

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

VOLUME 42
Pages 5600 through 5695

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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 2:30 p.m.
 Concluded at 4:45 p.m.

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

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

PARTICIPATING: (As heretofore noted.)

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I N D E X

WITNESS

NAME:

PAGE NO.

KATHLEEN SLATTERY

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NUMBER:		ID.	ADMTD.
481			5604
511			5605
514	Compensation Revenue		
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P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 41.)

4 CHAIRMAN CARTER: We are back on the record,
5 and when we last left I kind of gave staff and the
6 parties an opportunity to look at some things, being --
7 let me look at my notes here -- Exhibit 481 and Exhibit
8 511. Let's speak to 481 first. Mr. Butler, you're
9 recognized.

10 MR. BUTLER: Thank you, Mr. Chairman.

11 FPL is prepared to move Exhibit 481 into the
12 record. It has sort of an unusual status, in that
13 obviously it was prepared addressing questions with
14 respect to Issue 94 that has now been withdrawn, mooted,
15 whatever you want to call it, but I think if there is
16 interest in still having it as part of the record we are
17 certainly prepared to move it into the record.

18 CHAIRMAN CARTER: Are there any objections
19 from the parties?

20 MR. McGLOTHLIN: Was 481 the one-page document
21 containing the breakdown, or is that something else?

22 MR. BUTLER: No, I think that's the 511 or
23 what has additional information attached to it as 511.
24 481, Joe, was the response to Commissioner Skop's
25 questions and other questions on the aviation logs that

1 we filed on October 7th.

2 MR. McGLOTHLIN: I'm with you. No objection.

3 CHAIRMAN CARTER: Okay, without objection,
4 show it done. 481 is entered.

5 (Exhibit No. 481 admitted into the record.)

6 CHAIRMAN CARTER: Now, Commissioners, let's
7 flip over the tab to 511. Staff, you're recognized.

8 MS. BENNETT: Staff would move Exhibit 511
9 into the record.

10 CHAIRMAN CARTER: Now, remember, 511 was the
11 one with aviation expense and the cover letter to that
12 that showed the numbers that pertained to the actual
13 cost. Which way am I going?

14 MS. BENNETT: I'm not sure. I gave the
15 parties, but I didn't give it to the Commissioners.

16 CHAIRMAN CARTER: That's the important thing
17 is that the parties saw them.

18 Okay, let's look.

19 It's grown considerably. Before we ask staff
20 to move this, let me make sure that the parties, first
21 of all, had an opportunity to look it over during the
22 lunch break. Staff, you're recognized for a motion.

23 MS. BENNETT: Staff would move Exhibit 511
24 into the record.

25 CHAIRMAN CARTER: Mr. Moyle, you're

1 recognized.

2 MR. MOYLE: I'm sorry, I thought the one-pager
3 that we had talked about earlier was what was coming in,
4 and this is more than that. I guess it's supplementary
5 to, or just not --

6 MS. BENNETT: No.

7 MR. MOYLE: It shows the backup, the
8 calculations?

9 MS. BENNETT: It's the October 16th letter
10 from FPL in response to staff's questions on how the
11 expenses were allocated among the different accounts,
12 and then the one page is at the back of this. The one-
13 pager is staff's compilation of the information that was
14 in the letter.

15 MR. MOYLE: Thank you.

16 MS. BENNETT: Yes, it is the detail backup.

17 CHAIRMAN CARTER: Mr. Moyle?

18 MR. MOYLE: I'm okay.

19 CHAIRMAN CARTER: Okay, without objection show
20 it done. 511 is entered.

21 (Exhibit No. 511 admitted into the record.)

22 CHAIRMAN CARTER: And at the risk of cringing
23 whenever I ask this question, staff, any additional
24 preliminary matters before we begin?

25 MS. BENNETT: No additional preliminary

1 matters.

2 CHAIRMAN CARTER: From the parties?

3 Mr. Moyle, you're recognized.

4 MR. MOYLE: Just briefly, one, this witness is
5 going to talk about salaries and we have the
6 confidential information, and I guess that issue has not
7 been resolved, it's up on appeal, so we'll be treating
8 this confidential for the purposes of the questions, is
9 that right?

10 CHAIRMAN CARTER: That's correct, that is
11 correct. Staff, am I correct in that?

12 MS. BENNETT: Yes, sir, you are.

13 MR. MOYLE: And the fact that we're treating
14 it as confidential for the purposes of the questions,
15 that's not a waiver of any kind of right that either the
16 Commission or someone else can argue on appeal. After
17 we finish this case and then all of a sudden there is
18 something that says, well, this issue is moot because
19 everybody treated it as confidential, that's not going
20 to happen, I presume, correct?

21 CHAIRMAN CARTER: I have no idea what the
22 courts would do or anything like that, but as far as
23 we're concerned, we will be proceeding.

24 MR. MOYLE: Yes. I was just kind of hoping
25 that FPL could indicate that they're not going to try to

1 make that argument, by us as a courtesy treating it as
2 confidential, they're not going to argue somehow it's on
3 appeal, that it has been waived or it's moot because
4 it's all been handled confidentially.

5 MS. CLARK: I have no idea what he's talking
6 about.

7 CHAIRMAN CARTER: I thought it was just me.
8 Mr. Butler, give it a shot.

9 MR. BUTLER: I may take a stab.
10 I think, Jon, tell me if I'm right, you're
11 asking us to confirm that you're not waiving your
12 arguments that this information should not be
13 confidential that might be made with respect to appeals
14 of the confidentiality determination by virtue of
15 treating it confidentially here, is that your argument?

16 MR. MOYLE: Partially. I mean, I guess the
17 concern, really, is if you're an appellate court you
18 don't rule on things that are deemed moot, and if we go
19 through this whole proceeding and are referencing a
20 document but never referencing numbers or anything like
21 that, it's possible that an argument can be made that,
22 well, there's really not a real live case in controversy
23 because we handled this whole thing without ever
24 revealing the numbers, and I just want to make sure that
25 that's not the case.

1 MS. CLARK: Well, it's part of the record
2 whether it's confidential or not.

3 CHAIRMAN CARTER: I would dare never to step
4 out on behalf of the appellate courts or anything like
5 that, but our entire record would obviously be available
6 to them on this matter or any other matter that may be
7 here. I know that there is a continuing line of
8 objections both you and Ms. Bradley has.

9 So I think that they could *sua sponte* take it
10 up and look at whatever they wish to. I'm presuming
11 that.

12 Ms. Bradley?

13 MS. BRADLEY: I hope as much as we have
14 complained about it, that they would certainly look that
15 we have waived anything.

16 MR. MOYLE: Yes, I just want to be clear on
17 that point. I understand that there is an order
18 basically saying, preserve its confidentiality while
19 it's up on appeal. I just don't want that to be
20 construed as any kind of waiver, the fact that we're
21 treating this confidential.

22 CHAIRMAN CARTER: I don't think that would be
23 construed as a waiver, Mr. Moyle, for the record.

24 MR. MOYLE: Thank you.

25 CHAIRMAN CARTER: From the Chair's perspective

1 I don't deem it as being a waiver, because a waiver
2 would have to be a knowing. Right, Ms. Bradley?

3 MS. BRADLEY: It was my understanding that you
4 have a special rule that specifically says that it's
5 confidential through the appeal. So I think a waiver
6 argument couldn't be made when we're abiding by the
7 rules of the Commission.

8 CHAIRMAN CARTER: Ms. Brubaker?

9 MS. BRUBAKER: You're quite correct, there is
10 a rule that says that confidentiality shall be
11 maintained throughout any appellate proceedings. I
12 don't think any party is waiving anything by comporting
13 with the requirements of the rule.

14 CHAIRMAN CARTER: Okay, good enough.

15 Anything further preliminarily?

16 MR. BUTLER: There is, Mr. Chairman.

17 MS. CLARK: I think I needed to be more clear
18 in what our preliminary matter was prior to this witness
19 coming on the stand. I want to be clear that it's not,
20 maybe "offer" wasn't the right word, it's a concession
21 by FPL. It does not require agreement by the other
22 parties, but we hope it would shorten the time spent on
23 this issue. It's not an adoption of OPC's position, but
24 an accommodation to those views.

25 We continue to believe the overall benefits

1 and pay package is reasonable and prudent as measured by
2 the market for similar services, duties and
3 responsibilities.

4 Now, the staff has asked that we walk through
5 the documents that you all have been provided, and I'm
6 going to turn it over to Mr. Butler to do that.

7 CHAIRMAN CARTER: Also to the parties, what
8 we'll probably do for the sake of clarity and for the
9 record, staff, correct me if I'm wrong, but I believe we
10 need to go ahead on and give this a number, is that
11 right, Ms. Bennett?

12 MS. BENNETT: Yes.

13 CHAIRMAN CARTER: So, Commissioners, this will
14 be 514. Ms. Clark, do you want to give us a shot at a
15 short title?

16 MS. CLARK: I guess we could Compensation
17 Revenue Requirement Reduction, or Executive Compensation
18 Revenue Reduction.

19 CHAIRMAN CARTER: You added another word on
20 me, Susan. Compensation Revenue Requirement Reduction.

21 MS. CLARK: Correct.

22 CHAIRMAN CARTER: One second, let me write
23 this down before I forget it.

24 (Exhibit No. 514 marked for identification.)

25 CHAIRMAN CARTER: Mr. Butler, you're

1 recognized.

2 MR. BUTLER: Thank you, Mr. Chairman.

3 Just briefly, this is laying out the elements
4 of the dollar amounts that Ms. Clark had mentioned
5 earlier when she described the concession that FPL is
6 making, and what it shows is that there are two
7 components. There is the amount associated with zeroing
8 out or not including any planned increases in executive
9 compensation from 2009 through the 2010 and 2011 test
10 years. That's sort of the first block of text, and
11 you'll see a figure of \$757,000 reduction in 2010 and a
12 \$2,044,000 reduction in 2011.

13 The second piece of this is the reduction by
14 50 percent in all of the executive incentive
15 compensation, and it shows there that the FPL
16 jurisdictional portion of that for 2010 is \$16,457,000
17 and for 2011 is \$17,279,000.

18 So the figures she quoted for 2010 would just
19 be the combination, the addition of the \$757,000 plus
20 the \$16.45 million, and then the reduction of
21 \$19.3 million for 2011 would be the addition of the
22 \$2,044,000 and the \$17,279,000. That's how we came up
23 with the figures that we are conceding.

24 CHAIRMAN CARTER: Thank you.

25 Commissioner Skop?

1 COMMISSIONER SKOP: Thank you, Mr. Chairman.
2 I guess I have some brief questions. Again, this is an
3 issue of first impression, seeing this for the first
4 time, and I know our staff, I guess before we broke,
5 indicated they wanted to get some clarification.

6 But on the respective adjustments for the
7 reductions to the revenue requirement for officer
8 compensation, is that correct to understand it only
9 applies to incentive compensation, it doesn't apply to
10 base salaries?

11 MR. BUTLER: The 50 percent reduction, that's
12 correct. The zeroing out of the increases that's
13 reflected in the top figures, that actually is applying
14 to all of the executive compensation.

15 COMMISSIONER SKOP: With respect to, again,
16 the listed officers and I know that the officers that
17 are disclosed in the 10-K, their compensation is public
18 information, I think as has been previously indicated.
19 But when they effectively break down their total
20 compensation for officer or executive at the group
21 level, typically that compensation is allocated to
22 NextEra and allocated also to FPL, is that correct?

23 MR. BUTLER: That's right.

24 COMMISSIONER SKOP: And the majority of that
25 compensation, it's not a 50-50 split, it's more geared

1 towards the higher number that gets allocated to FPL, is
2 that correct?

3 MR. BUTLER: I think that's true in some of
4 the periods. I'm not sure in all of the periods, but
5 the calculation here applies to 50 percent of the
6 portion that's allocated to FPL.

7 COMMISSIONER SKOP: I guess that's the point
8 I'm getting to. If you do your initial allocation for a
9 group officer, you split it, and I think it's 70-30 for
10 some reason sticks in my mind, subject to check, I don't
11 have my calculator with me, but the portion that's
12 allocated to FPL ratepayers that we regulate, the
13 adjustments don't apply to base salary, I think as you
14 indicated, it only applies to the executive compensation
15 and that's after the original allocation.

16 Say, for the sake of discussion and a
17 hypothetical, somebody's total compensation was
18 \$10 million and through the allocation to the utility
19 and the unregulated entity would be 70-30 or 60-40,
20 whatever it is, I can do the math here in a second, but
21 say \$6 million is allocated to FPL, \$4 million is
22 allocated to NextEra, so of that \$6 million the
23 adjustments that FPL is proposing doesn't apply to the
24 base salary portion of that \$6 million, it's only a 50
25 percent reduction to any incentive compensation. So

1 effectively it's like a 25 percent reduction, is that
2 correct?

3 MR. BUTLER: 25 percent of the original total
4 compensation?

5 COMMISSIONER SKOP: Yes.

6 MR. BUTLER: I think probably in your example
7 that sounds like the math is about appropriate.

8 Again, what we were trying to do here is to
9 adjust the portion that would be what customers are
10 responsible for, and we're adjusting the incentive
11 compensation or the calculation is based on that really
12 mirroring the position taken with respect to executive
13 incentive compensation by Public Counsel.

14 COMMISSIONER SKOP: And with respect, again,
15 just for clarity, in terms of planned officer
16 compensation, is there a supplemental sheet that would
17 list all those officers so we would know the scope of
18 the planned reductions, not their specific salaries, but
19 just know who we're talking about?

20 MR. BUTLER: It's the 42 named officers.
21 There is not a sort of backup sheet to this calculation.
22 As we had indicated, this is sort of a top-end lump sum
23 adjustment that we're proposing.

24 We wanted to provide the Commission and the
25 parties with a little bit more detail and understanding

1 on the logic behind the adjustment, but this is really
2 the, sort of the extent of the supporting information.

3 COMMISSIONER SKOP: What happens after 2011?
4 For instance, you've come in with projected test years
5 for 2010 and 2011, but typically there's a four or more
6 year span between your next rate case. So what happens
7 in the 2012 era with respect to any adjustments?

8 MR. BUTLER: This is literally and
9 specifically to those two years, and it's not a
10 continuing adjustment. We are not offering it as
11 something that either continues or that is precedential
12 with respect to our positions in subsequent periods.
13 We've offered it as something that we hope will make
14 things go a little bit more smoothly and easily with
15 respect to a review of these test years, but it's not a
16 continuing adjustment.

17 COMMISSIONER SKOP: So in 2012, then, you
18 would perhaps come back with a limited proceeding to do
19 that, or would you just unilaterally raise the revenue
20 requirement?

21 MR. BUTLER: Well, in terms of our base rates
22 we certainly wouldn't be permitted to increase those
23 without going through a proceeding for doing so. I
24 can't speculate at this point whether that change is
25 something that would move the needle such that any sort

1 of rate relief would be required at that point. We
2 would just have to see what the circumstances were then.

3 COMMISSIONER SKOP: Thank you.

4 MR. BECK: Mr. Chairman?

5 CHAIRMAN CARTER: Mr. Beck.

6 MR. BECK: I would like to address the
7 question Commissioner Skop asked of Mr. Butler.

8 CHAIRMAN CARTER: You're recognized.

9 MR. BECK: Commissioner Skop, with respect to
10 the adjustments on the FPL executives and the
11 allocations, let me back up.

12 We have two witnesses to address compensation.
13 One of them is Kimberly Dismukes, and she specifically
14 had an issue about the allocation factor.

15 66 percent of the group executive salaries in
16 the 2010 test year are allocated to the utility. She
17 proposed an adjustment of \$7.9 million to bring that to
18 a 50-50 adjustment. I believe that's not reflected at
19 all in FPL's offer. Again, I will ask the witness about
20 that.

21 We also have another witness, Sheree Brown,
22 who makes a number of adjustments to incentive
23 compensation, but I don't believe the proposal of FPL
24 addresses all of them, either. Again, we will take that
25 up with the witness to try to distinguish those matters.

1 CHAIRMAN CARTER: Anything further before we
2 go forward?

3 Ms. Clark?

4 MS. CLARK: I believe the witness is tendered
5 for cross.

6 CHAIRMAN CARTER: Commissioner Edgar, you're
7 recognized.

8 ACTING CHAIRMAN EDGAR: Thank you. I just
9 want to make sure for my own benefit that I understand
10 where we are. This document that we titled Compensation
11 Revenue Requirement Reduction, or something close to
12 that, that we marked as 514, is this put in to show us
13 an adjustment that's being made to the request, or is
14 this for discussion purposes?

15 MR. BUTLER: It's to document the adjustment
16 that Ms. Clark had announced early before Ms.
17 Slattery took the stand. It's just in response to a
18 staff request for some explanation of the basis for the
19 adjustment.

20 ACTING CHAIRMAN EDGAR: I think you just said
21 this, so I'm sorry for being redundant, but this is a
22 change that has been made, is in the process of being
23 made to the request?

24 MR. BUTLER: That's right. We are agreeing to
25 remove those dollar amounts, the \$17.2 million and the

1 \$19.3 million, from FPL's 2010 and 2011 revenue
2 requirements request.

3 ACTING CHAIRMAN EDGAR: Thank you.

4 CHAIRMAN CARTER: Anything further from the
5 bench?

6 Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Mr. Chair.

8 Just to Mr. Beck's comments again, I was
9 trying to remember the allocations, again, with the
10 pickup of the proceedings after some lapse in time.
11 Yes, I would agree it's somewhere between 60 and 70
12 percent allocation, depending upon what number you
13 choose.

14 MR. BECK: All of that is reflected in her
15 Exhibit KHD-11, Kim Dismukes' testimony.

16 COMMISSIONER SKOP: Thank you.

17 MR. MOYLE: Mr. Chairman?

18 CHAIRMAN CARTER: Mr. Moyle.

19 MR. MOYLE: Just briefly, I mean, I think the
20 record is clear that FPL has made the concession on this
21 point. The use of the term "offer," they have not asked
22 us to agree and I think OPC and some others have taken
23 positions that go above and beyond this. So we are
24 going to be asking questions of the witness. I don't
25 want there to be any confusion on that.

1 CHAIRMAN CARTER: No, that's fine. I think
2 that Ms. Clark made it clear that the term "offer" was
3 just a misnomer. "Concession" is the word.

4 MS. CLARK: Not the best word. "Concession"
5 would be better.

6 CHAIRMAN CARTER: Anything further?

7 Mr. Beck, you're recognized.

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

9 CROSS EXAMINATION

10 BY MR. BECK:

11 Q Good afternoon, Ms. Slattery.

12 A Good afternoon.

13 Q My name is Charlie Beck, with the Office of
14 Public Counsel, and welcome back to Tallahassee.

15 Do you have the Exhibit 514 in front of you?

16 A Yes, I do.

17 Q What I would like to do is go over your
18 exhibit and to compare what is offered or the concession
19 that's reflected in the exhibit and some of the
20 testimony that Public Counsel's witnesses have made and
21 to get the differences.

22 Did you just hear my discussion with
23 Commissioner Skop concerning the allocation of the group
24 executives between the regulated and non-regulated
25 operations?

1 A Yes, I did.

2 Q And this concession by Florida Power & Light
3 does not concede that change in allocations that Ms.
4 Dismukes has proposed, does it?

5 A That's correct.

6 Q In FPL's incentive compensation plans you also
7 include target performance levels or baseline
8 performance levels, do you not? They are included in
9 your compensation or incentive compensation plans?

10 A Yes, they're included.

11 Q And when you said compensation or the amount
12 that's included in the test year for executives, you
13 used a factor of 1.4 times the baseline or target level
14 to set the test year compensation, is that right?

15 A Yes, we did, because --

16 MS. CLARK: Madam Chairman, can I interrupt
17 for just a minute?

18 ACTING CHAIRMAN EDGAR: Sure. Let's make sure
19 that everybody that needs to can see you and hear you.
20 Can you help us if need be, Chris? Okay, we'll try
21 this. Is that better?

22 MS. CLARK: Yes. It's either that or ask Mr.
23 Moyle to move.

24 ACTING CHAIRMAN EDGAR: Go ahead, Mr. Beck.

25 MR. BECK: Thank you.

1 BY MR. BECK:

2 Q So we were just talking about the target
3 compensation levels and how the company sets
4 compensation levels in the test year using a factor of
5 1.4 for exempt employees, which includes executives.

6 A Well, we use a target range in between, it's
7 between 1.3 and 1.4, depending on the level of employee,
8 but this is required under generally accepted accounting
9 principles which require us to accrue the awards over
10 the period in which they're earned at the level at which
11 we expect them to pay out based on historical actuals.

12 Q Right. Ms. Brown, one of our witnesses, made
13 an adjustment to adjust the compensation from that 1.4
14 factor down to 1.0, did she not?

15 A She did, and I disagreed with her.

16 Q If we could, I'm trying to get to the
17 differences between what your concessions are and what
18 our positions are.

19 And again, she made that adjustment in her
20 testimony, is that right?

21 A Yes, she did.

22 Q This concession does not include that
23 adjustment, does it?

24 A No, it does not.

25 Q Ms. Brown also had an adjustment for non-

1 executive incentive compensation, did she not?

2 A Yes, she did.

3 Q And this does not reflect or your concession
4 does not reflect that adjustment, either, does it?

5 A No, it does not.

6 Q Now, on Exhibit 514, if we look at the
7 calculation under the section where it says, "50 percent
8 executive incentives, all officers cash and stock," the
9 amounts there show that they're included in both O&M and
10 capital, is that right?

11 A Yes.

12 Q And then when we go down to the bottom where
13 it's all added up it says the revenue requirement
14 reduction, is that correct?

15 A That's correct.

16 Q Would you agree that a dollar allocated to
17 capital doesn't translate dollar for dollar into a
18 revenue requirement reduction?

19 A I agree.

20 Q So, in fact, when it says revenue requirement
21 reduction, it actually is less than the amount stated on
22 this exhibit, is that right?

23 A We were trying to be very transparent about
24 the amount of revenue that we would reduce our revenue
25 requirements, so we added O&M and capital together to

1 show the totals and allocated and jurisdictionalized it
2 and cut it in half by 50 percent.

3 Q If we look at the amount for 2010, and you
4 show the total amount of executive incentive
5 compensation at \$32.914 million, that includes both
6 expense items and capital, is that right?

7 A Yes.

8 Q Because some salaries are placed in capital
9 accounts because they relate to capital projects
10 generally, is that right?

11 A That's correct, a very small portion of
12 executive incentives, which I believe, based on the
13 late-filed exhibit to my deposition, No. 5, shows a very
14 small amount would be capitalized.

15 Q About five to ten percent?

16 A I believe even less; \$260,900 of the cash
17 annual incentive awards and about \$700,000, looks like,
18 of the stock.

19 Q And this is your Late-Filed Exhibit No. 5 to
20 your deposition?

21 A Yes.

22 Q We're going to go over that in a little bit,
23 but at least for the purpose of your exhibit where it
24 shows that the dollars that you're conceding, those are
25 not revenue requirement dollars, by looking at the

1 bottom of the exhibit, are they?

2 A No. I'm not an accountant, so I don't know
3 how it goes through the schedules.

4 Q So the revenue requirement reduction would
5 actually be somewhat less than the amount shown on your
6 exhibit that you're conceding, is that correct?

7 A I believe that would be correct.

8 Q Could you turn, please to page 4 of your
9 direct testimony? And at the bottom, beginning at lines
10 21 through 23, you testify as to the number of employees
11 forecasted in 2010 is 11,111, is that right?

12 A That's correct.

13 Q And then you give the number for salaried
14 employees is just a bit shy of 5,000 for salaried
15 employees?

16 A That's correct.

17 Q And you also used the term *exempt* for salaried
18 employees, is that right?

19 A Yes, we do.

20 Q And you have 2,628 non-exempt or hourly
21 employees?

22 A Yes.

23 Q And 3,540 union employees, is that right?

24 A That's correct.

25 Q Now, when you use the term *executives*, as

1 you've have used in your exhibit that was handed out,
2 514, that's a small subset of the salaried employees, is
3 it not?

4 A Yes.

5 Q That would be employees who have a title of
6 vice-president or president in front of their position
7 names, is that right?

8 A Well, it would not be based on title so much
9 as officer status. It would be an officer of the
10 corporation.

11 Q And FPL has 42 officers?

12 A 42 officers forecasted for 2009 through '11,
13 yes.

14 Q So that would include persons such as Mr.
15 Litchfield and Mr. Hoffman, who are here today?

16 A Well, one of them is an officer, one of them
17 is not.

18 Q Who is who?

19 A Mr. Litchfield is an officer, Mr. Hoffman is
20 not.

21 Q So your concession relates only to the 42
22 officers of FPL, is that right?

23 A That's correct.

24 Q What I would like to do for the remainder of
25 the cross is focus on your exempt employees or your

1 salaried employees. I really don't want to talk about
2 the hourly employees that are under the union that are
3 under different compensation packages. You will agree
4 to that?

5 A I will agree to that.

6 Q For all of your salaried employees you have
7 both a short-term incentive plan and a long-term
8 incentive plan to which the employees are eligible to
9 participate, is that right?

10 A That's correct.

11 Q And the short-term incentive plan is
12 essentially a cash bonus at the end of the year, it's a
13 yearly type plan for incentive compensation, is it not?

14 A Yes, it is.

15 Q And the long-term incentive plan is
16 essentially an equity compensation that's given to
17 employees, is that right?

18 A That's correct.

19 Q And except for the very top named executives,
20 officers, we will get to that in a little bit, 12
21 officers, there is only two kinds of stock that are used
22 in the long-term incentive plan; one is restricted stock
23 and one is performance shares, is that right?

24 A That's correct.

25 Q Would you please describe what restricted

1 stock is?

2 A Restricted stock is an award of full value
3 shares that's made on the date of grant with a vesting
4 period tied to it. It's generally considered time
5 vested. Our default is a three-year vesting period,
6 although the vesting period is unique to the award, so
7 it can be longer or shorter.

8 Q But the only qualification for an employee to
9 actually get that is longevity with the company, is it
10 not?

11 A Well, that's not true for our executive
12 officers, for whom there is a 162(m) hurdle, as I call
13 it, in the award agreement to ensure the deductibility
14 of the compensation. So there is a performance hurdle
15 for those 12, but other than those 12, it's time-vested.

16 Q I think we need to go back to definitions just
17 a little bit if we could. There are certain named
18 executive officers that are listed in the proxy
19 statement, is that right?

20 A That's correct.

21 Q And these are the very top officers of the
22 parent company?

23 A No, it would be the top officers of the entire
24 entity, so, for example, Mr. Amando Olivera is one of
25 our five named officers, and is an employee of Florida

1 Power & Light Company, not the parent company. So it's
2 your five top officers.

3 Q Five top officers?

4 A The five top officers generally will be the
5 named executive officers. There are certain
6 circumstances you could have a sixth, but our proxy is
7 not.

8 Q And as opposed to that, there is, then, your
9 officers, your salaried officers, and you could have 42
10 of those in your proposed test year?

11 A Correct.

12 Q So Mr. Litchfield is one of those 42, but he's
13 not one of the top five, as it were?

14 A Correct.

15 Q Is that right?

16 A That's correct.

17 Q And what you were referring to before about
18 the hurdles, that applies to the top five named
19 executive officers, does it not?

20 A No, Mr. Beck, it applies to the top roughly 12
21 officers who are Section 16 reporting officers under SEC
22 rules, so they are executive officers, we call them.

23 Q But in another context you call executive
24 officers includes all 42 officers, does it not?

25 A Well, for clarity I'll be careful to call the

1 42 officers the top 12 executive officers and the five
2 in the proxy, the named executive officers.

3 Q Now, you've described one of the two types of
4 stock that are given as compensation, that's restricted
5 stock, is that right?

6 A That's correct.

7 Q You also have performance shares, do you not?

8 A Yes, we do.

9 Q What are they?

10 A Performance shares are awards of equity
11 compensation that are made at the beginning of a three-
12 year term, and at the end of the three-year term the
13 actual shares are paid out to the employee based on the
14 performance of the company, so there is a baseline award
15 communicated at the beginning of the three years and
16 then at the end of the three years that's trued up for
17 performance and paid out in stock.

18 Q Are some of those same performance targets
19 used for both short-term incentive and long-term
20 incentive plans?

21 A For the performance shares it is, in essence,
22 the annual incentive award operating performance targets
23 over the three-year period. They're the same.

24 Q So you have certain targets and those targets
25 are used for your short-term incentives, which are cash

1 bonuses, is that right?

2 A That is correct. We have goals that are used
3 for the short-term cash bonuses, yes.

4 Q And then those same performance factors are
5 also used for your long-term incentive, but you look at
6 a three-year period for those, is that right?

7 A That's essentially correct, yes.

8 Q I would like to hand you your proxy statement
9 as an exhibit, and ask that it be marked as an exhibit.

10 ACTING ACTING CHAIRMAN EDGAR: Okay, Mr. Beck,
11 we will mark it as 515.

12 Mr. Beck, as it is being distributed, we will
13 mark it as 515, and use your title, FPL Group Proxy
14 Statement.

15 (Exhibit No. 515 marked for identification.)

16 BY MR. BECK:

17 Q Ms. Slattery, do you have the Exhibit 515 in
18 front of you?

19 A Yes, I do.

20 Q If you could turn to page 47 of the proxy
21 statement?

22 MS. CLARK: What page was that, Mr. Beck?

23 MR. BECK: 47 of the statement itself.

24 BY MR. BECK:

25 Q Do you have page 47, Ms. Slattery?

1 A Yes, I do.

2 Q And first of all let me ask just generally, a
3 proxy statement is a statement that was sent to
4 shareholders earlier this year, is that right?

5 A Yes, that's correct. It's compiled under SEC
6 rules.

7 Q And it went out to a vote of shareholders to
8 approve a change in your long-term incentive plan, is
9 that right?

10 A Yes, it was. Our shareholders did approve the
11 annual long-term incentive plan this year.

12 Q And they approved the changes in the proxy
13 statement on your shareholder meeting on May 22nd of
14 this year, is that right?

15 A That's correct.

16 Q Now, on page 47 of the proxy statement this
17 lists the operational performance targets and the actual
18 performance for 2008 that was used in your incentive
19 compensation plans, is that right?

20 A Yes, it does.

21 Q Let me ask you about a couple of them. One of
22 them is net income, and it shows the goal of
23 \$875 million and the actual of \$789 million, do you see
24 that?

25 A Yes, I do.

1 Q What was the effect of not meeting that net
2 income operational performance target on compensation?

3 A The impact of not meeting this one target, I
4 cannot isolate the impact on the overall corporate
5 rating because I was not part of the discussions with
6 the senior officers and the Compensation Committee of
7 the Board of Directors, but I'm sure that it did impact
8 the overall assessment of the company's performance and
9 I did see it reflected in the overall result.

10 Q And all of these operational performance
11 targets are included in both the long-term and short-
12 term incentive plans, is that right?

13 A By virtue of the fact that the performance
14 share awards are paid out at the end of a three-year
15 period based on the performance of these, yes, it is
16 included.

17 Q This is one of the three years for the
18 performance shares?

19 A Yes, that's correct.

20 Q But for the short-term incentive plan, these
21 are included in everybody's bonus award, the cash bonus
22 award?

23 A Yes, assessment of these goals are.

24 Q And certain people may have other performance
25 targets other than these included in their incentive

1 compensation amount, is that right?

2 A All salaried employees will have other targets
3 or goals that are included in the assessment of their
4 performance and therefore the determination of their
5 overall award under the plan, because all employees have
6 individual performance goals set out prior to the
7 beginning of the performance year.

8 Q So, for example, one manager might have a
9 project they're working on and they might have, for
10 example, a target of meeting that project on time and on
11 budget, is that right?

12 A That's correct, it will be individual goals
13 and business unit goals as well as these corporate goals
14 considered.

15 Q But everybody's will include all of these as
16 well, is that right?

17 A Performance against these goals will be a
18 function of the award for all employees, yes.

19 Q And the item next to net income is regulatory
20 return on equity, and the goal and the actual are,
21 "Performance consistent with the rate agreement with the
22 Florida Public Service Commission." Could you tell me
23 what that means?

24 A That the return on equity should be consistent
25 with that which is allowed under the rate agreement with

1 the Commission.

2 Q Is there a certain range that's reflected by
3 that, or do you know?

4 A I believe there is, but I don't have it with
5 me here today.

6 Q The last -- and again, all of these are the
7 operational performance targets for 2008, is that right?

8 A That's correct.

9 Q And by 2009 you knew the actuals and goals,
10 and those are reflected here?

11 A Yes.

12 Q The last one has, "Obtain necessary approvals
13 for generation additions," do you see that?

14 A Yes.

15 Q Do you know what generation additions that's
16 referring to?

17 A Yes, I believe that was West County Energy
18 Center Unit 3 and Turkey Point Units 6 and 7.

19 Q New performance targets have been set for
20 2009, have they not?

21 A Yes, they have.

22 Q And is it correct that all of these except the
23 last one about the generation additions, again, with
24 different numbers, but all of these types of criteria
25 are included in the 2009 operational performance

1 targets?

2 A Yes, all of these types of goals are included
3 for 2009. However, the milestone measures, as we call
4 them, change from year to year, so, for example, the
5 approval for generation additions was specific to 2008,
6 and every year, based on the strategic imperatives for
7 the company for the year, we will update and change a
8 few goals.

9 Q You have a new criteria as well for 2009, do
10 you not, and that is the outcome of this rate case is
11 one of the operational performance goals for FPL?

12 A Well, the specific goal is successful
13 completion of the rate case. There is no specified
14 outcome. It's simply a qualitative and quantitative
15 assessment on the part of the Board of Directors and
16 management on the successful outcome of the rate case.

17 Q Would not the amount of rate increase be part
18 of that assessment?

19 A I would imagine it would be one factor taken
20 into consideration, but one of the main purposes of
21 including it in the plan is a recognition of the fact
22 that we have so many employees focused on this as part
23 of their individual objectives for the year.

24 Q How do you not meet successful completion of
25 the rate case? I mean, you're going to complete the

1 rate case.

2 A Absolutely. As I said, I'm sure that that's
3 one of the considerations in the assessment of this, the
4 outcome.

5 Q Are there any other changes to the operational
6 performance goals for 2009?

7 A None of which I'm aware, subject to check.

8 Q In the proxy statement you also talked about
9 changes to your long-term incentive plan which were
10 approved by the shareholders, is that right?

11 A That's correct, approval of the material terms
12 of the plan.

13 Q You mentioned earlier that there is a hurdle
14 for the very top executives that they have to pass
15 before they can receive performance shares, is that
16 right?

17 A We were talking about restricted stock at the
18 time.

19 Q Okay. Would it also apply to the performance
20 shares as well?

21 A There is no separate 162(m) hurdle necessary
22 in the performance share awards, subject to check,
23 because there are other -- there has to be some
24 performance criteria that are acceptable under the
25 performance-based exception of 162(m) of the Internal

1 Revenue Code to ensure tax deductibility of the
2 compensation expense, and it's a tax planning issue.

3 Q And what the shareholders approved in this
4 proxy statement was a change to the measures that could
5 be used for that hurdle, is that right?

6 A That's correct.

7 Q Prior to this proxy statement the only
8 criteria was net income, is that correct?

9 A I don't recall if the prior plan allowed for
10 any other indicators to be used as the 162(m) hurdle. I
11 just know that when we revised the plan we added
12 additional possible objectives that could be used.

13 Q Could you turn to page 12 of the proxy
14 statement, please?

15 A I am there.

16 Q And at about the middle it says, the LTIP,
17 standing for long-term incentive plan, "currently
18 provides that the company's annual net income is the
19 sole performance measure for grants of performance-based
20 awards." Do you see that?

21 A Yes, I do.

22 Q And that was being changed to include a whole
23 host of new measures that could possibly be used in
24 addition to or in lieu of that, is that correct?

25 A Yes, ones that could possibly be used.

1 Q And those are listed on the remainder of page
2 12 and through about more than half of page 13, is that
3 right?

4 A That's correct.

5 Q So that in addition to net income, you could
6 use return on equity, earnings per share growth, diluted
7 earnings per common share and so forth, is that right?

8 A That's correct.

9 Q Did, after obtaining shareholder approval to
10 those changes, did in fact Florida Power & Light change
11 the hurdle criteria from net income to any of the
12 others?

13 A No, we have not.

14 Q Again, net income performance is the sole
15 hurdle that must be passed by the very top executives.
16 I take it from this it's both for performance shares and
17 restricted stock, is that right?

18 A Yes, and in addition the plan requires that
19 there be a cap in order to ensure deductibility. So we
20 make sure we follow those rules to have the most tax-
21 effective plan possible.

22 Q Now, all salaried employees or exempt
23 employees are eligible to participate in both the
24 short-term incentive plan and the long-term incentive
25 plan, is that correct?

1 A Yes, it is.

2 Q Do you know what portion of the employees
3 actually receive compensation under short-term incentive
4 compensation and long-term incentive compensation?

5 A Yes, I do. In 2009, of the eligible
6 population all but 6.4 percent received an award, so we
7 had 6.4 percent eligible who received no annual
8 incentive award. In 2008, 7.6 percent of the eligibles
9 did not receive an annual incentive award, and then in
10 2007, it was 9.4 percent.

11 We have been using this plan to drive
12 performance to show our employees that we have a level
13 of performance that's required to receive an award, and
14 it has been successfully raising the bar for them.

15 Q The numbers you just gave were for any type of
16 incentive compensation, be it short- or long-term, is
17 that correct?

18 A No. I apologize if I confused you. That was
19 annual incentive award or cash incentive award only.
20 Regarding long-term incentive award, only about 700,
21 approximately 700 employees in the company receive long-
22 term incentive awards in any given year. It's used very
23 selectively to reward top performers and drive
24 performance at the higher levels.

25 Q So that was 700?

1 A About 700 employees of the 4,900.

2 Q So about one in seven?

3 A Yes..

4 Q I would like to hand out an exhibit, this is
5 part of Staff's Composite Exhibit, so it's just for ease
6 of use at the moment.

7 ACTING ACTING CHAIRMAN EDGAR: All right,
8 thank you. You can go ahead and pass it out.

9 MR. BECK: And this exhibit, for the record,
10 is Florida Power & Light's Response to the Attorney
11 General's Interrogatory No. 76.

12 BY MR. BECK:

13 Q Ms. Slattery, do you have the exhibit in front
14 of you?

15 A Yes, I do.

16 Q I will wait one minute until everybody else
17 gets it.

18 (Brief pause.)

19 ACTING ACTING CHAIRMAN EDGAR: Ready when you
20 are.

21 BY MR. BECK:

22 Q Could you turn to the attachment to the
23 interrogatory response, page 1 of 5?

24 A Okay.

25 Q In particular I'm going to ask you about the

1 middle grid which shows amounts related to the 2010 test
2 year. Could you describe generally what is shown on
3 this page of the attachment to the exhibit for the 2010
4 test year?

5 A Yes. This is the attachment to the
6 interrogatory requesting a breakdown of compensation
7 related to annual incentive awards, other earnings, lump
8 sum awards and long-term incentive pay, and the center
9 section on page 1 of 5 shows the 2010 test year amounts
10 broken down in categories of exempt -- or, rather,
11 executives, exempt, non-exempt, bargaining and other,
12 and by row it breaks it down between cash only incentive
13 awards, capital, O&M and other; performance share
14 awards, capital, O&M and other; stock-based
15 compensation, capital O&M and other; and other
16 compensation, capital, O&M and other.

17 Q Would it be fair to say that in general this
18 breaks down the incentive compensation included in a
19 test year both by the type of compensation and to whom
20 it's paid?

21 A Yes, it does. It also includes some other
22 forms of compensation, miscellaneous earnings as well.

23 Q Now, the columns that are listed there,
24 executives, who is included within executives in this
25 exhibit?

1 A In this exhibit it's the 42 officers. In
2 addition, there is some -- some amount included in other
3 stock-based compensation allocated to capital, O&M and
4 other related to a few high level individuals in our
5 nuclear business unit that were budgeted with executives
6 for this award.

7 Q If we could, let's look at the first two rows
8 for the executives. This shows the bonuses, that would
9 be the short-term incentive plan compensation paid to
10 executives and the amount that went to capital and the
11 amounts that went to base O&M for the test year, is that
12 right?

13 A That is correct.

14 Q So the 42 officers of Florida Power & Light,
15 about 1.2 million is allocated for short-term incentive
16 compensation, about 1.2 million or 1.3 to capital, and a
17 little over 10 million to O&M, is that right?

18 A That's correct.

19 Q There is another category down a little
20 further of performance shares, and that would be, we
21 have discussed a little earlier, that's equity
22 compensation to the executives, is that right?

23 A That's correct.

24 Q And we have about 1.1 million of that
25 allocated to capital and 12.259 allocated to the base,

1 is that right?

2 A Yes.

3 Q You also have value of other stock-based
4 compensation, and we have allocations to both the
5 capital and base O&M, do you see that?

6 A Yes.

7 Q What is that "Other stock compensation"?

8 A Restricted stock and stock option
9 amortization.

10 Q And all told, we see for the test year FPL has
11 included both in base O&M and capital \$48.471 million of
12 incentive compensation to the 42 executives, is that
13 right?

14 A Yes, but as I mentioned previously, there is
15 also a small amount of restricted stock compensation for
16 non-executives that was budgeted in the executive
17 location that shows as value of other stock-based
18 compensation allocated to capital or base O&M, so there
19 is a small amount in there that's not attributable to
20 the 42.

21 Q We also show an amount of performance shares
22 in its equity compensation to exempt of about
23 \$9.276 million. Who are the exempts that that is
24 allocated to?

25 A This would be the approximately 700 salaried

1 employees I mentioned previously receiving long-term
2 incentive awards in a given year. The majority of them
3 would be recipients of a performance share award as that
4 form of compensation.

5 Q So if you look at the total columns, it's
6 \$48.4 million for the 42 officers and for all the
7 remaining salaried employees it's \$9.26 million?

8 A That's not an apples-to-apples comparison,
9 however, Mr. Beck, because the 48 million includes all
10 forms of incentive compensation, and the 9.2 million for
11 exempt is for performance shares only.

12 For the exempts, the non-equity compensation
13 miscellaneous earnings show in the "Other" column,
14 because there is a small subset of non-salaried
15 employees eligible for these awards as well in one of
16 our business units, so we bucket it under "Other."

17 So in other words, that \$79.7 million would
18 need to be added to the \$9.2 million to compare the
19 total programs for non-executive incentive versus
20 executive.

21 Q If you wanted to compare the stock
22 compensation of the 42 executives compared to the all
23 other salaried employees, would it be fair to compare
24 the \$9.2 million for everyone else to the amount shown
25 for performance shares and other stock for the 42

1 executives?

2 A Yes.

3 Q So we would compare the \$9.2 million for
4 everybody else to amounts of 12.2 plus another 430,000,
5 plus another 1.2 million, plus another 20.8 million for
6 the 42 executives?

7 A Yes.

8 Q So the 42 executives are getting the lion's
9 share of the stock compensation?

10 A Yes. That's consistent with our philosophy
11 that the higher up in the organization you go, the more
12 compensation should be at risk, because of that
13 individual's impact to the organization and performance
14 we deliver to customers.

15 Q I hand you another exhibit; again, this is
16 included in staff's composite exhibit, but this is your
17 Late-Filed Exhibit No. 5 to your deposition.

18 Once this is handed out, Ms. Slattery, what I
19 would like to do is compare the amounts shown on your
20 Late-Filed Exhibit 5 to the amounts we have been
21 discussing in the attachment to Interrogatory 76.

22 (Brief pause.)

23 BY MR. BECK:

24 Q Ms. Slattery, your Late-Filed Exhibit 5 is a
25 breakdown of the amounts included in the Interrogatory

1 No. 76, but this is for your top 12 executive officers,
2 is that right?

3 A That is correct, this is a subset.

4 Q So if we were to look at Interrogatory No. 76
5 for each of these items and look at the amount for the
6 42 executives listed there, the amounts shown on
7 Late-Filed Exhibit 5 show a portion of those amounts
8 that go to your top 12 executive officers, is that
9 right?

10 A Yes, that's correct.

11 Q Let's look at the "Bonuses Paid in Cash" row.
12 For the 42 top executives, that's \$10.1 million, is that
13 right?

14 A For the O&M number, yes.

15 Q Right. And if we compare that to what portion
16 of that gets paid to the top 12, it's \$6.1 million, is
17 that right?

18 A Yes, that's correct.

19 Q So about 60 percent of the amounts for the
20 executives for this, for the 42 executives, about 60
21 percent of that goes to the top 12, is that right?

22 A Yes, that's correct. And, as I said before,
23 the higher up in the organization you go, the more
24 compensation is at risk, and therefore the larger
25 portion is in the form of incentives.

1 Q And if we look at the value of performance
2 shares for the top -- to O&M, for the top 42 executives,
3 that's \$12.2 million, is that correct?

4 A That's correct.

5 Q And \$8.9 million of the \$12.2 goes to the top
6 12, is that right?

7 A That's correct.

8 Q So approximately 73 percent of the amount to
9 the top 42 actually goes to the top 12, is that right?

10 A That sounds right. I haven't done the math
11 myself.

12 Q Again, if we go down to the value of other
13 stock-based compensation, we have \$20.8 million for the
14 42 executives, \$11 million of that \$20 million goes to
15 the top 12 executives, is that right?

16 A That's correct.

17 Q For the shares that are issued to pay these
18 amounts for incentive compensation, these shares can
19 either be purchased in the open market or they can be
20 issued by the company, is that right?

21 A That's correct, although we have not
22 repurchased shares to satisfy our long-term incentive
23 awards in a number of years.

24 Q So for a number of years the sole source of
25 this stock has been the issuance of new shares by the

1 company, is that right?

2 A That's correct.

3 Q And that doesn't take any cash for the company
4 to do that, does it?

5 A No, it doesn't. However, we must accrue the
6 expense of the awards under generally accepted
7 accounting principles, so there is still an expense to
8 the company related to the long-term incentive plan
9 amortization.

10 Q Now, the amounts that you have remaining for
11 the performance shares and restricted stocks, you have
12 included amounts in your test year to be paid by
13 customers for that. Some of the expense that's included
14 in the test year for your shares, that's expense dollars
15 to customers that translate into higher rates, is that
16 correct?

17 A First, I want to make sure I understand your
18 question. Are you asking if the amount remaining after
19 Exhibit 514, is that what we're talking about?

20 Q I'm going to broaden this a little bit. Any
21 amounts that you've included in the test year as expense
22 for stock, right, that translates into higher rates for
23 customers that they pay you in cash, is that right?

24 A It does translate into revenue requirement,
25 which is part of the determination of appropriate base

1 rates, yes.

2 Q But, in fact, FPL for the past several years
3 has paid no cash for it, you just issue the new shares,
4 is that right?

5 A That's correct, but as I stated there was
6 still an expense to Florida Power & Light Company as
7 required under accounting rules for the awards.

8 Q Thank you, Ms. Slattery.

9 MR. BECK: That's all I have.

10 ACTING ACTING CHAIRMAN EDGAR: Thank you.

11 Ms. Bradley, questions?

12 MS. BRADLEY: Just a few.

13 CROSS EXAMINATION

14 BY MS. BRADLEY:

15 Q Do you have the confidential document, it's in
16 a group, it says, overtime as a percentage of base
17 salary? And it's persons' compensation greater than
18 165,000 for 2008.

19 A You said this is the overtime as a percent of
20 salary source?

21 Q Yes.

22 A Yes, I have that.

23 Q Can you look at, it's number 172 on this list?

24 MS. CLARK: Ms. Bradley, I would like an
25 opportunity to get to where you are.

1 MS. BRADLEY: I'm sorry. Let me know.

2 ACTING ACTING CHAIRMAN EDGAR: Ms. Bradley,
3 can you tell us all?

4 MS. BRADLEY: I'm sorry, it's the document,
5 one of the confidential documents that's labeled
6 *Overtime As a Percent of Base Salary*. It's 2008, and
7 compensation greater than 165,000 K. It's one of the
8 long ones.

9 MR. WRIGHT: Madam Chairman?

10 ACTING CHAIRMAN EDGAR: Mr. Wright.

11 MR. WRIGHT: I apologize, but Mr. Moyle and I
12 are, unfortunately, not able to keep up. Can we know
13 exactly where we are, please?

14 ACTING CHAIRMAN EDGAR: I'm afraid I might be
15 right there with you.

16 Ms. Bradley, go ahead and help us all, if you
17 would. Is there a line number, Ms. Bradley?

18 MS. BRADLEY: I was looking at 172.

19 ACTING CHAIRMAN EDGAR: Thank you.

20 Ms. Bradley, I'm there now. Mr. Wright, are
21 you -- we will wait just another moment.

22 Ms. Bradley, for the record, why don't you,
23 recognizing, of course, that we're dealing with a
24 confidential document, why don't you identify one more
25 time for us all where you have brought our attention to,

1 and then go right ahead with your question, please?

2 MS. BRADLEY: Thank you.

3 BY MS. BRADLEY:

4 Q Line 172. Are you there?

5 A I am. Line 172, which is the original line
6 number 31?

7 Q Correct.

8 A I'm there.

9 Q That's a person, would you agree that's a
10 licensed professional person that's a non-union member?

11 A Yes.

12 Q And he was paid, he or she was paid overtime?

13 A Well, there's actually quite a simple
14 explanation for this. As referenced in Late-Filed
15 Deposition Exhibit No. 4, there are approximately ten
16 people who show up on this list as having a small amount
17 of overtime. That's attributable to the way our payroll
18 system categorizes when an employee works, in an exempt
19 capacity, when an employee works eight hours or more on
20 what would otherwise be a paid holiday.

21 So if an employee works eight hours or more on
22 a day which would otherwise be a paid holiday, such as,
23 for example, the Fourth of July, what they're able to do
24 is code it as a day worked and they get an extra
25 vacation day in the next year and they get straight time

1 for the eight hours, no extra pay, but it categorizes it
2 as straight time overtime. So that was noted in the
3 footnote to that Late-Filed Deposition Exhibit No. 4
4 explaining this.

5 Q But the extra holiday that they get, that's
6 additional compensation, essentially, for that person?

7 A It's an extra day of paid vacation at their
8 regular rate of pay to recognize they worked eight hours
9 or more on what should have otherwise been a recognized
10 holiday because of business needs.

11 Q And looking at the first couple of pages of
12 this document, you have a number of people that are
13 marked as supervisors and managers that were also paid
14 overtime.

15 A If you could please be more specific with
16 which rows you're looking at?

17 Q Well, on the first page it looks like starting
18 line 41, 42, on 44 is a manager, on 45 is a supervisor,
19 on 46 is a manager, on 47, 48, 49, 50, they're labeled
20 supervisors, 51 is a manager, and all but the last one
21 is labeled supervisor or manager, and then that goes
22 over on the next page where it looks like a number of
23 them are labeled managers and supervisors, correct?

24 A That's correct. You went through that a
25 little fast for me, but in general I'm identifying that

1 these are Turkey Point nuclear managers and supervisors
2 who were paid straight time exempt overtime because of
3 the fact we have them in 2008 working significant
4 amounts of overtime.

5 This is in part due to the nuclear staffing
6 issues at Turkey Point that we have addressed through
7 some focused retention efforts. We have also had some
8 licensing classes that we put in place that graduated
9 this year, but in '08, we had a situation where we were
10 working these folks significant amounts beyond a 40-hour
11 work week, and in recognition of that fact, the business
12 unit did pay, as is permissible under our exempt
13 overtime policy, straight time overtime to these
14 supervisors and managers.

15 Q So they were essentially compensated above and
16 beyond their salary for working extra hours?

17 A Yes, they were compensated above and beyond
18 their normal 40-hour work week salary in recognition of
19 the fact that they were working above and beyond a
20 normal and sometimes reasonable workload.

21 Q And those are your managers and supervisors,
22 correct?

23 A Yes. However, it should be noted that we do
24 have rules that prohibit the payment of straight time
25 exempt overtime to senior managers, directors or higher

1 level supervisory employees.

2 Q How many people did you have making above
3 \$165,000 in 2008?

4 A How many people?

5 Q A number.

6 A The total number was 463.

7 Q And how many did you have making above
8 \$1 million?

9 A I do not know off the top of my head, and I
10 don't want to speculate.

11 Q You don't have that information in front of
12 you?

13 A Actually I could look it up for you.

14 Q Thank you.

15 A According to this schedule there were 12 whose
16 total compensation was a million or higher, but only
17 five of them, after allocations and jurisdictional
18 adjustment for FPL, were paid a million or more from
19 FPL.

20 Q What about those making above two million?

21 A There were five individuals whose total
22 compensation was above two million, and after
23 allocations and jurisdictionalizations there were three.

24 Q What about those over three million?

25 A There were three.

1 Q And what about over ten million?

2 A There was one officer who was paid over ten
3 million in total compensation, but after allocations and
4 jurisdictionalization, the FPL portion was 7.5 million.

5 Q What about those -- did those figures go up
6 any for the 2009?

7 A Well, for the forecast years, the numbers were
8 escalated on every spreadsheet just to reflect the total
9 budget increase, which, as we previously discussed this
10 afternoon, we're now taking out of the revenue
11 requirement.

12 Q And that was for 2009, or was that for 2010-
13 2011?

14 A For '10 and '11.

15 Q So looking at 2009, did these number of
16 persons in these different categories, did that
17 increase?

18 A Yes, there were increases on the schedule.
19 After the allocations and jurisdictionalizations the
20 total increase actually resulted in a decrease of about
21 one percent total revenue requirement, in the aggregate.

22 Q So as far as the persons making more than one
23 million, two million, three million and ten million,
24 that number went down?

25 A No, I apologize. On the individual basis, I

1 don't have the exact 2009 compensation. Just the
2 escalations using MFR C-35 year over year was part of
3 our budget and what we put in the test year.

4 Q What about those persons making above 165,000?

5 A Similarly for those making above 165,000 we
6 escalated the totals by the year over year increase on
7 MFR C-35 for employee. It was the best way to forecast
8 since we do not budget on an individual basis at any
9 level of the organization, we budget in aggregate
10 buckets.

11 Q Let me ask you to look at the proxy statement
12 that Mr. Beck showed you earlier, and I believe you were
13 looking at page 47.

14 A Yes, I'm there.

15 Q On these goals, are they all weighted the same
16 or are there different weights to different ones?

17 A They are weighted differently. On an annual
18 basis the Compensation Committee of the Board of
19 Directors preapproves the goals and weightings, and so
20 they will change from year to year as the strategic
21 imperatives add to or subtract from the total and they
22 have to be redistributed.

23 Q And of those weighted, how are they weighted?

24 A Again, they're weighted by the decision of the
25 Compensation Committee. I do have that information.

1 Q Well, you indicated who does the weighing, but
2 I'm wondering how they're weighted. What is the basis
3 for the difference?

4 A Well, the weightings will change from year to
5 year as the total number of performance goals may change
6 from year to year. In general, for 2008, for example,
7 the four financial goals were weighted 12 and a half
8 percent out of the 100 percent total. The reliability
9 was 22 and a half percent. Other, such as OSHA
10 reportables, environmental and customer service, were
11 22.5 percent, and milestone measures related to the
12 generating assets was five percent. So each year the
13 compensation committee will determine the appropriate
14 weighting, and these will change slightly from year to
15 year, but that gives you an example of how 2008 was
16 weighted.

17 Q Mr. Beck asked you something about one of them
18 that was the satisfactory outcome of this rate case?

19 A Yes.

20 Q What was the weighting on that?

21 A That was -- for 2009, the weighting on that is
22 25 percent.

23 Q I'm going to try to find the 2008, those
24 making above \$165,000. Have you got it?

25 A Yes, I do.

1 MS. BRADLEY: Does everyone else have the
2 document?

3 BY MS. BRADLEY:

4 Q Can you look at line 166?

5 Now, these are all people that are making
6 above \$165,000 in 2008, correct?

7 A That's correct.

8 Q Looking at line 166, do you have that?

9 A Yes.

10 Q Did that person, did that job description
11 require a doctor degree?

12 A No, it does not.

13 Q How about a Master's degree?

14 A I don't know if it's required or preferred. I
15 don't have all of the job descriptions with me. I don't
16 know individual by individual what the education of the
17 folks on this list are. I do know that a fair
18 percentage of them have advanced degrees.

19 Q But do you know whether the position title or
20 the requirements for that position required a Master's
21 or a college degree?

22 A I don't believe it does, subject to check.

23 Q How about a license, would that type job
24 require a license?

25 A I do not know.

1 Q And that person made over \$200,000, correct?

2 A Yes, they did.

3 Q What about line 190?

4 A I do not know the requirements regarding
5 education or certification for this position.

6 Q Do you know whether it would have required an
7 advanced degree?

8 A No, I do not, not for this particular
9 position, but not all of the jobs on this list require
10 advanced degrees. Some of them require industry
11 experience and company experience.

12 Q And we don't have any way to determine whether
13 or not this might have required or probably didn't
14 require an advanced degree?

15 A No, I do not. This is a position in our
16 engineering and construction division and I do not know
17 what the requirements were for it.

18 Q How about looking at line 49?

19 A Yes, I'm there.

20 Q Did that require an advanced degree?

21 A No. This individual is a bargaining unit
22 employee that is on this list because of an arbitration
23 decision that paid this individual a one-time lump sum
24 equivalent to back pay related to a grievance.

25 Q Was that only for that year?

1 A Yes. However, because, as I previously
2 stated, we do not budget our employees on an individual
3 basis, but instead on an aggregated basis, when we
4 produced our forecast for '09, '10 and '11 related to
5 this schedule we were unable to determine exactly who
6 would or would not be on this list in the future years.
7 Since performance-based compensation has to be re-earned
8 every year, overtime pay will depend on the
9 circumstances around that position. So we determined
10 that the most straightforward approach would be to
11 escalate the totals on the spreadsheet by the year over
12 year escalation factors in MFR C-35.

13 Q But that person at line 49 for 2008 was paid
14 over \$165,000?

15 A By virtue of the fact that there was a
16 \$101,000 grievance settled in arbitration, yes.
17 Otherwise, clearly this person would not have been on
18 this list.

19 Q Do you have any idea about the other job
20 requirements for the persons on this list?

21 A For some I do. This is a list of 463 -- or
22 419 people in the non-officer roles, and it's not
23 possible for me to have memorized the position
24 descriptions or job requirements for 419 individuals.

25 Q How about looking at line 234 and 257 and

1 seeing if you know anything about the requirements of
2 those two positions, 234 and 257?

3 A For 234, I do not know the education or
4 certifications required for this position. You said
5 257?

6 Q Yes.

7 A This position has specific requirements
8 regarding years of experience in the field and specific
9 education requirements.

10 Q What are the education requirements for that?

11 A A Bachelor's degree required, a Master's
12 degree preferred.

13 Q What about for 258?

14 A I do not know the specific education or
15 certification requirements for that position.

16 Q How about line 141?

17 A I do not know.

18 Q Going back to line 49, you indicated that that
19 person was given \$100,000, \$101,000 grievance, so even
20 without that would have made over \$65,000, correct?

21 A Would have made just under, just under
22 \$65,000.

23 MS. BRADLEY: I don't think I have any more
24 questions.

25 ACTING CHAIRMAN EDGAR: Thank you.

1 Mr. Moyle?

2 MR. MOYLE: Thank you. Thank you, Madam

3 Chair.

4 CROSS EXAMINATION

5 BY MR. MOYLE:

6 Q Good afternoon.

7 A Good afternoon.

8 Q I'm going to have some questions for you.

9 Before I do, I just want to understand a couple of
10 things.

11 You are a lawyer, correct?

12 A Yes, I am.

13 Q Are you a member of the Florida Bar?

14 A Yes, I am.

15 Q But you're not in a legal role with FP&L,
16 correct?

17 A No, I'm not. I'm a non-practicing attorney.

18 Q So if I ask you any questions about salary or
19 compensation, you don't have any attorney-client
20 communications that you provided to anybody, correct,
21 because you're not practicing as a lawyer with the
22 company?

23 A That's correct, I'm not serving in a legal
24 capacity.

25 Q And then there has been a dispute about what

1 is confidential and what is not. I just want to make
2 sure that I understand what I understand to be
3 confidential based on watching arguments that were made
4 in front of this Commission a few months ago and, I
5 think, other communications, that what you all consider
6 confidential about these documents in these red folders
7 is tying the position to the numbers, and that you don't
8 necessarily consider the numbers confidential, so long
9 as positions are not tied to numbers. Is that
10 essentially correct as you understand it?

11 A No, I would disagree, because I believe that
12 the aggregate numbers we have no problem with
13 discussing, but even if you were to simply remove the
14 titles from this exhibit and it became public, you could
15 say that competitors could ascertain some of our pay
16 practices regarding annual incentive award as a
17 percentage-based, retention bonuses, equity compensation
18 as percentage-based and so forth, overtime practices.

19 So some of our pay practices would be subject
20 to a violation of competitive business advantages if
21 each component of pay for each position was out in the
22 public domain, even without the title.

23 Q Mr. Olivera wrote a letter, did he not, to the
24 Commission in which he indicated that the key that was
25 held over at Rutledge Ecenia, that that was the

1 component that was considered confidential, are you
2 aware of that?

3 A I don't recall the specifics.

4 Q Do you recall that he wrote a letter or made
5 some representation as what he considered as
6 confidential?

7 A I do, but I'm trying to recall when we
8 originally submitted this to staff regarding -- there
9 was a lot of highlighted yellow confidentials and I'm
10 trying to remember which ones were confidential and
11 which ones weren't. I recall that from the beginning we
12 have said that the aggregate dollar figures and total
13 number of individuals was not confidential.

14 Q Right. But even with respect to pay
15 practices, really you don't consider that confidential,
16 do you? I thought I just heard you say that with
17 respect to incentive compensation, that more than 90
18 percent of the people were getting incentive
19 compensation for 2007, 2008 and 2009, correct?

20 A That's correct.

21 Q So that portion is not confidential, correct,
22 with respect to those percentages?

23 A That's correct.

24 Q And the total, the aggregate total numbers are
25 not?

1 A Correct.

2 Q And all of the columns, the columns with
3 respect to the amounts of different types of
4 compensation, and we can use the document that Ms.
5 Bradley was just asking you about, you don't consider
6 any of those columns as confidential?

7 A I don't consider the column headers or the
8 aggregate totals at the bottom to be non-confidential.
9 That's why they're not highlighted yellow.

10 Q Right, but you were just asked questions about
11 that, the person on 49 and I guess we talked about that
12 number, correct?

13 A There was one specific number that I discussed
14 that, without any other additional information being
15 disclosed in this form, I felt adequately protected the
16 identity of the individual and did not disclose anything
17 related to our pay practices, merely that there was an
18 arbitration settlement.

19 Q Right. And your pay practices are part of the
20 issue that this Commission is being asked to determine
21 today, is that correct?

22 A That's correct.

23 Q You're talking about things other than pay
24 practices in your testimony, correct? It's not limited
25 just to salary?

1 MS. CLARK: Mr. Moyle, would you be more
2 specific?

3 MR. MOYLE: Sure.

4 BY MR. MOYLE:

5 Q I looked on your testimony on page 3, you're
6 sponsoring industry association dues, is that correct?

7 A I'm a co-sponsor.

8 Q So do you have familiarity or, given the fact
9 that you're a co-sponsor, information about industry
10 association dues?

11 A I have some information, but I would prefer to
12 defer those questions to Mr. Barrett who has additional
13 information.

14 Q Do you have copies of the MFRs or can you
15 access copies of the MFRs? Because you reference C-15
16 and I want to ask you a couple of questions about C-15.

17 A I don't have a copy of that with me.

18 Q Maybe your counsel can assist.

19 ACTING CHAIRMAN EDGAR: Let's ask.

20 Ms. Clark, is that something that your group
21 can provide?

22 MS. CLARK: I probably have a copy of it.
23 I'll see what I can do.

24 MR. MOYLE: That's fine.

25 ACTING CHAIRMAN EDGAR: And for the record,

1 Mr. Butler has just given the witness a copy of the
2 document that we think Mr. Moyle has referred to.

3 Mr. Moyle, go right ahead.

4 MR. MOYLE: Thank you, and thank you to
5 counsel for FPL. I think Ms. Clark looked at what I was
6 looking at and looked at what the witness was looking at
7 and I think we're on the same page.

8 BY MR. MOYLE:

9 Q What is in front of you is C-15, it shows
10 industry association dues, correct?

11 A That's correct.

12 Q And the total amount paid, it looks to be 14,
13 the jurisdictional amount, north of \$14 million, is that
14 right?

15 A That's correct.

16 Q Now, I didn't see Associated Industries of
17 Florida on this list. Do you know why they're not on
18 this list?

19 A No, I do not know.

20 Q You are aware that Florida Power & Light is a
21 member of Associated Industries?

22 A Yes, I'm aware of that fact.

23 Q Do you know how much they pay Associated
24 Industries in dues?

25 A No, I don't. I did not compile this MFR,

1 rather, Mr. Barrett and his team did. I merely provided
2 some limited pieces of information that went into it.

3 Q So do you think -- do you think Mr. Barrett
4 might know the answer to that question? I thought that
5 if you had a chart that said "Industry Association Dues"
6 that the payment to Associated Industries might show up
7 in here. Should I defer those questions to Mr. Barrett?

8 A Yes, please.

9 Q You don't have any information at all?

10 A No, I do not.

11 Q Other than the fact that you know that Florida
12 Power & Light is a member of Associated Industries?

13 A That's correct.

14 Q Do you know whether -- so you don't know
15 whether their dues increased this year or not?

16 A No, I have no idea.

17 Q You were asked some questions about the goals
18 and Office of Public Counsel asked you some and you said
19 that for 2009, the goals included satisfactory outcome
20 of the rate case, and that that was a 25 percent,
21 correct?

22 A That's correct.

23 Q Could you -- what are the other goals for
24 2009, if you know?

25 A O&M and capital expenditure goals which we

1 have every year coming in at or under budget; net income
2 goals and regulatory ROE goals, again, similar to 2008's
3 goals which were published in our proxy which we already
4 reviewed; a number of reliability goals, including
5 fossil generation availability, nuclear WANO index,
6 service unavailability, average frequency of customer
7 interruptions, average number of momentary interruptions
8 per customer. Other operating goals include number of
9 OSHA reportables per 200,000 hours worked.

10 Q How much does the net operating income
11 represent of the goals in terms of a percentage? You
12 said it was 12 and a half percent for 2008.

13 A It's lower this year, it's ten percent.

14 Q And the ROE is also ten percent?

15 A Ten percent.

16 Q Any there any other financial goals?

17 A O&M budget and capital expenditure budget
18 goals, each worth ten percent.

19 Q But the three components of satisfactory
20 outcome in a rate case, return on equity and net income,
21 is 45 percent of the overall goal figure, correct?

22 A I'm sorry, I didn't follow your question.

23 Q If I took 25 percent, which is the
24 satisfactory outcome of the rate case, and included the
25 return on equity goal which is ten percent and the net

1 operating income goal, that would give me 45 percent of
2 the goals relate to those three components, correct?

3 A Yes, your math is correct.

4 Q And how do you make a judgment about a
5 satisfactory outcome of the rate case?

6 A That will be assessed by the Compensation
7 Committee of the Board of Directors in conjunction with
8 senior leadership of the company.

9 Q Do you serve as staff to the Compensation
10 Committee?

11 A I'm not staff to the Compensation Committee.
12 That's a committee comprised of independent directors,
13 and they have an independent compensation consultant,
14 Watts & Wyatt Worldwide, that they retain directly. I
15 and my executive services staff provide technical
16 support and information to the consultant and the
17 committee.

18 Q And with respect to the -- I was a little
19 unclear about completion of the rate case. It was more
20 than just completion of the rate case, was it not, in
21 terms of the 25 percent goal? It wasn't like just
22 getting done, getting across the finish line, was it?

23 A No, it's successful completion of the rate
24 case.

25 Q And with respect to "successful," is it your

1 understanding that that is designed to consider the
2 result of the Commission, or just did all the witnesses
3 take the stand and get off the stand?

4 A I actually do not have any additional
5 information regarding the qualitative and quantitative
6 assessment of this goal. I know that when we included
7 it in this year's performance goals, I do recall
8 discussion about the importance of showing the employees
9 who are working on it, the importance of focusing on
10 putting on the case, of complying with the onerous
11 discovery requirements and making sure that we met all
12 deadlines.

13 Q Do you think or would you agree with me that
14 to the extent that somebody's compensation, this
15 incentive compensation compromises a significant portion
16 of your executives' pay, correct?

17 A That is correct.

18 Q Can you tell me approximately what percent as
19 a general rule of thumb without hurting confidentiality?

20 A It will vary. As I stated before, the higher
21 you go in the organization, the more compensation is at
22 risk. So it depends on the level of employee, but we do
23 have, in our proxy statement we do provide some
24 information on general relationships between the
25 elements.

1 On page 40 of the proxy, for example -- it's
2 very difficult to read in our copies -- it provides
3 information regarding the relative percentages for each
4 portion of the total compensation and benefits package
5 for the officers.

6 Q Does it, given the fact and I think you have
7 agreed that a significant portion is based on incentive
8 compensation, does it present any issues with respect to
9 testimony in front of this Commission that someone's pay
10 or a significant portion of their pay is dependent upon
11 the ultimate judgment that this Commission makes? Does
12 that present any concerns to you, as a member of the
13 Bar?

14 A No, absolutely not. I'm not sure what your
15 question is, but if you're implying that there is any
16 pressure on any witnesses in relation to the annual
17 incentive plan related to performance at this hearing,
18 that's completely false and is somewhat insulting.

19 Q With respect to return on equity, how do you
20 determine that ten percent return on equity piece?

21 A The return on equity, it's targeted to be
22 within the boundaries of what is set forth in the
23 agreement with the Florida Public Service Commission
24 from our prior settlement.

25 Q So if this Commission came back and awarded a

1 return on equity of, say, ten and a half percent, then
2 how would that be viewed or graded with respect to
3 determining whether that return on equity goal was met
4 or not met?

5 A I do not know. That would be up for decision
6 by the Compensation Committee of the Board of Directors.

7 Q Now, we had talked about net operating income
8 and return on equity. Isn't earnings per share also a
9 measure that's used in determining incentive
10 compensation?

11 A It's a measure that pertains only to those 12
12 executive officers as it relates to the FPL Group
13 financial matrix that includes earnings per share
14 growth.

15 Q I presume in your role you keep abreast of the
16 employment situation in the state of Florida, do you
17 not?

18 A I do try to.

19 Q Are you aware that as we sit here today that
20 the unemployment has recently risen to over 11 percent
21 in the state of Florida?

22 A I have read about that, yes.

23 Q And also with respect to what you're
24 presenting to this Commission, you're asking for
25 ratepayers to provide rates that would include an

1 increase in salaries from 2009 to 2010, correct?

2 A That's correct.

3 Q And also the number of jobs that FPL, the head
4 count would go up from 2009 to 2010, correct?

5 A That's correct.

6 Q And then from 2010 to 2011 you also have an
7 increase in salaries, correct?

8 A That's correct.

9 Q And you also have an increase in the head
10 count?

11 A That's correct.

12 Q And you're aware that those trends are
13 inconsistent with respect to a number of businesses and
14 industries in the state of Florida during these tough
15 economic times, correct?

16 A I disagree. We stay abreast of the market
17 through a number of different reliable sources. One of
18 them is *World at Work*, and we have looked at their
19 annual salary budget survey for 2009-2010 that was
20 published in August of 2009, and through it we can
21 determine that nationally merit budgets for 2010 are
22 expected to be about 2.7 percent in general industry,
23 three percent for utilities, and, furthermore, that when
24 they look at Florida-specific employers, the numbers are
25 consistent with the 2.7 and three percent as well.

1 Q And you're focusing on merit moneys, correct?

2 A Excuse me, I didn't understand your question.

3 Q I thought you said that that information that
4 you were talking to related to merit pay, correct?

5 A That's correct. That survey actually provides
6 additional money for off-cycle increases and total
7 salary increase, so the numbers are slightly higher on
8 that regard, so it would be north of 2.7 and three.

9 Q And my question was not focused on merit pay,
10 but was just on pay in general, and was whether you were
11 aware that the trend in Florida during these economic
12 times that are challenging was not to increase employees
13 and increase raises in 2009 and 2010, you would agree
14 with that, would you not?

15 A I would not agree, because based on the data
16 that I have gathered of the Florida employers that
17 participated in the *World at Work* survey, there is
18 expected to be merit increases.

19 So I know that unemployment in the state is
20 relatively higher, but a more important statistic that I
21 keep my eye on is that the U.S. Department of Labor
22 Bureau of Labor Statistics publishes monthly and
23 quarterly reports on the employment situation by
24 industry, and the utility industry does not have high
25 unemployment. On the contrary, the total number of

1 employees reported on utility payrolls as of June 2009
2 was slightly higher than the total number of employees
3 reported on utility payrolls in 2008, an increase of
4 just under one percent. So in our industry there is
5 still competition for resources and we must pay market-
6 competitive wages or we will lose our talent to these
7 companies that like to take our employees and, by all
8 accounts from our market intel, will be having merit
9 programs.

10 Q And you didn't use the word *poaching*, but in
11 your direct testimony you talk about poaching being a
12 problem in your industry, isn't that correct?

13 A Poaching is a problem in our industry.

14 Q And with respect to nuclear, the nuclear
15 employees, isn't it true that FPL has been a net
16 beneficiary of poaching in terms of getting more
17 employees from other companies than they have lost?

18 A I don't know if the net works out in our favor
19 or against us, but I do recall that FPL Witness Stall in
20 his testimony talked about the fact that FPL has poached
21 as well as been poached, but that we're taking steps to
22 try to prevent that in the future.

23 The preference is to build a nuclear pipeline.
24 He talked at length regarding our community college
25 programs and our licensing classes, as well as the

1 necessity of protecting that investment once we have it,
2 since it takes eight to nine years to build a licensed
3 reactor operator from scratch, which is quite costly.

4 Q Do you know what the average median income is
5 in the state of Florida?

6 A I do not know that off the top of my head,
7 no.

8 Q Do you know just like a ballpark?

9 A I don't want to speculate.

10 Q Do you know what the average wage is for an
11 FPL employee or the total benefit cost for an FPL
12 employee for 2010 is?

13 A Yes, it's shown in the MFR C-35 for 2010. The
14 total payroll and fringe benefit cost per employee is
15 \$113,492. That includes benefits.

16 Q What percentage of benefits does that -- do
17 benefits typically compose?

18 A I'm trying to calculate how the fact that we
19 have a FAS 87 pension credit factors into this
20 discussion, because, unlike many employers who are
21 burdened with very expensive and costly pension expenses
22 each year, we have a credit, so it lowers our overall
23 cost of fringe benefits to the benefit of our customers.

24 But without the benefits, the average
25 compensation as shown on MFR C-35 is \$95,639. Again,

1 this comprises all levels of individuals, including the
2 highly leveraged nuclear positions and the executive
3 positions.

4 Q And for 2011 it goes up to approximately
5 \$117,000 per employee, is that right?

6 A Including the impact of fringe benefits, yes.

7 Q And how much of that 117 is salary, if you
8 will?

9 A \$96,471.

10 Q Do those numbers strike you as being high for
11 wages in the state of Florida?

12 A The relevant market for our employees is not
13 all industries in the state of Florida. We have to
14 benchmark this by comparing an apple to an apple, so
15 we're comparing these wages and salaries to those of
16 other utilities in our industry and, where appropriate
17 depending on the position, general industry. And as
18 shown in the exhibits to my direct testimony, these
19 wages are very reasonable and prudent.

20 Q And you do compare -- Mr. Wright previously
21 had asked some questions of one of your witnesses about
22 the salary of somebody at Publix and the salary of
23 someone that runs the Dade County School Board, I don't
24 know, were you here for that or did you hear about that?

25 A I heard about that.

1 Q And there was a little bit of discussion about
2 whether it's appropriate to compare somebody running a
3 school system with somebody running a utility company,
4 but for the purposes of determining the compensation,
5 you do benchmark to industries outside of electric
6 industries, correct?

7 A We do have a general industry comparator where
8 appropriate, but again, we do not compare to public
9 sector employers. And whenever we look at a peer group,
10 you have to look at the relevant statistics for the
11 companies to make sure they're appropriate, based on,
12 for example, industry classification code, the SIC code,
13 revenues, net income, number of employees, et cetera.
14 So a lot of analysis goes into determining appropriate
15 markets and appropriate comparator groups to ensure that
16 we are comparing relevant markets for talent where we
17 attract talent from and where we lose talent to.

18 Q Yes, ma'am. And you said you do or do not
19 benchmark to publicly traded companies?

20 A We do benchmark to publicly traded companies.
21 Did I say -- I meant to say public sector, meaning, for
22 example, state employees, municipal employees and so
23 forth, which is a different compensation and benefits
24 philosophy in package, usually.

25 Q Do you know how long it's been since state

1 employees received a raise in the state of Florida?

2 A No, I do not.

3 Q And I guess in this proxy document, just so
4 I'm clear on this point, on page 42, it shows that
5 you're benchmarking compensation to some general
6 industry companies, correct?

7 A This is a comparator group that we use for
8 executive positions. We have 16 energy services
9 industry companies and approximately 20 or 21 general
10 industry, yes.

11 Q Do you know if the average wage for SunTrust
12 Bank, Inc., which is listed as one of your proxy
13 companies, is in excess of \$95,000 per year?

14 A No. We're not able to benchmark individual
15 company data to individual company data; rather, the
16 third-party survey vendors that we utilize aggregate the
17 data and provide it to us in the form of mean, median,
18 average and so forth.

19 Q I want to just spend a couple of minutes
20 better understanding the components of your workforce.

21 OPC asked you and you listed the numbers on
22 page 4, but you have nearly 5,000 salaried employees,
23 correct?

24 A That's correct.

25 Q And most of those salaried employees are the

1 one getting this incentive compensation, is that right?

2 A That's correct.

3 Q And with respect to the non-exempt, the hourly
4 people, they're not getting incentive compensation, are
5 they, because they're hourly?

6 A As a general rule, no.

7 Q And then with respect to the 3,540 union
8 employees, they're not getting the incentive
9 compensation, either, are they, because they're subject
10 to a collective bargaining agreement?

11 A That's correct.

12 Q So a majority of the workforce of FP&L is not
13 able to receive incentive compensation, correct?

14 A Not under the annual incentive plan, no. We
15 do have other programs, though, for the union employees.
16 They're laid out in the collective bargaining agreement,
17 including some positions that, for example, nuclear get
18 licensing bonus pay and so forth. And the non-exempts,
19 we sometimes have lump sum programs for them.

20 Q I'm sorry I interrupted you.

21 A I was just saying that part of the annual
22 merit program is generally to try to keep our non-
23 exempts comparable to market, and in some cases there
24 are some small budgets for lump sum awards as variable
25 pay.

1 Q Are you on the collective bargaining team for
2 management that sits down with the union?

3 A No, I'm not.

4 Q You had talked earlier about some of the
5 pension assets deferring your benefit costs and you have
6 some testimony about pensions. Do you know what your
7 targeted return is for your pension investments?

8 A I do not know what the targeted return is. I
9 do know that FAS 87, which is Fair Accounting Standards
10 rules, require that we have an assumption on return, and
11 the long-term assumption on the return is 7.75, I
12 believe, subject to check.

13 Q And do you have any information or familiarity
14 with where the pension assets are invested?

15 A No, and I wouldn't want to speculate.

16 Q I had asked, I think Mr. Olivera, about
17 whether the company had invested funds in the utility
18 sector, specifically FPL. You don't have any
19 information on that, do you?

20 A No, I do not.

21 Q You spent a little time in your testimony
22 referencing a salary expert that was hired by FPL who
23 has previously testified in this case, and you're
24 testifying that you believe the salaries are reasonable
25 and appropriate, correct?

1 A That's correct.

2 Q And the expert who previously was here, his
3 testimony was that in the electric sector that things
4 like stock options and incentive pay is typical in the
5 electric sector, correct?

6 A I believe that's correct. His complete
7 testimony was in regard to the prevalence and
8 appropriateness of incentive compensation, both cash and
9 long-term equity, in our sector, and further that
10 without it our company could not have competitive
11 compensation and benefit packages necessary to attract
12 the talent we need to deliver on promises to our
13 customers.

14 Q Right. And, with respect, I had asked some
15 questions about the confidential documents and he
16 indicated he had never seen them, so I think we're on
17 the same page, in that the expert was not asked to opine
18 on individual salaries or the reasonableness of salaries
19 of your salaried employees, correct?

20 A That's correct, because we have 7,500 non-
21 bargaining employees, so hiring an outside consultant to
22 perform the benchmarking that our staff performs would
23 have been rather expensive and costly.

24 Q And with respect to the testimony about the
25 reasonableness of the salaries, say, the folks in these

1 red folders, you're the witness for FP&L who is
2 suggesting that the salaries are reasonable, correct?

3 A I'm not suggesting it, I'm stating it
4 unequivocally.

5 Q Ms. Bradley walked you through a couple. Let
6 me just walk you through and see if I can better
7 understand your reasoning and rationale for this.

8 What I want to show you is, there's a red
9 folder that has a document number 08839 that I think you
10 had when Ms. Bradley had asked you some questions. And
11 I'm sorry this is a little cumbersome to make sure we
12 get the right document in front of us.

13 There's also some working papers in there and
14 I want to ask you the questions about the working
15 papers.

16 Specifically --

17 A Mr. Moyle, could you please repeat the number,
18 088 --

19 Q The document I want to ask you about is a
20 four-page document that starts 08869-09.

21 A Yes.

22 Q And it says work papers, do you see that?

23 A Yes, I do.

24 Q So what does this document represent?

25 A This is the schedule that we provided related

1 to executive compensation. We were asked by staff to
2 provide work papers to support the adjusted
3 jurisdictional O&M expense calculation, in other words,
4 taking total compensation through allocation and
5 capitalization and jurisdictional adjustment, and this
6 is the work papers that support that walk from the total
7 compensation column to the jurisdictional O&M expenses
8 column.

9 Q So the document that's 08869-09 --

10 A Yes.

11 Q -- under the total compensation, just to make
12 sure that we're on the same document, would you read the
13 total compensation number?

14 A Yes, I will, but both of these are labeled
15 08869-09.

16 Q At the top it says INT 1617 2008 detailed work
17 papers.

18 A Okay. Would you please repeat your question?

19 Q Sure, just read for the record the total
20 compensation figure.

21 A On which row?

22 Q 47.

23 A \$55,614,192.

24 Q That's right. How many people are listed on
25 this page?

1 A For 2008 there were 44.

2 Q So if you did the math that would give you
3 your average compensation for the 44 listed on this
4 page?

5 A It would, although it would not be a very
6 meaningful number since this list would be skewed by,
7 for example, the fact that our CEO and Chairman of the
8 Board's compensation is at the top.

9 Q And just so I understand how you've made the
10 judgment that you believe the salaries reflected on this
11 document are reasonable and appropriate -- you do
12 believe that, right?

13 A Yes, I do.

14 Q For example, do you see line 43?

15 A Yes.

16 Q What is the total compensation number on line
17 43?

18 A \$622,060.

19 Q And how have you made the judgment that you
20 believe that's a reasonable and fair compensation number
21 for the position found on line 43?

22 A We have made that determination through a very
23 -- a very thorough annual benchmarking process that we
24 conduct each year, utilizing data from primarily Towers
25 Perrin, where we match our jobs to their database and

1 compare the market data to our incumbent's data for base
2 plus actual annual incentive award paid, plus fair
3 market value of long-term incentive on date of grant.

4 Actually, let me correct that. The long-term
5 incentive values are valued by the consultants at the
6 survey company using a variety of methods, so it's going
7 to depend on which form of long-term incentive
8 compensation as to how it's valued. But they provide an
9 equivalent value that allows you to compare apples to
10 apples across all companies that participate in the
11 survey.

12 Q Are any adjustments made? I would think the
13 position that's on line 43, I would think that if you
14 held that position for South Dakota Power & Light that
15 maybe the number wouldn't be as high. Is there any kind
16 of adjustment made?

17 A No, we do not adjust as you're suggesting.
18 Although we recognize that in our energy services
19 comparator group, the one you and I previously reviewed
20 in the proxy, which is 16 companies, FPL was in the 80th
21 percentile of that comparator group for revenue size and
22 other data, because revenue is probably the greatest
23 correlation between -- it's what they base their
24 regression analysis on when they do regression analysis
25 of the survey companies because of the correlation

1 between revenue size and appropriate levels of pay for
2 various positions.

3 Q Do you see line 8 up there?

4 A Row 8, yes.

5 Q What is the total compensation on that line?

6 A On row 8 the total compensation, if I have the
7 correct rows, \$1,376,802.

8 Q And with respect to determining the
9 reasonableness of that, did you do anything other than
10 rely on the studies that you referenced in response to
11 my question about the position on line 43?

12 A Yes, absolutely. The Compensation Committee
13 of the Board of Directors relies on the benchmarking
14 studies, as we have previously discussed, and considers
15 other factors, including the individual's performance,
16 industry experience, company experience, potential, and
17 other significant factors which go into determining the
18 appropriate level of pay for that position.

19 Q And flipping through these work papers, I
20 don't want to belabor this, but it appears that every
21 year for those lines that I referenced that the numbers
22 go up, and why is that?

23 A As I previously discussed in my testimony this
24 afternoon, because we do not budget individual by
25 individual; rather, we budget in aggregated buckets of

1 dollars. The only way to show the escalation year over
2 year is to apply the MFR C-35 for the case of most
3 employees, and for our executives we use the specific
4 executive budget. And we just showed the escalation
5 factor applied to every cell to show the approximate
6 escalation of the executive budget.

7 As we discussed earlier this afternoon those
8 dollars are coming out of our revenue requirement and so
9 are no longer pertinent.

10 Q Well, if -- because I understand what's coming
11 out is not picking up all of the salaried employees,
12 correct? It's only a limited group of people that
13 you're pulling the money out of the rate case for, is
14 that right?

15 A To this group that we're looking at here on
16 this schedule, yes.

17 Q And so that the group that's on this other
18 page, the larger document, they're not coming out,
19 correct?

20 A That's correct.

21 Q And with respect to what the ratepayers are
22 being asked to pay for, you're just assuming an
23 escalation rate of a percentage. What is it, two
24 percent?

25 A The MFR C-35 escalation factor for 2010, is

1 3.41 percent, and for '11 it's 0.87 percent. So those
2 are the escalation factors we applied. Though I would
3 point out that of the 3.41 percent escalation year over
4 year, much of it is driven by our nuclear up-rates
5 budgeted overtime. So without that increase in
6 overtime, the base salary increases forecasted are
7 actually going to go up by slightly less than
8 two percent when you factor out that overtime.

9 MR. MOYLE: Mr. Chair, if I could just have a
10 minute to renew my notes?

11 CHAIRMAN CARTER: Absolutely.

12 While Mr. Moyle is looking, at the risk of
13 embarrassing you, which I hope I don't do, do you need
14 to go to the necessary room?

15 THE WITNESS: No, thank you. Thank you for
16 asking.

17 (Brief pause.)

18 BY MR. MOYLE:

19 Q Just a couple of other points.

20 With respect to the financial goals that we
21 had talked about, return on equity and earnings per
22 share, those are all calculated at the group level, are
23 they not?

24 A For that financial matrix that we had talked
25 about, yes.

1 Q And are you aware that this Commission in the
2 Tampa Electric case indicated that financial metrics
3 that are achieved at the parent level shouldn't
4 necessarily automatically flow down into the parent?

5 A I'm aware that this Commission did disallow a
6 small portion of TECO's incentive compensation, but as
7 discussed in detail in my rebuttal testimony, I strongly
8 believe that it's appropriate for incentive compensation
9 programs to recognize the fact that it's the financial
10 strength of the parent company that provides the access
11 to capital and low rates of capital to the utility that
12 it uses to invest in the infrastructure to deliver safe,
13 reliable, cost-effective service to its customers, that
14 ultimately lowers the rate base for customers.

15 Q And I didn't understand -- I mean, it's a fair
16 answer to my question, but you're not really here to
17 talk about the relative risk of the regulated utility
18 versus NextEra Energy and how Wall Street views that,
19 are you?

20 A Not at all. That, of course, was Mr.
21 Pimentel's job.

22 Q Right. And I think staff showed some reports
23 that said, well, maybe some of the merchant plants and
24 some of the other things associated with unregulated
25 entity --

1 MS. CLARK: Mr. Chairman?

2 CHAIRMAN CARTER: Ms. Clark.

3 MS. CLARK: Mr. Moyle got after me for
4 beginning to testifying, and I would make the same
5 objection to his testimony.

6 MR. MOYLE: I will move on. She had answered
7 the question by getting into that area.

8 BY MR. MOYLE:

9 Q But let me ask you this: So I take it from
10 your answer that you, in essence, disagree with the
11 Commission's decision rendered in TECO with respect to
12 that issue, correct?

13 A I would say that I would disagree with the
14 disallowance of any portion of FPL's compensation
15 expense related to incentive comp. I'm not here to
16 testify about the TECO case.

17 MR. MOYLE: Mr. Chairman, I don't think we
18 need to introduce that order, we can cite it in our
19 briefs, but I have a copy if we need to do that.

20 BY MR. MOYLE:

21 Q A couple more questions for you.

22 You state in your rebuttal testimony that you
23 believe compensation is akin to a philosophy, correct?

24 A Compensation is not strictly a philosophy, but
25 it's important to understand that appropriate

1 compensation packages start out with a philosophy, and
2 ours is laid out in detail in my direct and rebuttal
3 testimony as one of a total rewards package.

4 Q And you also believe that the compensation
5 package should not be broken out into its component
6 parts, but should be viewed *in toto*, is that correct?

7 A Yes, I believe that the appropriate way to
8 weigh the appropriateness is to look at the total
9 package rather than pull it apart and look at each piece
10 independently.

11 Q But you would agree, would you not, that this
12 Commission has the ability, should it so desire, to
13 delve into the individual component parts and consider
14 those, and if it reaches a conclusion that a certain
15 portion is inappropriate, to disallow it, correct?

16 A Yes, certainly this Commission has that
17 authority.

18 Q And the philosophy that FPL has adopted with
19 respect to its compensation is to reward its key
20 performers, correct?

21 A That's part of our philosophy, yes.

22 Q And notwithstanding the economic downturn, FPL
23 I think prior to today has not taken any action to
24 reduce salary levels of any of its employees, correct?

25 A It's true that we have reduced salaries.

1 However, your question implies that we have not taken
2 any action in recognition of the economic downturn, and
3 that's false, including the fact that in the fall of
4 2008 we cut back our merit budgets for employee
5 compensation increases for 2009 in recognition of the
6 fact that the economic downturn had caused other
7 companies to similarly cut its budgets.

8 Q Are you an officer of FP&L?

9 A No, I am not.

10 MR. MOYLE: Mr. Chairman, thank you for your
11 patience patient. Madam Witness, thank you for your
12 time.

13 CHAIRMAN CARTER: Mr. Wright?

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

15 CHAIRMAN CARTER: Hang on a second.

16 Commissioner?

17 COMMISSIONER SKOP: Would it be possible to
18 take a brief break, like a five-minute break?

19 CHAIRMAN CARTER: You got you a break, Ms.
20 Slattery.

21 THE WITNESS: Thank you.

22 CHAIRMAN CARTER: We'll come back on the hour.

23 (Hearing adjourned at 4:45 p.m.)

24 (The transcript continues in sequence with
25 Volume 43.)

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

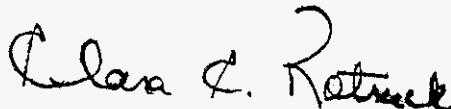
3 COUNTY OF LEON)

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

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

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

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

17
18
19
20 

21 _____
22 CLARA C. ROTRUCK
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