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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 43
Pages 6309 through 6345

PROCEEDINGS: HEARING

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

DATE: Tuesday, November 20, 2012

TIME: Commencing at 6:50 p.m.
Concluding at 7:44 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.)

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I N D E X

WITNESSES

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EXHIBITS

NUMBER:	ID.	ADMTD.
Exhibits 701		6337
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P R O C E E D I N G S

(The transcript follows in sequence from Volume 42.)

MR. REHWINKEL: Thank you, Mr. Chairman.

BY MR. REHWINKEL:

Q Mr. Dewhurst, would you agree that on July 15th 2012, Public Counsel was invited to a meeting and shown a negotiated, completed settlement agreement between FPL and a party?

A Again, I'm -- the exact date, I can't speak to. Somewhere in this period, inasmuch as we had not heard back from Office of Public Counsel -- I guess there had been, in our view, no direct response, and no attempt to engage -- we engaged in direct discussions with another party which in due course led to -- I would characterize it as a term sheet. I don't know exactly when a, you know, fully documented agreement came into place, but sometime by the middle of July sounds about right.

And I then asserted my recollection that at some point the Office of Public Counsel was directly invited to step in, if you like, and participate in the resolution. Again, I don't know the exact details of what was discussed at the time.

Q And I'm not asking you to disclose them, and I wouldn't. Isn't it true that the Public Counsel was not invited to these ongoing discussions that led to the document

1 they were shown -- they, the Public Counsel -- were shown on
2 July 15th, 2012?

3 A That I don't know. I don't know whether there was
4 an invite nor would I necessarily expect there to be. If
5 you're in the midst of discussions with one party you'll
6 typically want to make sufficient progress that you have a
7 sense that there may be, you know, a meeting of the minds
8 before you expand to consider other parties to see if you can
9 bring other people on board. So I can't speak to whether
10 there was an invitation or whether it was just working
11 discussions with one party. I don't know.

12 Q Just one last question. Would you accept my
13 representation that the Public Counsel and I were shown a
14 signed settlement document and more than a term sheet on July
15 15th, 2012?

16 A I have no reason to doubt your representation.

17 MR. REHWINKEL: Okay. Mr. Dewhurst, those are all
18 the questions I have. Thank you.

19 CHAIRMAN BRISE: All right. Thank you,
20 Mr. Rehwinkel. Mr. Wright?

21 MR. WRIGHT: Thank you very much, Mr. Chairman. I
22 have a few questions, very much along the same lines as
23 Mr. Rehwinkel's last line of questioning; no content,
24 dates, things like that.

25 CHAIRMAN BRISE: Okay.

1

CROSS EXAMINATION

2

BY MR. WRIGHT:

3

Q Good evening. How are you doing?

4

A I'm very well, and I think I will be better

5

shortly.

6

Q I'm sure that we all shall. Will you acknowledge

7

that the FRF, the Florida Retail Federation, has historically

8

demonstrated its willingness to negotiate toward and enter

9

into reasonable settlement agreements with FPL and other

10

utilities?

11

A I would certainly agree that there have been

12

occasions, multiple occasions, when we have been able to

13

successfully work out agreements with FRF and many other

14

parties.

15

Q Including with FPL in 2002?

16

A Yes, FRF was definitely a party to the 2002

17

agreement.

18

Q And again with FPL in 2005?

19

A And in 2005, yes.

20

Q And also in 2010, correct?

21

A Yes.

22

Q You're probably aware that we were also a party to

23

a settlement with Progress in 2005, yes?

24

A I certainly recall the 2005 Progress settlement.

25

Who was exactly the signatories, some of these agreements,

1 when we go back, we had various signatories, so I don't
2 know.

3 Q And I'm sure you know that we were a party to the
4 2012 Progress settlement, correct?

5 A That's my understanding, yes.

6 Q And, in fact, other than this one, are you aware
7 of any efforts to settle a case that --

8 A I'm sorry, Mr. --

9 Q Other than the instant situation, are you aware of
10 any instance where the Florida Retail Federation did not
11 participate actively toward settling the case?

12 A No, I have no personal knowledge one way or the
13 other.

14 Q Thank you. Do you have any specific knowledge --
15 these questions go to your phraseology at line 22 on page 23
16 of your testimony, where you refer to those who chose to sit
17 down at the table. And so my first question goes like this:
18 Do you have specific knowledge as to if the Florida Retail
19 Federation was offered a choice to sit down to the table?

20 A Again, I have to come back to remind you of what I
21 can tell you and what I can't, because all of this was based
22 on information that was reported in our business sessions.

23 Most of my recollection relates to the outreach
24 and discussion with Office of Public Counsel. I recall that
25 there was at least some attempt, but I don't recall the exact

1 time frame, to see whether or not Retail Federation would be
2 interested in engaging. So I don't recall that side of it.

3 Q You and Mr. Rehwinkel just discussed a meeting
4 that I gather you knew about and know about that occurred on
5 March 1st, 2012, correct?

6 A Again, my recollection is that there were at least
7 a couple of meetings that I was informed about in March.

8 Q And those meetings were specifically between
9 Florida Power & Light and the Office of Public Counsel,
10 correct?

11 A Yes, that's correct. Those were clearly follow-up
12 sessions to the January meeting. And as I indicated earlier,
13 it has been, I think, our practice in the past first to reach
14 out to Office of Public Counsel. If we can establish some
15 kind of mutual framework at that level, then it generally
16 historically has made it easier to get others on board.

17 Q Do you have any specific knowledge as to whether
18 the Retail Federation was invited to that meeting on March 1?

19 A I don't know, but I don't believe so.

20 Q The same question with respect to the meeting that
21 you recently discussed with Mr. Rehwinkel that occurred on
22 July 15.

23 A Now you're getting into that period where my
24 recollection of specific meetings and dates is very unclear.
25 I don't know about that, that specific meeting. It's my

1 understanding that there were at least one or two meetings
2 around that time also with FRF, but what the sequence was,
3 I'm not quite sure.

4 Q Around what time?

5 A The July time frame.

6 Q Do you have any specific knowledge as to who
7 attended those meetings on behalf of the Retail Federation?

8 A No, I don't.

9 Q Do you have any specific knowledge as to whether
10 the Retail Federation was offered the opportunity to
11 negotiate a settlement agreement as it was being formulated,
12 or only to sign an already executed agreement?

13 A Mr. Wright, could you repeat the -- I want to make
14 sure I'm being precise.

15 Q And I appreciate it. It was a precise question,
16 I think. Do you have any specific knowledge as to whether
17 the Retail Federation was offered the opportunity in this
18 time frame, March 1 to July 15, say, to negotiate toward a
19 settlement agreement as such agreement was being formulated
20 or was the Retail Federation only offered the opportunity to
21 sign on to an already executed agreement?

22 A No.

23 MR. WRIGHT: Thank you. That is all I have.

24 CHAIRMAN BRISE: Mr. Saporito?

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

CROSS EXAMINATION

1

2 BY MR. SAPORITO:

3 Q I'll be very brief. And I know you've been here a
4 long time, and I know that it's very hard to recall exact
5 dates and times when events have happened, especially in a
6 proceeding which has been prolonged to this extent. So I'm
7 just going to ask you, if you could, to the best of your
8 recollection, give the Commission a month and a year in
9 response to this question I'm going to ask you.

10 Can you tell the Commission by stating a month and
11 a year approximately when Florida Power & Light Company
12 reached out to me and offered me an opportunity to sit down
13 at the negotiation table to discuss the settlement
14 negotiations that led up to this proposed settlement
15 agreement which is the subject of this proceeding?

16 A I don't believe we ever did.

17 Q Okay. So with respect to your comments that you
18 made in your prefiled testimony and you were questioned by
19 both these attorney about -- and those comments are those
20 that chose to sit down at the table -- how do they apply to
21 me?

22 A They don't.

23 Q Oh, okay. Okay, the last question I have goes to
24 your testimony about Progress Energy had some discussions
25 with counsel and I think there was some in your testimony and

1 somehow this Crystal River Nuclear Plant was talked about.

2 Do you recall briefly that --

3 A Generally, yes.

4 Q Are you aware that Duke Power now owns that
5 nuclear plant, Crystal River, and that Duke Power informed
6 the Nuclear Regulatory Commission that by mid summer of 2013
7 they may well decommission the plant and not repair that
8 plant; are you aware of that?

9 A Are you representing that that's the case?

10 Q Yes.

11 A I have no independent knowledge of that. I have
12 read some of the public reports on Duke's evaluation process,
13 but I know nothing more than I have read in the public media.

14 MR. SAPORITO: I have no further questions. Thank
15 you very much.

16 CHAIRMAN BRISE: Thank you. Mr. Garner?

17 MR. GARNER: I have no questions for Mr. Dewhurst.

18 CHAIRMAN BRISE: Mr. Hendricks?

19 CROSS EXAMINATION

20 BY MR. HENDRICKS:

21 Q Good evening.

22 A Good evening.

23 Q I'd just like to ask you about one area. In your
24 rebuttal testimony, going from page 20 to about 24, I think,
25 you talked quite a bit about a comparison to the Progress

1 Energy settlement. And in the -- on page 20, specifically,
2 the question to you was another witness asserts that it was
3 not appropriate to compare the proposed settlement agreement
4 to the 2012 PEF settlement agreement, is that correct? And
5 your reply was no, that is not correct.

6 A Yes.

7 Q For reasons that you would explain. And then you
8 go on and make a number of comparisons to that agreement.
9 And if you'd look at page 21, it's about line 16 to 20, I
10 suppose, where you comment about investors' perception of the
11 two settlements and comparing them, is that correct?

12 A Yes, I refer to investors' views of the
13 comparison.

14 Q That they were particularly comparing the ROEs
15 that were allowed in those two agreements?

16 A Yes. In my conversations with investors I've had
17 discussions and had feedback from them on the overall
18 comparison between the Progress Energy settlement and the
19 proposed settlement, including the ROE.

20 Q It's pretty clear, is it not, from this body of
21 material in these pages that you -- that you believe there's
22 a reasonable comparison between the two and that you believe
23 that investors believe there's a reasonable comparison
24 between these two situations?

25 A Yes, that's correct. I believe those are two

1 separate things. I believe it's reasonable to draw
2 comparisons between the two, even though obviously every
3 settlement agreement is unique, and it is certainly true that
4 investors have repeatedly drawn comparisons. Obviously
5 everybody will draw their own conclusions about the
6 comparisons.

7 But just to be clear, this section of my testimony
8 was designed to indicate why I think that the comparison can
9 be one test of reasonableness for this Commission to
10 consider, one test among many.

11 Q Do you happen to know what the ratio of long-term
12 debt to common equity that was enacted as a part of the
13 Progress settlement?

14 A I don't know the specific number. My general
15 understanding is that Progress retains its current capital
16 structure and along with it its overall weaker balance sheet
17 and lower credit rating than FPL.

18 Q Would you be surprised to know that the order in
19 that case appears to show that the amount of long-term debt
20 was 49.75 percent compared to the common equity of 50.25
21 percent in the Progress settlement?

22 A No, that wouldn't surprise me as all. Progress
23 has for some time definitely had a weaker balance sheet and a
24 lower credit rating than we have. Obviously, as we discussed
25 in August, the risk profile is different, their requirements

1 are different.

2 Q And as you also noticed, they have a major nuclear
3 problem on their hands.

4 A Yes, and I count myself very fortunate that we
5 don't share that problem.

6 MR. HENDRICKS: Yes. Thank you, no more questions.

7 CHAIRMAN BRISE: All right, Staff?

8 MR. YOUNG: No questions.

9 CHAIRMAN BRISE: Commissioners? Commissioner
10 Balbis?

11 COMMISSIONER BALBIS: Thank you, Mr. Chairman. And
12 thank you, Mr. Dewhurst. I'm going to try and rearrange
13 my cup so you can't see how much coffee I've had. But I
14 do appreciate you being here. And one of the things I
15 do appreciate is your candor to very difficult
16 questions. And I know you're under oath, but, you know,
17 I always appreciate someone working for the company and
18 giving very clear, concise answers.

19 You know, we're at the end of this process and I
20 was kind of surprised how this process evolved because,
21 you know, I was anticipating this exact exchange, having
22 a live testimony question and answer session on specific
23 questions that I had, and it's kind of turned into a,
24 you know, very detailed almost full-blown proceeding
25 here. But I appreciate you're here.

1 And you indicated, when you and I discussed -- I
2 don't even know if it was today -- but whether or not
3 this Commission has been fair in the past. Do you
4 recall that?

5 THE WITNESS: Yes.

6 COMMISSIONER BALBIS: Okay. And would you agree
7 that one of the reasons why any party enters into a
8 settlement is they get concessions that maybe they would
9 not have gotten through another process? Is that one of
10 the reasons to enter into a settlement?

11 THE WITNESS: It certainly can be one of the
12 reasons, yes.

13 COMMISSIONER BALBIS: Okay. So what concessions is
14 FPL getting with the settlement that you would not have
15 gotten through the regular process, knowing that we make
16 fair decisions?

17 THE WITNESS: Commissioner, just so I can be clear,
18 what concessions are investors receiving through signing
19 on to this agreement that they could not expect to
20 receive; is that the core of your question?

21 COMMISSIONER BALBIS: Correct.

22 THE WITNESS: Or the other --

23 COMMISSIONER BALBIS: No, no, that's my question
24 exactly. If you're representing investors.

25 THE WITNESS: Okay, the company and its investors.

1 COMMISSIONER BALBIS: Yes.

2 THE WITNESS: I just wanted to clarify that. Well,
3 I think in this settlement agreement the core value from
4 a company and investor perspective is the clarity for a
5 four-year period. It ensures that we get ourselves back
6 on a cash recovery basis from the period that we have
7 been in with extensive use of the non-cash credit to
8 depreciation, so we get rates that are more
9 fundamentally based on our true cost structure.

10 I believe that we get on that side an ROE that's
11 more representative of what we believe the true cost of
12 capital is, albeit still toward the lower end of the
13 range, recognizing that others have different positions.
14 But I believe it is fundamentally the clarity around the
15 four-year period and hence the ability to be able to
16 plan for the business over an extended period of time,
17 albeit with some incremental risks associated with that.

18 COMMISSIONER BALBIS: Okay, let's just walk through
19 a couple of those items that you mentioned. One was the
20 cash flow that represents the true cost of doing
21 business. And I may be paraphrasing what you said.

22 Are you indicating that through the rate case
23 process -- again, we've established we're fair -- you
24 wouldn't receive the proper revenues for that?

25 THE WITNESS: No, I don't mean to suggest that, but

1 obviously there are five individuals with differing
2 views and you all have a process that you will use to
3 get to a particular answer.

4 From an investor perspective, I can't tell exactly
5 where that answer is going to come out. With the
6 settlement agreement, it's clear. We know what we're
7 going to get. So there is a resolution of uncertainty
8 that's involved in that. That's clearly a benefit.

9 COMMISSIONER BALBIS: Okay, but with the premise
10 that we are always fair -- and I know that's a stretch,
11 but -- then there is no risk; we're going to make a fair
12 decision.

13 THE WITNESS: I agree with that. But what I would
14 tell you is that a fair decision may not align with what
15 the company might hope to receive or investors might
16 hope to receive, or, in fact, with what investors might
17 expect to receive.

18 So, again, I come back to saying that there is a
19 degree of clarity over a multiple year period with the
20 settlement agreement, including, in particular, the
21 resolution of how the three, you know, roughly billion
22 dollar each projects are going to be handled. I think
23 there's value in that.

24 COMMISSIONER BALBIS: Okay, and let's skip ahead.
25 I assume the ROE discussion is the same premise, so

1 I'll skip the ROE of 10.7 and go to the three plants.
2 Now, those plants have all gone through a need
3 determination process, correct?

4 THE WITNESS: That's correct.

5 COMMISSIONER BALBIS: And I believe approved
6 unanimously. And I think the latest one I made the
7 motion for and I believe it's still being challenged by
8 Mr. Moyle, which is an odd situation that we won't get
9 into.

10 So if we've gone through the need determination
11 process, we've been unanimous in our decision, we've
12 been very methodical in our deliberations; why would FPL
13 and its investors not expect that if there's a limited
14 proceeding or other proceeding that FPL wouldn't receive
15 the appropriate revenues required to construct those
16 plants?

17 THE WITNESS: I think there is a general
18 expectation on the part of our investor base that there
19 is a very high likelihood that we would receive
20 appropriate revenue recovery for those plants. But as
21 in everything else, there is uncertainty. And so to
22 some degree, Commissioner, you're getting to the heart
23 of what regulatory risk is from an investor perspective.

24 And so I guess I'd have to come back to saying that
25 one can believe that the process used to achieve a

1 decision -- to reach a decision -- is a fair one, that
2 all individuals are acting in good faith, paying
3 attention to, you know, all full facts and
4 circumstances, and yet there is still uncertainty as to
5 the actual specific outcome.

6 And I think we would all agree that there can be a
7 range of what constitutes a reasonable outcome on any
8 specific issue.

9 So, again, there's a value in the clarity of a
10 multi-year agreement. I will also note that we have
11 operated as a company successfully in the past under
12 multi-year rate agreements, and under those we have been
13 able, I think, a little bit through the magic of
14 incentives, to work on things that perhaps we wouldn't
15 have otherwise worked on, in part because many of our
16 staff would be distracted, I believe Mr. Barrett's terms
17 were, by preparing for the next rate case.

18 And over time I think that basic approach has been
19 a partial cause -- certainly has been instrumental in
20 our reaching the level of performance that we currently
21 have, in terms of low rates, high reliability, and
22 excellent customer service. I think there's value in
23 that structure.

24 I'm not sure if I'm not answering your -- I know
25 I'm answering your question, but whether I'm addressing

1 your issue, I don't know.

2 COMMISSIONER BALBIS: No, you answered my question.
3 You elaborated, and I still would like to continue this,
4 with the Chairman's indulgence.

5 I guess what you're describing, wouldn't that be
6 the normal regulatory process with the statutes and
7 rules in place to protect both the customers and a
8 utility in order to ensure that fair, just and
9 reasonable rates are provided. So isn't that the normal
10 process and --

11 THE WITNESS: Yes, and I'm not suggesting that, you
12 know, a series of rate cases can't achieve reasonable
13 outcomes. I'm simply suggesting that from an investor
14 point of view there is value in a period of, you know,
15 where the parameters of what we're dealing with are set
16 and predetermined.

17 COMMISSIONER BALBIS: And I'm not proposing a
18 series of rate cases. I want to be clear. What I'm
19 proposing is what has been mentioned throughout this
20 process, is once a fully litigated case proceeds and
21 capital costs are established, appropriate ROE is
22 established, appropriate O&M expenses, et cetera, and
23 then a limited proceeding can take place, focusing just
24 on the cost of those plant additions, which is not a
25 series of rate cases. I mean, wouldn't that process

1 work just as well without having this consternation that
2 we're having now?

3 THE WITNESS: It might, but I don't think it's a
4 practical alternative in the situation we're facing
5 today. I think the reality is that absent the
6 settlement agreement, for sure there's going to be
7 another rate case, because it's not just Riviera coming
8 in, it's the disappearance of 191 remaining non-cash
9 credit to expense at the end of next year.

10 And obviously further out is more uncertain, but
11 the basic drivers affecting our cost structure suggest
12 to me that -- we've had a lot of discussion about things
13 that might come up later in the period, magical
14 productivity gains. I don't see those things as being
15 very likely, and therefore I think the dominant reality
16 for the next few years is both the disappearance of the
17 remaining non-cash credit and the big projects coming
18 in, plus regular underlying cost drivers.

19 So while I appreciate the possibility, I think the
20 practical reality is we have at least two more major
21 rate cases.

22 COMMISSIONER BALBIS: And you mentioned the
23 exhaustion of the \$191 million in excess depreciation
24 reserve. Are you continuing to use that on a monthly
25 basis to hit the midpoint of the authorized ROE?

1 THE WITNESS: Commissioner, the 191 is for 2013.

2 COMMISSIONER BALBIS: Okay, with the current.

3 THE WITNESS: Under the current, we are continuing
4 to amortize up to the upper limit, as is consistent with
5 the current settlement agreement, and, frankly, as was
6 anticipated by all parties at the beginning of the
7 settlement agreement.

8 You may recall that we had a discussion about this
9 in August. This was in a sense a response to where we
10 came out of the formal side of the 2009 rate case. We
11 viewed the 2010 settlement agreement as an interim step.
12 You'll recall that we had a lot of discussion about
13 capital market reactions, our credit ratings were
14 downgraded in the period of the -- while the 2009 case
15 was going on. The company lost about 25 percent of its
16 market capitalization.

17 So the 2010 rate settlement agreement went a long
18 way to stabilizing the situation and a critical part of
19 that was the ability to sustain the 11 percent ROE,
20 which was more consistent with capital market conditions
21 through that time.

22 COMMISSIONER BALBIS: And I agree, and I approved
23 the settlement agreement in December of 2010, I believe
24 it was, or January of 2011. So I fully understand the
25 reasoning behind it, but I think it goes back to our

1 discussion in August where, you know, an appropriate
2 level of revenue requirement, as approved by this
3 Commission, would not -- would allow you to not utilize
4 that in order to hit your appropriate ROE, and we had
5 that discussion.

6 THE WITNESS: Yes, sir.

7 COMMISSIONER BALBIS: Okay, that's all I have.
8 Thank you very much.

9 THE WITNESS: Thank you.

10 CHAIRMAN BRISE: Commissioner Edgar.

11 COMMISSIONER EDGAR: Thank you, Mr. Chairman. And
12 I'm going to have to ask us to come back for a moment,
13 Mr. Dewhurst, because Commissioner Balbis took us in a
14 different direction. Let me lay a foundation for these
15 couple questions, which is that I obviously, but for the
16 record, have absolutely no idea who spoke to whom, when,
17 in what order, or at what existent or nonexistent table.

18 But to follow up on the questions that you were
19 asked just a little bit ago, the question was posed to
20 you, were one or more of the non-signatories given a
21 chance to sit at the table. So I'm going to take that
22 question and turn it around a little bit.

23 To your knowledge, in the time frame that you
24 were being asked about on cross, did any of the
25 non-signatories ask the company to sit at a metaphorical

1 table?

2 THE WITNESS: Not to my knowledge.

3 COMMISSIONER EDGAR: You were also asked if one or
4 more of the non-signatories were offered the opportunity
5 to negotiate toward a settlement agreement. To your
6 knowledge, did any of the non-signatories ask to
7 negotiate toward a settlement agreement?

8 THE WITNESS: No, but I have to add the caveat that
9 at some point Florida Retail Federation did come forward
10 with what I would characterize as a counter proposal.

11 COMMISSIONER EDGAR: Thank you, and that was
12 actually -- you kind of jumped right in there to my next
13 question.

14 So to expand on that, you were asked if any of the
15 non-signatories -- one or maybe any -- were offered the
16 opportunity to sign an already -- sign on to an already
17 signed agreement. And my question, which you may have
18 just answered, but I'll pose it again, is, did any of
19 the non-signatories offer a counter offer or a counter
20 agreement upon being made aware that there was a signed
21 agreement potentially in the works?

22 THE WITNESS: Again, Commissioner, I just feel I
23 have to reiterate what I knew and what I didn't. To my
24 knowledge, as I indicated, there was a -- I would call
25 it a counter proposal from Florida Retail Federation.

1 The two parties were very far apart at that time. We
2 felt we had the core of an agreement with other parties.
3 I am not aware of any equivalent counteroffer from the
4 Office of Public Counsel.

5 COMMISSIONER EDGAR: Okay, that's as far as I'll
6 take that, but thank you.

7 CHAIRMAN BRISE: All right, any further questions
8 from Commissioners? All right, seeing none, redirect.

9 REDIRECT EXAMINATION

10 BY MR. LITCHFIELD:

11 Q Okay, Mr. Dewhurst, you and I always seem to close
12 out the hearings. I guess the first question that I want to
13 ask you, Mr. Dewhurst, is if you can recall having read this
14 quote. Quote: While for years we have settled with folks
15 like Florida Power & Light before it ever goes before the PSC
16 for a full hearing, in the last few years we have learned we
17 are better off going to the PSC for the full rate case. It
18 gives us a chance to take apart and examine what is going
19 into their full request. Sometimes we find things no
20 ratepayer would ever want to pay for.

21 And that's attributed to Rick McAllister,
22 President and CEO of the Florida Retail Federation, quoted in
23 the Palm Beach Post, our hometown paper, January 18th, 2012.
24 Do you remember reading or hearing of that quote?

25 A I remember that quote very distinctly. I couldn't

1 tell you the date of that, but certainly I do recall that.

2 Q Now, Mr. Rehwinkel asked you about a series of
3 meetings, and I'm going to come back to those, but with
4 regard to a July 15th meeting that he referred you to, he
5 asked you whether you knew whether the company had provided
6 them with a signed agreement or a term sheet. Do you recall
7 that?

8 A I recall that, yes.

9 Q And I think your answer was you didn't know one
10 way or the other?

11 A That's correct.

12 Q And then he indicated to you -- he represented to
13 you that they had been provided with a copy of a signed
14 agreement. Do you remember that?

15 A I recall that, yes.

16 Q Now, if I were to make a representation to you
17 that a term sheet was provided, your answer would be the
18 same; you would not know one way or the other, correct?

19 A That's correct.

20 Q Now, going through the dates of the meetings that
21 Mr. Rehwinkel took you through, I think you both agreed, more
22 or less, that there would have been a meeting sometime in the
23 fall of 2011?

24 A The late fall, yes.

25 Q Late fall?

1 A November is what sticks in my mind, but, again,
2 I don't have precise dates.

3 Q Do you have any appreciation for what calls, if
4 any, may have been made to the Office of Public Counsel
5 following that meeting?

6 A No, I have no specific recollection. Obviously
7 there must have been some contact, otherwise the January
8 meeting or meetings would not have been set up.

9 Q And so then there was a subsequent meeting in
10 January that Mr. Rehwinkel asked you about. And do -- and
11 then there was a following meeting, or a meeting following
12 that in March that you discussed with him. Do you remember
13 that?

14 A I recall -- well, I both recall understanding that
15 there were at least two meetings in March, and I recall
16 having a discussion with Mr. Rehwinkel about two meetings.

17 Q Okay. That's almost seven weeks between meetings.
18 Do you have any sense for whether calls were placed to the
19 Office of Public Counsel from January to March?

20 A I don't know. All I can tell you is that coming
21 out of essentially the report on the January meeting, which,
22 again, was when the test year letter was filed, the feedback
23 that I took away was nothing much is going to happen here
24 until the actual filing.

25 So, again, I'm sure there was contact, otherwise

1 the March meetings would not have been set up.

2 Q And yet when you say that Public Counsel indicated
3 that nothing was going to happen until the actual filing, in
4 early January a settlement with Progress was announced in
5 which there had not been any filing; do you recall that?

6 A Yes, that's certainly contemporaneous with the
7 Progress Energy settlement.

8 Q Now, Mr. Rehwinkel showed you this e-mail from
9 Mr. Hoffman to him, dated March 13th, at 9:21 in the morning.
10 Do you see that?

11 A Yes.

12 Q You have that in front of you? Indicating that
13 FPL is comfortable with the form of confidentiality agreement
14 proposed by Office of Public Counsel, correct?

15 A That's what it says on its face.

16 Q Which would indicate that any confidentiality
17 agreement issues were resolved, correct, at that point?

18 A On its face that would definitely be consistent,
19 yes.

20 Q But do you have any idea as to whether this
21 agreement was ultimately signed by Public Counsel?

22 A I do not.

23 Q Now, even if it -- even if it were signed, what
24 would that indicate, if anything, with regard to discussions
25 that may or may not have occurred afterwards?

1 A I guess the short answer to that is I don't know,
2 because I don't know what the specific conditions of the
3 confidentiality agreement were or were not.

4 The absence of a confidentiality agreement would
5 not necessarily have precluded substantive discussions, nor
6 would the presence of a confidentiality agreement have
7 implied that there were substantive discussions. So based
8 on my knowledge, I cannot conclude anything from that.

9 Q Now, at one point, in response to Mr. Rehwinkel's
10 questioning, you indicated that your understanding was that
11 the ball was firmly in Public Counsel's court; do you recall
12 that?

13 A Yes, around about the time of the actual filing,
14 so the March filing, whether it was immediately at the time
15 of the filing or shortly thereafter. But certainly I
16 understood that Public Counsel was going to have a chance to
17 dig into the numbers and come back to us when they were ready
18 to engage.

19 Q And do you have any idea as to how many phone
20 calls may have been placed to the Office of Public Counsel
21 during that period of time?

22 A No, my only recollection there is that in the
23 course of the service hearings there was some contact between
24 senior members of our management team and the Office of
25 Public Counsel to see if they were ready to engage.

1 Q By the time that July 15th rolled around, do you
2 have any sense as to whether the company had ever heard back
3 from Public Counsel during this period of time?

4 A No, certainly not substantively. Again, we had --
5 as I indicated earlier, we always traditionally tried to
6 reach out to Public Counsel first, but certainly in the June
7 time frame we were -- had drawn the conclusion that we would
8 not be able to engage meaningfully with Public Counsel, and
9 therefore we had more substantive discussions with another
10 party.

11 MR. LITCHFIELD: That's all I have.

12 CHAIRMAN BRISE: All right, thank you. Exhibits.

13 MR. LITCHFIELD: We have 701.

14 CHAIRMAN BRISE: Okay, we will move 701 into the
15 record, recognizing the standing objection.

16 (Exhibit 701 admitted in evidence.)

17 MR. REHWINKEL: Public Counsel moves 726.

18 CHAIRMAN BRISE: All right, 726 will be moved into
19 the record at this time, recognizing the standing
20 objection.

21 (Exhibit 726 admitted in evidence.)

22 CHAIRMAN BRISE: Is there anything further for
23 Mr. Dewhurst? All right, seeing nothing else, thank
24 you, Mr. Dewhurst, for your testimony this evening, and
25 you are excused.

1 All right, we are coming to the conclusion of this
2 hearing. Before we get into the final things that we
3 have to deal with, there is a motion for summary final
4 order denying the approval of a settlement and that is
5 brought forward by the Village of Pinecrest. So I'm not
6 necessarily going to hear oral arguments, but I want to
7 hear -- give you an opportunity to explain the motion.

8 MR. GARNER: The theory behind the motion is pretty
9 simple, even though it's many pages. When the
10 Commission in the past has entered into settlement
11 agreements, it has had a broad representation of party
12 representation, of customer classes, et cetera.
13 They've been true stipulations.

14 Those stipulations have allowed the Commission to
15 approve in one year the permit rates for plant that's
16 going to be in service multiple years out, without the
17 benefit of the information that the Commission would
18 receive in a file and suspend rate case.

19 In this instance there is not the same kind of a
20 stipulation, because as has been adduced at the hearing,
21 a broad swath of their customer community is not
22 represented by the signatories to the agreement.

23 There being no true stipulation, those basic facts
24 regarding the actual and expected costs of the plant,
25 the capital structure, the return on equity, there's

1 inadequate support for those elements. And because
2 there haven't been MFRs, there hasn't been audits
3 performed, there hasn't been all of the usual rigorous
4 process that has been given to these things, with
5 respect to the outside the test year plant, then there's
6 no basis in the record for the Commission to set fair,
7 just and reasonable rates for those plants today, or in
8 this proceeding for the outside of the test year power
9 plants.

10 That's the basic theory of the motion, and a motion
11 for a summary final order. The idea is that if there's
12 no disputed issue of fact on the record, then the movant
13 is entitled to an order denying the proposed action.
14 And that's the essential nature of the motion.

15 CHAIRMAN BRISE: All right.

16 MR. GARNER: You didn't want oral argument, you
17 just wanted it explained, right?

18 CHAIRMAN BRISE: Right. I sure didn't want oral
19 argument. Staff, what's your recommendation?

20 MR. YOUNG: I'll yield to Ms. Helton.

21 CHAIRMAN BRISE: Mary Anne?

22 MS. HELTON: Mr. Young can have the floor if he
23 wants to. Section 120.557 --

24 MR. YOUNG: 1(h).

25 MS. HELTON: Thank you. There's too many letters

1 here -- 1(h), or is it 2(h) -- 1(h) states that a party
2 to a proceeding may move for a summary final order when
3 there is no genuine issue as to any material fact. A
4 summary final order shall be rendered if the
5 Administrative Law Judge -- or in your case, the
6 Commission -- determines from the pleading, depositions,
7 answers to interrogatories, and admissions on file,
8 together with affidavits, if any, that no genuine issue
9 as to any material fact exists, and that the moving
10 party is entitled as a matter of law to the entry of a
11 final order.

12 A summary final order shall consist of findings of
13 fact, if any, conclusions of law, a disposition or
14 penalty, if applicable, and any other information
15 required by law to be contained in the final order.

16 So the gist is there can be no -- if there are no
17 disputed facts, then you have the ability to enter a
18 summary final order.

19 In this case, if there's no -- if there's no
20 disputed facts, then I'm not quite sure what we've done
21 here for the last two days. So in my opinion there are
22 disputed facts, and, in my opinion, for that reason, the
23 Village of Pinecrest's motion should be denied.

24 CHAIRMAN BRISE: All right.

25 MR. GARNER: The point of the motion, though, is

1 that the facts that have been adduced at the hearing and
2 are being argued over are not sufficient facts to
3 support the establishment of the rates.

4 CHAIRMAN BRISE: All right, thank you. So
5 therefore I think this is a decision of the Chair,
6 right? Okay, so we will deny the motion, okay?

7 MS. HELTON: This might be one that you want the
8 full Commission to vote on, because it's concerning the
9 entry of whether you're entering a final order or not
10 disposing of the motion.

11 CHAIRMAN BRISE: All right. So the Chair will
12 withdrawal his denial and will entertain a motion, if
13 there is a motion, or discussion. Commissioner Graham?

14 COMMISSIONER GRAHAM: I move to deny the motion.

15 CHAIRMAN BRISE: All right, it's been moved.

16 COMMISSIONER BROWN: Second.

17 CHAIRMAN BRISE: It's been moved and seconded. Is
18 there any further discussion? All right, seeing no
19 further discussion, all in favor say eye.

20 (Vote taken)

21 MR. GARNER: See you at the next meeting.

22 CHAIRMAN BRISE: All right, Staff, we can talk
23 about some post -- post-hearing dates and so forth.

24 MR. YOUNG: Yes, sir. The post-hearing procedures,
25 parties may file briefs electronically, as stated by

1 Rule 28-106.107 -- 1047(b) of the Florida Administrative
2 Code. A party who elects to file any document by
3 electronic mail shall be responsible for any delays,
4 disruptions -- delays, disruptions, or interruptions of
5 the signal and accept the full risk that the document
6 may not be properly filed within the agency clerk as a
7 result. So I just want to let the parties be aware of
8 that.

9 The critical dates are, briefs are due November the
10 30th, 2012 for a special agenda on December 13, 2012.

11 CHAIRMAN BRISE: All right. Are there any other
12 issues or matters that we need to address at this time?

13 MR. SAPORITO: Mr. Chairman, I just -- I don't have
14 a matter to pursue, but I have a question for
15 clarification for my point of reference.

16 CHAIRMAN BRISE: Sure.

17 MR. SAPORITO: When Mr. Young talked about the
18 December 12th --

19 CHAIRMAN BRISE: December 13th.

20 MR. YOUNG: December 13th.

21 MR. SAPORITO: December 13th? See that? Okay, the
22 December 13th date, now, that is when you all are going
23 to get together and make a decision on the proposed
24 settlement?

25 CHAIRMAN BRISE: Yes, that's correct, proposed

1 settlement.

2 MR. SAPORITO: Okay. So hypothetically speaking,
3 should you deny that settlement, or reject it, would
4 there be a -- is there a date certain already set to --

5 CHAIRMAN BRISE: I believe it's January 23rd is the
6 date for a special agenda.

7 MR. SAPORITO: Thank you.

8 MR. YOUNG: Yes.

9 CHAIRMAN BRISE: All right. Does that answer your
10 question?

11 MR. SAPORITO: Yes, sir. Thank you.

12 CHAIRMAN BRISE: Are there any other matters that
13 need to be addressed? All right, I want to thank all
14 the parties for working diligently to come to this
15 point. I know this process has been long and at times a
16 little contentious, but I certainly appreciate the
17 civility that has been used in this process to get us to
18 this point.

19 I do want to especially thank those who have made
20 the expenses out of their own pockets and made the
21 effort to be at the customer service hearings and so
22 forth. And so we thank you for your effort and your
23 interest in these issues.

24 I want to thank my fellow Commissioners for their
25 hard work, and working with the Chair with the long

1 hours and missing dinner and time with the children and
2 so forth, but getting us to this point.

3 And finally, I want to thank our Staff for your
4 hard work, those who are here now and those who have
5 probably gone home, for working nights and weekends and
6 so forth, in preparation to get us to this point. And
7 some of you have forgone some of your Thanksgiving plans
8 so that we can do this. And I am truly thankful for
9 your hard work in getting us to this point.

10 So with that, we stand adjourned.

11 MR. YOUNG: Mr. Chairman?

12 CHAIRMAN BRISE: Yes, sir?

13 MR. YOUNG: Close the record.

14 CHAIRMAN BRISE: And we need to close the record?

15 MR. YOUNG: Yes.

16 CHAIRMAN BRISE: All right. So the record is
17 closed. All right? So with that, Happy Thanksgiving,
18 everyone. We stand adjourned.

19 (Whereupon, the proceedings were concluded at 7:44 p.m.)

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CERTIFICATE OF REPORTER

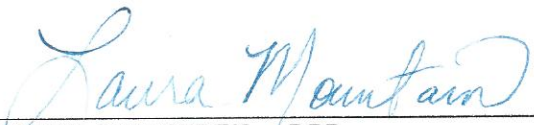
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STATE OF FLORIDA)
COUNTY OF LEON)

I, LAURA MOUNTAIN, Court Reporter, do hereby
certify that I was authorized to and did
stenographically report the foregoing proceedings;
and that the transcript is a true record of the
aforesaid proceedings.

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

Dated this 21st day of November, 2012.



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