

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

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

VOLUME 32

Pages 4717 through 4896

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PROCEEDINGS: HEARING

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

DATE: Thursday, August 30, 2012  
-and-  
Friday, August 31, 2012

TIME: Commenced at 9:13 p.m.  
Concluded at 12:20 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR  
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APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION

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## I N D E X

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## EXHIBITS

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## P R O C E E D I N G S

1  
2 (Transcript continues in sequence from Volume  
3 31.)

4 **CHAIRMAN BRISÉ:** All right. So we will move  
5 forward with Mr. Dewhurst.

6 **MR. LITCHFIELD:** Okay. Mr. Chairman, FPL  
7 calls Mr. Dewhurst to the stand for his rebuttal  
8 testimony.

9 **CHAIRMAN BRISÉ:** Perfect. Thank you.

10 **MR. LITCHFIELD:** And he has previously been  
11 sworn.

12 **MR. YOUNG:** Mr. Chairman, I think staff is  
13 passing out Page 108 from OPC -- which is now marked as  
14 OPC 629. It was missing Page 108.

15 **CHAIRMAN BRISÉ:** Okay. Thank you.

16 **MR. SAPORITO:** Mr. Chairman, I only got one  
17 part of FRF's exhibit that he wants to --

18 **CHAIRMAN BRISÉ:** I believe it's just one page.

19 **MR. WRIGHT:** Mr. Chairman, I believe that was  
20 by design, because the second part is optional,  
21 depending on what Commissioner Balbis wanted.

22 **CHAIRMAN BRISÉ:** Okay. As soon as the  
23 documents are passed out, we will proceed with Mr.  
24 Dewhurst.

25 Mr. Litchfield.

1                   **MR. LITCHFIELD:** Thank you, Mr. Chairman.

2                                   MORAY DEWHURST

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

6                                   **DIRECT EXAMINATION**

7 **BY MR. LITCHFIELD:**

8           **Q.** Mr. Dewhurst, I don't think you've changed  
9 address or employment capacity since we last spoke, so  
10 we'll move straight to your rebuttal testimony. And I  
11 will ask you if you have prepared and caused to be filed  
12 51 pages of Prefiled Rebuttal Testimony in this  
13 proceeding?

14           **A.** I have.

15           **Q.** And you submitted errata to that testimony on  
16 August 16th and to MFR D-4A, correct?

17           **A.** That's correct.

18           **Q.** Do you have any further changes or revisions  
19 to your Prefiled Rebuttal Testimony?

20           **A.** Yes, sir. I have four errata on Page 12, Line  
21 12. There are two square brackets which I don't think  
22 should be there. On Page 13, Line 23, the word provides  
23 should be provide, singular. Page 43, Line 21, I have a  
24 similar thing. Questions should be singular. And Page  
25 15, Line 11, that came as a shock when -- granted FPL a

1 tariff, so FPL should be inserted between granted and a.

2 Q. Thank you. Does that complete those  
3 additional corrections?

4 A. Yes, sir.

5 Q. With those changes, including the errata that  
6 you submitted on August 16th, if I were to ask you the  
7 same questions contained in your rebuttal testimony,  
8 would your answers this evening be the same?

9 A. They would.

10 **MR. LITCHFIELD:** Mr. Chairman, I would ask  
11 that Mr. Dewhurst's Rebuttal Testimony be inserted into  
12 the record as though read.

13 **CHAIRMAN BRISÉ:** All right. At this time we  
14 will enter Mr. Dewhurst's rebuttal testimony into the  
15 record as though read, seeing no objections.  
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**ERRATA SHEET****WITNESS: MORAY P. DEWHURST - REBUTTAL**

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
46	15 - 17	Change "...for purposes of this case to 5.18%..." to "...reflected in MFR D-4a to 5.20%..."

1 I. INTRODUCTION

2

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

4 A. My name is Moray P. Dewhurst. My business address is Florida Power & Light  
5 Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420.

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

7 A. Yes.

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

9 A. The purpose of my testimony is to respond to capital structure and return on  
10 equity (“ROE”) claims made by the Office of Public Counsel’s (“OPC”) witnesses O’Donnell, Woolridge, and Lawton; the Federal Executive Agencies’  
11 (“FEA”) witness Gorman; and the South Florida Hospital and Healthcare Association’s (“SFHHA”) witnesses Baudino and Kollen. In doing so, I also  
12 address related claims made by Florida Retail Federation (“FRF”) witness Chriss and other intervenors. I also respond to witnesses Schultz’s and Kollen’s  
13 oppositions to the requested storm cost recovery mechanism and respond to OPC witness Schultz’s position on Directors and Officers (“D&O”) liability insurance.  
14 Finally, I respond to the inaccurate representations and clear misunderstandings of  
15 several intervenor witnesses related to the proposed ROE performance adder for  
16 Florida Power & Light Company’s (“FPL” or “the Company”) superior  
17 performance.  
18  
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## II. SUMMARY

1

2

3 **Q. Please summarize your rebuttal testimony.**

4 A. FPL's approach to managing its capital structure, supported by the Florida Public  
5 Service Commission ("FPSC" or "Commission") for decades, has served  
6 customers extremely well as manifest by the Company's low cost access to debt  
7 markets, its ability to quickly fund major liquidity needs such as storm restoration  
8 efforts and fuel under-recoveries, its highly reliable service, and its low cost  
9 position overall. A fair rate of return, acknowledging the true cost of equity has  
10 been equally important over the years. As described in my direct testimony, the  
11 Settlement Agreement's provisions enabling FPL to earn 11% on its equity  
12 investment helped to bridge the poor result of the last case through the end of  
13 2012, with the ability to have the Commission reassess the appropriate equity cost  
14 rate in this proceeding.

15

16 Now, however, with the expiration of the Settlement Agreement, the intervenors  
17 are recommending an even more extreme result – an ROE lower than the 10%  
18 ROE which prompted downgrades of FPL's debt *and*, in the case of OPC, a  
19 dramatically weakened capital structure. The only logical result of accepting such  
20 recommendations would be further downgrades, higher costs of borrowing, and  
21 renewed concern over the regulatory environment in Florida.

22

1 It defies reason for the intervenors to recommend such a drastic result,  
2 particularly when FPL's balance sheet strength and opportunity to earn a fair ROE  
3 have served customers so well for so long. It is no coincidence that FPL  
4 historically has been able to deliver *both* superior value to customers and adequate  
5 returns to investors. These objectives are not mutually exclusive. Indeed, cursory  
6 examination of our industry shows that utilities that are generally perceived as  
7 delivering excellent customer value are also commonly the ones with strong  
8 financial positions and financial returns.

9  
10 For context, the intervenors' recommended ROE rates are: (1) lower than the 10%  
11 ROE ordered by the prior Commission in the last case, which was the lowest  
12 return authorized by the Commission for any electric, gas, or telecommunications  
13 utility in Florida in over 50 years; (2) lower than the ROE the Commission  
14 approved as recently as April 2012 for Gulf Power; (3) lower than the ROE  
15 incorporated in the Progress Energy Florida settlement approved in March 2012;  
16 (4) lower than any other ROE for a Florida investor owned utility ("IOU"); (5) the  
17 lowest among major electric IOUs in the Southeast United States; and (6) in the  
18 bottom third of ROEs awarded for electric utilities in the United States within the  
19 last two years. For intervenors to suggest that their recommended ROEs, if  
20 adopted, will not have any negative consequences for FPL as it attempts to  
21 compete in capital markets defies reason.

22

1 In spite of basement-level ROE recommendations for the Company, OPC and  
2 other intervenors actually contend that FPL would *not* be downgraded.  
3 Astonishingly, OPC takes this position not simply if OPC's ROE  
4 recommendation is accepted, but if the Commission also were to dramatically  
5 alter FPL's capital structure by as much as a \$3 billion difference in debt versus  
6 equity capital. Beyond incredible, OPC's position is demonstrably wrong. The  
7 analysis supporting this position contains elementary but serious errors and  
8 omissions that, if corrected, actually show that downgrades *would* follow such a  
9 decision. There simply is no credible basis for the intervenors to assert that FPL's  
10 financial strength and access to capital markets would not be adversely affected  
11 by such a drastic outcome. Their contentions reflect a clear lack of any practical  
12 experience in the financial markets or in managing the finances of a large electric  
13 utility. Based on my experience in the industry, I am convinced that the  
14 intervenors' recommendations would have significant detrimental impacts on the  
15 Company's financial strength, likely leading to a downgrade by the credit rating  
16 agencies and ultimately negatively impacting customer service.

17  
18 I am responsible for managing the Company's financial integrity and ensuring  
19 that we have ready, sufficient and cost-effective access to capital markets to  
20 support the operations of FPL and to finance the major capital investments  
21 authorized by this Commission. In meeting these obligations, I regularly deal  
22 with both actual and prospective investors, equity and debt, the banks that support  
23 our short term credit needs, and the major credit rating agencies. I have practical

1 experience in dealing with them over many years and in a variety of market  
2 environments. I know how they viewed the results of the last case, how they  
3 reacted when we entered into the Settlement Agreement, and what their  
4 expectations are going forward. The intervenors' recommendations on capital  
5 structure and ROE are, quite simply, out of line both with investor expectations  
6 and with the investment opportunities of similar risk readily available to investors  
7 elsewhere. If adopted, they would negatively impact FPL's standing with the  
8 investment community upon whom we rely so heavily to meet the financial needs  
9 of the Company and, ultimately, our customers. In the long run, the intervenors'  
10 recommendations would hurt FPL's ability to continue delivering superior  
11 customer value.

12  
13 The intervenors' recommendations on storm cost recovery and D&O liability are  
14 short-sighted and misguided. With respect to storm costs, those intervenors  
15 opposing FPL's requested continuation of the mechanism approved in the  
16 Settlement Agreement fail to appreciate either FPL's real exposure to risk from  
17 tropical storms or the impact that adoption of their recommendations would have  
18 on FPL's risk profile – or both. With respect to D&O liability insurance, the  
19 intervenors' recommendations would disallow recovery of a legitimate cost of  
20 providing electric service to our customers without demonstrating any  
21 imprudence on the part of FPL. Accordingly, their recommendations should be  
22 rejected.

23

1 Finally, the intervenors fail to counter the good public policy reasons for  
2 authorizing FPL's requested incentive for superior performance. Their objections  
3 are simply irrelevant to the issue. The superior performance that FPL provides,  
4 for which it is seeking an incentive, is more than just its customers' low bills – it  
5 is the total package of low bills, high reliability, and excellent customer service.  
6 As long as management actions influence the delivery of customer value, there is  
7 logic in affording the prospect of a higher ROE to those utilities that deliver  
8 higher customer value. This type of superior service – which requires some risk  
9 taking to go “above and beyond” the minimally adequate level of service – should  
10 be encouraged for the benefit of all Floridians. An ROE incentive, such as that  
11 requested by FPL, provides the appropriate encouragement in a manner consistent  
12 with the Commission's previous use of ROE incentives as a mechanism to reward  
13 superior electric service.

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

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

- 16 • MD-3, Regional Comparison: ROE and Key Customer Metrics
- 17 • MD-4, Corrected DJL-3
- 18 • MD-5, S&P's PPA Guidance
- 19 • MD-6, Effect of OPC's Recommendations on S&P Metrics
- 20 • MD-7, Effect of OPC's Recommendations on Moody's Credit Rating
- 21 Triggers
- 22 • MD-8, FPL ROE 1999-2012
- 23 • MD-9, Climatological Probability – Southeastern U.S.

- MD-10, Business Risk Comparison - Florida IOUs

**III. IMPLICATIONS OF INTERVENOR RECOMMENDATIONS**

**Q. OPC recommends that the Commission decrease FPL’s equity ratio, while OPC, SFHHA, and FEA all recommend that the Commission establish an ROE for FPL at a level even lower than that allowed by the Pre-Settlement Order in FPL’s last rate case. Why should the Commission reject intervenors’ recommendations?**

A. The intervenors’ recommendations would fail three key tests: (1) they would not serve customers’ long-term interests; (2) they would not fairly compensate FPL’s investors; and (3) they would constitute poor public policy.

**Q. Why are the intervenors’ recommendations not in customers’ long term interests?**

A. Contrary to their contentions, the intervenors’ recommendations would weaken FPL’s financial strength substantially, resulting in further degradation of credit and likely downgrades to ratings. Adoption of such recommendations also would revive and aggravate investor perceptions of regulatory risk and make it difficult to persuade investors to commit capital to the business. The cost of that capital would increase (not decrease, as the intervenors suggest) and capital availability would decrease. Over time this would lead to reduced electric system investment and, in due course, lower customer value. None of this is in our customers’ long term interests.

1 It is no coincidence that FPL historically has been able to deliver *both* superior  
2 value to customers and adequate returns to investors. These objectives are not  
3 mutually exclusive. Indeed, cursory examination of our industry shows that  
4 utilities that are generally perceived as delivering excellent customer value are  
5 also commonly the ones with strong financial positions and financial returns. For  
6 example, the operating companies of The Southern Company are generally  
7 acknowledged as delivering good value. They do so with authorized ROEs as  
8 high as 13.75% (Alabama Power Company). Even the lowest allowed ROE for a  
9 Southern operating company (Gulf Power, at 10.25%) is 100-175 basis points  
10 higher than the intervenors are recommending for FPL. Virginia Electric &  
11 Power Company (“VEPCO”) also is generally acknowledged within our industry  
12 as providing high customer value. VEPCO’s currently authorized ROE is 11.4%.  
13 On the other hand, the Potomac Electric Power Company (“PEPCO”), a utility  
14 whose reliability and performance have been heavily criticized within the past  
15 year, has allowed ROEs of only 9.63% (District of Columbia) and 9.31%  
16 (Maryland), respectively. Historically, the rates of return and other forms of  
17 regulatory disallowance for PEPCO have been much worse compared to VEPCO,  
18 the Southern Subsidiaries, and, until 2010, FPL. I believe that strong long-term  
19 customer value goes hand in hand with strong financial performance, and FPL’s  
20 historical results underscore this point.

21  
22 Contrary to the intervenors’ implicit assumptions, customers’ interests are *not*  
23 best served by cutting ROE to a level lower than historical FPSC lows (and, with

1 respect to OPC's recommendation, the lowest in the country) while  
2 simultaneously weakening FPL's financial integrity particularly in the midst of  
3 the largest capital spending wave in its history. It simply defies common sense  
4 and practical utility experience to suggest that this could be done without  
5 damaging customers' long term interests. The intervenors' recommended  
6 approach of cutting FPL's ROE as well as the amount of equity in its capital  
7 structure solely for the purpose of slashing revenue requirement, would be an  
8 extreme case of "penny wise and pound foolish," especially as FPL will still have  
9 the most affordable bill in the state if the Commission maintains FPL's financial  
10 integrity and provides it a reasonable ROE opportunity consistent with our  
11 request. It may be easy for a witness focusing only on the short term with no  
12 other accountability to propose such approaches, but it would be a serious mistake  
13 for the Commission to accept them.

14 **Q. Why would the intervenors' recommendations be unfair to investors?**

15 A. As discussed by FPL witness Avera in both his direct and rebuttal testimony,  
16 regulators must establish an ROE that: (1) fairly compensates investors for capital  
17 invested in the utility; (2) enables the utility to offer a return adequate to attract  
18 new capital on reasonable terms; and (3) maintains the utility's financial  
19 integrity. The intervenors' recommendations do not withstand even a cursory  
20 comparison with these three standards. Even the highest of the intervenor-  
21 recommended ROEs of 9.25% (recommended by FEA witness Gorman) would be  
22 far lower than investors can expect to earn on investments of comparable or even  
23 lower risk, and thus would self-evidently *not* fairly compensate investors.



1 Moreover, a drastic reduction in FPL's creditworthiness associated with a 100  
2 basis points (based on authorized return) or 200 basis points (based on FPL's  
3 current ROE under the Settlement Agreement) reduction in ROE, *coupled with an*  
4 increase in debt of \$1.5 billion (a consequence of OPC's witnesses' proposed  
5 new, weaker capital structure) would most certainly *not* maintain the utility's  
6 financial integrity. In the current environment, as my Exhibit MD-3 shows, the  
7 opportunities available to investors to commit capital to the utility business offer  
8 returns well in excess of what each intervenor witness is recommending. Finally,  
9 the intervenors ignore the specific business risks faced by FPL, which a fair ROE  
10 would reflect. These risks are discussed in detail in my direct testimony at pages  
11 12-32. It defies common sense to assert that offering investors the prospect of a  
12 9.25% or less ROE is consistent with the principle of fairly compensat[ing]  
13 investors.

14 **Q. Why do the intervenors' recommendations reflect poor public policy?**

15 A. The intervenors' recommendations, if adopted, would set up a perverse incentive:  
16 penalize superior customer value delivery and offer higher returns to utilities  
17 which deliver less value to their customers. This is the precise reverse of what a  
18 regulator should be wishing to encourage.

19  
20 Whether or not the intervenors' witnesses think that their ROE recommendations  
21 fairly reflect FPL's true cost of capital, the practical implications of adopting their  
22 recommendations is that FPL – the utility that today delivers the best combination  
23 of low bills, high reliability, and excellent customer service in Florida – would see

1 its allowed ROE *reduced* and reduced to a level that would be the lowest in the  
2 state, the lowest among major electric IOUs in the Southeast, and among the  
3 lowest established for any electric utility in the nation within the last two years.  
4 OPC's and SFHHA's proposed ROEs of 9% would be the absolute lowest in the  
5 nation in the last two years.

6  
7 From a policy perspective, it is obvious that regulators should want to encourage  
8 regulated utilities to seek to improve their customer value delivery. In practical  
9 terms, the way to do this in electric utility regulation is offering the prospect of  
10 higher rewards to those who perform well. Higher ROE, all other things being  
11 equal, will clearly offer this prospect and will provide better long term customer  
12 benefits. To saddle the best performing utility with the lowest allowed ROE  
13 while simultaneously weakening its financial integrity (as OPC recommends)  
14 would achieve the precise opposite of this policy aim. The predictable result  
15 would be to send a message that customer value is irrelevant to regulatory  
16 outcomes (unless, perhaps, it is poor enough to warrant a penalty), which would  
17 only lead to utility conservatism and higher costs over time. No utility would  
18 ever see it to its advantage to take a step beyond the minimum needed to provide  
19 adequate service, as required by statute.

20 **Q. Please provide some market and investor context for the intervenors'**  
21 **recommendations on ROE in this case.**

22 A. The Commission's Pre-Settlement Order in FPL's last rate case and investors'  
23 reactions to that decision provide important context. In that order, the prior

1 Commission maintained FPL's actual equity ratio as requested (the same equity  
2 ratio maintained now), but authorized an ROE midpoint of only 10%. This ROE  
3 was the lowest return authorized by the Commission in Florida in over 50 years.  
4 It is also lower than the ROE the Commission approved as recently as April 2012  
5 for Gulf Power and it is lower than the ROE incorporated in the Progress Energy  
6 Florida settlement approved in March 2012. Today, it remains among the bottom  
7 third of authorized ROEs for electric utilities in the nation and the lowest among  
8 major electric IOUs in the Southeast United States. Exhibit MD-3 provides the  
9 current authorized ROEs in the Southeast U.S. for major electric IOUs. It shows  
10 that FPL's current authorized ROE is the lowest in this region, even as its  
11 residential customer satisfaction score – according to a recent JD Power survey –  
12 is the highest and its typical 1,000 kWh residential bill is the second lowest.  
13 Exhibit MD-2, attached to my direct testimony, presented the ROEs established in  
14 Florida in the last 50 years. Each of these exhibits demonstrates FPL's  
15 comparatively low ROE position.

16  
17 The results of the pre-settlement ROE decision in 2010 – a decision that lowered  
18 FPL's ROE but maintained its capital structure – were both immediate and  
19 sustained. Both Standard & Poor's ("S&P") and Moody's Investor Service  
20 ("Moody's") downgraded FPL. S&P noted that "...regulators [have] responded  
21 with decisions that reflect more intense political influence over the regulatory  
22 environment. Maintaining financial strength despite regulatory setbacks and a  
23 slowly improving economy in Florida will be challenging." (Standard & Poor's,

1 “Research Update: FPL Group Inc. Downgraded to ‘A-’ from ‘A,’ Off Credit  
2 Watch; Outlook Stable” (March 11, 2010)). Moody’s stated: “As a result of these  
3 developments, Moody’s now views the Florida utility regulatory environment as  
4 substantially less constructive and predictable than it has been historically,  
5 increasing the level of risk to investors going forward.” (Moody’s, “Rating  
6 Action: Moody’s Places FPL Group and Subsidiaries on Review for Downgrade”  
7 (Jan. 19, 2010)).

8  
9 The investment community also expressed deep concerns, observing “FPL was hit  
10 with a harsh rate order earlier this year...Utilities almost never get everything  
11 they request, but it came as a shock when the Florida commission granted a tariff <sup>FPL</sup>  
12 hike of just \$74.5 million this year, based on an ROE in a range of 9%-11%.”  
13 (Value Line, February 26, 2010).

14 **Q. Given this context, what are the implications of the intervenors’**  
15 **recommendations on ROE in this case?**

16 A. As I explained in my direct testimony, the Settlement Agreement that was entered  
17 into by the major parties in this case and subsequently approved by the  
18 Commission in the last case provided the Company with the ability to earn 11% in  
19 each year of that agreement. Now, however, with the expiration of the Settlement  
20 Agreement, the intervenors are recommending an even more extreme result – an  
21 even lower ROE than the 10% ROE which prompted the negative reactions and  
22 downgrades summarized above *and*, in the case of OPC, at the same time a  
23 dramatically weakened capital structure. The only logical result of accepting such

1 recommendations would be further downgrades, higher costs of borrowing, and  
2 renewed concern over the regulatory environment in Florida.

3 **Q. Can OPC's recommendations be adopted without consequence, as its**  
4 **witnesses contend?**

5 A. No. It defies common sense and practical experience for OPC's witnesses to  
6 claim that the Commission can: (i) significantly weaken the capital structure of  
7 the Company; and (ii) approve one of the lowest ROEs in the country, and yet  
8 produce no negative impacts on the financial strength and credit rating of the  
9 Company. The presumption that FPL will remain as financially sound and  
10 competitive in the capital markets as it historically has been and that FPL will  
11 continue to be able to deliver the same superior service to customers with a  
12 significantly weakened balance sheet is simply wrong.

13 **Q. OPC witness Lawton and FEA witness Gorman specifically claim that FPL's**  
14 **financial metrics would remain within the S&P and/or Moody ranges**  
15 **supporting FPL's credit rating if their recommendations are adopted. Do**  
16 **you agree?**

17 A. No, I do not agree. OPC witness Lawton makes credit metric computations (see  
18 his DJL-3) in an attempt to illustrate that FPL would not suffer financial  
19 degradation and risk a credit downgrade. Unfortunately, these contain elementary  
20 but serious errors. I have not attempted a detailed re-analysis in an effort to  
21 uncover all possible errors, but, as shown in my Exhibit MD-4 "Corrected DJL-  
22 3," correcting just two glaring errors changes the results and his conclusions. His  
23 Moody's credit metrics analyses are similarly unreliable because he omits any

1 reference to the most recent Moody's guidance specific to FPL's credit rating.  
2 When correction of these errors and omissions are taken into account, it is clear  
3 that OPC's claim that FPL's financial strength will not be harmed by its  
4 recommendations has no basis in reality. The computations provided by witness  
5 Gorman also indicate a decline in FPL's S&P financial risk profile and therefore  
6 similarly fail to support the proposition that FPL (and its customers) will be  
7 unharmed.

8 **Q. Please describe the errors in OPC witness Lawton's Standard & Poor credit**  
9 **metric calculations.**

10 A. First, witness Lawton omits FPL's short term debt of \$446 million from his metric  
11 calculations. Short term debt is a portion of FPL's financing that is integral to  
12 FPL's operations as explained on MFR Schedule D-3, and is recognized by S&P  
13 in its evaluations. Second, he omits S&P's consideration of power purchase  
14 agreements ("PPAs") in evaluating the financial strength of a utility. S&P's  
15 guidance related to PPAs is included as Exhibit MD-5. Regardless of whether  
16 witness Lawton agrees with S&P's inclusion of short term debt and consideration  
17 of PPAs, he is purporting through his testimony and Exhibit DJL-3 to demonstrate  
18 how *S&P* would react to OPC's recommendations. Accordingly, these  
19 adjustments should be made. Properly considering, rather than completely  
20 ignoring, short term debt and S&P's current \$922 million PPA adjustment would  
21 move the Company's financial risk profile from "intermediate" toward  
22 "aggressive" – two notches down and by itself a likely downgrade. To be clear, I  
23 have not conducted a detailed examination of witness Lawton's calculations,

1 which may contain other errors. The two I have identified are glaring and  
2 elementary, and correcting them substantially changes the conclusions one would  
3 reasonably draw from such an analysis.

4 **Q. What is the significance of OPC witness Lawton's financial errors?**

5 A. OPC relies on its credit metrics testimony of witness Lawton to claim that the  
6 investment community would not react negatively or downgrade FPL's credit  
7 rating if OPC's position were accepted by the Commission. In contrast, when  
8 witness Lawton's financial errors are corrected, it is clear that FPL's credit rating  
9 with respect to S&P would deteriorate. This is shown in my Exhibit MD-6.

10  
11 Even using his uncorrected calculations, the Financial Risk Indicative Ratios (per  
12 S&P) for FPL would be severely and negatively affected and would move the  
13 Company's financial risk profile from "intermediate" to "significant" and  
14 potentially even to "aggressive." These are not minor changes.

15 **Q. Please describe the omission contained in OPC witness Lawton's testimony**  
16 **with respect to Moody's credit metrics.**

17 A. OPC witness Lawton's testimony unaccountably omits any reference to the most  
18 recent Moody's guidance with respect to FPL, issued in April 2012. Because FPL  
19 is the company which is the subject of this proceeding, and this guidance is  
20 commonly available and relied upon by investors, it is difficult to understand how  
21 anyone could make such a critical omission in purporting to apply Moody's  
22 guidance and methodology.

23

1 In April 2012, Moody's stated what key factors would lead Moody's to consider  
2 downgrading FPL:

3 "A downgrade could be considered if there is an adverse outcome to the  
4 company's pending rate case, if there are significant cost disallowances or  
5 other changes to the Florida's currently credit supportive cost recovery  
6 provisions, or if there is a sustained decline in cash flow coverage metrics,  
7 including CFO pre-working capital interest coverage below 5.0x and CFO  
8 pre-working capital to debt below 25%, or an increase in debt to capital  
9 above the 40% range."

10 (Moody's Investor Service, "Credit Opinion: Florida Power & Light Company"  
11 (April 10, 2012)). This is unmistakable and particularly clear for a credit rating  
12 agency, and while the phrase "could be considered" is of course conditional, my  
13 direct conversations with Moody's credit analysts leave me in no doubt as to what  
14 the outcome would be if OPC's recommendations were to be adopted.

15 **Q. What is the significance of Public Counsel's failure to consider the most**  
16 **recent April 2012 Moody's guidance?**

17 A. The Moody's April 2012 FPL credit analysis clearly identifies three credit metric  
18 triggers which could cause a further downgrade of FPL's credit rating. OPC's  
19 recommendations in this case would trip not just one, but *all three* of these  
20 triggers, meaning that a downgrade would more than likely result. This is  
21 demonstrated in Exhibit MD-7. It is clear that OPC's claim that Moody's ratings  
22 of FPL would be unaffected by accepting OPC's position is incorrect.



1 **Q. Please respond to FEA witness Gorman's claim that his ROE**  
2 **recommendation would not harm the strength of the Company, based on his**  
3 **S&P metric calculations.**

4 A. Witness Gorman does not propose changing FPL's equity ratio as OPC does.  
5 Nevertheless, his proposed ROE of 9.25% would be viewed as an extremely  
6 negative result from a credit perspective, and would reverse the emerging  
7 perception of a return to more constructive regulation in Florida. With respect to  
8 his credit metrics, witness Gorman himself admits that his proposal would drop  
9 FPL from its current S&P financial risk profile of "intermediate" to "significant"  
10 (p. 52). This degradation of financial risk position, combined with his  
11 exceedingly low and punitive ROE proposal, would likely lead to a credit  
12 downgrade by the rating agencies.

13 **Q. Do factors other than these types of metrics influence the Company's credit**  
14 **rating?**

15 A. Yes. Naively moving numbers in a matrix and suggesting that this would dictate  
16 the impact on credit reflects a fundamental lack of understanding of how credit  
17 analysis is conducted. S&P cautions that the indicative outcomes of these metrics  
18 "are not meant to be precise indications or guarantees of future rating opinions"  
19 and has stated "our assessment of financial risk is not as simplistic as looking at a  
20 few ratios." (S&P, "Criteria Methodology: Business Risk/Financial Risk Matrix  
21 Expanded" (May, 2009)).  
22

1 A major element in credit analysis for regulated utilities is the assessment of  
2 regulatory risk. OPC witness Lawton and FEA witness Gorman simply ignore the  
3 impact that adopting their recommendations would have on perceptions of  
4 regulatory risk. It could only be negative, and the only relevant question is: how  
5 negative? Investors and rating agencies are watching very carefully the  
6 regulatory process in Florida. The downgrade that followed the last rate case still  
7 negatively resonates with FPL's investors and the rating agencies. They remain  
8 optimistic that the regulatory climate has stabilized and may be returning to one  
9 that encourages investment and high quality service among utilities. Another  
10 unreasonable outcome, such as those recommended by the intervenors, would be  
11 a major setback in investors' view of the regulatory environment in Florida.  
12 Reaction to a negative decision in this case alone could be enough to prompt  
13 another credit rating downgrade – regardless of the metrics.

14 **Q. Do the intervenor witnesses apply the correct standard in making its**  
15 **recommendations regarding ROE and capital structure?**

16 A. No. The intervenors' positions indicate that they believe that the Commission's  
17 task is to determine what the lowest possible ROE and weakest capital structure  
18 for FPL could be without affecting FPL's ability to provide minimally adequate  
19 electric service. This is clearly not the appropriate standard.

20  
21 The Commission's task, as I understand it, is to authorize an ROE that complies  
22 with the standards set forth in *Hope* and *Bluefield* to: (1) fairly compensate  
23 investors for capital invested in the utility; (2) enable the utility to offer a return

1 adequate to attract new capital on reasonable terms; and (3) maintain the utility's  
2 financial integrity. Just as important, the Commission must consider how  
3 customers' long term interests would best be served. The intervenors'  
4 recommendations to slash short term costs (by reducing equity and lowering the  
5 Company's ROE) at the expense of the Company's financial strength is short-  
6 sighted and would at a minimum result in credit rating downgrades, higher debt  
7 costs, and investor concerns related to the regulatory environment in Florida.

8  
9 In contrast, FPL's approach to maintaining financial strength, which includes  
10 maintaining the current, actual equity ratio by which the Company is managed  
11 and affording equity investors the opportunity to earn a fair ROE, has served  
12 customers well for decades and can be expected to continue to do so. The proof is  
13 in the low bills, high reliability, and excellent customer service to which our  
14 customers have become accustomed. FPL's customers enjoy the most affordable  
15 electric service in Florida today and will continue to do so if the Commission  
16 grants 100% of FPL's rate request in this proceeding.

17 **Q. Do you have any other general observations about the intervenor witness**  
18 **positions regarding capital structure and ROE?**

19 A. Yes. First, the intervenors fail to consider the total effect of FPL's request to  
20 maintain its capital structure and establish an ROE of 11.5% on FPL's rate case  
21 request – and therefore its effect on customers. Authorizing FPL's requested  
22 ROE would result in a weighted average cost of capital ("WACC") of 7.0%,  
23 which is below the average WACC of FPL's peer electric utilities. FPL's average

1 bill will also remain below the average of FPL's peers and will remain the lowest  
2 in Florida. This emphasizes the "penny wise and pound foolish" nature of the  
3 intervenors' recommendations.  
4

5 Second, it appears that the intervenor witnesses forget or overlook the 2010 Rate  
6 Settlement – a critical stop-gap measure put in place to mitigate the effects of the  
7 2010 Pre-Settlement order. SFHHA witness Baudino, for example, states that  
8 “[s]ince its last rate proceeding before the Commission, the Company has had  
9 nearly unfettered and low cost access to capital markets for its construction  
10 program and for other corporate purposes.” (p. 17). He then points to the rates  
11 obtained for FPL's June 2011 and December 2011 bond issuances as support.  
12 These bond issuances, however, occurred *after* approval of the Settlement. They  
13 reflect FPL's ability to consistently earn an 11% ROE, the ability to recover costs  
14 associated with West County Unit 3, and FPL's current capital structure (in  
15 addition to a variety of market influences outside of FPL's control) – not the 10%  
16 ROE upon which rates were set by the 2010 Pre-Settlement Order. It is the  
17 Settlement Agreement that has, albeit temporarily, helped support FPL's financial  
18 position.  
19

20 As I discussed in my direct testimony, as a direct and contemplated result of the  
21 Settlement Agreement's provisions allowing FPL to flexibly amortize theoretical  
22 depreciation reserve surplus (effectively reversing depreciation) to provide  
23 earnings, albeit non-cash earnings, FPL projected to earn and did earn 11% in

1 2010 and 2011. Likewise, FPL expects to earn 11% in 2012 through the end of  
2 the Settlement Agreement. Contrary to the implications in Mr. Baudino's and  
3 others' testimony, the Settlement Agreement provided the additional elements  
4 missing from the initial rate order that were necessary to stabilize FPL's financial  
5 position and provide investors with comfort. Value Line summarized the results  
6 of the settlement as follows:

7 "Earlier this year, Florida Power & Light was hit with a harsh rate order.  
8 There was some concern about the treatment FPL would get when it filed  
9 for recovery of the cost of a 1,220-megawatt gas-fired plant...The  
10 agreement allows the utility to recover the cost of the plant, next year, but  
11 only to the extent that lower fuel prices will offset the revenue  
12 requirement. Base rates will be frozen through the end of 2012. The  
13 allowed return on equity will remain in a range of 9%-11%."

14 (Value Line, November 26, 2010). Later, Value Line stated:

15 "Florida Power & Light is benefiting from a rate settlement that was  
16 approved last year. This will enable FPL to earn a return on a generating  
17 facility that went into service in 2010. Also, the settlement allows the  
18 company to boost its profits by amortizing surplus depreciation."

19 (Value Line, February 25, 2011). The limited nature of the Rate Settlement and  
20 expectations for this rate case have also been expressed in the investment  
21 community. As Barclays Equity Research reported in July of this year,

22 "An increase in cash earnings is an equally important issue for this rate  
23 case. Although FP&L has been earning an 11% ROE for the last 2 years,

1 and should earn at 11% again in 2012, it is doing so based on a reduction  
2 in depreciation expense as a result of having been found to have surplus  
3 depreciation in the last depreciation study. Consequently, FP&L's  
4 earnings have been lighter on cash than an 11% ROE implies, and the  
5 company must have some – and investors should expect – a notable  
6 increase in cash to be a part of this rate case, if the FL PSC seeks to be fair  
7 in its regulation.”

8 (Barclays Equity Research, U.S. Utilities, Sector Update (July 16, 2012)).

9  
10 As explained in my direct testimony, the Settlement Agreement expires at the end  
11 of this year. FPL's requested ROE and the maintenance of its actual capital  
12 structure, which has served customers so well for so long, will continue to support  
13 investor confidence and FPL's competitive access to capital.

#### 14 15 IV. CAPITAL STRUCTURE

16  
17 **Q. Several intervenor witnesses claim that FPL's equity ratio is excessive**  
18 **compared to other utilities in the industry, particularly the proxy groups**  
19 **used by various witnesses in their ROE models. Please respond.**

20 **A.** The intervenors disregard the relative business risk profile of FPL compared to  
21 those in the proxy groups. Every utility faces a unique risk profile, and these risk  
22 differences influence the capital structure that a prudent utility manager should  
23 seek to employ. This fact is recognized by witness O'Donnell when he states that

1            “[p]rudent management practices attempt to ameliorate higher business risk with  
2            offsetting, lower financial risk.” (p. 15). His application of this concept on a  
3            strictly regulated (not risky, according to this witness) versus unregulated (more  
4            risky, according to this witness) basis, however, is overly simplistic and ignores  
5            the many FPL-specific risk factors presented in this case. As described in my  
6            direct testimony at pages 12-32, there are very real business risks faced by FPL,  
7            such as miles of shoreline and therefore exposure to hurricanes, which support the  
8            reasonableness of a less-leveraged capital structure.

9  
10           The reasonableness of FPL’s current capital structure is not a theoretical or  
11           academic issue. FPL has repeatedly relied on its strong balance sheet to serve its  
12           customers. For example, solely with regard to the 2004 and 2005 hurricane  
13           seasons, FPL had to fund approximately \$1.8 billion in storm restoration costs, a  
14           significant portion of which was over an indefinite period of time, with substantial  
15           uncertainty as to timing and amount of recovery. In addition, FPL has had to fund  
16           large fuel under-recoveries in times of increasing fuel prices in order to continue  
17           purchasing fuel for use in generating electricity (such as the \$1 billion under-  
18           recovery in 2005). These actions – all of which are clearly in customers’ interests  
19           – would have been impossible without FPL’s strong balance sheet. Again, for a  
20           short-sighted purpose, the intervenors simply ignore the practical need for  
21           financial strength and the many ways that FPL’s financial strength benefits  
22           customers.

1 **Q. The intervenors also claim that FPL's equity ratio is excessive compared to**  
2 **NextEra Energy, Inc ("NEE"). Please respond.**

3 A. Each intervenor comparison of FPL's capital structure to NEE's consolidated  
4 capital structure is grossly simplistic. NEE's consolidated capital structure is  
5 completely different from FPL's, in that it contains project (non-recourse) debt,  
6 hybrid securities, and equity units, among other instruments. Project debt, which  
7 totals about \$6 billion, is secured solely by the particular asset financed and the  
8 cash flows generated by the project, with no obligation to repay in whole or in  
9 part from corporate funds. Hence, it is often called "non-recourse" (to the  
10 sponsoring company's credit) debt. Consequently, the rating agencies and  
11 investment community distinguish and largely exclude non-recourse project debt  
12 from NEE's capital structure in their credit evaluation. Hybrid securities and  
13 equity units have equity benefits to issuers. Therefore, the rating agencies assign  
14 equity credit for these types of instruments which equates to an adjustment to  
15 capital structure. These adjustments have a material effect on NEE's  
16 capitalization. Without accounting for these differences, one cannot compare the  
17 equity ratio of FPL and the consolidated equity ratio of NEE and reach any  
18 meaningful conclusions, as OPC witness O'Donnell attempts to do.

19 **Q. OPC witness O'Donnell alleges that NEE can "lean on FPL" to take dividend**  
20 **payments for the benefit of affiliated companies, pointing to the varying level**  
21 **of dividends that have been paid as presented in KWO-10. Does KWO-10**  
22 **support witness O'Donnell's alleged "linkage" between NEE's credit rating**  
23 **and FPL's capital structure?**



1 A. No. In fact, it shows the very reverse of what OPC witness O'Donnell is  
2 suggesting. NEE carefully manages the capital structure of FPL so that it closely  
3 matches the capital structure last reviewed and approved by the FPSC. This  
4 means that, at times, FPL will pay a dividend to its equity owner (NEE) and, at  
5 other times, NEE will infuse equity into FPL. This is a function of the fluctuating  
6 cash flows of the business. The capital structure, as well as other financial  
7 information on a rolling twelve-month basis, is filed with the Commission each  
8 month in the Company's Earnings Surveillance Reports. Far from NEE being  
9 able to "lean on FPL," it is FPL that is able to lean on NEE when its investment  
10 needs exceed its capital generating abilities, as is the case currently. But FPL can  
11 only enjoy this benefit as long as shareholders have the prospect of earning a fair  
12 rate of return on their invested capital.

13

14 The dividend amounts will vary as the dividends are paid or equity is infused in  
15 order to meet the Company's target capital structure. Overall, however, from  
16 December 1989 to the end of 2011, FPL has increased its common equity balance  
17 from \$2.8 billion to \$10.9 billion, an increase of about \$8.1 billion, as it has  
18 increased its overall investment in the business and maintained a consistent equity  
19 ratio.

20 **Q. Do rating agencies make adjustments to a utility's capital structure in**  
21 **evaluating its financial risk?**

22 A. Yes. As discussed previously, S&P recognizes \$922 million in PPA obligations  
23 as debt-like in its evaluation of FPL. Credit rating agencies take these PPA

1 obligations into account when evaluating the financial strength of FPL either  
2 explicitly (in the case of S&P) or as part of their overall credit evaluation (in the  
3 case of Moody's). S&P has explained that "[t]o better reflect the 'truth' of an  
4 issuer's financial position, we must make certain adjustments to these financial  
5 statements that affect metrics in a way we believe more completely reflects  
6 creditors' risks, rights, and obligations." (S&P, "Financial Adjustments Give a  
7 Clearer Picture of Credit Quality for U.S. Utility and Infrastructure Companies"  
8 (August, 2008), p. 2). With respect to PPAs specifically, S&P states "[w]e view  
9 PPAs as fixed, debt-like financial obligations that represent substitutes for debt-  
10 financed capital investments in electric generation capacity." (*Id.* at 6). For that  
11 reason, S&P considers \$922 million in PPAs as debt when evaluating the  
12 financial strength and appropriate credit rating for FPL. (S&P, Ratings Direct,  
13 NextEra Energy, Inc. (April 6, 2012)). Regardless of whether the intervenors  
14 agree that it is an appropriate adjustment for the credit rating agencies to make,  
15 the fact of the matter is that the credit rating agencies *do* in fact take PPAs into  
16 account when evaluating the financial strength of FPL and considering the  
17 appropriate credit rating to assign.

18 **Q. Do FPL's customers benefit from FPL's current capital structure?**

19 A. Yes. No one can reasonably argue that FPL's approach to maintaining financial  
20 strength over the long term has not served customers well. FPL has been prudent  
21 in maintaining a capital structure that has enabled consistent and competitive  
22 access to the capital markets in times of economic turmoil, has been able to  
23 satisfy instant liquidity needs caused by unexpected events such as major storms,

1 and has been able to competitively finance large investments to modernize and  
2 strengthen its infrastructure – all of which result in high reliability and low costs  
3 for customers.

4 **Q. Has the Commission in the past acknowledged the customer benefits of a**  
5 **strong capital structure?**

6 A. Yes. Even in the 2010 Pre-Settlement Order the Commission recognized the  
7 importance of financial strength, finding “FPL’s position of financial strength has  
8 served it and its customers by holding down the Company’s cost of capital.”  
9 (Order No. PSC-10-0153-FOF-EI, p. 119). The Commission also acknowledged  
10 that while others were forced to issue debt at high rates during the financial crisis  
11 of 2008 and 2009, FPL was able to sell 30-year bonds at very reasonable rates  
12 “due to its strong financial position.” (*Id.* at 119). Despite the fact that FPL’s  
13 equity ratio was near the top of the range of equity ratios for its proxy group, the  
14 Commission agreed that FPL’s actual capital structure, which it had maintained  
15 for over a decade, was reasonable.

16 **Q. Please respond to OPC witness O’Donnell’s recommendation that the**  
17 **Commission “impute” an equity ratio of 50% for purposes of ratemaking in**  
18 **this docket.**

19 A. If witness O’Donnell is suggesting that the Commission set rates on an equity  
20 ratio of 50% but then expect FPL to maintain an actual equity ratio of 59.6%, he  
21 is effectively proposing that customers receive all the benefit of FPL’s strong  
22 capital structure without paying for it. This certainly seems to be the implication  
23 of his recommendation.

1 In practice, of course, FPL could not reasonably continue operating the Company  
2 in a manner that is contrary to the Commission's determination on an appropriate  
3 equity ratio in this case. Accordingly, if witness O'Donnell's recommendation  
4 were to be accepted by the Commission, FPL would have to issue more than \$1.5  
5 billion in long-term debt and correspondingly reduce its equity by more than \$1.5  
6 billion – an over \$3 billion swing in the relative amount of equity compared to  
7 debt in FPL. FPL would thus become far more leveraged and financially risky.  
8 Adoption of this recommendation would also reduce FPL's cash flow by  
9 approximately \$214 million annually, according to OPC witness O'Donnell. As I  
10 have already discussed at length, these impacts would most likely translate into a  
11 credit rating downgrade and would certainly result in higher borrowing costs.

12  
13 Further, regardless of any impacts associated with recapitalization of the  
14 Company, the \$214 million reduction in revenues resulting from OPC's  
15 recommendation would be recognized by investors and credit rating agencies.  
16 This alone would negatively affect their opinions on the financial strength of FPL.  
17 To imply that investors and credit ratings agencies would overlook these cash  
18 impacts because the "actual" capital structure could theoretically remain  
19 unchanged demonstrates witness O'Donnell's lack of understanding of the  
20 practical consequences of his recommendations.

21

## V. RETURN ON EQUITY

1

2

3 **Q. Please respond to the intervenor witnesses' ROE recommendations.**

4 A. Dr. Avera explains why the intervenors' recommendations are not supported by  
5 correct market-based analyses. My observations as to the intervenor  
6 recommendations are based on my experience and discussions with investors.

7

8 OPC witness Woolridge recommends an ROE of 9% (coupled with an arbitrary  
9 equity ratio of 50%, or an ROE of 8.5% if FPL's equity ratio is maintained),  
10 SFHHA witness Baudino recommends an ROE of 9%, and FEA witness Gorman  
11 recommends an ROE of 9.25%. Each of these recommendations falls woefully  
12 short of an ROE that would fairly compensate FPL's equity investors. A result in  
13 this case in line with these recommendations would likely be seen as punitive and  
14 would result in considerable, negative investment community and rating agency  
15 reaction. For example, Fitch has recently reported that "An adverse outcome in  
16 FPL's pending rate case would lead to a revision in Fitch's view that Florida  
17 regulatory environment has improved." (FitchRatings, "Fitch Affirms NextEra  
18 Energy, Inc. & NEE Capital Holdings' IDRS; Also Affirms Florida Power &  
19 Light" (April 27, 2012)). A consistent feature of the intervenors' witnesses' ROE  
20 recommendations is that they ignore this type of guidance and therefore ignore the  
21 investor perspective.

1 **Q. Why do you think the investment community would view an ROE in line**  
2 **with the intervenors' recommendations as punitive?**

3 A. As mentioned above, an ROE midpoint of 9% or 9.25% (or OPC's alternate  
4 recommendation of 8.5%) would be even lower than the ROE midpoint approved  
5 by the Commission in 2010 before the Settlement Agreement. Also, as shown on  
6 my Exhibit MD-3, it would be far below the 11.52% average ROE established for  
7 other major electric IOUs in the Southeastern U.S., despite FPL's demonstrably  
8 excellent performance. Finally, as demonstrated in Exhibit MD-8, such  
9 recommendations are far below the ROE levels that investors have realized over  
10 the last 14 years.

11

12 All witnesses agree that the Commission is required to set an ROE that is fair and  
13 compensatory. Yet, the intervenors' ROE proposals are neither fair nor  
14 compensatory and are in fact demonstrably punitive in nature. The Department of  
15 Public Utilities of Massachusetts, for example, recently established an ROE for  
16 Fitchburg Gas & Electric Company ("Fitchburg") of 9.2%. This was the lowest  
17 ROE established for any electric utility in the country in the last two years. Part  
18 of the Department's support for this low ROE was its finding that Fitchburg had  
19 "fail[ed] to meet its fundamental service obligation as a franchised utility." (DPU  
20 11-01; DPU 11-02, Aug. 1, 2011, p. 424). PEPCO's ROE was also recently  
21 reduced, in part to "reflect the substandard reliability and service quality of  
22 PEPCO's distribution system." (Order 85028, Public Service Commission of  
23 Maryland, issued July 20, 2012, p. 108). PEPCO's ROE was set at 9.25%, plus

1 six basis points for flotation costs. Fitchburg and PEPCO are distribution-only  
2 utilities, with lower risk profiles. The intervenors recommend applying a *similar*  
3 *or lower* ROE to FPL in this case, in spite of FPL's higher risk profile as an  
4 electric generation, transmission, and distribution utility; excellent reliability;  
5 excellent customer service; and low customer bills. It is hard to see how investors  
6 could not see this as punitive.

7 **Q. Witnesses Woolridge, Lawton, Baudino, and Gorman all spend time**  
8 **discussing the relative riskiness of the utility industry generally. Please**  
9 **respond.**

10 A. The relative riskiness of the utility industry *generally* is not at issue here. FPL  
11 acknowledges that in *some* respects, an investment in the utility industry is less  
12 risky than an investment in other industries. As FPL witness Avera concludes,  
13 however, disregarding other industries with which FPL competes for capital  
14 would fail to fulfill the relevant *Hope* and *Bluefield* standards for determining a  
15 fair ROE.

16  
17 Moreover, these intervenors ignore – and would have the Commission ignore –  
18 the relative business risk profile of FPL *within* the utility industry. Evaluating  
19 FPL's relative business risk profile is a necessary step in determining the fair  
20 ROE for FPL's investors. FPL's business risk profile is discussed in detail in my  
21 direct testimony at pages 12-32.

22 **Q. FEA witness Gorman and OPC witness Woolridge discuss the impact of a**  
23 **utility's equity ratio on its financial risk and conclude generally that because**

1           **FPL's equity ratio is higher than some of its peers, its ROE should therefore**  
2           **be lower than its peers. Please respond.**

3    A.    These witnesses focus on equity ratio to the exclusion of all other factors, as  
4           though FPL were identical to other utilities in all relevant respects.  Again, the  
5           intervenors appear to rely on broad, general concepts rather than evaluate the very  
6           real business risk factors that, on balance, set FPL apart from other electric  
7           utilities.  As explained in my direct testimony, FPL faces significant risks  
8           associated with FPL's location at the end of a peninsula and extensive use of  
9           nuclear generation.  Additionally, while all Florida electric utilities are exposed to  
10          some storm damage and storm cost risks, including lost revenues, what makes  
11          FPL unique is the level and degree to which FPL is exposed to these risks.  FPL is  
12          exposed to tropical storms and hurricanes along a much longer coastline that  
13          wraps from north of Fort Myers on Florida's west coast, down to the end of the  
14          peninsula and then up the Atlantic coast just to the south of Jacksonville.  No  
15          other utility within or outside Florida has that kind of storm exposure.  As shown  
16          on Exhibit MD-9, Florida has the greatest exposure to hurricane damage and FPL  
17          has the greatest exposure among the Florida electric IOUs.  These are just a few  
18          examples, and the intervenors simply ignore these business risks.

19  
20          Taken in the aggregate, FPL's business risk profile is somewhat greater than most  
21          utilities in the country and greater than other IOUs in Florida.  FPL's relative  
22          riskiness among Florida IOUs is shown in Exhibit MD-10.  This suggests that  
23          FPL should maintain a stronger financial position and that its investors should be



1           compensated for this greater risk exposure – not that FPL should receive one of  
2           the lowest ROEs in the nation, the lowest ROE in the Southeast, and the lowest  
3           ROE in Florida. Again, FPL’s strong capital structure and a fair rate of return on  
4           equity, buttressed by constructive regulation, have been key components to the  
5           long-term health and strength of the Company. The benefits of this for customers  
6           exist today; they are tangible, and they have been demonstrated repeatedly in the  
7           real world.

8   **Q.   Witness Baudino points out that FPL uses annual cost recovery clauses to**  
9   **recover some of its costs, stating that FPL “receives substantial benefits”**  
10  **from them, and implying that this reduces FPL’s investment risk. Are these**  
11  **cost recovery clauses unique to FPL?**

12  A.   No. Adjustment mechanisms that enable utilities to implement rate changes to  
13  pass through fluctuations in costs are widely prevalent in the industry and already  
14  well understood by investors. Absent these cost recovery mechanisms, investors’  
15  required ROE would be significantly higher than FPL’s requested ROE. Once  
16  again, he fails to examine the specifics of FPL’s situation relative to other  
17  alternatives to which investors can commit capital.

18  
19           The specific cost recovery clauses available to FPL are available to *all* Florida  
20           investor-owned electric utilities. Their availability, therefore, does not support  
21           the intervenors’ recommendations that the Commission establish an ROE for FPL  
22           that is lower than that recently established for Gulf Power Company (Order No.

1 PSC-12-0179-FOF-EI, April 3, 2012) and approved for Progress Energy Florida  
2 (Order No. PSC-12-0104-FOF-EI, March 8, 2012).

3 **Q. Does the presence of cost recovery clauses eliminate the risk to FPL and its**  
4 **investors that FPL will not timely recover all its prudently incurred costs?**

5 A. No. Cost recovery clauses mitigate but do not eliminate the risk that FPL will not  
6 timely recover its prudently incurred costs. Certain disallowances advanced by  
7 the intervenors and approved by the Commission, for example, can apply to costs  
8 that FPL and its investors believe to be prudent. Additionally, clause under-  
9 recoveries, which can be significant, are reimbursed at FPL's commercial paper  
10 rate, not at FPL's weighted average cost of capital. This increases the risk that  
11 investors will not earn a return at the level authorized by the Commission.

12 **Q. Several of the intervenor witnesses, such as FRF witness Chriss, cite concerns**  
13 **with FPL's requested ROE given the "current economic conditions" faced by**  
14 **the utility's customers (Chriss, p. 6). Please respond.**

15 A. FPL acknowledges that these are difficult times for some of its customers – which  
16 is one of the reasons why we're pleased with our relative low-cost, low-bill  
17 position. But witness Chriss's concerns seem somewhat disingenuous,  
18 considering the fact that his employer, Wal-Mart, is realizing healthy returns far  
19 in excess of FPL's. In 2009, Wal-Mart's ROE was 19.94%, in 2010 it was  
20 21.83%, and in 2011 it was 23.60% – growing each year, for a three year average  
21 of 21.79%, net of taxes. Moreover, based on his review, FPL witness DeRamus  
22 concludes that the impact of FPL's request on commercial customers is moderate,

1 particularly in comparison to changes in prices for other goods and services over  
2 time.

3 **Q. How would the impact of a weakened balance sheet and lower ROE affect**  
4 **the investment community?**

5 A. As I have discussed, it is clear that these actions will degrade and likely  
6 downgrade the credit, financial strength, financial health, and financial resiliency  
7 of FPL. Financial markets remain weak and uncertain; global credit markets are  
8 vulnerable as is illustrated by the turmoil in Europe and in the banking sector.  
9 Since 2011, for example, Moody's has downgraded 807 banks, 74 of which are in  
10 the United States. That compares with the sparse number of upgrades of 119  
11 worldwide and just 12 in the U.S. (and none so far in 2012). It is certain that the  
12 downgrades in the banking sector will continue to cause concern and increase the  
13 stress in the credit markets. It is unreasonable, particularly in this credit and  
14 economic environment, for OPC to propose a position that would purposely and  
15 unequivocally decrease the financial strength of one of the best performing, low  
16 cost utilities in the industry, thereby weakening its ability to serve its customers.

## 18 VI. STORM COST RECOVERY

19  
20 **Q. How does FPL propose to address storm recovery in this proceeding?**

21 A. FPL proposes for the immediate future to continue to recover prudently incurred  
22 storm costs under the framework prescribed by the 2010 Rate Settlement.  
23 Specifically, if FPL incurs storm costs related to a named tropical storm or

1 hurricane, the Company may begin collecting up to \$4 per 1,000 kWh (roughly  
2 \$400 million annually) beginning 60 days after filing a petition for recovery with  
3 the FPSC, subject to possible refund upon a subsequent prudence review. This  
4 interim recovery period will last up to 12 months.

5 **Q. What was the Commission's approach to storm cost recovery before the 2010**  
6 **Rate Settlement?**

7 A. Prior to the 2010 Rate Settlement, the Commission had established and  
8 consistently endorsed an overall framework that acknowledges that the costs  
9 associated with restoring service after tropical storms and hurricanes are a  
10 necessary cost of doing business in Florida and as such are properly recoverable  
11 from customers. As I have indicated in previous testimony, this framework  
12 consisted of three main parts: (1) an annual storm accrual, adjusted over time as  
13 circumstances change; (2) a storm damage reserve adequate to accommodate most  
14 but not all storm years; and (3) a provision for utilities to seek recovery of costs  
15 that go beyond the storm reserve. These three parts act together to allow FPL  
16 over time to recover the full costs of storm restoration, while at the same time  
17 balancing competing customer interests: as small an ongoing impact as possible;  
18 minimal volatility in customer bills after a storm; and intergenerational equity.

19  
20 The storm damage reserve is a substitute for insurance. If commercial insurance  
21 were reasonably available there would be no need for special treatment; FPL  
22 would simply include the insurance premiums in its cost structure and hence its  
23 base rates. However, the substantial losses associated with Hurricane Andrew in

1 1992 essentially eliminated the commercial market for transmission and  
2 distribution system insurance at the levels or amounts needed to provide adequate  
3 protection to FPL's extensive network of assets and its ability to quickly restore  
4 reliable service. Though FPL continues to explore the market for insurance for  
5 storm damage losses, it has been forced to seek other methods to ensure that it  
6 would have adequate available resources for the costs of repairing and restoring  
7 its system in the event of a hurricane, storm damage, or other natural disaster.

8  
9 Intervenors in recent years have consistently challenged the Company's proposal  
10 to accrue a reasonable amount each year for deposit in the storm damage reserve.  
11 They have indicated their preference essentially to pay in arrears for storms. This  
12 carries certain risks and is not good long term public policy. It is the equivalent  
13 of carrying no insurance on one's house and then borrowing the money needed to  
14 rebuild after a tropical storm. No prudent consumer does this. But in the interest  
15 of eliminating that debate in this proceeding, FPL believes it makes sense for the  
16 Commission to simply approve an extension of the existing framework that most  
17 of the parties in this proceeding agreed to for the last few years and also have  
18 agreed to for Progress Energy Florida in connection with that recent settlement.

19 **Q. Does it make any difference that this framework was the subject of a prior**  
20 **settlement agreement?**

21 A. No, the fact that this framework was previously agreed to as one part of a  
22 settlement does not mean that the Commission cannot decide that it is an  
23 appropriate framework based on its own merits.

1 **Q. Do you agree with the positions of witnesses Schultz and Kollen in response**  
2 **to FPL's storm cost recovery proposal?**

3 A. No. First, it is not entirely clear why witnesses Schultz and Kollen oppose the  
4 proposed approach when this framework provides for no current storm reserve  
5 accrual and would avoid any impact to customer bills at this time. Both witnesses  
6 indicate that this recovery mechanism was part of a negotiated settlement  
7 agreement and therefore should not be continued. But, as I indicate above, this  
8 fact does not prohibit the Commission from considering whether the mechanism  
9 is appropriate and ordering its continuation.

10

11 Witness Schultz provides no reason for his position. In fact, his testimony is self-  
12 contradictory, since he argues simultaneously that "FPL should not be seeking an  
13 accrual" (p. 50) and that "storm cost recovery should follow past Commission  
14 practice for addressing the adequacy of FPL's storm reserve and the recovery of  
15 storm costs" (p. 51), which included the provision of an annual accrual.

16

17 Witness Kollen claims that it is "unnecessary [and] harmful to customers." (p.  
18 54). He then advances a series of arguments, some of which misstate FPL's  
19 request and some of which fly in the face of the Commission's historical  
20 treatment of storm cost recovery. In particular, he argues that "the appropriate  
21 and least cost level [of the storm reserve] is \$0." (p. 56). This is inconsistent with  
22 many years of Commission consideration and ruling on this subject.

23

1 In any case, as a practical matter, witness Kollen's position ignores the high  
2 likelihood of major tropical storms in FPL's expansive, largely coastal service  
3 area. Exhibit MD-9, presenting Colorado State University's Statistical Landfall  
4 Forecast, demonstrates that the probability of a hurricane landfall in Florida is  
5 higher than in any other southern state. History has shown us that even a \$200  
6 million storm reserve is not sufficient during active hurricane seasons, such as  
7 those that occurred in 2004 and 2005. S&P has even recognized that "...the \$200  
8 million storm reserve . . . is lower than the company requested [in 2006] and  
9 lower than past storm reserves, keeping the company dependent on future  
10 favorable regulatory actions." (S&P, "Storm Cost Recovery Does Not Affect  
11 Rating," *Bulletin* (May 16, 2006)). Witness Kollen's suggestion to maintain no  
12 storm reserve ignores its important insurance-like function and would also result  
13 in a substantial rate impact after a major storm, at a time when many customers  
14 affected by the storm would likely have a number of other additional expenses  
15 such as costs for repairing their homes.

16 **Q. Does FPL's proposal in any way limit the Commission's ability to review the**  
17 **prudence of storm costs, or in a future proceeding to revisit how storm costs**  
18 **should be recovered?**

19 A. Absolutely not. In lieu of re-litigating the necessity and appropriate amount of an  
20 annual storm accrual, FPL has requested approval of a simple recovery  
21 mechanism that has been in place since August 2010. A mechanism that provides  
22 for the timely and efficient recovery of substantial costs in excess of the  
23 Company's storm reserve provides greater access to liquidity when funds are

1 needed to restore service following major events. FPL's proposal does *not* limit  
2 the Commission's ability to review prudently incurred storm costs as the  
3 intervenors imply, and it does *not* preclude any party from participating in any  
4 storm recovery proceeding. Finally, it does *not* presume that such framework  
5 would remain in place in perpetuity or that it could not be revisited by this or a  
6 future Commission in some future proceeding. As noted, FPL remains convinced  
7 that better public policy would be to properly accrue for such events and may seek  
8 in the future to re-institute such an accrual. In the meantime, FPL's proposal  
9 represents a reasonable compromise. To reject it out of hand, as certain  
10 intervenors suggest, would leave FPL and its customers without an accrual or a  
11 pre-defined mechanism for recovery of these essential costs and would certainly  
12 have an unfavorable impact on investor perceptions of FPL's risk.

13 **Q. Is SFHHA witness Kollen correct that FPL has “virtually no risk exposure to**  
14 **storm damage costs” (p. 57)?**

15 A. No. Witness Kollen is both wrong and incomplete in his treatment of risk. He is  
16 careful to limit his claim to “risk exposure to storm damage costs.” This,  
17 however, ignores the substantial exposure that FPL and its investors have to  
18 revenue shortfalls (relative to the levels on which rates were based) that *inevitably*  
19 occur with tropical storms. In other words, statistically, FPL is assured of having  
20 rates set on a revenue forecast that is biased high, and the only question is how  
21 much – a question that imposes significant risk on investors.  
22



1 But even ignoring this critical omission, witness Kollen is simply wrong in his  
2 claim. FPL is at very substantial risk of incurring additional costs associated with  
3 storms, not all of which will be recoverable through a storm surcharge. This is  
4 evidenced in the Commission's treatment of the 2004-2005 storm cost recovery  
5 proceedings, which saw substantial disallowances. The practical effect was that  
6 FPL experienced a reduction in its earned ROE at that time.

7  
8 Accordingly, witness Kollen's testimony ignores both the need to recognize storm  
9 cost exposure as an investment risk factor affecting the appropriate ROE and  
10 capital structure and, in the absence of establishing a target reserve level and  
11 accrual, the need to have some recovery mechanism clearly spelled out in  
12 advance, such as the one previously supported by OPC and the SFHHA, among  
13 others, and which FPL is proposing to continue in this instance. Ready access to  
14 funds in the immediate wake of a storm is simply too critical for the Company to  
15 go forward *without either approach*, which is what both witness Kollen and  
16 Schultz recommend.

## 17 18 VII. D&O LIABILITY INSURANCE

19  
20 **Q. What does OPC's witness Schultz recommend for D&O liability insurance?**

21 A. Witness Schultz recommends that \$2,781,173 of expense associated with D&O  
22 liability insurance be reduced by \$1.391 million. He indicates the costs should be  
23 shared equally between customers and shareholders.

1 **Q. Do you agree with OPC's witness Schultz recommendation that the cost**  
2 **associated D&O liability insurance should be shared equally between**  
3 **customers and shareholders?**

4 A. No, I do not. D&O liability insurance is a necessary cost of providing service  
5 and as such should be reflected in FPL's base rates. Simply stated, by law a  
6 corporation must have directors and officers. In today's environment of increased  
7 scrutiny and exposure with respect to corporate governance, the risk of liability to  
8 directors and officers has increased substantially. A company could not attract  
9 competent, capable officers or directors without D&O liability insurance. Thus,  
10 D&O insurance is a cost of business for any corporation and no company of  
11 FPL's size would be without such coverage.

12 **Q. Do you agree with OPC's witness Schultz's assertion that D&O costs should**  
13 **be disallowed since incurring D&O insurance is to protect shareholders?**

14 A. No. The purpose of D&O insurance is to enable the Company to attract and retain  
15 qualified, capable directors and officers, without which FPL's performance would  
16 certainly not be as good as it is and without which it might literally be unable to  
17 function over time. This ensures proper management and oversight of the  
18 Company, which in turn benefits customers. This is a prudently incurred cost of  
19 doing business and should be included to calculate a company's revenue  
20 requirement.

1 **Q. Should the Commission include FPL's requested \$2,781,173 expense for**  
2 **D&O liability insurance in its revenue requirement calculation?**

3 A. Yes. D&O liability insurance directly benefits customers and is a necessary and  
4 reasonable expense for the FPL to provide service to its customers. FPL witness  
5 Deason also support FPL's request in his rebuttal testimony.

6

7 **VIII. COST OF LONG TERM DEBT**

8

9 **Q. Are you making any adjustments to the Company's projected cost of long**  
10 **term debt?**

11 A. Yes. As FEA witness Gorman notes on page 21 of his testimony, one of the  
12 projected test year debt issuances at the time of FPL's rate case filing has now  
13 occurred, and FPL was able to obtain a lower interest rate than projected. Instead  
14 of issuing \$400 million in 30-year first mortgage bonds at 4.85%, in May 2012,  
15 FPL issued \$600 million in 30-year first mortgage bonds at 4.05%. Accounting  
16 for this known cost of debt would reduce FPL's long term debt cost for purposes  
17 of this case to 5.18%.

18 **Q. Do you agree with witness Gorman that the interest rates associated with**  
19 **FPL's other projected debt issuances should be reduced?**

20 A. No. Witness Gorman provides no support for his assumption that the May  
21 issuance accurately portrays future debt interest rates. Notably, witness Gorman  
22 has not identified other costs that have increased since the filing. Witness  
23 Gorman appears to be cherry-picking forecast changes that serve his purposes.

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## IX. PERFORMANCE INCENTIVE

**Q. Are the objections of witnesses Gorman, Lawton, and Baudino to FPL’s proposed ROE performance incentive well founded?**

A. No. None of their objections addresses the basis for the performance incentive.

FEA witness Gorman claims the requested incentive is not needed because his recommended ROE of 9.25% “already awards FPL fair compensation.” (p. 68). OPC witness Lawton takes the position that the incentive is “unnecessary for the efficient provision of electrical service” (p 5). And SFHHA witness Baudino claims that rather than acknowledging FPL’s superior performance with an uptick to ROE, “[t]he Commission should base its allowed return on equity on market-based data and analysis” (p. 60). None of these objections is relevant, however, and each misses the point.

FPL does not contend that an additional 25 basis points is needed to ensure investors are fairly compensated or that it is needed for “efficient” electric service. Instead the basis for the performance adder is purely grounded in public policy considerations, as my direct testimony makes clear. If the Commission believes that, measured over the long haul, providing an incentive in the form of the 25 basis point adjustment will encourage all utilities (not just FPL) to strive to improve the value they deliver to their customers, then the Commission should

1 approve FPL's request. The Commission has done so in the past and, I believe,  
2 should do so here. FPL's proposed incentive is to reward and encourage superior  
3 performance in terms of customer service, reliability, and maintaining the lowest  
4 bill in the state.

5 **Q. How do you respond to the intervenors' claims that FPL's low bills are due**  
6 **to factors not within management's control, such as low natural gas prices?**

7 A. Again, the intervenor witnesses miss the point. The fact that certain outcomes  
8 (such as low bills) are *in part* a function of variables beyond management's  
9 control, does not mean that *all* are. And as long as some factors are within  
10 management's control (which no one would reasonably deny), it makes sense to  
11 incentivize management to seek to improve performance. That is what FPL's  
12 proposed performance adder does. In addition, the intervenor witnesses appear  
13 not to understand that the superior performance that FPL provides, for which it is  
14 seeking an incentive, is more than just its customers' low bills. Equally important  
15 is the excellent customer service and first quartile reliability that FPL works day  
16 in and day out to provide.

17

18 Thus, because the intervenors do not contend that FPL's superior performance has  
19 nothing whatever to do with actions that FPL has taken, they have not addressed  
20 the policy rationale for the performance adder. In fact, OPC witness Lawton  
21 inadvertently supports FPL's position when he states at page five that "differences  
22 in rate levels are to *some extent* attributable to factors other than management  
23 performance" (emphasis added). Implicit in this statement is the acknowledgment

1 that FPL's low bills *are* the direct result (in part) of management decisions and  
2 actions. For example, FPL's decisions to modernize its fossil fleet and move  
3 away from fuel oil toward natural gas contribute to FPL's low bills. OPC witness  
4 Lawton inexplicably claims that the "vintage of equipment" used to serve  
5 customers is an example of something unrelated to management performance (p.  
6 6), when clearly, the vintage of FPL's equipment is the direct result of these types  
7 of management decisions. Other management actions that have resulted in lower  
8 customer bills include: (i) continuous efforts in maintaining one of the lowest  
9 *non-fuel* O&M costs in the industry (see FPL witness Reed's direct testimony  
10 pages 6-7 and 24-25); and (ii) improving FPL's fossil fleet heat rate by 19% over  
11 the last ten years (see FPL witness Kennedy's direct testimony page 7).  
12 Furthermore, were gas prices to rise significantly in the future, FPL's decision to  
13 invest in highly efficient combined cycle generation would be even more  
14 beneficial to customers.

15  
16 Finally, witness Lawton contends that the prior Commission's rejection of FPL's  
17 rate request in 2010 is a primary reason for FPL's low cost position. However, if  
18 OPC believes that the prior Commission's order accurately reflected FPL's cost  
19 position, then FPL must have done something to produce that low cost position  
20 relative to other utilities. Importantly, as witness Deaton notes in her direct  
21 testimony, FPL expects to remain the low cost provider even with the  
22 Commission granting the requested rate relief in this proceeding.

1 **Q. Please respond to OPC witness Lawton’s claim that FPL is seeking to change**  
2 **the regulatory structure, and FRF witness Chriss’s recommendation to**  
3 **address FPL’s request in a separate docket.**

4 A. These positions overlook the fact that ROE rewards for superior performance or  
5 penalties for poor performance have routinely been addressed by the Commission  
6 within a utility’s rate case based on the particular or unique circumstances of each  
7 utility. For example, the Commission awarded Gulf Power Company a 25 basis  
8 point adder in its rate case in 2002 (Order No. PSC-02-0787-FOF-EI).  
9 Additionally, the Commission recently reduced Aqua Utilities Florida’s ROE by  
10 50 basis points after finding that Aqua’s quality of service was “marginal” (Order  
11 No. PSC-12-0102-FOF-WS, p. 55). There is nothing novel about FPL’s request,  
12 as these two intervenors claim.

13

14 Witness Chriss’s concern that the Commission’s decision on this request would  
15 somehow impact the businesses of the other electric IOUs in Florida (p. 11),  
16 thereby requiring a separate docket in which those IOUs could participate, is  
17 misplaced. While the specific mechanism and applicability of the incentive *to*  
18 *FPL* would be monitored and measured by comparing FPL’s average bill to the  
19 other average electric bills in the state, there is nothing to say that this approach  
20 would be the necessary or appropriate approach for other utilities in the state.  
21 What would be important and relevant for other utilities of course would be the  
22 message the Commission chooses to send in determining whether to reward or  
23 remain neutral with regard to good performance.

1 **Q.** Does this conclude your rebuttal testimony?

2 **A.** Yes.



1 **BY MR. LITCHFIELD:**

2 Q. And are you sponsoring any exhibits to your  
3 rebuttal testimony?

4 A. Yes, I am.

5 Q. And do those exhibits consist of 11 pages,  
6 marked MD-3 through MD-10?

7 A. That's correct.

8 **MR. LITCHFIELD:** Mr. Chairman, I would note  
9 that these are reflected on Staff's Composite Exhibit as  
10 Exhibit Numbers 451 through 458.

11 **BY MR. LITCHFIELD:**

12 Q. Have you prepared a summary of your rebuttal  
13 testimony, Mr. Dewhurst?

14 A. I have.

15 Q. Would you please provide that at this time to  
16 the Commission.

17 **THE WITNESS:** Good evening, Commissioners,  
18 Chairman Brisé. My rebuttal testimony responds to  
19 intervenor witnesses in the areas of ROE and capital  
20 structure, storm cost recovery, directors and officers  
21 insurance, the cost of long-term debt, and the ROE  
22 performance adder. In my summary I will address these  
23 roughly in reverse order.

24 First, directors and officers insurance is a  
25 legitimate part of the cost of providing service to our

1 customers, as it is an essential requirement for hiring  
2 and retaining capable and experienced directors and  
3 officers without which FPL literally could not operate.  
4 Contrary to Witness Schultz' assertion, D&O insurance is  
5 carried to enable the company to attract and retain  
6 capable directors and officers, which is a part of the  
7 cost to provide service.

8 Second, with respect to long-term debt, FEA  
9 Witness Gorman makes a recommendation to lower our  
10 interest rate forecast without providing any real world  
11 support for his position. His recommendation should be  
12 rejected.

13 Third, with respect to storm cost recovery,  
14 intervenor witnesses provide no reasonable basis for  
15 rejecting FPL's proposal to continue the recovery  
16 mechanism contained in the 2010 settlement agreement.  
17 Witness Schultz' position is self-contradictory, since  
18 he argues simultaneously that, quote, FPL should not be  
19 seeking an accrual, end quote, and that, quote, storm  
20 cost recovery should follow past Commission practice,  
21 end quote, which included the provision of an annual  
22 accrual.

23 Witness Kollen, on the other hand, argues not  
24 only that there should be no accrual, but also that,  
25 quote, the appropriate level, end quote, of the storm

1 reserve is zero, which again is inconsistent with past  
2 Commission rules.

3 Fourth, intervenor witnesses uniformly  
4 misunderstand or mischaracterize our proposal for an ROE  
5 performance adder. FPL does not argue that this is  
6 needed for the efficient provision of electrical  
7 service, as intervenors state. Instead, my position is  
8 that it is good policy to provide a positive incentive  
9 for superior customer value delivery, such as FPL has  
10 clearly demonstrated in the form of a premium to the  
11 allowed ROE.

12 Intervenors' objection that some factors  
13 affecting FPL's performance are beyond management's  
14 control utterly misses the point. As long as the  
15 Commission concludes that management actions have some  
16 direct influence on a utility's performance, a position  
17 self-evident to anyone with practical experience, the  
18 Commission is justified in setting up a structure that  
19 encourages FPL's management to strive for superior value  
20 delivery such as our proposed ROE adder. Sound  
21 regulatory policy surely dictates that better customer  
22 value delivery should be associated with the potential  
23 to earn higher returns, just as occurs in nonregulated  
24 competitive markets.

25 And, finally, with respect to ROE and capital

1 structure, intervenor witnesses -- excuse me, intervenor  
2 witness recommendations would fail three key tests.  
3 They would be harmful to our customers' long-term  
4 interests, blatantly unfair to investors, and contrary  
5 to sound regulatory policy.

6 Intervenor are proposing ROEs that would be  
7 below levels deemed punitive in two recent cases for  
8 poorly performing companies with lower risk profiles  
9 than FPL. They would be even less than the current  
10 10 percent that contributed to downgrades to FPL's  
11 credit ratings in 2010, the lowest in Florida, including  
12 rates approved by this Commission earlier this year, and  
13 at the very bottom of allowed ROEs throughout the  
14 country, even including wires-only companies that have  
15 far lower risk profiles than FPL.

16 On top of this, OPC Witness Lawton recommends  
17 weakening FPL's financial integrity with a \$3 billion  
18 shift from equity to debt. Yet, incredibly, intervenor  
19 witnesses claim that following their recommendations  
20 would have no negative effects on FPL's creditworthiness  
21 or access to capital. They base their assessment solely  
22 on cursory and selective examination of credit metrics,  
23 without consideration of context or real world input,  
24 while also in one case making elementary analytical  
25 errors that, if corrected, completely change the

1 conclusions of the analysis.

2 Finally, intervenors ignore the total cost  
3 impact of FPL's capital structure and ROE, which produce  
4 a requested rate of return, or weighted average cost of  
5 capital, of 7.0 percent, which is below the average for  
6 FPL's peers. Intervenors' position is quite simply  
7 unbelievable to anyone with practical experience, and  
8 accordingly, intervenors' ROE and capital structure  
9 recommendations are unsupportable and should be  
10 dismissed.

11 Thank you.

12 **MR. LITCHFIELD:** Thank you, Mr. Chairman.

13 Mr. Dewhurst is available for  
14 cross-examination.

15 **CHAIRMAN BRISÉ:** Okay. Thank you.

16 Mr. Moyle.

17 **MR. MOYLE:** Thank you, Mr. Chairman.

18 **CROSS-EXAMINATION**

19 **BY MR. MOYLE:**

20 **Q.** Good evening.

21 **A.** Good evening.

22 **Q.** As we sit here tonight, is there renewed  
23 concern on Wall Street about this current Commission?  
24 Yes, no, and if you need to explain.

25 **A.** Could you repeat the question? I didn't hear

1 a question.

2 Q. Sure. As we sit here this evening, in your  
3 view, is there renewed concern on Wall Street about this  
4 current Commission?

5 A. I don't know what you mean by renewed. There  
6 is always concern --

7 Q. Well, I'll direct you.

8 A. Okay.

9 Q. You used the term on Page 4, Line 21. Do you  
10 see you say renewed concern?

11 A. In the context of that statement --

12 Q. And let me go back to my original question. I  
13 mean, it's late, we're trying to just get to the point  
14 without a lot of conversation.

15 But as we sit here tonight, the question is  
16 very simple, yes/no, in your opinion is there renewed  
17 concern on Wall Street with this current Commission?

18 A. I can't answer that question with a yes or no.  
19 This statement refers to renewed concern if certain  
20 things came to pass.

21 Q. You talk to people on Wall Street, right?

22 A. Yes, sir.

23 Q. Have you had conversations with them recently  
24 about this new Commission?

25 **MR. LITCHFIELD:** Asked and answered.

1                   **THE WITNESS:** Yes.

2                   **BY MR. MOYLE:**

3                   **Q.** Have they expressed views to you about, well,  
4 this new Commission is different and, you know, it seems  
5 to be doing better?

6                   **A.** Investors have expressed a variety of  
7 opinions, a variety of concerns. It's difficult to  
8 generalize when we're speaking about investors.  
9 Investors cover a wide range of points of view.

10                  **Q.** Well, let me try to make it even a little  
11 simpler. As we sit here tonight, do you have concerns,  
12 whether they're renewed or otherwise, do you have  
13 concerns about this Commission?

14                  **A.** Yes, I always have concerns about the  
15 regulatory environment within which we operate. The  
16 regulatory environment is very, very important overall  
17 to our business.

18                  **Q.** Have any of the rating agencies issued any  
19 reports or documents recently that comment on the newly  
20 constituted Commission as compared to the Commission  
21 that decided your last rate case?

22                  **A.** I don't know. I would have to go back and  
23 review. Certainly the most recent Moody's and S&P  
24 reports comment on the overall regulatory environment  
25 and speak to it as improving.

1           Q.    Okay.  And you keep up with the rating  
2 agencies and what they say, don't you?

3           A.    Overall, yes.

4           Q.    Okay.  And you do it with respect to other  
5 Florida utilities, not just yours?

6           A.    I'm not sure what you mean.

7           Q.    Do you keep up with what Moody's, Standard &  
8 Poor's, Fitch's says about Progress Energy in their  
9 reports?

10          A.    To some degree.  To a much more limited degree  
11 than I keep up with their views of ourselves.

12          Q.    How about with Southern Company?

13          A.    Again, to a limited degree.

14          Q.    Okay.  You're not aware that after this  
15 Commission reached a decision in the Gulf rate case that  
16 any of the rating agencies issued rating warnings  
17 similar to those issued after the decision in the last  
18 FPL rate case, are you?

19          A.    No, I can't speak to the specifics of Gulf's  
20 case.

21          Q.    So that sentence that had the renewed concern,  
22 are you there?  This is, again, on Page 4, Line 19.

23          A.    Yes, sir.

24          Q.    Okay.  You say the only logical result of  
25 accepting such recommendations would be further



1 downgrades, higher cost of borrowing, and renewed  
2 concern over the regulatory environment in Florida. Is  
3 that your testimony?

4 **A.** That is my testimony, yes, sir.

5 **Q.** Okay. And you're referencing above. I'm  
6 unclear as to whether you're referencing any ROE that is  
7 less than 10 percent, or are you referencing the  
8 specific ROEs of the expert witnesses of the  
9 intervenors?

10 **A.** The latter. This is the summary, and it  
11 encompasses the recommendations from 8.5 percent,  
12 9 percent, and 9.25 percent, which I believe are all  
13 below 10 percent.

14 **Q.** Okay. So if -- you're focusing on the  
15 intervenor testimony. If this Commission said we think  
16 maybe 9.95 is appropriate, would your testimony be true  
17 with respect to the further downgrades, the higher cost  
18 of borrowing, and the renewed concern?

19 **A.** Yes and no. Obviously there is no absolute  
20 here, and something like ROE is clearly on a scale. The  
21 further we go down below a reasonably market-justified  
22 return on equity, then very clearly the greater the  
23 concerns are going to be, and the greater the negative  
24 impact on our overall credit position.

25 **Q.** And in your last rate case, do you know what

1 your ROE was before you filed your last rate case?

2 A. Are you referring to our earned ROE or our  
3 allowed ROE?

4 Q. Your allowed ROE, the midpoint.

5 A. As I recall, the last time it was  
6 11.75 percent.

7 Q. And you ended up at 10?

8 A. That's correct.

9 Q. And are there any witnesses in this case that  
10 are recommending an ROE deduction of 1.75 percentage  
11 points, or 175 basis points?

12 A. I'm sorry, relative to what?

13 Q. Relative to your existing ROE.

14 A. No. I believe the lowest recommended ROE by  
15 one of the intervenor witnesses is 8.5 percent, so that  
16 would be 150 basis points below the currently authorized  
17 10 percent.

18 MR. MOYLE: Okay. And if I could get help  
19 with an exhibit.

20 CHAIRMAN BRISÉ: Sure. We are on 631.

21 MR. MOYLE: It's actually one that has already  
22 been marked. I'm just going to hand it out again for  
23 ease of reference.

24 MR. LITCHFIELD: Mr. Chairman, I would simply  
25 note that I think this was -- it's already been

1 admitted. It was well covered by Dr. Avera. To the  
2 extent that Mr. Moyle has new questions relative to this  
3 exhibit that haven't been already traversed, perhaps  
4 that would be fine. But it's a late hour, and so to the  
5 extent that it is duplicative, I would object.

6 **CHAIRMAN BRISÉ:** Okay.

7 Mr. Moyle, let's see.

8 **MR. MOYLE:** I think we'll cover some new  
9 ground.

10 **BY MR. MOYLE:**

11 **Q.** You're not telling this Commission that, to  
12 the extent that an ROE of one of the intervenor  
13 witnesses, say 9 percent, if that 9 percent were  
14 awarded, that there would be downgrades, in fact,  
15 correct? You're not testifying to that point.

16 **A.** Well, yes and no. No, I can't guarantee,  
17 because obviously that's an action that the rating  
18 agencies would take. But based on my knowledge of  
19 credit analysis, how they look at things, I think it is  
20 highly likely, and I think the statistics actually by  
21 one of the intervenor witnesses demonstrate very  
22 strongly that there would be at least one notch,  
23 possibly multiple notch downgrades if their  
24 recommendations were adopted, and I don't think that's a  
25 direction we should want to go.

1           Q.    And you say that, notwithstanding the fact  
2 that, as you just testified to, in the last rate case,  
3 from your authorized midpoint to your awarded midpoint,  
4 it was 175 basis points, and Fitch didn't even downgrade  
5 you, did they?

6           A.    You've got two different questions there.  On  
7 the first, the starting point in a sense was -- you're  
8 comparing apples and oranges.  On the second, you're  
9 right, Fitch did not in the end downgrade us, because  
10 they got comfortable after the 2010 settlement agreement  
11 came in, that that brought us an opportunity to recover.

12          Q.    But that settlement agreement didn't come in  
13 for, what, six, eight months after the decision,  
14 correct?

15          A.    The actual final execution of the settlement  
16 agreement?  Yes, that's right.

17          Q.    And this Merchant Bond Record that has already  
18 been previously introduced, are you familiar with this  
19 document?

20          A.    No, I'm not.  This is obviously an outdated  
21 document, which I'd never seen before, so I can't speak  
22 to it.

23          Q.    Okay.  Well, do you know anything about  
24 Merchant Bond Record, or Mergent?

25          A.    No.  It's not a data supplier that I'm

1 familiar with.

2 Q. So you have -- in your job as CFO of the  
3 company, you have no information with respect to what  
4 Mr. Avera testified is a company affiliated with Moody's  
5 and how they rate bond yields?

6 A. I believe I just said I have no familiarity  
7 with this document. I'm not familiar with Mergent as a  
8 data supplier. We have many data suppliers. I'm not  
9 familiar with every single one, no.

10 Q. This is already in evidence, but on the  
11 page -- it's actually the third page in, down at the  
12 very, very, very bottom there is a citation to  
13 Section 17B of the Securities Act of 1933, in which it  
14 says, Moody's Investor Services discloses that most  
15 insurers of debt securities may have prior arrangements  
16 for the rating and agreed to pay Moody's Investor  
17 Services.

18 Are you familiar with that disclosure?

19 A. I'm sorry. Could you repoint me to the  
20 section? I haven't found it.

21 Q. Sure. The first page is the number.

22 A. Okay.

23 Q. The second page is the big sheet that says  
24 Mergent Bond Record.

25 A. Okay.

1 Q. The third page is this index page. Do you see  
2 it?

3 A. Yes.

4 Q. Okay. And the very last words on the piece of  
5 paper.

6 A. Okay. I read it.

7 Q. Okay. Are you familiar with those types of  
8 disclosures?

9 A. Generally. Most analytical organizations need  
10 to make comparable disclosures.

11 Q. Okay. And this one is by Moody's, correct?

12 A. This appears to be by Moody's. Again, I have  
13 no -- you know, this is a document that I've just seen  
14 for the first time, so I have no independent way of  
15 recognizing it.

16 Q. All right. So let me just flip you to the  
17 last page. It's Page 11.

18 A. I'm there.

19 Q. It's Page 11, at the right-hand side.

20 **MR. LITCHFIELD:** Mr. Chairman, the witness has  
21 said he has not seen this document, he's not familiar  
22 with this data source, and beyond that it's a document  
23 that Mr. Moyle had before Dr. Avera, who did agree to  
24 work with him through the document and answered the  
25 questions that Mr. Moyle had at that time.

1           If Mr. Moyle had additional questions, he  
2 should have put them to Dr. Avera. I think the time has  
3 passed, it's late, and I respectfully request that Mr.  
4 Moyle move on to his next line.

5           **MR. MOYLE:** I just have a couple more.

6           **CHAIRMAN BRISÉ:** Mr. Moyle, I think I'll agree  
7 here. You've asked, I think, three or four ways whether  
8 he's familiar with this document, and he's said in three  
9 or four ways that he's not, so if we can move on.

10          **BY MR. MOYLE:**

11           **Q.** Have you spent much time in North Florida?

12           **A.** What you do mean by much time?

13           **Q.** Other than in the last two weeks. There's a  
14 saying that I've heard up here that says you don't catch  
15 any fish if you don't have your line in the water.

16                   Have you ever heard that? You have mentioned  
17 the Bahamas in your direct.

18           **A.** That's not an expression I'm familiar with.

19           **Q.** Okay.

20           **A.** It does sound reasonable.

21                   (Laughter.)

22           **Q.** Wouldn't you agree that that is comparable to  
23 base rates with respect to your company, that really the  
24 only way that you can get an increase in base rates is  
25 to come in and ask for it?

1           **MR. LITCHFIELD:** Outside the scope of his  
2 rebuttal.

3           **CHAIRMAN BRISÉ:** Mr. Moyle.

4           **MR. MOYLE:** He's in here supporting the ROE  
5 adder and the whole rate case. I think it's fair.

6           **CHAIRMAN BRISÉ:** Is it within the scope of the  
7 rebuttal itself?

8           **MR. MOYLE:** I think his overall testimony  
9 supports the rate case.

10          **MR. LITCHFIELD:** And 17 other witnesses do  
11 likewise.

12 **BY MR. MOYLE:**

13          **Q.** Gulf has a higher risk profile than FPL,  
14 doesn't it?

15          **A.** No.

16          **Q.** I'm sorry?

17          **A.** No, I don't believe so. That is what my  
18 testimony speaks to.

19          **Q.** How about with respect to the debt rating; is  
20 Gulf's debt rating viewed as riskier or less risky than  
21 FPL's?

22          **MR. LITCHFIELD:** I will object to the form of  
23 the question. I think counsel is mixing -- he's asking  
24 about risk, but he's asking -- I'm not sure whether he's  
25 asking about equity risk or debt risk. He shifted



1 gears. I'd like a clarification.

2 **MR. MOYLE:** We can read the record back. The  
3 witness used the term higher risk profile in answer of  
4 one of his previous questions.

5 **CHAIRMAN BRISÉ:** Mr. Moyle, if you could pose  
6 your question again so I can hear it.

7 **BY MR. MOYLE:**

8 **Q.** When we were talking earlier you said  
9 something about a higher risk profile, did you not?

10 **A.** I'm sorry. I may have misspoken. In terms of  
11 the fundamental underlying risk profile, my testimony is  
12 that FPL has a higher risk profile than Gulf Power.

13 To your question on bond ratings, Gulf Power  
14 has a higher rating, at least from S&P, which is the  
15 data that I have readily available, than we do.

16 **Q.** Is that for the Southern Company or for Gulf?

17 **A.** Gulf Power Company.

18 **Q.** What are they rated?

19 **A.** By S&P, A stable and A1. That's the  
20 commercial paper.

21 **Q.** And by Moody's?

22 **A.** I don't have Moody's with me.

23 **Q.** And you have a higher equity component of your  
24 capital structure than either Gulf or Progress Energy,  
25 isn't that true?

1           A.    Yes, just illustrating that equity ratio is  
2 merely one component of an overall risk assessment to  
3 determine a credit position.

4           Q.    So you're aware that this Commission has  
5 recently entered orders awarding Gulf 10.25 and Progress  
6 Energy 10.5 this year, are you aware of that?

7           A.    Yes. My understanding is that Gulf was  
8 awarded 10.25 as a result of a conventional base rate  
9 case, and Progress through a settlement agreement is  
10 able to earn 10.5 with a possibility of at some point in  
11 the future of earning up to 10.7 percent. That's my  
12 understanding.

13          Q.    All right. Florida Power & Light does not  
14 need 11.5 for its ROE, does it?

15          A.    I disagree with you on that. Obviously need  
16 refers to need relative to some standard. I think the  
17 standard that we're trying to look for here is need --

18          Q.    Mr. Dewhurst, just a yes or a no. I mean, you  
19 sit here tonight --

20          A.    I said I disagree --

21          Q.    Is it your testimony that you got to have 11.5  
22 to run your company effectively?

23                **CHAIRMAN BRISÉ:** Mr. Moyle, I think that that  
24 question requires a yes or no, but then I think the  
25 witness should be allowed to qualify the yes or the no

1 on that.

2 **MR. MOYLE:** Thank you, Mr. Chairman. I think  
3 I got the explanation without the yes or no.

4 **BY MR. MOYLE:**

5 **Q.** Do you want me to repose the question?

6 **A.** Yes, please, because I heard two very  
7 different questions in that.

8 **Q.** Okay. As we sit here tonight, is it your  
9 testimony that Florida Power & Light must have 11.5 ROE  
10 in order to run its company effectively and efficiently?

11 **A.** Yes and no. No to the extent that we would be  
12 able to continue to run and certainly for some time  
13 safely and efficiently. But yes to the extent that over  
14 the long term my testimony is that what we have asked  
15 for here, the overall capital structure and the ROE, are  
16 what is needed to fulfill the standards, including full  
17 cost recovery and a proper return for investors.

18 **MR. MOYLE:** Thank you. I'm done.

19 **CHAIRMAN BRISÉ:** Okay. Thank you, Mr. Moyle.

20 **MR. SUNDBACK:** Mr. Chairman, it was shocking  
21 it was so abrupt. Thank you.

22 **CROSS EXAMINATION**

23 **BY MR. SUNDBACK:**

24 **Q.** Good evening, Mr. Dewhurst. Let's look at  
25 your Page 48, starting at Line 18 through the bottom of

1 the page. And let us know when you've had a chance to  
2 review that, please.

3 A. I'm with you.

4 Q. Thank you. You're addressing the ROE  
5 incentive adder there, and you link it to superior  
6 performance, right?

7 A. That's correct.

8 Q. And superior performance, in your opinion, in  
9 part is composed of superior customer service, correct?

10 A. That's correct. Superior performance -- by  
11 superior performance I'm trying to capture all the  
12 attributes that customers value, of which customer  
13 service is clearly one.

14 Q. Okay. At Page 49, Lines 7 through 11, you  
15 discuss some other management actions, right?

16 A. Yes. Specifically with respect to management  
17 actions that have affected customer bills, another  
18 attribute of customer value.

19 Q. Well, the way that the customer bills have  
20 been impacted is through changes or improvements in  
21 operations that are identified at Lines 7 through 11,  
22 right?

23 A. Yes. Among other things, I just provide a  
24 couple of examples here.

25 Q. Okay. But I'm just trying to see whether it's

1 your testimony that these actions are changes or  
2 improvements with regard to the company's operations?

3 **MR. LITCHFIELD:** That has been asked and  
4 answered.

5 **MR. SUNDBACK:** Mr. Chairman, I'm not sure I  
6 got an answer. If it has been answered, I think an easy  
7 answer is yes. If he agrees in the affirmative, he can  
8 just say affirmative. But I'm not sure we got there.

9 **CHAIRMAN BRISÉ:** I would agree with you. If  
10 you could ask the question again.

11 **BY MR. SUNDBACK:**

12 **Q.** Mr. Dewhurst, your identification of  
13 management actions on Lines 7 through 11 take the form  
14 of improvements or changes in company operations, right?

15 **A.** That's correct. These two specific examples  
16 do.

17 **Q.** Okay. Would you characterize these as  
18 examples of the company's operational excellence?

19 **A.** Not exactly. I would characterize them as, in  
20 part, a function of our devotion, if you like, to  
21 operational excellence.

22 **Q.** Okay. Fair enough. Is it your contention  
23 that without the ROE incentive adder, FPL will not  
24 strive for superior service and operational excellence?

25 **A.** No, I think we will always strive for it.

1 It's my testimony that there is value in introducing the  
2 adder.

3 Q. Well, actually, FPL has stated that its  
4 commitment to operational excellence and superior  
5 customer service is unyielding, hasn't it?

6 A. I'm not familiar with that statement. I'm not  
7 saying it's not true, but I'm not personally familiar  
8 with that one.

9 Q. Well, let's see if we can try to nail that one  
10 down.

11 MR. SUNDBACK: Mr. Chairman, could we have  
12 marked with the next appropriate exhibit number a  
13 two-page excerpt of an FPL presentation.

14 CHAIRMAN BRISÉ: Sure. 631.

15 (Exhibit Number 631 marked for  
16 identification.)

17 MR. SUNDBACK: Thank you. And just for the  
18 record, this represents materials presented May 21,  
19 2010, by Mr. Lew Hay, Chairman and CEO of the FPL Group.

20 CHAIRMAN BRISÉ: Okay. Any objections?

21 MR. LITCHFIELD: No.

22 BY MR. SUNDBACK:

23 Q. Mr. Dewhurst, if you would turn to the last  
24 page of this handout. Under the bullet point at Florida  
25 Power & Light you'll see the first hyphenated point.

1           **A.**    Could you give me a moment to review this?

2           **Q.**    Certainly.

3           **A.**    It looks to be a very selective excerpt from a  
4 larger document from 2010, if I'm reading this  
5 correctly.

6                    I've reviewed it.

7           **Q.**    Okay.  And just to refresh my recollection, as  
8 of May 21, 2010, you were Vice Chairman?

9           **A.**    That is correct; yes.

10          **Q.**    Okay.  And in conjunction with Mr. Hay at that  
11 time, you were helping make policy for the enterprise?

12          **A.**    Yes.

13          **Q.**    And you wouldn't disagree with Mr. Hay's  
14 statement that appears under the second bullet point in  
15 the first hyphenated phrase on the last page of what's  
16 been marked as Exhibit 631?

17          **A.**    No, I would not.

18          **Q.**    Okay.  Thank you.

19                    You, do you believe that this is a correct  
20 statement of the company's belief and policy at that  
21 time?

22          **A.**    I'm not sure I would call it either a belief  
23 or a policy.  It was certainly -- maybe it's almost more  
24 like a value.  It's certainly something that we were  
25 committed to.

1           Q     Okay. Thank you. And is it correct to take  
2 your testimony a few moments ago that that is a value  
3 that is still true today for the enterprise?

4           A     Yes, sir, very much so.

5           Q     Thank you. Thank you.

6                     Okay. Still on page 49, lines 2 through 3,  
7 you refer to the construction of natural gas-fired  
8 plants in the transition away from fuel oil; right?

9           A     Yes, that's correct.

10          Q     And at lines 19 through 20, you say that FPL  
11 must have done something to produce that low cost  
12 position relative to other utilities, and you want us to  
13 take that into account, for instance, with regard to the  
14 developments that are outlined in the foregoing  
15 paragraph; right?

16          A     No, that's not quite correct. The statement  
17 in line 19 was merely put in there to rebut an assertion  
18 by Witness Lawton in his testimony, which to me confused  
19 a proximate with an ultimate cause.

20          Q     Well, FPL's decision to construct more natural  
21 gas-fired generation wasn't solely a result of the  
22 decisions by its management on a unilateral basis;  
23 correct?

24          A     I'm not sure I'm following you. Could you  
25 help me out? I'm thinking of factors that were



1 contributing. I'm not clear.

2 Q It's late, so I'll try to -- I apologize.

3 FPL in 2007 had pending before this Commission  
4 a proposal to invest over \$5.5 billion in a coal-fired  
5 plant; right?

6 A That's correct.

7 Q And \$5.5 billion would be a substantial  
8 investment, even for FPL; right?

9 A I agree with that.

10 Q You were CFO during the time; right?

11 A I was.

12 Q The Commission turned the plant down by a vote  
13 of 4 to 0; right?

14 A I don't recall the vote, but they certainly  
15 rejected it, yes.

16 Q Do you recall that the Chair of the Commission  
17 at the time stated that FPL's proposal was not the most  
18 cost-effective option?

19 A I believe I recall that. I just do need to  
20 clarify that lines 2 and 3 do not refer to this time  
21 period. They refer to a time period earlier, just so  
22 we're clear.

23 **MR. SUNDBACK:** Mr. Chairman, could we have  
24 marked with the next available exhibit number a press  
25 release from 2007?

1                   **CHAIRMAN BRISÉ:** Okay. That would be 632.

2                   (Exhibit 632 marked for identification.)

3                   **BY MR. SUNDBACK:**

4                   **Q**     Do you have a copy of that document,  
5                   Mr. Dewhurst?

6                   **A**     I do.

7                   **Q**     Let's look at the second paragraph. Do you  
8                   disagree that the Commission made a thorough analysis of  
9                   the record evidence?

10                  **A**     I'm sorry. The second paragraph, I don't --

11                  **Q**     Yes, sir. On the second line there's a  
12                  recitation in that first sentence of a number of inputs,  
13                  and one of the statements is there was a thorough  
14                  analysis of the record evidence. Do you see that?

15                  **A**     Yes, sir, I see that.

16                  **Q**     Do you think the Commission was wrong when it  
17                  made that statement?

18                  **A**     No. I agree there was a very thorough  
19                  analysis of the record at that time.

20                  **Q**     Okay. And in the third, third paragraph,  
21                  you'll see that the Chair of the Commission stated that  
22                  FPL's proposal is not the most cost-effective  
23                  alternative. Do you see that?

24                  **A**     I do see that.

25                  **Q**     Was that an incorrect statement when it was

1 made?

2 **A** I believe that the Chairman was acting  
3 completely forthrightly.

4 **Q** That wasn't my question. Was the question --  
5 was the statement incorrect when it was made?

6 **MR. LITCHFIELD:** Mr. Chairman, I'll object to  
7 the form of the question. It's phrased in a way that  
8 suggests the witness has said that it was an incorrect  
9 statement, so I object to the way it's being phrased and  
10 put to the witness. It's almost argumentative.

11 **MR. SUNDBACK:** Mr. Chairman, we'll rephrase  
12 it, if that moves it along.

13 **CHAIRMAN BRISÉ:** Please do.

14 **BY MR. SUNDBACK:**

15 **Q** Would you agree with the statement that  
16 appears in the third paragraph, that FPL's proposal was  
17 not the most cost-effective alternative?

18 **A** Rehashing old ground, no, I would not. I  
19 believed at that time and I continue to believe that it  
20 was the most cost-effective. Obviously the Commission  
21 ruled differently, I accept that ruling, and we have  
22 subsequently moved on.

23 **MR. SUNDBACK:** Okay.

24 **CHAIRMAN BRISÉ:** Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you. And it is

1 late and I, and I am tired. But I think there's a,  
2 maybe a subtle difference with your, your question and  
3 what I'm reading here in front of me, which is, and  
4 obviously we all see that it's a quote that I issued at  
5 that point in time, and I fully stipulate that I did  
6 issue that quote at that point in time and, and believed  
7 it to be an accurate statement at that point in time and  
8 still believe it to be an accurate statement.

9 But the statement is that the Commission ruled  
10 that FPL's proposal is not the most cost-effective  
11 alternative at that time, and I do believe that that  
12 was, was and is an accurate statement describing the  
13 ruling.

14 **MR. SUNDBACK:** Commissioner, to the extent  
15 that my characterization was incorrect in the question,  
16 I want to apologize for it.

17 **COMMISSIONER EDGAR:** I'm not sure it was  
18 incorrect, but I think there was a, there was a subtlety  
19 that was perhaps missing, and just for clarity --

20 **MR. SUNDBACK:** Commissioner, you are much  
21 sharper at this hour than the cross-examiner is, so I  
22 apologize for --

23 **COMMISSIONER EDGAR:** No apology necessary. I  
24 just wanted to clarify.

25 Thank you, Mr. Chairman.

1           **MR. SUNDBACK:** Thank you.

2           Could we have marked another document at this  
3 point, which is another press release, and if the notes  
4 here are correct, that would be hearing Exhibit 633, Mr.  
5 Chairman.

6           **CHAIRMAN BRISÉ:** Yes. 633.

7           (Exhibit 633 marked for identification.)

8           **COMMISSIONER EDGAR:** Is this going to be  
9 another quote of mine?

10          (Laughter.)

11          **MR. SUNDBACK:** Quotations from the Chairman?

12          No.

13          **BY MR. SUNDBACK:**

14           **Q**     Mr. Dewhurst, you'll see this is a June 5th,  
15 2000 -- or at least dated June 5th, 2007, at the top,  
16 and it's a press release from FPL; right?

17           **A**     If you'll allow me to read it.

18           **Q**     Certainly.

19           **MR. LITCHFIELD:** May I ask for a  
20 clarification? And I could be misremembering. I  
21 thought this had been marked previously, and even  
22 entered and discussed at length previously with, if not  
23 this witness, a prior witness. If I'm wrong about that  
24 --

25           **MR. SUNDBACK:** Mr. Chairman, I thought there

1 was an effort to introduce it and it was not admitted.  
2 I, if, if it's in the record, I'd be intrigued to find  
3 out that information. I apologize if, if that's  
4 incorrect, and I'm not aware that it actually was  
5 admitted.

6 **MR. YOUNG:** Mr. Chairman, I think Mr. Sundback  
7 is correct. It was, it was attempted to be entered by  
8 Mr. Saporito. Florida Power & Light objected to it.  
9 And I can't remember if the Chairman had the gavel or he  
10 passed the gavel, but I remember, I recall that that,  
11 this exhibit was excluded from entrance.

12 **CHAIRMAN BRISÉ:** From inclusion, yeah.

13 **MR. LITCHFIELD:** My recollection has also been  
14 refreshed.

15 **MR. MOYLE:** I think it was Captain Miller, and  
16 the objection was -- there was nobody to authenticate  
17 it, is my recollection on that.

18 **CHAIRMAN BRISÉ:** Okay.

19 **MR. SUNDBACK:** And once again, I apologize  
20 if --

21 **CHAIRMAN BRISÉ:** Sure. No problem. It's  
22 late.

23 **BY MR. SUNDBACK:**

24 **Q** All right. Mr. Dewhurst, have you had a  
25 chance to read this?

1           **A**     I have skimmed through it, yes.

2           **Q**     Okay.  And in the third paragraph you'll see  
3 the second sentence states that FPL criticizes the PSC  
4 decision because it increases customers' exposure to  
5 what most experts believe will be higher natural gas  
6 prices and increased volatility in those prices.  Do you  
7 see that statement?

8           **A**     Yes.  As it turned out, the Commissioners were  
9 far more prescient than we were.

10          **Q**     Okay.  In that case, should the Commission and  
11 its staff, because of their rejection of the Glades  
12 power plant, receive an incentive payment for excellent  
13 judgment and management of FPL?

14          **A**     I don't think I'm in a position to answer  
15 that.

16          **Q**     Okay.  The Glades Power Park project would  
17 have represented a capital cost that exceeded the  
18 capital cost of Cape Canaveral, Riviera, the Everglades  
19 plant, and West County 3 all rolled together; isn't that  
20 right?

21          **A**     I don't recall the exact numbers.  That's  
22 possible.

23          **Q**     Well, you're the CFO of the company, and those  
24 are four major natural gas projects that are either  
25 underway or recently completed.  You're telling us that

1 you can't --

2 **MR. LITCHFIELD:** Argumentative.

3 **MR. SUNDBACK:** I'm sorry.

4 **MR. LITCHFIELD:** Argumentative.

5 **CHAIRMAN BRISÉ:** I would agree.

6 **MR. SUNDBACK:** Thank you, Mr. Chairman.

7 **BY MR. SUNDBACK:**

8 **Q** Would you agree that West County 3's capital  
9 cost is approximately 865 million?

10 **A** Subject to check. I haven't reviewed the  
11 numbers for quite a while.

12 **Q** And Riviera's is 1.3 billion?

13 **A** Okay.

14 **Q** Cape Canaveral is 1.1 billion?

15 **A** Okay.

16 **Q** Everglades is 1.185 billion; right?

17 **A** Okay.

18 **Q** So that gets us to about 4.45 billion; right?

19 **A** Okay.

20 **Q** And so Glades was a proposal to spend 20 to  
21 25% more than that total; right?

22 **A** I'm not sure whether -- I don't recall the  
23 Glades capital investment. I'm not saying you're wrong.  
24 I just don't recall it. I don't see it here. I may be  
25 missing it. Again, as you said, it's late.



1           Q     Okay. Well, fair enough. You'd also agree  
2 that the Glades generation capacity is a fraction of the  
3 total capacity that's represented by those four natural  
4 gas-fired plants; right?

5           A     Yes. Coal is a more capital intensive  
6 technology than natural gas, and particularly at this  
7 time offered lower fuel prices, fuel costs in  
8 compensation.

9           Q     Well, in fact, natural gas prices in the last  
10 year have been so low that natural gas is crowding out  
11 coal in electric generation in some markets; isn't that  
12 right?

13          A     No, I don't think it's correct to say that  
14 it's crowding out. It is the relative price of gas and  
15 coal is causing some generators who have the flexibility  
16 to switch to gas or burn gas if they can.

17          Q     Okay. Let's look at your rebuttal testimony  
18 at page 23, if we could, lines 5 through 18. Let me  
19 know once you've had a chance to review that, please.

20          A     Okay.

21          Q     Okay. And there you're testifying about the  
22 impact of the Commission's orders on FPL in 2010; right?

23          A     No. My testimony speaks to the impact of the  
24 2010 rate settlement agreement.

25          Q     Okay. Would you agree that your testimony

1 does also address the other order issued in 2010  
2 concerning FPL's rate case?

3 A Can you point me to the particular section  
4 you're considering?

5 Q Let's look at page 14, line 17, Mr. Dewhurst.

6 A Okay. Thank you.

7 Q That refers to the presettlement decision,  
8 doesn't it?

9 A Yes. That specifically refers to the  
10 authorized ROE of 10%, which, again, remains, puts us  
11 among the bottom third of authorized ROEs.

12 **MR. SUNDBACK:** Mr. Chairman, we're trying to  
13 move it along here and instead -- that, that answer  
14 didn't, didn't get us anywhere in terms of progress.

15 **BY MR. SUNDBACK:**

16 Q Would you agree that the Commission voted on  
17 or about January 13th, 2010, on the first of the 2010  
18 rate case orders?

19 A Yes.

20 Q And that the decision itself was issued on or  
21 about March 17th, 2010?

22 A Yes.

23 Q Between, let's say, January 2010 and  
24 August 2010 when the settlement was filed, FPL was  
25 engaged in discussions with the investment community,

1 was it not?

2 A Yes.

3 Q Okay. Let's look at page 24, line 5. You  
4 refer to providing investors with comfort. And that was  
5 a result of the settlement; right?

6 A That's correct. I address this in more detail  
7 in my direct testimony.

8 Q Okay. And it's true, isn't it, that even  
9 before the settlement was filed, NextEra was telling its  
10 investors that the settlement -- that things would work  
11 out all right, wasn't it?

12 A Perhaps you can point me to that document.

13 Q Yes, sir.

14 MR. SUNDBACK: Mr. Chairman, if we could have  
15 marked as hearing Exhibit 633, if we're --

16 CHAIRMAN BRISÉ: 634.

17 MR. SUNDBACK: 634. Yes.

18 (Exhibit 634 marked for identification.)

19 BY MR. LITCHFIELD:

20 Q All right. Mr. Dewhurst, you'll see this as a  
21 May 4th, 2010, presentation by Mr. Cutler.

22 A Again, it appears to be selected excerpts from  
23 a presentation.

24 Q Well, let's, let's turn to the next page after  
25 the cover page.

1           **MR. LITCHFIELD:** May I ask counsel if he has  
2 the complete document to which this pertains?

3           **MR. SUNDBACK:** Yes, certainly. We'd be happy  
4 to provide a copy to FPL at this point, if that's its  
5 desire.

6           **MR. LITCHFIELD:** Thank you.

7 **BY MR. SUNDBACK:**

8           **Q** All right, sir. And do we understand by this  
9 chart that in 2010 year-to-date FPL accessed as much or  
10 raised as much capital as it had raised in the entirety  
11 of 2009?

12           **MR. LITCHFIELD:** May I -- I've asked also for  
13 a copy to be provided to the witness, a full copy, if  
14 that's all right.

15           **CHAIRMAN BRISÉ:** Sure. Go ahead.

16           **MR. LITCHFIELD:** If he may approach the  
17 witness, please, Mr. Chairman. Thank you.

18           **CHAIRMAN BRISÉ:** Yes.

19           **MR. SUNDBACK:** And may the record reflect that  
20 the witness has now received a full copy, please. It  
21 may not be in the beautiful color that the excerpts are,  
22 but --

23           **THE WITNESS:** Could you repeat your question,  
24 please?

25

1 **BY MR. SUNDBACK:**

2 Q Yes, sir. On the slide that's labeled 13 in  
3 the lower left-hand corner.

4 A Yes. I'm with you on the slide.

5 Q Are you on that page, sir?

6 A Yeah, I'm on that page.

7 Q Okay. You'll see the bar charts, and on the  
8 right-hand side you'll see a dark blue area in the 2010  
9 year-to-date bar chart, and doesn't that appear to be  
10 about the same size as the blue area in the 2009 bar  
11 chart?

12 A Yes. It appears that long-term debt capital  
13 raised in the 2010 year-to-date was about 500 million,  
14 and that seems to be about what we did in 2009. That's  
15 obviously not all the capital that FPL needs.

16 Q But it certainly caused FPL to represent that  
17 it had successfully accessed capital during that period;  
18 right?

19 A That's correct.

20 Q Okay. If you'd turn to the next page, which  
21 is labeled 14 in the lower left-hand corner.

22 A I'm with you.

23 Q You'll see the representation in the blue box  
24 that you have confidence that we can access worldwide  
25 capital again in 2010 and beyond to fund growth. Do you

1 see that?

2 **A** I see that.

3 **Q** Okay. You don't believe that was a mistaken  
4 statement, do you?

5 **A** Certainly not. It's --

6 **MR. LITCHFIELD:** Argumentative again. Really  
7 it would help things if counsel would, would not argue  
8 with the witness and would pitch the question in a pure  
9 question form.

10 **MR. SUNDBACK:** Mr. Chairman, we, we don't want  
11 to have an objection when we're done with these  
12 documents that we haven't conducted cross-examination on  
13 them and haven't laid a foundation. We're testing the  
14 proposition with the witness. We're entitled to do  
15 that.

16 **MR. LITCHFIELD:** It's the form to which I  
17 object.

18 **CHAIRMAN BRISÉ:** Right. I think the, the  
19 objection has to do with, with maybe how the question is  
20 posed.

21 **MR. SUNDBACK:** Maybe we can use the same  
22 mechanism we did before, Mr. Chairman.

23 **BY MR. SUNDBACK:**

24 **Q** Would you agree that FPL had confidence that  
25 it could access worldwide capital again in 2010 and

1 beyond to fund growth?

2 **A** Yes. Although I have to note that this  
3 statement says nothing about the terms on which we could  
4 access capital.

5 **Q** Let's take a look at the next page, which is  
6 labeled 15 in the lower left-hand corner. To your  
7 knowledge, is the information reflected on that page  
8 correct?

9 **A** I don't recall these specific transactions. I  
10 have no reason to believe that they are not correct.

11 **Q** And, and that totals about \$2 billion, just on  
12 that page, from February 2010 through May 2010; right?

13 **A** That's correct. Across a variety of different  
14 activities, 500 million of which is associated with FPL,  
15 the rest with FPL Group capital.

16 **Q** Okay. Now, once again, back to pages 48 and  
17 49. Maybe we can shortcut this by looking at page 49,  
18 line 7.

19 **A** Yes, sir.

20 **Q** You're talking -- we're back to the management  
21 actions and decisions again.

22 Could you point me to a place in your  
23 testimony where you acknowledge any material mistake  
24 that FPL's management has made in the last six years?

25 **A** I don't believe there are any in my testimony.

1           **Q**     Do you believe that the company has not made  
2 any material mistakes in the last six years?

3           **A**     I'm going to have to ask you to define  
4 material, because that has a very, it has a number of  
5 possible meanings.

6           **Q**     For our purposes, it would be material with  
7 regard to the impact on ratepayers.

8           **MR. LITCHFIELD:** It's also a vague and  
9 undefined term.

10          **MR. SUNDBACK:** Well, Mr. Chairman, if the  
11 witness can address it, he can address it. If it he  
12 finds it vague and difficult, then we'll try to  
13 reformulate it. But he seems to be quite capable of  
14 identifying concerns he has with that type of question.

15          **CHAIRMAN BRISÉ:** I will allow the question.  
16 Mr. Dewhurst, if you can answer.

17          **THE WITNESS:** I can't --

18          **CHAIRMAN BRISÉ:** If you can, I mean.

19          **THE WITNESS:** Yeah. I can't think of any. I  
20 think the record of our cost performance, our  
21 reliability, and our customer service speaks to the  
22 overall good job that we've been doing for our  
23 customers. I'm not going to say our performance is  
24 perfect. By no means is it perfect. We hope we get  
25 better next year than we are this year. But I think



1 it's been pretty good during this period.

2 **MR. SUNDBACK:** Okay. Thank you, Mr. Dewhurst.  
3 Those are all my questions.

4 Mr. Chairman, Commissioners, thank you for  
5 your indulgence.

6 **CHAIRMAN BRISÉ:** Thank you.

7 OPC, Mr. Rehwinkel.

8 **MR. REHWINKEL:** Yes, Mr. Chairman. Pursuant  
9 to agreement with counsel for FPL, I will be asking  
10 questions only about VI, which is pages 38 to 44, and  
11 Mr. McGlothlin will ask on the rest.

12 **CHAIRMAN BRISÉ:** Okay.

13 **CROSS EXAMINATION**

14 **BY MR. REHWINKEL:**

15 **Q** Good evening, Mr. Dewhurst.

16 **A** Good evening.

17 **Q** Can we agree for purposes of my questions to  
18 you tonight that if I use the phrase SRM, it means the  
19 storm recovery mechanism that you're asking the  
20 Commission to adopt in this case?

21 **A** Yes.

22 **Q** Okay. Can you turn to page 38 of your  
23 rebuttal testimony.

24 **A** Yes, sir.

25 **Q** You propose in this proceeding to, quote,

1 continue to recover prudently incurred storm costs,  
2 close quote, under the provision in paragraph 3 of the  
3 2010 rate settlement and order; isn't that right?

4 **A** I take your word on the specific paragraph. I  
5 don't recall the exact paragraph, but it's -- what we're  
6 proposing is to lift that specific piece from the 2010  
7 rate settlement and use that as the template for storm  
8 cost recovery.

9 **MR. REHWINKEL:** Okay. Mr. Chairman, I am  
10 asking for an exhibit to be passed out. It does not  
11 need a number because it is the order approving this  
12 proposed stipulation. That's Order Number  
13 PSC-11-0089-S-EI.

14 **CHAIRMAN BRISÉ:** Okay.

15 **BY MR. REHWINKEL:**

16 **Q** Mr. Dewhurst, while that's being passed out,  
17 I'll continue with the questioning, if that's okay.

18 Isn't it also true that your basis for wanting  
19 to use that framework for SRM is that there is precedent  
20 for it in that 2010 order?

21 **A** No, sir.

22 **Q** Well, let's look at your rebuttal testimony.  
23 Would you turn to page 38, please.

24 **A** I'm there.

25 **Q** Okay. The bottom of page 38, line 21 and 22,

1 you state there, do you not, FPL proposes for the  
2 future, for the immediate future to continue to recover  
3 prudently incurred storm costs under the framework  
4 prescribed by the 2010 rate settlement?

5 **A** Yes, sir. Maybe I can just explain the  
6 difference, at least in, in my mind. As far as I, my  
7 understanding of the 2010 settlement agreement, that's a  
8 total package that was appropriate and all parties  
9 agreed was appropriate at that point in time.

10 I'm not trying to suggest that this particular  
11 framework has any precedential value drawn from that.  
12 I'm trying to suggest that I think this is a reasonable  
13 framework for the Commission to consider on its own  
14 merits at this point in time.

15 **Q** Well, let's look at page 40 of your rebuttal  
16 then, and I'd direct you to lines 21 through 23. You  
17 state there that the fact that this framework was  
18 previously agreed to as one part of a settlement does  
19 not mean that the Commission cannot decide it, cannot  
20 decide that it is an appropriate framework based on its  
21 own merits; right?

22 **A** Yeah. That's what I think I was just trying  
23 to say.

24 **Q** Okay. So you're saying that's the basis on  
25 its own merits that you're asking the Commission to

1 approve this SRM?

2 A Yes, sir. That is a reasonable framework.

3 Q Okay.

4 A In and of itself.

5 Q Well, then tell me, please, why you state on  
6 page 44, line 12, that the SRM was previously supported  
7 by OPC and the SFHHA.

8 A I'm merely observing that it was supported by  
9 OPC and SFHHA.

10 Q Can you tell me what basis you have for saying  
11 that the OPC and SFHHA supported that SRM?

12 A That it was an integral part of this  
13 settlement agreement. Again, I'm not trying to -- I'm  
14 trying to say that I think it's an appropriate piece to  
15 lift as a template from this agreement, while  
16 recognizing that it was an integral part at that time of  
17 a broader set of agreements. I'm not trying to run away  
18 from that.

19 Q Okay. I think earlier in response to a  
20 question on cross-examination you indicated that your  
21 current midpoint is 10.0?

22 A The authorized ROE?

23 Q Yes.

24 A Yes, sir.

25 Q And would you also agree that the settlement

1 agreement is still in effect?

2 A As of today? Yes.

3 Q Yes. Okay. So you would agree with me that  
4 the SRM is the provision in an active in effect  
5 settlement agreement; correct?

6 A That's my understanding, yes.

7 Q And you would also agree that a 10.0 ROE is in  
8 effect as well; correct? Authorized ROE.

9 A Yes. Although not as a function of the  
10 settlement agreement. That was from the PSC's order.

11 Q Okay. Is there, is there an ROE range in the  
12 settlement agreement?

13 A I would have to refresh my recollection.

14 Q If I could get you to turn to page 20 of the  
15 order at the top left, or page 10 of the settlement  
16 agreement at the bottom, and direct you to the top of  
17 that page.

18 A The top of page 10 of the --

19 Q Of the settlement agreement.

20 A That appears to be a continuation of a clause  
21 from the previous page.

22 Q Let me strike that question and move on and  
23 ask you a different question.

24 Would you please look at the last page of the  
25 settlement agreement, or page 12. This is before the

1 signature pages.

2 A Okay.

3 Q I think you've agreed that what is in  
4 paragraph 10 on the first line there that begins with  
5 the provisions; do you see that?

6 A Yeah.

7 Q You've agreed that this is an operative term  
8 of the settlement agreement that means that it's all or  
9 nothing; correct?

10 A That's my understanding.

11 Q Okay. Now, you don't have any basis for  
12 saying that because the Public Counsel and the Hospital,  
13 or SFHHA, signed this agreement, that they specifically  
14 support the SRM by itself?

15 **MR. LITCHFIELD:** Mr. Chairman, I think that  
16 counsel has asked this at least three times. I think  
17 the witness has not really differed with counsel,  
18 although it seems like counsel keeps intending to  
19 believe that, that Mr. Dewhurst will disagree with him  
20 on this. He said it's part of the package, he said it's  
21 part of a settlement, and I think we're treading over  
22 ground that, that has already been covered.

23 **CHAIRMAN BRISÉ:** Mr. Rehwinkel?

24 **MR. REHWINKEL:** Mr. Chairman, I can ask a  
25 different question.

1                   **CHAIRMAN BRISÉ:** Okay. Please do.

2                   **BY MR. REHWINKEL:**

3                   **Q**     How many times has FPL used the SRM,  
4                   Mr. Dewhurst?

5                   **A**     I'm not sure I know what you mean by used the  
6                   SRM. If you're referring to how many times we have  
7                   charged items against the storm reserve, which I think  
8                   would be consistent with this, I'm not sure.

9                   **Q**     Okay. How many times have you billed  
10                   customers pursuant to the provisions of the SRM?

11                   **A**     To my knowledge, we have not had to use that  
12                   part of the mechanism. We've been very, very fortunate  
13                   the last few years.

14                   **Q**     Okay. How many times has Progress Energy used  
15                   the SRM that's in their agreement?

16                   **A**     I have no information on that.

17                   **Q**     Okay. Whose idea was the storm recovery  
18                   mechanism, or SRM?

19                   **A**     I don't know. I wasn't involved in the  
20                   negotiations for this settlement agreement.

21                   **Q**     Wouldn't you agree that it is just copied from  
22                   the, in the FPL agreement is copied from the Progress  
23                   agreement that had been previously filed?

24                   **A**     I don't know.

25                   **Q**     Page 42 of your testimony, if I could get you

1 to look there.

2 A I'm with you.

3 Q On line 21 you state that this SRM has been in  
4 place since August 2010; is that correct?

5 A That's correct. To my understanding.

6 Q And you have this order that I handed out;  
7 correct?

8 A That's correct.

9 Q All right. Could you look at -- and is your  
10 basis for saying that date of August 2010, is that based  
11 on the date that's in paragraph 11 on page 12 of the  
12 stipulation, which is page 22 of the order?

13 A That's correct.

14 Q Okay. Now, could you turn to page 1 of the  
15 order.

16 A Yes, sir.

17 Q What is the effective date of that order?

18 A The issue date?

19 Q Yes.

20 A February 1st, 2011.

21 Q Okay. And isn't it true that the stipulation  
22 that's attached to this order was not effective until  
23 the final order of the Commission approving it? That  
24 would be on page 2, paragraph 1 of the stipulation.

25 A I'm sorry. I'm a little lost now.



1           Q     Okay.  Page, if you look at either page 12 of  
2 the order.

3           A     Page 12 of the order.

4           Q     Which is page 2 of the stipulation.

5           A     Page 2 of the stipulation.  I'm with you.

6           Q     Paragraph 1 at the very bottom.

7           A     Oh, I'm sorry.

8           Q     You would agree with me that it says that the  
9 stipulation isn't effective until the Commission order  
10 approving it is final; right?

11          A     I see.  Yes.

12          Q     Okay.

13          A     Yes.

14          Q     So the mechanism wasn't available to you in  
15 the 2010 storm season; correct?

16          A     Correct.

17          Q     And in fact didn't FPL take action in court  
18 to, to -- that delayed the in-service date or the  
19 effective date of the stipulation?

20          A     I don't know.

21          Q     Okay.  Can you show me where in your testimony  
22 you provide evidence as to the monthly rate of \$4 that  
23 is authorized in the SRM that is in the current  
24 effective agreement?

25          A     I'm not sure -- I'm not following you.

1           Q     Okay.  Let's go to page 3 of the stipulation,  
2 paragraph 3.  Isn't it true that you were authorized to  
3 charge up to \$4 a month for storm recovery for a  
4 1,000-kilowatt-hour monthly residential bill for a  
5 period of 12 months?

6           A     Yeah.  That's my understanding of the  
7 agreement, and that's what I modeled the proposal on.

8           Q     Okay.  Now, is there any evidence about the  
9 basis for that \$4 and why that is appropriate that is in  
10 your testimony or any other witness's testimony in this  
11 docket?

12          A     Well, I'm not quite sure what you mean by  
13 evidence, but it's -- I'm offering it as a judgment that  
14 that number is reasonable.

15          Q     Okay.  But it's only because it's in this  
16 agreement; right?

17          A     No, I don't think that's quite true.  I think  
18 it's a reasonable number in and of itself.

19          Q     Okay.  What about the 12-month recovery  
20 period?  Is there any independent evidence apart from it  
21 being in this stipulation that is offered by, in  
22 testimony by either you or another FPL witness?

23          A     Well, I think my answer is the same.  I think  
24 it's a reasonable judgment.  I don't have any  
25 analytical, you know, detailed framework that says

1 that's exactly the right time frame, but a \$4 per month  
2 premium for a 12-month period seems to me as a matter of  
3 judgment to be something that is reasonable to ask  
4 consumers to bear. And if it goes beyond that, it would  
5 be reasonable to spread it over a longer period of time.

6 Q Okay. Aside, aside from you just making that  
7 statement here today, that is not included in your  
8 testimony, is it?

9 A No. As I said, there's no independent  
10 analytical framework supporting that. That's a question  
11 of judgment.

12 Q Okay. And if we go to page 4 of the  
13 stipulation, the, the last sentence of this paragraph 3,  
14 the sentence reads, the parties expressly agree that any  
15 proceeding to recover costs associated with any storm  
16 shall not be a vehicle for a, quote, rate case, close  
17 quote, type inquiry concerning the expenses, investment,  
18 or financial results of operation of the company, and  
19 shall not apply any form of earnings test or measure or  
20 consider previous or current base rate earnings or level  
21 of theoretical depreciation reserve. Do you see that?

22 A Yes, sir.

23 Q Is there any independent evidence offered by  
24 you or any other witness in this case to justify or  
25 support that sentence and the provisions in that

1 sentence as they relate to the SRM?

2           **A**    No.  Other than I believe that has been a  
3 longstanding practice here in Florida.

4           **Q**    Okay.  All right.  Just finally, Mr. Dewhurst,  
5 could you turn to -- let me get you to go to the last  
6 page again of the stipulation, which is page 22 of the  
7 order, page 12 of the stipulation.

8           **A**    Okay.

9           **Q**    All right.  You see about six or seven lines  
10 down there's the phrase that starts, no party will  
11 assert -- maybe it's six down.  Six down.

12           **A**    Yes, sir.  And that's what I tried to make  
13 clear early on in our discussion.

14           **Q**    Okay.  It says, no party will assert in any  
15 proceeding before the Commission that this agreement or  
16 any of the terms in the agreement shall have any  
17 precedential value.

18           **A**    That's correct.  And I'm not doing that here.

19           **Q**    Okay.  You would agree that we are in a  
20 proceeding?

21           **A**    Yes.

22           **Q**    Okay.  And that your petition that was filed  
23 on March 19th is in a proceeding before this Commission;  
24 correct?

25           **A**    Yes, sir.

1           **Q**     And that paragraph 3 is a term of the  
2 settlement that's in effect today; correct?

3           **A**     Yes, sir.

4           **Q**     And you're saying to me that your advocacy of  
5 that term does not violate this provision?

6           **A**     Yes, sir.

7           **Q**     Thank you.

8           **MR. REHWINKEL:** No further questions, Mr.  
9 Chairman. Mr. McGlothlin will ask now.

10           Thank you, Mr. Dewhurst.

11           **CHAIRMAN BRISÉ:** Mr. McGlothlin, before you  
12 begin, I think now may not be a bad time for a  
13 five-minute break, give our court reporter a little bit  
14 of break here, and then we'll resume in five minutes.

15           **MR. WRIGHT:** Mr. Chairman?

16           **CHAIRMAN BRISÉ:** Yes, sir.

17           **MR. WRIGHT:** Could we do 582 now, or could we  
18 do it when we come back?

19           **CHAIRMAN BRISÉ:** Let's go ahead and deal with  
20 it now. Commissioner Balbis is here.

21           **MR. WRIGHT:** Thank you, Mr. Chairman.

22           When Mr. Chriss was on the stand, Commissioner  
23 Balbis asked, asked for a late-filed exhibit regarding  
24 the estimated number of employees of the FRF's members  
25 in FPL's service area. That is contained -- that

1 estimate was compiled as represented by telephone and  
2 e-mail survey of larger members. And based on the  
3 responses we got, there were a few left out, and then  
4 based on an estimate matching up retail members to FPL's  
5 zip codes, that's presented there.

6 I was uncertain whether Commissioner Balbis  
7 wanted to know only about the FRF's members or whether  
8 he wanted to know about retail employment in Florida.  
9 And accordingly, with the advice as to sources, I  
10 prepared the document that's labeled supplement to  
11 Exhibit 582.

12 I prepared it separately so that if that's not  
13 what Commissioner Balbis wants or if anybody objects to  
14 it, you don't have to have it. You can just look at the  
15 one-pager and go with that. Or if Commissioner Balbis  
16 does want retail sector employment, you can let this in  
17 too. That is your call.

18 **CHAIRMAN BRISÉ:** Commissioner Balbis, if you  
19 can review this.

20 **COMMISSIONER BALBIS:** Yeah. Thank you, Mr.  
21 Chairman.

22 And thank you, Mr. Wright, for providing this.  
23 To be honest, I think -- I appreciate the supplemental  
24 information. I think as much information that I can  
25 have on this, this subject is, is appropriate for the

1 question that I asked.

2 So I would request that both of these  
3 late-filed exhibits be numbered and entered into the  
4 record.

5 **CHAIRMAN BRISÉ:** All right. 582.

6 **MR. WRIGHT:** 582 and 582 sup or something like  
7 that?

8 **CHAIRMAN BRISÉ:** Composite.

9 **MR. WRIGHT:** Composite 582?

10 **CHAIRMAN BRISÉ:** Okay. Composite.

11 **MR. WRIGHT:** Thank you very much, Mr. Chair.

12 **CHAIRMAN BRISÉ:** Thank you. So we will move  
13 these into the record, seeing no objections.

14 (Exhibit 582 admitted into the record.)

15 All right. Five-minute break begins now.

16 (Recess taken.)

17 All right. We're going to reconvene at this  
18 time.

19 Mr. McGlothlin, you can proceed with  
20 cross-examination.

21 Oh, Commissioner Balbis. I see your light.

22 **COMMISSIONER BALBIS:** Yes, Mr. Chairman. And  
23 I'm not sure if this is proper or not, but I have a  
24 request of the Chairman. As we continue with  
25 cross-examination, Mr. Dewhurst covers in his rebuttal a

1 lot of issues that was discussed in detail in his direct  
2 testimony. And I don't know if the Chairman can direct  
3 the Intervenors who have remaining cross-examination  
4 questions to try and see if we can cover new ground or  
5 new points or something to make this time that we're  
6 spending as efficient as possible. That would be great.

7 **CHAIRMAN BRISÉ:** Okay.

8 **MR. McGLOTHLIN:** Well, Commissioner, the  
9 content of his rebuttal testimony is what it is, and  
10 it's there for a reason and we have to have the right to  
11 test it. I don't think I can go without objecting to it  
12 being curtailed and told I can't cross anything in his  
13 rebuttal.

14 **COMMISSIONER BALBIS:** If I can respond?

15 **CHAIRMAN BRISÉ:** Sure.

16 **COMMISSIONER BALBIS:** My request was for the  
17 Chairman to possibly direct the remaining Intervenors in  
18 their cross-examination of the rebuttal testimony, and  
19 no way implied to limit your due process. I just wanted  
20 to -- again, we've made comment to try and be efficient  
21 with our time, just to be cognizant of that. And I  
22 certainly don't want to limit your due process rights,  
23 but, you know, let's cover new issues, new points, and  
24 it's your decision. And it was a request of the  
25 Chairman, not of you.



1                   **MR. McGLOTHLIN:** Perhaps I misunderstood. If  
2 so, I apologize. But I do want to be efficient, but I  
3 also want to be thorough.

4                   **CHAIRMAN BRISÉ:** Understood. Go right ahead.

5                   I'd just remind everyone that both in our  
6 questions and in our responses to try to be as concise  
7 as possible.

8                   **CROSS EXAMINATION**

9                   **BY MR. McGLOTHLIN:**

10                  **Q**     Mr. Dewhurst, I want to ask you some questions  
11 about what has been identified as your MD-10, which  
12 appears near the end of your exhibits.

13                  **A**     Yes, sir.

14                  **Q**     You have a business risk comparison there.  
15 And I want to spend a few moments developing a frame of  
16 reference within which your comparison takes place. For  
17 instance, when you compare FPL to other Florida  
18 utilities, you recognize, of course, that FPL, TECO,  
19 Gulf Power, and Progress Energy Florida all possess a  
20 protected retail market; correct?

21                  **A**     If you mean by protected retail market that we  
22 have franchise territories with single service  
23 obligations, yes.

24                  **Q**     And no competition for the retail customer;  
25 right?

1           **A**     I disagree with that, at the risk of taking us  
2 off on to a long path.

3           **Q**     On what basis do you disagree?

4           **A**     Every individual retail customer has the  
5 possibility of self-generating, and it's a practical  
6 proposition now in many parts of the country.

7           **Q**     Okay. All right.

8           **MR. LITCHFIELD:** Excuse me, Mr. Chairman. I  
9 would just ask if you could direct the witness to speak  
10 a little louder. We're actually having trouble down at  
11 this end hearing him.

12           **CHAIRMAN BRISÉ:** Mr. Dewhurst, I don't know if  
13 you can speak into the mike or bring it closer or  
14 something.

15           **THE WITNESS:** I will try, Mr. Chairman.

16           **CHAIRMAN BRISÉ:** Thank you.

17 **BY MR. McGLOTHLIN:**

18           **Q**     Of course, self-generating customers are not  
19 retail customers, are they?

20           **A**     No. But it constitutes a form of competition.  
21 If we don't serve our customers well, we will not have  
22 customers and we won't have a business in the long run.

23           **Q**     I accept that distinction. FPL, TECO, Gulf  
24 Power, and Progress Energy all collect fuel costs based  
25 upon projections; correct?

1           **A**     That's correct.

2           **Q**     Which means that they collect their fuel costs  
3 on a current basis with no lag; correct?

4           **A**     No, that's not correct. We can have very  
5 significant fuel underrecoveries.

6           **Q**     Underrecoveries, also overrecoveries; right?

7           **A**     That's correct. Unfortunately it's an  
8 asymmetrical proposition. We have to have the balance  
9 sheet to support the underrecoveries. The  
10 overrecoveries flow back pretty quickly.

11          **Q**     And any imbalances are subject to true-ups;  
12 correct?

13          **A**     That's correct.

14          **Q**     Do you believe that reduces uncertainty seen  
15 by investors?

16          **A**     Oh, certainly. We would not be an A-rated  
17 company if we didn't have the fuel clause.

18          **Q**     Those utilities all implement conservation  
19 cost recovery clauses?

20          **A**     That's correct.

21          **Q**     Environmental cost recovery clauses?

22          **A**     That's correct.

23          **Q**     Capacity cost recovery clauses?

24          **A**     That's correct.

25          **Q**     All of which incorporate projected factors?

1           **A**     Yes.

2           **Q**     With true-up.

3           **A**     Yes.

4           **Q**     Subject only to eligibility screening and  
5 prudence review.

6           **A**     I believe that's accurate.

7           **Q**     Do you think those factors reduce uncertainty  
8 seen by investors?

9           **A**     Yes and no to varying degrees. I think the  
10 capacity clause and the conservation clause are  
11 fundamentally less about risk reduction than they are  
12 about administrative functionality and simplicity.

13                   I would say that the environmental clause has  
14 more of an impact on risk and is in that sense more  
15 comparable to what many other utilities have in other  
16 parts of the country.

17           **Q**     It's true, isn't it, that FPL receives about  
18 61% of its total revenues through these various clauses?

19           **A**     I don't know what year you're referring to. I  
20 think it's lower than that now. But the percentage of  
21 revenue is not really -- if you're thinking of that as a  
22 measure of risk, I don't think that's a very relevant  
23 measure of risk.

24           **Q**     And you, by which I mean FP&L, TECO, Gulf  
25 Power, and Progress Energy, all operate under such

1 statutory provisions as the file and suspend law, the  
2 provision for interim rates, the use of projected test  
3 years, and midcourse fuel corrections; correct?

4 A I did not hear the first of those, sir.

5 Q The file and suspend ratemaking process.

6 A That's a term I'm not familiar with myself.

7 Q When you set out to compare FPL with the other  
8 Florida utilities, it is within the framework of the, of  
9 these various factors that you and the others share;  
10 correct?

11 A The -- yes. The specific purpose of MD-10 was  
12 to look at relative risk profile within Florida. It was  
13 not an attempt to look at the overall risk profile or  
14 the overall risk profile relative to other utilities or  
15 relative to other businesses and other industries.

16 Q And it's true, isn't it, that the Commission's  
17 decision in FPL's last rate case did not disturb or  
18 modify any of the considerations that I've mentioned to  
19 you?

20 A No, I would not agree with that.

21 Q Which, which did they --

22 A I'm sorry. The structural provisions that you  
23 were talking about earlier?

24 Q Yes.

25 A No, it didn't have an impact on that.

1 Obviously it had a very significant impact on investors'  
2 perceptions of regulatory risk, as we've discussed at  
3 length.

4 Q You've used the term "risk profile." Would  
5 you agree that investors, as they assess potential  
6 investments, consider both strengths and weaknesses of  
7 the companies under consideration?

8 A As a broad generalization, yes.

9 Q Would you agree that one consideration that a  
10 potential investor in an electric utility would consider  
11 would be customer mix?

12 A Yes. It's certainly a question that we get  
13 asked.

14 Q Isn't it true that in a recession or a slow  
15 economy there's more risk associated with large  
16 industrial load than, than with a predominantly retail  
17 customer?

18 A Not necessarily.

19 Q You don't think that residential customer base  
20 is an advantage in a, in a slow economy?

21 A It can be, but as I said, not necessarily.  
22 Certainly in Florida we suffered significantly, as  
23 everybody knows, and that was reflected in residential  
24 sales and lower residential customer count.

25 Q Would you agree that FPL's total load

1 represented by industrial customers is about 2%?

2           **A**     That's approximately correct. Yes, sir.

3           **Q**     You did not discuss or mention that aspect of  
4 your business versus the others in your comparison, did  
5 you?

6           **A**     No. I don't think it's particularly material.

7           **Q**     Would you think potential investors would  
8 assess quality of management among other things as they  
9 make a decision as to where they want to put their  
10 capital money?

11          **A**     Yes. And let me just clarify. I mean, you've  
12 talked about a number of things that investors would  
13 consider. They consider a wide range of things. Some  
14 of those things will affect the risk profile, some of  
15 those things will just be things that they consider in  
16 terms of what their potential return might be. But,  
17 yes, I would agree they would certainly consider the  
18 quality of management.

19          **Q**     And would you regard that as a part of a risk  
20 profile?

21          **A**     It can be. I think if you have a management  
22 team that has, you know, demonstrated certain issues,  
23 shall we say, that then becomes a risk factor for  
24 investors. I think normally it would not be a major  
25 distinction on the risk side.

1           **Q**     Now, in this proceeding numerous FPL witnesses  
2 have testified that FPL has superior management, have  
3 they not?

4           **A**     No, I don't think that's quite what they've  
5 testified. I think what they've testified to is  
6 superior performance. In the end what we care about is  
7 the value delivery to customers: Low cost, high  
8 reliability, excellent customer service. I think that's  
9 what the testimony speaks to.

10          **Q**     Would superior performance emanate from sound  
11 management?

12          **A**     I certainly agree that sound skilled  
13 management has a role in that, but it's more than that.  
14 It's a, it's a team effort.

15          **Q**     Are you saying that FPL does not have strong  
16 management?

17          **A**     I believe -- no, I'm not saying that. I  
18 believe FPL has very strong management. I wouldn't  
19 change our management team for any other team in the  
20 industry.

21          **Q**     And, in fact, based upon that strong  
22 management and the superior performance, several  
23 witnesses have suggested a performance adder to the ROE;  
24 correct?

25          **A**     That's correct. Including myself.



1           Q     Yes.  The quality of management is not  
2 something that you mentioned in your risk profile  
3 discussion, is it?

4           A     No.  As I said earlier, while I think there  
5 might be some occasions in which a management team  
6 having issues could be considered part of the risk  
7 profile, normally I don't think that would be the case.

8           Q     To the extent strong management that delivers  
9 superior performance is considered with respect to the  
10 proposed adder, that has the potential to increase FPL's  
11 ROE; correct?

12          A     Yes.  The performance adder would be additive  
13 to the, what I think of as the cost-based ROE, yes.

14          Q.    To the extent that strong management that  
15 delivers superior performance is discussed and  
16 considered in business risk, that would have the effect  
17 of lowering business risk, would it not?

18          A.    I think I already addressed this question.  I  
19 think there may be some circumstances in which  
20 management team issues could become a risk factor, but  
21 more in the typical situation I don't think it has a  
22 great deal of impact on risk.

23          Q.    Well, to the extent it does, and I think you  
24 acknowledged it to some extent where under some  
25 circumstances it may, that would lower business risk and

1 argue for a lower ROE to be commensurate with that lower  
2 risk.

3 A. I will concede the point immaterially.

4 Q. What about size of the operation; is that  
5 something that investors would consider?

6 A. Yes. Size can be an advantage or a  
7 disadvantage. It depends on the particular situation.

8 Q. We've heard some references, I believe, in  
9 this proceeding to the advantages of size and scale.  
10 Would that be an aspect of business risk?

11 A. No, not typically. And the scale is kind of  
12 an academic concept, so maybe I'm not understanding  
13 where you're going with that. What do you mean by  
14 scale?

15 Q. Advantages of scale, economies of scale, the  
16 wherewithal to engage in the market on a large scale.

17 A. Again, I think that's a very general concept.  
18 I think the easiest way to say it is there can be  
19 advantages in being big and there could be disadvantages  
20 in big. If you look at the companies in our industry,  
21 some large companies are good performers, some large  
22 companies are not such good performers. Some small  
23 companies are very good performers and vice versa.

24 So I think it has a lot more -- you need to  
25 know a lot more about the specific facts and

1 circumstances. You can't draw general conclusions at  
2 that level.

3 Q. What about the level of rates; would customers  
4 look at a utility's low rates relative to others as an  
5 advantage?

6 A. Would customers? I certainly hope so.

7 Q. What about investors?

8 A. I think the answer is it depends on many other  
9 factors around the situation. So I think on -- in  
10 general, one would look to low -- if you're an investor  
11 looking at low rates, you would hope that that is a  
12 positive feature for the company concerned, but it may  
13 or may not be. It will depend upon other factors in the  
14 particular situation.

15 Q. To the extent some investors may consider low  
16 rates to be an advantage and to be reflected in business  
17 risk, you did not discuss that in your discussion, in  
18 your treatment of business risk, did you?

19 A. No, that's correct. I didn't think it was  
20 necessary.

21 Q. Now, looking at --

22 A. Excuse me. I mean, it doesn't seem like from  
23 these proceedings our low rates are helping us with the  
24 intervenor risk, shall we say.

25 Q. Well, that's -- (Laughter.)

1           **A.**    Which is important from an investor point of  
2 view.  It's the outcome of regulatory proceedings like  
3 this that count.

4           **Q.**    I believe you've answered my question, sir.  
5 I'm directing you to MD-10, Page 1 of 1.

6           **A.**    Yes, sir.

7           **Q.**    There's a footnote there that says source,  
8 SNL; do you see that?

9           **A.**    Yes, I do.  That refers specifically to the  
10 regulatory risk column, I believe.

11          **Q.**    Yes.  You've anticipated my next question.  
12 The footnote refers to the one category that has an  
13 asterisk, which is regulatory risk.  But is it true that  
14 you are the source of the balance of the material there?

15          **A.**    Yes.  This is my judgment based on my  
16 experience in the industry.  This is not a detailed  
17 analytical quantitative look.  I'm merely trying to  
18 motivate the observation that there can be significant  
19 differences in relative risk profile even among  
20 companies in the same general geographic area and the  
21 same regulatory environment.

22          **Q.**    So you are the source of the categories of  
23 business risk, correct?

24          **A.**    Yes.  Those were drawn from my analysis in my  
25 direct testimony.

1 Q. And the gradations of low, low medium, medium  
2 high, and high, you developed those?

3 A. Yes, these are my assessments.

4 Q. And you scored the utilities in each of those  
5 categories?

6 A. Yes. I mean, for each one there is a basis  
7 for it, so there is an analytical basis for the relative  
8 hurricane exposure. I can show you all the statistics  
9 that show that we are significantly more exposed to  
10 hurricane loss than any of the other utilities. Large  
11 capital expenditure, our relative capital expenditure is  
12 greater than the others. So each one has some support,  
13 but ultimately it's my integrated assessment and  
14 judgment based on my experience in the industry.

15 Q. How about the color scheme, with FPL in red?

16 A. Well, I am color-blind, so I rely on my staff  
17 for this.

18 Q. Give me a moment to find it. Turn to your  
19 MD-3, which is the regional comparison.

20 A. Page 1, 1 of 4?

21 Q. Actually, Page 2 of 4.

22 **THE WITNESS:** Okay. Just so, Commissioners,  
23 you're clear, that Pages 2, 3, and 4 of 4 really simply  
24 illustrate one of the columns that come from  
25 Page 1 of 4.

1 BY MR. McGLOTHLIN:

2 Q. You show various returns on equity authorized  
3 for the utilities in the region?

4 A. That's correct.

5 Q. And for Progress Energy Carolinas you show  
6 12.75 percent. Do you know in what year those were  
7 established?

8 A. I had the backup on these, but, no, I don't  
9 know right now the sources labeled on the chart. These  
10 are -- to the best of my understanding, these are the  
11 currently applicable allowed ROEs.

12 Q. Would you agree subject to check that the last  
13 full rate case for that company was 1988?

14 A. Subject to check. It's the rate that  
15 investors see right now.

16 Q. You show 11.25 for Tampa Electric Company. Do  
17 you know what year that was established?

18 A. I don't recall when TECO's last rate case was.

19 Q. Subject to check, would you agree it was 2008?

20 A. That sounds about right, so that's the rate  
21 that investors see today.

22 Q. You show 11.40 for Dominion Virginia Power.  
23 Are you aware that that ROE is subject to certain  
24 statutory mandates?

25 A. Yes, I am. It's on a sort of formula that is,

1 in fact, based on the average essentially of other  
2 regulated utilities in the Southeast. And that is  
3 interesting because a lot of us, investors included,  
4 sort of compare this group of southeastern utilities.

5 Q. At Page 4 of your rebuttal testimony --

6 A. Yes, sir.

7 Q. -- at Line 12, you refer to the poor result of  
8 the last case, do you not?

9 A. Correct, yes.

10 Q. And at Page 9, Line 18, you refer to the need  
11 to possibly reviving and aggravating investor perception  
12 of regulatory risk?

13 A. I'm sorry, I missed your reference.

14 Q. Page 9, Line 18.

15 A. Yes, that's right, in connection with adoption  
16 of intervenor recommendations would aggravate  
17 perceptions of regulatory risk, yes.

18 Q. And at Page 15 you refer to the Value Line  
19 article that used terms such as harsh rate order, shock  
20 in the fact that the company was awarded \$75 million of  
21 its request, correct?

22 A. Yes, that is correct. That is one example of  
23 sort of the investment community reaction around that  
24 time.

25 Q. And, of course, that was the investment

1 communities you're speaking of there. Whether a result  
2 was poor is a matter of perspective, isn't it?

3 A. I would agree with that from that perspective.  
4 Clearly it was poor. We heard a lot about it.

5 Q. Are you aware that in the last rate case the  
6 Office of Public Counsel advocated a return on equity of  
7 9.5 percent?

8 A. I don't recall the exact number.

9 Q. Are you aware that the Office of Public  
10 Counsel advocated a revenue decrease for FPL in that?

11 A. I do recall that, yes.

12 Q. So it is not likely given that the OPC is  
13 hoping the company would -- the FPSC would reassess the  
14 10 percent ROE upward, is it?

15 A. I'm sorry. Could you repeat that?

16 Q. I'll strike that question.

17 You will agree that the range of ROE in the  
18 last case was set at 9 to 11 percent, with a 10 percent  
19 midpoint?

20 A. That is correct.

21 Q. If you look at Page 12 at Line 1 you say a  
22 drastic reduction in FPL's creditworthiness associated  
23 with 100 basis points based on authorized return, or 200  
24 basis points based on FPL's current ROE under the  
25 settlement agreement, reduction in ROE.



1                   Now, the settlement agreement did not alter  
2 either the bottom of the range or the top of the range,  
3 did it?

4           **A.**   No.  But, of course, it had the surplus  
5 depreciation flexibility which enabled us and was  
6 understood to enable us to earn close to the top of the  
7 range.

8           **Q.**   So you did not intend to imply there that the  
9 range was modified by the settlement agreement?

10          **A.**   No, sir, I do not intend to imply that.

11          **Q.**   And with respect to the amortization of  
12 reserve surplus, you're familiar with the March order  
13 that has been referred to as the presettlement order,  
14 are you not?

15          **A.**   Generally speaking, yes.

16          **Q.**   That order directed FPL to amortize  
17 \$894 million of reserve surplus over a four-year period,  
18 did it not?

19          **A.**   That is my recollection, yes.

20          **Q.**   And the time frame was such that the order  
21 would have required FPL to amortize 223 million in each  
22 of four years, correct?

23          **A.**   Approximately, yes.  So what the settlement  
24 did was provide flexibility around the first three years  
25 of that.

1           Q.    So the first order would have decreased  
2 depreciation expense and increased earnings to that  
3 extent during the following four years?

4           A.    No, because the presettlement order separates  
5 on 10 percent including the amortization of surplus, so  
6 had everything gone consistently with that we would have  
7 earned 10 percent.

8           Q.    The first order establishes a midpoint of  
9 10 percent, correct?

10          A.    Correct, and set rates on that midpoint.

11          Q.    Yes.  And also directed FPL to amortize  
12 \$223 million of reserve surplus annually for four years?

13          A.    That's correct, and that was built into the  
14 economics.

15          Q.    You said during the proceeding that you visit  
16 the credit rating agencies frequently, do you not?

17          A.    Frequently is obviously a relative term.  I  
18 try and see the major credit rating agencies at least  
19 twice a year, and typically they will come down to visit  
20 us at least one more time.

21          Q.    What about when you are about to or have a  
22 major filing or soon after a major filing; does that  
23 prompt a separate visit?

24          A.    Well, not for myself.  My staff will have much  
25 more frequent contact with them, and clearly anytime

1 that we're going to be going to market with a particular  
2 issuance they'll have to confirm the ratings, but that's  
3 part of what the Treasury Department does.

4 Q. Again, when I say you, I intend to mean you or  
5 persons who work for you or the company.

6 A. Fair enough.

7 Q. With respect to the company's last rate case,  
8 Docket 080677, did FPL inform the credit rating agencies  
9 of its intent or the fact it was poised to file such a  
10 case?

11 A. I don't recall, because I wasn't with the  
12 company at the time, but I would be extremely surprised  
13 if we did not. We certainly make an effort to let them  
14 know when major things are coming up. We're under a  
15 confidentiality agreement with them, so it's reasonable  
16 for us to let them in on things like that.

17 Q. So either shortly before or shortly after,  
18 typically you or someone in your position would apprise  
19 the rating agencies of such things as the requested ROE,  
20 the revenue requests, and some of the parameters of the  
21 filing?

22 A. Generally speaking, yes. I mean, we wouldn't  
23 go into tremendous detail about it, but the broad  
24 parameters of the filing, yes.

25 Q. Let me pose a hypothetical to you. If a

1 utility informed the credit agencies or analysts on Wall  
2 Street of their intent to make a major rate case filing,  
3 and if afterwards the regulatory agency concluded  
4 rightly that the utility had been overreaching its  
5 request and denied it, would any resulting  
6 disappointment -- should any resulting disappointment be  
7 directed at the Commission or at the utility?

8 **A.** I don't know that I can answer that, because  
9 you're saying should, and should is, you know, an odd  
10 term. So it implies some relative standard, and you  
11 haven't specified what that relative standard is, so I  
12 can't answer.

13 All I can tell you is that in that kind of  
14 situation, and you asked me for a hypothetical and I  
15 don't do well with hypotheticals, as we saw last week.  
16 In that sort of situation, we're talking about investors  
17 range widely. They're ultimately individual human  
18 beings. I think their reactions, again, range equally  
19 widely.

20 **Q.** Okay. Now, we've heard testimony that there  
21 was a negative reaction to the initial decision in the  
22 last case, and that the settlement agreement which  
23 enabled FPL to earn 11 percent with some assurance based  
24 upon the amortization provisions, had the effect of  
25 calming the situation and enabled you to go forward. Am

1 I paraphrasing that correctly?

2 A. Yeah, I think that is part of it. There were  
3 a number of things going on at the time, but one key  
4 element that helped get investors comfortable and sort  
5 of, in my words, bought us time, was the settlement  
6 agreement, yes.

7 Q. The company asked for a 12.5 percent return on  
8 equity in the last case, correct?

9 A. That's my recollection, yes.

10 Q. And without indicating that I believe 11  
11 percent is the appropriate number, 11 percent is 150  
12 basis points below that ask, correct?

13 A. I believe we can agree on that arithmetic.

14 Q. Well, using the same arithmetic, you requested  
15 11.25 in this case.

16 A. Yes.

17 Q. And 150 basis points below that would be 9.75.

18 A. That's the arithmetic. 9.75 would not, in my  
19 judgment, be an appropriate rate of return in this  
20 environment for this particular company, but I agree,  
21 that's the arithmetic.

22 Q. Again, without any indication on my part that  
23 11 percent is a valid ROE or appropriate ROE, I think  
24 we've heard it said several times, including when you  
25 were on the stand, that for FPL 100 basis points

1 translates to about \$160 million, correct?

2           **A.** To the first order, 160 revenue requirements,  
3 yes.

4           **Q.** So, again, using the arithmetic, the increment  
5 between 10 percent and 11 percent ROE would be about  
6 \$160 million.

7           **A.** Of revenue requirements, yes.

8           **Q.** In the last case, FPL requested a revenue  
9 increase of \$1.24 billion, did it not?

10          **A.** I thought it was 1.23, but okay.

11          **Q.** And the last case was based upon a 2010 test  
12 year?

13          **A.** Yes.

14          **Q.** And I think we've heard it said in this case  
15 that after an initial pause, FPL decided not to suspend  
16 any projects and to go forward with all of its plans,  
17 correct?

18          **A.** Yes, that's correct. There was a, I guess you  
19 could call it soul-searching going on there. But as a  
20 result of a number of different factors, we concluded  
21 that it was the right thing to do to press forward and  
22 continue to make large investments for the long-term  
23 benefit of our customers.

24          **Q.** So some of those expenses were incurred in  
25 2010.

1           A.    I'm sorry.  Some of which expenses?

2           Q.    Well, business-as-usual expenses.  The  
3 decision to go forward with all of your projects and  
4 budgeted levels.

5           A.    Okay, yes.  You referred to expenses, and I  
6 was thinking, you know, capital investment associated  
7 with those major projects, but, yes.

8           Q.    I'll try this.  Mr. Dewhurst, if you will  
9 accept a couple of numbers subject to check, I will  
10 dispense with the handouts that I planned to do.

11                    According to the surveillance reports --  
12 excuse me.  Let me begin this way.  According to the  
13 first order, the presettlement order which decided the  
14 last rate case, the Commission established the test year  
15 total operating expenses at \$3.066 billion, and the  
16 surveillance report for the 12 months ending  
17 December 2010 reflects total operating expenses of  
18 \$3.156 billion.  Will you accept those, subject to  
19 check?

20           A.    Subject to check, yes.

21           Q.    That being the case, actual operating expenses  
22 exceeded the amount that FPL projected for the rate case  
23 on a projected basis.

24           A.    I'm not sure I can agree with that.

25                    **MR. LITCHFIELD:**  I think I would actually ask

1 that Mr. McGlothlin put those numbers in front of the  
2 witness. I think -- it is late, but it's a significant  
3 question, and I think I would request that Mr.  
4 McGlothlin put those numbers in front of the witness.

5 **MR. McGLOTHLIN:** It will take a moment.

6 **MR. LITCHFIELD:** I apologize.

7 **CHAIRMAN BRISÉ:** Mr. McGlothlin, do you have  
8 an exhibit?

9 **MR. McGLOTHLIN:** I do.

10 **CHAIRMAN BRISÉ:** That will be 635.

11 (Exhibit Number 635 marked for  
12 identification.)

13 **CHAIRMAN BRISÉ:** Mr. McGlothlin, do you have  
14 the exhibit?

15 **MR. McGLOTHLIN:** I do.

16 **CHAIRMAN BRISÉ:** Would you like these marked  
17 as two separate exhibits, or would you like to handle  
18 them as a composite exhibit?

19 **MR. McGLOTHLIN:** One of the documents is a  
20 page from a PSC order, so I don't think we need to mark  
21 it. The one that's called PSC surveillance report for  
22 December 2010 excerpt, I would like to have an exhibit  
23 number.

24 **CHAIRMAN BRISÉ:** Okay. 635.

25 **MR. McGLOTHLIN:** And we have the full



1 documents here in the room if either counsel or the  
2 witness has a need to see either of those documents.

3 **CHAIRMAN BRISÉ:** Okay. Go ahead and pose your  
4 question.

5 **BY MR. McGLOTHLIN:**

6 **Q.** Mr. Dewhurst, the first document I want you to  
7 look at is the one-page excerpt from Order Number  
8 PSC-10-0153.

9 **A.** I have that.

10 **Q.** You will see in the second column from the  
11 right one called total operating expense?

12 **A.** I see a number that looks like 3,086.

13 **Q.** I read it to be 3,066,000,000.

14 **A.** Okay. Your eyes are better than mine.

15 **Q.** And if you will accept my representation that  
16 this is a portion of the order that quantifies the total  
17 level of operating expenses approved for the test year  
18 purposes.

19 The second document has been marked as 635. I  
20 will represent to you that this is the income statement  
21 portion of the company's surveillance report for the 12  
22 months ending December 2010. Again, there is -- the  
23 second column from the right is captioned total  
24 operating expenses, and the PSC adjusted total there is  
25 \$3.16 billion.

1           **A.**   3-1-5-5-point-6?

2           **Q.**   Yes.

3           **A.**   Okay. I see those numbers.

4           **Q.**   And that is the basis for my question, which  
5 is do you see that the actual expenses actually exceeded  
6 the amount that was approved for test year purposes by  
7 the Commission?

8           **A.**   Yes, exceeded the amount on which rates were  
9 based.

10          **Q.**   Now, are you aware that in 2010, with the  
11 rates that were set in the last rate case, FPL earned  
12 11 percent without resorting in any material way to the  
13 reserve surplus amortization?

14          **A.**   In 2010, yes, that was the year that we had  
15 abnormally positive weather, so there was no need to  
16 utilize a lot of the surplus depreciation.

17          **Q.**   Yes. Weather is always a variable, isn't it?

18          **A.**   Weather is always variable.

19          **Q.**   And even though abnormal weather contributed  
20 to the higher revenues, that was real money being  
21 transferred from customers' accounts to the utility,  
22 correct?

23          **A.**   That portion contributed to cash flow, if  
24 that's what you're asking, yes. The depreciation  
25 surplus credit is a non-cash credit to expenses, so

1 effectively for a given level of ROE it reduces the cash  
2 return from an analyst point of view.

3 Q. I'm referring to the manner in which FPL  
4 frequently qualifies the results of 2010 by saying,  
5 well, yes, but that was abnormal weather. But on an  
6 actual basis, customers did pay those high revenues to  
7 the company.

8 A. Can you show me where we qualify 2010?

9 Q. Explain.

10 A. Certainly. It's an aspect of explaining what  
11 happened in 2010, yes.

12 Q. Yes. But, again, weather is one of many  
13 variables that operate after rates are set, correct?

14 **MR. LITCHFIELD:** Asked and answered.

15 **CHAIRMAN BRISÉ:** I would agree.

16 **BY MR. McGLOTHLIN:**

17 Q. Now, the rate request in the 2010 case was in  
18 two parts, was it not?

19 A. Are you referring to the step increase?

20 Q. The first of the two steps, yes.

21 A. Yes.

22 Q. And the first one requested authority to  
23 increase revenues by 1 million -- excuse me,  
24 1,044,000,000 in 2010, correct?

25 **MR. LITCHFIELD:** Mr. Chairman, may I just --

1           **THE WITNESS:** I don't recall the numbers.

2           **MR. LITCHFIELD:** -- pause for a moment and  
3 perhaps interpose an objection. It's just not clear to  
4 me where we are in Mr. Dewhurst's rebuttal testimony  
5 with this line of questioning. If counsel could refocus  
6 us, maybe I won't have an objection.

7           **MR. McGLOTHLIN:** Mr. Dewhurst characterized  
8 the last rate case decision as a poor result. I'm going  
9 to test that. I'm going to demonstrate that it was  
10 instead a result that the Commission rightly rejected  
11 the overstated or oversized request, and that it was a  
12 correct result and not a poor one.

13           **MR. LITCHFIELD:** I think, Mr. Chairman, Mr.  
14 Dewhurst's testimony in the record will speak for itself  
15 is that investors reacted to the decision and  
16 characterized it as a poor result. That's his  
17 testimony. I'm not sure that we are going to answer or  
18 conclude a debate here tonight as to whether it was or  
19 wasn't within this hearing room. I think those  
20 contentions are going to remain long after we walk out  
21 the doors here.

22           **MR. McGLOTHLIN:** Yes, but Mr. Dewhurst also  
23 says -- alludes to such things as the possibility of  
24 aggravating investor concern and over the regulatory  
25 environment. And if there was no basis for any

1           aggravation, then I think I'm entitled to show that.

2                   **CHAIRMAN BRISÉ:** Mr. McGlothlin, I'm going to  
3 allow you one or two questions down that path, but I  
4 think you've asked some of those questions already.

5                   **MR. McGLOTHLIN:** Some of those questions were  
6 predicate questions, and I'm ready to move to the point.

7                   **CHAIRMAN BRISÉ:** Well, if you can get to the  
8 point quickly.

9           **BY MR. McGLOTHLIN:**

10                   **Q.** Mr. Dewhurst, the company asked for  
11 1,044,000,000 in 2010 and received 75 million, correct?

12                   **A.** From the initial rate order. That was not the  
13 final effect once the settlement agreement was in place.  
14 I think we've discussed this before.

15                   **Q.** So, effectively, the portion that was denied  
16 amounted to \$969 million?

17                   **A.** The initial rate order or the first portion,  
18 that's correct.

19                   **Q.** I want you to assume that the company received  
20 what it -- hypothetically received what it asked for.  
21 The rates were effective in March of 2010, so the  
22 company would have received ten months of that 969. And  
23 if you'll follow the arithmetic, 10/12ths or 5/6ths of  
24 \$969 million would have been 804 million additional  
25 revenues in 2010, had the company received everything it

1 asked for. Will you accept that?

2 **A.** You're just discussing the revenue side.  
3 You're not discussing the incremental costs. For  
4 example, included in the original request that was  
5 denied was -- I believe it was 150 million a year  
6 accrual to the storm reserve. 150 million of revenue,  
7 150 million of expense. So are you taking the revenue  
8 side only, or are we going to take both sides?

9 **Q.** Well, I think you said --

10 **MR. LITCHFIELD:** Mr. Chairman, I'll object to  
11 the relevance of the question. The testimony is with  
12 regard to the investment communities' reaction to what  
13 the Commission gave FPL relative to its request, not  
14 what the Commission -- excuse me -- not the fact that  
15 the Commission did not give FPL its full request.  
16 That's the testimony. So I don't know what the  
17 relevance is of Mr. McGlothlin's line of inquiry here.

18 **CHAIRMAN BRISÉ:** Mr. McGlothlin.

19 **MR. MCGLOTHLIN:** In an earlier question I  
20 posed a hypothetical. The hypothetical was what if --  
21 the witness has referred to the disappointment and the  
22 shock of the investment community. I'm going to suggest  
23 that the disappointment was a function of unrealistic  
24 expectations created by the company that then filed an  
25 overreaching rate request, and I'm going to demonstrate

1 that by pointing out what high returns, oversized  
2 returns the company would have realized had it received  
3 what it asked for.

4 **MR. LITCHFIELD:** I'm not sure we have time to  
5 alter the investment communities' reaction tonight.

6 **CHAIRMAN BRISÉ:** Mr. McGlothlin, if you can  
7 move on to the next question.

8 **MR. MCGLOTHLIN:** Well, we may have finished  
9 this one line with a couple more, and I'll move on after  
10 that.

11 **BY MR. MCGLOTHLIN:**

12 **Q.** Mr. Dewhurst, you said there may have been  
13 some changes on this call side. Using the equation \$160  
14 million for 100 basis points, would you agree that  
15 \$804 million divided by \$160 million would have  
16 increased ROE by 503 basis points?

17 **A.** No, because I'm not sure that that was the  
18 relationship at the time. And as I said, you're just  
19 taking one piece of it.

20 **Q.** Would the relationship have been more or less  
21 with a smaller rate base?

22 **A.** I don't know at this point.

23 **Q.** You're familiar with Mr. Barrett's testimony  
24 in which he describes rate case drivers?

25 **A.** Generally speaking, yes.

1           **Q.**    Would you agree that those drivers relate to  
2 costs that have been incurred post 2010?

3           **MR. LITCHFIELD:**  Mr. Chairman, now we are  
4 cross-examining Mr. Dewhurst on Mr. Barrett's direct  
5 testimony, I believe, not Mr. Dewhurst's rebuttal.

6           **CHAIRMAN BRISÉ:**  Mr. McGlothlin.

7           **MR. McGLOTHLIN:**  This relates, again, to the  
8 same point, which is that the 2010 decision was a  
9 correct one.  And to prove that, I want to demonstrate  
10 that the matters to which the witness -- the company has  
11 pointed as drivers of the new rate case are unrelated to  
12 any cost -- any portion of the cost of service that was  
13 considered in 2010.

14          **MR. LITCHFIELD:**  That would have been a line  
15 to take up with Mr. Barrett.

16          **CHAIRMAN BRISÉ:**  Mr. McGlothlin.

17          **MR. McGLOTHLIN:**  I concede I'm too late in the  
18 day to pursue this, so I'll move on.

19 **BY MR. McGLOTHLIN:**

20           **Q.**    Refer to your MD-2, please.

21           **A.**    MD-2?

22           **Q.**    Yes.

23           **A.**    I believe that's in my direct.

24          **CHAIRMAN BRISÉ:**  That's in direct.

25          **MR. LITCHFIELD:**  I wondered why I couldn't



1 find it.

2 **BY MR. McGLOTHLIN:**

3 Q. Then let's try MD-4.

4 A. I'm there.

5 Q. And this is the schedule on which you made  
6 certain corrections to Mr. Lawton's corresponding  
7 exhibit, is that correct?

8 A. Yes. As I said in my testimony, I picked up  
9 two obvious errors in his effort to replicate an S&P  
10 credit assessment. I adjusted for those.

11 Q. With respect to the corrected values, would  
12 you agree that with respect to the funds from operation  
13 to debt and the debt to EDITDA, the corrected values  
14 still fall within the range shown?

15 A. No. I'm sorry, solely with respect to FFO to  
16 debt, is that your question?

17 Q. With respect to the cash flow metrics shown  
18 for Standard and Poor's and Moody's, the corrected  
19 values still fall within the ranges shown.

20 A. Well, you've got two different things.  
21 Moody's -- he made another error by failing to look at  
22 what they had actually said about us. The S&P numbers  
23 declined substantially. The FFO to debt at 21.05 is  
24 technically within the range of 20 to 45, but the  
25 magnitude of the decrease is significant and would

1 hardly be overlooked by S&P.

2 Q. Turn to MD-7, Page 1 of 1.

3 A. I'm there.

4 Q. Now, this treats Public Counsel's primary  
5 position, does it not?

6 A. That's correct. This is the 9 percent ROE and  
7 shifting \$3 billion from equity to debt.

8 Q. You are aware that Public Counsel also has an  
9 alternative recommendation?

10 A. Yes, which has a lower ROE of 8.5 percent,  
11 which would be well below any other allowed ROE in the  
12 country.

13 Q. And maintaining the existing capital  
14 structure?

15 A. That's my understanding.

16 Q. And you're aware that the revenue level that  
17 corresponds to that alternative recommendation is a  
18 reduction of \$184 million?

19 A. I'm sorry, compared to what?

20 Q. Compared to the company's request. No,  
21 compared to existing revenues.

22 A. No. I'm now completely confused on the  
23 numbers.

24 Q. I will tell you what, let's do this. Under  
25 the OPC witness testimony, again, for frame of

1 reference, I want you to pencil in the corresponding  
2 values that are associated with OPC's alternative  
3 recommendation. CFO preworking capital to debt, 30.91.

4 **A.** Those are your numbers?

5 **Q.** Those are taken straight off of Mr. Lawton's  
6 exhibit.

7 **A.** Can you point me back to those?

8 **Q.** Do you have Mr. Lawton's exhibit?

9 **A.** I just have DJL-3.

10 **MR. LITCHFIELD:** Which exhibit are you  
11 referring the witness to, Mr. McGlothlin, if I could  
12 ask?

13 **MR. McGLOTHLIN:** This is DJL-3, Page 2 of 2.

14 **MR. LITCHFIELD:** Are we now cross-examining  
15 this witness on Mr. Lawton's testimony?

16 **MR. McGLOTHLIN:** No. I'm providing a frame of  
17 reference because this particular exhibit examines only  
18 one of two alternatives, and I'm going to establish  
19 first that the alternative recommendation falls within  
20 even the more stringent category shown here, and then  
21 I'm going to move to the primary.

22 **CHAIRMAN BRISÉ:** Go ahead, Mr. McGlothlin.

23 **BY MR. McGLOTHLIN:**

24 **Q.** Do you need to see the exhibit?

25 **A.** Yes. I don't have that.

1 (Pause.)

2 **CHAIRMAN BRISÉ:** Mr. McGlothlin.

3 **BY MR. McGLOTHLIN:**

4 **Q.** Would you agree that the values that  
5 correspond to the Kollen/OPC witness testimony are  
6 30.91, 6.02, and then the 40.30 that corresponds to the  
7 company's existing capital structure?

8 **A.** Well, I agree those are the numbers. I don't  
9 know if they're right. Since I found basic errors in  
10 the other numbers, I'm not willing to accept those.

11 **Q.** On the other hand, you did not challenge them  
12 in your rebuttal testimony, did you?

13 **A.** No, I didn't see a need to, since I'd already  
14 uncovered some basic errors.

15 **CHAIRMAN BRISÉ:** Mr. McGlothlin.

16 **MR. McGLOTHLIN:** I have an exhibit to pass  
17 out.

18 **CHAIRMAN BRISÉ:** We're at 636.

19 (Exhibit Number 636 marked for  
20 identification.)

21 **CHAIRMAN BRISÉ:** Do you have the exhibit?

22 **MR. McGLOTHLIN:** It will be here in a second.

23 **MR. LITCHFIELD:** Mr. Chairman, I have an  
24 initial observation with respect to this exhibit, at  
25 least with regard to what appear to be the first two

1 substantive pages behind the exhibit cover. I may have  
2 an objection. There is no indication of the source or  
3 any other way to essentially help in the authentication  
4 of these numbers. The balance appears to be something  
5 taken from Moody's, but I would refer to the witness to  
6 authenticate.

7 **MR. McGLOTHLIN:** I will be happy to remove the  
8 first two pages so that there is no controversy about  
9 that. That's probably a summary that we made for  
10 internal reasons.

11 **CHAIRMAN BRISÉ:** Okay.

12 **BY MR. McGLOTHLIN:**

13 **Q.** Mr. Dewhurst, do you recognize Exhibit 636 as  
14 the Moody's April 10th, 2012, report to which you refer  
15 in your testimony?

16 **A.** Yes, it appears to be the same.

17 **Q.** If you'll look at Page 2 of 4.

18 **A.** Yes.

19 **Q.** Under the caption strong credit metrics and  
20 low leverage, would you read what Moody's had to say in  
21 the second paragraph of this April 2012 document?

22 **A.** Yes, I have read that.

23 **Q.** Would you read it for the Commissioners,  
24 please.

25 **A.** Despite the rate freeze instituted as part of

1 FPL's 2010 rate case settlement, the use of its  
2 depreciation reserve, and additional debt issued to  
3 finance high capital expenditures, there has been little  
4 material decline in these coverage metrics over the last  
5 two years. That would be 2010 and 2011. Coverage  
6 metrics should continue to be supported by the high  
7 percentage of FPL's revenues that are recovered through  
8 cost recovery clauses, the gradual improvement of  
9 economic conditions in its service territory, and its  
10 still adequate 10 percent return on equity for the  
11 remainder of this year that includes a range of plus or  
12 minus one percent.

13 Assuming a credit-supportive outcome of its  
14 pending rate case, we anticipate that FPL's credit  
15 metrics will continue to remain well in excess of the  
16 financial ratio parameters required for its current A2  
17 rating? The obvious implication being that they must be  
18 offset by something else.

19 **Q.** Would you read the first sentence of the  
20 paragraph above?

21 **A.** FPL continues to exhibit some of the stronger  
22 financial performance measures and cash flow coverage  
23 ratios in the industry, with ratios that are generally  
24 well above the parameters required for its rating under  
25 our regulated electric and gas utilities rating

1 methodology.

2           Again, obviously those must be offset by  
3 something else, and that something else is detailed in  
4 other parts of the summary.

5           **Q.** I only asked you to read the paragraph, Mr.  
6 Dewhurst.

7           **A.** I'm just trying to explain.

8           **Q.** Yes. That reference to the parameters  
9 required for rating under the regulated electric and gas  
10 utilities rating methodology, capitalized, that refers  
11 to a particular document, does it not?

12          **A.** That's correct.

13          **Q.** And those are the parameters that appear on  
14 Mr. Dewhurst's exhibit?

15          **A.** On my exhibit?

16          **Q.** I misspoke. On Mr. Lawton's exhibit that you  
17 then corrected?

18          **A.** They may be.

19          **Q.** Okay.

20          **A.** Again, obviously that is one part of the  
21 rating evaluation process.

22          **Q.** Now, in your MD-7, you've got some Moody's  
23 trigger metrics that depart from the standard criteria,  
24 do you not?

25          **A.** That's correct. Those were drawn directly

1 from Page 3 of this document.

2 **MR. McGLOTHLIN:** I have one more exhibit to  
3 pass out.

4 **CHAIRMAN BRISÉ:** Sure. That would be 637.  
5 (Exhibit Number 637 marked for  
6 identification.)

7 **MR. McGLOTHLIN:** And, again, Commissioners,  
8 this has the two-page summary notes attached to the  
9 front of it. We'll gladly withdraw those as part of the  
10 exhibit.

11 **CHAIRMAN BRISÉ:** Okay. I think that will work  
12 for efficiency.

13 **MR. McGLOTHLIN:** This is 636? I'm sorry.

14 **CHAIRMAN BRISÉ:** 637.

15 **MR. McGLOTHLIN:** 637. Thank you.

16 **MR. LITCHFIELD:** While Mr. Dewhurst is looking  
17 at this document, may I ask counsel how this relates to  
18 Mr. Dewhurst's rebuttal?

19 **MR. McGLOTHLIN:** Mr. Dewhurst criticized Mr.  
20 Lawton for having not mentioned the April 2012 Moody's  
21 report. It turns out that Mr. Lawton referred to a more  
22 recent one than that, and this is that document, which  
23 supersedes, I contend, the metrics that Mr. Dewhurst  
24 uses.

25 **THE WITNESS:** Which is not for FPL. It's for



1 the parent company.

2 **MR. McGLOTHLIN:** May I proceed?

3 **MR. LITCHFIELD:** Mr. Chairman, the witness  
4 just said this is for the parent. It's not for FPL.

5 **MR. McGLOTHLIN:** But some of the paragraphs  
6 relate specifically to FPL, including references to the  
7 existing rate case that was filed by FPL, not the  
8 parent.

9 **CHAIRMAN BRISÉ:** Go ahead, Mr. McGlothlin.

10 **BY MR. McGLOTHLIN:**

11 **Q.** Turn to Page 406, please.

12 **A.** I'm there.

13 **Q.** In the middle of the page there is a paragraph  
14 that begins, "FPL continues." Would you read that  
15 sentence?

16 **A.** "FPL continues to exhibit some of the stronger  
17 financial performance measures and cash flow coverage  
18 ratios in the industry, with ratios that are generally  
19 well above the parameters required for its rating under  
20 our regulated electric and gas utilities rating  
21 methodology.

22 **Q.** Again, that capitalized term, regulated  
23 electric and gas utilities rating methodology refers to  
24 a specific document, doesn't it?

25 **A.** That's correct. It's a general guidance

1 document that shows, broadly speaking, how they perform  
2 their basic credit analysis, which will then be modified  
3 by specific circumstances affecting a particular issuer.

4 Again, I need to emphasize this is a credit  
5 report for the parent company. We have been looking at  
6 the current credit report for FPL.

7 **MR. McGLOTHLIN:** I do believe there was a  
8 need, based on that answer, to have that additional  
9 document part of the evidence, Mr. Chairman, so I'll  
10 have to ask your indulgence to pass that out, as well.

11 **CHAIRMAN BRISÉ:** Which document is that?

12 **MR. McGLOTHLIN:** This is going to be the  
13 Moody's methodology for ratings that both of these  
14 individual reports refer to.

15 **CHAIRMAN BRISÉ:** All right. 638.

16 **MR. LITCHFIELD:** Mr. McGlothlin, is this the  
17 entire document? I just can't tell from its face.

18 **MR. McGLOTHLIN:** This is an excerpt. I do  
19 have the entire document in the room.

20 **MR. LITCHFIELD:** You know, I'm not sure I need  
21 it. I just wanted to know. I guess I'm just wondering  
22 if this is something -- whether we treated it as the  
23 complete document or agreed to allow the excerpt in,  
24 whether it's something we could just move in, and  
25 whether that would obviate the need for cross.

1           **MR. McGLOTHLIN:** Could I have just a second in  
2 place, Mr. Chairman?

3           **CHAIRMAN BRISÉ:** Okay.

4           (Pause.)

5           **MR. McGLOTHLIN:** I think Mr. Litchfield had  
6 the right idea. We're going to distribute the entire  
7 document in lieu of the one that we just gave you.

8           **CHAIRMAN BRISÉ:** Okay. That's 638.

9           **MR. LITCHFIELD:** So we had not marked the  
10 excerpt? Oh, we had marked it?

11           **CHAIRMAN BRISÉ:** Yeah. So we'll substitute  
12 the full document for the excerpt.

13           (Exhibit Number 638 marked for  
14 identification.)

15           **MR. LITCHFIELD:** Okay.

16           **CHAIRMAN BRISÉ:** And was that in lieu of cross  
17 on this document, Mr. McGlothlin?

18           **MR. McGLOTHLIN:** I have only a couple of  
19 questions on this.

20           **MR. LITCHFIELD:** I need to be more explicit in  
21 my offers.

22           **CHAIRMAN BRISÉ:** Commissioner Graham.

23           **COMMISSIONER GRAHAM:** Mr. Chairman, OPC has  
24 been questioning this witness now for almost two hours.  
25 Florida Power & Light has agreed to take this document

1 in. Can we just move on to the next question? We've  
2 got two more witnesses to go after this.

3 **CHAIRMAN BRISÉ:** I mean, that's -- we can take  
4 the document, but it's up to Mr. McGlothlin to determine  
5 if he's going to ask questions on it or not.

6 **MR. McGLOTHLIN:** I'm going to take your  
7 suggestions to heart, and if you'll let me go through my  
8 notes, maybe I can wrap up.

9 **CHAIRMAN BRISÉ:** Okay. That would be greatly  
10 appreciated.

11 **COMMISSIONER BALBIS:** Mr. Chairman, was that a  
12 motion from Commissioner Graham, because I second it?

13 (Laughter.)

14 **MR. McGLOTHLIN:** I believe with this document  
15 in I can brief the points I have in mind, so I have no  
16 further questions.

17 **CHAIRMAN BRISÉ:** Thank you, Mr. McGlothlin,  
18 for working with us this evening.

19 **MR. LaVIA:** No questions, Mr. Chairman.

20 **CHAIRMAN BRISÉ:** All right. Mr. Saporito.

21 **MR. SAPORITO:** Thank you, Mr. Chairman. I  
22 have eight brief questions, and just to speed things  
23 along I'm going to go ahead and give you the answers.  
24 They're either yes or no. Here we go.

25 **CROSS-EXAMINATION**

1 **BY MR. SAPORITO:**

2 Q. Would you agree with me that the personal  
3 assets of FPL officers, as well as the personal assets  
4 of Next Energy, Inc. officers are fully protected from  
5 any investor lawsuit within the meaning of the safe  
6 harbor provisions of the Private Securities Litigation  
7 Reform Act of 1995?

8 A. No.

9 **MR. LITCHFIELD:** Outside the scope of  
10 rebuttal.

11 **MR. SAPORITO:** No, it isn't, Your Honor,  
12 because at Page 45, Line 69, this witness testified  
13 about D&O liability insurance, and his testimony talks  
14 about how it is desperately needed by the company to  
15 protect those officers from getting their personal  
16 assets attacked from investor lawsuits.

17 **CHAIRMAN BRISÉ:** Okay. I'll allow it.

18 **THE WITNESS:** I answered no.

19 **CHAIRMAN BRISÉ:** Okay. Next question.

20 **BY MR. SAPORITO:**

21 Q. Would you agree with me that Next Energy,  
22 Inc. -- excuse me. Would you agree with me that NextEra  
23 Energy, Inc. has a diverse energy portfolio and  
24 represents a low-risk investment to the retail  
25 investment community?

1           **A.** Both diversified and low are relative terms.  
2 Without a preciser definition, I will neither agree nor  
3 disagree.

4           **Q.** Would you agree with me that retail investors  
5 who desire to hold a financial position in FPL would  
6 review the associated risk profile for NextEra Energy,  
7 Inc.?

8           **A.** They might or they might not.

9           **Q.** Well, let me ask you this, then. Isn't it  
10 true that for a retail investor to hold a financial  
11 position in FPL they have to buy NextEra Energy, Inc.  
12 stock?

13           **A.** No.

14           **Q.** Assuming that this Commission assigns an ROE  
15 level at 8.5 percent with a 100 basis point assigned  
16 range spanning 50 basis points above and below that  
17 level, would you agree with me that FPL has an incentive  
18 to be rewarded for performance?

19           **A.** Yes, we will always have an incentive to be  
20 rewarded for performance.

21           **Q.** Would you agree with me that as interest rates  
22 decrease it benefits FP&L?

23           **A.** Not necessarily.

24           **Q.** Will you agree with me that the United States  
25 Federal Reserve has committed to keeping interest rates

1 down to near zero until the end of 2014?

2 **MR. LITCHFIELD:** Duplicative.

3 **THE WITNESS:** No. The Federal Reserve doesn't  
4 control interest rates.

5 **BY MR. SAPORITO:**

6 **Q** Would you agree with me that NextEra Energy,  
7 Inc., is a financially strong company with expected  
8 strong earnings going forward, which attracts investors?

9 **A** Yes.

10 **Q** And the last question, isn't it true,  
11 Mr. Dewhurst, that on or about April 20th, 2012, you  
12 sold 100,000 shares of NextEra energy stock?

13 **A** No.

14 **MR. SAPORITO:** No further questions, Mr.  
15 Chairman.

16 **CHAIRMAN BRISÉ:** Thank you, Mr. Saporito.

17 Mr. Hendricks.

18 **MR. HENDRICKS:** Owing to the lateness of the  
19 hour and the fact that Mr. Dewhurst looks surprisingly  
20 fresh after two hours of being cross-examined, I have no  
21 questions.

22 **CHAIRMAN BRISÉ:** Okay. Staff?

23 **MR. YOUNG:** Mr. Chairman, we do have some  
24 questions, just a handful. May we approach the witness  
25 with some documents?

1                   **CHAIRMAN BRISÉ:** Sure.

2                   **MR. YOUNG:** And just for ease of reference,  
3 Mr. Chairman, we're handing out three set of documents,  
4 two of them previously marked, have been identified and  
5 entered into the record. One has not. So we're going  
6 to ask that it be given a number, exhibit number, and I  
7 think we're at, we're at --

8                   **CHAIRMAN BRISÉ:** 639.

9                   **MR. YOUNG:** 639.

10                   (Exhibit 639 marked for identification.)

11                   And that's Blue Chip Financial Forecast issued  
12 August 1st, 2012.

13                   May I proceed? All right.

14                   **CROSS EXAMINATION**

15                   **BY MR. YOUNG:**

16                   **Q** Good evening, Mr. Dewhurst. How are you?

17                   **A** Good evening.

18                   **Q** On page 46, lines 9 through 17 of your  
19 rebuttal testimony you state that you're making  
20 adjustment to the reduced FPL projected cost of  
21 long-term debt to 5.20%; is that correct?

22                   **A** That's correct.

23                   **Q** And the reason for that adjustment is that FPL  
24 was able to obtain a lower interest rate on the first  
25 mortgage bonds issued in May 2012 --



1           **A**     That's correct.

2           **Q**     -- than was projected; correct?

3           **A**     That's between the time of the initial filing  
4 and when we actually did the issuance they came out  
5 lower than we had expected.

6           **Q**     Okay. Can you please turn to what is  
7 identified as Exhibit Number 64?

8                   **CHAIRMAN BRISÉ:** 64, you say?

9                   **MR. YOUNG:** Yes, sir.

10                   **THE WITNESS:** I have 64.

11 **BY MR. YOUNG:**

12           **Q**     This document is FPL's response to staff's  
13 12th request for production of documents number 84;  
14 correct?

15           **A**     That's correct.

16           **Q**     And if you can look at what is marked as BSP  
17 Staff 005907.

18           **A**     Is that page 1 of 2?

19           **Q**     Yes.

20           **A**     Okay. Yeah, I'm with you.

21           **Q**     Are you familiar with this document, sir?

22           **A**     Yes.

23           **Q**     And this document is an updated Schedule D-4a  
24 reflecting the actual interest rates, interest rate  
25 of -- do you see the highlighted part, the 4.05% for

1 May 2012 bond issuance on line 18?

2 A I see that. Yeah.

3 Okay. I'm with you.

4 Q Looking at -- can you please refer to lines  
5 21, 20 and 21 of this document, looking at the interest  
6 rates of 5.05% and 5.09% for the projected bond issuance  
7 in December 2012 and February 2013 respectively. Do you  
8 see that?

9 A Yeah.

10 Q These are, these are estimates, FPL estimates;  
11 correct?

12 A Correct. These are our projections of the  
13 appropriate rates for those expected issuances.

14 Q Okay. Now can I have you please refer to the  
15 document title, which is Exhibit Number 55. These are  
16 FPL rate assumptions provided in FPL's response to  
17 staff's first request for POD number 21, Bates stamp  
18 page 000233.

19 A The Blue Chip from December of last year.

20 Q And looking, looking at the last page.

21 A Okay. I'm --

22 Q Are you there?

23 A Yeah. I'm there. This is the first time I've  
24 seen this page, so I would appreciate a little help in  
25 where it comes from.

1           Q     No problem. We walked through this, we  
2 walked, we kind of walked through this page in your  
3 deposition; correct? And let me ask some questions.

4                     Is this, is this the schedule FPL used to  
5 estimate the interest rate of the projected bond  
6 issuance, looking at your December 2012 Blue Chip  
7 corporate triple A to December 2012 Blue Chip corporate  
8 B, triple B?

9           A     Just bear with me one second. I just want to  
10 make sure I get this right.

11                     (Pause.)

12                     Right. This is the -- yes, this is the  
13 interpolation, that methodology that leads us to the  
14 forecast interest rates for the two debt issuances that  
15 were at least tentatively scheduled for December '12 and  
16 February of '13, the 5.05% and the 5.09%.

17           Q     Okay. And FPL used, like you said, FPL used  
18 the, the forecasted interest rates for the December 2012  
19 Blue Chip Financial Forecast. 2000 -- excuse me.  
20 December 2011 Blue Chip Financial Forecast in its rate,  
21 in its interest rate assumption to estimate the interest  
22 rate for the projected bond issuance; correct?

23           A     That's correct.

24           Q     Now you would agree with me, Mr. Dewhurst, as  
25 a general principle that the Commission should use the

1 most current available information at the time it makes  
2 its decision in determining the appropriate cost rates  
3 for long-term debt, including capital structure for  
4 ratemaking purposes; correct? From a general principle  
5 you would agree with that?

6       **A**     Only if it is consistent in its use of the  
7 latest information in other areas. I don't think it  
8 would be appropriate to update to the latest information  
9 selectively.

10       **Q**     Not selectively.

11               Mr. Dewhurst, can you now please take a look  
12 at the, what is marked as Exhibit Number 639, which is  
13 the August 2012 Blue Chip Financial Forecast?

14       **A**     I have 639.

15       **Q**     Are you familiar with this document, sir?

16       **A**     If this is the same one we discussed in my  
17 depo, then, yes.

18       **Q**     Neglecting the cover sheet, look at the one,  
19 two, three, fourth page in. Consensus -- the title  
20 Consensus Forecasts of U.S. Interest Rates And Key  
21 Assumptions.

22       **A**     Okay. I'm there.

23       **Q**     Subject to check, would you, and looking at  
24 the hour, because it's past 12:00, subject to check,  
25 would you agree that if FPL used the interest rate

1 forecast in the August 2012 Blue Chip Financial Forecast  
2 in its calculation to estimate the interest rates for  
3 the bond issuance of December 2012, the result will be  
4 4.41%?

5 **A** Well, again, given your comment in view of the  
6 hour and subject to check, yes.

7 I would point out that since this report came  
8 out, interest rates have come up. So if we were really  
9 to use the principle of the latest, greatest  
10 information, we'd have still a different number. But,  
11 yes, I will go with you on that.

12 **Q** All right. And subject to check, would you  
13 agree that if FPL used the interest rate forecast in the  
14 August 2012 Blue Chip Financial Forecast in its  
15 calculation to estimate the, estimate the interest rate  
16 for the bond issuance in February 2013, the result would  
17 be 4.51%?

18 **A** Again, subject to check, okay.

19 **Q** Would you agree, sir, that if FPL were to use  
20 the August 2012 Blue Chip Financial Forecast to estimate  
21 the interest rate for the projected bond issuance in  
22 December 2012 and February 2013 on MFR Schedule D-4a,  
23 the embedded cost of the long-term debt will be 5.31% --  
24 5.13%? Excuse me.

25 **A** Again, subject to check, I'll go with that.

1 As I said, I don't think that would be the appropriate  
2 thing to do.

3 Q That's fair.

4 MR. YOUNG: No further questions, Mr.  
5 Chairman.

6 CHAIRMAN BRISÉ: Thank you.

7 Commissioners? Commissioner Edgar.

8 COMMISSIONER EDGAR: Mr. Chairman, I had two,  
9 but in the interest of moving things along, I'm only  
10 going to ask one.

11 Mr. Dewhurst, in your opening summary, which  
12 seems like a very long time ago.

13 MR. LITCHFIELD: It actually was yesterday.

14 (Laughter.)

15 COMMISSIONER EDGAR: No. The opening summary  
16 of the rebuttal. But you're right, it was yesterday.

17 CHAIRMAN BRISÉ: Yeah. It was yesterday.

18 COMMISSIONER EDGAR: Okay. See, I'm a little  
19 slow on the uptake.

20 I think, and if I have this wrong, I  
21 apologize, but I think that you made the statement  
22 something along the line of that this, for two utilities  
23 this Commission had recently penalized them for poor  
24 performance by granting a higher -- I'm sorry -- by  
25 granting a higher ROE than FPL currently enjoys. Is

1 that accurate, or did I mishear or misremember?

2 **THE WITNESS:** No. I'm sorry. That, that  
3 sentence is sort of long and compound. The -- what I  
4 was saying was that Intervenor's recommendations, so the  
5 8.5, the 9, or the 9.25 -- well, the 8.5 and the 9 are  
6 lower than the authorized ROEs for two utilities in  
7 other parts of the country that were reasonably  
8 penalized for poor performance.

9 **COMMISSIONER EDGAR:** Okay.

10 **THE WITNESS:** So the very lowest that I found  
11 is 9.2% for Fitchburg, which was penalized for poor  
12 performance. And so my argument is it just doesn't pass  
13 the red face test to say that FPL should have 9 or 8.5.

14 **COMMISSIONER EDGAR:** Okay. Then I did  
15 mishear, and I appreciate the opportunity to have that  
16 clarified. Thank you.

17 **CHAIRMAN BRISÉ:** All right. Redirect?

18 **MR. LITCHFIELD:** Thank you.

19 **REDIRECT EXAMINATION**

20 **BY MR. LITCHFIELD:**

21 **Q** Good morning, Mr. Dewhurst.

22 **A** Good morning.

23 **Q** Just briefly, do you still have Exhibit 636 in  
24 front of you? This was provided to you by Office of  
25 Public Counsel. It's the Moody's April 10, 2012, FPL

1 report.

2 A Yes, I do have that one.

3 Q Mr. McGlothlin asked you to read a couple of  
4 paragraphs, and I would then like to do the same. Page  
5 3 of 4, if you could read the two paragraphs that are in  
6 the middle of the page beginning with "What Could Change  
7 the Rating - Up," and then read the second one with the  
8 header "What Could Change the Rating - Down."

9 A Sure. These are subsets of the section Rating  
10 Outlook.

11 What could change the rating - up? An upgrade  
12 could be considered if there is an improvement in the  
13 political and regulatory environment in Florida, which  
14 may not be fully evident until FPSC rules on the  
15 company's pending rate case. An upgrade could also be  
16 considered if there is significant improvement in  
17 economic conditions in FPL's service territory. Upward  
18 movement of FPL's ratings is constrained, however, by  
19 the utility's limited geographic diversity, ongoing  
20 exposure to event risk caused by storms in its service  
21 territory, and its substantial near term capital  
22 expenditure program.

23 What could change the rating - down? A  
24 downgrade could be considered if there is an adverse  
25 outcome to the company's pending rate case, if there are



1 significant cost disallowances or other changes to  
2 Florida's currently credit supportive cost recovery  
3 provisions, or if there is a sustained decline in cash  
4 flow coverage metrics, including CFO pre-working capital  
5 interest coverage below 5.0 times and CFO pre-working  
6 capital to debt below 25%, or an increase in debt to  
7 capital above the 40% range.

8 Q Thank you. Now Mr. McGlothlin also asked you  
9 once again to do a simple mathematical equation. He  
10 asked you again to equate the revenue requirement that  
11 corresponds to a 100-basis-point representation of ROE.  
12 Do you recall that question?

13 A Yes.

14 Q Okay. Would you just assume for me three  
15 utilities, one is FPL and the other two are exactly like  
16 FPL in all respects except that one is one-fifth the  
17 size of FPL and one is twice the size of FPL. Can you  
18 give me the corresponding revenue requirements that  
19 would equate to a 100-basis-point spread for ROE for the  
20 utility that in my hypothetical is one-fifth the size of  
21 FPL?

22 A For -- 100 basis points would be roughly  
23 30 million.

24 Q Okay.

25 A Assuming that same rate base relationships.

1 Q Everything is equal in all due respects.

2 A And the other one was what proportion?

3 Q Twice the size of FPL.

4 A 320 million.

5 Q Okay. On a per capita basis in terms of  
6 revenue requirement, what, what are the differences  
7 among those three utilities?

8 MR. MOYLE: I'm not, I'm not sure that, that  
9 there's any information with respect to a, how you get  
10 to a per capita basis. I mean, the first question was  
11 just kind of do the math.

12 BY MR. LITCHFIELD:

13 Q On a prorated basis.

14 A If, if your hypothetical has me assuming that  
15 they are, one is just a mini version of the other, then  
16 the ratios per customer would be the same, the amounts  
17 per customer would be the same.

18 Q Thank you. Now Mr. McGlothlin took you  
19 through a line of questioning in which I think he  
20 represented to you and asked you to accept, subject to  
21 check, that in the last base rate case for FPL OPC had  
22 advocated a 9.5% ROE and a rate decrease. Do you recall  
23 that question?

24 A I recall that question. Yes, sir.

25 Q Okay. Now OPC did agree to the settlement

1 agreement that, that included the last base rate  
2 proceeding, did it not.

3 **A** Yes. They were a party to that agreement.  
4 Are a party.

5 **Q** What were the, what were the key economic  
6 terms, or if you could describe the economic impact to  
7 FPL of that agreement to which OPC agreed?

8 **MR. McGLOTHLIN:** I think this is beyond the  
9 scope of cross-examination.

10 **CHAIRMAN BRISÉ:** Mr. Litchfield.

11 **MR. LITCHFIELD:** Thank you, Mr. Chairman. Mr.  
12 McGlothlin wanted to make a very strong point with  
13 Mr. Dewhurst as to what OPC had proposed in the last  
14 base rate case. I think it's more than fair to point  
15 out or to have this witness describe what OPC actually  
16 agreed to and is currently in effect by OPC.

17 **MR. McGLOTHLIN:** A settlement is by definition  
18 a settlement and it doesn't infer anything about our  
19 litigation positions then or now. It's an improper,  
20 improper question for that reason.

21 **CHAIRMAN BRISÉ:** I think I'll allow the answer  
22 to this question, and hopefully this closes the line on  
23 this question.

24 **MR. LITCHFIELD:** It does.

25 **CHAIRMAN BRISÉ:** On that line.

1           **THE WITNESS:** It's late and I'm not sure I  
2 remember all the terms, but obviously there was the cash  
3 recovery of West County up to the limit of fuel savings.  
4 There was some additional -- I forget whether they were  
5 base rate amounts or separate charges and I forget the  
6 amount. And then obviously there was the surplus  
7 depreciation flexibility to enable us to earn  
8 effectively an 11% book rate of return.

9 **BY MR. LITCHFIELD:**

10           **Q**     Okay. Now Mr. Sundback asked you a few  
11 questions relative to the Commission's decision in 2007  
12 relative to FPL's proposal to construct a supercritical  
13 pulverized coal burning facility. Do you recall those  
14 questions?

15           **A**     That definitely was yesterday.

16                   (Laughter.)

17           **Q**     And I see that Mr. Sundback is armed and  
18 ready. My next, my next question is really quite  
19 straightforward, Mr. Dewhurst. Do you recall the  
20 circumstances that led FPL to recommend that coal  
21 project to the Commission?

22           **A**     Well, there were several that we were  
23 ourselves searching for, and I think it's fair to say  
24 being encouraged to search for ways of increasing the  
25 fuel diversity in our mix. Because it was clear that we

1 had already been on a path to utilize natural gas to  
2 make our fleet more efficient and we were increasing the  
3 proportion of our fuel mix coming from natural gas. So  
4 we were looking for incremental fuel diversity, and I  
5 believing it was also, it's also fair to say that we  
6 were encouraged to do so.

7 **MR. LITCHFIELD:** By "Commission," for the  
8 record, I should note that I don't believe Commissioner  
9 Edgar was on that Commission at the time.

10 **COMMISSIONER EDGAR:** Right.

11 **BY MR. LITCHFIELD:**

12 **Q** Now lastly I would like you to refer to  
13 Exhibit 634. This was provided to you by Mr. Sundback  
14 during his cross-examination. And it is a few pages  
15 from a presentation by Paul Cutler dated May 4, 2010.  
16 Do you see that?

17 **A** Yes, I see that.

18 **Q** Now I'm not going to focus on all of these  
19 pages but would just ask you, first of all, generally  
20 the, the financial information in here, it's been  
21 updated, I assume, since 2010.

22 **A** I think, as I said last week, each of these  
23 documents is a separate document that has information  
24 that's relevant to that point in time. So this  
25 particular document was accurate and relevant as of

1 May 4th, 2010. I can't say sitting here today that we  
2 have subsequently prepared a document that looks, you  
3 know, exactly the same. But anything that we have come  
4 out with more recently would obviously have more recent  
5 information on it relating to our financing activities.

6 Q Fair enough. Now I would refer you to page 13  
7 of this presentation, which Mr. Sundback also referred  
8 you to.

9 A Yes.

10 Q And he asked you questions relative to capital  
11 raised since 2005, did he not?

12 A Yes.

13 Q So my question to you is relative to FPL's or  
14 the funding of FPL's operations investments, is, is this  
15 all the capital that FPL requires or is this sufficient  
16 to fund its operations?

17 A No. I think I made that point in response to  
18 one of Mr. Sundback's questions. This is a portion of  
19 the funding need for FPL.

20 Q How does FPL finance the balance of its  
21 operations and investment needs?

22 A Well, the primary method of financing is  
23 incremental equity, whether that be through retained  
24 earnings or infusions of equity from the parent company.

25 Q Retained earnings through the return on equity

1 that the company receives through rates?

2 **A** Correct. Yes.

3 **MR. LITCHFIELD:** Okay. That's all I have.

4 **CHAIRMAN BRISÉ:** Thank you very much.

5 Exhibits, FPL.

6 **MR. LITCHFIELD:** We, FPL would move  
7 451 through 458.

8 **CHAIRMAN BRISÉ:** Okay. 451 through 458 will  
9 be moved into the record, seeing no objections.

10 (Exhibits 451, 452, 453, 454, 455, 456, 457,  
11 and 458 admitted into the record.)

12 Mr. Sundback.

13 **MR. SUNDBACK:** Oh, I'm sorry, Mr. Chairman.

14 At this time SFHHA would move the admission of  
15 631 through 634, if our notes are correct.

16 **CHAIRMAN BRISÉ:** 631 through 634?

17 **MR. SUNDBACK:** Yes.

18 **CHAIRMAN BRISÉ:** Okay.

19 **MR. SUNDBACK:** If you -- if there's some more  
20 exhibits out there to go in, we're happy to move those  
21 too.

22 (Laughter.)

23 **MR. LITCHFIELD:** No objections.

24 **CHAIRMAN BRISÉ:** All right. Seeing no  
25 objections, we'll move 631 through 634 into the record.

1 (Exhibits 631, 632, 633, and 634 admitted into  
2 the record.)

3 **MR. SUNDBACK:** Thank you.

4 **MR. McGLOTHLIN:** I move 635 through 638.

5 **MR. LITCHFIELD:** No objections.

6 **CHAIRMAN BRISÉ:** Okay. 635 through 638 will  
7 be moved into the record, hearing no objections.

8 (Exhibits 635, 636, 637, and 638 admitted into  
9 the record.)

10 **MR. YOUNG:** I move, I move 639.

11 **CHAIRMAN BRISÉ:** Okay. 639 will be moved into  
12 the record, seeing no objections.

13 (Exhibit 639 admitted into the record.)

14 All right. Thank you very much. Seeing the  
15 lateness of the hour, it is 12:20, I think we've reached  
16 the point of diminishing return on our investment with  
17 respect to our time today.

18 What's that? Oh, Mr. Dewhurst, you may be  
19 excused.

20 **THE WITNESS:** Thank you. And, Commissioners,  
21 I apologize for taking up so much of your time.

22 **CHAIRMAN BRISÉ:** All right. So, I know some  
23 of you are prepared to, to go up tonight. That is, that  
24 is, that is my inclination, my personal inclination,  
25 considering that I think we could be done in an hour, an



1 hour and a half or so. But taking into consideration  
2 the fact that we have been here since 9:00 a.m. and  
3 we've been here for about maybe 14, almost 15 hours, I  
4 think we will go ahead and recess until tomorrow. But,  
5 Commissioner Balbis.

6 **COMMISSIONER BALBIS:** As long as that's what  
7 you said, I have nothing to say.

8 (Laughter.)

9 **CHAIRMAN BRISÉ:** Okay. However, tomorrow  
10 morning we will convene at 9:30, and we certainly hope  
11 that we can move expeditiously tomorrow.

12 Yes, Mr. Saporito.

13 **MR. SAPORITO:** Yeah. I, I would just ask for  
14 a little latitude and ask you to reconsider, because if  
15 we can wrap this up in an hour, hour and a half, you  
16 know, I already checked out of the hotel because you  
17 told me this was going to be done tonight. So, you  
18 know, it's going to cost me a lot of money to go check  
19 into another hotel just to be here for an hour tomorrow.

20 **CHAIRMAN BRISÉ:** Understood. But we fully  
21 expected to be done at around midnight, and I think  
22 we've reached the point that, you know, it, it really --  
23 I don't think we -- I think everybody is -- all the  
24 juice is drained out of everybody. And, and --

25 **COMMISSIONER BALBIS:** Mr. Chairman, can I --

1                   **CHAIRMAN BRISÉ:** Mr. -- I mean, Commissioner  
2 Balbis.

3                   **COMMISSIONER BALBIS:** What I was going to say,  
4 in light of Mr. Saporito's request, my concern is that  
5 the *Florida Administrative Weekly* notice indicated we  
6 start at 9:30 or it would be announced the night, the  
7 day before. Well, the day before has passed and we  
8 haven't announced it. So in the abundance of caution,  
9 I'm glad you said we should start at 9:30 for noticing  
10 requirements only.

11                   **CHAIRMAN BRISÉ:** All right. All jokes aside  
12 --

13                   **MR. YOUNG:** Also, based on what has been  
14 passed to me, I see here that Mr. Saporito indicated he  
15 has no cross for Ender or Deaton.

16                   **CHAIRMAN BRISÉ:** Okay.

17                   **MR. YOUNG:** Thus, if he wants to request to be  
18 excused, he, him or any other witness can, can make that  
19 request -- any party, excuse me, any other party.

20                   **CHAIRMAN BRISÉ:** Sure. Mr. Saporito.

21                   **MR. SAPORITO:** If I do that, I won't lose any  
22 of my rights or anything?

23                   **CHAIRMAN BRISÉ:** No, sir.

24                   **MR. SAPORITO:** Okay. So can I be excused?

25                   **CHAIRMAN BRISÉ:** Absolutely.

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**MR. SAPORITO:** Thank you, sir.

**CHAIRMAN BRISÉ:** All right.

**MR. HENDRICKS:** Yes. I'd like to request to  
be excused.

**CHAIRMAN BRISÉ:** Okay. Absolutely. That  
works just fine. With that, we will see you tomorrow  
morning at 9:30.

(Transcript continues in sequence with Volume  
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STATE OF FLORIDA        )  
                                  :    CERTIFICATE OF REPORTERS  
COUNTY OF LEON        )

WE, LINDA BOLES, CRR, RPR, and JANE FAUROT, RPR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 5<sup>th</sup> day of September, 2012.

Linda Boles                      Jane Faurot  
LINDA BOLES, CRR, RPR            JANE FAUROT, RPR

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