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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

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

COMMISSION  
CLERK

12 NOV 21 PM 2:02

RECEIVED-FPSC

VOLUME 41

Pages 5920 through 6127

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 12:00 p.m.  
Concluded at 4:00 p.m.

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

REPORTED BY: MICHELLE SUBIA, RPR

APPEARANCES: (As heretofore noted.)

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## EXHIBITS

NUMBER:	ID.	ADMTD.
684		5954
685		5954
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CERTIFICATE OF REPORTER 6127

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

(Transcript follows in sequence from  
Volume 40.)

Thereupon,

JAMES W. DANIEL

was called as a witness, having been previously duly  
sworn, was examined and testified as follows:

CONTINUED CROSS EXAMINATION

BY MR. BUTLER:

**Q** Would you agree that selecting the years the way you did made the proposed incentive mechanism appear considerably more favorable to FPL in your Exhibit JWD-2 than if you included all of the years in your analysis?

**A** Well, the percentage of the savings that FPL would have retained is higher, but the change in the percentage is not -- would not have changed my opinion.

**Q** Okay. But what you show is a 16.13 percent total for your five years, if you include all of the years as what's shown on Mr. Forrest's Exhibit SF-4, which is page one in this Exhibit 722, and that's a percentage of 9.63 percent, correct?

**A** It is. And I still consider that to be favorable and significant.

**Q** Okay. You have a section in your testimony

1 starting on page 16 entitled "Lack of Sufficient  
2 Information." Do you see that?

3 A Yes.

4 Q And in this section, you have some references  
5 to FPL responses to staff data requests; is that right?  
6 For example, on the top of page 17, you have "See FPL's  
7 response to staff's first data request No. 01-09D"?

8 A Yes.

9 Q Okay. Are you aware that subsequent to  
10 responding to those data requests, FPL responded to  
11 over 150 formal interrogatories concerning the proposed  
12 settlement agreement?

13 A I'm not aware of the number of the  
14 interrogatories.

15 Q Did you review the responses to the  
16 interrogatories?

17 A I believe I reviewed the ones related to the  
18 incentive mechanism.

19 Q Did you ask OPC to pose any discovery to FPL  
20 about the incentive mechanism?

21 A No. Given the vagueness of the proposal and  
22 the time involved, I did not think that would be  
23 productive.

24 Q You're aware that OPC had the same  
25 opportunity, the same time period to pose discovery in

1    **which staff posed 150 formal interrogatories, aren't**  
2    **you?**

3           A     I'm not aware of the specifics of the  
4    procedural order, but I will accept that.

5           **Q     Okay. So prior to completing your prefiled**  
6    **testimony, let me ask you if you reviewed a couple of**  
7    **PSC orders. Did you review Order PSC 02-1484-FOF-EI**  
8    **concerning the approval of an expanded hedging program**  
9    **and the mechanism for reviewing and approving hedging**  
10   **activities?**

11          A     I don't recall if that's something I  
12    reviewed.

13          **Q     Do you recall reviewing Order No.**  
14    **PSC-08-0667-PAA-EI concerning clarification of the**  
15    **hedging guidelines and the procedures for approving**  
16    **hedging plans?**

17               MS. CHRISTENSEN: Objection. I believe this  
18    is outside the scope of his testimony.

19               MR. BUTLER: I don't think it is. I'm asking  
20    him what he reviewed in reaching conclusions about  
21    the adequacy of mechanisms for reviewing and  
22    evaluating our proposed asset optimization  
23    arrangement.

24               I think, as Mr. Forrest testified yesterday,  
25    that Commission Staff has a great deal of

1 experience doing so, you know, under a couple of  
2 mechanisms, one of which being the hedging process  
3 that the Commission oversees.

4 MS. CHRISTENSEN: My recollection is  
5 Mr. Forrest didn't bring up the discussion  
6 regarding the hedging mechanism until his rebuttal  
7 testimony.

8 MR. BUTLER: It was in your cross examination  
9 of him yesterday.

10 MS. CHRISTENSEN: I still --

11 MR. BUTLER: I'm just asking him whether he's  
12 reviewed these materials. I only have one more  
13 order to ask him about.

14 CHAIRMAN BRISE: Sure. Ask the last one.

15 MR. BUTLER: All right. Thank you.

16 BY MR. BUTLER:

17 **Q Finally, Mr. Daniel, did you review Order No.**  
18 **PSC-02-1761-FOF-EI, which established procedures for**  
19 **reviewing and approving incremental power plant**  
20 **security costs to be recovered through the fuel and**  
21 **capacity clause?**

22 A I don't recall specifically, but I don't  
23 think that's one I reviewed.

24 **Q Okay. And just to clarify, I had asked you**  
25 **about this Order PSC-08-0667-PAA-EI and Ms. Christensen**

1 had objected. Did you review that order?

2 A Again, I don't recall if that's one of the  
3 orders that I reviewed.

4 Q Okay. That's all the questions I have.  
5 Thank you, Mr. Daniel.

6 A Thank you.

7 CHAIRMAN BRISE: All right. Mr. Wiseman.

8 CROSS EXAMINATION

9 BY MR. WISEMAN:

10 Q Good morning, Mr. Daniel. I'm Kenneth  
11 Wiseman, counsel for the South Florida Hospital &  
12 Healthcare Association.

13 A Good morning.

14 Q Mr. Daniel, could you refer to page five of  
15 your testimony, and specifically if you would review  
16 the testimony on lines eight through 12. Do you have  
17 that?

18 A I've got page five. Are you referring --

19 Q Lines eight through 12.

20 A Yes, I have that.

21 Q All right. You state there that the  
22 procedural schedule didn't provide the parties an  
23 opportunity to conduct adequate discovery; is that  
24 correct?

25 A Yes.



1 Q Okay. Did OPC advise you as to when it was  
2 first provided the opportunity to obtain information  
3 about the proposed settlement?

4 A I don't believe they did.

5 Q Okay. Well, are you aware that the  
6 Commission issued an order on August 27th, 2012 that  
7 allowed the parties to serve 100 data requests on the  
8 settling parties to request information about the  
9 proposed settlement? Were you aware of that?

10 A I did review the procedural schedule and, I  
11 believe, it also had a date in there for the company to  
12 file testimony in mid October.

13 Q Well, my question was whether you were aware  
14 of the August 27th order that permitted the parties,  
15 OPC as one of the parties, to obtain information  
16 through data requests about the proposed settlement?  
17 Were you aware of that order?

18 A I was aware of the order.

19 Q All right. So that order was issued, what is  
20 that, September, October, more than two months ago.  
21 And it's your testimony that having the opportunity to  
22 obtain information two months -- more than two months  
23 in advance of this hearing -- was inadequate to obtain  
24 information about the incentive rate mechanism?

25 A Well, I think my view is that given the mid

1 October date for the company to file their testimony,  
2 there was inadequate time to do discovery.

3 **Q So you believe that it was inadequate to have**  
4 **a month and a half prior to the time that testimony was**  
5 **filed to obtain discovery concerning -- or information**  
6 **concerning the incentive rate mechanism?**

7 A Given the limitations on the number of  
8 requests that you just referred to, you know, I think  
9 that would be involved in the mid October decision or  
10 deadline for filing the company's testimony.

11 **Q Mr. Daniel, do you know when OPC first**  
12 **requested any information from any of the settling**  
13 **parties concerning the incentive rate mechanism, if at**  
14 **all?**

15 A I'm not aware of any.

16 **Q Well, will you accept, subject to check, that**  
17 **the first time that OPC requested the information from**  
18 **FPL or any of the settling parties concerning the**  
19 **incentive rate mechanism was on October 31st, which was**  
20 **two days before you finalized your testimony?**

21 MS. CHRISTENSEN: Objection. I think that  
22 mischaracterizes the facts, and that's not --  
23 facts not in evidence.

24 MR. WISEMAN: I asked him if he's aware of  
25 whether -- if that mischaracterizes the facts.

1 I'm happy to be corrected. But you can look at  
2 the docket statement in this case and see when the  
3 first notice of discovery was. And if Mr. Daniel  
4 is the improper witness, that's fine, we can get  
5 clarification.

6 But my review of the records shows that the  
7 first time that OPC requested the information on  
8 the incentive rate mechanism was on October 31st.  
9 There's no data request or request for -- I'm  
10 sorry -- interrogatory or for production of  
11 documents prior to that date that I'm aware of.

12 CHAIRMAN BRISE: Ms. Christensen.

13 MS. CHRISTENSEN: I believe Mr. Daniel had  
14 already testified -- it's already been asked and  
15 answered -- that he believed from the time that  
16 the testimony was filed that there was inadequate  
17 time to do discovery responses. I think that  
18 Mr. Wiseman is testifying. And I believe that the  
19 documents, if he has them, he can produce them,  
20 but I don't think that he does.

21 But certainly I think the question has been  
22 asked and answered about what he was aware of and  
23 why he felt that it was not appropriate to -- or  
24 there was insufficient time to conduct discovery  
25 in this proceeding.

1 MR. WISEMAN: The record stands for what it  
2 is. I'll withdraw the question.

3 CHAIRMAN BRISE: All right.

4 MR. WISEMAN: I have no further questions for  
5 this witness.

6 CHAIRMAN BRISE: All right.

7 LT. COL. FIKE: I have no questions.

8 CHAIRMAN BRISE: Thank you.

9 Mr. Moyle.

10 MR. MOYLE: I have some.

11 CROSS EXAMINATION

12 BY MR. MOYLE:

13 **Q Sir, do you have a copy of the settlement**  
14 **agreement?**

15 A Not with me.

16 **Q Did you review the settlement agreement?**

17 A Portions of it.

18 **Q You didn't review the whole thing?**

19 A I did not.

20 **Q Okay. And is that because, I guess, you're**  
21 **offering testimony only on one portion; is that right?**

22 A That's correct.

23 **Q You would agree though, as a general**  
24 **proposition, that for this Commission to make a**  
25 **judgment about the settlement and whether it's in the**

1 public interest, that you got to review the entire  
2 document, right?

3 A I would expect the Commission to review the  
4 entire document, yes.

5 Q Okay. Did you review the portion of the  
6 settlement agreement that related to this asset  
7 optimization or incentive mechanism?

8 A I did.

9 Q Okay. And are you aware that there's a  
10 sentence in the agreement found on page 14 that says --  
11 and I'll quote it to you -- "FPL agrees that it will  
12 not require any native load customer to be interrupted  
13 in order to initiate or maintain an economic sale,  
14 comma, whether that sale is firm or non-firm"?

15 A Yes, I recall that.

16 Q Okay. And do you have any reason to believe  
17 that that contractual provision, if the settlement  
18 agreement is approved by this Commission, will not be  
19 given effect?

20 A Well, my --

21 Q If you can go yes or no and then explain, if  
22 you need to, I would appreciate that.

23 A Well, I would have to say yes based on my  
24 interpretation of that provision. It would be -- my  
25 opinion is that is typical language that when we're

1 talking about doing all system sales that, for example,  
2 an industrial interruptible customer would insist that  
3 they not get interrupted for economic reasons, and that  
4 would be the type of language that would typically be  
5 in a settlement agreement to prevent that.

6 **Q Okay. And I guess that wasn't my question.**  
7 **I mean, I appreciate that. And you weren't in the**  
8 **negotiations, but I guess my question was is do you**  
9 **have any reason to believe that FPL is not going to**  
10 **adhere to that contractual provision if the settlement**  
11 **agreement is approved?**

12 A I do not have any reason, given that  
13 language, that they would interrupt an interruptible  
14 customer for economic purposes.

15 **Q So it would be no, correct?**

16 A Yeah, I have no reason to.

17 **Q Okay. And Mr. Forrest -- were you here**  
18 **yesterday when he testified?**

19 A I believe I was here for most of it, if not  
20 all of it.

21 **Q Okay. And he stated -- and I'll summarize**  
22 **it -- and we can go back and look at the record if we**  
23 **need to -- but essentially he said that FPL doesn't**  
24 **engage in the business of -- that they're running their**  
25 **economic dispatch that they don't engage in a practice**

1 where they're not economically dispatching their system  
2 so that they can make money.

3 Do you recall that testimony that he provided  
4 yesterday?

5 A I believe there was a statement to that  
6 effect under the current incentive mechanism.

7 Q Okay. And do you have any reason to  
8 disbelieve that statement or his testimony as provided  
9 yesterday?

10 A No, I believe I previously answered that, you  
11 know, I have not made a review to reach any conclusion  
12 one way or the other.

13 Q Okay. And what did you do to prepare your  
14 testimony?

15 A I reviewed the provisions of the settlement  
16 agreement related to the incentive mechanism. I  
17 reviewed Mr. Forrest's testimony. I reviewed  
18 Mr. Kollen's testimony, and reviewed a few orders,  
19 prior orders of the Commission. I reviewed some of the  
20 companies' responses to document requests and  
21 interrogatories. I believe I reviewed some of the  
22 Commission's rules.

23 Q Did you look for the Commission rules? I  
24 mean, you cited some statutes and rules. Did you  
25 independently go out and do a review of the laws and

1 the rules that may be applicable to this incentive  
2 mechanism?

3 A No. I was specifically looking for the rule  
4 that related to the utility's general obligations.

5 Q Okay. And did you independently do that?  
6 Did you have a lawyer help you with it? How did you  
7 come into that information?

8 A Somebody that works under my supervision, I  
9 believe, requested that information from OPC and then I  
10 reviewed it.

11 Q You had stated in response to a question that  
12 -- I wrote it down -- you said that there was some  
13 vagueness with the incentive mechanism proposal; is  
14 that right?

15 A Yes.

16 Q And you've been an expert in cases throughout  
17 the years; is that right?

18 A Yes.

19 Q And you're familiar with depositions, how  
20 depositions work where they give parties the  
21 opportunity to explore and, you know, if something's  
22 vague to ask questions to understand it? Isn't that a  
23 fair statement?

24 A I'm familiar with depositions, yes.

25 Q Okay. And in this case, are you aware that



1 the opportunity for deposition was available to take  
2 Mr. Forrest's deposition or other witnesses as it  
3 related to this incentive mechanism?

4 A I do not know that.

5 Q Do you think that a deposition might have  
6 helped you with respect to the vagueness that you  
7 testified, to the extent that it was available, that  
8 you could have had OPC ask questions that would have  
9 clarified your points of vagueness?

10 A It could possibly have helped.

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

12 CHAIRMAN BRISE: All right.

13 Staff?

14 MR. YOUNG: No questions.

15 CHAIRMAN BRISE: Commissioners?

16 Commission Graham and then Commission Balbis.

17 COMMISSIONER GRAHAM: Thank you,

18 Mr. Chairman.

19 This may be perfect timing, but my first  
20 comment was going to be I agree with you, that it  
21 was kind of vague. But I got some of my questions  
22 answered yesterday on how this process flows  
23 through.

24 And as Mr. Butler asked earlier, if you're  
25 not familiar with our practice and specifically on

1 the hedging, you see how the process works where  
2 we can come to some sort of understanding through  
3 our staff and through Florida Power & Light on how  
4 this mechanism will actually work, which will be  
5 after this is either approved or disapproved.

6 A question I have for you is you said that  
7 this is something they should be doing already,  
8 correct?

9 THE WITNESS: Yes.

10 COMMISSIONER GRAHAM: So I guess the question  
11 I have is do you think there should be a penalty  
12 because they're not doing a better job than  
13 they're currently doing?

14 THE WITNESS: Well, I think you could  
15 probably review that in the fuel reconciliation  
16 case. And if they're not doing an adequate job,  
17 fuel expenses are higher than they should have  
18 been, I think you can make a disallowance.

19 COMMISSIONER GRAHAM: So this is something  
20 that should be benchmarked constantly?

21 THE WITNESS: Yes, I think it should be  
22 something that is reviewed on an ongoing basis.

23 COMMISSIONER GRAHAM: So then how do you go  
24 out -- how do you go out and figure out where they  
25 should and should not be taking advantage of

1 opportunities that are out there?

2 THE WITNESS: Well, it goes to my problem  
3 with after the true-up review. Economic dispatch  
4 requires very complex computer models and a  
5 tremendous amount of data inputs in order to run  
6 those models. Those models are usually  
7 proprietary, they're not readily available to most  
8 parties. And you can get licenses for some of  
9 them that are commercially available, but they're  
10 very expensive, and it would take a tremendous  
11 amount of time to review all of the data inputs  
12 necessary to run the model. I don't believe  
13 that's -- it's going to be very difficult to do in  
14 a fuel reconciliation process.

15 COMMISSIONER GRAHAM: So from what I  
16 understand your testimony being, it's convoluted,  
17 it's expensive, it's very detail oriented. So  
18 where -- how and why should they be doing this, as  
19 you said? You said this should be part of their  
20 normal practice, so how should all of that extra  
21 stuff be part of their normal practice?

22 THE WITNESS: Well, part of the problem is  
23 the time allotted under the fuel reconciliation  
24 provision. I don't think it is enough time to do  
25 that, so I think you need to provide for adequate

1 time for parties to do that kind of analysis.

2 COMMISSIONER GRAHAM: Well, in your  
3 testimony -- let's turn to page 11 -- I'm trying  
4 to remember where you put it -- you said that you  
5 can't believe that they had the audacity to come  
6 up with something like this.

7 But I guess my question is if you can't  
8 incentivize them to do it and the resources aren't  
9 there to force them to do it, how does -- it seems  
10 like it's an opportunity that goes by the wayside  
11 unless somebody comes up with a clever way of  
12 making it happen.

13 THE WITNESS: Well, the issue is that as far  
14 as purchase power savings, which I believe is what  
15 you're referring to, that should be just a normal  
16 part of their business. I believe they're  
17 adequately compensated already to do that.

18 If they're not doing it adequately, I think  
19 you can determine that as part of the fuel  
20 reconciliation process if the parties are allotted  
21 adequate time to do that.

22 COMMISSIONER GRAHAM: Well, let's see if we  
23 can't break the deal down a little bit. The deal  
24 is -- and we'll speak in rough numbers -- I don't  
25 know if you were here -- they want to hire three

1 employees. They figure the cost is going to be  
2 roughly \$500,000. And their commitment is the  
3 ratepayers will get \$10 million before we start  
4 claiming any of that.

5 So if you're a businessman going into a deal  
6 that you can spend a half million dollars and get  
7 a \$10 million return plus some further return as  
8 you go forward, is that a good deal or a bad deal?

9 THE WITNESS: Well, my concern is not only  
10 the economics of the deal but also the impact on  
11 reliability. You know, I think if we're trying to  
12 incentivize a utility to pursue transactions that  
13 would increase their profit, you get into a gray  
14 area as to whether or not or their reliability is  
15 going to be impacted.

16 You know, if it's a no-brainer decision, you  
17 know, they ought to be doing that anyway. If  
18 you're giving them an incentive to kind of push  
19 the envelope and get into the gray area, you know,  
20 reliability could be impacted. And that's a  
21 dangerous path to go down.

22 COMMISSIONER GRAHAM: I think I'm a little  
23 lost. Now, I agree if it's something that's out  
24 there that it's a deal that they would probably  
25 trip over, then I wouldn't have a problem coming

1 after them saying that they were imprudent for not  
2 chasing after that deal because it was an obvious  
3 thing.

4 Beyond that obvious deal, the ones that you  
5 said you have to get -- it was going to be very  
6 costly, there is going to be various modeling and  
7 things that have to be done to take advantage of  
8 some of those other smaller deals. So it seems  
9 like we're not talking about the obvious -- the  
10 big deals, the ones that you trip over, we're  
11 talking about the ones that are down into the  
12 weeds that you have to shake those deals out.

13 Now, I guess what I don't understand is where  
14 you see the negative coming from. Give me an  
15 example of how this could go very bad for the  
16 ratepayers.

17 THE WITNESS: Well, I think my exhibit shows  
18 an immediate place where it could go bad is  
19 historically they made purchase power decisions  
20 and those -- without any kind of incentive under  
21 their new program, without any change in behavior,  
22 they get \$47 million. I mean, I think that's  
23 significant dollars and a negative impact on  
24 ratepayers.

25 COMMISSIONER GRAHAM: But the ratepayers also

1 get a benefit out of that, correct?

2 THE WITNESS: They -- no, the benefit they  
3 get out of it has been reduced by \$47 million.

4 COMMISSIONER GRAHAM: Which exhibit are you  
5 talking about? You're going to have to walk me  
6 through this because I'm not following you.

7 THE WITNESS: It's my Exhibit JWD-2, which  
8 looking at historic data, if you include savings  
9 from purchase power in the incentive mechanism,  
10 fuel costs to ratepayers would have gone up  
11 \$47 million.

12 COMMISSIONER GRAHAM: Where are you looking  
13 at on this chart?

14 THE WITNESS: Well, the 47 million is the  
15 difference between the total number in Column I,  
16 which is what FPL currently gets, and the number  
17 in Column K, which is the number FPL would get  
18 under the new incentive mechanism. So the  
19 differences between those two numbers is  
20 47 million.

21 COMMISSIONER GRAHAM: But, now, what do the  
22 ratepayers get in that same scenario?

23 THE WITNESS: They get a higher fuel factor  
24 to the tune of \$47 million.

25 COMMISSIONER GRAHAM: You still have me lost.

1 Let's back up.

2 Now, we're talking specifically about dollars  
3 that happened in 2011, correct?

4 THE WITNESS: Well, it's from the inception  
5 of the current incentive mechanism. If the new or  
6 the proposed incentive mechanism would have been  
7 in place during that time frame, fuel charges to  
8 ratepayers would have gone up \$47 million.

9 COMMISSIONER GRAHAM: All right. So the  
10 current mechanism was instituted in 2001?

11 THE WITNESS: Yes.

12 COMMISSIONER GRAHAM: And you are looking at  
13 years 2003, 2005, 2009, 2010, 2011. My question  
14 is where is years 2001, and '02? Where is years  
15 '04? Where is years '06, '07, '08 in your data?

16 THE WITNESS: Well, if we want to look at  
17 those years, we can refer to Mr. Forrest's  
18 rebuttal exhibit.

19 COMMISSIONER GRAHAM: Okay.

20 THE WITNESS: The numbers don't change that  
21 much. I believe it was one of the exhibits that  
22 was handed out. I don't have the exhibit number.

23 COMMISSIONER GRAHAM: It's 722.

24 THE WITNESS: If you go to the first page of  
25 that exhibit, that includes all of the years. If



1           you look at the difference on the total line, the  
2           difference between Column J, which is 1.8 million,  
3           and Column K, which is 48.4 million, still roughly  
4           talking 46, \$47 million, if you look at all of the  
5           years.

6           COMMISSIONER GRAHAM: But in your data, it  
7           seems to me that you picked all of the -- all of  
8           the ones where the mechanism numbers are on the  
9           high end and none of the ones with the mechanism  
10          numbers on the low end. You just kind of -- you  
11          cherry picked your data?

12          THE WITNESS: Well, I'm saying if you include  
13          the other years, the 47 million doesn't change  
14          significantly. It's still in the ballpark of a  
15          \$47 million increase to ratepayers if you include  
16          all of the years.

17          The number in Column I, the total benefit to  
18          the company is currently 1.8 million. If the new  
19          proposed mechanism had been in effect, they would  
20          have received 48.4 million. The difference  
21          between those two numbers is approximately  
22          47 million, 46 million, and that's the number that  
23          fuel charges to ratepayers would have increased.

24          COMMISSIONER GRAHAM: Now, my understanding  
25          was that you had to hit a -- you had to hit

1 46 million before the company started receiving  
2 anything; is that correct?

3 THE WITNESS: That's correct. And the  
4 numbers in Column D are the amounts in excess of  
5 the 46 million.

6 COMMISSIONER GRAHAM: Okay. So in your  
7 chart, there is two years, which is 2010 and 2011,  
8 that were significant over that 46 threshold?

9 THE WITNESS: Yes. This chart that we're  
10 looking at currently is Mr. Forrest's chart, but  
11 yes, that's what it shows.

12 COMMISSIONER GRAHAM: Now, did you ask the  
13 company at all why that number was as high as it  
14 is?

15 THE WITNESS: Well, this is based on historic  
16 data. It's the result of applying the new  
17 incentive mechanism.

18 COMMISSIONER GRAHAM: So the answer to the  
19 question is no?

20 THE WITNESS: Well, they provided the data.  
21 The question was asked by, I believe it was staff,  
22 to provide these numbers. I just put them in an  
23 exhibit.

24 COMMISSIONER GRAHAM: But when you see a  
25 number that is so far out of what I would consider

1 the trend, isn't the first reaction to say, well,  
2 what happened on these two years to make these  
3 numbers so high?

4 THE WITNESS: I don't know if -- I don't  
5 believe that question got asked.

6 COMMISSIONER GRAHAM: Okay.

7 CHAIRMAN BRISE: All right. Commissioner  
8 Balbis.

9 COMMISSIONER BALBIS: Okay. Yeah, I only had  
10 one question, but I think Commission Graham may  
11 have gotten me confused, so I just want to clarify  
12 this.

13 Going to the existing incentive mechanism for  
14 power generation and purchase and your table.  
15 And, I guess, just not to overly simplify it, but  
16 because FPL indicated that the new incentive --  
17 the increasing of the incentive will not change  
18 their behavior, all they're doing is getting a  
19 higher percentage of the savings; is that correct?

20 THE WITNESS: I guess I don't recall  
21 specifically making that statement. You know, I  
22 think the expanded transactions would change what  
23 they're currently doing if they enter into some of  
24 those expanded transactions.

25 COMMISSIONER BALBIS: No, they have the two

1 separate mechanisms. The existing incentive  
2 mechanism is going to be changed or expanded and  
3 then the asset optimization measures that they're  
4 going to start doing if we approve the settlement  
5 agreement.

6 But focusing on the existing incentive  
7 mechanism, which is what your exhibit shows for  
8 those five years, the current incentive and the  
9 proposed incentive, what the different dollars are  
10 associated with that, right?

11 THE WITNESS: Yes.

12 COMMISSIONER BALBIS: Okay. So since they're  
13 not going to change any of their behavior on the  
14 economic dispatch or purchasing power, your table  
15 just shows they are getting a higher percentage of  
16 the savings; is that correct, or no?

17 THE WITNESS: Well, let me make sure I  
18 understand your question. The current incentive  
19 mechanism only deals with sales, it doesn't  
20 include purchases. So, you know, if the question  
21 is their behavior would be different, you know,  
22 for all of the other incentives in the proposal,  
23 you know, I don't know that. But as far as just  
24 the purchases and the sales, I believe their  
25 behavior would be the same.

1 I believe Mr. Forrest indicated yesterday  
2 that they were going to hire some additional  
3 people to try to look at other areas. But, you  
4 know, that's -- you know, hasn't been done. But  
5 at least historically, you know, I think their  
6 behavior would have been the same.

7 COMMISSIONER BALBIS: Okay. I think I'll  
8 remain confused. I'll go to my original question.

9 You indicated in your testimony that instead  
10 of initiating this new incentive mechanism through  
11 the settlement agreement, that the Commission  
12 should go through a traditional rule-making  
13 process.

14 So what additional information can we get  
15 through that process that has not been provided in  
16 support of the settlement agreement?

17 THE WITNESS: Well, I think this is more of a  
18 generic type of issue that other utilities will be  
19 interested in if you give this provision to FPL,  
20 you know, I think you need to hear from these  
21 other utilities because they may have other views.  
22 It may impact them differently. So I think you  
23 need other utilities involved and other -- the  
24 parties or customers of those other utilities  
25 involved. It's a generic issue that I think will

1 affect everybody in the state.

2 COMMISSIONER BALBIS: Well, couldn't we  
3 tailor individual programs for each individual  
4 utility as they present these programs to us?

5 THE WITNESS: Well, I suppose you could do  
6 that. You know, I think, you know, some of the  
7 decisions that need to be made would be similar  
8 across the board, so I would think that you would  
9 want to consider the implications not only for FPL  
10 but for the other utilities.

11 COMMISSIONER BALBIS: Okay. Thank you.  
12 That's all I have.

13 CHAIRMAN BRISE: All right. Commissioners,  
14 any further questions for this witness?

15 (Negative response.)

16 CHAIRMAN BRISE: All right. Redirect.

17 REDIRECT EXAMINATION

18 BY MS. CHRISTENSEN:

19 **Q Okay. I think hopefully to follow up on a**  
20 **few questions Commissioner Balbis posed, is the current**  
21 **mechanism that we're talking about, does that apply the**  
22 **same to all of the investor-owned utilities, to your**  
23 **knowledge?**

24 A Yes, I believe it does.

25 **Q Okay. I want to take a look at your Exhibit**

1 **JW-2. Can you explain why you chose the years you**  
2 **chose to include in this exhibit and didn't include all**  
3 **of them?**

4 A Well, I initially looked at just the years in  
5 which the proposed incentive mechanism would have  
6 produced a change in what the current incentive  
7 mechanism produced, so that was primarily the basis for  
8 doing that.

9 Q Okay. So essentially you were trying to --  
10 so your exhibit, if I'm understanding the purpose of  
11 your exhibit, was to show the difference between how  
12 the current mechanism works versus how if the proposed  
13 mechanism had been in place, how that would have  
14 worked? And is that my understanding of your  
15 explanation?

16 MR. BUTLER: I'm going to object to that as  
17 leading. Improper for redirect.

18 MS. CHRISTENSEN: I can move on.

19 CHAIRMAN BRISE: Okay.

20 BY MS. CHRISTENSEN:

21 Q Mr. Daniel, do ratepayers currently get 100  
22 percent of the benefit of purchase power as an offset  
23 to fuel costs?

24 A Yes, they do.

25 Q And does your exhibit show how the current

1 purchase power benefit that's enjoyed by customers  
2 would change under the proposed mechanism?

3 A Based on the historic period that the current  
4 incentive mechanism has been in place, it does show  
5 that result.

6 Q Okay. And how would those customers be  
7 impacted under the proposed mechanism based on  
8 historical data?

9 A I believe I previously stated that their fuel  
10 charges would have increased by approximately  
11 \$47 million.

12 Q Okay. And if FPL changes -- does not change  
13 their behavior regarding purchase power, how they do  
14 their purchase power transactions, would customers  
15 benefit from the changed proposed mechanism?

16 A During the historic period?

17 Q No; during future periods based on what you  
18 know from the historic periods? If FPL does not change  
19 the way they procure purchase power, would customers be  
20 better off under the current incentive mechanism or the  
21 proposed incentive mechanism?

22 A I think the inclusion of savings due to  
23 purchase power, that's going to increase fuel costs  
24 tremendously to ratepayers. So if there are savings  
25 related to some of these other transactions that they



1 want to include, there are going to have to be a  
2 tremendous level of those before they offset the  
3 increase in fuel charges due to the proposed split of  
4 the savings on purchase power.

5 So it's possible that there could be a net  
6 benefit, but it would have to be a tremendous amount of  
7 some of these other transactions before they offset the  
8 negative impact, including savings from purchase power.

9 **Q Okay. And in part, you're basing your answer**  
10 **on the -- would it be -- I'm trying to figure out how**  
11 **to say this.**

12 **Am I understanding it that customers would be**  
13 **potentially worse off unless the company engages in**  
14 **other types of transactions under the proposed**  
15 **incentive mechanism? Can you explain that a little bit**  
16 **further?**

17 MR. BUTLER: I'm going to object again to  
18 leading. She's clearly trying to take the witness  
19 to a place he's not too sure he knows how to go.

20 CHAIRMAN BRISE: If you can rephrase.

21 MS. CHRISTENSEN: I'll attempt to restate.

22 BY MS. CHRISTENSEN:

23 **Q I'm just trying to get further clarification.**  
24 **Assuming that -- I'll move on to a different subject.**

25 **Can you tell us, when were you retained to**

1 **provide testimony in this matter?**

2 A It was during the week previous -- prior to  
3 the deadline for filing testimony.

4 **Q And were you aware that the Commission had**  
5 **not decided to take evidence regarding the stipulation**  
6 **until the week of September 27th?**

7 MR. BUTLER: I'm going to object to that as  
8 leading again.

9 BY MS. CHRISTENSEN:

10 **Q Do you know when the Commission decided to**  
11 **take evidence regarding the settlement agreement in**  
12 **this matter?**

13 A I do not.

14 MS. CHRISTENSEN: I believe that may be my  
15 last question, just give me a second, let me see.

16 CHAIRMAN BRISE: Sure.

17 MS. CHRISTENSEN: I believe that was my last  
18 question.

19 CHAIRMAN BRISE: All right. Let's deal with  
20 exhibits.

21 MR. BUTLER: FPL would move Exhibit 722.

22 CHAIRMAN BRISE: Ms. Christensen.

23 MS. CHRISTENSEN: I would move Mr. Daniel's  
24 exhibits attached to his prefiled testimony, which  
25 I believe is 684 and 685.

1 CHAIRMAN BRISE: Okay. We will move exhibits  
2 684 and 685 into the record at this time.

3 (Exhibit Nos. 684 and 685 were received in  
4 evidence.)

5 MS. CHRISTENSEN: I would also move 721,  
6 which is the errata sheet to his exhibit.

7 CHAIRMAN BRISE: As well as 721. All right.  
8 Not withstanding the standing objection.

9 (Exhibit No. 721 was received in evidence.)

10 CHAIRMAN BRISE: And Mr. Butler asked to move  
11 722 into the record.

12 MR. BUTLER: Yes, please.

13 CHAIRMAN BRISE: Okay. Not withstanding the  
14 standing objection.

15 (Exhibit No. 722 was received in evidence.)

16 CHAIRMAN BRISE: All right. Is there  
17 anything else for this witness?

18 MS. CHRISTENSEN: No. We would ask that the  
19 witness be excused.

20 CHAIRMAN BRISE: All right. Mr. Daniel,  
21 thank you.

22 THE WITNESS: Thank you.

23 CHAIRMAN BRISE: All right. Travel safely.

24 All right. At this time, we're going to go  
25 ahead and take our lunch break. It is 12:41, so

1 see you back here at 1:41.

2 (Whereupon, a luncheon recess was taken.)

3 CHAIRMAN BRISE: We're going to go ahead and  
4 reconvene at this time.

5 Mr. Rehwinkel.

6 MR. REHWINKEL: Yes, Mr. Chairman. Before  
7 Mr. McGlothlin introduces our next witness and in  
8 absence of Ms. Christensen, I wanted to make a  
9 statement for the record to address an issue that  
10 was raised earlier.

11 On Mr. Wiseman's cross examination of  
12 Mr. Daniel, he asked the question about the timing  
13 of Public Counsel discovery, and I think an  
14 objection was interposed and a statement regarding  
15 mischaracterizing evidence was made.

16 In the confusion of the timeline of discovery  
17 versus data requests and the timing of when there  
18 was an opportunity to actually hear evidence after  
19 September 27th, I think something got jumbled up  
20 in there, and we would like to apologize and state  
21 that Mr. Wiseman was correct in stating that  
22 discovery was served on October 31st, so he is  
23 correct in that regard, without agreeing to the  
24 premise of his question. Thank you.

25 CHAIRMAN BRISE: All right. Thank you very

1 much, for the record.

2 All right, Mr. McGlothlin.

3 MR. McGLOTHLIN: OPC calls Kevin O'Donnell.

4 Thereupon,

5 KEVIN O'DONNELL

6 was called as a witness, having been previously duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. McGLOTHLIN:

10 **Q Have you been sworn, sir?**

11 A Yes, I have.

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

14 A Kevin O'Donnell, I'm President of Nova Energy  
15 Consultants, my address is 1350 Southeast Maynard Road,  
16 Suite 101, Cary, North Carolina.

17 **Q On behalf of the Office of Public Counsel,**  
18 **did you prepare and submit direct testimony in this**  
19 **proceeding?**

20 A Yes, I did.

21 **Q Do you have that document with you?**

22 A Yes, I do.

23 **Q Do you have any corrections or changes to**  
24 **make to the document?**

25 A No, I do not.

1           **Q     Do you accept the questions and answers that**  
2 **appear in your prefiled testimony as your testimony**  
3 **today?**

4           A     Yes, I do.

5           MR. McGLOTHLIN: I ask that the prefiled  
6 testimony be entered into the record at this point  
7 as though read.

8           CHAIRMAN BRISE: Okay. We will enter  
9 Mr. O'Donnell's prefiled testimony into the record  
10 as though read, notwithstanding the standing  
11 objection.

12           (Whereupon, prefiled testimony inserted.)

13  
14  
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25

**DIRECT TESTIMONY****OF****Kevin W. O'Donnell, CFA****On Behalf of the Office of Public Counsel****In Response To****Order No. PSC-12-0529-PCO-EI**

1  
2  
3  
4  
5  
6  
7 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS**  
8 **FOR THE RECORD.**

9 **A.** My name is Kevin W. O'Donnell. I am President of Nova Energy Consultants,  
10 Inc. My business address is 1350 Maynard Rd., Suite 101, Cary, North Carolina  
11 27511.

12  
13 **Q. ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS**  
14 **PROCEEDING?**

15 **A.** I am testifying on behalf of the Florida Office of Public Counsel ("OPC"), which  
16 represents the interests of consumers in utility rate proceedings before the Florida  
17 Public Service Commission ("FPSC" or "Commission").

18  
19 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**  
20 **PROCEEDING?**

21 **A.** Yes. I presented prefiled direct testimony on July 2, 2012, and testified during the  
22 hearing that the Commission conducted in August 2012. My earlier testimony

1 includes my educational background and professional experience. Briefly, I am a  
2 consultant and subject matter expert in the areas of cost of equity capital, capital  
3 structure, cost of service, and rate design of regulated utilities. In my prefiled  
4 July testimony, I addressed the issue of the proper capital structure to use in this  
5 proceeding. My July, 2012 testimony dovetails with that of OPC witness Dr.  
6 Randall Woolridge, who performed and sponsored a detailed analysis of Florida  
7 Power & Light's ("FPL") cost of equity capital. In the testimony that I presented  
8 during the August hearing, I recommended that the Commission employ an  
9 imputed capital structure containing 50% equity and 50% debt for ratemaking  
10 purposes in this case. Dr. Woolridge developed a discounted cash flow-based  
11 cost of equity for FPL corresponding to the risk profile that includes a 50% equity  
12 ratio. He recommended that the Commission establish a return on equity for FPL  
13 of 9%. Dr. Woolridge also quantified the difference in risk between the 50%  
14 equity ratio that I recommend and the 59.62% equity ratio that FPL proposes. Dr.  
15 Woolridge testified that in the event that the Commission adopts FPL's proposed  
16 59.62% equity ratio, it should reduce the authorized ROE by 50 basis points to  
17 8.5%.

18  
19 **Q. WHAT IS THE PURPOSE OF YOUR ADDITIONAL TESTIMONY?**

20 **A.** The purpose of my testimony in this additional phase of the proceeding is to  
21 respond to the testimonies of FPL witness Moray Dewhurst and Florida Industrial  
22 Power Users Group ("FIPUG") witness Jeff Pollock, which were filed in support



1 of the "Stipulation Settlement" document executed by FPL, FIPUG, the South  
2 Florida Hospital and Healthcare Association ("SFHHA"), and the Federal  
3 Executive Agencies ("FEA") on August 15, 2012 (referred to herein as the  
4 "August 15 document"). Mr. Dewhurst and Mr. Pollock address the cost of  
5 capital aspects of the August 15 document. I have been informed by OPC counsel  
6 that OPC opposes the August 15 document on legal and substantive grounds.  
7 Because the legal issues have not been resolved to date, I am addressing the  
8 technical aspects of these testimonies as they relate to the cost of capital  
9 components of the August 15 document.

10  
11 **Q. PLEASE RESPOND TO MR. DEWHURST'S TESTIMONY.**

12 **A.** Mr. Dewhurst testifies that he has spoken to a number of investors, and they told  
13 him that the August 15 document, which includes a return on equity ("ROE") of  
14 10.7%, is acceptable to them. Such an acceptance is hardly surprising, because  
15 10.7% ROE is higher than would be warranted by any credible analysis of capital  
16 market conditions — as Dr. Woolridge demonstrated in detail during the August  
17 2012 hearing. In today's economic environment, coupling a 10.7% ROE with a  
18 59.62% equity ratio for FPL, as the signatories propose to do, would produce  
19 what I would consider to be a windfall for investors. Unfortunately, this windfall  
20 to investors would come at the expense of captive ratepayers in Florida.

1 Mr. Dewhurst also attempts to link the settlement involving Progress Energy  
2 Florida (PEF) that the Commission approved in Docket No. 120022-EI and the  
3 current proceeding. As Mr. Dewhurst surely knows, each settlement is based on  
4 factors that are unique to the circumstances of that case. The situation with PEF  
5 simply does not "translate" to that of FPL. Therefore, any comparison between  
6 these cases is inappropriate.

7  
8 **Q. WHAT IS THE BASIS FOR YOUR OBSERVATION THAT THE PEF  
9 SETTLEMENT DIFFERS FROM FPL'S CIRCUMSTANCES?**

10 A. First, it is my understanding that PEF was actually granted a base ROE of 10.5%,  
11 and that the 10.7% to which Mr. Dewhurst tries to lay claim is expressly  
12 conditioned on PEF's ability to get its crippled Crystal River Nuclear Plant back  
13 online prior to 2016. In addition, the base 10.5% ROE is one term of a multi-  
14 faceted settlement under which PEF agreed to refund approximately \$288 million  
15 to its customers, among other things. In the instant case, FPL has not offered a  
16 refund, and does not face a situation that is in any way analogous to PEF's broken  
17 nuclear unit. In other words, the circumstances surrounding the PEF settlement  
18 are totally different than FPL's current situation, in which FPL seeks approval of  
19 a series of substantial rate hikes and other advantages. In addition, PEF's equity  
20 ratio (as used in the AFUDC calculation) for investor supplied funds was 50.05%,  
21 while FPL wants to maintain its extravagant 59.62% equity ratio for ratemaking  
22 purposes. The Commission referred to FPL's high equity ratio when it set FPL's

1 it set FPL's return on equity at 10% in Docket No. 080677-EI in 2010 (See Order  
2 No. PSC-10-0153-FOF-EI, issued on March 17, 2010, at page 132). At  
3 approximately the same time, the Commission established PEF's return on equity  
4 at 10.5% (Order No. PSC-10-0131-FOF-EI, issued March 5, 2010). In other  
5 words, through its past actions, the Commission has refuted the notion that FPL  
6 and PEF should receive the same authorized ROE.

7  
8 In addition to the above statement regarding the PEF settlement, it is important to  
9 contrast the financial conditions that were present at the time of that settlement  
10 and the current conditions. The settlement involving PEF, OPC, and others was  
11 reached on Friday, January 20, 2012. On that date, the yield on 30-year U.S.  
12 Treasury bonds was 2.99%. Today, the yield on 30-year U.S. Treasury bonds has  
13 fallen to 2.92% and utility prices have risen since the beginning of the year. In  
14 terms of opportunities with fixed income investments and common equities, the  
15 cost of capital has fallen since PEF and OPC entered into the PEF settlement.

16  
17 **Q. PLEASE ELABORATE ON HOW UTILITY STOCKS HAVE REACTED**  
18 **TO THE LOW INTEREST RATE LEVELS FOUND IN TODAY'S**  
19 **MARKETPLACE.**

20 **A.** Utility stocks are often desired by investors that seek current income. Since  
21 interest rates have fallen, many investors have turned to utility stocks to replace  
22 income that they would otherwise have seen through a purchase of fixed income

1 securities (bonds). Exhibit KWO-11 is a chart showing the movement of the Dow  
2 Jones Utility Index from January 1, 2010, through present day.

3 Dividend yields are calculated by dividing a company's dividend by the current  
4 stock price. Since utility stocks, as defined by the Dow Jones Utility Index, have  
5 increased nearly 25% since the beginning of 2010, dividend yields have  
6 correspondingly moved downward. These lower dividend yields again reflect the  
7 fact that the cost of capital available in the marketplace has fallen.

8  
9 **Q. MR. DEWHURST ALSO ALLUDES TO THE COMMISSION'S**  
10 **DECISION IN GULF POWER'S RATE CASE. WHAT HAVE CAPITAL**  
11 **MARKETS DONE SINCE THE COMMISSION ISSUED ITS FINAL**  
12 **ORDER IN THE GULF POWER CASE ON APRIL 3, 2012?**

13 **A.** On April 3, 2012, the Commission issued Order No. PSC-12-0179-FOF-EI, in  
14 which it allowed Gulf Power a ROE of 10.25%. On that date, the 30-year U.S.  
15 Treasury bond yield was 3.41%, whereas today 30-year U.S. Treasury bonds are  
16 yielding 2.92%. Similarly, the Dow Jones Utility Index on February 27, 2012  
17 was 453.75 and as of October 22, 2012 it was at 475.49, which equates to a price  
18 increase of approximately 4.8%. So this is yet another example illustrating that  
19 the cost of capital has fallen during 2012.

20  
21 **Q. IS GULF POWER'S EQUITY RATIO SIMILAR TO THAT WHICH FPL**  
22 **PROPOSES?**

1 A. No. Based upon information that I obtained from the Gulf Power docket, the  
2 equity ratio that the Commission approved (when limited to investor provided  
3 capital, to correspond to FPL's request) is 46.26%. An equity ratio of 46.26% is  
4 far lower than the 59.62% equity ratio requested in the August 15 document in  
5 this proceeding.

6  
7 **Q. DO YOU AGREE WITH COMPANY WITNESS DEWHURST THAT**  
8 **INFLATION AND INTEREST RATES ARE ANTICIPATED TO RISE**  
9 **OVER THE NEXT FOUR YEARS, THEREBY CREATING RISK TO**  
10 **FPL?**

11 A. No. I disagree with Mr. Dewhurst's premise.

12  
13 **Q. ON WHAT DO YOU BASE YOUR ANSWER?**

14 A. On September 13, 2012, the Federal Reserve announced additional quantitative  
15 easing, which has been labeled "QE3." "Quantitative easing" means that the  
16 Federal Reserve plans to take measures designed to keep interest rates low. I  
17 have attached an article to my testimony (Exhibit KWO-12) in which ABC News  
18 reports that the Federal Reserve intends to keep interest rates low through mid-  
19 2015. Mr. Dewhurst ignored this notable development in his testimony.

20  
21 **Q. PLEASE TURN TO MR. POLLOCK'S TESTIMONY.**

1 A. Mr. Pollock offers some comparisons with other utilities' authorized returns in  
2 support of his contention that the settlement would provide FPL with a  
3 "competitive" rate of return. To the limited extent that comparisons with other  
4 utilities' rates of return are useful without the in-depth type of analysis that Dr.  
5 Woolridge (and others) sponsored during the August hearing, I believe that these  
6 comparisons must:

- 7 (1) be based on decisions made contemporaneously or near in time; and  
8 (2) take into account, given the extreme nature of FPL's equity ratio request,  
9 the differences in risk associated with varying capital structures.

10

11 **Q. DO YOU AGREE WITH MR. POLLOCK'S STATEMENT THAT THE**  
12 **10.7% ROE PROPOSAL IS COMPARABLE TO THE AUTHORIZED**  
13 **ROE'S IN OTHER SOUTHEASTERN STATES?**

14 A. Mr. Pollock did not provide the work papers to show how he calculated the  
15 authorized ROE for all other southeastern U.S. electric utilities. Hence, I cannot  
16 comment at this time on the accuracy of his calculation. Based on his description,  
17 it appears that Mr. Pollock's basis for comparison depends more on geographical  
18 proximity than proximity in time. If Mr. Pollock's authorized ROE average  
19 value of 10.8% includes returns authorized prior to 2012, his comparison suffers  
20 from the problem of differences in time frames to which I alluded earlier. Given  
21 that capital costs have fallen significantly in the past 3 years, I believe that it is  
22 simply inaccurate to compare authorized returns for any period prior to 2012.

1

2 **Q. DO YOU AGREE WITH MR. POLLOCK'S EXHIBIT JP-2, WHICH**  
3 **STATES THAT THE AVERAGE AUTHORIZED RETURN FOR**  
4 **ELECTRIC UTILITIES IS 10.38%?**

5 A. No. Again, at this point I do not know which period Mr. Pollock uses in his  
6 calculation of the average authorized ROE. However, in Exhibit KWO-13 I have  
7 provided the ROEs from across the United States that have been authorized in  
8 2012 and compared them to the 10.7% ROE proposed by the signatories to the  
9 August 15 document.

10

11 As can be seen in this exhibit, the 2012 average authorized ROE from other states  
12 is 9.99%, with the highest ROE being 10.5% and the lowest ROE being 9.25%. If  
13 approved, the 10.7% ROE proposed by FPL and the other signatories would be  
14 the highest authorized ROE I have found that has been allowed in the U.S. to date  
15 in 2012. I believe that this exhibit provides clear evidence that the 10.7%  
16 proposed ROE is simply out of line with how utility regulators across the country  
17 view the current capital markets.

18

19 **Q. HAS THIS COMMISSION PREVIOUSLY STATED THAT IT REVIEWS**  
20 **AUTHORIZED ROEs FROM OTHER STATES WHEN GAUGING THE**  
21 **REASONABLENESS OF ITS DECISIONS IN FLORIDA?**

1 A. Yes. In the Gulf Power Order, which was Docket No. 110138-EI, the  
2 Commission stated the following on page 52:

3  
4 Finally, the record indicated that the authorized ROEs set during 2011  
5 for integrated electric utilities as reported by SNL Financial ranged  
6 from a low of 9.8 percent to a high of 11.35 percent and averaged  
7 10.1 percent. While a 10.25 ROE for Gulf is based upon an  
8 independent assessment of the testimony and evidence in the record,  
9 the authorized ROEs from Commissions in other jurisdictions serve  
10 as a gauge to test the reasonableness of this ROE for Gulf.  
11

12 The data found in Exhibit KWO-13 provides the Commission the same type of  
13 comparison it made in the Gulf Power order entered earlier this year.  
14

15 **Q. HOW DOES THE CAPITAL STRUCTURE USED IN THE AUGUST 15**  
16 **DOCUMENT COMPARE TO THE CAPITAL STRUCTURES USED FOR**  
17 **RATEMAKING PURPOSES IN 2012?**

18 A. The signatories make no adjustment to FPL's proposed 59.62% equity ratio.  
19 However, since the Commission does test the reasonableness of its decisions by  
20 looking at decisions made in other states, I examined all of the cases heard to date  
21 in 2012 to prepare Exhibit KWO-14. This exhibit compares the equity ratios  
22 authorized by regulators throughout the country during 2012 to the August 15  
23 document's 59.62% equity ratio. This exhibit shows that, of the cases in which a  
24 specific equity ratio was found by a state regulatory body, the average equity ratio  
25 through 2012 was 51.35%, ranging from a high of 56.86% to a low of 46.17%.  
26

27 **Q. WHY IS THIS COMPARISON OF EQUITY RATIOS RELEVANT?**



1 A. As has been developed in the earlier phase of the case: when the amount of  
2 equity a company has in its capital structure increases, the amount of financial  
3 risk it bears decreases, and so the required ROE also decreases. Given that the  
4 terms of the August 15 document would provide FPL with the highest authorized  
5 equity ratio in any rate case decision in 2012, logic dictates that the authorized  
6 ROE should be at the low end of the range in rate case decisions this year.  
7 Significantly, despite their inverse relationship, FPL wants the highest ROE *and*  
8 the highest common equity ratio granted in the United States in the past year.  
9 OPC witnesses Donna Ramas, Jacob Pous, and James Daniel observe that other  
10 major provisions of the August 15 document are similarly one-sidedly  
11 advantageous to FPL. The Commission should not require Florida ratepayers to  
12 pay such excessive returns to FPL, especially in the absence of any other  
13 provisions that would warrant such major concessions in the area of cost of  
14 capital.

15  
16 **Q. PLEASE RESPOND TO MR. POLLOCK'S ASSERTION THAT A 10.7%  
17 ROE SHOULD ALLOW FPL TO MAINTAIN ITS "A" CREDIT RATING.**

18 A. The impact of OPC's recommendations, including OPC's recommendations on  
19 capital structure and ROE, has been addressed thoroughly by OPC witness Dan  
20 Lawton in response to the March 19, 2012 petition. Mr. Lawton has demonstrated  
21 that FPL would continue to exhibit cash flow characteristics of an "A" rated  
22 utility if all of OPC's positions were adopted. Since that is true of a 50% equity

1 ratio and an ROE of 9%, Mr. Pollock's claim that it is true with a 59.62% equity  
2 ratio and a 10.7% ROE does not surprise me. The pertinent question is whether  
3 an ROE of 10.7% is *necessary* to maintain FPL's current credit rating. The  
4 evidence indicates that the combination of the 59.62% equity ratio and the 10.7%  
5 ROE exceeds FPL's legitimate needs.

6  
7 Further, as I noted in my direct testimony filed in this proceeding in July 2012,  
8 credit rating agencies look through the regulated utility subsidiary to the  
9 consolidated group. In a March 11, 2010 publication entitled "Methodology:  
10 Differentiating The Issuer Credit Ratings Of A Regulated Utility Subsidiary And  
11 Its Parent," **Standard & Poors** made the following statement:

12  
13 Utility subsidiaries' ratings are linked to the consolidated group's  
14 credit quality because of the financial linkage of the parent to the  
15 subsidiary and the likelihood that, in times of stress or bankruptcy,  
16 the parent will consider the utility subsidiary as a resource to be  
17 used. Accordingly, our base-case financial analysis primarily  
18 focuses on the performance, cash flow, and balance sheet of the  
19 consolidated group.  
20

21 As can be seen from the above quote, the overall performance of NextEra Energy,  
22 Inc. represents the basis of FPL's credit rating, not the ROE authorized in this rate  
23 case.

24  
25 **Q. PLEASE EXPLAIN BRIEFLY WHY YOU BELIEVE THAT THE 10.7%**  
26 **ROE IN THE AUGUST 15 DOCUMENT IS INCONSISTENT WITH THE**

1           **RETURN JUSTIFIED BY CURRENT CONDITIONS IN CAPITAL**  
2           **MARKETS.**

3    A.    This point has already been made in the record of the August hearing, but I will  
4           briefly add to what has been stated earlier. As this Commission is aware, interest  
5           rates are at historically low levels, and dividend yields have dropped as well. In  
6           Exhibit KWO-15, I have provided a chart that shows the offered yield on 30-year  
7           U.S. Treasury bonds since January 1, 2010.

8  
9           As can be seen in this exhibit, interest rates have plummeted over the past 3 years.  
10          The downward movement in interest rates is due to the poor United States  
11          economy and efforts of the Federal Reserve to stabilize the economy through an  
12          easing of U.S. monetary policy. The level of interest rates drives other capital  
13          costs, including the return that investors require of equity investments.

14  
15    Q.    **ARE THERE ANY ASPECTS OF THE TERMS OF THE AUGUST 15**  
16           **DOCUMENT THAT BEAR ON THE REASONABLENESS OF THE**  
17           **PROPOSED 10.7% RETURN ON EQUITY?**

18    A.    Yes. During the August 2012 hearing, Dr. Woolridge and other experts  
19           demonstrated that, based on conditions of capital markets and FPL's risk profile,  
20           FPL's current cost of equity is less than 10%. The August 15 document contains  
21           provisions (such as the base rate increases that would occur in 2014 and 2016, and  
22           \$400 million of reserve amortization designated for earnings flexibility and

1 maintenance), which would reduce FPL's risk profile below that which was  
2 considered by cost of capital witnesses when they formed their opinions of FPL's  
3 required ROE. For this reason, too, the 10.7% is excessive and unreasonable.  
4

5 **Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS PHASE OF THE**  
6 **PROCEEDING.**

7 A. The 59.62% equity ratio implicit in the August 15 document is excessive,  
8 unreasonable, and would unduly burden customers. Particularly in view of the  
9 extreme equity ratio, which would lower FPL's risk in an environment in which  
10 interest rates are already at historic lows, and the risk-reducing features of the  
11 package of which it is a part, the 10.7% ROE in the August 15 document is  
12 excessive, unreasonable, and would unduly burden customers. Based on my  
13 research, in this proposed disposition of the rate case, FPL is asking the  
14 Commission to approve an ROE higher than any granted in 2012 to date, and pair  
15 it with an equity ratio higher than any approved in 2012 to date. In my view, in  
16 light of the clear evidence showing that capital costs have fallen since the  
17 Commission set FPL's ROE at 10% in 2010, and the analyses by Dr. Woolridge  
18 and others, the cost of capital terms of the August 15 document are skewed  
19 heavily toward FPL's interests, and would not produce fair, just, and reasonable  
20 rates. Finally, in light of the testimony of other OPC witnesses, who demonstrate  
21 that other provisions of the signatories' document are similarly skewed in FPL's  
22 favor, I do not see how the Commission could possibly conclude that the

1 disposition of FPL's petition proposed by the signatories would be in the public  
2 interest.

3

4 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

5 **A. Yes, it does.**

1 BY MR. MCGLOTHLIN:

2 **Q Did you also prepare exhibits to this**  
3 **prefiled testimony?**

4 A Yes, I did.

5 **Q All right.**

6 MR. MCGLOTHLIN: Commissioner, those have  
7 been designated as Exhibit Nos. 686 through 690  
8 inclusive.

9 (Exhibit Nos. 686 through 690 were marked for  
10 identification.)

11 BY MR. MCGLOTHLIN:

12 **Q Do you have any changes or corrections to**  
13 **those documents?**

14 A No, I do not.

15 **Q Have you prepared a summary of your prefiled**  
16 **testimony?**

17 A Yes, I have.

18 **Q Please proceed.**

19 A The purpose of my testimony is to respond to  
20 testimonies of FPL Witness Dewhurst and FIPUG Witness  
21 Pollock. I refute Mr. Dewhurst's effort to link the  
22 signatories' document to the ROE provision of the  
23 settlement in the Progress Energy PEF case.

24 First, the 10.7 percent ROE in the PEF  
25 settlement is contingent on PEF's ability to return the

1 Crystal River 3 Nuclear Plant online by 2016. In  
2 addition, the 10.5 percent base ROE in the PEF case was  
3 one term, among many other factors, one of which was a  
4 substantial refund to customers. In this case, the  
5 utility is asking for a large rate increase, not a  
6 decrease.

7 Furthermore, the equity ratio granted in the  
8 PEF case was 50.05 percent as opposed to the  
9 59.62 percent equity ratio that is implicit part of  
10 the August 15th document. Finally in 2010, the  
11 Commission established that the PEF's authorized  
12 midpoint ROE to be 10.5 percent and authorized FPL to  
13 earn 10 percent.

14 These decisions were made less than two weeks  
15 apart. Therefore, by its actions, the Commission has  
16 already rejected the notion that FPL's cost of equity  
17 is equivalent to PEF's.

18 In his prefiled testimony, Mr. Dewhurst also  
19 cites to Gulf Power's final order that was issued on  
20 April 3rd of this year. In that case, Gulf Power was  
21 granted an ROE of 10.25 percent.

22 In my testimony, I show that the cost of  
23 capital has fallen since the Gulf Power order, as  
24 evidenced by interest rates that have dropped almost 50  
25 basis points since the Gulf Power case, while the Dow

1 Jones Utility Index has risen 4.8 percent. In  
2 addition, the equity ratio granted to Gulf Power in  
3 that case is 46.26 percent as opposed to the 59.62  
4 percent proposed in the settlement in this case.

5 Mr. Dewhurst also claims that inflation and  
6 interest rates are anticipated to rise in the next four  
7 years, thereby creating risk for FPL. I point out that  
8 his assertion conflicts with the Federal Reserve's  
9 announced policy of maintaining low interest rates  
10 through its newest program of quantitative easing. The  
11 Federal Reserve intends to keep interest rates low  
12 through 2015.

13 FIPUG Witness Pollock tries to support the  
14 10.7 percent ROE of the August 15th document by  
15 referring to ROEs approved for other utilities  
16 throughout the United States over the past three years.  
17 To the extent that the Commission wishes to compare the  
18 10.7 percent proposal to decisions in other  
19 jurisdictions, I believe that the comparison should be  
20 limited to decisions made in 2012 because interest  
21 rates have been falling for the past three years and  
22 older decisions would not represent current capital  
23 market conditions because the utility's investment risk  
24 and cost of equity decrease as the amount of equity in  
25 its capital structure increases. I also maintain that



1 any such comparison should keep in mind the extremely  
2 high 59.62 percent equity ratio that the August 15th  
3 document adopts.

4 My research shows that for 2012 the average  
5 ROE granted by state regulators is 9.99 percent as  
6 opposed to the settlement request of 10.7 percent. In  
7 addition, the average equity ratio of cases disposed in  
8 2012 is 51.35 percent as opposed to the requested  
9 settlement amount of 59.62 percent.

10 My Exhibit KWO-13 shows that the proposed  
11 settled in this case will give FPL the highest allowed  
12 ROE of any rate case decision in 2012 that I'm aware  
13 of. Similarly, my Exhibit KWO-14 shows the settlement  
14 will give FPL the highest equity ratio of any rate case  
15 decision in 2012.

16 At the same time, other provisions such as  
17 assured base rate increases in 2014 and 2016 would  
18 reduce FPL's risk profile below that which was  
19 considered by Dr. Woolridge and other ROE analysts  
20 during the August hearing.

21 In my opinion, the 10.7 percent ROE and 59.62  
22 percent equity ratio features of the August 15th  
23 document are excessive, unreasonable, and would be  
24 unduly burdensome to FPL's customers, especially in the  
25 absence of other offsetting provisions that would

1 warrant such a huge concession in the area of cost to  
2 capital. I do not believe that approving the  
3 August 15th document would be in the public interest.

4 MR. MCGLOTHLIN: The witness is available for  
5 cross.

6 CHAIRMAN BRISE: All right. Thank you.

7 FPL.

8 MR. LITCHFIELD: No questions.

9 CHAIRMAN BRISE: South Florida Hospital  
10 Association.

11 MR. WISEMAN: No questions.

12 CHAIRMAN BRISE: FIPUG -- I mean FEA.

13 LT. COL FIKE: No questions.

14 CHAIRMAN BRISE: FIPUG.

15 MR. MOYLE: You're really going to put the  
16 comment about efficiency to the test, but we do  
17 have some questions.

18 CHAIRMAN BRISE: Okay.

19 CROSS EXAMINATION

20 BY MR. MOYLE:

21 **Q Good afternoon.**

22 **A Good afternoon.**

23 **Q I'm John Moyle and I represent the Florida**  
24 **Industrial Power Users Group.**

25 **You had made a statement in your opening**

1 about the Progress Energy settlement, I think you said  
2 it was a rate decrease or something. Is that what you  
3 said?

4 A It's my understanding there was a rate refund  
5 involved.

6 Q Okay. You're also aware there was a rate  
7 increase involved?

8 A I believe there was a balance between the  
9 two, yes.

10 Q Yeah. And the rate decrease was one time and  
11 the rate increase goes on in perpetuity, right?

12 A If it was a base rate increase, yes.

13 Q Do you know whether it was a base rate  
14 increase?

15 A I believe that it was a base rate increase,  
16 right.

17 Q Do you know how much it was?

18 A No, I don't.

19 Q Wouldn't that be a meaningful data point with  
20 respect to comparing the Progress Energy settlement as  
21 compared to the settlement in this case, how much the  
22 base rate increase in the Progress Energy case was?

23 A No, I don't think so because I think the key  
24 point is that you're dealing with a utility that's  
25 financially very solid in FPL and you're dealing with

1 another utility, PEF, that was dealing with the  
2 river -- crippled Crystal River Nuclear Plant. So, no,  
3 I --

4 **Q So if I told you it was a billion dollars --**

5 MR. MCGLOTHLIN: Excuse me.

6 MR. MOYLE: I'm sorry.

7 MR. MCGLOTHLIN: You interrupted his answer.

8 CHAIRMAN BRISE: Yeah, please allow him to  
9 finish.

10 MR. MOYLE: Okay.

11 THE WITNESS: I see your point, but I still  
12 think that when -- as an analyst and you're  
13 looking at the two and you're trying to determine  
14 the rate of return, it's most important to  
15 understand the times that you're involved in and  
16 then look at the overall risk profile between the  
17 two utilities.

18 BY MR. MOYLE:

19 **Q Okay. And I appreciate that, I've read your**  
20 **direct testimony and I understand your point that**  
21 **you're making. I guess my point simply is -- let me**  
22 **come at it this way: You would agree that each**  
23 **settlement agreement typically has unique terms and**  
24 **conditions, correct?**

25 A Yes.

1           **Q**     And you would also agree that the settlement  
2 agreement should be considered as a whole and not in  
3 parts, correct? In order to determine the public  
4 interest, don't you have to consider the settlement  
5 agreement as a whole as compared to picking, you know,  
6 one or two pieces of it?

7           A     The reason I can't answer that yes or no is  
8 because I've been involved in a number of settlements,  
9 and the settlement itself is presented to the  
10 Commission as a whole package.

11                     But I have seen some settlements where the  
12 Commissions have accepted part of the settlement and  
13 have rejected part of the settlement, so I would say it  
14 kind of depends on what the Commission decides to do  
15 and whether or not they deem to be -- the entire  
16 settlement to be in the public interest or whether they  
17 feel like it's up to them to take apart certain  
18 components.

19           **Q**     Okay. And we don't have any disagreement, do  
20 we, that the ultimate decision with respect to the  
21 public interest in this settlement agreement rests not  
22 with you, not with FIPUG, not with OPC, but rests with  
23 this Commission?

24           A     Yes.

25           **Q**     Okay. And back to the question that I was

1 trying to get you to answer, which I guess you're  
2 having difficulty answering yes or no -- and I'm trying  
3 to be really straightforward on it -- but wouldn't you  
4 agree that when considering whether a settlement  
5 agreement is in the public interest, that the entire  
6 settlement agreement should be considered?

7 A Yes, I think that the entire settlement  
8 agreement has to be considered, but I also believe --

9 Q Okay.

10 MR. MOYLE: That's all I need, Mr. Chairman,  
11 thank you.

12 BY MR. MOYLE:

13 Q And in this case, you don't provide testimony  
14 about the entire settlement agreement, do you?

15 A No. My testimony relates directly to cost to  
16 capital.

17 Q Okay. And you would agree that that is one  
18 component of the settlement agreement, correct?

19 A A very important component, but one.

20 Q Did you review the entire agreement? Did you  
21 read it?

22 A Yes.

23 Q Do you think there's anything in that  
24 agreement that is of benefit to my clients, the  
25 Industrial Power Users, or any other customers, or is

1 **it just your --**

2 MR. McGLOTHLIN: Objection.

3 BY MR. MOYLE:

4 **Q -- judgment it's all bad?**

5 MR. McGLOTHLIN: Beyond the scope of his  
6 testimony.

7 MR. MOYLE: Well, I think he in his summary  
8 said he thinks the agreement is not in the public  
9 interest. He just testified he read the whole  
10 thing so I think it's fair game.

11 MR. McGLOTHLIN: No, it's not fair game. In  
12 his testimony, he also alludes to the fact OPC is  
13 sponsoring several testimonies. And just as your  
14 witness didn't address the entire scope of the  
15 document, Mr. O'Donnell was careful to say that  
16 he's addressing the cost to capital components,  
17 and he's available for cross examination on his  
18 testimony on that subject.

19 MR. MOYLE: Well, Mr. Chairman, I do  
20 disagree. Mr. Pollock said he thought the  
21 agreement was in the public interest. And if OPC  
22 doesn't have anybody that can say they reviewed  
23 the entire agreement and say that it's not in the  
24 public interest, then I guess they don't. But I  
25 think that's a material defect in their burden of

1 proof.

2 So if he doesn't -- if he can't say he looked  
3 at the entire agreement and reached the conclusion  
4 as it relates to the public interest, I guess --

5 CHAIRMAN BRISE: Mr. Moyle, you can move on  
6 to the next question.

7 MR. MOYLE: Okay.

8 BY MR. MOYLE:

9 **Q Can you give us an opinion as to whether you**  
10 **looked at the entire agreement and have an opinion as**  
11 **to whether it's in the public interest or not?**

12 MR. McGLOTHLIN: Objection, beyond the scope  
13 of his direct testimony. He's here to talk about  
14 cost to capital. He has provided prefiled  
15 testimony and exhibits on that subject. He is  
16 prepared to answer questions about his testimony.

17 CHAIRMAN BRISE: Restate your question again.

18 MR. MOYLE: He said -- my recollection is in  
19 his summary he said he thought that the agreement  
20 was not in the public interest. He just said he  
21 read the entire agreement.

22 Mr. McGlothlin is saying he's only focusing  
23 on two areas, and I want to understand whether  
24 he's offering testimony to say that in his view,  
25 the entire agreement is not in the public interest



1 or whether he doesn't have an opinion on the  
2 entire agreement, he just has an opinion on the  
3 equity ratio and the cost to capital.

4 CHAIRMAN BRISE: Let me make sure my  
5 understanding is right on what this witness is  
6 here to talk about. On my sheet here -- and we  
7 are with Mr. O'Donnell, right?

8 MR. MOYLE: Yes.

9 CHAIRMAN BRISE: It says, "public interest"  
10 here, issue five.

11 MR. McGLOTHLIN: Yes. And Mr. Chairman,  
12 Mr. Moyle referred to his summary, and it is that,  
13 a summary, designed to fit within five minutes.  
14 He was summarizing, among other things, this  
15 statement on page 14: "Finally, in light of the  
16 testimony of other OPC witnesses, who demonstrate  
17 that other provisions of the signatories' document  
18 are similarly skewed in FPL's favor, I do not see  
19 how the Commission could possibly conclude that  
20 the disposition of the petition would be in the  
21 public interest."

22 So he's responsible for the cost to capital.  
23 And his conclusion about being in the public  
24 interest takes into account the input that other  
25 OPC witnesses have been providing to this

1 Commission, each one of which has been available  
2 for cross examination on their areas of  
3 responsibility. So that's why I say that  
4 Mr. Moyle's question is beyond the scope of this  
5 witness's testimony.

6 MR. MOYLE: And I would just point out that I  
7 asked him if he reviewed the whole agreement and  
8 he said he did. You know, he's talking about the  
9 public interest. In his summary, he said that he  
10 thinks the agreement is not in the public  
11 interest.

12 Now, Mr. McGlothlin is trying to isolate him  
13 only to two issues. And if that's what the  
14 witness says when I ask him the question, say,  
15 well, you're not comfortable talking about, you  
16 know, the impacts with respect to the commercial  
17 rider, then he can just tell me he's not  
18 comfortable doing that and he didn't consider  
19 that. But I think it's relevant to whether his  
20 opinion that he's giving to you all to say that he  
21 doesn't think it's in the public interest ought to  
22 be given significant weight if he didn't review  
23 the entire document.

24 MR. MCGLOTHLIN: To say that --

25 MR. MOYLE: He didn't say other things --

1 MR. MCGLOTHLIN: To use the word "isolated"  
2 has mischaracterized what I've been saying. This  
3 August 15 document is a broad document. It  
4 encompasses several technical disciplines. For  
5 instance, FPL has had different witnesses talk to  
6 each aspect of it.

7 Mr. O'Donnell has said from the start that he  
8 is addressing cost to capital. He has not  
9 isolated himself. He is offering his credentials  
10 in the area of cost to capital and addressing  
11 those aspects of the document for which he is  
12 qualified to opine.

13 CHAIRMAN BRISE: Mr. Moyle, restate your  
14 question and I will see -- I mean, Mr. O'Donnell,  
15 you can determine if you can answer the question  
16 or not.

17 THE WITNESS: Yes, sir.

18 MR. MOYLE: Okay. Can I ask just one leading  
19 question just to confirm that he read the  
20 agreement?

21 CHAIRMAN BRISE: What's that?

22 MR. MOYLE: Did you read the agreement?

23 CHAIRMAN BRISE: You asked him already and he  
24 answered it.

25 MR. MOYLE: Okay.

1 BY MR. MOYLE:

2 **Q In your review of the entire agreement, did**  
3 **you identify any provision in it that you think is of**  
4 **benefit to any ratepayer?**

5 MR. McGLOTHLIN: I'll renew my objection. I  
6 understand you wanting him to answer, but my  
7 objection stands.

8 CHAIRMAN BRISE: Understood.

9 THE WITNESS: I do know that in the  
10 settlement agreement that there are demand  
11 credits, but I'm not certain if those demand  
12 credits for your particular customers will offset  
13 the higher cost to be paid with the 10.7 and the  
14 59.62 percent equity ratio, so I cannot say  
15 definitively that it is going to be of benefit to  
16 your customers without doing the analysis.

17 BY MR. MOYLE:

18 **Q But by your identification of the credits,**  
19 **then it's a logical assumption then that potentially**  
20 **that has a benefit to certain customers, correct?**

21 A It would be a benefit, but they would have to  
22 weigh that against the cost.

23 **Q Okay. And same question with respect to,**  
24 **again, a four-year term, having an agreement that --**  
25 **were you here last night?**

1 A Yes.

2 Q To use the term that was used repeatedly last  
3 night, "sleeves" the utility for four years, is in your  
4 opinion not a benefit?

5 A No.

6 MR. McGLOTHLIN: Objection, Mr. Chairman. I  
7 think this is getting out of hand. He's testified  
8 as to cost of equity and capital structure. He's  
9 not opened himself to answer questions about every  
10 paragraph of this August 15th document.

11 CHAIRMAN BRISE: Mr. Moyle.

12 MR. MOYLE: Well, I think, Mr. Chairman, it's  
13 a fair line of questioning because if he doesn't  
14 have information on that and didn't review it, you  
15 know, then it should be known and the record  
16 should be clear that he did not consider some of  
17 the things that, you know, in our opening we said  
18 are benefits to the ratepayers. If he didn't  
19 consider it, then that's significant with respect  
20 to his opinion.

21 CHAIRMAN BRISE: Mr. McGlothlin.

22 MR. McGLOTHLIN: He's only opining on the  
23 cost of capital components and refers to the other  
24 OPC witnesses for the balance of that  
25 presentation.

1           CHAIRMAN BRISE: Mr. Moyle, if this witness,  
2           as OPC is stating that, you know, he's here to  
3           talk about certain specific areas of the  
4           settlement and there's already been one or two  
5           objections lodged to that, we gave you some  
6           latitude, so this witness is not prepared to do  
7           that, so if you would move on.

8           MR. MOYLE: Okay. Could I just make just a  
9           proffer, which would be that to the extent that if  
10          I had been allowed to ask him a series of  
11          questions related to the settlement agreement,  
12          that there are a number of provisions in there  
13          that are of benefit to the ratepayers that I would  
14          have brought out. But I'm fine, I'll move on and  
15          ask him a few other questions.

16 BY MR. MOYLE:

17           **Q     Were you here yesterday for the opening**  
18 **statement that OPC made?**

19           A     Yes.

20           **Q     Did you see this document that they handed**  
21 **out, Opening Statement, Office of Public Counsel? Do**  
22 **you have a copy of that or have you seen it?**

23           A     I saw the cover. I don't think I went into  
24 the -- what's behind it, all of the exhibits there.

25           **Q     You did or did not?**

1           A     I did not.

2           Q     Okay.  If I were to represent to you that the  
3     second page of this document has a paragraph in it and  
4     the last sentence of the paragraph says as follows,  
5     quote, Nonetheless, this Commission has a long history  
6     of encouraging settlements, giving great weight and  
7     deference to settlements and enforcing them in the  
8     spirit in which they were reached by the parties, would  
9     you have any reason to disagree with that?

10           MR. McGLOTHLIN:  Objection, beyond the scope  
11     of his direct testimony.

12           CHAIRMAN BRISE:  All right.  We're going to  
13     do this:  If you want to ask a question with  
14     respect to the direct testimony, please cite the  
15     page and we'll go from there.

16     BY MR. MOYLE:

17           Q     Do you think that having nuclear power plants  
18     in the fleet of a utility presents greater risk with  
19     respect to -- I mean, ultimately I want to ask a  
20     question about the ROE, but do you have a view with  
21     respect to the presence of a nuclear unit or not as to  
22     whether that presents a greater risk for a utility?

23           MR. McGLOTHLIN:  Are you talking about  
24     investment risk or some other kind of risk?

25           MR. MOYLE:  I'm talking about risk, and the

1 follow-up is as it relates to he had questions and  
2 made some comments about the Progress Energy 10.7  
3 ROE, and I want to ask him -- he said it only  
4 applied to the nuclear power plant, and I want to  
5 ask him whether he believes that nuclear power  
6 plants present greater risks that might warrant  
7 additional ROE consideration.

8 THE WITNESS: I think my answer depends on  
9 the state of the nuclear plant. For example, if  
10 you have a nuclear fleet that's well run, you have  
11 a diversified portfolio, and if gas costs go up or  
12 coal costs go up, then you're real happy to have  
13 that nuclear plant because it helps keep your fuel  
14 costs low. In that case, you want nuclear power.

15 The flip side of that is when something goes  
16 bad with one of those nuclear plants. And it  
17 obviously went bad at Crystal River. Duke Energy  
18 has now bought Florida Progress, and from that  
19 standpoint, nuclear power has increased the risk  
20 for Duke Power. But when things are running well,  
21 I would counter that it's good to have them in the  
22 mix of the portfolio.

23 BY MR. MOYLE:

24 Q Okay. And you responded to my question  
25 generally by talking about -- I guess fuel diversity



1 was your point in that response; is that right?

2 A Correct.

3 Q Okay. So really what I want to focus on is  
4 you would agree that return on equity is something that  
5 is set that also measures risk, correct?

6 A Correct.

7 Q Okay. So what I want to understand is do you  
8 believe that having nuclear plants presents a greater  
9 risk for a utility? All other things being equal --  
10 you know, the names Three Mile Island and Fukushima are  
11 two that come to mind. But do you think that having  
12 nuclear plants in a generation fleet presents greater  
13 risk for a utility?

14 A In terms of accident risk, yes. In terms of  
15 fuel mix, no. Overall risk, that's really hard to say.

16 And I'll go back to the point that I made  
17 earlier, when you have a well-run nuclear plant, I  
18 would argue that your -- and if you have a reasonable  
19 mix of nuclear power in your portfolio, 30 percent,  
20 25 percent, something like that, then you want nuclear  
21 power. But when you have a problem, you don't want the  
22 nuclear power. And I think that's what is happening  
23 with Progress Florida right now.

24 Q Right. And you would agree that when you  
25 have a problem at a nuclear plant, that a big problem

1 at a nuclear plant can be a lot more significant than a  
2 big problem, say, at a gas plant, correct?

3 A Absolutely.

4 Q And when I had referenced Fukushima and Three  
5 Mile Island, just so the record is clear, those are  
6 situations in which nuclear accidents took place that  
7 resulted in very significant damage, correct?

8 A Correct.

9 Q Okay. And you made a distinction in your  
10 opening about a -- well, let me ask it this way: What  
11 is the current ROE for Progress Energy as it relates  
12 to -- should it be able to get its Crystal River 3 Unit  
13 up and running, what would the ROE be for that?

14 A I believe if it gets its Crystal River Plant  
15 up and running, it will be 10.7.

16 Q Okay. And that's the same ROE that's set  
17 forth in the settlement agreement, right?

18 A Yes.

19 Q And do you know how many nuclear generating  
20 units FPL has in its fleet?

21 A Not offhand, no.

22 Q Do you know if they have any?

23 A I know they have some.

24 Q From a matter of policy, do you think that it  
25 would make sense to provide an ROE -- well, assume for

1 the purposes of the question that there are four  
2 nuclear units that FPL has and Crystal River only has  
3 -- I'm sorry -- Progress Energy only has one. Based on  
4 our previous conversation, there would be greater risk  
5 with four as compared to one, all other things being  
6 equal, correct?

7 A No.

8 Q No?

9 A No. Because it would depend upon how much of  
10 that nuclear fleet makes up their total generation  
11 portfolio.

12 Q Okay. Again, my question is all other things  
13 being equal -- I think we have agreed that nuclear  
14 presents some risk -- is it your testimony that having  
15 four nuclear units could present less risk than having  
16 one nuclear unit?

17 A Four well-run nuclear units opposed to one  
18 poorly run, all other things equal?

19 Q No. All other things being equal, I want you  
20 to assume all of them are run in an acceptable way,  
21 four as compared to one.

22 A Yes, I'll agree.

23 Q Okay. And so to the extent that -- would you  
24 think it makes good sense from a matter of policy to  
25 award a 10.7 ROE for a plant that's not operational,

1 **assuming it gets back operational, and a lesser ROE for**  
2 **four nuclear units that are in operation that present**  
3 **ongoing risk?**

4 A You're talking about two different times,  
5 yes. You're talking about the PEF case that was  
6 settled earlier this year and you're talking about  
7 today, you're talking about two different time periods.  
8 And I don't believe you can set a return on equity, you  
9 can put it in isolation as you've proposed.

10 MR. SAPORITO: Your Honor, maybe it's me  
11 because, you know, I'm not an attorney here, but  
12 I'm confused as to why we're extending the  
13 questioning about nuclear power and ROE related to  
14 nuclear power when this witness here is not  
15 obviously in his direct testimony, as I understand  
16 it, has nothing to do with informing the  
17 Commission about the settlement agreement with  
18 respect to nuclear power. Thank you.

19 CHAIRMAN BRISE: Continue, Mr. Moyle.

20 BY MR. MOYLE:

21 **Q Do you know -- if you assume that there are**  
22 **four nukes on FPL's system, do you know if that's a**  
23 **greater percentage or a lower percentage of its**  
24 **generation mix as compared to one nuke on Progress**  
25 **Energy's system?**

1 A I don't know what that mix would be.

2 Q Do you know the size of Progress Energy  
3 relative to the size of FPL?

4 A I believe FPL is larger.

5 Q Do you know by what order of magnitude?

6 A No, I don't.

7 Q Per your previous testimony, those would be  
8 important factors to know in terms of doing an analysis  
9 or comparison of FPL versus Progress, correct?

10 A Well, if I was going to do an analysis  
11 isolated, as you proposed, it may be, but I don't think  
12 my testimony I've isolated that analysis. What I've  
13 looked at is what other states have done and what's  
14 happened across the country. I think that's my  
15 testimony.

16 Q Okay. Do you know what the average ROE in  
17 Florida is today?

18 A For cases heard in 2012?

19 Q No, just for the -- do you know how many  
20 investor-owned utilities there are in Florida today?

21 A Four, I believe.

22 Q Okay. And then if you took the ROEs of each  
23 of those and added them up and divided by four, do you  
24 know what the average ROE would be?

25 A No, I don't. And I don't think that matters

1 at this point.

2 Q So with respect to the comparisons, you've  
3 done a lot of comparisons, you're not able to let the  
4 Commission know what the average ROE of the four  
5 utilities in Florida currently is as you sit here  
6 today?

7 A No, but I'm certain you have that information  
8 readily available. But my focus is on 2012.

9 Q And I guess the final question on that point,  
10 with respect to a customer that's paying, you know  
11 rates, I mean, if a rate was set two years ago and it  
12 was set at, say, you know, 10.8 or 10.9, it's still  
13 being paid today, correct, at that rate?

14 A The revenue requirement was designed based  
15 upon a 10.8 or a 10.9 maybe a couple of years ago.  
16 Whether or not the utility is earning that is a  
17 different story.

18 Q All right. But their ability to earn it,  
19 assuming it was a 10.8 or a 10.9, I mean, if that was  
20 what was set a couple of years ago, assuming it hasn't  
21 been changed, it's still in existence today, correct?

22 A Well, the final order is still in existence,  
23 yes. The revenue requirement is still based upon 10.8  
24 or 10.9, but that doesn't mean they're earning that.

25 Q Okay.

1 MR. MOYLE: Mr. Chairman, thank you for  
2 allowing me to delve into some of those other  
3 areas related to the settlement. I have no  
4 further questions. Thank you.

5 CHAIRMAN BRISE: All right. Thank you.  
6 Staff.

7 MS. KLANCKE: No questions for this witness.

8 CHAIRMAN BRISE: All right. Commissioners.  
9 (Negative response.)

10 CHAIRMAN BRISE: All right. Redirect.

11 REDIRECT EXAMINATION

12 BY MR. MCGLOTHLIN:

13 Q Were you present when FIPUG Witness Pollock  
14 was on the stand?

15 A Yes.

16 Q Do you recall through questions to  
17 Mr. Pollock, I established through him that in FIPUG's  
18 post-hearing brief in the case, FIPUG's position on the  
19 appropriate ROE for FPL was 10 percent or below?

20 A Yes.

21 MR. MOYLE: I think this is beyond the scope  
22 of my cross. I mean, it is what it is. He can  
23 cite the record or refer to it, but I do think --  
24 you know, we're trying to move it along -- it's  
25 beyond the scope.

1 CHAIRMAN BRISE: That's a good one.

2 You may proceed, Mr. McGlothlin.

3 BY MR. MCGLOTHLIN:

4 Q The record will reflect, the procedural  
5 schedule in this case will reflect that briefs were  
6 filed on September 21st. Did the PEF settlement occur  
7 prior to September 21st, 2012?

8 A Yes, it did.

9 Q Did FPL have a fleet of nuclear units prior  
10 to September 21st, 2012?

11 A Yes, it did.

12 MR. MCGLOTHLIN: I have no further questions.

13 CHAIRMAN BRISE: All right. Let's deal with  
14 exhibits.

15 MR. MCGLOTHLIN: OPC moves 686 through 690.

16 CHAIRMAN BRISE: All right. We will move 686  
17 to 690 into the record, recognizing the standing  
18 objection.

19 (Exhibit Nos. 686 through 690 were received  
20 in evidence identification.)

21 CHAIRMAN BRISE: I don't think there were any  
22 other exhibits for this witness. All right.  
23 Seeing that, thank you, Mr. O'Donnell.

24 THE WITNESS: Thank you.

25 CHAIRMAN BRISE: You may call your next



1 witness.

2 MR. McGLOTHLIN: OPC calls Jacob Pous.

3 I'm reminded that we failed to ask the  
4 Commission to excuse Mr. O'Donnell.

5 CHAIRMAN BRISE: Okay. Mr. O'Donnell, you  
6 are excused.

7 MR. McGLOTHLIN: Mr. Pous arrived by plane  
8 around 10:30 so he wasn't here to be sworn. Would  
9 you please administer the oath.

10 CHAIRMAN BRISE: Sure.

11 Thereupon,

12 JOCOB POUS

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

15 CHAIRMAN BRISE: Thank you.

16 DIRECT EXAMINATION

17 BY MR. McGLOTHLIN:

18 **Q I was looking for your witness exhibits. You**  
19 **don't have any exhibits, do you?**

20 A I'm efficient.

21 **Q We let you off easy this time. Please state**  
22 **your name and business address.**

23 A My name is Jacob Pous. I go by Jack. My  
24 address is 1912 West Anderson Lane, Austin, Texas.

25 **Q On behalf of the Office of Public Counsel,**

1 **Mr. Pous, did you prepare prefiled testimony and submit**  
2 **it in this proceeding?**

3 A Yes.

4 **Q Do you have any changes or corrections to**  
5 **make to your prefiled testimony?**

6 A Yes, I have one. On page three, the sentence  
7 beginning at the end of line ten, it says, "I have been  
8 informed by OPC Counsel," that entire sentence which  
9 goes through three lines needs to be stricken.

10 MR. MCGLOTHLIN: That's because we updated  
11 the witness as to the status of the Supreme Court  
12 action.

13 BY MR. MCGLOTHLIN:

14 **Q With that correction, do you adopt the**  
15 **contents, the questions and answers contained your**  
16 **prefiled direct testimony as your testimony today?**

17 A Yes.

18 MR. MCGLOTHLIN: I ask that the prefiled  
19 testimony be inserted in the record at this point.

20 CHAIRMAN BRISE: All right. At this time, we  
21 will enter the prefiled testimony of Mr. Pous into  
22 the record as though read.

23 (Whereupon, prefiled testimony inserted.)

24

25

**DIRECT TESTIMONY****OF****Jacob Pous**

On Behalf of the Office of Public Counsel

In Response To

Order No. PSC-12-0529-PCO-EI

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**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Jacob Pous and my business address is 1912 W Anderson Lane, Suite 202, Austin, Texas 78757.

**Q. WHAT IS YOUR OCCUPATION?**

A. I am a principal in the firm of Diversified Utility Consultants, Inc. ("DUCI"). A copy of my qualifications appears as Appendix A to my direct testimony filed on July 2, 2012 as part of this proceeding.

**Q. PLEASE DESCRIBE DIVERSIFIED UTILITY CONSULTANTS, INC.**

A. DUCI is a consulting firm located in Austin, Texas with an international client base. DUCI consultants provide engineering, accounting, economic, and financial services to DUCI clients. DUCI provides utility consulting services to municipal governments with utility systems, to end-users of utility services, and to regulatory bodies such as state public service commissions. DUCI provides complete rate case analyses, expert testimony, negotiation services, and litigation

1 support to clients in electric, gas, telephone, water, sewer, and cable utility  
2 matters.

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PUBLIC UTILITY**  
4 **PROCEEDINGS?**

5 A. Yes. The aforementioned Appendix A also includes a list of proceedings in  
6 which I have previously presented testimony. In addition, I have been involved in  
7 numerous utility rate proceedings that resulted in settlements before testimony  
8 was filed. In total, I have participated in well over 400 utility rate proceedings in  
9 the United States and Canada. I have also testified on behalf of the staff of 5  
10 different state regulatory commissions and one Canadian regulator.

11

12 **Q. WHAT IS YOUR PROFESSIONAL BACKGROUND?**

13 A. I am a registered professional engineer. I am registered to practice as a  
14 Professional Engineer in the State of Texas, as well as numerous other states.

15

16 **Q. DID YOU TESTIFY ON BEHALF OF THE OFFICE OF PUBLIC**  
17 **COUNSEL (OPC) DURING THE HEARING ON FLORIDA POWER &**  
18 **LIGHT'S (FPL)'S MARCH 19, 2012 PETITION?**

19 A. Yes. In my earlier testimony in this docket, I responded to criticisms and  
20 mischaracterizations of the Commission's decision in Docket No. 080677-EI  
21 (FPL's last base rate case) to require FPL to amortize \$894 million of  
22 depreciation reserve surplus over 4 years. I also expressed my view that the  
23 Commission should order FPL to cease recording amortization of depreciation

1 reserve surplus after FPL complies with the requirement to complete the  
2 amortization of that amount of depreciation reserve surplus by the end of 2013,  
3 unless and until the Commission directs it to amortize any other surplus reserve in  
4 the context of a future base rate proceeding.

5

6 **Q. WHAT IS THE PURPOSE OF YOUR ADDITIONAL TESTIMONY?**

7 A. On August 15, 2012, FPL, SFHHA, FIPUG, and FEA submitted a document  
8 captioned "Stipulation and Settlement," referred to herein as the "August 15  
9 document," and a joint motion asking the Commission to approve their August 15  
10 document as the disposition of FPL's pending base rate request. I have been  
11 informed by OPC counsel that OPC disputes the legal validity of the August 15  
12 document, and that, among other things, OPC has challenged that document on  
13 legal grounds before the Florida Supreme Court. In Order No. PSC-12-0529-  
14 PCO-EI, the Commission Chairman identified several components of the August  
15 document that were not within the scope of FPL's March 19, 2012 petition as  
16 the subjects of an evidentiary hearing scheduled for November 19 through 21,  
17 2012. Two of the issues that the Chairman identified are the proposal to authorize  
18 FPL to amortize some \$209 million of fossil dismantlement reserve over the four-  
19 year term of the August 15 document to allow FPL to manage its earned return,  
20 and the postponement of depreciation and dismantlement studies now due in  
21 March 2013 until after the end of the four-year term of the August 15 document.  
22 Inasmuch as OPC's legal challenges to the validity of the purported settlement are

1 still pending, I have been asked by OPC to address those issues, and the related  
2 testimony of FPL witness Barrett and others.

3  
4 **Q. WHAT STANDARD SHOULD THE COMMISSION RELY UPON WHEN**  
5 **DETERMINING WHETHER TO ACCEPT THE PSA AS IT RELATES TO**  
6 **THE ISSUES YOU WILL ADDRESS?**

7 A. In my opinion, the standard is clear. Chapter 366, Florida Statutes, dictates that  
8 rates for public utilities shall be fair, just, and reasonable (Sections 366.03,  
9 366.041, 366.05, 366.06, and 366.07, F.S.). My testimony will demonstrate that  
10 permitting FPL to amortize \$209 million of fossil dismantlement reserves and the  
11 postponement of the scheduled depreciation and dismantlement studies for several  
12 years will not result in fair, just, and reasonable rates.

13  
14 **Q. PLEASE SUMMARIZE YOUR TESTIMONY REGARDING THE**  
15 **PROPOSAL TO AUTHORIZE FPL TO AMORTIZE \$209 MILLION OF**  
16 **FOSSIL DISMANTLEMENT RESERVE.**

17 A. The purpose and mechanics of the accounting for fossil dismantlement expense  
18 are identical to the purpose and mechanics of the accounting for depreciation  
19 expense. Unlike the Commission's treatment of depreciation reserve surplus in  
20 FPL's last rate case, FPL's current proposal to amortize \$209 million of  
21 dismantlement reserve for the purpose of managing its earnings, in the absence of  
22 a study and outside of the evaluation of test year expenses in a base rate case,  
23 would turn the fundamental purpose of capital recovery accounting on its head.

1       The proposal is deftly designed to avoid having to include the “newly discovered”  
2       surplus reserve accruals and resulting amortization credits in the measurement of  
3       test year revenues on which rates are based. Accordingly, if adopted, the proposal  
4       outlined in the August 15 document would enrich FPL at the expense of treating  
5       customers unfairly. Any rates that would be designed and implemented as a  
6       consequence of adopting this aspect of the August 15 document would by  
7       definition be unjust, unfair, and unreasonable.

8  
9       **Q.   HOW ARE THE PURPOSES OF ACCOUNTING FOR FOSSIL**  
10       **DISMANTLEMENT EXPENSE SIMILAR TO THE PURPOSES OF**  
11       **DEPRECIATION EXPENSE?**

12      A.   Each is related to the manner in which the utility recovers its capital investment in  
13      plant. The goal of depreciation accounting is to have each generation of  
14      customers pay its fair share of the investment — also known as “the matching  
15      principle.” Because the task of retiring and possibly dismantling a fossil fuel-  
16      fired generator and restoring its site differs from the tasks relating to the end of  
17      service lives of other classes of physical assets, it is accounted for separately.  
18      However, the purpose of dismantlement accounting is identical to that of  
19      depreciation accounting. It is to ensure that each generation of customers pays its  
20      fair share of the cost of the asset that serves it, and by doing so avoids  
21      intergenerational inequity.

1 **Q. HOW ARE THE MECHANICS OF DISMANTLEMENT ACCOUNTING**  
2 **SIMILAR TO THE MECHANICS OF DEPRECIATION ACCOUNTING?**

3 **A.** In my earlier testimony addressing FPL's March 19, 2012 petition, I described  
4 how a utility recovers its capital investment through depreciation expense over the  
5 life of the asset. In terms of mechanics, the original investment or gross plant on  
6 the books remains unchanged over time, but is offset by a growing reserve (or by  
7 the accumulated provision for depreciation) as the utility applies depreciation  
8 rates, accrues depreciation expense over time, and recognizes actual retirements,  
9 cost of removal, and salvage. As required by the Commission, the utility  
10 performs periodic studies to determine whether it is collecting the appropriate  
11 amount of depreciation expense. Typically, if there is an imbalance (difference  
12 between the amount collected and the amount that should have been collected by  
13 the time of the study), the difference (whether positive or negative) becomes part  
14 of the unrecovered investment and that total is recovered over the remaining lives  
15 of the assets. If a surplus imbalance is so severe as to create an unfair level of  
16 intergenerational inequity, as was the case in FPL's last rate case with respect to  
17 the depreciation reserve, the Commission can require the utility to return the  
18 surplus to customers over a shorter period through amortizing the surplus over a  
19 prescribed number of years. The amortization is a credit to expense, which means  
20 that it effectively lowers the utility's overall depreciation expense. When the  
21 amortization of depreciation reserve surplus is prescribed at the same time rates  
22 are being set, the amount of amortization applicable to the test year serves to  
23 lower the utility's overall revenue requirements and, therefore, the rates that



1 customers pay. In this manner, the amortization enables customers to actually  
2 receive the benefit of the amortization through lower rates, rather than simply  
3 permitting the utility to clean up its books.

4  
5 The mechanics of accounting for fossil dismantlement expense are similar. The  
6 utility accrues annual dismantlement expense and accumulates past costs in a  
7 fossil dismantlement reserve — precisely as it is done with the accumulated  
8 provision for depreciation. Factors (including the methodology for dismantling  
9 plants) that affect the appropriate amount of dismantlement expense can, and do,  
10 vary over time. Accordingly, the Commission requires the utility to conduct  
11 periodic studies — again, just as it is done with depreciation accounting. If, after  
12 appropriate review, the Commission identifies a reserve imbalance, it can take  
13 corrective action. Where the corrective action is a requirement that the utility  
14 amortize a surplus and the annual amortization amount falls within a test year, the  
15 rates that customers pay will be lower as a result of the amortization. Inasmuch as  
16 the purpose of the corrective action is to return the over collection of past expense  
17 to customers, incorporating the credits into the calculation of base rates is an  
18 important step in the fair and just implementation of that action.

19

20 **Q. DOES THE COMMISSION'S DECISION IN THE LAST CASE PROVIDE**  
21 **GUIDANCE TO ITS CONSIDERATION OF FPL'S PROPOSAL TO**  
22 **AMORTIZE \$209 MILLION OF FOSSIL DISMANTLEMENT RESERVE?**

1 A. Yes. Three important principles embedded in the manner in which the  
2 Commission determined and treated the depreciation reserve surplus in FPL's last  
3 rate case are not only conspicuous, but also provide guidance in its consideration  
4 of FPL's August 15 document: (1) the Commission's purpose and motivation in  
5 Docket No. 080677-EI was to adhere to the matching principle, and the effect on  
6 FPL's earnings was a by-product of that objective; (2) the amortization was  
7 ordered after a detailed study and, where the study was challenged, a proceeding  
8 that included competing evidence and argument occurred (i.e., the Commission  
9 determined factually, based on a detailed evidentiary record, the existence and  
10 magnitude of the surplus imbalance); and (3) the amortization ordered by the  
11 Commission occurred simultaneously with the construction of test year revenue  
12 requirements and the setting of rates, so that customers who overpaid in the past  
13 benefited directly through cost of service and rate reductions.

14

15 **Q. WHY ARE THESE PRINCIPLES IMPORTANT?**

16 A. The matching principle must be paramount in the decision to modify a reserve  
17 through an ordered amortization; otherwise, the accounting for capital recovery  
18 will become distorted to the prejudice of either past or future customers. If the  
19 amortization is not directly adjusted in the test year revenue requirements of a rate  
20 case, FPL will modify its rate base; however, the intergenerational inequity will  
21 not be corrected most effectively, because customers will not receive the money  
22 that they overpaid.

1 It is important to have a study and, where the study is challenged, a determination  
2 by the Commission. This is because a surplus correction will have the effect of  
3 increasing future rate base, thereby affecting the rates that future customers will  
4 pay. Before a step is taken that will require a future generation to pay higher  
5 rates, the Commission should investigate whether it is on solid evidentiary  
6 footing. Indeed, in the last base rate case the Commission adjusted many of  
7 FPL's depreciation proposals after its study was challenged. It is also important  
8 to address the imbalance at the same time that base rates are set. This is because  
9 it would be patently unfair and unreasonable to effectively lower FPL's expenses  
10 materially — *for the stated purpose of boosting its earnings and achieved rate of*  
11 *return* — and not reflect those lower expenses in the rates that customers pay.

12  
13 **Q. HOW DOES FPL'S CURRENT PROPOSAL TO AMORTIZE**  
14 **DISMANTLEMENT RESERVE COMPARE TO THE COMMISSION'S**  
15 **APPROACH TO DEPRECIATION RESERVE SURPLUS IN FPL'S LAST**  
16 **RATE CASE?**

17 A. FPL's current proposal, which is outlined in the August 15 document, is  
18 dissimilar to the Commission's treatment in ways that render the proposal unfair,  
19 unjust, and unreasonable to customers. The Commission's actions in the last rate  
20 case are a good example of how to treat depreciation accounting in a way that will  
21 accomplish the capital recovery objective fairly and effectively. By contrast, the  
22 provisions of the August 15 document that address the fossil dismantlement

1 reserve and depreciation reserve illustrate how the Commission should *not* treat  
2 these items.

3

4 **Q. PLEASE EXPLAIN.**

5 A. First, FPL's objective within the August 15 document is *not* to implement the  
6 matching principle. Instead, FPL's stated goal is to provide a source of financial  
7 wherewithal that it can draw down to enhance its earnings during the four-year  
8 term of the August 15 document. Any customer impact on current and future  
9 generations is a by-product of FPL's desire for earnings flexibility and stability.  
10 This concept turns the purpose of capital recovery accounting on its head.  
11 Secondly, FPL has not submitted a study that supports its request — indeed, a key  
12 part of FPL's proposal is the postponement of the next study until after the end of  
13 the four-year term of the August 15 document. In other words, FPL wants to  
14 avoid the very measure that is needed to support its request for earnings  
15 flexibility. Thirdly, by addressing its \$209 million fossil dismantlement reserve  
16 amortization request in the August 15 document instead of its original March 19,  
17 2012 petition, FPL has timed and structured the proposed amortization in a way  
18 that avoids having to reduce the revenue requirement borne by customers' rates  
19 by the amount of annual amortization credits associated with the August 15  
20 document. As a matter of fact, if one assumes that FPL would file and that the  
21 Commission would process a base rate request during the last year of the four-  
22 year term of the August 15 document; the base rate case would be based on a  
23 projected test year that is beyond the four-year term of the amortization period of

1 the August 15 document. Further, the scheduled depreciation and dismantlement  
2 studies would be postponed until after the next base rate case has been completed,  
3 and FPL would have completely dodged any requirement to reflect the annual  
4 amortization impact of \$209 million of fossil dismantlement reserve in the  
5 calculation of base rates.

6  
7 **Q. ARE YOU SURPRISED BY THE EXTENT TO WHICH THE AUGUST 15**  
8 **DOCUMENT DEPARTS FROM THE PRINCIPLES THAT YOU**  
9 **IDENTIFIED AT THE OUTSET OF YOUR TESTIMONY?**

10 **A.** No. The contrast between FPL's resistance to the amortization of depreciation  
11 reserve surplus that the Commission ordered in the last rate case and its  
12 enthusiastic support for the proposed amortization of fossil dismantlement reserve  
13 in this case is revealing, but not surprising.

14  
15 **Q. PLEASE ELABORATE.**

16 **A.** In the last base rate case, FPL proposed three-year capital recovery programs for  
17 assets that were retired and for which the corresponding reserve was inadequate.  
18 The three-year capital recovery program would have increased test year expenses  
19 and increased rates that customers pay. FPL proposed this capital recovery  
20 program-related increase in depreciation expense in spite of the fact that its own  
21 studies indicated a substantial depreciation reserve surplus. In other words, rather  
22 than use the overall surplus to offset and absorb the shortfall associated with  
23 specific capital recovery program items being retired, FPL's preference was to

1 keep the surplus on its books and increase customers' rates. And, for that much  
2 larger surplus reserve, the Company requested that the surplus be returned to  
3 customers over the approximately 20-year remaining lives of the investments.  
4 Stated otherwise, FPL wanted significant and immediate rate treatment for its  
5 under-recovery, but was not willing to offset the under-recovery with admitted  
6 over-recoveries for which it sought corrective measures over a 20-year period.  
7 Further, when OPC recommended that an amortization of reserve be accompanied  
8 by a corresponding lowering of test year expenses, cost of service, and base rates,  
9 FPL opposed the measure and complained about it afterwards. FPL's consistently  
10 one-sided approach to such situations demonstrates the need for the Commission  
11 to properly investigate reserve amortization positions to establish fair, just, and  
12 reasonable rates. After a full evidentiary hearing in Docket No. 080677-EI, FPL's  
13 proposal in that case was found by the Commission to be anything but fair, just,  
14 and reasonable. In the instant case, neither FPL nor the Commission has  
15 identified or quantified a surplus in the dismantlement reserve that is the subject  
16 of FPL's \$209 million proposal in the August 15 document. In fact, in its last  
17 case, FPL requested a 41% *increase* (from \$15.2 million to \$21.5 million) in  
18 annual dismantlement accruals! In this case, FPL has not proposed to reduce the  
19 size of the annual fossil dismantlement accrual, even though it now proposes a  
20 \$209 million dismantlement reserve excess amortization.

21  
22 Rather, in the absence of a current study — much less a determination by the  
23 Commission that an amortization is warranted in any amount — FPL proposes to

1       raid the fossil dismantlement reserve “piggy bank” for the purpose of stabilizing  
2       its future earnings, and in a manner that avoids giving customers the  
3       corresponding and commensurate benefit of a rate reduction. FPL made no  
4       mention of its fossil dismantlement reserve in its March 19, 2012 petition. Only  
5       when FPL filed its August 15 document did it assert that its fossil dismantlement  
6       reserve is available to be amortized for the purpose of providing “earnings”  
7       flexibility.

8  
9       Virtually by definition, and especially in light of the fact that the Commission is  
10      nearing the end of a rate setting docket, rates that deliberately do not take into  
11      account the impact of a proposed \$209 million reduction in expense levels over  
12      the period outlined in the August 15 document would not be fair, just, or  
13      reasonable.

14  
15   **Q.   IN SUPPORT OF ITS PROPOSAL TO POSTPONE THE DEPRECIATION**  
16   **STUDY THAT IS DUE IN MARCH 2013, FPL WITNESS BARRETT**  
17   **STATES AT PAGE 21 OF HIS DIRECT TESTIMONY THAT THE**  
18   **FACTORS THAT LED TO THE 2010 FINDING OF A SURPLUS**  
19   **DEPRECIATION RESERVE ARE UNLIKELY TO RECUR, AND**  
20   **REFERS TO AN “ANTICIPATED DEFICIT TREND.” HOW DO YOU**  
21   **RESPOND TO HIS REASONING?**

22   **A.   As with the other portions of FPL’s August 15 document associated with**  
23   **depreciation or dismantlement, there is no demonstration of fact. Indeed, I**

1 believe that, when based on a proper evaluation, a significant surplus depreciation  
2 reserve will be determined in the next proceeding after review of a full study. I  
3 base this conclusion on the fact that: (1) the Company's significant investment in  
4 combined cycle generating facilities reflects an artificially short life span; (2) the  
5 analysis that I performed in the last case, which demonstrated that the surplus  
6 reserve was in fact more than a billion dollars greater than identified by FPL in its  
7 study; and (3) not only may FPL not fully retire a generating facility, but it may  
8 also repower such facilities for extended use many decades longer than what was  
9 previously indicated. All of these factors strongly indicate that a sizeable excess  
10 reserve for depreciation would be determined after a study and evidentiary  
11 hearing. I believe that similar factors indicate that a surplus in the fossil  
12 dismantlement reserve may be determined at the same time. However, that argues  
13 for completing the study, not postponing it, so that the Commission can consider  
14 the manner in which to address the matching principle on an informed and timely  
15 basis — as well as in a manner that treats customers fairly.

16  
17 **Q. FPL WITNESS BARRETT ALSO ALLUDES TO FPL'S GENERATION**  
18 **MODERNIZATION PROJECTS TO SUPPORT THE VIEW THAT**  
19 **NEITHER THE \$209 MILLION AMORTIZATION OF FOSSIL**  
20 **DISMANTLEMENT RESERVE NOR THE POSTPONEMENT OF A**  
21 **DISMANTLEMENT STUDY WOULD HARM CUSTOMERS. HOW DO**  
22 **YOU RESPOND?**



1 A. Those factors and others — including changes in dismantlement methodology —  
2 argue for the completion of the study and for the correction of the factor in the  
3 context of a base rate proceeding. For example, if other production facilities at  
4 repowered generating stations are anticipated to have service lives of potentially  
5 40 years or longer, yet the initial dismantlement studies anticipated full green  
6 fielding of the sites rather than repowering, then the fossil dismantlement reserve  
7 will undoubtedly be materially over accrued. Moreover, the Company's very  
8 sizeable investment in combined cycle generating facilities will already have been  
9 over accrued due to FPL's initial short life span estimates. These are precisely the  
10 types of factors that must be fully investigated in order to determine the most  
11 appropriate value to be utilized for ratemaking purposes. It is unreasonable to  
12 simply assume some level of reserve position for the purpose of providing  
13 earnings flexibility to the utility when there have been major changes to system  
14 operations at present and into the future.

15

16 **Q. IN YOUR VIEW, DOES THE PROPOSED AMORTIZATION OF \$209**  
17 **MILLION OF FOSSIL DISMANTLEMENT RESERVE TREAT FPL AND**  
18 **CUSTOMERS' INTERESTS IN A FAIR AND BALANCED MANNER?**

19 A. No. The proposal in the August 15 document is severely skewed toward serving  
20 FPL's interests at customers' expense.

21

1 **Q. PLEASE EXPLAIN.**

2 **A.** As previously discussed, intergenerational inequity is created when the matching  
3 principle has not been properly followed. The correction of intergenerational  
4 inequity through amortization of excess reserves can most effectively occur when  
5 the correction is tied to the test year revenue requirements establishing base rate  
6 charges for customers, or if the terms of an overall settlement provide sufficient  
7 value to customers to offset the absence of a reduction in revenue requirements  
8 and rates (OPC witnesses Donna Ramas, Kevin O'Donnell and James Daniel  
9 demonstrate that the other terms of the August 15 document are skewed one-  
10 sidedly to FPL's advantage). Otherwise, the correction becomes simply an  
11 accounting mechanism on FPL's books and results in a benefit to FPL only.  
12 Especially where the initiative is to increase the utility's earnings, the two  
13 components must be tied together in order to effectively and equitably correct for  
14 prior over collections.

15  
16 By analogy, assume that an individual obtains a mortgage from a bank for a  
17 property. Further, assume that over time the individual pays off the mortgage, but  
18 then makes 5 additional payments (overpayment) without realizing that the  
19 mortgage has been previously fully paid off. When the bank realizes that it has  
20 received 5 additional monthly payments than it was entitled to, rather than  
21 refunding the overpayments to the individual, it simply amortizes equal credits on  
22 its books over the next 5 months so that at the end of the period the balance on the  
23 mortgage is zero (0). Under this arrangement, the bank shows that it has

1 recovered the right amount of money (from its accounting perspective without  
2 actually refunding any overpayments), yet the individual who made the extra  
3 mortgage payments did not receive an actual refund for the 5 months of  
4 overpayments that were made (the individual is still out the 5 extra payments).  
5 Indeed, the bank actually recovered more than it was entitled to, but its books now  
6 reflect the accounting correction to its satisfaction. It is preposterous to consider  
7 that a bank would entertain such a scenario, but that is analogous to what FPL is  
8 proposing in this case. Therefore, such a situation should be unacceptable.

9  
10 **Q. CAN THE AMORTIZATION OF THE FOSSIL DISMANTLEMENT**  
11 **RESERVE, EVEN IF REFLECTED IN BASE RATE REVENUE**  
12 **REQUIREMENTS, STILL HARM CURRENT CUSTOMERS?**

13 **A.** Yes. While I do not dispute that an excess imbalance may exist in the fossil  
14 dismantlement reserve, I believe that it is necessary to test the level of excess  
15 reserve in order to establish fair, just, and reasonable rates. I also believe that this  
16 would be especially important in this case, where the utility's stated objective is to  
17 create a means of managing its earnings levels. For example, if the excess  
18 imbalance in the fossil dismantlement reserve was in fact \$300 million rather than  
19 the \$209 million from the August 15 document, then FPL would only recognize a  
20 limited level of intergenerational inequity that requires correcting and postpone  
21 the greater corrective amount for many years. That is precisely why scheduled  
22 dismantlement and depreciation studies are critically important to the  
23 establishment of fair, just, and reasonable rates.

1 Q. DOES FPL ACTUALLY RECOGNIZE THE PROPER PROCEDURE FOR  
2 ESTABLISHING RESERVE POSITIONS AND HOW TO CORRECT  
3 MAJOR IMBALANCES?

4 A. Yes. At page 17 of Mr. Barrett's direct testimony, he notes that FPL can provide  
5 for future dismantlement costs "by authorized amounts approved by the  
6 Commission after reviewing dismantlement studies filed periodically by the  
7 Company." (emphasis added). In other words, FPL recognizes that the proper  
8 process is to perform studies to quantify the best estimate of the position that  
9 exists for a particular reserve. This is logical and makes perfect sense. However,  
10 because Mr. Barrett's and FPL's purpose is to support an earnings management  
11 program advantageous to FPL rather than to serve the principle of equity between  
12 generations of customers, this process is completely opposite to the approach of  
13 the August 15 document.

14

15 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

16 A. Yes

1 BY MR. MCGLOTHLIN:

2 Q And did you not prepare exhibits to your  
3 testimony?

4 A No, I did not.

5 Q Have you prepared a summary?

6 A Yes, I have.

7 Q Please proceed.

8 A Thank you. In my testimony, I address the  
9 features of the signatories' August 15th document that  
10 would permit FPL to amortize approximately \$209 million  
11 of fossil dismantlement reserve and postpone the  
12 dismantlement and depreciation studies during the  
13 four-year term contemplated by the proposed agreement.  
14 I state in my testimony that the provisions would turn  
15 the objective of capital cost accounting on its head  
16 and would enrich FPL at the expense of customers. I  
17 will summarize why that is the case.

18 The objective of capital cost accounting  
19 associated with the dismantlement of fossil fired  
20 plants is to ensure that each generation of customers  
21 pays its fair share of dismantlement costs. By  
22 contrast, the objective of the proposed amortization  
23 provision is not to adhere to the matching principle,  
24 but to provide a source of financial wherewithal that  
25 FPL can draw on to enhance and stabilize its earnings.

1           Adjustments to reserves affect generations of  
2 customers; therefore, before ordering a utility to take  
3 action to correct an imbalance, the regulator should  
4 review a comprehensive study and assemble the  
5 information necessary to support its actions so that it  
6 is on firm evidentiary footing.

7           The August 15th provision by contrast would  
8 avoid the very measure that is needed to support the  
9 proposed amortization. The comprehensive study now due  
10 in March of 2013 would be postponed until after the  
11 four-year term of the proposed agreement.

12           The objective of returning a surplus to  
13 customers can be accomplished most effectively by  
14 including the annual amortization and test year expense  
15 during a rate review so that the revenue requirement  
16 and associated rates will be lower as a result of the  
17 amortization.

18           By waiting until August 15th and proposing  
19 the amortization outside the analysis of the test year  
20 expenses, FPL has definitely avoided having to reduce  
21 its revenue requirements by the amount of the new  
22 amortization that it seeks. The postponement of the  
23 next study until after the expiration of the four-year  
24 term would further ensure that FPL would not have to  
25 reflect the customers' related benefit of the new

1 amortization in its next base rate proceeding, or ever.

2           The contrast between FPL's opposition to the  
3 amortization of the huge depreciation reserve surplus  
4 that had the effect of lowering revenue requirements in  
5 the last case and FPL's enthusiastic pursuit of a new  
6 amortization of dismantlement reserve that it would not  
7 have to share directly with customers is revealing but  
8 not surprising. FPL's consistently one-sided approach  
9 to the matters of capital cost recovery demonstrates a  
10 need for the Commission to investigate reserve  
11 amortization positions and establish fair, just, and  
12 reasonable rates.

13           That FPL sought to increase the amount of the  
14 dismantlement accrual in the last case but now seeks to  
15 amortize 209 million of the excess reserve heightens  
16 the need to insist on full evaluation before taking  
17 action on the status of FPL's dismantlement reserves.

18           My testimony also refutes Mr. Barrett's  
19 assertion that future large depreciation reserve  
20 surpluses are unlikely. The life spans that FPL  
21 records for combined cycle units likely will prove to  
22 be artificially short. Also, repowering will extend  
23 the lives of facilities. These factors indicate to me  
24 that, contrary to Mr. Barrett's testimony, a valid  
25 study of FPL's depreciation reserve will again show a

1 large surplus.

2 That repowerings will also delay the need to  
3 green field a site simply bolsters the case for  
4 requiring the next study to be filed on time so that  
5 the Commission will be in a position to quantify any  
6 reserve imbalance timely and with precision and protect  
7 customers accordingly.

8 Besides, FPL knew about the impact of  
9 repowering on the need for green fielding in time to  
10 reflect that expectation in the revenue requirements  
11 filed in March but elected to remain silent at that  
12 time. Especially because the stated purpose of the  
13 proposed amortization is to enhance FPL's earnings,  
14 customers should receive the direct benefit through  
15 lower revenue requirements. That customers did not  
16 receive a lower revenue requirement due to the proposed  
17 209 million amortization under the August 15th document  
18 demonstrates that rates resulting from the August 15th  
19 document would be unfair, unjust, and unreasonable.  
20 Thank you.

21 MR. McGLOTHLIN: The witness is available for  
22 cross.

23 CHAIRMAN BRISE: All right. FPL.

24 MR. BUTLER: Thank you, Mr. Chairman,  
25 briefly.



## 1 CROSS EXAMINATION

2 BY MR. BUTLER:

3 Q Good afternoon, Mr. Pous.

4 A Good afternoon.

5 Q Were you involved in any respect in the  
6 settlement negotiations that led to the proposed  
7 settlements under consideration here?

8 A No.

9 Q Okay. Do you have any information about the  
10 details of the settlement negotiations?

11 A Not of the negotiations, no.

12 Q Okay. Do you have any information to  
13 indicate whether or not the parties would have been  
14 able to reach agreement on settlement terms that  
15 provided for a four-year term and a base rate increase  
16 of \$378 million without including the provisions for  
17 depreciation and dismantlement reserve amortization?

18 A Do I have firsthand knowledge of that?

19 Q Yes.

20 A No.

21 Q No. Okay. Thank you.

22 MR. BUTLER: Those are all the questions I  
23 have. Thank you.

24 CHAIRMAN BRISE: All right. Thank you.

25 Mr. Wiseman?

1 MR. WISEMAN: No questions.

2 CHAIRMAN BRISE: FEA?

3 LT. COL. FIKE: No questions.

4 CHAIRMAN BRISE: FIPUG?

5 MR. MOYLE: Just some questions along the  
6 lines of the previous witness, Mr. Chairman.

7 CROSS EXAMINATION

8 BY MR. MOYLE:

9 **Q You're not testifying about the entire**  
10 **settlement agreement, are you?**

11 A My focus is on the amortization of the  
12 reserve for the fossil dismantlement and the  
13 postponement of the two studies, both the depreciation  
14 and dismantlement studies.

15 **Q Okay. So I take that that would be a no, you**  
16 **have two issues, correct?**

17 A Those are the two I focused on, yes.

18 **Q You're aware that the settlement agreement --**  
19 **have you read the settlement agreement?**

20 A I probably reviewed it when it first came  
21 out. I can't say I've read it all, but I believe I  
22 looked at most, if not all.

23 **Q Okay. But you're aware that there are a**  
24 **whole bunch of other issues in the settlement agreement**  
25 **besides the two that you provided testimony on,**

1 correct?

2 A Yes.

3 Q Do you know if OPC has a witness who is  
4 providing testimony relative to the agreement as a  
5 whole in whether it's in the public interest?

6 A I don't know.

7 Q Okay. But your testimony is you don't think  
8 it's in the public interest based on the two issues  
9 you've reviewed?

10 A Yes.

11 Q So your last sentence in your summary was you  
12 said you don't think the, quote, rates resulting from  
13 the August 15th settlement are unfair, unjust, and  
14 unreasonable. Given your previous answers, I assume  
15 that is the conclusion you reached based on the two  
16 issues you reviewed, correct?

17 A Yes.

18 MR. MOYLE: Okay. Thank you, Mr. Chairman,  
19 that's all I have.

20 CHAIRMAN BRISE: All right. Thank you.

21 Staff?

22 MS. KLANCKE: Staff has no questions for this  
23 witness.

24 CHAIRMAN BRISE: All right. Commissioners?

25 (Negative response.)

1 CHAIRMAN BRISE: Redirect?

2 MR. McGLOTHLLIN: No redirect.

3 CHAIRMAN BRISE: Thank you very much. There  
4 are no exhibits for this witness.

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

6 CHAIRMAN BRISE: Thank you, Mr. Pous. And  
7 you are excused.

8 THE WITNESS: Thank you.

9 CHAIRMAN BRISE: Call your next witness, OPC.

10 MR. McGLOTHLLIN: We're going to change  
11 attorneys.

12 CHAIRMAN BRISE: Sure. No problem.

13 MR. REHWINKEL: Public Counsel calls Donna  
14 Ramas.

15 Thereupon,

16 DONNA RAMAS

17 was called as a witness, having been previously duly  
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. REHWINKEL:

21 **Q Ms. Ramas, have you been sworn?**

22 A Yes, I have.

23 **Q Could you please state your name?**

24 A My name is Donna Ramas.

25 **Q On whose behalf are you testifying here**

1 today?

2 A The Office of Public Counsel for the State of  
3 Florida.

4 Q Okay. Ms. Ramas, did you cause to be  
5 prepared on behalf of the Public Counsel's office  
6 direct testimony consisting of some 28 pages on  
7 November 2nd?

8 A Yes, I did.

9 Q Did you also cause to be prepared  
10 supplemental direct testimony on November 19th  
11 consisting of four pages?

12 A Yes, I did.

13 Q Okay. Do you have any changes or corrections  
14 to make to either your direct or your supplemental  
15 direct testimony?

16 A Yes. With regards to the direct, I would  
17 like to correct two typographical changes and then I  
18 have a couple of modifications to exhibit numbers as a  
19 result of Mr. Pollock changing his exhibit numbers in  
20 his corrected testimony.

21 Q Okay. Could you give those to the  
22 Commission?

23 A Yes. I'll first go over the changes in  
24 exhibit numbers. As I indicated, Mr. Pollock filed  
25 corrected supplemental testimony that changed some

1 exhibit numbers, and I had referenced his original  
2 exhibit numbers. So there are several pages where I  
3 reference Exhibit JP-1, and those all need to change to  
4 JP-15. They're at page 7, line 13; page 8, lines 9, 11  
5 and 16; and then page 9, lines 5, 19 and 21.

6 And then the correction I have to make is at  
7 page 18, lines 15 and 16 where the abbreviation ROE is  
8 inserted. That should be the ROR, so that it  
9 references the rate of return, not the return on  
10 equity. That's the extent of my changes or  
11 corrections.

12 **Q Okay. So with those changes or corrections**  
13 **to your testimony, if I asked you the questions**  
14 **contained your direct and your supplemental direct**  
15 **today, would your answers be the same?**

16 A Yes, they would.

17 MR. REHWINKEL: Mr. Chairman, I ask that the  
18 direct and supplemental direct testimony of  
19 Ms. Ramas be entered into the record as though  
20 read.

21 CHAIRMAN BRISE: All right. At this time, we  
22 will enter the direct and supplemental direct of  
23 Donna Ramas into the record as though read,  
24 recognizing the standing objection.

25 (Whereupon, prefiled testimony inserted.)

**DIRECT TESTIMONY****OF****DONNA RAMAS**

On Behalf of the Office of Public Counsel

In Response To

Order No. PSC-12-0529-PCO-EI

1  
2  
3  
4  
5  
6  
7  
8 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9 A. My name is Donna M. Ramas. My business address is 4654 Driftwood Drive,  
10 Commerce Twp., Michigan.  
11

12 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS PROCEEDING?**

13 A. Yes, I filed direct testimony on July 2, 2012 in the captioned matter on behalf of the  
14 Citizens of the State of Florida ("Citizens"). In that testimony, I presented the Office of  
15 Public Counsel's ("OPC") overall recommended revenue requirement in this case as well  
16 as several adjustments to the Company's proposed rate base and operating income.  
17

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PHASE OF THE**  
19 **PROCEEDING?**

20 A. On August 15, 2012, Florida Power & Light Company ("FPL" or "Company"), the  
21 Florida Industrial Power Users Group ("FIPUG"), the South Florida Hospital and  
22 Healthcare Association ("SFHHA"), and the Federal Executive Agencies ("FEA") filed a  
23 "Stipulation and Settlement" (herein after referred to as the "August 15 document"), as  
24 well as a Joint Motion for Approval of Settlement Agreement ("Joint Motion"). OPC  
25 vehemently opposes the offered non-unanimous August 15 document that was entered

1 into by FPL and 3 of the intervening parties in this case and has challenged the filing on  
2 legal grounds. Included as Appendix A to Order No PSC-12-0529-PCO-EI ("Third  
3 Procedural Order"), was a list of specific issues regarding aspects of the August 15<sup>th</sup>  
4 Document on which the Commission will take supplemental testimony in this phase of  
5 the case. In this testimony, I provide information for the Commission's consideration on  
6 what have been identified as "Settlement Issues" 1 and 5. I also address several  
7 statements and issues raised in the testimonies filed by the parties that are signatories to  
8 the August 15 document on October 12, 2012.

9  
10 **Q. WHAT ARE "SETTLEMENT ISSUES" 1 AND 5?**

11 A. "Settlement Issue" 1 specifically states: "Are the generation base rate adjustments for the  
12 Canaveral Modernization Project, Riviera Beach Modernization Project, and Port  
13 Everglades Modernization Project, contained in paragraph 8 of the Stipulation and  
14 Settlement, in the public interest?" Issue 5 states: "Is the Settlement Agreement in the  
15 public interest?"

16  
17 **Q. ARE THERE ANY KEY PRINCIPLES OR REQUIREMENTS THAT SHOULD**  
18 **BE CONSIDERED IN ADDRESSING WHETHER THE GENERATION BASE**  
19 **RATE ADJUSTMENTS CONTAINED IN THE AUGUST 15 DOCUMENT ARE**  
20 **IN THE PUBLIC INTEREST, AND WHETHER THE OVERALL PROPOSAL IS**  
21 **IN THE PUBLIC INTEREST?**

22 A. Yes, it is my opinion that rates which are not fair, just, or reasonable are not in the public  
23 interest. It is also my opinion that for rates to be fair, just, and reasonable, they should be  
24 cost based. In other words, rates should be calculated based on the prudently incurred  
25 costs necessary to provide a reasonable level of service to customers.



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While not offering a legal interpretation of Chapter 366, F.S., it is my opinion, based on the experience I have in Florida and in other states, that the clear language of the statutes requires that rates be fair, just, and reasonable, and that such rates be cost based. For example, Section 366.03, F.S. – *General duties of public utility* states, in part, “All rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable.” (emphasis added) Section 366.06(1), F.S., states, in part, “All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged or collected by any public utility for its service.” That section also states: “The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.”

Section 366.041(1), F.S., states, in part: “In fixing the just, reasonable, and compensatory rates, charges, fares, tolls or rentals to be observed and charge for service within the state by any and all public utilities under its jurisdiction, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such

1 service and the value of such service to the public; the ability of the utility to improve  
2 such service and facilities; and energy conservation and the efficient use of alternative  
3 energy resources; provided that no public utility shall be denied a reasonable rate of  
4 return upon its rate base in any order entered pursuant to such proceedings.” (emphasis  
5 added.)  
6

7 **Q. WHAT INCREASE IN BASE RATES WOULD BE EFFECTIVE JANUARY 1,**  
8 **2013 UNDER THE AUGUST 15 DOCUMENT?**

9 A. Stipulation 3(a) of the August 15 document provides that effective in January 2013, base  
10 rates and service charges would be increased by an amount “...intended to generate an  
11 additional \$378 million of annual revenues.” Paragraph 2.b.i. of the Joint Motion  
12 indicates that the \$378 million base rate increase is a \$139 million reduction from FPL’s  
13 original request filed on March 19, 2012.  
14

15 **Q. IS A BASE RATE INCREASE OF \$378,000,000, EFFECTIVE JANUARY 1, 2013,**  
16 **FAIR, JUST, AND REASONABLE, AND BASED ON THE COSTS TO SERVE**  
17 **FPL’S CUSTOMERS DURING THE 2013 TEST YEAR?**

18 A. No, it is not. In its Post-Hearing Brief filed on September 21, 2012, OPC recommended a  
19 reduction in FPL’s current base rates of at least \$253.4 million effective January 1, 2013.  
20 The January 1 increase contemplated in the August 15 document is at least \$631.4  
21 million higher than the amount of revenues recommended by OPC in this case and  
22 supported by the experts representing the Citizens. Additionally, FPL’s own numbers  
23 contained in its original filing, coupled with the return on equity (“ROE”) provided for in  
24 the August 15 document and a change in the Commission’s rules on the interest to be

1 paid on customer deposits, clearly show that the \$378 million increase provided for in the  
2 August 15 document is above a reasonable level.

3  
4 **Q. PLEASE EXPLAIN.**

5 A. In the original filing in which FPL requested a \$516.5 million increase in base rates, FPL  
6 incorporated an ROE of 11.50% and a cost rate for customer deposits of 5.99%.  
7 Stipulation 2 of the August 15 document provides that FPL's authorized rate of return on  
8 common equity shall be a range of 9.70% - 11.70%, with a mid-point of 10.70% and that  
9 the "...mid-point shall be used for all purposes during the Term." The Joint Motion, at  
10 paragraph 2(c), also indicates that "FPL's return on common equity ("ROE") would be  
11 10.70% for all purposes (range of 9.70% - 11.70%)." Additionally, in Order No. PSC-  
12 12-0358-FOF-PU, the Commission changed its rules to lower the interest rate to be  
13 applied to customer deposits. In its Post-Hearing Brief filed on September 21, 2012, FPL  
14 indicated that the revised cost rate for customer deposits decreased to an effective rate of  
15 1.99%, which it used in determining its weighted cost of capital. As shown on Exhibit  
16 DR-7, if one merely takes the amounts presented in FPL's original filing in this case,  
17 reduces the rate of return on equity to the August 15 document amount of 10.70%, and  
18 reduces the customer deposit cost rate to the effective rate of 1.99%, the result would be a  
19 rate increase of \$362,456,000. The January 2013 increase contemplated in the August 15  
20 document exceeds this amount by over \$15.5 million. Thus, even if one assumes that  
21 every single one of the numerous recommendations offered by the experts representing  
22 OPC and the experts who provided testimony on behalf of other parties in this case would  
23 be rejected – something that I am not aware has ever happened, the increase  
24 contemplated in the August 15 document would still exceed the amount that would  
25 correspond to the changes in ROE and the customer deposit interest rate.

1

2 **Q. FPL REVISED ITS REVENUE REQUIREMENT CALCULATIONS FROM THE**  
3 **AMOUNT INCLUDED IN ITS INITIAL FILING. HOW DOES THE \$378**  
4 **MILLION INCREASE COMPARE TO THE REVISED AMOUNTS PRESENTED**  
5 **BY FPL?**

6 A. In its Post-Hearing Brief filed on September 21, 2012, FPL presented a revised revenue  
7 requirement for the 2013 test year of \$525.1 million. This increase factored in numerous  
8 changes to FPL's original filing in the case. As shown on Exhibit DR-8, if one were to  
9 accept every modification FPL made to its filing that was identified in its Post-Hearing  
10 Brief and simply change the ROE from the requested amount of 11.50% to the amount  
11 identified in the August 15 document of 10.70%, the result would be a revenue  
12 requirement of \$397,554,000, which is within \$20 million of the increase proposed in the  
13 August 15 document. Thus, to achieve an increase of \$378 million, one would have to  
14 conclude that most, if not all, of FPL's requested modifications to its original position are  
15 reasonable and appropriate, and one would also have to assume that almost none of the  
16 recommendations sponsored by OPC and other parties in the case are reasonable or  
17 appropriate. Given the vast range between OPC's recommended rate reduction and  
18 FPL's proposed increase, such a conclusion is not reasonable.

19

20 **Q. BASED ON THE ABOVE ANALYSIS, AND THE AMOUNTS PRESENTED IN**  
21 **EXHIBITS DR-7 AND DR-8, IS THE \$378 MILLION INCREASE PROPOSED IN**  
22 **THE AUGUST 15 DOCUMENT FAIR, JUST, REASONABLE, OR BASED ON**  
23 **THE COSTS INCURRED TO PROVIDE SERVICE TO FPL'S CUSTOMERS?**

24 A. No. While it is possible that the Commission may not ultimately adopt every single one  
25 of the adjustments sponsored by OPC and other parties in this case, it is also not

1 reasonable to assume that the Commission would reject every one of those  
2 recommendations. Additionally, OPC witness Kevin O'Donnell is addressing the  
3 reasonableness of the 10.70% return on equity provided for in the August 15 document  
4 and testifies that such a high ROE is not fair, reasonable, or justified for FPL in this case.  
5

6 **Q. IN HIS SUPPLEMENTAL DIRECT TESTIMONY, AT PAGES 5 AND 6, FIPUG**  
7 **WITNESS JEFFRY POLLOCK INDICATES THAT THE \$378 MILLION BASE**  
8 **RATE INCREASE WOULD ALLOW FPL TO RECOVER INFRASTRUCTURE**  
9 **COSTS INCURRED SINCE FPL'S LAST RATE CASE. WOULD YOU PLEASE**  
10 **ADDRESS MR. POLLOCK'S ASSERTION?**

11 A. Yes. Mr. Pollock states that "The 2013 increase will provide FPL an opportunity to  
12 recover new infrastructure costs incurred since FPL's last rate case (Docket No 080677-  
13 EI)..." Mr. Pollock also provides Exhibit JP-1, which he claims at page 6 of his  
14 supplemental testimony "...demonstrates that the \$378 million base revenue increase as  
15 authorized under the Settlement Agreement would provide FPL an opportunity to recover  
16 its incremental infrastructure costs only." Under Mr. Pollock's approach, all other  
17 changes that impact the revenue requirements of FPL would be ignored and the  
18 "infrastructure costs" would only be considered in deriving a reasonable change in rates.  
19 Many other items beyond the addition of infrastructure or new plant additions impact the  
20 return earned by FPL. As will be discussed more extensively later in this testimony,  
21 additions to plant or "infrastructure" are not made in isolation. For example, the added  
22 plant is used to serve an increasing level of customers and sales load. Mr. Pollock has  
23 not demonstrated that his analysis, which he claims shows only the impacts of  
24 "incremental infrastructure," would result in fair and reasonable rates that are based on  
25 the overall costs incurred to serve FPL's customers. This piecemeal approach to

1           justifying a \$378 million increase in base rates is not reasonable and has not been  
2           demonstrated to result in fair and reasonable rates to be charged to FPL's customers.

3

4   **Q.   BEYOND YOUR DISAGREEMENT REGARDING THE APPROACH TAKEN**  
5   **BY MR. POLLOCK IN HIS TESTIMONY AND IN HIS EXHIBIT JP-1 IN**  
6   **ATTEMPTING TO SUPPORT THE \$378 MILLION BASE REVENUE**  
7   **INCREASE, DO YOU HAVE ANY ADDITIONAL CONCERNS WITH HIS**  
8   **EXHIBIT?**

9   A.   Yes. While Exhibit JP-1 does not identify the source of the numbers used in his exhibit  
10       or how most of the inputs were derived, page 5 of his testimony indicates that Exhibit JP-  
11       1 "...is a comparison of the infrastructure related costs between FPL's proposal in this  
12       rate case and the corresponding costs approved in the Commission's Final Order in  
13       Docket No. 08-0677-EI." Unfortunately, Mr. Pollock did not provide the sources of the  
14       data used in this exhibit, so I am unable to confirm that the amounts are accurate, or even  
15       if they include only incremental infrastructure-related costs, as he claims. While Exhibit  
16       JP-1 indicates that it is "Revenue Requirement Associated With Additional  
17       Infrastructure-Related Costs Since FPL's Last Rate Case," on its surface the exhibit  
18       appears to include much more.

19

20       For example, Line 1 is titled "Jurisdictional Adjusted Rate Base" and includes an amount  
21       of \$4,282,845,000. If the title of that line is accurate, then his analysis would include all  
22       changes to rate base reflected in FPL's filing in this case as compared to the  
23       Commission's order in Docket No. 080677-EI. Other items are included in rate base  
24       beyond investment in plant and infrastructure, such as cash working capital, which  
25       increased substantially in FPL's filing as compared to the prior case. If one takes the

1 difference between FPL's entire as-filed jurisdictional rate base contained in MFR B-1 of  
2 \$21,036,823,000 and the amount of jurisdictional rate base authorized in FPL's last rate  
3 case in Order No. PSC-10-0153-FOF-EI, Schedule 1, of \$16,787,430,000, the difference  
4 is \$4,249,393,000, which is \$33.5 million less than the jurisdictional adjusted rate base  
5 change of \$4,282,845,000 identified in Exhibit JP-1. If one were to use the updated  
6 jurisdictional rate base of \$21,220,083,000 presented in FPL's Post-Hearing Brief in this  
7 case and compare that to the Commission's order, the difference or increase in rate base  
8 requested by FPL in this case is \$4,432,653,000.

9  
10 However, if one were to instead focus on the change in the jurisdictional net plant in  
11 service included in rate base, the difference between FPL's filing in this case on its MFR  
12 B-1 of \$18,552,516,000 and the amount authorized in the Commission's prior order of  
13 \$15,547,230,000, the increase in jurisdictional net plant in service is \$3,005,286,000.  
14 Similarly, if one were to focus on the change in plant in service and ignore the  
15 accumulated depreciation offset, the difference between FPL's filing in this case on MFR  
16 B-1 of \$30,424,227,000 and the amount authorized in the Commission's prior order of  
17 \$27,036,863,000, the increase in jurisdictional plant in service is \$3,205,364,000. The  
18 increases in each of these amounts (i.e., net plant in service and plant in service) since the  
19 last rate case are far less than the \$4,282,845 shown in Mr. Pollock's Exhibit JP-1.

20  
21 Additionally, on his Exhibit JP-1, Mr. Pollock also amortizes the projected remaining  
22 surplus depreciation as of January 1, 2013 contained in FPL's filing of \$191 million over  
23 18 months. It is my understanding that the Commission's order in FPL's last rate case  
24 required the Company to amortize the Depreciation Reserve Surplus over the four-year  
25 period ending on December 31, 2013. While the settlement in that case allowed FPL

1 some flexibility regarding the level of amortization each year, the order approving the  
2 settlement, Order No. PSC-11-0089-S-EI states as follows on page 6: "To the extent  
3 there exists any remaining unamortized reserve surplus at the end of the 3-year settlement  
4 period, FPL would amortize it in 2013 in accord with the 4-year amortization period  
5 approved in the Final Order unless we require a different result pursuant to a final rate  
6 order effective on or after January 1, 2013." Given the fact that the four-year  
7 amortization period expires on December 31, 2013, Mr. Pollock's 18-month amortization  
8 of FPL's projected remaining balance in the 2013 test year on his exhibit is perplexing.  
9 If FPL's projected full remaining balance of \$191 million is used in the test year, the  
10 result of Mr. Pollock's analysis would be an "Adjusted Revenue Deficiency" of  
11 \$309,788,000 instead of \$385,988,000. If the "Jurisdictional Adjusted Rate Base" of  
12 \$4,282,845,000 in his analysis were to be replaced with the change in either jurisdictional  
13 net plant in service of \$3,005,286,000 or jurisdictional plant in service of \$3,205,364,000,  
14 the "Adjusted Revenue Deficiency" shown in his analysis would be reduced by an  
15 additional \$124.9 million and \$105.4 million, respectively.

16  
17 **Q. FPL'S ORIGINAL FILING INCLUDED A REQUESTED STEP INCREASE OF**  
18 **\$173.9 MILLION FOR THE CANAVERAL MODERNIZATION PROJECT**  
19 **EFFECTIVE WITH THE IN-SERVICE DATE OF THE UNIT, WHICH WAS**  
20 **PROJECTED TO BE JUNE 2013. HOW, AND AT WHAT AMOUNT, IS THE**  
21 **CANAVERAL MODERNIZATION PROJECT TREATED IN THE AUGUST 15**  
22 **DOCUMENT?**

23 **A.** Under the August 15 document, Stipulation 8, the Canaveral Modernization Project is  
24 considered a Generation Base Rate Adjustment ("GBRA"). The August 15 document  
25 specifically states "For the Canaveral Modernization Project, the Annualized Base



1 Revenue Requirement shall be as reflected in the 2012 Rate Petition and accompanying  
2 MFRs...”

3  
4 **Q. IS THE ALLOWANCE FOR AN INCREASE IN BASE RATES FOR THE**  
5 **CANAVERAL MODERNIZATION PROJECT AT THE AMOUNT REFLECTED**  
6 **IN FPL’S ORIGINAL FILING REASONABLE, JUSTIFIED, OR LIKELY TO**  
7 **RESULT IN COST-BASED RATES?**

8 A. Absolutely not. First, the revenue requirement amount presented by FPL in its original  
9 filing, or “2012 Rate Petition,” for the Canaveral Modernization Project exceeded the  
10 amounts FPL requested in its Post-Hearing Brief for the project. During the course of the  
11 review of FPL’s original filing, FPL reduced the projected costs associated with the  
12 Canaveral Modernization Project such that the final revenue requirements presented in its  
13 Post-Hearing Brief on September 21, 2012 declined from the \$173.9 million presented in  
14 its original filing to \$171.9 million.

15  
16 Second, the revenue requirements associated with the Canaveral Modernization Project in  
17 both FPL’s original filing and in its Post-Hearing brief incorporated an ROE of 11.50%  
18 and a capital structure consisting of long-term debt and equity components only. The  
19 11.50% ROE exceeds the 10.70% ROE provided for in the August 15 document. In my  
20 earlier testimony, I stated that the revenue requirements associated with the Canaveral  
21 Modernization Project should be based on FPL’s overall capital structure, including  
22 deferred taxes and customer deposits.

23  
24 Third, Exhibit DR-3 presented with my original testimony filed in July 2012 in this case  
25 showed that a revenue requirement of no more than \$121.5 million associated with the

1 Canaveral Modernization Project was justified or reasonable. If OPC's recommended  
2 revisions to FPL's equity ratio were to be rejected by the Commission, then Exhibit DR-5  
3 demonstrated that an increase of no more than \$122.5 million would be justified and  
4 reasonable based on OPC's recommended adjustments and recommended rate of return  
5 for the project. The August 15 document, as worded, would allow for an increase in base  
6 rates for the Canaveral Modernization Project of \$173.9 million, which (1) exceeds FPL's  
7 updated request presented in its Post-Hearing Brief by \$2 million; (2) would allow for an  
8 excessive ROE; (3) is based on an inappropriate, incomplete capital structure; and (4)  
9 exceeds OPC's recommended amount by over \$52 million. Such a result clearly is not  
10 fair, reasonable, or justified in this case.

11  
12 **Q. HAS FPL ADDRESSED THE DISCREPANCY IN THE AUGUST 15 DOCUMENT**  
13 **WITH REGARD TO THE INCREASE PROVIDED FOR THE CANAVERAL**  
14 **MODERNIZATION PROJECT, THE REVISIONS MADE BY FPL DURING THE**  
15 **COURSE OF THE CASE, AND THE 10.70% ROE PROVIDED FOR IN THE**  
16 **AUGUST 15 DOCUMENT?**

17 A. At page 13 of his direct testimony on the August 15 document, filed on October 12, 2012,  
18 FPL witness Robert E. Barrett, Jr., describes the calculation of the Annualized Base  
19 Revenue requirement for the Canaveral Modernization Project as follows: "The first year  
20 annualized base revenue requirement is based on the following assumptions: the revised  
21 Cape Canaveral Modernization Project costs and expenses included in the Appendix to  
22 FPL's post hearing brief filed on September 21, 2012, the as-filed, incremental capital  
23 structure, the revised long term debt cost rate as described by FPL in its post hearing  
24 brief, and the settlement ROE of 10.7%." Exhibit REB-10 provided with Mr. Barrett's  
25 testimony presents the revised amounts for the Canaveral Modernization Project,

1 resulting in a base rate increase for the project of \$165,289,000. Apparently, it is FPL's  
2 intent that the updated projection of the Canaveral Modernization Project costs and the  
3 updated long-term debt rate identified in the Post Hearing Brief be considered, as well as  
4 the 10.70% ROE contemplated in the August 15 document. However, this is not  
5 consistent with the written language of the August 15 document.

6  
7 **Q. IF THE CALCULATION OF THE CANAVERAL MODERNIZATION PROJECT**  
8 **BASE RATE INCREASE IS CALCULATED BASED ON THE METHODOLOGY**  
9 **AND AMOUNTS PRESENTED BY MR. BARRETT INSTEAD OF THE**  
10 **METHODOLOGY SPECIFIED IN THE AUGUST 15 DOCUMENT LANGUAGE**  
11 **AT STIPULATION 8(A), WOULD THE AMOUNT OF BASE RATE INCREASE**  
12 **FOR THE PROJECT BE FAIR OR REASONABLE?**

13 **A.** No, it would not. As mentioned previously in this testimony, and as presented in the  
14 direct testimony that I filed in this docket in July 2012, OPC's recommendations and  
15 calculations show that if any base rate step increase is allowed at the time the project is  
16 placed into service, the amount should be no more than \$121.5 million. The revised  
17 amount presented in Mr. Barrett's Exhibit REB-10 of \$165.3 million is \$43.8 million  
18 higher than the amount recommended by OPC and reflects the unjustifiably high ROE of  
19 10.70%. The 10.70% ROE rate is addressed in OPC witness O'Donnell's testimony in  
20 this phase of the proceeding.

21  
22 **Q. IF THE COMMISSION DECIDES TO ALLOW A BASE RATE STEP INCREASE**  
23 **AT THE TIME THE CANAVERAL MODERNIZATION PROJECT IS PLACED**  
24 **INTO SERVICE, ARE THE ADDITIONAL BASE RATE STEP INCREASES, OR**

1           **“GENERATION BASE RATE ADJUSTMENTS” CONTEMPLATED IN THE**  
2           **AUGUST 15 DOCUMENT FAIR, REASONABLE, OR JUSTIFIED?**

3    A.    No. The Canaveral Modernization Project base rate step increase that is being considered  
4           as part of FPL’s original rate case filing, or the 2012 Rate Petition and accompanying  
5           MFRs, is projected to be placed into service within the first 6 months of the 2013 test  
6           year that was considered in the rate case. The project clearly falls within the test year.  
7           The additional base rate step increases provided for in Stipulation 8 of the August 15  
8           document fall well beyond the test year in this rate case, with the Riviera Modernization  
9           Project projected to go into service in June 2014 and the Port Everglades Modernization  
10          Project projected to be placed into service in June 2016. There are many reasons why the  
11          additional base rate step increases, which the August 15 document identifies as  
12          “Generation Base Rate Adjustments” or “GBRA,” are not fair or reasonable.

13  
14    **Q.    BY WHAT AMOUNT WOULD BASE RATES INCREASE UNDER THE**  
15          **AUGUST 15 DOCUMENT WHEN THE GENERATION BASE RATE**  
16          **ADJUSTMENTS ARE CONSIDERED?**

17    A.    The August 15 document first allows for an existing base rate increase of \$378 million on  
18           January 1, 2013. Using the timelines currently contemplated for the modernization  
19           project in-service dates and the revision to the Canaveral Modernization Project base rate  
20           increase identified in Mr. Barrett’s Exhibit REB-10, the following additional increases  
21           would occur: (1) \$165,289,000 in June 2013; (2) \$236,043,000 in June 2014; and (3)  
22           \$217,862,000 in June 2016. Thus, the base rate step increases would add an additional  
23           \$619,194,000 increase in base rates to the \$378 million increase specifically identified in  
24           the August 15 document. The result is that base rates would be guaranteed to be at least  
25           \$997,194,000 higher than the current level by June 2016.

1

2 **Q. HAS FPL DEMONSTRATED THAT BASE RATE INCREASES OF ALMOST \$1**  
3 **BILLION BETWEEN NOW AND JUNE 2016 ARE NEEDED AND WOULD**  
4 **RESULT IN RATES THAT ARE JUST AND REASONABLE?**

5 A. No, it has not. The increases contemplated for the Riviera and Port Everglades  
6 Modernization projects are based on the amounts presented in the need determination  
7 filings for the projects, revised to reflect the capital structure contained in FPL's MFRs  
8 for the Canaveral Modernization Project (39.031% long-term debt and 60.696% common  
9 equity) and an ROE of 10.70%. No evidence has been provided by the parties with  
10 regard to FPL's overall operating and capital budgets for 2014, 2015, or 2016, or for  
11 FPL's projected revenue requirements for that period. Even if such information had been  
12 provided, such budgets and estimates would be too far out in time to be reliable in  
13 evaluating the potential returns that will be experienced by FPL in those years. What has  
14 been provided are projected plant, rate base and operating cost increases associated with  
15 the 3 projects that will fall under the proposed additional base step increases. Any other  
16 potential changes in FPL's revenue requirement components and needs in 2014, 2015,  
17 and 2016 have not been reviewed or vetted by the parties in this case.

18

19 **Q. OVER THE FOUR-YEAR PERIOD COVERED BY THE CONTEMPLATED**  
20 **AUGUST 15 DOCUMENT, IS IT APPROPRIATE TO PROVIDE FOR BASE**  
21 **RATE STEP INCREASES THROUGH THE GBRA WHILE IGNORING OTHER**  
22 **CHANGES THAT WILL OCCUR TO THE REVENUE REQUIREMENTS THAT**  
23 **WILL BE EXPERIENCED BY FPL?**

24 A. No. Generation plants are not added to the system in a vacuum with all other  
25 components of the base revenue requirements calculation remaining unchanged. The

1 additional energy that will be realized as a result of the modernizations would be used to  
2 serve customers on FPL's system at the time those modernization projects are placed into  
3 service. Between the 2013 test year that was considered in the base rate case and the  
4 dates the modernization projects will be placed into service, other aspects of FPL's  
5 operations and cost structure will change. Customers will be added, and presumably the  
6 number of customers served by FPL will increase, and the level of sales will increase.  
7 The existing plant that is factored into the 2013 test year will continue to be depreciated,  
8 reducing the net rate base impact of the existing plant in service. In addition, it is  
9 probable that some costs will increase and others may be offset by cost savings,  
10 productivities, and efficiencies. As an example of known cost savings or reductions, my  
11 direct testimony filed in this docket in July 2012 indicated that FPL's adjusted 2013 test  
12 year incorporated \$3,743,000 of net operation and maintenance ("O&M") expenses  
13 associated with the smart meter project, yet FPL projects net annual cost savings  
14 associated with the smart meter implementation of \$12.9 million in 2014 and \$27.6  
15 million by 2015, with savings continuing thereafter. Moreover, plant will be added and  
16 plant retirements will occur.

17  
18  
19 FPL has not in any way demonstrated that the revenues it will collect during 2014, 2015,  
20 and 2016 will not be sufficient to partially or fully offset the costs of the modernization  
21 projects without the application of a GBRA. Again, these modernization projects are not  
22 being added in a vacuum without any other changes in FPL's costs and cost structures  
23 occurring after the 2013 test year contemplated by the parties in this rate case. The  
24 GBRA's are tantamount to single-issue ratemaking, resulting in additional base rate

1 increases of \$619 million between June 2013 and June 2016 that would ignore the other  
2 components of the revenue requirement calculations and FPL's overall cost structure.

3  
4 **Q. IF THE AUGUST 15 DOCUMENT IS REJECTED, WOULD FPL STILL HAVE**  
5 **AN OPPORTUNITY TO RECOVER THE COSTS ASSOCIATED WITH THE**  
6 **MODERNIZATION PROJECTS IN RATES?**

7 A. Absolutely. First, in this case the parties contemplated a base rate step increase for the  
8 Canaveral Modernization Project as that project is anticipated to be placed into service  
9 during the 2013 test year considered in the rate case. Typically, OPC does not favor such  
10 a step increase outside of a negotiated settlement agreement. However, in light of a  
11 recent decision involving Gulf Power that allowed for a step increase associated with  
12 several turbine upgrade projects that were placed into service during the test year in that  
13 case, coupled with the fact that the Canaveral Modernization project is projected to be  
14 placed into service during the 2013 test year, OPC elected not to object to the Canaveral  
15 Modernization step increase in this docket. Thus, if the Commission appropriately rejects  
16 the August 15 document, it would still have the opportunity to consider allowing a base  
17 rate step increase for the Canaveral Modernization project. The record in this docket has  
18 fully addressed the Canaveral Modernization Project costs and associated revenue  
19 requirements, and the project completion date falls within the test year being considered  
20 in the case.

21  
22 Second, if FPL determines that it may have a revenue deficiency when the projects are  
23 closer to being placed into service, the Company would have the opportunity to file a  
24 base rate increase request. This would be based on a full rate case proceeding that would  
25 factor in all of the components of the base rate calculations and not be limited to impacts

1 associated with the modernization projects. This would provide a full matching of the  
2 revenue requirement calculations, and all the changes impacting FPL's revenue  
3 requirements could be considered. This would ensure that the resulting rates are cost  
4 based and supported by analysis and evidence presented to the Commission for  
5 consideration.

6  
7 **Q. STIPULATION 8(C) OF THE AUGUST 15 DOCUMENT INDICATES THAT**  
8 **EACH GBRA WILL BE CALCULATED "...USING THE CAPITAL**  
9 **STRUCTURE REFLECTED IN THE CANAVERAL STEP INCREASE MFRS**  
10 **ACCOMPANYING THE 2012 RATE PETITION." IS THAT CAPITAL**  
11 **STRUCTURE APPROPRIATE IF A GBRA IS CONSIDERED?**

12 **A.** No. The capital structure contained in FPL's MFRs for the Canaveral Step Increase  
13 consisted of 39.03% long-term debt and 60.97% common equity, and ignored any other  
14 components of the capital structure. As indicated in my direct testimony filed in July  
15 2012, if any step increase for the Canaveral Modernization Project is allowed, the ROE  
16 should be based on the overall ROE approved by the Commission for the base rate  
17 increase, and should not be limited to long-term debt and equity. Project financing does  
18 not occur in a vacuum. During the term contemplated in the August 15 document, other  
19 factors will impact the capital structure, the amount of short-term and long-term debt, and  
20 the amount of common equity beyond the modernization projects. In my July 2012  
21 testimony, I identified 2 recent orders involving Gulf Power and Tampa Electric  
22 Company in which the Commission allowed for step increases that factored in the overall  
23 rate of return found appropriate in those decisions. They were not limited to long-term  
24 debt and equity components.

25



1           Additionally, OPC witnesses Kevin O'Donnell and Dr. Randall Woolridge both filed  
2 testimony in July 2012 regarding the high equity ratio proposed by FPL and  
3 recommended a modification of the debt and equity ratios for ratemaking purposes which  
4 will not be repeated herein. Their testimonies establish that the 10.70% ROE and the  
5 equity ratio contemplated in the agreement are not fair or reasonable to FPL's customers  
6 and would result in excessive rates. This will be further addressed by OPC witness Kevin  
7 O'Donnell in his testimony,

8  
9       **Q.   STIPULATION 8(A) PROVIDES THAT THE RIVIERA MODERNIZATION**  
10       **PROJECT GBRA AND THE PORT EVERGLADES MODERNIZATION**  
11       **PROJECT GBRA WOULD BE CALCULATED TO REFLECT THE COSTS**  
12       **CONTAINED WITH THE NEED DETERMINATION GRANTED BY THE**  
13       **COMMISSION FOR EACH OF THOSE PROJECTS. DO YOU WISH TO**  
14       **COMMENT ON THIS PROVISION?**

15       **A.**   Yes. It is my understanding that the proceedings which result in a need determination are  
16 conducted in a more condensed time frame as compared to a full revenue requirement  
17 proceeding, and do not entail as robust of a review of the projected plant costs and  
18 operating costs as would occur in a base rate case. Additionally, the original needs  
19 determination request for the Riviera Modernization Project was filed in April 2008 and  
20 approved by the Commission in PSC-08-0591-FOF-EI on September 21, 2008. Thus, the  
21 project cost estimates upon which the need determination was based were projected more  
22 than 6 years prior to the project going into service in June 2014. Given the staleness of  
23 the projections contemplated in the need determination, the accuracy of the projected  
24 amounts are unknown at this time. Similarly, FPL's request for the Port Everglades need  
25 determination was filed in June 2011, which is almost 5 years prior to the projected in-

1 service date. Thus, the costs considered for each of the need determinations may not be  
2 reliable for purposes of determining the revenue requirements to be included in base rates  
3 for the projects, and would not have undergone as rigorous of a review as may occur in a  
4 base rate case closer in time to the projects being completed and placed in service.

5  
6 **Q. DOESN'T THE AUGUST 15 DOCUMENT PROVIDE FOR A TRUE-UP OF THE**  
7 **MODERNIZATION PROJECT CAPITAL EXPENDITURES IN STIPULATIONS**  
8 **8(D) AND 8(E)?**

9 A. The Stipulations do provide for some "after the fact" true-ups should the actual capital  
10 expenditures differ from the projected amounts; however, the amounts initially going into  
11 effect would be based on the original need determination amounts with a potential future  
12 credit if FPL over-projected the costs and a potential future increase in the rates if FPL  
13 under-projected the costs. These potential true-up provisions do not justify the GBRA  
14 increases, because these would still not consider a full revenue requirement review of all  
15 components of the revenue requirement calculations and consideration of overall base  
16 rates at the time of implementation.

17  
18 **Q. HAS THE COMMISSION PREVIOUSLY REJECTED A GBRA MECHANISM**  
19 **FOR FPL?**

20 A. Yes. In Order No. PSC-10-0153-FOF-EI, issued on March 17, 2010, the Commission  
21 rejected the GBRA mechanism requested by FPL in Docket No. 080677-EI. The reasons  
22 that led the Commission to reject the GBRA are consistent with the concerns raised in  
23 this testimony.

24  
25 **Q. PLEASE ELABORATE.**

1 A. At page 13 of Order No. PSC-10-0153-FOF-EI, the Commission indicated in the very  
2 first paragraph addressing the GBRA as follows:

3 For the reasons explained below, we do not approve FPL's request for a  
4 Generation Base Rate Adjustment (GBRA) mechanism that would authorize FPL  
5 to increase base rates for revenue requirements associated with new generation  
6 additions approved under the Power Plant Siting Act at the time they enter  
7 commercial service. The existing ratemaking procedure provided by Florida  
8 Statutes and our rules provides for a more rigorous and thorough review of the  
9 costs and earnings associated with new generating units. Section 366.06(2), F.S.,  
10 provides that when approved rates charged by a utility do not provide reasonable  
11 compensation for electrical service, the utility may request that we hold a public  
12 hearing and determine reasonable rates to be charged by the utility. Section  
13 366.071, F.S., provides expedited approval of interim rates until issuance of a  
14 final order for a rate change. Rule 25-0243, F.A.C., establishes the minimum  
15 filing requirements for utilities in a rate case. These procedures have been  
16 sufficient in the past for FPL and other regulated utilities wishing to recover  
17 capital expenditures when a new generating facility begins commercial service.  
18 We find that the GBRA shall expire as scheduled when new rates are established  
19 as delineated in this Order.  
20  
21

22 At page 14 of that decision, the Commission stated that "The record indicates that FPL  
23 built several generating units since 1985 without seeking a rate increase." In the same  
24 paragraph, the Commission states that FPL acknowledged that if economic conditions or  
25 other factors changed, it was possible that FPL could earn enough through base rates to  
26 cover the costs of a new generating unit in whole, or in part, without the need for a  
27 GBRA and that other factors, such as "...the addition of new customers and increased  
28 electricity sales tend to offset the additional costs of new power plants."  
29

30 The very next paragraph on page 14 of the order indicates that a rate case proceeding  
31 "...provides more of an opportunity to rigorously review costs and earnings as a whole."  
32 It also states that a traditional base rate proceeding could be timed to coincide with the in-  
33 service date of a new generation plant and that a matching of the fuel costs savings with  
34 the new generation plant costs could be achieved through a traditional rate case.  
35

1 That decision, at page 15, further asserted that “It is not possible for us or interested  
2 parties to examine projected costs at the same level of detail during a need determination  
3 proceeding as we would be able to do in a traditional rate case proceeding” and that “A  
4 need determination examines costs only in comparison to alternative sources of  
5 generation.” The same paragraph acknowledged that a need determination “...does not  
6 allow for a review of the full scope of costs and earnings, as a rate case does.”

7  
8 In rejecting the GBRA mechanism for FPL, in the final paragraph addressing the subject  
9 at page 16 of the order, the Commission stated, in part, “It is not possible for us to  
10 exercise as adequate a level of economic oversight within the context of a GBRA  
11 mechanism as we can exercise within the context of a traditional rate case proceeding.”

12  
13 The GBRA deficiencies identified by the Commission in Order No. PSC-10-0153-FOF-  
14 EI hold true today. For the same reasons, the August 15 document and the GBRA  
15 provisions contained therein should be rejected.

16  
17 **Q. IN HIS TESTIMONY ON THE SIGNATORIES’ AUGUST 15 DOCUMENT AT**  
18 **PAGE 7, MR. BARRETT IDENTIFIES FOUR-YEAR RATE CERTAINTY AS**  
19 **ONE OF THE PURPORTED REASONS THAT THE GBRA MECHANISM FOR**  
20 **THE MODERNIZATION PROJECTS IS APPROPRIATE. DO YOU WISH TO**  
21 **COMMENT ON THE RATE CERTAINTY ALLUDED TO IN HIS TESTIMONY?**

22 **A.** Yes. Mr. Barrett indicates that the GBRA mechanism is required “...in order to facilitate  
23 4 years of base rate certainty” to FPL’s customers. Similarly, at page 11 of his testimony,  
24 FPL witness Moray P. Dewhurst states that one of the reasons he contends that the  
25 August 15 document is in the public interest is that it “Offers reduced uncertainty to all

1 parties, including customers and investors.” However, the certainty offered by the  
2 August 15 document is that, during its four-year term, FPL’s customers would experience  
3 base rate increases of almost \$1 billion, consisting of a \$378 million increase in January  
4 2013, a \$165.3 million increase in June 2013, a \$236 million increase in June 2014, and  
5 another \$217.9 million base rate increase in June 2016.

6  
7 While guaranteeing base rate increases in the magnitude of almost \$1 billion by the end  
8 of the four-year term, there is nothing that would bar FPL from earning above the ROE  
9 range provided for in the August 15 document. Thus, if other changes in revenue  
10 requirements experienced by FPL would allow the Company to recover the costs it incurs  
11 to serve customers and to earn a fair and reasonable return on its investment without a  
12 base rate step increase for the modernization projects, FPL would still be able to  
13 implement the GBRA increases. There is no earnings cap provided for in the terms of the  
14 August 15 document that would limit the earnings or the ROE that could be realized by  
15 FPL at the same time that base rate increases in base rates of almost \$1 billion are  
16 allowed. While Stipulation 9(b) of the August 15 document does indicate that, if FPL  
17 earns above an 11.70% return on common equity during the term of the agreement on a  
18 monthly earnings surveillance report, “any other Party” will be entitled to petition the  
19 Commission for a review of FPL’s base rates, such a process takes time and the GBRA  
20 increases would still go into effect during the review period. Such an approach would  
21 also shift the burden of proving that FPL’s rates are just and reasonable. Under the  
22 GBRA approach, instead of the Company having the burden to prove that an increase in  
23 its base rates is required to provide an opportunity to earn a fair return (as would occur in  
24 a traditional rate case setting), the increases would automatically go into effect. If FPL  
25 exceeds the 11.70% ROE during the term outlined in the August 15 document, the burden

1 would be on the customers or the Commission to initiate a proceeding and show that FPL  
2 is overearning. There is nothing to prevent FPL from potentially earning excessive  
3 returns above the range provided for in the August 15 document for a potentially  
4 extended amount of time. The loss of a thorough review of FPL's revenue requirements  
5 through a base rate proceeding that would result in just, fair, and reasonable rates that are  
6 cost based is hardly a fair trade-off for the dubious "benefit" of known base rate increases  
7 totaling almost \$1 billion.

8  
9 Additionally, the terms of the August 15 document would allow FPL to potentially  
10 manipulate its reported earnings through the amortization of a fossil dismantlement  
11 reserve over the term and outside of a dismantlement study, to the future detriment to  
12 customers. An amortization of the fossil dismantlement reserve of this type was not  
13 addressed or contemplated in the original rate case proceeding and was not factored into  
14 the revenue requirements presented by FPL in its 2012 Petition. This issue is addressed  
15 further in the testimony of OPC witness Jacob Pous.

16  
17 **Q. AT PAGES 11 AND 12 OF HIS TESTIMONY, MR. BARRETT CLAIMS THAT**  
18 **GBRA IS "MID-POINT SEEKING" AND THAT "THE GBRA MECHANISM IS**  
19 **MATHEMATICALLY INCAPABLE OF INCREASING THE SETTLEMENT**  
20 **ROE ABOVE THE MID-POINT OF THE AUTHORIZED RANGE." IS THIS**  
21 **TESTIMONY RELEVANT TO THE GBRA ISSUE?**

22 **A.** No. It is important for the Commission to recognize that Mr. Barrett's argument flies in  
23 the face of a fundamental tenet of base rate regulation. In addition to an inappropriate  
24 piecemeal approach to ratemaking, FPL hopes to discard the concept of a range of  
25 reasonableness in which the utility's earnings and earned ROE may vary with its

1 fluctuating mix of investment, revenues, and expenses, and to supplant it with a new  
2 paradigm that requires rates to increase so that its earnings remain "whole" as it places a  
3 new generating unit into service.

4  
5 **Q. PLEASE CONTRAST THE FUNDAMENTAL TENET TO WHICH YOU REFER**  
6 **TO THE GBRA PROVISIONS IN THE AUGUST 15 DOCUMENT.**

7 A. Base rates are set after the Commission evaluates a representative test year. It is  
8 understood that assumptions regarding the levels of investment, expenses, and revenues  
9 will vary from those assumed once the rates are placed into effect. It is my understanding  
10 that is why the Commission establishes a range, within which any point is, by definition,  
11 fair and reasonable. If the utility incurs a net increase or decrease in cost, its earnings  
12 may decrease or increase; however, if the earned ROE remains within the established  
13 range, this would not warrant a change in the rates that customers pay. It has been  
14 established that, over time, FPL has placed several power plants into service without  
15 increasing rates, because its earnings were sufficient to absorb the additional costs.

16  
17 The proposed paradigm shift is this: instead of a situation in which earnings fluctuate  
18 within a range while rates remain unchanged, FPL proposes that rates should go up to  
19 absorb a specific cost. Mr. Barrett's description of the GBRA as "mid-point seeking" is  
20 clever, but it misses the point, which is that customers' rates should be increased only if  
21 and to the extent necessary to provide FPL the opportunity to earn a fair return on the  
22 basis of its overall operations. FPL's GBRA proposal conflicts with this fundamental  
23 premise by seeking a guarantee that a specific increment to its investment in plant will  
24 not cause its earnings to decline.

25

1 Q. AT PAGE 11 OF HIS TESTIMONY, MR. DEWHURST INDICATES THAT THE  
2 PROPOSED SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST, IN  
3 PART, BECAUSE IT "PROMOTES ADMINISTRATIVE EFFICIENCY,  
4 OBVIATING WHAT WOULD OTHERWISE BE THE NEED FOR MULTIPLE,  
5 EXPENSIVE RATE CASES." IS THE AVOIDANCE OF POTENTIAL RATE  
6 CASES IN THE PUBLIC INTEREST?

7 A. No, it is not. First, as addressed previously in this testimony, there is the potential that  
8 other changes in FPL's cost structure and revenue requirement components could offset  
9 (either partially or fully) the need to increase rates at the time the modernization projects  
10 are placed into service, and still allow FPL to earn a fair and reasonable ROE on the  
11 prudent investment used to provide service to its customers.

12  
13 Second, the costs incurred to process a traditional rate case pale in comparison to rate  
14 increases provided for in the August 15 document. The rate case costs would be well  
15 spent if these insure that the resulting rates are fair, just, and reasonable and based on the  
16 overall costs incurred to provide service to customers. The assurance provided in the  
17 context of traditional rate case setting that a robust review of the costs has occurred and  
18 that the resulting rates are fair, reasonable, and justified is worth the additional  
19 administrative tasks and incurred costs.

20  
21 The goal should not be administrative ease or to reduce the burden on FPL, the  
22 intervenors representing the customers served by FPL, Commission staff, or the  
23 Commissioners themselves; rather, the goal should be to ensure that rates are fair,  
24 reasonable, and justified. If rates are not fair, reasonable, or justified, then they are not in  
25 the public interest. Ensuring that rates meet these requirements is an important obligation



1 that the Commission has the responsibility to bear. Such considerations should not be  
2 tossed aside for a dangled carrot of “administrative efficiency,” “administrative ease,” or  
3 a potential lower workload over the settlement term.

4  
5 **Q. AT PAGE 12 OF HIS TESTIMONY, MR. DEWHURST INDICATES THAT THE**  
6 **COMMISSION CAN “SATISFY ITSELF” THAT THE JANUARY 2013 BASE**  
7 **RATE INCREASE IS REASONABLE, IN PART BECAUSE IT IS ROUGHLY**  
8 **25% LOWER THAN FPL’S ORIGINAL REQUEST. DO YOU VIEW THE**  
9 **REDUCTION IN THE JANUARY 2013 BASE RATE INCREASE FROM \$516.5**  
10 **MILLION TO \$378 MILLION SUFFICIENT TO “SATISFY” THE**  
11 **COMMISSION THAT THE \$378 MILLION INCREASE IS REASONABLE?**

12 **A.** No. As indicated previously in this testimony, the \$378 million increase exceeds the  
13 revenue requirement recommended by OPC in this case by at least \$631.4 million.  
14 Additionally, if one merely replaces the ROE incorporated in the 2012 Rate Petition and  
15 MFRs with the 10.70% ROE and revises the customer deposit rate to reflect the rate  
16 implemented by the Commission, the resulting rate increase would be lower than the  
17 \$378 million contained in the August 15 document. Thus, the Commission would need  
18 to reject every one of the recommendations made by the intervening parties in this case to  
19 determine that a \$378 million increase effective January 2013 is “reasonable.” Even if  
20 every one of the modifications and revisions made by FPL between the time its original  
21 filing was made and the time it filed its Post-Hearing Brief were found to be appropriate  
22 by the Commission, the Commission would still need to reject the vast majority of the  
23 recommendations made by the intervening parties in this case to justify an increase of  
24 \$378 million.

25 **Q. PLEASE SUMMARIZE YOUR TESTIMONY**

1 A. The \$378 million rate increase proposed in the August 15<sup>th</sup> Document is unreasonably  
2 high, both because (for the reasons stated by OPC witnesses O'Donnell and Woolridge)  
3 the 10.7% ROE is excessive and the proposal unreasonably assumes the Commission  
4 would reject 100% of the significant adjustments to test year rate base and expenses  
5 supported by OPC witnesses and others. FPL's proposed treatment of the Canaveral Step  
6 increase is based on an ROE of either 10.7% or 11.5% (either of which is excessive), an  
7 incomplete capital structure, and other excessive costs. The GBRA step rate increases in  
8 2014 and 2016 are inconsistent with sound regulatory principles established by this  
9 Commission and ignore other cost offsets. In his testimony, OPC witness Jack Pous  
10 demonstrates that the proposed amortization of fossil dismantlement reserve surplus is  
11 one-sided and unreasonable. OPC witness James Daniel makes similar points about the  
12 proposed "asset optimization" program. Individually and collectively, these components  
13 of the August 15<sup>th</sup> Document are skewed to serve FPL's interests to the disadvantage of  
14 the customers. The resulting rates would not be fair, just or reasonable and, accordingly,  
15 the FPL proposal is not in the public interest.

16  
17 **Q. DOES THIS COMPLETE YOUR PREFILED TESTIMONY RELATED TO THE**  
18 **AUGUST 15 DOCUMENT?**

19 A. Yes, it does.

1                                   **SUPPLEMENTAL DIRECT TESTIMONY**  
2   **OF**  
3   **DONNA RAMAS**  
4                                   **TO ADDRESS EXHIBIT JP-21**

5  
6                                   On Behalf of the Office of Public Counsel  
7   Before the  
8                                   Florida Public Service Commission  
9   Docket No. 120015-EI  
10

11   **Q.    DID YOU FILE TESTIMONY IN RESPONSE TO MR. POLLOCK REGARDING**  
12   **HIS TESTIMONY RELATED TO EXHIBIT JP-15 ORIGINALLY FILED ON**  
13   **OCTOBER 12, 2012?**

14   A.    Yes.

15   **Q.    DID MR. POLLOCK REVISE THAT EXHIBIT?**

16   A.    Yes. Mr. Pollock attached an exhibit, labeled Exhibit JP-21, to his rebuttal testimony.  
17        He described it as an errata to JP-15 that was attached to his direct testimony.

18   **Q.    DID EXHIBIT JP-21 SUBSTANTIVELY MODIFY WHAT WAS ORIGINALLY**  
19   **IDENTIFIED AS EXHIBIT JP-15?**

20   A.    Yes. Mr. Pollock removed the investment in the Cape Canaveral Modernization project,  
21        modified the amount of investment in West County Energy Center 3 that he removed  
22        from the incremental infrastructure, and eliminated the line amortizing the remaining  
23        depreciation reserve surplus of \$190.9 million that was included in Exhibit JP-15.

24   **Q.    WHICH CHANGE TO EXHIBIT JP-15 DO YOU ADDRESS IN THIS**  
25   **SUPPLEMENTAL TESTIMONY?**

26   A.    This Supplemental Testimony addresses the elimination of the recognition of the  
27        amortization of the remaining depreciation reserve surplus. In the course of correcting

1 certain errors, Mr. Pollock introduced a new error that overstated the “revenue  
2 deficiency” that he calculated by \$190.9 million.

3 **Q. WHAT REASON DID MR. POLLOCK GIVE FOR ELIMINATING THE**  
4 **RECOGNITION OF THE FLOWBACK OF \$190.9 MILLION OF REMAINING**  
5 **DEPRECIATION RESERVE SURPLUS WHEN HE PROVIDED HIS ERRATA**  
6 **IN REBUTTAL TESTIMONY?**

7 A. In addressing the corrections to Exhibit JP-15 in his rebuttal testimony, at page 5, lines 11  
8 through 13, he indicates that “...the amortization of the depreciation surplus was already  
9 reflected in depreciation expense and should not have been separately netted against the  
10 revenue deficiency.”

11 **Q. IS THE STATEMENT THAT THE AMORTIZATION OF THE DEPRECIATION**  
12 **SURPLUS WAS ALREADY REFLECTED IN DEPRECIATION EXPENSE**  
13 **CORRECT?**

14 A. No.

15 **Q. PLEASE EXPLAIN.**

16 A. Basically, Mr. Pollock’s Exhibit JP-21 confuses two separate concepts. A change in  
17 depreciation expense (exclusive of amortization) between the 2010 rate case order and  
18 the 2013 test year is an indication of expenses associated with increased infrastructure.  
19 However, the surplus depreciation amortization amount of \$223.7 million that was  
20 reflected in the 2010 order and the surplus depreciation amortization of \$190.9 million  
21 reflected in the 2013 MFRs do not reflect infrastructure changes, and netting the two does  
22 not produce a result that corresponds to the purpose of his exhibit.

23 Mr. Pollock erroneously believed that in subtracting the depreciation value in the  
24 final order that reflected \$223.7 million of surplus depreciation amortization from  
25 depreciation expense in the test year that includes \$190.9 million of amortization had the

1 effect of flowing the remaining \$190.9 million of depreciation surplus back to customers.  
2 This clearly is not the case.

3 **Q. PLEASE EXPLAIN.**

4 A. The impact of amortization of the depreciation reserve surplus is a reduction of  
5 depreciation expense. However, by “subtracting” a credit of \$223.7 million from a credit  
6 of \$190.9 million, Mr. Pollock effectively increased depreciation expense in his exhibit.  
7 This is because he did not provide for the consumption of the remaining surplus; he  
8 merely compared the level of annual amortization amounts between two years. This  
9 counter intuitive result should have made it clear that something was wrong with the  
10 exhibit.

11 We know that, based on FPL’s estimate, \$190.9 million of reserve surplus  
12 remains to be amortized. A comparison of a change in the depreciation expense levels  
13 between 2010 and 2013 does nothing to “consume” that \$190.9 million; else, FPL would  
14 not be arguing that it exists and should be carried over to future years in the August 15  
15 document.

16 **Q. WHAT IS THE IMPACT OF THE ERROR?**

17 A. In Exhibit JP-21, Mr. Pollock does not flow the \$190.9 million of remaining surplus  
18 reserve back to customers, as the Commission has ordered. As a result, he overstated the  
19 “revenue deficiency” by at least \$190.9 million—or, if one uses the 18 month  
20 amortization assumption in his Exhibit JP-15, by at least \$114.8 million.

21 **Q. WHAT SHOULD MR. POLLOCK HAVE DONE?**

22 A. That is the question that Exhibit 713 is intended to answer. As demonstrated in Exhibit  
23 713, the amortization of the reserve surplus should be removed from the depreciation line  
24 of Exhibit JP-21 if Mr. Pollock truly intended the exhibit to show the impacts of  
25 “incremental infrastructure” added by FPL since the last rate case. As also shown on

1 Exhibit 713, you would, however, still need to reflect the \$190.9 million of remaining  
2 reserve sufficiency as a reduction to the revised revenue requirements to ensure that  
3 amount still owed to customers is returned to customers.

4 **Q. WHAT IS THE RESULT OF THIS REVISION?**

5 A. As shown in Exhibit 713, the Revenue Deficiency would decrease from the \$371,764,000  
6 shown on Mr. Pollock's Exhibit JP-21 to \$338,986,000 before the return of the remaining  
7 surplus depreciation reserve owed to ratepayers. After consideration of the remaining  
8 surplus depreciation reserve of \$190.9 million going to customers, the revenue deficiency  
9 result would be \$148 million if returned to customers in one year, or \$224,186,000 if one  
10 uses the 18-month assumption of Exhibit JP-15.

11 **Q. DID EXHIBIT JP-21 CHANGE THE POSITIONS THAT YOU STATED IN**  
12 **YOUR DIRECT TESTIMONY IN ANY WAY?**

13 A. No.

14 **Q. DOES THAT CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

15 A. Yes.

16

17

1 BY MR. REHWINKEL:

2 Q Ms. Ramas, did you prepare two exhibits, DR-7  
3 and DR-8, which have been numbered 691 and 692?

4 A Yes, I did.

5 Q Do you have any changes or corrections to  
6 make to those exhibits?

7 A No, I do not.

8 Q Okay. Have you prepared a summary of your  
9 testimony for the Commission?

10 A Yes, I have.

11 Q Could you give that at this time?

12 A Yes.

13 Good afternoon, Commissioners.

14 In testimony I address issues one and five,  
15 which ask whether the generation based rate adjustments  
16 contained in the signatories' August 15th document are  
17 in the public interest and whether the terms and  
18 provisions of that document are in the public interest.  
19 The short answer to these questions is that they are  
20 not.

21 In addressing the public interest, it is my  
22 opinion that rates which are not fair, just, or  
23 reasonable are not in the public interest. It is also  
24 my opinion that in order to be fair, just, and  
25 reasonable, rates charged to customers should be cost

1 based. The \$378 million rate increase the company  
2 wants to go into effect in January must be considered  
3 in evaluating whether the August 15th document is in  
4 the public interest.

5 If the only changes made to the company's  
6 original filing in this document were to reduce the  
7 return on equity to the 10.7 percent rate provided for  
8 in the August 15th document and to reduce the customer  
9 deposit cost rate to the currently effective rate, the  
10 result would be a rate increase of \$362.5 million.

11 Putting aside the evidence that a  
12 10.7 percent return on equity is unfair and  
13 unreasonable, the \$378 million increase exceeds even  
14 this result. To put this into perspective, the Office  
15 of Public Counsel recommended a rate reduction in this  
16 case of at least \$253 million. The August 15th  
17 document amount exceeds this recommendation by  
18 \$631 million.

19 Because the \$378 million would cover all test  
20 year O&M expenses claimed by the company, all projected  
21 rate base claimed by the company and yield a 10.7  
22 percent return on equity, it would also necessarily  
23 assume that the Commission would take the unprecedented  
24 step of rejecting every one of the tens of millions of  
25 dollars of adjustments to the test year recommended by



1 the OPC and the other intervenors in this case. Taking  
2 these factors into account, the \$378 million increase  
3 is not a fair or reasonable result.

4 I also address Mr. Pollock's flawed assertion  
5 that the \$378 million increase would provide the  
6 company an opportunity to recover only new  
7 infrastructure costs incurred since the last rate case  
8 and somehow put FPL at risk for recovering increased  
9 O&M since that time.

10 I point out several problems with his  
11 analysis and the fact that it uses a piecemeal approach  
12 in an attempt to justify the increase that ignores many  
13 other factors that impact the revenue requirements. I  
14 also address the proposed generation base rate  
15 adjustments. While completion of the Canaveral  
16 modernization project does fall within the test year of  
17 this case, the other two modernization projects for  
18 Riviera and Port Everglades do not.

19 The additional generation base rate  
20 adjustments add another \$619 million of increases with  
21 no recognized offsets in 2014 or 2016, then result that  
22 base rates would increase by almost \$1 billion by June  
23 of 2016. This is far in excess of the increase  
24 requested by the company in its original filing in this  
25 case.

1           The additional step increase would occur  
2 regardless of what rate of return is being realized by  
3 the company at the time the projects are completed.  
4 Even if FPL is earning above its authorized rate of  
5 return, base rates would still be increased by the  
6 total revenue requirement of the Riviera and Port  
7 Everglades plants in the proposal.

8           All other changes that impact the components  
9 of rate base and base revenue requirements would be  
10 ignored. Generation plants are not added to the system  
11 in a vacuum with all other components of the base  
12 revenue requirements remaining unchanged. Earnings  
13 within the approved range may be sufficient to absorb  
14 some, if not all, of the costs associated with those  
15 plant additions in the event the customers' bills  
16 should not be increased by the full amount of the  
17 revenue requirements of the units.

18           The utility has the burden of demonstrating  
19 that it requires an increase to have an opportunity to  
20 earn a fair rate of return. FPL wants to shift that  
21 burden to the customers and to the Commission through  
22 increases that would be predetermined years in advance  
23 and it would be inappropriately based on limited  
24 aspects of the company's operations.

25           In its evaluation, the Commission should be

1 mindful that less than three years ago, it rejected the  
2 request for a generation base rate adjustment mechanism  
3 for very sound reasons, and those reasons still hold  
4 true today.

5           Because of the piecemeal approach and because  
6 of the one-sided subordinate level of customers' bills  
7 to FPL's interest in maximizing earnings, the proposed  
8 generation base rate adjustments are unreasonable, have  
9 not been shown to result in fair, just, and reasonable  
10 rates, and are not in the public interest in this case.

11           While accepting the August 15th document may  
12 offer a promise or superficial promise of  
13 administrative ease and lighter workload, that should  
14 not be the goal in setting rates.

15           Thank you.

16           MR. REHWINKEL: The witness is tendered for  
17 cross examination.

18           CHAIRMAN BRISE: FPL.

19           MR. BUTLER: Thank you, Mr. Chairman. I'm  
20 going to give staff an exhibit that I would like  
21 to hand out that I'll be using with Ms. Ramas.

22           CHAIRMAN BRISE: Sure.

23           Okay. We are at 723.

24           (Exhibit No. 723 was marked for  
25 identification.)

1 MR. BUTLER: Thank you.

2 CROSS EXAMINATION

3 BY MR. BUTLER:

4 Q Ms. Ramas, good afternoon.

5 A Good afternoon.

6 Q First of all, I would like to ask you briefly  
7 about your critique of Mr. Pollock's Exhibit JP-15.

8 Is it your understanding that Mr. Pollock's  
9 exhibit is intended to evaluate all of the changes in  
10 expenses, revenues, investments, et cetera, that have  
11 occurred from 2010 to 2013, or does it just focus on  
12 the impact on revenue requirements of the increase in  
13 non-generation infrastructure investment?

14 A What he asserts in his testimony is that it  
15 factors in the incremental infrastructure costs only.  
16 That's what he contends in his testimony. But I  
17 disagree that that's what the result of the exhibit  
18 shows.

19 Q But would you agree that it's not presented  
20 and it's not purported to be a comprehensive evaluation  
21 of all of the changes in FPL's expenses, all of the  
22 drivers of what might be a rate increase or revenue  
23 requirements increase between 2010 and 2013?

24 A Yeah, I agree. I would agree. And that is  
25 also what he expressed, as far as what was intended

1 with that exhibit.

2 Q On page 4 of your testimony -- and you go on  
3 some while on the subject -- you state your opinion  
4 that the \$378 million rate increase in the proposed  
5 settlement agreement is not fair, just, and reasonable;  
6 is that right?

7 A Yeah, that's my opinion, because it wouldn't  
8 result in cost base rates and it by far exceeds what I  
9 and OPC views as a reasonable rate increase that would  
10 go into effect in January 2013.

11 Q Were you engaged by the Office of Public  
12 Counsel to perform a similar analysis of whether the  
13 \$150 million rate increase for Progress Energy Florida  
14 in docket 12002-EI was fair, just, and reasonable?

15 A No, I wasn't involved in that docket in any  
16 way.

17 Q Okay. So would I be correct in understanding  
18 that you have not performed a similar evaluation of  
19 whether that increase was, in fact, fair, just, and  
20 reasonable?

21 A Correct, I did not perform any analysis of  
22 that settlement or what resulted in that settlement.

23 Q Okay. Have you compared the \$378 million  
24 increase under the proposed settlement agreement on a  
25 percentage of total revenues basis to the \$150 million

1     **increase in the Progress settlement?**

2           A     No. In fact, I haven't even read the  
3     Progress settlement.

4           Q     Okay. Have you performed that sort of  
5     percentage of total revenues on comparison to the  
6     \$64 million increase that was granted to Gulf Power  
7     Company in January of 2012?

8           A     No, I have not.

9           Q     Okay. I would like you to turn, if you  
10    would, please, to what we have marked as Exhibit 723.

11          A     I have it.

12          Q     And what we have attempted to portray here --  
13    and I would like to ask you whether you concur with how  
14    it is portrayed -- is putting the FPL, the Progress and  
15    the Gulf rate increases I was just describing on a  
16    similar percentage of total revenues basis. If you  
17    turn to the second page in the exhibit, there's a  
18    table.

19                   Do you see that?

20          A     Yes, I do.

21          Q     And you'll see that running across the top we  
22    have \$378 million base rate increase for FPL, a  
23    projected total operating revenues of \$4.4 billion and  
24    then calculating a percentage increase on that base of  
25    8.6 percent.

1                   **Do you see that?**

2           A       Yes, I see that.

3           **Q       Okay.  Would you accept those figures,**  
4 **subject to check?**

5           A       Subject to check, yes.

6           **Q       Okay.  And then in the next row, we have the**  
7 **Progress settlement, \$150 million, got total operating**  
8 **revenues from one of the exhibits to their settlement**  
9 **of \$1.541 billion and the division there results in an**  
10 **increase of 9.7 percent.**

11                   **Do you see that?**

12          A       I see that that's what the document says.

13          **Q       Do you accept the math, subject to check?**

14          A       The math looks correct.

15          **Q       Okay.  And do you have any knowledge one way**  
16 **or the other on what the -- you know, the figures that**  
17 **are represented there for the base rate increase amount**  
18 **or the projected total operating revenues for Progress**  
19 **Energy?**

20          A       Could you repeat that question?

21          **Q       Do you have any knowledge as to the accuracy**  
22 **of the figures on the base rate increase or the**  
23 **projected total operating revenue for Progress Energy?**

24          A       No.  As I previously indicated, I didn't  
25 review that settlement agreement and wasn't involved in

1 that case in any way.

2 **Q Okay. With respect to the third row, Gulf**  
3 **rate case, the same presentation, right, of the base**  
4 **rate increase of 64 million, projected total operating**  
5 **revenues of just under 482 million, and then a**  
6 **13.3 percent increase.**

7 **Do you accept that math, subject to check?**

8 **A Yes, I would.**

9 **Q Okay. And then the final column shows what**  
10 **the FPL increase would be using the percentage**  
11 **increases as a percent of total operating revenues**  
12 **reflected for the Progress Energy settlement and the**  
13 **Gulf rate case outcome if you apply those percentage**  
14 **increases to FPL's total operating revenue.**

15 **Do you see that?**

16 **A Yes, I see that. But I fail to see how**  
17 **that's at all relevant in analyzing the reasonableness**  
18 **of the FPL settlement in this case. I assume that the**  
19 **PEF settlement was based on facts and circumstances**  
20 **that the parties had at the time in entering that**  
21 **settlement. In the Gulf rate case, that increase was**  
22 **based on a fully litigated rate case and all of the**  
23 **facts and evidence before the Commission in that case.**

24 **Q And in that fully litigated case, based on**  
25 **those facts and evidence, the Commission granted an**



1 **increase of 13.3 percent of the projected total**  
2 **operating revenue?**

3 A Yes. Based on the revenue requirements for  
4 that specific utility, that was the decision it  
5 reached.

6 **Q Were you involved in that Gulf Power rate**  
7 **case?**

8 A Yes, I was.

9 **Q Okay. Do you know what the Office of Public**  
10 **Counsel's position was with respect to the appropriate**  
11 **base rate increase for Gulf Power in that case?**

12 A I should remember, but if you refresh my  
13 memory, I'm sure I could accept it, subject to check.  
14 I do know the Commission didn't agree with all of our  
15 recommendations in that case. They agreed with some  
16 but not all of them.

17 **Q Was it a substantially lower figure than**  
18 **\$64 million?**

19 A I suspect so.

20 **Q Okay. Well, would you agree with the math in**  
21 **the last column, the right-hand column, that if you**  
22 **looked at a rate increase for FPL that was the same**  
23 **percentage of total operating revenues as the Progress**  
24 **Energy settlement, that it would be approximately**  
25 **\$429 million?**

1 A For the Progress Energy settlement?

2 Q Yes.

3 A Yes, that's what the math would calculate out  
4 to.

5 Q And then similarly, using the math of the  
6 13.3 percent increase for Gulf Power in its litigated  
7 outcome, that would equate, on a percentage of total  
8 operating revenue basis, to a \$586 million increase for  
9 FPL?

10 A Yes, that's what the numbers show. But,  
11 again, I don't see the validity or the relevance of  
12 that calculation.

13 Q Okay. Let me ask you to turn to pages 12 and  
14 13 of your testimony. At the bottom of page 12 and on  
15 to the top of 13, you discuss the topic of whether the  
16 long-term debt rate has been updated with respect to  
17 calculating the revenue requirements for the Canaveral  
18 modernization project.

19 Do you see that?

20 A I don't see where I address the long-term  
21 debt rate. Maybe if you could point me to a line on  
22 the pages you just referenced.

23 Q I'm sorry, on the top of page 13, "Apparently  
24 it is FPL's intent that the updated projection of the  
25 project cost and the updated long-term debt rate

1 **identified in the post-hearing brief" --**

2 A Oh, yes. I see that.

3 **Q Okay. You end that paragraph by saying,**  
4 **"However, this is not consistent with the written**  
5 **language of the August 15 document."**

6 **Do you see that?**

7 A Yes, I do.

8 **Q And that's referring to the proposed**  
9 **settlement agreement that we're discussing here today,**  
10 **correct?**

11 A Correct. That's the purpose of this section  
12 and testimony, is to point out some of the  
13 discrepancies in what's actually written in the  
14 language of the settlement as opposed to what's been  
15 said in testimony.

16 **Q Do you have any reason to believe that FPL,**  
17 **indeed, intends to and has committed to update the**  
18 **long-term debt interest rate for calculating the**  
19 **Canaveral GBRA under the proposed settlement agreement?**

20 A I believe in testimony the company has  
21 indicated that it would be their intent that -- and I  
22 believe it's Mr. Barrett's testimony -- that both the  
23 cost from the original March filing, as well as the  
24 debt rate and the return on equity rate, would be  
25 modified based on the post-hearing brief position,

1 which is contained in, I believe it's Mr. Barrett's  
2 exhibits in this phase of the case.

3 **Q Okay.**

4 A But, again, the reason I express this concern  
5 here is in enforcing a settlement agreement, if it is  
6 approved, it's been my experience that you have to  
7 stick to the language of the settlement agreement. So  
8 there is a concern I have that the language is  
9 different from what's been asserted in the testimony  
10 with regards to the Cape Canaveral step increase.

11 **Q Are you familiar with the Commission's**  
12 **practice of if it approves settlements of doing so in**  
13 **an order that will comment on the various provisions**  
14 **within the settlement agreement?**

15 A I assume that that would be the norm, that  
16 they would comment on those provisions.

17 **Q And if the company were committed to updating**  
18 **the costs and the long-term debt interest rates on, the**  
19 **Commission referred to that commitment in the order**  
20 **approving the settlement agreement, would you agree**  
21 **that that would be a binding obligation on FPL to apply**  
22 **the --**

23 A If it's required by the order, the order puts  
24 that explicit statement in there to assure that,  
25 instead of going by necessarily the exact writing of

1 the terms of the settlement agreement, the Commission's  
2 order would be, I assume, what would have to occur.

3 Q On page 16 of your testimony, starting on  
4 line 19, you talk about -- you assert that "FPL has not  
5 in any way demonstrated that the revenues it will  
6 collect during 2014, '15 and '16 will not be sufficient  
7 to partially or fully offset the costs of the  
8 modernization project without the application of a  
9 GBRA."

10 Do you see that?

11 A Yes, I do.

12 Q Do you agree that a utility's rates are fair  
13 and reasonable if it is earning within its authorized  
14 ROE range?

15 A I would agree that if the Commission sets a  
16 range and the company is earning within its range, then  
17 yeah, the rates would be deemed to be fair and  
18 reasonable.

19 Q Okay. Do you agree that if a GBRA increase  
20 for modernization project is calculated at FPL's  
21 midpoint ROE, then the combination of including both  
22 the project costs in calculation of revenue  
23 requirements and the GBRA revenues in FPL's financial  
24 results cannot result in pushing FPL's earned ROE above  
25 the midpoint?

1           A     It wouldn't push it further above the  
2 midpoint. But, again, as I pointed out in my  
3 testimony, if the company is already earning above the  
4 midpoint or even above the range under the settlement  
5 agreement, they would still be allowed to put that GBRA  
6 increase in place. So in and of itself, it won't cause  
7 the earnings to be in excess of the range.

8           **Q     And, in fact, if the earnings were, before**  
9 **the plant goes into service, above the midpoint, it**  
10 **would pull the ROE, after both the cost for the plant**  
11 **went into the calculation and the revenues from the**  
12 **GBRA, it would pull it down toward the midpoint,**  
13 **wouldn't it?**

14           A     I know that's what the company contends in  
15 this case. However, as pointed out both in the  
16 previous phase of this case and in this testimony, it's  
17 my position, as well as people's counsel, that you  
18 shouldn't base it on just the debt and equity ratio  
19 rating. And I believe the company has a 60 -- over a  
20 60 percent equity ratio rating for the GBRA steps. And  
21 just that in and of itself could potentially shift the  
22 overall earnings up so that as a whole, they could go  
23 up higher because of the additional GBRA step being  
24 added so heavily weighted toward equity compared to the  
25 capital structure as a whole.

1           Q     Well, you're aware of Mr. Barrett's -- FPL  
2     Witness Barrett's testimony to the effect that the  
3     effect of implementing a GBRA is what he calls midpoint  
4     seeking, aren't you?

5           A     Yes, that is what he contends.

6           Q     Have you performed any mathematical  
7     calculation you can share with us that would show that  
8     adding a plant with its associated revenue requirements  
9     and then the GBRA increase for that plant would move an  
10    ROE that is above the midpoint further away from the  
11    midpoint?

12          A     No, I have not. But I do believe there's a  
13    data response that the company filed. I'm not sure if  
14    it's been entered in the record. But a staff response  
15    where it showed the impact on the capital structure in  
16    the overall rate of return after the GBRA because of  
17    the debt and equity ratio, and it increases the overall  
18    rate of return. But I would agree that wouldn't  
19    necessarily increase the overall ROE once that's all  
20    factored in.

21          Q     Okay. Page 18 of your testimony you  
22    reiterate what I think was a recommendation in the  
23    earlier phase of this proceeding that the Canaveral  
24    modernization project cost should be calculated using  
25    an embedded rather than an incremental cost of capital;

1 **is that right?**

2 A What I recommended is it should be based on  
3 an overall rate of return approved by the Commission in  
4 this case and not just on a debt and equity ratio.

5 **Q And you're aware that in calculating FPL's**  
6 **January 2013 base rate increase request in the -- or**  
7 **the original March filing -- that FPL had pulled the**  
8 **Canaveral modernization project costs out of that**  
9 **filing because we were seeking a separate Canaveral**  
10 **step increase, right?**

11 A Yes, I would agree with that.

12 **Q And is it your understanding that those costs**  
13 **were removed based on an embedded or an incremental**  
14 **basis?**

15 A I'm trying to recall. I believe it was an  
16 incremental basis cost by that point.

17 **Q Okay. Let me look at one of the non-investor**  
18 **sources of capital for FPL customer deposits. Do you**  
19 **expect FPL to have any additional customer deposits**  
20 **available to finance its operations after the Canaveral**  
21 **modernization project goes into service than it would**  
22 **immediately before the in-service date?**

23 A Well, during the first year that that is in  
24 service, the company will still have customer growth,  
25 so there will be more, presumably, customer deposits



1 coming in over that period.

2 **Q But you would expect there to be a step**  
3 **increase in them at the point when the plant goes into**  
4 **service?**

5 A No, not a step increase. That occurs over  
6 time to the normal course of operations. It wouldn't  
7 be a step on the date that the plant goes into effect.

8 **Q Another source, or non-investor source of**  
9 **capital are deferred taxes. Do you know whether FPL**  
10 **has taken deferred taxes into account in the form of a**  
11 **reduction to the rate base amount for the Canaveral**  
12 **modernization project?**

13 A Yes. And I believe in the previous phase of  
14 the testimony, I agreed that was a reasonable way to  
15 treat that.

16 **Q Okay. May I ask you to turn to page 23 of**  
17 **your testimony?**

18 **And you state on line eight and nine,**  
19 **"Nothing would bar FPL from earning above the ROE range**  
20 **provided for in the August 15 document." Do you see**  
21 **that?**

22 A Yes, I do.

23 **Q Okay. Would you agree that Paragraph 9B of**  
24 **the proposed settlement agreement provides all other**  
25 **parties to the agreement with the right to initiate a**

1 **rate case if FPL earned above the top of its ROE range?**

2 A Yes, I believe if it earns above, I believe  
3 it's 11.7 percent, the parties could come in and  
4 request a review. But that then shifts the burden  
5 approving whether or not the rates are just and  
6 reasonable on those customers that would have to bring  
7 FPL in, instead of on FPL in justifying that the rates  
8 it needs at the time those plants go into effect need  
9 to be increased or not.

10 **Q Would you agree that paragraph 10B of the**  
11 **proposed settlement agreement forbids FPL from**  
12 **amortizing any portion of the reserve amount that would**  
13 **result in FPL earning above the top of the ROE range?**

14 A Yes.

15 **Q Okay. Would you agree that there are**  
16 **counterparts to paragraphs 9B and 10B in the current**  
17 **2010 settlement agreement for FPL to which the Office**  
18 **of Public Counsel was a signatory?**

19 A I don't recall specifically. I thought there  
20 was also a rate cap within that agreement, but I don't  
21 recall.

22 **Q Can you point to where you believe there is a**  
23 **rate cap in the current settlement agreement?**

24 A I don't have it in front of me and, again,  
25 that's just my recollection.

1           **Q     Would you agree that FPL has not exceeded the**  
2 **ROE range during the current term of the current**  
3 **settlement agreement?**

4           A     I would agree.  And it's my understanding  
5 that one of the reasons of that is because they were  
6 allowed in that settlement agreement to take the over  
7 \$800 million amortization of the excess reserve  
8 sufficiency and use it as needed to stay within the  
9 range during that four-year term.

10          **Q     Isn't that the same thing that paragraph 10**  
11 **of the proposed settlement agreement provides?**

12          A     If you give me a moment, I would like to  
13 actually go to paragraph 10.

14          **Q     Sure.**

15          A     I wouldn't agree that they're comparable.  
16 Over \$800 million in the last case of excess reserve  
17 sufficiency, in fact, \$894 million, was the result of a  
18 fully litigated review of depreciation rates in the  
19 reserve in that case, and it was agreed by the  
20 Commission that that's the amount that should have gone  
21 back to customers.  So then you allowed -- the company  
22 in the settlement was allowed the flexibility to time  
23 when that was used.

24                   The \$400 million in this proposed settlement  
25 agreement that's in the August 15th document is

1 different. It takes into account some other items that  
2 were addressed by Mr. Pous' testimony that haven't been  
3 reviewed by the parties and haven't been litigated.  
4 And I believe it's been indicated the company hadn't  
5 even done a study of that reserve excess yet.

6 So I don't believe that paragraph 10 of this  
7 settlement is comparable to the flexibility with  
8 regards to the amortization of the \$895 million that  
9 was allowed in the settlement in the last rate case.  
10 They are not comparable items, in my opinion.

11 **Q Well, let me ask you further about that. I**  
12 **mean, does it matter in terms of the potential for the**  
13 **company over-earning, whether the source of the amount**  
14 **to be amortized is from a depreciation reserve or a**  
15 **dismantlement reserve, in your opinion?**

16 A I think the source of what you're allowing  
17 the company in the settlement to use to manipulate or  
18 modify its earnings to fall within a range is a very  
19 relevant thing that the Commission needs to consider in  
20 evaluating the settlement as a whole.

21 **Q I'm sorry, that's not my question though.**

22 A Maybe I didn't understand your question.  
23 Could you restate it, please?

24 **Q Yeah. The question comes from your**  
25 **expression of concern that the company would end up**

1     **earning over the top of the ROE range during the period**  
2     **that the proposed settlement agreement would apply to.**  
3     **And I'm really focusing on paragraph 10, from that**  
4     **perspective, not from perspective of Mr. Pous has**  
5     **testified as to whether he thinks it is or isn't the**  
6     **right source of funds to use as an amortization amount,**  
7     **but just the availability of an amount to amortize.**

8             **Do you understand?**

9             A     Yes. I guess if what you're asking is if  
10     paragraph 10 would allow the company to shift earnings  
11     in such a way to try to keep it within the range,  
12     paragraph 10 gives them some options with regards to  
13     modifying the earnings to try to keep it within the  
14     range, but it doesn't guarantee it will stay within  
15     that range.

16            **Q     And isn't that, from this perspective, from**  
17     **the perspective of using funds, amortizing them to**  
18     **increase or decrease a reported ROE, isn't that the**  
19     **same mechanism, in principle, that exists in the**  
20     **current settlement under which FPL is operating?**

21            A     It's a similar mechanism, but they were  
22     derived at by significantly different ways to get the  
23     dollar amount that you're able to use in that  
24     mechanism.

25            **Q     Well, let's talk about that for a moment.**

1     **You mentioned earlier \$894 million as a total**  
2     **depreciation reserve amount to be amortized over four**  
3     **years, right?**

4           A     Yes, that was the amount of depreciation  
5     reserve sufficiency that under the order in the last  
6     case was to be amortized back to customers over four  
7     years.

8           **Q     Over a four-year period. And the company had**  
9     **flexibility over, I believe it was 776 million of that**  
10    **total, is that right, over the three-year term of the**  
11    **settlement agreement?**

12          A     Yes. My understanding is that they were  
13    still to use it all within four years, but they were  
14    capped on how much could be used within each period.  
15    So there was some constraint on that as far as the  
16    timing of when it could be used.

17          **Q     Okay. In the current settlement proposal,**  
18    **the total would be no more than 400 million over four**  
19    **years, wouldn't it?**

20          A     The total amount of what the settlement calls  
21    --

22          **Q     Reserve amount.**

23          A     Reserve amount, yeah, it would be capped at  
24    400 million.

25          **Q     So, in fact, FPL would have had more**

1 flexibility, more ability to increase earnings sort of  
2 on a per year basis under the current settlement, you  
3 know, 776 million over three years, than it would have  
4 under the proposed settlement, \$400 million over four  
5 years, correct?

6 A Well, when you say "increased earnings," what  
7 it was is that's the amount that was due to go back to  
8 customers over that four years, and you had the ability  
9 to shift those amounts.

10 Q I'm sorry, that was a pretty straightforward  
11 question that you could answer yes or no, and then you  
12 could explain.

13 A I'm sorry, could you repeat it?

14 Q My question is wouldn't FPL have had more  
15 flexibility to affect its earnings under the current  
16 settlement where there's \$776 million that can be  
17 amortized over a three-year period of the settlement  
18 compared to the proposed settlement where there are a  
19 total of \$400 million available over a four-year term?

20 A Yes, more flexibility within that time  
21 period.

22 Q And, again, so far as you're aware, FPL has  
23 not exceeded the ROE range during the term of the  
24 current settlement, has it?

25 A Not to my knowledge.

1           **Q**     Okay. Do you have any factual basis to  
2 suggest that FPL would behave differently under  
3 paragraphs 9 and 10 of the proposed settlement  
4 agreement that it has under the current settlement  
5 agreement?

6           A     Specifically with regards to amortization of  
7 the reserve sufficiency?

8           **Q**     That's right.

9           A     No, I don't.

10           MR. BUTLER: That's all the questions that I  
11 have. Thank you, Ms. Ramas.

12           THE WITNESS: You're welcome.

13           CHAIRMAN BRISE: All right. Mr. Wiseman.

14           MR. WISEMAN: Thank you, Mr. Chairman.

15                           CROSS EXAMINATION

16 BY MR. WISEMAN:

17           **Q**     Good afternoon, Ms. Ramas.

18           A     Good afternoon.

19           **Q**     Could you turn to page 2 of your testimony,  
20 please?

21           A     I'm there.

22           **Q**     All right. On -- I'm sorry, lines 23 to 24  
23 you state that in your opinion, for rates to be fair,  
24 just, and reasonable, they should be cost based. Do  
25 you see that testimony?



1           A     Yes, I do.

2           **Q     To be fair, just, and reasonable, do you**  
3 **think that the rates the Commission approves have to be**  
4 **the rates that are supported by OPC's litigation**  
5 **positions?**

6           A     Oh, no. No, I don't. I just think that they  
7 have to be fair, just, and reasonable based on all the  
8 facts and evidence that the Commission considers from  
9 all of the parties, the company, the OPC, the  
10 association you're representing, they have to take all  
11 of those positions in evaluating to determine what the  
12 cost base and just and reasonable result would be.

13          **Q     To be in the public interest, do the rates**  
14 **the Commission approves have to reflect or be based**  
15 **upon OPC's litigation positions?**

16          A     No.

17          **Q     Would you agree that there is little**  
18 **likelihood that if the Commission decides this case on**  
19 **the evidentiary record that was developed during the**  
20 **technical hearing, that it will accept 100 percent of**  
21 **OPC's litigation positions?**

22          A     I'm a realist and I realize it's not likely  
23 that they will accept 100 percent of those  
24 recommendations. I would hope that they accept a  
25 significant amount of them. It's our opinion that all

1 of the recommendations made by the OPC witnesses were  
2 well founded and supported in testimony. But I'm also  
3 a realist in realizing that people have other views of  
4 that at times.

5 **Q So you would agree that it's highly likely**  
6 **that the Commission is going to reject some of OPC's**  
7 **litigation positions, right?**

8 A I would agree that it's likely they would  
9 reject some of the litigation positions.

10 **Q And would you agree that it's highly likely**  
11 **that the Commission's going to accept some of FPL's**  
12 **recommendations based upon its litigation positions?**

13 A Oh, yes. And even OPC agrees with some of  
14 the positions offered by the company in their  
15 testimony, so it's likely that they will accept quite a  
16 few of their recommendations.

17 **Q All right. Now, are you aware that FPL filed**  
18 **MFRs in this case which, in its opinion, support a rate**  
19 **increase in excess of \$500 million?**

20 A Yes, that's what their filed case showed.

21 **Q Okay. You would agree that under the**  
22 **settlement, the result would be a \$139 million**  
23 **reduction from the requested rate increase that FPL**  
24 **supports in its MFRs, correct?**

25 A Yes. And, in fact, I address that within my

1 testimony and indicate that you just change the return  
2 on equity to what was agreed to in the August 15th  
3 document and change just the customer deposit rate to  
4 the current rate that was adopted by the Commission in  
5 a decision, and it gets you close to that number.

6 **Q Okay. Would you agree that in the context of**  
7 **the settlement agreement, there's more give and take**  
8 **and more flexibility than there is in having rates set**  
9 **in a litigated proceeding?**

10 A There should be.

11 **Q Okay. Is it your position that the**  
12 **Commission, this Commission, has never approved a rate**  
13 **settlement that did not -- I'm sorry, where the rates**  
14 **were not cost based?**

15 A Not that I'm aware of. I know at least in  
16 the settlements that I've participated in the past,  
17 there is consideration typically in entering that  
18 agreement of what the rates should be to recover the  
19 cost for the utility. Whether or not this Commission  
20 has specifically adopted a settlement agreement that  
21 results in rates that are not cost based, I don't know  
22 if that's happened or not.

23 **Q You testified about it a little bit ago that**  
24 **you're aware that the Commission recently, within the**  
25 **past year, approved a settlement in the Progress Energy**

1 **case, right?**

2 A Yes. But, again, I don't know any of the  
3 details of that settlement.

4 **Q Well, do you know if that settlement**  
5 **agreement contained a 10.7 percent ROE for Progress**  
6 **Energy if it returns its nuclear plant operation?**

7 MR. REHWINKEL: I'm going to object on asked  
8 and answered about -- this question has been asked  
9 and asked and asked all day today.

10 MR. WISEMAN: I certainly didn't ask that of  
11 this witness.

12 CHAIRMAN BRISE: Yeah. I don't think I heard  
13 it for this witness, either. I mean, we've  
14 allowed, throughout this process, multiple  
15 questions of different witnesses, even though the  
16 same question has been asked in the process  
17 already, so it's acceptable.

18 THE WITNESS: I've heard it testified to in  
19 the last several days, and I believe I may have  
20 read testimony submitted in this case, even, that  
21 there's a provision in there that if the Crystal  
22 Nuclear Unit is put back into service and serving  
23 customers, that the return equity would end up  
24 being 10.7 percent.

25

1 BY MR. WISEMAN:

2 Q Okay. Do you know if the Progress Energy  
3 settlement had a base rate increase of \$150 million?

4 A I'm not sure. It may be in the exhibit -- or  
5 the exhibit that was handed to me earlier. If you  
6 would like me to look at it, I could see if that tells  
7 me what it was.

8 Q Sure. Why don't you take a look at the  
9 exhibit. I think you're referring to -- it was  
10 No. 723.

11 A Yeah, the exhibit that was provided to me  
12 this morning indicates that it was \$150 million  
13 increase. But I haven't been able to confirm that and  
14 have no direct knowledge of it.

15 Q All right. So then you also wouldn't know  
16 what cost justified a \$150 million increase in the  
17 Progress Energy settlement; is that fair?

18 A Yeah, I have no personal knowledge about how  
19 that amount was derived.

20 Q Do you know if MFRs were filed with the MFR  
21 -- I'm sorry -- if MFRs were filed with the Commission  
22 in advance of the Progress Energy settlement?

23 A I don't believe they were. But, again, I  
24 don't know for certain.

25 Q Do you know if there were weeks of

1 **evidentiary hearings held by the Commission in advance**  
2 **of approving the Progress Energy settlement?**

3 A I don't believe so, but I don't know.

4 **Q You certainly don't take the position, do**  
5 **you, that the Commission was without authority to**  
6 **approve the Progress Energy settlement, do you?**

7 A No, I don't.

8 **Q And do you believe that the Progress Energy**  
9 **settlement was cost based?**

10 A Again, I wasn't involved in those  
11 negotiations, but the fact that it's my understanding  
12 that the OPC and many additional parties signed on to  
13 the agreement that the cost of service, I hope would  
14 have been something considered in that, but I have no  
15 direct knowledge of that.

16 **Q Okay. And so then you also don't have any**  
17 **direct knowledge of whether the increase to base rates**  
18 **that was part of the Progress Energy settlement was**  
19 **fair, just, and reasonable; is that right?**

20 A No. As I said, I wasn't involved in any way  
21 in that case. I assumed that the OPC wouldn't have  
22 signed on to it if they didn't think it would result in  
23 just and reasonable rates.

24 **Q Would you agree that there are times where**  
25 **there are provisions in settlements that provide**

1 **benefits to ratepayers that are not strictly cost**  
2 **based?**

3 A Yes.

4 **Q Okay. Would you agree that a long-term**  
5 **settlement, meaning three years or four years, that**  
6 **that is a -- that can, in the right situation, provide**  
7 **stable rates and be a benefit to ratepayers?**

8 A There are situations when that could occur.  
9 I don't agree that's occurred in this case, but there  
10 are probably situations in which that could occur.

11 **Q Okay. Are you familiar with the term "black**  
12 **box settlement"?**

13 A Yes, I am.

14 **Q Can you say what that term means?**

15 A I could tell you based on my experience in  
16 assisting other clients in reaching and discussing  
17 settlements, without giving away any confidential  
18 settlement information, is oftentimes parties can come  
19 together and agree on what they view as a reasonable  
20 rate increase and there are oftentimes when parties  
21 might not agree to some of the specific components  
22 going into that number. So in situations such as that,  
23 that I've even been involved in, they'll call it a  
24 black box settlement in that it's not necessarily  
25 agreed to what adjustments you need to get to that

1 number, but that each of the parties are individually  
2 comfortable that that number is a reasonable result.

3 **Q Do you know whether this Commission has ever**  
4 **approved a black box settlement, using your definition?**

5 A I don't know specifically. It wouldn't  
6 surprise me if they had.

7 **Q Are you familiar with the settlement of FPL's**  
8 **2005 rate case?**

9 A Not intimately familiar, but I have some  
10 knowledge of it.

11 **Q Would you agree that that was a type of black**  
12 **box settlement, using your definition, if you know?**

13 A I don't know.

14 **Q Okay. You certainly don't believe that the**  
15 **Commission was without authority to approve the**  
16 **settlement of FPL's 2005 rate case; is that right?**

17 A That's correct.

18 **Q I'm going to come back to the rate case in a**  
19 **minute, but let me shift gears and ask you about late**  
20 **payment penalties. Are you familiar with that term?**

21 A Yeah, if you're referring to the penalties  
22 individuals or customers pay because of being late in  
23 payment of their bill, I know it from that general  
24 perspective.

25 **Q All right. And do you know that that's a**



1 **common feature of rates by all Florida utilities or**  
2 **most Florida utilities?**

3 A Yeah. In fact, most utilities, that's a  
4 common provision to encourage customers to make  
5 payments on time.

6 **Q Do you know whether late payment penalties**  
7 **are cost based?**

8 A They can be. I was here, I believe it was  
9 Ms. Deaton was crossed yesterday, that there was no  
10 study prepared by the company in coming up with the \$5  
11 or \$6 rate that it's charging. I think they probably  
12 could be designed to be so, but not necessarily.

13 **Q Well, do you know whether there are Florida**  
14 **utilities that have late payment penalties that are not**  
15 **cost based?**

16 A I believe so, yes.

17 **Q Okay. And would you agree that the**  
18 **Commission has the authority or had the authority to**  
19 **approve those late payment penalties?**

20 A Oh, yes, absolutely.

21 **Q Okay. Now, could you turn to page 15 of your**  
22 **testimony, lines 9 through 13. That's roughly where --**  
23 **a portion of your testimony where you're expressing**  
24 **your opposition and OPC's opposition to the GBRA**  
25 **mechanism; is that right?**

1           A       That's part of the section of testimony in  
2       which I address the GBRA mechanism and the increases  
3       that would go into effect as a result of those  
4       mechanisms.

5           **Q       Okay. Well, would you agree that one reason**  
6       **that you oppose the GBRA mechanism is that you say that**  
7       **there's no evidence that's been provided regarding**  
8       **FPL's overall operating -- I'm sorry -- operating and**  
9       **capital budgets for 2014 through 2016?**

10          A       Yes. But I also indicate in my testimony  
11       that even if that had been provided, it's so far out  
12       that there's too many unknowns in that time frame to  
13       have a reasonable projection of what the overall  
14       revenue requirements will be in that time frame.

15          **Q       All right. I want to go back to the**  
16       **settlement of FPL's 2005 rate case. I have a document**  
17       **I can show you, if you need it, but let me see if we**  
18       **can do this without the document. Are you familiar**  
19       **with the fact that the settlement of FPL's 2005 rate**  
20       **case contained a GBRA mechanism?**

21          A       Yes, it did. I believe it was tied to  
22       specific plants, but I don't recall which ones.

23          **Q       Well, do you want to -- maybe if OPC has an**  
24       **extra copy. It introduced a document yesterday, it's**  
25       **Exhibit No. 705. It was a copy of the order approving**

1 the 2005 settlement agreement.

2 Ms. Ramas, to speed things along, if you  
3 could turn to page 12. It's kind of a lengthy  
4 provision, I apologize, but take a look at paragraph  
5 17. And tell me when you're ready.

6 A You said page 12?

7 Q Page 12, paragraph 17.

8 MR. REHWINKEL: You mean at the bottom?

9 There's two numberings.

10 BY MR. BUTLER:

11 Q Yeah. I'm sorry.

12 A Yeah, I was looking at the page number at the  
13 top and it wasn't coinciding.

14 Q Right. I apologize. I didn't see that there  
15 are two. Yeah, it's page 12 at the bottom, page 19 at  
16 the top.

17 A Yeah, it's page 19 of the order and page 12  
18 of the attachment, it appears to be.

19 Q Right. Yeah, if you could take a look at  
20 paragraph 17, please.

21 A I have that.

22 Q Okay. That paragraph describes a GBRA  
23 mechanism; is that correct?

24 A Yes, it does.

25 Q All right. And would you turn to -- it would

1 be page 14 of the attachment or page 21 of the order.

2 It's the signature page. Do you see that?

3 A Yes, I do.

4 Q And do you see that this settlement agreement  
5 was agreed to by, among other parties, the Office of  
6 Public Counsel?

7 A Yes. In that case, the Office of Public  
8 Counsel viewed that the settlement taken as a whole,  
9 which included this GBRA provision as a piece of the  
10 settlement, would result in fair, just, and reasonable  
11 rates and be a good result for customers.

12 Q Right. So OPC did agree to the GBRA  
13 mechanism in the context of the 2005 settlement,  
14 correct?

15 A Yes. It would have evaluated all aspects of  
16 that settlement agreement. And there must have been  
17 something that would overcome the concerns they have  
18 with the GBRA mechanism for them to have agreed and  
19 entered into this.

20 Q Well, would you agree, following up on your  
21 answer, that whether a settlement is fair, just, and  
22 reasonable and in the public interest, that in making  
23 that determination you would not want to look at any  
24 particular item in the settlement on a stand-alone  
25 basis, you would have to look at the settlement as a

1 **whole; is that fair?**

2 A Yeah, I would agree that in evaluating this  
3 settlement, the Commission should also look on that as  
4 a whole and all of the provisions of that agreement.

5 **Q Okay. Now, I wonder, do you think that**  
6 **interest rates over the next three years, if you have**  
7 **an opinion, are likely to stay at the same low level**  
8 **that they're at currently?**

9 A I don't know what they'll do over the next  
10 three years. I believe Mr. O'Donnell has addressed  
11 that some in his testimony today, but it's beyond the  
12 scope of what I've addressed.

13 **Q Well, I'm going to your overall assessment of**  
14 **the settlement. Let me just ask you one follow-up**  
15 **question and see if you can answer this one.**

16 **Do you think that it's reasonable to conclude**  
17 **that the cost of -- sorry -- the cost of capital will**  
18 **increase over the next four years from current levels?**

19 A I have no way of knowing that. When you look  
20 at cost to capital, you got to consider all of the  
21 components of cost to capital, and I don't know what it  
22 will do in the next three years.

23 MR. WISEMAN: I have no further questions

24 Thank you, Ms. Ramas.

25 THE WITNESS: You're welcome.

1 LT. COL. FIKE: I have no questions.

2 CHAIRMAN BRISE: All right. Thank you.

3 Mr. Moyle.

4 MR. MOYLE: I have some questions. Thank  
5 you.

6 CROSS EXAMINATION

7 BY MR. MOYLE:

8 **Q Good afternoon.**

9 A Good afternoon.

10 **Q In your opening comments, you criticized --**

11 CHAIRMAN BRISE: You all right?

12 MR. REHWINKEL: Yes.

13 BY MR. MOYLE:

14 **Q You used the term "piecemeal." I think you**  
15 **criticized Mr. Pollock and maybe somebody else because**  
16 **of a piecemeal approach and a piecemeal approach to**  
17 **rate making. Would you expand upon your criticism of a**  
18 **piecemeal approach?**

19 A Yes. With regards to how I've used it in my  
20 testimony. First I'll address Mr. Pollock.

21 **Q You can just give it to me in a general**  
22 **criticism.**

23 A Okay. In general, if you're picking just  
24 pieces or components of the overall revenue  
25 requirement, maybe specific pieces that may change but

1 ignoring the overall revenue requirements as a whole,  
2 and being experienced by the company, I would consider  
3 that a piecemeal approach.

4 **Q And you don't think that's good because**  
5 **you're not looking at the entire picture; is that**  
6 **right?**

7 A Yes, you're not looking at the overall  
8 revenue requirements. You're looking at just a piece  
9 or one component that impacts rates without -- or the  
10 revenue needs without looking at the operations as a  
11 whole.

12 **Q Okay. And you would agree that a similar**  
13 **criticism could be leveled with respect to a view of**  
14 **the settlement agreement that only looked at pieces and**  
15 **not the overall settlement agreement, correct?**

16 A I believe that the settlement agreement, you  
17 need to look at the components, if you want to call  
18 them pieces of the settlement agreement, you also have  
19 to look at the settlement agreement as a whole.

20 That's different than what I would consider  
21 piecemeal as far as setting rates and determining what  
22 an overall revenue requirement is. But I do agree that  
23 in evaluating the settlement agreement, the Commission  
24 should consider all of the components of the settlement  
25 agreement, and if that, in their opinion, would result

1 in fair, just, and reasonable rates.

2 **Q Okay. In your testimony you didn't consider**  
3 **all of the components of the settlement agreements,**  
4 **correct? You testified to issues one and five?**

5 A Yeah, I testified to issues one and five, but  
6 I also summarize at the end that the OPC has brought  
7 forth several witnesses that address different  
8 components and they haven't found anything that they  
9 see that would go into customers' favor more so than  
10 the company's favorable when you look at the individual  
11 pieces that the OPC has addressed in testimony.

12 **Q Do you believe that the OPC has addressed the**  
13 **settlement, all of the provisions of the settlement**  
14 **agreement with their witnesses?**

15 A They may not have addressed every single  
16 provision in that lengthy document and testimony, but  
17 the OPC, in not agreeing to the settlement agreement  
18 and opposing the settlement agreement, would have  
19 internally discussed that settlement agreement and what  
20 they viewed the impacts of the settlement agreement and  
21 discussed with their individual experts they have  
22 retained in this case, different specific components of  
23 that agreement.

24 **Q Okay. And we're trying to -- you know, yes**  
25 **or nos would be appreciated.**



1           A     Okay.

2           **Q     So I take it from your answer that the answer**  
3 **would be no, that based on your review of the**  
4 **testimony -- and you've been here for the last two**  
5 **days -- that OPC has not offered testimony as it**  
6 **relates to all of the terms of the settlement**  
7 **agreement, correct?**

8           A     I could say that, no, they did not address  
9 every single provision of the settlement agreement in  
10 testimony, but, yes, I think through their witnesses  
11 they have expressed the view that they don't agree that  
12 the settlement agreement is in the public interest.

13          **Q     What were you asked to do with respect to the**  
14 **settlement agreement?**

15          A     Specifically in testimony I was asked to  
16 address the GBRA, as well as issue five, which is  
17 whether or not it's in the public interest, and when  
18 the company first filed, or when the signatories first  
19 filed the settlement agreement. I was asked to look at  
20 it and would have had discussions with counsel with my  
21 view on the settlement agreement.

22                   But in testimony, I was asked to address  
23 issues one and five that were delineated in the  
24 Commission's third procedural order in this case.

25          **Q     Yesterday during an opening statement, FIPUG**

1 indicated that there were benefits to customers  
2 contained within the settlement agreement such as a  
3 four-year term, certainty with respect to what rates  
4 would do, the fact that for most businesses rather than  
5 facing double-digit increases, the settlement would  
6 have flat to negative numbers.

7 Do you think any of those things are  
8 beneficial to the ratepayers?

9 A Given the fact that FIPUG has signed the  
10 settlement agreement, I would assume that its customers  
11 it's representing saw that as a benefit that would  
12 outweigh some of the concerns it may have. However, I  
13 don't see that a promise of almost \$1 billion of rate  
14 increases over the next four years as being a benefit  
15 to all of the customers.

16 Q So with respect to a four-year term, you were  
17 asked questions about another document, I think it's  
18 705. Do you still have that in front of you?

19 A Yes, I do.

20 Q And you said you were somewhat familiar with  
21 this case and this document, correct?

22 A Some of the provisions of it. I don't recall  
23 if I read it in its entirety.

24 Q Let me refer you -- let's go to the top of  
25 the pages for numbering. Page two, "Stipulation and

1       **Settlement," do you see that?**

2           A     Yes, I do.

3           **Q     Under the first bullet point, what's the**  
4       **term?**

5           A     Four years, January 2006 through  
6       December 31st, 2009.

7           **Q     Okay. And this agreement, the current**  
8       **agreement that's in front of the Commission, is a**  
9       **four-year term as well, correct?**

10          A     Correct.

11          **Q     And I guess you discussed with counsel for**  
12       **the hospital, this agreement contained a GBRA**  
13       **mechanism, correct?**

14          A     Yes, it did.

15          **Q     Okay. And you would agree that the**  
16       **settlement agreement, you talked about black box and**  
17       **you've been involved in settlement agreements, that**  
18       **it's a give-and-take process?**

19          A     Yes, a settlement agreement should -- in  
20       general, it's usually a give-and-take process between  
21       the parties that are signatories to the settlement  
22       agreement.

23          **Q     At the point in time that you were asked to**  
24       **render your opinion, were you already made aware that**  
25       **OPC opposed the settlement agreement?**

1           A     I knew they hadn't signed on to the  
2 settlement agreement. I'm trying to recall if they had  
3 told me at that point, that they had provided to me  
4 that they were opposed to it. I believe so, but I'm --  
5 I knew they didn't sign on to it.

6           **Q     How did you first see the agreement?**

7           A     The day that it was filed, I believe I was  
8 made aware of it.

9           **Q     And how so?**

10          A     Again, I'm trying to recall, because it was a  
11 very busy time because we were in the process of  
12 preparing for the hearings in the case.

13                   I don't recall if it was an email or if they  
14 called me to tell me that a settlement had been filed  
15 by some of the parties, and it would have been  
16 forwarded to me and I would have looked at it.

17           **Q     Yeah, but you weren't asked to prepare**  
18 **testimony for this proceeding at that point in time,**  
19 **were you?**

20          A     No. In fact, I don't believe there was even  
21 a procedure in place to allow for testimony at that  
22 point in time.

23           **Q     Yeah. At what point in time were you asked**  
24 **to prepare testimony?**

25          A     I discussed it sometime in October.

1           **Q     At that point in time you were aware that OPC**  
2 **had opposed the settlement agreement, right?**

3           A     Yeah. In fact, I was aware -- I believe I  
4 became aware of it pretty quickly after receiving the  
5 settlement agreement. I just don't remember if it was  
6 at the same time, but it was definitely within a day or  
7 two.

8           **Q     And you were also involved or consulted with**  
9 **respect to commenting on the settlement as it related**  
10 **to negotiations, is that -- did I hear you correctly on**  
11 **that?**

12          A     I wasn't involved in any way with the  
13 settlement negotiations and, again, I wasn't even aware  
14 there were any negotiations going on until I was told  
15 that there was a settlement agreement that had been  
16 signed by yourself and other parties.

17          **Q     There was testimony yesterday about --**  
18 **essentially about a decent settlement, having**  
19 **negotiations with a lot of parties. Were you here for**  
20 **that?**

21          A     Which witness was it?

22          **Q     I think it was Mr. Deason.**

23          A     No, I wasn't here at that time.

24          **Q     Okay. You're aware that OPC was involved in**  
25 **negotiations relative to this agreement, were you not?**

1 MR. REHWINKEL: Objection. Assumes facts not  
2 in evidence, and it's a lie. If we want to go  
3 down this road, we can go down it.

4 COMMISSIONER EDGAR: Mr. Rehwinkel.  
5 Mr. Rehwinkel, here, please. Thank you.

6 MR. REHWINKEL: I apologize, I was looking at  
7 the --

8 COMMISSIONER EDGAR: I know. That's okay.  
9 That's okay. Your objection is what?

10 MR. REHWINKEL: The question assumes facts  
11 not in evidence.

12 COMMISSIONER EDGAR: Mr. Moyle.

13 MR. REHWINKEL: We were not invited to any  
14 negotiations that occurred.

15 COMMISSIONER EDGAR: Mr. Moyle.

16 MR. MOYLE: There was testimony --

17 COMMISSIONER EDGAR: Mr. Moyle, why don't  
18 you rephrase the question. Let's start there.

19 MR. MOYLE: Okay.

20 BY MR. MOYLE:

21 **Q In response to a previous question, I thought**  
22 **I understood you to say that you had been asked**  
23 **about -- the settlement agreement had been provided to**  
24 **you and you had been asked questions about it, and in**  
25 **this case; is that correct?**

1           A     I was provided a copy of the settlement  
2 agreement after it had already been signed and filed by  
3 the parties that are signatories to it. I saw nothing  
4 with regards to settlement or had no discussions with  
5 regards to a settlement prior to that point in time.

6           **Q     So were you asked questions about it when it**  
7 **was provided to you?**

8           A     By asked questions?

9           **Q     By OPC, did they say, here is the settlement**  
10 **agreement, what do you think?**

11          A     I would have discussed with counsel the  
12 settlement agreement. I don't recall what they asked  
13 me because, again, that was a very busy time as we were  
14 trying to prepare for hearings. I did discuss with  
15 them, I knew they were going to file -- they indicated  
16 they were filing an objection to the settlement  
17 agreement, so I would have discussed the provisions of  
18 it with counsel at that time.

19          **Q     So then your answer is, yes, you did have**  
20 **conversations with them about the settlement agreement?**

21                COMMISSIONER EDGAR: Mr. Moyle, I'm not  
22 completely seeing how this line of questioning  
23 directly relates to the two issues that her  
24 testimony is here to pertain to. Can you bring it  
25 to --

1 MR. MOYLE: Sure. I'll tell you where I'm  
2 trying to go with it. Yesterday I think  
3 Mr. Deason made the point --

4 COMMISSIONER EDGAR: I don't want you to tell  
5 me where you're trying to go with it.

6 MR. MOYLE: Okay.

7 COMMISSIONER EDGAR: I want you to have your  
8 questions tied to the two issue that her testimony  
9 relates to.

10 BY MR. MOYLE:

11 **Q The agreement that's in front of you on 705.**

12 A Yes. That would be the prior settlement  
13 agreement.

14 **Q Right. Right. I want to refer you to the**  
15 **same page, page two.**

16 A I'm there.

17 **Q The first full paragraph it seems to suggest**  
18 **that a settlement was filed and approved, was actually**  
19 **filed on August 22nd, 2005, and there was a one-day**  
20 **recess taken and then the vote on the matter was held**  
21 **on August 24th.**

22 **Do you have any knowledge of that, or is that**  
23 **how you read that?**

24 A That's what it indicates, that it was -- a  
25 joint motion for approval was submitted on the 22nd.



1 There was a -- it was presented to the Commission at  
2 the start of hearings. There was a recess in hearings  
3 and they asked staff to review the stipulation  
4 settlement and provide analysis to the Commission on  
5 August 24th when the hearing was reconvened. That's  
6 what it says.

7 **Q Okay. You would agree that things can happen**  
8 **quickly, I guess, in settlements?**

9 A Oh, yes, I would agree with that.

10 **Q Have you made any judgment whether this**  
11 **document -- you believe that's in the public interest?**

12 MR. REHWINKEL: Object to the form of the  
13 question, when you say "this document," Mr. Moyle.

14 MR. MOYLE: 705.

15 THE WITNESS: I have no reason to believe  
16 that it was not in the public interest.

17 BY MR. MOYLE:

18 **Q If I were to ask you to assume one change to**  
19 **it, if you look at -- on Attachment A, under the**  
20 **signature blocks on page 14, going back to the bottom,**  
21 **page 21 at the top, and tell me when you're there.**

22 A I'm there.

23 **Q If you assume that the signature of Harold**  
24 **McLean, who was serving as the Public Counsel at the**  
25 **time, was not on this document, would your opinion**

1 **change?**

2 MR. REHWINKEL: I'm going to object to the  
3 question in that it asks for a legal conclusion,  
4 even though it's a hypothetical. This question  
5 Mr. Moyle is posing is an essential legal question  
6 in this case, and Ms. Ramas is not offered to  
7 provide testimony about the legal position of the  
8 Public Counsel with respect to that.

9 COMMISSIONER EDGAR: Mr. Rehwinkel, I agree  
10 that it is a hypothetical, obviously. What are  
11 you referring to when you say the central legal  
12 issue of this case?

13 MR. REHWINKEL: The Public Counsel has, as we  
14 stated in our opening statement, raised the issue  
15 about a necessary party. That's a legal question.  
16 That has been the subject of some litigation so  
17 far and could be the subject of future litigation.  
18 But I think nothing in Ms. Ramas' testimony  
19 addresses the necessary party issue, because  
20 that's a legal issue. She's not an attorney and  
21 she's not offered for this purpose.

22 COMMISSIONER EDGAR: I agree that she is not  
23 an attorney. I agree that that is a legal issue.  
24 And you've put forth that that's the central issue  
25 in this case? Is that part of the basis for your

1 objection?

2 MR. REHWINKEL: It is one of the central  
3 legal issues that we have raised about the Public  
4 Counsel's absence in this -- the document that was  
5 filed on August 15th.

6 COMMISSIONER EDGAR: Mr. Moyle.

7 MR. MOYLE: I'm not trying to go to a legal  
8 issue.

9 COMMISSIONER EDGAR: I didn't think you  
10 would.

11 MR. MOYLE: Even if I was when Mr. Deason was  
12 asked questions as to his understanding, you  
13 know -- so I think expert witnesses can be asked  
14 their understanding. But I'm not even trying to  
15 go to the legal aspects. I'm just trying to ask  
16 her in her view if there were one change to this  
17 document that she had familiarity with, she's  
18 testified to it, if the one change were that  
19 Office of Public Counsel was not on it, whether  
20 her view --

21 COMMISSIONER EDGAR: You're asking about her  
22 opinion, not the legal --

23 MR. MOYLE: Yeah, exactly.

24 COMMISSIONER EDGAR: Mr. Rehwinkel, one more  
25 time, can you respond to that?

1 MR. REHWINKEL: It only calls for a legal  
2 conclusion. Her opinion about the absence of a  
3 signatory can only address a legal opinion.

4 COMMISSIONER EDGAR: In the interest of  
5 helping us move along, I'm going to sustain the  
6 objection and, Mr. Moyle, I'll ask you to move to  
7 your next area of questioning.

8 MR. MOYLE: Okay.

9 COMMISSIONER EDGAR: Thank you.

10 BY MR. MOYLE:

11 **Q Would you agree that working capital is a**  
12 **legitimate cost of providing service for an electric**  
13 **utility?**

14 A Yes, working capital, if properly calculated,  
15 is a normal component of rate base, then you do  
16 typically allow a return to be your -- as part of rate  
17 base.

18 **Q Okay. How much of new plant has FPL added**  
19 **since its last rate case, if you know?**

20 A I have the numbers for plant that would be  
21 considered in base rates. I don't know --

22 **Q Okay. You can give those to me, if you**  
23 **would.**

24 A Okay. Just a moment. I believe it's in my  
25 direct testimony or in my testimony, so if you give me

1 a moment, I can find that. It's somewhere around  
2 3.2 billion, but I can give you the exact number.

3 **Q That's fine.**

4 A Okay. It's in the range of 3.2 billion from  
5 the amount approved for base rates in the order of the  
6 last case to the company's request in filing for the  
7 2013 test year in this case.

8 **Q Okay. And would it, just to ballpark it -- I**  
9 **mean, it's getting kind of late, so 3.2, if you assumed**  
10 **a depreciation rate, an average depreciation rate of**  
11 **two and a half percent on 3 billion -- is two and a**  
12 **half percent an average depreciation rate? Is that**  
13 **reasonable?**

14 A For a hypothetical, without having the  
15 numbers right in front of me, two and a half percent  
16 sounds like it would be within a reasonable range of  
17 what an average rate would be or a composite rate would  
18 be.

19 **Q Okay. And two and a half percent on**  
20 **3 billion, if you did the math, would be a 75 million**  
21 **increase in depreciation expense, all other things**  
22 **being equal, correct?**

23 A All other things being equal, correct.

24 **Q Okay. And once FPL is fully amortized, the**  
25 **remaining 191 million of surplus depreciation in 2013,**

1 doesn't it follow that FPL's revenue requirements in  
2 2014 would be 191 million higher, all other things  
3 being equal?

4 A If all other things remain equal and that is  
5 the only change, yes.

6 Q Okay. And you were asked a question by  
7 Mr. Butler about the GBRA. I have a few GBRA questions  
8 and I think we will be close to being done.

9 A Thank you.

10 Q And it relates to the notion of a new plant  
11 coming in and what it would do to the authorized return  
12 on equity. So I want to ask you a very simple  
13 hypothetical.

14 Assume it's a very small utility system,  
15 okay, and that it has \$50 in its rate base, and on that  
16 \$50 it's invested 50 bucks, that it's earning at the  
17 top of the range of 11.7, okay?

18 A You're saying that it's earning before that  
19 -- that it's earning at that point in time --

20 Q Right.

21 A -- at the top of its range?

22 Q So it's earning at 11.7 50 bucks and all of a  
23 sudden, pursuant to a GBRA-type mechanism, another  
24 plant comes in at 50 bucks, but it comes in at 10.7, so  
25 now you have a grand total of 100. Wouldn't the

1 **average ROE, based on those facts in that hypothetical,**  
2 **be 11.2?**

3 A Only if 100 percent of everything else  
4 remains equal. In that type of scenario, I would think  
5 they're doubling their plant. Presumably they need to  
6 double their plant to serve additional load or  
7 additional customers. That could create additional  
8 revenue.

9 **Q And I'm asking you to assume everything else**  
10 **is equal.**

11 A If you assume everything else is equal and  
12 absolutely nothing changes, that would be the result.

13 **Q Okay. So the point being, with respect to**  
14 **that simple hypothetical, with a GBRA mechanism similar**  
15 **to the one in this rate case, all other things being**  
16 **equal, if you put in a new asset, it has the impact of**  
17 **going back down toward the average midpoint of 10.7,**  
18 **correct?**

19 A Correct, if all else remains equal and you  
20 use similar capital structures that you're comparing.

21 **Q Okay. So do you have a settlement agreement**  
22 **in front of you?**

23 A Somewhere. If you give me a moment.

24 Yes, I do.

25 **Q Have you assumed that the GBRA is going to**

1 apply to the Everglades case, pursuant to your analysis  
2 of the settlement agreement and the GBRA component of  
3 it?

4 A Yeah, it's my understanding that there would  
5 be three GBRA increases under the settlement agreement,  
6 one of which is for the Port Everglades modernization  
7 project.

8 Q Would your view change with respect to the  
9 GBRA if Port Everglades was not part of the settlement  
10 agreement?

11 MR. REHWINKEL: Can I ask when you mean "your  
12 view," with respect to what?

13 MR. MOYLE: Her view with respect to GBRA  
14 being bad.

15 MR. REHWINKEL: I want to object to the form  
16 of the question. I don't understand it; I don't  
17 know how the witness can. I'm not saying he's  
18 asking an improper question, I don't know what  
19 view he's looking for, whether they're good or  
20 bad.

21 COMMISSIONER EDGAR: Mr. Moyle, can you be  
22 more clear?

23 BY MR. MOYLE:

24 Q Sure. You think the GBRA mechanism is not  
25 good. Does your view change if it only applies to Cape



1 Canaveral, would GBRA be okay? Would that alter your  
2 view or is GBRA bad just as a matter of policy or is it  
3 bad because it applies to three? I'm trying to  
4 understand the basis for your view that GBRA is not  
5 something that this Commission should go along with?

6 A It's my view, and it's addressed in my  
7 testimony, that the GBRA, as proposed in the  
8 settlement, does not take into consideration other  
9 changes that could happen to the revenue requirements  
10 for FPL over the four-year term of this rate case and  
11 there aren't, as I view it, enough mitigating factors  
12 to offset that, to alleviate that concern.

13 First, both the Port Everglades modernization  
14 and the Riviera modernization project are beyond the  
15 test year that was used in the case, so they're both a  
16 concern. I know there was a consideration for a step  
17 increase as part of the rate case for the Canaveral  
18 modernization project, so there wouldn't be as much of  
19 a concern, but still concerns with it.

20 Q Okay.

21 A I think that all of the GBRA's that are  
22 proposed in this are some of the terms the Commission  
23 needs to consider in reviewing the settlement agreement  
24 as a whole.

25 Q Okay.

1           A     If one was removed, that might -- I don't  
2 know how that would shift their judgment of the  
3 settlement, but it wouldn't be enough to make it, my  
4 opinion, that the settlement would be reasonable.

5           **Q     But it could be a mitigating factor, based on**  
6 **your testimony, with respect to -- it might make it**  
7 **better, I guess would be your view?**

8           A     If hypothetically the same settlement  
9 agreement was entered in here with one less GBRA, it's  
10 still likely I wouldn't agree that the settlement as a  
11 whole is reasonable, but it's something that I'm sure I  
12 would discuss with OPC and we would consider overall.

13          **Q     All right. And when you say "the settlement**  
14 **as a whole," just to be clear, you're not giving**  
15 **testimony with respect to the settlement as a whole, as**  
16 **we established earlier, right? You're just giving it**  
17 **-- that's your conclusion based on the analysis of**  
18 **issues one and five?**

19          A     Yes, I just address issues one and five, and  
20 briefly summarize the other OPC witnesses' testimony.

21          **Q     And the concern you expressed about GBRA as a**  
22 **matter of policy, that would also be the same concern**  
23 **in Exhibit 705, the previous settlement agreement, you**  
24 **just assume it was overcome with some other positive**  
25 **things, correct?**

1           A     Yes, I would assume that, taken as a whole,  
2 the OPC, by signing that, found it reasonable because  
3 there were other factors that would have offset  
4 concerns they may have had with those GBRAs.

5           **Q     Okay.  Would you go to page 16 of the**  
6 **settlement agreement, paragraph 15, and I would ask**  
7 **that you read into the record --**

8           A     All of paragraph 15?

9           **Q     No.  Go down to the fourth sentence where it**  
10 **says, "Provided, however," and read that, if you would.**  
11 **If you would read it out loud.**

12          A     The version I have -- I have two pages per  
13 page, so it's taking me a minute to read the small  
14 print.

15          **Q     Take your time.**

16          A     So the fourth sentence of paragraph 15?

17          **Q     Yes, ma'am, where it says, "Provided,**  
18 **however."**

19          A     Okay.  So not the fourth sentence, but I  
20 think it's the sixth line, "Provided, however," isn't  
21 the start of a sentence.  But you want me to start  
22 reading with the term, "Provided, however"?

23          **Q     That's right, until you get to the period**  
24 **after "appeal."**

25          A     "Provided, however, that nothing in this

1 agreement shall affect FIPUG's right to continue its  
2 appeal of Order No. PSC-12-0187-FOF-EI, granting an  
3 affirmative determination of need for the Port  
4 Everglades modernization project or FPL's right to  
5 oppose that appeal."

6 **Q Do you have an understanding of that**  
7 **contractual provision of the settlement agreement?**

8 A If you just read it as written, it would  
9 indicate that FIPUG's opposed that needs termination.  
10 If they're successful in that, I presume that it  
11 wouldn't allow for that GBRA increase then.

12 **Q Do you have any information with respect to**  
13 **the status of FIPUG's appeal that's referenced in**  
14 **there?**

15 A No, I do not.

16 **Q Do you know when the Everglades plant is**  
17 **supposed to come in under the GBRA approach, as**  
18 **outlined in the agreement?**

19 A I believe it's June 2016 -- well, it's  
20 supposed to come in when it's completed in-service, and  
21 I believe the estimated date of that, that I've seen,  
22 is June of 2016.

23 **Q If the Port Everglades didn't come in until**  
24 **January of 2017, would it be covered under the term of**  
25 **this agreement?**

1           A     Based on my understanding of the reading of  
2 the agreement, no.

3           **Q     Because it would be beyond the four years?**

4           A     It would be beyond the four-year term.

5           MR. MOYLE:  If I could just have a minute.

6 BY MR. MOYLE:

7           **Q     With respect to GBRA and the need**  
8 **determinations, do you know -- you're aware that any**  
9 **party could have intervened in any of the need**  
10 **determination cases to challenge the costs, correct?**

11          A     That's my understanding, that they could  
12 participate.  However, I also assume that in evaluating  
13 whether or not some parties may have participated in  
14 that proceeding, they probably didn't anticipate that  
15 automatic increases in rates would be based on numbers  
16 in those proceedings.  That could have changed whether  
17 or not some parties would have participated differently  
18 or at all.

19          **Q     Do you know whether OPC intervened in any of**  
20 **these need determination cases, to contest the cost?**

21          A     I don't know.

22          **Q     Okay.  And the final question, I asked this**  
23 **of another witness, with respect to the opening**  
24 **statement, you would agree that the Commission has a**  
25 **past practice and history of providing deference to**

1 **settlement agreements that are reached by folks,**  
2 **correct?**

3 A I know they've approved settlement agreements  
4 that have been reached by people. I guess I don't know  
5 how you're defining the term "deference." I think it's  
6 still part of their -- they're still required to review  
7 that settlement agreement before approving it to  
8 determine if, in their view, it would result in just,  
9 fair, and reasonable rates.

10 **Q Okay. Do you have a view with respect to**  
11 **parties being able to settle matters and address things**  
12 **and take care of things? Is that typically or**  
13 **oftentimes a beneficial system or process? You've been**  
14 **involved in settlements?**

15 A There are times that settlements could end up  
16 in fair and reasonable results for all parties  
17 concerned. It can happen. It doesn't always, may not  
18 always happen, but it can.

19 **Q As a matter of broad policy, would you have**  
20 **concerns if this Commission took action that sent a**  
21 **signal that settlements maybe should be -- well, maybe**  
22 **not the long history of approval in encouraging**  
23 **settlements, that maybe that history should not be**  
24 **followed?**

25 A I guess I'm not completely understanding your

1 question. I believe the Commission can reject a  
2 settlement without setting a bad policy going forward  
3 that it won't consider settlements. It still, in my  
4 view, should be one of the Commission's requirements,  
5 before approving a settlement, that it reviews that  
6 settlement to determine if it's fair, just, and  
7 reasonable.

8 **Q Okay. And final question, with respect to**  
9 **the public interest that needs to be determined, you**  
10 **would agree that that judgment rests with this**  
11 **Commission and is not exclusive to any party in this**  
12 **case, correct? Whether the settlement is in the public**  
13 **interest rests with this Commission and is not**  
14 **something that any party in this case can say whether**  
15 **it is or it isn't, but the ultimate call rests with**  
16 **this Commission?**

17 A I don't know if the parties have differing  
18 legal views on what public interest is. But in my  
19 view, the Commission needs to weigh the public interest  
20 as a whole.

21 MR. MOYLE: Okay. Thank you. That's all.

22 (Whereupon, proceedings continued in Volume  
23 42.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, MICHELLE SUBIA, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 5923 through 6126, are a true and correct record of the aforesaid proceedings.

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

DATED this 21st day of November, 2012.

*Michelle Subia*

MICHELLE SUBIA  
NOTARY PUBLIC  
COMMISSION #DD987077  
EXPIRES JUNE 7, 2014

