

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 40

Pages 5728 through 5919

PROCEEDINGS: HEARING

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

DATE: Tuesday, November 20, 2012

TIME: Commenced at 9:06 a.m.
Concluded at 11:55 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

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COMMISSION
CLERK

I N D E X

WITNESSES

NAME: PAGE NO.

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EXHIBITS

NUMBER :	ID.	ADMTD.
675 REB-9	5735	5808
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677 REB-11	5735	5808
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719 Sales by Rate Class	5811	5812
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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 39.)

CHAIRMAN BRISÉ: Good morning. All right.
Glad to see everybody back awake and ready to go. It is
going to be a long haul today. Hopefully -- yes, it is.
I'm excited too.

We can expect that we'll take our lunch break
around the same time that we did yesterday, between
12:00 and 12:30, depending upon how we're, how we're
flowing. We will take our evening break either between
the 5:00 and 6:00 time frame or the 6:00 or 7:00 time
frame, depending upon how we're flowing. And depending
upon how far we are into rebuttal this evening will
determine how long we will go tonight. If we are close
to, to, you know, if we're up to or near our last
witness, say, about 10:00, then we'll probably forge on
through and try to make it to the end this evening. And
I think that's everyone's goal to see if we can get it,
if we can bring this in for a landing today. That's
certainly my goal. So we will hope that everyone,
witnesses, attorneys, and everyone will be, will --
thank you -- will be efficient in terms of use of
language and so we can move quickly.

I know there's a couple of things that we need

1 to take care of this morning prior to, to continuing
2 with our, with the testimony. Okay? So we had an issue
3 with, with the testimony, with the additional testimony
4 for Ms. Ramas related to Mr. Pollock.

5 Mr. Rehwinkel.

6 **MR. REHWINKEL:** Thank you, Mr. Chairman. And
7 I believe that we've worked out an accommodation. I've
8 spoken with counsel for the signatories, and I think in
9 light of the fact that Mr. Pollock has, was up on direct
10 and rebuttal and has gone, they've asked for an
11 opportunity to have Mr. Barrett provide a short rebuttal
12 that would have been available opportunity had this been
13 filed in, in the right sequence. And we think that's
14 appropriate. He can file that, provide a written
15 statement to us as soon as possible, hopefully right
16 around lunchtime, and he would be available on, on
17 rebuttal. So I think that would put everything back in
18 the right sequence and, and preserve some level of
19 fairness on this issue.

20 **CHAIRMAN BRISÉ:** All right. I'm seeing heads
21 nodding on this side. So thank you for working that out
22 amongst yourselves.

23 We do have a, a motion by the Village of
24 Pinecrest for a summary final order denying FPL's,
25 SFHAA -- I'm sorry -- HHA, FIPUG, FEA motion for the

1 settlement. We will deal with that a little bit later.
2 So it came in at about 10:30 last night, so our staff is
3 still reviewing it. I think our, our individual offices
4 are still reviewing, are still looking at it and
5 reviewing it, and we will deal with it a little bit
6 later. And we'll let you know with, with enough time so
7 that you can be prepared for whatever dealing with it
8 will entail.

9 All right. Commissioner Edgar, did you have
10 something that you wanted to --

11 **COMMISSIONER EDGAR:** I was just going to say,
12 Mr. Chairman, I may start counting the words per
13 question.

14 **CHAIRMAN BRISÉ:** All right. That sounds good.
15 I know we had 167 words on GBRA yesterday as part of one
16 of the, as part of the testimony. So there may be a
17 penalty, especially if you, people repeat the same thing
18 over and over and so forth.

19 **COMMISSIONER EDGAR:** Was that the 167?

20 **MR. WRIGHT:** The sleeve.

21 **CHAIRMAN BRISÉ:** Sleeve, you know, it's the --
22 put the sleeve around it.

23 (Laughter.)

24 It's, it's good to have some levity, you know.
25 All right. So now we're going to get back to

1 the, to the work at hand. I think FPL has a witness up,
2 and you may proceed.

3 **MR. BUTLER:** Thank you, Mr. Chairman. Call
4 Mr. Barrett to the stand.

5 Whereupon,

6 **ROBERT E. BARRETT, JR.**

7 was called as a witness on behalf of Florida Power &
8 Light and, having been duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. BUTLER:**

11 **Q** Mr. Barrett, have you been previously sworn?

12 **A** Yes, I have.

13 **Q** Okay. Would you please state your name and
14 business address?

15 **A** Robert E. Barrett, Jr., 700 Universe Boulevard
16 in Juno Beach, Florida.

17 **Q** And by whom are you employed and in what
18 capacity?

19 **A** I'm employed by Florida Power & Light as the
20 Vice President of Finance.

21 **Q** Okay. Have you prepared and filed 22 pages of
22 prefiled direct testimony in this phase of the
23 proceeding?

24 **A** Yes, I have.

25 **Q** Okay. Do you have any changes or revisions to

1 your prefiled direct testimony?

2 **A** No, I don't.

3 **Q** Okay. If I asked you the questions contained
4 in your direct prefiled testimony today, would your
5 answers be the same?

6 **A** Yes, sir.

7 **MR. BUTLER:** Okay. Mr. Chairman, I'd ask that
8 Mr. Barrett's prefiled direct testimony be inserted into
9 the record as though read.

10 **CHAIRMAN BRISÉ:** Okay. At this time we'll
11 insert Mr. Barrett's prefiled testimony, prefiled
12 direct testimony into the record as though read,
13 notwithstanding the, the standing objection.

14 **MR. BUTLER:** Thank you.

15 **BY MR. BUTLER:**

16 **Q** Mr. Barrett, are you also sponsoring Exhibits
17 REB-9 through REB-12 to your direct testimony?

18 **A** Yes.

19 **MR. BUTLER:** Okay. Mr. Chairman, I would note
20 that those have been premarked on staff's Comprehensive
21 Exhibit List as Exhibits 675 through 678.

22 (Exhibits 675 through 678 marked for
23 identification.)

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Robert E. Barrett, Jr. My business address is Florida Power & Light Company (“FPL” or “the Company”), 700 Universe Boulevard, Juno Beach, Florida 33408.

Q. Did you previously submit direct and rebuttal testimony in this proceeding?

A. Yes.

Q. Are you sponsoring any exhibits related to the Stipulation and Settlement in this case?

A. Yes. I am sponsoring the following exhibits:

- REB-9 – GBRA ROE Midpoint Illustrative Example
- REB-10 – MFR A-1 Canaveral, Riviera, and Port Everglades
- REB-11 – Dismantlement Reserve - Illustrative Example of Impact of Amortization on Future Accruals
- REB-12 – Depreciation Accrual - Illustrative Example of Effect of Nuclear Plant Additions on Accrual

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address three of the issues identified in the Third Order Revising Order Establishing Procedure, Order No. PSC-12-0529-PCO-EI. Specifically, I will explain why the following provisions of the

1 Stipulation and Settlement filed on August 15, 2012 (the “Proposed
2 Settlement Agreement”) are appropriate and in the public interest: (1) the
3 Generation Base Rate Adjustment (“GBRA”) for the Canaveral, Riviera and
4 Port Everglades Modernization Projects (Issue 1); (2) the amortization of a
5 portion of FPL’s dismantlement reserve (Issue 2); and (3) the deferral of
6 FPL’s filing of its depreciation and dismantlement studies (Issue 3).

7 **Q. Please summarize your testimony.**

8 A. The Proposed Settlement Agreement has a four-year term, which provides an
9 extended period of rate certainty and avoids the need for expensive and
10 disruptive base rate proceedings during that term. The three measures that I
11 address in my testimony are essential elements of the Proposed Settlement
12 Agreement that make the four-year term feasible. These provisions are
13 consistent with good ratemaking principles, they have been deployed by this
14 Commission previously, and they work together in the context of the overall
15 settlement for the benefit of customers as well as the investors who provide
16 the financial platform for the Company’s investment and operations.
17 Therefore, approving the Proposed Settlement Agreement with those
18 provisions would be in the public interest.

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II. GBRA (ISSUE 1)

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Q. Please briefly describe the GBRA that is included in the Proposed Settlement Agreement.

A. As was the case in FPL's 2005 rate case settlement agreement (Docket No. 050045-EI), the GBRA would provide a streamlined procedure to permit FPL to recover revenue requirements for new generating units that have been previously approved by the Commission in need determination proceedings, when those units come into service. The GBRA relies on projected costs for the generating units that have been previously reviewed by the Commission, and it gives customers the added protection of automatically lowering rates if the actual construction costs for a generating unit turn out to be lower than projected while requiring FPL to petition for a limited proceeding before the Commission if it seeks to recover higher revenue requirements due to actual construction costs exceeding the projections.

The GBRA in the Proposed Settlement Agreement would apply during the settlement term and exclusively to the Canaveral, Riviera and Port Everglades Modernization Projects, which are the three generating units that FPL expects to bring into service during the settlement term. Paragraph 8 of the Proposed Settlement Agreement describes the contemplated application of the GBRA in greater detail.

1 **Q. What is the impact of implementing GBRA on the Company's earned**
2 **return?**

3 A. Mathematically, the GBRA *cannot* increase FPL's earned return on common
4 equity ("ROE") above the mid-point approved by the Commission and, in
5 fact, if FPL were earning above the mid-point at the time that a GBRA were
6 implemented, it would tend to bring FPL's earned ROE down toward the mid-
7 point. I describe this in more detail later in my testimony and have provided
8 an illustrative example on Exhibit REB-9.

9 **Q. For what generating units has FPL previously utilized the GBRA**
10 **mechanism?**

11 A. FPL successfully utilized the GBRA mechanism under the 2005 rate
12 settlement agreement to recover the costs associated with Turkey Point Unit 5
13 in 2007 and West County Units 1 and 2 in 2009.

14 **Q. Why is it appropriate for FPL to recover the costs associated with the**
15 **Cape Canaveral, Riviera, and Port Everglades Modernization Projects**
16 **through a GBRA mechanism?**

17 A. The GBRA is an appropriate mechanism to provide prudent cost recovery
18 associated with the in-service of new generating plants for the following
19 reasons:

- 20 1) Necessary to deliver four year rate certainty;
- 21 2) Mirrors the step increase approach utilized in base rates to recover
22 generating plant costs;
- 23 3) Retains appropriate cost oversight capability for the Commission;

- 1 4) Provides cost protection for customers;
- 2 5) Synchronizes fuel savings with non-fuel costs thereby minimizing the
- 3 total bill impact; and
- 4 6) Provides for administrative efficiency.

5 I will describe each of these in more detail below.

6

7 Four Year Rate Certainty

8 The GBRA mechanism is an integral part of the Proposed Settlement
9 Agreement, and is required in order to facilitate four years of base rate
10 certainty to our customers while affording the Company the opportunity to
11 recover its prudently incurred costs. Without GBRA, the Company could not
12 commit to a four-year period of no base rate increases because it would be
13 unable to absorb the costs of the new units. For instance, the approximate
14 impact to ROE for Cape Canaveral, Riviera, and Port Everglades without a
15 change to base rates would be a reduction in ROE of 103 bps, 148 bps, and
16 136 bps, respectively. The cumulative impact of all three units would be a
17 reduction in ROE of nearly 400 bps, quite clearly requiring supplemental rate
18 relief. These amounts are reflected on Exhibit REB-10.

19

20 GBRA Mirrors a Base Rate Step Increase Approach

21 The concept of the proposed GBRA mechanism is consistent with the
22 Canaveral base rate step increase filing and is consistent with other step
23 increases approved by this Commission. Like the Canaveral Step Increase, it

1 uses incremental costs to calculate revenue requirements and synchronizes the
2 increase with the in-service date of the facility. GBRA and step increase
3 methods properly reflect the incremental cost of financing the new generating
4 plant and therefore provide a proper matching of costs and rates, and is
5 consistent with how past GBRA's were calculated. It would be inappropriate
6 to use an embedded cost of capital, including such items as existing short term
7 debt and customer deposits (which will vary independent of the existence of
8 the new plant) to calculate revenue requirements for new generating plants
9 which will require new long term debt and equity for permanent financing.

10

11 Proper Cost Oversight

12 GBRA increases are based on the economic analysis that the Commission
13 thoroughly reviewed and approved as part of the need determination for each
14 plant. The first 12 months revenue requirements of each new plant are
15 implicitly validated by that overall economic review. Historically, FPL's
16 actual capital costs for plants placed in rates using GBRA have been no more
17 than, and in most cases less than, the need determination revenue
18 requirements which form the basis for the cumulative present value revenue
19 requirements ("CPVRR") analysis upon which the need determination was
20 based. Therefore, history shows that the need determination estimates have
21 served as a reasonable basis for setting future rates. In addition, as has been
22 the process in the past, the Commission confirms the revenue requirements
23 and base rate impacts for the GBRA prior to implementation through a formal

1 filing made by FPL as a part of the Capacity Clause proceedings and
2 submittals. No rate change is made without proper regulatory oversight. In
3 fact, historically no party (including the Office of Public Counsel and the
4 Florida Retail Federation) has ever objected to the calculations submitted as a
5 part of this efficient and well understood process.

6

7 Cost Protection for Customers

8 The use of a GBRA mechanism affords substantial additional protection to the
9 customer because the initial rate adjustment allows for recognition of cost
10 decreases only. This provides additional protection for customers. Should the
11 final capital costs be less than the need determination estimates, the customer
12 is assured a timely refund and a prospective rate reduction, which would not
13 be the case with a traditional base rate filing. This protection has been clearly
14 demonstrated as the actual costs for Turkey Point Unit 5 were lower than
15 estimated in its need determination, and customers' rates were promptly
16 revised to reflect this lower cost. In that instance, FPL reduced the GBRA
17 factor for Turkey Point Unit 5 to recognize that the actual construction costs
18 for that unit came in below the estimate. The factor was reduced from 3.271%
19 to 3.129%, and a credit of \$9.3 million was returned to customers through
20 FPL's capacity clause for the period in which the higher GBRA factor had
21 been in effect.

22

1 If instead the plant costs are higher than the need determination estimate, the
2 Company could only implement GBRA at the lower amount. FPL, at its
3 option, would then be allowed to petition the Commission, in a limited scope
4 proceeding, to seek recovery of the higher revenue requirements due to actual
5 construction costs exceeding the projections.

6

7 Synchronizes Fuels Savings with Plant Cost Recovery

8 The GBRA mechanism is the most efficient and effective way of providing
9 for new generating plant recovery in base rates commensurate with the time
10 fuel savings associated with new plant begin to be achieved, and the
11 Company's expenses associated with operation of new units are incurred. As
12 these modernization projects are providing a reduction in customer bills over
13 the life of these assets on a present value basis, it is reasonable to seek a cost
14 recovery method that matches those fuel savings to customers with base rate
15 recovery to the Company.

16

17 Administrative Efficiency

18 The GBRA relies on Power Plant Siting Act ("PPSA") need determination
19 cost estimates as a threshold for cost recovery (or, in the case of the Canaveral
20 Modernization Project, the detailed schedules setting forth that unit's revenue
21 requirements that were provided in support of the Canaveral Step Increase that
22 FPL included in its original March 19, 2012 rate petition and that were the

1 subject of scrutiny in the August 2012 technical hearing). These cost
2 estimates are used to calculate the annualized base revenue requirement for
3 the first 12 months of operation. The Company would calculate the revenue
4 requirement reflecting the costs upon which the CPVRR were predicated.
5 FPL would then submit this calculation along with the proposed tariff to the
6 Commission for approval. The use of a GBRA for the Canaveral, Riviera and
7 Port Everglades Modernization Projects will result in greater regulatory and
8 administrative efficiency and avoid the tremendous expenditure of costs and
9 distraction of resources associated with multiple back-to-back base rate
10 proceedings.

11 **Q. What risks do FPL and its investors continue to bear under GBRA?**

12 A. FPL retains all the construction risk associated with building these new-
13 generation, highly efficient technologies. It must independently finance the
14 construction of these projects over long periods. GBRA does not provide for
15 an automatic pass through - instead the rate change is well documented,
16 capped at the need determination amount, formally filed for review by the
17 public and all interested parties, and then implemented consistent with
18 commercial operation timing.

19 **Q. Would implementing a GBRA mechanism as a part of this settlement
20 increase FPL's ROE above the mid-point of the authorized ROE range?**

21 A. No, it would not. The GBRA mechanism is mathematically incapable of
22 increasing the settlement ROE above the mid-point of the authorized range. If
23 FPL is earning above the authorized mid-point prior to the GBRA for other

1 reasons, the GBRA would actually drive the ROE down towards the
2 authorized mid-point. Conversely, if FPL is earning below its authorized mid-
3 point prior to the GBRA, implementation of the GBRA will move the ROE
4 toward the authorized midpoint. Exhibit REB-9 demonstrates this
5 mathematical certainty. Therefore, one could say that GBRA is “mid-point
6 seeking.”

7 **Q. Does the proposed GBRA mechanism address concerns expressed by the**
8 **Commission in Order No. PSC-10-0153-FOF-EI?**

- 9 A. Yes. The proposed GBRA mechanism addresses the following concerns:
- 10 • The order expressed concern that the GBRA mechanism requested by
11 FPL in its 2010 rate request, if approved, would have been permanent.
12 This would not be the case under the Proposed Settlement Agreement.
13 Rather, the GBRA mechanism is limited to the four-year settlement
14 period and applies only to the three modernization projects that are
15 expected to come into service during that period.
 - 16 • The order also expressed concern that the Company might over earn
17 its allowed ROE due to the application of a GBRA. As discussed
18 above, this is mathematically impossible, as the GBRA is by its nature
19 “mid-point seeking.”
 - 20 • Lastly, the order expressed concern for approval of GBRA in a rate
21 case as a policy change without providing consideration of its use by
22 other utilities. Here, however, the GBRA is a component of a time-

1 bound, negotiated settlement, so there would be no generally
2 applicable precedent resulting from its approval.

3 **Q. How will the first year Annualized Base Revenue Requirement for the**
4 **Canaveral Modernization Project be calculated?**

5 A. The first year annualized base revenue requirement is based on the following
6 assumptions: the revised Cape Canaveral Modernization Project costs and
7 expenses included in the Appendix to FPL's post hearing brief filed on
8 September 21, 2012, the as-filed, incremental capital structure, the revised
9 long term debt cost rate as described by FPL in its post hearing brief, and the
10 settlement ROE of 10.7%.

11 **Q. How will the first year Annualized Base Revenue Requirements for the**
12 **Riviera and Port Everglades Modernization Projects be calculated?**

13 A. The first year annualized base revenue requirements for the Riviera and Port
14 Everglades Modernization Projects are based on the following assumptions:
15 the projected capital costs and expenses included in the projects' respective
16 need determination filing, the as filed and revised incremental capital structure
17 and cost rates for the Canaveral Modernization Project, and the settlement
18 ROE of 10.7%, consistent with Paragraph 8(c) of the Proposed Settlement
19 Agreement.

20 **Q. What are the amounts for the estimated first year Annualized Base**
21 **Revenue Requirements for these three projects?**

22 A. Exhibit REB-10 provides Schedule MFR A-1 for Canaveral, Riviera and Port
23 Everglades Modernization Projects.

1 **Q. Is the GBRA mechanism in the public interest?**

2 A. Yes. It allows for the Company to recover prudently incurred costs previously
3 approved by the Commission in its need determination filings, and provides
4 the Company the opportunity to earn a return on and of its investments. In
5 addition, the GBRA utilizes the settlement ROE and provides a mechanism
6 that avoids permanent severe degradation to FPL's ROE.

7

8 **III. AMORTIZATION OF DEPRECIATION**
9 **AND DISMANTLEMENT RESERVES (ISSUE 2)**

10

11 **Q. What does the Proposed Settlement Agreement provide as it relates to**
12 **amortization of the depreciation and dismantlement reserves?**

13 A. Paragraph 10 of the Proposed Settlement provides FPL with discretion as to
14 amortization during the settlement term of the "Reserve Amount." In
15 Paragraph 10(b), the Reserve Amount is the sum of (1) the higher of \$191
16 million or the actual remaining portion of the total \$894 million Depreciation
17 Reserve Surplus that the Commission authorized FPL to amortize in Order
18 No. PSC-10-0153-FOF-EI plus (2) a portion of FPL's fossil dismantlement
19 reserve. The total Reserve Amount to be amortized cannot exceed \$400
20 million over the settlement term.

21 **Q. Why is this provision critical to the settlement?**

22 A. It provides the Company the flexibility necessary to achieve reasonable
23 financial results during the extended settlement period. Without this

1 flexibility, base rates could not be held constant for such a long time due to
2 the risk of weather, inflation, mandated cost increases and other factors
3 affecting FPL's earnings that are beyond the Company's control. The \$400
4 million Reserve Amount includes \$191 million of remaining surplus
5 depreciation that is included in the Company's 2013 Test Year request.
6 Therefore, the incremental \$209 million, an average of \$70 million or 45 basis
7 points of ROE per year, is all that is available during the three years of the
8 Settlement Agreement beyond 2013 to provide flexibility to absorb revenue
9 and cost uncertainty.

10 **Q. Would FPL's customers be adversely affected by allowing FPL to**
11 **amortize the Reserve Amount during the settlement term?**

12 A. No. The Commission has already approved amortization of the Depreciation
13 Reserve Surplus, so the Proposed Settlement Agreement provides nothing new
14 in that regard. As to the dismantlement reserve, the proposed amortization is
15 reasonable in relation to the current level of the reserve and the current
16 projections of when dismantlement will need to occur.

17 **Q. What is FPL's current assessment of the adequacy of its current fossil**
18 **dismantlement reserve?**

19 A. FPL's last dismantlement study was filed with the Commission in March 2009
20 in conjunction with its base rate petition in Docket No. 080677-EI, and the
21 Company has not completed or finalized another dismantlement study since
22 then. Therefore, FPL is unable to provide a precise calculation or updated
23 estimate of the current present value of expected future dismantlement, or

1 annual dismantlement accrual at this time. However, all other things equal,
2 FPL's construction of the modernization projects will have a downward effect
3 on the level of the necessary accrual and would provide a greater likelihood
4 for a sufficient reserve due to the deferral of a portion of the necessary
5 dismantlement of these facilities decades into the future.

6 **Q. What does the Company forecast for amortization of its dismantlement**
7 **reserve during the four year period?**

8 A. The settlement caps the use of depreciation surplus and dismantlement,
9 collectively the "Reserve Amount," to no more than \$400 million over the
10 term. The as filed remaining amount of FPL's Total Depreciation Reserve
11 Surplus is \$191 million, which would leave \$209 million of dismantlement
12 reserve for FPL to amortize (\$400 million maximum Reserve Amount minus
13 \$191 million depreciation surplus amortization). During the term of the
14 agreement, FPL will continue to accrue approximately \$18.5 million annually
15 to the dismantlement reserve. When future accruals are considered (\$209
16 million minus \$74 million), the reduction to the reserve, due to this provision
17 of the agreement, should be no more than \$135 million.

18 **Q. What will be the impact on the dismantlement accrual in FPL's next**
19 **study if it amortizes a net of \$135 million during the next four years?**

20 A. The accrual of dismantlement reserve is not highly sensitive to the current
21 level of the reserve because the use of the dismantlement reserve is targeted so
22 far into the future. For example, an amortization of \$209 million assumed to
23 be spread ratably over all assets, all else equal, would increase the accrual by

1 approximately \$7.0 million. This increase would be only 0.1% of FPL's total
2 2013 projected revenue requirements. This is illustrated on Exhibit REB-11.

3 **Q. How would FPL provide for future dismantlement costs if FPL amortizes**
4 **a portion of its dismantlement reserve over the term of the agreement?**

5 A. Future dismantlement costs will be provided for through current and future
6 dismantlement accruals determined by authorized amounts approved by the
7 Commission after reviewing dismantlement studies filed periodically by the
8 Company. All Commission authorized accruals are collected over the
9 remaining life of the units to be dismantled.

10 **Q. Does the amortization of the dismantlement reserve over the term of the**
11 **agreement violate the regulatory principle of intergenerational equity?**

12 A. No, it does not. First, we have demonstrated that even the highest possible
13 amortization afforded under the Proposed Settlement Agreement is reasonably
14 anticipated to have only a modest impact on the size of future accruals.
15 Secondly, FPL's recent modernization projects have allowed for the
16 construction of new generating plants at existing plant sites and thereby defer
17 for 30 years or more the need to incur the full cost of green field
18 dismantlement at those sites. Therefore, a portion of its currently accrued
19 dismantlement reserve will not be needed until much later than previously
20 anticipated, which would mitigate the effect of the dismantlement flow-back
21 contemplated by the Proposed Settlement Agreement.

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**IV. DEFERRAL OF DEPRECIATION
& DISMANTLEMENT STUDIES (ISSUE 3)**

Q. Why is the Company proposing to defer filing the depreciation and dismantlement studies during the term of the Proposed Settlement Agreement?

A. One of the important features of this four year Proposed Settlement Agreement is rate stability and predictability. As I discussed above with respect to amortization of the Reserve Amount, the Company must be able to manage currently unknown and unanticipated cost and revenue changes during the extended term of the Proposed Settlement Agreement. It could not therefore, commit to a settlement with fixed base rates, while assuming the risk of depreciation and/or dismantlement accrual increases during the settlement term. Nor would it be reasonable to expect customers to have base rates remain constant if the Company’s depreciation accruals were reduced. The base rate freeze contemplated by the Proposed Settlement Agreement must be sustainable if predictable, stable rates are to be maintained for customers. Therefore, Paragraph 11 of the Proposed Settlement Agreement provides that FPL will not be required to file a depreciation or dismantlement study, nor changes its depreciation rates or dismantlement accruals, during the settlement term.

Q. Has the Company calculated its expected 2013 depreciation accrual based on a new depreciation study utilizing capital expenditures through 2013

1 **and updating for parameter changes through the most recent historical**
2 **period?**

3 A. No. Although the Company has begun the extended effort of preparing its
4 next depreciation study, that work is currently in the preliminary stages with
5 significant additional analysis remaining. It is important to note that the
6 historical conditions that gave rise to the depreciation reserve surplus in FPL's
7 last study are already fully reflected in the current approved depreciation rates,
8 and FPL does not expect those conditions to be repeated. A significant driver
9 of the historical surplus was recognition of the life extension of FPL's nuclear
10 units. Now however, with incremental plant investment since the last study
11 totaling over \$9 billion and no indicator of significant increased life spans, we
12 can reasonably anticipate that there likely will be a deficit in at least some
13 functions of depreciation reserve.

14
15 As an example, \$3 billion has been invested in the nuclear function since the
16 last study, which must be recovered over the remaining lives of these units.
17 Because the life spans of these units are fixed, the higher capital costs will
18 quite obviously increase the annual accrual needed for those accounts.
19 Exhibit REB-12 provides this illustrative example. The same general point
20 would apply to the other \$6 billion of incremental non-nuclear plant, but the
21 impact of those investments is not as readily illustrated in a simplified
22 example due to differences in life spans and other parameters for the various
23 types of investment.

1 As shown on Exhibit REB-12, continuing the use of the current approved
2 nuclear function depreciation rate of 2.0% and factoring in projected
3 incremental activity through 2013 would result in an estimated depreciation
4 accrual of \$134 million for the nuclear function. If this accrual was further
5 adjusted to reflect the remaining life beyond 2013, then the nuclear
6 depreciation rate and accrual would increase to 3.1%, and \$207 million,
7 respectively. As such, by deferring FPL's next depreciation study until after
8 the settlement term, FPL would experience an annual deficit, or shortfall, in
9 its accrual of \$73 million related to the incremental investment in the nuclear
10 function, which would need to be incorporated into the next depreciation
11 study. This would then result in an increase to FPL's nuclear depreciation rate
12 and accrual to 3.3% and \$224 million, respectively. This is only an increase
13 of 0.2% in the accrual rate, or about \$17 million in the annual accrual, due to
14 the four year delay.

15
16 This illustrative example shows that a delay in filing a depreciation study
17 would not be expected to materially impact FPL's annual depreciation
18 accruals. In fact, less than 20% of the \$90 million increase in accruals for the
19 nuclear function from 2013 to 2017 in this example (i.e., \$224 million minus
20 \$134 million) would be due to the delay in the filing. And in exchange for
21 that delay, customers would have avoided a \$73 million annual increase in
22 depreciation accruals for the nuclear function over the four-year settlement

1 term. Of course, the \$6 billion in incremental non-nuclear infrastructure
2 investment would also affect the acquired accruals in this time period.

3

4 **Q. Does the anticipated deficit trend indicate that deferring the next**
5 **depreciation study would create intergenerational inequity, as future**
6 **customers bear the increased accruals?**

7 A. No. Although there is a possibility that accruals may need to increase at the
8 end of the settlement period, the benefits of the settlement for customers more
9 than offset that possibility. Utility assets are long lived. Their costs are
10 recovered prospectively, usually over very long periods of time, because
11 regulatory accounting is designed to spread changes in those estimates over
12 future periods. Therefore, a deferral of four years would not be expected to
13 create intergenerational inequities.

14 **Q. What changes does FPL expect in its dismantlement accrual**
15 **requirements over the term of the Proposed Settlement Agreement?**

16 A. For the reasons I discussed above, FPL does not expect significant increases
17 in the dismantlement accrual to be required when a new study is filed at the
18 end of the settlement term. The Modernization Projects will result in
19 deferring for many years a significant portion of the dismantlement costs for
20 those sites.

21 **Q. Is FPL aware of any other Florida investor-owned electric utilities that**
22 **have been authorized to defer the filing of their depreciation and/or**
23 **dismantlement studies?**

1 A. Yes. In Paragraph 18 of the current Progress Energy Florida settlement
2 agreement, all signatories agreed to defer the filing of Progress' depreciation,
3 dismantlement, and decommissioning studies.

4

5

V. SUMMARY

6

7 **Q. Please summarize your testimony.**

8 A. The Proposed Settlement Agreement is a reasonable balance among the
9 interests of the Company and its customers. The GBRA, flexible amortization
10 of the Reserve Amount, and FPL's ability to defer the depreciation and
11 dismantlement studies during the settlement term are integral parts of that
12 balance. For the reasons I have explained, each of those provisions is
13 reasonable, will not adversely affect customers, and is in the public interest.

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

15 A. Yes.

1 **BY MR. BUTLER:**

2 Q Mr. Barrett, do you have a summary of your
3 direct testimony?

4 A Yes, I do.

5 Q Would you please deliver it at this time?

6 A Yes.

7 Good morning, Commissioners. My direct
8 testimony for the proposed settlement agreement
9 addresses three of the issues identified by the
10 Commission, which taken together are essential elements
11 to facilitate a four-year rate freeze.

12 The generation base rate adjustment, or GBRA
13 mechanism, the amortization of FPL's depreciation
14 reserve surplus remaining at the end of 2012, and a
15 portion of FPL's fossil dismantlement reserves, and the
16 deferral of depreciation and dismantlement studies
17 during the term of the settlement. These items together
18 with the other provisions of the proposed settlement
19 agreement give rate stability to our customers, provide
20 for recovery of already approved generation projects,
21 and allow all parties to avoid costly rate proceedings
22 over the next four years.

23 The GBRA mechanism is an essential component
24 of this agreement as it provides for recovery of the
25 costs of three major generating facilities, each of

1 which provides substantial customer value. The GBRA is
2 only applicable to FPL's Canaveral, Riviera, and Port
3 Everglades modernization projects, each of which is
4 expected to go into commercial operation during the
5 term of the agreement.

6 Also, it's important to keep in mind that it's
7 mathematically impossible for a GBRA to result in FPL's
8 earnings to be in excess of its allowed ROE. To the
9 contrary, the GBRA is midpoint seeking, meaning that it
10 would move FPL's ROE toward the Commission-approved
11 midpoint.

12 GBRA is in the best interest of customers.
13 First, it's necessary to deliver four-year rate
14 certainty. Second, it mirrors the step increase
15 approach proposed in FPL's rate case filing for
16 Canaveral, and used in other base rate proceedings to
17 recover generating plant costs. Third, it provides for
18 cost oversight capability and protection for customers.
19 Fourth, it synchronizes fuel savings with the recovery
20 of non-fuel costs. And lastly, it's administratively
21 efficient. This mechanism offers the company the
22 opportunity to recover the revenue requirements of
23 generating investments that benefit customers through
24 reduced fuel costs and emissions.

25 Like GBRA, the amortization of FPL's

1 depreciation reserve surplus and fossil dismantlement
2 reserve is required in order to manage the risk and
3 uncertainty inherent with a four-year base rate freeze.
4 The agreement allows FPL to amortize no more than
5 400 million of depreciation and dismantlement reserves,
6 with at least \$191 million coming from the 2010
7 depreciation reserve surplus amount that remains
8 unamortized at the end of 2012.

9 Above the remaining depreciation surplus
10 amortization up to the total of 400 million the
11 agreement provides FPL the flexibility to amortize a
12 portion of the fossil dismantlement reserve. This
13 flexibility is needed for FPL to have the opportunity to
14 achieve reasonable financial results during the
15 settlement term. My testimony demonstrates that future
16 dismantlement reserve accruals will not be significantly
17 impacted by this amortization.

18 The last provision I address is the necessary
19 deferral of FPL's depreciation and dismantlement study
20 filings and any resulting change to accrual rates. This
21 provision is not only important to customers for rate
22 stability, but it's also required in order for the
23 company to commit to a four-year rate freeze.

24 My testimony demonstrates the likelihood of
25 future depreciation accrual increases, and therefore the

1 risk of base rates needing to be increased during the
2 term of the settlement cannot be mitigated without such
3 deferral. A better choice is a short deferral of this
4 likely cost increase.

5 Utility assets are long-lived with costs
6 recovered prospectively over very long periods of time.
7 My testimony demonstrates with a simple example that a
8 four-year deferral of such required increases would not
9 harm future customers and is counterbalanced by the base
10 rate certainty over the four-year settlement term.

11 In summary, the proposed settlement agreement
12 provides rate certainty for customers and avoids the
13 cost and disruption of base rate proceedings. The
14 provisions I've addressed are essential to making a
15 four-year settlement period possible. These provisions
16 are consistent with good ratemaking principles. They've
17 been deployed by the Commission previously and they work
18 together in the context of the overall settlement for
19 the benefit of the customers as well as the company.
20 Therefore, approving the settlement including these
21 provisions is in the public interest. This concludes my
22 summary.

23 **MR. BUTLER:** Thank you, Mr. Barrett. I tender
24 the witness for cross-examination.

25 **CHAIRMAN BRISÉ:** All right. Thank you very

1 much.

2 Mr. McGlothlin.

3 **CROSS EXAMINATION**

4 **BY MR. McGLOTHLIN:**

5 Q Hello, Mr. Barrett.

6 A Good morning.

7 Q During your summary I heard you use the term
8 "base rate certainty," did you not?

9 A Yes.

10 Q And at page 15 of your direct you use the
11 term, at line 1, base rates being held constant during
12 the four-year term of the August 15th proposal?

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

14 Q Yes. At page 15, line 1, you characterize the
15 proposal as holding base rates constant, do you not?

16 A Yes.

17 Q And then at 18 you say, as you said in your
18 summary, that the package contemplates a base rate
19 freeze; correct?

20 A Yes. Other than the GBRA's base rates will be
21 frozen.

22 Q Now the August 15th settlement proposal
23 contemplates an increase on January 1st, 2013, of
24 \$378 million; correct?

25 A Correct.

1 Q And there would be another increase in June of
2 2013?

3 A Yes.

4 Q What is that amount?

5 A I believe it's 165 for Cape Canaveral.

6 Q 165 million? And there's going to be another
7 increase in 2014?

8 A Yes. The GBRA for the Riveria plant.

9 Q And what is that amount?

10 A \$236 million.

11 Q \$236 million? And there's going to be another
12 increase in 2016?

13 A Yes, for the Port Everglades plant.

14 Q And what is that amount?

15 A 218 million, I believe.

16 Q \$218 million. And do I understand correctly
17 that FPL will complete some nuclear uprate projects in
18 that time frame?

19 A We will complete our uprate projects in 2013.

20 Q And will there be a base rate increase
21 associated with that?

22 A Yes.

23 Q Of what magnitude?

24 A I don't recall.

25 Q Substantial, isn't it? It's a lot of money?

1 **A** I don't recall what the, what the magnitude
2 is.

3 **Q** Okay. And do I understand correctly that the
4 August 15th proposal provides that if your earned rate
5 of return falls below 9.70%, FPL could come in for a
6 base rate increase?

7 **A** Yes. We -- if we fall below 9.7, we have the
8 right to petition for a base rate increase. And
9 similarly, if we were to go above 11.7, the Commission
10 or Intervenors could bring us in for a base rate review.

11 **Q** Well, if these increases in, two in '13, one
12 in '14, another in '16, one associated with the nuclear
13 uprates, constitute a rate freeze, should we worry about
14 the thaw that's coming after that?

15 **A** I'm not sure I follow you.

16 **Q** I'll withdraw the question.

17 Page 5, line 8, that's where you begin your
18 discussion of the generation base rate adjustment; is
19 that correct?

20 **A** Yes, page 5.

21 **Q** And all the base rate increases I discussed
22 with you, the Cape Canaveral project is part of the
23 company's March 2014 petition, is it not?

24 **A** Yes. We had a petition for a step increase
25 when the plant goes online, projected to be in June of

1 2013.

2 Q And that aspect of your petition was, is teed
3 up in the main portion of the case, the portion that was
4 heard in August prior to this phase devoted to the
5 August 15th proposal; correct?

6 A I'm not sure what you mean by "teed up." We
7 discussed it in the other hearings that we had. There
8 are MFRs that were filed, so it was completely talked
9 about. Is that what you mean by "teed up"?

10 Q By "teed up," I mean that the company's
11 request for a step increase in 2013 that would recover
12 the costs of the Cape Canaveral project is pending
13 before the Commission in conjunction with this
14 March 2012 petition.

15 A Yes, it is. As I, as I remember, it's
16 something that your office does not oppose.

17 Q The Riviera and Port Everglades -- excuse me.
18 Let me back up.

19 The Canaveral project would enter service
20 during the projected test period of 2013; correct?

21 A That's correct.

22 Q The Riviera and Port Everglades projects'
23 in-service dates fall outside or beyond the end of the
24 2013 test year; correct?

25 A Yes. They're beyond 2013, but within the

1 window of the settlement period of '13 through '16.

2 Q Let's look at your REB-10. And you have a
3 separate page for each of the projects. Just for
4 purposes of illustration, let's look at page 3 of 3,
5 which is Port Everglades.

6 A Okay.

7 Q One of the early line entries is rate of
8 return on rate base; correct?

9 A Yes.

10 Q What return on equity is included in that?

11 A 10.7.

12 Q And with respect to the capital structure,
13 what components of capital structure are included?

14 A Long-term debt and common equity. We've used
15 an incremental capital structure for these GBRA plants
16 because that's essentially how they're going to be
17 financed.

18 Q So the other components of the regulatory rate
19 structure -- capital structure that include, that
20 includes a deferred tax, this is not taken into account;
21 correct?

22 A Well, deferred taxes are taken into account.
23 It's just in the presentation on this exhibit and the
24 way we do in a need filing is it's, it's a reduction to
25 rate base rather than a zero cost capital component of

1 the capital structure. They're economically equivalent.
2 So deferred taxes clearly are taken into account.

3 Q At the bottom of that schedule you have an
4 item called ROE impact of revenue requirements 136 basis
5 points. How did you arrive at that?

6 A Essentially we, we took a rule of thumb from
7 our 2013 filing, which was in evidence, of 160 basis
8 points roughly is equivalent to 100 points of ROE -- or,
9 excuse me, \$160 million is 100 basis points of ROE. So
10 if you take the \$218 million of revenue requirements, it
11 equates to roughly 136 basis points of ROE.

12 Q So this 136 basis points is calculated looking
13 at the Port Everglades modernization project on a
14 standalone basis; correct?

15 A Yes, it is.

16 Q And it does not mean that, for instance, if on
17 an overall basis the company's earned rate of return
18 would otherwise have been 10%, the Everglades would have
19 the effect of reducing that overall return by the same
20 amount?

21 A Yes, it does.

22 Q Well, it doesn't take into account any other
23 factors that might have an offsetting impact in the
24 other direction, does it?

25 A Well, the premise of your question was if the

1 company was otherwise earning 10%. If the company were
2 earning 10% just before this plant were to go into
3 service, the rate of return would fall by 136 basis
4 points due to this plant.

5 Q Okay. But if in the mix of things there were
6 offsetting considerations, those would be reflected in
7 the overall return as well, would they not?

8 A If I could just play that back to make sure I
9 understand where you're going.

10 In the premise of your prior question, the 10%
11 that you were suggesting was the return prior. That
12 would reflect all of the revenues and expense
13 interrelationships excluding this plant, and then this
14 plant would bring the whole company down 136 basis
15 points.

16 Q Okay. Now let's, let's take that a step
17 further. You indicated that 136 basis points was
18 calculated on a standalone basis looking at Port
19 Everglades. Let's assume that there's another factor.
20 Let's say that the O&M savings associated with smart
21 meters is ramped up and has the effect of reducing
22 expenses \$4 million. On a standalone basis that item
23 would have the effect of increasing return on equity,
24 would it not?

25 A It would. And I would assume that was in your

1 10% that you had suggested was prior to this plant.
2 Similarly, if inflation were to drive costs up, which we
3 expect it will, that would be, have been reflected in
4 the 10%.

5 So I think it's just important to understand
6 in trying to ground the use of this document that
7 wherever the return is prior to the unit coming online
8 and us incurring these revenue requirements, we're
9 estimating that 136 is the impact on the company on
10 day two.

11 Q And that impact would be aggregated with
12 everything else going on in the company, some going one
13 direction and some going the other, and the overall
14 return on equity would be a function of everything,
15 including this unit; correct?

16 A Well, there's several parts to your question
17 there, and let me just try to parse it.

18 The 136 is strictly due to this plant.

19 Q Yes.

20 A The 217 in this case, \$218 million of revenue
21 requirements. Everything else kind of works together
22 before this plant comes in and gives us a return prior
23 to this plant.

24 Q Everything else --

25 A In your example it was 10%.

1 Q I've posed a different question, Mr. Barrett.

2 A Okay.

3 Q And the question is to ask have you
4 acknowledged that the overall return on equity is a
5 function of all the investment, all of the revenues, all
6 of the expenses, and that this plant is a part of that
7 overall equation?

8 A Yes. This plant would be part of the overall
9 equation, and these revenue requirements are calculated
10 for this plant to earn a 10.7 ROE. And as I've pointed
11 out in my testimony, if we were earning below that prior
12 to this plant coming in, then this GBRA sort of moves us
13 up towards the midpoint. If we're earning above the
14 midpoint prior to this plant coming in for all the
15 reasons you're suggesting, then the GBRA actually brings
16 us back down towards the midpoint because just
17 mathematically this particular asset earns the
18 10.7 midpoint. So it kind of brings us towards 10.7 no
19 matter where we are before the plant comes in.

20 Q You testified on behalf of the company during
21 the last rate case, did you not?

22 A 2009 rate case?

23 Q Yes.

24 A Yes, sir.

25 Q And, among other things, you addressed the

1 proposed GBRA that was part of that request?

2 A Yes, I did.

3 Q Do you have available to you Exhibit Number
4 717, which is an excerpt from the rate that accompanies
5 the Commission's order in that case?

6 A I don't.

7 MR. McGLOTHLIN: May I provide this to the
8 witness?

9 CHAIRMAN BRISÉ: Sure. You may.

10 BY MR. McGLOTHLIN:

11 Q I suspect you're familiar with the order,
12 Mr. Barrett, and you probably know that some of your
13 testimony made the Commission's highlight reel in that
14 case. Please turn to page 14.

15 A Okay.

16 Q And you'll see that on your copy I favored you
17 with a couple of brackets to indicate the section I
18 would like for you to read beginning in the first full
19 paragraph on page 14, beginning with, As FPL Witness
20 Barrett acknowledged.

21 A You want me to read it out loud?

22 Q Yes, please.

23 A As FPL Witness Barrett acknowledged, the GBRA
24 mechanism would allow FPL to recover such costs without
25 regard to whether earnings were sufficient to cover the

1 addition of a new plant.

2 Q Now in your testimony in this case you
3 describe how the GBRA proposal in this case differs from
4 the one in the last case, and one of the distinctions
5 that in the last case it would have been perpetual
6 unlimited; whereas, this one is time constrained. Now,
7 that particular distinction would not affect this
8 particular observation, would it?

9 A Well, it sort of does in my opinion, because
10 in the prior case where it was sort of an open-ended
11 GBRA, not part of a settlement, we were not constrained
12 to holding our, our base rates flat other than the GBRA.
13 So we, excuse me, we could have come back in the
14 following year and sought a general base rate increase
15 despite having a GBRA.

16 In this settlement agreement we can't do that.
17 We're locked into the 378. Other than the GBRAs, the
18 378 has to last us for the four years. So I do think
19 it's a little different in that regard.

20 Q How about the second paragraph under existing
21 ratemaking policy? Would you read that bracketed
22 paragraph?

23 A FPL Witness Barrett also acknowledged that if
24 economic conditions or other factors changed, it was
25 possible that FPL's base rates could be sufficient to

1 cover the cost of a new generating unit in whole or in
2 part without the application of a GBRA. Other factors
3 such as the addition of new customers and increased
4 electricity sales tend to offset the additional costs of
5 new power plants.

6 FPL Witness Barrett testified that under
7 certain hypothetical circumstances with a GBRA mechanism
8 in place, customers' bills could go up as a result of
9 adding new generation, though FPL's earnings would
10 remain unaffected.

11 Q And there are two more short passages, which
12 you see one at the bottom of that same page 14.

13 A FPL Witness Barrett testified that it is
14 possible for the company to structure the timing of a
15 rate request associated with a new plant so that both
16 the plant's costs and its fuel savings benefits are
17 received by the customer at the same time.

18 Q And the last one is in the following
19 paragraph.

20 A FPL Witness Barrett acknowledged that the GBRA
21 mechanism would be a limited scope proceeding focused
22 only on the GBRA, and Intervenors would not be able to
23 raise other cost issues in such a proceeding.

24 Q Now, if you'll look at page 15 of your
25 prefiled testimony. And at line 14 on that page you

1 say, As to the dismantlement reserve, the proposed
2 amortization is reasonable in relation to the current
3 level of the reserve and the current projections of when
4 dismantlement will need to occur.

5 Isn't it true that in the company's last rate
6 case FPL requested an increase in its accrual to the
7 fossil dismantlement reserve?

8 **A** Yes.

9 **Q** And doesn't a request in the amount of an
10 accrual signify the requester's belief that the reserve
11 is inadequate?

12 **A** Typically. And we had performed studies back
13 in '09 that had estimated what the, what we believed the
14 accrual needed to be, and then the Commission ultimately
15 determined what the accrual should be for dismantlement.

16 And as is always the case, some things change
17 as you move through time. In the case of, of our
18 company over the past few years and going forward, the,
19 we've pursued some modernizations of some of our
20 facilities, as you know, and that has allowed us to be
21 able to put off for a long period of time the
22 greenfielding of those sites. We're making use of some
23 existing infrastructure at Canaveral, Riviera, and
24 Everglades. So the decommissioning of those sites has
25 been pushed way out into the future from when we would

1 have otherwise thought they might have been.

2 Q Was FPL aware of its modernization projects
3 when it prepared its March 2012 base rate petition?

4 A Yes.

5 Q At page 16 you refer to the accrual of \$18.5
6 million. Is that the same accrual that was last
7 approved?

8 A Yes, it is.

9 Q FPL has not sought to change that, has it?

10 A I'm sorry?

11 Q FPL has not sought to change that in this
12 case.

13 A I still didn't understand the last part of
14 that.

15 Q FPL has not sought to modify the level of the
16 accrual.

17 A No. That would be part of the comprehensive
18 dismantlement study that, were the settlement not
19 approved, would be due early next year.

20 Q So customers would continue to pay rates
21 reflecting that accrual at the same time FPL would be
22 able to draw on the amount of amortization that is
23 approved as a result of your request?

24 A Yes. And it's important to remember that this
25 is one --

1 Q That's, that's all.

2 A I'd like to elaborate, if I could.

3 Q Well, the question was customers would
4 continue to pay rates based on the accrual at the same
5 time you draw on the amortization. What is there to
6 explain about that?

7 CHAIRMAN BRISÉ: Right. It was a
8 straightforward yes or no question.

9 THE WITNESS: Okay.

10 BY MR. McGLOTHLIN:

11 Q At page 19 with respect to the potential for
12 additional depreciation reserve surpluses, you say
13 there's no evidence of increased lifespans. Isn't it
14 true that as a technology is implemented, lifespans tend
15 to get longer as experience with that technology is
16 acquired and experience is gained?

17 A I don't know.

18 Q You indicated that FPL was aware of its
19 modernization projects when it filed the March 2012
20 petition. Was it aware of those projects when it filed
21 its petition in the last rate case?

22 A The '09 rate case?

23 Q Yes.

24 A I don't remember about Riviera. I'm pretty
25 sure that Canaveral would have been contemplated back in

1 '09. I guess it was early '09 when we filed that case.
2 I don't recall the exact dates.

3 **MR. McGLOTHLIN:** All right. Thank you,
4 Mr. Barrett. That's all I have.

5 **CHAIRMAN BRISÉ:** All right. Thank you,
6 Mr. McGlothlin.

7 Mr. Wright.

8 **MR. WRIGHT:** Good news, Mr. Chairman. No
9 questions.

10 **CHAIRMAN BRISÉ:** Wow. Okay. Mr. Saporito, do
11 you have good news, too?

12 **MR. SAPORITO:** Thank you, Mr. Chairman. I
13 have some questions for Mr. Barrett.

14 **CHAIRMAN BRISÉ:** Okay. Is your mike on?

15 **MR. SAPORITO:** No, it isn't.

16 **CHAIRMAN BRISÉ:** Okay.

17 **MR. SAPORITO:** I think it's on now. Okay.
18 Thank you, Mr. Chairman.

19 **CROSS EXAMINATION**

20 **BY MR. SAPORITO:**

21 **Q** My name is Thomas Saporito, and I'm here as a
22 pro se Intervenor. And I think I questioned you at the
23 March -- I mean at the earlier hearing, if I'm not
24 mistaken.

25 **A** Yes, sir.

1 Q Okay. So I'd like to explore your prefiled
2 direct testimony at page 4, lines 8 through 18, where
3 you describe a rate proceeding before the PSC as, and I
4 quote, expensive and disruptive, unquote. Did I get
5 that right?

6 A Yes. Yes.

7 Q Okay. So would you agree with me that the
8 Public Service Commission provides FPL's recovery of
9 costs related to rate cases filed before the Commission?

10 A Yes.

11 Q And so would you agree with me that FPL
12 operations continue without interruption during rate
13 case proceedings before the PSC?

14 A Yes, sir. Operations obviously continue. It
15 does require a lot of time from a lot of people to go
16 through these proceedings and there's a lot of cost.
17 And to the extent we are recovering those costs, it's
18 costs that customers pay.

19 Q But it doesn't interrupt service to the
20 customers. I mean, people come home, they turn their
21 light switch on, their lights still come on; right?

22 A Yes.

23 Q So would you agree with me that the four-year
24 term of the proposed settlement agreement would remove
25 one or more opportunities for FPL ratepayers like myself

1 to intervene in the process before the Commission?

2 **A** Yes. And it also affords you rate certainty
3 over that period of time, which I think has tremendous
4 value to our customers.

5 **Q** Would you agree with me that because the
6 proposed settlement agreement denies ratepayers like
7 myself their due process right to intervene in the PSC
8 ratemaking process, that the settlement agreement is not
9 in the public interest?

10 **A** No, sir.

11 **Q** And why not?

12 **A** I believe that you will have plenty of
13 opportunities to intervene in lots of things over the
14 next four years. And if this settlement agreement is
15 determined to be in the public interest, which I believe
16 that it is, the public interest is served despite the
17 fact that you won't be able to intervene in a rate case.

18 **Q** So it's my understanding that your testimony
19 is despite the fact I won't be able to intervene on one
20 or more of the terms and conditions of this settlement
21 agreement which I might otherwise be able to, just
22 because I can have an opportunity to intervene in some
23 future FPL rate cases, that my due process rights aren't
24 being violated?

25 **A** That's my testimony, sir.

1 Q Could you please explain to the Commission
2 your understanding or definition of the term "public
3 interest"?

4 A I believe that public interest is a broadly
5 encompassing term that includes all customers at large
6 and the company and its investors. And so when
7 something is in the public interest, it serves the, to
8 balance the competing interests of all parties.

9 Q Is it your belief and understanding that the
10 terms "fair, just, and reasonable" should be applied by
11 the Commission in deciding if the settlement agreement
12 is in the public interest?

13 **MR. BUTLER:** I'm going to object to that
14 question. I don't think that Mr. Barrett addresses the,
15 excuse me, the issue of fair, just, and reasonable
16 rates. This is going well beyond the scope of his
17 testimony, which is addressing three of the specific
18 mechanisms in the settlement agreement.

19 **MR. SAPORITO:** Mr. Chairman, his testimony in
20 here deals with public interest. He's testifying that
21 the various terms and conditions that he wants this
22 Commission to approve and adopt are in the public
23 interest. And I think the Commission would be well
24 served to understand if the terms "fair, just, and
25 reasonable" are in the mind of this individual when he's

1 explaining why this settlement agreement is in the
2 public interest in his view.

3 **CHAIRMAN BRISÉ:** Okay. Mr. Saporito, I'm
4 going to allow you to -- I'll allow Mr. Barrett to
5 answer this question. But as I'm looking at the issues
6 that he is laid out to, to deal with, they're Issues 1,
7 2, and 3, and the public interest issue is Issue 5. So
8 I'm going to allow this question, and then that's it
9 with this public interest with this witness.

10 **MR. SAPORITO:** Thank you, Mr. Chairman.

11 **BY MR. SAPORITO:**

12 **Q** Can you answer, please?

13 **A** Sure. When I think about the terms "fair,
14 just, and reasonable" and I compare that with us having
15 the lowest bills in the state, the highest reliability,
16 and the cleanest emissions profile, I think that all of
17 those are kind of wrapped into this fair, just, and
18 reasonable.

19 **Q** At this time I'd like to explore your prefiled
20 testimony inclusive of pages 5 through 14 in connection
21 with the GBRA provision contained in the settlement
22 agreement.

23 In your prefiled testimony you provided the
24 Commission with an outline of the GBRA process. As it
25 applies to the settlement agreement you also describe

1 what you believe to be the benefits of the GBRA process
2 as it applies to this settlement agreement.

3 So did I understand that testimony correctly?

4 **A** Sure.

5 **Q** Okay. Mr. Barrett, are you aware that in a
6 prior Florida Power & Light rate case, this Commission,
7 Commission issued an order, Number PSC-10-0153-FOF-EI,
8 which, amongst other things, rejected FPL's request for
9 a GBRA mechanism that would authorize FPL to increase
10 base rates for revenue associated with new generating
11 additions?

12 **MR. BUTLER:** I'm going to object to that
13 question as asked and answered. Exact same line of
14 questions that Mr. McGlothlin was asking Mr. Barrett
15 earlier.

16 **MR. SAPORITO:** I don't believe Mr. -- the
17 counsel for OPC addressed this order that the Commission
18 issued in the prior FPL rate case.

19 **CHAIRMAN BRISÉ:** Which order are you
20 addressing?

21 **MR. SAPORITO:** PSC-10-0153-FOF-EI with this
22 witness.

23 **MR. BUTLER:** That's the one he asked
24 Mr. Barrett to read some provisions out of.

25 **CHAIRMAN BRISÉ:** Right. He -- Mr. Barrett was

1 quoted in it.

2 **MR. SAPORITO:** Okay. Then I stand corrected.
3 Okay. Moving on.

4 **BY MR. SAPORITO:**

5 **Q** Mr. Barrett, are you aware that Section
6 366.071 under *Florida Statutes* provides expedited
7 approval of interim rates until issuance of a final
8 order for a rate change before this Commission?

9 **A** I'm not that familiar with the statute, no.

10 **Q** Okay. Are you aware that generally speaking
11 the Commission, if FPL were to seek intermittent, seek
12 approval on an expedited basis to increase the rates for
13 whatever reason, that they can do that?

14 **A** Again, I'm not familiar with the statute or
15 what the provisions of it are, what the limitations are,
16 what it would mean to the company, so I'm not prepared
17 to offer an opinion on that process.

18 **Q** All righty. Hypothetically speaking, would
19 you agree with me that FPL is seeking expedited approval
20 by the Commission to increase their rates on an interim
21 basis? Would that be in the public interest?

22 **A** It depends.

23 **Q** Depends on what?

24 **A** I guess what the facts and circumstances were
25 of why we felt we needed an expedited review for interim

1 rates. It's not even a complete hypothetical.

2 Q At this time I'd like to explore your prefiled
3 testimony, page, at page 14 to 15, lines 21 to 23 and
4 1 through 9 respectively, where you responded to the
5 question about why the amortization of depreciation
6 dismantlement reserves, by stating that it provides the
7 company the flexibility necessary to achieve reasonable
8 financial results during the extended settlement period.
9 And that without flexibility, base rates could not be
10 held constant for such a long time due to the risk of
11 weather, inflation, mandated cost increases, and other
12 factors affecting FPL's earnings that are beyond the
13 company's control. Did I get that right?

14 A Yes, sir.

15 Q So hypothetically speaking, if FPL had these
16 concerns, would you agree with me that they could come
17 to the Commission and ask for expedited consideration to
18 raise their rates on an interim basis?

19 A I don't know if we could or not. I guess what
20 I would say is the settlement agreement the way it's
21 crafted prevents us from being able to come back to the
22 Commission, makes us take some risks. And part of the
23 way we're able to do that is this flexible amortization
24 to prevent us from coming and raising customer rates
25 over that four-year period of time. So that's -- that

1 rate certainty we think adds a lot of value to
2 customers.

3 Q Well, hypothetically speaking, if FPL can have
4 the Commission expedite a ruling to increase the rates
5 on an interim basis, that would accomplish the same
6 thing as a settlement agreement in giving rate
7 certainty; isn't that true?

8 A No, it's not true.

9 Q Why?

10 A If we were to come to raise rates, that's
11 different than having rates held flat.

12 Q Well, isn't the settlement agreement, doesn't
13 it incorporate terms, conditions that raise rates over
14 the term of that settlement agreement?

15 A Very specific defined around these power
16 plants only, and we bear the risks of rising costs,
17 inflation, cost of capital. And this flexible
18 amortization above the 191 of an extra 209 affords us a
19 little bit of flexibility to absorb, kind of as a shock
20 absorber for bad weather, increased inflation, cost of
21 capital. We bear that risk, customers are held harmless
22 on that, unless we fall below 9.7% ROE.

23 Q So would you agree with me it would be a
24 benefit to FP&L to have the ability to come to this
25 Commission on an interim basis to expedite a decision to

1 offset all those risks? FPL wouldn't have those risks
2 if they could get interim expedited rate relief from
3 this Commission; true?

4 **MR. BUTLER:** Objection. Asked and answered.

5 **CHAIRMAN BRISÉ:** Mr., Mr. Saporito, I think
6 you've asked that question three times.

7 **MR. SAPORITO:** Thank you, Mr. Chairman.

8 That's all I have, Mr. Chairman.

9 Thank you, Mr. Barrett.

10 **CHAIRMAN BRISÉ:** All right. Thank you.

11 Mr. Garner.

12 **MR. GARNER:** No questions for Mr. Barrett.

13 **CHAIRMAN BRISÉ:** All right. Mr. Hendricks.

14 **CROSS EXAMINATION**

15 **BY MR. HENDRICKS:**

16 **Q** Good morning, Mr. Barrett.

17 **A** Good morning, Mr. Hendricks.

18 **Q** I just wanted to ask you about one thing.

19 You, you described how the GBRA basically cannot
20 increase the ROE for the company as a whole above 10.7%.

21 **A** Correct.

22 **Q** Is that correct? And you referred to it, I
23 think, as midpoint seeking, or some of the other
24 witnesses did.

25 **A** Yes.

1 Q To tend to drive it back towards that.

2 Okay. Could you similarly characterize the
3 effects of the GBRA on the weighted average cost of
4 capital for the whole company?

5 A Well, because the GBRA would use an
6 incremental cost of capital, it would reflect the equity
7 and the debt that we would be raising to finance the
8 plant, and therefore those components of the capital
9 structure would go into the overall company's capital
10 structure as it would without GBRA.

11 Q Right. Do you know if the, if this, if the
12 GBRA would tend to increase the weighted average cost of
13 capital when there is a GBRA transaction executed?

14 A I would say that the GBRA in and of itself
15 does not increase the cost of capital. It merely
16 reflects what we would be doing anyway.

17 Q Let me try to make the question a little more
18 specific.

19 A Okay.

20 Q If you look at the weighted average cost of
21 capital before a GBRA transaction and the weighted
22 average cost of capital for the company after a GBRA
23 transaction, would there, would it, would it be higher
24 after the GBRA transaction, the same, or lower?

25 A It would be, it would be higher after the

1 GBRA, but the same as if there had been no GBRA. Keep
2 in mind, what --

3 Q Okay.

4 A Okay.

5 MR. HENDRICKS: Thank you. No more questions.
6 Thank you.

7 CHAIRMAN BRISÉ: Okay. Thank you.

8 Staff? Ms. Klancke.

9 CROSS EXAMINATION

10 BY MS. KLANCKE:

11 Q Good morning, Mr. Barrett.

12 A Good morning.

13 Q My name is Caroline Klancke. I believe we've
14 spoken before. I just have a few questions.

15 During your conversation with Mr. McGlothlin,
16 he brought up Exhibit 717. Do you recall that?

17 A Yes.

18 Q Would you turn to page 16 of Exhibit 717,
19 which contains an excerpt from FPL's last rate case in
20 which you confirmed that you were a witness?

21 A Yes.

22 Q In particular, would you read the short final
23 paragraph, it's the one, two, the third paragraph on
24 that page?

25 A It's the one just above jurisdictional

1 separation?

2 Q Yes, sir.

3 A Okay. We deny FPL's request to continue the
4 GBRA mechanism. It's not possible for us to exercise an
5 adequate level of economic oversight within the context
6 of a GBRA mechanism as we can exercise within the
7 context of a traditional rate case proceeding.
8 Furthermore, a policy change of this magnitude which
9 would ultimately affect other utilities deserves a more
10 thorough review through a separate generic proceeding.

11 Q Are you aware that the Commission also
12 addressed a similar request to establish a GBRA
13 mechanism concept from TECO for major transmission
14 projects which was similarly denied for largely the same
15 reasons?

16 A I'm vaguely familiar with it. I don't know
17 the details.

18 Q That's fair enough. Are you aware that during
19 the 2012 legislative session FPL supported an amendment
20 that would have incorporated the GBRA concept into
21 legislation which was subsequently withdrawn?

22 A Yes.

23 Q I'd like to turn your attention now to
24 paragraph 10 of the settlement, and in particular if you
25 would turn to page 14 of your direct testimony. And in

1 addition, I'd like you to have access to paragraph 10 of
2 the agreement as well. It's contained on pages
3 10 through 12 of the settlement itself. Let me know
4 when you're there.

5 **A** Give me just a second to find the settlement
6 agreement.

7 Okay. Now what, what provision in the
8 settlement agreement?

9 **Q** It's paragraph 10.

10 **A** Okay.

11 **Q** Paragraph 10 of the agreement provides that,
12 provides FPL with the discretion as to the amortization
13 of the reserve amount during the four-year term of the
14 agreement; is that correct?

15 **A** Yes.

16 **Q** And paragraph 10B of the agreement defines the
17 reserve amount as consisting of, quote, the total
18 depreciation reserve surplus remaining at the end of
19 2012, plus a portion of FPL's fossil dismantlement
20 reserve, end quote. Is that correct?

21 **A** Yes.

22 **Q** Turning back to page 14 of your testimony,
23 beginning at line 15, you clarify that the first
24 component of the reserve amount which we just discussed
25 pertaining to the total depreciation surplus would be

1 either the higher of the 191 million figure derived from
2 FPL's projected amount of remaining depreciation reserve
3 surplus at the end of 2012 or the actual remaining
4 portion of the depreciation reserve surplus. Is that
5 correct?

6 **A** Yes.

7 **Q** I'd like to unpack that a little. The second
8 component of the reserve amount to be amortized consists
9 of, as it specifies here, a portion of FPL's fossil
10 dismantlement reserve; correct?

11 **A** Correct.

12 **Q** Now on page 15 of your testimony, lines 19
13 through 23, and on the top of page 16, in this section
14 you assert that because FPL has not filed a
15 dismantlement study since 2009, March of 2009, FPL does
16 not currently have a precise calculation or even an
17 updated dismantlement cost estimate; correct?

18 **A** Correct.

19 **Q** And isn't it correct that paragraph 11 of the
20 agreement specifies that FPL will not be required to
21 file either a depreciation or a dismantlement study with
22 the Commission providing such an estimate during the
23 period of the four-year term of the agreement; correct?

24 **A** That's correct. Not required to file.

25 **Q** Turning your attention back to page 14 of your

1 testimony, lines 22 through 23, you state that the broad
2 discretion afforded to FPL in paragraph 10 to amortize
3 the reserve amount is necessary to provide the company
4 with, quote, flexibility necessary to achieve reasonable
5 financial results during the extended settlement period.

6 Do you see that?

7 **A** I do.

8 **Q** What do you mean by the term "reasonable
9 financial results" as used in that sentence?

10 **A** An opportunity to earn within the range of
11 9.7 to 11.7.

12 **Q** And that is the sole impetus behind the
13 inclusion of paragraph 10 with respect to the
14 amortization?

15 **A** Yes. It's an acknowledgment that the
16 four-year term is a long period of time for us to have
17 frozen rates, particularly given the fact that the
18 \$191 million surplus credit rolls off at the end of
19 2013. So we're going to have three years beyond '13
20 where our revenue requirements are going up and we're
21 going to have to be able to manage that. You have
22 increasing costs, increasing inflation, cost of capital.
23 We felt it was necessary to have some flexibility to
24 keep us within the range and preserve the four-year rate
25 certainty.

1 Q Would you -- I'd like to turn your attention
2 now to the accrual. Would you turn to page 16 of your
3 direct testimony? And in particular I'd like to turn
4 your attention to lines 18 through 23 at the bottom of
5 that page.

6 A Yes.

7 Q In this portion of your testimony you explain
8 the potential impact of amortization on the accrual of
9 the dismantlement reserve; is that correct?

10 A That's correct.

11 Q In particular, you provide an example in which
12 even the amortization of 209 million spread ratably over
13 assets, with all, all other things being equal, would
14 result in an increase to the annual dismantlement
15 accrual of approximately \$7 million; is that correct?

16 A Yes. I actually have an exhibit that goes
17 through the math on that.

18 Q And we're going to talk about that in a
19 moment.

20 A Okay.

21 Q Actually could you turn to that? It's Exhibit
22 REB-11 attached to your direct testimony. This exhibit
23 contains an illustrative example of the impact of
24 potential amortization on future accruals; is that
25 correct?

1 **A** Yes.

2 **Q** In particular, Table 1 depicts the impact of
3 potential amortization on future dismantlement accruals
4 for the years 2013 through 2016; is that correct?

5 **A** Actually Table 1 just shows the flow-back.

6 **Q** Indeed. In particular with respect to the
7 flow-back, it provides that the net accrual impact
8 during the settlement term, the four-year period, would
9 be 135.8 million?

10 **A** Yes. And that's just derived by the continued
11 amortization of the 18.3 and flow-back ratably of the
12 209.

13 **Q** Looking down to Table 3 on the same exhibit,
14 it provides a comparison of the currently authorized
15 accrual, which is set, which was set in 2010.

16 **A** Yes.

17 **Q** With the potential 2017 accrual; correct?

18 **A** Correct.

19 **Q** And in particular, it identifies that the
20 agreement would effectively increase the dismantlement
21 accrual from approximately 18.3 million, which was set
22 in 2010, to 25.5 million a year; is that correct?

23 **A** In the hypothetical it illustrates that that
24 could be the case, if all else was equal.

25 **Q** In your illustrative example?

1 **A** In the illustrative example. And the point
2 being obviously that the 7 million -- the point of my
3 testimony is it's about .1% of our total revenue
4 requirements. So that's why I'm able to make the
5 assertion that it's a pretty small increase.

6 **Q** Certainly. But even small increases are
7 important to ratepayers, of course.

8 **A** Absolutely.

9 **Q** With respect to the increase we just discussed
10 as indicated on, in Table 3, the 18.3 million current up
11 to the 25.5 million as an effect of the 2017 accrual,
12 this indicates that if the agreement is approved, the
13 dismantlement accrual would almost certainly increase
14 above the current 18.3 million; correct?

15 **A** In this illustrative example, all else being
16 equal, it would increase. But obviously all things
17 aren't equal and we won't know until we do that study.

18 I might point out too that this is only the
19 case if we amortize the whole 209 million. And if we
20 had done that, that would have been to defray 70 million
21 a year of rate increases over the, over the '13 through
22 '16 period. So I think that's where the tradeoff that
23 we got comfortable with in the settlement agreement was
24 over this four-year period there's a huge benefit to
25 customers. A small increase after that possibly.

1 Q Certainly. I think it would be help -- yes or
2 no answers with an explanation would be helpful.

3 A Uh-huh.

4 Q Using your examples, given the information we
5 currently possess, which is -- since no studies have
6 been filed since 2009, these are very helpful. So we'd
7 like to stay with your examples.

8 A Okay.

9 Q In your example on Table 3 we have what we now
10 know, which was the current annual accrual of 18.3 which
11 was set in 2010.

12 A Yes.

13 Q The potential effect of the settlement
14 agreement is to increase it to 25.5 annually; correct?

15 A Hypothetically, yes.

16 Q Even given the other factors, all other things
17 being equal, if the, if the current Commission approves
18 the settlement agreement, the accrual will increase
19 above the 18.3 million; correct?

20 A I don't know until we do that study.

21 Q In your illustrative example it would
22 certainly increase, would it not?

23 A The illustrative example shows an increase,
24 yes.

25 Q Conversely, if the agreement were not

1 approved, given the recent modernization allowing for
2 the deferral of the need to incur the full cost of
3 greenfield dismantlements, doesn't it stand to reason
4 that the dismantlement accrual of 18.3 million could be
5 reduced?

6 **A** Yes, that's possible. But if I could explain.
7 If the agreement were not approved, there are a lot of
8 things that will happen, including other rate cases.

9 **Q** And the, and the filing of your dismantlement
10 study; correct?

11 **A** Correct.

12 **MS. KLANCKE:** I have no further questions for
13 this witness.

14 **CHAIRMAN BRISÉ:** Thank you.

15 Commissioner Brown.

16 **COMMISSIONER BROWN:** Thank you.

17 Thank you, Mr. Barrett. You state that one of
18 the advantages of the settlement agreement is the need
19 to avoid expensive rate proceedings. In your opinion,
20 if hypothetically the Commission were to deny the
21 settlement, do you have an estimate of how many rate
22 proceedings or rate cases or limited proceedings you
23 would need to file within the next four years?

24 **THE WITNESS:** I can give you a learned opinion
25 of that. Obviously some will depend on what happens

1 with the litigated case and how that gets resolved. If,
2 if we get recovery of Cape Canaveral in that case, we
3 certainly, in my opinion, will be back in for Riviera.
4 Because it's not just Riviera that's going to affect
5 2014. It's the end of the \$191 million credit that's
6 holding rates down right now in our 2013 test year. So
7 I think 2014 for sure we'll have, we'll be in looking
8 for new rates. So I guess that means filing a case next
9 year for 20 -- for 2014 rates.

10 And then I really, you know, 2016 is kind of
11 far out there, but I see no way to avoid being able to
12 absorb the Everglades power plant. So that 216 million
13 plus whatever else has happened in the business, likely
14 rising costs. So I think at least '14 and '16. I don't
15 know about '15.

16 **COMMISSIONER BROWN:** Thank you. And as a
17 follow-up, if you could estimate in a ballpark fashion
18 how, what the average cost is for a rate case for FPL.

19 **THE WITNESS:** That's a hard one because
20 there's a monetary cost. I think it's 4, 5, \$6 million.
21 And then the cost of the resource of putting it
22 together, which is basically a lot of people spending a
23 lot of time putting together a lot of schedules. And,
24 and that's what I meant by the distraction I think when
25 I, I mentioned that in my -- or disruption in my, in my

1 testimony. It's lot of focus around prosecuting the
2 rate case that could maybe be spent on looking for more
3 innovative ways to stay out of rate cases.

4 **COMMISSIONER BROWN:** Uh-huh. Okay.

5 Appreciate that.

6 On pages 9 and 10 of your direct you state,
7 you address the cost protection for customers as part of
8 the GBRA mechanism. If the capital costs are less than
9 the need determination, than the need determination
10 estimates, customers will receive a refund --

11 **THE WITNESS:** Yes.

12 **COMMISSIONER BROWN:** -- under the settlement
13 agreement. At this time and this place today do you
14 know if the costs associated with the Riviera and Port
15 Everglades projects are higher or lower than the need
16 determined estimates that were --

17 **THE WITNESS:** Go ahead. Sorry.

18 **COMMISSIONER BROWN:** That's it.

19 **THE WITNESS:** Actually they're right on, on
20 plan right now. They're -- Riviera is well under
21 construction, and I think it's, it's on budget, on time.
22 Everglades we're just getting started on, and our budget
23 for that is still right on, right on target.

24 So I would expect that we would -- and we have
25 a good track record of bringing things in at or below

1 cost. So I'm hopeful that we'll able to bring them in
2 below cost, but right now they're on, on budget.

3 **COMMISSIONER BROWN:** Okay. Thank you. That's
4 all.

5 **CHAIRMAN BRISÉ:** Commissioner Balbis.

6 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
7 Thank you, Mr. Barrett. This is one of the
8 issues that really drove me to want to have additional
9 testimony because I had a lot of questions about this as
10 it was clearly outside of the original rate case. And
11 I'm going to try and simplify this because, you know, it
12 may be something simple for you being, you know, having
13 a finance background, but I just want to make sure that
14 I understand it.

15 So the fossil dismantlement process is where,
16 you know, FPL would file a depreciation study that
17 identifies the cost of taking down and greenfielding all
18 of the plants at whatever time they, they are no longer
19 useful; is that correct?

20 **THE WITNESS:** Just one minor clarification
21 there.

22 **COMMISSIONER BALBIS:** Okay.

23 **THE WITNESS:** We have -- we do a depreciation
24 study separate from a dismantlement study.

25 **COMMISSIONER BALBIS:** Right.

1 **THE WITNESS:** But you've accurately described
2 the dismantlement study.

3 **COMMISSIONER BALBIS:** Okay. So, and then for
4 all of your units you have a total amount that's needed
5 at the, at the cost at the time of the study to take
6 down these plants.

7 **THE WITNESS:** Yes.

8 **COMMISSIONER BALBIS:** And the customers pay
9 every year so that they don't have to pay a large amount
10 when these plants are needed to be dismantled.

11 **THE WITNESS:** Correct.

12 **COMMISSIONER BALBIS:** Okay. Do you know the
13 last time this study was prepared -- I believe you said
14 it was 2009.

15 **THE WITNESS:** Yes.

16 **COMMISSIONER BALBIS:** Was the estimated cost
17 to dismantle the plants, do you know what that number
18 was?

19 **THE WITNESS:** I don't. No.

20 **COMMISSIONER BALBIS:** Okay. Do you know if
21 the total accrued amount at that time was in excess of
22 what was needed or less than what was needed?

23 **THE WITNESS:** It's a little different than a
24 depreciation study where we don't really calculate a
25 surplus or a deficit.

1 Essentially what we do when we do a study is
2 we say from this point forward what do we need to accrue
3 such that when we get to the end of the lives of each of
4 the plants we have enough money.

5 **COMMISSIONER BALBIS:** Okay. But the amount
6 that was accrued up to that point at that study, was it
7 more than or less than the total cost at study?

8 **THE WITNESS:** Well, it would have been less
9 than because you accrue to the end of the life of those
10 plants. So we're kind of along the way midlife on a lot
11 of these plants, so we wouldn't have accrued the total
12 amount yet.

13 **COMMISSIONER BALBIS:** Okay. So what the
14 settlement, settlement agreement will allow FPL to do is
15 access that accrued amount; correct?

16 **THE WITNESS:** Yes.

17 **COMMISSIONER BALBIS:** Okay. But you just
18 indicated that that accrued amount is not enough. So
19 what would be the benefit to customers to allow FPL to
20 access that amount that's accrued when they still need
21 more than what has been accrued?

22 **THE WITNESS:** Well, there's a couple of
23 components there, if you would indulge me. We're going
24 to continue to accrue the \$18 million a year. We also
25 know that because of, as I mentioned earlier, the

1 modernization of several of our facilities that weren't
2 contemplated -- when we did the last study, it wasn't
3 contemplated that we were extending the lives of those
4 units out well beyond what the old fossil units that
5 were there were going to be retired on. So we believe
6 we've created some margin by basically retooling those
7 sites and pushing out the ultimate dismantlement and
8 greenfielding of those sites well into the future. So
9 we believe we've created some margin there.

10 But this really is an opportunity for us to
11 over the next four years reverse some of that reserve,
12 do a new study in four years, determine how much we need
13 from that point forward, but give customers a real
14 benefit today by not having to have those other rate
15 cases and having, you know, having costs go up more than
16 the 378. So we see it kind of as a shock absorber, I
17 think, as I said earlier.

18 So, yes, the accrual may go up four years from
19 now that would be collected over the next 20, 30, 40
20 years. We think that's a modest amount, because it's
21 collected over a long period of time, it's a modest
22 amount four years from now for a huge savings now.

23 **COMMISSIONER BALBIS:** Okay. So you're -- so
24 if I understand you correctly then, similar to the other
25 depreciation reserve surplus that FPL used as part of

1 the settlement agreement last year, two years ago, you
2 would utilize the dismantlement reserve to hit the low
3 end of the approved ROE, the 9.7 in the settlement
4 agreement, in order to stay out of a rate case?

5 **THE WITNESS:** We -- yes, to the extent that we
6 were otherwise below the 9.7 and we had reserve, some of
7 this reserve amount left over, we would use that first
8 to get us back into the range to try to avoid coming in
9 for a rate case.

10 **COMMISSIONER BALBIS:** And would FPL use it to
11 hit the low end to stay out of a rate case or use more
12 of that to hit the high end, which is, I believe, you
13 had -- I don't know if it was you who testified that's
14 how you used it before, to hit the high end of the
15 range, not the low end of the range.

16 **THE WITNESS:** Yeah.

17 **COMMISSIONER BALBIS:** Would you only use to
18 the low end of the range?

19 **THE WITNESS:** It's probably going to be there
20 for the, kind of the rainy day for where we have, you
21 know, costs going up unexpectedly, revenues dropping
22 unexpectedly. We haven't laid out the plans for the
23 next 16 -- or the next four years through 2016 to know
24 exactly how we're going to need to use it.

25 I will commit to you that we will use it to

1 stay above the 9.7 to stay out of a rate case. We're
2 committed to that in the settlement agreement. And we
3 won't use it to go above 11.7.

4 **COMMISSIONER BALBIS:** What is the difference
5 in revenue requirement from a 9.7 to 11.7?

6 **THE WITNESS:** Roughly \$300 million.

7 If I could draw one more distinction.

8 **COMMISSIONER BALBIS:** No. Hold on. I don't
9 want to lose my train of thought, which is kind of
10 scattered.

11 **THE WITNESS:** Okay.

12 **COMMISSIONER BALBIS:** So because you haven't
13 done a dismantlement study or depreciation study since
14 2009, you've indicated that you've, because of these
15 modernizations you've generated some sort of, I think,
16 margin. I think you may have used that word.

17 **THE WITNESS:** Uh-huh.

18 **COMMISSIONER BALBIS:** But do you know if there
19 is now an excess amount that's accrued because of those
20 modernizations?

21 **THE WITNESS:** I don't know. I believe that
22 because of those modernizations there is some margin or
23 some excess. But, again, the study is going to look at
24 all of our assets and, and look at the, the current cost
25 of dismantlement in today's world and, and escalate

1 those out into the future. It's a comprehensive study.
2 But the one fact I know is those modernizations will
3 have reduced the need to dismantle those sites well into
4 the future.

5 **COMMISSIONER BALBIS:** And when is -- if we do
6 not vote on the settlement agreement and proceed with
7 the litigated rate case, when is the next depreciation
8 dismantlement study due to be filed?

9 **THE WITNESS:** The spring of next year.

10 **COMMISSIONER BALBIS:** So March of 2013, four
11 months away?

12 **THE WITNESS:** Yes.

13 **COMMISSIONER BALBIS:** And you haven't seen a
14 draft of that or anything so we can know if there is a
15 reserve or --

16 **THE WITNESS:** I haven't, no. I mean, there --
17 it's a pretty detailed process, and the folks that do
18 that are kind of out in the field talking to the
19 engineers and the people in the power plants and getting
20 all the data together, and they run it through their,
21 you know, big calculators. And I'm sure I'll get it
22 presented to me sometime early next year.

23 **COMMISSIONER BALBIS:** Okay. Thank you.
24 That's all I have.

25 **CHAIRMAN BRISÉ:** All right. Any further

1 questions, Commissioners?

2 All right. Redirect.

3 **MR. BUTLER:** Thank you, Mr. Chairman.

4 **REDIRECT EXAMINATION**

5 **BY MR. BUTLER:**

6 **Q** Mr. Barrett, a couple of questions related to
7 your exchange with Commissioner Balbis.

8 Would you explain why the delay in
9 dismantlement requirements for the modernization
10 projects would end up reducing accrual requirements?

11 **A** Essentially because those units would have
12 otherwise been retired probably within the next ten
13 years. Now it's going to be 30 plus before they're
14 going to be retired and then dismantled and then
15 greenfielded. The prior study would have assumed they
16 would have been greenfielded much sooner. And so that
17 will give us more time to accrue towards eventual
18 dismantlement.

19 **Q** In discussions with Commissioner Balbis you
20 described the amount that had been accrued for
21 dismantlement as of the time of the last study as not
22 being enough. Do you recall making that statement?

23 **A** Yes.

24 **Q** Can you explain what you meant by that?

25 **A** Yeah. I guess what I meant by that was I

1 thought that the question was had we completely accrued
2 for the dismantlement of those units? And the answer is
3 no. But we were on track. We were accruing what needed
4 to be accrued in order to ultimately get the amount that
5 needed to be in the reserve when those units were going
6 to be dismantled. So we were on track.

7 But maybe I misunderstood the question, but I
8 had thought that Commissioner Balbis had asked were we
9 completely accrued at that point. So if I
10 misunderstood, I apologize. But we are on track right
11 where we needed to be for accrual, but weren't obviously
12 done accruing because we weren't retiring the plants
13 yet.

14 Q Okay. Would you look at your Exhibit REB-11,
15 please?

16 A Okay.

17 Q In discussions with Ms. Klancke you had
18 pointed to the \$209 million of flow-back as being a
19 maximum level; is that right?

20 A Yes.

21 Q Okay. Can you explain what circumstances
22 might arise where less than that amount would be flowed
23 back?

24 A Certainly. The settlement agreement caps us
25 at \$400 million of reserve amount, and it's comprised of

1 two pieces. One is whatever surplus depreciation is
2 left at the end of this year, and then the difference
3 being the dismantlement reserve.

4 So the assumption here, the 209 says that
5 191 is the surplus depreciation that would be left at
6 the end of 2012. If, for instance, there were more than
7 \$191 million left, then it would mean that the
8 209 million would come down such that the total always
9 equals 400.

10 So hypothetically if we had 250 of surplus
11 left over at the end of this year, then this 209 would
12 drop to 150. So that's the counterbalancing issue in
13 the 400 total. We always use the surplus first. So
14 whatever is left, minimum of 191, as called for in the
15 settlement agreement, gets subtracted from 400, and that
16 becomes the maximum flow-back of dismantlement reserve.

17 Q Do you have any insight at this point as to
18 what we expect will be available for use in 2013 as of
19 today?

20 A I believe we currently -- the weather has been
21 beautiful; we've been losing revenues. Currently we
22 would have probably about 20 million more than the
23 191 left over.

24 Q Okay. Thank you. Back at the beginning of
25 your testimony, Mr. Barrett, you were asked by

1 Mr. McGlothlin about the rate increases that would
2 result from the three GBRAs that are proposed in the
3 settlement agreement. Do you recall that?

4 **A** Yes, sir.

5 **Q** And at the point that those rate increases
6 would go into effect under the settlement proposal,
7 would customers also see the impact of fuel savings in
8 their bills?

9 **A** Yes. They'd see significant impact of fuel
10 savings.

11 **MR. BUTLER:** Okay. That's all the redirect I
12 have. Thank you.

13 **CHAIRMAN BRISÉ:** All right. Thank you very
14 much. Let's deal with exhibits.

15 **MR. BUTLER:** FPL would move the admission of
16 Exhibits 675 through 678.

17 **CHAIRMAN BRISÉ:** All right. We will move
18 Exhibits 675 through 678 into the record,
19 notwithstanding the standing objection.

20 (Exhibits 675 through 678 admitted into the
21 record.)

22 Any other exhibits?

23 Okay. All right. Now is a good time to take
24 a five-minute break. We've been at it for about an
25 hour -- I mean, yeah, an hour and a half almost. All

1 right. So see you in about five minutes.

2 (Recess taken.)

3 All right. We're going to go ahead and get
4 ready to reconvene, so we're going to give everybody
5 about 30, 40 seconds to find a spot.

6 All right.

7 (Pause.)

8 **MS. CLARK:** Mr. Chairman, if I can provide
9 some information on a request from Commissioner Brown
10 yesterday.

11 **CHAIRMAN BRISÉ:** Sure.

12 **MS. CLARK:** I think it may have had its
13 genesis in testimony from Ms. Deaton, where she
14 indicated 51% of FPL's sales were from residential
15 customers. And at the end of that, at the end of the
16 day we think you asked for information regarding the
17 sales for Intervenor customers who are parties to the
18 settlement. So that's what we have passed out to you.

19 The customers represented by the three
20 Intervenors who are parties to the settlement take under
21 multiple rate classes, and we've identified those in the
22 handout.

23 There are rate, eight rate classes, as you can
24 see. And then in column five we have given you
25 information about the type of customers that are in each

1 rate class.

2 For example, CILC-1D are hospitals, large
3 groceries, large schools, large department stores.
4 CILC-1G, large department stores are also under that.
5 Small manufacturing military installations, CILC-1T.
6 Manufacturing and military bases GST, which is the small
7 business and offices; FEA members do have -- take
8 service under that rate class. GSD is small
9 manufacturing, small groceries, also retail
10 establishments.

11 And then your GSL-DT1 is similar to the GSL --
12 I'm sorry -- similar to CILC-1D, and the GSL-D2 and
13 3 are similar to the customers that are under CILC-1G
14 and 1T. So I hope that provides the information you
15 were looking for.

16 **COMMISSIONER BROWN:** Thank you, Ms. Clark.
17 This is exactly what I wanted. I appreciate you
18 compiling it for me.

19 **MS. CLARK:** Thank you.

20 **CHAIRMAN BRISÉ:** All right. Do we need to
21 enter this as an exhibit?

22 **MR. WRIGHT:** Mr. Chairman, I thought the
23 request was for those customers that are members of the
24 group. Did I -- and I asked that clarifying question
25 yesterday. Did I miss something?

1 **CHAIRMAN BRISÉ:** Okay. Well, the person who
2 asked for the document --

3 **MR. WRIGHT:** This addresses all commercial and
4 industrial customers.

5 **COMMISSIONER BROWN:** This is exactly what I
6 requested.

7 **MR. WRIGHT:** Okay. Thank you.

8 **MS. CLARK:** Mr. Chairman, I believe it would
9 be appropriate to have it identified as an exhibit. And
10 I beg your pardon, I don't know the next number.

11 **CHAIRMAN BRISÉ:** No problem. I wouldn't
12 either if I didn't have this list in front of me.

13 **MR. YOUNG:** 719.

14 **CHAIRMAN BRISÉ:** We are at 719. And I guess
15 this would go under Deaton?

16 **MS. CLARK:** Yes, I believe so.

17 **CHAIRMAN BRISÉ:** Okay. And description, Sales
18 by Rate Class.

19 (Exhibit 719 marked for identification.)

20 **MS. CLARK:** And I would move it into the
21 record.

22 **CHAIRMAN BRISÉ:** Thank you.

23 **MS. CLARK:** Thank you, Mr. Chairman.

24 **CHAIRMAN BRISÉ:** All right. We'll move that
25 into the record, notwithstanding the standing objection.

1 (Exhibit 719 admitted into the record.)

2 **CHAIRMAN BRISÉ:** All right. If we can proceed
3 with our next witness.

4 **MR. LITCHFIELD:** Thank you. I need to turn my
5 mike on. Thank you, Mr. Chairman.

6 FPL's next and last witness on direct is
7 Mr. Moray Dewhurst, and he has been sworn.

8 Whereupon,

9 **MORAY PETER DEWHURST**

10 was called as a witness on behalf of Florida Power &
11 Light Company and, having been duly sworn, testified as
12 follows:

13 **DIRECT EXAMINATION**

14 **BY MR. LITCHFIELD:**

15 **Q** Mr. Dewhurst, would you please state your name
16 and business address.

17 **A** Moray Peter Dewhurst, 700 Universe Boulevard,
18 Juno Beach, Florida.

19 **Q** And by whom are you employed and in what
20 capacity?

21 **A** I am the Vice Chairman and Chief Financial
22 Officer of NextEra Energy, Inc., and I'm also the Chief
23 Financial Officer of Florida Power & Light.

24 **Q** And have you prepared and caused to be filed
25 24 pages of prefiled direct testimony in this proceeding

1 on October 12, 2012?

2 **A** Yes, I have.

3 **Q** Do you have any changes or revisions to your
4 prefiled direct testimony?

5 **A** No, I do not.

6 **Q** So if I were to ask you the same questions
7 contained in your direct testimony, would your answers
8 here this morning be the same?

9 **A** Yes, they would.

10 **MR. LITCHFIELD:** Mr. Chairman, I would ask
11 that Mr. Dewhurst's prefiled direct testimony be
12 inserted into the record as if read.

13 **CHAIRMAN BRISÉ:** Okay. We will enter
14 Mr. Dewhurst's prefiled direct testimony into the record
15 as though read, recognizing the standing objection.

16 **BY MR. LITCHFIELD:**

17 **Q** Mr. Dewhurst, you're not sponsoring any
18 exhibits with your direct testimony, are you?

19 **A** No, I am not.
20
21
22
23
24
25

1 **I. INTRODUCTION**

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

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

5 **Q. By whom are you employed and what is your position?**

6 A. I am Vice Chairman and Chief Financial Officer at NextEra Energy, Inc. I also
7 serve as Executive Vice President of Finance and Chief Financial Officer of
8 Florida Power & Light Company ("FPL" or the "Company").

9 **Q. Have you filed testimony previously in this proceeding?**

10 A. Yes.

11 **Q. Are you sponsoring any additional exhibits in this proceeding?**

12 A. No.

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

14 A. FPL, the Florida Industrial Power Users Group ("FIPUG"), the South Florida
15 Hospital and Healthcare Association ("SFHHA") and the Federal Executive
16 Agencies ("FEA") collectively entered into a Stipulation and Settlement that
17 would resolve the FPL Rate Case ("Proposed Settlement Agreement"). On
18 October 3, 2012, the Florida Public Service Commission ("FPSC" or the
19 "Commission") issued an Order (No. PSC-12-0529-PCO-EI) directing the parties
20 in the case to file testimony addressing five issues specifically related to the
21 Proposed Settlement Agreement.

22

1 The purpose of my testimony is to provide an overview of the Proposed
2 Settlement Agreement and to address the fifth issue identified by the Commission,
3 which is how the Proposed Settlement Agreement is in the public interest. My
4 testimony will explain how the Proposed Settlement Agreement appropriately
5 benefits FPL's customers, its investors and the state of Florida and therefore is in
6 the public interest.

8 II. SUMMARY

9
10 **Q. Please provide an overview of the Proposed Settlement Agreement.**

11 A. The Proposed Settlement Agreement would resolve FPL's base rate case filed on
12 March 19, 2012 in a fashion that balances the interests that customers have in
13 receiving low rates, high reliability and excellent customer service with the
14 opportunity for investors to have the potential to earn a rate of return
15 commensurate with returns available from other opportunities open to them.

16
17 The Proposed Settlement Agreement provides for a substantial reduction in FPL's
18 2013 base rate request. In fact, on a proportional basis, the resulting base rate
19 increase in January 2013 is lower than that recently granted to Gulf Power and
20 lower than the increase approved in Progress Energy's settlement agreement that
21 was approved by the Commission on March 8, 2012— notwithstanding the fact
22 that FPL's starting residential base rates (and, indeed, total bills) are already

1 significantly lower than either Gulf Power's or Progress Energy's. The Proposed
2 Settlement Agreement therefore maintains FPL's affordability within the state.

3
4 The Proposed Settlement Agreement provides for a substantially lower Return on
5 Equity ("ROE") than FPL requested but one that is consistent with the level
6 recently approved in the Progress Energy settlement agreement. Although lower
7 than FPL's March 19th request, this authorized ROE, when viewed in the context
8 of all other elements of the Proposed Settlement Agreement, including the term of
9 the agreement, will offer investors the potential to earn returns reasonably
10 commensurate with other alternatives available to them. Attaining the authorized
11 ROE through the period of the Proposed Settlement Agreement, however, will
12 likely require the continued amortization of some degree of non-cash credit to
13 expense, which is provided for in paragraph 10(a). The Proposed Settlement
14 Agreement further provides for flexibility in the utilization of the allowed non-
15 cash credits, which offers the prospect of somewhat mitigating volatility in earned
16 returns.

17
18 The Proposed Settlement Agreement also provides for the continuation of the
19 current mechanism for recovery of prudently incurred storm restoration costs,
20 offering risk mitigation to investors while supporting administrative efficiency,
21 but without sacrificing any oversight of the FPSC as to the prudence of storm
22 restoration efforts.

23

1 Through its terms, the Proposed Settlement Agreement provides a high degree of
2 base rate certainty to all parties and FPL customers for a fixed term of four years.
3 While certainty can never be absolute, the ability of all parties to plan more
4 effectively is an important benefit of the agreement.

5
6 In order to provide this degree of certainty, the Proposed Settlement Agreement
7 necessarily includes a mechanism to handle the known and predictable
8 introduction to service of three major generating facilities – necessarily, because
9 in the absence of such a mechanism FPL would assuredly be forced to seek
10 additional base rate relief during the period of the agreement, thus destroying any
11 durability the agreement might otherwise appear to possess. This is explained in
12 more detail in the testimony of FPL witness Barrett. The mechanism chosen to
13 accommodate the entry into service of new generation facilities, known as
14 Generation Base Rate Adjustment or “GBRA” (paragraph 8), is well-proven and
15 entirely consistent with the successful mechanism that was previously used to
16 bring into service Turkey Point Unit 5 and West County Units 1 and 2 under
17 FPL’s 2005 base rate settlement agreement.

18
19 Finally, the Proposed Settlement Agreement contains an update and extension of
20 an existing framework designed to promote tactical operational decisions in
21 purchases and sales of generation, fuel and related assets (“Incentive
22 Mechanism”), that will benefit customers through optimization of certain fuel

1 assets (paragraph 12) and is described more fully in the testimony of FPL witness
2 Forrest.

3
4 **III. CONTEXT FOR REVIEWING SETTLEMENT AGREEMENTS**

5
6 **Q. Is this Proposed Settlement Agreement consistent with past practice in**
7 **Florida?**

8 A. Yes, as discussed by FPL witness Deason, public policy favors settlement and the
9 FPSC has a long history of encouraging and approving settlements.

10
11 Settlement agreements typically represent negotiated solutions to numerous,
12 interrelated and complex issues. A settlement agreement often contains final
13 terms that differ from litigated or recommended positions, because the resolutions
14 represent compromises between opposing perspectives. Sometimes, settlement
15 solutions reflect a modification or enhancement to a prior approach or FPSC
16 precedent. All of these points are reflected in the Proposed Settlement
17 Agreement. It represents a series of interrelated compromises that independent
18 parties with differing interests jointly arrived at. The resulting compromises
19 differ from the positions the parties adopted in the underlying litigated base rate
20 case. And in helping to flesh out an agreement that meets the overall objectives
21 of the settling parties, some of the substantive terms either draw directly from past
22 instances that have been approved by the FPSC in the context of other agreements
23 or represent modifications to existing practices.

1 **Q. Are any of the major terms of the Proposed Settlement Agreement**
2 **significant departures from past practice?**

3 A. No. Although one of the advantages of settlement agreements is that they allow
4 the parties to introduce new and innovative approaches to addressing recurring
5 common issues, in this particular case none of the major terms is substantively
6 new. The GBRA mechanism is well-established and has in fact already been used
7 in FPL's 2005 base rate settlement agreement to govern the introduction to
8 service and base rate recovery of new generation assets. An ability to flexibly
9 amortize certain non-cash expense credits or debits over the period of an
10 agreement has also been used on multiple occasions, including in FPL's 1999,
11 2002, and 2010 base rate settlement agreements. The amortization of certain
12 amounts from the fossil dismantlement reserve is a minor variation on this
13 approach, analogous to the approach used in Progress Energy's 2010 and 2012
14 base rate settlement agreements with regard to cost of removal. (See Order Nos.
15 PSC-10-0398-S-EI and PSC-12-0104-FOF-EI). As explained in greater detail by
16 FPL witness Barrett, this flexibility is motivated in part by the economic life
17 extension of the three major generation sites that FPL is currently modernizing,
18 effectively deferring much further into the future the need to utilize a portion of
19 the dismantlement reserve.

20
21 The deferral of depreciation studies for the period of an agreement is also not new
22 or unique to FPL. The Commission recently approved a similar deferral as part of
23 Progress Energy's 2012 base rate settlement agreement in Order No. PSC-12-

1 01040-FOF-EI. The terms governing the recovery of prudently incurred storm
2 costs are taken directly from FPL's 2010 settlement agreement, currently in force,
3 and are similar to those used in Progress Energy's 2010 and 2012 settlement
4 agreement. The Incentive Mechanism (paragraph 12) represents a variation on an
5 existing program. As explained in more detail by FPL witness Forrest, this term
6 will encourage FPL to seek greater value for customers, and customers are
7 assured of getting 100 percent of the first \$46 million of whatever gains FPL may
8 create using this additional flexibility.

9
10 The other terms all represent either direct compromises or minor variations on
11 positions that were already examined at length in the underlying case – in
12 particular, ROE, the level of the January 2013 base rate increase, Commercial and
13 Industrial Load Control ("CILC") credits, and late payment fees. As with all
14 agreements, the particular mix and balance of terms is unique, but there is nothing
15 unusual or radical about the specific provisions.

16
17 **Q. Should the Commission approve certain provisions of the Proposed**
18 **Settlement Agreement, and deny others?**

19 A. No. The Proposed Settlement Agreement represents an extensively negotiated
20 settlement that balances the interests of FPL's customers and its investors and
21 should be considered in its entirety. Approval of certain provisions, to the
22 exclusion of others, will upend the equilibrium achieved by linking the individual
23 components. It is for this reason that paragraph 15 of the Proposed Settlement

1 Agreement contains the typical provision conditioning the effectiveness of the
2 agreement on approval of the agreement in its entirety. The Proposed Settlement
3 Agreement comes together in a package that, taken as a whole, is in the public
4 interest. Therefore, it should be considered in its entirety.

6 **IV. APPROVAL OF THE SETTLEMENT IS IN THE PUBLIC INTEREST**

7
8 **Q. Is the Proposed Settlement Agreement in the public interest?**

9 **A.** Yes. As FPL witness Deason describes, the Commission has wide discretion in
10 determining whether an agreement such as this is in the public interest.
11 Moreover, regardless of whatever frame of reference the Commission might use
12 in reaching a conclusion in this regard, I believe it would surely seem that a
13 settlement of a base rate case that simultaneously (a) offers customers the
14 prospect of enjoying relatively low rates, good reliability and excellent customer
15 service, not just in the short term but over the period of the agreement, and
16 (b) also offers investors the prospect of being able to earn a return commensurate
17 with their other opportunities, is evidently in the public interest. The Proposed
18 Settlement Agreement achieves both these points, but it also does more.
19 Specifically, the Proposed Settlement Agreement:

- 20 • Offers FPL's customers a high degree of confidence that their bills will
21 continue to be among the lowest if not the lowest in the state;
- 22 • Helps to ensure that FPL will be able to maintain its strong financial position
23 and will have access to the financial resources to sustain continued investment

1 – investment that in turn will enable FPL to continue its excellent track record
2 of superior reliability and strong customer service;

- 3 • Offers reduced uncertainty to all parties, including customers and investors;
- 4 • Promotes administrative efficiency, obviating what would otherwise be the
5 need for multiple, expensive rate cases;
- 6 • Supports continued investment in the state, thus promoting economic growth;
- 7 • Offers investors the prospect of a reasonable return and a reasonable degree of
8 risk around the potential range and variability of that return in a period likely
9 to see interest rates increase.

10 **Q. How does the Proposed Settlement Agreement offer customers a high degree**
11 **of confidence that their bills will continue to be among the lowest, if not the**
12 **lowest, in the state?**

13 A. As FPL witness Deaton indicates, under the Proposed Settlement Agreement the
14 bills in 2013 for residential customers will remain the lowest in the state and the
15 bills for commercial and industrial customers will be more competitive with rates
16 of other utilities in Florida and the southeast United States. The Proposed
17 Settlement Agreement provides for a roughly 25% reduction in FPL's January
18 2013 base rate increase request, from \$517 million to \$378 million.

19
20 The Proposed Settlement Agreement also provides for base rate increases for the
21 three project modernizations. However, the cost of those projects would be no
22

1 more than (and possibly less than) the cost reviewed in the need proceedings
2 when those projects were approved; and those approvals were based on a
3 demonstration that, relative to competing resource options, the projects would
4 *improve* customer bill affordability over their lifetimes for a wide range of fuel
5 price assumptions. Accordingly, customers can be assured that the inclusion of
6 these projects within the scope of the Proposed Settlement Agreement, at costs no
7 higher than contemplated in their respective need approvals, will be positive for
8 long term bill affordability.

9
10 Finally, the Proposed Settlement Agreement settles all the major base rate issues
11 and provides only limited opportunities to adjust base rates; base rates comprise
12 roughly half of the typical residential bill, offering customers a high degree of
13 confidence that their bills will remain among the lowest in the state throughout
14 the term of the agreement. Therefore, customers can have a high degree of
15 certainty and predictability around future base rates.

16 **Q. How can the Commission satisfy itself that the January 2013 base rate**
17 **increase is reasonable in the present circumstances?**

18 A. First, as noted above, the \$378 million contained in the Proposed Settlement
19 Agreement is a roughly 25% reduction from FPL's original request. Testimony
20 of FPL witness DeRamus demonstrated that the impact of the original request on
21 customer bills and affordability was moderate. Clearly, the 25% reduction
22 improves affordability.

23

1 Second, the \$378 million, expressed as a percentage increase in base rates, or
2 8.6%, can be compared with the increases granted to Gulf Power on April 3, 2012
3 of 13.3%, and the increase approved for Progress Energy on March 8, 2012 via its
4 settlement agreement, of 9.7%. Yet both Gulf Power's and Progress Energy's
5 base rates (and total bills) were *higher* than FPL's before their respective
6 increases. A smaller percentage increase on lower base rates clearly should not be
7 deemed unreasonable.

8
9 Third, as demonstrated through the testimony of FPL witness Barrett in the
10 underlying case, from 2012 to 2013 FPL will lose the benefit of accruing \$367
11 million of non-cash surplus depreciation amortization. It is no coincidence that
12 this amount is very close to the \$378 million increase agreed to in the Proposed
13 Settlement Agreement. Absent a rate increase of approximately this magnitude
14 there is simply no way to avoid FPL's earnings falling dramatically, to levels well
15 below reasonable or competitive ROEs.

16
17 These three observations provide strong support for a conclusion that the January
18 2013 base rate increase is reasonable given the facts and circumstances of FPL's
19 current position.

20 **Q. How does the Proposed Settlement Agreement help ensure that FPL will be**
21 **able to sustain continued investment?**

22 A. The Proposed Settlement Agreement preserves FPL's financial integrity and
23 supports FPL's existing strong financial position, which provides the

1 underpinning for its ability to sustain high levels of investment. As discussed
2 later in my testimony, taken in aggregate the Proposed Settlement Agreement is
3 likely to be broadly viewed by investors as balanced and constructive;
4 consequently, capital is likely to be available to FPL on competitive terms.

5 FPL's continued access to capital is critical because FPL is currently investing for
6 the long term benefit of its customers in amounts substantially in excess of
7 internally generated cash flow. FPL must sustain its investment to complete the
8 three major modernization projects. FPL must also sustain investment in its core
9 infrastructure, including continuation of its multi-year storm hardening initiative
10 and ongoing investment designed to enhance the reliability of its transmission and
11 distribution network as well as its generation fleet.

12 FPL today offers its customers service reliability among the best in the state and
13 nation. Superior reliability is only made possible with the help of sustained
14 investment. The Proposed Settlement Agreement therefore ensures a stable
15 framework that will support FPL's capital raising activities and thereby enable it
16 to sustain its substantial investment program.

17 **Q. How is the reduced uncertainty provided by the Proposed Settlement**
18 **Agreement a benefit to all parties?**

19 A. The reduced uncertainty with a four-year rate agreement benefits both customers
20 and investors. For customers, the Proposed Settlement Agreement establishes a
21 four-year period with reduced uncertainty; during the four year term, FPL would
22 not be permitted to seek another base rate increase except as expressly provided in
23 the Proposed Settlement Agreement. While this does not mean absolute certainty,

1 it nevertheless provides all customer classes a much better view of what they can
2 expect their rates and bills to be. Practical experience confirms that customers
3 value predictability and reductions in rate volatility. For investors, the four-year
4 term of the Proposed Settlement Agreement offers the prospect of a greater degree
5 of predictability around the level and variability of FPL's earned ROE, together
6 with reduced regulatory uncertainty. This is particularly valuable for investors
7 with a long-term outlook, who are the investors FPL most seeks to attract.

8
9 **Q. How does the Proposed Settlement Agreement promote administrative**
10 **efficiency?**

11 A. First, setting base rates for four years and incorporating three modernizations
12 avoids the need for multiple rate cases. As FPL witness Barrett discusses in his
13 testimony, each of these projects alone would, in the absence of rate relief, result
14 in reductions in earned ROE of more than 100 basis points, thus in all likelihood
15 necessitating additional, costly, and time-consuming base rate proceedings.
16 Second, as FPL witness Barrett also discusses in his testimony, the Proposed
17 Settlement Agreement includes the adoption of the GBRA mechanism previously
18 used in FPL's 2005 settlement agreement. This mechanism promotes
19 administrative efficiency by avoiding the need to revisit issues that have already
20 been addressed in a need petition. Additionally, the mechanism for recovery of
21 prudently incurred storm costs supports administrative efficiency but does not
22 sacrifice any oversight of the FPSC as to the prudence of storm restoration efforts.

1 **Q. How does the Proposed Settlement Agreement support continued investment**
2 **in Florida's economy?**

3 **A.** The Proposed Settlement Agreement supports continued investment in the state
4 both directly and indirectly. Directly, as discussed above, it will support FPL's
5 own capital investment program. As I noted in earlier testimony, FPL is in the
6 midst of the largest capital investment program in its history. This roughly \$9
7 billion of capital investment itself directly translates into positive impact on the
8 Florida economy and the creation of new employment. Moreover, FPL expects to
9 continue to invest additional capital through the four-year term of the Agreement.
10 FPL was the largest private investor in the state in 2010 and will likely remain
11 among the largest throughout the period of the Agreement. No other private
12 investor in Florida that I am aware of has an overall investment program of the
13 same magnitude.

14
15 The Proposed Settlement Agreement also supports continued investment
16 indirectly through its impact on rates and reliability. Efficient, reliable electric
17 service is an important underpinning of a modern economy, and FPL's
18 commercial and industrial customers depend in part for their own competitiveness
19 on the efficiency and reliability of FPL's service. When viewed in the context of
20 the southeastern United States - the economic region within which many of FPL's
21 commercial and industrial customers compete - FPL's residential rates are already
22 extremely competitive and are highly likely to remain so under the Proposed
23 Settlement Agreement. The rates proposed for commercial and industrial

1 customers under the Proposed Settlement Agreement, including the impact of
2 CILC and Commercial/Industrial Demand Reduction (“CDR”) rider credits, will
3 improve the relative competitiveness of FPL’s commercial and industrial
4 customers. All other things equal, this will help them to grow their businesses in
5 a way that benefits Florida relative to other southeastern states. In turn, this will
6 support investment and employment within Florida, benefiting all Floridians.

7
8 **Q. How does the Proposed Settlement Agreement balance customer and**
9 **investor interests?**

10 A. As discussed above, the Proposed Settlement Agreement serves customers
11 interests through its support, both direct (as expressed through its impact on base
12 rates and hence bills) and indirect (through the support for sustained investment
13 levels), of the benefits FPL’s customers currently enjoy: the lowest typical
14 residential bills in the state; the best service reliability among the Investor Owned
15 Utilities (“IOU”), and excellent, award winning customer service. Relative to
16 FPL’s original request it improves affordability for every major customer class.
17 At the same time, it offers investors the prospect of earned ROEs in the range of
18 9.7% - 11.7%, which although lower than originally requested in FPL’s March
19 2012 filing and supported in part by the amortization of non-cash credits to
20 expense, will nevertheless make FPL more competitive with other utilities in the
21 broader southeast region with which it is commonly compared to by investors.

1 **Q. Does the Proposed Settlement Agreement change the risk profile of FPL as**
2 **viewed by investors?**

3 A. Yes. The effect of locking-in the base rate framework for the next four years is to
4 accentuate investors' exposure to potential increases in inflation and interest rates,
5 both of which are widely anticipated at some point within the term of the
6 Proposed Settlement Agreement. It is commonly accepted among professional
7 investors that today's interest rate environment is distorted by Federal Reserve
8 Bank actions designed to stimulate the economy, and this makes it difficult to rely
9 on today's yield curve for investment horizons exceeding a few months to a year.
10 However, the Proposed Settlement Agreement also provides investors with clarity
11 around the likely determinants of future base rates and will reduce perceptions of
12 regulatory risk to some degree. Overall, the agreement provides a reasonable
13 balance that FPL believes will be adequate from the standpoint of meeting its
14 obligations to investors.

15

16

V. INVESTOR REACTIONS

17

18 **Q. Have you had occasion to discuss the Proposed Settlement Agreement with**
19 **investors?**

20 A. Yes. Since the public announcement of the Proposed Settlement Agreement we
21 have attended three major investor conferences and have had numerous in-person
22 and telephonic conversations with major institutional investors. I have personally
23 met directly with representatives of approximately 50 large institutional investors.

1 **Q. How do FPL investors view the Proposed Settlement Agreement?**

2 A. Investors' views naturally vary. However, the majority of views expressed have
3 been consistent with the following quote from one of the most respected
4 investment analysts covering the U.S. utility sector:

5 "On balance, we believe the settlement is fair to both ratepayers and
6 shareholders, in that it allows for rate base growth at ROEs that may
7 look very reasonable over the 4-year plan." (Barclays, August, 16,
8 2012 NEE: Settlement Reached in Florida).

9 In addition, many investors have noted the consistency of the Proposed Settlement
10 Agreement's authorized ROE range with that contained in the Progress Energy
11 settlement agreement that was approved by the Commission on March 8, 2012.

12 **Q. How does the investment community view the ROE settlement level?**

13 A. In general, and combined with the greater predictability of earnings discussed
14 earlier and considering the four-year term of the agreement, the investment
15 community views the 10.7% ROE as reasonable under the circumstances and
16 commensurate with the risk level of FPL.

17 "We would again point to the fact that recent rate cases in the state
18 have allowed 10.25-10.5% ROEs, for smaller utilities with less risky
19 asset bases and locations, and therefore continue to expect a similar
20 outcome for FP&L." (Barclay's September 28, 2012, NEE: More
21 Testimony Required to Support FP&L Settlement)

1 **Q. Have investors noted the changes in the risk profile of FPL that you**
2 **described earlier?**

3 A. Yes. In my discussions with investors they have noted the greater degree of
4 certainty around critical items, such as rate recovery via the GBRA mechanism
5 for large generation projects previously approved by the FPSC, but they have also
6 expressed concern over the exposure that FPL would have to increases in inflation
7 and interest rates during the term of the agreement, both of which are widely
8 anticipated among professional investors.

9
10 However, a key and important feature to both FPL customers and investors is the
11 clarity provided by the four-year duration of the Proposed Settlement Agreement.
12 Without the Proposed Settlement Agreement, rate proceedings for the three
13 modernization projects are likely because each one would reduce FPL's earned
14 ROE by more than 100 basis points absent any rate relief. This would place
15 FPL's investors at a disadvantage.

16 **Q. Do investors continue to have concerns about the regulatory environment in**
17 **Florida?**

18 A. Yes. While there has been a generally positive response to the Proposed
19 Settlement Agreement, investors continue to express some concern over the
20 regulatory environment in Florida and are watching the outcome of FPL's rate
21 case very closely. The investment community is still seeking further affirmation
22 of what it currently views as a return to a constructive regulatory environment in
23 Florida.

1 "A constructive resolution of this case will likely be viewed
 2 favourably by investors. Given how adverse the ruling was in FPL's
 3 last rate case, we believe that some investors remain nervous and as
 4 a result, the shares continue to trade at a discount." (Atlantic
 5 Equities, October 2, 2012, NextEra Energy Inc, Rate case catalyst,
 6 reiterate overweight).

7
 8 **VI. THE ROLE OF PUBLIC COUNSEL**
 9

10 **Q. Should the Commission conclude that the Proposed Settlement Agreement is**
 11 **not in the public interest because the Office of Public Counsel opposes it?**

12 A. No. While FPL respects Office of Public Counsel ("OPC's") role in the rate case
 13 process, nothing in reason suggests that OPC's position should automatically
 14 determine whether or not a proposed settlement is in the public interest. As FPL
 15 witness Deason notes, in evaluating settlement agreements the FPSC is the arbiter
 16 of the public interest and must make its decision based on all the facts and
 17 circumstances. The Commission's role is to balance the interests of customers
 18 with the obligations owed to FPL's investors. Certainly FPL agrees that OPC is
 19 an important voice in the process; however, its opposition to the Proposed
 20 Settlement Agreement cannot be viewed as dispositive of the matter, any more
 21 than its position on any given issue in any proceeding must be accepted as
 22 equivalent to the public interest. Rather, the substance of OPC's objections to the

1 agreement must be considered in light of all the evidence submitted during the
2 base rate case proceedings.

3
4 This is particularly necessary in this instance where OPC has taken positions on
5 core issues of the underlying case – most notably with respect to allowed ROE
6 and capital structure – that clearly do not align with the public interest. OPC’s
7 litigation position did not seriously challenge FPL’s performance. Rather, OPC
8 challenged the very platform that allows FPL to deliver excellent performance
9 and value to its customers: its financial strength and integrity. Without repeating
10 all of the evidence adduced during the technical hearing, OPC’s recommendations
11 would strip the Company’s financial strength, disallow significant components of
12 the compensation of employees who deliver exceptional service, and set rates
13 based on the lowest allowed ROE for any utility in the country – even lower than
14 the current lowest value of 9.2%, awarded to a wires-only utility that was
15 explicitly penalized for poor performance to its customers. Such short-sighted
16 positions do not serve the public interest.

17
18 Further, if settlements are to remain an important element of the regulatory
19 process and if the Commission wishes to continue encouraging parties to reach
20 constructive resolutions, then no one intervenor can be given a veto power.
21 Granting any intervenor superior footing, even OPC, would adversely change the
22 regulatory environment by effectively discouraging utilities from reaching
23 agreements with other intervenors who are willing to negotiate and allowing one

1 intervenor to determine when, how, or whether any matter would be negotiated
2 for settlement. An effectual veto power of that nature would be contrary to the
3 public interest.

4 **Q. Given that FPL's co-signatories represent commercial and industrial**
5 **customers and given OPC's opposition, how can the FPSC be assured that**
6 **residential customers' interests are addressed in the Proposed Settlement**
7 **Agreement?**

8 A. Notwithstanding OPC's opposition and its claim to represent all customers'
9 interests, the FPSC can and should look to independent, objective evidence to
10 consider whether or not the Proposed Settlement Agreement fairly balances the
11 interests of *all* customer classes, including residential.

12 **Q. Please describe the independent evidence that the FPSC can look to.**

13 A. Substantial, undisputed evidence was provided during the underlying case to
14 show that FPL today delivers superior value to its residential customers, in the
15 form of low typical bills (indeed, the lowest in the state), strong reliability, and
16 excellent customer service. Nothing in the Proposed Settlement Agreement
17 changes these, and in fact the Proposed Settlement Agreement provides the means
18 to ensure the likely continuation of this performance. FPL's typical residential
19 bills will remain the lowest in the state, while the balanced treatment of ROE
20 means that FPL will have continued access to the capital necessary to invest to
21 sustain superior reliability and customer service. Moreover, FPL witness
22 DeRamus demonstrated that the impact on customer bills of granting FPL's full
23 base rate request was moderate, and the Proposed Settlement Agreement contains

1 a substantial *reduction* in the January 2013 request relative to the March 2012
 2 filed case. Accordingly, it is clear that FPL’s residential affordability, which is
 3 the best in the state today, will continue to be excellent and will not be materially
 4 reduced. In fact, it is difficult to understand how an agreement which helps
 5 ensure that the lowest typical residential bills in the state remain among the most
 6 affordable in the state for the period of the agreement and which helps ensure that
 7 the serving utility will have the resources to maintain and hopefully improve its
 8 reliability and customer service over the same period could not be considered to
 9 be in residential customers’ interests.

10
 11 **VII. CONCLUSION**

12
 13 **Q. Should the Commission approve the Proposed Settlement Agreement as**
 14 **consistent with the public interest?**

15 A. Yes. For all the reasons and benefits noted throughout my testimony and noted in
 16 the testimony of the other FPL witnesses, the Proposed Settlement Agreement is
 17 clearly in the public interest and should be approved by this Commission.

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

19 A. Yes.

1 BY MR. LITCHFIELD:

2 Q Have you prepared a summary of your direct
3 testimony?

4 A Yes, I have.

5 Q Would you please offer that at this time?

6 A Certainly.

7 Good morning, Commissioners, Chairman Brisé.
8 My testimony provides an overview of the proposed
9 settlement agreement and shows how it is in the public
10 interest.

11 While the specific terms of this particular
12 agreement are of course unique, the proposed settlement
13 agreement is entirely consistent with the long history
14 of settlements that have been approved in the past by
15 this Commission.

16 It comprehensively resolves all major issues
17 associated with a base rate proceeding. It represents a
18 series of interrelated compromises that independent
19 parties with differing interests freely arrived at. The
20 resulting compromises are different from the litigated
21 positions of the signatory parties, and it draws on
22 elements of other settlement agreements and includes
23 modifications to existing practices. In all these
24 respects it is highly consistent with past practice in
25 Florida.

1 Substantively, the proposed settlement
2 agreement provides the following. It contains a
3 substantially lower ROE and a substantially lower
4 January 2013 base rate increase than was reflected in
5 FPL's March filing. Proportionally, the January 2013
6 increase is lower than that contained in the recent
7 Progress Energy Florida rate settlement, even though
8 FPL's starting base rates are lower.

9 It accommodates the predictable rate impact of
10 the three major modernization projects by employing the
11 proven GBRA mechanism that was pioneered in FPL's 2005
12 rate agreement, avoiding the need to revisit issues that
13 have already been addressed in three extensive need
14 petitions.

15 It maintains the existing mechanism for the
16 recovery of prudently incurred storm costs, and it
17 modifies and updates the existing framework governing
18 the purchase and sales of generation fuel and related
19 assets. It provides a four-year term of predictability
20 for all parties covering all these substantive issues.

21 The proposed settlement agreement reasonably
22 balances the interests of all parties and provides for
23 the following outcomes. Clarity and substantially
24 reduced uncertainty around FPL's base rates for the next
25 four years, which is a benefit to all; a high degree of

1 confidence for all FPL's customers, including
2 residential customers, that they will continue to enjoy
3 among the lowest, if not the lowest bills in the state.
4 While absolute certainty is impossible for subsequent
5 years, FPL's typical residential bills will continue to
6 be the lowest in the state in 2013.

7 Maintenance of FPL's strong financial position
8 and continued access to capital to enable the company to
9 support its ongoing investments in reliability and
10 customer service; a fair return for investors, given the
11 overall risk profile they will face; improved
12 administrative efficiency by obviating the predictable
13 need for multiple base rate cases over the coming years;
14 and finally, support for much needed economic
15 development in the state, both directly and indirectly.

16 For all these reasons, I believe it is in the
17 public interest and should be approved.

18 Finally, my testimony addresses the issue of
19 OPC's opposition to the proposed settlement agreement.
20 Logically the mere fact of OPC's support or opposition
21 cannot be sufficient to conclude that any agreement is
22 or is not in the public interest. While OPC's views are
23 important, the Commission must look beyond their
24 opposition and consider the objective independent
25 evidence that is relevant.

1 In this instance, the resulting low bills for
2 all customers, including residential customers, who will
3 continue to enjoy the lowest typical bills in the state
4 in 2013 and likely beyond, combined with the knowledge
5 that FPL will continue to enjoy access to the capital
6 needed to support its reliability, which is the best
7 among the IOUs, and its excellent customer service, are
8 important objective indicators that approval of this
9 agreement is in the public interest.

10 Thank you.

11 **MR. LITCHFIELD:** Mr. Dewhurst is available for
12 cross-examination.

13 **CHAIRMAN BRISÉ:** All right. Thank you.

14 Mr. McGlothlin?

15 **CROSS-EXAMINATION**

16 **BY MR. McGLOTHLIN:**

17 **Q** Hello, Mr. Dewhurst.

18 **A** Good morning.

19 **Q** In your prefiled testimony you refer to three
20 different documents, reports from Wall Street entities,
21 do you not? Two from Barclays and one from Atlantic
22 Equities?

23 **A** Yes. If you would remind me of the exact page
24 number.

25 **Q** Well, I'm going to ask -- with some help I'm

1 going to distribute the, the documents themselves. One
2 appears on page 19.

3 **A** Thank you.

4 **Q** Two in fact. And the others on page 21.

5 **CHAIRMAN BRISÉ:** Mr. McGlothlin, do you want
6 to have these marked?

7 **MR. McGLOTHLIN:** Yes, please.

8 **CHAIRMAN BRISÉ:** All right. We're at 720.

9 (Exhibit 720 marked for identification.)

10 **BY MR. McGLOTHLIN:**

11 **Q** Mr. Dewhurst, we provided you a document
12 that's been marked as Exhibit 720. Do you recognize
13 these three documents that have been put together as a
14 composite exhibit as the three documents that you cite
15 in your prefiled testimony?

16 **A** Yes. These appear to be those documents.

17 **Q** The first one in this composite is one from
18 Atlantic Equities. If you would turn to the page that
19 has the Bates stamp 305033. It's also page 3 of the
20 Atlantic Equities document.

21 **A** Yes, I'm there.

22 **Q** Under the caption Valuation Still Attractive,
23 would you read number 6, please?

24 **A** Yes. Just so everybody understands, this is
25 obviously an analyst's opinion affecting NextEra Energy,

1 so it includes FPL but it goes beyond FPL.

2 So the sixth item there is, business risk is
3 lower than average as regulated and long-term contracted
4 businesses represent approximately 85% of expected 2014
5 EBITDA, a higher than average proportion. Also
6 expectations for its deregulated subsidiaries have been
7 ratcheted down considerably. So obviously the business
8 risk is reflecting both major parts of our company.

9 Q And at page 21, when you cite this document,
10 there is the final parenthetical which ends with,
11 reiterate overweight. What does the term "overweight"
12 signify?

13 A I'm sorry. Which -- where are you?

14 Q Page 21, line 6.

15 A Okay. I'm sorry. The overweight term depends
16 on the specific brokerage company and the specific
17 analyst. All brokerage firms have some kind of rating
18 scheme.

19 Typically an overweight indicates that the
20 analyst at the time believes that, given where the
21 company is trading and given the analyst's view of the
22 outlook, it's an appropriate start for investors to add
23 to their holdings.

24 So typically there will be three. There will
25 be an overweight, a corresponding underweight, and

1 something in the middle, which is a hold.

2 So in this context this indicates that the
3 particular analyst, Nathan Judge in this case, who had
4 earlier in the year been very lukewarm on us, has come
5 to the conclusion that there's additional opportunity in
6 the stock, and that's --

7 Q And the next two documents are the Barclays
8 reports that you cite; correct?

9 A That's correct.

10 Q And each of these Barclays documents contains
11 a disclaimer. And if you would, turn to Bates stamp
12 305037.

13 A 037. Yes, I'm there.

14 Q In the middle of the page there's a paragraph
15 that begins, Barclays Capital Inc. and/or one. Would
16 you read that paragraph?

17 A Yes. This is a standard disclosure. Barclays
18 Capital Inc. and/or one of its affiliates does and seeks
19 to do business with companies covered in its research
20 reports. As a result, investors should be aware that
21 the firm may have a conflict of interest that could
22 affect the objectivity of this report.

23 Those conflict of interest statements are
24 pretty standard since 2001, 2002.

25 **MR. McGLOTHLIN:** Thank you, sir. That's all I

1 have.

2 **CHAIRMAN BRISÉ:** All right. Thank you.

3 Mr. Wright.

4 **MR. WRIGHT:** More good news, Mr. Chairman.

5 **CHAIRMAN BRISÉ:** Wow.

6 **MR. WRIGHT:** I have no questions for
7 Mr. Dewhurst this morning.

8 **CHAIRMAN BRISÉ:** Well, it is almost
9 Thanksgiving.

10 Mr. Saporito.

11 **MR. SAPORITO:** It's not Thanksgiving yet,
12 Mr. Chairman. I have some questions.

13 (Laughter.)

14 **CROSS-EXAMINATION**

15 **BY MR. SAPORITO:**

16 **Q** Good morning, Mr. Dewhurst.

17 **A** Good morning.

18 **Q** Or I guess good afternoon.

19 Okay. I'd like to question you about your
20 direct testimony at page 4, lines 1 through 6, where you
21 stated that the purpose of my testimony is to provide an
22 overview of the proposed settlement agreement and to
23 address the fifth issue identified by the Commission,
24 which is how the proposed settlement agreement is in the
25 public interest.

1 Did I get that right?

2 A Yes, you read that right.

3 Q Could you explain to the Commission your
4 understanding or belief as to what the term "public
5 interest" means?

6 A No, I'm not sure I can. I don't have a
7 general definition of the term "public interest." I
8 didn't attempt to create one, nor do I think one is
9 necessary. I tried to apply my basic commonsense
10 understanding of the term public interest to the facts
11 and circumstances of this particular situation. I used
12 other examples in the past as a guide and came to my own
13 conclusions.

14 In lines 4 through 6, I do indicate some of
15 the things that I think are important in the
16 determination of customer interest, that the proposed
17 settlement agreement appropriately benefits FPL's
18 customers and its investors and the State of Florida and
19 therefore is in the public interest.

20 Q I understand that. But the Commission is here
21 to learn from you, to gain information and understanding
22 about your testimony as it specifically relates to the
23 term "public interest." So all I'm asking you to do is,
24 since you're testifying with respect to what the
25 settlement means in terms of public interest, I'm asking

1 you just to describe to the Commission what you believe
2 public interest means to you.

3 **A** I believe I just answered that question.

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

5 **MR. SAPORITO:** He didn't answer it, Your
6 Honor. He just described the settlement agreement and
7 that certain aspects of why he thinks they apply to be
8 approved under public interest.

9 But that is not the question. The question is
10 him, as an individual, as a person, what does he, what
11 is his understanding of what that terms means, public
12 interest. Like what does the -- how does the color
13 yellow compare with the color black? Well, in my view I
14 think the color yellow is a brighter color. So all I'm
15 asking him is to say, well, what does public interest
16 mean to you, so that the Commission has the benefit of
17 how he, his thinking process was when he analyzed the
18 settlement agreement. That's why, that's specifically
19 what he said he was testifying about.

20 **CHAIRMAN BRISÉ:** Understood. I understand
21 your question. You posed a question and he answered the
22 question based upon what, within his purposes what he
23 may understand what it means.

24 **MR. SAPORITO:** Okay. Mr. Chairman. Thank
25 you. I'll move on.

1 **BY MR. SAPORITO:**

2 **Q** In your opinion, should the Commission
3 consider the settlement agreement as to whether it's
4 fair, just, and reasonable in deciding whether the
5 settlement agreement is in the public interest?

6 **A** No. I wouldn't say precisely that. I believe
7 that it is appropriate for the Commission and the
8 Commission should consider whether the rates that result
9 from the settlement agreement meet the fair, just, and
10 reasonable standard. I agree with ex-Commissioner
11 Deason's remarks yesterday, that the public interest
12 concept goes beyond simply fair, just, and reasonable
13 rates.

14 But I do believe that fair, just, and
15 reasonable rates is one important factor that you should
16 consider, and I certainly believe the rates that come
17 out of the settlement agreement meet the fair, just, and
18 reasonable standard.

19 **Q** Now, I'd like to explore your prefiled direct
20 testimony at page 18 through 20, where you describe
21 investor reactions to the settlement agreement and the
22 regulatory environment in Florida. Now, did I
23 understand your testimony to include those areas?

24 **A** I certainly have testimony on investor
25 reactions, yes.

1 **Q** Is it true that your testimony in those pages
2 stems from three major investor conferences hosted by
3 Florida Power & Light?

4 **A** Yes and no. It includes three major investor
5 conferences. It goes substantially beyond those.

6 **Q** Okay. Thank you for that clarification.

7 Would you agree with me that your testimony
8 about these investor conferences includes discussions
9 about the ROE or the return on investment level, the
10 risk profile for FP&L, and the regulatory environment in
11 Florida?

12 **A** Yes. Certainly my discussions have included
13 those subjects and many others related to the settlement
14 agreement and the environment for FPL in Florida.

15 **Q** Your prefiled testimony about the FP&L
16 investor conference also included quoted statements by
17 one or more analysts for well-known investment firms; is
18 that correct?

19 **A** Yeah. I need to clarify my response to the
20 earlier question. I may have misheard. The three major
21 investor conferences were not hosted by FPL and NextEra.
22 We attended conferences that were put on by analysts.

23 **Q** All right. Thank you for that clarification.

24 **A** I'm sorry. Could you repeat the second part
25 of the question?

1 Q Absolutely. The next question is your
2 prefiled testimony about the FP&L investor conference
3 also included quoted statements by one or more analysts
4 for well-known investment firms; is that correct?

5 A Yes. Those were taken -- quoted from the
6 documents that Mr. McGlothlin had.

7 Q In fact, page 19, lines 5 through 8, you
8 quoted an analyst with Barclays who purportedly stated
9 that, quote, on balance, we believe the settlement is
10 fair to both ratepayers and shareholders in that it
11 allows for rate base growth at ROEs that may look very
12 reasonable over the four-year plan, unquote.

13 Did I get that right?

14 A Yes, you read that correctly.

15 Q And at page 21, lines through 6, you also
16 quoted an analyst with Atlantic Equities who purportedly
17 stated that, quote, a constructive resolution of this
18 case will likely be viewed favorably by investors.
19 Given how adverse the ruling was in FPL's last rate
20 case, we believe that some investors remain nervous and
21 as a result, the shares continue to trade at a discount.

22 Did I get that right?

23 A Yes, you read that correctly.

24 Q Well, before I get into the next question, you
25 know, would you agree with me that the general stock

1 market in the United States has, has decreased recently
2 dramatically by at least 7% or more, mainly due to the
3 so-called fiscal cliff that the Congress is grappling
4 with right now?

5 **A** No, I wouldn't. I would not agree with your
6 characterization of dramatic.

7 **Q** Well, how would you characterize the fall?

8 **A** I think there has been a decline in most of
9 the major U.S. stock market indices over the last few
10 weeks since the election period. I don't have the exact
11 amounts, you know, ready to add.

12 **Q** And would you agree with me that NextEra
13 Energy, which is Florida Power & Light's parent company,
14 that stock fell in price, the share price, along with
15 other companies in the stock market?

16 **A** It depends what you mean by "along with." So
17 let's be precise. Our share price has declined since
18 the -- let's take the election as a point in time. It
19 has declined somewhat less proportionately to the Dow
20 Jones ***Utility Index, which is one of the indices that
21 we compare against.

22 **Q** And would you agree with me that the main
23 reason that the shares of NextEra Energy declined, using
24 your reference point, after the election results, the
25 presidential election results were determined is

1 because, under the Obama administration, the way the
2 government has the tax structure, there may be a time in
3 early next year where the dividends that FP&L pays to
4 its shareholders are taxed at a substantially higher
5 rate, and that's the reason the stock is selling off.
6 Is that not true?

7 **A** No, I would not agree with you.

8 **Q** Are you aware that one or more analysts in
9 major investment firms around the United States have
10 that opinion?

11 **A** Could you show me the documents?

12 **Q** No, but I'll try to make them available to the
13 Commission through my post-hearing brief.

14 Okay. Next question. Would you agree with me
15 that one of the most important measure of a company's
16 performance to investors is the company's projected
17 forward-looking earnings?

18 **A** I'm sorry. Could you repeat the question?

19 **Q** Absolutely. Would you agree with me that one
20 of the most important measures of a company's
21 performance, such as FP&L, to investors is the company's
22 projected forward-looking earnings?

23 **A** No, I would not agree with that. To me, the
24 term "performance" generally connotes something that has
25 happened. When we discuss our performance with

1 investors, we're typically talking about what has
2 happened. What you're talking about are expectations of
3 the future.

4 Q Well, isn't it true that Florida Power & Light
5 Company and NextEra Energy, that, on a quarterly basis,
6 the company officers go public and actually hold news
7 conferences and they talk about earnings and what their
8 expectations are with respect to the performance of the
9 company by talking about forward-looking earnings; isn't
10 that true?

11 CHAIRMAN BRISÉ: Mr. Saporito, before you,
12 before you move forward, I don't know if Commissioner
13 Graham has a question.

14 COMMISSIONER GRAHAM: Actually I have more of
15 a point of order. This witness is here for if this
16 settlement is in the public interest, and I see us going
17 down a path that is so far away from the public
18 interest. I guess if we can just get to where we're
19 talking specifically about this settlement and the
20 public interest, and some of this other stuff, talking
21 about the election and the decline in the stock market
22 and that sort of stuff, is just going way down too deep
23 in the woods.

24 MR. LITCHFIELD: I support Commissioner
25 Graham's objection.

1 **MR. SAPORITO:** I'll, I'll move, move a little
2 ahead here, Mr. Chairman.

3 **BY MR. SAPORITO:**

4 **Q** Well, you know, you're testifying here today
5 about the settlement agreement and, and why the
6 Commission should adopt it, because in your view it's
7 going to benefit the customers of FPL, and then you were
8 asked questions by the attorney for OPC about these
9 analyst reports and whatnot.

10 And so I'm asking you questions about earnings
11 because I think it's important for you to give input to
12 this Commission about what you think in your opinion,
13 with consideration of your high level opinion --
14 position with the company, what you believe FPL's future
15 earnings would be during the context of the settlement
16 agreement in the years 2014, 2015, and 2016. Could you
17 do that for the Commission?

18 **COMMISSIONER GRAHAM:** Mr. Chairman, point of
19 order again. Once again, we're talking about Florida
20 Power & Light and what their customer -- what their
21 stockholders are making and not the public interest.

22 **MR. SAPORITO:** Mr. Chairman, I'm not talking
23 about stockholders at this point. I mean, the
24 settlement agreement is locking in certain rates of
25 return, certain --

1 **CHAIRMAN BRISÉ:** Mr. Saporito, let me help you
2 out. Ask a question. You don't need to provide a
3 preamble for the question.

4 **MR. SAPORITO:** I was just trying to lay the
5 foundation, Mr. Chairman.

6 **CHAIRMAN BRISÉ:** Just ask your question.

7 **MR. LITCHFIELD:** Mr. Chairman, I mean, if you
8 could as a point of departure point, point Mr. Dewhurst
9 to where in his testimony he's asking the witness to
10 focus, that might be helpful for, for Mr. Saporito and
11 all involved.

12 **CHAIRMAN BRISÉ:** Okay.

13 **BY MR. SAPORITO:**

14 **Q** Mr. Dewhurst, where in your testimony, in your
15 prefiled testimony for this Commission, did you address
16 or express an opinion of what FPL's future earnings
17 would be during the context of the settlement agreement?

18 **A** I did not.

19 **Q** Thank you. And could you tell me how the
20 Commission will be able to arrive at a determination
21 whether or not the settlement agreement is in the public
22 interest without that information?

23 **A** Oh, yes, absolutely. The settlement agreement
24 is clear on its face that it includes an authorized
25 return on equity of 10.7, plus or minus 100-basis-point

1 band, and so the Commission can have a high degree of
2 certainty that, under most states of the world in the
3 future, FPL's ROE will remain within that band.

4 Q The settlement agreement contains a term which
5 requires the Commission to either approve or reject a
6 settlement agreement, inclusive of all the terms and
7 conditions contained in that document; is that correct?

8 A Yes. That's typical for these settlement
9 agreements.

10 Q In your opinion, can you -- can the Commission
11 cherry-pick items from the settlement agreement that
12 they like and place them back into FPL's original rate
13 case in this docket?

14 A Well, I would be hesitant to say that -- to
15 tell the Commission that they can't do anything. I'm
16 not sure -- in fact, I'm quite sure it would not be
17 wise, both as a specific in this instance and as a
18 general principle.

19 Obviously if parties know that agreements that
20 they may freely enter into may be subject to, to use
21 your term, cherry picking, then it's going to completely
22 color the nature of future negotiations in a way that I
23 would submit will not be good for the long-term
24 interests of the state.

25 Q Mr. Dewhurst, you know, excuse me if this

1 question was asked, because I don't quite frankly
2 recall, but you did read the settlement agreement; true?

3 **A** I have read the settlement agreement, yes.

4 **Q** And as an individual and as an employee of the
5 company, are you comfortable that, that the settlement
6 agreement is in the best interest of FPL customers and
7 its shareholders?

8 **A** Yes. I believe this is a reasonable balance
9 of the interests concerned, given all the facts and
10 circumstances of the case. You never get everything
11 that you want in negotiations. I'm sure our
12 co-signatories wish that they could have cut a slightly
13 better deal. I know we wish we could have cut a
14 slightly better deal. But that's the nature of
15 settlement agreements; it's a fair and balanced view.
16 So, yes, I'm very comfortable with that.

17 **Q** And my final question to you would be then,
18 could you please explain to this entire Commission why,
19 if you're so confident in the settlement agreement and
20 so comfortable with it, that in August of 2012 you sold
21 200,000 shares of the company's stock?

22 **MR. LITCHFIELD:** I'll object.

23 **CHAIRMAN BRISÉ:** That's beyond the scope of,
24 of his testimony.

25 **MR. SAPORITO:** Thank you, Mr. Chairman.

1 That's all I have.

2 Thank you, Mr. Dewhurst.

3 **CHAIRMAN BRISÉ:** All right.

4 Mr. Garner.

5 **CROSS-EXAMINATION**

6 **BY MR. GARNER:**

7 **Q** Good morning, Mr. Dewhurst.

8 **A** Good morning.

9 **Q** In your, in your opening summary of your
10 testimony, you talked about the settlement agreement
11 being in the public interest in part because it provides
12 clarity and certainty, did you not?

13 **A** Yes. I'm not sure those are the precise
14 words, but I can look back. I think they were clarity
15 and substantially reduced uncertainty were the actual
16 terms I used.

17 **Q** Thank you. Would part of that clarity and
18 certainty be the, the four-year period wherein the
19 company will not seek additional base rate relief
20 outside of the GBRA mechanisms, but also that other
21 parties who have signed the agreement will also agree to
22 refrain from seeking decreases in FPL's rates or, or
23 other sorts of actions that they might have otherwise
24 been able to take in that period?

25 **A** If I'm understanding your question, I think

1 broadly speaking the answer is yes. It gives clarity
2 around the base rate component to all parties involved.
3 So it prescribes the conditions under which base rate --
4 parties on either side may come to the Commission to
5 seek a change in base rates.

6 Within the reasonable state of uncertainty
7 that we have about the future, I think it locks things
8 in on the base rate side about as well as you can hope
9 to do.

10 Q Are you specifically familiar with the
11 provisions in the settlement agreement that place
12 limitations on, on the parties in terms of what they can
13 bring before the Commission?

14 A I would have to review the specific provisions
15 there.

16 Q Do you happen to have it available?

17 A I do.

18 Q Okay.

19 A Do you have a reference that you would like me
20 to --

21 Q I apologize for this. It's a question that I
22 didn't prepare in advance, and it occurred to me to ask
23 it while others were, were doing their examinations.
24 And so I don't have the provision in front of me, and I
25 would like, if possible, for you to, to locate and

1 identify the provision in the settlement agreement that
2 does place those restrictions on, on the parties. If,
3 if that's --

4 **MR. LITCHFIELD:** Mr. Chairman, that's a rather
5 broad request in a several multipage agreement that
6 counsel is really not prepared himself to discuss.

7 **MR. GARNER:** Okay. I will, I'll cut to the
8 chase then.

9 **BY MR. GARNER:**

10 **Q** As, as a non-signatory, the Office of Public
11 Counsel, the Retail Federation, and any, anyone else for
12 that matter I suppose who's not a signatory wouldn't be
13 bound by those provisions that are contained in the
14 settlement agreement, and would therefore be able to
15 come before the Commission with -- if they, if they
16 viewed there to be some issue with, with the rates that
17 are being charged, they could come before the Commission
18 and attempt to have that addressed. Is that your
19 understanding?

20 **A** Well, I'm not by any means an expert in
21 regulatory law, but it's my general understanding that
22 if the Commission were to approve the settlement
23 agreement, then all the provisions of that agreement
24 would go into effect.

25 Any non-signatory party -- this is my

1 understanding; again, I'm not a lawyer -- would retain
2 all their rights to petition the Commission for whatever
3 relief they thought was appropriate, given the facts and
4 circumstances at the time. I assume that they would do
5 that in view, in full view of the Commission's decision
6 and whatever reasoning was contained in the order
7 approving the settlement.

8 Q Thank you. Earlier in this proceeding,
9 Witness Deason presented his view that the, the
10 Commission typically provides deference to settlement
11 agreements. Do you recall that; are you familiar with
12 that?

13 A I think -- I do believe I recall the term
14 "deference" being used.

15 Q Do you agree with that?

16 A As a statement of history?

17 Q Yes.

18 A It's my understanding Commissioner Deason is a
19 much better historian on this than I am.

20 Q I understand. In light of that, if, if, if
21 the Office of Public Counsel, for whatever reason, let's
22 assume that it's, it's, it's a substantially good
23 reason, decides to come before the Commission to, to
24 challenge some aspect of FP&L's rates or to seek a
25 reduction or, or something like that that they might

1 have otherwise been precluded from doing if they were a
2 signatory, how would the Commission in your view be --
3 how should the Commission view that in light of the
4 deference that's historically been shown to, to the
5 settlement agreements?

6 **MR. LITCHFIELD:** Mr. Chairman, before -- and
7 perhaps the witness will answer, but before he does, may
8 I ask counsel to point to Mr. Dewhurst's testimony as to
9 where he discusses the issue of deference or whether he
10 proposes to cross-examine Mr. Dewhurst with regard to
11 ex-Commissioner Deason's testimony? It seems like this
12 question would have been more appropriate to, to
13 Mr. Deason.

14 **MR. GARNER:** I agree that it would have been
15 appropriate to, to put before Commissioner Deason, and I
16 wish I had. But I also believe that it's appropriate
17 for this witness.

18 **CHAIRMAN BRISÉ:** He'll be back on rebuttal.

19 **MR. GARNER:** Pardon?

20 **CHAIRMAN BRISÉ:** Commissioner Deason -- I
21 mean, Mr. Deason will be back on rebuttal.

22 **MR. GARNER:** His rebuttal testimony didn't
23 really go directly to this point. And I do believe that
24 Mr. Dewhurst has spoken to the, the agreement being in
25 the public interest because of the clarity and the

1 reduced level of uncertainty that would be provided, and
2 that I'm just exploring whether or not there might be
3 some level of uncertainty or perhaps lack of clarity in
4 regard to how various parties are to be treated
5 vis-a-vis the settlement agreement in the future.

6 **MR. LITCHFIELD:** FPL won't oppose that
7 question being put to Mr. Deason, in spite of the fact
8 that it may not be in his rebuttal.

9 **MR. GARNER:** If that's, if that's the position
10 of Mr. Litchfield, then I will save that for Mr. Deason.
11 Thank you.

12 **CHAIRMAN BRISÉ:** All right. That works.
13 That's all you have?

14 **MR. GARNER:** That's all I have.

15 **CHAIRMAN BRISÉ:** Okay.

16 Mr. Hendricks?

17 **MR. HENDRICKS:** Yes. Just a few things.

18 **THE WITNESS:** Good morning.

19 **MR. HENDRICKS:** I pushed the wrong button.
20 Perhaps people would like it better that way, but
21 anyway.

22 **CROSS-EXAMINATION**

23 **BY MR. HENDRICKS:**

24 Q I wanted to ask you just a couple of things.
25 If we could turn to page 11 of your, your direct

1 testimony, please. And looking down at lines 16 through
2 18, you characterize the proposed settlement agreement
3 as providing a roughly 25% reduction in FPL's
4 January 2013 base rate increase request. Is that
5 correct?

6 **A** Yes, that's correct. Relative to the March
7 filing, the settled increase of 378 is roughly 25%
8 lower.

9 **Q** Right. Is -- that refers to the, the January
10 base rate increase request that you're referring to here
11 is the base rate increase and the, the increase for the
12 performance adder as well. Is that correct?

13 **A** No. I mean, the settlement agreement is what
14 it is. It contains within it a 378 million increase in
15 base rates effective January 1, 2013. It contains
16 within it a 10.7% authorized ROE, et cetera, et cetera.
17 It's a totality. How it's made up, I suspect every one
18 of us who is involved with it has a slightly different
19 idea of how it was made up, but it speaks for itself.
20 It is the totality.

21 **Q** Maybe I misspoke in asking the question.

22 I was trying to ask you if the, if the
23 original January 2013 base rate increase request that
24 you're using as a baseline to measure the 25% includes
25 the performance adder.

1 **A** Yes, that's correct.

2 **Q** Okay. That's, that was the clarification.
3 Because if you remove the performance adder, the amount
4 of the savings comes down to 99.5 million approximately,
5 which is more like a 20% reduction. And I guess it
6 wasn't clear from the wording in this that it included
7 the performance adder.

8 **CHAIRMAN BRISÉ:** Is that a question?

9 **MR. HENDRICKS:** What?

10 **CHAIRMAN BRISÉ:** Is that a question?

11 **MR. HENDRICKS:** I'm sorry. I was just
12 explaining the question. I'm not supposed to do that.

13 (Laughter.)

14 **BY MR. HENDRICKS:**

15 **Q** Let me step over and look at page 21, please.

16 **A** Yes, I'm there.

17 **Q** Okay. If we could look down to lines 14
18 through -- excuse me -- 14 through 18.

19 **A** Yes.

20 **Q** And here you're referring to the comments of
21 Witness Deason -- I assume you're endorsing them -- and
22 characterize the Florida Public Service Commission as
23 the arbiter of the public interest. Is that correct?

24 **A** Yes. I believe that in the context of
25 evaluating a settlement agreement it is the Public

1 Service Commission's role to make the final judgment as
2 to whether or not it is in the public interest. I don't
3 believe it is Office of Public Counsel's role to make
4 that judgment.

5 Q You go on to say, in the second part of that,
6 that the Commission's role is to balance the interests
7 of customers with the obligations owed to FPL's
8 investors. Since I've noticed you use language pretty
9 carefully, what is the intent of referring to interests
10 of customers versus obligations owed to investors,
11 rather than saying interests of investors?

12 A I'm sure I could have chosen slightly
13 different terms here. The interests of both. Maybe I
14 chose not to use, repeat the word interests. It's
15 specifically with obligations owed to FPL investors, I'm
16 referring essentially to the whole Bluefield standard.

17 Q Okay. Thank you. If we could just step over
18 to page 22, I believe it's lines 4 through 6. You have
19 to refer back a little bit to some of the previous
20 verbiage to understand it.

21 Here you're talking about the, basically in
22 judging the substance of OPC's objections, they should
23 be considered in the light of all evidence submitted
24 during the hearing, and go on to say that in different,
25 4 through 6, this is particularly necessary when OPC has

1 taken positions on issues, issues of the underlying
2 case, most notably with respect to allowed ROE and
3 capital structure that clearly do not align with the
4 public interest.

5 What -- so could you elaborate a little on
6 what you're suggesting there?

7 **A** Yes, I do in the, in the remainder of the
8 paragraph. But just so everybody is grounded, as you
9 point out, you're jumping into the middle of a response
10 to a question.

11 The core of the response is to say that it is
12 not enough simply for OPC to assert opposition to either
13 the settlement agreement in total or any specific issue.
14 I believe the Commission must look to objective evidence
15 on those issues.

16 And I believe it's particularly important
17 when, in my judgment, it is my testimony before you,
18 that positions that OPC has taken on core underlying
19 issues are extreme and would not be in the public
20 interest. And I then go on to characterize that,
21 including the significant reduction that OPC has
22 proposed in the financial integrity of the company, the
23 ROE recommendation that OPC made, which would be below
24 the lowest awarded ROE to any utility in the country. I
25 do not believe that that combination would be in any way

1 in the public interest. That is my testimony.

2 Q Let me ask you in light of that response, is
3 it not the case that the, the other parties to the
4 settlement agreement who are supporting it, and you're
5 relying on their, their support, had similar positions
6 to OPC's in the earlier part of this, of the
7 proceedings?

8 A On many issues, yes.

9 Q On the particular ones we're talking about
10 here, ROE and capital structure.

11 A Yes. The positions varied, but in general
12 they were closer to OPC's position than they were to
13 ours, and my judgment on that remains the same. That's
14 why it's essentially --

15 Q Then should the Commission take into account
16 that fact, just as they were taken into account for OPC
17 in evaluating their support for the, for this settlement
18 agreement, as opposed to OPC's opposition to it?

19 A Yes, absolutely. The Commission should take
20 into account all the facts and circumstances, which
21 include all the testimony provided in the August
22 hearings, and certainly they should weigh very carefully
23 the respective views in the underlying technical case on
24 ROE and capital structure.

25 As I said, it's my testimony that the extreme

1 position, as I characterize it, taken by OPC would not
2 be in the public interest.

3 **MR. HENDRICKS:** Thank you. No more questions.

4 **CHAIRMAN BRISÉ:** All right. Thank you,
5 Mr. Hendricks.

6 **MR. YOUNG:** No questions.

7 **CHAIRMAN BRISÉ:** All right. Commissioners?
8 All right. Commissioner Balbis.

9 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
10 Thank you, Mr. Dewhurst. Good to see you
11 again. I just have one or two questions concerning this
12 exhibit, and I don't have the number on it, but it's the
13 Atlantic Equities document.

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

15 **COMMISSIONER BALBIS:** On page 2 of the
16 Atlantic Equities report, they go through some reasons,
17 quote, why we remain cautiously optimistic about this
18 rate case. And the last sentence in bullet number
19 2 states, It appears that the newly comprised Commission
20 has been much fairer, focusing on the details and the
21 application of the existing law.

22 In your, in your opinion, if we go through the
23 rate case process, which I believe is scheduled for
24 mid-January, is there anything that leads you to believe
25 that this Commission will not be fair to FPL or the

1 customers?

2 **THE WITNESS:** Me personally?

3 **COMMISSIONER BALBIS:** Yes.

4 **THE WITNESS:** No.

5 **COMMISSIONER BALBIS:** And have you reviewed
6 our recent decisions of us five Commissioners on the
7 Commission for Gulf Power and the settlement agreement
8 with Progress Energy?

9 **THE WITNESS:** Yes. I definitely reviewed the
10 Progress Energy settlement. I haven't reviewed the
11 detailed reasoning in the orders in either case.

12 **COMMISSIONER BALBIS:** Okay. But again,
13 there's nothing that leads you to believe that going
14 through all of the issues and deciding on the merits of
15 this, each of those issues, that this Commission will
16 not continue to be fair?

17 **THE WITNESS:** No. I believe that we as a
18 company have every reason to expect that this Commission
19 will examine all the issues fairly and objectively as
20 best they can.

21 **COMMISSIONER BALBIS:** Okay. And do you
22 recall -- I believe you and I had a discussion during
23 the hearing for the last rate case about actual revenue
24 versus theoretical depreciation reserve. Do you recall
25 that?

1 **THE WITNESS:** Not for the last rate case. We
2 may have had a discussion in August.

3 **COMMISSIONER BALBIS:** In August in the hearing
4 for the current rate case. And I believe you indicated
5 that, and correct me if I'm wrong, that you would rather
6 have actual revenue versus a theoretical amount, or
7 something to that effect. Do you recall that?

8 **THE WITNESS:** Yes. Other things equal, real
9 cash earnings are clearly more valuable than non-cash
10 earnings. Every company has some mix. It's not an
11 absolute, but as a general rule, yes.

12 **COMMISSIONER BALBIS:** So wouldn't another
13 positive outcome of this process, you know, as an
14 alternative to the settlement agreement, going through
15 the rate case process, deciding on each of the
16 individual issues, determining what is the appropriate
17 amount of actual cash revenue needs to go to FPL to
18 continue the good reliability and service you're
19 providing, isn't that another positive outcome?

20 **THE WITNESS:** Potentially, yes. It obviously
21 depends upon the specific nature of the outcome.

22 Not to reopen old wounds, but the outcome in
23 2010 was the Commission's decision to require us to
24 amortize surplus depreciation in an accelerated fashion.

25 I believed then, I continue to believe, that

1 that was not the best decision, and it certainly
2 resulted in very substantial non-cash earnings
3 subsequently. So I think it does depend on the outcome.
4 But in principle it could be, yes.

5 **COMMISSIONER BALBIS:** Okay. Thank you.

6 **CHAIRMAN BRISÉ:** Commissioner Brown.

7 **COMMISSIONER BROWN:** Thank you.

8 Mr. Dewhurst, I just want your opinion. I
9 kind of asked this question before. We sat through two
10 weeks of a long rate case, heard from a lot of different
11 witnesses. But the settlement agreement focuses a lot
12 on economic development and job creation, and I noticed
13 that more so than the rate case itself focused on.

14 What other benefits do you ***foresee
15 settlement achieves with respect to each customer group
16 that was not or is not contemplated by the rate case?

17 **THE WITNESS:** Commissioner, I'm not sure I'm
18 following your question exactly. The customer groups
19 that -- so you're looking for what are the benefits
20 associated with the settlement agreement that go beyond
21 factors considered in the underlying technical case?

22 **COMMISSIONER BROWN:** Yes. In your opinion.

23 **THE WITNESS:** Well, I -- yeah. I think they
24 fundamentally -- the core of them, the economic ones,
25 all relate to the post 2013 period, the reduction of

1 uncertainty and the clarity around that. And that is
2 true for all customer classes, residential included.
3 That to me is the core benefit of this.

4 I do believe very firmly that there will be, I
5 would call them incidental benefits on the economic
6 development front. We will continue, I believe, to be
7 the largest investor in the state that has a direct role
8 in helping create economic activity and jobs.

9 Indirectly it will support it by maintaining
10 us having the best affordability of electric service in
11 the state, and that's good for the economy. But to me
12 the core of it is still the direct tangible rate --

13 **COMMISSIONER BROWN:** Rate stability.

14 **THE WITNESS:** -- benefits and stability. Yes.

15 **COMMISSIONER BROWN:** Okay. Thank you.

16 **CHAIRMAN BRISÉ:** Thank you. I have a couple
17 of questions for you, Mr. Dewhurst.

18 On page 19, you reference Barclays
19 September 28th, 2012, between pages -- I mean, between
20 lines 17 through 21, which says, we would gain -- we
21 would again point to the fact that recent cases in the
22 state have allowed 10.25 to 10.5 ROEs for smaller
23 utilities with less risky asset bases and locations, and
24 therefore continue to expect similar, a similar outcome
25 for FPL.

1 In your perspective, does that mean -- what
2 does a similar outcome mean?

3 **THE WITNESS:** The way I interpret this, which
4 to be fair goes beyond simply my reading, because I have
5 had direct conversations with this individual.

6 **CHAIRMAN BRISÉ:** Sure.

7 **THE WITNESS:** It's his way of saying that the
8 10.7% that's in the settlement agreement is in the
9 ballpark. It's not on the face of it unreasonable,
10 given other decisions that this Commission has made this
11 year with respect to other utilities, which is, again,
12 he's characterizing it as smaller with less risky asset
13 bases.

14 So I don't think he's making any numerical
15 judgment about, you know, if it got beyond X many basis
16 points, it would be out of line. It's in the context of
17 an evaluation of this was a report about the settlement
18 agreement and your decision to move forward with
19 additional testimony. So he's simply focusing on that
20 as being within the ballpark.

21 **CHAIRMAN BRISÉ:** Okay. So therefore in -- not
22 that the settlement rate could be changed, but that
23 number could have been different and still been within
24 the ballpark.

25 **THE WITNESS:** Yes.

1 **CHAIRMAN BRISÉ:** Okay. So it could have been
2 10.25 and still been within the ballpark.

3 **THE WITNESS:** Well, I wouldn't want to put
4 words into Dan's mouth on a specific number, but
5 somewhere -- yeah, again, he's just saying it's in the
6 range, so it's not totally out of the realm. Then
7 you've got, obviously you've got to look at the other
8 aspects --

9 **CHAIRMAN BRISÉ:** Understood.

10 **THE WITNESS:** -- of the settlement agreement,
11 et cetera, et cetera.

12 **CHAIRMAN BRISÉ:** Understood. Understood.

13 The second question I have, which goes to
14 something that Commissioner Balbis alluded to, if you'd
15 turn to page 20 and line 21, the investment community is
16 still seeking further affirmation of what is
17 currently -- what it currently views as a return to a
18 constructive regulatory environment in Florida.

19 So I suppose here we're talking about the
20 whole environment in Florida. Is there an implication
21 here that if the settlement agreement is not approved,
22 that that sort of sends a signal that Florida's
23 regulatory environment is risky?

24 **THE WITNESS:** Mr. Chairman, speaking from
25 self-interest, I would love to be able to tell you yes,

1 but the answer is no. I don't think that that is
2 necessarily the case. I think the answer is it would
3 depend upon the investment community's reading of the
4 logic and the decision-making by which the Commission
5 arrived at its decision.

6 So, I think -- well, I don't think, I know --
7 if you arbitrarily dismiss the petition, that will
8 clearly have a negative impact on many investors. If
9 you evaluate it reasonably, taking into account all the
10 facts and circumstances, and in your judgment you
11 conclude it's not in the public interest, and the
12 explanation for that is coherently articulated, I don't
13 think that that will by itself increase perceptions of
14 regulatory risk in Florida.

15 **CHAIRMAN BRISÉ:** Okay. So sort of following
16 that question up, considering that we've gone, we're
17 going through this process that explores the settlement,
18 we could have obviously taken the decision, made a
19 decision a long time ago one way or the other, so we've
20 taken this step to, to explore what the settlement
21 actually entails and take testimony and so forth.

22 Then if, if the settlement were to be denied,
23 then there's a second step. So I suppose the investment
24 community would probably wait 'til that second step to
25 make a judgment on the regulatory environment here in

1 Florida.

2 **THE WITNESS:** Generally, yes. Obviously
3 investors are making judgments every single day by the
4 actions they take. I can tell you that in my
5 discussions with investors, the decision to hold these
6 evidentiary hearings was, broadly speaking, positively
7 viewed. It indicated that you were willing seriously to
8 entertain and evaluate the settlement agreement.

9 Against that is the recognition that if you
10 choose to deny it and we revert back to the underlying
11 case, it will be more protracted than they originally
12 expected, probably.

13 **CHAIRMAN BRISÉ:** All right. But, but you
14 would agree with me that, that there would be a
15 recognition that there's a process --

16 **THE WITNESS:** Absolutely. Absolutely.

17 **CHAIRMAN BRISÉ:** -- and so, therefore, you
18 know, it's not an off-the-cuff decision. It's a
19 decision that would have gone through a process that I
20 guess whatever the decision would be, as you would, as
21 you stated, would be clearly stated in the order and so
22 forth.

23 **THE WITNESS:** I agree.

24 **CHAIRMAN BRISÉ:** Okay. Any further questions,
25 Commissioners?

1 All right. Redirect.

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

3 Just one or two perhaps.

4 REDIRECT EXAMINATION

5 BY MR. LITCHFIELD:

6 Q Mr. Dewhurst, you were asked about the
7 relative merits, if you will, between cash and non-cash
8 earnings. Do you recall those questions?

9 A Yes.

10 Q And you were also asked questions relative to
11 the settlement agreement being approved versus being
12 denied and moving through the process in which the, the
13 full litigated outcome of, of the case would be decided
14 by the Commission. Do you recall those questions?

15 A Yes.

16 Q How, how much non-cash earnings are embedded
17 in the 2013 test year upon which rates would be set if
18 the Commission were to move through the full litigated
19 outcome?

20 A I'm sorry. Could you repeat the question?

21 Q Yes.

22 A I want to make sure I'm getting it.

23 Q How much non-cash earnings are embedded in the
24 test year, in 2013, if the Commission were to deny the
25 settlement agreement and move forward with the fully

1 litigated --

2 **A** In the underlying case?

3 **Q** Yes.

4 **A** The core answer to the question is the
5 191 million of incremental surplus depreciation that's
6 baked into the test year that then goes away in 2014.

7 **Q** Okay. And then so what happens in 2014 with
8 regard to those earnings?

9 **A** Well, other things equal, there's a revenue
10 deficiency equivalent to the 191, or a decrease in
11 earnings equivalent to the after-tax impact of that. So
12 \$100 million.

13 **MR. LITCHFIELD:** Okay. Thank you. No
14 further.

15 **CHAIRMAN BRISÉ:** All right. Exhibits?

16 **MR. MCGLOTHLIN:** OPC moves Exhibit 720.

17 **CHAIRMAN BRISÉ:** All right. We will move
18 Exhibit 720 into the record, notwithstanding the
19 standing objection.

20 (Exhibit 720 admitted into the record.)

21 All right. Thank you, Mr. Dewhurst.

22 All right. OPC, call your first witness.

23 **MS. CHRISTENSEN:** Office of Public Counsel
24 recalls James Daniel to the stand.

25 Commissioner, for a point of order, we have an

1 errata sheet. We could hand it out now, before we start
2 the introduction.

3 **CHAIRMAN BRISÉ:** Sure.

4 **MS. CHRISTENSEN:** It might flow a little bit
5 easier, and we figure the exhibit corrections would be
6 easier to find if we went ahead and typed out the
7 corrections for that.

8 **CHAIRMAN BRISÉ:** All right.

9 **MS. CHRISTENSEN:** Are you ready to proceed?

10 **CHAIRMAN BRISÉ:** Has he been sworn in already?

11 **MS. CHRISTENSEN:** Mr. Daniel, have you been
12 sworn in?

13 **THE WITNESS:** I have not.

14 **MS. CHRISTENSEN:** I would ask that he be sworn
15 in at this time.

16 **CHAIRMAN BRISÉ:** Sure.

17 And if anyone else who is going to testify
18 today that has not been sworn in, if you could rise at
19 this time so we could swear you in.

20 (Witnesses collectively sworn.)

21 **CHAIRMAN BRISÉ:** All right. Thank you.

22 Whereupon,

23 **JAMES DANIEL**

24 was called as a witness on behalf of Citizens of the
25 State of Florida and, having been duly sworn, testified

1 as follows:

2 **DIRECT EXAMINATION**

3 **BY MS. CHRISTENSEN:**

4 Q Can you please state your name and business
5 address for the record, please.

6 A My name is James Daniel. My business address
7 is 919 Congress Avenue, Austin, Texas.

8 Q And did you cause to be filed prefiled direct
9 testimony consisting of 24 pages in this docket?

10 A I did.

11 Q And do you have any corrections to that
12 prefiled testimony?

13 A I do have a couple of corrections.

14 Q Can you please provide those corrections now?

15 A The first correction is on page 9, line 22.
16 The sentence that begins in the middle of that line, the
17 first two words that currently say "my chief" should be
18 changed to "another primary," so that it reads "another
19 primary concern."

20 Q Okay. Do you have any other corrections?

21 A The next correction is on page 15, on lines 13
22 and on lines 20, the numbers 47.65 million should be
23 47.31 million.

24 The next one is on page 20. On line 6, the
25 end of that sentence got chopped off. Before the

1 period, after the word "mechanism," there should be
2 inserted a comma and then the words "will be very
3 difficult," period.

4 Q Does that conclude the corrections that you
5 had to your prefiled testimony?

6 A On the prefiled testimony, those would be the
7 corrections. I do have an errata to my exhibit.

8 Q Okay. And we'll go through that when we get
9 to your exhibits.

10 If I were to ask you the same questions
11 contained in your prefiled testimony with the
12 corrections that you've made here today, would your
13 answers be the same?

14 A Yes.

15 Q And did you also cause to be attached to your
16 prefiled testimonies Exhibit JWD-1 and JWD-2?

17 A I did.

18 Q And do you have any corrections to those
19 exhibits?

20 A I do have a correction to Exhibit JWD-2.

21 Q Can you please explain that?

22 A Yes. The number that is shown on line 2,
23 column D, the formula that was in the spreadsheet
24 calculating that number was incorrect, so I have
25 corrected the formula. So that number would change, and

1 it does change a couple of other numbers on that line,
2 as well as the totals. It's a minor change. I would
3 add that the numbers that are on the corrected exhibit
4 for 2005 are now identical to the numbers that
5 Mr. Forrest uses on one of his rebuttal exhibit,
6 exhibits.

7 Q And with that correction, to the best of your
8 knowledge, are your exhibits correct and accurate?

9 A Yes. Yes, they are.

10 Q I would ask that you please summarize your
11 direct prefiled testimony.

12 A My testimony addresses the expansion of the
13 current incentive, incentive mechanism that is a
14 provision of the signatory's August 15th document, which
15 FPL calls its asset optimization program. This
16 provision is flawed and unreasonable for the following
17 technical and procedural reasons, on which I elaborate
18 in my prefiled testimony.

19 First, the proposed incentive mechanism is too
20 vague. FPL has not adequately supported and the
21 Commission cannot test in this proceeding the basis for
22 and reasonableness of the proposed thresholds, the
23 eligibility criteria, the dollar amounts, and percentage
24 splits.

25 Under the August 15 document, FPL would even

1 have the ability to nominate additional presently
2 unidentified categories as transactions and request
3 incentive payments before the Commission has approved a
4 category as eligible for the program.

5 FPL wants to add purchased power to the
6 incentive program. I find this to be an audacious
7 notion. As part of the regulatory paradigm, utilities
8 are required to operate prudently and efficiently
9 because they have exclusive service territory. The most
10 conspicuously inappropriate transaction within the
11 expanded program would be the split of savings
12 associated with buying power when it is available at
13 prices lower than FPL's cost of generating it.

14 Just as FPL dispatches its own resources in
15 the order of ascending cost to provide the most
16 economical power to its customers, savings from
17 short-term purchases are realized as a result of FPL
18 conducting its business in a reasonable and prudent
19 manner to deliver economical energy. FPL has already
20 adequately rewarded and approved rates for these
21 activities.

22 If the purchased power aspect of the proposed
23 expanded incentive mechanism had been implemented in
24 2001, when the current incentive mechanism became
25 effective, FPL's ratepayers would have by now paid

1 47 million more in incentives to FPL, and this assumes
2 no change in FPL's behavior during that time period.

3 The higher percentage of retained gains by FPL
4 under the expanded mechanism could result in unintended
5 consequences, such as reduction in reliability. For
6 example, FPL could contract away low cost resources or
7 capacity reserved in transmission, storage, or pipeline
8 facilities that may be needed due to unknown events.
9 Should this occur, the service to FPL ratepayers could
10 be affected or disrupted.

11 Because complex computer models and data that
12 would be required to review them are not readily
13 available, it would be very difficult for the Commission
14 and the parties to monitor these types of additional
15 transactions effectively after the fact. Moreover, FPL
16 has not shown that these increased risks would be
17 significantly offset by lower rates to ratepayers.

18 Finally, the proposed incentive mechanism
19 would allow FPL to recover incremental expenses to
20 pursue the additional transactions. There's no required
21 cost benefit test for these expenses to ensure that the
22 new transactions will result in ratepayer benefits. In
23 addition, the open-ended nature of the provision
24 provides an incentive to increase, not decrease,
25 expenses.

1 As for procedural deficiencies, by springing
2 the significant change at the 11th hour of the
3 proceeding, FPL has placed the parties and the
4 Commission at a disadvantage in evaluating the merits of
5 the proposal.

6 Second, if the Commission wants to approve an
7 incentive mechanism in this FPL rate case, other
8 utilities and affected parties will not have had the
9 opportunity to present their views. Typically these
10 kinds of issues are addressed in a generic proceeding,
11 not in a utility-specific rate case. If the Commission
12 wants to consider expanding the current incentive
13 mechanism, they should deny the signatories' proposal in
14 this docket and open a generic proceeding so that
15 participation by all affected parties in the state can
16 be heard.

17 Thank you. That concludes my summary.

18 **MS. CHRISTENSEN:** I would ask that
19 Mr. Daniel's testimony be inserted into the record as
20 though read, and then I would tender the witness for
21 cross.

22 **CHAIRMAN BRISÉ:** All right. We will insert
23 Mr. Daniel's testimony into the record as though read,
24 notwithstanding the ongoing, ongoing objection.
25

DIRECT TESTIMONY OF JAMES W. DANIEL

On Behalf of the Office of Public Counsel

In Response to

Order No. PSC-12-0529-PCO-EI

1 **I. PROFESSIONAL TRAINING AND EXPERIENCE**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is James W. Daniel. My business address is 919 Congress Avenue,
4 Suite 800, Austin, Texas 78701.

5 **Q. PLEASE OUTLINE YOUR FORMAL EDUCATION.**

6 A. I received the degree of Bachelor of Science from the Georgia Institute of
7 Technology in 1973 with a major in economics.

8 **Q. WHAT IS YOUR PRESENT POSITION?**

9 A. I am a Vice President of the firm GDS Associates, Inc. ("GDS") and Manager of
10 GDS' office in Austin, Texas.

11 **Q. WOULD YOU PLEASE DESCRIBE GDS?**

12 A. GDS is an engineering and consulting firm with offices in Marietta, Georgia;
13 Austin, Texas; Auburn, Alabama; Manchester, New Hampshire; Madison,
14 Wisconsin; and Avon, Indiana. GDS has over 170 employees with backgrounds
15 in engineering, accounting, management, economics, finance, and statistics. GDS
16 provides rate and regulatory consulting services in the electric, natural gas, water,

1 and telephone utility industries. GDS also provides a variety of other services in
2 the electric utility industry including power supply planning, generation support
3 services, financial analysis, load forecasting, energy efficiency, renewable energy,
4 and statistical services. Our clients are primarily publicly-owned utilities,
5 municipalities, customers of privately-owned utilities, groups or associations of
6 customers, and government agencies.

7 **Q. PLEASE STATE YOUR PROFESSIONAL EXPERIENCE.**

8 A. From July 1974 through September 1979 and from August 1983 through February
9 1986, I was employed by Southern Engineering Company. During that time, I
10 participated in the preparation of economic analyses regarding alternative power
11 supply sources and generation and transmission feasibility studies for rural
12 electric cooperatives. I participated in wholesale and retail rate and contract
13 negotiations with investor-owned and publicly-owned utilities, prepared cost of
14 service studies on investor-owned and publicly-owned utilities, and prepared and
15 submitted testimony and exhibits in utility rate and other regulatory proceedings
16 on behalf of publicly-owned utilities, industrial customers, associations and
17 government agencies. From October 1979 through July 1983, I was employed as
18 a public utility consultant by R. W. Beck and Associates. During that time, I
19 participated in rate studies for publicly-owned electric, gas, water and wastewater
20 utilities. My primary responsibility was the development of revenue
21 requirements, cost of service, and rate design studies as well as the preparation
22 and submission of testimony and exhibits in utility rate proceedings on behalf of
23 publicly-owned utilities, industrial customers and other customer groups. Since

1 February 1986, I have held the position of Manager of GDS' office in Austin,
2 Texas. In April 2000, I was elected as a Vice President of GDS. While at GDS, I
3 have provided testimony in numerous regulatory proceedings involving electric,
4 natural gas, and water utilities, I have participated in generic rulemaking
5 proceedings, I have prepared retail rate studies on behalf of publicly-owned
6 utilities, I have prepared utility valuation analyses, I have prepared economic
7 feasibility studies, and I have procured and contracted for wholesale and retail
8 energy supplies.

9 **Q. HAVE YOU TESTIFIED BEFORE ANY REGULATORY COMMISSIONS**
10 **AS AN EXPERT WITNESS?**

11 A. Yes. I have testified many times before regulatory commissions. I have
12 submitted testimony before the following state regulatory authorities: the State
13 Corporation Commission of Kansas, the Georgia Public Service Commission, the
14 Public Utility Commission of Texas, the Texas Commission on Environmental
15 Quality, the Texas Railroad Commission, the South Dakota Public Utilities
16 Commission, the New Mexico Public Service Commission, the Arizona
17 Corporation Commission, the Louisiana Public Service Commission, the
18 Arkansas Public Service Commission, the Oklahoma Corporation Commission,
19 and the Illinois Commerce Commission. I have also testified before the Federal
20 Energy Regulatory Commission ("FERC"), and two Condemnation Courts
21 appointed by the Supreme Court of Nebraska, and I have submitted an expert
22 opinion report before the United States Tax Court on utility issues. A list of

1 regulatory proceedings in which I have presented expert testimony is provided as
2 Exhibit JWD-1.

3 **II. INTRODUCTION**

4 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

5 A. I am testifying on behalf of the Florida Office of Public Counsel (“OPC”).

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. The purpose of my testimony is to review portions of the August 15, 2012
9 document captioned “Stipulation and Settlement Agreement” entered into by
10 some of the parties to this proceeding (“August 15 document”). More
11 specifically, I will address the reasonableness of allowing the Company to
12 significantly expand its current incentive mechanism regarding gains on non-
13 separated wholesale power sales in order to include in it a large number of
14 additional transactions.

15 **Q. ARE YOU SPONSORING ANY OTHER DOCUMENTS ALONG WITH**
16 **YOUR TESTIMONY?**

17 A. Yes. I am sponsoring Exhibits JWD-1 through JWD-2, which were prepared by
18 me or under my supervision and direction.

19 **Q. PLEASE SUMMARIZE YOUR FINDINGS AND RECOMMENDATIONS.**

1 A. Based on my review of the August 15 document and testimony of FPL witness
2 Sam A. Forrest filed on October 12, 2012 in support of it, I recommend that the
3 Commission not approve paragraph 12 of the August 15 document, which would
4 provide FPL with significant additional margin sharing opportunities. These
5 proposed new margin sharing provisions were not included as part of FPL's
6 original rate application and have been sprung on the parties, the Commission,
7 and other utilities and potentially affected entities who are not parties to this case,
8 through the August 15 document. The procedural schedule does not provide the
9 parties, or other affected entities, the opportunity to conduct adequate discovery
10 on the significant proposed changes to the incentive rate mechanism and does not
11 provide them sufficient time to analyze fully the implications of these proposed
12 changes. In addition, if the August 15 document is approved, the types of rate
13 incentive mechanism changes proposed are likely to be sought by other utilities.
14 Therefore, these proposed modifications are better considered in a generic
15 rulemaking proceeding rather than in an expedited proceeding to consider a
16 company-specific rate case stipulation. Perhaps more significantly, in my opinion
17 the expanded incentive mechanism proposed by the signatories is unacceptably
18 vague and open-ended; encompasses areas that prudent management should
19 pursue without the necessity of incentives; and could result in unintended
20 consequences, including a potential deterioration of reliable retail service and
21 higher costs to ratepayers.

1 **III. THE SIGNATORIES' PROPOSED INCENTIVE MECHANISM**

2 **Q. WOULD YOU BRIEFLY DESCRIBE THE INCENTIVE MECHANISM**
3 **RELATED TO NON-SEPARATED WHOLESALE POWER SALES THAT**
4 **IS CURRENTLY IN EFFECT?**

5 A. Yes. FPL's current wholesale incentive mechanism, approved by Order No. PSC-
6 00-1744-PAA-EI, issued September 26, 2000, allows the Company to retain 20%
7 of the gains related to short-term power sales above a threshold amount. In Order
8 No. PSC-00-1744-PAA-EI, the Commission directed utilities to credit 100% of
9 gains associated with the amount below the threshold, and 80% above the
10 threshold from these sales to ratepayers. Order at p. 2. The threshold amount is a
11 function of a rolling three-year average of short-term power sales gains. Order at
12 pp. 13-14. Short-term "savings" derived from the *purchase* of power are not part
13 of the non-separated wholesale power sales incentive mechanism established by
14 the Commission. Order at pp. 14-15. Since 2007, due in part to increases in fuel
15 oil prices relative to natural gas prices, FPL's gains on economy *sales* have
16 declined, and opportunities for economy *purchases* have increased. FPL has not
17 shared in any gains since that time, per Exhibit SF-1 attached to the direct
18 testimony of Sam. A. Forrest.

19 **Q. PLEASE DESCRIBE THE SIGNATORIES' PROPOSED EXPANSION OF**
20 **THE CURRENT WHOLESALE INCENTIVE MECHANISM.**

21 A. The August 15 document would expand the current incentive mechanism to
22 include several other types of transactions. In addition to the currently approved

1 short-term power sales gains that comprise FPL's existing gains on non-separated
2 wholesale power sales, the August 15 document would include, but not be limited
3 to, the following additional transactions:

- 4 1. natural gas storage transactions;
- 5 2. delivered city-gate natural gas sales;
- 6 3. production (upstream) area natural gas sales;
- 7 4. capacity releases of natural gas transportation;
- 8 5. selling idle, third party electric transmission capacity; and
- 9 6. outsourcing the asset management function to a third party in the form of
10 an Asset Management Agreement ("AMA").

11 **Q. HOW DOES FPL (AND OTHER SIGNATORIES) PROPOSE TO DIVIDE**
12 **GAINS UNDER THE PROPOSED EXPANSION OF THE CURRENT**
13 **INCENTIVE MECHANISM?**

14 A. Pursuant to Paragraph 12(a)(iii), the proposed expansion of the incentive
15 mechanism's proportional sharing arrangement is composed of the following
16 elements:

- 17 1. Up to a "customer savings threshold" of \$36 million, customers would
18 receive 100% of the gain described in Paragraph 12(a)(i);
- 19 2. In addition, customers would receive 100% of the gain described in
20 Paragraph 12(a)(i) for the first \$10 million above the customer savings
21 threshold;
- 22 3. FPL would retain 70% of incremental gains between \$46 million and \$75
23 million, and customers will receive 30%;

1 4. FPL would retain 60% and customers will receive 40% of incremental
2 gains between \$75 million and \$100 million; and

3 5. FPL would retain 50% and customers will receive 50% of all incremental
4 gains in excess of \$100 million.

5 See, August 15 document at p. 14.

6 **Q. PLEASE BRIEFLY DESCRIBE THE INCREMENTAL EXPENSES**
7 **RATEPAYERS WOULD INCUR UNDER THE PROPOSED EXPANSION**
8 **OF THE EXISTING INCENTIVE MECHANISM IN THE EVENT THAT**
9 **THE AUGUST 15 DOCUMENT WERE TO BECOME EFFECTIVE.**

10 A. Pursuant to Paragraph 12(b), FPL would be entitled to recover through its fuel
11 clause incremental O&M expenses composed of the following elements:

12 (1) incremental personnel, software, and associated hardware costs
13 incurred by FPL to manage the expanded short-term wholesale
14 purchases and sales programs and the asset optimization measures; and

15 (2) variable power plant O&M expenses incurred by FPL to
16 generate additional output in order to make wholesale sales, to the
17 extent that the level of such sales exceeds 514,000 MWh, with such
18 costs determined by multiplying the sales above that threshold times
19 the monthly weighted average variable power plant O&M expenses
20 per MWh reflected in the 2013 test year monthly reports.

1 **Q. HOW WOULD GAINS ASSOCIATED WITH THE ELIGIBLE**
2 **TRANSACTIONS BE INCLUDED IN THE EXPANDED INCENTIVE**
3 **MECHANISM CONTEMPLATED BY THE AUGUST 15 DOCUMENT?**

4 A. As contemplated under the August 15 document, each year FPL would file a final
5 true-up schedule as part of its fuel cost recovery clause showing its gains in the
6 prior calendar year on short-term wholesale sales, short-term wholesale purchases
7 (including purchases that are reported on Schedule A-7), and all forms of asset
8 optimization measures that it undertook in that year. Such measures would be
9 subject to review by the Commission to determine eligibility for inclusion in the
10 expanded incentive mechanism.

11

12 **Q. WHAT ARE YOUR PRIMARY CONCERNS WITH THE EXPANSION OF**
13 **THE WHOLESALE INCENTIVE MECHANISM PROPOSED WITHIN**
14 **THE AUGUST 15 DOCUMENT?**

15 A. The proposal would dramatically expand FPL's current, limited wholesale
16 incentive mechanism in a number of presently unknowable and unquantifiable
17 areas, with little justification as to the reasonableness of the requests. These
18 concerns include the types of transactions eligible for the program, the derivations
19 of the dollar amounts projected to be collected, the proportions expected to be
20 retained by the Company, the extent to which the additional activities will affect
21 the reliability and efficiency of electric service, and the expected level of
22 incremental O&M expenses. ^{Another primary} ~~My chief~~ concern is that a proposal of this scope

1 could be approved based on the limited and imprecise information provided in
2 this proceeding to date.

3 In order to conduct the type of comprehensive, thoughtful analysis that
4 would be required to fully evaluate the consequences and effects on ratepayers if
5 these additional margin sharing transactions are to be considered, FPL should be
6 required to file meaningful support for this proposal. The parties then would need
7 an appropriate amount of time to conduct discovery. The information provided to
8 date is vague and lacks the relevant details required to develop a thorough
9 understanding as to how the additional margin sharing transactions would be
10 implemented, and whether ratepayers will see meaningful benefits. In addition,
11 the proposal lacks necessary assurances that, if it were approved and
12 implemented, the program would not undermine the FPL's ability to fulfill its
13 obligation to serve its customers reliably and efficiently at just and reasonable
14 rates.

15 **Q. HAS THE FPL DEMONSTRATED THAT THE INCLUSION OF THE**
16 **PROPOSED ADDITIONAL MARGIN SHARING TRANSACTIONS**
17 **WOULD BE BENEFICIAL TO CUSTOMERS?**

18 **A.** No. FPL has offered an additional \$10 million in margins to the current threshold,
19 but has substantially increased the percentage of margins above the threshold that
20 it would retain. As I will demonstrate later in my testimony, these higher margin
21 retention percentages can result in less benefit to the customers in comparison to
22 the current incentive mechanism.

1 When placed in the context of the Company's \$378 million revenue
2 requirement increase, the potential \$10 million benefit to customers is a small
3 percentage of the overall agreed-upon increase. Further, no information is
4 provided as to the likelihood that these additional margin levels are reachable. In
5 addition, no information has been provided to determine the extent of possible
6 reliability issues associated with the growth of the new incentivized transactions,
7 and whether the proposed proportional sharing amounts are required at all.

8 **Q. ARE THERE OTHER CHANGES TO THE CURRENT INCENTIVE**
9 **MECHANISM THAT CAUSE YOU CONCERN?**

10 A. Yes. Under the current wholesale incentive mechanism, savings related to short-
11 term power purchases are not part of the shared "margins" that FPL retains. This
12 is reasonable, since short-term power purchase decisions should be part of a
13 utility's normal practice under its fundamental economic dispatch process and
14 objective, and the savings should be passed through to ratepayers. Under the
15 proposed expansion of the incentive mechanism, FPL would be allowed to "keep"
16 a significant portion of these savings above the threshold by charging ratepayers a
17 higher fuel factor. In my 38 years of experience in electric rate regulation, I have
18 never seen a case in which the utility had the audacity to claim that implementing
19 the concept of economic dispatch should be a source of bonuses. Purchased
20 power savings are a component of the concept of economic dispatches and should
21 inure to the benefit of customers. They should be off limits to requests for
22 incentives. In my view, this proposed sharing of the savings from short-term

1 power purchases is just a disguise for a revenue increase larger than the \$378
2 million.

3 **Q. DOES THE EXISTING REGULATORY FRAMEWORK REQUIRE**
4 **ELECTRIC UTILITIES TO PROVIDE EFFICIENT SERVICE AT FAIR**
5 **AND REASONABLE RATES?**

6 A. Yes. Florida Statutes require the following:

7 **366.03 General duties of public utility**

8 Each public utility shall furnish to each person applying therefore
9 reasonably sufficient, adequate, and *efficient* service upon terms as
10 required by the commission. No public utility shall be required to
11 furnish electricity or gas for resale except that a public utility may
12 be required to furnish gas for containerized resale. All rates and
13 charges made, demanded, or received by any public utility for any
14 service rendered, or to be rendered by it, and each rule and
15 regulation of such public utility, shall be *fair and reasonable*.

16 (Emphasis added)

17
18 Moreover, the Commission's rules impose an affirmative duty on electric utilities
19 to minimize costs and to operate efficiently and reasonably in order to reduce
20 costs for ratepayers. Specifically, Rule 26-6.0002, Application and Scope,
21 provides that the Commission's rules are intended to define and promote good
22 utility practices and procedures, and adequate and efficient service to the public at
23 reasonable costs. In addition, Rule 25-6.140, Test Year Notification; Proposed
24 Agency Action Notification, requires a statement describing the actions and
25 measures implemented by the utility for the specific purpose of avoiding a rate
26 increase.

27 **Q. DOES FPL HAVE A DUTY TO PROVIDE EFFICIENT AND RELIABLE**
28 **ELECTRIC SERVICE AT REASONABLE COSTS TO ITS CUSTOMERS?**

1 A. Absolutely. In exchange for the opportunity to be the monopoly service provider
2 in its service area, FPL has a duty to provide efficient and reliable electric service
3 at reasonable costs to its customers. Therefore, absent sufficient justification in
4 the form of benefits to customers, which is lacking in the August 15 document, as
5 a matter of policy the Commission should not approve incentives that would
6 result in unnecessary increases in profits for FPL and costs to its customers. An
7 increase in profits should result from a utility taking on *extra* responsibility or risk
8 that actually results in a corresponding increase in system efficiency and the
9 reduction of rates or fuel costs for native-load customers. This is because native-
10 load customers bear all the costs associated with implementing off-system sales.

11 **Q. PLEASE EXPLAIN HOW NATIVE LOAD CUSTOMERS BEAR ALL**
12 **EMBEDDED COSTS ASSOCIATED WITH SHORT-TERM OFF-SYSTEM**
13 **SALES.**

14 A. Native load customers pay for all resources electric utilities need to make off-
15 system sales. Customers pay for the generating units, depreciation on the
16 generating units, return on the utilities' investment in equipment, interconnections
17 and ties with other utilities, natural gas storage facilities, dispatching equipment,
18 non-fuel operations and maintenance expenses, and personnel and associated
19 expenses incurred in making off-system sales. Because customers pay for the
20 generating capacity and related facilities used in producing the electricity for
21 short-term off-system sales, the margins created by those sales should be applied
22 to reduce ratepayers' fuel costs, and the Commission has historically recognized
23 this by allowing ratepayers to be credited for 100% of the margins below the

1 threshold and for 80% of the margins above the threshold through the current,
2 limited wholesale incentive mechanism.

3 **Q. DO SHAREHOLDERS BEAR ANY COSTS OR RISKS IN FPL'S OFF-**
4 **SYSTEM SALES?**

5 A. No. In fact, as the August 15 document proposes, any incremental costs
6 associated with new transactions will be passed on to FPL's customers.
7 Shareholders also bear no regulatory recovery risk as long as FPL demonstrates
8 that a transaction resulted in margins above costs, so Commission disallowances
9 are very remote. Therefore, there is no reason for allowing FPL to share in off-
10 system sales margins over and above what the Commission has previously
11 authorized. In fact, FPL should already be pursuing these potential additional
12 margins pursuant to the Company's responsibility to provide efficient and low-
13 cost electric service.

14 **Q. COULD THE PROPOSED EXPANSION OF THE WHOLESALE SALES**
15 **INCENTIVE MECHANISM CREATE INCENTIVES THAT WOULD BE**
16 **DETRIMENTAL TO CUSTOMERS' INTERESTS?**

17 A. Yes, I believe it could. Expanding the sharing of margins resulting from the
18 additional proposed transactions would encourage FPL to engage in market
19 transactions that could be more costly and could undermine reliability. The
20 expanded sharing mechanism would create an incentive for FPL to deprive native
21 load customers of less expensive power or capacity resources, which would be
22 diverted to wholesale markets on which FPL could earn expanded profits through

1 the expanded incentive margins. The proposed expansion could also provide a
2 disincentive for FPL to obtain the lowest cost fuel supplies for its power plants.
3 These kinds of practices would actually turn the sharing of margins into a
4 perverse incentive, and native load would be deprived of the lowest reasonable
5 cost of energy.

6 **Q. IF THE PROPOSED EXPANSION OF THE INCENTIVE MECHANISM**
7 **HAD BEEN IN PLACE SINCE THE COMMISSION'S APPROVAL OF**
8 **FPL'S CURRENT INCENTIVE MECHANISM, HOW MUCH OF THE**
9 **CUSTOMER SAVINGS WOULD INSTEAD HAVE BEEN GIVEN TO**
10 **FPL'S SHAREHOLDERS?**

11 A. Based on my analysis, by including short-term purchased power in the
12 determination of the shared margins, FPL's shareholders would have received
13 more than ~~\$47.65~~ **47.31** million of the savings that the customers have received under
14 the current incentive mechanism since 2001. My Exhibit JWD-2 determines the
15 total gains from short-term sales, and savings from short-term purchased power.
16 It then compares the customers' and stockholders' shares of the benefits based on
17 the current incentive mechanism to those based on the proposed expansion of the
18 incentive mechanism. As Exhibit JWD-2 clearly demonstrates, had FPL's
19 proposed expanded incentive mechanism been in effect during this period, fuel
20 costs for ratepayers would have been ~~\$47.65~~ **47.31** million more than the amount they
21 actually incurred because that amount would have been given to FPL's
22 stockholders. For this reason alone, the Commission should deny the proposal

1 because it increases costs to customers and provides FPL an unnecessary
2 incentive to provide reliable electric service at reasonable rates.

3 **Q. WOULD THE COMMISSION, THROUGH REGULATORY OVERSIGHT**
4 **MECHANISMS SUCH AS RECONCILIATION REQUIREMENTS,**
5 **POSITION ITSELF TO PROTECT CUSTOMERS FROM SUCH AN**
6 **UNINTENDED CONSEQUENCE?**

7 A. Unfortunately, no. In an "after-the-fact" fuel reconciliation proceeding, I believe
8 it could be very difficult for interveners or Commission Staff to determine
9 whether those utilized resources should have otherwise been dispatched for the
10 benefit of native-load customers.

11 IV. LACK OF SUFFICIENT INFORMATION

12 **Q. IN GENERAL, WHAT ARE YOUR CONCERNS WITH THE LACK OF**
13 **INFORMATION SUPPORTING THE EXPANSION OF FPL'S EXISTING**
14 **WHOLESALE INCENTIVE MECHANISM?**

15 A. The new proposal in the August 15 document is a far-reaching and open-ended
16 expansion of FPL's current, limited incentive mechanism. Currently, FPL is
17 obligated to conduct off-system sales as long as those sales do not jeopardize
18 service reliability, and the margins associated with the sales are used to offset
19 reasonable and necessary fuel costs. However, pricing for off-system transactions
20 which reflect market conditions are not the same as the embedded costs of
21 providing electric service that are used in the setting of rates for native load

1 customers. See, FPL's Response to Staff's First Data Request No. 01-09(d). If
2 the incentives to enter into off-system contracts are large enough, FPL could
3 implement the transactions to the detriment of native load customers,
4 undermining reliability. In addition, I have questions about specific parameters
5 that comprise the expansion of FPL's current incentive mechanism.

6 **Q. ARE YOU CONCERNED ABOUT THE UNDERLYING MARKET**
7 **CONDITIONS ASSOCIATED WITH FPL'S PROPOSED INCENTIVE**
8 **MECHANISM?**

9 A. Yes. Uncertainty abounds with respect to the underlying market conditions that
10 support FPL's proposed incentive mechanism. FPL has limited experience in
11 contracting for the proposed asset optimization transactions, because the market
12 conditions needed for its pursuits have not developed. Moreover, in its search to
13 procure the necessary expertise, FPL has not been successful. Therefore, the
14 potential to implement the proposed transactions remains untested for the most
15 part. See, direct testimony of Sam. A. Forrest at page 15. FPL may at some point
16 in the future be in an operational position to execute its asset optimization
17 strategy; however, based on the information that it has provided to date, it would
18 be premature to implement the program at this time without sufficiently
19 considering the economic and reliability consequences for FPL's retail customers.

20
21 **Q. HOW MANY OF THE PROPOSED INCENTIVE TRANSACTIONS DOES**
22 **FPL CURRENTLY UTILIZE?**

1 A. Currently, FPL contracts for the sale of idle electric transmission capacity, as well
2 as for the sale of natural gas in production areas. See, FPL's Response to Staff's
3 First Data Request No. 01-10. In addressing its historical lack of involvement in
4 the proposed asset optimization transactions, FPL states that absent an approved
5 program to be implemented via the expanded incentive mechanism, it would bear
6 the risk for the outcome of each transaction, with no prospect for sharing in the
7 gain. See, FPL's Response to Staff's Second Data Request No. 02-01. Therefore,
8 considering FPL's dearth of expertise in the implementation of these transactions
9 coupled with its inability to locate third-party expertise, Commission approval at
10 this point would be untimely. Also, in responses to interrogatories, FPL has not
11 addressed the specific components of the risks it faces, or explained how not
12 entering into such transactions is consistent with its general duties as a public
13 utility as required under Section 366.03, Florida Statutes.

14 **Q. HAS FPL DEMONSTRATED THAT AN ADDITIONAL SHARING**
15 **INCENTIVE ABOVE THE COMMISSION'S CURRENT 20% LEVEL IS**
16 **WARRANTED?**

17 A. No. FPL has not provided sufficient evidence for the Commission to conclude
18 that sharing margins from its asset optimization transactions above the current
19 level of 20% for its shareholders will actually increase the volume, or value, of
20 off-system sales. The sharing mechanism may in fact encourage counter-
21 productive behavior by FPL. Moreover, the Company has not provided sufficient
22 evidence for the Commission to conclude that the proposed incentives are
23 required for FPL to implement the wholesale market transactions. If wholesale

1 markets do not exist for FPL's proposed transactions, the costs related to
2 incentivizing FPL to "create" them would trump any benefits. Given the potential
3 scarcity of markets in place to support the execution of FPL's additional asset
4 optimization transactions, combined with the lack of information FPL provided in
5 supporting its proportional margin sharing agreement, another major concern is
6 that the sharing arrangement does not appropriately recognize FPL's obligation to
7 serve at just and reasonable rates.

8 **Q. PLEASE STATE YOUR CONCERN WITH RELIABILITY ISSUES**
9 **ASSOCIATED WITH THE PROPOSED EXPANSION.**

10 A. I am concerned that the higher incentives in the proposed expansion would
11 encourage FPL to pursue such margins at the expense of undermining electric
12 service for its native load customers. To the extent the Commission believes that
13 incentives are necessary to motivate conduct, the incentives should be designed to
14 enhance or improve the service received by FPL's retail customers as FPL
15 pursues the rewards of the incentive mechanism. In my opinion, the proposed
16 expansion is not structured in this fashion. Instead, as structured, the proposal
17 incentivizes FPL to enter into high dollar value transactions. As the dollar
18 amounts of transactions rise, more of the resources whose costs FPL collects
19 through native load rates would be dedicated to off-system purposes. This, in
20 turn, would reduce FPL's reliability margin of error. While the Company has
21 stated its commitment to reliability (See, direct testimony of Sam. A. Forrest at
22 pagel6), to date it has not provided a sufficient amount of information related to
23 the proposal to substantiate its claims. I believe that the Commission should be

1 cautious not to establish a system of incentives that it cannot police effectively to
2 guard against abuse. As I mentioned earlier, I believe that any after-the-fact
3 reconstruction whether FPL failed to give appropriate priority to the interests of
4 the retail customers who are paying for the assets when it pursued opportunities
5 for the high margins in its proposed expansion of the current incentive
6 mechanism, *will be very difficult.*

7 **Q. PLEASE OUTLINE YOUR CONCERNS WITH THE INCREASED COSTS**
8 **RETAIL CUSTOMERS WOULD BE REQUIRED TO PAY.**

9 A. FPL estimates that for 2013, ratepayers would incur incremental O&M expenses
10 of at least \$500,000 regardless of the amount of gains, if any, resulting from the
11 asset optimization program. FPL also estimates that as long as wholesale sales
12 volume does not exceed a threshold of 514,000 MWh in 2013, the incremental
13 variable generation-related O&M costs will be \$0. See, FPL's Response to
14 Staff's Second Data Request Nos. 02-02, and 02-03. The August 15 document
15 requires that variable generation-related O&M costs be determined by multiplying
16 the sales above the threshold times the monthly weighted average variable power
17 plant O&M cost per MWh. As I state above, FPL, via the proportionate margin-
18 sharing arrangement, is induced to pursue as many off-system transactions as
19 possible. Yet, because costs are flowed through to customers in full, FPL has no
20 inherent incentive to reduce costs in its implementation of higher-margin sharing
21 transactions. That is because FPL can collect the costs associated with its
22 proposed expansion of margin-sharing transactions dollar-for-dollar, and receive

1 the benefit of piecemeal ratemaking, while side-stepping any of the costs
2 associated with the proposed expansion.

3 **Q. WHAT IS PIECEMEAL RATEMAKING, AND WHY IS IT A CONCERN?**

4 A. Piecemeal ratemaking occurs when a utility is allowed to adjust rates for changes
5 in a specific cost category outside of a traditional base rate proceeding. Typically,
6 it is only allowed in rare situations, e.g., for large, volatile expenses. The problem
7 with piecemeal ratemaking is that it does not take into account the utility's total or
8 overall costs. It is possible that other costs could be decreasing, thereby offsetting
9 the specific cost increase the utility is proposing to recover. For example, if FPL
10 is replacing old, deteriorated plant with new plant, then it is possible that
11 maintenance expenses would be decreasing. Another example of this mismatch
12 problem would be the costs eliminated or reduced by more efficient operations
13 and maintenance procedures, while the Company collects new costs associated
14 with its far-reaching proposed expansion of margin-sharing transactions. In
15 effect, if the August 15 document is approved, the Commission will be issuing a
16 blank check to FPL for the associated costs of its expanded asset optimization
17 program. Moreover, as I stated above, an after-the-fact Commission review in
18 which it could be very difficult for interveners or Commission staff to determine
19 whether the utilized resources should have otherwise been used for the benefit of
20 native load customers does not ameliorate my concerns.

21

1 **Q. PLEASE OUTLINE YOUR CONCERN ABOUT THE NATURE AND**
2 **SCOPE OF THE ANNUAL REVIEW FOR THE PROPOSED EXPANSION**
3 **OF THE INCENTIVE MECHANISM.**

4 A. Very little information has been provided that addresses the nature and scope of
5 the annual review of the proposed expansion, except that FPL would file a final
6 true-up schedule FPL would file each year as part of its fuel cost recovery clause
7 a final true-up schedule showing its gains in the prior calendar year on short-term
8 wholesale sales, short-term wholesale purchases (including purchases that are
9 reported on Schedule A-7), and all forms of asset optimization transactions that it
10 undertook for the year. The August 15 document makes reference to FPL's final
11 true-up having a description of each measure for which a gain is included in a
12 total gains schedule, but nothing further. By this approach, the Commission
13 would be placed in the undesirable position of reconstructing and verifying
14 transactions with limited information on whether these were the most prudent use
15 of ratepayer-funded resources.

16 **Q. ARE YOU ALSO CONCERNED THAT IN FUTURE REVIEWS FPL**
17 **WILL BE ALLOWED OPPORTUNITIES TO NOMINATE NEW**
18 **TRANSACTIONS WITH LIMITED DOCUMENTATION SUPPORTING**
19 **THE OPERATIONAL, EXPENSE, AND FINANCIAL TRADEOFFS TO**
20 **RATEPAYERS?**

21 A. Yes. As I stated above, reconstructing and verifying the complex dispatching and
22 market operations associated with current wholesale transactions is resource
23 intensive. Compounding the verification process with new and unique

1 transactions that would have to be dissected during a review with limited time
2 parameters would further reduce the required oversight for such a mechanism.

3 **Q. DO YOU HAVE ANY OTHER CONCERNS WITH FPL'S PROPOSAL?**

4 A. Yes. In addition to the concerns I discussed above, the types of rate incentive
5 mechanism changes that FPL has proposed are likely to be sought by other
6 utilities. In addition, the mechanism could affect the transactions that other
7 utilities engage in and thus the sharing of gains by those utilities with their
8 customers. Therefore, these proposed modifications are better considered in a
9 generic rulemaking proceeding rather than in an expedited proceeding to consider
10 a company-specific rate case stipulation. This approach would allow the
11 Company and other utilities to provide one or more technical workshops so that
12 the costs, risks, and other public interest concerns could be sufficiently addressed
13 before moving forward with utilities implementing any approved transactions
14 statewide.

15 **V. SUMMARY AND CONCLUSIONS**

16 **Q. WOULD YOU PLEASE SUMMARIZE YOUR FINDINGS AND**
17 **RECOMMENDATION?**

18 A. Yes. Based on my review of the August 15 document and testimony filed in
19 support of it, I believe that FPL has not demonstrated that paragraph 12 of the
20 August 15 document, which would provide FPL with significant additional
21 margin-sharing opportunities, is fair and reasonable, or would produce benefits to

1 customers. To the contrary, in my opinion the proposed expansion and
2 reformulation of the current incentive mechanism is vague, unsupported,
3 unreasonably one-sided in favor of FPL, and would create counterproductive
4 incentives and unintended consequences that would be detrimental to customers
5 and difficult for the Commission to guard against. In addition, if the August 15
6 document is approved, the types of rate incentive mechanism changes proposed
7 are likely to be sought by other utilities. Therefore, these proposed modifications
8 are better considered in a generic rulemaking proceeding rather than in an
9 expedited proceeding to consider a company-specific rate case stipulation.

10 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

11 **A.** Yes, it does.

1 **CHAIRMAN BRISÉ:** All right. FPL.

2 **MR. BUTLER:** Thank you, Mr. Chairman. I've
3 asked the staff to pass out an exhibit that we'll be
4 using for cross-examination of Mr. Daniel.

5 **CHAIRMAN BRISÉ:** Sure.

6 **MR. MOYLE:** Mr. Chairman, while that exhibit
7 is being passed out, also, for the signers on the
8 settlement, amongst ourselves have agreed, I think it
9 would be more efficient, FPL, hospitals, military, and
10 then FIPUG for the order of our cross.

11 **CHAIRMAN BRISÉ:** Okay. We'll see. Appreciate
12 it. We'll see if that's truly more efficient.

13 (Laughter.)

14 All right. Okay.

15 **MR. BUTLER:** 721; right?

16 **CHAIRMAN BRISÉ:** 722.

17 **MR. BUTLER:** Twenty-two? Okay. Sorry.

18 **MR. YOUNG:** And, Mr. Chairman, that's because
19 Ms. Christensen's errata is --

20 **CHAIRMAN BRISÉ:** The errata is 721.

21 **MR. BUTLER:** Okay. Thank you.

22 (Exhibits 721 and 722 marked for
23 identification.)

24 **CROSS-EXAMINATION**

25 **BY MR. BUTLER:**

1 Q Good morning, Mr. Daniel.

2 A Good morning.

3 Q I note on page 1, lines 6 and 7, that you
4 attended the Georgia Institute of Technology; is that
5 correct?

6 A Yes.

7 Q Okay. I did too, so I won't criticize your
8 choice of undergraduate education.

9 But I do want to ask you, do you have any
10 formal education in engineering?

11 A Well, I did start out in the engineering
12 program at Georgia Tech, so I was in an engineering
13 program for two years.

14 Q But then you switched over and graduated with
15 a degree of economics; is that right?

16 A That is correct.

17 Q Okay. Do you have any formal education in
18 law?

19 A No, sir.

20 Q Okay. Have you ever worked for an
21 investor-owned electric utility?

22 A As an employee?

23 Q That's right.

24 A No, not as an employee.

25 Q Have you ever been responsible for managing

1 the fuel procurement function for an investor-owned
2 electric utility?

3 A Not for an investor-owned utility.

4 Q Have you ever managed the economic dispatch
5 function for an investor-owned electric utility's
6 generating assets?

7 A I have not.

8 Q Okay. I don't see any references in your
9 Exhibit JWD-1 to your testifying before the Florida PSC.
10 Is it correct that you have not testified before this
11 body previously?

12 A That's correct.

13 Q Okay. Have you ever testified in court about
14 a Florida utility?

15 A I'm trying to recall the utility involved in
16 the text (phonetic) case I was involved in. I don't
17 recall specifically. It may have been a utility in
18 Tampa.

19 Q Okay. On page 12 of your testimony you cite
20 to a couple of *Florida Statutes* and *Florida*
21 *Administrative Code* rules. Have you conducted any
22 investigation of Florida utility law and practice,
23 beyond reading the statutes and rules that you cite on
24 that page?

25 A I believe those are the ones I relied upon.

1 Q On page 12, line 19, you have a -- 18 and
2 19 -- you have a sentence that reads, Moreover, the
3 Commission's rules impose an affirmative duty on
4 electric utilities to minimize costs and to operate
5 efficiently and reasonably in order to reduce costs for
6 ratepayers. Do you see that?

7 A I do.

8 Q Okay. Can you point me to where in the
9 *Florida Statutes* or rules you see the words, quote,
10 minimize costs, unquote?

11 A Well, I was paraphrasing what, what I
12 interpreted the rules to mean. But I don't think that
13 those two words are, show up in, in the section I
14 referred to.

15 Q Okay. On page 11 of your testimony you have a
16 statement at, looking at line 12, actually starting on
17 line 11, This is reasonable, since short-term power
18 purchase decisions should be part of a utility's normal
19 practice under its fundamental economic dispatch
20 process. Do you see that?

21 A Yes.

22 Q Okay. What references can you cite, if any,
23 that define a utility's wholesale power purchases as
24 being part of its fundamental economic dispatch process?

25 A I'm sorry. I wasn't quite sure. You were

1 asking for a cite?

2 Q Yes, that's right. A cite to references where
3 you believe wholesale power purchases are defined as
4 being part of a utility's fundamental economic dispatch
5 process.

6 MS. CHRISTENSEN: I'm going to object as vague
7 as to the term "cite." I mean, is he asking for a
8 specific citation to the company, a general body of
9 knowledge?

10 MR. BUTLER: I'm asking for a resource, some
11 sort of reference. You know, where does he get this
12 notion that wholesale power purchases are part of a
13 utility's fundamental economic dispatch process, if
14 anywhere, if he has any sort of documentation or guide
15 or whatever that he can refer to.

16 THE WITNESS: That, that reference is based
17 upon my experience with other utilities and also with,
18 based on discussions with others in my firm that get
19 involved in economic dispatch on a daily basis.

20 BY MR. BUTLER:

21 Q So you don't have anything you're aware of you
22 can point to where it would be defined as part of the
23 fundamental economic dispatch process?

24 A I cannot point you to a document, no.

25 Q On page 14 of your testimony, starting on line

1 19, you have a sentence that at least begins, The
2 expanded, the expanded sharing mechanism would create an
3 incentive for FPL to deprive native load customers of
4 less expensive power or capacity resources, which would
5 be diverted to wholesale markets. Do you see that?

6 A Is that the bottom of page 14; is that where
7 you are?

8 Q That's right, yeah. The bottom of page 14,
9 starting on line 19.

10 A Yes, I see that.

11 Q Are you aware of any instances in the past
12 where FPL has deprived native load customers of the
13 least expensive power or capacity resources under the
14 existing incentive mechanisms?

15 A Under the existing incentive mechanism I'm not
16 aware of anything. I haven't reviewed that, and we
17 don't have any experience under the proposed mechanism.

18 Q Okay. All right. I'd like you to turn to
19 your Exhibit JWD-2, please. And JWD-2 focuses on five
20 years, 2003, 2005, 2009, 2010, and 2011, and it looks at
21 the extent to which FPL would receive a sharing in gains
22 as an incentive under the current and proposed
23 mechanism; is that right?

24 A Those are the years shown on that exhibit,
25 yes.

1 Q Okay. Now, would you turn, please, to what's
2 been marked as Exhibit 722 that we handed out?

3 A I have that.

4 Q Okay. You recognize -- page 1 of this is
5 Exhibit SF-4 from Mr. Forrest's testimony, rebuttal
6 testimony. Do you recognize that?

7 A I do.

8 Q Okay. And then the second page on that is
9 your Exhibit JWD-2; right? On the pre-erratasized
10 version of it.

11 A Yes, it is.

12 Q Would you please point out, just for the,
13 making the record clear, on this exhibit what
14 corrections would be made here to correspond it, conform
15 it to the changes that you made on your errata?

16 A Make sure I understand your question. You
17 want, on the --

18 Q I just want you to correct JWD-2 in this
19 exhibit so that it confirms with what you did as your
20 corrections on, you know, when you introduced your
21 testimony.

22 A Okay. The changes, first set of changes would
23 be on line 2. The first one would be in column D. The
24 new number should be 3,612,011. The next change would
25 be on column G. The new number should be 47,083,603.

1 The next change would be in column H. The percentage
2 should be 94.9. The next change would be in column K.
3 The new number is 2,528,408. And the percentage in
4 column L should be 5.1%.

5 Those revisions change some of the totals in
6 those columns. So you go to line 6, the total in column
7 D would now be 70,305,022. Go to column G. The new
8 total is \$251,865,342. The total percent in column H is
9 83.87%. And the new total in column K is 48,439,680.
10 And the total percent in column L is 16.13%.

11 Q Okay. Thank you.

12 Now, would you agree, Mr. Daniel, that the
13 current incentive mechanism has been in effect since
14 2001?

15 A Yes.

16 Q Okay. And at this point we only have complete
17 data running through 2011; correct?

18 A I believe that's correct, yes.

19 Q All right. Now, you displayed five years out
20 of that total of 11 years, correct, on your Exhibit
21 JWD-2?

22 A That's correct.

23 Q Okay. I'd like for you to turn to the third
24 page in Exhibit 722. Would you agree that this reflects
25 the years that are not included in your JWD-2?

1 **A** That appears to be the case, yes.

2 **Q** Okay. For each of the years that you excluded
3 from your JWD-2, FPL in fact would receive no incentive
4 under the proposed incentive mechanism had it been in
5 effect during that period of time; is that right?

6 **A** That's correct, based on this document.

7 **Q** Do you have any reason to doubt the accuracy
8 of what's shown here?

9 **A** I don't have any reason to doubt it. I
10 haven't had a lot of time to review it.

11 **Q** You didn't analyze those years when you were
12 putting together JWD-2; you only focused on the five
13 years that are included on it?

14 **A** I believe I looked at all the years.

15 **Q** Okay. So you would have at least looked at
16 these years, whether you focused on them at the time
17 that you prepared JWD-2?

18 **A** I'm sorry. Could you repeat your question?

19 **Q** So you would have looked at these other six
20 years, the ones that are referred to on page 3 of
21 Exhibit 722, at the time you were putting together your
22 JWD-2; correct?

23 **A** Yes, I would have.

24 **Q** Okay. And would you agree that whereas FPL
25 would receive no incentive for those six years under the

1 proposed mechanism, it actually received \$745,000 of
2 incentives under the current mechanism?

3 **A** Yes, that's what it shows.

4 (Transcript continues in sequence with Volume
5 41.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED THIS 21st day of November, 2012.

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21
22
23
24
25

LINDA BOLES, RPR, CRR
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