BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

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

VOLUME 42

Pages 6128 through 6308

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 4:02 p.m. Concluded at 6:50 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732
APPEARANCES:	(As heretofore noted.)

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P R O C E E D I N G S

CHAIRMAN BRISÉ: Staff?

MR. YOUNG: No questions.

CHAIRMAN BRISÉ: Commissioners?

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. I have just a couple of questions.

Concerning the GBRAs, which you testified to, what are some of the factors or changes to the economy or other outside factors that would affect the revenue requirement for those two outlier plants, Riviera Beach and Everglades?

THE WITNESS: There is a lot that can affect the revenue requirements of those. Presumably, the reason you are adding additional base load plants or additional plants is because you project a need to serve more load or more customers at some point in the future. So presumably you would have more revenues that would be realized at the time those plants go into place and possibly more sales at that time.

And one thing that could impact the economy as a whole and the growth in the State of Florida are the amount of customers that are being added to the system between now and 2014 and 2016 when those are added. There's a lot that can change with the economy. I'm

optimistic and hopeful that the economy will continue improving. But going out four years from now, I have no way of knowing if that will, in fact, be the case or not.

There's a lot of other things that could change. I know in the past there have been many times where certain acts have allowed for bonus depreciation as an incentive to spur investments. I'm not sure if bonus depreciation could be approved by the Congress again in the future. You know, four years out a lot could change, you know, with tax policy and different policies that could encourage growth. In the next four years there's a lot that could change from what was assumed at this time of this case.

COMMISSIONER BALBIS: Okay. And then I want to go back to when you summarized your testimony, you said something I want to make sure I understand. You indicated that you calculated that if you take Florida Power and Light's original rate request or base rate increase and just lowered the ROE from 11.5 to 10.7, what was that number?

THE WITNESS: Actually I have it. Exhibit DR-7 attached to my testimony. What I did is just took the company's original request, so assuming the Commission agrees 100 percent with their rate base they

presented in their case, and the net operating income they presented in their case, and the only thing I changed is to reduce the return on equity from what was in their original filing of 11.5 percent down to the 10.7 percent that is contained within the August 15th document, and I reduced the customer deposit rate from what was in the company's original filing to the currently effective rate.

As a little background, by the time we got to the post-hearing brief, and I think even before the August hearings, the company had revised downward that customer deposit rate to 1.99 percent because that had changed under a Commission order. If you just take those two items and change those and nothing else, the resulting revenue requirement would be 362,456,000, and that's calculated in my Exhibit DR-7.

COMMISSIONER BALBIS: Okay. So everything else would be in it; all the vacant positions, the land, everything?

THE WITNESS: Yes, 100 percent of what they requested in their initial March filing. In Exhibit DR-8 I went through a similar analysis, but updated it to reflect the modifications the company made to its rate base in that operating income. And this, again, would assume that the Commission agrees with 100 percent

of the company's brief position and only changes that return on equity and rejects all other recommendations made by the parties in the case, and that would result in 397.5 million.

COMMISSIONER BALBIS: Okay. Thank you.

THE WITNESS: You're welcome.

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

All right. Redirect.

MR. REHWINKEL: Thank you, Mr. Chairman. I'll try to be brief here.

REDIRECT EXAMINATION

BY MR. REHWINKEL:

Q. Ms. Ramas, do you have the 2005 stipulation which I think Mr. Moyle identified as 705?

A. I put it somewhere. Just a moment.

Q. Okay. When you get it, I'm going to ask you to turn it to the first page.

A. Yes, I have Exhibit 705. I didn't confirm it is the whole agreement, but --

Q. Correct. This is the one where he asked about the Public Counsel signing on. I think it was noted that Mr. McLean, the Public Counsel, signed that agreement.

A. Correct.

Q. On Page 1 of the agreement, which is the first page of the order, can I get you to look at the first paragraph, please. And can you tell from there what the amount of the revenue increase that FPL requested for a base test year and a subsequent test year?

A. It says the requested approval of an increase in rates of 430,198,000 and for approval of a subsequent year adjustment to increase revenues an additional $122,757,000.

Q. Okay. Now could you turn to Page 11, which is the -- and I'm looking at the top, the order page Number 11.

A. I'm there.

Q. Can you read the first line?

A. FPL's retail base rates and base rate structure shall remain unchanged except as otherwise permitted in this stipulation and settlement.

Q. Okay. So the Public Counsel signed onto this agreement that provided for zero revenue, base rate revenue increase compared to the request of 430 million and 123 million, roughly, correct?

A. Correct.

Q. Okay. If a utility -- let me ask you a hypothetical. If a utility is earning -- and you were asked some questions by Mr. Moyle about GBRA, and the

impact on the earnings with respect to the midpoint. Do you recall that?

A. Uh-huh.

Q. If a utility is earning at the maximum of its authorized ROE prior to putting a GBRA, or a GBRA-type rate increase in, let's just say that -- let me start over again.

If a utility is earning at the maximum of its range, and let's say that utility has $160 million equals 100 basis points, so there is $320 million range between -- revenue requirement, between the top and the bottom of the range, do you understand that?

A. Yes.

Q. And they put an asset in place that has a revenue requirement of, say, $237 million, and the day before the asset goes into service they were earning at the very top of the range. Would that utility be able to put that asset into place without affecting its -- and stay within its authorized ROE range?

A. Yes, I believe -- and just to make sure I heard you correctly, the revenue requirement impact of that asset?

Q. $237 million.

A. Yes, they could add that and stay within their range.

Q. Okay. Mr. Butler asked you about Exhibit 723, do you recall that? This is the blue bars.

A. Yes. The version I have doesn't have a number on the top. Yes, that was the comparison of the different settlements.

Q. Right.

A. Yes, I have that.

Q. How many states have you testified in, just roughly?

A. I believe it's around 13.

Q. Okay. Have you ever seen a state or a commission set rates based on a ratio of what another company got with respect to rates?

A. No, absolutely not.

Q. Okay. If FPL -- you participated in the Gulf case I think you told Mr. Butler, right?

A. Correct.

Q. Did Gulf Power have the same cost structure as FPL?

A. No.

Q. Were the issues the same with respect to the dollar amounts?

A. No, they weren't.

Q. When was FPL last in for a rate case?

A. In 2010, I believe.

Q. A 2010 order, maybe 2009 was when they --

A. Yes.

Q. Prior to this Gulf case, how long had it been since Gulf Power had been in for a rate case, if you know?

A. I don't recollect.

Q. Okay. Did you determine -- is there any evidence in this exhibit that Mr. Butler passed out that indicates the types of assets and the relative mix of assets that were in the various clauses of Gulf Power, Progress, and FPL?

A. No.

Q. Was there a GBRA in the 2010 FPL settlement, if you know? Well, let me withdraw that question. I guess the order will speak for itself.

A. Oh, actually, I believe the company -- you said settlement. You meant the decision in the last FPL rate case?

Q. I was talking about the 2010 FPL settlement. The post rate case settlement.

A. Oh. I don't recall if the settlement provided for one or not.

Q. You were asked a question about late payment charges being cost based, do you recall that?

A. Yes.

Q. Okay. If a Commission approves one type of charge that is not cost based, is it obligated to -- does that mean it can't set the other rates on a cost basis?

A. No.

Q. Does it mean that it shouldn't?

A. That it shouldn't set other rates on a cost basis? Absolutely not.

Q. Okay. And, finally, Commissioner Balbis asked you questions about DR-7 and DR-8, your exhibits. This was a sensitivity analysis, was it not? You are not accepting, or agreeing, that the $516.2 or .5 million or $525.1 million numbers are right, is that correct?

A. Correct.

MR. REHWINKEL: Okay.

Thank you, Mr. Chairman. I have no further questions.

CHAIRMAN BRISÉ: All right. Let's deal with exhibits.

MR. REHWINKEL: Public Counsel would move 691 and 692.

CHAIRMAN BRISÉ: All right. We will move 691 and 692 into the record, notwithstanding the standing objection.

(Exhibit Numbers 691 and 692 admitted into the

record.)

MR. BUTLER: FPL would move Exhibit 723.

CHAIRMAN BRISÉ: All right. We will move 723 into the record, notwithstanding the same standing objection.

(Exhibit Number 723 admitted into the record.)

MR. REHWINKEL: Public Counsel would ask that Ms. Ramas be excused.

CHAIRMAN BRISÉ: Sure.

Ms. Ramas, thank you very much. You may be excused.

THE WITNESS: Thank you.

MR. REHWINKEL: That concludes the Public Counsel's witness. Thank you, Mr. Chairman.

CHAIRMAN BRISÉ: Thank you very much.

MR. BUTLER: Mr. Chairman, taking the opportunity here just to break in briefly and distribute to the others. We distributed to Public Counsel actually awhile ago, an hour or so ago, but we have the Supplemental Rebuttal Testimony of Mr. Barrett that is addressing the Supplemental Direct Testimony of Ms. Ramas, and he will be available when he takes the stand on rebuttal to answer any questions about it.

CHAIRMAN BRISÉ: All right. Thank you.

It's 4:15. I'm going to try to forge on.

Mr. Hendricks.

All right. Who's helping Mr. Hendricks out?

Okay. Mr. Hendricks.

MR. HENDRICKS: Yes. Would you like me to begin?

CHAIRMAN BRISÉ: Yes, you may proceed, Mr. Hendricks.

MR. HENDRICKS: Very good.

JOHN HENDRICKS

was called as a witness representing himself, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

MR. HENDRICKS: My name is John Hendricks. My address is 367 South Shore Drive, Sarasota, Florida. I am testifying on behalf of myself. I prepared Direct Testimony consisting of 12 pages. I have five minor changes or corrections to make to my testimony. And with those changes, if asked the same questions contained therein, my answer would be the same.

Would you like me to read the corrections now or is that later?

CHAIRMAN BRISÉ: No, you can do that right now.

MR. HENDRICKS: Okay. The first correction, on Page 3, Line 17, between the word request and the

word would insert the phrase for investor capital. So it would then read --

CHAIRMAN BRISÉ: I'm sorry, what page did you say, again?

THE WITNESS: Page 3, Line 17. Let me make sure we're on the same page.

MR. BUTLER: I'm not seeing those words on my Page 3.

MR. HENDRICKS: Page 3. I wonder maybe if the pagination is different. All right. Could I see a copy of what you have to make sure.

(Pause.)

MR. HENDRICKS: Maybe I misspoke. Page 3, Line 17. You don't see the words request and would?

CHAIRMAN BRISÉ: No. Requirement would be.

MR. HENDRICKS: Oh, I'm sorry.

CHAIRMAN BRISÉ: That's at the end of the line, but the line begins --

MR. HENDRICKS: I'm sorry, I miswrote the word here. It is requirement and would. My apologies. I made the corrections in the draft -- I accidentally filed an earlier draft.

Okay. So now it reads requirement for investor capital would.

CHAIRMAN BRISÉ: Okay.

MR. HENDRICKS: Sorry about that. On Page 5, Line 3, after the closed paren on Line 3, at the end of the line, add a comma and the phrase which is substantially higher than the determined -- I'm sorry, determination of need value that is which is substantially higher than the determination of need value, period, and that's it.

CHAIRMAN BRISÉ: Okay.

MR. HENDRICKS: And then just three little typos remaining. On Page 8, Line 19, in the name Alvin Roth, I accidentally appended an E to that, so strike the letter E at the end of what appears to be Alvine Roth. And on Page 10, Line 14, between the words it and unclear, add the word is, so it should read it is unclear.

MR. BUTLER: That may be 15.

CHAIRMAN BRISÉ: Line 15, yes. But it is.

MR. HENDRICKS: It's Line 15 on your -- the pagination may be different on mine, sorry about that.

CHAIRMAN BRISÉ: No problem.

MR. HENDRICKS: And the final thing, on Page 11, Line 3, which begins with the number two, just to be sure we are on the same line, between the word federal and income, add the word corporate, so it will read federal corporate income.

CHAIRMAN BRISÉ: Is that it?

MR. HENDRICKS: Yes, that's it.

CHAIRMAN BRISÉ: All right.

MR. HENDRICKS: With those changes my testimony would be the same. Mr. Chairman, I ask that my testimony be entered into the record as though read.

CHAIRMAN BRISÉ: All right. At this time we will enter Mr. Hendricks' testimony into the record as though read, recognizing the standing objection.

MR. HENDRICKS: Thank you. I have also prepared an exhibit consisting of JWH-7.

CHAIRMAN BRISÉ: Okay. We'll mark that as 724.

THE WITNESS: I believe that in the --

CHAIRMAN BRISÉ: It has been prefiled already?

MR. HENDRICKS: It has already been filed as 693.

CHAIRMAN BRISÉ: Thank you.

MR. HENDRICKS: And I have no changes or corrections to the exhibit.

CHAIRMAN BRISÉ: Okay.

1. INTRODUCTION

Q Please state your name and address.

A My name is John W Hendricks. My address is 367 S. Shore Drive, Sarasota, Fl 34234.

Q Did you previously submit direct testimony in this proceeding?

A Yes.

Q Are you sponsoring any exhibits in this case?

A Yes. I am sponsoring the following exhibit.

- JWH-7 – Tax Efficiency in the GBRA Process

Q What is the purpose of your testimony?

A The purpose of my testimony is to address the issues identified in the Third Order Revising Order Establishing Procedure, Order No. PSC-12-0529-PCO-EI. It is my assessment that the Stipulation and Settlement (S&S) agreement would result in a rate structure that would be economically inefficient and fail to appropriately balance between the interests of the utility and its ratepayers, or among the different types of ratepayers. Specifically, I will explain my concerns about the "Settlement Issues" identified in the order that deal with the proposed GBRAs, a proposed incentive

mechanism, and the public interest question. These are not general objections to the GEBRA process or incentive mechanisms, but to these specific proposals in the context of this FPL rate case.

Q 1. Are the generation base rate adjustments for the Canaveral Modernization Project, Riviera Beach Modernization Project, and Port Everglades Modernization Project, contained in paragraph 8 of the Stipulation and Settlement, in the public interest?

A There are several advantages for the utility that will substantially increase costs and risks for ratepayers which have not been acknowledged or appropriately taken into account in the S&S document.

One is elimination of the possibility of "regulatory lag" in getting these three large modernized generation plants into the rate base. A recent EEI report (Edison Electric Institute, Rate Case Summary, Q2 2012, p. 2) indicated that the typical regulatory lag for rate cases is about 10 months. If FPL were to experience this typical lag for each of these three facilities, the total revenue requirement for investor capital would be reduced by over $300 million over the term of the proposed agreement. The GBRA effectively eliminates the regulatory lag for these large additions to the generation base and will expose ratepayers to higher base rates sooner. The substantial value to FPL of eliminating regulatory lag should be recognized as a major factor in weighing the balance of this S&S proposal.

Also, by neutering the risk of regulatory lag, the GBRA eliminates one of the factors that to some extent counterbalances the general tendency of regulated firms to overinvest in capital to grow their revenue for shareholders. This increases the risk of costly overinvestment and should also be taken into account in the balance.

A second issue is that, in this case, the GBRA eliminates the possibility of a rate case for three large generation facilities that were approved in need determination proceedings that occurred when the Commission and the parties had the expectation that these investments would be subjected to the further scrutiny of a rate case before entering the rate base. If the reasonable expectation in these need determination proceedings had been that these large investments would automatically enter the rate base, other parties would likely have participated and many other issues and arguments would likely have been raised in these proceedings. The GBRA process might be appropriate for new investments where parties in the determination of need proceedings know this is the next step, but it raises serious process issues when a GBRA is applied to projects whose need was approved under different circumstances and assumptions.

A third issue is the tax-inefficiency of the proposed GBRA. Exhibit JWH-7 illustrates the fact that under the proposed GBRA the costs for "equity gross-up," which is calculated to cover the state and federal corporate income taxes on the equity returns, constitutes over 30% of the total cost of long-term investor capital. The gross-up cost alone in the first year of operation for the three facilities covered

by the GRBA would be about $130 million and these costs would continue for many years, declining slowly with amortization. This is due to the very high incremental equity ratio of 60.969% as shown in the FPL Post-Hearing Brief (Appendix, p. 190), which is substantially higher than the determination of need value. The grossed-up cost of equity accounts for about 85% of the total cost of long-term investor capital, and is shown as "All 3 as Proposed." To illustrate the opportunity to reduce gross-up costs, an example for a 50% equity ratio for investor capital in the GBRA is shown as "All 3 Tax Efficient." This example keeps the total investor returns constant, but shifts to more debt and less equity, reducing the total cost by about 6% by reducing the required gross-up costs. This would be an excellent way to improve the balance of the proposed settlement by reducing ratepayer costs and risks of future increases due to volatile equity costs, while still providing FPL investors with the same income.

Fourth, if corporate income taxes are reduced as now being advocated by many political leaders, large unintended windfall profits can be created during the fixed term of the rates implemented under the GBRA (and other elements of the proposed settlement), with only a very restrictive opportunity for revision provided. Each major presidential candidate is advocating a reduction in the federal corporate tax from the current 35% (Romney to 20%, Obama to 25%) and Gov. Scott has proposed eliminating the 5% Florida corporate income tax. This would create a windfall increase in equity return of about 15% to 30% if all other factors remained the same.

Of course no one can predict what actually will happen, but these positions suggest

that a reduction of corporate income tax rates in the range between 25% and 50% down from the current rates is a serious possibility, although any reductions might be less than proposed, phased -in gradually, or restricted.

The only opportunity provided for the Commission or ratepayers to initiate actions to make changes in the base rates during the term of the proposed settlement arises if FPL's reported earnings exceed the 11.7% top end of the allowed range as defined in the proposed Stipulation and Settlement Agreement (9.B on page 9). Depending on the size and timing of the tax change, FPLs responses and how the calculations are structured, this threshold might or might not be triggered by some corporate income tax reductions that would nonetheless create substantial windfall profits.
FPL's response to my data request No. 6, which asked about other provisions in the settlement agreement under which parties could seek to modify the agreement before 2017, indicated that there were none.

As it stands, the proposed GBRA process is not in the public interest because it fails to balance the benefits and reduction of risks for the utility with comparable benefits and risk reduction for the ratepayers. A more tax-efficient equity ratio for the GBRA would be a good step toward reducing costs and risks for ratepayers at no cost to investors, but additional reductions are required to balance the scales. The process issues of bypassing the expected rate cases with the GBRA is troubling, especially since the Office of Public Council who represents the citizens of Florida is not a party to the settlement. If the corporate tax cut issue is not already addressed

elsewhere in regulations or policy, so it can be dealt with in a prompt and effective way, the proposed settlement agreement should be modified to do so, or rejected in its entirety.

Q 2. Is the provision contained in paragraph 10(b) of the Stipulation and Settlement, which allows the amortization of a portion of FPL's Fossil Dismantlement Reserve during the Term, in the public interest?

A No. See answer to #5.

Q 3. Is the provision contained in paragraph 11 of the Stipulation and Settlement, which relieves FPL of the requirement to file any depreciation or dismantlement study during the Term, in the public interest?

A No. See answer to #5.

Q 4. Is the provision contained in paragraph 12 of the Stipulation and Settlement, which creates the "Incentive Mechanism" including the gain sharing thresholds established between customers and FPL, in the public interest?

A Incentives are obviously key tools for motivating desired behavior of individuals and organizations, and as an engineer and economist I appreciate their importance. Our understanding of incentives in economic decision making has advanced in recent years, particularly with respect to the role of asymmetric information. For example, MIT's Paul Joskow describes his view of how our understanding of economic incentive mechanisms in regulation has advanced:

> The **major advances in the theory and practice of regulation have relied on formalizing the information structure that characterizes the real world** [emphasis added]. Regulators are imperfectly informed, regulated firms have better information about the cost and demand attributes they face, and regulated firms will use this information advantage to their benefit (Incentive Regulation and Its Application to Electricity Networks, Review of Network Economics, December 2008, p. 547).

Joskow is generally enthusiastic about deregulation, so the tone of his remarks can be disregarded, but his observation about the importance of asymmetric information is critical and applies to many situations where the parties have important "private" information.

In this case, it suggests caution about accepting the specific details of the incentive mechanism included in the proposed settlement because the utility almost certainly has better information about the value potential of this opportunity. On the other hand, there may be a substantial opportunity to manage fuel costs down to the benefit of all parties. If more time were available, I would advocate considering the implications of some of the more recent academic developments in mechanism design, including the work of Roger Myerson and Alvin Roth (both recent Nobel laureates).

One relatively conservative way to seek this opportunity without taking the risk of creating windfall profits might be to reduce the incentive share in the top tier from 50% to 20% (as in the current mechanism), while accepting the other terms of the new

mechanism as proposed in the settlement offer, except perhaps the outsourcing option. This would broaden the scope of the mechanism and provide a substantial incentive, but also insure that gains derived from assets in the rate base are primarily received by the ratepayers. It would provide a more measured transition from the current situation and less risk.

As explained in my response to Staff's First Interrogatory, it is my opinion that the proposed incentive mechanism be should be considered in this case, and not in a separate generic proceeding. There is no reason to believe that an optimal incentive mechanism for FPL would also be optimal for other electric utilities in Florida. A "one size fits all" incentive would likely fit badly, and the size of FPL's customer base warrants an efficient incentive mechanism.

Q 5. Is the proposed Settlement Agreement in the public interest?

A Not as it stands. All of the settlement issues discussed above individually provide substantial new opportunities for FPL to increase its profits without providing a reasonable balance of benefits to ratepayers. Taken together, they are mutually reinforcing and exacerbate the imbalance, creating a risk of blowback in future years when the results of the decisions in this case become obvious.

Issues two and three concern provisions that would allow FPL to manage earnings by manipulating amortization of certain reserve accounts and shield the company from any depreciation or dismantlement studies during the term of the agreement. They

are not separately discussed in this testimony, but they are undesirable as they create a lack of transparency about how ROE is generated and could facilitate steering reported earnings to maximize profits, while avoiding tripping the trigger at the top of the allowed ROE range. When a reserve account is used for purposes other than those for which it was established, it is sometimes referred to as a "slush fund."

As proposed the GBRA would benefit FPL by eliminating the risk of regulatory lag, bypassing rate cases and imposing financing at a very high 60.969% equity ratio for incremental investor capital for three new combined cycle gas generation facilities that should have a much lower risk profile than nuclear, coal or other alternative technologies. This exposes ratepayers to forgoing regulatory lag benefits that could amount to $300 million, and paying for equity gross-up costs of about $130 million in the first year of operation and a slowly declining repeat cost each year the units are in service. Reductions in the corporate income tax are being seriously proposed that could cut some of this burden, but it is unclear if the benefits would in fact flow through to ratepayers if these taxes are reduced.

The Incentive Mechanism is an excellent concept, but the fixed threshold and the outsourcing option are questionable. The above-threshold incentive fees appear very rich and could lead to windfall profits.

A Please summarize your testimony.

A Overall, the settlement agreement is even less balanced that the original FPL proposal. I suggest four concrete adjustments to improve the balance of the proposed settlement.

1. Reduce the incremental investor capital equity ratio for the GBRA from 60.969% to 50.00%.

2. Insert specific provisions to insure that any reductions in state or federal corporate income tax rates immediately and completely flow through to ratepayers by adjusting the base rate.

3. Eliminate the provisions for adjustable amortization of reserve accounts.

4. Adjust the top incentive rate in the incentive mechanism down from 50% to 20% and consider eliminating or putting some restrictions on the outsourcing option.

If the proposed settlement is not substantially improved it should be rejected.

MR. HENDRICKS: The proposed settlement package has some desirable features, but also some critical flaws. It is inefficient, and also imbalanced in favor of the utility and the large ratepayers over the small ones. The most obvious symptom of the imbalance is that OPC, representing all the citizens of Florida, opposes the proposed settlement, while the three parties joining FPL in support exclusively represent large institutional power users who would benefit from shifting costs to residential and other small ratepayers.

The GBRA provision specifically short circuits the expected rate case scrutiny for over $3 billion of new generation by eliminating the reasonably expected rate case scrutiny for three major generation facilities that have already passed the determination of need proceeding. This is a little like moving the goal line out to the 20-yard line after the ball is already at 21 yards. It's not very fair to the defense. It also enshrines a costly and tax inefficient equity ratio that substantially exceeds the determination of need value, and it could block ratepayers from receiving the benefit of corporate income tax reductions and cost ratepayers over 300 million in revenue requirements for investor capital by eliminating the typical rate case regulatory

lag.

The incentive mechanism does address the opportunity to make the most efficient use of valuable generation, fuel supply power, and transmission resources. However, this incentive proposal does define threshold values, allocation percentages, and scope of activities and contracting outsourcing provisions that are overly generous to the utility and have the potential to create windfall profits.

I would like to note that many of the advances in economics that are relevant to regulation that occurred in recent years involved the distribution of information across different organizations and individuals. In this case, the information advantage possessed by the utility suggests extra caution in accepting the specific details of the incentive mechanism as proposed, because the utility almost certainly has much better information about the value potential of this opportunity.

Assessing the risks of the information -- incentive mechanism, sorry, is especially difficult since this proposal changes so many parameters at one time when compared to the existing incentive mechanism, and it does so in a period when many large new generation facilities are going on-line. I would

suggest that it would be in the public interest that the Commission consider adopting some terms from the proposed settlement and some from the original FPL proposal, but modify them to achieve a more balanced outcome.

I have three specific recommendations that you might wish to consider. Number one, reduce the investor capital equity ratio for the GBRA down from the 60.969 percent to a figure around 50 percent.

Number two, insert specific positions in the GBRA to ensure that any reductions in state or federal corporate income tax rates immediately and completely flow through to ratepayers by adjusting the rate base.

And, three, adjust the top incentive rate and the incentive mechanism down from 50 percent to 20 percent and consider eliminating or putting some restrictions on the outsourcing option. Thank you.

CHAIRMAN BRISÉ: All right. Thank you. I suppose you are available for cross?

MR. HENDRICKS: That I am.

CHAIRMAN BRISÉ: All right. FPL.

MR. BUTLER: Yes, thank you.

Mr. Chairman, we have distributed an excerpt from an article that is quoted by Mr. Hendricks on Page 8 of his testimony, and ask that be marked as 724.

CHAIRMAN BRISÉ: All right. Thank you.

(Exhibit Number 724 marked for identification.)

CROSS EXAMINATION

BY MR. BUTLER:

Q. Mr. Hendricks, do you have the exhibit that we handed out in front of you?

A. That I do, Mr. --

Q. Thank you. Would you agree that the page that comprises this exhibit is the page from the Review of Network Economics article that you quote on Page 8 of your testimony?

A. I probably saw it printed on a different format, but, yes, it's the same article.

Q. Okay. And would you agree that the text that has an orange highlighting to it is the text that you had cited in your testimony?

A. Yes, I would.

Q. Okay. And that is a portion of Mr. Joskow's Dr. Joskow's conclusion to the article, correct?

A. It is.

Q. Would you read, please, the last sentence of conclusion, which is highlighted in green, into the record?

A. Yes. "While applying this theory in practice

you must confront numerous empirical challenges, the available evidence from their application to electricity distribution and transmission systems suggests that they can help to resolve what Kahn called "the central institutional question" that confronts economic regulation."

Q. And would you agree that the they there refers to the forms of incentive regulation that Dr. Joskow is writing about in his article?

A. Yes.

MR. BUTLER: Thank you.

That's all the cross-examination we have.

Thank you, Mr. Hendricks.

MR. HENDRICKS: Thank you.

CHAIRMAN BRISÉ: All right. Mr. Wiseman.

MS. CHRISTENSEN: Commissioner, can I ask that -- this is an excerpt portion of an article that he has crossed on. I think in fairness we should get a copy of the whole entire article, especially since it's not clear from this excerpted context what he is talking about with they. So if you put the whole article in there, that will be put in context, and then I think we would not have an objection to moving it into evidence.

CHAIRMAN BRISÉ: So you have an objection to --

MS. CHRISTENSEN: To the excerpted portion being entered in as opposed to the whole entire article.

CHAIRMAN BRISÉ: Okay.

MR. BUTLER: Mr. Chairman, I think, with all due respect, that's really beyond the pale. We do have the complete article, and we can put it in if you would prefer, but the witness has agreed that it is the article he was referring to. He had no objections to the context or the completeness of my reference, and I don't see the need for taking up the extra paper. But we certainly will accommodate, if that is the Commission's preference.

CHAIRMAN BRISÉ: If you have it, and it seems like you have somebody who has it available, we will just go ahead and do that.

MS. CHRISTENSEN: Thank you.

MR. BUTLER: All right. Will do.

CHAIRMAN BRISÉ: But I do understand your point. The witness was able to navigate it easily, but we'll put the whole thing into the record.

MR. BUTLER: Okay. So then the entire article will be Exhibit 724.

CHAIRMAN BRISÉ: 724, yes.

MR. BUTLER: Thank you.

CHAIRMAN BRISÉ: Mr. Wiseman.

MR. WISEMAN: No questions.

CHAIRMAN BRISÉ: All right.

Colonel.

COLONEL FIKE: No questions.

CHAIRMAN BRISÉ: Mr. Moyle.

MR. MOYLE: Yes.

CROSS EXAMINATION

BY MR. MOYLE:

Q. In your testimony you reviewed the entire document, your testimony is based on a review of the entire document, the entire settlement agreement, correct?

A. That's correct.

Q. Okay. And you point out that there are some good things in there and maybe some not so good things, but you would agree that it represents give and take in a compromise, correct?

A. Yes.

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

CHAIRMAN BRISÉ: Thank you, Mr. Moyle.

Staff.

MR. YOUNG: No questions.

CHAIRMAN BRISÉ: Commissioners?

Mr. Hendricks, is there anything that you would like to add in terms of redirect or anything,

redirect for yourself?

MR. HENDRICKS: Just one thing. Since we are going to put the whole article in the record, the reference to Joskow was interesting because, I mean, the words between the two highlighted things at the end of the page is sort of interesting. It says this situation leads to adverse selection and moral hazard problems that have been incorporated into the modern theory of incentive regulation. So I think that is an area that continues to develop. This article is, what, about five years ago. There is quite a bit going on.

One of the leading experts in the area actually happens to be at the University of Florida, so there is a lot of research that is around here, so I would suggest you might want to consider, you know, consulting some of them or looking into it. Thank you.

CHAIRMAN BRISÉ: All right. Thank you.

Let's deal with exhibits. So for Mr. Hendricks we have -- let's see if I've got it -- 693. Are you seeking to move that into the record?

MR. HENDRICKS: Yes, I am. Please move 693 into the record.

CHAIRMAN BRISÉ: All right. At this time we will move Exhibit 693 into the record recognizing the standing objection. And we will -- FPL.

MR. BUTLER: Yes, we would move Exhibit 724 into the record.

CHAIRMAN BRISÉ: All right. We will move 724, which includes the whole article, okay, as 724 into the record.

(Exhibit Number 693 and 724 admitted into the record.)

CHAIRMAN BRISÉ: All right. Mr. Hendricks.

MR. HENDRICKS: Very good. I will request that I be excused.

CHAIRMAN BRISÉ: Well, I don't know if you want to be excused. It's up to you. All right. Thank you for your testimony this afternoon.

All right. It is 4:34. We haven't taken a break in a few hours. We will take a ten-minute break. All right.

(Recess.)

CHAIRMAN BRISÉ: All right. We're going to go ahead and reconvene at this time. We are in the rebuttal phase of the case. Just for planning purposes, we normally take a dinner break at 5:00 or 6:00 o'clock. We are going to go ahead and try to work through that. And so -- I'm sorry, Lisa. Lisa has to trek all the way across town and come back, but we'll make it up to you.

So we are going to try to forge on through,

and hopefully we'll be done earlier than we would have been done if we took the dinner break and so forth. Thank you for your accommodation with that.

So, FPL.

MR. LITCHFIELD: Thank you, Mr. Chairman. FPL's first rebuttal witness is Mr. Deason. He previously was sworn.

TERRY DEASON

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

DIRECT EXAMINATION

BY MR. LITCHFIELD:

Q. Mr. Deason, would you please provide your name and business address for the record?

A. My name is Terry Deason. My business address is 301 South Bronough Street, Suite 200, Tallahassee, Florida.

Q. And you prepared and caused to be filed 10 pages -- excuse me, 13 pages of Prefiled Rebuttal Testimony on November 8th, 2012, correct?

A. Yes.

Q. Do you have any changes or revisions to your Prefiled Rebuttal?

A. No.

Q. If I were to ask you the same questions this afternoon contained in your Rebuttal Testimony, would your answers be the same?

A. Yes.

MR. LITCHFIELD: Therefore, Mr. Chairman, I would ask that Mr. Deason's Rebuttal Testimony be inserted into the record as though read.

CHAIRMAN BRISÉ: All right. At this time we will insert Mr. Deason's Rebuttal Testimony into the record as though read, notwithstanding the standing objection.

Q. Please state your name and business address.

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

Q. Did you previously submit direct testimony regarding the proposed Stipulation and Settlement that was filed on August 15, 2012 in this proceeding (the "Proposed Settlement Agreement")?

A. Yes.

Q. Are you sponsoring any rebuttal exhibits related to the Proposed Settlement Agreement?

A. No.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to certain assertions and positions taken by the Office of Public Counsel ("OPC") witnesses Pous and Ramas concerning the Proposed Settlement Agreement.

Q. What does witness Pous conclude with regard to the Proposed Settlement Agreement?

A. He concludes that the provision allowing discretionary amortization of up to $209 million of fossil dismantlement reserves and the postponement of the regularly scheduled depreciation and dismantlement studies will not result in fair, just, and reasonable rates.

Q. Do you agree with his conclusion?

A. No, I do not agree, for two fundamental reasons.

Q. Please explain.

A. First, and perhaps most importantly, witness Pous' criticisms of the discretionary amortization are unfounded. Second, witness Pous loses sight that the provision with which he disagrees is only a part of the overall Settlement. As I stated in my direct testimony, the Proposed Settlement Agreement should be evaluated as a whole to determine if it is in the public interest. Rarely, if ever, has a single provision been so significant that it has resulted in a settlement agreement being deemed inconsistent with the public interest. The provision allowing the discretionary amortization should be viewed in the context of the entire Proposed Settlement Agreement and what benefits it brings to all stakeholders.

Q. What are witness Pous' criticisms to which you refer?

A. Witness Pous essentially raises three criticisms of the discretionary amortization provision. First, he criticizes it for not being accompanied by a dismantlement study. Second, he criticizes it for violating the matching principle. And third, he alleges that it will enrich FPL at the expense of treating customers unfairly.

Q. Is witness Pous' concern that there is not an accompanying dismantlement study valid?

A. No, it is not, for at least three reasons. First, there was no requirement for a dismantlement study to have been filed as part of the rate case that the Proposed Settlement Agreement settles. It would be unreasonable and contrary to the Commission's policy of promoting settlements to now interject a new unanticipated requirement before a settlement can be accepted. Second, the Commission has on several occasions given a utility discretion within a settlement agreement to vary the level of depreciation and has never required a depreciation (or dismantlement) study be filed as a

prerequisite. And third, witness Pous is incorrect in his assertion that a depreciation (or dismantlement) study must be filed and considered every time customer rates are changed. To the contrary, the Commission routinely uses its discretion both in setting depreciation rates and how it will use a depreciation (or dismantlement) study as a tool to set those rates. Resetting depreciation rates is done on a schedule that can be altered, and the Commission can and routinely establishes just and reasonable customer rates without the use of a depreciation (or dismantlement) study.

Q. In your previous response, you stated that the Commission has allowed depreciation discretion as part of negotiated settlements. Can you give an example?

A. Yes, a good example is the settlement the Commission approved in 2002 for FPL in Docket No. 001148-EI. In this settlement, FPL was allowed the discretion to amortize up to $125 million annually as a credit to depreciation expense and a debit to the depreciation reserve for the term of the settlement which was nearly four years. The settlement did not require a depreciation study and the OPC supported that settlement. Rather it recognized that the discretionary depreciation amortizations would be used to address reserve imbalances in the next depreciation study. The settlement further recognized that the inherent depreciation rates would remain unchanged during the settlement period and any impacts on the accumulated depreciation reserve would be included in establishing the remaining life depreciation rates on a going forward basis after the settlement period ended.

Q. Is this essentially the same as the discretionary dismantlement amortization in the Proposed Settlement Agreement?

A. Yes, except the 2002 settlement was for depreciation only and was at a much higher dollar amount. The fundamental basis for the discretionary amortization in 2002 is the same as that in the Proposed Settlement Agreement.

Q. Please address witness Pous' concern that the dismantlement amortization violates the matching principle.

A. Witness Pous defines matching as a situation where each generation of customers pays its fair share of the cost of an asset over the life of the asset. It is a proper goal of regulation to match costs and benefits. However, witness Pous is incorrect that the proposed dismantlement amortization would violate this goal.

Q. Why is there no violation of the matching principle?

A. In the case of setting depreciation or dismantlement rates there is much uncertainty. While the original cost of an asset can be readily ascertained when it is placed into service, there is much uncertainty as to its life. This is further complicated by asset additions, potential life extensions or even life curtailments due to economic or physical obsolescence. This is a fundamental reason the Commission uses the remaining life method of depreciation, which self-corrects any reserve imbalances as information on actual costs become better known with the passage of time. In the case of dismantlement, there is even greater uncertainty as to the dollar cost of the ultimate dismantlement, potential salvage values, and the exact timing of the dismantlement. So there is no one correct amount of "cost" at any given time against which to match rates. To claim that the discretion to amortize up to $209 million of the dismantlement reserve results in unfair, unjust, and unreasonable rates attributes a degree of certainty and precision that simply does not exist.

Q. Are there additional reasons why the discretion to amortize $209 million of the dismantlement reserve does not result in unfair, unjust, or unreasonable rates?

A. Yes, there are at least two additional reasons. First, as discussed by FPL witness Barrett, there is evidence in the record indicating that the fossil dismantlement reserve is or likely soon will be in an over-accrued position based on changes in the composite lives of FPL's fossil plants. This is acknowledged by witness Pous in his testimony, where he identifies factors that could result in a depreciation surplus and concludes: "I believe that similar factors indicate that a surplus in the fossil dismantlement reserve may be determined at the same time." Therefore, if these anticipated factors do indeed result in a surplus in the fossil dismantlement reserve, the amortization discretion granted in the Proposed Settlement Agreement would merely address this imbalance sooner rather than later. This discretion certainly would not cause customer rates to be unfair, unjust, or unreasonable.

Second, the amount of discretionary amortization is simply not that significant in magnitude to reasonably conclude that customer rates would be unfair, unjust, or unreasonable. The normal amount of fossil dismantlement accruals will continue during the settlement period. Even if the entire amount of discretionary amortization is taken, the reserve at the end of the settlement would be reduced by only the net amount of $135.8 million due to this provision, to then be recaptured over the remaining life of the fossil plants to be eventually dismantled. Conservatively assuming no change in lives, this would be 15 years, or less than $10 million per year. Of course, if the lives are extended, the per-year impact would be even less. Given the size of FPL and the inherent

uncertainty of estimating the ultimate amount and timing of future dismantlement costs, $10 million per year is simply not enough to significantly affect the fairness, justness or reasonableness of customer rates. It should be noted that Mr. Barrett has calculated the average annual impact to be only $7.2 million per year for the years 2017-2020.

Q. Witness Pous' third criticism is that the discretionary amortization would unjustly enrich FPL. Would you please comment on this criticism?

A. Like his other criticisms, this criticism too is unfounded. The purpose of the discretionary amortization is not to enrich FPL, but rather to allow FPL a reasonable opportunity to earn within its authorized range over the four-year term of the Proposed Settlement Agreement. The discretionary amortization is merely a regulatory tool used in the context of a settlement to enable three very beneficial outcomes for customers. In addition, the Commission maintains its authority to monitor earnings through its earnings surveillance program.

Q. What are the beneficial outcomes to which you refer?

A. First is the reduction in the amount of the requested revenue increases from $517 million to $378 million. Second is the assurance that rates will be stable and predictable over the four years of the Proposed Settlement Agreement. And third is the opportunity for FPL to remain financially viable to continue its capital investments in Florida for the benefit of its customers. Without the discretionary amortization provision, these beneficial outcomes of the Proposed Settlement Agreement could not be achieved.

Q. What does witness Ramas conclude with regard to the Proposed Settlement Agreement and the Generation Base Rate Adjustment ("GBRA") provision within the Proposed Settlement Agreement?

A. Witness Ramas states that the Proposed Settlement Agreement is not based on the costs to serve FPL's customers during the 2013 test year and that the resulting rates are not fair, just and reasonable. With regard to the GBRA, witness Ramas concludes that the GBRA step rate increases are "inconsistent with sound regulatory principles established by this Commission and ignore other cost offsets."

Q. Do you agree with witness Ramas that the rates contemplated under the Proposed Settlement Agreement are not cost-based?

A. No, I do not. The record evidence before the Commission is more than adequate for the Commission to judge whether the rates contemplated by the Proposed Settlement Agreement are based upon FPL's costs and meet the other statutory criteria cited by witness Ramas. A careful reading of witness Ramas' testimony reveals that her complaint about the Proposed Settlement Agreement is simply that it is inconsistent with the way that she and other OPC witnesses wish to define FPL's costs. This is evident from her statement that "the proposal unreasonably assumes the Commission would reject 100% of the significant adjustments to test year rate base and expenses supported by OPC witnesses and others." The record evidence before the Commission is also abundantly clear that OPC took a litany of aggressive positions on many different revenue requirement issues. Because the revenue requirement contemplated in the Proposed Settlement Agreement exceeds that advocated by OPC does not mean that the resulting rates are not cost-based. To the contrary, there is ample evidence to conclude that the rates are cost-based.

Q. Is it necessary for the Commission to evaluate the cost basis for the resulting rates before it can approve the Proposed Settlement Agreement?

A. While there is ample evidence to make that determination, it is not necessary and has not been a prerequisite in approving other settlement agreements. A settlement is the consummation of negotiation and the approval of a settlement should be based upon the agreement as a whole and whether it is in the public interest. A vote on individual issues as is done in a rate case is not required and would be counterproductive to encouraging settlements and parties actually reaching a settlement. In addition, as shown in the statutory citations provided by witness Ramas, there are other considerations beyond the cost of providing the services that the Commission can consider:

- The efficiency, sufficiency, and adequacy of the facilities provided
- The value of such service to the public
- The ability of the utility to improve such service and facilities
- Whether the utility would be denied a reasonable rate of return.

It is very evident that the Proposed Settlement Agreement as a whole and the GBRA provision in particular, contain provisions designed to address all of these considerations. The Commission should weigh all of these considerations to reach a reasonable end result consistent with the public interest.

Q. You stated that it is not necessary for the Commission to make a finding that settlement rates are cost based. Can you give examples?

A. Yes, the most recent example is the Progress Energy Florida base rate settlement approved by the Commission in Order No. PSC-12-0104-FOF-EI. That settlement was consummated and approved without a test year letter, rate case petition, testimony, or MFR's to demonstrate a cost-based revenue requirement. There was no formal hearing on the evidence, no discovery, and no public quality of service hearings. The

Commission stated in the order, "Based upon the petition, our review of the Agreement, and the evidence and oral argument taken at the hearing, we find approval of the Agreement to be in the public interest." In view of the limited supporting documentation for the rates approved in that settlement, the Commission clearly had to have reached its conclusion that the settlement was in the public interest without conducting any sort of formal cost-of-service evaluation. In addition, in FPL's base rate proceedings in Docket Nos. 001148-EI and 050045-EI, there was no formal hearing on the evidence in either of these cases as a settlement agreement was filed prior to the start of technical hearings.

Q. You stated that witness Ramas also takes the position that the GBRA provision in the Proposed Settlement Agreement is inconsistent with sound regulatory principles established by this Commission. Do you agree?

A. No. I believe the GBRA mechanism is a proven and valuable regulatory tool totally consistent with sound regulatory principles. It provides a reasonable means to facilitate cost recovery of prudent and cost-efficient generating assets and enables a timely matching of costs and benefits without the need for a rate case. As I mentioned earlier, it offers a means for the Commission to recognize "the efficiency, sufficiency, and adequacy of the facilities," the "value of such service," and "the ability of the utility to improve such service and facilities," while affording a utility an opportunity to earn its rate of return without the need for a rate case. This constitutes good regulatory policy.

Q. Why then does witness Ramas state that the GBRA mechanism is inconsistent with sound regulatory principles?

A. A careful reading of witness Ramas' testimony reveals her fundamental belief that the only way to allow for cost recovery is through a comprehensive rate case. In criticizing

the GBRA's true-up provisions she states: "These potential true-up provisions do not justify the GBRA increases, because these would still not consider a full revenue requirement of all components of the revenue requirement calculations and consideration of overall base rates at the time of implementation." Thus her fundamental philosophical approach is to force a utility (and the Commission) to endure rate case after rate case simply so the utility can have a reasonable opportunity to earn a return on capital deployed to prudently and cost-effectively serve its customers. While rate cases are certainly needed from time to time, the GBRA represents a more efficient means to provide needed cost recovery of assets which have already been determined to be needed and to be the most cost-effective alternative. So the fundamental question for the Commission is whether to rely on potentially up to three rate cases over the next four years or to utilize an approach that has been successfully utilized in a previous settlement to allow reasonable cost recovery without the rate cases.

It should also be noted that FPL witness Barrett, in his rebuttal testimony, states that absent rate adjustments, FPL will experience declines in its earned ROE of 148 and 136 basis points, respectively, when the Riviera and Port Everglades Modernization Projects go into service. Without the use of the GBRA mechanism to recover the costs of these modernization projects, such substantial deterioration in earnings likely would force FPL to petition the Commission for multiple base rate increases to recover the costs associated with these projects. The four-year term of the Proposed Settlement Agreement, which is facilitated in large part by the GBRA mechanism, avoids these costly rate cases. Witness

Barrett further testifies that the implementation of the GBRA works to move earnings toward the ROE midpoint.

Q. Witness Ramas further criticizes the GBRA mechanism because it uses costs obtained from each generating unit's need determination proceeding. Do you agree with this criticism?

A. No, I do not. Witness Ramas states: "It is my understanding that the proceedings which results in a need determination are conducted in a more condensed time frame as compared to a full revenue requirement proceeding, and do not entail as robust of a review of the projected plant costs and operating costs as would occur in a base rate case." It is obvious that witness Ramas does not have an adequate appreciation of the rigors of a need determination proceeding.

Q. What has been your experience with need determinations and the rigors of cost review as compared to the review of generating plant costs in a rate case?

A. During my tenure on the Commission, I sat on twenty-five separate need determination cases. For those companies, such as FPL, that are rate regulated, my experience has been that the rigors of cost review and operational scrutiny was as great or greater in the need determinations as the level of review and scrutiny when those plants were placed in rate base in a rate case. I have complete confidence that the use of the need determination costs in the GBRA mechanism is appropriate and adequately protects customers from potentially excessive costs.

Q. Witness Ramas further criticizes the GBRA mechanism because it ignores other cost offsets. Is this a legitimate criticism?

A. I agree with witness Ramas that "Generation plants are not added to the system in a vacuum with all other components of the base revenue requirements calculation remaining unchanged." I also agree that there could be increased revenues from customer growth and the potential for cost savings to help offset the cost of the plants. However, witness Ramas ignores the reality that FPL will be adding substantial investments in transmission, distribution, and other operating assets which will add to FPL's rate base and which are not eligible for GBRA treatment. She also ignores the increased cost of serving new customers, the potential for increasing interest rates, and the ever present cost increases associated with inflation over the next few years. So the question for the Commission is whether on balance there will be net cost increases above or below the limited structured increases associated with the three generating units qualifying for GBRA or whether there should be rate cases with the optimistic expectations that all other costs will be trending downward as opposed to upward. It is possible and perhaps likely, that the later alternative advocated by witness Ramas will result in rates higher than those contemplated by the Proposed Settlement Agreement. What is known with certainty is that the Proposed Settlement Agreement offers rate stability and predictability that are made possible by the limited increases provided within the confines of the GBRA mechanism.

Q. Does this conclude your testimony?

A. Yes, it does.

BY MR. LITCHFIELD:

Q. And you have no exhibits to your rebuttal testimony, do you?

A. No exhibits.

Q. Okay. Have you prepared a summary of your rebuttal testimony?

A. Yes.

Q. Would you please provide that at this time?

A. Yes.

Commissioners, any settlement should be viewed in the context of the entire agreement and what benefits it brings to all stakeholders. The Office of Public Counsel witnesses have presented piecemeal arguments against the proposed settlement and have ignored or minimized its many benefits.

Specifically, Ms. Ramas suggests that the settlement rates are not cost based and are not reasonable. She is incorrect on both counts. First, there is no requirement that the rates be determined to be cost based. The Commission has never so constrained itself in approving previous settlements. Nevertheless, the record evidence before the Commission is more than adequate for the Commission to judge whether the rates contemplated by the proposed settlement agreement are based upon FPL's costs and meet other statutory

criteria. Because the revenue requirement contemplated in the proposed settlement agreement exceeds that advocated by OPC does not mean that the resulting rates are not cost based. To the contrary, there is ample evidence to conclude that the rates are indeed cost based.

Ms. Ramas is also incorrect in her criticisms of the generating base rate adjustment mechanism, or GBRA. The GBRA mechanism is a proven and valuable regulatory tool consistent with sound regulatory principles. It provides a reasonable means to facilitate cost recovery of prudent and cost-efficient generating assets, and enables a timely matching of costs and benefits without the need for a rate case.

Her fundamental philosophical approach is to force a utility and the Commission to endure rate case after rate case. While rate cases are certainly needed from time to time, the GBRA represents a more efficient means to provide needed cost-recovery of assets which have already been determined to be needed and to be the most cost-effective alternative. I have complete confidence that the use of the need determination cost in the GBRA mechanism is appropriate and adequately protects customers from potentially excessive costs.

OPC Witness Pous' criticism of the provision

allowing the discretionary amortization of the dismantlement reserve is also unfounded. First, there was no requirement for a dismantlement study to have been filed as part of the rate case that the proposed settlement agreement settles. It would be unreasonable and contrary to the Commission's policy of promoting settlements to now interject a new unanticipated requirement before a settlement can be accepted.

Second, the Commission has on several occasions given a utility discretion within a settlement agreement to vary the level of depreciation and has never required a depreciation or dismantlement study to be filed as a prerequisite.

And, third, Mr. Pous' claim that the discretion to amortize a portion of the dismantlement reserve results in unreasonable rates, attributes a credit of certainty and precision that simply does not exist. Given the size of FPL and the inherent uncertainty of estimating the ultimate amount and timing of future dismantlement costs, the annual impact of the amortization is simply not enough to significantly affect the fairness, justness, or reasonableness of customer rates.

The purpose of the discretionary amortization is not to enrich FPL, but rather to allow FPL a

reasonable opportunity to earn within its authorized range over the four-year term of the proposed settlement agreement. Both the GBRA mechanism and the discretionary amortization are regulatory tools used in the context of the proposed settlement to enable three very beneficial outcomes for customers: One, a reduction in the amount of the requested revenue increases from 517 million to 378 million; two, an assurance that rates will be stable and predictable over the four years of the proposed settlement agreement; and, third, the opportunity for FPL to remain financially viable to continue its capital investment in Florida for the benefit of its customers.

Without the GBRA mechanism and the discretionary amortization provision these beneficial outcomes of the proposed settlement agreement could not be achieved. This concludes my summary.

MR. LITCHFIELD: Thank you.

Mr. Deason is available for cross-examination.

CHAIRMAN BRISÉ: Thank you.

Mr. Rehwinkel.

MR. REHWINKEL: Mr. Chairman, Public Counsel has no questions.

CHAIRMAN BRISÉ: All right.

Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

Again, I have a Schef Wright few.

CHAIRMAN BRISÉ: Sure. Go right ahead.

CROSS EXAMINATION

BY MR. WRIGHT:

Q. Good afternoon, Mr. Deason.

A. Good afternoon.

Q. I just have what I believe will be two relatively brief lines of question for you. At the bottom of Page 9 you talk about the Progress settlement that was approved by the Commission earlier this year, correct?

A. Yes.

Q. And near the bottom of the page you say there was no formal hearing on the evidence. Do you see that?

A. I do.

Q. Now, you will agree that there was, in fact, a hearing, will you not?

A. There was a limited proceeding before the Commission to consider the merits of it. There was not a protracted hearing in the sense of a full revenue requirements type hearing that has been held in this case.

Q. I will agree that it wasn't a full revenue requirements hearing, but there was a hearing with sworn

testimony, was there not?

A. I do not dispute that.

Q. Okay. And, in fact, on the next page you actually cite the Commission's order saying based upon the petition, our review of the agreement, and the evidence and oral argument taken at the hearing, right?

A. Yes.

Q. Thanks. And the only other brief line of questioning I have for you regards the GBRA. Will you agree with me -- you make the statement that the use of the need determination costs in the GBRA mechanism is appropriate and adequately protects customers from potentially excessive costs, right?

A. Yes.

Q. Will you agree with me that the purpose of a need determination review of a proposed power plant's costs is different from what goes on in a base rate case?

A. I will agree that it is not the purpose of the need determination to determine the amount of cost that would be included in a rate case once the plant is close to plant-in-service and there is a rate proceeding, but the review of the costs of the unit, and the review of the operating parameters of the unit, and the operating and maintenance costs are reviewed in great detail and

are compared to other alternatives to determine that the plant is the most cost-effective alternative.

Q. And that answered my next question, and the follow-up question is isn't the purpose of a subsequent base rate case to determine whether the utility needs additional revenues in order to fulfill its responsibility to provide safe and reliable service while covering its costs and earning a reasonable return?

A. That is the purpose of a rate case and the GBRA accomplishes that for the investment in the assets in an efficient way.

Q. You'll agree -- well, you testified you are a veteran of some 25 separate need determinations, correct?

A. Yes.

Q. And you served from January of '91 to January of '07, is that correct?

A. Either December 31st, '06, or January 1, '07, and I'm not really sure when my departure date was.

Q. Okay. I thought it was January 1st or 2nd, but close enough.

A. Yes.

Q. And surely you sat on a fair number of FPL need determinations during that time, did you not?

A. Yes.

Q. Were there any base rate cases that followed on the heels of those during your tenure on the PSC, that 16 years?

A. When you state on the heels, can you give me some parameters of what you mean by that?

Q. Sure. Let's say Martin 3 and 4. Subject to check, will you accept Martin 3 and 4 came on-line in about 1993 and 1994?

A. I accept your word that that was the time period.

Q. Okay. FPL didn't have a rate case in that time frame, did they?

A. Not that I recall, no.

Q. So when I say on the heels of, I mean did FPL have to come in for a rate case to get those costs incorporated into its base rates as they added those power plants?

A. No. At that time it was not necessary due to other dynamics that were in play.

MR. WRIGHT: Thanks. It really was a Schef Wright few. That's all I have.

CHAIRMAN BRISÉ: All right. Thank you.

Mr. Saporito.

MR. SAPORITO: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. SAPORITO:

Q. Mr. Deason, if the Commission were to reject the settlement agreement, it would fall back to making a decision on the original filing in this rate case by FPL in March of this year, and that incorporated a step increase for one of their power plants. I believe it was the Cape Canaveral power plant. Is that your understanding?

A. Yes.

Q. And then the two other power plants, which there was a GBRA mechanism incorporated in the settlement agreement, if FPL were to seek recovery for those costs -- let's take those one at a time. The first power plant came on-line -- now those costs for that power plant, they could be completely absorbed by the company's earnings, is that not true?

A. In a theoretical sense, yes. In a practical sense, no.

Q. Okay. But it's possible, isn't that not true?

A. Theoretically, most anything is possible, but highly unlikely.

Q. Okay. So if that happened there would be no need for any further rate case concerning that one plant, is that not so?

A. Under your unlikely hypothetical, yes, that's true. But we all know that there are many other dynamics in play other than just these plants.

Q. And obviously Florida Power and Light Company believes that the United States economy, and particularly in Florida is improving, because they have accomplished a positive ruling by this Public Service Commission on building two more power plants, is that correct?

A. I'm sorry, you have to repeat your question. I don't understand the basis.

Q. Sure. I'll rephrase it and make it simpler. The Commission -- you understand that the Commission did approve two need determinations for FPL to build two additional power plants, correct?

A. Yes.

Q. Okay. And FPL wouldn't have done that if they didn't believe their research about Florida's economy was such that they believed that the economy was improving and that there were going to be more customers needing more electric power provided to them, correct?

MR. LITCHFIELD: I'll object to the question. It assumes facts not in evidence. If Mr. Saporito wants to ask the witness -- if he is to lay the predicate if he is aware of the basis upon which the power plants

were approved, that would be an appropriate predicate.

CHAIRMAN BRISÉ: Mr. Saporito.

MR. SAPORITO: I'll rephrase the question.

BY MR. SAPORITO:

Q. Is it your understanding that when FPL applies for a need determination decision by the Commission it is because they anticipate having to provide electricity for more customers?

A. No, and that was not the basis of the need determinations for the plants in question. It was not to meet additional load growth. It was to cost-effectively provide service to customers and provide the benefits of reduced fuel costs through the clause. So there is not going to be this enormous increase in the number of customers and the amount of revenues to the company as a result of these plants going on-line, and that's one of the reasons that Ms. Ramas is incorrect in her testimony.

Q. Well, going back to the original presumption that the Commission were to reject the settlement in this proposed -- excuse me, going back to the understanding, the assumption that the Commission would reject the proposed settlement in this docket, leaving them to decide the original rate case, if FPL decided they really wanted to build these additional power

plants they could ask on an expedited basis for the Commission to provide them interim rate relief, is that not true?

A. Your hypothetical assumes that the settlement is rejected?

Q. Yes, sir.

A. It is possible that the company could ask for rate relief in that manner, but there is also the risk that FPL is absorbing under the statement that would now be put back on the ratepayers if the settlement is rejected, and those risks include a number of items, weather-related risks, storm risks, inflation risks, government-mandated costs, increase investments in other type of assets other than generating assets. And so FPL would be required to make an evaluation as to when that plant came on line if that was not the most appropriate time to come in for a full revenue requirements case.

We don't know what those facts would be, but that could exist. And according to Mr. Barrett, the impact of these plants are such that the impacts on return on equity very likely would trigger a case. Whether it be a limited proceeding case or a full-blown rate case we don't know at this point.

Q. Well, doesn't your testimony just prove out the point that I'm trying to make here in that the

settlement agreement, like you talked about, would obviate these risks? You talk about inflation, changes in weather, et cetera, et cetera. Whereas, if you get rid of the settlement agreement and go back to the original rate case, FPL doesn't have to have that burden of all those unknowns and all those variables anymore, because they could come to the Commission for immediate consideration of an interim rate increase?

A. Yes, they could, and to me that could potentially be a detriment to customers as opposed to an advantage.

MR. SAPORITO: No further questions, Mr. Chairman.

CHAIRMAN BRISÉ: All right. Thank you, Mr. Saporito.

Mr. Garner.

CROSS EXAMINATION

BY MR. GARNER:

Q. Good afternoon, Commissioner Deason.

A. Good afternoon.

Q. I just have one line of questions that I thank Mr. Litchfield for allowing me the flexibility to ask this question on rebuttal, since it is not --

MR. LITCHFIELD: Mr. Deason also thanked me.

Q. -- related to your rebuttal testimony, but to your direct. You are familiar, are you not, with all the provisions of the settlement agreement?

A. Yes.

Q. Including Paragraph 13, which addresses whether any party to the agreement may request, support, seek, or impose a change in the application of any of the provisions except as provided in Paragraph 9, seek or support any reduction in FPL's base rates, et cetera, et cetera. Are you familiar with that provision as well?

A. Yes.

Q. As I recall your testimony, your direct testimony, you referred to the discretion that the Commission afforded to settlement agreements, did you not?

A. I did.

Q. I'd like to ask how these two things would work together, then? If the Public Counsel, for example, is not a signatory to the agreement, are they bound by this Paragraph 13?

A. No.

Q. In light of the deference that the Commission in your view is showing to settlement agreements, or should show to settlement agreements, how would that

affect how the Commission views Public Counsel in bringing before them a request for whatever reason to reduce FPL's base rates?

A. I believe the Commission should afford the same amount of deference -- if this settlement is approved and determined to be in the public interest, then it is in the public interest. And the same amount of deference that the Commission has afforded past settlements should be afforded this settlement, as well.

And I believe that deference is an important key ingredient to the successful use of settlements, and the reason that the Commission has been successful in encouraging settlements is the fact that there is deference. And it's very important because if the Commission did not show deference and was overly willing to make changes to a previously approved settlement, that would undermine future settlements.

But having said that, and as I indicate in my direct testimony, the Commission loses none of its jurisdiction, and the Commission has an ongoing obligation to ensure that rates remain fair, just, and reasonable. And so if the Commission -- even affording deference, if the Commission believes that the rates resulting from this settlement become unjust, unfair, or unreasonable, I think the Commission has the ability and

maybe even the responsibility to make changes to those rates. And in that scenario, the Public Counsel would be free, or any other nonsignatory would be free to petition the Commission, if the Commission does not act on its own motion, to petition the Commission. But there is a burden associated with that, and I think that it may be a high burden in the sense that I still think it is important that deference be given to the settlement and that the provisions that are in that be adhered to to the greatest extent possible. But it is not an unlimited concept. There is a certain amount of limitation on the deference.

Q. Would the deference, the level of deference be different whether it happened to be a nonsignatory, such as OPC, who comes before the Commission, or a signatory?

A. That would petition the Commission to change rates or somehow change an aspect of the settlement?

Q. Right, in a manner that's inconsistent with this Paragraph 13?

A. I think it goes back to a previous answer. Deference should be given to this settlement like any other settlement if it is approved, because the only way the Commission is going to approve this settlement is if the Commission determines it is in the public interest. And once it is determined to be in the public interest

and it is implemented, it should be treated like any other settlement has been treated in the past.

Q. Would you agree with me that that sounds a little bit like Public Counsel and other nonsignatories are bound by this agreement even though they have had no -- they have not been party to negotiating it and they are not a signatory to it?

A. No, I don't think that they are bound, but I think it is important to remember two things: One is that the Public Counsel and other nonsignatories have had ample opportunity to participate in this hearing to convince the Commission and provide evidence as to why they think that the settlement is not in the public interest, and --

MR. GARNER: Thank you.

THE WITNESS: And if that answers your question, I'll stop.

CHAIRMAN BRISÉ: Mr. Hendricks.

MR. HENDRICKS: No questions. Thank you.

CHAIRMAN BRISÉ: All right.

Staff.

MR. YOUNG: No questions.

CHAIRMAN BRISÉ: Commissioners? All right.

Redirect.

MR. LITCHFIELD: I have no redirect.

CHAIRMAN BRISÉ: All right.

Exhibits. I don't think there were any.

MR. LITCHFIELD: None sponsored by Witness Deason.

CHAIRMAN BRISÉ: All right. So there are no exhibits.

Thank you, Mr. Deason.

THE WITNESS: Thank you.

CHAIRMAN BRISÉ: All right. And you are excused.

MR. BUTLER: FPL would call its next witness, Mr. Forrest.

SAM FORREST

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

DIRECT EXAMINATION

BY MR. BUTLER:

Q. Good evening, Mr. Forrest.

A. Good evening.

Q. You have been sworn previously, correct?

A. Yes, I have.

Q. Would you please state your name and address for the record?

A. My name is Sam Forrest. My business address

is 700 Universe Boulevard, Juno Beach, Florida.

Q. Okay. Have you prepared and filed 17 pages of Prefiled Rebuttal Testimony in this proceeding?

A. Yes, I have.

Q. Do you have any changes or revisions to the Rebuttal Testimony?

A. No, sir.

Q. If I asked you the questions contained in the Rebuttal Testimony today, would your answers be the same?

A. Yes, they would.

MR. BUTLER: Mr. Chairman, I'd ask that Mr. Forrest's Prefiled Rebuttal Testimony be inserted into the record as though read.

CHAIRMAN BRISÉ: All right. At this time we will enter Mr. Forrest's Prefiled Rebuttal Testimony into the record as though read, recognizing the standing objection.

MR. BUTLER: Thank you.

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Sam A. Forrest. My business address is Florida Power & Light Company ("FPL"), 700 Universe Boulevard, Juno Beach, Florida 33408.

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

A. Yes.

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

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

- SF-4, Incentive Mechanism Comparison
- SF-5, FPL responses to Staff's Twenty-Second Set of Interrogatories, Nos. 608 through 611
- SF-6, FPL's Natural Gas Assets

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to rebut the testimony of the Office of Public Counsel ("OPC") witness James W. Daniel. Specifically, I will rebut his inaccurate assertions that (1) the proposed Incentive Mechanism would be detrimental to customers' interests and would be unreasonably one-sided in favor of FPL; (2) short-term power purchases should not be in the proposed Incentive Mechanism; (3) the information FPL has provided regarding the proposed Incentive Mechanism is insufficiently detailed; (4) FPL's lack of experience with additional forms of asset optimization would make Commission approval of the proposed Incentive Mechanism untimely; and (5)

the review and timing process for the proposed Incentive Mechanism is not appropriate.

II. SUMMARY

Q. Please summarize your rebuttal testimony.

A. The proposed Incentive Mechanism is a win-win proposition for FPL and its customers. It provides FPL a meaningful incentive to encourage innovation and maximization of its asset utilization to produce gains for customers, while ensuring that customers will retain 100% of the first $46 million of such gains and a percentage of any gains above that threshold. Over the term of the Proposed Settlement Agreement, $46 million represents a "stretch goal" for FPL, exceeding its current projections of customer savings by approximately $10-$20 million per year. Only if FPL exceeds its "stretch goal" will shareholders receive a portion of incremental gains above that goal. OPC witness Daniel raises several objections to the proposed Incentive Mechanism, but none of them is valid:

- The proposed Incentive Mechanism will *not* undermine the reliability of service or the costs that customers pay for that service. First and foremost, FPL's goal is to deliver reliable fuel supply to its generating units. This focus will not change with the implementation of the proposed Incentive Mechanism. FPL has engaged in asset optimization through wholesale power sales for many years and the

reliability of its system has not been impacted. Likewise, the costs that customers pay for service will also not be impacted by the proposed Incentive Mechanism. FPL will not deprive customers of lower cost power or fuel in order to experience higher levels of gains for the proposed Incentive Mechanism. Simply put, FPL's track record does not support the assertions made by OPC witness Daniel, who really has no experience with FPL or its operations.

- The proposed Incentive Mechanism would not result in FPL receiving too large a share of gains; to the contrary, it would provide a reasonable, meaningful incentive where the current mechanism does not. This is illustrated by witness Daniel's own Exhibit JWD-2. Even though his exhibit is unreasonably skewed against FPL, it still demonstrates clearly that (1) FPL has not received meaningful incentives under the current mechanism; and (2) the sharing methodology prescribed in the proposed Incentive Mechanism would have resulted in customers receiving approximately 84% of the total benefits. For the five years he chose to include in Exhibit JWD-2, FPL received only 0.38% of the total benefits in incentives under the current mechanism, nowhere nearly enough to provide meaningful motivation. For those same five years, customers would have received approximately 84% of the total benefits under the proposed Incentive Mechanism, with only 16% going to FPL. I do not see how this could be viewed as unreasonable from the standpoint of customers. My

Exhibit SF-4 shows that, over the full eleven years in which the current incentive mechanism has been in place, FPL customers would have received more than 90% of the total benefits with FPL receiving just below 10%. Again, this allocation of benefits between customers and FPL clearly and quantitatively discredits witness Daniel's claim that the proposed Incentive Mechanism would unreasonably favor FPL.

- Contrary to witness Daniel's assertion, power purchases are not part of the economic dispatch process. The concept of economic dispatch specifically relates to the efficient utilization of a utility's own resources. Resources that are not under a utility's control are not part of its economic dispatch process. The purpose of the incentive mechanism is to provide appropriate incentives to enhance or add value beyond the economic dispatch process. Engaging in both power purchases and sales allows a utility to improve upon the economic dispatch of its own resources. Opportunities to participate in the wholesale power market must be actively pursued and require the execution of several activities. Gains on power sales and savings due to power purchases have the same dollar-for-dollar impact on reducing fuel expenses. For these reasons, there should be no distinction or differentiation made to the application of incentives between power sales and purchases.

- Contrary to witness Daniel's assertion, FPL has provided voluminous, detailed information regarding the proposed Incentive Mechanism. FPL has responded to over ninety discovery requests covering all relevant topics related to the proposed Incentive Mechanism.
- Regarding witness Daniel's assertion that an "after the fact" review will be difficult and involve limited time, for several years the Commission has reviewed and approved FPL's expanded hedging program. The same review mechanisms could be utilized effectively for review and approval of the proposed Incentive Mechanism.

III. IMPACT OF ASSET OPIMIZATION ON RELIABILITY

Q. Do you agree with OPC witness Daniel's assertion on page 19 of his testimony that the proposed Incentive Mechanism would encourage FPL to pursue marginal gains at the expense of electric service reliability for native load customers?

A. Absolutely not. Witness Daniel's assertion challenges the integrity of FPL, has no basis in fact, and is quite simply preposterous. To suggest that FPL would jeopardize the reliability of its system for monetary gains is an irresponsible accusation. Reliability is the foundation of the electric utility business. Fuel procurement and the utilization of fuel is a core component of providing reliable electric service. The primary goal of FPL's fuel procurement activities is to deliver the most reliable fuel supply to FPL's

generating units and this would not change with the implementation of the proposed Incentive Mechanism. FPL's history of participation in asset optimization through the wholesale power market demonstrates its commitment to reliably serving its customers. Incentives are in place for power sales, and FPL has participated in the power market for numerous years without impacting reliability. FPL will apply the same principles when evaluating potential asset optimization transactions to arrive at decisions that maintain reliability while helping to reduce overall fuel costs for customers.

IV. IMPACT OF ASSET OPTIMIZATION ON COSTS

Q. Witness Daniel asserts on pages 14 and 15 of his testimony that the proposed Incentive Mechanism could result in FPL depriving its customers of less expensive power and fuel in order to expand its profits in the market. Is this a valid conclusion?

A. No. The asset optimization measures included in the proposed Incentive Mechanism are intended to derive *additional* value for customers. FPL optimizes its generation and fuel portfolio on a daily basis through economic dispatch, efficient utilization of its gas transportation capacity, and taking the lowest-cost, most reliable approach to gas procurement. This optimization will continue to take place if the Incentive Mechanism is approved, as it is an integral part of daily operations. In addition to those on-going activities, FPL will look for opportunities to enhance the value it provides to customers.

Witness Daniel's testimony is essentially an unsubstantiated assertion that FPL would "game" the Incentive Mechanism with the hope of potentially realizing higher sharing levels at the expense of its customers. FPL's track record clearly does not support witness Daniel's suggestion. For example, FPL is now at the lowest three-year threshold for gains on sales since the current incentive mechanism was put in place, but it hasn't shared in benefits in six years. Following witness Daniel's conclusion, FPL should be exceeding the threshold of the current incentive mechanism by continually selling its least expensive power into the market to increase gains. The reality is that FPL has never conducted business that way and never will. Moreover, the Commission has review mechanisms in place to assure itself that FPL's resources are deployed appropriately.

V. INCENTIVE MECHANISM COMPARISON

Q. Does OPC witness Daniel's Exhibit JWD-2 provide a complete comparison of the current incentive mechanism and the proposed Incentive Mechanism utilizing historical data?

A. No. Exhibit JWD-2 is incomplete. Witness Daniel selected five years of data from an eleven year period to show the benefits customers and FPL received under the current incentive mechanism and the benefits each would have received under the proposed Incentive Mechanism. The five years he selected are not representative for the eleven-year period in which the current incentive

mechanism has been in place. Nonetheless, two important conclusions can be drawn from the exhibit as it stands. First, Exhibit JWD-2 clearly shows that FPL has not received meaningful incentives under the current mechanism. In the five years of data that witness Daniel's selected, FPL received just over $1 million in incentives, or only 0.38% of the total $300 million in benefits. Second, applying the sharing methodology of the proposed Incentive Mechanism to the total benefits of $300 million yields a sharing of approximately 84% to customers and only 16% to FPL. I do not see how this could be viewed as unreasonable from the standpoint of customers.

But as I noted earlier, witness Daniel's Exhibit JWD-2 does not tell the whole story, because it reflects only five out of the eleven years in which the current incentive mechanism has been in effect. I have created an identical table to Exhibit JWD-2 that shows a complete representation of all eleven years of data. This is attached to my rebuttal testimony as Exhibit SF-4.

Q. What information can the Commission derive from Exhibit SF-4?

A. Exhibit SF-4 helps to further demonstrate the reasonableness of the sharing methodology prescribed in the proposed Incentive Mechanism. From 2001 through 2011, FPL delivered almost $503 million in total benefits from power sales and purchases. Under the current incentive mechanism, customers received nearly $501 million in benefits, or 99.63% and FPL received just under $1.9 million in incentives, or only 0.37% of the total. In eight of the eleven years, FPL received no incentive.

FPL's proposed Incentive Mechanism strives to deliver additional value to customers while also providing a meaningful incentive to FPL if certain thresholds are reached. As shown in Exhibit SF-4, the proposed Incentive Mechanism would have also resulted in several years of FPL receiving no incentive (six of the eleven years); however, it would have provided meaningful incentives in the years that the threshold was exceeded. Under the proposed Incentive Mechanism, customers would have received just over $454 million in benefits, or 90.37% and FPL would have received just over $48 million in incentives, or 9.63% of the total. This allocation of benefits between customers and FPL clearly and quantitatively discredits witness Daniel's claim that the proposed Incentive Mechanism would unreasonably favor FPL. FPL's total share of slightly less than 10% provides a meaningful incentive while continuing to ensure that the great majority of the benefits would go to customers.

VI. SHORT-TERM POWER PURCHASES

Q. Do you agree with OPC witness Daniel (pages 11-12) that savings generated from short-term power purchases should not be included in an incentive mechanism because they are part of a utility's normal practice under its fundamental economic dispatch process and objective?

A. No. Witness Daniel states, "In my 38 years of experience in electric rate regulation, I have never seen a case in which a utility had the audacity to

claim that implementing the concept of economic dispatch should be a source of bonuses." What is audacious is witness Daniel's mischaracterization of the relationship between short-term power purchases and economic dispatch. The concept of economic dispatch specifically relates to the efficient utilization of a utility's own resources. Resources that are not under a utility's control are not part of its economic dispatch process. The purpose of the incentive mechanism is to provide appropriate incentives to enhance or add value beyond the economic dispatch process. For example, power purchases and sales are activities conducted outside of the economic dispatch process, but which allow a utility to improve upon the economic dispatch of its own resources.

Opportunities to participate in the wholesale power market must be actively pursued and participation requires the execution of activities such as marginal cost modeling, communicating and negotiating with numerous counterparts on a continual basis, submitting transmission service requests, submitting data electronically showing the flow of power, and capturing transaction data for risk management and accounting purposes. All of those activities go beyond the scope of ordinary economic dispatch, and it makes sense to provide an incentive for FPL to pursue them aggressively. Furthermore, it is reasonable to apply the incentives equally to gains on power sales and purchases. Both types of transactions have the same dollar-for-dollar impact on reducing the fuel expenses that customers pay, and both require the same sort of activities

to identify and execute beneficial transactions. For these reasons, there should be no distinction or differentiation made to the application of incentives between power sales and purchases.

VII. INFORMATION PROVIDED BY FPL

Q. On page 9 and 10 of his testimony, witness Daniel asserts that his chief concern is that the proposed Incentive Mechanism could be approved based on the limited and imprecise information provided in this proceeding to date. Do you agree with this assertion?

A. No. In addition to my direct testimony in this docket, FPL has provided responses to over ninety interrogatories and document requests. Those responses provide voluminous, detailed information on every relevant topic included in the proposed Incentive Mechanism. For example, witness Daniel claims on page 18 of his testimony that FPL has not addressed the specific components of risk it faces; in fact, however FPL provided detailed descriptions of the risk components and safeguards it will have in place in its responses to Staff's Twenty-Second Set of Interrogatories Nos. 608 through 611. These responses are provided in my Exhibit SF-5. The extent of OPC's own request for information regarding the proposed Incentive Mechanism through the discovery process has been minimal: two document requests issued very late in the process.

VIII. EXPERIENCE WITH ASSET OPTIMIZATION

Q. Do you agree with witness Daniel that FPL's lack of experience with additional forms of asset optimization would make Commission approval of the proposed Incentive Mechanism at this point untimely?

A. No. FPL has become the largest investor-owned utility consumer of natural gas in the United States. FPL now consumes over 500 BCF of natural gas per year and has extensive expertise in the procurement of natural gas. As shown on Exhibit SF-6, FPL's portfolio of natural gas assets has grown to meet those needs and now includes transportation capacity on five natural gas pipelines, as well as storage capacity. While FPL has not engaged in most forms of the asset optimization measures described in the Proposed Settlement Agreement, its market presence and knowledge provide a strong base for implementation of these new forms of asset optimization.

Q. Do you believe that FPL's lack of experience with these new forms of asset optimization is a reason not to incent FPL to explore additional measures?

A. No. If FPL is unable to deliver additional gains from the expanded optimization program, then it will not receive any incentives. Conversely, if FPL is successful, customers will benefit beyond the current level of gains they receive. Additionally, the Commission will always have full authority to review the prudence of FPL's transactions.

IX. REVIEW AND TIMING

Q. Witness Daniel claims that the Commission would be in a difficult position to review FPL's transactions "after-the-fact" and sufficient time would not be available for review. Do you agree with this claim?

A. No. At the time FPL files its proposed Incentive Mechanism activities with its Final True-Up filing at the beginning of March each year, the Commission will have approximately eight months to conduct a review of the material prior to the annual fuel hearing in November. As previously noted, the Commission has many provisions in place to conduct a thorough review of FPL's optimization activities including the ability to conduct an annual audit. The Commission continues to utilize these provisions to review FPL's hedging program on an annual basis. I note that the Commission Staff has become quite experienced in evaluating gas transactions as a result of its hedging reviews, and FPL expects that Staff would put that expertise to use in effectively monitoring FPL's proposed Incentive Mechanism activities.

Q. Do you agree with witness Daniel's assertion on page 21 that if the proposed Incentive Mechanism is approved, the Commission will be issuing a blank check to FPL for the associated costs of its expanded asset optimization program?

A. No. In Order No. PSC-02-1484-FOF-EI, the Commission approved fuel clause recovery for prudently incurred incremental operating and maintenance expenses incurred for the purpose of initiating and/or maintaining a new or

expanded hedging program. I do not believe the Commission viewed that approval as having issued FPL a blank check to incur hedging-related O&M expenses, and the experience over the years has borne out the Commission's confidence that utilities would use their cost recovery authority prudently. FPL's projected and actual expenditures of all types are scrutinized through the normal fuel clause process. FPL envisions the same process for incremental operating and maintenance expenses associated with the proposed Incentive Mechanism.

X. APPROPRIATE PROCEEDING FOR APPROVAL

Q. Do you agree with witness Daniel's comment on page 23 of his testimony that review of the proposed Incentive Mechanism should be moved to a separate proceeding involving the other utilities?

A. No. Settlement agreements provide the perfect opportunity to try new concepts and there is no reason to postpone implementation of the proposed Incentive Mechanism for FPL. The provisions of the proposed Incentive Mechanism are unique to FPL at this point. There is not necessarily a "one size fits all" incentive mechanism. The proposed Incentive Mechanism would only be in place for four years unless the Commission decided that it made sense to continue with the program. Using the proposed Incentive Mechanism first for FPL is an ideal pilot program for all parties to learn more about the

practical implementation realities and then decide whether and how to expand application of the mechanism to other utilities.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BY MR. BUTLER:

Q. Mr. Forrest, are you also sponsoring Exhibits SF-4 through SF-6 attached to your Rebuttal Testimony?

A. That is correct, yes.

MR. BUTLER: Mr. Chairman, I'd note that those have been premarked by -- are on the Staff Comprehensive Exhibit List as Exhibits 694 through 696.

CHAIRMAN BRISÉ: All right. Thank you.

BY MR. BUTLER:

Q. And, Mr. Forrest, would you please summarize your rebuttal testimony.

A. Yes. Mr. Chairman, Commissioners, my rebuttal testimony responds to objections by OPC Witness Daniel to the incentive mechanism in the proposed settlement agreement. I will show that those objections are unfounded and that the incentive mechanism is a win/win proposition for FPL and its customers. It provides FPL a meaningful incentive, while ensuring that customers will retain 100 percent of the first 46 million of such gains and a percentage of any gains above that threshold.

Let me highlight a couple of the objections raised by Mr. Daniel and explain why they are not valid. Contrary to Mr. Daniel's objections, the proposed incentive mechanism will not undermine the reliability

of service or the cost that customers pay for that service. First and foremost, FPL's goal is to deliver reliable fuel supply to its generating units. This focus will not change with the implementation of the proposed incentive mechanism.

FPL has engaged in asset optimization through short-term wholesale power transactions for many years and the reliability of our system has not been impacted. Likewise, FPL will not deprive customers of lower cost power or fuel in order to experience higher levels of gains for the proposed incentive mechanism.

Mr. Daniel challenges FPL's integrity by implying we could somehow abuse the system if the new incentive mechanism was approved. The facts just don't bear this out, as FPL never has and never will put an incentive mechanism in front of our customers' interests. The primary goal of FPL's fuel procurement activities is to deliver the most economic and most reliable fuel supply to FPL's generating units, and this would not change with the implementation of the proposed incentive mechanism.

FPL's history of participation in asset optimization through the wholesale power market demonstrates its commitment to reliably serving its customers. To suggest that FPL would jeopardize the

reliability of its system for monetary gains is just irresponsible.

Additionally, the proposed incentive mechanism would not result in FPL receiving too large a share of gains. Again, to the contrary, it would provide a reasonable meaningful incentive where the current mechanism has not.

Mr. Daniel's own exhibit demonstrates clearly that FPL has not received meaningful incentives under the current mechanism. It also shows the sharing methodology prescribed in the proposed incentive mechanism would have resulted in customers receiving approximately 84 percent of the total benefits. I do not see how this could be viewed as unreasonable from the standpoint of customers.

However, if you include all the years since the current incentive mechanism went into place back in 2001, rather than just the ones Mr. Daniel hand-picked, FPL's customers would have received more than 90 percent of the total benefits with FPL receiving just below 10 percent. The allocation of benefits between customers and FPL discredits Witness Daniel's claim that the proposed incentive mechanism would unreasonably favor FPL. And this completes my summary.

MR. BUTLER: Thank you, Mr. Forrest. I tender

him for cross-examination.

CHAIRMAN BRISÉ: All right.

Ms. Christensen.

MS. CHRISTENSEN: Good evening, Commissioners.

CROSS EXAMINATION

BY MS. CHRISTENSEN:

Q. Good evening, Mr. Forrest.

A. Good evening.

Q. I hopefully have just a few questions. I wanted to take you through your Exhibit SF-4. Do you have that in front of you?

A. Yes, I do.

Q. And this is an exhibit that's a comparison of the current incentive mechanism and the proposed expanded mechanism based on the actual results for the years 2001 through 2011, is that correct?

A. That is correct, yes.

Q. And so it would be correct to say that the total amount in Column E of -- excuse me, that $500,903,115 is what went to customers under the current mechanism, is that correct?

A. That is correct, yes.

Q. Okay. And if the proposed mechanism had been in place during those years 2001 through 2011, the amount would have been $454,339,082, correct? That is

in Column G.

A. I would agree with that, yes, but I would also say it didn't include any of the expanded incentive measures that we are talking about, so it's tough to go back and say what it would have done absent those additional measures.

Q. That would have included expanding the -- would have included the purchased power portion of the expanded program, correct?

A. That is correct, yes.

Q. And the other expanded options you're talking about are things that FPL has not done in the past, correct?

A. That is correct.

Q. Okay. And is it correct to say that the difference between those two amounts is $46,000,564.33?

A. Subject to check, I would say that's correct, yes.

Q. Okay. And is it also true that by adding the 46.6 million to the amount in Column I, which is $1,875,647 that FPL received over that time period, it would total the $48,439,680 that appears in Column K, correct?

A. Would have received, yes, which works out to just a little bit less than 10 percent of the overall

savings from the mechanism, yes.

Q. Okay. And I think you agreed that the 48.4 million is the amount that FPL would have received for that period, given no other changes, no other changes in behavior, correct?

A. I agree with that. I'm not sure looking at history is the right way of evaluating the proposed mechanism, given that it is being established based on four projections, but I agree with your math.

Q. Right. But based on what you actually have done in the past, that's a correct statement. So let me ask you the next statement that I have. Based on your exhibit would it also be correct to say that the $46.6 million of the 500.9 million saved by customers under the current mechanism during the 2001 to 2011 time frame, if the proposed mechanism had been in place, customers would have incurred an additional 46.6 million more in fuel costs?

A. I think it's difficult, again, to say what those savings would have been, because we would have had these additional measures that may have contributed to additional savings for our customers.

Q. Based on the activities and the numbers that were in the past, is that a correct statement?

A. Just based on the math, yes.

MS. CHRISTENSEN: Okay. I have no further questions.

CHAIRMAN BRISÉ: All right. Thank you, Ms. Christensen.

Mr. Saporito.

MR. SAPORITO: I have no questions for this witness, Mr. Chairman.

CHAIRMAN BRISÉ: All right.

Mr. Garner.

MR. GARNER: No questions.

CHAIRMAN BRISÉ: Mr. Hendricks.

MR. HENDRICKS: No questions.

CHAIRMAN BRISÉ: Does anyone know if Mr. Wright -- okay.

Staff.

MR. YOUNG: No questions.

CHAIRMAN BRISÉ: All right. Commissioners.

Commissioner Graham.

COMMISSIONER GRAHAM: Thank you, Mr. Chairman. It seems like this is one of my favorite subjects.

Mr. Forrest, how are you this afternoon?

THE WITNESS: I am doing well. Thank you.

COMMISSIONER GRAHAM: Could I get you to turn to Page 6 of your Rebuttal Testimony, Lines 2 through 4. If I could get you to read -- how about Lines 1 through

4. If I could get you to read those four lines. I'm sorry, let's go half way through to where it says Florida customers would through below 10 percent.

THE WITNESS: Yes. FPL customers -- starting right there?

COMMISSIONER GRAHAM: Yes.

THE WITNESS: Okay. FPL customers would have received more than 90 percent of the total benefits with FPL receiving just below 10 percent.

COMMISSIONER GRAHAM: Okay. So if you look at Mr. Daniel's premise that if the mechanism was in place from 2001 to 2011, if you are looking at this from the eyes of the consumer, if you are the ratepayer, and there was a mechanism in place that you got 90 percent of the benefit and the power company got 10 percent of the benefit, being the ratepayer, does that sound like a good deal to you?

THE WITNESS: I think it seems fair. There are numerous incentive mechanisms around the country that have sort of that same 90/10 split, 90 percent to the customer, 10 percent to the utility. That seems fair to me to is incent to go beyond what would be, I guess, the activities present, absent an incentive mechanism. Again, when you look at this from a historical perspective, it's a little bit challenging to

say --

COMMISSIONER GRAHAM: I get that. I understand. Now, let's move forward a little bit.

THE WITNESS: Sure.

COMMISSIONER GRAHAM: I did a little looking, and the dictionary that I looked at says -- looking for incentive, it says the additional payment to an employee as means to increase output. So if we had the incentive mechanism that you were talking about back from '01 to '11, specifically if you look at '01 and '02, do you think it was possible, if you had the resources, that you could have hit the 46 million in '01 and '02 if you had the extra three people, if you everything set up?

THE WITNESS: I haven't studied the 2001/2002 time frames specifically. I think certainly it is possible that we could have. There was a fair amount of gap between the $32 million in 2001 that we did produce and the 46 million. Again, if we were able to achieve an incremental $10 million through other activities during that period, 100 percent of those $10 million would have gone to customers as we would not have achieved the $46 million threshold.

COMMISSIONER GRAHAM: Okay. So let's continue.

THE WITNESS: Sure.

COMMISSIONER GRAHAM: If we assumed that if you had those extra resources in there and you generate the $46 million on those years between '01 and '08 that you missed, which I think it is only four or five, that would get you up to a number which I calculated was $73.7 million.

THE WITNESS: When you say get you up to 73 million, what does the 73 million represent?

COMMISSIONER GRAHAM: For example, 2001, you have $32.4 million in Column C, correct?

THE WITNESS: That's correct.

COMMISSIONER GRAHAM: If that number went to 46, and you completed the rest of that, completed the rest of that chart, and then in '02 that number went to 46, and in '03 that number went to 46, and in '04 --

THE WITNESS: I understand. Yes, subject to check, I believe that is somewhere in the 73 to $75 million.

COMMISSIONER GRAHAM: So if you had the resources and you had the ability to hit the incentive, and if you filled out the rest of this chart, to my calculation it would have been a positive $26.1 million, not the negative $47.6 million that Mr. Daniel spoke of. Does that make sense to you?

THE WITNESS: Yes, subject to checking the

math, I agree with the premise, yes.

COMMISSIONER GRAHAM: So had you had the resources, this mechanism would have been a beneficial thing for the ratepayers and not the negative thing that Mr. Daniel was speaking of.

THE WITNESS: I believe that is true, yes. I believe this is a very good deal for customers in that every dollar that we contribute either through gains or savings in some way is either going to contribute an entire dollar to customers or some percentage thereof. So, you know, we sort of did the same math that you did taking each of those years where we achieved -- did not achieve the incentive mechanism, took it to 46 million just to figure out kind of what the head room was, if you will, and it worked out to roughly 75 million. So, yes, there would have been an additional 26 or so million dollars contributed to customers through fuel savings.

COMMISSIONER GRAHAM: I wasn't quite sure why Mr. Daniel looked at it the way he did, because the whole reason behind the mechanism was those added resources.

THE WITNESS: I agree, yes.

COMMISSIONER GRAHAM: Okay. Thank you.

CHAIRMAN BRISÉ: Any further questions,

Commissioners?

All right. Redirect.

MR. BUTLER: No redirect. Thank you.

CHAIRMAN BRISÉ: All right. Let's deal with exhibits.

MR. BUTLER: FPL would move Exhibits 694 through 696.

CHAIRMAN BRISÉ: All right. So we will move Exhibits 694 through 696, recognizing the standing objection. And I think that there were no other exhibits for this witness.

Thank you, Mr. Forrest.

(Exhibits 694 through 696 admitted into the record.)

THE WITNESS: Thank you.

CHAIRMAN BRISÉ: You are excused.

MR. BUTLER: Thank you. And we would call our next witness, Mr. Barrett.

CHAIRMAN BRISÉ: All right.

MR. BUTLER: As Mr. Barrett is taking the stand, I will remind the Commission and the parties that we had distributed this Supplemental Rebuttal Testimony earlier, and we'll be asking Mr. Barrett to adopt that and then insert into the record as though read along with his previously prefiled testimony.

ROBERT E. BARRETT

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

DIRECT EXAMINATION

BY MR. BUTLER:

Q. Mr. Barrett, you have previously been sworn, correct?

A. Yes.

Q. Would you please state your name and business address for the record?

A. Robert Barrett, Jr., 700 Universe Boulevard in Juno Beach, Florida.

Q. Have you prepared and filed in this proceeding on -- trying to keep this straight, sorry -- on November 8, 18 pages of Prefiled Rebuttal Testimony?

A. Yes.

Q. And did you also prepare and have we distributed today an additional four pages of Supplemental Rebuttal Testimony dated November 20, 2012?

A. Yes.

Q. Okay. Do you have any changes or revisions to make to either the November 8 or the November 20 Rebuttal Testimony?

A. No.

Q. If I asked you the questions contained in those prepared Rebuttal Testimonies, would your answers be the same?

A. Yes, they would.

MR. BUTLER: Mr. Chairman, I would ask that Mr. Barrett's Rebuttal Testimony, both the November 8 and the November 20 testimony, be inserted into the record as though read.

CHAIRMAN BRISÉ: All right. We will enter Mr. Barrett's Rebuttal Testimony and Supplemental Rebuttal Testimony into the record as though read, recognizing the standing objection.

I. INTRODUCTION

Q. Please state your name and business address.

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

Q. Did you previously submit direct testimony regarding the proposed Stipulation and Settlement that was filed on August 15, 2012 in this proceeding (the "Proposed Settlement Agreement")?

A. Yes.

Q. Are you sponsoring any rebuttal exhibits related to the Proposed Settlement Agreement?

A. Yes. I am sponsoring the following exhibits:

- REB-13 – Expanded OPC Witness Ramas Exhibit DR-8 – Adjusted Earned ROE
- REB-14 – Projected Capital Expenditures (2014 – 2016) Excluding New Generation
- REB-15 – FPL's response to OPC's Sixteenth Set of Interrogatories, Question No. 275
- REB-16 – Total Project Construction Costs for TP5 and WCEC 1&2 - Need vs. Actual

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to demonstrate that the principal

arguments in the direct testimonies of the Office of Public Counsel's ("OPC") witnesses Ramas and Pous, and *pro se* intervenor John W. Hendricks, regarding the Proposed Settlement Agreement are incorrect and should be rejected. I will show that the settlement is fair, just, and reasonable, and in the public interest. I will also address those witnesses' inaccurate contentions about the Generation Base Rate Adjustment ("GBRA") mechanism, the amortization of the dismantlement reserve, and the deferral of FPL's next depreciation and dismantlement studies provisions of the Proposed Settlement Agreement.

Q. Please summarize your rebuttal testimony.

A. In large part, the intervenor testimony that I address is nothing more than hand waving. No new evidence is provided to support their positions; they either want to revisit the 2010 base rate decision or reiterate their earlier testimony in this docket. In my rebuttal testimony, I will clearly demonstrate why the Proposed Settlement Agreement is in the best interest of all parties and should be considered by the Commission in the aggregate rather than piecemeal. My rebuttal testimony makes the following specific points in response to the intervenor arguments against the Proposed Settlement Agreement:

1) OPC witness Ramas incorrectly asserts that the proposed settlement rates will not be fair, just and reasonable;
2) The intervenor arguments against the GBRA should be rejected; GBRA is necessary to accommodate a four-year term and ensures cost protection for customers;

3) OPC witness Pous mischaracterizes the provision to amortize FPL's dismantlement reserve, and I will demonstrate the benefit of that provision for customers; and

4) Witness Pous mischaracterizes the effect of a delay in the preparation and filing of depreciation and dismantlement studies. I will provide context regarding the impact of that provision and its importance to the four-year settlement term.

II. FAIR, JUST, AND REASONABLE RATES

Q. Witness Ramas argues that FPL's rates under the Proposed Settlement Agreement are not fair, just and reasonable because they are not cost-based. Are the rates derived by the settlement agreement cost-based?

A. Yes, of course they are. FPL's March 2012 base rate petition, subsequent discovery, and technical hearings held in August 2012 clearly demonstrate that FPL's cost of service for 2013 for rates to go into effect on January 2, 2013 is greater than its as-filed request of $517 million, when all the adjustments reflected on Hearing Exhibit 399 (FPL Ousdahl Exhibit KO-16) and FPL's post hearing brief filed on September 21, 2012 are taken into account. OPC witness Ramas herself states that FPL's 2013 as-filed, adjusted cost of service is $525 million and the Canaveral Step Increase is $171.9 million on an adjusted basis.

Moreover, FPL has provided voluminous support for the costs that are the basis for its rate request. The base rate filing is based on cost as required in Commission Minimum Filing Requirements ("MFRs"). This cost-based filing formed the basis or starting point of FPL and intervenor negotiations, which resulted in settlement rates that provided a clear discount from FPL's 2013 cost of service. Given the voluminous discovery, the detailed updates and corrections provided by FPL, comprehensive testimony, lengthy hearings and depositions, it is difficult to imagine the Commission could ever have a more robust record to assess cost of service.

Q. OPC witness Ramas calculates revised revenue requirements on her Exhibits DR-7 and DR-8 in an effort to show that the base rate increase of $378 million in the Proposed Settlement Agreement is unreasonable. Do her exhibits raise any valid concerns about the proposed base rate increase?

A. No. Witness Ramas' Exhibit DR-7 inappropriately cherry picks the FPL adjustments that it reflects. Her Exhibit DR-8, on the other hand, properly reflects all of FPL's adjustments in Hearing Exhibit 399 and its post-hearing brief filed on September 21, 2012. With those adjustments, witness Ramas calculates a 2013 revenue requirement deficiency of $398 million, which is $20 million more than the base rate increase included in the Proposed Settlement Agreement. Additionally, on Exhibit REB-13, I have expanded witness Ramas' Exhibit DR-8 to show a comparison of her calculated revenue deficiency of $398 million and earned ROE of 10.70% versus the Proposed

Settlement Agreement revenue increase of $378 million and calculated earned ROE of 10.58%. This comparison demonstrates that rates established under the Proposed Settlement Agreement result in an earned ROE below the ROE midpoint for the 2013 test year.

III. GBRA MECHANISM

Q. Is the GBRA mechanism for the Canaveral Modernization Project substantially the same as the Canaveral Step Increase requested by FPL in its March 2012 base rate petition?

A. Yes. The GBRA mechanism in the Proposed Settlement Agreement reflects the same revenue requirement included in the Canaveral Step Increase. In her direct testimony on the Proposed Settlement Agreement, OPC witness Ramas agrees that an increase in base rates associated with the Canaveral Modernization Project is reasonable because it falls within FPL's 2013 test year.

Q. OPC witness Ramas believes that the revenue requirements associated with the Canaveral Modernization Project should be no more than $121.5 million. Do you agree with her calculation?

A. No. Witness Ramas is simply rehashing OPC litigation positions from the technical hearings in August 2012 and advocating an average embedded cost of capital approach. The incremental cost of capital approach is the appropriate method to determine revenue requirements for the Canaveral Step

Increase and was negotiated and agreed to by the parties to the Proposed Settlement Agreement to apply to the Canaveral Modernization Project and the other GBRA plants.

Q. Are additional base rate increases necessary during the term of the Proposed Settlement Agreement in order to provide FPL an opportunity to recover the revenue requirements for the Riviera and Port Everglades Modernization Projects?

A. Yes. Notwithstanding OPC witness Ramas' position, the reality is that increases in FPL's base rates are necessary for these modernization projects. Her vague references to other potential changes in FPL's costs and revenues that might offset those revenue requirements are simply too speculative for FPL or any prudently managed utility to rely upon as a basis for agreeing to the four-year term of the Proposed Settlement Agreement. Witness Ramas is basically asking the Commission to offset revenue increases for the Modernization Projects that are certain to occur with uncertain, speculative increases in revenues or decreases in expense that may or may not materialize.

Q. Can you please elaborate?

A. Yes. There are several reasons why it is unlikely that FPL will be able to avoid base rate increases, either in whole or in part, for these modernizations projects:

- First, the magnitude of the revenue requirements is such that minor, incremental offsets are simply not going to be adequate. As stated in my direct testimony and included on Exhibit REB-10, absent rate adjustments,

FPL will experience declines in its earned ROE of 148 and 136 basis points, respectively, when the Riviera and Port Everglades Modernization Projects go into service. Absent the GBRA mechanism to recover the costs of these modernization projects, such substantial deterioration in earnings likely would force FPL to petition the Commission for multiple base rate increases to recover the costs associated with these projects. As such, FPL could not have agreed to a settlement without the GBRA provision.

- Second, OPC witness Ramas ignores the fact that FPL's 2013 test year assumes FPL will amortize $191 million in 2013. Barring unforeseen events, FPL cannot realistically expect to amortize less than this amount in 2013 and still achieve reasonable earnings for the year. Thus, any analysis of the revenue requirements over the remaining term of the Proposed Settlement Agreement (i.e., 2014-2016) must take into account the expectation that FPL will only have $209 million left to amortize over three years (i.e., $400 million of Reserve Amount that FPL may amortize under the Proposed Settlement Agreement, less $191 million amortized in 2013. This clearly would be insufficient to maintain the 2013 earnings position even if all of FPL's other revenue requirements remain flat, which is unlikely to be the case.
- Third, given the modest recent customer growth rates, any increase in revenues will likely not be sufficient to offset the cost of these modernizations. In addition, FPL expects to experience the usual

inflationary pressures on its operations costs, with no mechanism under the settlement agreement to address inflation.

- Fourth, it is highly unlikely that a utility already operating as efficiently as FPL could produce productivity gains to fully offset the need for a base rate increase. However, to the extent gains in productivity are achieved during the settlement period, monthly earnings surveillance reporting will reflect that cost reduction.
- Finally, FPL will be adding substantial investment in infrastructure other than power plants, and there is no mechanism under the Proposed Settlement Agreement for rate increases to recover those investments. As reflected on Exhibit No. REB-14, FPL indicated in its 2012 Third Quarter 10-Q filing that it will spend approximately $4.7 billion between 2014 and 2016 for capital expenditures *excluding* new generation. This is equivalent to at least four new $1.0 billion generating units, for which no base rate relief is provided under the Proposed Settlement Agreement. For all the reasons above, it is clear that FPL must have base rate relief for its modernization investments during the settlement term.

Q. OPC witness Ramas argues that need determination proceedings do not provide a sufficient opportunity to evaluate the estimated cost of proposed generating units. Do you agree with this statement?

A. No. As FPL witness Deason demonstrates in his rebuttal testimony on the Proposed Settlement Agreement, the Commission undertakes a robust analysis of the costs of generating units in its need determination proceedings. History

demonstrates the accuracy of FPL's need determination cost estimates. FPL has demonstrated repeatedly over many years, its strong performance in engineering and construction of fossil generation. This is a competency that can be counted on to deliver new fossil generation on time and on budget. It is also important to note that GBRAs protect customers if the in-service cost of a unit declines from the need determination estimate, a protection that does not exist in the conventional base rate setting process.

As described on page 9 of my direct testimony on the Proposed Settlement Agreement, the actual costs for Turkey Point Unit 5 were lower than estimated in its need determination and a credit of $9.3 million was returned to customers. In addition, the actual costs associated with West County Energy Center Units 1 and 2, which were also recovered through GBRA, are right in line with the estimates provided in FPL's need determination filing. The comparison of need determination and actual capital costs for all these generating units is contained in FPL's response to OPC's Sixteenth Set of Interrogatories, Question No. 275 (Exhibit REB-15). As reflected on Exhibit REB-16, over the period that FPL implemented GBRA for three generating units, the actual cost in the aggregate was within 1% of the need determination estimate.

Q. OPC witness Ramas discusses concerns that the prior Commission expressed in 2010 when it denied FPL's request for permanent GBRA authority. Does the Proposed Settlement Agreement address those

concerns?

A. Yes. The primary concern the previous Commission expressed regarding the GBRA mechanism in FPL's last rate case arose from FPL's request to institute GBRA authority on a permanent, prospective basis which the Commission felt would require a policy change. This is not the case in the Proposed Settlement Agreement. As described in my direct testimony regarding the Proposed Settlement Agreement, the GBRA mechanism is only applicable to specifically identified generating units (i.e., the Canaveral, Riviera, and Port Everglades Modernization Projects). The remaining concerns expressed by the prior Commission in FPL's last rate case are addressed in my direct testimony regarding the Proposed Settlement Agreement.

Q. Does OPC witness Ramas mischaracterize the significance of a GBRA being "mid-point seeking?"

A. Yes. FPL is not discarding the concept of an ROE range of reasonableness, but rather pointing out that the GBRA will help ensure that FPL can stay within it. The mid-point ROE is an appropriate goal, and GBRA helps achieve it. GBRA will bring the ROE down if earnings are above the mid-point before the plant goes into service, and it will help pull the ROE up (to the midpoint) if the Company were earning below the mid-point. Thus, implementation of a GBRA by itself cannot cause an over-earnings situation.

Q. OPC witness Ramas rejects FPL's concern for administrative efficiency and argues that the goal should not be to reduce the burden on FPL,

Commission Staff or Commissioners. Do you agree with her?

A. No. While it is true that administrative efficiency should not be the sole rationale for promoting settlements, it is an important consideration in the evaluation of individual settlement agreements and settlement provisions as a whole. As a regulated enterprise, the Company accepts that base rate filings are a necessary part of doing business. At the same time, all parties must recognize that base rate proceedings require a tremendous amount of resources on the part of all parties and the Commission, and frankly, can be a distraction from pursuing efficient utility operations. Where a reasonable alternative such as GBRA is offered that adequately protects customer interests while reducing those distractions, it is in the interest of all to take advantage of it. FPL has demonstrated year after year its continued commitment to low rates and superior reliability. Coupled with the confidence from past experience that FPL has the ability to bring plants into service at or below its need-determination estimates of construction costs, the GBRA is an ideal win-win opportunity.

Q. *Pro se* intervenor Hendricks asserts that the GBRA mechanism would not incorporate changes in either the federal or state income tax rates. Is this correct?

A. No. Pursuant to Paragraph 8 of the Proposed Settlement Agreement, FPL's base rates will be increased by the annualized base revenue requirement for the first 12 months of operations for each GBRA. The federal and state income tax rates in effect when a plant goes in service will be used to

calculate the revenue requirement associated with the GBRA for that plant. Regardless of the income tax rates in effect at the time, the revenue requirement will be calculated to produce an after-tax ROE of 10.7%. If the tax rates were reduced, this would mean that the GBRA revenue requirements to generate the 10.7% ROE would be reduced accordingly.

IV. AMORTIZATION OF DISMANTLEMENT RESERVE

Q. Does the dismantlement reserve amortization included in the Proposed Settlement Agreement violate the matching principle as asserted by witness Pous?

A. No. FPL's dismantlement reserve for the Modernization Project sites contains amounts collected for dismantlement costs that have now been deferred substantially beyond the timeframe assumed in the currently authorized accruals. Thus, it does not violate the matching principle to provide an accelerated return of a portion of the dismantlement reserve to the customers who have been funding it. That is, in fact, precisely the effect of the dismantlement reserve amortization in the Proposed Settlement Agreement. The use of an accelerated amortization coupled with a reserve surplus position was advocated by OPC in FPL's last rate case proceeding (Docket No. 080677-EI). Furthermore, the dismantlement amortization is so modest in size relative to FPL's overall revenue requirement that it cannot realistically be characterized as leading to significant intergenerational differences. My

direct testimony on the Proposed Settlement Agreement and Exhibit REB-11 show the likely impact on the post-settlement dismantlement reserve accrual is only about $7 million per year. This is 0.1% of FPL's total 2013 revenue requirements and would constitute an impact on a 1,000 kWh residential bill of only about seven cents per month, after the end of the settlement term.

Q. OPC witness Pous attempts to distinguish this amortization from the similar amortization of depreciation surplus by arguing that FPL will amortize a portion of the dismantlement reserve without customers getting a corresponding rate benefit. Do you agree?

A. No. The dismantlement reserve amortization is one of the provisions in the Proposed Settlement Agreement that is needed to keep the size of the rate increase modest and to facilitate the four-year settlement term. Without it, settlement rates would be higher, and/or the settlement term would be shorter. Customers clearly benefit from the settlement rates and from having them "locked in" for four years. It should be noted that depreciation reserve amortization has been used as a mechanism to help facilitate favorable settlements previously for both FPL and Progress Energy Florida.

Q. Is there anything in the Commission rules or precedent that precludes FPL from amortizing a portion of its fossil dismantlement reserve?

A. No. There is no requirement in the Commission's rules or precedent for an imbalance to be demonstrated as a prerequisite to amortizing a portion of the dismantlement reserve.

Q. Under the Proposed Settlement Agreement, is it reasonable to allow FPL to amortize a portion of its dismantlement reserve?

A. Yes. As I discussed previously, there is evidence of over-accrual of certain costs based on changed circumstances since FPL's dismantlement rates were last determined in 2010. FPL's Modernization Projects, resulting in the deferral of greenfield costs, provides evidence that some amounts accrued and recorded in the dismantlement reserve will be further deferred into the future. Witness Pous himself testifies that, if "...the initial dismantlement studies anticipated full green fielding of the sites rather than repowering, then the fossil dismantlement reserve will undoubtedly be *materially* over accrued." (Emphasis added). Therefore, given witness Pous' statement, it should be reasonable to amortize a portion of FPL's dismantlement reserve as provided in the Proposed Settlement Agreement.

V. DEFERRAL OF DEPRECIATION STUDY

Q. OPC witness Pous asserts that FPL will have another depreciation reserve surplus as a result of its next depreciation study. Do you agree with his assertion?

A. No. Witness Pous provides no evidence for his assertion. This is an example of witness Pous wanting to judge the Proposed Settlement Agreement on what might occur rather than what we actually know. Authorized service lives for combined cycle plant were set and a reserve surplus calculated by the

Commission in FPL's 2010 rate case order after considering all evidence, including the evidence of both FPL's depreciation witness and witness Pous. Since that time, FPL has been making substantial additional capital investments, primarily in assets with fixed life spans, which will tend to increase depreciation accrual requirements and hence tilt the imbalance toward a deficit.

Q. In support of the Proposed Settlement Agreement, is it reasonable for FPL to defer its next depreciation study?

A. Yes. OPC wholeheartedly endorsed deferral of the depreciation and dismantlement studies in the recent Progress Energy Florida settlement. No mention of intergenerational inequity was made by OPC. Their positions in this docket are completely inconsistent with that recent endorsement, and witness Pous offers nothing to reconcile the inconsistency.

In an effort to provide stability and predictability in rates to the benefit of customers over the next four years, it is reasonable to defer the depreciation study. A new depreciation study is not simply a continuation of an old study, but is instead a new study that develops depreciation rates based on updated analysis of depreciation parameters (which may or may not change) which are then applied to vintage, historical data using current plant and reserve balances. The illustrative examples on Exhibit REB-12 to my direct testimony provide evidence as to how significant additional spending using current authorized rates can result in deficit-trending reserve imbalances.

Q. Does this conclude your rebuttal testimony?

A. Yes.

I. INTRODUCTION

Q. Please state your name and business address.

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

Q. Did you previously submit direct and rebuttal testimony regarding the proposed Stipulation and Settlement that was filed on August 15, 2012 in this proceeding (the "Proposed Settlement Agreement")?

A. Yes.

Q. Are you sponsoring any supplemental rebuttal exhibits related to the Proposed Settlement Agreement?

A. Yes. I am sponsoring the following exhibit:

- REB-17 – Corrected Witness Ramas Exhibit for Infrastructure Costs Revenue Requirement Including Surplus Amortization

Q. What is the purpose of your supplemental rebuttal testimony?

A. The purpose of my rebuttal testimony is to demonstrate that Witness Ramas' critique of Mr. Pollock's Exhibit JP-21 is incorrect and inconsistent. Exhibit REB-17 reflects the effect of the additional investment in infrastructure between the Company's base rate filing for the 2010 test year and the 2013 proposed revenue requirements based on those additional investments. The exhibit also shows that this increase is comparable to the settlement base rate

increase of $378 million.

Q. Is Witness Ramas correct in her statement that the amortization of surplus in 2010 and 2013 do not reflect infrastructure changes?

A. No. The total depreciation reserve surplus calculated by the Commission in the Company's 2010 base rate proceeding was based on its assessment of the imbalance in depreciation reserve for all of the Company's assets including those related to infrastructure investments in Transmission and Distribution and General plant functions.

Q. How did Witness Ramas attempt to correct for this assumption of error in Exhibit JP-21?

A. Hearing Exhibit 713 shows how Witness Ramas attempted to correct this error by removing the effects of the change in surplus amortization from each of the test years 2010 and 2013.

Q. Did Witness Ramas correctly reflect that adjustment to remove the effects of surplus amortization?

A. No. Although she consistently removed the proper amounts of surplus amortization from 2010 and 2013 on line 5a, she then inconsistently and incorrectly reflected the 2013 surplus amortization amount again on line 8 therefore, inappropriately and inexplicably reducing the revenue requirement by another $191 million.

Q. Given that it is necessary for the base rate increase to recover infrastructure costs and also reflect the impact of surplus amortization, how should this comparison be demonstrated?

A. My Exhibit REB-17 reflects the proper comparison of the base rate settlement agreement increase of $378 million to the revenue requirement growth due to infrastructure investment and surplus amortization credit in 2010 through 2013. This analysis clearly shows that the base rate increase of $378 million would be barely adequate to recover the increases in revenue requirement associated with past investment and the impact of the change in the surplus amortization credit in 2010 through 2013. I also note that this increase of $378 million makes no provision for the cessation of the $191 million surplus amortization credit or other cost increases over the term of the Proposed Settlement Agreement.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BY MR. BUTLER:

Q. Mr. Barrett, are you also sponsoring Exhibits REB-13 through REB-16 to your November 8 Rebuttal Testimony?

A. Yes.

Q. And then you have attached a document labeled as Exhibit REB-17 to the Supplemental Rebuttal Testimony, and you prepared that, as well?

A. That's correct.

MR. BUTLER: Mr. Chairman, I would note that REB-13 through 16 are premarked as Exhibits 697 to 700. We hadn't premarked, which I think means we are at, what, 725?

CHAIRMAN BRISÉ: I think you may be correct. Yes, 725.

MR. BUTLER: I would ask that we mark Mr. Barrett's Exhibit REB-17 as Exhibit 725.

CHAIRMAN BRISÉ: Okay.

MR. BUTLER: Thank you.

(Exhibit Number 725 marked for identification.)

BY MR. BUTLER:

Q. Mr. Barrett, would you please summarize your Rebuttal Testimony?

A. Yes. Good afternoon, Mr. Chairman and

Commissioners. My Rebuttal Testimony for the proposed settlement agreement addresses the inaccurate intervenor contentions concerning the GBRA mechanism, the amortization of the dismantlement reserve, and the deferral of FPL's next depreciation and dismantlement studies.

The intervenor's testimony offers no evidence to support their positions, rather they simply revisit the 2010 base rate decision, or reiterate their earlier testimony in this docket. OPC Witness Ramas argues that the 378 million base rate increase included in the proposed settlement agreement is not cost based, and therefore is not fair, just, and reasonable. The filing demonstrates just the opposite. The settled total base rate increase of $378 million is clearly a discount on FPL's 2013 cost of service filed in this proceeding.

Throughout this docket, FPL has provided voluminous discovery, detailed updates and corrections to MFRs, and comprehensive testimony. We have engaged in lengthy hearings and depositions on this evidence. The record as to FPL's cost is exceptionally robust, far more than is usually case for settlements that are presented to the Commission for approval.

Witness Ramas agrees that a step increase is reasonable for the Canaveral modernization project.

However, she wants the Commission to deny increases for the similar modernizations at Riviera and Port Everglades modernization projects, which will provide similar benefits to customers.

Her assertion is that there may be changes in FPL's costs and revenues that perhaps could offset those revenue requirements. My rebuttal testimony explains why there is only a remote possibility that those speculative changes could offset the known revenue requirements for the modernization projects. She also highlights concerns that the prior Commission expressed in 2010 when it denied FPL's request for a permanent GBRA authority. As described in both my direct and rebuttal testimonies, FPL has addressed all the Commission's concerns regarding the GBRA mechanism and has provided evidence that those concerns are not valid in this instance.

OPC Witness Pous argues incorrectly that amortization of a portion of the dismantlement reserve violates the matching principle and doesn't provide customers a corresponding rate benefit. My rebuttal testimony shows that FPL's amortization proposal is, in fact, fully consistent with the matching principle and demonstrates the customer benefits from lower settlement rates that this amortization helps make possible.

I also should note that Mr. Pous' own testimony supports likely overaccrual in FPL's dismantlement reserve due to deferral of dismantlement costs. Witness Pous makes the unfounded assertion that FPL is proposing to defer its depreciation study in order to avoid flowing back more surplus to customers. This assertion is simply inconsistent with the evidence I have already presented of a deficit trend in depreciation rates. It is undisputed that FPL has been making substantial additional capital investments primarily in assets with fixed lifespans that tend to increase fuel depreciation accrual requirements and tilt the imbalance towards a deficit.

Finally, I find OPC's objection to deferring the depreciation and dismantlement studies to be surprisingly inconsistent with its support for the recent Progress Energy Florida settlement, which also provides for deferrals of those studies. OPC made no mention of intergenerational inequity when it supported that settlement. OPC positions in this docket are completely inconsistent with that recent endorsement and Witness Pous offers nothing to reconcile the inconsistency.

In conclusion, the testimony of OPC Witnesses Ramas and Pous contain no valid objection to the

proposed settlement agreement which is in the best interest of all parties and should be approved by the Commission.

That concludes my summary.

MR. BUTLER: Thank you, Mr. Barrett.

I tender the witness for cross.

CHAIRMAN BRISÉ: Mr. Rehwinkel.

MR. REHWINKEL: Mr. Chairman, the Public Counsel has no questions of Mr. Barrett. Thank you.

CHAIRMAN BRISÉ: All right.

MR. WRIGHT: Thank you, Mr. Chairman. I have a Schef Wright zero.

CHAIRMAN BRISÉ: Okay. Mr. Saporito.

MR. SAPORITO: No questions, Mr. Chairman.

CHAIRMAN BRISÉ: All right. Mr. Garner.

MR. GARNER: No questions.

CHAIRMAN BRISÉ: Mr. Hendricks.

MR. HENDRICKS: No questions.

CHAIRMAN BRISÉ: Okay. Staff.

MS. KLANCKE: Staff has just a few questions.

CHAIRMAN BRISÉ: Sure.

CROSS EXAMINATION

BY MS. KLANCKE:

Q. Welcome back, Mr. Barrett.

A. Thank you.

Q. I would like to turn to your attention to the specific requirements of Paragraph 11 of the settlement agreement, and I would like you to turn to your testimony beginning on Page 16 and on to Page 17 of your Rebuttal Testimony, please.

A. If you would give me just a minute to get the settlement agreement.

Q. Certainly.

A. Which paragraph in the settlement?

Q. Paragraph 11 dealing with the deferral of the depreciation dismantlement studies.

A. Okay.

Q. Paragraph 11 specifies that FPL, quote, "Shall not be required during the term to file a need depreciation study or dismantlement study," end quote, is that correct?

A. Yes.

Q. And the last sentence of Paragraph 11 provides that the, quote, "Parties agree that the provisions of Rules 25-6.0436 and 25-6.04364 pursuant to which depreciation dismantlement studies are generally filed at least every four years will not apply to FPL during the term," end quote, is that correct?

A. Yes.

Q. The term parties as used in this provision is

synonymous with the term signatories as we have been utilizing, is that correct?

A. Correct.

Q. So OPC, FRF, Village of Pinecrest, Mr. Saporito, and Mr. Hendricks have not agreed to this waiver, is that correct?

A. That is correct.

Q. And under Rules 25-6.0436 and 25-6.04364, absent the approval of the agreement, FPL would be required to file with the Commission both a depreciation study and a dismantlement study in March of 2013, is that correct?

A. That's correct.

Q. Are you aware that Section 120.542 of the Florida Statutes provides for a specific procedure for the waiver of rule requirements?

A. I'm not familiar with that.

Q. Fair enough. I'll move on. To your knowledge, has FPL filed for a waiver of the requirements of Rules 25-6.0436 and 25-6.04364 in conjunction with its settlement in this proceeding?

A. I don't know whether we have filed a waiver or not. I would presume that this request of the Commission constitutes a waiver. I don't know the requirements of that statute.

Q. To your knowledge has FPL filed for such a waiver other than the provisions of this settlement agreement?

A. Not to my knowledge.

Q. Turning back to the language of Paragraph 11 of the settlement which uses the phrase shall not be required to file the depreciation or dismantlement studies, does this mean that FPL will not be required, but still may file the respective studies during the term of the agreement if they so choose?

A. Yes.

Q. If the agreement is approved and FPL elects not to file the studies during the term of the agreement, when would FPL file its next depreciation and dismantlement studies?

A. I'm presuming it would be right after the end of this agreement. I don't have a specific date.

Q. Certainly. Just to put a fine point on this, you have previously testified in your Direct Testimony that the last time FPL filed a depreciation or dismantlement study was March of 2009, is that correct?

A. That's correct.

Q. And as we discussed, the two rules require the filing of these studies four years from the submission date of the previous study, is that correct?

A. That's my understanding.

Q. If the four-year settlement is approved, wouldn't it stand to reason, then, that the next possible filing date for these studies would be March of 2017?

A. That makes sense.

Q. Fair enough. Turning to your Rebuttal Testimony, Page 17, and in particular I'd like to refer you to Lines 9 through 10.

A. Okay.

Q. In this portion of your testimony you reference the recent approval of the Progress Energy Florida settlement, do you see that?

A. I do.

Q. And are you aware that the terms of the Progress settlement defer the filing of the depreciation, fossil dismantlement, and nuclear decommissioning studies?

A. Yes.

Q. Unlike the Progress settlement, Paragraph 11 of the FPL settlement does not address the filing of FPL's next nuclear decommissioning study, is that correct?

A. That's correct.

Q. Pursuant to the order issued in Docket Number

100458, FPL is currently required to file its next nuclear decommissioning study no later than December 13th, 2015, is that correct?

A. That's my understanding, yes.

Q. And the possible approval of this settlement agreement would not impact FPL's requirement to file its next nuclear decommissioning study by this date?

A. That's correct.

Q. To your knowledge does FPL currently intend to file its next nuclear decommissioning study no later than December 13th, 2015, regardless of the approval of the agreement?

A. That's my understanding, yes.

MS. KLANCKE: Excellent. I have no further questions for this witness.

CHAIRMAN BRISÉ: All right. Thank you. Commissioners.

All right. Redirect.

MR. BUTLER: No redirect.

CHAIRMAN BRISÉ: All right. Let's deal with exhibits.

MR. BUTLER: For FPL that would be Exhibit 697 through 700 and 725, move those into the record.

CHAIRMAN BRISÉ: All right. So we will move into the record 697 through 700 and 725, recognizing the

standing objection.

All right. Thank you, Mr. Barrett.

THE WITNESS: Thank you.

CHAIRMAN BRISÉ: You are excused.

(Exhibit Numbers 697 through 700 and Exhibit Number 725 admitted into the record.)

CHAIRMAN BRISÉ: FPL, call your next witness.

MR. LITCHFIELD: Thank you, Mr. Chairman.

FPL calls its remaining rebuttal witness, Mr. Dewhurst, who was previously sworn. (Pause.)

Thank you. May I proceed?

CHAIRMAN BRISÉ: Yes, you may.

MORAY P.DEWHURST

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

DIRECT EXAMINATION

BY MR. LITCHFIELD:

Q. Mr. Dewhurst, would you please, once again, state your name and business address for the record this evening.

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

Q. And you have prepared and caused to be filed 27 pages of Prefiled Rebuttal Testimony in this

proceeding on November 8th, 2012?

A. That's correct.

Q. Do you have any changes or revisions to that Prefiled Rebuttal Testimony?

A. No.

Q. If I asked you the same questions contained in that testimony, would your answers be the same this evening?

A. Yes.

MR. LITCHFIELD: Mr. Chairman, I would ask that Mr. Dewhurst's Prefiled Rebuttal be inserted into the record as though read.

CHAIRMAN BRISÉ: All right. At this time we'll enter Mr. Dewhurst's Prefiled Rebuttal Testimony into the record as though read, recognizing the standing objection.

I. INTRODUCTION

Q. Please state your name and business address.

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

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

A. Yes. I submitted both direct and rebuttal testimony in connection with the underlying technical hearing. In addition, I submitted direct testimony in this supplemental phase of the proceeding to consider the Proposed Settlement Agreement.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to respond to the contentions raised by Office of Public Counsel's ("OPC") witness O'Donnell with regard to the level of Return on Equity ("ROE") and equity ratio in the Proposed Settlement Agreement.

Q. Do you have any exhibits to your rebuttal testimony?

A. Yes. Attached as MD-11 is the Proposed Settlement Agreement that is the subject of my testimony.

II. SUMMARY

Q. Please summarize your rebuttal testimony.

A. OPC witness O'Donnell's entire approach to the question of the reasonableness of the ROE and capital structure embedded in the Proposed Settlement Agreement is flawed. He considers ROE and capital structure in isolation, ignoring the broader context of the full scope of the Proposed Settlement Agreement as well as the broader environment in which it was negotiated. He provides little new perspective on the subjects, instead largely reiterating OPC's previous claims, and what new information he does offer is internally inconsistent and does not support his contentions.

Apart from reviewing the full range of testimony previously submitted on ROE and capital structure, including that submitted by Dr. Avera, there are a number of other facts that the Florida Public Service Commission ("FPSC" or "the Commission") can look to when considering the reasonableness of ROE and capital structure within the context of a general base rate case settlement agreement. First, the Proposed Settlement Agreement was extensively negotiated between parties with widely differing and opposing positions on the core issues, including ROE and capital structure. Second, the resulting residential typical bills likely will continue to be the lowest in the state, emphasizing the affordability resulting from the Proposed Settlement Agreement. Third, and contrary to witness O'Donnell's contention, the FPSC can reasonably look to the Progress

Energy Florida ("PEF") 2012 Settlement Agreement for a wide range of comparisons with corresponding terms in the Proposed Settlement Agreement, including ROE.

Witness O'Donnell's claim that the FPSC should ignore all authorized ROEs (for other utilities with which FPL is frequently compared by investors) *except* those issued this year is misguided. Investors can and do compare FPL's authorized ROE with those currently applicable to other utilities in the southeast peer group, and those ROEs represent the contemporaneous, competing opportunities available to them.

Witness O'Donnell also makes fatal errors in his attempt to argue that costs of capital have declined in 2012, and I demonstrate that his own data undermine his contention and instead are consistent with the observation I made in my direct testimony that, under the Proposed Settlement Agreement, FPL's investors are exposed to a greater degree of inflation and interest rate risk than they would otherwise be.

In his superficial treatment of equity ratio, witness O'Donnell offers no new information but merely repeats earlier, flawed logic, from his previous testimony in this proceeding. Contrary to his implicit assumption, companies differ in their risk profiles in many more ways than simply their equity ratios; indeed, the very fact that FPL's current equity ratio co-exists with its current 'A-' rating clearly

demonstrates that there must be other risk factors (which I described extensively in my prior direct and rebuttal testimony) that 'require' FPL's 59.6% equity ratio to compensate for, while still supporting an 'A-' rating. By witness O'Donnell's logic, FPL should be rated much higher than it is if its equity ratio is "extravagant."

Finally, witness O'Donnell repeats the same errors around the impact on FPL's credit ratings of adopting OPC's positions on ROE and equity ratio that were previously expressed in his August testimony. Not only is there no new information here for the FPSC to consider but the repetition of obviously flawed analysis without any attempt to address the criticisms that have been raised against it is concerning.

In summary, witness O'Donnell's testimony adds little to his prior presentation in this case, and when the errors in his analysis are corrected serves to support rather than refute the contention that approval of the Proposed Settlement Agreement is in the public interest.

III. O'DONNELL'S APPROACH IS FUNDAMENTALLY FLAWED

Q. Does OPC witness O'Donnell consider the Proposed Settlement Agreement in its entirety?

A. No. Although he notes (page 4) that "each settlement is based on factors that are unique to the circumstances of that case," witness O'Donnell does not attempt to consider the Proposed Settlement Agreement in its entirety. In fact, he explicitly states that he is "addressing the technical aspects of [co-signatories witnesses'] testimonies as they relate to the cost of capital components of the [Proposed Settlement Agreement]" (page 3).

Q. Do witness O'Donnell's arguments on the cost of capital provide a meaningful basis to judge the overall reasonableness of the Proposed Settlement Agreement?

A. No. In addition to ignoring the broader context of the overall "unique circumstances" of the Proposed Settlement Agreement, witness O'Donnell's testimony is largely restricted to comments on ROE and, to a lesser extent, equity ratio that simply reiterate points made in earlier testimony by OPC witnesses. He provides no analysis on whether or not a 10.7% authorized ROE is reasonable *in the context of the Proposed Settlement Agreement*. Rather, he refers specifically to OPC witness Woolridge's prior testimony to support his core contention that a 10.7% ROE "is higher than would be warranted by any credible analysis of capital market conditions" (page 3). Further, what little additional contextual analysis he does provide is internally inconsistent and does not support his claims, as I will discuss later in my testimony. And finally, even in making his narrow points, he makes no attempt to rebut the competent and extensive evidence provided by FPL witness Avera that shows that current capital market conditions support an ROE range from 10.25% to 12.25%.

In effect, witness O'Donnell concludes that the Proposed Settlement Agreement's ROE and capital structure terms are too favorable to FPL because they do not line up with the positions that OPC's witnesses have taken earlier in this case and that, as a result of the ROE and capital structure terms, the rates resulting from the Proposed Settlement Agreement would not be fair, just and reasonable. This is made explicit in his final summary in which he asserts that the 59.62% equity ratio (which reflects FPL's current equity ratio) is "excessive, unreasonable and would unduly burden consumers" and the Proposed Settlement Agreement's 10.7% authorized ROE is "excessive, unreasonable and would unduly burden consumers" (p. 14).

Thus, witness O'Donnell's testimony boils down to the notion that because the Proposed Settlement Agreement's terms do not reflect the positions OPC has taken with respect to ROE and capital structure, the resulting rates are not fair, just and reasonable. Yet it would be extraordinary if a settlement agreement, extensively negotiated between independent parties with differing interests, would reflect the extreme positions taken by a party that chose not to enter into the agreement, particularly on a core issue such as ROE, which typically serves as a balancing factor in settlement discussions. Accordingly, witness O'Donnell's testimony provides little basis for the FPSC to judge whether or not the Proposed Settlement Agreement is in the public interest.

Q. Is the approach OPC witness O'Donnell takes in his testimony appropriate for consideration of the Proposed Settlement Agreement?

A. No. FPL's and OPC's underlying positions on ROE and capital structure as stand-alone issues in this proceeding are not in dispute and have not changed. I believe the FPSC is well able to evaluate the relative merits of the different arguments in support of each. I believe the Commission's challenge is to evaluate the totality of the Proposed Settlement Agreement and its provisions – including the reasonableness of the 10.7% ROE and the continued use of FPL's existing and historical capital structure – in the broader context of prior testimony and the totality of today's facts and circumstances. Consequently, the challenge for witnesses is to offer additional evidence that can be used to evaluate the overall reasonableness of the outcomes that would ensue if the Commission were to approve the Proposed Settlement Agreement.

Q. What evidence can the FPSC look to that is independent of the parties' established views on ROE and capital structure?

A. There are three important facts that witness O'Donnell completely ignores that are highly relevant here. First, all aspects of the Proposed Settlement Agreement were extensively and aggressively negotiated by independent parties with opposing positions on the core issues in the underlying case, including ROE and capital structure. In fact, the co-signatories had litigation positions which, while not as extreme as those advanced by the OPC, were in direct opposition to FPL's. Thus, these terms, when viewed in the context of the full Proposed Settlement Agreement and the full facts and circumstances of FPL's situation, necessarily

imply a meaningful degree of give-and-take. While not dispositive, this provides strong support for the conclusion that the Proposed Settlement Agreement strikes a reasonable overall balance.

Second, witness O'Donnell ignores the fact that the 10.7% ROE negotiated under the Proposed Settlement Agreement will decrease FPL's overall cost of capital. FPL's cost of capital, as noted by OPC's own witness Ramas, would fall from the already reasonable level of 7.00% in FPL's originally filed case, to an even lower 6.53% under the negotiated agreement. This is one of the lowest electric investor owned utility ("IOU") cost of capital rates in the state of Florida. This reinforces that the Proposed Settlement Agreement's ROE is reasonable.

Third, witness O'Donnell completely ignores the testimony that shows that if the Proposed Settlement Agreement is approved, residential customers will continue to enjoy the lowest typical bills in the state in 2013 and very likely for the term of the Proposed Settlement Agreement. Abundant testimony in the underlying case demonstrated that FPL's superior cost position relative to others in the state was *not* merely a matter of low natural gas prices or scale but instead was in significant measure a result of actions that FPL had taken. Again, this point is not dispositive but it is clearly very strong support for the view that the outcomes of approving the Proposed Settlement Agreement would include rates that are fair just and reasonable.

Notwithstanding this fundamental flaw in his overall approach, I will rebut each of witness O'Donnell's arguments below.

IV. THE SETTLEMENT ROE IS REASONABLE

Q. What are witness O'Donnell's arguments regarding ROE?

A. Witness O'Donnell asserts (page 3) that the 10.7% ROE is "higher than would be warranted by credible analysis of capital market conditions" and therefore would constitute a windfall for investors. He makes two arguments based on current capital market conditions. First, he continues to rely on witness Woolridge's analysis presented during the August 2012 hearing, which was proven to be inaccurate and unreliable by witness Avera's and my own previous rebuttal testimony and witness Woolridge's cross examination. Second, he claims that the cost of capital has fallen since January 2012, supporting lower ROEs than those recently awarded by this Commission. Additionally, he tests the reasonableness of the Proposed Settlement Agreement's ROE of 10.7% by comparing it to only those ROEs awarded in 2012, which is but a small subset of ROEs currently available to IOU investors. His arguments are incomplete, shortsighted and inaccurate.

Q. Why are witness O'Donnell's arguments with respect to ROE incomplete?

A. In referring to witness Woolridge's earlier testimony, witness O'Donnell simply ignores the existence of other evidence provided by myself and witness Avera that

shows that 10.7% is materially lower than can be justified by reference to "credible analysis of capital market conditions."

Q. Do you agree with OPC witness O'Donnell's argument that the cost of capital has fallen in 2012?

A. No, and witness O'Donnell's own data do not support the points he is trying to make.

Q. Please explain.

A. Witness O'Donnell argues that interest rates have fallen, utility stocks have risen, and therefore cost of capital must have decreased since the Gulf decision in early April. Yet he also argues that cost of capital has decreased since the PEF settlement in mid-January. But according to witness O'Donnell's own data, interest rates in mid-January were not materially different from where they are currently. Consequently, if the decline in interest rates between April and today is evidence of decreasing cost of capital then there must have been a corresponding – and roughly equal – *increase* in the cost of capital from January to April. Witness O'Donnell cannot have it both ways.

Q. Can you suggest an alternative explanation for the data witness O'Donnell has cited?

A. Yes. A much more realistic explanation for what has happened so far this year in the treasury market is simply continued volatility of rates, driven by continued uncertainty about the economic outlook and about government economic and monetary policy, which, far from implying a *decrease* in cost of capital would potentially imply an *increase* in risk and hence an increase in cost of capital, other

things equal. A casual glance at the time series of rates for 2012 shows no readily discernible trend but rather shows significant variability, thus underlining my earlier direct testimony that investors during the term of the Proposed Settlement Agreement are exposed to a greater degree of interest rate risk than the likely alternative of a series of rate cases in those same years. Witness O'Donnell's attempts to draw inferences about systematic changes in cost of capital from interest rates that have risen sharply for some months, then declined to a trough in mid-July and then increased again to the point where they are materially no different than where they started the year makes no sense.

In fact, in making his comparisons between interest rates and the utility equity index (the Dow-Jones Utility Index), he uses different dates and mixes the comparisons. For example, he uses a 30 year U.S. Treasury interest rate of 2.99% on January 30, 2012. On that date the Dow-Jones Utility Index closed at 446.56. Witness O'Donnell then states that, on April 3, 2012, the same U.S. 30-year Treasury rates rose to 3.41%. On that same date the Dow-Jones Utility Index rose to 461.27. Later, on October 22, 2012, witness O'Donnell states that the U.S. Treasury rate fell to 2.92%. On that date the Dow-Jones Utility Index rose to 475.49. Witness O'Donnell tries to glean some meaning from these comparisons but it simply does not hold up. Between January 30th and April 3rd, both interest rates *and* the index went up. But then between April 3rd and October 22nd, interest rates fell while the index rose. There is no obvious implication to be drawn from these comparisons.

In fact, witness O'Donnell's own testimony here demonstrates the futility of trying to argue – as OPC's witnesses did in their earlier testimony – that changes in interest rates (and especially changes in a Treasury yield curve that every market practitioner recognizes to be distorted by Federal Reserve intervention) should drive lock-step changes in authorized ROE. They do not.

Q. What other considerations relevant to the Proposed Settlement Agreement arise from the current interest rate environment?

A. It is indisputable that overall interest rates have come down substantially over the last several years, even though they have not materially declined in 2012. It is also clear that today's treasury curve is widely viewed by professional investors as distorted by the interventions of the Federal Reserve that witness O'Donnell alludes to in his testimony. Simply put, most investors view interest rates as a one-sided bet: there is very little, if any, room for further decreases, but there is substantial risk of material increases – increases that many observers fear will occur precisely because of the Federal Reserve's unprecedented intervention into fixed income markets. This is a theme that I repeatedly encounter in my meetings with investors.

Thus, in considering the reasonableness of the ROE in the Proposed Settlement Agreement, which will be in place for four years, the Commission should look not only to today's environment but also more broadly to the environment that is expected to exist over the full period of the Agreement. Simply assuming that

today's very low interest rate environment will necessarily persist throughout the term of the agreement would be naïve. Witness O'Donnell simply ignores this issue. Clearly, the real world is far more complex than witness O'Donnell's testimony would imply.

Q. Does the article included as an exhibit to witness O'Donnell's testimony support his contention that interest rates and inflation will remain low?

A. No. Even the article that is cited by witness O'Donnell does not support his premise. He cites an ABC News report from September 13, 2012, that discusses the Federal Reserve's highly-anticipated announcement that it will provide yet another economic stimulus to the American economy, the apparent third in the series, called QE3 (which stands for Quantitative Easing – third series). The news report states that the Federal Reserve will purchase $40 billion in mortgage backed securities in yet another effort to stimulate the economy.

The Federal Reserve does not control market interest rates. Rather, it has the authority to set the Federal Funds and Discount rates of member banks in an *attempt to influence* interest rates. The effort of the Federal Reserve is neither guaranteed nor unanimously viewed as effective and could lead to an increase in inflationary pressures. The ABC news report referenced by witness O'Donnell cited an economist from Morningstar who stated that he was "skeptical" that the Federal Reserve's actions will have a strong effect on the economy. In fact, the Federal Reserve itself is not in full agreement that this policy will work and that interest rates and inflation will be kept low. The same ABC news report goes on

to say that "[t]he economic 'hawks' within the FOMC have feared that large purchases of Treasuries and a commitment to low rates, would lead to *higher inflation* in the future, or to an unmooring of inflation expectations."

In another article from about the same time period that witness O'Donnell references, the Financial Times pointed out (September 17, 2012); "Bond investors pushed a key measure of US inflation expectation on Monday to their highest level since 2006, in response to last week's aggressive policy action by the Federal Reserve." The article goes on to point out that "The surge in expectations of future inflation has been accompanied by a weaker dollar, higher gold and oil prices as investors view QE[3] as heightening the risk of rising consumer prices in the future."

As evidence of the increased inflation risks seen by investors, the price of gold referenced in the article rose from $1,598 an ounce on January 3, 2012 to $1,727 on October 22, 2012 (London p.m. fixing gold prices). These facts indicate that the Federal Reserve is running out of options as rates are nearing trough levels and cannot go much lower and is succeeding in only increasing the inflation pressures in the future.

Q. Does witness O'Donnell make other arguments that he attributes to current financial market activity?

A. Yes. Witness O'Donnell attempts to draw an unsupported and conflicting conclusion that capital costs in 2012 have decreased, but he is unable to substantiate this position.

Q. Please explain.

A. Witness O'Donnell states (page 6) that utility stocks, as defined by the Dow Jones Utility Index, have risen 25% since early 2010. But this is in conflict first with his own data which show that the index grew by only 4.8% during a narrow period in 2012 and, secondly, with OPC witness Woolridge who states that, "[s]ince that time [two years after March of 2009], the stock market advance has been slowed by the U.S. and global economic uncertainties and concerns" (page 9, direct testimony). This pattern, combined with the earlier mentioned modicum of change in interest rates, appears to conflict directly with witness O'Donnell's point that costs of capital have somehow decreased.

Q. Do investors care primarily about future expectations?

A. Yes. In fact, investors are especially interested in the future pressure on cost of capital. The four year term of the Proposed Settlement Agreement makes investor expectations regarding the future of even greater concern.

Witness O'Donnell clearly (i) ignores the future expectations for growth and (ii) ignores entirely investor expectations. These are fundamental to understanding what investors are looking for as they evaluate their investment positions.

Q. Is witness O'Donnell's comparison to ROEs only recently authorized in other jurisdictions valid?

A. No. Witness O'Donnell is being highly selective by testing the reasonableness of the Proposed Settlement Agreement ROE of 10.7% against only other ROEs authorized in 2012. This is not what investors see. Investors see what each utility's current authorized ROE is, regardless of the date of their commission's decision. Therefore, ROEs awarded before 2012 are very relevant for investors. This is illustrated simply by considering the approved ROE midpoints for the other Florida IOUs, which range from 10.25% to 11.25%, as well as the average approved midpoint for major southeastern IOUs at 11.52%. Additionally, if those historically awarded ROEs were excessive, the respective state commissions could change them.

As my earlier testimony showed, FPL's original request of 11.25% was far from inconsistent with the environment in the southeast region with which FPL is commonly compared; consequently, the Proposed Settlement Agreement's 10.7% represents a material reduction from a rate that was broadly comparable to rates that investors can be expected to look to when considering whether or not to invest in FPL. It is therefore hard to argue that it is unfair, unjust or unreasonable on this basis.

Q. Please respond to witness O'Donnell's assertion that the negotiated 10.7% ROE would constitute a "windfall" for FPL's investors.

A. The currently authorized ROE for FPL allows the opportunity to attain an ROE of 11.0%. Under the Settlement Agreement of 2010, the ROE was set at 10.0%, but with the application of the surplus depreciation mechanism, investors had a high

degree of certainty that the Company could earn 11.0%. In fact, that is what the Company has earned each year. Now, OPC wants to put the Company in a far worse financial position, with an ROE well below the 10.7% of the Proposed Settlement Agreement, and with *no* mechanism to maintain earnings at or near 11%. OPC would have this Commission authorize an ROE of 8.5% or 9% – so low that either figure would be lower than the lowest ROE authorized in the last two years for any electric utility in the U.S., which included a penalty for poor performance. In light of the 2010 Settlement Agreement, an ROE of 10.7% can hardly be seen as a "windfall" for investors.

Q. What other information shows that the Proposed Settlement Agreement's ROE is reasonable?

A. The fact that the 10.7% ROE was arrived at after negotiations with opposing parties and that it represents a substantial reduction from the 11.5% that FPL has already demonstrated would be appropriate both support the conclusion that it is reasonable. The undisputed customer benefits that would result from the Proposed Settlement Agreement's approval, such as FPL's ability to continue offering the lowest residential bills in the state in 2013 and FPL's ability to maintain the financial strength needed to continue to invest in the electric system and access capital on competitive terms, further support the reasonableness of the Proposed Settlement Agreement's ROE.

V. PEF'S SETTLEMENT AGREEMENT IS INSTRUCTIVE

Q. Witness O'Donnell asserts that it is not appropriate to compare the Proposed Settlement Agreement to the 2012 PEF Settlement Agreement. Is he correct?

A. No, he is not correct, for reasons that I will explain. But even though he contends that any comparison between the two is inappropriate, he then promptly proceeds to compare them. He notes that the 10.7% ROE to which OPC and the Florida Retail Federation, among others, agreed, included 20 basis points conditioned upon PEF getting its "crippled Crystal River Nuclear Plant" back online prior to 2016. He also notes that under its 2012 agreement, PEF agreed to refund customers $288 million in replacement power costs in connection with its "broken nuclear unit." In so doing, he inadvertently makes important points that support the reasonableness of the Proposed Settlement Agreement's 10.7% ROE and other terms.

He is correct that there are no refunds associated with the Proposed Settlement Agreement before the Commission in this proceeding. That is because FPL does not face a "broken" nuclear unit, a fact which is of enormous benefit to our customers. This implies two things that affect investors' perceptions. First, from the standpoint of a utility, PEF's situation only underscores the risks that any utility faces in operating nuclear units. These units provide tremendous operational and cost savings value to customers; but if the units do experience challenges that prevent them from operating, consumer advocates such as OPC

typically push for the utility to bear additional costs of replacement power. That is an example of the highly asymmetric risk associated with nuclear operations that, in theory, should be compensated through a higher ROE. FPL operates four nuclear units in Florida at two sites. PEF has just the single unit at Crystal River.

Second, from the standpoint of customers, the refunds themselves would be intended to offset the increased costs they have faced due to the plant having been taken off line. With the loss of an operating nuclear unit, the overall cost of electricity will remain higher than otherwise would be the case. So, simply looking at the two situations from a relative cost perspective, FPL customers remain much better positioned than those who face the loss of a nuclear unit. So in a purely economic sense, a comparable ROE for FPL with units that continue to provide low cost power to customers should hardly be seen as a negative.

This in no way would suggest that the ROE agreed to by OPC for PEF is unreasonable. What I am saying is that for these reasons, when investors see that OPC and FRF agreed to a 10.5% ROE for PEF, with its only nuclear unit not in operation, and a 20 basis point incentive for bringing the unit back on line, they are surprised by OPC's opposition to a 10.7% ROE for FPL which has four units in operation. In short, if witness O'Donnell is suggesting that the Crystal River situation is evidence that the increased risk of operating nuclear plants warrants a higher ROE, then FPL should likewise warrant a higher ROE. If on the other hand, witness O'Donnell is saying that PEF should have a higher ROE because of

the costs and risks it faces due to the challenges with its Crystal River Nuclear Plant, then as a matter of policy (and economic impact) the same consumer representatives should have no difficulty supporting a 10.7% ROE for a utility that does not have a "broken" nuclear unit along with the associated costs for customers.

Q. Have you had input on this issue from investors?

A. Yes. This is the most frequent issue that has been raised in my discussions with investors around the Proposed Settlement Agreement. Whether or not OPC witness O'Donnell believes the comparison is appropriate, it is one that investors almost uniformly make, and moreover one that leads them to conclude that if anything the authorized ROE for FPL ought to be higher than PEF's. In my interactions with investors, many of them have found it hard to understand how it could be reasonable for a company with a major nuclear issue, such as Crystal River, to warrant earning a higher ROE than a company that not only does not face a similar issue but in addition has better underlying performance in the form of lower bills and higher reliability.

Q. How does witness O'Donnell's position comport with public policy?

A. If witness O'Donnell's implicit argument is that PEF is justified in receiving a higher ROE precisely because it faces a situation (regardless of whether PEF has acted imprudently, which I am not in any way suggesting) that potentially will impose additional costs and risks on both its shareholders and customers, then in effect he is arguing for an indirect form of ROE penalty on FPL. Thus, witness O'Donnell's position would set up a perverse incentive: penalize superior

customer value delivery and offer higher returns to utilities which, even where they have acted prudently in all respects, have delivered less value to their customers. This is the precise reverse of what a regulator should be wishing to encourage.

Q. Is there any additional relevance of the PEF 2012 Settlement Agreement in considering whether to approve the Proposed Settlement Agreement?

A. Yes. With regard to the 2012 PEF Settlement Agreement, among other things, OPC and the Florida Retail Federation both supported:

- a base rate increase for PEF proportionately larger on a relative basis than the $378 million base rate increase that they oppose for FPL, despite FPL's rates already being well below those of PEF;
- a base rate increase for PEF without the necessity for PEF to submit Minimum Filing Requirements, direct testimony, and thousands of responses to discovery; and
- a suspension of the requirement to file a depreciation study and fossil dismantlement study during the term of the settlement agreement, provisions that they now stridently oppose with regard to the Proposed Settlement Agreement.

I believe the 2012 PEF Settlement Agreement is much more reflective of the approach to negotiations and settlement that should be encouraged of all parties. Those who chose to sit down to the table in FPL's case certainly had the PEF Settlement Agreement in mind as a point of reference given that it had received

broad support and had been approved by the Commission. So I understand why OPC, given the positions it has taken, does not want to have any comparisons drawn. But, as I have indicated, certainly the negotiating parties took that agreement into consideration and the investment community absolutely has focused on it as a frame of reference.

Q. Are you suggesting that the Proposed Settlement Agreement should be approved solely based on a comparison with the 2012 PEF Settlement Agreement?

A. No, but it is another test of reasonableness. If the Proposed Settlement Agreement (a) provides the benefits I described in my Direct Testimony, including maintaining low rates, promoting high reliability, providing rate certainty and stability for customers and creating investor confidence (a critical component of FPL's capital expansion program in Florida), and (b) also does not have to address issues associated with a nuclear unit that is off line and which requires major repairs to bring it back into operation, then there should be a strong presumption that the Proposed Settlement Agreement is in the public interest and should be approved.

VI. O'DONNELL'S VIEWS ON EQUITY RATIO REMAIN FLAWED

Q. How are witness O'Donnell's views on equity ratio flawed?

A. Witness O'Donnell argues that it is relevant to compare unadjusted equity ratios of companies in other situations without any consideration of the differences in

those companies' situations. In doing so, he is implicitly arguing that all utilities face the same underlying risk profile and therefore any differences in equity ratio automatically and uniformly reflect differences in what is conventionally called "financial risk," leading him to state: ". . . logic dictates that the authorized ROE should be at the low end of the range. . ." (page 11). This is simply factually wrong.

FPL faces a unique collection of risks and other factors that together support maintaining a higher equity ratio (though not, as was mischaracterized, the highest equity ratio) than most other utilities. These are described in detail in my previous testimony and were not refuted by any intervenor witness. As I testified earlier, simple comparisons of capital structure and balance sheet strength without consideration of a company's specific situation and needs will not produce meaningful conclusions.

Witness O'Donnell's use of equity ratio information for purposes of evaluating an appropriate ROE also remains flawed. Once again, witness O'Donnell's position assumes that the "financial risk" represented by a company's equity ratio is the *only* risk factor that influences its cost of equity. As described extensively in my previous direct and rebuttal testimony, there is a long list of business risks faced by FPL not faced by other electric utilities, or not faced to the same extent as FPL, that support FPL's need for a stronger financial position.

Q. How else are witness O'Donnell's views on equity ratio flawed?

A. According to witness O'Donnell's logic, a company with a high equity ratio always would have higher credit ratings than companies with lower equity ratios. As explained in my direct testimony, FPL has solid credit ratings but not the highest. FPL is only 'A-' rated, despite the fact that its equity ratio is, as described by witness O'Donnell "extravagant." FPL's credit is rated the same as other companies which have lower equity ratios. The rating agencies (and investors, for that matter) are clearly weighing and considering other risks against FPL.

VII. O'DONNELL REPEATS INCORRECT CREDIT IMPACT ARGUMENTS

Q. Please respond to witness O'Donnell's use of Lawton's previously filed testimony.

A. Witness O'Donnell re-asserts OPC's earlier, discredited position that OPC's recommendations of a 9% ROE and 50% equity ratio would have no negative consequences for credit, although he is careful not to say so directly. Instead, he states that "FPL would continue to exhibit cash flow characteristics of an 'A' rated utility..." (p. 11).

OPC's position that a lower ROE than the ROE that resulted in past downgrades plus a dramatically weakened capital structure would not negatively impact FPL's credit is not only illogical; it was proven to be inaccurate. The result of OPC's recommendations would be further downgrades, higher costs of borrowing, and renewed investor concerns over the regulatory environment in Florida.

Q. Does witness O'Donnell make other misleading arguments about the potential credit impact of this Commission's determination in this proceeding?

A. Yes. Witness O'Donnell once again claims that FPL's credit rating will not be affected by the ROE authorized in this rate case, and that credit rating agencies will instead only focus on NextEra Energy, Inc.'s ("NEE's") performance. Two simple facts clearly indicate the fallacy of this position. First, the credit rating downgrade that FPL experienced after the 2010 rate decision clearly indicates that FPL's credit rating is directly impacted by rate case outcomes. Second, the fact that S&P issues separate rating agency reports for both NEE and FPL cannot be denied.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BY MR. LITCHFIELD:

Q. And, Mr. Dewhurst, are you sponsoring or co-sponsoring any exhibits to your rebuttal testimony?

A. Yes, I am co-sponsoring Exhibit MD-11, which is the settlement agreement, the rate schedules sponsored by Witness Deaton.

MR. LITCHFIELD: Mr. Chairman, I would note that that exhibit has been premarked for identification on Staff's list as 701.

BY MR. LITCHFIELD:

Q. Have you prepared a summary of your Rebuttal Testimony, Mr. Dewhurst?

A. Yes.

Q. Would you please offer that at this time?

A. Good evening, Commissioners, Chairman Brisé.

My Rebuttal Testimony responds to assertions made by OPC Witness O'Donnell regarding both ROE and capital structure. Witness O'Donnell's approach to evaluating the reasonableness of the ROE and equity ratio contained in the proposed settlement agreement is fundamentally flawed. His core argument amounts to a reiteration of positions that he or other OPC witnesses took in their August testimony. He provides little new perspective on ROE, and what new information he does offer is internally inconsistent and does not support

his contentions.

Witness O'Donnell's fundamental contention is simply that the 10.7 percent ROE is too high in light of current capital market conditions, yet he offers no new evidence for this, instead merely referring to OPC Witness Woolridge's August testimony. In so doing, he not only ignores the competent independent evidence that was provided by FPL Witness Avera that directly conflicts with Woolridge's, but also ignores the context within which the ROE must be viewed, that is the fact that it was a key balancing outcome in a negotiation between independent parties with widely differing and opposing positions.

Witness O'Donnell also seeks to avoid comparisons between the current proposed settlement agreement and the January 2012 Progress Energy Florida settlement agreement, yet such comparisons are reasonable and appropriate, and in any case they are certainly made by others, including, in particular, investors who see the comparison as highly relevant.

The Progress agreement provides for a proportionally higher initial base rate increase and a comparable ROE, yet FPL does not have what O'Donnell refers to as a, quote, broken nuclear plant for which the refunds offered in the Progress settlement are an

incomplete offset from the customer's point of view. Progress's customers will still bear risk and likely additional costs above and beyond the value of the refunds. Yet with all this, FPL's rates and typical bills are now and will remain well below Progress'.

In seeking to avoid direct comparisons with the Progress settlement, O'Donnell argues that cost of capital have declined since that agreement was approved, yet his own data do not support his claims. Instead, they support a contention I made in my Direct Testimony that under the proposed settlement agreement, FPL's investors are exposed to the risks of rising interest rates and inflation.

Witness O'Donnell also seeks to have the Commission ignore all authorized ROEs for other southeastern utilities with which FPL is commonly compared except those issued this year. This is inappropriate. Whether authorized this year or in a prior year, the authorized ROEs are what the investors can and do look to, and as a broad test of the reasonableness of the settlement ROE they are highly relevant.

Finally, Witness O'Donnell repeats fundamental mistakes with regard to equity ratio and credit ratings that were previously addressed in the August hearing.

Contrary to O'Donnell's implicit assumption, companies' risk profiles differ in fair more ways than simply the impact of their differing equity ratios. FPL's current and historical ratio of around 59 percent is entirely compatible with its current debt rating precisely because of all the other factors that collectively determine FPL's full risk profile.

If O'Donnell's logic were correct, FPL's bond rating would be much higher than it is. In short, Witness O'Donnell's testimony adds little to his prior testimony. And when his errors are corrected, serves to rather than refute the contention that the proposal settlement is in the public interest and should be approved.

That completes my summary.

MR. LITCHFIELD: Mr. Chairman, Mr. Dewhurst is available for cross-examination.

CHAIRMAN BRISÉ: All right.

Mr. Rehwinkel.

MR. REHWINKEL: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. REHWINKEL:

Q. Good evening, Mr. Dewhurst.

A. Good evening.

Q. Let me get you to turn, please, to Page 23 of

your testimony.

A. Yes, sir.

Q. You discuss the Progress Florida 2012 settlement there, do you not?

A. Yes, there and in other places.

Q. Okay. And you are aware of the amount of the Progress settlement base rate increase beginning January 21, 2013, is that right?

A. My understanding is it's approximately 150 million.

Q. Okay. Did you watch the 2009 Progress rate case?

A. No, I did not. I was not employed by NextEra at the time.

Q. Okay. Isn't it true that Progress sought during that case to amend its 2009 MFR filing to add an updated sales forecast?

A. I don't know.

Q. Okay. Isn't it true that that sales forecast showed a deficiency of about $120 million?

A. Again, I don't know.

Q. Okay. So you don't know, again, whether that forecast that was withdrawn was a basis or a consideration in the negotiated base rate increase, do you?

A. No, I do not.

Q. Okay. On the same page, beginning on Line 20, could you please read those four lines up through the last -- through the word Commission on Page 24 aloud, please.

A. Certainly. I believe the 2012 Progress Energy Florida settlement agreement is much more reflective of the approach to negotiations and settlement that should be encouraged of all parties. Those who chose to sit down to the table in FPL's case certainly had the Progress Energy Florida settlement agreement in mind as a point of reference, given that it had received broad support and had been approved by the Commission.

Q. Are you suggesting in that testimony that less than all parties negotiated with FPL to produce the August 15th settlement document?

A. I'm sorry, could you repeat the question?

Q. Yes. My question is are you suggesting that less than all of the parties to the 2012 FPL rate case negotiated to produce the August 15th settlement document?

A. No, I don't think I'm actually suggesting that in this sentence, although I do agree with the statement.

Q. What statement do you agree with?

A. That less than all the parties negotiated the August 15th agreement.

Q. What do you mean by the phrase those who chose to sit down to the table?

A. I think it is self-evident. Those who chose to sit down at the table, indicating that there were some who chose not to.

Q. Okay. And those refers to parties that intervened in this case, is that right?

A. In this context, yes.

Q. Okay. Now, what is this table that you are talking about?

A. The table that I'm referring to here is obviously a metaphorical term for the arena for negotiations.

Q. Okay. What do you know about this arena for negotiations?

A. Are you asking me what my knowledge of the negotiations leading up to the August 15th agreement is?

Q. Yes.

A. Well, broadly speaking, my knowledge of the negotiations is indirect. I was not a direct participant in any of the negotiating sessions as is, I suspect, typical for a major corporation. We have periodic and frequent reviews at a senior management

level with the heads of the major businesses to receive updates on major developments in their business. And obviously for a business like Florida Power and Light the progress of any negotiations relating to something as significant as a potential base rate settlement would be a subject of those meetings. So that is the context for my knowledge.

So throughout the period starting from last fall, November of last fall when we first reached out to Office of Public Counsel, I would receive along with Mr. Hay and Mr. Robo, the then Chief Executive Officer and Chief Operating Officer, regular updates on discussions that we were having with other parties, and then subsequently as we got into detailed negotiations.

Q. So it is your testimony to the Commission here today under oath that there were discussions with the Public Counsel's Office in November of 2011?

A. That is my understanding that the first outreach was conducted by one of our employees to the Office of Public Counsel. This was before we had filed the test year letter. I would characterize it as a friendly outreach to indicate that we would be filing and to express the hope that we would be able to sit down at the metaphorical table and work something out.

Q. And who was this employee?

A. I'm not sure who the individual employee was at the time. I suspect it was most likely Mr. Hoffman or possibly Mr. Silagy.

Q. Okay. And what was the employee told with respect to the Public Counsel in the fall? Well, actually this would be the winter, right, of 2011?

A. Yes, I believe it was November of last year. My recollection of that was that there was an expression of appreciation for the outreach, and since there was little of substance to be discussed at that point, it was really more a recognition of the outreach had been -- the initial outreach had been made.

Q. Was that the end of it?

A. No, there was -- again, if my recollection serves, there was at least one meeting in January, possibly more, I'm not sure, I don't recall, around about the time of the filing of the test year letter indicating that, you know, the nature of the fundamental request and the order of magnitude, and, again, indicating our desire to be able to, if we could, negotiate an agreement.

Q. And what is your understanding of that meeting?

A. What was relayed to the senior management team from that meeting was an expression that -- I guess I

would characterize as fundamentally we need to see the filing in more detail before we can go any further. You have given us general drivers of a need for a base rate increase, but we haven't seen any specifics yet.

As you know, Commissioners, the test year letter has some broad outlines of the nature of the coming request, but it doesn't have all the detailed schedules.

Q. Now, the test year letter that you would have filed around this time, it didn't have a proposal for a GBRA in it, right?

A. That's correct.

Q. It didn't have a proposal for an asset optimization?

A. That's correct.

Q. It did not have a proposal to suspend or defer the filing of depreciation, dismantlement, and reserve studies, correct?

A. That's correct. I would characterize it as a typical test year letter, because it was our intention, and obviously that is how it worked out, we went forward to file a conventional rate case. But obviously that serves as the starting-off point for the possibility of negotiations leading to a settlement. That is certainly the way it has occurred in the past.

Q. Okay. And you did file testimony in the hearings that we had in August to the effect that you filed a -- I don't want to use the word clean, I don't think was it, a limited, a fairly narrow request, is that right, something along that line?

A. I don't recall the exact words that I used in August, but I do recall a discussion of certainly limiting some elements. In fact, I think it may have been in a conversation with Commissioner Edgar having to do with storm cost-recovery. There were certain elements that we chose to hold out of this particular request to try and keep the number of issues to be resolved to a minimum.

Q. Without going through the rigmarole of passing out an exhibit, would you accept my representation that on Page 54 of your testimony, I think this is your -- I think it's your Direct where you say FPL has attempted to reduce the number of complex issues to be decided in this proceeding, I think in the context of the storm?

A. That sounds about right.

Q. Okay. That was the kind of case that you would have prepared in the January -- it would have been close to completion in January, right?

A. Yes and no. I mean, the core of the case was well understood in January, and certainly internally we

were well along in preparing all the detailed information. But obviously there is a mass of information, as you Commissioners know very well, that actually gets filed with the filing from the MFRs to the testimony. So we were in the midst of developing that detailed material.

Q. Okay. And would it be fair to say that if you are going to file a case on March 19th, it would be fair to say that on January -- let's say the first or second week of January you couldn't have added a GBRA proposal or an asset optimization proposal at that time, is that right?

MR. LITCHFIELD: May I interpose an objection here, and it is a delicate one, and I'd like Mr. Rehwinkel to listen carefully.

The nature of his questions, I want to be clear here, I want to be clear that they are not intended to convey what was or wasn't discussed. The fact that negotiations occurred, the fact that meetings occurred, of course, is not considered confidential under the terms that we negotiated with. But the terms and what was discussed or wasn't discussed would be, and I'm a little concerned by the nature of Mr. Rehwinkel's questioning that he is intending to convey things that weren't discussed which, A, may not be accurate, and, B,

would probably violate an obligation of confidentiality in any event.

MR. REHWINKEL: I would like to note from my appearance here at this tribunal is Mr. Litchfield suggesting that I have done something improper, or is he issuing to me some sort of a shot-across-the-bow warning, if that is a fair --

MR. LITCHFIELD: As I said, it is a delicate objection, and Mr. Rehwinkel can govern himself accordingly.

MR. REHWINKEL: Well, is there an objection to the question?

MR. LITCHFIELD: There is an objection to the question, Mr. Rehwinkel, to the extent that it is intended to convey the notion or impression to this Commission that certain things were not discussed.

MR. REHWINKEL: Okay. Well, that's not my intention. I'm not going in that direction, if I can calm Mr. Litchfield's concerns. Let's see where this --

CHAIRMAN BRISÉ: Sure, go right ahead.

BY MR. REHWINKEL:

Q. So my only question is whether -- let me ask it this way. At the time that you filed your test year letter with the Commission, had you pretty much decided the scope of the case that ultimately was filed on

March 19th?

A. Yes, I think that's a fair characterization. We were well along in the preparation of basic elements. The outline of the case was very clear.

MR. REHWINKEL: Okay. That's all I wanted to know. I hope I wasn't upsetting Mr. Litchfield in that regard.

BY MR. REHWINKEL:

Q. So you had an early January meeting, and you say the Public Counsel wanted to -- well, was there another meeting after January? Was that meeting on January 10th?

A. I don't recall the exact date of the meeting. Again, I was not present for the specific meeting, so what I am relaying to you is the information that was communicated through our regular management review processes, which would probably have been several days afterwards. But to the best of my recollection, it was sometime around the filing of the test year letter, which was, I believe, mid-January.

Q. Okay. Was there a meeting on March 1st that you are aware of?

A. There was definitely at least one or two meetings around the time of the actual filing that were communicated to me. I think part of what -- at least

the impression that I had taken away from the January meeting was that Office of Public Counsel wanted to see the actual filing, and so there was a logic point to go back and have further discussions around the time of the filing. So the filing was sometime in March. I don't know whether there were one or two sessions there. I don't exactly recall, but certainly there was at least one meeting.

Q. Okay. And I'm not trying to elicit from you what was actually said at the meetings, okay?

A. Okay.

Q. Isn't it true that the January meeting that you refer to was only between FPL and the Public Counsel's Office?

A. That is my understanding. As has been common or typical in the past, we have often reached out to Public Counsel first to see if we can form the basis of an agreement at that level which we may then be able to carry forward to other intervenors.

Q. Okay. So would it be fair to say that in January FPL was not meeting or had not initiated negotiations with any other party, other party meaning someone over than the Public Counsel?

A. I certainly don't recall being informed of any other discussions with other parties other than possibly

similar general outreach of the nature of the November discussion indicating that, you know, we hope that at some point we might be able to. But I don't have any specific recollection of any of those.

Q. Okay. So would you agree that there was a meeting on March 1 at 1:30 at FPL's offices in Tallahassee?

A. Again, I was not present at these meetings. The timing is roughly coincident with my recollection of having a report delivered to us in the senior management team.

Q. Okay. And would you accept my representation that such a meeting involved Mr. Hoffman, Mr. Litchfield, and Mr. Sowell (phonetic), Mike Sowell of FPL?

A. I will certainly accept your representation on that. Certainly those three individuals would be ones I would expect might be involved in such discussions.

Q. And Mr. Kelly, Mr. McGlothlin, Ms. Christensen, and myself, would you accept --

A. Again, I will accept that.

Q. Okay. Would you also accept my representation to you that the Public Counsel offered to sign a nondisclosure agreement that would allow them to receive and review information in advance of the filing of FPL's

rate case?

MR. LITCHFIELD: Well, here is where I think we're getting into -- I mean, and I can conduct redirect as to whether Mr. Dewhurst would accept certain things that occurred or didn't occur, Mr. Rehwinkel. And I think we are getting into an area that is not going to ultimately be productive.

As I said, the fact that the meeting occurred, and if you want to identify the individuals who were present, we have no objection to that. But there is going to be a point at which I think both of us are not going to want to have the specifics of the discussions disclosed, consistent with understandings that we had.

Now, if that is something that you would like to discuss with us about waiving, that's a discussion we should have independently off-line. I don't think we should have it in the hearing room.

CHAIRMAN BRISÉ: And I hear the issue. I will tell you my interest, okay? Since this issue has been one that you all have been talking about, you all can walk that fine line and get me as much information as possible. So when your opportunity for redirect, I will allow the latitude as I am going to allow the latitude now. And however that turns out, it turns out that way. Just making sure that everybody is clear on that.

MR. REHWINKEL: Mr. Chairman, if it would be your pleasure, I have one document that I'd like to show Mr. Litchfield, and it might facilitate -- the only thing I want to ask about is related to the last question. And if we could take a couple of minutes, I would be glad to show it to him and see if it creates any kind of further concern.

CHAIRMAN BRISÉ: Sure. That will work. We will take five minutes.

MR. MOYLE: Could I see it, as well?

MR. REHWINKEL: Yes. I hope to show it to everybody.

(Laughter.)

CHAIRMAN BRISÉ: We will take five minutes.

(Recess.)

CHAIRMAN BRISÉ: All right. Yes, that was a pretty long five minutes. So I figured you all worked out a new settlement and all of that.

(Laughter.)

COMMISSIONER BALBIS: Was that a motion?

CHAIRMAN BRISÉ: Did I hear a second?

(Laughter.)

CHAIRMAN BRISÉ: So let's hear what we've got.

MR. REHWINKEL: Well, let me say this, Mr. Chairman. I want to thank you for letting us talk.

Whether we resolved much, I don't know, but I would say that we had more of a dialogue than we have had in a while, which was a good thing, I think. But, nevertheless, given the state of the record, I think I want to pursue my line of questioning to a limited extent, and then we will see kind of where it goes from there.

I think basically there's some communication and difference of opinion issues that we might as well just have, based on the state of the record. And Mr. Litchfield or the others can speak to what I just said. I mean, we didn't have any kind of agreement to do one thing or the other.

MR. LITCHFIELD: Well, what I had understood is that Mr. Rehwinkel had a document that he wanted to put in front of Mr. Dewhurst and ask him a question about it, and that I said I would have no objection with that. I would have some redirect, and indicated to Mr. Rehwinkel the nature of the redirect, and that's kind of where we left it.

CHAIRMAN BRISÉ: Sure.

MR. REHWINKEL: I think we all kind of have a better understanding. And with your indulgence, I would like to proceed, and maybe we can end pretty soon.

CHAIRMAN BRISÉ: Sure. In talking to my legal

staff, they just asked me to advise everyone that we know that if we are talking about procedural stuff, you know, times and dates and stuff like that, that is absolutely fine. But anything beyond that is probably problematic for everyone. So we certainly hope that we will work within those confines.

MR. REHWINKEL: And if I can state for I record, I have a better understanding of Mr. Litchfield's concern when he raised his delicate objection. For the record, I would like to state that I was not trying to convey by asking Mr. Dewhurst about the status of the filing and the timing that certain discussions were or were not had, but I also will honor my obligations not to disclose the substance of the negotiations.

CHAIRMAN BRISÉ: Sure.

MR. REHWINKEL: I hope that satisfies my obligation to Mr. Litchfield?

MR. LITCHFIELD: Absolutely. Thank you.

CHAIRMAN BRISÉ: All right. You may proceed.

MR. REHWINKEL: Thank you. Mr. Chairman, I'd like to ask that this document be given a --

CHAIRMAN BRISÉ: 726.

(Exhibit 726 marked for identification.)

MR. REHWINKEL: Okay. And it was originally

intended for Mr. Deason, but I'm sure he is glad --

THE WITNESS: I appreciate the upgrade in my status.

MR. LITCHFIELD: I owed Mr. Deason one anyway.

MR. REHWINKEL: So the witness is Mr. Dewhurst.

CHAIRMAN BRISÉ: Sure.

MR. REHWINKEL: And it's a March 13, 2012, e-mail.

BY MR. REHWINKEL:

Q. Having put this before you, Mr. Dewhurst, Exhibit 726, I suspect that until now you have not seen this document?

A. That's correct.

Q. Okay. Would you agree with me that the bottom half of this shows an e-mail from myself to Mr. Hoffman dated March 1st at 4:13 p.m.?

A. That is certainly what it seems to show.

Q. Okay. And the substance of the March 1st e-mail is to convey that we were sending an example of a standard agreement that we used in the PEF matter, do you see that?

A. I see the language, yes.

Q. Okay. And then on March 13th, 2012, at 9:21 in the morning, Mr. Hoffman replied to me and copied

Mr. Litchfield. Do you see that?

A. Yes. Again, recognizing that this is the first time I have seen these, so I'm just reading the words.

Q. Okay. Do you need a second to read it completely?

A. No, I have read them. But they are words on a piece of paper to me; I have no independent knowledge of them.

Q. All right. Would you agree with me that for whatever it's worth, this e-mail indicates the Public Counsel indicated a willingness to talk to FPL, if you would accept my representation that this is related to the impending rate case filing?

A. Well, I don't really know that I can independently speak to that. It appears to be an e-mail chain, you know, speaking about a confidentiality agreement, which presumably would have covered some discussions. And given the time frame, that may or may not be the case.

Commissioners, all I can tell you independently on this is whether it was in the March time frame or subsequently, it was reported to us that there was some back and forth about nondisclosure agreements. And my recollection is not good enough.

Frankly, I didn't pay close enough attention to it at the time. So I recognized at the time that there was some issue relating to confidentiality agreements, but I didn't fully understand what that was, and certainly still don't to this day.

MR. REHWINKEL: Mr. Chairman, if I could have -- and, honestly, this will be 20 seconds. I want to show something to Mr. Litchfield.

CHAIRMAN BRISÉ: Okay.

(Pause.)

MR. REHWINKEL: Mr. Litchfield has given me permission to show something to the witness. And all I want to show him is what is blacked out on this, without disclosing it to anyone else.

CHAIRMAN BRISÉ: Sure. That's fine.

BY MR. REHWINKEL:

Q. And, Mr. Dewhurst, please don't --

A. I understand.

Q. -- speak aloud what is blacked out. Is the information that you can see from what is blacked out, does it indicate generally that the nondisclosure or confidentiality agreement has some relation to an impending rate filing?

A. Yes.

Q. Okay. Thank you.

Mr. Dewhurst, isn't it true that sometime within a couple of days after March 13th, that Mr. Hoffman and I met back here in this room during a limited proceeding rulemaking and agreed that by the time this document would be executed your case would be filed on March 19th?

A. Again, all I can tell you is my recollection of what was reported to us. As I think I said earlier, I believe that there were at least a couple of meetings in the March time frame around the time of the formal filing of the testimony and the MFRs. And what was relayed to me at the time was, again, the Public Counsel felt that they needed time to fully evaluate all the information that was in the filings and read all the testimony and potentially have outside experts look at it. So they didn't feel at that time that they were willing to engage directly in negotiations.

Q. Okay. And prior to July 15th, 2012, are you aware of -- let me step back.

From March 1st, 2012, to July 15th, 2012, are you aware of the Public Counsel being invited to join any ongoing settlement talks?

A. I'm not sure. Again, all I can tell you is what was relayed to me. Sometime, I don't know which of the March meetings, the resolution of the March

meetings, as I understood it, was essentially that the ball was in Public Counsel's court. That it was up to them to then come back to us when they were ready to engage. Then we get into the time when we were, you know, all in the midst of getting ready for service hearings, we had the storm, and then getting ready for the August hearing. My understanding is there were at least a couple of informal conversations in that period, but I can't say the extent to which those constituted substantive negotiations.

Q. Okay. But just so I understand your answer, and I appreciate your answer, is that you are not stating that there was ongoing negotiations. And I mean by that, define ongoing negotiations, discussions between FPL and any other party other than the Public Counsel in that March 1 to July 15 time frame?

A. Well, let me break it down. In the March, April, May time frame, no, I don't recall precisely when the first -- and obviously negotiations, you know, sort of progress. But at some point somebody has to put a concrete proposal together, an offer, if you like, or, you know, a term sheet or whatever it is. I don't recall exactly when the first one of those was. I think it was in the July time frame, but I couldn't be sure. So in direct response to your question, you gave me a

gap like this. I think some of it I can fairly say there were no what I would call direct negotiations. I'm not sure in the latter portion of that period.

MR. REHWINKEL: Okay. Mr. Chairman, I have two further questions, but I would like to run one by Mr. Litchfield, if that is okay. I apologize, but this is a delicate area.

CHAIRMAN BRISÉ: Understood.

(Pause.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said 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.

JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732