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 COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Thursday, September 17, 2009
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PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, RPR, CRR Official FPSC Reporter (850) 413-6734
APPEARANCES:	(As heretofore noted.)

I N D E X

WITNESSES

EXHIBITS

P R O C E E D I N G S

(Transcript continues in sequence from Volume 36.)

CHAIRMAN CARTER: Okay. We are back on the record. And last night when we left we were just getting ready for cross-examination. But before that, preliminary matters.

Commissioner Skop, you first, and then I've got some parties that have some preliminary matters. We'll go there.

Commissioner Skop, you're recognized, sir.

COMMISSIONER SKOP: Thank you, Mr. Chairman. Just a brief correction to a misstatement that I made late in the evening with respect to one of the items. IAD was actually Dulles International, and I think that I referred to it as IAH, which was Houston. So, subject to check, I've corrected myself.

Also, too, I guess -- I tried to spend some time yesterday identifying some concerns. I tried to limit that because in the big picture that's not where the real value in this rate case is. Certainly it's significant expense that would be incurred by the ratepayers, but there are far bigger picture items that the Commission is facing with in this case. I don't want to lose sight of the big picture and spend a lot of time on this issue if it can be avoided. And equally it's, the burden is on the company to prove that its cost allocations and expenses are prudently incurred.

So as part of perhaps a solution which would mitigate the majority of the concerns I expressed yesterday, I would like to just offer to Mr. Butler, you don't have to answer this now, it's something maybe you can go back and think about from the company's perspective, maybe get with the Intervenors. Maybe it would address their concerns. I don't know. But it occurred to me that the central focus of what I was trying to identify is, is the cost accounting issues, the burdening issues, and whether costs were being reasonably incurred and burdened to the ratepayers of Florida Power & Light. And, again, that all centers around internal controls and accounting practices.

So I guess what I would propose is two-fold. Perhaps the company might be willing to have its independent auditor and audit committee jointly certify that proper internal controls are in place for aviation-related expenses to ensure that those costs are appropriately collected, accounted for and burdened. And I think that would address the majority of the concerns.

And also in conjunction with that review, it might be appropriate to equally certify for the same period in question, 2006 to present, that no member of the Commission or Commission employee has ever flown on jets, just to aleve (phonetic) any, you know, public misperception that might arise out of comments. But just if the company could take that under advisement.

And I don't require a response, but, again, instead of dwelling on something that may have a reasonable explanation behind the scenes that's not transparent, I think it's a reasonable inference, based upon the flight log seemed to suggest that the initial checkoff is to burden it to companies that obviously I expressed my concerns about.

And I think that if there are additional controls in place that are not transparent, you know, I think that as long as that's certified and bought off on, that would go a long way in terms of mitigating my concerns and avoid any potential disallowance, so.

MR. BUTLER: Thank you, Commissioner Skop. We will check into that.

COMMISSIONER ARGENZIANO: Mr. Chairman?

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Well, I sat through, as you all did, we all did last night, a very long, lengthy period of discussion on the flight logs. I still want information on those flight logs. It's a rate case. We haven't had one in a long time. And not to focus on one issue, but I probably have some particular questions to those flight logs. So I'm not so sure I'll just sign off on them. Of course I want to know if there's some type of control or mechanism that the company has.

But after sitting there and listening to all that last night, it brings questions up. And I'm not just concerned, you know, with the Commission, of course Commission -- Commissioner Skop makes a good point, to make sure that no Commissioners were on or whatever the case is. But, you know, I heard yesterday repeatedly that, from Mr. Avera, that political influence could be a negative thing. Well, as I said yesterday, it works both ways. So I'm still interested in who else was sitting on those planes and what cost to the consumer there was.

So I'm not sure what, Commissioner Skop, if you're backing off or what you're really saying today. But my opinion is I still have questions and I, that I may want to ask. So I'm not so sure I'm signing off on one, okay, we audit it and that's good enough. It may not be good enough for me.

CHAIRMAN CARTER: Okay. Commissioner Skop?

COMMISSIONER SKOP: Thank you, Mr. Chair.

And to Commissioner Argenziano, no, I'm not backing off at all. I guess what I was saying is that obviously I've expressed my concern and cast a significant shadow on the cost accounting mechanism in relation to the numerous flights that I mentioned. Again, it's very important to me to make sure that the ratepayers of Florida Power & Light are not being allocated costs that are not prudently incurred.

So, again, I wholeheartedly endorse any questions that you or my colleagues may ask or the Intervenors may ask. I'm just merely -- what I don't have transparency and visibility on, and I could spend hours questioning a witness and still scratch my head at the end of the day, it would be good to have an independent auditor and the audit committee of the board of directors sign off on the fact that there are appropriate controls.

That would give me a little bit more assurance. It still would not cause me not to question some of the expenses that have been incurred to date to the extent that, again, I have a lot of question marks, as I expressed yesterday. But --

COMMISSIONER ARGENZIANO: Yes.

COMMISSIONER SKOP: Thank you.

COMMISSIONER ARGENZIANO: And I, and I understand that.

Mr. Chair, if you don't mind. I understand that and I understand trying to get to the nut of the matter with anything. I'm not just picking on the logs or anything. But you brought up a lot of issues. And in looking at the logs, they bring up issues. And I guess we're in a rate case, that means everything is to be looked at. So if it's still fuzzy, then we still have a right to ask questions. I just want to make sure of that.

And I'm not so sure, I mean, when we talk of the board of directors, I'm not so sure that that's the right place to go. I'm not sure that, you know, if it's paid by the ratepayer, that the board of directors really is the right place to get that, that, I guess that feel good audit or whatever they -- not a feel good audit. You know what I mean. An audit from them -- I'm not sure that's the right place. They can maybe help and assist us, and I'm sure maybe the company has very logical and good explanations for everything on the log.

But after we, you know, sat through quite a long time, a lengthy time, and then really focusing on some of the other log sheets, log sheets, there just may be remaining questions and the company needs to answer.

And I don't think they have a problem, they've been answering the questions. I think that would be perfect.

COMMISSIONER SKOP: Right. And, Commissioner, just so you know, and I know sometimes the telecommunications is not the best in the world, but it wasn't just the board, because I would, I would have the same concern if it was just the board's audit committee. What I asked for or proposed would be that the independent auditor, being the external auditor, which I believe is Deloitte & Touche, as well as the audit committee of the board, jointly sign off on the fact that there are proper internal controls. So that would be an independent external analysis as well as the audit committee of the board both certifying that there are proper controls in place to account for those costs.

COMMISSIONER ARGENZIANO: Well, that does help, but there's still a lot of questions. And if people are following along, I think they'd like to hear some of the answers to some of the questions. I don't think you have to go into every single one of them, but I guess -- and I think you're right. If there's something that, that, that makes us all feel comfortable, that the company can provide or an external auditor, an independent auditor can also provide, I'm sure that would be most helpful.

COMMISSIONER SKOP: Absolutely. Thank you.

CHAIRMAN CARTER: Thank you. And also, Commissioner Argenziano, I'm going to go with the preliminary matters and I'll come back to you, because last night when we ended, I did tell you that I'd recognize you this morning. I think you had some questions related to the flight logs.

COMMISSIONER ARGENZIANO: Well, Mr. Chair, I think what we'll do is just, if you don't mind, just keep going, and as they come up, I will just say something.

CHAIRMAN CARTER: Okay. That'll be fine.

COMMISSIONER ARGENZIANO: Thank you.

CHAIRMAN CARTER: Thank you.

Preliminary matters. Mr. Mendiola, you're recognized, sir. Good morning.

MR. MENDIOLA: Thank you, Mr. Chair. Yesterday Mr. Butler handed to me a late-filed exhibit that was prepared at the request of SFHHA, and we appreciate the company putting it together. This is -- and I think Mr. Butler has copies, and I'd like to have a number for this, please.

CHAIRMAN CARTER: That number will be 502, Commissioners. 502.

MR. MENDIOLA: And the short title, which is already indicated on the title sheet, is WCEC3-Transmission Integration Cost.

And just a little bit of background, this relates to a line of cross-examination conducted by Mr. Wiseman relating to the amount of transmission integration costs that are associated with the West County Energy Unit 3 that will come online.

(Exhibit 502 marked for identification.)

CHAIRMAN CARTER: Which witness was this?

MR. MENDIOLA: Ms. Deaton, D-E-A-T-O-N. Thank you.

CHAIRMAN CARTER: Let me do this. Let me, before we go to dealing with this, let the parties have an opportunity to look, look it over. I'm going to give the court reporter a break this morning, and during the court reporter's break you guys can look it over. And then if there's any questions or concerns, we'll deal with it at that point in time. Okay?

MR. MENDIOLA: Thank you. And I do appreciate the company putting it together for us.

CHAIRMAN CARTER: Okay. Mr. Moyle, you're recognized for preliminary matters.

MR. MOYLE: Just so I'm clear in my cross, Mr. Pimentel -- and I don't want to get bogged down into, into stuff and take a bunch of time, but it just would help me to understand what the plan is with respect to the company responding to some of the questions posed by Commissioner Skop so that -- you know, whether it's to bring another witness back, whether this witness has knowledge now. It just would help to know what the situation is.

CHAIRMAN CARTER: One second.

Commissioner Edgar?

COMMISSIONER EDGAR: Mr. Chairman, actually I was just going to chime in similarly. I, you know, as we've talked about, we had long discussion and many questions posed last night. And, Commissioner Skop, and I appreciate it, has I know tried to be thoughtful in suggesting ways to get that information and to move us along, for which I'm grateful. Commissioner Argenziano I think posed some questions that she may still have.

But with all of that, and maybe it's just because it was a very long day for all of us yesterday, I'm not quite sure where we are or how to proceed. And I don't mean to put that right on you, Mr. Chairman, but I'm just still not clear where that leaves us. And I would expect that all the parties want to be prepared and I certainly want to try to be prepared to the best of my ability.

So I'm not sure who to pose it to, but I'm not sure how we're going to proceed. So whoever can help us think that through, I'd appreciate it.

CHAIRMAN CARTER: Mr. Butler yesterday mentioned that Mr. Pimentel and two other -- well, one other witness, but also if we had to, we'd bring a witness who is already gone.

Mr. Butler, would you address that, please, sir?

MR. BUTLER: Yes. Certainly, Mr. Chairman. Yes. Mr. Barrett, with respect to how costs were projected for 2010, 2011 test years, with respect to aviation is the witness who can speak to that.

Mr. Davis, although his testimony on rebuttal doesn't address the subject, but he is the company's Chief Accounting Officer, I think probably could provide some insight on accounting controls and the issues that Commissioner Skop had raised.

If we're talking sort of individual entries on logs, what was this flight about, why did it occur, you know, how, what's the justification for charging it, the questions that Commissioner Skop was raising last night on individual log entries, I think that Commissioner Edgar and Mr. Moyle raise a good point. We're not going to be in a position today for Mr. Pimentel to provide detail on either those pages or other pages of the logs that are going to be kind of definitive answers.

So I think that it may be most productive on that subject to, at least to defer questions on that to the end of Mr. Pimentel's examination, and then perhaps it may very well be something that's best to be, excuse me, deferred for the detailed answers to one of our other witnesses. Because, just as a matter of time, it takes quite a bit of effort to track down people, events, you know, put the chronologies together with respect to specific log entries, and I'm not optimistic that we'll be able to do that at a full level of detail as we sit here through Mr. Pimentel's testimony today.

CHAIRMAN CARTER: Okay. We can -- and that was my understanding, that we could get those witnesses that will have the, actually go through the, answer whatever questions that you may have if Mr. Pimentel is unable to do that, and we can do it from that perspective. Also, if we need to have someone from the company, I could actually go down to the nuts and bolts or, as I would like to say, in the weeds and get that. And if that's necessary, we can do that as well. We can do that as well.

MR. MOYLE: And I just don't see how it cannot be done, given the detail of the questions that have been asked, you know, on some of it.

CHAIRMAN CARTER: Okay. Well, we'll just --

MR. MOYLE: But I don't know the best way to handle it.

CHAIRMAN CARTER: Well, what we'll do, Mr. Butler, we'll just probably have to look at -- I mean, kind of think through the, the best witness for this. Okay? And then we can kind of, maybe during the break we can talk about it or you guys can talk about it. And then after we come back from the break we can decide on how we'll proceed with that. I think that's most productive.

You want an answer to your questions and we need to have the right witnesses. It's fruitless to all of us to be asking a witness a question he has no knowledge about. And so we'll do that, Mr. Butler, give you a chance to do that and then be prepared for that.

MR. BUTLER: Thank you, Mr. Chairman.

CHAIRMAN CARTER: Anything, any other preliminary matters of the parties?

Staff, any preliminary matters?

MS. BROWN: No, Mr. Chairman.

CHAIRMAN CARTER: I got one from, from the bench.

Schedule. I should have an idea for you around lunch, hopefully by lunchtime in terms of where we're going. We, we did a grand total of one witness on yesterday. So it -- well, even glaciers move. I'm an optimist.

COMMISSIONER SKOP: Global warming.

CHAIRMAN CARTER: Yeah, we'll get there. So we only did one witness yesterday, and I've got staff trying to do some computations and combinations and permutations on our schedule to kind of get a place when the five of us will be available and not conflicting with other kinds of things. But we'll get that done and I'll have that -- my goal is to have that to all the parties by lunchtime on that. So that way you guys will know and we'll all know at the same time. Okay?

So, and I know you probably was thinking about, well, you probably didn't say it, but everybody was probably thinking about schedule because we did one witness yesterday. Okay? Anything further?

Mr. Mendiola, you're recognized. Good morning, sir.

MR. MENDIOLA: Good morning, Mr. Chairman. Good morning, Commissioners.

CROSS EXAMINATION

BY MR. MENDIOLA:

Q. Mr. Pimentel, my name is Lino Mendiola. I represent the South Florida Hospital and Healthcare

Association. How are you this morning?

A. Good morning. Thank you. Fine.

Q. Good. Mr. Pimentel, you are the Chief Financial Officer of Florida Power & Light and FPL Group and Executive Vice President; is that correct?

A. Yes.

Q. And you had an opportunity to provide sworn deposition testimony in this case earlier in the proceeding, did you not?

A. Yes.

Q. And you had an opportunity to review that deposition?

A. Yes.

Q. Make any corrections that you saw fit to make; right?

A. Yes.

Q. Now I wanted to follow up on a few questions that were asked from the bench yesterday, and then we'll get into the substance of your rebuttal testimony.

First of all, I wanted to ask you with respect to your comments to the Commission about fuel, you understand as an accountant that there's a difference between base rates and fuel; right?

A. There's a difference between -- I'm sorry? Base?

Q. Between base rates and fuel costs.

A. Yes.

Q. All right. And you understand that when the Commission awards a base rate increase in terms of an increased annual revenue requirement, that annual revenue requirement will be collected, rates will be designed to collect that annual revenue requirement from ratepayers until the next rate case; isn't that right?

A. Yes.

Q. While fuel prices can fluctuate with the volatility of, of the fuel markets; isn't that right?

A. Yes.

Q. And you understand that natural gas is a highly volatile commodity; isn't that correct?

A. Yes.

Q. In fact, I take it that as part of your daily responsibilities you monitor the natural gas markets?

A. Not daily, but we, I keep an eye on it.

Q. Well, I wonder if you could agree with me that since the time that we have been in this proceeding, in this hearing, natural gas has fluctuated from around 2.50 a million up to, I think yesterday it was around 3.70 or 3.80; is that correct?

A. You know, it had a large runup yesterday. I don't know what the final price was, but it did have a large runup yesterday. It had a large rundown on Thursday or Friday of last week. It's been pretty volatile for the last couple of weeks.

Q. And, in fact, it's been so volatile the prices fluctuated on the forward month around 50 percent in the last couple of weeks; isn't that correct?

A. I don't know the, the percent.

Q. All right. Well, you were here, I take it, for Dr. Avera's testimony yesterday; isn't that correct?

A. Yes.

Q. And you heard Dr. Avera testify about what he called asymmetrical risk?

A. Yes.

Q. And isn't it true, sir, that there's an asymmetrical risk for ratepayers if there is a base rate increase that is granted by the Commission so the base rates are guaranteed to go up but fuel prices only might go down; isn't that asymmetrical risk?

A. No. That's not asymmetrical risk as I understand it.

Q. Okay.

A. Asymmetrical risk is that there's a possibility for only one risk to actually be there at the end of the day. In fact, fuel prices, as much as they've gone up over the last couple of weeks, could go down. There's certainly a lot of people out there that are predicting that the storage levels that we've got in place right now, that sometime in the next couple of months we could have an all-time low, at least in the recent past for natural gas. So I wouldn't agree that the gas -- you mentioned yourself that they've gone up. They can certainly go back down again pretty significantly.

Q. Sure. And the bottom line is that we don't know whether gas is going to go up or gas is going to go down or gas is going to remain the same; isn't that right?

A. That's correct.

Q. And so when the company has stated publicly that if this Commission grants a $1.46 billion base rate increase, consumer prices, consumer bills will go down, there's no certainty of that; isn't that right?

A. I think that's what we've said is our expectation is that the typical average bill will go down.

We've -- and, no, there is no certainty of that, but we do have a fuel hedging program that's been approved by, by this Commission.

Q. And ratepayers pay for that fuel hedging program; right?

MR. ANDERSON: Commissioner Carter, could the witness be permitted to answer?

THE WITNESS: Ratepayers pay for the fuel hedging program?

BY MR. MENDIOLA:

Q. Yes.

A. Let me just finish my answer --

CHAIRMAN CARTER: Mr. Mendiola.

THE WITNESS: -- and try to, try to deal with that.

CHAIRMAN CARTER: Okay.

THE WITNESS: Approximately 50 percent of our fuel for next year has already been locked in, so approximately 50 percent has not been locked in. So the fuel prices would have to rise, and I don't know what the number is, but pretty significantly for that reduction that we've, that we expect for that to all go away.

BY MR. MENDIOLA:

Q. Well, the bottom line -- you would agree with me that if the Commission awards a base rate increase, the annual revenue requirement collected from ratepayers through the rates that will be designed will go up, that's a certainty; isn't that correct?

A. Yes. It would go up.

Q. All right. And there is no certainty that fuel prices will come down sufficient to offset the base rate increase; isn't that correct?

A. That is correct. I'm not sure anybody -- you know, if one of our witnesses has indicated that it is certain that we are, that fuel prices will remain at this level for a long period of time -- I mean, I haven't heard that. Our expectation, very late into this year, having about 50 percent of our fuel hedged for next year, looking at forward prices, which is what we would look at every year when we would do a fuel clause filing, is that those rates will go down, overall bill rates.

Q. And now, and so it's not really fair, you would agree with me it's not really fair to go tell general customers and ratepayers that if this Commission grants a base rate increase, that the bill will go down?

A. I don't think that's what we've said. I think what we've said is that even with the full base rate increase that we're asking for in this proceeding, our expectation based on fuel prices and our expectation based on what we've done in the past in order to deal with fuel efficiency measures, our expectations is that the fuel bill will go down pretty significantly -- I'm sorry, the total bill will go down pretty significantly.

Q. You would agree with me, wouldn't you, that transparency in the regulatory process is important?

A. That transparency -- can you define what you mean by transparency?

Q. What you think I mean by transparency?

A. I don't know. That's why I'm asking you to define it.

Q. When someone says that something is transparent, what does that mean to you?

A. I'm asking for your definition. You're asking the question.

Q. And the beauty of being a lawyer is I get to ask the questions. So in terms of a transparent legal process, do you believe that, that a transparent regulatory system is important for ratepayers and the company alike?

A. If, if what you mean by transparent is that all of the, all of the people at the proceeding know all of the facts, I would agree with you.

Q. And it's important that, that when a request is made or documents are produced, that the request is made as clearly as possible or the documents are as clear as possible to get the message across that is intended to get across; right?

A. I'm sure there's a question in there, Mr. Mendiola.

Q. The question was, is that correct?

A. If you're asking if, if a question is asked, does it require, you know, the party that's answering, answering the question to do their best to provide a truthful answer, the answer to that is yes.

Q. Well, and not only the answer, but also the, the request, for example -- well, let me move on.

Let me ask you about the convertible ITCs that, that the Commission asked you about yesterday.

My understanding is that if the company makes an election to take the convertible investment tax credits on the solar generation projects, that it will enjoy the benefit of cost-free capital in the neighborhood of 218 million; is that correct?

A. That it will -- well, I'm not exactly sure what you mean by cost-free capital.

Q. Well, I believe you testified yesterday that if the company were to receive this investment tax credit, ratepayers would benefit by the company avoiding to have to go to the capital markets to raise that money. Did I hear that correctly?

A. That's right. If, if the, if the company, which it expects to do, elects to take the convertible ITC, it would be approximately $200 million of a stimulus similar to accelerated depreciation or bonus depreciation that would come into the company as, as cash flows. That, that stimulus, if you will, or that ITC becomes a part of the company's capital structure. That's in accordance with the, with the normalization rules of the IRS.

Q. And that was really my question, whether you have reflected the value of that 200-plus-million-dollar ITC in the regulatory capital structure that's being requested by this Commission, or at this Commission.

A. I don't know the answer to that question. I can find out.

Q. All right. I'd appreciate that, because if -- you would agree that if that $218 million is not reflected as cost-free capital in the regulatory capital structure that's being requested at this Commission, then the company would have the benefit of that cost-free capital, but there would be no reflection of that benefit for the benefit of ratepayers?

A. I'm sorry, Mr. Mendiola. I answered your question thinking I knew what you were asking.

Q. Uh-huh.

A. But now that you mentioned cost-free capital at least three times in your, in your comment, I understand that you were, you were going somewhere else.

The IRS rules actually prohibit the $200 million in this case, this convertible ITC, from being shown as cost-free capital. I assume, hopefully a good assumption, I assume that what you mean by cost-free capital is the accumulated and deferred income taxes that we have in our capital structure. The --

Q. And ITCs; right?

A. ITC is not cost-free capital.

Q. Well, it -- all right. But it is reflected in your capital structure, isn't it?

A. And yes. So I wanted just to make that point. I'm talking about reflecting it in the capital structure as ITC. I wanted to make that distinction. It is not cost-free capital.

Q. Thank you. I appreciate that distinction.

And so the question, to be clear, is whether the convertible ITCs are or will be reflected in the regulatory capital structure approved by this Commission as requested by the company.

A. Yes. That's the question.

Q. And that's the question you're going to provide an answer to later?

A. Yes.

Q. All right. Thank you.

Now with respect to the discussion regarding depreciation that you had with the Commission yesterday, I believe you said, and I'd ask you to correct me if I'm wrong about this, but I believe you said the depreciation is, is an estimate; is that correct?

A. Yes.

Q. But, in fact, depreciation expense is not really just an estimate. I mean, it's a calculation made by depreciation experts who are trained to make those calculations; isn't that correct?

A. Yes.

Q. It's not just a wild guess; right?

A. Is that your word, wild guess?

Q. That's my question.

A. I didn't -- no. I didn't say wild guess. I said it's an estimate. That's -- if you go back and look at the, the accounting and finance rules, that's exactly what they'll tell you.

Q. And so the point is that if depreciation has been collected from ratepayers at, at a level that has accumulated a reserve as currently calculated, based on the assets' remaining service life or the calculation of existing depreciation rates, that's based on a calculation made by your depreciation expert; right?

MR. ANDERSON: Chairman Carter, just to try to help keep our proceeding focused.

CHAIRMAN CARTER: Yes, sir.

MR. ANDERSON: I don't believe that this is within the scope of Mr. Pimentel's testimony. As you know, we have several other witnesses talking about the depreciation issues. I don't believe -- perhaps if counsel could refer to the question and answer in the direct or rebuttal where Mr. Pimentel goes into this. But I don't believe that's so, and there are other witnesses for that.

CHAIRMAN CARTER: To the objection.

MR. MENDIOLA: That's correct, Mr. Chairman. But the witness testified about depreciation yesterday in response to questions by the Commission, and I think that the impression that was left may leave the record unclear. I wanted to clarify that.

MR. ANDERSON: Commissioner Carter, I don't believe -- you know, we're always highly responsive to Commissioner questions. The Commission is always entitled to ask any question for any information. But it is not the practice that would open the door and constitute additional scope of direct or rebuttal testimony for that witness. Rather, the appropriate approach would be to interrogate the extensive other accounting witnesses. That's part of the problem with this proceeding, I believe, in terms of just helping keep us on focus and on track. Thank you.

CHAIRMAN CARTER: Ms. Cibula?

MS. CIBULA: I think Mr. Mendiola did state that he is aware that it's outside his direct testimony and that we should move on to other questioning.

CHAIRMAN CARTER: Okay. Let's move on.

MR. MENDIOLA: All righty.

BY MR. MENDIOLA:

Q. Now, Mr. Pimentel, you also testified or at least answered some questions with respect to the flight logs; isn't that correct?

A. I actually didn't answer many questions relating to the flight logs.

Q. All right. Well, maybe you can answer this one. Just so the record is clear, can you tell me what the company's policy is with respect to the allocation of costs associated with flights by guests when there is a legitimate business purpose for the flight for one person on the plane but that person is accompanied by the guests? How are those guests' costs allocated?

A. There are no guest costs. The policy is not that any guest cost would be charged to Florida Power & Light Company, if that's the, if that's your question.

Q. That is my question. And so if a, if a guest shows up on a flight log and, and FP&L is identified as the, the company to allocate the costs to, those costs should simply come out?

A. Assuming that there's not some sort of business purpose associated with the guest, and I don't remember all of the flight logs yesterday, but certainly some of the flight logs and some of the names would lead me to believe that there was not a business purpose associated with those flight logs -- I'm sorry, associated with that travel -- then that expense should have been, not have been charged to, to ratepayers.

Q. All right.

A. It's clear, just to -- I shouldn't say it's clear, but we talked about 2006, 2007, 2008 flight logs yesterday. 2008 is the year that actually reflects on our 2010 allocation in our test year, not 2006 and not 2007.

Q. And the, the policy is that regardless of whether the guest flight is in '06, '07 or '08, if it's a cost associated with the guest and there's no business purpose, that cost should come out of the costs that are allocated to ratepayers?

A. That's correct.

Q. All right. Now, if you know, what is the general scope of and order of magnitude of costs that are associated with the flights that have been put into question from the Commission's questions? Are we talking about 10 million, 20, 30, 40, 50, 100? Do you know?

A. Well, I don't know --

Q. All right.

A. -- as a matter of magnitude. There's approximately $7.5 million in total in expenses associated with the aircraft in our 2010 test year.

Q. 7.5 million?

A. It's approximately 7.5 million.

Q. All right. Out of 1.46 billion of increase for the test year?

A. That's not an apples to apples comparison. The 1.46 billion is an increase to get up to a rate of return that we believe is fair and reasonable. The 7.5 million that I mentioned would be part of the O&M in our MFR filings.

Q. Very good. Thank you.

Now I want to ask you some questions regarding how the return on equity that is being requested by the company was selected. Because I think Dr. Avera testified about that, but it left a little bit of lack of clarity in my mind.

First of all, you're aware of Dr. Avera's range, which he characterizes as from 11 to 13 percent;

is that correct?

A. I think as he described it, he, he would say it's 11, it was 11 to 13, but then he narrowed the range from 12 to 13. I believe I heard him say that several times yesterday.

Q. And I take it that in the development of Dr. Avera's testimony and in the development of his recommendation, you guided him in that; is that correct?

A. No. I did not guide him in that.

Q. Did you have any discussions with him about his testimony?

A. I didn't -- I actually had no discussions with, with Dr. Avera until the testimony was already filed.

Q. Did anyone in your office or under your direction have --

A. I'm sure that -- we obviously hired Dr. Avera. We actually had to tell Dr. Avera what we wanted him to do for this proceeding, so I'm sure that those discussions were held.

Q. And Dr. Avera said that his range was from 11 to 13 percent, and he selected the top end of that range, 12 to 13, in order to reflect flotation costs; is that correct?

A. I don't think that's -- that's not my recollection of his testimony.

Q. Well, that's what I thought he said.

A. You know, flotation --

Q. Why did he select the 12 to 13 percent?

CHAIRMAN CARTER: Hang on. Hang on. Hang on. You ask a question, you get the answer. Okay?

MR. MENDIOLA: Just trying to move things along, Mr. Chairman. But that's fine. We'll have to have all day.

CHAIRMAN CARTER: I'll have Ms. Bradley share her Diet Coke with you and get you off of the coffee.

All right. Let's try it again. Ask your question. Do you remember the question?

THE WITNESS: I do, sir.

CHAIRMAN CARTER: Okay. You may proceed.

THE WITNESS: There were a number of reasons that he indicated that he went to the 12 to 13 percent range, including the company-specific risks that he talked about in his testimony and I speak about in my, in my direct testimony. Flotation cost was something that he also discussed, but that certainly was not the singular reason for going to the top end of the range.

BY MR. MENDIOLA:

Q. Did you hear him testify that after he selected the range of 12 to 13 percent, you selected the midpoint of that at 12.5 percent in part to reflect exemplary management?

A. I may have heard it. I don't remember it. I selected the midpoint of the range for -- really just a couple of reasons. One, I didn't have a better estimate as to whether the low end or the high end of the range was, was the best, was the best point based on the work that he had done. A simple average of the three models that he used came out to somewhere around 12.47, 12.48, and that's how I set the middle point of the range.

Q. Did exemplary management have any role in your selection of the 12.5 percent ROE?

A. I think, as Dr. Avera indicated, it's something that certainly the Commission should reflect on, or we believe, I'm sorry, that the Commission should reflect on. But it wasn't the basis for moving up or down on the range, not, not for me.

Q. All right. So your testimony is that the consideration of exemplary management had no effect or no role in your selection of the 12.5 percent ROE?

A. That's right. I -- we could look in my direct testimony. I don't remember it exactly. But I think, if I recall correctly, it indicates that it's something that the Commission, Commissioners should consider in setting the appropriate ROE.

Q. All right. I think that might be different than what Dr. Avera said, but the record will speak for itself on that.

Now with respect to your statement that the Commission should reflect on exemplary management, you would agree with me that management has a responsibility to provide fair and adequate and reliable electricity service to its ratepayers; right?

A. Yes.

Q. And that is the management's responsibility regardless of whether the ROE is set at 12.5 or 10.5; isn't that correct?

A. Yes.

Q. And you would agree with me that management will do its best to provide fair and adequate and reliable electric service regardless of what the ROE is that this Commission sets; right?

A. Yes.

Q. All right. And you agree with me that management is adequately compensated for performing the functions that it performs, isn't that right, in terms of salary and stock bonuses?

A. Yes.

Q. Currently.

A. Yes.

Q. And part of -- I don't need to get into any specifics about your compensation and I don't mean to, but part of an executive's compensation at your level is, is the award of, of FP&L stock and stock options; isn't that correct?

A. Yes.

Q. And to the extent that an exemplary management increase is awarded for the ROE at FP&L, that increased return on equity at FP&L will translate into an increased return on equity at FPL Group, isn't that correct, all other things being equal?

A. Yeah. From the deposition you'll remember I really hate the "all things being equal." I can't agree with, with the comment. What the Commission will do is it'll set a reasonable ROE. And it's, it's up to us, up to management to run the business in accordance with, with the rules of this Commission, to make sure that we can attain the ROE that's been set by the Commission. There's certainly no assurance that, that the Commission setting an ROE, whatever that might be, that management will actually be able to, to attain it. So -- and I wouldn't agree that necessarily the setting of an ROE would give me some sort of indirect benefit.

Q. Well, if, if the Commission sets an ROE at 10.5 percent and rates are designed to return an annual revenue requirement that reflects that ROE at FP&L versus if the Commission were to set an ROE at 12.5 percent, that difference, all other things being equal, will result in greater earnings at FPL Group; isn't that correct?

A. The, setting the ROE at 12.5 percent?

Q. Versus 10.5 percent.

A. Well, I guess I'm not going to get into the all else being equal. There's a lot of matters that are up for discussion in this rate case, the ROE being one of the items that are up for discussion in this rate case.

If you want to just go through a simple mathematical calculation to prove that if you hold everything else equal, 12.5 percent would give the company higher earnings, that's certainly true. But in my view the 12.5 percent ROE will over the long-term certainly give our customers the benefit of lower bills.

Q. Your testimony is that a 12.5 percent ROE would give customers lower bills than a 10.5 percent ROE?

A. Certainly, over the long-term. There's always, there's always things that you can do in the short-term to reduce or significantly reduce or significantly increase customer bills that, that don't necessarily make sense during the long-term. And in my view a shortsighted conclusion dealing with, in your specific example, ROE that would set what I would think would be an unreasonably low level of return on investment for, for investors has several ramifications that other witnesses, and I can talk about them too, other witnesses have discussed. Over the long-term, if it's more costly for us to raise capital, customer bills will go up.

Q. Your testimony, just so I'm clear, is that -- and we discussed yesterday that 100 basis points of ROE is about $130 million of annual revenue requirement; right?

A. That's correct.

Q. Your testimony is that if this Commission reduced the annual revenue requirement by $260 million, the difference between 10.5 and 12.5, if the Commission reduced the annual revenue requirement by $260 million, customers' bills would go up. That's your testimony?

A. No, that's not what I said.

Q. I think that is. I'm asking you if that's what you said.

A. I did not say that. I said there's always things that you can do in the short-term to reduce or increase customer bills that do not make sense for customers longer term. Reducing an ROE to what I would think would be an unreasonable level will have long-term impacts on our company raising capital and will directly impact customer bills over the long-term. I wasn't talking about customer bills for next year.

Q. We can agree that for the 2010 and 2011 test years, if this Commission were to set an ROE, for example, as Mr. Baudino suggests, at 10.4 versus what Dr. Avera suggests at 12.5, that customer bills would be lower; right?

A. I would agree with that. And I would hope that, that this Commission would not take a short-term view of the best interests for customers, but that it would be a longer term view.

Q. Now getting back to the issue of exemplary management, I think you agreed with me, and you can tell me if you didn't, that, all other things being equal, if this Commission were to award a higher ROE than a lower ROE, that would translate into greater earnings at the FP&L Group level; is that correct?

A. Yes.

Q. All right. And to the extent that that translated into greater earnings, then to the extent that executives hold FP&L Group's stock, that would translate into higher compensation for those executives;

isn't that right?

A. No, not necessarily. The, the total compensation of FPL Group executives isn't just tied to the holdings of FPL Group stock. It's tied to the salary, it's tied to incentive compensation and so on. All of those make up a proportion of, of the compensation to make sure that executives' compensation is tied, you know, to, to investors' interests but also to customer interests.

Ms. Slattery, who is our witness on compensation, will talk about the different parameters of our compensation, many of those parameters that Florida Power & Light have to deal with customer -- for effectiveness and efficiency of, of customer operations.

You're talking about the one piece which is, which is the stock, but that's just one piece of the compensation.

Q. Let me ask you what I think is a yes or no question. Of course you can always provide an explanation. The long-term incentive plan at FP&L Group provides that the higher the ROE that is achieved at FP&L Group, the more likely it is for an executive to be more highly compensated; is that correct?

A. It's -- if you're referring to the -- are you referring to the matrix table?

Q. Yes. Uh-huh.

A. All right. The matrix table only makes up 50 percent of the incentive compensation to be granted to one of the FPL Group executives. The other 50 percent is primarily operating metrics at both Florida Power & Light and at the unregulated subsidiary.

Q. And so was that a yes, no, or I don't know?

A. I, I apologize for not answering yes, no. Could you repeat your question, and I will definitely say, yes, no at the beginning?

Q. Or I don't know. My question was whether or not it was true that, as part of the long-term incentive plan, the matrix that's in place at FP&L Group, the higher the achieved ROE, the greater the likelihood that the executive will receive higher compensation?

MR. ANDERSON: Chairman Carter, this is similar to the earlier questions. Perhaps counsel could indicate what portion of this witness's testimony talks about executive compensation. We've had an expert witness on executive compensation, we have Ms. Slattery on executive compensation. The details with respect to design of plans is beyond the scope of this witness, and we object to further questions along this line. Again, just trying to keep us focused on the issues that this witness is testifying about.

CHAIRMAN CARTER: Let's tighten it up, Mr. Mendiola.

MR. MENDIOLA: But, Mr. Chairman, we're --

CHAIRMAN CARTER: I know you can do it.

MR. MENDIOLA: All right.

CHAIRMAN CARTER: Move on.

BY MR. MENDIOLA:

Q. I think I'm waiting for a yes, no, or I don't know.

A. I don't, I don't think it's -- it's not I don't know. It's maybe, or yes or no. Because it's only -- the matrix table that you're discussing is only 50 percent of the incentive compensation for the executive. And so if there were operational metrics that would not be met at Florida Power & Light Company and would not be met at its, at its unregulated subsidiary, certainly the compensation committee of the board could adjust the, the total payout of the, of the matrix, so that the answer to your question would be no.

Q. All right. Now we were talking about exemplary management and whether that should be an issue that the Commission considers in setting the ROE. That is something you testified to, is it not?

A. Yes.

Q. All right. Now can we agree that, that you in your role as an executive, you will not change any of your efforts to manage the company well based on the ROE that the Commission selects? In other words, you'll work just as hard regardless of the ROE.

A. Yes.

Q. All right. Now let me shift gears a little bit and try to do this quickly. A lot of it will depend on your answers. I want to ask you about some of the automatic recovery clauses. I don't want to go into detail. I think we've talked about it at length with various witnesses.

But you're familiar with the automatic recovery clauses, including the fuel clause, the nuclear construction and preconstruction clause and conservation renewable clause, all of those; right?

A. I am familiar with the clauses. I never refer to them as automatic.

Q. All right. Well, can we agree, and this is going to decide whether this is a five-minute line or a 20-minute line, will you agree with me that without those clauses, investors would require a higher return on their investment in FP&L?

A. Without those clauses and with the same risks that those clauses are trying to reduce, the answer to your question is yes.

Q. All right. So you agree that those clauses do mitigate the risks that the company has with respect, for example, to volatile fuel prices or nuclear construction?

A. Yes. But it's, it's not a simplistic yes or no. You know, it's, it's -- just comparing an entity that has clauses to an entity that doesn't have clauses is not a, not a terrific, not a terrific comparison unless you really know something about the entity. And I think Dr. Avera mentioned this yesterday. I'm not sure. I know that I've discussed it with him.

We do have what I call a nuclear, you know, recovery clause. But we have that because we are doing nuclear uprates, we're doing new nuclear. Investors consider that to be risky. And so I wanted to be careful in my response to you. If we did not have the clause but we still had the risk, investors would require more of a return than what I'm talking about in my direct testimony.

Q. Thank you. That's really my question. I appreciate that.

And just with respect to the nuclear recovery clause, that is a dollar for dollar recovery; isn't that correct?

A. Well, I'm not exactly what, sure what you mean by dollar for dollar.

Q. Can I tell you what I mean?

A. Sure.

Q. That may help us move along.

What I mean is if, if the company spends an amount of money on nuclear preconstruction costs and it's allowed to recover those costs through this nuclear recovery rider from ratepayers, and if it underrecovers those costs, it can recover the shortfall from ratepayers with interest; isn't that correct?

A. Yes. Assuming that all of those costs are prudently incurred. As I'm sure you're aware, we've got to come to this Commission once a year to talk about the costs that we incurred last year and what we recovered, and the costs that we will incur in the following year and how we, you know, we're supposed to recover that. And certainly there are, there are folks out there that, that might want to take exception to, to what we've done or what we will want to do. But we certainly do have the opportunity to recover preconstruction costs on new nuclear dollar for dollar.

Q. And with respect to the nuclear recovery clause, has a single dollar ever been disallowed related to a prudence decision?

A. I don't think so. But this is only the beginning of the second year.

Q. And --

A. I would hope that no, no single dollar is ever disallowed.

Q. And wouldn't you agree that if an investment is considered to be imprudent, it should not be recovered?

A. Could you repeat your question?

Q. I said wouldn't you agree that if this Commission decides that an investment is imprudent, then it shouldn't be recovered?

A. I believe the answer to your question is, is yes. If, if we for some reason incur a cost that the Commission later determines is imprudent, it should not be recovered. However, we do not go out and incur imprudent costs on our own behalf.

Clearly one of the, one of the concerns that, that investors have in this area is the exact annual process that, that we have here in Florida. They are concerned that at some point the, the numbers will get, will get large, Commissioners will change --

MR. MENDIOLA: Mr. Chairman, I'd like to object. My question was whether the witness agreed or disagreed that if the Commission decided that a cost was imprudent, that it should not be recovered. I wasn't asking about what investors think about nuclear investment. That's a different question, and frankly that's one of the reasons why we're still here. I --

CHAIRMAN CARTER: The reason why we're still here is that you went down this line. So you asked a question. He was answering the question. You can finish, you can finish, finish your answer and tighten up your questions. Let's move on.

THE WITNESS: Thank you, Chairman Carter.

One of the things that investors are very concerned about is that costs will be incurred by the company. And although there is a regular mechanism to recover those costs on an annual basis, that in fact future Commissions will find those costs to be imprudent.

BY MR. MENDIOLA:

Q. Well, prudence has been identified as, as a risk that continues to exist with respect to these recovery clauses. But you do agree that if a, if an investment is imprudent, it shouldn't be recovered?

MR. ANDERSON: Objection. Asked and answered.

CHAIRMAN CARTER: He's right. It's been asked and answered. Move on.

MR. MENDIOLA: All right.

BY MR. MENDIOLA:

Q. Let me ask you now about --

MR. MENDIOLA: Let me pass this out to you.

CHAIRMAN CARTER: Okay. Do you need a number?

MR. MENDIOLA: I do, Your Honor.

CHAIRMAN CARTER: Okay. Commissioners, that would be Number 503. 503. Short title?

MR. MENDIOLA: Fitch Ratings 12/22/08.

CHAIRMAN CARTER: Fitch Rating 12/22/08.

(Exhibit 503 marked for identification.)

BY MR. MENDIOLA:

Q. Mr. Pimentel, in your role as Chief Financial Officer --

CHAIRMAN CARTER: Hang on a second. Do you guys have a copy of this? Hang on. Hang on. Hold on. Hold on.

MR. MENDIOLA: I thought Joe started right there. I'm sorry.

CHAIRMAN CARTER: You need Captain McNeill to do it since -- Mr. Moyle was here and Mr. Wright was there, and then Captain McNeill took us to a whole other level. Now we've got Mr. McGlothlin.

MR. MENDIOLA: I don't think that's quite fair to Mr. McGlothlin.

(Pause.)

MR. WRIGHT: Please don't overlook the perfection of Captain McNeill.

CHAIRMAN CARTER: Oh, absolutely. Absolutely. Okay. Mr. Mendiola, you may proceed.

MR. MENDIOLA: Thank you, Mr. Chairman.

BY MR. MENDIOLA:

Q. In your role as Chief Financial Officer you oversee the relationship that the company has with the various rating agencies; isn't that correct?

A. Yes.

Q. And I've handed you a document which is a list of Fitch's ratings of integrated utility companies. Do you see that?

A. Yes.

Q. All right. And do you see where Florida Power & Light is on this document? It's at the very top.

A. It's not at the very top. But I do see it, yes.

Q. All right. Well, when I -- I mean, it's at the fourth from the top or fifth from the top; is that correct?

A. Yes.

Q. All right. And Florida Power & Light is rated A by, by Fitch with a stable outlook?

A. Yes.

Q. And its senior unsecured rating is A plus; is that correct?

A. Yes.

Q. And what is, if you can tell from this document, what is the segment median rating?

A. Triple B.

Q. And what does that mean, segment median rating?

A. It's the -- that's the entire segment for integrated utility companies. They call it a segment and they pick the median of the ranges, I'm sorry, of the ratings, and the median is triple B.

Q. So the median integrated utility company is rated triple B; is that correct?

A. According to this Fitch report, yes.

Q. And now you don't have any specific knowledge, do you, of whether, if the rate increase were rejected by the Commission, whether FP&L would be, its rating would be downgraded by Fitch?

A. I don't, I don't know exactly what the, what the rating agencies would do. But my phone certainly has, has been ringing a lot from the rating agencies over the last three weeks or so. And all of them have, have indicated in the past that the regulatory environment here in Florida is, has been strong and supportive, and, you know, they'd like to understand whether that continues to be the case.

So I don't know exactly what, what they plan to do, if anything, regarding the outcomes of, of this, of this rate case, but it's certainly a concern to them.

Q. You have had telephone discussions with the rating agencies since this case has commenced?

A. Yes, I have.

Q. And none of those agencies have told you that they're putting you on a negative outlook?

A. None of those agencies -- no, they haven't. They would never tell me that.

Q. And --

A. They're -- go ahead.

Q. And none of them have told you that they would downgrade the rating of FP&L if, if the rate case were rejected?

A. No. Rating agencies are not in the habit of, of telling the, the entities they rate exactly what action they would take until they understand what the outcomes of -- whether it's a rate case or whether it's a transaction, whether it's a storm, whatever it is, it's no longer the case that they share with you information as to what their actions are going to be very far in advance of when they take those actions.

Q. And even if, and I'm not suggesting that anybody wants this at all, but even if the Commission were to reject the rate increase and FP&L were to suffer a two-notch downgrade, it would still be above the median rating of integrated utility companies; isn't that correct?

A. Yes. Yes, it would. But that's not, that's not, that's certainly not the way I'd like to run this railroad.

The, the rating, the rating that we have, that the company has worked very long and hard to get to and that this Commission has been very supportive of the regulation and of the company's efforts really throughout Florida for a very long period of time, is the reason that we have an A rating. It's the reason we're able to issue debt at reasonable prices on reasonable terms when we think we need to be out in the market. It's the reason we have a large liquidity facility. It's the reason we have short-term credit ratings where we can access the market even at the worst of times. It's ultimately the reason why we have the employees that we have and customer bills as low as we have them.

So I don't -- you know, I -- yes, you're absolutely right. A, a two-notch downgrade would get us to the, the median, if you will, back at December of

2008. That's not a place I want to be. I hope that's not a place where this Commission wants us to be. And I can certainly tell you that that shouldn't be a place where our customers would want us to be.

Q. Well, actually a two-notch downgrade would get you above the median to triple B plus; isn't that correct?

A. Yes.

Q. And a three-notch downgrade would get you to the median; isn't that correct?

A. Yes. We'd go to, excuse me, to triple B.

Q. All right. Now -- and triple B, by the way, is still investment grade, is it not?

A. Yes, it is.

Q. And I've heard numerous witnesses testify, including yourself, about the, quote, constructive regulatory environment or the, quote, supportive regulatory environment. You've used those words, have you not?

A. Yes.

Q. All right. And does that mean generally that -- does that mean generally that when the company has asked for a rate increase or approval of a rider, that it's been awarded?

A. No. That's not, that's not what it means.

What it means to me -- it may mean different things to, to different people. What it means to me is that this Commission has looked out over the long-term when making conclusions about regulation to, to us and the other electric companies here in Florida and has forsaken short-term conclusions that might imperil a company's financial position over the longer term, has tried to address the risks that we face here in Florida by all the companies, because we have some unique business risks here in Florida that others don't have. Certainly the clauses to deal with our specific risks have been helpful, but the, the environment has, has been helpful.

Q. Now you're not testifying that if the company were to have a two-notch downgrade to triple B plus, that its financial integrity would be imperiled?

A. It absolutely would be imperiled.

Q. It would be imperiled?

A. It absolutely would be imperiled. A two-notch downgrade, the first thing it would do, it would take our short-term commercial paper ratings, which are currently A1, P1, F1, which are the very high of the short-term ratings, and they would immediately downgrade those to A2, P2, F2. A2, P2, F2 paper, those entities were unable to issue commercial paper really through, from September through most of December last year.

The $600 million or so that we have in tax exempt debt that renews on a daily basis, I'm not sure that we would be able to do that with a two-notch downgrade.

The amount of fuel hedging that we do would, you know, we, instead of providing letters of credit on that fuel hedging, we would likely have to provide cash for collateral margins on that hedging.

It, it would be a, in my view, a significant, significant financial implications.

Q. Well, let me ask you this, because -- well, there are dozens of companies that are rated triple B plus all the way down to double B. And Double B is below investment grade, is it not?

A. It is.

Q. And all these companies were in business during the financial crisis of the third and fourth quarter of last year; isn't that correct?

A. Yes.

Q. And did any of them go bankrupt?

A. No, none of them went bankrupt. But several of them had to issue debt close to a 10 percent yield during that time, and that 10 percent yield will directly affect their customer bills. A lot of them couldn't issue commercial paper during that time. And because they couldn't issue commercial paper, a lot of the tax exempt debt that they had available to them got put back. And so now they don't have the favorable financing on that tax exempt commercial paper, tax exempt commercial, I'm sorry, tax exempt debt that they had last year.

So, yeah, they, they made it through the financial crisis, but there are long-term implications for many of those customers because of what some of these companies had to do.

Q. And do you think that it's a possibility that if the Commission were to refuse to grant the rate increase, that FP&L's rating could go as far as triple B minus?

A. I don't know.

Q. All right. Now much of what you testified to in your direct testimony relates to the financial crisis that the country has been in, and that really was at its apex in the third or fourth quarter of last year; is that correct?

A. I would -- it probably was the apex, although certainly the second week of February 2009 through the second week of March of 2009 was also a very significant period for the, for the financial markets.

Q. And that's right about the time that you actually filed your direct testimony; isn't that right? You filed it March 18th, 2009?

A. March 18th, yes.

Q. And you testified -- I'm looking now, sir, at Page 7, Line 7.

A. Of the direct testimony?

Q. Of the direct testimony, yes.

"Is it appropriate for the Commission to consider the status of the current financial markets" is the question. Answer, "It is more than just appropriate. It's imperative that the Commission do so." Do you see that?

A. Yes.

Q. And you would agree with me that we're setting rates for the 2010 and potentially 2011 test years; right?

A. Yes.

Q. And you would also agree with me that the financial markets have, have come back significantly from the brink that they may have been on in the third or fourth quarter of last year or in the spring of this year?

A. I think that's right. Although, you know, it's -- I'm not, I'm not sure I feel the same way as, as others might as to where the financial market is today.

Our credit spreads to issue debt today are still about double what they are on the last five-year average. They're certainly lower than what, what they were or what they would have been if we would have issued debt third and fourth quarter of last year. The credit spreads are still very high compared to, to history.

MR. MENDIOLA: Mr. Chairman, I'm handing out this document. It's a cross-examination exhibit. I don't think I need a number.

CHAIRMAN CARTER: Thank you, Mr. Mendiola. Wait. Hang on a second. Do you guys have it? Hang on a second, Mr. Pimentel. Mr. Mendiola, hang on one second.

(Pause.)

You may proceed.

MR. MENDIOLA: Thank you, Mr. Chairman.

BY MR. MENDIOLA:

Q. Mr. Pimentel, you testified that the markets were struggling still in February and March of this year, and I handed you a document which is a graph of the S&P returns since March 10, 2009, until yesterday, September 16th, 2009. Do you see that?

A. Yes.

Q. And you agree that since that time S&P has returned almost 58 percent; isn't that right? That's at the -- if you look in the top left corner of the box, it says zoom, and then March 10, 2009, to September 16th, up 392.23 points.

A. Yes. I see that's what it says on this, this page.

Q. 57.98 percent?

A. Yes.

Q. All right.

A. What, what this doesn't show is if, if you would, if you would have gone back just a couple more months, it was a pretty big runup in the financial markets from late December until about the, the middle of February. A significant amount of entities went out in the market to issue debt. Everybody thought that --

MR. MENDIOLA: Mr. Chairman, may I object? This, this is an explanation that doesn't attempt to address anything that I asked.

CHAIRMAN CARTER: Okay. Let's do this, boys and girls. Linda, I'm going to give you a break. When we come back, tighten up your questions and tighten up the answers. We'll come back at five after.

(Recess taken.)

Okay. We are back on the record. Mr. Mendiola, you're recognized.

MR. MENDIOLA: Thank you, Mr. Chairman.

BY MR. MENDIOLA:

Q. Mr. Pimentel, we were discussing the return or the directional return of the financial markets back to more normal.

I wanted to ask you a few more questions about that. Do you agree with me that LIBOR rates have come down since the third and fourth quarter of last year?

A. Yes. They've come down from the peak of the third and fourth quarter of last year, yes.

Q. Credit spreads have come down from the peak of the third and fourth quarter of last year?

A. I don't, yeah, I don't know about overall credit spreads, but certainly credit spreads for those entities that are rated within at least a notch of where FPL Group is, and FPL is rated have, have come down.

Q. The VIX has come down?

A. I'm sorry?

Q. The VIX.

A. The VIX, the volatility index?

Q. Yes.

A. Yes. You spoke about that with Dr. Avera yesterday. And, yes, the volatility index has come down from the peak of where it was third and fourth quarter of last year.

Q. Commercial paper markets have returned closer to normal?

A. They certainly have returned closer to normal for us. I, I don't know whether they have returned to pre September 2008 levels for those that, that are rated less than A1/P1, which is what we are rated.

Q. For a time in late 2008 there was a negative yield on the three-month T bill. Do you recall that?

A. Yes, I do.

Q. And there's no longer a negative yield on the three-month T bill; is that correct?

A. That's correct.

Q. All right. And that indicates that there has been a movement back toward a greater acceptance of risk?

A. I think, yes, I would agree with that. I think that's right. The, you know, I'm paid to worry about a lot of things, not just about what I read and see from, from economists. And my concern is that this -- certainly since the middle of March up until now things have gotten a lot better. But as I was trying to say before, from the middle of December through the middle of March, things really looked a lot better -- I'm sorry, through the middle of February things really looked a lot better for, for a lot of people. And from about the middle of February this year, which isn't really that long ago, until about the middle of March of this year is when most of the equity indexes reached their lows and when most of the share prices, at least in our sector, reached their lows.

And so the real question, you're appropriately pointing out that there are many things in the equity market and in the debt market that certainly make us feel a heck of a lot better than, than they did before, but we're still concerned about the longer term. We're concerned about the longer term credit facilities and availability of banks and so on, which I think it was you and I, maybe it was me and one of the other Intervenors, I apologize, talked a little bit about during my deposition.

Q. Now even in the bleakest moments of the financial crisis FP&L, because of the strength of its balance sheet, was able to access the commercial paper markets; isn't that correct?

A. Yes, that's correct. However, not even those with strong financial positions like us were able to, to access the market the same way we were able to access the market before. And by that I mean there's access to the market and then there's access to term in the market. And clearly the term in the market was, was very limited.

Q. Now we discussed regulatory transparency at the beginning of this cross-examination, and you would agree that it's important for the company to have a consistent message to its regulators as it does with its investors; is that correct?

A. Yes.

Q. And it would not be appropriate for the company -- for any company. I don't mean to single out FP&L. But it would not be appropriate for a regulated company to highlight its risk with its regulator for the purpose of achieving a higher ROE, while at the same time understating its risk in its communications with investors for purposes of receiving investments at lower rates. You would agree that that's not appropriate?

A. Can I just rephrase?

Q. Sure.

A. I think your question -- you lost me with the lower rates. I think you asked whether it, you know, it would be appropriate for the company to, to be telling investors the same thing that we're telling this Commission.

Q. Right.

A. And, yes, I would agree with that.

Q. That's really my question. Thank you.

MR. MENDIOLA: Now I have passed out to you an

FP&L investor presentation.

CHAIRMAN CARTER: Commissioners, for the record that will be 504. 504. And the short title, FPL Investor Presentation April 2009.

(Exhibit 504 marked for identification.)

MR. MENDIOLA: Thank you, Mr. Chairman. I think everybody should have a copy of that. If I left anybody off, I'll be happy to give them a copy.

CHAIRMAN CARTER: Okay. You may proceed.

MR. MENDIOLA: Thank you, Mr. Chairman.

BY MR. MENDIOLA:

Q. Mr. Pimentel, Ms. Beilhart works as the Assistant Treasurer at FPL Group; is that right?

A. That's correct.

Q. She's not a witness in this case, is she?

A. No, she's not.

Q. But she prepared many of the discovery responses that you sponsor; isn't that right?

A. Yes.

Q. All right. And you make it part of your practice to communicate with investors from time to time?

A. Yes.

Q. And I've handed you this document, which is an April 2009 presentation to investors. Is this something that you would have reviewed?

A. I don't remember whether, whether I reviewed it. I do not review all presentations that are made by, by our treasurer.

Q. All right. Now if you can turn with me to Bates Page 112972 at the bottom right-hand corner.

A. Yes.

Q. This, first of all, this was a presentation that FPL Group made to a group of investors, is that correct, or potential investors?

A. It says investor presentation on Page 1. I don't recall which presentation this was that Mr. Cutler and Ms. Beilhart made.

Q. All right. At the bottom of that page, 112972, there's a highlighted block. And it states that "Only three companies in the power sector, including FPL Group, have an A or better issuer credit rating." Do you see that?

A. Yes.

Q. And then just above that, the ratings for the FPL Group, Florida Power & Light, and then FPL Group Capital are all stated there. And it looks like Florida Power & Light actually has a slightly better rating from Fitch, Moody's, from Fitch and Moody's than FPL Group; is that correct?

A. Those are the Florida Power & Light first mortgage bonds.

Q. Right.

A. It's different than -- it's not necessarily the same as the, as the Florida Power & Light.

Q. The issuer of credit?

A. Yes.

Q. All right. But at least -- thank you for that clarification. With respect to the first mortgage bonds, there's the AA minus rating from Fitch and a AA3 rating from Moody's; is that correct?

A. Yes.

Q. All right. Now you are the CFO for both FP&L and FPL Group; right?

A. Yes.

Q. And FP&L Group is comprised mainly, setting aside various corporate distinctions, but mainly of the regulated company and then an unregulated company known as NextEra; right?

A. Correct.

Q. And you agree, if you'd turn over to Page 112973 --

A. Yes.

Q. -- that the, at the very first bullet point states that the ratings on FP&L Group reflect the strength of the regulated cash flows from the integrated electric utility, FP&L. Do you see that?

A. Yes.

Q. All right. And that's a statement that you agree with?

A. I'm sorry. That I would agree with that the rating reflects the strength of the regulated cash flows?

Q. Yes.

A. I would agree with that. I would not agree that that is the only thing that is supportive of the rating of FPL Group.

Q. All right. And then there's a statement at the bottom by Fitch that reflects Fitch's view about the, some of the cost recovery clauses that we've discussed. Would you read that, please?

A. Yes. "FPL's ability to recover," excuse me, "all of its fuel and purchased power costs after the very rapid rise in gas prices during 2005 illustrates the supportive character of the PSC." Would you like me to continue?

Q. That's okay. And, and nothing that is at issue in this case, in this base rate case, will change FPL's ability to come in to this Commission and recover its fuel and purchased power cost if there's another rapid increase in, in gas prices; is that correct?

A. No, not, not, certainly not directly.

Q. My question -- and maybe I misstated it. My question was in this base rate case there's not an issue that's put forward that would, that would prevent -- regardless of whether the base rate increase is approved or not approved or whatever, FP&L will still have the ability to come in to this Commission and seek a recovery of its fuel and purchased power cost if there is another rapid rise in fuel costs; isn't that correct?

A. Yes.

Q. All right. Thank you. Now on Bates number 112978, and it looks to me, I don't know this, but it looks to me like there's a new presentation that begins on 112976. I don't know if you can confirm that or not.

A. I'm sorry. You want me to go 978?

Q. Well, I just didn't want you to think that 978 was the same presentation that we were just going over, because I think it might be a different one based on --

A. And where did the new one start?

Q. I think it starts at 112976, but I don't know.

A. Okay. All right.

Q. It doesn't really matter, frankly.

On 978 --

A. Yes.

Q. -- that is a slide that is entitled Florida Power & Light Operates in an Environment with Sound Regulatory Policy. Do you see that?

A. Yes.

Q. And at the very bottom bullet point, second dash, one of the points of regulatory clarity is that revenue adjustments are in place to incorporate preapproved generation build; right?

A. Yes.

Q. All right.

A. Second dash up from the top?

Q. Yes. And is that, if you know, a, a reference to the GBRA that was in place in the prior settlement?

A. Yes.

Q. And could it also be a reference to the nuclear recovery clause?

A. It, it could. I'm not, I'm actually not sure whether for regulatory purposes we treat that as, as revenue or as a reduction of the, of the capital since it's the recovery of the preconstruction costs.

Q. Fair enough. Could it also be a reference to the solar generation investment that the company is making?

A. Yes, I think so.

Q. Now you've testified in your direct testimony about the capital expense budget for FP&L; is that correct?

A. Yes.

Q. If you'd turn with me to Page 112981.

A. Yes.

Q. There is a description of FP&L generation expansion. Do you see that?

A. Yes.

Q. That includes West County 1 and 2, the solar projects, West County 3, nuclear uprates, Cape Canaveral and Riviera modernization; right?

A. Yes.

Q. And that's a total of 6.9 billion --

A. Yes.

Q. -- in CAPEX? Is that 6.9 billion included in part of the 16 billion that you reference in your direct testimony, if you know?

A. Yes.

Q. All right. And how much of that 6.9 billion will be recovered through the generation clauses that we just discussed, either the existing GBRA or the nuclear preconstruction or, or the solar rider? In other words, of the 6.9 billion, how much will be recovered through riders? That's my question to you, if you know.

A. Well, in 2010, certainly we will not recover

Canaveral and Riviera or West County 3 or 1 and 2, because 1 and 2 are part of, are part of our rate base in 2010. I'm sorry. I'm having a little trouble with your, with your question.

Q. Let me -- fair enough. Let me be more specific, Mr. Pimentel. West County 1 was recovered through GBRA; is that correct?

A. West County 1, the first year revenue requirements will be recovered through the GBRA mechanism.

Q. Uh-huh.

A. However, in 2010 --

Q. It moves into base rates.

A. Right.

Q. I understand. But at least in terms of the initial recovery.

A. Of the initial, is it in GBR -- does it qualify for G -- inclusion in GBRA --

Q. Yes, sir.

A. -- in 2009? Yes. Just for 2009.

Q. So that's West County 1. West County 2, same thing?

A. Yes, for about a month in 2009.

Q. The solar projects will be recovered through the solar rider?

A. They will, but it's not the same recovery as the, as the nuclear. But if your question is will they be recovered under the, you know, the --

Q. Recovery clause?

A. Yes.

Q. All right. Thank you. West County 3, GBRA?

A. Yes. West County 3 is in, as we've discussed before, and other witnesses have discussed, it is in the 2011 additional GBRA revenue --

Q. Which is being requested in this case.

A. Yes.

Q. And nuclear uprates through the nuclear recovery clause?

A. Yes.

Q. All right. And then that leaves the Cape Canaveral and Riviera, and those are being sought to be -- those are not being recovered through one of the clauses, is that correct, or are they?

A. Well, again, the way the GBRA works is when the plant actually gets completed, the first year revenue requirements are, are included as part of base rates. So they're not in either 2010 or 2011. And just to --

Q. Let me, let me -- I understand your distinction, and let me see if I can, if I can make the question a little more clear.

The GBRA allows generation to be recovered in base rates without the need for a full rate case; right?

A. That's correct.

Q. All right. And so, for example, West County 1 and West County 2 were recovered through the GBRA, put into base rates without the need for a full rate case.

A. No. West County 1 is built, so, yes, its first year revenue requirements are now included in base rates. West County 2 is not yet completed, likely will not be completed until December of 2009. So they, no, they are not part of base rates at this point. And as soon as you flip the calendar to 2010, GBRA, I mean, they go into, into rate base.

Q. That's really -- I think we're saying the same thing. That is, absent the GBRA, when a company makes a major capital investment in a new generation plant, the only way that it is recovered through base rates is in the context of a base rate case; isn't that correct?

A. Yes.

Q. Without a GBRA.

A. Yes.

Q. All right. But because there has been a GBRA as a result of the 2005 settlement, regardless of what happens in this case right now, the docket that we're in right now, West County 1 and 2 will be recovered in base rates because of the GBRA that had been previously negotiated; isn't that correct?

MR. ANDERSON: I'd object, because I think that question is misleading. Because the fact of the matter is whatever ultimately goes in a rate base, the revenue requirement will be a function of the cost of capital that comes out of this case. So to treat this as if it's different or separate is, is not right at all. And unless those predicate facts are outlined in the questions, this is likely to mislead.

MR. MENDIOLA: Let me rephrase, Mr. Chair.

CHAIRMAN CARTER: Okay.

MR. MENDIOLA: I really am just trying to get to the bottom of this. I'm not -- I don't want to mislead anyone.

BY MR. MENDIOLA:

Q. West County 1 was completed in what year?

A. This year, in August.

Q. 2009?

A. Yes.

Q. And West County 1 first year revenue requirement was being recovered through the GBRA.

A. Correct. Yes.

Q. That was the result of the 2005 settlement;

right?

A. Yes.

Q. All right. And but for the GBRA that was a result of the 2005 settlement, West County 1 would not have been recovered outside of a rate case.

A. Correct.

Q. All right. So my, my, I think we're agreeing that West County 1, West County 2, well, West County 1 is being recovered first year revenue requirements through the GBRA. West County 2 will be through the GBRA recovered.

A. Until it gets into rate base.

Q. Until it gets into rate base.

A. As part of this rate proceeding.

Q. But we don't need to wait for a rate case to begin to recover on West County 2; right?

A. That's right.

Q. All right. Solar projects recovered through the solar rider. West County 3 is part of the GBRA request in this case.

A. Yes.

Q. And nuclear uprates to the nuclear recovery rider.

A. Yes.

Q. All right. And, and that is approximately

4 billion or so of generation expansion.

A. Yes, that's right. But this, this whole question started with the, with the $16 billion that's, that's in my testimony. The $16 billion that's in my testimony is a, is a cash flow number. I mean, that's how much we're going to need to build not only the generation projects that you see here, but the, you know, the strengthening and hardening of the transmission distribution system and, and so on. And simply because a, a generation plant may be under the GBRA mechanism, that doesn't mean we don't have to actually go out and raise the debt and equity to fund the project.

Q. Sure.

A. I just want to make that distinction.

Q. I appreciate that clarification. And so just to tie this all up and then we can move on, just take, for example, the three solar projects and the nuclear uprates, those total about 2.4 or 2.3 billion in generation expansion, right, just those two items?

A. The three solar projects and the --

Q. Nuclear uprates.

A. Right. 2.5 billion.

Q. 2.5 billion. And those two projects are going to be recovered through riders regardless of whatever happens in this rate case; right?

MR. ANDERSON: I'd object because that's not quite right either. Just to be very specific, it's a mischaracter, I'm sorry, mischaracterization of Florida law. The way it works is nuclear uprates, we recover the carrying costs on construction. And then as the components go into service, as the Commission knows, there's a base rate adjustment which takes into account the 12-month expected costs, which includes the cost of capital which will come out of this case. So it's, it's not right to say that these things are clause-recovered, so to speak. Similarly, the statement --

MR. MENDIOLA: I'm not sure that's actually right, Mr. Chairman.

MR. ANDERSON: No. I'm the nuclear cost recovery guy for FPL, so I'm pretty knowledgeable.

MR. MENDIOLA: Okay.

MR. ANDERSON: And there is no solar clause. That's a different mechanism also. And, again, the inputs for that come, come, will come out of this case as well. So, you know, precision is important, and I've let a number of the questions go. But I want to make the record very clear that, and object to the characterization of these as clause recovery, because that's not right.

CHAIRMAN CARTER: Mr. Mendiola, to his objection.

MR. MENDIOLA: Let's, can I -- the -- can I ask more specific questions and maybe take that question off the table that was objected to? Because I want to get to the bottom of this. I think we might be talking past each other.

CHAIRMAN CARTER: I think you may be. Let's proceed. Let's --

MR. MENDIOLA: And I'll wrap this up quickly, Mr. Chairman.

BY MR. MENDIOLA:

Q. Mr. Pimentel, first of all, in these, in the nuclear recovery clause, for example, that, that clause allows for the incremental cost of capital; isn't that correct?

A. Yes.

Q. All right. So it's not necessarily the cost of capital that would result from this case, it's the incremental cost of capital; isn't that right?

A. Yes. But that has some -- that, that incremental cost of capital will be maybe different depending on the results of this case.

Q. All right. Well --

A. Which I think is what Mr. Anderson was trying to say.

Q. My point is that you agree it's the incremental cost of capital, which could be different than the cost of capital that comes out of this case?

A. Yes.

Q. I'm afraid -- thank you.

Okay. And then furthermore, the nuclear recovery clause and the solar or the conservation recovery clause or renewable, I get those two messed up, those are not at issue in this case; right? The nuclear recovery clause is statutory; isn't that correct?

A. Yes. It's recovered through the capacity clause, if we --

Q. All right. All right. Fair enough. Let's move on. Now --

MS. BRADLEY: Mr. Chairman, since counsel took a breath, is --

CHAIRMAN CARTER: Yes, ma'am, Ms. Bradley.

MS. BRADLEY: I would move to strike Mr. Anderson's testimony -- as he indicated at the end his objection was to characterization. But all the other comments and him being an expert in this area and all of that, I would move to strike that because I don't think it's appropriate.

CHAIRMAN CARTER: We're beyond that. I allowed Mr. Mendiola to -- I think some of the times, a lot of time the lawyers are doing more testifying than they are asking questions, so --

MR. MENDIOLA: Mr. Chairman, I was going to ask to cross-examine Mr. Anderson.

CHAIRMAN CARTER: We're way beyond that by now.

Okay. Mr. Mendiola, you may continue.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. All right. Turning now to Bates Page 113002, Mr. Pimentel. Do you see that?

A. 113002.

Q. Yes. FP&L has reported to the investment community that it is -- at the very top, first bullet point -- the best utility franchise in the nation. Do you see that?

A. Yes.

Q. All right. And it has told the investment community that there are opportunities to deploy capital at fair rates of return; isn't that right?

A. Yes.

Q. And that's a statement that FP&L made without regard to the outcome of this rate case; right?

A. What do you mean, without the outcome of this rate case?

Q. Well, in other words, when FP&L was telling the investment community that it could deploy capital at fair rates of return, it was saying at fair rates of return at the time the statement was made, not taking into account whatever result may result from this rate case.

A. No, I don't, I don't think that's true. Just the -- I haven't had a chance to flip through this entire presentation, but there's a number of things in here that look familiar to me from, from presentations that I've actually done in the, in the past. To get back to that chart that we were just on, which, which is Page 14 or 112, I think that's 981, we put this, I put this, this chart together to use in previous presentations. And the important part of this chart to me is that every single one of the projects on here, this company has been in front of this --

MR. MENDIOLA: Your Honor, I'd like to object. I'm not ask -- I moved on from that chart.

THE WITNESS: Well, I can't, I can't answer just half of your question.

CHAIRMAN CARTER: Okay. Hold it. Hold it. Hold it.

MR. MENDIOLA: That's a line of question that's closed.

CHAIRMAN CARTER: Hang on.

MR. MENDIOLA: I'm happy to go back to it I guess and ask some more questions, if that's necessary.

CHAIRMAN CARTER: I'm not happy to go back to it. Let's move on.

MR. MENDIOLA: All right. Well, I was asking the witness about a statement that's made on Page, let's see here --

CHAIRMAN CARTER: You're on 113 --

BY MR. MENDIOLA:

Q. 113002. Are you there, sir?

A. I am.

Q. All right. FP&L reported to the investment community that it had opportunities to deploy capital at fair rates of return; isn't that correct?

A. That's correct.

Q. All right. Thank you.

A. And the reason that we did that was because that $7 billion matches the generation that we've been in front of this Commission in the past, asked for a need approval, we've received that need approval. Our expectation is that this Commission will grant us the right regulatory environment to be able to go out and raise that capital to build that generation that has previously been approved. And that -- your reference there to a fair rate of return is our expectations of what happens in this rate case and in future cases where we're in front of this Commission.

Q. Okay. But what you didn't say there was if the Commission grants us our full rate request, then you can deploy capital at a fair rate of return; right?

A. I didn't say that where?

Q. On that slide.

A. No. Those words are not on this slide.

Q. All right. Thank you.

MR. MENDIOLA: Now let me see if my colleague here could help me by passing out another document.

CHAIRMAN CARTER: You're doing better, Mr. McGlothlin. You're doing much better.

For the record, Commissioners, that will be Number 505.

MR. MENDIOLA: Thank you, sir.

CHAIRMAN CARTER: Short title?

MR. MENDIOLA: Let's see. I don't think I put one on here. How about -- well, let's see. FPL Response to FRF Interrogatory Number 20. Is that too long?

CHAIRMAN CARTER: Okay. We'll go with that.

MR. MENDIOLA: FPL Response to FRF Second

Interrogatory Number 20.

CHAIRMAN CARTER: To FRF second Interrogatory Number 20.

Okay. It's on the bottom, Commissioners, right where it says interrogatories, we'll use that title.

(Exhibit 505 marked for identification.)

Do you guys have it? Do y'all have it?

MR. WRIGHT: No.

MR. MENDIOLA: He's making the rounds, Mr. Chair.

CHAIRMAN CARTER: Make sure you get one to Captain McNeill, Mr. McGlothlin.

Okay. You may proceed.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. Mr. Pimentel, in your role as CFO, you, we discussed you have relationships with investors. And you also have relationships with the credit rating agencies; is that correct?

A. Yes.

Q. All right. And those are Standard & Poor's, Moody's and Fitch?

A. Yes.

Q. And part of the credit rating business is when a business wants to be rated, when it wants its credit to be rated, it has to pay for the rating; right?

A. Yes.

Q. All right. And this interrogatory simply describes the amounts of money that FP&L has paid to its credit rating agencies; isn't that correct?

A. Yes.

Q. All right. And so, for example, S&P received a total of $258,000 in 2009 for both its annual fees and its subscription to, FP&L's subscription to S&P's research; is that correct?

A. Yes.

Q. All right. And then 131,000 was paid to Moody's.

A. Yes.

Q. And 58,000 was paid to Fitch.

A. Yes.

Q. All right. And it looks to me like from '06 to '09 the amount paid to S&P has increased; is that correct?

A. Yes.

Q. While the amount paid to Moody's has decreased.

A. Yes.

Q. And the amount paid to Fitch has been about, with the, with the exception of 2007, it's been relatively stable.

A. Yes.

Q. All right. Is there any reason for those relationships, Moody's -- I mean, S&P being paid more over time and Moody's being paid less?

A. Not that I'm aware of.

Q. All right.

A. They may have changed their fee structure.

Q. Okay. And the reports that come out of these agencies are some of the reports that you relied upon in the preparation of your testimony and that also Dr. Avera relied upon in the preparation of his testimony; is that correct?

A. Yes.

Q. All right.

CHAIRMAN CARTER: Do you have another one?

MR. MENDIOLA: Yes.

CHAIRMAN CARTER: Okay. Your number will be 506. Short title?

MR. MENDIOLA: This is going to be S&P Ratings Direct 1/17/08.

CHAIRMAN CARTER: 1/17/08?

MR. MENDIOLA: Uh-huh.

(Exhibit 506 marked for identification.)

CHAIRMAN CARTER: Just hang on for one second. You may proceed.

MR. MENDIOLA: Thank you, Mr. Chair.

BY MR. MENDIOLA:

Q. Mr. Pimentel, my questions are going to go to the issue of whether you have an opinion of whether the regulated portion of FPL Group is more risky or less risky than the unregulated portion of FPL Group. Do you have an opinion about that?

A. Well, I, my view is that the unregulated portion of, of FPL Group is certainly somewhat more risky in certain terms and a lot less risky in other terms. So it depends on, you know, specifically what we want to focus in on.

But I believe even the rating agencies in the past have indicated that they appreciate the diversification away from, from Florida and they appreciate the diversification in the generation assets and the regulatory, the regulatory risk. But if you're talking about something that's, that's more specific, we can get down to that.

Q. Well, in terms of business risk, do you have an opinion about whether FP&L Group is less risky or more risky than NextEra? I'm sorry. Not FPL Group, FP&L, from a business risk perspective.

A. I think they're probably -- my view would be that they're, that they're rather close. You know, one, some have more pros than the other but they're relatively close. In business risk, clearly there are things that, the type of fuel you use, the type of generation you have, the type of regulatory environment that you're in. I mean, it's really everything outside of the financial metrics if you use an S&P methodology. And I can certainly see that, that NextEra has, on a number of those fronts, less, less business risk.

Q. Fair enough. I just wanted to get your opinion. Your opinion, to summarize, is that they're, NextEra and FP&L are comparable in terms of business risk.

A. I think overall in the aggregate they're, they're pretty close.

Q. All right. Now I'm not going to go into a lot of detail on these. I just wanted to get them into the record. But if you can turn with me to Bates 113273.

A. Yes.

Q. Again, this is S&P's statement at the top under Rationale, that the ratings on FPL Group reflect the strength of the regulated cash flows from the integrated electric utility FP&L; do you see that?

A. Yes.

Q. All right. And then under the outlook, could you read that second sentence that begins, "The rating could be pressured, if."

A. "The rating could be pressured if growth in the unregulated portfolio increases the consolidated company's business risk, the forecast becomes more dependent on earnings growth at FPL Energy or the projected cash flow is insufficient to maintain ratings in line with our expectation." That sentence?

Q. Yes. Thank you. And so you agree that from S&P's perspective, if, if the unregulated portfolio increases, then that could increase the FPL Group's business risk?

A. Well, I agree that's what it says on here. The rating agencies are actually required to indicate what could, what could affect their ratings either upwards or downwards. And so as you'll see above on that, on that same page under Weaknesses, they do talk about that sentence that I just read, that the other weakness is dependent on natural gas to generate electricity, which is a specific Florida Power & Light risk.

Q. Right. And those natural gas costs are recovered through the fuel clause; right?

A. The costs are recovered through the fuel clause. This isn't just an issue about cost. It's also an issue about supply. And supply is pretty constrained coming into, into Florida, and that concerns the rating agencies a great deal. But in many cases the fact that, that FPL can have weaknesses and NextEra can have weaknesses are highlighted in the same sentence.

MR. MENDIOLA: All right. I'd like to pass out another one.

CHAIRMAN CARTER: Number 507. Short title?

MR. MENDIOLA: S&P Ratings Direct 2/12/09.

CHAIRMAN CARTER: 2/12/09? 507.

MR. MENDIOLA: You said 507, sir?

CHAIRMAN CARTER: 507. Yes, I did.

(Exhibit 507 marked for identification.)

You may proceed.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. You agree with me, and maybe we can save some time by just agreeing to this, that the ratings of FPL, I'm sorry, of FP&L are based on the consolidated credit profile of the FPL Group.

A. Yes, they are, for S&P. That's what S&P does differently than the other agencies.

Q. So S&P looks at, for FP&L's rating, it looks at the whole group, FPL Group?

A. Yes.

Q. All right. And then let me read this sentence. This is the second sentence in the second paragraph. "Business risk is anchored on the company's core electric utility operations in Florida."

A. I'm sorry, Mr. Mendiola. Did you say second sentence, second paragraph?

Q. Second sentence, second paragraph, second page.

A. Oh, second page.

Q. Yes. Under rationale. Bates 036458.

A. My second sentence in the second paragraph begins, "Business risk is portrayed."

Q. Oh, I'm sorry. This is the third sentence. The third sentence. "Business risk is anchored."

A. Yes. Okay.

Q. All right. Thank you for pointing that out.

"Business risk is anchored on the company's core electric utility operations in Florida, which exhibit strength in almost every area of analysis. The service territory is healthy and growing, the customer mix is mostly residential and commercial, the regulatory environment supports credit quality, and regulatory risk is well managed, costs and rates are solid, and reliability and customer satisfaction are high."

Did I read that correctly?

A. Yes.

Q. All right. And that is from February of this year; is that correct?

A. Yeah. But there's -- yes, it is. But there's, there's also points to this rating that aren't as rosy as what you just read. Including, "However, large and growing reliance on natural gas, a fuel utility generation could over time turn from an advantage to a weakness if gas prices continue to fluctuate and trend up. Utility managers will be challenged to keep all constituents, customers, regulators and investors contented in a future that could feature higher commodity costs, accelerated capital spending, greater demands for cleaner energy and possibly slower customer growth."

And if I just might add, maybe there's other questions you'd like to ask me on this, towards the bottom of that same page, it says, "The financial profile of FPL on which all ratings are based is characterized by very healthy credit metrics, adequate liquidity, and management and regulatory commitment to credit quality that supports ratings."

Q. Would you agree that that's a long way of saying that FP&L is a healthy company?

A. I don't know whether it's a long way of saying that, but I think what S&P is trying to say is that based on what it's seen in the past and that those things that I just pointed out and I read are important to the rating.

Q. Thank you.

MR. MENDIOLA: Let me pass out another one, Mr. Chair.

CHAIRMAN CARTER: Number 508. Short title?

MR. MENDIOLA: Fitch Ratings 2/12/08.

CHAIRMAN CARTER: Thank you. You may proceed.

MR. MENDIOLA: Sir, what was the number?

CHAIRMAN CARTER: 508.

MR. MENDIOLA: Thank you.

(Exhibit 508 marked for identification.)

BY MR. MENDIOLA:

Q. And with this one, Mr. Pimentel, I'm going to move slightly into a new line of cross regarding capital structure. But before I do that, could you read the second bullet point under Rating Rationale on Bates 036491?

A. "The ratings also benefit from regulatory policies and procedures in Florida that generally minimize regulatory lag and permits reasonably timely recovery of fuel and purchased power expense and investments in fixed assets."

Q. All right. Now one of the issues that has seem to vex this case more than most I've seen is the issue of capital structure and how capital structure is characterized. And in your rebuttal testimony you actually have four different ways of viewing the capital structure; isn't that correct?

A. In my, in my rebuttal testimony I put together an exhibit to, just kind of to help clarify the numbers that, that we were using and that some of the Intervenor witnesses were using. Is that what you're referring to?

Q. Yes. And there are four different ways of -- your exhibit illustrates four different ways of viewing the capital structure; isn't that right?

A. I don't, I don't know because I don't see it as four different ways of viewing the capital structure. It's the same capital structure. It really just depends on what, what you're comparing it to, whether you're going to the GAAP financial statements, whether you're looking at the regulatory capital structure that we use to put rates together or whether you're doing something else.

Q. It depends on how you look at it; right? Whether you look at GAAP or whether you look at investor-supplied capital or whether you look at --

A. But it's the same capital, it's the same capital structure. It just has different percentages based on whether you, you actually make some Commission-required adjustments or you don't.

Q. Well, this is why -- I'm going to ask you some questions about it. Let's first of all turn to your direct testimony at Page 6, Line 13 to begin with. There you ask the Commission to, number one, maintain FPL's current 55.8 adjusted equity ratio. Do you see that?

A. Yes.

Q. All right. So you're asking there, if I understand your testimony correctly, the 55.8 is the adjusted equity ratio; right?

A. I think that's, I think that's -- not I think. That's what I call it in my testimony. It is the actual equity that we have in the business.

Q. Well, I'm not asking about the dollars of equity. I'm asking about the percentage. Okay? And you say 55.8 adjusted equity ratio, and my question to you is that is an adjusted equity ratio. That's your word; right?

A. It is my word.

Q. Okay.

A. And I'll, what I'm trying to clarify is that

that 55.8 percent adjusted equity ratio encompasses the actual amount of equity that we have in the business.

Q. Okay. And I'm, my question is going to focus on what you have in your testimony, which is the 55.8 percent of -- percent is a relational concept, right. That's a percent of something; right?

A. Yes.

Q. All right. And so I think you want to answer my question with respect to actual dollars. I'm not asking about actual dollars. I'm asking about what you have in your testimony, which is 55.8 percent. That percentage is an adjusted equity ratio; correct?

A. Okay.

Q. No. I'm just asking if that's correct.

A. Well, I, I explained that the actual equity that we have in the business is what, when you do the calculation, comes up to 55.8 percent.

MR. MENDIOLA: Well, can I have a yes, no, or I don't know with an explanation, Mr. Chair?

CHAIRMAN CARTER: That would be helpful.

THE WITNESS: What was the question?

BY MR. MENDIOLA:

Q. Is 55.8 percent the adjusted equity ratio, as you testify in your testimony?

A. Yes.

Q. All right. Now moving to Page 30 at Line 12 of your direct testimony, we discussed earlier the need for regulatory transparency, and I asked you whether you thought it was important for the request that's made of the Commission to be clear. I don't really recall your answer, but my, my question is whether this is clear. At Page 30, Line 12, "I recommend use of FPL's actual adjusted equity ratio of 55.8." Do you see that?

A. Yes.

Q. All right. Doesn't that sound like double talk, "actual adjusted"?

A. No.

Q. Well, if something is adjusted, how can it be actual?

A. It is the actual amount of equity that we have in the business.

Q. Well, my actual weight is 175 but my actual adjusted weight might be 160. How can they be the same, actual and adjusted?

A. I'm not talking about your weight. I'm talking about the amount of equity that we have in the business.

Q. Well, if something is what it is, 55.8, but you adjust it, it's no longer actual; would you agree with that?

A. No. I'm not going to get into the words.

Q. Well, these are your words though, sir.

A. That is the actual amount of equity that we have in the business. The actual amount of equity that we have in the business equals 55.8 percent of our capital structure after you go through several Commission-required adjustments to our capital structure. All right.

Q. Okay. Fair enough.

A. And so the reason it says adjusted is there's a number of Commission-required adjustments that have to be made. But it is the actual amount of equity that we have in the business.

Q. So the 55-point -- this will be my final question on this, if you answer it correctly. The 55.8 percent is the actual equity ratio after adjustments are made.

A. After the Commission-required adjustments are made, yes.

Q. All right. So before the adjustments are made, there's a different equity ratio.

A. Yes.

Q. All right. Fair enough.

Now let's go to your rebuttal testimony at Exhibit AP-10. Let me know when you're there.

A. Yes.

Q. All right. Now first of all, elementary, equity is more expensive than debt; correct?

A. Generally, yes.

Q. All right. And --

A. Equity investors require a higher, higher return than debt holders.

Q. Okay. And so the -- and you would agree with what Dr. Avera said, that there's an optimal range of, of debt or of equity in a given capital structure.

A. I would agree there's an, there's an optimal range. That optimal range has been moving up the credit spectrum now for the last nine months or so. But there's a, there's a range that would be optimal.

Q. And if, for example, a given capital structure has greater than the optimal amount of equity, then it could be that that company is paying too much for its capital compared to if the equity were within the optimal ranges; would you agree with that?

A. I'm assuming this is a theoretical.

Q. Yes.

A. And your question is if, if an entity holds too much equity?

Q. In the capital structure.

A. And is outside this theoretical optimal range?

Q. Right.

A. Would its weighted average cost of capital be higher than what it could be; is that --

Q. Yes. That's correct.

A. Yes. I would answer yes.

Q. And so the endeavor to bring the theoretical company into its optimal range of equity in the capital structure is an endeavor to bring the overall weighted average cost of capital to its optimal cost; would you agree with that?

A. Try again.

Q. All right. If -- let's just back up a little bit. This Commission, one of the decisions that it may make is the amount of equity, the percentage of equity to allow FP&L to maintain in its capital structure; isn't that right?

A. Yes.

Q. All right. And if, if, speaking hypothetically, if the Commission were to allow too much equity, that is, an amount of equity above the optimal range, then the company's cost of capital would be above the optimal level, too high; would you agree with that hypothetically?

A. Yes.

Q. All right. And, and similarly, if the

Commission were to award a, an amount of equity that was below the optimal range, too little equity in the capital structure, then the company could have trouble raising sufficient capital to fund its capital expenditure projects hypothetically; is that correct?

A. Yes.

Q. All right. And so the effort that we're going through is to try to figure out what -- this is not hypothetical now and I'm asking you to agree with this. One of the efforts that we're going through in this rate case is to determine a proper amount of equity in FP&L's capital structure. Do you agree with that?

A. Yes.

Q. All right. And now turning specifically to your Exhibit AP-10 of your rebuttal testimony, these are the four -- I don't want to get into a war of words, the four ways that you have delineated the capital structure; would you agree with that?

A. Yes.

Q. All right. And one of the things that we kind of discussed earlier is if you look at, at Columns 3 and 4, Regulatory Investor Sources and Test Year Capitalization. Are you with me?

A. Yes.

Q. All right. The common equity, 59.6 and 55.8, those are two different percentages, but they represent the same amount of equity dollars; is that correct?

A. Yes.

Q. All right. And so, so the reason that the percentages are different while the dollars are the same is because the denominator is different; right?

A. Yes.

Q. All right. So, in other words, going back to sixth grade math, a percentage is top divided by bottom; right?

A. Yes.

Q. All right. And let me just apologize for the elementary math, but this is going to help me when I write my brief in creating a record. So, so if the top, the numerator, is the amount of equity dollars, but the bottom is different, the denominator, when we do top divided by bottom we're going to get different percentages; isn't that correct?

A. Yes.

Q. Now the difference in the denominators between the 59.6 and the 55.8 is the amount of imputed debt that the company has added that relates to the purchased power agreements; isn't that correct?

A. Yes.

Q. All right. Now -- and so if the Commission were to agree that imputed debt were proper to add to the denominator, then the actual adjusted equity ratio would be 55.8; correct?

A. Correct.

Q. If the Commission were to disagree and exclude the imputed debt related to the purchased power agreements, then the actual adjusted equity -- actual -- well, then the equity ratio would be 59.6 percent; correct?

A. Assuming that, assuming that we would not --

Q. Impute that.

A. Right. Impute, impute the debt. I think that's what you said. Is that what you said?

Q. Thank you. That is what I said, yes. And you -- I'm sorry. I think I clouded the record.

If the Commission were to agree to exclude imputed debt related to purchased power agreements from the denominator, the equity ratio would be 59.6 percent.

A. Assuming that the, assuming that that's all that happened, yes. In other words, the equity would not be distributed out of the business --

Q. Correct.

A. -- because it's no longer needed to support a PPA obligation.

Q. Well, and thank you for that clarification.

Because that's in fact what Mr. Baudino recommends, is that correct, that some equity be, be distributed out of the business to bring the equity ratio back down or to bring it down if the PPAs are excluded? Let me, let me strike that question and start over. In fact, let me move on and then we'll get to that question. Okay?

Now the, so the issue that we're going to be discussing is, is whether or not it's proper for the Commission in your opinion or in the opinion of the rating agencies to include imputed debt related to PPAs. All right. That's where I'm going with this. S&P, which we've discussed, includes imputed debt related to PPAs in the capital structure; isn't that right?

A. Yes.

Q. And that's why it's called the S&P methodology; right?

A. I don't think I've referred to it as the S&P methodology. Maybe somebody has.

Q. All right.

A. As I've explained it in, in my testimony, the S&P is a, is a nice way to get to a number that a bunch of folks can kind of look at and say, yeah, that appears, that appears right. But if you, if you talk to, if you talk to investors, investors are always concerned about long-term obligations that are included back in the footnotes and aren't included in the balance sheet, and investors take those obligations into account in one form or another.

S&P happens in this case to provide a formulaic approach, if you will, to take those long-term obligations that aren't included on your balance sheet and provide an adjustment. But it's a, it's an investor issue. It's, I wouldn't just say it's, it's S&P doing it on, on their own.

Q. All right. Well, S&P has a rating methodology, and as part of that methodology S&P imputes debt related to PPAs into the capital structure; isn't that correct?

A. Yes, they do.

Q. All right. And the way that the company has proposed to add debt to the capital structure is consistent with the way S&P method does it; is that correct?

A. The -- right. Yes. For the last over ten years the company's capital structure has been based on those power purchase agreement obligations consistent with an S&P methodology being included in the capital structure of the company, and that's why the company has maintained a capital structure over, close to the fourth column in here, of 55.8 percent. I mean, that equity is already in the business supporting the PPA obligations.

Q. Now when you recommended that the, that adjustment be made in the MFRs in this case, that is the adjustment to include imputed debt related to PPAs, you didn't conduct an individual analysis of each PPA to determine its term or whether the prices were above or below market or whether they were marked to market; isn't that correct?

A. That's correct.

Q. All right. So, for example, if, if, if a PPA has a capacity price and an energy price that's required that is below the current market, investors could view that as a financial benefit to the company; isn't that right?

A. Yes. Any, any long-term obligation that the company would have above market or below market investors could view as a, as a positive to the equity, as a negative to the equity, or may, or may disregard it because it is what it is and it's sunk.

Q. All right. So an investor may look at each individual PPA and say this PPA requires capacity payments that are above market and energy payments that are above market, therefore it's a negative, or this PPA requires capacity payments below market and energy payments below market, therefore it's a positive; right?

A. Yes, Mr. Mendiola. Theoretically they could require that. Practically the energy prices of power purchase agreements are right around market because they are index-based. And because we're not in a deflationary environment, capacity payments and the capacity payments actually reimburse the builder of the power plant for the plant, you would expect those capacity payments to, to go up. So theoretically you're correct. Practically I'm not --

Q. And you didn't look at each of the individual PPAs to determine whether the energy payments are based on a certain heat rate or certain index of gas at a certain place like the Henry Hub, you just didn't look at the individual PPAs to determine --

A. I did not. Personally I did not.

Q. Now Fitch and Moody's are the other two rating agencies, and they do not impute debt for FP&L's PPAs; isn't that correct?

A. I believe it is, it is correct for one of them. In other words, in other words, I think it is, I believe it is clear for one of them, and I don't remember exactly which one at this point. And it is unclear for the other one whether they, whether they do or not.

Q. Well, let's go through this. If you can turn with me in the Exhibit 508 that has just been handed to you and look with me at Bates number FPL 036495, there's a paragraph there called Purchased Power. Do you see that?

A. Yes.

Q. All right. And the punch line here is the very last sentence that says, "Fitch has not capitalized any portion of the power purchase agreements and treats their ongoing costs as an operating expense." Do you see that?

A. I do.

Q. Would you go ahead and just read the whole paragraph in there so we could see why Fitch does that?

A. The whole purchased power paragraph?

Q. Please, yes.

A. "Committed contractual expenditures for purchased power set out in the table FP&L contractual commitments above. The general approach Fitch uses in considering purchased power obligations is to assess the risk associated with the purchased power obligation. To the extent that such power is economically justified in quantity and relative to the prevailing market price or is purchased by a rate-regulated utility with a strong regulatory mechanism to recover the costs from consumers, the presumption is that such contracts are not dead equivalents. In the case of FP&L, this presumption is bolstered by the history of recovery from" -- I'm sorry -- "history of recovery of fuel costs under the FPSC policies and procedures. Fitch does not capitalize any portion of the power purchase agreements and treats their ongoing costs as an operating expense."

Q. Thank you. So Fitch did examine the particular power purchase agreements identified in the table and determined not to capitalize those costs; is that correct?

A. That's correct.

MR. MENDIOLA: All right. Let me ask my colleague to please hand out another document.

CHAIRMAN CARTER: That would be number 509. 509, Commissioners. Short title?

MR. MENDIOLA: Moody's Regulated Electric and Gas Utilities August '09.

CHAIRMAN CARTER: Okay.

MR. MENDIOLA: We could just say Moody's August '09.

CHAIRMAN CARTER: Moody's August '09. Great.

Moody's August '09, Number 509.

(Exhibit 509 marked for identification.)

You may proceed.

MR. MENDIOLA: Thank you, Mr. Chair.

BY MR. MENDIOLA:

Q. Before I move on to 509, let me go back to 508, please, Mr. Pimentel.

You read the paragraph titled Purchased Power that outlined Fitch's rationale --

CHAIRMAN CARTER: Give me that Bate number, Bates number again, please.

MR. MENDIOLA: That's Bates number 036495.

CHAIRMAN CARTER: Okay. You may proceed. Thank you.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. You outline -- excuse me. You read Fitch's rationale for its decision not to capitalize the debt purchase, the power purchase agreements as debt.

Do you dispute any of the rationale that Fitch has outlined there: For example, the fact that this Commission allows a strong regulatory mechanism to recover the cost from consumers or any of the other statements?

A. I'm sorry. Do I dispute that --

Q. Are any of these statements factually incorrect in your understanding?

A. No. I, I wouldn't say that any of these statements are factually incorrect. That's not the, that's not the point that I, that I tried to make in my direct and rebuttal testimony, which is that there's lots of investors out there that are concerned about the long-term commitments that are, that are off balance sheet, and they're, you know, they're seeing an accounting standard come down the road which will very likely require that all of these long-term commitments are included in a, in a company's balance sheet. That's, that's their focus. Their focus is long-term obligations.

The fact that there's a recovery mechanism, in my view, in their view actually reduces the amount of risk but doesn't necessarily make the, the risk go away. Their concern is what could happen in the future. When you load this up on, on the balance sheet going from the disclosures to the balance sheet, it's, it'll be clearly evident.

Q. And lots of investors don't have the time to, quote, get into the weeds of actual terms of, commercial terms and conditions of contracts, so they rely on the reports by the credit rating agencies; isn't that correct?

A. I think --

Q. Isn't that what Dr. Avera said yesterday?

A. Yeah. That's a, that's a really open question. I don't remember what Dr. Avera said. I will tell you that the large sophisticated investors may read this information, but those large sophisticated investors do all of their work in-house.

Q. Uh-huh. All right. So Fitch doesn't -- well, strike that.

Let's move on to, to Moody's. This is, this document, 50 -- I'm sorry, Mr. Chair.

CHAIRMAN CARTER: 509.

BY MR. MENDIOLA:

Q. 509 is the updated methodology that Moody's supplies to rating electric and gas utilities; is that correct?

A. Yes.

Q. And this is just from August of '09; right?

A. Yes.

MR. MENDIOLA: And for the record, this is the document that Ms. Bennett was asking about yesterday and wanted to make sure it would be put into the record.

MS. BENNETT: Thank you.

BY MR. MENDIOLA:

Q. Let's first of all turn with me to Page 3. This isn't Bates-stamped. The first full paragraph that begins, "The rated universe includes approximately 250." Do you see that?

A. Yes.

Q. All right. So that was really my question. It includes about 250 entities; right?

A. Yes.

Q. All right. And that chart there is the distribution of Moody's ratings for senior unsecured debt for the universe of, of electric and gas utilities that it, that it rates; is that correct?

A. Yes.

Q. And what is FP&L's Moody's rating again?

A. Senior unsecured. So these must be the mortgage bonds. I believe they're A1 or A2, but I bet this tells us somewhere; right?

Q. It does. I also think it's on that investor document I showed you earlier.

But A1 or A2, the point is that FP&L on senior unsecured is, is again --

A. It's A1.

Q. All right. It's A1. On senior unsecured is well above, we can just say above the median for Moody's ratings; right?

A. Yes.

Q. And if it's A1, then in the unlikely, not unlikely, in the un -- well, let me just restart.

In the event that the Commission were to reject the rate increase and FP&L were to suffer a two-notch downgrade on senior unsecured, it would go from A1 to A3 and it would still be above the median; isn't that correct?

A. That's a hypothetical. That's a hypothetical example. I, if you're asking whether two notches from A1 is A3, that's correct.

Q. And A3 is still above the median.

A. Yes.

Q. All right. Now if you'd turn with me to Page 21 of this -- actually let's start with Page 20. Part of the Moody's methodology is to examine different aspects of the, what they call mapping factors, and then they weight each one of those factors by a certain percentage; isn't that correct?

A. Yes.

Q. All right. One of those factors is the, quote, regulatory framework. Do you see that on Page 20?

A. Yes.

Q. And out of these companies that are outlined in this, in this report, FP&L is there fourth from the top, and the top one in terms of domestic power companies, isn't that right, for regulatory framework?

A. Yes. But this isn't in any order that I can really understand. FPL has a, under regulatory supportiveness an A, and there's a number of companies under that that also have an A.

Q. Okay.

A. I don't know whether that was important to your question or not.

Q. And I think it might be rated by or listed by the current rating. Does that seem logical to you because AA2 is higher than A1 and A1 is higher than A2?

A. Yes. Yes.

Q. All right. Now this report also describes in great detail the treatment of power purchase agreements beginning on Page 31. Do you see that?

A. Yes.

Q. All right. And it says, first of all, and I don't want to rush you into this. If you need to read the first half of that page, please take the time to. But one of the points that is made in here is that power purchase agreements can sometimes be viewed as a reduction to risk because it avoids the necessity sometimes of building additional capacity, and so there is execution risk in the building of plant. Do you agree with that, that that's one of the points that Moody's makes?

A. Yes.

Q. All right. And then on the second half of Page 31 and going into the, Page 32, Moody's outlines about eight, seven or eight different analyses that it examines before it determines how to treat purchased power agreements. Do you see that?

A. Yes.

Q. And those are risk management, pass-through capability, price considerations, excess reserve capacity, risk sharing, default provisions and accounting. Do you see that?

A. Yes.

Q. And so this is what Moody's examines before it decides whether or not to impute debt related to PPAs. And you didn't examine any of these factors with respect to PPAs; isn't that correct?

A. I didn't examine these in --

Q. You didn't examine these factors that Moody's examines prior to your including the imputed debt related to FP&L's PPAs?

A. No. I didn't, I didn't examine these factors. I'm well versed in, in discussions that, and models that investors have when looking at Florida Power & Light and other entities. We have a large amount of power purchase agreements on our balance sheet. That's, that's an issue because it's such a long, such a large, off balance sheet obligation. And, you know, oftentimes they employ their own adjustments to off balance sheet obligations, whether we agree to them or not, and whether they agree to the Moody's or S&P methodology or not.

Q. And then Moody's goes on to describe the methods of accounting for PPAs in our analysis. Do you see that at the bottom of Page 32?

A. Yes.

Q. And the first one is operating cost. And Moody's says that, "If a utility enters into a PPA for the purpose of providing an assured supply and there is reasonable assurance that regulators will allow the cost to be recovered in regulated rates, Moody's may view the PPA as being most akin to an operating cost. In this circumstance, there most likely will be no imputed adjustment to the debt obligations of the utility." Do you see that?

A. I, I heard you.

Q. Uh-huh.

A. I didn't see it.

Q. You didn't see what I was reading?

A. No.

Q. I was reading on the bottom of Page 32 under the bullet point Operating Costs.

A. Oh, I was looking under Accounting.

Q. It is under Methods of Accounting.

A. I was looking at the other bullet on Accounting. All right.

Q. Well, you would agree with me that FP&L has entered into PPAs for the purpose of providing an assured supply. And, furthermore, you would agree with me that there is a reasonable assurance that regulators will allow the cost to be recovered in regulated rates; isn't that correct?

A. Yes.

MR. MENDIOLA: I think there's a good chance I'll finish before lunch, Mr. Chair.

CHAIRMAN CARTER: You're on a roll. Keep going.

MR. MENDIOLA: All right.

CHAIRMAN CARTER: Do you need another -- Commissioner Skop?

COMMISSIONER SKOP: Thank you, Mr. Chair. Just for planning purposes, are we going to break at the traditional time?

CHAIRMAN CARTER: Traditional time. Yes, sir.

COMMISSIONER SKOP: Thank you.

CHAIRMAN CARTER: The other thing too is I did mention schedule this morning. I've had staff working all morning on some things and trying to connect the dots on, on our calendars. And I'll have, give you an announcement before we go for lunch on what we've been able to work out on schedule. Okay?

But we will do our traditional 1:00 to 2:15 for lunch. Okay?

MR. MENDIOLA: Mr. Chair, this is a document that does not need a number. It's been previously entered into the record as Exhibit Number 460.

CHAIRMAN CARTER: Outstanding. Oh, yes. I've got two.

Mr. Mendiola, you may proceed.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. Sir, this is a document that has been previously marked as Exhibit Number 460 and used by your counsel in the cross-examination of Mr. Woolridge. And this outlines S&P's method for imputing debt, including what's been highlighted on Page 3. Do you see that, the 25 percent risk factor?

A. Yes.

MR. MENDIOLA: All right. I should have had this one passed out at the same time, Your Honor. I apologize.

CHAIRMAN CARTER: Okay. No problem. You need a number for that one?

MR. MENDIOLA: No, sir. This has also been previously entered as 459.

CHAIRMAN CARTER: Okay.

BY MR. MENDIOLA:

Q. If you'd turn for a second --

CHAIRMAN CARTER: Hang on a second. We don't have one.

MR. MENDIOLA: I'm sorry.

CHAIRMAN CARTER: I appreciate your enthusiasm though. That's appreciated.

Thank you, sir.

Okay, Mr. Mendiola. You may proceed.

MR. MENDIOLA: Thank you, sir.

BY MR. MENDIOLA:

Q. If you turn with me to Page 5 of Exhibit 460, there is a paragraph that's titled Short-Term Contracts. Do you see that?

A. Yes.

Q. Do you understand that S&P used to have the practice of not imputing debt for contracts with terms of three years or less, but that's changed; right?

A. Yes.

Q. All right. And then S&P goes on to state in the second sentence that "We understand that there are some utilities that use short-term PPAs of approximately one year or less as gap fillers pending the construction of new capacity." Do you see that?

A. Yes.

Q. And in fact that's what FP&L does pending the construction and bringing online of, for example, West County 3.

A. No. I don't, I don't think so. I mean, we don't, we don't, we didn't go out and enter into, into short-term, into short-term contracts.

Q. As gap fillers?

A. Yeah. As gap fillers. I mean, the contracts that we have are longer term power purchase agreements. They're not short-term in nature. With S&P, at least my understanding of what S&P is referring to here is many of the, of the unregulated T -- the T&D companies that actually have to buy generation, both on a short-term and a long-term basis, and the short-term contracts in order to acquire generation are no longer included as part of their, of their PPA obligation.

Q. Well, FP&L has generation that has either recently come online or will come online, particularly West County Units 1 and 2 and then eventually West County Unit 3; right?

A. That's right.

Q. All right. And you agree that S&P does not necessarily impute debt associated with these gap filler contracts; right?

A. Yeah. I think the exact thing is, that they say is some utilities use short-term PPAs of approximately one year or less as gap fillers, pending the construction of new capacity.

Q. But when you imputed debt in the company's capital structure, you didn't examine the particular PPAs and exclude those that are short-term, did you?

A. Well, no. Neither does S&P. That's not what this is referring to.

Q. Well, my question is whether, when you imputed debt in the MFRs that you support, whether you examined the individual PPAs and excluded the short-term PPAs.

A. No. We do not -- we did not enter into any short-term contracts as gap fillers, which is what this is talking about.

Q. Well --

A. This is not talking about -- it doesn't say in here if you have a short maturity, until the maturity, a short term until the maturity of the PPA, whether you include those are not. Those are two different things.

Q. They were two different questions. We, one question was what does S&P do? The other question is what did you do? And I think you testified that you did not examine the PPAs and you didn't make any exclusion for short-term, short-term PPAs; right?

A. No. I didn't, I said I didn't examine the PPAs based on the characteristics that you had laid out before. We're very well aware of what the maturity schedule of our PPAs are.

Q. And those maturity schedules are from 2009 to 2012; isn't that correct?

A. No. Those maturity schedules are from 2009 at least through 2030.

Q. Well, turn with me to document 459, which is the company's 10K, which was used by your counsel in the cross-examination of Dr. Woolridge, and turn with me to Page 94, please. Read that sentence that your counsel highlighted.

A. Okay. "FPL has various agreements with several electricity suppliers to purchase an aggregate of up to approximately 870 megawatts of power with expiration dates ranging from 2009 through 2012. In general, the agreements require FPL to make capacity payments and supply the fuel consumed by the plants under the contracts."

Q. So the FP&L purchased power agreements that were highlighted by FP&L in its 10K to investors are those that have dates ranging from April 2009 through 2012; isn't that correct?

A. I'm not sure what that 2012 is. I'm a little confused why that says it. You can look at the table just below and see that it's got 2013 and thereafter.

Q. And this is Form 10K that investors rely upon to be truthful and accurate; isn't that correct?

A. Right. I'd have to read the entire, the entire section here.

Q. Well, when --

A. To make sure that there's not something that's taken out of context.

Q. Well, when the company highlighted this sentence, it highlighted just this sentence; isn't that correct?

A. I don't know who highlighted which section.

MR. ANDERSON: You know, let's be clear. The highlighting was done for the purpose of Mr. Woolridge's --

CHAIRMAN CARTER: Hang on. Hang on. Hang on.

MR. ANDERSON: Sure. Okay.

CHAIRMAN CARTER: Every time we get close to lunch, you know, you guys were doing -- you did it after lunch yesterday.

MR. MENDIOLA: All right. Let me move on.

MR. ANDERSON: I'm sorry. May we clarify? Is, is --

MR. MENDIOLA: Your Honor, I don't have a question on the table.

MR. ANDERSON: Was counsel suggesting --

CHAIRMAN CARTER: Mr., hang on, Mr. Anderson. Hold on. You can do that on redirect.

MR. ANDERSON: Okay.

CHAIRMAN CARTER: Move on.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. Now, Mr. Pimentel, you monitor the various rate cases from around the country, do you not?

A. I get a summary of what's happening around the country, yes.

Q. I put on your desk earlier today what had been previously marked as Exhibit Number 462, which is the SNL report used by Mr. Moyle yesterday of rate case history, prior rate case history. Do you see that anywhere? I have an extra copy, if you don't have that.

MR. MENDIOLA: And, Mr. Chair, I have extra copies, if you'd like me to distribute them.

CHAIRMAN CARTER: Yes, sir. That would be good. I don't, I was looking for one, but I -- yeah. It's probably underneath the stack somewhere here. Oh, I got it. Okay.

MR. MENDIOLA: All right.

CHAIRMAN CARTER: This puppy right here?

MR. MENDIOLA: Yes, sir.

CHAIRMAN CARTER: Okay. You may proceed.

MR. MENDIOLA: Thank you.

BY MR. MENDIOLA:

Q. Now, Mr. Pimentel, to review the bidding a little bit, the company is asking for a 12.5 percent ROE and an equity ratio of either 55.8 or 59 percent, depending on how you look at it; right?

A. Mr. Mendiola, could you repeat your question?

Q. Sure. I was saying before I begin on this line of questions I would like to set the stage, the company, FP&L in this case is asking for a 12.5 percent ROE and either a 55.8 or 59.5 percent ROE component in the capital structure. Not ROE. I'm sorry. Let me start all over.

The company in this case is asking for a 12.5 percent return on equity and either a 55.8 percent or a 59.5 percent equity ratio in the capital structure depending on how you look at it; right?

A. Right. I wouldn't, I wouldn't agree with the either. We're asking for 55.8 percent --

Q. Actual adjusted.

A. -- equity capitalization, which is consistent with the equity that we have in the business.

Q. All right. And in looking at these decisions that are reported on this document marked as 462, on the increase that was authorized by the various commissions, would you agree that, of the authorized return on equities, only three of them are north of 11 percent? And by north I mean higher.

A. Yes, I'd agree with that.

Q. And none of them are greater than 12 percent.

A. Yes, I'd agree with that.

Q. And with respect to the Common Equity to Total Capitalization Percentage column, on the amount of equity that was authorized, none of the equity ratios that were authorized are greater than 55 percent; isn't that correct?

A. That's correct. But I have no, no, no basis for determining how exactly that common equity ratio was derived.

Q. And did you hear Dr. Avera say that in his review of these cases he could only identify one company that was downgraded as a result of the decision by the Commission, and that was a New York one? I think it was Con Edison. Did you hear him say that yesterday?

A. I think I did hear him say that.

Q. All right. My question to you is are you aware of any other companies that are listed on this exhibit that suffered a credit rating downgrade as a result of the decision made by the Commission as reported on, on this exhibit?

A. I'm not aware of any, but I'm not aware of the individual facts and circumstances surrounding many of these entities.

Just looking at the, just looking at the list of entities, I can tell that some of these entities, you know, some of these entities don't have nuclear power, some of these entities, you know, certainly don't have the storm risks or other items that I've discussed.

So I don't -- it's difficult to just take this without understanding what the details of each one of them are and compare that to, to our case.

MR. MENDIOLA: If I could have just one moment, Your Honor.

CHAIRMAN CARTER: Absolutely.

BY MR. MENDIOLA:

Q. Mr. Pimentel, you also support the MFRs regarding the storm reserve and the increase to base rates of $150 million per year; isn't that correct?

A. Yes.

Q. All right. Now you are aware that the Florida

Legislature saw fit to allow the company to sell storm securitization bonds in order to recover storm restoration costs; isn't that correct?

A. Yes.

Q. And are you aware that one of reasons that storm securitization bonds were supported was because the carrying cost on securitization bonds is lower than the carrying costs in base rates?

A. I'm not aware of that. But I would agree that, in general, securitization, depending on the assets or cash flows that are securitized, would lead to a lower, to a lower yield from requested by bondholders.

Q. And so from a ratepayers' perspective, ratepayers are paying less to allow the utility to recover storm restoration costs by selling bonds because the carrying cost on the bonds is 5 or 6 percent, while if ratepayers had to pay for storm restoration costs in base rates, they'd be paying the weighted average cost of capital, which is around 8 percent; isn't that correct?

A. That's correct. But there's a major assumption in there, and the major assumption is that the market for those bonds is, is available. As an example, the securitization market right now is shut down except for single-family conforming mortgages. So if you were to, if you were to try to go securitize any type of cash flow or other asset right now, you would have a, have a difficult time. I don't know whether, you know, what would happen if you went out today and tried to securitize storm costs.

Q. Well, are you -- let me ask you this. Are you familiar with the Entergy operating company in Texas or the CenterPoint transmission distribution utility?

A. I am not.

Q. Do you know whether the Texas commission has within the last month authorized the selling of over $700 million of storm restoration cost bonds?

A. I am not.

Q. And do you know whether there is in fact a market for those bonds?

A. I do not. What I do know is that the securitization market is a much different market today than it was back a couple of years ago in 2007, when we, when we, Florida Power & Light Company, securitized these storm costs.

Q. You would agree that if Entergy and CenterPoint utility are, are able to access the securitization market at rates less than the weighted average cost of capital, then that would indicate that it is still more beneficial for ratepayers to compensate the utility for storm restoration costs through securitization bonds as opposed to in base rates?

A. Again, that assumes that the market is available. If a large, if a large storm comes through, comes through Florida at unfortunately the wrong time, and not only we but others are out having to go into the market, including potentially the State of Florida having to go out into the market to securitize longer term securitization, proceeds that they're going to receive in the future, there's no guarantee that that market will be available. So in your, in your example the major assumption is that the market is available and behaving as we've seen historically, and there's no guarantee of that.

Q. No, sir. There's no assumption. My question is whether you are aware of the fact, not the assumption, the fact that Hurricane Ike came through November '08, basically wiped out Galveston, and caused incredible damage to the CenterPoint service area, and that company is selling bonds right now?

A. Right now. But they probably could not have sold those bonds in December of 2008, and that's my exact comment.

Q. Well, but we're talking about a rate case that's going on right now and not in December '08;

right?

A. We are talking about it. But we're talking about a number --

Q. Nothing further.

A. You didn't let me finish. But we're talking about a number of risks that this company has pointed out. We cannot assure ourselves that a securitization market which has been hobbled over the last year which may be available to those entities that you just mentioned right now would be available in the future. There's no assurance that that market would be available in the future if a storm would hit at unfortunately the wrong time.

Q. And there's no assurance that fuel costs will go down; right?

A. What do you mean, there's no assurance? What does that have to do with the discussion we're having?

Q. Well --

A. We're having a discussion about the securitization market.

Q. Well, no, sir. My question to you -- you're stating there's no assurance that the securitization market will available. I'm asking you if there's any assurance that fuel costs will go down, yes or no?

A. I've already answered that question.

Q. The answer is?

A. There's no assurance.

MR. MENDIOLA: Thank you. I pass the witness.

CHAIRMAN CARTER: You know, I probably should just outlaw lunch altogether. It's highly overrated.

Ms. Bennett, as I said to you earlier this morning, I've had staff try to work something out. I hope you got your calendars, ladies and gentlemen. And we're trying to work something out on the, on the structure of the case before us.

Ms. Bennett, you're recognized to discuss the schedule.

MS. BENNETT: In the off chance that we don't finish all nine witnesses today, we have reserved October the 21st, 22nd and 23rd for the continuation of this hearing, with briefs to be due November the 9th. Staff's recommendation on revenue requirements would be due December the 7th. There would be a Special Agenda Conference on December 25th -- I mean, 21st.

CHAIRMAN CARTER: That was almost funny.

MS. BENNETT: Almost. The recommendation on rates would be due December 29th, with a Special Agenda Conference on rates January 11th.

COMMISSIONER EDGAR: Could you just go over that one more time?

MS. BENNETT: Sure.

CHAIRMAN CARTER: She lost me when she said December 25th.

MS. BENNETT: The continuation of this hearing would be October 21st, 22nd and 23rd. Briefs would be due November the 9th.

CHAIRMAN CARTER: Okay.

MS. BENNETT: Staff's recommendation for revenue requirements would be December the 7th.

CHAIRMAN CARTER: Wow. You guys sure you want to do that on December 7th? You know what that is, don't you?

MR. PRESTWOOD: Pearl Harbor Day.

MS. BENNETT: Oh.

CHAIRMAN CARTER: Go ahead. Go ahead, Lisa.

MS. BENNETT: And the agenda would be a Special Agenda December 21st.

CHAIRMAN CARTER: Okay.

MS. BENNETT: The recommendation for rates would be December the 29th. And the Agenda Conference would be a Special Agenda Conference on rates for January 11th.

CHAIRMAN CARTER: Did everyone get that?

MR. WRIGHT: Yes.

CHAIRMAN CARTER: Mr. Wright, you got it?

MR. WRIGHT: I did get it, sir.

CHAIRMAN CARTER: All the parties, did you guys get that? As I said to you at the outset, that we will do what we need to do as much as possible to try to accommodate everyone. And I think that we have -- and I want to commend our staff for doing, I started to say a yeoman's job, but it's more like Paul Bunyan in the heavy lifting that they've been able to do to work with all five of our offices and work together with the calendar and with what we have before us.

Let's do this, ladies and gentlemen. Let's take a break for lunch and we'll come back at 2:30.

(Recess taken.)

(Transcript continues in sequence with Volume 38.)

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

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

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

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

DATED THIS 22nd day of September, 2009.

Linda Boles

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