

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180007-EI

ENVIRONMENTAL COST
RECOVERY CLAUSE.

VOLUME 2
PAGES 247 through 430

PROCEEDINGS: HEARING
COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Monday, November 5, 2018

TIME: Commenced: 2:03 P.M.
Concluded: 5:40 P.M.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 (Transcript follows in sequence from
3 Volume 1.)

4 COMMISSIONER CLARK: Move to exhibits.

5 MR. MURPHY: Staff has compiled a stipulated
6 comprehensive exhibit list which includes the
7 prefiled exhibits attached to the witness'
8 testimony and staff's exhibits. The list has been
9 provided to the parties, the Commissioners and
10 court reporter. This list is marked as the first
11 hearing exhibit, and the other exhibits should be
12 marked as set forth in the chart.

13 COMMISSIONER CLARK: All right. The
14 comprehensive exhibit list is marked as Exhibit 1.

15 (Whereupon, Exhibit No. 1 was marked for
16 identification.)

17 COMMISSIONER CLARK: Okay. Staff.

18 MR. MURPHY: At this time, staff asks that the
19 comprehensive exhibit list marked as Exhibit 1 be
20 entered into the record.

21 COMMISSIONER CLARK: Okay. Exhibit No. 1 is
22 entered.

23 (Whereupon, Exhibit No. 1 was received into
24 evidence.)

25 MR. MURPHY: Staff asks that all prefiled

1 exhibits and staff's exhibits be included in the
2 record as set forth in the comprehensive exhibit
3 list numbered Exhibit 2 through 48.

4 (Whereupon, Exhibit Nos. 2-48 were marked for
5 identification.)

6 COMMISSIONER CLARK: Okay. Have all of the
7 parties had an opportunity to review this exhibit
8 list?

9 So are there any objections to entering this
10 into the record?

11 All right. Seeing none, Exhibits 2 through 48
12 are hereby entered into the official record.

13 (Whereupon, Exhibit Nos. 2-48 were received
14 into evidence.)

15 COMMISSIONER CLARK: All right. Stipulated
16 issues, Mr. Murphy.

17 MR. MURPHY: Yes, if the Commission decides
18 that a bench decision is appropriate today, staff
19 recommends that the proposed stipulation for the
20 issues set forth in Section X of the prehearing
21 order should be approved. All parties either
22 support or do not oppose the proposed stipulations.

23 COMMISSIONER CLARK: All right.

24 Commissioners, are there any questions on the
25 generic issues or the stipulated company specific

1 issues that are listed? I can go through those
2 numbers if necessary, but would rather not.

3 There are no questions on any of the
4 stipulated issues. All right, then I would
5 entertain a motion regarding the proposed
6 stipulations.

7 COMMISSIONER FAY: Mr. Chairman, I will move
8 the motioned stipulation.

9 COMMISSIONER CLARK: Do I have a second?

10 CHAIRMAN GRAHAM: Second.

11 COMMISSIONER CLARK: I have a motion and
12 second to approve the stipulations as set forth in
13 Section X of the prehearing order.

14 Any discussion? Seeing none, all in favor,
15 say aye.

16 (Chorus of ayes.)

17 COMMISSIONER CLARK: Opposed?

18 (No response.)

19 COMMISSIONER CLARK: Motion carries.

20 Mr. Murphy.

21 MR. MURPHY: Would you wish to excuse Gulf,
22 TECO and DEF at this time?

23 COMMISSIONER CLARK: Yes. We will excuse
24 Gulf, TECO and Duke since all of your issues have
25 been resolved, for the remainder of the ECRC

1 hearing that is.

2 Okay. Did we get everybody?

3 All right. Let's move to contested issues,
4 Mr. Murphy.

5 MR. MURPHY: I'm not aware of any preliminary
6 matter for contested issues.

7 COMMISSIONER CLARK: All right. Parties, is
8 there anything else that we need to discuss?

9 All right. Let's move into opening
10 statements. Each party is allowed three minutes
11 for opening statements, and I believe we will begin
12 with FPL.

13 MS. MONCADA: Thank you. Good afternoon,
14 Commissioners.

15 The environmental cost recovery factors
16 proposed by FPL are reasonable and should be
17 approved. In this proceeding, FPL proposes to
18 modify two existing projects and seeks approval of
19 one new project.

20 FPL proposes to modify Project 41, the Manatee
21 Temporary Heating System project, to include
22 installation of a heating system at Plant Ft.
23 Myers. This installation is a cost-effective way
24 to satisfy the plant's environmental permit
25 requirement to provide a warm refuge for manatees.

1 Next, FPL proposes to modify Project 47, the
2 National Pollution Discharge Elimination System
3 Permit Renewal Requirement project, or the NPDES
4 project. Florida and Georgia Power, the co-owners
5 of Plant Scherer Unit 4, anticipate that the
6 plant's renewed NPDES permit will include an
7 effluent discharge limit for copper.

8 In order to continue to satisfy Georgia's
9 water quality standards, FPL and Georgia Power will
10 replace what is known as packing material that is
11 contained inside of Unit 4's cooling tower. The
12 old packing material at Plant Scherer had become
13 contaminated with copper, which led to elevated
14 levels of copper discharge in the Ocmulgee River.
15 The replacement of that material is designed to
16 redress that situation.

17 And to be clear, Commissioners, FPL seeks to
18 recover the associated costs through ECRC only if
19 the copper discharge limit is included as a permit
20 condition as we anticipate will occur.

21 Next, FPL seeks approval of for a new project
22 that is known as the Solar Site Avian Monitoring
23 and Reporting project. This monitoring and
24 reporting of the avian fatality rate at a universal
25 solar site is required by Alachua County's

1 Department of Growth Management as a permit
2 requirement for FPL's Horizon Solar Energy Center.
3 Thus, the two modifications and the one new project
4 concern activities that FPL is required to
5 undertake in order to comply with environmental
6 regulations.

7 Finally, with respect to FPL's Turkey Point
8 Cooling Canal Monitoring project, SACE's prehearing
9 statement acknowledges the Commission's ruling from
10 last year that the costs associated with the
11 activities required by the DEP Consent Order and
12 Miami-Dade Consent Agreement are eligible for ECRC
13 recovery. The cooling canal costs in question here
14 are necessary to comply with that Consent Agreement
15 and Consent Order. They are prudent and reasonable
16 and should be approved.

17 In conclusion, FPL's new projects, or
18 modifications to existing projects, satisfy the
19 ECRC eligibility criteria and should be approved,
20 and FPL's proposed 2019 ECRC factors should be
21 approved.

22 Thank you.

23 COMMISSIONER CLARK: Okay. Who's next? OPC?

24 MR. REHWINKEL: Thank you, Mr. Chairman and
25 Commissioners.

1 Very briefly, the Public Counsel is here today
2 challenging the company's request for cost recovery
3 for two projects, the manatee heating plan project
4 and the NPDES -- if I said that correctly --
5 modification cost recovery request for the Scherer
6 plant in Georgia. We believe that the company's
7 showing falls short of the legal standard that is
8 required for cost recovery in Florida, and that
9 would be the basis of our questioning here today.

10 Thank you.

11 COMMISSIONER CLARK: All right. FIPUG.

12 MS. PUTNAL: Thank you. FIPUG waives an
13 opening statement in this docket.

14 COMMISSIONER CLARK: Okay. Phosphate.

15 MR. BREW: No.

16 COMMISSIONER CLARK: And SACE.

17 MR. CAVROS: Good afternoon, Commissioners.
18 George Cavros on behalf of Southern Alliance for
19 Clean Energy. SACE, as you know, is a nonprofit
20 clean energy organization that advocates moving the
21 state to a lower cost, lower risk and cleaner
22 energy future.

23 SACE maintains its position from last year's
24 docket, that FPL's cooling canal system remediation
25 cost should not be recoverable from FPL customers.

1 It believes that Florida's families should not be
2 paying for FPL's mistakes. FPL knew or should have
3 known in 1978, or at least by 1992, that its
4 cooling canal system at its Turkey Point plant was
5 causing an underground hypersaline plume, a
6 contamination plume that was spreading well beyond
7 the borders of the plant.

8 FPL's imprudent operation of the cooling canal
9 system violated drinking water standards, which has
10 led to environmental compliance requirements placed
11 upon it by the Department of Environmental
12 Protection and the Miami-Dade Division of
13 Environmental Resources Management.

14 The Commission last year approved the
15 company's request for rate recovery from customers
16 for the costs associated with those compliance
17 actions. The Commission's order is being appealed
18 at the Florida Supreme Court, and a decision on
19 that appeal is still pending.

20 So, you know, beyond the recovery of the
21 operations and maintenance costs, FPL is also
22 seeking to recover profit for shareholders for
23 investments stemming directly from its violation of
24 law.

25 In 2019, for instance, the company will

1 collect over \$6 million in revenue requirements
2 from customers. And based on FPL's debt to equity
3 ratio and its 10.5 percent ROE midpoint range,
4 surely more than half of that will be paying for
5 FPL profits stemming from the company's violation
6 of federal, state and local water quality laws.
7 SACE believes that, again, is very inappropriate.

8 In this year's docket, FPL is not only
9 requesting a prudence determination for costs that
10 it's already incurred, but it's coming to you,
11 Commissioners, for costs that it wants to spend,
12 but yet it provides almost very little testimony on
13 whether it is making timely progress towards
14 meeting provisions in the DEP Consent Order and the
15 DERM Consent Agreement.

16 This information is critical for a
17 reasonableness determination. That's the standard
18 for approving costs, forward-looking costs.
19 Without that information, the Commission is
20 effectively providing a blank check to the company.
21 Getting information on the record whether FPL is
22 making timely progress on its compliance
23 requirements will help this commission now and
24 future commissions in making a reasonable
25 determination on a cost that flow from these

1 compliance activities.

2 SACE believes that FPL has not met its
3 evidentiary burden to show the projected
4 remediation costs are reasonable. FPL only
5 provides a one-paragraph summary of project
6 accomplishments. FPL witness -- in that summary,
7 FPL Witness Sole states that the company is moving
8 forward with compliance on the consent agreement
9 and the consent agreement addendum.

10 Commissioners, it's not only -- the company is
11 not only moving -- not moving forward, it's not
12 even moving sideways. The Commission -- rather,
13 the company is moving backwards on some of these
14 matters referenced in the Consent Agreement, and we
15 look forward to shedding light on that here today.

16 Therefore, we request that rate recovery for
17 the Turkey Point Cooling Canal Management Plant
18 project remediation activities should be denied.

19 Thank you.

20 COMMISSIONER CLARK: Thank you, Mr. Cavros.

21 All right. Did we cover everybody in opening
22 statements?

23 All right. We will move in to witnesses.

24 FPL.

25 MS. MONCADA: FPL calls Mr. Mike Sole.

1 COMMISSIONER CLARK: Before you begin your
2 testimony, may I swear you in? Would you raise
3 your right hand and repeat after me?

4 Whereupon,

5 MIKE W. SOLE
6 was called as a witness, having been first duly sworn to
7 speak the truth, the whole truth, and nothing but the
8 truth, was examined and testified as follows:

9 COMMISSIONER CLARK: All right. Witness Sole
10 will be allowed three minutes to summarize his
11 testimony.

12 We would like to remind the parties that there
13 will be no friendly cross, and I believe everything
14 else is in order.

15 Mr. Sole, you have the floor.

16 THE WITNESS: Good afternoon, Chairman,
17 Commissioners.

18 My testimony --

19 COMMISSIONER CLARK: Microphone.

20 THE WITNESS: -- addresses FPL's request for
21 approval to modify two existing projects and
22 approval of a new project. I also explain the
23 variance between 2017 estimated and 2017 actual
24 expenditures for the Turkey Point Cooling Canal
25 Monitoring Plan project.

1 FPL is requesting to modify the Manatee
2 Temporary Heating System project. In 2009, this
3 commission approved FPL's Manatee Temporary Heating
4 System project, which involved the installation of
5 an electric heating system at Riviera and Cape
6 Canaveral plants in order to provide a Manatee
7 refuge by discharging warm water to the Manatee
8 embayment area during the plant's modernization
9 process.

10 Since 2009, this commission has approved
11 expansions to this project to include similar
12 installations at two additional plants. FPL is now
13 requesting to expand this project to include the
14 installation of a Manatee Temporary Heating System
15 at Plant Ft. Myers for two reasons.

16 First, FPL can no longer ensure that plant
17 outages at Ft. Myers are sequenced outside of the
18 Manatee season due to changes in its combined cycle
19 fleet.

20 Second, improvements in the efficiency of
21 FPL's fossil fuel fleet have pushed Plant Ft. Myers
22 down the dispatch stack to a point that FPL can no
23 longer be confident that it will be dispatched
24 regularly during the winter months.

25 FPL also proposes a modification to its NPDES

1 permit renewal requirements project. As approved
2 in 2011, the project allows FPL to recover costs to
3 meet the new requirements associated with NPDES
4 permit renewals. FPL has an ownership interest in
5 Plant Scherer, which is currently renewing its
6 NPDES permit through the Georgia Environmental
7 Protection Division.

8 Recent testing of the effluent from Plant
9 Scherer revealed that copper discharge levels have
10 the potential to result in an exceedance of the
11 Georgia water quality standard. Based on
12 consultations with the Division, FPL and Georgia
13 Power anticipate that the Division will include a
14 new permit condition addressing this continued
15 obligation to meet copper discharge limits.

16 FPL and Georgia Power analyzed options and
17 chose the most cost-effective long-term solution,
18 which entails replacing the copper condenser tubes
19 with titanium tubes, and replacing the copper
20 contaminated packing in the cooling towers with new
21 packing material. While the replacement of the
22 copper condenser tubes was completed as part of the
23 normal replacement schedule, replacement of the
24 packing material is necessary solely to address the
25 anticipated copper discharge limits.

1 FPL is also requesting Commission approval of
2 a new project, the Solar Site Avian Monitoring and
3 Reporting project. FPL's Horizon Solar Energy
4 Center is subject to a development order issued by
5 the Alachua County Department of Growth Management,
6 under which FPL is required to monitor and report
7 on avian mortality.

8 Finally, my testimony provides an update on
9 FPL's Turkey Point Cooling Canaling Monitoring Plan
10 project. Expenditures for this project were lower
11 than projected in 2017 due to delays in the permit
12 approval process. FPL has timely filed request for
13 permit approval with the appropriate regulatory
14 agencies, and continues to work with these agencies
15 to implement all projects associated with the
16 monitoring and reporting requirements.

17 Additionally, costs associated with sediment
18 removal have been deferred in order for FPL to
19 evaluate the appropriate level of sediment removal
20 needed to address system thermal performance.

21 This concludes my summary.

22 COMMISSIONER CLARK: Thank you, Mr. Sole.
23 Ms. Moncada.

24 MS. MONCADA: Thank you, Commissioner Clark.

25 I have confirmed with staff that although Mr.

1 Sole's prefiled exhibits have been entered into the
2 record, his prefiled testimony has not, and I would
3 like to do that now.

4 COMMISSIONER CLARK: Okay.

5 EXAMINATION

6 BY MS. MONCADA:

7 Q Mr. Sole, did you prepare and cause to be
8 filed direct testimony on April 2nd, 2018 and June 13th,
9 2018?

10 A I did.

11 Q If I asked you the same questions today, would
12 your answers be the same?

13 A Yes, they would.

14 Q Do you have any changes to your testimony?

15 A I do not.

16 MS. MONCADA: Commissioner Clark, FPL requests
17 that Mr. Sole's prefiled testimony be entered into
18 the record as though read.

19 COMMISSIONER CLARK: Okay. So entered.

20 MS. MONCADA: Thank you.

21 (Prefiled testimony inserted.)

22

23

24

25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF MICHAEL W. SOLE**
4 **DOCKET NO. 20180007-EI**
5 **APRIL 2, 2018**
6
7 **Q. Please state your name and address.**
8 A. My name is Michael W. Sole and my business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.
10 **Q. By whom are you employed and in what capacity?**
11 A. I am employed by NextEra Energy, Inc. (“NEE”) as Vice President of
12 Environmental Services.
13 **Q. Please describe your educational background and professional**
14 **experience.**
15 A. I received a Bachelor’s of Science degree in Marine Biology from the Florida
16 Institute of Technology in 1986. I served as an Officer in the United States
17 Marine Corps from 1985 through 1990 attaining the rank of Captain. I was
18 employed by the Florida Department of Environmental Protection (“FDEP”)
19 in multiple roles from 1990 to 2010 and served as the Secretary of the FDEP
20 from 2007-2010. I have been employed by Florida Power & Light Company
21 (“FPL” or the “Company”), or its affiliate NextEra Energy Resources, in
22 multiple roles since 2010. Since November 2016, I have held the position of

1 Vice President of Environmental Services. In that role, I have overall
2 responsibility for environmental, licensing, and compliance efforts for the
3 Company. In May 2017, I was appointed by Governor Scott to the Florida
4 Fish and Wildlife Conservation Commission (“FWC”).

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

6 A. The purpose of my testimony is to present for Commission review and
7 approval modification of two existing, approved projects: the Manatee
8 Temporary Heating System (“MTHS”) and the National Pollutant Discharge
9 Elimination System (“NPDES”) Permit Renewal Requirements. Additionally,
10 I will provide an update on the Turkey Point Cooling Canal Monitoring Plan
11 (“TPCCMP”) Project.

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

14 A. Yes, I am sponsoring the following exhibits:

- 15 • Exhibit MWS-1 - Supplemental CAIR/CAMR/CAVR Filing
- 16 • Exhibit MWS-2 - Conceptual Location of Fort Myers Plant Manatee
17 Heating System
- 18 • Exhibit MWS-3 - FDEP NPDES Permit for PFM
- 19 • Exhibit MWS-4 - PFM Manatee Protection Plan
- 20 • Exhibit MWS-5 - Environmental Protection Division of the Georgia
21 Department of Natural Resources Permit NPDES Permit Number
22 GA00035564 for Plant Scherer

- 1 • Exhibit MWS-6 - Application for EPD NPDES Permit GA00035564
2 Renewal for Plant Scherer
3 • Exhibit MWS-7 - Letter from Georgia Power to Plant Scherer Co-Owners
4

5 **Manatee Temporary Heating System Project**
6

7 **Q. Please describe FPL’s currently approved MTHS Project.**

8 A. On April 13, 2009, FPL petitioned the Commission for approval of the
9 MTHS Project, which involved the installation of an electric heating system
10 at its Riviera Plant, in order to provide a manatee refuge by discharging warm
11 water when necessary into the manatee embayment area during the plant’s
12 conversion to the Riviera Beach Next Generation Clean Energy Center
13 (“RBEC”). On August 28, 2009, FPL petitioned the Commission to expand
14 the proposed MTHS Project to include FPL’s Cape Canaveral Plant during its
15 conversion to the Cape Canaveral Next Generation Clean Energy Center
16 (“CCEC”). The MTHS Project at Riviera and Cape Canaveral was approved
17 by Order No. PSC-2009-0759-FOF-EI.

18
19 On January 13, 2012, FPL petitioned the Commission to expand the MTHS
20 Project to include a MTHS at its Port Everglades Plant during its conversion
21 to the Port Everglades Next Generation Clean Energy Center (“PEEC”). This

1 expansion of the existing MTHS Project was approved by Order No. PSC-
2 2012-0613-FOF-EI.

3

4 On July 19, 2017, FPL petitioned the Commission to expand the MTHS
5 Project to include a MTHS at its Ft. Lauderdale Plant during its conversion to
6 the Dania Beach Clean Energy Center (“DBEC”). This expansion was
7 approved by Order No. PSC-2018-0014-FOF-EI.

8

9 On February 12, 2018, FPL petitioned the Commission for approval to
10 modify the MTHS Project to include the installation of an MTHS at Fort
11 Myers Plant (“PFM”) in 2018. As explained further in this testimony, the
12 MTHS will ensure compliance with the Manatee Protection Plan (“MPP”) by
13 providing a manatee refuge when necessary by discharging warm water into
14 the discharge canal at PFM.

15 **Q. Please briefly describe FPL’s proposed expansion of the MTHS Project**
16 **at PFM.**

17 A. A MTHS much like the system currently in place at CCEC will be installed at
18 PFM. A conceptual location of the MTHS at PFM is included as Exhibit
19 MWS-2. The MTHS would be used during manatee season, which spans
20 from November 15 to March 31, whenever the water temperature in the PFM
21 intake canal drops below 61°F and PFM is either shut down for outages or is
22 not being economically dispatched. At these times, the PFM MTHS will help

1 ensure that the manatee refuge is maintained.

2 **Q. Please describe the environmental laws or regulations requiring FPL's**
3 **proposed activities at PFM.**

4 A. FPL is proposing to expand the MTHS Project to include PFM in order to
5 comply with PFM's MPP, which is Specific Condition I.D.10 to the NPDES
6 Permit Number FL0001490, issued by the FDEP for PFM on January 20,
7 2016. Specific Condition I.D.10 to the NPDES Permit states that "the
8 permittee shall continue compliance with the facility's Manatee Protection
9 Plan approved by the Department on August 18, 1999." The NPDES Permit
10 containing Specific Condition I.D.10 is attached as Exhibit MWS-3. FPL's
11 PFM MPP is attached as Exhibit MWS-4. Please note that the MPP refers to
12 "Specific Condition 14" which has been renumbered as Specific Condition
13 I.D.10 in the current NPDES Permit.

14 **Q. Typically, how many manatees can be found in the discharge canal and**
15 **Orange River in the vicinity of PFM and the PFM warm water refuge?**

16 A. Aerial surveys for manatees have been conducted by Mote Marine Laboratory
17 on behalf of FPL for decades. Over the past five years, the number of
18 manatees that have been observed at various times in the vicinity of the PFM
19 discharge canal has ranged from 77 to 434.

20 **Q. How did FPL comply with the MPP in the past?**

21 A. Historically, FPL provided warm water in support of the MPP by releasing
22 once-through cooling water from the existing oil and gas-fired steam units at

1 PFM into the discharge canal.

2 **Q. Why does FPL now need an additional heating source for PFM?**

3 A. PFM was repowered in 2003 with what was highly efficient combined cycle
4 technology for the time. As part of the MPP that was approved on August 18,
5 1999, and is implemented via PFM's NPDES permit, FPL is obligated to
6 maintain a warm water manatee refuge if the water temperature at the PFM's
7 cooling water discharge falls below 61°F.

8
9 Until recently, FPL has not needed to have a MTHS at PFM because the plant
10 routinely operated during the manatee season and thus the plant's regular
11 cooling water discharges provided a sufficient and consistent supply of warm
12 water. For the reasons described below, however, FPL cannot continue to
13 rely solely on the plant's regular cooling water discharges to meet the permit
14 requirement for a warm water manatee refuge.

15
16 Over the past two decades, FPL has embarked on a concerted program of
17 upgrading its fossil power plant fleet, constructing state-of-the-art combined
18 cycle units at its Turkey Point, Martin, Manatee, West County, Cape
19 Canaveral, Riviera and Port Everglades plant sites. Similar units are planned
20 to go into service in 2019 and 2022 at Okeechobee and Ft. Lauderdale plant
21 sites, respectively. With each successive generation of combined cycle
22 technology, the efficiency has continued to improve, resulting in \$9.3 billion

1 in fuel savings for customers and over 120 million tons of carbon dioxide
2 emissions avoided. The addition of these highly efficient combined cycle
3 units has had two consequences for PFM that are now requiring the addition
4 of an MTHS at the site.

5
6 First, combined cycle units need significant routine maintenance. Until now,
7 FPL has been able to schedule the maintenance for PFM outside of the
8 manatee season so that it would be able to rely on the plant's normal cooling
9 water discharge to provide a warm water manatee refuge without the need for
10 an MTHS. The upgrades at other plant sites discussed above have resulted in
11 both a significant increase in the number of combined cycle units requiring
12 routine maintenance and a significant decrease in the number of smaller units
13 with individual steam turbines that can remain in operation to provide warm
14 water for manatees. For example, prior to 2013, the predecessor plant to the
15 CCEC facility consisted of two individual steam units which allowed one
16 steam unit to be idled for maintenance activities while allowing the other to
17 continue operating and thus providing warm water discharges. After 2013,
18 the new plant consists of three combustion turbines with heat recovery steam
19 generators that provide steam to a single steam turbine. When the CCEC
20 plant is taken out of service today, the single steam turbine is idled and thus
21 no cooling water discharge is available to provide warm water for manatees.

22

1 The same situation is true for RBEC and PEEC. The size of FPL's combined
2 cycle fleet and the reduction in the number of small, single units that can be
3 taken out of service separately for maintenance outages has now reached the
4 point that FPL can no longer ensure that the PFM outages are sequenced
5 outside of manatee season.

6
7 Second, improvements in the efficiency of FPL's fossil fuel fleet since the
8 time that PFM was repowered have pushed PFM down the dispatch stack to
9 the point that FPL can no longer be confident that it will be dispatched
10 regularly and for sustained periods during winter months. When PFM was
11 first repowered, it was one of the most efficient and economical units in
12 FPL's fleet, and as such, it would be dispatched routinely even during periods
13 of relatively low winter-time load. Now, the more recent combined cycle
14 units are more efficient and are dispatched before PFM, with the result that
15 there may be extended periods during manatee season when PFM would not
16 be dispatched to meet load and thus would not be producing a cooling water
17 discharge that could maintain the necessary warm water manatee refuge.

18 **Q. Could FPL run PFM out of dispatch in order to provide a warm water**
19 **refuge when needed?**

20 A. That could be done if the plant were not in an outage, but of course it would
21 not eliminate the need for an MTHS during planned and unplanned outages.
22 Furthermore, running the plant out of dispatch could be very costly. While

1 FPL's use of the MTHS at PFM will be seasonal or sporadic, the need for that
2 MTHS will continue indefinitely. Based on the frequency of events for the
3 past ten years where water temperature was below 62°F during manatee
4 season (i.e., the temperature at which FPL would have to start PFM in order
5 to provide a timely warm water manatee refuge), the annual fuel and other
6 operating and maintenance expenses of running PFM out of dispatch are
7 estimated to range from \$350,000 in an average year to more than \$1 million
8 in a worst case year.

9 **Q. Did FPL anticipate that it would need an MTHS for PFM at the time**
10 **that it prepared the Minimum Filing Requirements for its 2016 rate**
11 **case?**

12 A. No. Those MFRs were prepared in late 2015 and early 2016. The
13 cumulative impact of the factors discussed above on FPL's ability to rely on
14 operating PFM to provide a warm water refuge has become apparent only in
15 the last year or so.

16 **Q. Please describe the MTHS that is proposed for PFM.**

17 A. The installation of the MTHS at PFM is a two-stage process. During the
18 2017-2018 manatee seasons and during construction of the fixed electric
19 heating system that will be used in the future, FPL leased mobile, diesel-
20 burning boilers capable of providing 17 MMBtu/hr of thermal energy that
21 will provide warm water during scheduled or unscheduled plant outages.

22

1 The mobile diesel-fueled system will allow FPL to meet the permit
2 requirements in the short term, but such systems are difficult to operate
3 reliably over longer periods. Therefore, for the second stage FPL will install
4 a fixed electric MTHS that will be used in future years. The fixed electric
5 MTHS will consist of three heaters in parallel. Under normal circumstances
6 two of these permanent heaters will be operated when required, and will
7 produce 17-20 MMBtu/hr thermal energy to heat the water in manatee refuge
8 area. Under extremely cold conditions, the third heater can be operated to
9 supply a maximum of 30 MMBtu/hr of thermal energy. In addition to the
10 heaters, the MTHS will include an associated pumping system, piping, and
11 electrical equipment. The intake piping and pump systems will be installed
12 in the discharge canal near the northern end of helper cooling towers (see
13 Exhibit MWS-2). Water from the discharge canal will be pumped through
14 the fixed electric heater and discharged into the northern portion of the
15 discharge canal when the ambient water temperature falls below a specified
16 trigger temperature. The water depth in this area is approximately 10 feet.
17 The proposed MTHS has been modeled to provide approximately 0.7 acres of
18 water at or above 68°F during the conditions under which the MPP requires
19 that FPL endeavor to provide heated water for manatee protection.

20 **Q. How did FPL determine the size of the required MTHS?**

21 A. To determine the size of the heater required to comply with the MPP
22 requirement, FPL retained an environmental services firm to perform

1 computer modeling of the minimum thermal output needed to generate and
2 maintain a warm water refuge consistent with the U.S. Fish & Wildlife
3 Service and FWC size guidance. FPL utilized its experience with the MTHS
4 at CCEC, RBEC and PEEC to refine the preliminary design basis for the
5 MTHS at PFM.

6 **Q. Why does the PFM MTHS need to be installed in 2018?**

7 A. FPL commenced a maintenance outage at PFM on March 5, 2018, which is
8 within the manatee season. FPL needed to be prepared for the possibility of
9 cold weather during the outage that would require an MTHS to meet the
10 permit requirement for a warm water manatee refuge. In order for FPL to
11 provide warm water during the March 2018 outage, the mobile diesel-burning
12 heaters were rented and temporarily installed at the site. To provide warm
13 water during outages occurring in future manatee seasons, FPL is purchasing
14 and installing the proposed fixed electric MTHS at the site.

15 **Q. Has FPL estimated the capital cost of the proposed PFM MTHS?**

16 A. Yes. The total estimated capital cost for the PFM MTHS is \$5 million. This
17 estimate includes expenditures for the equipment, design and engineering of
18 the system, labor for installation, and interconnection to the FPL power
19 system and is expected to be spent in 2018 and 2019.

20 **Q. What O&M costs will be associated with the proposed PFM MTHS?**

21 A. FPL estimates that it has incurred \$250,000 of O&M expenses associated
22 with the cost of the temporary mobile diesel-burning heater, from the

1 February 12, 2018 date that the petition to amend the MTHS Project was filed
2 through March 31, the end of the 2017-2018 manatee season.

3

4 FPL estimates O&M costs of \$30,000 per year through the life of the
5 proposed fixed electric MTHS. These projected O&M costs do not include
6 the electrical costs to operate the MTHS. FPL cannot predict how often the
7 system will operate but does not expect the electrical costs to be significant.
8 Therefore, FPL is not seeking recovery through the ECRC process for the
9 electrical costs.

10 **Q. Please describe the measures FPL is taking to ensure that costs of the**
11 **MTHS Project at PFM are reasonable and prudently incurred.**

12 A. FPL's Power Generation Division ("PGD") projects team designed the
13 MTHS from experience and lessons learned during installations of similar
14 systems at PEEC, RBEC, DBEC and CCEC. This will ensure a cost-
15 effective design and equipment selection process. A few examples of lessons
16 learned include 1) critical review of the warm water refuge thermal loss
17 mechanisms, including use of a thermal model that divides the refuge into at
18 least six cells and accounts for tidal exchange, advection and convective
19 flows between cells and at the refuge entrance, 2) optimization of the
20 temporary refuge design such as locating the heated water discharge at a
21 depth which promotes uniform distribution of warm water and the
22 withdrawal at the opposite end of the refuge enhances mixing, 3)

1 optimization of the warm water refuge size to provide only the necessary area
2 of heated water for the expected number of manatees at PFM, and
3 4) coordination of electrical service for the PFM MTHS with the plant
4 upgrade construction plans and schedule, in order to maximize use of existing
5 transformers and electrical feeds.

6
7 Using a performance specification for the PFM MTHS equipment that meets
8 all of FPL's requirements, FPL's Integrated Supply Chain ("ISC") group will
9 solicit bids from multiple suppliers to determine the source providing the
10 overall best value. The ISC group provides enterprise-wide leadership,
11 direction, and operation of a fully integrated supply chain supporting the
12 procurement, materials management, and logistic needs of FPL and the
13 MTHS Project at PFM. ISC's objective is to drive down costs to FPL and
14 ensure the delivery of the highest quality goods and services. Well-
15 established corporate policies and procedures dictate that for the MTHS
16 Project at PFM, the materials supply contract and the construction contract
17 will be competitively sourced.

18
19 FPL's PGD projects team has established a scope, budget, and schedule to
20 meet the needs of the PFM MTHS. Project Controls is also responsible for
21 tracking all MTHS Project costs through various approval processes,
22 procedures, and databases.

1 **Q. Is FPL recovering through any other mechanism the costs for the MTHS**
2 **Project at PFM for which it is petitioning for ECRC recovery?**

3 A. No.

4

5 **Modification to National Pollutant Discharge Elimination System**
6 **(“NPDES”) Permit Renewal Requirements Project**

7

8 **Q. Please describe FPL’s approved NPDES Permit Renewal Requirements**
9 **Project.**

10 A. The Federal Clean Water Act requires all point source discharges to
11 navigable waters from industrial facilities to obtain permits under the NPDES
12 program. Affected facilities are required to apply for renewal of the five-year
13 duration NPDES permits prior to their expiration.

14

15 By Order No. PSC-2011-0553-FOF-EI issued in Docket No. 20110007-EI on
16 December 7, 2011, the Commission approved FPL’s NPDES Permit Renewal
17 Requirements Project to recover costs associated with new requirements for
18 whole effluent toxicity monitoring and reporting, as well as for preparing
19 Storm Water Pollution Prevention Plans that were contained in the then-latest
20 renewals for FPL’s NPDES permits.

21

1 With one exception, all of FPL's power plants are located in Florida and
2 therefore already are part of the NPDES Permit Renewal Requirements
3 Project. The one exception is FPL's ownership interest in Plant Scherer Unit
4 4.

5 **Q. Please briefly describe FPL's proposed expansion of the NPDES Permit**
6 **Renewal Requirements Project at Plant Scherer.**

7 A. Due to circumstances described below, Plant Scherer will be replacing the
8 packing material inside the Unit 4 cooling tower in order for the Plant to
9 ensure compliance with anticipated NPDES permit conditions.

10 **Q. Please describe the law or regulation requiring the NPDES Permit**
11 **Renewal Requirements Project.**

12 A. All of FPL's power plants that discharge to navigable waters are subject to
13 the Federal Clean Water Act's NPDES program. Pursuant to the EPA's
14 approval, the Georgia Environmental Protection Division ("EPD")
15 implements the NPDES permitting program in Georgia.

16 **Q. What regulatory compliance action does FPL anticipate will be required**
17 **at Plant Scherer as a result of the NPDES permit renewal?**

18 A. Under the NPDES program, wastewater discharges from Plant Scherer
19 cannot cause a water body to exceed Georgia's Water Quality Standards
20 ("WQS"). Georgia's WQS for copper in the Ocmulgee River, which is found
21 in Rule 391-3-6.03 (5)(e)(ii)5, is 5 parts per billion ("ppb"). As established
22 in Rule 391-3-6.06 (4)(d)5(ii) of the Georgia Rules and Regulations, if a

1 chemical constituent listed in the WQS is present in an effluent stream, an
2 effluent limit may be required. Copper is one of those constituents. The limit
3 for copper in the Plant Scherer effluent is based on the following equation:

4
$$\text{Effluent limit} = \text{criteria concentration} \times \text{dilution factor.}$$

5 The dilution factor is calculated by determining the ratio of the effluent
6 volume to the receiving stream (Ocmulgee River) flow.

7
8 In the case of Plant Scherer, the calculated limit is approximately 60 ppb at
9 the point of discharge from the collection basin for the Plant Scherer cooling
10 towers. On January 30, 2018, Plant Scherer submitted an updated NPDES
11 permit renewal application (see Exhibit MWS-6). Recent testing and
12 monitoring of the effluent from Plant Scherer's cooling tower basin (referred
13 to as the "NPDES Collection Basin") revealed that Plant Scherer's copper
14 discharge levels have the potential to result in an exceedance of the Georgia
15 WQS. Based on the EPD's permitting procedures, and consultation with
16 EPD, FPL and Georgia Power Corporation ("Georgia Power") anticipate that
17 the EPD will include in the facility's renewed NPDES permit a new condition
18 addressing the Plant's obligations to ensure that it does not exceed the
19 Georgia WQS copper discharge limit. FPL and Georgia Power also
20 anticipate that the EPD will require monitoring of copper concentrations.
21 Depending on the results of the EPD's final analysis of the renewal

1 application, the EPD may also require additional compliance measures
2 beyond the cooling tower repacking projects.

3 **Q. What is cooling tower packing?**

4 A. Packing is a medium used in cooling towers to increase the surface area over
5 which cooling water is exposed to air in the towers. Increased surface area
6 allows for maximum contact between the air and the water, which allows for
7 greater evaporation rates and lower temperature cooling water being returned
8 to the condenser.

9 **Q. Do Georgia Power and FPL expect that Plant Scherer Unit 4 cooling
10 tower packing needs to be replaced in order to achieve the anticipated
11 copper concentration limit?**

12 A. Yes. Georgia Power analyzed the source of copper in Plant Scherer's
13 discharge stream and evaluated options for reducing the concentration of
14 copper in the discharge. It determined that that the elevated copper levels in
15 the effluent were attributable to two sources: (1) degradation of the Plant's
16 copper condenser tubes, and (2) concentration of copper in the cooling tower
17 packing, where copper from the condenser tubes became entrained over years
18 of operation. Between 2009 and 2013, various cleaning and treatment
19 techniques were employed in an attempt to reduce the rate of copper
20 corrosion and erosion from the condenser tubes and to remove copper that
21 was entrained in the cooling tower packing. Unfortunately, these efforts on
22 their own resulted in only limited reductions in the copper discharge level.

1 **Q. Has Georgia Power subsequently evaluated the cost and effectiveness of**
2 **available options that could adequately reduce the copper discharge**
3 **level?**

4 A. Yes. Georgia Power identified three options that could potentially resolve the
5 issue of copper concentrations in the cooling water wastewater. They were:
6 (1) coating of condenser tubes, (2) installation of a treatment system to
7 remove copper from the cooling tower discharges, or (3) replacement of
8 condenser tubes and cooling tower packing.

9
10 A thorough analysis of the options concluded that, due to the age of the
11 condenser tubes (i.e., they have been in service since the 1980s with a life
12 expectancy of 30 years) and contamination of the packing, replacement of the
13 condenser tubes and packing is the most cost-effective, long-term solution,
14 which entails replacing the copper condenser tubes with titanium tubes and
15 replacing the copper-contaminated packing in the cooling towers with new
16 packing material (Exhibit MWS-7).

17 **Q. Is FPL seeking to include the Unit 4 condenser tube replacement as part**
18 **of the NPDES Permit Renewal Requirements Project?**

19 A. No. Georgia Power already has completed the replacement of the copper
20 condenser tubes in both Units 3 and 4 as part of a normal replacement
21 schedule based on the anticipated life and condition of the tubes. Therefore,

1 FPL has not included the costs incurred for the tube replacement as part of
2 this request.

3 **Q. Is the cooling tower packing material also being replaced as a part of**
4 **normal Unit 4 maintenance?**

5 A. No. The packing material in Unit 4 has not reached the end of its useful life
6 and was not previously expected to be replaced for many more years.
7 However, due to its contribution to the elevated copper concentration in the
8 cooling tower effluent, it needs to be replaced before the end of its useful life
9 in order to ensure that the copper concentration in the cooling tower basin can
10 remain consistently in compliance with applicable WQS.

11 **Q. When has Georgia Power scheduled the Unit 4 repacking?**

12 A. To maximize efficiency, Georgia Power plans to complete the remaining tube
13 replacements and the repacking for all four Plant Scherer units during the
14 next planned outage for each unit. For Unit 4, that planned outage began on
15 March 8, 2018. Furthermore, satisfaction of the WQS is an issue of great
16 importance to the EPD. It is therefore reasonable to move forward with these
17 steps now, to provide the EPD assurance that Plant Scherer will be able to
18 meet the WQS for copper under its renewed NPDES permit.

19 **Q. Did FPL anticipate that it would need to repack the Unit 4 cooling**
20 **towers at the time that it prepared the MFRs for its 2016 rate case?**

21 A. No. As I noted earlier, those MFRs were prepared in late 2015 and early
22 2016. At that time, Georgia Power had not completed its evaluation of the

1 copper concentration in the Plant Scherer effluent, much less determined the
2 appropriate way to address that need.

3 **Q. Has FPL estimated the cost of the repacking activities at Plant Scherer?**

4 A. Yes. The total estimated cost for FPL's share of the repacking activity at
5 Plant Scherer Unit 4 is \$9 million, all of which will be recorded as a capital
6 investment. FPL anticipates that there will be minimal O&M costs associated
7 with this project. Because the NPDES permit renewal process is still in an
8 early stage, FPL is seeking to defer ECRC recovery of the Unit 4 cooling
9 tower repacking costs in the manner discussed in the testimony of FPL
10 witness Renae Deaton.

11 **Q. How will FPL ensure that the costs incurred for this project are prudent
12 and reasonable?**

13 A. Georgia Power, as FPL's agent for the operation and maintenance of Scherer
14 Unit 4, uses competitive bidding for equipment and services as part of their
15 standard practices. Under the contract agreement between FPL and Georgia
16 Power, FPL has oversight and audit rights for costs that are incurred on
17 behalf of our ownership of Unit 4 and have on-site staff at the facility to
18 ensure expenditures are reasonable and prudent.

19 **Q. Is FPL recovering the cost of the repacking through any other
20 mechanism?**

21 A. No.

22

1 **Turkey Point Cooling Canal Monitoring Plan Project (“TPCCMP”) Update**

2

3 **Q. In FPL witness Deaton’s final true-up testimony, she states that the 2017**
4 **O&M expenditures for the TPCCMP project were \$26.5 million lower**
5 **than projected and that the 2017 capital revenue requirements were**
6 **\$495,747 lower than projected. Why were project expenditures in 2017**
7 **for the TPCCMP lower than projected?**

8 A. These reductions were due to delays in the permitting process, which affected
9 the timely implementation of the Recovery Well System (“RWS”), Turning
10 Basin and Turtle Point Backfill projects. FPL submitted the RWS designs
11 and modeling to the agencies for review and approval on May 16, 2016, with
12 the expectation that the approvals and permitting for this agreed upon
13 restoration project would be completed in nine months. Due to the scale of
14 the remediation and complexity of the model, however, the regulatory
15 agencies did not approve the designs for the RWS until May 15, 2017. On
16 June 27, 2017 the RWS wells, pumps and electrical construction began and is
17 scheduled to be completed in May 2018. Permit approval from Miami-Dade
18 County and the U.S. Army Corps of Engineers for the Turning Basin and
19 Turtle Point Backfill projects is still pending and anticipated to be issued by
20 the end of April 2018. Additionally, costs associated with sediment removal
21 have been deferred in order for FPL to evaluate the appropriate level of
22 sediment removal needed to address system thermal performance.

- 1 **Q.** Does this conclude your testimony?
- 2 **A.** Yes.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF MICHAEL W. SOLE**
4 **DOCKET NO. 20180007-EI**
5 **JUNE 13, 2018**

6
7 **Q. Please state your name and address.**

8 A. My name is Michael W. Sole and my business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

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

11 A. I am employed by NextEra Energy, Inc. (“NEE”) as Vice President of
12 Environmental Services.

13 **Q. Have you previously filed testimony in this docket?**

14 A. Yes.

15 **Q. What is the purpose of the testimony that you are filing at this time?**

16 A. The purpose of my testimony is to present for Commission review and
17 approval Florida Power & Light Company’s (“FPL” or the “Company”) request for recovery through the Environmental Cost Recovery Clause
18 (“ECRC”) of a new project, the Solar Site Avian Monitoring and
19 Reporting (“SSAMR”) Project.
20

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

23 A. Yes, I am sponsoring the following exhibits:

- 1 • Exhibit MWS-8 – Alachua County Development Review Committee
2 Order DR-17-04
- 3 • Exhibit MWS-9 – FWC Protocol for Monitoring Avian Mortality at
4 Solar Energy Facilities

5

6 **Solar Site Avian Monitoring and Reporting Project**

7

8 **Q. Please briefly describe FPL’s proposed SSAMR Project.**

9 A. FPL will be monitoring and reporting on avian mortality at FPL’s existing
10 DeSoto solar photo voltaic (“PV”) facility (“DeSoto”), utilizing a protocol
11 for avian monitoring at solar facilities that was developed in conjunction
12 with the Florida Fish and Wildlife Conservation Commission (“FWC”).

13 **Q. Please describe the environmental law or regulation requiring the
14 SSAMR Project.**

15 A. FPL is required to obtain a siting permit from the Alachua County
16 Department of Growth Management (“Alachua DGM”) for its Horizon
17 Solar Energy Center (“HSEC”). Pursuant to the Development Review
18 Committee Order DR-17-04 issued by the Alachua DGM on February 16,
19 2017, FPL is required to conduct avian mortality monitoring and report on
20 the results of that monitoring as a permit condition for the HSEC.
21 Specifically, Section 6 of that Order requires FPL to develop monitoring
22 protocols in 2017, perform monitoring in accordance with those protocols
23 and, ultimately, report the results of that monitoring to the Alachua DGM.

1 Order DR-17-04 is attached as Exhibit MWS-8.

2 **Q. Why is the required monitoring being conducted at the DeSoto PV**
3 **facility rather than at the HSEC?**

4 A. Alachua County was the first governmental entity in Florida to require
5 FPL to conduct monitoring at a universal solar site as a permit
6 requirement. The Alachua DGM required this type of data collection to
7 inform and further its assessment of the impacts of solar generation on
8 avian species, and it wanted to get results as promptly as possible. In
9 order to accommodate the Alachua DGM's desire for prompt results, FPL
10 recommended that monitoring be conducted at DeSoto (an existing
11 universal solar facility) because construction of HSEC had not been
12 completed at the time the permit condition was imposed. Using a fully
13 operational site helped FPL and FWC create the avian solar protocol and
14 allowed FPL to conduct a necessary trial in 2017 for implementing the
15 protocol. The Alachua DGM agreed that the data from DeSoto would be
16 representative of future universal solar PV facilities located in Alachua
17 County and required the monitoring be conducted at DeSoto as part of the
18 Development Review Committee Order DR-17-04 (MWS-8).

19 **Q. Please describe what is entailed in the monitoring portion of the**
20 **SSAMR Project.**

21 A. The purpose of the monitoring program is to estimate the overall annual
22 avian fatality rate and species composition associated with a universal
23 solar site. At a specified frequency, biologists, using trained dogs as

1 appropriate, will conduct searches for avian detections within designated
2 sampling units. Bias trials will be conducted to determine the likelihood of
3 carcasses being removed naturally by scavengers (carcass persistence
4 trials) and the effectiveness of the searchers in finding the carcasses
5 (searcher efficiency trials). The search frequency will be based on carcass
6 persistence trials conducted at the site. An estimate of fatalities will be
7 calculated using the results of the monitoring and the bias trials.

8 **Q. Please describe the actions taken by FPL to date in order to prepare**
9 **for the required monitoring under Order DR-17-04.**

10 A. Since the issuance of Order DR-17-04, FPL has worked with the FWC to
11 identify suitable protocols and procedures for avian mortality monitoring
12 and reporting. FPL initiated preliminary carcass persistence trials on
13 October 3, 2017, which were used to determine the appropriate survey
14 frequency for the mortality monitoring. Following these preliminary
15 trials, the FWC developed an avian solar monitoring protocol and
16 provided FPL the final version on October 31, 2017. The protocol is
17 attached as Exhibit MWS-9. FPL is not seeking ECRC recovery for the
18 preliminary carcass trials or the costs for developing the protocol.

19 **Q. What activities related to the SSARM Project does FPL need to**
20 **conduct in the future?**

21 A. Pursuant to Order DR-17-04, FPL is required to conduct four seasons of
22 avian mortality monitoring, including bias trials (carcass persistence and
23 searcher efficiency), and must provide FWC an annual report with fatality

1 estimates for birds. FPL intends to start the standardized mortality
2 monitoring this year and finish in 2019.

3 **Q. Is FPL currently required to conduct similar avian monitoring and**
4 **reporting programs at any other solar sites?**

5 A. No. The Alachua DGM is currently the only regulator that has required
6 FPL to conduct this type of program. However, it is possible that other
7 regulators will require FPL to conduct avian monitoring and reporting
8 programs.

9 **Q. What is the estimated O&M expense associated with the proposed**
10 **SSAMR Project that FPL is requesting to recover through the**
11 **ECRC?**

12 A. FPL estimates that the total O&M expenses associated with the SSAMR
13 Project that will be incurred following the filing of this petition is
14 \$173,270. FPL expects that this expense will be incurred in 2018 and
15 2019.

16 **Q. What are the main drivers of the O&M expenses being requested for**
17 **ECRC recovery for this project?**

18 A. The main drivers of the O&M expenses for the Project derive from the
19 survey protocol's requirements for biologists, using trained dogs as
20 appropriate, to walk a significant portion of the 235-acre site to conduct
21 the mortality monitoring. The amount of site surveyed and frequency of
22 the surveying is driven by the results of the carcass persistence and
23 searcher efficiency trials.

- 1 **Q. Does FPL expect to incur any capital costs associated with the**
2 **proposed SSAMR Project?**
- 3 A. No.
- 4 **Q. Please describe the measures FPL is taking to ensure that costs of the**
5 **SSAMR Project are reasonable and prudently incurred.**
- 6 A. In general, FPL competitively bids the procurement of materials and
7 services. FPL benefits from strong market presence allowing it to leverage
8 corporate-wide procurement activities to the specific benefit of individual
9 procurement activities. For the SSAMR project, FPL issued a request for
10 proposal to five vendors and chose the least cost option among the two
11 bids that were received. All initial commitments and contract change
12 orders will be appropriately authorized. FPL's Project Controls group
13 maintains the project scope, budget, and schedule and tracks project costs
14 through various approval processes, procedures, and databases. FPL used
15 its prior experience and lessons learned with wildlife monitoring and
16 reporting to ensure a cost-effective procurement selection process.
- 17 **Q. Did FPL anticipate that it would need to conduct avian monitoring**
18 **and reporting as a permit condition for the HSEC at the time that it**
19 **prepared the Minimum Filing Requirements for its 2016 rate case?**
- 20 A. No. Those MFRs were prepared in late 2015 and early 2016. As noted
21 above, Order DR-17-04 was not issued until February 16, 2017.
- 22 **Q. Is FPL recovering through any other mechanism the costs for the**
23 **SSAMR Project for which it is petitioning for ECRC recovery?**

- 1 A. No.
- 2 **Q. Does this conclude your testimony?**
- 3 A. Yes.

1 MS. MONCADA: The witness is available for
2 cross.

3 COMMISSIONER CLARK: All right. We will start
4 with OPC.

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

6 EXAMINATION

7 BY MR. REHWINKEL:

8 Q Good afternoon, Mr. Sole.

9 A Good afternoon.

10 Q It's good to see you about a year later.

11 I am going to ask you questions only about
12 your April 2nd testimony.

13 A Okay.

14 MR. REHWINKEL: Mr. Chairman, I prepositioned
15 with your staff three exhibits that I would be
16 happy to pass out now to save time, if you would
17 like.

18 COMMISSIONER CLARK: Yes, please.

19 MR. REHWINKEL: While they are being passed
20 out, one exhibit is just Section 366.8255 Florida
21 Statutes. And I would ask that be given a number
22 just for identification. I am not sure that it
23 will be moved.

24 COMMISSIONER CLARK: Okay. I think the
25 correct number would be 49, is that right? 49.

1 MR. REHWINKEL: We can just call it the ECRC
2 statute for a short title.

3 COMMISSIONER CLARK: That's fine.

4 (Whereupon, Exhibit No. 49 was marked for
5 identification.)

6 MR. REHWINKEL: And a next exhibit is entitled
7 February 12, 2018 and March 5, 2018, FPL petitions.

8 COMMISSIONER CLARK: Okay. We will give that
9 Exhibit No. 50, and title it February 12th,
10 March 5th FPL petitions.

11 (Whereupon, Exhibit No. 50 was marked for
12 identification.)

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

14 And then finally, again, probably more for
15 cross-examination purposes, but this would be Order
16 No. PSC-11-0553-FOF-EI.

17 COMMISSIONER CLARK: And we will mark it No.
18 51, Order No. PSC-11-0553-FOF-EI.

19 (Whereupon, Exhibit No. 51 was marked for
20 identification.)

21 MR. REHWINKEL: And just for the record, I
22 think the new naming convention would require that
23 order to be known as PSC-2011-0553.

24 COMMISSIONER CLARK: Okay.

25 BY MR. REHWINKEL:

1 Q Mr. Sole, do you have these exhibits with you?

2 A I do not believe I have all of them. What was
3 the last exhibit, again, Mr. Rehwinkel?

4 Q It would be the 2011 order, PSC order. That
5 would be 51. And 50 would be the petitions relating to
6 the Manatee Temporary Heating System and the NPDES
7 permit for Scherer.

8 A Mr. Rehwinkel, I apologize, I do not seem to
9 have the order. I apologize.

10 Q No problem.

11 A I have them.

12 Q Okay, very good.

13 So would can just set those aside for a
14 second. Well, let me start by asking you to start
15 with -- your job title and responsibilities remain
16 unchanged since the last time you testified in the 2017
17 docket, is that correct?

18 A Yes, that is correct.

19 Q Would it be correct -- I wasn't trying to
20 trick you, but are you also over the new acquisition of
21 City Gas? Is that under your umbrella of NextEra
22 Environmental Services Vice-President?

23 A No. I wouldn't -- as you characterize it, I
24 would have to answer no, Mr. Rehwinkel. Obviously, I
25 have responsibility, as we look at that acquisition, in

1 implementing that acquisition.

2 Q Okay. And I know that Gulf Power has not been
3 acquired by NextEra yet, is that correct?

4 A That is correct.

5 Q Okay. Upon closing of that transaction,
6 assuming that it occurs, will you be responsible for
7 Gulf Power as a part of your responsibilities for
8 NextEra?

9 A Yes. No different than my current
10 responsibilities at NextEra. I am responsible for
11 environmental programs for both FPL as well as NextEra
12 subsidiaries.

13 Q Okay. Thank you.

14 Mr. Sole, could you pick up Exhibit 49, which
15 is just the one-pager with the statute?

16 A Yes, sir, I have it.

17 Q And I know right off the bat you are not an
18 attorney, correct?

19 A That is correct.

20 Q Are you familiar with this statute
21 nevertheless?

22 A Yes, I am.

23 Q Could I ask you to read the definition of
24 environmental laws or regulations, which is subsection
25 (1)(c), aloud? Would you read that aloud?

1 A Yes.

2 Environmental laws or regulations includes all
3 federal, state or local statutes, administrative
4 regulations, orders, ordinances, resolutions or other
5 requirements that apply to electric utilities and are
6 designed to protect the environment.

7 Q Thank you.

8 Would you -- would it be your testimony that
9 that provision, as it defines laws or regulations,
10 environmental laws or regulations, is the standard that
11 your testimony seeks to meet for approval of the
12 recovery of costs under the ECRC today?

13 A Yes. I believe that FPL is obligated to
14 ensure compliance with all of 366.8255, and that is one
15 provision.

16 Q Okay. But that is the definition of what the
17 law or regulation is that your projects must be within
18 in order to be eligible for recovery, is that correct?

19 A Yes. That is the statutory definition of
20 environmental laws or regulations.

21 Q Okay. Thank you.

22 Now, in your testimony -- well, let me strike
23 that and ask it this way.

24 Your testimony provides the basis of what you
25 call modifications of two existing approved projects for

1 Commission approval, is that right?

2 A Yes.

3 Q And turning to the Manatee Temporary Heater
4 System, or MTHS project, first, can you tell me exactly
5 what you are asking the Commission to do with respect to
6 this MTHS project?

7 A Yes. FPL is requesting that the Commission
8 modify the existing Manatee Temporary Heating System
9 project to include the addition of a temporary Manatee
10 heating system at Plant Ft. Myers.

11 Q Is it your view, or your testimony here today,
12 that the Ft. Myers MTHS project is somehow already
13 approved in an overall sense and you are just here
14 seeking a modification?

15 A Could you ask the question again? I may not
16 have fully understood it.

17 Q Okay. Is it -- let me ask it a different way.
18 Is it your view that -- well, first of all,
19 let me ask it this way: You have a very similar
20 temporary heater system project designed to provide
21 heated environment for manatees at several plants
22 already, is that correct?

23 A Yes, that is correct.

24 Q Okay. And is it your testimony that each of
25 those projects is approved by an overall Commission

1 **approval of this type of project, or are they approved**
2 **each alone -- each on a stand-alone basis?**

3 A As we have progressed with this project, it
4 started individually with the Riviera Beach project.
5 During the same period in which we requested Commission
6 approval, the Canaveral project was identified, and it
7 was identified as a project approval for both of those
8 projects.

9 Since that time, we have had similar approvals
10 by the Commission to add specific projects at specific
11 plants based upon a demonstrated need. Does that -- I
12 apologize, I think that answered your question.

13 Q I appreciate that. My question -- let me ask
14 a follow-up to that.

15 Is it your opinion that there is a generic
16 Commission policy where they have approved any Manatee
17 Temporary Heating System project at any plant if it is a
18 requirement of a permit?

19 A No. The -- FPL is, at this point, seeking
20 specific Commission approval of this project, or to
21 amend this project based upon the need demonstrated
22 specifically at Ft. Myers and the requirement to meet
23 its National Pollution Discharge Elimination System
24 permit and Manatee Protection Plan obligations at that
25 facility.

1 **Q Is there any reason why the Ft. Myers project**
2 **isn't before the Commission on a stand-alone basis just**
3 **on its own merits, without regard to whether you have**
4 **had an approval in any other Manatee Temporary Heating**
5 **System project at another plant?**

6 A The answer is no. It's clear that, in the
7 past, a individual project has been created to deal with
8 addressing Manatee heating systems at plants where it's
9 demonstrated and justified to be needed. The precedence
10 has been established where, in the past, where we've
11 identified that need, we've modified this existing
12 project to include additional projects where needed.

13 That is the case where we are at today in
14 making a recommendation to modify the existing project
15 for Manatee Temporary Heating Systems.

16 **Q So another way of asking that is can you tell**
17 **me what more you would have to present to have the Ft.**
18 **Myers MTHS project approved if there were no other MTHS**
19 **projects at any of the other plants that you describe in**
20 **your testimony.**

21 MS. MONCADA: Commissioner Clark, I want to
22 lodge an objection. It's been going on for a
23 while, but the first thing established in this line
24 of questioning was that Mr. Sole is not an
25 attorney, and I think it's really reached the point

1 where Mr. Rehwinkel is asking him to make legal
2 determinations about legal requirements.

3 COMMISSIONER CLARK: Mr. Rehwinkel.

4 MR. REHWINKEL: Yes. Thank you, Mr. Chairman.

5 The basis of my question is to understand what
6 he is asking the Commission to approve. His
7 testimony supports the petition, so there is no
8 line between what's a legal opinion and what's not
9 based on the way their case is presented.

10 COMMISSIONER CLARK: I will allow the
11 question.

12 THE WITNESS: There is two fundamental --
13 well, ask the question again and make sure I get it
14 correct. I apologize.

15 MR. REHWINKEL: Thank you. And thank you, Mr.
16 Chairman.

17 COMMISSIONER CLARK: Yes, sir.

18 BY MR. REHWINKEL:

19 **Q Mr. Sole, can you tell me what more you would**
20 **have to present to have the Ft. Myers MTHS approved if**
21 **there were no other MTHS projects at any of the other**
22 **plants you describe in your testimony?**

23 A Yes. The temporary Manatee heating system
24 obligation is actually confined within the NPDES permit
25 that's issued for this facility. There is an obligation

1 under that permit, and I can point to that specifically.

2 If you go to my Exhibit MWS-3, page 15 of 48,
3 this is the specific NPDES permit for Plant Ft. Myers.
4 And you look at Condition No. 10, there is a specific
5 obligation that the permittee shall continue compliance
6 with the facility's Manatee Protection Plan approved by
7 the Department on August 18th, 1999.

8 If you then go to MWS-4, which is the Manatee
9 Protection Plan as approved by the Department in 1999,
10 and go to specific page 8 of 9, there is a specific
11 language in the Manatee Protection Plan that obligates
12 FPL from November 15th through March 31 to endeavor to
13 operate in a manner that maintains the water temperature
14 in an adequate portion of the discharge canal at or
15 above 68 degrees Fahrenheit. And there are specific
16 trigger mechanisms in that Manatee Protection Plan that
17 would establish when FPL is to take action. So those
18 are the two regulatory requirements that FPL is
19 obligated to meet at Plant Ft. Myers.

20 If you go to my testimony, you will see that I
21 specifically describe the conditions at Plant Ft. Myers
22 why, under prior operating protocols, our ability to
23 meet that obligation has eroded as a result of changes
24 and to FPL's combined cycle natural gas fleet, and the
25 need to do maintenance, and scheduling that maintenance

1 outside of the manatee season was complicated.

2 Additionally, as a result of the efficiency
3 improvements that we have implemented at FPL, while
4 Plant Ft. Myers, at one time, was one of our very
5 efficient plants, it has actually gone lower in the
6 stack, and therefore, its ability to be dispatched
7 economically efficiently may erode, and therefore,
8 eliminate our ability to provide that warm water during
9 those periods of time.

10 Those two requirements, as I specifically
11 provided in my exhibits, as well as the existing
12 conditions at Plant Ft. Myers now have required us to
13 move forward with a temporary manatee heating system at
14 Plant Ft. Myers.

15 **Q So is it essentially your testimony that the**
16 **way you operate your system and you dispatch that unit,**
17 **the Ft. Myers unit, is what triggers a requirement that**
18 **you have to meet these specific conditions that you**
19 **discuss in MWS-3 and MWS-4?**

20 A No, that is not the sole reason. There were
21 combined reasons as it related not only to its economic
22 dispatch, which was just a reason. The more compelling
23 reason is the ability to operate and maintain the
24 system, and not take it out of service during the
25 winter. Our ability to do so has been significantly

1 reduced as compared to past operating and past
2 configurations of FPL's overall fleet.

3 Q Does your testimony present to the Commission
4 a case to support the prudence of the solution that you
5 have selected in order to meet the requirements in the
6 permit and the plan that you have pointed to in MWS-3
7 and MWS-4?

8 A Ask the question again just to make sure I
9 fully understand. I am sorry, Charles -- Mr.
10 Rehwinkel -- I apologize.

11 Q That's all right.

12 Does your testimony support the prudence of
13 the method that you have chosen to meet the specific
14 requirements in MWS-3 and MWS-4 that you just testified
15 to?

16 A Yes, I believe it does.

17 Q Okay. Does that mean that you have selected
18 the lowest cost solution to meet the requirements that
19 are in MWS-3 and MWS-4?

20 A Yes. And as provided in interrogatories, I
21 believe FPL also identified alternatives that could be
22 pursued, and demonstrated that the alternatives selected
23 by FPL was some little more than five million CPVRR in
24 the better as compared to a more temporary system.

25 And I also believe we provided

1 interrogatories -- I am sorry, I thought I could find it
2 quickly. Here it is. We provided two responses to
3 interrogatories, one that identified the comparative
4 analysis, CPVRR analysis.

5 We also presented information related to the
6 annual average estimated fuel cost for each FPL
7 generating unit and inclusive of Plant Ft. Myers. And
8 more importantly, the capacity factor that Plant Ft.
9 Myers have been incurring during the manatee season
10 itself. And if you go to interrogatory No. 3--

11 **Q These are responses to staff interrogatories?**

12 A Yes, they were. Thank you for that
13 clarification, Mr. Rehwinkel.

14 If you go to the second attachment to that
15 interrogatory, you can see that the capacity factor at
16 Plant Ft. Myers during the manatee season is actually
17 quite low, and it's been quite low during the 2006 --
18 excuse me, '18-'19 period, and projected to be roughly
19 in the, I am going to say, average 30 percent range
20 throughout the next several years until getting to
21 significantly reduced in roughly 2028.

22 So you are only operating the unit a third of
23 the time during the manatee season. So in so doing, in
24 a situation where conditions merit the need for
25 providing that warm water discharge, it's unclear as to

1 whether or not you would be actually economically
2 dispatching that plant to achieve the warm water refugia
3 that we are obligated to meet under the NPDES permit and
4 the Manatee Protection Plan.

5 **Q So what you just described, the analysis, the**
6 **CPVRR analysis and the options that you referenced in**
7 **the interrogatories, that information was not included**
8 **in your testimony or your exhibits; is that correct?**

9 A That is correct. Well, correction. The
10 premise of it was absolutely addressed in my testimony.
11 My testimony specifically identified two factors. One,
12 the ability to continue to adequately conduct
13 maintenance outside of the manatee season as being no
14 longer achievable, plus the factor of our ability to
15 economically dispatch during the manatee season was
16 similarly challenged. And therefore, in order to
17 maintain compliance during the manatee season, we would
18 have to dispatch, in all probability, during uneconomic
19 times. And the analysis similarly showed that that
20 would be a cost impact to ratepayers and customers.

21 **Q Can you now pick up Exhibit 50, please?**

22 A If I can find it now.

23 **Q These are the two petitions. And I want to**
24 **ask you about the February 12th petition.**

25 A Yes, sir. I have it. Thank you.

1 Q You are familiar with this petition, are you
2 not?

3 A I am.

4 Q Your testimony is specifically designed in
5 part to support the relief requested on this petition,
6 is that correct?

7 A Yes, it is.

8 Q Okay. Can you look at paragraph 2 on page 1
9 of that petition? And do you see where you say -- where
10 it says: "FPL is requesting to modify its existing,
11 approved MTHS project to include an MTHS at FPL's Ft.
12 Myers plant site (PFM)." Do you see that?

13 A I do.

14 Q Okay. And I read that correctly?

15 A I think so.

16 Q Okay. So I am just trying to understand
17 what's already approved that has a bearing on whether
18 you get cost recovery for the specific Ft. Myers MTHS,
19 if anything.

20 A I believe the intent is to acknowledge an
21 existing Commission approved project addressing
22 temporary manatee heating systems. There is no premise
23 that the Commission has already approved the Plant Ft.
24 Myers project, and FPL is requesting a modification to
25 include that project as part of the Project 41, or

1 temporary Manatee heating system project -- Manatee
2 Temporary Heating System project. Sorry.

3 Q So when I think of the word project, it sounds
4 like a singular thing. And I am trying to understand
5 how you view, in terms of what you are asking the
6 Commission to approve, the word project is, is there
7 something that's preapproved about your project at all?
8 I think your last answer said no, but I want to
9 understand if that's your testimony. Is there anything
10 that's preapproved, that gives you a head start or a
11 running start on approval of this Ft. Myers MTHS?

12 A No, I don't believe there is anything, quote,
13 unquote, preapproved as the term you are using. I think
14 the intent is that there are multiple projects often in
15 certain categories, and this project was created as
16 such. There is the need for FPL to meet both its
17 National Pollution Discharge Elimination System permit
18 obligations, as well as meeting its Manatee Protection
19 Plan.

20 Those obligations that exist at several other
21 plants, the obligation is the same in each. FPL is
22 obligated to ensure and provide adequate warm water
23 refugia for these animals in times where there may be
24 disruption in services. That is the project that there
25 is this need and obligation that FPL is obligated to

1 pursue.

2 Individually, we have come to the Commission
3 each time to address the need to do a specific plant
4 project, and that may be the terminology that we are
5 crossing on.

6 Q Okay. And to the extent that you are familiar
7 with this petition, aside from -- on page 4, where there
8 is a footnote to a 1994 order, which I would expect you
9 are familiar with as it is the seminal order dealing
10 with cost recovery for an ECRC; am I correct in that?

11 A I am struggling on page 4 of Exhibit 50.

12 Q Of February 12th --

13 MS. MONCADA: Mr. Rehwinkel and Commissioners,
14 I believe there may have been a duplication error
15 for this exhibit and we only got the odd numbered
16 pages.

17 MR. REHWINKEL: Oh, wow. That's a problem.

18 Okay. Well, I don't think it's fair for me to ask
19 Mr. Sole to look at my microprint.

20 THE WITNESS: I need my uber readers.

21 BY MR. REHWINKEL:

22 Q Do you have a copy of that petition with you
23 in your notebook?

24 A I do.

25 Q Okay.

1 A I am on page 4.

2 Q Okay. Are you familiar with the PSC-94044 --
3 0044 order?

4 A I am not.

5 Q You are not, okay.

6 Well, do you know whether any -- this petition
7 cites any order of the Commission that says there is
8 approved manatee project? And let me ask -- let me step
9 back and say, when was the first manatee project that
10 the company brought forward? Was it in '99?

11 A I believe it was 1999, associated with -- no,
12 hold on.

13 I believe it was in 1999, but I could be wrong
14 on that. I know that the first one was Riviera Beach,
15 Mr. Rehwinkel, as part of that project, and then the
16 Canaveral project.

17 Q Okay. But it wasn't in 1994, is that right?

18 A It was not in 1994.

19 Q Okay. So now back to my question, is there an
20 order in here that's cited in this petition that your
21 testimony supports that is the Commission order that
22 approves this project, this overall project that you
23 describe?

24 A As pointed out in my testimony -- you are
25 asking about my testimony or the actual filing?

1 **Q Well, the petition.**

2 A Well, the petition clearly points out that
3 there has been projects approved for Cape Canaveral,
4 Riviera Beach, Port Everglades and Fort Lauderdale on
5 the first page of paragraph 2. And each of those have
6 been pursued by FPL to the Commission and have been
7 approved by the Commission.

8 As we categorize these, this is, I believe,
9 Project 41 under our books. And this is how we manage
10 this project as a individual project, inclusive of all
11 four of the projects that have already been approved by
12 the Commission.

13 **Q Can you cite to me any order of the Commission**
14 **that approves the MTHS in an overall sense?**

15 A Other than the approval of the Riviera and
16 Canaveral project as the first project, I believe that
17 is the only thing that I would cite as the initial
18 project that established the temporary -- or the Manatee
19 Temporary Heating System project.

20 **Q Okay. Did that order say that if you brought**
21 **another one to the Commission, you would have to**
22 **separately justify it?**

23 A I would have to read that order to validate
24 that question, so I don't know. However, it's very
25 clear, having modified that existing order twice

1 already, or at least modified this project twice already
2 for now the Port Everglades facility, which was approved
3 by the Commission, as well as subsequently the Dania
4 Beach Clean Energy System, or formerly Lauderdale Plant,
5 this is an established protocol that we have worked with
6 the Commission on under this project in the past.

7 Q Based on what you have testified here today,
8 not only in your testimony, your prefiled testimony and
9 exhibits, but in the discovery responses that you have
10 discussed on the record here today, wouldn't you agree
11 that the Ft. Myers Manatee Temporary Heating System
12 project stands on its own?

13 A Yes. I believe in order to pursue cost
14 recovery, we would need to establish that at this
15 hearing.

16 Q Okay. And so the prudence -- the evidence of
17 prudence that you are submitting to the Commission here
18 is evidence that would stand on its own, regardless of
19 whether you had approved projects at other plants in
20 prior years; is that your testimony?

21 A My testimony is that we do need to justify the
22 actions in this project, and we have done so both in the
23 petition as well as my individual submitted testimony,
24 not only establishing the obligation to adhere to the
25 permit condition in the Manatee Protection Plan, but

1 noting the additional risks that now occur at Plant Ft.
2 Myers, and our ability to maintain compliance under that
3 existing NPDES permit and Manatee Protection Plan.

4 Q Now, would you agree that the NPDES permit
5 Manatee Protection Plan -- and Manatee Protection Plan
6 is a preexisting requirement for the Ft. Myers plant?

7 A Mr. Rehwinkel, I apologize, I don't know what
8 you mean by preexisting. Preexisting to what?

9 Q Today.

10 A Yes, it's preexisting to today.

11 Q Was it preexisting before you spent the first
12 dollar on the MTHS at the Ft. Myers site?

13 A Yes.

14 Q Okay. In other words, it was not newly
15 imposed as part of a new construction or an NPDES
16 license renewal, for example; is that right?

17 A No. This was established in the renewal of
18 the permit condition, but it's been there for some time.

19 Q Yeah. I mean, your -- your purp -- the
20 requirement is not part of a proposed renewal of NPDES
21 permit at Ft. Myers, is that right?

22 A Yes, that is correct.

23 Q Okay. So from the time the requirement became
24 established in a license or a regulation that applied to
25 the Ft. Myers plant, something would have had to have

1 **changed to make this requirement applicable to the Ft.**
2 **Myers plant, is that correct?**

3 A Yes.

4 Q **And that's what you describe in your testimony**
5 **with respect to the way you dispatch the plant today, or**
6 **propose to do so; is that right?**

7 A Partially right. It's not just the way we
8 dispatch the plant. It's also related to our ability to
9 conduct maintenance work outside of the manatee season.
10 Our ability to do so has now been significantly reduced,
11 and as such, now we are having to do both planned and
12 maintenance outages during the manatee season, which
13 would then result in our inability to meet the permit
14 requirements in the NPDES permit.

15 Q **So it's dispatching and maintenance issues**
16 **that are essentially, in a big sense, the trigger that**
17 **requires you to expend these funds to meet the permit**
18 **requirements; is that fair?**

19 A Yes, that is fair. And there is additional
20 risk also as it relates to the location of the plant.
21 The plant is in an area that has the higher likelihood
22 of having these lower temperature requirements. There
23 is a requirement that if water conditions, or water
24 temperatures get below 61 degrees, it's at that time
25 that we are obligated to take action. Here at Plant Ft.

1 Myers, due to its location, we have a higher propensity
2 of seeing that as compared to other plants in our fleet.

3 Q Okay. And with respect to the Ft. Myers
4 plant, is FPL in violation of any environmental law or
5 regulation with respect to the NPDES and MPP
6 requirements with respect to manatees?

7 A No.

8 Q Okay. And prior to the implementation, or the
9 beginning of the implementation of the MTHS, has the
10 company been, or will the company have been in violation
11 of any environmental law or regulation with respect to
12 the NPDES and MPP requirements for that plant?

13 A I misunderstood the beginning of that, just
14 the beginning. Could you -- because you said prior to
15 and then after, and then I got confused which one it
16 was, or maybe I heard it wrong, Mr. Rehwinkel. I
17 apologize.

18 Q I didn't mean to ask you about after. I was
19 talking about prior to.

20 A Prior to what time?

21 Q Prior to the implementation of the Manatee
22 Temporary Heater System project at Ft. Myers.

23 A Thank you. No.

24 Q Okay. If I asked you the same question about
25 protecting manatees in the -- under your NPDES permits

1 at any other FPL power plants in Florida, would the
2 answer be the same?

3 A I believe so, yes. The answer is we have not
4 seen violations associated with our NPDES permits or
5 Manatee protection plans.

6 Q Okay. And has this project been completed, or
7 are you still using the temporary leased system until --

8 A We are currently using the temporary lease
9 system until a project can be completed.

10 Q And when is the project expected to be
11 completed?

12 A I do not have the specific timeline, but I do
13 believe it will be subsequent to the end of the current
14 manatee season, which started November 15th. Not quite
15 current, upcoming manatee season.

16 Q So would it be true that the proposed MTHS
17 expenditure is solely for prospective compliance or
18 staying within compliance with an existing regulation?

19 A Yes, I would characterize it that way.

20 Q With regard to the solution that you chose,
21 did you look at a solar solution, or solar with battery?

22 A Is the -- do you infer a solar solution to
23 mean the heater itself is powdered by solar or --

24 Q Yes, sir.

25 A -- that the solar energy is used to heat the

1 water?

2 Q Solar energy used to power it.

3 A Okay. No, we did not.

4 Q Okay. Was there a reason why you didn't?

5 A Primarily cost-effectiveness, the existing
6 generation at the site would provide adequate power, or
7 the grid already established at this facility.

8 Q Okay. Would you agree that -- well, are there
9 any other plants that FPL has that could potentially
10 require a Manatee Temporary Heater System that don't
11 already have it?

12 A No, I don't believe so. I think this is the
13 fifth and eventual final project that would require a
14 temporary manatee -- a Manatee Temporary Heating System.

15 Q And I am talking about existing. I am not
16 asking about any you might build in the future.

17 A Understood.

18 Q Okay. And with regard to the Manatee
19 Temporary Heating System at Ft. Myers, can you tell me
20 what regulation that you are proposing to comply with
21 that is designed to protect the environment?

22 A Yes. It's combined both the National
23 Pollution Discharge Elimination System obligation, which
24 that permit condition is designed to protect the
25 environment, and specifically the Manatee Protection

1 Plan, which under Fish and Wildlife Conservation
2 Commission obligations we are obligated to maintain,
3 protect for threatened and endangered species.
4 Similarly, the U.S. Fish and Wildlife Service obligation
5 to provide protection to the threatened and endangered
6 species.

7 Q Okay. Thank you.

8 So I think I am done with the manatee issue.
9 I want to return to Plant Scherer. But before -- well,
10 yes, so let's go to Plant Scherer.

11 Is the National Pollution Discharge
12 Elimination System permit -- it's almost easier to say
13 NPDES.

14 A That's why I say NPDES.

15 Q Is that permit renewal requirement
16 requirement's project specific to the existing Plant
17 Scherer NPDES renewal or is that for FPL -- for any time
18 FPL has to renew a permit at a plant, a project?

19 A I understand the question.

20 The original NPDES renewal project was
21 designed to address a new requirement associated with
22 all of Florida's -- excuse me, all of FPL's Florida
23 plants. And the new requirements were primarily
24 specific to two new specific obligations, whole effluent
25 toxicity testing, as well as the Stormwater Pollution

1 Prevention plan obligation. That was approved by the
2 Commission. And as new obligations were realized by FPL
3 when they renewed their NPDES permit, those costs would
4 be addressed specific to that project.

5 Q Would it be your testimony that -- and let me
6 start over again and ask you to look on page 14 of your
7 testimony, on lines five and six, you describe -- or you
8 give a label for a project. Do you see that?

9 A I do.

10 Q Okay. Is -- that's the project that you just
11 described?

12 A It is. And it includes a modification that
13 was subsequently approved by the Commission, I believe
14 in 2016, related to a new obligation associated with our
15 NPDES permit for our St. Lucie Power Plant project,
16 where there was a new obligation established by DEP
17 related to a chlorinization study and optimization.

18 Q So is it your testimony there are now three
19 elements of NPDES renewal that are covered by this
20 project, the WET, the SWPP and now this St. Lucie issue?

21 A That is correct.

22 Q Okay. Is it your testimony that this project
23 is kind of a one-size-fits-all preapproved --
24 preapproval that you just have to update periodically?

25 A No, that is not my testimony.

1 Q If this project had not been approved by the
2 Commission in the past, as you describe it, would you be
3 still asking for the same relief, and making the same
4 justification that you are providing for the Scherer
5 NPDES renewal?

6 A If I understand the question correctly, yes.
7 If there was no established project to deal with NPDES
8 renewal permit requirements, we would pursue and propose
9 a stand-alone project for the Scherer NPDES renewal
10 project.

11 Q So what is it about your testimony -- well,
12 let me step back and ask it this way.

13 Is there anything in an order that describes
14 this NPDES renewal -- or permit renewal project --
15 permit renewal requirements project that states that
16 prudence is assumed for any activities related to
17 renewals regardless of where the plan is?

18 A No. I am pretty confident the Commission
19 would not put that in the order.

20 Q So it's your testimony that there is no
21 preapproval of prudence for any project?

22 A Yes.

23 Q Okay. And the only reason the manatee -- I
24 said I was finished, but let me just ask you this just
25 so I can understand the scope of the NPDES project.

1 **Is the manatee issue, as it relates to the**
2 **NPDES project, it wouldn't fall under this umbrella of**
3 **the renewal because it's not related to a renewal; is**
4 **that right?**

5 A Yes. And the additional scenario that we have
6 in front of us, that there is an already existing
7 Manatee Temporary Heating System project that has been
8 amended -- approved and amended in two additional
9 events.

10 Q Okay. So I understand what these projects are
11 with respect to what it means that there has been
12 commission action on them in the past. Is it your
13 testimony that they are the type of project or
14 expenditure that the Commission has previously approved?

15 A Yes. I think that would be a correct
16 interpretation of the term project in this case, where
17 we categorize certain activities that have been approved
18 by the Commission. And in this case, we are requesting
19 to modify two of those existing categories to include
20 specific projects.

21 Q Okay. So now I want to ask you to pick up 51.
22 And I hope I have copied all the pages in this order
23 this time.

24 A I have 51.

25 Q Yes.

1 A And the good news is there are even pages.

2 Q Well, I am looking at the top, and you should
3 see under the order heading, it will say the order
4 number, the docket number and then it will say page in
5 the top left-hand side. Do you see that?

6 A What page? I apologize.

7 Q Okay. I am just asking, do you have odd and
8 even numbered pages there?

9 A Page 2. Page 3.

10 Q Okay.

11 A Page 4. Page 5. Yes, sir.

12 Q Okay. Let's look at page 14, if you can.

13 A I am there.

14 Q All right. I think I have -- that's not the
15 right page. Page 12.

16 A I am there.

17 Q Now, I know why I said page 14, because on
18 page 14 of your order -- if you could keep your finger
19 on page 12 of that Exhibit 51.

20 Page 14, lines 15 and 16, this Exhibit 51 is
21 the order that you cite on those lines, is that right?

22 A It is.

23 Q Okay. And just for the record, I have
24 attached an amendatory order at the very back of this
25 exhibit, which I think is not going to impact at all the

1 questions I am going to ask you, but for completeness I
2 have attached it.

3 A I understand.

4 Q And I want to ask you if you could, keeping
5 your finger on page 12, if you could flip back to page 6
6 of the order, and tell me if you see that these are
7 stipulated -- that there is a series of stipulated
8 company specific issues under Florida Power & Light, and
9 they have numbered -- or lettered Paragraphs A through
10 E. And I think I want you to keep your thumb on page 8
11 and not 12. I apologize for the misdirection.

12 A I only have two thumbs, but I will do my best.

13 Q Okay. Do you see -- so paragraph E on page 8
14 is part of a series that fall under stipulated issues
15 for Florida Power & Light, is that right?

16 A I do see that. Yes.

17 Q Okay. Now, is paragraph E the specific -- the
18 second paragraph that starts with yes, is that the
19 specific language that is the genesis of the NPDES
20 permit renewal project that you describe in your
21 testimony?

22 A Yes, it is.

23 Q Okay. And just so I understand -- I am not
24 going to ask you to read this paragraph, but ask you to
25 review it because I want to ask you some questions about

1 it.

2 A This whole paragraph E?

3 Q Yeah, that starts with yes.

4 A Understood. I have read it.

5 Q Okay. Would you agree, after reading it, can
6 you confirm that this is, indeed, the applicable portion
7 of the order that you reference on page 14 of your
8 testimony?

9 A It is.

10 Q Okay.

11 A Yes.

12 Q And can you go back to Exhibit 50 -- oh, you
13 can't go to Exhibit 50, but do you have the permit -- I
14 mean the petition that was filed on March 5th that
15 supports this project, the NPDES renewal requirement
16 project?

17 A I do.

18 Q And I would like you to read aloud the first
19 sentence of paragraph 2 of that petition once you have
20 located and had a chance to look at it.

21 A On page 1, sir?

22 Q Yes, sir.

23 A "In 2011, this Commission approved the NPDES
24 permit renewal requirement project to allow recovery of
25 costs incurred to meet NPDES permit requirements for all

1 of FPL's Florida plants."

2 **Q Okay.**

3 A "FPL requests a modification to the NPDES
4 permit renewal requirement project to allow recovery of
5 costs incurred to meet anticipated NPDES permit
6 conditions and compliance schedules to be imposed on
7 Plant Scherer by the Environmental Protection Division
8 of Georgia's Department of Natural Resources."

9 **Q Okay. So with that first sentence there, with
10 respect to the phrase for all of FPL's Florida plants,
11 is that language in the order that's Exhibit 51, that it
12 says it applies to all FPL's plants?**

13 A To the extent that a facility has an NPDES
14 permit, yes.

15 **Q So it says that in this order?**

16 A That is my read of that provision that you had
17 me read. Yes.

18 **Q Was this renewal for a specific plant, or was
19 it generic to all FPL plants in Florida at the time?**

20 A It is not specific to a specific plant, and
21 was generic to the renewal obligations associated with
22 all of Florida's NPDES permits, and the obligation under
23 the renewal provisions that will require Florida plants
24 that have an NPDES permit to conduct and produce both a
25 stormwater protection prevention plan as well as address

1 whole effluent toxicity testing at their facilities.

2 Q Okay. So there is not -- NPDES permits are
3 specific to plants, is that right?

4 A Each permit -- excuse me, each plant is
5 obligated to go and get its own NPDES permit. Yes.

6 Q Okay. And it's your testimony that this order
7 applies to multiple plants that were in the renewal
8 process for their NPDES permits at the time that this
9 action was taken by the Commission?

10 A I was going to say yes until the latter part
11 of your statement. So I am going to say yes, but to
12 clarify, it was to address when FPL renewed its permit
13 and the new obligation occurred, that those activities
14 would be considered ECRC recoverable pursuant to the
15 statute.

16 So we may be renewing a permit in this case in
17 2011, but my next permit might not be renewed until
18 2013. It would still apply to the 2013 project
19 renewal -- permit renewal. Excuse me.

20 Q So if I look about three-quarters of the way
21 down on the right-hand side, do you see a sentence that
22 starts with the estimated 2011 and 2012?

23 A I do see that.

24 Q Okay. And would you agree that following this
25 sentence, there are three O&M expenditure numbers that

1 are contained in the order, one for WET -- and that's
2 all capitals, W-E-T. That's whole effluent --

3 A Toxicity test.

4 Q -- testing. There is \$77,000. Then there is
5 an SWPP activities with \$100,000 estimate?

6 A I see that. Yes.

7 Q And then there is a \$30,000 estimate in O&M
8 expenditures for -- related to an SWPP for 2012 -- or
9 2011 and 2012. Do you see that?

10 A I see that, yes.

11 Q Okay. So those are the amounts that the
12 Commission approved for recovery in this case, is that
13 right?

14 A These are the amounts that were stipulated in
15 this case specific to that ECRC recovery year. There
16 have been subsequent cases that additional amounts, or
17 different amounts have been provided, which I don't
18 happen to have that data in front of me.

19 Q Okay. Is it your testimony that the Plant
20 Scherer -- now, what you are asking the Commission to do
21 is to add in Plant Scherer to this project because it's
22 not a Florida plant, is that right, and it wasn't
23 covered under this project approval back in 2011?

24 A No.

25 Q Okay.

1 A The way you have asked the question, I
2 can't -- I have to answer no.

3 We have asked the Commission to approve this
4 project for two reasons. One, it's clearly not part of
5 the previously approved project that we referenced in
6 the order. And, two, it is a new obligation that we
7 have, or Georgia Power in this case, has identified that
8 is requiring this work to be taken to ensure compliance
9 with both the anticipated NPDES permit.

10 Q **So are the toxicity limitations that you are**
11 **seeking to comply with on a anticipated basis in Georgia**
12 **with the EPD there, are they part of WET requirements in**
13 **the state of Georgia in implementing the CWA, or Clean**
14 **Water Act?**

15 A No. They are not part of the whole effluent
16 toxicity, I do not believe. I think they are specific
17 to ensuring compliance with Georgia's water quality
18 standards specific to Rule 931.

19 Q **Okay. So are you asking the Commission to add**
20 **a fourth criteria for NPDES permit renewal? Because**
21 **this order, 2011 order, refers to either WET or SWPP**
22 **requirements under the Clean Water Act that implemented**
23 **by the Florida DEP; is that right?**

24 A Yes, but this order that we are talking about
25 was also -- or this project was also subsequently

1 modified to include the chlorinization study obligated
2 by DEP against the St. Lucie plant. So there had been
3 additional obligations that have been identified by
4 regulatory agencies under NPDES renewals that we have
5 sought approval by the Commission to evaluate and either
6 discern as, yes, it is appropriate for ECRC, or, no, it
7 is not.

8 **Q So I thought we had earlier established that**
9 **prior to you coming before the Commission with the**
10 **Scherer NPDES modification, or renewal and modification,**
11 **there were three criteria under the NPDES renewal that**
12 **you had identified that the Commission had approved in**
13 **past orders, WET, SWPP and the chlorinization issue in**
14 **St. Lucie?**

15 A Yes. Subsequently, the chlorinization issue
16 at St. Lucie.

17 **Q Okay. So now this copper issue in Georgia**
18 **would be a fourth?**

19 A It would be a specific project at Plant
20 Scherer addressing a copper effluent limit that both
21 Georgia Power and we believe Georgia DNR are going to
22 agree in the upcoming NPDES permit.

23 **Q So in that regard, why couldn't the Georgia**
24 **project stand on its own without regard to whether there**
25 **had been any action in Florida if it's not related at**

1 all to the two elements that are in the 2011 order, as
2 well as the third element that you say is in the
3 St. Lucie decision, why isn't it just on its own?

4 A Because that was the path that FPL took in
5 addressing the proposed requirement.

6 When you look at the project itself, it
7 specifically talks to NPDES permit renewal requirements
8 project. It is not a SWPP or whole effluent toxicity
9 project. It is -- in its title, it is specific to NPDES
10 permit renewal requirement projects, which addresses new
11 requirements that are established against FPL as we
12 renew NPDES permit projects -- or permits. Excuse me.

13 Q Okay. Let's put aside Exhibit 51, and
14 actually you can put aside all of the exhibits that I
15 have passed out. And I want to spend the next segment
16 of this talking about your Exhibits MW-5 and MW-6
17 attached to your April 2nd testimony. Do you have that
18 before you?

19 A Yes, sir, I do.

20 Q Okay. And this is going to be somewhat of a
21 walk-thru of these documents, but I need to understand
22 for the record here what the factual basis for your
23 statement that the \$9 million that you are asking for
24 deferred -- I guess contingent deferred recovery?

25 A I am comfortable with that terminology. I am

1 sure Witness Deaton would be the more appropriate one to
2 ask that.

3 Q You are aware that's the amount, right?

4 A It was \$9 million, yes.

5 Q And I am trying to understand the basis for
6 your asking the Commission to approve it on a contingent
7 basis. Is that what you are asking for?

8 A Contingent upon it -- yes.

9 Q And it's -- just describe for the Commission
10 that contingency, or why -- it's being deferred, and it
11 would not be recovered in 2019 as you understand it
12 today, is that correct?

13 A As requested, and as pointed out in Witness
14 Deaton's testimony, the proposal is to gain approval,
15 however, not book it under ECRC until such time as there
16 is a renewed NPDES permit from Georgia EPD that
17 establishes this effluent criterion.

18 Q But you are asking for approval today such
19 that if the permit is renewed and it contains the copper
20 standard in it, then you don't have to come back and get
21 permission, you just book it and start recovering it. I
22 am sure you would show it in your filings, but you
23 wouldn't have to get it approved again, is that fair?
24 Is that your understanding?

25 A That is my understanding. Witness Deaton is

1 the better one to speak to the accounting specific to
2 that, but, yes, that is my understanding.

3 Q But this is the time for it to be approved is
4 today. If they are going to approve it, the Commission
5 is going to approve it, it's in this hearing?

6 A Yes.

7 Q Okay. Now, you would agree with me generally
8 the duration of an NPDES permit is five years?

9 A I apologize for the smile. Yes, the duration
10 of an NPDES permit is five years. Unfortunately they
11 are routinely administratively continued, which extends
12 that duration.

13 Q And I just want to walk you through that
14 process real quickly here.

15 As long as the permit holder applies before
16 the expiration date, or a deadline before the expiration
17 date, the existing permit is continued until final
18 action on the renewal; is that right?

19 A Yes, that is correct.

20 Q And that's the situation you face in Georgia,
21 is that right?

22 A Yes, that is correct.

23 Q And when I say you, I mean either you or
24 Georgia Power.

25 A I am comfortable with that. Yes.

1 Q Okay. And just for the record, Georgia Power
2 does all the work in the environmental area. You are a
3 partner, but they handle the regulation -- environmental
4 regulation in Georgia for this plant?

5 A Yes. They operate and maintain all facilities
6 at Scherer, all four units.

7 Q Okay. So when I look at MWS-5 at page 2, this
8 shows January 30, 2002 date. And on page 3, you see the
9 permit date is signed as of that date; is that right?

10 A That is correct.

11 Q And page 1 of the permit is a November 29,
12 2006 letter that shows that the Department acknowledges
13 that you had already applied for renewal. They explain
14 that there is a rotation that the basins in Georgia go
15 through, and that your -- the Ocmulgee River Basin is
16 not up for renewal at this time, so you are continued
17 until they act on it; is that fair?

18 A Yes. We are administratively continued under
19 the existing 2002 permit.

20 Q Okay. And so if I look at page 5 -- well,
21 let's see. Look, pages 2 -- 3 through 11 on MWS-5 --
22 well, first of all, this 2002 permit is the existing
23 permit for Plant Scherer, is that right?

24 A Yes. This is the permit in effect at Plant
25 Scherer.

1 Q Okay. And let me flip you over real quick. I
2 am going to come back to five. But if we look at MWS-6
3 on page 1, you see under Dear Mr. Dunn, attached is an
4 updated NPDES permit renewal application package for
5 Georgia Power Company's Plant Scherer facility, located
6 in Juliette, Georgia?

7 A I see it. Yes.

8 Q So when they talk about an updated NPDES
9 permit, that's the update to what happened in 2006, is
10 that right?

11 A No. Well, yes, I believe -- yeah. And the
12 timeframe is an update to the 2006 renewal application.

13 Q That's what I mean, yes.

14 A Yes.

15 Q Okay. So they are just now, I guess, getting
16 around to taking up the basin at the Ocmulgee River is
17 the drainage basin it's in, and so Plant Scherer is up;
18 is that right?

19 A It is my understanding that Georgia EPD is
20 actively working this renewal for this permit. And, in
21 fact, we anticipate seeing a draft permit by the end of
22 this year sometime.

23 Q Okay. But if I go back to MWS-5, under your
24 existing permit, the limitations, if any, that are shown
25 in pages 3 through 11 for the various outfalls that

1 discharge to the navigable waters of the state of
2 Georgia, or any waters of the state of Georgia, I guess,
3 are contained here in part; is that right?

4 A Yes, that is true.

5 Q And then if I go and look, there are some
6 other effluent limitations in the permit on Paragraphs B
7 and C, on pages 25 through 28, that might deal with
8 toxicity and biomonitoring reduction, or is it just the
9 ones on 3 through 11?

10 A No. The provisions on 25 through 28 similarly
11 apply. And did you reference 23? I apologize, I don't
12 remember.

13 Q Is 23 one as well?

14 A Yeah. There are specific requirements that
15 specifically say, for example, on page 23, paragraph 8,
16 nothing in this permit shall be construed to preclude
17 the modification of any condition of this permit when it
18 is determined the effluent limitations specified here
19 and failed to achieve the applicable state water quality
20 standards.

21 And there is specific provisions also on page
22 22 that actually, under paragraph 5, toxic pollutants,
23 the permittee shall comply with effluents standards or
24 prohibitions established pursuant to Section 307.

25 So there are as specific, as you pointed out,

1 specific monitoring obligations as well as general
2 requirements.

3 **Q So this permit doesn't exempt you from**
4 **requiring -- from applying -- complying with new**
5 **regulations under the Clean Water Act, or if Georgia**
6 **modifies their standards to lower them?**

7 A I would not be the best witness to answer that
8 question because there is a very nuanced answer to that,
9 and there is a legal framework in which, if you are in
10 compliance with your permit, you are in compliance with
11 the obligations --

12 **Q Okay.**

13 A -- and -- but it would not preclude Georgia
14 DNR or EPD to take proactive measures to address an
15 identified issue that may pose a probable noncompliance
16 to water quality standards.

17 **Q Okay. Is it your testimony that Plant Scherer**
18 **is in full compliance with the NPDES requirements of**
19 **this permit today?**

20 A Yes.

21 **Q Is it also your testimony that with respect to**
22 **any other water quality regulation that would affect**
23 **whatever amount of copper is in your discharges from**
24 **that plant, you are in compliance with those beyond or**
25 **apart from whether they are requirements contained in**

1 **your permit?**

2 MS. MONCADA: I don't understand the question,
3 Charles. Can you --

4 THE WITNESS: I didn't either, so that is the
5 good news.

6 BY MR. REHWINKEL:

7 **Q All right. So put aside the permit, are there**
8 **any other water quality regulations that Plant Scherer**
9 **is not in compliance with, to your knowledge, today with**
10 **respect to copper?**

11 A Thank you for -- no, to my knowledge, there is
12 not a specific identified noncompliance event. There
13 are clearly indications that there is a probability that
14 there is a concern, and that is what both Georgia Power
15 and FPL are addressing in this action, to address the
16 probable exceedance of the water quality standards, all
17 be not established. There are work that Georgia Power
18 is doing with Georgia EPD to address those issues, which
19 I don't have at my fingertips here today.

20 **Q Is it your testimony here today that Plant**
21 **Scherer and Georgia Power are not under any enforcement**
22 **action with respect to discharge of copper from Plant**
23 **Scherer?**

24 A To my knowledge, there is not an enforcement
25 action as it relates to discharge of copper.

1 **Q Is it your testimony that there is no copper**
2 **pollution that Georgia Power is required to clean up**
3 **related to discharges from Plant Scherer?**

4 A No. That would not be my testimony.

5 My testimony is, as part of its renewal
6 application to renew its NPDES permit, Georgia Power
7 conducted a suite of samples, like it normally does
8 under its discharge areas. And in this case, Discharge
9 1, which is the discharge that discharges to the
10 Ocmulgee River, and there was an identification of
11 elevated levels of copper. And based upon that
12 identification of elevated levels of copper, Georgia
13 Power identified actions needed to address the water
14 quality standards that exist in Georgia Rule 391 to
15 ensure that it is in compliance with Georgia's water
16 quality standard provisions, acknowledging that it is
17 definitely fully in compliance with its NPDES permit as
18 of today.

19 **Q So the elevated levels of copper that you**
20 **identified from the suite of testing that Georgia Power**
21 **did related to copper at -- copper from effluent from**
22 **Plant Scherer, are those elevated levels in any way in**
23 **violation of any environmental regulation enforced by**
24 **the State of Georgia or the United States of America?**

25 A To date, there has been no notice of violation

1 presented to Georgia Power from either the Georgia EPD
2 or the USEPA, to my knowledge.

3 **Q Is FPL recovering any costs through the ECRC**
4 **to meet compliance -- meet environmental regulations**
5 **imposed by the State of Georgia or the United States of**
6 **America with respect to the Plant Scherer? And I put**
7 **copper in there I hope.**

8 A You did not say copper.

9 **Q That's what I mean.**

10 A Okay. Because, yes, there are several
11 projects under way at Plant Scherer related to both the
12 ELG obligation, as well as coal combustion residue
13 storage that is also part of our ECRC request. But
14 specific to copper, no, there is no other project
15 identified other than the modification to the NPDES
16 renewal permit project.

17 **Q Okay. Now, the request that you are making**
18 **today with respect to the \$9 million project, is it your**
19 **testimony that any such limitations, once in effect**
20 **under a new NPDES permit, would be designed to protect**
21 **the environment in Georgia?**

22 A Yes. The actions being taken clearly address
23 what is a potential for a water quality exceedance of a
24 surface water body. By taking these actions, it is
25 designed to not only prevent, but remediate an ongoing

1 discharge that is potentially elevated above water
2 quality standards.

3 **Q What did you mean when you just said remediate**
4 **a discharge?**

5 A Currently, the discharges, at least based upon
6 the sampling that I have seen, are elevated and are
7 currently contributing copper to a surface water body in
8 exceedance of what an estimated effluent limit would be
9 for this water body based upon its volume, as well as
10 its discharge rate.

11 So we currently see an elevated condition, and
12 it's been ongoing as we continue to operate the system.
13 So in order to cease that and remediate that, we would
14 like to reduce and remediate the discharge to the point
15 where it no longer has that impact to the Ocmulgee
16 River.

17 **Q So when you say remediate, you are not talking**
18 **about cleaning up copper that's already left your**
19 **discharge point and entered the environment. You are**
20 **talking about reducing the amount of copper that enters**
21 **the environment from your discharge point, is that**
22 **right?**

23 A Yes. That is correct.

24 **Q Okay. And the measures that you are proposing**
25 **to take for -- under this \$9 million project, are they**

1 **tailored to meet any -- only to meet what you think are**
2 **going to be the new standards for copper discharge from**
3 **Plant Scherer in the new NPDES permit when it's issued?**

4 A No. First clarification, there are not going
5 to be new standards, to my knowledge, of a copper limit
6 for the Ocmulgee River. That standard has been
7 established in rule with Georgia DNR, and is listed
8 at -- is it five parts per million?

9 The design is to ensure that the discharge --
10 I said design. The work that is being conducted and
11 proposed by Georgia Power is to ensure that the
12 discharge effluent limit doesn't result in an exceedance
13 of that level.

14 Q Okay.

15 A Sorry to --

16 Q I appreciate that clarification, because I was
17 under the impression that there might be a new lower
18 standard for copper.

19 A No, sir. It's a little complicated.

20 There is an established copper standard by
21 rule, but then there is a effluent limitation that you
22 will specifically identify based upon the river body
23 itself, the volume of the water and the flow of the
24 river body, as well as the volume and dilution of your
25 discharge. And we have estimated that the total

1 effluent limitation needed for the Discharge 1 at Plant
2 Scherer would be roughly 60 parts per million, even
3 though the water quality standard is five. So it
4 address delusion and assimilation.

5 **Q Okay. So let's look on MWS-6, pages 6 through**
6 **10.**

7 MS. MONCADA: Mr. Rehwinkel, I am sorry, can
8 you repeat the number of the exhibit?

9 MR. REHWINKEL: Yes, it's MWS-6, page 6
10 through 10.

11 THE WITNESS: I am there.

12 BY MR. REHWINKEL:

13 **Q Now, would it be fair to say that these pages**
14 **in your -- this is your permit renewal application, is**
15 **that right?**

16 A It is.

17 **Q And these -- this lists 14 overall outfall**
18 **points from Plant Scherer that discharge effluent of**
19 **some sort into the waters of the state of Georgia?**

20 A Not all of the discharges discharge to waters
21 of the state. They are just the individual discharges
22 themselves.

23 **Q Okay.**

24 A Discharge 1 is the one, I believe, that is
25 relevant to our discussion.

1 Q Okay. And that's one of the questions I had,
2 is at Outfall 1 --

3 A Yes.

4 Q -- and it has, I guess, several subparts?

5 A It does. Yes.

6 Q But this is where -- this is the only outfall
7 that is impacted by the solution that you are proposing
8 under the \$9 million?

9 A Thank you. Yes.

10 Q Okay, good.

11 And if I look on pages 14 and 15 of this
12 exhibit, there are some -- I guess is part of what you
13 are asking to be permitted are intermittent discharges.
14 And as described here, if this was approved as written,
15 the Georgia EDP would approve these types of
16 intermittent discharges?

17 A Yes.

18 Q Okay. And are the outfalls, the first two
19 outfall that starts 1C and then 1E, are these impacted
20 by any of the work that you are proposing to do with the
21 \$9 million?

22 A No.

23 Q Okay.

24 A Well, other than the cooling tower overflow
25 discharges does also have copper as a result of that

1 activity, but -- so I change my answer.

2 Yes. The cooling tower overflow does have the
3 potential to have elevated copper if nothing was done.
4 And by taking the actions that we are doing, we would
5 ensure that that similarly does not pose a copper risk.

6 **Q So is what happens is that as the cooling**
7 **tower operates, does copper get trapped and condense and**
8 **flow back down and then out? Is that how -- is that**
9 **sort of, in a very basic overall way what happens?**

10 A I think the answer is yes. In a simple term,
11 the operation of the system over several years, and the
12 use of copper condensing tubes, you saw wear and tear of
13 those copper condensing tubes and degradation, erosion,
14 corrosion, which allowed for copper to become entrained
15 in the cooling tower fill material. And just as it's --
16 as there is discharges, that entrained copper would also
17 be released over time, so you see elevated copper levels
18 in the discharge itself.

19 **Q So this has nothing to do with any copper that**
20 **might get out through the air?**

21 A Correct.

22 **Q This is only about what washes back down and**
23 **out?**

24 A That is correct.

25 **Q Okay.**

1 **COMMISSIONER CLARK:** Mr. Rehwinkel, could you
2 just excuse me for the interruption? Any idea how
3 much longer you have got? I am trying to schedule
4 a break here for --

5 MR. REHWINKEL: I am not quite there yet. I
6 probably have 30 more minutes.

7 COMMISSIONER CLARK: Okay. Then I am going to
8 go ahead and let's take a 10-minute recess and let
9 our court reporter rest just a second.

10 MR. REHWINKEL: Thank you.

11 COMMISSIONER CLARK: Thanks.

12 (Brief recess.)

13 COMMISSIONER CLARK: We will resume.

14 We were trying to make some determinations
15 about how this evening is going to go. We are
16 going to play it by ear for about the next hour,
17 hour-and-a-half and then make a decision as to what
18 the cutoff point is going to be for this evening.
19 If it looks like we can wrap up everything by 6:30,
20 we will stay and wrap up. If not, we will kind of
21 make a determination point at where the cutoff is
22 probably at the end -- right around the end of the
23 07 docket. So that's kind of my leanings and
24 direction for right now.

25 MR. REHWINKEL: Thank you.

1 COMMISSIONER CLARK: Any questions or
2 concerns?

3 Okay. All right. Let's continue.

4 MR. REHWINKEL: Thank you.

5 BY MR. REHWINKEL:

6 Q Mr. Sole, I appreciate -- I think you answered
7 kind of the overall question about how the copper gets
8 from the cooling tower and then out through the Outfall
9 1. Do you recall that?

10 A I do. Yes.

11 Q Okay. And your testimony is that you, FPL
12 and/or Georgia Power, have proposed and designed the \$9
13 million solution. And there is more spent, but that's
14 on Georgia Power side, right? 9 million is just the FPL
15 piece, right?

16 A 9 million, as projected, is just the FPL
17 piece. There are other participants at Plant Scherer
18 that also are paying for the improvements associated
19 with this copper effluent issue.

20 Q Okay. But the \$9 million that you are
21 proposing is to fix that problem so that you are not in
22 violation of the NPDES permit, whether it's the one --
23 the 2002 one or the renewal; is that fair?

24 A Yes. That's fair. It is a bit more nuanced
25 than that.

1 **Q I wouldn't mind if you explain.**

2 A I will do my best.

3 Actions being taken now, which just to be
4 clear, the fill replacement has already been conducted
5 and occurred during the outage of the spring of 2018.
6 Actions being taken now are designed to ensure that upon
7 renewal of the NPDES permit, there is a demonstration
8 that Plant Scherer is able to or on a path to ensure it
9 meets Georgia's water quality requirements for copper.

10 Based upon the information that we had prior
11 to taking these actions, the probability of us being
12 able to meet the water quality requirements was
13 concerning whether we would be able to achieve that. So
14 these actions ensure that we will be, not only in
15 compliance or -- not only in compliance with the water
16 quality standards, but also in concert with an
17 anticipated monitoring requirement for copper in a
18 demonstration that the effluent limits will meet the
19 requirements in the upcoming permit.

20 **Q Is there a concern by you that whether the**
21 **standard changes or not, the way measurements are taken**
22 **in the sampling, or analysis, will somehow put you in**
23 **jeopardy of being out of compliance once the new permit**
24 **is issued?**

25 A I am not sure I understood the hypothetical.

1 The concern is that without doing this
2 project, the likelihood of us being in compliance, not
3 only with the new permit, but now an obligation to do
4 something specific, would be part of the new NPDES
5 permit. It's known what the water quality standard is
6 in Georgia for the Ocmulgee River. It's estimated what
7 our effluent limitation would be. And based upon
8 sampling that's been done, it's very clear that there is
9 the potential that we will have a water quality problem,
10 and therefore, taking action now is prudent and
11 appropriate, not only as relates to environmental
12 conditions today on the Ocmulgee River, but also as it
13 relates to the obligations in the new NPDES permit.

14 **Q I thought I understood until you gave that**
15 **answer, but it seems to me that the MP -- we've already**
16 **established that the standard will not change?**

17 A Correct.

18 **Q So what will change?**

19 A Currently, there is no obligation to monitor
20 for copper on the discharge 01. There is not a concern
21 of copper as it relates to operating at Plant Scherer.
22 The sampling that we've identified acknowledges, yes,
23 there is now a concern. And based upon the levels
24 that -- in your sample that we've seen, there is a
25 potential that you are harming or exceeding the water

1 quality standards for the Ocmulgee River.

2 Q So is it possible that you are in violation
3 now?

4 A Of what, sir?

5 Q The Georgia water quality limits for copper.

6 A Again, water quality standards are a little
7 bit more complicated than a simple numeric number. So
8 as it relates to the estimated 60 parts per billion
9 effluent limitation for copper that we estimated as an
10 effluent limitation, if you look at the sample results
11 that are in MWS-6, you can see were slightly above that
12 level.

13 Q Show my where that is.

14 A If you go to MWS-6 -- oh, good, these are
15 upside down.

16 Q 21?

17 A Yep. Thank you.

18 Page 21, this is Outfall No. 1. If you look
19 at the copper limit, it shows the actual concentration
20 as being 65 parts per billion. And you can see it only
21 shows -- and that's in the column defined as maximum
22 daily value.

23 The next one is really the volume, or the mass
24 that's based upon the amount of flow in this discharge.
25 And you can see that the long-term average, not just a

1 single sample point, is to be below the five parts per
2 billion.

3 This does not take into account the effluent
4 limit that would need to be established and is
5 anticipated to be established as part of the NPDES
6 renewal.

7 Q And when you say this, you mean the -- under
8 Column 5, under concentration, .005?

9 A Yes.

10 Q Okay.

11 A That is the standard. The actual effluent
12 limit will be a calculated number, and that calculation
13 will also be set forth also through DNR -- Georgia DNR
14 rules.

15 Q Okay. Now, is there any correspondence or
16 documentation that Georgia has given you that says that
17 unless you do something that this .657 number, if it
18 represents the way you are going to sample on an ongoing
19 basis, will put you in violation?

20 A No. But if you go to the rule itself, Rule
21 391 is fairly clear -- well, it's a very complicated
22 environmental rule, so I apologize for the word fairly
23 clear. It's generally clear on what you are obligated
24 to do. And in this case, we are obligated to establish,
25 and Georgia DNR or EPD, Environmental Protection

1 Division, will establish an actual effluent limit. And
2 that effluent limit is going to be based upon, not only
3 the concentration of my discharge, but also the volume
4 of the flow in the Ocmulgee River and its identification
5 of what is the assimilation capacity of the river, so
6 that after you go through a small zone of discharge, you
7 will meet the .05 parts per billion level.

8 So there is provisions in the rule that
9 establish that path. And that has been the
10 conversations that Georgia Power has had with the
11 Georgia DNR EPD. I have not been in those
12 conversations.

13 **Q Okay. So I don't have to worry about anything**
14 **else after page 21 in this, through page 135, which**
15 **deals with the remaining 13 outfalls; is that right?**

16 A I think that's fair. There is one cooling
17 tower overflow outfall that would eventually get to; but
18 again, as you pointed out earlier, those are the
19 temporary or intermittent discharges, and the actions
20 that we are taking at the fill to replace the fill would
21 address that as well.

22 **Q Okay. So if I go to page -- just to make**
23 **sure, page 28 is -- that's -- this is where the**
24 **discussion starts for Outfall No. 2?**

25 A Yeah. You don't need to -- I agree with

1 everything you said previously.

2 Q So from here on, through page 135, it's
3 outfalls 2 through 14, which are not at issue at all
4 here?

5 A Correct.

6 Q Okay. Save some time.

7 Okay. Just one kind of last area of
8 questioning. I just need to ask you these questions to
9 make sure I understand what is and is not involved -- I
10 was going to say entrained, but that would be sort of a
11 stupid pun -- in this issue.

12 We talked a little bit at the beginning with
13 your potential role with Gulf Power as, just like you
14 are NextEra, FPL is a subsidiary of NextEra, and if Gulf
15 closed, Gulf Power will be a subsidiary of NextEra,
16 right?

17 A I recall.

18 Q And would it be true that when the
19 negotiations for making the transaction were being done,
20 you were involved in some due diligence to look at what
21 Gulf Power's environmental regulatory issues and
22 potential liabilities were, is that fair?

23 A Yes, that's fair.

24 Q Okay. And you would also, as part of that, be
25 aware that Gulf Power had a similar issue about copper,

1 or potential copper exceedances at the Crist plant
2 relative to the discharges at the Escambia River,
3 correct?

4 A Some vague recollection, yes.

5 Q Okay. Are you aware that there is a consent
6 order right now between the FDEP and Gulf Power with
7 respect to copper in the area of Plant Crist?

8 A I am aware of a consent order on Plant Crist.
9 The details I don't recall specifically.

10 Q Okay. Isn't it true that the Commission
11 entertained and approved cost recovery for Gulf Power
12 that required replacing copper tubes, similar to what
13 would be going on at Plant Scherer, in order to mitigate
14 or remediate discharges from Plant Crist to avoid being
15 in violation related to copper exceedances?

16 A Without having that specific order in front of
17 me, I am uncomfortable addressing what the Commission
18 approved or didn't approve.

19 Q Are you aware that there was an issue about
20 copper tube replacement at Gulf Power in the past?

21 A I am aware there was an issue of copper tube
22 replacement at Gulf Power.

23 Q Now, are you also generally aware, as part of
24 the due diligence you had to do with respect to
25 acquiring Gulf Power by NextEra, that the copper

1 exceedances may not have been as a result of the copper
2 tubes, but some other source of copper in the vicinity
3 of Plant Crist?

4 A I do not have the details to address that
5 question.

6 Q Okay. So you have no knowledge about that?

7 A I don't have enough knowledge to address the
8 question.

9 Q Okay. So what I am getting at here is, is
10 there any other -- well, let's look at, in MWS-6, there
11 is a chart on pages 17 -- 16 and 17. Are you familiar
12 with that chart -- flowchart?

13 A Page 17. I am sorry.

14 Q Yes, 16 and 17.

15 A Thank you. I am going to it, but slowly.
16 Yes.

17 Q Okay. So there is two charts here, and the
18 second chart is sort of a reconfiguration based on the
19 process that you would have to go to dewater and sort of
20 start decommissioning the ash pond; is that right?

21 A That is correct.

22 Q So we can ignore that one?

23 A Yes, please.

24 Q Okay. But this chart on 16, it shows the
25 various outfalls that all have an 01 in front of them.

1 Do you see that?

2 A I do.

3 Q And they somehow have to do with coming out of
4 the cooling tower at Plant Scherer, right?

5 A That is correct.

6 Q And I say coming out of --

7 A That's the ultimate --

8 Q -- that's the source --

9 A -- yes.

10 Q -- the origination source for those outfalls.

11 Is it your testimony that the outfalls that
12 are shown on page 16 are the only source of copper --
13 potential copper exceedances that this project would be
14 designed to address?

15 A This project -- it is my testimony that this
16 project is designed to address Outfall 1 copper
17 exceedances.

18 Q Okay. And so is there a potential that copper
19 exceedances that the Georgia EPD could be concerned
20 about, or that you would test for, could be related to a
21 source other than Outfall 1 that are shown on exhibit --
22 I mean, MWS-6, page 16?

23 A The short answer is yes. Potential is a very
24 easy word to say yes to. Is there a potential there is
25 another source? Yes, there is a potential. However, in

1 the analysis conducted by Georgia Power, they did share
2 with us it was evident that the source of copper was
3 primarily associated with not only the copper tube
4 condenser tubes, but also the source being entrained in
5 the cooling tower fill itself.

6 We have an interrogatory which I think
7 provides some -- a response to an interrogatory that
8 gives you some better understanding of what the results
9 are since we actually have conducted for Unit 4, the
10 fill replacement, and the results were fairly
11 significant as compared to the pre and post.

12 **Q So maybe another way for me to ask my question**
13 **is, is the testing that we -- that generated the results**
14 **that are shown on page 21, that .0657 number, that's the**
15 **right number?**

16 A Yes.

17 **Q Were those at -- tested at the point of**
18 **discharge, or were they tested in a more ambient**
19 **location in the environment down -- out from the**
20 **discharge point?**

21 A Those were tested at the point of discharge,
22 not in the ambient environment, in order to meet the
23 obligations. But testing also does occur at each of the
24 units, so we could actually kind of chase back, or trace
25 back that source of copper.

1 And as the testing that's been done on a
2 monthly basis, or actually bimonthly basis, has
3 demonstrated that there is a significant reduction in
4 the copper effluent as a result of the fill replacement,
5 going from as high, I believe, as 90 parts per billion
6 pre project to as low as, I think in the low 20s post
7 project. So you clearly saw a cause and effect and
8 beneficial result as a result of conducting the fill
9 replacement project.

10 **Q Okay. Let me try to wrap this up by going to**
11 **page 18 and 19 of your testimony?**

12 A Of the testimony. Thank you.

13 **Q Yes. Starting at line 17 on page 18.**

14 **Now, you state that the past replacements to**
15 **date of these copper tubes is not being recovered**
16 **through the ECRC?**

17 A We are not -- that is correct. We are not
18 requesting ECRC recovering for the copper tube
19 replacement.

20 **Q Will there be any request for recovery for**
21 **future copper tube replacements?**

22 A No. As it relates to Unit 4, the copper tubes
23 have been replaced. Their timing of replacement was
24 more associated with was there normal lifespan and it
25 was time to replace the copper tubes. But the decision

1 that was different was we replaced with titanium tubes
2 in order to avoid a continuing copper source.

3 Q Okay. But since they were part of a normal
4 end-of-life maintenance operation, they did not fall
5 under being required to meet a regulatory obligation, is
6 that fair?

7 A That is fair.

8 Q Environmental regulatory obligation, okay.

9 MR. REHWINKEL: All right. That's all the
10 questions I have, Mr. Chairman. Thank you.

11 Thank you, Mr. Sole.

12 THE WITNESS: Thank you.

13 COMMISSIONER CLARK: All right. Coming down
14 the line, Mr. Brew.

15 MR. BREW: I don't have questions for the FPL
16 witness.

17 COMMISSIONER CLARK: Okay. Mr. Cavros.

18 MR. CAVROS: Chair, I do, and I have some
19 exhibits I would like to pass out at this time.

20 COMMISSIONER CLARK: Okay.

21 MR. REHWINKEL: Mr. Chairman, while Mr.
22 Cavros' exhibits are being passed out, just for the
23 record, I would like to thank staff. I think they
24 have passed out an exhibit to fix my copying
25 problem for Exhibit 50, which is the two petitions,

1 and I am I am not going to take care of it here,
2 but at the right time, when it comes time to
3 addressing exhibits, I will be seeking to move that
4 substitute exhibit that has an asterisk on it --

5 COMMISSIONER CLARK: Thank you.

6 MR. REHWINKEL: -- into the record as 50.

7 Thank you.

8 COMMISSIONER CLARK: We have it marked. Thank
9 you, Mr. Rehwinkel.

10 Mr. Cavros, I have six documents, is that the
11 correct number?

12 MR. CAVROS: That's correct, Chair.

13 COMMISSIONER CLARK: Okay. You want to go
14 ahead and mark these now, or do you want to pick
15 them up as we go through them?

16 MR. CAVROS: I would like to pick them up as
17 we go through them.

18 COMMISSIONER CLARK: All right. Everybody has
19 all their documents. It's all yours.

20 EXAMINATION

21 BY MR. CAVROS:

22 Q Good afternoon, Mr. Sole.

23 A Mr. Cavros.

24 Q Mr. Sole, your official title is

25 Vice-President of Environmental Services for NextEra, is

1 **that correct?**

2 A Yes.

3 **Q Okay. And you provided testimony in support**
4 **of the Turkey Point Cooling Canal Management Plan**
5 **project in last year's docket, is that correct?**

6 A Yes.

7 MR. CAVROS: Okay. I will go ahead now and I
8 would like to mark the Turkey Point Cooling Canal
9 Management Plan project O&M Expenses and Capital
10 Costs as Exhibit 52.

11 COMMISSIONER CLARK: 52, yes, sir.

12 We will title that TPCCMP project O&M expenses
13 and capital costs.

14 MR. CAVROS: Correct.

15 (Whereupon, Exhibit No. 52 was marked for
16 identification.)

17 BY MR. CAVROS:

18 **Q And, Mr. Sole, this is actually an exhibit**
19 **from your testimony from last year -- last year's**
20 **docket, MWS-14, page 1 of 1. And these are the cost**
21 **projections that you provided to the Commission, both**
22 **O&M expenses and projected capital cost expenses for the**
23 **project in last year's docket, correct?**

24 A Yes.

25 **Q Okay. And by way of background, now, these**

1 columns start in 2017 and move forward, but there were
2 costs related to the Turkey Point Cooling Canal
3 Management project in 2016 as well, is that correct?

4 A Yes. As a reminder, the Turkey Point Cooling
5 Canal Monitoring Plan project initiated in, I want to
6 say 2011 or '12 timeframe, so there have been costs
7 prior to '16 as well.

8 Q Okay. And the costs in 2016, those costs were
9 related to the Floridan aquifer system to freshen the
10 cooling canal, is that correct?

11 A I believe -- without having the actual
12 documents, it's difficult to specifically say exactly
13 what each of the costs was, Mr. Cavros. Yes, that was
14 one of the costs encompassed in that year's ECRC
15 recovery request, but I believe there are other costs as
16 well --

17 Q Okay.

18 A -- related to the project.

19 Q All right. So I would like to point your
20 attention now to column 2017, specifically to the
21 project capital costs.

22 In 2017, in the first row of that column, you
23 have barge canal turning basin backfill, and the cost of
24 that project is 13,128,375. Do you see that?

25 A Yes.

1 **Q Okay. Now, those dollars were not expended in**
2 **2017, were they?**

3 A That is correct. We received our permits from
4 DEP within two months. Unfortunately, it took two years
5 for Miami-Dade County to issue its permits for this
6 restoration project.

7 **Q So are those costs being recovered in 2018?**

8 A The project is moving forward in 2018. We are
9 actually on site. We have awarded the bid, and the
10 project is initiating -- or has initiated for several
11 months now, but beginning to see actual fill material
12 begin to arrive here in the next several weeks, I hope.

13 **Q So is FPL recovering costs for that in -- for**
14 **2018?**

15 A Yes.

16 **Q And it's expected that it will recover costs**
17 **in 2019 as well?**

18 A Yes.

19 **Q Do you foresee any capital cost expenditures**
20 **in 2020?**

21 A At this stage, it's not clearly known whether
22 or not we will be able to fully complete the project.
23 Most of the capital projects associated with overall
24 this part is going to relate to the fill project at
25 Turtle Point and the barge basin backfill. That's the

1 significant portion of the capital moving forward.

2 We hope to be completed in -- by the end of
3 2019 and not having to pursue it in 2020, but again,
4 it's a big project so...

5 Q And so it's the same answer, then, for the
6 Turkey Point backfill project as well?

7 A The Turtle Point.

8 Q I am sorry. The Turtle Point, yes, backfill
9 project, you are recovering some costs in 2018?

10 A Yes.

11 Q And you expect to have that completed in 2019?

12 A We hope to have it completed in 2019, yes.

13 Q And how about the recovery well system?

14 According to this, there was 20 million -- over \$20
15 million that were to be recovered in 2017. Now, those
16 monies were not recovered in 2017, is that correct?

17 A Not all of the monies were recovered in 2017.
18 As pointed out in our response to interrogatories, some
19 of the dollars for the recovery well system were moved
20 to 2018. Fortunately, the recovery well system did go
21 fully on-line in May of 2018, and but for the
22 obligations to maintain and operate the facility, any
23 significant capital costs have been concluded.

24 Q The 2018 costs of \$4,331,000 for the recovery
25 well system, is that accurate, Mr. Sole?

1 A Let me refer to the -- because we answered
2 this question. Let me refer to that interrogatory.

3 If you go to Interrogatory No. 28, we identify
4 that the cost recovery for the recovery well system
5 costs that were projecting in 2017, that we envisioned
6 2.3 million of that be deferred to 2018. So the dollars
7 that you see there are inclusive of that additional
8 deferral from 2017 to 2018.

9 **Q And the capital cost in the 2019 column for**
10 **the recovery well system of \$118,000, that cost seems to**
11 **stay static going into the future. What does that cost**
12 **represent?**

13 A It's the obligation to maintain replacing
14 pumps. This is a very challenging environment in
15 addressing hypersalinity in pumps. So the expectation
16 is we will need to change out pumps on a routine basis
17 for each of the wells.

18 **Q And the company has chosen to recover that as**
19 **a capital expense as opposed to an O&M expense?**

20 A That is a capital item, the pumps themselves,
21 and the replacement value is such that they would be
22 capital, yes.

23 **Q Are there any -- let me ask you this: It's**
24 **possible that the company might have to undertake other**
25 **backfill activities in order to comply with the Consent**

1 **Order or the Consent Agreement or the Consent Agreement**
2 **Addendum, isn't that true?**

3 A Well, anything is possible in the
4 circumstances that you describe. However, as it stands
5 today, I don't envision the need to do any additional
6 fill projects. We are currently in compliance with the
7 Consent Order and the Consent Agreement and the Consent
8 Agreement Addendum. We've laid out our plans and
9 project scope. And, as it stands, FPL is fully in
10 compliance with those projects and will continue to be
11 so.

12 **Q Isn't it true that Miami-Dade County DERM has**
13 **expressed concern about ammonia exceedances coming from**
14 **some other canals?**

15 A The Miami-Dade concern about the ammonia
16 exceedances actually is what initiated the Consent
17 Agreement Addendum. And since that time, there has been
18 quite a bit of work that FPL has done to quantify and do
19 an assessment of the ammonia, and where its origination
20 was.

21 We submitted several documents to Miami-Dade,
22 as required under the Consent Agreement Addendum, and
23 culminated in an analysis a site assessment report that
24 identified for those areas where there were exceedances
25 of ammonia. FPL's contribution from the cooling canal

1 system was less than two percent, or generally a de
2 minimis contribution, albeit a contribution all the
3 same.

4 So as it stands, we have completed the site
5 assessment report, presented that information to
6 Miami-Dade.

7 Q Okay, Mr. Sole, thank you for that answer. It
8 went a little bit beyond what I was looking for, but we
9 will touch on that in just a little more detail.

10 And if you could, when you are answering the
11 question, if you could look at me, I would appreciate
12 it. And I, in turn, promise not to look at the
13 Commission when I ask them your question. Thank you.

14 So, Mr. Sole, are there any capital projects
15 that aren't listed here that might be based on new
16 circumstances, or new information, or requirements that
17 might be placed on FPL by government agencies?

18 A I am sorry, Mr. Cavros, is the question is --
19 can you clarify the question?

20 Q Yeah, I apologize.

21 A It's so broad and hypothetical, I mean, I can
22 say yes.

23 Q Sure. Okay. Let me limit it then.

24 Are there I any capital projects here that
25 aren't listed that are based on unused circumstances

1 **since this -- since last year's hearing?**

2 A No. There currently have been no decisions to
3 pursue any additional capital -- or projects under a
4 capital cost at this stage.

5 Q **Okay. Since this hearing, though, FPL has**
6 **announced that it has agreed to a joint partnership**
7 **agreement to build a reclaimed water facility that would**
8 **link the Miami-Dade County with FPL's Turkey Point**
9 **plant, and that would presumably enable the sustainable**
10 **use of up to 60 million gallons of county wastewater; is**
11 **that an accurate statement?**

12 A Yes, that is accurate.

13 Q **Okay. And this reclaimed water facility will**
14 **be placed on FPL land?**

15 A It's unknown at this time where the location
16 of the facility will be. We are in the early phases of
17 discussing this with Miami-Dade, and that's why the
18 joint participation agreement was executed, to just
19 basically agree to partner and identify the potential
20 efficacy of a project with Miami-Dade in addressing
21 their reuse requirements, while also addressing water
22 needs at Turkey Point.

23 Q **And the water is intended, presumably, to help**
24 **freshen the water canal cooling system; is that correct?**

25 A No. The water is intended to actually just

1 support Turkey Point facility as a whole. Not only
2 would water be used to freshen the cooling canal
3 systems, but water would be used also for Turkey Point
4 5, which is the fossil plant. Currently it uses source
5 of water from the Floridan aquifer. In lieu of using
6 Floridan aquifer water, we would actually go to reuse
7 water as a source of water.

8 **Q So that sort of gets to my next question,**
9 **because aren't you already recovering costs for a**
10 **Floridan aquifer system well that's in place to freshen**
11 **the cooling canal system?**

12 A Yes.

13 **Q So would this water, then, replace those --**
14 **the investment in those wells?**

15 A Yes, in time. Clarity on the timeframe in
16 which such a project would come to fruition, this is not
17 a project, a new reclaimed water facility to the tune of
18 60 plus mgd that would occur in a very short period of
19 time. It would envision to occur several years from
20 now. And so the use and benefit of the Floridan aquifer
21 system that we are currently using to freshen the
22 cooling canal systems are very real, very needed.

23 **Q And do you have a sense of what this**
24 **wastewater facility or this infrastructure might cost?**

25 MS. MONCADA: Commissioner Clark, I am going

1 to object. He has asked about, I don't know, four
2 or five questions about this new treatment plant
3 for the water. FPL has not sought ECRC recovery in
4 this docket for that.

5 COMMISSIONER CLARK: Mr. Cavros.

6 MR. CAVROS: Chair, this is a cost recovery
7 docket. It not only looks at costs that have been
8 incurred, but costs that are to be projected as
9 well. I thought it would be helpful to get some
10 information out in full view for the benefit of the
11 Commission to see what might be coming on down the
12 line and --

13 COMMISSIONER CLARK: Does Mr. Sole's testimony
14 anywhere go into those aspects?

15 MS. MONCADA: It does not.

16 MR. CAVROS: It does not.

17 COMMISSIONER CLARK: Okay. I am going to
18 sustain the objection.

19 BY MR. CAVROS:

20 **Q Mr. Sole, do you still support these**
21 **projections going forward?**

22 A Yes, going forward, I do.

23 I do believe that, in light of the activities
24 and the late timeframe in which we were able to start
25 the Turtle Point and barge basin fill, I do expect to

1 see some of the capital costs continue to be deferred
2 until 2019. And you can see in this case, they are all
3 in 2017, so there clearly needs to be a modification of
4 that.

5 And that's supported by the testimony that we
6 presented in this case, is that there are some deferrals
7 of project costs as a result of regulatory delays, and
8 also as a result of some decisions by FPL not to pursue
9 some of the sediment removal that we originally
10 projected in light of the performance of the system
11 today.

12 So I do support these costs in general.
13 However, that's with the caveat that we've already
14 updated these costs, not only in the filings of Ms.
15 Deaton, but also in some of the responses to
16 interrogatories.

17 **Q Isn't it true that the consent order with DEP**
18 **has certain compliance milestones that the company has**
19 **to meet?**

20 **A Absolutely.**

21 **Q For instance, the company has to meet a 34 PSU**
22 **average salinity in the cooling canal system by the**
23 **fourth year of freshening activities; is that right?**

24 **A That's correct.**

25 **Q Okay. And the company has to also halt the**

1 western migration of the hypersaline plume in three
2 years after the start of the recovery well system?

3 A That is also correct.

4 Q Okay. And the company also has obligations
5 under the Consent Agreement Addendum to fully address
6 areas that have ammonia exceedances as identified by the
7 County?

8 A I am not able to say that's correct on that
9 issue. That's not the obligation of the Consent
10 Agreement Addendum.

11 Q Okay. Yeah, we will get into that in just a
12 minute.

13 But as we sit here today, you cannot guarantee
14 that the costs that you put forth before the Commission
15 in 2017 will not increase?

16 A No, I cannot guarantee that. As previously
17 identified, that's a difficult thing to do under any
18 circumstance, making a guarantee. However, at the same
19 time, I do believe that, in many cases, we are seeing
20 areas where we are actually making cost improvements and
21 decreasing the costs. And that's a factor that we will
22 continue to pursue to ensure not only are we compliant,
23 but we are doing so in a way that improve some of our
24 cost expenditures.

25 Monitoring is a significant one. We spend

1 roughly \$6 million on monitoring. And that's a cost
2 that provides some value, or benefit -- result that
3 provides some value, but admittedly, the value per cost
4 is questionable, and we continue to work with regular
5 regulators to try to keep and dial in the monitoring in
6 such a way that's cost-effective as well as beneficial.

7 **Q Can you agree, sitting here today, that the**
8 **costs will not increase by 20 percent?**

9 A I wouldn't be able to speculate on any generic
10 hypothetical that you propose.

11 **Q Okay. So if I said 30 percent, you would say**
12 **the same?**

13 A I would say the same thing. Yes, sir.

14 **Q Okay. Could you please refer to page 112 of**
15 **your August 24th testimony?**

16 A What number?

17 **Q That would be page 112 of 132. I guess that**
18 **would be Exhibit RBD-4, Appendix 1.**

19 A Is there an exhibit you are asking me?
20 Because my testimony and exhibits are, I think,
21 separately numbered.

22 **Q Sure. So this is Exhibit RBD-4, Appendix 1.**

23 A Ah, that's not my -- you are meaning Renae
24 Deaton's testimony?

25 **Q I apologize. That is -- this would be -- this**

1 **testimony, is this sponsored by you or Renae Deaton?**

2 A It depends. There is one provision of Ms.
3 Deaton's testimony that I do cosponsor, and that's Form
4 42 -- what do we call this? Form 42-4P.

5 Q **Okay. And this would be --**

6 A -- or 5P, excuse me.

7 Q **-- 5P.**

8 A So I am cosponsoring that.

9 Q **Okay. And if I could just point you to the**
10 **very top of that page. It says that FPL --**

11 A I am sorry, Mr. Cavros, I am not with you.
12 What page are you on?

13 Q **So this is page 112 of 132.**

14 A Okay. Thank you. Let me get there.

15 Q **Sure.**

16 A I apologize.

17 I am there. And, yes, I do cosponsor this.
18 So this is mine.

19 Q **Okay.**

20 A So it took me a while to get with you. I
21 apologize.

22 Q **Not a problem.**

23 I will go ahead and read it. It says: **FPL**
24 **continues to move forward with compliance and**
25 **implementation of actions associated with activities**

1 required under the CO, CA and CAA. Did I read that
2 correctly?

3 A Yes.

4 Q Okay. And the CA refers to the Consent
5 Agreement, is that correct?

6 A That is correct, with Miami-Dade County.

7 Q Okay. And the CAA refers to the Consent
8 Agreement Addendum?

9 A That is correct, also with Miami-Dade County.

10 Q Okay. Great.

11 And, Mr. Sole, as a general rule, you believe
12 that it is important for a regulated entity to deal in
13 good faith with a regulator?

14 A Absolutely.

15 Q And you would agree that it's important for an
16 entity subject to a consent agreement like FPL is to
17 comply in a timely manner with the provisions in the
18 agreement?

19 A I agree with that.

20 Q Okay. And just kind of for background, DERM
21 issued a notice of a violation on October 2nd, 2015, to
22 FPL, alleging violations of Chapter 24 of the code of
23 Miami-Dade County dealing with water quality standards;
24 is that right?

25 A That is correct.

1 Q Did I get the date right? Okay.

2 And you entered into a consent agreement with
3 DERM on October 7th of 2015, is that right? Subject to
4 check.

5 A Subject to check, yes.

6 Q Okay. And you entered into a subsequent
7 consent agreement addendum on August 15th, 2016, about a
8 year later; is that correct?

9 A August 16th, that is correct.

10 Q Okay. Great.

11 MR. CAVROS: Chairman, I would like to mark
12 DERM Consent Agreement Addendum as Exhibit 53.

13 COMMISSIONER CLARK: All right. Exhibit No.
14 53, DERM Consent Agreement, is it the excerpt?

15 MR. CAVROS: It is not. That is a separate
16 document.

17 COMMISSIONER CLARK: DERM Consent Agreement
18 Addendum.

19 MR. CAVROS: Yes, sir.

20 COMMISSIONER CLARK: Okay. We will give that
21 Exhibit No. 53.

22 (Whereupon, Exhibit No. 53 was marked for
23 identification.)

24 BY MR. CAVROS:

25 Q Mr. Sole, I imagine you are very familiar with

1 this document, but I would like to go through it with
2 you.

3 The focus of this addendum is to address
4 exceedances of ammonia -- of ammonia standards in and
5 around the Turkey Point plant, is that correct?

6 A I would say it is to address elevated ammonia,
7 yes.

8 Q Okay. If I could point to you 30 -- paragraph
9 34A. And there, it says: Within 30 days of execution
10 of Addendum 1 of this Consent Agreement, the respondents
11 shall submit a site assessment plan to DERM for review
12 and approval. Did I read that correctly?

13 A Yes.

14 Q And the site assessment plan effectively
15 allows for the identification of ammonia exceedances of
16 surface waters surrounding the facility, is that right?
17 Is that the purpose of the site assessment plan?

18 A I wouldn't word it that way, no.

19 A site assessment plan is designed to
20 basically assess what the potential cause or
21 contribution of a potential exceedance, and to discern
22 whether or not an exceedance is just in one area or
23 other areas. So it's really to assess a specific
24 chemical of concern, in this case, ammonia. So that's
25 the way I would put it.

1 Q Okay. That was my understanding of the site
2 assessment report but --

3 A The plan is how to do it.

4 Q Yes. The plan is how to do it, okay.

5 And on or about shortly thereafter, on
6 December -- in December 2016, DERM approved a site
7 assessment plan for FPL?

8 A December -- what year?

9 Q 2016. Let me -- hold on a second. 2016 is
10 what I have, is that correct?

11 A I believe that's correct.

12 Q Okay. And then if I could point your
13 attention to 34B, where it states: Within 60 days of
14 DERM's approval of a site assessment plan, the
15 respondent shall implement said plan and submit to DERM
16 a site assessment report for review and approval, et
17 cetera. Did I read that correctly, that first sentence?

18 A Generally, yes.

19 Q Okay. I didn't finish the sentence.

20 So it wasn't until March 17th, on or about
21 2017, that FPL filed its site assessment report, or its
22 first site assessment report with DERM; is that correct?

23 A I don't have the date specific in front of me.

24 Q Okay. I do have just a copy of the cover
25 letter, if that would help with your -- with the

1 **recollection.**

2 MR. CAVROS: Chair, could I have permission
3 just to approach the witness? I have a copy for
4 him and counsel.

5 COMMISSIONER CLARK: Sure.

6 THE WITNESS: Thank you, sir.

7 BY MR. CAVROS:

8 Q So I am effectively just trying to establish a
9 timeline here, Mr. Sole. Does this refresh your
10 recollection that that site assessment report was filed
11 on March 17th, 2017?

12 A Based upon this cover letter, it appears that
13 the site assessment report was submitted March 17, 2017.

14 Q Okay. And that site assessment report that
15 was submitted to the County presumably addressed the
16 concerns regarding ammonia level exceedances; is that
17 correct?

18 A It was submitted in compliance with the
19 requirements of 34B. As I recall, Miami-Dade County did
20 have questions associated with our report, and asked us
21 to do supplemental work, which we also did.

22 Q Okay. Now, on July 17th, a few months after
23 that, DERM responded to the proposed site assessment
24 report and stated that it does not concur with
25 conclusions and recommendations in the site assessment

1 **report by FPL; do you recall that?**

2 A I do.

3 MR. CAVROS: And at this time, Chair, I would
4 like to mark an exhibit entitled DERM letter,
5 July 17th, 2017.

6 COMMISSIONER CLARK: July 7th.

7 MR. CAVROS: July 7th, 2017. There are
8 actually two.

9 COMMISSIONER CLARK: Okay. Make that Exhibit
10 No. 4, titled DERM letter, July 7th, 2017. 54,
11 yes, sir.

12 (Whereupon, Exhibit No. 54 was marked for
13 identification.)

14 BY MR. CAVROS:

15 **Q And do you need a second, Mr. Sole, to review?**

16 A I do. It's been over a year since I looked at
17 this document.

18 All right. I have generally familiarized
19 myself. Go ahead with your question.

20 **Q Thank you, Mr. Sole.**

21 **Do you see the -- I am going to read the**
22 **second and third sentence in the first paragraph of the**
23 **actual letter.**

24 **Based on the data and information provided,**
25 **DERM does not concur at this time with the conclusions**

1 and recommendations presented in the report. The
2 following is required to allow for further evaluation of
3 the SAR conclusions and recommendations.

4 Did I read that correctly?

5 A Yes, you did.

6 Q And then if you turn to the second page, page
7 2 of the letter, in paragraphs 9 and 10, it states the
8 following. Paragraph 9 says: Please provide data and
9 information to support the statements on page 22 of the
10 SAR, quote, that the ammonia appears to be limited in
11 extent, unquote, period.

12 And then in paragraph 10, it also requests
13 that FPL provide specific data from the studies that it
14 undertook, including where the high ammonia
15 concentration versus been detected; is that accurate?
16 Did I --

17 A I don't -- did you read that accurately? Yes,
18 you read that accurate. Is the information Miami-Dade
19 professed accurate? That's another question. We would
20 probably be here for a while.

21 Q Yeah. Okay, but suffice it to say that there
22 is some disagreement here on DERM's part regarding FPL's
23 conclusions in its site assessment report, correct?

24 A Yeah. At this time there is disagreement.
25 Obviously, in response to this letter, FPL provided

1 supplemental information to DERM. And since that time,
2 I believe the site assessment report has been completed
3 and approved by DERM. And DERM has followed up with
4 their request for us to move forward and asked us what
5 our plan was, so --

6 Q Okay. Because it is -- that is not my
7 understanding, but let's go on -- let's move further
8 down the timeline. I think it would be very helpful.

9 I would like, at this point -- now, just to
10 stay on this letter for a second. The letter does
11 request for supplemental information to be provided, is
12 that correct?

13 A That is correct.

14 Q Okay. And that supplemental information was
15 provided on or about November 13th of 2017, is that
16 correct?

17 A Generally, I believe that's the date.

18 Q Subject to check, okay.

19 And generally -- and I will give you a chance
20 here -- in response, FPL alleges that the ammonia
21 exceedances around the plant are not attributable to
22 cooling canal system factors; is that generally your
23 position?

24 A Yeah. It's important to have some clarity on
25 this issue. But, yes, FPL has identified that the

1 ammonia exceedances surrounding the plant are as a
2 result of primarily these anthropogenic canals and
3 stratification of water quality where you have low flow
4 and low dissolved oxygen areas. And in these areas, you
5 have accumulation of detrital material, leaf litter,
6 things of that nature, which is a scenario for
7 ammonification.

8 You have a nitrogen source. You have low
9 dissolved oxygen because there isn't flushing, and
10 ammonification occurs. And it's very stratified. It's
11 only at the low levels of these, very bottom of these
12 canals. As soon as you get off the bottom in the
13 midpart of the canal, the ammonia levels meet
14 Miami-Dade's water quality requirement.

15 So it is very clear that the predominant
16 source of ammonia is associated with its natural
17 conditions. And, in fact, the report that was finally
18 accepted by Miami-Dade, concluded that those areas that
19 have elevated ammonia, FPL's contribution from the
20 cooling canal system, or the groundwater flow from the
21 cooling canal system, was no more than two percent to
22 that source of ammonia. And I think the highest
23 percentage in areas where there was not elevated
24 ammonia, but there was measurable ammonia, was no more
25 than 16 percent.

1 Miami-Dade has accepted this report and has
2 moved on. And we are now moving on and have
3 professed -- or provided them with our plan on
4 addressing this issue.

5 MR. CAVROS: Chair, I would like to mark a
6 letter, the DERM letter, dated July 10th, 2018, as
7 Exhibit 55.

8 COMMISSIONER CLARK: Okay. Mark it Exhibit
9 55, DERM letter, July 10, 2018.

10 (Whereupon, Exhibit No. 55 was marked for
11 identification.)

12 MS. MONCADA: Commissioner Clark?

13 COMMISSIONER CLARK: Yes.

14 MS. MONCADA: The exhibit that's identified --
15 that was just identified as No. 55, the DERM letter
16 dated July 10, 2018, SACE's attorney had advised us
17 a week or two ago that it planned to introduce this
18 letter.

19 There is a response that FPL wrote to this
20 letter. We have advised Mr. Cavros that we would
21 be arguing today, or making the request to you
22 today that -- or let you know that we don't have an
23 objection to this letter going in provided,
24 however, that the response letter also be provided
25 into evidence. I have made copies, enough for

1 everyone.

2 Under the Rule of Completeness, the document
3 of completeness of evidence, we think it is only
4 fair that if the first letter is introduced, that
5 the response letter also be admitted.

6 COMMISSIONER CLARK: Okay. We will make the
7 determination when we decide if this is going into
8 the record or not.

9 MS. MONCADA: Will there be an opportunity for
10 FPL to introduce the response, then?

11 COMMISSIONER CLARK: Yes, ma'am.

12 MS. MONCADA: Thank you.

13 COMMISSIONER CLARK: Mr. Cavros.

14 MR. CAVROS: Okay. So thank you, Chair.

15 BY MR. CAVROS:

16 Q So we are on DERM letter dated July 10th,
17 2018, Mr. Sole.

18 A I have it. Yes.

19 Q Okay. And I have been reading a lot of these
20 provisions. Would you mind reading paragraph 2 of this
21 letter for the record?

22 A I would be happy to.

23 Paragraph 2, DERM finds that the total ammonia
24 concentrations documented in several sampling locations
25 at the Barge Basin, Turtle Point Canal, Card Sound

1 Canal, S-20 Get Away Canal and the Sea-Dade Canal
2 exceeded the applicable Miami-Dade County surface water
3 standard. DERM acknowledges that the documented
4 elevated surface water ammonia concentrations may be
5 attributable to several contributing sources, including
6 factors not directly related to the operation of the
7 CCS. However, based on the evaluation of other
8 associated water quality data, such as tritium
9 concentrations and temperature, DERM finds that the data
10 supports that the CCS is a contributing source to the
11 ammonia concentrations observed in areas which exceeded
12 the applicable standard.

13 Q Great. Thank you for reading that.

14 Could I point your attention to page 2 of that
15 letter?

16 A I am there.

17 Q Okay. And then there is also a paragraph 2
18 there which I will read. Implementation of the FPL
19 proposed plan -- so let me actually read the paragraph
20 that introduces these subparagraphs.

21 Based on the above, and to address the CCS's
22 contribution of the surface water ammonia exceedances,
23 and to monitor any potential migration of the
24 groundwater ammonia plume, DERM requires the following.
25 And under that paragraph, subparagraph (2), it says:

1 Implementation of the FPL proposed plan to fill the
2 Barge Basin and Turtle Point canal, as well as submittal
3 of plans to fill or otherwise address water quality
4 impacts in the additional areas as referenced above.

5 So this statement here references other canals
6 besides the Turtle Point canal and the Barge Basin,
7 correct?

8 A It makes an inquiry as to whether there are
9 others. It doesn't establish a requirement to do so.

10 Q Right. And the paragraph that you had read,
11 the DERM indicated that exceedances were found in, not
12 only the Barge Basin in Turtle Point Canal, but also the
13 Card Sound Canal, the S-20 Getaway canal and the
14 Sea-Dade Canal; is that correct?

15 A That is correct, as did the actual report that
16 we submitted that identified these. And that report
17 also identified that contributions from the CCS were
18 less than two percent, and therefore, de minimis.

19 Admittedly, as found by DERM, even two percent
20 is a contribution. And they have identified that, yes,
21 there is a contribution, but in all reality, that
22 contribution is de minimis.

23 Q Mr. Sole, you keep referring to an approval,
24 or an acceptance by DERM that they have agreed that two
25 percent is the contribution coming from the CCS. Is

1 **that your testimony here?**

2 A My testimony is that based upon the Consent
3 Agreement Addenda -- and I will read it. It's page 3 of
4 22 of your exhibit now 53.

5 Within 90 days of approval of the site
6 assessment report, the respondent shall submit to DERM
7 for review and approval of a corrective action plan
8 prepared by the State of Florida.

9 Well, as you note in the letter that you have
10 referenced, on July 10th, they are asking for our plan.
11 They have executed their review within 90 days. And at
12 this stage, I have interpreted this, under the Consent
13 Agreement Addendum, that they have approved our report
14 and asked us to develop a plan. So we are now to the
15 point of no longer doing a site assessment report, but
16 now moving forward with what's your plan to address it.

17 FPL has, in accordance with this obligation
18 under the Consent Agreement Addendum, as well as the
19 July 10 letter, have responded to that, and we presented
20 that plan to Miami-Dade DERM on October 8th of 2018.

21 **Q Mr. Sole, I appreciate your interpretation of**
22 **this agreement. Let me -- let's go back to paragraph**
23 **34B, if we could, and let me read that sentence for you**
24 **again.**

25 **Within 60 days of DERM's approval of the site**

1 assessment plan, the respondent shall implement said
2 plan and submit to DERM a site assessment report for a
3 review and approval -- or approval with modifications
4 which shall address the requirements of Item A above.

5 Have you gotten any affirmative indication
6 from DERM that they have approved the site assessment --
7 the latest site assessment report that FPL has provided
8 to them?

9 A Yes, the July 10th letter of 2018. They have
10 gone from asking for additional information. They have
11 gone from asking us to take additional samples, but for
12 one clarifying sample that was required because of an
13 anomaly, and have asked for a plan.

14 Under the Consent Agreement Addendum, as I
15 read again, and as I will read again to you, Paragraph C
16 says: Within 90 days of approval of the site assessment
17 report, the respondent shall submit to DERM for review
18 and approval a corrective action plan.

19 As you see in July 10th, 2018, DERM is asking
20 us for a plan within 90 days of receipt of this letter.
21 We have moved from monitoring and conducting a report to
22 now what actions are you going to take to address it.
23 This July 10th letter establishes that they have
24 approved it, and we are moving forward.

25 Q I don't see any affirmative statement of

1 **approval in this letter. Could you show me where it is?**

2 A The direction to move forward with a plan.
3 The request on behalf of Miami-Dade County DERM for FPL
4 to actually move forward and away from an additional
5 site assessment report or additional monitoring and to
6 provide a plan.

7 **Q And I apologize. Could you show me what**
8 **sentence, or phrase you are referring to?**

9 A Based on the above and address CCS
10 contributions, surface water ammonia exceedance and
11 monitoring potential migration of groundwater ammonia
12 plume, DERM requires the following: Submittal of a plan
13 that identifies strategies or actions FPL shall
14 implement to address CCS nutrient impacts to
15 groundwater/surface water resources beyond the
16 boundaries of the CCS.

17 **Q You would agree in this letter, there is no**
18 **affirmative statement approving the site assessment?**

19 MS. MONCADA: I object. That's about the
20 third time he has asked the same question.

21 MR. CAVROS: No, it --

22 COMMISSIONER CLARK: Mr. Cavros --

23 MR. CAVROS: It's a different question.

24 COMMISSIONER CLARK: Well, it has been asked
25 several times. I think the two of you have have an

1 obvious different interpretation of what the letter
2 says there. If you can get a specific question and
3 Mr. Sole give a specific answer, we can move on.

4 BY MR. CAVROS:

5 **Q My specific question is this, is there**
6 **specific language in this letter that says the**
7 **following: DERM approves FPL's site assessment report?**

8 A No. However, it's rare that I ever get
9 specific language from DERM that says they approve
10 interim steps, and merely ask me to go on to the next
11 step. That is the normal course of business from DERM.

12 **Q It is true, although, Mr. Sole, that there**
13 **have been interim steps between the site assessment plan**
14 **and the site assessment review, according to you, the**
15 **acceptance of the site assessment review, I mean, almost**
16 **a year has passed, right? You have -- let me stop**
17 **there. There have been informal discussions, correct,**
18 **with DERM?**

19 A Absolutely. Yes.

20 **Q And those informal discussions extended beyond**
21 **the stated timeframe for approval in the Consent**
22 **Agreement Addendum, correct?**

23 A No, I disagree.

24 **Q Okay. Mr. Sole, as of today, FPL has not**
25 **entered into a corrective action plan with DERM,**

1 **correct?**

2 A No, I disagree. As part of our October 8th
3 response to DERM, we specifically acknowledged that this
4 is anticipated to be compliant with the requirements
5 under the Consent Agreement Addendum.

6 Clearly, based upon the information that we
7 were presented in the site assessment report, it was
8 evident that there was basically a de minimis
9 contribution from the cooling canal system associated
10 with the ammonia.

11 And, in fact, DERM has significantly shifted
12 from what is a more rigid site assessment plan, site
13 assessment report, contamination action plan,
14 contamination action report protocol that was
15 established in the Consent Agreement Addendum to more of
16 now a letter just saying, we still any there is a
17 contribution, and we would like to know what your plan
18 is to address nutrients in the area.

19 FPL has been working on a nutrient management
20 plan for some several years. We testified about that
21 last year, and worked with FDEP as part of the Consent
22 Order to do the fill project, which is also envisioned
23 to help reduce that ammonification process from
24 occurring.

25 And the report that we presented to DERM on

1 October 8th, specifically lays out, here's the actions
2 that we have taken and are planning to take to address
3 nutrients in the system. And that is the contamination
4 assessment plan that you are referring to in the Consent
5 Agreement Addendum. And because DERM has significantly
6 reduced that level of obligation based upon the reports
7 that we presided to them.

8 **Q The October 8th letter that you allege is a**
9 **corrective action plan, has there been any affirmative**
10 **response from DERM to FPL approving that corrective**
11 **action plan?**

12 A No. Unfortunately, it takes DERM quite some
13 time to review. In fact, I think it took them almost a
14 year to review the report -- the supplemental
15 information we gave them prior to the July 10th letter
16 being presented. So I don't know when DERM will
17 actually have commented, if any comment, on our
18 October 8th response.

19 **Q I just want to point you to the very last page**
20 **of that letter.**

21 A Of our October 8 response?

22 **Q No, the July 10th, 2018.**

23 A Okay. I am there. I apologize.

24 **Q It says, one paragraph up from the last one:**
25 **Be advised that failure to comply with the above may**

1 result, at a minimum, in the assessment of penalties as
2 outlined in the subject consent agreement.

3 If DERM does not view your October 8th letter
4 as compliant, it indicates that the company could be
5 subject to penalties according to this letter, is that
6 correct?

7 A It is clearly FPL's obligation to comply with
8 the provisions of the Consent Agreement and the Consent
9 Agreement Addendum. It is a true statement, if we fail
10 to comply, that we could be subject to penalties.

11 Q And if you fail to comply and are assessed
12 with penalties, would FPL seek to recover those costs
13 from customers?

14 A Mr. Cavros, that's a hypothetical, and I don't
15 have the circumstance in which to establish whether or
16 not we would or wouldn't. I think every individual
17 circumstance deserves its story to discern what actions
18 FPL would take.

19 Q But sitting here today, you cannot discount
20 the possibility that you may come to the Commission
21 again to seek recovery of penalties levied by DERM
22 against FPL related to this project, correct?

23 MS. MONCADA: Objection, calls for speculation
24 and --

25 MR. CAVROS: Okay, Chair, I would like to move

1 on to the DERM Consent Agreement excerpt, please.

2 COMMISSIONER CLARK: All right. No. 56, DERM
3 Consent Agreement excerpt.

4 THE WITNESS: I have it, yes, sir. Did we
5 give it a number?

6 MR. CAVROS: It's 56.

7 (Whereupon, Exhibit No. 56 was marked for
8 identification.)

9 BY MR. CAVROS:

10 Q And I would like to direct your attention,
11 well, to the excerpt, if you will. And I think, again,
12 you are probably pretty familiar with this, Mr. Sole.

13 This particular provision is 17, subsection
14 (c)(i) of the Consent Agreement. Does this look
15 familiar to you?

16 A Yes.

17 Q Okay. Great.

18 And the very first sentence of that
19 requirement says that FPL agrees to undertake -- to
20 raise control elevations in the Everglades Mitigation
21 Bank; is that correct.

22 A That is correct.

23 Q Okay. And it's supposed to raise those
24 elevations, later on down the paragraph there, to no
25 lower than 0.2 feet lower than the 2.4 trigger of the

1 **S-20 structures. Do you see that?**

2 A I do.

3 **Q Okay. Isn't it true that FPL has not**
4 **maintained that elevation level throughout the term of**
5 **the Consent Agreement?**

6 A Yes. FPL currently has the elevations at 1.8,
7 as obligated in this provision of the Consent Agreement
8 Addendum, FPL was obligated to raise the elevations to
9 2.2 and maintain them for a year, and do an analysis as
10 to the effect of changing the weir elevations.

11 FPL did conduct that analysis for the year
12 period, and actually determined there was a significant
13 adverse impact on operation of the mitigation bank and
14 water conditions in the mitigation bank.

15 We presented that study to Miami-Dade, and
16 consulted with them. We also presented that information
17 to DEP, because we end up sharing all of our information
18 related to Turkey Point with both Miami-Dade and DEP.
19 And subsequently, we received a permit modification
20 requirement to operate the weirs back to the 1.8 mgd
21 elevation by DEP as part of our mitigation permit.
22 Miami-Dade has challenged that, and we are now still
23 subject to that hearing. And that's the extent of
24 information I think appropriate to testify on at this
25 stage.

1 **Q Thank you for identifying that DERM has**
2 **challenged the permit modification that DERM -- rather**
3 **DEP has issued. I think I heard you say that you**
4 **provided that information to DEP?**

5 A Yeah. Most of the -- not most. I think all
6 the monitoring information, whether it's an obligation
7 to provide to determine, or an obligation to provide to
8 DEP, we end up sharing with the regulatory agencies.

9 And this is a truly unfortunate situation,
10 where we are stuck between two regulatory agencies; one
11 telling me it should be 2.2, and one telling me that it
12 should be 1.8. The one that actually drives is the
13 permit, so we need to be in compliance with the FDEP
14 permit.

15 And also, as I testified earlier, FPL did
16 comply with this provision, and did consult with
17 Miami-Dade as relates to the impact of the operating of
18 the weirs at these elevations, and that there was an
19 adverse impact to the mitigation area.

20 **Q And you would agree, Mr. Sole, that the lower**
21 **level -- do you have -- let me step back.**

22 Do you now have it at the lower level, at 1.8?

23 A I believe it's currently operating at 1.8, but
24 I would have to validate that.

25 **Q And you would agree that based on this**

1 **requirement in the Consent Agreement, that it is**
2 **currently not compliant with the Consent Agreement?**

3 A No, I would not agree with that at all. In
4 fact, there has been absolutely no information from
5 Miami DERM presented to say that FPL is in violation of
6 any part of the Consent Agreement or Consent Agreement
7 Addendum.

8 This is a situation that has been discussed
9 with DERM. They are aware of the conditions. They are
10 aware of the challenge that FPL is put in as a result of
11 one regulatory agency saying do it one way, and another
12 regulatory agency saying doing it another. And at this
13 stage, we have seen absolutely nothing from DERM to
14 assert that there is any violation. I do believe there
15 is concern from DERM, and that's why they challenged the
16 permit.

17 Q **And I don't know that I used the word**
18 **violation. I used not in compliance.**

19 A I don't know what the difference is. You are
20 either in compliance or you are not. In this case, I
21 believe we are in compliance, and we are working with
22 DERM, as well as DEP, on this issue.

23 Q **Mr. Sole, the four corners of this document**
24 **say that FPL is to raise elevations there to a certain**
25 **level. They are not at that level. I appreciate your**

1 interpretation and some of the challenges you are
2 facing. My question is really very straightforward to
3 you. Based on the language in this provision, FPL is
4 not in compliance, correct?

5 MS. MONCADA: Objection. That's the same
6 question he just asked, and Mr. Sole answered it.

7 COMMISSIONER CLARK: I agree. Mr. Sole has
8 answered he believes that they are in compliance,
9 is that correct, Mr. Sole?

10 THE WITNESS: Yes, Mr. Chairman.

11 BY MR. CAVROS:

12 Q Mr. Sole, I am going to switch gears for a
13 second about a matter that will more than likely impact,
14 but I want to hear your opinion on this, the evaporation
15 of the CCS.

16 FPL -- subsequent -- well, actually, let me --
17 let me retract that.

18 On May 17th, 2017, okay, FPL filed a notice
19 with the NRC to extend the life of the Turkey Point 3
20 and 4 reactors, correct?

21 A That is correct. I believe that's the date.

22 Q Okay. I guess my first question to you is,
23 it's true that you did not share this information at the
24 time of this last hearing with the Commission, and my
25 question to you is why?

1 MS. MONCADA: Objection. I don't think this
2 line of questioning has anything to do with the
3 costs for which FPL is seeking recovery here today.

4 COMMISSIONER CLARK: Mr. Cavros.

5 MR. CAVROS: This is new information. It was
6 available to the company prior to last year's
7 environmental cost recovery clause hearing. It
8 chose not to share that information with the
9 Commission. There are cost implications associated
10 with that, and simply, you know, want to better
11 understand what the company's thinking was in not
12 providing that.

13 COMMISSIONER CLARK: Can you point to anywhere
14 in his direct testimony that this issue is
15 addressed?

16 MR. CAVROS: I think what I would like to do,
17 Commissioner, if it's okay with you, is simply
18 just, you know, to ask him a question and, you
19 know, just get straight to the point.

20 And, you know, our interest here is to know
21 how this will impact the operation of the CCS going
22 forward. You know, customers are paying over \$200
23 million for this project. FPL did not disclose
24 that it was planning to extend the life of the
25 reactors. They could uprate them. They could

1 change the operation of the CCS. And I think
2 rather than the way FPL is doing it in providing,
3 you know, on a need-to-know basis information, I am
4 trying to get a preview of what the next couple
5 years are looking like.

6 COMMISSIONER CLARK: Well, I think that is a
7 little bit beyond the scope of the testimony
8 specifically here, so I am going to sustain the
9 objection.

10 MR. CAVROS: Okay.

11 BY MR. CAVROS:

12 Q Mr. Sole, you have read Ms. Deaton's testimony
13 in this docket, is that correct?

14 A Yes, I have.

15 Q Okay. And you would agree that FPL is
16 recovering \$6.5 million in revenue requirement in 2019?

17 A I would have to refer to Ms. Deaton's
18 testimony to answer that because I don't have all of
19 them memorized.

20 Q And it's actually -- okay, it's actually on --
21 I had referred you to 42-5P last time.

22 A Yes.

23 Q It's really just on the back of that page as
24 well.

25 A Yes. There is a estimated project revenue

1 requirement for the project at 6.534 million.

2 Q Mr. Sole, do you believe it's fair for
3 customers to be paying not only the cost of the
4 remediation but also profits the FPL's follow
5 investments the company was forced to make because it
6 violated the law?

7 MS. MONCADA: Object to this line of
8 questioning. This was litigated at length in the
9 2017 proceeding, and the Commission made its
10 ruling.

11 COMMISSIONER CLARK: Mr. Cavros.

12 MR. CAVROS: I have no further questions.
13 Thank you.

14 COMMISSIONER CLARK: Thank you, sir.

15 All right. There was an issue regarding the
16 exhibit --

17 MS. HELTON: Mr. Chairman, I think you need to
18 do redirect before we take up any exhibits.

19 COMMISSIONER CLARK: No, ma'am. I am doing
20 the redirect, but I am asking her specifically
21 about --

22 MS. HELTON: Oh, okay.

23 COMMISSIONER CLARK: -- an exhibit that she
24 wanted to introduce.

25 MS. HELTON: Okay, I am sorry.

1 COMMISSIONER CLARK: My question to her was,
2 would you like to do that on redirect?

3 MS. MONCADA: Whatever is your pleasure. I
4 can do it now, or I can do it on redirect.
5 Whatever you prefer.

6 COMMISSIONER CLARK: If it's okay, I think we
7 will just do it on redirect.

8 MS. MONCADA: I can do that. Thanks.

9 COMMISSIONER CLARK: Thanks.

10 All right. FIPUG, you are up.

11 MS. PUTNAL: Thank you. Mr. Chairman, FIPUG
12 has no questions of the witness.

13 COMMISSIONER CLARK: All right. We are moving
14 right along now.

15 Okay. All right. Let's move to -- let's
16 begin with staff next.

17 MR. MURPHY: Staff has no questions.

18 COMMISSIONER CLARK: All right. And
19 Commissioners.

20 Commissioner Polmann, you are recognized.

21 COMMISSIONER POLMANN: Thank you, Mr.
22 Chairman.

23 Good afternoon, Mr. Sole.

24 THE WITNESS: Good afternoon, Commissioner.

25 COMMISSIONER POLMANN: I have a few questions

1 regarding Plant Scherer.

2 Just a basic question, and can you tell us how
3 does FPL receive benefits and bear the costs
4 associated with Plant Scherer? Because it seems
5 like it's not right here in Florida. So just big
6 picture overview, how are we receiving benefits?

7 THE WITNESS: Commissioner, I will do my best
8 to answer it on a big picture level, because it
9 goes a little bit beyond my expertise.

10 But the bottom line is, we have energy
11 delivered from Plant Scherer to FPL territory here
12 in Florida. It was a partnership scenario. We
13 have owned 76 percent of one unit at Plant Scherer.
14 JEA, out of Jacksonville, is the other partner.
15 They own the other 23.4 percent. And we deliver
16 power into Florida as part of the benefit to FPL
17 customers, as well as JEA customers.

18 COMMISSIONER POLMANN: Thank you.

19 And you indicated you -- the costs you are
20 seeking recovery is a portion, according to the
21 investment that FPL has, and with partners?

22 THE WITNESS: Yes, Commissioner, that is
23 correct.

24 COMMISSIONER POLMANN: Thank you.

25 The line of questioning from the parties, I

1 believe it was Mr. Rehwinkel, if I recall, the
2 copper tubes -- I believe that was the language
3 that was used. I am not quite sure what the
4 correct configuration is. That was replaced with
5 titanium, I think. Do you recall that line of
6 questioning?

7 THE WITNESS: Yes, Commissioner.

8 COMMISSIONER POLMANN: You essentially stated
9 that replacement was considered normal end-of-life
10 cycle -- my words, I am not sure -- is that
11 correct?

12 THE WITNESS: (Witness nods head in the
13 affirmative.)

14 COMMISSIONER POLMANN: There was also
15 discussion regarding packing material, if what was
16 the wording, and that's related to the heat
17 exchange system, is that correct?

18 THE WITNESS: Yes.

19 COMMISSIONER POLMANN: Has that material
20 already been replaced, or is that to be replaced?

21 THE WITNESS: The packing material was
22 replaced during the scheduled outage of 2018, in
23 the spring of 2018. So the project that we are
24 seeking cost recovery has been completed. They
25 have replaced that contaminated, or entrained,

1 copper entrained packing material with clean
2 packing material so as to ensure the effluent
3 discharges are below the requirements.

4 COMMISSIONER POLMANN: Thank you.

5 Now, I understand the heat exchange with the
6 copper titanium, but what exactly is the function
7 of the packing material? And I understand it's
8 contaminated, but what's the function?

9 THE WITNESS: So the fill material, when you
10 look at a cooling tower, you see a big space where
11 water goes through and it interacts with air. What
12 the fill material does, it gives it more surface
13 area, to have an increased air/water interaction so
14 it can improve the thermal heat transfer from water
15 to air.

16 So the fill actually just presents that
17 surface area so the water can actually land on,
18 have more interaction with air instead of just
19 falling straight down.

20 COMMISSIONER POLMANN: Thank you.

21 Now, if the tubes were normal end-of-life
22 cycle, why is the packing material, that fill
23 material, not in that category? Why is this an
24 environmental issue?

25 THE WITNESS: It's a completely different

1 component to the system that has a much longer
2 lifespan. In this case, in fact, much of the
3 packing material had already been augmented
4 previously. The original packing material was a --
5 I am trying to remember the term -- asbestos
6 concrete board.

7 COMMISSIONER POLMANN: Yes.

8 THE WITNESS: And that -- there was some
9 settlement to that. And over the prior years,
10 there was a new PVC packing material added to
11 augment it. The system itself operated perfectly
12 fine, other than this entrainment. There was no
13 need to actually replace the fill but for this
14 copper entrained condition, which resulted in the
15 elevated copper levels in the elevated levels
16 effluents.

17 COMMISSIONER POLMANN: Mr. Chairman, just a
18 few more questions.

19 COMMISSIONER CLARK: Sure.

20 COMMISSIONER POLMANN: Thank you.

21 There was reference, we don't need to look at
22 it right now. I think you will recall in your
23 Exhibit MSW-6, looking at a table, it happened to
24 be on page 21, you may remember that just by --

25 THE WITNESS: I do. Yes, sir.

1 COMMISSIONER POLMANN: -- but there was -- I
2 believe you refer to as an instream standard five
3 parts per million for copper long-term average.
4 And then you were referring to evidence that there
5 is concern about an elevated copper level referring
6 to a number 60 plus or minus.

7 Was that not evident some time ago? Is that a
8 relatively new elevated value? I was trying to
9 understand, is this something that just recently
10 come up because of this packing material, but
11 that's now been changed?

12 THE WITNESS: Two answers to your question.

13 So Georgia Power had been looking at this
14 copper issue for several years, and trying to
15 discern whether or not there was a problem. And as
16 part of that analysis, that was the basis for, yes,
17 it's appropriate to replace the copper tubes with
18 titanium to see if that would reduce the discharge
19 to a point where there wasn't this elevated level
20 in our effluent.

21 The titanium tube replacement occurred on
22 several of the units, but it didn't completely
23 address the problem. And that rationale was the
24 basis that there had been this entrainment of
25 copper in the fill material of the cooling towers

1 themselves.

2 So it's been an iterative process as Georgia
3 Power has looked at the problem to try to solve it.
4 And I think at this stage, and the good news is the
5 benefit of the project that we've completed it's
6 very clear that by replacing the cooling tower
7 packing fill material it does solve the problem
8 because we saw that significant reduction of copper
9 effluent in our Unit 4 cooling tower discharge.

10 COMMISSIONER POLMANN: Okay. Thank you.

11 I am trying to understand the stipulation
12 aspect of this, and -- now, there is no copper
13 limit in your NPDES or -- let me ask it. Is there
14 a copper limit in your NPDES discharge now at
15 Outfall 1?

16 THE WITNESS: No.

17 COMMISSIONER POLMANN: Okay. So if there is a
18 future limit set, that's the stipulation issue on
19 the table, is that correct, specific to the copper
20 limit being set or not?

21 THE WITNESS: Yes, Commissioner, that is the
22 stipulation here.

23 COMMISSIONER POLMANN: Okay. Now, if it is to
24 be set in the renewed NPDES permit, is that, to the
25 best of your knowledge and experience with NPDES,

1 will that be set specifically to address the
2 long-term average copper concentration instream
3 regardless of where the copper is coming from? It
4 gets to the discharge at Outfall 1 somehow from
5 somewhere. Can you separate those issues and just
6 say, at Outfall 1, the concentration is X compared
7 to instream, given the mixing zones and all of that
8 magic that occurs in this state determining your
9 number is X? Does it matters where it comes from?

10 THE WITNESS: I think I understand the
11 question.

12 The good news is it really will be a discharge
13 limit from the outfall versus the overall instream
14 what are the concentrations instream. So we will
15 have a outfall discharge limit that we are
16 obligated to ensure that we meet. We will be
17 required to sample it.

18 The clear issue, and when you look at NPDES in
19 Georgia's rules, is what they are going to look for
20 is they are going to set that effluent limitation,
21 which is we project around 60 parts per billion.
22 They are going to discern an obligation to continue
23 to monitor if, obviously, you are above 60. But
24 even if you are above 30, at 50 percent of the
25 concentration, they will say, no, this is an area

1 of concern, we want to continue to monitor it.

2 It's our hope that we can actually get it
3 below that 50 percent concentration to go back to
4 where we are today, where there is not an
5 obligation to unnecessarily monitor for copper.

6 So it will be at the pipe. There will be an
7 effluent limitation set in the permit, and it will
8 be subject to Georgia Power and FPL, as a partner,
9 to ensure that we get that reduced below that
10 level.

11 COMMISSIONER POLMANN: So again, the cost will
12 be monitoring at the pipe. The company's issue is
13 to manage the plant in such a way that the
14 concentration at the pipe is as low as prudence
15 tells you as to how you manage the infrastructure
16 and the operation to keep that concentration at the
17 pipe low enough so that you eliminate the
18 monitoring costs?

19 THE WITNESS: That is exactly correct. Yes,
20 sir.

21 COMMISSIONER POLMANN: Thank you.

22 THE WITNESS: I liked your testimony better
23 than mine.

24 COMMISSIONER POLMANN: Thank you, Mr. Sole.

25 Thank you, Mr. Chairman. That's all I have.

1 COMMISSIONER CLARK: Any other Commissioners
2 have any questions?

3 All right. We will move to redirect,
4 Ms. Moncada.

5 MS. MONCADA: Thank you, Commissioner Clark.
6 At this time, I believe staff is prepared to
7 pass around what completes Exhibit 55.

8 COMMISSIONER CLARK: Okay. We will mark this
9 as Exhibit No. 57, FPL's October 8th, 2018
10 response.

11 (Whereupon, Exhibit No. 57 was marked for
12 identification.)

13 MS. MONCADA: If it's okay with you, Mr.
14 Chairman, I have other questions that don't relate
15 to that exhibit, maybe I can get started on those.

16 COMMISSIONER CLARK: Yes.

17 MS. MONCADA: Thank you.

18 FURTHER EXAMINATION

19 BY MS. MONCADA:

20 **Q I will start with the Manatee Temporary**
21 **Heating System project.**

22 A Yes, ma'am.

23 **Q You had discussions at length with Mr.**
24 **Rehwinkel about it, and I believe there was just some**
25 **opportunity for clarity resulting from the**

1 cross-examination, so if I could take you through some
2 of that timing.

3 The original Manatee Temporary Heating System
4 project, which plants were involved in connection with
5 that approval?

6 A The original plant was Riviera Beach. And
7 that was the original filing by FPL just for Riviera
8 Beach. We amended that filing that same year to include
9 Canaveral Clean Energy Center.

10 Q Do Riviera and Cape Canaveral have -- are they
11 subject to a Manatee Protection Plan?

12 A Both facilities are, yes.

13 Q Do each have their own Manatee Protection Plan
14 requirements?

15 A They do, and their own National Pollution
16 Discharge Elimination System permit.

17 Q The Manatee Protection Plan, is that something
18 that's regulated by DEP?

19 A It is part of -- it is an attachment -- the
20 short answer is no. It's regulated currently by Fish
21 and Wildlife Conservation Commission. At the time of
22 the issuance of the original project, it was regulated
23 by DEP.

24 Q You mentioned in your discussions with Mr.
25 Rehwinkel that after Cape, Riviera and Cape, there was a

1 **subsequent modification. Which plant was involved?**

2 A So after the original project approval, there
3 was an addition to include Port Everglades facility as a
4 project under the Manatee Temporary Heating System
5 project.

6 Q **And is Port Everglades subject to a Manatee
7 Protection Plan?**

8 A Yes.

9 Q **Is that Manatee Protection Plan substantively
10 similar to that of Cape and Riviera?**

11 A Yes.

12 Q **Okay. Was there a renewal subsequent to
13 that -- I am sorry, was there a modification subsequent
14 to that?**

15 A There was yet another project additionally
16 requested. This was later in -- or recently in 2017,
17 and this included the addition of the Lauderdale Plant
18 as a result of its conversion to the Dania Beach Clean
19 Energy Center. That project was subsequently approved
20 by the PSC earlier this year.

21 Q **Does Lauderdale have -- is Lauderdale subject
22 to a Manatee Protection Plan?**

23 A Yes.

24 Q **Is it substantively similar or dissimilar to
25 Cape, Riviera and Port Everglades?**

1 A It is substantively similar.

2 Q Okay. The plant that we are requesting
3 recovery for today, that is Plant Ft. Myers, yes?

4 A Yes.

5 Q Is Plant Fort Myers subject to a Manatee
6 Protection Plan?

7 A Yes.

8 Q Is that Manatee Protection Plan similar to
9 Plant Ft. Myers?

10 A Yes.

11 Q Is it substantively similar or dissimilar to
12 the Manatee Protection Plans that were at issue when FPL
13 sought approval for Cape, Riviera, Lauderdale and Port
14 Everglades?

15 A It is substantively similar.

16 Q Is it your position that the PSC's approval
17 for Cape, Riviera, Everglades and Lauderdale meant that
18 FPL did not have to come today to seek PSC approval for
19 ECRC recovery of the Ft. Myers installation?

20 A No.

21 Q Okay. Moving on to Plant Scherer. Just a
22 quick closing of the loop on your discussion with
23 Commissioner Polmann, not that I can improve upon his
24 testimony either.

25 What is -- if you know, what is the estimated

1 remaining life -- you talked about the life cycle, the
2 end-of-life cycle for the copper tubing. What is the
3 estimated remaining life for the packing material? If
4 you have a range or an estimate.

5 A So there is two materials in there. So one of
6 them, the PVC, the most recent material that was placed
7 in there, I think had an end-of-life to some 26 to 30
8 years. It was replaced earlier in, I want to say late
9 2000. I can't remember the exact year. But the short
10 answer is there is at least a couple of, 10 to 15 years
11 left on the packing material that was previously within
12 the cooling towers themselves.

13 Q Thank you.

14 Moving on to Turkey Point cooling canals. Mr.
15 Cavros spoke with you at length regarding the July 10th
16 letter from DERM and the ammonia standards.

17 Mr. Sole, if you know -- if you know, the
18 water within the Turkey Point cooling canal system, does
19 that water meet or exceed the ammonia standards?

20 A While it's inside an industrial wastewater
21 treatment facility, and the water quality standards
22 don't apply within the cooling canal systems. The
23 reality is the ammonia within the cooling canal systems
24 actually meets the Miami-Dade cooling canal -- or
25 Miami-Dade water quality standards.

1 The ammonia is well below the .5 requirement,
2 and the bottom line, it actually meets the water quality
3 standards of Miami-Dade.

4 **Q Okay. You have Exhibit 55?**

5 A I do.

6 **Q Mr. Cavros pointed you to the second to last**
7 **paragraph on page 3.**

8 A Yes.

9 **Q It refers to the assessment of penalties in**
10 **the event of a failure to comply. Has FPL been assessed**
11 **with any penalties?**

12 A No.

13 **Q Okay. Staff has passed out Exhibit 57, do you**
14 **have that?**

15 A I do.

16 **Q Can you point to the pages where FPL sets**
17 **forth --**

18 MR. CAVROS: Excuse me. Chairman, I am going
19 to object to the introduction of this document for
20 a couple of reasons.

21 No. 1, it's well beyond the scope of my
22 cross-examination of the witness. It discusses
23 cooling canal practices, which I did not touch on.
24 It talks about foam removal harvesting, nutrient
25 algae removal, which I did not touch on. It talks

1 about salinity reduction, which I did not touch on.
2 It talks about berm maintenance practices, which I
3 did not address. It talks about seagrass
4 reestablishment, which I did not address.

5 COMMISSIONER CLARK: Mr. Cavros, let me ask
6 you, so you submitted your -- the entire document
7 from the Miami-Dade County, this was the entire
8 document -- I know you didn't go through all of it,
9 but you submitted the entire document?

10 MR. CAVROS: That is correct.

11 COMMISSIONER CLARK: Ms. Moncada, you
12 submitted an entire document. Do you intend to go
13 through all aspects in that that are outside of
14 what rebuttal should be limited to here?

15 MS. MONCADA: I don't. No.

16 COMMISSIONER CLARK: Okay. If you stick to
17 that very defined answer that was related to what
18 the initial cross was, we are good there, okay?

19 MS. MONCADA: Yep. Thank you.

20 COMMISSIONER CLARK: Okay. Proceed.

21 BY MS. MONCADA:

22 **Q In your discussions with Mr. Cavros, several**
23 **times you and he mentioned a corrective action plan?**

24 A Yes.

25 **Q Can you point to the pages where FPL sets**

1 **forth its corrective action plan in the October 8th**
2 **letter?**

3 A As in the first paragraph, if I understood
4 your question, the first paragraph, last sentence, we
5 attempt to clarify that in complying with the July 10th
6 DERM letter, FPL understands that the requirements and
7 obligations of paragraph 34C and D of the August 2000
8 Consent Agreement Addendum are met.

9 Q **And does the letter address your plan -- the**
10 **plans to address the nutrients in the water?**

11 A Yes. This submittal actually provides FPL's
12 plan, which includes several of the actions that are
13 underway, and those actions are that being proposed to
14 address nutrient reductions.

15 Q **And just for the sake of clarity, are there**
16 **specific pages where that appears?**

17 A Yes. If you go on to page 3 of 10, you begin
18 to see activities that are addressed within the canal
19 itself, the cooling canal system itself, includes
20 reporting on some of the significant progress made in
21 reducing nitrogen.

22 If you go to page 4 of 10, you can see where
23 we were at a high of some 15 point -- I want to say -- I
24 think it was 15.6 milligrams per liter of nitrogen
25 within the cooling canal systems to now, in 2018, all

1 the way down to three -- a little over three milligrams
2 per liter. Same holds true for phosphorus. You can see
3 significant reductions in nutrients within the cooling
4 canal system.

5 And then it goes on to talk about some
6 additional biological as well as physical treatments,
7 which include foam collection pilot, which we have
8 identified significant nutrient reduction. We have
9 already started planting seagrasses back in the cooling
10 canal system. We have got three acres growing, and look
11 forward to seeing that continue, along with the fill
12 projects that we have already testified to last year.

13 So it generally shows a significant amount of
14 progress as well as work that is underway.

15 MS. MONCADA: I have no further redirect.

16 COMMISSIONER CLARK: All right. I think that
17 concludes everybody. Let's talk about the
18 exhibits.

19 Exhibits No. 49 through 57, do the parties
20 wish to enter their exhibits, Mr. Cavros?

21 MR. CAVROS: Yes. Chair, I would move to
22 enter Exhibits 52 through 56.

23 COMMISSIONER CLARK: All right. FPL.

24 MS. MONCADA: FPL would like to move in
25 Exhibit 57.

1 COMMISSIONER CLARK: Okay. OPC.

2 MR. REHWINKEL: Mr. Chairman, we would only
3 move Exhibit 50, unless the parties want the other
4 two entered. I think the Commission can take
5 notice of the statute and its orders.

6 COMMISSIONER CLARK: Okay. All right.

7 MR. REHWINKEL: Can I just, for the --

8 COMMISSIONER CLARK: Yes.

9 MR. REHWINKEL: -- practice point here.

10 I don't know how Mr. Cavros feels. I have no
11 problem with Exhibit 57 coming in, just as in the
12 normal course of redirect. I don't believe it's a
13 good precedent to admit it on the basis of
14 substantial completion because it is a different
15 document. But I have no problem, based on the
16 predicate that was laid and the discussion that you
17 had with counsel, for it coming in and considered
18 on the basis of what redirect it was addressed to.
19 I just don't think substantial completion is the
20 basis, but I think it's valid to come in.

21 COMMISSIONER CLARK: Thank you.

22 Mr. Cavros.

23 MR. CAVROS: And I would just like to add on
24 to that. I am a little concerned about entering
25 this into the record on redirect. You know, the

1 parties haven't had a chance to review it or
2 cross-examine the witness on it, so I have some
3 concerns about entering documents into the record
4 that come in on redirect without the parties'
5 ability to cross-examine the witness on them. Ms.

6 COMMISSIONER CLARK: Ms. Moncada.

7 MS. MONCADA: Thank you.

8 With regards to the parties' ability to review
9 it, I did provide last week, and I think even the
10 week before, a copy of that letter to Mr. Cavros
11 for his review and consideration.

12 And with respect to it coming in during
13 redirect, it -- you know, in our opinion, it should
14 have come in during Mr. Cavros' examination under
15 the Doctrine of Completeness. And I have heard
16 what Mr. Rehwinkel has to say, you know, that he
17 doesn't agree that that's the doctrine that governs
18 here, but I am happy to point to case law that
19 would say otherwise.

20 The Rule of Completeness is there for the
21 purpose of avoiding misleading or incomplete
22 impressions by the Commission or, in a civil
23 context, the jury. And I have a case here out of
24 the Fourth DCA that even says, for example, if one
25 letter in a continuing correspondence between two

1 individuals is introduced, that letter by itself
2 may be misleading, and that is what we had here
3 today.

4 COMMISSIONER CLARK: Okay. Where it came in
5 the proceedings could be my fault. I asked for it
6 to be brought back in on redirect. So that one is
7 mea culpa.

8 Mary Anne, would you give me some-

9 MS. HELTON: In my opinion, Ms. Moncada gave
10 SACE notice that she had a problem with Exhibit 55
11 coming in without the response. It sounds like
12 that Mr. Cavros has had that letter for at least a
13 week or two. And if he had wanted to ask questions
14 about that letter, I think that he probably could
15 have.

16 And to me, it seems that everything is fair,
17 that Exhibit 57, when it goes into the record, you
18 can give it the weight that it is due. And I think
19 that everyone is on notice here that you should use
20 only those portions that we have discussed in the
21 hearing today.

22 COMMISSIONER CLARK: We are going to allow it
23 and enter 49 through 57 into the record as
24 presented.

25 (Whereupon, Exhibit Nos. 49-57 were received

1 into evidence.)

2 COMMISSIONER CLARK: All right. Any other
3 questions?

4 MS. MONCADA: May the witness be excused?

5 COMMISSIONER CLARK: Yes, the witness may be
6 excused.

7 Thank you.

8 (Witness excused.)

9 COMMISSIONER FAY: Mr. Chairman, I have a
10 quick question. We had a --

11 COMMISSIONER CLARK: Commissioner Fay.

12 COMMISSIONER FAY: -- an exhibit, and I
13 apologize, I might have just stepped out and missed
14 it. It was a DERM letter to DEP on Turkey Point
15 wetlands permit. Was that -- did we number that
16 exhibit or was it not brought in?

17 COMMISSIONER CLARK: Which one? Say it again.
18 I am sorry.

19 COMMISSIONER FAY: DERM letter to DEP on
20 Turkey Point wetlands permit.

21 COMMISSIONER CLARK: No, that one was not
22 entered.

23 COMMISSIONER FAY: It was not entered, okay.

24 COMMISSIONER CLARK: We did not enter it.

25 COMMISSIONER FAY: Thank you.

1 COMMISSIONER CLARK: Okay. Let's go to
2 concluding matters.

3 Staff, are there any matters that we need to
4 address? Charlie?

5 MR. MURPHY: Yes, Commissioner Clark. I
6 believe that we are in a posture that we could
7 possibly stipulate a Type 2 stipulation of FPL's
8 Issues 10C and 10D addressing the avian program.
9 FPL's language would be stipulated. It's found on
10 page 12 and 13 of the prehearing order, if that's
11 the desire of the Commission to vote that out and
12 make a bench decision on that one.

13 COMMISSIONER CLARK: Any objections by the
14 parties?

15 MR. REHWINKEL: The Public Counsel would take
16 no position, and would not have an objection to
17 whatever action the staff and the company do.

18 COMMISSIONER CLARK: Okay.

19 MR. CAVROS: Likewise for SACE.

20 COMMISSIONER CLARK: Thanks.

21 Mr. Brew? Everybody is good.

22 Okay. We will entertain a motion to approve
23 stipulations on 10C and 10D.

24 COMMISSIONER BROWN: So moved, Mr. Chairman.

25 CHAIRMAN GRAHAM: Second.

1 COMMISSIONER CLARK: I have a motion and a
2 second.

3 Any discussion?

4 All in favor, say aye.

5 (Chorus of ayes.)

6 COMMISSIONER CLARK: All right. The motion
7 carries.

8 MR. MURPHY: Thank you, sir.

9 COMMISSIONER CLARK: All right. Charlie.

10 MR. MURPHY: Post-hearing briefs regarding the
11 contested issues are due on November 16th, and
12 should not exceed 40 pages.

13 There will be a staff recommendation on
14 November 29th, and it should go to the
15 December 11th Agenda.

16 COMMISSIONER CLARK: All right. Any of the
17 parties have any additional concerns that should be
18 addressed at this time?

19 COMMISSIONER POLMANN: Mr. Chairman.

20 COMMISSIONER CLARK: Commissioner Polmann.

21 COMMISSIONER POLMANN: Just a quick closing
22 remark.

23 I appreciate FPL recognizing my comments. I
24 assure you I am not here testifying. I truly was
25 trying to clarify for my own understanding, and I

1 just put that on the record.

2 MS. MONCADA: I should have used a different
3 word, Mr. Chairman. I am sorry, Commissioner
4 Polmann.

5 COMMISSIONER POLMANN: Thank you very much.

6 COMMISSIONER CLARK: All right. That does
7 conclude the 07 docket.

8 Before we move, let me do a quick opinion and
9 survey here. I am going to get the Commission's
10 opinion on whether or not to continue.

11 It is 5:30. If this is going to be a lengthy
12 proceeding in the 01 docket, then I think we would
13 just as soon come back tomorrow. If we can wrap
14 this thing up pretty quick, I think I would say
15 within one hour, I think everyone would be subject
16 to -- I am going to propose that to the Commission.

17 Can you guys give me just any -- I am not
18 putting you under any gun or pressure. Just give
19 me a ballpark on what your -- how long you think
20 your line of questioning would be. We will start
21 with OPC.

22 MR. REHWINKEL: My questions, at this time,
23 would be in excess of an hour.

24 COMMISSIONER CLARK: Okay.

25 MR. REHWINKEL: Maybe closer to two.

1 COMMISSIONER CLARK: Okay. That is going to
2 eliminate that little issue then. The rest of you
3 don't need to answer tonight.

4 Commission, is it good with you guys, are
5 y'all comfortable with coming back and let's
6 wrapping this thing up tomorrow morning? Everybody
7 comfortable with it?

8 COMMISSIONER FAY: I am not excited about it.

9 CHAIRMAN GRAHAM: I was going to say, see what
10 you can get done today and then come back and
11 finish up in the morning.

12 COMMISSIONER CLARK: Yeah.

13 MS. MONCADA: And if you are taking comments
14 from the utilities, or the parties, I agree with
15 Chairman Graham. There is much of the fuel docket
16 that will be stipulated, a substantial portion of
17 it will, and maybe some of us can start heading
18 back home tomorrow earlier than --

19 COMMISSIONER CLARK: Okay. I have no
20 objection to that. So let me go back to --
21 Mr. Brew, any idea?

22 MR. BREW: Yes. I, for one, would be willing
23 to stay as long as it takes, but I have about 40
24 minutes of cross.

25 COMMISSIONER CLARK: Okay. And FIPUG. Okay.

1 All right. Well, let's give it a run. We are
2 going to go until about 6:30. We will see how that
3 looks.

4 And, staff, I hope you are okay with this. I
5 know we are trying to limit this thing and not push
6 it too hard too far for you guys, but let's take a
7 five-minute break and we will come right back and
8 get back on it.

9 (Proceedings concluded at 5:40 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, 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 7th day of November, 2018.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020