

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 36

Pages 5262 through 5,381

PROCEEDINGS: HEARING

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

DATE: Monday, November 19, 2012

TIME: Commenced at 11:20 a.m.  
Concluded at 2:35 p.m.

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

REPORTED BY: DEBRA R. KRICK  
(850) 894-0828

APPEARANCES: (As heretofore noted.)

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COMMISSION  
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## EXHIBITS

NUMBER :

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

## CROSS EXAMINATION (Cont.)

1  
2  
3 BY MR. REHWINKEL:

4 Q All right. Let's look at page 6 of the --  
5 what's identified as Exhibit 704, and ask you to look at  
6 Section III, Roman numeral III.

7 CHAIRMAN BRISÉ: Did you mean 705 or 704?

8 MR. REHWINKEL: I thought you gave that number  
9 704. I wrote down 704.

10 CHAIRMAN BRISÉ: No, it's 705.

11 MR. REHWINKEL: I apologize, Mr. Chairman.

12 CHAIRMAN BRISÉ: Okay.

13 BY MR. REHWINKEL:

14 Q Okay. Well, I'm asking you to look at the  
15 2005 stipulation and the order approving it. On page 6,  
16 Roman numeral III, you quote the first sentence of each  
17 of the two paragraphs in that paragraph, correct, in --  
18 on page two of your testimony, line 17 through 23?

19 A Yes, I believe that's correct.

20 Q Now, you did not quote the last sentence in  
21 the first paragraph, did you?

22 A I did not.

23 Q Okay. Can you read that sentence into the  
24 record, please?

25 A Yes. "In addition, we recognize that the

1 stipulation and settlement reflects the agreement of a  
2 broad range of interests, FPL, OPC, the Attorney General  
3 and residential, commercial, industrial and governmental  
4 customers of FPL."

5 Q Okay. You talk on page three of your  
6 testimony about deference, on line 11 specifically,  
7 correct?

8 A I do.

9 Q And you cite this order, that's Exhibit 705,  
10 in support of that proposition, correct -- or that  
11 concept, I should say?

12 A Yes. But let me be clear, it's not just  
13 because of that one statement from that one order, but  
14 to me, it was a good example.

15 Q Okay. Let's explore the notion of deference,  
16 and I want to ask you a hypothetical. Would this  
17 Commission, in your experience -- and you're testifying  
18 here partly based on your experience of 30 plus years as  
19 a commissioner, Public Counsel employee, commissioner's  
20 aid and appearing before the Commission, right?

21 A Yes.

22 Q Okay. Would the Commission likely give any  
23 deference to a unilateral offer of settlement of a  
24 file-and-suspend rate case that was -- which unilateral  
25 offer was submitted by the utility where such unilateral

1 offer of settlement was opposed by every single party  
2 that intervened, and which was filed six days before  
3 hearing and proposed to increase rates by \$350 million?  
4 And let's also add a fact that the Intervenor thought  
5 that rates should be increased no more than \$100  
6 million. In that hypothetical, would the Commission  
7 give any deference to an offer of settlement under those  
8 facts?

9 A I don't know. I have never seen those facts  
10 presented to the Commission before. It's possible that  
11 the degree of deference may not be as great as if there  
12 were a greater number of signatories to the settlement,  
13 but a settlement, for it to have deference, needs to  
14 have parties -- in my opinion, needs to have parties  
15 agreeing that have taken opposing viewpoints on  
16 substantive parts of the case, and have come to a  
17 compromise on those.

18 And in that situation, I think that is a  
19 settlement, and it is something that the Commission  
20 historically has given deference to.

21 Q But in my hypothetical, where it was  
22 unilateral, in other words, only the utility offered,  
23 you're saying that the level of deference --

24 A Well, I am not -- Mr. Rehwinkel, if it's  
25 unilateral, I don't think it meets the definition of

1 settlement.

2 **Q Okay. All right. So no deference to a**  
3 **unilateral offer of settlement?**

4 MR. BUTLER: Asked and answered.

5 MR. REHWINKEL: I don't think he did. I think  
6 he first answered it, and then he said it was  
7 unilateral -- because I said unilateral, so I need  
8 to make sure that he answers the question I asked.

9 CHAIRMAN BRISÉ: Go ahead, Mr. Deason.

10 THE WITNESS: Yeah. Again, it was never  
11 presented to me as a commissioner, that set of  
12 facts, but I would be hard pressed to give  
13 deference to a strictly unilateral proposal that  
14 was not substantiated by some type of evidence or  
15 either some type of negotiation that took place and  
16 other parties agreeing. And that certainly doesn't  
17 meet the definition of unilateral.

18 BY MR. REHWINKEL:

19 **Q Okay. Let's -- let me ask you another**  
20 **hypothetical. Same set of facts, except let's change it**  
21 **and say this utility has three million customers; and it**  
22 **entered into a settlement with a single customer who**  
23 **buys electricity to run a mass transit rail service.**  
24 **And the utility in the settlement that they enter into**  
25 **with the mass transit rail service customer gives him a**

1 rate decrease of \$20 million and all other customers  
2 bear a \$370 million increase.

3 All the other customers oppose it, and they  
4 refuse to negotiate. Should the Commission or would the  
5 Commission give that settlement deference?

6 A Here again, Commissioners, that hypothetical  
7 has never been presented to this Commission and to me  
8 while I served on the Commission. It's difficult to  
9 say. It would depend upon all the other facts and  
10 circumstances and what issues were being included in the  
11 settlement and whether those were issues that the  
12 transit authority provided testimony and took opposing  
13 viewpoints and was willing to make a concession to reach  
14 an agreement.

15 But, Mr. Rehwinkel, I do agree with the  
16 concept that the degree of deference may be dependent  
17 upon the degree of participation of the various  
18 intervenors, to what extent they participated in the  
19 case, what concession that they were making. All of  
20 these go into a consideration of what constitutes the  
21 public interest, and again, it comes down to whether it  
22 is in the public interest and all of the facts and  
23 circumstances that go in to that particular case as it  
24 is presented to the Commission.

25 Q Okay. So would you agree with me that the



1 concept of deference may be on a sliding scale that  
2 depends on the number of customers and the interests  
3 they represent?

4 A I am not sure I would go that far to say that  
5 there is some type of a sliding scale. It goes to --  
6 back again to all of the facts and circumstances as they  
7 exist at the time the settlement is presented to the  
8 Commission and whether there is a basis to determine  
9 whether it's in the public interest.

10 Q Okay. Now, in the hypothetical that I last  
11 asked you about with the mass transit customer, if the  
12 other parties refuse to agree to that settlement and  
13 objected to the Commission considering it, would they be  
14 viewed as vetoing the settlement by their objections?

15 A No, I don't think they would be viewed as  
16 vetoing it, as long as the settlement was free to come  
17 to the Commission and be considered on its merits and  
18 the Commission was free to act upon that in their  
19 determination of whether it is or is not in the public  
20 interest.

21 Q What do you mean by "free to come to the  
22 Commission?"

23 A Well, Mr. Rehwinkel, it's very obvious in this  
24 case there has been a lot of argument and pleadings  
25 filed at the courts concerning whether the Commission

1 has the authority to go forward with the settlement that  
2 is currently before it because the Public Counsel is not  
3 a signatory, and I think that is more close to the  
4 concept of the veto power as opposed to the previous  
5 example which you just gave.

6 **Q Okay. Is it your testimony that a utility has**  
7 **a right to force a settlement on the other parties?**

8 A No, that is not my testimony, and I do not see  
9 how -- given this set of facts or even hypothetically,  
10 how the utility could force a settlement on parties who  
11 do not believe it is in their interest or in the  
12 interest of the public generally.

13 **Q Okay. Is it your testimony that settlements**  
14 **should be freely negotiated and that all parties should**  
15 **have an equal opportunity to negotiate and have**  
16 **knowledge of the settlement negotiations and access to**  
17 **necessary information?**

18 A I think those are key ingredients for a  
19 successful negotiation and for a -- an agreement that  
20 reaches a balanced outcome.

21 **Q On page four of your testimony, you use the**  
22 **phrase -- well, I wrote down that you did, "negotiating**  
23 **from positions of strength." Line 9, "negotiate from**  
24 **positions of strength." Is that what you are talking**  
25 **about? Freely negotiating, equal opportunity to**

1 negotiate, knowledge of the negotiations, access to  
2 necessary information, does that give a party the  
3 ability to negotiate from strength -- position of  
4 strength?

5 A Yes, the ability -- the knowledge of --  
6 concerning the facts of the case and the ability to  
7 engage in negotiations without being forced to do one  
8 thing or another; that's -- that's what I am referring  
9 to.

10 Q Okay. And negotiation with those  
11 characteristics would also be meaningful negotiations;  
12 would you agree?

13 A Yes, there may be other aspects as well, but I  
14 think that that's true that for meaningful negotiations,  
15 the parties need to have access to enough information  
16 from which they can negotiate with knowledge and  
17 strength.

18 Q Have you ever negotiated a settlement -- to  
19 buy land?

20 A Have I ever negotiated a purchase price to  
21 purchase land?

22 Q Yes.

23 A As an individual?

24 Q Yes, sir.

25 A Yes.

1           Q     Did you buy everything you ever negotiated for  
2 in buying land?

3           A     No.

4           Q     Did you ever walk away from a deal?

5           A     Yes, sir.

6           Q     If the seller insisted you buy at his price  
7 and you didn't, would you be vetoing his proposal, this  
8 land, if a seller of land?

9           A     Well, I think we have two different scenarios  
10 here, Mr. Rehwinkel. You're talking about one purchaser  
11 and one seller, which I don't think is really analogous  
12 to the situation of the settlement that we have here,  
13 so -- but, yes, if there is -- there are only two people  
14 negotiating and one party through negotiation reaches a  
15 point to where he or she walks away, well, then, there  
16 is no deal. So I guess in that sense, the deal has been  
17 vetoed because it doesn't go forward.

18          Q     Okay. But the -- could the -- in that case,  
19 could the seller go to court and make you buy at his  
20 price or even buy at all, if you didn't agree to buy?

21          A     No, but I just don't see the relevancy to what  
22 we are doing here.

23          Q     If a -- if a buyer in a land transaction has  
24 all the information he needs and has meaningful  
25 negotiations and still doesn't reach a deal, is the

1 buyer wrong for not buying if the price is too high, in  
2 his opinion?

3 A No. He is free to negotiate and take whatever  
4 position that he or she feels is appropriate, and I just  
5 don't see the relevancy, Mr. Rehwinkel, of what's in  
6 front of the Commission at this time.

7 Q Wouldn't you agree that in some negotiations,  
8 some things are just nonstarters, price too high?

9 A I agree that there could be some things that  
10 in a party's mind would be considered a nonstarter; that  
11 happens in real life, yes.

12 Q And nonstarters that stop negotiations don't  
13 mean that the party that walked away from negotiations  
14 was not acting in good faith, correct?

15 A Yeah. I think you can't make that judgment  
16 just upon the limited facts that you have presented in  
17 your hypothetical.

18 Q Okay. On page 6 of your testimony, you  
19 reference, on line nine and 10, a review of the proposed  
20 settlement agreement and circumstances that brought it  
21 to this point. What are you referring to with respect  
22 to reviewing the proposed settlement?

23 A Reading the proposed settlement, its terms,  
24 its conditions, the positions taken and in the context  
25 of my knowledge of the case and that has been presented

1 and the information that supports the case.

2 **Q When you say "the positions taken," are you**  
3 **talking about in opposition to the settlement?**

4 A Yes, everything -- well, you have to realize  
5 that this testimony was filed as part of the direct  
6 case, and it was before the Public Counsel's Office  
7 filed testimony in opposition. So I did have the  
8 benefit of that.

9 **Q Uh-huh.**

10 A But based upon the information I had at the  
11 time this testimony was filed.

12 **Q And when you say, "and the circumstances that**  
13 **have brought it to this point," what are you talking**  
14 **about there?**

15 A The history of this case, the filing of it,  
16 the extensive discovery, the testimony, the hearing, the  
17 depositions, everything that had brought it to this  
18 point was information that I knew about, and certainly  
19 when I reviewed the proposed settlement agreement, I  
20 didn't -- I was aware of all of that. So it entered  
21 into my review of the settlement.

22 **Q Are you generally familiar with who negotiated**  
23 **the settlement --**

24 A No.

25 **Q -- with FP&L?**

1 A No.

2 Q You have no knowledge whatsoever?

3 A I have no knowledge of who participated in the  
4 settlement process, how long it took, who were the  
5 parties, what were the positions or what was the give  
6 and take. I saw the settlement when it was filed  
7 publicly for the first time.

8 Q Uh-huh. And you have had -- but you know who  
9 signed the settlement agreement, right?

10 A Not off the top of my head. I am sure it's --  
11 whoever signed it, it's a public document.

12 Q You know who the signatories are, don't you,  
13 the parties?

14 A Well, I know the parties. I don't know who  
15 the individuals were that signed it.

16 Q In your knowledge or understanding, is counsel  
17 for FIPUG authorized to represent customers in this case  
18 or in settlement negotiations who are not members of  
19 FIPUG and who are customers of FP&L?

20 A I don't believe that Mr. Moyle is attempting  
21 to represent any entities other than those which  
22 expressed made an appearance on behalf of.

23 Q Is he authorized to, whether he is attempting  
24 to or not?

25 A I do not believe he is authorized. That may

1 be a legal question, but I do not think that he is.

2 But one thing needs to be clear, and it goes  
3 back to a previous statement that I made about giving  
4 deference to a settlement is the extent to which parties  
5 actively participated in a case and took positions  
6 contrary to those of the applicant, and FPL in this  
7 case. And certainly FIPUG was very much engaged in the  
8 case and took differing positions and reached a  
9 negotiation, a settlement. I think given that fact,  
10 it's something that deems the evaluation of the  
11 Commission to determine if that is in the public  
12 interest.

13 **Q So it's your testimony that all a party has to**  
14 **do in order to sign on to a negotiation with a**  
15 **utility -- a settlement with a utility is to take a**  
16 **position adverse to the company, and then they are free**  
17 **to negotiate and have the Commission give it deference?**

18 A Mr. Rehwinkel, no, that's not my testimony. I  
19 am saying that is a component, something the Commission  
20 can give consideration to, to the extent to which a  
21 party has actively engaged and taken contrary positions.

22 **Q Okay. And by doing so, they can speak for**  
23 **other customers?**

24 A No, that's not my testimony, Mr. Rehwinkel.

25 **Q Okay. What if I asked you the same questions**



1 about for counsel for South Florida Hospital and Health  
2 Care Association, are they authorized to represent  
3 customers in this case who are not members of South  
4 Florida Hospital and Health Care Association?

5 MR. LITCHFIELD: Mr. Chairman, I have given  
6 Mr. Rehwinkel a lot of latitude here. I don't see  
7 anything in Mr. Deason's testimony anything along  
8 these lines.

9 MR. REHWINKEL: This witness is testifying  
10 about the level of deference that the Commission  
11 should give to the settlement, and he makes  
12 statements in his testimony about the -- who signs  
13 the agreement and what level of deference the  
14 Commission should give, especially on page nine of  
15 his testimony.

16 He has asked -- he answered this question with  
17 respect to FIPUG. I just want to ask it with  
18 respect to South Florida and FEA, and then I am  
19 done with this, this aspect of it.

20 MR. WISEMAN: Mr. Chair, if I may.

21 CHAIRMAN BRISÉ: Sure.

22 MR. WISEMAN: We have limited time for  
23 cross-examination over the course of the next three  
24 days. I don't think there is any question in this  
25 proceeding that Mr. Moyle -- Mr. Moyle certainly

1 has not attempted to represent the interests of non  
2 FIPUG members. I am not trying to inter --  
3 represent the interest of non SFHHA members. I  
4 will stipulate to that, if that will help move this  
5 along. I don't see the purpose of this  
6 cross-examination.

7 MR. REHWINKEL: That will because Mr. Wiseman  
8 indicated -- he certainly alluded to the 79,000  
9 employees that I don't believe are members of SFHA,  
10 but I will accept that stipulation and move on to  
11 another question.

12 CHAIRMAN BRISÉ: Okay. Go right ahead.

13 BY MR. REHWINKEL:

14 Q So on page nine, Mr. Deason, you ask the  
15 Commission to ignore the fact of the Public Counsel not  
16 signing on to the agreement, correct?

17 A I don't believe I said the Commission should  
18 ignore that fact. But if you could point me to my  
19 testimony, I would gladly look at that.

20 Q Okay. Let's look at page nine, lines 14  
21 through 15. And we started off with this.

22 A I state that the -- I am sorry. Is there a  
23 question pending?

24 Q Yeah. Let me ask it this way, when you say,  
25 "I would strongly encourage the Commission not to deny

1 the proposed settlement agreement simply because OPC is  
2 not a signatory," aren't you asking the Commission to  
3 ignore the Public Counsel's status as non-signatory?

4 A No, I am not. In fact, later in my testimony,  
5 I state that the Commission should take -- take into  
6 consideration the objections of the Public Counsel, but  
7 that the settlement should not be rejected simply  
8 because Public Counsel is not a signatory.

9 Q So you use the phrase "de facto veto power,"  
10 right, on line 18 and line 22?

11 A Yes, I do.

12 Q And are you state -- stating in your testimony  
13 that the Public Counsel wants this so-called power?

14 A No, I am not saying that's what Public Counsel  
15 wants. I am saying it could have the -- if the  
16 Commission were to state emphatically that simply  
17 because -- regardless of the merits, but simply because  
18 the Public Counsel is not a signatory, that the  
19 settlement will not be considered on its merits. If  
20 that were the position the Commission were to take, then  
21 that would have the effect of granting a de facto veto  
22 power to the Public Counsel.

23 Q So the extent that the Public Counsel exerts  
24 that his participation is as a necessary party -- and  
25 you have seen pleadings to that effect, correct?

1           A     I have.

2           Q     If the Commission agreed with that, they would  
3 be giving the Public Counsel de facto veto power; is  
4 that your testimony?

5           A     I think, in effect, that would be the result,  
6 and I think it would have detrimental effect upon the  
7 possibility of future settlements being brought to the  
8 Commission.

9           Q     Okay. And what is your definition of veto?

10          A     I really didn't define the term. I think it's  
11 generally understood to mean that -- veto power meaning  
12 that one entity or one person's say overrides that of  
13 others, and has the effect of nullifying a proposal or a  
14 position. Are you going to give me the precise  
15 definition, Mr. Rehwinkel?

16          Q     Well, I am going to ask you if you agree  
17 with -- and I am looking at Merriam-Webster's Collegiate  
18 Dictionary, Eleventh Edition. It looks like it's a 2003  
19 book. You would agree the definition of veto hasn't  
20 changed in the last nine years; wouldn't you?

21          A     Not to my knowledge.

22          Q     Okay. Definition number one, an authoritative  
23 prohibition, interdiction. Is that the definition  
24 you're using?

25          A     I don't think it fits precisely.

1           **Q**     **A power of one department or branch of**  
2 **government to forbid or prohibit finally or**  
3 **provisionally the carrying out of projects attempted by**  
4 **another department?**

5           A     I think that's more closely aligned with the  
6 concept that I am trying to portray in my testimony.

7           **Q**     **A power vested in a chief executive to prevent**  
8 **permanently or temporarily the enactment of measures**  
9 **passed by a legislature; not that one, right?**

10          A     Well, I think certainly we are not talking  
11 about a chief executive in the Legislature, but I think  
12 the concept is synonymous with what I am portraying in  
13 my testimony.

14          **Q**     **Would the alternative to this de facto veto**  
15 **power that you're talking about would be the ability to**  
16 **bypass the Public Counsel?**

17          A     If by -- what do you mean by the term  
18 "bypass," Mr. Rehwinkel?

19          **Q**     **Ignoring.**

20          A     So are you saying that if -- well, if you  
21 could restate your question, please.

22                 MR. LITCHFIELD: And if -- I will object to  
23 that question as having been asked and answered if,  
24 in fact, that is Mr. Rehwinkel's definition,  
25 ignoring. He asked that precise question already.

1 MR. REHWINKEL: That's the first time I have  
2 asked about bypassing, but.

3 CHAIRMAN BRISÉ: The bypass is -- is new, but  
4 the ignore part has been asked.

5 MR. REHWINKEL: I am asking him about what's  
6 the compliment of the word veto.

7 BY MR. REHWINKEL:

8 Q Is it -- let me ask you this: Do you believe  
9 that the Public Counsel didn't do something in this case  
10 that he was required to -- obligated to do with respect  
11 to negotiating?

12 A I am sorry. Could you repeat the question?

13 Q Do you believe that the Public Counsel didn't  
14 do something he was required or obligated to do with  
15 respect to negotiating with FPL in this case?

16 A That is not in my testimony. It's not been my  
17 position. I have no knowledge of who participated, when  
18 in the negotiations, so I have no basis upon which to  
19 make a judgment.

20 Q So you are not saying the Public Counsel  
21 forfeited his right to have a hearing or to object to  
22 the settlement?

23 A That's not my testimony.

24 Q So are you not -- and is it -- you are also  
25 not telling the Commission that the Public Counsel did

1 not act in good faith, and that he had -- or that he had  
2 a duty to negotiate; are you?

3 A That's not my testimony. I have no facts to  
4 substantiate it one way or the other.

5 Q Have you read the statement by Mike -- do you  
6 know who Mike Sole is?

7 A I do.

8 Q Have you read where Mr. Sole stated that FPL  
9 invited the Office of Public Counsel to join settlement  
10 talks many months ago, and they declined to do so?

11 MR. LITCHFIELD: I will object to this line of  
12 questioning. I don't think it's anywhere in Mr.  
13 Deason's testimony, as he has just indicated, and I  
14 don't see the relevance with respect to Mr.  
15 Deason's testimony.

16 CHAIRMAN BRISÉ: Mr. Rehwinkel?

17 BY MR. REHWINKEL:

18 Q Let's do it this way, we can revisit that  
19 question.

20 On page nine, lines 19 through 23, can you  
21 turn to that part of your testimony?

22 A Yes.

23 Q Can you read that for me, please?

24 A Yes. "The best negotiated settlements are  
25 those where the public utility and the Intervenors all

1 willingly negotiate from a position of knowledge and  
2 strength with a willingness to engage in compromise to  
3 achieve a beneficial balance. A negotiation in which  
4 one intervenor has de facto veto power would not be  
5 conducive to or consistent with this approach."

6 **Q You offered this testimony in this case where**  
7 **the Public Counsel opposes the settlement and insists**  
8 **that he is a necessary party, correct?**

9 A Yeah, but that's not the purpose of my  
10 testimony, Mr. Rehwinkel. It's in response to the  
11 question on line six and seven.

12 **Q Are you testifying that the Public Counsel --**  
13 **well, you would agree that the Public Counsel is an**  
14 **intervenor in this case, right?**

15 A Yes.

16 **Q And you state here that, "the best negotiated**  
17 **settlements are those where the public utility and the**  
18 **Intervenors all willingly negotiate from a position of**  
19 **knowledge and strength," right?**

20 A Yes, those are the best negotiated  
21 settlements, but I did not mean to cast any particular  
22 meaning on the term "all," meaning that to have a  
23 successful negotiation that you have to have 100 percent  
24 participation. All was is referring to, all of those  
25 that do negotiate should negotiate from a position of



1 knowledge and strength.

2 **Q Okay. So if the Public Counsel wasn't one of**  
3 **those who negotiated, that's just his tough luck?**

4 A No, I disagree with that. Public Counsel has  
5 the obligation to consider whether to negotiate and if  
6 they negotiate, what positions they take. There is no  
7 obligation to reach a settlement, but I think there is  
8 an obligation -- not in a legal sense, but I think an  
9 obligation in trying to bring forth the best outcomes  
10 for their clients to at least enter into negotiations  
11 and see if there are areas which would be beneficial for  
12 Public Counsel's clients.

13 **Q Public Counsel did that in this case; didn't**  
14 **he?**

15 A I do not know that for a fact. I have no  
16 reason to disagree or to state one way or the other. I  
17 really do not know the facts of the negotiating process,  
18 who was approached, when, who -- who participated and to  
19 what extent. I have no knowledge of that.

20 **Q Well, if the Public Counsel negotiated and**  
21 **just didn't reach settlement with -- with Florida Power**  
22 **& Light, what's wrong with that?**

23 A I am not saying there is anything wrong with  
24 that. As long as there was a good faith effort to  
25 attempt in the negotiations and they were not

1 successful, I can't fault that. And I am not -- and  
2 that's not the purpose of my testimony to assert one way  
3 or the other, that the facts were in this case one way  
4 or the other. I do not know.

5 **Q Have you been told that the Public Counsel**  
6 **refused to join settlement discussions?**

7 A No, I have not been told that.

8 **Q Would you accept my representation that the**  
9 **Public Counsel was not asked to join settlement**  
10 **discussions that were underway?**

11 MR. LITCHFIELD: I will object to the  
12 question. Now Mr. Rehwinkel is testifying.

13 CHAIRMAN BRISÉ: I think I agree with that.  
14 If you could --

15 MR. REHWINKEL: Well, the flavor of this  
16 witness' testimony is certainly to cast the Public  
17 Counsel in a light that suggests that he did not  
18 negotiate with this company.

19 MR. LITCHFIELD: But this witness has just  
20 clarified that that's not his testimony.

21 CHAIRMAN BRISÉ: Mr. Rehwinkel, if we could  
22 move on. I think he has answered with his  
23 knowledge of what he knew with respect to the  
24 negotiations. So if we could move on to the next  
25 topic, or the next question.

1 THE WITNESS: Mr. Chairman, may I have just a  
2 moment to clarify something with your indulgence,  
3 please? I think it's very important.

4 CHAIRMAN BRISÉ: With respect to a question  
5 that Mr. Rehwinkel asked?

6 THE WITNESS: Yes. Yes, Mr. Chairman.

7 CHAIRMAN BRISÉ: Go right ahead.

8 THE WITNESS: I am a little troubled, and I  
9 want to make it very clear to Mr. Rehwinkel,  
10 Mr. Kelly, the Commissioners, everybody in this  
11 room, I am not casting any aspersions whatsoever as  
12 to the Office of Public Counsel. As former  
13 employee and as a commissioner, I am fully aware of  
14 the quality of work the Public Counsel does and the  
15 zeal with which they present their arguments and  
16 present positions in front of the Commission.

17 I am not in my way trying to be derogatory or  
18 negative. I am trying to present to the Commission  
19 a context in which I suggest would be beneficial  
20 for the Commission to consider this proposed  
21 settlement, and that is the extent of my testimony.

22 CHAIRMAN BRISÉ: Mr. Rehwinkel, you may  
23 proceed.

24 THE WITNESS: And if I did otherwise, I  
25 apologize.

1 BY MR. REHWINKEL:

2 Q With respect to the testimony you offer  
3 beginning on line 14 through line 23 on page nine, could  
4 these facts occur hypothetically -- let me strike that  
5 and start over again.

6 Line 19 through line 23, where you reference  
7 the best negotiated settlements, could a negotiated  
8 settlement occur -- where the public utility and  
9 intervenors all willingly negotiate from a position of  
10 knowledge and strength, could that occur if one party  
11 was prohibited from knowing about negotiations because  
12 of confidentiality agreement among some parties?

13 MR. LITCHFIELD: Object to the question,  
14 assumes facts not in evidence.

15 MR. REHWINKEL: It's a hypothetical.

16 MR. LITCHFIELD: It's hardly a hypothetical.

17 MR. REHWINKEL: Oh, is it true?

18 MR. LITCHFIELD: No, as a matter of fact, it's  
19 not.

20 CHAIRMAN BRISÉ: I think the question was --

21 MR. LITCHFIELD: Neither is your prior  
22 testimony, I might add.

23 CHAIRMAN BRISÉ: The question was posed as a  
24 hypothetical, so the witness can answer.

25 THE WITNESS: Could you repeat your question,

1 Mr. Rehwinkel?

2 BY MR. REHWINKEL:

3 Q You describe kind of a Best Practices for  
4 negotiation on lines 19 through 23, a type of Best  
5 Practices; would you agree with that?

6 A Yes, I do.

7 Q Okay. Can that occur if one party is  
8 prohibited -- hypothetically, if one party is prohibited  
9 from knowing about negotiations that are ongoing because  
10 there is a nondisclosure agreement between the utility  
11 and some parties?

12 A Well, you have interjected the idea of a  
13 nondisclosure agreement, and if that's part of the  
14 hypothetical, it -- it -- it raises the question of the  
15 reason for the nondisclosure agreement, whether the  
16 agreement was or was not reached and for the facts of  
17 that.

18 And I could understand the importance of  
19 commercially sensitive confidential information and how  
20 that needs to be protected, and if there is a fear that  
21 such information would not be protected, then I think  
22 that probably would -- could be -- based upon the  
23 limited facts that you presented in your hypothetical,  
24 could be a reason to not engage in negotiations.

25 But back -- certainly the best -- and this is

1 my testimony, the best negotiations are when all parties  
2 negotiate, but sometimes you can't always achieve the  
3 best because of other facts and circumstances.

4 **Q Okay. Now, to your knowledge, Public Counsel**  
5 **has never been accused of disclosing confidential**  
6 **information or violating an agreement or disclosing**  
7 **sensitive information, right?**

8 A Other than inadvertent or utterances in a  
9 hearing, which I think you did one time, Mr. Rehwinkel.  
10 Other than that, I am not aware of Public Counsel ever  
11 divulging anything.

12 **Q Are you sure is it was me? It wasn't a**  
13 **Commissioner that did it?**

14 A I thought you did it one time, Mr. Rehwinkel,  
15 but I stand corrected if it was not you.

16 **Q Okay. I don't recall ever doing it.**

17 A Okay. Well, my recollection may be incorrect.

18 CHAIRMAN BRISÉ: Next question.

19 MR. REHWINKEL: I have no further questions.

20 Thank you.

21 CHAIRMAN BRISÉ: All right. Thank you. It is  
22 12:00. We have four other intervenors that have  
23 questions for Mr. Deason. I think now may not be a  
24 bad time for us to go ahead and take our lunch  
25 break. We will go from 12:00 to 1:00, and then we

1 will reconvene at 1:00.

2 (Lunch recess.)

3 CHAIRMAN BRISÉ: All right. We are going to  
4 reconvene at this time. Mr. Wright, I think you  
5 were up to cross-examine.

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

7 CROSS EXAMINATION

8 BY MR. WRIGHT:

9 Q Good afternoon, Mr. Deason.

10 A Good afternoon.

11 Q I wish it were under other circumstances, but  
12 it's always a pleasure to see you.

13 A Likewise.

14 Q Thank. This is a Schef Wright few questions,  
15 not few questions such as other attorneys might  
16 advertise. You testified early on that -- in your  
17 direct testimony as well as in response to Mr.  
18 Rehwinkel, that one intervenor party should not have  
19 veto power over a settlement, right?

20 A That's correct.

21 Q Okay. Do you give any weight at all to the  
22 fact there are five intervenor parties remaining in this  
23 case who oppose the settlement, a majority of all the  
24 parties left in the case?

25 A That really wasn't the focus of my testimony.

1 My testimony was to lay out a framework for the  
2 Commission to consider the settlement and what reasons  
3 it's given in the past and fact that the Commission has  
4 historically encouraged settlements, but it was not the  
5 focus of my testimony to take a count of the number of  
6 intervenors on one side of the ledger or the other.

7 **Q Would you agree that the Retail Federation has**  
8 **been a relatively long-term participant in Public**  
9 **Service Commission proceedings?**

10 A Yes.

11 **Q And certainly, you will agree that the Public**  
12 **Counsel has?**

13 A Yes.

14 **Q Will you agree that both the Public Counsel**  
15 **and the Retail Federation have consistently demonstrated**  
16 **a willingness to negotiate in good faith towards**  
17 **settlement of rates cases and related proceedings?**

18 A Not privy to the negotiation process, I have  
19 seen the results where both Public Counsel and the  
20 Retail Federation have been signatories to successful  
21 settlement agreements.

22 **Q Okay. And there have been a good handful, or**  
23 **maybe more than a handful of those; have there not?**

24 A I would agree, yes.

25 **Q Will you agree that if the Public Service**



1 Commission were to approve the settlement agreement and  
2 the associated tariff sheets that go with that  
3 settlement, those results would bind all of FPL's  
4 customers?

5 A Well, if by the term "bind" you mean that  
6 those would become the tariffs and customers would be  
7 obligate today pay those rates to receive service, I  
8 would agree with that.

9 Q Thanks. That is what I meant.

10 A But also, non-signatories would be free to  
11 petition the Commission at any time if they felt like  
12 those rates were unfair or unjust or unreasonable.

13 Q Let's pursue that one for a minute. Like  
14 myself, you sat through two weeks of the original  
15 hearings in this case; did you not?

16 A I either was sitting here or I was monitoring  
17 the hearings at a remote location, yes.

18 Q Okay. You will agree with me that of the  
19 issues originally identified in the prehearing order in  
20 this docket, taking out those that have been dropped and  
21 stipulated, there is still something like 150 or 160  
22 issues left to be decided, as identified in the  
23 prehearing order, correct?

24 A I have not counted them, but that number  
25 sounds reasonable to me.

1           Q     Okay.  Couldn't FPL -- if the Commission were  
2 to deny this settlement, couldn't FPL and the  
3 signatories, FEA, FIPUG and the hospitals, seek the  
4 relief that they desire through the settlement by simply  
5 filing a new case or cases seeking that relief in future  
6 proceedings?

7           A     I believe -- yes, I think whether it's  
8 practical would be a different matter, but I think that  
9 there would probably be standing to file for such  
10 relief.

11          Q     You and I have been at this a long time; have  
12 we not?

13          A     Yes, we have.

14          Q     During the 1980s, there were rate cases --  
15 each utility had rate cases about every other year;  
16 didn't they?

17          A     It seemed like that was the case, yes.

18          Q     And that worked out; didn't it?

19          A     It worked out, yes, but one looking back upon  
20 that probably could ask was there -- was there a more  
21 efficient way that could have afforded rate relief and  
22 protected customer interest without rate case after rate  
23 case?

24          Q     And among the things that the Public Service  
25 Commission did in order to accommodate that concern was

1 to allow attrition allowances; wasn't it?

2 A Yes, in the 80s attrition was an issue,  
3 attrition or accretion, depending upon the economic  
4 circumstances at the time.

5 Q When you were -- when you served on the Public  
6 Counsel's staff, did you participate in any settlement  
7 negotiations with utilities?

8 A Mr. Wright, I feel confident that I did, but  
9 none come to mind as to any specific company or specific  
10 issues that were issues that were negotiated.

11 Q Thanks, and I -- I think all of us agree that  
12 one of the issues in this case is whether the settlement  
13 agreement is in the public interest, correct?

14 A Yes.

15 Q Will you agree that if FPL's rates are lower  
16 than they would otherwise be, whatever that is, that  
17 Floridians would have more disposable income to spend on  
18 other things?

19 A Well, I would assume that would be -- yes,  
20 that would be the case. By disposable income, meaning  
21 money that's left over after paying obligations, a  
22 utility bill being usually an obligation, I would tend  
23 to agree with that, yes.

24 Q And wouldn't you agree that -- that Floridians  
25 having more disposable income to spend on other things

1 in Florida would be better for the Florida economy,  
2 other things equal?

3 A Well, other things being equal, but I don't  
4 think that would be the case with the stipulation  
5 because there -- other things would not be equal. But,  
6 yeah, if -- if from an economist' viewpoint, holding all  
7 other things equal, I think there probably would be some  
8 beneficial effect having a higher level of disposable  
9 income.

10 Q Did you personally analyze whether FPL can  
11 meet its costs and support its planned investments with  
12 a lesser base rate increase than that represented in the  
13 settlement agreement?

14 A I did not.

15 Q You had a colloquy for the last 10, 20 minutes  
16 of your cross-examination by Mr. Rehwinkel regarding  
17 your views about how -- how settlements should be; they  
18 should be freely negotiated, and the parties should have  
19 adequate, notice and opportunity and so on. Is that  
20 about -- is that a fair characterization of your  
21 testimony?

22 A I agree with the things you just stated, yes.

23 Q Okay. Now, did -- didn't you also testify  
24 that you had no knowledge as the negotiations in this  
25 case?

1           A     Yes, that's correct.

2           Q     So you are not testifying whether the parties  
3 to this case had any of that, had the opportunity to  
4 freely negotiate, had adequate notice or had information  
5 about settlement proposals; are you?

6           A     That's correct. I am not.

7           MR. WRIGHT: That's all I have. Thank you,  
8 Mr. Chairman.

9           CHAIRMAN BRISÉ: Thank you, Mr. Wright.  
10 Mr. Saparito?

11          MR. SAPARITO: Thank you, Mr. Chairman.

12                           CROSS EXAMINATION

13 BY MR. SAPARITO:

14          Q     Good afternoon, Mr. Deason. My name is Thomas  
15 Saparito. I am here pro se today. I have a very short  
16 list of questions for you.

17                   I would like to explore your prefiled  
18 testimony at page three, lines 16 to 23 and page 10  
19 lines 1 through 10. I am going to ask you some followup  
20 questions related to your testimony here today.

21                   So you state in your prefiled testimony that  
22 if the proposed settlement agreement is determined to be  
23 reasonable and consistent with the public interest on  
24 the whole, it should be approved. If it is determined  
25 to be unreasonable and inconsistent with the public

1 interest on the whole, it should be rejected. Am I  
2 correct?

3 A That's correct.

4 Q Okay. In September 14th, 2005 FPL rate case  
5 settlement Docket Numbers 050045-EI and 050188-EI, the  
6 Commission conclude that, "we find the stipulation  
7 settlement establishes rates that are fair, just and  
8 reasonable, and that approval of the settlement --  
9 excuse me -- that approval of the stipulation and  
10 settlement is in the public interest.

11 However, in your prefiled testimony you state  
12 at page 36 lines 17 through 20, that the Commission has  
13 a long recog-- has long recognized that a proposed  
14 settlement is an effective regulatory tool to fill its  
15 responsibility to regulate in the public interest and to  
16 set rates that are just, reasonable and compensatory.

17 So the question is, can you please explain to  
18 the Commission why you left out the word "fair" and why  
19 you added the word "compensatory" in your testimony?

20 A I was using the terms just -- reasonably and  
21 compensatory because that is contained in a statutory  
22 reference concerning the Commission's jurisdiction to  
23 regulate in the public interest.

24 Q Well, would you agree with me that the word  
25 "fair" should be part of the standard for this

1 Commission to evaluate the FPL's proposed settlement  
2 agreement?

3 A I have no problem with including the term  
4 "fair."

5 Q So does that if mean if the Commission  
6 determines that any part of this settlement agreement --  
7 proposed settlement agreement is not fair to the  
8 ratepayers, that they should disapprove it?

9 A That would be one item for the Commission to  
10 consider, amongst many other items, as to what  
11 constitutes the public interest.

12 Q So are you -- are you suggesting to this  
13 Commission that they tally up the items that are fair  
14 and the items that aren't fair and what the greater  
15 number is, that should be there decision as to whether  
16 to approve or not approve this settlement agreement?

17 A Absolutely not. In fact, it's the focus of my  
18 testimony to do just the opposite, to evaluate the  
19 settlement as a whole.

20 Q Well, then how are you suggesting this  
21 Commission treat the word "fair" in their analysis of  
22 this proposed settlement agreement?

23 A Just as they would treat the terms just,  
24 reasonable and compensatory.

25 Q And not fair?

1           A     I am -- the reason that I did not use the word  
2 "fair," there is no -- there is no motive there. It was  
3 just I was using the terms consistent with the statutory  
4 reference that describes the Commission's jurisdiction  
5 to regulate in the public interest. But I had no  
6 problem adding the term "fair."

7           **Q     Okay.**

8           A     And fair could be judged along with many other  
9 factors in determining overall whether a settlement is  
10 in the public interest from an overall perspective.

11          **Q     All right. And with that testimony, how would**  
12 **you suggest to this Commission that they utilize and**  
13 **treat the word "fair" when they analyze this proposed**  
14 **settlement agreement?**

15          A     They would weigh the proposed settlement  
16 agreement as a whole and determine if the rates that  
17 result are fair.

18          **Q     And with respect to the -- whether or not the**  
19 **rates that result are fair, what if the rates that**  
20 **result place a heavier burden on the residential**  
21 **ratepayers who make up 99.99 percent of FPL's customers**  
22 **and less of a burden as far as base rates go with**  
23 **respect to their industrial and commercial customers;**  
24 **would it be fair to the residential ratepayers?**

25          A     Are you speaking hypothetically, or are you



1 speaking about the facts of this case?

2 **Q Hypothetically.**

3 A Okay. Hypothetically, if the Commission were  
4 to determine that the rate levels amongst the customers  
5 classes were -- was not fair, that would be a basis  
6 to -- to determine it's not in the public interest. But  
7 it would not be determinative. There are many other  
8 factors for the Commission to consider as well.

9 **Q Well, if the majority of the customers, it**  
10 **would -- if the Commission determines that the**  
11 **settlement agreement is unfair to the majority of the**  
12 **customers, shouldn't they determine that the overall**  
13 **settlement is unfair?**

14 A Well, based upon the limits of your  
15 hypothetical, it's difficult to answer the question. It  
16 would be -- it would be based upon the degree of the  
17 unfairness, what -- why there was unfairness, and in all  
18 honesty, what -- what constitutes fairness in one  
19 intervenor's eye does not constitute unfairness in  
20 another. There is judgment involved, and in a  
21 settlement, there is a negotiation and a give and take,  
22 and that's why it should be evaluated as a whole.

23 **Q Well, you sat on the Commission as a**  
24 **commissioner, and how -- what is your opinion of how**  
25 **they apply fairness, then, to this case, to this**

1 **specific docket?**

2 A I believe the Commission should utilize the  
3 same methods -- methods and methodologies that it uses  
4 in determining the class cost of service, and look at  
5 the parity among the rate classes, and look to see if  
6 parity is as a -- the rates, that the parity would be  
7 negatively impacted to the extent that the resulting  
8 rates could be considered unfair, but this is really  
9 subject of the testimony of Witness Deaton.

10 Q Yeah. I have lots of questions for that  
11 witness, but since I have you here, is it my  
12 understanding now -- so that I am clear on this point,  
13 because I am confused. I am afraid that the  
14 Commissioners may not be -- understand the point here  
15 with respect to fairness.

16 If -- are you saying that it doesn't matter if  
17 the resident -- class of residential customers pays  
18 higher base rates as a result of this proposed  
19 settlement, just so long as all the classes pay an equal  
20 part -- percentage of the rates; is that what you are  
21 saying?

22 MR. LITCHFIELD: Object to the form of the --  
23 object to the characterization Mr. Deason's  
24 testimony. Object to the form of the question.

25 CHAIRMAN BRISÉ: Mr. Saporito?

1 MR. SAPARITO: I will rephrase.

2 BY MR. SAPARITO:

3 Q Is it your testimony that the Commission  
4 should not analyze the fairness element in their  
5 decision on FPL's rate case, but with respect to the  
6 residential customers out -- not far outnumbering the  
7 other classes, but instead should just evaluate whether  
8 or not all the classes have an equal burden of paying  
9 the base rates?

10 MR. LITCHFIELD: Compound, vague.

11 MR. SAPARITO: I think he understood the  
12 question, Your Honor.

13 BY MR. SAPARITO:

14 Q Did you understand the question?

15 A It was a little convoluted, but I can answer  
16 the question.

17 Q Thank you.

18 THE WITNESS: Mr. Chairman, should I answer?

19 CHAIRMAN BRISÉ: You may go right ahead.

20 THE WITNESS: Okay. Fairness is a  
21 multifaceted subject, and I think we have departed  
22 from the -- from the basis of your question as  
23 being hypothetical to one that's factual in this  
24 case. And I think there are a number of  
25 considerations for this Commission.

1           One is the overall rate levels. There is  
2 ample testimony in this case about the low level of  
3 the rates, residential and other classes as well  
4 and that those low rates would continue. That's a  
5 consideration.

6           There is also the -- the consideration of  
7 the -- the level of parity in the rates, and the  
8 fact that there is testimony in this case  
9 concerning the need for certain classes of  
10 customers who have not had the ability to fully  
11 engage in credits with their ability to curtail  
12 service and to have non-interruptible service and  
13 things of that nature.

14           So there is ample evidence in the record. All  
15 of this needs to be considered, and it's not just  
16 one little simple test to say that the rates are --  
17 are higher or lower than what was requested, even  
18 though that's a factor as well. It's -- it's a  
19 fact that the rates in the settlement are lower  
20 than those rates that were being requested by FPL  
21 in their March filing.

22 BY MR. SAPARITO:

23           **Q** Well, you testified earlier that you read the  
24 settlement agreement, I think if I am not -- if I am  
25 correct it's in your prefiled testimony, and I am pretty

1 certain it is.

2 So the fact that you read the settlement  
3 agreement, can you give this Commission an opinion as to  
4 the effect, the economic effect of the -- of the whole  
5 FPL proposed settlement agreement as to whether in the  
6 end, is it the residential rate payers that will have  
7 their base rates increased by a greater amount than all  
8 other classes; is that not true?

9 A No, I think that the residential classes are  
10 going to have lower rates as a result of the settlement,  
11 as opposed to what was included in FPL's March filing.

12 Q That wasn't the question, sir. The question  
13 was, in the end, does the FPL proposed settlement  
14 agreement place a higher burden on the residential  
15 customers by increasing their base rates by a greater  
16 amount than increasing the base rates for all other  
17 classes?

18 A I don't know the percentage of the increases.  
19 Ms. Deaton could answer that question for you, but even  
20 if the percentages are different, it still there are  
21 other facets that need to be answered as to whether the  
22 rates still -- that result are still fair.

23 Q Okay. Again, you didn't answer the question.  
24 The question was whether the proposed settlement  
25 agreement will result in the residential class of FPL

1 customers paying higher base rates as compared to all  
2 other classes?

3 MR. LITCHFIELD: Objection. He did answer the  
4 question. He referred the specific percentages to  
5 Ms. Deaton on the grounds that he is not the  
6 witness and does not have that information in his  
7 testimony and then provided clarity with latter to  
8 regard to how the overall context of the rate  
9 changes should be viewed.

10 MR. SAPARITO: I never asked the witness about  
11 any percentages, Mr. Chairman.

12 CHAIRMAN BRISÉ: Understood, but the witness  
13 answered the question and also referred the  
14 specifics of your question to another witness, so I  
15 think he answered within his capacity and his  
16 testimony.

17 MR. SAPARITO: All right. Thank you,  
18 Mr. Chairman.

19 BY MR. SAPARITO:

20 Q Can you please -- let's see -- throughout your  
21 prefiled testimony, you talk about the term "public  
22 interest" as you understand that applies to whether or  
23 not the Commission should approve FPL's proposed  
24 settlement agreement; am I correct?

25 A Yes.

1           **Q**     Can you please explain to the Commission as to  
2 whether the due process rights of one or more FPL  
3 ratepayers should be considered under the umbrella of  
4 public interest?

5           MR. LITCHFIELD: I am tempted to object, but I  
6 won't.

7           THE WITNESS: If the Commission is concerned  
8 that elements of the settlement have somehow  
9 jeopardized the due process rights of parties --

10           First of all, I think there is an obligation  
11 on the party to assert that there has been a due  
12 process violation and go through the normal legal  
13 channels of having the Commission address that and  
14 hopefully alleviate that. So I think that would be  
15 the process that would -- that should take place to  
16 determine if there has been some type of a due  
17 process impairment.

18 BY MR. SAPARITO:

19           **Q**     So am I to understand that due process  
20 considerations by this Commission is part of -- of the  
21 public interest term; is that correct?

22           A     No, I wouldn't necessarily agree with that. I  
23 think that -- that the due process and the procedures  
24 that the Commission has employed is one question,  
25 whether the procedures and process afford due process to

1 all interested parties. The merits of the settlement is  
2 an entire -- entirely different matter. It either is in  
3 the public interest, or it is not in the public  
4 interest.

5 **Q Well, if one or more FPL ratepayers -- if the**  
6 **Commission finds that one or more FPL ratepayers had**  
7 **their due process rights violated with respect to this**  
8 **proposed settlement agreement, would it not be prudent**  
9 **of them to determine that and conclude that the**  
10 **settlement agreement is not in the public interest?**

11 A No, I don't necessarily agree with that. I  
12 think it would be contrary to the Commission's policy of  
13 encouraging settlements, and the fact that a party could  
14 claim some type of a due process impairment that could  
15 jeopardize an entire settlement that is clearly in the  
16 public interest, that would be contrary.

17 Due process is an important concept. It needs  
18 to be afforded. It needs to be protected, but I am not  
19 necessarily -- I do not necessarily agree that it is an  
20 impairment which could prevent the Commission from  
21 improving an otherwise -- a settlement that is otherwise  
22 clearly in the public interest.

23 **Q So to be clear, your -- your testimony is that**  
24 **despite any due process right violation which the**  
25 **Commission may determine occurred in this proceeding,**



1 that they can still go ahead and approve this settlement  
2 agreement; is that your testimony?

3 A My nonlegal, strictly policy perspective is  
4 yes, the Commission has that discretion.

5 Q Can you explain to the Commission as to  
6 whether my participation in this proceeding as a citizen  
7 intervenor in this docket has a comparable and equal  
8 standing to that of the Office of Public Counsel?

9 A I have no opinion on that.

10 Q Are you aware that FP&L did not offer me an  
11 opportunity to participate in the settlement  
12 negotiations that led up to the proposed settlement  
13 agreement?

14 A I am not aware of that other than hearing you  
15 say that repeatedly during the hearings.

16 Q Okay. So you are aware with -- in that  
17 context, correct?

18 A On your representations, I have heard that. I  
19 have not discussed that at all with FPL whether that's  
20 factually correct or not.

21 Q Do you have any reason sitting here today  
22 under oath -- testifying under oath to find that that's  
23 not true?

24 MR. LITCHFIELD: Ask -- asked and answered.

25 Outside the scope of the witness' knowledge and his

1 testimony, as he has said at least four or five  
2 times today.

3 CHAIRMAN BRISÉ: Yeah, I would agree.

4 BY MR. SAPARITO:

5 Q Are you aware that FPL did not offer other  
6 intervenors in this docket an opportunity to par --  
7 participate in settlement negotiations that led up to  
8 the proposed settlement agreement?

9 MR. LITCHFIELD: I have same objection, and I  
10 object -- I object to the continued inference  
11 that -- that such extensions were not made. I  
12 object to the continued inference that counsel  
13 or -- that Mr. Saparito would have this Commission  
14 draw with regard to those facts.

15 MR. SAPARITO: And, Your Honor, the record is  
16 quite clear that other intervenor parties had --  
17 that were not provided an opportunity by Florida  
18 Power & Light Company to participate in the  
19 settlement negotiations that led up to the proposed  
20 settlement agreement.

21 CHAIRMAN BRISÉ: Thank you, Mr. Saparito.

22 Move on to your next question.

23 BY MR. SAPARITO:

24 Q Can you please explain to this Commission as  
25 to whether FPL's failure to offer all intervenor parties

1 the opportunity --

2 MR. LITCHFIELD: Objection.

3 BY MR. SAPARITO:

4 Q -- to participate in the settlement  
5 negotiations that led up to the proposed settlement  
6 agreement would invalidate the settlement agreement with  
7 respect to being in the public interest?

8 CHAIRMAN BRISÉ: Mr. Saparito, I just asked to  
9 you move on to the -- to your next question. You  
10 just posed the same question.

11 MR. SAPARITO: That was my next question.

12 CHAIRMAN BRISÉ: You just posed the same  
13 question again.

14 BY MR. SAPARITO:

15 Q Okay. The next question, hypothetically  
16 speaking, if the Office of Public Counsel and all other  
17 intervenor parties were signatories to the proposed  
18 settlement agreement, except for me, would it be in the  
19 public interest for the Commission to consider the  
20 settlement agreement?

21 A It would be appropriate for the Commission to  
22 consider the settlement agreement. Now, whether the  
23 Commission determined it to be in the public interest or  
24 not would be at their discretion.

25 MR. SAPARITO: Okay. I have nothing further,

1 Your Honor -- or Mr. Chairman.

2 CHAIRMAN BRISÉ: Thank you, Mr. Saporito.

3 Mr. Garner?

4 MR. GARNER: Thank you, Mr. Chairman.

5 CROSS EXAMINATION

6 BY MR. GARNER:

7 Q Good afternoon. I am going to say  
8 Commissioner Deason, because that's how I first met you,  
9 and that's how I know you.

10 A Good afternoon.

11 Q Would you say that -- that it's fair for the  
12 Commission or reasonable for the Commission to consider  
13 who the parties are who agreed -- or who didn't agree to  
14 the proposed settlement agreement?

15 A I would agree that is a consideration, but  
16 it's not determinative as to whether the agreement is or  
17 is not in the public interest.

18 Q Fair enough.

19 Would you say that it would be fair or  
20 reasonable for the Commission to look to past orders, as  
21 you suggested in your testimony, to determine what are  
22 the proper things to look at and as an example for how  
23 it should -- it should acting go forward in making this  
24 and even future determinations on proposed settlement  
25 agreements?

1           A     I agree past orders can give guidance to the  
2 Commission, but, again, even past orders are not  
3 determinative. And then obviously, we know that each  
4 settlement agreement is based upon the facts and  
5 circumstances in existence at that time. So -- but,  
6 yes, the past decisions can give guidance.

7           Q     There has been some discussion already with  
8 other examiners about -- about your testimony in regards  
9 to PSC Order 050902, which is the 2005 settlement  
10 agreement, and you have establish -- it's been  
11 established that you have some familiarity with that  
12 order having been a commissioner?

13          A     Yes, I was a commissioner when this order --

14          Q     At the time --

15          A     -- when this order was issued.

16          Q     You're -- you're also aware, then, that the  
17 Attorney General was a signatory to that settlement  
18 agreement, correct?

19          A     Yes, that is correct.

20          Q     And that the Office of Public Counsel was a  
21 signatory to that agreement?

22          A     Yes.

23          Q     And that AARP was a signatory to that  
24 agreement?

25          A     Yes, I believe that is correct.

1 Q And that the Florida Retail Federation was a  
2 signatory to that agreement?

3 A Yes.

4 Q And in addition to all of the participants at  
5 the other end of the -- the table here who -- who were  
6 signatories to that agreement, also the commercial group  
7 and Common Cause Florida were signatories as well?

8 A I am looking at the signature page of the  
9 settlement. I -- I don't see Common Cause, unless --

10 Q They were a late write-in --

11 A Oh, okay.

12 Q -- I believe.

13 A I accept that from you.

14 Q Is it -- is it reasonable for the Commission  
15 in evaluating the value of -- of the 2005 order as  
16 precedent to consider the -- the differences in the  
17 signatories between that agreement and the proposed  
18 agreement in this case?

19 A Once again, it's a consideration, but I think  
20 that the -- the -- there is significant guidance to be  
21 obtained from this order and what the Commission  
22 considered as reasons why this settlement was in the  
23 public interest, and that can give guidance to the  
24 Commission to determine if this current settlement is in  
25 the public interest.

1           Q     Earlier in your -- in your discussion with or  
2 your -- or the examination by Mr. Rehwinkel, I believe I  
3 heard you as saying, and I wrote this down so I think  
4 it's verbatim, the best negotiations are when all  
5 parties participate?

6           A     I think as a general principal, I would agree  
7 with that.

8           Q     Would it be true, then, that when all parties  
9 do not participate, they are not the best negotiations?

10          A     Maybe the negotiations were not as good as  
11 they could have been, but that does not mean that the  
12 end product, the settlement, is inferior and is not in  
13 the public interest.

14          Q     Thank you. I will accept your answer that the  
15 negotiations were not as good as they could have been.

16                   In your opinion, as a former Public Service  
17 Commissioner and in your knowledge of regulatory  
18 rate-making, do you believe that the rates that could  
19 result from a Commission decision on FPL's original base  
20 rate filing could be in the public interest?

21          A     Let me be sure I am clear on your question.  
22 Are you asking me that if the Commission were to deny  
23 the settlement and go through a process voting on each  
24 of the 150 issues, whether that decision would be in the  
25 public interest?

1           **Q     Could that -- yes, could that -- could that**  
2 **also result in rates which are in the public interest?**

3           A     Yes, I would agree with that, but it would  
4 be -- the Commission, I am sure, would realize that it  
5 would be establishing rates which in and of themselves  
6 don't have any longevity, as opposed to the rates that  
7 are contained in the settlement, which were for a  
8 four-year period. So that would be a major distinction,  
9 but, yes, I think the rates would be in the public  
10 interest.

11           MR. GARNER: Thank you. That's all I have.

12           CHAIRMAN BRISÉ: All right. Thank you.

13           Mr. Hendricks?

14                           CROSS EXAMINATION

15 BY MR. HENDRICKS:

16           **Q     Just a few things. Good afternoon.**

17           A     Good afternoon.

18           CHAIRMAN BRISÉ: Mr. Hendricks, if you can  
19 pull your mic a little closer to you.

20           MR. HENDRICKS: Okay. I will try to get it in  
21 a useful position here.

22 BY MR. HENDRICKS:

23           **Q     Putting aside for a moment the question of**  
24 **whether OPC's participation in a settlement agreement is**  
25 **required. In stepping back and -- and asking about**



1 essentially setting the bar for approving a settlement  
2 in terms of the -- the level of -- of evidence and --  
3 and confidence that a -- a commission might want to have  
4 before approving a settlement, would you agree that not  
5 having the Office of Public Counsel supporting a  
6 settlement would -- would necess-- should set that bar  
7 higher for identifying the value of the -- of the  
8 settlement?

9 A No, it should not set the bar higher. The bar  
10 is, as the standard is, is the settlement in the public  
11 interest?

12 Q So then you wouldn't be any more -- any more  
13 skeptical or any more careful about approving one that  
14 did not have OPC's participation as one that did?

15 A I am not sure use of the term "skeptical" is  
16 right. I, as a commissioner, would be very much  
17 interested and attentive to the arguments presented by  
18 the Office of Public Counsel as to why, in their  
19 believe, the settlement is not in the public interest.

20 Q Would you think that it would perhaps  
21 influence your -- your evaluation of the proposal if you  
22 knew that the Office of Public Counsel was not notified  
23 of the settlement process and had no opportunity to  
24 participate?

25 MR. LITCHFIELD: Same objection. Assumes

1 facts absolutely not in evidence.

2 MR. HENDRICKS: If I make that a hypothetical.

3 MR. LITCHFIELD: Objection -- same objection.

4 These hypotheticals, they are -- they are a pitch

5 to something intended to be more than a

6 hypothetical. They are intended to have the

7 Commission infer facts that are not in evidence.

8 MR. HENDRICKS: Well, I would still offer it

9 as a hypothetical because, to me, one of the really

10 questions we are trying to get at here is Mr.

11 Deason has offered essentially advice, best

12 practice advice about evaluation of settlement

13 agreements, and so I am trying to find out if he

14 thinks it would be important if OPC were invited

15 and had the opportunity to participate in it.

16 MR. LITCHFIELD: And -- and I would just note

17 that -- in fairness to Mr. Hendricks, this line was

18 initiated earlier by the Office of Public Counsel,

19 and had there been facts to bring to light in this

20 regard, they might have put on a witness and

21 attested to that. And they have not.

22 Instead, we are asked to infer again from --

23 from innuendo and hypotheticals that things

24 happened that didn't happen or things didn't happen

25 that happened, and I just find it objectionable.

1 And I don't think it adds to the constructive  
2 development of the record.

3 MR. REHWINKEL: Mr. Chairman, if I might be  
4 heard briefly. Mr. Litchfield is not stating a  
5 proper objection. Mr. Hendricks is entitled to ask  
6 a hypothetical. He has clearly stated it's a  
7 hypothetical, and the overly sensitive nature of  
8 the objection may be telling in and of it self.  
9 But Mr. Hendricks can ask a hypothetical question,  
10 and there is no prohibition to that. And there is  
11 no inference or innuendo exception to that.

12 MR. LITCHFIELD: But there is a balance --  
13 there is a balance in terms of use of hypotheticals  
14 in cross-examination.

15 MR. MOYLE: Might I also -- if I could be  
16 heard on this, lawyers who are member -- members of  
17 the Bar have duties to the tribunal, and to the  
18 extent that they are putting forward through  
19 innuendo or otherwise and suggesting facts that are  
20 not supported by record evidence or anything else,  
21 it's not proper.

22 CHAIRMAN BRISÉ: Mr. Hendricks, you may  
23 proceed. We will accept your hypothetical since we  
24 allowed others to provide the hypothetical.

25 MR. HENDRICKS: Thank you very much,

1 Mr. Commissioner.

2 BY MR. HENDRICKS:

3 Q Mr. Deason?

4 A Could you repeat the question, please?

5 Q I will see if I can remember it myself after  
6 all of that.

7 Hypothetically speaking, if you knew that a  
8 settlement agreement had not -- that -- that OPC had not  
9 been either notified of the settlement agreement process  
10 or had the opportunity to participate in it, would that  
11 influence your -- your initial opinion of the likelihood  
12 that that settlement agreement would represent the  
13 public interest?

14 A The answer to your question is no, and let me  
15 explain. The settlement should rise or fall on the its  
16 own merits and whether it's in the public interest. If  
17 Public Counsel or any other intervenor that had  
18 objections to the settlement comes forward and presents  
19 those arguments, as Public Counsel has done in this  
20 case, that is certainly the type evidence that this  
21 Commission needs to consider in judging whether the  
22 settlement is in the public interest.

23 Q You obviously have a deep knowledge of the --  
24 of the Commission's process with your experience, and  
25 how would you suggest that if none of the parties

1 supporting a settlement agreement represent the average  
2 ratepayers, then -- then how would their interest be  
3 represented and factored into the development of a  
4 settlement agreement if they were not represented in it?

5 A Well, I think it's plainly obvious. Every  
6 intervenor is here participating in this hearing and  
7 presenting their interest and their arguments, so -- and  
8 it's being presented to the Commission. Once again, a  
9 settlement needs to be judged upon its merits, and the  
10 Commission needs to consider all of those arguments. So  
11 I don't see how that is an impairment.

12 MR. HENDRICKS: Thank you.

13 CHAIRMAN BRISÉ: Staff.

14 MR. YOUNG: Staff has no questions.

15 CHAIRMAN BRISÉ: Commissioners.

16 Commissioner Brown?

17 COMMISSIONER BROWN: Thank you. Good  
18 afternoon.

19 THE WITNESS: Good afternoon.

20 COMMISSIONER BROWN: Your direct testimony  
21 focuses a lot on public interest taken as a whole  
22 in evaluating the benefits of the settlement  
23 agreement. Would you say that public interest, by  
24 its very standard, is subjective in nature?

25 THE WITNESS: Yes.

1           COMMISSIONER BROWN: Okay. And based on your  
2 experience and your understanding of this  
3 particular settlement case, could you explain the  
4 benefits of the settlement and how they serve the  
5 public interest to all of the customer groups?

6           THE WITNESS: Are you talking about the  
7 existing proposal that is in front of you, or are  
8 you talking generically?

9           COMMISSIONER BROWN: The existing proposal.  
10 And I understand that Witness Deaton goes into more  
11 detail.

12          THE WITNESS: Yes.

13          COMMISSIONER BROWN: But generally.

14          THE WITNESS: Well, generally, yes. There --  
15 to me, there are -- there are three main benefits  
16 associated with the settlement that is currently in  
17 front of you, and I am not sure these benefits  
18 could be -- have been obtained absent the  
19 settlement, that is if we had simply not had a  
20 settlement or just gone to the rate case and had a  
21 vote on each of the issues. One is that the -- FPL  
22 is voluntarily reducing -- significantly reducing  
23 the amount of their request. So that's -- that's  
24 benefit number one.

25                   Benefit number two is the fact that this

1 agreement is for a four-year term. And that  
2 provides a great deal of certainty and  
3 predictability, which the -- particularly the  
4 industrial and commercial customers have indicated  
5 is important to them.

6 It also -- thirdly, it -- by the testimony of  
7 FPL witnesses, primarily Mr. Dewhurst, it is his  
8 opinion that this settlement brings -- reduces  
9 uncertainty in the process, which is advantageous  
10 for investors, but that it does not eliminate a lot  
11 of the risk that FPL still is going to take, but  
12 given that entire picture, it is his testimony that  
13 FPL is positioned to continue to have the financial  
14 integrity to go forward with their construction  
15 program, which benefits customers, and to be able  
16 to maintain a high degree of service.

17 So these are the benefits that are contained  
18 in the settlement that I think would -- would go  
19 beyond just the limitations of a rate case.

20 MS. BROWN: Thank you. That's all.

21 CHAIRMAN BRISÉ: Commissioner Edgar?

22 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

23 A couple of questions, Mr. Deason.

24 THE WITNESS: Sure.

25 COMMISSIONER EDGAR: On the bottom of page

1 three of your prefiled testimony, you make the  
2 statement that the Commission has recognized that  
3 settlements can encourage innovative solutions or  
4 innovative approaches that may be difficult to  
5 achieve or recognize during a traditional litigated  
6 rate case. Two questions on that point.

7 One, do you have any examples that you could  
8 share of past settlements that were approved that  
9 included, as it is termed here, an innovative  
10 approach that was then carried forward by the  
11 Commission in other instances?

12 THE WITNESS: Yes, Commissioner. There are --  
13 there are at least two that come to mind, and there  
14 probably are more. But the two that come to mind  
15 immediately is the GBRA mechanism, which had its  
16 start in the context of a settlement.

17 I think that that is a -- a regulatory tool  
18 that has benefits, even outside of a settlement,  
19 but it is certainly a part of the -- a part of  
20 the -- the current assessment and it is a very  
21 important component of the current settlement.

22 The other -- the second item is the  
23 discretionary amortization. In this case, it's  
24 discretionary amortization of the dismantlement  
25 reserve, but in previous settlements, it's been



1 discretionary amortization of depreciation reserves  
2 both upward and downward, depending on the financial  
3 circumstances facing a company and the general  
4 economic situation in which their capital budgets  
5 were.

6 So all of these -- those two things, I think,  
7 are -- are good examples of the kind of thinking --  
8 innovative thinking that the parties in an -- in an  
9 effort to reach a balanced solution that has  
10 longevity have come up with these type mechanisms  
11 which afford customer protection, but also enable  
12 the company a reasonable opportunity to actually  
13 earn within its authorized range and to have rate  
14 certainty or at least predictability over an  
15 extended period of time.

16 COMMISSIONER EDGAR: Thank you, and you -- you  
17 answered what was going to be my followup on that  
18 point, so I am going to move to the next.

19 On page five of your prefiled testimony, you  
20 give a number of bullet reasons that support the  
21 position that the Commission has encouraged  
22 settlements and that they have also been in the  
23 public interest.

24 The one, two, three, four, fifth bullet down  
25 says, "the existence of safeguards for the

1 protection of customers and investors." What  
2 safeguards are there in the settlement that is  
3 before us in this matter that are for the  
4 protection of customers?

5 THE WITNESS: Yeah. There -- here again, at  
6 least there are two that come to mind. There, may  
7 be more. One is the GBRA mechanism itself, in that  
8 the amount of capital costs upon which rates would  
9 be based is limited to those costs which were  
10 determined by this Commission in a need  
11 determination to be the reasonable cost of the --  
12 the unit in question, and that the Commission  
13 determined that those units were not only needed,  
14 but they were the nose most cost-effective  
15 alternative. So there is that limitation, which I  
16 think is a safeguard.

17 The other safeguard is the fact that rates are  
18 going to be in existence for a four-year period,  
19 which means as long as there are not unforeseen  
20 circumstances which cause the company to earn below  
21 the range, that they would not be filing any type  
22 of rate relief. Well, that's tremendous benefit  
23 for customers because there are risks involved any  
24 time a rate case is filed.

25 Under the current settlement, FPL is going to

1 be taking risk of inflation, generally. They are  
2 going to be taking the risk of government mandates  
3 that may come into place. They are going to take  
4 the risk of maintaining their system in a reliable  
5 manner and make all the necessary investments in  
6 distribution and transmission and other operating  
7 assets, generally. They have all of those  
8 obligations.

9 They also are taking on the risk of interest  
10 rates increasing, which some financial experts  
11 indicate that that's probably on the horizon,  
12 certainly probably within the next four years, but  
13 here again, none of us have a crystal ball. We  
14 don't know, but that is another benefit of the  
15 settlement.

16 So I see a -- a benefit of the fact of not  
17 having rate cases, and we certainly know that that  
18 is a benefit in terms of -- of costs and taking  
19 management focus away from operating the company  
20 effectively and efficiently and having to redirect  
21 that focus to some extent about process --  
22 processing rate cases. You know that's correct,  
23 that is a benefit. It's not going to tip the  
24 scales one way or the other, but it is a  
25 consideration.

1           COMMISSIONER EDGAR: Another time and place it  
2 might be interesting to pursue the concept of the  
3 riskiness of a rate case, but I am not going to do  
4 that right now. But I will -- would like to ask  
5 one other point, and this may go beyond the scope  
6 of your testimony. But I am going to give it a try  
7 anyway.

8           A concern has been raised by the  
9 non-signatories that the settlement contains issues  
10 and/or expenses that were not included in the  
11 projected test year. If you know, do you agree  
12 that is the case? Or is not, if you know?

13          THE WITNESS: Well, I think it does include  
14 capital cost and operating the O&M expenses  
15 associated with the new generating units. So to  
16 that limited extent, those costs are outside of the  
17 test year; I think that's factually correct.

18          COMMISSIONER EDGAR: And recognizing, as has  
19 been discussed earlier today, that you are not a  
20 member of the Florida Bar, but recognizing that you  
21 do have significant expertise and experience  
22 regarding the application of Florida Statutes that  
23 would be relevant to this docket, are you aware of  
24 any statute or rule that would prevent the  
25 Commission from considering those aspects that are

1 in the settlement that are beyond the filings for  
2 the projected test year?

3 THE WITNESS: I am not aware of any, and I  
4 would point to the fact that in previous  
5 settlements, the GBRA mechanism was used and to  
6 enable there to be longevity in the -- in the  
7 rates. So if there were -- it was impermissible  
8 then, maybe it's impermissible now, but for  
9 whatever reason maybe no one objected. But it  
10 was -- it was adopted, and it worked. The  
11 effectiveness of that mechanism was -- was evident,  
12 and from a policy standpoint, it worked.

13 COMMISSIONER EDGAR: You mentioned a moment  
14 ago possible risk to -- risk involved within the  
15 litigation and determinations of a rate case. For  
16 the Commission to -- whether it be the GBRA or  
17 other, for the Commission to consider items that  
18 are beyond the projected test year filings, does  
19 that contain additional risk for customers?

20 THE WITNESS: Commissioner, I believe it does,  
21 but I think it's very minimal because of the -- the  
22 safeguards within the GBRA mechanism, limiting  
23 costs to those which have been demonstrated by the  
24 company before the Commission concerning the  
25 capital costs and the operating costs of those

1 units, that those units were needed and that they  
2 were the most cost-effective alternative.

3 COMMISSIONER EDGAR: Okay.

4 THE WITNESS: I am sorry.

5 COMMISSIONER EDGAR: That's okay. And I  
6 apologize, too. I did not mean to speak over you.

7 Do I understand your answer to be specific to  
8 the GBRA, as encompassed in this proposed  
9 settlement, and not more broadly to other potential  
10 current or future items that may be beyond the  
11 filings of a projected test year?

12 THE WITNESS: I am sorry, Commissioner. Can  
13 you repeat the question?

14 COMMISSIONER EDGAR: Well, I will try.

15 THE WITNESS: Okay.

16 COMMISSIONER EDGAR: What I was trying to get  
17 to, two-pronged, one is there a -- to your  
18 knowledge from your experience and expertise, a  
19 statutory or rule provision that makes it  
20 inappropriate for the Commission to consider items  
21 in the settlement that are beyond the projected  
22 test year filings?

23 And in your answer to me, I understood you to  
24 speak specifically to the GBRA, so what I was then  
25 trying to understand and -- and pursue a little bit

1 is -- did I understand your answer specifically to  
2 be that you believed the GBRA provision by nature  
3 of being beyond the projected test year filings  
4 does contain some additional risk for customers,  
5 but in the totality -- totality of the factors on  
6 that specific issue, that risk is balanced by other  
7 benefits?

8 THE WITNESS: Yes.

9 COMMISSIONER EDGAR: Are -- okay. So then  
10 putting the GBRA aside, more generally, are there  
11 prohibitions or risks to customers -- and that may  
12 be two separate questions, prohibition is and/or  
13 risks to customers to the Commission considering  
14 any other items that would be beyond the filings of  
15 projected test year?

16 THE WITNESS: I am not aware of any other  
17 items in this settlement that would fit into that  
18 category or risk concerns. To me, the fact that  
19 there would not be rate cases actually minimizes  
20 risks on customers because they would not longer  
21 be -- FPL would be taking the risk of general  
22 inflation and their other capital budgets other  
23 than the three specified generating units.

24 COMMISSIONER EDGAR: All right. Thank you.

25 CHAIRMAN BRISÉ: Commissioner Balbis?

1           COMMISSIONER BALBIS: Thank you, Mr. Chairman,  
2           and thank you for coming, Mr. Deason. Always a  
3           pleasure seeing you. I want to clarify or follow  
4           up on some comments or responses you made to  
5           Commissioner Brown and Commissioner Edgar.

6           You indicated that one of the benefits to the  
7           settlement agreement for customers is, I believe it  
8           was, rate stabilization or a term similar to that,  
9           and then, you also indicated that, you know, one of  
10          the main -- in fact, the first benefit you  
11          mentioned was it was a reduction in the overall  
12          request.

13          And I believe the specific question from  
14          Commissioner Brown was, you know, what is the  
15          benefit of the settlement agreement as opposed to  
16          going through the fully litigated case? Or maybe  
17          that wasn't the question. So was your answer, your  
18          response that we could not get a reduction in the  
19          request through a fully litigated proceeding?

20          THE WITNESS: Oh, no. By all means, no. The  
21          Commission is fully -- it is consistent with your  
22          jurisdiction responsibility to evaluate every issue  
23          in the case and make a determination as to what  
24          constitutes fair and just and reasonable rates  
25          based upon your vote of those issues. And that's



1 what the Commission has traditionally done, and I  
2 would think that's what this Commission would need  
3 to do going forward if this settlement is rejected.

4 COMMISSIONER BALBIS: So how would that be a  
5 benefit to the customers, the -- the settlement  
6 request being less than the original request?

7 THE WITNESS: Because that's known and  
8 quantifiable; you have a number out there. You  
9 don't they what the number is going to be from a  
10 vote on all of the issues until that vote is taken,  
11 so there is some risk associated with that.

12 If the -- you know, at the end of the day, if  
13 the settlement is rejected and the Commission votes  
14 on every one of those issues and the revenue  
15 requirement is determined, well, then, you know,  
16 you might could make that judgment comparing that,  
17 but here again let me reiterate --

18 COMMISSIONER BALBIS: Well, let me follow up  
19 on that if I may. And -- and I understand your  
20 point, but if we make a decision on each one of the  
21 issues based on what's in the best interest of the  
22 public and -- and, you know, of both sides, if you  
23 will, how would that be a risk to the public in  
24 that that's an unknown quantity if each one of  
25 those decision is made with the best interest in

1 mind?

2 THE WITNESS: It's a risk in that you don't  
3 know what the number is going to be, but I -- I am  
4 not saying that the number that results is not in  
5 the public interest. I think that if -- if you  
6 vote on each one of those issues and you determine  
7 what the revenue requirement is and that the rates  
8 going forward that, that would be -- the rates  
9 would be just and reasonable rates.

10 Here is the distinction, the settlement goes  
11 ahead and establishes rates for a four-year period.  
12 You may go through the -- the rate case and  
13 establish those rates, and they may have a short  
14 period of time that they are in effect because  
15 there is testimony in this record that when the --  
16 the generating units are added to rate base, it's  
17 going to have a significant financial impact to the  
18 extent that it most likely would trigger future  
19 rate cases.

20 So it's not only the -- the risk of this rate  
21 case, but the next case and the next case. But  
22 here again, we don't have a crystal ball. We don't  
23 know what that outcome would be. It's -- it's a  
24 question of risks and the certainty of the rates  
25 contained in the settlement and the stability and

1 the predictability of those rates over a four-year  
2 period.

3 COMMISSIONER BALBIS: Okay. And the followup  
4 on that, are you aware that Section 9A of the  
5 settlement deals with the fact if FPL's earned ROE  
6 falls under the 9.7, that they are to initiate a  
7 rate case proceeding?

8 THE WITNESS: I think that the settlement  
9 allows them to file the case -- a case if it falls  
10 below that, yes.

11 COMMISSIONER BALBIS: Okay. And going back to  
12 the GBRA I believe in Section 8E of the settlement,  
13 it states that in the effect -- in the event that  
14 actual capital costs for the modernization costs  
15 are higher, then FPL can petition for an increase  
16 in rates?

17 THE WITNESS: Yes, and they can petition that  
18 and have the burden to demonstrate that those costs  
19 are still just and -- I mean, that those costs were  
20 prudently incurred above those contained in the  
21 need determination. But I think there is also  
22 evidence in this record that indicates that in  
23 previous need determinations, the company has been  
24 pretty close on their estimates, so that may not be  
25 a great risk. But, yes, it is a risk.

1           And back to your previous question about the  
2 fact that there is a provision if rate -- if the  
3 earnings fall below 9.7 percent, I agree that's in  
4 there, and there is a certain amount of risk  
5 associated with that. But what's not in that risk  
6 component is the fact that that 9.7 percent is  
7 pretty well fixed. There is no recognition of  
8 changes in cost of equity that could happen to  
9 where maybe that cost of equity would increase from  
10 what it is now over some -- at some point during  
11 the four years; it's pretty well locked in.

12           If you file another rate case, you're going to  
13 have the privilege and pleasure of hearing all of  
14 the ROE experts again and determine what the equity  
15 would be. It could be higher; it could be lower,  
16 but that is a risk component that would not be  
17 present in the settlement. It would be locked in  
18 at 10.7 for the entire four years.

19           COMMISSIONER BALBIS: I -- I didn't understand  
20 that last point, how it would be locked at 10.87.  
21 I agree the midpoint would be locked in, but  
22 accords to the provisions of the settlement  
23 agreement, if it falls below 9.7, they have the  
24 right to initiate a proceeding.

25           THE WITNESS: You're exactly right.

1 COMMISSIONER BALBIS: Okay.

2 THE WITNESS: And what -- and what I was  
3 saying the fact that the settlement is over a  
4 four-year period, you get that -- that becomes that  
5 ROE for that entire four-year period. If you  
6 reject the settlement and rely upon rate cases to  
7 put the new plants into rate base, you most  
8 likely -- unless it's a limited proceeding, you  
9 most likely are going to have a full rate case, and  
10 return on equity is going to be one of the issues  
11 that's going to be determined.

12 So it's very -- it's possible that the 10.7  
13 could go up. It could go down at some point with  
14 each succeeding rate case during that four-year  
15 period, so there is a risk component associated  
16 with that that is eliminated if the settlement is  
17 adopted.

18 COMMISSIONER BALBIS: Okay. But you do agree  
19 that the limited proceeding process is another way  
20 that as these plants come online, that would allow  
21 FPL to recover the appropriate revenue requirement  
22 for those plants, correct?

23 THE WITNESS: It is a mechanism, and it would  
24 have that effect.

25 Just one word of caution, experience has

1 indicated that sometimes limited proceedings have  
2 the effect of growing in scope and complexity, but  
3 if the Commission desires to keep that very  
4 limited, that is a tool that the Commission has to  
5 put those plants in rate base on a hopefully  
6 expedited, very focused proceeding to include those  
7 in those plants.

8 COMMISSIONER BALBIS: Okay. Thank you.  
9 That's all I had.

10 CHAIRMAN BRISÉ: Any further questions,  
11 Commissioners? All right.

12 Redirect?

13 REDIRECT EXAMINATION

14 BY MR. LITCHFIELD:

15 Q One quick question with regard to a point that  
16 Commissioner Balbis was asking you about, and it's this:  
17 If the company constructs power plants that would be  
18 subject to the GBRA requirement and -- and the costs  
19 come in less than projected, what happens to the revenue  
20 requirement that would be used to establish the rates  
21 for that power plant under the settlement agreement?

22 A The lower cost would be recognized, and those  
23 savings would be passed through to customers.

24 Q Okay. Thank you.

25 MR. LITCHFIELD: Now, Commissioner, there was

1 a fair amount of testimony that seemed to go well  
2 beyond the scope of this witness' personal  
3 knowledge. What I would suggest -- so I am not  
4 going to redirect him on that.

5 What I would suggest and offer to Mr.  
6 Rehwinkel is if he believes it's important for this  
7 Commission to know when and how many times Public  
8 Counsel was approached by the company for purposes  
9 of engaging in settlement discussions, that he put  
10 that question directly to Mr. Dewhurst when he  
11 takes the stand. Either that, or Mr. Rehwinkel and  
12 Mr. Hoffman and I can go out in the back and we can  
13 check our calendars together and cross-check them,  
14 but that would be my invitation.

15 I have no further redirect for this witness.

16 CHAIRMAN BRISÉ: All right. Thank you very  
17 much. Let's deal with deal with exhibits. I think  
18 we took official recognition of the PSC order  
19 looking at Exhibit 705.

20 Okay. All right. If we can call the next  
21 witness. FEA?

22 MR. FIKE: Thank you, Mr. Chairman, the  
23 Federal Executive Agencies call Mr. Ryan Allen.

24 CHAIRMAN BRISÉ: All right.

25 MR. FIKE: He has been previously sworn.

1 Whereupon,

2 RYAN ALLEN

3 was called as a witness, having been previously duly  
4 sworn to speak the truth, the whole truth, and nothing  
5 but the truth, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FIKE:

8 Q Mr. Allen, if you could please state your name  
9 and business address for the record?

10 A Yes, my name is Ryan Allen, and my business  
11 address is 1245 Jupiter Street, Patrick Air Force Base,  
12 Florida, 32925.

13 Q And what is your position?

14 A I am the Chief of Financial Policy at Patrick  
15 Air Force Base.

16 Q Mr. Allen, did you file five pages of direct  
17 testimony on behalf of the Federal Executive Agencies in  
18 this case?

19 A Yes.

20 Q And do you have your prefiled testimony with  
21 you?

22 A Yes, I do.

23 Q Do you have any changes or corrections you  
24 want to make to -- make to your testimony at this time?

25 A No.



1           Q     Do you adopt the prefiled testimony as your  
2 testimony here today?

3           A     Yes.

4           Q     Did you also prepare as part of your  
5 submission one exhibit marked as RMA-1, which has been a  
6 signed hearing identification number 683?

7           A     Yes.

8           Q     Do you have any changes to make to that  
9 exhibit?

10          A     No.

11               MR. FIKE: Mr. Chairman, I would ask that the  
12 prefiled testimony of Mr. Allen be entered into the  
13 record as though read.

14               CHAIRMAN BRISÉ: All right. We will enter  
15 Mr. Allen's prefiled testimony into the record as  
16 though read, recognizing Mr. Saporito's standing  
17 objection.

18               (Whereupon, testimony inserted.)

19

20

21

22

23

24

25



1 **Q. Are you sponsoring any exhibits as part of your testimony?**

2 A. I am sponsoring one exhibit, the 2011 Economic Impact Analysis for Patrick AFB and Cape  
3 Canaveral Air Force Station (hereinafter: RMA-1). It is a 6 page document with a cover page on  
4 page 1 and 5 tables on pages 2-6.

5

6 **Q. What is the military mission of Patrick AFB?**

7 A. The 45th Space Wing (Patrick AFB) Mission statement is:

8 One Team...Delivering Assured Space Launch, Range and Combat Capabilities for the Nation.

9

10 **Q. What is the approximate size of the workforce at Patrick AFB and Cape Canaveral Air  
11 Force Station?**

12 A. See Table 1 below and Exhibit RMA-1

<b>Active Duty (AD)</b>	<b>2,188</b>
<b>Air Force Reserve/Air National Guard</b>	<b>154</b>
<b>Non-Extended Active Duty Reserve/ANG</b>	<b>1,063</b>
<b>Individual Mobilization Augmentees</b>	<b>243</b>
<b>General Schedule, Wage Grade, DICPS, NSPS</b>	<b>2,181</b>
<b>Civilian NAF</b>	<b>263</b>
<b>Civilian BX</b>	<b>150</b>
<b>Bank/Credit Union</b>	<b>8</b>
<b>Post Office</b>	<b>1</b>
<b>Contracted workers</b>	<b>3665</b>
<b>TOTAL:</b>	<b>9916</b>

1 **Q. What is the approximate economic impact of Patrick AFB and Cape Canaveral Air**  
2 **Force Station on the Florida economy?**

3 A. Patrick AFB and Cape Canaveral Air Force Station employ a \$336 million payroll, and  
4 impact the state's economy with construction projects, major contracts and daily procurements,  
5 education requirements, health necessities, and commissary and exchange expenditures. In  
6 addition to Patrick AFB's and Cape Canaveral Air Force Station's work force, there are more  
7 than 24,000 serviced military retirees living in the local area, who continue to have a large  
8 impact on the state's economy. Additionally, Patrick AFB and Cape Canaveral Air Force Station  
9 generate nearly 4,850 secondary jobs in the local communities in such fields as housing, food  
10 and the services industries, with an estimated economic impact on Florida of approximately  
11 \$208 million per year. Lastly Patrick AFB and Cape Canaveral Air Force Station executed  
12 approximately \$701 million in annual contract awards in Fiscal Year 2011. (See RMA-1)

13

14 **Q. Where does Patrick AFB and Cape Canaveral Air Force Station purchase its electric**  
15 **utility service, what rate class do they fall under, and how much is the annual electric**  
16 **utility bill?**

17 A. Patrick AFB and Cape Canaveral Air Force Station purchase electric utility services from  
18 Florida Power and Light Company (FP&L) and receive service under the CILC-1T and GSLDT3  
19 Rate Schedules. For Fiscal Year 2012, (October, 1 2011 – September 30, 2012) Patrick AFB  
20 and Cape Canaveral Air Force Station paid FP&L approximately \$15.7 million for electric utility  
21 service.

22

23 **Q. What funds are used to pay Air Force utility bills?**

24 A. The funds used to pay for the utility service provided by FP&L are operations and  
25 maintenance (O&M) funds. In addition to paying for utilities, operations and maintenance funds

1 are also used to fund military operations and maintenance. Utility bills are "must pay" bills,  
2 meaning they are among the first requirements funded and paid by the government. Any cost  
3 avoidance or reduction in costs Patrick AFB or Cape Canaveral Air Force Station realizes in  
4 their utility payments provides a corresponding increase in funds that could be utilized  
5 elsewhere for essential military operations and maintenance.

6

7 **Q. What happens to Patrick AFB's O&M funds when there is a large increase in utility**  
8 **bills?**

9 A. Since the funding used to pay utility bills is the same funding used to fund military operations  
10 and maintenance, when utility bills increase, other areas of military operations and maintenance  
11 must be reduced. The only mechanism to increase the overall funding level is to request  
12 additional appropriations from Headquarters Air Force and ultimately, Congress.

13

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

15 A. Yes it does.

1 BY MR. FIKE:

2 Q Mr. Allen, did you prepare a summary of your  
3 testimony?

4 A Yes, I did.

5 Q And could you please present at that to the  
6 Commission at this time?

7 A Yes. Thank you, Mr. Chairman and  
8 Commissioners.

9 My testimony addresses the economic impact  
10 that Patrick Air Force Base and Cape Canaveral Air Force  
11 Station have on the Florida economy and highlights the  
12 adverse impact that increased utility bills would have  
13 on the Patrick Air Force Base and Cape Canaveral Air  
14 Force station.

15 As part of my testimony, I have introduced one  
16 exhibit, which is the fiscal year 2011 economic impact  
17 analysis for Patrick Air Force Base and Cape Canaveral  
18 Air Force Station. This exhibit shows that Patrick Air  
19 Force Base and Cape Canaveral Air Force Station employ a  
20 \$336,000,000 payroll for over 9,000 active military,  
21 government and civilian and contractor employees.  
22 Additionally, Patrick Air Force Base and Cape Canaveral  
23 Air Force Station generate nearly 4,850 secondary jobs  
24 in the local community, with an estimated economic  
25 impact in Florida of approximately \$208 million per

1 year.

2           Since funds to pay for utility bills comes out  
3 of the operations and maintenance budget for Patrick Air  
4 Force Base and Cape Canaveral Air Force Station, any  
5 increase in the utility bills represents a corresponding  
6 decrease in the funds that could be utilized elsewhere  
7 for funding essential military operations and  
8 maintenance. The proposed settlement will permit  
9 Patrick Air Force Base and Cape Canaveral Air Force  
10 Station to use its operation and maintenance funds for  
11 purchasing the necessary supplies and services required  
12 to perform its mission to delivered assured space launch  
13 range and combat capabilities for the nation. That  
14 summarizes my testimony.

15           MR. FIKE: Mr. Allen is tendered for  
16 cross-examination.

17           CHAIRMAN BRISÉ: Thank you.

18           Mr. Rehwinkel?

19           MR. REHWINKEL: Mr. Chairman, before.

20           MR. BUTLER: Mr. Chairman, before we go into  
21 cross-examination as a housekeeping matter, I don't  
22 think that actually had Mr. Deason excused. He  
23 will be back to for rebuttal, but if we can excuse  
24 him for his direct, I'd appreciate it.

25           CHAIRMAN BRISÉ: Okay. Mr. Deason is excused

1 from his direct testimony.

2 (Witness excused.)

3 MR. REHWINKEL: Thank you.

4 CHAIRMAN BRISÉ: Mr. Rehwinkel?

5 MR. REHWINKEL: Thank you, Mr. Chairman.

6 CROSS EXAMINATION

7 BY MR. REHWINKEL:

8 Q Good afternoon, Mr. Allen.

9 A Good afternoon.

10 Q Can you tell me what federal facilities are  
11 represented by FEA in this case?

12 A What federal facilities?

13 Q Yes.

14 A No, I cannot.

15 Q Your testimony addresses the economic impact  
16 of having military bases in the state, specifically  
17 Patrick Air Force Base; is that right?

18 A The two military installations that I rest --  
19 referenced in my testimony are Patrick Air Force Base,  
20 and they are you also supporting Cape Canaveral Air  
21 Force Station; that's correct.

22 Q Your economic impact analysis is not an  
23 analysis of the economic impact of the rate increases  
24 and stipulation on the general body of FPL ratepayers;  
25 is that right?



1           A     That is correct.

2           Q     Your testimony is limited solely to the impact  
3 on increase on utility bills of Patrick Air Force Base  
4 and Cape Canaveral Air Force Station, correct?

5           A     Can you repeat the question?

6           Q     Your testimony are, you are here testifying  
7 only about the impact of the increase in the settlement  
8 on utility bills of Patrick Air Force Base and Cape  
9 Canaveral Air Force Station, correct?

10          A     That's correct.

11          Q     So by definition, you would agree that your  
12 testimony does not address the impact of increased  
13 utility bills on the other four million or so customers  
14 of FPL, such as residential users or retail customers,  
15 correct?

16          A     That's correct.

17          Q     Are you familiar with the petition to  
18 intervene that FEA filed in this case?

19          A     I don't think so, no.

20          Q     Okay. Do you know whether the -- the FEA is  
21 appearing here based on delegated authority by the  
22 General Services Administration to represent through the  
23 Department of Air Force counsel, the consumer interest  
24 of the FEA in this proceeding?

25          A     I do not know the answer to that, no.

1 Q Your testimony does not use the terms "fair,  
2 just and reasonable" with respect to FPL's rates  
3 proposed in the August 15th document; does it?

4 A No, it does not.

5 Q Let me ask you to turn to your exhibit that  
6 you have attached. And just so I understand, you have  
7 Table 1, Table 2, they reference personnel on Table 1  
8 and payroll by classification and housing location on  
9 Table 2; is that right?

10 A That's correct.

11 Q The purpose of this exhibit is not to address  
12 the individuals who are enumerated on these two tables  
13 with respect to the bills they pay to FPL, correct?

14 A That's correct.

15 Q You are not here testifying or presenting  
16 evidence that the August 15th proposal is in the best  
17 interest of ratepayers other than Patrick Air Force Base  
18 and Cape Canaveral Air Force Base, correct -- Air Force  
19 Station?

20 A I believe that's correct. I am here to  
21 represent solely Patrick Air Force Base and Cape  
22 Canaveral Air Force Station.

23 Q Okay. And you are not presenting evidence in  
24 support of the -- the GBRAs, the asset optimization  
25 proposal, the depreciation or fossil dismantlement

1     **reserve amortization, correct?**

2           A     That's correct.

3           MR. REHWINKEL: Thank you, Mr. Chairman. I  
4     have no further questions. Thank you.

5           CHAIRMAN BRISÉ: Thank you.

6           Mr. Wright?

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

8                           CROSS EXAMINATION

9     BY MR. WRIGHT:

10           Q     **Good afternoon, Mr. Allen.**

11           A     Good afternoon.

12           Q     **My name is Schef Wright, and I represent the**  
13 **Florida Retail Federation in this proceeding. And I,**  
14 **again, think I have what I call a Schef Wright few**  
15 **questions for you.**

16           A     Okay.

17           Q     **If you know, will the electric -- will the**  
18 **total electric bill paid by Patrick Air Force Base**  
19 **increased under the settlement agreement from its**  
20 **current level?**

21           A     It is my understanding that under the current  
22 settlement agreement, the utility -- the expected  
23 utility bill would not increase under the settlement.

24           Q     **At all?**

25           A     That is my understanding, yes.

1 Q You didn't analyze that, I gather?

2 A I did not analyze the specifics. I looked at  
3 the information that was provided to me, and it would  
4 appear that our rates would not go up.

5 Q I would like to refer to you a sentence on  
6 lines two through five of page five of your testimony.

7 A I am sorry, which page?

8 Q Page five of your testimony.

9 A Okay.

10 Q Before -- before we go there, stay there for  
11 you don't mind, but I did want to ask you a question  
12 about your previous answer. You said your rates  
13 wouldn't go up. And I -- the question I asked you,  
14 would your bill go up? Do you know?

15 A Okay. That was my mistake, and I misstated  
16 it. My understanding is that our overall bill would not  
17 go up.

18 Q Okay.

19 A That's -- that's a correction that's  
20 warranted, yes.

21 Q Thank you for rate geeks like me, it's a  
22 nuance that's -- that's interesting.

23 Anyway, if I could -- if I could ask you  
24 just -- just to read out loud the sentence that begins  
25 any cost on page -- line two of page five?

1           A     Yes, sir. "Any cost, avoidance or reduction  
2 in costs at Patrick Air Force Base or Cape Canaveral Air  
3 Force Station realized in their utility payments  
4 provides a corresponding increase in funds that could be  
5 utilized elsewhere for essential military operations and  
6 maintenance."

7           Q     Thank you. Now, would it be fair for me to  
8 interpret that as meaning that lower electric bills are  
9 better than higher electric bills?

10          A     That is correct, yes.

11          Q     So if you were actually able to get a rate  
12 reduction, that would be better than your rate staying  
13 constant; wouldn't it?

14          A     That is correct.

15          Q     Are you familiar with what the Federal  
16 Executive Agencies advocated in the original phase of  
17 this case, as reflected in their post-hearing statement?

18          A     No, sir. I am not.

19          Q     Would you accept, subject to check, that they  
20 advocated a decrease in FPL's total revenue of  
21 \$253 million a year?

22          A     Sir, I am not aware of the testimony. I  
23 apologize.

24          Q     Well, I will ask you the hypothetical, if  
25 FPL's rates went down \$253 million a year, wouldn't you

1 **expect Patrick's rates to go down, too?**

2 A I would suppose that would be in the realm of  
3 possibility, but without seeing the specifics, I  
4 wouldn't know whether our rates would go down or not.

5 **Q And you didn't look at any of that stuff**  
6 **preparing this testimony?**

7 A I did not. My testimony is fully -- excuse  
8 me, solely established based on the impact of utility  
9 rates as a portion of our economic impacts in the local  
10 area.

11 MR. WRIGHT: Okay. Thanks very much. That's  
12 all I have.

13 THE WITNESS: Thank you.

14 CHAIRMAN BRISÉ: Thank you.

15 Mr. Saporito?

16 MR. SAPARITO: Thank you, Mr. Chairman.

17 CROSS EXAMINATION

18 BY MR. SAPARITO:

19 **Q My name is Thomas Saporito. I am here pro se**  
20 **representing myself in this matter.**

21 I would like to ask you a question about your  
22 direct testimony at page four, lines three through,  
23 where you stated that there are more than 25 -- excuse  
24 me, 24,000 service military retirees living in the local  
25 area and that the Patrick Air Force Base and Cape

1 Canaveral Air Force Station generate nearly 4,850  
2 secondary jobs in the local community.

3 So the question is, would you agree with me  
4 that the combination of the 24,000 military retirees and  
5 4,850 secondary jobs equate approximately 28,550  
6 residential customers of Florida Power & Light Company?

7 A I -- yes, I would assume they would all be  
8 residential customers of Florida Power & Light.

9 Q And would you agree with me that the proposed  
10 settlement agreement will cause electrical rates to  
11 rise -- to increase?

12 A Sir, I -- I do not know specifically what's  
13 going to happen to the residential rates.

14 Q Hypothetically speaking, if the residential  
15 customer rates were to increase as a result of the  
16 Commission approving FPL's settlement agreement, isn't  
17 it true that the customers would have less money to  
18 spend on other items, such as buying a new car, clothes  
19 or major appliances?

20 A Hypothetically speaking, if the utility rating  
21 up, most people view utility rates and bills as a  
22 must-pay bill, and therefore, they would have less  
23 disposable income to spend on other items. I would  
24 agree that would be true.

25 Q Would you agree with me that would be a

1 negative -- a negative economic impact on Florida?

2 A I believe that hypothetically speaking, if the  
3 rates were to increase that, yes, that could have a  
4 potential negative impact on those referenced folks to  
5 be able to spend money on other items; that is true.

6 Q And that that would negatively impact the  
7 economics of Florida?

8 A Without knowing their spending habits, I would  
9 assume that that would be the case.

10 Q Thank you.

11 I would now like to ask you a question about  
12 your direct testimony at page five, lines nine through  
13 12, where you stated that when utility bills increase,  
14 other areas of military operations and maintenance must  
15 be reduced and that the only mechanism to increase  
16 overall funding level is to request additional  
17 appropriations from Headquarters Air Force Base and  
18 ultimately Congress; did I state that correctly?

19 A That's -- that's a true statement yes.

20 Q Well, isn't it true that if the Commission  
21 were to reject FPL's proposed settlement agreement and  
22 adopt the position of the Office of Public Counsel to  
23 lower FPL's electric -- electric rates by \$250 million  
24 or so, that the overall funding level for the Air Force  
25 bases would increase due to lower electric bills?



1           A     If I understand the question correctly, you're  
2 supposing that the rates would be lower?

3           **Q     Yes, sir.**

4           A     Then, yes, there would be less money expended  
5 for utility bills, and therefore, it would have the  
6 opposite affect as what's in the stated testimony, yes.

7                   MR. SAPARITO: Thank you. That's all I have,  
8 Mr. Chairman.

9                   CHAIRMAN BRISÉ: Thank you.

10                   Mr. Garner?

11                   MR. GARNER: Pinecrest has no questions for  
12 Mr. Allen.

13                   CHAIRMAN BRISÉ: All right. Thank you.

14                   Mr. Hendricks?

15                   MR. HENDRICKS: No questions. Thank you.

16                   CHAIRMAN BRISÉ: Staff?

17                   MR. YOUNG: No questions.

18                   CHAIRMAN BRISÉ: Commissioners?

19                   All right. Redirect?

20                   MR. FIKE: Just a couple.

21                   CHAIRMAN BRISÉ: Sure.

22                   MR. FIKE: Just a couple, Mr. Chairman.

23                                   REDIRECT EXAMINATION

24 BY MR. FIKE:

25           **Q     Real quickly, in response to OPC's question**

1 about the bills for Patrick Air Force Base and Cape  
2 Canaveral Air Force Station, your understanding is that  
3 the overall bill will not increase, and that is also  
4 due, in part, because of the expected lower fuel costs  
5 for 2013 versus what was in 2012; is that correct?

6 A It is my understanding that there is two  
7 components to the -- to the bills, and, yes, that as a  
8 result of the fuel savings, the overall bill to the  
9 Patrick Air Force Base and Cape Canaveral Air Force  
10 Station would not increase.

11 Q And then also in response to Mr. Wright's  
12 question -- pardon me, Mr. Saporito's question, just  
13 because the overall revenue requirement would be  
14 decreased, it does not necessarily mean that Patrick Air  
15 Force Base and Cape Canaveral Air Force Station's  
16 utility bill would also decrease if their rates -- the  
17 rate class they are in remains set at a high level; is  
18 that your understanding?

19 A I don't think I understand the question.

20 Q Let me rephrase the question.

21 So they asked -- they said, you know,  
22 230 million I think was the number -- was our  
23 original -- was the original request for reduction on  
24 the bill on behalf of FP&L -- FP&L's request, and that  
25 obviously, the overall revenue requirement is one piece

1 of that.

2 But if the corresponding rate that a certain  
3 customer pays, in this case, a commercial customer pays  
4 a certain rate, if that rate were to remain high or be  
5 raised after the Commission's decision, just because the  
6 overall revenue requirement was lowered doesn't  
7 necessarily mean that that would equate for a lower bill  
8 for Patrick Air Force Base and Cape Canaveral Air Force  
9 Station?

10 A All I can say is I haven't seen the proposed  
11 rates other than the one that's proposed in this  
12 settlement. The -- the Commission's discretion to  
13 establish those rates, if the rate is lower, obviously  
14 there is more money available for other activities in  
15 support of the national defense mission, and if the rate  
16 is higher, then there is less. So I --

17 Q I think you answered my question. The key  
18 component is the rate there, is what I am getting at,  
19 not the actual total revenue?

20 A Correct.

21 Q That's the point I wanted to make.

22 A Right.

23 Q And just one last question, in regard to,  
24 again, OPC's question about the impact as far as the  
25 settlement on Patrick Air Force Base and Cape Canaveral

1 **Air Station, would you agree there is also an indirect**  
2 **impact to the local community?**

3 MR. SWITALSKI: Mr. Chairman, I object. This  
4 question is clearly leading on its face. Would you  
5 agree that suggests an answer it's leading?

6 CHAIRMAN BRISÉ: Okay. If you could sort of  
7 clean up the open-ended question.

8 MR. FIKE: Okay. All right.

9 BY MR. FIKE:

10 **Q What impact does Patrick Air Force Base and**  
11 **Cape Canaveral have on the local community?**

12 A The overall impact to the local community is  
13 about \$1.2 billion dollars.

14 MR. FIKE: That's no further questions. Thank  
15 you.

16 CHAIRMAN BRISÉ: All right. Thank you.

17 I don't think we had any -- no exhibits?

18 MR. YOUNG: No.

19 CHAIRMAN BRISÉ: For this witness?

20 MR. YOUNG: Yes.

21 MR. FIKE: We have one exhibits.

22 CHAIRMAN BRISÉ: We have one, okay. The one  
23 attached. That's correct.

24 MR. FIKE: Right and that's labeled -- I think  
25 it's --

1 MR. YOUNG: 683.

2 MR. FIKE: 683, right.

3 CHAIRMAN BRISÉ: 683, that's correct.

4 MR. FIKE: So I move of that exhibit in.

5 CHAIRMAN BRISÉ: All right. At this time we  
6 move 683 into -- to the record recognizing the  
7 standing objections.

8 (Whereupon, Exhibit No. 683 was received into  
9 evidence.)

10 CHAIRMAN BRISÉ: All right.

11 MR. FIKE: And then, a request that Mr. Allen  
12 be excused for the rest of the hearing. He has no  
13 rebuttal.

14 CHAIRMAN BRISÉ: Sure. Sure. Thank you,  
15 Mr. Allen. Thank you very much. You may be  
16 excused.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 CHAIRMAN BRISÉ: All right.

20 FPL, call your next witness.

21 MR. BUTLER: Thank you. We call Ms. Deaton.

22 CHAIRMAN BRISÉ: All right. I am going to  
23 remind everyone that as we are working to be  
24 efficient with our questions, that if someone asks  
25 a question, please don't repeat that same question

1 and so forth. All right. So if we can be  
2 efficient as we go through that process, so pay  
3 attention to your own questions as other people are  
4 asking questions and sort of check them off. All  
5 right. We certainly appreciate that.

6 Whereupon,

7 RENE DEATON

8 was called as a witness, having been previously duly  
9 sworn to speak the truth, the whole truth, and nothing  
10 but the truth, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. CLARK:

13 Q Ms. Deaton, you have been sworn; have you not?

14 A Yes, I have.

15 Q Okay. Would you please state your name and  
16 business address?

17 A My name is Rene Deaton. My business address  
18 is 700 Universe Boulevard, Juno Beach, Florida, 33408.

19 Q By whom are you employed and in what capacity?

20 A Employed by Florida Power & Light Company as  
21 Senior Manager of Rate Design.

22 Q Have you prepared and caused to be filed 11  
23 pages of prefiled direct testimony on October 12th,  
24 2012?

25 A Yes.

1           Q     Do you have any changes to your direct  
2 testimony?

3           A     No.

4           Q     If I asked you the same questions as are in  
5 your prefiled testimony today, would your answers be the  
6 same?

7           A     Yes, they would.

8           MS. CLARK: Mr. Chairman, I would ask that the  
9 prefiled direct testimony of Ms. Deaton be inserted  
10 in the record as though read.

11           CHAIRMAN BRISÉ: All right. At this time, we  
12 will insert the testimony of Ms. Rene Deaton into  
13 the record as though read, recognizing the standing  
14 objection.

15                   (Whereupon, testimony inserted.)  
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## I. INTRODUCTION

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

A. My name is Renae B. Deaton. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

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

A. Yes.

**Q. Are you sponsoring additional exhibits in this case?**

A. Yes. I am sponsoring five additional exhibits which are attached to my direct testimony. They are as follows:

- RBD-12 FPL Bill Comparisons Under Settlement Rates – January 2012 to January 2013, June 2013
- RBD-13 FPL Bill Comparisons Under Settlement Rates vs. Rates Proposed in March 2012 MFRs – June 2013
- RBD-14 Parity of Major Rate Classes: Current and Proposed Settlement Agreement
- RBD-15 EEI Industrial Bill Comparison – January 2012
- RBD-16 Late Payment Charge Survey

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

A. The purpose of my testimony is to show that the rates in the Proposed Settlement Agreement are consistent with the public interest (Issue 5 in Commission Order No. PSC-12-0529-PCO-EI, Docket No. 120015-EI, issued on October 3, 2012).



1 **Q. Please summarize your testimony.**

2 A. My testimony shows that the rates under the Proposed Settlement Agreement  
3 are in the public interest. Under the Proposed Settlement Agreement the bills  
4 for residential customers will remain the lowest in the state and the bills for  
5 commercial and industrial customers will be more competitive with rates of  
6 other utilities in Florida and the Southeast.

7  
8 For the residential customer the net impact on the typical residential bill in  
9 June 2013 is \$1.54 a month or 5 cents per day, which is less than a 2%  
10 increase. The net impact on bills for commercial and industrial customer  
11 classes in June 2013 is expected a range from flat to a 3 percent decrease.

12  
13 The Proposed Settlement Agreement also includes credits for large  
14 commercial and industrial customers on the Commercial/Industrial Load  
15 Control ("CILC") rates and Commercial/Industrial Demand Reduction  
16 ("CDR") rider that are greater than the credits reflected in the Minimum Filing  
17 Requirements ("MFRs") filed in March 2012. Additionally, the relationships  
18 between the non-fuel energy and demand charges in the CILC rates were  
19 revised. Under the Proposed Settlement Agreement, the increased CILC and  
20 CDR credits will be recovered through the Energy Conservation Cost  
21 Recovery ("ECCR") clause. These proposals combine to make rates for these  
22 customers more competitive during the term of the Proposed Settlement  
23 Agreement.

1           **II. RATES UNDER THE PROPOSED SETTLEMENT AGREEMENT**

2

3   **Q.    What is the base rate adjustment under the Proposed Settlement**  
4           **Agreement?**

5    A.    The Proposed Settlement Agreement reflects a base rate adjustment of \$378  
6           million effective January 1, 2013. This represents a \$139 million reduction  
7           from FPL's original request. The Proposed Settlement Agreement also  
8           reflects the utilization of the Generation Base Rate Adjustment ("GBRA") as  
9           described by FPL witness Barrett to recover the costs associated with the  
10          Canaveral Modernization project, the Riviera Beach Modernization project  
11          and the Port Everglades Modernization project ("Modernization Projects")  
12          beginning on their respective commercial operation dates of June 2013, June  
13          2014 and June 2016.

14   **Q.    How do rates under the Proposed Settlement Agreement compare to**  
15           **FPL's rates filed in the March 2012 MFRs?**

16    A.    As reflected in Exhibit RBD-12, page 1 of 5, the base component of the  
17           typical residential (1,000 kilowatt-hours) bill would increase from \$43.26 in  
18           January 2012 to \$47.36 in January 2013 and to \$49.01 in June 2013 to recover  
19           the Cape Canaveral Modernization Project. Based on fuel efficiency savings,  
20           current projections of fuel prices and other expected changes to clauses and  
21           base rates, including the increase to the ECCR charge due to the increase in  
22           the CILC and CDR credits, the net impact on the typical residential bill in

1 June 2013 is projected to be \$1.54 a month or 5 cents per day, which is less  
2 than a 2 percent increase.

3

4 Exhibit RBD-12, page 2 of 5 and page 3 of 5, shows that the base increase for  
5 most Commercial / Industrial ("CI") customers' bills, i.e., those on the  
6 General Service Non-Demand ("GS-1") and General Service Demand ("GSD-  
7 1") rates, is between 3 and 11 percent from January 2012 to June 2013. In  
8 fact, customers on the GS-1 and GST-1 rate schedules will see no increase  
9 over current rates in January. For a small number of larger CI customers,  
10 increases range from 12 to 13 percent. However, due to fuel efficiency  
11 savings, current projections of fuel prices, and other expected changes to base  
12 rates and clauses in June 2013, the net impact on bills is expected to range  
13 from flat to a decrease of 3 percent.

14

15 As shown in Exhibit RBD-13, pages 1 - 5, the Proposed Settlement  
16 Agreement results in bills that are flat or lower than those that would result  
17 from the rates proposed in the March 2012 rate request.

18 **Q. An objective of rate design is to move rate classes closer to parity. Is**  
19 **parity among the rate classes improved under the Proposed Settlement**  
20 **Agreement?**

21 A. Yes. The table below illustrates that all rate classes will either be within the  
22 range of 90 percent to 110 percent of parity, or will be moved toward that  
23 objective.

1

**PARITY UNDER THE PROPOSED SETTLEMENT AGREEMENT**

Rate Class	Remaining Within +/- 10% Range	Improving Toward +/- 10%Range	Moving Away from +/- 10%Range
GS(T)-1		√	
GSD(T)-1	√		
GSLD(T)*		√	
Lighting	√		
Residential	√		
CILC Classes	√		

2

\* GSLD(T) includes GSLD(T)-1, GSLD(T)-2 and GSLD(T)-3 rate classes

3

4

Exhibit RBD-14 shows the parity positions of the major rate classes under the Proposed Settlement Agreement.

5

6

**Q. How do the rates under the Proposed Settlement Agreement “promote economic development, job creation and stability”?**

7

8

A. The rates under the Proposed Settlement Agreement should promote economic development and job creation and stability in a number of ways. The rates should contribute to making businesses and industry in FPL’s territory more competitive and help in retaining and attracting industry to Florida, and will provide long-term rate stability.

11

12

13

14

First, the level of the increases for all commercial and industrial classes is reduced. The percentage reduction from the increase proposed in the March 2012 MFRs is greater for the larger CI customer classes than that for the

15

1 residential and small non-demand general service rate classes. The greater  
2 reductions for the larger CI customer classes recognizes that, while FPL's  
3 residential and small non-demand general service bills will remain the lowest  
4 in the state as compared to the other Florida utilities current bills, the bills for  
5 the larger CI customers do not compare quite as favorably, with some being  
6 4<sup>th</sup> to 5<sup>th</sup> lowest currently. See RBD-3 pages 6-7 of 7 (Exhibit 219). Also,  
7 because Florida competes with other states for industry, FPL's rates need to  
8 be competitive on a regional and national basis to help retain and attract  
9 industry in Florida. While FPL's industrial bills do compare favorably based  
10 on the Edison Electric Institute ("EEI") bill survey, many utilities in the  
11 Southeast offer lower bills to large industrial customers. See Exhibit RBD-15.  
12 Although no changes are proposed to the underlying cost of service  
13 methodology, the terms of the Proposed Settlement Agreement will provide  
14 some competitive relief to these industries for a four year period.

15  
16 Second, intervenors expressed concerns that increasing energy charges more  
17 than demand charges impacts high load factor customers more than low load  
18 factor customers, so the relationship of the CILC demand and energy rates is  
19 modified such that the majority of CILC revenue is recovered through the  
20 customer and demand charges rather than the energy charges, and the on and  
21 off peak energy charges are not differentiated.

22

1 Third, the CILC and CDR credits are increased 56%. The CILC and CDR  
 2 programs provide rate reductions for large commercial and industrial  
 3 customers in exchange for the ability to interrupt customers during periods of  
 4 extreme demand, capacity shortages or system emergencies. Intervenor  
 5 testimony presented a cost-effective value of \$12.07 per kW. The Settlement  
 6 increases the CDR credit to a lesser amount, i.e., from \$4.68 to \$7.30 per kW.  
 7 Even with the increase, credits under the Proposed Settlement Agreement  
 8 continue to pass the Enhanced Rate Impact Measure (“E-RIM”) cost-  
 9 effectiveness screening test as shown in the table below. Thus, the general  
 10 body of customers receives more benefit from FPL’s ability to interrupt  
 11 service to the customers receiving those credits than the amount that they  
 12 would pay to reimburse for the credit. It should be noted that the credit is less  
 13 than that approved for Progress Energy in their settlement in Docket No.  
 14 120022-EI of \$8.70 per kW, which other parties endorsed.

15 **Rate Impact Measures for CDR and CILC Programs**

Commercial/Industrial Demand Reduction (CDR)	E-RIM
2012 MFR Rate Filing	4.12
Proposed Settlement Agreement	2.69
Commercial/Industrial Load Control (CILC)	E-RIM
2012 MFR Rate Filing	3.07
Proposed Settlement Agreement	2.00

16  
 17 Finally, the Proposed Settlement Agreement provides long-term rate stability.  
 18 After January 2013, base rates would not increase except to recover the  
 19 revenue requirements for two categories of large generation projects: (1) the  
 20 Modernization Projects recovered through the GBRA provided in Paragraph 8

1 of the Proposed Settlement Agreement; and (2) nuclear projects eligible for  
2 base rate recovery under Section 366.93, Florida Statutes, as reflected in  
3 Paragraph 4 of the Proposed Settlement Agreement.

4 **Q. Is the increase from \$5 to \$6 in the minimum charge for late payments in**  
5 **the public interest?**

6 A. Yes, the \$6 minimum Late Payment Charge is \$1 higher than the minimum  
7 proposed in the March 2012 MFRs, which was not opposed by any party in  
8 the case. The additional \$1 minimum Late Payment Charge reduces by \$10  
9 million the amount of revenues to be recovered from all other customers,  
10 resulting in lower bills for customers who pay timely. The level of the charge  
11 is comparable to many other Florida utilities, as can be seen in Exhibit RBD-  
12 16. For example, the city of Miramar and Lee County Electric Cooperative  
13 minimum late payment charges are \$15 and \$10 respectively. As a result, this  
14 change is in the public interest when taken in context with the entirety of the  
15 settlement.

16 **Q. Are the Proposed Settlement Agreement rates in the public interest?**

17 A. Yes. All customers will benefit from the rates in the Proposed Settlement  
18 Agreement, which result in bills that are flat or lower than those that would  
19 result from the rates proposed in the March 2012 MFRs, provide long-term  
20 rate stability and predictability through 2016, and help promote economic  
21 development. Customers will continue to enjoy superior service and  
22 reliability at rates that are expected to remain the lowest or among the lowest  
23 in the state.

- 1 Q. **Does this conclude your direct testimony?**
- 2 A. Yes.



1 BY MS. CLARK:

2 Q Are you also sponsoring exhibits to your  
3 direct testimony?

4 A Yes, I am.

5 Q And are those exhibits RBD-12 to RBD-16?

6 A Yes.

7 Q Do you have any changes to those exhibits?

8 A Yes, I have a minor correction to page five of  
9 RBD-12. The -- the fuel bill is lower by \$23 in January  
10 and \$35 in June.

11 Q Do you have a similar change to RBD-13, page  
12 five of that?

13 A Yes, the same -- the June bill would be \$35  
14 lower than that shown.

15 MS. CLARK: Mr. Chairman, I would note that  
16 Ms. Deaton's exhibits have been premarked as 667 to  
17 671?

18 CHAIRMAN BRISÉ: Thank you.

19 BY MS. CLARK:

20 Q Ms. Deaton, have you prepared a summary of  
21 your direct testimony?

22 A Yes, I have.

23 Q Would you please provide that summary now?

24 A Yes. Good afternoon, Chairman and  
25 Commissioners. My name is Rene Deaton, and my direct

1 testimony shows that the rates provided in the proposed  
2 settlement agreement are in the public interest.

3 Under the settlement, residential bills will  
4 remain the lowest in the state and commercial and  
5 industrial bills will also remain the lowest or among  
6 the lowest in the State while still allowing FPL to  
7 continue to provide superior service and reliability.  
8 With regard to the commercial and industrial bills, the  
9 proposed settlement bills will make FPL's rates more  
10 competitive.

11 Florida competes with other states for  
12 industry, and therefore, FPL's bills need to be  
13 competitive, not only in Florida, but in other -- in the  
14 southeast region and nationally as well.

15 While FPL's bills do compare favorably based  
16 on information from Edison Electric Institute, many  
17 utilities in the southeast do offer lower bills to  
18 industrial customers than FPL.

19 The net impact of the settlement on bills for  
20 commercial and industrial classes in June 2013 is  
21 expected to range from a zero percent increase to a  
22 three percent decrease. In addition, large commercial  
23 industrial customers taking service under the CILC and  
24 the CDR interruptible tariffs will see further rate  
25 relief in the form of higher load control credits.

1           For residential customers, the net impact is  
2 modest, less than a two-percent increase. The rate --  
3 the net impact of the settlement on a typical  
4 residential bill in June 2013 is expected to be a \$1.54  
5 a month, or just five cents a day.

6           Another benefit of the settlement agreement is  
7 long-term stability. After January 2013, base rates  
8 would not increase, except to recover the approved  
9 revenue requirements for large generation projects.  
10 These are the modernization projects recovered through  
11 the GBRA described by Witness Barrett and the nuclear  
12 projects eligible for base rate recovery through to the  
13 nuclear statute.

14           Finally, the settlement agreement -- under the  
15 settlement agreement, parity among the rate classes is  
16 improved compared to current rates.

17           In conclusion, all customers of FPL will  
18 benefit from the rates in the settlement agreement  
19 because they result in bills that are flat or lower than  
20 those proposed in our March 2012 MFRs. They provide  
21 long-term rate predictability through 2016, and they  
22 contribute to making business and industry in FPL's  
23 territory more competitive and help to retain and  
24 attract industry to Florida. This concludes my summary.  
25 Thank you.

1 MS. CLARK: Mr. Chairman, FPL tenders the  
2 witness for cross-examination.

3 CHAIRMAN BRISÉ: Thank you, very much.

4 Mr. Rehwinkel.

5 MR. REHWINKEL: Mr. Chairman, the Public  
6 Counsel has no questions. Mr. Wright told me  
7 before he left that he has none either.

8 CHAIRMAN BRISÉ: All right. Thank you.

9 Mr. Saporito?

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

11 CROSS EXAMINATION

12 BY MR. SAPARITO:

13 Q My name is Thomas Saporito. I am here pro se.

14 I would like to question you about your direct  
15 testimony at page four, lines two through four, where  
16 state that the rates under the proposed settlement  
17 agreement are in the public interest and that the bills  
18 for the residential customers remain the lowest in the  
19 State.

20 MR. SAPARITO: Now, just to expedite this,  
21 Mr. Chairman, I would like to put two documents  
22 before the witness now so that I can bring these  
23 into the record later.

24 CHAIRMAN BRISÉ: Sure.

25 Staff, if we can have somebody assist Mr.

1           Saparito with two documents. For identification  
2           purposes, we are at 706.

3           MR. SAPARITO: And the one description for 706  
4           will be the free -- free dictionary definition of  
5           public interest.

6           (Whereupon, Exhibit No. 706 was marked for  
7           identification.)

8           CHAIRMAN BRISÉ: All right.

9           MR. SAPARITO: And I believe 707 will be next,  
10          Mr. Chairman; is that correct? And that would be  
11          the FPL Key Customer Adversary Groups asked the PSC  
12          to approve proposed rate settlement that would help  
13          secure rates for FPL customers for four years.

14          CHAIRMAN BRISÉ: Okay.

15          (Whereupon, Exhibit No. 707 was marked for  
16          identification.)

17          BY MR. SAPARITO:

18           **Q All right. Would you agree --**

19           MS. CLARK: Mr. Chairman, I don't have a copy  
20           of it yet.

21           CHAIRMAN BRISÉ: You don't yet. Okay.

22           MS. CLARK: And I would like to give the  
23           witness an opportunity to look at it --

24           CHAIRMAN BRISÉ: Sure.

25           MS. CLARK: And I would like to look at it as

1 well.

2 CHAIRMAN BRISÉ: Sure. No problem. Okay.

3 MS. CLARK: Thank you, Mr. Chairman.

4 CHAIRMAN BRISÉ: All right. You may proceed,  
5 Mr. Saparito.

6 MR. SAPARITO: Thank you, Mr. Chairman.

7 BY MR. SAPARITO:

8 Q Would you agree with me that public interest  
9 means anything affecting the rights, health or finances  
10 of the public at large, and that is a broad term that  
11 refers to the body public and the public will, such as  
12 in this docket where private individuals rely on Florida  
13 Power & Light for vital services of electric power?

14 A I would agree that's what this definition  
15 says.

16 Q Would you agree with that definition of public  
17 interest?

18 A I am not aware of all of the definitions of  
19 public interest there might be.

20 Q What's your opinion of -- and understanding of  
21 what public interest means?

22 A Public interest, to me, is as my testimony  
23 says, I am identifying the rates that I feel that are in  
24 the public interest. They are lower than that we  
25 approved that was needed in the MFRs that we filed in

1 March. They provide rate stability and they provide  
2 economic development potential for business and  
3 industrial customers.

4 Q Okay. Maybe you didn't understand the  
5 question. The question is specifically I am asking you  
6 if you would explain to the Commission what you  
7 understand public interest to mean. The term "public  
8 interest," what does that mean to you?

9 A I am sorry. I think I did explain if in terms  
10 of how I am addressing it in my testimony.

11 Q Would you agree with me that the term "public  
12 interest" applies more so to FPL's residential customers  
13 for which their make up 99 percent of FPL's customers  
14 more so than the other rate classes in this proceeding?

15 A No, I would not agree that any rate class is  
16 more important than any other rate class to FPL. And I  
17 also would point out that residential customers make up  
18 51 percent of the sales that FPL makes to the customer  
19 classes, not -- so --

20 Q All right.

21 (Whereupon, the proceedings were continued in  
22 Volume 37 of the transcript.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA R. KRICK, Professional Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 5265 through 5380, are a true and correct record of the aforesaid proceedings.

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

DATED this 20th day of November, 2012.

  
DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #EE212307  
EXPIRES JULY 13, 2016