

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR RATE INCREASE BY  
FLORIDA POWER & LIGHT COMPANY.

DOCKET NO. 160021-EI

PETITION FOR APPROVAL OF  
2016-2018 STORM HARDENING PLAN  
BY FLORIDA POWER & LIGHT  
COMPANY.

DOCKET NO. 160061-EI

2016 DEPRECIATION AND  
DISMANTLEMENT STUDY BY,  
FLORIDA POWER & LIGHT COMPANY.

DOCKET NO. 160062-EI

PETITION FOR LIMITED  
PROCEEDING TO MODIFY AND  
CONTINUE INCENTIVE MECHANISM,  
BY FLORIDA POWER & LIGHT  
COMPANY.

DOCKET NO. 160088-EI

VOLUME 37

(Pages 5750 through 6034)

PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: CHAIRMAN JULIE I. BROWN  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ART GRAHAM  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER JIMMY PATRONIS

DATE: Thursday, September 1, 2016

TIME: Commenced at 9:00 a.m.  
Concluded at 12:18 p.m.

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

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

APPEARANCES: (As heretofore noted.)

## I N D E X

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

1  
2           **CHAIRMAN BROWN:** All right. Good morning.  
3 Welcome back. The time is 9:00. I hope everybody got  
4 some rest, and ready to take the day.

5           **MR. GUYTON:** Florida Power & Light Company  
6 calls Terry Deason, who has not previously been sworn.

7           **CHAIRMAN BROWN:** Good morning, Mr. Deason.

8           **THE WITNESS:** Good morning.

9           **CHAIRMAN BROWN:** Please raise your right hand.  
10 Whereupon,

**TERRY DEASON**

11  
12 was called as a witness on behalf of Florida Power &  
13 Light Company and, having first been duly sworn,  
14 testified as follows:

15           **CHAIRMAN BROWN:** Thank you. Please be seated.

**EXAMINATION**

16  
17 **BY MR. GUYTON:**

18           **Q** Please state your name and business address  
19 for the record.

20           **A** My name is Terry Deason. My business address  
21 is 301 South Bronough Street, Tallahassee, Florida.

22           **Q** And by whom are you employed and in what  
23 capacity?

24           **A** I am employed by the Radey law firm as a  
25 special consultant.

1           **Q**     And have you prepared and caused to be filed  
2 57 pages of rebuttal testimony in this proceeding?

3           **A**     Yes.

4           **Q**     And you've not filed an errata to that, have  
5 you?

6           **A**     I have not.

7           **Q**     So if I were to ask you the same questions as  
8 are contained in your rebuttal testimony, would your  
9 answers be the same today?

10          **A**     Yes.

11                   **MR. GUYTON:** Madam Chair, I'd ask that  
12 Mr. Deason's rebuttal testimony in this docket be  
13 inserted into the record as though read.

14                   **CHAIRMAN BROWN:** We will insert Mr. Deason's  
15 prefiled rebuttal testimony into the record as though  
16 read.

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**I. INTRODUCTION**

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

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

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

A. I am employed by the Radey Law Firm as a Special Consultant specializing in the fields of energy, telecommunications, water and wastewater, and public utilities generally.

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

A. I have thirty-nine years of experience in the field of public utility regulation spanning a wide range of responsibilities and roles. I served as a consumer advocate in the Florida Office of Public Counsel (“OPC”) on two separate occasions, for a total of seven years. In that role, I testified as an expert witness in numerous rate proceedings before the Florida Public Service Commission (“Commission” or “PSC”). My tenure of service at OPC was interrupted by six years as Chief Advisor to Florida Public Service Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory Analyst when I was first appointed to the Commission in 1991. I served as Commissioner on the Commission for sixteen years, serving as its chairman on two separate occasions. Since retiring from the Commission at the end of 2006, I have been providing consulting services and expert testimony on



1           behalf of various clients, including public service commission advocacy staff  
2           and regulated utility companies. I have also testified before various legislative  
3           committees on regulatory policy matters. I hold a Bachelor of Science Degree  
4           in Accounting, summa cum laude, and a Master of Accounting, both from  
5           Florida State University.

6   **Q.    Are you sponsoring an exhibit?**

7   A.    Yes. I am sponsoring the following rebuttal exhibit:

8           ▪    TD-1, Biographical Information for Terry Deason

9   **Q.    For whom are you appearing as a rebuttal witness?**

10  A.    I am appearing as a rebuttal witness for Florida Power & Light Company  
11       ("FPL" or "the Company").

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

13  A.    The purpose of my rebuttal testimony is to respond to certain assertions and  
14       recommendations in the testimony of: South Florida Hospital and Health  
15       Care Association ("SFHHA") witnesses Baudino and Kollen, Office of  
16       Public Council ("OPC") witnesses Lawton, Schultz and Smith, Florida  
17       Industrial Power Users Group ("FIPUG") witness Pollock, Federal Executive  
18       Agencies ("FEA") witness Gorman, and AARP witness Brosch. The issues I  
19       address in rebuttal to these witnesses are: Construction Work In Progress  
20       ("CWIP"); Property Held for Future Use ("PHFFU"); Performance Based  
21       Compensation; Directors and Officers Liability ("DOL") Insurance; and the  
22       Return on Equity ("ROE") Performance Adder.

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**II. CONSTRUCTION WORK IN PROGRESS**

**Q. What is CWIP?**

A. CWIP refers to assets that are recorded in the Federal Energy Regulatory Commission (“FERC”) Account 107 of the Federal Energy Regulatory Commission Uniform System of Accounts (“USOA”). This account includes the total of work order balances for electric plant that is in the process of being constructed.

**Q. Is CWIP a necessary part of providing quality utility service?**

A. Yes, it is. A well-managed utility focused on providing quality and cost effective service will deploy capital to construct new and/or modernize existing facilities to meet these objectives.

**Q. Recognizing that CWIP is a necessary part of providing quality utility service, should it be permitted to earn a return?**

A. Yes, it should. Otherwise the utility will not be given an opportunity to realize a fair return on its investment in electric plant. By way of explanation, the return earned by a utility once a plant goes into service compensates the utility for its investment in that plant only from the in-service date forward. The return earned on plant in service does not – and is not intended – to provide any compensation to the utility for its investment in a plant before it goes into service.

1 **Q. How should this be accomplished?**

2 A. It should be accomplished in one of two ways. First, balances in CWIP could  
3 be allowed to accrue an Allowance for Funds Used During Construction  
4 (“AFUDC”). The Commission has adopted Rule 25-6.0141, Florida  
5 Administrative Code (“F.A.C.”), which sets forth the calculation of AFUDC  
6 and the eligibility requirements of those construction projects which qualify.  
7 The second way is to allow CWIP to be included in rate base when rates are  
8 set.

9 **Q. Is there a fundamental difference between the two approaches?**

10 A. Yes, there is. Accruing AFUDC adds to the capital costs of a project. The  
11 return is an accounting entry only and is actually realized when the capital  
12 asset is included in rate base and is depreciated. Including CWIP in rate base  
13 avoids increasing the capital cost of the project through AFUDC and instead,  
14 provides a return in rates while the project is being constructed.

15 **Q. What does Rule 25-6.0141, F.A.C., say about the return to be earned on**  
16 **CWIP?**

17 A. The Rule recognizes that the return on CWIP can be earned in either of the  
18 two fundamental ways that I just described. Further, the Rule establishes the  
19 criteria for CWIP projects to be eligible for AFUDC. Generally, to be eligible  
20 for AFUDC, a CWIP project must be large in size (greater than 0.5 percent of  
21 all existing plant on the books of the utility) and have a long construction time  
22 (greater than one year from the project’s commencement). CWIP projects not  
23 eligible for AFUDC under the rule are generally included in rate base rather

1 than accruing AFUDC.

2 **Q. Why did the Commission require that CWIP projects be large in size and**  
3 **long in construction duration to be eligible for AFUDC?**

4 A. The Commission recognized that most construction projects are relatively  
5 small in size and of short duration. The Commission further recognized that  
6 these projects were generally routine and recurring in nature. It was  
7 determined that it was not administratively efficient to require the accrual of  
8 AFUDC on such projects. Further, due to their routine, recurring nature, they  
9 were better addressed as a component of rate base. The overall  
10 reasonableness of these projects could then be reviewed in the context of rate  
11 cases and surveillance reports.

12 **Q. What is the Commission’s policy on the inclusion of CWIP in rate base?**

13 A. The Commission recognizes that CWIP constitutes an investment upon which  
14 a return should be allowed. Construction projects ineligible for a return  
15 through the accrual of AFUDC are included in rate base. And in some  
16 situations, the Commission allows large projects otherwise eligible for  
17 AFUDC to be allowed in rate base instead of allowing AFUDC to be accrued.  
18 This is done in those situations where a utility’s construction program is so  
19 large that reliance solely on AFUDC would harm the company’s financial  
20 integrity.

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1 **Q. Does witness Smith recommend a disallowance of any of the CWIP that**  
2 **FPL is seeking to include in its rate base?**

3 A. No. Witness Smith, on behalf of OPC, acknowledges the Commission's  
4 policy to provide a return on construction projects ineligible for AFUDC by  
5 means of rate base inclusion. While stating some philosophical differences  
6 with the Commission's policy, he makes no disallowance in his recommended  
7 revenue requirements calculation.

8 **Q. Does witness Kollen recommend a disallowance of any of the CWIP that**  
9 **FPL is seeking to include in its rate base?**

10 A. Yes. Witness Kollen, on behalf of SFHHA, recommends a disallowance of  
11 100% of the amount of nuclear fuel in process ("NFIP"). Instead of including  
12 NFIP in rate base, witness Kollen recommends that it be allowed to accrue  
13 AFUDC.

14 **Q. Is witness Kollen's recommendation consistent with Commission policy?**

15 A. No. Witness Kollen's recommendation is inconsistent with Commission  
16 policy and Rule 25-6.0141, F.A.C. This Rule requires a minimum  
17 construction period of one year and a project threshold cost of 0.5 percent of  
18 total plant in service, which for FPL is a project threshold cost of  
19 approximately \$246 million in the 2017 Test Year. The amounts of NFIP for  
20 each fuel cycle at each nuclear plant do not meet the Rule's threshold  
21 requirements.

22

23

1 **Q. Do you agree with witness Kollen's recommendation?**

2 A. No, I do not agree. It would be inappropriate to make such a significant  
3 unilateral change to Commission policy that has been adopted through the  
4 rulemaking process and codified by rule. At best, his proposal is an attempt to  
5 adopt a new policy without the benefit of a thorough evidentiary review and  
6 the due process protections of a rulemaking proceeding, a proceeding that  
7 would be open to all interested parties and not just those parties to this rate  
8 case. At worst, it is an attempt to unjustifiably reduce FPL's revenue  
9 requirement in this case and ill-advisedly defer cost recovery to the future.

10 **Q. Witness Kollen argues that his proposal to defer cost recovery to the**  
11 **future is appropriate. Do you agree?**

12 A. I do not agree with his conclusion. I do agree with his statement that "all  
13 costs associated with the construction or completion of an asset that is  
14 constructed or acquired to provide service should be recovered from  
15 customers over the period that the asset provides service to those customers."  
16 Witness Kollen has misapplied this concept to conclude that a return on  
17 nuclear fuel being processed to insure continuous service to customers should  
18 be disallowed in this rate case and deferred to the future. Customers expect  
19 and deserve to have sufficient quantities of nuclear fuel available when  
20 needed. It is the same as having sufficient quantities of coal in transit and coal  
21 located in inventory at a coal plant to assure continuous service to customers  
22 from that plant. And given the economics of nuclear generation, it is even  
23 more imperative that nuclear fuel be available to serve customers. FPL's

1 investment in NFIP is absolutely necessary to provide this assurance to  
2 customers.

3 **Q. Witness Kollen alleges that allowing NFIP in rate base will result in**  
4 **intergenerational inequity. Is he correct?**

5 A. No, there is no intergenerational inequity because the NFIP is needed to  
6 assure existing customers of continuous service from nuclear plants just like  
7 coal in transit and coal in inventory is needed to assure existing customers that  
8 generation will be available from a coal plant. Ironically, the only way that  
9 there would be intergenerational inequity would be for the Commission to  
10 adopt witness Kollen's recommendation.

11 **Q. How would witness Kollen's recommendation result in intergenerational**  
12 **inequity?**

13 A. The Commission's consistent application of its policy as stated in Rule 25-  
14 6.014 F.A.C. has resulted in an equilibrium of costs over time. Existing  
15 customers pay less in their fuel adjustment charges for nuclear fuel as it is  
16 consumed, because that fuel cost does not have to include a return on the  
17 accrual of AFUDC. At the same time, and again by virtue of the  
18 Commission's policy, existing customers' base rates reflect the *inclusion* of  
19 NFIP in rate base. Thus there is a balance and equilibrium. Witness Kollen's  
20 recommendation would destroy this equilibrium by giving existing customers  
21 the benefit of both lower fuel adjustment charges as the nuclear fuel is  
22 consumed and avoidance of the obligation of paying a return on NFIP in base  
23 rates. In essence, witness Kollen would have existing customers benefited to

1 the detriment of future customers, who would be obligated to pay higher fuel  
2 adjustment charges once the fuel that is accruing AFUDC starts to be  
3 consumed.

4 **Q. Witness Kollen references paragraph (1)(g) of Rule 25-6.0141, F.A.C.**  
5 **Are you familiar with this provision?**

6 A. Yes, I am. This provision was added to the Rule in 1996, while I was serving  
7 on the Commission. It gives the Commission limited discretion to exclude a  
8 portion of CWIP from rate base and allow it to accrue AFUDC instead.

9 **Q. What was the context within which the Commission adopted this**  
10 **provision?**

11 A. The Commission was considering a number of changes to the Rule. The  
12 overall purpose of the amendments was to increase the threshold of project  
13 qualification in order to limit AFUDC treatment to only those projects with a  
14 significant financial impact on any given utility.

15 **Q. Why did the Commission believe this was needed?**

16 A. The Commission was reviewing the thresholds in the context of possible  
17 industry restructuring. It was believed that limiting the amount of AFUDC  
18 would get regulated costs more comparable to true economic costs and more  
19 consistent with Generally Accepted Accounting Principles (“GAAP”).

20 **Q. Did the Commission consider the benefits for customers?**

21 A. Yes, the Commission recognized that setting a higher threshold for AFUDC  
22 accrual would have the effect of lowering total project costs in rate base and



1 that this would ultimately lead to lower base rates and a lower likelihood of  
2 stranded costs.

3 **Q. Did the Commission consider the possibility that the higher threshold**  
4 **could result in current customers paying for projects that would only**  
5 **benefit future customers?**

6 A. Yes, the Commission considered this and determined that this would not  
7 likely be the result of the higher threshold. Commission Staff's  
8 recommendation dated April 18, 1996, in Docket No. 951535-EI, Proposed  
9 Revisions to Rule 25-6.0141, F.A.C., recognized that large long term  
10 construction projects would still accrue AFUDC and that other projects should  
11 be in rate base. Staff's recommendation stated:

12           However, large, long term projects, such as power plants, will  
13           still accrue AFUDC unless the Commission specifically  
14           approves inclusion in rate base. Not all construction is solely  
15           for the benefit of future ratepayers. There are many projects  
16           which are built in order to increase the reliability of service or  
17           replace aging or obsolete equipment and facilities. In some  
18           cases, facilities in high growth areas reach capacity and must  
19           be expanded.

20 **Q. Should paragraph (1)(g) of Rule 25-6.014, F.A.C., be used to approve**  
21 **witness Kollen's proposal to disallow NFIP in rate base?**

22 A. No, it should not. This provision was enacted to give discretion to the  
23 Commission to exclude a portion of CWIP from rate base should the

1 Commission determine that the potential impact on base rates was such that  
2 the exclusion may be required. Therefore, before this provision is used to  
3 exclude NFIP, the Commission must make a finding that the resulting impact  
4 on rates of including the NFIP would be inappropriate or unduly burdensome.  
5 Exercising this provision should only be done in truly extraordinary situations.

6 **Q. Has the Commission ever used this provision to disallow CWIP or NFIP**  
7 **projects from rate base?**

8 A. No, not to my knowledge.

9 **Q. Was NFIP allowed in rate base in FPL's last rate case?**

10 A. Yes.

11 **Q. What is the revenue impact of the disallowance suggested by witness**  
12 **Kollen?**

13 A. Witness Kollen calculates the revenue requirements impact to be \$40 million  
14 for the 2017 Test Year. I have not determined the exact impact of \$40 million  
15 of FPL's rates, but believe it to be roughly 35-40 cents on a typical, 1,000  
16 kWh residential bill. I do not believe that this would be considered  
17 extraordinary such that the utilization of paragraph (1)(g) would be justified.

18 **Q. Does witness Pollock recommend exclusion of any of the CWIP that FPL**  
19 **is seeking to include in its rate base?**

20 A. Yes. Based upon either a total disregard of Commission policy or a  
21 misapplication of Rule 25-6.0141 F.A.C., witness Pollock, on behalf of  
22 FIPUG, recommends that 100% of FPL's CWIP be excluded from rate base.

23

1 **Q. What is the basis for witness Pollock's recommendation?**

2 A. Despite the requirements of Rule 25-60141 F.A.C., witness Pollock declares  
3 that CWIP is not used and useful and should be included in rate base only in  
4 extraordinary circumstances, such as the company's financial integrity being  
5 threatened. And in an inexplicable inconsistency, he further opines that the  
6 amount of CWIP being sought by FPL is insufficient to create financial stress  
7 if it were disallowed, yet is large enough that it would significantly add to rate  
8 shock if it were allowed in rate base.

9 **Q. Do you agree that CWIP is not used and useful?**

10 A. No. As contemplated by Commission policy and Rule, CWIP is a necessary  
11 component of providing dependable and consistent service for customers. As  
12 such, it is used and useful and is entitled to earn a return either through  
13 AFUDC or inclusion in rate base. The Rule then establishes what is eligible  
14 for AFUDC, with ineligible CWIP being included in rate base. Contrary to  
15 witness Pollock's assertion, a showing of extraordinary financial harm is not a  
16 requirement to allow rate base inclusion of AFUDC ineligible CWIP.

17 **Q. Does the Commission ever consider financial integrity when deciding the**  
18 **amount of CWIP to include in rate base?**

19 A. Yes. In the relatively rare situation that the amount of AFUDC-eligible CWIP  
20 is so large in relation to a company's overall rate base that cash flows become  
21 insufficient to meet essential financial metrics, the Commission has allowed  
22 some AFUDC-eligible CWIP to be included in rate base. Contrary to witness  
23 Pollock's assertion, the Commission's standard is not and never has been one

1 of requiring a showing of financial harm before AFUDC-*ineligible* CWIP is  
2 allowed in rate base. It should be noted that FPL is not seeking the inclusion  
3 of any AFUDC-eligible CWIP in rate base. FPL is seeking only to include  
4 AFUDC-*ineligible* CWIP in rate base, consistent with Rule 25-6.0141 F.A.C.

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### III. PROPERTY HELD FOR FUTURE USE

7

8 **Q. What is PHFFU?**

9 A. PHFFU is the original cost of electric plant owned and held for future use in  
10 electric service under a definite plan for such use. It includes both property  
11 acquired but never previously used, as well as property used by the utility but  
12 retired from service pending its reuse in the future. The original cost amounts  
13 are booked in FERC Account 105 Electric plant held for future use, as  
14 prescribed by the USOA.

15 **Q. Does FERC Account 105 also include land and land rights?**

16 A. Yes, it does. The parameters for land and land rights are generally the same  
17 as those set forth for electric plant in the USOA, with one notable exception.

18 **Q. What is the exception?**

19 A. When describing the types of electric plant eligible for inclusion in FERC  
20 Account 105, the USOA includes the term “definite” when describing the plan  
21 for its use. In describing the types of land and land rights eligible for  
22 inclusion in FERC Account 105, the USOA does not use the term “definite.”  
23 The USOA simply prescribes that land and land rights be planned for future

1 electric use.

2 **Q. Why is this a significant distinction?**

3 A. Electric plant is held to a higher standard for inclusion in PHFFU because of  
4 the USOA's requirement that there be a definite plan for its future use. In  
5 contrast, the USOA recognizes that land and land rights may need to be  
6 acquired for possible future use. In other words, the USOA does not prescribe  
7 that the land and land rights have a definite future use in order to be treated as  
8 PHFFU.

9 **Q. Does this distinction have implications for regulatory policy?**

10 A. Yes, it does. Appropriate and responsible regulatory policy recognizes that,  
11 unlike electric plant that usually would be acquired only a short time before it  
12 is to be placed into service, land and land rights may need to be acquired  
13 many years in advance of their designated use. It would be an inappropriate  
14 and unreasonable standard to require all land and land rights to have a  
15 "definite" plan for use at the time of initial acquisition. This is not to suggest  
16 that regulated utilities should be encouraged to acquire land and land rights in  
17 a speculative manner. Certainly all regulatory land acquisitions should be  
18 made consistent with a utility's plans to cost-effectively and reliably serve all  
19 future demands from its customers.

20 **Q. Has the Commission recognized the need of regulated utilities to acquire  
21 property in advance of its designated use?**

22 A. Yes, as early as 1971, the Commission articulated an expanding policy on the  
23 inclusion of PHFFU in a regulated utility's rate base. In Order No. 5278,

1 issued November 30, 1971, in Docket No. 70532-EU, in re: Petition of Tampa  
2 Electric Company for an increase in rates and charges and for approval of a  
3 fair and reasonable rate of return, the Commission stated:

4 This Commission has long recognized that in Florida, public  
5 utilities cannot, in the exercise of good business judgment,  
6 indefinitely postpone the acquisitions of property necessary to  
7 future expansion. In many instances, a deferral of acquisition  
8 of necessary property would be very costly and imprudent and  
9 the management would be subject to criticism for delay...  
10 Until recently, this Commission allowed the inclusion of  
11 Property Held for Future Use if it were acquired as a result of a  
12 definite plan for its use, and its use was imminent. Since we  
13 last considered this matter, there has been a growing  
14 controversy over the locating of power plants, both nuclear and  
15 fossil fuel, which makes it imperative that we review our  
16 policies, practices, and procedures in this area...It is the  
17 conclusion of this Commission that so long as the acquisition  
18 of the property in question is considered a responsible and  
19 prudent investment and it appears that it will be used for utility  
20 purposes in the reasonably near future, in the light of prevailing  
21 conditions, such land should be included in the Company's rate  
22 base.

23

1 **Q. Does witness Smith address PHFFU in his testimony?**

2 A. Yes, he recommends the disallowance of \$14.2 million of PHFFU from FPL's  
3 rate base. The majority of his recommended disallowance (\$10.0 million) is  
4 the cost of sites to either expand existing distribution substations or build new  
5 distribution substations. The remaining \$4.2 million is the cost of easements  
6 for four transmission projects scheduled to be completed in the 2027-2028  
7 time frame.

8 **Q. What is the basis for his recommended disallowances?**

9 A. Witness Smith states, "Property held for future use that is beyond the ten-year  
10 planning horizon is not used and useful in providing service to ratepayers."  
11 He then tabulates the costs associated with all PHFFU projects with expected  
12 in-service dates beyond 2026 to determine the amount of his recommended  
13 disallowance. His recommendation is not based upon an individual study of  
14 each property to determine whether each is reasonably needed over the  
15 planning horizon.

16 **Q. Do you agree with witness Smith's recommended disallowances?**

17 A. I do not agree with his recommended disallowances. His use of an arbitrary  
18 and fixed time limitation on PHFFU projects is contrary to Commission  
19 precedent and contrary to good regulatory policy. If adopted, his  
20 recommended disallowances would be inconsistent with the long-range  
21 planning requirements which are necessary for the reliable and cost-effective  
22 provisioning of service to customers. Witness Smith's recommended  
23 disallowances would not be in the customers' best interest.

1 **Q. What is the Commission’s policy in regard to PHFFU?**

2 A. The Commission has a policy that has evolved somewhat over time, but has  
3 consistently recognized the need for adequate long-term planning and the need  
4 to have property available to fulfill service commitments to customers reliably  
5 and cost effectively. This is clearly evident from the Commission’s 1971  
6 order involving Tampa Electric Company (“TECO”) that I earlier cited. In  
7 that same order, regarding its decision to allow a future power plant site in  
8 rate base and the need for adequate planning, the Commission stated:

9 In this regard, failure to provide for the long-range planning  
10 necessary for adequate and reliable power supply could well be  
11 considered an imprudent act and inconsistent with the public  
12 interest.

13 **Q. What is the standard the Commission has applied to determine whether**  
14 **specific future use properties should be included in rate base?**

15 A. The Commission’s standard is one of reasonableness or what amount of  
16 PHFFU is reasonably needed to cost-effectively provide reliable service to  
17 existing and future customers. Applying this standard requires a review of  
18 specific properties to determine whether their acquisition and retention are  
19 reasonable to provide service over an adequate planning horizon. The  
20 Commission’s reasonableness standard cannot be determined by arbitrary and  
21 rigid time limitations on the properties’ ultimate use. To do so would be  
22 contrary to Commission policy and ultimately work to the disadvantage of  
23 utilities’ customers.



1 **Q. In testimony you filed in FPL's 2012 rate case you were asked this same**  
2 **question on the Commission's standard to judge PHFFU and you are**  
3 **giving the same answer now that you gave then, correct?**

4 A. Yes.

5 **Q. Witness Smith quotes your answer in his testimony. Does witness Smith's**  
6 **reliance on your answer change your conclusion?**

7 A. No. The fact remains that witness Smith's recommended disallowance is  
8 based on the use of an arbitrary and rigid ten-year time limitation, which is not  
9 consistent with the Commission's standard and good regulatory policy.  
10 Further, witness Smith has made no review of the need and appropriateness of  
11 each individual project. Instead, he simply states that in his opinion FPL has  
12 made no showing that the projects "are reasonably needed to provide reliable  
13 service to existing and future customers." Whether FPL has made a sufficient  
14 showing will depend on the evidence in this record. I note that FPL witness  
15 Miranda addresses the need for these projects with greater specificity in his  
16 rebuttal testimony.

17 **Q. Has the Commission spoken to the need to make an individual study of**  
18 **properties held for future use?**

19 A. Yes, in Order No. 5619, in Docket No. 71370-EU, the Commission  
20 recognized that there is no hard and fast rule to determine the amount of  
21 PHFFU to include in rate base. The Commission stated:

22 Under past Commission policy, we have recognized that the  
23 deferral of acquisition of property for future use to meet

1                   foreseeable needs could be imprudent and costly. Thus, we  
2                   have no hard and fast rule as to what should be or should not be  
3                   included but must make an individual study for each tract so  
4                   held.

5   **Q.    Has the Commission previously addressed a proposal to limit PHFFU to**  
6   **an arbitrary ten-year rule?**

7   A.    Yes, in a 1992 rate case involving TECO, there was a proposal to apply a ten-  
8   year rule to PHFFU. The Commission rejected this approach. In Order No.  
9   PSC-93-0165-FOF-EI, the Commission stated:

10                   Public counsel’s witness, Mr. Schultz, applied a 10-year rule to  
11                   plant held for future use, suggesting that property either owned  
12                   by Tampa Electric for longer than ten years or whose projected  
13                   in-service date is greater than ten years in the future should be  
14                   removed from rate base. We disagree with this methodology  
15                   because it arbitrarily disallows rate recovery for power plant  
16                   distribution substation, and transmission substation sites that  
17                   Tampa Electric plans to use to meet future growth beyond a  
18                   point in time ten years from now. It is well known that, in  
19                   Florida, these sites are becoming increasingly more difficult to  
20                   find, purchase, and permit.

21  
22  
23

1 **Q. Would the requirement to have a definite plan to use all PHFFU within a**  
2 **ten-year planning horizon be consistent with regulatory goals of reliable**  
3 **and cost efficient service to customers?**

4 No. As I stated earlier, the USOA does not require there to be a definite plan  
5 of use with a definite time frame. But more importantly, requiring there to be  
6 a specific plan for development within ten years belies the purpose of  
7 acquiring property to cost-effectively and reliably provide service to existing  
8 and future customers. For a public utility to wait to acquire property, property  
9 that often times must possess very specific locational, geologic, hydrologic,  
10 and environmental attributes, until the utility has a firmly established plan of  
11 development within ten years, could prove costly and could threaten  
12 reliability. In fact, waiting could even be considered imprudent as stated by  
13 the Commission in Order No. 5619 which I just quoted.

14  
15 A cardinal virtue of proper planning is not only to anticipate needs but also to  
16 maintain options to enable a utility to provide service in an ever changing  
17 environment. Requiring a definite plan of development within ten years  
18 would be short-sighted, would limit the ability of a utility to adapt to changing  
19 circumstances, and could ultimately lead to higher costs. This is why it is  
20 better to evaluate each property individually and make an informed judgment  
21 of its reasonableness.

22

23

1 **Q. Has the Commission addressed the need for property to be acquired and**  
2 **retained prior to there being a specific plan for its use?**

3 A. Yes, the Commission has. In Order No. 5619, the Commission recognized  
4 that deferring acquisition of property could be imprudent and costly. The  
5 Commission also addressed the growing amount of time lag between the study  
6 of a site and when construction begins. The Commission stated:

7 In recent years, the lag time has been extended considerably  
8 from the time the first study is made until the final approval is  
9 given and construction begins. Obviously, it would be folly  
10 then to insist that the Company defer the purchase of land for  
11 future use until all doubts as to its use have been resolved.

12 (Emphasis added).

13

14 And in Order No. PSC-93-0165-FOF-EI, in Docket No 920324-EI, the  
15 Commission included TECO's Port Manatee plant site in rate base, even  
16 though there were no current plans for its use:

17 Public Counsel argues that Tampa Electric has no current plans  
18 for the Port Manatee plant site. Staff agrees that, at the current  
19 time, the company has not identified a particular generating  
20 unit to be built at the site. However, as discussed before, it will  
21 be more difficult to find an alternate plant site in the future. By  
22 allowing the Port Manatee site to remain in rate base, Tampa

23

1 Electric will already have a viable generating site for future  
2 power plants.

3 **Q. If the Commission were to adopt witness Smith's recommended**  
4 **disallowances, would there be consequences?**

5 A. Yes, there would be. Disallowing the costs from rate base, as he recommends,  
6 would be tantamount to declaring the properties in question as being unneeded  
7 and imprudent to retain. As a consequence, FPL would have to evaluate  
8 whether the properties should be retained. While I cannot and do not speak  
9 for FPL in this regard, I would expect the properties would be sold. This  
10 would mean the properties would no longer be available to serve customers.  
11 FPL would then be in the position of acquiring similar properties at some time  
12 in the future; assuming similar properties with the same attributes would be  
13 available. There would also be a question of the price that would have to be  
14 paid at that time.

15 **Q. Has the Commission previously addressed these potential consequences?**

16 A. Yes, in the same order addressing TECO's Port Manatee plant site that I just  
17 cited, the Commission stated:

18 Power plant sites in Florida are becoming increasingly more  
19 difficult to find, purchase, and permit. Tampa Electric has a  
20 potential power plant site at Port Manatee. Utilities purchase  
21 power plant sites in advance, because the value of the land will  
22 generally appreciate at a rate greater than the utility's overall  
23 rate of return. If the Commission found that the Port Manatee

1 site was an imprudent investment and did not allow Tampa  
2 Electric to earn a rate of return on the property, Tampa Electric  
3 would be encouraged to sell the site now. Tampa Electric  
4 would then have to search for, and purchase, another site for a  
5 future power plant, at much greater cost.

6 **Q. The case you just referenced specifically addressed a generating plant**  
7 **site. Is it also relevant for transmission and distribution property?**

8 A. Yes, the concepts and principles stated therein also apply to transmission and  
9 distribution properties.

10 **Q. Would there be any other consequences of adopting witness Smith's**  
11 **recommended disallowances?**

12 A. Yes, there would be. Aside from the immediate consequence of losing the  
13 properties in question as future sites, adopting witness Smith's  
14 recommendation would send a message to FPL and other Florida utilities to  
15 take a shorter look into the future and be less aggressive in actively seeking  
16 and acquiring properties that they believe are needed to cost-effectively and  
17 reliably serve their customers. By using either rigid time limitations or  
18 imposing a requirement for a definite plan of development, utilities would  
19 logically wait longer to acquire needed property and increase the risk of  
20 having to acquire less than optimal sites, pay more for the sites that are  
21 available, or both. This would not be in the customers' best long-term  
22 interest.

23

1 **Q. Are there additional reasons the Commission should avoid sending such a**  
2 **message to FPL and Florida's other utilities?**

3 A. Yes, there are. There are many dynamics in play which would call for even  
4 longer planning horizons, not shorter.

5 **Q. What are these dynamics to which you refer?**

6 A. Over my 39 years of experience in utility regulation, I have observed  
7 dynamics which make planning for future demand more difficult yet more  
8 essential for customers to be served cost-effectively and reliably. Perhaps  
9 most important is the rapid growth Florida has experienced and the reduction  
10 in the number of sites available for future development. This dynamic is  
11 further compounded by an increase in conservation areas in Florida, increased  
12 demands on Florida's limited water resources, an increase in environmental  
13 standards and requirements, an escalation of "not-in-my-backyard" concerns  
14 from citizens, and more litigation concerning the placement of utility  
15 facilities. On top of these dynamics is the fact that the time required to locate,  
16 acquire, and get all necessary permits has generally increased.

17

#### 18 **IV. PERFORMANCE BASED COMPENSATION**

19

20 **Q. What is the recommendation of witness Schultz regarding non-executive**  
21 **performance-based variable compensation?**

22 A. Witness Schultz refers to performance-based variable compensation as  
23 incentive compensation and is recommending a disallowance of 100% of non-  
24 executive performance based compensation that is tied to what he considers

1 financial goals and 50% of such compensation that he considers to be tied to  
2 operational goals. FPL witness Slattery addresses why his categorization of  
3 financial goals as not customer-related is incorrect, as well as the overall  
4 reasonableness and necessity of the non-executive performance-based variable  
5 compensation. If accepted, the effect of his recommendation would be to  
6 deny cost recovery of these costs on a going forward basis.

7 **Q. Do you agree with witness Schultz's recommendation?**

8 A. No, I do not. His recommendation to disallow a significant part of non-  
9 executive performance-based variable compensation is inconsistent with  
10 sound regulatory policy and basic principles of ratemaking.

11 **Q. How is witness Schultz's recommendation inconsistent with sound  
12 regulatory policy and basic principles of ratemaking?**

13 A. A fundamental tenet of sound regulatory policy is to provide recovery of all  
14 reasonable and necessary costs incurred to provide service to customers. And  
15 a basic principle of ratemaking is to include all such costs as test year  
16 expenses in calculating a regulated company's net operating income. Only if  
17 the Commission finds that the expenses in question are unreasonable or  
18 unnecessary should they be disallowed in calculating the company's revenue  
19 requirement.

20

21 Another fundamental tenet of sound regulatory policy is to encourage  
22 regulated utilities to be efficient and provide high quality service to their  
23 customers over the long term. Sacrificing efficiency or quality of service in



1 the long run to achieve temporary rate reductions is not in the customers'  
2 interest. All regulatory decisions have consequences and good regulatory  
3 policy results when these consequences are adequately considered.

4

5 Witness Schultz's recommendation violates both of these tenets of sound  
6 regulatory policy.

7 **Q. Please explain how witness Schultz's recommendation violates the tenet**  
8 **of recovery of reasonable and necessary costs.**

9 A. Witness Schultz has made no allegations or presented any evidence that the  
10 total compensation paid to FPL employees, including performance-based  
11 variable compensation, is unnecessary or unreasonable. Neither he, nor any  
12 other OPC witness, has presented an analysis of the employment market to  
13 determine what amount of compensation is reasonable and necessary to attract  
14 the workforce needed to efficiently and reliably run an electric utility. This is  
15 in contrast to the testimony of FPL's witness Slattery who explains that the  
16 overall compensation is reasonable, that it is necessary to attract and retain a  
17 qualified workforce, and that it is at or near the median of employee  
18 compensation paid by other regulated utilities.

19

20 Witness Schultz's recommendation is further flawed because he makes no  
21 analysis of the reasonableness of the net amount of compensation that remains  
22 after incentive compensation is eliminated. He has not provided any evidence  
23 that shows the level of compensation that remains will ensure that FPL is

1 competitive in the market in terms of its ability to attract and retain qualified  
2 employees.

3

4 Consequently, witness Schultz's testimony is totally devoid of any  
5 consideration of reasonableness regarding either the overall amount of  
6 compensation or of the net amount he has recommended.

7 **Q. Has the Commission addressed performance-based variable  
8 compensation for other Florida utilities?**

9 A. Yes. A prior Florida Power Corporation rate case provided for cost recovery  
10 of incentive (performance-based variable) compensation finding that:  
11 "Incentive plans that are tied to achievement of corporate goals are  
12 appropriate and provide an incentive to control costs." Order No. PSC-92-  
13 1197-FOF-EI, issued October 22, 1992, in Docket No. 910890-EI, In Re:  
14 Petition for a rate increase by Florida Power Corporation. And in a TECO  
15 rate case, the Commission found that TECO's total compensation package,  
16 including the component contingent on achieving incentive goals, was set near  
17 the median level of benchmarked compensation and allowed recovery of  
18 incentive compensation that was directly tied to results of TECO:

19 TECO's Success Sharing Plan has been in place since 1990 and  
20 its appropriateness was approved in the Company's last rate  
21 case in 1992. Lowering or eliminating the incentive  
22 compensation would mean TECO employees would be  
23 compensated below the employees at other Companies, which

1           would adversely affect the Company's ability to compete in  
2           attracting and retaining a high quality and skilled workforce.

3           We therefore decline to do so.

4           Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No.  
5           080317-EI, In re: Petition for a rate increase by Tampa Electric Company.

6  
7           The Commission has also approved incentive compensation in three prior rate  
8           cases for Gulf Power Company ("Gulf Power"), the most recent of which  
9           resulted in an Order No. PSC-12-0179-FOF-EI, issued April 3, 2012, in  
10          Docket No. 110138-EI, In re: Petition for increase in rates by Gulf Power  
11          Company. The Commission's finding in the 2001 Gulf rate case contains  
12          language similar to the TECO case:

13                 To only receive a base salary would mean Gulf employees  
14                 would be compensated at a lower level than employees at other  
15                 companies. Therefore, an incentive pay plan is necessary for  
16                 Gulf salaries to be competitive in the market. Another benefit  
17                 of the plan is that 25% of an individual employee's salary must  
18                 be re-earned each year. Therefore, each employee must excel  
19                 to achieve a higher salary. When employees excel, we believe  
20                 that the customers benefit from a higher quality of service.

21          Order No. PSC-02-0787-FOF-EI, in Docket 010949-EI, In re: Request  
22          for rate increase by Gulf Power Company, (page 45 of order).

1 In this case, FPL is seeking recovery of the same type of incentive  
2 compensation allowed in the above noted cases.

3 **Q. Are there any Florida Court decisions relevant to the issue of**  
4 **Commission disallowance of compensation expenses?**

5 A. Yes, two cases are instructive in this regard and both dealt with the  
6 Commission’s disallowance of executive compensation.

7  
8 In *Florida Bridge Company v. Bevis*, the Florida Supreme Court reversed a  
9 decision of the Commission disallowing a portion of the Company President’s  
10 salary. The Court observed:

11 Indeed, the Commission has made no attempt to determine  
12 whether the president’s compensation is excessive in view of  
13 the services he provides. The arbitrary ratio by which the  
14 Commission reduced the salary and expense account[,] the  
15 ratio of days physically absent from the home office to the total  
16 number of workdays in the test year[,] has no support in logic,  
17 precedent, or policy.

18 363 So. 2d 799, 800-01 (Fla. 1978)

19  
20 The Court found the Commission’s action “was arbitrary and constitutes a  
21 substantial departure from the essential requirements of law.” Id.

22

1 The First District Court of Appeal reached a similar conclusion in *Sunshine*  
2 *Utilities of Central Florida, Inc. v. Florida Public Service Commission*, in  
3 finding fault with the Commission's disallowance of a portion of the  
4 Company president's salary:

5 In determining whether an executive's salary is reasonable  
6 compared to salaries paid to other company executives, the  
7 comparison must, at a minimum, be based on a showing of  
8 similar duties, activities, and responsibilities in the person  
9 receiving the salary.

10 624 So. 2d 306, 311 (Fla. 1st DCA 1993)

11 **Q. How are these cases related to the disallowance of performance-based**  
12 **variable compensation recommended by Witness Schultz?**

13 A. It relates to the point I made earlier in my testimony regarding Witness  
14 Schultz's failure to determine whether overall compensation expense is  
15 reasonable and necessary. The Florida Supreme Court and the First District  
16 Court of Appeal reversed Commission decisions because the basis for the  
17 disallowances did not address the reasonableness of the salaries as compared  
18 to the market.

19

20 Witness Schultz's analysis is similarly flawed because he has made no attempt  
21 to compare the total compensation paid to FPL employees to the market for  
22 similar services, duties, activities and responsibilities. Nor has he or any other  
23 witness, presented evidence that the salaries for any employee are excessive.

1           Instead he recommends a portion be disallowed based on how it is paid:  
2           Because it is performance-based variable pay, rather than base salary, it is  
3           subject to disallowance notwithstanding whether the total amount of  
4           compensation is reasonable. The focus of any disallowance should be how  
5           much is paid, not how it is paid.

6           **Q.    Is it your position that Commission precedent supports the recovery of all**  
7           **of the non-executive performance-based variable pay?**

8           A.    While the Commission reviews each utility's compensation costs on the facts  
9           specific to that utility, the Commission has consistently recognized that  
10          incentive compensation/performance-based variable pay is an accepted and  
11          desirable way to achieve corporate goals and to control costs for the benefit of  
12          customers. The Commission has also determined that incentive compensation  
13          is an appropriate component to include within overall compensation to judge  
14          whether the overall compensation paid to employees is reasonable.

15  
16          I believe there are a number of reasons for this precedent. First, the  
17          Commission's policy is consistent with the basic tenets of sound regulatory  
18          policy that I described earlier. Second, the Commission has recognized that  
19          having good management at utilities is essential for regulators to achieve their  
20          mission of having safe, reliable and reasonably-priced service delivered to  
21          customers. Third, the Commission has further understood that management  
22          needs sufficient tools and incentives to achieve these goals and that regulators  
23          should not attempt to "micro-manage" their regulated utilities. Fourth, the

1 Commission has appropriately recognized that not all issues in a rate  
2 proceeding are a simple situation of “us vs. them,” where every issue has a  
3 clear winner and a clear loser. While at-risk compensation has been and is  
4 currently being characterized as an “us vs. them” issue, in reality it is not.  
5 Incorporating performance-based variable pay as part of an overall  
6 compensation plan is a good example of aligning employee interests with  
7 customer interests.

8 **Q. Mr. Deason, do you understand that witness Schultz is suggesting that**  
9 **FPL will continue pay the entire non-executive performance-based**  
10 **variable pay even if it is disallowed?**

11 A. Yes, I understand his suggestion. That suggestion is an implicit  
12 acknowledgement that the total compensation, including 100% of  
13 performance-based variable pay, is a necessary and reasonable business  
14 expense.

15  
16 Disallowing a reasonable and necessary business expense, or requiring  
17 the Company to share part of the expense, is nothing more than a  
18 backdoor approach to reducing the allowed ROE. Funds that should go to  
19 shareholders as a fair return on investment instead would be diverted to cover  
20 costs that should otherwise be recovered in rates

21

22

23

1           **V. DIRECTORS AND OFFICERS LIABILITY INSURANCE**

2

3   **Q.    What is the recommendation made by witness Schultz regarding DOL**  
4   **Insurance?**

5   A.    Witness Schultz, on behalf of OPC, recommends that the DOL insurance be  
6        reduced by \$1.391 million. He indicates the costs should be shared equally  
7        between customers and shareholders.

8   **Q.    Do you agree with this recommendation?**

9   A.    No, I do not. The cost of DOL insurance is an ordinary and necessary cost  
10       of doing business, and as such the entire amount FPL has requested should be  
11       recovered in rates.

12   **Q.    Why are DOL insurance premiums an ordinary, necessary and beneficial**  
13   **cost of doing business?**

14   A.    DOL insurance is necessary to attract and retain knowledgeable, experienced  
15       and capable directors and officers. DOL insurance is purchased for the  
16       purpose of protecting the company and its directors and officers from normal  
17       risks associated with managing the Company. Qualified and capable directors  
18       and officers would be reluctant to assume the responsibilities of managing a  
19       company without the assurance that their personal assets would be shielded  
20       from legal expenses, settlements or judgments arising from lawsuits. The  
21       assets of the Company are likewise protected from lawsuits that could divert  
22       capital to cover any losses. Increasing scrutiny of corporate governance and  
23       the related risk exposure of directors and officers make insurance a necessity



1 in maintaining a high quality board and senior management team. Adequate  
2 liability coverage gives directors and officers the level of comfort necessary to  
3 enable them to make forward-looking decisions that will provide operational  
4 and cost-efficiency benefits for customers.

5 **Q. Has the Commission previously allowed recovery of the cost of DOL**  
6 **insurance?**

7 A. Yes. There are two good examples involving Peoples Gas System and TECO.  
8 In the Peoples Gas System's case the Commission stated:

9 DOL Insurance has become a necessary part of conducting  
10 business for any company or organization and it would be  
11 difficult for companies to attract and retain competent directors  
12 and officers without it. Moreover, ratepayers receive benefits  
13 from being part of a large public company, including, among  
14 other things, access to capital. In addition, DOL Insurance is  
15 necessary to protect the ratepayers from allegations of  
16 corporate misdeeds.

17 Order No. PSC-09-0411-FOF-GU, page 37 issued June 9, 2009, in Docket  
18 No. 080318-GU, In re: Petition for rate increase by Peoples Gas System.

19

20 In the TECO case, the Commission stated:

21 We find that DOL insurance is a part of doing business for a  
22 publicly-owned Company. It is necessary to attract and retain  
23 competent directors and officers. Corporate surveys indicate

1           that virtually all public entities maintain DOL insurance,  
2           including investor-owned electric utilities.

3           Order No. PSC-09-0283-FOF-EI, page 64 issued April 30, 2009, in Docket  
4           No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company.

5   **Q.    What is instructive from these two cases?**

6   A.    Both of these cases found that DOL insurance is, first, necessary and, second,  
7           beneficial to customers. In the Peoples Gas System's case in particular, the  
8           Commission found that DOL insurance benefits customers by enabling their  
9           service provider to be managed by competent directors and officers, by  
10          enabling service to be provided by a large public company with access to  
11          capital, and by protecting customers from allegations of corporate misdeeds.

12 **Q.    Why is this important?**

13 A.    It clearly places DOL insurance in the proper overall regulatory perspective  
14          for cost recovery. Any expense that is determined to be both necessary and  
15          prudent is typically provided full cost recovery in rates (assuming the amount  
16          spent is reasonable in amount, which does not appear to be at issue for the  
17          level of premiums paid by FPL). In the case of DOL insurance, the  
18          Commission has also found it to not only be necessary but to also be  
19          especially beneficial to customers. It would be extremely rare, if ever, that an  
20          expense that is determined to be both necessary and beneficial to customers to  
21          be denied cost recovery. However, DOL insurance costs are being  
22          characterized as an exception by witness Schultz because of his contention  
23          that DOL insurance primarily benefits stockholders.

1 **Q. Do you agree with his characterization of the purpose of DOL**  
2 **insurance?**

3 A. No, I do not. DOL insurance is not designed to protect shareholders. DOL  
4 insurance is designed to protect the officers and directors of the corporation  
5 from lawsuits alleging harm from decisions of the officers and directors acting  
6 in their official capacity. This is an important distinction for two reasons.  
7 First, without adequate DOL insurance, any corporation would find it difficult  
8 to attract the best qualified individuals to serve as officers and directors.  
9 Second, and perhaps more importantly, it allows officers and directors to  
10 make decisions based on their best judgment and not on the goal of  
11 minimizing exposure to potential lawsuits. And this second reason is  
12 especially applicable to officers and directors of regulated utilities.

13 **Q. Why is this second reason especially applicable to officers and directors**  
14 **of regulated utilities?**

15 A. A regulated utility is in a relatively unique position as compared to typical for-  
16 profit companies. To be successful, a regulated utility must meet all of its  
17 obligations required by virtue of being a state-sanctioned regulated monopoly  
18 and must also fulfill its commitments to all stakeholders, including its  
19 vendors, employees, creditors, stockholders, customers and regulators.  
20 Therefore, truly effective directors and officers must feel free to exercise their  
21 best independent judgment to balance all of those sometimes competing  
22 interests, without fear of lawsuits threatening their personal assets. It is both

1 good public policy and good regulatory policy to encourage such informed,  
2 objective decision making that is enabled to a great extent by DOL insurance.

3 **Q. Why is it good regulatory policy to encourage DOL insurance?**

4 A. It is good regulatory policy to encourage DOL insurance to enable officers  
5 and directors to engage in thoughtful, objective decision making that carefully  
6 weighs the outcomes and resulting impacts on all stakeholders.

7 **Q. Is there a real-world example of this?**

8 A. Yes, perhaps the best example of this is the Commission's policy of  
9 encouraging settlements among the parties on matters in dispute. The best  
10 settlements are those where all parties engage in meaningful discussion and  
11 agree on sometimes significant concessions. When these concessions are  
12 believed to be in the best interest of a regulated utility and its stakeholders, the  
13 officers and directors should feel free to exercise this judgment, without the  
14 fear of a lawsuit alleging the concessions were too great.

15 **Q. In response to a previous question, you contrasted a regulated utility with  
16 a typical for-profit company. Are for-profit companies the only entities  
17 that find it necessary and appropriate to purchase DOL insurance?**

18 A. No, many non-profit entities purchase DOL insurance for the same reasons,  
19 i.e., to enable them to have qualified officers and directors and to enable those  
20 officers and directors to engage in objective decision making. So entities that  
21 do not even have stockholders also find it necessary and appropriate to have  
22 DOL insurance. This fact is another reason why I disagree with witness

1 Schultz's characterization that DOL insurance is primarily to protect  
2 shareholders from the past decisions of officers and directors.

3 **Q. What would be the result of accepting witness Schultz's recommendation**  
4 **to disallow half of the cost of FPL's DOL insurance?**

5 A. Witness Schultz characterizes his recommendation as a sharing of costs based  
6 on who he believes benefits. As I just described, I believe his opinion on who  
7 benefits is incorrect. Nevertheless, the true effect of his recommendation is to  
8 disallow one-half of the cost of FPL's DOL insurance. This is tantamount to  
9 saying that one-half of the cost is unnecessary and imprudently incurred. If  
10 this is not the Commission's intended result, his recommendation violates one  
11 of the most basic tenets of regulatory theory, i.e., that all necessary and  
12 prudent costs should be allowed to be recovered in rates.

13 **Q. From a policy perspective, what would be the effective message that**  
14 **would be sent by adopting witness Schultz' recommendation?**

15 A. At least from a theoretical level, his recommendation would trigger three  
16 potential outcomes, none of which is desirable for a regulated utility and its  
17 customers. First, the company could simply decide to not have DOL  
18 insurance. This would result in the extremely undesirable consequences of  
19 which I earlier spoke. Second, the company could decide to not have DOL  
20 insurance and pay its officers and directors more to make-up for the greater  
21 risk exposure. Presumably the increased costs would then be borne fully by  
22 customers because they clearly would be prudent and necessary to attract and  
23 retain directors and officers and pay them a market level of compensation.

1 And third, the company could retain its DOL insurance and not recover one-  
2 half of the cost of doing so. Given that DOL is essential for a large publicly  
3 traded company to function and maintain access to capital on reasonable  
4 terms, this third outcome would almost be assured.

5 **Q. What would be the bottom-line impact of the third potential outcome?**

6 A. As I noted earlier, disallowing a reasonable and necessary business expense,  
7 or requiring the company to share part of the expense, is unfair and  
8 inconsistent with the basic tenets of regulatory theory that all necessary and  
9 prudent costs should be allowed to be recovered in rates. It would amount to  
10 nothing more than another backdoor approach to reducing the allowed ROE.  
11 Funds that should go to shareholders as a fair return on investment instead  
12 would be diverted to cover costs that should otherwise be recovered in base  
13 rates.

14

## 15 **VI. ROE PERFORMANCE ADDER**

16

17 **Q. How is your testimony in this area organized?**

18 A. I begin by describing how FPL's requested ROE adder fits within Florida's  
19 policy on ROE adjustments based on performance and cite to specific cases in  
20 which such adjustments have been made. I next respond to some of the more  
21 general themes contained in the recommendations of witnesses Baudino,  
22 Brosch, Gorman, Lawton, and Pollock. I continue by individually addressing

1 some of the more specific arguments made and positions taken by witnesses  
2 Brosch, Lawton, and Pollock. I end with some concluding observations.

3 **Q. How does FPL's requested ROE adder fit within Florida's policy on**  
4 **performance based adjustments to ROE?**

5 A. The possibility of setting rates at an ROE above or below the mid-point of the  
6 range is a well-established practice in the state of Florida. FPL's requested  
7 ROE performance adder is a request to set rates at a target ROE point above  
8 the mid-point to recognize exceptional performance. The reciprocal of this is  
9 to set rates at a target ROE point below the mid-point for less than satisfactory  
10 performance. Setting rates at a point above or below the mid-point is  
11 authorized by statute, is a regulatory tool historically used by the Commission,  
12 and has been upheld by the Florida Supreme Court. Further, the concept of  
13 recognizing superior management or penalizing unsatisfactory management is  
14 recognized by authoritative sources as an appropriate regulatory tool.

15 **Q. What is the specific statutory provision to which you refer?**

16 A. I am referring to Section 366.041(1), F.S., which authorizes the Commission  
17 when setting rates to consider "the efficiency, sufficiency, and adequacy of  
18 the facilities provided and the services rendered; the cost of providing such  
19 service and the value of such service to the public..."

20 **Q. Has the Commission utilized its discretion to set rates at a target ROE**  
21 **above or below the mid-point?**

22 A. Yes, the Commission has. In fact, the Commission has set rates at targets  
23 both higher and lower than the mid-point in three different cases involving the

1 same electric utility, Gulf Power Company.

2 **Q. In what case did the Commission set rates at a target ROE below the mid-**  
3 **point for Gulf Power?**

4 A. In a 1990 rate case the Commission authorized an ROE of 12.55% for Gulf  
5 Power. However, in recognition of mismanagement, the Commission set rates  
6 at 12.05%, a full 50 basis point reduction, for a period of two years.

7 **Q. Was this decision appealed to the Florida Supreme Court?**

8 A. Yes, it was. In *Gulf Power Co. v. Wilson*, 597 So. 2d 270 (Fla. 1992) (“Gulf  
9 Power Case”), the Court upheld the Commission’s adjustment to ROE based  
10 on evidence of the utility’s mismanagement, but explained that the discretion  
11 worked both ways:

12 This Court has previously recognized that this authority  
13 includes the discretion to *reward*, within the reasonable rate of  
14 return range, for management efficiency. In fact, Gulf Power  
15 has in the past received a ten basis point reward for efficient  
16 management through its energy conservation efforts. *Gulf*  
17 *Power v. Cresse*, 410 So. 2d 492 (Fla. 1982). We find that,  
18 inherent in the authority to adjust for management efficiency is  
19 the authority to reduce the rate of return for mismanagement,  
20 as long as the resulting rate of return falls within the reasonable  
21 range set by the Commission. This concept of adjusting a  
22 utility’s rate of return on equity based on performance of its



1 management is by no means new to Florida or other  
2 jurisdictions.

3 **Q. In what cases did the Commission set rates at a target ROE above the**  
4 **mid-point for Gulf Power?**

5 A. The first time was in Docket No. 800001-EU, where the Commission set rates  
6 at 10 basis points above the ROE mid-point. In denying a Petition for  
7 Reconsideration filed by OPC, the Commission stated:

8 With regard to the ten basis points added to the return on equity  
9 capital used for ratemaking purposes, we believe that once we  
10 have identified an appropriate range for a fair rate of return  
11 consistent with the record, we have some discretion in fixing  
12 the point within the range to be used to determine revenue  
13 requirements. In this instance, we exercised our authority in  
14 this regard to reward Gulf Power Company's visible efforts in  
15 promoting conservation, an objective which we hope that  
16 management of all utilities will strive to achieve. The action in  
17 this case was within our discretion and reconsideration thereof  
18 will be denied.

19 This action was upheld by the Florida Supreme Court. In *Gulf Power Co. v.*  
20 *Cresse*, 410 So. 2d 492 (Fla 1982), the Court affirmed the Commission's  
21 authority to reward a utility for management efficiency with an upward  
22 adjustment in its rate of return.

23

1 **Q. What was the second instance in which the Commission set Gulf Power's**  
2 **rates at a target above the ROE mid-point?**

3 A. The second time was in a 2001 rate case, Docket No. 010949-EI. In this case,  
4 the Commission found the mid-point ROE to be 11.75%. However, in  
5 recognition of Gulf's high level of performance, the Commission set rates at  
6 25 basis points above that level or 12.00%. In its Order No. PSC-02-0787-  
7 FOF-EI, the Commission stated:

8 Gulf contends that it deserves an upward adjustment to its  
9 return on equity (ROE) as a reward for its continuing high level  
10 of performance in customer satisfaction, customer complaints,  
11 transmission and distribution reliability, and generating plant  
12 availability. Gulf's position is that increasing the ROE sends a  
13 message to the Company and the customers that superior  
14 performance is important. Furthermore, such an increase  
15 provides an incentive to continue to provide superior service....  
16 The testimony of Gulf witnesses Labrato and Fisher  
17 demonstrates that Gulf's service is excellent. In addition,  
18 testimony of customers at the customer service hearings was  
19 very favorable. We find that Gulf's past performance has been  
20 superior and we expect that level of performance to continue  
21 into the future.

22

23

1 **Q. What do witnesses Baudino, Brosch, Gorman, Lawton, and Pollock**  
2 **recommend for FPL's requested ROE performance adder?**

3 A. All of these intervenor witnesses recommend denial of the ROE performance  
4 adder.

5 **Q. What are the reasons given by these intervenor witnesses for their**  
6 **recommendations?**

7 A. These intervenor witnesses give reasons which have common themes.  
8 Generally, these recurring themes are:

- 9 • An ROE adder is inconsistent with the regulation of a  
10 monopoly;
- 11 • An ROE adder is unneeded because monopolies enjoy a  
12 privileged position with an obligation to provide superior  
13 service;
- 14 • An ROE adder is unjustified because of FPL's capital  
15 expenditures;
- 16 • An ROE adder is unjustified because it is duplicative of GPIF;  
17 and
- 18 • An ROE adder leads to unjust rates.

19 **Q. Do you agree that an ROE performance adder is inconsistent with the**  
20 **regulation of a monopoly?**

21 A. No, I strongly disagree. To the contrary, a properly imposed performance-  
22 based ROE adjustment is an essential regulatory tool. It enables a regulatory  
23 authority to introduce elements of competition and incentives that otherwise

1 may be lacking in more traditional approaches to ratemaking and enables  
2 regulators to directly express priorities in terms of service quality, cost  
3 control, and customer satisfaction to management. This was expressly  
4 recognized by the Florida Supreme Court in the Gulf Power Case:

5 In a competitive market environment, the market would  
6 provide the necessary incentives for management efficiency  
7 and corresponding disincentives for mismanagement.  
8 However, for a utility that operates as a monopoly, this  
9 discretionary authority to reward or reduce a utility's rate of  
10 return within a reasonable rate of return range is the only  
11 incentive available.

12 **Q. Do you agree that an ROE performance adder is unneeded for**  
13 **monopolies?**

14 A. I disagree for at least two reasons. First, as I just explained, the fact that  
15 utilities are regulated monopolies is the very reason that incentive based  
16 regulatory tools, like ROE adjustments, are necessary. And second, certain  
17 factual assertions presented by the intervenor witnesses do not give a  
18 complete picture. While there may indeed be some advantages to being a  
19 regulated utility, the intervenor witnesses fail to mention the corresponding  
20 obligations and disadvantages.

21 **Q. What are some of the disadvantages of being a regulated utility?**

22 A. Regulated utilities like FPL have an obligation to serve all customers when  
23 service is demanded. They do not have the option of not investing during

1 times of uncertainty or financial difficulty. Neither do they have the option of  
2 departing unprofitable markets or not serving certain customers. Regulated  
3 utilities must justify their prices, while competitive firms enjoy pricing  
4 flexibility and alacrity. Regulated utilities' earnings are set and closely  
5 monitored, while competitive firms such as Walmart do not have  
6 governmentally imposed restrictions on earnings. The fact that regulated  
7 utilities' earnings are set within a narrow range and actively monitored to  
8 insure that earning levels are not exceeded is the very reason that discretion in  
9 setting rates at a point other than the mid-point can be so very crucial to  
10 obtaining the goals of regulation.

11 **Q. Do regulated utilities such as FPL have an obligation to provide superior**  
12 **performance?**

13 A. Regulated utilities do have an obligation to serve, which I just described. In  
14 addition, regulated utilities in Florida have an obligation to provide  
15 "reasonably sufficient, adequate, and efficient service upon terms as required  
16 by the commission." This language is found in Section 366.03, F.S.  
17 Regulated utilities do not however, have an obligation to provide superior  
18 performance. It would be wholly unrealistic and perhaps mathematically  
19 impossible for everyone to be superior. It would be synonymous with setting  
20 an expectation that, as in the mythical town of Lake Wobegon, everyone is  
21 above average.

22

23

1 **Q. Has the Commission ever required a utility to provide superior**  
2 **performance or found a utility to be in violation of a Commission rule or**  
3 **order for not providing superior performance?**

4 A. No, not to my knowledge. The Commission has generally followed a standard  
5 of reasonably sufficient, adequate, and efficient, as prescribed in statute.  
6 When the Commission has imposed a lower ROE it has been for performance  
7 and a quality of service which was determined to be inadequate. Likewise,  
8 when the Commission has awarded a higher ROE it was for performance and  
9 a quality of service beyond that which would be considered merely adequate.

10 **Q. Why has the Commission followed this practice?**

11 A. It is the standard prescribed in statute. Beyond that, it constitutes good  
12 regulatory policy. Applying this standard and using its authority to adjust the  
13 ROE provides the Commission with a powerful and needed regulatory tool to  
14 get inadequate performance corrected and to have superior performance  
15 continue and even become a goal to which other utilities may aspire. This  
16 was certainly the intent of the Commission when it awarded Gulf Power a ten  
17 basis points higher ROE for its conservation efforts. Following the intervenor  
18 witnesses' opinions and recommendations would effectively take this tool out  
19 of the hands of the Commission.

20 **Q. Do you agree that an FPL adder would be unjustified because FPL's**  
21 **capital expenditures have helped it achieve superior performance?**

22 A. No, to the contrary, I believe FPL's capital expenditure history is a strong  
23 indicator that an ROE adder is indeed justified. While a robust capital

1 expenditure program is imperative to achieve the goals of regulation, merely  
2 deploying capital does not guarantee this result. In contrast, FPL's capital  
3 expenditures have not only met the requirements of regulation, but have  
4 exceeded them.

5 **Q. What are the requirements of regulation to which you refer?**

6 A. I am referring to the overarching requirement to have safe and reliable service  
7 provided to customers at reasonable rates.

8 **Q. How are the intervenors incorrect in their assertions?**

9 A. The intervenor witnesses are confusing what is a regulated utility's obligation  
10 and what constitutes superior service beyond its obligation. The intervenor  
11 witnesses' call for service at "at the lowest practical cost" (witness Brosch) or  
12 "lowest reasonable cost" (witness Pollock), as if it is the utility's obligation to  
13 have low costs and superior performance. The intervenor witnesses also fail  
14 to recognize that, if there is indeed to be a superior level of performance, it  
15 has to be a shared goal of both utility management and utility regulators. It is  
16 unrealistic to expect that utilities and their management will always have a  
17 robust capital expenditure program simply because it is their "obligation" to  
18 do so. This is a fundamental flaw in the approach that is being advanced by  
19 the intervenor witnesses who fail to fully appreciate the role of the regulator.

20 **Q. What is the role of the regulator in this regard?**

21 A. It is the role of the regulator to encourage capital expenditures which improve  
22 service and/or reduce costs. Florida has a history of implementing policies  
23 and making decisions which provide this needed encouragement. In fact, FPL

1 has responded appropriately and has not been hesitant to deploy capital that  
2 benefits its customers and is conducive to achieving the common goal of  
3 regulation. However, the successes of FPL's capital expenditures are now  
4 being used by the intervenor witnesses as a reason to deny an ROE adder – an  
5 irony that should not escape us. Generally, they focus on the rate base  
6 impacts of the capital expenditures and fail to appreciate the cost savings and  
7 efficiencies that have resulted. I would note that witness Pollock does  
8 recognize this: “However, FPL has lower costs because it has invested in cost  
9 saving measures, such as installing lower heat rate generation capacity and  
10 smart grid meters.”

11 **Q. Is an ROE adder duplicative of the Generating Performance Incentive**  
12 **Factor (“GPIF”)?**

13 A. While the GPIF is a good example of Commission authority to incent utility  
14 behavior, it is much more limited in scope than an ROE adder. As I  
15 understand the ROE adder proposal, it is designed to incentivize the utility to  
16 continue to provide superior performance and value to customers on a much  
17 broader range of performance than the GPIF. The GPIF is limited to certain  
18 measures of generating unit performance. FPL witness Kennedy addresses  
19 the Company's superior performance in a wide range of generating unit  
20 performance measures, a number of which are not captured in the GPIF.  
21 However, FPL's superior performance outlined in its direct case does not stop  
22 there. It extends to superior nuclear performance as outlined by FPL witness  
23 Goldstein. It extends to extraordinary transmission and distribution reliability



1 performance relative to other Florida utilities and the electric utility industry  
2 in total. It extends to customer satisfaction addressed by FPL witness Santos.  
3 It is addressed by a number of performance metrics addressed by FPL witness  
4 Reed. FPL's superior performance and the superior value FPL provides to its  
5 customers are much broader than the GPIF, and an ROE adder is an  
6 appropriate tool for the Commission to employ to incent such excellent  
7 performance into the future.

8 **Q. Do you agree that an ROE adder will result in unjust rates?**

9 A. No, for three reasons. First, by definition and function, the ROE adder will  
10 not set rates at an unjust level. To the contrary, rates will be set within the  
11 Commission's established range of reasonableness. This concept has been  
12 recognized and approved by the Florida Supreme Court. Second, a properly  
13 structured and implemented performance adder is not intended to unjustly  
14 enrich a company. To the contrary, it is intended to introduce incentives  
15 designed to continue or even enhance superior performance, such that the net  
16 cost paid by customers through rates is less than it would be had the superior  
17 performance not been achieved. And third, an ROE adder would mimic  
18 dynamics that would naturally occur in a competitive market.

19 **Q. How would rates set using an ROE adder or penalty mimic competitive**  
20 **rates?**

21 A. Economic theory holds that a competitive firm that provides greater customer  
22 value (through the quality of its products and services and the efficiency with  
23 which it provides them) can demand higher rates and revenues than a

1 competitor that provides less customer value. An ROE adder or penalty is  
2 consistent with this economic principle. The Florida Supreme Court, in the  
3 1992 Gulf Power Case I earlier referenced, adopts this principle.

4 **Q. Witness Gorman on behalf of FEA takes the position that the ROE adder**  
5 **is not justified because FPL has “been provided the privilege of providing**  
6 **a monopolistic or franchise service territory.” Please respond.**

7 A. The fact that FPL has the exclusive right to serve a particular geographic area  
8 and an obligation to serve within that area is irrelevant to the discussion.  
9 Nearly all electric utilities operate within an exclusive service area. The real  
10 question is whether the differences in performance among those utilities  
11 should be acknowledged. For reasons I have explained, I believe this  
12 represents good policy, and this Commission has elected to do so in the past.

13 **Q. Has the Commission considered arguments before that competitive forces**  
14 **should be considered in setting rates?**

15 A. Yes. In an application for increased rates by Aloha Utilities, Inc., Docket No.  
16 010503-WU, OPC offered the testimony of Hugh Larkin in opposition to the  
17 requested increase. In advocating for a total rejection of the requested  
18 increase based on poor service, witness Larkin testified: “The competitive  
19 principle requiring that regulation be a substitute for competition would view  
20 both price and service from a competitive standpoint.” Witness Larkin went  
21 on to quote James C. Bonbright’s *Principles of Public Utility Rates*  
22 (*“Bonbright’s Principles”*):

1 Regulation, it is said, is a substitute for competition. Hence its  
2 objective should be to compel a regulated enterprise, despite its  
3 possession of complete or partial monopoly, to charge rates  
4 approximating those which it would charge if free from  
5 regulation but subject to the market forces of competition. In  
6 short, regulation should be not only a substitute for  
7 competition, but a closely imitative substitute.

8 **Q. What did the Commission decide in the Aloha case?**

9 A. The Commission, in accordance with the Court's decision in the Gulf Power  
10 Case, set Aloha's ROE at the bottom of the range in recognition of its poor  
11 service.

12 **Q. Witness Lawton asserts that an ROE adder would constitute retroactive  
13 ratemaking. Do you agree?**

14 A. No, witness Lawton either does not understand the standard applicable to  
15 retroactive ratemaking applicable in Florida or is simply trying to confuse the  
16 issue.

17 **Q. Please explain.**

18 A. Retroactive ratemaking occurs when future rates are increased to make up for  
19 past earning deficiencies and/or past failures to recover approved costs. (On  
20 occasion, surcharges have been assessed when ordered by a court on remand.)  
21 Retroactive ratemaking would also occur if future rates were decreased to  
22 eliminate past overearnings and/or past over-recoveries of approved costs.  
23 Retroactive ratemaking is prohibited in Florida, but it would not occur through

1 the implementation of either an ROE adder or ROE penalty. This is because  
2 the ROE adder (or penalty) does not provide for future recovery of past  
3 underearnings (or past overearnings). An ROE adder simply uses historical  
4 data to determine the fair and reasonable level of rates applicable for service  
5 rendered in the future. It is the same as using a historical test year to set  
6 forward looking rates. It is interesting to note that witness Lawton sees no  
7 retroactivity with an ROE penalty: “A penalty involving managerial  
8 misconduct is not retroactive ratemaking.” However, in his view, an ROE  
9 adder for exemplary management would be retroactive. These two positions  
10 are not reconcilable.

11 **Q. Witness Brosch asserts that an ROE adder for FPL would be redundant**  
12 **to its employee compensation program to incent employees to obtain**  
13 **specified goals. Do you agree?**

14 A. No, witness Brosch is mixing apples and oranges. FPL’s employee  
15 compensation structure is a management tool to incent employees to be  
16 productive and hopefully obtain both operational and financial goals. It is  
17 designed to provide these incentives at market medians so that overall  
18 compensation is at competitive levels. It affects the manner in which  
19 employees are paid but is not designed to pay more than is reasonably  
20 necessary to attract and retain qualified employees. In contrast, an ROE adder  
21 is a regulatory tool to recognize superior performance and to incent continued  
22 superior performance. It is designed to reward shareholders at overall  
23 customer rates that are fair and competitive. It also acts as an incentive to

1           deploy capital on reasonable terms that results in even greater customer value  
2           through better service, reduced costs, or both.

3   **Q.   Witness Pollock asserts that there should be no ROE adder because of**  
4   **hedging losses. Do you agree?**

5   A.   No. It is Commission policy to have utilities engage in hedging to reduce the  
6       volatility of fuel costs. Hedging is not designed to be a tool to reduce the  
7       overall cost of fuel. In fact, given the purpose and construct for hedging by  
8       Florida utilities, if losses are incurred on hedges it means that natural gas  
9       prices have dropped. Where a portfolio is only partially hedged, such as  
10      FPL's, it means that all customers are enjoying lower prices that more than  
11      offset the hedging losses. For this reason, the focus of intervenors on the  
12      losses under the hedging program is very much misplaced in general, and  
13      completely inappropriate in this base rate case as a measure of performance.  
14      Losses and gains over time are to be expected and hedging losses during a  
15      specified period of time does not imply mismanagement any more than  
16      hedging gains during another period of time implies superior management.  
17      Therefore, hedging results should have no bearing on the question of an ROE  
18      adder. It should be noted that despite the hedging losses, FPL's rates are still  
19      among the lowest in Florida and low by national standards. That is a good  
20      indicator of superior management performance.

21

22

23

1 **Q. Witness Pollock also asserts that the existence of a depreciation reserve**  
2 **deficit should be a reason to reject the ROE adder. Do you agree?**

3 A. No. It is ironic that witness Pollock and FIPUG are taking exception to the  
4 natural consequence of positions they advocated (to rapidly flow back an  
5 earlier depreciation reserve surplus through the flexible use of depreciation  
6 surplus reserve) and endorsed as part of a comprehensive settlement.  
7 Nevertheless, the existence of a theoretical depreciation reserve deficit or  
8 surplus is not an indicator of either superior management or mismanagement.  
9 Therefore, the fact that FPL's current depreciation reserve is in a deficient  
10 position should have no bearing on the question of an ROE adder.

11 **Q. In response to a previous question you indicated that an OPC witness**  
12 **referred to *Bonbright's Principles* as an authoritative source. Is there**  
13 **another passage from it that is instructive on the use of ROE adders and**  
14 **penalties?**

15 A. Yes. This passage was also referenced by the Florida Supreme Court in the  
16 1992 Gulf Power Case. The Court quoted pages 366-67 of *Bonbright's*  
17 *Principles*. The passage from which the Court quoted reads:

18 While exceptional management is rarely explicitly rewarded,  
19 and mediocrity infrequently penalized, it suggests more  
20 systematic and deliberate efforts on the part of regulating  
21 agencies to distinguish, somewhat as competition is presumed  
22 to do, in favor of companies under superior management and  
23 against companies with substandard management. The

1           distinction might take the form of an explicit and publicly  
2           recognized differential in the allowed rate of return. There is  
3           ground for the conviction that the opportunity of a well-  
4           managed utility to earn a return *liberally* adequate to attract  
5           capital is in the public interest as encouraging rapid  
6           technological progress and long-run policies of operation.

7   **Q. Do you have any concluding observations regarding FPL's**  
8   **requested ROE adder?**

9   A. Based on my thirty-nine years of regulatory experience, utilities that provide  
10   exceptional value to customers are those that have allowed ROEs and capital  
11   structures that maintain their financial integrity and have a willingness to  
12   deploy capital to provide improved service and even greater value to  
13   customers. ROE levels and a willingness to deploy capital are directly related.  
14   To that end, the use of an ROE adder is a valuable and meaningful regulatory  
15   tool that can and should be used, where appropriate, to result in continued and  
16   even increasing value for customers.

17

18   While an ROE adder is discretionary, it should be based on the facts presented  
19   and not rejected on overly simplified philosophical arguments that it is not  
20   beneficial to customers. In the right situation, an ROE adder can be and  
21   should be enormously beneficial to customers. Too often we can lose sight of  
22   the potential for long term benefits when confronted with the prospect of  
23   increasing the calculated revenue requirement in a given rate proceeding.

1           However, low allowed ROEs and inefficient capital structures do not equate to  
2           customer benefits. They may temporarily lower revenue requirements in a  
3           given rate case, but this does not equate to exceptional customer value over  
4           the long-term.

5  
6           Certainly a balance has to be reached with careful consideration and  
7           discretion. The same is true for ROE penalties, in that they should not be used  
8           to result in lower revenue requirements as an end objective. Rather, they  
9           should be used as a means to get reluctant management to cure past  
10          mismanagement and to focus on providing improved service and greater  
11          customer value.

12   **Q.    Does this conclude your testimony?**

13   **A.    Yes, it does.**



1 **BY MR. GUYTON:**

2 **Q** And, Mr. Deason, did you have an exhibit that  
3 you identified as TD-1 attached to your rebuttal  
4 testimony?

5 **A** Yes.

6 **Q** And is the information in that true and  
7 correct to the best of your knowledge and belief?

8 **A** Yes.

9 **CHAIRMAN BROWN:** Staff.

10 **EXAMINATION**

11 **BY MS. BROWNLESS:**

12 **Q** Good morning, Mr. Deason.

13 **A** Good morning.

14 **Q** Nice to see you.

15 Did you have -- prepare parts of what's been  
16 identified on the staff's Comprehensive Exhibit List as  
17 Exhibit 522, work papers related to your rebuttal  
18 testimony?

19 **A** Yes.

20 **Q** Okay. And having reviewed those work papers,  
21 are they true and correct to the best of your knowledge  
22 and belief?

23 **A** Yes.

24 **Q** If I were to ask you the same interrogatory as  
25 was asked before, would you produce the same papers?



1           There also are adjustments recommended by  
2 Mr. Schultz concerning directors and officers liability  
3 insurance and at-risk compensation or incentive  
4 compensation; different terminologies for the same  
5 concept. These amounts are not being questioned in  
6 terms of the amount that's being paid but just how the  
7 amount is being paid and, in the case of directors and  
8 officers liability insurance, on the mistaken belief  
9 that that expense is primarily for the benefit of  
10 stockholders.

11           And I conclude my testimony by speaking to the  
12 ROE adder. In my testimony, I describe that the ROE  
13 adder is a policy of the Commission. It has been used  
14 in the past. It's supported by statute; it's supported  
15 by Commission decisions; it's supported by the Florida  
16 Supreme Court; and it has, by an authoritative source,  
17 Bonbright, has been cited in proceedings here at this  
18 Commission, as well as the court that supports that use.

19           In my experience, I have found that those  
20 utilities which provide the greatest value to customers  
21 are those that have allowed ROEs and equity ratios that  
22 maintain the financial integrity of the companies and  
23 companies that have a willingness to invest. And this  
24 willingness to invest in cost-saving measures that are  
25 measures that enhance quality of service is the type of

1 activity the Commission should encourage, has encouraged  
2 in the past, and should continue. That concludes my  
3 summary.

4 **CHAIRMAN BROWN:** Thank you.

5 **MR. GUYTON:** Thank you, Mr. Deason.

6 We tender the witness.

7 **CHAIRMAN BROWN:** Thank you. And my  
8 understanding is that we're going to go back to the  
9 original order for cross-examination purposes for this  
10 witness.

11 Mr. Rehwinkel.

12 **EXAMINATION**

13 **BY MR. REHWINKEL:**

14 **Q** Thank you, Madam Chair. Charles Rehwinkel  
15 with the Public Counsel.

16 Good morning, Mr. Deason.

17 **A** Good morning.

18 **MR. REHWINKEL:** Madam Chairman, I have passed  
19 out -- hopefully the staff has passed out  
20 seven interrogatory exhibits, or they're in the process  
21 of doing that.

22 **CHAIRMAN BROWN:** Okay.

23 **MR. REHWINKEL:** I have worked with Mr. Guyton,  
24 as I committed to you to do, early this morning to  
25 resolve a couple of pages of cross-examination questions

1 with an agreement to stipulate these interrogatory  
2 responses into the record. Mr. Guyton would like to  
3 explain a couple of slight modifications or corrections  
4 to the interrogatories. And then after that, what I  
5 would like to do is inquire of the witness about the  
6 voracity of the -- and authenticate the documents, and  
7 we can move on from there.

8 **CHAIRMAN BROWN:** Why don't we go ahead and  
9 mark these for ease of reference while Mr. Guyton is  
10 going through that. So we will be starting at 793.

11 **MR. REHWINKEL:** And that would be  
12 interrogatory 407.

13 **CHAIRMAN BROWN:** Okay. 793 will be identified  
14 as FPL's response to OPC's 22nd interrogatory number  
15 407.

16 (Exhibit 793 marked for identification.)

17 **MR. REHWINKEL:** And then interrogatory 408.

18 **CHAIRMAN BROWN:** We will identify that as 794.

19 (Exhibit 794 marked for identification.)

20 **MR. REHWINKEL:** Okay. And 409.

21 **CHAIRMAN BROWN:** 409 interrogatory will be  
22 identified as 795.

23 (Exhibit 795 marked for identification.)

24 **MR. REHWINKEL:** And then 410.

25 **CHAIRMAN BROWN:** Interrogatory 410 will be

1 identified as 796.

2 (Exhibit 796 marked for identification.)

3 **MR. REHWINKEL:** 411.

4 **COMMISSIONER EDGAR:** Interrogatory 411 will be  
5 identified as 797.

6 (Exhibit 797 marked for identification.)

7 **MR. REHWINKEL:** And 411 amended.

8 **CHAIRMAN BROWN:** 411 amended interrogatory  
9 will be identified as 798.

10 (Exhibit 798 marked for identification.)

11 **MR. REHWINKEL:** And finally 412.

12 **CHAIRMAN BROWN:** Interrogatory 412 will be  
13 identified as 799.

14 **MR. REHWINKEL:** Thank you.

15 (Exhibit 799 marked for identification.)

16 **CHAIRMAN BROWN:** Mr. Deason, do you have  
17 copies of all of those in front of you?

18 **THE WITNESS:** Yes.

19 **CHAIRMAN BROWN:** Okay. Mr. Guyton.

20 **MR. GUYTON:** Thank you, Madam Chair. In  
21 regard to Exhibit 793, which is the response to OPC's  
22 22nd set of interrogatories No. 407, on subpart (d)  
23 there is a sentence that reads, "Mr. Deason is aware of  
24 Docket No. 810002-EU, Order No. 10306. Please see  
25 Attachment 3." That should be the answer to subpart (f)

1 instead of (d), but the term "Mr. Deason should," we  
2 should substitute "FPL is aware." And I apologize. We  
3 just simply didn't catch that as we were responding.

4 **CHAIRMAN BROWN:** Okay.

5 **MR. GUYTON:** On the response to interrogatory  
6 No. 408, which has been identified as Exhibit 794, there  
7 are a series of misnumbering of responses. I think it  
8 begins before this, but you will note on (i) through  
9 (l), (i) should not be there. The answer "Yes" should  
10 not be there on (i), and so all of the subsequent  
11 answers should move up one notation. So (j) would  
12 become the response to (i), (k) would become the  
13 response to (j), and (l) would become the response to  
14 (k), and the answers would actually match the  
15 interrogatory.

16 **CHAIRMAN BROWN:** Okay.

17 **MR. GUYTON:** Those are the only corrections  
18 that we made. We have pointed those out to Office of  
19 Public Counsel, and we're fine with stipulating these  
20 exhibits as correct.

21 **CHAIRMAN BROWN:** Okay. Thank you. That is  
22 noted.

23 **MR. REHWINKEL:** Thank you, Madam Chairman.

24 **BY MR. REHWINKEL:**

25 Q So I would inquire of the witness, Exhibit

1 793 through 799, Mr. Deason, with the corrections noted  
2 by your counsel, are these responses true and correct to  
3 the best of your knowledge and were they prepared under  
4 your direction and control?

5 **A** Partially, Mr. Rehwinkel. As you can tell,  
6 some of these questions ask for information from FPL and  
7 not from me. Obviously, all of the answers that were  
8 directed at me and of which I had knowledge, I certainly  
9 provided those answers and those answers are true and  
10 correct to the best of my knowledge and belief. But,  
11 for example, a question about an appraisal which is in  
12 the possession of FPL, I did not ask for that. I did  
13 not know of its existence. So any information about  
14 that sort of thing did not come from me.

15 **MR. REHWINKEL:** Okay. Thank you. And I would  
16 assume Mr. Guyton would stipulate that the responses in  
17 here that are not from Mr. Deason can be relied upon as  
18 record evidence by the Commission?

19 **MR. GUYTON:** Yes. And those were sponsored by  
20 witness Ousdahl, as I understand it.

21 **CHAIRMAN BROWN:** Okay.

22 **BY MR. REHWINKEL:**

23 **Q** Thank you. Thank you, Mr. Deason.

24 **A** Thank you.

25 **Q** I won't ask you about comparison of retirement



1 patterns. That was for Mr. Allis.

2 **A** I was hoping you would, though, Mr. Rehwinkel.

3 **Q** Isn't it true you were a commissioner here for  
4 about 16 years?

5 **A** Yes.

6 **Q** And you were chair of the Commission twice?

7 **A** Yes.

8 **Q** You were an aide to a commissioner for whom  
9 that building over there is named after; right?

10 Mr. Gunter?

11 **A** Yes.

12 **Q** You were twice an employee of the Public  
13 Counsel and often a witness on behalf of customers;  
14 right?

15 **A** Yes.

16 **Q** And you consider yourself today to be the same  
17 person now testifying for utilities as one who  
18 represented and testified on behalf of customers;  
19 correct?

20 **A** I am the same person, yes.

21 **Q** And you consider yourself the same person who  
22 was a commissioner and a chairman who served the public  
23 and customers in that capacity; correct?

24 **A** Yes.

25 **Q** And when you were an OPC witness and a

1 commissioner, you were an ardent adherent to a  
2 fundamental principle that a utility has the burden of  
3 proof to prove their case and the costs they seek  
4 recovery for; correct?

5 **A** Yes.

6 **Q** In fact, you were well known for voicing your  
7 support for that in your decisions and sometimes even  
8 your dissents; correct?

9 **A** I would think that over the 16 years that has  
10 happened on more than one occasion, yes.

11 **Q** Okay. You still today strongly and  
12 consistently believe that the utility petitioning for a  
13 base rate increase shoulders the burden of proof to  
14 justify the costs which they seek to recover from  
15 customers; correct?

16 **A** Yes.

17 **Q** And you are not here suggesting that  
18 intervenor witnesses who are raising issues are doing so  
19 in bad faith or doing it in a way differently than you  
20 did as a witness for the citizens of Florida, are you?

21 **A** I am not making any such allegation.

22 **Q** Okay. Mr. Deason, on page 25 of your rebuttal  
23 testimony, I think you address Mr. Schultz,  
24 Mr. Schultz's contention that this allowance of  
25 incentive compensation -- regarding disallowance of

1 incentive compensation; is that right?

2 **A** Yes. This is the subject matter on page 25.

3 **Q** Okay. Are you familiar -- you say there that,  
4 on lines 8 through 10, that his suggested modification  
5 is inconsistent with sound regulatory policy and basic  
6 principles of ratemaking; right?

7 **A** Yes.

8 **Q** And this is a phrase that you frequently use  
9 in rebutting intervenor witnesses; right?

10 **A** Yes. It may not be the exact phrase from time  
11 to time, but the basic meaning is there probably several  
12 times throughout my testimony.

13 **Q** Okay. Are you familiar with rate decisions in  
14 other jurisdictions disallowing incentive compensation?

15 **A** No, I'm not.

16 **Q** Okay. You mentioned Mr. Bonbright's book I  
17 think in your rebuttal -- I mean, in your summary with  
18 regard to the adder; is that right?

19 **A** Yes.

20 **Q** Okay. Does Mr. Bonbright say anything in his  
21 book about whether incentive compensation is correct or  
22 incorrect as a matter of regulatory principles?

23 **A** I do not know, but I suspect you're going to  
24 show me.

25 **Q** I was just wondering if -- I guess if you had

1 seen something in there, you would have cited it; right?

2 **A** Yes, most likely, but I don't recall him  
3 speaking specifically to that issue.

4 **Q** Okay.

5 **A** It's very clear, though, that he believes as a  
6 matter of regulatory policy that incentives do matter.  
7 But, of course, that was more in the question of an ROE  
8 adder as opposed to incentives for utility employees.

9 **Q** Now if I could get you to look on page 25,  
10 line 11, and carrying forward to page 26, line 6, you  
11 consider non-incentive -- a non-executive incentive  
12 compensation to be reasonable and necessary in providing  
13 service to ratepayers; is that right?

14 **A** If the amount is reasonable. My -- the focus  
15 of my testimony is to not make a disallowance because it  
16 is incentive compensation. If there is to be a  
17 disallowance, it should be based upon the amount that is  
18 unnecessary or excessive, not because a part of it is  
19 paid based upon performance metrics.

20 **Q** So that was a yes followed by that  
21 explanation?

22 **A** I'm sorry, and I am admonished for not  
23 answering yes at the beginning. Could you repeat your  
24 question?

25 **Q** Yes. In that section of page 25 and 26 that I

1 referred you to, I asked you if it was your testimony  
2 that you consider non-executive incentive compensation  
3 to be reasonable and necessary in providing a service to  
4 ratepayers as FPL proposed it in this case.

5 **A** Yes. As a general matter, subject to the --  
6 to what -- the previous answer about there could be  
7 exceptions if it was determined the amounts were  
8 excessive.

9 **Q** All right. Okay. Now you don't know that the  
10 non-executive incentive compensation plan that FPL has  
11 in this case provides real goals that promote an  
12 incentive to improve operations, do you? You didn't  
13 look at the plan to that degree, did you?

14 **A** No. I replied upon the testimony of  
15 Ms. Slattery in that regard.

16 **Q** And your -- you are -- have a degree in  
17 accounting; correct?

18 **A** I have two degrees in accounting.

19 **Q** Okay. And so you know that O&M expenses are  
20 part of the components of determining net income; right?

21 **A** Yes.

22 **Q** And you know that if the goal for O&M is to  
23 reduce expenses, and all other things being equal,  
24 reduction in O&M expenses would increase net income;  
25 right?

1           **A**     I think mathematically you're correct, but I  
2 think we need to understand that a compensation goal  
3 based upon a reduction in O&M cost is something that's  
4 very beneficial for customers because you're reducing a  
5 cost. And to the extent that service can be provided  
6 more efficiently, which is the target or the focus,  
7 purpose of that goal, that definitely is a benefit to  
8 customers. If it were to be strictly a financial goal,  
9 I would suspect that it would be stated more in terms of  
10 a return on equity that was achieved or certain level of  
11 income that was achieved. But that goal is certainly  
12 customer focused.

13           **Q**     Okay. So if net income increases, where does  
14 the net income get recorded when the books are completed  
15 for that reporting period?

16           **A**     Where do they get reported?

17           **Q**     Recorded, recorded on the books.

18           **A**     Reported?

19           **Q**     Recorded.

20           **A**     It would be on the income statement.

21           **Q**     Recorded, not reported. Recorded. What  
22 account? Would it be retained earnings?

23           **A**     Oh, it would eventually flow through to  
24 retained earnings, yes.

25           **Q**     Okay. All right. Do ratepayers have a claim

1 or interest in retained earnings, or is that a  
2 shareholder claim?

3 **A** Yes and no. The shareholders -- it is  
4 shareholders' money, and that money can either be  
5 reinvested in the business to support ongoing  
6 operations, it could be paid in dividends. But to the  
7 extent that there are retained earnings and that helps  
8 support the financial integrity of the company and  
9 perhaps can be used to have the utility not go to the  
10 capital markets as much, in that regard, it's beneficial  
11 to customers to have a certain amount of retained  
12 earnings.

13 **Q** Okay. And retain the increase in -- or  
14 increased credits to retained earnings could also allow  
15 the utility to report earnings above the midpoint and up  
16 to the top of the range; right?

17 **A** Well, the range --

18 **Q** Yes or no?

19 **A** Yes, it could, and it could -- it's just a  
20 mathematical result that with earnings -- return on  
21 equity is the result of the earnings, and it's a  
22 question of the percentage of those earnings to the  
23 capital base of the equity component in the capital  
24 structure. So, yes, that's a mathematical result.

25 **Q** Okay. Now you -- in your -- providing your

1 rebuttal testimony or whatever work you did for the  
2 company in this case, you didn't review any compensation  
3 studies that compared FPL compensation to other  
4 utilities, did you?

5 **A** I did not.

6 **Q** Let's look at line 25 of your rebuttal.

7 **CHAIRMAN BROWN:** Line 25 or page?

8 **MR. REHWINKEL:** You didn't give me enough  
9 sleep time last night, Madam Chairman.

10 **CHAIRMAN BROWN:** It's my fault.

11 **MR. REHWINKEL:** No, it's not your fault. I  
12 appreciate what -- that you let us go last night.

13 **BY MR. REHWINKEL:**

14 **Q** Page 25, line 21, on to line 3 of page 26.

15 **A** Yes.

16 **Q** You aren't aware of any studies that show that  
17 because incentive compensation was disallowed by a  
18 Commission that efficiency or quality of service has  
19 declined, are you?

20 **A** No, I'm not aware of any such study.

21 **Q** Okay. Now let's look at page 27 of your  
22 rebuttal testimony between lines 7 and 12. Now you show  
23 here -- or you reference here a decision that states,  
24 "Incentive plans tied to achievement of corporate goals  
25 are appropriate and provide incentive to control cost,"



1 don't you?

2 **A** Yes.

3 **Q** And I assume you would agree with that  
4 philosophy.

5 **A** Yes.

6 **Q** Okay. Would you agree with me that if a goal  
7 is achieved in year one, that the bar should be raised  
8 in year two to effect, effect -- to in effect continue  
9 to incent an employee to improve performance?

10 **A** No, I would -- as a blanket, no, I would not  
11 agree with that statement. It would depend upon the  
12 circumstances.

13 **Q** Okay. If the goal isn't raised after it's  
14 been achieved, how can there be an incentive to improve  
15 in the subsequent years?

16 **A** I think that the answer to your question lies  
17 in the fact that I don't think the standard is one of  
18 constant improvement. I think the standard should be  
19 one of improvement to the extent that improvement can be  
20 achieved. But if a certain level is achieved that  
21 should be sustained, the goal may be sustaining that  
22 high level. And that would be a goal that has to be  
23 achieved year after year after year. So I don't want --  
24 mean to quibble with you on that, but many goals are set  
25 higher one year to the next. Again, it would depend on

1 the circumstances.

2 Q Well, you're not telling the Commission here  
3 that there are certain levels of service that are  
4 maximum and there's no further achievement that can be  
5 gained, are you?

6 A No. But, for example, one of the goals that  
7 FPL has, as I understand it, is to increase the  
8 efficiency of their operations, one of those being the  
9 increased efficiency of power plants. Well, there are  
10 laws of physics and engineering that you can just get so  
11 much efficiency out of a power plant. Now there may be  
12 the ability to invest further dollars perhaps to  
13 modernize a plant or to put greater efficiencies in or  
14 better technologies. But still at the end of the day,  
15 there's just so much Btus you can get out of a molecule  
16 of gas and convert that to electricity. So there are  
17 limits on what the goals can be.

18 Q Okay. So are -- well, you're not an engineer,  
19 are you?

20 A I am not.

21 Q Okay. On page 32, lines 8 through 20, of your  
22 testimony, you testify that Mr. Schultz is suggesting or  
23 acknowledging, I guess, that the incentive compensation  
24 is reasonable because he has not recommended that FPL  
25 discontinue the incentive pay program; is that right?

1           **A**     Can you show me the line number, please?

2           **Q**     8 through 20.

3           **A**     Yes, I see that.

4           **Q**     Okay.  Would you agree with my  
5     characterization of your testimony?

6           **A**     Well, let's just read the testimony.  It says,  
7     "The suggestion is an implicit acknowledgment that the  
8     total compensation, including 100 percent  
9     performance-based variable pay, is a necessary and  
10    reasonable business expense."

11          **Q**     Okay.  Is it your testimony -- or can I take  
12    from your testimony there that you believe that as long  
13    as there is no recommendation to stop paying an expense  
14    like incentive compensation, then that expense is  
15    necessary and required for the safe and reliable  
16    provision of service to customers?  And by  
17    recommendation, I mean by an intervenor witness.

18          **A**     I'm going to ask you to repeat that question,  
19    please.

20          **Q**     Okay.  Is it -- do I take it from your  
21    testimony there that you believe that as long as there's  
22    no recommendation by an intervenor witness, let's say,  
23    to -- that FPL stop paying an expense like incentive  
24    compensation, then that expense is reasonable and  
25    necessary and required for safe and reliable provision

1 of service to customers?

2 **A** No, that is not my testimony, and I probably  
3 need to explain the reason for my statement in the  
4 testimony. Normally in regulation, if an expense is  
5 determined to be unneeded or excessive, that is a signal  
6 to the utility to make changes. Either they cease  
7 expending the funds for that purpose or else if they're  
8 spending too much, they decrease it.

9 In the case of performance-based compensation,  
10 there's been no allegation by the intervenor witnesses  
11 that the amount that is being paid is excessive. So  
12 what is the utility supposed to do? They need to  
13 continue to pay that. So if it is needed to be paid,  
14 why should there be a disallowance of the cost just  
15 because of the way that it is paid. So if there's  
16 something fundamentally wrong that sends the wrong  
17 message or somehow harms customers or is not beneficial  
18 to customers by incentive compensation, there should be  
19 a change. But that's not Mr. Schultz's testimony. He's  
20 not finding fault that somehow customers are harmed or  
21 not benefited. He just doesn't want customers to pay  
22 for a portion of the incentive. And that's the  
23 difficulty where this particular recommendation deviates  
24 from what is normally the course when an expense is  
25 determined to be excessive and there is a recommendation

1 to have that expense reduced or the Commission -- or the  
2 utility can take that finding and can change their  
3 operations to conform with that finding.

4 Q I believe that your experience in the field of  
5 public utility regulation goes back to maybe 1977. Is  
6 my memory failing me there?

7 A That's correct.

8 Q Okay. So you lived through the process that  
9 under -- that this Commission underwent where they  
10 considered charitable contributions and whether they  
11 were appropriate for recovery above or -- above the  
12 line; right?

13 A Yes.

14 Q Okay. So the issues there weren't about the  
15 level of charitable contributions but about whether the  
16 shareholders or the customers should be responsible for  
17 bearing that cost; correct?

18 A That's correct.

19 Q Okay. So you haven't encountered a litigation  
20 position in a case that -- in your travels around the  
21 country or in your experience here in Florida where the  
22 intervenors were advocating that the charitable  
23 contributions cease or that they were excessive. It's  
24 just about who pays, who pays for it; right?

25 A Yes. That's an issue that really has not been

1 litigated, to my knowledge, recently in the state of  
2 Florida or in other jurisdictions. It's a policy that's  
3 been well established and everyone seems to accept it.  
4 I understand that utilities still continue to make  
5 contributions. They make those contributions fully  
6 knowing that it's not going to be included in utility  
7 rates.

8 **Q** Let's talk about DOL insurance just for a  
9 little bit. You cite on page 34 of your testimony an  
10 instance where the Commission has allowed DOL, or  
11 directors and officers liability insurance, looking at  
12 lines 5 through 8; right?

13 **A** Yes.

14 **Q** Likewise, the Commission has disallowed a  
15 portion of DOL insurance cost; right?

16 **A** Yes.

17 **Q** On page 36 of your testimony, looking at lines  
18 1 through 6, are you saying that shareholders receive  
19 absolutely no benefit from the existence of directors  
20 and officers liability insurance?

21 **A** No, they definitely do benefit. But -- and I  
22 guess it's the purpose of my testimony to emphasize the  
23 fact that DOL insurance is no different from any other  
24 expense. Following this argument, it could be just as  
25 easily made that, well, a portion of the salaries that

1 are paid to officers and directors should be disallowed  
2 because stockholders benefit, also benefit from having  
3 qualified, capable officers and directors.

4 It could also be argued under this same theory  
5 that a portion of the maintenance expense on a power  
6 plant should be shared between customers because a  
7 stockholder in a utility has -- is benefited by the fact  
8 that their investment is being maintained.

9 So if you want to expand this, and I hope I'm  
10 not giving Mr. Rehwinkel any ideas, but if you want to  
11 expand this basic argument, you could be arguing that  
12 the vast majority of the expenses that are incurred to  
13 provide service to customers should be shared with  
14 stockholders for stockholders' due benefit from those  
15 expenditures.

16 Somehow it seems that DOL insurance has been  
17 placed in a category, I think, under the mistaken belief  
18 that DOL insurance benefits stockholders, and that is  
19 not the primary purpose. I do agree there is a benefit  
20 to stockholders.

21 **Q** You are aware that lawsuits are sometimes  
22 filed against officers and directors of a company;  
23 right?

24 **A** Yes.

25 **Q** And isn't it true that shareholders generally

1 file the lawsuits against officers and directors?

2 **A** I don't know. I'm sure that that is a  
3 distinct possibility.

4 **Q** Okay. And if that occurs -- well, and it is  
5 the case, though, that shareholders are the ones that  
6 appoint directors of a company; right?

7 **A** Yes, they do vote on that, and so they do have  
8 a say as to who those persons are.

9 **Q** Okay. So if the shareholders bring a suit  
10 against officers and directors of a company, don't the  
11 shareholders directly or indirectly receive the  
12 insurance proceeds of that suit if they win?

13 **A** If they win or if there's a settlement, there  
14 are -- they do receive that. But, you know, there can  
15 be suits brought by other individuals or groups other  
16 than stockholders. And as I pointed out in my  
17 testimony, there are other entities that also find it  
18 necessary to have DOL insurance that don't even have  
19 stockholders.

20 **Q** Right. But in this case, FPL has  
21 stockholders; right?

22 **A** They do.

23 **Q** So --

24 **A** Well, FPL through NextEra.

25 **Q** Well, yeah. So --



1           **A**     NextEra is the stockholder, but NextEra has  
2 stockholders.

3           **Q**     Right. So what amount do ratepayers receive  
4 from insurance proceeds if there's a shareholder  
5 derivative suit?

6           **A**     Well, I think -- I don't know that they  
7 receive anything. What they do receive, though, the  
8 benefit to shareholders, and I describe this in my  
9 testimony, is they get the assurance that you have  
10 qualified officers and directors who have the freedom to  
11 make decisions that are not being unduly influenced by  
12 how do I minimize my risk exposure to a lawsuit. And I  
13 think it's very beneficial for customers to have such  
14 informed and objective and independent directors and  
15 officers who can make those decisions and those  
16 decisions not be driven to minimize exposure to a  
17 lawsuit.

18           **CHAIRMAN BROWN:** And, Mr. Rehwinkel, not to  
19 interrupt your flow but to help maybe streamline you a  
20 little bit, you are at the 33-minute mark with  
21 Mr. Deason, and I'm just trying to give you a time  
22 warning.

23           **MR. REHWINKEL:** I appreciate that. I think we  
24 got started after the preliminaries a little bit. I  
25 think I'm bumping up against my 20 minutes. Of course,

1 17 of those have been from explanations of Mr. Deason.

2 **THE WITNESS:** You shouldn't ask such good  
3 questions, Mr. Rehwinkel.

4 **MR. REHWINKEL:** So I think it's a shared  
5 problem here.

6 **THE WITNESS:** I will cooperate, Madam Chair.

7 **CHAIRMAN BROWN:** Thank you.

8 **MR. REHWINKEL:** Thank you, Madam Chairman.  
9 Just a few more questions.

10 **BY MR. REHWINKEL:**

11 **Q** If there are any shared -- any insurance  
12 proceeds that go back to the company as a result of  
13 litigation and the insurance proceeds are from a DOL  
14 insurance policy, whose investment is it that is  
15 protected?

16 **A** It would be the stockholders' investment, but  
17 that is also the investment that is used to provide  
18 service to customers. And so if you protect that  
19 investment, it's also beneficial to customers.

20 **Q** Okay. You can't point me to any situation  
21 where a company has discontinued taking or receiving DOL  
22 insurance protection just because there was a  
23 disallowance of the cost in the ratemaking process, can  
24 you?

25 **A** I cannot, and I think that speaks very loudly

1 of the fact that DOL insurance is necessary for a  
2 utility to provide service and to have access to  
3 capital.

4 Q Okay. If the Commission disallows  
5 non-regulated costs from recovery in the ratemaking  
6 process, are they making a determination that there's  
7 something imprudent about those costs, the incurrence of  
8 them?

9 A Not necessarily.

10 Q Okay.

11 A That would not be -- not necessarily be the  
12 result.

13 Q And, likewise, if a cost is attributable in  
14 the ratemaking process or allocated to the wholesale  
15 side of the business, that doesn't mean that it's  
16 imprudent or unreasonable, does it?

17 A I agree. It does not.

18 Q Okay. Isn't asking customers to pay for  
19 incentive compensation that is designed to increase  
20 shareholder returns a diversion of funds that should  
21 remain in customers' pockets --

22 A No.

23 Q -- into shareholders' pockets?

24 A No.

25 Q Isn't asking customers to pay for incentive

1 compensation that is designed to increase shareholder  
2 returns just a backdoor method of artificially boosting  
3 shareholder profits?

4 **A** No, absolutely not, particularly in the case  
5 where it's -- the overall level of compensation is  
6 market based and is necessary to hire and retain  
7 employees.

8 **MR. REHWINKEL:** Okay. Thank you, Mr. Deason.

9 I have no further questions, Madam Chairman.

10 **CHAIRMAN BROWN:** Thank you, Mr. Rehwinkel.

11 And if the parties could try to avoid asking  
12 duplicative, irrelevant questions to utilize the time  
13 that we have here, that would be very appreciated.

14 Mr. Moyle.

15 **MR. MOYLE:** Thank you. We're going to cover  
16 some of the topics in his area. I don't think the  
17 questions will be overlapping to any significant degree.

18 **EXAMINATION**

19 **BY MR. MOYLE:**

20 **Q** I do want to just follow up on one point you  
21 made with Mr. Rehwinkel. I think he was asking you  
22 something about D&L and if you could -- had found any  
23 authority for a commission disallowing D&L, I thought as  
24 I heard it. And you said, no, you hadn't, and you think  
25 that speaks loudly. Did I get that right?

1           **A**     I think you got it partially right. You got  
2 some of the words right, Mr. Moyle. I don't think you  
3 got the concept right.

4           **Q**     All right. Well, what was -- what were you  
5 suggesting when you said if there -- you couldn't find  
6 something supporting it, that that speaks loudly? Could  
7 you explain that to me, please?

8           **A**     Well, let's go back to the question. The  
9 question from Mr. Rehwinkel was asking me whether I knew  
10 if in other jurisdictions, when there was a disallowance  
11 of DOL insurance, if the utilities had ceased carrying  
12 that coverage and paying those premiums, as I understood  
13 the question. And I'm not aware of any companies doing  
14 that in the state or outside of the state, and I think  
15 that speaks to the fact that DOL insurance is needed  
16 even though only half of the costs are being recovered  
17 in rates.

18          **Q**     Okay. Do you think it's fair, if commissions  
19 have been made aware of a particular policy and not  
20 opted to adopt it, whether an inference can be drawn  
21 that that policy may not be viewed favorably by a  
22 particular commission?

23          **A**     I'm sorry. Could you repeat the question? It  
24 was a little confusing.

25          **Q**     Yeah. So when you were taking about

1 charitable contributions, you said, "Well, it's  
2 well-established policy that charitable contributions  
3 are not something that ratepayers pay for." And I just  
4 am wondering if you believe that if a particular policy  
5 has been talked about at NARUC and is out there but has  
6 never been adopted by any commission, whether it's fair  
7 to draw an inference from the commissions around the  
8 country's failure to act that that policy may be viewed  
9 negatively?

10 **A** I think each commission speaks through its  
11 orders, and you can tell what policies they adhere to  
12 and those that they don't. So I would -- you would need  
13 to look at each jurisdiction.

14 **Q** Okay. So then I guess it would follow, if you  
15 look at each jurisdiction and if a commission --  
16 commissions had been aware of something and hadn't acted  
17 on it, then you could draw that inference; is that fair?

18 **A** Either that or else they have not presented --  
19 been presented with the issue at hand and/or else did  
20 not receive enough credible evidence to make the finding  
21 that some party was seeking to get from the commission.

22 **Q** Okay. You're aware that witness Pollock  
23 suggests that CWIP not be allowed in base rates;  
24 correct?

25 **A** Yes.

1           **Q**     And that's part of your rebuttal testimony?

2           **A**     Yes.

3           **Q**     Okay.  And CWIP is -- it covers activities  
4     like, say, for example, construction.  If you're  
5     building a peaker power plant and you have laborers out  
6     there and electricians and you have lawyers who are  
7     giving legal advice about contractual issues related to  
8     the construction of the peaker power plant, that --  
9     those are the kind of things that would be treated as  
10    CWIP; is that fair?

11          **A**     I think that's fair.

12          **Q**     Okay.  And you also would agree that this  
13    Commission, that the role it serves as a surrogate to  
14    set rates because there's no competitive market;  
15    correct?

16          **A**     I generally think that's correct, yes.

17          **Q**     Okay.  And would you agree that to the extent  
18    that there are ways to determine how -- I mean, I think  
19    you maybe even in your testimony talk about things that  
20    occur outside of the regulated community, but if there  
21    is not a need to make a particular adjustment because of  
22    the lack of competition, that the Commission shouldn't  
23    necessarily venture down that path.

24          **A**     Again, Mr. Moyle, I apologize.  I had  
25    difficulty following that question.

1           **CHAIRMAN BROWN:** And I do want to encourage  
2 the parties, we do have limited time here today  
3 probably, so I'd like to encourage the parties to be as  
4 organized in their questions and succinct as possible.

5 **BY MR. MOYLE:**

6           **Q**     Okay. Well, let me take the witness to page  
7 7, line 4, and I'll read this.

8           **CHAIRMAN BROWN:** You don't have to read it,  
9 sir. If you can get to the question.

10 **BY MR. MOYLE:**

11           **Q**     Okay. You take issue with the recommendation  
12 because the policy has not been through a rulemaking  
13 process that includes evidentiary review and due process  
14 protections in a proceeding that allows interested  
15 parties to participate; is that right?

16           **A**     That's partially correct. In this situation,  
17 there had already been a thorough rulemaking process and  
18 a policy established, and the recommendation of this  
19 witness was to deviate from that from a policy already  
20 established in rule.

21           **Q**     Okay. And I assume, because you mentioned due  
22 process and evidentiary, that you believe rulemaking is  
23 a good, fair process for developing policy?

24           **A**     I do.

25           **Q**     Do utilities -- in my CWIP question, do



1 utilities earn a return on the monies that they pay  
2 laborers and lawyers and engineers for work on a  
3 construction project?

4 **A** Well, they earn a return -- when you say "earn  
5 money," that sound like a cash return. It depends -- if  
6 it's AFUDC, it is a paper return. If it is included in  
7 rate base and rates are set thereupon, well, then it is  
8 a -- it's in rates, so it would be a cash return. But  
9 there's a return nevertheless.

10 **Q** Right. So you get a return on equity on what  
11 you pay laborers or lawyers when you're doing a project  
12 in CWIP; is that right?

13 **A** Yes. Whatever the reasonable, necessary and  
14 reasonable amounts to construct a project that is booked  
15 into that account, it would earn AFUDC if it is an  
16 AFUDC-eligible project.

17 **Q** Okay. And AFUDC includes a return; correct?

18 **A** It does.

19 **Q** And in the unregulated world, if a company is  
20 building a plant and they say I'm going to build this  
21 plant, they would have to pay their laborers and their  
22 lawyers and their engineers, they would have to pay it  
23 with monies that they would not be able to earn a return  
24 on, and the only way they would earn a return is after  
25 the plant is built and they start selling a product and

1 receive revenues from the product; is that right?

2 **MR. GUYTON:** Objection. That goes beyond the  
3 scope of this witness's testimony and it goes beyond the  
4 scope of this proceeding.

5 **CHAIRMAN BROWN:** Objection sustained.

6 **MR. MOYLE:** Can I just make a quick proffer?  
7 If permitted to proceed with this line of questioning, I  
8 think I would have been able to show that the activity  
9 in a normal business is that they do not earn on monies  
10 paid to lawyers and workers, and that there is no need  
11 to do that in a regulatory system, given that it's a  
12 substitute for competition. You are being asked to make  
13 a policy decision today on CWIP, and that would have  
14 been, we think, informative with respect to the policy.  
15 So I'll move on. Thank you.

16 **BY MR. MOYLE:**

17 **Q** On page 6, line 11, you talk about nuclear  
18 fuel. It's my understanding that fuel typically is a  
19 straight passthrough and handled in the fuel clause and  
20 there are no earnings that take place on fuel. Is that  
21 consistent with your understanding?

22 **A** As a general proposition, that's correct.

23 **Q** Okay. So in this case, is FPL seeking to earn  
24 a return on nuclear fuel?

25 **A** They're seeking to recover their costs that

1 are having to be incurred to have that fuel processed.

2 Q Not the fuel itself?

3 A No. Once the fuel is processed and it  
4 becomes -- and it's being used and then flows through  
5 the clause, there's no markup on top of that to make a  
6 profit. But to the extent that there are -- is a return  
7 included in the processing of that fuel, then it is that  
8 overall cost that it is accounted for and recovered  
9 through the fuel clause.

10 Q All right. You also have testimony about  
11 plant held for future use; is that right?

12 A Yes.

13 Q Okay. And you would agree that there's no  
14 hard and fast rule to determine the amount of plant for  
15 future use that should be included in rate base?

16 A There is not a hard and fast rule. There is a  
17 policy.

18 Q Okay. And the Commission is free in this case  
19 as -- with a number of issues that they can enter an  
20 order and do what they believe is best using a  
21 reasonableness standard; is that right?

22 A Yes. I think that the standard is one of  
23 reasonableness.

24 Q Okay. And you reference the Commission to an  
25 order, a 1971 order on page 14, line 22.

1           **A**     Yes.

2           **Q**     And is it your understanding -- it's one of  
3 the few orders we could find that predated your  
4 involvement in the system, but would you --

5           **A**     Thank you for that compliment.

6           **Q**     It's meant as a compliment.

7                     You're aware that the Commission had said that  
8 as a matter of Commission policy, that one would need to  
9 show that the policy -- that the property was acquired  
10 as a result of a definitive plan for use and that the  
11 use was imminent; correct?

12           **A**     As you review this order, you will find that  
13 that was the standard before this decision was made in  
14 this docket in 1971.

15           **Q**     And in the order that you reference, it also  
16 suggests that one of the things to be considered is  
17 whether the utility proposes the property for a use in  
18 the reasonably near future; is that right?

19           **A**     Yes, that's contained in this order. And as I  
20 also indicate in my testimony, this was the first case  
21 that followed a line of evolution on this issue. This  
22 was the first case that deviated from the imminent  
23 standard to one of reasonably -- in the near reasonable  
24 future, and this decision was further evolved over time  
25 to the standard that we have now.

1           **Q**     Okay.  And you talk about used and useful on  
2 page 16; right?

3           **A**     Yes.

4           **Q**     And were you here when Mr. Barrett gave his  
5 understanding of used and useful?

6           **A**     I was not here.  I did hear that, though.

7           **Q**     Okay.  Do you have any disagreement with what  
8 he said was used and useful?

9           **A**     Well, as I recall, and you may correct me, his  
10 definition said it was self-defining.  It is whatever is  
11 being used providing benefit.

12          **Q**     And you -- FPL -- did you hear the witness,  
13 whose name is escaping me right now, but who talked  
14 about the acquisition of property and the process that  
15 FPL goes through and says that they use a ten-year  
16 horizon to acquire property except for special cases?

17          **A**     Are you referring to testimony of Mr. Miranda?

18          **Q**     That's right.

19          **A**     I did hear most of that testimony, maybe not  
20 all.

21          **Q**     Okay.  Did my summary capture it relatively  
22 accurately?

23          **A**     I think you're correct.

24                 **MR. GUYTON:**  Objection.  That is a gross  
25 limitation of the characterization of Mr. Miranda's

1 testimony. I just don't think it's accurate for the  
2 record. It shouldn't be summarized.

3 **MR. MOYLE:** It's in the record. I'll move on  
4 juice.

5 **CHAIRMAN BROWN:** Thank you. And just if I  
6 could focus you a little bit more, encourage you to  
7 focus a little more in your questions, that would be  
8 helpful.

9 **BY MR. MOYLE:**

10 **Q** Okay. You don't believe FPL's use of a  
11 ten-year time frame is arbitrary, do you?

12 **MR. GUYTON:** Objection. If we could give some  
13 context about the ten-year time frame by FPL that he's  
14 referring to.

15 **MR. MOYLE:** Well, that's what I was trying to  
16 do with Mr. Miranda's testimony where I'm pretty sure he  
17 said they use a ten-year time frame.

18 **MR. GUYTON:** That's fine. I just wanted to  
19 make sure that you were talking about Mr. Miranda and  
20 not some other ten-year time frame.

21 **CHAIRMAN BROWN:** Okay. Proceed since that's  
22 acknowledged.

23 **MR. MOYLE:** There was a pending question.

24 **THE WITNESS:** I'm sorry. I lost the question.

25 **CHAIRMAN BROWN:** Restate.

1 **BY MR. MOYLE:**

2 **Q** Okay. Are you aware FPL uses a ten-year time  
3 frame for its planning with respect to property held for  
4 future use?

5 **MR. GUYTON:** Objection. I'm sorry, but that  
6 was as to T&D property, not all plant held for future  
7 use. So it's not an accurate characterization.

8 **CHAIRMAN BROWN:** Restate.

9 **BY MR. MOYLE:**

10 **Q** Okay. For T&D property, are you aware that  
11 FPL uses a ten-year time planning horizon?

12 **A** As I recall the testimony, he did indicate it  
13 was a ten-year period, but that it was not hard and fast  
14 ten years, that there are certain situations in which  
15 the horizon has to be beyond ten years.

16 **Q** Okay. And do you think -- do you have any  
17 information to lead to the conclusion that you think a  
18 ten-year time planning horizon is arbitrary?

19 **A** No. I have no basis to say that the planning  
20 criteria used by FPL is arbitrary.

21 **Q** Including the time, ten years?

22 **A** Including the time, ten years.

23 **Q** Okay. Yet on page 18, you suggest that the  
24 recommended disallowance by witness Smith for property  
25 that's been in place for more than ten years is

1 arbitrary; is that right?

2 **A** Yes, I do.

3 **Q** Okay. And with respect to property that has  
4 been in place for T&D for, say, more than 20 or 30  
5 years, do you believe that that -- whose burden is it to  
6 show that that property should continue to be paid for  
7 by ratepayers? Is that the burden of the intervenors or  
8 FPL?

9 **A** FPL.

10 **Q** And are you of any -- aware of any witness  
11 testimony in this case that has described the properties  
12 and why they should continue to remain in rate base  
13 testimony?

14 **A** Yes.

15 **Q** And that would be who, Mr. Miranda?

16 **A** Yes.

17 **Q** All right. And on page 20 -- I guess just to  
18 put a point on the property held for future use --

19 **CHAIRMAN BROWN:** And, Mr. Moyle, I'm going to  
20 interrupt you just a moment. We did get information  
21 that the Governor has issued notice that the offices for  
22 government will be closed at 12:00. So we have two  
23 hours left to -- so I wanted to let all of the parties  
24 know, we are working on limited time.

25 **MR. MOYLE:** Do you know if that -- did that



1 order cover tomorrow as well?

2 **CHAIRMAN BROWN:** I do not know.

3 **MR. MOYLE:** I will.

4 **BY MR. MOYLE:**

5 **Q** Mr. Deason, with respect to FPL's ability to  
6 acquire property, you're aware that there's a Florida  
7 statute that allows for quick taking of property; is  
8 that right?

9 **A** Only to the extent I heard you ask that  
10 question of Mr. Miranda.

11 **MR. MOYLE:** Okay. Can I just hand out a  
12 document real quick?

13 **CHAIRMAN BROWN:** Staff, can you assist  
14 Mr. Moyle, please.

15 Would you like this marked, Mr. Moyle?

16 **MR. MOYLE:** I don't think it's necessary.

17 **CHAIRMAN BROWN:** Okay.

18 **MR. MOYLE:** It's a statute. I can cite that  
19 in my brief without it being in the record.

20 **CHAIRMAN BROWN:** Mr. Deason, do you have a  
21 copy of it?

22 **THE WITNESS:** I do.

23 **CHAIRMAN BROWN:** Okay. Please proceed, Mr.  
24 Moyle.

25 **BY MR. MOYLE:**

1           **Q**     While I'm distributing this to you, if  
2 properties held for future use are sold, who receives  
3 those monies? Do you know.

4           **A**     If it has been in rate base, it's -- the  
5 ratepayers get the benefit of the proceeds of the sale.

6           **Q**     I've handed you a copy of *Florida Statute*,  
7 it's actually -- it's 74.011.

8           **A**     I see that.

9           **Q**     And it's Chapter 74 entitled, "Proceedings  
10 Supplemental to Eminent Domain." I'm just going to read  
11 a section where it says at the very end, "A public  
12 utility may avail itself of provisions of this chapter  
13 to take possession and title in advance of the entry of  
14 final judgment."

15                   In preparing your testimony about property and  
16 future use, you didn't take into account the existence  
17 of this Florida statute; is that right?

18           **A**     I have no basis to either agree or disagree  
19 with your statement. I think that would have been a  
20 question better asked of Mr. Miranda and how he  
21 incorporates this into the judgment.

22                   I could say from a public policy perspective  
23 and the policies of this Commission that utilizing this  
24 tool probably should be a last resort, and it's much  
25 better to obtain properties and acquire them without --

1 Q Is that --

2 A Okay. I'll stop.

3 MR. GUYTON: If he might be allowed to finish  
4 his answer.

5 CHAIRMAN BROWN: Absolutely. Continue.

6 THE WITNESS: This should be a stopgap measure  
7 and that it is not in the best interest of customers or  
8 others whose properties could be taken by this to use  
9 this tool. It should be a last resort when all other  
10 measures fail.

11 BY MR. MOYLE:

12 Q Okay. And you don't have anything in your  
13 testimony related to that; is that right?

14 A No. So why are you asking me these questions?

15 Q Well, because the question -- the question I  
16 asked you that you did not answer that I would like you  
17 to answer was when you formulated your opinion and  
18 provided testimony, did you take into account the  
19 existence of a quick-take procedure, Chapter 74? And  
20 it's a yes or no, which I was hoping to get, but --

21 MR. GUYTON: Asked and answered. He's --

22 MR. MOYLE: He didn't answer the question.

23 MR. GUYTON: He answered the question and  
24 explained why not.

25 CHAIRMAN BROWN: Mr. Moyle.

1           **MR. MOYLE:** He did not answer whether he took  
2 into account the existence of the quick-take statute in  
3 formulating his opinion.

4           **CHAIRMAN BROWN:** Okay. Ask again.

5 **BY MR. MOYLE:**

6           **Q** Can you --

7           **A** No, I did not specifically take this into  
8 account.

9           **Q** Thank you.

10          **A** Nor do I think I should have.

11          **Q** You're an expert on policy; right? I mean,  
12 you keep track of Commission rules and orders and acts  
13 of the legislature that affect matters before this  
14 Commission; right?

15          **A** Yes.

16          **Q** All right. Let's switch, given the pending  
17 circumstances, to another couple of topics, then I think  
18 I'll be done with you.

19                 On page 20, line 15, and this is -- you say a  
20 cardinal virtue of proper planning is to not only  
21 anticipate needs, but look about the ever-changing  
22 environment. What do you mean when you say  
23 "ever-changing environment"?

24          **A** We live in a dynamic world and there are  
25 changes, there are growth patterns, there are changes in

1 environmental requirements, there are changes in laws,  
2 there are changes in demographics, there are changes in  
3 property values. All of these things go into the  
4 consideration of anticipating needs and planning for  
5 those needs.

6 **Q** And would that include changes in technology,  
7 in your opinion, on things like battery storage or  
8 rooftop solar or distributed generation, things that  
9 might make the provision of power less dependent on  
10 property that is owned by the utility?

11 **A** I would agree that that -- to the extent those  
12 technologies become viable, that that would be part of  
13 the planning process.

14 **Q** Okay. Do you agree that a reason that it  
15 would be okay for utilities to purchase property is  
16 because the value of the land will generally appreciate  
17 at a greater rate than the utility's overall rate of  
18 return? Do you agree with that, that proposition?

19 **A** Yes and no. I do not think that should be the  
20 driving force to acquire a property. I think, though,  
21 that considerations of trends in property values within  
22 the utility's planning horizon, to take that into  
23 account and that it may be prudent to acquire a property  
24 in anticipation that property values are going to be  
25 increasing and that it would be more cost-effective to

1 acquire that property sooner rather than later.

2 Q But you would agree that property values, like  
3 the stock market, they go up or down; right? It's not a  
4 one-way street where the property values are always  
5 appreciating; correct?

6 A Property values do go up and down. I think  
7 the long-term trend, particularly in the state of  
8 Florida, has been that property values have been  
9 increasing, but they do fluctuate over time. Recent  
10 history certainly shows that.

11 Q Okay. And with respect to your ROE testimony  
12 to support that, you were aware that FPL sought this  
13 issue before in the 2012 rate case; is that right?

14 A Yes, I believe that's correct.

15 Q Okay. And you know at that point in time they  
16 sought a 25-basis-point adder as compared to a  
17 50-basis-point adder; correct?

18 A I don't recall the specifics. I have no  
19 reason to doubt what you just said.

20 Q Okay. And you're not the witness to ask,  
21 well, why did it go from 25 to 50, or do you have any  
22 information on that?

23 A No, I don't know why the amount -- I know that  
24 there are certain parameters that the Commission could  
25 look to to determine an appropriate level of an adder,

1 but I was not part of that decision-making process at  
2 FPL.

3 Q Okay. Are you aware that FPL has not sought  
4 a -- from this Commission a workshop or a rulemaking  
5 proceeding to explore the use of the adder since that  
6 last rate case?

7 A I think that's true. I think FPL is relying  
8 on Commission policy as stated in its orders.

9 MR. MOYLE: Thank you, ma'am. That's all I  
10 have.

11 CHAIRMAN BROWN: Thank you.  
12 Hospitals.

13 MR. SUNDBACK: No questions, Madam Chair.

14 CHAIRMAN BROWN: Thank you.

15 FRF.

16 MR. LaVIA: Just a few.

17 **EXAMINATION**

18 **BY MR. LaVIA:**

19 Q Good morning.

20 A Good morning.

21 Q Let me get my microphone here.

22 Good morning, Mr. Deason. I'm going to ask  
23 you a few questions about FPL's proposed ROE adder,  
24 which you spend extensive testimony on.

25 Your understanding of the ROE adder is it's 50

1 basis points; is that correct?

2 **A** I understand that is the proposal.

3 **Q** And it's for four years?

4 **A** I'm not sure it has a duration. I suppose  
5 that would be Mr. Dewhurst. You could certainly ask  
6 him.

7 **Q** Okay. Has this -- in your testimony, you  
8 identify other instances in which the Commission has  
9 awarded ROE adders; correct?

10 **A** Yes.

11 **Q** Has the Commission ever awarded a  
12 50-basis-point ROE adder?

13 **A** No, not to my recollection. I think the  
14 Commission has certainly had ROE penalties of that  
15 magnitude, perhaps even greater than 50 basis points.

16 **Q** Is FPL's proposed ROE adder cost based?

17 **A** Yes, I think it is.

18 **Q** Could you describe how?

19 **A** By the testimony of Mr. Dewhurst and others,  
20 he has characterized the efficiencies and the cost  
21 savings that have taken place. And according to his  
22 testimony, the amount of an adder, even at 50 basis  
23 points, is small in comparison to the efficiencies and  
24 cost savings that have been achieved.

25 **Q** But is the amount of the adder based on FPL's



1 costs?

2 **A** It would be based upon their cost of capital  
3 as defined by this Commission when it applies its policy  
4 to determine what the rate setting point should be for  
5 that return on equity. So, yes.

6 **Q** Does FPL need the proposed ROE adder to  
7 provide safe, adequate, and reliable service to its  
8 customers?

9 **A** No, but they need it to be able to continue  
10 the excellent service that they have and the exemplary  
11 value to customers that they have achieved.

12 **MR. LaVIA:** That's all I have. Thank you.

13 **CHAIRMAN BROWN:** Thank you, Mr. Lavia.

14 FEA.

15 **MR. JERNIGAN:** No questions, ma'am.

16 **CHAIRMAN BROWN:** Thank you.

17 Ms. Csank.

18 **MS. CSANK:** Madam Chair, just a few questions.

19 **CHAIRMAN BROWN:** Okay.

20 **EXAMINATION**

21 **BY MS. CSANK:**

22 **Q** Good morning, Mr. Deason.

23 **A** Good morning.

24 **Q** Nice to see you again.

25 **A** Thank you.

1           Q     I'm Diana Csank with the Sierra Club. I'm  
2 going to have just a few very short questions following  
3 on Mr. Moyle's line of questioning on property held for  
4 future use. You support FPL's position by citing two  
5 orders from this Commission from 1971 and from 1992.

6           A     I do recite a '71 order, but I didn't hear the  
7 last part of your question.

8           Q     And another one from 1992.

9           A     Yeah, I think that's correct.

10          Q     And the energy market has changed since those  
11 orders issued.

12          A     Yes, the energy market has changed.

13          Q     And distributed energy resources such as  
14 behind-the-meter solar storage and energy efficiency are  
15 now more available than they were, for example, in 1992.

16          A     I would generally agree with that, yes.

17          Q     And you also cannot deny that such resources  
18 can defer or entirely avoid the need for certain  
19 conventional transmission and distributed --  
20 distribution infrastructure such as the substations that  
21 you describe in your testimony.

22               **MR. GUYTON:** Objection. Goes beyond the scope  
23 of this witness's testimony. That's a resource planning  
24 question.

25               **CHAIRMAN BROWN:** Ms. Csank --

1           **MS. CSANK:** Madam Chair --

2           **CHAIRMAN BROWN:** -- restate the question.

3           **MS. CSANK:** Yes, I can.

4           **BY MS. CSANK:**

5           **Q**     So the question was that -- do you know  
6 whether distributed resources like those we just  
7 identified can defer or avoid the need for transmission  
8 and distributed -- distribution infrastructure? Yes,  
9 no, you don't know.

10           **CHAIRMAN BROWN:** Ms. Csank, it does go beyond  
11 the scope of his rebuttal testimony, but I will allow it  
12 on a limited basis.

13           **MS. CSANK:** Thank you, Madam Chair. That's my  
14 penultimate question.

15           **THE WITNESS:** As I think I answered to a  
16 previous question, the -- this entire dynamic, it is  
17 dynamic and there are things that are changing. And to  
18 the extent new technologies come about, it will impact  
19 the company's planning process. But based upon the need  
20 to provide service now and to continue to provide  
21 reliable service in the future, there has to be a  
22 certain amount of property held for future use and there  
23 should not be a ten-year arbitrary deadline or threshold  
24 imposed upon that when making that determination. It  
25 should be on a determination of reasonableness.

1 **BY MS. CSANK:**

2 Q Thank you, sir. I appreciate that, but that  
3 wasn't the thrust of my question.

4 I'm simply asking you to focus on the  
5 relationship between the distributed energy resources  
6 and their ability to defer transmission and distribution  
7 infrastructure. Do you know? Yes, no.

8 A No. That would be a question for Mr. Miranda.  
9 I did not look at that.

10 **MS. CSANK:** Thank you. No further questions.

11 **CHAIRMAN BROWN:** Thank you.

12 Wal-Mart.

13 **MR. WILLIAMSON:** No questions, ma'am.

14 **CHAIRMAN BROWN:** Thank you.

15 Larsons.

16 **MR. SKOP:** Yes. Good morning, Madam Chair.  
17 Just a few questions.

18 **EXAMINATION**

19 **BY MR. SKOP:**

20 Q Good morning, Mr. Deason.

21 A Good morning.

22 Q I hope you'll show me some "aloha" with my  
23 quick questions.

24 If I could ask you to turn to page 47, lines  
25 20 through 23, continuing to page 48, lines 1 through 4,

1 please. Are you there?

2 **A** I am.

3 **Q** And in that passage you basically state that  
4 your testimony is deploying capital does not guarantee  
5 superior performance; correct?

6 **A** That's correct, it does not guarantee that  
7 result.

8 **Q** Okay. So with that in mind and your  
9 testimony, the failure of FPL to deliver millions of  
10 dollars of promised cost savings to customers in 2013  
11 and 2014 for AMI investments is not superior  
12 performance; correct?

13 **A** No, I disagree with that. I disagree with  
14 that characterization. I think you had a discussion of  
15 that earlier with -- I believe it was Ms. Santos where I  
16 think she disputed the \$30 million number. And then  
17 while there may have been a temporary misalignment of  
18 the expenditures and net cost savings that have been  
19 achieved, but that cost savings have even exceeded what  
20 was originally anticipated, but maybe not on the same  
21 time frame as originally projected.

22 **Q** Okay. But you would agree that FPL earned a  
23 substantial return on equity on the millions of dollars  
24 it invested during that same time period.

25 **MR. GUYTON:** Objection. Goes beyond the scope

1 of the rebuttal.

2 **MR. SKOP:** Madam Chair, he just -- this is --

3 **CHAIRMAN BROWN:** Sustained.

4 **MR. SKOP:** All right. Thank you.

5 **BY MR. SKOP:**

6 **Q** Mr. Deason, if I could ask you to turn to page  
7 48, lines 15 through 23, please.

8 **A** I am there.

9 **Q** Investor-owned utilities make capital  
10 investments to maintain or expand rate base and earn a  
11 return on invested capital; correct?

12 **A** Well, yes and no. They do that and that is  
13 the result. If the investment is prudently made, they  
14 will earn a return on that. But the decision to deploy  
15 that capital is because there is a need and it is a  
16 cost-effective way to provide service to customers.

17 **Q** And on 21 -- page 48, line 21, you indicated  
18 it's a role of the regulator to encourage capital  
19 investments. This Commission has always had a policy of  
20 granting timely cost recovery where FPL has demonstrated  
21 value; correct?

22 **A** I would generally agree with that, yes.

23 **MR. SKOP:** Okay. All right. Thank you. No  
24 further questions. Thank you, Mr. Deason.

25 **CHAIRMAN BROWN:** Thank you.

1 Staff.

2 **MS. BROWNLESS:** Literally two questions.

3 **EXAMINATION**

4 **BY MS. BROWNLESS:**

5 **Q** Under generally accepted accounting  
6 principles, are all costs necessary to bring an asset  
7 into service included in the cost of the asset? For  
8 example, attorneys' fees, permitting fees, things like  
9 that.

10 **A** Yes.

11 **Q** And does this principle apply to both  
12 regulated and non-regulated entities?

13 **A** It certainly applies to regulated entities. I  
14 think unregulated entities, if they're going to be a  
15 going concern, they have to factor into their pricing  
16 the cost of expanding or building new resources or  
17 modifying or retrofitting existing resources.

18 **Q** So that's a yes?

19 **A** That is a yes.

20 **Q** Thank you.

21 **CHAIRMAN BROWN:** Thank you.

22 Commissioners? Commissioner Edgar.

23 **COMMISSIONER EDGAR:** I do have a few  
24 questions, Madam Chair.r.

25 **CHAIRMAN BROWN:** I figured you did.

1                   **COMMISSIONER EDGAR:** Good morning.

2                   **THE WITNESS:** Good morning.

3                   **COMMISSIONER EDGAR:** I have just a couple of  
4 questions, and I'm focusing on your rebuttal testimony  
5 that begins on page 39, just dealing with the request  
6 for the incentive ROE adder.

7                   And in your rebuttal testimony, you cite three  
8 previous Commission decisions where an ROE, either adder  
9 or penalty, were applied: The 1990 50-basis-points  
10 penalty; a 1980 case, which I'm going to come back to;  
11 and the 2002 case dealing with Gulf. Did you  
12 participate in that case?

13                   **THE WITNESS:** I did.

14                   **COMMISSIONER EDGAR:** Okay. And I'm assuming  
15 you did not participate in the 1980 case.

16                   **THE WITNESS:** I did not. I was around, but I  
17 was not a commissioner then.

18                   **COMMISSIONER EDGAR:** So I was not aware of  
19 that decision or that case at all, that 1980 case, until  
20 I read your testimony. And I recognize that that was a  
21 while ago and that you were not a part of it, but are  
22 you aware -- was that a rate case or was it a  
23 different -- was it a rate case that the Commission made  
24 that decision within.

25                   **THE WITNESS:** Yes, it was.



1           **COMMISSIONER EDGAR:** Okay. And do you know  
2 if -- and I have not pulled the case to read. I'm just  
3 going from what was in your testimony. But do you know  
4 if -- I think you said it was a reward for conservation.  
5 Was there a finding about performance?

6           **THE WITNESS:** Yes, there was a specific  
7 finding by the Commission that Gulf Power here, the same  
8 company throughout all this history, they had performed  
9 in an exceptional manner in their conservation programs  
10 and the initiatives that they had taken, and the  
11 Commission felt it was appropriate to reward that with  
12 an ROE adder. And not only as a reward, but to send a  
13 signal to other utilities to -- hopefully to emulate  
14 that type performance.

15           **COMMISSIONER EDGAR:** Okay. On page 47, I have  
16 a specific question about a statement in your testimony.  
17 And it's page 47, line 11. And you say, "It is the  
18 standard prescribed in the statute." What standard?  
19 What is the standard that you are saying is prescribed  
20 in the statute?

21           **THE WITNESS:** It's the standard that sets  
22 forth what is the -- is to be expected by utilities to  
23 provide service, and one of the factors to be considered  
24 is the value of the service. And I interpret that to  
25 mean the value that customers derive from that service,

1 and so it is a value proposition.

2 **COMMISSIONER EDGAR:** Okay. Because in your  
3 testimony leading up to it and maybe subsequent as well,  
4 you discuss that -- superior being a finding in that  
5 2002 Gulf case, and then you also discuss performance  
6 above merely adequate. So when you're referring to  
7 standard in that case, it was unclear to me whether you  
8 meant a standard of superior performance or a standard  
9 above merely adequate or something different. And by --  
10 I think you're telling me something different --

11 **THE WITNESS:** Something different than  
12 adequate. There needs to be something beyond just  
13 merely adequate to -- that would be a basis to make an  
14 ROE adder.

15 **COMMISSIONER EDGAR:** So in that 2002 Gulf case  
16 that you participated in and the decision was -- part of  
17 the decision was a .25-basis-points adder for superior  
18 performance for that company, would you -- was that  
19 adder given because of past performance or as an  
20 incentive for future performance?

21 **THE WITNESS:** Both.

22 **COMMISSIONER EDGAR:** Can you elaborate?

23 **THE WITNESS:** Yes. The way I look at it,  
24 Commissioners, I think that before there can be a  
25 reasonable contemplation and consideration of an adder,

1 there has to be a value that is provided to customers  
2 that is beyond just what is normally expected, more than  
3 just adequate, and that basically tees up the issue to  
4 whether there should be an ROE considered. But the  
5 purpose of the ROE is to recognize that exemplary  
6 service and value to customers, but also to recognize  
7 that that is a means to have that level of exemplary  
8 service and value to customers continue into the future.  
9 And it also sends a message to other utilities that  
10 there are opportunities. If they can avail themselves  
11 and reach those plateaus, that they too may find  
12 themselves in a situation of being considered for an ROE  
13 adder.

14 **COMMISSIONER EDGAR:** So I've mentioned the  
15 three cases that you cited. I'm not aware of any cases  
16 in the electric area where the Commission, since 2002,  
17 has added an ROE adder, added an adder for performance  
18 or a penalty regarding performance. Is that accurate?

19 **THE WITNESS:** I think that's accurate to the  
20 best of my knowledge, for an electric utility, that  
21 that's -- that was the last one.

22 **COMMISSIONER EDGAR:** Okay. So would that be  
23 an indication that since 2002 no utility has reached  
24 superior performance, or is it that the incentive  
25 mechanisms or performance regulation is becoming more --

1 I don't know how to say it -- more -- that regulation is  
2 moving towards more performance and/or incentive  
3 mechanisms as a policy or philosophically, or why would  
4 you think that this is not something that has come to  
5 the Commission or has been utilized by the Commission  
6 since 2002?

7 **THE WITNESS:** And that's an interesting  
8 question, and I don't know that there's a really easy  
9 answer to that. I think that the facts -- normally it's  
10 done in conjunction with a rate case, ROE adders. There  
11 have been a number of rate cases that have come up that  
12 have been settled. Some have gone to hearing. Maybe  
13 some companies just didn't feel like that they were at  
14 the level that they wanted to attempt to justify an ROE  
15 adder and did not request one. So it has been a long  
16 number of years since one has been made. I don't think  
17 that's a bad thing because I think an ROE adder should  
18 be -- they should not be common or else they would lose  
19 their effectiveness. At the same token, never granting  
20 an adder under any circumstance, you would lose the  
21 effectiveness of this tool.

22 And I am -- quite honestly, Commissioner, I'm  
23 concerned that maybe this tool will be no longer  
24 effective. And I say that in that if there's not an ROE  
25 adder in this case -- I mean, if not FPL, what company?

1 And if not now, when? It may never be a case where  
2 there would be an adder. I mean, I think the testimony  
3 in this case is complete that there -- that if the  
4 Commission is inclined, and I know the Commission has  
5 discretion and I'm not saying that this policy dictates  
6 one thing or another, it does not, it's strictly within  
7 the discretion of the Commission, it's my belief that if  
8 the Commission wants to retain this tool, and I think it  
9 is a regulatory tool, a valuable regulatory tool, that  
10 if you want to retain this tool, at some point it needs  
11 to be used again and, you know, and probably more often  
12 than, you know, than once every 14 or 15 years, whatever  
13 the time difference has been, but it would depend upon  
14 the facts.

15 **COMMISSIONER EDGAR:** Sure. Okay. I think I  
16 just have one more. There is a statement in your  
17 testimony on page 50, lines 14, lines 14 through 17, I  
18 believe, and in your testimony leading up to that, you  
19 list some of the areas that FPL has presented evidence  
20 and testimony as indicators of superior performance:  
21 customer satisfaction, reliability, superior nuclear  
22 performance, extraordinary transmission and distribution  
23 reliability. That's at the bottom of 49 and moving into  
24 50. And then on these lines on page 40, you make the  
25 statement that "An adder is intended to introduce

1 incentives designed to continue or even enhance superior  
2 performance such that the net cost paid by customers  
3 through rates is less than it would be had the superior  
4 performance not been achieved." Do you believe that's  
5 the case in this instance?

6 **THE WITNESS:** I do, Commissioner. Now I refer  
7 to other witnesses --

8 **COMMISSIONER EDGAR:** Yes.

9 **THE WITNESS:** -- so I'm not saying that I have  
10 looked at all of these dynamics. But I think this  
11 record has many, and I do recite those witnesses, and it  
12 was in rebuttal to a contention that GPIF is sufficient.  
13 And I was indicating GPIF is very narrow and that the  
14 value proposition for customers should be much broader,  
15 and I refer to all of the other witnesses in that  
16 regard.

17 **COMMISSIONER EDGAR:** So how would one measure  
18 that the net cost paid by customers through rates is  
19 less than it would have been minus the superior  
20 performance?

21 **THE WITNESS:** I'm not sure that lends itself  
22 to a -- like a cost-effectiveness test or some type of  
23 test that is used to look at generating resources or  
24 cost-effectiveness in a demand-side management. I think  
25 it's just the sum total that has to be reached. One, I

1 think the driving forces of that, though, would be  
2 rates. And if you have a company that has rates that  
3 are significantly lower than other benchmarks, that is a  
4 strong indicator that the measures taken have been  
5 successful and that the measure that would continue to  
6 take place if an ROE adder is granted, that it would be  
7 cost beneficial to customers in terms of the low rates  
8 that they would be paying.

9 **COMMISSIONER EDGAR:** Okay. Now I have a  
10 follow-up very quickly. So for determining superior  
11 performance and whether an ROE adder is appropriate due  
12 to that superior performance, would you consider that to  
13 be a quantitative, qualitative, or both form of  
14 analysis?

15 **THE WITNESS:** I think it's both, but I would  
16 think that it -- there are quantitative aspects, but I  
17 think the bottom line call has to be within the  
18 discretion of the Commission, and it's going to rely  
19 greatly on qualitative measures.

20 **COMMISSIONER EDGAR:** All right. Thank you  
21 very much.

22 **CHAIRMAN BROWN:** Redirect.

23 **EXAMINATION**

24 **BY MR. GUYTON:**

25 Q Mr. Deason, you were asked a series of

1 questions by Mr. Moyle about the order you quote in part  
2 at page 15 of your rebuttal testimony. Do you recall  
3 that?

4 **A** Yes.

5 **Q** And that would be Order No. 5278?

6 **A** Yes.

7 **Q** Is that order the current -- the Commission's  
8 current policy on plant held for future use?

9 **MR. MOYLE:** I'm going to object to the extent  
10 it calls for a legal conclusion.

11 **CHAIRMAN BROWN:** Overruled.

12 **THE WITNESS:** No, it is not. This was the  
13 first case that started an evolution to where we are  
14 now, that finds ourself in a policy of the Commission to  
15 look at each individual property to determine if it's  
16 reasonable to serve customers cost-effectively and  
17 reliably in the future.

18 **MR. GUYTON:** That's all we have.

19 **CHAIRMAN BROWN:** Thank you.

20 This witness has 386 attached to his rebuttal.

21 **MR. GUYTON:** We move Exhibit 386.

22 **CHAIRMAN BROWN:** Seeing no objections, we will  
23 move into the record 386.

24 (Exhibit 386 admitted into the record.)

25 Office of Public Counsel, you have



1 Exhibits 793 through 799, which I believe Florida Power  
2 & Light has agreed to put in the record.

3 **MR. REHWINKEL:** Yes, we move them per the  
4 stipulation.

5 **CHAIRMAN BROWN:** See no objections, we will go  
6 and move into the record 793 through 799 .

7 (Exhibits 793 through 799 admitted into the  
8 record.)

9 Mr. Deason, you are excused. Go take shelter.

10 **THE WITNESS:** Thank you.

11 **CHAIRMAN BROWN:** Thanks for being here.

12 All right. Last witness, Mr. Dewhurst.

13 Remind the parties we have one hour and 30  
14 minutes left. Please be cognizant we also have to get  
15 to exhibits as well, so use the time wisely, if you can.

16 **MR. LITCHFIELD:** Thank you, Madam Chair. If  
17 we may proceed --

18 **CHAIRMAN BROWN:** Yes.

19 **MR. LITCHFIELD:** -- I'll introduce  
20 Mr. Dewhurst.

21 Whereupon,

22 **MORAY P. DEWHURST**

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

**EXAMINATION**

1  
2 **BY MR. LITCHFIELD:**

3 Q Good morning, Mr. Dewhurst. You've previously  
4 been sworn; correct?

5 A I have.

6 Q Have you prepared and filed 70 pages of  
7 rebuttal testimony in this proceeding?

8 A I have.

9 Q And did FPL file errata sheets for your  
10 rebuttal testimony on August 16 and August 30 of this  
11 year respectively?

12 A Yes.

13 Q Beyond those filed errata, do you have any  
14 further changes or revisions to your rebuttal testimony?

15 A No.

16 Q With those changes and subject to the  
17 adjustments previously discussed as set forth in KO-19  
18 and -20, if I were to ask you the same questions  
19 contained in your rebuttal testimony this morning, would  
20 your answers be the same?

21 A Yes.

22 **MR. LITCHFIELD:** I would ask that  
23 Mr. Dewhurst's rebuttal testimony be inserted into the  
24 record as though read, Madam Chair.

25 **CHAIRMAN BROWN:** We'll insert Mr. Dewhurst's

1 prefilled rebuttal testimony into the record as though  
2 read.

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## ERRATA SHEET

### WITNESS: MORAY DEWHURST – REBUTTAL TESTIMONY

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
16	11-12	<p>“Mr. O’Donnell then applies this arbitrary 25 basis points to FPL’s entire outstanding debt balance of \$8 billion”</p> <p>Should read: “Mr. O’Donnell fails to apply this arbitrary 25 basis points to FPL’s current outstanding debt balance of about \$10 billion”</p>
16	18-19	<p>“second is the application of this increase to FPL’s current outstanding debt balance”</p> <p>Should read: “second is the failure to apply this increase to FPL’s current outstanding debt balance”</p>
29	22	Change “Lawton’s” to “Gorman’s”
30	1	Move end quotation marks to following “rating”
36	9	Change “textbook” to “textbooks”
40	17	Change “or” to “of”
42	3	Change “challenged” to “challenging”
63	4	Change “ox” to “or”
66	3	Change “If certainly would” to “It certainly would”

**ERRATA SHEET****WITNESS: MORAY DEWHURST – REBUTTAL TESTIMONY**

<b><u>PAGE #</u></b>	<b><u>LINE #</u></b>	<b><u>CHANGE</u></b>
5	3	Insert “that” after “assume”
12	11	Replace “outperformances” with “outperformance”
24	14	Replace “born” with “borne”
39	10	Replace “occurs” with “occur”
44	17	Replace “reflect” with “reflects”

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**I. INTRODUCTION**

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

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

**Q. Did you previously submit testimony in the proceeding?**

A. Yes.

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

A. The purpose of my testimony is to respond to the following:

- PART 1: Financial Strength, Risk Profile, Capital Structure and ROE  
 Financial strength and risk profile comments, as well as capital structure and return on equity (“ROE”) arguments made by Office of Public Counsel’s (“OPC”) witnesses Randall Woolridge, Kevin O’Donnell and Daniel Lawton; Federal Executive Agency’s (“FEA”) witness Michael Gorman; AARP’s witness Michael Brosch; Wal-Mart Stores East, LP and Sam’s East, Inc.’s (“Wal-Mart”) witness Steve Chriss; South Florida Hospital and Healthcare Association’s (“SFHHA”) witnesses Richard Baudino and Lane Kollen; and Florida Industrial Power Users Group’s (“FIPUG”) witness Jeffrey Pollock;
- PART 2: ROE Performance Adder (“ROE Adder”)  
 ROE Adder arguments made by OPC’s witness Lawton; SFHHA’s witness Richard Baudino; FIPUG’s witness Jeffrey Pollock; FEA’s witness

1 Michael Gorman; AARP's witness Michael Brosch; and Wal-Mart's  
2 witness Steve Chriss;

3 • PART 3: Storm Cost Recovery Mechanism

4 Storm cost recovery arguments made by OPC's witness Helmuth Schultz  
5 and SFHHA's witness Lane Kollen; and

6 • PART 4: Cost of Debt and DOL Insurance

7 Other arguments regarding FPL's cost of debt projections made by  
8 SFHHA's witness Richard Baudino; FEA's witness Michael Gorman; and  
9 FIPUG's witness Jeffry Pollock; and Directors' and Officers' Liability  
10 ("DOL") Insurance made by OPC's witness Helmuth Schultz.

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

12 A. PART 1: Financial Strength, Risk Profile, Capital Structure and ROE

13 With respect to the linked issues of financial strength, risk profile, capital  
14 structure and return on equity, intervenor witnesses use flawed analyses,  
15 which ignore important practical considerations, to reach conclusions that, if  
16 acted upon, would seriously undermine FPL's strong financial position, deny  
17 investors the opportunity to earn a fair rate of return on the capital they have  
18 committed to the business, and over time erode FPL's ability to continue  
19 delivering superior value to its customers.

20

21 Intervenor witnesses err most fundamentally in presuming that it is possible to  
22 make significant changes to capital structure and allowed ROE without any  
23 damaging effects in terms of FPL's overall cost position and ability to execute

1 its business strategies. But undermining FPL's financial position will  
2 ultimately undermine its business position, to the detriment of long-term  
3 customer interests. Intervenors' positions incorrectly assume the way in  
4 which FPL has financed its operations over the years has had nothing to do  
5 with the benefits that customers realize today in the form of low bills and high  
6 reliability.

7  
8 Intervenor witnesses ignore FPL's specific risk position and strategies, which  
9 call for and depend upon maintaining a "stronger-than-average" financial  
10 position. As a result, their recommendations are extreme, and their ROE  
11 recommendations in particular, if allowed, would result in the lowest  
12 authorized ROE for any vertically integrated electric utility in the U.S. in over  
13 two years.

14  
15 FPL's financial policies are an integral part of its overall strategy to deliver  
16 value to customers, the results of which are readily visible in comparisons of  
17 cost, rates, reliability, overall customer service, etc. FPL's strategies are  
18 working for customers; intervenor witnesses' recommendations would  
19 thoroughly undermine those strategies. Their recommendations should be  
20 rejected.

21

22

23



1 PART 2: ROE Adder

2 With respect to FPL’s requested ROE Adder, intervenor witnesses largely  
3 ignore the policy argument for this regulatory incentive tool. No witness has  
4 disputed FPL’s superior performance as benchmarked against other electric  
5 utilities nationally by FPL witness Reed. Additionally, no witness has  
6 challenged FPL’s performance against its duty to provide “reasonably  
7 sufficient, adequate, and efficient service” – the duty established by Florida  
8 law. Instead, each witness who testifies on this topic makes up a different  
9 standard of service and then claims either that FPL’s performance is merely in  
10 line with it, or that FPL’s performance is the result of factors outside of FPL’s  
11 control, not as a result of anything FPL did. But the policy argument for the  
12 ROE Adder does not depend on *every* aspect of performance being  
13 controllable, and it is indisputable that the actions FPL has taken have resulted  
14 in today’s superior competitive position. The fundamental point remains  
15 valid: acting as a surrogate for direct competition, regulation can provide a  
16 strong incentive for rate-regulated companies to improve the value they  
17 deliver to customers through the introduction of an ROE Adder.

18

19 PART 3: Storm Cost Recovery Mechanism

20 OPC supports continuation of the storm cost recovery mechanism currently in  
21 place, while SFHHA disputes it. SFHHA’s witness Kollen fails to appreciate  
22 either FPL’s real exposure to risk from tropical storms or the impact that  
23 adoption of his recommendation would have on FPL’s risk profile – or both.

1           Witness Kollen’s recommendation to leave FPL with no cost recovery  
 2           mechanism in place would reflect a significant change to FPL’s risk profile.  
 3           As discussed in my direct testimony, absent the historical three-pronged  
 4           approach to storm cost recovery, the Commission should continue the  
 5           mechanism agreed upon in the 2010 and 2012 rate case settlements.

6

7           PART 4: Cost of Debt and DOL Insurance

8           As in prior cases, FPL has used reasonable, third-party forecasts to project its  
 9           long- and short-term debt costs. Witnesses Baudino, Gorman and Pollock  
 10          either engage in “cherry picking” by asking the Commission to selectively  
 11          update these forecasts, or in some instances, create their own forecasts for the  
 12          Commission to utilize. The bias in such exercises is evident and should result  
 13          in rejection of intervenors’ debt cost recommendations.

14

15          Finally, with respect to DOL insurance, the intervenors’ recommendations  
 16          would disallow recovery of a legitimate cost of providing electric service to  
 17          our customers without demonstrating any imprudence on the part of FPL.  
 18          Accordingly, their recommendations should be rejected.

19

20

21

22

23



1 wrong when reviewing a company like FPL, whose strategy is based in part  
2 on maintaining a “stronger-than-average” financial position. FPL’s financial  
3 policies are an integral part of its overall business strategy; they cannot be  
4 changed without an impact on its business position, its ability to support its  
5 capital investment program, and the way in which it serves its customers.

6  
7 If the Commission wishes to judge the “cost” of those policies, it can readily  
8 do so by looking at the *total* cost of FPL’s delivered service, which, as  
9 benchmarking shows, compares very favorably with other companies in its  
10 industry and with other utilities in the state. It would be both wrong and  
11 dangerous to take any one cost element in isolation, as intervenor witnesses  
12 seek to do here, and argue that it could be reduced without considering the  
13 effects that it would have on the overall delivery of customer value.

14  
15 This false premise pervades the intervenor witnesses’ testimony. In many  
16 cases it is implicit, but in some instances intervenor witnesses are quite direct  
17 about it. For example, witness Baudino states on page 50 that “[a] 60%  
18 common equity ratio imposes higher than necessary capital costs, when *the*  
19 *same productivity and output could be achieved* with a less costly set of  
20 inputs.” (emphasis added). Witness Gorman makes the same point when he  
21 claims on page 18 that FPL’s capital structure “increases its cost of service  
22 *with very little benefit to retail customers*” (emphasis added), referring then to

1 FPL's bond ratings as if those strong ratings were the only benefit. Neither  
2 witness attempts to justify his claim.

3

4 Intervenor witnesses appear to appreciate neither the general point that  
5 operating and financial strategies cannot be separated in the real world (in  
6 contrast to the way they are commonly treated in academic texts) nor the  
7 specific point that FPL's successful approach to delivering value is based on a  
8 stronger-than-average financial position.

9 **Q. Please provide examples of problems you have observed in intervenor  
10 witnesses' analyses.**

11 A. All of the intervenor witnesses who directly address capital structure rely on a  
12 simplistic framework that is known to be inconsistent with empirical evidence  
13 and cannot usefully be implemented. I will discuss this framework and its  
14 problems in much more detail later (beginning on page 35 of my rebuttal  
15 testimony).

16

17 Witnesses Woolridge (Exhibit JRW-4), Baudino (page 48) and Brosch (AARP  
18 Exhibit 1.5 and 1.6) all seek to draw inferences from comparisons between  
19 FPL's equity ratio and the average equity ratio of a group of utility holding  
20 companies. This is both inappropriate and unnecessary. While the use of a  
21 proxy group of holding companies is appropriate in estimating cost of equity,  
22 the use of such a group for risk or credit analysis is inappropriate unless  
23 adjustments are made, which intervenor witnesses do not do. Moreover, it is

1 quite unnecessary, as direct comparisons of FPL's capital structure can readily  
2 be made with those of other *operating* companies.

3  
4 Witnesses O'Donnell (page 16), Woolridge (page 31), Baudino (page 49) and  
5 Brosch (page 49) seek to draw inferences by comparing FPL's equity ratio  
6 measured on a Generally Accepted Accounting Principles ("GAAP") basis  
7 with that of its parent company and/or those of FPL's affiliates. This is  
8 wholly inappropriate for reasons I explain in greater detail later (beginning on  
9 page 32 of my rebuttal testimony). Intervenor witnesses must surely be aware  
10 that without making certain critical adjustments, such comparisons are utterly  
11 meaningless.<sup>1</sup>

12  
13 All intervenor witnesses concentrate their attention on investor sources of  
14 capital and set aside as fixed the other drivers of the overall cost of capital,  
15 including in particular deferred income taxes, which carry zero cost in the  
16 calculations. For example, a 59 percent equity ratio, as calculated based on  
17 investor sources, actually results in only 45 percent of FPL's rate base being  
18 financed with equity when its deferred income taxes are included as shown in  
19 MFR D-1A in the 2017 Test Year. This error illustrates the flawed premise  
20 that I have described: they are assuming that the deferred income tax  
21 component would remain unchanged if investor-supplied capital ratios or

---

<sup>1</sup> For example, Standard & Poor's, with whose reports the intervenor witnesses should be familiar, explicitly describe the types of adjustments they make in their credit analysis.

1 allowed ROEs were changed. But this is not the case, because the deferred  
2 income taxes derive from FPL's capital investment program, which would  
3 surely be affected if their recommendations were adopted, over time reducing  
4 the element of deferred income taxes and therefore *increasing*, all other things  
5 equal, the overall cost of capital.

6

7 While these may appear to be 'technical' points, they are important.

8 **Q. Please provide examples of what you have termed "analyses that embody**  
9 **'non sequiturs.'"**

10 A. Witness Woolridge (pages 8-9) argues that FPL's earned ROE performance  
11 over the period 2011-2015 has been reflected in the outperformances of the  
12 stock of its parent since 2013. This is misleading, and it ignores all other  
13 factors, including in particular the significant improvement in the outlook for  
14 NextEra Energy Resources' ("NEER") renewables business, which has in fact  
15 been the principal driver of NEE's relative outperformance. In fact, during  
16 the period 2013 – early 2016, there was little change in equity investor  
17 expectations for FPL's earned ROE: they expected it to earn in the upper half  
18 of its authorized band and it did so. Accordingly, because changes in share  
19 price are generally agreed to be driven by changes in expectations, it is  
20 unlikely that much, if any, of NEE's outperformance is attributable to FPL.

21

22 As a second example, witness Baudino (page 15) and Woolridge (page 7) both  
23 note that Moody's Investors Service ("Moody's") upgraded FPL's credit

1 rating in January 2014, yet they fail to note that this was part of Moody's  
2 reevaluation of the entire U.S regulated utility sector. Without this important  
3 piece of context, a reader might be led to the view that FPL's relative position  
4 had changed, which was not the case.

5  
6 A third example is provided by witness Baudino's discussion of NEE's  
7 announcement of its intention to increase its dividend payout ratio over time  
8 (page 15). Mr. Baudino's testimony implies that this decision signaled  
9 "increased confidence in FPL's ability to maintain or grow its earnings." This  
10 does not follow, however, and in fact the reasons for the increase in target  
11 payout ratio had very little to do with FPL and nothing at all to do with  
12 changes in confidence in FPL's earnings outlook.

13  
14 I offer these examples as they indicate to me a tendency among some of the  
15 intervenor witnesses to oversimplify. Particularly when dealing with the  
16 complex technical issues surrounding capital structure and cost of capital, it is  
17 important to apply sensible, real-world perspectives to the data used in  
18 analysis.

19 **Q. Please summarize intervenors' recommendations with respect to ROE**  
20 **and equity ratio.**

21 A. OPC, SFHHA, FIPUG and AARP each recommend that the Commission  
22 decrease FPL's equity ratio, with recommendations ranging from 47 percent



1 to 55 percent; while OPC, SFHHA, FIPUG, AARP and FEA each recommend  
2 that the Commission establish an ROE for FPL that is well below 10 percent.

3

<u>Intervenor</u>	<u>Witness</u>	<u>ROE</u>	<u>Equity Ratio</u>
SFHHA	Baudino	recommends 9.00 percent	recommends 55 percent
AARP	Brosch	recommends a lower ROE than the approved ROE in the 2010 rate case	recommends 47 percent
Wal-Mart	Chriss	recommends the commission consider impact of approved ROE on customers	n/a
FEA	Gorman	recommends 9.25 percent <sup>2</sup>	n/a
OPC	Lawton	defers to Woolridge	defers to O'Donnell
OPC	O'Donnell	defers to Woolridge	recommends 50 percent
FIPUG	Pollock	recommends below the electric utility average	recommends 51.10 percent
OPC	Woolridge	recommends 8.75 percent	defers to O'Donnell

4

5 **Q. What would be the consequences of implementing intervenors'**  
6 **recommendations?**

7 A. The consequences of implementing the intervenors' recommendations would  
8 be numerous and include the following:

- 9 • Immediate negative reactions from equity investors, debt investors and  
10 the rating agencies, as the perception of regulatory risk would be  
11 radically increased. Ironically, this would promptly undermine the

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<sup>2</sup> Assumes FPL's equity ratio of 59.6% is maintained.

1                   very arguments intervenor witnesses have made for lowering ROE and  
2                   increasing the equity ratio;

- 3                   • Likely downgrades, whether immediate or over time;
- 4                   • Restrictions on FPL's ability to support its liquidity needs;
- 5                   • Erosion of FPL's relative cost position;
- 6                   • Higher financing costs in the long-term; and
- 7                   • Most importantly, over time, a serious erosion of FPL's ability to  
8                   deliver value to customers.

9

10                  These effects would not all occur immediately, but their impacts would  
11                  compound over time. Intervenors cannot credibly conclude that the total cost  
12                  of capital would decrease, as they claim, as there is no way of knowing just  
13                  what the total impact of this degradation and heightened risk perception would  
14                  be over the long term. And even if the cost of *capital* decreased it does not  
15                  follow that FPL's *total* costs would be lower over the long term. Over time,  
16                  however, we would surely witness reduced electric system investment and, in  
17                  due course, lower customer value.

18   **Q.   What do the intervenors say about the consequences of their**  
19   **recommendations?**

20   A.   Witnesses seek to quantify the impact of their recommendations but they do  
21       so from the very narrow perspective of the potential impact on credit ratings;  
22       and even within this limited context their analyses are flawed and should not  
23       be relied upon. None of the intervenor witnesses acknowledges or addresses

1 the impacts on the business beyond possible credit ratings and cost of debt  
2 degradation.

3 **Q. What does OPC witness O'Donnell claim would be the impact to FPL's**  
4 **credit ratings if the recommendations made by OPC were adopted?**

5 A. OPC witness O'Donnell claims (page 25) that no downgrade would occur,  
6 basing his view on another error. He refers to FPL's requested capital  
7 structure as "hypothetical" which I will address in more detail on page 40 of  
8 my rebuttal. He then adds (page 26): "Assuming arguendo that FPL's bonds  
9 were downgraded, consumers may be asked to pay an additional 25 basis  
10 points in higher interest expense associated with the hypothetical downgrade."  
11 Mr. O'Donnell then applies this arbitrary 25 basis points to FPL's entire  
12 outstanding debt balance of \$8 billion in determining that "the downgrade  
13 would cost consumers approximately \$20 million per year in higher debt  
14 service costs."

15  
16 This argument by OPC witness O'Donnell is incorrect on multiple premises:  
17 first is the assumption that a downgrade would translate to an arbitrary 25  
18 basis point increase in the cost of debt; second is the application of this  
19 increase to FPL's current outstanding debt balance; and finally, the naïve  
20 presumption that the increase in debt cost is the only impact or increased cost  
21 of such downgrade. The presumption that FPL will remain as financially  
22 sound and competitive in the capital markets, and that FPL will continue to be

1 able to deliver the same superior service to customers with a significantly  
2 weakened balance sheet is wrong and should not be relied upon.

3 **Q. What does OPC witness Lawton say with regard to the impact of OPC's**  
4 **recommendations on FPL's credit metrics?**

5 A. Witness Lawton states (page 30) "the financials all fall within the benchmarks  
6 [for an A rated utility] except for the 50% debt ratio compared to the Moody's  
7 benchmark," the obvious implication being that FPL very likely *would* lose its  
8 rating. Specifically, his analysis (Exhibit DJL-5) purports to demonstrate that  
9 a decrease in the ROE to 8.75 percent, as OPC recommends, would produce a  
10 Cash Flow/Debt ratio of 22.52 percent which is at the bottom of Moody's  
11 range of 22 percent to 30 percent for the 'A' category. FPL certainly would  
12 not maintain its 'A1' rating if this metric, which is the most heavily weighted  
13 financial metric in Moody's financial analysis, was at the bottom of the range.  
14 Witness Lawton also states that his "recommended 50 percent debt  
15 capitalization is not out of line with the Moody's 'Baa' debt capitalization  
16 benchmark of 55 percent." This would imply a downgrade of at least three  
17 notches, not to mention that 55 percent is the high-end of the 'Baa' range,  
18 bordering on the 'Ba' or junk category. Additionally, his comment seems to  
19 completely ignore Moody's warning, as published in its most recent credit  
20 opinion for FPL (March 31, 2016), that "a downgrade could be considered if  
21 there [is]... an increase in debt-to-capitalization above the 40 percent range."  
22 Witness Lawton may view the possibility of FPL's position bordering on junk  
23 with equanimity; but the Commission should not.

1           Additionally, Witness Lawton on page 27 of his direct testimony states  
2           Standard & Poor's Ratings Services ("S&P") "employs three similar financial  
3           metrics in evaluating financial integrity and ratings of a company." He goes  
4           on to define these three metrics as funds from operations divided by total debt  
5           ("FFO/Debt"), total debt divided by earnings before interest, taxes,  
6           depreciation and amortization ("Debt/EBITDA") and total debt divided by  
7           total capitalization ("Debt/Capital"). In fact, when S&P revised its  
8           methodology in November 2013, it stopped using Debt/Capital as a financial  
9           benchmark.

10       **Q. FEA witness Gorman also attempts to assess the impact of his**  
11       **recommendations on FPL's credit metrics. Please respond.**

12       A. For his part, witness Gorman simply abandons the actual credit rating analyses  
13       for his own suggested approach. Stating on page 56 of his testimony, "I  
14       calculated each of S&P's financial ratios," he then goes on to acknowledge  
15       that his analysis, which indicates FPL's rating would not be adversely  
16       impacted by a decrease in ROE to 9.25 percent with the Company's current  
17       capital structure, "is not the same as S&P's." He makes no attempt to assess  
18       the impacts on Moody's ratios. It is not necessary for any of the witnesses to  
19       make up their own form of analysis when the agencies have been very clear.

20       **Q. Is there other evidence the Commission can look to in considering the**  
21       **implications of FPL's request versus intervenors' recommendations?**

22       A. Yes. The Commission can look at FPL's low cost position and its overall  
23       performance. If it were the case that FPL was high cost overall, their analysis

1 of capital costs might illustrate some contribution to that. But that is not the  
2 case. FPL is very low cost by comparison with most other utilities.

3

4 Accordingly, it follows that intervenor witnesses' arguments really all boil  
5 down to the idea that FPL's total cost position could be lower still if capital  
6 costs were arbitrarily slashed. But, to repeat, this assumes that the reduction  
7 in capital cost they recommend would have no adverse impact on the rest of  
8 FPL's business. Said differently, it assumes that the way in which FPL has  
9 financed its operations over many years has had nothing to do with benefits  
10 that customers realize today in the form of low bills and high reliability. This  
11 contention and the related implications are false.

12

13 The ultimate results of our financial policies are reflected in our overall  
14 performance. As an individual who has been intimately involved in the  
15 determination of FPL's strategies for roughly 15 years and who has had direct  
16 accountability for its financial policies, I can assure the Commission that FPL  
17 and its customers would not enjoy their current favorable situation if the  
18 recommendations of intervenor witnesses with respect to ROE and capital  
19 structure were followed.

20

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### III. FINANCIAL STRENGTH

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**Q. Please respond to the intervenor witnesses' discussion of financial strength.**

A. Astonishingly, none of the intervenor witnesses directly addresses financial strength or recognizes that different companies may seek to maintain different degrees of financial strength in response to differences of situation or as a choice of strategy. Yet these points are fundamental: without understanding FPL's position and strategy it is impossible to appreciate why we seek to maintain financial strength, as I explained in my direct testimony.

To the extent that intervenor witnesses even acknowledge the importance of financial strength they generally do so simply from the perspective of capital access. For example, witness Lawton (pages 24-30) in a section headed "Financial Integrity" in which he acknowledges that customers have an interest in a utility maintaining adequate financial strength, states: "the term financial integrity is a term or concept that addresses a company's ability to access capital on reasonable terms." (page 24)

Financial strength certainly encompasses capital access, but it is much more than that. A company maintains financial strength to respond to 'shocks' (unexpected financing or liquidity needs driven by external events), to take advantage of opportunities that may arise, and in general to retain flexibility to

1 respond to changing circumstances. What degree of financial strength is  
2 appropriate is a function of individual circumstances and strategy and  
3 therefore must be a matter of considered judgment. Because intervenor  
4 witnesses nowhere address FPL's specific circumstances and seem to be  
5 unaware that its overall strategy for delivering value to customers depends on  
6 maintaining a higher degree of financial strength than is typical in the  
7 industry, their assessments of both capital structure and allowed ROE are  
8 fundamentally flawed.

9

10

#### IV. FPL'S RISK PROFILE

11 **Q. Please summarize your response to intervenor witnesses' treatment of**  
12 **risk.**

13 A. No intervenor witness specifically addresses the issue of FPL's unique risk  
14 profile, which is critical to understanding FPL's approach to financial policies  
15 in general and capital structure in particular. Overall, intervenor witnesses  
16 offer an over-simplified view of risk and implicitly argue that risk can be  
17 reduced to a unidimensional concept; but this is not representative of the real  
18 world. They compound this by confusing the views of risk taken by different  
19 classes of investors (debt versus equity, for example). And in one case, an  
20 intervenor witness appears not to understand the basic concept of risk.

21

22 As a consequence of their failure to appreciate either the complexities of risk  
23 overall or the specifics of FPL's unique situation, intervenor witnesses are led



1 to make analytical and conceptual errors that undermine their assessments of  
2 ROE and capital structure.

3

4 In practice, risk has many aspects and many dimensions and is realized by  
5 different parties (customers versus investors) and by different classes of  
6 investors (equity versus debt most particularly) in different ways. To offer  
7 just one simple example, while regulatory risk as a broad category is highly  
8 relevant both to debt and equity investors, it affects each in different ways.  
9 Debt investors will be concerned primarily with large impacts to liquidity and  
10 cash flow as well as general predictability and stability in regulation. Equity  
11 investors will be sensitive not only to these aspects but also to others with a  
12 finer impact, such as the risk of modest disallowances or asymmetrical  
13 treatment of costs. Because risk in the real world has many aspects, a  
14 company must respond to different risks in different ways, and because each  
15 company's situation is different its response is likely to be different.

16

17 In the case of FPL, as my direct testimony indicated at pages 17-22, we have  
18 risk exposures in certain areas that are markedly different from most utilities  
19 and we have chosen to respond to them in part by maintaining a stronger than  
20 typical capital structure. This has had clear benefits for customers, because it  
21 has been an integral part of our overall strategy for delivering superior value.  
22 Yet intervenor witnesses are completely silent on this point. They neither  
23 challenge my assessment of FPL's specific situation nor acknowledge that

1           there is value to financial strength. Instead, they focus solely on what they  
2           purport to be the “cost” of maintaining the position that FPL and its customers  
3           have enjoyed for well over a decade; or, even more simply, they assert that  
4           FPL’s capital structure is excessive because it employs more equity than is  
5           common in the industry.

6   **Q.   Please describe what you mean by “reduc[ing] risk to a unidimensional**  
7   **concept.”**

8   A.   Because intervenor witnesses do not appreciate the specific characteristics of  
9   FPL’s situation they are led to make general statements that imply there is one  
10   overall type of risk, which they commonly sub-divide into “business” versus  
11   “financial” and occasionally, “liquidity.” Witnesses Woolridge<sup>3</sup> and  
12   O’Donnell,<sup>4</sup> for example, separate investment risk into “business” and  
13   “financial” risk.

14  
15        Within this overall view, one type of risk is seen as much like another, and  
16        risk is viewed as either ‘higher’ or ‘lower’ on a single scale.<sup>5</sup> Furthermore,  
17        this limited view of risk implies that the sub-types of risk may be traded off –  
18        an increase in business risk, for example, can be compensated for by an  
19        exactly offsetting decrease in financial risk.

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<sup>3</sup> See, for example, witness Woolridge (page 37, lines 3-4): “A firm’s investment risk is often separated into business and financial risk.”

<sup>4</sup> See, for example, witness O’Donnell (page 6, lines 11-12): “The risks that a regulated utility incurs can be stated as financial risk and business risk.”

<sup>5</sup> See, for example, witness Baudino (page 3, lines 3-5), where he characterizes FPL as “a low-risk, financially robust electric company.” *See also*, (page 22, line 14-21): “FPL remains a low cost and low risk electric utility... Overall FPL remains a low risk electric utility...” *See also*, (page 76, lines 18-20): “...a financially strong and low risk utility investment like FPL.”

1 **Q. What is wrong with this approach to risk?**

2 A. If terms such as “low risk” are simply used to summarize more in-depth  
3 analysis, as they often are in a typical credit rating agency report, and if they  
4 are not taken out of context, no great harm is done. The danger, however, is  
5 that such simplistic generalizations invite faulty reasoning and do not take into  
6 account the multiple issues involved in determining appropriate ROEs and  
7 capital structures in the real world.

8  
9 In practice, different risk exposures have different impacts on a business’  
10 return profile, and no single measure of risk is uniformly appropriate. As a  
11 consequence, it is not possible to make simple statements about the ‘trade-off’  
12 between, for example, business and financial risk. It is not true that two  
13 companies with the same capital structure and the same debt rating face the  
14 same business risk profile, and the risk born by equity holders may be quite  
15 different in the two cases. Yet this is precisely the foundation for the  
16 conclusions and recommendations of certain intervenor witnesses.

17  
18 The point to be stressed here is that we must be very careful in drawing  
19 inferences about underlying risk from simple comparisons of higher-level  
20 metrics (e.g., equity ratios, bond ratings, equity betas, etc.).

21  
22 The assumption that risk is unidimensional is frequently utilized in finance  
23 theory because it allows for analytical simplicity, but it is well known to be

1 false. For example, the Capital Asset Pricing Model (“CAPM”), which is  
2 used in part in assessing cost of equity, depends upon the Markowitz mean-  
3 variance framework, in which an asset’s returns can be completely described  
4 by the mean (expected return) and variance. As a consequence, the sole  
5 measure of risk that matters in the CAPM is so-called systematic risk,  
6 measured by beta.<sup>6</sup> This is analytically elegant, but it is known to be  
7 inconsistent with empirical data. Among several factors, actual equity returns  
8 are *not* normally distributed and *cannot* be completely described by their  
9 means and variances. That is why, as witness Hevert repeatedly notes, it (or  
10 any other model) must be used with great care as the input to a broader  
11 analysis.

12  
13 In addition to all these considerations is a further distinction that is important  
14 in the real world but is nowhere recognized or acknowledged by the  
15 intervenor witnesses. Different risk factors can have very different impacts on  
16 a company’s expected return profile and on its needs for liquidity. Again,  
17 FPL’s geographical exposure has an impact on both, but it has a particular  
18 impact on our need for liquidity, especially when coupled with our capital  
19 investment program. We accommodate this through maintaining a strong  
20 financial position.

21 **Q. Please explain what you mean by ‘faulty reasoning.’**

---

<sup>6</sup> See, for example, witness Woolridge (page 37, lines 16-18): “... an assessment of investment risk for 97 industries, as measured by beta, which according to modern capital market theory is the only relevant measure of investment risk.”

1 A. As an example, witnesses Gorman, Woolridge and Baudino each claim that  
2 business risks are incorporated in a company's credit ratings, and since FPL's  
3 credit ratings are higher than the average for the proxy groups, then it must  
4 mean that FPL has less business risk than other utilities. This is not an  
5 accurate assessment. As I discuss in my direct testimony, FPL's risk profile is  
6 heavily influenced by its geographical position, which constrains the  
7 company's transmission system, generation mix, and fuel supply, and carries  
8 with it a high exposure to tropical storm damage. This coupled with a strong  
9 capital investment program and other factors all suggest that FPL needs to  
10 maintain a stronger financial position than most other U.S. utilities.

11

12 Moreover, on at least two occasions intervenor witnesses appear to conflate  
13 risk from an equity investor's perspective with risk from a credit perspective,  
14 employing selective quotes from rating agency reports in the context of  
15 discussing risk from an equity perspective. Witness Baudino (page 25) refers  
16 to bond and credit rating agencies within the context of discussing a "fair rate  
17 of return" and his ROE estimation models. Similarly, in assessing FPL's  
18 ROE, Witness Woolridge claims FPL's capital expenditure program,  
19 geography, and nuclear risk are already considered by *rating agencies*. While  
20 it is certainly true that debt and equity investors share exposures to many  
21 underlying risk factors, it does not follow that they share them equally or  
22 consistently, and therefore rating agency views cannot be taken as fully  
23 characterizing equity investors' risk exposure.

1 **Q. Please explain your reference to an intervenor witness**  
2 **“misunderstanding” the concept of risk.**

3 A. Witness O’Donnell on page 6 of his testimony states “[b]usiness risk is a  
4 measure of a company’s ability to operate at a profit within its industry.  
5 Given that FPL operates in a monopoly industry with no retail competition, its  
6 business risk is relatively small.”

7  
8 His definition of risk is simply wrong. Academically, risk is typically defined  
9 as the variability around an expected value, but it is certainly *not* a measure of  
10 a company’s ability to operate at a profit. A highly profitable company may  
11 have high risk, while one that is consistently unprofitable may well have  
12 lower risk.

13 **Q. SFHHA witness Baudino refers to FPL as being a “low risk, financially**  
14 **robust electric company” (page 3). Do you agree with this**  
15 **characterization?**

16 A. I agree that FPL is financially strong relative to most other companies in its  
17 industry. As I have explained, this reflects both FPL’s specific risk profile  
18 and a strategic choice. However, whether FPL is “low risk” or not depends  
19 crucially both on perspective (i.e., who is bearing that risk) and the standard of  
20 relativity being applied. For instance, given the high rating of FPL’s first  
21 mortgage bonds (“FMBs”), the risk of a fixed income investor in these  
22 instruments is low compared to the average utility mortgage bond. This is  
23 reflected in the fact that FPL generally enjoys a lower cost of debt than the

1 average utility. In contrast, from an equity investor's perspective, FPL is not  
2 "low risk" compared with the average utility. More important, in the real  
3 world it is not possible to reduce the risks that equity investors are exposed to  
4 in selecting among different utilities to a simple scale of "higher versus lower"  
5 whether measured by beta or any other single indicator. Each company has a  
6 different profile and its investors will have different exposures in different  
7 states of the world.<sup>7</sup> In practice, risk cannot be reduced to a single measure.

8 **Q. Witness Chriss argues that (1) the use of a future or projected test year**  
9 **and (2) the amount of revenues collected or costs recovered through**  
10 **clause charges both lower FPL's financial risk, and should be key**  
11 **considerations for the Commission when examining the proposed revenue**  
12 **requirement and associated ROE. Does this reduce FPL's financial risk**  
13 **as compared to its peers?**

14 A. No. Projected test years and cost recovery clauses are both aspects of FPL's  
15 overall risk profile but they are not uncommon in the industry. Moreover, the  
16 mere existence of a clause recovery mechanism by itself tells us little, because  
17 different companies will have different exposures to the risk factors that  
18 underlie the clauses (e.g., variations in fuel price).

19 **Q. Witnesses Gorman and Woolridge note that FPL's risks are considered**  
20 **by the rating agencies that arrive at FPL's A- and A1 ratings, while**  
21 **witness Baudino comments that comparing bond and credit ratings**

---

<sup>7</sup> This is one reason why the measurement of beta presents problems; betas are not stationary but vary in different states of the world.

1           **provides “an objective assessment of how FPL’s overall risk compares”**  
2           **(page 71). Please respond.**

3    A.    I agree that FPL’s risks are considered by credit rating agencies, but they are  
4           considered alongside of FPL’s financial policies. In other words, FPL’s  
5           strong credit ratings are arrived at *despite* FPL’s risk factors, thanks to the  
6           strong financial policies it has consistently employed.

7    **Q.    Several intervenor witnesses characterize the ratings outlook for FPL as**  
8           **“stable”, citing credit rating agency reports. Do you agree?**

9    A.    I agree that today the three agencies all describe the outlook for FPL as stable.  
10           However, that is not the same as saying it would remain stable if the  
11           intervenor witnesses’ recommendations were adopted. The stable outlook of  
12           all three agencies is predicated in significant measure on the continuation of  
13           what the agencies see as the currently constructive regulatory environment.  
14           As witness Gorman notes in his testimony, quoting Moody’s: “The stable  
15           rating outlook reflects the our [sic] expectation that the current rate case will  
16           result in a constructive outcome that will maintain its existing credit  
17           supportive features... including CFO Pre-WC-to-debt in the low to mid 30%  
18           range.”

19  
20           Implementation of the intervenor witnesses’ recommendations with respect to  
21           capital structure and equity ratio would clearly not meet this expectation.  
22           Because of this, witness Lawton’s analysis (page 54-57) that purports to show  
23           that implementation of his proposed recommendation would “support an



1 investment grade bond rating for FPL” is incomplete and should be  
2 disregarded.

3

4

## V. CAPITAL STRUCTURE

5

6 **Q. How do intervenors propose that the Commission should consider capital  
7 structure?**

8 A. Intervenor witnesses Baudino, Brosch, O’Donnell and Pollock all call upon a  
9 simple framework in which equity is “more expensive” than debt and debt  
10 should be added to the capital structure to lower the overall cost of capital up  
11 to some (unspecified) “optimal” point.<sup>8</sup> I will comment on the flaws in this  
12 approach later. However, because this conceptual framework is not actually  
13 operational, as I will also explain at page 35, they all immediately abandon it  
14 in favor of one or more of three more generalized arguments as follows:

15 (1) FPL’s current equity ratio is too high because it exceeds the average of  
16 other utilities,<sup>9</sup> *without any consideration for the differences in  
17 situation and strategy;*

18 (2) FPL’s current equity ratio is too high because it exceeds the generally  
19 accepted accounting principles (“GAAP”) equity ratio of NextEra  
20 Energy and/or its other subsidiaries, *without any consideration for*

---

<sup>8</sup> Pollock page 32; Baudino page 42, O’Donnell page 9; *see also* Brosch page 47.

<sup>9</sup> In the case of AARP witness Brosch, he bases his recommendation on a comparison of FPL’s equity ratio to the average equity ratio of a group of utility *holding companies*. This is inappropriate for the reasons I described earlier at page 10.

1                   *differences in situation and strategy and ignoring the irrelevance of*  
2                   *GAAP equity ratios to the financial profile of NEE's other businesses;*  
3                   and

4                   (3) FPL's current equity ratio is too high because it results in higher  
5                   revenue requirements that could be lower, *without any ill effect.*

6   **Q.   Please respond to the assertion that FPL's equity ratio is "too high"**  
7   **because it exceeds the average of other utilities.**

8   A.   As I explained earlier, naïve comparison of capital structures without regard  
9       for differences in situation and strategy can tell us nothing about how FPL  
10      should structure itself. Companies differ in their risk profiles, as I described  
11      both in my direct testimony and earlier in my rebuttal testimony, and they also  
12      differ in how they choose to seek to deliver value to their customers. These  
13      differences will logically lead to different decisions about financial policies in  
14      general and capital structure in particular.

15  
16      In effect, by proposing that the Commission alter FPL's capital structure on  
17      the basis of these comparisons, intervenor witnesses are assuming that all  
18      utilities are alike and interchangeable in every other respect (or at least, so  
19      nearly similar as to make no practical difference), so that differences in capital  
20      structure can meaningfully serve as a measure of deviations from the  
21      purported 'optimal' capital structure. Such a view is not consistent with  
22      practical experience in this industry.

23

1 In focusing on purported ‘optimal’ capital structure, intervenor witnesses are  
2 seeking to undertake what is referred to academically as “sub-optimization” –  
3 i.e., to optimize one element of an integrated system without regard for its  
4 impact on other parts of the system. Even if it were the case that intervenor  
5 witnesses’ capital structure recommendations in some fashion truly  
6 represented a lower cost of capital, which I dispute because they have ignored  
7 FPL’s risk profile, it would still not follow that we should adopt them.

8  
9 It is true that we have deliberately chosen to maintain a stronger-than-average  
10 financial position for FPL. We have done so both because of the unique risk  
11 profile to which FPL is exposed, which in my judgment requires a greater than  
12 average degree of financial strength, and because the strong financial position  
13 gives us real-world advantages in many areas, which I noted in my direct  
14 testimony starting on page 11, and which in turn improve our ability to deliver  
15 value to our customers. It would be both wrong as a matter of logic and  
16 dangerous as a matter of practice to assume, as intervenor witnesses do, that  
17 we are free to arbitrarily change FPL’s capital structure without also affecting  
18 its operational performance.

19 **Q. Please respond to the assertion that FPL’s equity ratio is “too high”**  
20 **because it exceeds the GAAP equity ratio of NEE and/or its other**  
21 **subsidiaries.**

22 A. This assertion contains all of the same errors as the prior point discussed  
23 above, as well as additional problems. The biggest source of additional error is

1 in the comparison of GAAP equity ratios for businesses with different  
2 economic structures and radically different financing structures. This is  
3 simply not proper and appears to reflect a lack of understanding in how  
4 companies capitalize themselves.

5  
6 As a practical matter, NextEra Energy structures and finances its principal  
7 subsidiary other than FPL, a business named NEER, in a very different way  
8 and it does so because the businesses are quite different and the strategies  
9 employed by these businesses are quite different. In structuring and financing  
10 NEER, NEE makes use of a wide variety of instruments, including project  
11 debt, tax equity, so-called 'hybrid' debt, and equity units, which together  
12 result in GAAP debt ratios that are much higher than the effective economic  
13 leverage. Without going into detail here, anyone familiar with the kinds of  
14 adjustments that S&P, for example, explicitly discusses in its reports, would  
15 be aware of this large difference. That intervenor witnesses apparently chose  
16 to overlook this difference should cast doubt on their broader assertions.

17 **Q. Please respond to the assertion that FPL's equity ratio is "too high"**  
18 **because it results in unnecessarily high revenue requirements and could**  
19 **be lowered without any ill effects.**

20 A. There are two main problems with the approach used by each of the witnesses  
21 that espouse this position. First, as discussed above, the intervenor witnesses  
22 have failed to show that FPL's equity ratio is "too high" given FPL's position  
23 and strategy. Rather, they ignore both FPL's position and its strategy,

1 incorrectly assuming that there is no relation between how the Company  
2 capitalizes and how it has performed and can continue to perform. This is  
3 discussed above as the false premise that underlies intervenor's testimony in  
4 this proceeding.

5  
6 Second, intervenor witnesses' attempt to show that there would be no ill  
7 effects from arbitrarily reducing FPL's equity ratio is flawed. One such  
8 example is witness O'Donnell's claim that FPL's credit rating would not be  
9 downgraded if the Commission were to approve an equity ratio of 50 percent  
10 because "the rating agencies are used to analyzing utilities with reasonable  
11 equity ratios." Even putting aside his view of what is "reasonable," a rating  
12 agency's previous guidance on FPL contradicts witness O'Donnell's claim.  
13 Employing a lower equity ratio would negatively affect FPL's credit metrics,  
14 including CFO Pre-WC-to-debt and debt-to-capitalization, critical metrics  
15 analyzed by Moody's. In Moody's most recent publication on FPL (March  
16 31, 2016), it cites that "a downgrade could be considered if there are  
17 significant cost disallowances or other changes to Florida's credit-supportive  
18 regulatory and cost recovery framework, or if there is a sustained decline in  
19 cash flow coverage metrics, including CFO Pre-WC-to-debt below 25%, or an  
20 increase in debt-to-capitalization above the 40% range."

21 **Q. Do you agree with witness O'Donnell that FPL's "unnecessarily**  
22 **expensive capital structure" or "excessively high 59.6 percent common**  
23 **equity ratio" costs the typical residential customer about \$41 per year?**

1 A. No. Witness O'Donnell bases his calculations on the hypothetical rate impact  
2 using a 50 percent equity ratio, which he states is "comparable to other  
3 electric utilities and is also comparable to what the state commissions across  
4 the country have deemed to be fair and reasonable." I have already explained  
5 why this is an inappropriate comparison and why it logically cannot  
6 demonstrate that FPL's capital structure is "unnecessarily expensive."

7  
8 However, even if witness O'Donnell were correct in his assertion, the overall  
9 magnitude is subject to different interpretations. In my judgment, \$41 per  
10 year, or about 3 percent of the typical residential bill is far more than offset by  
11 the advantages that a "stronger-than-average" capital structure brings, both in  
12 terms of flexibility and resilience to stress scenarios and in terms of direct  
13 support to the Company's operational strategies. Witness O'Donnell's  
14 hypothetical \$41 per year should be compared with the very real roughly \$480  
15 per year typical bill savings that the FPL residential customer enjoys by  
16 comparison to national averages (or the more than \$200 per year benefit  
17 derived from lower O&M as compared to national averages (Silagy page 6)).

18 **Q. Please describe the framework for determining capital structure that**  
19 **intervenor witnesses use, and explain why you believe it is flawed.**

20 A. Each of witnesses Baudino, Brosch, O'Donnell, Gorman, Kollen and Pollock  
21 employs some variation on a framework that argues the following:

- 22
- debt is "cheaper" than equity

- 1           • as debt is added to a hypothetical capital structure the weighted  
2           average cost of capital, or WACC, is gradually reduced...
- 3           • ...until at some point the greater risks associated with using more debt  
4           cause debt rates to rise and equity required returns to rise at a faster  
5           rate such that WACC starts to increase...
- 6           • ...and therefore firms should choose the point that minimizes the  
7           WACC.

8

9           This framework is commonly found in most first-year finance textbook, and  
10          as a starting point for teaching finance students it captures some important  
11          principles. However, the framework itself is known to be incomplete, and it  
12          clearly is not representative of real-world behavior. It is a pedagogical tool,  
13          and not a financial model to be algorithmically used in the development of  
14          capital structures by corporations. In addition, it is not operational – meaning  
15          that there is no practical way of applying it, which is why each of the  
16          intervenor witnesses immediately abandons it in favor of simplistic  
17          comparisons of equity ratios for companies in different situations.

18

19          It is flawed conceptually because the only direct economic benefit of debt is  
20          the tax deductibility of interest payments, but the theoretical magnitude of this  
21          benefit would drive “optimal” capital structures to levels that even academics  
22          have admitted make no sense. Brealey, Myers and Allen note in the textbook  
23          “Principles of Corporate Finance” (McGraw-Hill, 2011) that under this

1 theory, “[t]he optimal debt policy appears to be embarrassingly extreme. All  
2 firms should be 100% debt-financed.” (page 444)

3

4 It clearly is not representative of the real world, and in the early 1980s, I  
5 personally undertook a detailed statistical analysis demonstrating that  
6 companies do not finance themselves with anywhere near the degree of  
7 leverage that the simple academic model would suggest.

8

9 This observation is well known. Since the 1980s more sophisticated work has  
10 been done to try and incorporate ‘real-world’ considerations, so that  
11 theoretically derived ‘optimal’ capital structures more closely approximate  
12 real-world observations.

13 **Q. Please summarize the problems of the approach intervenor witnesses use  
14 to criticize FPL’s capital structure.**

15 A. There are two fundamental problems with the simple business school model  
16 that intervenor witnesses seek to call upon, one irremediable and the other  
17 pragmatic:

18 (1) to repeat a theme noted now several times, the framework assumes that  
19 changes to capital structure have no effect on the asset side of the  
20 balance sheet, i.e., on operational performance.<sup>10</sup> This is simply  
21 wrong and inconsistent with the real world; and

---

<sup>10</sup> It is clear that some academics appreciate this fundamental issue. For example, in their introduction to Chapter 5 (“Does Debt Policy Matter?”) of their book “Financing and Risk



1 (2) the factors that are supposed to increase cost and limit the benefit of  
2 adding debt (bankruptcy costs, costs of financial distress, agency costs,  
3 etc.) are essentially impossible to estimate with any precision and  
4 therefore it is essentially impossible to tell, even with the limited  
5 confines of the model where the “optimal” capital structure is. This is  
6 why I characterized the model as not operational.

7 **Q. If the approach to capital structure used by intervenor witnesses is fatally**  
8 **flawed, how should the Commission consider this topic?**

9 A. Determining an appropriate capital structure is an important question that  
10 cannot be reduced to an arithmetic search for the “lowest” cost of capital.  
11 Instead, it must be determined using judgment and it must be based on  
12 consideration both of the overall strategy of the business and of the unique  
13 circumstances affecting the business, including in particular its unique risk  
14 profile. This is what we have done at FPL and the result is periodically  
15 reviewed for continuing applicability. Because FPL’s situation and strategy  
16 have remained broadly the same for over a decade, it should not be surprising  
17 that we have maintained consistency in our approach to capital structure.

18  
19 Additionally, the Commission can consider the results of the capital structure  
20 being employed. In addition to purely financial impacts, such as the fact that

---

Management” (McGraw-Hill, 2003), professors Brealey and Myers note: “In Chapter 6 we will undertake a detailed analysis of the imperfections that are most likely to make a difference, including taxes, the costs of bankruptcy, and the costs of writing and enforcing complicated debt contracts. We will also argue that it is naïve to suppose that investment and financing decisions can be completely separated.” (page 92)

1 FPL's cost rates for long term debt are generally amongst the lowest in the  
2 nation, FPL's overall cost of service and exemplary performance for  
3 customers should not be ignored. Intervenors have failed to present any  
4 compelling evidence to support a deviation from FPL's historic and current  
5 approach.

6 **Q. Witness Baudino at pages 45 to 46 of his testimony notes that FPL in**  
7 **discovery produced no document responsive to certain questions around**  
8 **analyzing capital structure. How do you respond?**

9 A. Witness Baudino's line of questions suggests that he does not appreciate how  
10 capital structure review and determination occurs in the real world. For  
11 example, his observation that "FPL has no documents regarding how  
12 increasing, decreasing, or maintaining FPL's equity ratio would affect its total  
13 cost of capital" (page 45, internal quotes omitted) illustrates well by  
14 implication the framework I described earlier. The fact is, however, that FPL  
15 has no such documents because such analyses are not useful in the real world.  
16 Capital structure is *not* a matter of choosing the equity ratio that minimizes  
17 cost of capital; and trying to determine the impact on cost of capital from  
18 changing equity ratios is so fraught with inherent uncertainties, as well as lack  
19 of useful needed input data, as to be worthless in the real world. Witness  
20 Baudino's framework may be useful for introducing finance students to a  
21 partial view of the issues surrounding capital structure, but as I have noted  
22 before, it is not operational and it does not reflect real world behavior.

1 **Q. Is FPL's equity ratio "hypothetical" as asserted by witness O'Donnell?**

2 A. No. FPL's requested capital structure reflects the actual capital structure that  
3 has been maintained by FPL for well over a decade. Our approach to  
4 capitalization has served our customers exceptionally well for years and will  
5 continue to be the foundation of our ability to provide the type of service we  
6 are currently providing and at affordable rates for years to come. Intervenors'  
7 recommendations would undermine the financial strength of arguably the best  
8 performing utility in Florida and the U.S., financial strength that we have  
9 worked hard to establish over many years.

10 **Q. Witnesses Pollock (page 32), Brosch (pages 50 to 51) and O'Donnell**  
11 **(pages 25 to 26) all claim that FPL may maintain a different capital**  
12 **structure than the one used by the Commission in this docket for**  
13 **ratemaking purposes. Is this correct?**

14 A. No. In practice, FPL could not reasonably continue operating the Company in  
15 a manner that is contrary to the Commission's determination on an  
16 appropriate equity ratio in this case. Accordingly, if intervenor witnesses'  
17 recommendations to employ an equity ratio of 47 percent to 55 percent were  
18 adopted, FPL would have to issue \$1.2 to \$3.2 billion in long-term debt and  
19 correspondingly reduce its equity by the same amount. FPL would thus  
20 become far more leveraged and financially risky. Adoption of this  
21 recommendation would also reduce FPL's cash flow significantly. As I have  
22 already discussed at length, these impacts most likely would translate into a  
23 credit rating downgrade and certainly would result in higher borrowing costs.

1 **Q. SFHHA witness Baudino claims that FPL's capital structure in 2014**  
2 **consisted of 55 percent equity, claiming that amount should therefore be**  
3 **sufficient. Please respond.**

4 A. FPL carefully manages its capital structure so that it closely matches the  
5 capital structure last reviewed and approved by the Commission based on a  
6 13-month rolling average. Witness Baudino, in referring to MFR D-2, which  
7 provides the year-end, investor-sources capital structure as measured at a  
8 point-in-time, identified that at December 31, 2014, FPL's equity ratio was 55  
9 percent. This was a function of the fluctuating cash flows of the business and  
10 decisions on the timing of accessing the long-term debt markets, and not an  
11 indicator that we maintain a regulatory capital structure significantly below  
12 the level that was approved by the Commission. Note that the 13-month  
13 rolling average equity ratio at December 31, 2014 was 60.0 percent; this can  
14 be derived from the Earnings Surveillance Report that the Company filed with  
15 the Commission in February 2015.

16 **Q. SFHHA witness Baudino suggests that FPL issue projected 2017 and**  
17 **2018 long-term debt now to take advantage of current interest rates (page**  
18 **55). Is this a reasonable financing strategy for FPL to pursue?**

19 A. No, in my judgment this would be unwise. To do as witness Baudino suggests  
20 would imply either substantially increasing FPL's leverage or maintaining  
21 material cash balances. To increase the leverage at FPL, FPL would have to  
22 recapitalize its balance sheet through an issuance in the range of \$1.2 to \$3.2  
23 billion of long-term debt. FPL would then dividend or distribute this same

1 amount to its parent, NEE, with a plan to revert that cash back to FPL at a  
2 time when a stronger financial position is needed. This would be exceedingly  
3 challenged and costly during adverse circumstances, which is most likely the  
4 time when FPL would be seeking to restore its financial strength under this  
5 example. I agree that short-term capital market conditions are comparatively  
6 benign, but we should not set capital structure on the assumption that benign  
7 conditions will always prevail. We maintain financial strength precisely so  
8 that we have flexibility when conditions are stressed, and no one can tell for  
9 sure when that flexibility will be required.

10

11 Alternatively, pre-funding FPL's future debt needs today and maintaining a  
12 cash balance with those proceeds would result in FPL incurring material  
13 carrying costs, and increased costs to customers, given that such issuances  
14 would occur far in advance of those expected operational cash needs.

15 **Q. What is your reaction to witness O'Donnell's assertion that if the**  
16 **Commission continues to accept FPL's actual equity ratio "the big**  
17 **winners are the shareholders...the customers lose" (page 22)?**

18 A. I disagree with the premise that there are 'winners' and 'losers.' FPL  
19 customers today enjoy all the benefits of low bills, high reliability and  
20 excellent customer service, and they will continue to do so if FPL's financial  
21 policies are maintained.

**VI. RETURN ON EQUITY**

1

2

3 **Q. Do you agree with the return on equity recommendations made by Dr.**  
4 **Woolridge, Mr. Baudino or Mr. Gorman?**

5 A. No. The analyses on which these recommendations are based are flawed or  
6 biased, as witness Hevert explains in his rebuttal testimony. And the  
7 recommendations themselves simply do not pass the common sense test of  
8 reasonableness. Specifically, each of these recommendations, if adopted,  
9 would represent the lowest authorized ROE decision for any vertically  
10 integrated electric utility in the U.S. since the beginning of 2014. In fact, each  
11 is at the low end of authorized ROEs for Transmission and Distribution-only  
12 electric utilities – businesses with clearly lower risk profiles. In the current  
13 environment, as my Exhibit MD-3 shows, the opportunities available to  
14 investors to commit capital to the utility business elsewhere offer returns well  
15 in excess of what each intervenor witness is recommending for FPL. In fact,  
16 OPC witness Woolridge’s recommended 8.75 percent ROE would be less than  
17 the lowest ROE awarded in the U.S. since the beginning of 2013 of 9 percent -  
18 which reflected a performance penalty.

19 **Q. How would investors and the rating agencies view a decrease in the**  
20 **allowed ROE to the levels recommended by intervenor witnesses?**

21 A. Clearly, different participants would react in different ways. However, based  
22 on my interactions with them, all would view such a change as very negative  
23 to risk and as a significant change in the regulatory environment. Investors

1 and rating agencies all tend to view allowed ROE as an important indicator of  
2 the broader regulatory environment, and such a large discontinuity relative to  
3 past practice in Florida would cause great concern. Investors generally would  
4 become more reluctant to commit incremental capital to the business, and  
5 there would be substantial pressure from equity investors to decrease  
6 investment in the business and increase payout ratios, as in 2010. While these  
7 effects would be concentrated on FPL, they would likely not be limited to  
8 FPL, but would extend to other Florida utilities regulated by the PSC. Over  
9 time, this would constrain access to capital, increase the cost of capital, and  
10 limit FPL's ability to invest, ultimately resulting in poorer customer value.

11 **Q. Witnesses Brosch, Chriss and Pollock all refer to FPL's ROE request as**  
12 **"excessive." Please respond.**

13 A. Testimony reflects that none of these three witnesses has conducted any  
14 independent analysis. Witness Brosch argues on page 40 of his direct  
15 testimony that "current risk free capital cost rates are much lower today than  
16 [in 2010]" and that therefore the allowed ROE should be lower. Yet witness  
17 Hevert's analysis is based on today's capital market conditions and reflect the  
18 impact of today's "risk-free capital cost rates," which of course are not the  
19 only determinant of cost of equity. As I will discuss in more detail, it would  
20 be wrong to set an allowed ROE off today's distorted interest rates strictly  
21 through a lock-step application of the notion that 'if risk-free rates have come  
22 down ROEs must, too.'

23

1           Witness Chriss presents a comparison of authorized ROEs for vertically  
2           integrated utilities from 2013 to the present but he provides no direct evidence  
3           on FPL's specific situation, in contrast to witness Hevert. Witness Pollock  
4           follows a similar line and presents comparative data on currently authorized  
5           ROEs, but again he provides no direct evidence comparable to witness  
6           Hevert's.

7           **Q. Please explain your reference to "today's distorted interest rates."**

8           A. Witness Baudino (pages 6 to 12 and page 75) and witness Woolridge (pages  
9           15 to 27), discuss current capital market conditions and argue in part, that  
10          current capital market conditions support their recommended ROEs. My  
11          concern with this is that their own assessment clearly demonstrates that  
12          historically unprecedented intervention by the Federal Reserve has led to  
13          distortions in the historical relationships between many of the variables that  
14          they use in their models. At the risk of simplifying, witnesses Baudino and  
15          Woolridge (and, implicitly, Witness Gorman, too) are all assuming that they  
16          can safely apply historical relationships to a currently distorted risk-free  
17          interest rate structure *and* that that distorted structure may be relied upon to  
18          continue indefinitely into the future. Both of these are dangerous  
19          assumptions, and should not be used in determining FPL's authorized ROE.

20          **Q. How have the historical relationships between modelling variables been**  
21          **affected?**

22          A. Witness Hevert explains this issue in more detail, and I defer to him on the  
23          specifics, but the principal point we should be aware of is that we should not



1 expect equity risk premia to remain independent of the overall level of interest  
2 rates: low interest rates generally imply higher risk premia and vice versa.

3 **Q. Please explain your concern about relying on the continuation of today's**  
4 **distorted market conditions.**

5 A. Witnesses Baudino and Woolridge both make clear that macroeconomic and  
6 political events, both domestically and internationally, have had a significant  
7 short-term impact on the U.S. Treasury yield curve and on equity market  
8 valuations, including sectoral effects such as the current relatively high price-  
9 to-earnings ("P/E") relationship for the U.S. utility sector relative to the S&P  
10 500 or other broader market indexes.<sup>11</sup> These effects have little or nothing  
11 directly to do with FPL or other U.S. utility companies, yet Witnesses  
12 Baudino and Woolridge are reflecting this in their ROE analyses – arguing  
13 that FPL's cost of capital is lower as a result of them. But macro-events come  
14 and go, and they come and go very rapidly. At some point – and I concede no  
15 one can know when – it is highly likely that the current environment will  
16 revert, in which case, if intervenor witnesses' recommendations are followed,  
17 there will be massive capital flight away from U.S. utilities generally and FPL  
18 even more so, and FPL and its customers and investors will be at risk of being

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<sup>11</sup> See, for example, witness Baudino (page 9, lines 26-27): "The Fed's monetary policy actions since 2007 were deliberately undertaken to lower interest rates and support economic recovery." *See also*, (page 57, lines 6-12): "The Federal Reserve considered raising interest rates this year, only to defer any such increases due to economic concerns relating to job creation, domestic economic growth, and the effect on exchange rates that would increase the value of the dollar abroad and potentially harm U. S. exports." *See also*, (page 12, lines 11-13) in which he quotes ValueLine "This is reflected in the high valuation of many electric company equities. Most are trading at a market premium..." *See also* witness Woolridge (page 75, line 11): "the P/E ratios of utility stocks have increased."

1 left 'high and dry.' I do not believe this is a sound policy basis for setting  
2 allowed ROEs.

3 **Q. Witness Woolridge argues that forecasts of interest rates have been**  
4 **wrong. Please respond.**

5 A. Mr. Woolridge ties himself into a logical knot when discussing the issue of  
6 forecasting capital market conditions generally and interest rates in particular.  
7 He goes to some lengths to argue that historical interest rate forecasts *have*  
8 *turned out to be* wrong, in order to discredit the use of a forecast of increasing  
9 interest rates (pages 16 to 17). Yet, having discredited the forecasting abilities  
10 of professional economists (pages 17, 11 to 13 and 19 to 22) he promptly asks  
11 the Commission to substitute his own professional *opinion* (page 26) that  
12 interest rates will remain low. This is a forecast like any other –extrapolating  
13 today's rates is by definition a forecast that rates will remain unchanged.  
14 Witness Woolridge (page 47) presents his forecast despite his own contention  
15 that "I suggest that the Commission set an equity cost rate based on current  
16 market cost rate indicators and not *speculate* on the future direction of interest  
17 rates" (emphasis added).

18  
19 Though I understand that intervenor witnesses may not like the result, we  
20 have to use the best information available to us. In my judgment, setting an  
21 allowed ROE based on the assumption that current market conditions,  
22 distorted as Mr. Woolridge acknowledges by macro and international events  
23 that are not likely to endure, will continue indefinitely, would be unwise. Mr.

1 Hevert's analytical techniques accommodate this concern far better than those  
2 of any of the intervenor witnesses.

3 **Q. Couldn't the Commission simply re-visit the cost of capital issue if and**  
4 **when capital market conditions change?**

5 A. While this might seem like an attractive alternative, there are two core  
6 problems; one practical and one conceptual.

7  
8 The practical problem is that capital market conditions are constantly  
9 changing and generally no one event will be sufficiently obvious to serve as a  
10 trigger. Coupled with the four-year stay-out proposed in FPL's application,  
11 this would make it difficult to re-visit within the next few years.

12  
13 However, there is a more fundamental issue. The allowed ROE is not used  
14 simply as an anchor point around which FPL's actual earned returns are  
15 expected to move. It also serves as a critical input in long-term capital  
16 investment decisions. Utilizing an allowed ROE based on distorted capital  
17 market conditions would give rise to capital investments, some of which later  
18 on would be revealed to be unwise if or when macro events revert to more  
19 normal conditions.<sup>12</sup> Ironically, given some intervenor witnesses' expressed  
20 concern for utilities having an incentive to overinvest (O'Donnell, page 5)

---

<sup>12</sup> It should be noted that this concern is at the heart of many critiques of the Federal Reserve's unprecedented intervention in capital markets. Arguably, the failure of investment to respond as policymakers hoped in the face of 'cheap' capital is evidence that investors have not been convinced that the true opportunity cost of capital has actually come down.

1 setting too low an authorized ROE would make more capital investments  
2 appear attractive from a cumulative present value of revenue requirements  
3 (“CPVRR”) perspective. This issue is of particular concern for a business like  
4 FPL where investments are commonly very long-lived and cannot easily be  
5 reversed or moved (e.g. generation or Transmission and Distribution (“T&D”)  
6 assets) once completed.

7

8

## PART 2

9

10

### VII. ROE PERFORMANCE ADDER

11

12 **Q. Please summarize your reaction to intervenor witness testimony as it**  
13 **relates to the ROE performance Adder.**

14 A. I have two primary concerns with the testimonies of witnesses Brosch,  
15 Gorman, Pollock, Lawton, Baudino and Chriss with regard to the performance  
16 Adder. First, intervenor witnesses uniformly misstate the performance  
17 standard to which a Florida regulated utility should be held; and, second,  
18 intervenors witnesses appear to misunderstand or mischaracterize my  
19 testimony on this topic.

20 **Q. Please explain how intervenor witnesses mistake the performance**  
21 **standard.**

22 A. Intervenors’ witnesses present varying formulations of FPL’s service  
23 obligation or “duty” to its customers in an attempt to demonstrate that FPL’s

1 service does not rise to the level of warranting the requested ROE Adder. For  
2 example:

- 3 • Mr. Pollock claims FPL has an “obligation to provide reliable service  
4 at the lowest reasonable cost.” (page 4)
- 5 • Mr. Gorman claims FPL is “require[d] to provide high quality, reliable  
6 service at competitive rates.” (page 4)
- 7 • Mr. Lawton claims all monopolies “have a duty to provide superior  
8 performance” (page 13)
- 9 • Mr. Brosch claims FPL is required “to constantly strive for the  
10 provision of safe and reliable service at the lowest practical cost”  
11 (page 51)
- 12 • Mr. Baudino claims FPL customers “should expect exemplary  
13 management from the company” (emphasis added; page 77, 14-15)

14  
15 Each witness is mistaken. As Witness Deason describes, FPL’s service  
16 obligation is clearly stated in the Florida Statutes – FPL is obligated to  
17 provide “reasonably sufficient, adequate, and efficient” service. FPL’s  
18 service, including its cost of service, is clearly above and beyond that standard  
19 as discussed in my direct testimony as well as the direct testimonies of FPL  
20 witnesses Silagy, Santos, Cohen, Kennedy, Miranda and Reed.

21 **Q. Does a general standard or expectation of “superior” performance make**  
22 **sense for utilities, regardless of the Florida-specific legal standard?**

1 A. No. Any attempt to impose a general standard of “superior” performance, as  
2 witness Lawton does, or “exemplary” management, as witness Baudino does,  
3 immediately runs into a logical conundrum: it is logically impossible for the  
4 median or average of a group to be equal to the best (“exemplary”) or even the  
5 upper half (“superior”) where there is variation in performance (as there is in  
6 the real world), however hard we try and regardless of whatever penalties or  
7 rewards may be imposed. The only way out of this conundrum is to conclude  
8 that the majority of the industry is failing to deliver against witness Lawton’s  
9 and Baudino’s standard, which defies reasonable belief. Overall, the U.S.  
10 utility industry does a highly creditable job in delivering reliable service at an  
11 affordable cost, as anyone who has traveled broadly across the globe can  
12 attest. Relative to this U.S. average, and even excluding those utilities that  
13 face penalties for substandard performance, it is clear that FPL provides  
14 superior service – for example, higher reliability at a lower cost. FPL is not  
15 simply delivering to its required obligation, as intervenors witnesses would  
16 have us believe, but is clearly going above and beyond.

17

18 Moreover, if it were true, as Mr. Lawton claims on page 13 of his direct  
19 testimony, that all monopolies “have a duty to provide superior performance  
20 in exchange for cost recovery plus an opportunity to earn a fair and reasonable  
21 return,” all below-average performing utilities would presumably be denied  
22 cost recovery and a return on their invested capital. Clearly that is not how  
23 utility regulation works. In effect, intervenor positions would conclude that

1 half or more of the utilities in the U.S. should be subject to penalties for poor  
2 performance.

3 **Q. Please explain how intervenor witnesses have misunderstood or**  
4 **mischaracterized your testimony.**

5 A. First, witnesses Lawton and Baudino either directly state or indirectly imply  
6 that my direct testimony argues that a performance adder is *necessary* for FPL  
7 to continue to deliver outstanding performance (for example, see Mr.  
8 Lawton's testimony at page 13). To be clear, this is not what I have said.  
9 Instead, I argue that it would be *good policy* to provide for a performance  
10 adder in this specific instance.

11

12 Second, as discussed further below, witnesses Brosch, Pollock, Lawton and  
13 Baudino seek to show that some aspects of FPL's current performance are due  
14 to factors having nothing to do with management. While they misappreciate  
15 the influence that management may have on total performance over time, as I  
16 will discuss, this argument misses the point. As long as management has  
17 *some meaningful influence* over performance, which no one with practical  
18 experience would deny, the concept of an incentive based on total delivered  
19 performance has merit. The purpose of the ROE Adder is not to reward effort  
20 or input but to reward output (i.e., customer value) and to offer an incentive to  
21 improve output.

22

1 Third, witness Lawton appears to misinterpret my testimony as asking to be  
2 rewarded for past accomplishments (page 11). When I testified that the  
3 incentive would “reflect what FPL has already accomplished” I was referring  
4 to the *current* exceptional value that FPL provides. While past actions are  
5 relevant because they have resulted in FPL’s current position, it is the  
6 recognition of FPL’s current superior customer value, in combination with an  
7 incentive for continued improvement, that I believe to be the purpose of the  
8 ROE Adder. FPL’s current performance, which few would deny merits the  
9 modifier ‘superior,’ is the culmination of more than two decades of customer-  
10 focused decision making, efforts to improve efficiency and careful  
11 investments, but it is the current performance that I believe warrants  
12 recognition.

13

14 Fourth, witness Pollock and Lawton note correctly, that FPL customers have  
15 paid or are paying for the service levels that they enjoy today. But they miss  
16 the point with regard to observing differences in performance among electric  
17 service providers. In effect, they are simply arguing that differences in  
18 performance should have no impact on allowed ROE without providing any  
19 basis for their contention. In contrast, I argue that differentiating ROE on the  
20 basis of overall performance represents better public policy because over time  
21 it is likely to result in higher levels of performance.

22 **Q. Why is the intervenor witnesses’ policy position inferior?**



1 A. It is important that some general relationship exist between a utility's allowed  
2 ROE and its relative performance in delivering value to its customers.

3

4 It is commonly understood that regulation is designed to act as a surrogate for  
5 competition. For example, in the publication "Principles of Utility Corporate  
6 Finance" (Public Utilities Reports, Inc. 2011), the authors state at page 7 the  
7 following:

8

9 "the fundamental economic goal of regulation is  
10 straightforward: to mimic a competitive market outcome,  
11 even when the underlying market is not competitive. In  
12 other words, purely economic regulation strives to achieve  
13 outcomes that capture the benefits of purely competitive  
14 markets when those markets are themselves not  
15 competitive."

16

17 Competitive markets financially reward those companies with better products  
18 or services – companies that do the right thing for customers. Such companies  
19 generally earn higher returns. If regulation is intended to be a substitute for  
20 competition, rewarding those companies that do the right thing for customers  
21 is an appropriate incentive. Indeed, as I noted in my direct testimony, in my  
22 experience it is more important to offer a positive incentive in light of the bias  
23 towards conservatism inherent in a regulated industry.

1 The key test for deciding between these two competing visions of public  
2 policy is very clear: do you believe that over time the observed performance  
3 of a regulated industry in which allowed ROE is linked to customer value  
4 delivery will be better than one in which there is no linkage? I believe the  
5 answer is obvious, and it is obvious for the same reason that, on average,  
6 companies in competing markets delivering superior customer value earn  
7 higher returns: incentives matter.

8 **Q. Please respond to the various claims that FPL's low bills are due to low**  
9 **gas prices.**

10 A. I would first observe that low bills are just one aspect of FPL's superior  
11 performance, albeit a very important factor. It is noteworthy that not a single  
12 intervenor witness has challenged any aspect of Witness Reed's  
13 benchmarking analysis in which he concludes that FPL has out-performed  
14 similarly sized companies across an array of financial and operating metrics.  
15 Instead, Intervenor witnesses point to several factors that they claim  
16 contribute to FPL's low bills, as if those factors undercut FPL's request for an  
17 ROE Adder to incent continued exemplary performance. Mr. Lawton even  
18 goes as far as saying FPL's low rates "are a direct result of historically low  
19 natural gas prices more than superior managerial performance" (page 14), but  
20 does not provide any quantification or analysis to support such a statement.

21 As FPL witness Forrest explains, intervenor witnesses overlook the fact that  
22 FPL has taken proactive steps to improve the efficiency of the system which  
23 has resulted in significantly less fuel being used. Curiously, intervenors in

1 this case either outright opposed, or failed to support, many of those efficiency  
2 investments.

3 **Q. Please respond to Mr. Baudino's claim that FPL's low bills are due to**  
4 **population growth.**

5 A. Mr. Baudino credits population growth within FPL's service territory with  
6 creating the opportunity for FPL to invest in new natural gas fueled power  
7 plants and claims that other utilities "have not had the same opportunities"  
8 (page 78). But Mr. Baudino seems not to understand that FPL's fuel  
9 efficiency has improved for multiple reasons. Moreover, the opportunity to  
10 invest in new technology is not limited simply to capacity expansion, as FPL's  
11 modernizations and its earlier re-powerings illustrate. Finally, even if the  
12 opportunity is created by growth it requires a customer-focused management  
13 team to exploit that opportunity.

14

15 To illustrate that population growth by itself does not automatically lead to a  
16 favorable cost position, we have only to consider other industries in Florida,  
17 including the healthcare industry that Mr. Baudino represents in this  
18 proceeding. They too would be impacted by such demand-related efficiency  
19 opportunities. But if a rising population in Florida is allowing for efficiencies  
20 at hospitals, spreading their costs across a greater number of patients, FPL is  
21 certainly not seeing it in the costs that we pay for health care services for our  
22 employees.

1 **Q. Please respond to Mr. Baudino's claim that FPL's low bills are due to**  
2 **economies of scale.**

3 A. I agree that, overall, scale can offer opportunities for lower unit costs.  
4 However, scale curves in the U.S. utility industry are relatively shallow and  
5 there is significant variation among companies that is not explained by scale.  
6 Moreover, FPL witness Reed's testimony demonstrates that FPL's  
7 performance is excellent after adjusting for scale impacts. Mr. Baudino does  
8 not address this.

9  
10 Scale may provide a conceptual opportunity for efficiency; however, that  
11 opportunity must be taken advantage of, which requires management action.  
12 That FPL outperforms other large utilities is evidence of real difference.

13  
14 Finally, scale itself is not completely exogenous and outside of management's  
15 control. It is open to the management teams of smaller utilities to consider  
16 merging into a larger organization, for example, as some have done, in order  
17 to benefit from economies in important areas such as purchasing.

18 **Q. Please respond to Mr. Baudino's claim that FPL's low bills are due to its**  
19 **low cost nuclear operations.**

20 A. Mr. Baudino credits the depreciation of FPL's nuclear power plants and their  
21 low operating costs as contributors to FPL's low bills, while somewhat to the  
22 contrary, Mr. Lawton claims that the "vintage of equipment" (page 19) –  
23 presumably the newness of FPL's generators – reduces costs and has "little to

1 do with management performance.” (page 20) Both Mr. Baudino and Mr.  
2 Lawton ignore the point that the decision to invest in nuclear power decades  
3 ago and the decision to invest in modernizing FPL’s fleet more recently were  
4 both *management decisions*.

5  
6 FPL has invested substantially in modernizing and uprating its nuclear fleet  
7 which, while good for customers in the long term, in fact puts upward  
8 pressure on its cost structure in the short term.

9  
10 Inadvertently, perhaps, intervenor witnesses’ selective arguments about  
11 individual elements of FPL’s cost structure point the way to exactly the view  
12 expressed in my direct testimony (page 29): the right way to judge FPL’s  
13 overall performance is on a broad array of measures that contribute to FPL’s  
14 delivery of customer value. Customers care about the total package, not the  
15 individual components of cost.

16 **Q. Witness Lawton states (page 22) his view that asking customers to pay for**  
17 **enhancements to the Turkey Point cooling canal system should by itself**  
18 **disqualify FPL from eligibility for any performance adder. Do you**  
19 **agree?**

20 A. No. While I strongly disagree with Mr. Lawton’s characterization of the  
21 cooling canal situation, he himself notes that the question of the treatment of  
22 costs associated with the enhancements is a separate legal issue that will be  
23 addressed in another docket. How FPL has managed and continues to manage

1 all its facilities, including its nuclear facilities, is certainly a part – but only  
2 one part – of FPL’s overall performance record. We are asking the  
3 Commission to consider the totality of FPL’s performance, which is reflected  
4 in its overall relative cost position, its low bills, its high reliability relative to  
5 industry norms, its strong record of customer service, and its relative position  
6 compared with others in the industry with respect to environmental risks. No  
7 company is immune from environmental risk, however strong its compliance  
8 record. However, FPL’s overall record of delivering value to customers,  
9 including fair and reasonable assessment of the management of its nuclear  
10 facilities, is quite clearly meaningfully superior to industry  
11 norms. Accordingly, consideration of the policy merits of awarding the  
12 proposed ROE Adder in this specific instance remains fully warranted.

13 **Q. Several intervenor witnesses quantify the requested ROE Adder in terms**  
14 **of revenue requirements and the impact on FPL’s request in this docket.**  
15 **What is your response?**

16 A. Without commenting on any of their estimates, FPL acknowledges that the  
17 performance adder contributes to its request made in this docket. If FPL were  
18 a smaller utility with a smaller rate base, the revenue requirements  
19 corresponding to a 50 basis point adder would be smaller, and if FPL were a  
20 larger utility with a larger rate base, the revenue requirements corresponding  
21 to a 50 basis point adder would be larger. In my judgment, 50 basis points  
22 represents a small component of the customer bill but is large enough from an  
23 investor perspective to serve as a meaningful incentive.

1

2 In pointing out these impacts, intervenors overlook that even if FPL's entire  
3 request is granted, including the ROE Adder, FPL's customer bills will  
4 continue to be comparatively low. In fact, as discussed in FPL witness  
5 Cohen's direct testimony, the typical residential customer bill is expected to  
6 remain among the lowest in the state through 2020. I do not believe the  
7 magnitude of the impact on revenue requirements should disqualify the  
8 concept from thoughtful consideration, and I am surprised that any witness  
9 would argue that it is bad public policy to provide regulatory incentives for  
10 companies to deliver superior value to their customers.

11 **Q. Witness Brosch, on behalf of AARP, claims that FPL has not proposed**  
12 **ROE penalties when electric utilities perform poorly, concluding FPL's**  
13 **view of regulation is "unbalanced." Please respond.**

14 A. In my direct testimony (page 31), I note that penalties may be appropriate in  
15 some circumstances, and penalties have in fact been applied in some  
16 jurisdictions, including Florida. However, as discussed in more detail by  
17 Witness Deason, it should be emphasized that FPL is not proposing a  
18 universally applicable rule; rather, FPL is proposing only what it believes is  
19 reasonably warranted by its specific performance, recognizing the positive  
20 public policy signals that such a performance-based ROE Adder would send.

21

22 Contrary to Mr. Brosch's claim, and based on Florida's regulatory history, it  
23 would be perfectly balanced to award FPL an ROE Adder, particularly given

1 the compelling performance metrics that have been presented in this case. In  
2 fact, under the circumstances presented by FPL, failing to acknowledge FPL's  
3 superior service appears to me to be "unbalanced."

4 **Q. Mr. Brosch asserts that FPL's growing rate base, and request for base**  
5 **rate increases, "is an admission that the Company has limited control**  
6 **over its total cost of service." Mr. Lawton makes a similar claim. Please**  
7 **respond.**

8 A. I disagree. These witnesses either inadvertently overlook, or seriously  
9 misunderstand, the crux of my direct testimony as well as the testimony of  
10 other FPL witnesses, including Witness Miranda, Witness Kennedy and  
11 Witness Goldstein. FPL has deliberately chosen to make select capital  
12 investments (i.e., rate based investments) to drive improvements in customer  
13 value. The total impact of such decisions is *lower* overall rates and bills for  
14 customers and better reliability. It is not surprising that the rate base portion  
15 of the bill is growing.

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**PART 3**

**VIII. STORM COST RECOVERY**

**Q. Do any intervenor witnesses support FPL’s proposed continuation of the storm cost recovery framework agreed upon in 2010 and 2012 in FPL’s rate case settlements?**

A. Yes. OPC witness Schultz states that “[t]he current framework prescribed by the 2010 Rate Settlement and continued by the 2012 Rate Settlement is sufficient with some exceptions.” His exceptions are really requests for clarifications.

**Q. What are the exceptions that Mr. Schultz identifies?**

A. First, Mr. Schultz is concerned with FPL’s ability “to seek recovery of costs associated with any storms” (page 42), as phrased in the Commission’s order approving the 2012 settlement of FPL’s rate case, taking the position that cost recovery should be available for major storms only. However, the language of the 2012 Settlement Agreement itself limits the mechanism’s availability to major storms named by the National Hurricane Center, and witness Schultz acknowledges that this was the intent. Accordingly, there should be no need for further clarification.

Second, Mr. Schultz is concerned with the language from the 2012 Settlement that “[t]he Parties expressly agree that any proceeding to recover costs

1 associated with any storm shall not be a vehicle for a "rate case" type inquiry  
2 concerning the expenses, investment, or financial results of operations of the  
3 Company and shall not apply any form of earnings test or measure or consider  
4 previous or current base rate earnings or level of theoretical depreciation  
5 reserve." (page 43). His stated concern is that this language would limit  
6 consideration of the prudence or reasonableness of FPL's actual storm-related  
7 costs. I disagree. Nothing in the language he cites precludes a review for  
8 prudence and reasonableness at the appropriate time and subject to the  
9 Commission's direction.

10 **Q. Mr. Schultz also provides recommendations should the process utilized**  
11 **prior to the existing mechanism be reestablished. Please respond.**

12 A. I disagree with many of witness Schultz's recommendations. Nonetheless,  
13 FPL has not asked the Commission to reinstitute the prior approach despite  
14 the fact that, as discussed in my direct testimony, I believe the prior approach  
15 is a better long-term policy. Accordingly, there is no need for me to rebut his  
16 specific suggestions in this testimony.

17 **Q. Mr. Kollen claims there are eight problems with the existing storm cost**  
18 **recovery mechanism. Please respond.**

19 A. Witness Kollen argues that no cost recovery should be allowed unless FPL's  
20 \$120.5 million storm reserve is first exhausted, and that the appropriate  
21 reserve level is \$0. This is inconsistent with many years of Commission  
22 consideration and ruling on this subject and ignores the high likelihood of  
23 major tropical storms in FPL's expansive, largely coastal service area. He

1 also argues that there is no need for the “self-executing” or “expedited” nature  
2 of the mechanism and that the 12-month recovery timeframe is unnecessarily  
3 short. These arguments ignore the importance of minimizing intergenerational  
4 inequities when possible. It is worth recalling that if this kind of exposure  
5 were insurable, as they once were, the cost of that insurance would be  
6 included in current rates.

7  
8 Witness Kollen then claims that “premature recovery before costs are incurred  
9 imposes an income tax cost on the recovery... that harms customers” (page  
10 73), but this seems to be a misunderstanding of the mechanism, as it does not  
11 allow recovery before costs are incurred.

12  
13 Next, witness Kollen claims the mechanism is unnecessary in light of  
14 available storm cost securitization, or less cost-effective than securitization.  
15 As an initial matter, I dispute that securitization is necessarily cheaper.  
16 Moreover, securitization is far more complex, takes longer, and strains the  
17 utility’s balance sheet in addition to contributing to intergenerational  
18 inequities.

19  
20 Witness Kollen further asserts that earnings in excess of FPL’s authorized  
21 ROE should be considered as offsets to the recovery of storm costs. This  
22 would be inequitable and inconsistent with the traditional cost of service  
23 framework. We know FPL will incur storm related costs. In fact, such cost

1 would most appropriately be “baked in” to electric rates on an annual basis,  
2 just as they would if FPL were able to purchase commercial insurance and  
3 consistent with the prior framework. Witness Kollen’s recommendation  
4 would thus guarantee that FPL would not have a fair opportunity to earn its  
5 authorized ROE over time.

6  
7 Finally, witness Kollen asserts that the Commission simply need not take any  
8 action at this time. Such an approach would represent a fundamental change  
9 to FPL’s risk profile. For at least two decades, investors have had some risk  
10 mitigation framework governing recovery of storm damage costs. Leaving  
11 FPL with no mechanism at all would have a negative impact on investors’  
12 perception of risk.

13 **Q. Mr. Kollen also asserts that FPL’s storm hardening efforts, storm reserve**  
14 **balance of over \$100 million, ability to seek deferral of costs from the**  
15 **Commission, access to short term credit facilities, and ability to securitize**  
16 **storm damage costs all reduce FPL’s risk and eliminate the need for such**  
17 **a mechanism. Please respond.**

18 A. Witness Kollen’s position ignores the high likelihood of major tropical storms  
19 in FPL’s expansive, largely coastal service area, which extends to both coasts  
20 of Florida. We know that FPL’s storm damage exposure is greater than any  
21 other utility in Florida, or indeed in the country. In my judgment, all parties,  
22 including customers, benefit from having a clear framework established in  
23 advance, that ensures that prudently incurred storm restoration costs can be

1 recovered in an efficient and timely manner. Simply relying on an approach  
2 that essentially amounts to “don’t worry; we’ll sort it out when it happens”  
3 would not represent good policy. It certainly would worsen FPL’s risk profile  
4 and have negative financial implications.

5  
6 We all wish that tropical storms would not affect us, and FPL has been  
7 working hard to reduce its exposure. But the exposure remains.

8  
9 As I stated in my direct testimony, my personal preference would be at some  
10 point to revert to the prior framework. FPL chose to request the continuation  
11 of this mechanism, rather than to request the establishment of an accrual, only  
12 in favor of removing an issue from debate in this case.

13 **Q. Do you agree with Mr. Kollen that FPL’s storm damage reserve is**  
14 **“substantially funded” at just over \$120 million?**

15 **A.** Absolutely not. This balance would have been far from sufficient to cover a  
16 number of prior years’ storm related costs. For example, FPL’s service  
17 territory experienced an unusually high level of storm activity in 2004 and  
18 2005 and incurred almost \$1.9 billion in costs to restore the electric  
19 transmission and distribution system. While FPL is not suggesting that it  
20 should maintain a storm reserve ample enough to cover costs associated with  
21 such unusual activity, it does demonstrate just how small a \$120 million  
22 reserve is in comparison to FPL’s storm damage exposure.

23

1 Overall, witness Kollen's testimony ignores the fact that, in the absence of  
2 establishing a target reserve level and accrual, FPL needs to have some  
3 recovery mechanism clearly spelled out in advance, which FPL is proposing  
4 to continue in this instance.

5

6

#### PART 4

7

8

### IX. COST OF DEBT PROJECTIONS

9

10 **Q. Are there other topics you are addressing in this rebuttal testimony?**

11 A. Yes. Because they were raised by intervenors, I am also addressing FPL's  
12 long and short term cost of debt projections and intervenors' recommended  
13 adjustments, as well as the appropriateness of FPL recovering DOL insurance  
14 costs.

15 **Q. Do you agree with witnesses Baudino, Gorman and Pollock that the**  
16 **interest rates associated with FPL's other projected long term debt**  
17 **issuances should be reduced to reflect more updated forecasts and/or**  
18 **recent changes to global financial markets?**

19 A. No. While it is appropriate to update FPL's debt costs for actual debt  
20 issuances that have occurred, it would be inappropriate to selectively update  
21 some of the forecasts that underlie FPL's filing. In doing so, intervenors are  
22 cherry picking which forecasts to update. Certainly intervenors would be

1           opposed to FPL doing the same thing for other elements of the filing or  
2           forecast that increase revenue requirements.

3   **Q.   Please respond to Mr. Baudino’s claim that FPL’s short term debt**  
4   **projections should not be based on forecast data, but rather, should**  
5   **reflect a “reasonable increase” over FPL’s 2015 cost of short term debt.**

6   A.   FPL relies upon objective, third party forecasts that are subject to verification.  
7       Witness Baudino is merely asserting that his forecast should be substituted for  
8       these third party forecasts. Without any evidence that witness Baudino (a  
9       party to this docket interested in reducing FPL’s revenue requirements to the  
10      maximum extent) is better at forecasting interest rates than FPL’s sources  
11      (uninterested third parties), this recommendation should be denied.

12 **Q.   How does witness Baudino’s recommended short term debt rate of 0.56**  
13 **percent compare with those of FPL’s current short-term, commercial**  
14 **paper borrowing program?**

15 A.   Witness Baudino’s recommendation is markedly lower than FPL’s 30-day  
16      commercial paper rates, which are currently 0.67 percent. Accordingly, if  
17      witness Baudino’s recommendation were accepted, FPL would not recover the  
18      cost associated with its short term debt.

19

20

21

22

1           **X. DIRECTORS & OFFICERS LIABILITY (“DOL”) INSURANCE**

2

3           **Q. What does OPC’s witness Schultz recommend for DOL insurance?**

4           A. Witness Schultz recommends that the DOL insurance be reduced by \$1.391  
5 million. He indicates the costs should be shared equally between customers  
6 and shareholders.

7           **Q. Do you agree with OPC’s witness Schultz recommendation that the cost**  
8 **associated with DOL insurance should be shared equally between**  
9 **customers and shareholders?**

10          A. No, I do not. DOL insurance is a necessary cost of providing service and as  
11 such should be reflected in FPL’s base rates. Simply stated, by law a  
12 corporation must have directors and officers. In today’s environment of  
13 increased scrutiny and exposure with respect to corporate governance, the risk  
14 of liability to directors and officers has increased substantially. A company  
15 could not attract competent, capable officers or directors without DOL  
16 insurance. Thus, DOL insurance is a cost of business for any corporation and  
17 no company of FPL’s size would be without such coverage.

18          **Q. Do you agree with OPC’s witness Schultz’s assertion that DOL costs**  
19 **should be disallowed since incurring DOL insurance is to protect**  
20 **shareholders?**

21          A. No. The purpose of DOL insurance is to enable the Company to attract and  
22 retain qualified, capable directors and officers, without which FPL’s  
23 performance would certainly not be as good as it is and without which it might





1                   **CHAIRMAN BROWN:** Staff.

2                                   **EXAMINATION**

3                   **BY MS. BROWNLESS:**

4                   **Q**     Good morning, Mr. Dewhurst.

5                   **A**     Good morning.

6                   **Q**     Nice to see you again. Have you had an  
7 opportunity to review what's been marked on the  
8 Comprehensive Exhibit List as Exhibit No. 522, which is  
9 the work papers associated with rebuttal testimony  
10 produced in this case?

11                  **A**     I have.

12                  **Q**     And if I were to ask that same question today,  
13 would you produce the same materials?

14                  **A**     I would.

15                  **Q**     And were those materials either generated by  
16 you or generated by folks under your supervision.

17                  **A**     They were.

18                  **Q**     And they're true and correct to the best of  
19 your knowledge and belief?

20                  **A**     They are.

21                  **Q**     Do they contain any confidential material?

22                  **A**     They do not.

23                  **MS. BROWNLESS:** Okay. Thank you so much.

24                  **CHAIRMAN BROWN:** Thank you.

25                               FPL.



1 Please proceed, Mr. Dewhurst.

2 **THE WITNESS:** Good morning, Commissioners,  
3 Madam Chairman. My rebuttal testimony contains four  
4 parts addressing intervenor witnesses' challenges to:  
5 Number one, the linked issues of financial strength,  
6 risk profile, capital structure, and ROE; number two,  
7 the proposed ROE performance adder; number three, the  
8 storm cost recovery mechanism; and number four, two  
9 smaller cost issues, the projected cost of debt and D&O  
10 liability insurance.

11 With respect to the linked issues of financial  
12 strength, risk profile, capital structure, and return on  
13 equity, intervenor witnesses use flawed analyses which  
14 ignore important practical considerations to reach  
15 conclusions that, if acted upon, would seriously  
16 undermine FPL's strong financial position, deny  
17 investors the opportunity to earn a fair rate of return  
18 on the capital they have committed to the business, and  
19 over time erode FPL's ability to continue delivering  
20 superior value to its customers.

21 Intervenor witnesses err most fundamentally in  
22 presuming that it is possible to make significant  
23 changes to capital structure and allowed ROE without any  
24 damaging effects in terms of FPL's overall cost position  
25 and ability to execute its business strategies, but

1 undermining FPL's financial position will ultimately  
2 undermine its business position to the detriment of  
3 long-term customer interests.

4           Intervenor positions incorrectly assume that  
5 the way in which FPL has financed its operations over  
6 the years has had nothing to do with the benefits that  
7 customers realize today in the form of low bills and  
8 high reliability. Their notion that investment and  
9 financing decisions can be completely separated is one  
10 that has been labeled naïve by respected academics and  
11 is belied by practical experience.

12           Intervenor witnesses ignore FPL's specific  
13 risk position and strategies which call for and depend  
14 upon maintaining a stronger than average financial  
15 position. As a result, their recommendations are  
16 extreme, and their ROE recommendations in particular, if  
17 allowed, would result in the lowest authorized ROE for  
18 any vertically integrated electric utility in the U.S.  
19 in over two years.

20           FPL's financial policies are an integral part  
21 of its overall strategy to deliver value to customers,  
22 the results of which are readily visible in comparisons  
23 of costs, rates, reliability, and overall customer  
24 service. FPL's strategies are working for customers.  
25 Intervenor witnesses' recommendations would thoroughly

1       undermine those strategies and their recommendation  
2       should be rejected.

3               With respect to FPL's requested ROE adder,  
4       intervenor witnesses largely ignore the policy argument  
5       for this regulatory incentive tool and instead seek to  
6       alter the standard to which FPL's performance should be  
7       held. No witness has disputed FPL's actual performance  
8       and no witness has challenged FPL's performance against  
9       its duty to provide, quote, reasonably sufficient,  
10      adequate, and efficient service, a duty established by  
11      Florida law. The policy argument for the ROE adder does  
12      not depend on every aspect of performance being  
13      controllable by the company, and it is indisputable that  
14      the actions FPL has taken have contributed to today's  
15      superior competitive position.

16              The fundamental point remains valid. Acting  
17      as a surrogate for direct competition, regulation can  
18      provide a strong incentive for rate-regulated companies  
19      to improve the value they deliver to customers through  
20      the introduction of an ROE adder.

21              SFHHA's witness Kollen opposes continuation of  
22      the storm cost recovery mechanism currently in place but  
23      fails to appreciate either FPL's real exposure to risk  
24      from tropical storms or the impact that adoption of his  
25      recommendations would have on investor perceptions of

1 FPL's risk profile. Witness Kollen's recommendation to  
2 leave FPL with no timely cost recovery mechanism in  
3 place would result in a significant change to FPL's risk  
4 profile and should be rejected.

5 With respect to debt cost projections, FPL has  
6 used reasonable third-party forecasts to project its  
7 long-term and short-term debt costs. Witnesses Baudino,  
8 Gorman, and Pollock either engage in cherry picking by  
9 asking the Commission to selectively update those  
10 forecasts or in some instances create their own  
11 forecasts. The bias in such exercises is evident and  
12 should result in rejection of intervenors' debt cost  
13 recommendations.

14 And finally with respect to DOL or D&O  
15 insurance, the intervenors' recommendations would  
16 disallow recovery of a legitimate cost of providing  
17 electric service to our customers without demonstrating  
18 any imprudence on the part of FPL. Accordingly, their  
19 recommendations should be rejected. And that completes  
20 my summary. Thank you.

21 **CHAIRMAN BROWN:** Okay.

22 **MR. LITCHFIELD:** Thank you. Mr. Dewhurst is  
23 available for cross.

24 **CHAIRMAN BROWN:** All right. My understanding  
25 is that Public Counsel and Hospitals want to go last; is

1 that correct? Can you speak?

2 **MR. REHWINKEL:** Yes, ma'am.

3 **MR. SUNDBACK:** Yes, that's correct, Madam  
4 Chair.

5 **CHAIRMAN BROWN:** Thank you. Okay. But we're  
6 going to go to FIPUG first.

7 **MR. MOYLE:** Thank you. We don't have any  
8 questions.

9 **CHAIRMAN BROWN:** Mr. Moyle, thank you.

10 All right. Retail Federation.

11 **MR. LaVIA:** No questions. Thank you.

12 **CHAIRMAN BROWN:** Thank you.

13 FEA.

14 **MR. JERNIGAN:** No questions.

15 **CHAIRMAN BROWN:** Thank you. Sierra.

16 **MS. CSANK:** No questions, ma'am.

17 **CHAIRMAN BROWN:** Thank you.

18 Wal-Mart.

19 **MR. WILLIAMSON:** No questions, ma'am.

20 **CHAIRMAN BROWN:** Thank you.

21 Larsons.

22 **MR. SKOP:** Larsons have no questions, Madam  
23 Chair.

24 **CHAIRMAN BROWN:** Thank you.

25 Public Counsel.



1           **MR. REHWINKEL:** Madam Chairman, we have no  
2 questions. Thank you.

3           **CHAIRMAN BROWN:** Thank you.

4 Hospitals.

5           **MR. SUNDBACK:** No questions, Madam Chair.

6           **CHAIRMAN BROWN:** I love you guys.

7 Staff.

8           **MS. BROWNLESS:** We've had a discussion with  
9 FP&L as to how we can very succinctly truncate our  
10 cross-examination, and if you could give us three  
11 minutes to continue that, I believe that would be very  
12 helpful.

13           **CHAIRMAN BROWN:** A three-minute break it is.

14 (Recess taken.)

15           **CHAIRMAN BROWN:** All right. Let's roll.

16           **MR. LITCHFIELD:** I would just like to note,  
17 Madam Chair, that that particular order of cross was  
18 extremely efficient.

19           **CHAIRMAN BROWN:** It was extremely efficient,  
20 yes. I've got to -- I would love to thank the parties  
21 for making this last witness so efficient. And staff is  
22 going to attempt to make this also efficient, so thank  
23 you for working with them on this. And, Suzanne, you  
24 have the floor at this time.

25           **MS. BROWNLESS:** And we'd like -- has the staff

1 distributed our exhibits?

2 **CHAIRMAN BROWN:** Yes. And I have them and we  
3 will be starting at 800. So would you like to label  
4 them now?

5 **MS. BROWNLESS:** Yes, please.

6 **CHAIRMAN BROWN:** Okay.

7 **MS. BROWNLESS:** 800 would be MFR Schedule --  
8 we've got D-4a on here, but it's actually D-8 for the  
9 projected test year ended 12/31/2017 and the projected  
10 subsequent test year end 12/31/20 --

11 **CHAIRMAN BROWN:** So we're going to change the  
12 title to MFRs Schedule D-8?

13 **MS. BROWNLESS:** Yes. Uh-huh.

14 **CHAIRMAN BROWN:** Okay. For the projected test  
15 year ended 12/31/2017 and 12/31/2018.

16 **MS. BROWNLESS:** Yes, ma'am.

17 **CHAIRMAN BROWN:** Okay.

18 (Exhibit 800 marked for identification.)

19 **MS. BROWNLESS:** And then the next one will be  
20 FPL's response to staff's 36th set of interrogatories  
21 No. 431. That's 801.

22 **CHAIRMAN BROWN:** We will identify that as 801.

23 (Exhibit 801 marked for identification.)

24 **MS. BROWNLESS:** Then the next one is FP&L's  
25 response to staff's 36th set of interrogatories No. 432.

1           **CHAIRMAN BROWN:** We will identify that as 802.

2           **MS. CSANK:** Madam Chair, just a moment. I  
3 have 431.

4           **CHAIRMAN BROWN:** 431 is 801.

5           **MS. CSANK:** Sorry.

6           **CHAIRMAN BROWN:** 432 is 802. Please continue.  
7 (Exhibit 802 marked for identification.)

8           **MS. BROWNLESS:** Yes, ma'am. Then the last one  
9 would be FPL's response to staff's 36th set of  
10 interrogatories No. 433.

11           **CHAIRMAN BROWN:** 433 will be identified as  
12 803.

13 (Exhibit 803 marked for identification.)

14           Mr. Dewhurst, do you have copies of all of  
15 those in front of you?

16           **THE WITNESS:** I do. Thank you.

17           **CHAIRMAN BROWN:** All right.

18           **MS. BROWNLESS:** Thank you.

19   **EXAMINATION**

20           **BY MS. BROWNLESS:**

21           **Q**     Mr. Dewhurst, can you turn to page 67 of your  
22 testimony, please, and look at lines 15 through 22.

23           **A**     I'm there.

24           **Q**     Here you say it is inappropriate to  
25 selectively update some of the forecasts that underlie

1 FP&L's filing; is that right?

2 **A** Yes, that's correct.

3 **Q** Do you believe that the Commission should use  
4 the most recent forecasted interest rates available when  
5 determining the appropriate cost rate for long-term debt  
6 to include in the capital structure for setting rates?

7 **A** No, consistent with that response. And if I  
8 may briefly explain, we may still be able to short  
9 circuit some of this stuff.

10 **Q** Sure.

11 **A** So as background, obviously we -- when we  
12 prepared the MFRs, the comprehensive filing, we had  
13 expectations about future debt issuances and we used the  
14 best available forecast information at that time to  
15 project what the costs associated with those debt  
16 issuances would be. Since that time, it is clearly the  
17 case that the source that we use for forecasting future  
18 interest costs has published additional data showing the  
19 forecast coming down. And consequently, in response to  
20 staff's interrogatories, we provided information to  
21 suggest what it would be were we to update the forecast  
22 using the latest information. So I think that's what's  
23 contained in 800, 801, 802, 803, and I will cheerfully  
24 stipulate that those are accurate, correct to the best  
25 of my knowledge.

1           The issue simply is one, as I refer to in my  
2 testimony, of what I'd call cherry picking. So it is  
3 certainly the case in this specific aspect of the total  
4 FPL forecast upon which rates will end up getting set  
5 that these particular cost element -- forecast of these  
6 particular future cost elements has come down. What you  
7 don't see, however, is that if we were to re-forecast  
8 all other elements of the cost structure, some others  
9 would have gone up.

10           So my concern is to engage in, as I refer to  
11 it, cherry picking, picking ones that have gone down  
12 without a review of the others that have gone up. And  
13 this one is particularly, I think, obvious because it  
14 doesn't take a lot to update the specific aspect of the  
15 forecast. And so that's my objection.

16           I would have less of an objection moving  
17 forward if I were sure that the treatment were going to  
18 be uniform and symmetrical. In other words, if I was  
19 sitting here in a future proceeding and those subsequent  
20 updates to the interest forecasts had gone up and we  
21 were going to make that adjustment -- in other words, if  
22 it was symmetrical in different situations, I would have  
23 less of a problem with that, but I do have a problem  
24 with the one-way ratcheting.

25           Q     Well, you have a problem because, as you've

1 just indicated, the interest rates have gone down.  
2 That's the problem.

3 **A** No. I think it's because of the way I  
4 perceive it at the moment at least as asymmetric.

5 **Q** Uh-huh. Do you agree that if the most recent  
6 forecasts materially change interest rates in either  
7 direction, that an adjustment to the embedded cost rate  
8 should be made?

9 **A** If it were asymmetric, I would have no problem  
10 with it. Excuse me, if it was symmetrical.

11 **Q** Symmetric.

12 **MR. LITCHFIELD:** You saved me a redirect.

13 **BY MS. BROWNLESS:**

14 **Q** Can you look at what's been marked as Exhibit  
15 No. 800, please?

16 **A** Yes.

17 **Q** And this is MFR Schedule D-8; is that correct?

18 **A** Correct.

19 **Q** Okay. And if you look at -- and it's for the  
20 projected test year ended December 31st, 2017; right?

21 **A** Two pages, one for 17, one for 18.

22 **Q** So the first page is 17, the second page is  
23 18?

24 **A** Correct.

25 **Q** And these D-8 schedules reflect FP&L's

1 financing plans for the 2017 and 2018 test years;  
2 correct?

3 **A** Yes, as they existed when we made the overall  
4 filing.

5 **Q** And if you can look at the first page, which  
6 is the 2017 projected test year data.

7 **A** Yes.

8 **Q** On the first line, you have a first mortgage  
9 bond issuance of March 2017; is that right?

10 **A** That's correct.

11 **Q** And the interest rate for that is  
12 6.16 percent; correct?

13 **A** Yes, that's the projection at that time.

14 **Q** And the second line, you have a first mortgage  
15 bond with an issuance date of November 17 and it also  
16 has an interest rate of 6.16; correct?

17 **A** Correct.

18 **Q** And if I look at line 25 down there, that  
19 indicates that these interest rates were based on bond  
20 yield forecasts published by Blue Chip Financial  
21 Forecasts in December of 2014; right?

22 **A** Correct.

23 **Q** Now if you can turn to the second page, and  
24 here on line 1, the first mortgage bond rate is  
25 6.5 percent; is that correct?

1           **A**     That's correct.

2           **Q**     And on line 2, the first mortgage bond rate  
3 for November '18 issuances is 6.5 as well; right?

4           **A**     Correct.

5           **Q**     And that is also -- when I turn to line 25,  
6 the information is based on the bond yield forecast  
7 published in the Blue Chip Financial Forecast issued  
8 December 2014; is that right?

9           **A**     Correct.

10          **Q**     Do you agree that the interest rate forecasts  
11 issued in December of 2014 are now outdated and stale?

12          **A**     I'm not sure those are the terms I've used --  
13 I would use. I would say that they have been replaced  
14 by more recent and -- more recent forecasts which  
15 hopefully contain more up-to-date external information.

16          **Q**     And how often does Blue Chip Financial  
17 Forecasts issue its forecast?

18          **A**     I believe it's twice a year.

19          **Q**     Subject to check, would you believe that it's  
20 monthly?

21          **A**     Subject to check, okay. Yes, subject to  
22 check.

23          **Q**     And can you look at what's been marked as  
24 Exhibit 801, please.

25          **A**     Yes.



1           **Q**     And in this response, you provided updated  
2 interest rates for the first mortgage bonds that FP&L  
3 was planning to issue in 2017; correct?

4           **A**     Correct.

5           **Q**     And the updated interest rates were based on  
6 bond yield forecasts in the Blue Chip Financial  
7 Forecasts issued June 1st, 2016; correct?

8           **A**     That's correct.

9           **Q**     And looking at the response, the updated  
10 interest rate for March 27, first mortgage bonds, is  
11 4.99 percent; correct?

12          **A**     Correct.

13          **Q**     And the updated interest rate for the November  
14 2017 first mortgage bond is 5.29 percent correct?

15          **A**     Correct.

16          **Q**     We're going to move on to Exhibit 802. Do you  
17 have that, sir?

18          **A**     I do, yes.

19          **Q**     And in this, FP&L provided updated interest  
20 rates for the first mortgage bonds you're planning to  
21 issue in 2018; is that right?

22          **A**     Correct.

23          **Q**     And the updated interest rate for the first  
24 mortgage bonds planned to be issued in 2018 is  
25 5.73 percent; correct?

1           **A**     That's correct.

2           **Q**     And the updated interest rates for 2018 were  
3 also based on bond yield forecasts published in the Blue  
4 Chip Financial Forecasts issued June 1st, 2016?

5           **A**     Correct.

6           **Q**     Turning to the last exhibit, 803.

7           **A**     Yes.

8           **Q**     In this response, you provided revised MFR  
9 Schedules D-4a; is that correct?

10          **A**     That's correct.

11          **Q**     To reflect the updated interest rates for the  
12 planned first mortgage bond issuances in both 2017 and  
13 2018; right?

14          **A**     Assuming the forecast of June 1st, 2016,  
15 that's correct.

16          **Q**     Yes. And if I asked this before, please  
17 forgive me. The revised MFR Schedules D-4a, the first  
18 set are for 2017, the first two pages, and the second  
19 two pages are for 2018; is that right?

20          **A**     That's correct.

21          **Q**     Okay. These reflect the updated interest  
22 rates for the planned first mortgage bond issuances in  
23 2017 and 2018; right?

24          **A**     Yes, that's correct. Once you ripple through  
25 the updated forecast for the 2017 and 2018 projected

1 issuance, the overall cost of debt, embedded cost of  
2 debt changes down to respectively 4.51 percent for '17  
3 and 4.67 percent for 2018.

4 **MS. BROWNLESS:** Just a second.

5 That's all we have. Thank you very much.

6 **CHAIRMAN BROWN:** Thank you.

7 Commissioners? Commissioner Edgar. I knew  
8 you were going to ask.

9 **COMMISSIONER EDGAR:** Good morning,  
10 Mr. Dewhurst.

11 **THE WITNESS:** Good morning.

12 **COMMISSIONER EDGAR:** A few days ago, or  
13 whenever was the last time you were in that chair, you  
14 testified that you had recently retired from the  
15 company, but as part of that process you were  
16 participating in preparation and obviously in this rate  
17 case.

18 **THE WITNESS:** Correct.

19 **COMMISSIONER EDGAR:** So are there any other  
20 hearings for this Commission this year that you will be  
21 appearing as a witness?

22 **THE WITNESS:** No, I hope not.

23 **MR. LITCHFIELD:** I may have to redirect on  
24 that one too. Just kidding, Mr. Dewhurst.

25 **COMMISSIONER EDGAR:** Well, then this -- then

1 this is my last chance to ask you a question as a  
2 witness.

3 **THE WITNESS:** As I witness, I believe that  
4 will be the case.

5 **COMMISSIONER EDGAR:** Okay. Well, then I  
6 cannot let this opportunity pass, even though my  
7 Chairman is glaring daggers at me.

8 So I am in -- I think the questions that I've  
9 asked during this hearing, some of them show this, but  
10 I'm kind of intrigued by the whole concept of an adder  
11 and how to apply it, why to apply it, why not to utilize  
12 it as a tool.

13 So I want to build on a -- on some of that and  
14 on the conversation that I had earlier this morning with  
15 Mr. Deason. And as predicate to that, not trying to  
16 testify, but let me say this: Over the last few years,  
17 I've had the opportunity to work with many commissioners  
18 from many other states, and I am always very interested  
19 in how other commissions operate and in how they deal  
20 with some of the similar issues that we are addressing  
21 and also issues that are not necessarily coming before  
22 us. So from my experience, Florida is truly very unique  
23 in this regulatory arena by -- for many reasons: our  
24 geography is different; our climate is different; our  
25 large population; limited in-state resource

1 availability, no wind, no hydro, for example; being  
2 vertically integrated; not being part of an RTO. I say  
3 all that to say that in my experience there is not  
4 another state that is closely, similarly situated for  
5 dealing with these types of regulatory issues.

6 So with that as backdrop, and realizing that  
7 this may be your last time to testify with all of your  
8 experience, what are your thoughts on how we, as the  
9 Florida Commission, should approach incentive regulation  
10 and how do the -- how does that relate to specifically  
11 FPL's request for an adder in this rate case?

12 **THE WITNESS:** Okay. So, first of all, I agree  
13 that Florida is unique, and so the right solution for  
14 Florida may not be the same as for other geographies.

15 If there's a single thing that I think it's  
16 important to try and change in the regulatory framework  
17 is a, and I discussed this in response to questions last  
18 time, it is to start to move towards what I call an  
19 output-based measure of performance. And by that, I  
20 mean let's shift the focus away from what I think of as  
21 the ingredients in a cake and how the ingredients come  
22 together. I'm not saying it's not important to check on  
23 those things, but to increase the focus on what does the  
24 cake look like and how does it taste as seen through the  
25 eyes of the customers. So an output focus. All right?

1 And that requires making assessments, some of which can  
2 be quantified, some of which are just going to be  
3 judgment, on the attributes that customers most value.  
4 And I think from my experience those are pretty clear,  
5 but others could have different views. They are:  
6 affordability, meaning low rates driven by a low cost  
7 structure; reliability, because everybody wants the  
8 service to be there; customer service, because when they  
9 do want something from us, they want it handled  
10 expeditiously and efficiently; and then, fourthly, in  
11 today's environment in particular, the overall emission  
12 profile as a shorthand for regulatory risk exposure.

13 So to me, the most important thing is -- and  
14 there are different ways that one could think about  
15 doing it, but start to shift the regulatory framework so  
16 that we are measuring everybody, FPL and -- this is, you  
17 know, beyond the scope of my actual testimony -- but I  
18 think everybody else too to what are you doing in terms  
19 of absolute delivery? At the same time, move away from  
20 an incentive -- an approach to incentive that says,  
21 okay, I'm performing at this level today. I'm going to  
22 set a target a little bit above and give a reward or an  
23 incentive or something if you get there. Just focus on  
24 the actual output and make any decision about rewards in  
25 relationship to how that output compares with averages

1 in the state, averages in a broader basis. So that, to  
2 me, is the single most important thing. And that would,  
3 if it could be affected over time, I believe would  
4 really change the long-term delivery of value of this  
5 industry, quite frankly.

6 I think I described in a response to  
7 Commissioner Graham in my direct some of my concerns  
8 about the incentives that are inherent in the  
9 traditional regulatory framework, and they tend to push  
10 towards everybody being in the middle. You don't want  
11 to stray too far from what everybody else is doing  
12 because then you're susceptible to second guessing. And  
13 I don't see that -- that's a function of the way the  
14 regulatory system is set up. So to overcome that or to  
15 compensate for that, there needs to be something else,  
16 and that something else needs to be focused on customer  
17 value delivery.

18 Now in this specific instance, I happen to  
19 think that the ROE adder is a good way to do it, but  
20 beyond that I think the single most important lever that  
21 you can use, if you're going to incent companies to  
22 focus on customer value delivery, is the ROE. If you  
23 want one single measure that will most of all get  
24 investors' attention and through their attention get our  
25 attention as well, it is the ROE, and it's the surrogate

1 for what would happen in a competitive marketplace.

2 **COMMISSIONER EDGAR:** And one follow-up  
3 question. So how does that -- within that framework,  
4 how would an ROE adder enhance value to customers?

5 **THE WITNESS:** Essentially you have to believe  
6 that long term the prospect of either getting such an  
7 adder or, if one has one, retaining it would ultimately  
8 cause differences in behavior. And that -- those  
9 differences in behavior would be driven really by the  
10 search for things that go beyond what I can see today,  
11 the whole -- we've talked about the innovative thing.

12 In the same way that competitive markets don't  
13 care how different companies get to the end result, they  
14 simply reward the end result. So if I pick on Wal-Mart  
15 for a moment, a highly respected, very well-managed  
16 company that does a great job in delivering value for  
17 its customers, its financial results in a sense fall out  
18 of that and it has the potential to earn a much higher  
19 return on equity than its competitors if it does a good  
20 job on it. So that's the analogy that I see.

21 **COMMISSIONER EDGAR:** Thank you. In the  
22 interest of time, I will stop there, Madam Chair.

23 Thank you, Mr. Dewhurst.

24 **CHAIRMAN BROWN:** Thank you, Commissioner  
25 Edgar.



1 Redirect.

2 **MR. LITCHFIELD:** Thank you. Very briefly,  
3 Madam Chair.

4 **EXAMINATION**

5 **BY MR. LITCHFIELD:**

6 **Q** Mr. Dewhurst, Ms. Brownless asked you, I  
7 believe, to accept, subject to check, that Blue Chip  
8 issues its forecast monthly. Do you recall that?

9 **A** I do, yes.

10 **Q** Would your answer matter or depend on whether  
11 Ms. Brownless meant a short- or long-term Blue Chip  
12 forecast rates?

13 **A** Oh, thank you. Yes. My recollection was  
14 based on long-term rates, which I still believe are only  
15 updated semiannually, but the short-term forecast is  
16 updated monthly.

17 **Q** And she asked you an extensive line of  
18 questions with regard to changes in Blue Chip's forecast  
19 since the case was filed; correct?

20 **A** Correct.

21 **Q** What is the most recent market indicator of  
22 which you are aware that would suggest where interest  
23 rates may be going?

24 **A** Well, I mean, markets move constantly.

25 **MR. MOYLE:** I think this is beyond the

1 questions that were asked by staff. They put some  
2 documents in front of him and asked him. And this is  
3 basically live testimony beyond his rebuttal.

4 **CHAIRMAN BROWN:** Mr. Litchfield.

5 **MR. LITCHFIELD:** I categorically disagree with  
6 Mr. Moyle's characterization of this. Ms. Brownless  
7 asked probably eight to ten minutes with regard to how  
8 interest rate forecasts had changed. I'm simply asking  
9 Mr. Dewhurst is there any more recent market data that  
10 would suggest where those interest rates may be going.

11 **CHAIRMAN BROWN:** Okay. Objection overruled.

12 **THE WITNESS:** Sure. I mean, just as recently  
13 as last Friday the Chairman of the Fed made some remarks  
14 which clearly indicate that the Fed is more inclined to  
15 be moving in the direction of raising the interest rates  
16 that they control.

17 **BY MR. LITCHFIELD:**

18 **Q** How would the next Blue Chip forecast with  
19 respect to long-term rates take Chairman Yellen's  
20 observations into account?

21 **MS. BROWNLESS:** Objection. Speculative.

22 **CHAIRMAN BROWN:** Can you rephrase the  
23 question?

24 **BY MR. LITCHFIELD:**

25 **Q** Would Blue Chip take information such as

1 promulgated by the Chairman of the United States Federal  
2 Reserve into account in developing their next forecast?

3 **MR. MOYLE:** Leading and speculative. He's  
4 being asked to give a view as to what a third party may  
5 or may not do with a certain piece of information. It's  
6 complete speculation.

7 **CHAIRMAN BROWN:** Mr. Litchfield.

8 **MR. LITCHFIELD:** Mr. Dewhurst has been the  
9 chief financial officer of the company for close to 15  
10 years -- 17 years, I believe, and he has relied  
11 extensively upon Blue Chip forecasts, and I think he's  
12 certainly entitled to answer the question as to what  
13 Blue Chip --

14 **CHAIRMAN BROWN:** Objection overruled. You can  
15 answer.

16 **THE WITNESS:** Sure. Well, Blue Chip is, in a  
17 sense, a consensus forecast, and so it seems highly  
18 likely to me that any forecaster would take into account  
19 pronouncements from the Federal Reserve chairman, and  
20 that would likely be -- mean that the next one to come  
21 out would be an increase relative to the last one.

22 **BY MR. LITCHFIELD:**

23 **Q** And I think Ms. Brownless pointed out that the  
24 last Blue Chip forecast was in June of this year; is  
25 that correct?

1           **A**     Correct.

2           **Q**     So the next forecast would come out when?

3           **A**     December.

4           **Q**     Of this year?

5           **A**     Of this year.

6           **MR. LITCHFIELD:** Thank you. No further  
7 questions?

8           **CHAIRMAN BROWN:** Thank you. Exhibits.

9           **MR. LITCHFIELD:** None for Mr. Dewhurst  
10 associated with his rebuttal.

11           **CHAIRMAN BROWN:** Staff, we have 800 through  
12 803.

13           **MS. BROWNLESS:** Yes, ma'am. We'd like to move  
14 those, please, ma'am.

15           **CHAIRMAN BROWN:** Any objections? Seeing none,  
16 we'll go ahead and move in 800 through 803 into the  
17 record.

18                     (Exhibits 800 through 803 admitted into the  
19 record.)

20           **MR. MOYLE:** Madam Chair, FIPUG would like to  
21 be given the option to provide as an exhibit the remarks  
22 made by the Federal Reserve chairman last Friday that  
23 Mr. Dewhurst just referenced in response to his question  
24 where he was saying, "Well, here's what the Federal  
25 Reserve chairman said." You know, obviously it's

1 hearsay that is coming from that. And I think the Fed  
2 publishes those remarks, it's a government document, so  
3 we -- under the idea of the optional completeness, we  
4 would like to have that document reviewed and, if  
5 appropriate, provide it --

6 **CHAIRMAN BROWN:** You know that would be a  
7 late-filed exhibit, Mr. Moyle.

8 **MR. MOYLE:** I know. I'm on perilous ground.

9 **MR. LITCHFIELD:** We have copies, I believe, in  
10 the hearing room, and we're happy to mark those and  
11 stipulate that into the record.

12 **MR. MOYLE:** And I'm not really asking for that  
13 because I haven't -- I've been in the hearing and  
14 haven't read her comments. But I'd like to read her  
15 comments and then make a judgment as to whether to put  
16 them in or not.

17 **MR. LITCHFIELD:** Madam Chair, I don't think  
18 this is going to be an option exercised at a subsequent  
19 date by Mr. Moyle. I think we can either move them in  
20 or not. FPL is indifferent, but we'd like Mr. Moyle to  
21 make the call.

22 **MR. MOYLE:** And it's sort of -- it sort of  
23 goes to a larger point that I know we'll talk about with  
24 respect to evidence coming in, kind of like that, so --

25 **CHAIRMAN BROWN:** Mr. Moyle.

1           **MR. MOYLE:** Can I -- I'll go ahead and put  
2 them in. I'd like to put them in.

3           **CHAIRMAN BROWN:** Okay. FPL.

4           **MR. LITCHFIELD:** Okay. Could we get those  
5 distributed and marked, Madam Chair?

6           **CHAIRMAN BROWN:** Sure.

7           **MS. BROWNLESS:** And that would be 804, Madam  
8 Chair?

9           **CHAIRMAN BROWN:** We are at 804.

10           So who would they be proffered by, Mr. Moyle  
11 or FPL, as an exhibit?

12           **MR. LITCHFIELD:** We'll take responsibility for  
13 offering them.

14           **CHAIRMAN BROWN:** Okay.

15           **MR. MOYLE:** Now I'm really getting nervous.

16           **CHAIRMAN BROWN:** Uh-huh. See the can of  
17 worms?

18           **MR. LITCHFIELD:** And if I had a copy in front  
19 of me, I could give you the title, Madam Chair.

20           **CHAIRMAN BROWN:** Mr. Litchfield, if you could  
21 also ask a question of Mr. Dewhurst to authenticate it.

22           **MR. LITCHFIELD:** That would be actually quite  
23 helpful. Thank you, Madam Chair.

24 **BY MR. LITCHFIELD:**

25           **Q** Mr. Dewhurst, I don't know if you have a copy

1 in front of you. If not, we're going to have one  
2 delivered to you right away.

3 **MR. LITCHFIELD:** You will note that we were  
4 prepared either for witness Hevert or Dewhurst, so we  
5 will strike through the reference to Hevert. This will  
6 be witness Dewhurst. The brief title or description of  
7 the document will be Federal Reserve Yellen Speech dated  
8 August 26th, 2016.

9 **CHAIRMAN BROWN:** All right. We will go ahead  
10 and mark it as such as Exhibit 804.

11 (Exhibit 804 marked for identification.)

12 I believe Mr. Dewhurst does have a copy of it  
13 in front of him.

14 **BY MR. LITCHFIELD:**

15 **Q** Mr. Dewhurst, have you reviewed this document?

16 **MR. MOYLE:** No, wait. We were just putting it  
17 in. We weren't going back through it, I don't think.

18 **CHAIRMAN BROWN:** He needs to authenticate it,  
19 sir.

20 **MR. LITCHFIELD:** Madam Chair asked me to  
21 authenticate it, so --

22 **MR. MOYLE:** Oh, I'm sorry. We don't contest  
23 its authenticity.

24 **THE WITNESS:** Yes, this appears to be the  
25 correct document that I was referring to or to represent

1 the speech that I was referring to.

2 **BY MR. LITCHFIELD:**

3 **Q** To the best of your knowledge, this is an  
4 official publication or release from the U.S. Federal  
5 Reserve system?

6 **A** To the best of my knowledge, yes.

7 **MR. LITCHFIELD:** All right. Thank you.

8 **CHAIRMAN BROWN:** All right. Moving to 804,  
9 FPL, would you like to move it into the record.

10 **MR. LITCHFIELD:** Yes, thank you, Madam Chair.  
11 We'd move 804.

12 **CHAIRMAN BROWN:** Seeing no objections, we'll  
13 move into the record 804 at this time.

14 (Exhibit 804 admitted into the record.)

15 Now would you like Mr. Dewhurst to be excused  
16 from the hearing?

17 **MR. LITCHFIELD:** I would indeed, although I  
18 surely would like the option of calling him back as a  
19 witness in a future proceeding.

20 **CHAIRMAN BROWN:** Mr. Dewhurst, it's been  
21 enjoyable. You're excused. Thank you very much for  
22 appearing today.

23 All right. Now we have a few housekeeping  
24 matters, notably the hearing -- the outstanding hearing  
25 exhibits that remain. Staff, can you walk us through



1 that at this time?

2 **MS. HELTON:** Madam Chairman, I know that with  
3 respect to -- and I think all of these exhibits relate  
4 to the removal -- or actually I don't want to use the  
5 word "removal" -- OPC's decision not to file or not to  
6 proceed with witness Pous, and that would be  
7 Exhibits 714, 715, 716, 717, 735, 767, and 768.

8 **CHAIRMAN BROWN:** And that's correct. I have  
9 all of those still remaining and open. I would  
10 entertain moving them all into the record at this time  
11 or having the -- I believe, Mr. Moyle raise his  
12 objections before we go ahead and do that.

13 **MR. MOYLE:** Thank you, Madam Chair. And thank  
14 you also for not ruling on them kind of, you know, a  
15 couple of days ago. FIPUG's objection to the admission  
16 of these documents really is premised upon due process  
17 grounds and that, you know, the process and procedure  
18 for this hearing has been laid out in the Prehearing  
19 Order. It's governed by Chapter 120. And the decision  
20 of OPC to withdraw the testimony of Mr. Pous was a  
21 decision that they made for, I assume, trial strategy  
22 reasons, and parties, I think, are free to do that. The  
23 consequences of that, however, were it prompted a series  
24 of changes throughout a whole series of witnesses'  
25 testimony with erratas being provided. I believe, you

1 know --

2 **CHAIRMAN BROWN:** The ones we just mentioned.

3 **MR. MOYLE:** Right, right. Really quickly, and  
4 I think the testimony with respect not to the  
5 substance -- I mean, those documents, if they come in,  
6 will show dollars changing, I do believe, but that it  
7 took, you know, FPL, with five people working on it, you  
8 know, a half an hour to make the changes, and then the  
9 witness said he spent time on it. And, you know, I  
10 think that the changes were substantive changes. And  
11 given that I think there was one piece of testimony that  
12 said there was a dramatic change in the level that OPC  
13 was saying -- maybe I read this in a news clip -- but  
14 there was an 800 million to 300 million -- I don't know.  
15 I guess the bottom line, it seems like there are  
16 substantive changes associated with those documents, and  
17 given that and the lack of ability to know of those  
18 changes and review the information and understand it and  
19 cross on it, we think that our due process rights have  
20 been impinged upon, and that's largely the basis for our  
21 objection. And we relied on the Prehearing Order as  
22 well. So thank you for giving me a chance to explain  
23 the basis for the objection. And, you know, I know  
24 during the course of the hearing we had similar  
25 discussions like this, but this is helpful to have a

1 clear opportunity to explain the basis for the  
2 objection.

3 **CHAIRMAN BROWN:** Thank you. And I just wanted  
4 to confirm that you still have an objection, the  
5 objections that you raised during the hearing for those  
6 specific exhibits.

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

8 **CHAIRMAN BROWN:** Okay. And I do hope that the  
9 additional time that we gave you to review was helpful,  
10 though.

11 **MR. MOYLE:** It was all relative, given our  
12 work habits for the last couple of days. So, you know,  
13 we went late, until 11:15. But, you know, we have  
14 circumstances. A storm is coming, so we're doing all  
15 the best we can.

16 **CHAIRMAN BROWN:** Yeah. I do want to thank the  
17 parties for all of their help and willingness and  
18 patience in proceeding and making sure we have a very  
19 clear, full record with a lot of substance, but also  
20 given the concerns of the pending storm. So I think  
21 we've done a really good job. You all have done a very  
22 good job in accomplishing that.

23 All right. So you have an objection. I'd  
24 like to hear from Public Counsel and Florida Power &  
25 Light on the objection that was raised to 714, 15, 16,

1 17, 735, 767, and 768.

2 **MR. REHWINKEL:** Thank you, Madam Chair. The  
3 Public Counsel, while we appreciate Mr. Moyle's  
4 objection and we understand the theoretical basis of it,  
5 we start from the premise, and I think we've heard it  
6 from General Counsel's Office, we've heard it from FPL,  
7 and even Mr. Moyle today, is that we have the right not  
8 to put on evidence. And I think that's the case here is  
9 we did not put on evidence. And I think the -- our  
10 witnesses who had testimony that incorporated in a  
11 referential way the evidence that we ultimately did not  
12 put in did a very good job and a very objective job of  
13 removing that impact from their testimony. And I will  
14 say that not only did FPL have people working late and  
15 on the weekend, the Public Counsel's Office did. We had  
16 a crew of people at the office all weekend long, and we  
17 had people in our consultant's office working on this.  
18 We looked very closely at those changes and the changes  
19 the company made and the redline that is 714, and we are  
20 absolutely convinced that FPL removed the impact of our  
21 non-submission of evidence from their rebuttal evidence  
22 in a transparent, fair, and objective way.

23 So it's my position to you -- this is not  
24 advocacy for or against the substance of their  
25 position -- is that they professionally and ethically

1 and responsibly responded to our, as Mr. Moyle puts it,  
2 trial strategy to not submit this evidence. So we  
3 believe that -- I'm here to speak to 715, 716, and 717  
4 with respect to wanting those changes made, and we think  
5 that it is a corollary of our right to withdraw this  
6 evidence from submission, if you will. So we think that  
7 it's done right, and if it's not allowed, it impinges  
8 our ability to make this change. So that's our response  
9 to the objection.

10 **CHAIRMAN BROWN:** Thanks, Mr. Rehwinkel.

11 Mr. Butler.

12 **MR. BUTLER:** Thank you, Madam Chair. I  
13 appreciate Mr. Rehwinkel's kind words but -- and I  
14 would, you know, echo them. You know, we've been very  
15 careful to present in what's sort of fundamentally our  
16 piece of this, which is the 714 and 767 and 768 that are  
17 all related to removing the results of their withdrawal  
18 of Mr. Pous's testimony. I don't think we've added any  
19 numbers that have, you know, substantively or even just  
20 period that have changed our position in any respect,  
21 have changed our support for our position. And so I  
22 think that, you know, everyone, including Mr. Moyle,  
23 have had more than adequate opportunity to confirm that,  
24 and once confirmed, it really should remove any doubt  
25 about whether there's new additional evidence going into

1 the record. So we think we have met the burden for  
2 those exhibits to be admitted.

3 We don't object to OPC's exhibits being  
4 admitted, with one wrinkle that has proven maddeningly  
5 difficult to get to the very bottom of, which is that in  
6 addition to removing the effect of Mr. Pous's testimony,  
7 Mr. Schultz ended up making some adjustments that  
8 related to information they'd received through discovery  
9 responses and late-filed exhibits to depositions of our  
10 witness Slattery.

11 **CHAIRMAN BROWN:** That's 715.

12 **MR. BUTLER:** That's right, 715. It carries  
13 over a little bit, as you may recall, from my questions  
14 to Mr. Smith, to his testimony, because he is kind of  
15 their roll up witness that, you know, provides the  
16 bottom line figure and it reflects results from  
17 Mr. Schultz.

18 We have discussed with Mr. Rehwinkel with  
19 Public Counsel's office some corrections to 715, which I  
20 believe that Mr. Rehwinkel is in agreement with except  
21 it led to him finding one that we didn't find that would  
22 also go onto the list. You know, honestly it rolls up  
23 into 717, to the exhibit there, but it is such a small  
24 impact, that I'm just inclined not to press any  
25 objection to the effects of it. It would -- you know,

1 Mr. Schultz's change based on review from Ms. Slattery's  
2 deposition had slightly increased things in their favor.  
3 I think that what we showed them slightly decreased it  
4 back to our way, but it's frankly just kind of a wash in  
5 terms of the recommendation of the ultimate revenue  
6 requirements adjustment. So we would be prepared to  
7 waive any objections to the impact on 717, and I would  
8 ask if Mr. Rehwinkel would be willing to agree on the  
9 record to the corrections that we had made to 715. And  
10 if he does, we have a copy that we can hand out of that,  
11 if it would be appropriate.

12 **CHAIRMAN BROWN:** Mr. Rehwinkel.

13 **MR. REHWINKEL:** Yes, Madam Chairman,  
14 Mr. Butler has accurately characterized it. We've had  
15 discussions back channel here the last few days, and I  
16 believe that we are in agreement with the errata that  
17 they suggest. I propose one additional adjustment to  
18 the errata. I don't know if they made it, but we could  
19 make it on the record and agree.

20 **MR. BUTLER:** We need to make it on the record.  
21 I didn't get time to make it on the sheets.

22 **MR. REHWINKEL:** Okay. I did not address it  
23 because it was not a Pous thing. It was a Schultz  
24 thing. But, yes, we are in agreement.

25 **CHAIRMAN BROWN:** Okay. So while staff is

1 passing out what I believe is a substitute for 715; is  
2 that correct?

3 **MR. REHWINKEL:** Actually I think it should be  
4 maybe a new exhibit that we on the record state is an  
5 errata to 715. I think that's the best way to handle it  
6 because it is not as comprehensive as 715.

7 **CHAIRMAN BROWN:** Okay. And I don't have a  
8 problem doing that, although it's already labeled as  
9 715. So we'll strike through that. Okay? And we're  
10 going to label this as 805, seeing no objection.

11 **MR. BUTLER:** Thank you.

12 (Exhibit 805 marked for objection.)

13 **MR. MOYLE:** Actually I do have an objection.

14 **CHAIRMAN BROWN:** Okay.

15 **MR. MOYLE:** And I think the conversation that  
16 just took place sort of underscores the point that I'm  
17 trying to make, which is changes were made that it's not  
18 particularly clear how they impact people and money and  
19 the case. I mean, here we have two lawyers who aren't  
20 sworn talking about an exhibit that's going to come in  
21 and saying, "Here's what we did." I mean, no witnesses  
22 are here to authenticate it or talk about it.

23 **CHAIRMAN BROWN:** Mr. Moyle, I --

24 **MR. MOYLE:** And, you know, it's 11:20 and now  
25 it's being offered. So we would, for the reasons stated



1 previously about notice and due process in the  
2 Prehearing Order, interpose those objections with  
3 respect to 805.

4 **CHAIRMAN BROWN:** Mr. Moyle, thank you. And  
5 those objections are noted, although I do think it may  
6 be a mischaracterization of this particular errata with  
7 the changes, so I'll have Public Counsel and FPL an  
8 opportunity to respond to those concerns.

9 **MR. MOYLE:** And I just don't know.

10 **MR. BUTLER:** Well, one thing I would note is  
11 on the issue that this goes to regarding Ms. Slattery's  
12 testimony, I believe that Mr. Moyle had adopted OPC's  
13 position in the prehearing statement. Beyond that, you  
14 know, we have conferred. We had the witness for OPC  
15 confer with our experts on this to confirm the accuracy  
16 of the adjustments that -- corrections that were being  
17 made. I can't really offer much beyond that. I think  
18 that it is something that we're doing, as I say,  
19 honestly, although modestly, against our interests and  
20 agreeing to this. We just -- we don't want to stand in  
21 the way of what we think is a reasonable exercise by the  
22 Office of Public Counsel to, you know, correct their  
23 testimony, and at this point in the proceeding don't  
24 have any objection to 715, with these corrections being  
25 entered into the record.

1           **CHAIRMAN BROWN:** Okay. Okay. Mr. Rehwinkel.

2           **MR. REHWINKEL:** Yes. Madam Chairman, first of  
3 all, I think that it's more than just two lawyers  
4 sitting here talking. We asked some questions of  
5 Ms. Slattery yesterday that were in -- supportive of  
6 these changes, and so I think that there's record  
7 evidence to support what's in these corrections.

8           This -- and I agree with what Mr. Butler  
9 represented. It is -- it's to Mr. Moyle's advantage in  
10 one aspect of the adjustment. It increases the level of  
11 the adjustment to the benefit of customers. So I think  
12 in that regard, it's in his interest.

13           **CHAIRMAN BROWN:** Well, can I ask a question,  
14 Mr. Rehwinkel, why this was not provided yesterday?

15           **MR. REHWINKEL:** Because it was just given to  
16 me this morning. We've been working on this process. I  
17 went to Mr. Butler -- I've lost track of time -- a day  
18 or two ago.

19           **CHAIRMAN BROWN:** Casino time.

20           **MR. REHWINKEL:** And I gave him some numbers.  
21 I said, "Can we agree upon" -- I wouldn't call it a  
22 swag. I would call it a compromise number that would  
23 get us from having to have the dispute that we had with  
24 Mr. Donaldson on the cross of Mr. Schultz and Mr. Smith.  
25 And that ensued a process where they started looking at

1 numbers, we had Ms. Slattery on the stand, and I think  
2 it resulted in this early this morning.

3 **CHAIRMAN BROWN:** Okay. Any further comment?  
4 Yes, you may. Any further comments before I turn to  
5 staff?

6 **MR. BUTLER:** Nothing other than to confirm  
7 what Mr. Rehwinkel said. We worked on this actually  
8 late last night. About the time that the hearing was  
9 concluded, finally were able to get the exhibit -- or  
10 the correction packaged together, what you've marked as  
11 805. I gave it to Mr. Rehwinkel the first thing when we  
12 walked in this morning and have been discussing it sort  
13 of behind the scenes throughout the time of trying to  
14 get to where we can come to you together with our views  
15 on it.

16 **CHAIRMAN BROWN:** Okay. Ms. Brownless.

17 **MS. BROWNLESS:** Thank you.

18 **MR. JERNIGAN:** I'm sorry, ma'am. Can I ask  
19 one question just based on the information that I've  
20 heard?

21 **CHAIRMAN BROWN:** Sure, Mr. Jernigan.

22 **MR. JERNIGAN:** My understanding was that some  
23 of these changes resulted from the testimony given  
24 yesterday, but I don't see that listed here as to which  
25 changes those are. I see changes listed for -- in

1 response to OPC's 16, rebuttal testimony as filed, and  
2 late-filed deposition. I'm just wondering if we can --  
3 if there are changes made as a result of testimony  
4 yesterday, that those also be listed on this as what  
5 those are.

6 **CHAIRMAN BROWN:** Mr. Rehwinkel.

7 **MR. REHWINKEL:** Yes, Madam Chairman. I've  
8 forgotten the number of the exhibit, but we introduced  
9 Ms. Slattery's late-filed deposition Exhibit No. 2, and  
10 you can see that on page 1 of the errata, or what is now  
11 805. There's a reference instead that we had --  
12 Mr. Smith had said witness Slattery's rebuttal  
13 testimony, which was a generalization, and OP -- FPL has  
14 suggested that the correct reference is her late-filed  
15 deposition Exhibit 2, which is what she testified to, as  
16 that contained the correct starting point number that  
17 then flows through to Mr. Schultz's testimony and yields  
18 the number that is the 31,652,000 that is replacing his  
19 35,616, and that was Exhibit 773 that Mr. Jernigan has  
20 asked about.

21 **CHAIRMAN BROWN:** Okay. Mr. Rehwinkel, does  
22 there need to be a witness on this document, on the  
23 cover page?

24 **MR. REHWINKEL:** The appropriate witness  
25 probably would be Smith and Schultz.

1           **CHAIRMAN BROWN:** Okay. Now, staff.

2           **MS. BROWNLESS:** Yes, ma'am. Thank you. It is  
3 very clear that the Office of Public Counsel has the  
4 right to present whatever testimony it deems  
5 appropriate, and given the nature of regulatory  
6 proceedings and given the nature of prefiled testimony,  
7 that change has ripple effects throughout the testimony  
8 of other intervenors and the company.

9           I think it is incumbent on the Commission,  
10 rather than try to guess what those results are based  
11 upon the previously filed testimony, it is much better  
12 to have errata sheets that clearly indicate what that  
13 is. I think FP&L and OPC has tried very hard to provide  
14 us with that, and they have, if you look at Exhibit 805,  
15 said the source of Schultz's change and they've listed  
16 Slattery rebuttal testimony, Slattery late-filed  
17 deposition, response to interrogatory. So it's clear  
18 where these materials are coming from.

19           So in order for the record to be as accurate  
20 as possible and for the parties to be able to have as  
21 accurate as possible a record to cite in their  
22 post-hearing briefs, and the staff as well to review, I  
23 think I would recommend that we allow these exhibits  
24 into the record and proceed from there, and that people  
25 be -- because that way people won't have to guess what

1 the withdrawal of witness Pous, the effect on  
2 significant issues in the case.

3 **CHAIRMAN BROWN:** Okay. Any further comments  
4 before I rule on this? We're going to go ahead and  
5 admit into evidence 714, 715, 716, 717, 735, 767, 768,  
6 as well as 805.

7 **MR. REHWINKEL:** Madam, before you admit 805, I  
8 don't know if in the discussion, Mr. --

9 **CHAIRMAN BROWN:** Hold on one second. Let me  
10 just say, we're going to go ahead and move into the  
11 record all of those right now except for 805.

12 (Exhibits 714, 715, 716, 717, 735, 767, and  
13 768 admitted into the record.)

14 **MR. REHWINKEL:** Okay. Before you do that, I  
15 wanted to confirm with Mr. Butler, if you'll look on the  
16 second page of 805.

17 **MR. BUTLER:** I am there.

18 **MR. REHWINKEL:** The first correction changes  
19 page No. 25 on the far left side to page No. 27. If you  
20 see that.

21 **MR. BUTLER:** I do.

22 **MR. REHWINKEL:** The -- if you look at  
23 Mr. Smith's testimony, on page 27, line 20, he had  
24 changed 28,216,000 to 35,616,000. But consistent -- and  
25 then this goes against my interest, but consistent with

1 the adjustments or the changes that were made on page 1  
2 of 805, 35,616 is really 31,652 based on the information  
3 that came from Ms. Slattery's deposition Exhibit No. 2.  
4 So that 35,616 needs to be -- in whatever document that  
5 goes in, it needs to be stricken and replaced with  
6 31,652 just so it's correct.

7 **MR. BUTLER:** Thank you, Mr. Rehwinkel. Yes.  
8 And that's consistent with the changes shown or the  
9 corrections shown on the first page, and I certainly  
10 have no objection to it. That was, by the way, the one  
11 wrinkle that I had mentioned at the outset of my  
12 comments, so I appreciate his bringing it to your  
13 attention.

14 **CHAIRMAN BROWN:** So that was the wrinkle.

15 **MR. BUTLER:** Yes.

16 **CHAIRMAN BROWN:** Okay. Any comments or  
17 thoughts before we get to 805? Any further?

18 **MR. MOYLE:** No. I just would, you know,  
19 maintain the objection as we stated before.

20 **CHAIRMAN BROWN:** Okay. That is noted. We're  
21 going to go ahead and admit into evidence 805 so that we  
22 have the most current and accurate information for  
23 consideration of this proceeding.

24 (Exhibit 805 admitted into the record.)

25 Okay. Staff, now we have MFRs to get to.

1           **MS. BROWNLESS:** Yes, ma'am. The -- what  
2 remains are staff's exhibits.

3           **CHAIRMAN BROWN:** Well, we also have 28, 29,  
4 and 30 first.

5           **MS. BROWNLESS:** Oh, the MFRs. I'm so sorry.

6           **MR. BUTLER:** I was going to move those into  
7 evidence.

8           **CHAIRMAN BROWN:** Okay. All right. Are there  
9 any objections to moving in 28 through 30?

10          **MR. REHWINKEL:** Madam Chairman, we don't have  
11 an objection, but we would ask -- I've discussed this  
12 with Mr. Litchfield. When FPL filed its case, it filed  
13 a petition, MFRs, and testimony. Of those three types  
14 of documents, all the testimony that they filed has gone  
15 in and the MFRs are about to go in. We would ask that  
16 there be agreement that -- it could be done in these  
17 exhibits or a separate exhibit -- that the petition that  
18 accompanied those two types of documents also be  
19 admitted into the record.

20          **MR. LITCHFIELD:** And FPL has no objection.  
21 We'd simply note that that would be, I presume, for  
22 purposes of a potential appeal that OPC might consider  
23 entertaining, for which we had included rate case  
24 expenses.

25          **CHAIRMAN BROWN:** Circling back to last night's



1 discussion.

2 **MS. BROWNLESS:** And Madam Chair, my --

3 **MR. MOYLE:** Can I -- I'm sorry.

4 **MS. BROWNLESS:** My understanding is that part  
5 of an appellate record includes filings in the docket,  
6 and, of course, petitions would be deemed filings. So I  
7 guess I'm a bit surprised.

8 **MR. LITCHFIELD:** We actually agree with  
9 Ms. Brownless. But if it is of concern to OPC, we had  
10 no objection. But we're -- honestly, we're fine either  
11 way.

12 **MR. MOYLE:** Can I be heard on this just  
13 because my --

14 **CHAIRMAN BROWN:** Yes.

15 **MR. MOYLE:** I have a concern about admitting  
16 into evidence a petition where, you know, it says things  
17 that are just allegations and witnesses get on and prove  
18 them up. So I agree with Ms. Brownless; the petition is  
19 available. It doesn't need to be admitted.

20 **CHAIRMAN BROWN:** You agree with Ms. Brownless?

21 **MS. BROWNLESS:** A first.

22 **CHAIRMAN BROWN:** All right. Mr. Rehwinkel.

23 **MR. REHWINKEL:** Yes, as long as -- I think  
24 this conversation on the record may suit my purposes. I  
25 just would not want to be whipsawed, that we --

1           **CHAIRMAN BROWN:** What was that, whipsaw?

2           **MR. REHWINKEL:** Where later on there was a  
3 contention that it was not part of the record. So I  
4 think we're good.

5           **CHAIRMAN BROWN:** Okay. So we're good right  
6 now and we're just dealing with 28, 29, 30. And FPL has  
7 asked to move those into the record, and I'm going to  
8 give the parties an opportunity -- any further  
9 objections or any objections? Pardon me.

10          **MR. MOYLE:** I would just -- to the extent that  
11 they haven't been validated, verified, confirmed by a  
12 witness, we would object.

13          **CHAIRMAN BROWN:** Mr. Butler.

14          **MR. BUTLER:** Each and every one of them is  
15 sponsored by one of our witnesses. It was listed in the  
16 prefiled testimony that we filed along with the MFRs.

17          **CHAIRMAN BROWN:** That was my understanding as  
18 well. So we will go ahead and move 28 through 30 into  
19 the record at this time.

20                 (Exhibits 28, 29, and 30 admitted into the  
21 record.)

22                 Now for the fun part, staff exhibits.

23          **MS. BROWNLESS:** Okay. We provided on the  
24 second day of the hearing our Comprehensive Exhibit List  
25 which we labeled as 579, which lists all the witnesses

1 and it ties back to our Comprehensive Exhibit List. And  
2 Exhibit No. 579 talks about all the hearing exhibits,  
3 gives a witness name, and ties it to the numbers, the  
4 exhibits identified on the Comprehensive Exhibit List  
5 that is -- has been used in this case.

6 **CHAIRMAN BROWN:** So what is being distributed  
7 right now to all the parties?

8 **MS. BROWNLESS:** What is being distributed  
9 right now is a revised Exhibit 579, which in addition to  
10 listing a witness, the pieces of the Comprehensive  
11 Exhibit List he sponsored, also provides an issue for  
12 each listed exhibit.

13 **CHAIRMAN BROWN:** Okay. I do understand what  
14 this exhibit is, and I've actually been using this going  
15 along as you've had the witnesses authenticate their --  
16 the numbers. So --

17 **MS. BROWNLESS:** So what we would like to do, I  
18 think, to make this --

19 **CHAIRMAN BROWN:** Mark it?

20 **MS. BROWNLESS:** Is mark it.

21 **CHAIRMAN BROWN:** Let's mark it as 806. So 806  
22 is going to be titled Revised Hearing Exhibit 579.

23 **MS. BROWNLESS:** Yes, ma'am.

24 **CHAIRMAN BROWN:** And, staff, you prefer to do  
25 that versus just substituting 579.

1           **MS. BROWNLESS:** I think it's easier.

2           **CHAIRMAN BROWN:** Okay. So that's what we're  
3 going to do.

4           (Exhibit 806 marked for identification.)

5           **MR. REHWINKEL:** Madam Chairman?

6           **CHAIRMAN BROWN:** Yes.

7           **MR. REHWINKEL:** This does not have pages on  
8 it, but I would refer you near the back where the OPC  
9 witnesses are listed, and I believe this needs to be  
10 corrected on the record. We may have another objection  
11 for the record, but the -- Mr. Pous is still listed on  
12 here and it has --

13           **MS. BROWNLESS:** And we would delete any  
14 reference to Mr. Pous.

15           **MR. REHWINKEL:** Okay. So --

16           **CHAIRMAN BROWN:** Okay.

17           **MR. REHWINKEL:** So just for clarity, 526, 529,  
18 531, 532, 533, 535, 536 discovery responses associated  
19 with Mr. Pous are not included on 806.

20           **MS. BROWNLESS:** That is correct.

21           **MR. REHWINKEL:** Thank you.

22           **CHAIRMAN BROWN:** Okay. We are striking  
23 through all of those as delineated by Mr. Rehwinkel.

24           Okay. Any comments on this item?

25           **MR. MOYLE:** I guess, similar to the discussion

1 we just had with the petition, it seems that this  
2 probably is not appropriate to go into evidence for the  
3 truth of the matter asserted, but no problem having it  
4 marked and be available for reference, for people to  
5 reference. But, you know, if it's an exhibit going in  
6 for the truth of the matter asserted, we would object.

7 **MR. REHWINKEL:** And one additional correction.  
8 I think on the next page by Mr. Lawton --

9 **CHAIRMAN BROWN:** Uh-huh. Yes.

10 **MR. REHWINKEL:** -- by 530 it should be 46 and  
11 51.

12 **MS. BROWNLESS:** Instead of 251.

13 **MR. REHWINKEL:** Yeah.

14 **CHAIRMAN BROWN:** Just to be clear for the  
15 record, can you repeat that, Mr. Rehwinkel?

16 **MR. REHWINKEL:** Yes. Exhibit 530 has in  
17 parentheses numbers 46-51, and that dash should be  
18 change to an ampersand or the word "and."

19 **CHAIRMAN BROWN:** Okay. Thank you.

20 All right. Ms. Brownless, can you respond to  
21 Mr. Moyle's objection?

22 **MS. BROWNLESS:** We offered 579 and now 806 as  
23 a -- as assistance in response to questions and concerns  
24 that the parties expressed with regard to the exhibits  
25 listed on the Comprehensive Exhibit List that the staff

1 wishes to enter. It is a demonstrative exhibit. We  
2 used this exhibit when we questioned each and every  
3 witness listed thereon about the exhibits that are  
4 listed thereon. We have added the issues associated  
5 with each of those in order to address the issue of  
6 relevancy that was expressed early on by the parties to  
7 the case. So it is an attempt to give the parties a  
8 clear understanding of which issues each staff exhibit  
9 on the Comprehensive Exhibit List addresses.

10 **CHAIRMAN BROWN:** For aid of reference.

11 **MS. BROWNLESS:** Yes, ma'am.

12 **CHAIRMAN BROWN:** Yes. Okay. Mr. Butler.

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

14 **CHAIRMAN BROWN:** Yes.

15 **MR. BUTLER:** Yes. Just for clarification on  
16 that, what Ms. Brownless was just discussing, we have no  
17 objection to the exhibit, to the identification of these  
18 issues that staff believes the, you know, various  
19 discovery responses are responsive to. Our only concern  
20 is that we want the identified issues to be sort of a  
21 minimum, not a maximum. I mean, there may be issues  
22 that evidence in here relates to that aren't on this  
23 list. There's no way in the world that we can, sitting  
24 here, go through and decide whether there are additional  
25 issues to be added. So if it's with the understanding

1 that they at least relate to these issues and might  
2 relate to others, then it's fine with us.

3 **MS. BROWNLESS:** These are the issues that  
4 staff believes are relevant. However, I certainly  
5 understand, due to the large number of issues in this  
6 case, that other parties could believe they apply to  
7 other issues, and we have no problem at all giving each  
8 party latitude to attach whatever issue they believe  
9 appropriate.

10 **CHAIRMAN BROWN:** My understanding is that this  
11 is really used as an ease of reference for staff going  
12 through the hearing.

13 **MS. BROWNLESS:** Yes, ma'am.

14 **CHAIRMAN BROWN:** Okay. So that's what it's  
15 being offered for.

16 **MR. MOYLE:** Right. And we are grateful for  
17 staff doing it. It's helpful. They said it's  
18 demonstrative. It's just a fine point that, you know,  
19 particularly given that there are still questions about  
20 issues, it shouldn't come into evidence.

21 **CHAIRMAN BROWN:** Okay. Yes.

22 **MR. SUNDBACK:** Madam Chair, just to make sure  
23 we understand what this document represents, and we  
24 appreciate all of staff's obviously substantive work on  
25 this, do we understand that this document is prepared to

1 indicate that with regard to each of the enumerated  
2 exhibits, cross-examination was had with regard to the  
3 listed witness on those exhibits regarding foundation,  
4 authentication, whatever you want to call it, a  
5 preliminary basis?

6 **MS. BROWNLESS:** Yes. We did, in fact, ask  
7 each and every witness the appropriate authentication  
8 questions.

9 **MR. SUNDBACK:** Thank you for that  
10 clarification.

11 **CHAIRMAN BROWN:** You're welcome. And this  
12 stemmed from the first day of the hearing, which Public  
13 Counsel raised some questions. And so our staff has  
14 been very accommodating in making sure that those  
15 concerns were addressed, so this has been very helpful.

16 Any further comment before I go ahead and  
17 enter this into the record? Mr. Rehwinkel?

18 **MR. REHWINKEL:** Yes, Madam Chairman. I guess  
19 I'm trying to understand, there is nothing in this  
20 document that bootstraps, if you will, the underlying  
21 documents that it references; is that correct? This  
22 isn't the vehicle upon which all these discovery  
23 responses find their way into the record; is that right?

24 **CHAIRMAN BROWN:** Ms. Brownless.

25 **MS. BROWNLESS:** What we've attempted to do



1 here is to address the concerns that were expressed by  
2 the parties. The first concern that was expressed was  
3 that they have no idea which witness was associated with  
4 which staff exhibit. So we provided witnesses and gave  
5 the associated exhibit. The next concern that the  
6 parties addressed was that there was no authentication  
7 of the documents listed on staff's exhibits. We asked  
8 each and every witness on the stand with regard, as  
9 indicated here, to authenticate the documents, the  
10 responses that were included. And so that is what this  
11 document shows: The witness, the exhibit they  
12 authenticated, and the issue that staff believes makes  
13 that material relevant to this proceeding.

14 **CHAIRMAN BROWN:** Again, more served -- serves  
15 more, from my understanding, as a demonstrative aid for  
16 you -- for staff's use. Is that a fair assessment?

17 **MS. BROWNLESS:** Yes. But it also, in our  
18 view, demonstrates relevancy.

19 **CHAIRMAN BROWN:** Okay.

20 **MR. REHWINKEL:** So it sounds like the answer  
21 to my question was sort of yes. And in case it was yes  
22 or sort of -- we heard a lot of yes and nos here the  
23 last two weeks -- I would like to just preventatively  
24 (verbatim) lodge an objection to lack of foundation,  
25 hearsay, and admissibility in general of the documents

1 that are all referenced in here just for the record. I  
2 don't want to argue that. We've had plenty of that in  
3 the last two weeks.

4 **CHAIRMAN BROWN:** You sound like Mr. Moyle.

5 **MR. REHWINKEL:** And there's one other aspect  
6 that I have a little bit of a concern about. Mr. Butler  
7 mentioned the issue references by the individuals, the  
8 witnesses that are listed in here, and as the Commission  
9 is well aware, we had a very acute concern about Issue  
10 48, which is the corrective reserve measures issue.

11 **CHAIRMAN BROWN:** Uh-huh.

12 **MR. REHWINKEL:** And in that issue, for FPL,  
13 only Mr. Allis and Mr. Barrett were identified as  
14 witnesses for the company on that issue. There are  
15 many -- there are many witnesses in here, Kennedy,  
16 Miranda, I think -- I just was flipping through here.

17 **CHAIRMAN BROWN:** Yes, several.

18 **MR. REHWINKEL:** That are -- it says, "40  
19 through 49." So I just want to make sure that it's  
20 clear on the record that there's no bootstrapping of --

21 **CHAIRMAN BROWN:** What does "bootstrapping"  
22 mean? You said --

23 **MR. REHWINKEL:** Well, the Prehearing Order  
24 lists the witnesses that the company offered on the  
25 issues, and I wouldn't want there to be somehow that

1 this document sort of brings other FPL witnesses in to  
2 support a position that might be taken on Issue 48 when  
3 we weren't cross-examining Ms. Kennedy, for example, on  
4 her views or her impact on Issue 48.

5 **CHAIRMAN BROWN:** Okay. Okay.

6 **MR. REHWINKEL:** She did not opine about it. I  
7 think it's -- there's no evidence on that, so --

8 **MR. LITCHFIELD:** Madam Chair, may I be heard  
9 on that point?

10 **CHAIRMAN BROWN:** Who blew into the mike? Was  
11 that you?

12 **MR. LITCHFIELD:** Not intentionally. It might  
13 have been the impending storm.

14 The record is going to be the record and the  
15 issues are the issues, and so we would reject any effort  
16 by Mr. Rehwinkel to attempt to draw lines around record  
17 evidence and issues to improperly compartmentalize what  
18 parties are able to brief and address. Again, the  
19 issues are the issues and the record is the record. And  
20 to the extent that the exhibits referenced on what is  
21 identified as Exhibit 806 are moved into the record, we  
22 would expect them to be available to all parties for all  
23 purposes under -- in this proceeding.

24 **CHAIRMAN BROWN:** Okay.

25 **MR. MOYLE:** And can I just join in the

1 objection that was lodged by OPC that you said sounded  
2 like me?

3 **CHAIRMAN BROWN:** Okay. It did sound like you.

4 **MR. MOYLE:** And also the due process points  
5 that were made earlier with respect to notice. And I  
6 just don't really understand why this is being admitted  
7 into evidence as opposed to just saying, "Here's a  
8 helpful guide that you all can use when doing your  
9 brief." If it were a helpful guide, I think some of the  
10 concerns voiced by Mr. Rehwinkel and me might not be  
11 there, but that's my point of making that clear.

12 **CHAIRMAN BROWN:** I appreciate that. And Ms.  
13 -- Suzanne, is it necessary to have this entered into  
14 the record since it was more used as an aid for staff?  
15 I mean, it seems that the parties are --

16 **MS. BROWNLESS:** It was developed as an aid to  
17 the parties but also developed to show the relevancy of  
18 each of staff's listed exhibits on the Comprehensive  
19 Exhibit List. It tracks the Comprehensive Exhibit List.  
20 We are not seeking to expand the testimony of any  
21 witness in this case to an issue that they did not  
22 testify about, so please be assured that that's not the  
23 intent of this case (sic). It is -- of this document.  
24 It's merely intended to respond to the relevancy  
25 argument that has been previously raised by the parties.

1           **CHAIRMAN BROWN:** Okay. I'm very clear on what  
2 this document is, but it seems that there are a lot of  
3 objections to it nonetheless.

4           Mr. LaVia.

5           **MR. LaVIA:** We would join in the objection.  
6 And to the extent that we've already identified two  
7 changes to this while sitting here, we haven't had a  
8 chance to verify this. It's not a redline. This is  
9 ostensibly changing a document. I trust it would  
10 verify. I just need a chance to verify. We have  
11 clearly not had that opportunity to verify.

12          **CHAIRMAN BROWN:** Okay.

13          **MR. SUNDBACK:** Madam Chair, the Hospitals join  
14 in OPC's objection, and we'd just note that as practical  
15 matter --

16          **CHAIRMAN BROWN:** Succinctly, please,  
17 Mr. Sundback.

18          **MR. SUNDBACK:** -- the issues list says what it  
19 says and we don't need that again.

20          **MR. MOYLE:** And I would just note to the  
21 extent it's showing relevancy, that's what lawyers argue  
22 about. So it's not -- the arguments, the lawyers'  
23 argument doesn't into the record as evidence.

24          **CHAIRMAN BROWN:** Okay. I've heard from all of  
25 the parties here. Staff, I think the record speaks for

1       itself. And when you authenticated -- when you had the  
2       witnesses authenticate the documents as they pertained  
3       to the issues, we've developed a very thorough record.  
4       I don't know what benefit this would serve at this  
5       point.

6               **MS. BROWNLESS:** If that's your ruling, we'll  
7       go with it, Your Honor.

8               **CHAIRMAN BROWN:** Thank you.

9               **MR. BUTLER:** Madam Chair.

10              **CHAIRMAN BROWN:** Yes.

11              **MR. BUTLER:** Sorry. Just one thing we're a  
12       little bit unclear of. This has several staff exhibits  
13       that are the actual exhibits with the discovery in them.  
14       Is it your intent to move those into the record  
15       separately, or was this going to be --

16              **CHAIRMAN BROWN:** We're going to do that after  
17       this.

18              **MR. BUTLER:** Okay. All right. Thank you.

19              **CHAIRMAN BROWN:** Okay?

20              **MS. BROWNLESS:** We're going to move them in  
21       separately.

22              **CHAIRMAN BROWN:** Yes.

23              **MR. BUTLER:** Thank you.

24              **CHAIRMAN BROWN:** I'm going to address this.  
25       806, we're not moving this into the record. Okay?

1           So now we're going to go to the staff exhibits  
2 which start at 390 -- they go 399 through 534.

3           **MS. BROWNLESS:** Yes, ma'am.

4           **CHAIRMAN BROWN:** Okay.

5           **MS. BROWNLESS:** And I would just -- are we  
6 going to go exhibit by exhibit, which is fine by me?

7           **CHAIRMAN BROWN:** It is not my preference to do  
8 that. I would rather take up those exhibits which have  
9 objections specifically. We have 399 through 534. We  
10 could take them in blocks, Ms. Brownless.

11          **MS. BROWNLESS:** Okay.

12          **CHAIRMAN BROWN:** And if a party has a specific  
13 objection to a specific exhibit, then we'll hear that.

14          **MR. REHWINKEL:** Madam Chairman, we would just,  
15 for efficiency's sake and given the hour, we would just  
16 lodge a general objection to the 399 through 534 on the  
17 basis of relevancy, hearsay, and foundation, and we just  
18 want to renew the objection --

19          **CHAIRMAN BROWN:** Foundation?

20          **MR. REHWINKEL:** -- that we had made in the  
21 past.

22          **CHAIRMAN BROWN:** Relevance -- I'm sorry. I'm  
23 not following.

24          **MR. REHWINKEL:** We object to the -- I know the  
25 staff went through a process. We just want to lodge an

1 objection that it may not have been entirely in accord  
2 with law. I still am unclear about some of the  
3 questions in cross-examination that were asked of  
4 witnesses at the end about the types of discovery they  
5 reviewed. So just as a precautionary measure, we want  
6 to preserve our objections. I don't -- I really don't  
7 want to argue that at this time, but --

8 **CHAIRMAN BROWN:** Okay. I'm going to go to our  
9 General Counsel right now and -- or Mary Anne and give  
10 them an opportunity to speak first.

11 **MR. HETRICK:** Thank you, Madam Chair.

12 Before I speak, can I ask the parties, for  
13 staff's Comprehensive Exhibit List, are there standing  
14 objections to still stipulating the entire exhibit list?  
15 We need to understand that. Or are there blocks of  
16 particular exhibits that you're okay with? Are you  
17 going to continue standing to object to each and every  
18 staff exhibit?

19 **CHAIRMAN BROWN:** Okay. Mr. Moyle? I mean,  
20 Mr. -- I'm looking at -- I called -- Mr. Rehwinkel --

21 **MR. REHWINKEL:** We have morphed.

22 **CHAIRMAN BROWN:** -- I called you Mr. Moyle.

23 **MR. REHWINKEL:** That's okay. It's -- we  
24 reached an accord, I think, at the beginning of the  
25 hearing with staff on conditions that they would adhere



1 to as we go forward, and we adhere to that. But to the  
2 extent that there are improper uses of documents when we  
3 see the recommendation and what turns out in the  
4 Commission's final vote, we are preserving that  
5 objection --

6 **CHAIRMAN BROWN:** Okay.

7 **MR. REHWINKEL:** -- so that we do not waive it  
8 here today if we get into another tribunal.

9 **CHAIRMAN BROWN:** Okay. Keith, can you just  
10 please proceed?

11 **MR. HETRICK:** Okay. Madam Chair, we find it  
12 important for the record to sort of lay out our response  
13 regarding the situation that we find ourselves in as a  
14 result of OPC, FIPUG, and the Hospitals' inability --  
15 maybe other parties, I'm not sure, but those were  
16 certainly the ones at the beginning, at the start of  
17 this hearing, they refused to stipulate to staff's  
18 exhibits wholesale. In addition, I think we want to lay  
19 the foundation for you to expeditiously deal with  
20 staff's exhibits.

21 Let me start by saying that staff's procedure  
22 for using and developing its Comprehensive Exhibit List  
23 is the same standard procedure that has been used for at  
24 least 20 years in this Commission. Draft copy -- the  
25 draft Comprehensive Exhibit List was provided to the

1 parties prior to the prehearing conference on  
2 August 12th, 2012, and discussed at the prehearing  
3 conference. At the prehearing conference, parties were  
4 asked to review and be prepared to state whether they  
5 were able to stipulate to the list or would object to  
6 the specific exhibits. At that time, OPC objected for  
7 the first time to stipulating all staff exhibits into  
8 the record.

9 A CD containing all identified exhibits was  
10 provided to all parties who requested it on Friday,  
11 August 19th. OPC, FIPUG, and FPL all picked up copies  
12 of this CD. At the beginning of the hearing, the  
13 Comprehensive Exhibit List was moved into the record,  
14 and OPC, the Hospitals, and FIPUG all stated they would  
15 not be able to stipulate to staff's exhibits into the  
16 record wholesale.

17 As we see it, there are potentially five  
18 objections to the Comprehensive Exhibit List that have  
19 been raised by OPC, FIPUG, and the Hospitals as we  
20 understand it or have discerned. These objections  
21 probably can be summarized in the following manner.  
22 They have objected at various points to authentication  
23 at the beginning. There's been numerous hearsay  
24 objections. There's been relevancy objections. There's  
25 been objections dealing with no context for the exhibit;

1 that is, the intervenors don't know how the exhibit will  
2 be used. And there's been actually due process  
3 objections.

4 Now as to these one at a time, authentication,  
5 each witness who prepared each staff exhibit  
6 authenticated the exhibit during the course of this  
7 hearing.

8 As to hearsay, any kind of hearsay objection  
9 or standing objection -- we don't recognize standing  
10 objections. Hearsay, as a general proposition, is an  
11 after-the-fact determination based upon the complete  
12 record. Chapter 120 of the *Florida Statutes*, which is  
13 the *Florida Administrative Code*, allows hearsay to be  
14 admitted, but it can't support a finding of fact unless  
15 it comes within a Chapter 90, the evidentiary code,  
16 hearsay objection or is otherwise corroborated in the  
17 record. Such objections, hearsay type objections in  
18 this proceeding have been made and dealt with or not,  
19 are noted throughout the course of this hearing and the  
20 record will speak for itself.

21 As to relevancy, these exhibits have been made  
22 relevant by the issues that have been attached at least  
23 as identified that makes each exhibit relevant. All of  
24 these exhibits are relevant because they -- the evidence  
25 is offered in each of the exhibits to prove a particular

1 proposition, approve or disprove a material fact which  
2 is at issue in this case is tied to an issue in this  
3 case. So all of these exhibits, staff exhibits are  
4 relevant.

5 As to the no context, which we heard, I think,  
6 at the beginning of this, this is really a collateral  
7 attack on the role of staff in rate cases. And what we  
8 think intervenors are saying is that there is no context  
9 for these exhibits because staff has not taken a  
10 position on the issues in this case. Had staff taken an  
11 issue on the positions in this case, we don't think  
12 these exhibits would even be an issue right now. But  
13 that's sort of the tie is that they believe staff has  
14 not taken a position. As we explained earlier in this  
15 hearing, it's not staff's role to take a position on  
16 issues in this case. Staff's role is to ensure that the  
17 record is fully developed in rate cases, and that's part  
18 of the quasi-legislative role of this Commission and  
19 staff.

20 Finally, as to due process, any alleged due  
21 process violation, we think there is none because all of  
22 the experts in this case have testified that they have  
23 the ability to review these materials as they become  
24 available -- as they became available. For these  
25 reasons, we think that none of these objections, in our

1 view, are well-taken or well-founded.

2 One way to summarily resolve these -- staff's  
3 exhibits is to turn -- well, we've already turned to the  
4 parties and they've stated their objection. We think  
5 it's within your discretion, Madam Chair, to go ahead  
6 and overrule those objections as standing objections to  
7 staff's exhibits, if you agree with our counsel on this,  
8 and agree to offer these exhibits into evidence.

9 If there are any other issues besides these  
10 five points that have been raised, I think it's entirely  
11 proper for you to ask the parties to state any other  
12 objections that they may have of these exhibits besides  
13 the ones staff has articulated to make that clear for  
14 the record, and then we can try to respond to those.

15 **CHAIRMAN BROWN:** Keith, thank for laying that  
16 foundation and for providing that as a reference point.  
17 So, parties, any other objections that Mr. Hetrick  
18 mentioned that haven't -- you haven't already stated?

19 **MR. LaVIA:** Just to be clear, the Retail  
20 Federation joins with OPC's objection.

21 **CHAIRMAN BROWN:** Okay.

22 **MR. SKOP:** Madam Chairman, Larsons also join  
23 with OPC's objections.

24 **MR. JERNIGAN:** FEA had also joined previously.

25 **CHAIRMAN BROWN:** Just one -- I'm just going to

1 go right down the line. Wal-Mart.

2 **MR. WILLIAMSON:** Yes, ma'am.

3 **MS. CSANK:** Yes, ma'am.

4 **CHAIRMAN BROWN:** Okay. This is all for the  
5 record, so if you guys could please speak into the  
6 mikes.

7 **MS. CSANK:** Yes, ma'am.

8 **CHAIRMAN BROWN:** Thanks. FEA?

9 **MR. JERNIGAN:** Yes.

10 **CHAIRMAN BROWN:** Hospitals?

11 **MR. SUNDBACK:** Madam Chair, there's an  
12 additional issue that wasn't flagged in the --

13 **CHAIRMAN BROWN:** Okay. Could you please  
14 provide it succinctly, Mr. Sundback?

15 **MR. SUNDBACK:** Certainly. We've just engaged  
16 over the last several days in trying to adjust the  
17 evidence with regard to the withdrawal of Mr. Pous's  
18 testimony and the downstream consequences for Mr. Smith,  
19 Mr. Schultz, Mr. Allis. This diskette was prepared long  
20 before that testimony was withdrawn and reviewed by the  
21 parties before it was withdrawn, and we have no idea  
22 what downstream consequences are buried in there that  
23 might be imported inadvertently into a record that the  
24 parties have apparently agreed already needs to be  
25 modified in, for instance, the errata we saw now. So

1 we're not comfortable buying that pig in a poke.

2 **CHAIRMAN BROWN:** What does that mean, buying  
3 that --

4 **MR. SUNDBACK:** That means we don't know, we  
5 don't know what is in these exhibits that was imported  
6 from the original version of Pous and the other related  
7 testimonies that's in there that isn't being adjusted  
8 now in accordance with the errata, for instance, that's  
9 been provided and the other redlining changes that have  
10 been circulated.

11 **CHAIRMAN BROWN:** Okay. I'm clear now. Thank  
12 you.

13 **MR. SUNDBACK:** Thank you.

14 **CHAIRMAN BROWN:** Mr. Moyle.

15 **MR. MOYLE:** Yes, ma'am. And we would join in  
16 the objections set forth by OPC. I know you went to  
17 Mr. Hetrick, but the, you know, the objections, just so  
18 we have a clear record, relate to relevancy, hearsay,  
19 lack of foundation, lack of context, authentication, and  
20 we would join on the basis of the downstream effects,  
21 the South Florida Hospital Association objections. And  
22 then we also -- you asked, okay, what are some other  
23 objections, and let me just speak to that.

24 **CHAIRMAN BROWN:** You don't have to offer more  
25 just because I opened --

1           **MR. MOYLE:** Your counsel suggested, you know,  
2 Chapter 90, which is the evidence code, that that, you  
3 know, that that -- he referenced it. So to the extent  
4 that records are going to be used and somehow staff is  
5 going to say, "Well, this is -- this record is an  
6 exception to the hearsay rule because it's a business  
7 record or because it's a public record," there's been no  
8 foundation with respect to those documents. Typically  
9 in a proceeding, you know, there has to be at least some  
10 foundation, like with respect to that letter that I  
11 tried to use. You know, nobody could say, "Yes, we got  
12 this letter and it's a public record." And I think the  
13 same type of analysis or at least Q and A would need to  
14 take place specifically in order to inform the decision  
15 maker with respect to whether a piece of evidence would  
16 come in under an exception pursuant to exceptions to the  
17 hearsay rule.

18           **CHAIRMAN BROWN:** Okay.

19           **MR. MOYLE:** And then the other point I want to  
20 make is, you know, sort of -- and this is a challenge  
21 and, you know, staff has worked very hard. All the  
22 parties have worked hard. These cases are very document  
23 intensive.

24           **CHAIRMAN BROWN:** Staff has worked incredibly  
25 hard.



1           **MR. MOYLE:** And I just would point out maybe  
2 just -- the last witness that they used, they had, like,  
3 four exhibits that they used and they put them to the  
4 witness and they asked him about them. You know, that  
5 is typically how documents come in.

6           The idea that thousands -- and I asked these  
7 witnesses, "Tell me how many pages." I mean, thousands  
8 and thousands of pages are coming in in that summary  
9 fashion, we don't think is appropriate, and it also  
10 serves as sort of the basis for the objection. And let  
11 me just give you an example: work papers. A lot of  
12 people said, "Oh, there's all these work papers." Well,  
13 I think the work papers sort of serve as the basis for  
14 testimony and other things, so I'm not sure they're  
15 relevant if they're simply papers that are being used  
16 that the witness ultimately says, "Here's my  
17 conclusion." You got the conclusion. You don't need  
18 all those work papers, so they're irrelevant.

19           But thanks for letting me have a chance to  
20 explain that. I don't feel a need to do this repeatedly  
21 as you go through, so if you want to go through all of  
22 them with this, then I'll just say, "Please see earlier  
23 comments."

24           **CHAIRMAN BROWN:** I will go through -- thank  
25 you. That sounds great, Mr. Moyle.

1 FPL, any comment?

2 **MR. BUTLER:** No, we don't have anything to  
3 add.

4 **CHAIRMAN BROWN:** Okay. All right. So all of  
5 those objections have been noted for the record. I am  
6 surprised by them, by the way. But, nonetheless, I  
7 appreciate staff providing a legal basis and advice on  
8 this. So why don't we take up 399 through 534.

9 **MS. BROWNLESS:** All right. We would offer  
10 399 through 534, with the exception of the Pous  
11 documents, which are 531, 532, 533.

12 **CHAIRMAN BROWN:** Okay. So that would be  
13 399 through 530.

14 **MS. BROWNLESS:** Yes, ma'am.

15 **CHAIRMAN BROWN:** All right. We're dealing  
16 with 390 through 530.

17 **MR. REHWINKEL:** I thought Ms. Brownless says  
18 the Pous documents were five --

19 **CHAIRMAN BROWN:** 531, 532, and 533.

20 **MR. REHWINKEL:** Well, 526, 529, 535, and 536  
21 are also identified.

22 **CHAIRMAN BROWN:** Ms. Brownless.

23 **MS. BROWNLESS:** I need to find Mr. Pous.

24 Excuse me for a minute.

25 **CHAIRMAN BROWN:** I think Mr. Rehwinkel is

1 right. Why don't we do this. Why don't we go 399 to  
2 525. Any objection to 399 to through -- pardon me --  
3 399 through 525?

4 **MR. MOYLE:** Yes, the objections that we just  
5 stated. We can state them again, if you feel a need to,  
6 so --

7 **CHAIRMAN BROWN:** Okay. I don't.

8 **MR. MOYLE:** Okay.

9 **CHAIRMAN BROWN:** All right. Noting all of the  
10 objections that have been made, listening to our legal  
11 counsel, and believing to give these documents the  
12 weight that they're due, we are going to go ahead and  
13 admit 399 into the record -- through 525 into the  
14 record. Again, giving them the weight that they are  
15 due.

16 (Exhibits 399 through 525 admitted into the  
17 record.)

18 All right. Now --

19 **MS. BROWNLESS:** Now with regard to 526, Madam  
20 Chair --

21 **CHAIRMAN BROWN:** Yes.

22 **MS. BROWNLESS:** -- with the exception of the  
23 responses to interrogatories 16 through 24, which were  
24 prepared by Mr. Pous, we would move that into the  
25 record.

1           **CHAIRMAN BROWN:** I'm so sorry. I'm a little  
2 confused by what you offered.

3           **MS. BROWNLESS:** Okay. If you look at Exhibit  
4 526 identified --

5           **CHAIRMAN BROWN:** I see it.

6           **MS. BROWNLESS:** Okay. You can see that this  
7 is OPC's responses to staff's third set of  
8 interrogatories Nos. 16 through 29.

9           **CHAIRMAN BROWN:** Okay.

10          **MS. BROWNLESS:** Mr. Pous prepared the  
11 responses 16 through 24.

12          **CHAIRMAN BROWN:** Yes.

13          **MS. BROWNLESS:** Exclude those.

14          **CHAIRMAN BROWN:** Okay. So any objection to  
15 moving 526, with the exclusion of Pous 16 through 24?

16          **MR. LaVIA:** Earlier objections.

17          **MR. REHWINKEL:** Madam Chairman, I thought the  
18 admonition was that we weren't going to keep saying our  
19 objections.

20          **CHAIRMAN BROWN:** That is.

21          **MR. LaVIA:** Okay. I'm sorry.

22          **MR. REHWINKEL:** I mean, yes, so.

23          **CHAIRMAN BROWN:** I'm doing this for the  
24 purposes of Pous, to make sure that we've got it.

25          **MR. REHWINKEL:** Yes, I appreciate the removal

1 of that. I think that's appropriate.

2 **CHAIRMAN BROWN:** Okay. So we're --

3 **MR. MOYLE:** And just so we have a clear  
4 record, FIPUG has no objection to the removal of Pous  
5 but does object to the insertion of the other documents  
6 consistent with the earlier objection.

7 **MR. LITCHFIELD:** Just as a matter of  
8 efficiency, perhaps we can simply, as we go through  
9 this, note that other than the objections previously  
10 stated.

11 **CHAIRMAN BROWN:** Yes.

12 **MR. MOYLE:** Or do them all at once, you know.

13 **CHAIRMAN BROWN:** We could do them all at once,  
14 although the way that they've provided me a list,  
15 they're a little piecemeal, so. All right. Let's just  
16 do -- continue. We're going to go ahead and admit 526  
17 at this time into the -- with the exception of Pous.

18 (Exhibit 526 admitted into the record.)

19 Ms. Brownless, can you make this more  
20 efficient for me?

21 **MS. BROWNLESS:** I'm trying. Let's go back to  
22 Exhibit 806 and look --

23 **CHAIRMAN BROWN:** Going back to 806 is actually  
24 going forward.

25 **MS. BROWNLESS:** Okay. I mean return to 806.

1           **CHAIRMAN BROWN:** Okay.

2           **MS. BROWNLESS:** Okay? Now let's find the page  
3 that has Jacob Pous, and it lists the comprehensive --  
4 staff's comprehensive exhibits and the portions that  
5 Mr. Pous sponsored.

6           **CHAIRMAN BROWN:** Okay.

7           **MS. BROWNLESS:** Okay. So you see that's 526,  
8 529 portions, 531, 532, 533, 535, and 536.

9           **CHAIRMAN BROWN:** Right.

10          **MS. BROWNLESS:** We would offer all of the  
11 exhibits on the staff's exhibit list from 527 forward,  
12 with the exception of the items listed that I just read  
13 on the Exhibit 806, into the record at this time.

14          **MR. BUTLER:** Madam Chair, just to confirm,  
15 does that run through 558, Ms. Brownless? At least as I  
16 have it broken up, that seems to be the last of the  
17 staff exhibits.

18          **CHAIRMAN BROWN:** That's what I have.

19          **MS. BROWNLESS:** Our exhibit list goes through  
20 558, yes, sir.

21          **CHAIRMAN BROWN:** That's right. Do you have a  
22 suggestion to do it a little bit differently?

23          **MR. BUTLER:** No. I like that. I just wanted  
24 to be sure I knew -- she said, "to the end," and I  
25 wanted to know what the end number was. So that's

1 great.

2 **CHAIRMAN BROWN:** Okay.

3 **MS. BROWNLESS:** Through 558.

4 **CHAIRMAN BROWN:** So 527 through 558 with the  
5 exception of, and I'd like to be clear rather than refer  
6 to Exhibit 806, so we are entertaining moving in 527  
7 through 558, with the exception of --

8 **MS. BROWNLESS:** 526, items, interrogatories 16  
9 through 24.

10 **CHAIRMAN BROWN:** Continue.

11 **MS. BROWNLESS:** 529, responses 25 to 41, which  
12 is the entire thing would be deleted. 531, entirety  
13 would be deleted. 532, entirety would be deleted. 533,  
14 entirety would be deleted. 535, entirety would be  
15 deleted. 536, entirety would be deleted.

16 **CHAIRMAN BROWN:** Okay. I'm clear. Is  
17 everybody clear? Okay. I'm seeing nods. That's the  
18 question.

19 **MR. LaVIA:** Subject to the same objections;  
20 correct?

21 **CHAIRMAN BROWN:** Yes, subject to the same  
22 objections. But is everybody clear with what is being  
23 moved in?

24 **MR. BUTLER:** Very clear.

25 **CHAIRMAN BROWN:** All right.

1           **MR. MOYLE:** Okay. So what she just read, I  
2 don't know if it's the same, but same objections.

3           **CHAIRMAN BROWN:** Yes. Anything different?

4           **MR. MOYLE:** Do you just want us to say those  
5 as we keep going through, say, "Same, same"?

6           **CHAIRMAN BROWN:** No. We're done. We're  
7 actually done.

8           **MR. MOYLE:** Okay. Oh, we are?

9           **CHAIRMAN BROWN:** We're going to go ahead and  
10 move those in with the exceptions that Ms. Brownless  
11 said.

12                   (Exhibits 527, 528, 530, 534, and 537 through  
13 558 admitted into the record.)

14           And now I think we have no other exhibits to  
15 get to.

16           **MR. MOYLE:** We did it en masse.

17           **CHAIRMAN BROWN:** We did it en masse.

18           **MR. MOYLE:** Okay.

19           **CHAIRMAN BROWN:** All right. So we have some  
20 post-hearing concluding matters to address. Concluding  
21 matters.

22           **MS. BROWNLESS:** I believe that the --

23           **CHAIRMAN BROWN:** Briefs are due on Friday,  
24 September 16th?

25           **MS. BROWNLESS:** Yes, ma'am.



1           **CHAIRMAN BROWN:** Do you want me to read it?

2           **MS. BROWNLESS:** Sure. Thank you.

3           **CHAIRMAN BROWN:** Briefs are due on Friday,  
4           September 16th, and shall not exceed 150 pages, as  
5           stated in the Prehearing Order. The summary of each  
6           position shall be no more than 75 words, with the  
7           exception of seven issues to be chosen at the parties'  
8           discretion that may be up to 180 words. All of that is  
9           in the Prehearing Order as well.

10                   The post-hearing special agenda, as you all  
11           know, is scheduled for Thursday, October 27th, as well  
12           as Tuesday, November 29th. Are there -- does any party  
13           have any additional matters to be addressed?

14           **MR. REHWINKEL:** Madam Chairman, I think I've  
15           probably burned up any bit of goodwill that I have left  
16           here today, but I was just wondering if there's any  
17           leeway we can have on the date of the brief. That's --  
18           we looked at the last few rate cases, and the 13 days  
19           between that was scheduled here, and I don't know how  
20           the weekend and the hurricane is going to turn out, it  
21           gives us not even two weeks to do this brief on a rather  
22           large case.

23           **CHAIRMAN BROWN:** Well, it is a large case. I  
24           will acknowledge that. What are you proposing,  
25           Mr. Rehwinkel?

1           **MR. REHWINKEL:** Well, I would start with an  
2 extra week. I know that your staff is very strapped,  
3 but we would be looking for any relief we can get. That  
4 would be --

5           **CHAIRMAN BROWN:** Even a few days, like a  
6 Wednesday?

7           **MR. REHWINKEL:** That would be -- that would be  
8 much better than what we have.

9           **CHAIRMAN BROWN:** Okay. I'm not going to agree  
10 to that until staff provides some input on it. Staff.

11           **MS. BROWNLESS:** May I have a minute to confer,  
12 Madam Chair?

13           **CHAIRMAN BROWN:** Sure. But, Mr. Rehwinkel, I  
14 don't have a problem giving a few extra days if --

15           **MR. REHWINKEL:** I appreciate that.

16           **CHAIRMAN BROWN:** As long as staff is  
17 comfortable with it.

18           **MR. MOYLE:** And thank you. FIPUG similarly  
19 would appreciate a little more time, so thank you for --

20           **CHAIRMAN BROWN:** So that would be moving it  
21 from briefs going from September 16th to September 21st.

22           **MR. REHWINKEL:** Yes.

23           **CHAIRMAN BROWN:** Are you okay with that?

24           **MS. BROWNLESS:** Our suggestion would be to  
25 give the parties from the 16th, extend it from the 16th

1 to the 19th.

2 **CHAIRMAN BROWN:** Oh, okay. So an extra  
3 weekend.

4 **MS. BROWNLESS:** Yes, ma'am.

5 **CHAIRMAN BROWN:** Well, since staff has to put  
6 a great deal of time as well into this in providing a  
7 recommendation, I think a little bit more relief than  
8 what was already granted by the Prehearing Order. Any  
9 relief would be appreciated, right, Mr. Rehwinkel?

10 **MR. REHWINKEL:** We'll take it. Thank you.

11 **CHAIRMAN BROWN:** Okay. So we are going to  
12 allow briefs to be due on September 19th. Is that okay?

13 All right. Any other additional matters that  
14 need to be addressed?

15 **MR. REHWINKEL:** I've been instructed that from  
16 the Public Counsel's standpoint, and I just want to  
17 renew our objections for the record and I won't say  
18 another word. Thank you.

19 **CHAIRMAN BROWN:** Okay. I really don't know  
20 what that means.

21 **MR. REHWINKEL:** On the -- the objections on  
22 the exhibits, just for the record now that you've ruled.  
23 Thank you.

24 **CHAIRMAN BROWN:** Okay. Well, those have  
25 already been stated. None of the parties need to go

1 over that again.

2 Any other additional matters?

3 Okay. Before I adjourn the hearing, I do want  
4 to give thanks to all of the parties for dealing with a  
5 dynamic hearing that has had a few procedural quagmires  
6 thrown our way. I want to give thanks to our  
7 Commissioners, who have been so patient and attentive  
8 throughout the proceeding.

9 Most importantly, I want to give thanks to our  
10 staff. You guys have worked around the clock. I know  
11 the parties have as well, but you -- I really can't  
12 appreciate -- I cannot give thanks enough to you all for  
13 helping run such an efficient process, given all the  
14 things that we've been dealt with at this time. You've  
15 done a really fine job and I appreciate it. Parties,  
16 thank you. It was a very fun two weeks. I appreciate  
17 it.

18 Commissioners, any closing words?

19 **COMMISSIONER PATRONIS:** Be safe.

20 **CHAIRMAN BROWN:** Be safe.

21 **COMMISSIONER GRAHAM:** Happy Labor Day.

22 **CHAIRMAN BROWN:** Safe trails. Thank you.

23 (Proceeding adjourned at 12:18 p.m.)  
24  
25

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 6th day of September, 2016.

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23  
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25  


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