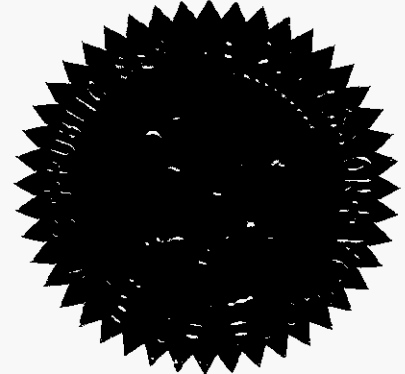


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090505-EI

REVIEW OF REPLACEMENT FUEL COSTS
ASSOCIATED WITH THE FEBRUARY 26,
2008 OUTAGE ON FLORIDA POWER &
LIGHT'S ELECTRICAL SYSTEM.



VOLUME 2

Pages 204 through 282

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING:

COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Wednesday, March 17, 2010

PLACE: Betty Easley Conference Center
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Tallahassee, Florida

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

4 **COMMISSIONER SKOP:** Okay. We'll go back on
5 the record. And where we left off is Public Counsel,
6 Mr. McGlothlin was engaging in a line of
7 cross-examination.

8 Mr. McGlothlin, you're recognized to continue.

9 **MR. MCGLOTHLIN:** Thank you.

10 **BY MR. MCGLOTHLIN:**

11 **Q.** Doctor Avera, prior to the break, I had asked
12 you a series of questions of a general nature, and I
13 want to follow up with just a couple more, and then we
14 will get to your specific recommendations in this case.

15 I think you had agreed with me that if one
16 assumes for the purpose of a hypothetical that the
17 regulator is doing its job correctly and a disallowance
18 is imposed on a utility, then the utility company's
19 investors will see with respect to either a capital
20 investment or the expense incurred something less than
21 the amount actually incurred by the company reflected in
22 the rates, correct?

23 **A.** Well, they may see that. They also have an
24 opportunity for an upside in the base rates if between
25 rate cases they are able to reduce their costs, or if

1 their sales expand, or they can improve their
2 investment, or lower the price they are paying for debt,
3 or do any number of other things they have a chance to
4 earn more than the allowed rate of return.

5 So on the base rate side, once the base rates
6 are set, there is no reconciliation. That's in contrast
7 to the fuel side where there is a reconciliation. So if
8 the company figures out a better way to run its plants,
9 to get lower fuel costs, those benefits do not enure to
10 the shareholder. They are recovered by the customer
11 through the process of fuel reconciliation.

12 Q. Referring to a situation -- and we can use the
13 fuel cost example for purposes of the question. With
14 respect to the fact that, in your words, the best that
15 the investor can see is the full amount of the costs
16 incurred flow through to customers and there is a down
17 side, where the cost is lowered by the Commission
18 through disallowance and that's properly done, what you
19 characterize as a down side is, in effect, the risk that
20 the management may not control its costs and incur
21 unreasonable costs that are filtered out by the
22 regulator, correct?

23 A. That is correct. That is a risk that goes
24 with investing in utility operations that the Commission
25 may find that some of the money you actually spent was

1 not prudently spent and you never get to recover that.
2 So, that is the risk, and I call it asymmetric as to the
3 fuel factor because you can never recover more than you
4 spent, you can only recover less.

5 Q. Now, in prior answers you alluded to the fact
6 that in Florida the fuel cost-recovery factor does
7 incorporate a true-up mechanism, did you not?

8 A. Yes.

9 Q. And would you agree with me that the fuel
10 cost-recovery mechanism was created to recognize that
11 due to the volatility of fuel costs, the base rate
12 mechanism is not an adequate way to address changes in
13 fuel costs?

14 A. That was one of the main motivations for the
15 development of this mechanism, and there was a time when
16 there was some migration away in the early '90s when
17 fuel costs seemed to be stabilizing, but then in recent
18 years the fuel adjustments and trackers and so forth
19 have been multiplying across the nation.

20 Q. You are familiar, are you not, with the fact
21 that in some jurisdictions the fuel cost-recovery
22 mechanism is based upon historical data rather than
23 projections?

24 A. Yes. In some I would say that there is a
25 migration away from that format, and we are seeing more

1 and more jurisdictions go to some form of forecasted
2 cost.

3 Q. And you are aware that in Florida, the
4 utilities are allowed to use projections of fuel costs
5 on which to base their cost-recovery factors?

6 A. Yes.

7 Q. And that means, does it not, that in Florida
8 by using projections the utilities are able to collect
9 fuel at the same time they are incurring the costs. In
10 other words, the recovery is current as opposed to
11 following any type of lag?

12 A. It is current to the extent the forecasts are
13 accurate. They can be wrong by a significant amount,
14 and there is a mechanism in the Florida clause for kind
15 of emergency adjustments. And I think we have seen in
16 the recent past when we had the runup in gas prices, for
17 example, substantial undercollections notwithstanding
18 the forecasted nature of the clause.

19 Q. But the intent is to provide current recovery,
20 and then the precision of recovery is ensured through
21 the incorporation of a true-up mechanism, correct?

22 A. That is correct. It gets you back to
23 recovering the actual dollars that you spent.

24 Q. Well, I'm trying to relate those aspects of
25 Florida's fuel cost-recovery mechanism with what you

1 characterize as the asymmetrical risk exposure with the
2 downside perceived by investors. Bearing in mind that
3 in Florida fuel cost-recovery is accomplished outside of
4 base rates, bearing in mind that there is no lag as
5 there is in some jurisdictions, bearing in mind the
6 incorporation of a true-up mechanism, wouldn't the
7 investor perceive fuel cost-recovery in Florida as a
8 positive?

9 **A.** Well, I think the clause is positive relative
10 to recovery that didn't have some of those
11 characteristics, but it is still a risk. Investors
12 know, and if you read commentaries on FPL or other
13 Florida companies, investors know that there is the
14 chance that not all that is spent will be recovered in
15 Florida, and that has been the experience. So that is a
16 risk, and it is asymmetric in that there is no
17 recovering more than you spent, there is only recovering
18 less.

19 Now, as an investor you hope management is
20 wise, and careful, and makes good choices, and has good
21 luck so that it doesn't get exposed to disallowances,
22 but the chance is there. And then when you expand the
23 possibility of disallowances, as I think this case might
24 do if Doctor Dismukes' proposal is accepted, then that
25 increases the risk. That is a new risk.

1 **Q.** I'm looking now at Page 8 of your prefiled
2 testimony. Beginning at Line 2, you say the benefits of
3 low fuel costs are passed on directly to consumers by
4 reducing the average power cost on the bills they pay.
5 However, the load fuel costs of those generating
6 resources increase the economic exposure of the utility.
7 And at that point in your testimony you say that the
8 relatively low fuel costs associated with nuclear
9 generation heightens the risk of nonrecovery or expands
10 the exposure as seen by the investor, is that correct?

11 **A.** That is correct. And you can see it by the
12 numbers in this case, .4 cents for nuclear, 7 cents for
13 fossil. So there is a big difference between nuclear
14 and fossil. And if you have to replace nuclear with
15 fossil and the Commission finds that that was due to
16 imprudence in the operation of plants, that can be a lot
17 of money. Investors know that, and that goes with the
18 territory of investing in low fuel cost plants.

19 **Q.** Yes, it goes with the territory, and something
20 else that goes with the territory is that those low fuel
21 cost plants typically have, relative to other
22 technologies higher capital costs, do they not?

23 **A.** That is correct, and the company is allowed to
24 earn a fair return on those just like it's allowed to
25 earn a fair return on fossil fuel plants and

1 transmission and distribution and the other investments
2 it makes. But because of this greater exposure, there
3 is greater chance that you will not earn that return
4 because you will have to absorb an imprudent
5 disallowance. But that's a fact and that goes with the
6 territory, and I take no disagreement with that. I
7 think that is part of investing in a nuclear plant.
8 What is new in this case is that risk comes not from
9 operation of the plant, but from outside the plant, the
10 operation of the transmission system.

11 Q. I want to focus for a moment on the flip side
12 of your point about the relatively low fuel costs
13 associated with nuclear units or technologies that are
14 characterized by low fuel costs. Earlier you said that
15 a utility makes its profit by the return on its capital
16 investment, correct?

17 A. That's what is built in the base rates, a
18 fair rate of return on its prudent investment.

19 Q. And the greater the investment that is allowed
20 to be placed in rate base, the higher the return that
21 the utility will receive, correct?

22 A. No. The rate of return is the same across the
23 whole rate base.

24 Q. I'm talking about the rate.

25 A. But the more dollars because you have to

1 support a larger investment. A larger investment leads
2 to more dollars, but exactly the same rate of return as
3 the other investment.

4 Q. That was my assumption in my question to you.
5 Now, let's take another simplistic hypothetical, and
6 let's say that the utility has a choice between -- let's
7 say the need of the utility to serve its customer is to
8 build a generator of 1,000 megawatts, and it has a
9 choice between a generating unit of 1,000 megawatts that
10 costs \$1,000 per installed kW on the one hand, or Choice
11 B, which is 1,000 megawatts also, but it costs \$2,500
12 per kW. Now, would you agree with me that regardless of
13 which it chooses, the fuel cost-recovery mechanism will
14 ensure that it receives fuel costs -- is compensated for
15 its fuel costs dollar-for-dollar absent some question of
16 prudence or reasonableness?

17 A. That is correct. They have the same
18 regulatory bargain, but, of course, the lower fuel cost
19 plant has more exposure if there is imprudence because
20 the exposure is the difference between that low fuel
21 cost and the higher replacement cost.

22 Q. So with respect to both units from the
23 standpoint of profit and loss, the fuel cost is going to
24 be a wash absent some issue of prudence or
25 reasonableness. The utility will recover

1 dollar-for-dollar the fuel cost it incurs.

2 **A.** No, Mr. McGlothlin, I don't believe it's a
3 wash. I think investors regard the risk of the lower
4 fuel cost unit as being greater. If you read investor
5 reports of FPL, say, compared to a company that doesn't
6 have nuclear, investors will notice and reference the
7 fact that there is greater exposure from disallowances
8 in nuclear, and that is one of the reasons that they
9 have a risk premium relative to nonnuclear utilities.

10 **Q.** My question does not relate to differences in
11 perceived risk. My question relates to the way the
12 mechanism of the fuel cost-recovery works. And with
13 respect to either of those two units, absent some issue
14 of prudence or excessive costs, the mechanism will
15 operate such that the utility will recover with
16 precision the actual costs incurred over time.

17 **A.** Yes, the mechanism works the same way, the
18 risk is different.

19 **Q.** All right. Now, with respect to the
20 investment side of the equation and the return side,
21 recall the hypothetical says that one unit costs \$1,000
22 per kW installed, the other costs 2,500 per kW. In
23 terms of the dollars involved, not the rate of return,
24 but the dollars of return received by the utility, would
25 you agree with me that the \$2,500 per kW unit will

1 result in 2-1/2 times the return dollars than the
2 utility would receive with the first option?

3 **A.** Yes, and the utility has to invest or has to
4 raise 2-1/2 times as much capital, so it has a greater
5 obligation to debt-holders and equity-holders. So, yes,
6 it gets more dollars of return, but it also has to pay
7 more dollars to the investors. And if the fair rate of
8 return is truly fair, it's a wash.

9 **Q.** Well, in terms of the return dollars compared
10 to the alternative, it's not a wash; the return dollars
11 are greater, are they not?

12 **A.** You have got more return dollars, but you have
13 got more securities to service. So you have got more
14 dividend dollars, you have got more retained earning
15 dollars, you have got more debt dollars to fund. So,
16 yes, you get more return dollars, but you also have more
17 return obligations, and that's a wash.

18 **Q.** Focusing solely on the dollars collected in
19 the form of a return, would FPL, or would a regulated
20 utility prefer to receive more or fewer dollars of
21 return?

22 **A.** I think the number of dollars depends on the
23 investments necessary to get those dollars. If the rate
24 of return is the same, and if it's properly set, they
25 should be indifferent, the investors should be

1 indifferent.

2 Q. Now, several times in your testimony and also
3 in responses to me, you have said that OPC's
4 recommendation in this case would present a new risk to
5 investors. Do you recall that statement?

6 A. Yes, sir.

7 Q. Would you agree that -- are you saying by that
8 statement that investors are not already aware of the
9 possibility of a disallowance of this type in front of
10 the Commission?

11 A. What do you mean by this type, Mr. McGlothlin?
12 I think investors are aware of disallowances related to
13 plant operations. Those have occurred in the past and
14 investors are very aware. This is a disallowance not
15 related to plant operations.

16 Q. So it's your contention that investors would
17 be surprised by the disallowance proposed by OPC and
18 would think that the risk has increased beyond what they
19 are already aware of?

20 A. I think they would regard it as a new risk.
21 How material it would be, I think, depends on the nature
22 of the decision. But you have got to remember an
23 investor looks at the possibilities, and the amount in
24 this case might be dwarfed by the amount in a future
25 case where there is a bigger difference between the

1 system average cost and the fuel efficient cost, and
2 more megawatts effected for a longer period of time. So
3 this is an unlimited kind of unspecified type of risk,
4 and that's the sort of thing that really shakes up
5 investors, things they can't get their arms around.

6 **MR. McGLOTHLIN:** I'd like to take a moment to
7 hand out a document.

8 **COMMISSIONER SKOP:** Go ahead.

9 Mr. McGlothlin, are we going to need to have
10 an exhibit number for this?

11 **MR. McGLOTHLIN:** Yes, Commissioner.

12 **COMMISSIONER SKOP:** Staff, I think that for
13 ID number this would be 36.

14 **MR. McGLOTHLIN:** And we have given it a short
15 title, which is Excerpt FPL Group Annual Report 2008.

16 (Exhibit Number 36 marked for identification.)

17 **BY MR. McGLOTHLIN:**

18 **Q.** Doctor Avera, do you have that document before
19 you?

20 **A.** I do, Mr. McGlothlin.

21 **Q.** I'll represent to you that this is an excerpt
22 from a larger document of about 130-something pages. To
23 save some paper, we excerpted only the parts that are
24 pertinent to my questions. I'm sure you're familiar,
25 are you not, with the fact that regulated utilities such

1 as FPL have occasion to file reports with government
2 agencies, including the SEC?

3 A. Yes, sir.

4 Q. And they also have occasion to communicate
5 with their investors through such things as an annual
6 report?

7 A. Yes, sir.

8 Q. And are you familiar with the fact that in
9 such communications the regulated utilities, such as
10 FPL, disclose and describe their operations and also the
11 risks that are associated with those operations?

12 A. Yes. That's a requirement of the securities
13 laws.

14 Q. Now, if you will, turn to the second page of
15 the excerpt which is taken from the section called
16 financial highlights of FPL's 2008 Annual Report, FPL
17 Group's Annual Report. And do you see the bottom
18 paragraph that has been highlighted?

19 A. Yes, sir.

20 Q. Would you read the statement that begins with
21 Safe Harbor Statement for the Commissioners?

22 A. Safe Harbor Statement: Any statements made
23 herein about future operating results or other future
24 events are forward-looking statements under the Safe
25 Harbor Provisions of the Private Securities Litigation

1 Reform Act of 1995. Actual results may differ
2 substantially from such forward-looking statements. A
3 discussion of factors that could cause actual results or
4 events to vary is contained in Item 1A, risk factors in
5 the enclosed FPL Group Annual Report on Form 10K.

6 Q. One reason I chose this particular exhibit is
7 because it sort of kills two birds with one stone in
8 that it is a communications both to the investors and
9 to -- by incorporating the 10K, a communication to the
10 SEC.

11 Now, if you will turn -- the next page is
12 simply included to show that what follows is a portion
13 of the 10K to which Page 2 refers. And if you will turn
14 to what is marked at the bottom as Page 6, which is a
15 portion of Item 1 business in the 10K. You'll see
16 another paragraph that has been highlighted in yellow.
17 Would you read that to the Commissioners?

18 A. The FPSC has the authority to disallow
19 recovery of cost that it considers excessively or
20 imprudently incurred. Such costs may include, among
21 others, fuel and O&M expenses, the cost of replacing
22 power lost when fossil and nuclear fuels are
23 unavailable, storm restoration costs, and cost
24 associated with the construction or acquisition of new
25 facilities.

1 **Q.** Now, that's taken from the business section of
2 the description of the 10K. I want to refer you to one
3 more highlighted sentence which appears on what is
4 marked as 19, and you'll see that it is under the
5 section captioned risk factors. And under the first
6 bullet point would you read the highlighted portion
7 there.

8 **A.** Yes. The FPSC has the authority to disallow
9 recovery by FPL of any and all costs that it considers
10 excessive or imprudently incurred.

11 **Q.** Thank you.

12 Now, in addition to the annual report to
13 shareholders and required reports to the SEC, you're
14 familiar with the fact, are you not, that regulated
15 utilities, including FPL, frequently disseminate news
16 releases?

17 **A.** Yes, sir.

18 **Q.** And would you agree that that is something
19 that investors pay attention to?

20 **A.** They do.

21 **MR. McGLOTHLIN:** I want to hand out another
22 document.

23 **COMMISSIONER SKOP:** Very well. Do we need a
24 number for this also?

25 **MR. McGLOTHLIN:** Yes, sir.

1 **COMMISSIONER SKOP:** Okay. So that will be
2 Number 37. And a short title?

3 **MR. McGLOTHLIN:** FPL News Release Dated
4 September 26, 2007.

5 And forgive me, did you say that is 37?

6 **COMMISSIONER SKOP:** Yes.

7 **MR. McGLOTHLIN:** Thank you.

8 (Exhibit Number 37 marked for identification.)

9 **BY MR. McGLOTHLIN:**

10 **Q.** Doctor Avera, do you have Exhibit 37 before
11 you?

12 **A.** I do.

13 **Q.** Now, you are familiar, are you not, with the
14 practice of corporations in general and utilities also
15 to include in press releases some summary of their
16 business operations, including some of the risk factors
17 that are applicable to those operations?

18 **A.** Yes.

19 **Q.** Within this press release, I want to refer you
20 to what is marked at the top Page 4 of 7, which is
21 within the section captioned cautionary statements and
22 risk factors that may affect future results. Would you
23 read to the Commissioners the highlighted sentence
24 there?

25 **A.** Certainly. The FPSC has the authority to

1 disallow recovery by FPL of any and all costs that it
2 considers excessive or imprudently incurred.

3 Q. And you'll notice the date on this was
4 September 2007, correct?

5 A. Yes.

6 Q. The calendar year prior to the year of the
7 Flagami event, correct?

8 A. Yes.

9 Q. Now, you are familiar with the fact that
10 another form of communication between the regulated
11 utilities and the potential investors is through such
12 things as earnings conference calls?

13 A. Yes, sir.

14 Q. And so far we have talked about the public at
15 large in the press release and the existing shareholders
16 who are given the annual report. Would you agree that
17 the conference calls to discuss earnings would be an
18 audience -- would also have potential investors in that
19 audience?

20 A. That is correct. In the former two, also,
21 potential investors, the Form 10K is available on the
22 SEC website, so any present or future potential investor
23 can review it.

24 MR. McGLOTHLIN: I want to pass out one more
25 document.

1 **COMMISSIONER SKOP:** Do we need a number for
2 that, also?

3 **MR. McGLOTHLIN:** Yes.

4 **COMMISSIONER SKOP:** Okay. That will be Number
5 38. And a short title, please.

6 **MR. McGLOTHLIN:** Information for Earnings
7 Conference Call.

8 (Exhibit Number 38 marked for identification.)

9 **BY MR. McGLOTHLIN:**

10 **Q.** Doctor Avera, we provide you with a copy of
11 what has been marked as Exhibit 38. The first page
12 following the cover sheet is captioned Earnings
13 Conference Call, Fourth Quarter and for year 2009,
14 January 26th, 2010. Do you have that document available
15 to you?

16 **A.** Yes, sir.

17 **Q.** Now, if you'll turn to Page 39, which is
18 marked in the lower left-hand corner of this document,
19 you'll see that FPL has included within the information
20 disseminated for purposes of its earnings conference
21 call a section that's captioned cautionary statements
22 and risk factors that may affect future results.

23 Now, in your experience is this a frequent
24 practice to include such information with information
25 that is distributed to analysts?

1 circumstances at the plant and found that imprudent
2 actions caused the shutdown, then I think the company
3 should bear the replacement costs, and I think the
4 replacement costs should be calculated roughly as Doctor
5 Dismukes did. I think that is the way it was
6 calculated. I believe in the drilled hole incident that
7 I was involved in where the Commission found there was
8 imprudent action at the plant. So I think as to plant
9 disallowances, I think investors expect and I think it's
10 established regulatory policy in this jurisdiction and
11 others that to the extent there is a plant shutdown
12 because of imprudence at the plant, the company bears
13 responsibility for replacement power cost.

14 Q. What is your understanding about what caused
15 this particular shutdown?

16 A. My understanding is there was a problem in the
17 transmission, the bulk electric system, the BES, as the
18 Federal Energy Regulatory Commission calls it, in a
19 transmission substation in west Miami. And that event
20 caused a series of circumstances that caused
21 4,300 megawatts of generation to be kicked off-line and
22 it caused 8 percent of FPL's customers to lose power.
23 Although the power was completely restored to the
24 customers that weren't interruptible within three hours,
25 many were recovered after one hour, and the bulk after

1 two hours.

2 Q. Do you know what caused that event?

3 A. I have read the FERC report accepting the
4 settlement between FERC and the North American Electric
5 Reliability Corporation, and I know that and I know that
6 FPL has agreed to take responsibility. I can tell you
7 what's there, but I was not there and I am not an expert
8 in engineering. But I understand there was a series of
9 events; certain protections were disabled; and as a
10 result of that series of events and the fact that
11 protections were disabled and the central control center
12 was unaware of them led to the transmission outage.

13 Q. Is it your understanding that a Florida Power
14 and Light employee was responsible for disabling the
15 protection?

16 A. That is what I understand from reading the
17 report. Again, I have no personal knowledge.

18 Q. So it was the Florida Power and Light employee
19 disabling the protection that resulted in this problem
20 with the grid that caused the automatic shutdown at the
21 plant, correct?

22 A. I think there was a series of circumstances
23 that led to that. I think it was not just one action by
24 one employee at one time. I think, as I read the
25 report, there were just circumstances that developed

1 over time that led to the ultimate fire and disabling
2 and outage.

3 Q. But it was occasioned by Florida Power and
4 Light employees?

5 A. I think Florida Power and Light has taken
6 responsibility for the outage. I think their settlement
7 does not admit imprudence, but they have agreed at the
8 federal level to accept responsibility, and I think
9 there is a stipulation at the state level where FPL has
10 accepted probability.

11 MS. BRADLEY: No further questions.

12 COMMISSIONER SKOP: Thank you, Ms. Bradley.

13 Ms. Kaufman.

14 MS. KAUFMAN: Thank you, Commissioner.

15 CROSS EXAMINATION

16 BY MS. KAUFMAN:

17 Q. Doctor Avera, good afternoon. I just have a
18 few short questions for you.

19 You said in your summary, and you said several
20 places, I think, in your prefiled testimony, and I'm
21 going to paraphrase, that essentially if the Commission
22 were to accept Doctor Dismukes' position and the
23 position of the intervenors in this case that that would
24 create a disincentive for Florida Power and Light to
25 invest in nuclear generation in the future. Is that

1 right?

2 **A.** Yes, I think a little bit further. Not only
3 nuclear, but any low energy cost alternative like wind,
4 solar, renewable. And it would not just be FPL, because
5 presumably this policy that the Commission applies here
6 would apply to other electric utilities, so I think
7 there would be spillover to the other electric
8 utilities.

9 **Q.** Would it be your advice to FPL if Doctor
10 Dismukes' position is accepted that they not invest in
11 the future in any nuclear, wind, or solar generation?

12 **A.** No. I think there are many considerations
13 that FPL should consider in deciding whether to go
14 forward with the projects they have underway or to do
15 new ones. But I think this is an extra risk that I
16 don't believe was present before such a decision would
17 be rendered and is present now.

18 Certainly, investors know and the company
19 knows that there can be disallowances for imprudence.
20 They know and have experienced when there is a problem
21 at the plant and the outage is found to be imprudent
22 that replacement power will have to be paid. I think
23 the new twist here is not a problem at the plant, a
24 problem on the transmission system that happened to
25 effect the plant where there is no evidence that I have

1 seen or that Doctor Dismukes has advanced that there has
2 been imprudent behavior.

3 **Q.** And when you are talking about imprudent
4 behavior, I think you discussed this with Ms. Bradley,
5 you are talking about at the nuclear plant. But you
6 have agreed that the events that led to the trip of the
7 nuclear plants were caused by the actions of FPL
8 employees at the substation, correct?

9 **A.** I haven't agreed because I don't know. I am
10 saying that I have read documents where FPL has agreed
11 to take responsibility and they have entered settlements
12 at the federal level and at the state accepting that
13 responsibility.

14 **Q.** And you certainly don't disagree with the
15 facts as they are set out in the stipulation and the
16 order of the FERC?

17 **A.** I have no reason to disagree. I assume they
18 are correct, but I can't myself on my own expertise
19 vouch for them.

20 **Q.** If the Commission were to accept Doctor
21 Dismukes' and the intervenors' position in this case,
22 would you advise Florida Power and Light to operate
23 Turkey Point Units 3 and 4 differently?

24 **A.** I don't know that I would. I think -- again,
25 I'm not a nuclear person. That would be Mr. Stall who

1 would make those decisions, but what I'm saying is there
2 would be a risk there that was I don't believe before
3 which is there can be an outage caused outside the plant
4 which has a significant economic effect because of the
5 big difference between nuclear fuel cost and replacement
6 fuel cost. That's new, and that would be a
7 consideration. Whether it would tip the balance on
8 Turkey Point 6 and 7 or any other project, I can't say.

9 Q. Now, we have talked a little bit about
10 incentives going forward. Are you aware of the current
11 incentives that are available to utilities under the
12 Florida law for the construction of nuclear plants?

13 A. Yes, I am, and I cite that. I mean, clearly
14 there is a policy here in Florida to favor the
15 development of nuclear power and to favor low cost
16 energy options. There's a lot of environmental reasons,
17 economic reasons, geographic location, that's the
18 policy. And I think this would undermine that policy.
19 It would send a mixed message. So I'm not proposing a
20 new incentive, I'm just saying you have these incentives
21 in place, it's obviously a policy. This kind of
22 disallowance would cut the other way.

23 Q. I guess I should have been more specific in my
24 question to you. Are you aware of the preconstruction
25 incentives that are currently contained in Florida law

1 for nuclear plants?

2 **A.** Yes, I am.

3 **Q.** Okay. And are you aware that those
4 preconstruction costs are recovered through the nuclear
5 capacity recovery clause in Florida?

6 **A.** Yes, I am.

7 **Q.** And are you also aware that the law provides
8 that in the event that for some reason a nuclear project
9 is canceled that those costs are still recoverable by
10 the utility?

11 **A.** Yes, clearly a policy favoring the development
12 of new nuclear power.

13 **MS. KAUFMAN:** Thank you. That's all I have.

14 **COMMISSIONER SKOP:** Thank you, Ms. Kaufman.

15 Before we go to staff, Commissioners, what is
16 the will of the Commission in terms of proceeding
17 forward? We have one additional witness on direct
18 testimony. I'm comfortable going until 5:00 or 5:30,
19 but I just wanted to get consensus from my colleagues.

20 **COMMISSIONER EDGAR:** May I ask Mr. Butler
21 about how -- do you have any idea about how long your
22 direct of the OPC witness is?

23 **MR. BUTLER:** My cross-examination of --

24 **COMMISSIONER EDGAR:** That's what I meant, yes.

25 **MR. BUTLER:** -- the OPC witness. I'm thinking

1 a half hour to 45 minutes.

2 **COMMISSIONER EDGAR:** What about staff?

3 **MR. YOUNG:** About five minutes.

4 **COMMISSIONER EDGAR:** Commissioner Skop, thank
5 you for asking. I would say 5:00-ish.

6 **COMMISSIONER SKOP:** Okay.

7 **COMMISSIONER KLEMENT:** And, also, if possible
8 5:00-ish for me.

9 **COMMISSIONER SKOP:** Okay. All right. We'll
10 plan on adjourning at 5:00 for the day. Hopefully we
11 can make some progress. If it needs to still over a
12 little bit longer, I will take a census, but I wanted to
13 check for air conditioning purposes. So with that,
14 staff, you're recognized.

15 **MR. YOUNG:** Thank you, sir.

16 CROSS EXAMINATION

17 **BY MR. YOUNG:**

18 **Q.** Doctor Avera, good afternoon.

19 **A.** Hello, Mr. Young.

20 **Q.** I believe Mr. Butler referred some questions
21 to you as it relates to FPL's development of the eight
22 hours for which FPL should be responsible for -- their
23 position that they should be responsible for. Do you
24 remember? Have you ever heard that conversation?

25 **A.** Well, I am responsible for the policy.

1 Mr. Yupp, given his knowledge of the system determined
2 that eight hours was the time when the transmission
3 system had stabilized, and you were back to normal
4 dispatching of Florida Power and Light units. So I said
5 we ought to find out what that period of time was. It
6 was Mr. Yupp's expertise that determined in this case it
7 was eight hours.

8 **MR. YOUNG:** Mr. Chairman, I'm a little bit
9 confused. Maybe Mr. Butler can chime in and explain,
10 because I know he deferred some questions to Doctor
11 Avera.

12 **COMMISSIONER SKOP:** Mr. Butler, if you could
13 please opine as to the -- to clarify the confusion.
14 Obviously staff has some questions. We need to identify
15 the appropriate witness such that staff can get their
16 questions answered. And I hate to have to go back to
17 witnesses on rebuttal, but that's the alternative. So
18 if you could please provide some clarification, please.

19 **MR. BUTLER:** If there are questions -- I mean,
20 as I recall the sequence, Mr. Yupp answered some
21 questions -- actually, some reasonably detailed ones
22 about how the eight-hour period was determined and that
23 was subsequent to staff's questions. He is the
24 appropriate person to ask those questions. I don't
25 recall Mr. Young asking Mr. Yupp specifically about the

1 eight-hour calculation. It's fine with me if he has
2 questions about the specifics of the eight hours to
3 raise those when Mr. Yupp comes back on rebuttal.

4 Certainly, Doctor Avera can address the
5 policy, but I think what Doctor Avera just said is
6 right, that the decision of the eight hours is the right
7 period was Mr. Yupp.

8 **COMMISSIONER STEVENS:** Mr. Chairman.

9 **COMMISSIONER SKOP:** Hold on. Commissioner
10 Stevens.

11 **COMMISSIONER STEVENS:** Maybe I missed it, but
12 I thought that I asked the prior witness about the eight
13 hours and that I was supposed to ask Doctor Avera that.

14 **COMMISSIONER SKOP:** Commissioner Stevens, that
15 is my recollection, also. Mr. Butler, again, what I'm
16 trying to do is work constructively with the parties so
17 that the parties can all get their questions answered.
18 What I don't want to do is engage in a bouncing witness,
19 you know, pointing a finger at someone, only for that
20 person to abstain any knowledge. And then we get into a
21 question where we have released witnesses.

22 So the alternative, again, would be to ask
23 these questions on rebuttal, which would be a little
24 unusual, but I feel it's necessary to get the answers.
25 So I would be willing to afford that latitude if we have

1 to go there, but hopefully we won't. But I thought I
2 heard the same thing as Commissioner Stevens that
3 Mr. Yupp just basically testified that he was given the
4 model inputs, and he just ran the financial analysis
5 based on those inputs. So somebody has to have
6 knowledge of who drove those inputs.

7 **MR. BUTLER:** Here is my understanding of the
8 dividing line and however it would be appropriate to
9 have Mr. Yupp and Doctor Avera divide up their time of
10 addressing it is fine with me. I think that the policy
11 implications, kind of what's driving coming to a figure
12 like eight hours, trying to decide when is the FPL
13 system sort of recovered without regard to the nature of
14 the -- specific nature of the nuclear units that were
15 out of service, that policy decision that that was the
16 appropriate way to avoid these disincentives that Doctor
17 Avera is testifying to, that's clearly for Doctor Avera.

18 What I think Doctor Avera was just being a
19 little careful about is that I don't know that he is the
20 person who knew that that period, sort of to identify
21 when the system was back to the stable condition, was
22 eight hours as opposed six hours, or ten hours, or
23 whatever might be another number. And I think that
24 particular number really is in Mr. Yupp's can to be
25 addressing.

1 **COMMISSIONER SKOP:** Okay. So Mr. Yupp would
2 be able to testify to the appropriateness of when the
3 system became stable, notwithstanding the assumption
4 power issues associated with nuclear generation.

5 **MR. BUTLER:** That is correct, yes. He is
6 actually quite familiar with what was going on in that
7 period of time and can talk to why he thinks that's the
8 appropriate end point of that time period, yes.

9 **COMMISSIONER SKOP:** Commissioner Stevens, does
10 that answer your question?

11 **COMMISSIONER STEVENS:** Not really, but --

12 **COMMISSIONER SKOP:** We'll get to the right
13 witness, I assure you.

14 Ms. Bennett, you're recognized.

15 **MS. BENNETT:** I have an unusual suggestion
16 that might give us some answers that we need instead of
17 going back and forth between the two witnesses. Perhaps
18 Mr. Yupp and Doctor Avera could testify together right
19 now and do a panel question and answer that would maybe
20 give us the big picture which is, I think, what staff is
21 looking for, and Mr. Stevens, too.

22 **COMMISSIONER SKOP:** Okay. That would be a
23 situation I have never encountered since I have been on
24 the Commission, having two witnesses at once. Certainly
25 I would like to hear from Ms. Helton as to the

1 appropriateness of that.

2 **COMMISSIONER STEVENS:** Mr. Chairman, before
3 you go --

4 **COMMISSIONER SKOP:** Commissioner Stevens.

5 **COMMISSIONER STEVENS:** And I'm going back to
6 Mr. Butler's opening statement, which is, I believe, the
7 key to what we are hearing today, and that is the
8 measurement process, which is the hours and the dollar
9 amount, and then the second item is how to handle the
10 customers. And obviously, I think, one of the biggest
11 issues is whether it is eight hours, whether it's 48
12 hours, or whether it is 107 hours, or 158 hours. And
13 that's why I had asked the question to the witnesses
14 before and why I was asking all the witnesses the same
15 question about how long the customers were without
16 power.

17 So if it takes a panel to get the question
18 answered, then let's go there. I would rather not,
19 because I don't I think that's the way to do it, but if
20 it takes that to get there, let's go.

21 **COMMISSIONER SKOP:** What I would like to do is
22 hear from Ms. Helton and possibly the other parties. I
23 don't want any decision to create prejudice, but I have
24 never seen two people up there at once with possibly one
25 rare occasion. I have to think way back on that one.

1 But, Ms. Helton, you're recognized.

2 **MS. HELTON:** Mr. Chairman, you probably don't
3 find it hard to believe that I do have an opinion, but
4 maybe it would be better to listen to the parties first
5 and see whether they have an objection or not, and then
6 I'll offer my opinion.

7 **COMMISSIONER SKOP:** Very well. Mr. Beck. Or
8 Mr. McGlothlin, sorry.

9 **MR. BECK:** Mr. McGlothlin is shy about saying
10 this, but he says this appears to be a new risk. I
11 don't have really a preference one way or the other.

12 **COMMISSIONER SKOP:** Okay. Ms. Bradley.

13 **MS. BRADLEY:** Right now I just would like
14 somebody that could answer my question. When Mr. Yupp
15 was on there he said it wasn't him, he just essentially
16 crunched the numbers they gave him, and that it was Mr.
17 Stall. And now they are saying it's Mr. Yupp who did
18 this information and all, so I just want somebody to
19 answer the question.

20 **COMMISSIONER SKOP:** Okay. Very well.

21 Ms. Kaufman.

22 **MS. KAUFMAN:** Commissioner, I'll admit to be
23 equally confused, as well. I think that Florida Power
24 and Light has the burden of putting on their case in the
25 appropriate manner so that the parties and, of course,

1 the Commissioners get the information that they need.
2 And as Ms. Bradley said, it has just sort of been punted
3 from witness to witness. I do have a problem. These
4 witnesses were not presented as a panel, which is rarely
5 done sometimes at the Commission, and so I think I would
6 object to them appearing jointly and kind of bouncing
7 their ideas off each other.

8 **COMMISSIONER SKOP:** I'm from Florida, and
9 we're the Gators, but I think at FSU they call that the
10 fumblerooskie. All right.

11 Ms. Helton, if you could please provide some
12 advisory staff guidance from Legal, I would appreciate
13 it.

14 **MS. HELTON:** Can we hear from Mr. Butler, too,
15 please.

16 **COMMISSIONER SKOP:** Mr. Butler.

17 **MR. BUTLER:** FPL would not object to putting
18 Mr. Yupp and Doctor Avera on as a panel. We are also
19 okay with the approach of simply having Mr. Yupp come
20 back to address whatever has been referred to him.

21 Let me briefly, if I may, comment to this
22 question of the distinction here. You know, we have
23 got, as Commissioner Stevens pretty much summarizes it,
24 you've got eight hours, you've got 48 hours, and then
25 the 158 and 107. And the eight hours is basically a

1 number representing this point at which the system is
2 stabilized. The policy of why it would be appropriate
3 to look at measuring the replacement power costs by that
4 period of time is certainly what Doctor Avera testifies
5 to. Mr. Yupp is our witness who would be in the best
6 position to talk to, you know, why that eight hours is
7 the right period to measure that. Forty-eight hours,
8 you know, is a number that has cropped up a few times.
9 I think Mr. Yupp is the one who had testified to this.

10 It is a number that really is kind of chosen
11 as representative of an uncomplicated nuclear unit
12 return to service after an unplanned outage. That would
13 clearly be Mr. Stall talking to why that is the right
14 number for it. And, of course, the 107 and the 158 is
15 kind of the actual times that the units were out
16 service. I don't know that they need anybody
17 specifically to be addressing them. But that's what we
18 have got.

19 Doctor Avera is clearly the person that is
20 presenting our position on the policy for why we feel
21 that the eight hours is the right figure. Questions
22 about why it's eight hours versus seven or nine, and why
23 it's 48 hours versus some other figure, those are
24 respectively Mr. Yupp and Mr. Stall who would be
25 addressing them. And whatever procedure is most

1 efficient to get that information out is fine with me.

2 **COMMISSIONER SKOP:** Thank you.

3 Commissioners, is there a preference from the
4 bench as to which way to go before we go back to Ms.
5 Helton? Commissioner Stevens.

6 **COMMISSIONER STEVENS:** I guess we can handle
7 it -- I mean, if it's okay with everybody, I guess,
8 through the rebuttal process, which I think is very
9 unusual, but I don't think a panel would be the way to
10 go.

11 **COMMISSIONER SKOP:** Commissioner Edgar, if you
12 have anything to add?

13 **COMMISSIONER EDGAR:** No.

14 **COMMISSIONER SKOP:** Commissioner Klement?

15 Ms. Helton.

16 **MS. HELTON:** I think I'm treading on a little
17 you bit of dangerous ground, because I have heard what
18 Commissioner Stevens' statements are about this. But it
19 is not unusual for the Commission to hear testimony by
20 way of a panel. Usually the panel files the testimony
21 together, but that is not unheard of, and sometimes I
22 think it can be preferable.

23 Here we have a situation where I admit that I
24 don't understand all the technicalities of this case and
25 am not sure that I have a great depth of knowledge with

1 respect to the testimony that has been presented so far
2 under cross-examination, but I am a little bit confused
3 about which witness to ask which question based on the
4 discourse that has happened today. So it seems to me
5 that if we are going to have -- the end goal should be
6 for the parties to have their questions answered, for
7 you to have a complete record on which to make a
8 decision.

9 I hear what Ms. Kaufman has said with respect
10 to that Power and Light has the burden here, and I
11 totally agree that Power and Light has the burden to
12 prove its case with respect to what cost-recovery should
13 be allowed for the customers, or from the customers, but
14 it seems to me that if it's your pleasure, Mr. Chairman,
15 that a panel would be appropriate, whether it's here, or
16 if the questions can't get asked on the direct case,
17 maybe bring the witnesses up on rebuttal in a panel and
18 have them altogether.

19 **COMMISSIONER STEVENS:** Mr. Chairman.

20 **COMMISSIONER SKOP:** Commissioner Stevens.

21 **COMMISSIONER STEVENS:** And thank you, Ms.
22 Helton.

23 If it's Ms. Helton's recommendation, I will
24 certainly go with her recommendation. I believe both
25 witnesses quoted the eight-hour period, and just so both

1 witnesses know, I'll ask where the eight hours came
2 from.

3 **COMMISSIONER SKOP:** Thank you, Commissioner
4 Stevens.

5 And to your point, I tend to concur more with
6 your original point of view than Ms. Helton on this
7 particular issue. I think what I'd like to do to
8 preserve the evidentiary record is to proceed with each
9 witness. If we either get answers from the questions or
10 we don't, go through that process. And, again, time, we
11 are running into some time considerations today.
12 Obviously tomorrow may be a long day. But if we can't
13 get answers at the conclusion of Doctor Avera's
14 testimony, then I think my preference would be to
15 proceed with the testimony of Witness Keith and then
16 prior to closing FPL's case in chief, put the panel up
17 there even if it is all three people, Stall, Yupp, and
18 Avera, and we will get the answers we need during their
19 case in chief. So it would be to recall those people
20 during their direct -- those witnesses during their
21 testimony even we have to recall them up as a panel to
22 get the answers that seem to be missing.

23 **MR. BUTLER:** We would certainly accommodate
24 that.

25 **COMMISSIONER SKOP:** Ms. Helton, does that

1 sound like an appropriate plan of action as opposed to
2 getting into rebuttal?

3 **MS. HELTON:** That sounds like a great idea to
4 me, Mr. Chairman.

5 **COMMISSIONER SKOP:** Let it be done. Okay.
6 Mr. Young, you may continue.

7 **BY MR. YOUNG:**

8 **Q.** Doctor Avera, is the eight hours tied to any
9 specific customers without power?

10 **A.** No, Mr. Young. All customers had power after
11 three hours. The eight hours is based on the policy
12 that we want to identify the transmission-related cost.
13 So those costs are incurred from the transmission event
14 until the transmission system had stabilized and FPL
15 could dispatch its system in a normal manner. So my
16 direction was to implement that policy we need to find
17 the period of time between the triggering event and when
18 the transmission system had stabilized. And Mr. Yupp
19 determined through his analysis and expertise that that
20 was a period of eight hours.

21 So it is my belief that that is the right
22 measure. The particular number of hours comes from Mr.
23 Yupp, but I am responsible for believing that the
24 increment of replacement power should be during that
25 period when the transmission system was disturbed from

1 the triggering event.

2 Q. And I think you said that customers were
3 without power for three years?

4 A. A maximum of three hours. I think that 56
5 percent were restored within the first hour, 84 percent
6 were restored within two hours, and by the third hour
7 all customers had been restored except for a few
8 industrial interruptible customers.

9 Q. Now, was the eight hours tied to how long the
10 fossil units were out?

11 A. Well, it was the period of time when the
12 system could not be dispatched normally, so after that
13 time the fossil units could be dispatched, so the fossil
14 units that were needed to meet the load were available
15 and had access to operate and to distribute through the
16 bulk electric system. So at that time, the disturbance
17 of the transmission system ceased to be an economic
18 factor in the cost of fuel.

19 Q. Do you know which ones were out?

20 A. Well, I know initially that 4,300 megawatts
21 were out, so that's a good chunk of, I imagine, the
22 available capacity. As to which particular units, Mr.
23 Young, I do not know.

24 Q. And were the eight hours tied to the amount of
25 time FPL purchased power?

1 **A.** I believe that FPL by the end of eight hours
2 had sent all the purchased power back, had ceased
3 operations of the combustion turbines. So after eight
4 hours it was operating with dispatching its units in
5 economic order.

6 **Q.** Now, were you here for my discussion with Mr.
7 Yupp as it relates to system average cost versus avoided
8 cost?

9 **A.** Yes.

10 **Q.** Okay. Did you suggest the use of system
11 average costs to Mr. Yupp or did you decide to use the
12 system -- did you decide to use the system average after
13 hearing the proposed policy?

14 **A.** No, I thought that was the appropriate policy
15 and I advocated it, and I justified it in my testimony.

16 **Q.** Okay. And you were here for my discussion as
17 relates to the parties' position as relates to FPL
18 versus OPC and the remaining of the intervenors?

19 **A.** Yes, Mr. Young, I was.

20 **Q.** Okay. Now, has the Commission ever required a
21 refund using the system average approach that FPL is
22 asking the Commission to implement?

23 **A.** No, but I don't know of any circumstance like
24 this where you have a transmission outage for which the
25 company is taking responsibility. So it has never been

1 done, but I don't think the issue has ever presented
2 itself to this Commission, or as far as I know, any
3 other commission.

4 Q. Okay. But the Commission has required a
5 refund using the incremental cost approach proposed by
6 OPC, correct?

7 A. Yes, for individual plants, and I believe that
8 that is the appropriate approach when there is a
9 disallowance for replacement power for a plant-caused
10 imprudent problem.

11 Q. And so the Commission decision in this
12 docket -- the same question that I asked Mr. Yupp. The
13 Commission decision in this docket is how much between
14 the 14.5 to 15.9 should FPL be responsible for paying
15 and how much should the ratepayers be responsible for
16 paying, correct?

17 A. Yes. You know, I believe the 14.5 should be
18 the starting point, because in my experience a
19 redispatched system is a more accurate rendering of the
20 cost than basically a back of the envelope using average
21 numbers.

22 Q. And am I correct in understanding that FPL's
23 argument is really a policy argument because there has
24 been no Commission decision as relates to which method
25 to apply?

1 **A.** As to between the two million and the 14.5, I
2 believe that's a policy argument. I don't believe there
3 is dispute about the numbers, and I think the staff
4 interrogatory has laid out all of the relevant numbers,
5 the 42 interrogatory. I think the issue before the
6 Commission, and I believe it's an issue of first
7 impression, is how are you going to measure a
8 transmission outage as opposed to a plant created
9 outage.

10 **COMMISSIONER SKOP:** Mr. Young, if you can hold
11 on for one second. I think Commissioner Klement has a
12 question.

13 Commissioner.

14 **COMMISSIONER KLEMENT:** No, I will wait until
15 staff is finished. I'm sorry.

16 **COMMISSIONER SKOP:** Very well. You may
17 continue.

18 **BY MR. YOUNG:**

19 **Q.** So let me see if I understand it. Basically,
20 you are saying -- so, the Commission should adopt a
21 standard that if a plant shutdown occurs and it's not
22 based on nuclear generation, that the company should not
23 be penalized, correct?

24 **A.** That's correct. If it is not because of the
25 operations of the plant, if it's because of some other

1 thing on the system, in this case a bulk transmission
2 event, then you shouldn't apply the same standard as
3 when there is a plant shutdown caused at the plant.

4 Q. Okay. So same company that owns both -- in
5 this example, the same company that owns both the plant
6 and the transmission, the company employee caused the
7 shutdown, so the Commission should not penalize the
8 company because it is not generation, correct?

9 A. No. I believe the company has agreed to pay
10 replacement power, so it's not an issue of whether the
11 company will be penalized or whether the customers will
12 get a reimbursement. The issue is how shall we measure
13 the reimbursement when we don't have a plant imprudence.
14 I think all of the cases, and I was in the drilled hole,
15 I think you and I talked at length in that case, and I
16 have been in many other cases in other states where
17 there is plant imprudence, but that's not what we have
18 here.

19 Q. Okay. Now, you mentioned drill hole. I'm
20 happy you mentioned that. Now, in the drill hole
21 incident in 2008, FPL claimed that it was not at fault
22 for the outage, correct?

23 A. Correct.

24 Q. And do you remember FPL's arguments in that
25 case?

1 **A.** Well, I think there are two arguments. The
2 one that I was the witness for, which is OPC had argued
3 that a standard other than prudence should be applied to
4 the drilled hole incident, a fair and reasonable rate
5 type approach.

6 **Q.** And FPL's argument is?

7 **A.** Is that, no, you shouldn't change the
8 standard. That that would be upsetting. You should
9 apply the standard of prudence. The Commission ended up
10 applying the standard of prudence.

11 Now, the second argument, which I was not
12 involved in, was whether or not the company's actions
13 relative to the drilled hole, the allowing the employee
14 access to the plant and so forth, was prudent or not.
15 And FPL took the position it was prudent. The
16 Commission found that FPL didn't carry its burden of
17 proof.

18 So there was a \$6 million disallowance based
19 on a finding of imprudence at the plant. And that was
20 consistent -- while I didn't take a position on prudence
21 or imprudence, the finding was consistent with what I
22 thought the appropriate policy would be, which is no
23 disallowance absent a finding of imprudence.

24 **Q.** And partly that was based because it was FPL's
25 employee that caused the drill hole?

1 **A.** Well, I think it was a little more than that.

2 **MR. BUTLER:** Excuse me. I object to the
3 question. It assumes facts not in evidence. I believe
4 the record would show that the individual in question
5 was not an FPL employee.

6 **COMMISSIONER SKOP:** Hold on. Mr. Young, to
7 the objection.

8 **MR. YOUNG:** I will withdraw. I will rephrase
9 the question.

10 **COMMISSIONER SKOP:** All right. Reframe.

11 **BY MR. YOUNG:**

12 **Q.** It was a contractor, FPL hired a contractor
13 that caused the drilled hole, correct?

14 **A.** That is my understanding.

15 **Q.** And the Commission found that FPL was
16 imprudent, correct?

17 **A.** I believe the technical finding was FPL did
18 not carry its burden to demonstrate that its actions
19 were prudent.

20 **Q.** Okay. Isn't that same thing we have here in
21 terms of -- let me ask you this. The Commission
22 rejected FPL's argument 5-0, correct?

23 **A.** In terms of the imprudence, I believe the
24 Commission accepted my policy argument that absent
25 imprudence there shouldn't be a disallowance.

1 **Q.** And the Commission -- in terms of FPL's second
2 argument, the Commission rejected that argument 5-0?

3 **A.** Yes, that is my understanding.

4 **Q.** But isn't it the same thing we have here, sir,
5 where FPL is arguing a position that they shouldn't be
6 held accountable -- well, let me rephrase. FPL is
7 arguing -- you are arguing that FPL should not be held
8 accountable for the total cost because it was a
9 transmission event instead of a generation event?

10 **A.** Exactly, Mr. Young. I think in this case we
11 don't have the second argument because FPL has accepted
12 responsibility. So we are not arguing over
13 responsibility, we are arguing over what is the
14 appropriate measure of replacement cost. And my
15 argument is this is not a plant incident. The evidence,
16 I think, from Mr. Stall, and Doctor Dismukes didn't take
17 opposition to it, is that in the plants coming off-line
18 as they are required to do was according to NRC
19 requirements. Everything that was done after was
20 reasonable and according to the best available safe
21 operation of the plant. So in the fact situation where
22 there is not a problem with the plant, I don't think you
23 ought to measure replacement power the same way you
24 would if there had a been plant problem, because this
25 was not a plant problem, this was a transmission

1 problem.

2 Q. But it takes me back to my original question.
3 The same company, the same employee, owned both,
4 correct?

5 A. Yes.

6 MR. YOUNG: Okay. No further questions.

7 COMMISSIONER SKOP: Thank you, Mr. Young.

8 And, Commissioners, I know we have a couple --
9 I think Commissioner Klement asked first, so I will
10 recognize him.

11 Commissioner Klement.

12 COMMISSIONER KLEMENT: Thank you.

13 Doctor Avera, my questions will follow on
14 Mr. Young's line of questioning which he just ended in
15 the subject of prudence and imprudence. We have talked
16 a lot about that this afternoon. And how do you define
17 imprudent in this context for allowing or disallowing
18 costs?

19 THE WITNESS: Well, I think the standard of
20 imprudence is that the company departed from the norm of
21 good and sound management. Now, I think it's almost
22 like a ball and a strike in a baseball game. You know,
23 it's imprudent if the Commission says it's imprudent.

24 I think in this case the company has agreed to
25 take responsibility for the outage. But what is missing

1 in this case is I don't think there has been any claim
2 that the company was imprudent in its actions at the
3 Turkey Point units. The unit operated as it was
4 supposed to operate. And given the facts and
5 circumstances according to Mr. Stall, the company did
6 everything it could to get the units back up on-line as
7 fast as they could in a safe reliable manner.

8 **COMMISSIONER KLEMENT:** Could you cite one, or
9 two, or three examples of imprudent actions from your
10 experience in utility consulting?

11 **THE WITNESS:** Well, there was a case -- and I
12 think OPC might have official notice -- a Gulf States
13 case where I was a consulting expert. Gulf States had a
14 nuclear plant, River Bend, which is in Louisiana, but it
15 serves both Texas and Louisiana. Gulf States
16 headquartered in Beaumont serves both states.

17 There is a transformer at the plant that
18 the company uses when the plant is off-line to get power
19 from the transmission system to step it down to 13.8
20 kilovolts and to run the auxiliaries in the plant. That
21 transformer had two -- there was an A and B, a primary
22 and a backup. The backup went down. The company did
23 not bring in a replacement. It didn't take the
24 appropriate action to get the spare parts on the site if
25 the primary went down. The primary went down and the

1 plant couldn't be started up after another outage.

2 So what both the Texas and the Louisiana
3 Commission did is said, okay, we had this outage and the
4 outage was extended a certain amount of time because
5 this transformer was unavailable. And, therefore, we
6 are going to figure how many hours the outage was
7 extended because of that transformer problem, and then
8 we are going to charge the company the replacement power
9 during those hours because we believe it was imprudent.
10 The commissions, both commissions believed it was
11 imprudent, as I recall, that the company didn't take
12 appropriate action to prepare for the contingency that
13 the other transformer would fail.

14 **COMMISSIONER KLEMENT:** Thank you.

15 And you do not consider it imprudent, I take
16 it from your position and your testimony, that
17 abnormally fast generator loading implemented by the
18 operating crew which had insufficient guidance for the
19 initial loading of the main generator and for
20 stabilizing the power is imprudent. Those are direct
21 quotes from Page 413 of the exhibits which identified
22 root causes which were discussed this morning.

23 **THE WITNESS:** Commissioner Klement, I'm not
24 the nuclear expert, but let me say I do know this from
25 40 years of working in the regulatory arena both as a

1 regulator and a consultant, is the standard of prudence
2 is not perfection. We are dealing with human beings
3 here. Human beings are not perfect. And I don't think
4 commissions -- and I think there is probably some law,
5 again, not as a lawyer -- that commissions cannot
6 hold -- and it is not reasonable and it is not good
7 policy to hold a utility to a standard of perfection.

8 So I think what the Commission must do is look
9 at the facts and circumstances and determine in its
10 judgment did the behavior cross the line between normal
11 management or imprudent and reckless management. To
12 me -- well, Mr. Stall is the one that can talk about
13 that. But the Commission, that's what the Commission
14 does. In the drilled hole incident, the company had an
15 argument why it didn't think it was imprudent, the
16 Commission didn't find that persuasive. That's what the
17 Commission does is evaluate these arguments.

18 I'm not taking a position on that. I'm just
19 saying Doctor Dismukes didn't depend on imprudence in
20 saying the whole time should be considered for
21 replacement power, that you would measure it the same as
22 if there had been plant imprudence. That is the
23 disagreement as a level of policy that I have that if
24 you are going to disallow the plant part of this outage,
25 there must be and should be a finding of imprudence at

1 the plant.

2 **COMMISSIONER KLEMENT:** Thank you. That's all
3 for now.

4 **COMMISSIONER SKOP:** Thank you, Commissioner.
5 Commissioner Stevens, you're recognized.

6 **COMMISSIONER STEVENS:** Thank you, Chairman.
7 Doctor Avera, you are not an employee of FPL
8 if I read correctly, is that correct?

9 **THE WITNESS:** No, sir, I am not.

10 **COMMISSIONER STEVENS:** And you live in Texas,
11 is that correct?

12 **THE WITNESS:** I do.

13 **COMMISSIONER STEVENS:** And you stated that a
14 maximum of three hours was all that the customers were
15 without power?

16 **THE WITNESS:** Well, I'm basing that on the
17 Federal Energy Regulatory Commission report that was
18 appended to Doctor Dismukes' testimony, and that's what
19 the report says at Page 10 of the exhibit.

20 **COMMISSIONER STEVENS:** So that is how you
21 determined how many hours?

22 **THE WITNESS:** No, sir, it is not.

23 **COMMISSIONER STEVENS:** Okay.

24 **THE WITNESS:** Because that is as to customers.
25 As far as customers were concerned, it was over in three

1 hours.

2 **COMMISSIONER STEVENS:** Right.

3 **THE WITNESS:** What we are trying to do here is
4 say since FPL has accepted the responsibility --

5 **COMMISSIONER STEVENS:** Okay. You're talking
6 about the eight hours now, right?

7 **THE WITNESS:** Right.

8 **COMMISSIONER STEVENS:** I'm not there yet.

9 **THE WITNESS:** Okay.

10 **COMMISSIONER STEVENS:** I'm still on the three
11 hours.

12 **THE WITNESS:** So, the three hours -- after
13 three hours the lights were on for the customers.

14 **COMMISSIONER STEVENS:** And you got that
15 directly from the --

16 **THE WITNESS:** Federal Energy Regulatory
17 Commission.

18 **COMMISSIONER STEVENS:** The FERC report?

19 **THE WITNESS:** Yes.

20 **COMMISSIONER STEVENS:** Okay. All right. Now
21 we can talk about the eight hours.

22 Tell me what you know about the eight hours
23 and where it came from.

24 **THE WITNESS:** What I know is that my
25 recommendation as a policy is because this was a

1 transmission outage, we should identify how long the
2 effect of the outage was on the system. Not on
3 individual plants, but the system. And based on the
4 analysis that Mr. Yupp did, his judgment was that was
5 eight hours. So after eight hours the system was
6 operating normally.

7 Now, the Turkey Point plants were off-line
8 because they are designed to go off-line when there is a
9 system disturbance. That is a safety feature that is
10 built into the plant and as part of the NRC mandates as
11 I understand from Mr. Stall.

12 **COMMISSIONER STEVENS:** So if I understand
13 correctly, the eight hours was a judgment?

14 **THE WITNESS:** It was an informed judgment by
15 looking at the circumstances on the system. What Mr.
16 Yupp did is he looked at the dispatch of the units and
17 he determined after eight hours all of the purchased
18 power was gone. After eight hours all of the kind of
19 emergency combustion turbines had been turned off, and
20 after eight hours the dispatch of the system looked like
21 the system dispatcher could freely decide which units to
22 put on-line in order to minimize fuel cost.

23 **COMMISSIONER STEVENS:** Thank you, Doctor
24 Avera.

25 **COMMISSIONER SKOP:** Please continue.

1 **COMMISSIONER STEVENS:** Mr. Chairman, I don't
2 know who to ask these questions to, so I'm going to ask
3 Mr. Butler these questions and he can tell me who to
4 ask. Apparently the three hours came from the FERC
5 report. Who puts together the FERC report on this
6 outage?

7 **MR. BUTLER:** Well, I think the FERC report
8 that Doctor Avera is referring to was prepared by FERC
9 itself. It was information that both FPL provided and
10 that FERC determined independently from a fairly
11 extensive investigation that FERC staff, you know,
12 technical staff and legal staff conducted of the Flagami
13 transmission event.

14 **COMMISSIONER STEVENS:** So the three hours came
15 from the FERC investigation?

16 **MR. BUTLER:** That's right. And certainly FPL
17 would have provided information into that, but they
18 conducted a pretty extensive investigation of their own.

19 **COMMISSIONER STEVENS:** Now, am I correct to
20 say that because of the outage, FPL settled with FERC
21 and had a \$25 million fine, is that correct?

22 **MR. BUTLER:** Because of the outage, FPL
23 settled with FERC over claims that FERC had regarding
24 reliability standard violations, and there was a
25 settlement in which FPL did not admit response or

1 liability for violation of those standards, but there
2 was an agreement as part of that that FPL would pay the
3 fine that you mentioned. And, yes, that was essentially
4 the resolution of that FERC investigation that I was
5 just referring to.

6 **COMMISSIONER STEVENS:** Okay. And the \$25
7 million, the people that have to bear that cost, that's
8 the investor's side?

9 **MR. BUTLER:** That's right.

10 **CHAIRMAN ARGENZIANO:** I only have one more
11 question, if I may. Do you know, Mr. Butler, how much
12 FPL has spent on this outage presenting to the
13 Commission so far to date?

14 **MR. BUTLER:** To this Commission?

15 **COMMISSIONER STEVENS:** Yes, sir.

16 **MR. BUTLER:** I don't have a figure, I'm sorry.

17 **COMMISSIONER STEVENS:** If one-side figure is
18 arrived, is that cost on the ratepayer or is it borne by
19 the investor?

20 **MR. BUTLER:** It is borne by the investor.
21 This isn't -- the expenses of proceeding in these
22 dockets is not something that we bring to the Commission
23 for recovery. It's different in that respect than the
24 rate case. I know you had seen that as one of the
25 issues that is presented as part of the costs that are

1 decided in a rate case, but it doesn't really have a
2 counterpart in these fuel adjustment type proceedings.

3 **COMMISSIONER STEVENS:** Thank you, Mr. Butler.

4 Thank you, Mr. Chairman.

5 **COMMISSIONER SKOP:** Thank you, Commissioner
6 Stevens.

7 Commissioner Edgar, do you have any questions?

8 Okay. Just a follow up to Mr. Butler, and
9 then I have a few brief questions for Doctor Avera.
10 Again, this is a little unique role for me. I have to
11 focus more on the proceedings than asking questions, so
12 it's a spectator sport today.

13 Anyway, Mr. Butler, you mentioned in response
14 to Commissioner Stevens a couple of things that it was
15 your understanding that power had been restored to all
16 FPL customers based on the FERC report within three
17 hours of the outage. Is that correct? I'm not
18 exactly -- this was a long time ago, so I just want to
19 make sure that that represented three-hour restoration
20 to all FPL customers. That's what I thought I heard
21 from the witness, but --

22 **MR. BUTLER:** That is my understanding with the
23 proviso, I think, that Doctor Avera had mentioned this,
24 you know, that FPL has interruptible customers where
25 they are paid for giving FPL the right to interrupt

1 their power where there are reasons for inadequate
2 resources, however they might arise, to keep those
3 customers off-line longer.

4 There was a period, and I don't have the
5 figure, but there was another number of hours, a short
6 number of hours before all of those interruptible
7 customers were back on-line. But all of the customers
8 that FPL has a firm commitment to provide power, it is
9 my understanding that they were on after three hours.

10 **COMMISSIONER SKOP:** Okay. Perhaps somehow,
11 some way of getting a little bit more clarity on that,
12 because I thought I heard two different versions. But,
13 again, I'm focused more on the proceeding than the
14 questions at this point.

15 In response to Commissioner Stevens' other
16 question about the costs of putting on the proceeding,
17 you mentioned that the shareholders incur such costs,
18 but would it not be true that basically your time as
19 well as staff's time is already incorporated into base
20 rates?

21 **MR. BUTLER:** If you want to look at it that
22 way I guess you could. Any incremental costs. Nothing
23 that has happened because we are putting on this
24 proceeding ends up being borne by the customers, yes. I
25 mean, I am a salaried employee, and that is certainly

1 part of the base rates. But, for example, we hired
2 Doctor Avera and the costs for him or other incremental
3 costs would not be anything that --

4 **COMMISSIONER SKOP:** So expert witness
5 testimony costs, the costs associated with that would be
6 not be passed through to the ratepayer. Okay, great.

7 **MR. BUTLER:** That is correct.

8 **COMMISSIONER SKOP:** Doctor Avera, I have got a
9 few questions and I have tried to write these down along
10 the way, so hopefully they will go quickly.

11 You mentioned in response to a comment or a
12 question from Mr. McGlothlin distinguishing rate of
13 return, and is there a difference between shareholder
14 rate of return and regulatory rate of return in terms of
15 how that is calculated, and were you referring in
16 response to Mr. McGlothlin's question to the shareholder
17 rate of return would be reduced, because there is no
18 profit on fuel costs.

19 **THE WITNESS:** That's right. The shareholder
20 return -- the company's rate of return would be reduced,
21 and that would have an effect on shareholders. So the
22 allowed return, 10 percent, or whatever the number is at
23 a particular time, the company is not guaranteed that.
24 And if it pays for fuel cost and doesn't get reimbursed,
25 the effect is to reduce the earned rate of return. So

1 that effects shareholders.

2 **COMMISSIONER SKOP:** Okay. Would that show up
3 on our earnings surveillance report to the extent that
4 shareholders had to basically incur those imprudently
5 incurred costs, or would that be something different?

6 **THE WITNESS:** It would be on surveillance
7 reports, but, of course, there are other factors, as Mr.
8 McGlothlin and I talked, that affect the earned rate of
9 return. But certainly all else being equal, if the
10 company pays replacement power costs or other
11 disallowances of fuel, the effect is to lower earned
12 rate of return.

13 **COMMISSIONER SKOP:** Okay, great. And I don't
14 want to spend a lot of time on this, so I will move
15 through these quickly. Another hypothetical that Mr.
16 McGlothlin presented was in terms of earning a return on
17 a certain dollar amount in the rate base versus a larger
18 rate base and being able to earn a higher rate of
19 return, or a larger total dollar return, if you will.
20 And you emphasized that investors would be indifferent
21 to that, is that correct?

22 **THE WITNESS:** That's right. There is a lot of
23 economic literature, and when we teach regulation we
24 spend a lot of time talking about this, but if the rate
25 of return is correctly determined, it is such that

1 shareholders are indifferent between more investment or
2 less. It's just at the margin where they are being
3 adequately compensated relative to their other
4 alternatives.

5 **COMMISSIONER SKOP:** Okay. But would you agree
6 that earnings growth drives typically share price?

7 **THE WITNESS:** But the problem -- yes, it does,
8 Commissioner. But if you invest more, you have to issue
9 more stock, so your earnings growth goes down, or you
10 have to issue more bonds and you have to pay more
11 interest. So more money, larger profit does not equate
12 to earnings growth if in order to get that greater
13 profit you have to expand your investment base.

14 **COMMISSIONER SKOP:** Okay. But failing to make
15 investments would also diminish earnings growth, is that
16 correct?

17 **THE WITNESS:** Yes. I think I heard you
18 correctly, Commissioner Skop, you said penalties?

19 **COMMISSIONER SKOP:** No, failure to make
20 investments.

21 **THE WITNESS:** Failure to make investments,
22 unless those investments were not -- if their risk was
23 greater than the return, your shareholders are better
24 off to by-pass those investments.

25 **COMMISSIONER SKOP:** Okay. All right. Fair

1 enough. We will move on. When you mention risk, who
2 evaluates risk, is it investors?

3 **THE WITNESS:** Well, investors ultimately value
4 risk because that is how they decide what their required
5 return is and whether they will buy stock or sell it or
6 buy bonds and not buy bonds. The company, as kind of
7 the agent for the shareholders, has to evaluate the
8 risk. So the company has to say if there is too much
9 risk in this, there is not enough to compensate my
10 investors for the return, therefore, I shouldn't do it.
11 So the management are the agents for the shareholders
12 and the bondholders in evaluating risk.

13 **COMMISSIONER SKOP:** Okay. So basically that
14 would be the investors, the company management, and also
15 credit rating agencies?

16 **THE WITNESS:** That is correct. They are all
17 together, and they all have an input, but ultimately
18 management makes the decision to go into something or
19 not go into it, but it has to look over its shoulder at
20 the effect on equity investors and how the credit rating
21 agencies and the fixed income investors will react.

22 **COMMISSIONER SKOP:** Okay. And you would
23 agree, would you not, that credit rating agencies are
24 not always the best to evaluate risk as illustrated by
25 AAA ratings on mezzanine level collateralized debt

1 obligations that resulted in the collapse of the
2 financial markets?

3 **THE WITNESS:** Yes, Commissioner, they have a
4 poor record in the recent past in particular securities.

5 **COMMISSIONER SKOP:** So anything they say is
6 subject to a question mark.

7 **THE WITNESS:** Some question mark. I do
8 believe that credit rating agencies are still regarded
9 as significant by investors, so I don't think investors
10 ignore them. Of course, they have to, you know,
11 evaluate the credibility of the credit rating agencies.

12 **COMMISSIONER SKOP:** Very well. Can risk be
13 quantified?

14 **THE WITNESS:** There are quantitative measures
15 of risk like beta and variants, but ultimately risk is a
16 judgment call because you are talking about the future
17 and nobody knows the future. And one of the problems
18 that got the rating agencies into problems is they
19 looked at the past and assumed the risk in the future
20 would be like the past. So the risk is at bottom an
21 undefined quantity. We do have certain measures that we
22 have developed in the academic world and the practical
23 world that help inform us about risk, but ultimately
24 risk is a semi-subjective judgment by the person who is
25 putting real dollars on the line.

1 **COMMISSIONER SKOP:** Okay. The reason I asked
2 that is I was trying to understand if you could quantify
3 risk as it pertains to this issue in question in terms
4 of basis points, and I'll provide an illustration.
5 Certainly, FPL is alleging through Witness Yupp's
6 calculation that their exposure in terms of replacement
7 fuel costs should be approximately \$2 million based on
8 the calculation that was performed. And certainly
9 typically fuel costs are recovered annually through our
10 fuel and capacity cost-recovery clause on which the
11 utilities do not earn a profit. But going back to OPC's
12 exhibit that has been marked for identification at this
13 point as Exhibit 36, do you still have that in front of
14 you?

15 **THE WITNESS:** Let's see. Which one was that?

16 **COMMISSIONER SKOP:** That was the one with the
17 pretty picture of the solar panels and the wind
18 turbines.

19 **THE WITNESS:** Yes, sir.

20 **COMMISSIONER SKOP:** Okay. And if I could ask
21 you to turn to Page 6 of that just as a point of
22 illustration.

23 **THE WITNESS:** Yes, sir.

24 **COMMISSIONER SKOP:** And if you look at the
25 highlighted portion and move up from there in the first

1 paragraph, and I'll give you a chance to look at that on
2 Page 6. And the statement that I would ask you to look
3 at is in 2008, approximately 6.1 billion of costs were
4 recovered through the fuel clause. Do you see that?

5 **THE WITNESS:** We are on Page 6, are we?

6 **COMMISSIONER SKOP:** Page 6, yes, sir. And at
7 the first paragraph where it talks about cost-recovery
8 clauses, mid paragraph?

9 **THE WITNESS:** Oh, right. Got it, yes.

10 **COMMISSIONER SKOP:** Okay. So basically it
11 says in 2008, approximately 6.1 billion of costs were
12 recovered through the fuel clause.

13 **THE WITNESS:** Yes, Commissioner.

14 **COMMISSIONER SKOP:** Okay. So I guess what I
15 was trying to rationalize when we talk about risk, if
16 risk can be -- perceived risk can be quantified in terms
17 of basis points, and what I'm looking at here is if
18 there is risk as being alleged to the extent that you
19 looked at nuclear -- or the perils of including those
20 ascension costs versus not doing it, then certainly the
21 two million based on a 6.1 million recovery in 2008 is a
22 mere fraction of the total costs that go through that
23 clause, is that correct?

24 **THE WITNESS:** Yes, sir. It is a small number.
25 But the important thing about it is as to the future,

1 and risk is about the future. It's an unbounded
2 exposure. Because anytime you have an extremely low
3 cost fuel plant where you have an outage and you
4 calculate the replacement cost based on that low fuel
5 cost, the dollars can add up.

6 In this case, happily the outage was not that
7 long. But still the spread between the nuclear fuel and
8 the replacement fossil fuel was very great. So I think
9 the important thing here is that it would create a new
10 risk. Now, it's not a huge -- in the scheme of things,
11 Mr. Skop, I think -- or, Commissioner Skop, you are
12 absolutely correct, it's not huge, but I think the
13 problem is it is a mixed message against the backdrop
14 that Ms. Kaufman talked about of a state that is trying
15 to encourage fuel efficient development, and this
16 undermines that. It won't change it, but it undermines
17 it.

18 **COMMISSIONER SKOP:** And I'll get to that in a
19 second. I just wanted to -- even at worst-case
20 scenario, depending on whether you believe FPL's
21 position or Public Counsel's position, looking at the
22 dollars in question here, which at most is, you know,
23 15 million and change versus 2 million at the low point
24 in comparison to the total dollars that passed through
25 that clause back in 2008, I think in reality it's

1 probably less than one basis point, is that correct?

2 **THE WITNESS:** It's a small amount of that
3 total. But remember there is no profit in that
4 6 billion, and the disallowance comes straight out of
5 profit.

6 **COMMISSIONER SKOP:** Okay. Just two or three
7 more questions and hopefully we can move along. In
8 response to Ms. Kaufman's question, you indicated that
9 you were aware of the nuclear cost-recovery provisions
10 within the state of Florida that provide for recovery of
11 preconstruction costs as well as recovery of all costs
12 irrespective of plant completion, is that correct?

13 **THE WITNESS:** Yes, sir.

14 **COMMISSIONER SKOP:** Okay. The argument that I
15 thought staff was trying to make, and I took some notes,
16 is in the hole drilling case, FPL argued that a
17 disallowance in that case would create a strong
18 disincentive for investment in generating resources with
19 low energy costs, like nuclear and renewables. Subject
20 to check, would you agree with that?

21 **THE WITNESS:** Yes, but I believe that was a
22 disallowance absent a finding of prudence.

23 **COMMISSIONER SKOP:** Okay. But isn't the same
24 argument made here -- and this is where I'm trying to
25 expand or understand what staff was trying to get at,

1 isn't that what's being argued here, essentially the
2 same argument with a twist to the extent that, you know,
3 they are still alleging that to include nuclear creates
4 risk and disincentives, and I believe you used the word
5 asymmetric risk?

6 **THE WITNESS:** You are correct. It is
7 essentially the same argument. It is a different twist.
8 At that time the issue was whether you would have a
9 disallowance at a plant without a finding of imprudence,
10 and the Commission said, no, we are not going to do
11 that.

12 The issue here is where you have a
13 transmission problem that happens to effect a nuclear
14 plant, are we going to disallow the plant cost?

15 **COMMISSIONER SKOP:** Okay. And that is what I
16 was going to get to in a second to try and get you to
17 differentiate or distinguish the instant case from the
18 prior argument that the Commission unanimously rejected.
19 So with respect to that, if I heard your testimony
20 correctly, you're alleging that this case is different
21 and the argument is valid because in the hole drilling
22 case there was actually a willful act that precipitated
23 the plant being down, resulting in the company having to
24 incur, imprudently incur -- or incur, I don't want to
25 use imprudent because they might object -- but incur

1 costs, purchased power costs, is that correct, because
2 there was an act in the plant that caused the plant to
3 be down longer than it was supposed to?

4 **THE WITNESS:** That is essentially correct.
5 Here there is no allegation that there was a problem
6 with the plant. At least that's not the basis of OPC's
7 claim of using the full amount. And I think that is the
8 problem, that we are penalizing a plant that has been
9 prudently operated just because it happened to be the
10 one that was affected by a transmission outage. And I
11 think the way that I recommended we calculate it, which
12 was to identify the pure transmission cost, was the
13 correct way to account for the replacement cost in this
14 case.

15 **COMMISSIONER SKOP:** Okay. And just three
16 follow-up questions. So you would distinguish then, if
17 I heard correctly, between an in-plant act, and employee
18 action which impacted the BES, or Bulk Electric System
19 in the state of Florida, is that correct?

20 **THE WITNESS:** Yes, sir.

21 **COMMISSIONER SKOP:** Okay. Now, would you also
22 distinguish or equally distinguish between a force
23 majeure event, such as a hurricane, that might, you
24 know, impact transmission versus the act of an employee
25 that would affect transmission?

1 **THE WITNESS:** That is correct. There are a
2 lot of things that disrupt the transmission system;
3 hurricanes, electrical storms, any number of other
4 things. And when those happen, we don't get to the
5 issue of replacement costs because there is no belief
6 about imprudency. Here we have a circumstance where the
7 company has accepted responsibility, so our challenge is
8 to calculate the transmission-related cost. Since it is
9 not something -- even though we have a lot of
10 transmission outages, they don't involve this kind of
11 responsibility, that's why the Commission hasn't crossed
12 this bridge before.

13 **COMMISSIONER SKOP:** Okay. And just one final
14 question. In following up on a question asked to you by
15 Commissioner Klement, certainly there was a delay in
16 restart on Turkey Point Unit 4 as a result of the manual
17 reactor trip associated with the steam generator levels.
18 Would you agree --

19 **THE WITNESS:** That's my understanding.

20 **COMMISSIONER SKOP:** I know you are not a
21 nuclear engineer, but would you agree that that was an
22 in-plant event that caused a delay in the restart of
23 that unit?

24 **THE WITNESS:** That's my understanding.
25 Whether it was imprudent or not has not been claimed,

1 but I think that is above my pay grade.

2 **COMMISSIONER SKOP:** Very well. And I
3 appreciate your time. And, Mr. Butler -- or,
4 Commissioners, are there any questions before I go to
5 Mr. Butler for redirect? Okay.

6 Hearing none, Mr. Butler, you're recognized
7 for redirect.

8 **MR. BUTLER:** Thank you, Commissioner Skop. I
9 will try and be brief.

10 REDIRECT EXAMINATION

11 **BY MR. BUTLER:**

12 **Q.** Doctor Avera, going back briefly to the Gulf
13 States decision that you had discussed previously. You
14 described an outage at the River Bend unit for which
15 there was a disallowance made that involved a
16 transformer failure, is that correct?

17 **A.** Yes.

18 **Q.** Was that transformer part of the Bulk Electric
19 System or was it dedicated to plant operations at River
20 Bend?

21 **A.** It was dedicated. It was not part of the bulk
22 electric system.

23 **Q.** Do you consider that to be a distinction
24 between the River Bend outage and the outages that we
25 are discussing here today?

1 **A.** Yes, I do.

2 **Q.** You were asked by Mr. Young about the
3 \$14.5 million disallowance calculation, or replacement
4 power cost calculation that appears in Exhibit 42D. Do
5 you remember that?

6 **A.** Yes.

7 **Q.** Now, would you agree that for that amount to
8 be appropriately disallowed there would have to be a
9 finding of imprudence with respect to the 158 hours for
10 Unit 3 outage and 107 hours for Unit 4 outage?

11 **A.** Yes, because that outage occurred because of
12 events at the plant and was after the transmission
13 system had stabilized.

14 **Q.** You were asked by Commissioner Skop a few
15 moments ago about Exhibit 36, and he had referred you to
16 Page 6. You discussed this with Mr. McGlothlin earlier.
17 There is a series, I think, of three exhibits, 36, 37,
18 and 38 that all have some similar language that Public
19 Counsel had highlighted in which there is reference to
20 the Florida PSC having authority to disallow recovery of
21 costs that it considers to be excessive or imprudently
22 incurred. Do you recall that?

23 **A.** Yes.

24 **Q.** Do you consider that language to have provided
25 investors reasonable notice of the possibility of a

1 disallowance of the full cost of the outage for Turkey
2 Point Unit 3 and 4 due to the Flagami Transmission
3 Event?

4 **A.** No. I think investors have been informed that
5 there is a possibility of any costs being disallowed if
6 it's found to be imprudent, but I think based on the
7 past practice of this Commission and other commissions,
8 investors expect that when there is a problem at a plant
9 that causes the plant to go down, and when there is a
10 finding of imprudence, then replacement power for that
11 plant will be calculated based on, basically, the kind
12 of methodology that would give you the 14.5.

13 But I think investors do not expect that just
14 because a transmission outage happened to effect a
15 nuclear plant that the lower costs of the nuclear plant
16 would be the basis of a penalty even though the nuclear
17 plant was not -- the Commission did not find that the
18 nuclear plant was taken off-line and returned to service
19 in an imprudent manner.

20 So I believe that a decision adopting the 14.5
21 number would be expanding the exposure that investors
22 expect to imprudence. Certainly, as Mr. Skop --
23 Commissioner Skop correctly observed, we are talking
24 about not a huge expansion, but an expansion
25 nonetheless, and one that runs counter to the policy

1 encouraging low fuel cost generation.

2 **MR. BUTLER:** Thank you, Doctor Avera.

3 That's all the redirect that I have.

4 **COMMISSIONER SKOP:** Thank you, Mr. Butler.

5 And I know that Doctor Avera had no exhibits, but OPC
6 had marked a few for identification. I think 36, 37,
7 and 38, so I'll look to Mr. McGlothlin to either move
8 those in, or what's your preference?

9 **MR. MCGLOTHLIN:** I move 36, 37, and 38.

10 **COMMISSIONER SKOP:** Okay. Any objection from
11 the parties?

12 **MR. BUTLER:** No objection.

13 **COMMISSIONER SKOP:** Okay. Show that Exhibits
14 36, 37, and 38 entered into the record.

15 (Exhibit Number 36, 37, and 38 admitted into
16 the record.)

17 **COMMISSIONER SKOP:** And, Commissioners, we're
18 approaching the 5:00 o'clock hour. It seems as if the
19 next witness's prefiled testimony is very small.

20 Mr. McGlothlin, do you have an extensive line
21 of cross-examination for that witness?

22 **MR. MCGLOTHLIN:** No, sir.

23 **COMMISSIONER SKOP:** Okay. Commissioners, can
24 we proceed briefly through that for a few minutes, if
25 it's okay with the --

1 **COMMISSIONER EDGAR:** I need to call it a day
2 very soon.

3 **COMMISSIONER SKOP:** Okay. All right. With
4 that, I'll recognize a request from a Commissioner, and
5 we will stand adjourned until 9:30 tomorrow morning.

6 **COMMISSIONER EDGAR:** Thank you.

7 **MR. BUTLER:** Thank you.

8 (Transcript continues in sequence with Volume
9 3.)

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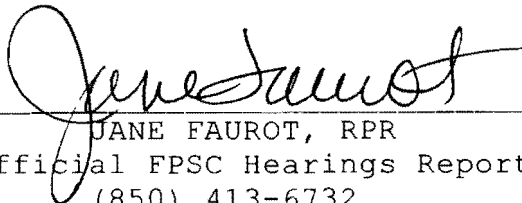
STATE OF FLORIDA)
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COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 29th day of March, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
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