

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

PETITION FOR INCREASE IN RATES
BY FLORIDA POWER & LIGHT COMPANY.

RECEIVED-FPSC
12 SEP -4 AM 11:03
COMMISSION
CLERK

VOLUME 25

Pages 3811 through 4012

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Wednesday, August 29, 2012

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

REPORTED BY: MICHELLE SUBIA, RPR

APPEARANCES: (As heretofore noted.)

I N D E X

WITNESSES

1		
2		
3	KIM OUSDAHL	3814
4	Cont' Cross Examination by Mr. Rehwinkel	3814
5	Cross-Examination by Ms. Christensen	3819
	Cross-Examination by Mr. Lavia	3826
6	Cross-Examination by Mr. Saporito	3826
	Cross-Examination by Mr. Hendricks	3830
7	Cross-Examination by Ms. Klancke	3835
	Redirect Examination by Mr. Butler	3845
8		
9	TERRY DEASON	3850
10	Direct Examination by Mr. Butler	3850
	Cross-Examination by Mr. Moyle	3915
11	Cross-Examination by Mr. Wiseman	3942
	Cross-Examination by Captain Miller	3948
12	Cross-Examination by Mr. Wright	3950
	Cross-Examination by Mr. Rehwinkel	3972
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

NUMBER:	ID.	ADMTD.
397		3848
398		3848
399		3848
400		3848
401		3848
402		3848
403		3848
409	3911	
595		3849
596	3836	3849
597	3839	3849

* * *

CERTIFICATE OF REPORTER 4012

P R O C E E D I N G S

(Transcript follows in sequence from
Volume 24.)

CONTINUED CROSS-EXAMINATION

BY MR. REHWINKEL:

Q Ms. Ousdahl, do you have Exhibit 595 in front of you?

A Yes.

Q Okay. This is the information that you discussed with me on your direct; is that right?

A That's correct.

Q Okay. Can you walk me through what this represents with respect to the uncollectibles?

A Yes. It's a comparison of the reserve roll-forward from the as-filed amounts to the revised and corrected amounts and then a calculation of the revenue requirement impacts.

So what it shows is that we had overstated it December of 2012 inadvertently the uncollectible reserve by 1.2 million. And in correcting for that on the 13-month average basis, we end up with a \$41,000 increase to revenue requirement.

Q Okay. Now, of course, the reserve that you overstated, the year-end balance on MFR B-3 is what's shown in the December column under -- on line 5, that's

1 **the 9 million 166; is that right?**

2 A That's the beginning balance for the test
3 year, the 9166.

4 **Q Okay.**

5 A The ending balance is the 9447.

6 **Q I'm sorry, I'm looking at the prior year, I**
7 **apologize, 12/31/2012. That would be the year-end**
8 **balance for '12, right?**

9 A That should be. I don't have that MFR in
10 front of me.

11 **Q Okay.**

12 A But yes, that should tie to the MRF.

13 **Q It's the same number and year beginning,**
14 **right?**

15 A Okay. Great.

16 **Q Okay. And that was a projected amount,**
17 **right, because, of course, we haven't reached that**
18 **point in the year?**

19 A That's correct.

20 **Q All right. And then if I look on Exhibit 595**
21 **in the "Difference" column on that top line, there's**
22 **the \$1.2 million. What is the -- what caused that**
23 **difference?**

24 A A forecast error. It's just an error somehow
25 in the forecast. As I said, we kind of started

1 drilling into this when we looked at Witness Schultz'
2 testimony.

3 **Q Okay. So you --**

4 A The expense --

5 **Q Go ahead.**

6 A If this helps, the expense side, the
7 write-off side are correct as shown here. We simply
8 erred in the way we were rolling forward the reserve.

9 The reserve is a beginning balance plus the
10 accrual minus the writeoffs to get to the ending
11 balance. And somewhere along the way in the forecast
12 process, we erred.

13 **Q So you didn't identify any assumption that**
14 **was wrong?**

15 A No.

16 **Q It was a math error?**

17 A No. It was an inadvertent error.

18 **Q Okay. So if I look on the second line here,**
19 **like you said, the expense account, 904, the**
20 **18.408 million, this is a combination of net writeoffs**
21 **and an adjustment to the reserve?**

22 A This is the expense accrual, that amount that
23 we believe, based on our estimates for GAP purposes and
24 for regulatory purposes, that we need to record to add
25 to the reserve throughout the test period.

1 **Q Okay.**

2 A We come up with that amount, we record our
3 reserve looking backwards at actuals and then rolling
4 forward because we estimate that writeoffs occur about
5 five months after we actually send the bill, so we have
6 a historical method that we've always used to estimate
7 our accrual.

8 **Q Okay. Now, since the reserve is a credit**
9 **balance on the balance sheet -- correct?**

10 A That's correct.

11 **Q Or as least as it's shown here it's a credit**
12 **balance, right?**

13 A That's correct.

14 **Q So the adjustment you made was to reduce that**
15 **credit balance, and that's why the rate base increased**
16 **overall; is that right?**

17 A Well, the rate base decreased because of the
18 error, because we increased the reserve
19 inappropriately. That's what gives rise to the very
20 minor increase in revenue requirement.

21 **Q Okay. Because the rate base -- the net rate**
22 **base increased, correct?**

23 A When we overstated -- oh, I'm sorry, I
24 apologize, I was thinking about the beginning balance.

25 Yes. In order to end up with our projected

1 balance of 9.4 million, we had to actually reduce that
2 reserve, yeah, inappropriately, yeah. In the
3 correction, of course, it rolls quite nicely to the
4 \$9.7 million required reserve.

5 **Q Okay. So just to be clear, the correction**
6 **that you reflect here is not an agreement with**
7 **Mr. Schultz's adjustment that there shouldn't be an**
8 **adjustment to the reserve separate and apart from the**
9 **estimation of uncollectibles due to net writeoffs; is**
10 **that right?**

11 A Right. We agree, I think, with Mr. Schultz,
12 or he agrees with our finding on expense and on the
13 writeoff. And he's come up with this \$1.5 million
14 reduction, we do not agree with that. We think we've
15 demonstrated in the revised numbers that given that
16 expense accrual and that writeoff estimate, the reserve
17 balance is appropriate and is adjusted only by the
18 \$287 million increase -- I'm sorry -- \$287,000
19 increase.

20 **Q All right. So the one point -- you said 1.5,**
21 **but it's \$1.7 million, whatever is in his schedule?**

22 A His adjustment, yes. Sorry.

23 **Q All right.**

24 MR. REHWINKEL: Mr. Chairman, those are all
25 the questions I have.

1 Thank you, Ms. Ousdahl.

2 CHAIRMAN BRISE: Thank you.

3 Ms. Christensen.

4 CROSS-EXAMINATION

5 BY MS. CHRISTENSEN:

6 Q Yes. I have some questions regarding your
7 testimony on affiliate transactions. Can I turn your
8 attention to page 24 of your rebuttal testimony.

9 A Yes, I'm there.

10 Q Okay. And on page 24 of your rebuttal
11 testimony, you discuss the SEC reporting requirements,
12 right?

13 A Yes.

14 Q Okay. And you would acknowledge that the
15 reporting requirements, the SEC reporting requirements,
16 are to make sure that you're reporting your costs
17 accurately in your financials, correct?

18 A Yes, it's -- the SEC Standards require and
19 ensure that we have reasonable financial reporting and
20 disclosure.

21 Q Okay. And you would also agree that
22 accurately writing down the costs that are charged to
23 an affiliate or where charged -- or when charged to you
24 from an affiliate does not necessarily mean that those
25 costs comply with the asymmetrical pricing requirement

1 **in the Affiliate Transactions Rule, correct?**

2 A I apologize, but you're going to have to
3 repeated that question. I struggled with it.

4 **Q Okay. I think we agreed that the SEC Rules**
5 **are geared towards accurately reporting the costs and**
6 **recording them in the right books and accounts,**
7 **correct?**

8 A Yes. And FPL is a registrant, as I say here,
9 so FPL needs to produce its financial statements for
10 its business appropriately with proper disclosure.

11 **Q Okay. And you would agree that -- and I'm**
12 **not saying that requiring accurate reporting of the**
13 **cost is not important -- but you would agree that**
14 **accurately reporting what the costs are is not the same**
15 **as an asymmetrical pricing requirement, correct?**

16 A The SEC Rules do not contemplate what the
17 Commission lay out in terms of affiliate transactions,
18 that's correct.

19 **Q Okay. And if I'm understanding that**
20 **statement correctly, then you would agree that the SEC**
21 **Rules don't contemplate whether or not the charge is**
22 **the higher of market or fully allocated costs for those**
23 **charges from FPL to its affiliates, correct?**

24 A That's correct. Compliance with our
25 reporting requirements would simply mean that we have

1 to follow the practices and policies and controls we've
2 laid out.

3 Q Okay. And you're -- and I'm assuming the
4 same can be said for charges from affiliates to FPL --
5 that there is no SEC requirement other than that you're
6 complying with what you say you're going to do, that it
7 be the lesser of market or fully allocation costs,
8 correct?

9 A Right. It just ensures that we properly
10 record the transactions.

11 Q Okay. Now, let me turn you to pages 26 and
12 27 of your rebuttal testimony. And I believe in that
13 portion of your testimony, you discuss that because you
14 don't provide accounting, legal, human resources,
15 treasury services, that you don't have an existing
16 market reference, correct?

17 A You're referring to the bottom of page 26,
18 that discussion?

19 Q I believe so. And it flows over to the other
20 side.

21 A Yes, that's correct.

22 Q Okay. And if I'm understanding your
23 testimony correctly, your testimony is that you can't
24 get comparable services from a third party?

25 A Yes. We are the service provider at FPL for

1 the enterprise. There's not a comparable market
2 provider that can step in to many of the services that
3 we're providing on an integrated basis that we could
4 call on. We don't believe that would be more
5 efficient.

6 **Q All right.**

7 A Or less costly for customers.

8 **Q But you would agree that FPL could hire**
9 **outside attorneys and does, correct?**

10 A Yes.

11 **Q And you also agree that FPL could hire**
12 **outside engineers and it does?**

13 A Yes.

14 **Q Okay. And if I'm not mistaken, FPL could and**
15 **does hire outside accountants, correct?**

16 A Not very many.

17 **Q Okay. But it does on occasion?**

18 A Yes.

19 **Q Okay. Now, let me turn your attention to**
20 **lines 15 through 19 on page 27. You discuss FERC Order**
21 **707A, correct?**

22 A That's correct.

23 **Q Okay. You would agree that the FERC order**
24 **does not relieve FPL from compliance with the Florida**
25 **Affiliate Transaction Rule, correct?**

1 A I agree.

2 **Q Okay. I'm going to turn your attention to**
3 **page 32 of your rebuttal testimony. On page 32,**
4 **starting at line 14 and going through lines 22, you**
5 **discuss that an investigation was done, an audit report**
6 **was done regarding affiliate relationships and**
7 **transactions between FPL and FPLES, correct?**

8 A That's correct.

9 **Q Okay.**

10 MS. CHRISTENSEN: I would like to hand out a
11 copy of the audit report that was done by staff.
12 I believe this has already been made part of --
13 already been made part of a composite exhibit in
14 575, I believe, 576.

15 CHAIRMAN BRISE: Okay.

16 MS. CHRISTENSEN: So we don't need to remark
17 this. But for ease of reference during this line
18 of questioning, I think it would be appropriate
19 for everyone to have a copy of it.

20 CHAIRMAN BRISE: Sure. Let me get a
21 confirmation that it's part of 576.

22 MS. HELTON: That's what my list says,
23 Mr. Chairman.

24 CHAIRMAN BRISE: Okay. Perfect.

25

1 BY MS. CHRISTENSEN:

2 Q Okay. Now that I believe everybody has a
3 copy of the audit that was conducted by staff in
4 regards to the docket that you reference, would you
5 agree that FPL and FPLES affiliate transactions were
6 the only one that were subject to this audit.

7 A Yes, that's my understanding.

8 Q Okay. I want to turn your attention to page
9 no. 3 of the audit report, and looking at the third
10 paragraph from the bottom, I would ask you to read that
11 paragraph for me.

12 A Beginning with "Since FPL"?

13 Q Correct.

14 A "Since FPL is supposed to charge FPLES the
15 higher of cost or market, we attempted to find out what
16 rates the FPLES Call Center charges other vendors for
17 each completed sale so we could compare to what FPLES
18 is paying FPL based on completed sales. FPL does not
19 believe any comparison to market is appropriate and
20 declined to provide these commissions."

21 Q Were you aware of that finding in the audit
22 when you wrote your testimony?

23 A No.

24 Q Okay. Let me turn your attention to page 35
25 of your testimony. And I believe your testimony, when

1 asked if FPL should be compensated for the value of the
2 relationship and contracts utilized by affiliates, you
3 indicated no; is that correct?

4 A Could you be more specific, please? I don't
5 see that discussion on page 35.

6 Q I may have it on -- hold on a moment. I may
7 have written down the wrong page number.

8 Yes, it's page 34. I'm sorry, I did. Let me
9 turn you over there. Do you see the questions starting
10 at line 8 and going through line 10?

11 A Yes.

12 Q And then your response was at 11. So let me
13 restate the question again now that we're all on the
14 same page.

15 Do you see when you asked the question FPL
16 should be -- whether FPL should be compensated for the
17 value of relationships and contracts utilized by
18 affiliates, you indicated no; is that correct?

19 A That's correct.

20 Q Okay. Now, I would like to refer you back to
21 the audit report on the fifth page, the paragraph under
22 "Audit Analysis," and I think it's really the second
23 full paragraph from the bottom.

24 Could you read that for me, please, starting
25 with "Customers may think."

1 A "Customers may think that FPLES is a
2 regulated company because the name includes FPL. FPLES
3 is receiving the benefit of being connected to a
4 customer of FPL. FPLES would have to spend
5 considerably more time and money to obtain the same
6 level of benefit."

7 **Q Were you aware of that finding in the audit**
8 **when you wrote your testimony?**

9 A I had not reviewed this before I wrote my
10 testimony. I don't think it changes anything that I've
11 testified to.

12 MS. CHRISTENSEN: I have no further
13 questions. Thank you.

14 CHAIRMAN BRISE: Mr. Lavia.

15 MR. LAVIA: Thank you, Mr. Chairman.

16 CROSS-EXAMINATION

17 BY MR. LAVIA:

18 **Q Just a quick question. Is the FPL or the**
19 **Florida Power & Light name trademarked?**

20 A I don't know.

21 **Q Thank you.**

22 MR. LAVIA: That's all.

23 CHAIRMAN BRISE: Mr. Saporito.

24 MR. SAPORITO: Thank you, Mr. Chairman.

25 CROSS-EXAMINATION

1 BY MR. SAPORITO:

2 Q My name is Thomas Saporito. I'm here pro se,
3 representing myself. And I will be very brief.

4 The attorney, Mr. Moyle, asked you some
5 questions related to the FPL name and value related to
6 that name. Do you recall your testimony about that
7 area?

8 A Yes, I do.

9 Q Are you aware that the Ford Motor Company
10 recently used its name as collateral for financing
11 purposes for the company?

12 A I am not.

13 Q Okay. Would you agree with me that FPL could
14 use its name as collateral for financing for the
15 company?

16 A I don't know.

17 Q Are you aware that FPL maintains its website
18 at fpl.com?

19 A Yes.

20 Q And would you agree with me that branded
21 websites have value?

22 A I don't know. They serve a purpose, I know
23 that, but I don't know if they have some other value.

24 Q And would you agree with me that FPL has
25 approved contractors that do work for customers?

1 A Yes, we do.

2 **Q And would you agree with me that those**
3 **contractors utilize the FPL branded name when they**
4 **offer their services to FPL customers?**

5 A That I don't know. I know the company
6 provides information to its customers in terms of a
7 list of approved contractors, but I don't know if the
8 opposite occurs, so I don't know.

9 **Q All right. And just going to another --**
10 **brief, just one question on it, one or two questions on**
11 **another subject. You were asked by OPC counsel about**
12 **FPL having retained attorneys for services, the**
13 **attorneys were outside contracted attorney services.**

14 **Do you recall your testimony in that area?**

15 A Uh-huh. Yes, I do.

16 **Q What's that?**

17 A Yes, I do.

18 **Q And is it your understanding that Florida**
19 **Power & Light Company made a decision to not contract**
20 **with outside attorneys in the handling of complaints**
21 **filed under 42 USA §5851 but to instead have the**
22 **internal house counsel represent FPL in those actions?**

23 MR. BUTLER: I object to this line of
24 questioning. I don't think it has anything to do
25 with Ms. Ousdahl's rebuttal testimony.

1 MR. SAPORITO: She testified with respect to
2 different contractors, whether they were in-house
3 or they were being retained by FPL on a contract
4 basis, and one of those applications was the
5 contracts with outside counsel.

6 And to the extent that FPL made a decision to
7 change their relationship and instead of using
8 outside contractors now expense those costs and
9 services through in-house counsel, those costs and
10 expenses would be borne by the consumer in this
11 rate case, and that's where my inquiry was.

12 MR. BUTLER: Mr. Chairman, I don't believe
13 that one line of cross-examination opens the door
14 to another line of cross-examination.

15 Ms. Ousdahl's testimony does not go anywhere near
16 the subject Mr. Saporito is seeking to explore.
17 She simply responded to a question, you know, one
18 of the areas where the company occasionally will
19 hire outside services is in the legal area, but it
20 certainly did not lead to the line of questions
21 that Mr. Saporito is exploring.

22 CHAIRMAN BRISE: Ms. Helton.

23 MS. HELTON: Let me look at the cross one
24 minute.

25 Was it that what she testified to or was it

1 what was in her -- I'm sorry -- because I was out
2 of the room for a minute. Was it what was brought
3 out on cross-examination or was it --

4 CHAIRMAN BRISE: The question is based upon
5 the response to a cross-examination question by
6 OPC. So the way I see it, it goes from a broad
7 question about legal to a very specific question
8 about a particular subject within legal.

9 MS. HELTON: Thank you. Then I agree with --
10 I think with what Mr. Butler said.

11 CHAIRMAN BRISE: Okay. That was my
12 inclination. I just wanted to make sure that I
13 was on the right legal footing there.

14 So Mr. Saporito, if you could move on to
15 another question.

16 MR. SAPORITO: I have no further questions,
17 Mr. Chairman. Thank you.

18 CHAIRMAN BRISE: Thank you very much.

19 Mr. Hendricks.

20 MR. HENDRICKS: Yeah, I just had one area
21 that I wanted to inquire about briefly.

22 CHAIRMAN BRISE: Sure.

23 CROSS-EXAMINATION

24 BY MR. HENDRICKS:

25 **Q I believe it's on page 20 of your rebuttal**

1 testimony, you talk about the Canaveral step increase.
2 And looking at the -- particularly down to the bottom
3 of that page, line 20 and on -- "Since generation
4 plants are long-lived assets which typically are
5 financed incrementally, only common equity and
6 long-term debt should be included in incremental
7 capital structure."

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q And you go on to cite some Commission orders
12 where that's been the custom on the next page?

13 A Yes.

14 Q Is that correct?

15 A Uh-huh. Yes.

16 Q And this is in response to one of the OPC
17 witnesses who suggested using a different cost of
18 capital; is that correct?

19 A That's correct.

20 Q If we just did the calculation simply that's
21 implied by the capital structure just including the
22 cost of equity and the cost of long-term debt, that
23 would mean taking the 11.5 percent that FPL is
24 requesting as an ROE in this case and multiplying it by
25 the 59.6 percent equity ratio that you're requesting in

1 **this case and then doing the similar calculation for**
2 **the long-term debt and adding those two together?**

3 A Well, what we've done on an incremental basis
4 is we've taken the month, the 13-month average balance
5 for Canaveral in the test period and we've removed it
6 using those incremental percentages of debt and equity,
7 so it does change then the overall weightings of each
8 of the other components and derives a new overall base
9 rate increase.

10 **Q Right.**

11 A We did the same thing in the incremental step
12 increase.

13 **Q Right. But the incremental cost that you're**
14 **talking about would be calculated the way we just**
15 **discussed; is that correct?**

16 A Yes.

17 **Q And if you plug in the numbers, that yields**
18 **an approximate cost of that capital at about**
19 **8.98 percent?**

20 A Well, we've done the calculation.

21 **Q Right.**

22 A So if I could look at it.

23 **Q It's probably in your exhibits somewhere.**

24 A Well, it's in the D1A for the incremental
25 increase for Canaveral.

1 Q Right.

2 A It's 9.06 percent.

3 Q Okay. Well, my math was off a little bit.

4 And then if you take that and multiply it by
5 the revenue multiplier, which is about 1.6 --

6 A Multiply what by the revenue multiplier?

7 Q Well, if you multiply the 8.9 by the revenue
8 multiplier. I know you usually do it in a different
9 order, but it's -- it doesn't really make any
10 difference because you're going to take that
11 approximately 9 percent cost of capital and you're
12 going to apply a revenue multiplier to it.

13 A Well, I'm going to apply this cost of capital
14 to a rate base.

15 Q That's right.

16 A But you've got a return.

17 Q But then you apply -- if we wanted to ask
18 about the driver of the incremental cost of the Cape
19 Canaveral Plant, would it be correct to say that you
20 would take the -- it will be equivalent to taking the
21 amount of capital that you're putting in at the Cape
22 Canaveral Plant and multiplying it by about
23 14.3 percent?

24 A I'm not sure what you're attempting to
25 calculate. You said, "the driver." Are you trying to

1 calculate the revenue increase associated with
2 Canaveral? We've done that.

3 **Q I'm trying to calculate the relationship**
4 **between the amount of capital that you're financing to**
5 **support the Canaveral step increase and the amount of**
6 **revenue that you're generating from that step increase?**

7 A Well, the revenue we're getting from the step
8 increase is 174 million.

9 **Q Right. But that includes things other than**
10 **just the cost of capital, doesn't it?**

11 A That's correct. I haven't performed --

12 **Q But the cost of capital component of it would**
13 **be --**

14 A It's the return.

15 **Q Yes, that's right.**

16 A It's the 74 million, uh-huh.

17 **Q But the return is basically determined by two**
18 **factors. One is your approximately 9 percent cost of**
19 **capital, and the other is the revenue multiplier which**
20 **essentially takes into account several factors, but the**
21 **predominant one is the income tax --**

22 A That's correct.

23 **Q Is that correct?**

24 A That's correct.

25 **Q Okay. Thank you.**

1 MR. HENDRICKS: No other questions.

2 CHAIRMAN BRISE: All right. Thank you,
3 Mr. Hendricks.

4 MS. KLANCKE: Staff does have a few questions
5 of this witness.

6 CHAIRMAN BRISE: Sure.

7 MS. KLANCKE: During the break you were
8 provided with a stack of documents that OPC
9 initially referred you to the last of four
10 documents.

11 For the clarity of the record, the first of
12 these documents is titled -- is the errata sheet
13 to Ms. Ousdahl's deposition, which was moved in as
14 110.

15 CHAIRMAN BRISE: Okay.

16 MS. KLANCKE: I just wanted to make sure --
17 at the time of your direct, it had not yet been
18 provided, so we wanted to make sure that it was
19 attached to your 110.

20 CROSS-EXAMINATION

21 BY MS. KLANCKE:

22 **Q Turning to the second item that I've provided**
23 **to you. It's titled "Late Filed Exhibit No. 1 to**
24 **Witness Ousdahl's deposition." Do you see that?**

25 MS. KLANCKE: Mr. Chairman, I would like an

1 exhibit number for this document.

2 CHAIRMAN BRISE: Sure. We are at --

3 MS. KLANCKE: I believe 596.

4 CHAIRMAN BRISE: 596.

5 (Exhibit No. 596 was marked for
6 identification.)

7 CHAIRMAN BRISE: Were these previously
8 distributed?

9 MS. KLANCKE: These were provided this
10 morning.

11 CHAIRMAN BRISE: As an addendum to 110?

12 MS. KLANCKE: There were four documents in a
13 stack with it.

14 CHAIRMAN BRISE: Okay.

15 MR. SAPORITO: Mr. Chairman, just for my
16 clarification, OPC, if I'm not mistaken, used a
17 handout, I believe it came from staff, it was
18 entitled "Deposition transcript of FPL Witness Kim
19 Ousdahl," and it was identified as an addendum to
20 that document and identified on the record as 110.

21 MS. KLANCKE: Okay. Let's just -- to
22 clarify. There were four documents passed out,
23 the last of which OPC used. I'm going to address
24 them each and I'll refer to them by their title.
25 And when necessary, I'll have them -- I'll ask to

1 have an exhibit number provided.

2 CHAIRMAN BRISE: Thank you.

3 MR. SAPORITO: But my question though is that
4 OPC had their document identified as 595 so --

5 MS. KLANCKE: We're using the same document,
6 correct.

7 MR. SAPORITO: So it's the same document,
8 it's just --

9 MS. KLANCKE: Correct.

10 MR. SAPORITO: -- two different numbers for
11 the same document?

12 MS. KLANCKE: We're going to use the same
13 exhibit number, as it is the same document, at the
14 appropriate time, correct. We'll be using 595 for
15 that particular one. All of the other items that
16 I've used will be referenced in accordance with
17 how they come up.

18 MR. SAPORITO: Okay.

19 BY MS. KLANCKE:

20 **Q Okay. Getting back to the second item that I**
21 **provided to you, which is titled "Late Filed Exhibit**
22 **No. 1 to Witness Ousdahl's Deposition."**

23 **Do you recognize this document, Mrs. Ousdahl?**

24 A Yes.

25 **Q Do you recollect when I took your deposition**

1 on August 13th of 2012?

2 A Yes.

3 Q During your deposition, I asked you to
4 provide a late-filed exhibit containing the actual
5 dollar amounts and the impacts of the recommended
6 adjustments contained in your exhibit KO-16.

7 Do you recall that?

8 A Yes, I do.

9 Q And is this that document?

10 A Yes, it is.

11 Q Just so that we understand the information
12 that's contained in your late-filed exhibit, the
13 numerals at the top of this exhibit, numbers 1 through
14 18, correspond to the item numbers that were contained
15 in your Exhibit KO-16; is that correct?

16 A That's correct.

17 Q And the accounts impacted by each of the
18 proposed adjustments that were reflected in your KO-16
19 are reflected on the left-hand side of this document;
20 is that correct?

21 A That's correct.

22 MS. KLANCKE: At the appropriate time, I
23 would like to have this moved into the record.

24 BY MS. KLANCKE:

25 Q I would like to turn your attention now to

1 the third document that I've provided to you. It is
2 entitled "FPL Reconciliation of MFR Schedule C-41 to
3 Issues 89 and 91."

4 Do you see that?

5 A Yes, I do.

6 Q This is a document that was provided to the
7 parties following your direct examination in which I
8 asked you some questions about MFR C-41. Do you
9 remember that?

10 A Yes.

11 MS. KLANCKE: Mr. Chairman, may I have an
12 exhibit number for this document?

13 CHAIRMAN BRISE: Sure. 597.

14 (Exhibit No. 597 was marked for
15 identification.)

16 BY MS. KLANCKE:

17 Q Are you familiar with this document?

18 A Yes, I am.

19 Q Was it prepared by you or under your
20 supervision?

21 A Yes.

22 Q Using this document, the Reconciliation of
23 MFR C-41, please walk me through how you derived the
24 production plant O&M expense request amount of six
25 million -- 663,393,000 that is reflected both here on

1 **this document in the issue amount and in FPL's position**
2 **on issue 89.**

3 A Well, the purpose of the reconciliation
4 prepared at your request is to take parties from the
5 MFR requirements, as the company understands from C-41,
6 which I believe is the benchmark MFR, over to the issue
7 amounts, which are reflecting the amounts of each of
8 these functional categories that would be reflected in
9 revenue requirement. And there are some differences.
10 So this document lays out those differences.

11 The MFR C-41 does not have nonrecoverable --
12 we call this nonrecoverable fuel, but it's base fuel.
13 So we've added those amounts in appropriately for the
14 functions for the test year. It did not include
15 expenses associated with transmission electricity by
16 others. We've added that in.

17 Oh, you asked me just about production. I'm
18 sorry.

19 **Q Correct.**

20 A I dropped down to transmission.

21 **Q If we could start with just issue 89 and the**
22 **production plant O&M. Our desire is, as you are doing**
23 **just now, for you to walk us through how you derive**
24 **that total amount --**

25 A Okay.

1 **Q -- for production plant O&M expense.**

2 A Okay. Again, by function or by type of
3 generation, steam, other -- and this other power supply
4 is really largely purchased power and by nuclear. We
5 take the MFR amounts that are produced for the
6 benchmark purpose. We have to add in base fuel that's
7 charged to those functions, which is what we're doing
8 in each of those categories, the 9.9 million, the
9 2.1 million, totaling up to the 12.1 million for
10 production, other. There is 11.7 for nuclear. What
11 that amount is is the end-of-life accrual that we make
12 under order of this Commission. So we add that in.

13 Then we have to remove the company
14 adjustments because they are not reflected in the MFR
15 C-41. So we've removed 7.3 million, which is the test
16 year amount of Cape Canaveral, okay, the 7.3. We get
17 an adjusted total.

18 We have to apply the jurisdictional factors
19 to get to the retail portion of each of these costs and
20 multiply that across. You get the total, and add down,
21 you get the six point -- well, I'm sorry, issue 89, you
22 get the 252,836. There's also -- well, I guess there's
23 three issue 89s. For production and total, 252.8, for
24 nuclear 410.5, and for total 663,393.

25 **Q And with respect to those, as we had**

1 previously discussed during your direct, those three
2 89s are the individual components that are -- that
3 comprise the total production O&M expense that's
4 reflected in your issue 89, correct?

5 A That's correct.

6 Q Excellent.

7 Moving down to issue 90, transmission, could
8 you walk us through -- the same question -- could you
9 walk us through how you derived the 55,677,000 for
10 transmission amount in line 89 and also as reflected in
11 your issue 90?

12 A Yes. It's the same general approach. We
13 started with the transmission O&M of 47.1 million, had
14 to add in the expense associated with transmission of
15 electricity by others of 15 million, derive a total of
16 62.2, apply the jurisdictional factor and derive the
17 55.7 million for issue 90.

18 Q Okay. And the final question using this
19 exhibit, could you walk us through your distribution
20 expense of 286,058,000 that's reflected in your
21 issue 91 using this exhibit?

22 A Yes. Again, same approach. We began with
23 the \$286.7 million of O&M on the benchmark. We're
24 subtracting the company adjustment. This is the
25 substation pollution company adjustment that I provide

1 in my direct testimony of 560,000, to get to the
2 \$286.1 million adjusted total, apply the jurisdictional
3 factor. And the result for issue 91 is 286,058.

4 **Q Thank you.**

5 **I would like to move to the next exhibit that**
6 **I've provided to you, which was -- previously you were**
7 **asked some questions on it from OPC. It was labeled**
8 **Exhibit No. 595.**

9 **Are you there?**

10 A Yes.

11 **Q Are you familiar with this document?**

12 A Yes.

13 **Q I would like to turn your attention to a**
14 **particular row, the row labeled "Other." Do you see**
15 **that?**

16 A I do.

17 **Q It's contained on line 5. What does the row**
18 **labeled "Other" represent?**

19 A It represents adjustments for accruals that
20 are outside of the regression analysis that's performed
21 by the customer service folks to derive the bad debt
22 expense.

23 So we have a reserve that is a part of the
24 total uncollectibles that is for unbilled accounts of
25 some of our larger customers that we handle separately.

1 And we don't perform a regression analysis; we perform
2 a much simpler estimation process, so we get
3 adjustments. And as you can see in the "Revised"
4 column, it's \$60,000. It's very, very small.

5 **Q Can you walk us through the calculations**
6 **that's contained in this row? You started with 60,000,**
7 **but can you kind of walk us through the origin of the**
8 **numerals and how the adjustment in total is in "Other"?**

9 A In the "Other" column?

10 **Q In the "Other," just focusing on the "Other"**
11 **column.**

12 A Well, remember, the 1.4 million is an error.
13 That's what we were talking with OPC counsel about, the
14 60,000 that results is an additional accrual for bad
15 debt expense associated with a smorgasbord of much
16 smaller amounts that are outside of the regression
17 estimation process that customer service uses to come
18 up with the bulk of our receivable bad debt estimate.
19 And I don't have the detail at my fingertips to help
20 you with the 60,000.

21 **Q Fair enough.**

22 **I believe that is all of the questions that**
23 **we have for you. Thank you.**

24 CHAIRMAN BRISE: Thank you. Commissioners.

25 Commissioner Brown.

1 COMMISSIONER BROWN: Thank you. And thank
2 you, Ms. Ousdahl, for your testimony.

3 On page 21 of your rebuttal, you state that
4 the -- regarding the Cape Canaveral step
5 increase -- you state that it includes the ROL
6 adder -- ROE adder.

7 Do you know what the revenue requirement --
8 and this may be somewhere in your testimony -- but
9 what the revenue requirement would be associated
10 with the Cape Canaveral step increase without the
11 ROE adder?

12 THE WITNESS: Yes. It's in the exhibit in my
13 direct, but let me refer. It's \$2 million.

14 COMMISSIONER BROWN: That's the revenue
15 requirement?

16 THE WITNESS: Yes. It's on my Exhibit KO-8.
17 Two million is the revenue requirement associated
18 with the adder for the Canaveral step increase, if
19 I understood your question.

20 COMMISSIONER BROWN: Yes. Thank you. That's
21 all.

22 CHAIRMAN BRISE: Okay. Redirect.

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

24 REDIRECT EXAMINATION

1 BY MR. BUTLER:

2 Q Ms. Ousdahl, do you have a copy of the audit
3 report that was discussed with you by -- with
4 Ms. Christensen?

5 A Yes, I do.

6 Q Okay. Would you turn to page 3.
7 Ms. Christensen had directed your attention to, I think
8 it's the third paragraph from the bottom; is that
9 right?

10 A Yes.

11 Q Did the Commission audit staff have any
12 finding in its audit report with respect to the comment
13 that's made in that paragraph?

14 A Not ultimately. The company was able to
15 clarify for parties that the services being provided by
16 FPLES for third parties were different than the
17 services that FPL was providing to FPLES. So FPL was
18 providing a transfer service to FPLES for every
19 customer that desired that transfer, and we were
20 billing the cost of that transfer.

21 Conversely, FPLES was providing a sales
22 service to third parties, and they were only receiving
23 payment if they actually culminated or terminated a
24 sale, so they were different. And I think we satisfied
25 that concern of parties.

1 **Q Thank you.**

2 A No change was made.

3 **Q Thank you, Ms. Ousdahl.**

4 **You were asked by Mr. Moyle about some of the**
5 **charges to FPL by outside affiliates. And one he**
6 **mentioned was Palms Insurance Company. Do you recall**
7 **that?**

8 A Yes, I do.

9 **Q Okay. Would you explain briefly the reasons**
10 **that Palms was formed and its benefits to FPL and**
11 **customers?**

12 A Yes. The company developed the insurance
13 provider, the captive insurance provider, in a
14 situation some years ago where insurance was not
15 available in Florida. And there was a need to be able
16 to provide coverages for the businesses that couldn't
17 be obtained at reasonable prices otherwise. And that
18 was the origin of the business. We engage that
19 provider where we can.

20 We also have other insurance providers that
21 FPL has to rely on because Palms cannot provide all of
22 our coverages. But where Palms does provide coverage,
23 they are typically quota share and market priced.

24 **Q Can you explain briefly what quota share and**
25 **market priced means?**

1 A Quota share, as I understand it -- I'm not an
2 insurance professional -- but a group of insurers will
3 share in coverages for an entity on certain losses or
4 risks. And we share in the pricing also, depending on
5 the -- obviously depending on the layer of risk that
6 we're taking on, that Palms may be taking on for the
7 business because the pricing will be different,
8 depending on whether it's the first layer of coverage
9 versus a higher layer.

10 **Q Thank you, Ms. Ousdahl. That's all the**
11 **cross-examination -- I'm sorry -- all the redirect that**
12 **I have.**

13 CHAIRMAN BRISE: Thank you.

14 Exhibits.

15 MR. BUTLER: FPL would move Exhibits 397
16 through 403.

17 CHAIRMAN BRISE: Okay. Without any
18 objection, we will move into the record 397 to
19 403.

20 (Exhibit Nos. 397 through 403 received in
21 evidence.)

22 CHAIRMAN BRISE: Ms. Christensen.

23 MS. CHRISTENSEN: I think OPC had utilized
24 one of the exhibits that staff had passed out, so
25 I'm going to go ahead and let them move those into

1 the record then.

2 CHAIRMAN BRISE: Okay.

3 MS. KLANCKE: At this time, staff would like
4 to move Exhibits 595, 596, and 597.

5 CHAIRMAN BRISE: Okay. Seeing no objections,
6 we will move Exhibits 595, 596, and 597 into the
7 record.

8 MR. BUTLER: That's fine.

9 (Exhibit Nos. 595, 596, and 597 received in
10 evidence.)

11 CHAIRMAN BRISE: All right.

12 MR. BUTLER: And I would ask that Ms. Ousdahl
13 be excused.

14 CHAIRMAN BRISE: Ms. Ousdahl, you are
15 excused. Safe travels.

16 MR. BUTLER: Thank you, Mr. Chairman.
17 Shall we move on to our next witness?

18 CHAIRMAN BRISE: Sure.

19 MR. BUTLER: I would call Mr. Terry Deason.

20 CHAIRMAN BRISE: In the interest of moving
21 forward in fluidity, we are looking to break at
22 around 12 or so, so if, you know, you're in the
23 middle of posing questions, if it's a good place
24 for you to break and we have not finished with the
25 witness, you know, you can signal to me that

1 that's a good place for us to break and we will
2 take our lunch break at that time, okay?

3 MR. BUTLER: Okay, thank you.

4 Mr. Deason, were you here this morning for
5 the swearing in?

6 MR. DEASON: No.

7 MR. BUTLER: I'm afraid we've got one more
8 here that needs to be sworn in separately,
9 Mr. Chairman.

10 CHAIRMAN BRISE: Sure.

11 Thereupon,

12 TERRY DEASON

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BUTLER:

17 **Q Mr. Deason, would you please state your name**
18 **and business address for the record.**

19 A Yes. My name is Terry Deason. My business
20 address is 301 South Bronough Street, Suite 200,
21 Tallahassee, Florida 32301.

22 **Q Okay. By whom are you employed and in what**
23 **capacity?**

24 A I'm employed by the firm Radey, Thomas, Yon &
25 Clark as a consultant.

1 **Q Thanks. Have you prepared and caused to be**
2 **filed in this docket 58 pages of prefiled rebuttal**
3 **testimony?**

4 A Yes, I have.

5 **Q Okay. Have you also prepared and caused to**
6 **be filed on August 16, 2012 an errata sheet to your**
7 **prefiled rebuttal testimony?**

8 A Yes, I did.

9 **Q Okay. Do you have any further changes or**
10 **revisions to your prefiled rebuttal testimony today?**

11 A No, I do not.

12 **Q If I asked you the questions contained in**
13 **your rebuttal testimony today, would your answers be**
14 **the same?**

15 A Yes, they would.

16 MR. BUTLER: Mr. Chairman, I would ask that
17 Mr. Deason's prefiled testimony be inserted into
18 the record as though read.

19 CHAIRMAN BRISE: Okay. At this time, we will
20 enter Mr. Deason's prefiled rebuttal testimony
21 into the record as though read, seeing no
22 objections.

23 MR. BUTLER: Thank you.

24 (Whereupon, prefiled testimony inserted.)

25

I. INTRODUCTION

1

2

3 **Q. Please state your name and business address.**

4 A. My name is Terry Deason. My business address is 301 S. Bronough Street,
5 Suite 200, Tallahassee, Florida 32301.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the law firm Radey Thomas Yon and Clark as a Special
8 Consultant specializing in the fields of energy, telecommunications, water and
9 wastewater, and public utilities generally.

10 **Q. Please describe your educational background and professional
11 experience.**

12 A. I have thirty-five years of experience in the field of public utility regulation
13 spanning a wide range of responsibilities and roles. I served a total of seven
14 years as a consumer advocate in the Florida Office of Public Counsel (“OPC”)
15 on two separate occasions. In that role, I testified as an expert witness in
16 numerous rate proceedings before the Florida Public Service Commission
17 (“Commission”). My tenure of service at the Florida Office of Public Counsel
18 was interrupted by six years as Chief Advisor to Florida Public Service
19 Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory Analyst
20 when I was first appointed to the Commission in 1991. I served as
21 Commissioner on the Commission for sixteen years, serving as its chairman
22 on two separate occasions. Since retiring from the Commission at the end of
23 2006, I have been providing consulting services and expert testimony on

1 behalf of various clients, including public service commission advocacy staff
2 and regulated utility companies, before commissions in Arkansas, Florida,
3 Montana, New York and North Dakota. My testimony has addressed various
4 regulatory policy matters, including: regulated income tax policy; storm cost
5 recovery procedures; austerity adjustments; depreciation policy; subsequent
6 year rate adjustments; appropriate capital structure ratios; and prudence
7 determinations for proposed new generating plants and associated
8 transmission facilities. I have also testified before various legislative
9 committees on regulatory policy matters. I hold a Bachelor of Science Degree
10 in Accounting, summa cum laude, and a Master of Accounting, both from
11 Florida State University.

12 **Q. Are you sponsoring an exhibit?**

13 A. Yes. I am sponsoring the following rebuttal exhibits:

14 ▪ TD-1, Biographical Information for Terry Deason

15 **Q. For whom are you appearing as a rebuttal witness?**

16 A. I am appearing as a rebuttal witness for Florida Power & Light Company
17 ("FPL" or "the Company").

18 **Q. What is the purpose of your rebuttal testimony?**

19 A. The purpose of my rebuttal testimony is to respond to certain assertions and
20 recommendations made by intervenor witnesses Kollen, Lawton, Ramas and
21 Schultz. The issues I address in rebuttal to these witnesses are: Construction
22 Work In Progress; Property Held for Future Use; Working Capital; Incentive
23 Compensation; Directors and Officers Liability Insurance; Advanced

1 Metering Infrastructure (the “Smart Meter Program”); and Return on Equity
2 (“ROE”) Performance Adder.

3

4 **II. CONSTRUCTION WORK IN PROGRESS (“CWIP”)**

5

6 **Q. What is CWIP?**

7 A. CWIP is Account 107 of the Federal Energy Regulatory Commission Uniform
8 System of Accounts (“USOA”). This account includes the total of work order
9 balances for electric plant that is in the process of being constructed.

10 **Q. Is CWIP a necessary part of providing quality utility service?**

11 A. Yes, it is. A well managed utility focused on providing quality and cost
12 effective service will deploy capital to construct new and/or modernize
13 existing facilities to meet these objectives.

14 **Q. Recognizing that CWIP is a necessary part of providing quality utility
15 service, should it be permitted to earn a return?**

16 A. Yes, it should. Otherwise the utility will not be given an opportunity to
17 realize a fair return on its investment in electric plant.

18 **Q. How should this be accomplished?**

19 A. It should be accomplished in one of two ways. First, balances in CWIP could
20 be allowed to accrue an Allowance for Funds Used During Construction
21 (“AFUDC”). The Commission has adopted Rule 25-6.0141, F.A.C., which
22 sets forth the calculation of AFUDC and the eligibility requirements of those

1 construction projects which qualify. The second way is to allow CWIP to be
2 included in rate base when rates are set.

3 **Q. Is there a fundamental difference between the two approaches?**

4 A. Yes, there is. Accruing AFUDC adds to the capital costs of a project. The
5 return is an accounting entry only and is actually realized when the capital
6 asset is included in rate base and is depreciated. Including CWIP in rate base
7 avoids increasing the capital cost of the project through AFUDC and earns a
8 return in rates while the project is being constructed.

9 **Q. What does Rule 25-6.0141, F.A.C., say about the return to be earned on**
10 **CWIP?**

11 A. The Rule recognizes that the return on CWIP can be earned in either of the
12 two fundamental ways that I just described. Further, the Rule establishes the
13 criteria for CWIP projects to be eligible for AFUDC. Generally, to be eligible
14 for AFUDC, a CWIP project must be large in size (greater than 0.5 percent of
15 all existing plant on the books of the utility) and have a long construction time
16 (greater than one year from the project's commencement). CWIP projects not
17 eligible for AFUDC are generally included in rate base.

18 **Q. Why did the Commission require that CWIP projects must be large in**
19 **size and long in construction duration to be eligible for AFUDC?**

20 A. The Commission recognized that most construction projects are relatively
21 small in size and of short duration. The Commission further recognized that
22 these projects were generally routine and recurring in nature. It was
23 determined that it was not administratively efficient to require the accrual of

1 AFUDC on such projects. Further, due to their routine, recurring nature, they
2 were better addressed as a component of rate base. The overall
3 reasonableness of these projects could then be reviewed in the context of rate
4 cases and surveillance reports.

5 **Q. What does witness Kollen recommend for CWIP for FPL?**

6 A. Mr. Kollen recommends a reduction of the amount of CWIP in FPL's rate
7 base to \$250 million, or approximately one-half of the amount included
8 pursuant to Rule 25-6.014, F.A.C.

9 **Q. What is the basis of witness Kollen's recommended disallowance?**

10 A. Mr. Kollen recommends on page 25 of his testimony that the Commission
11 "prospectively modify" the criteria in Rule 25-6.0141, F.A.C., to increase the
12 amount of CWIP projects eligible for AFUDC and thereby reduce the amount
13 of CWIP to be included in rate base. Specifically, he recommends a minimum
14 construction period of only six months and a project threshold cost of only
15 \$0.5 million. Currently, the Rule requires a minimum construction period of
16 one year and a project threshold cost of 0.5 percent of total plant in service,
17 which for FPL is a project threshold cost of approximately \$175 million in the
18 test year.

19 **Q. Do you agree with witness Kollen's recommendation?**

20 A. No, I do not agree. It would be inappropriate to make such a significant
21 unilateral change to Commission policy that has been adopted after a due
22 process procedure and codified in a rule. It is not entirely clear what Mr.
23 Kollen means by recommending a prospective modification to the AFUDC

1 criteria in Rule 25-6.0141. His proposal appears, however, to be an attempt
2 to adopt a new policy without the benefit of a thorough evidentiary review or
3 the due process protections of a rulemaking proceeding, a proceeding that
4 would be open to all interested parties and not just those parties to this rate
5 case. At worst, it is an attempt to unjustifiably reduce FPL's revenue
6 requirement in this case and ill-advisedly defer cost recovery to the future.

7 **Q. Witness Kollen argues that his proposal to defer cost recovery to the**
8 **future is appropriate? Do you agree?**

9 A. I do not agree with his conclusion. I do agree with his statement that "all
10 costs associated with the construction or completion of an asset that is
11 constructed or acquired to provide service should be recovered from
12 customers over the period that the asset provides service to those customers."
13 Mr. Kollen has misapplied this concept to conclude that a return on \$250
14 million invested by FPL to serve its customers should be disallowed in this
15 rate case and deferred to the future. The costs to construct the assets in
16 question are being incurred to provide service and/or benefits to existing
17 customers. Customers expect and deserve to have facilities in place to serve
18 them when needed and to modernize existing facilities when it is cost-
19 effective and/or improves service. Most of the construction projects in
20 question will be completed in one year or less. When those specific projects
21 are completed, they will likely be replaced by new similar projects of a
22 recurring nature. Thus they are necessary to provide high quality cost-
23 effective service to existing customers on an on-going consistent basis.

1 **Q. Is it the case that all CWIP projects exceeding the dollar threshold and**
2 **taking longer than one year to construct should always accrue AFUDC**
3 **and never be in rate base?**

4 A. No, the Commission on occasion has recognized the need to place large
5 longer-term construction projects in rate base.

6 **Q. Why has the Commission done this in some instances?**

7 A. As I stated earlier, AFUDC is an accounting entry that does not generate
8 immediate cash earnings. A large construction project can put financial
9 strains on a utility and insufficient cash flows can threaten bond ratings. The
10 Commission has recognized this and on occasion has allowed a greater
11 amount of CWIP in rate base to maintain a utility's financial integrity. In
12 addition, paragraph (1)(f) of Rule 25-6.0141, F.A.C. permits a utility to file a
13 petition to include a construction project in rate base that would otherwise
14 qualify for AFUDC treatment.

15 **Q. Witness Kollen references paragraph (1)(g) of Rule 25-6.0141, F.A.C.**
16 **Are you familiar with this provision?**

17 A. Yes, I am. This provision was added to the Rule in 1996, while I was serving
18 on the Commission. It gives the Commission limited discretion to exclude a
19 portion of CWIP from rate base and allow it to accrue AFUDC instead.

20 **Q. What was the context within which the Commission adopted this**
21 **provision?**

22 A. The Commission was considering a number of changes to the Rule. The
23 overall purpose of the amendments was to increase the threshold of project

1 qualification in order to limit AFUDC treatment to only those projects with a
2 significant financial impact on any given utility.

3 **Q. Why did the Commission believe this was needed?**

4 A. The Commission was reviewing the thresholds in the context of possible
5 industry restructuring. It was believed that limiting the amount of AFUDC
6 would get regulated costs more comparable to true economic costs and more
7 consistent with Generally Accepted Accounting Principles or GAAP.

8 **Q. Did the Commission consider the benefits for customers?**

9 A. Yes, the Commission recognized that setting a higher threshold for AFUDC
10 accrual would have the effect of lowering total project costs in rate base and
11 that this would ultimately lead to lower rates.

12 **Q. Did the Commission consider the possibility that the higher threshold
13 could result in current customers paying for projects that would only
14 benefit future customers?**

15 A. Yes, the Commission considered this and determined that this would not
16 likely be the result of the higher threshold. Commission staff's
17 recommendation dated April 18, 1996, in Docket No. 951535-EI, Proposed
18 Revisions to Rule 25-6.0141, F.A.C., recognized that large long term
19 construction projects would still accrue AFUDC and that other projects should
20 be in rate base. Staff's recommendation stated:

21 However, large, long term projects, such as power plants, will
22 still accrue AFUDC unless the Commission specifically
23 approves inclusion in rate base. Not all construction is solely

1 for the benefit of future ratepayers. There are many projects
2 which are built in order to increase the reliability of service or
3 replace aging or obsolete equipment and facilities. In some
4 cases, facilities in high growth areas reach capacity and must
5 be expanded.

6 **Q. Should paragraph (1)(g) of Rule 25-6.014, F.A.C., be used to approve**
7 **witness Kollen's proposal to disallow \$250 million of CWIP from FPL's**
8 **rate base in this proceeding?**

9 A. No, it should not. This provision was enacted to give discretion to the
10 Commission to exclude a portion of CWIP from rate base should the
11 Commission determine that the potential impact on rates was such that the
12 exclusion may be required. Therefore, before this provision is used to exclude
13 a portion of CWIP, the Commission must make a finding that the resulting
14 impact on rates of including the CWIP would be inappropriate or unduly
15 burdensome. Exercising this provision should only be done in truly
16 extraordinary situations.

17 **Q. Has the Commission ever used this provision to disallow CWIP projects**
18 **from rate base?**

19 A. No, not to my knowledge.

20 **Q. What was the amount of CWIP that was allowed in rate base in FPL's**
21 **last rate case?**

22 A. The Commission allowed \$687 million, which is greater than the amount
23 being requested in the current case.

1 **Q. What is the revenue impact of the disallowance suggested by witness**
2 **Kollen?**

3 A. Mr. Kollen calculates the annual revenue impact to be \$26 million. I have not
4 determined the exact impact of \$26 million of FPL's rates. However, I am
5 confident that it would not be considered extraordinary such that the
6 utilization of paragraph (1)(g) would be justified.

7

8 **III. PROPERTY HELD FOR FUTURE USE ("PHFU")**

9

10 **Q. What is PHFU?**

11 A. PHFU is the original cost of electric plant owned and held for future use in
12 electric service under a definite plan for such use. It includes both property
13 acquired but never previously used, as well as property used by the utility but
14 retired from service pending its reuse in the future. The original cost amounts
15 are booked in Account 105 Electric plant held for future use, as prescribed by
16 the USOA.

17 **Q. Does Account 105 also include land and land rights?**

18 A. Yes, it does. The parameters for land and land rights are generally the same
19 as those set forth for electric plant in the USOA, with one notable exception.

20 **Q. What is the exception?**

21 A. When describing the types of electric plant eligible for inclusion in Account
22 105, the USOA includes the term "definite" when describing the plan for its
23 use. In describing the types of land and land rights eligible for inclusion in

1 Account 105, the USOA does not use the term “definite.” The USOA simply
2 prescribes that land and land rights be planned for future electric use.

3 **Q. Why is this a significant distinction?**

4 A. Electric plant is held to a higher standard by prescribing that there be a
5 definite plan for its future use. In contrast, the USOA recognizes that land and
6 land rights may need to be acquired for possible future use. The USOA does
7 not prescribe that the land and land rights have a definite future use.

8 **Q. Does this distinction have implications for regulatory policy?**

9 A. Yes, it does. Appropriate and responsible regulatory policy recognizes that,
10 unlike electric plant that usually would be acquired only a short time before it
11 is to be placed into service, land and land rights may need to be acquired
12 many years in advance of their designated use. It would be an inappropriate
13 and unreasonable standard to require all land and land rights to have a
14 “definite” plan for use at the time of initial acquisition. This is not to suggest
15 that regulated utilities should be encouraged to acquire land and land rights in
16 a speculative manner. Certainly all regulatory land acquisitions should be
17 made consistent with a utility’s plans to cost-effectively and reliably serve all
18 future demands from its customers.

19 **Q. Has the Commission recognized the need of regulated utilities to acquire
20 property in advance of its designated use?**

21 A. Yes, as early as 1971, the Commission articulated an expanding policy on the
22 inclusion of PHFU in a regulated utility’s rate base. In Order No. 5278,
23 issued November 30, 1971 in Docket No. 70532-EU, In re: Petition of Tampa

1 Electric Company for an increase in rates and charges and for approval of a
2 fair and reasonable rate of return, the Commission stated:

3 This Commission has long recognized that in Florida, public
4 utilities cannot, in the exercise of good business judgment,
5 indefinitely postpone the acquisitions of property necessary to
6 future expansion. In many instances, a deferral of acquisition
7 of necessary property would be very costly and imprudent and
8 the management would be subject to criticism for delay....
9 Until recently, this Commission allowed the inclusion of
10 Property Held for Future Use if it were acquired as a result of a
11 definite plan for its use, and its use was imminent. Since we
12 last considered this matter, there has been a growing
13 controversy over the locating of power plants, both nuclear and
14 fossil fuel, which makes it imperative that we review our
15 policies, practices, and procedures in this area.

16 **Q. Does witness Ramas address PHFU in her testimony?**

17 A. Yes, she recommends the disallowance of \$117.5 million of PHFU from
18 FPL's rate base. The great majority of her recommended disallowance (\$109
19 million) is the cost of two future generating plant sites (Fort Drum and
20 McDaniel/Hendry, the "McDaniel Site"). The remaining \$8.5 million is the
21 cost of nine properties for future transmission facilities.

22 **Q. What is the basis for her recommended disallowances?**

23 A. Ms. Ramas recommends disallowance of the two future generating plant sites

1 because FPL “has no specific in-service dates” for the plant sites. Ms. Ramas
2 recommends disallowance of the nine transmission properties because the
3 expected utilization of the properties is either beyond ten years or has not yet
4 been announced.

5 **Q. Do you agree with witness Ramas’ recommended disallowances?**

6 A. I do not agree with her recommended disallowances. Her stated reasons are
7 contrary to Commission precedent and contrary to good regulatory policy. If
8 adopted, her recommended disallowances would be inconsistent with the
9 long-range planning requirements which are necessary for the reliable and
10 cost-effective provisioning of service to customers. In essence, Ms. Ramas’
11 recommended disallowances would not be in the customers’ best interest.

12 **Q. What is the Commission’s policy in regard to PHFU?**

13 A. The Commission has a policy that has evolved somewhat over time, but has
14 consistently recognized the need for adequate long-term planning and the need
15 to have property available to fulfill service commitments to customers reliably
16 and cost effectively. This is clearly evident from the Commission’s 1971
17 order involving Tampa Electric that I earlier cited. In this same order,
18 regarding its decision to allow a future power plant site in rate base and the
19 need for adequate planning, the Commission stated:

20 In this regard, failure to provide for the long-range planning
21 necessary for adequate and reliable power supply could well be
22 considered an imprudent act and inconsistent with the public
23 interest.

1 **Q. What is the standard the Commission has applied to determine whether**
2 **specific future use properties should be included in rate base?**

3 A. The Commission's standard is one of reasonableness or what amount of
4 PHFU is reasonably needed to cost-effectively provide reliable service to
5 existing and future customers. Applying this standard requires a review of
6 specific properties to determine whether their acquisition and retention are
7 reasonable to provide service over an adequate planning horizon. The
8 Commission's reasonableness standard cannot be determined by arbitrary and
9 rigid time limitations on the properties' ultimate use. To do so would be
10 contrary to Commission policy and ultimately work to the disadvantage of
11 utilities' customers.

12 **Q. Does witness Ramas' recommend disallowances utilize arbitrary and**
13 **rigid time limitations?**

14 A. Yes, they do. In regard to the transmission properties, she recommends that
15 all properties with expected in-service beyond ten years and those without an
16 announced in-service date be excluded from rate base. Her recommendation
17 is not based upon an individual study of each property to determine whether
18 each is reasonably needed over the planning horizon.

19 **Q. Has the Commission spoken to the need to make an individual study of**
20 **properties held for future use?**

21 A. Yes, in Order No. 5619, in Docket No. 71370-EU, the Commission
22 recognized that there is no hard and fast rule to determine the amount of
23 PHFU to include in rate base. The Commission stated:

1 Under past Commission policy, we have recognized that the
2 deferral of acquisition of property for future use to meet
3 foreseeable needs could be imprudent and costly. Thus, we
4 have no hard and fast rule as to what should be or should not be
5 included but must make an individual study for each tract so
6 held.

7 **Q. Has the Commission previously addressed a proposal to limit PHFU to an**
8 **arbitrary ten year rule?**

9 A. Yes, in a 1992 rate case involving Tampa Electric, there was a proposal to
10 apply a ten year rule to PHFU. The Commission rejected this approach. In
11 Order No. PSC-93-0165-FOF-EI, the Commission stated:

12 Public counsel's witness, Mr. Schultz, applied a 10-year rule to
13 plant held for future use, suggesting that property either owned
14 by Tampa Electric for longer than ten years or whose projected
15 in-service date is greater than ten years in the future should be
16 removed from rate base. We disagree with this methodology
17 [*51] because it arbitrarily disallows rate recovery for power
18 plant distribution substation, and transmission substation sites
19 that Tampa Electric plans to use to meet future growth beyond
20 a point in time ten years from now. It is well known that, in
21 Florida, these sites are becoming increasingly more difficult to
22 find, purchase and permit.

1 **Q. Ms. Ramas refers to the Company's Ten Year Site Plan as a basis of her**
2 **recommended disallowance. Is this appropriate?**

3 A. No, it is not. A utility's Ten Year Site Plan was never intended to be nor has
4 it ever been used by the Commission to determine the appropriateness or
5 inappropriateness of including an asset in a regulated utility's rate base. Ten
6 Year Site Plans are filed pursuant to Section 186.801(1), F.S., and are
7 recognized to be "tentative information for planning purposes only" which
8 "may be amended at any time...." In addition, in its Review of the 2011 Ten
9 Year Site Plans, the Commission states:

10 Since the Ten-Year Site Plan is not a binding plan of action for
11 electric utilities, the Commission's classification of these Plans
12 as suitable or unsuitable does not constitute a finding or
13 determination in docketed matters before the Commission.

14 **Q. Witness Ramas recommends the disallowance of \$109 million associated**
15 **with two future generating sites. Do you agree with her basis for these**
16 **recommended disallowances?**

17 A. No, I do not. Once again she has not conducted an evaluation of the
18 reasonableness of these sites. Rather, she recommends their disallowance
19 because there are, in her words, "no specific plans to develop these sites
20 and/or place them into service at any time in the foreseeable future." Her
21 description of these properties is an assertion that the ultimate facts in this
22 case may or may not support. Nevertheless, even if her assertion is factually
23 correct, it is not a justifiable reason to exclude these sites from rate base.

1 **Q. Why so?**

2 A. As I stated earlier, the USOA does not require there to be a definite plan of
3 use with a definite time frame. But more importantly, requiring there to be a
4 specific plan for development belies the purpose of acquiring property to cost-
5 effectively and reliably provide service to existing and future customers. For
6 a public utility to wait to acquire property, property that often times must
7 possess very specific locational, geologic, hydrologic, and environmental
8 attributes, until the utility has a firmly established plan of development, could
9 prove costly and could threaten reliability. In fact, waiting could even be
10 considered imprudent as stated by the Commission in Order No. 5619 which I
11 just quoted.

12

13 A cardinal virtue of proper planning is not only to anticipate needs but also to
14 maintain options to enable a utility to provide service in an ever changing
15 environment. Requiring a definite plan of development would be short-
16 sighted, would limit the ability of a utility to adapt to changing circumstances,
17 and could ultimately lead to higher costs. This is why it is better to evaluate
18 each property individually and make an informed judgment of its
19 reasonableness.

20 **Q. Has the Commission addressed the need for property to be acquired and**
21 **retained prior to there being a specific plan for its use?**

22 A. Yes, the Commission has. In Order No. 5619, in Docket No. 71370-EU, the
23 Commission recognized that a deferral of acquisition of property could be

1 imprudent and costly. The Commission also addressed the growing amount of
2 time lag between the study of a site and when construction begins. The
3 Commission stated:

4 In recent years, the lag time has been extended considerably
5 from the time the first study is made until the final approval is
6 given and construction begins. Obviously, it would be folly
7 then to insist that the Company defer the purchase of land for
8 future use until all doubts as to its use have been resolved.
9 (emphasis added)

10

11 And in Order No. PSC-93-0165-FOF-EI, in Docket No 920324-EI, the
12 Commission included Tampa Electric's Port Manatee plant site in rate base,
13 even though there were no current plans for its use:

14 Public Counsel argues that Tampa Electric has no current plans
15 for the Port Manatee plant site. Staff agrees that, at the current
16 time, the company has not identified a particular generating
17 unit to be built at the site. However, as discussed before, it will
18 be more difficult to find an alternate plant site in the future. By
19 allowing the Port Manatee site to remain in rate base, Tampa
20 Electric will already have a viable generating site for future
21 power plants.

1 **Q. If the Commission were to adopt witness Ramas' recommended**
2 **disallowances, would there be consequences?**

3 A. Yes, there would be. Disallowing the costs from rate base, as she
4 recommends, would be tantamount to declaring the properties in question as
5 being unneeded and imprudent to retain. As a consequence, FPL would have
6 to evaluate whether the properties should be retained. While I cannot and do
7 not speak for FPL in this regard, I would expect the properties would be sold.
8 This would mean the properties would no longer be available to serve
9 customers. FPL would then be in the position of acquiring similar properties
10 at some time in the future, assuming similar properties with the same
11 attributes would be available. There would also be a question of the price that
12 would have to be paid at that time.

13 **Q. Has the Commission previously addressed these potential consequences?**

14 A. Yes, in the same order addressing Tampa Electric's Port Manatee plant site
15 that I just cited, the Commission stated:

16 Power plant sites in Florida are becoming increasingly more
17 difficult to find, purchase and permit. Tampa Electric has a
18 potential power plant site at Port Manatee. Utilities purchase
19 power plant sites in advance, because the value of the land will
20 generally appreciate at a rate greater than the utility's overall
21 rate of return. If the Commission found that the Port Manatee
22 site was an imprudent investment and did not allow Tampa
23 Electric to earn a rate of return on the property, Tampa Electric

1 would be encouraged to sell the site now. Tampa Electric
2 would then have to search for, and purchase, another site for a
3 future power plant, at a much greater cost.

4 **Q. Would there be any other consequences of adopting witness Ramas’**
5 **recommended disallowances?**

6 A. Yes, there would be. Aside from the immediate consequence of losing the
7 properties in question as future sites, adopting Ms. Ramas’ recommendation
8 would send a message to FPL and other Florida utilities to take a shorter look
9 into the future and be less aggressive in actively seeking and acquiring
10 properties that they believe are needed to cost-effectively and reliably serve
11 their customers. By using either rigid time limitations or imposing a
12 requirement for a definite plan of development, utilities would logically wait
13 longer to acquire needed property and increase the risk of having to acquire
14 less than optimal sites, pay more for the sites that are available, or both. This
15 would not be in the customers’ best long-term interest.

16 **Q. Are there additional reasons the Commission should avoid sending such a**
17 **message to FPL and Florida’s other utilities?**

18 A. Yes, there are. There are many dynamics in play which would call for even
19 longer planning horizons, not shorter.

20 **Q. What are these dynamics to which you refer?**

21 A. Over my 35 years of experience in utility regulation, I have observed
22 dynamics which make planning for future demand more difficult yet more
23 essential for customers to be served cost-effectively and reliably. Perhaps

1 most important is the rapid growth Florida has experienced and the reduction
2 in the number of sites available for future development. This dynamic is
3 further compounded by an increase in conservation areas in Florida, increased
4 demands on Florida's limited water resources, an increase in environmental
5 standards and requirements, and an escalation of "not-in-my-backyard"
6 concerns from citizens. On top of these dynamics is the fact that the time
7 required to locate, acquire, and get all necessary permits has generally
8 increased.

9
10 Another significant dynamic is the need to have generation sites located close
11 to load centers. This need is further amplified by the difficulty of obtaining
12 new transmission right-of-way and the escalating cost of constructing
13 transmission lines. Further, the overall increase in fuel costs and the resulting
14 higher cost of line losses make the location of generation an even more
15 essential factor.

16
17 And lastly, Florida has an established policy of increasing its fuel diversity.
18 To obtain this goal and to be able to adapt to an era of technological,
19 environmental, and financial uncertainty, it is imperative that options for
20 future generation and transmission facilities be maintained. Putting arbitrary
21 time limitations or requiring specific development plans are counter to this
22 goal.

1 **Q. In your testimony you have cited a number of Commission cases**
2 **concerning PHFU. Has the Commission made a more recent decision**
3 **concerning PHFU?**

4 A. Yes, in the most recent Gulf Power rate case, Docket No 110138-EI, the
5 Commission addressed PHFU.

6 **Q. What was the Commission's decision in that case?**

7 A. The Commission evaluated various properties being held for future use by
8 Gulf Power. The Commission allowed in rate base properties associated with:
9 the Carryville site, Plant Smith, Plant Daniel, and the Mossey Head
10 Generating site. The Commission disallowed the North Escambia County
11 Nuclear Plant site.

12 **Q. Does the Commission's decision to disallow the North Escambia site as**
13 **property held for future use change any of your opinions on this case?**

14 A. No. First, the Commission allowed four generation-related properties to be
15 included in rate base. Second, the Commission did not apply the standard that
16 Ms. Ramas espouses in this case: the North Escambia site was not disallowed
17 because there were no definite plans for development or because the plans
18 exceeded ten years. Third, the absence of a need determination should not be
19 a prerequisite for the rate base inclusion of a plant site. Fourth, the possibility
20 of sharing a plant site with a sister company is not a factual contention in this
21 case and thus could not be a reason to disqualify any of the FPL properties
22 from inclusion in rate base. Fifth, all of the dynamics impacting the need for
23 adequate long range planning to reliably and cost-effectively serve customers,

1 which I just discussed, are in no way diminished by this decision. If anything,
2 this order and the subsequent Commission deliberations on the motion for
3 reconsideration only highlight the need for these dynamics to be considered.

4

5

IV. WORKING CAPITAL

6

7 **Q. What is working capital, as that term is used in a ratemaking context?**

8 A. Just as the term implies, working capital is that amount of capital invested in
9 those assets necessary to meet the day-to-day obligations of an enterprise.
10 These assets are commonly referred to as working assets or current assets.
11 Another way of looking at the concept is to define working capital as that
12 amount of a utility's capital that is not invested in long term assets such as
13 plant and equipment. But under either definition, working capital is an
14 investment-oriented concept and is a necessary part of providing service. As
15 such, it is included as a component of a utility's rate base.

16 **Q. How has the Commission historically determined the amount of cash
17 working capital to include in an electric utility's rate base?**

18 A. Prior to the early 1980's, the Commission employed what is known as the
19 "formula approach". It assumed there was, on average, a 45-day delay
20 between the time service was rendered and payment was received from
21 customers for that service. The application was to multiply the utility's total
22 operating and maintenance expense ("O&M") by a factor of one-eighth, 45
23 days being approximately one-eighth of a year. This was recognized as being

1 a “quick and dirty” approach that was generally believed to yield reasonable
2 results.

3 **Q. Why was it generally believed to yield reasonable results?**

4 A. That belief was premised on the assumption that 45 days was an accurate
5 measure of the average delay in payment, based on the results of lead-lag
6 studies that had been used in other jurisdictions and at what was then called
7 the Federal Power Commission. These lead-lag studies generally yielded an
8 average delay of 45 days between the rendering of service and the receipt of
9 payment.

10 **Q. What method did the Commission begin using in the early 1980’s.**

11 A. The OPC had concerns that the formula approach was not accurate, did not
12 reflect potentially unique operating characteristics between utilities, and
13 resulted in rate base allowances greater than was necessary. The OPC
14 sponsored testimony offering a different approach, based on an analysis of
15 each utility’s average balance sheet. Starting in the early 1980’s, the
16 Commission began using the balance sheet approach for each of the regulated
17 electric utilities as they came before the Commission in rate cases. The
18 balance sheet approach has been consistently used by the Commission for all
19 of Florida’s regulated electric utilities from that time until the present.

20 **Q. Why did the Commission switch from the formula approach to the
21 balance sheet approach?**

22 A. Like the OPC, the Commission had concerns that the formula approach was
23 too much of an approximation that did not take into account potential

1 differences between utilities. The Commission also desired an approach that
2 would lend itself to a reconciliation between a utility's rate base and its capital
3 structure. One of the first instances where the Commission adopted the
4 balance sheet approach was a 1980 rate case involving Tampa Electric. In its
5 Order No. 9599, the Commission found:

6 As a concept, we believe and so find that the use of the balance
7 sheet method of determining the amount of working capital to
8 be included in the rate base has advantages over the formula
9 method. We think it lends itself to a more precise
10 determination of the amount of capital a utility is actually
11 employing in its day-to-day operations. We also believe that it
12 results in a closer correlation between the rate base and a
13 company's capital structure. The formula method was devised
14 many years ago to avoid a costly lead-lag study in every case.
15 Since it does represent only an approximation, it also may or
16 may not correspond with a particular utility's method of
17 handling its receipts and disbursements.

18 **Q. Has the Commission ever used a lead-lag study to determine the amount**
19 **of working capital to allow in an electric utility's rate base?**

20 A. The answer is certainly no for all cases since 1980. And I am unaware of any
21 case where a formal lead-lag study was used prior to then. Rather, the
22 Commission generally relied on the formula approach.

1 **Q. Why did the Commission generally rely on the formula approach and not**
2 **on lead-lag studies?**

3 A. Lead-lag studies are complicated and costly to develop. They are based on
4 varying assumptions on what to include, how to measure the leads and lags,
5 and competing opinions of those sponsoring the studies. In addition, lead-lag
6 studies do not facilitate a reconciliation of rate base and capital structure.

7 **Q. Does witness Kollen make a recommendation for working capital based**
8 **upon a lead-lag study?**

9 A. Mr. Kollen does not present a lead-lag study in his testimony. He
10 recommends that the cash working capital component be set at zero, as a
11 proxy for what he believes a lead-lag study would yield.

12 **Q. Is this appropriate and consistent with Commission policy?**

13 A. It is neither appropriate nor consistent with Commission policy. It would be
14 inappropriate to make such a substantial adjustment on mere conjecture that a
15 lead-lag study would yield a zero result for FPL. Obviously, there is no such
16 study to evaluate to judge its structure and the accuracy of its outcome. It
17 would also be contrary to Commission policy to abandon the use of a
18 verifiable method that considers the unique operating parameters of each
19 utility, like the balance sheet approach. In short, Mr. Kollen's
20 recommendation has the same shortcomings that caused the Commission to
21 reject the formula approach.

1 **Q. What would be the result of using the old formula approach as a**
2 **surrogate for a lead-lag study, as opposed to using witness Kollen's**
3 **surrogate of zero?**

4 A. Let me be clear. I do not endorse the use of the formula approach or any other
5 surrogate approach. However, application of the formula approach (one-
6 eighth of O&M) would yield a cash working capital allowance for FPL in the
7 2013 Test Year of approximately \$193 million. This would be a larger cash
8 working capital allowance than that being requested by FPL. This shows that
9 using surrogates to estimate cash working capital can result in a wide range of
10 possible outcomes.

11 **Q. Witness Kollen opines that the balance sheet approach is outdated in light**
12 **of sophisticated cash management techniques, including electronic funds**
13 **transfer. Do you agree?**

14 A. I have no basis to agree or disagree because Mr. Kollen has presented no facts
15 to substantiate his claim. I am skeptical though.

16 **Q. Why are you skeptical?**

17 A. I am skeptical for two reasons. First, the amount of capital necessary to
18 finance day-to-day operations is tied to the delay in the payment of costs to
19 provision service and the delay in the receipt of payment for service. There
20 are delays in the payments to employees, vendors and investors which help
21 offset the delay in the receipt of payments from customers. It is the netting of
22 delays in receipts and in payments that yields the proper measure of working
23 capital. Therefore, if sophisticated cash management techniques and

1 electronic funds transfers are available to FPL to maximize the delay in its
2 payments, these same tools are available to customers to maximize their delay
3 in payments to FPL. Therefore, I am not sure what the net result would be.
4 There are no facts presented by Mr. Kollen to resolve this uncertainty.
5 Second, if there is a net change in one direction or the other as a result of
6 electronic funds transfer, this would be reflected in FPL's current assets and
7 current liabilities on its balance sheet. Therefore, the balance sheet approach
8 would reflect any net change in the timing of the average net flows.

9 **Q. Witness Kollen criticizes the balance sheet approach because it is based**
10 **on an end of month "snapshot" of certain balance sheet accounts. Do you**
11 **agree with this criticism?**

12 A. No, I do not. Mr. Kollen presents no facts to substantiate his criticism. He
13 does present two hypotheticals, both of which are flawed.

14 **Q. Please explain.**

15 A. Mr. Kollen's first hypothetical assumes that the utility incurs expenses ratably
16 over the month but pays all of its bills at the end of the month to reach a zero
17 balance in accounts payable. His supposition is that there has been a
18 manipulation of the balance sheet accounts to result in a higher amount of net
19 working capital. However, this supposition is flawed because it ignores the
20 source of the payment. To have paid the entire balance of accounts payable
21 there would have to have been a substantial amount of cash, cash equivalents
22 or credit mechanisms in place to enable such a large payment at the end of the
23 month. Thus, in this simplistic hypothetical, making the substantial month-

1 end payments would have necessitated changes in other balance sheet
2 accounts. In reality, FPL has a substantial amount of accounts payable on its
3 books each month and there are no facts presented by Mr. Kollen to show that
4 the amount of month-end accounts payable is not representative of operations
5 throughout the month.

6

7 Mr. Kollen's second hypothetical is also flawed. It assumes a significant
8 increase in accounts receivable at the end of the month. However, this is not
9 consistent with FPL's continuous cycle billing to customers which tends to
10 average out the amount of accounts receivable throughout the month.

11 **Q. Should the Commission adopt witness Kollen's recommendation to allow**
12 **a zero amount of cash working capital in FPL's rate base?**

13 A. No, the Commission should not. Mr. Kollen is proposing to eliminate certain
14 accounts from the balance sheet approach and substitute a surrogate of zero to
15 approximate his opinion of what a lead-lag study would yield. In contrast,
16 FPL has used a comprehensive balance sheet approach which includes all
17 relevant balance sheet accounts. FPL's approach does not rely on surrogate
18 values and is consistent with the approach the Commission has used since the
19 early 1980s.

20

V. INCENTIVE COMPENSATION

1

2

3 **Q. What is the recommendation of Mr. Schultz regarding non-executive**
4 **performance-based variable compensation?**

5 A. Mr. Schultz refers to performance-based variable compensation as incentive
6 compensation and is recommending a disallowance of 50% of such
7 compensation to non-executives. If accepted, the effect of his
8 recommendation would be to deny cost recovery of these costs on a going
9 forward basis.

10 **Q. Do you agree with Mr. Schultz's recommendation?**

11 A. No, I do not. His recommendation to disallow 50% of non-executive
12 performance-based variable compensation is inconsistent with sound
13 regulatory policy and basic principles of ratemaking.

14 **Q. How is Mr. Schultz's recommendation inconsistent with sound regulatory**
15 **policy and basic principles of ratemaking?**

16 A. A fundamental tenet of sound regulatory policy is to provide recovery of all
17 reasonable and necessary costs incurred to provide service to customers. And
18 a basic principle of ratemaking is to include all such costs as test year
19 expenses in calculating a regulated company's net operating income. Only if
20 the Commission finds that the expenses in question are unreasonable or
21 unnecessary should they be disallowed in calculating the company's revenue
22 requirement.

23

1 Another fundamental tenet of sound regulatory policy is to encourage
2 regulated utilities to be efficient and provide high quality service to their
3 customers over the long term. Sacrificing efficiency or quality of service in
4 the long run to achieve temporary rate reductions is not in the customers'
5 interest. All regulatory decisions have consequences and good regulatory
6 policy results when these consequences are adequately considered.

7

8 Mr. Schultz's recommendation violates both of these tenets of sound
9 regulatory policy.

10 **Q. Please explain how Mr. Schultz's recommendation violates the tenet of**
11 **recovery of reasonable and necessary costs.**

12 A. Mr. Schultz has made no allegations or presented any evidence that the total
13 compensation paid to FPL employees, including performance-based variable
14 compensation, is unnecessary or unreasonable. Neither he, nor any other OPC
15 witness, has presented an analysis of the employment market to determine
16 what amount of compensation is reasonable and necessary to attract the
17 workforce needed to efficiently and reliably run an electric utility. This is in
18 contrast to the testimony of FPL's witness Slattery who explains that the
19 overall compensation is reasonable, that it is necessary to attract and retain a
20 qualified workforce, and that it is at or near the median of employee
21 compensation paid by other regulated utilities.

22

1 The sole basis for Mr. Schultz's recommended disallowance is his position
2 that the costs of the pay plan should be shared by both the customers and
3 shareholders. Significantly, Mr. Schultz argues for disallowance of incentive
4 compensation even if a company justifies the total compensation based on
5 market studies.

6
7 Mr. Schultz's recommendation is further flawed because he makes no analysis
8 of the reasonableness of the net amount of compensation that remains after
9 incentive compensation is eliminated. He has not provided any evidence that
10 shows the level of compensation that remains will ensure that FPL is
11 competitive in the market in terms of its ability to attract and retain qualified
12 employees.

13
14 Consequently, Mr. Schultz's testimony is totally devoid of any consideration
15 of reasonableness regarding either the overall amount of compensation or of
16 the net amount he has recommended.

17 **Q. Has the Commission addressed performance-based variable**
18 **compensation for other Florida utilities?**

19 A. Yes. A prior Florida Power Corporation rate case also provided for cost
20 recovery of incentive (performance-based variable) compensation finding
21 that: "Incentive plans that are tied to achievement of corporate goals are
22 appropriate and provide an incentive to control costs." Order No. PSC-92-
23 1197-FOF-EI, issued October 22, 1992, in Docket No. 910890-EI, In Re:

1 Petition for a rate increase by Florida Power Corporation. And in a Tampa
2 Electric Company (“TECO”) rate case, the Commission found that TECO’s
3 total compensation package, including the component contingent on achieving
4 incentive goals, was set near the median level of benchmarked compensation
5 and allowed recovery of incentive compensation that was directly tied to
6 results of Tampa Electric:

7 TECO’s Success Sharing Plan has been in place since 1990 and
8 its appropriateness was approved in the Company’s last rate
9 case in 1992. Lowering or eliminating the incentive
10 compensation would mean TECO employees would be
11 compensated below the employees at other Companies, which
12 would adversely affect the Company’s ability to compete in
13 attracting and retaining a high quality and skilled workforce.

14 We therefore decline to do so.

15 Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No.
16 080317-EI, In re: Petition for a rate increase by Tampa Electric Company.

17

18 The Commission has also approved incentive compensation in three prior rate
19 cases for Gulf Power, the most recent of which resulted in an order issued in
20 April of this year. Order No. PSC-12-0179-FOF-EI, issued April 3, 2012, in
21 Docket No. 110138-EI, In re: Petition for increase in rates by Gulf Power
22 Company. The Commission’s finding in the 2001 Gulf rate case contains
23 language similar to the TECO case:

1 To only receive a base salary would mean Gulf employees
2 would be compensated at a lower level than employees at other
3 companies. Therefore, an incentive pay plan is necessary for
4 Gulf salaries to be competitive in the market. Another benefit
5 of the plan is that 25% of an individual employee's salary must
6 be re-earned each year. Therefore, each employee must excel
7 to achieve a higher salary. When employees excel, we believe
8 that the customers benefit from a higher quality of service.

9 Order No. PSC-02-0787-FOF-EI, in Docket 010949-EI, In re: Request
10 for rate increase by Gulf Power Company, (page 45 or order).

11

12 In this case, FPL is seeking recovery of the same type of incentive
13 compensation allowed in the above noted cases.

14 **Q. Are there any Florida Court decisions relevant to the issue of**
15 **Commission disallowance of compensation expenses?**

16 A. Yes, two cases are instructive in this regard and both dealt with the
17 Commission's disallowance of executive compensation.

18

19 In *Florida Bridge Company v. Bevis*, the Florida Supreme Court reversed a
20 decision of the Commission disallowing a portion of the Company President's
21 salary. The Court observed:

22 Indeed, the Commission has made no attempt to determine
23 whether the president's compensation is excessive in view of

1 the services he provides. The arbitrary ratio by which the
2 Commission reduced the salary and expense account[,] the
3 ratio of days physically absent from the home office to the total
4 number of workdays in the test year[,] has no support in logic,
5 precedent, or policy.

6 363 So. 2d 799, 800-01 (Fla. 1978)

7

8 The Court found the Commission's action "was arbitrary and constitutes a
9 substantial departure from the essential requirements of law." Id.

10

11 The First District Court of Appeal reached a similar conclusion in *Sunshine*
12 *Utilities of Central Florida, Inc. v. Florida Public Service Commission*, in
13 finding fault with the Commission's disallowance of a portion of the
14 Company president's salary:

15

16 In determining whether an executive's salary is reasonable
17 compared to salaries paid to other company executives, the
18 comparison must, at a minimum, be based on a showing of
19 similar duties, activities, and responsibilities in the person
20 receiving the salary.

21 624 So. 2d 306, 311 (Fla. 1st DCA 1993)

1 **Q. How are these cases related to the disallowance of performance-based**
2 **variable compensation recommended by Mr. Schultz?**

3 A. It relates to the point I made earlier in my testimony regarding Mr. Schultz's
4 failure to determine whether overall compensation expense is reasonable and
5 necessary. The Florida Supreme Court and the First District Court of Appeal
6 reversed the Commission's decision because the basis for the disallowances
7 did not address the reasonableness of the salaries as compared to the market.

8

9 Mr. Schultz's analysis is similarly flawed because he has made no attempt to
10 compare the total compensation paid to FPL employees to the market for
11 similar services, duties, activities and responsibilities. Nor has he or any other
12 witness, presented evidence that the salaries for any employee are excessive.
13 Instead he recommends a portion be disallowed based on how it is paid:
14 Because it is performance-based variable pay, rather than base salary, it is
15 subject to disallowance notwithstanding whether the total amount of
16 compensation is reasonable. The focus of any disallowance should be how
17 much is paid, not how it is paid.

18 **Q. How does Mr. Schultz's recommendation fail to encourage efficiency or**
19 **maintain or improve the quality of service?**

20 A. His recommendation would have longer term consequences that could affect
21 efficiency and service, and his recommendation takes away a valuable
22 managerial tool that is effective in increasing efficiency and maintaining or
23 improving the quality of service provided to customers.

- 1 **Q. What do you mean by “takes away a managerial tool”?**
- 2 A. Accepting Mr. Schultz’s recommendation would, by necessity, cause FPL to
- 3 rethink its long standing approach to employee compensation. If a significant
- 4 amount of otherwise valid and reasonable costs were disallowed simply
- 5 because of the method by which they are paid, FPL would be justified in
- 6 implementing a different pay structure. While accepting Mr. Schultz’s
- 7 recommendation would deny FPL the opportunity to recover necessary costs
- 8 currently, adopting a different compensation plan with no at-risk pay and a
- 9 greater reliance on base pay would presumably eliminate the issue in future
- 10 rate proceedings. But by moving more salary to base pay, employees don’t
- 11 have to re-earn that pay by meeting goals that typically include efficiency and
- 12 service objectives. A compensation structure that pays employees regardless
- 13 of performance diminishes management’s leverage to motivate and focus
- 14 employees on appropriate goals.
- 15 In essence, the Commission would be substituting its judgment for that of
- 16 FPL’s management as to how best to motivate and compensate its employees.
- 17 Consequently, the incentive for FPL’s employees to be motivated and
- 18 productive would be lost.
- 19 **Q. Is it your position that Commission precedent supports the recovery of all**
- 20 **of the non-executive performance-based variable pay? And why has this**
- 21 **been the precedent in Florida?**
- 22 A. While the Commission reviews each utility’s compensation costs on the facts
- 23 unique to that utility, the Commission has consistently recognized that

1 incentive compensation/performance-based variable pay, is an accepted and
2 desirable way to achieve corporate goals and to control costs for the benefit of
3 customers. The Commission has also determined that incentive compensation
4 is an appropriate component to include within overall compensation to judge
5 whether the overall compensation paid to employees is reasonable.

6
7 I believe there are a number of reasons for this precedent. First, the
8 Commission's policy is consistent with the basic tenets of sound regulatory
9 policy that I described earlier. Second, the Commission has recognized that
10 having good management at utilities is essential for regulators to achieve their
11 mission of having safe, reliable and reasonably-priced service delivered to
12 customers. The Commission has further understood that management needs
13 sufficient tools and incentives to achieve these goals and that regulators
14 should not attempt to "micro-manage" their regulated utilities. And third, the
15 Commission has appropriately recognized that not all issues in a rate
16 proceeding are a simple situation of "us vs. them", where every issue has a
17 clear winner and a clear loser. While at-risk compensation has been and is
18 currently being characterized as an "us vs. them" issue, in reality it is not.
19 Incorporating performance-based variable pay as part of an overall
20 compensation plan is a good example of a "win-win" situation.

21 **Q. What do you mean by a "win-win" situation?**

22 **A.** Including performance-based variable pay as part of an overall compensation
23 plan enables all stakeholders to win. Shareholders get to invest in a company

1 with employees motivated to achieve appropriate corporate goals.
2 Management gets to apply compensation tools that they think are best to
3 motivate and fairly compensate employees. And most importantly, customers
4 get to pay no more than a reasonable amount in their rates but get a work force
5 that is motivated to be efficient, to reduce costs where possible and to
6 maintain a high level of safe and reliable service.

7 **Q. Mr. Deason, do you understand that Mr. Schultz is not recommending**
8 **FPL not pay the entire non-executive performance-based variable pay; he**
9 **is simply recommending that only 50% recovered in rates?**

10 **A.** Yes, I understand his recommendation. That recommendation, coupled with
11 his statements on page 23, lines 3 through 8, regarding the use of
12 compensation studies to justify total compensation paid to employees, is an
13 implicit acknowledgement that the total compensation, including 100% of
14 performance-based variable pay, is a necessary and reasonable business
15 expense.

16

17 Disallowing a reasonable and necessary business expense, or requiring the
18 company to share part of the expense, is nothing more than a backdoor
19 approach to reducing the allowed ROE. Funds that should go to shareholders
20 as a fair return on investment instead would be diverted to cover costs that
21 should otherwise be recovered in rates.

22

1 **VI. DIRECTORS AND OFFICERS LIABILITY INSURANCE**

2

3 **Q. What is the recommendation made by Mr. Schultz regarding Directors**
4 **and Officers Liability (“DOL”) Insurance?**

5 A. Mr. Schultz is recommending the disallowance of 50% of the cost of DOL
6 insurance premiums.

7 **Q. Do you agree with this recommendation?**

8 A. No, I do not.

9 **Q. Why not?**

10 A. I disagree for reasons similar to the points I made with regard to at-risk
11 compensation. The amount requested by FPL for DOL insurance is
12 reasonable and is an ordinary and necessary cost of doing business, and as
13 such the entire amount should be recovered in rates.

14 **Q. Why are DOL insurance premiums a necessary and reasonable cost of**
15 **doing business?**

16 A. DOL insurance is necessary to attract and retain knowledgeable, experienced
17 and capable directors and officers. DOL insurance is purchased for the
18 purpose of protecting the company and its directors and officers from normal
19 risks associated with managing the company. Qualified and capable directors
20 and officers would be reluctant to assume the responsibilities of managing a
21 company without the assurance that their personal assets would be shielded
22 from legal expenses, settlements or judgments arising from lawsuits. The
23 assets of the Company are likewise protected from lawsuits that could divert

1 capital to cover any losses. Increasing scrutiny of corporate governance and
2 the related risk exposure of directors and officers make insurance a necessity
3 in maintaining a high quality board and senior management team. Adequate
4 liability coverage gives directors and officers the level of comfort necessary to
5 enable them to make forward-looking decisions that will provide operational
6 and cost-efficiency benefits for customers.

7 **Q. Mr. Schultz states that there are Commission cases that have allowed**
8 **recovery of premiums for DOL insurance, have disallowed recovery, or**
9 **have required the expense be shared with stockholders. Can you**
10 **comment on those cases?**

11 A. Yes. The Commission's rationale in the People's Gas case and in the Tampa
12 Electric case is instructive regarding the need for DOL insurance:

13 DOL Insurance has become a necessary part of conducting
14 business for any company or organization and it would be
15 difficult for companies to attract and retain competent directors
16 and officers without it. Moreover, ratepayers receive benefits
17 from being part of a large public company, including, among
18 other things, access to capital. In addition, DOL Insurance is
19 necessary to protect the ratepayers from allegations of
20 corporate misdeeds.

21 Order No. PSC-09-0411-FOF-GU, page 37 issued June 9, 2009, in Docket
22 No. 080318-GU, In re: Petition for rate increase by People's Gas System.

23

1 We find that DOL insurance is a part of doing business for a
2 publicly-owned company. It is necessary to attract and retain
3 competent directors and officers. Corporate surveys indicate
4 that virtually all public entities maintain DOL insurance,
5 including investor-owned electric utilities.

6 Order No. PSC-09-0283-FOF-EI, page 64 issued April 30, 2009, in Docket
7 No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company.

8 **Q. Does Mr. Schultz claim DOL insurance is not a necessary and reasonable**
9 **expense?**

10 A. No, he does not. He characterizes it as “a legitimate business expense” but
11 further characterizes it as being “unique in that it is designed primarily to
12 protect shareholders from their past decisions”.

13 **Q. Do you agree with his unique characterization?**

14 A. No, I do not. DOL insurance is not designed to protect shareholders. DOL
15 insurance is designed to protect the officers and directors of the corporation
16 from lawsuits alleging harm from decisions of the officers and directors acting
17 in their official capacity. This is an important distinction for two reasons.
18 First, without adequate DOL insurance, any corporation would find it difficult
19 to attract the best qualified individuals to serve as officers and directors.
20 Second, and perhaps more importantly, it allows officers and directors to
21 make decisions based on their best judgment and not on the goal of
22 minimizing exposure to potential lawsuits. And this second reason is
23 especially applicable to officers and directors of regulated utilities.

1 **Q. Why is this second reason especially applicable to officers and directors**
2 **of regulated utilities?**

3 A. A regulated utility is in a relatively unique position as compared to typical for-
4 profit companies. To be successful, a regulated utility must meet all of its
5 obligations required by virtue of being a state-sanctioned regulated monopoly
6 and must fulfill its commitments to all stakeholders, including its vendors,
7 employees, creditors, stockholders, customers and regulators. Therefore, truly
8 effective directors and officers must feel free to exercise their best
9 independent judgment to balance all of those sometimes competing interests,
10 without fear of lawsuits threatening their personal assets. It is both good
11 public policy and good regulatory policy to encourage such informed,
12 objective decision making that is enabled to a great extent by DOL insurance.

13 **Q. Why is it good regulatory policy to encourage DOL insurance?**

14 A. It is good regulatory policy to encourage DOL insurance to enable officers
15 and directors to engage in thoughtful, objective decision making that carefully
16 weighs the outcomes and resulting impacts on all stakeholders.

17 **Q. Is there a real-world example of this?**

18 A. Yes, perhaps the best example of this is the Commission's policy of
19 encouraging settlements among the parties on matters in dispute. The best
20 settlements are those where all parties engage in meaningful discussion and
21 agree on sometimes significant concessions. When these concessions are
22 believed to be in the best interest of a regulated utility and its stakeholders, the

1 officers and directors should feel free to exercise this judgment, without the
2 fear of a lawsuit alleging the concessions were too great.

3 **Q. In response to a previous question, you contrasted a regulated utility with**
4 **a typical for-profit company. Are for-profit companies the only entities**
5 **that find it necessary and appropriate to purchase DOL insurance?**

6 A. No, many non-profit entities purchase DOL insurance for the same reasons,
7 i.e., to enable them to have qualified officers and directors and to enable those
8 officers and directors to engage in objective decision making. So entities that
9 do not even have stockholders also find it necessary and appropriate to have
10 DOL insurance. This fact is another reason why I disagree with Mr. Schultz's
11 characterization that DOL insurance is primarily to protect shareholders from
12 their past decisions.

13 **Q. What would be the result of accepting witness Schultz's recommendation**
14 **to disallow half of the cost of FPL's DOL insurance?**

15 A. Mr. Schultz characterizes his recommendation as a sharing of costs based on
16 who he believes benefits. As I just described, I believe his opinion on who
17 benefits is incorrect. Nevertheless, the true effect of his recommendation is to
18 disallow one-half of the cost of FPL's DOL insurance. This is tantamount to
19 saying that one-half of the cost is unnecessary and imprudently incurred. If
20 this is not the effective result, his recommendation violates one of the most
21 basic tenets of regulatory theory, i.e., that all necessary and prudent costs
22 should be allowed to be recovered in rates.

1 **Q. From a policy perspective, what would be the effective outcome of his**
2 **recommendation?**

3 A. His recommendation would trigger three potential outcomes, none of which is
4 desirable for a regulated utility and its customers. First, the company could
5 simply decide to not have DOL insurance. This would result in the extremely
6 undesirable consequences of which I earlier spoke. Second, the company
7 could decide to not have DOL insurance and pay its officers and directors
8 more to make-up for the greater risk exposure. Presumably the increased
9 costs would then not be shared because they clearly would be prudent and
10 necessary to attract and retain directors and officers and pay them a market
11 level of compensation. And third, the company could retain its DOL
12 insurance and not recover one-half of the cost of doing so.

13 **Q. What would be the bottom-line impact of the third potential outcome?**

14 A. Disallowing a reasonable and necessary business expense, or requiring the
15 company to share part of the expense, is nothing more than another backdoor
16 approach to reducing the allowed ROE. Funds that should go to shareholders
17 as a fair return on investment instead would be diverted to cover costs that
18 should otherwise be recovered in rates.

19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

VII. SMART METER PROGRAM

Q. What do witnesses Kollen and Ramas recommend for expenses associated with the deployment of smart meters?

A. They both recommend that recoverable expenses be reduced based on forecasts that were submitted during FPL's 2009 rate case.

Q. Is this appropriate to do?

A. No, it is not appropriate. It violates one of the most basic tenets of ratemaking, that the test year be based on the most current, accurate data possible and that it be reflective of costs on a going forward basis. One of the reasons the Commission has historically rejected some test year requests is that some test years were considered "stale." This adjustment is reminiscent of this deficiency.

Q. Both witnesses Kollen and Ramas opine that their recommended adjustment is necessary to reflect post-test year savings associated with smart meters. Do you agree with this opinion?

A. I disagree for three reasons. First, as I just described, the adjustment is based on stale data and more current data is available to ascertain the costs and savings associated with the deployment of smart meters. Second, the adjustment does not result in a test year that is reflective of costs on a going forward basis. Rather, the adjustment picks one specific subset of overall O&M expenses and uses stale data as a surrogate to estimate savings. Neither Mr. Kollen nor Ms. Ramas attempts to adjust other areas of O&M expense

1 that will be increasing beyond the 2013 Test Year. This actually distorts total
2 test year O&M expense. And third, the savings associated with the
3 deployment of smart meters will be recognized in the future as the savings
4 materialize.

5 **Q. Witness Ramas states that it would be unfair to have the capital costs of**
6 **the smart meters in base rates without the net O&M savings being**
7 **reflected. Do you agree?**

8 A. I agree that capital costs and any resulting savings should be matched when
9 possible. However, it is common for capital dollars to be invested before net
10 savings are achieved. The delay in this realization of savings cannot be
11 wished away. To make an adjustment to do so would only distort this
12 relationship.

13 **Q. Witness Kollen states the Commission should hold FPL to its 2009 rate**
14 **case projections of net savings. Do you agree?**

15 A. I do not agree. The Commission has the authority and responsibility to
16 evaluate and scrutinize all projections. However, once done and approved, it
17 would be inappropriate to hold a company to its projections. There will
18 always be economic, technological, financial, and operational changes that
19 will result in schedule changes and costs being over or under the projected
20 levels. The real issue is whether those changes were prudently managed by
21 the company to minimize increases and maximize savings to the extent
22 reasonably within management's control to do so. Absent a finding of such

1 imprudent actions, the current costs should be evaluated on the most current
2 and accurate information available.

3 **Q. Witness Kollen states that had the SFHHA known that there would be no**
4 **future O&M savings, they may have opposed the smart meter**
5 **deployment in the last rate case. Is this an appropriate reason to make**
6 **his recommended adjustment?**

7 A. It is not an appropriate reason. First and foremost, Mr. Kollen is incorrect that
8 there are no O&M savings associated with the deployment of smart meters.
9 The most current and accurate information projects future net savings. And
10 second, there are no such guarantees in the ratemaking process. As I stated
11 earlier, there will always be changes that affect the scheduling and the level of
12 costs for such a major deployment. The Company has the risks that such costs
13 escalate quicker and/or greater than projected.

14 **Q. Was this the case with the 2009 projections of the smart meter program?**

15 A. Yes, Mr. Kollen's own exhibit shows that during the intervening years 2010
16 through 2012 the amount of O&M costs exceeded those in the 2009
17 projections.

18

19 **VIII. ROE PERFORMANCE ADDER**

20

21 **Q. What does witness Lawton recommend for FPL's requested ROE**
22 **performance adder?**

23 A. Mr. Lawton recommends denial of the ROE performance adder and proceeds

1 to express reasons for his recommendation.

2 **Q. What are the reasons given by witness Lawton for his recommendation?**

3 A. Mr. Lawton essentially gives four reasons for his recommendation to deny the
4 ROE performance adder, arguing that the ROE performance adder:

- 5 ● Constitutes a change of regulatory structure;
- 6 ● Is antithetical to the concept of a monopoly;
- 7 ● Results in an unneeded “bonus”; and
- 8 ● Leads to unjust rates.

9 **Q. Do you agree with Mr. Lawton that the ROE performance adder**
10 **constitutes a change in regulatory structure?**

11 A. I do not agree. To the contrary, the possibility of setting rates at a ROE above
12 or below the mid-point of the range is a well-established practice in the state
13 of Florida. Ironically, to simply reject the requested ROE performance adder
14 based on philosophical grounds, as Mr. Lawton recommends, would constitute
15 a change in regulatory structure.

16 **Q. How is it that an ROE performance adder is a well-established practice in**
17 **the state of Florida?**

18 A. FPL’s requested ROE performance adder is a request to set rates at a target
19 ROE point above the mid-point to recognize exceptional performance. The
20 reciprocal of this is to set rates at a target ROE point below the mid-point for
21 less than satisfactory performance. Setting rates at a point above or below the
22 mid-point is authorized by statute, is a regulatory tool historically used by the
23 Commission, and has been upheld by the Florida Supreme Court. Further, the

1 concept of recognizing superior management or penalizing unsatisfactory
2 management is recognized by authoritative sources as an appropriate
3 regulatory tool.

4 **Q. What is the specific statutory provision to which you refer?**

5 A. I am referring to Section 366.041(1), F.S., which authorizes the Commission
6 when setting rates to consider “the efficiency, sufficiency, and adequacy of
7 the facilities provided and the services rendered; the cost of providing such
8 service and the value of such service to the public....”

9 **Q. Has the Commission utilized its discretion to set rates at a target ROE
10 above or below the mid-point?**

11 A. Yes, the Commission has. In fact, the Commission has set rates at targets
12 both higher and lower than the mid-point in three different cases involving the
13 same electric utility, Gulf Power.

14 **Q. In what case did the Commission set rates at a target ROE below the mid-
15 point for Gulf Power?**

16 A. In a 1990 rate case the Commission authorized an ROE of 12.55% for Gulf
17 Power. However, in recognition of mismanagement, the Commission set rates
18 at 12.05% for a period of two years.

19 **Q. Was this decision appealed to the Florida Supreme Court?**

20 A. Yes, it was. In *Gulf Power Co. v. Wilson*, 597 So. 2d 270 (Fla. 1992) (Gulf
21 Power Case), the Court upheld the Commission’s adjustment to ROE based on
22 evidence of the utility’s mismanagement, but explained that the discretion
23 worked both ways:

1 This Court has previously recognized that this authority
2 includes the discretion to *reward*, within the reasonable rate of
3 return range, for management efficiency. In fact, Gulf Power
4 has in the past received a ten basis point reward for efficient
5 management through its energy conservation efforts. *Gulf*
6 *Power v. Cresse*, 410 So .2d (Fla. 1982). We find that, inherent
7 in the authority to adjust for management efficiency is the
8 authority to reduce the rate of return for mismanagement, as
9 long as the resulting rate of return falls within reasonable range
10 set by the Commission. This concept of adjusting a utility's
11 rate of return on equity based on performance of its
12 management is by no means new to Florida or other
13 jurisdictions.

14 **Q. In what cases did the Commission set rates at a target ROE above the**
15 **mid-point for Gulf Power?**

16 A. The first time was in Docket No. 800001-EU, where the Commission set rates
17 at 10 basis points above the ROE mid-point. In denying a Petition for
18 Reconsideration filed by OPC, the Commission stated:

19 With regard to the ten basis points added to the return on equity
20 capital used for ratemaking purposes, we believe that once we
21 have identified an appropriate range for a fair rate of return
22 consistent with the record, we have some discretion in fixing
23 the point within the range to be used to determine revenue

1 requirements. In this instance, we exercised our authority in
2 this regard to reward Gulf Power Company's visible efforts in
3 promoting conservation, an objective which we hope that
4 management of all utilities will strive to achieve. The action in
5 this case was within our discretion and reconsideration thereof
6 will be denied.

7 This action was upheld by the Florida Supreme Court and was referenced in
8 the above quote from the Court.

9 **Q. What was the second time that the Commission set Gulf Power's rates at**
10 **a target above the ROE mid-point?**

11 A. The second time was in a 2001 rate case, Docket No. 010949-EI. In this case,
12 the Commission found the mid-point ROE to be 11.75%. However, in
13 recognition of Gulf's high level of performance, the Commission set rates at
14 25 basis points above that level or 12.00%. In its Order No. PSC-02-0787-
15 FOF-EI, the Commission stated:

16 Gulf contends that it deserves an upward adjustment to its
17 return on equity (ROE) as a reward for its continuing high level
18 of performance in customer satisfaction, customer complaints,
19 transmission and distribution reliability, and generating plant
20 availability. Gulf's position is that increasing the ROE sends a
21 message to the Company and the customers that superior
22 performance is important. Furthermore, such an increase
23 provides an incentive to continue to provide superior service....

1 The testimony of Gulf witnesses Labrato and Fisher
2 demonstrates that Gulf's service is excellent. In addition,
3 testimony of customers at the customer service hearings was
4 very favorable. We find that Gulf's past performance has been
5 superior and we expect that level of performance to continue
6 into the future.

7 **Q. Witness Lawton's second reason is that an ROE performance adder is**
8 **antithetical to the concept of a monopoly. Do you agree?**

9 A. No, I strongly disagree. Far from being antithetical, a properly imposed
10 performance based ROE adjustment that is symmetrical in its approach is an
11 essential regulatory tool. It enables a regulatory authority to introduce
12 elements of competition and incentives that otherwise may be lacking in more
13 traditional approaches to ratemaking and enables regulators to directly express
14 priorities in terms of service quality, cost control, and customer satisfaction to
15 management. This was expressly recognized by the Florida Supreme Court in
16 the Gulf Power Case:

17 In a competitive market environment, the market would
18 provide the necessary incentives for management efficiency
19 and corresponding disincentives for mismanagement.
20 However, for a utility that operates as a monopoly, this
21 discretionary authority to reward or reduce a utility's rate of
22 return within a reasonable rate of return range is the only
23 incentive available.

1 **Q. Witness Lawton's third reason for denial is that an ROE performance**
2 **adder should not be necessary. What is his reasoning for this position?**

3 A. Mr. Lawton states that the adder is not necessary because "FPL enjoys a
4 privileged position" with "advantages that competitive enterprises must
5 envy...." He further opines that a regulated utility like FPL has an obligation
6 to provide "superior performance."

7 **Q. Do you agree with Mr. Lawton's reasoning?**

8 A. I disagree for at least two reasons. First, as I just explained, the fact that
9 utilities are regulated monopolies is the very reason that incentive based
10 regulatory tools, like ROE adjustments, are necessary. And second, certain
11 factual assertions presented by Mr. Lawton do not give a complete picture.
12 While there may indeed be some advantages to being a regulated utility, Mr.
13 Lawton fails to mention the obligations and disadvantages of being a
14 regulated utility.

15 **Q. What are some of the disadvantages which Mr. Lawton does not**
16 **mention?**

17 A. Regulated utilities like FPL have an obligation to serve all customers when
18 service is demanded. They do not have the option of not investing during
19 times of uncertainty or financial difficulty. Neither do they have the option of
20 departing unprofitable markets or not serving certain customers. Regulated
21 utilities must justify their prices while competitive firms enjoy pricing
22 flexibility and alacrity. Regulated utilities' earnings are set and closely
23 monitored while competitive firms do not have governmentally imposed

1 restrictions on earnings. The fact that regulated utilities' earnings are set
2 within a narrow range and actively monitored to insure that earning levels are
3 not exceeded is the very reason that discretion in setting rates at a point other
4 than the mid-point can be so very crucial to obtaining the goals of regulation.

5 **Q. Do regulated utilities, like FPL, have an obligation to provide “superior
6 performance” as witness Lawton opines?**

7 A. Regulated utilities do have an obligation to serve, which I just described. In
8 addition, regulated utilities in Florida have an obligation to provide
9 “reasonably sufficient, adequate, and efficient service upon terms as required
10 by the commission.” This language is found in Section 366.03, F.S.
11 Regulated utilities do not however, have an obligation to provide superior
12 performance.

13 **Q. Has the Commission ever required a utility to provide superior
14 performance or found a utility to be in violation of a Commission rule or
15 order for not providing superior performance?**

16 A. No, not to my knowledge. The Commission has generally followed a standard
17 of reasonably sufficient, adequate, and efficient, as prescribed in statute.
18 When the Commission has imposed a lower ROE it has been for performance
19 and a quality of service which was determined to be inadequate. Likewise,
20 when the Commission has awarded a higher ROE it was for performance and
21 a quality of service beyond that which would be considered merely adequate.

1 **Q. Why has the Commission followed this practice?**

2 A. It is the standard prescribed in statute. Beyond that, it constitutes good
3 regulatory policy. Applying this standard and using its authority to adjust the
4 ROE provides the Commission with a powerful and needed regulatory tool to
5 get inadequate performance corrected and to have superior performance
6 continue and even become a goal to which other utilities may aspire. This
7 was certainly the intent of the Commission when it awarded Gulf Power a ten
8 basis points higher ROE for its conservation efforts. Following Mr. Lawton's
9 opinion and recommendation would effectively take this tool out of the hands
10 of the Commission.

11 **Q. Witness Lawton's final asserted rationale is that the performance adder
12 can lead to unjust rates. Is this correct?**

13 A. It is absolutely incorrect. First, by definition and function, the ROE adder will
14 not set rates at an unjust level. To the contrary, rates will be set within the
15 Commission's established range of reasonableness. This concept has been
16 recognized and approved by the Florida Supreme Court. Second, and perhaps
17 more importantly, Mr. Lawton's reasoning ignores the very purpose of an
18 ROE performance adder. A properly structured and implemented
19 performance adder is not intended to unjustly enrich a company. To the
20 contrary, it is intended to introduce incentives designed to continue or even
21 enhance superior performance, such that the net cost paid by customers
22 through rates is less than it would be had the superior performance not been
23 achieved. In fact, FPL's proposal in particular puts safeguards in place to

1 prevent the continuation of the adder should FPL's rate levels exceed those of
2 other Florida utilities.

3 **Q. Are there other benefits of a properly structured and implemented**
4 **performance adder?**

5 A. Yes, there are. Rates would not be unjust and incentives and safeguards
6 would be in place as I just explained. Beyond that, there would be other
7 benefits as well. FPL would have stronger financial metrics and an increase
8 of cash flow. This would help maintain FPL's financial integrity and reduce
9 the amount of outside funding needed for FPL's large construction budget.

10 **Q. In response to a previous question you stated that recognizing superior**
11 **management or penalizing unsatisfactory management is recognized by**
12 **authoritative sources. Can you provide an example?**

13 A. Yes, perhaps the most authoritative source was also referenced by the Florida
14 Supreme Court in the Gulf Power Case. The Court quoted James C.
15 Bonbright et al., Principles of Public Utility Rates, 366-67 (2d ed. 1988). The
16 passage from which the Court quotes reads:

17 While exceptional management is rarely explicitly rewarded,
18 and mediocrity infrequently penalized, it suggests more
19 systematic and deliberate efforts on the part of regulating
20 agencies to distinguish, somewhat as competition is presumed
21 to do, in favor of companies under superior management and
22 against companies with substandard management. The
23 distinction might take the form of an explicit and publicly

1 recognized differential in the allowed rate of return. There is
2 ground for the conviction that the opportunity of a well
3 managed utility to earn a return *liberally* adequate to attract
4 capital is in the public interest as encouraging rapid
5 technological progress and long-run policies of operation.

6 **Q. Do you have any other general observations regarding the appropriate**
7 **ROE and capital structure for FPL?**

8 A. It is not the purpose of my testimony to propose a specific ROE or capital
9 structure for FPL. However, it has been my observation, over thirty-five years
10 of regulatory experience, that utilities that provide exceptional value to
11 customers are those that have allowed ROEs and capital structures that
12 maintain their financial integrity, provide incentives to promote efficiencies,
13 and facilitate ready access to capital to invest in needed infrastructure. Low
14 allowed ROEs and inefficient capital structures do not equate to customer
15 benefits. They may temporarily lower revenue requirements in a given rate
16 case, but this does not equate to exceptional customer value over the long-
17 term.

18 **Q. Does this conclude your testimony?**

19 A. Yes, it does.

ERRATA SHEET

WITNESS: TERRY DEASON - REBUTTAL

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
22	18	Remove the words "the absence of"

1 BY MR. BUTLER:

2 Q Mr. Deason, are you also sponsoring Exhibit
3 TD-1 to your rebuttal testimony?

4 A Yes, I am.

5 Q Was that prepared by you or under your
6 supervision?

7 A Yes, it was.

8 Q Okay.

9 MR. BUTLER: Mr. Chairman, I would note that
10 this has been marked for identification in the
11 comprehensive exhibit list as 409.

12 (Exhibit No. 409 was marked for
13 identification.)

14 BY MR. BUTLER:

15 Q With that, Mr. Deason, would you please
16 summarize your rebuttal testimony.

17 A Yes, I will.

18 Commissioners, my rebuttal testimony
19 addresses a number of adjustments being recommended by
20 various intervenor witnesses in this proceeding. In my
21 opinion, these adjustments are inconsistent with
22 Commission precedent, contrary to basic principles of
23 regulation and not based on substantiated facts. And
24 to be brief, I will summarize some, but not all, of
25 these adjustments which I address in my testimony.

1 Ms. Ramas recommends significant
2 disallowances for property held for future use based on
3 arbitrary and rigid time limitations. These
4 limitations are inconsistent with Commission precedent,
5 not based upon a specific review of the need of these
6 individual properties and are contrary to the
7 requirements to plan for the needs of customers.

8 Accepting Ms. Ramas' disallowance would
9 inappropriately constrain needed parameters to
10 adequately plan and would jeopardize FPL's ability to
11 serve customers reliably and cost effectively in the
12 future.

13 Mr. Kollen recommends a significant
14 disallowance of working capital based upon his
15 conjecture that a lead-lag study would yield a zero
16 requirement for cash working capital. He further
17 recommends that the Commission's longstanding practice
18 of using a comprehensive balance sheet approach be
19 discarded, an approach that the Commission has
20 determined yields better results than a surrogate
21 approach. In addition, Mr. Kollen's criticism of the
22 balance sheet approach as being outdated is incorrect
23 and unsubstantiated.

24 Mr. Schultz recommends the disallowance of
25 half of nonexecutive incentive compensation. His

1 recommendation is not based on an evaluation of the
2 amount of compensation that is reasonable and necessary
3 to cost effectively serve customers; rather, his
4 recommended disallowance is based upon the manner in
5 which the compensation is paid. If adopted, his
6 recommendation could eliminate a needed management tool
7 to motivate and focus employees for the benefit of
8 customers and would constitute a backdoor approach to
9 reducing FPL's return on equity.

10 Similarly, Mr. Schultz recommends that half
11 of the cost of FPL's directors and officers liability
12 insurance be disallowed. Mr. Schultz agrees that this
13 coverage is a legitimate business expense. The basis
14 is recommended disallowance on his belief that is
15 designed to primarily protect stockholders. I disagree
16 with his conclusion and show that customers are the
17 beneficiaries of this insurance coverage.

18 And lastly, Mr. Lawton recommends that FPL's
19 requested return on equity performance adder be
20 summarily rejected. He gives several reasons for his
21 recommendation, which are not correct; namely, the
22 adder does not constitute a change in regulatory
23 structure, rather, it is consistent with good
24 regulatory policy and Commission precedent. The adder
25 is not antithetical to a concept of a monopoly. To the

1 contrary, the adder is a needed tool to effectively
2 regulate a monopoly. The adder does not result in an
3 unneeded bonus; rather, it yields results more closely
4 to that of a competitive market. And lastly, the adder
5 will not lead to unjust rates.

6 Superior performance is not a requirement of
7 a regulated company; rather, regulation should put
8 measures in place that encourage superior performance.

9 In conclusion, Commissioners, I'm not here to
10 recommend a specific ROE or a capital structure, but
11 it's been my experience that those companies would
12 provide the greatest value to its customers or those
13 that have the resources at hand to be able to go to
14 capital markets and have the ability to do that in a
15 cost effective manner, to put an infrastructure to cost
16 effectively serve customers. That concludes my
17 summary.

18 MR. BUTLER: Thank you, Mr. Deason.

19 I tender the witness for cross-examination.

20 CHAIRMAN BRISE: Thank you.

21 Mr. Moyle.

22 MR. MOYLE: Thank you, Mr. Chairman. And I
23 understand you want to try to break at noon.

24 CHAIRMAN BRISE: Yeah.

25 MR. MOYLE: So I'm going to kind of alter a

1 little bit my cross.

2 CHAIRMAN BRISE: Okay.

3 CROSS-EXAMINATION

4 BY MR. MOYLE:

5 **Q Good morning, Mr. Deason.**

6 A Good morning, Mr. Moyle.

7 **Q Are you testifying today as an expert?**

8 A I am.

9 **Q Okay. And in what areas are you suggesting**
10 **that you have expertise?**

11 A In the area of regulatory policy.

12 **Q Anything else?**

13 A No. All of my testimony, I think, fits in
14 the category of regulatory policy.

15 **Q And can you define what you understand to be**
16 **regulatory policy?**

17 A By that term, I mean that it is the sum of
18 all of the facts, principles, law, precedent, that this
19 Commission has at its disposal to utilize in making
20 fair decisions for the companies they regulate and the
21 customers that those companies serve.

22 **Q Okay. Would it be fair to then say that the**
23 **area of regulatory policy in which you're providing an**
24 **expert opinion is limited to Florida?**

25 A No.

1 Q So what does it then encompass?

2 A I'm sorry, could you repeat your question?

3 Q Yeah. What does it encompass? What are you
4 holding yourself out as an expert in, you know,
5 federal, FERC regulatory policy, in regulatory policy
6 in a select number of states, all the states?

7 A Regulatory policy, as it is utilized in the
8 United States, is not necessarily constrained by state
9 boarders. I would consider myself an expert in
10 regulatory policy across the country.

11 Q Okay. And can you tell us how many times
12 you've provided testimony before State Commissions and
13 the FERC, ballpark, not to hold you to it exactly, but
14 just give us an estimate, if you could?

15 A Probably more than a dozen, but probably less
16 than two dozen.

17 Q And am I correct in assuming that all of that
18 testimony has been on behalf of utility companies?

19 A No.

20 Q Have you provided testimony on behalf of
21 consumer interest?

22 A Yes.

23 Q And where?

24 A State of Florida and in the state of North
25 Dakota.

1 **Q When did you provide consumer -- or testimony**
2 **on behalf of the consumers in the state of Florida?**

3 A In the late 1970s and the early 1980s.

4 **Q And I read your background, and this was**
5 **before you served on the Commission; is that right?**

6 A That is correct.

7 **Q Okay. And where were you working in the '70s**
8 **when you provided the testimony on behalf of the**
9 **consumer interest?**

10 A Florida Office of Public Counsel.

11 **Q Okay. And then the other instance in which**
12 **you said you provided testimony on behalf of consumers,**
13 **was that in a similar time frame?**

14 A No. That was subsequent to my retirement
15 from this Commission.

16 **Q Okay. Thank you. So to the extent that you**
17 **have testimony --**

18 A Mr. Moyle, let me --

19 **Q I'm sorry.**

20 A Just so the record is very clear, when I say
21 on behalf of customers in North Dakota, I was actually
22 retained to provide testimony on behalf of the advocacy
23 staff of the North Dakota Public Service Commission.
24 Being that they were the advocacy staff, I think that
25 it is correct to say that I was appearing on behalf of

1 consumer interests. But I was not retained by a Public
2 Counsel, for example, in North Dakota. In fact, I
3 don't know that North Dakota has a Public Counsel's
4 Office.

5 **Q That's helpful. So you were not providing**
6 **testimony on behalf of somebody like FIPUG or the**
7 **hospitals or Public Counsel; it was sort of in a**
8 **different setup and you were providing testimony on**
9 **behalf of Commission staff?**

10 A The advocacy staff of the North Dakota Public
11 Service Commission.

12 **Q Okay. So other than those two exceptions --**
13 **we talked about one in the '70s and the one in the**
14 **Dakotas -- then all of your testimony has been on**
15 **behalf of utilities; is that correct?**

16 A That is correct.

17 **Q And back to my initial line of questioning.**
18 **I mean, to the extent that you have comments in your**
19 **testimony about the price of land going up in the**
20 **future, you're not here today saying I'm an expert in**
21 **real-estate, correct?**

22 A No, I don't hold myself out as an expert in
23 real-estate. I hold myself out as an expert in terms
24 of regulatory policy should be established recognizing
25 trends that have existed in the past and may continue

1 in the future concerning real-estate values.

2 Q Okay. And you're aware that there are
3 professionals who provide advice with respect to trends
4 relative to real-estate, correct?

5 A I take your word that there are.

6 Q Okay. Like in the stock market, there are
7 people that give advice with respect to whether the
8 stock market is going to go up or down, you know,
9 stockbrokers; you would agree with that, right?

10 A I know that there are stockbrokers who engage
11 in that service.

12 Q Okay. And with respect to the services you
13 provide, you're not -- people don't consult you to ask
14 you whether the price of land is going to go up or
15 down, correct?

16 A No.

17 Q I'm going to ask you some questions about the
18 ROE adder that's part of your rebuttal testimony, and I
19 have some questions on that. I think for the purposes
20 of trying to budget time and break when the Chair
21 indicated we would break, I just want to ask you, start
22 with one line of inquiry, and given your expertise in
23 the regulatory policy, are you aware that this
24 Commission, a few years ago, rejected an effort by FP&L
25 to get a need determination for a coal fired power

1 **plant?**

2 A Yes.

3 **Q And are you also aware that because of that**
4 **rejection, that FPL decided well -- and these are my**
5 **words, not FPL's -- you know, if we can't do coal, then**
6 **we'll go to natural gas; is that fair?**

7 MR. BUTLER: I'm going to object to that as
8 assuming facts not in evidence. Mr. Moyle is just
9 speculating on what he thinks FPL's
10 decision-making process would be in the form of a
11 question to Mr. Deason.

12 MR. MOYLE: Well, he's the guy. I mean, he's
13 an expert in this area. If he has the
14 information, I think he can provide it. If he
15 doesn't have it, he can not provide it.

16 THE WITNESS: So have you just conceded I'm
17 an expert then, Mr. Moyle?

18 MR. MOYLE: In regulatory policy.

19 CHAIRMAN BRISE: Mr. Moyle, if you could
20 maybe restate the question without the assumption.

21 MR. MOYLE: Okay.

22 BY MR. MOYLE:

23 **Q After this Commission denied FPL's request to**
24 **build coal plants, do you know what type of plants FPL**
25 **has come forward with for the purposes of meeting its**

1 **projected need?**

2 A Yes, I am aware, and it does not -- it is not
3 exclusively natural gas, as you suggested in your
4 previous question.

5 **Q Okay. What else is it?**

6 A Uprates at existing nuclear facilities and
7 the maintaining an option to build a new nuclear
8 facility, new nuclear generation in the state.

9 **Q So --**

10 A And to be clear, I think there also is some
11 consideration of some renewables, perhaps
12 photovoltaics.

13 **Q Okay. Have you done any analysis or have any**
14 **information with respect to the relative size of the**
15 **natural gas power plants that FPL has sought, vis-a-vis**
16 **the uprates or the PV?**

17 A Perhaps I can answer your question this way:
18 I agree that natural gas continues to grow in terms of
19 the degree within the fuel mix for FPL and that the
20 additions of the nuclear facilities are important in
21 that regard to try to maintain some fuel diversity for
22 this state. But I do agree that natural gas continues
23 to be a fuel source which is part of FPL's future
24 generation plants.

25 **Q Okay. And are you also aware that with**

1 **respect to all of the utilities in Florida, investor on**
2 **utilities, that FP&L has the most generation fueled by**
3 **natural gas?**

4 A I don't know that. I do not know that for a
5 fact. But I don't have a basis to disagree with your
6 conclusion.

7 Q **Okay. And gas prices right now are at, some**
8 **would say historically low levels; do you agree with**
9 **that statement?**

10 A I agree that gas prices are low by historical
11 standards.

12 Q **Okay. And fuel is a large component of what**
13 **ratepayers pay on their bill, correct?**

14 A It is a large component.

15 Q **So to the extent natural gas prices were low**
16 **and FPL used a lot of natural gas and that resulted in**
17 **the lowest residential bills in the state, would you**
18 **agree that that would be at least in part caused by**
19 **commodity pricing?**

20 A Commodity pricing does affect customers'
21 bills. But I think, Commissioners, what's more
22 important is to recognize that FPL took the -- made the
23 decision to --

24 MR. MOYLE: Mr. Chairman, if I could have
25 a -- you know, it was just a -- I said "in part,"

1 I didn't say exclusively. It was a yes or no.

2 CHAIRMAN BRISE: Next question.

3 BY MR. MOYLE:

4 Q So to the extent that FPL, in the lowest
5 residential bill category, you're aware that that's the
6 trigger for the adder on an annual going-forward basis,
7 having the lowest residential bills in the state?

8 A I don't understand what you mean by the term
9 "trigger."

10 Q Okay. Do you understand that FP&L is seeking
11 to have a 25 basis point adder?

12 A Yes, I'm aware of that.

13 Q And do you understand that in order to
14 maintain that adder, FP&L has to demonstrate that they
15 have the lowest residential bills in the state on a
16 go-forward basis?

17 A Yes, to maintain the adder.

18 Q Okay. Can we agree that I'll call that a
19 trigger, in effect, the 25-basis-point trigger?

20 A That's fine.

21 Q Okay. So to the extent that natural gas
22 prices have a significant impact relative to the
23 residential bills being the lowest for FP&L, do you
24 think that the adder should be discounted because of
25 the fact that the prices are low due to low natural gas

1 **prices? And if you could give me a yes or no, and then**
2 **explain.**

3 MR. BUTLER: I would ask Mr. Moyle to make it
4 a little easier to give yes, no, or explain by
5 saying what you mean by discounting the adder.
6 What are you referring to?

7 BY MR. MOYLE:

8 **Q I'm suggesting that the 25 percent adder,**
9 **could it be adjusted to, you know, less than 25 percent**
10 **if a determination was made that, well, you know, some**
11 **of this is related to the price of natural gas and not**
12 **necessarily effective management, would the Commission**
13 **have the ability to make an adjustment relative to that**
14 **25 percent adder, as you understand it?**

15 A Mr. Moyle, there's a lot in your question,
16 and I will answer yes or no. Yes, there is the ability
17 for the Commission to exercise its discretion. In
18 fact, that's one of the bases of my testimony is that
19 the Commission does have the discretion to craft an ROE
20 performance adder which the Commission feels is
21 appropriate.

22 So, yes, the answer to your question is yes,
23 the Commission could. The more important question -- I
24 mean, the Commission could. The more important
25 question is should the Commission do so? And I

1 disagree with you on that part.

2 **Q Okay.**

3 MR. MOYLE: Mr. Chairman, that may be a good
4 breaking point for us, it's a little after noon.

5 CHAIRMAN BRISE: Okay. So you have more
6 questions after the break?

7 MR. MOYLE: I do.

8 CHAIRMAN BRISE: Okay. Perfect. So we will
9 reconvene at 1:05, and so we stand in recess right
10 now for lunch.

11 (Whereupon, a lunch recess was taken.)

12 CHAIRMAN BRISE: All right. We're going to
13 go ahead and reconvene at this time. Mr. Moyle
14 was in the process of cross-examination of
15 Mr. Deason.

16 Before we do that, I'm going to pass the
17 gavel off. And some of you may be wondering why I
18 pass the gavel off in the afternoon. For some
19 reason, I have a fever that keeps on coming back
20 in the afternoon and I get stuffed and all of
21 that. So rather than you having to deal with my
22 coughing and all that stuff, I figure it's more
23 efficient to pass the gavel off.

24 So at this time, I'll ask Commissioner Edgar
25 to proceed.

1 COMMISSIONER EDGAR: Thank you, Mr. Chairman.
2 To staff, any procedural matters or anything
3 before we move back into cross?

4 MR. YOUNG: Yes, ma'am, I think just briefly.
5 Office of Public Counsel and the Florida Retail
6 Federation have made a request that the -- Florida
7 Power & Light do not object -- that in the order
8 of cross, instead of it going OPC, Florida Retail
9 Federation, then Mr. Saporito, it will go Florida
10 Retail Federation, then OPC, then Mr. Saporito,
11 for Mr. Deason.

12 COMMISSIONER EDGAR: Okay. Any concerns?

13 (No response.)

14 COMMISSIONER EDGAR: That's fine. Thank you.
15 Mr. Moyle.

16 MR. MOYLE: Thank you, Madam Chairman.

17 BY MR. MOYLE:

18 **Q Mr. Deason, I know you've probably monitored**
19 **this proceeding and you and I can probably have**
20 **extensive conversations on energy policy, but you're**
21 **aware that the Commission has asked that witnesses**
22 **answer yes, no, with a brief explanation, correct?**

23 A Yes, Mr. Moyle, and I've been doing my best
24 to comply with that.

25 **Q Okay. We were talking about the ROE adder.**

1 I just have a few more questions on that topic.

2 Would you believe it to be fair or reasonable
3 that to the extent that the trigger, the 25-basis-point
4 adder, but the trigger with the lowest residential
5 rates, if the lowest residential rates were not
6 achieved, that rather than having the 25-basis-point
7 adder, that it be parallel and that there be a 25-point
8 deduct? Would that -- would that be an acceptable
9 policy from your perspective?

10 THE WITNESS: Mr. Chairman, this -- Madam
11 Chairman, this is a difficult answer -- question
12 to answer yes or no. I think that, yes, it is
13 good policy for there to be symmetry in the
14 application of an ROE adder or an ROE penalty,
15 but each -- it's got to be based upon the facts of
16 each case. I'm not sure the facts of this case
17 would support that. But that's an ultimate
18 determination for the Commission.

19 BY MR. MOYLE:

20 Q Okay. So with respect to the concept, I
21 guess you agree symmetry is acceptable?

22 A Not only acceptable, I think it's desirable.

23 Q Okay. And do you have an understanding with
24 respect to how the determination with respect to the
25 lowest residential bill, the trigger mechanism will be

1 **ascertained?**

2 A That wasn't the subject of my testimony, and
3 I did not do an in-depth review of the trigger
4 mechanism. I focused on the policy.

5 **Q Okay. And given your regulatory expertise,**
6 **there may be more ways, but wouldn't you agree -- and**
7 **I'll just ask you this -- in determining the lowest**
8 **residential bills in the state, one way to do it would**
9 **be to look at who had the most -- the lowest**
10 **residential bills in the state for a majority of the**
11 **year.**

12 **So if you had the lowest residential bills in**
13 **the state for, you know, I think more than 183 days,**
14 **you know, that might qualify. You would agree that**
15 **would be one way to measure the lowest residential bill**
16 **in the state?**

17 A That would be a way. It could be, yes.

18 **Q Okay. And then I guess you would agree,**
19 **also, another way to measure it might be to just look**
20 **at the -- you know, the dollars, to at the end of the**
21 **year look at it and say, okay, at the end of the day,**
22 **who had the lowest residential bill, not using time as**
23 **the measurement, but dollars, correct?**

24 A I don't believe I understand your question.

25 **Q So with respect to the average cost of a**

1 typical residential bill, you're aware that FPL
2 typically puts out information about the average cost
3 of a typical customer, correct?

4 A Yes.

5 Q Okay. So do you know how they measure that?

6 A I do not. I think there should be some type
7 of an objective standard. And hopefully from publicly
8 available information, so that the -- and in the
9 calculation, whatever method the Commission agrees
10 upon, the method should be clear to all participants so
11 that you minimize any questions.

12 Q Okay. And "all participants," you would
13 agree, could include other utilities, correct? I mean,
14 if this is good policy, it ought not just apply to FPL?

15 A I agree. The policy for an ROE adder should
16 apply to other utilities, not just FPL.

17 Q Okay. And you're also aware, given your
18 service on the Commission, that when matters of policy
19 are to be put in place to have uniform applicability,
20 that that's done through rule making, correct?

21 A Oftentimes it could be done through rule
22 making. That's not been the case with the ROE adder in
23 the state of Florida.

24 Q Right. And are you aware if there's a
25 provision in Chapter 120 that requires it, to the

1 **extent policies of general applicability are going to**
2 **be put in effect, that it must be done through rule**
3 **making?**

4 A I'm aware of that general requirement. But
5 I'm also aware that there needs to be an exact policy
6 delineated that is eligible for inclusion in a rule or
7 else there needs to be a proceeding which determines
8 with specificity how that is going to be implemented.

9 Q **And in your experience, that's typically done**
10 **through notice of rule development, rule workshops,**
11 **proposed rules, a rule-making process where comments,**
12 **give and take occurs in a general context, correct?**

13 A Yes, it could be done that way. But I don't
14 think it diminishes the applicability of the policy in
15 this case.

16 Q **Okay. And with respect to the evidence that**
17 **has been put forth, I assume you've heard a lot of the**
18 **evidence or read the testimony related to this ROE**
19 **adder; is that right?**

20 A I have reviewed much of the materials that
21 have been filed in this case. I won't say it's been an
22 exhaustive review.

23 Q **Okay. And I guess you would agree that it's**
24 **been a fair debate given the varying points of policy**
25 **views on the ROE rider, correct?**

1 A I'm not sure what you mean by "rider."

2 **Q I'm sorry. Adder.**

3 A Adder, okay.

4 Yes, this question has gotten a lot of
5 attention from the applicant in this case and from all
6 of the participants, including staff, so it is an issue
7 that I think would be ripe for the Commission to make a
8 determination on.

9 **Q Okay. And given the testimony in which**
10 **you've reviewed, it would also be fair to say that the**
11 **evidence in this for which the Commission has to make a**
12 **judgment shouldn't be characterized as extreme; would**
13 **you agree with that?**

14 A I'm not sure what you mean by extreme
15 evidence.

16 **Q Well, just the common, everyday usage of**
17 **extreme I mean.**

18 A Are you referring to the standard that the
19 Commission should apply?

20 **Q No. I'm just asking you whether, based on**
21 **your review, you believe the evidence is extreme?**

22 A Based upon --

23 MR. BUTLER: I would object to the form of
24 that question. I just don't see how that can be
25 answerable without some greater definition by

1 Mr. Moyle of what concept he's getting at with the
2 idea of extreme evidence.

3 COMMISSIONER EDGAR: Mr. Moyle, I agree. Can
4 you restate, reword.

5 MR. BUTLER: Rethink.

6 MR. MOYLE: I can, but I'm not sure it's
7 going to work out well for me.

8 COMMISSIONER EDGAR: Next question.

9 BY MR. MOYLE:

10 **Q Isn't it true that with respect to**
11 **considering the ROE adder, that when you were Chairman**
12 **of this Commission, you were involved in a decision**
13 **that said the adder should only be implemented when you**
14 **used the word "extreme," the condition seemed to be**
15 **fairly --**

16 MR. BUTLER: If you have the decision --

17 BY MR. MOYLE:

18 **Q -- extreme one way or the other?**

19 MR. BUTLER: Could you identify the decision
20 and show the witness a copy of it, Mr. Moyle.

21 MR. MOYLE: Sure. It was actually one that
22 you-all handed out previously, Order No. PSC
23 93-0165-FOF-EI, Application for a Rate Increase by
24 the Tampa Electric Company.

25 If I could approach the witness.

1 COMMISSIONER EDGAR: You may. But I
2 understand Mr. Rehwinkel has it available. Thank
3 you.

4 MR. REHWINKEL: I just had it from Ms. Ramas'
5 testimony.

6 BY MR. MOYLE:

7 **Q Do you have a copy?**

8 A Yes, I have a copy.

9 **Q Okay. And I guess at the top it says that**
10 **you were the Chairman and Commissioner Easley and**
11 **Commissioner Lauredo were involved in this decision; is**
12 **that right?**

13 A Yes.

14 **Q Okay. So the rate case, I guess, was decided**
15 **by a three-judge panel rather than five at this point**
16 **in time?**

17 A Yes, that's correct. As I recall, there were
18 a number of large cases pending, and we decided to hear
19 the case as a panel.

20 **Q All right. So page 97, if you would just**
21 **read into the record the provision F -- I think it's**
22 **two or three sentences -- but the provision F says,**
23 **"Reward/Penalty for Corporate Performance." Are you**
24 **there?**

25 A I see the section F entitled "Reward/Penalty

1 for Corporate Performance."

2 **Q Okay. If you would just read that first**
3 **paragraph, please.**

4 A Yes. "The issue of whether or not Tampa
5 electric should be given a award or penalty for its
6 corporate performance in the areas of residential
7 rates, customer service, and energy efficiency programs
8 was raised by the Commission staff. We believe that
9 staff has an obligation to look into these matters and
10 bring them to our attention when appropriate. However,
11 we are reluctant, unless the condition seemed to be
12 fairly extreme one way or the other, to grant a reward
13 or impose a penalty."

14 **Q Okay. And it may be testing your memory, but**
15 **as you sit here today, that would reflect an order that**
16 **you were involved in and entered; is that correct?**

17 A Yes. I see that the term "extreme" was used
18 in the order.

19 **Q Okay. And in this case today, the issue of**
20 **the ROE adder was not raised by Commission staff, was**
21 **it?**

22 A No. It was part of FPL's application with
23 this Commission.

24 **Q Let me move on to another topic, if I could.**
25 **You -- and I don't want to spend long on this, but you**

1 have some testimony related to the incentive
2 compensation issue; is that right?

3 A Yes.

4 Q Okay. And you wouldn't dispute the fact that
5 as a matter of policy, that Commissions around the
6 country have been trending away from allowing full
7 recovery for incentive compensation programs; isn't
8 that correct?

9 A I do not know that to be a fact, Mr. Moyle.

10 Q It's just you don't have the information one
11 way or the other on it?

12 A Agreed; I don't have information one way or
13 the other.

14 Q And then the final area that I want to spend
15 some time talking with you about is the plant for
16 future use issue. And you spent, I think, quite a bit
17 of time on that?

18 A Yes.

19 Q All right. And this plant for future use, it
20 represents over \$100 million that FPL is asking be put
21 into rate base; isn't that right?

22 A Yes, I believe it does exceed that threshold,
23 yes.

24 Q Okay. And doesn't it work that -- you know,
25 from a regulatory standpoint, it works that to the

1 extent that this Commission would say, yes, let's --
2 you can put this in, that the utility would be able to
3 earn a return on that hundred million dollars? I'll
4 just use hundred million for the purposes of the
5 conversation. But the utility, if it were allowed to
6 go in, would earn a return, correct?

7 A Yes, it would. And that would be -- if the
8 Commission determines it's the appropriate amount, it
9 would be appropriate for it to earn the return.

10 Q So if the Commission awarded, let's say, a
11 10 percent ROE, for the purposes of the conversation,
12 then you would earn -- "you" being FPL, would earn --
13 I'm sorry -- \$10 million per year on that?

14 A Well, no. You used the term "ROE." And we
15 know that it would be the overall rate of return that
16 would be applied to this investment and property held
17 for future use, which is much lower than 10 percent.

18 Q Okay. So the facts, as you understand them
19 in this case, assuming the Commission were to allow
20 these two sites to go in at 100 million, what would FPL
21 earn annually on that?

22 A Well, it would be the overall rate of return
23 that was determined to be reasonable, plus a multiplier
24 to capture revenue taxes and income taxes. I have not
25 done the calculation.

1 **Q Are you comfortable ball-parking it?**

2 A Very general terms, probably 100 million,
3 maybe somewhere between ten to 12 million. That's
4 just -- that's a guess, Mr. Moyle. But it's somewhere
5 in -- it probably would be in that area.

6 **Q Okay. And these plants, there's not an**
7 **identified need for a specific power plant to go at**
8 **these sites, correct, as we sit here today?**

9 A I agree that FPL has not designated a certain
10 type of generating plant to be constructed on these
11 sites.

12 **Q Okay.**

13 A But that does not necessarily mean that the
14 sites are not needed.

15 **Q Do you know at the earliest when FPL might**
16 **need to use one of these sites?**

17 A No. I think that's probably better addressed
18 to Mr. Silva.

19 **Q Are you aware that one of the reasons that**
20 **FPL indicates that they need these two sites is so that**
21 **they can start doing work related to the permitting and**
22 **other regulatory approvals?**

23 A Once again, I think that's a question better
24 addressed to Mr. Silva. But I do agree with you that
25 part of the reason to obtain property ahead of time is

1 to allow there to be time enough to do all of the
2 necessary functions which you just described.

3 **Q Okay. So I'll just try to come at it this**
4 **way, and it may save us some time: You do provide**
5 **testimony that you think that these two plants should**
6 **be going into base rates at this point in time,**
7 **correct?**

8 A We probably -- let me draw a fine line here.
9 It's not my testimony to defend the appropriateness of
10 these investments, these specific investments and these
11 particular plant sites. My testimony goes to the
12 overall policy and the standards that this
13 Commission -- I think this Commission should apply in
14 making its evaluation.

15 **Q And in your opening, you had said that it**
16 **wouldn't be fair to have arbitrary time limitations; is**
17 **that right?**

18 A Yes.

19 **Q Okay. But isn't it arbitrary if you don't**
20 **have any time limitation at all; you just have a policy**
21 **of sort of ad hoc, we'll take a look at it on**
22 **individual facts?**

23 A I think that the so-called ad hoc method that
24 you just described is the Commission's policy. It is
25 the policy of the Commission to look at each individual

1 site on its own and make a reasonableness
2 determination.

3 The Commission certainly can consider the
4 length of time that it is anticipated before
5 construction would commence. But just because it may
6 exceed ten years should not be determinative.

7 **Q Okay. So let me refer you to page 11, line**
8 **12. And I'll just read it. But you say, quote, it**
9 **would be an inappropriate and unreasonable standard to**
10 **require all land and land rights to have a, quote,**
11 **unquote, definite plan for use at the time of initial**
12 **acquisition.**

13 **Is that your testimony?**

14 A That's my testimony. It's also consistent
15 with the uniform system of accounts.

16 **Q Okay. So, again, a policy discussion, would**
17 **the converse -- would you argue that the converse of**
18 **this should be the policy, that it would be appropriate**
19 **and reasonable to have land be able to be acquired**
20 **without a definite plan for use at the time of the**
21 **acquisition?**

22 A No, I'm not sure I agree with that. I think
23 it's clear in my testimony that I'm not supporting
24 utility's efforts to speculate in the land market, but
25 that it should be part of a consistent,

1 well-thought-out plan to provide service reasonably,
2 reliably, and cost effectively in the future, and that
3 that plan may require properties which would be used at
4 some point greater than ten years in the future.

5 **Q Have you read Mr. Silva's testimony?**

6 A Yes, I have.

7 **Q Okay. And so you're aware that part of the**
8 **reason he says that this should come in is because, you**
9 **know, land values are low now and they may go up in the**
10 **future; is that correct?**

11 A I believe I recall something to that effect
12 in his testimony.

13 **Q Does that fall within -- you use the term**
14 **"speculate" -- does that fall within your understanding**
15 **of speculate to take a position on something thinking**
16 **it will either go up or go down in the future?**

17 A No. I'm using the term "speculate" meaning
18 that it is outside of a plan to cost effectively and
19 reliably serve customers in the future.

20 **Q Okay. And then again, you know, to kind of**
21 **bring this in for a landing, but FPL does not have to**
22 **voluntarily negotiate with landowners to acquire**
23 **property, correct?**

24 A I believe it's not 100 percent necessary, but
25 it's certainly a preferred method.

1 **Q** And more specifically, FPL has eminent domain
2 powers to take land that may be needed to build power
3 plants, correct?

4 A I believe those powers exist. It's just a
5 question of whether that's a preferable route to take.
6 I do not think it is.

7 **Q** And are you aware of something called quick
8 taking powers where it provides the entity that needs
9 the property for public benefit to do it on an
10 expedited basis? Do you have any information about
11 what is sometimes referred to as a quick take process
12 in eminent domain?

13 A No, Mr. Moyle, I do not.

14 **Q** Okay. And then finally, as a matter of
15 policy, you would agree that with respect to
16 controlling a site, that purchasing a site in fee is
17 not the only way that someone could control a site?
18 Would you agree with that?

19 A I assume there could be other ways, some type
20 of, perhaps, an option to purchase or something of that
21 nature, that's possible.

22 **Q** That's right. And is it your experience or
23 do you have an understanding that option contracts that
24 give you an option to purchase it at some point in the
25 future typically you don't pay as much for an option as

1 **you pay for the fee simple value of the property?**

2 MR. BUTLER: I'm going to object to the form
3 of the question, assuming facts not in evidence.
4 He's pursuing a line also that Mr. Deason has
5 already said he's not familiar with.

6 COMMISSIONER EDGAR: Mr. Moyle.

7 MR. MOYLE: I'll ask Mr. Silva.

8 COMMISSIONER EDGAR: Thank you.

9 MR. MOYLE: Okay. If I could just have one
10 minute.

11 COMMISSIONER EDGAR: Sure.

12 MR. MOYLE: That's all I have.

13 Thank you, Mr. Deason.

14 THE WITNESS: Thank you.

15 COMMISSIONER EDGAR: South Florida Hospital.

16 MR. WISEMAN: Thank you, Madam Chairman.

17 CROSS-EXAMINATION

18 BY MR. WISEMAN:

19 **Q Good afternoon, Mr. Deason.**

20 **Mr. Deason, if I heard you correctly during**
21 **your summary of your testimony, I think you said that**
22 **you disagreed with the number of proposals by**
23 **intervenor witnesses because they were inconsistent**
24 **with Commission policy; is that correct?**

25 **A Yes.**

1 **Q Okay. You were on this Commission for**
2 **16 years, right?**

3 A Yes.

4 **Q Okay. I'm wondering during those 16 years,**
5 **did the Commission ever change any policies during that**
6 **time?**

7 A I'm sure that the Commission did. I can't
8 point to one example, but I feel confident in 16 years
9 there probably was some type of change in policy.

10 **Q Okay. And would you agree with the**
11 **proposition that from time to time it's appropriate for**
12 **a regulatory Commission to reexamine its policies?**

13 A Yes, I wholeheartedly agree that the
14 Commission should reexamine its policies and make
15 informed judgments.

16 **Q And would you agree that in making that**
17 **informed judgment, that if a change in policy would**
18 **further a statutory goal, such as setting fair, just,**
19 **and reasonable rates, then the Commission in that**
20 **circumstance should change the policy, right?**

21 A I believe policy changes should be based upon
22 evidence and that that evidence should be interpreted
23 to conform with the jurisdiction of the Commission,
24 which is set by statute.

25 **Q Well, I don't believe you answered my**

1 question. My question was -- is wouldn't you agree
2 that there are times when a Commission is reviewing its
3 policies that -- and if the evidence suggests that
4 there is a reason to change the policy, as an example,
5 to further a statutory mandate, such as setting fair,
6 just, and reasonable rates, then in that circumstance,
7 the Commission should change the policy? Isn't that a
8 fair method of procedure for this Commission or any
9 other regulatory Commission to follow?

10 A I believe I've already answered your
11 question.

12 MR. WISEMAN: Madam Chairman, I don't believe
13 he answered that question. If I could get a yes
14 or no answer, please.

15 COMMISSIONER EDGAR: I'm going to ask you
16 to -- and I have heard it twice -- reask the
17 question because you've got a number of what I
18 would view as almost parentheticals in there. So
19 if you would reask the questions, perhaps more
20 directly, if you can.

21 MR. WISEMAN: All right.

22 COMMISSIONER EDGAR: And, Mr. Deason, you
23 know our general method of procedure, if you can
24 answer with a yes or no, please do.

25 THE WITNESS: Yes, Madam Chair.

1 COMMISSIONER EDGAR: Thank you.

2 BY MR. WISEMAN:

3 Q If it would further a statutory goal, such as
4 setting -- goal such as setting fair, just, and
5 reasonable rates to change a Commission policy,
6 wouldn't you agree that in that circumstance a
7 Commission should change its policy?

8 A I will answer yes, but I will qualify that
9 that there are many and different interpretations as to
10 what consummates -- constitutes just, fair, and
11 reasonable rates.

12 Q All right. Fair enough.

13 So you would agree that the mere fact that a
14 party is asking the Commission to change a policy is
15 not in and of itself sufficient reason to reject that
16 party's proposal?

17 A I agree, it is not in and of itself a
18 sufficient reason. But it should be scrutinized in
19 light of what has been the Commission's policy and
20 whether deviation from that policy is justified.

21 Q Okay. Now, FPL included just a little bit
22 over \$500 million of construction work and progress
23 work, CWIP, in rate base in this case. Is that your
24 understanding?

25 A I'm not sure of the exact amount, but I would

1 agree it's probably somewhere in that order of
2 magnitude.

3 **Q Okay. Now, Mr. Kollen recommended that the**
4 **Commission reduce the CWIP and rate base to**
5 **\$250 million, and that the balance, which is around**
6 **\$250 million also, should be treated as being eligible**
7 **for AFUDC.**

8 **Is that your understanding of his testimony?**

9 A I understand that that is his testimony. I
10 don't understand how he calculated the 250 million, but
11 I understand that is his position.

12 **Q All right. And you oppose Mr. Kollen's**
13 **recommendation, correct?**

14 A I do oppose his recommendation, yes.

15 **Q Would you agree that whether a utility**
16 **recovers the financing costs of construction through**
17 **CWIP rate base or in the form of AFUDC, the utility**
18 **does, in fact, recover the financing cost of CWIP;**
19 **although, there are timing differences in terms of the**
20 **utility's recovery, correct?**

21 A Yes, it is a question of timing. But it also
22 is a question of the amount that is ultimately
23 recovered from ratepayers, AFUDC being a higher cost
24 alternative.

25 **Q Well, if a utility recovers the financing**

1 costs of CWIP through AFUDC, it's provided an
2 opportunity to recover the financing costs it incurs
3 between rate cases; isn't that correct?

4 A It is booked as earnings, and so it's
5 reflected as such. It would not constitute a cash
6 return, but it would be booked as a return, yes,
7 between rate cases.

8 Q So the answer to my question was yes,
9 correct?

10 A Yes, with the qualifier.

11 Q All right. You agree that if a project does
12 not qualify for AFUDC between rate cases, it can't get
13 the recovery of the financing costs from ratepayers
14 during construction and it loses that ability to
15 recover those financing costs forever?

16 A That's really not a yes or no question
17 because it depends on the amount of construction work
18 in progress that is allowed in a utility's rate base
19 from one rate case to another.

20 Q Well, again, are you saying it's -- a part of
21 my question says that -- I prefaced it with a qualifier
22 that the dollars will not qualify for AFUDC. And in
23 that context, your answer still would be that it's a
24 yes -- neither a yes or a no, that you would need more
25 facts?

1 A Well, I thought your question was would there
2 be a return earned between rate cases.

3 **Q No. My question was can the -- would the**
4 **utility give up forever the financing costs in my**
5 **hypothetical?**

6 A I can't answer the question based upon the
7 facts you've giving me. I need more information.

8 **Q Okay. Well, would you agree with the**
9 **proposition that recovery of financing costs of CWIP**
10 **through AFUDC, actually can in some circumstances be a**
11 **benefit to the regulated utility?**

12 A Yes, I agree with that.

13 **Q Thank you.**

14 MR. WISEMAN: Those are all my questions.

15 COMMISSIONER EDGAR: Thank you.

16 Captain.

17 CAPTAIN MILLER: Just one question.

18 CROSS-EXAMINATION

19 BY CAPTAIN MILLER:

20 **Q Good afternoon. Are you aware in Mr. Silva's**
21 **testimony he says there would be both a primary and**
22 **alternate site for generation?**

23 A I recall that specific section. If you could
24 direct me to it, I would be glad to look at it. But I
25 don't recall that.

1 **Q It is on page 6 of his testimony.**

2 A Okay. I will need his testimony.

3 CAPTAIN MILLER: May I hand the testimony to
4 the witness?

5 COMMISSIONER EDGAR: Yes, you may. Or,
6 Mr. Rehwinkel, do you have it there?

7 MR. REHWINKEL: Yes.

8 COMMISSIONER EDGAR: I'll let
9 Mr. Rehwinkel --

10 THE WITNESS: This must be why Mr. Rehwinkel
11 sits at the end of the table.

12 COMMISSIONER EDGAR: Thank you for your help.
13 Can you redirect the witness to the specific
14 section?

15 CAPTAIN MILLER: Yes, ma'am.

16 BY CAPTAIN MILLER:

17 **Q It's page 6, paragraph five.**

18 A Give me a moment. Do you want me to review
19 paragraph 5; is that correct?

20 **Q Yes, please.**

21 A Okay. I've reviewed that.

22 **Q After reviewing that, do you agree that**
23 **Mr. Silva explains that there should be both a primary**
24 **and alternate site for generation just in case the**
25 **extra capacity is required and it can't be acquired**

1 **through the primary site?**

2 A Yes, I see that.

3 **Q And do you think that is a good policy?**

4 A I believe it depends upon the facts for each
5 individual site that is being considered by the
6 Commission. I think that as an adder --

7 **Q Generally, yes or no?**

8 A Yes, if the facts substantiate it.

9 **Q Okay. Thank you.**

10 CAPTAIN MILLER: That's all I have. Thank
11 you.

12 COMMISSIONER EDGAR: I'm not on. Let's take
13 a moment, if we can, and see what the problem is
14 with our sound system.

15 Am I back, okay.

16 Then, Mr. Wright, you are up.

17 MR. WRIGHT: Thank you, Madam Chairman.

18 CROSS-EXAMINATION

19 BY MR. WRIGHT:

20 **Q Good afternoon, Mr. Deason.**

21 A Good afternoon.

22 **Q It's always a pleasure to see you.**

23 A Same here.

24 **Q Thank you.**

25 **I have a predicate question for you that will**

1 lead to some ultimate questions after we talk about two
2 areas of your rebuttal testimony. And I'll let you
3 know that those two areas are CWIP and rate base versus
4 AFUDC treatment and plant held for future use.

5 A Okay.

6 Q So you don't have to worry about the other
7 five sections of your testimony.

8 A Very good.

9 Q Here is the predicate question for you: Do
10 you agree that it is a public utility's duty to provide
11 safe, adequate, and reliable service at the lowest
12 possible cost?

13 A No, I cannot agree with that. It would -- I
14 have to answer no, and then I can qualify my answer,
15 because I'm not sure in your question what you mean by
16 "lowest cost."

17 There are some times when it is the best
18 public policy and indeed in the customer's interest to
19 allow cost recovery in such a way that it may not be
20 the absolute lowest cost, but it is the appropriate
21 level of cost recovery and the appropriate level of
22 rates established therefrom.

23 Q Let me try two more follow-ups, maybe only
24 one. Given the premise of my question, which is that
25 the utility would meet all applicable requirements for

1 **safety, adequacy, and reliability of the service to be**
2 **provided, would you agree that it's the utility's duty**
3 **to provide that service at the lowest possible cost?**

4 A Yes, I would agree, to the extent that, as in
5 your qualifier, lowest cost contemplates a number of --
6 a myriad of issues which can be debated. So it's
7 probably -- you know, maybe even a better would be the
8 most appropriate cost. But I do agree that a utility
9 has an obligation to be as efficient as possible in
10 meeting its obligations to serve.

11 **Q Thank you.**

12 **Moving on to the line of questions I have for**
13 **you regarding construction work in progress, or CWIP,**
14 **in rate base.**

15 COMMISSIONER EDGAR: Mr. Wright, would you
16 raise your mic just a little bit.

17 MR. WRIGHT: Sure.

18 COMMISSIONER EDGAR: Thank you.

19 MR. WRIGHT: Certainly, Madam Chairman. I
20 try to keep it out of the line of sight. Thank
21 you.

22 BY MR. WRIGHT:

23 **Q Do you agree that either or both AFUDC**
24 **treatment or allowing the inclusion of CWIP in rate**
25 **base apply to assets that are not actually providing**

1 **service?**

2 A No, I can't agree with that.

3 **Q Well, if an asset is actually providing**
4 **service, then isn't it true that it would normally be**
5 **in rate base?**

6 A Yes, that is normally true.

7 **Q So how can it be that an asset that is not**
8 **providing service and not in rate base -- well, let's**
9 **go at it this way: An asset that's not in service is**
10 **normally treated either through the application of CWIP**
11 **or the application of AFUDC treatment, correct?**

12 A I agree that it's normally one or the other,
13 yes.

14 **Q Okay. In the context of a rate case, isn't**
15 **it true that an asset that would be proposed for AFUDC**
16 **or CWIP is not actually providing service in the test**
17 **year for which rates are being set?**

18 A No, I cannot agree. And if you'll allow me
19 to explain, I will explain.

20 **Q Please do.**

21 A All right. Commissioners, it depends on the
22 terminology actually providing services. And I take it
23 from the question that there seems to be this sharp
24 delineation between an accounting mechanism as to where
25 it is classified in the books of account, whether it's

1 classified as CWIP or whether it's classified plant in
2 service.

3 That is an accounting mechanism, and it's
4 clearly defined in uniform system of accounts, as it
5 should be. But I think for policy purposes, there
6 should be a broader interpretation of what constitutes
7 providing service.

8 And as provided in my testimony, I provide a
9 quote of when we last considered the rule in question
10 here, and it's a quote from the staff's recommendation.
11 And it makes the observation that there are projects --
12 it says, "Not all construction is solely for the
13 benefit of future ratepayers. There are many projects
14 which are built in order to increase the reliability of
15 service or replace aging or obsolete equipment and
16 facilities. In some cases, facilities in high growth
17 areas reach capacity and must be expanded."

18 So there are a lot of construction projects
19 which are on an ongoing, consistent basis that are
20 needed to continue to provide that level of service.
21 And customers expect when they apply for service, for
22 that service to be there and facilities to be in place.

23 So to some extent, those facilities, they
24 already provide service. While they may not have the
25 switched turned on, are there to serve existing

1 customers and do provide a service to customers by the
2 fact that they are there and available.

3 **Q But if the switch isn't turned on, they're**
4 **not providing service, right?**

5 A In that limited definition, I agree.

6 **Q And if they're -- let's talk about 366.06.**
7 **Do you have 366.06 with you, and specifically**
8 **366.06(1)?**

9 A I don't believe that I do.

10 **Q I do.**

11 A Thank you.

12 **Q Before we go there, I would like to ask you**
13 **one more question about CWIP and AFUDC. Would you**
14 **agree that as long as the asset receives either CWIP**
15 **treatment or AFUDC treatment, the utility is whole?**

16 A All other things being equal, yes.

17 **Q I would like to -- following the first line**
18 **of questions and answers that we had, I would like to**
19 **ask you to look at the rather long third sentence of**
20 **Section 366.06(1).**

21 A Can you tell me where the third sentence
22 begins?

23 **Q Sure. On the --**

24 A With "shall"?

25 **Q It begins with the word "the Commission shall**

1 **investigate."**

2 A Okay. You want me to review that sentence?

3 **Q Please.**

4 A Yes, it is a long sentence. I have reviewed.

5 **Q Would you agree generally that the statutory**
6 **criterion for inclusion in rate base and for**
7 **rate-making purposes is that the Commission shall**
8 **determine the cost of property actually used and useful**
9 **in the public service?**

10 A I do agree that the phrase "actually used and
11 useful in the public service" is contained within this
12 statutory provision.

13 **Q Do agree that that is the general statutory**
14 **standard for inclusion in rate base for rate-making**
15 **purposes?**

16 A Generally, yes.

17 **Q Thank you.**

18 A But as always, is subject to interpretation
19 of what constitutes used and useful in the public
20 service.

21 **Q Do you agree that there is an inherent**
22 **conflict or tension between allowing construction work**
23 **in progress in rate base and the general statutory**
24 **standard that assets must be actually used and useful**
25 **in the public service to be included for rate-making**

1 **purposes?**

2 A I think it's a fair question and that the
3 Commission needs to answer, but I think the rule that
4 the Commission adopted fairly reaches that balance.

5 **Q Thank you.**

6 **And we're going to talk about the rule in**
7 **hopefully very few minutes. But the question I asked**
8 **you was, is there an inherent conflict or tension**
9 **between CWIP and rate base in requiring that rates be**
10 **set based on the actual legitimate costs of property**
11 **actually used and useful in the public service?**

12 MR. BUTLER: I'm going to object that this is
13 asked and answered. I think it's the same
14 question. I think Mr. Deason answered it, in
15 fact, agreed there was tension, but then observed
16 that in his view the rule does a good job of
17 balancing that tension.

18 COMMISSIONER EDGAR: Mr. Wright.

19 MR. WRIGHT: Madam Chairman, I did not hear
20 him say that he agrees that there's an inherent
21 tension. I heard him say, Mr. Wright, that's a
22 fair question and I believe the Commission's rule
23 balances it.

24 COMMISSIONER EDGAR: I'm going to --

25 MR. WRIGHT: If he would answer the question

1 is there an inherent conflict, I'm ready to go on.
2 Thank you.

3 COMMISSIONER EDGAR: Why don't you repose the
4 question.

5 MR. WRIGHT: Sure.

6 BY MR. WRIGHT:

7 **Q Do you agree that there is an inherent**
8 **conflict between allowing CWIP in rate base and the**
9 **statutory language that says the Commission for**
10 **rate-making purposes shall use the costs of property**
11 **actually used and useful in the public service?**

12 A And I will have to answer your question no
13 because your use of the term "conflict" implies to me
14 that there is a bright line yes/no answer as to what
15 constitutes used and useful in the public service.

16 I do agree that it is a matter for the
17 Commission to make a determination on, but it's just
18 not simply a conflict with either a yes or a no answer.

19 **Q Thank you.**

20 **At pages 7 and 8 of your rebuttal testimony,**
21 **you talk about the rationale for having a higher**
22 **threshold for CWIP projects to accrue AFUDC. You**
23 **testified that that was in the context of possible**
24 **industry restructuring back in 1996, correct?**

25 A Yes, that is correct.

1 **Q** And surely you'll agree that at least in
2 **Florida, industry restructuring has not occurred,**
3 **correct?**

4 A That's correct, yes.

5 **Q** Will you also agree that industrial
6 **restructuring isn't likely to occur in Florida for the**
7 **remainder of your and my careers?**

8 A That depends on how long we're going to be
9 working, Mr. Wright. I do not see it in the near
10 future for sure.

11 **Q** Thank you.

12 **At pages 8 through -- excuse me -- at lines 8**
13 **through 11, you say that the Commission considered the**
14 **benefits to customers, correct?**

15 A Yes.

16 **Q** Did the Commission also consider the benefits
17 **to utilities of adopting the CWIP rule that it did?**

18 A I simply don't recall whether that was the
19 focus of the review by the Commission. It very well
20 could be, I just don't recall.

21 **Q** Would you agree that adopting the rule as the
22 **Commission did, particularly in the context of possible**
23 **industry restructuring, provided benefits to utilities?**

24 A I agree they provided benefits in this
25 limited extent, that it put them in a posture to be

1 better prepared to be able to compete in a potential
2 competitive market, yes.

3 **Q A bit further down on page 8, you --**
4 **particularly lines 9 through 11 -- you talk about using**
5 **a higher threshold for AFUDC accrual. That resulted**
6 **in -- the higher threshold meant that more projects**
7 **would be given CWIP treatment under the normal**
8 **structure of the rule, correct?**

9 A Yes.

10 **Q Okay. And then you go on there to say that**
11 **it would ultimately lead to lower rates?**

12 A Yes.

13 **Q Yeah. And by that, you mean that it leads to**
14 **lower rates by avoiding the AFUDC adder that would**
15 **ultimately come in on top of the original base**
16 **investment in an asset, correct?**

17 A Yes.

18 **Q So isn't it true that allowing CWIP and rate**
19 **base leads to lower rates in the long-run by requiring**
20 **customers to pay higher rates in the short-run?**

21 A I would agree, yes, all other things being
22 equal. But there has to be some assumption about the
23 timing of those projects being put into rate base
24 between rate cases.

25 **Q Okay. Do you know whether the Commission**

1 **considered the higher rates in the short-run effect on**
2 **customers when it adopted its rule?**

3 A Yes, I believe the Commission balanced that
4 in the adoption of the rule and did recognize that
5 there -- as I quoted earlier from my testimony and from
6 staff's recommendation -- that there are -- many of
7 these projects really are more applicable for rate base
8 inclusion because they are part of more of the
9 consistent, continual providing of service and being
10 prepared to provide service.

11 MR. WRIGHT: Madam Chairman, Mr. Rehwinkel is
12 going to hand Mr. Deason a copy of the Rule
13 25-6.0141.

14 COMMISSIONER EDGAR: Thank you.

15 MR. WRIGHT: Thank you.

16 BY MR. WRIGHT:

17 **Q It's your testimony on page 9, you talk**
18 **about -- you talk about Section (1)(g) of the rule,**
19 **correct?**

20 A I do.

21 **Q Okay. I would like to ask you, please, just**
22 **to -- it's not long -- if you would please read**
23 **Subsection (1)(g) of the rule out loud.**

24 A Well, Mr. Rehwinkel gave me 366.06.

25 **Q Oh, I'm sorry. That was probably my fault, I**

1 **probably handed him the wrong one. My apologies.**

2 A Do you want me to read that now?

3 **Q Yes, would you, please.**

4 A Aloud or --

5 **Q Yes, sir, aloud.**

6 A Aloud, okay.

7 "On a prospective basis, the Commission, upon
8 its own motion, may determine that the potential impact
9 on rates may require the exclusion of an amount of CWIP
10 from a utility's rate base that does not qualify for
11 AFUDC treatment per paragraph (1)(a) and to allow the
12 utility to accrue AFUDC on the excluded amount."

13 **Q Thank you.**

14 **In your testimony at lines 15 through 16 on**
15 **page 9, you make this statement: "Exercising this**
16 **provision should only be done in truly extraordinary**
17 **situations." Is that an accurate quote of your**
18 **testimony?**

19 A It is.

20 **Q You don't see that extraordinary situation's**
21 **criterion in the Commission's rule, do you?**

22 A No. That's my interpretation of the rule and
23 what the Commission considered at the time that it was
24 adopted, that it was not something to be done on a
25 routine basis, that there was -- there was a

1 requirement for the Commission to make an evaluation
2 before doing so.

3 **Q I think you stated this in your rebuttal**
4 **testimony, but let me just make sure the record is**
5 **clear. You will agree, will you not, that under the**
6 **rule, Subsection (1)(g) that we are discussing, the**
7 **Commission could require FPL to apply AFUDC treatment**
8 **to the CWIP amounts at issue here?**

9 A I agree that it could. But I further believe
10 that there should be a determination consistent with
11 the rule that somehow that inclusion results in
12 unreasonable or burdensome rates on customers.

13 **Q And just so we're clear, the amount we're**
14 **talking about, the amount of CWIP, is \$250 million,**
15 **correct?**

16 A That is the amount that has been put at
17 issue.

18 **Q That's what I meant.**

19 A Yes.

20 **Q The amount at issue or in dispute between the**
21 **Hospital Association's witness and Florida Power &**
22 **Light?**

23 A Yes, I agree.

24 **Q Okay. And I gather -- Mr. Kollen testified**
25 **that the revenue requirements associated with that**

1 amount are in the ballpark of \$26 million a year?

2 A Yes, I recall that to be the approximate
3 amount.

4 Q Okay. Would you agree that's a reasonable
5 approximation of the revenue requirements impact of a
6 \$250 million CWIP inclusion?

7 A I have no basis to disagree with that.

8 Q Okay.

9 A It sounds like it's in the ballpark.

10 Q Thanks.

11 Will you agree -- if I say, "the Great
12 Recession," you know what I'm talking about, don't you?

13 A I'm sorry, I didn't hear you.

14 Q If I use the phrase "the Great Recession,"
15 you know what I'm talking about, do you not?

16 A Generally. I don't know the exact start and
17 end time or even its -- but, anyway, I generally know
18 what you're talking about.

19 Q The general economic adversities experienced
20 in the United States of America, say, between 2008 and
21 possibly continuing through the present.

22 A I generally understand that.

23 Q Okay. Will you agree that the Great
24 Recession is the most significant adverse economic
25 episode in U.S. economic history in your and my

1 **lifetimes?**

2 A Well, I personally had it much harder in
3 earlier years when there was not a recession.

4 **Q And so did I.**

5 A I think as a general proposition that the
6 so-called Great Recession has had substantial impacts
7 on the economy. Whether it's the worst, I don't
8 really -- I can't really say.

9 **Q Okay. Would you consider the impact of the**
10 **Great Recession on Floridians generally to be**
11 **extraordinary?**

12 A I would agree that it is above normal
13 economic ups and downs and, hence, the term the "Great
14 Recession." So, generally, yes, I agree with that
15 proposition.

16 **Q Would you agree that for customers to have an**
17 **extra \$26 million a year in their pocketbooks and**
18 **checking accounts, would at least be significant to**
19 **them?**

20 A No, I can't agree with that. \$26 million in
21 a -- for a company this size, while I have not done the
22 calculation, is probably pennies per month, certainly
23 less than a dollar. My guess would be somewhere
24 between 25 cents to maybe 30 cents a month. But that
25 probably would be a better question for another

1 witness, perhaps Ms. Deaton.

2 Q If the Commission were to decide -- now, you
3 previously agreed that the utility is whole with either
4 methodology, AFUDC or CWIP in rate base, correct?

5 A I generally agree with that, yes.

6 Q Okay. So would you agree that if the
7 Commission were to decide to require FPL to accrue
8 AFUDC on this \$250 million amount in dispute, FPL would
9 still be able to provide safe, adequate, and reliable
10 service?

11 A Yes, I would agree.

12 Q I just -- that concludes my line of
13 questioning on the CWIP and rate base. I do have what
14 I think are not a whole lot of questions for you on
15 plant held for future use.

16 Just as predicate so we understand what we're
17 talking about, your rebuttal testimony addresses
18 Ms. Ramas' recommendation to disallow two future power
19 plant sites plus some transmission sites of lesser
20 value from rate base, correct?

21 A Yes.

22 Q Would it be okay if we just confined our
23 discussion to the two power plant sites?

24 A Yes.

25 Q And those are the Hendry/McDaniel or Fort

1 **Drum/North Okeechobee sites?**

2 A That's what I understand them to be, yes.

3 Q Okay. And I think I recall the combined
4 value of those sites is in the vicinity of
5 \$109 million?

6 A I tend to recall that number as well.

7 Q Okay. And would you agree that the revenue
8 requirement impact of that is probably in the vicinity
9 of ten, 11, \$12 million a year?

10 A I would agree with that, yes.

11 Q As I understand your testimony, basically you
12 testified that Ms. Ramas is wrong because she didn't
13 conduct a detailed analyses of the sites; is that
14 right?

15 A That's part of the reason I found fault with
16 her recommendation, but not all of the reasons.

17 Q In response to a question by Mr. Moyle, I
18 think you made the statement that "It's not my
19 testimony to defend either site." Do you recall making
20 that statement?

21 A I recall generally making such a statement,
22 yes.

23 Q Would it be fair to understand that to mean
24 that your testimony does not defend the inclusion of
25 either the Hendry or Fort Drum site in rate base for

1 **this rate case?**

2 A Yes, I agree, my testimony goes to the --
3 what I consider would be proper policy considerations
4 and standards of review that this Commission should
5 apply to those sites.

6 Q **And later on in your testimony, you talk**
7 **about three particular policy concerns that I think in**
8 **your view militate towards allowing future power plant**
9 **sites in rate base?**

10 A Could you direct me to --

11 Q **Sure. Pages 20 and 21.**

12 A Yes, I'm there.

13 Q **Okay. And generally, as I read it, the three**
14 **criteria or concerns were lead times to construct new**
15 **plants, proximity to load centers, and fuel diversity?**

16 A Generally, yes. I think there's probably
17 more detail than just that. But, you know, the
18 testimony is as it is on those pages.

19 Q **Okay. Your testimony then -- I just want to**
20 **make sure the record is clear -- your testimony does**
21 **not stand for the proposition that either of these**
22 **plant sites is specifically needed in light of each of**
23 **these criteria, correct?**

24 A I agree with this caveat: That it goes to
25 the question of her recommendation that there should be

1 some type of ten-year limitation for consideration or
2 there needs to be a definite plan for the use of the
3 sites. And my opinion that it is not the appropriate
4 standard to employ, and that in considering what
5 properties may be needed, that these did not -- these
6 dynamics which I just describe stand for the
7 proposition that that planning horizon should be
8 longer, not shorter.

9 **Q But, again -- and just so the record is**
10 **clear -- you're not saying that either of these**
11 **specific sites is needed because of any of the specific**
12 **concerns articulated on pages 20 and 21 of your**
13 **testimony, correct?**

14 **A Correct.**

15 **Q Thank you.**

16 **On pages 17 and 18 of your testimony, you**
17 **talk about -- and you cite to some Commission orders --**
18 **that generally stand for the proposition that putting**
19 **off buying a future power plant site could have adverse**
20 **consequences, correct?**

21 **A Yes.**

22 **Q Okay. And pretty much to the same effect on**
23 **page 20 of your testimony, you say that if the**
24 **Commission were to adopt Ms. Ramas' recommendations, it**
25 **could or would, in your testimony, send a message to**

1 Florida utilities to take a shorter look into the
2 future and be less aggressive in seeking and acquiring
3 future properties; is that a fair characterization?

4 A Yes, I think that's fair.

5 Q Okay. And then at page -- on page 20 on line
6 13, you're talking about utilities waiting longer and
7 thereby increasing the risk of having to acquire either
8 less than optimal sites, paying more for the sites or
9 both, correct?

10 A Yes. Correct.

11 Q My question for you is this: Doesn't
12 allowing the utility to buy early shift the carrying
13 costs of having acquired that site on to customers?

14 A I don't understand what you mean by shifting
15 costs.

16 Q Well, if you put -- if the utility buys it
17 and doesn't put it in rate base, customers aren't
18 paying for it, correct?

19 A If it is purchased and it is allowed in rate
20 base, it is -- a return is being allowed and customers
21 would be paying for that return through their rates.

22 Q Okay. Isn't it also true that allowing it to
23 be put into rate base puts whatever cost risk is
24 associated with actually having acquired the site on to
25 customers?

1 A Could you rephrase your question, I'm really
2 having difficulty understanding.

3 **Q Sure. Well, you testified that waiting and**
4 **not buying a plant increases potential future risks.**
5 **And I'm asking you will you agree that buying the plant**
6 **and putting it in rate base puts some risks on to**
7 **customers and takes them off the utility?**

8 A I agree that there -- by purchasing the
9 property and allowing it in rate base, that the
10 customers are going to pay a return on that and by --
11 and if the property is needed and it is not purchased,
12 there is more risk to the customer by doing that.
13 Maybe you can help me with your question then.

14 **Q Sure. If it's purchased and put in rate base**
15 **and never used, the risk falls on the customer and they**
16 **never get any benefit, right?**

17 A Yes, with this caveat: The fact that it was
18 purchased, reviewed by the Commission, determined to
19 have been a prudent purpose and it did serve a function
20 by maintaining an option for future development, there
21 is benefit by that.

22 The ultimate test is not whether the property
23 is actually used; the test is was it acquired, at the
24 time it was acquired, was that a prudent decision and
25 consistent with planning to provide service reliably

1 and cost effectively.

2 **Q Thank you, Mr. Deason, that's all I have.**

3 MR. WRIGHT: Thank you, Madam Chairman.

4 Thank you, again, for the indulgence of letting us
5 switch places in the order.

6 COMMISSIONER EDGAR: That's fine. Thank you.
7 Mr. Rehwinkel, do you have questions?

8 MR. REHWINKEL: I have a few.

9 COMMISSIONER EDGAR: Okay.

10 MR. REHWINKEL: Thank you.

11 CROSS-EXAMINATION

12 BY MR. REHWINKEL:

13 **Q Good afternoon, Mr. Deason.**

14 A Good afternoon.

15 **Q It's hard to call you mister instead of Terry**
16 **or Commissioner, so I'll try.**

17 A I'll answer regardless.

18 **Q Good. Can I get you to turn, please, to page**
19 **30. And I first want to ask you some questions about**
20 **incentive compensation, and specifically lines 10**
21 **through 13.**

22 **There do you indicate that the disallowance**
23 **of performance-based variable compensation is**
24 **inconsistent with sound regulatory policy and basic**
25 **principles of ratemaking?**

1 A Yes, his recommendation is inconsistent, in
2 my opinion.

3 Q Okay. So if I rephrase the question to say
4 that the recommendation for disallowance and then the
5 rest of that, would --

6 A Yes, his recommendation and the basis for his
7 recommendation I think is inconsistent.

8 Q Okay. Are you familiar with decisions in
9 other jurisdictions, the last FPL case and the last
10 Progress Energy case where incentive compensation was
11 disallowed?

12 A I'm generally familiar with those. I
13 wouldn't say in detail.

14 Q Okay. Would it be your testimony then that
15 when those decisions were made in other jurisdictions
16 in the last FPL case and in the last Progress Energy
17 case, that the Commissioners in those cases did not
18 follow sound regulatory policy or the basic principles
19 of ratemaking?

20 A Each case base needs to be evaluated upon the
21 facts of the case.

22 Q Okay.

23 A So it is a difficult question to answer yes
24 or no.

25 Q Well, let's take them one at a time.

1 A Very good. Very well.

2 **Q The last Progress Energy case -- do you want**
3 **me to ask the question again?**

4 A Yes.

5 **Q Okay. In the last Progress Energy case, was**
6 **the decision in that case to disallow performance-based**
7 **variable compensation a situation where those**
8 **Commissioners did not follow sound regulatory policy or**
9 **the basic principles of ratemaking?**

10 A Yes, I believe that those decisions were not
11 consistent with prior precedent of the Commission and
12 were deviations from what I consider to be sound
13 regulatory policy.

14 Those Commissioners may have made that
15 decision based upon what they thought was appropriate.
16 I personally think it was an inappropriate decision
17 considering what's best in the customer's long-term
18 interest.

19 **Q Okay. Now, I asked you about the Progress**
20 **case. If I asked you the same thing about the last FPL**
21 **case, would your answer be the same, to the extent**
22 **variable -- performance-based variable compensation was**
23 **disallowed?**

24 A I think the answer would generally be the
25 same, yes.

1 **Q** Okay. I guess my third scenario was other
2 jurisdictions. I don't have a specific jurisdiction to
3 point you to, but if they disallowed performance-based
4 variable compensation, would your answer be the same?

5 A Here again, not having any facts to base it
6 upon -- if it were just a blanket rejection of the
7 entire concept based upon the fact that it is labeled
8 "incentive," then, yes, I would agree that it probably
9 is inconsistent with what I consider to be sound
10 regulatory policy. But with you not giving me a
11 specific case and a specific set of facts, it's hard to
12 make a definitive statement.

13 **Q** Okay. Fair enough.

14 Let's look at page 31, and let me generally
15 direct you to your testimony at lines 12 through 21.

16 A Okay.

17 **Q** And my question to you is that do you
18 indicate there that Public Counsel Witness Schultz has
19 not provided any market analysis as to what amount of
20 compensation is reasonable and necessary to attract the
21 workforce necessary to efficiently and reliably run an
22 electric utility?

23 A I think that's a correct characterization of
24 my testimony.

25 **Q** Does it follow then that you conclude that

1 **Witness Slattery, FPL Witness Slattery, has explained**
2 **what is necessary to attract and retain a qualified**
3 **workforce and that compensation is at or near the**
4 **median employee compensation?**

5 A Yeah, I think that's -- yes, Witness Slattery
6 addresses that, and that's an ultimate fact for this
7 Commission to determine as to whether she has
8 satisfactorily met that burden.

9 Q **But you agree that she -- it's your testimony**
10 **that she has provided the explanation that is**
11 **necessary?**

12 A I think she has provided an explanation, yes.

13 Q **Okay. Is it your opinion that you offer in**
14 **your rebuttal testimony here that an explanation is**
15 **considered sufficient to justify allowing a cost?**

16 A I think an explanation is a prerequisite but
17 in and of itself may not be sufficient. That's a
18 determination for the Commission to make.

19 Q **Well, in that case, how is it that you can**
20 **provide a judgment in your testimony on Mr. Schultz's**
21 **recommendation?**

22 A I'm pointing out to a deficiency that I
23 believe is within his testimony that it lacks such
24 explanation and such analysis but draws a conclusion --
25 and draws a conclusion absent performing that analysis.

1 **Q Are you familiar with Mr. Schultz's**
2 **experience in testifying in this area of**
3 **compensation -- incentive-based compensation?**

4 A Generally, yes.

5 **Q Would you agree that he has some level of**
6 **extensive experience around -- testifying about this**
7 **issue around the country?**

8 A Yes.

9 **Q Okay. If that's the case, why should his**
10 **explanation be ignored and he be required to provide a**
11 **separate analysis when the company has the burden of**
12 **proof to justify cost recovery in a rate increase**
13 **request?**

14 A That's a good question, Mr. Rehwinkel. And
15 I've heard a lot of discussion here about burden of
16 proof, and it certainly rests with the utility. But
17 the utility has put on a case, and Ms. Slattery is part
18 of that case.

19 Mr. Schultz has found fault with that. I
20 don't think that he is -- there's a certain burden on
21 the intervenors as well when they present an
22 alternative approach, they have to substantiate that in
23 the eyes of the Commission as well. And so I don't
24 think that Mr. Schultz has provided a sufficient
25 analysis to reach his conclusion.

1 Q But you would agree with me that the initial
2 burden of proof is on the utility for recovery of any
3 cost that they seek recovery for?

4 A I agree with that, yes.

5 Q Okay. Is it your opinion that the analyses
6 supplied by the company are support for allowing the
7 incentive compensation?

8 A Yes, without a question it is support. It's
9 just a question as to whether it is -- in the eyes of
10 the Commission, whether it is sufficient.

11 Q Okay.

12 A I'm not making an independent judgment that
13 that is sufficient.

14 Q Did you review Ms. Slattery's Exhibit KS-3 in
15 her testimony, her direct?

16 A I did not.

17 Q Okay. Did you review the deposition that she
18 gave?

19 A I did not.

20 Q Okay. Were you aware that she affirmed --
21 well, let me step back, let me ask this question a
22 different way.

23 Would you accept my representation that she
24 affirmed that the average salary and wage in her
25 Exhibit KS-3 -- that the average salary and wage for

1 **FPL included incentive compensation?**

2 A I have no reason to disagree with that.

3 **Q Okay. Would you be surprised if I**
4 **represented to you that Ms. Slattery could not confirm**
5 **whether the Progress Energy average salary and wage**
6 **included incentive compensation?**

7 MR. BUTLER: I'm going to object to this. I
8 think it's beyond the scope of his testimony.
9 He's been pretty clear that he is not here
10 testifying to the specifics of FPL's compensation,
11 much less Progress Energy's compensation.

12 MR. REHWINKEL: I'll withdraw the question.

13 Thank you.

14 BY MR. REHWINKEL:

15 **Q Are you familiar with compensation studies as**
16 **they have been discussed in this case?**

17 A Yes, generally familiar, but not in detail.

18 **Q Okay. Would compensation studies serve as a**
19 **basis for determining what compensation levels may be**
20 **reasonable in the overall marketplace?**

21 A Yes.

22 **Q Are you familiar with whether Commissions**
23 **around the country adjust compensation requests for**
24 **incentive compensation?**

25 A I am not specifically aware of any, but I

1 would not be surprised if there are such adjustments in
2 other jurisdictions.

3 **Q Are you aware of whether Commissions around**
4 **the country have adjusted compensation requests for**
5 **reasonableness or lack thereof?**

6 MR. BUTLER: I'm sorry, Mr. Rehwinkel, your
7 question is whether they have reduced the requests
8 or not allowed all of their requests because it's
9 not reasonable?

10 MR. REHWINKEL: Yes.

11 MR. BUTLER: Okay. Thank you.

12 BY MR. REHWINKEL:

13 **Q Do you understand my question?**

14 A I do. And if it wasn't reasonable, I hope
15 they disallowed it.

16 **Q Okay. Are you familiar with any situations**
17 **specifically where that has been done?**

18 A No.

19 **Q Okay. As a Commissioner in your 16 years,**
20 **did you ever support a reduction to any utility's**
21 **request for recovery of compensation expense?**

22 A Well, maybe you can refresh my memory,
23 Mr. Rehwinkel.

24 **Q I only have six years in that.**

25 A Nothing comes to mind, but I feel confident

1 probably in 16 years there probably were compensation
2 disallowances.

3 Q Would it be fair to say that you -- would it
4 be fair to say that -- well, let me strike that and ask
5 it a different way.

6 Did you find that the company always met its
7 burden to support its compensation requests in your
8 tenure as a Commissioner?

9 A I would be surprised if I always found that
10 all compensation requests were appropriate. I feel
11 confident that there were disallowances.

12 Q Okay. If various Commissions adjust the
13 amount of compensation included in rates for incentive
14 compensation and/or for other reasons like
15 reasonableness, wouldn't that fact be something to be
16 considered when a compensation analysis is provided as
17 support for justification of costs?

18 A I'm going to ask you to repeat the question,
19 please.

20 Q Okay. What I'm asking you about is if
21 Commissions around the country adjust, have adjusted
22 the compensation requests of utilities and there are
23 compensation analyses like FPL has presented in this
24 case, wouldn't the comparison of FPL's compensation to
25 those other jurisdictions -- shouldn't those consider

1 **whether there has been a regulatory disallowance?**

2 A Oh, absolutely not, no. A reasonable,
3 justified cost is a reasonable, justified cost, and
4 it's based upon the evidence and facts presented to
5 this Commission. And what another jurisdiction does
6 with that should have no bearing.

7 **Q So just so I understand, if compensation in**
8 **other states has been adjusted because there are**
9 **regulatory disallowances, it's your position that the**
10 **analyses that FPL submits should not take that into**
11 **consideration in judging where FPL sits with respect to**
12 **the rest of the industry?**

13 A Yes, you're correct, that is my
14 interpretation, it should not be considered.

15 **Q Okay. Let's look at page 32, lines 1**
16 **through 5. Do you see that?**

17 A I do.

18 **Q Okay. Is it correct here that you state**
19 **Mr. Schultz argues for disallowance of incentive**
20 **compensation even in a situation where a company**
21 **justifies total compensation based on market studies?**

22 A I may be at the wrong place, Mr. Rehwinkel.
23 This page 32, lines 1 through 5?

24 **Q Yes.**

25 A Okay. Give me just a moment.

1 Q Okay. Does yours start "The sole basis"?

2 A Yes.

3 Q Okay.

4 A Okay. I'm with you.

5 Q Okay. I'm really looking at lines 3 through
6 5 there. Do you see that?

7 A Okay.

8 Q So should I ask you again?

9 A Yes, please.

10 Q Okay. Do you state there that Mr. Schultz
11 argues for disallowance of incentive compensation even
12 if a company justifies total compensation based on
13 market studies?

14 A Yes, that's what the testimony says.

15 Q Now, it's not your expressed testimony in
16 this rebuttal testimony or before the Commission here
17 today that FPL has justified the total compensation
18 level, is it?

19 A No, I'm not making -- you're correct, I am
20 not making a judgment that the total compensation has
21 been justified. I am observing a deficiency in the
22 approach in Mr. Schultz's testimony and find fault with
23 his approach because he does not do a similar analysis,
24 which is part of FPL's direct case.

25 Q Should we nevertheless assume that you

1 believe that FPL has provided some justification for
2 the total compensation that they request?

3 A Yes.

4 Q Have you done an independent analysis to
5 support your conclusion that FPL's compensation request
6 is reasonable?

7 A I have not.

8 Q Let's look at lines 7 through 12 of that same
9 page. There do you indicate that Mr. Schultz has not
10 provided any evidence that after adjusting for
11 incentive compensation that the resulting compensation
12 levels remain competitive?

13 A That's generally what the testimony says,
14 yes.

15 Q Okay. Can you tell me if the company has
16 provided any analysis that shows a comparison of the
17 FPL compensation levels exclusive of -- let me start
18 over again.

19 Can you tell me whether the company has
20 provided an analysis that shows a comparison of FPL
21 compensation levels exclusive of incentive compensation
22 or above, at, or below that of other companies that
23 have had incentive compensation removed for ratemaking
24 purposes?

25 A I don't know. But, you know, in answer to a

1 previous question, I'm not sure that such an analysis
2 is relevant.

3 Q Let's look at line 17 of page 32. And if you
4 could just wrap around to the next page, page 33,
5 review that section.

6 A Okay. I'm generally familiar with this, yes,
7 sir.

8 Q Okay. Is this where you discuss the various
9 cases where the Florida Commission has allowed
10 incentive compensation?

11 A Yes, I believe I give two examples.

12 Q Okay. Is there a reason that you selected
13 cases where the situation was that only all of
14 incentive compensation costs were allowed?

15 A Yes, I considered them to be most relevant.

16 Q On page 37 you discuss the Commission's
17 precedent here on how this Florida Commission has
18 allowed incentive compensation here, right?

19 A Are you at the bottom of page 37?

20 Q Yes.

21 A Yes.

22 Q Okay. By its absence from your testimony,
23 should the Commission here today assume that you
24 believe that the last Progress Energy decision where
25 incentive compensation was disallowed does not provide

1 precedent?

2 A No, I believe they do provide precedent, and
3 the Commission probably should consider that. I
4 believe that the cases that I cite have greater
5 relevance and would be a more meaningful standard to
6 apply than what was done in the recent FPL and Progress
7 Energy cases.

8 Q Is your answer you just gave me based on the
9 specific facts of the cases that you have cited as well
10 as the ones that you have not or is it just based on
11 your view of what the policy ought to be?

12 A The policy.

13 Q Okay. On page 33, if we can go back there,
14 you specifically refer to the Gulf Power case that was
15 just concluded in 2012 in Docket 110138; is that right?

16 A Yes.

17 Q Okay. And you testified in that case that no
18 adjustment should be made to incentive compensation,
19 correct?

20 A I believe that may be stretching my testimony
21 to some extent. I filed rebuttal testimony arguing
22 that a rejection of incentive-based compensation, just
23 because it was incentive based, would be inappropriate.

24 Q Okay. Fair enough.

25 You were not -- you were testifying against

1 **the Public Counsel's position to disallow a portion of**
2 **incentive compensation, correct?**

3 A Yes, based upon the rationale of Public
4 Counsel's witness in that case.

5 **Q Okay. Isn't it true that some of the**
6 **short-term incentive pay was not allowed in that case?**

7 A I believe that is correct. But I also
8 believe that the Commission looked at market
9 compensation information and made judgments as to what
10 was necessary for compensation to be set at a level
11 which would be necessary in the market so that Gulf
12 could hire and retain qualified employees.

13 **Q Okay. Let's turn to page 34 and talk about**
14 **the two appellate cases that you cite. I guess since**
15 **you included them, it's your position that these court**
16 **cases are relevant to the incentive compensation issue**
17 **here today?**

18 A Yes.

19 **Q Okay. Are you familiar with the facts of the**
20 **cases in the Florida Bridge case and the Sunshine**
21 **Utilities case?**

22 A Generally. Perhaps not in detail, but
23 generally.

24 **Q Okay. Would you agree that the *Florida***
25 ***Bridge v. Bevis* case that you cite on line 19 of**

1 page 34 involved the Court overturning the Commission's
2 decision for reasons, among others, that it had
3 disallowed or deemed excessive the company president's
4 salary due to the amount of time he was physically not
5 in the office?

6 A That was the nature of the adjustment that
7 was reversed.

8 Q Okay. With respect to this case, can you
9 cite to me in Mr. Schultz's testimony where he made a
10 recommendation to remove any costs associated with the
11 executive compensation based on it being excessive?

12 A I'm sorry, could you repeat your question?

13 Q Yeah, sure, no problem.

14 Can you site to me where Mr. Schultz, in his
15 testimony, made a recommendation to remove the costs
16 associated with executive compensation because it was
17 excessive?

18 A No, I don't think that is in his testimony,
19 and I'm not presenting this case for that argument.

20 Q With respect to the second case, the Sunshine
21 Utilities case, again, the First District Court of
22 Appeal reversed the Commission's decision for reasons
23 including that they had determined that Sunshine's
24 president's salary was excessive given the salary of
25 others in the area and lack of appropriate market

1 **studies? Is that generally your understanding of the**
2 **case?**

3 A Generally, yes.

4 **Q Okay. You would agree with me that**
5 **Mr. Schultz is not recommending disallowance for**
6 **incentive-based compensation based on it being**
7 **excessive, would you not?**

8 A No. His testimony is totally devoid of such
9 analyses. His testimony is based upon a rejection of
10 the methodology in which the compensation is paid.

11 **Q I guess my question to you is he is not**
12 **asserting that the level of compensation is excessive,**
13 **is he?**

14 A Well, Mr. Rehwinkel, I would hope that at
15 some point he would consider there to be something
16 unreasonable or excessive about an amount he is
17 recommending be disallowed. Yes --

18 **Q Okay.**

19 A -- I guess is the answer to your question. I
20 apologize.

21 **Q That's okay.**

22 **Can you point to me, based on the scope of**
23 **your testimony, where the company -- whether or where**
24 **the company has provided any specific evidence and**
25 **testimony or exhibits that show that FPL's executive**

1 **salaries are reasonable?**

2 A I cannot point you to a specific reference.
3 I know that other witnesses support the level of
4 compensation.

5 But I think there's one thing that needs to
6 be made clear, if I may. Your questions are focusing
7 on executive compensation. These cases were presented
8 for the idea -- it wasn't limited to executive
9 compensation, it was limited -- I mean, it was
10 generally presented that there needs to be some
11 substantive finding by the Commission based upon
12 evidence in the record and that in my position, that an
13 approach suggested by Mr. Schultz may be deficient in
14 that regard.

15 Q You would agree with me that based on your
16 reading of these cases -- and I know you're not a
17 lawyer, but you certainly have a lot of experience at
18 the Commission interpreting the statutes and even the
19 decisions that have applied to the Public Service
20 Commission's discharge of its duties, right?

21 A Yes.

22 Q Okay. You would agree with me that the two
23 cases that you cite, the Bevis case -- I mean, the
24 Florida Bridge case -- and the Sunshine case, do not
25 address the issue of whether there should be a sharing

1 **of costs between shareholders and ratepayers, right?**

2 A I agree, they do not address the concept of
3 sharing. And the way I read the cases, if there had
4 been a sharing, it probably would have been rejected by
5 the Appellate Courts as well.

6 **Q But that's --**

7 A And that's just a judgment on my part. I'm
8 not a lawyer or a judge.

9 MR. MOYLE: That is speculation on the
10 witness's part with respect to what a Court might
11 have said or done. I would move to strike it.

12 COMMISSIONER EDGAR: Mr. Butler.

13 MR. BUTLER: Mr. Rehwinkel has been asking
14 for a lot of speculation. I mean, it's simply his
15 opinion as somebody with an awful lot of
16 experience in the area of utility regulation. I'm
17 not extremely concerned whether his answer remains
18 or not, but it certainly was responsive to the
19 question.

20 COMMISSIONER EDGAR: And I agree that the
21 answer was couched as in language reflecting that
22 it was specifically and clearly the witness's
23 opinion, so I will overrule.

24 You may go forward.

25

1 BY MR. REHWINKEL:

2 Q Let's turn away from incentive compensation.

3 A That's nice.

4 Q To the issue of directors and officers
5 liability insurance.

6 A Okay.

7 Q So that would take us to page 40. And I
8 would ask you to just look quickly at lines 10 through
9 13 and ask if you would agree with me that you state
10 there that you disagree with Mr. Schultz's
11 recommendation to adjust DOL costs -- when I say,
12 "DOL," directors and officers liability. Do you
13 understand what I mean?

14 A Yes.

15 Q Okay -- to adjust DOL costs based on reasons
16 similar to the points that he made relative to at-risk
17 compensation?

18 A I believe I disagree with points that I made
19 in regard to his testimony in regard to incentive
20 compensation. I see some similarity in the positions
21 advocated by Mr. Schultz.

22 Q Okay. Now, isn't it true that in your
23 testimony you do not refer to past decisions in the --
24 you do refer to past decisions in the People's Gas and
25 Tampa Electric cases where the DOL cost was allowed,

1 right?

2 A Yes.

3 Q But you would also agree with me in the last
4 Progress Energy case, the Commission disallowed
5 recovery from customers of 50 percent of the cost of
6 DOL premiums, right?

7 A I don't know that for a fact. I have no
8 basis to disagree with your assessment.

9 Q And in the recent Gulf Power case that we
10 just talked about, did you provide rebuttal testimony
11 to Mr. Schultz here on the DOL issue?

12 A I don't know if it was Mr. Schultz or not. I
13 do recall providing rebuttal testimony, yes.

14 Q Okay. Now, in that case, the Commission also
15 disallowed 50 percent of the cost being recovered from
16 the customers through rates, correct?

17 A That's correct.

18 Q Okay. Now, you don't provide a reason in
19 your testimony as to why the Commission should not
20 reference these cases and these decisions over the
21 people's gas and Tampa Electric cases that you cite, do
22 you?

23 A No, I don't address -- you're right, I don't
24 address the other cases.

25 Q On page 42, specifically in the area of

1 line 14, do you contend that DOL insurance is not
2 designed to protect shareholders?

3 A Yes.

4 Q In the absence of a company having a DOL
5 insurance policy, if the officers and directors were to
6 make decisions that would have a negative economic
7 impact on the company, who would generally have to bear
8 the costs associated with any damages associated with a
9 judgment against the officers and directors in any
10 resulting litigation?

11 A Mr. Rehwinkel, that would depend upon the
12 nature of the litigation. It is conceivable and
13 perhaps even likely that it would be the personal
14 assets of the directors and officers that could be in
15 jeopardy.

16 Q Is it your opinion that the shareholders
17 would not be at risk for paying such a judgment?

18 A It is possible, yes.

19 Q Okay. When officers and directors have made
20 decisions that have an economic impact on the company,
21 who generally will file suit to recover any losses
22 incurred because of any bad decisions by management?

23 A I believe generally it's probably more likely
24 it's going to be stockholders, but it's not exclusive
25 to stockholders. There could be suits by competitors,

1 by vendors, by employees, even government agencies
2 could file some type of litigation, so it's not
3 exclusive to stockholders.

4 **Q Okay. So in those circumstances that you**
5 **identified as generally they could be stockholders, if**
6 **any damages are awarded as a result of that litigation,**
7 **who would then be paid by the insurance company if a**
8 **DOL policy is maintained by the company?**

9 A It would be whatever entity prevailed in the
10 litigation.

11 **Q And if it was shareholders who sued and**
12 **prevailed, who would receive the proceeds from that**
13 **litigation?**

14 A It would be shareholders.

15 **Q On page 44, lines 20 through 22, I want to**
16 **ask you about those lines, but please review the**
17 **context if you need to.**

18 A Yes, I see that.

19 **Q There on those lines 20 through 22, do you**
20 **suggest that the Commission disallowances -- the**
21 **Florida Commission disallowances in past cases was not**
22 **appropriate for the reason that the costs of DOL**
23 **insurance is a necessary and prudent cost?**

24 A With all due respect, yes.

25 **Q If a claim were to be filed and had to be**

1 paid because of decisions to be made by the officers
2 and/or directors of FPL, should it be automatically
3 assumed that the decision that resulted in some payment
4 and/or loss was a prudent decision?

5 A No, and neither should it be assumed to have
6 been an imprudent one. And as I address in my
7 testimony, that's one of the benefits of DOL insurance
8 is to allow directors and officers to make objective
9 decisions without fear of being sued and having their
10 personal assets placed in jeopardy.

11 Q If the insurance company, the DOL carrier,
12 has to pay out for a decision deemed imprudent, why
13 should the cost of that insurance have to be fully paid
14 by ratepayers? And that's a hypothetical.

15 MR. BUTLER: I'm sorry, Mr. Rehwinkel, I'm
16 not sure I understand your hypothetical. There's
17 a payment by the insurer for something that was
18 deemed inappropriate. Are you talking about the
19 premiums that were originally paid for the
20 insurance that then made the payment that was
21 deemed for an imprudent action? Can you explain.

22 MR. REHWINKEL: Okay. I'm talking about a
23 payment for -- to pay a damage judgment.

24 BY MR. REHWINKEL:

25 Q So my question is if the insurance company

1 has to pay out, that would be to pay because of an
2 adverse judgment for a decision deemed imprudent, why
3 should the cost of that insurance, the premium for that
4 insurance, be fully paid for by ratepayers? Do you
5 understand the question?

6 A I understand the question. And the answer is
7 because DOL insurance is a necessary and prudent
8 insurance coverage to acquire and that the premiums are
9 a necessary part of the conducting business and should
10 be included in rates as such.

11 Q Okay. Let's look at page 45, at lines 4
12 through 6. Is it your suggestion in your testimony
13 that if part of the cost of DOL insurance were to be
14 disallowed, that a company like FPL could elect to drop
15 DOL insurance?

16 A It's a hypothetical and, yes, it could.

17 Q Okay. Can you cite to me any utility that
18 has dropped its DOL insurance because some or all of
19 the costs for DOL insurance was disallowed in a
20 ratemaking context?

21 A No, I cannot point to that. And I think that
22 stands for the proposition of how essential this
23 coverage is that a utility would continue to pay the
24 premiums even though they are not getting full cost
25 recovery.

1 **Q** Do you believe, in your opinion, that FPL
2 would in fact drop its DOL coverage if 50 percent of
3 the costs were disallowed in this case?

4 A I cannot speak for FPL. If you're asking for
5 my opinion would they do that --

6 **Q** Yes.

7 A -- I would be very surprised if they made
8 that decision.

9 **Q** All right. Let's go to working capital.

10 A Okay.

11 **Q** You kind of give in your testimony a bit of a
12 history of working capital leading up to the balance
13 sheet approach in this state?

14 A Yes.

15 **Q** Okay. You probably do have some knowledge of
16 who the witness that first advocated the use of balance
17 sheet working capital in Florida was.

18 A Well, it depends on when you use the term
19 "first," Mr. Rehwinkel.

20 **Q** Okay.

21 A Actually, I believe it was Mr. Larkin of
22 Larkin & Associates that Mr. Schultz and Ms. Ramas
23 works for, who first probably presented the idea in
24 Florida, to my recollection, that there should be some
25 use of balance sheet consideration in determining

1 working capital instead of strict reliance upon a
2 formula approach.

3 **Q Okay.**

4 A But I also filed testimony on that subject on
5 behalf of the Office of Public Counsel. And the time
6 period in which I filed testimony, maybe just by
7 coincidence, but it did lead to a change in policy in
8 the state of Florida.

9 **Q Okay.**

10 A Does that sufficiently answer your question?

11 **Q That answers the question. Those are the**
12 **answers I expected to get.**

13 MR. REHWINKEL: Madam Chairman, I'm going to
14 go to a new and fairly lengthy subject matter.
15 The next is just going to be property held for
16 future use.

17 COMMISSIONER EDGAR: I appreciate it. I was
18 kind of waiting for a break.

19 Mr. Deason, you've been on the stand for
20 almost two hours, would you like to take a stretch
21 break?

22 THE WITNESS: That would be wonderful, Madam
23 Chair.

24 COMMISSIONER EDGAR: Okay. Then we will come
25 back in what is approximately ten minutes, and

1 that will be five after. Thank you. We are on
2 break.

3 (Whereupon, a brief recess was taken.)

4 COMMISSIONER EDGAR: Okay. We are back on
5 the record.

6 And, Mr. Rehwinkel, go ahead and get settled,
7 and then we will look to you for your next round
8 of questions.

9 MR. REHWINKEL: Thank you.

10 BY MR. REHWINKEL:

11 **Q Okay. I think, as I indicated before the**
12 **break, I'm ready to talk about property held for future**
13 **use.**

14 **Should I be calling it that or plant held for**
15 **future use?**

16 A Whatever you prefer, Mr. Rehwinkel.

17 **Q Okay. Well, I was going off of B-15, MFR**
18 **B-15, which is property held for future use. And I**
19 **think Mr. Moyle asked you about \$109 million. This is**
20 **108,951,000 is the 13-month average amount being**
21 **requested.**

22 **Is that -- would you accept that subject to**
23 **check?**

24 A For those properties which Ms. Ramas
25 recommends be disallowed?

1 Q These are the other production future use,
2 the -- related to Fort Drum, Hendry County land, and
3 the McDaniel site.

4 A Yes. I believe that's correct.

5 Q Okay. So my first questions to you will be
6 related to that part of the testimony. And maybe we'll
7 talk about transmission later.

8 With regard to property or plant held for
9 future use, am I correct in assuming that your
10 testimony pertains more to the policy regarding whether
11 plant and land held for future use should be included
12 in rate base and not on whether the specific land and
13 the cost of the land that FPL has included in plant
14 held for future use in its request is reasonable?

15 A Yes, you are correct.

16 Q Okay. Now, when addressing land held for
17 future use at page 11 of your testimony, lines 3
18 through 7 --

19 A Yes.

20 Q -- you explain that the Uniform System of
21 Accounts recognizes that land and land rights may need
22 to be acquired for possible future use and that it does
23 not prescribe -- the USOA does not prescribe that land
24 and land rights have a definite future use for
25 recovery, correct?

1 A Yes, with this caveat: The Uniform System of
2 Accounts doesn't really go into cost recovery. That is
3 a ratemaking function that is at the discretion of the
4 Commission. But it does prescribe the accounts and
5 gives directions as to what qualifies certain amounts
6 to be put in certain accounts.

7 **Q Okay. Now, it's not your testimony that just**
8 **because an item is given accounting treatment pursuant**
9 **to the USOA, that that dictates how ratemaking should**
10 **occur, is it?**

11 A I believe that's just what I stated in answer
12 to your previous question. Yes, it does not dictate,
13 it does give guidance to the Commission, but it does
14 not dictate.

15 **Q Okay. Can you tell me what your**
16 **understanding is of what the term "land rights" is with**
17 **respect to that portion of the USOA?**

18 A My interpretation is that it could be right
19 to purchase land as opposed to fee simple title to
20 land.

21 **Q So this would be like the option that**
22 **Mr. Moyle was asking you about?**

23 A That's my understanding.

24 **Q Okay. Let me ask you to look on page --**

25 A Mr. Rehwinkel.

1 **Q Yes.**

2 A It also potentially could include
3 easements --

4 **Q Okay.**

5 A -- as opposed to fee simple title.

6 **Q Okay. Continuing on page 11 and going to**
7 **lines 14 through 18, just look at that real -- as you**
8 **need -- I want to ask you about it.**

9 A Okay. I've reviewed that.

10 **Q Okay. Would I be correct in interpreting**
11 **this part of your rebuttal testimony to mean that if a**
12 **utility were to make an acquisition of land that was**
13 **demonstrated to be speculative, there may be**
14 **circumstances in which it would be appropriate to**
15 **disallow inclusion of the cost of that land in a rate**
16 **base?**

17 A Yes, I agree with that. But let me expand on
18 that. By the use of the term "speculative" -- and
19 maybe my testimony is not clear -- if it's speculative
20 and not consistent with the utility's plans to cost
21 effectively and reliably serve future demands, then I
22 think it's a disallowance. So it depends on your
23 interpretation of the term "speculative."

24 **Q Well, just so we understand, what do you mean**
25 **by "speculative," in the context of how you testify**

1 **here?**

2 A What I mean by that is that it -- land or
3 land rights are acquired in a manner that is not
4 consistent with a long-term plan to cost effectively
5 and reliably serve customers and that it needs to be
6 part of that. But the consideration of land price and
7 what direction the market is going should be part of
8 that consideration.

9 Q Okay. Is embodied in the concept of
10 speculative, the notion -- and this is hypothetical --
11 that a utility might be acquire -- might acquire more
12 land than is necessary for its future generation needs?
13 And I say "more land," let's say a larger parcel size
14 than is needed.

15 A I did not contemplate that in my use of this
16 term. But I do agree that, yes, the size of a parcel
17 needs to be part of the Commission's consideration in
18 determining whether a specific property is needed and
19 part of a long-range plan to serve customers.

20 Q Okay. And, likewise, the price paid, that
21 would be also a consideration that the Commission would
22 have to take into account in its decision on an issue
23 like this?

24 A Yes, I agree price would be a consideration.

25 Q Would I also be correct in interpreting this

1 section of your testimony to mean that if it is
2 demonstrated that a particular acquisition of land was
3 not a cost effective choice, that there may be
4 circumstances in which it would be appropriate to
5 disallow recovery of such land in a rate base?

6 A The term "cost effective" is a broad concept.
7 And giving a broad interpretation to that, I would say
8 generally, yes, properties that are going to be
9 acquired should be acquired in a cost effective manner.

10 Q Okay. In your opinion as an expert on
11 regulatory policy and in light of your experience as a
12 Commissioner, would you consider that the cost of other
13 land available at the time of purchase that would also
14 meet the needs of the utility in an equal manner be
15 something that you would consider if a party raised a
16 concern with the cost of a particular parcel of land or
17 land acquisition?

18 A Yes, I think it would go to the prudence of
19 the purchase. And prudence is always an issue in
20 determining cost recovery.

21 Q If there was a demonstrated relationship
22 between the party selling the land and the utility or
23 between the party selling the land and employees of the
24 utility that would be involved in a decision to acquire
25 the land, hypothetically, would you agree that such a

1 **transaction might deserve at least additional scrutiny**
2 **prior to being allowed for inclusion in rate base?**

3 A Yes, if it were truly a less than arm's
4 length transaction. That does not automatically mean
5 that there is an inappropriate amount of cost to be
6 recovered, but it's something that certainly should be
7 scrutinized by the Commission.

8 Q In such a hypothetical circumstance, would it
9 be fair to say that it might be appropriate to include
10 the land because there might otherwise be justification
11 for all of the policy reasons that you outline -- that
12 you lay out in your testimony but maybe at a lower
13 amount than the company requests in such a
14 hypothetical?

15 A I believe that would be -- yes, that would be
16 in the Commission's discretion to do that. But I also
17 believe it would raise another question as to whether
18 there would be a continuing obligation on the utility's
19 part to retain the ownership of that land, if it were
20 not going to receive 100 percent recovery of costs.

21 Q Okay. And just so I understand your answer,
22 in my hypothetical, the utility would otherwise meet
23 its burden of demonstrating that the site was needed
24 and meets all of the criteria that the Commission may
25 have enunciated in the policy, but the property was

1 **acquired at a cost that was higher than it would have**
2 **been if it was arm's length.**

3 **And you're saying that if the Commission**
4 **disallowed the less than arm's length or an above**
5 **market portion of the land price, that the utility**
6 **might still decide to -- that they might need to sell**
7 **the property?**

8 A We're dealing with a hypothetical here.

9 **Q Yes. Oh, yes, absolutely.**

10 A And my answer is hypothetically that, yes, I
11 think that it could be a consideration as to whether
12 the utility would continue to hold an asset for which
13 it is not getting cost recovery, recovery of
14 100 percent of the cost.

15 **Q Okay. If hypothetically there was a**
16 **demonstrated relationship between the seller and the**
17 **utility and the acquisition of the property resulted in**
18 **a significant gain to the individual or entity that**
19 **sold the land to the utility, is that something that**
20 **the Commission should consider in deciding whether or**
21 **not the cost or some portion of that cost should be**
22 **included in rate base?**

23 A No. The gain is irrelevant. It's whether
24 the property required as -- was acquired at market and
25 at a prudent level.

1 Q Okay. If, hypothetically, it could be
2 demonstrated that a utility acquired some land at a
3 price greater than market value for that particular
4 piece of land and that the utility did not plan to use
5 that land to provide service -- I better speak louder.
6 Let me start that question over again, I couldn't even
7 hear myself.

8 If hypothetically it could be demonstrated
9 that a utility acquired some land at a price greater
10 than the fair market value of that land and that the
11 utility did not plan to use that land to provide
12 service to customers for a period of in excess of ten
13 years, would you agree that that cost -- the cost of
14 that land should be excluded from rate base?

15 A Not necessarily. If I may explain.

16 Q Sure.

17 A The ten-year, as I testified, has no -- in my
18 opinion, has no bearing. It's a question of the
19 appropriateness of the land and what -- how it fits
20 into the long-term planning horizons of the company.
21 But you also have -- part of your hypothetical was
22 whether the property was acquired above market.

23 The answer is still no, that that does not
24 necessarily mean that the purchase was imprudent, but
25 it should raise a red flag as to why above market was

1 paid. There may be other considerations that justified
2 that, but not knowing the facts -- anymore facts of the
3 hypothetical, I would have to answer no.

4 **Q Okay. Let me ask you one other related**
5 **hypothetical scenario. Let's assume that a party with**
6 **which the utility has had a business relationship**
7 **acquires a parcel of land, and let's further assume**
8 **that between the date that individual or entity**
9 **acquired the land and the date the land was**
10 **subsequently sold to the utility, that land values in**
11 **the area were either stable or declining, in that**
12 **hypothetical situation, if the utility then acquires**
13 **the land for an amount that is more than double the**
14 **original cost of the land to the seller, would you**
15 **agree that the acquisition cost to the utility of that**
16 **land should be given greater scrutiny prior to being**
17 **included in rate base?**

18 A If I understand -- I need to have the --

19 **Q Do you want me to read it again?**

20 A -- hypothetical clarified. If you could read
21 it again, that would be helpful.

22 **Q Let's do this: Let's assume that a party**
23 **with which the utility has a business relationship**
24 **acquires a parcel of land, and let's assume that**
25 **between the date that individual -- and this is the one**

1 the utility had the business relationship with --
2 acquired the land and the date the land was
3 subsequently sold to the utility, that land values in
4 the area were either stable or declining. If in that
5 hypothetical situation the utility then acquires the
6 land for an amount that is more than double the
7 original cost of the land to the seller, would you
8 agree that such an acquisition cost to the utility of
9 that land should be given greater scrutiny prior to
10 being included in rate base?

11 A The difficulty I'm having is the term
12 "greater scrutiny." Certainly it should be
13 scrutinized. But just by the fact that there was a
14 price paid more than double than what the previous
15 owner acquired the property at is not determinative as
16 to whether it was or was not a prudent purchase on the
17 part of the utility.

18 The other party may have been fortunate to
19 acquire the property at substantially below market, I
20 don't know all of the facts. But I agree it should be
21 scrutinized. But all purchases of property should be
22 scrutinized.

23 Q Okay. In FPL's last rate case -- well, let
24 me ask you this: As part of your testimony preparation
25 for this case, did you review the prior FPL rate case

1 **order?**

2 A I may have reviewed parts of it. I know I
3 didn't go cover to cover reviewing the order.

4 **Q I hope not, it's kind of lengthy.**

5 **Would you agree with me that the level of**
6 **property held for future use for the 2010 test year was**
7 **\$70,302,000?**

8 A If you represent that, Mr. Rehwinkel, I trust
9 that was the number.

10 **Q I do so represent. And it's found on**
11 **page 100 of that order.**

12 A And that was the amount allowed in rate base
13 in the previous rate case, correct?

14 **Q Yes. If your counsel doesn't mind, I'll just**
15 **show it to you real quick.**

16 MR. BUTLER: No objection.

17 (Whereupon proceedings continued in Volume
18 26.)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MICHELLE SUBIA, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 3814 through 4011, are a true and correct record of the aforesaid 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 2nd day of September, 2012.

MICHELLE SUBIA
NOTARY PUBLIC
COMMISSION #DD987077
EXPIRES JUNE 7, 2014

