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P R O C E E D I N G S

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

4 THE COURT: We are back on the record, and
5 when we last left, Ms. Bradley was cross-examination.

6 Ms. Bradley, you are recognized.

7 CROSS EXAMINATION (continued)

8 BY MS. BRADLEY:

9 Q Mr. Dolan, did you hear the testimony from
10 some of the consumers, some of the seniors that were
11 testifying about having their Social Security frozen and
12 that they only had about \$400 a month income?

13 A Yes, I did hear some of that. You're talking
14 about from the service hearing?

15 Q Yes.

16 A Yes, I'm generally familiar with that.

17 Q Now, earlier you looked at the 2009
18 priorities, and I understood that was a presentation
19 that was done for your shareholders, is that correct?

20 A Are you talking about the presentation I went
21 through with Mr. Rehwinkel?

22 Q Yes.

23 A Yes. Well, it was a -- I'm sorry, it was a
24 presentation that was done to a financial community in
25 New York, I believe, the analysts and others.

1 Q All right. And you made the statement about
2 -- or one of the statements on this presentation was one
3 of your 2009 priorities was, "achieve reasonable Florida
4 rate outcome," correct?

5 A The slide said that, yes.

6 Q Now, since it was presented to the financial
7 community, I'm assuming that when it says "achieve
8 reasonable," that would be reasonable as they were
9 looking at it, correct?

10 A Well, that's not my slide, that's Mr.
11 Mulhearn's, so I'm not in a position to know what he
12 would mean by the word "reasonable" in that context.

13 Q And as president of the company, you don't
14 have any understanding of that?

15 A I have an understanding of what I think is
16 reasonable, but I don't want to substitute my judgment
17 for how he prepared that slide.

18 Q All right. Is it fair to say that what
19 appears reasonable to the person such as the senior
20 citizens on \$400 a month is going to differ from that of
21 someone making over 165,000?

22 A I'm not sure. Everyone is going to come to
23 their own conclusions about "reasonable," and I think it
24 would depend on what facts they have to work with.

25 Q And you wouldn't think that a person making

1 \$400 a month would see things differently than the
2 person making over \$165,000 a year?

3 MR. GLENN: Objection; relevance, and beyond
4 the scope of rebuttal.

5 MS. BRADLEY: He talked in the testimony,
6 there was discussion of reasonable rates.

7 CHAIRMAN CARTER: Ms. Brubaker?

8 MS. BRUBAKER: I have to admit, I'm struggling
9 a little, Mr. Chairman. The rebuttal testimony does
10 talk about reasonable rates. Perhaps if --

11 CHAIRMAN CARTER: Overruled. You may proceed.

12 BY MS. BRADLEY:

13 Q Can you answer the question, Mr. Dolan?

14 A Could you remind me of the question?

15 Q For the person, the senior citizen that's
16 making \$400 a month Social Security, he's probably going
17 to have a different view of what is reasonable than an
18 executive making over \$165,000 a year, correct?

19 A I think that's possible.

20 Q You expect your customers to pay their bills
21 regardless of whether they've been laid off or had their
22 salary cut or circumstances that are involved, you still
23 expect them to pay their bills for your utility,
24 correct?

25 A I would say that we -- our expectations are

1 that customers will pay for the electricity that they
2 use, yes.

3 Q Do you understand that there's a difference
4 between us customers who don't want a rate increase and
5 those who have testified they simply can't afford a rate
6 increase?

7 A I'm not sure I understand the distinction. I
8 mean, some -- if your question is are there customers
9 that voiced those concerns differently, yes, I would
10 agree. Some said they don't want one, some said they
11 don't want one because, in their judgment, they can't
12 afford one. So I would agree with that, if that's your
13 question.

14 Q Not exactly.

15 A I'm sorry.

16 Q Would you agree that there's a difference
17 between not wanting something and not being able to
18 afford something?

19 A Yes, I would probably agree with that.

20 Q Okay. Do you understand that your customers
21 who are suffering a lot in this economic circumstances
22 don't understand why your company is not willing to make
23 some similar sacrifices, such as freezing corporate
24 executives' salaries?

25 A Could you try that again?

1 Q All right, I'll try it one more time -- well,
2 maybe more.

3 Do you understand that you have customers who
4 are making sacrifices to try to keep within their
5 budgets and pay their bills, and that they may not
6 understand, or have actually testified that they don't
7 understand why your company can't make similar
8 sacrifices, such as freezing executives' salaries?

9 A I think, based on the testimony that I
10 listened to, I can understand that customers would,
11 given a choice, would prefer not to have rates increase,
12 yes, I can understand that.

13 Q And that they feel like the company should be
14 making sacrifices because they're making sacrifices?

15 A I can understand that sentiment as well, yes.

16 MS. BRADLEY: No further questions.

17 CHAIRMAN CARTER: Thank you, Ms. Bradley.

18 Mr. Moyle?

19 MR. MOYLE: Thank you, Mr. Chairman.

20 CROSS EXAMINATION

21 BY MR. MOYLE:

22 Q Good afternoon, Mr. Dolan.

23 A Mr. Moyle, good afternoon to you.

24 Q I have some questions that I want to ask, and
25 some of them will be follow-up to questions you were

1 asked by Mr. Rehwinkel and some others will be questions
2 related to certain aspects of your rebuttal testimony,
3 but before I get into that, I want to ask you if you
4 have ever heard the saying -- you've been in this
5 business how many years?

6 A I have been in the electric utility or related
7 business since 1977.

8 Q So that's a good number of years. Have you
9 ever heard the saying that a rate case typically works
10 with the utility asking for twice as much as it needs
11 and the regulators cutting that in half and everybody
12 going home okay, except the consumers? Have you ever
13 heard that saying?

14 A I've heard you just say it now. I'm not sure,
15 other than that. I mean, there's always sort of
16 commentary going around about the nature of rate case.
17 I don't know about that comment specifically.

18 Q It was actually, I think, made in an opening
19 remark -- did you monitor the TECO case at all?

20 A Not sort of day-to-day, maybe more on a
21 general basis.

22 Q Mike Toomey actually said it, and he
23 attributed it to a guy who showed up at a customer
24 service hearing in Palm Beach County in a Florida Power
25 & Light case, but I was just interested if you had any

1 familiarity with that saying. Sounds like you don't.

2 A Not that specific one, no.

3 Q And if you -- half of your rate request would
4 be approximately 250, is that right?

5 A If you do the math, yes, that would be
6 correct.

7 Q And then if you took half of OPC's 35, that's
8 another 17 that you would have to deduct, isn't that
9 right, assuming you were trying to figure out what a 50
10 percent number is of the difference in positions of the
11 parties?

12 A If I understand your question, you're trying
13 to get to mathematically between minus 35 and 500?

14 Q Right, half of that --

15 A So that would be 250 minus 17? 233 --

16 Q Give or take.

17 A -- just simply on the math in that
18 hypothetical, yes.

19 Q And you were asked a lot of questions about
20 impacts on the company, and in your rebuttal testimony I
21 think you suggest that if you got negative 35, it would
22 jeopardize certain things. Have you done an analysis
23 about different levels of results and how that might
24 impact the company as you sit here today?

25 A Have I?

1 Q Any kind of prospective planning to say, okay,
2 what's the worst-case scenario look like, if we get
3 negative 35, how are we going to run our business, let's
4 say we get 150, how are we going to run our business, if
5 we get half, how -- have you guys engaged in that
6 exercise?

7 A Have I? No.

8 Q Or the company.

9 A They may have. I don't have specific
10 knowledge of that.

11 Q Presumably if they had, you would have
12 knowledge of that, as president of the company, correct?

13 A Not necessarily. I think our financial groups
14 look at a lot of different things week to week, month to
15 month, so I think they would have to answer for
16 themselves on that.

17 Q But as we sit here today, it's your testimony
18 that that 499 is your number that you'd need, is that
19 right?

20 A Yes, it is.

21 Q And I want to have some discussion a little
22 bit to try to compare and contrast the position of
23 Public Counsel, which Intervenors generally support,
24 with that of the company. They are at a negative
25 \$35 million number, correct?

1 A Yes, they are.

2 Q And you're aware of how they got there, are
3 you not?

4 A Generally, yes.

5 Q And for preparing your rebuttal testimony --
6 and we talked a little bit about what you did on your
7 direct and how Mr. Lyash was president and you adopted
8 his testimony. Tell me what you did to prepare your
9 rebuttal testimony.

10 A Well, I'm familiar with and read the, I think
11 the vast majority of the testimony filed in the case,
12 and, you know, worked through, you know, the points of
13 disagreement and then worked with -- you know, gave
14 feedback to counsel to do drafting and then reviewed it
15 and finalized it.

16 Q So which Intervenor witnesses do you sort of
17 really take issue with?

18 A I think Schultz is one and probably Pollock
19 the other, the principal ones. There's parts of the
20 others as well. Marz and -- I'm forgetting the other
21 specific name. I can get it, if you'd like. But I
22 think Schultz and Pollock in particular were the lead
23 witnesses for OPC and FIPUG that laid out most of the
24 argument that had the financial impact.

25 Q And Woolridge, you're aware he also --

1 A Woolridge, yes.

2 Q -- filed testimony?

3 A Yes.

4 Q It's not a memory test, but I'm just trying
5 to --

6 A No, I read Woolridge as well, yes.

7 Q Okay. And you don't question, do you, any of
8 the qualifications of the OPC or the FIPUG witnesses in
9 terms of them being expert in their areas of testimony?
10 I understand you question more their judgment and their
11 opinions rather than their expertise, is that right?

12 A Well, I would say it's fair to say that I
13 didn't form an opinion as to their credentials either
14 way.

15 Q But as we sit here today, having read their
16 testimony, a lot of them say here's where I went to
17 school, here's all the things I have testified in, you
18 don't have any reason to question their qualifications,
19 do you, of any of the Intervenor or OPC witnesses?

20 A Well, I think the best way I can answer that
21 is I didn't question it one way or the other. I tried
22 to look at the facts compared to our case and make
23 judgments based on that. Whether or not there's
24 questions about their qualifications, I'm not the one to
25 make that judgment.

1 Q Right, and I'm just asking you, because a lot
2 of times I'll read something and I'll say, wait a
3 minute, who's saying this, why do they have this
4 opinion, what's their qualifications to make that
5 opinion? When you read the Intervenor's testimony,
6 you're aware that it sets out their qualifications,
7 correct?

8 A Yes.

9 Q And you didn't, when you read their
10 qualifications, come to a conclusion and say these
11 people aren't qualified to talk about depreciation, or
12 you never made that kind of assumption or came to that
13 conclusion when you were reviewing their testimonies,
14 correct?

15 A No. Just so I'm clear, I did not form an
16 opinion either way. I think I tried to look at the
17 facts that they were presenting and where we would have
18 points of disagreement on those facts, and did not focus
19 on where they got their degree or where else they
20 testified, those sorts of things. I was really more
21 focused on our points of disagreement.

22 Q I want to talk a little bit about the points
23 of disagreement, but I want to make sure that we're
24 understanding each other. And our chief contention,
25 really, is about different views, different judgments,

1 about certain key issues, correct?

2 A I would agree with that, yes.

3 Q And those issues are depreciation, return on
4 equity and O&M, correct?

5 A Yes, I would agree with that.

6 Q So I want to spend just a little bit of time
7 and see if we can't further understand our differences
8 on that issue. Let's talk first about depreciation, if
9 we can.

10 You would agree that depreciation is largely
11 an estimate, correct? When you come up with
12 depreciation, it's estimates as to life of an asset?

13 A Well, let me try to answer your question this
14 way, Mr. Moyle: I would prefer not to be the expert
15 here to sit here and testify how we do a depreciation
16 study. I know generally that you're looking at our
17 asset base that has varying, you know, long-term
18 depreciable lives, so, I mean, I think I have some
19 general understanding of that, but I certainly don't
20 want to substitute for folks that are better qualified
21 to talk about the details of that study.

22 Q I don't want to get into the weeds with you on
23 depreciation, but I want to just test your knowledge
24 from a general sense as to why you believe the
25 Intervenor's position should not be followed.

1 Are you aware that historically the Commission
2 has accelerated amortization for physical plant when a
3 physical plant's life was erroneously estimated?

4 A I would have to know a specific instance that
5 you're referring to. I don't believe that the
6 Commission has done anything like what either FIPUG or
7 OPC is proposing.

8 Q Do you have any knowledge one way or the other
9 as to how the Commission has handled, historically,
10 imbalances in depreciation reserves?

11 A Which -- you have to tell me what imbalance
12 are you referring to.

13 Q I'm just asking you in general terms. I don't
14 want to get into the weeds on the details. My
15 understanding is there can be an imbalance, it can
16 either be a surplus imbalance or a negative imbalance.
17 Is that your understanding?

18 A I would say generally on that, my knowledge --
19 and again, I don't want to stray too far into the
20 details, or the weeds, as you said -- is typically those
21 balances are trued up over the remaining life of the
22 assets.

23 Q Is that your understanding as to what happens
24 when there's a negative imbalance, that that gets trued
25 up over the remaining life of the asset?

1 A That's my general understanding, yes.

2 Q Would it surprise you if the Commission has
3 previously accelerated depreciation to try to catch up
4 and allowed utilities to take more rapid depreciation as
5 compared to letting it depreciate it over the life of
6 the asset?

7 A I mean, to me, I'm not sure I would use the
8 word "surprise." I guess I would have to look at a
9 specific instance and make a judgment.

10 Q Let's just assume for purposes of my question
11 that that's what the Commission has historically done;
12 if a utility had a deficit with respect to depreciation,
13 that rather than amortize it out over the remaining life
14 of the asset, that they allowed it to be accelerated.

15 If that were done with respect to when you had
16 a negative balance, do you know any reason why that
17 might not make sense to do it also to the extent that
18 you had a positive balance on the depreciation reserve?

19 A I think it really would depend on the overall
20 picture and the facts and circumstances around that
21 individual decision.

22 Q I think -- I don't know if it was your
23 counsel, or somebody used the good for the goose/good
24 for the gander rule. Are you familiar with that rule?

25 A Is that a -- that's a rule?

1 Q Or a saying.

2 A I'm familiar with the saying, yes.

3 Q Okay. I'm having a little fun with you, but
4 it seems like to the extent depreciation -- when a
5 utility was in a different position and didn't have a
6 depreciation surplus, but had a deficit, that if the
7 Commission has allowed that to be accelerated, now that
8 the shoe is on the other foot and there's a situation
9 where ratepayers can get some money back on an
10 accelerated basis, would you believe that should be
11 pursued?

12 MR. GLENN: Objection; assumes facts not in
13 evidence.

14 CHAIRMAN CARTER: To the objection, Mr. Moyle?

15 MR. MOYLE: I'll come at it another way.

16 BY MR. MOYLE:

17 Q Mr. Dolan, I think you've already acknowledged
18 that Florida is in the midst of a recession. You're
19 aware that this has been the most prolonged recession
20 since the Great Depression, correct? Do you know that?

21 A I know we're in a recessionary time. The last
22 part, I'm not sure I know that specifically.

23 Q You're aware also, are you not, that
24 policymakers have undertaken efforts to try to put
25 dollars in the hands of consumers?

1 A Can you be a little more specific about that?

2 Q Sure. The Cash for Clunkers program, wasn't
3 that a policy effort to try to stimulate things, put
4 some money in people's hands? The federal stimulus
5 package, you all are getting some money for smart grids
6 related to that. I'm just trying to test your knowledge
7 from a general, broad policy matter that to deal with
8 these recessionary times, some have thought putting cash
9 in the hands of consumers makes sense, you would agree
10 with that?

11 A What I would agree with is that the new
12 administration, the federal government and some states,
13 politically they're doing that. Whether I agree with
14 that or not that that's good policy, that's a different
15 question.

16 Q Right. And you're aware that the Bush
17 administration also had a rebate, a \$1,000 rebate, when
18 the economy started going south, or provided some cash
19 to people, do you remember that?

20 A Not specifically.

21 Q Those are sort of foundational questions to
22 ask you this question: To the extent that this
23 Commission had a decision with respect to depreciation,
24 that the result could be to return some cash to the
25 hands of the consumers, given this economic condition

1 and the unemployment that you talked with Ms. Bradley
2 about, wouldn't you think that that should be something
3 that should be pursued?

4 A No, because it gets to your earlier question
5 about the federal policy. I think we're seeing the
6 argument emerge on the other side now that we're
7 mortgaging the future.

8 And I think if you look specifically at the
9 OPC proposal, if that proposal was implemented, all
10 things equal, it will necessarily result in a
11 \$200 million rate increase four years from now, so it's
12 a pay-me-now-or-pay-me-later.

13 You could argue your point about policy. I
14 would advise against that. I think we have to have both
15 a short-term and a longer-term perspective here, and
16 it's not free. So I think that's really -- ultimately
17 that's a judgment call that this Commission will make,
18 and hopefully they will listen -- not hopefully -- they
19 will listen to the evidence and they will make a
20 decision based on the facts.

21 It's my advice not to do that, because I think
22 it's something that will necessarily aggravate a
23 situation that we see down the road where prices are
24 going to continue to rise with inflation and fuel costs
25 and other things that are coming in the future.

1 Q And I appreciate that.

2 You use the term, "pay me now, pay me later,"
3 and that oftentimes, as I have heard it used, is a
4 choice that's presented to someone who is doing the
5 paying. If you use your words, "pay me now or pay me
6 later," you're aware, are you not, that the consumer
7 groups are choosing the pay-me-later approach, correct,
8 with respect to depreciation?

9 A That's -- to use your terminology, to pay me
10 later, I think the -- if you're saying consumer group's
11 counsel for opposing counsel, their preference is to
12 flow back the reserve, yes. And as I said, there's a
13 cost for that, and it may be a higher cost in the future
14 than dealing with the cost today.

15 Q Yes, sir, and as we talked about, the higher
16 cost, to the extent that it might come, the first point
17 it could come would be four years down the road,
18 correct?

19 A If you implemented that specific proposal.

20 Q Right. And given the estimates of the economy
21 and the length of the recession, don't you anticipate
22 that people are going to be better off four years from
23 now than they're right now?

24 A I don't have that crystal ball. It could be
25 worse than it is today.

1 Q But you're aware of economic projections and
2 we've got bond rate, availability of markets, those
3 things are trending upward, are they not, in terms of
4 being more positive than they were about a year ago?

5 A I would agree in the very near term, but I
6 would be -- it's sort of like -- one rule I have is I
7 try not to say a fuel price and a year in the same
8 sentence, especially if it's in the future, because it's
9 probably going to be wrong. So I think we should be
10 cautious about how we think about the future and deal
11 with where we are today.

12 Q Yes, sir.

13 And Ms. Bradley asked you a lot of questions
14 about the service hearings, people coming and being in
15 difficult spots financially, and I guess -- I guess I
16 would just try to get you to acknowledge that, given the
17 evidence that we have, all of the transcripts of the
18 service hearings, to the extent that a decision on
19 depreciation can be made which would act to put some
20 money back in the pockets of people who are hurting, as
21 compared to possibly making a decision that four years
22 down the road might result in having to deal with it,
23 wouldn't you think that the better decision would be to
24 take some action to put some dollars back in people's
25 pockets now, given those facts?

1 A I'm not sure, and here's why: We're
2 absolutely sympathetic to the plight of some of the
3 customers that we heard from who are struggling. On the
4 other hand, there are a number of businesses today that
5 might prefer, you know, we have 1.7 million customers,
6 and I think if you looked across our customer base as a
7 whole, there may be other customers that, in their
8 judgment, would rather pay today to avoid a
9 substantially higher cost in the future.

10 So I think while we heard from some specific
11 customers, and we acknowledge that and we're sympathetic
12 to that, on the other hand, we have to balance that
13 against the interests of all customers. And I think
14 perhaps some of your clients or perhaps some of Mr.
15 Wright's clients, businesses today, the time value --
16 their money, they might rather pay today than pay a
17 premium down the road. So I think that's really the
18 judgment that ultimately the Commission is going to have
19 to make.

20 Q Right, and you're aware that my clients and
21 Mr. Wright's clients and other businesses are advocating
22 that the depreciation be accelerated, correct?

23 A Yes, I am.

24 Q Okay. Now, I have a couple of other questions
25 about depreciation --

1 A Although I would, just to clarify, I know your
2 proposal is -- your client's proposal is different than
3 the Public Counsel proposal, it's 100 million as opposed
4 to 160, if I have that right.

5 Q Yes, and we're talking general terms, but
6 you're right that there is a difference between the two.

7 A Right.

8 Q And presumably you would think that FIPUG's
9 proposal is better as compared to the one that has you
10 at 160 per year, correct?

11 A The hundred would be better than 160, that
12 part I would agree with.

13 Q Can we agree to that, the hundred?

14 A I think we could that agree the hundred is
15 better than 160, we can agree to that.

16 Q I have a couple of other questions about
17 depreciation.

18 Do you have kind of an understanding as to how
19 we are in this depreciation box right now from the
20 standpoint of the accounting?

21 A I would just say I have a limited
22 understanding of that. I'm not going to step in the
23 shoes of the experts, but I think I have a general
24 understanding.

25 Q Let me try this with you and we'll see how far

1 we get.

2 A Right.

3 Q As a general understanding with respect to
4 depreciation, my understanding is that it allows a
5 company like yours to get back their capital invested
6 over a period of time. Is that right?

7 A I think so.

8 Q And to the extent that you can do that sooner
9 and get that money back, that's probably better than
10 doing it latter, as a general proposition, wouldn't you
11 agree?

12 A Not necessarily, no.

13 Q Do you know -- are you aware that most of this
14 depreciation imbalance, or surplus, as our side of the
15 table likes to call it, that that results from
16 underestimating the lives of your generation assets?

17 MR. GLENN: Objection as to the
18 characterization of the -- in the question.

19 CHAIRMAN CARTER: Rephrase.

20 BY MR. MOYLE:

21 Q Do you have an understanding as to --

22 MR. MOYLE: I tell you what, can I just hand
23 out an exhibit?

24 CHAIRMAN CARTER: Sure. Do you need a number?

25 MR. MOYLE: Actually, this is an exhibit

1 that --

2 CHAIRMAN CARTER: It's already in?

3 MR. MOYLE: Yeah, it's attached to -- just for
4 counsel for Progress, it's attached to another witness's
5 testimony.

6 CHAIRMAN CARTER: So you're just going to use
7 it for cross-examination purposes?

8 MR. MOYLE: Right.

9 CHAIRMAN CARTER: That will be fine.

10 Thank you.

11 BY MR. MOYLE:

12 Q Mr. Dolan, this is Exhibit No. WG-2, page 1 of
13 1. The handwritten notes are mine, I'll represent, and
14 the column that I have circled represents an increase or
15 decrease in the average service life. Is it your
16 understanding that -- have you seen this document
17 before?

18 A No, I have not, not before just now.

19 Q Do you know who W.G. is? Is he one of your
20 witnesses?

21 A Perhaps my counsel can --

22 MR. GLENN: That is Will Garrett, who is
23 scheduled to testify and is probably the more
24 appropriate witness to testify as to his own exhibit.

25 MR. MOYLE: I think that's right, and I'm not

1 going to delve in.

2 BY MR. MOYLE:

3 Q But, Mr. Dolan, assume for the purposes of my
4 question that this is an accurate exhibit. Doesn't this
5 reflect that, between the prior study and the current
6 study, that there's been an addition of additional years
7 in life to a physical plant of Progress Energy?

8 A I'm not sure, Mr. Moyle, I really understand
9 your question. I mean, the -- what I'm seeing here is
10 there's been some updates to the average life.

11 Q And looking at those updates, some are
12 negative and some are positive, correct?

13 A Yes, that I can agree to.

14 Q And if you added them up, wouldn't there
15 probably be more positive than negative?

16 A In terms of the years?

17 Q Yes, sir.

18 A It appears that way.

19 Q All right. And again, I'll ask the next
20 witness about this in more detail, but again, you're
21 taking issue with my client's contention as to how
22 depreciation should be handled, and I want to understand
23 kind of your level of understanding of the depreciation,
24 and I guess we've kind of come to the conclusion that
25 it's more of a 10,000-foot level and something like this

1 ought to be best handled with your expert, right?

2 A Yes, I would agree with that; however, I think
3 I said in answer to some of your earlier questions how I
4 feel about the policy and the concern about putting off
5 a problem that may be a bigger issue down the road. So
6 I don't want to move away from that, but certainly the
7 details of all this, Mr. Garrett I think can certainly
8 answer any of those questions that you might have.

9 Q Thank you. We'll defer some of this
10 conversation for him.

11 The other -- another point you take issue with
12 is return on equity. I just want to have a quick
13 conversation about that, if I could.

14 My understanding is that one of your chief
15 contentions is that if this Commission were to set an
16 ROE less than 12.54, that you have concerns it might
17 affect your ability to get capital in the debt and
18 equity markets, is that right?

19 A Yes.

20 MR. MOYLE: I'm going to hand out an exhibit,
21 if I could, Mr. Chairman.

22 CHAIRMAN CARTER: Okay, for cross-examination,
23 or do you need a number?

24 MR. MOYLE: This is going to come in.

25 CHAIRMAN CARTER: The next number is 294.

1 Short title?

2 MR. MOYLE: Fitch Ratings, 12/22/08, 294.

3 (Exhibit 294 marked for identification.)

4 MR. MOYLE: Mr. Chairman, so the record is
5 clear, this is an exhibit that was also used in the
6 Power & Light case, and the pertinent data is on the
7 back page of it. It's the Fitch's ratings. I wanted to
8 make sure we were all on the same page.

9 BY MR. MOYLE:

10 Q Mr. Dolan, you just answered my question about
11 ROE by suggesting that you had a concern about the
12 ability to raise capital if the Commission gave a rating
13 of less than 12.54.

14 As we sit here today, you don't have any
15 concrete, substantive basis for that concern, do you?

16 A I'm not sure I understand your question, Mr.
17 Moyle.

18 Q We agree that you have a concern that if you
19 don't get a 12.54, you're going to have difficulty
20 accessing capital?

21 A Yes.

22 Q And I'm trying to understand why you believe
23 that, the basis for that opinion. And my question was,
24 as we sit here today, there's nothing that you can point
25 to that suggests that if this Commission comes in at

1 10.5, that you're not going to be able to access
2 capital, either debt capital or equity capital, correct?

3 A Well, I don't know what you mean by something
4 to point to. I think our financial folks are in touch
5 with the market on a regular basis, and I think they
6 certainly would disagree with your premise.

7 Now, your specific fact question, I'm not
8 offering that here today. Others may have an opinion on
9 that that may be different than mine, but I certainly
10 stand by my comment that I think there's going to be a
11 negative effect if it's reduced.

12 Q I want to make sure we're not talking past
13 each other. You said negative effect. My question was
14 access to capital.

15 You are aware, are you not, that currently, as
16 we sit here today, that your company is above the median
17 rating segments for integrated utility companies,
18 correct?

19 A Let me make sure I have the right reference
20 here, Mr. Moyle. Is this the December 22, 2008,
21 document?

22 Q That's right.

23 A Okay. So at this point in time, if you're
24 referring to Florida Power Corp, I can see where you
25 are. I would also add that the world has changed fairly

1 significantly since December of 2008.

2 Q Has your rating changed since then?

3 A That I don't know. I don't know the specifics
4 about this rating versus today's rating, I don't have
5 that in the top of my head.

6 Q And this was not too far from a point in time
7 where you all were working on your case, correct, and
8 preparing testimony?

9 A We were certainly working on it around this
10 time leading up to our filing in March.

11 Q I guess the point I wanted to try to explore
12 with you related to this Fitch's rating exhibit is that
13 doesn't this indicate that, with respect to integrated
14 utility companies, that the majority of them are rated
15 below Florida Power Corporation?

16 A Well, again, the only way I can answer your
17 question is if you isolate this point in time back in
18 December of 2008, which seems like a heck of a long time
19 ago. We know what our relative position was at that
20 time. What this would look like today relative to
21 others, I really don't have any knowledge of that.

22 Q If I had a more updated one, then that would
23 help, but let's just use this one for the purposes of
24 our discussion.

25 A Okay.

1 Q You would agree at the point in time
2 referenced on this document that the majority of utility
3 companies were not rated as high as Florida Power Corp,
4 correct?

5 A I would agree with that based on the data
6 that's here in front of me.

7 Q And as you look through this list, you see
8 Tampa Electric Company down there as a BBB. You are
9 aware that they were upgraded to BBB plus, correct?

10 A I'm not. I don't have firsthand knowledge of
11 that.

12 Q Do you know of any company on this list that
13 has not been able to access debt capital in the last six
14 months?

15 A I have no firsthand knowledge of that either
16 way.

17 Q And you did keep abreast and were aware of
18 some difficult financial situations with respect to
19 access to the debt markets back in the fourth quarter of
20 2008, correct?

21 A Just generally, if you're referring to sort of
22 the turbulence in the market as a whole.

23 Q Some people --

24 A Generally aware of that, I mean, that's not
25 something that I look at day in and day out. That's

1 Mr. Sullivan and others that do that work.

2 Q Were you aware of it at the time that it was
3 taking place, that there was sort of a freeze or a
4 meltdown in the debt markets?

5 A I was generally aware that there was
6 difficulty. That's not my area of expertise.

7 Q But you don't have a similar awareness today,
8 as we sit here, about any other period of time similar
9 to that period in the fourth quarter of last year,
10 correct?

11 A No. This is -- it's not something that I
12 study. I think that's more appropriate for Mr. Sullivan
13 or someone to answer.

14 Q Is it your understanding -- if you look --
15 let's say, worst-case scenario, and what I understand
16 you're telling this Commission is if you don't get a
17 good number close to our 499 that we may get downgraded,
18 and if you look at this chart, if you did get
19 downgraded, where would that put you, one notch, it
20 would put you at a BBB plus, would it not?

21 A It depends on the amount of the downgrade.

22 Q Assume it's a one-notch downgrade. Isn't that
23 typically what's done, they do it one notch at a time?

24 A That I don't know, how that's typically done.

25 Q Do you have information one way or the

1 other as to --

2 A No.

3 Q Okay. So if you assume that a one-notch
4 downgrade is typical -- that's what your testimony is
5 about, a downgrade, right? I mean, you have a concern
6 about a downgrade?

7 A I have a concern about, you know, the
8 financial impact on the company if the OPC suggestion is
9 approved.

10 Q And when you were putting your testimony
11 together, were you concerned about a one-notch downgrade
12 or a two-notch --

13 A I don't think I was dealing with that level of
14 specificity, Mr. Moyle.

15 Q If you assumed a one-notch downgrade, you
16 would agree that you would still be above the median
17 rating for integrated utility companies found on this
18 exhibit, what has been marked as 294, correct?

19 A Well, again, if we're dealing with a
20 hypothetical where we're going from one level to the
21 next level, and that level is above the segment in the
22 middle, then I think your statement is accurate. That
23 does not really contemplate what's going on in the
24 market or how people are going to view the company, it's
25 a hypothetical data point, so I can agree with it as far

1 as it goes.

2 Q And isn't the real effect of a downgrade in
3 rating not that you can't necessarily get access to
4 capital, but you might just have to pay a little more
5 for it?

6 A I think it can be a number of factors. It's
7 hard to say. I think -- you know, I think if you're --
8 and again, folks are closer to the markets than I am,
9 but I think I said this earlier and I'll say it again:
10 if we don't think that the financial community is paying
11 attention to what's going on in Florida, I think we're
12 kidding ourselves. I mean, that's why we're here.

13 Q But you would agree that this Commission has
14 to make its judgment, I think we are in agreement, on
15 the facts and evidence in this case, not necessarily
16 about something Wall Street may or may not do, correct?

17 A I think they need to make their judgments
18 based on the facts in this case, yes.

19 Q Right. And in response to a question from Mr.
20 Rehwinkel, you said, "I don't know, you'll have to ask
21 Wall Street that question," do you remember that answer?

22 A I remember -- I don't remember the question
23 that I was -- he asked me quite a few questions, so I
24 don't remember that specific one.

25 Q I understand. But the point is that to know

1 what Wall Street is going to do, you need to talk to
2 Wall Street, correct?

3 A Well, I tell you, that's -- you may be playing
4 with fire there a little bit, quite frankly. I mean,
5 you can look at history and you can look at regulatory
6 decisions and you can look at reactions, and you might
7 have an idea what's going to happen. I don't think we
8 should sit here with a blindfold on and suggest that if
9 we get the kind of outcome that's being suggested, that
10 we should just say, oh, we didn't anticipate we were
11 going to have a strong negative reaction next year and
12 then what do we now. I think that would be a little bit
13 short-sighted.

14 Q Yes, sir, but there's an objection in the law
15 called speculation, and it often is raised when somebody
16 says, "What is Bill going to do next week," and you
17 don't know because it requires somebody to speculate as
18 to what a third party is going to do.

19 Wouldn't you agree that with respect to
20 notions as to what Wall Street is going to do, that that
21 largely is speculative on our part?

22 A I'm not sure that I would agree that it's
23 speculative, but what I would say is we're comfortable
24 and confident that the facts that are in evidence will
25 be what the Commission judges to decide the outcome of

1 this case.

2 Q And that's how it should be, correct?

3 A Yes.

4 Q And you're aware that one of the items that
5 this Commission should consider by statute is the
6 acceptance or the willingness of the ratepayers to
7 accept a rate -- a rate change, correct?

8 MR. GLENN: Objection. That's a
9 mischaracterization of the law.

10 CHAIRMAN CARTER: To the objection, Mr. Moyle?

11 MR. MOYLE: I can probably point him to it,
12 but I can move on, I can argue it in my brief.

13 I'll ask him just a general understanding of
14 it and I won't have to get to the exact specifics, if
15 that's all right, Mr. Glenn.

16 MR. GLENN: That's fine.

17 BY MR. MOYLE:

18 Q Mr. Dolan, do you have any understanding as to
19 whether this Commission is charged with considering
20 impacts of requested rates on ratepayers when making its
21 decision?

22 A Are you asking me for a legal opinion on that?

23 Q No, just your understanding.

24 A I don't know either way.

25 Q Put aside Florida law, do you think that's

1 something that should be considered?

2 A I think we should consider whatever the facts
3 are consistent with Florida law.

4 Q Has anybody told you -- you're aware that that
5 exhibit we talked about on your direct examination
6 showed a 10.51 average ROE for decisions rendered in the
7 last -- since -- in 2009, correct?

8 A I remember the earlier conversation I believe
9 with Mr. Rehwinkel about that, yes.

10 Q No one has told you that if this Commission
11 gives you a 10.51 return on equity, that you will not
12 have the ability to raise debt, correct?

13 A No, I don't think I can agree with that.

14 Q So somebody has told you, Mr. Dolan, if this
15 Commission gives you a 10.51, you can't raise debt?

16 A Well, I wouldn't -- I guess I would answer
17 your question this way: It goes back to sort of the --
18 you're giving me a precise number. I think our CFO
19 would tell you that if we got a result approaching what
20 you're suggesting or what Public Counsel is suggesting,
21 there's going to be a serious issue with raising money.

22 Q Has he told you that it will be impossible,
23 that you can't do it, or just that it will cost more?

24 A I think he would be very concerned about that.
25 I don't think I would go beyond that.

1 Q But he hasn't told you expressly that you're
2 not going to be able to access that, has he?

3 A He hasn't told me that personally, no.

4 Q And you're not aware that he has told anybody
5 that?

6 A I don't know, he may have.

7 Q If this Commission were to adopt the position
8 of Public Counsel, you're not telling them that Progress
9 Energy Florida would be unable to meet its statutory
10 obligation to serve, are you?

11 A No, I don't think we're saying that. I think
12 the concern would be not so much access to debt, but the
13 cost of that access to debt. I think obviously people's
14 willingness to give us money to apply to our business is
15 going to be a function of our ability to repay that, so
16 I think that all sort of factors in. That's sort of my
17 general understanding. I'm sure Mr. Sullivan can
18 expound on that if he chooses to.

19 Q I just want to make sure the record is clear.
20 With counsel for the consumers and for public saying
21 negative 35, if this Commission were to adopt a negative
22 35 million, a rate decrease, you're not telling either
23 the customers or this Commission that the company would
24 not be able to keep the lights on, are you?

25 A I'm not saying that. What I'm saying is I

1 think it would have some pretty significant
2 consequences, and it may affect service levels as well.
3 It may affect how quickly the lights come back on in an
4 outage, as an example.

5 Q The third big component -- we've talked about
6 depreciation, we've talked about ROE. The third biggest
7 component is your O&M, your operation and maintenance,
8 correct?

9 A Yes, it is.

10 Q Isn't it true that the O&M levels for 2010 are
11 the highest O&Ms in the company's history?

12 A I don't know that.

13 Q And part of the O&M is increased salaries,
14 correct?

15 A Yes, I believe that's correct.

16 Q And you were asked a question earlier, I took
17 notes on it, if you will bear with me, Mr. Chairman, by
18 Public Counsel about -- I think he said raises were hard
19 to come by in the labor market, and then you wanted a
20 definition of the labor market.

21 I mean, you're generally aware that in Florida
22 most businesses aren't giving raises, correct?

23 A No, I'm not generally aware of that.

24 Q You are not aware of that?

25 A No. I suspect there are some that aren't and

1 I suspect there are some that are, depending on the
2 nature of their business.

3 Q Can you tell me any other industry, as we sit
4 here today, beside the electric utility industry that
5 has given raises throughout the recession that our state
6 is experiencing?

7 A I would say that -- do I have specific
8 knowledge of that? No, but I suspect that there are.

9 Q Okay. But again, I want -- again, we're
10 deciding this case on facts --

11 A No, I have not researched that question, Mr.
12 Moyle, but I think generally, I mean, you can point to
13 successful businesses in Florida today. Supermarket
14 industry might be one; some of your clients have had
15 some good years of late. So I suspect it wouldn't be a
16 stretch to find some that are giving raises to their
17 employees.

18 Q That's right, but you don't know?

19 A I did not research -- no, I don't pretend that
20 I've researched that specific question.

21 Q But you're aware that the electric industry,
22 both your company and Florida Power & Light, has
23 continued to give raises throughout this recession,
24 correct?

25 A I'm aware of that. I'm also aware that this

1 Commission approved Tampa Electric to do that same thing
2 earlier this year.

3 MR. MOYLE: Just a minute, Mr. Chairman, if I
4 could.

5 CHAIRMAN CARTER: Absolutely.

6 (Brief pause.)

7 BY MR. MOYLE:

8 Q Just a couple more lines of questions, Mr.
9 Dolan.

10 In my opening statement, I had urged this
11 Commission not to be held captive, I think was the term
12 I used, by the Levy project with the notion that it
13 seemed that Progress was indicating that if OPC's
14 position was adopted, a rate decrease came to be, that
15 Levy -- Levy might be in trouble.

16 You're not suggesting that, are you, to this
17 Commission, that Levy is hinging exclusively on this
18 rate case, you're not suggesting that?

19 A Not exclusively, no.

20 Q Because Levy has some other issues, does it
21 not? I mean, you talked about them with Mr. Rehwinkel.
22 There's the -- you don't have any joint partners, as we
23 sit here today, correct?

24 A We do not have any -- no, we do not, as we sit
25 here today.

1 Q And actually, that exhibit that Mr. Rehwinkel
2 used with you, there was that one page that had I think
3 some key things on Levy. Let me just be fair to you and
4 get it in front of you. I think it's 35, Mr. Dolan. Do
5 you see that Levy County nuclear financing?

6 A Yes, I do.

7 Q And joint ownership, that's a key component,
8 but that's not in place as we sit here today, correct?

9 A Correct.

10 Q And securitization of preconstruction costs,
11 that's a key component, but that's not in place as we
12 sit here today, correct?

13 A It's not.

14 Q The DOE loan guarantee, has the DOE guaranteed
15 any kind of loan related to the Levy project?

16 A Not for us to this date.

17 Q Okay. And then I think you didn't know about
18 the other two, the investors and the time to develop.

19 In the rate case issue, you were aware when
20 you prepared this that the rate case was going to be
21 filed for 2010, correct?

22 A Yes, we were.

23 Q So would it be a fair statement to say that
24 Levy has some other serious challenges to it, as we sit
25 here today?

1 A Well, I think what would be fair is to say
2 that -- what I said earlier: a project of this magnitude
3 has a number of important milestones that we need to
4 accomplish to keep this project moving along the
5 schedule that we would like to move it on.

6 I think it would also be fair to say that our
7 overall financial health as a company is going to have
8 an impact on our ability to do that project. I think
9 they are absolutely connected, and so therefore I think
10 the result here will be an additional factor that
11 influences that project. I think there is no question
12 about that.

13 Q And we've talked about having this case
14 decided on the facts and evidence as we sit here today.
15 As we sit here today, you don't know whether Levy is a
16 go or a no-go, correct?

17 A I -- well, I think we -- what we talked about
18 earlier, I would say yes, we're at a point in the
19 project where things could influence its schedule for
20 completion.

21 Q And you're also at a point in the project
22 where -- Levy could not go forward even if this
23 Commission came back and gave you every penny you asked
24 for, correct?

25 A It would certainly help.

1 Q Yes, sir.

2 A But it could -- there could be a separate
3 factor that could influence the outcome of that project.

4 Q Okay. And to the extent that this Commission
5 were basing rates on a speculative future event that
6 didn't happen and they built rates on that, that would
7 work to the disadvantage of customers, would it not, if
8 rates were based assuming something were to move forward
9 when, in fact, it didn't move forward?

10 A No, I wouldn't agree with that.

11 Q Let me switch gears just briefly and talk to
12 you about storm response, funding storm response. And
13 before I do, that exhibit that was in front of you, do
14 you have information about kind of the company's
15 finances, Progress Energy Florida's finances generally?

16 A I'm sorry, Mr. Moyle, you just -- are we
17 talking about the same exhibit that Mr. Rehwinkel
18 provided?

19 Q Yes, sir.

20 A Okay.

21 Q I guess the question pending is, do you have
22 information generally about the company finances?

23 A Generally, yes. I'm certainly not the CFO,
24 but I have some general knowledge about our finances.

25 Q Do you know how much you have with respect to

1 credit facilities available to you?

2 A No.

3 Q Okay. Page 23, or 34, I guess, under this
4 exhibit that Office of Public Counsel used with you.

5 A Okay.

6 Q Do you see down there it says, "credit
7 facility amount, 450, expiration, 2011"?

8 A Yes.

9 Q Do you know if that's accurate?

10 A I don't. I mean, I assume it is. It was on a
11 slide; I'd like to think the facts are accurate.

12 Q So that's a question for Mr. Sullivan?

13 A Probably so, yes.

14 Q You reference -- the reason I was going to ask
15 that is because in your rebuttal testimony on page 9,
16 line 3, you talk about funding storm response. Do you
17 see that?

18 A Yes, I do.

19 Q And as we sit here today, do you know how much
20 you have in the storm accrual account?

21 A Not precisely, but it is I think 130 million,
22 maybe. I'm just guessing. I think that's in the
23 ballpark.

24 Q Okay, give or take.

25 You also know that you do have the ability to

1 seek the PSC approval of any storm surcharge -- of a
2 storm surcharge? In the event that your assets were hit
3 with a hurricane, you could ask this Commission to put a
4 surcharge on customers' bills to help pay for the
5 damage, correct?

6 MR. GLENN: Objection. This is cumulative
7 from his direct exam. We're just rehashing the whole
8 direct exam right now.

9 CHAIRMAN EDGAR: Mr. Moyle, is this on
10 rebuttal, and if so, where?

11 MR. MOYLE: It's in rebuttal, I pointed right
12 to the line where he's talking about funding storm --
13 storm response.

14 MR. GLENN: He's just asking the same
15 question, how much is in the storm reserve. You know,
16 you can go get a surcharge if you want, it's -- I'll
17 withdraw the objection.

18 ACTING CHAIRMAN EDGAR: We have had
19 significant testimony in this hearing on that point,
20 but --

21 MR. MOYLE: Let me just wrap it up this way.
22 If Mr. Glenn is convinced that the record is clear and
23 -- I'll move on.

24 BY MR. MOYLE:

25 Q Mr. Dolan, you would also agree, would you

1 not -- and I'm going to ask Mr. Sullivan about available
2 credit facilities. You would also agree, would you not,
3 that if a storm hit and you needed money to do some
4 repairs, if you had a line of credit or credit
5 facilities available, that could also be looked to,
6 could it not, as a source to help with storm expense?

7 A It would really depend on the precise point in
8 time and the amount of that, and it would depend on the
9 magnitude of the storm and the amount of money that it
10 took to do the repairs. So it definitely would be a
11 strain, and obviously there's regulatory lag in
12 receiving that money in return. So it's going to
13 definitely put some short-term pressure on cash, no
14 question.

15 Q Right, but to the extent that you were looking
16 for places where you could come up with money to fix
17 something and you had a line of credit that was
18 untapped, or had a portion of it, that would be a
19 possible money source, correct?

20 A In your hypothetical, if you had sufficient
21 untapped, that has that potential to be utilized for
22 that purpose. But again, it depends on where you are in
23 time.

24 Q Now, you were asked some questions by Mr.
25 Rehwinkel about, you said that you hadn't had an

1 increase in base rates for a number of time, and he went
2 through some discussions with clauses. I want to
3 briefly just kind of test your knowledge on the clauses
4 and then introduce an exhibit, but I think we've agreed
5 that clauses have gone up over time, correct, the amount
6 of money recovered through clauses?

7 A Yes, primarily because of increases in fuel
8 prices.

9 Q And did you happen to see the decoupling
10 report to the Legislature that this Commission did?

11 A You know, I may have a -- I don't think I read
12 it. I think I have some general familiarity with it.
13 But I'm aware of it, that it was produced.

14 MR. MOYLE: Madam Chair, I would like a number
15 for this, if I could?

16 ACTING CHAIRMAN EDGAR: Absolutely. I'm on
17 295, I believe.

18 MR. MOYLE: Thank you.

19 ACTING CHAIRMAN EDGAR: Short title?

20 MR. MOYLE: Decoupling Report to Legislature,
21 Excerpt.

22 ACTING CHAIRMAN EDGAR: Thank you.

23 (Exhibit No. 295 marked for identification.)

24 BY MR. MOYLE:

25 Q Mr. Dolan, do you have any reason to believe

1 that the percentages and figures represented on the
2 excerpt of the decoupling report to the Legislature
3 prepared by the Florida Public Service Commission, which
4 has been marked as Exhibit 295, is incorrect?

5 A You're referring to the chart at the bottom
6 of --

7 Q 15, and the chart at the top of 16. One is
8 expenses and I think the other is revenues.

9 A Well, I must say, Mr. Moyle, I'm a little bit
10 at a disadvantage. I have two pages of what I suspect
11 is a fairly lengthy report, but having said that, I
12 mean, I don't have any reason to doubt the calculations
13 and the percentages.

14 Q So as we --

15 A I'm not sure what context they are in the flow
16 of the report, since I only have two pages.

17 Q No, and I don't want to get into the report or
18 talk about decoupling in any great detail. I'm just
19 trying to understand as we sit here today, do you have
20 a -- what is the percent of annual expenses that your
21 company is recovering through clauses, if you know?

22 A Yes, this is probably fair. I think to put it
23 in proper perspective, maybe five or six years ago it
24 was probably about 50-50, and I think the swing that we
25 have seen has almost been exclusively driven by higher

1 commodity fuel prices, so I think that has been the big
2 driver.

3 Q And if you'd look at the chart on page 16?

4 A Okay.

5 Q The last piece of information there is
6 December 2007. Do you know what the December 2008
7 number was? Do you know if it was higher than 69?
8 Lower?

9 A I do not.

10 Q The final sentence on page 16 states that,
11 quote, "The practice of removing capital cost" -- "of
12 recovering capital cost items through cost recovery
13 clauses has reduced risk for utilities by removing a
14 disincentive against investing in items that could
15 result in efficiency improvements."

16 You don't have any reason to disagree with
17 that statement, do you?

18 A It's really hard for me to agree or disagree
19 with it. I'm reading one sentence in a I don't know how
20 many page report to put things in proper context. I --
21 I think I said this when we did direct, that I have a
22 different view of this.

23 You know, the risk -- this idea of no risk
24 with the clauses, I think given that the primary driver
25 of the increase in the clause has been commodity fuel,

1 then you look at the base rates, you know, and that's
2 part of the reason why we're here, I think both
3 component parts are rising.

4 So in my humble opinion, I think there is
5 increasing risk with the rate base, and I think that's
6 really where I would agree that -- you know, I don't
7 necessarily leap to this conclusion, I guess, that
8 because it's in the clause, it's higher or lower.

9 Q Do you know how Wall Street views recovery
10 through clauses vis-à-vis recovery through base rates?

11 MR. GLENN: Objection; beyond the scope of
12 rebuttal.

13 MR. MOYLE: I'm not sure it is. He's talked
14 about Wall Street's views on the impacts of this rate
15 case. I think it's a fair question.

16 ACTING CHAIRMAN EDGAR: I'll allow.

17 THE WITNESS: No.

18 BY MR. MOYLE:

19 Q You don't know how they view it, is that
20 right?

21 A I mean, I don't know either way.

22 Q One way or the other, okay, thank you.

23 Mr. Dolan, you're aware that your company has
24 the burden of proof in this proceeding, correct?

25 A Yes, I've heard that been said.

1 Q And the litigants are contesting vigorously
2 issues on behalf of my clients, I'm trying to make sure
3 that the rate increase is lower, you're trying to get a
4 rate increase as high as you can, correct?

5 A No, I'm trying to get what is fair and
6 reasonable.

7 Q Okay, and that would be the 499 number,
8 correct?

9 A I'm trying to get what is fair and reasonable,
10 which is what we've asked for.

11 Q Are you familiar with in the sporting world
12 there are certain -- certain rules -- I want to just ask
13 you with respect to a close call. To the extent that
14 issues presented a close call for this Commission, you
15 know, given the financial conditions, given the
16 recession, given the consumers and the impact on
17 consumers, would you think that there might be a
18 regulatory rule similar to the tie goes to the runner,
19 or simultaneous catch is the offense, that in a close
20 regulatory issue, with you having the burden of proof,
21 that to the extent that there was any kind of doubt,
22 that the benefit ought to go to the consumer, would you
23 as a general proposition accept that?

24 A I don't think I would accept it or reject it.
25 I think that's ultimately for the Commission to decide.

1 Q Thank you for your time this afternoon.

2 ACTING CHAIRMAN EDGAR: Mr. Brew, questions?

3 MR. BREW: Yes, thank you.

4 CROSS EXAMINATION

5 BY MR. BREW:

6 Q Good afternoon, Mr. Dolan.

7 A Good afternoon.

8 Q I bet you didn't expect to be here this time
9 of day.

10 A I'm thrilled to be here.

11 Q I have a couple of questions for you about
12 Exhibit 293, which Mr. Rehwinkel showed you. Do you
13 have that?

14 A Okay.

15 Q And briefly, page 4, which is one of the
16 slides from the February 27th analyst meeting.

17 A Yes, I have that.

18 Q And that's the slide that's labeled,
19 "Delivering on our EPS Commitments." Do you see that?

20 A I do.

21 Q And this bar chart shows, if I'm correct, that
22 from 2006 to 2007, your earnings per share, Progress
23 overall, went up 28 cents, or 11 and a half percent, is
24 that right?

25 A I know the 28 cents. You're doing the math on

1 the percentage, so I don't have any reason to doubt you
2 on that.

3 Q Accept the math is 11 and a half percent?

4 A Okay, if you say so.

5 Q And from '07 to '08, it went up another 26
6 cents, or 9.6 percent, is that right?

7 A I've got the 26, I can see that. I'll trust
8 you on the percentage math.

9 Q And from '08 to '09, assuming your top end of
10 3.15, it would go up another 17 cents, or 5.7 percent,
11 is that right?

12 A If you make the assumption that you just made,
13 then it would go up 17 cents, if you make that
14 assumption.

15 Q Based on the bar charts, if you maintain that
16 ongoing guidance up to \$3.15, that would be about a 71
17 cent increase, or 29 percent, since 2006, is that right?

18 A Yes, again, if you take the maximum number in
19 the '09 range.

20 Q Okay. And when you talk about, from the
21 heading of the slide, your EPS commitments, that's
22 explained on page 6, the second bullet, which is, "To
23 achieve long-term annual EPS growth of four to five
24 percent"?

25 A That's the objective --

1 Q Okay. So am I correct --

2 A -- yes.

3 Q -- that since 2006, on average, you've well
4 exceeded that goal?

5 A Well, I think it depends where you start the
6 long-term conversation. I don't know where we were in
7 '05. I know -- you know, I mean, you would have to look
8 at the overall long term. If you isolate this period of
9 time and use the math that you used, perhaps it fits in
10 that slope.

11 Q I'm just working off of this presentation
12 slide --

13 A Okay.

14 Q -- starting from 2006, which is where this
15 slide starts, to 2009, which is where the slide ends.
16 Assuming those targets were met, you would have
17 increased earnings per share by 29 percent, which is
18 about ten percent a year, three years, year over year,
19 is that right?

20 A Well, again, we're using your hypothetical.

21 Q I'm just using your numbers.

22 A Well, you're using the top end of the range in
23 '09 and we're a long way from done in '09, so I would
24 hesitate to completely agree with your premise, but I
25 think if we did land that number at the high end, which

1 will be a challenge this year, I think, then perhaps
2 your math is correct.

3 Q Even if you didn't make the high end, on
4 average you would still be well above four to five
5 percent for this period, right?

6 A Perhaps we would. However, I think obviously
7 if you look at the near term, if we made the low end of
8 that range, we would actually be down year over year, so
9 clearly the market would have concerns with that.

10 Q Okay. So 2008, which includes the fourth
11 quarter of '08 when the recession was at its most
12 severe, you still managed to have six percent growth in
13 earnings per share?

14 A I'm sorry, Mr. Brew, where --

15 Q The bar labeled, 2008 Ongoing EPS.

16 A Okay.

17 Q \$2.98.

18 A Yes, I see that.

19 Q That would include the fourth quarter of '08
20 when the recession was at its most severe, and yet you
21 still for the year managed a six percent growth in EPS,
22 right?

23 A I'm just making sure, I'm trying to get clear
24 on your six percent. Are you calculating the 2.72 to
25 2.98, is that how you're doing that?

1 Q Yes, which is the 17 cents increase --

2 A Okay. Yeah, the '07 to '08, you know, subject
3 to check, the 26 cents, if that's six percent, then I
4 can agree with what you're saying.

5 Q Okay, thanks.

6 Now, am I also correct that when you're
7 talking about your EPS commitments, most of the earnings
8 from -- for Progress Energy comes from regulated
9 operations?

10 A I would say that's probably true, yes.

11 Q Okay. And that earnings, long-term earnings
12 growth goal that we talked about earlier that was
13 described in the February 27th analysts' meeting, does
14 that continue to be a Progress Energy goal today?

15 A Which one are you referring to?

16 Q Sure. Page 6 of this document.

17 A Okay.

18 Q The EPS growth -- long-term annual growth goal
19 of four to five percent that's listed the company gave
20 to the analysts in February, I'm simply asking, is that
21 still a goal today?

22 A Yes, it is.

23 Q Okay. So earlier in the discussions you've
24 had with other counsel, you have mentioned a number of
25 times that the world has changed, but one thing that

1 hasn't changed is Progress's expectation in terms of
2 earnings per share growth, is that right?

3 A "Expectation" is the term you use. How I
4 would answer that is that nothing has changed about our
5 desire and objective to try to continue that. It's
6 getting more challenging as we go along.

7 Q So other things have changed, but that
8 objective for you -- for Progress hasn't changed?

9 A As we sit here today, yes.

10 Q Okay, thanks.

11 MR. BREW: That's all I have, thank you.

12 ACTING CHAIRMAN EDGAR: Mr. Wright?

13 MR. WRIGHT: Thank you, Madam Chairman.

14 CROSS EXAMINATION

15 BY MR. WRIGHT:

16 Q Good afternoon, Mr. Dolan.

17 A Good afternoon to you as well.

18 Q I have some prepared cross-examination along
19 my own lines, but I wanted to follow up on a few things
20 that Mr. Rehwinkel and Mr. Moyle asked you about.

21 The first thing is just a clarifying factual
22 question. I think the answer is to be found at what is
23 in Exhibit 293 at the Bates-stamped page number 33. My
24 question was, earlier in the presentation materials
25 there is an indication I think that the company, PGN,

1 had made two large financings earlier in 2009, and by
2 that I understood it to mean earlier than the dates of
3 the presentations to the analysts. And I looked at page
4 33, Bates page 33, which is also page 22 of one of your
5 presentations, and that shows two financings, one,
6 Progress Energy, Inc., selling equity of 525 million,
7 and Progress Energy Carolina selling 600 million. Are
8 those the two financings that were referred to earlier
9 in the presentation?

10 A When you said earlier, which slide were you
11 referring to?

12 Q I'll tell you in a moment.

13 It's Bates page 000005, which is near the
14 front of the packet, heading, Recent Achievements.

15 A I believe that those -- the ones on Bates 33
16 are connected to the reference on Bates 05, I believe
17 that's correct.

18 Q Okay. And were those -- were those issued --
19 those January financings, did those occur pretty close
20 in time to what we would call the market bottom that
21 occurred earlier this year?

22 A That I don't know. Mr. Sullivan may be able
23 to help you better with that.

24 Q I'm looking at page Bates-stamped number 8 of
25 Exhibit 293, and in the blue block in the upper right,

1 headed, Financial Performance, there is a reference to
2 achieving a three to five percent productivity gain.

3 Are you with me?

4 A Yes, I am, I see that.

5 Q How is that productivity gain measured?

6 A I would say that that's probably measured in
7 -- well, actually, it could be measured in a number of
8 different ways. One way it could be measured is in
9 lower than otherwise projected costs. You know, if
10 we're looking at increased costs in a particular point
11 in time, it could be productivity in the sense that it
12 would achieve a lower cost than would otherwise be in
13 effect, so that might be one.

14 The other productivity could manifest itself
15 where the -- if you had a certain number of employees
16 that did a certain amount of work, it may reduce work in
17 some areas, increase productivity, to free them up to do
18 work in other areas, perhaps; wouldn't necessarily be a
19 one for one sort of dollar change.

20 But I think it's fair to say that that's --
21 there is an attempt to sort of stem the tide of
22 increasing costs in our business.

23 Q Might it also be measured in dollars of
24 corporate income per employee or dollars of corporate
25 income per dollar of labor expense?

1 A I'm not sure. I think it would be more the
2 two that I cited.

3 Q Okay. I don't mean to put words in your
4 mouth, but it sounds like the specifically correct
5 answer to my question, do you know how productivity gain
6 is measured here, is, "I don't know," and you offered a
7 couple of possible explanations. Is that a fair
8 characterization of your testimony?

9 A No.

10 Q Okay. Then do you know how productivity gain
11 is measured as used in your presentation to the
12 financial analysts in February?

13 A Well, I -- and I think my answer was there are
14 a number of different ways to measure productivity. I
15 offered you a couple of examples based on my own
16 knowledge how I thought it might be measured. They may
17 not be all-inclusive, because I think -- how I was
18 trying to answer your question. So there may be other
19 versions of that. So I don't know how you want to
20 interpret that answer.

21 Q Well, you were at the meeting on February
22 27th -- is that February 27th? Sorry, yes. You were
23 at the meeting on February 27th, correct?

24 A I was.

25 Q Do you know what the meaning of the phrase

1 productivity gain as it was used in the company's
2 presentation to the investors, analysts, whomever was
3 there, do you know how that phrase was used in that
4 meeting?

5 A Well, it was the three percent -- three to
6 five percent productivity gain, and I tried to offer you
7 my interpretation of how it was used. As I said, I
8 don't know that that is all-inclusive. There may be
9 other interpretations of that. I didn't have a specific
10 conversation or a written definition of three to five
11 percent productivity gain.

12 Q Let's pursue one of the measures you offered,
13 which was -- as I believe you indicated that it was
14 intended to capture the idea of lowering costs. Is that
15 so far, so good?

16 A No, I think I said that it could make costs
17 less than they otherwise would be.

18 Q Is there some production measure against which
19 the lower -- against which costs are benchmarked? Is it
20 lower cost per megawatt hour of product, is it lower
21 cost per unit of earnings? Is it lower cost per some
22 other unit of product delivered by the company?

23 A Yeah, I think it might be, for example, it may
24 be lower number of hours to complete a work task, as one
25 example.

1 You know, in a power-generating facility, if
2 it takes us X number of hours to move coal from one
3 location in the plant to another, if there's a more
4 efficient way to do that, that might be one example.
5 I'm sure there are a number of others.

6 Q Well, Mr. Dolan, you've given me several
7 answers in which you have said it might be this, it
8 might be that. And again, I'm going to come back to the
9 question I asked you: Do you know how it was used in
10 the presentation to the folks on Wall Street on February
11 27th?

12 A Mr. Wright, I think I'll stand by my earlier
13 answer. As I'm saying, I think there are a number of
14 ways to measure that. I'm trying to give you specific
15 examples of ways that I would measure that, and I think
16 there are specific examples of the way the company is
17 measuring that.

18 I'll go back to the coal plant example. I'm
19 aware that we have undertaken processes in that area to
20 try to make productivity gains where you would have less
21 hours of work for a specific task. So yes, that would
22 be included in this definition. I'm not here to
23 represent to you that I know every all-inclusive part of
24 the definition under productivity gain. I'm not here to
25 tell you that.

1 Q Okay. Do you have a witness in this case who
2 has yet to testify on rebuttal who would be able to give
3 me a more specific answer to my question?

4 A I'm not sure who to refer that to. Perhaps
5 Mr. Glenn can help with that at the break or something.
6 I'm sorry, I don't know where to direct you on that.

7 CHAIRMAN CARTER: Mr. Glenn?

8 MR. GLENN: We have a number of witnesses,
9 including our operational folks, as well as, I believe,
10 Mr. Toomey.

11 CHAIRMAN CARTER: Mr. Wright?

12 MR. WRIGHT: Thank you, Mr. Chairman, and
13 please convey my thanks to Mr. Glenn. Thank you.
14 Following protocol, I'm addressing the Chair.

15 MR. GLENN: Mr. Chairman, please let Mr.
16 Wright know that he's welcome.

17 CHAIRMAN CARTER: Let me let all of you guys
18 know that I'm going to give the court reporter a break
19 at 4:00.

20 You may proceed.

21 BY MR. WRIGHT:

22 Q Sticking with the same page we're on, in the
23 lower left-hand corner, under "Regulation and Public
24 Policy," there's -- the document indicates that it's one
25 of the company's priorities for 2009 to achieve a

1 reasonable Florida rate outcome. And my question for
2 you is, remembering that you were there, do you recall
3 any specific discussion between the company's
4 representatives and the Wall Street folks as to what a
5 reasonable Florida rate outcome would be?

6 A No.

7 Q I would like to -- this next, hopefully brief
8 line of questions refers to several different pages
9 within the document. I would like you to look first at
10 Bates stamp page 000017. I'm looking specifically at
11 the second bullet point next to the cost management
12 marker or arrow, i.e., Targeting Minimal O&M Growth.

13 I understand that to indicate that it is part
14 of the company's desire to improve earnings in 2009
15 through minimizing O&M growth in that year. Is that
16 accurate -- an accurate understanding of what that
17 shows?

18 A I wouldn't agree with your characterization.
19 I would say one of our goals is to -- is to, you know,
20 manage the growth in our O&M expenses. That I would
21 agree with.

22 Q Well, the phrase that the company used in its
23 presentation to the investors or analysts is "targeting
24 minimal O&M growth."

25 A Yes.

1 Q To me, that means minimize O&M growth. Is
2 that an accurate understanding?

3 A I don't know whoever put this slide together,
4 how they define the word *minimal*, so I don't want to
5 substitute my judgment for theirs.

6 Q I would like to ask you to look at what is
7 Bates page 000044. It's part of the transcript of the
8 session.

9 A Okay.

10 Q In the second paragraph, and I believe this is
11 Mr. Johnson speaking, he says, "On slide A, which is
12 also included in your (inaudible), this slide compares
13 O&M costs in 2007 and 2008. As you can see on both an
14 adjusted and unadjusted basis, we were able to reduce
15 costs year over year."

16 That's accurate so far, correct?

17 A I see the words as you read them, yes.

18 Q And I bet you would agree with me that
19 reducing your O&M costs year over year is consistent
20 with a goal of minimizing O&M growth?

21 A I think I would agree with that, yes.

22 Q I'd like to now ask you to look at what is
23 Bates page 75, 000075. The heading on this page is
24 Financial Statement Review.

25 A I have that one, Mr. Wright.

1 Q Thanks. If you look at the second row in the
2 income statement box at the top, that appears to me to
3 indicate that O&M declined from 1.842 billion in 2007 to
4 1.820 billion in 2008. Is that accurate?

5 A Yes, that would be accurate for the overall
6 company.

7 Q Right. Then on page 24 of the same document,
8 Bates page 24, the last bullet on the page under Expense
9 Reductions is, "Targeting reduction in 2009 budgets,"
10 correct?

11 A That's what it says, yes.

12 Q And that's under the overall heading of O&M
13 Cost Management, correct?

14 A If you're referring to the top header on the
15 slide, yes, I agree with that.

16 Q Yes. Is it an accurate interpretation of this
17 slide that the company was telling the investors and
18 analysts present that it was the company's intent to
19 target reduction in its 2009 O&M budgets?

20 A I think for the period, the calendar year of
21 '09, looking at it from a short-term perspective, I
22 think that's what that suggests, keeping in mind this
23 was done in February, earlier in the year.

24 Q To your knowledge, is that the company's
25 intent, to reduce its O&M spending in 2009?

1 A It was at the time this was written.

2 Q Do you know whether it's still the case?

3 A I don't know specifically either the start
4 point, end point. I know obviously, as we do every
5 year, we're looking to manage O&M in a way, you know, as
6 best we can to minimize costs.

7 Q Do you have the company's MFRs with you?

8 A I do not.

9 Q I can share my copy of the C schedules, but if
10 you could ask someone or if you have your counsel ask
11 someone to bring you a copy, it might help us out a
12 little bit. I just want to ask you a couple questions
13 about O&M costs in the 2007 to 2010 period.

14 CHAIRMAN CARTER: Mr. Burnett is going to
15 assist us on that.

16 Thank you.

17 BY MR. WRIGHT:

18 Q Mr. Dolan, I'd like to ask you to look at
19 Schedule C-6, page 7 of 7, at the bottom of the page it
20 bears page number 72.

21 A I'm sorry, Mr. Wright, once more?

22 Q Certainly. MFR Schedule C-6, page 7 of 7. At
23 the bottom of the page, if you hold the book in portrait
24 format, at the very bottom it says page 72.

25 A I got it, okay.

1 Q Okay. What I'm wanting to inquire about is
2 the company's projected O&M costs in light of what we
3 have just been talking about in terms of the
4 presentation that the company made to the Wall Street
5 folks.

6 Just as a predicate question, do you have any
7 objection to my using the phrase "the Wall Street folks"
8 to mean the investors and analysts who were attending
9 these meetings?

10 A No, I don't.

11 Q Okay. I didn't want to be disrespectful. I
12 figured that was appropriate.

13 A No, but I know we're being very sensitive
14 about what Wall Street thinks about all this, so maybe
15 we ought to come up with a different phrase.

16 Q If someone has one that would be -- I'll just
17 say investors and analysts. It takes a little longer,
18 but I will say that.

19 Okay. If I could ask you to look at line 6 on
20 the schedule that I think we're both on the same page
21 with, that appears to me to show that the company's
22 actual total O&M base recoverable for 2007 was about
23 \$661 million?

24 A Yes.

25 Q And reading further across, the actual 2008

1 total O&M base recoverable is 642 and a half million
2 dollars, correct?

3 A Yes.

4 Q I understand that row heading, Total O&M Base
5 Recoverable, to mean operations and maintenance costs
6 recoverable through base rates. Is that a fair
7 understanding of what that means?

8 A I believe that is.

9 Q Okay, let's move on to the 2009 budget,
10 please, and that number shows as \$725.6 million,
11 correct?

12 A Yes, it does.

13 Q And for 2010, \$819.9 million?

14 A Yes.

15 Q Okay. Now, you're welcome to check my
16 arithmetic, but I did it with what I believe to be a
17 reliable calculator. I think if you take the difference
18 between 642 and a half million dollars and \$725 million,
19 which is the difference between the '08 actual and the
20 '09 budget, that's about 12.7 percent. Does that sound
21 good to you?

22 A Okay.

23 Q And if you take the corresponding difference
24 from 2009, 725 million, to the 819.9 million in 2010,
25 that's about 13 percent?

1 A Okay.

2 Q Eyeballing those, you would agree that's about
3 right, would you not?

4 A The percentage you're suggesting?

5 Q Yes, sir.

6 A I don't have any reason to doubt your
7 calculation.

8 Q Okay. So my question is -- well, my
9 observation -- and I'm going to put this in the form of
10 a proposition. My observation is that a 12.7 percent
11 jump in '09 and a 13 percent jump in 2010 does not seem
12 to be consistent with targeting O&M reductions. Do you
13 agree with that or disagree with it, and why?

14 A Well, I would say it's hard for me to agree or
15 disagree with this, because, number one, I'm not sure
16 what all makes up this number, whether we're comparing
17 apples to apples. You know, we have new plan and
18 services, there's a number of different things that are
19 going to influence this number. And so for me to sit
20 here and speculate as to is that an apples-to-apples
21 comparison, I'm really not in a position to do that.

22 Q Well, your company, by the historic data shown
23 in C-6, cut O&M costs from 2007 to 2008, right?

24 A We did, yes.

25 Q And the total company cut O&M by a roughly

1 similar amount from 2007 to 2008, correct?

2 A 2007, 2008 --

3 Q Yeah, as shown in here --

4 A Yes, I recall that other -- if you're
5 referring to the other page that maybe -- I believe it
6 was Mr. Moyle had asked me about that.

7 Q I think he did, and I think maybe Mr. --

8 A Yeah. Yes.

9 Q So that was a decline, but a 13 percent
10 increase in each of the succeeding years doesn't strike
11 you as inconsistent with attempting to reduce O&M costs?

12 A Well, on its face, I understand your question.
13 Like I said, I don't have the specifics that make this
14 up. There are a number of different things that are
15 moving up and down. As an example, pension expense has
16 changed fairly significantly. But again, I would defer
17 to others if you want to go point by point on the
18 individual O&M expenses. What I do know is what the
19 historical data shows, and what I also know is what
20 we're asking for in terms of 2010, and I'm comfortable
21 with it as being appropriate.

22 Q Looking back for a moment at the page we just
23 left, I think, page 24, Bates page 24 in Exhibit 293,
24 the next-to-the-bottom bullet on that page reads,
25 "Significant belt-tightening efforts." And my question

1 for you is, what, if any, significant belt-tightening
2 efforts are reflected in the O&M values for 2009 and
3 2010 that we see in your MFR C-6?

4 A I don't -- I don't have -- I'm probably not
5 the best person to answer that specific question. I
6 think each of the individual businesses can do that.

7 I think as a general matter, you know, one
8 thing to keep in mind there is what we talked about
9 earlier, that the belt-tightening, you know, is
10 different than permanent reduction. You're going to
11 have ups and downs with the situation that we're dealing
12 with, for example, this year where you may have some
13 things you're able to do that are not sustainable. So I
14 think you just have to keep that particular aspect of
15 that in perspective. As to the specifics, I would defer
16 to the individual folks to talk about theirs.

17 Q What, if any, flexibility in your O&M
18 expenditures do you have -- does Progress Energy Florida
19 have from year to year?

20 A What flexibility do we have?

21 Q What, if any, flexibility do you have?

22 A I'm not sure I understand your question.

23 Q Do you have any flexibility in terms of
24 deferring O&M from a current year into a future period?

25 A Well, there are times when that may be

1 possible; as an example, for a large generating station,
2 if there are outages scheduled in one year and then the
3 next year it's possible that the work could be, you
4 know, done in either period. So if that's -- to your
5 question of flexibility, the money will eventually be
6 spent appropriately on that maintenance. There may be
7 some flexibility as to the timing of that. But I would
8 say over the long haul, that becomes more and more
9 limited.

10 Q Do you know whether the company exercised any
11 discretion when it reduced its O&M spending from 2007 to
12 2008?

13 A Exercised any discretion?

14 Q In scheduling O&M expenditures.

15 A I don't know that specifically.

16 Q Do you know whether it exercised any
17 discretion in possibly deferring expenditures from 2008
18 into 2009?

19 A I don't know that.

20 CHAIRMAN CARTER: Mr. Wright, would this be a
21 good time to give the court reporter a break?

22 MR. WRIGHT: I sort of have one more question
23 on the flexibility line, if I might.

24 CHAIRMAN CARTER: Okay, you may proceed.

25 / / / / /

1 BY MR. WRIGHT:

2 Q I'd like to ask you to look at page Bates 57
3 of Exhibit 293, Mr. Dolan.

4 A I have the pages all mixed up here. I'm
5 sorry, Mr. Wright, 57, did you say?

6 Q Yes, it's Bates page 57.

7 A Okay, I have that.

8 Q At the very top, and this is attributed to
9 Mark Mulhearn, he makes the statement, "There is some
10 flexibility in that and all through the line items on
11 the utility side." I understand that he's referring to
12 the capital expenditure budget, is that accurate?

13 A I think that's accurate in this context. This
14 is the paragraph we read earlier?

15 Q Right.

16 A Yes, I believe it's capital that he is
17 referring to.

18 Q That's what CAPEX means, correct?

19 A Yes.

20 Q Okay. And you would agree that Mr. Mulhearn's
21 statement was true as made, that the company does have
22 some flexibility in its capital expenditures?

23 A Yes, I would agree with that.

24 Q Thank you.

25 MR. WRIGHT: This would be a great time to

1 take a break, Mr. Chairman.

2 CHAIRMAN CARTER: Thank you, the court
3 reporter thanks you. Let's take ten, everybody.

4 (Brief recess.)

5 CHAIRMAN CARTER: We're back on the record,
6 and when we last left, Mr. Wright, you were on cross-
7 examination. You're recognized, sir.

8 MR. WRIGHT: Thank you, Mr. Chairman.

9 CHAIRMAN CARTER: Are you ready, Mr. Dolan?

10 THE WITNESS: Yes, I am.

11 CHAIRMAN CARTER: Mr. Wright?

12 MR. WRIGHT: Thank you, Mr. Chairman.

13 BY MR. WRIGHT:

14 Q Mr. Dolan, you'll be happy to know I think
15 we're done with Exhibit 293.

16 A Wonderful.

17 Q I want to ask you a few questions about your
18 testimony at page 2 and also at page 10 of your rebuttal
19 testimony, where you in two different places talk about
20 the company's base rates having been generally flat for
21 more than a quarter century. To assist us in this
22 discussion, I'm going to ask my partner to give you what
23 is already in evidence as Exhibit 280, two eight zero.

24 A Thank you.

25 Q This exhibit has been admitted into evidence

1 and was introduced during the cross-examination of Mr.
2 Slusser, but it shows what it purports to show, and that
3 is, it's a publication of the Public Service Commission
4 that shows for different time periods the various
5 investor-owned utilities base charges, not base charges,
6 base fuel and clause charges for the typical 1,000 KWH
7 residential service. I'm sure you have seen things like
8 this, at least for your company, have you not?

9 A Yes, probably.

10 Q If I could ask you to look at the first page
11 in after the cover sheet of Exhibit 280?

12 A Yes.

13 Q I'm just picking for discussion purposes the
14 middle of 1984. If I could ask you to look at the box
15 that's headed, Proposed April 1984 to September 1984?

16 A I see that, yes.

17 Q Okay. You would agree that the company's base
18 charges, again, for the 1,000 KWH residential customer,
19 was about 43 and a half dollars at that time?

20 A Yes.

21 Q And fuel was about 31?

22 A Yes.

23 Q And energy conservation was a little over a
24 dollar, correct?

25 A Yes.

1 Q Okay. Now, if you would turn to the very last
2 page of that exhibit and again focus your attention on
3 your company's column, which is now headed Progress
4 Energy Florida, Inc., base rate charges are slightly
5 higher, they're about \$44 now, correct?

6 A The 43.95 you're referring to?

7 Q That's the one, yes.

8 A Yes, I see that.

9 Q Okay. And fuel is now \$56 per 1,000 KWH
10 residential?

11 A Yes, it is.

12 Q And the balance -- and those two numbers
13 together sum to about, right at \$100, correct, 99.95?

14 A 99.95, yes.

15 Q So what I want to look at is the comparison
16 between the composition in 1984, and the amounts as
17 well, and 2009.

18 Roughly, the base rates, as you correctly
19 testify in your testimony, the base rate charges as
20 stated are right around \$44 in both 1984 and 2009,
21 correct?

22 A Yes.

23 Q And fuel has increased from roughly \$31 to \$56
24 even, correct?

25 A Yes, it has.

1 Q Now, the total bill, however, has increased by
2 some \$47, from \$76, roughly, to just under \$123,
3 correct?

4 A \$46, \$47, you said?

5 Q I said 47, I think the exact number is \$43.83.

6 A Okay.

7 Q \$46.83, sorry.

8 A That appears right.

9 Q Okay, so we've got roughly a \$47 increase in
10 the bottom line bill, of which 25 is accounted for by
11 the increase in fuel costs, correct?

12 A Yes.

13 Q And would you agree that the majority of the
14 remaining difference is accounted for by the capacity
15 cost recovery clause, environmental and energy
16 conservation cost recovery clauses?

17 A Yes, plus the gross receipts tax.

18 Q Correct, and that's really why I said
19 "majority." I think it's about \$20 out of the
20 additional -- about \$19 out of the additional 22 that's
21 accounted for by those three clause charges, correct?

22 A Yes.

23 Q Okay. Now, would you agree that the costs
24 that are in the capacity cost recovery clause are of a
25 type that could just as easily be recovered through base

1 rates?

2 A Some may be. I'm trying to get clear on where
3 the -- some of the cogen contract stuff I think flows
4 through that as well, Mr. Wright. So I would say some
5 of that, yes.

6 Q Well, would you agree that predictable
7 capacity payments under cogen contracts could as well be
8 recovered through base rates as through a clause?

9 A I'm not sure I could agree with that. I think
10 if we -- if we built generation instead of purchasing
11 generation, it might be different. That -- I don't
12 think of those payments as equivalent to a rate base
13 capital expense that we would make ourselves, no.

14 Q Well, historically, hasn't the company
15 recovered capacity payments for long-term purchase power
16 agreements with other utilities through base rates?

17 A Through base rates, did you say?

18 Q Yes, sir.

19 A I'm not sure. Can you try that again? I want
20 to make sure I'm understanding your question.

21 Q Historically, isn't it true that the company
22 has recovered capacity payments pursuant to long-term
23 purchase power agreements with other utilities or other
24 entities through base rates?

25 A I thought we recovered those through the

1 capacity clause.

2 Q Well, you do now. My question is,
3 historically, isn't it true the company has?

4 A I see. I don't know that I have that much
5 historical knowledge, quite honestly.

6 Q Are the costs in the environmental cost
7 recovery clause principally the costs associated with
8 additional environmental measures such as scrubbers,
9 precipitators and things like that?

10 A I think that would be a significant portion of
11 that. There may be other T&D-related expenses, but I
12 think I would generally agree with your suggestion.

13 Q A scrubber is an integral part of a power
14 plant if it is part of the power plant, isn't it?

15 A Well, when they're operating at Crystal River
16 4 and 5 soon, they will be integral to that for emission
17 reductions. They will be part of the overall power
18 plant footprint.

19 Q And as such, once they're built their costs
20 are known, are they not?

21 A Once they're built their capital costs are
22 known. Their operating costs will vary, obviously, as
23 you go out in time.

24 Q Right. Wouldn't it be true that you could as
25 easily recover those capital costs and the O&M costs

1 associated with the scrubber component of Crystal River
2 4 and 5 through base rates?

3 A That we could have easily --

4 Q You could as easily as through the clause
5 recovered them through base rates?

6 MR. GLENN: I'm going to object to this line.
7 It's all covered in direct testimony. We have been
8 through this before. I don't -- I mean, it's tenuous at
9 best at how it applies here.

10 CHAIRMAN CARTER: Mr. Wright, to the
11 objection?

12 MR. WRIGHT: Mr. Chairman, Mr. Dolan has made
13 the -- has averred that their base rates have remained
14 constant for a quarter of a century. That's true.
15 However, I assert and where I'm going with this line of
16 questioning is to demonstrate that the company has
17 additional costs in its non-base rates that could just
18 as easily be recovered through the base rates.

19 MR. GLENN: Mr. Chairman, we will stipulate
20 that we have other costs that are outside of base rates
21 that are recovered through clauses. I think the
22 Commission well knows this, this point has been
23 established. I think we're on the seventh hour of eight
24 pages of testimony. So I would remain -- continue my
25 objection.

1 CHAIRMAN CARTER: Overruled.

2 You may proceed.

3 MR. WRIGHT: I may be able to shorten this up
4 if --

5 CHAIRMAN CARTER: That would be most
6 appreciated.

7 MR. WRIGHT: I'll try, if the company will
8 stipulate that the costs are costs that are base rate
9 type costs that are recovered through clauses other than
10 -- and not through base rates as denominated.

11 MR. GLENN: No.

12 CHAIRMAN CARTER: That was too easy, wasn't
13 it?

14 MR. WRIGHT: I tried, Mr. Chairman.

15 CHAIRMAN CARTER: You may proceed.

16 BY MR. WRIGHT:

17 Q Let me ask you this: You could -- when are
18 the scrubbers going in service at Crystal River 4 and 5?

19 A I believe -- I think the projects will be
20 completed in the spring of 2010. There's some part of
21 it -- first unit will be completed later this year. I'm
22 uncertain about the full operation, but I think it's the
23 spring. Mr. Sorrick could probably give you a better
24 answer on that.

25 Q Are the cost of the scrubbers included in the

1 company's rate base within the base rate increase
2 request in this case?

3 A No, they're not.

4 Q Couldn't they be?

5 A Well, no, they couldn't be, because we have a
6 clause that suggests that we should put them through the
7 environmental cost recovery clause, so they couldn't be
8 part of this base rate proceeding.

9 Q But you would agree they're capital costs that
10 are part of the integral capital costs of the plant,
11 correct?

12 A There definitely are capital expenses
13 associated with that project.

14 Q Thank you.

15 MR. WRIGHT: Mr. Chairman, I'm going to ask my
16 partner to pass out an exhibit.

17 CHAIRMAN CARTER: Do you need a number?

18 MR. WRIGHT: I do, thank you.

19 CHAIRMAN CARTER: 296. Short title? You
20 looked like you zigged when you should have zagged. No
21 prob. No harm, no foul.

22 MR. WRIGHT: Thank you, Mr. Chairman. I did
23 indeed zig when I should have zagged, and I was about to
24 have Mr. LaVia pass out an extraneous exhibit that I'm
25 not going to use, and now he's passing out the correct

1 one. This will be 296.

2 CHAIRMAN CARTER: Short title?

3 MR. WRIGHT: PEF Financial Info 1998-2008.

4 CHAIRMAN CARTER: Nineteen --

5 MR. WRIGHT: 1998-2008.

6 CHAIRMAN CARTER: Thank you.

7 (Exhibit No. 296 marked for identification.)

8 CHAIRMAN CARTER: Okay?

9 Hang on one second, Mr. Wright.

10 MR. WRIGHT: Yes, sir.

11 CHAIRMAN CARTER: Did everyone get a copy

12 here?

13 You may proceed.

14 MR. WRIGHT: Thank you, Mr. Chairman.

15 BY MR. WRIGHT:

16 Q Mr. Dolan, I've just had distributed to you a
17 document that presents some summary information that I
18 will aver to you is extracted from the company's
19 earnings surveillance reports for the years indicated.
20 Do these numbers look basically right to you, that the
21 company's -- for example, that the company's plant in
22 service increased from roughly 5.7 billion in 1998 to
23 9.3 billion in 2008?

24 A Mr. Wright, I really don't have a good frame
25 of reference to either agree or not agree with the

1 numbers. It doesn't surprise me that we're increasing
2 plant in service, and the revenue numbers I think are
3 generally in the ballpark based on my, you know, general
4 knowledge that 1.7, 1.5, in the more near-term years.
5 So I think I can agree as far as that goes.

6 Q And how about the ROE numbers?

7 A Familiar with the '08, we talked about that
8 earlier. The others, you know, that's not my direct
9 area of expertise. I don't have a good frame of
10 reference to agree or disagree on those.

11 MR. WRIGHT: Mr. Chairman, I do aver to you
12 these were extracted from the company's own earnings
13 surveillance reports. If I could just ask Mr. Glenn if
14 the company intends to object to this? If not, then I
15 don't have to go to the source documents, but we do have
16 them in the room.

17 CHAIRMAN CARTER: Mr. Glenn?

18 MR. GLENN: The witness has only testified
19 that he has any knowledge about the 1.5 billion in '08
20 and the 9.71 in '08, so -- I mean, I would like to
21 object. I mean, we haven't had an analysis of whether
22 these ROEs are correct or not. We haven't had any of
23 our folks look at this.

24 I mean, we can take a look, review these and
25 then I could back to Mr. Wright. I don't want Mr.

1 Wright to have to put in every surveillance report if he
2 doesn't have to, but I would like to check these, if
3 that would be appropriate and if Mr. Wright would be
4 amenable to that.

5 MR. WRIGHT: Mr. Chairman, I'm completely
6 amenable to that, and if I could ask, if the company
7 will agree that this can come in without objection,
8 subject to their checking the accuracy of the numbers
9 presented?

10 CHAIRMAN CARTER: Do you have another witness
11 for this, Mr. Glenn?

12 MR. GLENN: Mr. Toomey probably could address
13 this, my guess.

14 MR. WRIGHT: Mr. Chairman, I don't think we
15 need a witness for this. The earnings surveillance
16 reports are the company's. As such, they are
17 effectively admission. They are also reports that are
18 maintained by the Commission in its ordinary course of
19 business. The information is clearly probative as to
20 the profitability of the company over the last 11 years
21 and its ability to run its business with certain amounts
22 of base revenues. That's all I'm going with. I don't
23 -- which is to say I don't think we need a specific
24 witness to sponsor this. I do have one or two questions
25 I want to ask Mr. Dolan about it, but if we can just

1 have an agreement that if the numbers are as represented
2 on the tables, that the exhibit will come in, I can move
3 on without going into any detail.

4 CHAIRMAN CARTER: I think he testified that he
5 was familiar with the '08 numbers, but he didn't say
6 about the rest of them. Mr. Glenn, recommendation?

7 MR. GLENN: Yeah. Mr. Chairman, you know, we
8 would reserve our objection to check the numbers. Some
9 of these don't look accurate to me, so we will check and
10 I can get back to Mr. Wright off line.

11 CHAIRMAN CARTER: I will let you guys work
12 that out.

13 Mr. Wright, you may proceed.

14 MR. WRIGHT: And if they're not accurate, I
15 will correct them, and if we need to take it up with Mr.
16 Toomey, we'll do so, but Mr. Glenn and I will endeavor
17 to avoid that extra step.

18 CHAIRMAN CARTER: You may proceed.

19 MR. WRIGHT: Thank you.

20 BY MR. WRIGHT:

21 Q On a more general level, Mr. Dolan, will you
22 agree that generally the company has been profitable for
23 the last 11 years, since 1998, whether you agree with
24 these specific numbers or not?

25 A It depends on your definition of *profitable*.

1 If you're saying we have a positive income, I would
2 agree with that.

3 Q Well, let me just pick a couple numbers here.

4 Do you think 13.9 percent on an FPSC adjusted
5 basis indicates profitability?

6 A I would say yes, probably it does.

7 Q How about 11 percent?

8 A To a lesser degree, yes.

9 Q How about 9.71 percent, you did say you were
10 familiar with the '08 number?

11 A Yes, to an even lesser degree, yes.

12 Q Page 8 of your testimony, you're addressing
13 the Intervenor's proposal for a \$35 million annual rate
14 reduction, and at lines 10 and 11, you state that any
15 rate reduction, especially one of that magnitude, would
16 be damaging to the financial health of the company.
17 That's a characterization of your testimony, is it not?

18 A Yes.

19 Q I think you also say that it would likely
20 cause, "credit rating agencies to downgrade the
21 company," correct, and that's at lines 13 and 14?

22 A Yes, that's correct.

23 Q Now, you can't say for sure that that will
24 happen, can you, if the Commission implements a rate
25 reduction?

1 A I would agree with you, Mr. Wright, that I
2 can't say it absolutely will happen. I think there's a
3 pretty high probability that it would happen, though.

4 Q Have you done any specific analysis of what
5 the impacts on the company's total weighted average cost
6 of capital would be if the Commission were to implement
7 a rate decrease as prayed by the consumer witnesses?

8 A I have not, no.

9 Q Has the company, to your knowledge?

10 A I'm not aware either way.

11 Q Have you done any -- if we were to assume that
12 your assertion that the ratings would be downgraded and
13 that that would in turn increase the company's cost of
14 capital and ultimately increase the cost of service to
15 your customers, have you done any analysis of when any
16 such impacts would be experienced?

17 A I have not.

18 Q Are you aware of any such analysis?

19 A I'm not aware whether we have or we have not.

20 Q Have you given any consideration to Progress's
21 ability to file another rate increase request in the
22 future in the event that any of the negative results
23 that you discuss in your testimony were to occur?

24 A I'm sorry, I missed the first part of your
25 question. I apologize.

1 Q I also apologize. I was probably mumbling in
2 an effort to speed up.

3 A We all support that.

4 Q My question is, have you given any
5 consideration to Progress's ability to file a future
6 rate increase request in the event that any of the
7 negative results that you discuss in your testimony were
8 to occur in the future?

9 A Well, I think I would say yes to your
10 question. I'm not -- let me try to expand on it this
11 way: I think there are a number of factors, some of
12 which are in evidence in this case, and others that are
13 not, that will influence that decision, so it certainly
14 has been something that I have thought about. And I
15 think ultimately that's a conversation for another day,
16 how we'll make that judgment. I think it depends on the
17 impact of this case, it depends on the broader economy
18 at large. So I think there are a number of things that
19 will influence how that decision gets made, and when.

20 Q Thank you. I now apologize, but I missed one
21 word in what you said, and you said -- discussing what I
22 asked you about, you said, "It's not something that I,"
23 have or haven't thought about, and I didn't catch
24 whether you said have or haven't.

25 A No, it us something that I personally have

1 thought about, yes. I'm concerned that's the situation
2 we will find ourselves in in 2010.

3 Q Still on page 8, at line 24, continuing onto
4 the top of page 9, you basically say that with less cash
5 flow, you'll have to borrow more money at higher
6 interest rates or curtail capital expenditures?

7 A Yes.

8 Q Do you have any testimony as to exactly what
9 those higher interest rates might be, as you use the
10 term in your testimony?

11 A I do not.

12 Q And you don't have any testimony as to what
13 future interest rates will be, do you?

14 A No, I do not. Mr. Sullivan perhaps may.

15 Q Continuing on page 9, in the middle of the
16 page, lines 14 through 18, you say that denying some or
17 all of your rate requests will, "affect the company's
18 financial strength and potentially have an adverse
19 impact on the timing and ultimate construction of the
20 Levy nuclear project," correct?

21 A Yes.

22 Q I first want to ask you a few questions about
23 your testimony with regard to the Levy nuclear project.
24 Do you have any specific -- have you done any specific
25 analyses of exactly what impacts, what adverse impacts,

1 as you use the term in your testimony, that denial of
2 part or all of the company's rate request would have on
3 the company's ability to fund, finance, the Levy
4 project?

5 A No, I have not.

6 Q Are you aware of any such analyses performed
7 by anyone else in the company?

8 A I'm not aware whether they -- no, I'm not
9 aware either way.

10 Q In preparing your testimony, or perhaps I
11 should say in adopting it -- no, this is your testimony.
12 In preparing your testimony, did you take account of the
13 fact that the company will continue to have the ability
14 to recover its preconstruction costs for the Levy
15 nuclear project?

16 A I'm not sure I understand your question, Mr.
17 Wright. Did I take into account -- could you try that
18 again?

19 Q Sure. To summarize what you have said, you
20 have said if you all don't -- if part or some or all of
21 your rate request is denied, it would potentially have
22 an adverse impact on the company's ability to finance
23 the Levy project. My question for you is, in making
24 that statement in your testimony, did you take account
25 of the fact that the company will, through the nuclear

1 cost recovery clause, continue to have the ability to
2 recover its preconstruction costs associated with the
3 Levy project?

4 A I would say yes.

5 Q Did you take account of the fact that the
6 company will, again, through the nuclear cost recovery
7 clause, continue to earn its current AFUDC rate on the
8 investment that it makes in the Levy nuclear project?

9 A I would say yes, to some extent, and I think
10 you're familiar that issue is still pending, how that's
11 going to be resolved in the other docket.

12 Q Your current AFUDC rate I think is 8.848
13 percent. Does that sound about right?

14 A It does.

15 Q And that includes an embedded ROE value of
16 11.75 percent, correct?

17 A Yes.

18 Q And it also includes a certain assumed capital
19 structure pursuant to our 2005 stipulation, correct?

20 A Yes.

21 Q My question, then, is, assuming that the
22 project is otherwise viable -- and I don't want to lead
23 you into the same discussion you had with Mr. Rehwinkel
24 this morning, so just assume for the purposes of this
25 question that the project is otherwise viable -- given

1 Progress's ability to recover its preconstruction costs
2 and to earn a weighted average return on its investment
3 during the construction period that includes an 11 and
4 three-fourths percent rate of return on equity, why are
5 you so concerned that you wouldn't be able to obtain
6 sufficient cash for the Levy project to continue the
7 project?

8 A Mr. Wright, I would be concerned about that,
9 because if you think about the result that OPC has
10 proposed and the negative consequence to that, I think
11 as a general matter you might agree with me that if that
12 causes our ability to access the markets to be more
13 difficult, or the cost of that financing to be more
14 expensive, ultimately that's going to influence all of
15 our expenses, including the borrowing we would need to
16 do for Levy.

17 And at some point, you know, as you know, in
18 the nuclear docket there are cost recovery provisions,
19 but there is also ongoing review of feasibility, so
20 there's a point where access to capital, especially the
21 amount of capital we're talking about for Levy, if that
22 cost continues to go up, it's going to have a negative
23 impact. The cost recovery mechanisms may not in fact
24 change, but how we view that project in total may in
25 fact change. So that's where I think -- I think there's

1 clearly an intersection between the short-term health of
2 the company -- you know, another example: If we have a
3 negative result and it influences our cost of equity and
4 our stock price, as an example, and we have to go into
5 the market and issue significant amounts of new equity
6 that's going to be paid back over time, all of the
7 fallout associated with that is going to influence the
8 long-term cost of that project. And I'm sure that you
9 and others will have an opinion about that when we get
10 into the nuclear cost recovery docket, and that would be
11 a matter of concern.

12 So I think these are completely connected. I
13 think we're going to finish here --

14 Q I'm sorry, are or are not?

15 A Are connected, as I've said many times today
16 already, that they are connected, and I think the market
17 is going to look at this decision and it's going to
18 influence how they look at us from a financial
19 perspective, and that's going to have secondary effects
20 on the Levy project.

21 Q When you borrowed for Levy, or when you needed
22 funds for Levy, could you borrow with respect to the
23 Levy project itself?

24 A That I don't know. I would defer to Mr.
25 Sullivan on how we go to market.

1 Q I want to ask you about the first part of the
2 sentence that begins at line 16 on page, I think, 9.
3 The first part says, "Denying some or all of PEF's rate
4 request will affect the company's financial strength."
5 I assume you would agree with that statement as a stand-
6 alone sentence, would you not?

7 A Since I wrote it, yes, I would agree with it.

8 Q Then I made a good assumption.

9 Based on your knowledge of the company's
10 history, has either Florida Power Corporation or
11 Progress Energy Florida, the current name for the same
12 operating company, ever gotten its entire requested
13 increase in a general rate case?

14 A I don't know. Here's what I do know, what I
15 do know is that we have operated under settlement
16 agreements since 1997, and I'm not familiar with the
17 facts around our last case in 1992 or '93, so I don't
18 know what we asked for and what we received in that
19 case.

20 Q Okay. Well, the Commission's orders will
21 reveal that, and I will cite to those --

22 A Absolutely, I'm sure they will.

23 Q Okay. Do you know whether the company has
24 ever appealed a final rate case order of this decision
25 and won?

1 A I don't know either if we had appealed, or, if
2 in fact, we did, whether we won or not.

3 Q Do you have an opinion as to whether a final
4 rate case order of this Commission ever prevented
5 Florida Power Corporation or Progress Energy Florida
6 from recovering its cost of service?

7 A I'm sorry, could you try that again?

8 Q Yeah. If you know, do you have a belief or an
9 opinion as to whether a final rate case order of this
10 Florida Public Service Commission ever prevented Florida
11 Power Corporation or Progress Energy Florida from
12 recovering its cost of providing service?

13 A I don't know. My recent history is with
14 settlements, so I don't know about the orders that
15 you're referring to.

16 Q You mentioned the settlements, and we had a
17 settlement in 2002, is that accurate?

18 A Yes, we did.

19 Q And in that settlement the company agreed to
20 reduce its rates, correct?

21 A Well, I think that's in part correct. I think
22 it was a comprehensive settlement. That was one
23 component of that settlement, given where we were at
24 that period in time, a lot of different circumstances in
25 '02 versus today. So I would say yeah, that was one

1 dimension of it, but there were certainly a number of
2 others, probably 18 or 20 in that agreement, that were
3 all bargained for.

4 Q Certainly. And in 2005, that case was
5 actually initiated by a filing by the company for a rate
6 increase request, was it not?

7 A I believe it was.

8 Q My recollection -- and again, the Commission's
9 orders would tell us with specificity -- my recollection
10 is the company was looking for about \$205 million a year
11 rate increase, is that correct?

12 A That sounds correct to me.

13 Q And the settlement included, among other
14 things, no base rate increase, correct?

15 A In -- well, the settlement included -- the
16 base rates themselves did not change.

17 Q Correct. And it did also provide for
18 subsequent increases in base rates for the company to
19 recover its revenue requirements associated with Hines 2
20 and Hines 4?

21 A It did, as well as many other things as well.

22 Q Correct. You made a -- a little bit above on
23 page 9, you referred to the possibility of there being
24 an adverse reaction if the Commission were to not grant
25 your increase in light of the Commission's having

1 recently awarded a modest rate increase to Tampa
2 Electric.

3 A Yes.

4 Q Is that a fair characterization of what you
5 say up there in --

6 A Yes.

7 CHAIRMAN CARTER: Mr. Wright, do you need a
8 number?

9 MR. WRIGHT: I do need a number.

10 CHAIRMAN CARTER: 297. Short title?

11 MR. WRIGHT: TECO Stock Prices. I will just
12 leave it at that.

13 CHAIRMAN CARTER: Great.

14 (Exhibit No. 297 marked for identification.)

15 CHAIRMAN CARTER: You may proceed, Mr. Wright.

16 BY MR. WRIGHT:

17 Q Mr. Dolan, would it be fair to say that you
18 followed the Tampa Electric rate case fairly closely?

19 A I don't know about "fairly closely." I mean,
20 I was paying attention to it. I didn't really watch it
21 day to day, if that's what you mean by "fairly closely."

22 Q I was looking for a less vague word, but that
23 was the best I could come up with.

24 Do you know how much Tampa Electric asked for?

25 A You know, I don't have that in the top of my

1 mind.

2 Q Will you accept, subject to check, that it was
3 \$228.3 million a year?

4 A Yes, I think I would.

5 Q I'm going to come back to Exhibit 297 in a
6 minute.

7 Do you know what the Commission's staff
8 initially recommended in terms of a rate increase for
9 Tampa Electric?

10 A I don't specifically recall that.

11 MR. WRIGHT: I have a copy of the staff
12 recommendation. I do not want to mark it; I'm going to
13 just show it to the witness for brief cross-examination.

14 CHAIRMAN CARTER: Yes, let's do it that way.
15 That would be the preferable route to take.

16 MR. WRIGHT: I think this is saving a whole
17 lot of trees, not quite a forest, but a bunch.

18 BY MR. WRIGHT:

19 Q Mr. Dolan, you're welcome to peruse this as
20 much as you like, but if you'd look at page 172, which
21 happens to be the page that I have marked with a sticky.

22 A What was the number?

23 Q 172. You got it?

24 A Yes, sir.

25 Q I think if you look down at the bottom there,

1 you'll see that the company -- I was wrong about 228.3,
2 it was closer to 228.2. You'll see the company
3 requested \$228,167,000 a year, correct?

4 A Yes, I see that.

5 Q And the staff's recommendation, in its
6 memorandum published on March 5, 2009, was that the
7 company be awarded approximately 76.7 million?

8 A I see that.

9 Q Now I would like to ask you to look at Exhibit
10 297. If you look --

11 A I'm sorry, is that the stock price one you
12 gave me?

13 Q Yes, it is.

14 A Okay, I have that.

15 Q If you would, look at what happened to Tampa
16 Electric's closing stock price from March 5 to March 6.
17 It jumped 67 cents a share, did it not?

18 A It did.

19 Q And would you also agree that the volume more
20 than doubled from the date that the recommendation was
21 issued --

22 A Yes.

23 Q -- until the following date?

24 A That's what the numbers show.

25 Q Thank you. Do you happen to know what day the

1 Dow bottomed on?

2 A I do not.

3 Q Would you agree that the stock price
4 information and the volume information indicate that
5 investors were at least relatively encouraged, other
6 things equal, by the staff's recommendation issued on
7 March 5?

8 A I can't agree with that, Mr. Wright. There
9 are so many things that influence stock price, and --
10 market turmoil, people flee to different investments, so
11 I don't know that I would leap to that conclusion.

12 Q I asked you if you knew when the Dow bottomed.
13 I will aver to you that I've seen recently that it
14 bottomed on March 9th.

15 A I don't know that, you know, one way or the
16 other.

17 Q These next few questions, follow along your
18 testimony on pages 9 and 10, at which on page 9 you make
19 the statement we were just discussing, "Denying some or
20 all of the company's rate requests will affect the
21 company's financial strength." And then at the top of
22 page 10, you make the statement that, "We do not take
23 lightly submitting a request for a rate increase," and
24 that you would not be before the Commission unless an
25 increase was necessary. I know this is a recap, but

1 just as a predicate to the flow of this examination,
2 it's your testimony you believe you need the whole
3 \$499 million, right?

4 A Yes.

5 Q In making the company's request, did you
6 consider making lower requests?

7 A No.

8 Q Did you consider any ways of reducing the
9 requested increase?

10 A I think whatever reductions we made were prior
11 to when we made the filing, so I think we made the
12 optimal filing.

13 Q I'm going to read you two sentences from an
14 order of the New York Public Service Commission. They
15 are stand-alone sentences, they are policy questions.
16 I'm going to read them to you and ask, then, do you
17 agree with them.

18 MR. WRIGHT: In fact, I'm not going to ask
19 this be marked yet, Mr. Chairman, but I'm going to go
20 ahead and ask Mr. LaVia to give them out to --

21 CHAIRMAN CARTER: Mr. Dolan?

22 MR. WRIGHT: Yes, Mr. Dolan.

23 BY MR. WRIGHT:

24 Q Mr. Dolan, if you'll look at the page -- I
25 think it's the fourth page in, at the bottom of the

1 page, it's numbered 342, and on that page I have
2 highlighted the two sentences to which I was referring.

3 A I see them.

4 Q Okay. Now, this is an order of the New York
5 Public Service Commission, and these sentences read -- I
6 want to ask you -- I'm going to read them out loud and
7 I'm going to ask you do you agree with them.

8 "Expenditures" -- and I'm going to ask you to
9 agree with them as they stand alone, I'm not going to go
10 into the rest of it just yet, if at all.

11 "Expenditures that are reasonable during
12 average or good economic times are not necessarily
13 reasonable when economic situations are extremely poor.
14 When consumers are experiencing the extraordinary harsh
15 economic realities we see today, a certain measure of
16 frugality is properly expected from utilities, and a
17 reprioritizing of expenditures may be needed."

18 Just by themselves, do you agree with those
19 statements?

20 A Well, I would say first that I'm not familiar
21 with New York regulation, and I don't tend to agree with
22 a lot of things I see out of any of the Public Service
23 Commissions in the northeast. So with that as an
24 underlying foundation, I guess I could agree with them
25 generally. In order to really agree with them -- it's

1 hard to do that without the proper context. They are
2 using words like, "are not necessarily reasonable," and,
3 "a certain measure." So really, I think I'm a little
4 bit hesitant to just agree with them on their face,
5 because I think they can be interpreted a lot of
6 different ways.

7 So I would say, if it's a yes or no, I would
8 say no, because I really don't know enough about the
9 intent behind the comment, or the context of this
10 particular case in New York.

11 MR. WRIGHT: Mr. Chair, I would like to have
12 this marked as an exhibit. It's lengthy, I have one
13 copy, but to use the favorite phrase from that other
14 rate case, I'm happy to allow Progress the opportunity
15 to preserve optional completeness.

16 CHAIRMAN CARTER: Okay, No. 298. Short title?

17 MR. WRIGHT: Excerpt from NYPSC Order.

18 (Exhibit No. 298 marked for identification.)

19 MR. MOYLE: This is the excerpt that you just
20 read from, is that right?

21 MR. WRIGHT: Yes, it is, Mr. Moyle.

22 CHAIRMAN CARTER: You may proceed.

23 MR. WRIGHT: Thank you, Mr. Chairman.

24 BY MR. WRIGHT:

25 Q Mr. Dolan, the New York Commission's order

1 refers to, "a certain measure of frugality being
2 properly expected from utilities." And my question for
3 you is what, if any, frugality measures did Progress
4 Energy Florida consider before filing its request for a
5 \$500-million-a-year rate -- base rate increase?

6 A Well, Mr. Wright, I think I would go back to,
7 this is some ground we've already plowed fairly
8 substantially, sort of how we try to run our business
9 day in and day out and manage expenses. I think we've
10 talked about the fact that we've had layoffs with a
11 number of our employees. So, I mean, things of that
12 nature would suggest to me that we're doing the best we
13 can to try to manage our business in a way that balances
14 the needs of our customers, our employees and our
15 owners.

16 Q Follow-up question: What, if any,
17 reprioritizing of expenditures did Progress Energy
18 Florida consider before filing its request as a way or
19 ways of limiting its requested rate increase?

20 A Again, the best way I can answer that is to
21 say, you know, if you look at our individual areas, and
22 I would, again, defer to our folks on the operations
23 side, this is something that we do day in and day out.
24 We're always looking for ways to be cost-efficient over
25 the long term, and I think we would have an eye towards

1 that as we filed our case, and I'm comfortable with the
2 case as we filed it.

3 Q Did you -- can you tell us any specific O&M
4 cost reductions that you considered to move out of the
5 test year in order to reduce the company's requested
6 increase?

7 A Well, you know, I can't sit here and tell you
8 specifically this or that. What I can tell you is that
9 all of the folks that provided the data and the budgeted
10 information are looking for the most efficient and cost-
11 effective way to run our business, and that's what we
12 filed. I'm not here to -- I can't -- I'm not going to
13 point you to a specific line item, I would defer to
14 those folks to do that, but, as I said, it's not an
15 exercise that we would do because we're filing a rate
16 case or not filing a rate case, it's something that we
17 do consistently within our business year in and year
18 out.

19 Q If you know, did you consider -- did the
20 company consider asking for a lower rate of return on
21 equity than the 12.54 percent that you've requested?

22 A No.

23 Q As a frugality measure or a reprioritization
24 of expenditures, would the company consider absorbing
25 the cost of its incentive pay program to the account of

1 shareholders instead of putting it all on customers?

2 A No.

3 Q Same question: Would the company, as an
4 austerity or frugality measure, would the company
5 consider reducing the requested pay raises from
6 three and a half percent to one and a half percent?

7 A No.

8 Q Wouldn't you agree that it would send a
9 positive, encouraging signal to the company's customers
10 if the company were to bear the cost of its incentive
11 pay program on the shareholders' tab?

12 A I'm not sure I would agree with the way you
13 characterize that, Mr. Wright. I think we've talked
14 about this fairly extensively where you understand what
15 our goals and objectives are over the long term. So I
16 think we try to balance things over that long haul to
17 make sure that we can run our business appropriately in
18 the manner in which our customers expect. So that's
19 really our philosophy, and we're requesting this
20 Commission give us permission to continue with that
21 philosophy, and that's what we're recommending,
22 obviously, in our case.

23 Q I know you've been here for a lot of this
24 proceeding. Have you heard the expression, "Cash is
25 king," in the course of this proceeding?

1 A I'm not sure I heard it in the course of the
2 proceeding, but I've certainly heard that expression
3 before.

4 Q Is that expression consistent with your
5 concerns about the company's cash flows?

6 A No, I don't think that expression is
7 consistent with anything. I think cash is an important
8 element of our business, especially now when we're
9 entering into a period where we have some fairly
10 significant capital investments. So I think cash is
11 important, as I'm sure Mr. Sullivan and others will tell
12 you again, and I would tend to agree with that. It's
13 not a catchy slogan or anything, it's something that's
14 important to how we run our business.

15 Q I didn't mean to imply that it's a slogan, I
16 meant to use it as an indication of the company's keen
17 interest in maintaining cash flow.

18 Let me ask you, did the company, in preparing
19 your rate case filing, consider any alternative means of
20 handling its cash flows that involved a lesser rate
21 increase than the half billion dollars a year that the
22 company has requested?

23 A No. I think we looked at, as I said earlier,
24 all the appropriate elements of our case and filed it as
25 it is.

1 MR. WRIGHT: If I could just have a minute,
2 Mr. Chairman?

3 CHAIRMAN CARTER: Absolutely.

4 MR. WRIGHT: Thank you.

5 (Brief pause.)

6 MR. WRIGHT: I think I just have a couple of
7 follow-up questions that go to the same point.

8 BY MR. WRIGHT:

9 Q Mr. Dolan, I asked you whether you had taken
10 into account the company's ability to file another rate
11 case if you were not satisfied with the outcome of this
12 one. Do you recall that conversation?

13 A Yes, I do.

14 Q I think that in your response you said that it
15 depended on a number of factors, including the broader
16 economy at large. Do you recall making that statement?

17 A Yes.

18 Q In that context, what did you mean? How did
19 you mean that it depends on the broader economy at
20 large?

21 A Well, Mr. Wright, I'm sure you will stop me if
22 you need to, but there's -- we -- our sales forecast for
23 next year is --

24 MR. MOYLE: I'm going to jump in and stop him
25 at this point, or at least register an objection. I

1 think we worked hard --

2 THE WITNESS: He asked --

3 MR. MOYLE: If I could, we worked hard,
4 counsel for Progress has agreed that updated sales
5 forecast is not coming in. We appreciate that. I don't
6 want to have to head down that road. I think the
7 question relates to the larger economy, and I guess I'm
8 okay on the question being answered, but I just don't
9 want to have -- get back into that issue that we spent a
10 bunch of time on early, first thing in the hearing.

11 CHAIRMAN CARTER: Mr. Wright? Then I will go
12 to Mr. Glenn.

13 MR. WRIGHT: I was intending to ask the
14 question, and I thought I phrased it this way, to ask
15 what he meant by a potential future decision to file a
16 new rate case next year relative to his use of the
17 phrase, "broader economy at large." I had maybe one or
18 two follow-up questions with respect to that. That was
19 how I thought I asked the question.

20 CHAIRMAN CARTER: Mr. Glenn, I'm inclined to
21 go with Mr. Moyle on this one, because we did go through
22 a lot of excising on this issue initially.

23 Mr. Glenn?

24 MR. GLENN: Thank you, Mr. Chairman. Just to
25 respond, I think, to the highly irregular objection of

1 Mr. Moyle to Mr. Wright, but I think Mr. Wright has
2 opened the door with his question. If he would like to
3 withdraw that question, that's fine, but if he's going
4 to elicit a response out of the witness about what might
5 make us come in for a rate case in 2010, that absolutely
6 implicates our sales forecast and the revised sales
7 forecast, so to that extent, if Mr. Wright would like to
8 withdraw that question so that the Commission doesn't
9 hear the answer to the question, I'm fine with that.

10 MR. WRIGHT: And so I will withdraw the
11 question, Mr. Chairman.

12 CHAIRMAN CARTER: Thank you, Mr. Wright.

13 MR. WRIGHT: Thank you, and that's all the
14 questions I have.

15 CHAIRMAN CARTER: Staff?

16 MS. FLEMING: We have no questions.

17 CHAIRMAN CARTER: Commissioner Skop?

18 COMMISSIONER SKOP: Thank you, Mr. Chairman.

19 Good afternoon, Mr. Dolan.

20 THE WITNESS: Good afternoon.

21 COMMISSIONER SKOP: Just a few follow-up
22 questions on what has been a lengthy day.

23 If I could please turn your attention back to
24 Exhibit No. 293, beginning on Bates number 18 at the
25 bottom of the page, please?

1 COMMISSIONER ARGENZIANO: Commissioner Skop,
2 you're getting rather low.

3 CHAIRMAN CARTER: Can we get some volume?

4 COMMISSIONER SKOP: Yes.

5 COMMISSIONER ARGENZIANO: Thank you.

6 THE WITNESS: Okay.

7 COMMISSIONER SKOP: On Exhibit 293, Bates
8 number 18, I guess one of the questions dealt with this
9 specific slide, and I just wanted to get some
10 clarification as to the graph and the comment on the
11 rightmost chart, particularly the term CAGR. Can you --
12 do you have some insight as to what that would be?
13 Would that be a clause adjusted gross revenue?

14 THE WITNESS: Is your question what is driving
15 that or --

16 COMMISSIONER SKOP: No, what is that term?

17 THE WITNESS: CAGR is compound annual growth
18 rate, I believe.

19 COMMISSIONER SKOP: All right, never mind. I
20 was trying to figure out what it was in relation to
21 Footnote 3. Thank you for that clarification.

22 If I could next turn your attention to Bates
23 number 24?

24 THE WITNESS: Okay.

25 COMMISSIONER SKOP: The first bullet there,

1 and there was some line of questioning on this, deals
2 with -- I guess it discusses Six Sigma and the Kaizen
3 initiatives that are outlined within the CBE process.
4 Do you see those?

5 THE WITNESS: Yes, I do.

6 COMMISSIONER SKOP: Following up on a question
7 that you were previously asked, would the expected three
8 to five percent productivity gains be recognized within
9 the O&M cost structure?

10 THE WITNESS: I would say certainly a portion
11 of it would be, yes.

12 COMMISSIONER SKOP: Would the other expected
13 savings be in other places in the cost structure?

14 THE WITNESS: It's possible, yes.

15 COMMISSIONER SKOP: Okay. Do you know if the
16 expected savings that relate to O&M cost structure are
17 reflected within the MFR schedules?

18 THE WITNESS: I'm sorry, the -- I'm not sure I
19 understood your question. I apologize.

20 COMMISSIONER SKOP: With respect to the
21 expected three to five percent productivity gains, and
22 you mentioned that some of those might be expected to be
23 recognized within the O&M cost structure, do you know if
24 those expected savings are reflected within the MFR
25 schedules that were filed with the Commission?

1 THE WITNESS: I do not know that specifically
2 by area. As I said earlier, I think, for PEF in
3 particular, I think a lot of this, in my opinion, is
4 getting underway, we'll work through a lot of these
5 processes in 2010. I think they're more likely to bear
6 some sustainable, tangible benefits in '11 and beyond,
7 my opinion.

8 COMMISSIONER SKOP: So once they're finally
9 implemented and up to full speed, that's when you expect
10 to see the savings, in the out years?

11 THE WITNESS: Yes, and I would think, again,
12 our hope there is we will use that to do two things:
13 One, to slow down the rate of growth of expenses, and
14 two, to potentially offset the, you know, potential
15 additional softening in top-line revenue growth.

16 COMMISSIONER SKOP: Just a few additional
17 questions on that page. The second and third bullets
18 identify measures that Progress has taken to date to
19 reduce expenses. Do you see those?

20 THE WITNESS: Yes, I do.

21 COMMISSIONER SKOP: Okay. In your opinion, is
22 that an adequate response, given the long-term approach
23 taken by the company in terms of the reductions made to
24 date?

25 THE WITNESS: I'm sorry, is it -- I think --

1 if I understood your question, I think it's a fairly
2 substantial response to date, and I would say, for
3 example, in external relations, which is an area that I
4 previously had, some of the savings that fall out of
5 that may be within the rate base, some may be outside
6 the rate base, as an example.

7 COMMISSIONER SKOP: Very well. I guess this
8 is a follow-up question to that, and this is a
9 hypothetical.

10 If Progress Energy Florida were not a
11 regulated monopoly, would it be necessary to implement
12 more aggressive cost-saving measures to reduce fixed
13 costs in relation to declining retail sales to maintain
14 the earnings at projected levels?

15 THE WITNESS: I'm not sure, because a lot of
16 it would depend on the market itself. I think what
17 comes with a regulated monopoly is, year in and year
18 out, it's a cost plus a reasonable return. What comes
19 with the market is fluctuation in market prices. So I
20 think, Commissioner Skop, part of how I would answer
21 that depends on the ability to raise or lower prices in
22 the market.

23 So I think it's a little bit of a more dynamic
24 process, and it may depend on market conditions prior to
25 the period, you know, that I would contemplate in your

1 question where you may be in a different situation to
2 weather that storm as compared with how the market may
3 recover in the future. So I think there's a lot of
4 variables in regulated versus non-regulated. We tend
5 to -- obviously we operate within that regulated box and
6 try to match revenues/expenses as best we can, year in
7 and year out.

8 COMMISSIONER SKOP: Thank you.

9 On that same line, is it possible that years
10 of prosperity and sales growth could overshadow
11 significant growth in fixed costs during the same period
12 of time?

13 THE WITNESS: I'm sorry, are you asking is our
14 sales growth --

15 COMMISSIONER SKOP: Let me restate the
16 question.

17 Is it possible that years of prosperity and
18 sales growth could overshadow significant growth in
19 fixed costs during the same period of time?

20 THE WITNESS: I think it's highly unlikely
21 that that would occur, given our current outlook.

22 COMMISSIONER SKOP: And last question on this
23 line and then I have one final question. Based on your
24 testimony and some of your responses to the Intervenor's
25 questions, what additional measures, if any, do you

1 believe are necessary to constrain and manage fixed cost
2 growth on a forward-going basis?

3 THE WITNESS: I don't know that I have a
4 specific list for you. I think we're going to continue
5 to operate with the same philosophy that we have
6 operated up to this point. If we find opportunities
7 where we can be more efficient and reduce costs, we're
8 obviously going to do those.

9 And I think that's going to serve two
10 purposes: one, especially in the upcoming period, to
11 match expenses and revenues better with the pressure
12 we're going to see on the top line; and secondly, I
13 think with a way to sort of reduce the rate of growth in
14 costs. So we're going to continue to search for ways to
15 do that as we move forward.

16 COMMISSIONER SKOP: And that's what my line of
17 questioning was, I guess, trying to get at is what
18 initiatives, and I think you gave a responsive answer in
19 terms of being able to constrain those fixed costs on a
20 forward-going basis to the extent that, you know, during
21 prosperous times it's not as critical as it would be
22 when you don't have parity between matching of the
23 declining sales and the constant fixed cost, which
24 basically requires a rate increase, for all practical
25 purposes, so that costs are recovered.

1 But some of those initiatives, too, that might
2 be able to pay dividends are those Six Sigma, the Kaizen
3 philosophies that you're currently working on
4 implementing, is that correct?

5 THE WITNESS: Yes, Commissioner, and I would
6 add that we are in the process as we sit here today of
7 trying to finalize and identify the specific areas that
8 we would like to look at in 2010 and beyond, and I think
9 we're -- obviously we can't do everything at once.
10 We're going to try to prioritize those areas where we
11 feel there are opportunities based on industry best
12 practices and obviously look for ways to do that in a
13 way that lowers overall costs.

14 COMMISSIONER SKOP: Very well. Just one final
15 question, if I could turn your attention to what was
16 marked as Exhibit 296, please, which is the surveillance
17 report of the ROEs?

18 THE WITNESS: Yes, I have that.

19 COMMISSIONER SKOP: Do you see that? Looking
20 at the right column, which are the ROEs, I will give you
21 a second to take a look at those.

22 THE WITNESS: Yes.

23 COMMISSIONER SKOP: I know that this was
24 subject to some controversy and a potential objection by
25 Mr. Glenn in terms of the accuracy, but subject to check

1 and assuming this data is accurate and looking at the
2 far right column for ROEs, would you happen to have an
3 opinion as to what may have contributed to the sharp
4 decline in the realized ROEs during the settlement
5 period as opposed to the pre-settlement period,
6 identified roughly 2000 to 2004?

7 THE WITNESS: Yes, I would say one significant
8 factor is -- has been the economic decline that has
9 decreased revenues during that period, and that may be
10 the most significant factor. We have seen costs
11 increase, we have had new fixed investments during that
12 period, I think you see labor and material costs going
13 up. So there's probably a number of contributing
14 factors that have put pressure on the business during
15 the period since we did the last settlement, which began
16 in '06 and will end at the end of this year.

17 COMMISSIONER SKOP: So some of those would be,
18 as you mentioned, increased cost of doing business or
19 expenses or fixed costs, then, that might drive that
20 earnings lower?

21 THE WITNESS: Yes, absolutely.

22 COMMISSIONER SKOP: And just one final
23 question: During that same period, 2004 through 2008, I
24 think that you mentioned plant in service or new capital
25 expenditures came into play. Could that also be a

1 potential reason?

2 THE WITNESS: Yes, it could.

3 COMMISSIONER SKOP: Okay. All right, thank
4 you.

5 CHAIRMAN CARTER: Commissioners, anything
6 further from the bench?

7 Redirect?

8 MR. GLENN: Yes, Chairman.

9 REDIRECT EXAMINATION

10 BY MR. GLENN:

11 Q Starting on Exhibit 298, the one that Mr.
12 Wright handed out, just a clarification question, Mr.
13 Dolan. Consolidated Edison Company of New York, that's
14 a transmission and distribution utility, correct, to
15 your knowledge?

16 A Mr. Glenn, I'm sorry, I didn't mark numbers on
17 my exhibits, so if you just would help me make sure I've
18 got the right one?

19 Q Sure. It's entitled, "Excerpt from NYPSC
20 Order Regarding Austerity Adjustment." Do you see that?

21 A Yes, I have that.

22 Q To your knowledge, is Consolidated Edison of
23 New York a transmission and distribution utility only?

24 A Yes.

25 Q Okay. And if you would turn, please, to page,

1 the bottom of 344, to 345, top, the carryover paragraph
2 on page 345 of that, do you see that?

3 A Yes.

4 Q It appears to me that the Commission has
5 ordered a three-quarters of a billion dollar rate
6 increase. Do you see that?

7 A I'm sorry, I may not be on the right page.

8 Q If you look at the bottom of page 344 --

9 A Okay.

10 Q -- it says, "We authorize the company to
11 increase its annual electric revenues by
12 \$721.405 million per year."

13 A Yes, I see that.

14 Q Okay. So it appears that they've awarded a
15 three-quarters of a billion dollar increase, correct?

16 A Yes.

17 Q And also, if you turn to page 347, do you see
18 paragraph 5-A, the numbered paragraph 5-A?

19 A Yes, I do.

20 Q It says, "Consolidated Edison Company of New
21 York is authorized under the revenue decoupling
22 mechanism," do you see that?

23 A Yes, I do.

24 Q So does it also appear to you that there is a
25 revenue decoupling mechanism in New York for ConEd?

1 A Based on this paragraph, yes.

2 Q And do decoupling mechanisms tend to protect
3 the utility from revenue shortfalls?

4 A Yes, they do.

5 Q Going back to Exhibit 293, the 2009 analysts'
6 meeting of Progress Energy, do you have that in front of
7 you?

8 A I do.

9 Q Okay. Now, I know that Mr. Brew, and I think
10 Mr. Moyle to an extent, talked to you about the earnings
11 of the company, and I think if you turn to Bates page
12 004, the bar chart, do you see that? It's actually
13 slide 4 as well in the presentation.

14 A I'm sorry, I've got my slides a little bit
15 disassembled here, so I have it. Thank you, Mr.
16 Rehwinkel. Yes, 04, Mr. Glenn?

17 Q Yes.

18 A Yes, I have that.

19 Q And I believe there's also an 075 page that's
20 similar, but for purposes of both of those pages, these
21 are consolidated earnings, correct?

22 A Yes, they are.

23 Q And what does it mean by "consolidated
24 earnings"?

25 A Consolidated is the company as a whole, which

1 would include the Carolinas and Florida.

2 Q Is there anything in this 85-page exhibit,
3 293, that's inconsistent with what the company is
4 putting forward before this Commission?

5 A No.

6 Q And Mr. Brew and I think Mr. Moyle and Mr.
7 Wright walked through some belt-tightening measures and
8 O&M concerns that they had. Can you turn to pages 076
9 and 078 of this document? And this document is Exhibit
10 293, the same analysts' meeting document.

11 Now, they didn't show you this page, did they?

12 A No, they did not.

13 Q And they didn't show you page 78 as well. Can
14 you explain what this shows, Mr. Dolan?

15 A The two pages here shows a fairly significant
16 decline in both customer growth, average use per
17 customer, and the sum total of that is a significant
18 decline in revenue to the company.

19 Q Now, putting aside this document, Mr. Moyle, I
20 think, had some line of questions to you regarding pay
21 me now/pay me later regarding the depreciation studies.
22 Do you recall that line of questioning?

23 A Yes, I do.

24 Q Now, are there short-term consequences of
25 OPC's proposal, in addition to long-term consequences,

1 of eliminating \$646 million of cash to the company over
2 a four-year period?

3 A Yes, there are.

4 Q What might those be?

5 A Well, I think in a period where we're looking
6 at fairly significant new investment, cash flow and how
7 that factors into the overall financial metrics of the
8 company is going to be important to the folks that we go
9 to talk to about access to capital and borrowing money.
10 And I think it's also important that -- what I said
11 earlier about the proposal, the -- while it has some
12 short-term benefit, I think the longer-term detriment,
13 you know, on balance, it's certainly my position, our
14 position as a company, that it would be more
15 appropriately dealt with over the remaining life of the
16 assets, because I think if you take the OPC proposal, as
17 I said earlier, if the -- once the 160 over four years
18 runs out, coupled with that increase of 650 million in
19 rate base, you have a \$200 million revenue deficit in
20 year five, all other things equal. So I think obviously
21 that's going to be a problem at that point in time.

22 MR. GLENN: One last question, Mr. Chairman.

23 BY MR. GLENN:

24 Q Mr. Dolan, do you recall Mr. Rehwinkel asked
25 you a line of questions regarding discussions that you

1 and the company had had with rating agencies with
2 respect to ROE versus cash flow, base rates versus
3 clause recovery, access to capital and things like that?
4 Do you recall that?

5 A I do.

6 Q And I think he also asked you a number of
7 questions about your interaction, and -- "you" being you
8 and the company -- your interaction with rating agencies
9 and their opinions on important aspects of regulatory
10 proceedings. Do you recall that line as well?

11 A Yes, I do.

12 Q And along those same lines, I think Mr. Moyle
13 handed you what he marked as Exhibit 294, which is a
14 Fitch ratings report dated December 22, 2008. Do you
15 recall that?

16 A Yes, I do.

17 Q It's a one-pager.

18 A I know -- here it is. Yes, I have it.

19 MR. REHWINKEL: Mr. Chairman, I would like to
20 object. I think that Mr. Glenn has inadvertently
21 mischaracterized the question, which I think was
22 investors and analysts, and not rating agencies.

23 CHAIRMAN CARTER: Rephrase.

24 MR. GLENN: That's fine. Investors, Wall
25 Street folks, I think was the terminology.

1 I'm going to hand out what I would like to be
2 marked -- I think it's Exhibit 299, Mr. Chairman.

3 CHAIRMAN CARTER: Okay, 299.

4 MR. GLENN: This is a September 8, 2009, Fitch
5 report.

6 CHAIRMAN CARTER: Give me the title again.

7 MR. GLENN: It's a September 8, 2009, Fitch
8 report.

9 (Exhibit No. 299 marked for identification.)

10 MR. MOYLE: Mr. Chair, I don't, obviously,
11 want to see the exhibit in that it's a new exhibit that
12 may be coming in beyond the prefiled rebuttal, but I
13 just want to give you a heads-up.

14 BY MR. GLENN:

15 Q Do you have a copy of that, Mr. Dolan?

16 A Yes, I do.

17 Q And Mr. Moyle didn't hand you out this Fitch
18 report, did he?

19 A No, he did not.

20 Q No. And can you take a look at the
21 highlighted portions of that, and could you read those,
22 please?

23 MR. MOYLE: Now, I think I'm going to object
24 on this and that this is beyond -- actually, I'm not.
25 Go ahead.

1 CHAIRMAN CARTER: Mr. Glenn?

2 BY MR. GLENN:

3 Q Mr. Dolan, do you have it in front of you?

4 A Yes, I do.

5 Q Do you see the highlighted portions?

6 A Yes.

7 Q Again, this is roughly a year after the report
8 that Mr. Moyle handed you, right?

9 A Yes. It's actually, I guess, about nine
10 months --

11 Q Okay. Can you read the highlighted portions,
12 please?

13 A Yes. "Despite numerous clause mechanisms at
14 PEF which account for approximately 60 percent of total
15 revenues, PEF's last 12 months' credit ratios have
16 nonetheless weakened due to lower residential demand,
17 debt incurred to post collateral for gas purchase
18 contracts and deferrals of cost recovery. The Florida
19 Public Service Commission decision on the \$499 million
20 base rate request and Levy cost recovery filings are
21 important drivers of future cash flows and ratings of
22 PEF. Fitch's primary rating concerns include
23 uncertainty over the outcome of the PEF base rate case
24 and Levy cost recovery filings in Florida, and recovery
25 of capital spending and operating costs at both

1 utilities. PEF's stable rating outlook assumes that the
2 outcomes of the base rate and Levy filings will result
3 in improvement in cash flow and credit metrics at PEF in
4 2010. On the other hand, if regulatory decisions are
5 adverse, Fitch would expect to take negative rating
6 action."

7 Q Now, Mr. Dolan, is this language that you just
8 read in this report consistent with the views expressed
9 by Wall Street investors, analysts and credit rating
10 agencies to the company this year?

11 MR. MOYLE: Now I'm going to object, if I can,
12 Mr. Chairman. I just got this document, and I thought
13 what was being done was Mr. Glenn was putting in
14 supplemental information that matched up to the report
15 that I had copied. The document that I put in was 294,
16 was put into Florida Power & Light, and it was put in by
17 the South Florida Hospital Association. This document
18 is, I guess, a current document, as of September 2009.
19 Never seen it, it's a hearsay document. I think that
20 his rebuttal, he didn't have any exhibits attached to
21 it, I think it's improper, and we would move to keep
22 this out and also to strike the response that Mr. Dolan
23 gave to the question previously posed by Mr. Glenn.

24 CHAIRMAN CARTER: Mr. Brew?

25 MR. BREW: Thank you, Mr. Chairman. I would

1 join in with FIPUG's objection. The fact that both
2 documents have Fitch on them doesn't mean that this
3 isn't supplemental rebuttal that's not responsive to the
4 earlier questions.

5 CHAIRMAN CARTER: Mr. Glenn?

6 MR. GLENN: Mr. Chairman, number one, it's
7 completely responsive to all of the questions that were
8 asked. They just don't like it.

9 Number two, hearsay and all of the other
10 objections that this is new, et cetera, apply to 293
11 through 298. This is the first time I have seen a Fitch
12 document here, not on their list or anything. As to
13 hearsay, you have already ruled on that in all the other
14 staff responses and staff production that's gone in. So
15 I think this is clearly admissible. You can give it
16 whatever weight you want to give it.

17 CHAIRMAN CARTER: Ms. Brubaker?

18 MS. BRUBAKER: Well, anticipating you may ask,
19 I looked into our good friend Mr. Ehrhardt and what he
20 would have to say about redirect, and if I could just
21 read briefly: "After the cross-examination of a
22 witness, the party who called the witness may conduct a
23 redirect examination in order to rebut or explain
24 matters elicited during the cross-examination. The
25 redirect examination is limited to the matters discussed

1 during the cross-examination. If matters are gone into
2 on cross about which a witness did not testify on
3 direct, they may be addressed on redirect. The cross-
4 examination may open the door to the admission of
5 certain testimony so that it will not be excluded during
6 the redirect examination."

7 The question, I think, is, is the information
8 that's been provided on redirect actually go to the
9 questions that were asked by the Intervenors on cross-
10 examination. Yes, there were questions based on Fitch
11 documents, but I'm unclear, looking at the highlighted
12 information, how this information goes to the questions
13 that were asked on cross. If we could get clarification
14 from Progress counsel, I think that might be helpful.

15 CHAIRMAN CARTER: Mr. Glenn?

16 MR. GLENN: Yes. A couple of points. If you
17 look down throughout this document, Fitch talks about
18 the clause mechanisms, which account for approximately
19 60 percent of total revenues, they talk about the
20 decision on rate base, they also talk about cash flows,
21 which were all *ad nauseam* gone into by Mr. Wright, Mr.
22 Moyle, Mr. Brew and Mr. Rehwinkel. This is directly
23 responsive to all of their questions on cross-
24 examination, and we can get the record read back if we
25 need to.

1 CHAIRMAN CARTER: No. I'm going to overrule
2 the objection, because I remember hearing a lot of this.
3 So we'll give it whatever weight it deserves. Move on.

4 MR. GLENN: That's it.

5 CHAIRMAN CARTER: Okay. Exhibits?

6 MR. MOYLE: Can I have a chance to recross on
7 this, on this exhibit I have never seen until a minute
8 ago?

9 CHAIRMAN CARTER: We went through the
10 testimony. You can look it over, but the testimony that
11 was given, cross-examination, I don't really want to go
12 through rereading the whole thing, but one of the
13 questions that was asked was whether or not -- one line
14 of questions was explaining how to quantify what the
15 Wall Street people or whatever you guys are calling them
16 at this point in time, the investor community would say
17 regarding to whether or not Progress Energy got their
18 rate increase or not.

19 MR. REHWINKEL: Mr. Chairman, I was not able
20 to be heard on this, and some of my questions I think
21 were what Mr. Glenn cited to. I ordinarily would not
22 have an objection to this. My concern is 293, with
23 Progress Energy's communication to the investment
24 community, the -- I don't think that it's reliable use
25 of documentary evidence to respond to their words by

1 someone else's words. That's the concern I have,
2 because we don't know what "adverse regulatory
3 decisions" refers to. I think --

4 CHAIRMAN CARTER: Here's what my concern is,
5 is to have cross-examination on these issues and
6 redirect is to directly go back to issues that were
7 asked on cross-examination, and I heard these. So I
8 think that the Commissioners are entitled to look it
9 over and give it whatever weight it deems necessary.
10 And that's my ruling, so let's move on, guys.

11 On exhibits, No. 293. Mr. Rehwinkel?

12 MR. REHWINKEL: Move 293.

13 MR. GLENN: No objection.

14 CHAIRMAN CARTER: Okay.

15 (Exhibit 293 was admitted into the record.)

16 MR. MOYLE: So, Mr. Chair, I don't have a
17 chance to cross on this?

18 CHAIRMAN CARTER: No. My ruling stands.

19 No. 294, Mr. Moyle?

20 MR. MOYLE: Move it.

21 MR. GLENN: No objection.

22 (Exhibit 294 was admitted into the record.)

23 CHAIRMAN CARTER: Mr. Moyle, No. 295?

24 MR. MOYLE: Move it.

25 CHAIRMAN CARTER: Are there any objections?

1 MR. GLENN: No.

2 (Exhibit 295 was admitted into the record.)

3 CHAIRMAN CARTER: Mr. Wright, you and Mr.
4 Glenn were going to get together on 296?

5 MR. WRIGHT: Yes, sir.

6 CHAIRMAN CARTER: And you guys can get with me
7 later. Mr. Burnett?

8 MR. GLENN: Yeah, I think we've got it. I
9 think the only revision we had was on the 2003 number,
10 that the plant in service would be 7.0 and that the ROE
11 would be 13.43.

12 CHAIRMAN CARTER: Mr. Wright, is this --

13 MR. GLENN: And other than that, we have
14 confirmed that that's accurate.

15 MR. WRIGHT: Mr. Chairman, if it's
16 satisfactory to you, I would walk over and make the
17 changes on the court reporter's copy.

18 CHAIRMAN CARTER: We'll do it at the break.

19 MR. WRIGHT: If we could do it that way, I'm
20 entirely willing to believe those are the correct
21 numbers, and with those corrections, we can move it in.

22 CHAIRMAN CARTER: Are there any objections?

23 MR. GLENN: No, sir.

24 CHAIRMAN CARTER: Without objection, show it
25 done.

1 (Exhibit 296 was admitted into the record.)

2 CHAIRMAN CARTER: Mr. Wright, No. 297?

3 MR. WRIGHT: Move it.

4 MR. GLENN: No objection.

5 (Exhibit 297 was admitted into the record.)

6 CHAIRMAN CARTER: Mr. Wright, No. 298?

7 MR. WRIGHT: Move it.

8 MR. GLENN: I'd just like the full order
9 entered.

10 MR. WRIGHT: Okay, you got it.

11 CHAIRMAN CARTER: Show it done.

12 (Exhibit 298 was admitted into the record.)

13 MR. WRIGHT: Mr. Chairman?

14 CHAIRMAN CARTER: Yes, Mr. Wright.

15 MR. WRIGHT: How many copies do I need to
16 deliver? I'm delighted to have the whole order in
17 there.

18 CHAIRMAN CARTER: You can just give one to the
19 company unless the other Intervenors want a full copy.

20 MR. WRIGHT: I will give one to the company, I
21 will give one to the court reporter.

22 CHAIRMAN CARTER: Staff, do you need one?

23 MS. FLEMING: Staff would like a copy.

24 CHAIRMAN CARTER: Mr. Brew would like a copy
25 as well. So let's do the complete service.

1 MR. GLENN: Mr. Chairman, I move Exhibit 299.

2 MR. MOYLE: That's the Fitch report we just
3 had this big conversation about?

4 CHAIRMAN CARTER: Yes.

5 MR. MOYLE: For the record, I would like to
6 object on the grounds -- can I object on the grounds of
7 authenticity, hearsay, it was beyond the cross-
8 examination and it violates the prehearing order with
9 respect to introducing an exhibit in an untimely
10 fashion.

11 CHAIRMAN CARTER: Anyone else to be heard on
12 this?

13 MR. GLENN: I was just going to confirm that
14 he's not objecting to the constitutionality of the
15 document.

16 CHAIRMAN CARTER: It's in. My ruling stands.
17 (Exhibit 299 was admitted into the record.)

18 CHAIRMAN CARTER: Let's give the court
19 reporter a stretch break. Mr. Dolan -- I think we're
20 done with Mr. Dolan for the day, is that correct, for
21 this case?

22 You may be excused, sir.

23 MR. GLENN: And for the hearing.

24 CHAIRMAN CARTER: And for the hearing, yes,
25 you may be excused.

1 Commissioners, we're going to give the court
2 reporter a stretch break. We'll come back at -- I'm
3 looking at five of.

4 MS. FLEMING: Parties, don't go anywhere.

5 (Hearing recessed at 5:45 p.m.)

6 (The transcript continues in sequence with
7 Volume 20.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

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

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

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

15 DATED this 1st day of October, 2009, at
16 Tallahassee, Leon County, Florida.

17
18
19 

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21 _____
22 CLARA C. ROTRUCK
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