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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20170007-EI

ENVIRONMENTAL COST RECOVERY
CLAUSE.

VOLUME 4
PAGES 476 through 599

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK

DATE: Thursday, October 26, 2017

TIME: Commenced at 1:30 p.m.
Concluded at 8:35 p.m.

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

REPORTED BY: DANA W. REEVES
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

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

2 (Transcript follows in sequence from Volume
3 3.)

4 CHAIRMAN BROWN: All right. We are back on
5 the record at this time in the 07 docket. And
6 before we get to Mr. Cavros, I want to thank you
7 for distributing those documents in advance. I
8 believe we have a preliminary matter to address
9 regarding the prior '09 -- prefiled 2009 prefiled
10 testimony. Does FPL want to address that at this
11 time?

12 MS. CANO: I'm happy to. We provided copies
13 of the 2009, 2013, 2015 and 2016 testimony that was
14 previously filed on this matter to staff to copy.
15 In some instances it was excerpts because other
16 environmental cost recovery projects were also
17 discussed so it's just the excerpts related to
18 project 42 and we have no objection if OPC would
19 like those to be entered into the record.

20 MR. REHWINKEL: Madam Chairman, I can confirm
21 that we are in agreement with the portions of the
22 testimony that FPL has provided to staff and we
23 would stipulate to those going into the record at
24 your pleasure.

25 CHAIRMAN BROWN: So we don't have them in

1 front of us. Staff.

2 MR. MURPHY: Any minute. They're being copied
3 and staff will bring them back.

4 CHAIRMAN BROWN: Okay, because I will end up
5 marking them as an exhibit. Yes, please. Thank
6 you. All right. Thank you so much.

7 So we're going to go ahead right now and mark
8 as Exhibit 75, and this title -- and it will be
9 distributed to commissioners in a moment -- is the
10 2015 ECRC Keith and Labauve testimony excerpts.

11 MR. REHWINKEL: I think it's '09, '13, '15 and
12 '16.

13 CHAIRMAN BROWN: I thought '09 would be in
14 there. Oh, well. We tried. Looks like there's --
15 okay. So we'll hold off. Strike that. When --
16 staff, when you have those excerpts -- Mr. Murphy,
17 when you have those excerpts ready, will you please
18 let us know so that we can mark them for
19 identification?

20 MR. MURPHY: We will.

21 CHAIRMAN BROWN: We're just going to proceed
22 right now with Mr. Cavros.

23 MR. MURPHY: Thank you. Thank you.

24 CHAIRMAN BROWN: All right. There are no
25 other preliminary matters to address?

1 The uprate, as a result of it being a siting act, was a
2 project that would potentially go before the Governor
3 and Cabinet, depending upon whether there was objections
4 from third parties. In this case, I was briefed
5 routinely on the uprate issues, inclusive of concerns
6 about whether or not the cooling canal system was
7 contributing to any additional hypersalinity were
8 discussed and vetted and there was even discussion about
9 specific provisions of the monitoring that were
10 required.

11 **Q And there was discussion or concern at that --**
12 **during those meetings expressed about what impact the**
13 **uprate might have on the cooling canal system and,**
14 **therefore, the salinity in the cooling canals?**

15 A Candidly, my recollection at the time was it
16 was less concern about the impact of the uprate, more
17 concerned about was the cooling canal system actually
18 performing as originally planned and not having salinity
19 or saltwater beyond the boundaries of the cooling canal
20 system. There were -- I don't want to diminish the
21 issue that you raised. There were discussions about
22 whether or not the uprate and the added heat load would
23 increase potential salinity in the cooling canal system
24 at the time, as well, and that's why there was specific
25 conditions in the permit there to address and identify

1 any impacts associated with that.

2 Q And when did you leave DEP, Mr. Sole?

3 A I want to say September 2010.

4 Q And when did you go to work for Florida Power
5 & Light?

6 A October 2010.

7 Q And during your time at the department, it's
8 fair to say you made some significant -- you built some
9 relationships both personal and professional with the
10 staff there?

11 A At FDEP? Yes. I would say mostly
12 professional, but some personal.

13 Q Okay. Can you describe the cooling canal
14 system for, you know, to me and maybe, you know, for the
15 benefit of the Commission? What's the purpose of it?

16 A The purpose of the cooling canal system is to
17 provide cooling water for -- at the time, Units 1
18 through 4. The cooling canal system is roughly 5,900
19 acres, I mean, it's a significant area, and basically
20 acts as a radiator. So the cooling water comes into the
21 plant, cooling plant infrastructure, providing cooling
22 water for condensate, et cetera. That water, which is
23 now heated, is returned to the cooling canal system, and
24 similar to a radiator the water is diffused down the
25 cooling canal individual canals themselves. By the time

1 that water is returned, which takes roughly 48 hours of
2 travel time, the water is back to a temperature
3 appropriate for pouring its cooling design.

4 Q And you would -- in that description it
5 certainly seems like movement of the water through the
6 cooling canal is an important component of the design of
7 the system, is that correct?

8 A Yes, it is.

9 Q Okay. And, you know, there's clearly an
10 interaction between the cooling canal system and
11 groundwater. I think that goes without saying, but just
12 would you confirm that?

13 A There is -- yes, I can confirm that.

14 Q Okay. And you knew that back in 1978, or at
15 least the company did, or the entities involved in the,
16 you know, in the contract of the cooling canal, is that
17 right?

18 A Yeah. Again, it was 1972 that the agreement
19 was established and acknowledging there would be
20 interaction with groundwater and the need for an
21 interceptor ditch or a barrier to be designed to prevent
22 migration.

23 Q Yeah. I'd just like to cover sort of a few
24 high-level hydrological concepts. I think it would be
25 helpful to me and maybe to the Commission. You know, so

1 I guess the first one is that water within the cooling
2 canal, it evaporates. That's part of the cycle of the
3 water in the canal, is that correct?

4 A That is part of its cooling function, yes.

5 Q And as the water gets hotter in the cooling
6 canal system, all other things being equal, the water
7 that remains in the system becomes more salty, right?

8 A Yes.

9 Q And water that has a higher concentration of
10 salt than surrounding water will tend to sink, is that
11 correct?

12 A Water that has a higher concentration of salt
13 is more dense, and all else being equal, would sink.

14 Q And the hypersaline water, and I'm not
15 referring to the saline saltwater intrusion, but the
16 hypersaline water in the groundwater, that's what we've
17 been referring to as the plume, is that right?

18 A That is correct.

19 Q And that hypersaline plume is part of a larger
20 saltwater mass that can be referred to as the saltwater
21 intrusion line or the saltwater interface?

22 A Mr. Cavros, I'm not sure I can call it a
23 saltwater mass. I would prefer to -- I call it a
24 saltwater wedge. So the saltwater intrusion on the
25 coast routinely forms a wedge-like feature being higher

1 as you go away from -- or as you -- excuse me. Try this
2 again. Sinking as you go away from the coast because of
3 both the density, as well as the pressures of the fresh
4 water aquifer pushing back, but instead of a push that's
5 parallel and vertical. It's more of a push that is kind
6 of in a wedge shape or diagonally.

7 **Q And we've -- I believe Mr. Rehwinkel covered**
8 **this, but in the -- in the CO, that states that the**
9 **cooling canal system is a major contributing cause to**
10 **the continuing westward movement of the saline water**
11 **interface, is that correct? That's at MWS-12, page 527.**

12 A Yes, that is correct.

13 **Q And how would you describe thermal efficiency?**

14 A So thermal efficiency is identifying the
15 cooling capacity of the canal system itself. So the
16 simple definition is and the terminology we use is
17 Delta-T. What's the change in temperature? Is the
18 change in temperature adequate and above a certain
19 percentage. Our obligation of the consent order is to
20 maintain the thermal efficiency of the cooling canal
21 system at around 70 percent.

22 **Q Okay. And would you agree that water**
23 **freshening or adding water to the cooling canal system**
24 **improves thermal efficiency?**

25 A Volumetrically, depending upon the conditions

1 at the site -- well, let me back up. It depends. If
2 there's adequate water in the system, adding more water
3 doesn't necessarily have a significant effect, I
4 believe, on the thermal efficiency. If you're in a
5 low-water condition, adding additional water would have
6 a greater effect.

7 Q Okay. And certainly I think you can agree
8 that water freshening or adding water to the cooling
9 canal system that's less saline than the water in the
10 cooling canal system at the time improves or helps
11 mitigate the groundwater hypersaline plume?

12 A Yes. Freshening the cooling canal system is
13 anticipated to also improve the groundwater conditions
14 over a significantly longer period of time.

15 Q Okay. And you had a deposition a few weeks
16 ago. You might recall it. And I asked you this
17 question, and it was: When did FP&L have its first
18 evidence or indication that the cooling canal system was
19 contributing to the groundwater salt concentrations that
20 were increasing through time in the Biscayne Aquifer
21 west of the cooling canal system? And at that time you
22 told me that around 2012, and you referenced a
23 pre-uprate report, but I'll let you -- you know, is
24 that's not what you recall, you tell me.

25 A No. The first indication of increased

1 salinity, and I believe my answer was it was evident in
2 the 1978 report of increased salinity. I think the
3 clarity in trying to understand the question of at what
4 point did we realize there was a hypersaline plume as a
5 result of the cooling canal system, that wasn't until
6 2012. There are 2012 data that was presented.

7 **Q Yeah. That was actually the intent of my**
8 **question. I meant to say, if I did not say it, that the**
9 **CCS was contributing to that westward movement. And so**
10 **you said first evidence. Evidence, you mean through a**
11 **report, is that correct?**

12 **A Yes. And Mr. Rehwinkel, I think, brought that**
13 **up as exhibit -- apologize -- Exhibit 70. This was the**
14 **1978 Dames and Moore salinity valuation. When you go**
15 **through the record it clearly identifies increases in**
16 **salinity in around or adjacent to the cooling canal**
17 **system.**

18 **Q But the first evidence you had would be in**
19 **2012 of the CCS's contribution to that westward**
20 **movement, is that correct?**

21 **A The westward movement of what? I'm sorry.**

22 **Q Sure. Sure. Sure.**

23 **A It's where it gets very important.**

24 **Q Yes, and absolutely. I understand that. The**
25 **CCS was contributing to groundwater salt concentrations**

1 **that were increasing through time in the Biscayne**
2 **Aquifer.**

3 A No, that would still be 1978. If --

4 **Q Okay.**

5 A If I may -- can I try to answer the question?
6 It wasn't until 2012 that there was evidence to discern
7 that the increased concentrations as a result of the CCS
8 were contributing to potential -- we talked about that
9 GII-GIII aquifer changes where the GII is the potable
10 aquifer and the GIII is a non-potable aquifer. So at
11 that time nowhere prior to really the 2013 review of the
12 data in 2012 was it evident that we were contributing to
13 "harm" to the environment as a result of the operation
14 of the CCS, and that harm being the impairment of the
15 reasonable and beneficial use of an adjacent aquifer.

16 **Q Okay. So that's the criteria that you used to**
17 **answer the question, and that is impact to the to GII**
18 **aquifer, is that correct -- or GII waters?**

19 A That is what I am answering, yes.

20 **Q Okay. When did -- okay. Let me get back to**
21 **the GII-GIII waters. When the cooling canal was first**
22 **built on the land that it was built, underneath the**
23 **cooling canal system, were those GII waters at the time?**

24 A Those were not.

25 **Q Okay. How far out did GII waters extend at**

1 **that time, if you recall?**

2 A So I know there's an exhibit on the
3 comprehensive exhibit list, and I don't remember the
4 number, but there is a Golder 2011 report that was done
5 on behalf of FPL and the Water Management District and
6 in that report, if you turn to page 26 of 48, it shows
7 the extent of --

8 Q **And I'm --**

9 A -- the GII-GIII --

10 Q **And I apologize. Is that an exhibit that --**
11 **in your testimony?**

12 A It's in the comprehensive exhibit list,
13 number --

14 Q **I apologize. Okay.**

15 MS. CANO: May I, for clarity, just ask that
16 the witness read the header on the document? I
17 think it reveals the interrogatory number.

18 THE WITNESS: Sure does. Staff's Third Set of
19 Interrogatories, Interrogatory No. 54. Attachment
20 No. 1.

21 MS. CANO: And for the record, this is in the
22 comprehensive exhibit list as Exhibit No. 61.

23 CHAIRMAN BROWN: Thank you. That's helpful.

24 BY MR. CAVROS:

25 Q **Go ahead. Thank you.**

1 A So this Golder 2011 study, Mr. Cavros, used
2 the data that was collected in 1972 and some in 1973 to
3 help establish the extent of saltwater intrusion and
4 inclusive of that they identified basically the extent
5 of conductivity, which can be calculated to the total
6 dissolved solids. There is a conversion. And as you
7 look at, as an example, the 60-foot contour, that's the
8 line that I tried to draw on the OPC demonstrative
9 behind me, which was well west of Tallahassee Road
10 through a significant portion of it, especially south of
11 the southern end of the cooling canal system.

12 Q **So my question -- maybe I didn't ask it in a**
13 **good way, or maybe there's a better way. Did that**
14 **GII-GIII line move over time?**

15 A So a GII-GIII aquifer is really a designation
16 based upon the concentrations that are in the aquifer at
17 the time. So it does move. It is defined by 62.520,
18 Florida Administrative Code, which is DEP rule on water
19 quality, and it is defined by primarily the
20 concentration of total dissolved solids at 10,000
21 milligrams per liter of total dissolved solids. The
22 aquifer is expected to be non-potable and no -- no
23 potential that it could become non-potable. At that
24 level it's a GIII aquifer. Aquifers that are in the
25 range of 3,000 to 10,000 milligrams per liter total

1 dissolved solids are also potentially GIII non-potable
2 aquifers, but there has to be some demonstration that it
3 is not expected that it could be used or would not
4 expect it to be used. Does that answer your question?

5 Q It was informative, but not technically.

6 A Sorry.

7 Q And that's all right. The question was: Did
8 the GII -- was helpful to know that DEP sets the water
9 quality standards, and I assume that the agency has some
10 way of knowing what is a GII -- what are GII waters and
11 GIII waters and there's probably some line of
12 demarcation. And my question is: Did that line move
13 further west over the course of the operation of the
14 cooling canal system?

15 A I think I understand your question. I'm going
16 to cheat ahead a little bit. So in 1983, Department of
17 Environmental Protection did a GIII designation at the
18 cooling canal system that confirmed that anything
19 underneath the cooling canal system -- I'm just
20 oversimplifying -- that any underneath the cooling canal
21 system was a GIII designated aquifer. It basically
22 establishes on a discharge. It did not establish the
23 delineation of the GII-GIII boundary. The GII-GIII
24 boundary is what the physical conditions of the water
25 are and does change over time, dependent upon the

1 numerous conditions that are influencing it.

2 **Q So then it's safe to say that GII-GIII line**
3 **did move further west over time?**

4 A I don't know. And my difficulty is it is
5 presumed to have moved west based upon the findings of
6 fact of the administrative law judge, and based upon the
7 findings of the Department of Environmental Protection
8 in the notice of violation, but as I think we pointed
9 out, there was a need to better understand what was
10 going on, and FPL is also obligated to do an additional
11 study that I think I've talked about that helps identify
12 that extent of the landward extent of the saltwater
13 intrusion.

14 **Q Okay. I think you answered the question.**
15 **Thank you. You would agree that also the CCS is subject**
16 **to seasonal changes and I think you even -- that's in**
17 **your testimony, weather patterns and things like that?**

18 A I would agree that it is influenced by
19 seasonal variation, yes.

20 **Q And you would also agree that over time those**
21 **seasonal variations tend to form -- you have data points**
22 **on which you can form patterns over, you know, regarding**
23 **those variations and its impact on salinity?**

24 A Yeah. My testimony does point out that there
25 is seasonal variation in the cooling canal system

1 salinity based upon the wet season and the dry reason
2 and is also influenced by more-significant annual events
3 such as drought.

4 **Q And the question was: Based on that data that**
5 **as an operator of the cooling canal system, Florida**
6 **Power & Light could establish, based on those data**
7 **points, a model or at least identify a pattern regarding**
8 **how the cooling canal impacts groundwater salinity?**

9 A I'm not sure I understand the question, Mr.
10 Cavros. I know there is a saltwater balance model that
11 FPL has and understanding the inputs and the outflows of
12 the cooling canal system, which is inclusive of the
13 outputs to groundwater, the outputs to evaporation and
14 the inputs associated with rain and now the inputs
15 associated with additional fresh water inputs that FPL
16 has been doing since 2015. Is that the model you're
17 referring to?

18 **Q That's helpful, yes, because it is seasonal.**
19 **You mentioned that the water sometimes -- the**
20 **underground water sometimes moves further out and**
21 **sometimes comes back in. And, you know, at some point**
22 **there's got to be a shifting base line. You know, the**
23 **water is incrementally moving further west as that, you**
24 **know, some of these demonstratives have shown.**

25 A But you would think that would be the case,

1 but it's worth noting that the saltwater intrusion line
2 which is basically the western-most extent of saltwater
3 intrusion, it's not the GII-GIII definition, it's really
4 just that western extent of, in this case, usually 1,000
5 milligrams per liter of total dissolved solid. That
6 saltwater intrusion line comes east and west over time,
7 even in the area that we're speaking of near the
8 vicinity of the Turkey Point Cooling Canal System. I
9 know that in another witness's documents there is a
10 reference to a prony report that shows, yes, over -- and
11 I think it was as late as 2014 -- there is areas where
12 the saltwater intrusion line has moved eastward in
13 Miami-Dade County, and there is areas where it has moved
14 west. And even in southern Miami-Dade County in the
15 vicinity of the cooling canal system, there is some
16 areas where it actually moved seaward instead of
17 westward or landward.

18 So there is not always a trend of it's always
19 going west, I think is the question I think you were
20 asking me, Mr. Cavros. And to the contrary, no, it
21 depends upon the influences. In many cases in the
22 Miami-Dade report, it's very clear that the groundwater
23 well withdrawals have had significant influence on
24 migration of saltwater intrusion line and in order to
25 mitigate that, well field operators either had to reduce

1 or shut down wells and you see a retraction as a result
2 of that. So it's a lot more nuance than I think you've
3 put it. And I'm sorry for a long answer.

4 Q That's quite all right. I was referring to
5 the hypersaline plume, not necessarily saltwater
6 interface, so --

7 A I apologize.

8 Q When did the company first consider taking
9 action to mitigate the plume spreading to the west?

10 A Immediately upon consultation of -- or
11 consultation request by the South Florida Water
12 Management District in April 2013.

13 Q Now would be a good time to go to exhibit --
14 the exhibit entitled 2010 GeoTrans feasibility study
15 excerpt.

16 CHAIRMAN BROWN: Okay. So we're going to go
17 ahead and mark that right now for identification
18 since we did not use 75. We're going to mark that
19 as Exhibit No. 75. Again, that's 2010 GeoTrans
20 feasibility study excerpt. Hope you got that.

21 (Whereupon, Exhibit No. 75 was marked for
22 identification.)

23 THE WITNESS: I was looking at OPC's. I'm
24 sorry.

25 MR. CAVROS: And this was provided in

1 discovery in 2016 by FPL to OPC's Third POD.

2 THE WITNESS: Correct.

3 MR. CAVROS: Number 45.

4 THE WITNESS: I thought you were talking --
5 sorry.

6 BY MR. CAVROS:

7 Q So I did not print the whole report. It was
8 about 150 pages, but would you agree that this is an
9 excerpt from the 2010 GeoTrans feasibility analysis?

10 A I do.

11 Q And this was conducted on behalf of FPL?

12 A It was.

13 Q And what's the date on this analysis?

14 A August 11, 2010.

15 Q And do you see that this is stamped attorney
16 work product?

17 A I do.

18 Q Okay. And do you understand what the attorney
19 work product doctrine is?

20 A Generally I understand what the attorney work
21 product doctrine is.

22 Q Okay. Do you understand it to mean that the
23 study was prepared with an eye towards sort of a
24 realistic possibility of impending litigation?

25 A That is one of the provisions, but I don't

1 believe it's the extent of the attorney work product
2 obligation. Obligation is not the right word, but
3 requirements.

4 Q All right. Well, I won't argue what it is or
5 it is not.

6 A Thank you.

7 Q But the -- we'll just leave it at that. So
8 who is the attorney that was overseeing the development
9 of this study?

10 A I don't know at the time.

11 Q But there obviously was an attorney involved?

12 A There would be an attorney involved in order
13 to have something doc stamped attorney work product,
14 yes.

15 Q Yeah. And do you know that the documents that
16 are stamped with attorney work product are generally not
17 discoverable?

18 A Because you used the word generally, I tend to
19 agree, but they are discoverable depending upon defense
20 that you put, but, again, I'm a biologist, not a lawyer
21 so I think I've exceeded my thorough knowledge of this.

22 Q That's very good. I didn't think you'd know
23 the exception, but you're right. So what pending -- I
24 mean, what litigation, you know, was the company eyeing
25 when it developed this document?

1 MS. CANO: Madam Chairman, I'm going to object
2 on the basis of relevance. Whether this was work
3 product in 2010 or not, it isn't anymore. So I'm
4 not sure --

5 CHAIRMAN BROWN: The relevancy.

6 MS. CANO: -- the purpose or the relevance of
7 this line of questioning.

8 CHAIRMAN BROWN: Mr. Cavros.

9 MR. CAVROS: Yes. It's relevant because, you
10 know, the witness testified that they did not, you
11 know, consider taking action until the South
12 Florida Water Management District called them in in
13 2013, and obviously there was -- not obviously, but
14 certainly this document indicates that there was
15 something moving them to action, and I'm trying to
16 kind of discern what that something was.

17 CHAIRMAN BROWN: I see -- Mr. Rehwinkel.

18 MR. REHWINKEL: Mr. Cavros is entirely on
19 point. This is relevant to some of the testimony
20 and goes to the creditability of statements they
21 made about when they knew what they knew.

22 MS. CANO: May I respond briefly?

23 CHAIRMAN BROWN: Yes.

24 MS. CANO: If you'd like to ask the witness
25 why this report was undertaken, that's fine. It's

1 just the continued discussion about the basis for
2 work product at the time that I don't understand.

3 CHAIRMAN BROWN: Mr. Cavros.

4 MR. CAVROS: I think it's at least -- if the
5 witness doesn't know, I think that's okay, but I
6 think I'm entitled to at least ask and if, you
7 know, if what pending litigation there might have
8 been, you know, I think it goes to why this
9 document was created. Without knowing that, you
10 know, it's --

11 CHAIRMAN BROWN: I'll allow the question.

12 MR. CAVROS: Thank you.

13 THE WITNESS: Well, first, to be clear, since
14 my answer I still stand by, we considered taking
15 action after the April 2014 -- or '13 letter. The
16 evaluation of options did occur well prior to that
17 and the evaluation of options was as a result of
18 the 2009 conditions of certification that said,
19 hey, there may be a problem and it is normal course
20 for FPL to evaluate options in the front of it as a
21 result of conditions and to determine whether or
22 not if there is a problem what actions would be
23 prudent and reasonable to take.

24 BY MR. CAVROS:

25 Q Okay. So I'll ask the question again. I

1 understand you were reviewing options, but was there
2 something other than just reviewing options that was
3 driving this report, like pending litigation?

4 A I'm aware of no pending litigation that was
5 driving this report.

6 Q If you could look at the second paragraph
7 starting on the second sentence, it describes a little
8 bit what the objectives of the study were and I'll read
9 it into the record. Alternative -- and I apologize.
10 I'm on the executive summary, small I. And the second
11 sentence in the second paragraph begins, alternatives
12 for two separate objectives were evaluated. One,
13 stopping the westward migration of saltwater, a portion
14 of which originates from the CCS.

15 So let me stop there for a second. The
16 consultants that you hired, GeoTrans, that are
17 developing this feasibility analysis, are going -- are
18 moving forward on the basis that the western migration
19 of saltwater, that some of that originates from this,
20 from the cooling canal system, is that correct?

21 A Yes. That's what is written here, that some
22 of that is resulted from the cooling canal system.

23 Q Okay. And then the second objective is
24 preventing hypersaline water from being added to
25 groundwater at the CCS source. It reads to me like the

1 consultants are going on the fact that there was
2 hypersaline water being added to the groundwater from
3 the cooling canal system, that's correct, isn't it?

4 A Yeah. In 2010 salinities that were identified
5 and based upon the monitoring that was begun showed that
6 there was hypersaline water.

7 Q Okay. And if you could turn the page to the
8 second page of the executive summary. There's two I's
9 at the bottom.

10 A I'm there.

11 Q And the second full paragraph of that page
12 reads: Reducing concentrations in the CCS -- freshening
13 the CCS by adding relatively low concentration Floridan
14 aquifer water was the most effective solution to those
15 analyzed. The modeling indicates an addition of 18
16 million gallons a day of water containing less than ten,
17 you know, GL salinity would reduce concentrations of the
18 CCS water to that of sea water in a period of three
19 years. Do you have any reason to believe that that
20 conclusion is misplaced?

21 A I haven't evaluated the specific models
22 associated with that, but having said that, no, I don't
23 have any reason to believe that the conclusion is
24 misplaced. The conclusion is very similar to what was
25 eventually proposed by FPL to DEP and the Water

1 Management District early on as early as 2013 when we
2 initiated consultation.

3 Q And, lastly, if you could turn to page two.

4 A Two proper? Thank you.

5 Q Yes. Two proper. And at the very top, that
6 very first sentence, it says: The rapid time frame and
7 complexity of the project. What do you think they meant
8 there be the rapid time frame?

9 A I'd have to actually review more of the
10 document to get a better sense of what they are
11 inferring. If they're --

12 CHAIRMAN BROWN: Mr. Cavros, I have a question
13 for while you're going over this document. So it
14 looks like it's a draft. Is this a final work
15 product? At the bottom on the opposite side of the
16 Bates stamp it says 8-11-2010 draft. Do you have a
17 final copy of the GeoTrans feasibility study?

18 MR. CAVROS: I do not have a final copy.

19 CHAIRMAN BROWN: It's kind of hard to rely on
20 this with the language draft. I assume you're
21 going to want to move this into the record.

22 MR. CAVROS: I will want to move this into the
23 record with the understanding that it's a draft.

24 CHAIRMAN BROWN: I mean, how do we know that
25 this is the final form -- version?

1 MR. CAVROS: Well, we -- I do not have the
2 final version. This was the version that was
3 provided in a discovery response to OPC.

4 CHAIRMAN BROWN: I'm fine with the questions
5 that you've been asking. I just -- it's hard for
6 us to rely on something with language that says
7 draft on it. Did you understand my point?

8 MR. CAVROS: No, and I absolutely do and
9 certainly the Commission can give it the weight it
10 feels it deserves.

11 CHAIRMAN BROWN: You can continue with your
12 questions.

13 BY MR. CAVROS:

14 **Q Actually, that's all I had for that document.**
15 **But you said, you know, in fact, you did start to**
16 **discuss freshening options in 2013, and I believe at**
17 **some later date they were even incorporated into the**
18 **administrative order and you actually began the**
19 **infrastructure to freshen the canals, is that correct?**

20 A That is correct.

21 **Q Did you do any freshening in 2011?**

22 A No.

23 **Q Or 2012?**

24 A No.

25 **Q Or 2013?**

1 A I believe we initiated efforts to freshen. I
2 just don't recall actually completing anything.

3 **Q Prior to this draft report, did you do**
4 **freshening in 2009?**

5 A No.

6 **Q 2008?**

7 A Prior to this -- that, there has been no
8 freshening. Inputs have been largely weather -- largely
9 have been weather driven and I want to say it was
10 roughly 1976. FPL originally had a provision in the
11 consent decree or settlement agreement with the U.S.
12 Department of Justice that would allow us to maintain or
13 freshen the cooling canal system by discharging to
14 Biscayne Bay and taking on clean or new water from
15 Biscayne Bay. As a result of review by regulatory
16 agencies, that was eliminated from our ability to do so.

17 **Q But that was to discharge water, not to add**
18 **water to the system, just to be clear?**

19 A Discharging would have added water to the
20 system. Again, it's a -- it's not too complex, but it's
21 a integrated system with the groundwater. If you lower
22 the levels, the groundwater and seepage is going to
23 raise it to the same or generally same condition as the
24 bay.

25 **Q And what was the date of that agreement?**

1 A What agreement are you referring to? United
2 States Department of Justice settlement agreement?

3 **Q Yes.**

4 A 1971.

5 **Q Seventy-one. So since -- from 1972 to**
6 **approximately 2013, FP&L never undertook any freshening**
7 **activities at the cooling canal system, correct?**

8 A I'm sorry. The dates. I may have to trip a
9 little bit. I believe the cooling canal system was
10 still open in 1972, as well as still open in 1973 or a
11 majority of '73 and I think it finally closed -- was a
12 full closed-loop system either in '73 or '74.

13 **Q Okay.**

14 A To simplify, their cooling canal system,
15 through a majority of its operation until more recently
16 in 2014, has been balanced by weather, rain primarily,
17 as well as groundwater inputs.

18 **Q Yeah. I mean, I think we've established it's**
19 **a weather-dependent system, right, and that FP&L also**
20 **again -- I don't know if I got the answer I was looking**
21 **for, but --**

22 A I don't know what answer you're looking for.

23 **Q Sure. The very last question. FP&L did not**
24 **proactively take any actions to freshen the canals prior**
25 **to --**

1 A 2013.

2 Q Thirteen. Thank you. I think now might be a
3 good time to go to the 2015 ECRC Keith and Labauve
4 testimony excerpts.

5 CHAIRMAN BROWN: All right. We will go ahead
6 and mark that as Exhibit No. 76. That's the 2015
7 ECRC Keith and Labauve testimony excerpts.

8 (Whereupon, Exhibit No. 76 was marked for
9 identification.)

10 THE WITNESS: I apologize. What was the
11 GeoTrans study exhibit number?

12 CHAIRMAN BROWN: Seventy-five.

13 THE WITNESS: Thank you, ma'am.

14 CHAIRMAN BROWN: You are welcome.

15 BY MR. CAVROS:

16 Q So, Mr. Sole, if I could just point your
17 attention to what is labeled at the bottom page ten. I
18 think it's the third, fourth page in.

19 A I'm there.

20 Q Okay. And this is testimony by Randy Labauve,
21 or an excerpt from it anyway, from the 150007 docket
22 describing the current status of the Turkey Point
23 Cooling Canal Monitoring Project, and it states on the
24 second sentence, additionally beginning in 2014 and
25 continuing in 2015, FPL has undertaken activities to

1 deliver new sources of water and remove sediment both
2 directed at reducing the salinity of the CCS. And that
3 would confirm your earlier statement that, you know,
4 freshening activities took place after 20 --

5 A Thirteen. After 2013.

6 Q After 2013?

7 A Yes.

8 Q Okay. And then if I could ask you to look at
9 just an excerpt from Terry Keith's testimony, and
10 actually we're going to go to the very last page of that
11 testimony. And that very first sentence -- well, let me
12 read it --

13 MS. CANO: Mr. Cavros. I apologize. You said
14 the very last page of --

15 MR. CAVROS: I'm sorry. Yes. It would be --
16 it would say at the bottom, page 68.

17 MS. CANO: Okay. It says page 68 at the
18 bottom, you said?

19 MR. CAVROS: Yes.

20 MS. CANO: Thank you.

21 MR. CAVROS: Okay. Sure.

22 CHAIRMAN BROWN: It's the last page.

23 BY MR. CAVROS:

24 Q In order to restore CCS design conditions FPL
25 is conducting maintenance dredging in the CCS. This

1 dredging will restore design flow distribution and
2 connectivity between the CCS and surrounding
3 groundwater. Modeling performed for FPL to evaluate its
4 AO compliance strategies shows restoring the design flow
5 distribution, thereby reducing overall CCS temperature
6 and evaporation rates and reestablishing connectivity
7 between the CCA and groundwater are essential to
8 creating conditions in which the lower salinity level is
9 required by the AO are realistically achievable. Do you
10 see that?

11 A I do see that.

12 Q All right. Do you have any reason to not
13 agree that the CCS design conditions needed to be
14 restored in 2015?

15 A No, I don't. I do know that as we've operated
16 the cooling canal system prior to the 2014 period, we
17 continued to look at thermal efficiency and thermal
18 efficiency was actually above the 70 percentile even up
19 until, I want to say, the 2013 time frame, but it wasn't
20 until we had conditions of extreme drought, of
21 significant algal bloom that degraded water quality and,
22 candidly, some low flow conditions as a result of the
23 uprate that suddenly we saw this reduction in thermal
24 efficiency. It was a rapid reduction. And up until --
25 I believe it was -- I know we provided answers in

1 interrogatory on this. I believe it was thermal
2 efficiency was good up until the 2014 period and we had
3 a significant change in thermal efficiency, and as part
4 of that was the need to go ahead and address that
5 through this effort and was dedicated -- or identified
6 under the administrative order that this was going to be
7 a needed activity, or a potentially-needed activity
8 under the salinity management plan.

9 **Q Had FPL conducted dredging maintenance**
10 **activity prior to 2015?**

11 A Yes. I'm aware of some of the management
12 occurring in the past. You asked this in deposition and
13 then, darn it, I forgot to validate, but I know -- I
14 don't recall the frequency and how often it occurred,
15 but I do know that sediment management has occurred in
16 the past.

17 **Q And I know that you said you didn't look back**
18 **to see what that answer might be, but was there a**
19 **protocol with the operation of the system that it needs**
20 **to be dredged every so often? Are you aware of any?**

21 A Protocol is the term they trip on. You know,
22 I apologize, but I know that there was -- I would say
23 more routine maintenance of the sediment in the past.
24 The need -- or continued need to do that apparently
25 ceased. The important thing is that we monitored

1 thermal efficiency in this system up and until roughly
2 the 2014, and I believe it was '14. It may have been
3 '13, George -- or Mr. Cavros -- that thermal efficiency
4 was fine. We didn't have a thermal efficiency issue
5 until recent events unfolded.

6 **Q Okay. But you would agree that as you said**
7 **earlier, keeping the water flowing in the canal is**
8 **important, and I think you would agree that dredging is**
9 **an important component to water movement?**

10 A I think the appropriate terminology is --
11 apologize -- yes. But I think the appropriate
12 terminology is maintaining thermal efficiency is the
13 appropriate thing we need to focus on. You can maintain
14 thermal efficiency multiple ways, and while sediment
15 management is one of the ways that we have, the system
16 continues to change and you need to adapt to those
17 changes. As an example, we used to have four units
18 running at the site. Now we only have two units running
19 so we have significantly less heat input and less flow.
20 So it may or may not be beneficial to sediment remove or
21 maintain at all times. So I'm just -- I'm just hesitant
22 to say, yes.

23 **Q I understand. But as a general rule?**

24 A As a general rule I'm saying, yes.

25 **Q Okay. And can we agree that as a general rule**

1 at times of low flow, freshening is also beneficial to
2 the system?

3 A I don't know what low freshening is.

4 Q And I apologize. I did not define low flow.
5 I think I heard you say it, but in times of low
6 weather -- of low rain periods.

7 A I think I understand. Well, let me be clear
8 in my answer. It's been demonstrated that freshening
9 the cooling canal system is a needed requirement of FPL
10 and that's established in not only the consent order,
11 but also established in the administrative order and
12 acknowledged in the consent agreement with Miami-Dade
13 County.

14 Q Okay. I think now might be a good time to go
15 to the next exhibit, 2009 ECRC, Goorland New Projects.

16 CHAIRMAN BROWN: We're going to go ahead and
17 mark that as Exhibit 77. Again, that's the 2009
18 ECRC Goorland New Projects.

19 (Whereupon, Exhibit No. 77 was marked for
20 identification.)

21 CHAIRMAN BROWN: You've got a copy of it, Mr.
22 Sole?

23 BY MR. CAVROS:

24 Q So, Mr. Sole, there was a lot of conversation
25 earlier this morning with Mr. Rehwinkel regarding the

1 language in the 2009 order and what essentially the
2 Commission agreed to and what they did not agree to. Do
3 remember that conversation?

4 A I remember some of that conversation, yes.

5 Q Okay. If you could turn to the second to
6 last -- second-to-last page. And maybe we ought to
7 just -- maybe we ought to just identify the document
8 first. This was filed in the 09 docket. It is a
9 preliminary list of new projects. It was filed by Scott
10 Goorland. He used to be an attorney at DEP, did he not?

11 A He was.

12 Q And the second-to-last page -- I apologize.
13 It says page two of three at the bottom. It lists the
14 cost of the project in 2011, 2012, 2013, 2014 and 2015.
15 You know, if you add that up, you know, over the course
16 of those years, I would estimate you're looking at about
17 four-and-a-half thousand -- four-and-a-half million,
18 five million dollars. Would you say that's correct,
19 subject to check?

20 A I say that's close enough, subject to check,
21 yes.

22 Q And, you know, it's indicated in your
23 testimony that -- I think it was Exhibit 14 that the --
24 and maybe we should turn to it -- the cost of the
25 project the next ten years. If you know what it is, you

1 can just tell me because I've forgotten.

2 A 176 million.

3 Q Thank you. And that doesn't include the
4 amount that are being recovered in 2016, and I believe
5 that would put it slightly over 200 million. Do you
6 think the Commissioners in 2009, when they saw these
7 numbers, agreed to an additional 200 million for the
8 next ten years?

9 A No. I think the Commissioners approved the
10 project and subject to annual updates either choose to
11 approve the recovery of the cost that the company
12 provides or chooses otherwise. I don't think there was
13 an arbitrary decision by the Commission to approve any
14 amount to include the amounts that we list here.

15 Q Okay. I want to talk about the conditions of
16 certifications for a moment, Mr. Sole. Could you
17 explain to us what an uprate is?

18 A I'll do my best. An uprate is taking the
19 existing nuclear units and improving them to an extent
20 that they are able to produce greater generation, and I
21 don't recall the exact megawatt improvement. I want to
22 say it's -- it was roughly 500 megawatt of additional
23 power at the Turkey Point units without having to build
24 new generation. So it's taking the existing nuclear
25 units and improving them, improving the steam turbines,

1 improving the facility so that it can generate
2 additional power beyond what its original site
3 certification was.

4 Q Okay. And I think we talked about this
5 earlier. You were DEP secretary at the time this came
6 before you?

7 A That is correct.

8 Q Okay. Now is probably a good time to put the
9 last exhibit in, South Florida Water Management District
10 final agency report.

11 CHAIRMAN BROWN: We will go ahead and give
12 that Exhibit 78 as you mentioned with the title.

13 (Whereupon, Exhibit No. 78 was marked for
14 identification.)

15 BY MR. CAVROS:

16 Q And I believe we discussed the uprate a bit in
17 your deposition. You know, as part of that process, as
18 part of the site certification application process,
19 agencies file final agency reports. The way I
20 understand it is the DEP is sort of a one-stop-shop that
21 coordinates the, you know, the power plant siting act
22 process and issues a final report or report to the
23 siting board approving or not approving it. This is a
24 report that was submitted by the district in 2008 and I
25 just want to direct you to the last paragraph. And

1 there it says: While there will be no increase in the
2 amount of cooling water necessary to cool the existing
3 units and no additional discharge to the cooling canal
4 system is a result of the uprate project --

5 A I apologize, Mr. Cavros. Were are you?

6 Q Oh, I apologize.

7 A Which page?

8 Q I'm at the bottom of the first page.

9 A Oh, okay. Keep going.

10 Q Sure. There will be a slight increase in
11 temperature of the cooling water discharge of the
12 cooling canal system which will result in an increase in
13 evaporation, two to three million gallons a day
14 according to FPL's analysis. FPL's maximum predicted
15 temperature increases is approximately 2.5 degrees
16 entering the cooling canal system and .9 degrees
17 returning to the generating units. Do you recall that
18 being a concern at the time?

19 A I recall it being an issues at the time, yes.

20 Q Yeah. When you -- rather when the company --
21 you were still at DEP at the time -- when the company
22 operated the units to generate more power, those units
23 were also going to generate more heat, is that correct?

24 A That is the basis of this projection of the
25 increase in two-and-a-half degrees, yes.

1 Q And I understand that FPL took offline one or
2 possibly two fossil units subsequent to this. And I'm
3 going to ask you a question.

4 A I waited. I almost got in there, but I
5 waited. Go ahead.

6 Q So -- well, let me just -- can you confirm
7 that, that -- let me ask a question. So this was a
8 concern at the time. FPL took a couple units offline,
9 fossil units, or at least unit -- Unit 1, I believe.
10 Can you confirm that?

11 A Subsequent to the approval of the site
12 certification and prior to the construction of the final
13 uprate, one of the units, Unit 2, was taken offline.
14 The fossil unit that did use the cooling canal system,
15 and therefore its heat load was similarly removed from
16 the cooling canal system.

17 Q Now, generally with these fossil units that a
18 lot of the heat escapes through the stacks. Would you
19 agree with that?

20 A Yes. Heat escapes through the stacks, as
21 well, yes.

22 Q Okay. And did the company do any analysis on
23 the net heat impact of the cooling canal system of
24 taking that off the fossil unit and uprating the nuclear
25 units?

1 A There was -- I recall an analysis that was
2 done that identified the total maximum heat load to the
3 cooling canal system pre- and post-uprate. As a result
4 of taking the fossil unit offline was a reduction in the
5 heat load to the cooling canal system. And, in fact, I
6 believe that was reported in our final uprate report
7 that was submitted to the Water Management District and
8 the Department of Environmental Protection as required
9 under the conditions of certification. And the
10 conclusions of that was that, no, the uprate did not
11 result in an added thermal -- maximum thermal load to
12 the cooling canal system as a result of those units
13 being taken offline.

14 **Q Yet the temperature spiked in the cooling**
15 **canals shortly after those came online, correct?**

16 A Yeah. You and I -- it was you and I discussed
17 this. Yes, temperature did increase at the cooling
18 canal system. And as I talked about roughly around the
19 '13, '14 period a significant drought had occurred in
20 the area of the cooling canal system. We also received
21 significant algal blooms that degraded water quality in
22 the system. And as a result we began to see a
23 deterioration of the water quality and the thermal
24 efficiency of the cooling canal system all in that time.
25 So the temperature increase was a result of these

1 external issues associated with operation of the cooling
2 canal system.

3 **Q You referred to algal blooms as external**
4 **issues. What role did -- isn't it true that warmer**
5 **temperatures in the cooling canal help to proliferate**
6 **algae?**

7 A Undeniably warm temperature is definitely a
8 driver of many algal blooms. In this case, what we saw
9 as a result of -- what we believe we saw as a result of
10 the uprate system is sea grass die off in the cooling
11 canal systems contributed to the significant nutrient
12 mass to the cooling canal systems, which then resulted
13 in this algal bloom. What was even more troubling is
14 because of the nature of the algae, it was cyanobacteria
15 that actually fixes nitrogen out of the atmosphere.
16 Even if we had no nitrogen in the cooling canal system
17 as a nutrient source, it would be able to actually make
18 the nitrogen from the atmosphere or gain the nitrogen
19 from the atmosphere, so we had an additional load there.

20 **Q And you said there was a drought during that**
21 **period, is that correct?**

22 A That's correct.

23 **Q And I think it's fair to say that that is**
24 **further evidence that this, the cooling canal system, is**
25 **very weather-dependent, is that correct?**

1 A And I think that's why we have taken the
2 action that we have taken to provide supplemental water
3 to maintain and freshen the cooling canal system.

4 Q There was some discussion -- just one more
5 question. You said the company took Unit 2 offline.
6 Did the company take Unit 2 -- and you were with the
7 company, I believe, at that time -- they took Unit 2
8 offline because the temperature in the cooling canal
9 system got too hot, is that correct?

10 A No, that is not correct.

11 Q Okay. There was some discussion about the
12 administrative order earlier on. This is -- this was
13 the first enforcement action, and I use that term
14 loosely, after the fifth supplemental agreement. Is
15 that correct?

16 A I would agree that that was the first
17 enforcement.

18 Q And I'm trying to understand sort of the
19 authority of the district. You know, their authority is
20 over-consumptive-use permits, but I think the
21 department, or DEP, has the authority over water quality
22 violations, is that correct?

23 A That is correct.

24 Q Okay. So DEP, in essence, is the main
25 enforcement entity that would place requirements on the

1 **company related -- environmental compliance requirements**
2 **related to the cooling canal system, right?**

3 A Well, again, you use the word main, so, yes.
4 They are the main. However, it's important to recognize
5 that FPL was similarly operating under the fifth
6 supplement agreement with the Water Management District,
7 which had specific requirements to take action if --
8 under the sole jurisdiction or sole observation of the
9 district there was harm. So both DEP and the Water
10 Management District in this case. One, under an
11 agreement. One, under an NPDES permit. And what we
12 used to as regulatory oversight had jurisdiction.

13 Q Okay. And you're with FPL now. You're not
14 the DEP secretary anymore. So how would you
15 characterize your interaction with DEP as it was
16 developing the administrative order?

17 A I would characterize it like no other -- not
18 any different from any other facility owner-operator.
19 DEP identified a concern, or in this case the Water
20 Management District identified a concern. No different
21 than when another facility owner-operator is identified.
22 You meet with the department and you begin to discuss
23 what options or appropriate corrective actions can be
24 taken.

25 Q Did you make any edits to the administrative

1 order and send them to the Department of Environmental
2 Protection?

3 A Absolutely.

4 Q Do you recall making any edits or suggested
5 edits to the findings of fact in the administrative
6 order?

7 A I don't recall what specific edits I made, Mr.
8 Cavros, but it's not unusual for edits to be made on a
9 consent order, or in this case an administrative order,
10 in addressing issues at hand.

11 Q I know you talked about collaboration earlier
12 in your testimony and, you know, if there are edits
13 being made to compliance mechanisms, you know, that
14 might give some a little pause if the regulated entities
15 are making edits to the requirements that are being
16 placed on them. Do you have an opinion on that?

17 A No, I disagree entirely. Consent orders are
18 frequently scenarios where there's collaboration of the
19 issues, collaboration of the corrective actions, the
20 benefit of the administrative order, unlike a consent
21 order, a consent order is a mutual agreement scenario.
22 An administrative order is a one-way street, whether DEP
23 wants to accept any recommended edits of FPL is up to
24 DEP; they have no obligation to do so. Under a consent
25 order, there's two signatories on it. Administrative

1 order only has one. So it's truly within, you know, the
2 final discretion of the department.

3 Q As we talked about earlier, that
4 administrative order was challenged, correctly?

5 A That is correct.

6 Q And could we -- if we could, let's turn to
7 MWS-10 for a moment, which is the recommended order.

8 A That is the final order.

9 Q The final recommended order. I'll take it.
10 Well --

11 A Do you want the recommended?

12 Q Yeah, I wanted to ask you about this, whether
13 this was mislabeled. You know, it certainly -- I want
14 the recommended order. That would be MWS-10, would it
15 not?

16 A I have two exhibits in my testimony. One
17 is --

18 Q I apologize. Starting on page 30.

19 A Within -- okay. Now I understand. I'm with
20 you, Mr. Cavros. Go ahead.

21 Q Okay. If you could, turn to page 22,
22 paragraph 66 -- I'm sorry. That's 15 of -- 51 of 63.

23 A Thank you.

24 Q Sure. And it says -- and this is the
25 recommended order by the administrative law judge after

1 a hearing was held, is that correct?

2 A This is the recommended order of ALJ Judge
3 Canter, yes. Go ahead.

4 Q And paragraph 66 reads, the AO lacks the most
5 fundamental element of an enforcement action charges.
6 An agency enforcement action charges a party with one or
7 more violations of law, which the party has the right to
8 challenge and attempt to refute. DEP did not charge FPL
9 with violating the minimum criteria for groundwater. So
10 I'll just -- I guess I'll just stop there. Obviously
11 the administrative law judge was -- did not agree in
12 how -- in the fact there was no enforcement action,
13 according to him. Is that a reasonable takeaway from
14 that?

15 A That's my interpretation of Judge Canter's
16 position. If I'm not mistaken, DEP overturned this
17 position and rejected. I can verify if you'd like.

18 Q But DEP subsequently did issue a notice of
19 violation?

20 A Yes, they did.

21 Q I just have a question about tritium.

22 A Remember I'm a biologist, so.

23 Q Were you ever involved in discussions on
24 whether or not tritium should be measured or sampled in
25 reference to the administrative order?

1 A I don't recall.

2 Q Okay.

3 A I recall recommending it as secretary of DEP,
4 but I don't recall whether there was a discussion when I
5 was with FPL. I just don't remember, Mr. Cavros.

6 Q Okay. Okay. We'll come back to that. Is
7 there, in the monitoring now, is there a requirement to
8 monitor for tritium?

9 A Yes, there is.

10 Q There is. Okay. I have just a couple more
11 questions and I'll be done.

12 There is some discussion about the interceptor
13 ditch earlier. Does that interceptor ditch have a pump
14 component to it?

15 A Yes. The way the interceptor ditch operates
16 is under certain conditions when groundwater flows as a
17 result of elevations within the two canals, the L31
18 canal and the interceptor ditch, primarily. If
19 groundwater flow is to the west, pumping of the
20 interceptor ditch is conducted to eliminate that
21 westerly groundwater flow direction and require it to go
22 back to the east towards the cooling canal system.

23 Q Okay. And were there any reports related to
24 the interceptor ditch pumps? I thought I saw something
25 in --

1 A I believe stop log reports were provided to
2 the district, yes.

3 **Q And were those provided in a timely fashion?**

4 A To my knowledge, they have been provided. I'm
5 aware of scenarios where they have been late in their
6 submittals.

7 MR. CAVROS: That's all I've got. Thank you.

8 CHAIRMAN BROWN: Thank you, Mr. Cavros.
9 Staff.

10 MS. CUELLO: Due to the excessive cross
11 examination and to avoid duplicative cross, staff
12 has no questions for this witness.

13 CHAIRMAN BROWN: Awesome. Good work, Staff.
14 And I would suggest the same thing for my fellow
15 colleagues. There were a voluminous amount of
16 questions already asked. Please try to be careful
17 and deliberate in your questions and not repetitive
18 in nature. So, with that, Commissioners.

19 MR. MURPHY: Commissioner, you said when the
20 time was right we could distribute the --

21 CHAIRMAN BROWN: The time is right.

22 MR. MURPHY: Okay.

23 CHAIRMAN BROWN: So he's going to distribute
24 right now the 09 testimony. We're going to go
25 ahead right now and mark for -- as Exhibit 79. And

1 I'm going to put the sponsoring party here is OPC,
2 I believe. Is it OPC that was cross-examining
3 or -- Mr. Rehwinkel?

4 Thank you. I'm putting him down anyway. All
5 right. Seventy-nine is the testimony of Labauve,
6 September 2016. I thought this was supposed to be
7 2009. Staff, it is in there?

8 Okay. Let me go through this again. This is
9 a composite exhibit. We're still going to label it
10 as Exhibit 79 and it's a composite exhibit of prior
11 testimony in years 2009, 2013 and 2016.

12 MS. CANO: And 2015.

13 CHAIRMAN BROWN: And 2015. Thank you.

14 All right. With that, we are back on
15 Commissioner questions. Commissioner Polmann, you
16 have the floor.

17 COMMISSIONER POLMANN: Thank you, Madam
18 Chairman.

19 CHAIRMAN BROWN: You're welcome.

20 COMMISSIONER POLMANN: Good afternoon, Mr.
21 Sole.

22 THE WITNESS: Good afternoon, Commissioner
23 Polmann.

24 COMMISSIONER POLMANN: Where to begin. I'd
25 like some clarification -- we're going to be all

1 over the map here, so if you bear with me. If we
2 could, go look at Exhibit 71, please.

3 CHAIRMAN BROWN: That's the 1972 CCS.

4 THE WITNESS: Yes, sir.

5 COMMISSIONER POLMANN: Let's first look at
6 page two, numbered page two at the bottom.

7 THE WITNESS: I'm there.

8 COMMISSIONER POLMANN: And then what is
9 labeled as paragraph B, paren one, it identifies
10 the seepage control interceptor canal, and within
11 this document I think this is the first mention of
12 that. And if you'll turn -- just keep those words
13 in mind and then if you'll turn back to the
14 whereas, those recitations on the prior page. In
15 the middle of that page, whereas FCD, which is the
16 flood control district, will continue to construct
17 and maintain an extensive water control system.
18 And then there are several -- two more whereas
19 referencing a water control system. Are you
20 familiar with the -- sufficiently familiar with the
21 site that you can explain for me whether the
22 seepage control interceptor canal and the flood
23 control system are the same or are they different?

24 THE WITNESS: They are different.

25 COMMISSIONER POLMANN: Does the utility have

1 any responsibility for the flood control system?

2 THE WITNESS: Actually, in this agreement,
3 Commissioner, they did. There was provisions where
4 because of the acquisition of the property for
5 construction of the cooling canal system, the
6 second part of this agreement largely talks to it,
7 in which we're obligated to allow the district --
8 I'm going to use that term -- to manage their flood
9 control infrastructure, which ran through the FPL
10 property.

11 So the key focus for us was operating the
12 interceptor ditch, which was constructed as part of
13 the cooling canal system. The L31 canal is part of
14 that infrastructure that the flood control district
15 had along with other canals in the area, the Card
16 Sound Canal, which at one time, and I guess still
17 does to a certain extent, have some discharges. So
18 there were flood control district canals in the
19 area that the water, the district at the time,
20 wanted to make sure they had the ability to
21 continue to operate, and then there was our
22 specific obligation to operate the interceptor
23 ditch to not exacerbate or interfere with their
24 flood control activities.

25 COMMISSIONER POLMANN: Thank you. So the

1 seepage control interceptor canal was a flood
2 control district facility?

3 THE WITNESS: No, sir.

4 COMMISSIONER POLMANN: I'm sorry.

5 THE WITNESS: I messed that up. It's the
6 other way.

7 COMMISSIONER POLMANN: The water control
8 system in the whereas clause is a district
9 facility?

10 THE WITNESS: I believe they're referring to
11 their obligations under the Central and South
12 Florida Flood Control Program.

13 COMMISSIONER POLMANN: That's a district
14 facility. And then -- my point is this, I think.
15 The permit conditions, the administrative order,
16 the CO, the CA all these other various letters,
17 have requirements that refer, with regard to water
18 quality, that refer to which of the surface water
19 features? All of them, one of them, two of them,
20 or which? Can you please clarify?

21 THE WITNESS: Yeah, I think I can,
22 Commissioner. The focus of all these, the
23 administrative order, the consent order, consent
24 agreement, is to address groundwater quality.

25 COMMISSIONER POLMANN: My question was

1 specifically to surface water. We'll get to
2 groundwater.

3 THE WITNESS: Oh, I apologize. The only
4 provision currently under the consent order is our
5 obligation to provide restoration of two areas,
6 adjacent to the cooling canal, a Turtle Point
7 dead-end canal, which I can point to the map if
8 you'd like, and the barge basin, and currently both
9 of those are very deep canals or basins and as a
10 result have low flushing and as a result have been
11 sampled and identified to have exceedances of
12 ammonia. As a result of those exceedances and the
13 potential that both groundwater and low flushing
14 have resulted in these potential issues, FPL has
15 been directed to fill those, restore those so that
16 it eliminates the formation of ammonia.

17 COMMISSIONER POLMANN: Okay. Thank you. And
18 then the interceptor canal, as it's been referred,
19 the purpose of that was to intercept groundwater.
20 This is a question. Is the purpose of that, to
21 intercept groundwater that was moving to the west
22 from the FPL property, so it's the interaction
23 between that surface water feature and the
24 groundwater. The intent was to capture saline
25 water that would otherwise move west?

1 THE WITNESS: It was. And by doing so kind of
2 changing the gradient. Instead of having a western
3 gradient, let's reverse the gradient and make it go
4 east.

5 COMMISSIONER POLMANN: And for purposes of
6 regulatory compliance, that is -- that particular
7 feature was the location at which the reference was
8 back to conditions with or without the cooling
9 canal system?

10 THE WITNESS: Yes, sir.

11 COMMISSIONER POLMANN: Okay. And that
12 feature, if you could point to that, on this
13 demonstrative.

14 THE WITNESS: So this would be the L31 canal.
15 The interceptor ditch is in between the L31 canal
16 and the cooling canal system, so right in between.

17 COMMISSIONER POLMANN: Thank you. All right.
18 I think I'm clear on -- can we go to your direct
19 testimony, please, page five? Line five on page
20 five.

21 THE WITNESS: Yes, sir.

22 COMMISSIONER POLMANN: You state:
23 Specifically as a result of expanded groundwater
24 monitoring that was required prior to the
25 implementation of the extended power uprate

1 project, it was the determined that a number of
2 corrective actions were required. So I read this
3 to say that a determination was made as a result of
4 monitoring. Who made that determination?

5 THE WITNESS: It was initiated by the South
6 Florida Water Management District, Commissioner, in
7 their April 2013 letter.

8 COMMISSIONER POLMANN: I'm going to interrupt.
9 I'm sorry. What was initiated?

10 THE WITNESS: The determination that it's --
11 corrective action is needed.

12 COMMISSIONER POLMANN: Okay. So the district
13 determined that the action was required?

14 THE WITNESS: Yes.

15 COMMISSIONER POLMANN: Okay. Thank you. We
16 can go back. Page four. There have been various
17 points in your answering questions -- let's look at
18 lines 16, and, in fact, I think it was Mr.
19 Rehwinkel that pointed to this, Mr. Cavros also
20 identify -- highlighted the wording 16 and 17 --
21 lines 16 and 17, page four, collaboratively you
22 worked -- the utility worked collaboratively with
23 these various agencies. The notion of
24 collaboration -- and I've heard your explanation --
25 what weight should this be given by the Commission

1 in considering your request for recovery, the fact
2 that you collaborated?

3 THE WITNESS: Commissioner, I look at it as a
4 measure of compliance. And, you know, FPL
5 undeniably continues to try to identify those
6 activities that are necessary to address some
7 environmental issues. We often will disagree with
8 regulatory agencies because they are not necessary
9 and not cost effective for customers. However,
10 when there is an issue, it's clear and we stand up
11 to address the issue --

12 COMMISSIONER POLMANN: Understood.

13 THE WITNESS: In this case, that is my basis
14 for saying, no, we've been collaborative. And the
15 weight is that it's a measure of compliance.

16 COMMISSIONER POLMANN: Well, let me back up to
17 line 14 and 15 and let's stop at the comma on line
18 15 and simply say that FPL has operated the
19 facility in compliance with all permits and
20 regulations. Is that simply the point of the
21 sentence to say you've been in compliance?
22 Regardless of how you got there, I think your point
23 that you're asserting is that you've been in
24 compliance with the permits.

25 THE WITNESS: And I think the -- the added

1 provision is actually pertinent here because
2 compliance --

3 COMMISSIONER POLMANN: Well -- okay. Let's
4 just leave it at that. Thank you.

5 THE WITNESS: All right, Commissioner.

6 COMMISSIONER POLMANN: All right. We'll skip
7 that. I'd like to look at -- quite frankly, I'm
8 confused on something here. Between pages six and
9 nine you seem to be saying two different things
10 about the water balance in the CCS, that's the
11 cooling canal system. So let's first look to page
12 nine of your direct testimony, lines 9, 10, 11.
13 There's discussion on page nine -- and I'll put
14 this in context -- the question on the top of page
15 nine is, please explain how salinity for the
16 request -- how salinity in CCS has increased. And
17 your statement starting on page -- I'm sorry -- on
18 that page nine, the full sentence began on page --
19 on line nine. Could you read that for us, please?

20 THE WITNESS: Throughout that time period,
21 there were no external water sources provided to
22 augment annual precipitation and groundwater
23 inflow.

24 COMMISSIONER POLMANN: In the time period,
25 could you identify that in the prior sentence?

1 THE WITNESS: In this manner -- let's see --
2 from 1970 to approximately 2013. It says the '70s.
3 I apologize.

4 COMMISSIONER POLMANN: Okay. Okay. So that's
5 over 40 years. No external water sources were
6 added to the CCS. Is that the gist of that
7 statement?

8 THE WITNESS: Yes, sir.

9 COMMISSIONER POLMANN: Okay. Can we please go
10 back to page six and look at lines 15 through 17?

11 THE WITNESS: I'm there.

12 COMMISSIONER POLMANN: And could you read for
13 me the full sentence starting on line 15?

14 THE WITNESS: I can. Water enters the system
15 through precipitation, groundwater in-seepage and
16 water sources that have been developed to assist
17 achieving and maintaining low-target salinity.

18 COMMISSIONER POLMANN: Could you please
19 explain the distinction between what we just read
20 on page nine, where I think I understand that no
21 water is added for that period, 1970 through 2013,
22 and this sentence which seems to say that water is
23 added?

24 THE WITNESS: This sentence, Commissioner, is
25 more of a, here's the current situation today. In

1 2014 -- or beginning in 2014, FPL implemented
2 several additional water inputs and is based upon
3 that 1970 to 2013 time period where no inputs
4 occurred and salinity continued to rise. So it
5 demonstrates that, yes, we have taken action and
6 have now subsequent to 2013 additional water inputs
7 put into the cooling canal system.

8 COMMISSIONER POLMANN: Thank you. With regard
9 to flow and the cooling canal system, there was
10 discussion here earlier that water moves through
11 the canal -- let's say hot water comes out of the
12 heat exchangers at the power plants and runs
13 through the canal and cools off and goes back in.
14 How does -- how does water flow through the system?
15 What forces that water to move?

16 THE WITNESS: So it's the old adage, water
17 flows downhill, Commissioner. As a result of the
18 discharge point, water is -- I'm going to use the
19 term stacked up. I apologize.

20 COMMISSIONER POLMANN: Sure.

21 THE WITNESS: Water is at a higher elevation
22 at the discharge. As that water flows through the
23 system, the elevation continues to decrease. At
24 the intake scenario, the water is at its lowest
25 elevation. So the system is designed as simply to

1 flow down hill.

2 COMMISSIONER POLMANN: So is that essentially
3 run by gravity?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER POLMANN: The intake point at the
6 plant is lower than the discharge point coming out
7 of the power plant?

8 THE WITNESS: Yes, sir.

9 COMMISSIONER POLMANN: Thank you. If we go
10 back to page nine, please. I'm trying to
11 understand your reference in -- the specific
12 wording is on line seven, but the sentence begins
13 on line five. And we've mentioned here -- you've
14 mentioned in response to questions and there's been
15 discussion about drought years, but on line seven
16 it's phrased in a ratcheting effect. And quite
17 frankly, I'm just purely befuddled by that. Can
18 you -- other than what's written here, can you just
19 explain to me how that works? I don't get it.

20 THE WITNESS: It would be my pleasure and I
21 apologize for using the terminology, Commissioner.
22 The ratcheting effect that I'm speaking to is under
23 normal circumstances water would, again, increase
24 through the dry season -- water salinity in the
25 cooling canals decrease in the wet season and you

1 would see generally a flat trend, generally. In
2 some cases it would be up, but then some years it
3 would be down. So you would see this trend and
4 then --

5 COMMISSIONER POLMANN: Essentially no trend?

6 THE WITNESS: No trend. And then a drought
7 would occur and suddenly salinity would go up
8 significantly, but it wouldn't necessarily trend
9 downward. It would stay and be a new normal, and
10 it would be normal, normal, normal, and then
11 another salinity jump in the next drought. So you
12 would see this more step-wise progression of
13 salinity increase as a result of drought versus
14 normal operations under normal years where you have
15 variation. You'd have some dryer years, some
16 wetter years.

17 COMMISSIONER POLMANN: Okay. But what I don't
18 understand is what happens in a wet year.

19 THE WITNESS: Well, we did see in one case a
20 very good wet year and water went down to, I
21 believe, in the high 30s.

22 COMMISSIONER POLMANN: Salinity went down?

23 THE WITNESS: I apologize. Yes, sir,
24 Commissioner. Salinity went down into the high
25 30s. Maybe it was the low 40s, but we had a good

1 wet year, but then it returned more at the higher
2 salinity levels and presumably in light of the fact
3 that the groundwater conditions have changed.

4 COMMISSIONER POLMANN: Okay. That, to me,
5 does not sound like a complete explanation
6 consistent with your written testimony because from
7 your written testimony I get the impression that
8 there is no upward bound to salinity increasing in
9 the canal. And I think what you're explaining to
10 me here is that the effect of a dry year is greater
11 than the offsetting balance -- offsetting effect of
12 a wet year.

13 THE WITNESS: I would agree with that
14 statement, Commissioner. And that's what we've
15 seen, the effect of a dry year is more significant
16 than an offset from a wet year. And my attempt to
17 answer your question earlier relating to
18 groundwater is groundwater again is one of the
19 significant inputs into the cooling canal system.
20 Over time if the groundwater salinity is
21 increasing, our ability to recover diminished.

22 COMMISSIONER POLMANN: Okay. We'll move on.
23 Thank you.

24 Can you, to the best of your knowledge,
25 describe for us the direction of groundwater flow

1 across the site? Is there a particular direction,
2 east, west, north, south, or is there a better
3 person for me to discuss that with?

4 THE WITNESS: Actually, I would say witness
5 Anderson is a better one to discuss it.

6 COMMISSIONER POLMANN: Okay. We'll leave it
7 at that. Thank you.

8 If we go to page ten and lines 12 through 15,
9 there is a reference to this 18-foot-deep
10 interceptor ditch, and we'd previously discussed
11 what that was. And they -- the requirement there,
12 specifically with regard to saline water and so
13 forth, that reference to the movement, the
14 restricted movement so that's not greater than it
15 would otherwise be, is that memorialized in the
16 agreement with the district and the various
17 supplements only? Is that the only place that
18 occurs?

19 THE WITNESS: Yes.

20 COMMISSIONER POLMANN: Is that otherwise
21 something that's in a water quality regulatory
22 criterion or any kind of a standard?

23 THE WITNESS: No.

24 COMMISSIONER POLMANN: Okay. Thank you.

25 If I look at the top of page 12, that first

1 sentence there SWFMD -- I'm sorry -- the South
2 Florida Water Management District agreement
3 modified most recently in 2009. If I recall,
4 elsewhere in your testimony suggests there was no
5 change in monitoring practice in the period 1983 to
6 2009, is that correct?

7 THE WITNESS: Commissioner, that's correct.

8 COMMISSIONER POLMANN: Okay. All right. I
9 think others have asked my questions on that page.

10 Let me find my next -- we can go page 20 and
11 then we're going to immediately look at 21. There
12 was a question posed on page 20 where the specific
13 environmental requirements imposed by the 2016 CO,
14 and that consent order is -- which entity is that
15 with? Can you --

16 THE WITNESS: The Department of Environmental
17 Protection, Commissioner.

18 COMMISSIONER POLMANN: Okay. Thank you. And
19 then if we go to the next page, on page 21 on line
20 9 through 11. This refers to groundwater model.

21 THE WITNESS: Yes, sir.

22 COMMISSIONER POLMANN: Could you read that
23 sentence for us, please?

24 THE WITNESS: Complete analysis using the
25 variable density three-dimensional groundwater

1 model that seeks to allocate relative contributions
2 of other entities or factors to the movement of the
3 saltwater interface.

4 COMMISSIONER POLMANN: Were you involved in
5 discussions collaboratively with DEP on the notion
6 of other entities or factors?

7 THE WITNESS: Yes, Commissioner.

8 COMMISSIONER POLMANN: Can you please give me
9 some clue on what that might be since it obviously
10 refers to not FPL?

11 THE WITNESS: Yes, Commissioner. Well, one of
12 the things that was well-understood in the area
13 about saltwater intrusion is the many influences
14 that affect saltwater intrusion. Drought is a
15 significant factor. I earlier testified to the
16 influence of one of the South Florida Water
17 Management District canals and I can show you and
18 did show you --

19 COMMISSIONER POLMANN: That's okay.

20 THE WITNESS: -- on the map how sea saltwater
21 intrusion --

22 COMMISSIONER POLMANN: Short answer would be
23 good.

24 THE WITNESS: Got you.

25 COMMISSIONER POLMANN: According to our

1 Chairman.

2 THE WITNESS: Roger that.

3 CHAIRMAN BROWN: Thank you.

4 THE WITNESS: Yes, ma'am. Withdrawal wells.
5 Municipal supply wells can influence saltwater
6 intrusion --

7 COMMISSIONER POLMANN: I got the general idea.
8 Thank you.

9 THE WITNESS: -- and drawdowns. I'm done.
10 Thank you, Commissioner.

11 COMMISSIONER POLMANN: We're moving to page
12 22. At the top, there are reference to expanding
13 the model -- the variable-density 3-D model that we
14 just described. I can talk to Mr. Anderson or --
15 would that be a good idea?

16 THE WITNESS: Yeah. The details on that, yes,
17 sir.

18 COMMISSIONER POLMANN: All right. Thank you.
19 I'm trying, Madam Chairman.

20 CHAIRMAN BROWN: Oh, thank you. I know this
21 an area of quite great interest.

22 COMMISSIONER POLMANN: We could be here all
23 day.

24 CHAIRMAN BROWN: I knew you could.

25 COMMISSIONER POLMANN: Then half the night.

1 I would like to ask this question, because it
2 really is a regulatory definition-type thing. On
3 page 26, I'd like to get your interpretation on
4 this. Let's look at beginning on line 10 and down
5 through 14, if you can just read that, not
6 necessarily out loud, but refresh your memory on
7 what that is.

8 THE WITNESS: I understand.

9 COMMISSIONER POLMANN: We've had discussion
10 earlier here with what hypersaline is. We'll go
11 from that point, but it says retraction of the
12 plume back to the boundary. By what measure? Is
13 that an average -- a vertical measure of something
14 determined by a set of wells? How is that going to
15 be evaluated? Then I'm going to be asking
16 questions of Mr. Anderson later, but --

17 THE WITNESS: Primarily, Commissioner, this
18 demonstrative behind me that OPC provided, the use
19 of the CSCM model is going to be done on an annual
20 basis to track the progress, and that model is a
21 3-D model so you can see it in 3-D and identify at
22 what layers we've actually stopped and what layers
23 we've seen retreat back to the cooling canal
24 boundary.

25 COMMISSIONER POLMANN: Okay. So this

1 particular discussion here on this page talks about
2 the projections and the use of the model. What I'm
3 questioning, and there may be testimony elsewhere,
4 but talks about the performance criteria of your
5 effort and the determination by the regulator that
6 you've completed and met the requirement for
7 bringing that saltwater plume --

8 THE WITNESS: And I believe this is the
9 performance criteria, Commissioner, within the
10 first three years obligated to demonstrate that
11 it's not growing, it's stopped growing. Within
12 five years I've got to show that it's shrinking and
13 then ten years I've got to show that I've brought
14 it back to my boundary.

15 COMMISSIONER POLMANN: Okay. Thank you.
16 Let's see if I have anything else here; just one
17 second. I may give you a pass here on the rest of
18 this.

19 Madam Chairman, I may have a couple of
20 questions on -- in the rebuttal, but I believe
21 that's all I have here on direct. Thank you.

22 CHAIRMAN BROWN: Good job, Commissioner
23 Polmann.

24 All right. Redirect.

25 EXAMINATION

1 BY MS. CANO:

2 Q See how quickly I can do this. Mr. Sole,
3 would you please turn to Exhibit MWS-11 page three?

4 A I am there.

5 Q Mr. Rehwinkel asked you to confirm that these
6 findings recited in paragraph 11A and B were, in fact,
7 made by DEP. I'm just going to shortcut this with a yes
8 or no question. The study you were just discussing with
9 Commissioner Polmann, is that intended to address these
10 same issues?

11 A Yes, it is.

12 Q Thank you. Could you please turn to Exhibit
13 72?

14 A I am there.

15 Q This was the response to Staff's Interrogatory
16 No. 62 and on attachment one Mr. Rehwinkel asked you
17 about the cost in columns C and D, and I believe this
18 was early on in the discussion where the term, mulligan,
19 was being used. He asked whether these costs reflected
20 that potentiality. Could you please turn to the
21 question on the prior page?

22 A I'm there.

23 Q And clarify for us whether these costs are
24 historical or projected, based on the question.

25 A These are historical and through August 2017.

1 Q Thank you. He also asked you about a line
2 item on here, the conveyance of property interest to the
3 South Florida Water Management District and the fact
4 that FPL had characterized that in column B as
5 mitigation. Could you please briefly discuss FPL's use
6 of these various terms, abatement, mitigation,
7 remediation in this response?

8 A Yeah. These were not intended but to be
9 responsive to the inquiry which is requested that we
10 characterize the activity as mitigation, abatement or
11 remediation in the question. And staff and myself did
12 our best to give a generic characterization of those,
13 based upon their performance and their function.

14 Q Thank you. Could you please turn to exhibit
15 MWS-12?

16 A I am there.

17 Q Page five.

18 A I am there.

19 Q Mr. Rehwinkel asked you some questions about
20 paragraph 14, and specifically the last sentence which
21 states FPL operated the CCS under regulatory approvals
22 and the department has not previously issued FPL either
23 a warning letter or a notice of violation concerning
24 FPL's operation of the CCS. Based on your experience,
25 as well as your familiarity with the development of the

1 consent order here specifically, what is the purpose of
2 this recital in this paragraph 14?

3 A It's normal to demonstrate compliance history
4 associated with -- or a facility owner-operator in
5 identifying corrective actions.

6 Q Could you please turn to Exhibit 74?

7 A I'm there.

8 Q This was the 2009 ECRC order.

9 A Correct.

10 Q And if you could please turn to where Mr.
11 Rehwinkel had directed you, page 12.

12 A I'm there.

13 Q He asked you some questions about the indented
14 language on this page and its references to the uprate
15 project. Do you recall those questions?

16 A I recall the discussion around that, yes.

17 Q Okay. Could you please refer to the beginning
18 of the paragraph in which only the first line is
19 indented and read for the record that first sentence of
20 the paragraph?

21 A FPL has been conducting certain monitoring
22 activities at the Turkey Point Plant for some time. FPL
23 indicates that the DEP and Water Management District
24 have been concerned with adverse environmental impacts
25 from the CCS beyond the specific impacts that may result

1 from the nuclear uprate. The costs associated with
2 these current -- oh, sorry. You said the first
3 sentence.

4 Q Thank you. You were also asked whether the
5 conditions of certification were specifically referenced
6 on pages 12 or 13, and you indicated they were not. Are
7 the conditions of certification referenced elsewhere in
8 this Section E?

9 A I believe they are.

10 Q Thank you. You know what, Mr. Sole, you don't
11 have to find it right now. The document is going to be
12 moved into the record, so --

13 A Thank you.

14 Q I don't recall the context of this question,
15 but I recall you mentioning some DEP activity in 2005.
16 Was there DEP activity on this issue in 2005?

17 A No, ma'am. I misspoke. I believe it was
18 2015, the timing of the hearing.

19 Q Please turn to Exhibit 77.

20 CHAIRMAN BROWN: That's the 2009 ECRC Goorland
21 project?

22 MS. CANO: Yes.

23 THE WITNESS: I'm there.

24 BY MS. CANO:

25 Q Mr. Cavros asked you some questions about

1 FPL's summary of the Turkey Point Cooling Canal
2 Monitoring Plan Project that's presented on page two of
3 three?

4 A I recall.

5 Q Okay. To your knowledge, was this the only
6 information about the project filed with the Commission
7 in 2009?

8 A No, ma'am. There was additional testimony
9 from Mr. Labauve and I believe there's also -- actually,
10 this was the first one. So, other than that, I'm aware
11 of the testimony from Mr. Labauve.

12 Q Okay. And final question. Mr. Cavros also
13 asked you whether the DEP was the main agency in FPL's
14 efforts to address the issues that have arisen under the
15 Turkey Point Cooling Canal Monitoring Plan Project. You
16 agreed essentially that it's the main agency and also
17 referenced FPL's agreement with the South Florida Water
18 Management District?

19 A Correct.

20 Q Are there other agencies involved with -- who
21 issue orders with which FPL must comply?

22 A Yes. FPL also has a consent agreement with
23 Miami-Dade County for the same issues that are
24 identified in the consent order.

25 MS. CANO: Thank you. No further questions.

1 CHAIRMAN BROWN: All right. Let's get the
2 exhibits here for this witness. Exhibits 2 --
3 Exhibits 2 through 20 are attached to his prefiled
4 testimony. Counsel, would you like to move those
5 into the record?

6 MS. CANO: Yes. At this time FPL would move
7 Exhibits 2 through 20, as well as 24.

8 CHAIRMAN BROWN: Okay. Seeing no objection
9 from any of the parties, we will go ahead and move
10 in 2 through 20, as well as 24.

11 (Whereupon, Exhibit Nos. 2 - 20 and 24 were
12 received into evidence.)

13 CHAIRMAN BROWN: OPC. You have 69 through 74
14 and 79.

15 MR. REHWINKEL: Well, Madam Chair, it's at
16 your pleasure. Sixty-nine is demonstrative 14B
17 from Dr. Panday's testimony. We can move it in.

18 CHAIRMAN BROWN: Yes.

19 MR. REHWINKEL: Okay. And the order in 74, we
20 can move it in or take recognition of it, either
21 way.

22 CHAIRMAN BROWN: We'll just go ahead and move
23 it in.

24 MR. REHWINKEL: I don't know how to
25 characterize 71. I have no objection to it being

1 in. That was really put forward by FPL to
2 facilitate his answer.

3 CHAIRMAN BROWN: That's right.

4 MR. REHWINKEL: So I would move 69, 70, 72
5 through 74.

6 CHAIRMAN BROWN: As well as 79, the composite
7 exhibit of the 2009, 2013, '15 and '16.

8 MR. REHWINKEL: Yes, I would move that one,
9 too.

10 CHAIRMAN BROWN: Are there any objections to
11 those?

12 MS. CANO: No objections.

13 CHAIRMAN BROWN: Okay. We're going to go
14 ahead and move in 69, 70, 72, 73 and 74, as well as
15 79.

16 (Whereupon, Exhibit Nos. 69 - 70, 72 - 74, 79
17 were received into evidence.)

18 CHAIRMAN BROWN: SACE, you have 75, 76, 77 and
19 78.

20 MR. CAVROS: Yes, I would ask that those be
21 moved in.

22 CHAIRMAN BROWN: Any objection?

23 MS. CANO: No objections.

24 CHAIRMAN BROWN: We'll go ahead and move those
25 into the records.

1 (Whereupon, Exhibit Nos. 75 - 78 were received
2 into evidence.)

3 CHAIRMAN BROWN: FPL, you have Exhibit 71 as
4 well, as 12.

5 MS. CANO: Yes. FPL would like to move that
6 into the record.

7 CHAIRMAN BROWN: Any objection? Seeing none,
8 we'll go ahead and move that into record.

9 (Whereupon, Exhibit Nos. 71 and 12 were
10 received into evidence.)

11 CHAIRMAN BROWN: Would you like this witness
12 temporarily excused?

13 MS. CANO: Temporarily until rebuttal. Thank
14 you.

15 CHAIRMAN BROWN: All right. You're off the
16 hot seat now.

17 We are moving to the next and last direct
18 witness for FPL, which is Keith Ferguson.

19 MR. REHWINKEL: Madam Chairman, may I ask for
20 a small break? I've given my exhibits to staff
21 to pass out --

22 CHAIRMAN BROWN: Oh, yeah. I forgot what time
23 it is. Thank you. You know, I was meaning to take
24 it at 3:30, so let's take a five-minute break.

25 MR. REHWINKEL: Thank you.

1 (Brief recess.)

2 CHAIRMAN BROWN: Mr. Butler.

3 MR. BUTLER: Thank you, Madam Chairman.

4 EXAMINATION

5 BY MR. BUTLER:

6 Q Mr. Ferguson, were you sworn when Chairman
7 swore all the witnesses in earlier?

8 A Yes, I was.

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

11 A Keith Ferguson, 700 Universe Boulevard, Juno
12 Beach, Florida 33408.

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

14 A Florida Power & Light Company as Controller.

15 Q Have you prepared and caused to be filed on
16 April 3, 2017 seven pages of prefiled direct testimony
17 in this proceeding?

18 A Yes, I have.

19 Q Have you also prepared and caused to be filed
20 on October 20, 2017 an errata sheet to your prefiled
21 direct testimony?

22 A Yes.

23 Q Do you have any further changes or revisions
24 to your prefiled direct testimony?

25 A No, I do not.

1 Q With the changes in the errata sheet, if I
2 asked you the same questions contained in your direct
3 testimony today, would your answers be the same?

4 A Yes.

5 MR. BUTLER: Madam Chairman, I would ask that
6 Mr. Ferguson's prefiled direct testimony be
7 inserted into the record as though read.

8 CHAIRMAN BROWN: We'll go ahead and insert Mr.
9 Ferguson's prefiled direct testimony into the
10 record as though read.

11 MR. BUTLER: Thank you.

12 (Whereupon, prefiled testimony was inserted.)

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Environmental Cost)
Recovery Clause)

DOCKET NO. 20170007-EI
FILED: October 20, 2017

ERRATA SHEET

April 3, 2017, 2017 TESTIMONY OF Keith Ferguson

<u>PAGE #</u>	<u>LINE #</u>	
Page 6	Line 3	Change “hydrogeogical” to “hydrogeological”

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF KEITH FERGUSON**
4 **DOCKET NO. 170007-EI**
5 **APRIL 3, 2017**
6

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

8 A. My name is Keith Ferguson, and my business address is Florida Power &
9 Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

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

11 A. I am employed by Florida Power & Light Company (“FPL” or the
12 “Company”) as Controller.

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

14 A. I am responsible for all financial accounting, as well as internal and external
15 reporting for FPL. As a part of these responsibilities, I ensure that the
16 Company’s financial reporting complies with requirements of Generally
17 Accepted Accounting Principles (“GAAP”) and multi-jurisdictional regulatory
18 accounting requirements.

19 **Q. Please describe your education and professional experience.**

20 A. I graduated from the University of Florida in 1999 with a Bachelor of Science
21 Degree in Accounting and earned a Master of Accounting degree from the
22 University of Florida in 2000. Beginning in 2000, I was employed by Arthur
23 Andersen in their energy audit practice in Atlanta, Georgia. From 2002 to

1 2005, I worked for Deloitte & Touche in their national energy practice. From
2 2005 to 2011, I worked for Mirant Corporation, which was an independent
3 power producer in Atlanta, Georgia. During my tenure there, I held various
4 accounting and management roles. Most recently and prior to joining FPL in
5 September 2011, I was Mirant’s Director of SEC Reporting and Accounting
6 Research. I am a Certified Public Accountant (“CPA”) licensed in the State of
7 Georgia and a member of the American Institute of CPAs.

8 **Q. Have you previously testified before this Commission?**

9 A. Yes. I sponsored testimony before this Commission in FPL’s recent base rate
10 proceeding (Docket No. 160021-EI).

11 **Q. What is the purpose of your testimony in this proceeding?**

12 A. The purpose of my testimony is to discuss the proper accounting treatment for
13 certain costs associated with FPL’s Turkey Point Cooling Canal Monitoring
14 Plan (“TPCCMP”) Project in accordance with GAAP. The costs discussed in
15 my testimony include amounts incurred in 2016 related to the Recovery Well
16 System, as well as the Barge Canal Turning Basin Back Fill and Turtle Point
17 Back Fill (collectively the “Back Fill Activities”). All of these activities are
18 required under the consent order (“CO”) between FPL and the Florida
19 Department of Environmental Protection and the Recovery Well System is
20 also a requirement under the consent agreement (“CA”) between FPL and the
21 Miami-Dade County Department of Environmental Resources Management
22 and therefore associated costs are recoverable through FPL’s environmental
23 cost recovery clause (“ECRC”).

1 **Q. Are you sponsoring an exhibit in this proceeding?**

2 A. Yes. I am sponsoring Exhibit KF-1 – TetraTech Analysis – Determination of
3 Allocation of Costs for CCS Recovery and Improvement for the Recovery
4 Well System.

5 **Q. Please describe the accounting treatment for environmental obligations**
6 **under GAAP.**

7 A. As required under ASC 410-30-25-16 to 18 (“ASC 410-30”),

8 “In general, environmental contamination treatment costs shall be
9 charged to expense. In certain situations, it may be appropriate to
10 capitalize environmental remediation costs. Those costs may be
11 capitalized if recoverable but only if any one of the following criteria
12 is met:

13 a. The costs extend the life, increase the capacity, or improve
14 the safety or efficiency of property owned by the entity. For
15 purposes of this criterion, the condition of that property after
16 the costs are incurred must be improved as compared with the
17 condition of that property when originally constructed or
18 acquired, if later.

19 b. The costs mitigate or prevent environmental contamination
20 that has yet to occur and that otherwise may result from future
21 operations or activities. In addition, the costs improve the
22 property compared with its condition when constructed or
23 acquired, if later.

1 c. The costs are incurred in preparing for sale that property
2 currently held for sale.”

3 **Q. Has the accounting treatment for any of the TPCCMP Project costs been**
4 **discussed in a prior docket?**

5 A. Yes. As indicated on pages 3 and 4 in the testimony of FPL witness Terry J.
6 Keith filed in Docket No. 160007-EI on September 2, 2016, the costs
7 associated with the Recovery Well System were reflected as operations and
8 maintenance expenses (“O&M”) in FPL’s Projections filing for 2017 in
9 accordance with ASC 410-30, which was consistent with the treatment of
10 these costs in FPL’s actual/estimated true-up of 2016 filed on August 4, 2016
11 and revised on September 2, 2016. However, Mr. Keith’s testimony for the
12 2017 Projections filing noted that FPL had not conducted an analysis at that
13 time to determine whether or not any of these costs could be capitalized.

14 **Q. Has FPL completed an analysis since then to determine whether or not**
15 **any of the costs associated with the Recovery Well System are**
16 **capitalizable under ASC 410-30?**

17 A. Yes.

18 **Q. Please provide a summary of the analysis.**

19 A. FPL has determined that the Recovery Well System performs both
20 remediation and prevention functions. The remediation function is related to
21 the removal of hypersaline water from areas outside the boundaries of the
22 Turkey Point Cooling Canal System (“CCS”) that are in violation of
23 groundwater standards, while the preventive function is related to the

1 containment and removal of the hypersaline water within CCS boundaries.
2 FPL engaged TetraTech to perform an engineering analysis to determine the
3 apportionment of the Recovery Well System costs between prevention and
4 remediation, based on the relative mass of hypersaline water removed from
5 within and beyond the CCS boundaries, respectively, over the 20-year
6 expected operating life of the Recovery Well System. The Company has
7 previously engaged TetraTech to perform analyses related to the CCS. Based
8 on their review, TetraTech concluded that between 83% and 74% of the
9 hypersaline water will be removed from within the CCS boundaries (and
10 hence is related to prevention), while between 17% and 26% will be removed
11 from outside the CCS boundaries (and hence is related to remediation). Based
12 on this analysis, FPL has conservatively utilized a 74%/26% split to allocate
13 Recovery Well System costs between capital and O&M. A copy of the
14 TetraTech analysis is provided as Exhibit KF-1.

15 **Q. What costs did FPL incur in 2016 for the Recovery Well System?**

16 A. FPL incurred \$5.1 million of actual capital expenditures and \$1.9 million of
17 O&M for the Recovery Well System, which was included in the 2016 ECRC
18 Final True-Up calculation. At the end of 2016, the capital portion was
19 reflected as construction work in progress (“CWIP”) in the Company’s books
20 and records, as this investment is expected to go into service in late 2018.

21 **Q. Did FPL complete a review to determine whether any other costs**
22 **associated with the CO or CA are capitalizable under ASC 410-30 that**
23 **were previously treated as O&M expenses?**

1 A. Yes. FPL completed a review of the Back Fill Activities.

2 **Q. Please briefly describe the purpose of the Back Fill Activities.**

3 A. The purpose of the Back Fill Activities is to eliminate hydrogeological
4 conditions favoring the formation of ammonia in Biscayne Bay that would
5 result in exceedances of surface water quality standards.

6 **Q. Please describe how the accounting treatment for the Back Fill Activities**
7 **was evaluated.**

8 A. FPL determined that the Back Fill Activities are solely being performed to
9 prevent ammonia from forming in Biscayne Bay surface water east of the
10 CCS. Thus, their purpose is preventive rather than remedial, and it was
11 determined that the costs related to the Back Fill Activities should be
12 capitalized because it enhances the current structure and performs a
13 prevention rather than remediation function.

14 **Q. How much did FPL incur in 2016 for the Back Fill Activities?**

15 A. FPL incurred \$1.9 million of capital expenditures for the Back Fill Activities.
16 At the end of 2016, these costs were reflected as CWIP as these investments
17 are expected to go into service in late 2018.

18 **Q. How were the costs for the Back Fill Activities reflected in the 2016**
19 **ECRC Actual/Estimated True-Up filing?**

20 A. As indicated on pages 5 and 6 of FPL witness LaBauve's testimony on
21 September 2, 2016, these costs were reflected as O&M in the 2016
22 Actual/Estimated True-Up filing.

23 **Q. How will costs associated with the Recovery Well System and Back Fill**

1 **Activities be reflected in future ECRC filings?**

2 A. FPL expects it will continue to utilize the same accounting treatment applied
3 to 2016 actuals for each of these activities going forward and include these
4 costs along with all other costs in the TPCCMP Project for all future ECRC
5 filings, including the 2017 ECRC Actual/Estimated True-Up and 2018 ECRC
6 Projections filings.

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

8 A. Yes.

1

2 BY MR. BUTLER:

3 Q Mr. Ferguson, do you have one exhibit attached
4 to your prefiled direct testimony that has been
5 identified as Exhibit 21 on that comprehensive exhibit
6 list?

7 A Yes.

8 Q Was this exhibit prepared under your
9 direction, supervision or control?

10 A Yes.

11 Q Okay. Thank you. Would you please provide a
12 summary of your direct testimony for the Commission?

13 A Yes. Good afternoon, Commissioners. Thank
14 you for the opportunity to speak with you today. The
15 purpose of my direct testimony is to support the proper
16 accounting treatment for certain costs associated with
17 FPL's Turkey Point Cooling Canal Monitoring Plan in
18 accordance with generally-accepted accounting
19 principles, or GAAP. GAAP generally requires that
20 environmental contamination treatment costs shall be
21 charged to expense. However, in certain situations it
22 may be appropriate to capitalize environmental
23 remediation costs. Those costs may be capitalized only
24 if they meet certain criteria including, one, the cost
25 to extend the life, increase the capacity or improve the

1 safety or efficiency of the property; or, two, if the
2 costs mitigate or prevent environmental contamination
3 that is yet to occur and that otherwise may result from
4 future operations or activities.

5 FPL's determined that the recovery well system
6 performs both a remediation and prevention function.
7 Therefore, it is appropriate to capitalize a portion of
8 those costs. The remediation function is related to the
9 removal of hypersaline water from areas outside the
10 boundaries of the Turkey Point Cooling Canal System,
11 while the preventive function is related to the
12 containment and removal of the hypersaline water within
13 the cooling canal system boundaries.

14 FPL engaged Tetra Tech to perform an
15 engineering analysis to determine the apportionment of
16 the recovery well system cost between prevention, which
17 are considered capital expenditures, and remediation,
18 which are considered O&M expenses. Based on their
19 review, Tetra Tech concluded that between 74 percent 83
20 percent of the hypersaline water will be removed from
21 within the cooling canal system boundaries and, hence,
22 is related to prevention, while between 26 percent and
23 17 percent will be removed from outside the cooling
24 canal system boundaries and hence is related to
25 remediation.

1 Based on this analysis, FPL is conservatively
2 utilizing a 74 percent capital, 26 percent O&M split to
3 allocate the recovery well system costs. In addition,
4 my testimony addresses the recovery of the backfill
5 activities which are being performed solely to prevent
6 ammonia from forming on the Biscayne Bay surface water
7 east of the cooling canal system boundary. Therefore,
8 it was determined that the cost related to the backfill
9 activities should be capitalized because it enhances the
10 current structure and performs a prevention rather than
11 a remediation function.

12 This concludes my direct testimony summary.

13 MR. BUTLER: Thank you, Mr. Ferguson. I
14 tender the witness for cross-examination.

15 CHAIRMAN BROWN: Thank you. Public Counsel.

16 MR. REHWINKEL: Thank you, Madam Chairman.

17 Good afternoon, Mr. Ferguson.

18 THE WITNESS: Good afternoon.

19 MR. REHWINKEL: Madam Chairman, I passed out a
20 couple of exhibits for Mr. Ferguson. I apologize.
21 The one of them that I passed out is -- and he can
22 turn them over and look at them. One of them I
23 passed out is really a rebuttal exhibit so if I
24 could just ask him to put that aside until we get
25 there, just leave it up there.

1 CHAIRMAN BROWN: Okay.

2 MR. REHWINKEL: That's the ASC 250 document.
3 So all I want to do is identify as an exhibit the
4 Tetra Tech November 7, 2016 memo, please.

5 CHAIRMAN BROWN: We will go ahead and mark
6 that as Exhibit 80 with the title you just
7 described.

8 MR. REHWINKEL: Thank you.

9 (Whereupon, Exhibit No. 80 was marked for
10 identification.)

11 EXAMINATION

12 BY MR. REHWINKEL:

13 Q Mr. Ferguson, the purpose as I understand it,
14 of your testimony is to establish capital and expense
15 allocation factors for the remedial recovery well system
16 and the backfill activities, is that correct?

17 A Yes, it's to establish the accounting related
18 to the recovery well system and the backfill activities.

19 Q Okay. And it's only those two types of costs,
20 is that correct?

21 A Yes, my testimony only covers those two types
22 of costs.

23 Q All right. You would agree with me, would you
24 not, that the RWS -- if I say RWS, that's recovery well
25 system, do you understand that?

1 A Yes.

2 Q Okay. You would agree with me that the RWS is
3 only being installed because FPL violated the
4 groundwater regulations as required to clean up the
5 problem, correct?

6 A I believe. You know, I'm not the
7 environmental expert witness, but I believe Mr. Sole
8 testified to that subject.

9 Q So if I get -- ask you to turn to your
10 testimony at page four, line 20, and ask you to read
11 that sentence there that carries over onto the top of
12 page five, aloud.

13 A Yes. Starting on line 20?

14 Q Yes, sir.

15 A The remediation function as related to the
16 removal of hypersaline water from areas outside the
17 boundaries of Turkey Point Cooling Canal System, they're
18 in violation of groundwater standards, while the
19 prevention function is related to containment and
20 removal of the hypersaline water within the CCS
21 boundaries.

22 Q Okay. Thank you. I think you said prevention
23 and you meant preventative?

24 A Preventive, yes. I apologize.

25 Q Thank you. And the language that you just

1 referenced with regard to a violation, if I could get
2 you to turn -- well, let me step back for a second. I
3 think as Mr. Butler was introducing you, he asked you if
4 Exhibit KF-1 was prepared under your -- I think he said
5 direct supervision and control. Is that the question
6 that you answered yes to?

7 MR. BUTLER: Direction, and supervision or
8 control.

9 MR. REHWINKEL: Or control.

10 THE WITNESS: Yes. So it was under my
11 direction.

12 BY MR. REHWINKEL:

13 Q Okay. So you asked Tetra Tech to do this
14 study?

15 A That's correct. You know, as we were having
16 discussions around the different projects associated
17 with the Turkey Point Cooling Canal Monitoring Plan,
18 this particular project, the recovery well system had a
19 bit of unique nature to it in the way that it provided
20 both a remediation function or retraction function as
21 well as a containment function, and being the accountant
22 I asked, you know, is there a way that we can do a study
23 around that to help support that apportionment of those
24 different functions.

25 Q Is it fair to say that for all of the other

1 prior costs of the Project 42, and when I mean prior I
2 mean before 2016, there was never a need to do a study
3 like this, is that right?

4 A No, not that I'm aware of, and it was really
5 because of the nature of this particular function.

6 Q Okay. So if I can get you to turn to page one
7 of KF-1, please.

8 A I'm there.

9 Q And there's an introduction section. And
10 about halfway in that first paragraph do you see there's
11 a sentence that starts, because of the of the RWS?

12 A Yes.

13 Q Would you mind reading that sentence for me?

14 A Because of the RWS's dual purpose, its cost
15 should be allocated between two regulatory objectives,
16 recovery which involves retraction -- involves
17 retraction hypersaline water from areas that are in
18 violation of groundwater standards and containment of
19 hypersaline water within FPL property.

20 Q Okay. Thank you. So is this something that
21 Tetra Tech wrote, this introduction here?

22 A Yes.

23 Q Okay. So they say that the hypersaline water
24 violates the groundwater standards, do they not?

25 A I believe that's the case and I think that Mr.

1 Sole testified to that.

2 Q Okay. Now, you did not perform any
3 independent analyses to determine whether the allocation
4 factors for the RWS were correct or what they should be,
5 is that correct?

6 A That's correct. The work that was performed
7 by Tetra Tech was reviewed by our internal experts
8 and --

9 Q Okay. And did -- was Mr. Anderson the primary
10 person involved in preparing KF-1?

11 A I believe he's one of the co-authors of this,
12 yes.

13 Q Okay. Was Mr. Ross the other one?

14 A I don't recall the other individual.

15 Q Did you discuss with Mr. Anderson or anyone
16 else at Tetra Tech about the lack of a mass -- of a
17 basis for a mass-based allocation and whether a
18 volumetric allocation was more appropriate in this
19 study?

20 A No, I had no discussions regarding that.

21 Q Could you turn to Exhibit 80 that I passed
22 out?

23 A Sure.

24 Q Would it be fair to say that you've read this
25 memo before?

1 A I don't know.

2 Q Okay. Well, you supervised the preparation of
3 **this study, correct?**

4 A The preparation of the study was done at my
5 direction, that's correct.

6 Q And is it your testimony that you're not
7 **familiar with Exhibit 80? Would you take a minute and**
8 **look at it?**

9 MR. BUTLER: Yeah, would you give him a little
10 bit of time to look at it, please?

11 CHAIRMAN BROWN: Yes.

12 MR. REHWINKEL: I'm sorry. What was it?

13 CHAIRMAN BROWN: He just said give him a
14 little time to look at it.

15 THE WITNESS: I don't recall the details of
16 it, but I probably looked at it at some point in
17 time.

18 BY MR. REHWINKEL:

19 Q I mean, if you look at the introduction
20 **section of Exhibit 80 and if you look at the**
21 **introduction section of KF-1, there's some striking**
22 **similarities, are there not?**

23 A I agree.

24 Q Okay. Can I ask you to go down to the bottom
25 **of page one of that document and ask you to read the**

1 sentence about two-thirds of the way down that begins,
2 FPL can choose. Do you see that?

3 A Yes.

4 Q Okay. Read that -- those -- read the rest of
5 the paragraph from that point forward, please.

6 A FPL can choose to base the apportionment on
7 volume or mass. Volumetric basis seems to be most
8 appropriate because there are no mass-dependent costs.
9 This is water treatment. Note that there will be a
10 fraction of saline or fresher water that reports to the
11 RWS as a consequence of pumping, particularly in later
12 time as the salinity of the CCS and surrounding area
13 become less saline.

14 Q So did you have a conversation with Tetra Tech
15 around this issue about whether volumetric or a
16 mass-base allocation was more appropriate?

17 A No. I would have relied on the internal
18 experts and environmental, including Mr. Sole.

19 Q Okay. Internal meaning internal to --

20 A Internal to FPL, yes.

21 Q In your direct testimony, do you recall using
22 the word abatement?

23 A I don't recall.

24 Q Okay. And I apologize if you feel like this
25 is asked and answered, but just to be sure, you did not

1 do an analysis related to the cost of the freshening
2 wells, did you?

3 A No. That -- those costs were already incurred
4 prior to this point in time.

5 Q Well, in the sense that they were already
6 incurred, they were capital costs and so you would not
7 have allocated those --

8 A That's correct. They don't have a dual nature
9 like the recovery well system does.

10 Q Okay. So just so I understand the bases
11 the -- or was there a determination made that the
12 freshening wells were only installed for prevention and
13 not for remediation?

14 A That's correct.

15 MR. REHWINKEL: Madam Chairman, as you can see
16 I'm checking off questions that I'm not asking. So
17 if I could just get a second.

18 CHAIRMAN BROWN: Sure.

19 MR. REHWINKEL: Thank you.

20 BY MR. REHWINKEL:

21 Q Is it your testimony that -- well, let me
22 ask -- let me strike that and ask this to you. Have you
23 done any analysis about whether the allocation basis
24 that you present in KF-1 has applicability to any other
25 cost in Project 42 other than the RWS and the backfill

1 activities?

2 A I don't believe KF-1 applies to the backfill
3 activities at all, so --

4 Q Okay. Strike that part. Other than the RWS,
5 is there anything about KF-1 that would be applicable to
6 any other cost component of Project 42 from 2016
7 forward?

8 A No, it's kind of the recovery well system, as
9 well as kind of the associated cost with it, would be
10 what's subject to that.

11 Q Okay. Do you have Exhibit 72 up there? And
12 this is Response Interrogatory 62.

13 A Yes, I do.

14 Q Okay. Have you ever -- do you have any
15 familiarity with this document? And I'm specifically
16 asking about attachment number one.

17 A No, I do not.

18 Q Okay. So the -- you look in column B of
19 Exhibit 62, and I understand you said you don't have
20 familiarity with it, but the 74 percent abatement and 26
21 percent remediation in the freshening column, which is
22 the second item in this thing -- well, actually, there
23 is a nutrient management plan that has a 74 percent
24 abatement, 26 percent remediation, and then the
25 freshening project. The top two there, they have that

1 74/26 allocation, do you see that? At least that's
2 presented here.

3 A Yes, I see it.

4 Q Okay. And I just want to understand, is your
5 testimony that those factors are not, to your knowledge,
6 derived from KF-1?

7 A Yeah. Like I said, I don't have any
8 familiarity with this exhibit so I don't know what
9 under -- under what pretense it was prepared in that
10 respect.

11 Q Okay. Yeah, on page five, lines 18 through
12 20.

13 A Of my testimony?

14 Q Direct, yes. Yeah. There is a sentence that
15 reads, at the end of 2016, the capital portion was
16 reflected as construction work in progress, CWIP in the
17 company's books and records as this investment is
18 expected to go in service -- into service in late 2018.
19 Do you see that?

20 A I do.

21 Q Can you tell me what that's referring to?

22 A It's referring to the capital portion
23 associated with the recovery well system. So
24 essentially the 74 percent apportionment of costs that
25 were incurred in 2016.

1 Q Okay. So if you'll accept, subject to check,
2 that about 75 million dollars were passed through the
3 clause in 2017 based on the 2016 testimony, and those
4 costs are being reallocated based on your study, or at
5 least a portion of them are, are being reallocated based
6 on your study. That's what this refers to?

7 A Yes. The cost hadn't been incurred yet and so
8 we were still, as we testified in our actual estimated
9 filing back in 2016, we were still doing some analysis
10 around the applicability of whether some of those costs
11 could be capitalized and this reflects that as we
12 completed the Tetra Tech analysis we ultimately
13 determined that it was appropriate to capitalize those
14 costs.

15 Q So these are costs that were from 2018, is
16 that right?

17 A No. These are costs incurred in 2016. The
18 applicability of the reference to 2018 is just the
19 in-service date of the project, right. It's in work in
20 process until such time that it goes in service.

21 Q I meant -- when I said incurred, I meant they
22 were not in service.

23 A That's correct, yes.

24 Q So was the amount here 49.4 million dollars?

25 A No, I think on line 16 I reference 5.1 million

1 dollars of incurred costs.

2 MR. BUTLER: I'm sorry, Mr. Rehwinkel. What
3 time period are you referring to for that amount in
4 question?

5 MR. REHWINKEL: Well, I'm a little bit
6 confused. I withdraw that question. And, Madam
7 Chairman, I just have two more questions, but I
8 want to review Ms. Deaton's testimony to ask him a
9 question about that.

10 CHAIRMAN BROWN: Okay. Do you want to skip
11 over and go to Mr. Moyle and --

12 MR. REHWINKEL: No, it'll just take a second.

13 BY MR. REHWINKEL:

14 Q Okay. You probably don't have Ms. Deaton's
15 testimony in front of you.

16 A I do not.

17 MR. REHWINKEL: But, Madam Chair, if I could
18 ask him a question and ask him to accept that I'm
19 reading accurately from RBD-3, appendix 1, page 103
20 of 119.

21 MR. BUTLER: I would prefer to put Ms.
22 Deaton's testimony in of him so he can follow
23 along.

24 MR. REHWINKEL: I'd be happy to do that. I
25 don't have a --

1 MR. BUTLER: We can get him a copy -- yeah.

2 CHAIRMAN BROWN: Okay. Commissioner Graham is
3 offering his.

4 THE WITNESS: Probably easier to read than Mr.
5 Rehwinkel's.

6 MR. REHWINKEL: You don't have an electric
7 microscope, you can't see it.

8 THE WITNESS: Thank you. Oh, it is the small
9 version. Okay.

10 BY MR. REHWINKEL:

11 Q So do you see on page 103 the first word up
12 there is capital-project. Do you see that?

13 A Let me get to it.

14 CHAIRMAN BROWN: Commissioner Graham's is
15 larger font if you need it.

16 THE WITNESS: Yes.

17 BY MR. REHWINKEL:

18 Q Okay. And read along with me, or follow along
19 with me and I'll read it. Capital-project costs are
20 estimated to be 3,538,078, which is 2,088,431 or
21 144.1 percent higher than previously projected. The
22 variance is primarily due to the transfer of CWIP from
23 base to ERC and the reclassification of 49.4 million
24 dollars of O&M to capital, as explained in the testimony
25 of Keith Ferguson filed in this docket on April 3rd,

1 **2017. Did I read that right?**

2 A Yes. This is referring to the 2017
3 projections, and what I believe Ms. Deaton is trying to
4 explain here is that we would consistently follow the
5 fact that we ultimately concluded that a portion of
6 those costs were capital. That will flow through the
7 remainder of the project.

8 Q Okay. Now -- but the testimony that she's
9 referring to is the same testimony I'm asking you about
10 on April 3rd, 2017, right?

11 A Yeah. Yes. Again, she is explaining that
12 I've, you know, our ultimate conclusion is that a
13 portion of that is moving to capital.

14 Q Okay. And my question to you is I couldn't
15 find the number 49.4 million in your testimony. And was
16 I missing something or is it not there?

17 A The number is not there is. Again, I think
18 what Ms. Deaton is trying to explain is the concept of
19 moving costs from O&M to capital is something that I
20 address in my testimony as part of the true-up for 2016
21 costs which she's trying to explain is that treatment
22 continues forward in 2017.

23 Q So -- and I'm not asking to verify the 49.4
24 million dollar number, but if there was 49.4 million
25 dollars of O&M reclassified to capital as a result of

1 **KF-1, by definition it would have to be because of --**
2 **because it was an RWS cost, is that right?**

3 A I believe it could be either RWS or the
4 backfill activities. And, again, these are projected
5 costs, not actually incurred costs. We didn't record
6 these costs as capital. These are projections.

7 MR. REHWINKEL: Thank you. And thank you for
8 bearing with me on the small print. And that's all
9 I have. Thank you, Madam Chairman. Thank you, Mr.
10 Ferguson.

11 CHAIRMAN BROWN: Thank you, Mr. Rehwinkel All
12 right. Mr. Moyle.

13 MR. MOYLE: Thank you.

14 EXAMINATION

15 BY MR. MOYLE:

16 Q With respect to the cost that you're
17 testifying about, do you know what's the cumulative
18 dollar number that you're talking about?

19 A In terms of the -- how much for the recovery
20 well system and the backfill activities?

21 Q Right.

22 A I don't know off the top of my head.

23 Q That would be Ms. Deaton?

24 A I'm sorry?

25 Q That would be Ms. Deaton who would know that?

1 A Yes. Yes.

2 Q Okay. And I guess you made clear that
3 everything that you're testifying about are all costs
4 that are required by the consent order with DEP that FPL
5 has or the consent agreement that FPL has with
6 Miami-Dade DERM, is that right?

7 A Yes, that's my understanding.

8 Q And you were here when Mr. Sole testified.
9 You're aware those costs relate to a violation of law,
10 is that right? Is that also your understanding?

11 A Again, I'm not the environmental expert and so
12 I can't comment on, you know, the relationship between
13 those, but clearly I think Mr. Sole did acknowledge that
14 there was a violation and the consent order and consent
15 agreements were, you know, a result of those -- of that
16 violation.

17 Q Okay. And you have a degree in accounting
18 from University of Florida as well as a Master's degree?

19 A Yes, I do.

20 CHAIRMAN BROWN: We know he's smart.

21 MR. MOYLE: Yeah.

22 THE WITNESS: Yeah. We can all agree on that,
23 right?

24 MR. MOYLE: Maybe even stipulate.

25 BY MR. MOYLE:

1 **Q** Are there any accounting rules or regulations
2 that you're aware of that would restrict the ability of
3 a regulated entity to earn a profit on certain capital
4 costs that result from a violation of an environmental
5 law?

6 A Are you asking whether there's any accounting
7 rules that would limit our ability to earn a return on
8 our capital invested?

9 **Q** That's right. If the capital invested flowed
10 directly from a violation of law, of environmental law?

11 A I'm not aware of any particular accounting
12 principals that limit the company's ability to earn a
13 return on capital that they've invested to prevent new
14 occurrences from happening, which is exactly the
15 component that we've capitalized here. It's not -- it's
16 not the retraction component. It is the containment
17 component.

18 **Q** And with respect to the containment component,
19 you're also -- you're asking for the Commission to
20 approve a profit on the capital that's invested, is that
21 right, as part of the cost?

22 A Again, I do --

23 **Q** You can go yes, no, and then explain.

24 A Well, yes, in terms of we are earning a return
25 just as we would any capital investment that we make

1 including ones that we make in ECRC. For instance,
2 scrubbers that we put on coal fire facilities that
3 prevent pollution from occurring into the atmosphere.
4 Those are capital investments that we earn an
5 appropriate return on the money that our -- both our
6 debt and shareholders have invested.

7 **Q All right. And you brought up the scrubber**
8 **example. That -- do you have any familiarity with that?**

9 A In terms of whether FPL has scrubbers? We do.

10 **Q Yeah, and weren't those required to be put in**
11 **place by the Federal Clean Air Act in related laws and**
12 **regulations?**

13 A I believe they're as a result of regulations
14 with regulatory bodies.

15 **Q They're not as a result of notice of**
16 **violations found against FPL by DEP, correct?**

17 A I'm not aware of that, but again, what we are
18 capitalizing is the containment from any new violations
19 from occurring. We're expensing anything that relates
20 to things outside of the boundaries of the cooling canal
21 system, which was what was subject to the violation.

22 **Q So what are you doing specifically with the**
23 **recovery well system? And that's being expensed or**
24 **capitalized?**

25 A It's being both capitalized and expensed.

1 Q All right. And same question with respect to
2 the ability to earn a profit on the money spent on the
3 recovery well system, you have the ability to earn a
4 profit spent on the recovery well system?

5 MR. BUTLER: I thought that's what he was just
6 talking about.

7 MR. MOYLE: I thought he was talking about the
8 backfill activities.

9 THE WITNESS: No. For clarification, the
10 capital portion of the recovery well system, which,
11 again, is the containment portion of it, it's
12 preventing new occurrences from happening, is being
13 capitalized and we are earning a return just as we
14 would any other capital investment that we make on
15 behalf of our customers.

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

17 CHAIRMAN BROWN: Thank you, Mr. Moyle. All
18 right. Mr. Cavros.

19 MR. CAVROS: I have no questions. Thank you.

20 CHAIRMAN BROWN: Thank you. Staff.

21 MR. MURPHY: No questions.

22 CHAIRMAN BROWN: Commissioners. Commissioner
23 Polmann. No?

24 COMMISSIONER POLMANN: Thank you, Madam
25 Chairman. Good afternoon, Mr. Ferguson.

1 THE WITNESS: Good afternoon.

2 COMMISSIONER POLMANN: If we could go to your
3 direct testimony, please.

4 THE WITNESS: I'm there.

5 COMMISSIONER POLMANN: Page four. Actually,
6 no. Well, let's look at bottom -- I believe Mr.
7 Rehwinkel made reference on page four to the
8 remediation function and the preventive function
9 and you read that part of the record here, part of
10 your answer to his question. And then let's look
11 at the top of page five. This was also mentioned
12 in your conversation. Starting on line two, this
13 is in reference to utilities engagement Tetra Tech.
14 And I believe and I heard your answers to Mr.
15 Rehwinkel's question, and I'm going ask this in a
16 slightly different way. Let's just look at
17 lines -- on page five, lines two through six. Can
18 you just review that? You don't have to read it
19 into the record, but just look at that again.

20 THE WITNESS: Sure. I've read it.

21 COMMISSIONER POLMANN: Now, you have answered
22 earlier that the work of Tetra Tech, and correct me
23 if I'm wrong, was conducted under your control or
24 at your direction?

25 THE WITNESS: At my direction because, again,

1 I wanted to make sure that we had something to
2 support our allocation.

3 COMMISSIONER POLMANN: So you essentially
4 requested the consulting firm to perform an
5 analysis, but you didn't supervise their technical
6 work, is that correct?

7 THE WITNESS: That's correct.

8 COMMISSIONER POLMANN: Okay. And the lines
9 two through six, is in some regard to define a type
10 of technical work, would you agree with that?

11 THE WITNESS: I would agree that I'm
12 summarizing what Tetra Tech had included in their
13 report.

14 COMMISSIONER POLMANN: Okay. Was this part of
15 a scope of work that was assigned to them prior to
16 their work, or was this a summary after their work?

17 THE WITNESS: I believe this reflects the
18 ultimate result of their work.

19 COMMISSIONER POLMANN: Because the way it's
20 written, that's unclear. So do you know for a fact
21 that this was written by Tetra Tech, these words
22 starting -- let me just say, performing an
23 engineering analysis and starting with, to
24 determine the apportionment of the recovery well
25 system cost between prevention, remediation based

1 on relative mass of hypersaline water removed
2 from -- and continue on through the end of that
3 sentence. Who crafted that language?

4 THE WITNESS: I believe I crafted it based on
5 a summary of the Tetra Tech report.

6 COMMISSIONER POLMANN: But, given that, this
7 is not your area of expertise. You wrote this
8 based on their material, is that correct?

9 THE WITNESS: That's correct. And, you know,
10 given that it's not my area of expertise, I'm sure
11 the wording might be looked at a little bit
12 differently, but I more concentrated on the actual
13 activities themselves.

14 COMMISSIONER POLMANN: Okay. Thank you.
15 Okay. I think we've addressed with other witnesses
16 the concept of hypersaline, so I won't pursue that
17 here.

18 In the last sentence in that response on line
19 14, just to confirm, this was their work but you
20 are relying upon it solely for apportioning the
21 costs?

22 THE WITNESS: That's correct.

23 COMMISSIONER POLMANN: So there's a percentage
24 of cost that's being split between the remediation,
25 the preventative or the containment --

1 THE WITNESS: That's correct. Essentially
2 it's to get a capital O&M split.

3 COMMISSIONER POLMANN: Okay. So you're not
4 using that report for any other purpose, is that
5 correct?

6 THE WITNESS: Not that I'm aware of. That was
7 why I requested the analysis to be done was to be
8 able to apportion the cost.

9 COMMISSIONER POLMANN: So is it true that you
10 have no opinion as to the technical validity of
11 that report, you're taking it at face value?

12 THE WITNESS: I am. I know that the model
13 they used was the same model that was used for the
14 other analysis and so, you know, I had relative
15 comfort in that, but I'm not the technical expert.

16 COMMISSIONER POLMANN: Okay. Thank you.

17 All right. Given that the report was not
18 prepared by you, I don't have any further
19 questions. I'll direct those to another witness.
20 Thank you.

21 CHAIRMAN BROWN: Thank you. Redirect.

22 MR. BUTLER: Thank you, Madam Chairman.

23 EXAMINATION

24 BY MR. BUTLER:

25 Q Mr. Ferguson, do you have in front of you a

1 copy of Exhibit 80?

2 A Exhibit 80? Yes. Sorry.

3 Q I think when you were asked about this, you
4 indicated that the discussion about the choice between a
5 volumetric or salt mass basis for allocation was
6 something that it then discussed with FPL's internal
7 environmental experts, is that right?

8 A Yes, that would be my assumption.

9 Q Were you involved in any conversations with
10 the experts, the internal experts, about the choice of
11 allocation method?

12 A No, I was not.

13 Q You were asked some questions by Mr. Moyle
14 about recovery, sort of capital cost recovery of -- or
15 the containment function costs associated with the
16 recovery well system. Do you remember that?

17 A Yes.

18 Q Did you discuss the proposed allocation
19 between capital and expense for those costs with your
20 external auditors?

21 A I did.

22 Q What was their opinion regarding the
23 appropriateness of your allocation?

24 A They --

25 MR. MOYLE: I'm going to object. I didn't get

1 into discussions about external auditor
2 conversations. This is new stuff coming in.

3 MR. BUTLER: Mr. Moyle appeared to be
4 criticizing at least the allocation if not the
5 recovery of the cost based on the fact that there
6 was a notice of violation and was -- precipitated
7 the consent order and agreements and whether that
8 was consistent with accounting standards and I'm
9 simply asking whether Mr. Ferguson had addressed
10 his proposal for allocating and recovering these
11 costs as capital with the external auditors.

12 MR. REHWINKEL: Madam Chairman, if I might be
13 heard. Mr. Ferguson rebuts the Public Counsel's
14 specific criticisms of the allocation factor and I
15 think that to the extent that any testimony is
16 relevant, it should be heard on his rebuttal
17 because this is -- I agree with Mr. Moyle, this is
18 new information and I don't think it's properly
19 within the scope of the question that Mr. Moyle
20 asked.

21 MR. BUTLER: Well, if I may respond.

22 CHAIRMAN BROWN: Yes.

23 MR. BUTLER: It's new information because Mr.
24 Moyle raise it in cross-examination. He raised or
25 put into play this question of whether it was

1 appropriate to be recovering these sorts of costs
2 and I think that the input of FPL's external
3 auditors is an important piece of information with
4 respect to addressing that --

5 CHAIRMAN BROWN: I'm going to allow the
6 question.

7 MR. BUTLER: Thank you.

8 THE WITNESS: So, yes, we discussed this
9 accounting extensively with our external auditors
10 and they ultimately agreed with our accounting
11 conclusions including how we allocate the costs.

12 MR. BUTLER: Thank you.

13 MR. MOYLE: And just so -- I think we have a
14 convention here. Mary Ann has opined on it before
15 with respect to relying completely on hearsay for a
16 finding of fact. That clearly is hearsay. We
17 would object to it being the basis of a finding of
18 fact.

19 CHAIRMAN BROWN: Okay. Your objection is
20 noted.

21 MR. BUTLER: Thank you. That's all the
22 redirect I have.

23 CHAIRMAN BROWN: Okay. Let's get to exhibits.
24 With this witness we have one that is attached to
25 his prefiled direct and that would be Exhibit No.

1 21.

2 MR. BUTLER: That's right. We would move that
3 into --

4 MR. MOYLE: We would register an objection on
5 the same grounds that Commissioner Polmann asked
6 him, do you have any knowledge about this. He said
7 no, I don't, I don't have any technical expertise
8 in this, I'm just attaching it. And you can't take
9 substantive information and attach it to testimony
10 and then put it in and say it's being offered for
11 the truth of the matter asserted. So we would --
12 we would register the objection on the hearsay.
13 Can't support a finding of fact without having
14 someone come in and have her corroborating
15 testimony.

16 CHAIRMAN BROWN: Any other objections on it?
17 All right. I'm going to turn to our legal counsel
18 on this one.

19 MR. MOYLE: Oh, can I add one more?

20 CHAIRMAN BROWN: No.

21 MR. MOYLE: Foundation. There's no
22 foundation.

23 CHAIRMAN BROWN: No, we're just sticking with
24 hearsay.

25 MS. HELTON: We're talking about Exhibit 21?

1 I want to make sure. Is that correct?

2 CHAIRMAN BROWN: That's correct.

3 MS. HELTON: It seems to me that we should
4 hear from Florida Power & Light if they have a
5 response to Mr. Moyle's objection before we go
6 forward any further.

7 MR. BUTLER: Thank you. Yes. The response is
8 this: Mr. Ferguson is -- clearly has expertise in
9 accounting. He is an accountant. He is a CPA.
10 This is the sort of thing that accountants would
11 rely upon for forming their judgment and that's
12 what he said he did and I think it is entirely
13 appropriate to come in to that basis. If there are
14 questions about the technical basis for it, we have
15 both Mr. Sole and Mr. Anderson who are available
16 for any questions that the witnesses might have to
17 explore that -- I'm sorry -- the attorneys might
18 have to explore those issues with, but I think that
19 it's exactly the sort of thing that an accountant
20 would appropriately direct to have prepared and
21 then rely upon in formulating the basis of the
22 accounting allocation.

23 CHAIRMAN BROWN: Okay. Fair enough. Going
24 back to legal.

25 MS. HELTON: Madam Chair, can I check one

1 thing in the order establishing procedure?

2 CHAIRMAN BROWN: Sure. Do you want to come
3 back to the admission of this particular exhibit
4 afterwards while staff has an opportunity to review
5 it?

6 MR. BUTLER: We could do that.

7 CHAIRMAN BROWN: Let's do that. I don't want
8 to have dead airtime here. So let's -- we have
9 another exhibit associated with this witness that
10 was proffered by, I believe it was OPC, and that is
11 the Exhibit No. 80.

12 MR. REHWINKEL: Madam Chairman, I'm prepared
13 to move it, but it probably will be appropriate to
14 move it after you make a ruling on 21.

15 CHAIRMAN BROWN: That's a good call. All
16 right. This witness, we will decide the exhibits
17 after, but this witness can be excused if you'd
18 like.

19 MR. BUTLER: That would be fine, yes,
20 temporarily excused because he does have rebuttal.

21 CHAIRMAN BROWN: Thank you, Mr. Ferguson.
22 You're temporarily excused.

23 THE WITNESS: Thank you.

24 CHAIRMAN BROWN: All right.

25 MS. HELTON: And, Madam Chairman, staff's

1 recommendation would be to admit Exhibit No. 21 and
2 then if it is corroborated later in the record then
3 you could use it has hearsay evidence.

4 CHAIRMAN BROWN: Thank you.

5 THE WITNESS: You could rely on the hearsay
6 evidence.

7 CHAIRMAN BROWN: Thank you. I would prefer to
8 do that. We're going to go ahead and admit 21.
9 And dealing with 80, which is the Tetra Tech
10 November 7, 2016 memo, you would recommend the
11 same?

12 MS. HELTON: Yes, ma'am.

13 CHAIRMAN BROWN: Okay. We're going to go
14 ahead and admit both and -- at this time.

15 (Whereupon, Exhibit Nos. 21 and 80 were
16 received into evidence.)

17 CHAIRMAN BROWN: That concludes the direct
18 case for FPL so now we move on to the Office of
19 Public Counsel. Mr. Rehwinkel -- or sorry.

20 MR. BUTLER: Madam Chairman.

21 CHAIRMAN BROWN: Yes.

22 MR. BUTLER: While they are preparing, we have
23 some exhibits that I'd like to hand out that we may
24 end up using in cross of Dr. Panday.

25 CHAIRMAN BROWN: Thank you. Staff will help

1 you out there.

2 MR. REHWINKEL: Madam Chairman, if we could
3 have a couple minutes for Dr. Panday to be -- to
4 get situated.

5 CHAIRMAN BROWN: Oh, sure. Is Dr. Panday in
6 the building or do you need a few more minutes?

7 MS. MORSE: He's in the building.

8 CHAIRMAN BROWN: Okay. Why don't we take a
9 five-minute break then while he's getting the
10 documentation and we'll reconvene at 4:35 p.m.

11 (Transcript continues in sequence in Volume
12 5.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 31st day of October, 2017.



DANA W. REEVES
NOTARY PUBLIC
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