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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120015-EI

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

Volume 39
Pages 5590 through 5727

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING:

CHAIRMAN RONALD A. BRISE
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Monday, November 19, 2012

TIME: Commencing at 6:55 p.m.
Concluding at 9:50 p.m.

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

REPORTED BY: LAURA MOUNTAIN, RPR
Wilkinson & Associates
850-224-0127

APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION

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1 margin, then, yes, we could sell that gas or release the gas
2 capacity.

3 Q Can you explain to the Commission how a situation
4 may resolve, like a few years ago there was an explosion at
5 one of FPL's substations that caused a variance in the
6 transmission lines which caused the two nuclear reactors at
7 Turkey Point to automatically shut down. And at that point I
8 would presume that the gas fired units at FP&L would have to
9 come on line to meet the challenge of that load loss.

10 So can you explain how, if you're already engaged
11 in selling the gas to another entity, how does the system
12 work that it would interrupt those customers to bring that
13 resource back to FPL's customers?

14 A I can't speak specifically to the outage that you
15 refer to, but I think in general, if we're in a system
16 emergency, there are provisions that we could include in the
17 sale of that natural gas which would allow us to recall it.
18 Again, we are going to maintain a certain benefit or certain
19 reliability benefit or threshold margin above which we
20 wouldn't sell, and so we'll have that at our disposal, as
21 well.

22 Q So is the reserve margin sufficient to take care
23 of a catastrophe like this hurricane that took out New York
24 City?

25 A I'm not sure if there's anything we could have

1 done to prevent that. And again, in that type of
2 catastrophe, all the generating units were off line, so, you
3 know, there wouldn't have been any need to maintain gas sales
4 at that point.

5 Q Okay. I'm trying to reframe this question I have
6 for you with respect to -- you testified in summary -- in
7 the context of your prefiled testimony, to the best of my
8 recollection, about if FPL earns profit through this gas
9 sales mechanism you were testifying here today about, that at
10 some point there are monetary triggers at which point FPL
11 customers engage in what I'm phrasing as profit sharing in
12 those profits. Is that true?

13 A Yeah, the way that this mechanism is laid out is,
14 again, we've established the \$46 million threshold at which
15 customers would receive 100 percent of the benefit, up to the
16 \$46 million. Above that \$46 million there are different
17 thresholds that change the sharing between FPL and its
18 customers at that point.

19 But, again, the way the thing has been designed,
20 in a very simple and straightforward manner, it ensures, no
21 matter what level of gains and savings that we can
22 contribute, our customers will always see the large majority
23 of those benefits.

24 Q So if FPL doesn't meet those monetary thresholds,
25 the customers would see no profit sharing, is that true?

1 A Well, I think, more importantly, FPL wouldn't see
2 any profit sharing. The customers -- if we don't achieve the
3 \$46 million as that first threshold where customers receive
4 100 percent of the benefit, as an example, if we hit \$40
5 million, customers receive 100 percent of the benefit of that
6 \$40 million and FPL will see no sharing or will have no
7 opportunity to participate in any type of sharing mechanism.

8 Q Are you aware that the United States Federal
9 Reserve publicly announced that they are committed to buying
10 \$40 billion worth of mortgage back assets into eternity, if
11 that's what it takes, to help the economy? And with that in
12 mind, isn't it reasonable to believe that the economy in
13 Florida and across the United States is poor right now; it's
14 at a low level?

15 MR. BUTLER: I'm going to object to the question,
16 assumes facts not in evidence, and doesn't seem to
17 relate it to Mr. Forrest's testimony.

18 CHAIRMAN BRISE: I'll agree.

19 BY MR. SAPORITO:

20 Q Would you agree that the -- if the businesses
21 of Florida were not profitable, they would use less gas
22 resources from FPL's electric generating systems because
23 they're using less electricity, is that not true?

24 MR. BUTLER: I'm going to object, again. This just
25 doesn't go to Mr. Forrest's testimony about the

1 incentive mechanism.

2 MR. SAPORITO: It goes to the profit sharing,
3 Mr. Chairman. If the businesses are not consuming the
4 gas revenues that FPL claims that the customers will
5 benefit from, then where is the benefit?

6 CHAIRMAN BRISE: I think I agree with Mr. Butler on
7 this. If you can move on to your next question.

8 MR. SAPORITO: That's all I have, Your Honor.

9 CHAIRMAN BRISE: All right. Okay, Mr. Hendricks?

10 CROSS EXAMINATION

11 BY MR. HENDRICKS:

12 Q Good evening.

13 A Good evening.

14 Q My name is John Hendricks, I'm appearing pro se.
15 I'm interested to see that you're an Aggie.

16 A Yes, I am.

17 Q I'm from the University of Texas.

18 A Oh, there you go.

19 Q But I won't hold that against you. In referring
20 to the proposed incentive mechanism I think your testimony --
21 and I believe witness Dewhurst's testimony, as well, referred
22 to it as a modification of an existing -- of an existing
23 mechanism. Is that the way you view it?

24 A Yes, I do. That's how I view it.

25 Q Could you give me a little insight into how the

1 design of it proceeded? I mean, you have an existing
2 mechanism that has a certain set of terms and this has a lot
3 of differences from that. So how --

4 A The existing incentive mechanism pertains only to
5 short-term power sales. What we tried to do was enhance that
6 to recognize that there are many methods of optimization that
7 we do today -- and there are several -- as well as some that
8 we could be doing.

9 This is basically an expansion of the existing
10 mechanism. It sets a threshold that is based on today's
11 marketplace and reflects our realities and our projections on
12 a go-forward basis of what we expect to achieve in 2013,
13 tries to establish a threshold well above that to offer our
14 customers the first ten-plus-million-dollars in savings above
15 that. But it also encompasses the fact that there are some
16 things we could be doing today that we don't do.

17 We are a fuel management organization, at the end
18 of the day. We don't have the resources to go out and try to
19 optimize some of these assets, so, you know, when we do have
20 idle transportation, we don't have the resources to go out
21 and try and sell gas into Florida or to release that
22 capacity. We don't have resources to potentially look for
23 opportunities to sell such assets --

24 Q Mr. Forrest, I think that's enough. I just
25 wanted sort of a brief explanation of --

1 A Well, I was trying to get to the point that --

2 Q Okay, well, please do. I didn't want a
3 five-minute explanation, just the short version.

4 CHAIRMAN BRISE: I'm going to remind the witness --
5 I'm going to remind the witness that considering the
6 posture that we are in, that brevity is certainly
7 appreciated.

8 THE WITNESS: Certainly. Certainly, Mr. Chairman.

9 BY MR. HENDRICKS:

10 Q The heart of my request is really to try to
11 understand why we changed so many things on the point. If we
12 can just start, for example, with the -- with the sharing
13 percentage. I mean, the existing mechanism is a fixed
14 sharing percentage above a threshold, right?

15 A Correct.

16 Q And so it's 20 percent. And so if you were going
17 to do an incremental change to an existing mechanism, a
18 typical way of designing that would be to make some
19 incremental changes. But you wouldn't necessarily just
20 change everything at once.

21 So how did you come to make all of these large
22 charges? We've expanded the scope, we've included potential
23 outsourcing, we've added -- we've changed the percentages,
24 we've redesigned the threshold. These are totally new
25 mechanisms.

1 A I still do believe it is an enhancement. What we
2 tried to do is recognize there are other things we could be
3 doing today that we're not doing because we don't have the
4 resources. So the mechanism allows us to recover the O&M
5 associated with those additional resources. It also
6 recognizes that the way that the current incentive mechanism
7 works, while it is working as designed, it hasn't allowed FPL
8 to share in any of the benefits of that mechanism since 2006.

9 We save our customers, you know, north of 158
10 million dollars. We've shared a little less than two million
11 of that. It also recognizes that there are other forms of
12 things that we're doing today, and tries to include those in
13 the overall incentive mechanism.

14 Q Let's talk about these things one at a time, then.
15 If we look at the setting of the threshold, the existing plan
16 has a three-year rolling average, as a threshold. So if,
17 over time, the system expanded or other things changed, the
18 rolling average would come along and it would sort of control
19 for that variable in the sense of not providing windfall
20 profits, just because it's a bigger system. Isn't that a
21 weakness of the proposed mechanism that it doesn't do that?

22 A I don't believe there's a weakness in the existing
23 mechanism in that I think it works nicely as a pilot, if you
24 will. We're going to set the threshold at \$46 million, which
25 is above the level we're projecting for 2013. If we achieve

1 that \$46 million, which is a stretch goal, for sure, above
2 the 35.1 million that we're actually projecting for next
3 year, our customers will still see the lion's share of the
4 benefits and we'll be able to participate in some of that
5 up-side.

6 Q But if you turn back and look at the setting of
7 the threshold, the current threshold is based on just
8 purchased power and wholesale power sales, right?

9 A Just on sales. Just on sales.

10 Q I'm sorry, it doesn't do purchased power, as well?

11 A The existing mechanism does not include purchases.

12 Q Okay, so we're adding purchased power, we're
13 adding gas sales, we're adding a number of other capabilities
14 here and yet we're only bumping the threshold up \$10 million
15 over what we're projecting for just the power sales?

16 A No, sir, the --

17 Q Is that correct?

18 A -- the \$35.1 million is our projection of the
19 short-term power purchases and power sales combined. So
20 we do provide, on an annual basis, as part of our fuel
21 projections, both purchases and sales. The incentive
22 mechanism, itself, that exists today, only pertains to sales,
23 but we do project both. So the \$35.1 million is the
24 projection of both the short-term purchases and short-term
25 sales.

1 Q Okay, but the -- but you're setting this baseline
2 based on those two components, but we're adding a lot of
3 other components that we don't have any data on at this
4 point. So is it logical, then, is it fair to the customers,
5 to say we're going to set a baseline that is based on a much
6 narrower universe of savings opportunities that we're going
7 to actually exploit?

8 A I believe it is fair. This will be something that
9 evolves over the course of four years. And again, we do
10 believe it sort of will function as a pilot to determine
11 whether this is something that we want to maintain going
12 forward post the four-year settlement.

13 There are a number of things that we could be
14 doing today, again, that we are not, because there are
15 certain uncertainties that exist, certain risks that exist.
16 This is just an acknowledgement that they do exist by the
17 Commission. We would include them in the incentive mechanism
18 and then try to produce some results associated with that.

19 I think, you know, even with these expanded
20 optimization opportunities that the \$10 million above the
21 current projections is still a bit of a stretch goal.

22 Q Is it true that all of the assets that we're
23 optimizing the returns on are currently in the rate base or
24 will be in the rate base at the time this process happens?

25 A No, many of these assets are recovered through the

1 fuel clause.

2 Q Okay, the fuel -- but I'm sorry, but they're
3 recovered -- the cost of it is recovered from the ratepayers?

4 A That is correct, from our customers, yes.

5 Q Is there a reason why this isn't considered just
6 an alternative source of available revenue that should be
7 pursued without an extra incentive?

8 A Additional revenue for --

9 Q I believe the -- you weren't here, but earlier in
10 this case we had an Intervenor who raised a question of the
11 available income that FPL could derive from selling CO-2,
12 which didn't go anywhere. But he raised -- but apparently
13 there is a requirement that a utility take advantage of all
14 available sources of profitable revenue from their assets.
15 And I don't quite understand why these -- all of these
16 transactions weren't included under that.

17 MR. BUTLER: I'm going to object to the form of the
18 question, assuming facts not in evidence.

19 MR. HENDRICKS: I'm sorry? What facts are not in
20 evidence?

21 MR. BUTLER: You just testified about what, I
22 assume you're referring to Algenol, had as part of an
23 earlier portion of the proceeding. You haven't cited to
24 anything in the record, you haven't indicated what in
25 the Florida Statutes you're referring to about an

1 obligation to maximize profits.

2 MR. HENDRICKS: You're correct.

3 CHAIRMAN BRISE: It's a fair objection,

4 Mr. Hendricks.

5 BY MR. HENDRICKS:

6 Q Would you say that the -- Mr. -- well, never mind.
7 I'll just put that one aside. I've raised the issue and
8 we'll deal with it later.

9 What is the rationale for the specific 50/50 and
10 higher rations that are in the sharing mechanism as designed,
11 50 percent share for FPL and larger share in the bulge
12 bracket above the threshold?

13 A I think, again, this is part of the negotiation as
14 part of a broader settlement. Again, we tried to put
15 together an incentive mechanism or enhancement to the
16 existing one that was very straightforward, it ensured our
17 customers saw the lion's share of the benefits and then from
18 that point created a meaningful sharing mechanism for FPL to
19 participate in.

20 I think incentives, over time, have been shown to
21 be -- produce better results than with the absence of an
22 incentive mechanism. The Commission, itself, is on record on
23 numerous occasions commenting to the same. And so we tried
24 to establish something that was very straightforward, but,
25 again, something that provided a meaningful sharing above

1 certain thresholds where while we could participate our
2 customers would still see the large benefits of those gains.
3 But it was done through the negotiation of the settlement.

4 Q Was there any discussion in the settlement or
5 otherwise of imposing some limitations on this or having a
6 reduced percentage or going back to the 20 percent sharing
7 arrangement?

8 A I was not part of the settlement discussions.

9 Q But did you design the original mechanism that
10 went into the settlement --

11 A I helped, yes.

12 Q -- from FPL's point of view?

13 A Yes.

14 Q Did it contain such features?

15 A The thresholds were added as we kind of went
16 through that process. So it started off with a threshold and
17 then we sort of established the incremental thresholds from
18 there, the sharing mechanisms through the process. I mean,
19 it was an ongoing battle. But I was not involved directly
20 with the signatories.

21 MR. HENDRICKS: Thank you.

22 CHAIRMAN BRISE: All right, thank you,

23 Mr. Hendricks. Staff?

24 MR. YOUNG: Thank you.

25 CROSS EXAMINATION

1 BY MR. YOUNG:

2 Q Good evening, Mr. Forrest, how are you?

3 A I'm doing well, thank you.

4 MR. YOUNG: May staff approach the witness? We
5 just want to hand out some documents in case -- to jog
6 the witness's memory, in case he forgets.

7 CHAIRMAN BRISE: Sure.

8 MR. YOUNG: Mr. Chairman, just for a point of
9 information, these documents have already been entered.
10 The cover page is in order, which we don't need to be
11 marked as any -- given any separate exhibit number. The
12 rest of the documents have been identified as Staff's
13 composite exhibit.

14 CHAIRMAN BRISE: All right, thank you.

15 BY MR. YOUNG:

16 Q Mr. Forrest, if I can direct your attention to
17 page eight, line 19 of your prefiled direct testimony.

18 A My prefiled? Okay.

19 Q And here you discuss the Commission approved
20 incentive mechanism that is currently in effect for
21 participating IOUs, correct?

22 A On line eight, you said? I'm sorry --

23 Q On page eight, line 19.

24 A Oh, line 19, yes, that's correct.

25 Q And the current incentive mechanism is outlined in

1 Order Number PSC-00-1744-PAA-EI, correct?

2 A That is correct, yes.

3 Q And the current incentive mechanism provides
4 that -- provides for participating IOUs, all IOUs, not just
5 FPL, to share 20 percent of the non-separate wholesale gains
6 once a particular threshold has been reached, correct?

7 A That is correct.

8 Q Now, looking on page 17, line five of your
9 prefiled direct testimony, you discussed how FPL utilizes
10 the software program GenTrader and Economy A to identify
11 potential arbitrage opportunities related to the asset
12 optimization measure listed in paragraph 12 of the proposed
13 settlement agreement, correct?

14 A Yes, those applications both determine marginal
15 pricing for dispatch.

16 Q And these software provide -- these software
17 programs evaluate potential transactions to determine net
18 gain-slash-savings associated with -- associated with the
19 transaction -- excuse me -- correct?

20 A Yes, that is in effect correct. We will either
21 use Economy A or GenTrader to determine marginal costs and
22 then we can look at either opportunities for purchases or
23 sales against that marginal cost, that is correct.

24 Q And this method FPL currently utilizes for
25 identifying eligible wholesales, like you said, wholesale

1 sales, and wholesale purchases and calculate the associated
2 gains and sales under current incentive mechanisms, correct?

3 A Yes, for savings -- excuse me -- for gains on
4 sales, that is correct.

5 Q Can you please turn to FPL's Response to
6 Staff's -- this packet that was handed out to you, FPL's
7 Response to Staff's 20th set of Interrogatories, number
8 588 -- 558, excuse me.

9 A I'm sorry, I don't see 558.

10 Q It should be right after the order.

11 A Yeah, I don't see it. Mine starts with 618.

12 Thank you.

13 Q Take a second to look at that document, sir,
14 please.

15 A Yes. Okay.

16 Q All right, this interrogatory response includes a
17 sample total gain schedule and incremental optimization cost
18 schedule, correct?

19 A That is correct.

20 Q And FPL will submit these schedules to the
21 Commission each year along with the actual estimated true-up
22 filings in the fuel clause, correct?

23 A That is the proposal, yes.

24 Q And each year FPL will calculate a separate
25 incentive mechanism factor to be included in the calculation

1 of the fuel clause, correct?

2 A Correct.

3 Q So you're saying that the incentive mechanism is
4 annually, correct?

5 A It would be -- we would show the total gains --
6 the short answer is yes. We would calculate the total gains
7 for the year that would be filed in the true-up in March for
8 inclusion in our projections for the following year.

9 Q Okay. It's late, so I'm a little slow. So each
10 year we start back at zero, correct, for the incentive
11 mechanism?

12 A That is correct.

13 Q Okay. Now, looking at the numbers -- and we can
14 run quickly through this -- as part of the incentive
15 mechanism FPL is proposing that the proposed settlement
16 agreement, that customer savings threshold is \$36 million,
17 correct?

18 A That is the first -- that is the first threshold,
19 yes.

20 Q With an additional \$10 million, correct?

21 A With the next \$10 million going to customers, yes.

22 Q And the \$36 million -- and this threshold is based
23 on FPL projected 2013 wholesale sales and wholesale purchase,
24 correct?

25 A That is correct, and just, I guess, for clarity,

1 the total projections were \$35.1 million, which we then
2 rounded to the \$36 million to create the first threshold.
3 So, yeah, the 35.1 was based on our projections of economy
4 sales and economy purchases for 2013.

5 Q Okay. But the threshold is \$36 million, correct?

6 A That's correct.

7 Q Okay. And next there's an additional customer
8 savings threshold of \$10 million, correct?

9 A That is correct, yes.

10 Q And this is, again, based on the threshold
11 represented as a threshold for FPL before its shareholders
12 will be eligible to receive a portion of the total
13 gains-slash-savings, correct?

14 A That is correct, the \$10 million is 100 percent to
15 the customer.

16 Q Now, beyond the \$46 million customer threshold and
17 additional customer savings there is a three-tier in which
18 FPL can share in the total gains and sales, correct?

19 A That's correct.

20 Q And the first one of these three thresholds, three
21 thresholds, is the 46 -- between 46 million and 75 million,
22 correct?

23 A That is correct.

24 Q And the split there is 70/30, FPL?

25 A That is correct.

1 Q Okay, 70 for the FPL, 30 for the customer?

2 A That is correct.

3 Q And the second threshold is between 75 and a \$100
4 million, correct?

5 A Correct.

6 Q And the split there is 60/40, correct?

7 A Sixty percent FPL, 40 percent to the customer,
8 that is correct.

9 Q And the third threshold is a 50/50 split, correct?

10 A That is correct.

11 Q And these thresholds remain in place for four
12 years -- a four-year duration of the proposed settlement
13 agreement, correct?

14 A For the term of the settlement agreement, that is
15 correct.

16 Q Now, in the proposed settlement agreement, FPL
17 preserved the option to outsourcing the certain asset
18 optimization measures in the form of an asset management
19 agreement, which you term AMA, correct?

20 A There is that potential. We have looked at AMAs
21 in the past, have never found the terms that we felt were
22 beneficial to our customers, and so we haven't transacted on
23 them, but there certainly is an opportunity to look at
24 potentially outsourcing a portion of our assets to a third
25 party.

1 Q Now, would FPL continue to manage the wholesale
2 sales and wholesale purchase in-house and only outsource the
3 other asset optimization measures, like natural gas storage,
4 transmission capacity, to a third party?

5 A Yeah, that is absolutely correct. We would always
6 maintain the short-term power purchases, short-term power
7 sales in-house. There's no guarantee that we would outsource
8 any of those other activities to a third party, but there is
9 the potential. So we will certainly do a portion of those
10 optimization measures in-house. If we can identify a third
11 party that brings additional value to us beyond what we
12 believe we can deliver ourselves, we might outsource a
13 portion of it, yes.

14 Q And would these AMAs be executed with any
15 affiliated FPL NextEra Energy, Inc. or any other party
16 represented by the signatories of the proposed settlement
17 agreement?

18 A No, these would all be -- if it were outsourced
19 through an asset management agreement, they would all be done
20 with unaffiliated third parties.

21 Q And the proceeds from the AMAs would come in the
22 form of optimization fees paid to FPL, sharing of profits
23 derived from the optimized assets, FPL purchasing gas at
24 below market price, or some other mutually agreed upon means,
25 correct?

1 A That is correct. We've not studied asset
2 management agreements all that in depth, but there are a
3 number of different structures that are available, almost
4 like incentive mechanisms where there's no one-size-fits-all.
5 It really depends largely on who the counterpart you're
6 talking to about the opportunity is.

7 So there is an opportunity that they may just pay
8 a fixed fee for the right to manage your assets, which would
9 then ensure that you received the same reliability and the
10 same price for the gas that you would have purchased
11 otherwise. They could pay you a portion of the gains
12 associated with their optimization activities. There's a lot
13 of ways to structure these, as we understand it.

14 Q Does FPL have any immediate plans or intimate
15 plans to engage in any AMAs?

16 A No, sir, we do not.

17 Q Okay. Now, looking at the costs, FPL anticipates
18 that it will incur additional O&M costs associated with the
19 expanded incentive mechanism, correct?

20 A Yes, that is correct.

21 Q And these anticipated additional costs are for the
22 incremental personnel, software, hardware, and potential
23 variable power plant O&M costs, correct?

24 A That is correct. On the operations and
25 maintenance side, as I mentioned earlier, some of these

1 activities, these optimization activities, are things that we
2 do not do today. We would have to go out and hire the
3 resources to go take on some of these additional activities.

4 Again, we believe it's a very modest investment
5 on the part of our customers to take on the additional
6 opportunities, again, in a very similar fashion to how the
7 hedging costs were first passed through the fuel clause. We
8 imagine that's the same sort of structure here.

9 Q Now, for 2013 FPL is anticipating approximately
10 \$500 thousand in incremental personnel, software, and
11 hardware to support the expended incentive mechanisms, and
12 zero additional -- zero dollars in addition to variable power
13 plant O&M expense, right?

14 A That is correct, and on the O&M side, the \$500,000
15 was very much an estimate. These are things that will evolve
16 over time. We don't have definitive answers as to how many
17 bodies we believe it will take, but it's something that will
18 evolve as we begin to implement some of those measures. We
19 estimated if we took on three additional bodies, it's
20 somewhere in the neighborhood of about \$500,000 of
21 incremental O&M costs.

22 Q Now, all these incremental O&M costs will be borne
23 but the ratepayers, correct, regardless of the level of
24 benefit FPL customers receive?

25 A That is correct, our customers -- we would ask our

1 customers to pay for that, yes.

2 Q And all these incremental O&M costs would be
3 subject to Commission approval, correct?

4 A That is correct. Again, back to the same
5 mechanism that was used when we used to pass our hedging
6 costs, our incremental hedging costs, through the fuel
7 clause, a very similar manner.

8 Q The asset optimization measures that FPL has
9 identified as potentially eligible for inclusion in the
10 incentive mechanism carry some risk, correct?

11 A They do carry some risk. I would characterize
12 them as primarily monetary, as opposed to operational.
13 Again, as I've mentioned earlier, we do not plan to take on
14 any transactions that would impact the reliability of our
15 system. I think that the years have borne that out in terms
16 of what we've done on the wholesale power side.

17 We would not take on any transactions that would
18 impact us from an operational perspective or from a
19 reliability perspective. So these types of risks we're
20 talking about are potentially monetary risks that potentially
21 you might have to dispatch a higher priced fuel to the
22 example that was offered earlier, yes.

23 Q And these risks include market risks, credit risks
24 and operational risks, correct?

25 A Yeah, again, largely pointing back to ultimately

1 monetary or economic impact, yes.

2 Q Is it possible that FPL could experience a net
3 loss due to these risks?

4 A There is that potential, yes.

5 Q Okay. And is there a sharing mechanism for that?

6 A There is in the -- I guess in the effect that if
7 we're experiencing a loss on a transaction, we are that much
8 farther away from the \$46 million and our opportunity to
9 participate in the sharing above the \$46 million.

10 So the sharing is -- the gains would, you know,
11 suffer from that. Again, I believe the types of gains -- the
12 types of losses we're talking about are very remote, but if
13 they do occur, it just puts us that much farther away from
14 the threshold, ultimately.

15 Q So that's a no? There's no sharing mechanism for
16 the loss?

17 A Well, I guess it's --

18 MR. BUTLER: I object. The question has been asked
19 and answered.

20 MR. YOUNG: Mr. Chairman, no, it has not. That
21 question has not been asked and answered.

22 My question is specifically is there a sharing
23 mechanism for the loss. He has not answered the
24 question.

25 CHAIRMAN BRISE: I would agree.

1 THE WITNESS: There is no specific sharing
2 mechanism for the loss. As we would see it, that puts
3 us that much farther away from the threshold, so that is
4 the risk sharing as we see it.

5 BY MR. YOUNG:

6 Q Can you please refer to FPL's Response to Staff's
7 22nd Set of Interrogatories, number 610. And it should be
8 somewhere toward the back.

9 A Yes.

10 Q Does FPL believe that the safeguards listed here
11 in this interrogatory would be able to mitigate some of the
12 risk associated with these asset optimization measures?

13 A Yes, we do.

14 MR. YOUNG: Mr. Chairman, I have no further
15 questions.

16 CHAIRMAN BRISE: All right, thank you.
17 Commissioners? Commissioner Balbis?

18 COMMISSIONER BALBIS: Thank you, Mr. Chairman. And
19 thank you, Mr. Forrest, for coming here. I always
20 appreciate someone who is down in the weeds doing the
21 work as a witness. It tends to focus my questions a
22 little bit more.

23 I'm going to separate my questions into two
24 separate tracks. I mean, the first one is on the
25 existing incentive mechanism for purchased power.

1 THE WITNESS: Okay.

2 COMMISSIONER BALBIS: And I'm going to reiterate
3 what has been stated but just kind of focus myself. You
4 indicate that the settlement agreement expands the
5 existing incentive mechanism, but you currently -- let
6 me preface this.

7 I had the benefit of visiting another investor
8 owned utility's control center where they had an
9 employee that was in front of a computer and made, you
10 know, instantaneous decisions as to what generating unit
11 to turn on, and when to purchase power, et cetera. I
12 would assume that FPL has a similar employee or system?

13 THE WITNESS: Employees, yes.

14 COMMISSIONER BALBIS: Okay. So the question to you
15 is, those employees make decisions on which generating
16 unit to turn on and whether to purchase power based upon
17 what is the incremental cheaper unit or power to
18 purchase, correct?

19 THE WITNESS: That is correct. The economic
20 dispatch process is one that establishes what I'll call
21 an incremental cost of generation. So we -- using such
22 things as load, fuel prices, generation availability,
23 they would all go into these unit commitment programs,
24 either Economy A or GenTrader that were referred to
25 earlier. They would then -- we would run the model and

1 it gives you an output of an economic dispatch, meaning
2 it may set the marginal cost of power at \$25 for a given
3 day. And then we would go out -- we have staff that
4 would then go out and canvas the market to try and
5 determine whether we can sell power above the \$25 or to
6 purchase power cheaper than the \$25. So that's an
7 activity that goes on on a daily basis. By the economic
8 dispatch process is the one that happens first.

9 COMMISSIONER BALBIS: Okay, does FPL ever dispatch
10 higher cost generating units or purchase power when it's
11 not as cheap as another way to generate the power or
12 purchase it?

13 THE WITNESS: There are times when we may generate
14 higher priced power than what the economic dispatch
15 model would save, but that would be for reliability
16 reasons, for transmission reasons, that, again, as the
17 marketing affiliate for the utility, we don't have any
18 insight into. But with respect to would I ever go
19 purchase higher priced power than what I can generate on
20 my own, we would not do that, no.

21 COMMISSIONER BALBIS: So what would the proposed
22 incentive mechanism change -- how would that change the
23 practice of those employees that use the economic
24 dispatch model? Would they do anything differently?

25 THE WITNESS: No, we wouldn't. I think maybe

1 there's two parts to your answer. One is, no, we would
2 not do anything differently. We're still going to
3 dispatch economically, we're still going to canvas the
4 market for opportunities for purchases and sales. I
5 think by including the purchases aspect of it, which is
6 not included today, recognizes that there are the same
7 dollar-for-dollar gains from purchases that there are,
8 you know, dollar-for-dollar on the sale side.

9 It also recognizes that incentives are a good thing
10 and by expanding the incentive mechanism, we may be able
11 to do more than what we're doing today. No guarantees
12 to that, but it's certainly -- I think, over time,
13 incentives have been shown to produce better results
14 than with the absence of an incentive mechanism. So
15 we're just looking to expand it beyond what exists
16 today.

17 COMMISSIONER BALBIS: I just want to follow up.
18 You indicated you wouldn't be doing anything
19 differently, but then you just indicated that there
20 may be an expansion. What would you -- what other
21 opportunities are there that incentive would encourage
22 you to take advantage of?

23 THE WITNESS: Sure, the process, itself, would not
24 change. We're still going to run the economic dispatch
25 model, we're still going to go canvas the market. There

1 may be an opportunity, if we were to go out and hire an
2 additional body, that may be able to look at
3 opportunities outside of our service territory that we
4 don't look at today.

5 Again, we have -- most opportunities on a
6 day-to-day basis, you're either buying or you're
7 selling. Very seldom is there an opportunity to do both
8 on a daily basis. But if we were to expand our staff,
9 we may have an opportunity to go out and look in the
10 SERC (phonetic) market, so up in the Georgia market,
11 where we don't typically do too much of our canvassing
12 because we're using our Georgia-based assets to serve
13 load in Florida. So it just may incent us to go out and
14 do some additional things that we don't look at today.

15 COMMISSIONER BALBIS: Okay, and I may come back to
16 that. I want to focus on the asset optimization
17 incentive. So there currently is no incentive for you
18 to utilize or take advantage of these asset optimization
19 programs or methods that you detailed in your testimony?

20 THE WITNESS: There is no incentive mechanism
21 today, that's correct.

22 COMMISSIONER BALBIS: Are you the only -- is
23 Florida Power & Light the only investor-owned utility in
24 Florida that can also take advantage of these asset
25 optimization measures?

1 THE WITNESS: I can't speak for the other
2 utilities. I would say no, but that's speculation on my
3 part.

4 COMMISSIONER BALBIS: So, no, in that there are
5 possibly other utilities --

6 THE WITNESS: There are possibly other utilities
7 that could, yes.

8 COMMISSIONER BALBIS: And you indicated that you're
9 also responsible for the hedging program?

10 THE WITNESS: That is correct.

11 COMMISSIONER BALBIS: And how is that hedging
12 program process established? Was it through a
13 settlement agreement, was it through a rulemaking
14 process? Was it a separate docket?

15 THE WITNESS: It was through an order from the
16 Commission. There's been several orders along the way
17 that defines -- I think the original one was back in
18 2001 or the 2002 time frame. There was a presentation
19 and a proposal by FPL back in 2007 for what was called
20 the volatility mitigation mechanism, which then spurned
21 the guidelines that we operate under today.

22 So there's been a few interactions with the
23 Commission over the last decade or so that have created
24 what we have today with hedging.

25 COMMISSIONER BALBIS: And I should have known that,

1 so I apologize for asking. Thank you for reminding me.

2 So the only thing that's preventing you from taking
3 advantage of these asset optimization measures are the
4 additional resources that may be required?

5 THE WITNESS: Yeah, it's the additional resources
6 that are required, it's also a recognition by the
7 Commission that there are some uncertainties associated
8 with performing some of these activities, that those
9 risks may exist, and the potential for if a loss does
10 occur that, you know, we don't want to be set up for
11 second guessing as to why we're doing certain things and
12 not others.

13 So it's just an acknowledgement that the expanded
14 program ultimately could hopefully bring a significant
15 amount of value to our customers and that we are taking
16 on those additional transactions beyond what we're doing
17 today.

18 COMMISSIONER BALBIS: So how is that different than
19 other proposals that FPL has made in their rate case,
20 whether it's going with a Smart Meter program that
21 allows them to reduce the number of meter readers, or
22 other investments, initial investments where there's
23 long-term cost savings, why didn't Florida Power & Light
24 propose this program in their rate case?

25 THE WITNESS: Well, the incentive mechanism,

1 itself, was not part of our original rate case filing.
2 This is something that would typically be handled
3 through a fuel clause proceeding. But rate cases
4 settlements offer sort of novel ratemaking type
5 opportunities, and we identified this as one way of
6 trying to bring some additional value to our customers
7 beyond what we're doing today, but also offering a
8 win-win situation, if you will, that we get to have an
9 opportunity to participate in a meaningful up-side
10 beyond the incremental value of bringing it to our
11 customers. So this was part of the settlement process,
12 not part of our original rate case filing.

13 COMMISSIONER BALBIS: But you had the opportunity
14 in a fuel clause to present a similar proposal?

15 THE WITNESS: We do, yes, or did.

16 COMMISSIONER BALBIS: I don't want you to
17 misinterpret my line of questioning. I applaud FPL for
18 looking for these methods to increase customer savings,
19 I just want to make sure that, you know, this is
20 something that can be afforded to everyone else, that
21 this is something that's not unique to Florida Power &
22 Light.

23 I don't know if you're aware, but certainly myself
24 and the Commission is aware that through the recent fuel
25 clause proceedings that we are moving forward with a

1 closer look at the GPIF incentive process and have a
2 methodical approach to what is the appropriate incentive
3 through the full evidentiary process. So I appreciate
4 you bringing this to our attention.

5 THE WITNESS: I would say we have not spoken to the
6 other utilities about this proposal, and I wouldn't want
7 to purport to understand how they view the current
8 incentive mechanism or not. I felt for us this was an
9 offer that offers kind of a unique perspective, offered
10 some unique solutions for our customers to bring in
11 additional value and, again, for us for an opportunity
12 to participate in the up-side, if there is some.

13 COMMISSIONER BALBIS: Okay, and then the last
14 question, the asset optimization measures that FPL could
15 take advantage of, does that -- would that solely
16 pertain to the existing infrastructure that's in place
17 today or any future infrastructure improvements over the
18 next -- of the terms of the settlement agreement?

19 THE WITNESS: Yeah, we wouldn't take on any
20 particular asset position just for the sake of asset
21 optimization. We review transactions all the time and
22 those -- we review those transactions as either how they
23 add to the reliability or how they improve the
24 economics, or maybe there's a combination thereof.

25 So any transaction that we're entering going

1 forward is going to be looked at with that same
2 scrutiny. It's either got to improve the reliability of
3 the system when you look at some of the things that
4 we've done, such as the southeast supply header, to try
5 and move ourselves away from off-shore natural gas.

6 You know, we used to be, within the last six or
7 seven years, 80 percent of our gas was coming from
8 off-shore, 20 percent was coming from more traditional
9 on-shore. Now we're sort of, in round numbers, a third,
10 a third, a third, where we have a third of our gas
11 coming from off-shore, a third kind of traditional
12 on-shore, and then a third of it is now the shell gas.

13 Positions like the southeast supply header have
14 allowed us to tie into that shell gas to move ourselves
15 away from off-shore supply, get a little bit more
16 geographic diversity to it. That's how we're going to
17 look at transactions is how do they benefit reliability,
18 how does it benefit our economics. If we take on an
19 additional transaction and it benefits from an asset
20 optimization perspective, that's a byproduct of either
21 reliability or economics.

22 COMMISSIONER BALBIS: Okay, and then just going
23 back quickly to the purchased power or generating
24 incentive, I'm struggling with if Florida Power & Light
25 is using the economic dispatch model as our utilities

1 are and using the existing incentives, and if there's
2 really no change in how you perform your day-to-day
3 business from a purchased power or generating power
4 standpoint, what would be in the public interest to
5 expanding that incentive mechanism?

6 THE WITNESS: Expanding it to include all the
7 activities we're talking about or --

8 COMMISSIONER BALBIS: No, no, just purchased
9 powered.

10 THE WITNESS: -- just purchased power?

11 COMMISSIONER BALBIS: Yes.

12 THE WITNESS: The way we've viewed this is that,
13 you know, over time there have been times when we've had
14 big years in terms of short-term power sales. There
15 have been years when we've had, you know, big years in
16 terms of short-term power purchases, and those things
17 tend to ebb and flow over time. They sort of average
18 out to the 35 to 40 million dollars, sort of in that
19 level over the course of the last ten or 11 years.

20 But it recognizes that there's an incremental
21 amount of value. They both go to reducing our
22 customers' fuel costs. And it's just a recognition that
23 there will be times when we're making sales, there will
24 be times when we're making purchases. It's the same
25 activities by the same people that produce those

1 results, whether they're sales or purchases.

2 And so we just thought it was appropriate to
3 include both of them and then set the mechanism based on
4 both of them. So set the threshold based on both our
5 projections for sales and purchases. So it was just
6 more recognition that it's the same activities by the
7 people on the trade floor on a daily basis.

8 COMMISSIONER BALBIS: Okay, thank you.

9 CHAIRMAN BRISE: Commissioner Graham?

10 COMMISSIONER GRAHAM: Thank you, Mr. Chairman. I
11 know this question was asked to you before, and I don't
12 think I have a clear understanding of what the answer
13 was, so I'll ask it again. The \$46 million, now, I
14 understand that it's roughly 35.1, which is the
15 estimation of what it's going to be in 2013 --

16 THE WITNESS: Correct.

17 COMMISSIONER GRAHAM: -- plus an extra \$10 million.
18 So I guess the question comes down to -- and this is the
19 problem we're at here, because we're not allowed to say
20 the anticipated plus 15 million or the anticipated plus
21 five million, because it's ten million, all or nothing.
22 You can't adjust one way or the other. So I'm trying to
23 understand why ten million.

24 THE WITNESS: We felt -- and again, this was a
25 negotiated process through the settlement -- we felt

1 that ten million was a meaningful goal, a meaningful
2 stretch goal for us to try and achieve beyond what it is
3 we're currently forecasting for 2013. And it's actually
4 higher than that, when you look at 2014's projections.
5 It's probably closer to a \$20 million stretch in 2014,
6 when you look at our forecast.

7 So it's a substantial stretch for us to try and
8 achieve these numbers, but once you do achieve the 46
9 million, it's a meaningful sharing mechanism for FPL to
10 participate in. \$10 million was just the number that
11 came through the negotiations.

12 COMMISSIONER GRAHAM: But I guess the question is
13 why \$10 million is not -- let's turn to tab SF-2.
14 Because I look here, the proposed for 2013 is on the
15 bottom end of what you have down here for 12, 13 years.
16 And if you do as you mentioned earlier, if you look at
17 the running ten-year averages, those running ten-year
18 averages all come out to about 46, 47, 48 million
19 dollars.

20 So my question is, as to 2013, isn't it odd low
21 that you guys are adding ten million to? Why didn't you
22 just go with a running ten million -- running ten years,
23 and then, so, that way, every year, if you have a great
24 year one year, that pushes the bar up for you to achieve
25 it again the next year.

1 THE WITNESS: Right.

2 COMMISSIONER GRAHAM: It pushes the bar up again,
3 but it doesn't ultimately impact you because it's for a
4 ten-year running average, not just the year before.

5 THE WITNESS: Yes, I understand your question.
6 There was a couple of years, the -- what I'll say, 2009,
7 '10, '11 time frame when there was a significant level
8 of purchases. Those purchases were driven by the fact
9 that we were still burning a pretty significant amount
10 of oil in our system. There was a huge disparity
11 between the price of oil and price of gas, it was five
12 times as expensive to generate on oil as it was on gas.

13 Because of the amount of oil that we were burning,
14 it offered significant opportunities for us to be
15 purchasing in the marketplace. So those three years
16 really kind of skew the data to the up side.

17 When we look at going forward, this forecast of
18 \$35.1 million was done on a forward basis. It takes
19 into account more of the market realities and what's
20 happening with our system. We'll have Cape Canaveral on
21 line in 2013, which will help to displace some of the
22 oil. We're projecting less than a million barrels of
23 oil, as five years ago, four years ago, we were doing
24 six, seven, eight, nine, ten, 11 million barrels.

25 So those opportunities to purchase down those oil

1 prices are going away. So this more reflects what's
2 happening with our system as well as the market
3 realities of it. We could have easily just done an
4 average of the last ten or 11 years, but didn't feel
5 like it provided a realistic depiction of what was going
6 forward with our system.

7 COMMISSIONER GRAHAM: Okay. I think incentives are
8 a good thing, I think they're a positive thing. I think
9 this idea is innovative, but who controls -- I think I
10 heard one of the staff mention this before -- if you're
11 buying and selling power, who decides if you're buying
12 high and selling low, or buying low and selling high,
13 and the deltas can be all over the place depending on,
14 you know, which numbers you're looking at. Who makes
15 that determination?

16 THE WITNESS: Well, ultimately I have oversight
17 over the group to make those types of decisions. We
18 have a group that is responsible for ultimately all of
19 our wholesale commodity, whether it's power gas, of our
20 buying and selling decisions. There's governance by our
21 exposure management committee, our risk management
22 groups, there's procedures in place to govern all of
23 that.

24 And ultimately the Staff and Commission have
25 ultimate oversight of, you know, any of the transactions

1 that we do. We've become quite comfortable with Staff
2 in terms of the audits that they perform on us on the
3 hedging. I wouldn't see this to be a whole lot
4 different in terms of coming in and auditing any of our
5 results to determine whether something like a buy high,
6 sell low type transaction has occurred.

7 COMMISSIONER GRAHAM: So let me see if I
8 understand. So you're saying that Staff has got
9 oversight so Staff can determine if they want you to use
10 this number that you sold at, and not this number you
11 sold at?

12 THE WITNESS: No, I guess, to be clear, in terms
13 of -- in terms of reviewing the end results. So after
14 we have performed throughout the year, they'll have the
15 opportunity to audit as, again, as they do with the
16 hedging program today.

17 Ultimately I have oversight over the group to
18 determine whether, you know, we're doing the right thing
19 by our customers in terms of making transactions that
20 make the most sense for our customers, and that we're
21 not doing something such as, you know, taking a
22 low-priced asset and selling it for a gain and then
23 dispatching a high-priced asset for, you know, serving
24 our customers. I think the years have proven that's
25 just not how we operate and it's not how we'll operate

1 going forward.

2 COMMISSIONER GRAHAM: Well, I'm playing devil's
3 advocate, because I don't know, and I guess I don't --
4 I don't know what the mechanisms are. You know, for
5 example, like inventory mechanisms, is it first in, last
6 out, last in, first out, or what are your mechanisms
7 now, as far as tracking that stuff?

8 THE WITNESS: Yeah, in terms of -- if you're
9 speaking specifically to like a gas sale, it would be we
10 would tie a specific gas sale to a specific transaction
11 such that, you know, we don't buy gas -- say the average
12 cost of gas in our system was \$3. We'd go out and buy
13 at 3.50. We would not average that into the \$3 and then
14 go make a sale against that.

15 If the last gas that we purchased was 3.50, if we'd
16 go make a sale for 3.40, we would have lost ten cents on
17 that transaction, as opposed to trying to somehow gain
18 it by combining and creating a weighted average cost
19 of gas. That's not our goal here.

20 The purpose of what we'll be doing is serving load
21 first, taking care of asset optimization second. And
22 that's how we conduct our business today, and that's how
23 we'll conduct our business going forward.

24 COMMISSIONER GRAHAM: So what happens a year from
25 now when Staff is not in agreement with the way you

1 anticipated or you interpreted the order being? What
2 happens at that point?

3 THE WITNESS: I guess we would be here having a
4 conversation with respect to, you know, the transactions
5 we did make and what issues Staff may or may not have
6 had with what we did.

7 COMMISSIONER GRAHAM: Is there a process in place
8 where -- is there a process in place where you and Staff
9 sit together and figure out the mechanism that goes into
10 play here with this mechanism? You guys come back with
11 something and Staff gives you a thumbs up or thumbs
12 down? I don't know how that works.

13 THE WITNESS: Yeah, there is not a mechanism today.
14 I would, you know, foresee a workshop of some type to
15 help in that process.

16 COMMISSIONER GRAHAM: Don't say workshop.

17 THE WITNESS: I won't say workshop. Strike that,
18 then. But we will certainly work with Staff to make
19 sure that, you know, they're comfortable with how we're
20 going to implement this and roll it out.

21 Then obviously they'll have an opportunity to
22 review all of our materials, we'll file the end results
23 in March with review throughout until we would come to
24 the fuel hearings the following -- you know, the
25 following fall to include in the following year's fuel

1 cost projections. So they'd have eight months to
2 review, ultimately.

3 COMMISSIONER GRAHAM: Now, what happens to this
4 settlement if you and Staff can't come to some sort of
5 agreement on how the mechanism works?

6 THE WITNESS: I'm not sure how to answer that one.
7 I'm assuming that we'll come to some agreement. I
8 think, again, it's a fairly straightforward approach to
9 the activities we're taking a look at. So I don't have
10 concerns about coming to an agreement, but --

11 COMMISSIONER GRAHAM: Like I said, I think it's a
12 great idea, I think it's innovative, I just want to ask
13 some of the questions that I didn't know.

14 THE WITNESS: Sure. Thank you.

15 CHAIRMAN BRISE: Commissioner Balbis.

16 COMMISSIONER BALBIS: Thank you, Mr. Chairman, just
17 to follow up on Commissioner Graham's questions. And I
18 thought I hit on this, and I guess I wasn't that
19 satisfied with it. But the \$10 million number,
20 obviously through the negotiation with the settlement
21 agreement there was an expectation on what is an
22 achievable goal, an additional \$10 million in savings,
23 because the 2013 number is at that expected threshold.

24 THE WITNESS: Correct.

25 COMMISSIONER BALBIS: How are you going to achieve

1 those savings and why aren't you doing those today or
2 doing that today?

3 THE WITNESS: Well, I guess, a couple of things,
4 the \$10 million was not an established threshold by
5 trying to go out and calculate how many additional
6 things we thought we could do to create \$10 million. We
7 didn't start with five million, we just said we're going
8 to establish a threshold of \$10 million above that, that
9 the first \$10 million will go to our customers and we'll
10 try to achieve something above that to share or
11 participate in any meaningful up-side above that.

12 Those additional activities that we're going to be
13 doing, such as, you know, selling gas -- again, these
14 are things that we're just not staffed to do today. We
15 are a fuel management organization, at the end of the
16 day. We don't have the resources out there canvassing
17 the market to try and sell gas delivered into Florida or
18 trying to, you know, potentially optimize pieces of our
19 transportation to buy and sell rather than just looking
20 at trying to buy the most economic gas that we can and
21 delivering it reliably to our system. That's our
22 focus on a day-to-day basis.

23 The reason we don't do those things is we just
24 don't have the staff to go out and do it and there's,
25 you know, nothing within the statute that says that we

1 should be, you know, hiring people to go out and do that
2 type of thing.

3 So what we're trying to do is include it in this
4 mechanism to take on those additional activities to try
5 to bring value to the customer.

6 COMMISSIONER BALBIS: So would this be an
7 additional business unit for FPL?

8 THE WITNESS: It would be within my group, as well.

9 COMMISSIONER BALBIS: But it would be an additional
10 unit staff, et cetera?

11 THE WITNESS: You would have additional personnel
12 that you would be responsible for, again, as I mentioned
13 earlier. Initially our focus on a daily basis will
14 always be reliably delivering the most economic fuel to
15 our power plants.

16 If there are idle assets that remain after that,
17 the optimization team will try to take advantage of
18 those opportunities that may present themselves. So it
19 would be staff that's within my business unit that are
20 focused solely on optimization beyond the folks that are
21 currently responsible for trying to buy the most
22 economic fuel and getting it reliably to our plants.

23 COMMISSIONER BALBIS: Okay, and in your -- this is
24 the last question -- Exhibit SF-2, page one of one,
25 Commissioner Graham focused on this. You have several

1 columns. The first column after the year's total power
2 sales gain, the next is total purchased power savings.

3 THE WITNESS: That's correct.

4 COMMISSIONER BALBIS: What do you anticipate will
5 have the greatest customer benefit in the future, power
6 sales gains or purchased power savings?

7 THE WITNESS: I would say for the near term it will
8 most definitely be power purchased savings.

9 COMMISSIONER BALBIS: Why is that?

10 THE WITNESS: Well, I think the sales opportunities
11 have -- you can see the trend there. It's been kind of
12 a downward trend for the last seven or eight years.
13 Part of that is driven by the fact that there is other
14 merchant generation available in Florida for sale.
15 Those merchants do sell price. We will buy from them
16 when we can. If we're dispatching on oil, we'll buy
17 that merchant generation.

18 Most of those assets are dispatched on natural gas,
19 as opposed to oil, so the opportunities for us are to
20 try to buy down. Even though we're very much weaning
21 ourselves away from oil, we still project to be, you
22 know, five or six or seven hundred thousand barrels of
23 heavy oil in 2013. Any opportunity we can to buy down
24 that is a big savings.

25 And on the sales side, the opportunities just don't

1 present themselves as much. We have, in those periods
2 when we have generation available to sell in the
3 marketplace, most everybody else does, as well, so it's
4 a pretty competitive marketplace on the sales side.

5 COMMISSIONER BALBIS: Okay, thank you. That's all
6 I have.

7 CHAIRMAN BRISE: Commissioner Brown.

8 COMMISSIONER BROWN: Thank you. And I don't want
9 to keep you any longer than you already are, but I just
10 want to clarify a question because the incentive
11 mechanism did pique my interest when I first read the
12 settlement agreement and I found it kind of interesting,
13 and saw some benefits there, possible potential benefits
14 there.

15 But that being said, I think Mr. Young asked you
16 a question earlier about -- or something -- I may
17 extrapolate from his question -- but something about
18 quantifying the amount of additional costs in order to
19 generate the benefits to customers contemplated by the
20 incentive mechanism. I think you said it was something
21 about adding three additional employees, correct?

22 THE WITNESS: That is correct.

23 COMMISSIONER BROWN: And like \$500,000 in
24 incremental costs. Is there any additional costs
25 associated with that?

1 THE WITNESS: Beyond what I've spoken about, beyond
2 the \$500,000?

3 COMMISSIONER BROWN: Uh-huh.

4 THE WITNESS: There's nothing concrete, really,
5 even about the 500,000. We tried to do our best
6 estimate of what we felt we would need in terms of going
7 out and to hire a few additional bodies to help with
8 these optimization measures we don't do today.

9 We're estimating two to three additional personnel
10 in 2013 would help in this process to do some of the
11 things, again, that we just don't look at: Delivering
12 sale -- you know, delivering gas into Florida, releasing
13 capacity. These are things that we don't do, so having,
14 you know, two or three additional bodies for taking that
15 is what we're talking about.

16 COMMISSIONER BROWN: It's limited to that, though?

17 THE WITNESS: It's limited to that. And we said,
18 you know, three bodies, if that's what it was, would run
19 somewhere in the neighborhood of about \$500,000 when you
20 took into consideration the hardware and software to
21 support a trading desk and the personnel along with
22 that.

23 COMMISSIONER BROWN: Okay, and I guess providing
24 the Commission with some updates, I guess Commissioner
25 Graham kind of alluded to some, you know, recourse with

1 that, with Staff communications. The settlement
2 agreement does not necessarily contemplate that
3 annually. Am I misstating it?

4 THE WITNESS: Correct. There would be several
5 interactions along the way. Like we've obviously missed
6 the 2013 fuel hearing projection. For 2014 we would
7 project those incremental costs as part of our annual
8 filings. So if for some reason we were having great
9 results with these optimization measures and we wanted
10 to hire a fourth body, if you will, to go out and do
11 some of these things and felt that, you know, the
12 opportunities were going to more than pay for that body,
13 we would file that as part of our 2014 fuel projections
14 in the November time frame.

15 So there will be a lot of interaction along the way
16 with the different filings that we'll make, both as our
17 projections and our end of year true-ups.

18 COMMISSIONER BROWN: Okay, good. Thank you. Have
19 a good night.

20 THE WITNESS: Yeah, thank you.

21 CHAIRMAN BRISE: Any further questions from
22 Commissioners? All right, redirect?

23 MR. BUTLER: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. BUTLER:

1 Q Yeah, not so fast, Mr. Forrest. I have a few
2 questions on redirect for you. Mr. Forrest, do you have a
3 copy of FPL's Response to Staff Interrogatory 556 available
4 to you? I would note, Commissioners and parties, this is
5 part of what has been marked as hearing Exhibit 651 in the
6 Staff list of discovery that they want to put into the -- put
7 into the record. Do you have a copy of that, Mr. Forrest?

8 A Yes, I do.

9 Q Okay. And does this show, Mr. Forrest,
10 projections of the gains that FPL anticipates for the years
11 2013 through 2016?

12 A Yes, it does.

13 Q Okay. Would you advise the Commission what the
14 projected gains are for those four years?

15 A The total amount in the --

16 Q No, just year-by-year. I'm sorry.

17 A Well, I'm just saying, do you want the total
18 column?

19 Q Yes.

20 A Okay, in 2013 the projection is \$35.1 million. In
21 2014 the projection is 24.9 -- I'll round -- \$24.9 million.
22 In 2015, \$25.2 million, and in 2016, \$31.4 million.

23 Q Thank you, Mr. Forrest. Would it be fair to say
24 for that period of time that the 2013 projected gain is the
25 largest of the four-year period?

1 A Yes, it would be.

2 Q Okay. You were asked some questions, Mr. Forrest,
3 about the sharing of gains with -- between the customer and
4 the company above the \$46 million threshold. I'd like you to
5 consider one illustrative example, if you would, please.

6 A Okay.

7 Q At a total gain of \$60 million, if that's what FPL
8 was able to achieve in one of the years during the term of
9 the settlement, would you do the calculation, please, just
10 sort of run through it for the Commission, of what portion of
11 that would go to customers and what portion of it would go to
12 the company?

13 A Yes, at \$60 million -- again, if the customers
14 were to receive the first \$46 million, 100 percent, above
15 that there is a 70/30 split, with 70 percent going to FPL and
16 30 percent going to the customer. \$60 million would produce
17 roughly 50-plus million dollars for our customers, which is
18 about -- I guess it's about 84 percent sharing for customers,
19 16 percent for FPL.

20 So even at the \$60 million level there's still a
21 fairly significant amount of gains that go to FPL's customers
22 which, again, \$60 million is a far stretch from what it is
23 that we're projecting today.

24 Q Thank you. Would you comment on the effect that
25 the modernization projects for FPL are anticipated to have on

1 FPL's potential for making beneficial wholesale power
2 purchases?

3 A Yeah, from a purchases perspective, the
4 modernization program, you've got Cape Canaveral coming on
5 line in 2013, Riviera coming on line in '14, and then you've
6 also got Everglades coming on line in '16. Those
7 opportunities or those power plants will drive down the
8 opportunities for purchases.

9 So as we continue to get into this modernization
10 program, the opportunity to purchase down against dispatched
11 oil will continue to diminish as oil continues to get removed
12 from our system. So the purchases opportunities do diminish
13 over time and the numbers that we show reflect that.

14 Q Final question on redirect, Mr. Forrest. Do you
15 recall early in your cross examination by Ms. Christensen you
16 were commenting on limitations on your knowledge or ability
17 to have knowledge about FPL's transmission operations?

18 A That is correct.

19 Q Would you explain, please, to the Commission what
20 the nature of those limitations are?

21 A Yeah, FERC has a standard of conduct which
22 effectively prohibits a marketing affiliate -- which the
23 energy marketing and trading group of Florida Power & Light
24 is the marketing affiliate for the utility -- from having
25 non-public information. So we're treated just like every

1 other utility is within the state in terms of dealing with
2 FPL transmission.

3 So I can't have any non-public transmission
4 information. So there's a fairly tall Chinese wall that
5 exists between the two organizations.

6 So with respect to anything the transmission group
7 is doing from an upgrades perspective or their daily dispatch
8 to potentially dispatch assets that are needed for
9 reliability reasons, I don't have access to any of that
10 information.

11 MR. BUTLER: Thank you, Mr. Forrest. That's all
12 the redirect that I have.

13 CHAIRMAN BRISE: All right, thank you very much,
14 Mr. Butler. At this time let's deal with exhibits.

15 MR. BUTLER: FPL would move into the record
16 Exhibits 672 through 674.

17 CHAIRMAN BRISE: All right, we'll move into the
18 record 672 to 674, notwithstanding the running
19 objection.

20 (Exhibits 672, 673 and 674 admitted in evidence.)

21 MS. CHRISTENSEN: Office of Public Counsel would
22 move into the record 714 and 715.

23 CHAIRMAN BRISE: Okay, we will move into the record
24 Exhibits 714 and 715, notwithstanding the running
25 objection. All right, are there any other exhibits that

1 I missed?

2 (Exhibits 714 and 715 admitted in evidence.)

3 MR. BUTLER: I don't think so.

4 CHAIRMAN BRISE: All right, thank you, Mr. Forrest.

5 MS. CHRISTENSEN: Was Staff moving in their
6 exhibit?

7 MR. YOUNG: No, that was just a -- absent the
8 order, all the exhibits have already been moved into the
9 record.

10 MS. CHRISTENSEN: Okay.

11 CHAIRMAN BRISE: Okay, thank you. Before we move
12 into the next witness -- and that will be from South
13 Florida Hospital Association -- we'll take a
14 three-minute stretch break.

15 (Brief recess)

16 CHAIRMAN BRISE: All right, we are going to give
17 everybody 30 seconds to find their spot. And I think,
18 Mr. Wiseman, your witness.

19 All right, Mr. Wiseman, go right ahead.

20 MR. WISEMAN: Thank you, Mr. Chairman. Mr. Kollen,
21 could you state your name and business address for the
22 record, please.

23 MR. KOLLEN: Yes, my name is Lane Kollen. My
24 business address is J. Kennedy and Associates --

25 CHAIRMAN BRISE: Is your mic on?

1 Q And do you adopt your testimonies as your sworn
2 testimony in this proceeding?

3 A I do.

4 MR. WISEMAN: Mr. Chair, I would ask that
5 Mr. Kollen's testimony be submitted into the record as
6 if read.

7 CHAIRMAN BRISE: All right, at this time we'll
8 enter Mr. Kollen's prefiled testimony into the record as
9 though read.

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**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

IN RE:

**PETITION FOR RATE INCREASE BY) DOCKET NO. 120015-EI
FLORIDA POWER & LIGHT COMPANY)**

DIRECT TESTIMONY OF LANE KOLLEN

1 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS PROCEEDING**
2 **ON BEHALF OF SFHHA?**

3 **A. Yes. I filed Direct Testimony in the captioned matter.**

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PHASE**
5 **OF THE PROCEEDING?**

6 **A. The purpose of my testimony is to address the issues listed in Appendix A to**
7 **the Commission's Third Order Revising Order Establishing Procedure dated**
8 **October 3, 2012. These issues are as follows:**

- 9
- 10 1. Are the generation base rate adjustment for the Canaveral
11 Modernization Project, Riviera Beach Modernization Project, and Port
12 Everglades Modernization Project, contained in paragraph 8 of the
13 Stipulation and Settlement, in the public interest?
- 14
- 15 2. Is the provision contained in paragraph 10(b) of the Stipulation and
16 Settlement, which allows the amortization of a portion of FPL's Fossil
17 Dismantlement Reserve during the Term, in the public interest?
- 18
- 19 3. Is the provision contained in paragraph 11 of the Stipulation and
20 Settlement, which relieves FPL of the requirement to file any
21 depreciation or dismantlement study during the Term, in the public
22 interest?
- 23

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

5
6 5. Is the Settlement Agreement in the public interest?

7 I address whether the provisions in the proposed settlement that are referenced
8 in Issues 1 through 4 are in the public interest and whether the Settlement
9 Agreement as a whole is in the public interest.

10 **Q. SFHHA'S FINAL LITIGATION POSITION AS SET FORTH IN ITS**
11 **POST-HEARING BRIEF SUPPORTS A REDUCTION OF FPL'S**
12 **REVENUE REQUIREMENT EFFECTIVE JANUARY 1, 2013 OF**
13 **APPROXIMATELY \$99 MILLION, WHEREAS THE PROPOSED**
14 **SETTLEMENT WOULD PROVIDE FPL A RATE INCREASE ON**
15 **JANUARY 1, 2013 OF \$378 MILLION. IS SFHHA'S POSITION IN ITS**
16 **POST-HEARING BRIEF INCONSISTENT WITH A CONCLUSION**
17 **THAT THE PROPOSED SETTLEMENT IS IN THE PUBLIC**
18 **INTEREST?**

19 A. No. I have testified on hundreds of occasions in rate proceedings over the
20 course of my career. I have offered that testimony at various times on behalf
21 of virtually every segment involved in electric regulation, including utilities,
22 state commissions and their staffs, and large consumers of electricity. In my
23 experience, the final agency order typically adopts positions advocated by
24 various parties, and does not adopt all positions adopted by any one party

25 Although I continue to strongly support the positions that I addressed

1 in the litigated proceeding, as does SFHHA, there is significant value to the
2 parties and the public in general from a settlement of litigated issues in lieu of
3 an adjudication of those issues. Such settlements generally are encouraged by
4 commissions to achieve outcomes that are more acceptable to the parties and
5 to minimize the use of the Commission's and the parties' resources in further
6 litigation.

7 As I subsequently discuss, the proposed settlement here represents a
8 compromise by all the settling parties of their litigated positions, a
9 circumstance that was made possible by the various provisions of the
10 proposed settlement as a package, including the five provisions of the
11 proposed settlement that are the subject of the issues identified by the
12 Commission. Taken as a whole, the proposed settlement provides substantial
13 benefits for customers, which is why the proposed settlement is in the public
14 interest, notwithstanding the positions SFHHA took in the litigated
15 proceeding.

16 **Q. ARE THE GENERATION BASE RATE ADJUSTMENTS FOR THE**
17 **CANAVERAL, RIVIERA BEACH, AND PORT EVERGLADES**
18 **MODERNIZATION PROJECTS, CONTAINED IN PARAGRAPH 8 OF**
19 **THE SETTLEMENT, IN THE PUBLIC INTEREST?**

20 **A.** Yes. In the context of this proceeding, the three GBRA adjustments in the
21 settlement are in the public interest for at least four reasons. The first reason
22 is that the Company cannot claw back the reduction from its request through a
23 subsequent base rate increase over the next four years.

1 The second reason is that the GBRA increases are limited to the
2 Canaveral, Riviera, and Port Everglades modernization projects. The
3 Company cannot seek or implement any other base rate increases during the
4 next four years regardless of increased costs unless it is unable to achieve a
5 return on equity of 9.70% through a combination of revenue growth, cost
6 controls, or amortization of the remaining depreciation reserve surplus and the
7 fossil dismantlement reserve.

8 The third reason is that the GBRA increases are capped based on the
9 costs approved by the Commission in the respective needs proceedings for the
10 three modernization projects. In those proceedings, the Commission approved
11 those projects based on the need for and costs of the three projects.

12 The fourth reason is that the settlement sets forth the methodology for
13 computing the GBRA revenue requirement for each of the three increases.

14 Thus, the GBRA mechanism in the proposed settlement provides rate
15 certainty and stability over the next four years, and allows rate increases over
16 that time period only for the costs of the three modernization projects, which
17 are reasonably certain and known and measurable as of today.

18 **Q. DID YOU OPPOSE FPL'S PROPOSED GBRA IN ITS LAST RATE**
19 **CASE?**

20 **A.** Yes. However, the settlement GBRA is different than FPL's proposed GBRA
21 in its last case. I opposed FPL's proposed GBRA in the last rate case because
22 it would have permanently supplanted the traditional base ratemaking process
23 for all major generation and transmission projects and because the
24 methodology was not well-defined and was flawed in important respects.

1 Unlike the Company's proposal in the last case, the settlement GBRA in this
2 case provides rate certainty and stability over a limited duration of four years,
3 limits the rate increases only to recovery of the costs of the three
4 modernization projects, which are known and measurable as of today, and is
5 part of a comprehensive settlement of all issues.

6 **Q. IS THE PROVISION CONTAINED IN PARAGRAPH 10(B) OF THE**
7 **STIPULATION AND SETTLEMENT, WHICH ALLOWS THE**
8 **CONTINUED AMORTIZATION OF THE COMPANY'S**
9 **DEPRECIATION RESERVE SURPLUS AND A PORTION OF ITS**
10 **FOSSIL DISMANTLEMENT RESERVE (THE "RESERVE**
11 **AMOUNTS"), IN THE PUBLIC INTEREST?**

12 **A.** Yes. This provision in the settlement is in the public interest for at least three
13 reasons. The first reason is that the settlement avoids future base rate
14 increases over the next four years by allowing the Company a limited
15 opportunity to amortize the remainder of the depreciation surplus and a
16 portion of the dismantlement reserve amounts recovered from customers in
17 prior years in order to maintain its return on equity within the range set forth
18 in the settlement. The ability to use the depreciation surplus and the
19 dismantlement reserve is limited by the Company's actual earned return up to
20 a maximum of 11.7% in each year during the four year period. The ability to
21 amortize these reserves also is limited to \$400 million over the four year
22 period.

23 The second reason is that this provision ensures that customers retain
24 the full amount of the excess depreciation reserve, including the reduction to

1 rate base, that actually will exist at December 31, 2012 if it is greater than the
2 amount projected by the Company in its filing. On the other hand, the
3 Company bears the risk if the actual amount is less than the Company
4 projected in its filing.

5 The third reason is that the continued amortization of the excess
6 depreciation reserve returns the excess amounts collected in prior years to
7 customers over a shorter period of time than if the excess depreciation reserve
8 were returned to customers over the remaining lives of the underlying assets
9 as reflected in the Company's approved depreciation rates. Given the
10 circumstances now in effect on FPL's system, SFHHA believes this provision,
11 in conjunction with other aspects of the settlement, is in the public interest.

12 **Q. IS THE PROVISION CONTAINED IN PARAGRAPH 11 OF THE**
13 **STIPULATION AND SETTLEMENT, WHICH RELIEVES FPL OF**
14 **THE REQUIREMENT TO FILE ANY DEPRECIATION OR**
15 **DISMANTLEMENT STUDY DURING THE TERM, IN THE PUBLIC**
16 **INTEREST?**

17 **A.** Yes. This provision of the settlement is in the public interest because it is
18 essential to ensure that the Company and its customers both obtain the benefit
19 of the settlement bargain and the relationship between base revenues and the
20 expenses used to support the base revenue requirement. The issue here is
21 whether the depreciation rates can or should be changed as the result of a
22 depreciation study during the next four years when the settlement precludes a
23 concomitant change in the Company's base rates to reflect the changes in
24 depreciation expense resulting from changes in the depreciation rates.

1 The obvious answer to this issue is that there should be no change in
2 depreciation rates during the next four years in order to maintain the matching
3 between the depreciation expense using the present depreciation rates and the
4 base revenues that recover this same depreciation expense using the present
5 depreciation rates.

6 If the Commission maintains the requirement to perform and file a
7 depreciation study in 2013 and the Company's depreciation rates are changed,
8 this necessarily will introduce a mismatch between depreciation expense
9 resulting from the new depreciation rates and the base revenues set to recover
10 depreciation expense. If the depreciation study were to result in a net
11 reduction in depreciation rates and the reduction in depreciation expense was
12 not reflected in a concomitant reduction in base revenues, then the Company
13 would retain the savings, all else equal.

14 **Q. IS THE PROVISION CONTAINED IN PARAGRAPH 12 OF THE**
15 **STIPULATION AND SETTLEMENT, WHICH CREATES THE**
16 **"INCENTIVE MECHANISM" INCLUDING THE GAIN SHARING**
17 **THRESHOLDS ESTABLISHED BETWEEN CUSTOMERS AND FPL,**
18 **IN THE PUBLIC INTEREST?**

19 **A.** Yes. This provision is in the public interest because it provides a timely
20 sharing of "gains" from wholesale power purchases and sales, as well as all
21 other forms of asset optimization, through the fuel adjustment clause ("FAC").
22 Among other sources of gains, as the three modernization projects are
23 completed, the Company should be able to reduce wholesale power purchases

1 and increase sales. Thus, these gains flowed through the FAC will partially
2 offset the base rate increases through the GBRA.

3 **Q. IS THE PROPOSED SETTLEMENT AGREEMENT AS A WHOLE IN**
4 **THE PUBLIC INTEREST?**

5 A. Yes. The proposed settlement is in the public interest because it results in a
6 known and certain reduction from the Company's requested increases, locks
7 in that reduction for the next four years, and ensures that base rate increases
8 over the next four years are capped to allow recovery of only the approved
9 capital investment costs of the Canaveral, Riviera, and Port Everglades
10 modernization projects. The Company will be required to manage its earnings
11 without the benefit of additional base rate increases through a combination of
12 effective cost controls and the amortization of the remaining depreciation
13 reserve surplus as well as a portion of the fossil depreciation reserve.

14 At the same time, all customers, as well as the Company, will be
15 spared the risk and expense of at least one rate case (and possibly two) that
16 FPL likely will file during the four-year period covered by the proposed
17 settlement in the absence of Commission approval of the settlement
18 agreement. One risk that will be avoided by customers is the potential for an
19 increase in FPL's cost of capital over the next few years if interest rates rise
20 from their present historic lows.

21 In short, the benefits I have described that result from the specific
22 provisions that are the subject of this current phase of this case, in conjunction
23 with the decrease to FPL's requested increase in base rates and the other terms
24 and conditions of the proposed settlement, provide substantial benefits to all

1 ratepayers, and approval of the proposed settlement will spare the parties and
2 the Commission from expending their valuable time and resources on further
3 litigation not only in this proceeding, but also over the next four years. In the
4 totality of the circumstances, including the combination of the components I
5 have addressed and the present economic environment, SFHHA believes that
6 the proposed settlement is in the public interest.

7 **Q. DOES THIS COMPLETE YOUR TESTIMONY REGARDING**
8 **SETTLEMENT ISSUES?**

9 A. Yes.

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

IN RE:

**PETITION FOR RATE INCREASE BY) DOCKET NO. 120015-EI
FLORIDA POWER & LIGHT COMPANY)**

REBUTTAL TESTIMONY OF LANE KOLLEN

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

2 A. My name is Lane Kollen. My business address is J. Kennedy and Associates,
3 Inc., 570 Colonial Park Drive, Suite 370, Roswell, GA 30075.

4 **Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS SETTLEMENT
5 PHASE OF THE PROCEEDING?**

6 A. Yes. I filed testimony in support of the settlement on behalf of the South Florida
7 Hospital and Healthcare Association ("SFHHA").

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. The purpose of my testimony is to respond to the claim by Office of Public
10 Counsel ("OPC") witness Ms. Ramas that the revenue increases set forth in the
11 August 15, 2012 Settlement Agreement are not fair, just and reasonable because
12 they exceed the test year costs recommended as reasonable by the OPC; and to
13 respond to OPC witness Mr. Daniel's opposition to paragraph 12 of the
14 Settlement Agreement, which incentivizes the Company to optimize the use of its
15 assets to improve revenues and margins for the benefit of customers.

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1 **Q. MS. RAMAS TESTIFIED THAT ALTHOUGH SHE IS NOT OFFERING A**
2 **LEGAL OPINION, SHE BELIEVES THE FLORIDA STATUTES, AND**
3 **STATUTES IN OTHER STATES, REQUIRE THAT RATES HAVE TO BE**
4 **COST-BASED. DO YOU AGREE?**

5 A. No. Although I too do not offer a legal opinion, I disagree with Ms. Ramas based
6 on my experience. State public utility commissions, including this commission,
7 often approve “black-box” settlement agreements wherein the components and
8 derivation of the rate increase are not specified except to the extent necessary for
9 various purposes, *e.g.*, return on equity, depreciation rates, regulatory assets and
10 amortization expense, etc. Each party to the settlement makes its own
11 determination of the reasonableness of the settlement compared to its litigation
12 position, which does not require that the parties or the Commission rigidly adhere
13 to cost-based rates as Ms. Ramas advocates. This was true with respect to the
14 Commission’s approval of the “black box” settlement of FPL’s 2005 rate case.

15 **Q. DO YOU AGREE WITH MS. RAMAS THAT THE REVENUE**
16 **INCREASES SET FORTH IN THE AUGUST 15, 2012 SETTLEMENT**
17 **AGREEMENT ARE NOT FAIR, JUST AND REASONABLE?**

18 A. No. The revenue increases set forth in the Settlement Agreement set rates for a
19 four year period and transcend the revenue requirement for a single test year. The
20 specified revenue increases over the four years are in fact cost-based in the sense
21 that they are derived from the cost-based filing FPL made to initiate this
22 proceeding. While OPC and I disagreed with FPL’s case in a litigated setting, as I
23 pointed out in Direct Testimony, there is no assurance the Commission will
24 accept SFHHA’s or OPC’s arguments on particular cost items. SFHHA has made

1 a judgment that a 25% reduction from the Company's request as reflected in the
2 agreed upon initial rate increase together with the other provisions of the
3 Settlement Agreement result in fair, just and reasonable rates even though the
4 initial increase is not based on a fully specified cost-based revenue requirement.
5 In addition, the revenue increases that will occur from the proposed settlement
6 were based on a careful balance among the initial increase and the increases in
7 each of the next three years rather than focusing only on the initial increase.
8 While the initial year increase is indeed more than either OPC or the SFHHA
9 recommended in the main proceeding, the tradeoff is that the four year agreement
10 limits base rate increases in each of the next three years to recovery of the costs of
11 the three modernization projects. Other than nuclear cost recovery base rate
12 adjustments, FPL cannot seek or implement additional base rate increases for any
13 other costs during the four year period.

14 Further, the Settlement Agreement provides customers a substantial and
15 continuing benefit from the amortization of the depreciation reserve surplus
16 reflected in the initial increase. The initial increase reflects a nonrecurring credit
17 of \$191 million. The four year agreement ensures that this credit is retained and
18 benefits customers for another three years, thus providing customers an additional
19 \$573 million in value that would not be available if FPL instead filed for annual
20 base rate increases.

21 Finally, the initial increase under the Settlement Agreement will not
22 achieve the 10.7% return on equity specified in the Settlement Agreement, based
23 on FPL's revised revenue requirement, as Ms. Ramas acknowledges. [Ramas
24 Direct at 6]. As Ms. Ramas notes, the initial increase of \$378 million is

1 approximately \$20 million less than the \$398 million increase that would be
2 necessary to achieve a 10.7% return on equity, all else equal. In other words, the
3 initial increase will result in a return on equity of less than 10.6%, all else equal.

4 **Q. MR. DANIEL OPPOSES THE INCENTIVE MECHANISM SET FORTH**
5 **IN PARAGRAPH 12 OF THE SETTLEMENT AGREEMENT FOR**
6 **VARIOUS REASONS, ONE OF WHICH IS THAT THIS IS A NEW**
7 **PROPOSAL NOT INCLUDED IN THE COMPANY'S FILING AND THAT**
8 **THE PARTIES HAVE NOT HAD AN OPPORTUNITY TO STUDY IT IN**
9 **DETAIL. PLEASE RESPOND.**

10 A. It is not entirely a new proposal, but even if that were true, that does not preclude
11 it from inclusion in the Settlement Agreement. The Incentive Mechanism is an
12 expansion and improvement of the existing sharing mechanism to include
13 additional transactions that otherwise would not have been flowed through to
14 customers between base rate cases, to increase the "gains" threshold before FPL
15 can share in those gains so that more savings flow through to customers upfront,
16 and to increase FPL's incentive to achieve savings and/or additional margins for
17 the benefit of customers.

18 This expansion of the existing sharing mechanism will not harm
19 customers, but has the potential to substantially benefit customers. As Mr. Daniel
20 notes, FPL has not exceeded the threshold of the existing sharing mechanism
21 since 2007. [Daniel Direct at 6]. However, the enhancements to the mechanism
22 that are part of the settlement, *i.e.*, new types of transactions to produce additional
23 revenues, and increases to the "gains" threshold before FPL can share in those
24 gains, have the potential to improve the results for ratepayers. Further, these two

1 modifications are improvements designed to incentivize FPL specifically for the
2 benefit of customers. As a result, and as Mr. Daniel also notes, the sharing
3 percentages for the Company once the threshold has been exceeded are
4 substantially greater than the 20% under the existing mechanism.

5 Even in a worst case scenario, the improved incentive mechanism will not
6 harm customers. Therefore, the proposed incentive mechanism should not be
7 viewed as a negative because customers will obtain the opportunity for greater
8 benefits than they had or would have under the existing mechanism if FPL
9 achieves "gains" that exceed the increased threshold of the Incentive Mechanism.

10 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

11 **A. Yes.**

1 BY MR. WISEMAN:

2 Q Thank you. And Mr. Kollen, do you have an oral
3 summary of your testimony?

4 A I do. I'll try to be brief. Good evening,
5 Commissioners and Mr. Chairman. In my direct testimony I
6 conclude that the proposed settlement, taken as a whole, is
7 in the public interest. It represents a significant
8 reduction compared to FPL's request.

9 It provides four years of certainty and rate
10 stability and ensures no other base rate increases, other
11 than the GBRA and nuclear cost recovery base rate increases.
12 It places the risk of cost control on FP&L. It expands the
13 value of the depreciation reserve surplus from a one-time
14 event to a recurring event worth as least \$573 million over
15 the four-year period. I think this is a very, very
16 significant benefit.

17 The settlement agreement specifies and caps
18 recovery of the three modernization projects and it
19 incentivises FP&L to achieve greater levels or margins from
20 all system sales, from reductions in purchased power costs
21 and to achieve greater asset optimization, all of which would
22 be flowed through to customers through the fuel adjustment
23 clause.

24 In my rebuttal testimony I respond to specific
25 Office of Public Counsel criticisms of the settlement.

1 Ms. Ramas asserts that the revenue requirement must be cost
2 based. I believe that although this is not necessary, the
3 settlement is in fact cost based in the sense that the
4 initial increase is based on the parties' assessment of the
5 company's filed case and that the GBRA increases are, in
6 fact, cost based.

7 The fact that the initial rate increase is greater
8 than SFHHA's litigation position is balanced against the
9 other components of the settlement, which is normally the
10 case when many issues are on the table and subject to
11 compromise.

12 The four-year period and the other considerations
13 transcend a single year cost-based revenue requirement. In
14 addition, I respond to Mr. Daniel's criticism of --
15 criticisms of the incentive mechanism. Mr. Daniel argues
16 that this is a new mechanism. I point out that it isn't new.
17 It modifies and enhances the existing mechanism for the
18 purpose of achieving benefits to customers through the fuel
19 adjustment clause.

20 The existing mechanism has not provided any
21 benefits to customers since 2007, so it is appropriate to
22 modify the mechanism to improve on that lack of achievement.

23 The incentive mechanism expands the transactions
24 that are covered, increases the threshold to ensure that the
25 first dollars go to customers, and then increases the

1 percentage to the company to incentivise achievement in a
2 meaningful way. And there is no down-side to the cost to the
3 customers compared to the last five years, but there is
4 significant up-side. That completes my summary.

5 MR. WISEMAN: Thank you. Mr. Kollen is available
6 for cross examination.

7 CHAIRMAN BRISE: All right, thank you.
8 Mr. Rehwinkel?

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

10 CROSS EXAMINATION

11 BY MR. REHWINKEL:

12 Q Good evening, Mr. Kollen.

13 A Good evening.

14 MR. REHWINKEL: Mr. Chairman, I passed out a batch
15 of three exhibits. Hopefully we can just save some time
16 and distribute them. I don't know --

17 CHAIRMAN BRISE: Oh, they're about to be
18 distributed.

19 MR. REHWINKEL: I say I passed them out. I gave
20 them to Staff.

21 CHAIRMAN BRISE: Okay.

22 MR. REHWINKEL: While they're being passed out, one
23 of the exhibits is an excerpt from Mr. Kollen's July,
24 2009 testimony.

25 CHAIRMAN BRISE: Okay.

1 MR. REHWINKEL: This is the first 14 pages.

2 CHAIRMAN BRISE: So would that be the first one
3 you'd like to use?

4 MR. REHWINKEL: Yes, sir.

5 CHAIRMAN BRISE: Okay, so that would be 716.
6 (Exhibit 716 marked for identification.)

7 MR. REHWINKEL: The second exhibit is an excerpt
8 from the most recent FPL rate case order and this is
9 really for demonstrative purposes. It's the first 17
10 pages.

11 CHAIRMAN BRISE: Okay, 717.
12 (Exhibit 717 marked for identification.)

13 MR. REHWINKEL: And then the third one is the SFHHA
14 Petition to Intervene, and the order granting
15 intervention. And that would be 718?

16 CHAIRMAN BRISE: Yes, it would be.
17 (Exhibit 718 marked for identification.)

18 CHAIRMAN BRISE: Thank you.

19 MR. REHWINKEL: Do all the parties have the
20 three exhibits? Mr. Kollen, do you have the exhibits?

21 THE WITNESS: I do.

22 BY MR. REHWINKEL:

23 Q Mr. Kollen, can you tell me what FPL's achieved
24 earnings will be in the years 2014, 2015 and 2016?

25 A I cannot.

1 Q Who is your client here today?

2 A My client is the South Florida Hospital and
3 Healthcare Association.

4 Q Are you testifying on behalf of the South Florida
5 Hospital and Healthcare Association and no one else?

6 A That's -- that's correct. I was retained by the
7 Association.

8 Q To the best of your knowledge, is the South
9 Florida Healthcare -- Hospital and Healthcare Association
10 paying for your testimony?

11 A To the best of my knowledge, that's correct.

12 Q Then your direct testimony on page three, line 20,
13 can I get you to turn there. You used the phrase in the
14 context of this proceeding. Do you see that?

15 Q I do. And that was intentional.

16 Q What do you mean by that?

17 A Well, as I further explain in my testimony, in the
18 prior case I opposed the company's proposal for GBRA for
19 various reasons. And in the context of this proceeding,
20 meaning the settlement, I believe that the three GBRA
21 adjustments are in the public interest and I cite four
22 reasons for that.

23 Q Okay. In your opinion is a rate increase either
24 fair, just and reasonable, or not?

25 A I don't understand the question.

1 Q Is it either fair, just and reasonable, or is it
2 not? I mean, can it be sort of fair, just and reasonable, or
3 is it one or the other?

4 A Well, I think that you have to balance all of the
5 factors and you have to come down on the side of either it
6 isn't or it is.

7 Q Okay. Let me get you to turn quickly to your
8 rebuttal testimony. On page two, at the very bottom, the
9 last three words, carrying over to the first four lines of
10 the next page three, do you see that?

11 A That's correct.

12 Q Okay. Now, it says here SFHHA has made a judgment
13 that a 25 percent reduction from the company's request as
14 reflected in the agreed-upon initial rate increase together
15 with the other provisions of the settlement agreement result
16 in fair, just and reasonable rates, even though the initial
17 increase is not based on a fully specified cost-based revenue
18 requirement. Do you see that?

19 A Yes.

20 Q Is this your judgment?

21 A It is my judgment. It's not the judgment that was
22 made initially. I did not personally negotiate the
23 settlement agreement. Mr. Wiseman did, and other counsel for
24 SFHHA. But I did discuss it with them in a relatively
25 contemporaneous time period, and it was my judgment at the

1 time that it was reasonable.

2 Q When was the earliest that you participated or
3 assisted in counsel -- in negotiating this settlement?

4 A It was prior to the hearing --

5 Q Which hearing?

6 A The litigation proceeding. But as far as the
7 specifics, I don't recall. But it was early on in the
8 process.

9 Q What process?

10 A The settlement discussion process.

11 Q Was it before the -- you filed your testimony
12 on -- in the litigated portion on July 2nd, is that right?

13 A I believe so.

14 Q Were you working on the settlement or with counsel
15 before you filed your testimony?

16 A I don't believe so.

17 Q Would you have been working on it before August
18 1st?

19 A You're helping me to narrow down the time frame,
20 but I don't have a specific recollection of the dates.

21 Q Would it have been after July 15th?

22 A I don't know. It would have been after I filed my
23 direct testimony in the litigated proceeding.

24 Q Okay. Did you sign a nondisclosure agreement as
25 part of your assistance with counsel?

1 A With whom and in what respect?

2 Q With Florida Power & Light.

3 A I believe that I had signed a nondisclosure -- or
4 a confidentiality agreement with respect to this proceeding,
5 this docketed proceeding.

6 Q Did you sign a separate one with respect to the
7 negotiations that were ongoing?

8 A I don't recall.

9 Q Is it possible that you did?

10 A It's possible. I just don't recall. I sign
11 probably two dozen or more nondisclosure agreements or
12 confidentiality agreements a year, and I just don't recall.

13 Q Do you recall whether you signed one that
14 precluded you from discussing negotiations with the Public
15 Counsel's office?

16 A I don't recall, sir. If I don't recall whether or
17 not I signed one, I certainly wouldn't recall any specifics
18 of anything that I don't recall whether or not I signed.

19 Q That's fair enough. I was just trying to see if
20 I could jog your memory.

21 A I appreciate that. Thank you.

22 Q On page two, line 24 of your direct testimony, you
23 say your experience is that the final order in rate cases
24 does not adopt all positions adopted by one party, is that
25 right, or something like that?

1 A That's correct.

2 Q Have you ever seen a utility win 100 percent of
3 the issues in a litigated rate case?

4 A Yes.

5 Q In Florida?

6 A I don't know. I was thinking more along the lines
7 of specifically litigated issues, maybe one or two issues in
8 a particular proceeding, and I don't have a specific
9 recollection of any circumstances in any cases in which I
10 participated in Florida where the utility won all of the
11 issues. And that's certainly not the case here, either.

12 Q In the 2009 case, do you have that excerpt from
13 your testimony, which is Exhibit 716?

14 A I do.

15 Q Isn't it true that you recommended in that case
16 that FPL's revenues -- revenue requirement was a negative
17 \$336 million? And you can look on page six of that excerpt.

18 A Well, not its revenue requirement, it's either
19 surplus or deficiency. I recommended that there was a
20 surplus.

21 Q Okay. FPL had sought a \$1.044 billion increase?

22 A Yes, that's correct.

23 Q And the Commission authorized 75 million?

24 A Yes.

25 Q Isn't it also true that in that case you

1 identified \$36 million in productivity gains for the test
2 year?

3 A That's correct.

4 Q Okay. And you also identified Smart Meter or AMI
5 savings resulting in about \$20 million by 2013?

6 A Yes, that's correct, and that was an adjustment
7 the Commission rejected.

8 Q And in this case, in the testimony you filed in
9 the litigated portion of this case, you identified \$42
10 million of AMI or Smart Meter savings that would result by
11 the 2014-2015 time frame, correct?

12 A I did address that issue. I don't recall the
13 quantification sitting here. I don't have that before me.

14 Q Okay. The record would reflect what your
15 testimony was?

16 A I'm certain that's true.

17 Q Okay. Have you now changed your position and do
18 you believe that FPL will not achieve whatever Smart Meter or
19 AMI savings you identified in your testimony filed in the
20 litigated portion of this case?

21 A No, I haven't changed my mind. FPL agreed that it
22 would achieve those savings. The question in the proceeding
23 is whether or not they should have been recognized in the
24 2013 test year.

25 Q Okay. You don't think it's a good idea to set

1 rates based on a subsequent test year test period, do you?

2 A I'm not sure what you mean. If you're talking
3 about a forecast test year, that would be one answer. If
4 you're talking about something years down the road, that
5 might be another answer.

6 Q Well, let's look at both answers. Forecasted test
7 year and then the year after that, do you think that's a good
8 idea to set rates based on that?

9 A Generally I do not.

10 Q How about two years out?

11 A Generally I do not.

12 Q What about three?

13 A I do not.

14 Q Four?

15 A Generally I do not.

16 Q Okay. Would it be even less compelling to set
17 rates two, three, and four years past a forecasted test year
18 each year you got out?

19 A On a comprehensive basis that's exactly right.
20 However, the settlement doesn't do that. What it does is it
21 essentially identifies specific cost increases that will be
22 hitting in '14, '15 and '16 and addresses how those costs
23 will be recovered. And it also puts additional parameters
24 around that in a comprehensive package that we believe brings
25 value to customers, not only the customers that I represent,

1 but the entire customer base.

2 Q Haven't you called that type of ratemaking single
3 issue one way ratemaking before?

4 A In what context?

5 Q Well, don't you think that a GBRA is a single
6 issue one way ratemaking that only addresses one type of cost
7 and doesn't consider offsets?

8 A Well, that was true in the 2009 case. That was my
9 testimony in that case for a number of reasons. One is that
10 there was no comprehensive package. What we have here is a
11 settlement that sets rates for four years. What the company
12 was asking for in 2009 was a series of open-ended rate
13 increases through the GBRA. And that essentially would, in
14 perpetuity, supplant the traditional ratemaking process.

15 So it's a totally different circumstance between
16 this case and this settlement compared to the 2009 case, and
17 I do explain that in my direct testimony, because I figured
18 that would be an issue or at least a question. And
19 apparently I was correct.

20 Q You were. Would you agree that you explain the
21 benefits of the GBRA using roughly about 167 words in your
22 direct testimony?

23 A I have no -- I did explain the benefits within the
24 context of the settlement. Whether it was 167 words, I have
25 no idea.

1 Q I see.

2 A If you counted those, I'm impressed.

3 Q Would you consider that damning with faint praise?

4 A I don't know what you would mean by that, so I
5 couldn't agree with that, either in principle or
6 specifically.

7 Q All right. Your testimony in 2009 wasn't based on
8 contrasting the proposal at that time with a settlement that
9 would resolve GBRA issues for a number of years, was it?

10 A That's correct. The 2009 testimony was where the
11 company, FP&L, was proposing the GBRA as a means of setting
12 rates going forward and essentially supplanting the
13 traditional ratemaking process, and I absolutely opposed
14 that.

15 That's not the situation here. We have a
16 settlement, four years of rate certainty, three specific GBR
17 rate increases that are defined.

18 Q And you would agree that there are no opportunity
19 in those periods for there to be an offset based on cost
20 savings that the company might incur from the customer
21 standpoint, right?

22 A I think that's generally right, but within the
23 context of --

24 Q Would you say certainly would?

25 A I said that's right, within the context of the

1 settlement. When I addressed this issue in the 2009 case, of
2 course, we had -- we were faced with a prospect under FP&L's
3 proposal of a never-ending series of rate increases without
4 the ability to incorporate offsets.

5 In this case we have a four year limited time
6 period, we have three GBR rate increases, there's tremendous
7 pressure on the company to deliver cost control, and that was
8 intentional. It basically sleeves the company for a
9 four-year period. And that was not the case in the company's
10 proposal in 2009.

11 Q In the proposal before the Commission now you
12 agree that they get a \$236 million increase in 2014 and a
13 \$218 million increase in 2016 in base rates, correct?

14 A I don't remember the amounts.

15 Q Would you accept that, subject to check?

16 A For what that's worth, yes.

17 Q Okay. Do you have any reason to doubt --

18 A You could have said 500 million. I would have
19 said yes, subject to check.

20 Q The record will speak for itself, will it not?

21 A It will, yes. And I'm not trying to be funny, but
22 I just don't recall the dollar amounts.

23 Q Okay. These are dollars that customers will pay,
24 right? It's not a laughing matter, right?

25 A I agree with you there, because my customers or my

1 clients will pay the costs, as well.

2 Q Okay. You objected to the notion of FPL's rates
3 being set at a \$244 million increase in 2011 in the last
4 case, correct?

5 A Again, I don't recall the dollar amount.

6 Q Okay. But the order will speak for itself on
7 that, right?

8 A It will, yes.

9 Q Okay. And you objected to that, correct?

10 A I didn't object to the order, I objected to the
11 step increase, yes.

12 Q Right, you objected to it being based on a
13 subsequent test year, a subsequent period test year, correct?

14 A Yes, that was one reason, that's correct.

15 Q Now, would you consider that position you took
16 there to be an aggressive one?

17 A No.

18 Q All right. What about these issues --

19 A And it was accepted by the Commission, too.

20 Q Right. On page six of your 2009 testimony you
21 have a list of issues here, a list of adjustments that take
22 the revenue requirements from 1.044 billion to negative
23 336 --

24 A It takes -- I would clarify your question to say
25 that it takes the deficiency identified by the company and

1 through a series of adjustments my recommendation is that
2 there was a surplus. It doesn't directly address the revenue
3 requirement. It moves it from a deficiency to a surplus.

4 Q Okay. Would you consider this to be a litany of
5 aggressive positions that are listed here?

6 A No, I don't think they were aggressive, I think
7 they were all reasonable.

8 Q Kind of vindicated by a \$75 million result, right?

9 A Well, I don't know if I would agree with that
10 characterization. I would say this, that many of the
11 adjustments specifically were rejected by the Commission, and
12 certain of them were accepted.

13 Q On page eight of your direct testimony, at lines
14 14 through 20, you state that the proposal will spare the
15 company and the customers the risk and expense of at least
16 one rate case and possibly two that FPL will likely file
17 during the four-year period covered by the proposed
18 settlement in the absence of a Commission approval of the
19 settlement, right?

20 A I'm sorry, are you in my direct testimony in this
21 settlement proceeding --

22 Q Yes.

23 A -- or are you back in 2009?

24 Q No, I'm in today's.

25 A I'm sorry, I was looking at the 2009 testimony.

1 Q I apologize for the confusion. Page eight, lines
2 14 through 20.

3 A Yes, yes.

4 Q Do I need to ask the question again?

5 A I think your question was did I say that, and the
6 answer is yes. I think you read it correctly.

7 Q Okay. Now, in 2009 you took pretty much the exact
8 opposite position about comparing the cost of a rate case.

9 A No, I don't think that's correct at all. You have
10 to keep in mind that the context of the 2009 case was far
11 different than the context of this settlement. Remember,
12 what the company was proposing in 2009 was a series of these
13 open-ended cases where basically they would be allowed to put
14 through large revenue increases, rate increases, without the
15 benefit of the Commission's review, including any offsetting
16 reductions in costs.

17 And so one of the reasons cited by the company in
18 2009 was that it would spare the Commission, as far as
19 resources and costs. Well, now we're over here in this
20 settlement proceeding where we have the four year rate
21 period, we have boundaries around the GBRA, and we know what
22 those rate increases are going to be, at least within a
23 reasonable range and with a reasonable degree of certainty.
24 And so then it does become a benefit. Now, I won't say
25 that it's a great benefit, but it is a benefit of the

1 settlement.

2 Q One of the benefits is that there wouldn't be any
3 offsets to the 218 to 236 million dollar rate increases
4 based on productivity, gains, or savings?

5 A No, this is something that the company will have
6 to manage during the four-year period of the stay-out. And
7 it puts significant pressure on the company because it has
8 limited ability to deal with cost increases. It can't raise
9 base rates to pick up additional transmission and
10 distribution costs, it can't raise base rates to pick up
11 additional generation costs.

12 In other words, all of the effects of inflation,
13 all of the effects of increases of costs of capital, the
14 company has to manage those costs. The only way it can
15 manage those costs is to do things better with less. In
16 other words, improve its productivity.

17 Q Mr. Kollen, you testify on many occasions in your
18 career about productivity gains and offsets to cost
19 increases, isn't that correct?

20 A Yes, that's true.

21 Q Okay. Now, everything you just listed to me is
22 only going one way, which is up, right? Is that your
23 assumption about 2013, '14, '15 and '16, that costs are only
24 going to go up, and there will be no productivity gains?

25 A No, that isn't my testimony. It's exactly what I

1 said. There is tremendous pressure to increase costs.
2 Additional regulations, inflation, all of these costs tend to
3 go up just with the status quo. So in order to keep costs
4 constant or actually to improve the cost structure, in order
5 to accommodate additional investment that isn't recovered
6 under the GBRA rate increases in '13, '14 and '15, the
7 company has to achieve productivity savings.

8 Essentially this is putting -- sleeving the
9 company so that they have to achieve the very things that I
10 have proposed. And so then rather from -- rather than having
11 the Commission say, well, listen, we like Kollen's idea that
12 there should be an adjustment for productivity offset,
13 instead it's up to the company to achieve it. You put the
14 parameters around the company, you box it in for four years,
15 you limit the increases, and the company has to respond. I
16 think that's a great structure, I really do.

17 Q So you don't believe -- well, you would agree with
18 me that the company spent in the five to \$600 million range
19 to put in Smart Meters, and those dollars will be fully in
20 rate base by sometime in 2013, right?

21 A I believe that's correct. It won't be -- there's
22 still a 13-month average in the 2013 test year. And since
23 that was the starting point for everyone, they would not be
24 fully in rate base, so -- because of the weighting over the
25 test year. But by the end of 2013 they'll be fully in the

1 rate base, fully expended, let's put it that way, but not
2 recognized in the rate base.

3 Q Okay. And you agree that they will generate tens
4 of millions of dollars of cost savings to the company?

5 A Yes, that's correct.

6 Q Okay. Let's look at your testimony from 2009, if
7 you have that.

8 A I do.

9 Q On page eight, lines five through 19, is there
10 anything in this testimony here that you now disavow or
11 disagree with as far as what you testified to in 2009?

12 A No, not at all. As I explained before, this
13 testimony was relevant to the circumstances in the 2009
14 proceeding, where the company was proposing this series of
15 perpetual GBRA rate increases. And one of the reasons cited
16 by the company why the Commission should approve that is that
17 it avoids the administrative resources and the cost of
18 recurring rate cases. I didn't agree with that within that
19 context.

20 Now I'm citing the savings in support of the
21 settlement because that's a reality, the GBRA rate increases
22 are limited, there's a four year box, if you will, or a
23 sleeve around the company.

24 Q I think you've said that about ten times.

25 A I know, but you keep asking me about it, so I have

1 to keep answering you.

2 Q Well, I keep asking you about your testimony in
3 2009.

4 A I know, and, well, it's a fair enough question
5 because on the surface, you know, I did say that, you know,
6 I don't think that's a valid rationale for doing the GBRA in
7 the context of the 2009 case. But it is a valid rationale
8 for doing the limited number of GBRA increases within the
9 context of this settlement.

10 Q FPL didn't give you any special knowledge about
11 its earning forecasts in 2014, '15 and '16, did it?

12 A No.

13 Q On your testimony, in your direct in the 2012
14 proceeding, you list your four reasons that we talked about
15 earlier, right? The first one is the -- let's call it the
16 anti claw back reason.

17 A Yes.

18 Q You have one sentence on that, right, in lines 21
19 through 23?

20 A On page three, yes.

21 Q Yes. Okay. Now, isn't it true that what you're
22 saying there is that's a good thing because you assume that
23 the company would win 100 percent of the \$517 million rate
24 increase that they asked for and they would be prohibited
25 from getting -- clawing back the \$138 million that they

1 supposedly are giving up in the settlement, is that right?

2 A I don't think I would characterize it that way.
3 I think the reduction is about \$160 million and the company
4 can't come back over the next four years and seek to increase
5 its rate of return.

6 Q What production is 160?

7 A Well, the \$160 million from the company's
8 corrected or updated request compared to --

9 Q Okay, so you agree with that, that it's really 525
10 and not 517?

11 A I'm just using that as a point of comparison.

12 Q Okay. But the same Lane Kollen that agreed --
13 that said that instead of a billion-44 in the last case, it
14 was negative 336, you're buying the whole 525 million; that's
15 the number they would have gotten in a litigated case?

16 A No, that isn't my testimony at all. The
17 settlement provides for an increase of \$378 million and I was
18 simply comparing that to the updated quantification of the
19 deficiency. I think it was around \$530 million.

20 Q Okay.

21 A And my litigated position and SFHHA's litigated
22 position still is essentially no rate increase.

23 Q It's less than a hundred million dollars, right?

24 A It's closer to zero.

25 Q Okay. And now because FPL is willing to knock

1 off, as you say, \$160 million from its bloated request, the
2 avoided claw back is supposed to be seen as a benefit to
3 customers?

4 A Well, it's a benefit because the company can't
5 come back over the next four years. In other words, this is
6 a reduction of \$160 million and that will remain in effect
7 and accrue over each of the four years. And then in addition
8 there are other benefits, as well. For example, the
9 depreciation reserve surplus.

10 Instead of paying a one-time reduction in the 2013
11 revenue requirement, you see that being picked up again in
12 '14, '15 and '16. That adds almost another \$600 million of
13 value.

14 Q So this 160 million, you said it will remain and
15 accrue, and it will only accrue if it's a legitimate -- if
16 the revenue requirement is legitimately a \$525 million
17 increase, is that right?

18 A No, it accrues because what we're doing is we're
19 looking at adopting a sleeve here for the company. It cannot
20 increase base rates beyond the GBRA and beyond the nuclear
21 cost increases. And so even if its costs go up, which
22 history tells us that they do, the company is now going to
23 have to manage those costs in order to live within that
24 revenue level.

25 Q Okay. So isn't it -- shouldn't the Commission

1 really look at these 2014 and 2016 rate increases that you're
2 agreeing to as not avoiding FPL getting 100 percent of its
3 original ask, but as locked-in guaranteed rate increases and
4 be concerned more that FPL won't be recognizing any offsets
5 like productivity gains, AMI, Smart Meter savings, and
6 potential decreases in depreciation expense?

7 A I'm sorry, I just didn't follow the question.

8 Q I'll withdraw that question. The GBRA that you
9 recommend in this case are really akin to two single issue
10 2014 and 2016 test year rate cases with costs only being
11 considered in one direction, right?

12 A Well, that's true if you look at only those
13 provisions, but you can't look at only those two provisions
14 within the four corners of the settlement, and that's what I
15 keep coming back to. It's a sleeve.

16 In other words, in exchange for that, they can't
17 raise rates, base rates, for any other reason. And in
18 addition we lock in the value of the depreciation reserve
19 surplus, substantial value. If the company came in in 2013
20 for a rate increase in 2014 for the Riviera modernization
21 project, do you think that they would include the \$191
22 million that was in the 2013 test year for the depreciation
23 reserve surplus? I don't think so.

24 Q Did FPL share with you its depreciation study that
25 they told the Commission that wasn't complete?

1 A No. We asked for it in discovery and they said it
2 wasn't complete.

3 Q Okay, so you have no knowledge about which
4 direction depreciation rates are going?

5 A I do not. They said it was not complete and
6 that's as much as I know.

7 Q All right, are you -- you list a benefit, I think,
8 in your 167 words, that the GBRAs are limited to these three,
9 is that right?

10 A Yes.

11 Q Okay. And is Lane Kollen guaranteeing the
12 Commission and other customers that didn't sign onto this
13 agreement \áá\ Port Everglades will be the last GBRA that
14 we'll ever see?

15 A Of course I can't guarantee that. The settlement
16 addresses only three GBRA rate increases. It doesn't address
17 any future GBRA rate increases. And, for example, if the
18 company were to propose an open-ended series going forward,
19 as it did in 2009, I personally would oppose that.

20 Q Okay. You would agree, would you not, that there
21 was an issue in the case about plant held for future use, or
22 land held for future use?

23 A I recall that OPC raised that issue, yes.

24 Q Okay. 12,000 acres for -- in Hendry County for
25 some combined cycle units?

1 A I don't know the specifics, I just recall that OPC
2 raised an issue with respect to plant held for future use.

3 Q You would agree that the settlement that you are
4 endorsing here today would essentially give the company its
5 requests for that land, would you not?

6 A Well, I don't think it gives the company anything.
7 What it does is it essentially sets a black box revenue
8 requirement, and based upon an initial year rate increase, it
9 keeps that in effect for four years, except for the GBRA.

10 Now, you know, we haven't looked at a test year
11 2014, '15, '16 to assess the increases in the costs and
12 individual adjustments that may occur in those years. It was
13 our judgment that this was a reasonable result.

14 Q Is there any surveillance report monitoring that
15 would occur under the settlement agreement that you think is
16 such a good idea?

17 A As far as I understand it, the surveillance report
18 monitoring will be ongoing.

19 Q Okay. And if the company falls below 9.7, what
20 could they do?

21 A Well, it can do a couple of things. One thing
22 they can do is they can use the remaining amount of the
23 depreciation reserve or they can use the fossil dismantling
24 reserve within the parameters set forth in the settlement
25 agreement, or, if those amounts are exhausted, they can seek

1 a rate increase.

2 Q Now, the plant held for future use, that would be
3 part of that achieved NOI calculation, correct?

4 A I don't know whether it would or not.

5 Q You didn't make any provision to exclude it, did
6 you?

7 A Well, if it's not excluded, I would presume, and
8 I think with, you know, a reasonable certainty, that the
9 company would include it.

10 Q Okay. So it's okay to give them the land for
11 these combined cycle units down the road, but you're not
12 going to give them the GBRA's for that?

13 MR. WISEMAN: Objection, mischaracterizes
14 Mr. Kollen's testimony.

15 MR. REHWINKEL: I'll withdraw the question.

16 BY MR. REHWINKEL:

17 Q You criticized the GBRA's in the last case based on
18 some computational problems, did you not?

19 A I did.

20 Q And there's nothing in your 167 words that are a
21 glowing endorsement of these GBRA's this time around that
22 address these concerns that are on pages 12 and 13 of your
23 2009 testimony, is there?

24 A Well, first of all, it's not a glowing
25 endorsement. I think it's a cold, you know, hard look at the

1 benefits of the settlement compared to fully litigating the
2 case and then proceeding to litigate another case next year
3 and then proceeding to litigate another case the following
4 year, because that's exactly the sequence that would be
5 followed in the absence of a settlement.

6 Q Do you know that for sure?

7 A What's that?

8 Q FPL told you they were going to file for sure?
9 They told you what their earnings will be and --

10 A No, that's my assessment, based upon the
11 modernization projects being placed into commercial operation
12 in those years. And looking ahead, it's reasonable to
13 conclude -- I don't think it's even an assumption, but it's
14 reasonable to conclude that the company would be seeking rate
15 relief before those assets are placed into operation.

16 Now, with respect to the computational problems
17 that I identified in 2009, the primary issue was there wasn't
18 a computation. Now, in this case there is. There's actually
19 a citation to the record, to the company's filing that says
20 this is how it's to be computed, and so I don't have that
21 same concern.

22 Q Okay, so let's look on page 12 of Exhibit 716, and
23 let's look at the lines 20 and 21. The rate of return that
24 would be used for West County 3 GBRA, you said, was
25 overstated then because of an equity ratio of 55.8, right?

1 A Yes.

2 Q Now, here it's 59.6, and back then you recommended
3 50, or the party you represented recommended 50 percent,
4 right, for equity ratio?

5 A Yes, that's correct.

6 Q Okay. And you still agree that 59.6 is too high,
7 don't you?

8 A I have not provided an opinion on that in this
9 proceeding.

10 Q Okay. But you didn't say in your 167 words this
11 time around that this problem was fixed for the GBRA that
12 you agree to, right?

13 A I did not address it.

14 Q Okay, let's look on page 13, lines four through
15 six. There's a complaint or concern voiced in 2009 about the
16 incremental cost of debt rather than the weighted average
17 cost of debt; do you see that?

18 A Yes.

19 Q That was a concern raised this time around for
20 Canaveral, right?

21 A I think so. I'm just not certain.

22 Q And Canaveral would be converted to a GBRA instead
23 of a step increase, as was originally proposed, right?

24 A Under the settlement, that's right.

25 Q Okay. Now, if we look on page 13, lines 11

1 through 14, you express a concern about the failure to
2 include low-cost short-term debt in the capital structure
3 associated with the West County Unit 3 GBRA, right?

4 A Yes.

5 Q And that's a concern that existed in 2012, right,
6 for Canaveral?

7 A I don't know if anybody raised that issue or not,
8 but it is true that there was no short-term debt included in
9 the rate of return for Canaveral.

10 Q Now, also on line 16 through 18, in 2009 you
11 expressed a concern about the lack of accumulated deferred
12 income taxes, is that right?

13 A Yes.

14 Q ADIT?

15 A Yes.

16 Q In this case South Florida Hospital took the
17 position, I think, that Canaveral understates the ADIT by
18 about \$45 million, right?

19 A I think that's right. In the 2009 case the step
20 increase did not include ADIT in the capital structure and
21 there was no reduction from the rate base for ADIT. In this
22 case the company did subtract the ADIT from rate base.

23 I took the position in the litigated proceeding
24 that it wasn't enough, that the company hadn't calculated it
25 correctly. But the problem that was evident in 2009 has been

1 corrected.

2 Q But you still voice a similar concern in 2012?

3 A It's not a similar concern.

4 Q It's not?

5 A It has ADIT in front of it, but it's a different
6 issue, so it's not a similar concern.

7 Q Well, you were saying that the cost for Canaveral
8 is overstated because the full benefit of accumulated
9 deferred income taxes was not correctly included in that
10 calculation, right?

11 A That's true, yes. But that's not the same issue
12 that I addressed in 2009 where the company ignored it
13 altogether.

14 Q Okay. They just got a little bit better this
15 time, right?

16 A No, it's a lot better, the fact that it was
17 recognized and there was, I believe, a computational error,
18 which I addressed.

19 Q Page six of your direct, lines nine and ten use
20 the phrase given the circumstances now in effect on FPL's
21 system. What does that mean? What are these circumstances
22 in effect? That's with an E.

23 A Well, I think what I had in mind there was the
24 longer lives of the assets. In other words, that there's
25 less need to have the dismantling reserves for a shorter

1 period of time.

2 Q This is talking about depreciation, not
3 dismantlement, right?

4 A That's true. I think I used that term as a single
5 term. If you look at the settlement agreement, I think that
6 the term depreciation reserve surplus and the dismantlement
7 reserve is combined together into -- parenthetically into a
8 single term depreciation reserve.

9 Q Okay, you're not providing testimony here that you
10 agree that somehow FPL's depreciation lives are going to be
11 longer in future -- I mean, will be shorter in future
12 depreciation studies?

13 A No, I think they'll be longer, not shorter. And
14 I think that what that will do is it will create additional
15 surpluses in the depreciation reserve, and I think it's
16 appropriate to return as much as possible of the surplus as
17 soon as possible to customers.

18 And given the circumstances, as I see them, that's
19 appropriate. And to provide the company the continued
20 flexibility to use these surplus reserves to manage its
21 earnings within the sleeve that the settlement provides.

22 Q But, in any event, no offset to the 218 and 236
23 million dollar rate increases, based on a decrease in
24 depreciation expense, right? Not until at least after 2016.

25 A Well, when the depreciation rates are reset,

1 because part of the settlement agreement is that the
2 scheduled depreciation study in 2013 will be deferred.
3 When depreciation rates then are reset and addressed perhaps
4 in 2016, for base rates being reset in 2017, then the
5 depreciation rate study at that time would address whatever
6 surplus reserves or deficiencies exist at that time.

7 Q And the customers will already be paying the
8 higher rates before that, right?

9 A Well, actually, no.

10 Q The higher base rates.

11 MR. WISEMAN: If counsel could please let the
12 witness finish his answer --

13 MR. REHWINKEL: Depreciation rates. I'm talking
14 about base rates and user rates.

15 MR. WISEMAN: And the witness was answering his
16 question and counsel interrupted him in the middle of
17 his answer.

18 THE WITNESS: I'm sorry, I did misunderstand --

19 MR. WISEMAN: Which he has done repeatedly, I would
20 note, and I haven't objected until now.

21 THE WITNESS: I did misunderstand your question, so
22 perhaps if you could repeat it.

23 CHAIRMAN BRISE: Mr. Rehwinkel, if you could repeat
24 the question, please.

25 BY MR. REHWINKEL:

1 Q Yeah, I was saying, by the time these 2017
2 depreciation benefits would come about, customers would
3 already be paying the higher rates, and I meant with the
4 GBRA's. They would already pay -- they wouldn't get any
5 offsets, those offsets would come later, if at all.

6 A Well, the increases are what they are in the
7 settlement agreement. I mean, Ø guess we could talk the
8 philosophy of it, but they are what they are.

9 Q And you don't agree that the cost of a rate case
10 is a material item in the overall scheme of things, do you,
11 from a customer standpoint?

12 A It's just the way you phrased the question. I
13 don't believe that it is a material issue, it's just one of
14 those things I put into my testimony, because it is a factor,
15 but it's not a material factor.

16 Q Okay. And you would agree that FPL did not
17 perform a cost effectiveness study or cost benefit analysis
18 to show that the cost of a rate case outweighed any savings
19 that could result to customers from reexamining changing
20 costs in 2014 or 2016, right?

21 A Well, I don't know how, you know, the company
22 evaluated the settlement. I know that we looked at it and we
23 felt that there were sufficient benefits because of the
24 sleeve for the four-year period.

25 Q But the answer to my question was no, they didn't

1 do a cost effectiveness study, or cost benefit analysis?

2 A Well, no, I said I don't know what they did. I
3 can't answer that yes or no. I don't know what the company
4 did.

5 Q Okay. There's no evidence in this case that
6 you've seen that they did one, is there?

7 A There's no evidence that I have seen that they did
8 one, but my experience suggests to me that they have done
9 one.

10 Q Okay. So the record will speak for itself on
11 that, right?

12 A Well, to the extent that there is a record on it.
13 As I said, I haven't seen anything that was performed by the
14 company, but I said that in my experience, including having
15 worked for a utility in the planning area and involved in
16 budgeting and forecasting, that is the type of analysis that
17 I would have done.

18 Q They didn't do one in the 2009 case, did they?

19 A Again, I don't know.

20 Q Okay. But the order will speak for itself on
21 that, right? Wasn't that specifically pointed out by the
22 Commission, that they didn't do one?

23 A I don't recall.

24 Q Okay. Wouldn't you agree that on a stand-alone
25 basis you would not support the 2014 and 2016 GBRAs as

1 proposed, right?

2 A I think I would agree with that. All else equal,
3 if the company came in and just filed for those, I don't
4 think I would support that absent the broader based
5 settlement agreement.

6 Q And your client wouldn't agree to a 10.7 ROE on a
7 stand-alone basis under current conditions, based on what you
8 know, right?

9 MR. WISEMAN: Could counsel clarify what he means
10 by a 10.7 ROE on a stand-alone basis? I'm unclear. Is
11 he asking if that would be the only issue?

12 BY MR. REHWINKEL:

13 Q I mean outside of the stipulation, if that -- do
14 you understand my question?

15 A If that were the only issue that was being
16 litigated, I am certain that my client would not agree to
17 the 10.7 percent, but, you know, it's in the context of the
18 settlement agreement, again, and that's the important
19 context.

20 Q What about the asset optimization proposal on a
21 stand-alone basis?

22 A I don't know.

23 Q What about the \$370 million rate increase on a
24 stand-alone basis?

25 A That's something that I don't think on a

1 stand-alone basis if there was just no settlement and we were
2 simply litigating the test year for 2013, my testimony -- I
3 testified zero increase and as I understand it from my review
4 of the SFHHA brief in which SFHHA adopted some of the
5 positions from some of the other parties, they supported a
6 \$100 million rate reduction. So on a stand-alone basis,
7 absent the settlement, SFHHA would propose a \$100 million
8 rate reduction.

9 Q Okay. And you didn't have anything to do with the
10 development of that \$378 million number, did you?

11 A I did not, not to my recollection.

12 Q All right. On your rebuttal -- I'm just going to
13 go back to that one more time -- page three, line four, we
14 touched on this sentence earlier. You have this phrase -- it
15 actually starts on line three. It says even though the
16 initial increase is not based on a fully specified cost-based
17 revenue requirement. Do you see that phrase?

18 A I do.

19 Q It's not your testimony that the \$378 million was
20 designed to cover incremental infrastructure costs since the
21 last rate case, is it?

22 A Well, I did not do the same type of analysis that
23 Mr. Pollock did, but I would suggest to you that there has
24 been growth in plant or rate base since the last case, and so
25 obviously a portion of the increase has to do with that, but

1 I didn't do the type of analysis that Mr. Pollock did.

2 Q But you don't know if it's 378 or 420 or 160, do
3 you?

4 A I said I did not do an analysis, so I don't know.

5 Q So you're not endorsing -- by saying not based on
6 a fully specified cost-based revenue requirement, you're
7 basically saying there's no cost basis for that 378, right?
8 It's just a negotiated number.

9 A No, I'm not saying that there's no cost basis.
10 What I'm saying is that we don't have a table like I had in
11 my direct testimony in a litigated case that starts out with
12 the company's deficiency and makes a series of adjustments to
13 it. We don't have that.

14 What we do have is we have a number that is less
15 than the company has asked. And then the question is, if
16 that goes forward, and is a limitation, then, for the next
17 four years, is that of value, of sufficient value, to agree
18 to it. It certainly wasn't our litigated position for the
19 initial year, and that's all I mean by this.

20 But that doesn't mean that the 378 does not have a
21 grounding in cost basis.

22 Q All right. So on a stand-alone basis you wouldn't
23 agree with the GBRAs, right?

24 A I'm sorry, please repeat that.

25 Q On a stand-alone basis, you wouldn't agree with

1 the GBRAs, right?

2 A True.

3 Q You wouldn't agree to the 10.7, right?

4 A True.

5 Q You wouldn't agree to the asset optimization,
6 right?

7 A I said I don't know.

8 Q Okay. You wouldn't agree to the \$378 million,
9 right?

10 A Right, because we're only dealing then with one
11 year. We're not dealing with a four-year settlement. And
12 so, you know, you've put enough parameters around your
13 questions that, I mean, the settlement is what it is. It's
14 a compromise of different positions for a four-year period.
15 And of course I wouldn't agree to isolated components of the
16 settlement, and I wouldn't advise my client to accept it.

17 Q So at least three items, and you don't know about
18 the fourth that I listed there, you don't agree with on a
19 stand-alone basis, but you put them all together, and they're
20 a good thing?

21 A Well, that's a good rhetorical question, but it's
22 not really a fair question because you have to look at them
23 all within the context of the settlement agreement. And if
24 you look at the rate increase for the initial year, based on
25 2013, I wouldn't agree with that on a stand-alone basis.

1 But being as that's the limit, no further
2 increases except for the GBRA increases over the next four
3 years, that's of value. So it's not like -- you know, your
4 question is, if I might say, brilliant, from a rhetorical
5 perspective, but absolutely wrong from a practical
6 perspective.

7 MR. REHWINKEL: Thank you for your answer. I have
8 no further questions. I just like being called
9 brilliant.

10 CHAIRMAN BRISE: Mr. Wright?

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

12 CROSS EXAMINATION

13 BY MR. WRIGHT:

14 Q Good evening, Mr. Kollen.

15 A Good evening.

16 Q A couple of quick questions. Will you agree with
17 me that it is a regulated utility's duty to provide safe and
18 reliable service at the lowest possible cost?

19 A I would say yes, but I would change one word, or
20 insert a word: The lowest practicable cost.

21 Q Okay. In your summary I think you mentioned that
22 you estimate the reduction from FPL's original request to the
23 378 million as being about 25 percent?

24 A Yes.

25 Q If you add in Canaveral, the 2013 step increase,

1 that's another \$173 million or so, right?

2 A Again, I don't recall the quantification.

3 Q And I think in response to questioning by
4 Mr. Rehwinkel you indicated that the updated number,
5 comparable to the 516.5 million, is more a like 530 million,
6 is that correct?

7 A Yes, that's my recollection.

8 Q If you add 530 and 170, that's about 700, right?

9 A Yes.

10 Q \$700 million --

11 A Yes.

12 Q -- between the January and June increases
13 combined, correct?

14 A Yes, that's correct.

15 Q Okay. And if you add 170 -- subject to check, and
16 we could pull out the MFRs, but let's don't -- the figure was
17 \$173.9 million for the Canaveral increase.

18 A Okay.

19 Q Let's just call it 170. If you add 170 to 378,
20 that's \$551 million a year?

21 A If you convert the 170 to 173, it's --

22 Q Oh, yeah, okay, 548.

23 A Yes. That's correct, yes.

24 Q Thank you. That's about 77, 78 percent of 700
25 million, right?

1 A I think that's probably mathematically correct.

2 Q Okay. I will aver to you that there's evidence in
3 the record that will support this, but if you know, what is
4 the highest percentage that FPL ever received from the
5 Florida Public Service Commission as compared to its request?

6 A I don't know. I simply don't know.

7 Q In response to some questions from
8 Mr. Rehwinkel -- and let me continue. Would it surprise you
9 to know that FPL only once ever got more than half of what it
10 asked?

11 MR. WISEMAN: Objection, introduces evidence that's
12 not in the record.

13 MR. WRIGHT: Oh, yes, it is, Mr. Chairman. It's in
14 an exhibit that's in this case.

15 MR. WISEMAN: Well, if it's in the record and the
16 witness doesn't know anything about it -- he's already
17 said he doesn't know -- I don't see the purpose in
18 asking the question.

19 CHAIRMAN BRISE: Mr. Wright?

20 MR. WRIGHT: Well, he's talking about the 25
21 percent reduction being somehow significant, and I think
22 that giving the company 80 -- for the Hospital
23 Association to agree to give the company 77 or 78
24 percent of its ask when the company has never gotten a
25 number close to that in its history of regulation by

1 this Commission is completely relevant. And he can say
2 he doesn't know again.

3 CHAIRMAN BRISE: The objection isn't to the
4 statement, the objection is to it being in the record.

5 MR. WRIGHT: It is in the record in an exhibit that
6 was introduced in the original hearing, Mr. Chairman,
7 the history -- specifically the history of rate --
8 electric utility rate cases before this Commission.

9 MR. WISEMAN: Mr. Chair, if I could ~~EA~~↓|b\ for a
10 moment. Again, if it's in the record, it's in the
11 record. But what I hear now is Mr. Wright testifying.
12 If he wants to testify as a witness, I have all the
13 respect in the world for Mr. Wright, I'm sure that he
14 will do a great job. But he's not here as a witness,
15 he's here as an attorney, and I don't believe that it's
16 appropriate for him to load the record with his
17 testimony through questions he's asking.

18 MR. WRIGHT: Mr. Chairman, I asked the witness
19 would ~~aa~~ be surprised to know that. The rest of what
20 ~~Ø~~ said was a proffer based on evidence that is in the
21 record of this case.

22 MR. MOYLE: Can we have the exhibit number?

23 MR. WRIGHT: I can't give it to you now. I'll move
24 on, Mr. Chairman. How's that?

25 CHAIRMAN BRISE: Go ahead. All right.

1 BY MR. WRIGHT:

2 Q In response to questioning by Mr. Rehwinkel,
3 I think you said something to the effect of that it was your
4 assessment that FPL would file additional rate cases if the
5 settlement were not approved?

6 A Yes.

7 Q And the question I want to pursue there is did you
8 make an assessment of the likely outcomes of such rate cases?

9 A No, I didn't. Well, I would say this, that with
10 respect to comprehensive base rate increases over the '14,
11 '15, '16 time period, I did not, on a calculation type of
12 basis -- in other words, I didn't sit down at the computer
13 with a spreadsheet or an analytical model and attempt to make
14 that evaluation.

15 What I did do was a qualitative assessment,
16 knowing that FP&L's costs have gone up historically, and make
17 an assessment of whether or not a limitation on base rate
18 increases, other than through the GBRA, would be appropriate,
19 and whether that brought value, and whether the locking in
20 of the \$191 million of the depreciation reserve surplus
21 amortization for another three years brought value.

22 And so I don't want my answer to be
23 mischaracterized that I didn't do any type of analytical
24 work, but it was more qualitative, of the nature I described
25 in my testimony, as opposed to quantitative.

1 Q You previously told Mr. Rehwinkel that FPL did not
2 share with you any projection about its future depreciation,
3 surplus, or expense, correct?

4 A No, I think that his question was did they share
5 with us a financial forecast, and the answer was no.

6 Q I believe he asked you both questions, but in the
7 event that he didn't, did FPL give you their depreciation
8 study for the future?

9 A Oh, no, it did not. As I answered Mr. -- counsel
10 for OPC, we asked for that and the company did not provide it
11 because they said it was incomplete, and so I haven't seen
12 anything.

13 Q Did you make any assessment as to what FPL's
14 future sales would be in your consideration?

15 A Not explicitly.

16 Q Now, in the first part of the case, as recounted
17 at pages two and three of your testimony, the hospital
18 association advocated a rate reduction of \$99 million a year,
19 overall revenue requirements reduction of \$99 million a year,
20 correct?

21 A About that, yes. That wasn't in my testimony. My
22 testimony was zero increase effectively. But the SFHHA brief
23 adopted positions from some of the other parties, and my
24 recollection is that it was about a \$100 million rate
25 reduction.

1 Q Okay. And that was as of January 1, 2013?

2 A Yes. The base rates would be reset as of January
3 1, 2013.

4 Q So from the SFHHA's -- the Hospital Association's
5 position in its brief to plus 378 is a swing of \$477 million?

6 A I think that mathematically is correct.

7 Q A pretty big swing; would you agree?

8 A That is a big swing, yes, even in the utility
9 world.

10 Q A half billion here, a half billion there, pretty
11 soon you're talking about real money; fair enough?

12 A The Hunt brothers are notoriously famous for
13 having said that, yes.

14 Q I'm sure you're familiar with the provisions
15 in the stipulation and settlement that provide for certain
16 adjustments to commercial industrial rates and the CILC
17 credits?

18 A I'm not, actually.

19 Q You're not?

20 A No. Now, by way of explanation, Mr. Barron, who
21 is SFHHA's witness on those issues in the litigated
22 proceeding, was the one who worked with counsel for SFHHA on
23 the settlement provisions. I did not have a meaningful role
24 in any of that.

25 Q I will bet that you hang out with attorneys a fair

1 amount of the time, is that correct?

2 A What? That I hang out --

3 Q I'll bet that you spend a fair amount of time with
4 attorneys, is that true?

5 A I do, yes.

6 Q So do I.

7 A Don't you live with one?

8 Q Pardon?

9 A Don't you live with one? Aren't you an attorney?

10 Q All the time, yes. Are you familiar with the
11 saying that a bad settlement is better than a good lawsuit?

12 A I've never heard that.

13 Q I think it's rather akin to the proposition that a
14 bird in the hand is worth two in the bush; are you familiar
15 with that one?

16 A I've heard that one, but not the former.

17 Q Really? Okay.

18 CHAIRMAN BRISE: Mr. Wright, do you have a
19 question?

20 MR. WRIGHT: Well, I was trying to lay a
21 foundation, but I got a surprise answer, so I'm
22 regrouping.

23 CHAIRMAN BRISE: Okay. Take a minute to do so.

24 MR. WRIGHT: Thank you.

25 BY MR. WRIGHT:

1 Q Will you agree that the Hospital Association has
2 strong litigation positions in the original part of this
3 case?

4 A Strong opinions expressed through the brief and
5 through our testimony, yes.

6 Q When was the last time you agreed to a settlement
7 that went 80 percent to the other side's litigation position?

8 A My client is the one who agreed to the settlement.
9 I think it's reasonable. I did not personally agree, you
10 know, in the sense of signing an agreement or whatever. But
11 I do agree that it is reasonable.

12 But I don't know -- I don't view settlements in
13 that way. Most of the settlements that I've been involved in
14 have been specific issues or single test year types of issues
15 that haven't necessarily been coupled with three additional
16 years of stay-outs, so --

17 Q Thanks very much. Oh, were you done?

18 A No, I was just going to simply say that you can't
19 look at the 78 percent ratio that you computed in one of your
20 earlier questions as being the only issue. You have to look
21 at the full context of the settlement over the four year
22 period.

23 Q But to do that wouldn't you have to look at all
24 the other moving parts, including revenues and other
25 cost items, correct?

1 A You have to make an assessment the best that you
2 can about all of those other factors.

3 Q And the only assessment that you made was
4 qualitative, not quantitative, correct?

5 A Yes, in the sense that it sleeves the company, and
6 I know that the upward -- there's upward pressure on cost. I
7 did not attempt to quantify that upward pressure, but I know
8 that it's there.

9 MR. WRIGHT: Thanks very much. That's all I have,
10 Mr. Chairman.

11 CHAIRMAN BRISE: Thank you, Mr. Wright.
12 Mr. Saporito?

13 MR. SAPORITO: Thank you, Mr. Chairman.

14 CROSS EXAMINATION

15 BY MR. SAPORITO:

16 Q Mr. Kollen, my name is Thomas Saporito. I'm here
17 pro se as a citizen intervenor. And so I would like to first
18 follow up with a question that the attorney to my left posed
19 to you. And correct me if I'm wrong, but he asked you about
20 absent the Commission's approval of this settlement
21 agreement, that FPL would likely file additional rate cases
22 with respect, I imagine, to these power plants that are
23 captured by these GBRAs in the settlement agreement. Did I
24 understand all that correctly?

25 A I'm not sure. If what -- you know, I'm not sure

1 what your understanding is, but in your question you laid out
2 some certain parameters, and I think what you said was
3 correct.

4 Q So if the Commission were to reject the settlement
5 agreement, it's your testimony here today that FPL would file
6 rate cases to recover costs involved in these three power
7 plants that are discussed in the settlement agreement?

8 A I think that's a reasonable conclusion. I don't
9 know, of course, what the Commission would do with respect to
10 the step increase for Canaveral modernization. In 2009 the
11 Commission rejected a step increase so it may very well be
12 that it does so this time. I don't know.

13 But I do know that you don't put in projects of
14 that dollar magnitude without cost recovery.

15 Q Well, would you agree with me that that would be a
16 good thing for the -- let me rephrase that. Would you agree
17 with me it would be a good result following a disapproval by
18 the Commission of the settlement agreement, the result being
19 that citizens like myself would have an opportunity to
20 intervene in any FPL rate case that would result from a
21 disapproval of the settlement agreement?

22 A Let me make sure I understand the question. In
23 other words, if you assume that there are additional rate
24 increases, the settlement -- first of all, the settlement
25 agreement is not approved, second of all, what am I to assume

1 with respect to the rate case for the 2013 test year. If you
2 would like me to make an assumption, I will. But that all
3 would enter into the equation if the Commission, for example,
4 granted them -- the company its full ask, that might
5 influence the timing of when it came in for the next rate
6 increase. But all of these are factors that have to be
7 considered, and I don't really know how to answer your
8 question beyond that.

9 Q Well, the original filing by Florida Power & Light
10 did incorporate at least two, if not three, of the power
11 plants that are incorporated in the settlement agreement,
12 isn't that so?

13 A Well, incorporated the Canaveral modernization
14 project as a step increase.

15 Q But it didn't include the other two power plants?

16 A That's correct.

17 Q So if the Commission rejected the settlement but
18 came to some decision on the original filing, is it your
19 opinion and your testimony to this Commission that at some
20 point when FPL wanted to bring these other two power plants
21 on line, that they most likely would file a rate case to
22 do that?

23 A Yes, that is my assessment. And it's, I think, a
24 reasonable conclusion, not the least of which is the cost of
25 the power plants, but then in addition to that is the loss of

1 the \$191 million built-in negative reserve -- depreciation
2 reserve amortization expense.

3 Q Okay, thank you, but I didn't ask about the
4 reserve. I didn't ask about --

5 CHAIRMAN BRISE: Mr. Saporito, Mr. Saporito, if you
6 would allow him to finish. But I do want to express to
7 the witness that brevity is greatly appreciated.

8 THE WITNESS: I appreciate that.

9 CHAIRMAN BRISE: And repeating the same statement
10 over and over doesn't sit well with me.

11 THE WITNESS: I appreciate that.

12 BY MR. SAPORITO:

13 Q So would you agree with me that it would be a
14 benefit to citizen intervenors like myself to have an
15 opportunity to intervene in any rate case that FPL might file
16 for in the future to bring in those two power plants?

17 A I don't know.

18 Q You don't know. All right. I would like to
19 explore your testimony, page two, lines seven through nine.

20 MR. WISEMAN: Could Mr. Saporito clarify, are you
21 in the direct or the rebuttal?

22 MR. SAPORITO: Hold on a second. It says direct
23 testimony of Lane Kollen.

24 BY MR. SAPORITO:

25 Q And at page two, line seven to nine, this is where

1 you talk -- you state that I address whether the provisions
2 in the proposed settlement agreement that are referenced in
3 issues one through four are in the public interests and
4 whether the settlement agreement as a whole is in the public
5 interest. Did I get that right?

6 A Yes, I was just responding to the preliminary
7 order that set forth the five issues.

8 Q Yeah. Excuse me. That's correct. And could you
9 share with this Commission what your understanding is of what
10 is meant by public interests?

11 A Yes. It's a general interest standard. Are the
12 company's customers benefited from a resolution of the
13 uncertainty over the next four years of the potential rate
14 increases that they would face, and is there value in the
15 terms of the settlement that could not be achieved through a
16 litigated process.

17 And in the -- the parties who signed the
18 settlement agreement, they had a joint statement, there is a
19 description of the public interest standard set forth in page
20 eight of the statement.

21 Q And is it your understanding that the term public
22 interest incorporates the terms fair, just and reasonable?

23 A Yes, I would agree with that.

24 Q Page four, lines 20 through 24, extending to page
25 five, lines one through five, you talk -- you were asked did

1 you oppose FPL's proposed GBRA in its last rate case, and you
2 answered yes, you did, and you gave some reasons for that.

3 And then on the following page, on page five,
4 lines one through five, you talk about the differences --
5 explain the differences from this proposed settlement
6 agreement versus your opinion about the GBRA in the last
7 rate case.

8 In part of that discussion you state that unlike
9 the company's proposal in the last case, the settlement GBRA
10 in this case provides rate certainty and stability over a
11 limited duration of four years. Do you see that? Did I say
12 that correctly?

13 A You said it correctly and I see it, yes.

14 Q So when the Office of Public Counsel attorney
15 questioned you about FPL's earnings extending out to 2016,
16 you couldn't provide OPC with an answer to that question,
17 correct?

18 A What question?

19 Q He asked you about -- well, isn't it true that the
20 settlement agreement extends to the end of 2016?

21 A Yes, that's true.

22 Q And it's my understanding he questioned you, well,
23 what would FPL's earning be extending out to 2016, covering
24 the years 2014, '15 and '16. Didn't he ask me that?

25 A No, he asked me a different question.

1 Q What would FPL's earnings be in 2014, '15, and
2 '16, in your opinion?

3 A I don't know.

4 Q You don't know?

5 A He did ask me if FP&L had shared its projection of
6 earnings over the next four years with me, and my answer to
7 that question was no.

8 Q And your answer to my question, direct question,
9 what they are, you're telling me you don't know; that's true?

10 A I don't know what their projection of earnings is.
11 I haven't seen that.

12 Q So how can you sit here and testify under oath to
13 this Commission about in your opinion that this settlement
14 agreement is in the public interest, if you can't even inform
15 this Commission about what FPL's anticipated earnings are to
16 the term of this proposed settlement agreement?

17 A You know, that's a difficult question to answer.
18 But essentially what I'm looking at is the boundaries set
19 forth in the context of the settlement agreement. And its
20 earnings can't go over 11.7 percent, and yet they can't fall
21 below 9.7 percent. So there's a banding of the earnings
22 throughout the four-year period, or a bounding of them, if
23 you will.

24 And so I don't know if your focus is on the
25 absolute dollars of the earnings or if it's on the earned

1 return. If it's on the earned return, the settlement
2 agreement addresses it.

3 Q Let me ask you this. Isn't it true that this
4 entire proposed settlement agreement is just one big
5 experiment to see what's going to happen, because nobody
6 knows with all these parameters we're trying to establish?

7 A I totally completely disagree. It's not an
8 experiment. It's an intentional structured proposal that
9 limits rate increases over the next four years. That's not
10 an experiment, that's a reality. And it also sets forth
11 certain parameters that allow the company to earn at least
12 the bottom end of a range of earned returns and then provides
13 for a situation where the company cannot over-earn.

14 So I think it's a very well structured, well
15 thought through process. It's not an experiment, it's a very
16 practical, very real proposal.

17 Q Did you even read the proposed settlement
18 agreement?

19 A Yes. Why would you ask that?

20 Q Because your answer is very interesting. You are
21 aware, then, that there's a clause in there that says that
22 this is an all or nothing deal; either the entire settlement
23 is accepted and adopted by the Commission or the entire
24 settlement has to be rejected; is that your understanding?

25 A Yes, and that's a normal clause in a settlement

1 such as this, because it's a compromise of positions,
2 disparate positions among a diverse series of interests among
3 various parties.

4 Nobody is going to agree that the settlement
5 agreement that is a compromise of all these interest can be
6 parsed out and then that particular party is disadvantaged if
7 indeed that particular provision is parsed ~ut.

8 Q Can you offer this Commission an opinion as to
9 whether they can, at their discretion, cherry-pick some of
10 the stuff they like out of this and put it back in the
11 original rate case?

12 A Well, the Commission can decide whether to reject
13 or accept this settlement agreement. What it chooses to do
14 in the litigated proceeding, I hope, is based upon the record
15 and that portion of the proceeding, and I believe it will be.

16 MR. SAPORITO: I have nothing further,
17 Mr. Chairman. Thank you, Mr. Kollen.

18 THE WITNESS: You're welcome.

19 CHAIRMAN BRISE: Thank you, Mr. Saporito.
20 Mr. Hendricks?

21 MR. HENDRICKS: I'd just like to thank this witness
22 for adding a few lighter moments to his testimony, and I
23 have no questions for him.

24 CHAIRMAN BRISE: Thank you. Mr. Young?

25 MR. YOUNG: No questions.

1 CHAIRMAN BRISE: Commissioners? All right,
2 redirect.

3 REDIRECT EXAMINATION

4 BY MR. WISEMAN:

5 Q Thank you, Mr. Chairman. I'll try to keep it
6 brief. Mr. Kollen, you were asked the question by
7 Mr. Rehwinkel about \$42 million in savings related to Smart
8 Meters that you testified about in the litigated technical
9 hearing. Do you recall that?

10 A I do.

11 Q And he said have you changed your mind, and you
12 said no, that's not the issue, the issue is whether those
13 savings should be recognized. Can you clarify what you meant
14 by that statement?

15 A Well, yes. In the litigated proceeding it was my
16 assessment that given that there was a 13-month average of
17 the investment associated with those meters, that the savings
18 should be recognized and matched with the costs that were
19 included in the 2013 test year.

20 Mr. Rehwinkel's question went to whether or not
21 they should be ignored. I don't believe that they are
22 ignored within the context of the settlement.

23 Q All right. Also, a couple of times you referred
24 to the depreciation reserve plus another \$600 million of
25 value. Can you explain what you meant by that testimony?

1 A Yes. In the company's filed case, there was
2 190 -- all else being equal, the company's revenue
3 requirement would have been \$191 million more on an ongoing
4 basis but for a one-time remaining balance of the
5 depreciation reserve surplus. The company took that \$191
6 million and reduced its revenue requirement by that amount.

7 So the revenue requirement, really, the starting
8 point is not the \$530 million, but really it's \$720 million
9 because what happens then is that every year after 2013 that
10 \$191 million isn't available anymore.

11 But under the settlement agreement, it embeds that
12 in as a recurring benefit to the customers. This is one of
13 the primary benefits of this settlement agreement. And
14 that's where you get another \$600 million worth of value.

15 Q Also, Mr. Rehwinkel asked you some questions
16 about -- a question or two about rate case expenses. Do you
17 recall that?

18 A I do.

19 Q What benefits, if any, do you see for ratepayers
20 in avoiding rate cases, additional rate cases, that would
21 occur over the next two or three years as FPL puts some of
22 its new generating plants into operations?

23 A Well, I think it's not only the avoidance of the
24 rate case expenses, it's the avoidance of these increases in
25 costs and the Commission having to make a decision whether or

1 not there should be productivity improvements when there are
2 not.

3 This agreement forces the company to make those
4 decisions and implement them, or otherwise it will be down
5 below the 9.7 percent low end of the range. The other thing
6 that it does is it puts the risk of all of these increases in
7 cost of capital, if the money supply should tighten again,
8 interest rates go up, those types of things, that risk is all
9 on FP&L.

10 And from our perspective, from my client's
11 perspective, it's a good thing to have that risk on FP&L
12 because they're the ones that can manage it. We can't manage
13 it for them.

14 Q Let's see, also, Mr. Rehwinkel asked you about
15 your views about the GBRA, a 10.7 ROE, and a \$370 million
16 rate increase and looking at those items on a stand-alone
17 basis. Do you recall those questions?

18 A I do.

19 Q What, in your opinion -- is it appropriate to look
20 at the issues -- those issues on a stand-alone basis in the
21 context of considering whether the settlement provides value
22 or not?

23 A No, it isn't appropriate. They are factors, but
24 it has to be looked at not on a stand-alone basis, but within
25 the context of the settlement. The \$378 million increase is

1 it, except for the GBRA rate increases and nuclear cost rate
2 increases over the next four years for base rate increases.
3 That's it.

4 And as I said, a major enhancement of value of
5 this settlement is the fact that we get 191 million from the
6 depreciation reserve surplus in '14, '15 and '16, and we
7 could never gotten that in a litigated proceeding.

8 Q Thank you. Hopefully the last question.
9 Mr. Wright asked you a question, something along the lines of
10 whether you had seen a rate case or whether you -- I'm sorry,
11 a settlement where the counter party got 80 percent of what
12 it asked for in a litigated proceeding.

13 Is it accurate to say that FPL got 80 percent of
14 what it wanted in this settlement?

15 A Well, I don't think so, because the company is
16 sleeved -- and I'm sorry to keep using that word,
17 Mr. Chairman, but it is sleeved for the next four years.
18 And quite frankly, without -- you know, without this stay-out
19 provision, customers would be facing significant increases
20 above and beyond the \$378 million in the first year.

21 MR. WISEMAN: Thank you. I have no further
22 questions.

23 CHAIRMAN BRISE: All right, thank you. Let's deal
24 with exhibits. Mr. Rehwinkel?

25 MR. REHWINKEL: 716, I'm just moving 716.

1 CHAIRMAN BRISE: 716? All right, so we'll move 716
2 into the record, notwithstanding the standing objection.
3 (Exhibit 716 admitted in evidence.)

4 CHAIRMAN BRISE: All right.

5 MR. WISEMAN: Mr. Chair, can Mr. Kollen be excused?

6 CHAIRMAN BRISE: Sure. Thank you, Mr. Kollen, you
7 may be excused.

8 THE WITNESS: Thank you very much.

9 CHAIRMAN BRISE: All right, Commissioners --

10 MR. REHWINKEL: Mr. Chairman, before -- I wanted to
11 take care of a housekeeping measure, if this would be an
12 appropriate time.

13 CHAIRMAN BRISE: All right, go right ahead.

14 MR. REHWINKEL: At a little after 9:00 we e-mailed
15 to all the parties on the broadcast list the testimony
16 that we propose Ms. Ramas to give, and also have paper
17 copies to hand out at this time so that parties can take
18 a look at it and we can deal with it at whatever time
19 you deem appropriate. Thank you.

20 CHAIRMAN BRISE: Thank you very much for working on
21 that so that we can have it available this evening or
22 tonight.

23 In terms of tomorrow, we are beginning at 9:00 in
24 the morning, and you can expect to have a long day
25 tomorrow, as well.

1 Okay, Commissioner Brown?

2 COMMISSIONER BROWN: I have a request, if I may be
3 so bold to ask at this late hour. Before we leave
4 this evening, if the parties, the signatories to the
5 settlement agreement, have information and if they could
6 provide it to us by tomorrow, I'm curious about who the
7 signatories actually represent from a sales generation
8 standpoint.

9 If at all possible, for purposes of my own
10 information, I'm curious who each of the signatories
11 represent from, I guess -- I mean, in terms of
12 percentages, from sales generation. So FIPUG, sales
13 generated even during the test year. FEA -- we went
14 through some numbers, and I just wanted a different
15 perspective in terms of not actually customers
16 percentages, but sales generated. Is that available?

17 MR. MOYLE: Are you -- are you looking at it with
18 respect to, I think, witness Deaton had said, you know,
19 residential is 53 percent, so that you would then look
20 for a corollary as to what industrial represents,
21 and then commercial?

22 COMMISSIONER BROWN: From a sales generation,
23 actually. Exactly.

24 MR. MOYLE: But not necessarily parsed, because I
25 think she also said that, you know, the CILC, some of

1 them are government.

2 COMMISSIONER BROWN: Right.

3 MR. MOYLE: It's not just, you know, give me the
4 FIPUG members, but it's industrial in kind of a broad
5 category.

6 COMMISSIONER BROWN: Right.

7 MR. MOYLE: Okay.

8 COMMISSIONER BROWN: I don't think the information
9 should be too hard to pull. I was curious as to if you
10 had it --

11 MR. LITCHFIELD: We're going to do our level best,
12 obviously. Ms. Deaton -- we excused her -- probably
13 shouldn't have, but I think she's probably on her way to
14 Thanksgiving somewhere.

15 COMMISSIONER BROWN: Lucky her.

16 MR. LITCHFIELD: Yeah. We will do our level best
17 to provide that information or to provide some
18 approximation, based on the information that we do have.

19 COMMISSIONER BROWN: I really appreciate it. That
20 would be helpful for me. Thank you.

21 CHAIRMAN BRISE: Do you have something?

22 MR. WRIGHT: Mr. Chairman, over here. I'd just
23 like to understand what Commissioner Brown is asking
24 for. Are you asking for those sales generated by those
25 customers who are participating on behalf ~àÀthe three

1 parties?

2 COMMISSIONER BROWN: Correct. Signatories, yes.

3 MR. WRIGHT: Thank you, ma'am.

4 CHAIRMAN BRISE: All right, with that, we certainly
5 hope that those who can provide that information will do
6 so.

7 We look forward to seeing you tomorrow morning at
8 9:00 a.m. Drive safely.

9 (Whereupon, the proceedings wæãæ adjourned at 9:50 p.m.
10 and \åæÁ\ãá^b'ã↔*\Ácontinues in sequence in Volume 40.)

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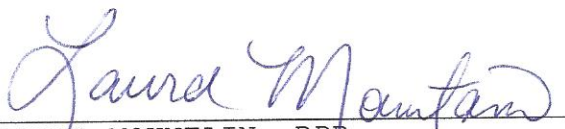
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Dated this 20th day of November, 2012.


LAURA MOUNTAIN, RPR
Post Office Box 13461
Tallahassee, Florida 32317