BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

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PROCEEDINGS:	HEARING
COMMISSIONERS PARTICIPATING:	CHAIRMAN MATTHEW M. CARTER, II COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Wednesday, September 16, 2009
TIME:	Commenced at 9:30 a.m. Adjourned at 9:37 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR (850) 413-6732
PARTICIPATING:	(As heretofore noted.)

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
500	Discovery Responses Avera	4735	4808
501	Final Decision, Wisconsin Electric Company	4782	4808
130-146, 363			4807
492-496			4807
497			4807
498-499			4808

P R O C E E D I N G S

(Transcript follows in sequence from Volume 35.)

CONTINUED CROSS EXAMINATION

BY MR. WRIGHT:

Q. Are the other utilities on this, listed on this sheet able to raise capital today?

A. I imagine they can. I'm not sure all of them can. And there are companies that are operating under rate plans that aren't reflected here. Like Nstar that's in my group has a 12.5 rate plan that wasn't picked up by SNL Financial, and that continues many years into the future.

Q. As far as you know -- well, let me ask you this. Is ConEd still able to sell bonds?

A. I don't know for a fact. I haven't looked at their selling bonds. But because their rating is lower, two notches lower, it will cost them more than it otherwise would. And if we went back into a condition of financial credit rationing, they would step back in the line to get financing from where they would have been before because of their lower rating.

Q. From what to what? From what rating to what rating was ConEd's rating changed?

A. The issuer rating went from A2 to BAA1.

Q. Thank you. Are you aware of any of the other utilities on this list being downgraded after their commissions awarded them less than they asked for in ROE?

A. I don't think so. I don't see any that jump out to me as having been downgraded, but to be definitive I would have to look at downgrades against the names of these companies.

Q. Thank you. I just have a couple more questions, Doctor Avera.

In some discussion with Mr. Mendiola, you talked about differences in ROE and the impact on the revenue requirements, and I think you agreed that the impact of a hundred-basis-point change in ROE is about $133 million a year?

A. That's approximately within the range of what the company has asked for. I think the numbers start to change as you get further away.

Q. And your forward CAPM result without flotation costs was 10-1/2 percent --

A. For the utility proxy group.

Q. For the utility proxy group. Is that a credible result?

A. As I mention in my testimony, it is probably less credible than it might be if we didn't have depressed Treasury prices because of the flight to quality. So in my direct I discuss that I think the CAPM has to be taken with a grain of salt in the current capital market conditions.

Incidentally, Doctor Woolridge and Mr. Baudino made exactly the same comment, that the CAPM, because it relies on the risk-free rate, which is distorted downward by the flight to quality, is less reliable in this environment than it may have been in the past.

Q. Well, you sort of answered my question. My question was is it a credible result, and you said it's less credible than some other stuff. Is it a credible result or not?

A. It is a credible result, but it shouldn't be taken by itself as an indicator of the ROE. You have to look at other and at present more reliable studies.

Q. Okay. And Doctor Woolridge and Mr. Baudino did, in fact, look at other things and they came up with numbers below that by some degree.

A. That's right. Mr. Baudino completely rejected his CAPM, even though the number was higher than Doctor Woolridge's.

Q. The spread between 10-1/2 percent and 12-1/2 percent, would equate to something in the range of $260 million a year in revenue requirements?

A. Approximately, all else being equal. But it is a substantial change, but I think it would have a substantial effect on the company.

Q. Well, and if the company got $260 million less in revenue requirements, or $400 million less in revenue requirements, which is the whole spread between 12-1/2 and 9-1/2, just the first part, customers' rates would be less than otherwise, true?

A. If that's all, you know --

Q. For the period of time until rates were changed again.

A. Yes. The immediate effect, the temporary effect would be lower rates. The long-term effect, I think, would not be lower rates. It would be higher rates and more risk.

Q. And that leads to my next question, which is, you talked about long-term and in the long run. What exactly do you mean by the long run in your testimony?

A. I mean more than the next few years. I don't think I have an exact understanding whether it's five years or ten years or seven years, but I think if the effect of this order is to weaken the company, I think it will mean higher costs down the road. Now, at what point those higher costs will overwhelm the temporary benefit, I don't know. It could be sooner rather than later, if, for example, we had a devastating hurricane season.

Q. I think you said earlier today that in the really long run, I think you said dividend and earnings growth don't really matter in the really long run; is that accurate?

A. I'm saying to investors, to the really -- because what we are doing is discounting back, and when you discount back 100, or 300, or 3,000 years, the present value is almost nothing.

Q. I hope this is my final question. Do you remember what John Maynard Keynes said about the long run?

A. He said we are all dead, and I think that's still right, unfortunately.

MR. WRIGHT: Thank you very much, Doctor Avera.

Thank you, Mr. Chairman.

CHAIRMAN CARTER: Thank you, Mr. Wright.

COMMISSIONER ARGENZIANO: Mr. Chair?

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Yes. I just have a couple of questions, if I could. I know Mr. Avera has been sitting there a long time, and I sure appreciate his willingness to stay there, even though he's kind of captive.

CHAIRMAN CARTER: You're recognized.

COMMISSIONER ARGENZIANO: Mr. Avera, I think you had mentioned earlier that -- actually you referred to the nuclear shutdown risk. Can I ask is this quantified anywhere? And what I mean is there some type of probability of each nuclear plant, you know, chances of shutting down? And I don't mean intentional shutdowns. I mean the ones where they suddenly have to be shut down.

THE WITNESS: No, Commissioner, I don't know that it's quantified. I think what is bothersome to investors when I read their reports is that to some extent some shutdowns are completely beyond the control of the company, and they may occur because a similar plant in another place has a problem and as a matter of precaution the NRC could order a shutdown of one of FPL's plants.

COMMISSIONER ARGENZIANO: Okay. Thank you.

And another question, or another I guess statement I wanted to make. I think you said before, and let me see, I think it was -- I guess it was Mr. Wright and not Mr. Moyle regarding political environment. You have mentioned it a few times and how it affects the view of investors. And I wanted to see if you do understand that that cuts both ways. That, you know, political interference on behalf of the utility could affect that investor's view also, could it not, meaning it's not a one-way street.

THE WITNESS: I think it potentially could. I don't know that that's the case now. But I think what investors would like to see is an expert independent agency making decisions based on the evidence before them rather than trying to sway their decision in response to political intervention.

COMMISSIONER ARGENZIANO: Yes. So basically you're saying that the investors would feel more comfortable with an independent factual determination that is not politically driven one way or the other?

THE WITNESS: Yes, Commissioner, I think that to be the case.

COMMISSIONER ARGENZIANO: Okay. Thank you.

CHAIRMAN CARTER: Thank you, Commissioner.

Mr. Stewart.

MR. STEWART: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. STEWART:

Q. Good afternoon, Doctor Avera. How are you?

A. I'm fine, Mr. Stewart. Good to see you again.

Q. Good to see you. I've got a couple of I think fairly benign questions. We'll see.

On Page 4 of your testimony, on Line 5, the question, what are the financial challenges facing FPL?

A. Yes.

Q. How did you come up with that answer?

A. I wrote this answer myself after thinking a long time, studying FPL, and studying what was going on in the country. So this is my attempt, after talking to FPL, and reading a lot about them, and my experience with FPL as well as experience with other utilities, to crystallize kind of what this rate order was about in terms of financial effect.

Q. And the reason I'm interested and I'm asking the question is I read through it and it's very succinct and it seems to carry the theme of the whole rate case and some of the other testimony that has been filed from some of the other witnesses, including President Olivera. Would you agree with that?

A. Yes, I think it's similar.

Q. And some of the major points that are the themes that seem to run through his testimony are the status of the financial markets, the new capital investments, and the ability for this company to attract capital. Would you agree with that?

A. Yes, I think, you know, that's what investors are worried about, and that's what Mr. Olivera is worried about, and I think that's what this Commission should be worried about.

Q. Also in reading your testimony, looking at the end notes reminded me of a research paper in college. I noticed -- I counted the number of times that you cited rating agencies. Moody's, Fitch, and Standard & Poor's. I came up with 38 times. Why did you rely so heavily on the rating agencies for support in your testimony?

A. I think for three reasons. Number one, rating agencies are really, really important, because when they change the rating of bonds, a company's bonds, it has implications for the cost of credit to the company. It also has implications for contracting, because a lot of people who are contracting with the company look to the bond rating to determine how much security they need, how readily they will do business with the company, and on what terms.

The second reason why I talked so much about rating agencies is they do and have available because they are so important, all of the information about the company. They talk to people at the Commission. When I was at the Texas commission, they talked to me. They do, I think, a thorough job of vetting all of the relevant information, and they lay it out in their reports. So I think their reports reflect what they're concerned about, but I think because of their access it kind of gives you insight into what the investment community is thinking about.

Q. You've read Doctor Woolridge's testimony?

A. Yes.

Q. Do you know how many times he cited rating agencies in his testimony?

A. I haven't counted. His testimony puts a lot of emphasis on academic articles, I noticed, including his unpublished works, but I didn't count how many times he referred to rating agencies.

Q. Okay. Subject to check, would you agree that it was probably less than five or six times that he cited rating agencies?

A. It may be.

Q. Okay. Thank you.

Would you agree that rating agencies are usually supportive of utilities' positions on issues like ROE and capital structures in cases like these?

A. Well, I -- no. But in this sense. The first thing rating agencies will tell you is they don't play the regulatory game. They are outsiders. The rating agency people do not testify, they do not take a position on rate cases. They obviously have the interest of bondholders in mind, and they're trying to evaluate things like rate cases from the perspective of bondholders. And the more cash flow, the more safety to the bondholders, the higher the rating agencies will rate the bonds. So their interest is to correctly advise bondholders as to how much risk they are getting into when they put their money in the company's bonds.

Q. Did you consult with any representatives with rating agencies during your writing of your testimony?

A. No, not for the purposes of this testimony. As I testified earlier, I have a lot of experience with rating agencies, I did this long project for SPC Communications with Fitch's; I've interviewed them, they come to my classes, but I didn't talk to them relative to this case.

Q. Okay. And are you aware of any financial relationship between FP&L and rating agencies that you have cited in your testimony?

A. Rating agencies get paid by the issuers of securities. So if FPL wants a rating, they pay for it. If TECO wants a rating, they pay for it. So they are paid for that. Now, they also provide publications and other services for which they are compensated. But rating agencies get paid to make ratings.

Q. So do they get money in any other way from the utility, other than the credit services and the issuance of bonds?

A. Not that I know of. I mean, rating agencies provide services that are largely subscribed to by institutional investors. For example, rating agencies will sometimes advise institutional investors on private placement bonds that aren't officially rated, but the rating agencies will help them, you know, evaluate the risk of the bonds.

So, I think, in my experience, most of the money that rating agencies get from the utilities is the fees for rating the bonds. They get substantial fees from investors for other services.

Q. Thank you, sir. Just a couple more questions. When did FP&L first contact you about filing testimony in this docket?

A. It was probably in the fall of 2008. I don't remember what time. That's the best I can do --

Q. That's fine. That's fine.

A. -- thinking about it as I sit here.

Q. When did you start working on your testimony?

A. We started working around Christmas. We started getting data from FPL. We started collecting security analyst reports. So it was a major project, unfortunately, during the Christmas holidays.

Q. And, if you remember, when did you complete your first draft?

A. It would have probably been in January, I believe, somewhere shortly after the Christmas holidays. My wife would know.

Q. And so that first draft would have necessarily included sort of the theme of the testimony?

A. Yes. We had a lot of discussions with the company about the case, about their financial situation. Of course we were involved with other utilities during the fall, so we were very much aware of the financial turmoil and the challenges that many of our other clients were facing. So the theme was developed, you know, in November or December.

Q. Okay. And then you filed the testimony March 18th?

A. Yes.

MR. STEWART: Okay. That's all the questions I have, Mr. Chairman. Thank you.

CHAIRMAN CARTER: Thank you, Mr. Stewart.

Commissioners, I'm going to go to staff and then I'll come back to the bench.

Staff, you're recognized.

MS. BENNETT: Thank you, Mr. Chairman. I have about an hour, and just --

CHAIRMAN CARTER: Well, we've got an hour. Let's roll.

MS. BENNETT: Okay.

CROSS EXAMINATION

BY MS. BENNETT:

Q. Good afternoon, Doctor Avera. I've been waiting all day for this.

A. I've been waiting too, Ms. Bennett.

MS. BENNETT: Mr. Chairman, Commissioners, and Doctor Avera, I handed out earlier today a packet that we would like to have marked for identification purposes as exhibit --

CHAIRMAN CARTER: Is it this one?

MS. BENNETT: It's the one that is entitled Discovery Responses Avera.

CHAIRMAN CARTER: That would be, Commissioners, Number 500, 5-0-0, 5-0-0. And the short title, Discovery Responses Avera.

(Exhibit Number 500 marked for identification.)

CHAIRMAN CARTER: Do all parties have one?

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chairman. Just for planning purposes, and, again, I apologize if I've forgotten. But what time do we expect to go through this evening?

CHAIRMAN CARTER: We're going to go until at least 9:30.

COMMISSIONER SKOP: Excellent. Thank you.

MS. BENNETT: And I will be asking questions in the order in which the documents appear, so you won't have to shuffle through them.

BY MS. BENNETT:

Q. But let's start with, Doctor Avera, we talked quite a bit at the deposition earlier this month, or maybe last month now, so some of these questions are going to sound familiar. But would you agree that the cost of capital as determined by the Commission in this proceeding should only reflect the risk of providing regulated electric service in Florida?

A. Yes.

Q. Would you agree that capital markets are generally efficient?

A. Yes.

Q. Would you agree that, in general, investors' perceptions of investment risk are reflected in market prices for investments?

A. Yes. We can't always read them clearly, but they're there.

Q. To the extent that a cost of capital witness such as yourself relied on market-based costs of equity models to estimate the required return on equity for FPL, would you agree that investors' perceptions of investment risk are reflected in the results of those models?

A. That's correct. Again, the models measure reality with error, because we cannot get completely in the heads of investors. So that's why we apply the models to a group to hope that some of those errors will cancel out. But the information is there, we're just limited in our ability to tease it out.

Q. Okay. To the extent that you've captured investors' return expectations through the dividend yields and growth rates assumed in your discounted cash flow, I think that's the DCF model, would you agree your DCF analysis has captured the risk-adjusted required return for investors?

A. Yes. To the extent that, A, we have correctly intuited out what investors are requiring so we can isolate the required return, and, B, of course we're doing this for a group, and to the extent that FPL may be higher or lower in risk, we need to position the FPL result within the group. So we're applying the models to a group of similar companies, but once we have an answer, we still have to take the next step of positioning FPL within the group.

Q. Okay. Similarly, to the extent you've captured investors' return expectations through the beta and the market risk premium assumed in your capital asset pricing model, that's the CAPM model, would you agree that your CAPM analysis has captured the risk-adjusted required return of investors, I'm sorry?

A. Yes, again, subject to our ability. When you have a distortion like the Treasury rate has been driven low by the flight to quality, you might not be able to correctly determine the risk-adjusted required return because of this temporary distortion.

Q. Okay. I'd like for you now to turn to Page 6 of your direct testimony, and on Lines 3 through 6, you state that the observable yields on utility bonds have soared during the current crisis, with average utility bond yield now over 100 basis points higher since the FPSC approved the settlement in FPL's last rate proceeding. Is this correct?

A. Yes.

Q. The reference you make to yields on utility bonds is a general observation. It's not specific to FPL, is that correct?

A. That's correct. I was referencing the Moody's public utility bond yield.

Q. I'm going to ask you now to turn to the first document in the packet of discovery responses. I believe that is FPL's response to staff interrogatory Number 152. Do you have it?

A. Yes.

Q. And as I understand from the affidavit, you sponsored this response; is that correct?

A. I did.

Q. In this response you state that, with respect to FPL specifically, as a result of the company's strong credit standing, FPL has been able to maintain sufficient liquidity and access to capital throughout the financial crisis; is that correct?

A. Correct.

Q. Has anything changed since the time this response was prepared?

A. Not to my knowledge.

Q. I want you to turn to Page 14 of your direct testimony now.

A. I'm there.

Q. Okay. And on Lines 11 through 13, you state that utilities have been forced to draw on short-term credit lines to meet debt requirement obligations because of uncertainties regarding the availability of long-term capital; is that correct?

A. That's correct.

Q. The reference you make to utilities having to draw on short-term credit lines to meet debt retirement obligations is a general observation. It's not specific to FPL; is that correct?

A. Yes.

Q. In fact, you're not aware of any instance in which FPL has been forced to rely on short-term credit lines to meet debt requirement obligations; is that correct?

A. That's correct. In fact, the company actually built up its cash balance in anticipation of having available liquidity if there were a hurricane or some other need. So the company was able to anticipate possible liquidity problems.

Q. Okay. I'm going to ask you now to turn to Page 13 of your direct testimony, and Lines 2 through 4.

A. Yes.

Q. On Lines 2 through 4 you state recent volatility in the debt and equity markets linked to the ongoing financial crisis and the economic downturn evidences investors' trepidation to commit capital. Is that correct?

A. Yes.

Q. Is it your testimony that the recent volatility in the financial markets linked to the ongoing financial crisis and the economic downturn applies to both the debt and the equity markets?

A. Well, we can see it in the debt market, but there is a spillover into equity. If investors are not willing to buy utility debt because of the risk, it is very reasonable to suppose they're not willing to buy equity, which is even more risky.

Q. And I think you told me in your deposition that the real break in yields and the flight to quality that you discuss in your testimony began following the failure of Lehman Brothers in September of 2008; is that correct?

A. Yes. This very day one year ago. I mean, it was building, but that was a real shock to the financial system.

Q. Now I'm going to ask you to turn to Page 16 of your direct testimony, beginning on Line 22. And it actually will go on to Page 17.

A. Yes.

Q. You state that while yields on Treasury securities have fallen significantly, the required returns for common stock and public utility bonds have moved sharply higher to compensate for increased perceptions of risk. Is that correct?

A. Yes.

Q. The statement you make that the required return for public utility bonds has move sharply higher is a general observation and is not specific to FPL; is that correct?

A. That's correct.

Q. Now I'm going to ask you to refer again to the exhibit packet of discovery responses, and I want you to look at FPL's response to staff interrogatory Number 123.

A. Yes.

Q. And you did not prepare this response, correct?

A. I did not.

Q. But we did talk about it in your deposition?

A. We did.

Q. And you understand the information staff had asked for in this request and what the company provided in response?

A. Yes.

Q. I want you to refer to the next to the last line on this schedule. Are you there?

A. Yes.

Q. This line items refers to the pricing of a 30-year bond in the amount of 600 million issued in

January 2008, correct?

A. Correct.

Q. This issuance in January 2008 predated the significant market break that took place following the failure of Lehman Brothers that you referenced, the September 2008 date; is this correct?

A. Yes.

Q. And now I want you to turn your attention to the last line item on this same schedule. This line item refers to the pricing of a 30-year bond in the amount of 500 million issued in March 2009, correct?

A. That's correct. And this is a beautiful schedule, because what it shows is that FPL was able to get in the market before things went bad and wait until after they settled down to come back. That's what financial strength buys you.

Q. And the financial strength that is represented by these two 30-year bonds are coupon rates at the rate of 5.95 and 5.96 percent respectively, correct?

A. Correct. And that's a very attractive rate relative to what other utilities, especially those that went to the market during that October period that Mr. Wright was talking about.

Q. The reoffer yield is also the same as the effective interest rate; is that correct?

A. That is correct. That takes into account the discount or premium that the dealers have to make to get investors to hold the bonds.

Q. Okay. And in our deposition you explained a little bit, but I want to make sure I understand. Because of the difference in the discount applied at the time of the issuance, the March 2009 bonds have a lower effective interest rate than the effective interest rate on the January 2008 bonds; is that correct?

A. Yes.

Q. Okay. So despite the movement in the yields on Treasury securities and the spread over Treasuries discussed in your direct testimony, in reality FPL was able to borrow 30-year money at a lower effective rate in March 2009 following the bankruptcy of Lehman Brothers than it was able to borrow 30-year money in January 2008, prior to the disruption in the financial markets, correct?

A. That is correct. FPL had the advantage of being a pearl of rare price, of being a financially strong utility at a time that other utilities weren't financially strong.

Q. Okay. I want you to -- well, we're going to talk a little bit about the credit ratings to determine comparability of companies for inclusion in your utility proxy group. And you relied on those credit ratings; is that correct?

A. Yes, along with the Value Line, more equity-oriented measures of risk.

Q. Okay. And you would agree that rating agencies do both qualitative and quantitative analysis in determining the credit ratings they assign to companies, correct?

A. Yes.

Q. And you would agree that rating agencies consider risk factors, such as off-balance sheet obligations, like purchased power contracts, reliance on nuclear power, degree of financial leverage, quality of regulation, et cetera, in the determination of credit ratings they assign?

A. They do.

Q. So credit ratings are useful for determining comparability for purposes of selecting a proxy group for use in ROE models, but I think your testimony is credit ratings are not useful for purposes of categorizing companies by risk; is that correct?

A. No. I think that's a little too broad. I think they're very useful as a rough cut to identify a comparable set of companies. But as I discussed earlier, there is not a one-to-one relationship where you can say, well, this company has a higher credit rating, therefore the equity risk is less.

So, since credit ratings have a constituency, as Mr. Maurey said, of the debt holders, they look at risk through the lens of debt holders. So there is a relationship, but it is not an absolute relationship. So a company may have a higher bond rating than another company, but the equity risk may be less. That can occur.

But the credit rating is useful for generally screening companies, especially when you have other screens, to kind of narrow the field to companies that are somewhat similar, because credit rating agencies look at the same kinds of risk, the same determinants of risk as equity holders would. They just look at it with the mind of a bondholder.

Q. Okay. I'm going to turn our attention a little bit now to, excuse me, capital structure. Is it your testimony that FPL's equity ratio is at the high end of the range of equity ratios, but that there are reasons why FPL needs to have an equity ratio at the high end?

A. Yes.

Q. I want you to turn to your Exhibit WEA-15, attached to your direct testimony.

A. Okay. Let me get there. Besides taking a toll on the witness, this long cross-examination has hurt my testimony. But I found 15.

CHAIRMAN CARTER: Do you need a necessary room break?

THE WITNESS: No, no, I'm fine, Mr. Chairman. I just -- this page got folded over.

BY MS. BENNETT:

Q. WEA-15 is a list of the operating companies for the investor-owned utilities of the companies in your utility proxy group; is that correct?

A. Yes.

Q. Did you compare FPL's -- not FPL Group, but FPL's Standard & Poor's adjusted equity ratio to the Standard & Poor adjusted equity ratios of the IOUs listed on Exhibit WEA-15 attached to your direct testimony?

A. I did not.

Q. You also developed a list of 66 nonutility companies, which are shown on WEA-9 attached to your direct testimony, that you believe are comparable in risk to FPL, correct?

A. That is correct. That are indicated to be comparable in risk based on investor measures like bond ratings and Value Line rankings.

Q. That leads into my next question, because according to Page 39 of your direct testimony, you selected all companies followed by Value Line, and I'll let you turn to that page so we can make sure we've got that screening factor.

A. Yes.

Q. Okay. According to your testimony, your screening factors include that pay common dividends, have a safety rank of 1, have a financial strength rating of A or above, have an investment grade credit rating from Standard & Poor's, and have at least two published growth estimates from Value Line, IBES, First Call, or Zacks. Is that correct?

A. Yes.

Q. Were there any other screening factors?

A. No.

Q. So other than the filters we've discussed, did you conduct any additional analysis to determine the comparability of the companies in your nonutility proxy group with FPL?

A. Well, I did the summary that I think is on WEA-6, which compares the outcome of the 66 companies in terms of these risk measures, including beta, which was not one of the screens, but which is a measure of risk. So, what I interpret from that analysis is that the nonutility group has similar risk measures to FPL.

Q. So you didn't look behind the indicators to the individual characteristics?

A. No, because the theory was to try to look at these companies as investments and investors would look at them. So these are companies that by their credit rating, by their safety rank, by their financial strength and beta are very similar in risk, some higher, some lower, than FPL. So based on that, I assumed that investors would view them as somewhat comparable.

Remember, we started with 1,700. We have narrowed it down to the 66 relatively unrisky of the universe of Value Line companies. And then if you look at the names, I mean, they're household names. But the screening criteria and the confidence I have in them is based on these risk measures.

Q. Okay. We're going to narrow it down from 66 to the 19 utility companies that you show on WEA-7 next.

A. Yes.

Q. And according to Page 38 of your direct testimony, you selected all companies classified by Value Line as electric utilities with -- do you want to turn to Page 38 first?

A. Yes. I'm there.

Q. I want to make sure that we've got all the criteria. There's a minimum S&P corporate credit rating of BBB plus, a safety rank of 1 or 2, a financial strength rating of B plus plus or better, and at least two published earnings per share growth projections from Value Line, IBES, First Call, or Zacks. Is that correct?

A. That's correct. There's another kind of background criteria that I may not have mentioned that's common, and that is that they pay dividends and they're not involved in merger and acquisition activity that is material.

Q. Is that for both WEA-7 and for the 66, the companies?

A. No. The WEA-7, the smaller group where you did that additional screening, which I don't think it turned out we screened anybody because of that screen, but that's kind of openers for being qualified.

Q. Okay. So other than the filters that we listed in your testimony, and then the additional filter, did you conduct any additional analysis to determine the comparability of the companies in your utility proxy group to FPL?

A. No.

Q. Other than credit ratings, the determination of your utility proxy group was based on a comparison of statistics related to FPL Group to other companies that own investor-owned utilities, but no specific comparison between statistics related to FPL and other IOUs; is that correct?

A. That's correct, because Value Line does not publish statistics for operating companies, only for holding companies.

Q. I'd like you to turn now to Page 27 of your direct testimony. And let me know when you're there.

A. I'm there.

Q. On Lines 5 and 6 you state that FPL's significant reliance on natural gas detracts from its credit quality, and should be taken into consideration in evaluating a fair ROE. Is that correct?

A. Yes.

Q. And then I want you to turn to Page 31 of your direct testimony, Lines 7 to 9.

A. Yes.

Q. On Lines 7 and 9 you reference FPL's reliance on nuclear power for a portion of the company's generating capacity. Is that correct?

A. Correct.

Q. And you've testified that FPL's reliance on natural gas and nuclear for significant portions of its fuel mix increases its risk; is that correct?

A. Yes.

Q. But you didn't develop any analysis to compare the percentage of generation attributed to various fuel sources for the operating utilities included on your Exhibit WEA-15; is that correct?

A. That's correct.

Q. So, isn't it true that you can't tell the Commission what the optimal mix for FPL is that would minimize the risk associated with fuel mix? Did I confuse you with the question?

A. No, I think I can answer that. No, I can't tell the Commission, because that's a very broad question that involves considerations of cost, considerations of availability, long-run reliability. It's the kind of thing that this Commission considers during a needs case. And as we discussed in the deposition, you can't just look at it from a financial perspective to decide if it makes sense. Clearly, I'm not saying natural gas and nuclear are bad. They are good. But they have financial implications.

Q. And I think we decided in the deposition that no matter what fuel mix FPL pursues, FPL will still be exposed to risk; is that correct?

A. That's correct. But when certain fuel choices are made and investorized, the risks increase.

Q. And I think that's true for every utility company on WEA-15, that each one of those companies is exposed to fuel mix risk; is that correct?

A. That is correct. But it depends on their exact fuel, the diversification and those things, as to how much risk there is.

Q. Okay. I'm going to ask you to turn to Page 27 of your direct testimony.

A. Yes.

Q. On Lines 12 through 16, you state that the Commission's adjustment mechanisms provide an important source of support for FPL's financial integrity, correct?

A. Yes.

Q. And you'd agree with me that the Commission's fuel cost recovery clause is supportive to FPL's credit quality, correct?

A. Yes.

Q. I'm going to ask you now to turn in your discovery packet to Interrogatory Response 158 for staff, and also OPC's Interrogatory Number 260.

A. Is it in the packet, as well?

Q. Both of them are. They should be right next to each other.

A. I've got it.

Q. Okay. According to your responses to the Interrogatory 158, you did not develop any analysis to compare the percentage of purchased power utilized by the operations utilities listed on WEA-15, correct?

A. That's correct.

Q. And has anything changed since the time this response was prepared that would change FPL's response to either Interrogatory 158 or OPC's Interrogatory 260?

A. No. As we discussed in the deposition, the amount of purchased power in terms of its effect is not as important as the nature of the purchased power commitments. Those purchased power commitments that carry with them an obligation to make long-term capacity payments have a different effect than purchased power that is overnight off the grid purchased power that is prevalent in many parts of the country.

Q. I'm going to ask you now to turn to Page 28 of your direct testimony, and let me know when you're there.

A. Yes.

Q. On Lines 5 through 7, you state that investors are aware of the financial and regulatory pressures faced by utilities associated with rising costs and the need to undertake significant capital investment. Is that correct?

A. That's correct.

Q. Would you agree that those financial and regulatory pressures faced by utilities associated with rising costs and the need to undertake significant capital investments -- I need to take a breath -- are not unique to FPL, but instead are systemic to the industry?

A. They are systemic, but as they -- each company is evaluated based on its exposure. And I think the important thing in that quote, if you look, the quote from Moody's, which is July '08, it talks about, the last line says prompt legislative intervention and a more contentious atmosphere between utilities and regulators is something that would increase risk. So it affects all utilities, but when investors see this contentious relationship being played out, that gives them concern.

Q. But that regulatory risk that we were talking about, it's faced by everybody in your utility proxy group, correct?

A. It is faced by everybody. Different commissions have different ratings. Now, one big difference, a big difference between FPL and a lot of these companies, which Moody's talked about in August of

2009, FPL has all of its eggs in one basket. It is jurisdictional to one state commission and has very little FERC jurisdiction. So, it is tied to its fortunes to the FPSC. Moody's says it prefers companies that have more diversification among commissions, and FPL does not have that. So, that's certainly a factor. Besides their judgment of the quality of this Commission, is the fact that all the eggs are in this basket.

Q. Okay. For purposes of preparing your testimony in this proceeding, you did not make any specific comparisons of FPL's proposed capital expenditure program to the capital expenditure programs of the other companies in your utility proxy group; is that correct?

A. I did not. I'm generally aware, as we mentioned over the deposition, I worked for most of these companies either at FERC or in their state commissions, so I'm familiar with these companies and I know of none that has the kind of investment program as FPL. I believe the 16 billion is about 12 percent of the total capital spending among utilities. So it's a huge capital budget, and I don't think, while some have large capital budgets, I think FPL eclipses them all.

Q. I'm going to ask you to turn to the bottom of

Page 28 of your direct testimony, Lines 16 to 18.

A. Yes.

Q. You discuss a quote from Standard & Poor's related to how rising operation and maintenance costs and volatile fuel costs are significant challenges to the utility industry, correct?

A. Yes.

Q. And you'd agree that the rising operating and maintenance costs are not unique to FPL, but are systemic to the industry, correct?

A. Yes.

Q. And the risk of rising operating and maintenance costs is present for all of the other companies in your utility proxy group, correct?

A. To a greater or lesser extent, yes.

Q. Would you agree the need to comply with environmental requirements is not unique to FPL, but instead systemic to the utility industry?

A. Yes.

Q. The risk associated with the need to comply with environment requirements is present for the other companies in your utility proxy group also, correct?

A. Yes. Of course, those that don't have generation, for example, are relieved somewhat of the risk relative to a company that has its own generation, and those generating plants must meet environmental requirements.

Q. Okay. I'm going to ask you to turn to Page 23 of your direct testimony.

A. Yes.

Q. On Lines 4 through 6, you discuss the customer mix of FPL, correct?

A. Yes.

Q. But you didn't develop an analysis to compare the percentage of sales attributed to various customer classes for the operating utilities on Exhibit WEA-15; is that correct?

A. That's correct.

Q. Please turn to Page 67 of your direct testimony, Lines 5 to 7.

A. Yes.

Q. And there you discuss regulatory risk. Is regulatory risk unique to FPL, or is it systemic to the other IOUs represented by the companies in your utility proxy group?

A. It's systemic. Now, when you have a big rate case pending, or a lot of rate cases in one jurisdiction, I think that increases the focus on regulatory risk as opposed to a company that doesn't anticipate a rate case or that, you know, where there's not a high level of regulatory activity, where the regulatory climate could be changed or measured.

Q. But regulatory risk is present for the other companies in your utility proxy group to one extent or another; is that correct?

A. Yes.

Q. Staying on Page 67, I'd like for you to actually read aloud on Lines 12 through 15.

A. This is a quote from Fitch in February 12th, 2008. "Maintaining a supportive political and regulatory environment in Florida that permits full and timely recovery of utility capital investments, commodity costs, and storm recovery is important to the maintenance of the current rating."

Q. Do you believe, and I think we've discussed this at length, but do you believe through its implementation of the fuel cost recovery clause, the nuclear cost recovery clause, and various means of storm cost recovery, the Florida commission has provided FPL with a supportive regulatory environment?

A. Yes. I believe those actions have been supportive.

Q. And then I'd like for you to turn to Page 68 of your direct testimony.

A. Yes.

Q. Is it your testimony that the availability of cost recovery clauses and other adjustment mechanisms are a valuable means of mitigating risk to IOUs?

A. Yes. They are mitigators of risk. They are not eliminators of risk, as we have talked for several hours earlier today.

Q. I would like you to turn to 69 of your direct testimony.

A. Yes.

Q. Is it your testimony that the mitigation in risk afforded by cost recovery clauses and other adjustment mechanisms is already reflected in the cost of equity estimates indicated by your models?

A. Yes, to the extent that we're able to extract from the market data an accurate assessment of the required return. It's there, we just can't always find it.

Q. Okay. I'm going to have you turn now to Interrogatory 157, which is the next document in your packet.

A. Yes.

Q. According to the affidavit, you sponsored this response, correct?

A. Yes.

Q. Would you read aloud the final two sentences of this response? I think it starts, "Investors consider the impact."

A. Right. I'm trying to find the beginning of that.

"Investors consider the impact of these adjustment mechanisms in assessing the risk and required returns for the firms in the utility proxy group, and their assessment is reflected in observable market data, such as stock prices used to apply the DCF model. As a result, the cost of equity estimates developed by Doctor Avera -- in Doctor Avera's testimony already consider the impact of cost adjustment mechanisms on investors' required returns."

Q. And with respect to the various risks that we have been discussing and that you've agreed are systemic to the utility industry, do investors consider these risk factors in assessing the risks and required returns for the firms in your utility proxy group?

A. They do.

Q. Do you have any reason to believe investors' assessment of the risk and required returns associated with these systemic risks are not reflected in observable market data?

A. No, Ms. Bennett. The problem is not with the data. It's our ability to determine what it tells us about required returns, but it is in the data.

Q. Okay. I'm going to ask you again to go to the packet of discovery and to Staff Interrogatory Response Number 156, and also to FPL's response to OPC's Fifth Set of Interrogatories Number 259.

A. Yes.

Q. And according to the affidavits, you sponsored both of these responses; is that correct?

A. Yes.

Q. And actually 156, the response to 156 refers to OPC's Number 259; is that correct?

A. Correct.

Q. And OPC -- or the FPL's response to OPC's Number 259 includes a schedule which shows the various cost-recovery mechanisms of the companies in your utility proxy group, correct?

A. Correct.

Q. Okay. Has anything changed since the time this response was prepared that would change FPL's response to these two interrogatories?

A. The only thing is that I've looked at some recent Value Lines, more recent than I had when we did the testimony or these responses, that indicate there may be more adjustment mechanisms out there for the comparable group than I initially got from the 10Ks.

Remember, this is from the 2008 10Ks generally, and we're now in 2009, so commissions have had a time to add mechanisms.

Q. And I think we discussed this, but -- in fact, I know you have earlier, but you're familiar with the generation base rate adjustment, GBRA mechanism that was included in the settlement negotiated between FPL and the parties to the 2005 rate case, correct?

A. I am.

Q. And in this Response Number 259, can you identify any specific examples on this schedule that show where a company in your utility proxy group was allowed to implement an automatic increase in base rates for the full annual revenue requirements for an entire power plant outside of a base rate proceeding?

A. Well, I think there are provisions in Virginia for Dominion, and in California for PG&E and Sempra, and in Wisconsin that have some of the same characteristics in terms of allowing the revenue requirements for plants to be deflected without a full rate case. Now, in some of these cases it's unclear reading the Value Line if it's all generation or just some generation.

Q. That was going to be my question. Are there any that allow for the full annual revenue requirements for an entire power plant outside of a base rate proceeding?

A. I am familiar with Virginia, because we're in cases up there, and I think the Virginia would be close to that. It's still -- you know, Virginia has gone from being deregulated to regulated, and they just passed a new regulatory act, so they are fleshing out how that's going to work. So it may be interpreted by the commission in such a way that it is the functional equivalent of GBRA, but I think it's too early in the game. The major Virginia companies are now before the commission trying to sort out how the new policy is going to be implemented.

Q. Okay. So I think it's fair to say then that none of the utilities currently have in place something similar to the generation base rate adjustment that FPL has as part of its negotiated settlement; is that correct?

A. Not exactly similar, but I think, for example, the California framework is very similar in that it eliminates the need for a full rate case and it eliminates the regulatory lag.

Q. But, again, does it have a full annual revenue requirements for an entire power plant outside of a base rate proceeding in California?

A. I don't know if it's entire. I think it's substantially all. I think one of the things about the California, it's on an annual basis, so they have an annual review of the investment of the companies without having to have a rate case.

Q. Okay. But you did not specifically review whether any of the companies in your utility proxy group had a GBRA mechanism in place; is that correct?

A. That's correct. Because, again, the perspective is that from an investor. And investors typically get their information from 10Ks, they get their information from Value Line and rating agencies. They are not in a position to go look at the tariffs or to be a part of rate cases in places like Virginia like I am. There was a Standard & Poor's publication in March on adjustment clauses, and it mentions a number of states that have generation adjustment clauses.

Q. Well, I think you told Mr. Moyle in the deposition that you did not research commission orders or review statutes in other states to determine whether a GBRA mechanism was in place in preparation for your testimony; is that correct?

A. That's correct, because I don't believe that's the kind of information that investors would reference. I am familiar with the Virginia statute because I'm doing a couple of cases up there, but I don't think investors would have that same level of knowledge. They would rely on Value Line, for example, that talks about the Virginia program.

Q. I'm going to change our topic a little bit and move to Staff Interrogatory Number 207, which is the next one in your packet.

A. Yes.

Q. And you sponsored this response; is that correct?

A. Yes.

Q. So, according to this response, you did not conduct any study to identify the extent to which each of the specific cost adjustment mechanisms for the companies in your utility proxy group, or the IOUs listed on Exhibit WEA-15 were comparable to the mechanisms approved by FPL -- approved for FPL; is that correct?

A. That's correct. There was no study before the testimony. We just talked about a study that I did in response to interrogatories.

Q. Has anything changed since that interrogatory response?

A. The only thing that I mentioned is the more recent Value Lines have indicated, and the Standard & Poor's report in March, which I hadn't seen until recently suggest that there are more states having these kinds of adjustments, a GBRA type adjustment.

Q. Earlier you stated that you did not consider fuel mix in the determination of the companies to include in your utility proxy group, correct?

A. Correct.

Q. I want you to refer, again, to the packet of discovery responses. There's a Deposition Exhibit Number 4 that should be next. It was prepared by, I believe by staff, and it shows the companies in your utility group which own or are building nuclear.

A. Yes.

Q. Subject to check, would you agree that ten of the companies in your utility proxy group own nuclear generation?

A. Yes.

Q. And subject to check, would you agree that six of the companies in your utility proxy group are proposing to build new nuclear generation?

A. Yes.

Q. With over half of the companies in your utility proxy group already owning nuclear generation and nearly a third of the companies proposing to build new nuclear generation, would you agree that investors' risk considerations regarding nuclear generation are incorporated in the market data you relied on in your cost of equity models?

A. They are, again, to the extent that we're able to interpret the information. They're incorporated in of the numbers, it's whether we can infer what they tell us.

Q. And isn't it true with regard to the variety of risk factors discussed in your testimony, and that we've been discussing with you today, you did not do any quantitative comparison of how these risk factors affect FPL to how these same risk factors impact each of the IOUs listed in WEA-15, correct?

A. Correct.

Q. Okay. I'm going to ask you again to refer to the packet of discovery responses. And in response to OPC's Fifth Set of Interrogatories Number 262, you provided Standard & Poor's reports for each of the companies in your utility proxy group, correct?

A. Yes.

Q. And I think that all of those are attached to Number 262 and are in your packet?

A. Yes, they are.

Q. The good news is I'm not going to make you go through each and every one of them.

A. That is good news.

Q. But Andrew Maurey says we're going to go through a lot of them.

And did you review these rating agency reports for purposes of preparing your testimony in this proceeding?

A. No. We had reviewed many of them, again, because we had worked with these companies, but we didn't do a systematic review for the purposes of our testimony.

Q. Okay. Well, let's do them now. Does S&P identify strengths and weaknesses for the companies in these reports?

A. Yes.

Q. Do investors rely on the Standard & Poor's reports like these reports when assessing the business and financial risk of companies?

A. They do, recognizing, of course, as Mr. Maurey has said, that their constituency is the debt holder. But they generally identify risk, but we have to appreciate that their constituency is the debt holder.

Q. Okay. To the extent that S&P identifies strengths and weaknesses for the companies it follows and investors rely on rating agency reports when assessing the business and financial risk of these same companies, would you agree that investors incorporate these assessment of risks in developing their risk and return requirements?

A. Yes. They look at these factors. They may give them different weight than S&P does.

Q. And to the extent investors incorporate these assessment of risks in developing their risk and return requirements, you would agree with me that these risk and return requirements are included in observable market data, such as stock prices, dividend yields, and betas for these companies, correct?

A. Yes.

Q. I'm going to ask you to turn to the S&P report for Dominion Resources. There's a Bates-stamped page, FPL 112139, if that'll help.

A. I am there.

Q. Very good. I want you to go to the heading Major Rating Factors.

A. Yes.

Q. Under the subsection Weaknesses, S&P identifies the higher risk unregulated generation portfolio remains sizeable and harbors considerable market exposure if not hedged appropriately and consistently. It also lists: And other unregulated activities contain even more risk, particularly upstream and midstream natural gas operations. Those are listed as weaknesses, correct?

A. Yes.

Q. Would you agree that S&P characterizes Dominion Resources' unregulated operations as higher risk than its regulated utility operations?

A. Yes.

Q. Also under the heading of Major Rating Factors, S&P identifies risk management around the retail gas and electric business spread over 12 states and states that this presents a challenge and a weakness; is this correct?

A. What are the 12 states? I missed that. Up in strengths?

Q. It's the last bullet under Weaknesses.

A. Yes.

Q. FPL's vertically integrated regulated utility operations are exclusively in Florida, correct?

A. Yes. And let me say that Dominion's electric operations are in Virginia and North Carolina. I think this is more to their gas operations.

Q. Would you agree that Dominion Resources owns nuclear generation, also?

A. Yes.

Q. And would you agree that Dominion Resources is proposing to build new nuclear?

A. Yes.

Q. Okay. I'm going to ask you to turn to the Standard & Poor report for Duke Energy next, and that's Bates stamp Page FPL 112146. Let me know when you're there.

A. 146. Duke, not to be confused with the University.

Q. I would like for you to read the two bullet points under Weaknesses on that page.

A. Significant capital spending to address environmental and growth needs necessitates timely recovery of expenses to preserve the currently strong financial profile and international operations introduce some political and currency risk.

Q. Would you agree that FPL is also requesting timely recovery of expenses to preserve its currently strong financial profile?

A. Yes.

Q. Would you agree that FPL does not have international operations?

A. I think generally that's the case. You mean FPL the utility, it does not.

Q. FPL utility does not?

A. Right.

Q. I want you to refer to the final few lines at the bottom of this page. Specifically, I believe it's the last sentence.

A. The strengths?

Q. Correct. Would you agree that S&P reports that Duke Energy has a significant capital expenditure program that will total 23 billion through 2012, with 84 percent of this amount targeted for regulated utility projects?

A. Yes.

Q. Subject to check, would you agree that 84 percent of 23 billion is approximately 19.3 billion?

A. Yes.

Q. So Duke Energy's capital expenditure program targeted for regulated utility projects of approximately 19.3 billion through 2012 is greater than FPL's projected capital expenditure program of 16 billion over the next five years; is that correct?

A. Yes, it is. I'm not exactly sure how the nuclear is incorporated in this. But, the numbers are greater.

Q. Those were my next two questions. Duke Energy owns nuclear generation, correct?

A. Yes.

Q. And it is proposing to build new nuclear generation, correct?

A. Yes.

Q. Okay. Let's turn to MDU Resources Group, which is FPL Bates stamp 112162.

A. Yes.

Q. Under the Major Ratings Factors Weaknesses, S&P identifies substantial exposure to the volatile exploration and production business and limited percentage of earnings contributions from the utility and other regulated business. Those are listed as a weakness, correct?

A. Yes.

Q. Would you agree with me that FPL the utility is not involved in the volatile exploration and production business?

A. Yes.

Q. I want you to go to the next page and read aloud the final sentence at the bottom of that page.

A. "We don't expect positive rating actions in the next 12 to 18 months given the high portion of unregulated earnings."

Q. Would you agree that S&P reports that MDU Resources' reliance on a high proportion of unregulated earnings is limiting the upside for its credit rating?

A. Yes, given this particular portfolio of unregulated activities.

Q. Next I want us to turn to Pacific Gas and Electric, PG&E, and I think that's on Bates stamp FPL 112184.

A. I am there.

Q. Very good. I would like for you to read aloud -- actually I think I will read it aloud. Under the heading Major Rating Factors, S&P identifies numerous pressures on electric costs include the company's significant capital spending program, rising commodity energy costs, renewable contracting, and the unquantifiable but pending costs of greenhouse gas reductions in 2012. And those are all identified as weaknesses; is that correct?

A. Yes.

Q. PG&E owns nuclear generation, correct?

A. Yes.

Q. And I would like for you to turn your attention to the fourth bullet point under the heading Strengths.

A. Yes.

Q. Would you agree that S&P reports PG&E projects -- projects, I'm sorry -- a capital expenditure program of 13 billion from 2008 to 2011?

A. Yes.

Q. And in the sixth bullet point under Strengths, would you agree that S&P characterizes a recently approved cost of capital mechanism that provides a return on equity of 11.35 percent through 2010 as supportive?

A. Yes. I was involved in that case, and I'm very proud that they got supportive results.

Q. Okay. Well, then I think this will -- you'll able to answer this next question then. You're aware that on August 14th, 2009, PG&E and the Division of Ratepayer Advocates jointly filed a petition with the California Public Utilities Commission to modify the cost of capital mechanism to keep the existing 11.35 percent ROE through 2012 and to defer the next cost of capital application until April 2012 to be effective January 2013? Boy, that was mouthful.

A. Yes, I understand there has been such an agreement.

Q. Okay. Next I'm going to ask you to turn to the SCANA Corporation. It's Bates stamp 112210.

A. 210. Yes.

Q. Under the heading Major Rating Factors, S&P identifies consolidated debt leverage is aggressive for the rating, exposure to higher risk retail gas marketing operations and potential for increased business risk and weakened financial risk profile due to planned construction of new nuclear power plants as weaknesses; is that correct?

A. That's correct.

Q. Does FPL have exposure to higher risk retail gas marketing operations?

A. No. I think since this report SCANA has been downgraded.

Q. Okay. SCANA owns nuclear generation, correct?

A. Yes.

Q. Does SCANA still plan to build new nuclear power plants?

A. I think they do. They might be, as a result of the rating action, kind of looking at their cards, but they haven't announced any change.

Q. I'm going to next ask you to look at the S&P report for Sempra Energy, which is 112218.

A. Yes.

Q. I think it's your turn to read under Weaknesses --

A. Okay. I like the split-the-labor approach. Which one do you want me to read?

Q. All three of them under Weaknesses.

A. Okay. "Aggressive growth plans as a natural gas infrastructure company. Uncertainty in California regarding retail choice, resource adequacy, and renewables, including greenhouse gas restrictions, and infrastructure investments in Mexico and risky investments in Argentina, Peru, and Chile."

Q. There are no uncertainties in Florida regarding retail choice in FPL's service territory, correct?

A. Correct.

Q. And FPL does not have any risky utility investments in foreign countries; is that correct?

A. Correct.

Q. Sempra owns nuclear generation, correct?

A. Yes. I'm not sure what their level of exposure is right now. There have been some changes in that. I haven't looked at this report to ascertain that.

Q. Okay. Do you need a minute to look at the report?

A. No. I don't think it's material to progressing. But I noticed on the exhibit that staff did there was some ambiguity about Sempra's nuclear.

Q. Okay. I would like for you to turn next to the S&P report for Southern Company, which is FPL Bates stamp 112233.

A. Yes.

Q. Under the heading Major Rating Factors, S&P

identifies significant capital spending and significant deferred fuel cost as weaknesses; is that correct?

A. Yes.

Q. I would like for you to refer to the third paragraph on that page.

A. Yes.

Q. Would you agree that S&P reports that Southern Company projects significant capital expenditure over the next three years of 13.2 billion?

A. Yes. And that -- yes.

Q. Okay. Southern Company owns nuclear generation, correct?

A. Yes.

Q. And Southern Company has proposed to build new nuclear power plants, correct?

A. They have.

Q. And let's turn to Vectren Corporation, which is FPL Bates stamp 112242.

Are you there?

A. Yes.

Q. Okay. Under the heading Major Rating Factors, S&P identifies increasing contribution of nonregulated businesses as a weakness; is that correct?

A. Yes.

Q. I would like for you to refer to the third paragraph on this report, and read aloud the first three sentences in this paragraph.

A. "Vectren's nonutility operations have higher risk than its regulated segments due to greater variability in cash flow generation. Energy marketing services, utility-related construction services, and coal mining operations provide the majority of cash flow from this segment."

Do you want me to continue?

Q. One more sentence.

A. "Financial performance of the nonregulated businesses can vary dramatically with changes in commodity prices and price volatility, effectiveness of the company's hedging programs, and competition."

Q. Okay. Thank you. Would you agree that S&P reports that Vectren's nonutility operations have higher risk than its regulated operations?

A. Yes, that seems to be the case for Vectren.

Q. Also under the heading of Major Rating Factors, S&P identifies an intermediate financial profile characterized by high leverage and weak cash flow measures as weaknesses; is that correct?

A. Yes.

Q. You would not characterize FPL as having high leverage and weak cash flow measures, would you?

A. No.

Q. Next I want you to turn to the Wisconsin Energy S&P report, which is Bates stamp 112250.

A. Yes.

Q. And the date of this report is August 5th, 2008, correct?

A. Correct.

Q. What are the strengths listed for Wisconsin Energy -- well, I'm sorry. One of the strengths listed for Wisconsin Regulatory Energy Corporation is very supportive regulation; is that correct?

A. Yes.

Q. Under the heading Major Rating Factors, S&P identifies ongoing large capital spending programs and is highly dependent on continuing supportive regulation during its construction cycle as a weakness; is that correct?

A. Yes.

Q. Are you aware that by an order dated January 17th, 2008, the return on equity for Wisconsin was 10.75 percent?

A. Yes. I believe Wisconsin can earn up to -- let me get my Value Lines. They can earn a higher return on their -- I think up to 12.7 on their generation investments.

Q. And I kind of skipped a step here. I did want to --

CHAIRMAN CARTER: Hang on a second. Hang on a second. Okay. You may proceed.

THE WITNESS: I'm reading from the Wisconsin Value Line from June 26th, 2009, and it said, "Thanks to a regulatory arrangement under the power of the future program that is designed to produce a 12.7 percent return on equity, the plant should increase the company's annual earning power by 100 million."

MS. BENNETT: I'm going to have an exhibit.

CHAIRMAN CARTER: Do you need a number?

MS. BENNETT: Yes, please.

CHAIRMAN CARTER: 501, 5-0-1.

(Exhibit Number 501 marked for identification.)

MS. BENNETT: And it is a Final Decision, Wisconsin Electric Power Company. That's kind of long, too, isn't it?

CHAIRMAN CARTER: Final Decision, Wisconsin Electric Company?

MS. BENNETT: Yes.

CHAIRMAN CARTER: Okay. I think she got Mr. Mendiola's coffee. Okay, Ms. Bennett.

BY MS. BENNETT:

Q. And this document is the order that granted the Wisconsin Energy -- or Wisconsin Electric Power Company the 10.75 ROE; is that correct?

A. Yes.

Q. Would you agree that despite recognizing its ongoing large capital expenditure program and its dependence on continuing supportive regulation during the construction period as weaknesses for Wisconsin Energy Corporation, S&P characterized the regulation in Wisconsin as very supportive just seven months after the Wisconsin commission approved the ROE at 10.75?

A. Yes. And as we discussed earlier, there's a lot more to evaluating an order than just the ROE number.

Q. Okay. I would like for you now to turn to Page 44 of your direct testimony.

A. Yes.

Q. Is the application of the DCF model you have used in the proceeding consistent with the manner you applied the DCF model in past testimony?

A. It is consistent. There are several changes that I'm -- well, okay. First, let me begin. The whole idea of the DCF model is to capture what investors are looking at, how they look at companies of a particular type at a particular time. Over time, as investors have changed, for example, putting less emphasis on dividends, my application of the DCF model has changed to reflect that. There was a time when investors seemed to be viewing the future in a discontinuity way. So we used two-stage DCFs. So we change the DCF model as the market changes because we're trying to get into the minds of investors. So since investors change, the DCF model must change.

Secondly, different commissions have given direction about how they like to do the DCF. The extreme example is the Federal Energy Regulatory Commission. The FERC has said this is how you shall do the DCF. Now we can take a little bit of credit or discredit for that, because we were involved in some of the benchmark cases where they made their decisions about how to apply the DCF. But when I go to FERC, since I want to play to their way of looking at the world, I adjust my DCF model to comply with the direction they've given, which varies in some minor respects from the DCF model we have presented here.

Q. And I think you also spoke with Mr. Mendiola a little bit about prior to your work in Illinois you had an historic DCF model, but after that you've gone to a forward-looking DCF model?

A. CAPM. Our CAPM changed, because we saw what the Illinois commission staff was doing, and it seemed like a good idea, so we started migrating toward that, and now we believe that's the most credible way to apply the CAPM.

Q. Okay. I need to go back to your DCF model, so let's turn to Page 48 of your direct testimony. And let me know when you're there.

A. Yes.

Q. Beginning on Line 15 you state that in applying the DCF model to estimate the cost of equity, the only relevant growth rate is the forward-looking expectation of investors that are captured in current stock prices. Did you use the current market stock prices in your DCF analysis?

A. I used the ones that lined up with the estimates of growth rate that we were using. It's important that you use a synoptic approach to the DCF.

Q. Well, did you use the forward-looking growth rates in your DCF analysis?

A. Yes.

Q. Since you relied on current market stock prices and forward-looking growth rates in your analysis, would you agree then that investors' expectations regarding risk factors faced by the electric utility industry are captured in your application of the DCF model?

A. I believe they are captured. Again, whether we can tease them out is another issue. But I think the prices reflect everything that's relevant to investors, including their risk perceptions. And I believe the growth indicators I've used are the ones that investors use.

Q. Okay. Now I'm going to ask you to turn back to your Exhibit WEA-13, which is attached to your testimony.

A. Yes.

Q. Let me know when you're there.

A. I'm there.

Q. The expected earned returns on equity shown on Exhibit WEA-13 reflect Value Line's forecasted earned returns for the companies in your utility proxy group; is that correct?

A. Yes.

Q. These expected returns shown on this schedule include the results from both regulated and non-regulated operations of your proxy companies, correct?

A. They do.

Q. And in the packet of discovery responses there is a response to Staff Interrogatory Number 159. I would like for you to pull that out as we talk about it.

A. Okay. I've got it.

Q. And according to the affidavit you sponsored this response, too, correct?

A. Yes.

Q. According to this interrogatory response, you are unable to cite any specific examples of Florida regulatory decisions regarding return on equity for FPL that were insufficient to maintain FPL's ability to attract capital; is that correct?

A. That is correct. I think in investors' perception the actions of this Commission have been consistently constructive.

Q. And the next interrogatory response is Number 151. Let me know when you've gotten there.

A. I'm there.

Q. And you and I discussed this at a break and you stated you wanted to make a correction to that response?

A. That is correct. This is one that slipped through. I just want to make clear that what we did is, based on our analyses, we developed a range of 11 to 13. Then based on flotation costs and the need to maintain FPL's financial strength, I developed a fair rate of return range of 12 to 13. So the flotation cost is used to go from the 11 to 13, the 12 to 13. Then, within the 12 to 13, the consideration that Mr. Pimentel used to choose a point estimate was the management efficiency and effectiveness.

Q. Is it your testimony in this interrogatory that part of the reason that the Commission should set the authorized return on equity for FPL in this proceeding at the top of the range is to recognize FPL's excellence in management?

A. No. The excellence in management is a choice within the range. The top of the 12 to 13 is based on a consideration of FPL's need for financial strength and the flotation cost adjustment, which this Commission has recognized in the past at about 25 basis points.

Q. So there's no specific quantity or quantification of the basis points on ROE necessary to recognize FPL's excellence in management?

A. That is correct. And this is a point of misunderstanding by Mr. Baudino that I tried to point out in my rebuttal. We are not suggesting to go outside the range to recognize management excellence. We are suggesting, my testimony is it should be used to choose within the range. And then Mr. Pimentel made that choice based on his understanding of FPL's performance as an insider.

Q. Okay. I'm going to ask you to go back to our package of information. And the next item in there is your Exhibit Number 2 from your deposition. And that's a Moody's report dated July 2009, correct?

A. Yes.

Q. And it's regarding U.S. regulated electric utilities, correct?

A. Correct.

Q. And you're familiar with this report?

A. I am.

Q. Would you turn to Page 2 of the report and read aloud the first paragraph?

A. "Overview. All the evidence we have seen suggests that the fundamental credit outlook for the electric utility sector will remain stable over the next 12 to 18 months. While most industrial sectors have negative sector outlooks today, we continue to view regulated utilities as relatively well insulated, although not immune, from economic and financial market turmoil. Regulation provides a key material benefit to the sectors' overall credit profile, and we believe that regulators will provide timely recovery of prudently incurred costs and investments over the near term. We have long held that regulators would rather regulate financially healthy companies than imperiled ones, and that utilities maintain effective constituency outreach efforts."

Q. Thank you.

A. Can I read the next sentence, because I think it's a really important sentence.

Q. Sure.

A. "For the longer run, however, we are becoming increasingly concerned about possible changes to our fundamental assumption about regulatory risk, particularly the prospect of more adversarial political and, therefore, regulatory environment."

Q. Okay. And do you agree with all of what you just read?

A. I agree that that is Standard & Poor's opinion, and I think it's a reasonable opinion.

Q. Okay. I would like you to turn to Page 3 of the report. And, again, read aloud the first paragraph on that page.

A. The caption is, "Utilities remain well positioned within rating category."

"Of all the factors affecting U.S. electric utility ratings, we have long considered regulatory support perhaps the most critical driver. We continue to believe regulators prefer to oversee financially healthy utilities, and certainly for the near term we believe the sector will continue to enjoy reasonably good regulatory support. Our focus remains on cash flow, not authorized return on equity, ROEs. We also remain more interested in written regulatory orders, not initial indications from utilities, regulatory staff, intervenors, or administrative law judges, although they may offer some hint about likely rulings."

Q. And, thank you. Would you agree, based on this statement, that Moody's is more concerned with the cash flow that will come out of this decision than the authorized return on equity?

A. Yes. I think I earlier testified, and there are similar statements in other rating agency documents, they look at the whole cloth. Now, from a bondholder standpoint, cash flow is king, because the bondholder wants to get those coupon payments and the principal payments at the end. That is different from the interest of the equity holder, who is looking to the upside, the company doing more than just paying its bills.

Q. Okay. During the cross-examination by Mr. Mendiola, and I think also by Mr. Moyle, you responded that there were six bankruptcies filed in regulated utilities. Do you remember that conversation?

A. Yes, and that's taken from a Moody's report that cites that.

Q. I'm interested in that Moody's report. Do you have the date of that Moody's report?

A. Well, I have the Moody's report right here. I've just got to dig it out of all this paper. But I brought it with me today, and it just may take me a minute to find it.

MR. MENDIOLA: I think that Moody's report might become an exhibit under the next witness' cross-examination, if it's the one from August '09.

THE WITNESS: I think that may be it, and that's what I'm looking at now, but I just can't find the quote.

You know, if we took a break now, Mr. Chairman, that would give me a change to look it up.

CHAIRMAN CARTER: I'll give you a break. I think it's appropriate for you to have a necessary.

Let's do this also. Just kind of an FYI, we do have air conditioning at least until 9:30, and we do have -- I think DMS will leave the doors unlocked for you guys to get in and out so you don't lock yourselves out, because we do have those electronic locks on there.

And we'll take a break and we'll come back at ten of.

(Recess.)

CHAIRMAN CARTER: We are back on the record. And when we last left, we took a quick break.

And, staff, you were on cross-examination. You're recognized.

MR. BUTLER: Mr. Chairman.

CHAIRMAN CARTER: Mr. Butler.

MR. BUTLER: I'm sorry. Before we do, one thing, if people want, we have now the unredacted -- the pages that were redacted, we have made copies of them unredacted so people can see all of the information in the aviation logs, the issue that had been raised earlier. And we can make those available to parties at this point, if people are -- including Commissioners, are interested.

CHAIRMAN CARTER: Let's take five, everyone, and make sure everyone gets them. Let's just take five.

MR. BUTLER: Thank you.

(Pause.)

CHAIRMAN CARTER: We are back on the record, and when we last left, we just took -- we took care of a preliminary matter that was pending, and everyone who had a copy of the unredacted got a copy of unredacted flight logs.

Ms. Bennett, you're recognized.

MS. BENNETT: Thank you.

BY MS. BENNETT:

Q. Doctor Avera, when we left you were looking for the -- I think it's the Moody's report that you talked about earlier.

A. I found it.

Q. Good. What date was that Moody's report?

A. It was August 2009. It is a review of their new rating methodology. It's called Regulated Electric and Gas Utilities. And the quote that I had in mind was on Page 7.

Q. And can you identify the six utilities that were referenced in the Moody's report?

A. It does not indicate who they are.

Q. Does it indicate the four utilities who you spoke of that were in bankruptcy in part because of the regulation?

A. No. It just announces -- can I read the two sentences, that might help --

Q. That would be great.

A. -- put it in context?

"The ability to recover prudently incurred costs in a timely manner is perhaps the single most important credit consideration for regulated utilities, as the lack of timely recovery of such costs has caused financial stress for utilities on several occasions. For example, in four of the six major investor-owned utility bankruptcies in the United States over the last 50 years, regulatory disputes culminated in insufficient or delayed rate relief for the recovery of costs and capital investment in utility plant."

So it just says there were six, and of four they were regulatory related. Two that I can account for personally are El Paso and Westar, or Western Resources it was called.

Q. Okay. I'm curious. When you were talking with Mr. Moyle a little bit later, you talked about Moody's using FPL as an example, not of a bankrupt utility obviously. But is this the same Moody's report, the August 2009?

A. It is. They say in this report they want to make their methodology more transparent, so they lay out a three-part looking at financial, looking at regulatory, and then looking at business risk considerations. And they pick a number of utilities to kind of show how the method would work, and as it happened FPL was one of the utilities they kind of used as a test case.

Q. Okay. Do you know if this Moody's report has been entered into the record as of your testimony?

A. I don't know.

Q. But you did not enter it in?

A. I did not.

MR. MENDIOLA: For the record, Ms. Bennett, it is the same report which I plan to enter into the record with Mr. Pimentel.

MS. BENNETT: Very good. That's what we needed, was it to be entered into the record. Thank you.

I have no further questions.

THE WITNESS: Thank you.

CHAIRMAN CARTER: Thank you, Ms. Bennett.

Commissioners. Commissioner Skop, you're recognized.

COMMISSIONER SKOP: Thank you, Mr. Chairman.

Good evening.

THE WITNESS: Good evening, Commissioner Skop.

COMMISSIONER SKOP: Ms. Bennett had asked some questions in relation to the nature of the proposed rate increase, specifically dealing with cash flow, and I wanted to take a moment to follow up on that line of questioning.

In your opinion, I mean, many of the issues related to the rate case involve accounting adjustments, depreciation, reserve charges and such. But, in your opinion, is the proposed rate increase more about improving cash flow for operations and discretionary expenditures than real substantive issues that need to be addressed and the need for additional rate increase or rate relief?

THE WITNESS: I don't know that I'm in a position to have the overview of the entire case. I do know that cash flow is very important to investors, especially bond investors. So the outcome of this case in terms of cash flow will be one of the major indicators.

I know you've asked other witnesses about the trade-off between depreciation and cash flow and ROE, and I want to be responsive to your concerns. They are related but different. Cash flow and ROE are different things. Of course, generally the higher ROE you have the higher the cash flow will be because there is cash flow from the earnings. But the cash flow and ROE are not really substitutes.

From a bondholder standpoint, cash flow is really important, crucially important. From an equity holder's standpoint, it is somewhat important, but the ability to earn in the allowed ROE is crucially important. So both are important. They are slightly differently important to different kind of investors.

COMMISSIONER SKOP: Okay. Well, let's simplify the analysis then, and just take for the moment ROE out of the equation, because, again, I think that's a separate and distinct issue.

But looking at the other issues, and you mentioned depreciation, so let's take that just for a quick example. Would you agree that if the depreciation rates were set in a manner that resulted in an overcollection, then that would by virtue of itself be sufficient, more than sufficient to cover the appropriate depreciation and the excess amount collected would be basically free cash flow for operations?

THE WITNESS: I don't think so, Commissioner. I think, you know, depreciation doesn't represent a pot of money that you can pull off. It represents an offset, you know, a non-cash charge to your earnings.

COMMISSIONER SKOP: I understand that, but if depreciation is built into rates that are collected from the customers, and so basically that's part of the base rate amount that they're being asked to pay, and that's collected over time.

THE WITNESS: Yes, sir.

COMMISSIONER SKOP: If that depreciation amount results in a surplus of depreciation, which I recognize is a non-cash item, but cash has been collected based upon the rates that were set. So, in essence, even though the appropriate accounting adjustment has been made as a non-cash item, essentially overcollecting what is needed to match -- and is cash flow matching, basically, to match what you need for depreciation, make your appropriate accounting adjustment, but if you're overcollecting by virtue of rates to the extent that you have a depreciation surplus, then, in effect, wouldn't you have free cash flow, because you're effectively overcollecting?

THE WITNESS: I don't think so, Commissioner, because my understanding -- and I'm not the accounting person, I'm the rate of return person. But my understanding is it isn't like there has been an overcollection. It's you have used one depreciation rate, you do a study and you find that the depreciation rate now needs to be adjusted for what you now know about the lives of your assets. So, you're adjusting your depreciation, but it's not that your previous depreciation was high, it was the best depreciation you could establish given what you knew at the time. And it's not like this money has been, you know, accumulated anywhere, it's been flown back into the investment in the business.

COMMISSIONER SKOP: Okay. Again, free cash flow. But I'll just leave it then and reserve my question, I guess, to Mr. Pimentel. I guess maybe he would be able to answer that more appropriately, since you're a rate of return expert.

THE WITNESS: Yes, sir.

COMMISSIONER SKOP: Thank you.

CHAIRMAN CARTER: Thank you, Commissioner. Anything further from the bench?

Redirect.

MR. ANDERSON: A little bit.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q. Doctor Avera, you were asked some questions by Mr. Mendiola about the Avista settlement before the Washington Utilities and Transportation Commission. Do you remember that?

A. Yes.

Q. Tell us if that settlement affects your opinions in this case or if it's relevant to this proceeding?

A. No, it doesn't. Avista is a very different utility in a very different situation. The Washington commission is different and operates under a different set of rules. So I really don't think it informs this Commission about what is an appropriate allowance for

FPL in this case now.

Q. You were also asked some questions about Texas transmission and distribution standard capital structure provided there. Do you remember that?

A. Yes.

Q. Is that of any significance to your opinions in this case, and how is it, if at all, relevant to the proceeding?

A. No, it is not relevant. In Texas, you may recall, within ERCOT there has been deregulation, so generation is not regulated, and you have transmission and distribution utilities which provide that service, and their rates are set by ERCOT. Because of the interconnections between the utilities, the PUC of Texas decided the most appropriate way was to fix the capital structure, since a lot of these costs are shared among all the companies, and then individualize the rate of return on equity.

So it's an entirely different regulatory framework and the kinds of risks that are involved are different, and there is no attempt to look at particular companies' capital structure from the point of view of what's supportive of their credit quality and the like.

Q. Mr. McGlothlin asked you a couple of questions about cases that you were in with Doctor Woolridge, the

SBC and United Illuminating cases. Do you remember that?

A. Yes.

Q. Can you comment on the significance of those orders or decisions in relation to setting return on equity in this proceeding?

A. I think they are of little significance. The reason I brought up the Ohio case is that's one where Doctor Woolridge and I agreed that the capital structure ought not be gapped, but be used based on market value. The United Illuminating I think is instructive because it shows, as the rating agencies say, they look at the total order and the effect of the order on the utility in establishing how they think it affects bondholders.

Q. Mr. Mendiola asked some questions about -- on a sheet of paper behind you. He called it Exhibit 496, Avera's Utility Proxy Group Analysis. Do you recall that?

A. Yes.

Q. Will you please comment on the significance of those lines of questions and what the Commission should consider in setting return on equity here?

A. The first observation is that my numbers and Doctor Baudino's numbers are very similar. What Mr. Baudino does is he establishes a range. He doesn't use the midpoint, but looks to the bottom of the range for his 10-4 recommendation. In my belief, in my numbers you shouldn't look at the midpoint for FPL, but for the reasons that we've discussed, the risk, the challenges, the flotation costs, you should move to the upper end of the range. And the upper end of the utility ranges encompass the 12.5 that we're talking about.

For example, the upper end of the DCF range is 15.4. The upper end of the CAPM is 12.2. The upper end of the realized earnings is 15.9. So there is a range around these midpoints. And the dispute, the really material dispute between Mr. Baudino and myself is where you position FPL in the range. I believe you should position them at the upper end of the range for the reasons I've discussed. He believes you should position them at the bottom of the range, even though he also adjusts the capital structure.

Q. Mr. Moyle asked you some questions about something marked as Exhibit 462, which is already in evidence, the rate case history document. Do you have that there?

A. Yes.

Q. What should the Commission glean from this document in thinking about deciding FPL's return on equity?

A. I think the challenge to this Commission is to look at FPL now and what is appropriate for this company in this situation. These orders are some of the regulatory actions over a period of time. They're backward looking in that the records are in the past. Secondly, they don't encompass all of the companies in my proxy group. Only five of the companies are represented in these orders. Also, there are a number of regulatory actions that have been taken, plans under which companies work that aren't reflected on this sheet.

For example, Virginia's 14 percent requested return in Virginia for Virginia -- for Dominion, for its Virginia and Electric Power subsidiary. And then that 12.5 percent return that Nstar, which is a distribution-only utility, is operating under for a multiyear plan. So it is not useful and it does not cover the range of what has been going on with the comparable utilities in my proxy group.

Q. Mr. Moyle asked you whether other return on equity experts' witness opinions were supported by substantial and compelling evidence, or something to that effect. Were you giving any kind of legal opinion in answering that question? What's your view of that?

A. Definitely not. Both of these witnesses I consider them friends of mine and I'm familiar with them. I fundamentally disagree with the approaches they have made in their quantitative methods. I've outlined those disagreements. I believe my evidence is more reasonable, more relevant, and better supported than that of Mr. Baudino and Doctor Woolridge.

Q. Staff asked you questions from rating agency reports that highlighted different risks of various utilities, such as substantial capital expenditure and other such factors. Do you remember those questions?

A. Yes, sir.

Q. Do you know of any utility that, like FPL, has the combination of large capital requirements, high storm risk exposure, high natural gas usage, existing nuclear operations, and new nuclear plant development?

A. No. I think FPL stands alone in kind of having the full spectrum of these risk factors.

Q. The last question is Mr. Moyle asked you about possible effects on FPL of low -- of a low return on equity. What are the consequences to FPL's customers if return on equity is set too low in this proceeding, or the Commission's order is otherwise not supportive of continued financial strength for FPL?

A. Well, I think customers have a lot to lose. If this Commission loses its reputation, and it's a well-earned and long-standing reputation for constructive regulation, I think that will increase the cost for FPL to borrow money, to enter contracts, to provide service, to retain services, to respond to hurricanes and other challenges. Ultimately those costs would be paid by customers.

Also, and I think very importantly, a financially strong utility can react to unusual circumstances, whether it is financial turmoil, whether it is hurricanes, whether it is gas market volatility, and protect the customers by not going into the market when everybody else is forced to, and can be on either end where the interest rates are low. So I think in the long run customers will pay more and be less secure if FPL loses the confidence of the investment community.

MR. ANDERSON: We have no further questions for this witness. Thank you, Mr. Chairman.

CHAIRMAN CARTER: Exhibits.

MR. ANDERSON: Let me look at my notes.

CHAIRMAN CARTER: Page 24, starting at Exhibit Number 130.

MR. ANDERSON: FPL offers Exhibits 130 through 146 and Number 363 into evidence.

CHAIRMAN CARTER: Are there any objections? Without objection, show it done.

(Exhibit Numbers 130 through 146 and 363 admitted into the record.)

CHAIRMAN CARTER: Okay. Mr. Mendiola, Number 492, sir.

MR. MENDIOLA: Thank you, Mr. Chairman.

CHAIRMAN CARTER: And actually you've got --

MR. MENDIOLA: 492 through 496.

CHAIRMAN CARTER: Are there any objections to 492 through 496?

MR. ANDERSON: None, sir.

CHAIRMAN CARTER: Without objection, show it done.

(Exhibit Numbers 492 through 496 admitted into the record.)

CHAIRMAN CARTER: Mr. McGlothlin, 497, sir?

MR. McGLOTHLIN: I move 497.

CHAIRMAN CARTER: Are there any objections?

MR. ANDERSON: None.

CHAIRMAN CARTER: Without objection, show it done.

(Exhibit Number 497 admitted into the record.)

CHAIRMAN CARTER: Mr. Wright, you've got 498 and 499, sir.

MR. WRIGHT: Move them into evidence, Mr. Chairman.

MR. ANDERSON: No objection.

CHAIRMAN CARTER: Without objection, show it done.

(Exhibit Numbers 498 and 499 admitted into the record.)

CHAIRMAN CARTER: Staff, you have 500 and 501.

MS. BENNETT: Move 500 and 501 into the record.

CHAIRMAN CARTER: Any objections?

MR. ANDERSON: No, sir.

CHAIRMAN CARTER: Without objection, show it done.

(Exhibit Numbers 500 and 501 admitted into the record.)

CHAIRMAN CARTER: Thank you very kindly.

Now, this witness was both direct and rebuttal, correct?

Okay. Have a nice day.

Call your next witness. I mean, well, you know, that's just being neighborly.

MR. ANDERSON: Thank you, Mr. Avera.

FPL calls as its next witness Armando Pimentel.

CHAIRMAN CARTER: Okay. Mr. Pimentel.

Now, will Mr. Pimentel be doing direct and rebuttal, as well?

MR. ANDERSON: Yes, sir, that's correct.

CHAIRMAN CARTER: Okay. Michael, you got it.

MR. BUTLER: Mr. Chairman.

CHAIRMAN CARTER: Yes, sir, Mr. Butler.

MR. BUTLER: While Mr. Pimentel is getting settled, I just wanted to comment briefly on the package that I have handed out of the confidential aircraft logs.

What we intend to be confidential here is simply what we had redacted before in the copy we had provided earlier in the day, so that basically if there is a subsidiary entry in the company activity column, then the name, the nature of the trip, we would ask that -- we are seeking confidential protection for that information.

And we are generally seeking confidential protection for the telephone numbers. We've included them here. We haven't redacted them as we did before. But as a matter of privacy would ask for protection of those, as well.

We filed a notice of intent and will follow that up. In anticipation there might be questions using this information, perhaps for Mr. Pimentel, and just wanted to describe that on the record.

CHAIRMAN CARTER: Okay. Okay. For the record.

Ms. Bradley, you look like you want to say something. You're recognized.

MS. BRADLEY: Well, if the only thing that they want to keep confidential is the telephone numbers, I certainly would not object to them redacting that portion. I mean, that's --

CHAIRMAN CARTER: What about the rest of the parties? Do you guys care about the phone numbers?

MR. MOYLE: No, we don't care about the phone numbers.

MR. MENDIOLA: We don't object to obviously keeping the phone numbers private. I was under the impression earlier that aside from the phone numbers there wasn't going to be a claim of confidentiality. It was just relevance. And so -- but I guess that was --

CHAIRMAN CARTER: Well, we got the phone numbers out of the way.

MR. BUTLER: We had requested --

CHAIRMAN CARTER: Mr. Butler, you're recognized.

MR. BUTLER: We had redacted as not relevant the information on the affiliates. Based on the Chair's ruling that that information would be admitted, we have made it visible, and as such, we do consider the information about the affiliates -- again, it's competitive sensitivity. It goes to disclosing, you know, the affiliates' business plans, operations where they're going, for what purposes, and certainly I don't think that is something that is appropriately revealed on a public basis in a proceeding over the utility's finances.

CHAIRMAN CARTER: Ms. Helton. I want to proceed, but I need some guidance from you on us proceeding further.

MS. HELTON: Mr. Chairman, this is where we kind of get in a quandary when I haven't sat down here all day. I know that Ms. Cibula told me that there was some discussion about what was or was not confidential. Can I get with Ms. -- I think maybe we can proceed and I can get with Ms. Bennett and Mr. Butler to understand exactly what it is, and then I will have a suggestion for you a little bit later.

CHAIRMAN CARTER: All right. That'll be fine.

MR. MOYLE: And can I be heard just briefly?

CHAIRMAN CARTER: Mr. Moyle, yes, sir. You're recognized.

MR. MOYLE: I have not been able to review all of it, but reviewing some of it, you know, it doesn't look like there's a lot of information that is confidential in terms of what is on the document. But to the extent that there are, you know, four people charging FPL Energy and three people charging FP&L, you know, the logical question is, well, what's going on here? Why are all of you going to the same place and three of them are charging FPL and four of them are charging FPL Energy? That's kind of a question to draw out, which I think is what Mr. Butler then has a concern about.

I don't know that he has that big a concern about what's on the document. But if they say we were going to County X to talk about, you know, a new project or something, that -- I just -- it's going to be a little tricky to try to get information if we are constrained in being able to make inquiry as to some of the things that are on the documents.

CHAIRMAN CARTER: We'll proceed accordingly and, as I said earlier, we'll cross that bridge when we get to it, and obviously we'll give -- I think we can get there. Let's go ahead on with our witness.

MR. BUTLER: Two other real quick points.

CHAIRMAN CARTER: Okay. Mr. Butler.

MR. BUTLER: First of all, just to be clear, we have filed a notice of intent with the Clerk's Office this afternoon. I was just trying to describe for the sake of the parties and the Commission of where we stood with the confidentiality claim.

The other I wanted to point out is that we will have tomorrow morning the list of flights that Commissioner Skop had also requested. It's taking a little bit longer to compile that, but we'll have that for the Commissioner and for all the parties in the morning.

CHAIRMAN CARTER: Okay.

Let's proceed.

MR. ANDERSON: Thank you, Chairman Carter.

ARMANDO PIMENTEL

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

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. Good evening, Mr. Pimentel.

A. Good evening.

Q. Have you been sworn?

A. Yes, I have.

Q. Will you tell us your name and business address?

A. Armando Pimentel, 700 Universe Boulevard, Juno

Beach, Florida.

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

A. FPL Group and Florida Power & Light Company as the Chief Financial Officer.

Q. Have you prepared and caused to be filed 53 pages of prefiled direct testimony in this proceeding?

A. Yes.

Q. Do you have any errata to your testimony?

A. No.

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

A. No.

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

A. Yes.

MR. ANDERSON: Chairman Carter, FPL asks that the prefiled direct testimony be inserted into the record as though read.

CHAIRMAN CARTER: The prefiled testimony of the witness will be inserted into the record as though read.

BY MR. ANDERSON:

Q. Did you sponsor any exhibits to your direct testimony?

A. Yes.

Q. AP-1 through AP-7?

A. Yes.

MR. ANDERSON: Mr. Chairman, these have been previously marked as Exhibits 147 through 153 on Staff's Comprehensive Exhibit List.

CHAIRMAN CARTER: For the record.

BY MR. ANDERSON:

Q. Mr. Pimentel, have you prepared and caused to be filed 47 pages of prefiled rebuttal testimony in this proceeding?

A. Yes.

Q. Were there any errata to that?

A. No.

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

A. No.

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

A. Yes.

MR. ANDERSON: Chairman Carter, FPL requests that the prefiled rebuttal testimony be inserted into the record as though read.

CHAIRMAN CARTER: The prefiled testimony of the witness will be inserted into the record as though read.

BY MR. ANDERSON:

Q. Are you sponsoring exhibits to your rebuttal testimony?

A. Yes.

Q. These are Exhibits AP-8 through AP-17?

A. Yes.

MR. ANDERSON: Chairman Carter, these were previously marked on Staff's Comprehensive Exhibit List as Exhibits 364 to 373.

CHAIRMAN CARTER: And, Commissioners, for the record, that's found on Page 42 of Staff's Comprehensive Exhibit List.

You may proceed.

MR. ANDERSON: Thank you.

BY MR. ANDERSON:

Q. Mr. Pimentel, have you prepared a summary of your direct and your rebuttal testimony?

A. Yes.

MR. ANDERSON: And this is a combined witness, sir.

CHAIRMAN CARTER: Okay.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

DIRECT TESTIMONY OF ARMANDO PIMENTEL

DOCKET NO. 080677-EI

Q. Please state your name and business address.

A. My name is Armando Pimentel. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420.

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

A. I am employed by Florida Power & Light Company ("FPL" or the "Company") as Chief Financial Officer. I am also FPL Group's Executive Vice President Finance and Chief Financial Officer.

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

A. I am responsible for the major financial areas of the Company, including the accounting and control functions, tax, treasury, and risk management. I oversee the establishment and maintenance of the financial plans, controls and policies for FPL. I am also responsible for establishing and maintaining effective working relations with the investment and banking communities, and for communicating the results of our operations to investors.

Q. Please describe your educational background and professional experience.

A. I hold a Bachelor of Science degree in accounting from Florida State University. Prior to joining FPL Group, I was a senior partner in the regulatory and public policy group at Deloitte & Touche. Previously, I held audit partner positions for clients in the financial services and energy industries. I was appointed to my present position in May 2008.

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

A. Yes. I am sponsoring the following MFRs:

- D-2, Cost of Capital – 5 Year History
- D-3, Short-Term Debt
- D-4a, Long-Term Debt Outstanding (Test, Subsequent and Prior Years)
- D-5, Preferred Stock Outstanding
- D-7, Common Stock Data
- D-8, Financing Plans - Stock and Bond Issues
- D-9, Financial Indicators – Summary

I am co-sponsoring the following MFRs:

- A-1, Full Revenue Requirements Increase Requested
- D-1a, Cost of Capital – 13 Month Average
- D-4b, Reacquired Bonds

In addition, I am sponsoring the following 2009 supplemental MFR schedule(s) that FPL has agreed with the Florida Public Service Commission ("FPSC" or the "Commission") Staff and the Office of Public Counsel to file:

- D-7, Common Stock Data
- D-8, Financing Plans - Stock and Bond Issues

Q. Are you sponsoring any exhibits in this case?

A. Yes. I am sponsoring the following exhibits:

- AP-1, Historical Credit Spreads
- AP-2, Capital Investment and Generation Capacity Additions
- AP-3, Market Capitalization
- AP-4, U.S. High Grade Credit Facilities
- AP-5, Credit Spreads Since 2005
- AP-6, Historical Capital Expenditures
- AP-7, FPL Capital Structure

Q. What is the purpose of your testimony?

A. My testimony supports and supplements the testimony of FPL witness Avera on the appropriate Return on Equity (ROE) that should be established in this proceeding; it supports the appropriate capital structure for the Company; and it also describes the current financial crisis and why it is even more important today for FPL to maintain its current financial position. Additionally, I discuss the need to reestablish an annual accrual for the Company's reserve established pursuant to Account 228.1 – Accumulated Provision for Property Insurance (Reserve) and describe why FPL's proposed accrual is in the best interest of customers.

Q. Please summarize your testimony.

A. It is critical in today's environment for FPL to maintain its financial strength as we confront the challenge of meeting significant infrastructure investment requirements at a time when cost of capital has significantly increased due to historically high volatility and dislocation in the global financial markets and economy.

A series of events in the economic, housing and financial markets have sparked a global economic recession. Since September 2008, financial markets have exhibited unprecedented volatility and decreased liquidity. This volatility has led investors to demand substantial increases in the risk premiums for debt and equity for all utilities, but especially for those without high quality credit ratings. These increased risk premiums can be seen in the spread investors require over treasuries to invest in fixed income securities. As Exhibit AP-1 illustrates, while credit spreads have increased for all companies, the spread to treasuries for lower investment grade rated companies (BBB categories) is now significantly higher than companies with stronger ratings (AAA/AA categories). This significant cost difference illustrated in Exhibit AP-1 has not been seen since the Great Depression and demonstrates the importance of maintaining strong credit ratings during periods of market volatility.

As one of the nation's most capital intensive industries, utilities have invested and must continue to invest billions of dollars to maintain reliability, replace aging infrastructure and meet load growth requirements even before the unknown costs of potential climate change legislation and state or federal renewable portfolio requirements are taken into account. Capital expenditure projections for the industry for the period of 2010 to 2030 are approximately $1.5 trillion with the southern portions of the country having a disproportionate share of projected expenditures (see Exhibit AP-2). FPL alone has projected capital expenditure requirements of approximately $16 billion just over the next five years. Maintaining access to the capital markets for both debt and equity financing will be paramount for FPL and its customers.

FPL, along with the utility industry as a whole, relies heavily on financial institutions to provide credit lines to back up commercial paper programs that support daily liquidity, seasonal cash flows and ongoing construction projects. FPL and the industry as a whole have benefited from several years of favorable credit market conditions and a competitive banking environment providing ready access to credit lines at historically low rates. However, as Moody's noted in a recent publication, the current financial crisis has "materially changed the banking environment for utilities going forward." (January 2009 Special Comment: Moody's Global Infrastructure – Near Term Bank Credit Facility Renewals to Be More Challenging for U.S. Electric and Gas Utilities.) Exhibit AP-3 provides a snapshot of the magnitude of change occurring for several leading financial institutions, many of whom are significant credit providers for FPL. As the exhibit indicates, these institutions alone have lost more than a trillion dollars of market capitalization since January 1, 2007. Remarkably this loss has occurred after nearly $500 billion of equity infusion from outside sources.

The impact of this reduced capacity in the banking environment on new credit lines being offered by the banking industry has been significant. As can be seen in Exhibit AP-4, new credit lines provided in 2008 declined by over 50% with the most significant reduction in multi-year facilities. Today, new facilities have been shortened from up to five years to almost exclusively less than one year. The access to capital and the availability of credit will be constrained for some time to come. Maintaining FPL's financial strength will put the Company in the best position to compete for what will likely be a substantially reduced pool of available liquidity.

For FPL to maintain the necessary financial strength to support our obligation to serve our customers, the Company asks the Commission to: (1) maintain FPL's current 55.8% adjusted equity ratio; (2) set rates with an allowed rate of return of 12.5%, which is the mid-point of FPL witness Avera's recommended rate of return on equity range of 12.0% to 13.0%; and (3) reestablish the annual accrual to the Reserve at a level of $150 million.

Today's environment clearly illustrates the need for FPL to maintain a strong financial position to benefit customers. FPL's recommendations would keep FPL in a strong financial position - able to protect its credit rating, attract new capital in both the debt and equity markets on reasonable terms, finance future system expansion at a reasonable cost, and respond with the flexibility needed to manage unforeseen events. Finally, FPL's recommendation on the annual Reserve accrual will allow FPL to achieve and maintain a reasonable plan for responding to storms in our service territory. In the long run, all of these things add up to delivering reliable electric service at the lowest reasonable costs to our customers.

STATUS OF CURRENT FINANCIAL MARKETS

Q. Is it appropriate for the Commission to consider the status of the current financial markets?

A. It is more than just appropriate; it is imperative that the Commission do so. These issues have a real and direct impact on FPL's cost of capital, and must be considered in order to determine a fair and reasonable rate of return on common equity for FPL. The United States Supreme Court has explained the factors a Commission must consider in reaching a determination on a particular utility's rate of return. Specifically, an appropriate ROE is one that is commensurate with the returns being earned on investments in businesses with similar risks and uncertainties. Additionally, the return should be reasonably sufficient to assure confidence in the financial soundness of the utility, to maintain and support its credit, and to enable it to raise the money necessary to serve its customers. These considerations are significantly affected by current market conditions and those of the foreseeable future.

Q. Please describe the current status of the financial markets.

A. The second half of 2008 marked a period of unprecedented volatility and decreased liquidity in the financial markets. During this time, financial institutions experienced significant liquidity issues caused by the depressed housing market and their exposure to sub prime mortgage losses. On September 7, 2008, the U.S. government took over operations of Fannie Mae and Freddie Mac via conservatorship. The liquidity/credit crisis became even more acute with Lehman Brother's declaration of bankruptcy, the announcement of Bank of America's purchase of Merrill Lynch and the required bailout of AIG all within a short period of time last Fall. The market experienced an extreme "flight to quality" as investors withdrew several hundred billion dollars from mutual funds over a two to three day period moving into treasuries, repurchase agreements (backed by treasuries) and treasury funds. Mutual funds were forced to sell off significant portions of their portfolios to meet redemption requests.

This massive movement of cash out of prime mutual funds ultimately caused the Reserve Primary Fund, with assets prior to the market disruption of approximately $65 billion to suspend distributions on September 15, 2008 and announce that the fund's net asset value had dipped below $1.00 per share. This was only the second time in history that a prime mutual fund had its value drop below $1.00 per share. Several other mutual funds subsequently suspended withdrawals.

Since that time, the short-term and long-term debt markets have been extremely volatile and at times have lacked the liquidity necessary for an efficient market structure. Mutual funds are some of the largest investors in corporate commercial paper. The unprecedented shrinkage of these funds essentially dried up a major source of short-term funding for many companies. Although several government programs have been put in place to improve market liquidity, they have not yet had a significant impact as investor confidence has not been restored. Treasury rates have fallen significantly due to investor's current lack of tolerance for risk, while credit spreads (the return investors require over and above treasuries to compensate for the difference in credit quality between a particular corporate security and a U.S. government backed security) have increased dramatically.

Q. How is FPL weathering the current liquidity crisis?

A. FPL's strong balance sheet, liquidity position and credit ratings have enabled the company to weather the significant events in the financial markets as we have seen over the past year without compromising our ability to continue to provide reliable, cost-effective service to our customers. In fact, those strengths have enabled the Company to maintain access to capital throughout the current financial crisis.

Q. How does FPL's access to the capital markets compare to others in the industry?

A. There has been a significant difference in the market access afforded to corporate issuers in the short-term markets during this financial crisis. Our strong short-term credit ratings ("A-1/P-1/F-1") supported by $2.75 billion in back-up credit facilities which I will detail later in my testimony, have enabled us to maintain continued access to the commercial paper markets.

In contrast, some corporate issuers with "A-2/P-2/F-2" rated commercial paper programs have seen significant increases in commercial paper rates and their access to the market restricted to an overnight or very short-dated basis. As a result, many in our industry drew down on their credit facilities, utilizing back-up liquidity sources and leaving themselves more vulnerable to potential liquidity problems.

Long-term credit markets have been similarly challenged. Debt issuances have generally been available only for issuers with higher credit ratings and with credit spreads (the additional cost paid in excess of U.S. Government securities) that are substantially above historical amounts.

Q. Can this financial crisis be considered a one time event?

A. No. Economic recessions have occurred rather frequently over the past eighty years. In fact, since 1925, the U.S. economy has experienced fifteen recessionary periods as can be seen on Exhibit AP-1. While economic recessions are not unusual events, the magnitude and the impact of the current economic recession is unusual. As can be seen on Exhibit AP-1, we have not experienced a widening of credit spreads (the risk premium investors require over U.S. Treasury securities) like today since the Great Depression.

Q. Can this financial crisis be considered a short-lived event?

A. Not at all. While market liquidity has improved somewhat, there will be long-lasting effects from the current crisis. The financial services industry is currently undergoing an unprecedented consolidation of financial institutions. In addition, the banking industry, weakened by substantial write-offs is reducing leverage to meet regulatory capital requirements. These actions are resulting in a significant reduction in the amount and tenor of new bank lines being provided. Very few new bank credit lines are being made available, and the maturities have been shortened from up to five years to almost exclusively less than one year. For example, U.S. high grade credit extended by financial institutions declined by 52% in 2008 from $987 billion in 2007 to $471 billion in 2008. The decline was most pronounced in multi-year credit facilities (similar to FPL's) which declined by 72% from 2007 to 2008 (see Exhibit AP-4). As the availability of credit has become more constrained, the cost to obtain new credit lines has increased significantly.

The utility industry relies heavily on credit lines to back up commercial paper programs that support daily liquidity, seasonal cash flows and ongoing construction projects. As Moody's Investors Service noted in a January 2009 Special Comment: Moody's Global Infrastructure – Near Term Bank Credit Facility Renewals to Be More Challenging for U.S. Electric and Gas Utilities:

> Unsettled credit and financial market conditions in 2008 have dramatically reshaped the banking environment for utilities going forward, which will make upcoming credit facility renewals significantly more challenging. The banking sector, both in the U.S. and on global basis, is being largely reshaped through a combination of bank failures, massive government intervention in some institutions, and large scale mergers of banks and other financial institutions. The result has been a significant contraction

in the bank market and a substantial decline in the number of banks available to provide credit to the utility sector. Those that remain will be constrained in both their ability and inclination to provide credit, as most will be focused on restoring their own balance sheets and are likely to be less willing to renew and extend existing credit facilities, especially at their current low pricing levels and liberal terms and conditions. As a result, a broad "repricing" of bank credit has begun, which will lead to sharply higher pricing for these credit facilities. Utilities may also have to downsize their credit facilities from their current levels as a result of these developments. The consequences of this transformation of the bank credit environment are likely to be profound for the U.S. electric and gas utility sector.

Current market conditions reinforce the need to maintain a strong financial position to plan for the unforeseen events that may materialize in the future. These events extend beyond the financial markets and include the Company's ability to absorb financial shocks such as those associated with extraordinary hurricane activity and volatile fuel pricing. A combination of improbable and/or unforeseen events could impact FPL's ability to serve customers on favorable terms if its current financial strength is not maintained.

FPL'S CURRENT FINANCIAL CONDITION

Q. Please describe FPL's current financial position and credit profile.

A. Our current financial position is strong. FPL currently has high-quality investment grade ratings from the three major credit rating agencies. FPL's corporate credit rating is A/A1/A from Standard and Poor's (S&P), Moody's Investors Service (Moody's) and Fitch Ratings (Fitch), respectively. All three agencies currently have a stable outlook on the company.

FPL's commercial paper program is rated "A-1/P-1/F-1," by S&P, Moody's and Fitch, respectively. These ratings have provided FPL access to commercial paper at reasonable rates.

FPL's strong liquidity position and short-term ratings are supported by $2.75 billion of available liquidity from FPL's $2.5 billion credit facility and a $250 million available term loan. These facilities are in place to back up commercial paper issuance and support the credit requirements of the fuel hedging program. Approximately 38 different banks participate in FPL's credit facility. This large bank group relationship diminishes the impact of the failure of any particular institution on FPL's ability to maintain current liquidity.

Q. Why is it important to maintain a strong financial position?

A. The most important benefits of a strong financial position are flexibility and security. Flexibility is a crucial element of FPL's ability to manage risk. The statutory obligation to serve all customers at their desired level of demand, coupled with the uncertainty inherent in unforeseen events such as the current financial crisis and active storm seasons experienced in 2004 and 2005, mean that FPL must go to the capital markets as service needs dictate rather than at the point in time that might be the most advantageous from a market perspective. The inability to time market entry is somewhat offset by a strong financial position. Balance sheet strength and flexibility are also important factors in our ability to manage unexpected financial shocks.

With respect to the security that a strong financial position affords, it is helpful to think of a strong financial position as an insurance policy. The owner of an insurance policy incurs a relatively modest, regular cost to protect against the occasional or unforeseen high-cost, highly negative event. Health insurance, for example, requires regular payments but protects the insured against the high cost of a serious illness or injury. Similarly, FPL's financial position, supported by the opportunity to achieve an adequate ROE, helps to protect against financial market volatility, capital scarcity, and the increased costs some entities realize as a result. One could certainly argue that so long as the insured is healthy, the short-term cost of health insurance outweighs the benefits received. However, that would be a very short-sighted view, and fails to recognize that the value of insurance is in its protection against uncertain events. A strong financial position will help protect FPL and its customers from the adverse effects of current and future financial market volatility.

Q. Why is financial strength more important today?

A. Two aspects of the current environment increase the importance of maintaining a strong balance sheet. First, the electric industry is at the beginning of a significant investment cycle. Capital expenditure requirements for the industry have increased significantly over the past several years as shown on Exhibit AP-6. This need for substantial amounts of capital is occurring simultaneously with a significant contraction in the credit markets as a result of the current economic crisis.

Q. How does financial strength impact liquidity and access to capital markets?

A. Utilities, like other large corporations, generally depend on commercial paper to provide an inexpensive (relative to long-term debt) and fluid source of funds to meet seasonal short-term cash needs. Investors in commercial paper generally rely on short-term ratings provided by the credit rating agencies. Historically, companies with "A-1/P-1/F-1" ratings and above have been able to access the commercial paper market even during times of decreased liquidity. After the Lehman bankruptcy announcement in September 2008, many companies with lower short-term ratings experienced difficulties issuing commercial paper at rates and terms they were historically able to obtain.

Companies with "A-2/P-2/F-2" ratings generally find a smaller pool of investors, as many investors are restricted to purchase only "A-1/P-1/F-1" paper. A smaller pool of investors typically indicates higher rates and reduced availability of funds.

Access to the commercial paper markets is crucial in order for FPL to meet its obligation to serve its customers. It serves an important purpose at FPL to meet short-term cash needs necessary to support daily operations. It is used to support storm restoration activities, fuel under-recoveries and is a bridge for liquidity needs until more permanent financing can be issued.

It is equally important for FPL to maintain access to long-term debt markets. FPL has an obligation to serve its customers and invest in long-lived assets to support that obligation. Access to long-term capital markets to finance those long-lived assets is just as important and our strong financial position allows the Company that access.

Q. How do customers benefit from FPL's strong financial position?

A. Our strong financial position gives FPL access to capital markets at reasonable rates. For instance, FPL has issued $2.2 billion of debt with coupon rates that average 5.7% and maturities of thirty years since January 2005 to retire higher cost debt and fund future capital requirements. Our credit spreads (the additional cost FPL pays in excess of U.S. Government securities) are among the lowest in the industry. Customers will continue to benefit from these attractive debt financings for many years to come. In addition, we expect to issue nearly $6 billion of new debt securities over the next five years to help finance capital expenditure requirements of approximately $16 billion as well as refinance maturing debt. The ability to support our capital expenditure program requires access to capital on reasonable terms. Customers benefit because our strong financial position allows us access to capital on reasonable terms relative to others in the industry. Maintaining FPL's financial strength translates into better access and lower costs, benefiting customers in much the same way that a household with good credit benefits from better and lower cost access to credit.

FPL maintains credit facilities to back-up its commercial paper program and procurement obligations related to the fuel hedging program. This fuel hedging program is key to reducing the volatility of customer bills by locking in fuel prices for a portion of FPL's fuel requirements. The Company could not execute such a large fuel hedging program without extensive credit support. FPL's strong financial position enabled the Company to upsize its credit facility in 2007 by $500 million to $2.5 billion, in order to accommodate our expanded fuel hedging program. FPL's credit facility, combined with our current ratings and strong financial position, allow us to support collateral calls related to our fuel hedging program primarily with company guarantees and low-cost letters of credit instead of cash collateral required of many companies whose financial positions are not as strong. Additionally, FPL's strong financial position reduces the total amount of collateral required to support the fuel hedging program. For example, FPL had $719 million in letters of credit outstanding as of January 31, 2009 for margin requirements related to the fuel hedging program. If instead of being in a strong credit position, FPL were rated two notches lower by one of the credit agencies, that collateral requirement would increase to over $1.1 billion to support FPL's fuel purchases.

Q. What conclusion should the Commission draw about FPL's current financial position?

A. Our current financial position provides the necessary financial strength and flexibility to accommodate the inherent uncertainties of the industry, taking due regard of the risk factors affecting the industry and the Company today, and is of benefit to our customers. Given the current financial crisis, the benefits of this strong financial position have never been more apparent and important. The benefits of a strong financial position can be seen in the current difference in credit spreads afforded higher rated issuers in today's market as illustrated on Exhibit AP- 5. It is critical that a strong financial position be maintained through the provision of an adequate allowed return on equity and an appropriate equity ratio, as reflected in the recommendations made later in my testimony. Weakening in any of these areas would clearly be perceived by investors as a decline in our overall financial strength, thereby affecting our access to capital at reasonable rates at a time when external financing requirements will be substantial. It will also jeopardize the Company's ability to use its financial strength to reduce volatility in customer bills through activities such as fuel hedging and would ultimately undermine our ability to provide highly reliable service at costs below industry averages. The increase in base rates requested will ensure financial stability and continued financial viability.

RETURN ON EQUITY

Q. What is your recommendation for a return on equity?

A. I have reviewed the analysis performed by FPL witness Avera and concur with his recommendation that the cost of equity for FPL is between 12.0% and 13.0%. I recommend that rates be set at the mid-point of 12.5%.

Q. What should the Commission consider in determining the Company's ROE?

A. A Company's ROE is an important indicator of both the economic return that the Company can provide to its equity holders and the overall financial strength of the enterprise. It is self-evident that any company must provide a prospective return to shareholders that is at least as good as the return that the shareholders could expect to earn on an investment of equal risk characteristics. Failure to do so will result in a loss of equity value and the inability to access capital markets at a reasonable cost. As I understand the Commission's task, it is, among other things, to look at risk through the eyes of current and potential equity investors and to set an allowed ROE that, if achieved by the Company, will induce the needed level of investment at the lowest reasonable cost and fairly compensate equity holders for the utilization of their assets. This level of ROE, if achieved by the Company, coupled with prudent management of the capital structure, will also satisfy investors' requirements for financial strength.

Investors' requirements at any particular point in time are set both by general conditions and risks and by company-specific conditions and risks. Virtually all conditions affect both debt holders and equity holders; however, they may affect these classes of investors differently. Therefore, the Commission should look to all the risk factors affecting a company when setting an allowed ROE, and emphasize those that have the greatest impact on equity holders.

Q. What general risk factors should the Commission consider in determining the Company's ROE?

A. As a regulated utility, FPL is not exempt from risk. FPL operates under a regulatory compact that mitigates some risks, but at the same time augments others. For example, unlike an unregulated business, FPL is obligated to invest in expanding its system to serve new load, even if the timing is not opportune for such investments. Moreover, unregulated firms have the flexibility to raise prices on their own when necessary to address inflationary cost increases. Finally, regulated utilities have limitations on their allowed returns that have no counterpart for unregulated firms. All of these risk factors should be considered by the Commission in determining FPL's ROE.

Q. Can you please specify these general risk factors?

A. Yes, there are two broad categories of risk that I will discuss; economic risks and utility operating risks. The financial success of all companies, including FPL, is influenced by the growth rate of the economy, the inflation rate, and general unemployment levels. Unfortunately, these conditions have significantly deteriorated since our last filing in 2005. Economic events have worsened nationally and are having a disproportionate effect here in Florida. The housing crisis has severely affected economic conditions in Florida and we have seen a slowdown in growth in the state. Additionally, Florida is a tourist-dependent state that relies greatly on intangibles like consumer confidence as a driver of economic activity. I discuss the slowdown in FPL's customer growth later on in my testimony when I address company-specific risk factors.

Q. What are the general operating risks that affect all utilities, including FPL?

A. There are numerous operating risks affecting all utilities. One of the most significant of these is the capital intensiveness of providing utility services. Other operating risks include: changes in technology; uncertainty of long-term fuel supply; increased fuel price volatility; stricter environmental control regulations for items such as carbon dioxide and mercury; and strained transmission grids.

All of these operating risks create an expectation that substantial investment will be required of regulated utilities for the foreseeable future. In a Fitch Ratings report titled "U.S. Utilities, Power and Gas 2009 Outlook" dated December 22, 2008, the Agency notes:

> "The regulatory compact is especially important in view of the sector's need for capital to support its projected, large post-2008, mostly non-discretionary capital spending programs. Recent changes in the political landscape articulated above enhance the prospects of higher environmental spending, including carbon controls."

Q. What is the level of the anticipated capital spending programs?

A. The electric industry is at the beginning of a significant investment cycle. Capital expenditure requirements for the industry have increased significantly over the past several years as shown on Exhibit AP-6. It is projected that through the year 2030 over $1.4 trillion in capital spending by utilities will be needed. Over $500 billion is projected for generation investment with over half of that being in the southern region of the country. These projections are shown on my Exhibit AP-2.

Q. Why is the regulatory compact an important consideration?

A. One of the essential components of the regulatory compact is the obligation to serve. A regulated utility, like FPL, must make the required investment when it is needed, not when it is convenient or economically advantageous to do so. This is particularly critical in times of economic challenges, when unregulated companies may defer capital expenditures or even constrict their current operations. A regulated utility does not have these choices, a fact which is part of its overall risk profile. Compounding this risk factor is the high level of future capital expenditures required for the utility industry generally and the southern region specifically.

Q. Please identify and describe some of the company-specific risk factors that are important in determining FPL's ROE.

A. There are several Company-specific risk factors that must be addressed in determining FPL's ROE:

Growth

The interaction of general economic uncertainty and the housing meltdown in our service territory creates a particular set of risks for FPL. We have experienced a slowdown in customer growth and our customer count is down to a level last seen in July 2007. As FPL witness Morley indicates in her testimony, FPL's retail sales are projected to decline at an average annual rate of 0.6% between 2006 and 2010. The extent of the slowdown in customer growth has been extremely difficult to predict as evidenced by the fact that the Bureau of Economic and Business Research within the University of Florida has made multiple downward revisions to their projections in recent months for population growth in the state, each one lower than the previous forecast. This slowdown in revenue growth coupled with the uncertainty over future growth and continued need to make incremental investments in infrastructure, increases risk for FPL.

Customer Base

The majority of our revenues come from our residential and commercial customers. Compared to utilities across the country, Florida has a low industrial load. From an investor perspective, a significant industrial load generally indicates greater risk due to concentration of load within a single customer group. However, the current economic recession and housing crisis are having widespread negative impacts on load across FPL's entire customer base creating load loss concerns on a much larger scale.

Florida Economy

As indicated earlier, the economic downturn is severe and the country is now officially in a recession. As described in FPL witness Barrett's testimony, the Florida economy has been particularly affected by the housing and economic crisis with disposable income per household declining at a much greater pace than the U.S. as a whole resulting in personal bankruptcies and home foreclosures more than doubling in the past two years. All of these factors have combined to plunge Florida into an economic deterioration not seen since the early 1970s.

As a service provider to all segments of the Florida economy, we logically absorb the consequences of this uncertainty, which from an investor perspective represents additional company-specific risk. In a Fitch Ratings report entitled "Credit Opinion: Florida Power & Light Company" dated February 12, 2008, the agency notes:

> FP&L's service territory was one of the 'overheated' housing markets in 2006–2007, and housing prices have declined in the area. Currently, there are reported vacancies of unsold housing units. These conditions in the real estate market could result in slower payments and/or higher delinquencies of accounts receivables, which would be made up in a subsequent tariff adjustment.

Capital Expenditures

As I stated earlier, the utility industry as a whole is entering into a significant capital expenditure cycle. FPL alone projects approximately $16 billion of capital requirements over the next five years. A significant amount of new capital is being spent on large construction projects to build new generation facilities, modernize existing facilities and expand the transmission system in the State. These facilities will provide additional generating capacity, at lower emission levels with lower costs for many years to come for FPL's customers. The addition of a third West County unit in 2011 and modernizations of the Cape Canaveral and Riviera plants in 2013 and 2014 will generate large fuel savings over the life of the projects. However, investors view the potential for cost overruns as an incremental risk for companies with significant construction projects.

Nuclear Generation

FPL has four nuclear generating units: Turkey Point Units 3 and 4 and St. Lucie Units 1 and 2. Together, these contribute 12% of available capacity and approximately 22% of actual supply, owing to their high reliability and their low-cost position in terms of economic dispatch. FPL has the highest percentage of generation from nuclear resources of any utility in the state. While our customers enjoy large fuel cost savings from these units, the investment community assigns a higher level of risk to a utility that has nuclear units in its generating portfolio.

Additionally, FPL has received a need determination for two new nuclear units at FPL's Turkey Point site. In general, the investment community and rating agencies view new nuclear construction as a higher risk than other technologies. This view is primarily driven by the long approval and construction process associated with new nuclear construction as well as the size of the capital requirements in relation to the utility as compared to capital requirements for other generation technologies. The United States is just now resuming its pursuit of nuclear power with the licensing and potential construction of new nuclear plants, after a hiatus of over 30 years. In theory, this incremental risk is partly offset by the regulatory rules that have been established in Florida to ensure interim recovery of prudently incurred pre-construction and carrying costs on construction work-in-process. However, investors remain cautious and will need more time and experience with the legislation and the application of the nuclear cost recovery rule to become fully committed to the development of new nuclear capacity. In particular, they will closely monitor the regulatory and political climate with respect to the development of new nuclear capacity in Florida. In other words, we are still very early in the process.

On a total cost basis (i.e., including depreciation and a fair allowance for capital recovery and assuming a risk premium for nuclear) our cost per kWh for nuclear-produced power is significantly less than the equivalent cost for fossil-fueled plants. It would be an inconsistent and unfair use of the rate setting process to take advantage of the very large customer savings in variable cost without also compensating equity holders for the risk premium associated with nuclear power.

Fuel Supply

Florida's geographic location, combined with an increasing reliance on natural gas, exposes the Company to certain additional risk factors related to gas supply. Currently, FPL obtains gas supply via two pipelines, Florida Gas Transmission and Gulfstream pipeline, both of which are sourced primarily from the Gulf of Mexico. The potential for disruptions of gas supply in the Gulf of Mexico due to a hurricane or other unforeseen events creates additional risk in the eyes of investors and the rating agencies. In a Moody's Investor Services report titled "Credit Opinion: Florida Power & Light Company" dated July 10, 2007, the Agency notes:

> This will further expose the company to potentially higher and more volatile fuel costs and risks possible service interruptions should the supply of natural gas to Florida be disrupted as was the case in 2005 following hurricane damage to the Gulf Coast.

This risk is partially mitigated through the use of fuel-switching capability, which has had the additional benefit of keeping fuel costs lower than they otherwise would have been. However, our dependence on natural gas has increased in recent years and will continue to increase as most of our near-term generation expansions are natural gas facilities.

Fuel Mix

FPL's growing dependence on natural gas creates another company-specific risk factor. FPL is the largest utility purchaser of natural gas in the country and in 2008 natural gas accounted for 53% of the electric energy provided by FPL. Additional capacity additions will further increase FPL's dependence on natural gas. Although natural gas is environmentally appealing, it has historically had more price volatility than other fuel sources. This increase in dependence on natural gas combined with the price volatility creates greater cash flow volatility and increases FPL's liquidity requirements when compared to other companies in the utility industry.

Geographic Position

Florida's geographic location also exposes our electrical systems to a higher likelihood of adverse weather events. In particular, FPL's service territory includes much of the areas of Florida most at risk for damage from tropical storm activity. In 2004 and 2005, FPL's service territory experienced an unprecedented amount of storm activity, receiving damage from seven hurricanes and incurring more than $1.8 billion to restore the electric transmission and distribution system. While the recovery of prudently incurred storm costs provides substantial mitigation of this risk, investors are still at risk for loss of revenues and other impacts during adverse weather conditions. All other factors being equal, Florida's greater likelihood of adverse weather events increases risk. This risk is further exacerbated by the very minimal electrical interconnection capacity serving peninsular Florida, meaning that the ability to supply purchased power from outside of Florida in the event that there is a significant need, for example due to storm conditions, is severely constrained.

Q. What conclusion should the Commission draw from these qualitative risk factors?

A. I believe it is important for the Commission to be aware of these risk factors as it considers both the appropriate level of ROE and the capital structure that we have maintained at FPL. Clearly, an analysis of the risk factors indicates that FPL operates in a riskier environment today than in 1999, 2002 and 2005, the years of prior rate proceedings. In my judgment, FPL witness Avera has appropriately evaluated the impact of these uncertainties on investors' willingness to supply capital and considered the implications for FPL's financial integrity. A 12.5% ROE would fairly account for the exposures that investors attribute to FPL, while ensuring the Company's ability to attract capital even under adverse circumstances.

Q. Should the Commission consider performance in setting a Company's ROE?

A. Yes. There is little doubt that the Commission can influence a company's performance by taking that performance into account when establishing the ROE upon which rates are set. While 12.5% is an appropriate ROE, taking into account the company's risk profile, market conditions, its need for access to large amounts of capital, it is also an appropriate ROE considering the Company's strong performance as detailed by various other FPL witnesses. I agree with FPL witness Avera and Olivera in this regard.

CAPITAL STRUCTURE

Q. What is FPL's current equity ratio?

A. Since the 1999 Revenue Sharing Agreement took effect we have maintained our equity position over time, on an adjusted basis, at approximately 55.8%, though the pattern of seasonal cash flows may drive the ratio slightly up or down on a short-term basis. As provided in all of the past agreements, the adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt, and off-balance sheet obligations.

Q. What is your recommendation for an equity ratio for FPL for regulatory purposes?

A. I recommend use of FPL's actual adjusted equity ratio of 55.8%. The Commission on several occasions has stated that the capital structure used for ratemaking purposes should bear an appropriate relationship to the utility's actual sources of capital. (See e.g., Order No. 850246-EI, Petition of Tampa Electric Company for Authority to Increase its Rates and Charges.) FPL's equity ratio was sustained in FPL's 2002 Stipulation and Settlement and FPL's 2005 Stipulation and Settlement. FPL's strong balance sheet has provided continuous access to both short-term liquidity and the capital markets throughout extreme events such as the 2004 through 2005 storm seasons as well as the current financial market crisis. Nothing has happened in the interim that would suggest that the ratio should be reduced, and in fact the current market conditions would support consideration of a higher equity ratio. FPL's current equity ratio recognizes the additional liquidity requirements and financial flexibility necessary to be in a position to hedge fuel price volatility for our customers, fund storm restoration activities and fund substantial construction activities. It would certainly be inconsistent for the Commission to seek to reduce the financial strength of the Company at a time when many key risk drivers point to a period of increased risk. Moreover, reducing the Company's equity ratio in current market conditions would send a very poor message to the investment community.

Q. Why are you not recommending an increase in FPL's equity ratio?

A. FPL's reasonable and consistently managed equity ratio has provided financial stability and benefits to customers. Thus, I believe that maintaining FPL's current equity ratio will provide sufficient confidence to the investment community in this market, when viewed in conjunction with FPL's trade record and the historically constructive regulatory support of this Commission. Thus, even though an increase in the equity ratio may be justified in these challenging economic times, FPL is not proposing it at this time.

Q. Why has FPL so carefully managed and maintained its equity ratio and capital structure consistent with prior Commission decisions?

A. A reasonable and stable equity ratio is a key requisite for maintaining financial integrity and the many benefits it provides customers. FPL is keenly aware of this relationship and has accordingly maintained its equity ratio in a narrow band consistent with regulatory directives. It should be noted that FPL has taken measures to maintain its equity ratio even though a decline in the equity ratio would have enhanced returns between rate cases. This exemplifies the importance FPL places on its equity ratio.

Q. How does the 55.8% adjusted equity ratio correlate to FPL's test year regulatory capital structure provided on MFR D-1a?

A. FPL's regulatory capital structure includes components for deferred taxes, investment tax credits and customer deposits, which lower the equity ratio to 47.9% in the test year. These items are generally excluded by rating agencies and investors in evaluating FPL's capital structure. Exhibit AP-7 provides a reconciliation of FPL's regulatory capital structure to its adjusted capital structure for the 2010 test year.

Q. How would a decrease in the adjusted equity ratio be viewed by the credit rating agencies?

A. A decrease in the adjusted equity ratio as a result of a regulatory decision would be negatively viewed by the credit rating agencies. All three credit rating agencies often mention the constructive regulatory environment in Florida as an important influence on their assessment of business risk for FPL. One agency goes further to mention that an adverse change to FPL's debt to total capital ratio as a factor that could cause the credit rating at FPL to downgraded.

Q. Please explain why it is important to evaluate a company's capital structure on an adjusted basis.

A. In evaluating the adequacy of the capital structure of any company, investors will make adjustments to the capital structure to take into account major financial commitments that are not reflected on the balance sheet as well as to remove all or a portion of obligations that are included on the balance sheet but are generally considered off credit or non recourse to the company. For FPL, two principal adjustments are made: 1) to remove the outstanding balance of Storm Recovery Bonds that are generally considered off-credit or non-recourse to FPL, and 2) to impute debt associated with long term commitments for purchased power agreements (PPAs).

Q. Why is it appropriate to make an adjustment for FPL's Storm Recovery Bonds?

A. In 2007 FPL issued Storm Recovery Bonds (Bonds) to finance, on a long-term basis, a portion of the restoration costs associated with the 2004 and 2005 storms. The bonds were issued pursuant to a statute passed by the Florida legislature which gives the FPSC the authority to approve the issuance of what is commonly referred to as securitized bonds. The Bonds were issued by FPL Recovery Funding LLC, a subsidiary of FPL. The sole source of repayment for the Bonds is customer receipts from a separate charge on customer bills called the Storm Recovery Charge. This charge is adjusted semi-annually to ensure sufficient funds to make principle and interest payments. Because FPL has no ongoing performance risk associated with the storm restoration activities, these Bonds are generally considered off-credit or non-recourse to FPL and, as such, are removed when evaluating the adequacy of FPL's capital structure.

Q. Why is it appropriate to make an adjustment for commitments associated with purchased power obligations?

A. In the case of a utility, the financial community commonly takes into account obligations associated with purchased power agreements (PPAs). This fairly acknowledges the fact that a long-term contractual commitment to purchase firm capacity behaves economically much like debt, imposing fixed charges independent of a company's revenues and, thus, should be taken into account in evaluating the financial strength of the company.

In the case of FPL, we have several long-term purchase contracts that supply about 14% of the energy we provide to our retail customers. These obligations significantly increase the fixed charge leverage of the Company and are generally understood by the investment community. They are explicitly evaluated by the rating agencies, who examine each contract and assign it a rating that dictates how much of the nominal total value of the contract will be added to FPL's debt obligations for rating purposes. The net effect is to increase the relative share of debt and debt-like instruments in the capital structure. Accordingly, FPL needs to maintain a higher unadjusted equity ratio to attain the same level of financial security with PPAs than without.

Q. Please describe the basic methodology employed to determine the amount of imputed debt.

A. While all of the rating agencies take off-balance sheet obligations into account when evaluating credit quality, S&P uses an approach that has both quantitative and qualitative aspects to value the debt component of off-balance sheet obligations. It involves first computing the net present value of the remaining capacity payments under the contract. A risk factor is then determined based primarily on the method of recovery of capacity payments. Once the risk factor is determined, it is then multiplied by the net present value of the remaining capacity payments to determine the amount of off-balance sheet obligation to include as debt in the capital structure of the company for purposes of analyzing credit quality.

Q. Do you believe an adjustment of this type is appropriate?

A. Yes. In general I agree with the judgment of the financial community that an adjustment for off-balance sheet obligations should be made in assessing the financial condition of a utility. In addition, while our own calculation of the appropriate amount to include might be different, I believe that the rating agencies' overall assessment fairly represents the general investor viewpoint that all other things equal, a company with an ongoing obligation to buy power should be evaluated as having more risk than a company without the obligation and is thus directly relevant. It is therefore reasonable for the Commission to make a comparable adjustment when it evaluates the financial strength of FPL.

Q. Does the adjustment for imputed debt made by S&P take into account the regulatory certainty provided by the Capacity Clause?

A. Yes. S&P assigns a risk factor to the capacity payment stream based on the method of recovery, ranging from 100% to 15%. For example, for an unregulated entity, 100% of the future minimum capacity payments would be imputed as debt. The risk factor used for a company that recovers purchased power costs through base rates is 50%. S&P reduces this risk factor to 25% for utilities that recover purchase power costs through a clause mechanism. In other words, if FPL were recovering these capacity payments through base rates, S&P's methodology would result in an imputed debt adjustment of $1,899 million versus the current adjustment of $949 million.

Q. Why is it important that regulatory policy be consistent with the perspective of the financial community on this issue?

A. There are two reasons. First, as I understand the goals of regulatory policy, one of the Commission's tasks is to set rates such that investors have the prospect, though not the guarantee, of earning a reasonable rate of return. In doing so, the Commission must look to capital markets for evidence of investor requirements. Rating agencies, acting as independent risk assessors on behalf of investors generally, are an important source of evidence in this regard. The fact that they include off-balance sheet obligations should be strong evidence of the relevance of these obligations to financial risk.

In addition, there are sound fundamental economic reasons for viewing PPAs as part of the financial profile. These obligations are similar to debt from a financial perspective. Moreover, they represent avoided capacity – capital expenditures and rate base that would otherwise have been included like other assets – but with a fixed obligation. Whereas all other assets are supported by a cushion in the form of the most junior financial claim (common equity), which bears the ultimate risk of financial fluctuations, these PPAs have no such support. The company is required to meet these obligations and cannot, in a weak year, pay its power suppliers less than the contractual commitment. From the company's perspective, it is as though the capacity represented by these contracts were 100% financed by debt. The major bond rating agencies include a portion of the present value of these contracts as debt in their analysis. Logically, this effect should be incorporated into the overall assessment of financial structure.

Q. Has the Commission previously recognized the financial market's imputation of debt in assessing the impact of PPAs on a utility's capital structure?

A. Yes. In several past power plant need determination cases, the Commission has acknowledged that imputed debt associated with PPAs is taken into consideration by credit rating agencies, and that its effect on a company's cost of capital should be considered. (See, e.g., Order No. PSC-02-1743-FOF-EI and Order No. PSC-01-0029-FOF-EI.) The Commission also continues to recognize the financial leverage implicit in PPAs in the approach used for surveillance reporting requirements. The 2005 Stipulation and Settlement Agreement currently in effect for FPL states:

> For surveillance reporting requirements and all regulatory purposes, FPL's ROE will be calculated based upon an adjusted equity ratio as follows. FPL's adjusted equity ratio will be capped at 55.8% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used

for off-balance sheet obligations will be calculated per the Standard & Poor's methodology.

Q. What can you conclude about FPL's current adjusted equity ratio?

A. Our 55.8% equity ratio has been and continues to be viewed as adequate and appropiate by the investment community. Maintaining this adjusted equity ratio will indicate to the Capital Markets the Commission's continued commitment to support the financial integrity of the service providers subject to its jurisdiction. Maintaining our current equity ratio will help to ensure continuous access to the capital markets at reasonable rates even during turbulent credit markets. Furthermore, a strong capital structure is appropriate under current circumstances and offers flexibility and security, which in turn enables us to serve our customers well.

ACCRUAL FOR THE ACCOUNT 228.1 RESERVE

Q. What has FPL proposed as the annual accrual to the Reserve to be reflected in base rates?

A. FPL has proposed that the Commission establish the annual accrual in base rates to be $150 million and a target reserve level of $650 million. The annual accrual approximates the expected amount of annual storm losses. As discussed in the testimony of FPL witness Harris assuming an annual accrual of $150 million, a two-year surcharge recovery of any deficit storm damage reserve balances that may occur during this period, and an initial Reserve balance of $215 million (Reserve replenishment amount per Financing Order No. PSC-06-0464-FOF-EI, adjusted for earnings and securitization-related activities), the expected balance of the Reserve would be approximately $382 million after five years.

Q. **What are the key policy considerations underlying any storm cost recovery framework?**

A. The key policy considerations underlying any storm cost recovery framework have been clearly acknowledged in past Commission treatment of storm restoration costs, as articulated in Orders Nos. PSC-93-0918-FOF-EI, PSC-95-0264-FOF-EI and PSC-95-1588-FOF-EI. The key principles are as follows:

First, storm restoration is a cost of providing electric service in Florida and is therefore, properly recoverable through the rates and charges of the Company. While we cannot predict with certainty when storms will occur, we can predict with virtual certainty that tropical storms and hurricanes will affect our service territory and we will incur costs for restoring power. However, those costs are not reflected in the Company's base rates.

Second, each "generation" of customers should contribute to the cost of storm restoration, even if no storm strikes in a particular year. Since storms will occur and only their timing is uncertain, the true cost of providing electric service should include an allowance for a level of restoration activity that approximates the expected annual storm costs.

Third, "pre-funding" restoration costs sufficient to cover an extreme sub-period of storm activity (i.e., building up a Reserve sufficient to cover virtually all storm restoration) is likely to be economically inefficient. Thus, some mechanism for recovery of the prudently incurred costs that exceed the Reserve is required.

Each of these principles has been reflected, expressly or implicitly, in prior Commission decisions relative to the establishment of the Reserve and the recovery of storm restoration costs.

Q. Please describe the history of the Reserve and the principal components of the Commission's approach to storm cost recovery.

A. Prior to Hurricane Andrew, FPL had a small Reserve and maintained commercial insurance coverage for its Transmission and Distribution (T&D) network. The cost of carrying this insurance was recovered through base rates. The cost of storm restoration, therefore, was spread out to customers over time largely through the cost of insurance included in the Company's base rate charge.

Following Andrew, commercial insurers withdrew from the market. In Order No. PSC-93-0918-FOF-EI, the Commission approved the implementation of a self-insurance mechanism for damage to FPL's T&D system and to resume and increase the annual contribution to the Reserve. In the absence of commercial coverage, the Company established and the Commission consistently endorsed an overall framework which acknowledges that the costs associated with restoring service after storms are a necessary cost of providing electric service in Florida and as such, are properly recoverable from customers. The framework consists of three main parts: (1) an annual storm accrual, adjusted over time as circumstances change; (2) a Reserve adequate to accommodate most but not all storm years; and (3) a provision for utilities to seek recovery of costs that go beyond the Reserve. The regulatory framework is designed to provide the flexibility to prevent unbounded growth of the storm fund during extended periods of extremely low storm activity as well as provide for supplemental recovery of deficits in the Reserve during periods of high storm activity.

These three parts act together to allow FPL over time to recover the costs of storm restoration, while at the same time balancing competing customer interests, namely: holding the ongoing impact to reasonable levels; minimizing the volatility of "rate shock" in customer bills which occurs when the Reserve is insufficient, (the timing of which could adversely impact customers when they are experiencing repair costs of their own); and promoting intergenerational equity. This balance requires periodic adjustment to the amount of the main components of the framework, the annual accrual and the target Reserve balance, in light of changing storm experience and the growth of FPL's T&D network.

Q. Please summarize your understanding of the Commission's policy on the appropriate level of the Reserve balance.

A. The Commission's policy, as articulated in Order Nos. PSC-95-0264-FOF-EI, PSC-95-1588-FOF-EI and PSC-98-0953-FOF-EI, is to determine a Reserve balance sufficient to protect against most years' storm restoration costs, but not the most extreme years. Such a level should reduce dependence on a relief mechanism such as a special customer assessment, providing for more stability in customer bills. Obviously, the lower the Reserve balance, the higher the risk that storm losses will exceed the funds available in the Reserve and therefore the greater the need for special assessments. The higher the Reserve balance, the lower the risk windstorm losses will exceed the funds available in the Reserve.

Q. Did the passage of Section 366.8260, Florida Statutes, which provides for the issuance of Bonds, alter the current framework for storm cost recovery?

A. No. Section 366.8260 simply provides the Commission with an additional alternative for recovery of storm restoration costs that have exceeded the Reserve and replenishment of the Reserve. Under Section 366.8260, recovery of deficits and replenishment of the Reserve would be achieved through the issuance of Bonds which are repaid by customers through a non-bypassable charge. Prior to the 2004 hurricane season, FPL had not experienced a deficit balance in the Reserve.

Q. Why should customers pay for storm restoration costs?

A. These costs are an integral part of the cost of providing electric service in Florida, a region susceptible to storms. As such, they are legitimately recoverable from customers under basic principles of cost-based rate regulation.

Q. How is this different than, for example, an accident at one of FPL's generating plants?

A. In many respects it is not. It is true that even an organization such as FPL, with a good track record, will from time to time incur losses from accidents. These losses are a part of the cost of providing electric service and as such a fair average level of costs is reasonably recoverable from customers. The fundamental difference, however, is that extraordinary losses from plant outages are covered by insurance, the cost of which is recovered through base rates. So, the costs of such extraordinary losses, effectively, are borne by customers.

Q. Why doesn't FPL purchase insurance for storm losses?

A. The substantial losses associated with Hurricane Andrew in 1992 essentially eliminated the commercial market for T&D insurance at the levels or amounts needed to provide adequate protection to FPL's extensive network of assets and its ability to quickly restore reliable service. Though FPL continues to explore the market for insurance for storm damage losses, it has been forced to seek other methods to ensure that it would have adequate available resources for the costs of repairing and restoring its T&D system in the event of a hurricane, storm damage, or other natural disaster.

Q. Please briefly describe the circumstances that led to the adoption of the 2004 Storm Restoration Surcharge.

A. The 2004 storm season inflicted severe damage on FPL's service territory and the electric infrastructure. As a result, costs incurred to restore electric service following Hurricanes Charley, Frances, and Jeanne, in the aggregate totaled $890 million (net of insurance proceeds), depleting in its entirety FPL's Reserve, and leaving the Reserve with a substantial deficit. In Order No. PSC-05-0937-FOF-EI, the Commission affirmed the surcharge it had approved on a provisional basis in Docket No. 041291-EI (the Storm Restoration Surcharge). The approved surcharge of $1.65 (per 1,000 kWh residential bill) was intended to eliminate the deficit in the Reserve caused by the 2004 storm season.

Q. What effect did the 2005 storm season have on the Reserve?

A. In 2005, another very active storm season, four Hurricanes inflicted damage on FPL's system. Restoration costs associated with Hurricanes Dennis, Katrina, Rita and Wilma increased the Reserve deficiency by approximately $816 million, leaving a deficit balance in the Reserve in excess of $1.1 billion. The Storm Restoration Surcharge was designed to recover approximately $300 million of that amount by February 2008, leaving approximately $800 million to be recovered through another means, as well as the question of how best to restore the Reserve to a reasonable level going forward.

Q. How did the 2005 Stipulation and Settlement Agreement signed by parties to FPL's base rate proceeding address the issues of storm cost recovery and the replenishment of the Reserve?

A. The Settlement Agreement: (1) suspended the then current base rate accrual of $20.3 million; (2) provided that FPL will be entitled to recover prudently incurred storm restoration costs and replenish the Reserve to a level approved by the Commission; and (3) allowed recovery of prudently incurred storm restoration costs and replenishment of the Reserve through charges that are incremental to base rates, either through a charge established through Section 366.8260, Florida Statutes or another form of surcharge.

Q. How did Financing Order No. PSC-06-0464-FOF-EI issued May 30, 2006 address the issues of storm cost recovery and the replenishment of the Reserve?

A. The Commission found the issuance of Bonds and the imposition of related storm restoration charges to finance the recovery of FPL's reasonable and prudently incurred storm restoration costs, the replenishment of the Reserve, and related financing costs were reasonably expected to significantly mitigate rate impacts to customers as compared with alternative methods of recovery of storm restoration costs and replenishment of the Reserve.

The Commission approved the issuance of Bonds in the amount of up to $708 million, provided the initial average retail cents per kWh for the Bonds would not exceed the average retail cents per kWh for the Storm Restoration Surcharge which was then in effect. The proceeds from the issuance of Bonds authorized by this Financing Order were required to be used by FPL to finance the after-tax equivalent of the following amounts: (1) approximately $199 million in unrecovered 2004 storm-recovery costs as of July 31, 2006 (estimated); (2) approximately $736 million in 2005 unrecovered storm-recovery costs (estimated); (3) replenishment of FPL's Reserve to the level of $200 million; and (4) $11.4 million in financing costs (estimated) associated with the Bonds. To the extent there were differences between the actual and estimated balances for unrecovered 2004 and 2005 storm restoration costs and between the actual and estimated financing costs, the differences were to be reflected through an adjustment to the Reserve.

Q. What are the fundamental regulatory objectives that should be considered in reestablishing the annual storm accrual and target reserve balance?

A. FPL believes that the regulatory objectives should be the following: (1) achieve low long-term customer costs; balanced with (2) dampening volatility of the Reserve (i.e., reduce reliance on special assessments/rate increases providing stability of customer bills); and (3) cover the costs of most storms, but not those from the most catastrophic events.

Q. How should the Commission determine the appropriate level of annual accrual?

A. The Commission's policy, as articulated in Order No. 95-0264-FOF-EI, is to determine a target reserve balance that is sufficient to protect against most years' storm restoration costs but not the most extreme years. Assuming the regulatory framework continues to provide for the recovery of prudently incurred storm costs in excess of storm reserves in periods of high storm activity, the goal of the accrual over the next several years should be to cover the expected value of annual windstorm losses and make some progress in reestablishing the Reserve to a level adequate to fund most but not all windstorm losses. Such a level should reduce FPL's dependence on a relief mechanism such as a special customer assessment, proving more efficient and effective for our customers. The annual accrual should be set large enough to allow the reserve to build modestly in years of "normal" hurricane activity, yet low enough to prevent unbounded storm fund growth. An accrual and reserve approach is the most cost effective means by which we can ensure that critical funds are available when needed while at the same time providing stability of customer bills and thereby minimizing the overall impact of hurricanes in our service territory. One advantage to funding the Reserve with an annual accrual is that in a year where no or low storm activity occurs, the Reserve has the opportunity to grow for future benefit and stability. This is in direct contrast to insurance premiums where, even during periods of no or low losses, the insurer retains the premiums paid. The Reserve primarily exists due to the unavailability of cost effective insurance for FPL's T&D system.

Q. **Has FPL performed a study to determine the annual amount of expected losses from windstorms?**

A. Yes. FPL commissioned studies to calculate the annual amount of expected windstorm losses, as well as the expected value of the Reserve given various funding levels. The studies were prepared by and are being sponsored by FPL witness Harris of ABS Consulting.

Q. **What direction was provided by FPL to ABS Consulting in the preparation of the studies?**

A. FPL requested that ABS Consulting determine the levels of losses to which the Company and its customers are statistically exposed and to develop average annual cost estimates associated with repair of storm damage and service restoration over a long period of time. Additionally, FPL requested ABS Consulting to provide a probabilistic analysis of expected results for the Reserve balance over five years at various levels of annual accrual. The current storm accrual established under the 2005 settlement agreement is zero. The Settlement Agreement addressed recovery of future storm costs via surcharge or securitization.

Q. What does the analysis conclude regarding the expected annual long-term cost for service restoration and repair of storm damage to FPL's assets?

A. The ABS Consulting analysis concludes that the expected annual cost for windstorm losses is approximately $153.3 million. Windstorm losses include costs associated with service restoration and system repair of FPL's T&D system from hurricane, tropical and winter storm losses. Also included are storm staging costs, windstorm insurance deductibles attributable to non-T&D assets, and payments of nuclear retrospective premiums. The $153.3 million expected annual loss has increased significantly since the 2005 Loss Analysis. This increase is predominantly the result of an increase in replacement values for FPL's T&D assets, as well as the incorporation of the hurricane storm data for the 2004 through 2007 hurricane seasons, which increases the modeled storm hazard. The expected annual loss estimate becomes a range of $146.6 million to $153.3 million when taking into consideration the potential reduction in storm restoration costs due to FPL's storm hardening activities.

Q. Are there other circumstances that could increase FPL's expected annual losses?

A. Yes. Changes in the insurance markets affecting the availability and affordability of insurance coverage would impact expected annual losses. FPL witness Harris' analysis assumes no T&D insurance is available and that non-T&D insurance deductibles remain stable. After the very active storm seasons of 2004 and 2005, the insurance markets continue to decline to offer T&D insurance at reasonable cost. In addition, non-T&D windstorm insurance availability remains volatile based on insurers' loss experience and available capacity, and could require higher deductibles in the future. If this were to happen, any deductible increase or any diminution in non-T&D windstorm insurance would increase the storm damage costs to be charged to the Reserve.

Q. Does the analysis recommend a target reserve level?

A. No. There is no single correct Reserve balance. The appropriate Reserve level depends largely on the regulatory framework for storm cost restoration and the point at which the Commission decides to balance the customer interests referred to earlier. Obviously, the lower the Reserve balance, the more likely that storm losses will exceed the funds available in the Reserve and, therefore, the greater the reliance on special assessments. The higher the Reserve Balance, the less likely windstorm losses will exceed the funds available in the Reserve. If the regulatory framework were to be changed such that FPL could not recover prudently incurred restoration costs in excess of the Reserve, then the balance in the Reserve would have to be maintained at substantially higher levels to ensure that FPL could recover the full cost of providing electric service over the long-term taking into consideration the condition of the financial markets at any given point in time.

Q. What target Reserve level does FPL recommend?

A. Consistent with past Commission Orders, a reserve level should be large enough to withstand the storm damage from most but not all storm seasons. FPL recommends a $650 million target reserve level. According to the aggregate damage exceedance probabilities presented in Table 5-2 on page 5-6 of FPL witness Harris' Storm Loss Analysis, Exhibit SPH-1, the chance that losses will exceed $650 million in any one season is approximately 5%.

Although a Reserve of $650 million is not necessarily what FPL would project as the ideal Reserve level going forward, weighing a number of factors including (i) an expected annual cost for windstorm losses, taking into consideration the storm hardening activities, of approximately $146.6 million to $153.3 million as determined by FPL's outside expert FPL witness Harris, (ii) the possibility that Florida is in the midst of a much more active hurricane period relative to average levels of activity over the much longer term, (iii) the impact of the recent severe and unprecedented storm seasons on customer bills in the near term, and (iv) the opportunity to revisit this issue in future proceedings, establishing a target Reserve level of $650 million is reasonable at this time.

Q. Does this recommendation eliminate the possibility of special assessments for future storm damage?

A. No. Without an additional annual surcharge or accrual to fund ongoing storm restoration costs, the Reserve naturally will decline over time as costs are charged against the Reserve. If we are fortunate enough to experience a few years of below average storm losses, the Reserve may be sufficient to avoid an additional surcharge or securitization during that period of time. However, FPL witness Harris' analysis concludes that the expected value of the Reserve under the Company's recommendation would be approximately $382 million after five years and that there would be a 33% chance that the Reserve would be insufficient at some point over the next five years to fund required storm restoration costs. Of course, future storm activity will dictate the necessity for any type of special assessments or additional issuances of storm-recovery bonds.

Q. How will the Company ensure that the requested annual accrual of $150 million will not result in unbounded growth?

A. FPL proposes to file updated studies at least every five years for review by the Commission. Based on the ABS Consulting analysis, at an annual accrual level of $150 million, the probability that the storm fund will exceed $650 million in five years is approximately 42%, and there is a 5% chance that the reserve would reach approximately $930 million after five years, at which time the annual accrual and appropriate reserve level could be reevaluated.

Q. Has the Commission allowed for a 5-year review of other funded reserves?

A. Yes. For example, the Commission currently requires FPL to file a study that allows the Commission to review its nuclear decommissioning costs at least every five years.

Q. Can FPL change its storm fund accrual without Commission authorization?

A. No.

Q. Can funds collected from customers for storm restoration be used for any other purpose?

A. No. FPL follows FPSC Rule 25-6.0143 – Use of Accumulated Provision Accounts 228.1, 228.2 and 228.4, to charge amounts to the Reserve. Funds collected can be used for any allowed purpose of the fund including costs associated with service restoration and repair of FPL's T&D system as a result of hurricanes, tropical storms and winter storms, storm staging costs, windstorm insurance deductibles attributable to non-T&D assets, and payments of nuclear retrospective premiums. The Commission established the inclusion of nuclear retroactive assessments as an allowed purpose of the fund in Docket No. 810002-EU, Order No. 10306 issued September 23, 1981. The Commission provided clarification in Order No. PSC-98-0953-FOF-EI as to the appropriate uses of the Reserve, and articulated the Reserve is available to cover retrospective assessments incident to FPL's insurance for its nuclear facilities.

NUCLEAR FUEL LEASE

Q. Can you please provide a brief history of FPL Fuels, LLC?

A. FPL Fuels, LLC, initially called St. Lucie Fuel Company, was established in 1979 for the purpose of financing the acquisition of nuclear fuel and then leasing the fuel to FPL. Under the terms of the lease, FPL Fuels owns finances and leases the fuel to FPL.

Q. How did the establishment of the nuclear fuel lease benefit FPL's customers?

A. At the time FPL entered into the lease, the accounting rules did not require consolidation of FPL Fuels. This allowed the lessor to finance the fuel at a lower overall cost than would be obtained if FPL were to acquire the fuel through its conventional purchasing and financing activities at its weighted average cost of capital.

Q. Does FPL Fuels still provide a benefit to customers?

A. No, it does not. Changes in accounting rules now require FPL to consolidate FPL Fuels in its financial statements filed with the Securities Exchange Commission. Consequently, the commercial paper issued by FPL Fuels is now included as short-term debt on FPL's balance sheet and is included in rating agency and investor evaluations of the adequacy of FPL's capital structure.

Q. How has FPL Fuels been treated in this filing?

A. FPL's 2010 forecast reflects continuation of FPL Fuels, but FPL makes a company adjustment that assumes the dissolution of FPL Fuels on January 1, 2010. FPL witness Ousdahl explains this company adjustment.

Q. Does this conclude your direct testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

REBUTTAL TESTIMONY OF ARMANDO PIMENTEL

DOCKET NO. 080677-EI

AUGUST 6, 2009

Q. Please state your name and business address.

A. My name is Armando Pimentel. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420.

Q. Did you previously submit direct testimony in this proceeding?

A. Yes.

Q. Are you sponsoring any rebuttal exhibits in this case?

A. Yes. I am sponsoring the following rebuttal exhibits:

- AP-8, Unique FPL Risks
- AP-9, FPL / Tampa Electric Risk Comparison
- AP-10, FPL Test Year Capitalization
- AP-11, Historical and Projected Capital Structure
- AP-12, Projected Book Capital Structure
- AP-13, Impact of 2010 Commission Specific Adjustments
- AP-14, Impact of Witness Baudino's Proposed Equity Adjustment
- AP-15, Imputed Debt Calculation
- AP-16, Short-Term Debt Costs – 30-Day LIBOR Curve

- AP-17, Long-Term Debt Cost

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to respond to claims made in this case included in testimony of Office of Public Counsel's (OPC) witnesses Woolridge, Lawton, and Brown, Florida Industrial Power Users Group's (FIPUG) witness Pollock and the South Florida Hospital and Healthcare Association's (SFHHA) witnesses Baudino and Kollen. Specifically, my rebuttal testimony will focus on the fundamental need to maintain FPL's financial strength in order to serve and protect FPL's customers, and urge the Commission not to weaken FPL's ability to provide service as proposed by intervenor witnesses. My rebuttal testimony discusses the appropriateness of Florida Power & Light's (FPL or Company) requested return on equity (ROE), capital structure, levels and costs of short and long-term debt, as well as the Company's request to protect customers through reestablishing an annual accrual for the storm reserve.

Q. Please summarize your rebuttal testimony.

A. My rebuttal testimony explains why it is critical that FPL's strong financial position be maintained through this regulatory proceeding and why it is in the best interest of customers. There is substantial value to customers in maintaining a financially strong utility with the capability to meet its obligation to provide safe and reliable service, even in the face of potential uncertainties. The investment community and rating agencies have recognized this value. The Moody's Report dated January 2009 titled "Industry Outlook: U.S. Investor-Owned Electric Utilities" states:

> "We continue to incorporate a view that individual state regulatory authorities will provide reasonably timely recovery of prudently incurred costs and investments. Moreover, we continue to believe that regulators prefer to otherwise regulate financially healthy companies. This relationship often creates a virtuous cycle, where financially healthy utilities have the balance sheet strength and liquidity to assure investment, maintain high levels of reliability and attract economic development. In turn, this tends to facilitate contentment among consumers, legislators and regulators."

As I indicated in my direct testimony, FPL needs to issue nearly $6 billion of new debt securities over the next five years to help finance capital expenditures of approximately $16 billion as well as refinance maturing debt. We need access to capital on reasonable terms. This is similar to a consumer seeking credit - the stronger the financial health of an applicant, the better and more cost effective access to credit one has.

The recommendations set forth by the intervenors in this proceeding would severely diminish the Company's ability to maintain its financial strength and, therefore, its ability to access capital at reasonable terms for customers. For example, if the Commission were to adopt OPC's recommendations, FPL's already significant financing requirements would increase by over $4 billion through 2013. Additionally, the flow back of depreciation over the recommended four years would significantly increase rate base with no offsetting fuel or efficiency benefit, and would result in a significant rate spike for customers over the long run.

The recommendations set forth by the intervenors in this proceeding represent a significant deviation from the strategy of maintaining financial strength and, if accepted would be negatively received by the financial community as a change in the regulatory policy. This change would occur after years of constructive regulation - which has resulted in low rates by both Florida and national standards, highly reliable service, and some of the cleanest generation in the U.S. electric utility landscape - that has spanned generations of Commissions. There would be significant financial consequences, which I describe later in my testimony, which would be detrimental to customers. It is critical that a strong financial position be maintained through the provision of an adequate allowed return on equity and an appropriate equity ratio.

A final consideration when evaluating the reasonableness of FPL's requested return on equity, recommended capital structure and their impact on customer rates should be the overall rate of return (ROR), since it fully reflects the costs from all sources of capital and the overall ROR is what is utilized for the purpose of setting rates. FPL's requested 2010 ROR of 8.0% is reasonable, and in fact below the overall ROR recently approved for Tampa Electric Company in its base rate proceeding. Furthermore, it is anticipated that the ROR that we are requesting will be even lower after factoring in the impact of bonus depreciation from the American Recovery and Reinvestment Act of 2009 and other adjustments outlined in FPL witness Ousdahl's Exhibit KO-16.

RETURN ON EQUITY

Q. Do you agree with the return on equity recommendations made by Dr. Woolridge or Mr. Baudino?

A. No. I will defer discussion of the analytical flaws in their respective approaches to FPL witness Avera. My rebuttal testimony discusses the reasonableness of the overall level of return on equity recommended by these witnesses and the general impact on the Company's financial strength, were the Commission to adopt any of their recommendations.

Q. Have intervenors addressed the risk factors that are specific to FPL which should be considered by the Commission in determining FPL's ROE?

A. No, they have not. As I indicated in my direct testimony, FPL is not exempt from risk as a regulated utility. FPL operates under a regulatory compact that mitigates some risks, but at the same time augments others. For example, unlike an unregulated business, FPL has a statutory obligation to invest in expanding its system to serve new load not withstanding economic and financial market conditions. Unregulated businesses have more flexibility in deciding when and how they expand and contract their business. It is also important to maintain the proper perspective regarding FPL's proposed 12.5% ROE in relationship to the ROE for some other major Florida businesses. For example, Publix' ROE for 2008 was 19.3%, Wal-Mart's ROE was 20.6% for the fiscal year ended January 31, 2009, Tenet Health's ROE for 2008 was 31.8% and PraxAir's ROE was 26.5% for 2008.

There are several factors that increase risk in an investor's viewpoint that are unique to FPL that should be considered by the Commission in determining FPL's ROE. They are: geographic position, capital expenditure requirements, fuel supply and mix, nuclear generation and the Florida economy. The specific details of these factors can be found in my direct testimony and are illustrated on Exhibit AP-8. Amazingly, each of these critical FPL-specific risk factors is completely overlooked in the intervenors' testimony. These FPL-specific risk factors pose clear and present dangers that influence investors' decisions on what matters most to the investment community – which is whether in light of its risks FPL can offer an adequate return for the investments so vitally needed for FPL to provide service to millions of Floridians.

Q. **Are the intervenor's return on equity recommendations consistent with what has recently been granted to other electric utilities in the state?**

A. No, they are not. Tampa Electric was recently awarded a return on equity of 11.25%. The intervenors have failed to acknowledge this recently awarded return on equity or that each of them presented substantially lower recommendations in that case which were rejected by the Commission. The intervenors have also failed to recognize the additional risk factors FPL faces when compared to Tampa Electric. As Exhibit AP-9 illustrates, FPL has significantly higher risk in a number of areas that warrants a strong financial position and higher return on equity to meet our obligation to serve our customers. It is critical for the Commission to evaluate each company uniquely and award a return on equity that is consistent with the risks of operating that business. If a lower return on equity was awarded to a higher risk company, it would send a negative message to the financial community.

Q. **What do you think the Commission's objectives should be in establishing the Company's authorized return on equity?**

A. The return on equity should be set at a level that, if achieved by the Company, will induce the level of investment needed to provide reliable electric service and fund necessary capital expenditure plans at the lowest reasonable cost while fairly compensating equity holders for the utilization of their capital. As I noted in my direct testimony, the United States Supreme Court has discussed the factors a Commission must consider in reaching a determination on a particular utility's rate of return. Specifically, an appropriate return on equity is one that is commensurate with the returns being earned on investments in businesses with similar risks and uncertainties.

Q. In your opinion, if the Commission were to adopt the return on equity recommendations presented by Dr. Woolridge or Mr. Baudino, would those objectives be met?

A. No. The Company must compete for investor capital by offering a reasonable return that is competitive with the returns available on investments with similar risk profiles. The proposed allowed returns on equity suggested by Dr. Woolridge or Mr. Baudino would be substantially below the returns available to investors on comparable investments and insufficient to maintain access to capital markets at reasonable prices. Furthermore, their testimonies fail to recognize the current financial environment that requires investors to seek additional compensation for the added risk that now exists in the capital markets.

It is quite clear that the intervenors' ROE recommendations would not represent a fair and reasonable return opportunity for investors and would not allow FPL to maintain access to capital markets at reasonable prices.

Q. One witness in the proceeding indicated FPL's ROE should be in the 4% to 6% range and further suggests that FPL's ROE should be compared to the interest rates that banks offer on checking accounts. Please comment on this recommendation.

A. This recommendation would result in an authorized ROE that is less than most utilities' cost of debt issuances. This non-market based allowed return is so low relative to the cost of competitive alternatives that it fails to meet the standards set out in the U.S. Supreme Court's Hope and Bluefield cases. It therefore should carry no relevance in this proceeding.

Q. What would be the likely consequences for FPL's financial position if the intervenors' ROE recommendations were adopted?

A. There would be several significant and adverse consequences to FPL's financial position, which would severely hurt customers' interests. The most immediate effect would be a significant reduction in operating cash flow. This would increase the dependence of the business on access to external funding and would obviously exacerbate the challenge of meeting capital expenditure requirements that will provide customers significant benefits.

A second effect would be dramatically reduced investor confidence in the Florida regulatory environment. Such a dramatic shift from a regulatory framework that provides an environment for a utility to have a balanced, but strong financial position to one where the utility would be in a weakened capital position would seriously undermine investor confidence in the Florida regulatory environment. This would likewise have the effect of increasing investor perceptions of regulatory risk with respect to other issues. Clearly, this would serve to *increase* the future cost of capital which ultimately would increase customer's rates.

Third, FPL's credit standing would certainly be weakened and credit ratings would likely be lowered. Credit spreads would widen, resulting in immediate losses to debtholders and decreased access to new capital, as well as increases in interest costs. Short-term credit capacity would be substantially curtailed and would be at risk during periods of market instability, as we saw during the Fall of 2008. This would also significantly limit the Company's ability to support the fuel hedging program and fund potential future storm expenditures, reducing flexibility in the event of unexpected shocks, which would lead to more volatility in customer bills.

Fourth, there would be an immediate loss in equity value as well as confidence, a related consequence of which would likely be pressure for an increase in dividends, because the shareholder trade-off between current return (dividend) and future return (capital gain) necessarily would be shifted towards the former. Of course, any increase in dividends needed to maintain equity investor confidence would obviously further exacerbate the cash flow shortfall.

All these effects would be taking place during a period of time when access to capital has been limited and more costly. Therefore, it would be very detrimental to long-run operating performance, undermining FPL's efforts to support its extensive capital building program while maintaining reliability and customer service. The result would not be in customers' long-run interests.

Q. Intervenors, as part of ROE testimony, have cited FPL's strong financial position as reason why FPL has lower risk and should have a lower ROE. Do you agree with this characterization?

A. No. These assertions are circular in that a lower ROE would weaken the Company's financial position, thus undermining the very basis of such contentions. A strong financial position should be viewed as an asset, which pays dividends to customers, rather than a liability. A strong financial position allows the Company to maintain the flexibility to raise capital when needed to meet our service obligations. This position also provides security that provides the ability to absorb unexpected financial shocks. While FPL's current financial position is strong, it is important to note that FPL must continue to invest to serve its customers and therefore requires a continuing strong financial position. Adequate allowed return on equity and an appropriate equity ratio underpin our financial strength.

Weakening in any of these areas would clearly be perceived by investors as a decline in our overall financial strength. A decline in financial strength introduces greater risk. In turn, investors will require a greater return on their invested dollar which ultimately will result in increased customer rates.

Q. Both Dr. Woolridge and Mr. Baudino indicate that public utilities are exposed to a lesser degree of business risk than other, non-regulated businesses. Therefore, the overall investment risk of public utilities is below most other industries." Do you agree?

A. No, I do not agree. FPL must compete for capital, not just against other utilities, but against other investment opportunities of comparable risk. FPL's risks are different than non-utility companies, but not necessarily less. Regulation provides risk reduction, but the obligation to serve compels utilities to access capital even under inopportune scenarios. Dr. Avera has established a non-utility proxy group of companies with similar risk profiles in his direct testimony. These companies are outside the utility industry but serve as a proxy group representative of those that FPL must compete with to obtain capital. It is important to approach consideration of FPL's return on equity with the understanding that investment dollars are fungible and more scarce than they have been in many years. Investor funds can be deployed in any company or industry, here or abroad. Thus there is a need to expand the comparable grouping to reflect how the financial community looks to invest.

Q. Dr. Woolridge has indicated "that the market for bonds of utilities came back significantly in 2009." Please comment on this statement.

A. Although the spread to Treasuries has declined since the peak of the financial crisis in 2008, they still remain high. Unfortunately, Dr. Woolridge fails to recognize the importance to customers of maintaining financial strength to weather future economic and credit challenges similar to what we saw late last year. In fact, his own testimony recognizes the uncertainties that the utility industry experienced over the last six months. The Wall Street Journal article presented in Exhibit JRW-3 of his testimony states:

> "Utilities are the third-largest debt issuers after government and finance, requiring a steady supply of cash to build power plants, pipelines and transmission lines and to meet tightening environmental requirements. When credit markets tanked last autumn, many utilities were hurt as market valuations tumbled amid investor fears that demand for their services would decline and that they would have difficulty raising the large sums of money they require, at least at affordable rates."

Other state regulators are beginning to comment on the increased cost of equity. For example, the staff of the Kansas Corporation Commission, filed testimony earlier this year in a Kansas City Power & Light Company docket recommending a higher cost of equity than the company's filed position citing today's current environment:

> "There have been dramatic changes in the financial markets since KCPL filed this case on September 5, 2008. The primary change that directly affects the estimated cost of equity for KCPL is the decline in stock prices, including the prices of electric utility stocks. The decline in prices is indicative of an increase in the cost of equity capital."

Lowering a utility's return on equity is short-sighted and may limit its ability to attract sufficient capital to adequately serve its customers. Therefore, it is <u>more important</u> for a utility to maintain its financial strength to attract capital to meet its obligation to serve during this economic downturn. Kansas Corporation Commission's staff witness Gatewood recognized this importance and stated:

> "If the Commission chooses not to pass along increases of the costs of any of these inputs, it would likely jeopardize the utilities' ability to obtain new capital and could push capital costs even higher."

Q. Do you believe in this time of economic uncertainty, that FPL should lower its position of financial strength?

A. No, I do not. I believe it is actually more important during this time of economic uncertainty for FPL to maintain its position of financial strength to attract the capital necessary to serve our customers on reasonable terms. The investor behavior during this financial crisis has shown that investors' first instinct is to rush to the safety of U.S. Treasury securities during times of uncertainty. Therefore, it is <u>more important</u> for a utility to maintain its financial strength to attract capital to meet its obligation to serve during this economic downturn. In a Fitch Ratings' Report dated December 22, 2008 titled "U.S. Utilities, Power and Gas 2009 Outlook," the rating agency states:

> "In Fitch's view, the business climate for the electric utility sector is negative in both 2009 and the longer term. A deepening global recession, ongoing financial crisis and a meaningful increase in the cost of capital compound an already difficult operating environment characterized by large projected capital expenditures and commodity cost volatility."

Q. **Does FPL's recommended return on equity request take into account risk mitigation effects of existing clause recovery mechanisms for fuel, capacity, nuclear, conservation costs and environmental costs?**

A. Yes, it does. FPL is exposed to significant risks associated with energy price volatility, particularly given FPL's high concentration of natural gas in its generation mix. The Commission's fuel and capacity cost adjustment mechanisms, like similar mechanisms around the country, mitigate but do not eliminate these risks. Likewise, there is significant risk associated with FPL's nuclear uprate and new nuclear projects, which the nuclear cost recovery clause mitigates but by no means eliminates. The conservation and environmental clauses similarly mitigate but do not eliminate risks associated with those activities. Finally, clause underrecoveries, which can be significant, are reimbursed at FPL's commercial paper rate, not at FPL's weighted average cost of capital increasing the risk that investors will not earn a return at the level authorized by the Commission.

Adjustment mechanisms that enable utilities to implement rate changes to pass through fluctuations in costs are widely prevalent in the industry and well understood by investors. Absent these cost recovery mechanisms, investors required return on equity would be significantly higher.

Q. Does FPL's recommended return on equity take into account the risk mitigation benefits of the Generation Base Rate Adjustment?

A. Yes it does. While the Generation Base Rate Adjustment does not reduce the significant execution risk associated with constructing and operating complex generation facilities, it does help to facilitate minimization of the regulatory lag typically associated with large construction projects. As FPL witness Reed discusses in his rebuttal testimony, this type of pre-approval process has become more prevalent throughout the industry as a means to partially mitigate increased levels of regulatory risk associated with the significant construction cycle the industry is undergoing.

Investors currently view Florida as having a constructive regulatory environment, and their overall expectations are for that environment to continue. A decision to eliminate the Generation Base Rate Adjustment mechanism would be contrary to those expectations and likely result in higher required rates of return by investors.

Q. Does FPL's recommended return on equity take into account the risk mitigation benefits afforded by the Nuclear Cost Recovery Rule?

A. Yes it does. Without the rule, I don't believe FPL would have ready and sufficient access to the capital markets at a reasonable cost if we were to attempt to construct new nuclear facilities. Having said that, investors and the rating agencies are cognizant of the increased risks associated with construction of new nuclear facilities, even with mechanism like the Nuclear Cost Recovery Rule. A Moody's Report dated June 2009 titled "New Nuclear Generation: Ratings Pressure Increasing" states:

> "Because companies that build new nuclear generation will increase their overall business and operating risk profiles, we believe they will need to compensate with near-term financial policies that produce strong financial credit ratios. While a constructive regulatory relationship will help mitigate near-term credit pressures, we will remain on guard for potential construction delays and cost overruns that could lead to future rate shocks and/or disallowances of cost recovery. Given the lengthy construction time

> needed for nuclear projects, there is no guarantee that tomorrow's regulatory, political, or fuel environments will be as supportive to nuclear power as today's."

In fact, although South Carolina's Base Load Review Act is strikingly similar to FPL's nuclear cost recovery provisions, South Carolina Electric & Gas recently suffered downgrades from all three major rating agencies. Each cited the increased business risk associated with the Company's plans to build new nuclear as a driver of the ratings downgrade. Each acknowledged that the risk mitigation benefits provided by the Base Load Review Act were not sufficient to prevent a downgrade.

CAPITAL STRUCTURE

Q. Before addressing the specific capital structure recommendations made by Dr. Woolridge, Mr. Baudino and Mr. Pollock, do you have any general comments regarding the recommendations by intervenors to increase debt leverage at FPL?

A. The capital structure that is currently in place at FPL is appropriate: it is well received by the capital markets, as evidenced by FPL's current credit ratings and overall credit profile, as well as the trading spreads of FPL bonds relative to others; and it provides the financial flexibility and resilience needed in order to fulfill our obligations to our customers. It would be unwise to weaken the Company's financial strength especially in a period where liquidity and capital access are more important than ever. Any attempt to do so will translate into uncertainty in the minds of investors and rating agencies and will lead to higher customer costs.

Q. What is the financial community's and rating agency expectations for strengthening a utility's balance sheet?

A. They are supportive of strengthening a utility's balance sheet. In a Moody's Report dated January 2009 titled "Industry Outlook: U.S. Investor-Owned Electric Utilities," Moody's states:

> "Our concerns are clearly growing, but we believe utilities have adequate time to adjust and revise their corporate finance policies and strengthen balance sheets, thereby improving their ability to manage volatility and address uncertainty."

Q. Is FPL proposing to strengthen its balance sheet at this time?

A. No. We have consistently maintained a strong financial position at FPL. While the rating agencies have voiced their expectation that the industry will need to strengthen balance sheets going forward in order to maintain credit quality in the face of increased capital expenditure requirements and stricter environmental controls, FPL feels that its current financial position is appropriate. Exhibit AP-10 is an overview of FPL's test year capitalization ratios from both a book basis prepared in accordance with Generally Accepted Accounting Principles (GAAP) and a regulatory basis. Exhibit AP-11 provides a summary of FPL's historical and projected capital structure as viewed by investors and as included in FPL's regulatory filings. This exhibit demonstrates that whether an investor looks at our capital structure from a year end book basis prepared in accordance with GAAP or a regulatory 13-month average point of view, they will see that our capital structure is steady and well balanced. Our proposed capital structure is consistent with the ratios that we have maintained over time that has made us the financially strong company that we are today.

Q. What would be the impact if the recommendations of Dr. Woolridge, Mr. Baudino or Mr. Pollock were accepted by the Commission?

A. Each of these witnesses recommends a significant decrease to FPL's equity ratio. While I disagree with the methodology used to compute their recommended adjustments, the end result of these proposals would be the distribution of significant funds (ranging from approximately $700 million to $1.3 billion depending on the proposal) from FPL to FPL Group and the issuance of a like amount of debt securities at FPL. In addition to sending strong negative signals to the financial community as discussed earlier, a regulatory decision weakening FPL's capital structure by increasing the debt ratio would increase dependence of the business on access to external debt financing at a time when FPL already has significant funding requirements for generation and infrastructure development.

If the Commission would accept any of these recommendations, it would be negatively viewed by the rating agencies and the investment community. It would also represent an unexpected change in the historically supportive regulatory climate in Florida. In a Standard & Poor's Report dated January 22, 2009 titled "Credit FAQ: Top 10 Investor Questions For The U.S. Electric Utilities Sector In 2009," Standard & Poor's clearly recognizes the importance of maintaining balance sheet strength:

> "The electric utility industry is asset-intensive and relies heavily on debt. Balance-sheet strength is a distinguishing factor when Standard & Poor's assesses financial risk and determines credit quality. Our analysis attempts to portray the economic reality of the financial conditions and considers several items, including purchase power obligations, capital leases, hybrid equity instruments, pension liabilities, and regulatory assets."

Q. Please summarize Dr. Woolridge's recommendation for FPL's capital structure.

A. Dr. Woolridge recommends that rates be set by utilizing what he calls FPL's "real" equity ratio of 54.43%. He argues that this capital structure (based on year-end book amounts for FPL and Subsidiaries as found on MFR D-2) better reflects the Company's capital structure as viewed by investors. As discussed below, his position is incorrect in several important respects, and should be rejected.

Q. What are the differences between the capital structure recommended by Dr. Woolridge and the capital structure proposed by FPL in its MFR filing?

A. There are two differences between the capital structure proposed by Dr. Woolridge and the capital structure proposed by FPL and reflected in FPL's MFR filing. First, as required by the Commission, FPL utilizes a 13-month average capital structure consistent with surveillance reporting, versus Dr. Woolridge's two-point average capital structure. Second, FPL makes several Commission required specific adjustments to its capital structure for regulatory purposes that Dr. Woolridge fails to recognize. The two most significant specific adjustments are for FPL's nuclear fuel lease and the storm recovery bonds issued by FPL Recovery Funding in 2007.

Q. Is Dr. Woolridge's claim that FPL's proposed capitalization does not reflect the actual capitalization of FPL and that it is not based on the company book figures accurate?

A. No it is not. In fact, FPL's proposed capital structure utilized to produce the "Company Total per Books" column on MFR D-1A is completely consistent with the capital structure proposed by Dr. Woolridge. If Dr. Woolridge had started with a thirteen month average consistent with regulatory reporting, and made the same reclassifications made by FPL to reflect FPL's nuclear fuel lease as a capital lease obligation and to reclassify debt issuance costs from rate base to capital structure, then the calculations result in a capital structure strikingly similar to our results. Exhibit AP-12 provides a reconciliation of the consolidated book capital structure provided in MFR D-2 to the "Company Total per Book" included in column 2 of MFR D-1A.

Q. What are the Commission specific adjustments that Dr. Woolridge has ignored in his analysis?

A. FPL makes several specific capital structure adjustments (as required by the Commission) that are included on MFR D-1B. The two primary adjustments that impact investor sources of capital are made to remove from rate base items that are currently recovered outside of base rates. The first adjustment removes the balance of FPL's nuclear fuel lease, the cost of which is recovered through the fuel clause. The second adjustment removes the storm recovery bonds issued in 2007 to finance storm restoration costs. The amounts required for principal and interest payments on these bonds are collected through a charge that is separate from base rates.

Q. What impact do these adjustments have on FPL's capital structure?

A. Because these specific adjustments reduce long-term debt in FPL's capital structure, the result is an increase in FPL's equity ratio applied to a lower rate base. The impact of these adjustments can be seen in Exhibit AP-13.

Q. If these same Commission specific adjustments were made to Dr. Woolridge's recommended "real" book capital structure, what would be the resulting equity ratio?

A. As shown on Exhibit AP-13 if the same adjustments were made to Dr. Woolridge's recommended capital structure, the resulting equity ratio would be 57.5%. The difference between this equity ratio, and the 59.1% included in FPL's filing results from the use of a two-point average rather than a thirteen-month average as is required by the Commission for FPL's filing.

Q. Given Dr. Woolridge's failure to properly consider Commission specific adjustments, do you agree with the resulting recommended reduction in revenue requirements of $508 million suggested by Ms. Brown?

A. No, I do not.

Q. Do you agree with Mr. Baudino's proposed adjustment to FPL's Capital Structure?

A. No, I do not. While Mr. Baudino recognizes that the rating agencies make adjustments to FPL's capital structure for items such as purchase power obligations, and that these adjustments should be taken into account when evaluating the reasonableness of FPL's capital structure, I disagree with his conclusion that his recommended capital structure ratios would be sufficient to maintain FPL's ratings.

Q. Does Mr. Baudino point to any documents to support this claim?

A. Mr. Baudino points to a now-superseded November 2007 article from S&P titled "U.S. Utilities Ratings Analysis Now Portrayed in the S&P Corporate Ratings Matrix". In that publication, S&P provided the following general guidelines for debt leverage (total debt/total capital) by financial risk category. I have added the corresponding equity ratio range.

Financial Risk Category	Debt Ratio	Equity Ratio
Minimal	none provided	
Modest	25% - 40%	60% - 75%
Intermediate	35% - 50%	50% - 65%
Aggressive	45% - 60%	40% - 55%
Highly leveraged	> 50%	< 50%

From this chart alone, Mr. Baudino concludes that 50% equity is the appropriate capital structure for the purposes of setting rates for FPL because it is at the bottom of the range of the "intermediate" financial risk category. He goes further and states that his proposed equity ratio is consistent with an "A" rating and supports FPL's credit quality.

Q. Do you agree with this conclusion?

A. No. I disagree for several reasons. Even if the document Mr. Baudino relied on was current, which it is not, Mr. Baudino's claim that FPL should target the absolute minimum capital structure provided in S&P's matrix would leave absolutely no room to absorb unexpected financial shocks, such as a substantial hurricane or a credit liquidity crisis as was experienced during the fourth quarter of 2008, just to name two. Second, the matrix was meant only as a guide. In an article issued in May 2009 entitled "Criteria Methodology: Business Risk/Financial Risk Matrix Expanded" S&P cautions that the indicative outcomes "are not meant to be precise indications or guarantees of future rating opinions" and goes on to state:

> "Moreover, our assessment of financial risk is not as simplistic as looking at a few ratios. It encompasses:
>
> - a view of accounting and disclosure practices;
> - a view of corporate governance, financial policies, and risk tolerance;
> - the degree of capital intensity, flexibility regarding capital expenditures and other cash needs, including acquisitions and shareholder distributions; and
> - various aspects of liquidity – including the risk of refinancing near-term maturities."

Third, as I mentioned before, the matrix utilized by Mr. Baudino is not even current. In May 2009 S&P expanded the business/financial risk matrix by expanding the financial risk profile categories as follows:

Financial Risk Category	Debt Ratio	Equity Ratio
Minimal	< 25%	>75%
Modest	25% - 35%	65% - 75%

Intermediate	35% - 45%	55% to 65%
Significant	45% - 50%	50% - 55%
Aggressive	50% - 60%	40% - 50%
Highly leveraged	> 60%	< 50%

While these ratios are not precise indicators of rating outcomes, they suggest that a 50% equity ratio might not be sufficient to be considered in the "intermediate" category. I am not aware of any utility with FPL's credit ratings that has a financial risk category that is below "intermediate."

Finally, the idea that leveraging FPL's balance sheet by issuing $845 million additional debt and distributing those funds to FPL Group as Mr. Baudino's Exhibit RAB – 8 suggests "is consistent with an "A" rating and supports FPL's credit quality" does not make sense. Practically and based on the S&P metrics provided, it is difficult to believe that leveraging the company another 6.2% would allow for the company to maintain its current debt ratings.

Q. **Finally, on Pages 40-41, Mr. Baudino concludes that "the Company's proposed equity ratio of 59.6% greatly exceeds all of the equity ratios contained in its Schedule D-2" and that his recommended 53.5% regulatory capital structure "compares quite closely to the equity ratios contained in the Company's Schedule D-2, which includes**

historical and forecasted capital structures through the end of the projected test year." Is this a valid comparison?

A. No, Mr. Baudino is not making an apples to apples comparison. As shown on Exhibit AP-14, Mr. Baudino's recommended capital structure results in a projected book equity ratio of 50.5%, much lower than historical and projected ratios. Mr. Baudino, like Dr. Woolridge, erroneously compares FPL's regulatory capital structure (with the required Commission specific adjustments) to the capital structure projected for FPL for financial reporting.

	Equity Ratio per Schedule D-2	Mr. Baudino's Recommendation
2007	54.6%	-
2008	56.0%	-
2009	55.2%	-
2010	53.8%	50.5%
2011	54.8%	-

Q. Do you agree with Mr. Pollock's statement that FPL has proposed an equity ratio that is 940 basis points higher than comparably rated electric utilities?

A. No, Mr. Pollock's conclusion is not meaningful. Similar to Dr. Woolridge, Mr. Pollock is comparing book capital structures for A-rated regulated utility operating companies not to FPL's book capital structure, but to FPL's capital structure after several Commission required adjustments totaling over $900 million have been made. A comparison of FPL's actual book ratios to the A-rated regulated utilities from Mr. Pollock's Exhibit JP-2 shows that FPL's actual and projected book equity ratios are well within the range of comparable companies identified by Mr. Pollock.

A-Rated Electric Utilities Book Equity Ratio

Year	Range	FPL
2006	42.1%-61.9%	60.9%
2007	42.6%-65.3%	54.6%
2008	37.7%-61.6%	56.0%
2009(Q1)	40.9%-56.1%	55.2%
2009 (Projected)		55.2%
2010 (Projected)		53.8%
2011 (Projected)		54.8%

Q. What would be the impact on FPL's book equity ratio if Mr. Pollock's recommended capital structure were accepted by the Commission?

A. Mr. Pollock's recommended equity ratio would result in a distribution of approximately $1.3 billion from FPL to FPL Group and a like amount of additional debt issuance by FPL. An adjustment of this magnitude would lower FPL's book equity ratio shown above to 46.5% in 2010. However, as previously indicated, Mr. Pollock's ratio is inappropriate for comparison purposes because it was derived from sources that are not consistent with the manner in which FPL and the Commission view regulatory capital structure.

Q. Given the ranges for A-rated companies above, would it be reasonable to assume that this would not impact FPL's ratings?

A. No. Mr. Pollock's simple approach fails to evaluate or take into consideration the company specific risks unique to FPL described in my direct testimony. In addition, many of the companies included in Mr. Pollock's group are already rated below FPL.

Q. Do you agree with the financial metrics presented by Mr. Lawton in his Exhibit DJL Supp.-6?

A. No, I do not agree. I have several concerns with this schedule. First, S&P no longer issues guidelines for a "Medium A Rating". S&P does provide indicative ratios for various financial risk categories. These categories were recently expanded by S&P as I previously discussed. Second, Mr. Lawton attempts to compare pre-tax ratio calculations with after-tax indicative ratios provided by S&P. Third, Mr. Lawton ignores the fact that Dr. Woolridge's recommended capital structure assumes that FPL will dividend approximately $700 million to FPL Group and issue a like amount of debt. This debt will have annual interest requirements in excess of $48 million. Finally, Mr. Lawton fails to recognize that when S&P imputes debt associated with purchase power obligations to FPL's capital structure, they also impute interest expense for purposes of calculating adjusted ratios. This amounts to approximately $56 million in additional interest. The May 7, 2007 report titled "Standard & Poor's Methodology For Imputing Debt For U.S. Utilities' Power Purchase Agreements" clearly illustrated that:

> "We calculate an implied interest expense for the imputed debt by multiplying the same utility average cost of debt used as the discount rate in the NPV calculation by the amount of imputed debt. The adjusted FFO-to-interest expense ratio is calculated by adding the implied interest expense to both the numerator and denominator of the equation."

Q. Can you please comment on Dr. Woolridge's and Mr. Baudino's comparisons of FPL and FPL Group's capital structure?

A. Dr. Woolridge and Mr. Baudino appear to be drawing their conclusions using GAAP capitalization ratios, which is not appropriate for FPL Group and FPL Group Capital. Let me explain in more detail. GAAP capitalization ratios fail to take into account FPL Group Capital's specific circumstances and fail to take into account several adjustments made by the rating agencies and investment community to FPL Group Capital's capital structure when evaluating credit strength. Similar to the purchase power obligation and storm bond adjustment made to FPL's capital structure, the investment community and the rating agencies make certain adjustments to FPL Group Capital financial statements when evaluating balance sheet strength. The two largest adjustments are for nonrecourse debt and hybrid capital instruments. Nonrecourse debt is project debt whose repayment is secured solely by the particular asset financed and the cash flows generated by the project, with no obligation to repay in whole or in part from corporate funds. Consequently, the rating agencies and investment community distinguish and exclude nonrecourse project debt from FPL Group Capital's capital structure in their credit evaluation. Hybrid capital instruments afford equity benefit to issuers, in part, by having ongoing payment requirements that are more flexible than interest payments associated with nondeferrable senior debt, and by being contractually subordinated to such debt. Therefore, the rating agencies assign equity credit for these types of instruments which equates to an adjustment to capital structure. These adjustments have a material effect on FPL Group Capital and FPL Group's capitalization. For example, Standard and Poor's in 2007 deducted approximately $2.4 billion of project debt and approximately $1.1 billion of hybrid capital instruments when evaluating FPL Group's credit strength.

IMPUTED DEBT

Q. Please summarize the positions taken by the intervenors related to imputed debt for off-balance sheet obligations.

A. While all three witnesses readily accept S&P's adjustment to remove debt from FPL's balance sheet associated with storm recovery bonds, only Mr.

Baudino recognizes the adjustment S&P makes for purchase power obligations in his recommended capital structure. Dr. Woolridge claims that S&P does not provide adequate guidance to calculate the amount of imputed debt. Mr. Pollock similarly claims that "S&P does not provide an objective standard for determining the risk factor" and implies that FPL has misunderstood S&P's criteria and has inappropriately estimated the imputed debt adjustment.

Q. Do you agree with Dr. Woolridge's claims that S&P does not indicate how the risk factor applied to the net present value of capacity payments is determined, that the risk factor is impossible to determine and that given the lack of guidance from S&P, it is impossible to properly assess the risk factor in this situation?

A. No I do not. S&P has issued guidance on the methodology utilized to compute the amount of imputed debt they will include in a company's capital structure for purposes of analyzing credit quality. That guidance is quite specific as to how S&P assigns risk factors to the net present value of the stream of minimum capacity payments stating that "In cases where a regulator has established a power cost adjustment mechanism that recovers all prudent PPA costs, **we employ a risk factor of 25%** because the recovery hurdle is lower than it is for a utility that must litigate time and again its right to recover costs."

Q. Is there other evidence that S&P applies a 25% risk factor to the net present value of the minimum capacity payments under FPL's purchase power agreements?

A. Yes. S&P included $1,165.8 million as an adjustment to debt and added $71.5 million in associated interest expense in its calculation of FPL's credit metrics for 2007 in their research report dated July 29, 2008. FPL has recalculated this amount assuming a 25% risk factor adjustment. FPL's calculation totals $1,169.7 million, or within 0.33%. This calculation is attached as Exhibit AP-15.

Q. Do you agree with Mr. Pollock's statement that "In Tampa Electric's (TECO's) most recent rate case, TECO made the same argument that FPL puts forth here and it was rejected by the Commission"?

A. No, I do not. TECO proposed to impute equity that was not in their capital structure to offset the impact of imputed debt for purchase power obligations. FPL is not requesting any adjustment to the actual amount of equity invested in FPL. FPL simply states that purchase power obligations create a debt-like obligation that must be considered in evaluating the reasonableness of the actual capital structure maintained by FPL. Order No. PSC-09-0283-FOF-EI clearly recognizes this distinction and states "The pro forma adjustment to equity proposed by TECO is not an actual equity investment in the utility. If this adjustment is approved for purposes of setting rates in this proceeding, the Company would essentially be allowed to earn a risk-adjusted equity return without having actually made the equity investment." The Order goes further to state "The capital structure and resulting rate of return authorized in FPL's 2005 settlement do not include an imputed equity adjustment."

SHORT TERM DEBT

Q. Do you agree with the recommendations made by Dr. Woolridge and Mr. Baudino as to the amount of short-term debt to be included in FPL's capital structure?

A. No I do not. Both Dr. Woolridge and Mr. Baudino recommend significant increases to the jurisdictional amount of short-term debt proposed by FPL. Both base their recommendation on a review of historical short-term debt balances provided by FPL on MFR D-2.

Q. Are Dr. Woolridge and Mr. Baudino making an appropriate comparison?

A. No, they are not. First, both Dr. Woolridge and Mr. Baudino are failing to recognize the Commission required specific adjustment of $375 million to remove FPL Fuels commercial paper from short-term debt included on MFR D-1B. Second, the jurisdictional balance of short-term debt in the test year is reduced by any prorata adjustments to capital structure. Third, MFR D-2 provides year-end balances that do not recognize the cyclical nature of FPL's cash flows and the resulting impact on short-term debt balances.

Q. What would be a more appropriate comparison to determine the reasonableness of FPL's forecast?

A. It would be more appropriate to compare the 13-month per book average short-term debt balance with historical 13-month per book balances from FPL's historical surveillance reports. These amounts would take into account seasonal fluctuations in FPL's short-term debt balances.

Year	13-Month Avg. Company Total Per Books
2006 Actual	$617,283
2007 Actual	$323,458
2008 Actual	$304,711
2009 Projected	$242,016
2010 Projected	$181,615

Q. Why are the historical 13-month average company per book amounts for short-term debt higher than FPL's projected test year?

A. Average short-term debt balances were up significantly in 2006 and early 2007 due to the funding of storm restoration activities and clause underrecoveries. Average balances in 2008 were higher due to clause underrecoveries and significant issuances of short-term debt during the height of the financial crisis. None of these are projected to occur in the test year.

Q. Mr. Baudino's testimony states that during the peak of the financial turmoil, FPL issued over $1 billion of commercial paper. Why did FPL have such high commercial paper balances in October 2008?

A. The meltdown in the financial market occurred during the height of hurricane season in 2008. The ability to issue commercial paper fluctuated on a daily basis, even for a highly rated issuer such as FPL. Many companies with otherwise good financial strength, but not top tier ratings (e.g. A-2/P-2 short-term ratings from rating agencies) found they were closed out of the market completely. To avoid the very real possibility that the commercial paper markets would completely shut down, we issued debt beyond the daily cash requirements and invested the excess funds in treasury securities with almost no yield at all. The negative arbitrage in interest rates during the peak period of volatility from September to December 2008 resulted in losses of $2.9 million, with those costs borne solely by the shareholders.

Q. Given the size of FPL's credit facility, why doesn't FPL maintain higher commercial paper balances to lower costs to customers?

A. FPL's credit facility of approximately $2.7 billion is primarily available to support FPL's commercial paper program. However, the credit facility also must support a guarantee for FPL Fuels' commercial paper program, FPL's $633 million tax exempt debt portfolio, letters of credit required for the fuel hedging program, and additional liquidity for storm restoration. So practically, the amount of commercial paper that FPL can issue is much lower than the amount of the credit facility.

FPL's and FPL Fuels' commercial paper balances outstanding peaked last year at $1.9 billion. Adding the tax exempt portfolio of $633 million and letters of credit outstanding, the credit facility was very close to capacity. To incorporate additional short-term debt to our forecast would be irresponsible. It could potentially tie up liquidity that would be needed for storm restoration or other unexpected cash requirements that are needed to serve our customers.

Since FPL can't always pick exactly when to go to the market, commercial paper is issued to bridge between long-term financings for the approximately $6 billion of debt that will need to be issued during the next five years. It is in the best interest of our customers that we manage our cash flows efficiently by being able to issue commercial paper as needed without carrying excess commercial paper or cash balances unnecessarily. To do so requires enough capacity and flexibility in the Company's sources of liquidity to handle those daily fluctuations.

Q. **What is the appropriate amount of short-term debt for FPL to maintain?**

A. FPL proposes to maintain average short-term debt balances as indicated in MFR D-3 to ensure that we will have adequate liquidity available to issue commercial paper throughout seasonal and cyclical fluctuations, periods of market volatility, and periods of storm restoration.

COST OF DEBT

Q. What is the most appropriate method of estimating the cost of short-term debt?

A. I believe that a forward looking rate is most appropriate. Forward London Interbank Offered Rate (LIBOR) curves best represent the market's expectation for these rates in the future. Therefore, FPL has used the 30-day LIBOR forward curve in estimating short-term rates.

Q. Have rates changed since you prepared the forecast supporting the rate request?

A. Yes, but let me explain further. We are currently in a period of historic lows not seen in the last 40 years. LIBOR rates have declined in the short-term since the filing of this case, but the forward curve has actually gotten steeper indicating that rates are forecasted to be well over 3.0% in the near future. Please see Exhibit AP-16. We view these low rates as a market anomaly, and do not expect this trend to continue.

Q. Do you agree with Mr. Baudino's recommendation of 0.60% as the appropriate short-term debt cost?

A. No. I do not agree. Although the short-term debt market is experiencing a period of historic lows, this is primarily a result of interest rates having been artificially driven down by the billions of dollars of liquidity pumped into the market by the federal government. In fact, there has only been one other time in the last 20 years that commercial paper rates have fallen below 2%. LIBOR forecasts indicate that rates will increase and in fact far exceed Mr. Baudino's recommended rate in the next few months. To rely on a specific rate on a specific day would not fairly capture market and investor expectations. It is much more appropriate to use the market's forward looking view when calculating a future cost rather than a rate from a specific point in time to determine the cost of debt.

Q. Is it appropriate to use historical rates to determine the cost of debt?

A. No. It is also not appropriate to use historical rates. The average A1/P-1 thirty day commercial paper rate over the last 20 years is 4.54%. Historical rates do not necessarily reflect current or future rates. Again, I conclude that using forward looking LIBOR rates for the purposes of rate setting is a more appropriate methodology.

Q. Should commitment fees for the credit facility be included in the cost of short-term debt?

A. Yes. Commitment fees on the credit facility are a true cost of issuing short-term debt and should be included in the cost of debt. Without this facility, the Company would be unable to issue commercial paper and furthermore, there is recent precedent for the Commission to approve recovery for commitment fees. In fact, Order No. PSC-09-0283-FOF-EI included 175 basis points for costs associated with Tampa Electric Company's credit facility

Q. Do you agree with Dr. Woolridge's recommendation to use 5.14% as the weighted average cost of long-term debt?

A. No, I do not agree. FPL's actual weighted average cost of long-term debt for 2008 is 5.43% (excluding storm recovery bonds). As can be seen in Exhibit AP-17, in order to have a weighted average cost of long-term debt of 5.14% in 2010, FPL would need to issue long-term debt in 2009 and 2010 at an average rate of 3.70% or below the rate for treasury securities.

ACCRUAL FOR THE ACCOUNT 228.1 RESERVE

Q. Is it possible for the intervenors to have different recommendations regarding the annual storm accrual amount and a target reserve?

A. Yes. It is likely that if five or more witnesses had offered testimony, we would have received five additional recommendations that differed. As indicated in my direct testimony, there is no single correct level either for the annual accrual or the reserve. However, FPL believes the appropriate annual accrual amount and target reserve level should be set so that they are consistent with the Commission's long-standing policies. For reasons explained in the direct testimony, FPL's proposal is consistent with the Commission's past approach to storm cost recovery.

Q. Please summarize your understanding of the Commission's policy on the appropriate reserve balance and annual accrual.

A. The Commission's policy, as articulated in Order No. 95-0264-FOF-EI, is to determine a target reserve balance that is sufficient to protect against most years' storm restoration costs but not the most extreme years. Such a level should reduce FPL's dependence on a relief mechanism such as a special customer assessment. The annual accrual should be set large enough to allow the reserve to build modestly in year's of "normal" hurricane activity, yet low enough to prevent unbounded storm fund growth.

Q. Do you agree with Ms. Brown and Mr. Kollen who suggest FPL's annual storm damage accrual request of $150 million should be denied, as the ratepayers should fund restoration costs on a "pay as you go" approach, potentially layering surcharges on the customer bill as the costs are incurred during these tough economic times?

A. No. The requested storm accrual of $150 million is to cover expected annual windstorm losses and to reestablish the reserve to a level adequate to fund most but not all windstorm losses.

FPL gave consideration to the following factors in making the annual storm damage accrual request: 1) Commission policy from past orders; 2) Actual storm damage incurred over the past 15 years; 3) Range of expected annual cost for windstorm losses $146.6 million to $153.3 million, inclusive of hardening benefits; 4) Impact of recent severe and unprecedented storm seasons on customer bills; and 5) Florida may be in a more active hurricane period.

The accrual and reserve approach is the most cost-effective means by which FPL can ensure critical funds are available when needed while at the same time providing stability of customer bills and thereby minimizing the overall impact of hurricanes in our service territory.

Emergency relief mechanisms, such as a special customer assessment, create volatility in customer bills. FPL, with Commission approval, exercised both surcharges and securitization relief mechanisms after the unprecedented storm seasons experienced in 2004 and 2005. The Commission recognizes emergency relief mechanisms are one of the principal components to storm cost recovery. The other two principal components are an annual storm accrual, adjusted over time as circumstances change, and a reserve adequate to accommodate most but not all storm years. The regulatory framework is designed to provide the flexibility to prevent unbounded growth of the storm fund during extended periods of extremely low storm activity as well as provide for supplemental recovery of deficits in the reserve during periods of high storm activity.

These three parts act together to allow FPL over time to recover the costs of storm restoration, while at the same time balancing competing customer interests, namely: holding the ongoing impact to reasonable levels; reducing volatility in customer bills which occurs when the reserve is insufficient; and promoting intergenerational equity. Unfortunately, tropical storms and hurricanes are a regular hazard of life in Florida.

Not providing for a reasonable annual storm accrual increases the risk to customers of FPL by not having adequate cash on hand or access to cash required for timely storm repairs and service restoration. FPL had exactly this concern during the peak of the 2008 hurricane season when it had a comparatively small reserve fund balance and financial markets were in an acute crisis stage. While it was able to access capital markets at the time due to its position of financial strength, there is no assurance that this will always be the case in the future. A bad hurricane at that time would have greatly stressed FPL's ability to obtain cash to fund service restoration – a problem that would have been further compounded when one considers all of the other affected private and governmental entities that would have been competing for storm recovery cash at the same time. FPL's customers are clearly better off when their electric utility has on hand a substantial dedicated cash reserve to deal with unexpected exigent circumstances.

Q. **Ms. Brown and Mr. Kollen propose that storm securitization or a surcharge should be used exclusively to recover any negative balances in the storm reserve. Do you agree with this recommendation?**

A. No. With an annual accrual of $150 million, as proposed by FPL, and assuming a few years of below average storm losses, the reserve may be sufficient to avoid an additional surcharge or securitization during that period of time. However, FPL witness Harris' analysis concludes that the expected value of the reserve under the Company's recommendation would be approximately $382 million after five years and that there would be a 33% chance that the reserve would be insufficient at some point over the next five years to fund required storm restoration costs.

Consistent with prior Commission orders, FPL believes that a reserve balance is appropriate, as it would not be good public policy to continually recover negative balances through special customer assessments, since they create volatility in customer bills. While FPL utilized the storm securitization bonds in the past to recover the excessively large restoration costs from 2004 and 2005, and the approach provides the Commission with another alternative to fund storm restoration costs, the storm securitization bonds cannot be relied upon as an economically viable option under all financial market conditions, especially in light of the economic downturn.

Q. **Why do you feel the securitization bonds cannot always be relied upon as a viable option?**

A. First, the funding of securitization bonds is a lengthy and costly process. The Company needs a plan in place now to alleviate future storm costs. At a minimum, the securitization process takes approximately a year which does not make it a replacement for the liquidity needed to fund restoration activities.

Second, due to the economic downturn and financial market crisis, the current financial environment would be limited, if not completely unsupportive of securitization. FPL and the Commission must implement rates that allow FPL to begin to replenish the reserve, while moving toward a reasonable target given current expected annual losses.

Q. What are the factors of the securitization process that should be taken into consideration in light of the economic downturn?

A. First, the charge to the customer bill is irrevocable and non-bypassable, which is in order to ensure repayment of the issued storm bonds. Therefore, additional surcharges or assessments would need to be layered on top of the current assessment for securitization causing volatility in customer bills over time and potentially creating a negative credit impact for FPL.

Second, factors contributing to an economical securitization which are subject to prevailing market conditions are; pricing, interest rates, terms, and structuring characteristics. There are also ongoing costs related to servicing the bonds, such as servicing fees, legal and accounting costs, trustee fees, rating agency fees, and administrative costs.

The issuance of storm recovery bonds provides the Commission with an additional option for recovery of storm restoration costs that have exceeded the reserve and for replenishment of the reserve. Special customer assessments are not intended to serve as a replacement for long-standing Commission storm cost recovery policy.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BY MR. ANDERSON:

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

A. Yes, I will.

THE WITNESS: Is it five minutes? Is it six minutes?

CHAIRMAN CARTER: Six minutes, because you've got direct and rebuttal.

THE WITNESS: Good afternoon, Chairman Carter and Commissioners.

My name is Armando Pimentel and I am the Chief Financial Officer for Florida Power & Light Company and for its parent, FPL Group.

Since I have not testified before in front of this Commission, I thought it would be helpful to give you a brief summary of my background.

I have been in my current role since May of 2008. Prior to joining FPL, I was employed by Deloitte & Touche, one of the world's largest accounting firms, for most of the prior 23 years. The last ten years at Deloitte I served as an audit partner for the financial services and energy industries.

In addition, from 1996 to 1998, I was on the staff of the Securities and Exchange Commission in the Office of the Chief Accountant, where I focused on regulated utility industries accounting, disclosure, and regulatory practices. I've also been a certified public accountant in Florida since 1987.

To meet the long-term expectations of our customers for affordable, reliable, and clean energy, FPL plans to add a significant amount of highly efficient generation resources over the next several years. These generation additions, combined with capital requirements to harden and maintain our transmission and distribution infrastructure, will reach almost $16 billion over the next five years, far in excess of internally generated funds. As it has in the past, FPL will need to maintain a strong financial position in order to be able to regularly access the capital markets at continued reasonable costs to our customers.

Investors whom I meet with regularly, both here in the United States and abroad, evaluate the unique business risks of Florida Power & Light as a result of our peninsular geographic location, our fuel mix, and our location in a hurricane-prone area in making their investment decisions. In order to attract needed capital investment, FPL's authorized return on equity must consider these and other FPL specific risks, which I have outlined in my direct testimony.

FPL's recommended return of 12-1/2 percent is reasonable and would ensure that the company will be able to continue to make investments that benefit our customers while keeping our rates low. When it comes to determining the appropriate capital structure for FPL, I urge the Commission to look at the significant challenges we have faced over the last few years: The most significant hurricane season in over 100 years, the extreme volatility of natural gas prices, and currently a very severe economic downturn. We have maintained access to capital on reasonable terms throughout these challenging times largely because we started from a position of financial strength.

The recommendation set forth by the intervenors in this proceeding represent a substantial departure from the long-term strategy established by the company and supported by this Commission. This departure would occur after years of constructive regulation that has resulted in low rates for FPL customers by both Florida and national standards, highly reliable service, and some of the cleanest generation in the United States.

Intervenor witnesses advocate leveraging FPL's balance sheet and weakening its financial position resulting in the redemption of equity ranging from approximately 700 million to $1.3 billion and the issuance of a like amount of debt securities at FPL. In addition to sending strong negative signals to the financial community, a regulatory decision weakening our balance sheet would increase dependence on the business on access to external debt financing at a time when FPL's need for external capital has never been greater.

My testimony also addresses FPL's storm damage reserve. Storm restoration is the cost of providing service to our customers and is, therefore, properly recoverable through rates. As you are aware, there is no commercially feasible insurance that would cover hurricane damage to our transmission and distribution infrastructure. My testimony and Witness Harris' testimony concludes that on average we should expect $150 million of annual storm damage to our system. We urge the Commission to not solely rely on non-base rate recovery mechanisms, such as surcharges, to recover the storms -- to recover storm costs relating to most storms.

As you have heard from previous FPL witnesses, we are an industry leader in terms of generation efficiency, distribution reliability, customer service, and energy efficiency, all this while having the lowest typical residential bill in Florida. This is largely because this Commission and FPL's management have taken prudent steps over a long period of time to ensure that the company maintains its strong financial position, a position that has clearly proven valuable to our customers.

Thank you, Mr. Chairman and Commissioners, and it's a privilege to be here this evening.

CHAIRMAN CARTER: Thank you.

Commissioner Skop, you're recognized, sir.

COMMISSIONER SKOP: Mr. Chair, if I may have a brief moment so I can segregate the confidential data from the nonconfidential data so I don't make a mistake.

CHAIRMAN CARTER: Yes, sir. Just take a moment.

(Pause.)

COMMISSIONER SKOP: Thank you, Mr. Chairman.

Good evening, Mr. Pimentel.

THE WITNESS: Good evening.

COMMISSIONER SKOP: I have some questions with respect to not only the aviation charges and the cost of accounting associated with those, but also some other related issues that I guess everyone has punted to you, so we're kind of running out of witnesses. So I don't mean any disrespect, I just need to ask some pointed questions and try and get some responses so we can assess the merits of the request before us.

With respect to the aviation charges, I guess I have requested and FPL has provided redacted copies of the data, and I'm going to speak to those, because the last packet we got was confidential, and I'll try not to mix the two. I think it's sufficient for me to ask my line of questions, and hopefully that will streamline some of the questioning that may result from this.

And what I would like to do is just refer you to the Bates number page, the FPL Bates number on each of the exhibits, and I'll try and move through the key points quickly. And let me get my stack and we'll start from there.

If I could refer your attention to Bates number 160554.

COMMISSIONER EDGAR: Commissioner, I'm sorry. Are you in the pages that were just given to us in the red folder, or in the larger stack that was given -- I'm sorry.

COMMISSIONER SKOP: The larger stack.

COMMISSIONER EDGAR: The larger stack? Okay. Thank you very much.

CHAIRMAN CARTER: Hang on. Let's get -- okay. You may proceed.

COMMISSIONER SKOP: Okay. Would you generally agree that the historical aviation costs form the basis for the requested aviation amounts in the test years?

THE WITNESS: Yes, I would, Commissioner Skop. Although to clarify, it's generally the 2008 historical information.

COMMISSIONER SKOP: Okay. Well, again, I'll move through this quickly. I don't want to dwell on 2006 and 2007, but I do want to go through it as the basis for trying to ascertain how costs are allocated, and I think that that's appropriate to make sure that certain controls are in place to make sure that the costs are allocate accordingly.

But on that particular Bates number, the 160554, do you have that in front of you?

THE WITNESS: Yes, I do.

MR. ANDERSON: Chairman Carter and Commissioners.

CHAIRMAN CARTER: Yes, sir, Mr. Anderson.

MR. ANDERSON: Would it be all right if my colleague, Mr. Butler, looks over the shoulder of the witness for the document? We're having another set brought to us, but that's our only one. We don't want to hold things up, but by the same token we want to make sure we look. Is that okay?

CHAIRMAN CARTER: That's fine.

MR. ANDERSON: Thank you for the permission.

CHAIRMAN CARTER: Okay. You may proceed.

COMMISSIONER SKOP: On that particular page, the aircraft tail number is November 1128 delta, which I believe, subject to check, is a 1999 Dassault Falcon 2000? Is that generally correct?

THE WITNESS: It's a bravo instead of delta. And, yes, it is the 1999 --

COMMISSIONER SKOP: Bravo. I'm sorry. I'm looking at two different things. Yes, my mistake. So November 1128 bravo.

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the second passenger listed on that manifest, do you recognize that name?

THE WITNESS: Yes, I do.

COMMISSIONER SKOP: And that passenger is listed as a guest with the company activity charged to Group; is that correct?

THE WITNESS: That's correct.

COMMISSIONER SKOP: And if you look at the bottom right corner of that document, I guess legal staff or whomever copied this must have annotated it with the note listed at the bottom right; is that correct, that no Group expenses were allocated between

FPL and FPL affiliates?

THE WITNESS: Oh, yes.

COMMISSIONER SKOP: So, would you also agree that with respect to Group expenses, by virtue of the nature of the allocation, that the majority of Group expenses were allocated to Florida Power & Light; is that correct?

THE WITNESS: Yes, that's correct.

COMMISSIONER SKOP: So with respect to that second passenger, who I believe is the CEO of Constellation Energy; is that correct?

THE WITNESS: That is correct.

COMMISSIONER SKOP: Okay. How would the Commission be assured that his travel on Florida Power & Light's jet that is being billed to Group and then allocated in part back to Florida Power & Light, how would the ratepayers not be charged for that -- for that travel, in light of the company activity charge with the charge being to Group for that guest?

THE WITNESS: I'm sorry. How would the company -- I'm sorry.

COMMISSIONER SKOP: Let me slow down. With respect to the second passenger --

THE WITNESS: Right.

COMMISSIONER SKOP: -- he's a guest?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the column saying company activity charge signifies Group?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the note at the bottom right says Group expenses are allocated between FPL and affiliates, correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the majority of those Group expenses get burdened upon Florida Power & Light; is that correct?

THE WITNESS: Yes. Business expenses, yes.

COMMISSIONER SKOP: Okay. So with respect to the guest in question that is traveling on a Florida Power & Light flight for Group related activity, how are the Florida Power & Light ratepayers not being charged for the second passenger's travel?

THE WITNESS: I don't -- and unfortunately it may be for a number of these that you have a question on, you know, and we will get you an answer before I get off of this little table, or we'll get somebody back here to get you an answer.

It's difficult to -- what generally happens is we do look at the company activity charge. These are the basis for our accounting records, but it's not --

it's not the sole basis, if you will. There is a review that's done of the logs to determine whether, in fact, the appropriate companies are being charged or not.

COMMISSIONER SKOP: And that was my concern, because, again, I recognize I may not be seeing the complete picture there, and I didn't want to be accusatory. But if that is the basis for the initial allocation without subsequent review, that might be a legitimate concern.

THE WITNESS: It obviously would be a concern, and I can't sit here today and guarantee you that we don't have instances where, you know, we've got expenses maybe going both ways. Things that shouldn't have been charged and maybe things that should have been charged, because it is a human process. It's not necessarily an integrated IT process.

So I can't tell you for sure on this particular Bates number whether, in fact, the expenses associated with that guest were allocated to FPL above the line, below the line, or whether, in fact, they were expensed to the nonregulated subsidiary.

COMMISSIONER SKOP: Okay. And we'll move through these other ones quickly. If I could draw your attention to Bates page 160616.

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. Now, Mr. Bell is a board of director for FPL Group; is that correct?

THE WITNESS: That's correct.

COMMISSIONER SKOP: Okay. I guess my concern on that particular page, and it was corrected on the return flight, but on that particular Bates page the entity charged was FPL, and on the return flight the entity charged was Group. So, again, I would be concerned about, you know, that Florida Power & Light would be burdened for the whole charge on the in-bound flight. I'll let you respond if necessary and I will move to the next one.

THE WITNESS: It's the same response as before. Simply looking at the log, again, the log forms the initial document for the accounting entry. I don't know, in fact, whether -- for this specific flight whether our process picked up that, you know, Mr. Bell should have been charging FPL Group instead of FPL.

COMMISSIONER SKOP: Very well. If I can move on to my next one. We're making good progress. Bates page 160622.

THE WITNESS: Yes.

COMMISSIONER SKOP: And I believe Mr. Moyle this morning spoke on this issue, or mentioned it in his response. And I guess my concern on this particular sheet, and I won't get into the redacted names, but there are FPL employees that appear to be going to Portsmouth, New Hampshire. And, at least in terms of the company activity charged, it would be my concern that those may be unregulated activities as opposed to being burdened to FPL Energy or Nexgen.

THE WITNESS: On this -- I'm sorry, Commissioner Skop, were you done?

COMMISSIONER SKOP: Yes.

THE WITNESS: Okay. On this particular one, which looks like it's two different -- maybe two different stops, one to New Hampshire that you mentioned and then it looks like some passengers went on to Duane Arnold, which is our other nuclear facility up in Iowa. I don't know the specifics. Obviously your question this morning got a couple of our folks just going back to find out what this was about.

I don't have an answer yet. I may have an answer, I just haven't read my e-mail. I wouldn't -- I think when Mr. Stall was here he talked about one of the things that we do is we do get some benefits from having a large nuclear fleet. And this may be, you know, if I had to guess for a second, this may be a meeting of some of our -- and I see Mr. Stall is also on the flight -- from the looks of it, some of our senior executives in nuclear going to one place to have a meeting.

I do know that the opposite does happen, when some of the NextEra energy folks travel down to either Turkey Point or to St. Lucie for combined meetings. They like to do their combined meetings at nuclear plants themselves. So I would think that that would be the case there, and, therefore, the FPL business purpose would be solely related to FPL and not to NextEra, because Mr. Stall is in charge across the board of our nuclear fleet. But obviously someone is going to find out the answer, but I believe it is the actual answer.

COMMISSIONER SKOP: Okay. Very well. If I could refer your attention next to Bates page 160626.

THE WITNESS: Yes.

COMMISSIONER SKOP: And on that particular page, again, there appears to be a number of FPL employees that are from human resources function traveling from West Palm Beach to BWI, which is Baltimore/Washington International Airport for meetings.

THE WITNESS: Yes.

COMMISSIONER SKOP: I guess the question I would have on that in terms of proper cost accounting, if that were, in fact -- and I could be wrong -- related to the merger, why would that not be appropriately burdened to Group rather than FPL for those flights?

THE WITNESS: Back during this time in 2006, that's likely what this meeting was about, and I would think that those, if it was, unless there -- I wasn't here, I wasn't there in 2006, but unless there's something that -- something else that was going on, and the something else could have been just -- I can't even think of it, but it would have been FPL Group activity where a portion would have been allocated to FPL as opposed to the whole business being related to FPL, if it was the merger activity. I surmise that at this point. I don't know for sure.

COMMISSIONER SKOP: And just a few more on this particular year and then I'll try and move forward. If I could turn your attention next to Bates number 160628.

THE WITNESS: Yes.

COMMISSIONER SKOP: And on that particular page there appear to be both perhaps lobbyists and legislators traveling as guests with the company activity charged to FPL. And if, in fact, that were the case, how are the costs, or how would the costs, or how would we be assured that the costs for that flight would be properly burdened back to the guests?

THE WITNESS: These should have been charged, if they were charged to FPL, should have been below the line charges to FPL. I can't tell from just looking at the document --

COMMISSIONER SKOP: Okay.

THE WITNESS: -- whether, in fact, that's what we did. But this one, based on the passengers that were on the flight, seems that -- you know, it seems clear that it would not be an FPL charge.

COMMISSIONER SKOP: Okay. And then move on --

COMMISSIONER EDGAR: Excuse me. Commissioner Skop, I apologize. I've got a lot of paperwork, as well. Could you tell me the page number, again, that you were just referencing that the witness just responded to your question?

COMMISSIONER SKOP: Yes. It was FPL Bates number 160628.

COMMISSIONER EDGAR: Thank you.

COMMISSIONER SKOP: If I could next turn your attention to Bates number 160634.

THE WITNESS: Yes.

COMMISSIONER SKOP: And that would be the same situation where you have an elected official as a guest with the company activity charged to FPL. And, again, how would from a regulatory perspective we have assurances that those costs would internally, beyond the generating document that we're looking at here, be properly allocated and not burdened to FPL?

THE WITNESS: If would be the same answer as before, Commissioner Skop. I can't tell just from looking at the document, but we will go back and try to determine whether, in fact, these numbers that you're pointing out, where those charges went.

COMMISSIONER SKOP: Okay. One more with respect to that, and then, again, I'll try and get to my bigger picture questions, more related to the larger items in the rate case. But if I could turn your attention to Bates number 160670.

THE WITNESS: Yes.

COMMISSIONER SKOP: Now, I apologize because my copy on this is not very good. And so I want to make sure, not being accusatory in any way, I'm just trying to understand the travel and the manner in which it is being burdened and the benefits to the ratepayers.

But on that particular page it appears to me that the executives, FPL Group executives, traveled from Palm Beach International to Louisville, Kentucky. And I think that, subject to check, that SDF is Louisville, Kentucky. I could be wrong.

THE WITNESS: I don't know what -- they must have run out of L letters I guess when they were handing that one out. I don't know the purpose of the trip. Is this another 2006?

COMMISSIONER SKOP: It is a 2006, and this will probably be my last one on 2006, because I would like to move on to my other ones. But on that particular sheet, do you recognize those individuals on the passenger manifest?

THE WITNESS: Yes, I do.

COMMISSIONER SKOP: And do you -- also, there are executives and also guests on that manifest?

THE WITNESS: Yes, correct.

COMMISSIONER SKOP: And the company activity charge would be Group in all four instances; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. I guess the question that I would have, given the date of travel, notwithstanding that the cost was allocated to Group with -- looking at the note at the bottom right, it says, "Note, Group expenses are allocated between FPL and affiliates," and that the majority of those Group costs funnel down to FPL, based upon representations that have been made prior.

But I guess I'm wondering if, in fact, that was the way it was allocated, what benefit might the FPL ratepayers receive from a weekend flight to Louisville, Kentucky?

THE WITNESS: I can't -- Commissioner Skop, I don't -- I'm not familiar with what was going on at the company in May -- is that May of 2006? I can't answer that. I will find out, but I don't know.

COMMISSIONER SKOP: The reason I ask is that the reason for the travel, it says BU, which is coordinated as business, subject to check, down at the bottom.

THE WITNESS: Yes.

COMMISSIONER SKOP: So, again, with the dates of travel, trying to ascertain what business interests might justify an expense to FPL ratepayers for those -- for the travel that was conducted on that specific trip.

Let me move forward. If I could next turn your attention -- and I'm trying to get out of 2006 as quick as I can, but it's tough -- to Bates page 160720.

THE WITNESS: Yes.

COMMISSIONER SKOP: And on that particular sheet, do you recognize the individuals listed on the passenger manifest?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the activity charged would be FPL for those passengers?

THE WITNESS: It looks like FPL, FPL, and

Group.

COMMISSIONER SKOP: Okay. And in terms of the destination -- again, it's hard to read the handwriting, but it looks like the destination was from Palm Beach International to Bermuda; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the purpose of the travel was a business meeting?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the note says that Group expenses are allocated between FPL and affiliates?

THE WITNESS: Yes.

COMMISSIONER SKOP: And I recognize that Bermuda is a big place for reinsurance, so, again, I'm just trying to understand if there is a business interest for that particular trip that would benefit FPL ratepayers because some of the charges appear to be allocated specifically to FPL.

THE WITNESS: Yes. We'll obviously check along with the others. I would imagine that this is probably a NEIL insurance meeting in Bermuda.

COMMISSIONER SKOP: Okay. And if I can next -- I think I've got three more on this and we're home free. If I could next turn your attention to Bates number 160774.

THE WITNESS: Yes.

COMMISSIONER SKOP: Actually, you're getting there quicker than me. On that particular page, the first passenger is indicated as a guest, and the company activity charge is FPL, correct?

THE WITNESS: Yes, it is.

COMMISSIONER SKOP: And I guess, subject to check, would you agree that the flight is from Palm Beach International to Martha's Vineyard, Massachusetts?

THE WITNESS: MVY?

COMMISSIONER SKOP: Yes.

THE WITNESS: Subject to check, yes. I'm not familiar with --

COMMISSIONER SKOP: Okay. And the stated reason for the trip is business for the first passenger?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the note indicates that Group expenses are allocated between FPL and affiliates, and there are Group attendees also on that flight; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. Again, the same concern I would have on that with respect to what benefits to the ratepayer might result from that specific trip that is identified as a business related flight.

Moving on to the next one, Bates number 160812.

THE WITNESS: Yes.

COMMISSIONER SKOP: All right. And do you recognize the passengers on that passenger manifest?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And one of those passengers is listed as a guest; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the company activity charged for both of the passengers appears to be FPL; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: And that is a -- appears to be a one-way flight for business purposes?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. With respect to the guest, again, there may be things that I'm not seeing transparently, but how would we be assured that the ratepayers were not paying for the second passenger?

THE WITNESS: They shouldn't be. I just -- I don't know. This is, if we can -- I mean, whichever ones you have questions on, it's very helpful to identify those so that I can check on each one of them.

COMMISSIONER SKOP: Will do. Just real quick, two more on this, and I think that we're moving forward into the next years. If I could refer to your attention to Bates number 160918.

THE WITNESS: Yes.

COMMISSIONER SKOP: And for the passengers listed on the passenger manifest, the majority of those passengers identify themselves as being from FPL; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And for the company activity charged down at the bottom column, it appears to be a 50/50 split between Florida Power & Light and FPL Energy; is that correct?

THE WITNESS: Yes. I see the box that you're looking at that has an arrow pointing up.

COMMISSIONER SKOP: Right.

THE WITNESS: That's what it would appear to me, yes.

COMMISSIONER SKOP: And the round trip travel would be from Juno Beach to Horse Hollow, which is a wind project in Texas; is that correct?

THE WITNESS: That's correct.

COMMISSIONER SKOP: But Horse Hollow is an unregulated project; is that correct?

THE WITNESS: It is, yes.

COMMISSIONER SKOP: All right. So I guess in relation to this, again, if 50 percent of the charge is allocated to Florida Power & Light, the same question is what benefit would the ratepayers receive from this trip that's related to a wind project.

THE WITNESS: Okay.

COMMISSIONER SKOP: Moving on to the next one, Bates number 160986.

THE WITNESS: Yes.

COMMISSIONER SKOP: Give me one second. You're much quicker than I. On that particular passenger manifest, do you at least recognize the first passenger?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the company activity charged, subject to check, would be J.B. Hunt; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay.

THE WITNESS: Mr. Robo is on the board of J.B. Hunt.

COMMISSIONER SKOP: Okay. And assuming that those charges were properly allocated, the travel was from West Palm Beach to Arkansas and back; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: And there were also guests on that particular flight; is that correct?

THE WITNESS: That's correct.

COMMISSIONER SKOP: And that flight was conducted on an aircraft owned by Florida Power & Light Company; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. Just based upon, again, you stated that you had served on DeLoitte & Touche and were an auditor and all those things, and I'm not really concerned about the cost allocation, because it appears to be done appropriately there. I guess my question would be from a risk management perspective, would it be appropriate for an FPL Group executive to use a Florida Power & Light Company plane to travel to a board meeting for a different company in another state. And I'm trying to ascertain what the benefit to the ratepayers might be for the use of Florida Power & Light's aircraft for that purpose.

THE WITNESS: All expenses associated with any of our executives attending outside board meetings, none of those expenses fall, whether they're fixed expenses or variable expenses, fall to the ratepayers. Those are all reimbursed by the companies whose board our executive represents.

COMMISSIONER SKOP: Okay. Just from a risk management perspective, again, extreme hypothetical. An executive uses the Florida Power & Light plane to go do a nonbusiness function, and heaven forbid there is an accident or what have you that results in airframe loss. So if there were airframe loss, obviously, hopefully there wouldn't be fatalities. But, again, you would have to replace the airplane and your insurance for that aircraft would go up. Generally speaking, would you agree with that?

THE WITNESS: I don't know a lot about airline insurance. I understand -- I understand your point. I think, if the fixed cost, the portion of the fixed cost, which insurance, I think, would fall under that, whether the plane flies or not, you're going to have a fixed cost. Assuming, again, that's how the insurance would work, would totally be borne by the outside activities. FPL is only paying for those costs associated with use that benefits our ratepayers and our customers.

COMMISSIONER SKOP: All right. I'll try and make the last ones kind of quick. There's an instance, and I'll just try and go to the first instance if I can, if I can find it. If I could turn your attention to Bates number 161471, please. And that might be in the separate stack. I had two stacks, but that might be in the second stack.

THE WITNESS: I have it.

COMMISSIONER SKOP: Okay. Give me one second, please. On that particular passenger manifest there are three passengers, one of which is a company employee, and two guests, correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay.

COMMISSIONER EDGAR: Commissioner, I'm sorry. What page was that again?

COMMISSIONER SKOP: That is FPL Bates number 161417.

COMMISSIONER EDGAR: And I apologize to keep asking, but you have me at bit of a disadvantage, because although I asked for this information three times today I was not given it until just now. I understand that you've had it for quite a period longer.

COMMISSIONER SKOP: No. I had it -- I got it about 5:00 o'clock last night.

COMMISSIONER EDGAR: Okay. Well, I just got it just now, although I had asked for it previously. Thank you for helping me to follow along since you have had more time with it than I have.

COMMISSIONER SKOP: Very well.

With respect to the two guests, more specifically those guests, the company activity charge, again, is FPL, would you agree, subject to check?

THE WITNESS: Yes.

COMMISSIONER SKOP: And with respect to the second passenger, there is at least seven instances in the entire compilation of documents where I believe that that company lobbyist has flown on various fixed-wing aircraft for FPL. And, again, my concern would be how, based upon in each instance where they're identified as a guest and the company activity charge is FPL, how from a cost accounting perspective is the ratepayer assured that that charge is not passed through to the company?

THE WITNESS: Yes. Those should have been -- those charges should have been below the line, unless there is something about that activity that I'm not aware of.

COMMISSIONER SKOP: Okay. If I could refer you back, and, again, I just have a couple more of these and we can move forward. Bates number 161384, and that may be a few pages back the other way.

THE WITNESS: Yes.

COMMISSIONER EDGAR: Mr. Chairman, could we maybe take a moment? And this is --

CHAIRMAN CARTER: Hang on a second.

COMMISSIONER EDGAR: -- obviously it's somewhat frustrating to me that information was provided to one Commissioner last night that was not provided to my office, or today when I asked for it. And I don't know if we all have the same information, but if we're going to be page-by-page, if we could take a moment if we may and make sure that we all do have the same thing.

CHAIRMAN CARTER: Okay. Let's take five, everybody.

(Off the record.)

CHAIRMAN CARTER: We are back on the record. And when we left, Commissioner Skop, you're recognized, sir.

COMMISSIONER SKOP: Thank you, Mr. Chairman.

If we could draw --

COMMISSIONER ARGENZIANO: Mr. Skop, could I interfere just for a minute? Interrupt.

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Interrupt. It's getting too late. And, Commissioner Skop, I apologize. Just one question, because I'm not sure how -- how is this confidential, and when did we determine it was?

COMMISSIONER SKOP: With all due respect, Commissioner Argenziano, I don't think we've reached that determination. I think that the company has asserted that the redacted portions of the documents, I think they're going to claim confidentiality. The documents I'm speaking to are not confidential.

COMMISSIONER ARGENZIANO: Okay. Those are the ones that are not confidential. The other ones we still have -- because I've been waiting since this morning to figure that out, if we had or had not. And the only other thing I wanted to say is that, just so we know, because I heard Commissioner Edgar's concern is that our office at nine -- I'm sorry, 5:11 yesterday received notice from the Clerk that that was available, and then again at 9:26 this morning, if that puts it in its perspective. I don't know.

COMMISSIONER EDGAR: Thank you, Commissioner Edgar (sic), but my office was not given that notice, and I did ask this morning for the information when I realized from the discussion at the beginning of hearing that Commissioner Skop had some information that I did didn't, and so I asked for it this morning, and then I asked for it again at 10:30-ish when I didn't get it, and then I requested it at lunch and was given half of it.

So I do have a little bit of frustration that

Commissioner Skop did have information with the ability last night to go through it that was not provided to my office. But I understand that there is lots of paperwork and that everybody is tired, and I'm sure it was just an oversight. But it just -- you know, it is a little frustrating, but we are working through it.

COMMISSIONER ARGENZIANO: Sure. And as I was saying it was just to let you know what my office had received, so you could put it together, and, as I said, I don't know what your office received or not.

COMMISSIONER EDGAR: Nothing.

COMMISSIONER ARGENZIANO: I've been there, so I understand.

But, thank you, Mr. Chairman. At least I understand these are not the ones that were to be -- these are -- I'm sorry. Let's go back to it. These are not the ones we were talking about this morning. Nonetheless, these are still confidential?

CHAIRMAN CARTER: No, ma'am. These are not.

COMMISSIONER ARGENZIANO: Well, then why is it that we -- can we indicate the people, or the persons, or whatever on it, if it's even necessary? I'm just afraid if something slips out I want to know if it's confidential or not.

COMMISSIONER SKOP: I'm trying to be polite.

COMMISSIONER ARGENZIANO: Oh, you're trying -- okay. All right. Thank you.

CHAIRMAN CARTER: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chair.

With respect to Bates number 161384. The first passenger on that manifest is listed as a guest of Group; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And I believe, subject to check, that the ultimate destination was Harrisburg, Pennsylvania?

THE WITNESS: That's MDT?

COMMISSIONER SKOP: Yes.

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And, again, given the note at the bottom right of the page, again, same concern, Group expenses were allocated between FPL and affiliates. And so, with relation to that guest, again, same cost accounting issue applies to the extent that making sure that the FPL ratepayers aren't being burdened for charges that they should not be.

Moving to the next Bates page 161491.

THE WITNESS: Okay.

COMMISSIONER SKOP: And on that particular page, the second and third passenger is, I guess, Ms. Glickman from the climate group, and the third passenger is Mr. Draper from Audubon; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the company activity charged is FPL; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the flight is listed from Tallahassee to Titusville; is that correct?

THE WITNESS: Yes. PBI to -- it looks like PBI to Tallahassee, Tallahassee to Titusville.

COMMISSIONER SKOP: Okay. For those two passengers. And the reason for the trip is a press event; is that correct?

THE WITNESS: Yes, it is.

COMMISSIONER SKOP: Do you know why those two non-FPL employees, their travel would be charged to FPL's ratepayers?

THE WITNESS: I do not.

COMMISSIONER SKOP: Thank you. And I guess if I could refer your attention to 161735.

THE WITNESS: Okay.

COMMISSIONER SKOP: And in that particular travel, it's from PBI to COS; do you see that?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And, subject to check, COS would be Colorado Springs, Colorado?

THE WITNESS: Okay.

COMMISSIONER SKOP: Okay. And for the first three employees that are not redacted, the company activity charged is FPL; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the reason for the trip is business; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: I guess the same concern, you know, what benefit. And there may be a legitimate business reason. Again, I'm just trying to understand, you know, whether there should be Group expenses or FPL expenses, and have a better handle on the nature of the out-of-state travel as it relates to being burdened back to FPL ratepayers.

THE WITNESS: I'll find out.

COMMISSIONER SKOP: Okay. And I think just a couple more, and then what I would like to probably do, because I guess staff has brought it to my attention that I have a lot of these that I have concerns with, they're all the same common concern. I'm trying to find an efficient way not to ask you about each one of them, because I don't to waste your valuable time, but somehow I need to identify for my staff's benefit as well as the company's benefit which items we need to go back and look. So I think what I'll do is I'll reserve, and at the end I'll read all of those in briefly and just briefly state my concern for the log number without seeking a response after the intervenors have had their opportunity to do cross, and that would probably be the most efficient thing to do.

THE WITNESS: That's fine.

COMMISSIONER SKOP: Okay. Thank you.

Going to Bates number 161020, and I apologize if that is causing you to back up.

THE WITNESS: 020. Okay.

COMMISSIONER SKOP: And on that flight, do you see two passengers identified as guests?

THE WITNESS: Yes.

COMMISSIONER SKOP: And the activity charge is FPL?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the travel is from West Palm Beach to Tallahassee, correct?

THE WITNESS: Correct.

COMMISSIONER SKOP: Okay. And I'm not sure who the two guests are. One of them may be a lobbyist, it may not. Again, the same general concern, making sure that those costs are not burdened to FPL ratepayers.

Moving next to Bates number 16110.

THE WITNESS: 16110?

COMMISSIONER SKOP: Yes, sir.

THE WITNESS: Is there a --

COMMISSIONER SKOP: I'm sorry. It's getting late. 16110. I think maybe I've got it wrong.

THE WITNESS: I think I need one more number.

COMMISSIONER SKOP: Yes, I think so, too. Give me one second.

THE WITNESS: There is a 100.

CHAIRMAN CARTER: I'll go back to that one. Let's go to 161134.

THE WITNESS: Okay.

COMMISSIONER SKOP: Okay. And with respect to that particular trip, I guess a prior witness had testified, Mr. Bennett, that typically that aircraft, which is owned by Florida Power & Light Company, really isn't capable of transatlantic flight and would have to hop multiple times?

THE WITNESS: Yes.

COMMISSIONER SKOP: In that particular instance the travel appears to go from, subject to check, from Juno Beach, and I don't have the second page so I'm looking at the actual flight log. But it goes from Juno Beach, generally speaking, to Nova Scotia, to London, to Amsterdam, to Frankfurt, to Paris, back to London, to Geneva, Zurich, Edinburough, back to Nova Scotia, and back to West Palm Beach. And the purpose of the trip was a road show, and I guess having financial experience, obviously they were seeking to attract capital of some sort.

My concern would be do we have a better understanding as to what that trip was for to the extent of if the majority of the capital were used for nonregulated operations, would it be appropriate to burden FPL for the majority of that travel, if you will. So that's something else I would like to have the company take a look at if we could.

THE WITNESS: Okay.

COMMISSIONER SKOP: All right. And, the next one would be 161190.

THE WITNESS: Okay.

COMMISSIONER SKOP: And, again, my copy is a little bit hard to read, but we have some corporate executives and perhaps some guests. Again, it's not really fully complete on that manifest, but the travel correlating over to the flight log on the next sequential Bates number appears to be from West Palm Beach to Daytona Beach, Florida, subject to check. And the reason for trip, again, it's kind of hard to read, but it seems to be sponsorship meeting.

I'm not exactly sure what that is or is not, so I don't want to assume, but if the company might be able to take a look at that to see if those charges were appropriately allocated based upon the reason for the trip. Not a whole lot on that page, so, again, it just drew a concern.

THE WITNESS: Okay.

COMMISSIONER SKOP: All right. And just one final question, if I could go back. Give me one second and I'll try and find that one that I'm missing a number on. Here it is. Bates number 161110.

THE WITNESS: 161100?

COMMISSIONER SKOP: No. I'm sorry. Bates number 161110.

THE WITNESS: 110. Yes.

COMMISSIONER SKOP: And the third passenger on that manifest is listed as a guest; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the company activity charged is Group; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And the flight, subject to check, is from Palm Beach International to

Augusta, Georgia.

THE WITNESS: Yes, subject to check. I'm having trouble reading what that says myself.

COMMISSIONER SKOP: Okay. And the note, Group expenses are allocated between FPL and affiliates. Again, my concern would be given the nature of the business, it being a legitimate business expense, and that the guest travel would be appropriately billed to the guest and not burdened through the allocation to Florida Power & Light ratepayers.

So I think that, with one exception, deals with all my questions. At the end I'll reserve and read all the numbers in briefly, stating a brief concern so that the company and our staff will have the benefit to look at those.

The other question that I wanted to deal with, and it's at the very bottom of this voluminous stack, and it deals with the Part 135 operations. And I'll try and give you a Bates number if I can liberate what I'm looking at from this stack here. It's way at the bottom. I guess beginning on Bates number 162043.

THE WITNESS: Okay.

COMMISSIONER SKOP: And ending on Bates number 162063. I guess I'm trying to figure out, generally speaking, and as CFO you might able to provide some insight, if not, the company can get back to us. In some of the flight manifests there has been for company activity charge it has been TS, which I assume is timeshare. And on other flight logs there's been an entry of 135, which I believe, looking at Bates page 162043, corresponds to Part 135 under FAA regulations, and that's general passenger operations.

I guess what I'm struggling with here is that the aircraft number on that Bates page, again, 162043, is an aircraft that on some pages, and subject to check, the registered owner is Florida Power & Light Company, and that's the Dassault Falcon 2000, 1999 aircraft. But that's the same aircraft being used by an entity, I guess on this page, identified as New World Jet under Part 135 operations.

So I guess I'm kind of struggling to understand, if you have an aircraft that's owned by Florida Power & Light Company that is depreciated, and actually this is the aircraft, subject to check, that I believe FPL has requested be replaced with a brand-new Dassault aircraft, another Falcon, you know, what is kind of going on here in terms of the Part 135 operation, which might be a whole separate set of books, from an asset that is owned by Florida Power & Light Company?

I guess that's a big question mark there. And there may be some tax benefits or something that I don't know or understand, but it seems to be an issue.

THE WITNESS: Yes. Commissioner Skop, I haven't seen these pages before, but looking at them very quickly they look to start sometime in 2007 and go through early 2008; does that seem accurate?

COMMISSIONER SKOP: Yes.

THE WITNESS: And I believe during that time, in order to comply with our FAA license for our airplane, unfortunately, in order to have those that take the plane for non -- what I'll call non-FPL business, so it could be a board meeting, as I was talking about before, we request those officers to reimburse the company. And in order to do that, under our current license agreement during this time, we had to enter into an arrangement with New World Jet to essentially lease them the aircraft for the trip.

The officer would fly on the trip, the officer would then get reimbursed for the trip, would give the money essentially to New World Jet, and New World Jet would turn around and give it to us. There was no cost to FPL customers associated with that. If, in fact, the cost of the travel on the jet was more than the reimbursement that that officer received on that non-FPL travel, that excess was allocated to our nonregulated subsidiary.

So it's a situation where we were wanting to do what we believed was the right thing, to get reimbursement for the use of the plane, but our FAA license, as I understand it, prohibited that direct reimbursement from our officer to FPL. And so we just set up an arrangement to get that done the same way.

Since, I believe it was later on in 2008, not even that arrangement we understood would be workable with the FAA, and we've entered into separate what we call timeshare arrangements with our officers that do use the plane for non-FPL travel, which essentially accomplishes the same thing that I just discussed. If, in fact, we didn't care about our officers' reimbursing FPL for the use of the jet, we wouldn't have to have these agreements in place.

COMMISSIONER SKOP: Okay. And I guess that would be my concern, because, again, anytime that you have that type of agreement which involves a lease to a third party for a specific purpose and you have the tax consequences and the financial consequences and, you know, the FAA compliance consequences, it seems to be a whole lot of headache waiting to happen.

I mean, you know, I know Warren Buffett's got his Marquis Jet, or Net Jets, or whatever, you know, carry the card. But it just -- it caught my eye, and I was trying to understand it. Because, again, I was looking at an asset that theoretically is owned by Florida Power & Light Company that is being used by a company that I was not familiar with under Part 135. And that gives a little bit better explanation.

And, again, not be -- I'm trying to do this politely because I know, you know, it's difficult, but I think it's important to illustrate for cost accounting perspectives when you're talking about aircraft replacement and other things, that those are some big dollars that, you know, could be burdened to the ratepayer, and I want to make sure that those are allocated properly.

And I've seen things here that give me pause or maybe behind-the-scene things that are not fully transparent where none of this is a problem. But, again, just based on the information I have before me, without having the additional comfort of knowing that the costs -- another set of eyes is reviewing this, and this is not the sole basis for the cost calculation, it gives me some pause and concern.

With respect to the New World Jet Part 135 operations, though, when executives use that resource for personal travel, if you look at the note on Bates page 162047, and it's kind of in the middle of the page there, it says arriving by helicopter. Do you see that in the real tiny print?

THE WITNESS: That's all real tiny right now. I do see arriving via helicopter under comments.

COMMISSIONER SKOP: Okay. I guess my concern would be if you're taking the corporate helicopter from Juno Beach over to PBI to the FPL hanger, you know, who is picking up that cost and making sure that cost is properly allocated also on those Part 135 flights.

So with that, I think that's the majority of the concerns that I had with respect to the aircraft. I think that at the end, again, in the interest of the intervenors who have been very patient, I'll reserve reading the numbers that I have concerns with into the record at the very end.

I do have a few more questions if the intervenors would just yield that I've been trying to get some answers to. And, unfortunately, they've all been punted your way, so sorry to put you on the hot seat, but I've got to go through a few more questions, and hopefully we'll be done.

One of the things I've been trying to get a handle on is with respect to the company's solar projects. And in the 10K statement, which is previously entered as Exhibit 385, and I don't know if you have that before you.

THE WITNESS: I do have a 10K.

COMMISSIONER SKOP: Okay. And in that 10K it talks about the solar projects on Page 9 of that document under Solar Operations, and they talk about the approximate cost of $728 million. Do you see that?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And then moving up to Page 4, it speaks about FPL Group and some of the elections associated with the taking of the convertible investment tax credit as opposed to the traditional one. Do you see that also?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. I guess what I've been trying to lock down and I've gotten differing answers from differing witnesses, and I guess at the end of the day they punted to you, so I'm going to ask the person that is the subject matter expert.

THE WITNESS: Okay.

COMMISSIONER SKOP: But my concern would be that if the cost of the projects is expected to be $728 million, and FPL has the ability under the economic stimulus package to make a conscious election to take the convertible investment tax credit, which provides for the 30 percent payment from the Treasury up front, it seems to me that that would immediately reduce the project cost, subject to check, by approximately $218.4 million.

So I guess the question, the ultimate question is do you, as CFO of FPL Group, intend to make that election for FPL to benefit the ratepayers?

THE WITNESS: Yes. Like many of these things, the act isn't very simple when it comes to items like this. But we do plan on taking the convertible, as we call it, the convertible investment tax credit for the solar project. The direct benefit to the FPL customers will be that much less financing, obviously, that we would otherwise have to do. Whether it's debt or equity, it's real cash that comes in the door.

I did hear your question. I was here when you asked it at least to one other person for. The IRS rules, the rules in the stimulus bill itself, refer to existing IRS rules which deal with investment tax credits, and specifically indicate that the normalization rules apply to these convertible investment tax credits, and I'm sure we don't want to talk about normalization here at --

COMMISSIONER SKOP: Not at this hour.

THE WITNESS: -- this time of night, but suffice it to say that the normalization rules require that the company not pass on, not directly pass on the benefit, the tax credit benefit, the federal benefit to customers immediately. They actually require that the benefit gets passed on to customers over the life of the asset.

And the rules go on to say -- and these are my words, but, you know, they're close enough. The rules go on to say that if the company finds a way to pass on that immediate credit to taxpayers, you essentially lose the benefit. You would lose that $248 million, I think was the number that you quoted.

Now, I can surmise as to why the rules are in place like they are. They're not rules associated just with the stimulus bill. They've been in place a very long time. So the accounting treatment that's in our MFRs is the accounting treatment that we would have had if it would have been regular investment tax credits and the normalization provisions would have applied from back in 1983 or 1986.

So the simple answer is our customers do get the benefit of the cash flow, but we cannot directly pass on the benefit of that 200-some-odd million dollars by reducing the cost of our solar facilities.

COMMISSIONER SKOP: But if you -- okay. Well, I guess that brings up two or three other questions, and I'll try and make this quick given the late hour. But if the company were to make the election, and not by virtue of normalization rules be able to pass that immediately on to the ratepayer, then wouldn't that be a cash flow windfall for the company to the extent that they'd get the $218 million, subject to check, immediately from the Treasury?

THE WITNESS: We do get it immediately from the Treasury and it is a benefit to our customers, because we don't actually have to go out and raise that additional debt, if you will, for the project. But I think your question was more of, I think -- I think your question was more of why can't we reduce the $700 million capital investment by 200-some-odd million dollars so that you're only adding the net amount, 400-and-some-odd million dollars as an investment for us to recover, and that's the specific provision that's precluded by the current Internal Revenue Service laws.

COMMISSIONER SKOP: Has FPL sought to perhaps get a tax opinion on that, on that specific issue?

THE WITNESS: We haven't because it's pretty clear.

COMMISSIONER SKOP: Okay. All right. With respect to your nonregulated operations, though, you'll be taking those convertible ITC elections for various projects on the unregulated side; is that correct?

THE WITNESS: Right. What we have told investors, at least it's our plans that we will take, for the wind projects that we're building at NextEra Energy Resources this year, for approximately two-thirds of our investment this year. That may go up as we continue to do further analysis, and approximately two-thirds of the projects that we expect to build next year.

COMMISSIONER SKOP: And I guess that's consistent with some of the statements you've previously made during earnings calls in relation to the benefits that may enure to the company under the American Recovery and Reinvestment Act?

THE WITNESS: Exactly. The difference between NextEra and FPL is we would be taking it for 100 percent of the investment in the solar plants at Florida Power & Light Company, and the reason why there's a difference, the wind projects get the benefit -- if you don't take the convertible investment tax credit, you get the benefit of production tax credits. You do not have that same option for solar facilities.

COMMISSIONER SKOP: Okay. I think I just have two more brief lines of questions and I think you're off the hook here.

THE WITNESS: Okay.

COMMISSIONER SKOP: I guess one of the first questions I asked, and this is a big issue in this case, Public Counsel and the other intervenors have alleged that FPL has a substantial depreciation reserve surplus. And I think that, you know, FPL has stated it to be approximately, subject to check, $1.25 billion, whereas OPC alleges that it's as high as $2.7 billion. But I think they're only looking with respect to the 1.25 billion, to do something with that. I heard one witness say, hey, we're going to make this easy for you, but this has been a lengthy proceeding.

I guess, in light of that, do you believe that a full rate case essentially functions as the ultimate true-up for all regulatory accounts?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And if the record evidence conclusively demonstrates that such a surplus exists, then why would FPL not want to amortize the excess reserve and decrease the depreciation rates to further reduce the near term rates for its customers?

THE WITNESS: It's a challenging issue. Depreciation is not something that, you know, if you go back and look at the accounting rules for depreciation, I think one of the oldest rules that's still on the books, ARB 43, subject to check, deals with depreciation. So you can imagine that was, you know, back in the 1950s, but depreciation isn't one of those things that's been tackled a lot in the recent past.

And the reason that it hasn't is because there's never right answer to depreciation. I mean, certainly you can go and you can get a proxy list of companies, and you can determine that some companies have the same assets and the depreciation rates could be very different, and that's okay. The same accounting firm can be looking at two different companies with similar operations and they would have two different depreciable lives. So that's the nature of depreciation. It's one of the, in my view, one of the biggest estimates that companies have on their financial statements.

And so, when we were talking about a theoretical depreciation reserve, if you will, that's based on a whole bunch of estimates that have been put together, that if we were to do the same study five years from now, or maybe intervenors were to do the same study, you know, three years from now, we would all get different numbers.

And so knowing that, knowing that depreciation has a very large estimate, our view has been that when we calculate a depreciation reserve, a theoretical reserve as we have, that we should pass that along, excuse me, to our customers over the average life of those assets. And we may do another depreciation study in four years and we may get to a different answer. I think we're giving that back today.

I think the only question is how quickly do we give that back. Should we give that back quicker. And if you can just say to yourself, okay, the right answer is to give it back quicker for whatever reason. Let's just say you get to that conclusion. You have got to deal with the potential consequences of that conclusion, right? The potential consequences of that conclusion are as you're giving that larger credit back to ratepayers, you're actually increasing rate base. I mean, that's essentially what happens.

You know, for those that really don't understand depreciation, you know, much, all you're doing is, think of the income statement. You record an expense on the income statement. That's depreciation. You're just reversing a portion of it, and you're building the asset back up. And so over a period of time what that does is, think of a credit card debt, you can think of any balance that you pay an amount at, instead of the rate base going down, it's kind of going down by the depreciation expense every year, and then you're kind of bumping it up, right? We're bumping it up right now. Or we were during the term of the agreement, $125 million. Even under what we propose in our MFRs, we're bumping it up by about 70 or $80 million. That's over the life of the asset.

So you have got to say to yourself, you know, one of the consequences is you get out over a period of time, you've actually built up rate base, and then customers would have to pay back that increased, excuse me, rate base plus a return on that rate. Is that the appropriate regulatory policy to follow?

The other questions, and there are many, if you don't get that full depreciation in your rates, you're essentially getting less cash, right? And if you get less cash, that means you have to go out into the market and raise more debt and more equity, because now you're getting less of that depreciation amount actually in your rates.

And the third issue, which is the issue that equity investors focus on is the non-cash earnings aspect of that. You know, how large -- you know, when does it become so large that equity investors say, you know, what's going on with the quality of earnings at this company. Obviously in the past there's been situations, not here, not with us, and not in Florida, but there's been situations where equity investors have really focused on earnings and non-cash earnings.

So those are the -- I mean, if you say that the right answer is to give it back quicker, those are the things that you've got to think about. I don't think it's as easy as every four years, whatever the theoretical amount, which is a big guesstimate is, whatever it is, we're just going to -- whether it's a debit or a credit, we're just going to give that back over four years. I don't think it's that simple.

COMMISSIONER SKOP: Okay. But you also said previously, though, that a full rate case should essentially function as the ultimate true-up for all regulatory accounts; is that correct?

THE WITNESS: Yes. Clearly, that's what we're, you know, that's what we're trying do here.

COMMISSIONER SKOP: Okay. Just following up on that one point, how does FPL effectively rebut the intergenerational and equity argument advanced by Public Counsel? Because, again, I know that depreciation is a non-cash item, and to do some of the things that have been alleged, obviously, you know, it's not cash and you have to generate cash to do some of the things that have been proposed.

But, if I heard the intervenors' argument correctly, they're suggesting that it would be inequitable to current customers not to have to pay for something in the future. So, again, I would like to get your perspective on how FPL would effectively rebut that intergenerational and equity argument, because it seems to be a strong one.

THE WITNESS: Yes.

COMMISSIONER SKOP: And I was just trying to better understand the issue.

THE WITNESS: My view would be that current customers are getting a significant benefit from that, again, that theoretical depreciation reserve. In fact, rate base is reduced, if you will. I mean, if you would have had, you know, a 1.25 billion immediate adjustment, then rate base would go up by that amount. And so it's not going up by that amount, and so current ratepayers and customers are benefitting from that amount. Clearly that's one side of the story.

The other side of the story, which some intervenors or all intervenors have used is, well, wait a second, if you have, in fact, collected more than what your depreciation would have told you with perfect 20/20 hindsight, you need to give that back. I understand that argument. It's not that difficult to understand, actually. But I am concerned with the three items that I pointed out to you earlier.

Once you make a decision that us giving back the 70 to $80 million is not enough, you really need to deal with those other three issues that I've pointed out before you can say it should be a higher number.

COMMISSIONER SKOP: Okay. Just one more question on this item, and then I believe I'll just have one more question, and I'll turn it over to the intervenors.

Are you familiar with FPL Group's pension plan?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And would you agree that historically FPL Group has transferred pension plan assets to fund claims associated with retiree medical benefits?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. Along that same line, why would it be acceptable for FPL Group to use overfunded accounts for its own purposes, but not appropriate for FPL to do the same for its ratepayers with respect to the alleged depreciation surplus in an effort to further reduce rates, if you accept the intervenors' arguments?

THE WITNESS: I may need a clarification. Are you saying why it wouldn't be appropriate for us to give back the pension funding to ratepayers?

COMMISSIONER SKOP: No, no, no. I guess what I'm saying is, with the FPL Group pension fund, they've done transfers for what is an overfunded account to transfer pension plan assets to fund claims associated with retired medical benefits. So obviously if --

THE WITNESS: Right. We take some of the funding that we have in the pension plan to fund some of the retiree medical benefits. If we didn't do that, we would have had to unfortunately get that money directly from our customers. Is that -- but that wasn't your question.

COMMISSIONER SKOP: That's a segue to my question. So in a similar sense, if they're doing that in that instance where you have an overfunded account and you're making a transfer to do something else, then why for a non-cash item, if a big enough theoretical reserve does exist, why wouldn't they want to further reduce rates for the customers by either amortizing the excess reserve over a shorter period and decreasing the depreciation rates to lower rates further?

THE WITNESS: Okay. Because I'm very concerned about the three items that I mentioned to you. Now, I wanted to throw the three items out there, but I'm very concerned with both debt investors and equity investors and their perception of, you know, taking this theoretical amount, which I just indicated changes over a period of time, and flowing that back very quickly.

I don't want to call it similar items, but we have had some utilities in this country that have had significant what I'll call rate cliffs come up, not because of depreciation reserves being allocated back too quickly, really for other issues. And that overhang has significantly affected the view that both credit investors and equity investors have as to whether, in fact, they would be able to pass on in some cases 60 or 70 percent increases to rates at one time.

COMMISSIONER SKOP: Okay. Just two final questions.

On a different line, Public Counsel and the other intervenors have questioned the FPL assertion that the proposed increases to base rates will be offset by the lower projected fuel prices for 2009 and 2010. And the recent FPL fuel and capacity clause filings project, subject to check, an overrecovery of approximately $294 million, reflecting both the 2008 true-up and the

2009 actual.

So, subject to check, assuming that's the case, why would FPL not want to immediately reduce the fuel capacity charges for its customers in these difficult economic times during the last three months of 2009 consistent with a previous FPL request that the Commission approved in a 2001 order?

THE WITNESS: I don't think that there is any, you know, any of us that would say that it wasn't the right thing to do and that we could all agree on it that we wouldn't do it. My understanding is, at least of how that clause works, is it's set once a year. You come back if you, you know, you go over or under the 10 percent corridor. But you're not back, you know, to change it if you're up 7 percent or down 7 percent.

So we would, you know, we would change it, you know, in accordance with the current clause. But I don't think I or anybody else from the company would say that, you know, if we reached a different agreement on just this one specific issue that, you know, we would take a different view.

COMMISSIONER SKOP: And the reason I asked that is any overrecovery from the clause that the Commission will deal with in November would be credited to customers in 12 equal installments normally in the next year, and I think that's what the intervenors are suggesting and FPL has suggested that it will be part of the lowering the rates with the reduced fuel charges, thereby mitigating any increase to base rates.

So, again, that's the only reason for that question is, you know, I guess if you give it back now, then obviously it can't be used later to make the argument that the intervenors seemingly object to about that fuel charges are actually going to be lower, therefore, there's not going be a whole lot of impact from any proposed base rate increase.

THE WITNESS: Yes. Well, that's clearly the argument that we're making. You know, subject to check, I'm not sure that I've heard any of the intervenors actually making that same argument. I mean, the argument that we're making is our bills are actually going down next year because the fuel part of the bill is coming down.

But I thought your question was, instead of linking that up next year, why wouldn't we give that back in some other format. And my only point would be if, you know, we could come to agreement, I'm sure we could do that. I just, I would hate to, you know, to take something that's worked so well in the past and sort of, you know, now put in different cases we're going to give it back over three months, or in other cases that we're really sure we're going to give it back in six as opposed to 12. I would hate to do that to something that at least our investors understand very well at this point.

And anytime you -- I think Doctor Avera did a good job of this. Anytime that you kind of tweak at the margin with something that people really understand, they don't like it, and I get a lot of calls.

COMMISSIONER SKOP: I understand. And, again, I don't want to do anything that would promote the image of regulatory uncertainty. But equally speaking, these are very difficult economic times for consumers. And, you know, you stated that should the proposed base rate increase be approved by the Commission, that to an extent any increase would be mitigated by reduced fuel charges in 2009, and what I'm trying to, I guess, get across is part of those reduced fuel charges are in part the overrecovery of the past year.

So, again, that's where if you give the overrecovery back sooner consistent with precedent for the right reason, again, not to bring any regulatory uncertainty into the mix, but, again, difficult times, prior precedent, then if you give back that overrecovery at the end of the year, you know, obviously the case that's being made of the mitigation as a result of fuel charges to mitigate any proposed base rate increase kind of may fall apart to some degree.

THE WITNESS: Well, the bottom line is, you know, it may fall apart for January. But, in fact, you can, you know, the customers are going to get that money back and are going to get the benefit of lower fuel prices. Or in the aggregate it's the same amount. Whether you give it back over a shorter period of time or a longer period of time, the customers are still going to be paying less over that 12 months, 15 months than they would have otherwise paid had there not been lower fuel prices and had we not invested in generation that's more efficient.

COMMISSIONER SKOP: Very well. Just one final question with respect to the GBRA or general base rate adjustment. You support that on behalf of your company; is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: All right. Thank you.

MR. BUTLER: Mr. Chairman.

CHAIRMAN CARTER: Mr. Butler.

MR. BUTLER: A point of logistics, I guess I would call it. Commissioner Skop had mentioned earlier that he had a list of additional aviation log pages that he had questions on. I am just wondering in terms of being able to get responses to it timely, if it would be appropriate to get that list now so that we could be working on it rather than at the end of the intervenors' questions to Mr. Pimentel.

CHAIRMAN CARTER: Well, let's do that because what I would like to do is obviously give the intervenors an opportunity to start and then kind of go through it. So, Commissioner, you're recognized.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chair. And hopefully I will try and do this and have a few minutes for the intervenors to ask some questions. And, again, Mr. Pimentel, I greatly appreciate your cooperation. I know it started off rough, but I think that we made some good progress in answering some of the concerns I have had over the course of the proceeding.

So I am going to briefly read these concerns into the record, hopefully starting by the applicable date in 2006 moving forward. And what I will briefly do is state for the record the Bates page number and the general concern and perhaps a passenger if I feel that is appropriate.

My first concern would be Bates number 160554, and that concerns a guest with a cost allocation to

Group, and that would be the guest listed on that particular flight.

The second concern I would have would be Bates number 160616, and that would be the allocation of that flight to Florida Power & Light in its entirety as opposed to the return flight which was burdened to Group. And I believe that return flight number -- I don't have the Bates page, but that return flight log number was 2096. I believe on the same day, so it shouldn't be too hard to find. And it might even be sequentially Bates numbered, or one or two pages thereafter.

The next concern is Bates number 160422, and that was a trip from Palm Beach to Portsmith, New Hampshire with some FPL allocations to out of state plant. And I believe Mr. Moyle mentioned that earlier in the day. I had the same concern.

The next Bates number is 160626, and that was apparently a group of HR related employees traveling from Palm Beach to Baltimore/Washington International with the allocation to FPL. And it may be related to the merger that was occurring at that time, but I question whether FPL was the appropriate allocation.

The next Bates number is 140428. There is a list of guests on there that include lobbyists, legislators, and FPL employees. Some of those are listed as guests with the cost allocated to Florida Power & Light. Again, I have a concern that those costs were allocated appropriately and not passed on to the ratepayer.

The next flight Bates number is 160634, and that is a flight from Boca Raton, Florida to Orlando with the cost allocated to FPL for an elected official.

The next Bates number is 160642, and that is a flight from Atlanta to Palm Beach with a guest that is allocated to Group, and the guest's name is Phil, I believe, McCullough (phonetic). I just wanted to make sure those costs were properly allocated.

The next flight is Bates number 160670. It is a flight from Palm Beach to Louisville, Kentucky and return. There are guests on that flight as well as Group executives, and the costs are allocated to Group, which would be allocated down to Florida Power & Light in a substantial portion. And, again, I would question with respect to that particular flight what benefit the FPL ratepayers might receive from a weekend flight to Louisville, Kentucky. So, again, making sure those cost allocations are appropriate.

Let me move on to the next flights. The next Bates page is 160684, and that is a flight from Palm

Beach International to what I believe to be San Francisco International with allocation to Florida Power & Light. And the question is is there a legitimate business interest for those costs to be allocated to Florida Power & Light for a trip to California. There may very well be. Again, not to be accusatory, it's just that I don't have full transparency.

The next Bates number 160716. And, again, that seems to be a flight to Pittsburgh in part and not really annotated as to how that flight is allocated to what entity.

The next flight is Bates Page 160720. There are guests on that flight. There also appear to be employees. The allocation appears to be to Florida Power & Light as well as perhaps to Group, and the flight is from West Palm Beach to Bermuda. Allegedly, again, subject to check. So, again, if there is a legitimate business reason, fine. I just want to make sure the cost allocation burden to Florida Power & Light is listed as appropriate for the business interest.

The next flight, I believe, is 160726. There is a Group executive on there, and I have a question mark, so either the destination or the allocation is not really shown on that. Again, I don't have it before me, but I just had a question about that particular flight.

The next flight is Bates page 160736, and that is a flight from Marathon in the Keys to Tampa with the allocation to FPL. And there is FPL employee, Mr. Hamilton, on that flight. So, again, it would be if there is a legitimate business interest, fine. I just wanted to look at that specific allocation.

The next flight, 160738. And that is a flight from PBI to Tallahassee with a guest with the allocation to Florida Power & Light. And the guest, again, just checking to see whether, again, those costs are recovered, or allocated, or burdened to ratepayers.

The next flight is Bates page 160764, and that appears to be a flight from Houston, Texas to Palm Beach with allocation to FPL for an FPL employee.

The next flight Bates number is 160774, and that appears to be an executive as well as guests, and the flight is from Palm Beach to Martha's Vineyard, Massachusetts with allocations to Florida Power & Light as well as Group. Again, the concern would be for not only the allocation that would result from Group, but also directly to Florida Power & Light for the one employee listed whether those -- there is a legitimate business reason for charging those flights to the ratepayers.

The next Bates number is 160812. It appears to be an executive and spouse or a guest from Rockland, Maine back to Palm Beach with the allocation to Florida Power & Light. So, again, with respect to the guest whether, again, there is appropriate cost-recovery or cost accounting.

The next Bates number is 160830. It is a flight from Palm Beach International to Baltimore/Washington International. There is a guest, I guess Mr. Quinn (phonetic) listed on that flight with the allocation to Group. Again, for the guest whether there was appropriate cost-recovery and not inappropriate cost allocation.

The next Bates number is 160918, and that is a flight from Palm Beach International to Horse Hollow, which I guess is an unregulated wind project in Texas, and return with the allocation apparently 50 percent to Florida Power & Light with some FPL employees. I think there may be some redactions on that page, but, again, my concern would be the appropriate allocation for what appears to be a trip to an unregulated project.

The next Bates number is 160986. It is a flight from Palm Beach International to Arkansas returning with some guests apparently, and allocated to J.B. Hunt for cost recovery, but the concern I have there was would it be appropriate for a Group executive to use a Florida Power & Light owned aircraft to attend an out of state board meeting and what benefit might the ratepayers expect to receive from that use of FPL owned aircraft.

The next Bates number would be 161020. That is a flight from Palm Beach International to Tallahassee with guests, and it is allocated to Florida Power & Light. And, again, the guests, I don't know what function they serve, but the concern is whether those costs were appropriately allocated as the basis, or historical basis for what FPL may be using for aviation costs in its projected test years.

The next Bates number is 161064, and that is a flight from Palm Beach International to Cleveland, Ohio, subject to check. It includes an FPL executive as well as a guest with the allocation to Florida Power & Light. Again, for the guest as well as the FPL executive, whether those are appropriate business expenses and whether the costs were allocated appropriately.

The next Bates number 161090. It is a flight from Palm Beach International to Fulton County Airport outside of Atlanta. A guest, the Constellation CEO, with the allocation to Group. Again, based on the note on the page, the costs were allocated between Group and Florida Power & Light, but Group costs, the majority of which get burdened to FPL, so I'm making sure that the guest had appropriate cost-recovery.

The next one is Bates number 161110. That is a flight from Palm Beach International to Augusta, Georgia.

CHAIRMAN CARTER: Excuse me, Commissioner. Could you restate that, 161110?

COMMISSIONER SKOP: Yes, 161110.

CHAIRMAN CARTER: Thank you.

COMMISSIONER SKOP: And that is a flight from Palm Beach International to Augusta, Georgia with a guest with the allocation to Group. And the question arises was there appropriate cost-recovery and a business purpose for the subject flight.

The next one is Bates number 161172, and that is a flight from Tallahassee to Palm Beach International with a guest, the allocation to FPL. And I believe that the guest is an FPL lobbyist. So, again, making sure that those costs are not passed through to the ratepayers.

The same instance in Bates number 161296, Tallahassee to Palm Beach, a guest, the same guest with allocation to FPL.

As well as Bates number 161348, a flight from Tallahassee to Palm Beach International with guest, allocation to FPL. The same guest.

The next Bates number 161338. It is a flight apparently in part to Baltimore/Washington International with a guest with the allocation to Group. And, again, making sure that those costs are appropriately allocated beyond what is listed on the page.

The next Bates number is 161134, and that is what is identified as a road show, which has a financial purpose of some sort. The trip is transatlantic to Europe, and the question I have with respect to that particular flight is two-fold. One, if it was for the purpose of raising funds that benefited mainly nonregulated operations. Would an allocation to Group be appropriate to the extent that the majority of the costs would be borne by Florida Power & Light, or if it were more intended towards nonregulated assets, would the appropriate cost burden be to FPLE or NextGen.

And also, too, whether commercial flight transatlantic would have been more cost-effective given the travel through Europe. But, again, that is an executive decision. That is not for me to second guess. I'm just trying to make sure that the allocations are appropriate.

The next Bates number 161190. It looks like a flight to Daytona Beach, Florida. Kind of cryptic on that one. Not a lot of information, but it seems to state a purpose of a sponsor meeting. Again, subject to check, I would like to get some clarification on that and what the business purpose of that flight might be if it were, in fact, allocated to either Group or FPL.

And we are in the home stretch. The next Bates number is 161384. It is a trip from Palm Beach International to Harrisburg, Pennsylvania with a guest with the allocation to Group. And the note on that expense or that manifest indicates Group expense is allocated between FPL and affiliates. But is there a legitimate business purpose for that -- for that guest and proper cost-recovery to ensure that those expenses don't flow back in the majority to FPL ratepayers.

The next Bates number would be 161471. It is a flight from Tallahassee to Palm Beach International. It is a guest allocated to FPL. The same concern about the company lobbyists, making sure that those costs are allocated appropriately and not passed on to the ratepayer.

There is another guest on that same flight, Ms. Young. And, again, the same concern. It is allocated to Florida Power & Light as a guest.

The next Bates page would be 161477. It is a flight from Palm Beach International to Allegheny

County, Pennsylvania with a guest. The allocation is to Group. It seems to be three individuals there, Duke Carbonell, Jinkers, McGraff (phonetic). Again, I took some very brief notes, but the same concern. Are the guests properly allocated and not passed through back to the FPL ratepayers.

The next Bates number 161491. A flight segment from Tallahassee to Titusville, allocation to FPL for two non-FPL employees, Ms. Glickman and Mr. Draper. Again, the concern would be whether the ratepayers are paying for that travel.

The next flight Bates number 161587. The passenger manifest showing one passenger, but then the flight log shows two passengers on the return. So I guess there may be some sort of disconnect there. But, again, I just looked at the two documents, and it may be a copying error because there were duplicate copies of certain flights in the stack. So, we may need to -- that's why I asked Mr. Butler for the list that they are going to provide tomorrow to make sure that we have all the documents.

The next Bates number 161599 appears to be a plant trip to the SEGS Project in California, and I don't believe it is allocated to any specific entity. So, again, there was a question mark there.

The next Bates number 161611 is a flight from Palm Beach International to where I used to work, Boeing Field, Seattle, Washington. The function is FN. A question mark as to who the allocation was, but I know BFI very well. It stuck out like a sore thumb, so that is where I had a question on that one. I actually landed there many times in a Cessna.

The next Bates number is 161613. It is a flight from Palm Beach International to Cleveland. There is a guest as well as an FPL employee with the allocation to Group. Particularly not only for the employee, but for the guest, making sure there is a legitimate business function as well as the proper cost allocation for the guest.

Bates number 161721, a flight from Palm Beach International to Tallahassee. A guest with the allocation to FPL. Again, a company lobbyist. Making sure that those costs are allocated appropriately.

The next Bates number -- and we are getting really close to the end -- 161735. It is a flight from Palm Beach International to Colorado Springs. The allocation is to FPL. FPL employees as well as Group executives. The question is what benefit to the ratepayer -- FPL ratepayers were associated with any legitimate business purpose to that destination that is out of state.

Bates number 161743. It is a flight from Palm Beach International to Houston. A cryptic note on there the best I can read suggest Texas trip with some other annotation. Numerous employees with the allocation to FPL. I'm not exactly sure what that means, but that is a recent trip and it would be good to get some clarity on that.

The next Bates number 161805. It is a flight from Palm Beach International to White Plains with an allocation to FPL with it looks like three employees. I'm just looking at allocation and business purpose on that particular segment.

Bates number 161839, Palm Beach International to Tallahassee. Guest allocation to FPL. Again, corporate lobbyist, making sure the allocation is appropriate for that flight.

Bates number 161857. A flight from Tallahassee to Palm Beach International. Guest allocation to FPL, same situation.

Bates number 161881. Palm Beach International to Houston. Allocation to FPL. The question is business purpose and proper cost allocation.

And two more Bates numbers, 161883. It's a flight from Palm Beach International to Cedar Rapids.

Allocation to FPL.

And Bates number 161901, and that is at the very bottom of my page, so I apologize if that number is not completely accurate. But it is a flight from Palm Beach International to Houston with the allocation to FPL, and the question would be legitimate business purpose for that allocation.

I do have some other concerns, and I am going to identify those by Bates number and not speak specifically to those because I think FPL may claim confidentiality to this. But is it okay to refer to the Bates stamp number?

MR. BUTLER: Sure.

COMMISSIONER SKOP: And what about the to and from destination?

MR. BUTLER: That's fine, too.

COMMISSIONER SKOP: Okay. All right. The next one would be -- and these are now confidential documents, but I have been told by corporate counsel that the Bates number as well as the to and from destination is not confidential, so I will just limit my discussion to that.

It is Bates number 161434 with a destination from/to of Palm Beach to what appears to be Las Vegas, subject to check. Other destinations on there, but, again, it just would be sufficient to take a look at that Bates number. And that was a somewhat not too recent, but still relevant time frame.

Base number 161420, and I apologize if I am not correlating these back to others I mentioned. Again, I'm trying to keep the two documents separate. A flight from Palm Beach International to Dulles/Washington. And what concerns me there without getting into details is the allocation, so I will leave it at that.

The next flight is on Bates number 161324, and the partial destination seems to be somewhere in Wisconsin. It is the last entry with respect to the guest with the allocation to FPL, so I feel pretty comfortable speaking to that because it doesn't reference the nonregulated entities. So, again, just taking a look at that for appropriate cost allocation.

The next one is Bates number 161312. There is an entry with an activity charge to FPL. And as far as the destination, it is late, and I'm not going to go there. Just please take a look at that one.

The other one is Bates number 161254. Again, there is a company activity charge to FPL, and it looks like -- I've got to test my memory here, but just look at that airport code and take a look there as to what the -- it looks like Palm Beach International to IAD, which might be Houston.

CHAIRMAN CARTER: Hang on a second, Commissioner. Mr. Moyle, make sure that your mike is off. Okay, thank you. You may continue.

COMMISSIONER SKOP: The next one I have -- and on this particular one they need to look at two Bates numbers. It is Bates number 160862, and there are some Group activity charges there, so I'm comfortable talking about those. The origination is in Palm Beach, the destination is Napa County, California, APC, subject to check. And it is on the FPL owned, Florida Power & Light Company owned aircraft November 1128 Bravo, which, subject to check, I believe the Falcon jet has 14 seats. And comparing that for the dates in question to Bates number 160860, and looking at the guest and the second flight that went from Palm Beach International to APC, which is Napa County, California for a different aircraft number, and then appears to be a return back to Palm Beach International.

So I guess the general question between those two is if there was enough seats on one plane, then why didn't they just put everyone on one plane instead of two separate flights, notwithstanding the allocations being appropriate and the guests.

The next one would be Bates number 160904. And, again, that entails, again, an FPL Group executive using Florida Power & Light owned aircraft for charges allocated to a board meeting type situation, so if they could just take a look at that.

The next Bates number is 161234. Lots of allocations to Group, and the general travel seems to be from Palm Beach International, or Juno Beach, to Point Beach. And, again, the majority of those costs get burdened to Florida Power & Light. What is the appropriate business interest. And there seems to be some corrections made on that page, so if they could just take a look at that.

The next one would be Bates number 160774. The first person -- and this may be a redundant one, and if so I apologize. And I will try and cross-reference real quick.

That one has already been mentioned, so we will skip that. But, the question is for the first passenger with allocation to FPL, was there a legitimate business reason and benefit to the FPL ratepayers from the flight from Palm Beach to Marsha's Vineyard and return.

MR. BUTLER: Uh-huh.

COMMISSIONER SKOP: The next is Bates number

160716. No company activity charge. There appears to be an FPL employee, numerous guests. And, again, we will leave it at that, but the appropriateness of where that ultimate charge got passed through, because there is no company activity charge identified for that particular sheet. And I think that's it.

MR. BUTLER: Thank you, Commissioner.

CHAIRMAN CARTER: Go ahead, Commissioner.

COMMISSIONER SKOP: One other thing. Again, the Part 135, taking a look at that in terms of, I think Mr. Pimentel mentioned that there were perhaps legitimate business reasons for doing that type of leasing arrangement, but also taking a look at the incremental helicopter trip from what would appropriately be maybe Juno to the hanger at Palm Beach International, and whether that was equally cost allocated appropriately, or whether that was a corporate trip that would have been passed through. Thank you.

MR. BUTLER: Thank you.

CHAIRMAN CARTER: Thank you. Mr. Mendiola, I know you're ready, but --

MR. MENDIOLA: Whatever you would like to do.

CHAIRMAN CARTER: You know, I always enjoy hearing your cross-examinations. They are quite riveting and inspiring, but I am running on impulse power now. So, tomorrow we will start at 9:30, everybody.

MR. MOYLE: Mr. Chairman, could I just make one --

CHAIRMAN CARTER: Mr. Moyle.

MR. MOYLE: -- because I don't want to -- you know, this is the only witness here, but obviously Commissioner Skop has a lot of information. I had one thing, if I could just ask?

CHAIRMAN CARTER: Sure, absolutely.

MR. MOYLE: And this is consecutive FPL Documents 161669 through --

CHAIRMAN CARTER: Is that on the --

MR. MOYLE: The nonconfidential. It is not confidential.

CHAIRMAN CARTER: Okay, go ahead. You're recognized.

MR. MOYLE: It is 161669 through 161672, and the information he asked about flights in chronological order may get this, but the question is is that if you look at the trip numbers, the trip numbers appear to go down rather than up and I just don't know whether they start at 5,000 and count down, or that was sort of the question I was hoping to get addressed.

CHAIRMAN CARTER: We can get that tomorrow when you do your cross.

MR. MOYLE: Thank you.

COMMISSIONER ARGENZIANO: Mr. Chairman.

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Since we have got the unredacted papers, you know, the whole batch later today, I still may -- Commissioner Skop hit a lot of the ones that I would be concerned with, but there may be some others, too.

CHAIRMAN CARTER: Okay. What we will do is we will start first thing in the morning and Mr. Mendiola will yield to you, Commissioner, and we will recognize any questions from the bench and then we will start with the cross-examination.

COMMISSIONER ARGENZIANO: Okay, thank you.

CHAIRMAN CARTER: All right. Good night, everybody. 9:30.

(The hearing adjourned at 9:37 p.m. Transcript continues in sequence with Volume 37.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 21st day of September, 2009.

Jane Faurot

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