BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

2009 DEPRECIATION AND DISMANTLEMENT STUDY BY FLORIDA POWER & LIGHT COMPANY. DOCKET NO. 090130-EI
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VOLUME 41
Pages 5426 through 5599

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PROCEEDINGS:	HEARING
COMMISSIONERS PRESENT:	CHAIRMAN MATTHEW M. CARTER, II COMMISSIONER LISA POLAK EDGAR COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Wednesday, October 21, 2009
TIME:	Commenced at 9:30 a.m. Concluded at 12:48 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	RAY D. CONVERY Court Reporter (850) 222-5491

PARTICIPATING: (As heretofore noted.)

ORIGINAL

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
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P R O C E E D I N G S

(Transcript follows in sequence from Volume 40.)

CHAIRMAN CARTER: Everybody ready?

We are back on the record, and, staff, thank you for the -- getting everything set up this morning, and let me just kind of bring us back in order here.

Staff, has the proceeding been noticed?

MS. BENNETT: Yes, Mr. Chairman, the proceeding has been noticed as a continuation of the September proceeding as a continuation of the August proceeding.

CHAIRMAN CARTER: Okay. Preliminary matters, staff?

MS. BENNETT: Yes, sir. There's a proposed stipulation on aviation costs, and we've talked with most of the parties. I believe that they want to have a little discussion with you before it's entered into stipulation. If the stipulation is approved, my understanding is that FPL will be removing all of its aviation costs from rate base for 2010 and 2011, and then the Issue 94 would be stipulated. And I think Mr. Butler -- Mr. Moyle -- I'm sorry, I'm starting off tongue-tied today -- Mr. Moyle wanted to talk a little bit about it.

CHAIRMAN CARTER: Mr. Moyle, you're recognized. Good morning.

MR. MOYLE: Good morning, Mr. Chairman. For the record, Jon Moyle, representing FIPUG.

The proposed stipulation came late yesterday afternoon. It has a bunch of numbers in it. I haven't had time to go and verify the numbers. I don't think the stipulation is really the way that we need to do it. If FPL is saying we're pulling everything related to aviation, that's a decision they can make, unilaterally make and we don't need a stipulation. What I don't want to have happen is for some kind of preclusion to make arguments in briefs, because I'm going to argue, you know, in my brief that this aviation issue should be taken into account in making other decisions, such as an increased return on equity for exemplary management, and make points related to aviation that flow into other issues, so, you know, I'm not comfortable in making a stipulation if it's going to have some kind of preclusion effect on my ability to make arguments and make points related to stuff that's already in the record on this issue.

And I don't even understand the need for why you even have to have a stipulation. You know, what I understand, they've unilaterally said we're taking everything out related to aviation. You know, I had asked staff, well, does that include the Falcon jet? I think it does, but, you know, there's the issue of the person in the confidential salary documents who's a pilot or something like that, and, you know, is that person out or in? I mean, I think it's cleaner just for them to say everything related to aviation, hook, line and sinker, is out, and make that representation. I don't think we need a stipulation.

CHAIRMAN CARTER: Mr. Butler? Good morning, sir.

MR. BUTLER: Good morning, Mr. Chairman.

First of all, just to give a little bit of context here, we did pull out, you know -- agreed in a late-filed exhibit, the cover to the late-filed exhibit that we had prepared, 481, that responded to the Commission's questions about the aviation logs, we offered to take out all of the costs or did take out all of the costs related to aviation. I think that the figures that staff has prepared and were distributed yesterday as a stipulation are the result of some additional detail they requested from FPL that shows which accounts actually get affected by removing all of the aviation costs. We had initially just given a lump sum figure of what the revenue requirement impact would be, and staff wanted to get information on exactly which of the NOI accounts, which of the rate base, which of the depreciation accounts, how they would get affected and in what dollar amount. That's what the figures they distributed show. We've checked them, confirmed them. They are accurate and do reflect removing all of the aviation costs.

To Mr. Moyle's point about briefing sort of the implications of the aviation expenditures that were initially filed, you know, we wouldn't object to that. We'd like to think this is a vehicle to be able to put aside the need to spend additional hearing time on the details of the aviation expenses and the Issue 94 that relates to that because we've now agreed to take all those costs out, but, you know, whatever he wants to brief about its implications elsewhere, we certainly wouldn't object to that.

CHAIRMAN CARTER: Commissioner Skop?

COMMISSIONER SKOP: Thank you, Mr. Chair. I guess I just wanted to briefly respond.

Again, I asked for some of the additional information and it was filed. I've read the FPL submittal, and essentially the submittal -- or at least all of my concerns were not addressed by the FPL submittal.

Briefly stated, if you look at Attachment 1 to that submittal, the trip numbers are not in sequence with some of the flight dates. On page 6 of Attachment 1, if you look at trip number 2149, it has a flight date of 12/15, 2006, and if you look on that same page for trip number 2172, it has a flight date of 2 -- of February 23rd, 2006. There's a 40-week gap between a later flight and the earlier flight.

The same thing on page 61, if you have -- let's see real quick. If -- you have trip number 5183 with a flight date of 6/19, 2009, and you compared that to trip number 5196, it has a flight date of February 17, 2009, nearly four months earlier. So -- and then there's one, in passing, page 64, trip number 5335, a trip date of 7/29, 2009. Compare that with trip number 5340 which was taken on May 1st, 2009; again, there's another 12-week interval difference between those for the same aircraft. So again, I think the submittal actually presented more questions than it did answers in some degree.

The Jefferson Wells letter, page 3 of that, they basically state that just re-performed the work of the company's internal audit department. That kind of goes to independence to some degree. And on page 4 of that letter, it expressly states that Jefferson Wells is not a certified public accounting firm and does not perform attestation work.

So again, those are just concerns. I'm not going to spend the Commission's time getting into that or nitpicking it, because essentially those concerns are effectively mooted by FPL's withdrawal of the aviation-related expenses from this rate case, and so I guess where it is for me is at least I can take comfort in the fact that tough questions effectively saved ratepayers approximately $16 million over the two projected test years, and that would be $8 million, approximately, on an annual basis.

So again, I don't want to spend a lot of time on this. I respect Mr. Moyle's concerns. Again, I don't think the submittal fully addressed the concerns I had, but again, I think that the ratepayers clearly benefit by taking the costs out of the equation, so I just wanted to briefly comment on that.

CHAIRMAN CARTER: Thank you.

Mr. Moyle, anything further?

Ms. Brubaker, or should I go back to Ms. Bennett first?

MS. BRUBAKER: If you wish. It might be good to get staff's opinion first.

CHAIRMAN CARTER: Ms. Bennett?

MS. BENNETT: The stipulation that -- or the removal of the expenses that we looked at, originally FPL proposed that they remove seven-million-something per year for 2010 and 2011 out of rate base. Staff followed up with some questions, and they wanted some specific information on which accounts those affected. So that's the information in the stipulation that you -- the information that you have that we are talking about today.

If this is approved and you all agree that that's the way to go, then 94, Issue 94 is basically moot because, yes, FPL has taken the aviation costs out.

As far as the specifics that Commissioner Skop had, Mr. Butler might be more capable of answering why the gaps are in the logs.

Did I answer your question?

CHAIRMAN CARTER: Almost. Almost.

Commissioner, do you need anything from Mr. Butler, Commissioner Skop?

COMMISSIONER SKOP: I don't believe so. I just find it to be somewhat inconsistent. Again, the -- look at the Bates numbers -- or the trip numbers I mentioned. Obviously even in the current historical test year there are still significant gaps in terms of the intervals between -- basically you have a later trip number that occurred at a date earlier than a lower trip number. So again, that raises scrutiny, but I could spend a couple -- 30 minutes or an hour going through this, and it's not really necessary. Again, my concerns are mooted by the fact that the ratepayers effectively save $16 million over the two projected test years as a result of the withdrawal of the requested cost recovery for aviation-related expenses.

CHAIRMAN CARTER: Okay, thank you, Commissioner.

And, Mr. Moyle, basically, based upon Mr. Butler's representation, you'd still, would be able to brief it however you wish to do that.

MR. MOYLE: Yeah, I think that's fine. I guess it's really -- you know, my understanding of a stipulation is everyone has to agree, and having just gotten the information and being asked to agree, I mean, I haven't double-checked these numbers, I'm not comfortable doing that. I think, you know, it can just as easily be done with FPL's representation that they're taking everything out related to the airline, and if you need that number, just have this come in as an exhibit.

You know, I'm not going to object to this coming in as an exhibit. It will give the record everything it needs. I'm just a little uncomfortable having a sort of a stipulation thrust upon me.

CHAIRMAN CARTER: I'm thinking aloud, Mr. Butler.

MR. BUTLER: That would be acceptable to us if that works for staff and for the Commission.

CHAIRMAN CARTER: Staff?

MS. BENNETT: Think it's brilliant. Thank you.

CHAIRMAN CARTER: Mr. Moyle?

MR. BUTLER: I wouldn't go that far.

MR. MOYLE: Can I be excused for the rest of the hearing?

CHAIRMAN CARTER: No, no. No, everybody stays for the party.

MS. BRUBAKER: Mr. Chairman?

CHAIRMAN CARTER: Ms. Brubaker.

MS. BRUBAKER: If I may offer some thoughts, just for clarification of the record?

What I seem to be hearing is that while the parties didn't wish to stipulate specifically to the amounts, they are not objecting to FPL withdrawing these amounts based on the representations here today, and I think that's fine. Perhaps we should make it clear that everybody agrees that Issue 94 is moot and that Mr. Moyle's concerns can be briefed on other issues, is that correct? And FPL has stated it has no objection to FIPUG doing so.

CHAIRMAN CARTER: Wait a second. Mr. Moyle, you're recognized, sir.

MR. MOYLE: Yeah, but -- I think that's right. I mean, it's their case. To the extent that they are withdrawing an ask of a certain amount of money, FIPUG has no objection to that.

We did change our position following all of the evidence in the first portion of the proceeding to say that we don't believe the aviation expenses have been justified, but, given their withdrawal, then I think we're all on the same page.

My point simply is that I don't -- by having that issue resolved, I don't want to be foreclosed from arguing facts related to aviation to make points with respect to other issues, and I use the example of the return on equity issue. They're saying we should get a higher return on equity because of exemplary management. I want to be able to argue the aviation use by top management is not compliant with the strict rules, should not warrant further ROE relief that they're seeking. That's what I'm trying to make the point on, and so long as FPL agrees that there's no restriction on use of aviation data in briefs, then I'm okay.

CHAIRMAN CARTER: I don't think you'd be restricted, Mr. Moyle.

MR. MOYLE: Thank you, Mr. Chairman.

CHAIRMAN CARTER: Okay, Commissioner Skop, and then, Ms. Brubaker, I'll be back to you.

Commissioner Skop.

COMMISSIONER SKOP: And again, not to belabor the point, I did have just one question, and I'll pose it to Mr. Butler.

Assuming that each time the plane is dispatched they have to fill out a passenger manifest that has the trip number and the date and the people that are on that manifest, I guess I find it hard to believe how there should be such an interval gap between the flights, particularly those that I mentioned, some of which are 40-week interval, some are 16-week, some are 12-week. So again, that would give me pause. I don't know if you have an answer, and if not, it really is kind of moot, but I just --

MR. PIMENTEL: Mr. Butler?

MR. BUTLER: Yes. Hello there, Mr. Pimentel. Would you like to speak to that?

I can address it, but certainly our witness is better prepared and is in fact a witness in the case to address it, so --

CHAIRMAN CARTER: Yeah, let's do that, because he's under oath.

MR. PIMENTEL: Yes, thank you. And at the risk of prolonging the aviation issue, I do want to address the two brief comments made by Commissioner Skop.

The first was what is apparent inconsistencies in the flight logs. The reason that those appear that way is because the flight number -- the flight log number actually is not given to a flight on a, what I will call a cumulative daily basis, so it's not that all flights taken on October 19th will have flight log numbers that precede all flights taken on October 20th.

And the reason for that, the biggest reason for that is many -- not many -- some flights are actually reserved. When a flight gets into the system, it gets a flight number. So as an example of -- if I or someone else is reserving a flight to come to Tallahassee and we make that reserve -- we make that request a month preceding the time, two months preceding the time, it gets a flight number at that time, and so it might get a very earlier flight number than a flight number that is taken one day before I actually take the flight, and that's the reason why flight numbers do not go consistently with dates.

Other reasons are maintenance flights. We've got to schedule certain maintenance flights. We schedule those many months in advance.

The second issue that Commissioner Skop brought up was Jefferson Wells and the comment in the back that they're not a certified public accounting firm. They're not. The reason that we actually used Jefferson Wells to do the internal control work on this particular project is because we use that firm today to go internal control work at other places at the company. I myself, Armando Olivera, Lew Hay, have to certify our financial statements every quarter and every year. Jefferson Wells has been doing SOX 404 work -- a lot of you are familiar with SOX internal control work -- for a number of years. We've been relying on them for a number of years. It was much easier to get them to continue that work in this specific aviation log request than it would have been to ask somebody else, but they are not a certified public accounting firm, and so therefore by statute they are required to say in all of their reports that they're not a certified public accounting firm. That does not mean that we do not rely on them very significantly for other purposes.

CHAIRMAN CARTER: Thank you.

Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, and we may have gone past this question, but I appreciate the opportunity to ask it anyway.

In the beginning of the discussion about a potential proposed stipulation, I think Commissioner Skop raised some questions that he had and mentioned what -- I think I heard this directly -- some potential gaps in the record or in the information that was presented, so if I may ask, Commissioner, if indeed Item 94 were to be withdrawn, does that sufficiently address the questions that you felt had not been addressed?

COMMISSIONER SKOP: I think it does. I mean, anything that saves the ratepayers $16 million is certainly worthy to move forward with.

COMMISSIONER EDGAR: Okay. And to staff, if 94 is to be withdrawn as has been discussed, what would be the treatment of aviation costs on a go-forward basis, for instance, 2012, 2013?

MS. BENNETT: I'm sorry, I was coordinating with Mr. Devlin with something else and I didn't hear your question.

COMMISSIONER EDGAR: That's okay, I'll try again.

If Issue 94 were to be withdrawn as has been proposed, what would be the treatment of aviation costs going forward in out years, 2012, 2013, et cetera?

MS. BENNETT: They're removed from rate base so they would not be included in base rates, and so until they had another base rate proceeding, they would not be included.

COMMISSIONER EDGAR: So does that put those costs essentially above the line?

MS. BENNETT: Yes.

CHAIRMAN CARTER: Below the line.

COMMISSIONER EDGAR: Below the line?

MS. BENNETT: I'm sorry. Below the line is what I'm being told.

CHAIRMAN CARTER: Marshall?

MR. WILLIS: Marshall Willis with the staff.

The outcome for 2012 and thereafter would be that these costs both in the expense level and the rate base level would be removed from base rates. They would not be there. They could only be placed back in through another rate case in the future if the Commission chose to do that and the company asked for it.

COMMISSIONER EDGAR: So the money would be paid for from what?

MR. WILLIS: That's correct.

COMMISSIONER EDGAR: From what?

MR. WILLIS: The money would be below the line, it would come from below the line and would be paid for through the stockholders and not the customers of FPL.

COMMISSIONER EDGAR: Okay. And that's the question I was asking. Thank you.

CHAIRMAN CARTER: Thank you.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chair. Just a follow-up to Mr. Marshall -- I mean, to Mr. Willis, to make sure that I have my numbers correct.

Effectively for the projected test years, they removed both of those in terms of revenue requirement, and that's about 16 million over the two years, but on an annual basis it would be approximately eight million per year in aviation-related costs, is that correct?

MS. WILLIAMS: That is correct. It's about 7.5 million and 7.8 million for the two years.

COMMISSIONER SKOP: All right, thank you.

CHAIRMAN CARTER: Okay. Commissioners, anything?

Mr. Moyle, yes, sir.

MR. MOYLE: And I know we want to try to move beyond this, but I -- you know, again, having just seen this proposed stipulation, I'm having difficulty -- it's -- the first sentence says, "The parties agree that the jurisdictional amounts for aviation costs shown below should be removed from the jurisdictional net operating income for the test years shown," and Commissioner Skop was referencing, you know, a number that's significantly higher than the numbers shown on this sheet. You know, the 210 sheet number shows 3.7 and the 211 shows 4.2, so --

MR. BUTLER: Mr. Chairman?

CHAIRMAN CARTER: Mr. Butler.

MR. BUTLER: Let me try to address that, and staff may want to weigh in as well.

The total amount of revenue requirements removed are the numbers that Mr. Willis had referred to. What staff asked us to do is to identify for them the amounts that would actually be taken out of specific accounts, and there's two major effects of removing the aviation costs. One is the expenses of running the aviation operation and the other is the return on the investment in the airplanes. And basically the first half of the exhibit or the document that staff had distributed is the NOI effect, the effect on expenses. The bottom half is the effect on rate base, and the return requirements on that rate base amount that's removed is essentially the rest of the dollar amount for the total revenue requirements that we had agreed to remove from the test year base rates.

CHAIRMAN CARTER: Does that help, Mr. Moyle?

MR. MOYLE: Yeah, I think it does. You know, the bottom line is always helpful, but I guess what Mr. Butler is indicating is that with respect to the plant and service number there's a figure in there that would be additive to the net operating income to get to the seven or eight million dollar number, is that right, Mr. Butler?

MR. BUTLER: That's right, yes. The return on that rate base balance would be additive to the net operating income effect, and the two together are the amount that we had quoted in our October 7 letter as the amount that we would be removing from the revenue requirements.

COMMISSIONER EDGAR: Mr. Chairman?

CHAIRMAN CARTER: Mr. -- excuse me, Commissioner Edgar.

COMMISSIONER EDGAR: Thank you.

And I think I understand all of that. What I am still not understanding completely, though, from the numbers that I'm looking at and from the discussion that we've had is where the number 16 exactly is coming from.

MR. BUTLER: The 16 million?

COMMISSIONER EDGAR: Yes, sir.

MR. BUTLER: Well, you have -- what we had filed on October 7 is the -- on the advice that we were removing these numbers, is precisely that $7,647,481 for 2010 and $7,812,923 for 2011. If you rounded those two to an even million dollars, it would be eight million per year, and the total of two would be 16 million over two years, I believe is what Commissioner Skop was referring to.

COMMISSIONER EDGAR: Okay, so how does that pertain to the numbers in front of me?

MR. BUTLER: The numbers in front of you --

CHAIRMAN CARTER: Hang on a sec. Hang on. I think Mr. Willis wants to -- Mr. Willis, you're recognized.

MR. WILLIS: Maybe I can clarify this. What you have in front of you are the adjustments that would be necessary to the expense accounts and the investment accounts. When we do the final numbers in the case, the rate of return will naturally fall out when we do the actual calculations. That's what Mr. Moyle was missing was the rate of return piece, because there is no real account that says here's the rate of return. When you do the calculation, naturally you take the expenses, you take the return on the investment, and that gets you to the 7.5 million and 7.8 million for 2011. That's what you're missing.

If you want to see the calculations that the company provided to staff, it's in that document, and I think Mr. Butler referred to it. It was the October 16th document that was sent to staff and put into the documents. On page 4 of that it shows the calculation of how the rate of return is, but that's probably based on the 12.5 percent rate of return requested. The rate of return is going to vary depending on what the Commission allows in this case, so if that helps, Mr. Moyle.

CHAIRMAN CARTER: Mr. Moyle?

MR. MOYLE: If it will save them some money to go to a 10.5 rate of return, we'd be --

CHAIRMAN CARTER: Commissioners, any -- Mr. Wright, good morning.

MR. WRIGHT: Good morning, Mr. Chairman, Commissioners. We've had a lot of substantive and procedural conversation, and I just want to make sure that I understand where we are with respect to this document, because we have been talking about it as a stipulation. It would be my understanding that this could come in as an exhibit showing numerical data, but that there is not going to be stipulation among the parties. Is that correct? And Issue 94 is going to become moot, essentially, by FPL's withdrawal of its request for recovery of aviation expense. Is that accurate?

CHAIRMAN CARTER: Ms. Brubaker, is that correct?

MS. BRUBAKER: I think that's correct. My understanding is the parties are not going to object to FPL withdrawing those amounts, that I think it would be appropriate to identify this as an exhibit, and that -- and the information Mr. Willis has here, the October 16th provision, that the parties would not object to those being entered, and that the parties do not object to Issue 94 being deemed essentially moot, with the understanding, of course, that any aviation-related concerns may be briefed at their appropriate points in the other issues.

I don't think it's necessary that the parties stipulate to this, but just as long as it's understood that these things will be done without objection by the parties.

CHAIRMAN CARTER: Mr. Wright, does that help?

MR. WRIGHT: Yes, sir, Mr. Chairman, but my point simply was, if there were going to be a stipulation, we would be a non-participant. We wouldn't oppose it; we wouldn't sign on to it. That's the only reason I asked the clarifying question, but with Ms. Brubaker's explanation, I'm completely okay. Thank you, sir.

CHAIRMAN CARTER: Okay, then let's try and bring it in for a landing, then. Staff, I presume what we need to do is take the one-pager here with the numbers on it that we've been talking about this morning and give that a number, is that correct?

MS. BENNETT: I'm going to have the letter and that one-pager put into the record. If you'll -- I'm having an administrative assistant come down to do a cover sheet and we'll have it entered into the record probably at the end of Mr. Pimentel's questioning, if that's all right.

CHAIRMAN CARTER: We'll do it at that point in time, and also, too, is that -- if that's the case, then we probably should dispose of the entire process at the same time, don't you think?

MS. BENNETT: Yes, we could go ahead and identify it as the next exhibit number.

CHAIRMAN CARTER: Okay. That would be No. 511. Is that correct, staff?

MS. BENNETT: That is correct, 511.

CHAIRMAN CARTER: Commissioners, 511. Anybody got a suggestion on a short title?

MS. BENNETT: Short title would be Aviation Expense Removal.

CHAIRMAN CARTER: Aviation Expense Removal.

(Exhibit No. 511 marked for identification.)

CHAIRMAN CARTER: And what we'll do, Commissioners, is that staff will get the one-pager with the cover letter over it, and we'll hold off on admitting it so all the parties can see it before we have a final document on that. I want to make sure everyone's on the same page.

Now, Ms. Brubaker, let's back up for a second -- or Ms. Bennett, rather, let's back up for a second. What should be our disposition on 94? Do we just withdraw the issue as an issue, or what's your recommendation on that? Do we need to do anything at all on it, or what?

MS. BRUBAKER: I think perhaps the cleanest disposition would be to deem the issue withdrawn, if that is --

CHAIRMAN CARTER: Let me just get a -- we can do that with the agreement of the parties.

Mr. Moyle, does that meet with your condition?

MR. MOYLE: Yeah, I think, given the conversation and the representation, I'm fine with that.

CHAIRMAN CARTER: Mr. Wright?

MR. WRIGHT: I have no objection. The way Issue 94 is stated is, should an adjustment be made for FPL's aviation cost. My understanding is that with the withdrawal of -- effectively what we've got is a withdrawal of the request for aviation costs. That moots the issue.

CHAIRMAN CARTER: Mr. Wiseman?

MR. WISEMAN: Withdrawing it is fine with us.

CHAIRMAN CARTER: Ms. Perdue?

MS. PERDUE: That's fine.

CHAIRMAN CARTER: Ms. Bradley?

MS. BRADLEY: That's fine.

CHAIRMAN CARTER: Good morning, Mr. McGlothlin.

MR. McGLOTHLIN: Good morning. I concur, that's the result.

CHAIRMAN CARTER: Capital McNeil?

CAPTAIN McNEIL: Fine with us.

COMMISSIONER EDGAR: I've got a motion, Mr. Chairman, for clarity.

CHAIRMAN CARTER: Commissioner Edgar, you're recognized.

COMMISSIONER EDGAR: I offer the motion that Issue 94 be withdrawn at the request of the Petitioner and, in the alternative, that the answer to the issue be no.

COMMISSIONER SKOP: Second.

CHAIRMAN CARTER: Okay, Commissioners, I think we've -- Commissioner Argenziano is going to remind me it's illegal in Florida. I think we've beat a dead horse to sleep already on this issue.

Are there any further questions or concerns?

Hearing none, it's been moved and properly seconded. All in favor, let it be known by the sign of aye.

(Chorus of ayes.)

CHAIRMAN CARTER: All those opposed?

(No response.)

CHAIRMAN CARTER: Show it done.

Staff, I'm always -- I feel like the guys on *Car Talk*. I'm always terrified when I ask the question about any other preliminary matters, like they said that everyone gets nervous when they say this is public radio, but anyway, are any other further preliminary matters?

MS. BENNETT: Staff has no other preliminary matters.

CHAIRMAN CARTER: From the parties, before we proceed, any further preliminary matters from any of the parties?

Okay. Hearing none, when we last left, staff, you were on cross-examination, is that correct?

MS. BENNETT: That's correct. We had cross-examination of Mr. Pimentel.

At this time I would like to identify for the record Exhibit 511, and I actually have CD copies for you, for the Commissioners. They've already been passed out to the parties.

CHAIRMAN CARTER: 511, is that -- now, 511 is the spot we held for the --

MS. BENNETT: I'm sorry, 512. I was thinking in terms of 511 earlier.

CHAIRMAN CARTER: You were testing me, right, to see if I was paying attention.

512, okay, short title.

MS. BENNETT: It is Pimentel Discovery Responses, part -- Pimentel Discovery Responses.

CHAIRMAN CARTER: Okay. Pimentel Discovery Responses.

(Exhibit No. 512 marked for identification.)

MS. BENNETT: And if you'll bear with me for just a minute, let me explain what that is.

When last we left Mr. Pimentel, I had given him a stack of documents marked as 510. This -- 511 includes all of those documents that we talked about --

CHAIRMAN CARTER: You mean 512.

MS. BENNETT: 512, I'm sorry. I'm going to call it 511, I've got that in my brain.

512 includes all of documents that we talked about on Thursday night with Mr. Pimentel, plus it includes some additional ones, but we will be handing out the additional ones that we're going to be talking with him about as we go along so that it won't be sorting through the stacks like we did the last time.

And in addition, I think that the parties have agreed to the admission of 512 into the record with the exception -- I think OPC had a couple of questions, and I don't see Ms. Merchant in here yet, so --

CHAIRMAN CARTER: Mr. McGlothlin is here.

Mr. McGlothlin?

MR. McGLOTHLIN: Yes. As of this morning, we have not been able to put our hands on all of the documents that were included in that request, and we wanted a chance to get with staff to see if there was any gaps in what we received before we stipulated.

CHAIRMAN CARTER: What we'll do is this, Commissioner and staff and to the parties, is that when we finish redirect with this witness, before going to the exhibits we'll take a break so the staff can work with the parties and make sure everyone's on the same page on that.

Mr. McGlothlin, would that be helpful?

MR. McGLOTHLIN: Yes, sir.

CHAIRMAN CARTER: So we'll do it that way, I think that will work better.

Okay. Ms. Bennett, you may proceed.

MS. BENNETT: Yes, thank you.

The first thing I'm going to do is have Production of Documents No. 38 handed out to the witness and to the parties and to the Commission, and it's also on the disk.

CHAIRMAN CARTER: Thank you. So what you're passing out now, Ms. Bennett, in this process, the documents that you're passing out don't need a number because they're enclosed within 512, correct?

MS. BENNETT: Correct. Correct. They're just for your use as we talk with the witness about this document.

CHAIRMAN CARTER: Okay. Let's wait a moment for everyone to get a copy. Staff, don't forget to make sure you get Captain McNeil a copy of those.

Okay, Ms. Bennett, you may proceed.

CROSS EXAMINATION

BY MS. BENNETT:

Q This response to POD No. 38 shows how FPL determined the cost rates for long-term debt projected to be issued in late 2009, 2010 and 2011, is that correct?

A I'm sorry, Ms. Bennett. Could you just repeat that question?

Q Sure. The response shows how -- this is a response to a production of document request.

A Yes.

Q And it shows how FPL determined the cost rates for long-term debt projected to be issued in late 2009, 2010 and 2011, is that correct?

A Yes.

Q The interest rate assumptions the company relied upon in this analysis came from the December 1, 2008, edition of the Blue Chip Financial Forecast, is that correct?

A That's correct.

Q Looking at the table on the Bates-stamped page FPL 157161, it includes a reference to a AAA-minus rating. Do you see that? It's in the shaded box.

A The shaded box doesn't have a rate.

Q It has "Interpolation Table" and it starts with AAA and then AAA-minus to --

A Yes, yes, it does. There's just no rates associated with that in the gray table. Is that your question?

Q No, actually my question is, would you agree that S&P doesn't have a AAA-minus rating?

A Oh, I'm sorry. Yes.

Q Yes, you agree?

A Yes, I would agree.

Q So the interpolation FPL did should have been four-eighths and not four-ninths as shown on this page, is that correct?

A I don't know whether it should have been four-eighths or four-ninths. I can tell you what we did; what we did was we interpolated between AAA and triple-B. Between AAA and BBB, there are two other major categories which are A and AA, and then between A and AA there are two other categories, A-plus and A-minus, and we interpolated to A-plus. I don't remember the -- I see the four-ninths here and I know that we provided that. I'm just going by memory by what we did as to how we interpolated all the way down to A-plus.

Q Okay. I'm going to ask you to look at the cover page of POD No. 38, in the column under Q4, 2009, and it's not the cover page that staff provided, it's the first page of the --

A That's the first page we were just looking at?

Q It's the page we were just on.
A Okay, yes.
Q In the column under Q4 2009, it shows -- are you there?
A Yes.
Q It shows interest rates of six percent for AAA bonds and eight percent for BBB bonds, is that correct?
A That's correct.
Q And these interest rates were taken from the December, 2008, edition of Blue Chip Financial Forecasts that was provided as part of the company's response, is that correct?
A Yes.
Q Okay. I'm going to have another exhibit passed out. This is, again, not to be entered into the evidence but just to talk about, and it's selected pages from June 1, 2009, and October 1, 2009, editions of the Blue Chip Financial Forecasts.

CHAIRMAN CARTER: Commissioners, while she's doing that, let me just kind of take a moment for planning purpose and for your calendars and also for the parties.

My plans are that we'll go today until about 8:00 p.m. I think we start reaching diminishing returns if we go further than that. And we'll go -- lunch, I'm looking for a break around 1:00 to 2:15, in that area. Hopefully, that will be a break -- if it doesn't break precisely at 1:00, we may go a little bit later than that for lunch, but we'll try to work that schedule. So I hope that will help the parties on that so as you can plan for the rest of the day.

Okay. Ms. Bennett?

BY MS. BENNETT:

Q Mr. Pimentel, would you turn to the last page of the exhibit, and you will be looking at the consensus forecast of U.S. interest rates from October, 2009, Blue Chip. Let me know when you're there.

A I'm on the last page.

Q Looking at the column for 4Q 2009, do you see the forecasted interest rate for AAA bonds is now 5.3 percent?

A Yes.

Q And the forecasted rate for BBB bonds is now 6.6 percent, is that correct?

A Yes.

Q I'm going to ask you to turn to the third page of the exhibit and you should be looking at the long-range forecast from the June, 2009, Blue Chip. Are you there?

A Yes.

Q Would you agree that Blue Chip Financial Forecasts is published monthly, but that the December and June editions include additional forecast information not contained in the other ten months' editions?

A Yes, that's correct. The two that you pointed out are, at least in my view, a much more comprehensive view of long-term rates than the ones that are published on a monthly basis.

Q Thank you. Referring back to that Bates-stamp page 157161 of the POD No. 38 in the column for 2011 --

A Yes.

Q -- this page shows a AAA rate of 6.3 percent and a BBB rate of 7.6 percent, correct?

A Yes, that's correct.

Q So would you agree with me that according to the June, 2009, Blue Chip, the forecasted rate for AAA bonds for 2011 has dropped to 5.9 percent and the forecasted rate for BBB bonds has dropped to 7.4 percent?

A Yes, that's correct.

Ms. Bennett, I just -- we talked about this in my deposition, that even with the lower rates that were projected in the semiannual survey that we're looking at here, which, again, just for the record, is the June 1 survey, if we actually re-ran our debt numbers based on that June 1 information, the effective interest rates for -- on a cumulative basis for 2010 and 2011, would be slightly higher than they were even in our original MFR. And the biggest reason for that, as I think I pointed out in the deposition, is because our MFR actually had short-term debt that we believed we would issue in the first quarter of 2009, three-year short-term debt at a very low interest rate. We actually did not issue that short-term debt in the first quarter of 2009. We issued longer-term debt in the first quarter of 2009, that 5.96 percent that we've talked about before, for 30 years. If you plug in that actual debt that we issued in the first quarter of 2009 with the revised numbers, interest rate numbers from this June forecast, we actually get a higher interest rate than what we show in the MFR. And I don't know whether you were done with your questions, but I wanted to at least bring that up again.

Q It will take me a minute to process that, but --

A I can -- if you'd like --

Q No, I want to go on to a next line of question. I may come back to that in a minute.

I want to talk to you a little bit about securitization charges from the storm cost recovery docket. I know that you were not in your current position at that time, but in 2006 the Commission permitted FPL to issue storm recovery bonds to finance the recovery of prudently incurred storm damage expenses associated with the 2004 and 2005 hurricane seasons, and according to that order, on a motion for reconsideration and clarification FPL could seek recovery of incremental costs associated with its rates as servicer and administrator of the storm recovery bonds.

And this is just a clarification question. Staff has reviewed the MFRs and did not see any incremental costs, and we wanted to confirm with you that they were not included in the MFRs or in your testimony.

A That's correct.

Q Okay. Next I want to talk a little bit about the relationship between FPL and FPL Group and your cost of capital, and so I'm going to have another exhibit passed out. Again, I don't need it marked for identification, we're just going to talk about it.

And this is FPL's Response to Staff's Request for POD, Production of Document No. 24. It's a rating research report for FPL Group from Fitch Ratings, dated February 12th, 2008.

(Brief pause.)

CHAIRMAN CARTER: You may proceed.

MS. BENNETT: Thank you.

BY MS. BENNETT:

Q This report -- you've seen this report before, correct?

A Yes.

Q I would like for you to turn to Bates-stamp page FPL 157002, which is page 6 of the report, and let me know when you're there.

A Yes.

Q I'd like you to go to the first four sentences under the heading "Financial Results and Outlook" and go ahead and read them aloud for us.

A The one that starts, "Group Capital"?

Q Yes.

A "Group Capital operates at a profit, but its credit and cash flow measures are not as robust as those of FPL or the consolidated FPL Group, Inc. Group Capital's growth capital investments are funded with a high component of debt leverage, including non-recourse project debt, at about 70 percent debt and 30 percent equity. Also during the period 2002 to 2006, relatively low power prices and spark spreads in Texas and Maine were a drag on operating results."

Did I reach four sentences yet?

Q Go ahead and read the next sentence, please.

A "As a result, Group Capital has relied upon the guarantee of its parent, FPL Group, in order to finance its growth investments most economically."

Is that --

Q That's fine, thank you.

Would you agree that Group Capital is the funding vehicle for FPL Group's non-regulated operations?

A It funds some of FPL Group's non-regulated operations. Many of FPL Group's non-regulated operations, as it points out right here, is actually funded through project debt down at the NextEra Energy Resources level, which is non-recourse and which is one of the primary reasons why FPL Group Capital is actually highly rated by all of the agencies. Project debt, since it is non-recourse to FPL Group Capital and NextEra Energy Resources, is actually removed from the balance sheet by the rating agencies when they make their -- when they make their metrics decisions.

Q So I think your answer was a mixed yes and no?

A It is a mixed yes or no, but what I wanted to relate is that most of the funding for NextEra Energy Resources actually does not occur at the FPL Group

Capital level. Most of the funding actually occurs down at the project level in the form of non-recourse debt. That non-recourse debt down there is at a very high leverage, and the rating agencies remove that project debt from their books when they are assigning ratings to FPL Group Capital.

Q Okay, thank you.

While we were talking, another exhibit was being passed out, and again, I don't need it entered into the record, it's just to talk about. And that's the staff -- FPL's Response to Staff's POD No. -- Production of Document No. 19, and I'd like for you to turn to Bates-stamp page FPL 156915.

A Okay.

Q And this report is a rating research report for FPL from Standard & Poor's dated August 20th, 2008, is that correct?

A Yes.

Q And you've seen this report before, correct?

A Yes.

Q Under the heading "Major Rating Factors," would you read aloud the bullet points listed under "Strengths"?

A "High quality electric utility generates steady cash flows, constructive regulatory environment in Florida, and strong customer growth with predominantly residential base."

Q And would you agree that all three of these identified strengths are related to Florida Power & Light's regulated operations?

A Yes.

Q Okay. And would you read aloud the bullet points under "Weaknesses"?

A Yes. "Dependence on natural gas to generate electricity and higher risk cash flows from FPL Energy's merchant generation."

Q And you would agree with me that only one of those two identified weaknesses is related to Florida Power & Light's regulated operations, and the other weakness is related to FPL Group's non-regulated operations, correct?

A I would agree with you, Ms. Bennett, that that's what it says. It's also important to know that the way that S&P rates the consolidated group is they look at all of the entities under the consolidated group. FPL Group Capital, FPL Group and Florida Power & Light have the same rating.

Q Okay, thank you.

I want you to turn, same document, to Bates-stamp page 156927.

A Yes.

Q Okay. And this report is a rating research report for Florida Power & Light from S&P dated February 12th, 2009, is that correct?

A Yes.

Q And you've seen this report before also, right?

A Yes.

Q Would you read aloud the first paragraph on the page?

A Under "Rationale"?

Q Yes.

A "The ratings on Florida Power & Light (FPL) are based on a consolidated credit profile of parent FPL Group, Inc. Ratings largely reflect the strength of the regulated cash flows from FP&L. The utility contributes to about three-quarters of the consolidated credit profile and has better fundamentals than most of its integrated electric peers with a healthy and growing service territory, sound operations and a supportive regulatory environment. Detracting from credit quality are the company's increasing exposure to wholesale energy activities, its willingness to expand through acquisitions and increase its risk profile, the fluctuating cash flows from FPL Energy, Inc.'s, portfolio of merchant generation and the utility's significant exposure to natural gas."

Q Thank you, Mr. Pimentel.

When S&P refers to the consolidated credit profile that we just talked about, would you agree it's referring to the credit profile of FPL Group on a consolidated basis?

A Yes, it is.

Q Do you recall earlier when we had you read from the Fitch rating report regarding FPL Group's guarantee of FPL Group Capital debt?

A Yes.

Q To the extent that FPL Group guarantees the debt of FPL Group Capital and Florida Power & Light is responsible for 75 percent of the credit profile of FPL Group, is the funding FPL Group's non-regulated operations dependent in any part on the financial success of Florida Power & Light, the regulated utility?

A I wouldn't -- I don't think so, and the reason I say that is most of the -- in my view, most of the credit profile of FPL Group Capital is actually based on the fact that FPL Group Capital, through NextEra Energy Resources, can either issue non-recourse debt, which I've explained what non-recourse debt is about, and it's extremely favorable from a credit position, but in addition to that, the non-regulated side can also issue other instruments, for example, long-term subordinated debt where the credit rating agencies provide credit. Although it's a long-term subordinated debt instrument, the rating agencies actually provide 50 percent equity credit for those instruments.

Both of those, which are very significant in my view, are the primary reason as to why FPL Group Capital at this point is still rated an A entity. By many respects, FPL Group Capital actually has lower risk than Florida Power & Light Company, including the diversification of many of its activities through 26 states in the United States, also in Canada. Most of its assets are under long-term power agreements with investment grade counter-parties. It also has much more diversification in the amount of generation. It's not as gas-heavy as Florida Power & Light is.

So, at least my opinion, my discussion with investors, both debt and equity, focus on the fact that, at least the way this management is running FPL Group Capital and NextEra Energy Resources, is credit-supportive.

Q Okay. And I think that means you would agree with me, then, for purposes of setting rates in this proceeding, the Commission should set the authorized return on equity based on the risks associated with the provision of a regulated electric service and not the total risk of FPL Group, the consolidated enterprise, correct?

A That's correct. I'm not sure whether you're referring to the way that both us and Intervenors have looked at proxy companies. It's sometimes very difficult to look through the proxies without looking at the consolidated entity, and so a lot of the information that's been provided is on consolidated entities, but we've spent a lot of time -- in this proceeding I know I've spent a lot of time, both in my deposition and in my written testimony, discussing specifically what the risks are to Florida Power & Light Company and how they're different from other regulated utilities that we've looked at.

Q But I think you did agree with me that for purposes of setting rates the Commission looks at setting ROE for only the regulated electric service, correct?

A Yes, that's correct.

Q I'm having another exhibit passed out. Again, I don't need it marked for identification. It's POD No. 34, and this document is the S&P's "Key Credit Factors, Business and Financial Risks in the Investor-Owned

Utility Industry," dated November 26, 2008.

A Okay.

Q And you've seen this report before also, correct?

A Yes.

Q I'm going to ask you to turn, near the back of the document, to Bates-stamp page FPL 157143.

A Okay.

Q The paragraph -- the second paragraph from the bottom that begins, "The level of business and credit risk," would you please read that paragraph aloud?

A Yes. Just a second, Ms. Bennett. I just want to look at the front page of whatever it is that I'm looking at.

Q Okay.

A Okay, and you asked me to read which paragraph?

Q The second paragraph from the bottom that begins, "The level of business and credit risk."

A Yes. "The level of business and credit risk associated with the investor-owned regulated utilities has historically proven in most countries to be lower risk than for many other industries. This has been because of the existence of government policy and related regulation that created significant barriers to entry-limiting competition and regulatory rate-setting designed to provide an opportunity to achieve a specific level of profitability. The credit quality of most vertically integrated utilities in developed countries has historically been and remains solidly investment grade. This, to reiterate, is primarily a function of the existence of protective regulation."

Q And you would agree that there is no choice in FPL's service territory, is that correct? I'm sorry, there's no retail choice in FPL's service territory?

A Yes, broadly speaking, there is no retail choice, correct, Ms. Bennett.

Q And Florida is not considered a deregulated utility state, correct?

A That is correct.

Q Would you agree that S&P believes investor-owned regulated utilities are considered less risky than the companies in many other industries?

A Yes, I would agree that that's what it says here, Ms. Bennett, but as we know, S&P -- this is a general industry outlook that they've provided here. S&P provides specific guidance for each one of the utilities, and when providing that guidance, they look at the specific risks associated with that utility and its regulatory environment.

Q Okay, that brings me to my next line of questions which is the type of risks that FPL faces. I want you to turn to page 23 of your direct testimony.

A Yes.

Q And on page 23 of your direct testimony you discuss that, "Due to the recession, FPL has experienced a decline in retail sales," is that correct?

A That's correct.

Q That decline in retail sales is not unique to FPL, is that correct?

A I'm sorry, unique to FPL compared to the industry overall?

Q Well, let's compare it to the industry overall and then to other utilities in Florida.

A Yeah. I don't know that it's unique to FPL. I don't know whether that -- well, I know that that is not the same as saying that there are not other parts of the country that continue to grow in terms of customers.

You know, our -- at least the number of customers here in Florida has continued -- has continued to decline. That's not my understanding of the case in other parts of the country. Broadly speaking, the load has decreased throughout the nation. Much of that I believe is weather-adjusted, but I wouldn't say that we are the only utility in the nation that is currently facing lower sales.

Q Okay. And for purposes of preparing your testimony, you didn't make any comparison of the dropoff in FPL's retail sales to the dropoff of sales of other investor-owned utilities, is that correct?

A No, I made no specific -- no.

Q Would you turn to page 24 of your direct testimony?

A Yes.

Q And in this portion of your testimony you discuss the economic downturn, is that correct?

A Yes.

Q The downturn in the economy is not unique to Florida, is that correct?

A Although -- the downturn in the economy, that is correct, it is not unique to Florida. The depth of the downturn and the length of the downturn is being predicted by many to be much different in Florida and a couple of other states than it is for the nation and other specific states as a whole. The statistics that we continue to see on the Florida economy are not encouraging, and certainly are not the statistics that we keep seeing in the media regarding other places of doing business in the U.S.

Q Okay, but let's go back to comparing it to

Florida, and -- I'm sorry, let's go on to the next question.

Please turn to page 25 of your direct testimony.

A Yes.

Q Would you read aloud the sentence on lines 1 and 2 for me?

A 2 and 3, Ms. Bennett?

Q Yes.

A "As stated earlier, the utility industry as a whole is entering into a significant capital expenditure cycle. FPL alone projects approximately 16 billion of capital requirements over the next five years."

Q Thank you. You would agree that an increase in capital expenditure programs is systemic to the industry and is not unique to FPL, is that correct?

A I would say it is systemic to the industry. I would disagree that others in the industry are facing, on a percentage basis or on a nominal basis, the same amount of CAPX that we are expecting over the next five years. A significant amount of the CAPX that this industry expects to build over the next five years is actually centered in the southeast United States, and I provided information through a Brattle Group study that indicated that, or at least I referenced that in my testimony, and when you look at the southeast, the $16 billion for FPL is a significant number compared to what others are doing.

So it is a significant amount. On a nominal -- on a percentage basis. On a nominal basis, $16 billion is larger than most of the regulated utilities as a whole in the United States.

Q I think at the time of your deposition you stated that FPL had not done any analysis that shows how FPL's capital expenditures program on a relative basis to its size compares to the capital expenditure programs of other utilities, is that correct?

A FPL has not. The Brattle Group study is not something that FPL put together, but it was a Brattle Group study that was done I believe in 2008, November of 2008, which I also believe we provided to the staff. I'm not going to be able to remember what interrogatory number that has the information that I just indicated.

Q Okay. I'd like you to turn to page 26 of your direct testimony.

A Yes.

Q Would you read aloud the one sentence on lines 2 and 3, please?

A "In general, the investment community and rating agencies view nuclear construction as a higher risk than other technologies."

Q Thank you. The company did not make any comparison of FPL's percentage of generation from nuclear plants to the relative reliance on nuclear power by each of investor-owned utilities identified on Mr. Avera's Exhibit WEA-15, is that correct?

A No, I did not do that.

Q I'm having another exhibit passed out. Again, it's part of 512, so I don't need it marked for identification, and this is the Company's Response to Staff's Interrogatory No. 147.

This is a June, 2009, Moody's report, attachment number 1, page 1 of the response, and it's regarding new nuclear generation that the company provided in response to Staff's Interrogatory No. 147, is that correct?

A Yes.

Q And you're familiar with this report?

A Yes.

Q The pages of this report do not follow the attachment pages, so we're going to try and walk us through it, but I think we can navigate the document. I want you to turn to page 13 of the attachment, which is actually page 3 of the Moody's report. Are you there? Up in the top right-hand corner --

A It would say what? What would it say on top right?

Q It's Florida Power & Light Docket No. 08677, Staff's Ninth Set of Interrogatories, question number 147, attachment number 1, page 13 and 14.

A Yes.

Q Okay. I'm going to ask you to read aloud the first two sentences at the top of that page.

A "Moody's believes"?

Q Yes, that's correct.

A "Moody's believes there is a significant difference between new nuclear plants located adjacent to existing units from those that are in greenfield projects. In our opinion, brownfield projects benefit from the existing infrastructure, including security plans, local political support and historical operating record of the existing units."

Q Do you understand what they're talking about as the difference between greenfield and brownfield?

A Yes, I do.

Q Okay. And would you agree that FPL's proposed nuclear project is a brownfield project and not a greenfield project?

A I would agree with that. I don't -- I'm not sure that -- no, I am sure. I am sure that I don't necessarily take these two sentences as granted, and I'm sure many of my peers that are in the process of looking to build brownfield units would not agree that it's necessarily any easier.

Q Okay. I'm going to ask you now to turn to page 8 of 14, which is actually page 10 of the Moody report.

A Yes.

Q At the top of the page it states, "In order to defend existing rates or to limit negative rating actions, we will look for investor-owned utilities to," and then there's a bullet list, and it has four bullets. Do you see this?

A Yes.

Q Would you agree that it is the discretion of FPL management how closely the company will comply with suggestions by Moody's regarding how companies can mitigate the perceived risks associated with new nuclear construction?

A I'm sorry, Ms. Bennett, you're asking is it within FPL management's control to deal with these four bullets?

Q That's correct, and how to deal with those four bullets.

A Yes and no. Certainly FPL's management has to take -- you know, it has to understand that in order to raise capital to build nuclear plants, they're going to have to provide returns that are satisfactory to those that are providing the capital, and they can certainly take -- they can certainly take some of the actions that are discussed here, but I wouldn't say that it's generally within their control.

The regulatory environment that we and any one of the entities that are considering new nuclear plants operate in is going to be a big piece as to whether FPL management or any other management is actually able to meet some of these criteria, and in specific I point to the top two. One is creating strategic partnerships to share costs and risks, and the other one is increased reliance on equity as a component to financing plans. Certainly just because an entity wants to issue equity, that doesn't necessarily mean that there are investors on the other side that are willing to take the risk for the appropriate return.

So certainly management has a lot to do with it, but so does the regulatory environment that our management and other managements operate in.

Q Okay. Even though Moody's has written about the risk associated with new nuclear construction and made specific suggestions for how investor-owned utilities can maintain their existing bond rating through the construction cycle, it's the prerogative of the company's management whether those suggestions will by followed, is that correct?

A Yes and no. That's the same question just asked, I think, another way, Ms. Bennett.

I would say that management, having been given the ability within its regulatory structure to take these types of actions, that yes, that it would be within their control to actually take some of these actions, but if there's not an appropriate regulatory structure, in order for management to actually be able to take the actions, then they wouldn't be able to do it. I gave you the example and I'll give it again: If the regulatory structure doesn't provide for the appropriate return on equity that Moody's in this report would like for the company to issue, the company could try to issue it all day long, but unless there's an appropriate return on that equity, it will be so expensive that it won't make sense to the company nor the company's customers to issue that equity.

So yes, in an appropriate regulatory environment, it would be within management's control, for the most part, to take the steps that are pointed out here.

Q Okay. I'm going to ask you to turn to your rebuttal testimony at this point, and when you're there, turn to page 4 and to the testimony beginning on line 22 at the bottom of the page through line 2 at the top of the following page.

A "A final consideration," Ms. Bennett, page 4, line 22?

Q Yes.

A You'd like me to start reading?

Q Actually I'm just going to ask you, would you agree with me that it's the company's overall rate of return that is utilized for purposes of setting rates? Do you agree with that statement?

A Yes. Yes, I do.

Q Would you agree that taxes are taken into account when a company's revenue requirements are determined?

A Yes.

Q Would you agree that while it's common to express a company's overall cost of capital on an after-tax basis, it's actually the company's pre-tax cost of capital that is utilized for purposes of setting rates?

A Yes.

Q Do you need me to repeat that?

A Yes, for revenue requirements. I'm sorry, I was just thinking through your question.

Q Okay. I'm going to have another exhibit passed out. This is Deposition Exhibit No. 4 that you filed or provided with your deposition. And, Mr. Pimentel, did you or someone under your supervision prepare this schedule?

A Yes.

Q The capital structure at the top of the page reflects the cost of capital for the company per the company's original filing, is that correct?

A Yes, it is.

Q And the capital structure in the middle of the page reflects certain adjustments to the cost of capital per the company's rebuttal testimony, is that correct?

A Yes.

Q There's some differences between the two representations of the company's capital structure. Can you walk us through those differences? And I'm specifically interested in the investment tax credits in the middle schedule compared to the investment tax credits shown in the original filing which is at the top of the schedule.

A You are interested in the $56 million number and the five million -- $5.4 million number?

Q Yes, I want to understand why that is such a significant difference.

A Ms. Bennett, we will -- let me give you what I believe it is. Mr. Barrett or Mr. Davis will be able to answer in detail, but I believe that the difference is that in the original filing which is up above, which includes the $56 million, we included some investment tax credits in that capital structure that should not have been included in that capital structure. Those investment tax credits, and I believe it's primarily the solar plants, should actually be included as part of the solar filing and that capital structure and not the rate case capital structure that we're looking at here. I believe that's exactly what that is. But we'll have -- if that's not all of it, Mr. Barrett or Mr. Davis will be able to provide the detail.

Q Okay. There's some distinction between the capital structure as originally filed and the middle schedule on long-term debt. Can you explain the differences there? It looks like about $80,000 -- 80 million.

A I don't remember what that is, but we will get you an answer.

Q And that would be Mr. Davis and Mr. Barrett?

A One of the two, yes.

Q And then the same about the short-term debt.

There seems to be some differences.

A Yeah, about five million dollars. I don't -- all of these differences, by the way, are a result of the Kim Ousdahl document that she filed with her -- Ms. Ousdahl -- Witness Ousdahl's testimony she filed in KO-16. As part of her rebuttal, there were a number of adjustments that are made to our request, and all of those adjustments resulted to changes in our capital structure. I just don't recall off the top of my head each individual one.

Q So the middle column would tie back to KO-16, is that correct?

A Yes.

Q And if we have specific questions, we can ask Mr. Barrett and Mr. Davis about those specific --

A Yes.

Q -- dollar amounts that were removed or added?

A Yes.

Q Okay. I want you to turn to page 6 of your rebuttal testimony, and in there on page 6 you've referenced returns for Publix and Wal-Mart and some other retail companies.

A Yes.

Q Those are historic returns, earned returns, right?

A Yes, they are.

Q These aren't expected returns for those companies, correct?

A I do not know what the expected returns for those companies are. I believe in Dr. Avera's testimony -- I don't know whether any of those specific companies are actually listed in his non-utility columns, but you would have some of that information there.

Q Okay, but if Publix earned 19 percent in 2008, as you note, does that necessarily mean investors expect Publix to earn 19 percent in 2009?

A No.

Q Okay. Would you agree that FPL earned a return on equity on its regulated operation of 10.8 percent in 2008?

A Yes.

Q Does the fact that FPL earned a return on equity of 10.8 percent in 2008 mean that investors' required return for FPL is only 10.8 looking forward?

A No.

Q FPL has requested an ROE of 12.5 percent for purposes of this proceeding, is that correct?

A Yes.

Q Is an increment of the 12.5 percent ROE associated with the need to secure sufficient financing for the Turkey Point nuclear project?

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

Q Sure. Is any increment of the 12.5 percent ROE associated with the need to secure sufficient financing for the Turkey Point nuclear project?

A And you're talking about Turkey Point 6 and 7 --

Q Yes.

A -- is that correct?

Q That's correct.

A Not specifically, Ms. Bennett. We continue to move forward on the licensing requirements for Turkey Point 6 and 7. Clearly investors know that and understand that.

In that report that you had me read off of just a little bit ago, the Moody's report, it did indicate that Florida Power & Light certainly was considering and moving forward at a measured pace in order to build those two plants. That raises expectations, certainly, from debt and equity investors. Equity investors is what you're talking about specifically right now. Equity investors would expect -- you know, equity investors, as I think I indicated back in September, they're interested in the future. They're interested in the income statement and in the risks associated with what the company is going to do. Equity investors are going to demand a higher return for those entities that they believe are taking additional risks.

Based on some of the documents certainly that you've had me read today and my own experience, any entity that is on its way to building additional nuclear plant equity investors believe have more risk, and so, no, not directly, because we're not out there looking right now for significant financing for Turkey Point 6 and 7, but equity investors already have in their mind that we're considering it, and that adds to the risk exposure.

Q But is it your testimony that FPL needs a 12.5 percent ROE regardless of whether it's building the Turkey Point nuclear project?

A I don't think I've actually testified -- I don't think I've said that before, if that's what you're asking.

Q Okay.

A At least I don't remember.

Q Would you say it now?

A I'd -- it's a difficult -- I'm not sure I can answer yes or no. It's a difficult question, all right?

I mean, we -- Dr. Avera and myself have spent a lot of time talking about ROE and looking at a bunch of comparables for ROE. I've spent a lot of time talking to investors about what an appropriate return on equity would be. All the equity investors are focused in the future and they understand that the future includes new nuclear, or could include new nuclear.

Now, we've done our best to tell equity investors and others that, you know, we are on a measured pace to building new nuclear. We did not want to be the first ones to do it. We want to certainly learn from others. The projected dates that we have are a little further off than the projected dates that you've heard from others. So I would say that there is not a significant built-in expectation of new nuclear in the 12 and a half percent, but I cannot say that there is not -- that there is zero expectation from equity investors. There shouldn't be zero. I mean, we've been talking about it for a while. We've got regulation in Florida. We're collecting dollars from customers to be able to move forward at a measured pace, and they understand that.

The real question is whether in fact, once folks get closer to building nuclear, whether Moody's and S&P, Fitch and some of the equity investors will actually say, at least in our case, that 12 and a half percent just isn't enough, and that's going to depend on a whole bunch of factors.

So that's a long answer and I apologize, but it's a very difficult question to just say yes or no to.

Q I try to give you hard questions, but this next one I think will be pretty easy. I'm going to have staff pass out the next exhibit, and I don't need it marked. It is the company's Response to Staff's Interrogatory No. 103.

MR. WRIGHT: Mr. Chairman?

CHAIRMAN CARTER: Mr. Wright, how are you doing?

MR. WRIGHT: I'm doing great, sir. How are you?

CHAIRMAN CARTER: Fantastic.

MR. WRIGHT: While staff are passing that out, can I just ask what the status is of Mr. Pimentel's Late-Filed Deposition Exhibit No. 4? Is that to be a separate exhibit?

CHAIRMAN CARTER: Ms. Bennett?

MS. BENNETT: It's actually part of 512.

CHAIRMAN CARTER: You say it's part of 512?

MS. BENNETT: And we hope to move it into the record.

MR. WRIGHT: Thank you. I did look, and --

CHAIRMAN CARTER: Also, too, Mr. Wright, remember what my plans are on that, is before we deal with any of those exhibits, after they finish redirect on Mr. Pimentel, we'll take a break and let you guys go through and look at everything before we even deal with those.

MR. WRIGHT: Thank you, Mr. Chairman. I apologize for the interruption.

CHAIRMAN CARTER: Not a problem. I just want to make sure we're all on the same page.

I was starting to give you guys a break, but I'm terrified that you guys may disappear on me.

Okay, let's roll. Ms. Bennett?

MS. BENNETT: I really don't have that much more, really.

BY MS. BENNETT:

Q And you're familiar with this --

A Ms. Bennett, I remember 20 minutes back in September.

Q I think that was an all-day deposition, wasn't it?

This schedule shows the flow of funds between FPL and FPL Group for the period 1999 through 2008 actual, and 2009 projected, is that correct?

A Yes.

Q Did you state you were familiar with this response?

A Yes.

Q This schedule shows that from 1999 through projected 2009, FPL reports that it will have earned approximately eight billion in net income over this period, is that correct?

A Yes.

Q This schedule also shows that of this eight billion in net income, approximately 4.1 billion was retained by FPL Group and approximately 3.9 billion was invested in the utility as equity. Is that correct?

A Yes.

Q And now I'm going to have another exhibit passed. It's staff's -- it's FPL's Response to Staff Interrogatory No. 112, and again --

A Ms. Bennett, again, if I may, I just want to make sure it doesn't get lost here. I did mention it I believe back in September that, based on the amount of CAPX that Florida Power & Light Company has over the next several years, out of 55.8 percent capital structure, there is not going to be a significant amount of free cash flow available at Florida Power & Light like there has been in the past, and that's what this schedule is referring to, free cash flow that's distributed or kept.

Q Thank you.

MS. BENNETT: This is FPL's Response to Staff Interrogatory No. 112, and again, it's part of 512.

CHAIRMAN CARTER: You may proceed.

BY MS. BENNETT:

Q Ms. Bealhart sponsored this response also, is that correct?

A Yes.

Q And she's your employee?

A Yes.

Q And you've seen this response before?

A Yes.

Q Is it correct that the earnings guidance FPL Group gave investors for 2009 is consistent with FPL earning an ROE of 9.3 percent?

A Yes.

Q So you would agree that FPL could earn an ROE of less than ten percent in 2009 and FPL Group could still meet investors' expectations regarding earnings per share for 2009, correct?

A Ms. Bennett, that's correct, but I don't necessarily agree with how you've, you know, indicated the question.

Investors are quite unhappy with the return of 9.3 percent. Clearly we knew -- we were able to project last year what Florida Power & Light would be earning this year, which is the last year of its rate agreement, and it wasn't necessarily an exciting picture for equity investors. We knew that the ROE would be declining significantly as it has during the year, and so when we put our earnings expectations out for 2009, we knew exactly what was going to be happening. If in fact Florida Power & Light would be earning a return that would be much closer to our expectations, investor expectations as to what an appropriate return should be for Florida Power & Light, then our adjusted earnings per share guidance would have been much higher.

So although it's true that at 9.3 percent, when these numbers were first distributed to investors, we were comfortable that it fell in. It would be untrue to say that the 420 to 440 range would be an appropriate range if FPL had been earning an appropriate amount of ROE for 2009.

Q Okay. The earnings guidance FPL Group gave investors for 2010 is not based on FPL being authorized at ROE of 12.5 percent in this case, is that correct?

A I'm not sure how much more I can say than what I've said both in my deposition and what we provided here in this interrogatory. I described how in fact FPL Group sets out its earnings range, which is based on the operations of not only its two significant subsidiaries, FPL Group and NextEra Energy Resources, but it's also based on other corporate activities that FPL Group has.

And so we looked at all of that, including sensitivities that we had both at NextEra and at Florida Power & Light, sensitivities related to the economy, O&M, nuclear plant outages, a whole number of things that could significantly swing earnings at both of those companies, and we laid out a range -- consistent with our base rate request, we laid out a range that we felt was reasonable based on all of the sensitivities at both of the companies that concerned us.

Q Okay. One last question, and I'm trying not to beat the dead horse, but the Commission could set an ROE in this proceeding less than the 12.5 percent FPL has requested and FPL could still meet investors' expectations regarding earning per share for 2010, correct?

A I'm not sure that I would agree with that, Ms. Bennett, and you might want to follow that after my question with "all other things held constant," and it would still be a very difficult question for me to meet.

There's a whole bunch of, obviously, very important things in this rate case. The return on equity is one of the important things in this rate case, but it's not the only important thing in this rate case. Our capital structure which has led us to have a strong financial position, which I believe benefits our customers greatly, is also an important item in this rate case. All of the O&M that we've asked for recovery for is an important item in this rate case, all of the things that we've really been talking about over the last couple of months. So it would be difficult for me to say that if the Commission did not provide -- the staff and the Commission did not provide for a 12 and a half percent ROE that we would actually continue to meet our rate case.

We purposely did not provide separate Florida Power & Light Company numbers to investors and separate NextEra Energy Resources numbers to investors for a number of things, this rate case being one of them, but also because we're in one of the worst economic situations that this company and others in Florida have been in for a very long time. So I can't answer yes or no, even with all other things held constant.

Q I'm going to turn our attention one last time to a different subject. I'm going to borrow some of your accounting expertise to talk about construction work in progress, and Mr. Young is going to pass out a response FPL provided to us regarding deferred taxes. I believe that Ms. Ousdahl --

CHAIRMAN CARTER: Is this part of 512?

MS. BENNETT: Yes, it is.

CHAIRMAN CARTER: Okay.

BY MS. BENNETT:

Q And, Mr. Pimentel, since you did not sponsor this, I'm going to ask you to review it before we talk about it.

A Ms. Bennett, I haven't read all of this, but -- and I appreciate you saying that you would be relying on my accounting expertise. That's always nice to hear.

I would suggest that if you have a question on this, Mr. Davis, who is our chief accounting officer, would be a much better person to ask than I. I'm reading this and I would -- I'm not sure that I could respond to any detailed questions.

MS. BENNETT: Okay, then I will defer to Mr. Davis for these questions, and staff has no further questions.

CHAIRMAN CARTER: Commissioners? Commissioner Skop, you're recognized.

COMMISSIONER SKOP: Thank you, Mr. Chairman.

Good morning, Mr. Pimentel.

THE WITNESS: Good morning.

COMMISSIONER SKOP: Just one quick follow-up question. If I could refer you back to what was previously provided as a handout by staff, it's POD 24, and the Bates page number that I'm looking for is FPL 157000.

THE WITNESS: Yes.

COMMISSIONER SKOP: And on that Bates page 157000 at the bottom of the page, continuing to the next page, do you see the paragraph titled "Purchase Power Contracts"?

THE WITNESS: Yes.

COMMISSIONER SKOP: If I could ask you to turn to the next page, please?

THE WITNESS: Yes.

COMMISSIONER SKOP: In this document -- which, again, appears to be dated February 12th, 2008, so it's somewhat dated -- I guess the Fitch policy has been one of not capitalizing any portion of FPL's purchase power commitments as debt equivalents, but instead treats them as ongoing costs, as an operating expense, is that generally correct?

THE WITNESS: Yes, Commissioner Skop, that is correct.

COMMISSIONER SKOP: Okay. Do you know if this

Fitch policy has changed in any way in light of prevailing economic conditions and/or counterparty risk?

THE WITNESS: No, I do not believe it has changed. Fitch is -- it's clear what S&P does. It's clear what Fitch does, at least for us. It's less clear what Moody's does because they're not as transparent on a specific company basis, but I do not understand that they've changed their policy in regards to this.

COMMISSIONER SKOP: Thank you.

CHAIRMAN CARTER: Anything further from the bench?

Redirect?

MR. ANDERSON: Just a moment to check my notes.

CHAIRMAN CARTER: Okay, take a minute.

(Brief pause.)

MR. ANDERSON: May I proceed?

CHAIRMAN CARTER: You may proceed.

MR. ANDERSON: Thank you.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Pimentel, thinking back to September, Mr. Mendiola asked you some questions concerning the capital structure that FPL is requesting in this proceeding. Do you remember those questions?

A Yes.

Q First, let's be very clear: Is FPL proposing to change its capital structure in this proceeding?

A No. We are proposing to maintain the same capital structure at Florida Power & Light Company that we've been maintaining for the last ten years.

Q Mr. Pimentel, why is it important for FPL's customers that the Commission enter an order approving FPL's request to maintain its existing capital structure?

A I've discussed that at several times during the proceeding, and it's also included in my written testimony. The capital structure directly provides for a strong financial position for the company. That strong financial position has many benefits to our customers that I've pointed out before, similar to a strong credit rating that any one of us would have. If we have a strong credit rating, we have the ability -- or credit score, if you will -- we have the ability to borrow more cheaply, get collateral more cheaply, and generally enter into business transactions that would be at a lower cost, specifically a customer's benefit from short-term debt that has lower costs, long-term debt that has lower costs, access to both of those capital markets as we need access to those capital markets, but it also enables us to hedge fuel purchases for our customers. That's the agreement that we have with the Commission, to hedge fuel purchases to limit the amount of volatility in natural gas prices. We don't do that without some significant increases to our credit strength.

So those are the benefits that have led to low customer bills and why the capital structures I've indicated before are important to our customers.

Q Mr. Mendiola also asked you a number of questions about the various equity ratio percentages that are expressed in different exhibits. Could you please explain FPL's request with respect to equity ratio percentages, just to make sure that's real clear?

A As I mentioned earlier, we have -- we're not requesting any changes in our capital structure, the same capital structure we've had in the past. Mr. Mendiola's questions surrounded the 55.8 capital structure that we have on our books, and whether that was the same as the 59 percent capital structure. It's all the same number. Our capital structure number is not changing from what we've had, from what we've had before.

Q Did FPL make any adjustments for imputed debt in its quantification of revenue requirements?

A No. FPL has not made any adjustments to imputed debt. If you go to MFR D-1-A which lays out the capital structure that we're requesting in this rate case, there are no adjustments for imputed debt there. These are not the same issues that other companies that have been in front of the Commission have been dealing with. Again, the amount of equity that we have in the business is the amount of equity that is in that business. We are not asking to add equity to our business.

The whole discussion about imputed debt arises because we have indicated that the Commission should consider our off-balance-sheet obligations and what that does to the actual capital structure that we have on our books.

Q Turning to some of Mr. McGlothlin's questions, he asked you questions about the difference between the equity ratio proposed by OPC Witness Woolridge and the equity ration proposed by FPL. Do you remember those questions?

A Yes.

Q In response to Mr. McGlothlin, you stated that the only difference between the capital structure recommended by FPL and the capital structure recommended by Dr. Woolridge resulted from the fact that Dr.

Woolridge used an a two-point actual capital structure computation, whereas FPL used a 13-month actual number. Is that right?

A Yes.

Q Please explain the significance of this point of agreement between FPL's and OPC Witness Dr. Woolridge's position.

A The significance is that both Dr. Woolridge and FPL would actually agree on the total dollar amount of equity capital in FPL's capital structure.

Q All right. If FPL and OPC's witness, Dr. Woolridge, agreed, as you've said, on the dollar amount of equity that should be included in FPL's capital structure, why is it then that OPC's recommendation would result in FPL leveraging its balance sheet by $700 million and cause FPL to disburse $700 million in equity from FPL?

A Dr. Woolridge and Witness Brown had a, in my view, an error in the handoff regarding that calculation. Dr. Woolridge clearly relies on the book capital structure of the company. Witness Brown relies on the jurisdictional capital structure of the company. There's a big difference between the two, and that is that, as we've shown in our MFRs, there are a significant amount of Commission-required adjustments, not company-required, Commission-required adjustments to our capital structure. Witness Brown, thereby using a different structure than Dr. Woolridge, she did not make those Commission-required capital adjustments that need to be applied, and because of that there's a $900 million difference between what we are requesting, again, what Dr. Woolridge would say should be our equity number and what Witness -- the adjustment that Witness Brown came to.

Q Turning briefly to the topic of purchase power agreements, Mr. Mendiola asked you a number of questions concerning FPL's long-term power purchase agreements. He also -- he asked about some short-term contracts and then he referred you to Exhibit 459, which was a one-page excerpt from FPL's 2009 10-K. Do you remember that?

A Yes.

Q Are any of FPL's power purchase agreements that are in place gap fillers?

A No. That term is referred to power agreements that are for a short term in nature in order to meet gaps in the generation profile of utilities. We don't have any of those short-term power purchase agreements. All of our agreements are long-term agreements that we referred to in my testimony and that are contained in that footnote to FPL's financial statements.

Q Focusing on that same exhibit that Mr. Mendiola asked you about, he had you read two sentences about the expiration dates of FPL's purchase power commitments. Do you remember that?

A Yes.

Q Did those two sentences represent all of FPL's purchase power commitments?

A No, they did not.

Q Can you read us the portion of page 94 of the 10-K that, Exhibit 459, which describe the other purchased power commitments?

A "FPL is obligated to undertake or pay purchase power contracts with JEA and with subsidiaries of the Southern Company to pay for approximately 1,300 megawatts of power annually through mid-2010, approximately 1,300 megawatts annually from mid-2010 to mid-2015, and 375 megawatts annually thereafter through 2021, and one of Southern's subsidiaries' contracts is subject to minimum quantities. FPL also has various firm take-for-performance contracts to purchase approximately 740 megawatts from certain co-generators and small power producers with expiration dates ranging from August, 2009, through 2026."

Q And all that information was provided in your

10-K and available for investors to rely on, right?

A Yes.

Q Thinking back again to September, Ms. Bennett asked you a line of questioning relating to Interrogatory No. 101, which shows short-term debt as a percentage of investor capital, and that interrogatory related to year-end balances. When comparing average short-term debt balances on D-1-A to year-end short-term debt balances on MFR D-2, it appeared that the forecasted periods showed less short-term debt in the capital structure. Why shouldn't more short-term debt be incorporated into the capital structure?

A Well, the difference there is that when we were talking back in September -- not just when we were talking. MFR D-2, which is our GAAP financial statements in a very summarized basis, are only year-end numbers, and we were talking about those year-end numbers back in September.

Our capital structure that we are asking to set rates on are not based on year-end numbers, they're actually based on 13-month average numbers the same way that we do our surveillance reports, and year-end short-term balances for us are generally much higher than 13-month averages. We've provided -- I don't have the interrogatory number, but we have provided information at least for 2006, '07 and '08 that actually shows that. The year-end number for 2006 is 630 million, while the average 13-month number is 617. In 2007, it's 842 million at year-end, but it's only 323 million on a 13-month average. For 2008, it's 772 million at year-end, and it's only 353 million on a 13-month average. And the reason for that is generally large tax payments that we have to make towards the end of the year in the fourth quarter, and also customer receivables that are much lower in the fourth quarter generally because of weather.

So you can't necessarily compare D-2 and D-1-A. There's a reason why our capital structure is based on a 13-month average, and it's appropriate that the short-term balances are much lower than they are at the end of the year.

Q Just a few minutes ago you were asked a question from one of those exhibits here, FPL Response to Staff POD No. 24. Can you look in your stack there real quick?

A Yes.

Q This was the Fitch ratings document dated 2/12/08, right?

A Yes.

Q And when you look in the left-hand column under "Ratings," at that time it showed FPL Group, Inc., current rating of A, right?

A Yes.

Q Do you recall what FPL Utility rating -- Fitch had for the utility at that time?

A A.

Q Thank you.

You were asked some questions by Mr. Moyle and perhaps others about an Exhibit 462. That was that major electric rate case decisions I think that staff started out asking about. Do you have that exhibit with you?

A Yes.

Q Focusing on that Exhibit 462, should the Commission rely on the information in that exhibit either in terms of individual rate case outcomes or averages of rate case outcomes in determining the return on equity or the capital structure in this particular case for Florida Power & Light Company?

A No. As I've indicated before, you know, setting rates, setting policy on averages is certainly not what we expect. We expect that it will be set on the specific risks and the proceedings of this rate case, and relying on averages is certainly not the right thing to do for a bunch of reasons.

Many of these utilities on this 462 are quite different than us. You've got utilities in here that do not own generation, they're only transmission and distribution companies. You've got utilities on here that do not own nuclear. You've got utilities on here that are much different from us.

As I've indicated before, you know, there's $16 billion -- and I think it was Ms. Bennett that asked me about that earlier, indicating whether that was a specific risk to us or whether that was a risk for the entire industry. One of the things that we can at least see from this, and which I've certainly noticed before is, if you look at just the rate base column on here, $16 billion -- which is not our rate base, $16 billion is just the expected build over the next several years or so. That number is larger than even the rate base for many of these utilities. That's the risks that we face today that many of these other companies do not have.

Q Do any of those companies have the combination of nuclear construction, nuclear operations, degree of storm risk, fuel price volatility risk of FPL?

A Not that I'm aware of.

Q Mr. Mendiola asked you if any of the rating agencies told you they would downgrade the rating of FPL if the rate case was rejected. Do you remember that?

A Yes.

Q Please comment.

A I've spoken about it several times. You know, I think it's important that we recognize that our credit rating is significant to us, to a company and to our customers, and it has a significant direct effect on what we can provide in terms of service equaled with terms of cost to our customers, and it's certainly something that we are concerned about, not just by what you pointed out, but just recently, you know, one of our rating agencies, Moody's, came out and said that --

MR. MOYLE: I'm going to object. Excuse me. Can I register an objection, please?

CHAIRMAN CARTER: The basis for your objection?

MR. MOYLE: If he's going to now get into stuff that happened last week, you know, it's beyond what he testified to on his direct. It's beyond his prefiled testimony. It's inappropriate to backfill based on something that happened last week or the week before, and if he does, then we should be given an opportunity to cross-examine about something that I think he's getting prepared to talk about that may have happened in recent weeks.

CHAIRMAN CARTER: Mr. Anderson?

MR. ANDERSON: It's entirely appropriate to ask this. There have been many, many questions about, in particular, the Moody's rating agency articles. We were just, in staff's examination, asked about October 1, 2009, Blue Chip articles, and this is entirely and accurately responsive to the questions which were gone into by Mr. Mendiola at that time, and nothing could be more relevant than the current Moody's views.

CHAIRMAN CARTER: Ms. Brubaker?

MR. MOYLE: And just --

CHAIRMAN CARTER: Mr. Moyle?

MR. MOYLE: And also, you know, we've had this standing objection about hearsay. So I just want to make sure that's not overlooked. It's been some time since --

CHAIRMAN CARTER: No, that's on the record.

Ms. Bradley, you're recognized.

MS. BRADLEY: For the record, I think it might be a little bit -- I'm sorry, I thought it was on.

It might be helpful if Mr. Anderson directed questions specifically to what he's asking him to address rather than just this "please comment" that opens the door for him to go on into who knows where. If it could be limited and directed, I think it would be helpful.

CHAIRMAN CARTER: I like Ms. Bradley's recommendation. Mr. Anderson, tighten it up.

MR. ANDERSON: I can do that.

BY MR. ANDERSON:

Q Did Moody's issue a report on October 7, 2009, indicating that the current regulatory environment is negative to the credit quality of FPL?

CHAIRMAN CARTER: Mr. Moyle?

MR. MOYLE: Now it's a specific question and it's referring to an October 7th document, and this is the point I was making earlier with respect to, you know, rebuttal is supposed to focus on the cross, and now we're bringing in a document through hearsay as to something that happened on October 7th. It's inappropriate. It shouldn't be allowed. It's hearsay. And if it is permitted, then we ought to be given the opportunity to cross on it.

CHAIRMAN CARTER: Mr. Wright?

MR. WRIGHT: Join the objection. Mr. Pimentel clearly was not asked about the Moody's report.

CHAIRMAN CARTER: Mr. Anderson, to the objection?

MR. ANDERSON: Yeah. He's been asked many questions with respect to Moody's. There is nothing in the law that says that more recent documents that are in the witness's knowledge are excludable from evidence. Nothing could be more relevant to this proceeding. And, you know, we have a very focused question on the table, and it is directly responsive and relates to, for example, what Mr. Mendiola asked about what Moody's thought about the rating of FPL in this proceeding.

CHAIRMAN CARTER: Ms. Brubaker?

MS. BRUBAKER: It does appear that through redirect counsel's opening the door to new documents, new evidence that the other parties have not had an opportunity to address, and, you know, the very basic tenet is to permit cross-examination on documentary evidence.

The purpose of cross-examination, of course, is to rehabilitate documents made by --

CHAIRMAN CARTER: Redirect.

MS. BRUBAKER: Or, excuse me, thank you, redirect is to rehabilitate the witness. My concern is if we allow the witness to address these updated information, that it may be appropriate to also allow the Intervenors to comment on it, and there is -- it becomes an issue of where do you stop, where do you draw the line. So perhaps it may be a good idea for FPL to weigh that possibility with the benefit of the information that it is redirecting the witness on.

MR. ANDERSON: And to be clear, we're passing out what I'd like to mark, please, as Exhibit No. 513, just so the record is super clear, which is the one-page document, "Moody's views politicized Florida rate cases as credit negative," Global Credit Research, dated 10/7/09.

(Exhibit No. 513 marked for identification.)

MR. ANDERSON: This is a one-page document, and this is the limit of information of this description.

CHAIRMAN CARTER: I beg your pardon?

MR. ANDERSON: That's all the information in this description.

Respecting Ms. Brubaker's point about opening the door in an unlimited way, that's absolutely not our intention. It's this one point from this one extremely relevant document which is exactly the type of document that an expert such as Mr. Pimentel relies on every day in his business.

MS. BRUBAKER: If I may, Mr. Chairman?

CHAIRMAN CARTER: Ms. Brubaker.

MS. BRUBAKER: I have to admit I'm very concerned that this seems beyond the scope of redirect to me.

CHAIRMAN CARTER: Okay. The objection is sustained.

Mr. Anderson, move on.

MR. ANDERSON: I'd like to make an offer of proof with respect to this particular point, please.

CHAIRMAN CARTER: You're recognized.

MR. ANDERSON: I'd like to show that if the question had been answered, the witness would have read from what has been marked as Exhibit -- I'm sorry, the number was --

CHAIRMAN CARTER: 513.

MR. ANDERSON: 513, that Moody's views the highly politicized atmosphere surrounding the base rate proceedings of Florida Power & Light Company, FPL, A-1 issuer rating, and Progress Energy Florida, Incorporated, PEF, A-3 issuer ratings, as negative to the credit quality of both utilities and an indication that the political and regulatory environment for investor-owned utilities in Florida may be deteriorating.

And it goes on to say in the third paragraph, "Moody's views political intervention in the utility regulatory process as detrimental to credit quality, sometimes resulting in adverse rate case outcomes. In some cases this has led to multi-notch downgrades of utilities in states where this has occurred, most notably Illinois and Maryland in recent years." And that would end the offer of proof on that point.

Okay. Right. And the other thing, just to complete the offer of proof, is that at page 5051 of the transcript of this proceeding, which was the examination by Mr. Mendiola of Mr. Pimentel, he was asked this question: "And none of those agencies have told you that they're putting you on a negative outlook?" And another question: "And none of them have told you that they would downgrade the rating of FPL if the rate case were rejected?" And for purposes of our argument, that's exactly the point we're talking about and why we believe this is relevant and admissible and ends our point. Thank you.

CHAIRMAN CARTER: Okay. Mr. Wright, you had a comment?

MR. WRIGHT: This is procedurally unusual. I'm not sure what I am to say. You have properly, in our view, of course, sustained Mr. Moyle's objection. I just want to say I view this as an effort to get some form of additional testimony into the record regarding comments made by the Governor several weeks ago that are not at issue in this case, and, accordingly, I think it's inappropriate. I think you made the right ruling and, accordingly, I think you -- Mr. Anderson is surely entitled to make his proffer, but I don't think it's appropriate. Thank you.

CHAIRMAN CARTER: Okay. Mr. Moyle?

MR. MOYLE: Just so the record is clear, I guess 513 has been marked for identification. Mr. Anderson read some portions out of it. You know, I think it can be identified but not admitted so the record will be clear, and, you know, he's made a proffer which, you know, is not evidence, not to be considered. I know it won't be regarded.

But the other point is, back in September I think there was an effort to ask some questions of this witness about, you know, politics or political stuff, and I said I have a whole line of questions if we're going to go there. He didn't bring it up in his direct, so I didn't go there.

Now, you know, if -- I don't think it's going to be brought up, but if it is brought up on redirect, then I sure want an opportunity to go there and delve into that.

CHAIRMAN CARTER: Well, as Mr. Wright said, my ruling stands.

Let's proceed. By the way, Mr. McGlothlin and Ms. Bradley, any comments?

Okay. Let's proceed.

BY MR. ANDERSON:

Q The last short line here: Mr. Pimentel, if FPL received a negative rate case outcome resulting in a credit rating downgrade, how would that affect the company and customers?

MR. MOYLE: Objection; assumes facts not in evidence. There's I don't think any evidence in the record supportive of the fact that they will receive a negative downgrade.

CHAIRMAN CARTER: Mr. Anderson?

MR. ANDERSON: It's an entirely appropriate question. This witness was examined for a day and a half and he's entitled to explain the significance to customers of having a constructive versus negative outcome.

CHAIRMAN CARTER: I think he asked him about his opinion based upon that line, so you may proceed.

BY MR. ANDERSON:

Q That is the question, and if the witness could answer?

A I'm sorry, Mr. Anderson. Could you just repeat it?

Q Sure. If FPL receives a negative rate case outcome resulting in a credit rating downgrade, what would the significance of that be for the company and for customers?

A That type of result would have significant consequences on our financial position. Our financial position, as I indicated earlier, has some direct, very direct benefits to our customers, including the amount of money that we borrow, the amount of money that investors give us to invest in the business. Both of those rates and those investments would be of concern to me. I could certainly see rates going up, long-term rates, short-term debt rates. That increases, as you know, the rate of return that is the basis for our customer bills. The amount of fuel hedging that we do, which is significant, as I mentioned before, if for some reason, our counterparties on fuel hedging would not feel comfortable with the hedging of Florida Power & Light Company at this point and would not provide us trade credit which they do.

We have about a billion dollars of trade credit that we're using today to hedge our fuels. That would not be something that we would be able to do in the future, and the amount of commercial paper that we use to bridge us in between long-term debt in order for us to build and to deal with unexpected emergencies would be at risk.

So, you know, we've talked a lot about what we're doing here, and those are events that would significantly affect our customer bills, which, you know, we're quite happy with our rating and the indirect benefit to our customers.

MR. ANDERSON: We have no further questions for the witness. Thank you.

CHAIRMAN CARTER: Okay. Commissioners, here is what my plans are is that I did tell the parties, because there was a couple of pieces of paper floating around, that they would have an opportunity to look at everything before we deal with the exhibits. So let's take a break. What about -- we will back at 12:15.

We're on recess.

(Brief recess.)

CHAIRMAN CARTER: Okay, we are back on the record, and when we last left, we were getting ready to deal with the exhibits pertaining to this witness.

Mr. Anderson, you're recognized.

MR. ANDERSON: FPL offers the direct and rebuttal testimony of Mr. Pimentel into evidence, and all of the attendant exhibits as indicated in the staff composite exhibit list.

CHAIRMAN CARTER: Okay. Staff?

MS. BENNETT: That will be on page 25 of the comprehensive exhibit list is the direct. That starts with No. 147.

CHAIRMAN CARTER: Hang on a second. Let's deal with those. 147 through --

MS. BENNETT: 153.

CHAIRMAN CARTER: -- through 153.

Are there any objections?

Okay. Without objection, show it done, 147 through 153.

(Exhibit Nos. 147 through 153 admitted into the record.)

MS. BENNETT: And then on page 42 of the comprehensive exhibit list, it starts with No. 364.

CHAIRMAN CARTER: Hang on, let me get there. Page 42?

MS. BENNETT: Yes, sir.

CHAIRMAN CARTER: 164 through --

MS. BENNETT: It's 364 through 373.

CHAIRMAN CARTER: Are there any objections? Mr. Anderson moves 364 through 373. Are there any objections?

Without objection, show it done, 364 through 373.

(Exhibit Nos. 364 through 373 admitted into the record.)

MR. ANDERSON: FPL also offers 513.

CHAIRMAN CARTER: Hang on, hang on. I've got to go to the back pages for that. Hang on a sec.

MR. ANDERSON: While we look, may Mr. Pimentel be excused?

CHAIRMAN CARTER: Oh.

MR. ANDERSON: I forgot to ask before we let you go.

CHAIRMAN CARTER: No, he needs to stay for the party. Just hang on a second. Let me see. Who has 502 -- Mr. Wiseman, I think you have 502, right? Wait a minute. Staff, help me with my list here.

MS. BENNETT: On page 55 is the beginning -- actually, there's a late --

CHAIRMAN CARTER: Yeah, that's where I am, on 55.

MS. BENNETT: 55, it's 502 through 503 -- it says Witness Deaton, but Mr. Pimentel actually talked about it, so I think we're ready to --

CHAIRMAN CARTER: So, Mr. Wiseman, you've got 502 through 509.

MR. WISEMAN: Thank you, Mr. Chair. I would move the admission of 502 through 509.

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

Commissioners, that's 502 on page 55 of exhibit -- the comprehensive exhibit list, 502 down through 509.

(Exhibit Nos. 502 through 509 admitted into the record.)

CHAIRMAN CARTER: Okay. Staff, you're recognized for 510 and -- 510 through 512.

MS. BENNETT: We're going to offer 510 and 512 at this time. I would like to wait on 511 until after lunch.

CHAIRMAN CARTER: Are there any objections to 510 and 512?

Okay. Without objection, show it done.

(Exhibit Nos. 510 and 512 admitted into the record.)

CHAIRMAN CARTER: So on 512, just so every -- 511, so everyone will be on the same page, staff had a cover page that would go with the one page with the numbers, remember, Mr. Moyle, the numbers and all like that, so --

MR. MOYLE: Yes, sir.

CHAIRMAN CARTER: -- what we'll do is we'll defer entering it until you've had an opportunity -- I think it's not down yet, is it? We don't have it yet?

MS. BENNETT: We have it. We spoke with Mr. Moyle, and there's some additional information that he wants to review.

CHAIRMAN CARTER: Okay. Well, we can do that at a later -- we can do that after lunch. We'll do that after lunch. Mr. Moyle, will that --

MR. MOYLE: Yeah, that's fine.

CHAIRMAN CARTER: Okay. And --

MS. BENNETT: I believe there's a late-filed exhibit that FPL was going to offer through Mr. Pimentel on aviation costs. Was that 481?

MR. BUTLER: The number is 481. I don't know that it's necessarily through Mr. Pimentel. I have it actually as Ms. Ousdahl when she was on the stand, but why don't we do it at the same time as we do 511?

MS. BENNETT: That's the document that Mr. Moyle wanted to finish reviewing before we enter it, so we'll do 481 and 511 at the same time after lunch.

CHAIRMAN CARTER: Okay, we'll do that. Is that okay with the parties that we can do that? Okay.

MR. WRIGHT: Mr. Chairman?

CHAIRMAN CARTER: Mr. Wright. Mr. Wright, you're recognized, sir.

MR. WRIGHT: Mr. Chairman, I apologize for being a step behind here, but I am having difficulty identifying 510.

CHAIRMAN CARTER: Okay. 510 is the staff --

staff?

MS. BENNETT: 510 was what we were talking with Mr. Pimentel about late Thursday, the 18th of September, and actually all of 510 is included in 512.

CHAIRMAN CARTER: I think what it was, Mr. Wright, 510 were the questions and 512 is the questions and the answers.

MR. WRIGHT: I have it, Mr. Chairman. I apologize. I thought I --

CHAIRMAN CARTER: That's okay. That's all right.

MR. WRIGHT: Thank you.

CHAIRMAN CARTER: Mr. Butler, anything further -- Mr. Anderson, anything further?

MR. ANDERSON: Yes, we offer Exhibit 513 into evidence. It was the subject of argument. It was the "Moody's views politicized Florida rate cases as credit negative," dated October 7, 2009, marked for identification as Exhibit No. 513. Consistent with our offer of proof, FPL offers Exhibit 513 into evidence.

CHAIRMAN CARTER: Mr. Moyle?

MR. MOYLE: FIPUG would object for the reasons stated earlier, and we don't need to burden the record by rearticulating them.

CHAIRMAN CARTER: Mr. McGlothlin?

MR. McGLOTHLIN: I think you've already ruled, Chairman Carter. It would be consistent with that earlier ruling to exclude it from evidence.

CHAIRMAN CARTER: Okay. All right. Anything further?

MR. MOYLE: I guess -- so 513's not coming in?

CHAIRMAN CARTER: Denied.

Okay. Anything further for the witness, Mr. Anderson?

MR. ANDERSON: May the witness be excused?

CHAIRMAN CARTER: Thank you, Mr. Pimentel, you may be excused.

Call your next witness.

MR. BUTLER: Ms. Slattery.

CHAIRMAN CARTER: Also, too, just a reminder to the attorneys, is that when you have a witness that has not been sworn, please let the Chair know so we can get that taken care of.

MS. CLARK: Mr. Chairman, that is the case here, and I have a preliminary matter I want to bring up.

CHAIRMAN CARTER: Let's do that, because what I'd like to do is swear in all the witnesses as a group. So let's do this, Ms. Clark. Are there any other witnesses that will be testifying today that have not been sworn in that are in the room?

Okay. Then let's deal with your preliminary matter, since there's only one witness, and we'll swear him in after we deal with that. You're recognized.

MS. CLARK: Swear her in.

CHAIRMAN CARTER: Her, oh. I didn't see you. You were standing behind a tall guy.

MS. CLARK: Thank you very much, Mr. Chairman.

During this proceeding the issue of executive compensation has received considerable attention, and we certainly agree that it is an important business matter, since FPL believes in competitive pay for top performance. For FPL customers, that performance has meant typical bills that are the lowest in the state, reliability that is 47 --

MR. MOYLE: Mr. Chairman, can we just get to the preliminary matter? I mean, I don't know that we need a whole lot of --

MS. CLARK: I am, Mr. Chairman.

CHAIRMAN CARTER: One second, Mr. Moyle. Just hold on for a sec. Let's see where she's going with it, okay.

MS. CLARK: -- is 47 percent better than the national average and a cleaner environment in Florida --

CHAIRMAN CARTER: Commissioner Skop?

COMMISSIONER SKOP: Mr. Chair, I'm going to voice my own objection from the bench. It sounds like she's testifying. It doesn't seem like a preliminary matter.

MS. CLARK: I'd be happy to -- as long as I -- I would be happy to jump to what we want to say about this as long as I have the opportunity to explain the rationale behind it.

CHAIRMAN CARTER: Okay, you may proceed. We'll hear your rationale, then we'll get to the bottom line. Okay.

MS. CLARK: As we considered the questions and comments on this matter, as a practical matter, compensation costs represent a small fraction of FPL's overall rate request, and we are concerned that they have the potential to become very time-consuming and a distraction from the many other important issues that still remain to be addressed. We have a very long witness list still out there.

Therefore, FPL is taking the following actions with respect to executive compensation costs. Now, OPC has taken the position that customers should only be responsible for 50 percent of incentive compensation for FPL executives. There's also been suggestions at certain points in this hearing that there should be no increases in executive compensation in 2009-2010 under the current economic conditions.

Accordingly, FP&L is reducing its 2010 and 2011 test year O&M expenses by an amount equivalent to 50 percent of all executive incentive compensation and equivalent to eliminating all executive raises for 2010 and 2011. Together these adjustments will reduce test year O&M expenses by approximately $17.2 million in 2010 and then 19.3 million in 2011. That is a total reduction in the two test years of approximately 37 million. These reductions will be one-time lump sum adjustments to the overall 2010 and 2011 test year O&M expenses.

I want to be clear, however, this approach does not come without a price that has the potential to impact investors and customers alike. Carried over the long term, we believe this could hinder FPL's ability to recruit, retain and benefit from some the brightest minds and hardest workers in the energy field. But given today's unfortunate economic climate, FPL made the decision to focus on the priority of investing in reliability and efficiency for our customers above all else.

FPL believes this is an appropriate action that accommodates the views of OPC and others while still providing flexibility for changes in the marketplace. As I noted previously, we're also hopeful that it will allow us to spend time on this and other matters proportionate to their relative size and scale in the context of this total rate request.

So, Mr. Chairman, that is the offer we have made and that is the reduction we will -- we propose at this time.

CHAIRMAN CARTER: Thank you, Ms. Clark.

Mr. Moyle, comment?

MR. MOYLE: Well, I applaud FPL for going in the direction that benefits the consumers. I'm a little unclear because -- I mean, she used the word "offer." I've never really negotiated through a Chair, but I don't think it's --

CHAIRMAN CARTER: You're not negotiating through the Chair now, either, by the way.

MR. MOYLE: -- really -- you know, subject to our agreement. I guess -- there are some questions that are raised. You know, Commissioner Edgar had previously asked a question and said, well, okay, what does this mean beyond '10 and '11, and it was referred to as a lump sum. So, you know, the question in my mind is what does it mean in '12 and '13. If they don't come in for a rate case, does it perpetuate or does something else happen?

And then the other point, you know, we have all this confidential, or what's been claimed as confidential, salary information that's up on appeal now that has everybody I think over 165,000, and she said that it's related to executive compensation, so in my mind I'm not clear as to the demarcation between executive compensation and other compensation, so that I think needs to be clarified.

But again, I appreciate, you know, the tender.

CHAIRMAN CARTER: Ms. Clark, comment?

MS. CLARK: I guess in the sense that it's an offer, that is what we intend to do, FP&L intends to do in terms of reducing the revenue requirements in this case. It's not to set a precedent for beyond this rate case, it is just to recognize the circumstances surrounding the case and surrounding the economic conditions.

We continue to believe that overall compensation and benefit packages represent a very reasonable and prudent expenditure and they are consistent with the market for similar services, duties and responsibilities. We do not back away from that point, but we make the concession for this rate and this revenue request.

CHAIRMAN CARTER: Thank you.

Mr. Wright, I think you wanted to make a comment. You're recognized, sir.

MR. WRIGHT: Thank you, Mr. Chairman, and my colleagues, we applaud FPL for this step in the right direction. I am trying to understand what issue this might relate to.

CHAIRMAN CARTER: Okay. Ms. Bradley?

MR. WRIGHT: Will there be an exhibit if --

CHAIRMAN CARTER: One second. Ms. Bradley?

MS. BRADLEY: You know, we encourage any decreases they would like to take. There's several more that we would like for them to take, but do they, by any chance, have this in writing so we can look at it and see exactly what they're talking about? Because it's a little bit hard to follow as she was reading through it and I wasn't expecting that.

CHAIRMAN CARTER: Mr. Wright made a good suggestion in the context of maybe kind of laying it out.

Ms. Clark, how long do you think it would take to kind of put together something like that so we can kind of see where we're going? Ms. Clark?

MS. CLARK: May I have a minute?

CHAIRMAN CARTER: Yes, ma'am.

MS. CLARK: I don't think it will take long.

CHAIRMAN CARTER: Okay. Let's everybody kind of hold in place.

MS. CLARK: And at one point I knew the account it would be taken out of, but I --

CHAIRMAN CARTER: Okay. I'll come to you in a minute, Mr. Beck. I'm just going to let her go --

MS. BENNETT: Mr. Chairman, this is Lisa Bennett over here.

CHAIRMAN CARTER: Oh, Ms. Bennett.

MS. BENNETT: Staff was going to ask for some documentation similar to what we had asked for in the aviation so that we could kind of understand which accounts it was coming out of, so as you're evaluating what you're looking -- what time frame, that will be helpful.

CHAIRMAN CARTER: Commissioner Skop, you're recognized.

COMMISSIONER SKOP: Thank you, Mr. Chairman.

Irrespective of, you know, what the parties may agree or may not be willing to agree to, I mean, I do have some questions on the line of executive compensation, and I recognize what information still remains confidential, but I don't want any proposed offer to preclude me from asking pointed questions that

I've spent my time preparing.

CHAIRMAN CARTER: Commissioner Skop, let me assure you that, regardless of what any of the parties say or do, you would not be precluded from asking your question. Any Commissioner can ask whatever question he or she wishes to ask at any point in the process. So I can assure you, sir, you will not be denied the opportunity to ask those questions.

Ms. Clark?

MS. CLARK: That was not our intention, but we thought it might shorten things up, and that was the purpose of the offer.

CHAIRMAN CARTER: I like what Ms. Bennett was saying in terms of maybe kind of constructing it similar to what we did on five -- what was that, five --

MS. CLARK: 511.

CHAIRMAN CARTER: 511.

MS. BENNETT: Correct, and Mr. Willis is jotting down some notes on what staff would be looking for, the information that we would be looking for. Perhaps it would be a good time to take a break for lunch and maybe FPL could come back and bring us that information.

CHAIRMAN CARTER: Ms. Clark?

MS. CLARK: Mr. Chairman, I would agree to that. I would suggest an alternative. Does it make sense to swear her in and let her give her summary so we use --

CHAIRMAN CARTER: No, let's do this. Let's see -- maybe we can get everybody to kind of roll up their sleeves and get busy if we -- let's do this. I hate to have you sitting over there. Why don't you stand. I'll swear you in. You can do your summary. You're familiar with my light system -- not my light system, the light system?

MS. SLATTERY: Yes, I am.

CHAIRMAN CARTER: Would you please raise your right hand?

Whereupon,

KATHLEEN SLATTERY

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

CHAIRMAN CARTER: Thank you. Please be seated.

Ms. Clark?

MS. CLARK: Now, Mr. Chairman, I'm holding you up because I suggested you do this, and now I don't have her testimony in front of me. Excuse me. And we are taking direct and rebuttal, I believe?

CHAIRMAN CARTER: That is correct. So you will have six minutes, and while she's getting her notes together --

MS. CLARK: I'm there, Mr. Chairman.

CHAIRMAN CARTER: -- the green light, you know, you'll have three minutes. When the -- not three -- you'll have -- yeah, three minutes. When the amber light comes on, you'll have two minutes left. When the red light comes on, you have 30 seconds. Somewhere in that I lost 30 seconds, but it will come out in the wash.

Ms. Clark?

MS. CLARK: Yes, thank you.

DIRECT EXAMINATION

BY MS. CLARK:

Q Would you please state your name and address?

A Kathleen Slattery, 700 Universe Boulevard, Juno Beach, Florida.

Q By whom and in what capacity are you employed?

A I'm employed by Florida Power & Light Company as Director, Executive Services and Business Planning, Human Resources.

Q Have you prepared and caused to be filed 27 pages of prefiled direct testimony in this proceeding?

A Yes, I have.

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

A No, I do not.

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

A Yes.

MS. CLARK: Chairman Carter, I ask that the prefiled direct testimony of Ms. Slattery be inserted in the record as though read.

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

DIRECT TESTIMONY OF KATHLEEN SLATTERY

DOCKET NO. 080677-EI

Q. Please state your name and business address.

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

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

A. I am employed by Florida Power & Light Company ("FPL" or "Company") as Director Executive Services and Business Planning.

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

A. I am responsible for the overall design and administration of the Company's compensation and benefits programs, as well as management of payroll and business planning for the Human Resources business unit.

Q. Please describe your educational background and professional experience.

A. I have a Bachelor of Science degree from Florida State University and am a graduate of the Florida State University College of Law. I have been a member of the Florida Bar since 1992. Before joining FPL, I worked in labor relations and served as a trustee of two outside electrical worker unions' pension and health and welfare funds. I began working at FPL in September 1996 as a benefit plan administrator and have held various positions of increasing responsibility in Human Resources since that time. My experience at FPL has included qualified and non-qualified benefit plan design and administration, salary and incentive compensation plan design and administration, and legal compliance of such plans and programs. I have extensive knowledge of FPL's compensation and benefits philosophy, plans, and practices, and of its payroll system.

Q. Are you sponsoring an exhibit in this case?

A. Yes. I am sponsoring the following exhibits which are attached to my direct testimony:

- Exhibit KS-1, Projected Total Payroll & Benefits Costs Based on Escalation of 1988 Actuals, 1988 Through 2011
- Exhibit KS-2, Position to Market (2008 Base Pay)
- Exhibit KS-3, Projected Total Cash Compensation per Employee Based on Escalation of 1988 Actuals, 1988 Through 2011
- Exhibit KS-4, FERC Total Salaries & Wages 2007 (pages 1 through 4)
- Exhibit KS-5, Non-Exempt and Exempt Merit Pay Program Awards, 2005 Through 2008 (pages 1 through 2)
- Exhibit KS-6, Relative Value Comparison—2008 Total Benefit Program
- Exhibit KS-7, Relative Value Comparison—2008 Active Employee Medical Plan
- Exhibit KS-8, Average Medical Cost Per Employee, 2003 – 2010
- Exhibit KS-9, Relative Value Comparison—2008 Pension & 401(k) Employee Savings Plan

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

A. Yes. I am sponsoring the following MFRs:

- C-17 Pension Cost
- C-35 Payroll and Fringe Benefit Increases Compared to CPI
- F-3 Business Contracts with Officers and Directors

I am co-sponsoring the following MFRs:

- C-8 Detail of Changes in Expenses
- C-15 Industry Association Dues
- C-41 O&M Benchmark Variance by Function (Subsequent Year)

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

- C-17 Pension Cost
- C-15 Industry Association Dues (co-sponsoring)
- F-3 Business Contracts with Officers and Directors

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to present an overview of the gross payroll and benefit expenses as shown in MFR C-35 and MFR C-17, demonstrating the reasonableness of FPL's forecasted payroll and benefit expenses.

Q. Please summarize your testimony.

A. FPL designs and manages its compensation and benefits programs as parts of a total rewards package. In order to address changing workforce dynamics, to control costs, and to attract, retain, and engage the required workforce, FPL places more focus on flexible, performance-based variable compensation rather than on less flexible fixed-cost benefit programs. This focus has allowed the Company to react to market conditions and drive the superior performance documented by other FPL witnesses, while remaining focused on managing total program costs. The total rewards package, emphasizing pay for performance, has served the Company and its customers well since the Florida Public Service Commission's ("FPSC" or the "Commission") last review of total compensation. FPL has successfully provided value to its employees and its customers through efficient use of compensation and benefits to drive a culture that provides improved efficiency, reliability, and service. As FPL moves forward, it must continue to provide a competitive total rewards package to its employees in order to attract and retain the necessary talent. The 2010 and 2011 projected levels of total compensation and benefits expense are reasonable and necessary to attract and retain the caliber of employees that create a high-performance organization.

TOTAL COMPENSATION AND BENEFITS

Q. What are FPL's projected total compensation and benefits cost and employee count for 2010?

A. FPL's total compensation and benefits cost is projected to be $1.261 billion for 2010. The average number of employees forecasted for 2010 is 11,111, consisting of 4,943 exempt (salaried) employees, 2,628 non-exempt (hourly) employees, and 3,540 union employees.

Q. What are FPL's projected total compensation and benefits cost and employee count for 2011?

A. FPL's total compensation and benefits cost is projected to be $1.308 billion for 2011. The average number of employees forecasted for 2011 is 11,157, consisting of 5,009 exempt (salaried) employees, 2,565 non-exempt (hourly) employees, and 3,583 union employees.

Q. What are the objectives of FPL's total compensation and benefits programs?

A. There are several key objectives of FPL's total compensation and benefits approach. The Company designs its compensation and benefits program to attract, retain and competitively reward its employees based on national and local comparative markets. FPL's compensation program also reflects a pay-for-performance philosophy, linking total compensation to attainment of corporate, business unit, and individual goals. In addition, FPL's total compensation and benefits approach is designed to control fixed costs by placing greater emphasis on variable cash compensation rather than on the traditional programs that are not performance-based, such as long-term retirement benefits. Finally, the Company strives to manage its various compensation and benefits programs holistically in order to keep its total program expenses at a reasonable level. To that end, FPL continuously monitors and benchmarks the compensation and benefits components of the total rewards package individually, since no composite benchmarks are available for the combined programs, and ensures that the total program is in line with the median of the combined compensation and benefits programs of the appropriate comparator groups.

Q. How has FPL designed and managed its compensation and benefits programs to achieve these objectives?

A. FPL's approach to the design and management of compensation and benefits is to consider them as parts of one total rewards package. A little over ten years ago, FPL made a strategic decision to realign its pay and benefits programs, implementing changes that shifted value from the fixed-cost benefit programs to more flexible pay programs, while simultaneously controlling total program costs as demonstrated in Exhibit KS-1. Specifically, in 1997 the Company converted its pension plan to a cash balance plan and also eliminated post-retirement medical coverage for all new hires. At the same time, the Company increased its focus on performance-based variable cash compensation. FPL's strategic decision in 1997 to develop and emphasize a pay-for-performance compensation program has been an important tool in the Company's ability to achieve efficiency, reliability, and customer service improvements over the past ten years. Moreover, the flexibility provided by these strategic changes has been an essential part of the Company's success in dealing with the workforce challenges confronting the utility industry.

Q. Please describe the challenges faced by the utility industry and FPL in attracting, retaining, and engaging a workforce with the required skills.

A. At a time when the industry is facing growing demand for electricity, it is challenged by an aging workforce and a severe shortage of skilled workers. As the workforce ages, there are insufficient numbers of trained replacement workers entering the field to meet current and future staffing demands. The issue has become a growing concern among government and industry leaders, as evidenced by the following:

- The National Electric Reliability Corporation (NERC) 2007 Survey of Reliability Issues identified the aging workforce and lack of skilled workers as the top business issue, with survey participants seeing a high likelihood of its leading to a reliability risk and assigning the issue a high severity level;
- Southern Company has estimated that the energy industry in the Southeast is 20,000 positions short of required staffing at present and sees the demand doubling by 2011 due to new construction demands (U.S. News & World Report, March 2008);
- The Recruiting Roundtable of the Corporate Executive Board reported in November 2008 that the number of utility industry workers aged 55 and older more than doubled between 1995 and 2007 and that the number of workers between the ages of 25 and 44 decreased by 24 percent over that same period;
- Standard & Poor's Rating Services noted the shortage of skilled labor and the aging workforce in the electric industry and cautioned that it would likely increase the construction costs of nuclear power plants (U.S. News & World Report, March 2008);
- Carnegie Mellon University's Electricity Industry Center estimated that one-half (400,000) of the electric power industry workforce will become eligible to retire within 10 years (Power Engineering, June 2008).

Furthermore, the impact of the workforce dynamics will be magnified by forecasted increases in generating capacity demand, estimated by the Edison Electric Institute to increase 30 percent by 2030 (Power Engineering, June 2008).

Q. Will these workforce challenges disproportionately impact utilities with nuclear operations?

A. Yes. As FPL witness Stall has pointed out in his testimony, the same workforce issues are likely to be more critical for nuclear utilities based on the decline in the number of nuclear engineers trained in the United States and industry plans to build a considerable number of new nuclear plants in the coming years. The pending increased demand for talent will come at a time when companies are already challenged to maintain existing levels of skilled nuclear operators and maintenance workers. As reported by the Nuclear Energy Institute, the policy organization for the nuclear power industry, there are a number of key factors impacting nuclear utility staffing:

- Twenty-seven percent of nuclear industry workers will be eligible to retire by 2012;
- Only eight percent of nuclear workers are under the age of 32;
- The median age of the nuclear workforce was 48 as of February 2007;
- There has been a significant decrease in university programs offering nuclear engineering degrees (from 65 in 1980 to 29 in 2007).

Q. To what extent have these industry challenges impacted FPL's efforts to attract and retain the necessary workforce?

A. FPL is clearly facing the same workforce challenges as the other electric and nuclear utilities. About 20 percent of FPL's current workforce is eligible to retire today, and nearly one third of the workforce will be eligible to retire within five years. Within the nuclear division, the number of workers over 55 has increased by almost 50 percent since 2003, while the number between the ages of 35 and 44 decreased by more than 30 percent. In addition, retention has become more challenging among FPL's nuclear workforce. The limited pool of available experienced workers has led to an industry-wide practice of "poaching" talent from peer organizations. FPL has had to implement retention programs to prevent turnover of critical talent, and the market value of a number of utility industry positions, particularly in the nuclear business unit, has increased at a faster rate and had a direct impact on the Company's total compensation and benefits cost.

Q. How has the redesign of the compensation and benefit programs allowed FPL to respond to current and future workforce challenges and meet the program objectives?

A. As a result of the total compensation and benefit design changes, FPL and its customers are in a better position, not nearly as burdened as many other utilities with the considerable cost of pension and post-retirement medical obligations and better able to address the changing workforce dynamics. The changes have allowed the Company to better focus on the elements of the total rewards package that have more value for attraction, retention, and engagement of the required workforce. As a result, the Company is able to provide a core level of compensation and benefits to all positions based on market analysis and performance, but has the flexibility to respond to the dynamics of an ever-changing workforce.

Q. How has FPL's total compensation and benefits cost changed since the last rate case and since the last Commission review of FPL's total compensation and benefits cost (1988), and are these increases reasonable?

A. FPL's total compensation and benefits cost is projected to increase from $1.014 billion in 2006 to $1.261 billion in the 2010 Test Year and to $1.308 billion in the 2011 Subsequent Year.

Over the last 20 years FPL has made tremendous improvements in efficiency, reliability, and quality of service while significantly reducing headcount. During a period when the number of FPL customers grew by over 60 percent, FPL was able to reduce its work force from approximately 15,000 employees in 1988 to an average of 11,111 projected in the 2010 Test Year, due to an ongoing focus on continuous improvement and cost management. The Company's aggressive management of the work force, supported by the pay-for-performance programs, has had a direct impact on maintaining total compensation and benefits cost at a reasonable level, while providing optimum levels of employee productivity.

The reasonableness of FPL's total compensation and benefits cost is clearly evident when the growth in the cost is compared to historical cost escalation using principal inflation indices. Exhibit KS-1 shows the increase in FPL's total compensation (payroll and benefits) cost since the levels reviewed and approved by the Commission in the 1988 Tax Savings Docket, Docket No. 890319-EI, Order No. 23727 (1988 Review), compared to the 1988 cost escalated using key indices. The chart demonstrates that if FPL's total compensation cost (wages and fringe benefits) had grown only at the rate of the Consumer Price Index (CPI) since 1988, it would be approximately $111 million higher than the projected cost for 2011. Exhibit KS-1 also compares FPL's total compensation cost escalated based on the WorldatWork index, formerly the American Compensation Association, which the Commission has previously used for comparison purposes. Compared to that index, FPL's escalated total compensation is lower by about $538 million. The Company's aggressive workforce management initiatives have allowed it to achieve the high level of performance documented by other FPL witnesses, while simultaneously controlling total compensation and benefits cost.

TOTAL COMPENSATION

Q. What is FPL's total compensation philosophy?

A. As discussed previously, FPL considers total compensation and benefits as components of a total rewards program. FPL's philosophy has been, and continues to be, to provide competitive, market-based salaries with consideration of an individual's performance and contribution to the Company's key goals. The performance-based pay programs have provided the ability for FPL to develop a sense of employee commitment and ownership in the performance of the Company. Each exempt employee's compensation has a portion of pay that is variable. The variable pay is linked to individual, business unit and corporate objectives, including budget and financial performance goals and operating efficiency milestones such as plant availability, service reliability, and quality of customer service. The strategic emphasis on the variable incentive pay program, rather than fixed salary and benefits costs, encourages performance at an individual employee level and adds flexibility in recognizing that performance.

Q. **What resources does FPL use to evaluate its compensation program?**

A. FPL uses a variety of compensation survey resources to evaluate its program, because the Company's recruiting department searches nationally for personnel to fill managerial, professional, and technical positions. Most of the key nuclear energy and engineering positions can not be filled from the local labor pool, so FPL must remain competitive in national as well as local markets. FPL utilizes nationally recognized third party compensation survey sources to aggregate and provide comparative data from other national and regional employers, both in general industry and the utility industry. It is important to utilize both general and utility comparative market information since FPL's workforce encompasses multi-industry talents. FPL relies on the following primary information sources for compensation survey data:

- Towers Perrin, an international human resources consulting firm;
- William M. Mercer Incorporated, an international human resources consulting firm;

- Bureau of Labor Statistics (the Consumer Price Index or CPI);
- Hewitt Associates LLC, an international human resources consulting firm;
- Watson Wyatt Worldwide, an international human resources consulting firm; and
- WorldatWork, a global human resources association of more than 30,000 compensation, benefits and human resources professionals.

The FPSC has previously recognized WorldatWork's market projections as an appropriate basis for compensation comparisons (1988 Tax Savings Docket).

Q. How does FPL's cash compensation program compare to the market?

A. FPL's base pay levels are comparable to the rates paid by its competitors for employees performing similar jobs and with similar skill sets. FPL performs a detailed annual benchmarking analysis of its pay rates to determine "position to market." The most recent market analysis completed in 2007 included market survey data from 69 sources, including Towers Perrin, Hewitt, Mercer, and Watson Wyatt. Exhibit KS-2 demonstrates that, as of the date of this latest study, FPL has maintained its average base pay for exempt and non-exempt jobs at or below the market at the median or 50th percentile in the aggregate.

Q. How has FPL's compensation cost changed since the last rate case and since the last Commission review of compensation cost (1988), and is the cost reasonable?

For the period from 2006 to 2011 represented on MFR C-35, FPL's compensation or gross payroll expense per employee is forecasted to increase from about

$84,600 to $96,500. Gross payroll as represented on MFR C-35 includes all wages and salaries, overtime pay, premium pay and miscellaneous other earnings. The 2006 to 2011 increase of approximately 14 percent in gross payroll per employee is just slightly higher than the projected CPI growth of 12.8 percent for the same period. While FPL strives to keep gross payroll in line with CPI, the Bureau of Labor Statistics' Compensation per Hour (Non-Farm Business Sector) index is a far more appropriate measure of wage growth than CPI, because the CPI increases have understated national salary increases for many years. CPI represents the changes in price of all goods and services purchased by households and does not adequately account for factors such as company and individual performance, market competitiveness, and industry trends that directly impact annual pay budgets. For the period from 2006 to 2011 represented on MFR C-35, the Compensation per Hour index projects an increase of approximately 18.6 percent, considerably higher than the projected 14 percent increase in FPL's compensation or gross payroll cost per employee. Finally, it is worth noting that FPL's projected increase in gross payroll per employee is also well below the WorldatWork Index's projected growth of 17.5 percent.

FPL's cash compensation levels historically trend below the escalated rates of the key market indices. When the average wage per employee that was approved in the 1988 Review is trended with market data from the WorldatWork index on Exhibit KS-3, FPL's average wage is below the trend. FPL has managed to keep cash compensation expense increases about 10 percent below the WorldatWork

Index and about seven percent below the Bureau of Labor Statistics' Compensation per Hour (Non-Farm Business Sector) Index, as shown in Exhibit KS-3. And, although the escalated compensation cost per employee is slightly above the non-wage based CPI benchmark, as stated previously, Exhibit KS-1 demonstrates that FPL's total payroll and benefits cost has escalated at a rate less than CPI for the period since the last formal Commission review.

Q. How does FPL's gross payroll cost compare with that of other utilities?

A. FPL's total compensation cost is comparable to that of other utilities as demonstrated by review of Federal Energy Regulatory Commission (FERC) Form-1 report data. FPL has reviewed its total compensation cost and compared it to that of other comparable utilities. The companies in the comparison included other regional utilities as well as other vertically integrated utilities of similar size. As shown on Exhibit KS-4, FPL continues to be one of the more efficient utilities from a total compensation standpoint. This efficiency is particularly evident when one looks at total compensation -- whether on a per-customer, operating revenue, or operating expense basis.

Q. Please describe FPL's annual performance-based merit program.

A. There are two components to FPL's annual performance-based merit program. The first component is a merit award determined by an individual's performance level and salary position relative to market. The second component is a variable incentive pay program that provides a lump sum payment based on each individual's contribution as well as Company and business unit results in comparison to pre-established objectives. FPL's incentive compensation is awarded based on an individual's contribution to corporate, business unit, and individual performance indicators. These performance indicators include Operations & Maintenance (O&M) costs, financial indicators, and operating efficiency milestones such as plant availability, service reliability, and quality of customer service.

Q. How does FPL's annual pay increase program compare to market?

A. FPL regularly benchmarks its annual pay increase program against relevant market data. As shown in Exhibit KS-5, the annual merit base and variable incentive pay awards have been at or below market for the period from 2005 through 2008.

BENEFITS

Q. Please describe FPL's benefits package.

A. FPL's benefits program is designed and managed as part of a total rewards package. The benefits package includes a full complement of benefits, comprised of three primary components: health and welfare benefits, retirement plans, and various benefits required by law.

Q. What are FPL's projected benefits costs for the 2010 Test Year and the 2011 Subsequent Year?

A. Total benefits cost is projected to be about $198 million in 2010 and $232 million in 2011, the major components of which are as follows:

	2010	2011
• Health and welfare benefits	$110,032,000	$122,880,000
• Retirement benefits		
o Pension plan	($55,719,000)	($37,715,000)
o Post-employment benefits	$29,875,000	$29,800,000
o Employee savings plan	$32,702,000	$34,803,000
• Total Retirement Benefits	$6,858,000	$26,888,000
• Benefits required by law	$81,465,000	$81,984,000
Total Benefits Cost	$198,355,000	$231,752,000

Benefits required by law include social security tax, federal and state unemployment taxes, and workers' compensation.

Below, I will discuss the major benefit plans, specifically the medical and retirement plans.

Q. How has FPL's total benefits cost changed since 2006?

A. Total benefits cost is projected to increase from a total of $133 million in 2006 to $198 million in the 2010 Test Year and $232 million in the 2011 Subsequent Year.

Q. What is driving the increase in the benefits cost?

A. The primary drivers of the increased benefits cost are increases to the medical and pension plans. The cost increases in these two plans are typical of those experienced by companies across the utility and general industry and have accounted for over 80 percent of the total benefits cost increase for the 2006 to 2011 period. I will address both issues in more detail.

Q. How does FPL evaluate the design and cost of its benefit plans and how do the plans compare to those of other companies?

A. FPL uses the Hewitt Benefit Index, an actuarial tool that compares the value of benefit plans. Hewitt Associates is an internationally recognized benefits consulting firm that provides analysis and consultation on the competitiveness of participating companies' benefit programs and produces the Hewitt Benefit Index. The study methodology first analyzes the value of each benefit plan for each individual in the plan and then converts the individual values to a composite value for the entire employee population by applying a standard set of actuarial and employee participation assumptions. An index of 100.0 always indicates the average of the comparator companies selected. FPL has used the Hewitt study to compare its benefits programs to those of companies in the general industry and utility industry sectors, and to those of participating Fortune 500 companies.

Exhibit KS-6 displays the relative value of FPL's total benefits program compared to a core comparator group composed of 14 electric utilities most similar to FPL in terms of revenue and workforce dynamics. The graph also displays relative value comparisons to a broader utility group (composed of 28 companies), to a general industry grouping, and to Fortune 500 companies that participated in the study. The graph shows that FPL's Benefit Index for the total benefit program is below average compared to the utility comparator group and each of the other industry groupings. FPL's total benefits program rated 92.4 as compared to a 100.0 average for the utility comparator group and to a 100.4 average for the broader utility group. These results are consistent with the Company's objective to emphasize cash compensation over traditional long-term benefits.

Q. What is FPL's projected medical cost for the Test Year and Subsequent Year?

A. FPL's projected medical cost is $95,537,000 for active employees and $22,600,000 for retiree benefits in the 2010 Test Year. For the 2011 Subsequent Year, projected medical cost is $106,988,000 for active employees and $22,300,000 for retiree benefits.

Q. How does FPL's medical plan compare to industry standards?

A. On a comparative basis, the relative value of FPL's medical plan for active employees is slightly below average when compared to other utility and general industry companies participating in the 2008 Hewitt Benefits Index. As illustrated by Exhibit KS-7, FPL's plan had a relative value of 97.0 as compared to the average of 100.0 for the 14 utilities in the comparator group and the average of 99.0 for the broader utility group. FPL's relative value for active medical is also below both the general industry and Fortune 500 company averages.

Q. How do FPL's projected medical costs for 2010 compare to those of other utilities and the national average?

A. Although the various factors driving health care costs higher both nationally and specifically at FPL are projected to result in a medical cost increase in 2010, FPL's average medical cost per employee is projected to remain below the industry average, as illustrated in Exhibit KS-8. The increase in FPL's health care costs for 2010 is consistent with national and utility industry trends provided by Hewitt Associates. In fact, Hewitt's forecasted utility industry benchmark is still approximately 12 percent above FPL's projected cost per employee of $11,238 in 2010.

Q. What has been FPL's experience in managing health care costs?

A. FPL's ability to keep per employee health care costs below the utility industry benchmarks and to project that costs remain below the utility industry benchmarks in 2010 and beyond has been the direct result of aggressive management of the drivers of health care costs. Exhibit KS-8 illustrates FPL's medical costs per employee for 2003 to 2008 and the projected costs through 2010 as compared to national and industry benchmarks. FPL has and will continue to look for ways to provide employees with a choice of quality medical plans at the most cost competitive level. However, health care cost inflation is a national concern in both the public and private sectors. Thus, while FPL has been successful in managing per-employee medical costs below the utility industry average, the Company expects total annual health care costs to increase in 2010 and beyond at a rate comparable to the forecasted national trend of approximately eight to 10 percent per year. Rising health care costs continues to be one of the largest concerns for companies and their employees.

Q. What specific initiatives has FPL pursued to control health care costs?

A. FPL has made health care cost control a key strategic initiative, applying the continuous improvement process from its quality program to develop an integrated health strategy that will optimize value and control costs for both the Company and employees. The Company's successful cost control strategy has included a variety of initiatives, including the following:

- Price incentives to encourage cost effective plan selections, including spousal surcharges
- Dependent eligibility audits
- Emphasis on employee consumer responsibility
- Comprehensive health promotion and care management programs
- Incentives to drive behavior changes
- Aggressive vendor management
- Value-based pharmacy design to promote therapeutic compliance
- Cost transparency, i.e., transparent full pass-through contract with pharmacy benefit manager.

Q. Are there other initiatives FPL has taken to control health care costs?

A. FPL has pursued initiatives to control the cost of post-retirement medical benefits, as measured under Financial Accounting Standard (FAS) 106. Those initiatives include implementing medical premium contribution caps in 1992 and eliminating eligibility for post-retirement medical coverage for all employees hired after April 1997. Together, these initiatives have resulted in an annual cost avoidance in the service cost component of FPL Group's FAS 106 expense attributed to active FPL employees of about $38 million in the Test and Subsequent Years.

One further key long-term cost control initiative has been the aggressive promotion of the employee's responsibility for health and the creation of a healthy work environment, as evidenced by the Company's comprehensive health and well-being programs. FPL's comprehensive health and well-being programs, developed over the past 15 years, have led to reductions in health risk factors for the employees who have participated in them, which will benefit our employees through better health and our customers through lower plan cost in the Test Year and beyond.

Q. Has FPL received recognition for successful management of its health care programs and costs?

A. Yes. The effectiveness of the programs has been acknowledged through frequent national recognition, including:

- "Best Employers for Healthy Lifestyles" Platinum Award from the National Business Group on Health—2005, 2006, 2007
- 2007 Leadership Award in Health from the Florida Health Care Coalition
- 2008 "Innovations in Prevention" Gold Award from the Department of Health and Human Services
- 2007 feature on FPL-WELL program on ABC World News Tonight for impact on managing health and well-being.

Q. What factors are driving the substantial increases in health care costs projected to occur over the next few years in the U.S.?

A. There are a number of factors impacting recent increases in national medical costs that will continue to cause costs to climb:

- Growing number of uninsureds putting pressure on the health care system;
- Technological enhancements in medical treatments and services driving greater utilization and cost;
- Continued focus on direct consumer advertising by pharmaceutical companies;
- Increased utilization and pricing of prescription drugs;
- Impact of specialty pharmacy;
- Threat of malpractice leading physicians to practice defensive medicine;
- Trend toward hospital consolidation, reducing competition and increasing cost pressure leading to more aggressive negotiation of contracts by hospitals with plan providers;
- Increased inpatient costs;
- Federal and state mandates, i.e., mental health;
- Political future of Federal mandates and potential for elimination of Employee Retirement Income Security Act (ERISA) preemption.

Q. In addition to these national trends, are there other health care factors and trends that will specifically impact FPL's medical costs?

A. Yes. Those factors are as follows:

- Sixty-seven percent of FPL's medical plan participants are age 40 and over. Studies have shown a correlation between an aging population and increasing medical costs.
- Pharmacy costs, which are rising at a higher rate than medical costs, represent approximately 18 percent of FPL's total medical costs. This is attributable to the Company's aging workforce.
- Health care costs for employer-sponsored medical plans in Florida are among the highest in the United States. Because hospitals and physicians in Florida serve a higher than average uninsured population (21.2 percent in Florida, 17.7 percent in Georgia, 17.9 percent in North Carolina, 10 percent in Pennsylvania, 14 percent in New York, and 9.4 percent in Connecticut as of 2006), financial losses from the care of those patients are passed along to private sector payers such as FPL.
- FPL covers a higher number of dependents than other large companies (three percent more dependents covered for non-union employees and 15 percent more dependents covered for union employees).

The impact of these cost factors is projected annual increases in medical costs of approximately $12.5 million in 2010 and $11.4 million in 2011, and a projected increase of over $40 million from 2006 through 2011.

Q. **Does FPL offer retirement plans to employees and is that consistent with industry practices?**

A. Yes, FPL offers its employees retirement plans consisting of a pension plan and a 401(k) employee savings plan, as do approximately 80 percent of utility industry companies included in the Hewitt Benefits Index. The Company also provides post-employment medical, life, and disability benefits; however, as discussed previously, the post-employment medical and life benefits were discontinued for employees hired after April 1997.

Q. **What is FPL's projected retirement expense in the Test Year and Subsequent Year?**

A. The projected expense for the 2010 Test Year is $6,858,000. This is the net expense of the pension plan credit of $55,719,000 together with the 401(k) employee savings plan expense of $32,702,000 and the post-employment medical, life, and disability benefits expense of $29,875,000. For the 2011 Subsequent Year, projected retirement expense is $26,888,000, the components being a pension credit of $37,715,000 together with expenses of $34,803,000 for the employee savings plan and $29,800,000 for post-employment medical, life, and disability benefits.

Q. **Why is the employee pension benefit reflected as a credit?**

A. The assets of the pension plan have been beneficially invested such that the expected return on assets exceeds the actuarially determined projected obligation.

Q. Please discuss the significant change in the pension cost in the 2010 Test Year and 2011 Subsequent Year reflected on MFR C-35.

A. FPL's projected pension benefit for 2010 and 2011 reflects the impact of the decline in 2008 in the financial markets, in which a significant portion of its pension funds are invested.

The pension plan's trust holds investments in a mix of equity and fixed income securities, which totaled $3.48 billion at the end of 2007. During 2008 and into 2009, worldwide financial markets entered a period of extreme declines due to, in large part, a credit freeze resulting from the collapse of the housing markets and related financial investments collateralized by investments in those markets. As a result the pension plan's assets declined by $983 million, due primarily to a decrease of approximately 24.7 percent in market value in 2008.

FPL's pension benefit is calculated based on Financial Accounting Standard (FAS) No. 87, Employers' Accounting for Pensions. Whereas many utilities must recover a pension cost associated with providing a retirement plan to its employees from customers, FPL has, through prudent investment over time, been able to grow its pension assets at a faster rate than the costs of its plan obligations. Even after the major market correction, the pension trust still exceeds its obligations, and therefore, creates a negative expense (a credit) to the benefit of customers. However, the size of that credit has and will continue to decline significantly, due to the recent change in market investment returns.

Q. How do FPL's retirement plans compare to the industry?

A. As shown in the Hewitt Benefit Index's comparison chart (Exhibit KS-9), FPL's retirement plans are valued similarly to the general industry (87.0 for FPL vs. the general industry average of 83.8) and well below the averages of the comparator companies and the utility industry (100.0 for the comparator and 103.7 for the utility companies).

Q. How does this evaluation demonstrate the reasonableness of FPL's qualified retirement plans?

A. FPL provides both a pension and 401(k) employee savings plan to its employees in order to attract and retain high quality employees. FPL has been able to do this despite the fact that the relative value of these plans is considerably less than average in the utility industry as demonstrated by the Hewitt Benefits Index.

Q. Does this conclude your direct testimony?

A. Yes.

BY MS. CLARK:

Q And, Ms. Slattery, are you sponsoring any exhibits to your direct testimony?

A Yes, I am.

Q And are those exhibits KS-1 through KS-9?

A Yes.

MS. CLARK: And, Mr. Chairman, I would note that I believe those exhibits have been premarked for identification as Exhibits 104 through 111.

CHAIRMAN CARTER: 104 through 111. Thank you. You may proceed.

(Exhibit Nos. 104 through 111 marked for identification and admitted into the record.)

BY MS. CLARK:

Q Ms. Slattery, moving now to your -- Mr. Butler is indicating it's through 112 as opposed to 111.

CHAIRMAN CARTER: Oh, on the next page there's another one, okay. One -- prefiled on the staff's comprehensive exhibit list, Exhibit No. 104 through 112.

(Exhibit 112 marked for identification and admitted into the record.)

BY MS. CLARK:

Q Turning now to your rebuttal testimony, have you prepared and caused to be filed 25 pages of rebuttal testimony in this proceeding?

A Yes, I have.

Q Do you have any changes or revisions to that testimony?

A No, I do not.

Q And if I asked you the same questions contained in your rebuttal testimony today, would the answers be the same?

A Yes, they would.

MS. CLARK: Mr. Chairman, I would ask that the rebuttal testimony of Ms. Slattery be inserted in the record as though read.

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

REBUTTAL TESTIMONY OF KATHLEEN SLATTERY

DOCKET NO. 080677-EI

AUGUST 6, 2009

Q. Please state your name and business address.

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

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

A. Yes.

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

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

- KS-10, Endnotes to Rebuttal Testimony of Kathleen Slattery

Q. What is the purpose of your rebuttal testimony?

A. The purpose of this testimony is to rebut the testimony of Office of Public Counsel (OPC) witness Brown regarding FPL's (FPL or the Company) compensation and benefits plan. Specifically, I recap FPL's total compensation and benefits philosophy, demonstrate the reasonableness of the costs, and explain why it is important to allow FPL flexibility in designing the optimal components of the program. I also identify inaccuracies and refute assertions witness Brown makes with respect to staffing and payroll, and incentive compensation. Lastly, the testimony demonstrates why the Company's incentive plans provide for improved performance and serve the needs of all constituents, particularly customers.

SUMMARY

Q. Please summarize your rebuttal testimony.

A. No witness in this case has shown or even suggested that FPL's total compensation and benefits costs are too high or otherwise unreasonable. Neither has any witness alleged that FPL's performance has in any way been less than stellar. As I explained in my direct testimony, this is a true litmus test of a company's hiring and compensation policies, a test that FPL certainly passes.

The only witness to take issue with any aspect of FPL's compensation and benefits plan is OPC witness Brown, whose testimony completely misses the mark by focusing on design mechanics and performing theoretical exercises. Compensation is not an exercise in accounting or mechanics, but an overall approach and philosophy. Whether intentionally or not, she has failed to evaluate total compensation and benefit costs and has demonstrated a lack of understanding of what it takes to attract and retain an engaged, high-performing workforce. In isolating the incentive compensation component and focusing on only one side of the total rewards equation, she has failed to recognize the Company's foresight and proactive measures to address the talent management challenges of the last decade and to position the Company well for the future.

With the overarching goal of motivating superior performance, an objective that benefits both customers and shareholders, the Company realigned its pay and benefit programs, shifting value from fixed-cost benefit programs to more flexible pay programs, while controlling total compensation and benefits program costs. My direct testimony provided evidence of the reasonableness of FPL's total compensation and benefits costs as measured by inflation indices, market surveys, and benchmark comparisons with competitors. In addition, total compensation and benefit costs are in line with other Florida investor-owned utilities as evidenced by commonly filed documents (MFR C-35) for the most recent dockets, even without considering differences in size, scale, complexity, and cost of living. Finally, the results—the Company's superior operating performance and comparatively low rates—show that the programs are working.

My rebuttal testimony describes why it is important to allow the Company flexibility in designing the optimal components of its total rewards program, so that FPL can maximize economic efficiency and attract, retain and engage the employees who are the engine that drives the performance-based culture that has directly benefited customers. My testimony is supported by FPL witness Richard Meischeid of Towers Perrin who expands on the value and prevalence of including variable and incentive pay programs in this total rewards mix in order to ensure that FPL is competitive in the employment market and can continue to attract and retain the talent necessary to build on its history of superior performance for customers. FPL witness Meischeid will also provide testimony on the need for market competitive executive pay programs in driving value for customers.

TOTAL COMPENSATON AND BENEFITS EXPENSE

Q. Is FPL's projected total compensation and benefits expense for 2010 and 2011 reasonable?

A. Yes. As previously demonstrated in direct testimony (Exhibit KS-1), FPL's projected total compensation and benefits expense is fair and reasonable. The reasonableness of the cost is clearly evident when the growth in the cost is compared to inflation indices, such as CPI and WorldatWork. The result shows that FPL's actual costs are in line with CPI inflation, and lower than the projected values customers would have experienced if cost grew in line with the wage-based inflation index published by WorldatWork. The comparison of FPL's compensation cost to those of other utilities provides another useful measure of reasonableness, and, as demonstrated in my direct testimony (Exhibit KS-4), total compensation is lower than most comparable utilities on a per employee, per operating revenue, and per customer basis. Finally, the reasonableness of FPL's benefits programs is demonstrated through the use of an analytical survey that benchmarks the plans to those of peers, and the relative value of the Company's benefits plans is consistently below average when compared to its peers in the utility industry.

Q. OPC witness Brown has taken issue with specific components of FPL's total compensation. In your view, is it appropriate to consider the individual components on a stand alone basis?

A. No, it is not appropriate to analyze the various components of total compensation separately. As stated in my direct testimony, FPL employs a total rewards approach. One of the stated objectives of this approach is to control fixed costs by placing emphasis on variable pay rather than fixed pay and traditional benefits. The strategic emphasis on variable pay rather than fixed salary costs lowers the Company's exposure to steadily increasing salary and fringe benefit costs and adds flexibility in recognizing performance. This approach has worked. FPL witnesses Santos, Stall, Hardy, Spoor, Keener, and Bennett have all detailed the types of superior performance and cost management that FPL has been able to drive with its total rewards program and pay for performance culture.

PAYROLL AND STAFFING LEVELS

Q. OPC witness Brown has made recommendations for FPL's required staffing and payroll for 2010 and 2011. Has she evaluated the required staffing level in view of FPL's specific workload or productivity measures?

A. No. She has relied on historical staffing levels, but has evidently made no attempt to analyze FPL's specific productivity measures or workload trends.

Q. Please explain the gap between forecast and actual staffing that OPC witness Brown has identified?

A. The staffing-level forecasts are management's reasonable estimates of what is required to do the work based on optimal staffing levels. Every effort is made to fill the forecast positions, but a number of factors have made it increasingly difficult for the Company to fill all open positions. Among these are the massive fluctuations in the South Florida housing market, limited availability of a technical and engineering related labor force, workforce demographics including growing numbers reaching retirement eligibility, and the fiscal constraints the Company has placed on the competitiveness of its pay and benefits package. All of these factors have historically resulted in the hiring process lagging slightly behind expectations. But this does not mean that the Company does not incur the costs corresponding to the budgeted headcount in ensuring that the budgeted work is completed.

Q. Citing the observed historical gap between budgeted and actual staffing, OPC witness Brown recommends a staffing level, and corresponding payroll reductions, for the 2010 Test Year. Should the Commission accept that analysis?

A. No. Her conclusion is premised on the incorrect assumption that there is a direct and predictable correlation between staffing levels and the payroll budget or between staffing levels and revenue requirements. FPL has historically estimated employee projections based on optimal staffing levels, but historically somewhat under-estimates salaries and wages. This is because FPL budgets employee projections at the staffing level necessary to most efficiently get the work done to ensure the Company delivers on its commitments to customer service and reliability. However, market conditions and workforce demographic factors have caused the Company to fall slightly short of its staffing goals. The result is that the Company has to sometimes rely on less efficient staffing models (such as contractors, outsourcing, overtime, etc.), which drive costs up. In order to insulate customers from these potentially higher costs, the Company focuses on total compensation and benefits at needed staffing levels when formulating its forecast. Therefore, the recommendation made by OPC witness Brown, which only considers one input in a dynamic equation, makes no sense, underestimates FPL's actual costs, and should be rejected.

Q. Have you reviewed the analysis OPC witness Brown performed in recommending adjustments based on FPL's historic staffing levels?

A. Yes. Witness Brown's calculations are a creative attempt to make an argument we all intuitively know to be false--that it is somehow more efficient to incur labor costs at overtime rates. Witness Brown appears to facilitate this false premise by underestimating the amount of overtime necessary to fill the gap left by open positions. In addition, witness Brown's technique is baffling, selectively excluding the Distribution business unit due to an observed variance, but ignoring significant variances in other business units, such as Transmission and Human Resources, for purposes of her calculations. No effort was made to question the underlying drivers of the staffing changes. Moreover, while OPC witness Brown's calculations seem quite complicated, they fail to take several basic costs associated with less than ideal staffing into account, including but not limited to the following: (1) under FPL's existing collective bargaining agreement, some overtime work requires that FPL provide compensation in excess of the time-and-a-half pay she modeled; (2) employees working excessive overtime are less productive and efficient than employees working standard hourly schedules, resulting in the need to pay for excess labor hours (at premium rates); and (3) the stress of increased work demands on existing employees leads to increased healthcare, benefits costs, and other costs associated with retaining and engaging these employees. The bottom line is that FPL's business unit leaders have developed reliable methods to determine the work hours they need to continue reliable performance for customers, and no witness, including OPC witness Brown, has shown why those methods should be criticized or second-guessed. The Company based its forecast on the optimal staffing levels which were developed through these methods and which correspond to this workload.

Q. **Given that FPL's historic staffing levels have fallen slightly short of the targeted staffing levels set in the budget process, has history supported OPC witness Brown's theory that vacancies will cause costs to go down?**

A. No. The historical budget impact has been exactly what one would expect. Because of the inefficiencies I have previously discussed, the Company's historical experience is that vacancies have resulted in actual gross payroll (including overtime) *exceeding* the budget projections. This, not headcount, is the appropriate measure of FPL's true costs.

INCENTIVE COMPENSATION

Q. Are cash annual incentive compensation and long-term incentive compensation plans necessary components of a total rewards package?

A. Yes. As stated in the testimony of FPL witness Meischeid, performance-based variable pay programs are a required element of a competitive total pay and benefits package in the utility industry. Furthermore, without them FPL would not be able to compete with general industry companies for staff and leadership talent. A competitive annual incentive and long-term incentive program is a critical strategy for retaining employees, attracting new talent and motivating desired performance and behaviors. A company without such programs is at a distinct disadvantage in a talent market already stressed by changing workforce demographics and skills shortages.

Q. Do you have concerns with OPC witness Brown's testimony regarding FPL's incentive compensation?

A. Yes. In her testimony, OPC witness Brown raises three issues regarding incentive compensation: (1) the relative shareholder orientation of FPL's incentive programs; (2) the mechanics FPL employs in accruing incentive compensation in the budgeting process; and (3) FPL's management of the executive compensation programs in light of current economic conditions. OPC witness Brown's portrayal, her analysis and her recommendations regarding each of these issues are inaccurate.

Q. What concerns do you have with OPC witness Brown's efforts to characterize FPL's incentive plan as shareholder and not customer-oriented?

A. OPC witness Brown's emphasis on FPL's annual proxy statement as support for her contention that FPL's incentive compensation approach serves primarily to further the interests of the Company's shareholders is simply misguided. Her testimony on this issue reflects a trendy (among consumer advocates), but inaccurate, representation of both the intent and effect of what is a high quality, well-designed compensation policy that has helped to produce overall superior performance in FPL's operations and cost control, with direct benefits to FPL's customers. These results and the benefits to FPL's customers are described in detail by FPL witness Reed in both his direct and rebuttal testimony.

Q. Please elaborate.

A. The basic problem with OPC witness Brown's position on this point is that the interests of shareholders and customers are *not* mutually exclusive. For example, where FPL's management and employees succeed in increasing fuel efficiency, bringing capital projects in at or under budget, improving productivity, or otherwise controlling costs, the Company's customers directly benefit. Thus, the Company's executive total compensation and benefits program serves all of FPL's major constituents well. To maintain her position, she must improperly ignore the benefits to customers of FPL's overall compensation program and the individual elements of the program that serve the interests of shareholders and customers.

In support of her position that FPL's executives work for shareholders to the exclusion of customer interests, OPC witness Brown has selectively quoted from FPL Group, Inc.'s Proxy Statement (DEF 14A-Definitive Proxy, dated April 3, 2009). As I have stated, OPC witness Brown fails to acknowledge the overarching philosophies and objectives of a well-designed compensation program and the alignment of both shareholder and customer benefits. But even beyond that, in order to sustain her position she must ignore the more thorough discussion of FPL's compensation program described in the same Proxy Statement. Page 38 of this Proxy Statement, for example, states, "The Compensation Committee and the Board believe that it is in the best interest of the Company, its shareholders and its important non-shareholder interest groups (such as customers, regulators and employees) to have highly-talented, able, highly-motivated and high-performing leaders who can sustain and improve upon the Company's strong performance and manage the Company appropriately in all economic circumstances."

The discussion on this page goes on to state the importance of a competitive executive compensation and benefits program to all constituents: "Proven, capable senior leaders who know the Company, have continuity with recent industry and Company experience, are of high character and have a track record of success are extremely valuable. Those individuals are attractive to competitors and have many other opportunities available to them, both in public companies and in other sectors of the economy. The cost of locating or developing alternative executives, whether internally or through external recruiting, is high."

Q. OPC witness Brown has pointed to the financial matrix published in the Company's Proxy Statement (Exhibit SLB-16) in support of her contention that the Annual Incentive Plan is shareholder, and not customer-oriented. Is this an accurate representation of the plan's mechanics?

A. No. OPC witness Brown's representation of FPL's incentive plan needs clarification. The Annual Incentive Plan described by OPC witness Brown in her testimony on pages 46 through 48 is a Plan document that covers only the Executive Officers, a group limited to only 13 senior officers of Florida Power & Light Company and FPL Group, Inc. OPC witness Brown implies the specific elements of this Plan apply to all executives or for that matter to all employees; they do not. The purpose of having a very specific plan for this small number of executives is to ensure deductibility of the related compensation expense under Section 162m of the Internal Revenue Code, which contains very specific requirements to ensure that performance-based compensation paid to proxy-named officers is tax deductible. To ensure that no annual incentive compensation deduction is lost, FPL makes all senior officers subject to the plan since the five or six who will be named in the proxy may change over time.

OPC witness Brown further implies, on page 48, that the Annual Incentive Plan's financial matrix developed at the beginning of 2008 and tied to FPL Group EPS growth and ROE impacted the payout of awards to all executives, when in fact it only impacted the top 13 officers as described above. The financial matrix is only applicable to the top 13 officers and only for a portion of their award determination. For all officers below the top 13, only the "operating indicators" are applicable.

However, with regard to the 13 people to whom this financial matrix does apply, it is both appropriate and fundamental to their overall roles within the Company to consider some financial metrics in connection with the performance of these individuals. The fallacy in OPC witness Brown's position is that these indicators benefit only shareholders, and she could not be more wrong. It would be detrimental to customers if in fact the Company's compensation package did not encourage senior management to keep the Company financially strong. As FPL witnesses Avera and Pimentel describe in detail in their testimony, a financially strong company has greater access to capital and a lower cost of capital, which in turn benefits customers through a lower cost structure and lower rates. The fact that shareholders also benefit should be irrelevant to the discussion if the Company's overall compensation program and incentive structure are reasonable and produce customer benefits. In theory, every action that FPL's management and employees take benefits the Company's shareholders through the prudent investment in and operation of the necessary plant to meet the Company's obligation to serve. Such actions are what allow the Company's shareholders to earn a return of and on their investment and the Company to recover the reasonable and prudent costs of service. This fact does not mean that payroll costs and incentive compensation are not properly charged as a cost of the utility's service.

Q. **Did OPC witness Brown recommend any adjustment to the Company's recovery of incentive pay?**

A. Yes. OPC witness Brown has recommended that the Commission disallow 50% of the plan cost with no real discussion of the overall reasonableness and effectiveness of the program.

Q. **On what basis does OPC witness Brown make this recommendation?**

A. OPC witness Brown alleges in her testimony that, "Financial factors, such as those recognizing earnings, income, and shareholder returns recognize benefits that accrue to shareholders at ratepayer expense."

Q. **Is this an accurate assumption?**

A. No. As I have previously discussed, it is inaccurate to assume that the interests of customers and those of shareholders are mutually exclusive. Both benefit from the strong financial performance of FPL. To the extent that the performance goals underlying the incentive plans result in increased efficiency and productivity, it is true that shareholders benefit, but ultimately such improvements in efficiency and productivity are reflected in lower revenue requirements and lower rates for customers. In addition, the participants in FPL's incentive plans work to ensure the Company achieves its goals of providing customers with safe and reliable service. The participants also work toward providing an adequate return to shareholders, which indirectly benefits customers by having a Company that is able to attract needed capital at a reasonable cost to deliver on its promise to provide safe and reliable service to customers. Thus, both shareholders and customers benefit.

Q. OPC witness Brown asserts that only 50 percent of annual incentive and long-term incentive compensation expense should be included because both shareholders and customers benefit equally. Do you agree?

A. No. The underlying performance goals are heavily weighted toward providing benefits to customers. They promote service reliability, high-quality customer service, cost containment, financial efficiency, productivity, safety, and environmental stewardship. The entire amount of these programs should be allowed because they are a required component of a competitive total compensation and benefits package that allows the Company to attract and retain a competent, stable workforce and drive a high-performance organization. By retaining high-performing employees, FPL provides direct benefits to customers, who benefit not only from the experience and expertise of the retained employees but also from the containment of turnover costs arising from recruiting, assimilating, training and developing new hires. This is particularly critical at senior leadership levels, where continuity of the management team required to develop and implement effective business strategies which span a multiple-year period is imperative. In addition, performance-based incentive compensation programs help to manage pay and benefit costs because incentive awards must be "re-earned" each year, unlike traditional base pay and benefits which tend to increase each year without requiring a corresponding increase in performance.

OPC witness Brown's position would assume, incorrectly, that customers would receive the same level of performance and service if the incentive compensation of employees were simply cut by the amount she recommends that the Commission disallow from the Company's cost of service. Similarly, her position implicitly and incorrectly assumes that shareholders wouldn't benefit at all if either (a) employees' compensation was cut by the amount she recommends the Commission disallow or (b) particular incentive factors that she claims are shareholder-oriented, were simply replaced with other factors. Her position is simply a results-oriented approach to lower FPL's cost of service. Simply stated, to disallow any portion of these costs because shareholders also benefit from the work that employees perform is not only nonsensical, but effectively deprives the Company of its true cost of providing high quality electric service and would send precisely the wrong signal to utilities regulated by the Commission and the labor markets in which they compete.

Q. **OPC witness Brown provides a list of regulatory decisions from other jurisdictions to support her request to remove 50% of FPL's prudently incurred incentive compensation. How much weight should the Commission give this information?**

A. None. The Commission should make a decision based on its own regulatory history and practice, the public policy it wishes to maintain in Florida, and the prudence and reasonableness of FPL's costs. Those decisions are a misguided and short-sited approach to the evaluation of the reasonableness of utility compensation plans and the Commission should not give them any deference.

Specifically, the removal of prudently incurred costs that clearly benefit customers, merely because some components of these costs may also provide benefits to shareholders, does not make sense from a regulatory perspective. The correct inquiry in Florida (and most jurisdictions) has been, and should remain, whether FPL's projected total compensation and benefits expense is reasonable. This standard has been affirmed in recent proceedings in a number of jurisdictions[1] and should be applied by this Commission.

Q **Please summarize why it would be inappropriate to disallow 50% of the cost of the incentive plans as recommended by OPC witness Brown?**

A. There are four primary reasons: (1) the plans are part of a competitive total rewards program that has been demonstrated to be prudent, reasonable and generating the desired results; (2) the incentive plan relies heavily on operating performance to determine employee payouts; (3) the motivational features of the incentive plan provide direct benefit to customers; and (4) strong financial performance by FPL ultimately benefits customers.

Q. **In her testimony, OPC witness Brown also objects to the mechanics FPL employs in accruing cash annual incentive compensation and Performance Share Award equity expense. Why are FPL's accrual method and corresponding budgeting process appropriate and necessary?**

A. FPL's accrual method is appropriate and necessary because accounting rules require it. Specifically, Generally Accepted Accounting Principles (GAAP) accounting rules require that the stock awards be expensed ratably as they vest, and that the annual incentive awards be expensed as earned, at levels which will reasonably cover the expected liability, which is generally interpreted as a requirement to accrue current period awards based on historic aggregate payout levels. FPL regularly validates the assumptions used in the accrual of its incentive compensation to ensure that Financial Accounting Standards Board and Sarbanes-Oxley requirements are met. FPL then budgets expense accordingly.

Q. What is OPC witness Brown's specific objection to the mechanics used by FPL to budget and accrue cash annual incentive compensation and Performance Share Award equity expense?

A. Of the numerous assumptions that FPL employs in developing its incentive compensation budgets, OPC witness Brown has objected to only one, the performance assumption. In so doing it appears that witness Brown has misunderstood FPL's internal mechanism used to measure performance. As I will explain below, if her position is accepted on this point, FPL will under recover its actual compensation expense.

The performance factor is a percentage determined through assessment of whether the Company and business unit operational performance metrics have been achieved, exceeded or missed, and the degree of difficulty of achieving each metric. FPL sets performance objectives that are generally equal to or better than top quartile performance and assesses performance accordingly. The maximum performance multiple allowed under the annual incentive plan is 200%. Given the Company's superior performance record, FPL's historic performance multiples have always been somewhere between the plan maximum and the baseline the Company has set. FPL's scale for measuring operating performance has been consistent for many years.

Based on the Company's historic performance and corresponding aggregate payout levels, FPL sets budgets and accrues awards based on an assumed performance of 30% to 40% above the baseline. This practice has also been consistent for many years and the performance assumptions used for the 2010 Test Year and 2011 Subsequent Year are consistent with the historic years.

Q. How is this performance assumption used in the budgeting process?

FPL's annual incentive program establishes for each salaried employee a baseline annual incentive award applicable to his or her role, expressed as a percentage of base pay. Similarly, for key employees who are nominated for Performance Share Awards, such awards are communicated to recipients as a number of shares subject to a performance factor. These starting points serve as an internal calibration tool and a means of communicating awards to employees. The aggregate award total of all participants is multiplied by a performance factor assumption, based on historic actual performance factors, of approximately 30% to 40% above the baseline to determine the required accounting expense and budget for FPL's incentive compensation programs.

Q. Is this a typical practice in incentive compensation design and administration?

Yes. A review of proxy statements of investor-owned utilities shows this is a common design and practice. Specifically, the annual proxy statements filed in each of the past three years by peer group companies show that the median payouts of annual incentive awards to proxy named officers have been well above 100% of the officers' pre-established "target" awards. Each company takes a different approach to setting incentive compensation expectations for its annual incentive plan participants, which is why FPL emphasizes benchmarking of <u>actual</u> incentive payouts in the peer group companies (rather than "target" annual incentive pay); it is the only way to ensure an apples-to-apples comparison and is therefore the most accurate view of market competitive incentive pay.

Q. If historically, FPL has consistently paid out cash annual incentive compensation and Performance Share Awards at a certain level, then why has FPL not adjusted the baseline level of these awards?

A. There is no reason to make changes to thoughtfully designed programs that work exactly as intended. FPL's incentive programs have worked to drive performance of our employees and business units, just as they were designed to do, as evidenced by the Company's superior performance. Furthermore, the calculations in question are merely an internal mechanism used to distribute performance-based compensation with enough variability among business units and individuals so that the payouts are meaningful with respect to each business unit's and each individual's contributions. The aggregate payout levels of FPL's programs are forecasted and budgeted with confidence based on expected performance and historic payout levels, which are in turn validated for appropriateness through benchmarking. This variability in payouts is an effective performance management tool which motivates the workforce to perform at high levels.

Q. Has witness Brown challenged any other assumptions used to develop the test year or subsequent year incentive compensation budgets?

A. No, nor has witness Brown challenged the overall reasonableness or prudence of the proposed expense.

Q. Would FPL need to consider restructuring its total compensation package if any incentive compensation expenses were excluded?

A. Yes. FPL would need to consider reallocating total compensation and benefits so as to reduce performance-based compensation programs while raising base salaries and/or other traditional fixed-cost programs. This would raise costs to customers in the long run. Doing so would also negatively affect the Company's performance and impede the ability to compete in attracting and retaining the talent needed to deliver on commitments to customers. Penalizing utilities that shift from traditional fixed-cost programs to more flexible, performance-based programs would encourage inefficient program design that would negatively affect performance and harm customers.

Q. OPC witness Brown has suggested that equity-based long-term incentive awards should be disallowed because they do not represent a cash outlay, referring to them as "paper" expenses. Is this a logical position?

A. No. Many components of revenue requirements are non-cash as rates are set on the basis of financial or GAAP accounting which is accrual, and not cash based. This same argument, if extended, would disallow recovery of all of the Company's depreciation expense among other such "non-cash" costs.

The Commission has already expressly recognized the appropriateness of the use of GAAP accounting in rates for purposes of deferred compensation expenses such as pension cost. (Order No. PSC-92-1197-FOF-EI in Docket No. 910890-EI, Petition for a rate increase by Florida Power Corp.) This is no different. The accrual amount is included in revenue requirements, not the cash benefits paid.

Finally, the Company sometimes utilizes a stock repurchase program under which it purchases on the open market many of the shares used to satisfy awards under the long-term incentive plan. Equity compensation may therefore be provided through the new issuance of shares or through stock repurchase as deemed appropriate by the Company's Treasurer.

Q. In her testimony, OPC witness Brown makes a largely unsubstantiated statement that FPL has not considered the impacts of the current economic climate in managing its executive compensation program. Is this observation correct?

A. No. OPC witness Brown's testimony on this issue is not accurate. Her conclusion is inconsistent with information included in the Company's filing, and the two documents from the record that she cites to support her thesis actually support the opposite conclusion–that the Company has diligently monitored the impact of the declining economic conditions on corporate pay practices and has made adjustments to its initial merit pay increase program that are consistent with the trends occurring in the market.

Q. You mention two documents relied upon by OPC witness Brown. Can you provide more detail about these documents?

A. Yes. OPC witness Brown attempts to support her conclusion by supplying an internal FPL presentation developed in January of 2009 reporting the market data the compensation group had obtained from a number of sources on potential adjustments to merit pay budgets at other companies. In addition, OPC witness Brown paraphrases conclusions from a study by Watson Wyatt on the effects of the economy on executive compensation programs. In both cases, the information that OPC witness Brown selectively cites does not provide the whole, or even an accurate picture. The internal presentation is a perfect example of the type of diligence and rigor the Company provides to ensure that its pay programs are providing an appropriate and prudent level of benefits. Specifically, the presentation revealed that while companies had initially reported that their annual merit pay increases would be somewhere between 3.6% and 3.8%, updated benchmarking revealed that actual average salary increases would likely fall in the 2.5% to 2.9% range. As a result the Company reduced its 2009 merit pay increase budget to 2%, significantly below the average levels reported in each of the benchmarking surveys analyzed. With regard to the Watson Wyatt survey, OPC witness Brown neglected to mention that nearly 50% of the companies reported taking the same action as FPL (i.e. reducing their salary increases to reflect market conditions). Moreover, OPC witness Brown's testimony implies that a large proportion of companies are reducing their bonus and long term incentive opportunities. However, the data from the Watson Wyatt report leads one to the opposite conclusion. Specifically, less than 10% of the companies surveyed reported that they had reduced baseline bonus opportunities and only 11% reported having decreased performance based long-term incentive award opportunities.

Q. **What conclusion can be drawn from the information OPC witness Brown provided on FPL's management of its executive compensation program?**

A. I believe that a clear conclusion can be drawn. Specifically, FPL has been very actively engaged in monitoring the changing economic climate and has made prudent adjustments to its pay programs where appropriate. There is a reason that OPC witness Brown had a wealth of resources from which to selectively quote--these were documents that were provided to her by FPL during discovery. It is because the documents were collected and/or developed by the Company as part of an extremely thorough process through which pay levels are set and reviewed, indicative of the Company's efforts to establish a high quality, performance driven compensation plan that continues to deliver benefits to FPL's customers.

Q. Does OPC witness Brown in any way challenge the overall reasonableness of the total compensation and benefits package?

A. Importantly, she does not. And that is the real test of any total compensation and benefits plan. FPL's plan has been demonstrated to be prudent and reasonable, and supported the Company's achievement of superior performance.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BY MS. CLARK:

Q And are there any exhibits to your rebuttal testimony?

A Yes.

Q And are those exhibits true and correct to the best of your knowledge?

A Yes.

Q And that would be the same for the direct exhibits as well, is that correct?

A Yes.

Q Does that exhibit consist of KS-10?

A Yes, it does.

MS. CLARK: Mr. Chairman, I believe that exhibit has been premarked for identification as 345 on staff's --

CHAIRMAN CARTER: 345 or 245? 345.

(Exhibit No. 345 marked for identification and admitted into the record.)

BY MS. CLARK:

Q Ms. Slattery, have you prepared a summary of your prefiled direct and rebuttal testimony?

A Yes, I have.

Q Would you give that now?

A Yes.

Good afternoon, Mr. Chairman and

Commissioners. FPL's projected total compensation and benefits expense is reasonable and prudent. My testimony provides evidence of the reasonableness of FPL's total compensation and benefits costs as measured by inflation indices, market surveys and benchmark comparisons with competitors. Moreover, the results, FPL's superior operating performance and low rates, prove that the programs are working and are appropriate.

FPL designs and manages its compensation and benefits programs as parts of one total rewards package. A chief objective is to provide a market competitive total rewards package that will allow the company to attract, retain and motivate talented high-performing employees at all levels of the organization.

FPL continuously monitors and benchmarks the compensation and benefits components of the total rewards package and ensures that the total program is in line with the programs of appropriate comparator companies. Another objective of FPL's total awards approach is to control overall costs by placing emphasis on performance-based variable pay rather than on less flexible fixed-cost pay and traditional benefits, thus lowering the company's and customers' exposure to steadily increasing salary and fringe benefit costs.

To implement this objective, in 1997 FPL converted its pension plan from a traditional pension plan to a leaner cash balance plan, and also eliminated post-retirement medical coverage for all new hires. At the same time the company increased its focus on performance-based variable pay.

Another key objective of FPL's total rewards approach is to drive superior performance through the focus on variable pay. FPL's strategic decision in 1997 to develop and emphasize a pay-for-performance compensation program has been a key driver in the company's ability to achieve efficiency, reliability and customer service improvements over the past ten years.

The flexibility provided by these strategic changes has been an essential part of the company's success in dealing with changing workforce dynamics, including aging workforce challenges and a shortage of skilled utility industry workers.

My rebuttal testimony refutes certain claims made by OPC Witness Brown, whose testimony misses the mark by focusing only on design mechanics. Whether intentionally or not, Ms. Brown has failed to evaluate total compensation and benefits costs and has demonstrated a lack of understanding of what it takes to attract and retain an engaged, high-performing workforce.

In isolating the incentive compensation component and focusing on only one piece of the total rewards program, she has failed to recognize the company's foresight and proactive measures to address the talent management challenges of the last decade and to position the company well for the future.

OPC Witness Brown has recommended removal of incentive compensation costs based on her argument that it benefits shareholders. The removal of prudent and reasonable costs that clearly benefit customers merely because some of those costs may also provide benefits to shareholders is shortsighted and does not make sense from a regulatory perspective.

Witness Brown's argument is unsupportable for a number of reasons. First, the plans are part of a competitive total rewards program that has been demonstrated to be prudent, reasonable and generating the desired results. Second, the incentive plan relies heavily on operating performance to determine employee payouts. Third, the motivational features of the incentive plan provide direct benefits to customers. And fourth, strong financial performance by FPL ultimately benefits customers.

FPL has demonstrated that its approach to total rewards is working very well. Numerous FPL witnesses have detailed the superior performance and cost management that FPL has been able to provide to its customers. These results are driven by FPL's total rewards program and pay-for-performance culture.

FPL's total awards approach has served not only its customers well, but also its employees, allowing the company to adapt to changing workforce dynamics in the utility industry and to attract, retain and engage the required workforce. Even in a difficult economy, there is competition for good resources. As FPL moves forward, it must continue to provide a competitive total rewards package to its employees at all levels of the organization.

The 2010 and 2011 projected levels of total compensation and benefits expense are reasonable, prudent and necessary to attract and retain the caliber of employee who drives FPL's high-performance organization.

This concludes my summary.

CHAIRMAN CARTER: Thank you.

Commissioners, and to the parties, before we begin cross-examination on this witness, there's one thing staff has to get with the parties on, Exhibit 511. Also, there's that Late-Filed Exhibit No. 481. The parties need to review that, and we just, from my communication from Ms. Clark just a few moments ago that they were going to get that, and I do expect you guys to get lunch because, you know, y'all get a little antsy when you don't have any nutrition, so, Commissioners, we'll probably just -- we'll just probably come back at 2:30 and I'll kind of survey things and see if everyone's ready at that point in time. So we'll just say 2:30-ish. That should give you guys an opportunity. If not, staff, let me know if that's not enough time for all of the parties to look at all of the information and get it ready. What do you think?

MS. BENNETT: I think 2:30 is fine. I would probably like to meet with the parties briefly after we break so that we can coordinate.

CHAIRMAN CARTER: Okay, let's do that. 2:30.

(Hearing adjourned at 12:48 p.m.)

(The transcript continues in sequence with Volume 42.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, RAY D. CONVERY, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings at the time and place herein stated.

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

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

DATED this 26th day of October, 2009, at Tallahassee, Leon County, Florida.

Ray D. Convery

RAY D. CONVERY