

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150075-EI

PETITION FOR APPROVAL OF  
ARRANGEMENT TO MITIGATE IMPACT  
OF UNFAVORABLE CEDAR BAY POWER  
PURCHASE OBLIGATION, BY  
FLORIDA POWER & LIGHT COMPANY.

VOLUME 1

(Pages 1 through 160)

PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, July 28, 2015

TIME: Commenced at 9:30 a.m.  
Concluded at 12:15 p.m.

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

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

## 1 APPEARANCES:

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3 MARIA MONCADA, ESQUIRES, 700 Universe Boulevard, Juno  
4 Beach, Florida 33408-0420, on behalf of Florida Power &  
5 Light Company.

6 JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES,  
7 Moyle Law Firm, P.A., 118 North Gadsden Street,  
8 Tallahassee, Florida 32301, appearing on behalf of  
9 Florida Industrial Power Users Group.

10 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA,  
11 III, ESQUIRES, Gardner, Bist, Bowden, Bush, Dee, LaVia &  
12 Wright, P.A., 1300 Thomaswood Drive, Tallahassee,  
13 Florida 32308, appearing on behalf of Cedar Bay  
14 Generating Company, LP.

15 JOHN TRUITT, CHARLES REHWINKEL,  
16 and J. R. KELLY, PUBLIC COUNSEL, ESQUIRES, Office  
17 of Public Counsel, c/o the Florida Legislature,  
18 111 W. Madison Street, Room 812, Tallahassee, Florida  
19 32399-1400, appearing on behalf of the Citizens of the  
20 State of Florida.

21 MARTHA BARRERA and JOHN VILAFRATE, ESQUIRES,  
22 FPSC General Counsel's Office, 2540 Shumard Oak  
23 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
24 behalf of the Florida Public Service Commission Staff.  
25

1 APPEARANCES (Continued):

2 CHARLIE BECK, GENERAL COUNSEL, and MARY ANNE  
3 HELTON, DEPUTY GENERAL COUNSEL, Advisors to the  
4 Commission, Florida Public Service Commission, 2540  
5 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

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## I N D E X

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

1  
2           **COMMISSIONER EDGAR:** Good morning. Call this  
3 hearing to order. Hello down there. Nice to see you.

4           We'll start by asking our staff to read the  
5 notice.

6           **MS. BARRERA:** Good morning. By notice issued  
7 June 22nd, 2015, this time and place is set for hearing  
8 in Docket No. 150075-EI. The purpose of the hearing is  
9 set out in the notice.

10          **COMMISSIONER EDGAR:** Thank you. And let's  
11 take appearances.

12          **MR. BUTLER:** Thank you, Madam Chair. John  
13 Butler, Kevin Donaldson, and Maria Moncada appearing on  
14 behalf of Florida Power & Light Company.

15          **COMMISSIONER EDGAR:** Thank you.

16          **MR. WRIGHT:** Good morning, Commissioners.  
17 Robert Scheffel Wright and John T. LaVia, III, making a  
18 limited appearance on behalf of Cedar Bay Generating  
19 Company, Limited Partnership, for the purpose of  
20 protecting Cedar Bay's confidential information. Thank  
21 you.

22          **COMMISSIONER EDGAR:** Okay. And so just for  
23 clarity, you are not participating as a party; is that  
24 correct? That's your understanding as well as mine?

25          **MR. WRIGHT:** That is correct, Madam

1 Commissioner. Thank you.

2 **COMMISSIONER EDGAR:** Thank you. Okay. Can we  
3 work on the --

4 **MR. SENA:** We are.

5 **COMMISSIONER EDGAR:** Okay. We're working on  
6 that. We'll -- we will push through.

7 **MR. MOYLE:** Good morning. Jon Moyle with the  
8 Moyle Law Firm, making an appearance on behalf of the  
9 Florida Industrial Power Users Group, FIPUG. With me  
10 is -- is Karen Putnal who's also with our firm. I'd  
11 like to enter an appearance for her. And she has been  
12 working on this matter, and some people have met her,  
13 some have not, but Karen is helping me on this today.  
14 Thank you.

15 **COMMISSIONER EDGAR:** Thank you.

16 **MR. TRUITT:** John Truitt, Charles Rehwinkel,  
17 and J. R. Kelly on behalf of the Office of Public  
18 Counsel.

19 **COMMISSIONER EDGAR:** Thank you. And our  
20 staff.

21 **MS. BARRERA:** Martha Barrera and John  
22 Villafrate on behalf of staff.

23 **MS. HELTON:** Mary Anne Helton. I'm here as  
24 your advisor today.

25 **MR. BECK:** Charlie Beck, General Counsel to

1 the Commission.

2 **COMMISSIONER EDGAR:** Thank you. To our staff,  
3 preliminary matters.

4 **MS. BARRERA:** The -- there seem to be a few  
5 preliminary matters. FP&L and OPC have filed a joint  
6 motion for approval of the settlement agreement -- of a  
7 settlement agreement. FIPUG has indicated it will be  
8 filing a response opposing the motion and settlement,  
9 but after the hearing. The parties agree and propose  
10 that the hearing commence and the parties present their  
11 witnesses and exhibits. OPC and FP&L would not  
12 cross-examine witnesses, but have no objection should  
13 FIPUG and staff wish to cross-examine. OPC and FP&L  
14 have no objection to questions regarding the settlement  
15 agreement being included in this hearing.

16 Mr. Barrett is the designated witness, FP&L  
17 witness to whom questions may be addressed, and FIPUG  
18 has indicated they reserve the right to object to  
19 questions regarding the settlement agreement.

20 **COMMISSIONER EDGAR:** So to the parties, does  
21 that comport with everyone's understanding of where we  
22 are at this point?

23 Mr. Butler, I'll start with you.

24 **MR. BUTLER:** Thank you. It does. One thing I  
25 would note just as clarification, our intention, I



1 believe it's consistent with staff's expectation, is  
2 that Mr. Barrett, he's actually our first witness, you  
3 know, presenting his direct testimony and rebuttal  
4 testimony. We'll do that. We would prefer that he come  
5 back to address whatever questions parties or the  
6 Commission or staff has on the settlement afterwards.  
7 He'll stay available. And after we've finished  
8 presenting the witnesses on the actual file of the case,  
9 he would come back to talk about the settlement.

10 **COMMISSIONER EDGAR:** All right. I understand.

11 OPC.

12 **MR. TRUITT:** Yes, generally, although we do  
13 reserve the right for obviously objections when our  
14 witnesses are on the stand.

15 **COMMISSIONER EDGAR:** Sure.

16 FIPUG.

17 **MR. MOYLE:** So -- so FIPUG indicated yesterday  
18 that it is reserving the right to object, and we would  
19 register an objection to discussions about the  
20 settlement agreement for a number of reasons.

21 One, the Prehearing Order and this Commission  
22 has an established procedure with respect to taking  
23 direct testimony. You have to prefile your testimony,  
24 and historically you're not allowed to go outside the  
25 prefiled testimony. So if all of the sudden we're

1 putting a, you know, a new issue out there, a  
2 settlement, which FIPUG did not receive notice that a  
3 settlement had been put together and agreed to by OPC  
4 and Florida Power & Light until Friday afternoon. So  
5 that was last Friday afternoon. You know, we've had one  
6 business day --

7 **COMMISSIONER EDGAR:** It was a busy week.

8 **MR. MOYLE:** Yeah. Yeah. And -- and, you  
9 know, we just don't -- we're focusing on the case that's  
10 been duly noticed and we're ready to ask questions about  
11 the case. We're not ready to ask questions about the  
12 settlement. And so we don't think there's been, you  
13 know, adequate notice and an opportunity to be prepared  
14 with respect to the, you know, the settlement, and so  
15 would argue that it's inappropriate to ask questions  
16 about it. It violates due process and the Commission's  
17 order. So that's one point.

18 I think the other point, this is a little  
19 unusual in that there's a non-unanimous settlement  
20 agreement that's in place. And you all do have some  
21 experience with it, and in that proceeding, my  
22 recollection -- and I think there was a Prehearing  
23 Order -- is you said, okay, here's what we're going to  
24 do. We're going to go ahead and consider the case as  
25 duly noticed. We're not going to talk about the

1 settlement, and we're going to come back and consider  
2 that at a -- at a later point in time. We're going to  
3 give people notice, the opportunity to ask some  
4 questions about it. And that's how it was handled in  
5 the -- in the last situation.

6 So, you know, it seems that that worked, at  
7 least from the viewpoint of the Florida Supreme Court.  
8 And I think all of the sudden saying today, okay, well,  
9 we're going to -- we're going to take a different  
10 approach and then allow -- I guess it sounds like  
11 Mr. Butler is suggesting a separate mini hearing in that  
12 he's saying his witnesses will come back at a later  
13 point in time. He didn't identify when that point in  
14 time was. I assume he's talking about today. But, you  
15 know, that -- that doesn't seem to be a good way to  
16 proceed, inconsistent with your prior ruling, due  
17 process, and the Prehearing Order.

18 **COMMISSIONER EDGAR:** Okay.

19 **MR. MOYLE:** So I figured I'd go ahead and just  
20 lay that out, the objection. And I think if we have to  
21 do it again to preserve the record, I'll just kind of  
22 refer back and say as referenced in the preliminary  
23 matter.

24 **COMMISSIONER EDGAR:** Okay. Thank you.

25 Mr. Moyle, your objection is duly noted, is on the

1 record. I would like to reserve that, and at the break  
2 and/or at lunch we'll -- I would like to confer with our  
3 General Counsel's Office, and then we can address that  
4 further when we come to it. If, indeed, we do move  
5 forward with bringing Mr. Barrett back for questions  
6 regarding the settlement, we will take him up at the --  
7 directly after, perhaps with a short break, but directly  
8 after the close of the other witness testimony.

9 Any other preliminary matters?

10 **MS. BARRERA:** At this time we would ask to  
11 have the exhibits, the staff exhibits marked. Staff has  
12 compiled a stipulated Comprehensive Exhibit List. It  
13 includes the prefiled exhibits attached to the witness  
14 testimony in this case. The list has been provided to  
15 the parties, the Commissioners, and the court reporter.  
16 This list is marked as the first hearing exhibit, and  
17 the other exhibits should be marked as set forth in the  
18 comprehensive list.

19 Staff announces that parties stipulated to the  
20 entry of staff's exhibits, and we ask to move  
21 Exhibits 1 and Exhibits No. 29 to 54 into the record as  
22 set forth in the Comprehensive Exhibit List.

23 **COMMISSIONER EDGAR:** 1 through 54, is that the  
24 request?

25 **MS. BARRERA:** I'm sorry. It's --

1           **COMMISSIONER EDGAR:** 29 through 54.

2           **MS. BARRERA:** I'm sorry. It's --

3           **COMMISSIONER EDGAR:** 29 through 54.

4           **MS. BARRERA:** -- 29 through 63. I'm sorry.

5           **COMMISSIONER EDGAR:** Okay. So staff is  
6 requesting that the Comprehensive Exhibit List be marked  
7 as Exhibit No. 1, and that the other items numbered on  
8 the list, 29 to 63, be entered into the record. Any  
9 objections?

10           **MR. BUTLER:** None.

11           **MS. BARRERA:** I'm sorry, Commissioner. I was  
12 confused, as always. It is Exhibits 29 to 54, because  
13 the end of the exhibits, 55 through 63, are FP&L  
14 rebuttal exhibits.

15           **COMMISSIONER EDGAR:** Mr. Butler?

16           **MR. BUTLER:** That's fine.

17           **COMMISSIONER EDGAR:** Okay. All right. Then  
18 at this time we will enter into the record Exhibit 1 and  
19 exhibits marked 29 through 54.

20           **MS. BARRERA:** Yes.

21           **COMMISSIONER EDGAR:** Thank you.

22           (Exhibits 1 through 63 marked for  
23 identification.)

24           (Exhibits 1 and 29 through 54 admitted into  
25 the record.)

1           **MS. BARRERA:** The additional preliminary  
2 matters, FIPUG has filed an objection to Cedar Bay's  
3 Revised Tenth Request for Confidentiality. I don't know  
4 if FIPUG will bring it, I mean, at this point. And  
5 staff is not aware of any other preliminary matters.

6           **COMMISSIONER EDGAR:** Okay. So noted for the  
7 record, Mr. Moyle?

8           **MR. MOYLE:** Yeah. But I just also want to  
9 clarify. I mean, this case has been somewhat unusual in  
10 that there's been scores and scores and scores of  
11 requests for confidentiality that have been filed.  
12 There was one filed this morning. And the rule says --  
13 lays out a process for how -- how it's handled. We have  
14 filed an objection yesterday to certain documents,  
15 including documents that have pricing information.

16           So I've talked to counsel for Cedar Bay.  
17 We're going to observe -- we have a confidentiality  
18 agreement. We're not going to -- you know, the  
19 witnesses need to be cautioned they don't need to  
20 vocalize numbers. We're going to show you documents  
21 that have those numbers and talk about them in terms of  
22 this number is a lot less than another number and, you  
23 know, try to get a general sense without getting into  
24 the confidential information. So I think that's how  
25 we're going to handle it.

1 I think we had just filed this yesterday. It  
2 has some case law and some legal reasoning. We don't  
3 feel the need to argue it or have a ruling today,  
4 particularly because in conversations with counsel, even  
5 if you ruled and said it's not confidential, government  
6 in the sunshine, let's look at it, I think they would  
7 indicate that it still stays confidential and we  
8 couldn't be talking about it. So we'll do our best to  
9 tread lightly on confidential information. But I just  
10 wanted to make everybody aware there is a lot of  
11 requests for confidential information.

12 **COMMISSIONER EDGAR:** Yes.

13 **MR. MOYLE:** So we're going to try to -- if it  
14 takes a little longer formulating questions, I mean,  
15 we're trying to, you know, do our best to preserve all  
16 the confidential information.

17 **COMMISSIONER EDGAR:** Thank you. I do believe  
18 that the process will accommodate the process and the  
19 concerns. But certainly to all the parties, please do  
20 make sure that your witnesses are aware of confidential  
21 information and the process for working with that.

22 Okay. Ms. Barrera.

23 **MS. BARRERA:** Staff is not aware of any other  
24 --

25 **COMMISSIONER EDGAR:** Okay. Any other items

1 from the parties before we move to opening statements?

2 Yes, Mr. Moyle.

3 **MR. MOYLE:** FIPUG has one. We find ourselves  
4 in a, I think a position we haven't found ourselves in  
5 before, which is we, I think, are maybe the only party.  
6 We haven't signed the settlement agreement; we object to  
7 it. So we're going to be crossing witnesses and  
8 building a record in this case. And as is done in  
9 practice over at the Division of Administrative Hearings  
10 and in circuit court, we would invoke the rule on  
11 sequestration of witnesses, Florida Statute 90.616, and  
12 ask that the witnesses who are going to testify not in  
13 any way, shape, or form listen to the testimony of the  
14 other witnesses. So that would mean, you know,  
15 excluding them from the room, but also directing them  
16 not to, you know, watch it on TV or talk to other  
17 witnesses or watch it on the Internet. So we would file  
18 and ask that the rule on exclusion of witnesses pursuant  
19 to Florida Statute 90.616 be invoked.

20 **COMMISSIONER EDGAR:** Mr. Butler.

21 **MR. BUTLER:** We don't think that is necessary  
22 or appropriate. The Commission has a very  
23 well-established procedure of having these hearings  
24 open. I don't think that the nature of the testimony  
25 here is in any respect the sort of thing where, you



1 know, it's necessary to sequester witnesses so that they  
2 are, you know, not hearing what other people say or  
3 their version of the facts, and I think it would be both  
4 cumbersome and inappropriate, unnecessary.

5 **COMMISSIONER EDGAR:** OPC.

6 **MR. TRUITT:** We have no position on the  
7 request.

8 **COMMISSIONER EDGAR:** Okay. Thank you.

9 All right. Then, Ms. Helton, I'm going to  
10 give you a few minutes. We're going to proceed with  
11 opening statements. After opening statements, I'm going  
12 to take a five-minute break, consult with counsel, and  
13 then rule on the objection -- or on the request. Excuse  
14 me. On the request.

15 So we will move to opening statements, ten  
16 minutes per party.

17 Mr. Butler, you're up.

18 **MR. BUTLER:** Thank you. And I will be  
19 admirably brief. Good morning. In 1988, FPL entered  
20 into a PPA to buy power from the Cedar Bay facility,  
21 which is a 250 megawatt coal-fired power plant that  
22 qualifies as a QF because it provides steam to an  
23 adjacent linerboard plant.

24 Pursuant to the Commission's QF rules, the  
25 Cedar Bay PPA provides for FPL to pay capacity charges

1 based on an integrated coal gasification combined cycle  
2 unit that had been designated at the time as a statewide  
3 avoided unit, and to pay energy charges based on a fixed  
4 heat rate and the cost of coal at the St. Johns River  
5 Power Plant. In 1989, the Commission approved the Cedar  
6 Bay PPA and, in 2002, you approved an amendment to that  
7 PPA.

8           Throughout the term of the PPA, the capacity  
9 payments have been above FPL's own avoided cost, but  
10 until recently the energy payments generally were  
11 favorable compared to FPL's dispatch cost; however, its  
12 natural gas prices have declined over the last few  
13 years. Excuse me. FPL's dispatch cost has declined as  
14 well, and the opportunity for cost savings on the Cedar  
15 Bay energy payments has gone down. As a consequence,  
16 continuing to make the required payments under the Cedar  
17 Bay PPA is now quite unfavorable for FPL and our  
18 customers.

19           These unfavorable economics led FPL to reach  
20 out to CBAS Power Holdings, the owner of Cedar Bay, in  
21 the summer of 2014 to see whether mutually agreeable  
22 terms could be reached for FPL to terminate the PPA.  
23 After several months of negotiation, FPL and CBAS Power  
24 Holdings signed the Purchase and Sale Agreement, or PSA,  
25 that is before you for approval today.

1 Under the PSA, FPL will pay CBAS Power  
2 Holdings \$520.5 million to acquire CBAS Power, which is  
3 substantially lower than the original asking price. I  
4 will refer to that acquisition as the Cedar Bay  
5 transaction.

6 FPL is asking the Commission to determine that  
7 the Cedar Bay transaction is prudent and to approve two  
8 key elements of FPL's proposed regulatory accounting  
9 treatment: establishment of a regulatory asset for the  
10 \$520.5 million purchase price, and recovery through the  
11 capacity clause of amortization of that regulatory asset  
12 and a return on the unamortized balance at FPL's  
13 weighted average cost of capital.

14 The Commission should approve the Cedar Bay  
15 transaction for several reasons. First and foremost,  
16 acquiring Cedar Bay and terminating the PPA is projected  
17 to save customers \$70 million on a net present value  
18 basis or \$156 million nominally compared to allowing the  
19 PPA to remain in effect until the end of its term in  
20 2024.

21 Second, by acquiring ownership of the Cedar  
22 Bay facility, FPL will be able to continue operating it  
23 for fuel diversity and reliability reasons so long as it  
24 remains beneficial to do so. This flexibility will be  
25 extremely valuable to FPL while the third natural gas

1 pipeline is under construction.

2           Finally, acquiring ownership of the Cedar Bay  
3 facility will also facilitate reducing the facility's  
4 operation substantially, avoiding approximately  
5 1 million pounds of CO2 emissions each year. That's the  
6 equivalent of taking about 182,000 vehicles off the  
7 road. And, of course, the emission reduction would be  
8 even greater when FPL retires the facility, which we  
9 currently anticipate to be at the end of 2016.

10           In short, FPL believes that the Cedar Bay  
11 transaction would be a solid win for our customers as  
12 proposed; however, FPL has entered into a stipulation  
13 and settlement with the Office of Public Counsel, which  
14 FPL fully supports and asks that the Commission approve.  
15 Thank you.

16           Before I conclude, I would like to point out,  
17 we've set up here on an easel just for everybody's  
18 convenience a, sort of, org chart showing the entities  
19 that are involved in this transaction. And really all  
20 that matter are the first two, which are, at the very  
21 top, the seller, CBAS Power Holdings, and then the  
22 entity we're buying, CBAS Power. Down at the, sort of,  
23 bottom left is Cedar Bay Genco, the company that  
24 actually owns and operates the power plant. But it's  
25 kind of confusing all the different terms that you may

1 end up hearing. I just wanted to have something  
2 available as a, you know, reminder of the structure, if  
3 it's useful. Thank you.

4 **COMMISSIONER EDGAR:** Thank you, Mr. Butler.

5 And I have my glasses on, but I --

6 **MR. BUTLER:** We can get you --

7 **COMMISSIONER EDGAR:** -- am apparently visually  
8 challenged. So for me, if not for anybody else, do you  
9 have a hard copy?

10 **MR. BUTLER:** We will get you hard copies of it  
11 at the break.

12 **COMMISSIONER EDGAR:** Thank you.

13 **MR. BUTLER:** Thank you.

14 **COMMISSIONER EDGAR:** And obviously, Mr. Moyle,  
15 you can have a hard copy to look at as well.

16 **MR. MOYLE:** Thanks.

17 **COMMISSIONER EDGAR:** All right. Thank you.

18 OPC.

19 **MR. TRUITT:** We waive opening statement.

20 **COMMISSIONER EDGAR:** Thank you.

21 Mr. Moyle.

22 **MR. MOYLE:** Thank you. Thank you, Madam  
23 Chair. And just before I get into my opening, I just  
24 want to make sure we're clear, Mr. Butler mentioned the  
25 settlement. I mean, obviously we object to that and

1 don't think it should be part of this hearing. I'd like  
2 to just have a standing objection to that effect so I  
3 don't have to jump in every time.

4 **COMMISSIONER EDGAR:** So noted.

5 **MR. MOYLE:** Okay. Thank you. So FIPUG is  
6 here today suggesting to you that the question, one of  
7 the key questions that you have to wrestle with and  
8 ultimately determine is how much, if anything, should  
9 FP&L -- and really it's the ratepayers, because  
10 ultimately, you know, FPL negotiated this deal, but it's  
11 all flowing to the ratepayers, the ratepayers are the  
12 real party in interest -- how much the ratepayers should  
13 pay, if anything, for this transaction, for the Cedar  
14 Bay facility and the related Purchased Power Agreement.

15 Please understand that the Cedar Bay facility  
16 itself and the Purchased Power Agreement are part and  
17 parcel of the same thing. So we're going to talk about  
18 the PPA, which is shorthand for the Purchased Power  
19 Agreement, and we're going to talk about the Cedar Bay  
20 facility. So just at the outset I wanted to try to  
21 make -- make that clear so that there's no -- no  
22 confusion in that regard.

23 You're going to hear some facts about the  
24 Cedar Bay facility. It's approximately 25 years old.  
25 It's a coal-fired generating plant, 250 megawatts

1 approximately. It's located on a site that has some  
2 environmental issues, I think, as you'll hear from an  
3 FPL witness and also from one of OPC's witnesses. So  
4 there's a bit of a question about, well, if there's a  
5 site that you know has some environmental issues, is it  
6 a good decision to take ownership in that? And there's  
7 all kinds of issues about CERCLA and some federal laws  
8 that I think you'll hear something about that. But  
9 please understand that the site where the facility is  
10 located does have some known groundwater exceedances for  
11 things like arsenic and lead and mercury, and we think  
12 that's something that you'll hear some testimony about.  
13 The plant's adjacent to the St. Johns River.

14           How much -- how much is the -- is the plant  
15 worth? FPL says the plant is worth nothing; it's worth  
16 zero; the plant itself, you know, has no value. And FPL  
17 says, well, here, we're going to -- we're going to buy  
18 the stock of these companies, in effect buy the power  
19 plant. And while you have that demonstrative exhibit up  
20 there, you're going to hear the word Carlyle, The  
21 Carlyle Group tossed about, because ultimately if you  
22 trace everything upstream, The Carlyle Group is the  
23 entity that -- that owns this power plant through a  
24 whole series of corporations, and you'll hear some  
25 evidence to that effect.

1           So Mr. Butler said FPL wants you all to  
2 approve \$520 million that the ratepayers should pay for  
3 largely this Purchased Power Agreement, but also the  
4 power plant comes along with it. He didn't tell you  
5 that there's also \$300 million in taxes that they're  
6 also asking the ratepayers to pay. So we believe the  
7 total number, and Ms. Ousdahl will probably be asked  
8 some questions about this, but the total number is  
9 approximately 850 million, which is a lot of -- a lot of  
10 money.

11           As Mr. Butler said, the Purchased Power  
12 Agreement is an obligation to pay for capacity. And  
13 FIPUG is going to ask witnesses, and there will be  
14 evidence from our witness Mr. Lane, who is an expert  
15 appraiser, that for a Purchased Power Agreement,  
16 generally speaking, all things being equal, the value of  
17 it goes down over time. And that makes sense because if  
18 you had a revenue stream that had, say, 100 million a  
19 year associated with it, if you only had that revenue  
20 stream for one year, that wouldn't be as good as having  
21 a \$100 million revenue stream for five years. It's  
22 120 million versus 600 million.

23           So the point there, and you're going to hear  
24 some testimony about it, is that the Purchased Power  
25 Agreement, if you're looking at it in isolation, FIPUG



1 contends that should go down over time. It seems to be  
2 consistent with economics, and the Purchased Power  
3 Agreement should go down over time and not go up over  
4 time.

5 That's -- that's not what you're going to hear  
6 about today. What you're going to hear from FPL's  
7 witness who says, oh, the fair value of this is 520, but  
8 this same person previously valued the same Purchased  
9 Power Agreement and valued it for a significantly lower  
10 amount of money, and it was only two years ago. In  
11 2013, he looked at the Purchased Power Agreement and  
12 said it's worth this significantly lower amount of  
13 money. Today it's worth a significantly higher amount  
14 of money. You know, he -- there's a lot of accounting  
15 and things like that, but intuitively that doesn't make  
16 sense.

17 You'll also see evidence in Mr. Lane, FIPUG's  
18 expert real estate appraiser, looked at a transaction in  
19 which Goldman Sachs, and they know a few things about  
20 valuation and markets, they sold a percentage of the  
21 Cedar Bay asset to Carlyle Group for a sum of money that  
22 is significantly less than the 520 million that you're  
23 being asked to approve today.

24 So our case is -- is not that complicated.  
25 You're going to have all this evidence in front of you.

1 Right now it's confidential. We've contended it really  
2 shouldn't be confidential, that Florida has a rich  
3 history of government in the sunshine, and this should  
4 be something that -- that should not be covered up with  
5 a cloak of confidentiality, but that these previous  
6 numbers are relevant because of the way the Purchased  
7 Power Agreement works. As I explained, the revenue  
8 stream goes down over time.

9 But what I'm going to do is I'll show you  
10 those numbers. We won't verbalize them, the witnesses  
11 won't verbalize them, but we'll look at them. Hopefully  
12 at some point the public will also have the right to  
13 look at them.

14 The -- your staff attended a lot of  
15 depositions in this case. One question they asked in  
16 one of the depositions was, "What's the book value of  
17 this?" And historically utilities record things at book  
18 value. We think that is an important piece of  
19 information. It's significantly less than the 520. And  
20 so I guess what we're asking you to do is to exercise  
21 your judgment. I mean, y'all -- this is a 120.57  
22 evidentiary hearing. We're going to present evidence.  
23 We think there's strong, compelling evidence that  
24 suggests that the 520 is overstated, as testified to by  
25 FIPUG expert Mr. Lane, it's inflated, and it should be

1 reduced.

2           And we'll also make the point that -- that FPL  
3 really does haven't much of an incentive to negotiate  
4 hard to reduce the price because what they're asking  
5 is, is that they be able to earn a return on that 520.  
6 So Ms. Ousdahl will say, well, yeah, we want this 520.  
7 Our plan is to retire the plant. You know, we're not  
8 going to be running the plant, but we still want to earn  
9 our -- earn on our 520 at the full weighted average cost  
10 of capital rate.

11           This Commission, we don't believe, has ever  
12 allowed a utility to earn its full average cost of  
13 capital in any previous cases where you guys had a PPA  
14 in front of you. There's some other cases that we'll be  
15 talking about: the Okeelanta case, the Tiger Bay case.  
16 Never have you said, oh, yeah, you can, you know, go  
17 ahead and earn your full return on that.

18           With respect to FPL's position, they, in their  
19 deposition, Mr. Barrett said, we're going to earn our  
20 full return on that or this deal doesn't go forward. He  
21 didn't give much room for the Commission to say, well,  
22 maybe there's not much risk associated with that. We  
23 can reduce the rate you're earning a little bit.

24           Mr. Barrett, at least in his deposition, said,  
25 no, if that Commission does that, you know, we're going

1 to walk away from a deal. I'll ask him again today, but  
2 that's what he said in his deposition. It's not a good  
3 position to be in. When the settlement, rate case  
4 settlement was before you that FIPUG participated in, we  
5 were in the position that OPC is in today. That  
6 settlement at a subsequent hearing came before you all.  
7 You looked at it, you took some evidence, and you said,  
8 we're going to reduce this number by -- I think it was  
9 50 or 60 million. You acted -- you know, you called  
10 balls and strikes based on the evidence, and you reduced  
11 the number.

12 FIPUG's position is the 520 number ought to be  
13 significantly reduced in this case, that you ought not  
14 to just go along with FPL's suggestion of 520 and say,  
15 okay, ratepayers, you get 520 plus 300 million in taxes,  
16 and FPL gets to earn their full return on that.

17 You know, the public -- the public interest --  
18 you know, I represent large users of electricity;  
19 Mr. Butler represents a Florida investor-owned utility,  
20 a good company; OPC represents the ratepayers, but none  
21 of us are charged with representing the public interest.  
22 You all are charged with representing the public  
23 interest. That's why the Governor appointed you and the  
24 Senate confirmed you, to act like you are today, to hear  
25 evidence, to hear testimony, to hear facts, and then

1 make a, you know, make a reasoned decision.

2 So we would suggest as you do hear the  
3 evidence and you do hear the facts, that the compelling  
4 evidence, given what I've told you about the previous  
5 market analysis by Mr. Herr, the Goldman purchase, those  
6 strongly suggest that the value come down. And OPC's  
7 own witness said the value ought to be no more than  
8 370 million. He suggested a savings of 150, OPC's  
9 witness, who I believe you'll hear from today. So you  
10 have a variety of data points less than the 520 that  
11 will save ratepayers significant monies. And we ask  
12 that you consider the evidence, that you reach the  
13 conclusion that 520 is not the right number, it's a  
14 lower number. So thank you for the chance to present  
15 the opening statement.

16 **COMMISSIONER EDGAR:** Thank you. I have  
17 approximately seven after. I'm going to be going by  
18 that clock. We will come back at 20 after. Take a  
19 short stretch break. I'd like to consult with counsel,  
20 staff counsel. When we come back, we'll address  
21 Mr. Moyle's request as to exclusion of witnesses, and  
22 then we'll go into the first witness, Mr. Butler. We  
23 are on break.

24 (Recess taken.)

25 **COMMISSIONER EDGAR:** Okay. We will go back on

1 the record. And when we left a few moments ago, we had  
2 finished opening statements and we had a pending request  
3 from Mr. Moyle on behalf of FIPUG. Ms. Helton.

4 **MS. HELTON:** Madam Chairman, we don't normally  
5 hear this request in our hearings, so we had to do a  
6 little bit of reading up on it in my favorite treatise  
7 by Judge Padovano, and we also looked at Professor  
8 Ehrhardt to see what they had to say with respect to  
9 excluding witnesses from the hearing room. Now both of  
10 these -- both of their texts apply to civil proceedings,  
11 not necessarily administrative proceedings, but we  
12 typically follow what they say for civil proceedings in  
13 our proceedings here.

14 Both of them said and I think the rule says  
15 that when a request is made to exclude witnesses, you do  
16 not have the discretion to deny that request unless some  
17 of the exceptions in the rule, and there's four  
18 exceptions in the rule, apply. Two of them deal, I  
19 think -- one deals with criminal proceedings, and  
20 obviously that's not the case here. One deals with a  
21 civil proceeding where there's actually a person, not a  
22 corporation involved in the case, and that doesn't deal  
23 here -- apply here. And then there are two others. A  
24 company who is part of the litigation may select a  
25 witness as a personal -- as a representative to

1 represent the corporation during the course of the  
2 proceeding, and that is an exception. There's also an  
3 exception that applies if the witness is essential to  
4 the case.

5 And I've -- if you'll hold on one minute, I'll  
6 see if I can find that language. And the test there is  
7 whether the -- you, as the Chairman, must determine  
8 whether the witness has such specialized or intimate  
9 knowledge of the case that the presence of the witness  
10 is necessary to ensure that a party will have effective  
11 legal representation. So it would be up to Florida  
12 Power & Light to state whether they are -- it's  
13 necessary for them to have a representative of the  
14 corporation that is an officer of the company and  
15 whether they have expert witnesses who are essential to  
16 the case.

17 **MR. BUTLER:** May I be heard?

18 **COMMISSIONER EDGAR:** In a moment you may.

19 Thank you, Ms. Helton. I will just say, as  
20 some of you know, I've been doing this in this room for  
21 almost 11 years, and this is the first time that we have  
22 had this request made in a proceeding that I have  
23 participated in. So we do not have recent precedent to  
24 fall back on.

25 Mr. Butler.

1           **MR. BUTLER:** As it turns out, you have  
2 slightly less recent precedent that I think supports the  
3 position I indicated earlier that we don't think that  
4 the sequestration is necessary or appropriate.

5           Interestingly, it was Mr. Moyle who raised  
6 this point in a case involving CPV Gulf Coast. It  
7 was a need determination for FPL's Martin 8 and  
8 Manatee 3 power plants. He attempted to invoke the  
9 rule. The Commission denied his request. It was  
10 appealed to the Supreme Court, Case SC-0366, and the  
11 Court ended up concluding that the Commission was within  
12 its discretion not to invoke the rule, that the rules of  
13 evidence do not apply strictly in administrative  
14 proceedings such as this one, and that the Court had --  
15 I mean, I'm sorry, that the Commission had acted  
16 properly in -- or within its range of discretion in not  
17 choosing to invoke the rule of sequestration for the  
18 witnesses in that proceeding. So I do think you have  
19 precedent and actually support from the state's highest  
20 court for using that discretion as I had suggested  
21 earlier.

22           If you were to conclude that you wanted to  
23 apply the rule, you know, I think that we have expert  
24 witnesses who are essential to our ability to present  
25 our case. We have a need to have a corporate



1 representative. It's hard to pick specifically among  
2 the five witnesses who will be appearing, but I would  
3 say that Mr. Barrett certainly is the person I would  
4 think of as the corporate representative. And as I say,  
5 while all of our witnesses are experts and I think will  
6 be found as such, we have a particular -- or a person  
7 with particular outside expertise in David Herr, who is  
8 our valuation expert.

9 Mr. Moyle has already indicated repeatedly how  
10 important he thinks those valuations are to the case,  
11 and so I think it would be essential to our due process  
12 rights in the case for Mr. Herr to be able to attend  
13 the -- attend the hearing. So those are our comments.

14 **COMMISSIONER EDGAR:** Mr. Moyle.

15 **MR. MOYLE:** So, Mr. Herr, I think, is -- is an  
16 expert. All of the other FPL witnesses, you know,  
17 there's no indication in their testimony that they're  
18 experts. So we're hearing now, you know, they're  
19 experts. I don't think there's any -- any evidence of  
20 that or what areas of expertise they have. There's no  
21 proof of that. I don't think there's any evidentiary  
22 proof, you know, related to the need to have these  
23 witnesses here.

24 I mean, the history -- and Mr. Butler is  
25 right, this was raised previously at one point in time.

1 But obviously the -- the basis for the rule is so that  
2 witnesses, you know, don't hear the answers of other  
3 witnesses. You know, it gives them an opportunity to  
4 match up their testimony or dovetail their testimony.  
5 I'm not suggesting any of the witnesses would do that,  
6 but it just -- it's a common practice that is exercised  
7 in evidentiary hearings in the State of Florida and at  
8 the Division of Administrative Hearings.

9           So, yes, it's not typically the practice here,  
10 but, again, this is not typically the position in which  
11 FIPUG finds itself where it's on an island, so to speak,  
12 with respect to a, you know, a case. So we'd exercise  
13 the option to, you know, to try to shape the record a  
14 little bit and have asked that the rule be invoked. And  
15 we would suggest that it -- that it be invoked. And  
16 FPL, we have no objection to them designating a  
17 corporate representative, but I think all the other  
18 witnesses should be excluded, particularly given the  
19 fact that there's no evidence to support any of FPL's  
20 contentions.

21           **COMMISSIONER EDGAR:** Ms. Helton, can you speak  
22 to the case cites that Mr. Butler has raised and the  
23 applicability or not here?

24           **MS. HELTON:** That's an example that I'm still  
25 learning on my job. I did not realize that had been an

1 issue that had been raised before the Commission. I  
2 still think the most conservative approach is to follow  
3 the rule. This is, though, is a legislative proceeding.  
4 It's not, you know, a typical hearing where you're  
5 taking away a license or looking at the violation of a  
6 regulation where invoking the rule may be appropriate  
7 from the perspective of making sure that there is no  
8 coloring of the facts by witnesses. But it sounds to me  
9 like Mr. Butler has raised that even under the Manatee  
10 -- notwithstanding the Manatee case, that he believes  
11 that the witnesses for Florida Power & Light, one could  
12 be designated as a representative and the others are  
13 necessary expert witnesses under the other exception.

14 **COMMISSIONER EDGAR:** Mr. Moyle, do you agree  
15 with Mr. Butler's description of the holding in the  
16 Supreme Court case?

17 **MR. MOYLE:** It's been a long time since that  
18 case, and I, you know, I'd just say it speaks for  
19 itself. I'm not really able to agree or disagree with  
20 Mr. Butler's characterization of it.

21 **COMMISSIONER EDGAR:** All right. Request  
22 denied.

23 Let's swear in the witnesses.

24 **MS. HELTON:** And, Madam Chairman, just so that  
25 the record is complete for appellate purposes, I'm

1 assuming that you are denying the request because you  
2 believe that the -- other than the representative for  
3 Florida Power & Light that they have designated as  
4 Mr. Barrett, that you believe that the other expert  
5 witnesses are necessary to the case and to Florida Power  
6 & Light.

7 **COMMISSIONER EDGAR:** No. I deny the request  
8 because it is my decision and opinion that I have the  
9 discretion to do so in this administrative proceeding.

10 Okay. One, two, three, four, five, six,  
11 seven. Thank you.

12 If you will, raise your right hand. In this  
13 matter before the Florida Public Service Commission do  
14 you swear or affirm to tell the truth?

15 (Affirmative responses.)

16 Thank you.

17 Mr. Butler, your witness.

18 **MR. BUTLER:** Thank you. We will call as our  
19 first witness Mr. Barrett, who indeed was standing with  
20 his right hand raised, so he is sworn.

21 Whereupon,

22 **ROBERT E. BARRETT**

23 was called as a witness on behalf of Florida Power &  
24 Light Company and, having first been duly sworn,  
25 testified as follows:

1 **BY MR. BUTLER:**

2 Q Good morning, Mr. Barrett. Would you please  
3 state your full name and business address for the  
4 record.

5 A Robert E. Barrett, Jr., 700 Universe  
6 Boulevard, Juno Beach, Florida.

7 Q By whom are you employed and in what capacity?

8 A Florida Power & Light, Vice President of  
9 Finance.

10 Q Have you prepared and caused to be filed in  
11 this proceeding nine pages of prefiled direct testimony  
12 and ten pages of prefiled rebuttal testimony?

13 A I have.

14 Q Okay. Do you have any changes or revisions to  
15 either your prefiled direct or rebuttal testimonies?

16 A No.

17 Q Okay. And am I correct there are no exhibits  
18 attached to your testimony; is that correct?

19 A That's correct.

20 **MR. BUTLER:** Okay. Madam Chair, I would ask  
21 that Mr. Barrett's prefiled direct and rebuttal  
22 testimony be inserted into the record as though read.

23 **COMMISSIONER EDGAR:** The prefiled testimony  
24 will be entered into the record as though read.

25 **MR. BUTLER:** Thank you.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**FLORIDA POWER & LIGHT COMPANY**

**DIRECT TESTIMONY OF ROBERT E. BARRETT, JR.**

**DOCKET NO. 15\_\_\_\_\_ -EI**

**MARCH 6, 2015**

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

A. My name is Robert E. Barrett, Jr. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

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

A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as Vice President of Finance.

**Q. Please describe your duties and responsibilities in that position.**

A. I am responsible for FPL’s financial forecast, analysis of financial results, corporate budgeting, resource assessment and planning, and load forecast activities.

**Q. Please describe your educational background and professional experience.**

A. I have a Bachelor of Business Administration degree from the University of Miami, 1982, with a major in Finance. I received a Master of Business Administration from Florida International University in 1985. I have been employed by FPL, or its affiliate NextEra Energy Resources, since 1982 and have held a variety of positions of increasing responsibility including: Financial Analyst; Manager of Financial Forecasting; Director of Quality, Planning and

1 Analysis; Director of Corporate Planning; Director of Investor Relations; Vice  
2 President of Business Development for NextEra Energy Resources; and my  
3 current position as Vice President of Finance for FPL.

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

5 A. My testimony provides an overview of the transaction that FPL is asking the  
6 Commission to approve; describes the economic and strategic benefits to FPL's  
7 customers; and, discusses the appropriate rate of return on FPL's investment on  
8 this transaction.

9 **Q. Please provide an overview of the Cedar Bay Transaction.**

10 A. As described in greater detail by FPL witness Hartman, FPL has entered into a  
11 definitive agreement to purchase 100% of the equity interest in CBAS Power, Inc.  
12 ("CBAS"), subject to FPSC approval. The transaction, upon financial closing, will  
13 transfer the ownership to FPL of the Cedar Bay power generation facility ("the  
14 Cedar Bay Facility" or "the Facility") and the Power Purchase Agreement  
15 ("PPA") between Cedar Bay Generating Company ("Cedar Bay Genco") and FPL  
16 for a total purchase price of \$520.5 million (referred to as the "Cedar Bay  
17 Transaction"). As a consequence of the Cedar Bay Transaction, FPL will no  
18 longer be obligated to make payments under the existing PPA for the Cedar Bay  
19 Facility and will own the Facility with full discretion to operate and retire it in the  
20 manner that best meets the needs of our customers.

21 **Q. Please describe the Cedar Bay Facility and the associated PPA.**

22 A. The Cedar Bay Facility is a 250 MW circulating fluidized bed coal unit located in  
23 Jacksonville, Florida. It has been selling all of its capacity and energy to FPL

1 under a long term contract during its operation. The Cedar Bay Facility is a  
2 Qualifying Facility (“QF”) under the Public Utility Regulatory Policy Act  
3 (“PURPA”) of 1978. The PPA was based on Florida’s avoided unit at the time,  
4 which was based on an Integrated Gasified Combined Cycle (coal) plant. FPL  
5 witness Hartman will provide more details regarding the Facility and the existing  
6 PPA contract.

7 **Q. Please describe the benefits of the Cedar Bay Transaction to customers.**

8 A. The Cedar Bay Transaction provides FPL’s customers an estimated economic  
9 benefit of \$70 million in cumulative present value revenue requirements  
10 (“CPVRR”), (\$156 million nominal savings) primarily as a result of canceling the  
11 PPA which currently is priced above market and is projected to remain above  
12 market for the balance of the agreement term. The Cedar Bay Transaction is  
13 expected to provide CPVRR benefits for customers under a range of sensitivities  
14 for key assumptions. FPL witness Hartman will provide more information  
15 regarding the economic analysis including the various sensitivities that were  
16 evaluated.

17 **Q. Are there strategic benefits provided to customers by the Cedar Bay**  
18 **Transaction beyond the economic benefits?**

19 A. Yes. The Cedar Bay Transaction provides key strategic benefits to FPL’s  
20 customers through acquisition of the Facility that would not be available through  
21 a buy-out of the PPA. For instance, by acquiring control of the asset, rather than  
22 simply buying out the PPA, FPL obtains for our customers an option for  
23 continued fuel supply diversity and reliability by keeping the Cedar Bay Facility



1 in service, but without the obligation of being locked in to the remaining term,  
2 roughly 10 years, of the existing PPA. FPL, at its sole discretion, can determine  
3 how to operate, and how long to operate the Facility.

4 **Q. Please explain why retaining this fuel supply reliability option is an**  
5 **important benefit for customers.**

6 A. FPL is undergoing an expansion of its natural gas-fired generating fleet and  
7 projects that by 2017, roughly 70% of its energy will be generated by natural gas-  
8 fired resources. Currently, FPL's gas transportation needs are met with two gas  
9 transportation pipelines, Florida Gas Transmission and Gulfstream. To mitigate  
10 the risk of loss of gas availability FPL entered into an agreement with a new  
11 pipeline system for deliveries beginning in the spring of 2017, before that year's  
12 summer peak season. Until the commercial operation of the third pipeline system  
13 is certain, the Cedar Bay Facility, a coal-fired unit, provides an important fuel  
14 supply reliability hedge in the near term. Longer term, FPL will evaluate the  
15 economic merits of the Facility to determine when it is no longer advantageous to  
16 the system. Currently, FPL estimates that the Facility would no longer be needed  
17 after December 2016, when the third pipeline system is expected to be in its final  
18 testing stages, but we will have no obligation to retire the Facility until we have  
19 confirmed that it is the proper time to do so.

20 **Q. Are there other benefits to ownership of the Facility?**

21 A. Yes. Through its ownership of the Facility, FPL will have sole discretion to make  
22 environmental decisions, including early retirement or repurposing of the Facility.  
23 For instance, once the PPA is canceled, the dispatch of the Facility is expected to

1 drop significantly thereby substantially reducing emissions as the facility will be  
2 dispatched on its true cost of operation, instead of being dispatched on the energy  
3 price determined pursuant to the PPA. FPL witness Hartman will describe this  
4 distinction in more detail. If the current PPA were to remain in effect, the  
5 economic incentives embedded in it ensure that the Facility would continue  
6 operating through the contract period despite its environmental profile. By  
7 canceling the PPA, and acquiring the asset, FPL will be able to control all  
8 economic and environmental decisions regarding the Facility.

9 **Q. Are there economic benefits for customers from FPL's approach of**  
10 **purchasing the Cedar Bay Facility rather than just buying out the PPA?**

11 A. Yes. Structuring the Cedar Bay Transaction as the purchase of CBAS followed by  
12 the cancelation of the PPA will result in the revenue requirements recovered from  
13 customers through the Capacity Cost Recovery Clause ("CCR Clause") being  
14 significantly lower in the early years than would have been the case with a  
15 straight buy-out of the PPA. Consequently the overall value of the economic  
16 benefit to customers is more favorable under the proposed transaction.

17 **Q. How is the Company proposing to recover the costs of the Cedar Bay**  
18 **Transaction?**

19 A. FPL witness Ousdahl's testimony discusses the requested recovery of the Cedar  
20 Bay Transaction in detail, but generally the Company proposes to treat the  
21 investment as a regulatory asset that would be amortized over the remaining term  
22 of the PPA, roughly 10 years, with a return on the unamortized balance of the  
23 investment at the Company's overall weighted cost of capital that is used for

1 clause investments. Because the payments under the PPA currently are recovered  
2 through the CCR Clause, the annual amortization and return on the regulatory  
3 asset likewise should be recovered through the CCR Clause. This is consistent  
4 with the 2012 Stipulation and Settlement Agreement's provision, as approved in  
5 Order No. PSC-13-0023-S-EI, that clause recovery is limited to items that are  
6 traditionally and historically recovered through cost recovery clauses.

7 **Q. Why is the average embedded overall cost of capital used for clause**  
8 **investments the appropriate rate of return for this investment?**

9 A. The Company is proposing to use the same rate of return for this investment as is  
10 used for all other investments that are made in cost recovery clauses. The  
11 investment is long term in nature – roughly 10 years – and will be funded with a  
12 mixture of long term debt and common equity, collectively, FPL's investor  
13 provided sources of capital. It is important that this investment be funded in line  
14 with the Company's current capital structure, which matches the capital structure  
15 last reviewed and approved by the FPSC, so that it remains credit neutral.  
16 Because the Company will use long term debt and common equity to fund the  
17 transaction, it is appropriate that it receive an overall cost of capital return that  
18 adequately compensates both debt and equity investors. The expected net  
19 economic benefits to customers take full account of, and fully reflect, this overall  
20 cost of capital.

21 **Q. Could some different capital structure, or other cost of capital be considered**  
22 **appropriate for a transaction of this nature?**

23 A. No. This proposed rate of return on this long term investment is consistent with

1 the return used for all other long term investments in the Company's cost  
2 recovery clauses. As previously stated, it also is consistent with the Company's  
3 plans to finance the investment to remain credit neutral. Therefore, a return that  
4 does not reflect the cost of both equity and debt capital consistent with the  
5 Company's overall capital structure will not fully compensate the Company for  
6 the investment it has made.

7 **Q. Is there a Commission standard or precedent regarding the use of the**  
8 **weighted average cost of capital ("WACC") for clause investments?**

9 A. Yes. The Commission has a history of authorizing utilities to earn their WACC  
10 on investments that are recovered through the various adjustment  
11 clauses. Recently, the Commission issued Order No. PSC-12-0425-PAA-EU  
12 approving a stipulation and settlement agreement entered into by the Florida  
13 IOUs, OPC and FIPUG to specify the methodology for calculating the WACC  
14 applicable to clause-recoverable investments. In so doing, the Commission  
15 confirmed its position that utilities should be permitted to earn their current,  
16 approved WACC on clause-recoverable investments.

17 **Q. The Commission previously approved a different rate of return on the**  
18 **unamortized balance of regulatory assets established for the PPA buyouts at**  
19 **the Okeelanta and Tiger Bay facilities. Should the Commission follow that**  
20 **treatment here?**

21 A. No. The terms for the Okeelanta and Tiger Bay PPA buyouts were the result of  
22 settlements that were specific to the circumstances of those cases. Furthermore,  
23 Order No. PSC-12-0425-PAA-EU, which I discuss above, was issued subsequent

1 to both of those cases. The Cedar Bay Transaction is an investment by FPL to  
2 generate savings for our customers by eliminating above-market payment  
3 obligations under the Cedar Bay PPA, and the unrecovered portion of that  
4 investment should earn FPL's current, approved WACC consistent with Order  
5 No. PSC-12-0425-PAA-EU and the treatment for all of FPL's other clause-  
6 recoverable investments.

7 **Q. Is FPL contractually obligated to proceed with the Cedar Bay Transaction if**  
8 **its cost recovery proposal were not approved by the Commission?**

9 A. No. At the same time FPL is proposing a solution to the above market costs of  
10 the Cedar Bay PPA that will benefit customers, FPL must also ensure that  
11 investors are fully compensated for the investment that will be made. Therefore,  
12 the Cedar Bay Transaction provides as a Condition Precedent to Close that the  
13 Commission approve cost recovery substantially as FPL has proposed, including a  
14 return on the unamortized balance of the regulatory asset at the full WACC.

15 **Q Will FPL's purchase of CBAS, and recovery of the associated costs as**  
16 **proposed in FPL's petition, be in the interests of FPL's retail customers?**

17 A. Yes. The Cedar Bay Transaction provides significant savings to FPL's customers  
18 of approximately \$70 million and provides savings under all of the sensitivities  
19 analyzed. The Cedar Bay Transaction provides for control of the 250 MW Cedar  
20 Bay Facility which provides an important fuel diversity and reliability option for  
21 customers in the near term, will reduce emissions immediately once the unit is  
22 dispatched on true economics, and gives FPL control of the environmental  
23 attributes of the Facility in the long term including the ability to retire the unit

1           early.

2   **Q.   Does this conclude your direct testimony?**

3   A.   Yes.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**DIRECT TESTIMONY OF ROBERT E. BARRETT, JR.**  
**DOCKET NO. 150075-EI**  
**JUNE 17, 2015**

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

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

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

A. Yes. My direct testimony was submitted on March 6, 2015.

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

A. The purpose of my rebuttal testimony is: (1) to show that FIPUG witness Pollock has mischaracterized the substance of the Cedar Bay Transaction (“the Transaction”) and therefore makes incorrect assertions and conclusions about the Transaction; and (2) to explain why OPC witness Myers is wrong in asserting that FPL should only receive a debt return on the unamortized balance of the regulatory asset created by the Transaction.

**Q. How has FIPUG witness Pollock characterized the proposed transaction?**

A. Witness Pollock describes the transaction as follows: “FPL is proposing to recover the \$520 million that it paid for the Cedar Bay plant...” (Pollock

1 testimony, at p. 5, emphasis added). Further discussion in his testimony confirms  
2 that he mistakenly believes the \$520.5 million paid by FPL is consideration for  
3 buying the Cedar Bay power generation facility (“the Cedar Bay Facility” or “the  
4 Facility”).

5 **Q. How is this a mischaracterization of the Cedar Bay Transaction?**

6 A. As described in my direct testimony, FPL has entered into a definitive agreement  
7 to purchase 100% of the equity interest in CBAS Power, Inc. (“CBAS”) for a total  
8 purchase price of \$520.5 million, subject to FPSC approval (referred to as the  
9 “Cedar Bay Transaction”). This transaction, upon financial closing, will have the  
10 effect of transferring ownership to FPL of (1) the Cedar Bay Facility ; and (2) the  
11 Power Purchase Agreement (“PPA”) between Cedar Bay Generating Company  
12 (“Cedar Bay Genco”). As described in greater detail by FPL witnesses Ousdahl  
13 and Herr, the \$520.5 million transaction price includes \$0 for the Cedar Bay  
14 Facility. Virtually all of the transaction price is related to the loss on the  
15 cancellation of the PPA. Witness Pollock’s assertion that FPL paid \$520.5 million  
16 for the Facility is wrong and misleading.

17 **Q. What incorrect conclusion does witness Pollock draw from his**  
18 **mischaracterization of the Cedar Bay Transaction ?**

19 A. Mr. Pollock asserts that “FPL is attempting to recover costs through the CCR  
20 clause that are historically and typically ripe for possible recovery in base rates.”  
21 (Pollock, 11). By assuming that the \$520.5 million is being paid for the Cedar  
22 Bay Facility, Mr. Pollock asserts that FPL is seeking Capacity Cost Recovery



1 (“CCR”) Clause recovery for a power plant, which would normally be recovered  
2 in base rates. FPL’s petition makes clear that all costs associated with owning and  
3 operating the Cedar Bay Facility are being requested for recovery in base rates *not*  
4 the CCR Clause. What FPL seeks to recover through the CCR Clause are the  
5 costs associated with the loss on the PPA. On several occasions, the Florida  
6 Public Service Commission (“Commission” or “the Commission”) has permitted  
7 CCR Clause recovery of regulatory assets established for buyouts of unfavorable  
8 power purchase agreements. See Commission Orders Nos. PSC- 96- 0889-FOF-  
9 EU, PSC-97-0652-S-EQ, and PSC-00-1913-PAA-EI. Witness Pollock’s  
10 conclusion depends on a fundamental misunderstanding or mischaracterization of  
11 the Cedar Bay Transaction.

12 **Q. What rate of return does OPC witness Myers recommend as appropriate for**  
13 **calculating the carrying cost of the unamortized balance of the regulatory**  
14 **asset created through this transaction?**

15 A. On page 21 of his testimony, witness Myers offers two alternatives, each of which  
16 is a debt-only return. He suggests either the debt component of FPL’s weighted  
17 average cost of capital (“WACC”) or the actual interest cost of any debt issued to  
18 consummate this transaction. Witness Myers purports to rely upon two prior  
19 orders of this Commission: Order No. PSC-97-0652-S-EQ, Docket No. 970096-  
20 EQ, and Order No. PSC-00-1913-PAA-EI, Docket No. 000982-EI.

21 **Q. Do you agree with OPC witness Myers’ recommendation?**

22 A. No. Neither order is relevant precedent for determining the carrying cost of the

1 regulatory asset established for the Cedar Bay Transaction.

2 **Q. What was the subject of Commission Order No. PSC-97-0652-S-EQ?**

3 A. In Order No. PSC-97-0652-S-EQ, the Commission approved a stipulation among  
4 the parties related to Florida Power Corporation's ("FPC's") purchase of the Tiger  
5 Bay Cogeneration facility and subsequent termination of the associated PPAs.

6 **Q. How is the Cedar Bay Transaction different than the Tiger Bay transaction?**

7 A. There are several key differences between the Tiger Bay transaction and the  
8 Cedar Bay Transaction: (1) the Tiger Bay transaction was the result of a stipulated  
9 settlement among all parties to the docket including OPC and FIPUG and,  
10 consequently, it should be viewed in its entirety and considered to be the result of  
11 the give-and-take of negotiations between all parties; (2) FPC proposed to finance  
12 the transaction only with debt, whereas FPL proposes to finance the Cedar Bay  
13 Transaction with its normal mix of debt and equity capital to maintain a consistent  
14 corporate capital structure; and (3) \$75 million of the Tiger Bay regulatory asset  
15 was placed in rate base and therefore was subject to FPC's overall capital  
16 structure and rate of return for surveillance purpose and for purposes of setting  
17 base rates.

18 **Q. Although the Cedar Bay Transaction is not comparable to the Tiger Bay  
19 stipulation, are there any similarities between the financing costs in the two  
20 cases?**

21 A. Yes. The financing costs for Tiger Bay that were authorized by the Commission  
22 under the stipulation were those proposed by FPC and were reflective of FPC's

1 stated intention to finance the transaction only with debt. The financing costs  
2 proposed by FPL in the Cedar Bay Transaction likewise are reflective of the costs  
3 FPL expects to incur in financing the transaction using a mix of long term debt  
4 and common equity. In other words, while the mix of financing sources was  
5 different, in both instances the return on unamortized balance of the regulatory  
6 asset is intended to track the actual costs of capital incurred by the utility.

7 **Q. What was the subject of Commission Order No. PSC-00-1913-PAA-EI?**

8 A. In Order No. PSC-00-1913-PAA-EI, the Commission approved a settlement  
9 agreement between FPL and two Qualifying Facilities (“QFs”), Okeelanta  
10 Corporation and Osceola Farms. The settlement terminated the standard offer  
11 contracts with the respective QFs; settled all claims by and/or against FPL; and,  
12 settled all pending judicial proceedings related to the QF contracts.

13 **Q. How is the Cedar Bay Transaction different than the Okeelanta settlement?**

14 A. There are several significant, substantive differences: (1) as with Tiger Bay, the  
15 Okeelanta transaction was the result of a settlement agreement that, among other  
16 items negotiated between the parties, cancelled the QF contracts, settled all  
17 claims, and ended all litigation between the parties; (2) FPL did not take  
18 ownership of the Okeelanta or Osceola power generation facilities; (3) the  
19 regulatory asset created by the settlement was amortized over a five-year period  
20 versus more than nine years for the Cedar Bay Transaction; and (4) the regulatory  
21 asset created by the Okeelanta settlement was placed in rate base for the first year  
22 of the five-year recovery period and was therefore subject to FPL’s overall capital

1 structure for surveillance purposes during that first year.

2 **Q. Why did FPL agree to accept a commercial paper return on the unamortized**  
3 **balance of the regulatory asset while it was in the Capacity and Fuel**  
4 **Clauses?**

5 A. As discussed above, this was a complex settlement agreement that achieved  
6 multiple objectives for all parties. Accepting a commercial paper rate of return on  
7 the unamortized balance of the regulatory asset when in the CCR Clause and Fuel  
8 Clause should be viewed as a concession made by FPL to achieve the litigation  
9 settlement agreement, viewed within the overall context of operating, financial  
10 and regulatory environments at that time.

11 **Q. Why is a similar concession not appropriate in the Cedar Bay Transaction?**

12 A. Unlike the Okeelanta settlement, where the parties were seeking to resolve  
13 complex litigation between them, the Cedar Bay Transaction represents a  
14 discretionary commercial transaction that neither FPL nor its counterparty, CBAS  
15 Power Holdings, was under any compulsion to enter into. For the reasons  
16 discussed in my direct testimony, and reiterated herein, FPL's fundamental  
17 position is that a regulatory asset, recovered over a long period, and financed with  
18 a mix of debt and equity, should be allowed recovery at the Company's WACC,  
19 irrespective of the mechanism (base or clause) that effects that recovery. The full  
20 cost of financing the transaction that creates customer savings should be properly  
21 recoverable, to avoid creating a disincentive for utilities to pursue such  
22 transactions.

1 **Q. Has the Commission previously approved a stipulation agreement between**  
2 **the Florida Investor-Owned Utilities (“IOUs”), OPC and FIPUG (among**  
3 **other parties) as to the appropriate return to be used for clause-approved**  
4 **investments?**

5 A. Yes, as referenced in my direct testimony, in Order No. 12-0425-PAA-EU, issued  
6 after both the Tiger Bay and Okeelanta settlements, the Commission approved a  
7 Stipulation and Settlement Agreement (“Agreement”) between the IOUs, FIPUG  
8 and OPC, intervenors in this docket. In the Commission’s decision approving the  
9 Agreement, the Commission stated, “Therefore, unless and until modified by us, we  
10 hereby approve use of the weighted average cost of capital calculation methodology  
11 as established in the Agreement in all subsequent clause dockets.”

12 **Q. You previously testified that prior settlement agreements should not be**  
13 **considered precedential for determining the proper return for the Cedar Bay**  
14 **Transaction. Why is this different?**

15 A. The stipulated Agreement approved by the Commission in Order No. 12-0425-PAA-  
16 EU is an agreement reflecting prospective Commission policy as to the appropriate  
17 cost of capital authorized for investments approved for cost recovery in clause  
18 proceedings. This is entirely different than a company-specific negotiated settlement  
19 of pending litigation, as was the case in the settlements previously discussed in my  
20 testimony.

21 **Q. Is a debt return sufficient to fully compensate FPL for the cost of financing**  
22 **the Cedar Bay Transaction?**

1 A. No. FPL will fund this transaction with a combination of debt and equity in a  
2 fairly consistent mix of approximately 40% debt and 60% equity. These sources  
3 of capital are appropriate for an investment of this duration. Compensating the  
4 equity portion of this investment with a debt rate of return is not sufficient.

5 **Q. Does FPL use its overall capital structure, reflected in its WACC, in all of its**  
6 **investment decisions?**

7 A. Yes. All of FPL's investment decisions presented before this Commission use the  
8 Company's WACC for determining revenue requirements and the corresponding  
9 impact on customers. For example, in Docket No. 130199-EI, Demand Side  
10 Management Goals, FPL used its WACC for calculating the cost effectiveness of  
11 each potential measure. In Docket No. 140009-EI, Nuclear Cost Recovery, FPL  
12 used its WACC for all analyses of revenue requirements related to an investment  
13 in Turkey Point 6 & 7 new nuclear units. Finally, in Docket No. 110309-EI, the  
14 Need Determination Filing for the Port Everglades Next Generation Clean Energy  
15 Center, (and all prior Need Determination filings), FPL used its WACC for all  
16 analyses of revenue requirements.

17 **Q. Has the Commission consistently approved the use of the overall capital**  
18 **structure in determining the authorized rate of return to be recovered on**  
19 **capital investments under different recovery mechanisms?**

20 A. Yes. FPL's recovery of capital investments through both clause and base rate  
21 recovery mechanisms reflect an overall capital structure including both debt and  
22 equity.

1 **Q. What would be the impact if the Commission granted a return based only on**  
2 **the cost of debt?**

3 A. Granting a debt-only return would harm customers by disincentivizing utilities  
4 from pursuing creative investment opportunities that provide customer savings.  
5 As previously mentioned, FPL finances the consolidated company to achieve its  
6 target capital structure. By so doing, the incremental financing of the Cedar Bay  
7 Transaction would by definition be approximately 40% long term debt and 60%  
8 common equity. FPL's after-tax cost of capital is 7.5%. If FPL were only allowed  
9 to recover the after-tax cost of debt (3.1%), this would represent an after-tax loss  
10 to FPL of more than \$20 million in the first year alone.

11 **Q. Please explain the adverse consequences for customers that would result if**  
12 **the Commission only granted a return based on the cost of debt.**

13 A. First, Section 8.05(b) of the purchase and sale agreement for the Cedar Bay  
14 Transaction (Confidential Exhibit TLH-2 to the direct testimony of FPL witness  
15 Hartman) expressly gives FPL the right to terminate the transaction if the  
16 Commission does not authorize FPL to earn its WACC on the investment. If the  
17 transaction did not close, the PPA would remain in effect and customers would  
18 lose the opportunity to save more than \$70 million on a cumulative present value  
19 revenue requirement basis. Second, refusing to allow FPL to recover its actual  
20 cost of capital on a transaction that is designed to save customers money would  
21 chill plans by FPL and other utilities to identify and pursue such opportunities in  
22 the future.

1 **Q. Please summarize your rebuttal testimony.**

2 A. FIPUG witness Pollock mischaracterizes the Cedar Bay Transaction as an asset  
3 purchase and consequently arrives at wrong conclusions regarding the proper  
4 accounting treatment and cost recovery for the transaction. OPC witness Myers  
5 incorrectly relies upon two prior Commission orders to arrive at the  
6 recommendation that the Commission should only authorize a debt return on the  
7 regulatory asset created by the Cedar Bay Transaction. The transactions addressed  
8 in those prior orders, however, are multi-part settlements reflecting the give and  
9 take of negotiations between parties and it is therefore inappropriate to isolate one  
10 component of either settlement, the rate of return, and suggest that it is applicable  
11 for the Cedar Bay Transaction. The Cedar Bay Transaction was negotiated on its  
12 own merits and is creatively structured to provide an estimated \$70 million of  
13 savings for customers. The Cedar Bay Transaction also maintains reliability  
14 benefits for customers in the near term, provides substantial environmental  
15 benefits immediately, and likely will result in the retirement of the facility well  
16 before it would otherwise retire without this transaction. A return on investment  
17 equal to the Company's WACC is appropriate and removes a potential  
18 disincentive for pursuing creative opportunities such as the Cedar Bay  
19 Transaction.

20 **Q. Does this conclude your rebuttal testimony?**

21 A. Yes.



1 **BY MR. BUTLER:**

2 **Q** Mr. Barrett, would you please give the  
3 Commission a brief summary of your direct testimony?

4 **A** Yes. Good morning, Commissioners. My  
5 testimony in this case demonstrates that the proposed  
6 transaction between FPL and CBAS Power Holdings will  
7 provide important economic and strategic benefits, and  
8 it's therefore in the interest of FPL's customers.

9 The transaction allows FPL to cancel the  
10 Power Purchase Agreement which currently is and  
11 expected to remain above FPL's avoided costs, and also  
12 allows us to take ownership of the 250 megawatt  
13 coal-fired Cedar Bay facility, which itself provides  
14 important strategic benefits.

15 Let me give you a little more detail about  
16 the benefits of the transaction. First, through the  
17 structure of this transaction, FPL has been able to  
18 secure for customers estimated net present value  
19 savings of \$70 million and estimated total nominal  
20 savings of \$156 million. FPL has analyzed several  
21 sensitivities regarding fuel prices and emissions  
22 costs, and in all of the sensitivities FPL's customers  
23 are projected to receive net present value savings.  
24 These economic benefits are discussed by FPL Witness  
25 Hartman.

1           Secondly, the structure of this transaction  
2 as a purchase of 100 percent of the equity in CBAS  
3 Power requires a lower initial investment by the  
4 company than would have been required to simply buy out  
5 the PPA. This provides a benefit to customers through  
6 lower bills.

7           Third, the ownership of the Cedar Bay plant  
8 provides at least two important strategic benefits for  
9 customers. One, it provides continued access to  
10 coal-based energy while the third natural gas pipeline  
11 into the state is being completed. Once that new  
12 source of natural gas transportation capacity is highly  
13 certain to be available, as currently planned, FPL has  
14 the option, through ownership, to retire the Cedar Bay  
15 plant. And, two, ownership of the plant gives FPL the  
16 ability to ensure that its operation is reduced and  
17 it's shut down sooner than would be the case under the  
18 current PPA. This will result in lower emissions and  
19 improved environmental profile for the state.

20           My testimony also demonstrates that the  
21 appropriate return on the regulatory asset created in  
22 this transaction is FPL's overall weighted average cost  
23 of capital used for clause investments. That  
24 regulatory asset recognizes the loss that is recorded  
25 for accounting purposes on the cancellation of the PPA

1 as discussed by Witnesses Ousdahl and Herr.

2 The financing of this regulatory asset is  
3 long term, more than nine years, necessitating the use  
4 of permanent debt and equity capital. The company will  
5 finance the investment using its current capital  
6 structure, which is consistent with the capital  
7 structure last reviewed and approved by this  
8 Commission. The expected net present value savings of  
9 \$70 million reflects the use of FPL's WACC as the  
10 return on the investment in this transaction. For  
11 these reasons, the Commission should approve FPL's  
12 purchase of CBAS Power for recovery through the  
13 capacity clause as proposed in FPL's petition. Thank  
14 you.

15 **MR. BUTLER:** Thank you, Mr. Barrett.

16 I tender the witness for cross-examination.

17 **COMMISSIONER EDGAR:** FIPUG.

18 **MR. MOYLE:** Thanks. We do have questions of  
19 Mr. Barrett. I apologize to you, you had asked on  
20 preliminary matters -- two -- two things, if I could,  
21 just to bring up with you briefly.

22 The prehearing, I wasn't aware that -- I guess  
23 we're doing direct and rebuttal at the same time. Is  
24 that -- is that right, Mr. Butler?

25 **MR. BUTLER:** We were asked by staff in the

1 last few days whether we're willing to take that  
2 approach, and we agreed that we are.

3 **MR. MOYLE:** Okay. I didn't get -- I didn't  
4 get that message. So is that the case with all of your  
5 witnesses?

6 **MR. BUTLER:** It is. That's our intent. We  
7 will be presenting them all for direct and rebuttal  
8 combined, with our one only rebuttal witness being at  
9 the end of -- end of the list.

10 **COMMISSIONER EDGAR:** And, Mr. Moyle, just so  
11 you know, when I was meeting with staff -- and so  
12 everybody knows -- when I was meeting with staff  
13 yesterday to go over the process today, recognizing that  
14 there had been some witnesses with requests to be  
15 excused, et cetera, I did suggest that, realizing that  
16 some of the requirements for the proceeding today have  
17 changed somewhat since the prehearing, I did ask our  
18 staff to look into the possibility of combining direct  
19 and rebuttal for efficiency.

20 My understanding was that you would have been  
21 made aware of those discussions. So if that did not  
22 occur, I apologize for that. Does that cause you  
23 concern?

24 **MR. MOYLE:** Well, just in terms of preparing,  
25 I prepared for direct and I prepared for rebuttal. So,

1 you know, I want to just know -- know how we're doing  
2 it. So Mr. Butler has explained it; you've explained  
3 it. But, you know, unless I missed an email, I don't  
4 think I got word of it. So that's -- that's fine.

5 **COMMISSIONER EDGAR:** Okay.

6 **MR. MOYLE:** And then the other preliminary  
7 matter, and I apologize, it would just take a little bit  
8 of time on it because it, I think, potentially affects  
9 the breadth and scope of my questions. A number of FPL  
10 witnesses -- Mr. Barrett, Ms. Ousdahl, Mr. Hartman,  
11 Mr. Herr -- were deposed pursuant to the Office of  
12 Public Counsel issuing a notice. FIPUG, I believe,  
13 cross-noticed it. We spent a lot of time down in Juno  
14 asking a lot of questions. And those depositions were  
15 filed by Cedar Bay on July 20th, 2015, and it's in  
16 Document No. 04500-15. It was filed in conjunction with  
17 a request for confidential protection. We have copies  
18 of -- of the depos and would like to move them into  
19 evidence, if we could.

20 And there's a Rule of Civil Procedure that  
21 suggests that depositions of parties can be used for any  
22 purpose. That's Rule 1.330, use of depositions in court  
23 proceedings. So we would -- it would help us with our  
24 cross-examination, Madam Chairman, if we knew whether  
25 the depos were coming in or not. And, candidly, it

1 would, I think, save time if they came in because, you  
2 know, we wouldn't have to go through and ask questions  
3 that were asked in deposition. This is a practice that  
4 staff has used repeatedly over the years to introduce  
5 depositions. They've been repeatedly introduced often  
6 over FIPUG's objection. So, you know --

7 **COMMISSIONER EDGAR:** So are you --

8 **MR. MOYLE:** -- things have changed a little  
9 bit, but we're asking that those depositions be admitted.

10 **COMMISSIONER EDGAR:** So you're requesting that  
11 depositions prior to hearing be entered into the record?

12 **MR. MOYLE:** We're requesting, as staff has  
13 done in previous proceedings, that the depositions of  
14 FPL witnesses Barrett, Hartman, Herr, and Ousdahl be  
15 admitted into the record.

16 **COMMISSIONER EDGAR:** Barrett, Hartman, Herr,  
17 and Ousdahl?

18 **MR. MOYLE:** Yes, ma'am.

19 **COMMISSIONER EDGAR:** Yes, Mr. Butler.

20 **MR. BUTLER:** I think we had agreed to a  
21 different procedure, but I'm not going to object to  
22 entering them into the record.

23 **COMMISSIONER EDGAR:** OPC?

24 **MR. TRUITT:** We'll object on the usual grounds  
25 that those depositions are going to contain immaterial

1 and irrelevant evidence that hasn't been gone through,  
2 and also the other idea that if a deposition is entered  
3 into the record by a party, that party adopts that  
4 witness as their own, which could create issues on  
5 cross-examination.

6 **MR. MOYLE:** We like them, but not that much.

7 **MR. BUTLER:** I'll have to inquire with  
8 Mr. Barrett and Ms. Ousdahl about their interest in  
9 adoption.

10 **COMMISSIONER EDGAR:** Ms. Helton.

11 **MS. HELTON:** Mr. Moyle is right that in the  
12 past the staff has made it a practice to enter  
13 deposition transcripts into the record. From our  
14 perspective, it was an efficiency measure.

15 However, the rules here for this hearing have  
16 changed, and the Prehearing Officer for this case has  
17 entered an order in which he said that any party wishing  
18 to introduce all or part of a deposition at hearing for  
19 any purpose other than impeachment must file a notice of  
20 intent to use deposition no later than Monday, June the  
21 8th, 2015, which was the -- the deadline for filing  
22 Intervenor testimony.

23 And then he also said that there was a little  
24 bit of a grace period if, for good cause, the person  
25 requesting the use of the deposition could show that

1 there was good cause for filing a notice of intent to  
2 use it later than that date, then that would be  
3 appropriate.

4 Mr. Moyle, to my knowledge, has not filed any  
5 notice of intent, nor attempted to show any type of good  
6 cause as to why he should be at this late date telling  
7 us that he plans to use those deposition transcripts.

8 **COMMISSIONER EDGAR:** Mr. Moyle.

9 **MR. MOYLE:** Well, I would -- I would suggest  
10 that the good cause would be that the hearing would be a  
11 little more efficient for the same reason that staff, I  
12 think, has made that argument many times before and the  
13 depositions have -- have been admitted. I mean, it's  
14 been a practice. There's a lot of rulings that -- that  
15 have taken place.

16 **COMMISSIONER EDGAR:** I'm aware of that,  
17 Mr. Moyle. However, I'm speaking to the second OEP that  
18 was issued June 5th, 2015, which requires a notice of  
19 intent no later than June 8th.

20 **MR. MOYLE:** The context of that second Order  
21 Establishing Procedure I think in part was the result of  
22 FIPUG entering -- taking certain depositions of third  
23 parties. Actually, the second sentence of your Order  
24 Establishing Procedure says, quote, due to the recent  
25 developments in this docket regarding the use of



1 depositions of third-party witnesses at hearing, the use  
2 of depositions as witness testimony, and possible  
3 objections to the entry of the depositions. I would  
4 suggest that the context of that was really related  
5 to -- to third parties.

6 And also to point out a practical problem with  
7 that is, you know, the dates. If you look at the dates,  
8 you had to have provided this notice of intent on, you  
9 know, on June 8. The depositions in question weren't taken  
10 until right -- I think they were the end of June, they  
11 were the beginning of July. The discovery cutoff  
12 deadline, you know, was quite late. So if you are  
13 construing this order in a way to say, no, you're not  
14 going to be able to put any depositions in, you know --

15 **COMMISSIONER EDGAR:** Unless a notice of intent  
16 was filed.

17 **MR. MOYLE:** Yeah. I mean, it's going to  
18 throw, I think, a pretty big monkey wrench in how cases  
19 are prepared. Are you following me on that?

20 **COMMISSIONER EDGAR:** Oh, I follow you.

21 **MR. MOYLE:** Okay.

22 **COMMISSIONER EDGAR:** I don't completely agree,  
23 but I -- I follow.

24 **MR. MOYLE:** Okay. It's just -- and we are  
25 having a meeting, I think, next week with staff to talk

1 about process. I mean, it's a good idea to have an  
2 informal meeting to talk about how can these proceedings  
3 flow better, and, candidly, depositions is an issue.  
4 But until that meeting, we, like I say, we just would  
5 try to move these depositions in.

6 **COMMISSIONER EDGAR:** All right. Request  
7 denied.

8 **MR. MOYLE:** Okay.

9 **EXAMINATION**

10 **BY MR. MOYLE:**

11 **Q** Mr. Barrett, how are you?

12 **A** I'm well. How are you?

13 **Q** Okay. Would you please explain to the  
14 Commission your role in negotiations related to the  
15 Cedar Bay transaction?

16 **A** Sure. As part of the senior management of the  
17 company, I served a review roll over the transaction.  
18 We had a deal team that handled the negotiations, and  
19 then there was essentially a management review team  
20 that, that interfaced with that -- that deal team and  
21 provided feedback and ultimately recommendations.

22 **Q** So who -- who was on the review team?

23 **A** That would be me, Sam Forest, and Wade  
24 Litchfield principally.

25 **Q** Anybody else?

1           **A**     From time to time we would have briefed Eric  
2     Silagy, Charlie Sieving as NextEra General Counsel, but  
3     that would have just been on an occasional briefing.  
4     The actual review team was, as I said, me, Wade  
5     Litchfield, and Sam Forest.

6           **Q**     And I think you told me in depositions that  
7     Mr. Silagy was on that team as well; is that right?

8           **A**     He was not an active part of the ongoing  
9     review of the negotiations, but we would brief him from  
10    time to time and ultimately present the final -- receive  
11    feedback from him and present the final recommendations  
12    to him.

13          **Q**     Okay. And then -- and then who's the deal  
14    team?

15          **A**     Tom Hartman was the principal negotiator for  
16    us. Tim Gerrish was on the team as well, who Tom  
17    reports to. And then a couple of our staff lawyers,  
18    Charlie Lande and Adam Sheinkin.

19          **Q**     Okay. And in the -- the review team, you,  
20    Mr. Litchfield, Mr. Forest, in consultation with  
21    Mr. Silagy, you all directed the deal team. You called  
22    the shots in effect; isn't that right?

23          **A**     The deal team has a fair bit of commercial  
24    expertise, and so we would review with them any -- any  
25    points of clarification that needed to be made, any

1 decisions that needed to be made and taken back to the  
2 other side, we would discuss that and provide guidance.

3 Q Okay. And so you're familiar with the  
4 Commission's practice of yes, no, and if you need to  
5 explain, explain?

6 A Yes, I am. Thank you for reminding me.

7 Q Yeah. And that's all right. And you told me  
8 in your deposition that -- that the review team directed  
9 the deal team, and that was the question I was trying to  
10 get you to answer yes or no. Isn't it yes?

11 A Yes.

12 Q And with respect -- are you comfortable if I  
13 ask you questions related to the negotiations with the  
14 counter-party?

15 A To the extent of my knowledge of those  
16 interactions, yes.

17 Q Okay. So if you don't know, you'll just tell  
18 me "I don't know."

19 A Yes.

20 Q Okay. Who reached out to who?

21 A We reached out to them.

22 Q And who did that?

23 A I believe it was Tom Hartman.

24 Q Okay. The counter-party in this -- in this  
25 case -- I mean, ultimately isn't -- isn't it, as I

1 suggested, The Carlyle Group that -- that's the real  
2 party in interest at the end of the day?

3 **A** Yes.

4 **Q** Okay. And there's a series -- you have a  
5 demonstrative exhibit up, but there's a series of  
6 complex corporate holdings and things. But if I'm -- if  
7 I'm talking about Carlyle, we'll understand that it's  
8 The Carlyle Group, LP; correct?

9 **A** That's my understanding, yes.

10 **Q** Okay. And is that -- is that who you  
11 negotiated with?

12 **A** I believe it was, and this is subject to  
13 Mr. Hartman being the better person to ask, but there --  
14 I believe they were either Carlyle officers or  
15 Cogentrix, which is a Carlyle affiliate.

16 **Q** I've got a couple of exhibits I'd like to use  
17 with you, if I could.

18 **MR. MOYLE:** And, Madam Chair, these are --  
19 they're in red folders.

20 **COMMISSIONER EDGAR:** Okay.

21 **MR. MOYLE:** It's confidential. So I think one  
22 of them is already in or will be in and one may not, but  
23 I'll -- can I have a minute to talk to Mr. Butler?

24 **COMMISSIONER EDGAR:** Of course.

25 (Discussion held off the record.)

1           Okay. Mr. Moyle, we'll note that two  
2 confidential exhibits have been distributed and ask you  
3 to mark and label in order.

4           **MR. MOYLE:** Okay. So for the first one --

5           **COMMISSIONER EDGAR:** Which will be No. 65.

6           **MR. MOYLE:** I lost track of my -- I lost track  
7 of my numbers. 54?

8           **COMMISSIONER EDGAR:** 64.

9           **MR. MOYLE:** 64.

10          **COMMISSIONER EDGAR:** Yes, sir.

11          **MR. MOYLE:** The first one I would like to mark  
12 as 64 is entitled Carlyle March 24, 2014, Indicative  
13 Proposal.

14          **COMMISSIONER EDGAR:** All right. We will so  
15 label, Carlyle March 24, 2014, Indicative Proposal.

16                 (Exhibit 64 marked for identification.)

17          **MR. MOYLE:** And the next one, which we'll have  
18 as 65, is FPL May 20th, 2014, Offer.

19          **COMMISSIONER EDGAR:** All right. We will so  
20 mark.

21                 (Exhibit 65 marked for identification.)

22          **BY MR. MOYLE:**

23                 **Q** Mr. Barrett, you have both exhibits in front  
24 of you?

25                 **A** I do, yes.

1           **Q**     Okay.  And let's start with No. 64, the  
2 Carlyle 2014 Indicative Proposal.  Are you familiar with  
3 this document?

4           **A**     Yes.

5           **Q**     All right.  And let me flip you to the third  
6 page.  And, remember, we were having an argument about  
7 confidentiality on these numbers, so I'm going to ask  
8 you some questions, but don't feel like you need to say  
9 the number.

10          **A**     Okay.

11          **Q**     So on the third page it says, "Sale of CBAS  
12 Power, Inc."  Do you see that?

13          **A**     Yes.

14          **Q**     And in the first bullet it says, "FPL can  
15 acquire CBAS Power for total purchase price of," and is  
16 that -- is that your understanding, that's the number  
17 that they put to you?

18          **A**     Yes.

19          **Q**     Okay.  And then what was the -- what was the  
20 number that -- that you ultimately are asking this  
21 Commission to approve?

22          **A**     520.5 million.

23          **Q**     All right.  I think Mr. Butler in his opening  
24 said, well, there's a substantial spread between  
25 these -- these two numbers.  That -- that is probably

1 true if you look at the spread in terms of dollar, a  
2 dollar figure, but maybe not so true if you look at the  
3 spread in terms of a percent. Would you agree with  
4 that?

5 **A** I don't recall the other number that  
6 Mr. Butler was referring to as being a significantly  
7 different number.

8 **Q** I thought he made a point of, oh, in the  
9 negotiations, you know, there was a substantial  
10 reduction from where things started. Is this -- is this  
11 number that is found on page 64 where -- where the  
12 negotiations started as far as you know?

13 **A** For the sale of CBAS Power, yes. There's  
14 another number on this page that the 520 is  
15 substantially lower than.

16 **Q** Right. And I'll probably ask you some  
17 questions about the other, the other number, but right  
18 now I want to focus on -- you know, the deal that was  
19 ultimately done was the sale of CBAS Power, Inc.; right?

20 **A** Correct.

21 **Q** And the number above was another option that  
22 was presented to you; correct?

23 **A** Correct.

24 **Q** Okay. So with respect to the deal that is in  
25 front of this Commission, how would you characterize the



1 reduction from the number that's found on Exhibit 64,  
2 page 3, first bullet under the sale of CBAS Power. as  
3 compared to the 520.5 number that you're asking this  
4 Commission to approve?

5 **A** I would say that's a significant reduction.

6 **Q** And to my question, you would agree that it's  
7 a significant reduction both in terms of dollars and  
8 percent or just dollars and not so much percent?

9 **A** Both.

10 **Q** Would you be -- would you be comfortable  
11 characterizing the reduction sort of comparable to what  
12 people may see when they show their AARP card at a  
13 hotel?

14 **A** I don't have one of those, so I don't know  
15 what that is.

16 **Q** You don't have an AARP card yet, huh?

17 **A** No.

18 **Q** AAA, are you a AAA member?

19 **A** No.

20 **Q** You don't have anything that gives you a  
21 discount if you show a card at a hotel?

22 **A** No.

23 **Q** Yeah. All right. Well, this is one of the  
24 issues with confidentiality. I'm, you know, trying to  
25 cross-examine you without revealing a number, and I

1 may -- I may have to rely on my brief to, to do that.

2 You had mentioned the number up above, the  
3 contract buyout number. What was -- what did that  
4 relate to?

5 **A** That would have been a -- in the context of  
6 this exhibit, it's an indicative proposal from Carlyle  
7 if we had chosen to make a payment to buy out the PPA.

8 **Q** So -- so they gave you an Option A, Option B?

9 **A** Yes.

10 **Q** Okay. And you took Option B.

11 **A** Correct.

12 **Q** And you're aware that Option A, at least the  
13 Office of Public Counsel in their testimony, they said  
14 that Option A saves ratepayers a lot of money; right?

15 **A** I'm aware of that, but I disagree with that.

16 **Q** Okay. And I don't want to get into the  
17 disagreement. I just want you to recognize, yes, that  
18 Office of Public Counsel said you should have taken  
19 Option A because it would save ratepayers money;  
20 correct?

21 **A** No, that's not the complete context of their  
22 recommendation. It included a lot of other  
23 recommendations that they were making which I also  
24 disagree with that resulted in what they purported to be  
25 a lot of savings.

1           **Q**     But just isolated on the -- on the Option A or  
2           Option B, they suggested Option A would save ratepayers  
3           money; correct?

4           **A**     I don't believe they made a -- a  
5           recommendation where that was the only difference.

6           **Q**     It was part and parcel of a combination of  
7           differences?

8           **A**     Exactly.

9           **Q**     Okay. All right. I'll move on to the next  
10          one. I'm showing you what has been marked as  
11          Exhibit 65. It's been labeled FPL May 20th, 2014,  
12          Offer. Are you familiar with this document?

13          **A**     Yes.

14          **Q**     Okay. And so in the second paragraph there's  
15          a number in there. Is that -- that's the number you  
16          came back to them with in response to their offer as set  
17          forth on 64, Exhibit 64?

18          **A**     Yes. I would characterize it as a counter  
19          proposal, if you will.

20          **Q**     Okay. And isn't it true that these are the  
21          only two documents that have any numbers related to the  
22          negotiations in them; correct?

23          **A**     Other than the final executed agreement to my  
24          knowledge.

25          **Q**     That's right?

1           **A**    Yes.

2           **Q**    Okay.  So I made a number of comments in my --  
3           in my opening statement about the Cedar Bay facility.  
4           You're okay if I ask you some questions about the Cedar  
5           Bay facility?

6           **A**    Yes, with some limitations.  Tom Hartman is  
7           our witness that's more intimately familiar with the  
8           facility itself.

9           **Q**    Okay.  All right.  Well, let's go through  
10          them.  Coal-fired power plant --

11          **A**    Correct.

12          **Q**    -- in Duval County or Nassau County?

13          **A**    Jacksonville.  I don't know which county it  
14          is.  I think Duval.

15          **Q**    Approximately 250 megawatts?

16          **A**    Yes.

17          **Q**    Located on a site that has some environmental  
18          issues?

19          **A**    I believe there has been some Phase 1 analysis  
20          done, but, again, Tom Hartman or Ray Butts can speak to  
21          the environmental issues.

22          **Q**    And, again, I'm not going to ask you to tell  
23          me what they are.  I just want -- generally you agree  
24          that there's some environmental issues on the site;  
25          correct?

1           **A**    Yes.

2           **Q**    And the facility is adjacent to the St. Johns  
3 River.

4           **A**    I don't know that for sure.

5           **Q**    Okay. The plant itself is valued at zero;  
6 correct?

7           **A**    As I understand from Witness Ousdahl and her  
8 testimony, the fair value, accounting value has -- has  
9 been established at zero.

10          **Q**    The only thing that has value in this, as FPL  
11 sees it, is the Purchased Power Agreement; is that  
12 right?

13          **A**    Correct.

14          **Q**    And if the Commission approves it and you buy  
15 the corporate structure, which -- I mean, ultimately  
16 you're buying the power plant; right?

17          **A**    We're buying everything that the corporate --  
18 that entity owns including the power plant and the PPA  
19 and contracts, et cetera.

20          **Q**    Okay. And ultimately when you buy it, your  
21 plans are to retire it right shortly after you buy it;  
22 correct?

23          **A**    The current --

24          **Q**    Yes, no, and then explain, if you could,  
25 please.

1           **MR. BUTLER:** I'm going to object. That  
2 question has a range of answers to it. Mr. Barrett was  
3 beginning to provide an appropriate answer, and I think  
4 he should be given a chance to do so.

5           **MR. MOYLE:** I'll rephrase.

6 **BY MR. MOYLE:**

7           **Q** Did FPL file testimony indicating that  
8 currently it plans to retire the plant shortly after it  
9 buys it, retire it in 2016, the end of 2016?

10          **A** Yes, at the end of 2016.

11          **Q** And when do you plan to close on this plant?

12          **A** As soon as we get approval to -- to close on  
13 it.

14          **Q** Okay. So how much -- do you know how much  
15 ratepayers are going to be charged if the Commission  
16 approves your petition as, as filed?

17          **A** I believe it's laid out in Mr. Hartman's  
18 exhibit. Could you clarify? What do you mean what they  
19 will be charged?

20          **Q** Well, they're going to pay 520.5 for, in  
21 effect, the Cedar Bay generating facility and the  
22 related Purchased Power Agreement; right?

23          **A** FPL will make an investment of 520.5 million,  
24 and customers will pay the revenue requirements over the  
25 remaining term of the initial contract. So it would be

1 an annual revenue requirement.

2 Q So the ratepayers will pay for the 520. And  
3 FPL seeks to earn on that 520 as well; right?

4 A Correct.

5 Q And how much will they earn on that 520?

6 A We're asking the Commission to allow us to  
7 earn our weighted average cost of capital for clause  
8 investments, which is currently in the low 6 percent  
9 range.

10 Q And the ratepayers are also being asked to pay  
11 for a tax liability; is that right?

12 A Correct. As Ms. Ousdahl's testimony  
13 elaborates on, we will have a tax obligation that we  
14 will have to pay, and that is a revenue requirement that  
15 customers would be obligated to pay.

16 Q And that's north of 300 million; correct?

17 A That's the asset that would be established on  
18 the books. But, again, it would be amortized over the  
19 length of the existing PPA term.

20 Q Right. So if I said nearly 850 million is  
21 going to go on the books if the Commission approves this  
22 without making changes, you would agree with that;  
23 right?

24 A I would agree that there's about 850 of assets  
25 that would go on the books in addition to a 350 million

1 liability offsetting that for the taxes. So the net  
2 would be the 520 that we're asking the Commission to  
3 earn a return on and amortize over the life of the -- of  
4 the remaining term of the contract.

5 Q And I told the Commission in my opening that  
6 you told me in the deposition that if there was no room  
7 with respect to earning the average weighted cost of  
8 capital, that if the Commission felt there was a need  
9 for a downward adjustment of that, that FPL would not  
10 move forward with the deal; is that correct?

11 A That's correct. That's what I explained in my  
12 deposition. And just to kind of elaborate on that a  
13 little bit further --

14 Q If I -- if I just could --

15 A I'd like to give the explanation after the  
16 yes.

17 Q Okay. Well, I have one more follow-up. I  
18 just want to make sure that position hasn't changed as  
19 we sit here today; right?

20 A That's correct.

21 Q No room, no flexibility.

22 A Yes.

23 Q Okay. It's in effect a take it or leave it  
24 proposition for the Commission as it relates to the  
25 weighted average cost of capital.



1           **A**     I've answered it three times, and I'd like to  
2 explain to the Commission our position on that, if I  
3 may.

4           **Q**     Okay. I want to just ask about three private  
5 prior cases where the Commission had a similar set of  
6 facts and then --

7           **MR. BUTLER:** This is really abusing the  
8 process. The witness should be allowed to explain his  
9 answer.

10          **COMMISSIONER EDGAR:** Yes, Mr. Butler. You may  
11 give your explanation.

12          **THE WITNESS:** Thank you. We are investing  
13 \$520 million on behalf of customers to secure for them  
14 an estimated \$70 million in present value savings,  
15 156 million in nominal savings. The investment that  
16 we're making is going to have a duration of about nine  
17 years. We view that as permanent capital. It's a  
18 permanent investment that we're making that is  
19 supportable, or it should be supported by long-term debt  
20 and long-term equity.

21                 We are very proud of the capital structure  
22 that we have as a company that we've maintained for more  
23 than a decade that has provided significant benefit to  
24 customers. And -- and if we move forward with this  
25 transaction, the 520 million needs to be supported with

1 that inequity. Our ask of the Commission is that we be  
2 allowed to recover the cost of that debt inequity, and  
3 it's reflected in the weighted average cost of capital  
4 for the company. We think that that is fair for a  
5 long-term investment, it's consistent with other  
6 long-term investments that we make, whether they be in  
7 base or in clause, and that's why our position is that  
8 that's the appropriate return on this investment.

9 **COMMISSIONER EDGAR:** Mr. Moyle, please  
10 continue.

11 **MR. MOYLE:** Thank you.

12 **BY MR. MOYLE:**

13 **Q** The Commission has never, never before allowed  
14 full recovery at the average weighted cost of capital  
15 for the duration of a PPA in any other case that they've  
16 considered; correct?

17 **A** I don't know that -- I don't know that there's  
18 been a case like this one.

19 **Q** All right. But -- but you are aware of the  
20 Okeelanta and the Osceola case; right?

21 **A** Yes.

22 **Q** And that wasn't -- the Commission didn't allow  
23 recovery at the average weighted cost of capital in  
24 that, did they?

25 **A** No. What the Commission did in that case is

1 --

2 Q I don't -- we'll talk to Ms. Ousdahl about  
3 what they did, but --

4 A Can I please explain the answer?

5 **COMMISSIONER EDGAR:** Briefly.

6 **THE WITNESS:** Those cases involved a complex  
7 settlement amongst the parties in the case, and the rate  
8 of return on the investment was only one component of  
9 that settlement. So my view and the view of the company  
10 is it should be viewed in the context of a settlement,  
11 not cherry picking one item out of that settlement.

12 **COMMISSIONER EDGAR:** Mr. Moyle.

13 **BY MR. MOYLE:**

14 Q Tiger Bay, same question. They didn't -- the  
15 Commission didn't say, yeah, you get your average  
16 weighted cost of capital. It was less; correct?

17 A Yes. Similar set of circumstances. It was  
18 a -- a settlement agreement between the parties. And  
19 actually in that case with FPL Power Corp. the  
20 Commission approved the rate of return that the company  
21 petitioned for, which was a cost of debt. And so we're  
22 asking that we get approval of what we've petitioned for  
23 as well, which is the weighted average cost of equity --  
24 or weighted average cost of capital.

25 Q All right. And you're aware that the OPC

1 witnesses in this case have said you shouldn't get your  
2 average weighted cost of capital, you should get less;  
3 you should get debt only, not the equity component.

4 Right?

5 **A** Yes, I'm aware of that.

6 **Q** Okay. So, in effect, with your request you're  
7 asking the Commission to take new -- to establish a new  
8 precedent and provide the average weighted cost of  
9 capital on this Purchased Power Agreement; is that  
10 right?

11 **A** No, I don't see it as new precedent. I'm  
12 asking that the Commission view this as a long-term  
13 investment. And all of their decisions on long-term  
14 investments have been at the weighted average cost of  
15 capital, whether it be base or clause.

16 **Q** You're buying the generating facility, right,  
17 the Cedar Bay 250 megawatt facility? That's part of  
18 this transaction?

19 **A** Yes, it's part of the transaction.

20 **Q** Okay. You're not aware of a power plant ever  
21 being recovered in a clause; correct? Power plants are  
22 recovered in base rates.

23 **A** That is correct, which is what we're asking  
24 for here.

25 **Q** So the reason you're suggesting that the

1 Commission approve this is based on projections. It's  
2 estimated that ratepayers, you would contend, possibly  
3 could save 70 million; is that right?

4 **A** Yes. It's our estimate that the base case set  
5 of assumptions would result in 70 million. And Witness  
6 Hartman goes into a number of sensitivities that we ran,  
7 all of which provided some savings to customers.

8 **Q** And some of those sensitivities in certain  
9 scenarios show the ratepayers may not save anything to  
10 speak of. \$3 million, I think; is that right?

11 **A** That's correct. And in all cases the  
12 customers save money.

13 **Q** All right. Well, we don't know that. I mean,  
14 they're all projections. We don't know -- you can't sit  
15 here and tell the Commission absolutely I can tell you  
16 and guarantee that the customers are going to save money  
17 on this deal, can you?

18 **A** I cannot guarantee that. All of the nine  
19 scenarios that we analyzed show that. And I can  
20 guarantee that if we don't move forward, the customers  
21 will pay this higher capacity cost for the next nine  
22 years.

23 **Q** Right. But it could be if you don't move  
24 forward, the customers pay less than they would if this  
25 deal was approved. That's possible; right?

1           **A**     I guess that's possible.  I'm trying to think  
2 of a scenario where that would be the case.

3           **Q**     Well, again, I mean, we talked about it in  
4 your deposition.  You agreed projections can be wrong.  
5 They often are; right?

6           **A**     Correct.

7           **Q**     There's no -- no guarantees that ratepayers  
8 will save money; correct?

9           **A**     Correct.  That's why we run a robust set of  
10 scenarios.

11          **Q**     Right.  So you told the Commission that  
12 there's no room, at least from FPL's perspective, with  
13 respect to the issue of weighted average cost of  
14 capital.  Does the Commission have any room if -- if  
15 they, say, consider the OPC witness recommendation that  
16 no more than 370 million should be recovered, if they  
17 said we think there should be a downward adjustment,  
18 does that -- does that kill the deal, or would FPL take  
19 a look at it and make a decision?

20          **A**     Can I ask you to clarify that question?

21          **Q**     Sure.

22          **A**     So you're -- you're suggesting that if the  
23 Commission were to -- were to say to us we're only going  
24 to allow recovery of 300 million, not the 520?

25          **Q**     Well, it's probably not a good question.

1 Let's do it in kind of a series of questions.

2 If -- if the Commission took the  
3 recommendation of OPC's witnesses and said we think OPC  
4 witnesses, their experts are credible and right and it  
5 shouldn't be more than 370 million recovered -- that's  
6 what the OPC witness has said; right?

7 **A** Among other things, yes.

8 **Q** Okay. If the Commission said we agree with  
9 that, 370 is the number, does FPL move forward with a  
10 deal, or does FPL, like they did with the weighted  
11 average cost of capital, say we're not moving forward  
12 with that?

13 **A** We would not move forward with that deal  
14 because we have an obligation to pay Carlyle the 520.  
15 And so you're suggesting that we take a \$150 million  
16 loss.

17 **Q** Or renegotiate.

18 **A** That is not the deal before the Commission  
19 today.

20 **Q** Okay. So -- so in the rate case, in my  
21 opening I mentioned that the Commission reduce the --  
22 the number by 60 million. If the Commission in this  
23 case reduced the 520 number by 60 million, same answer,  
24 FPL says that's not the deal, we're not moving forward  
25 with this?

1           **A**     That would be the answer. That is not the  
2 deal. We are asking the Commission to approve a  
3 commercial transaction entered into by unaffiliated  
4 parties at arm's length, and that is the deal we're  
5 asking kind of an up or down vote on because that is the  
6 deal that we've brought forward.

7           **Q**     So you're telling the Commission essentially  
8 they, you know, it's 520.5 or -- or nothing. There's no  
9 room in that. Is that right?

10          **A**     I wouldn't characterize it that way,  
11 Mr. Moyle. I would say that we negotiated hard with the  
12 counter-parties to reach a -- a mutually agreeable  
13 transaction price that in our estimation provides  
14 significant value for customers, and for that reason we  
15 believe that it should be approved by the Commission.

16          **Q**     You say you negotiated hard. You -- you  
17 didn't negotiate, did you?

18          **A**     I reviewed the negotiations of the deal team.

19          **Q**     And -- and those are the documents that we  
20 have that shows the written correspondence that FIPUG  
21 has marked that we just talked about; is that right?

22          **A**     Those are a couple of data points, yes.

23          **Q**     In my opening I also said that FPL doesn't  
24 haven't an incentive really to negotiate hard because  
25 the higher the purchase price of this deal, the more FPL



1 earns. That -- that factually is correct; right? Well,  
2 let me -- let me ask it this way. Isn't it true that --  
3 that the higher the purchase price, the more FPL stands  
4 to earn in this case?

5 **A** I would say that the higher the purchase  
6 price, the higher the required return for FPL's  
7 investors. But if I may, I would say that the predicate  
8 of your question is somewhat offensive to me that we  
9 would not negotiate because we might earn more. We  
10 negotiate on behalf of our customers to bring value to  
11 our customers. We take a lot of pride in having the  
12 lowest bill in the state, and so we -- we negotiate hard  
13 to keep that position.

14 **Q** And please understand, I'm not -- if I -- if I  
15 offended you, I'm sorry. I didn't mean any -- I'm  
16 trying to focus my question, maybe I didn't do a good  
17 job of asking it, as it relates to the economic  
18 incentives, just purely the economic incentives. And I  
19 think I understand it right that, you know, FPL earns  
20 more on 500 million than they would on 400 million;  
21 correct?

22 **A** It's correct that our dollar earnings would be  
23 more, but the rate of return, which is the return to  
24 investors, is exactly the same, 10.5.

25 **Q** So if -- if you had a choice of earning

1 10.5 on 520 million or 370 million, from an economic  
2 standpoint what would be -- what would be the better  
3 economic deal?

4 **A** The deal I could get for the customers. I  
5 couldn't -- the deal of 370 was not on the table.

6 **Q** Okay.

7 **A** And so we --

8 **Q** Just hypothetically assume -- assume just, you  
9 know, from a math standpoint, earn of 10.5 percent on  
10 520 is -- you earn more money on that than you do on  
11 370; correct?

12 **A** The dollar level is higher on the higher  
13 investment. That's just math. But, again, I -- you  
14 know, we look at it as the deal we could get for our  
15 customers to secure an opportunity to save money.

16 **Q** So talking about those negotiations, you're  
17 saying we went into these negotiations looking out for  
18 customers; is that right?

19 **A** Yes.

20 **Q** Okay. Did you also consider the interest of  
21 FPL's shareholders when you were negotiating?

22 **A** Of course. Yes.

23 **Q** Okay. And, and you would agree that FPL in  
24 these negotiations, they're kind of in a unique position  
25 vis-a-vis the customer; right? I mean, you all have

1 specialized knowledge. You're the ones at the table  
2 negotiating. That's a unique set of circumstances where  
3 you, as you say, are looking out for the customers'  
4 interests; correct?

5 **A** Could you elaborate on what you mean by  
6 "unique set of circumstances"?

7 **Q** Well, FIPUG wasn't invited to the negotiating  
8 table to negotiate with The Carlyle Group, were they?

9 **A** Correct.

10 **Q** And ultimately if this is approved, the FIPUG  
11 members are going to be asked to -- to pay for this,  
12 right, along with other ratepayers?

13 **A** Correct. And FIPUG will share in the savings.

14 **Q** Assuming there are any.

15 **A** Correct.

16 **Q** So I guess what I'm asking with my question is  
17 given the relationship and circumstances, FPL assumes a  
18 unique position vis-a-vis the customers, the ratepayers,  
19 when they enter into negotiations like this; correct?

20 **A** That's correct, as it with any commercial  
21 transaction that Florida Power & Light enters into.

22 **Q** Okay. Do you have an understanding of the  
23 term "fiduciary duty"?

24 **A** Yes.

25 **Q** What is your understanding of that?

1           **A**     It's the duty to protect the assets of the  
2 corporation, and to make sure that the books and records  
3 are -- are accurate and reflect the reality of the  
4 situation for investors, and the situation that, for us  
5 as a regulated utility, for our regulators as well.

6           **Q**     Okay. So you answered the question with  
7 respect to a fiduciary duty to your shareholders; is  
8 that right?

9           **A**     And our regulators.

10          **Q**     Okay. Do you believe that you have a  
11 fiduciary duty, as you understand the term, to the  
12 customers or the ratepayers?

13          **A**     I believe as a regulated entity we have an  
14 obligation to seek to provide cost-effective service for  
15 our customers, and I guess that you could expand  
16 fiduciary to include that as well.

17          **Q**     So I just want to use your definition with  
18 respect to -- I mean, do you have a general definition  
19 of fiduciary?

20          **A**     As I answered you a few minutes ago.

21          **Q**     And -- and I wasn't clear whether that was a  
22 yes or a no with respect to a fiduciary to the  
23 ratepayers or customers. You believe you do. I think  
24 you said you do; is that right?

25          **A**     Yes, in the context of making sure that we

1 fulfill the compact that we have with -- with our  
2 customers as a regulated utility.

3 Q How about when negotiating an agreement  
4 like -- like this?

5 A Yes.

6 Q Okay. And I'm sorry I'm taking a little time  
7 with you. I said in my opening statement that the  
8 purchase power agreements, generally speaking, as time  
9 goes on, there's less value in the Purchased Power  
10 Agreement because monies are being paid out. Is that --  
11 do you generally agree with that statement?

12 A Yes, if everything else is equal.

13 Q Okay. How much -- and I don't know, John, if  
14 you have an objection -- but how much are you paying now  
15 on a monthly basis pursuant to this Purchased Power  
16 Agreement, if you know?

17 Is that confidential?

18 **MR. BUTLER:** Hold on one second. I don't  
19 think it's confidential, but I also don't think this is  
20 a good witness to ask the question. Mr. Hartman will  
21 have a lot more personal information on that than  
22 Mr. Barrett does.

23 **MR. MOYLE:** Yeah. He's kind of a general  
24 witness. If he knows, he can tell me. If he doesn't,  
25 he can tell me he doesn't know, if that's all right.

1                   **COMMISSIONER EDGAR:** To the witness.

2                   **THE WITNESS:** I don't know.

3                   **BY MR. MOYLE:**

4                   **Q**     In -- in your direct testimony, I have it on  
5 page 4, line 22 of your direct, you said there may be  
6 plans to repurpose the facility. What -- what do you  
7 mean when you say "repurpose the facility"?

8                   **A**     Just one correction. I didn't say we had  
9 plans to repurpose it. I said we would have the option  
10 or we could make decisions if we were to do that. That  
11 would be to make it a different fuel than, than coal  
12 potentially, but we have no plans to do that.

13                   **Q**     So you might turn it into a gas plant  
14 potentially?

15                   **A**     I'm not an engineer. I don't know what can or  
16 can't be done, but that would be a repurposing of the  
17 facility.

18                   **Q**     Or a biomass plant. I mean, you don't have --  
19 you don't have plans -- as we sit here today, there  
20 aren't plans that say, oh, just like we did with  
21 Canaveral, we're going to repurpose it and put a gas  
22 unit in here?

23                   **A**     Correct. Our plans right now are to retire  
24 the facility at the end of 2016.

25                   **Q**     Okay. I mean, what can you tell me about

1 possibly transferring the facility to a third party?

2 There was conversations about something like that during  
3 the -- during your discussions.

4 **A** We have no plans to do that.

5 **Q** So it's not going back -- back to anybody in  
6 this room today?

7 **A** No, it's not our plans.

8 **Q** You're the Vice President of Finance; right?

9 **A** Yes.

10 **Q** You have a pretty good understanding of tax  
11 law?

12 **A** No.

13 **Q** No?

14 **A** No.

15 **Q** That makes two of us. Tell me your  
16 understanding with respect to how -- how this  
17 transaction where essentially you're asking the  
18 ratepayers to, say, approve this 800 million --  
19 500 million on the asset, how there's a 300 million tax  
20 obligation that -- that flows?

21 **A** I really think Witness Ousdahl is the best one  
22 to answer that for you.

23 **Q** And she probably can. I asked you in your  
24 deposition. You were able to explain it to me in  
25 general terms; right?

1           **A**     I can try at a -- at a high level to explain  
2 my understanding of it.

3           **Q**     Please, please do.

4           **A**     Essentially the amortization of the  
5 500 million -- the 500 million -- 520 million that we're  
6 paying is not deductible for tax purpose, and therefore  
7 the revenues we collect need to be grossed up for the  
8 taxes that we would owe because we can't take a  
9 deduction for the 500 million. So that's why it needs  
10 to be -- the deferred taxes that would be associated  
11 with that 500 million need to be recognized and then  
12 flowed back over the -- the nine years as we collect  
13 that money from customers, so that at the end of the day  
14 we have collected 500 million after tax to amortize  
15 fully the regulatory asset.

16          **Q**     And that's another disputed in this --  
17 disputed issue in this case, is it not, whether the --  
18 whether there's -- the purchase is tax deductible or  
19 not?

20          **A**     I would agree it's a dispute, and you should  
21 probably talk to Witness Ousdahl about that.

22          **Q**     Right. And then -- I will. But OPC has,  
23 their experts have said, hey, the ratepayers shouldn't  
24 pay this 300, this should be tax deductible essentially;  
25 right?



1           **A**    I don't know that they've been unequivocal on  
2           that.

3           **Q**    Their testimony is what their testimony is.

4           **A**    It is, yes.

5           **Q**    Okay. And they've also said, I think, in  
6           other contexts that private letter rulings have been  
7           issued to utilities on similar deals that have addressed  
8           tax deductibility. Is that your understanding?

9           **A**    It's my understanding that that's their  
10          testimony.

11          **Q**    And that there have been private letter  
12          rulings issued that have said in other contexts this is  
13          tax deductible?

14          **A**    Context matters. Not in this context is my  
15          understanding.

16          **Q**    Every deal has different facts; right?

17          **A**    Correct. Right.

18          **Q**    But in the context of other purchased power  
19          related agreements, the IRS has previously said the  
20          purchase price is tax deductible in private letter  
21          rulings; correct?

22          **A**    Not in the purchase of a -- the stock of a  
23          company like we are doing.

24                **MR. MOYLE:** Okay. Could I have just a couple  
25          of minutes, please?

1                   **COMMISSIONER EDGAR:** You may.

2                   **BY MR. MOYLE:**

3                   **Q**     The 520.5 million, why are you not asking  
4                   confidentiality on that number?

5                   **A**     I'm sorry. Which number?

6                   **Q**     The number you're asking the Commission to  
7                   approve for the purchase agreement, the 520.5 million;  
8                   right?

9                   **A**     Correct.

10                  **Q**     Why are you not asking that that number be  
11                  treated as confidential?

12                  **A**     I mean, it's the, it's the number that we are  
13                  transacting at and we're asking the Commission to make a  
14                  decision about, and feel it's pertinent to the case.  
15                  And that it's -- it's the final number that matters;  
16                  therefore, it is not confidential.

17                  **Q**     How -- how about the number that I showed you  
18                  in FIPUG's exhibit that we marked with respect to the  
19                  Carlyle letter to you? Do you consider that  
20                  confidential?

21                  **A**     It's been marked confidential, yes.

22                  **Q**     And why -- why would that number, from your  
23                  perspective, be confidential?

24                  **A**     From my perspective, it's because it was the  
25                  subject of negotiations that would be proprietary to the

1 parties negotiating the deal.

2           **Q**     But there's not anything that, you know, gives  
3 you a business advantage or anything with respect to  
4 those numbers. It's just you would say they were  
5 negotiations; therefore, they shouldn't -- we shouldn't  
6 talk about them?

7           **A**     As I think I just said, the positions that  
8 companies take when they are negotiating typically are  
9 considered proprietary and could prejudice them in other  
10 negotiations and, therefore, typically are requested to  
11 be held in confidence. That's why companies sign  
12 nondisclosures agreements and confidentiality  
13 agreements, so that we can negotiate freely, not feeling  
14 as though those negotiations are going to become public.

15           **Q**     All right. And with respect to -- you know,  
16 the record reflects Mr. Butler talked about the  
17 substantial reduction. You would agree that the course  
18 of negotiations is something that this Commission is  
19 being asked to look at in this case; correct?

20           **A**     Can you state that again?

21           **Q**     Sure. Is -- do you think the negotiations in  
22 terms of their level of rigor or back and forth is  
23 something that the Commission should consider to see  
24 whether, you know, whether ratepayers got the best deal  
25 they possibly could or not?

1           **A**     I feel as though the Commission has every  
2 right to ask what questions gets them comfortable that  
3 the deal before them is in the best interest of  
4 customers.

5           **Q**     And parties would likewise have that right?

6           **A**     Parties would have the right to ask questions  
7 about the process, yes.

8           **MR. MOYLE:** Thank you, Mr. Barrett. I  
9 appreciate it.

10          **THE WITNESS:** Thank you.

11          **COMMISSIONER EDGAR:** OPC, no questions?

12          **MR. TRUITT:** No questions.

13          **COMMISSIONER EDGAR:** No questions. Okay.  
14 Staff.

15          **MS. BARRERA:** Thank you.

16                                   **EXAMINATION**

17          **BY MS. BARRERA:**

18           **Q**     Mr. Barrett, based on the Purchase and Sale  
19 Agreement, among other contracts that FP&L would acquire  
20 along with Cedar Bay is an existing environmental  
21 liability insurance policy. Does FP&L plan on  
22 maintaining this environmental liability insurance  
23 policy until the ground lease ends?

24           **A**     That's probably a better question for  
25 Mr. Hartman. There's an existing term to the policy,

1 and as we are intending to retire the facility at the  
2 end of 2016, I believe that the policy runs through that  
3 period. So I think the answer to the question is no,  
4 but you might want to ask that one of Mr. Hartman.

5 Q Okay. Thank you. Would you know whether in  
6 its economic evaluation FP&L included no other costs for  
7 environmental liabilities associated with Cedar Bay  
8 beyond the cost of the insurance policy?

9 A Can you rephrase that? I'm sorry. I missed a  
10 couple of words in the middle there.

11 Q Okay. In its economic evaluation did FP&L  
12 include any other costs for environmental liabilities  
13 associated with Cedar Bay beyond the cost of the  
14 environmental liability insurance?

15 A Again, I think Mr. Hartman might be able to  
16 answer that one.

17 Q Mr. Hartman? Okay. Well, then, I don't have  
18 any further questions. Thank you.

19 **THE WITNESS:** Thank you.

20 **COMMISSIONER EDGAR:** Commissioners, any  
21 questions for this witness at this point? No questions.  
22 Mr. Butler.

23 **MR. BUTLER:** No redirect for Mr. Barrett.

24 **COMMISSIONER EDGAR:** Okay. Exhibits?

25 **MR. BUTLER:** No exhibits for him. This one

1 was straightforward.

2 **COMMISSIONER EDGAR:** Mr. Moyle.

3 **MR. MOYLE:** We'd like to move in the two  
4 exhibits we marked, 64 and 65.

5 **COMMISSIONER EDGAR:** Any objection?

6 **MR. BUTLER:** No.

7 **COMMISSIONER EDGAR:** Okay. No objection.  
8 Exhibits 64 and 65 will be entered into the record.

9 (Exhibits 64 and 65 admitted into the record.)

10 Mr. Barrett, you may leave the stand now;  
11 however, you may be called later in the hearing, so we  
12 ask that you stay available.

13 **THE WITNESS:** Thank you.

14 **COMMISSIONER EDGAR:** Thank you.

15 **MR. BUTLER:** We would call as our next witness  
16 Mr. Hartman.

17 **COMMISSIONER EDGAR:** And, Mr. Moyle, can you  
18 make it work if Mr. Hartman presents his direct and  
19 rebuttal at the same time?

20 **MR. REHWINKEL:** Madam Chairman, could I --  
21 down here.

22 **COMMISSIONER EDGAR:** I'm sorry, Mr. Rehwinkel.  
23 Yes.

24 **MR. REHWINKEL:** Just for logistics purposes  
25 and I think for the staff who's handling this, it's been

1 the practice before when confidential exhibits are --  
2 documents are passed out and they become part of the  
3 official record and exhibits, that the parties retain  
4 them for purposes of the brief or post-hearing  
5 activities, and I just wanted to know amongst the  
6 parties what the understanding about that is, and the  
7 Commission. I mean, we'll return them if we're required  
8 to, but we ordinarily have kept them. If they're not  
9 entered into the record, then we return them.

10 **COMMISSIONER EDGAR:** Mr. Butler.

11 **MR. BUTLER:** I think that would be useful to  
12 have them after the hearing. The thing I was really  
13 even more immediately concerned about is I'm not sure if  
14 Mr. Moyle is finished asking about them, and it may be  
15 that it would be at least useful to have them through  
16 the end of the hearing so that we can conveniently  
17 reference them if he returns to them.

18 **COMMISSIONER EDGAR:** Mr. Wright, do you have a  
19 comment on this? No.

20 Okay. Mr. Moyle.

21 **MR. MOYLE:** We -- we may have some additional  
22 questions, you know, about them. We're not claiming  
23 confidentiality of the information, so I'm kind of  
24 whatever the parties are most comfortable with is -- is  
25 okay by me. But I would suggest that for record

1 purposes they're entered, they've been admitted, they're  
2 in evidence, that they, you know, obviously be -- be  
3 here if somebody needs to look at them.

4 **COMMISSIONER EDGAR:** Yes. Absolutely.

5 **MR. MOYLE:** And that the parties have access  
6 to them.

7 **COMMISSIONER EDGAR:** All right. Unless our --  
8 our -- yes, Ms. Barrera, did you have a comment?

9 **MS. BARRERA:** Yes, Commissioner. If I  
10 understand this correctly, page 3 of the Prehearing  
11 Order setting the procedure for maintaining confidential  
12 information says that the copies of the confidential  
13 exhibits are returned to the proffering party. And if  
14 it's been admitted into evidence, the copy provided to  
15 the court reporter shall be retained by the Office of  
16 the Commission Clerk. It's our practice to provide the  
17 copy only to the court reporter at this time. And I'll  
18 note that the -- all the parties have copies of this,  
19 these two exhibits.

20 **COMMISSIONER EDGAR:** Mr. Rehwinkel.

21 **MR. REHWINKEL:** I think I've participated in  
22 most of the proceedings that have dealt with  
23 confidential information in the last 25 years it seems  
24 like, and I think regardless of the language that  
25 Ms. Barrera cited, I think the practice has been for the



1 parties to retain the documents. Because if you do end  
2 up having to write a brief, it's not practical to have  
3 to come to the Clerk's Office to look at a document  
4 every time you need to cite it. So I -- I mean, it  
5 seems to me that's the only practical thing to do is  
6 that the parties retain them.

7 **MR. WRIGHT:** Commissioner.

8 **COMMISSIONER EDGAR:** Yes, Mr. Wright.

9 **MR. WRIGHT:** Part of this is our information,  
10 and, like I say, we certainly have no objection to the  
11 parties here keeping copies because they already have  
12 copies. They're part of the deposition exhibits, which  
13 Mr. Moyle and my friends at Public Counsel and my  
14 friends at FPL all -- and staff all have. So I don't  
15 see any harm in the parties keeping copies in the red  
16 folders.

17 **COMMISSIONER EDGAR:** Mr. Wright, exactly what  
18 I was going to say. So unless Commissioners want to  
19 retain, and others, we will ask the staff to go ahead  
20 and pick them up; however, for the parties, if you would  
21 like to keep the copy that you have with you in addition  
22 to the copy that you already have as part of the  
23 proceedings, I think that is very practical and  
24 workable. Okay.

25 **MR. REHWINKEL:** Thank you very much.

1                   **COMMISSIONER EDGAR:** Anything else? No.  
2                   Mr. Butler.

3                   **MR. BUTLER:** Thank you.

4                   Whereupon,

5   **THOMAS L. HARTMAN**

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

9                   **BY MR. DONALDSON:**

10                   **Q**     Good morning, Mr. Hartman.

11                   **A**     Good morning.

12                   **Q**     You were here and you were sworn; is that  
13                   correct?

14                   **A**     Yes, I was.

15                   **Q**     Would you please state your name and business  
16                   address?

17                   **A**     My name is Thomas L. Hartman. My business  
18                   address is 700 Universe Boulevard, Juno Beach, Florida.

19                   **Q**     By whom are you employed and in what capacity?

20                   **A**     I'm employed by Florida Power & Light Company  
21                   as Director of Business Development.

22                   **Q**     Have you prepared and caused to be filed 12  
23                   pages of prefiled direct testimony in this proceeding on  
24                   March 6th, 2015?

25                   **A**     Yes. Yes, I have.

1           **Q**     Do you have any changes or revisions to your  
2 prefiled direct testimony?

3           **A**     No, I do not.

4           **Q**     If I was to ask you the same questions  
5 contained in your direct testimony, would your answers  
6 be the same?

7           **A**     Yes, they would be.

8           **MR. DONALDSON:** I ask that Mr. Hartman's  
9 prefiled direct testimony be inserted into the record as  
10 though read.

11           **COMMISSIONER EDGAR:** The prefiled testimony  
12 will be entered into the record as though read.

13 **BY MR. DONALDSON:**

14           **Q**     Are you also sponsoring Exhibits TLH-1 through  
15 TLH-4 to your direct testimony?

16           **A**     Yes, I am.

17           **MR. DONALDSON:** Okay. Madam Chair, I would  
18 just like to note that TLH-2 is the Purchase and Sale  
19 Agreement that has been marked as confidential for the  
20 record. I would also like to note that TLH-1 through  
21 TLH-4 have been premarked for identification purposes on  
22 staff's Comprehensive Exhibit List Nos. 2 through 5.

23           **COMMISSIONER EDGAR:** Thank you.

24 **BY MR. DONALDSON:**

25           **Q**     Have you also prepared and cause to be filed

1 ten pages of prefiled rebuttal testimony on June 17th,  
2 2015?

3 **A** Yes, I have.

4 **Q** Do you have any changes or revisions to your  
5 prefiled rebuttal testimony?

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

7 **Q** If I ask you the same questions contained in  
8 your rebuttal testimony, would your answers be the same?

9 **A** Yes, they would be.

10 **MR. DONALDSON:** I would ask that Mr. Hartman's  
11 prefiled rebuttal testimony be inserted into the record  
12 as though read.

13 **COMMISSIONER EDGAR:** The prefiled rebuttal  
14 testimony will be entered into the record as though  
15 read.

16 **BY MR. DONALDSON:**

17 **Q** Are you also sponsoring Exhibits TLH-5 through  
18 TLH-7 to your rebuttal testimony?

19 **A** Yes, I am.

20 **MR. DONALDSON:** Madam Chair, I'd also like to  
21 note that TLH-5 through TLH-7 have been premarked for  
22 identification purpose on staff's Comprehensive Exhibit  
23 List Nos. 61 through 63.

24 **COMMISSIONER EDGAR:** Thank you.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**FLORIDA POWER & LIGHT COMPANY**

**TESTIMONY OF THOMAS L. HARTMAN**

**DOCKET NO. 15\_\_\_\_\_ -EI**

**MARCH 6, 2015**

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

A. My name is Thomas L. Hartman. My business address is 700 Universe Blvd., Juno Beach, FL 33408.

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

A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as the Director - Business Development in Energy Marketing and Trading.

**Q. What are your present job responsibilities?**

A. My current responsibilities include: providing analyses and support to assist the Company in determining whether and on what terms to extend or replace expiring purchase power contracts; evaluating and identifying improvement opportunities and negotiating amendments to existing long term power purchase agreements; negotiating new power purchase agreements; and assisting in the development of draft purchase power agreements for future generation capacity purchases.

**Q. Would you please give a brief description of your educational background and professional experience?**

A. I received a Bachelor of Science Degree in Mechanical Engineering and Aerospace Sciences in 1974, and a Master’s Degree in Mechanical Engineering in

1 1975 from Florida Technological University. I received a Masters of Business  
2 Administration degree from Georgia State University in 1985. I have been  
3 employed at FPL since July 2003, first in Resource Assessment and Planning, and  
4 currently in Energy Marketing and Trading. From 1994 until joining FPL, I was  
5 employed by FPL's unregulated affiliate, FPL Energy, LLC and its predecessor  
6 company. Throughout my employment at FPL Energy I held a number of  
7 positions in Business Management, where I had responsibility for various  
8 unregulated power projects, including responsibility for administering,  
9 negotiating, and modifying power purchase agreements. Prior to joining FPL  
10 Energy, I was with a number of consulting firms, providing management and  
11 technical consulting.

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

13 A. My testimony is provided to support FPL's request for approval of the acquisition  
14 of CBAS Power Inc. ("CBAS") and its subsidiaries from CBAS Power Holdings,  
15 LLC., for purposes of cost recovery through the Capacity Cost Recovery Clause  
16 ("CCR Clause") as well as base rates. My testimony supports the proposed  
17 transaction to purchase CBAS ("the Cedar Bay Transaction"), including a  
18 description of the Cedar Bay generating unit ("the Cedar Bay Facility" or "the  
19 Facility"), a summary of the CBAS acquisition contract ("the Purchase and Sale  
20 Agreement" or "the Agreement"), identification of the principal benefits, and  
21 quantification of the projected cost savings for customers resulting from the  
22 transaction.

1 **Q. Have you prepared, or caused to be prepared under your direction,**  
2 **supervision, or control, exhibits in this proceeding?**

3 A. Yes. They consist of the following exhibits:

- 4 • Exhibit TLH-1 Existing Contract Capacity and Operation & Maintenance  
5 (“O&M”) Payment Obligations
- 6 • Exhibit TLH-2 Purchase & Sale Agreement (Confidential)
- 7 • Exhibit TLH-3 Cedar Bay Ownership Structure
- 8 • Exhibit TLH-4 Results of FPL’s Economic Evaluation

9 **Q. Can you provide some background on the Cedar Bay Facility?**

10 A. The Cedar Bay Facility is a 250 Megawatt (“MW”) coal fired cogeneration unit  
11 located in Jacksonville, Florida, using three circulating fluidized bed boilers and a  
12 single steam turbine. Limestone injection into the bed is used for Sulfur Dioxide  
13 (“SO<sub>2</sub>”) control. Steam is sold to an adjacent linerboard facility, so it is eligible  
14 for Qualifying Facility (“QF”) status as a co-generator. All of the Facility’s  
15 electrical energy and capacity are sold to FPL pursuant to a long term Power  
16 Purchase Agreement (“PPA”).

17

18 The original PPA was executed in 1988 and approved by the Commission in  
19 Order No. 21468, issued June 28, 1989 in Docket No. 881570-EQ. The terms of  
20 the PPA were negotiated consistent with the Commission’s rules for QFs.  
21 Therefore, FPL was obligated to make capacity payments to Cedar Bay based on  
22 the approved “avoided unit,” which at the time was assumed to be an integrated  
23 coal gasification combined cycle unit. The PPA was last amended in 2002, and

1 the amendment was approved by the Commission in Order No. PSC-03-0157-  
2 PAA-EI, in Docket No. 020995-EI issued on January 30, 2003. The PPA expires  
3 at the end of 2024.

4  
5 Capacity and O&M payments are fixed in the contract and escalate yearly, as  
6 shown in Exhibit TLH-1. Additionally, if the Facility's availability performance  
7 meets the contractual threshold, the Facility is eligible for a bonus capacity  
8 payment of up to an additional 5%.

9  
10 As noted by the Commission in Order No. 21468, Commission rules at the time  
11 required the use of a state-wide 500 MW coal unit as the avoided unit in a  
12 required standard offer contract. The present value of the revenue requirements  
13 of the PPA were less than those in the standard offer contract, and therefore  
14 approved by the Commission.

15  
16 The Cedar Bay Facility is dispatchable by FPL within the operating limits of the  
17 Facility. When FPL dispatches the Facility, FPL compensates Cedar Bay  
18 Generating Company, Limited Partnership. ("Cedar Bay Genco") for energy  
19 delivered to FPL based on the unit cost for coal at the Saint Johns River Power  
20 Park ("SJRPP"), as reported to the FPSC in what is currently Schedule A4, times  
21 a fixed heat rate. This results in an energy cost to FPL's customers very similar to  
22 the costs of SJRPP and a similar dispatch rate, currently about 50% per year.  
23 When the Cedar Bay Facility is operating, under current economic conditions, it



1 produces energy at a net loss (to Cedar Bay Genco) – that is, the fuel for the  
2 Facility costs more than FPL pays for the energy output. However, the very high  
3 capacity and O&M fixed payments result in the PPA being profitable for Cedar  
4 Bay Genco.

5  
6 When FPL elects to decommit the Facility, Cedar Bay Genco retains the right to  
7 continue to operate the Facility, delivering energy to FPL. During such periods,  
8 payment to Cedar Bay Genco is limited to the lower of the energy price as  
9 calculated in the preceding paragraph, or 99% of FPL’s avoided cost. In recent  
10 years, when FPL has elected to decommit the Facility, Cedar Bay Genco normally  
11 has elected to shut down.

12  
13 Conversely, while energy costs under the existing PPA are competitive, the high  
14 fixed O&M and capacity costs in today’s market make the output of this PPA  
15 very expensive for FPL’s customers. As a reference, the “all in” price of energy  
16 from the Cedar Bay Facility in 2014 was over \$178/MWh, compared to an  
17 average FPL avoided cost of \$27/MWh.

18 **Q. Is the Cedar Bay Facility technically and financially viable for the remainder**  
19 **of the PPA term?**

20 A. Yes. The Facility is very well run and dependable, with consistent capital  
21 expenditures by the owner to keep it in good operating condition. There is every  
22 reason to believe that the equipment and facilities will remain operable through  
23 the end of the PPA with regular maintenance and recurring capital improvements.

1

2 Financially, operating the Facility under the PPA is profitable for Cedar Bay  
3 Genco, and the cash flows adequately support the debts, operations and needed  
4 recurring capital.

5

6 This is further supported by the fact that the debt was refinanced in 2013 which  
7 indicates that the lenders believed the Facility remained viable at that time,  
8 largely due to the contractual payments from FPL.

9

**Q. Can you briefly summarize the Cedar Bay Transaction?**

10

A. Yes. The complete details of the proposed Cedar Bay Transaction are provided in  
11 the Purchase and Sale Agreement, attached as Exhibit TLH-2.

12

13 Briefly, FPL will purchase 100% of the equity interests in CBAS from CBAS  
14 Power Holdings, LLC for a fixed payment of \$520.5 million. As shown in  
15 Exhibit TLH-3, CBAS owns the Cedar Bay Facility indirectly through a series of  
16 wholly owned subsidiary companies.

17

18 At closing of the Cedar Bay Transaction, all of the third party debt of the acquired  
19 entities will be canceled. Additionally, FPL will purchase the working capital of  
20 the Cedar Bay Facility (fuel inventory, spare parts, tools, etc.) and record it at fair  
21 value.

22

1 Immediately after closing, FPL will cancel the existing PPA. Cedar Bay Genco  
2 will contract with Cedar Bay Operating Services to operate the Facility under  
3 FPL's direction. FPL currently anticipates that the Facility will be economically  
4 dispatched no more than about 5% of the time. Additionally, FPL anticipates  
5 operating the Facility through the end of 2016. In early 2017, before the summer  
6 peak season, the new interstate natural gas pipeline into Florida is expected to  
7 enter commercial operation and FPL believes presently that at that time the  
8 Facility may no longer be economic to dispatch and would be retired under those  
9 circumstances.

10 **Q. Why is the Cedar Bay Facility owned and operated through multiple CBAS**  
11 **subsidiaries?**

12 A. The subsidiaries are predominantly a result of the initial financing structure of the  
13 project and then the impact of multiple changes in ultimate ownership and control  
14 during the life of the project. Cedar Bay Genco holds all of the assets for the  
15 project, including operating contracts. At the time of closing, the remaining  
16 subsidiaries of CBAS will have only intercompany assets and liabilities, holding  
17 no third party liabilities.

18 **Q. What are the customer benefits of the proposed Cedar Bay Transaction?**

19 A. FPL's customers will receive at least three benefits. First, as discussed above, the  
20 capacity payments under the PPA in today's market are very high as shown on  
21 Exhibit TLH-1. The negotiated Cedar Bay Transaction will terminate FPL's  
22 obligation to make those payments, thereby saving substantial costs for our  
23 customers.

1

2 Second, FPL maintains for its customers the option of continued fuel reliability  
3 and diversity by keeping the Cedar Bay Facility in service, without the obligation  
4 to continue the existing PPA. While FPL currently anticipates retiring the Facility  
5 at the end of 2016, if economic conditions change we can continue to operate. In  
6 that case, customer savings would be higher than our current estimate.

7

8 Third, the Cedar Bay Facility is a very high emitter of Carbon Dioxide (“CO<sub>2</sub>”).  
9 FPL anticipates that changing the rate of dispatch from 50% to 5% per year will  
10 reduce CO<sub>2</sub> emissions in Florida by nearly a million tons per year once FPL takes  
11 control of the Facility and dispatches based on its true energy costs. This  
12 reduction in CO<sub>2</sub> equates to removing approximately 182,000 vehicles from the  
13 roads. This may be a particularly important benefit depending on the scope and  
14 timing of implementing the EPA’s Clean Power Plan regarding CO<sub>2</sub> emissions.

15 **Q. What is FPL’s estimate of customer savings as a result of the proposed Cedar  
16 Bay Transaction, and how were those savings estimated?**

17 A. Customer savings are estimated to be \$70 million cumulative present value  
18 revenue requirements (“CPVRR”), (\$156 million nominal savings) as shown in  
19 Exhibit TLH-4. This estimate is the result of an economic evaluation of the  
20 revenue requirements to customers under the current PPA structure versus the  
21 proposed Cedar Bay Transaction. The UPLAN production costing model was  
22 used to quantify the system impacts of the Cedar Bay Transaction as well as the  
23 impact of various alternative fuel and emission sensitivities. The key components

1 of this estimate are the elimination of fixed-cost payments under the PPA,  
2 compared to the impact on FPL's system costs if the PPA is no longer in place.

3  
4 Exhibit TLH-1 shows the two types of fixed-cost payments that FPL is obligated  
5 to make under the PPA: capacity and fixed O&M. While there are performance  
6 standards that Cedar Bay Genco must meet in order to qualify for these payments,  
7 Cedar Bay Genco reliably achieves those standards and, recent years, has  
8 consistently earned the potential performance bonus. Over the remaining life of  
9 the PPA, the Net Present Value ("NPV") of the standard payments is \$993.4  
10 million. The NPV of potential performance bonus payments is another \$44.3  
11 million. Thus, the NPV of the total amount of payments that FPL customers are  
12 obligated to make for the Cedar Bay Facility over the remaining life of the PPA is  
13 expected to be \$1,038 million.

14  
15 The PPA currently provides both capacity and energy to our customers. The PPA  
16 is dispatchable by FPL at favorable PPA energy prices, thereby dispatching more  
17 often than its actual production costs would warrant. Consequently, loss of the  
18 PPA would require the dispatch of other FPL units that are more costly than the  
19 PPA energy cost to replace the output of the Facility. This impact in differential  
20 production costs is estimated through FPL's system cost analysis. FPL's  
21 production cost model is run with and without the Cedar Bay Facility and PPA  
22 attributes. The difference in CPVRR of the two simulations represents the system  
23 cost impact of canceling the PPA as proposed in the Cedar Bay Transaction. The

1 system cost impact is estimated at \$86 million, meaning that customers would  
2 incur an additional \$86 million in costs of dispatching other units on FPL's  
3 system to replace the Cedar Bay Facility's energy.

4  
5 In addition to the system impacts of the Cedar Bay Transaction, other components  
6 of the economic evaluation include operating costs and fees while FPL operates  
7 the Facility, costs of working capital acquired as part of the transaction, the costs  
8 associated with dismantlement of the facility at the end of its economic life, costs  
9 associated with various contracts assumed as part of the Cedar Bay Transaction  
10 (including land lease, steam sales agreements, rail car lease etc.), and the revenue  
11 requirements associated with the purchase price (and its associated financing  
12 costs) for the Cedar Bay Transaction itself.

13 **Q. Were customer impacts analyzed under a range of sensitivities to the key**  
14 **assumptions?**

15 A. Yes. Two sensitivities for natural gas prices and two sensitivities for emissions  
16 costs were developed and used to analyze the Cedar Bay Transaction. Natural gas  
17 prices were varied by plus and minus 20% -- Low Fuel Case of -20% and High  
18 Fuel Case of +20% relative to the Base Case forecast. This is a sufficiently broad  
19 range in expected natural gas prices to deliver a meaningful range of expected  
20 results. Similarly, two environmental sensitivities were developed: a Low  
21 Environmental Case of -20% and a High Environmental Case of +20% relative to  
22 the Base Case forecast of emissions costs. The expected impact of these

1 sensitivities on the overall customer benefit of the Cedar Bay Transaction is  
2 shown in the table below:

3 CPVRR Net Cost/ (Net Benefit) of Transaction

4 \$ Millions (2015)

	Low Case Fuel	Base Case Fuel	High Case Fuel
Low Case Emissions	\$(106)	\$(72)	\$(9)
Base Case Emissions	\$(105)	\$(70)	\$(6)
High Case Emissions	\$(104)	\$(69)	\$(3)

5

6 **Q. What is the significance of this range of projected benefits?**

7 A. First, under the Base Case set of assumptions, the net benefit of \$70 million is a  
8 significant savings for customers relative to the status quo of continuing to receive  
9 capacity and energy under the existing PPA. Second, it is noteworthy that for all  
10 of the sensitivities analyzed, the Cedar Bay Transaction is expected to provide  
11 customer savings.

12 **Q. What will happen to the Facility if the Commission approves this  
13 transaction?**

14 A. The Cedar Bay Facility will be added to FPL’s fleet, available to meet customers’  
15 needs for capacity and energy. We anticipate the Facility will run much less

1 frequently, 5% capacity factor versus 50% currently because it will be dispatched  
2 based on its true energy costs. Additionally, as a result of the reduced dispatch,  
3 the environmental impact of the Facility on Florida will be greatly reduced.

4  
5 FPL anticipates operating the Cedar Bay Facility at least through 2016. With the  
6 new gas pipeline coming into service in early 2017, FPL believes it will be  
7 uneconomic to operate the Facility. If, however, it is shown to be economic at the  
8 time, operations could be continued if it would provide additional customer  
9 benefits. When FPL determines that the Cedar Bay Facility is no longer needed  
10 to meet customers' needs, the Facility will be sold or dismantled.

11 **Q. Does that conclude your testimony?**

12 A. Yes



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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**REBUTTAL TESTIMONY OF THOMAS L. HARTMAN**  
**DOCKET NO. 150075-EI**  
**JUNE 17, 2015**

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

A. My name is Thomas L. Hartman. My business address is 700 Universe Blvd., Juno Beach, FL 33408.

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

A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as the Director - Business Development in Energy Marketing and Trading.

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

A. Yes. My direct testimony was submitted on March 6, 2015.

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

A. The purpose of my testimony is to respond to the testimonies of OPC’s witnesses Dawson and Brunault, and FIPUG’s witnesses Lane and Pollock who erroneously allege that (1) the five percent bonus capacity payment used in FPL’s analysis is too high, (2) the St. Johns River Coal price forecast used in FPL’s analysis is too high, (3) FPL agreed to pay an excessive price under the transaction due to “undue stimulus”, (4) FPL should keep the facility operating past 2016 because the unit is viable and provides fuel diversity, (5) FPL has not properly accounted for the costs and benefits associated with either needing additional capacity, or having excess

1 capacity to sell, and (6) a pure PPA buyout is a practical alternative to the current  
2 transaction.

3

4 My testimony will show that intervener witnesses are wrong on each of these  
5 points:

- 6 • The Cedar Bay generating unit (“the Cedar Bay Facility” or “the Facility”) has  
7 achieved an average Capacity Factor (as defined in the Purchase Power  
8 Agreement (“PPA”)) of 98.61% for each month from January 2010 through  
9 February 2015, which is above the level needed to earn the 5% bonus. In 2014,  
10 the average was 101.465%. I will show why continued performance above the  
11 98% threshold is a reasonable estimate of future performance.
- 12 • FPL’s forecast of fuel cost for St. Johns River Power Park (“SJRPP”) is  
13 reasonable, and the unsupported conjecture of lower prices by the intervener  
14 witness is unreasonable.
- 15 • What the intervener witness characterizes as “undue stimulus” is, in fact, simply  
16 the unfavorable economics of the PPA, which Cedar Bay Generating Company,  
17 Limited Partnership. (“Cedar Bay Genco”) presently is entitled to enforce.  
18 Those unfavorable economics can be avoided only by negotiating an alternative,  
19 mutually beneficial transaction. This is exactly what FPL has done, in order to  
20 save our customers money.
- 21 • FPL plans to operate the Facility through the end of 2016 for reliability reasons.  
22 Under current economic conditions it is projected not to be in our customers’

1 interests to continue operation of the unit past that point.

2 • FPL has properly accounted for the costs of PPAs to meet the 20% reserve  
3 margin. FPL has not included the potential benefit of selling excess capacity in  
4 the analysis, because the market for such capacity is highly speculative,  
5 particularly at the price point of this unit.

6 • Finally, FPL pursued the current transaction to acquire both the plant and the  
7 PPA. We wanted the plant for its short term reliability value. The benefits of a  
8 sole PPA buyout are pure speculation and unlikely to be realized in any event.

9 **Q. Do you have any exhibits to your testimony?**

10 A. Yes.

- 11 • Exhibit TLH-5 – Historical operating performance of the Cedar Bay Facility
- 12 • Exhibit TLH-6 – Graph of Monthly Capacity Factor from January 2010 through  
13 December 2014
- 14 • Exhibit TLH-7 – Economics of operating the Cedar Bay Facility through 2024

15 **Q. What do the interveners claim about FPL’s estimate of bonus capacity  
16 payments that would be made if the Cedar Bay PPA remained in effect?**

17 A. This is primarily addressed by witness Brunault, although his analysis is also  
18 adopted by witness Dawson. Witness Brunault makes three assertions: (1)  
19 historically from 2007 through 2014 the capacity bonus earned was 2.59% [page 7,  
20 line 4], (2) nothing has changed at the Facility to more reliably earn a capacity  
21 bonus [page 7 line 9] and (3) a target Equivalent Forced Outage Rate (“EFOR”) in  
22 the business plan of 3.5% translates to an approximate 2.5% bonus. Each of these

1 assertions is incorrect. Let me address them in reverse order.

2

3 Witness Brunault asserts (page 8, line 5) that an EFOR rate of 3.5% results in an  
4 equivalent availability of 96.5%, translating into an approximate 2.5% Bonus  
5 Capacity Revenue. This is not true. Consider actual historical performance data  
6 from the Cedar Bay Facility from 2010 through 2013 (see Exhibit TLH-5). During  
7 that period the EFOR averaged 3.34% with an Equivalent Availability Factor  
8 (“EAF”) of 85.23%. Witness Brunault neglects to account for the fact that Capacity  
9 Factor, as defined in the PPA, is significantly different from either capacity factor  
10 or equivalent availability as generally used in the industry. As a simple example, if  
11 during on-peak hours FPL dispatches the Facility above 175 MW, it is credited with  
12 an output of 258 MW, or 103.2% of rated capacity. The Capacity Factor, as  
13 defined in the PPA, from 2010 through 2014 has averaged 98.79%, which, under  
14 the terms of the PPA would result in the Cedar Bay Facility earning slightly better  
15 than the 5% bonus.

16

17 Witness Brunault is also in error when he states that “Nothing stands out to  
18 demonstrate that extraordinary efforts are being undertaken to overcome the effects  
19 of aging on the plant’s ability to earn bonus payments” [page 7 line 9]. He then  
20 goes on to note that “there have been significant problems over the years with  
21 erosion-related tube leaks in all three boilers, although most of those issues were  
22 prior to 2007....” While dismissed by witness Brunault in a cavalier fashion, this  
23 is exactly the point. As noted by URS Corporation in their 2012 review of the

1 Cedar Bay Facility's operations, the Facility has proactively addressed the EFOR  
2 problems. According to URS "[m]ost of the improvement over the past few years  
3 is attributable to the programs put in place in previous years that appear to be  
4 providing meaningful and early warnings of potential equipment/system  
5 performance." Witness Patterson testifies to the technical and operational changes  
6 that have been successfully implemented. The effectiveness of these efforts is  
7 demonstrated by the performance achievements of the Facility.

8  
9 The final point to be addressed is witness Brunault's belief that the historic  
10 achieved capacity bonus of 2.59% since 2007 is the appropriate value to be used for  
11 the future. FPL believes that a capacity bonus of 5% (reflecting a 98% capacity  
12 factor) is appropriate for the future. Exhibit TLH-6 provides the monthly data for  
13 Capacity Factor as defined in the PPA. The dramatic impact of the performance  
14 improvements is readily apparent. According to witness Brunault's Exhibit GB-1,  
15 the average annual bonus capacity revenue over the last three years was 6.25%,  
16 which was worth \$20.9 million in additional revenue to Cedar Bay Genco.

17  
18 Witness Brunault apparently believes that the performance improvements evident  
19 since January 2010 are not sustainable, and denies that plant improvements can be  
20 sustained over the remaining life of the PPA, as discussed above. This is refuted by  
21 the testimony of witness Patterson. Sustainability is demonstrated by the fact that  
22 the Facility is meeting its debt service obligations and generating profits for the  
23 owners as demonstrated by the financial statements of Cedar Bay Genco. FPL

1 believes that the Cedar Bay Facility has demonstrated that operating at this  
2 Capacity Factor is profitable and technically achievable. We see no reason why the  
3 Cedar Bay Facility would not continue to operate at this high level.

4 **Q. Why is the intervener’s projection of SJRPP fuel costs unreasonable?**

5 A. Witness Dawson notes that SJRPP obtains coal from the Ace In The Hole mine in  
6 Indiana under a contract that expires at the end of 2015 and Colombian coal under a  
7 contract that expires at the end of 2016 [page 8 line 2]. Witness Dawson posits that  
8 using lower current spot prices for coal instead of the expiring contract will result in  
9 a lower overall price of coal at SJRPP [page 8 line 22]. Additionally, witness  
10 Dawson eliminates FPL’s expected cost increase for 2016 in estimating his savings.

11  
12 SJRPP is subject to the Mercury and Air Toxics Standards (“MATS”) rule,  
13 effective April of this year. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED].

1           Witness Dawson’s assumptions, based upon which he reduced customer savings of  
2           this transaction by \$14 million due to lower cost coal for SJRPP, are simply not  
3           valid.

4   **Q.    Was FPL subject to “undue stimulus” in negotiating the transaction as claimed**  
5   **by witness Lane?**

6   A.    No. This is an unusually reckless assertion, unsupported by any facts. This was an  
7   arm’s length transaction between two independent organizations. Witness Lane  
8   appears to believe that because the PPA resulted in prices above market, the very  
9   presence of the PPA represents “undue stimulus.” Under witness Lane’s definition,  
10   a simple buyout of the PPA for any price could not be accomplished at “Fair  
11   Market Value” because the PPA would represent “undue stimulus.” This is  
12   ludicrous. The definition cited by witness Lane is commonly used in real estate  
13   appraisal. This transaction is not real estate – it is the acquisition of a group of  
14   corporate entities which control and own not only the physical assets of Cedar Bay  
15   Genco, but also the rights to the PPA. This “undue stimulus” claimed by witness  
16   Lane – i.e., the above market PPA – is one of the assets being acquired in the  
17   transaction.

18   **Q.    Why would FPL not continue to operate the Cedar Bay Facility until at least**  
19   **2024 as suggested by witness Pollock?**

20   A.    FPL’s decisions regarding whether and when to continue operating the Cedar Bay  
21   Facility will be based on the best interest of its customers. While FPL agrees with  
22   witness Pollock that “[i]f well operated and maintained, the Cedar Bay Facility can  
23   be used and useful until at least 2024,” at the present time it is not in the best

1 interest of FPL's customers to do so. FPL intends to operate the Cedar Bay Facility  
2 through the end of 2016 for reliability reasons. Extending the operations until the  
3 end of 2024, as suggested by witness Pollock, would cost our customers \$70  
4 million (CPVRR) more than shutting it down as currently anticipated, as shown in  
5 Exhibit TLH-7. Operation past 2016 would be justified only for reliability  
6 requirements, which is not expected.

7 **Q. Witness Dawson believes that FPL is subject to potentially much higher costs**  
8 **for additional capacity in 2018 and has the opportunity to sell capacity in 2022**  
9 **if the Cedar Bay Transaction does not occur. Do you agree?**

10 A. No. FPL's forecast, as witness Dawson notes, uses a 2015 purchase proxy price of  
11 \$■■■■/kW-month in 2015, which FPL believes is conservative. Presently FPL can  
12 purchase capacity in the market with high heat rates for pricing between \$■■■■ and  
13 \$■■■■/kW-month. Witness Dawson indicates that FPL's cost for peaking capacity  
14 could go much higher, based upon an EIA forecast cost of a new peaking unit [page  
15 12 line 2]. Witness Dawson, however, fails to recognize market realities. There is  
16 excess short term peaking capacity available in Florida. In this environment,  
17 market participants only sell above their variable cost, without regard to their fixed  
18 costs, in order to generate a contribution margin. As a result, market prices are  
19 much lower than witness Dawson has indicated.

20  
21 Witness Dawson also suggests that the capacity from the Cedar Bay Facility would  
22 result in FPL being above the 20% capacity reserve margin in 2022, leading to the  
23 capability of selling this capacity into the market. FPL occasionally does sell



1 capacity into the market when above the required 20% reserve margin. Such sales  
2 however, are system sales, not sales from a particular unit. Additionally, for  
3 planning purposes, although FPL considers purchases to maintain the required 20%  
4 capacity margin, we do not plan for short term sales. FPL's capacity, including its  
5 reserve margin, is to meet the needs of its customers. Short term sales of energy  
6 and capacity are normally recallable by FPL to meet our customers' requirements.  
7 As a result, these sales are not as firm as those from a generating company and this  
8 can be expected to be reflected in the price. A short term capacity sale by FPL in  
9 2022 would be purely speculative at this point.

10 **Q. Could FPL consider a pure PPA buyout as suggested by witness Dawson?**

11 A. FPL pursued the current transaction as a clean way to acquire both the plant and the  
12 PPA. We wanted the plant, although it didn't have long term economic value,  
13 because it provides short term reliability value until both the new Port Everglades  
14 Energy Center and the third natural gas pipeline into Florida go into service.  
15 Accordingly, FPL pursued the better and necessary alternative of a transaction that  
16 would allow ownership of the plant for a limited period of time for reliability  
17 purposes and did not "dual track" negotiations to consider a pure PPA buy-out  
18 option.

19  
20 In any event, there is no guarantee that FPL could negotiate an agreement along the  
21 terms outlined by witness Dawson, should the Florida Public Service Commission  
22 ("FPSC" or "Commission") not approve the current transaction.

23

1        Witness Dawson's estimate of \$129 million savings for a speculative and  
2        hypothetical ██████████ PPA buyout shown in Exhibit CCD-5 incorporates a  
3        number of additional assumptions which have already been addressed here or in  
4        FPL witness Barrett's rebuttal testimony as being unreasonable – reduction of the  
5        bonus capacity payment to 2.59%, sale of capacity in 2022, adjustment in the  
6        SJRPP fuel cost, and no equity return on the investment. Once these unreasonable  
7        assumptions are eliminated it is likely that the benefits of this speculative and  
8        hypothetical transaction would be comparable to the projected benefits for the  
9        existing transaction before the Commission. Witness Dawson's projections as  
10       stated in his testimony and illustrated in his Exhibits CCD-5 and CCD-6 are simply  
11       not likely to be achievable and are not before this Commission in this docket in any  
12       case.

13    **Q.    Do you have any final comments?**

14    A.    Yes. In rebuttal I have shown that the intervener's concerns are not valid.  
15       However, please note that, in the most pessimistic case, as presented by witness  
16       Dawson, containing a host of unrealistic or unfounded assumptions, the proposed  
17       transaction still results in customer savings of \$32 million. The Commission should  
18       approve the transaction.

19    **Q.    Does this conclude your rebuttal testimony?**

20    A.    Yes, it does.

1           **MR. DONALDSON:** I tender the witness for  
2 cross-examination.

3           **COMMISSIONER EDGAR:** Mr. Moyle.

4           **MR. MOYLE:** Is he going to do a summary?

5           **MR. DONALDSON:** No summary.

6           **COMMISSIONER EDGAR:** Summary waived?

7           **MR. DONALDSON:** Summary is waived.

8           **MR. BUTLER:** Does Mr. Moyle want him to give  
9 the summary so he can think of questions a little  
10 longer?

11           **MR. MOYLE:** No. I'm okay. Thank you, though.  
12 Thanks for looking out for me, Mr. Butler. I always  
13 appreciate it.

14           **MR. BUTLER:** Always happy to do so.

15   **EXAMINATION**

16           **BY MR. MOYLE:**

17           **Q**     Good morning, Mr. Hartman. How are you?

18           **A**     Good morning, sir.

19           **Q**     Have you read the Prehearing Order in this  
20 case?

21           **A**     I have scanned it, yes.

22           **Q**     So you've read it?

23           **A**     Yes.

24           **Q**     And there's a provision in there that suggests  
25 the witnesses answer yes, no, and then if they need an

1 opportunity to explain, to do so. But yes, no answers  
2 are sufficient as a going proposition. You're familiar  
3 with that; right?

4 **A** Yes.

5 **Q** Okay. Would you do your best to abide by that  
6 language in the Prehearing Order?

7 **A** Yes, I will.

8 **Q** Okay. Let me turn you to your exhibit.  
9 You're doing both your direct and your rebuttal?

10 **A** That's my understanding.

11 **Q** So in your direct, TLH-4, would you turn to  
12 that, please? Tell me when you're there.

13 **A** I'm there.

14 **Q** What does -- what does line M -- well, first  
15 of all, what's the document entitled?

16 **A** The document is entitled Results of FPL's  
17 Economic Evaluation.

18 **Q** And there's nothing on this document that's  
19 confidential; right?

20 **A** That's correct.

21 **Q** And what -- what is line M entitled?

22 **A** Line M is entitled Net Customer Cost/Savings.

23 **Q** And the savings are represented by numbers  
24 with parentheses around them?

25 **A** That's correct.

1           **Q**     Okay. So am I correct that in 2015, 2016,  
2           2017, and 2018 that this arrangement, if the Commission  
3           approves it, is going to cost the ratepayers 70 million  
4           in costs in the first four years?

5           **A**     That's correct.

6           **Q**     You were the chief negotiator on this deal?

7           **A**     Yes, I led the team.

8           **Q**     Okay. And who did you negotiate with on the  
9           other side?

10          **A**     The lead negotiator on the other side was Jim  
11          Larocque from Carlyle. There was other members of the  
12          Carlyle team including Cogentrix general counsel and  
13          Cliff Evans from Cogentrix.

14          **Q**     And the two exhibits that FIPUG has identified  
15          with Mr. Barrett and marked 64 and 65, those were the  
16          extent of written documentations with respect to price;  
17          correct?

18          **MR. DONALDSON:** I'm not sure he actually has  
19          the exhibits in front of him.

20          **MR. MOYLE:** Back to our previous conversation  
21          about using these exhibits, I'm happy to get them to  
22          him.

23          **MR. DONALDSON:** Yeah. I just wanted to make  
24          sure that he knows what you're talking about.

25          **COMMISSIONER EDGAR:** Thank you. Mr. Rehwinkel

1 will provide the witness with his copy.

2 **MR. MOYLE:** Thank you, Mr. Rehwinkel.

3 **BY MR. MOYLE:**

4 **Q** And just for the record, you're being shown  
5 exhibits, these have been admitted into evidence, 64 and  
6 65.

7 **A** With the exception that the March 24th letter  
8 from Carlyle appears to be a draft rather than the  
9 actual one we received. They're consistent with what we  
10 had in terms of a formal back and forth upfront. I'm  
11 sure that there were other numbers that changed and were  
12 back and forth in terms of negotiating the power -- the  
13 Purchase and Sale Agreement and O&M agreements, et  
14 cetera.

15 **Q** And when you say you're sure that there were,  
16 do you have recollection of that? If I said, well, tell  
17 me about -- about those discussions, could you do that?

18 **A** Certainly. We negotiated a -- you know, these  
19 letters started the process and we negotiated a Purchase  
20 and Sale Agreement, and the Purchase and Sale Agreement  
21 is the ultimate agreement that we're asking the  
22 Commission to approve.

23 **Q** And when you say we negotiated, Mr. Barrett  
24 (sic.), did you have autonomy with respect to the  
25 negotiations?

1           **A**     Excuse me?

2           **Q**     Did you have autonomy? Describe your level of  
3 autonomy with respect to the negotiations.

4                   **MR. DONALDSON:** That's Mr. Hartman on the  
5 stand.

6           **BY MR. MOYLE:**

7           **Q**     I'm sorry.

8           **A**     Basically our -- our small team would meet  
9 with their small team on a periodic basis or we would  
10 have telephone calls with them to clear up and negotiate  
11 language. And we would periodically report back to  
12 Mr. Barrett, Mr. Litchfield, and Mr. Forest as to where  
13 we were sitting and any issues we had with the  
14 negotiations at the time.

15           **Q**     Do you know if Mr. Litchfield, Mr. Barrett,  
16 Mr. Silagy, anybody else on the review team had -- had  
17 other communications with Carlyle members?

18           **A**     I would not be in a position to know what  
19 private communications they had with other people.

20           **Q**     So you just don't know one way or the other?

21           **A**     No, that's correct, I do not.

22           **Q**     Okay. And you -- did Mr. Barrett get it  
23 correctly that the review team was kind of calling the  
24 shots, and you were the chief negotiator that would take  
25 information from them and then impart it to Carlyle?

1           **A**     They would give us guidance, and they would  
2 tell us whether things were acceptable, particularly on  
3 language or numbers, and we would come back with a  
4 position where we needed a decision from them.

5           **Q**     Does the Cedar Bay facility have value as an  
6 operating asset in your view?

7           **A**     Yes, it has value in terms of reliability for  
8 our customers in the near term. It doesn't have  
9 monetary value.

10          **Q**     And explain how it has reliability value in  
11 the near term.

12          **A**     Until the new pipeline comes into the state,  
13 we're limited to two fully subscribed gas pipelines.  
14 This provides basically a hedge on the capabilities of  
15 those lines.

16          **Q**     And have you done any studies or have any  
17 analysis with respect to whether the two existing lines  
18 are insufficient or -- or are not capable of providing  
19 enough natural gas for your needs?

20          **A**     I know as of right now those two pipelines are  
21 consistently full.

22          **Q**     So the answer with respect to have you done an  
23 analysis or study, would that be -- would that be no?

24          **A**     No. The answer would be there is no  
25 additional capacity on those pipelines. All of the



1 capacity is being used. So to say that a study -- I  
2 mean, you know, all of it is being used right now.

3 Q And can't you in natural gas do things to --  
4 to get more flow through natural gas? You increase the  
5 compression, things like that.

6 A That's been done.

7 Q So -- so you don't think there's anymore --  
8 nothing else that can be done to increase any flow of  
9 natural gas that's not already been done?

10 A With the system as it exists at the present  
11 time, all of the natural gas capabilities into the state  
12 are being used in the summer months.

13 Q So -- so then I guess Cedar Bay as a  
14 generating asset does have value to Florida Power &  
15 Light.

16 A I think I testified in my testimony that we  
17 have a reliability benefit that we see with this unit.  
18 It's one of the reasons why we went down this means of  
19 the transaction so that we can still have the capability  
20 of running that unit through the end of 2016.

21 Q So you'll put it in, it'll be part of your  
22 generating fleet, you'll put it in and look at it and  
23 dispatch it as you would your other assets?

24 A Yes, we will.

25 Q Mr. Pollock, you're familiar with his

1 testimony; correct?

2 **A** Yes, I am.

3 **Q** And he -- he said, and I'm paraphrasing, so --  
4 but he essentially said, you know, FPL is pretty long in  
5 gas now, 70 percent gas, not a lot of coal. Fuel  
6 diversity is an important consideration, and it may not  
7 make that much sense to, you know, buy this coal unit  
8 and then retire it. Do you disagree with that general  
9 proposition?

10 **A** There were multiple propositions in what you  
11 said. I agree that we are long natural gas. I agree  
12 with Mr. Pollock's statement that the plant could run  
13 until 2024 readily. The issue becomes that it can't run  
14 at an economic cost. For reliability reasons you can  
15 justify some of that, but after we have the third  
16 pipeline, there's no economic benefit to maintaining  
17 that plant in an operating condition.

18 **Q** And that's based on today's economics and  
19 projections; correct?

20 **A** That's based on the forward curve of natural  
21 gas and coal; correct.

22 **Q** And you've been in this business long enough  
23 to know that forward curves can change pretty quickly  
24 and dramatically in the natural gas market; correct?

25 **A** Yes, they can.

1           **Q**     What percent of your fleet is fueled by  
2 natural gas?

3           **A**     If you include our power purchase agreements,  
4 it's a little bit more than 2,000 megawatts out of a  
5 25,000 megawatt system. So it's on the order of  
6 8 percent.

7           **Q**     8 percent is fueled by coal?

8           **A**     Fueled by coal.

9           **Q**     Okay. I'm sorry. I asked, first of all,  
10 natural gas. What's your natural gas -- what percentage  
11 is that?

12          **A**     I don't know off the top of my head. I'd have  
13 to go back to the ten-year site plan and look at it.  
14 It's in the neighborhood of 65 percent or so.

15          **Q**     And then the question that you answered, that  
16 8 percent, that's your coal; is that right?

17          **A**     That's correct. It's 8 or 9 percent.

18          **Q**     And does that include the Cedar Bay PPA?

19          **A**     Yes, it does.

20          **Q**     So if the Cedar Bay, if you guys move forward  
21 and close Cedar Bay, what does that take your -- your  
22 coal number down to? From 8 percent to what?

23          **A**     Take 250 megawatts off it, so it's maybe down  
24 to 7 percent instead of 8 percent.

25          **Q**     Do you agree that having fuel diversity is

1 a -- fuel diversity in terms of different power plants  
2 that are fueled on different sources is a good thing for  
3 Florida Power & Light?

4 **A** I agree that fuel diversity is a good thing.  
5 It always has to be balanced off with costs for it also.

6 **Q** Okay. So the answer to that was, yes, fuel  
7 diversity with respect to having different types of fuel  
8 is a good thing; correct?

9 **A** Yes, I would agree with that.

10 **Q** Okay. And sometimes when we talk about fuel  
11 diversity, I want to make sure we're not talking past  
12 each other. I'm asking you specifically fuel diversity  
13 in that you might have some renewable, you might have  
14 some coal, you might have some natural gas. Is that how  
15 you understand that -- understood that question?

16 **A** That's the way I understand it.

17 **Q** Okay. But with respect to your answer in your  
18 testimony about diversity, you use it, I think, in a  
19 different context where you're saying, oh, it provides a  
20 hedge and there's fuel diversity because eventually  
21 we'll have a third pipeline coming in, and you'll have  
22 diversity from other sources of natural gas. Is that --  
23 is that right?

24 **A** No. I was using the issue of the third  
25 pipeline as one of reliability. And, yes, I agree with

1 fuel diversity is a very desirable characteristic, but I  
2 don't believe it is a desirable characteristic at an  
3 unlimited amount of cost. So it's an economic tradeoff.  
4 The plant is being kept online for reliability reasons.

5 Q And that would apply regardless of the -- of  
6 the source of power, correct, whether it be a coal plant  
7 or a solar plant?

8 A That's correct.

9 Q All right. So on page 11 of your direct,  
10 you -- you made some projections about what you think  
11 might be potential savings. 70 million is what you  
12 think is the, kind of the best case; is that right?

13 A \$70 million is our base case projection.

14 Q Okay. And it could -- could be higher.

15 A Yes, as shown on that page.

16 Q And it could -- could be lower.

17 A That's correct.

18 Q And just because you have it on that page,  
19 that doesn't capture the range of possibilities, does  
20 it, on that -- on that nine box that you have on page  
21 11?

22 A It captures a significant range, but I can't  
23 say that it can't exceed the ranges that are here.

24 Q And that holds true -- that holds true on the  
25 high end or the low end; correct?

1           **A**     That's correct.

2           **Q**     Okay.  So you're not -- I mean, you would  
3 agree that as things play out, ratepayers potentially  
4 don't know, maybe, maybe not, they could potentially not  
5 save any money in this transaction depending on how  
6 future -- the future unfolds; correct?

7           **A**     Yes.  The possibility exists that the  
8 customers won't save money.  The likelihood, however, is  
9 that the customers will save substantially.

10          **Q**     And when you say likely, you haven't made any  
11 effort to say there's an X percent chance that they'll  
12 save 70 million, have you?

13          **A**     No.  Our central -- our central forecast says  
14 that they'll save 70 million.

15          **Q**     Right.  And I just want to test it.  I mean,  
16 you can't -- so the same thing with respect to they may,  
17 you know, not save any money, you don't have a  
18 percentage that you can associate with that.

19          **A**     No, I do not.

20          **Q**     So with respect to the negotiations, you --  
21 you called Carlyle; is that right?

22          **A**     I initially called Cogentrix, and they  
23 referred me to Carlyle.

24          **Q**     And who did you initially call?

25          **A**     I called Cliff Evans.

1 Q And what -- what did he say?

2 A I told him that we were interested in seeing  
3 what we could do about reducing the cost at Cedar Bay,  
4 and would they be interested in having discussions on  
5 it.

6 Q Okay. And was this the first time you've ever  
7 had any discussions about possibly doing something  
8 related to the PPA?

9 A No. We've had discussion with the owners of  
10 this facility at least back in 2009 that I was familiar  
11 with.

12 Q Okay. And in 2009 who called who?

13 A I don't recall who called who.

14 Q Were you involved in that?

15 A Yes, I was.

16 Q If Mr. Evans in his deposition said that he  
17 had contacted you, that they had reached out to you,  
18 would you disagree with that?

19 A For which -- which time?

20 Q Well, how many times have there been?

21 A Well, you're saying if Mr. Evans has said that  
22 he had called me, are you talking about on this  
23 transaction or are you talking about 2009?

24 Q It's my understanding that there have been a  
25 number of conversations about buying out this PPA and

1 that never before had FPL reached out to Cogentrix or  
2 Cedar Bay. Is that consistent with your understanding?

3 **A** I don't recall who -- who started the  
4 conversations in 2009.

5 **Q** Do you believe it's significant with respect  
6 to who contacts who?

7 **A** No.

8 **Q** It doesn't say anything with respect to  
9 whether somebody might be more interested in a deal as  
10 compared to somebody else?

11 **A** No, not necessarily.

12 **Q** Okay. And in 2009 -- I may have used the  
13 wrong corporate entity. Carlyle hadn't owned these  
14 assets in 2009; correct?

15 **A** No. They were owned by affiliates of Goldman.

16 **Q** Goldman Sachs?

17 **A** Goldman Sachs.

18 **Q** And did you have conversations with Goldman  
19 Sachs about restructuring?

20 **A** Yes, we did. Yes, we did.

21 **Q** And do you have a recollection about who  
22 reached out to who in those conversations?

23 **A** No, I don't recall who started those  
24 conversations.

25 **Q** And after you had the first conversation with



1 Mr. Evans, it was left unclear as to what the next move  
2 would be, who would be proposing something to whom;  
3 right?

4 **MR. DONALDSON:** I'm sorry. Are you talking  
5 about the current transaction?

6 **MR. MOYLE:** Yes.

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

8 **THE WITNESS:** No. Actually I got a call back  
9 from Carlyle, okay, from Jim Larocque of The Carlyle  
10 Group, and then we discussed the idea that we needed to  
11 go ahead and -- and were they interested in  
12 restructuring the contract or doing something else. And  
13 how one party was going to get back with the other or  
14 when they would get back and with what was left unclear.

15 **BY MR. MOYLE:**

16 **Q** So it wasn't like you said, hey, we'll send  
17 you something or they said we'll send you something. It  
18 was just unclear. And then -- and then Exhibit --  
19 Exhibit 64 in a final version showed up; is that right?

20 **A** That's correct.

21 **Q** Do you believe this is a good deal for FPL's  
22 shareholders?

23 **A** I think it's a fair deal for FPL's  
24 shareholders.

25 **Q** Do you think it's a fair deal for ratepayers?

1           **A**     I think it's a very good deal for customers.

2           **Q**     Do you think it would be a better deal for  
3 customers if there was a reduction made to the purchase  
4 price?

5           **A**     Unfortunately that isn't the transaction on  
6 the table.  If I had been able to negotiate a lower  
7 transaction price, I would have done so.

8           **Q**     All right.  But that -- with respect to it  
9 being a better deal, you wouldn't disagree that to the  
10 extent the purchase price was reduced by the Commission,  
11 that it would be a better deal for ratepayers; correct?

12          **A**     If the Commission reduced the transaction  
13 price, there would be no transaction.

14          **Q**     Y'all wouldn't go through with it?

15          **A**     Irrespective of whether we would go through it  
16 or not, and I don't believe we would, the Purchase and  
17 Sale Agreement has a fixed number in it.  So what you're  
18 talking about is, okay, we reject this deal, go do a  
19 different deal.  Whether that deal would be good, bad,  
20 or indifferent, I have no idea.

21          **Q**     Okay.  And that number that's in the Purchase  
22 and Sale Agreement, you'd agree that it's significantly  
23 higher than what's recommended by the witness for the  
24 Office of Public Counsel; correct?

25          **A**     Yes, I do.

1           **Q**     And the recommendation of the Office of Public  
2 Counsel is 370 million; right?

3           **A**     That's my understanding, yes.

4           **Q**     And it's significantly lower than the value  
5 placed on the Purchased Power Agreement by Mr. Herr, who  
6 is the same person who valued this agreement and is  
7 going to be providing testimony this afternoon; correct?

8           **A**     I don't understand that question.

9           **Q**     Okay. Are you aware that Mr. Herr valued the  
10 PPA in 2013?

11          **A**     Yes. You brought that up at my deposition.

12          **Q**     Okay. And do you know that the value he  
13 placed on the PPA in 2013 was significantly lower than  
14 the 520 million that you're asking this Commission to  
15 approve?

16          **A**     Yes. And the numbers were significantly  
17 different for different assumptions, and it's best to  
18 discuss that with Mr. Herr.

19          **Q**     I will. Also, you're aware that Goldman sold  
20 a portion of the Cedar Bay unit and its related PPA in a  
21 separate transaction, and the value of that transaction  
22 was also significantly lower than the 520 million;  
23 correct?

24          **A**     I'm aware of it, but you're also  
25 mischaracterizing that transaction.

1           **Q**     Okay. We'll have a document, I think, that  
2 will go into evidence, and you'd agree the document will  
3 speak for itself?

4           **A**     I will agree that the document will speak for  
5 itself to the extent that you understand how the  
6 document fits into the overall financing and structure  
7 of the project.

8           **Q**     And to the extent that Mr. Herr does, right,  
9 he's the best person to talk to about that.

10          **A**     He would be.

11          **Q**     And you're also aware that the 520 million is  
12 significantly higher than the book value of this asset  
13 as carried on the books of the seller; correct?

14          **A**     Yes, I am. I will also point out that the  
15 book value of the asset does not include the Power  
16 Purchase Agreement. And if you looked at the Power  
17 Purchase Agreement itself, it basically guarantees in  
18 excess of \$1.4 billion of payments to the owner of the  
19 PPA.

20          **Q**     Do you have that agreement in front of you?

21          **A**     Yes, I do.

22          **Q**     Can you point to the language you just  
23 referenced where it guarantees the 1.4 payment? Does it  
24 use the word "guarantee" in there?

25          **A**     It does not use the word "guarantee." As long

1 as they maintain an annual billing capacity factor  
2 adequate to maintain their capacity payments, the  
3 capacity payments are in a schedule in the appendix to  
4 the contract, and at 250 megawatts, if they can produce  
5 250 megawatts, they get over a billion dollars.

6 **Q** And you would agree that there's certain risks  
7 associated with getting that payment. You've got to run  
8 a power plant to do it; right?

9 **A** You have to maintain the power plant capable  
10 of operations, yes.

11 **Q** And that's not a risk-free proposition;  
12 correct?

13 **A** It is not a risk-free proposition.

14 **Q** And you -- FPL previously sued the operators  
15 of the power plant over -- over the contract; correct?

16 **A** That's correct.

17 **MR. DONALDSON:** Object. Well --

18 **THE WITNESS:** And we --

19 **MR. DONALDSON:** Let me just object.  
20 Mischaracterization of facts not evidence in.

21 **COMMISSIONER EDGAR:** Hold on, Mr. Moyle.

22 **MR. DONALDSON:** FPL didn't actually commence  
23 the lawsuit.

24 **THE WITNESS:** Right.

25 **COMMISSIONER EDGAR:** Mr. Moyle.

1           **MR. MOYLE:** I can ask him who commenced it,  
2 but essentially it's the --

3           **COMMISSIONER EDGAR:** To the witness.

4           **MR. MOYLE:** I'll rephrase it.

5 **BY MR. MOYLE:**

6           **Q** Has there been litigation over -- over this  
7 contract previously?

8           **A** Yes, there has been.

9           **Q** Okay. And --

10          **A** I'm aware -- I'm aware of two instances of  
11 litigation. One was a claim of force majeure, which we  
12 denied. The other one was a claim that we were gaming  
13 the PPA in order to reduce payments to them.

14          **Q** Okay. And there's potentially, if this deal  
15 is not approved, there's potentially other litigation or  
16 other breach of contract issues that might come up in  
17 the future; correct?

18          **A** That's correct. That's the nature of  
19 contractual relations.

20          **Q** And -- and with respect to -- didn't this  
21 contract also have a regulatory out clause?

22          **A** The contract does have a regulatory out  
23 clause.

24          **Q** What's that?

25          **A** There's a clause in the PPA that says that at

1 any time if the Commission denies recovery, we have to  
2 pay them no more than the recovery we are allowed, and  
3 they can decide whether to terminate the contract or  
4 not.

5 Q And does -- does that put any limitations on  
6 the Commission with respect to, you know, what they can  
7 deny the recovery for?

8 A No, it does not.

9 Q And do you know how that language is viewed by  
10 the -- the folks that own the power plant? I mean, it  
11 doesn't sound like it's real good language for them if  
12 the Commission can say you don't have to pay this  
13 anymore and it gives you the -- the out to pay the  
14 money.

15 A I know that the financing entities thus far  
16 have been willing to accept it in the power purchase  
17 agreements because the Commission has been reliable and  
18 supportive of the industry. I also know that the first  
19 time that one of these occurs, you will not be able to  
20 finance an independent power plant in the state.

21 Q And nobody is financing independent power  
22 plants in the state now anyway, are they?

23 A Yes, they are.

24 Q Who?

25 A Excuse me?

1 Q Who?

2 A We've got a number of contracts out there for  
3 QFs for renewables that are going through the financing  
4 process now.

5 Q And it's your testimony that they've recently  
6 been financed and approved?

7 A They have not yet been financed. They're  
8 talking to the investors at the present time.

9 Q Okay. So -- so, again, you made the statement  
10 about there being a guarantee in these contracts. The  
11 contract has risks associated with it, does it not?

12 A The contract does have risks associated with  
13 it.

14 Q Including the regulatory out clause.

15 A Including the regulatory out clause.

16 **MR. DONALDSON:** Mr. Moyle, when you're talking  
17 about the contract, you're referring to the PPA; right?

18 **MR. MOYLE:** Yes, sir.

19 **MR. DONALDSON:** Okay. I just want to -- if  
20 you can make that separation between PPA and power --  
21 Purchase and Sale Agreement. Thanks.

22 **BY MR. MOYLE:**

23 Q Okay. Your counsel brought up a good point.  
24 When I was talking about the agreement, we were talking  
25 about the Purchased Power Agreement that's in place;



1 correct?

2 **A** Correct.

3 **Q** We weren't talking about the Purchase and Sale  
4 Agreement that's before this Commission for  
5 \$520 million; correct?

6 **A** That's correct.

7 **Q** If the -- if the Commission approves this,  
8 there are a number of contracts that are currently in  
9 place between Carlyle/Cogentrix and third parties; isn't  
10 that correct?

11 **A** You mean Carlyle, Cogentrix, and third  
12 parties? I'm not aware of those.

13 **Q** Okay. Cedar Bay, Cedar Bay and third parties.

14 **A** Yes. Between the Cedar Bay generating company  
15 and a number of third parties there are contracts.

16 **Q** Okay. And tell the Commission what those  
17 contracts are, if you would.

18 **A** Excuse me?

19 **Q** Could you tell the Commission what those  
20 contracts are?

21 **A** The contracts range from everything from  
22 leasing arrangements on Xerox copiers to ground lease to  
23 steam sales agreement to coal supply agreements to  
24 railcar leases, the normal things that are necessary to  
25 keep a facility like this up and running and in an

1 operation.

2 Q And I don't want to talk about -- let's just  
3 put, you know, a million dollar threshold on -- on the  
4 contractual obligations. Can we do that?

5 A Okay.

6 Q So I'm assuming that would take out the  
7 copying lease?

8 A I hope so.

9 Q The ground lease would be above that  
10 threshold; right?

11 A The ground lease last year would be about that  
12 threshold. I don't believe it would be this year.

13 Q On a cumulative basis?

14 A What do you mean "on a cumulative basis"?

15 Q How many years are left on the ground lease?

16 A Through 2041.

17 Q So through 2041 is the amount that would be  
18 paid under the ground lease more than a million  
19 dollars?

20 A Yes. If you're talking an NPV basis, it's  
21 more than a million dollars.

22 Q Okay. And is it anticipated that if the  
23 Commission approves this, that FPL and ultimately the  
24 ratepayers are responsible for payments under that  
25 ground lease?

1           **A**    Yes.  You have to pay the ground lease in  
2 order to have the plant.

3           **Q**    And that would include through 2041?

4           **A**    Yes.

5           **Q**    Okay.

6           **A**    Now, as we've also pointed out, the ground  
7 lease resets to a market price at this time, so we can  
8 either negotiate out of a ground lease or we can  
9 sublease the land since it is at market price.

10          **Q**    Okay.  And with respect to the coal supply  
11 agreement --

12          **A**    Yes.

13          **Q**    -- same question, it's over that million  
14 dollars threshold?

15          **A**    No.

16          **Q**    What's -- well, without getting into  
17 confidential stuff, can you tell the Commission what the  
18 situation is with the coal supply agreement?

19          **A**    The coal supply --

20          **Q**    And how much ratepayers may be on the hook for  
21 for that.

22          **A**    The coal supply agreement on its face expires  
23 at the end of this year.

24          **Q**    But you need coal for the plant; right?

25          **A**    That's correct.

1 Q Okay. How about the railcar lease?

2 A Railcar leases are above that figure you  
3 mentioned, and they run through 2024.

4 Q What's the plan with the railcars?

5 A The plan on the railcars is to go ahead, and  
6 it's included in our economic analysis, is to go ahead  
7 and sublease the cars. Our experience with other coal  
8 plants is we can sublease the cars for about 50 percent  
9 of what we're currently -- of what the current lease  
10 payments are.

11 Q So who would you sublease them too, for  
12 example?

13 A Other companies that need a railcar. These  
14 things can be used for coal, they can be used for  
15 gravel, they can be used for all sorts of materials.

16 Q So FPL wouldn't be making use of those  
17 railcars; correct?

18 A We have railcars that we use in other places.  
19 Whether we'd use these cars or not, I don't know.

20 Q All right. But with respect to -- the plan is  
21 to sublease them to third parties; correct?

22 A That's correct.

23 Q Okay. And on all these leases and in all  
24 these payments, the shareholders ultimately would be  
25 looked to pick up any costs related to these; is that

1 right?

2 **A** What do you mean by that?

3 **Q** Well, lease payments that are -- that would  
4 have to be made to -- on the ground lease.

5 **A** The ground lease in most of the operating  
6 leases --

7 **Q** I'm sorry. Ratepayers. Ratepayers would have  
8 to pick up.

9 **A** The expert on that would be Ms. Ousdahl, but I  
10 believe most of the costs of the plant would be going  
11 through our base rates.

12 **Q** Okay. Are you familiar with the term "skin in  
13 the game"?

14 **A** I'm familiar with the generic term, yes.

15 **Q** What does it mean to you?

16 **A** It means that you have some risk in it in your  
17 own interest.

18 **Q** And it seems to me FPL doesn't have much skin  
19 in the game in this transaction. Would you agree with  
20 that?

21 **A** No, I don't think I would agree with that.

22 **Q** Identify for me where there's financial risk  
23 in this transaction for FP&L.

24 **A** Well, we've already talked about the fact that  
25 we're going to be putting the plant in base rates. So

1 there's some risk there certainly.

2 Q About -- about whether the plant goes in base  
3 rates or not?

4 A No. Assuming our transaction is approved,  
5 it's going in base rates, so we're going to be absorbing  
6 the cost of operating the power plant.

7 The other thing to recognize is whenever  
8 you're talking skin in the game, the existing PPA, the  
9 existing power purchase agreement, we have zero skin in  
10 the game. That is entire pass-through to the  
11 customers.

12 Q And when you say entire pass-through, that  
13 means FPL doesn't earn any money on the transaction;  
14 correct?

15 A Nor do we take any risk.

16 Q And in this transaction, FPL would earn money  
17 on the regulatory asset; correct?

18 A FPL would -- would earn money on investing  
19 over half a billion dollars on behalf of our customers.

20 Q And you would agree that if you retire this  
21 plant in 2016, at the end of 2016 -- that's -- that's  
22 the current plan; right?

23 A That's the current plan, yes.

24 Q Okay. That there will be a lot less risk  
25 associated with the Cedar Bay facility because it's not

1 an operating unit; correct?

2 **A** I would agree with that, yes.

3 **Q** And you're also aware that the Commission,  
4 when it considers the appropriate rate of return at  
5 least in rate cases and maybe in other contexts,  
6 considers levels of risk when setting the appropriate  
7 level of return; correct?

8 **A** Yes. I'm aware that the Commission sets  
9 appropriate rates of return. It's also my understanding  
10 that this is a long-term investment, and if the  
11 Commission decides to start setting rates of return for  
12 every long-term investment by every utility in the  
13 state, we're going to be spending a lot of time in  
14 Tallahassee.

15 (Transcript continues in sequence with Volume  
16 2.)

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1 STATE OF FLORIDA )  
2 COUNTY OF LEON ) : CERTIFICATE OF REPORTER

3  
4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

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

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

18 DATED THIS 29th day of July, 2015.

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LINDA BOLES, CRR, RPR  
FPSC Official Hearings Reporter  
(850) 413-6734



*Demonstrative for  
FDZ opening  
Statement.*

**Cedar Bay Transaction  
Legal Structure  
Pre-Acquisition**

