

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041272-EI

In the Matter of:

PETITION FOR APPROVAL OF STORM
COST RECOVERY CLAUSE FOR RECOVERY
OF EXTRAORDINARY EXPENDITURES
RELATED TO HURRICANES CHARLEY,
FRANCES, JEANNE, AND IVAN, BY
PROGRESS ENERGY FLORIDA, INC.



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VOLUME 5

Pages 425 through 513

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON
COMMISSIONER LISA POLAK EDGAR

DATE: Thursday, March 31, 2005

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CHAIRMAN BAEZ: Mr. Twomey.

MR. TWOMEY: Yes, Mr. Chairman. Thank you.

JAVIER PORTUONDO

continues his testimony under oath from Volume 4.

CROSS EXAMINATION

BY MR. TWOMEY:

Q Good morning, sir.

A Good morning.

Q It strikes me from listening to your testimony yesterday afternoon and this morning that you place great emphasis on what your company intended in its study and its initial filings on storm cost recovery as opposed to necessarily what the Commission's precedence has said. Am I seeing that correctly?

A I don't think so. I think the study was mandated by the Commission. They took no exception to that study, so in my role as being responsible for adhering to the Commission's orders, rules, and guidelines, I deemed that to be acceptance of that accounting and made sure that my company complied with that accounting. And we are here now presenting this petition in accordance with what the Commission did do and has done with regards to storm costs.

Q Okay. Without regard -- let me change the question.

1 With regard to what the Commission's orders say, I believe I
2 have heard you say rather consistently that you place
3 importance upon what the company said it was going to do in its
4 study, have you not?

5 A Yes, I have.

6 Q And the suggestion I took from that was that you
7 believe the Commission should, as well, because you have been
8 straightforward in the study, you say, about what you intended
9 to charge and how you intended to go about it, correct?

10 A Yes.

11 Q But you would concede, would you not, that the study
12 and the company's intentions as expressed therein are trumped
13 by the Commission's orders, if there is any consistency?

14 A I would say yes.

15 Q Now, I think Mr. Wright -- you said in response to
16 Mr. Wright's question that the company reported to the SEC and
17 its shareholders earnings on equity for calendar year 2004
18 something in the order of 13.5 percent, right?

19 A Retail, yes.

20 Q And yet it is my understanding that you haven't
21 mentioned your equity return at all in your testimony or in the
22 company's filing, is that correct?

23 A No, I haven't. I did not find it to be relevant to
24 our request.

25 Q And yesterday I think you told Mr. McWhirter in

1 response to a question of his that it would be your position
2 and the company's position that even if you were earning in the
3 range of 17 or 17.5 percent ROE that you would still be
4 entitled to recover all the costs, the storm cost recovery
5 costs you are seeking here, is that correct?

6 A That is correct. And then I proceeded to say that
7 the Commission its base rate jurisdiction or authority would
8 have called the company in to discuss that ROE and have dealt
9 with the underlying factors that gave rise to that ROE.

10 Q And so far then you have essentially decoupled
11 earnings of the company in this case, is that correct?

12 A That is correct.

13 Q You think they are, in fact, irrelevant in all
14 respects?

15 A I do.

16 Q You testify, I think, or would you agree in any event
17 that the hurricane damage or the hurricanes and the subsequent
18 damage are out of the control of management, correct?

19 A Yes, and it is beyond our control to predict such an
20 event as we have experienced in 2004.

21 Q And wouldn't it be also generally true -- or not
22 generally true, but true that all weather events are out of the
23 control of the management?

24 A Well, I think for the -- partially correct, partially
25 incorrect. I think that what we have attempted to do through

1 the establishment of the storm reserve is to use consultants
2 that have expertise in arriving at probabilistic parameters
3 around what history has proved to be the types of effects that
4 one in a particular service territory could experience from
5 major storms, and that is one way management can try and
6 anticipate what could be considered normal recurring effects of
7 another nature, and I think that is what gave rise to the
8 reserve.

9 Q Yes, sir. But notwithstanding the use of experts and
10 looking at predictive methods of trying to figure out how many
11 storms are going to hit, I thought it was part of your thesis
12 in this case and support for the recovery that management and
13 the company should take home these costs sought because they
14 are beyond their control, the incurrence of the expenses is
15 beyond the control of management, but not really -- you can
16 predict, but they are not foreseeable and they are not within
17 the management's control, correct?

18 A That's correct.

19 Q And so I'm asking you as a followup to that isn't it
20 true generally that all weather events are beyond the control
21 of management?

22 A I would say yes, and I guess I would add to that that
23 there is some history on which management can rely and can use
24 that history to forecast some of the events, some of the normal
25 thunderstorms. We know we are in the lightning capital of the

1 world, so those elements given our 100 year history in the
2 state of Florida, have manifested themselves in the level of
3 budgeting and operation and maintenance expenses that we do on
4 a normal recurring basis.

5 Q Yes, and while I assume you would suggest the same
6 thing is true of customer growth, generally the actual customer
7 growth that occurs is, again, outside the control of
8 management, would that be correct?

9 A Again, yes and no. History has demonstrated that
10 there seems to be a pattern that our service territory is
11 growing at a certain percentage every year and that is
12 incorporated in the financial reports presented to the
13 Commission when setting base rates so that they have a normal
14 picture of what annual costs and revenues would be.

15 Q Right. Now, I want to present you with a
16 hypothetical to consider, and for purposes of the hypothetical,
17 assume that there is no revenue sharing agreement in effect as
18 you currently have. Further assume that their authorized, the
19 last authorized range of return on equity is 10 to 12 percent,
20 okay? Further assume that this hypothetical is taking place in
21 the year 2004, and that you experience a higher level of
22 customer growth than you had forecast previously. And,
23 furthermore, that you experience an extremely hot summer with
24 the result that your sales from air conditioning primarily are
25 increased substantially more than you had predicted the year

1 previous. And, further, that because of the customer growth
2 combined with the summer sales that the equity return went to
3 15 percent the last five months of the year 2004.

4 Do you follow me?

5 A Yes, sir.

6 Q And that further, the Public Counsel or any
7 intervenor, customer intervenor and the Commission staff didn't
8 notice the increase in earnings until January of this year,
9 2005, okay? Now, with your qualification as a regulatory
10 expert, which I'm not sure you didn't have before, wouldn't you
11 agree with me that there is nothing the Commission or the
12 consumers could do to recover the excess earnings in the last
13 five months of 2004?

14 A That is correct. I think in that hypothetical what
15 would happen is that the Commission staff would be calling me
16 and asking whether that was an anomaly or whether that is
17 something that has changed our fundamental assumptions and
18 would be ongoing. If my answer was that, yes, something has
19 changed. Our growth rate has now appeared to have increased,
20 and customer usage has increased, more than likely the
21 Commission would ask that we come in to reestablish rates.

22 Q Yes, sir. And let's just hypothetically assume that
23 the excess profits, if you will, for the later part of 2004 in
24 my hypothetical equated to \$100 million in revenues, and that
25 the Public Counsel comes in or the Commission on its own motion

1 brings you in for a rate reduction case, okay? Based upon your
2 understanding of the law and the Commission's precedence,
3 again, isn't it true that the Commission. While it could set
4 lower rates on a prospective basis, could not go back into the
5 last five months of 2004 and take those excess profits away
6 from you, isn't that correct?

7 A That is absolutely correct. The reciprocal is also
8 correct, that if my earnings fell below the floor to 9 percent,
9 the company could not initiate a proceeding where it could
10 recoup the loss of that prior year. It would all be
11 prospective.

12 Q Right. Now, isn't it true as a contrast to that
13 situation which you are probably going to say involves base
14 rates and not cost recovery rates, but isn't it true in
15 contrast to that situation that what you are trying to do here
16 is go back in 2004 and recoup expenses retroactively already
17 expended by a surcharge that you expect this Commission to
18 approve in the future?

19 A No, sir. Again, I don't agree that they are covered
20 in base rates as you suspected, but those costs have not been
21 expended yet as they relate to the financials of the company.
22 The Commission's order requires us to apply them to the
23 reserve, allow the reserve to go negative. The recognition of
24 the expense is pending the Commission's decision in this
25 proceeding.

1 Q Yes, sir. But whether they are technically expensed
2 in that accounting sense, you made real life expenditures in
3 bringing your system back from the hurricane damages, correct?

4 A Yes, we incurred those costs.

5 Q Okay. Now, Mr. Wright asked you a minute ago whether
6 the Commission had, to your knowledge, ever approved a
7 surcharge of the type that you are seeking here that would on a
8 going-forward basis recover for you expenditures made in the
9 past. And I think you said you were aware of none, isn't that
10 correct?

11 A Well, one example of that would be the post-9/11
12 security costs that the Commission approved recovery of through
13 the fuel charge. I mean, we incurred costs, we sought
14 permission from this Commission to recover those extraordinary
15 costs through the fuel charge, and they provided for it in the
16 fuel charge. The normal true-up process that results in an
17 underrecovery is an example of where the Commission takes an
18 expenditure that had occurred in the prior year and sets rates
19 prospectively to recover those costs. So, they have addressed
20 the situation, a recovery situation that results in expenses in
21 one year and recovery in a future period.

22 Q First of all, I think you are right, but let me ask
23 you are you positive that the Commission approved in the
24 post-9/11 security cost expenses that they approved going
25 forward for costs you had already expended?

1 A I think that the fact that the costs that were
2 included in the factor were predicated on an estimate, any
3 deviation from that estimate would be a recovery in a future
4 period, so its a true-up.

5 Q Let me ask you my question again because you didn't
6 answer it, I don't believe, and I think it was reasonably
7 clear. Are you sure that any of the expenditures in the 9/11
8 recovery clause, that any of them had previously been expended
9 prior to the Commission approving their recovery? And I would
10 suggest that maybe you answered in a part a minute ago when you
11 said that they were estimates.

12 A They were estimates, yes.

13 Q So, to my pending question, are you aware that in the
14 9/11 security cost recovery issue of any expenditures that you
15 had made previously that the Commission allowed you to recover
16 prospectively through this modification to the fuel adjustment
17 clause?

18 A I'm not sure of that exact timing. Probably not.
19 Probably we came before the Commission sufficiently in advance
20 of the actual expenditure taking place where that did not
21 occur. I would be subject to check.

22 Q So then in response to my question a few minutes ago,
23 then even this example that you attempt to raise here doesn't
24 meet the qualification that it was the Commission approving a
25 charge, or a surcharge, or a line item charge that would allow

1 your company or others to recover costs that were expended in a
2 previous time period, isn't that correct?

3 A That example you are correct. We did not physically
4 probably expend any dollars prior to that Commission approval,
5 but as in this unique situation the Commission's own rules
6 prohibit me from expending those dollars to the income
7 statement until such time as they are allowed to make a
8 decision.

9 Q That's fine. And we will get to that, hopefully, in
10 a minute in greater depth. But even if you had been initially
11 correct that the post-9/11 security costs had been expended
12 prior to your making the request for their recovery in the fuel
13 clause, it would still be true, wouldn't it, that they were, in
14 fact, allowed for recovery in the fuel adjustment cost-recovery
15 clause, isn't that correct?

16 A I didn't quite understand the whole question. Could
17 you try it again?

18 Q I will try. Those monies, the post-9/11 security
19 cost monies, were collected through the fuel adjustment
20 proceeding, didn't you say that?

21 A Yes, sir, I did.

22 Q And the fuel adjustment proceedings are an existing
23 relatively longstanding recovery clause authorized by this
24 Commission, correct?

25 A Absolutely.

1 Q Okay. And there are other cost-recovery clauses that
2 you spoke to, I think to Mr. McGlothlin yesterday, but you
3 concede, do you not, that there is no such thing in existence
4 now as approved by the Commission as a storm cost-recovery
5 clause?

6 A I do agree with you, yes. It was acknowledged by our
7 company when we filed in compliance of the Commission's request
8 that we would be seeking a mechanism similar to this so it
9 wasn't something that was coming out of the blue, per se.

10 Q Yes, sir, and that's fine. It's not coming out of
11 the blue, but wouldn't you agree with me that it is more in the
12 nature of what you want to get out of this Commission, and the
13 fact of the matter is, am I not correct that as of right now,
14 you can't point us, and you can't point the Commission to any
15 order approving such recovery, isn't that correct?

16 A I believe their orders gave them the ability to
17 establish such a mechanism. I think they are -- and I
18 apologize, I can't put my hands on exactly what Mr. McGlothlin
19 had me read yesterday, but I believe there was a number of
20 options that they left themselves open to which included a
21 recovery mechanism.

22 Q Yes. And I'm not suggesting that the Commission
23 didn't leave itself that latitude, okay? I'm just asking you
24 isn't it true that as of right this minute, you can't point to
25 me and you can't point to these five Commissioners an existing

1 order that says not that we have the latitude to do it, but
2 that we have approved this type of cost-recovery clause with
3 respect to hurricane or storm damage for your company or any
4 other, isn't that true?

5 MR. WALLS: That has been asked and answered.

6 MR. TWOMEY: I don't think that it has, Mr. Chairman.

7 COMMISSIONER DEASON: The witness may answer the
8 question.

9 THE WITNESS: No, the Commission has not established
10 yet a storm cost-recovery clause.

11 MR. TWOMEY: Thank you.

12 BY MR. TWOMEY:

13 Q The Commission's decision in this case, can it in any
14 way effect your 2004 earnings?

15 A No, it would affect 2005.

16 Q There is no outcome here that you can think of that
17 would affect your 2004 earnings and cause you to have to issue
18 a restatement of them?

19 A I do not believe so.

20 Q Okay. Now, either Mr. McGlothlin or Mr. McWhirter or
21 both of them discussed with you the various methodologies that
22 the Commission might have -- could still allow for recovery of
23 these storm costs expenditures, and my question is did your
24 management explore those methodologies before it came up with
25 what is found in your petition, the other methodologies?

1 A I would say that those methodologies were considered
2 back in '93 when the original petition was filed for
3 self-insurance, and the company having presented to the
4 Commission that position, has now filed in accordance with that
5 position.

6 Q Okay. When you use the term self-insurance, you use
7 this -- you know, I guess Mr. McWhirter referred to it as
8 customer insurance, but you call it self-insurance and you view
9 it, do you not, as a surrogate for insurance coverage
10 generally, is that true?

11 A It is in essence a replacement for third-party
12 insurance.

13 Q Okay. Now, I've got an article here that the
14 headline reads, "Progress Energy increases bonuses while
15 preparing to cut jobs." And within -- it is dated March 29th,
16 2005, Associated Press. And it says within the text the
17 Raleigh-based company spent 81.2 million in bonuses for 2004,
18 up from 71.5 million the previous year. **Its ten top executives**
19 received 3.1 million in cash bonuses for 2004, including
20 830,000 for Mr. Bob McGee. Is it McGee?

21 A Yes.

22 Q You didn't need, the company didn't need to get the
23 PSC's permission, of course, to approve bonuses, isn't that
24 correct?

25 MR. WALLS: I'm going to object on relevance grounds.

1 CHAIRMAN BAEZ: There is a relevance objection.

2 MR. TWOMEY: Pardon me?

3 CHAIRMAN BAEZ: There is an objection on relevance.

4 MR. TWOMEY: Well, I just wanted to try and explore
5 just briefly, Mr. Chairman, what -- and I'm not going to go
6 much further with this, obviously, but --

7 CHAIRMAN BAEZ: I mean, I think the answer should be
8 no. And if you just answer yes or no, we're not going to down
9 that road.

10 THE WITNESS: No.

11 MR. TWOMEY: I understand. Okay. You said no,
12 didn't you?

13 THE WITNESS: Yes, I did.

14 MR. TWOMEY: I thought you did. Thank you.

15 BY MR. TWOMEY:

16 Q Page 7 of your direct testimony. Do you have it?

17 A Yes, I do.

18 Q At Line 14 starts the sentence, "As a result, the
19 Commission recognizes there may be times when the reserve can
20 have a negative balance. What the Commission has not yet
21 addressed, however, is how a negative storm damage reserve
22 balance will be recovered by a utility and over what period of
23 time that recovery will occur." Do you see that?

24 A Yes, I do.

25 MR. TWOMEY: Mr. Chairman, I want to ask the witness

1 some questions from several of the Commission orders, and
2 yesterday at the beginning of the hearing although I think they
3 may have been duplicated by some of the handouts by Mr.
4 McGlothlin, I gave you this document here with three orders
5 listed on the front. I don't know that it needs to be
6 identified as an exhibit, but --

7 BY MR. TWOMEY:

8 Q Mr. Portuondo, do you have that?

9 A No, I do not.

10 MR. TWOMEY: I'm sorry, I don't have an extra copy
11 for you, but maybe Public Counsel will loan you one.

12 CHAIRMAN BAEZ: Mr. Twomey, for the benefit of those
13 that don't have your packet in particular, when you ask your
14 question to the extent necessary if you can just identify the
15 order number.

16 MR. TWOMEY: Yes, sir, I will. Thank you. Mr.
17 Chairman, as you just suggested, the order is Commission Order
18 PSC-96-0023 -- I will skip all the FOF stuff. **It was issued**
19 **January 8th, 1996,** and it was styled in re: Petition for
20 approval of special accounting treatment of expenditures
21 related to Hurricane Erin and Hurricane Opal by Gulf Power
22 Company.

23 BY MR. TWOMEY:

24 Q Now, am I correct in understanding that inasmuch as
25 you have -- am I correct in understanding that you would have

1 reviewed the Commission's orders on storm cost recovery in
2 preparing your rebuttal testimony?

3 A Yes, sir.

4 Q And you, therefore, have read this order, is that
5 correct?

6 A Yes, I have.

7 Q Okay. Now, I understand in this case that -- and you
8 correct me if I am misunderstanding it in your view -- Gulf
9 Power Company, as a result of these two storms in 1995, Gulf
10 Power's reserve balance went negative by approximately \$9
11 million in late 1995, isn't that correct?

12 A Yes, it is.

13 Q And that I understand that Gulf in their petition as
14 reflected in the order asked the Commission increase its storm
15 damage accrual from 1.2 to 3.5 million a year correct?

16 A That is correct.

17 Q And that furthermore, they asked the Commission that
18 the revised accrual be effective January 1st, 1996, not the
19 year that the storms occurred in, correct?

20 A I believe so, yes.

21 Q Now, my understanding of the order is that the
22 Commission approved the ability of Gulf Power Company to
23 increase the accrual from 1.2 to \$3.5 million, but that they
24 said its effective date would be effective -- its effective
25 date would be October 1st, 1995, not January 1st, 1996 as

1 requested by Gulf Power. Is that correct?

2 A Subject to check, yes.

3 Q Now, help me understand, if you will, more from your
4 regulatory accounting hat perspective, what was the implication
5 to Gulf Power Company's earnings from the refusal of the
6 Commission to let them expense or start the accrual in January
7 and requiring them to start it in October of the year the
8 storms took place?

9 A All other variables held constant, the lack of the
10 expense would have -- or I should say had they booked the
11 expense their return would have gone down.

12 Q Their earned return would have gone down?

13 A Yes.

14 Q So what the Commission made them do by -- help me
15 here, I'm not clear -- by requiring Gulf Power to make the
16 accrual effective October 1st, 1995, versus January 1st of the
17 succeeding year --

18 A I'm sorry, I got you reversed.

19 Q Well, the company asked permission to start the
20 accrual January 1st of 1996?

21 A Okay.

22 Q Why would they do that? Presumably it was beneficial
23 to them financially, am I correct?

24 A I can't speak for Gulf. I can speak to the
25 theoretical of what the impact would be, and I apologize I got

1 it flipped when I was answering before.

2 Q Theoretically, why would they want the accrual to
3 start January 1st of 1996 versus October 1st of 1995?

4 A Well, again, I'm not going to speak for Gulf, but I
5 can tell you what the impact is. The impact of recording the
6 accrual in the fourth quarter of the prior year would be to
7 reduce the prior year's earnings.

8 Q Which presumably they didn't want to happen, right?

9 A Again, I'm not going to speak for Gulf.

10 Q Okay. Now, on Page 4 of that order, the Commission
11 recognized, did it not, that even with the increased accrual to
12 \$3.5 million a year, that it would take approximately two years
13 for the reserve fund to go positive?

14 A Yes, sir, that would be true.

15 Q So, isn't it true then, at least in some respect, in
16 the Gulf Power order we are discussing here, the Commission
17 recognized that Gulf Power would have a negative balance, a
18 relatively large negative balance of \$9 million, and that it
19 would remain negative for at least two years, isn't that
20 correct?

21 A Yes, their rule on that reserve account provides for
22 a negative balance.

23 Q And didn't the Commission in the Gulf order we are
24 discussing decide how Gulf would recover from this situation?

25 A Well, I believe that Gulf Power petitioned for an

1 annual accrual increase to the 3.5 million. So it was Gulf
2 that initiated the request for an increase in the accrual to
3 deal with the 9 million. That leads me to believe that they
4 found this to be a new level of accrual that was necessary to
5 deal with their normal recurring risk assessment to storm
6 damage.

7 Q Well, but they didn't -- first of all, they
8 addressed -- apparently, I would suggest, contrary to your
9 testimony on Page 7 of your direct testimony, that the
10 Commission at least in some respects addressed how a negative
11 storm damage reserve balance will be recovered by a utility,
12 did it not?

13 A Well, I think what the Commission has addressed here
14 is a resetting of the level of accrual necessary to deal with
15 normal recurring levels of risk associated with major storms.
16 I think the rule for the reserves contemplates the utility
17 coming in and asking for such an adjustment, and not unlike the
18 exhibit that I have to my direct testimony that shows how in
19 some years we were pretty close to that 6 million annual
20 accrual, had we gone deficient as a result of one of those
21 normal storms, we, too, may have had a reason to ask the
22 Commission to change that 6 million to something other than the
23 6 million because of a change in risk profile. But, again, it
24 would be consistent with the Commission's application of the
25 reserve to allow it to go negative and pay itself down going

1 orward with the annual accrual that they have approved.

2 Q But, the Commission -- isn't it true the Commission
3 didn't increase Gulf Power's rates, either base rates or
4 through a surcharge in this case, isn't that correct?

5 A No, they did not. I don't believe Gulf asked them
6 o.

7 Q Right, but they did not. Now, help me understand in
8 an accounting sense or financial sense, this order says that
9 Gulf had approximately, as I understand it, \$12 million in its
10 reserve. It suffered two storms, two named storms in 1995, the
11 first of which almost completely wiped out the balance of the
12 reserve, 11 million something. **And then the second named storm**
13 **took it negative by \$9 million.** So the company apparently in
14 recovering from those two storms in the 1995 presumably had to
15 spend something on the record of \$20 million in repairs, is
16 that roughly correct?

17 A Roughly.

18 Q They didn't asked for, apparently, nor did the
19 Commission give them rate increases of any kind. They allowed
20 them an increase in their accrual and they required them to
21 start it the fourth quarter of 1995. **How** did the company end
22 up paying for that \$20 million in repairs in 1995 and then get
23 its reserve balance back on track? Where did the money come
24 from?

25 A Well, like you indicated, they had collected in the

1 reserve all but \$9 million. So, I would say a large majority
2 of the costs associated with those storms had already been
3 collected from customers through the annual accrual. And then
4 they requested from the Commission that the going-forward
5 normal recurring accrual be changed to a higher level, and
6 through that increase in the accrual they were able to pay down
7 the remaining \$9 million.

8 Q Okay. Hypothetically, if the Commission -- I know
9 this isn't what you want, of course, but if this example here
10 were followed in your case, with your expenditures, how would
11 it effect your company?

12 A I don't believe the Commission would in good
13 conscience think that the level of the accrual should be
14 increased to hundred of millions of dollars on an annual basis.
15 I don't think you want to reserve for a catastrophic event,
16 because hopefully they don't happen too frequently, but you do
17 want to establish a reasonable risk profile.

18 Q But what would it do to your earnings if they did the
19 same kind of a -- had the same kind of outcome as in the Gulf
20 case, what would happen to the company?

21 A Very negatively it would impact earnings going
22 forward.

23 Q Now, I want to ask you to turn to Page 5 of the
24 Florida Power Corporation order, which I think is the second
25 order in the handout of three.

1 MR. TWOMEY: And, Mr. Chairman, it is Order Number
2 PSC-93-1522 issued 10/15/93.

3 BY MR. TWOMEY:

4 Q At page 5, Mr. Portuondo, there is -- I think you
5 have been asked this briefly before, but I want to clarify
6 something in my head if I may. On Page 5, the top of Page 5,
7 the first full sentence says, "Mr. Scardino proposes that in
8 the event that actual experience from storm damage exceeds the
9 reserve balance at any given point in time, the excess costs
10 should be deferred through the creation of a regulatory asset
11 to be recovered from the customers over a five-year period
12 through a mechanism to be determined by this Commission." Do
13 you see that?

14 A I do.

15 Q Now, as I understand the order we are looking at, the
16 Commission didn't approve that request, is that correct?

17 A Did not approve the establishment of a mechanism.

18 Q No. Did the Commission in that order approve Mr.
19 Scardino's proposal to recover and have a mechanism that would
20 allow the creation of a regulatory asset to be recovered from
21 the customers over a five-year period?

22 A No, they did not. And I would also take the
23 opportunity to make a point that this is an incomplete
24 characterization of what Mr. Scardino proposed. Mr. Scardino
25 in his testimony goes on to say that the company anticipates

1 that this Commission would either establish a storm damage
2 clause or allow recovery of these costs through one of the
3 existing clauses, such as the fuel adjustment clause.

4 Q Okay. Now, I'm just trying to understand what the
5 Commission -- what alternatives there are to the Commission if
6 it decides not to approve your petition and if it doesn't
7 necessarily go with any of the consumers. In the circumstances
8 of your company's case now vis-a-vis the 2004 hurricanes, how
9 would Mr. Scardino's proposal work if it were implemented by
10 the Commission here, and if you were allowed a regulatory
11 asset?

12 A Mr. Scardino's proposal would work identically to our
13 proposal except for the fact that we are proposing a two-year
14 recovery rather than a five-year recovery.

15 Q He was proposing a surcharge over five years?

16 A Yes, he was.

17 Q And even over five years, though, the Commission at
18 that point anyway declined the mechanism, correct?

19 A They did not preclude the mechanism, they just
20 decided that it would be taken up as a matter when and if an
21 event were to happen.

22 Q On the same page of that order, two paragraphs down
23 it says, "If FPC experiences significant storm-related damage,
24 it can petition for appropriate regulatory action. In the past
25 this Commission has allowed recovery of prudent expenses and

1 has allowed amortization of storm damage expenses.
2 Extraordinary events such as hurricanes have not caused
3 utilities to earn less than a fair rate of return. FPC shall
4 be allowed to defer storm damage loss over the amount in the
5 reserve until we act on any petition filed by the company." Do
6 you see that?

7 A Yes, I do.

8 Q And maybe this is the point that Mr. McGlothlin
9 raised with you yesterday. It goes on. The next paragraph
10 says, "No prior approval will be given for the recovery of
11 costs to repair and restore T&D facilities in excess of the
12 reserve balance. However, we will expeditiously review any
13 petition for deferral, amortization, or recovery of prudently
14 incurred costs in excess of the reserve."

15 Now, when amortization of storm damage expenses is
16 allowed, that doesn't result in rate increases, does it?

17 A It can if the Commission decides to impose a base
18 rate surcharge.

19 Q But, absent -- are you aware of any example on which
20 the Commission has ever done that?

21 A Well, they are doing it now pending subject to
22 true-up with the FPL storm cost-recovery.

23 Q Aside from that one, has the Commission ever approved
24 a base rate surcharge?

25 A Well, in some respects our Sebring rider is a base

1 rate surcharge that will, in essence, expire in 2015, I
2 believe.

3 Q Okay. You had prior approval for that, correct?

4 A Yes, we did.

5 Q That involved you buying the diesel unit at Sebring,
6 right?

7 A No, sir. We bought the distribution system from the
8 City of Sebring.

9 Q Thank you. But, again, you had prior approval from
10 the Commission before you made the expenditure, right?

11 A No, we did not.

12 Q Okay. If you had a fair rate of return of -- if you
13 had a return authorized of 12 to 14 percent without a sharing
14 mechanism, what would be the minimum fair rate of return that
15 you could have there?

16 A You said the floor and the ceiling were at 12 and 14?

17 Q Twelve and 14, yes.

18 A Thirteen normally, if there is 100 basis points on
19 either side of the midpoint.

20 Q Wait a minute. I want to make sure I understand
21 that. I'm saying the range is 12 to 14, and my question to you
22 is what is the minimum fair rate of return within that range?

23 A The minimum --

24 Q The minimum fair rate.

25 A -- fair rate of return I guess would be the 12

1 percent.

2 Q Okay. Thank you. Now, if the Commission allows you
3 to amortize storm damage expenses without giving you a
4 surcharge, how is that booked or how does that effect the
5 company's earnings?

6 A Without a surcharge it would, as I mentioned before,
7 negatively impact our return on equity. It would increase our
8 expenses without any compensating revenues.

9 Q Okay. And that apparently is one of the
10 methodologies the Commission expressed as being possible in
11 your order in 1993, correct?

12 A Yes, they do.

13 Q And, in this particular case, if they chose the
14 amortization route as opposed to giving you a surcharge,
15 wouldn't it be better for the company to have the amortization
16 over a larger period of years like five as opposed to a shorter
17 period like two, because the annual impact on your earnings
18 would be diminished, wouldn't that be correct?

19 A I mean, mathematically you are correct, but it still
20 exposes the company and its customers to the unforeseen
21 possibility that we could experience another storm like this,
22 and we don't have the financial integrity as we did before this
23 storm to access the capital markets and fund the restoration as
24 efficiently as we have in 2004.

25 Q Okay. But you could certainly -- under the

1 Commission's prior orders you could come in and petition for
2 appropriate relief at that time, as well, couldn't you?

3 A Well, I'm assuming that I would get the same
4 application of the Commission's policy.

5 Q Would you turn to Page 6 of your rebuttal testimony?
6 Do you have it?

7 A Yes, sir.

8 Q Now, you told me a minute ago, didn't you, that the
9 storm cost-recovery treatment that the Commission has now, as
10 well as your recovery clause is a surrogate or a replacement
11 for insurance, correct?

12 A My recovery clause? No, I didn't say that.

13 Q The one you are proposing is also a replacement for
14 insurance, is it not?

15 A I'm confused, I'm sorry.

16 Q Let me start over. You used to have insurance.
17 Prior to Andrew you had insurance for your transmission and
18 distribution system, correct?

19 A That is correct.

20 Q The testimony is that it became prohibitively
21 expensive, therefore you came to the Commission, the utilities
22 did generally, and asked for a self-insurance program which is
23 essentially funded by your customers, correct?

24 A That is correct.

25 Q And I thought you told me earlier, and this is not

1 intended to be a trick or anything, that this is essentially a
2 replacement for insurance, correct?

3 A The self-insurance program, yes.

4 Q Now, you quoted at some length starting at the bottom
5 of Page 6 of your rebuttal, you quoted from the FPL order,
6 correct?

7 A Yes, I did.

8 Q Now, the very bottom of Page 6, would you read the
9 last full sentence that starts at the bottom of Page 6?

10 A It is, is that where you are?

11 Q The record reflects, or go ahead and say --

12 A Oh. "The record reflects the catch-up expense is not
13 recoverable under FPL's current insurance policy."

14 Q Okay. Yet you are asking for it here, are you not?

15 A No, I am not.

16 Q I thought the gist of yesterday's testimony was that
17 catch-up expense is defined by the extra work that has to be
18 taken up and that it is going to be -- is your justification
19 for charging the customers of your company for the regular
20 eight hour days of the employees in base rates in addition to
21 the eight hours plus overtime that you have designated as being
22 storm cost recovery, isn't that correct?

23 A I don't believe so. What I'm asking for is recovery
24 of the direct costs that our company expended in the
25 restoration process. The costs that I will incur to address

1 the catch-up work, which will be on more than likely premium
2 time or through extra contracted labor, will be absorbed in the
3 normal base rates of the company.

4 Q I don't want to belabor this, because the record will
5 show what was said, but I thought that some of your company
6 witnesses preceding you referred to catch-up work. Do you
7 recall that or not?

8 A They did, and I'm saying that the catch-up work will
9 be incurred in base rates and absorbed in the current period by
10 the company in base rates.

11 Q Okay. At Page 13 of your rebuttal testimony, Line 5,
12 starts the sentence, "The Commission, its staff, and various
13 parties in various rate proceedings have had countless
14 opportunities to review these actions," and you are talking
15 about, as I understand it, the ten years of hurricane cost
16 recovery treatment you have had since 1993, correct?

17 A That is correct.

18 Q Now, I think Mr. McWhirter addressed this, or perhaps
19 Mr. McGlothlin, but generally when you had hurricane expenses
20 in the intervening ten years, you discharged them against your
21 reserve, didn't you?

22 A Yes, in accordance with what the Commission has
23 ordered in their rule.

24 Q Right. And they generally didn't involve a case
25 before the Commission, did they?

1 A No, it was not required.

2 Q So, again, when did the various parties have
3 countless opportunities to review those actions?

4 A Well, the Commission has an on-going earnings
5 surveillance monitoring system. Periodically they will do spot
6 audits and will review all the components, and this is a
7 component of base rates. That is one avenue. In the 2002 base
8 rate proceeding we filed MFRs that delineated all aspects of
9 the company's base rates. In fact, intervenors proposed that
10 we reduce the accrual from 6 million to 2. So they had ample
11 opportunity, I would assume, to analyze the history in arriving
12 at that proposal.

13 Q My point, though, is isn't it correct that there were
14 not, there were not a detailed examination of your expenses in
15 recovery?

16 A It was not required.

17 Q Now, on Page 16 of your rebuttal testimony, in
18 addressing the recovery of extraordinary security costs
19 resulting from the 9/11 terrorist attack, you go on to say at
20 Line 4, "This only makes sense. PEF is a regulated cost of
21 service utility. It is entitled to recover reasonable and
22 prudent expenses as a statutory and constitutional
23 entitlement," correct?

24 A That is correct.

25 Q Okay. Now, you recognize, of course, don't you, that

your company is not a cost plus operation, right?

2 A No, it is cost plus a reasonable return on its
3 development.

4 Q Well, but haven't you previously acknowledged that
5 rates are set prospectively to give you an opportunity to cover
6 your reasonable, necessary, and prudent costs plus a fair
7 return on your invested capital, correct?

8 A That is correct, normal recurring costs.

9 Q And that generally if you don't get all of your
10 expenses in prior periods, it is not like a cost plus contract
11 where you can go back and pick that up, isn't that correct?

12 A That is correct. We discussed that we can't go back
13 to a prior year and collect it in a future year.

14 Q Except that you are trying that, you are asking for
15 it here?

16 A I disagree. I have complied with the Commission's
17 directions, and have deferred recognition of these expenses in
18 accordance with the rule, and have petitioned this Commission
19 to adjudicate how we proceed to recognize these expenses. And
20 our petition has been consistent with our position that we
21 believe that these expenses should be dealt with in a
22 cost-recovery type mechanism given their unpredictability and
23 volatility.

24 Q By this sentence, "It is entitled to recover
25 reasonable and prudent expenses as a statutory and

1 constitutional entitlement," are you suggesting that either
2 there is, one, a statutory obligation for this Commission to
3 give you the relief requested here, or a higher constitutional
4 requirement that the Commission give it to you?

5 A No. I think it is a reference to the fundamental
6 regulatory compact that this Commission has implemented that
7 for base rates recovery the company will be entitled to its
8 normal recurring costs plus the opportunity to earn a
9 reasonable and just rate of return. And it also has
10 acknowledged that for volatile costs, such as fuel, that the
11 company will be entitled to recovery of any prudently incurred
12 costs. We feel that like fuel, this is a volatile cost that is
13 beyond the ability of management to predict and, therefore, not
14 incorporated in the risk that has been assigned in that
15 establishment of the reasonable rate of return and, therefore,
16 should be treated consistent with other pass-through type
17 costs.

18 Q Didn't the Commission specifically address that
19 concept and reject it earlier in the 1993 order for Florida
20 Power and Light which we have discussed before? And, if you
21 have the order it is Page 5. I want to read this. Actually
22 let me ask you to read. It is at Page 5 of Order PSC-93-0918
23 if you have it.

24 A I believe I'm there.

25 Q Okay. If you would read the sentence in the middle

1 that starts, "Storm repair expenses is."

2 A I believe I read this yesterday.

3 Q I'm sorry, did you?

4 A Yes, I did.

5 Q I'm sorry, I missed that. Well, I won't ask you to
6 do it again. But you would agree, would you not, that the
7 Commission addressed the issue of whether storm damage expenses
8 are like conservation and fuel and rejected it, did they not?

9 A I believe that in the context in which this order was
10 written FPL was requesting the establishment of a clause prior
11 to having experienced such an event as we have experienced in
12 2004, and I think the Commission at the time may not have had
13 the full breadth of the impact that such an event would have on
14 the utilities. I think that this cost is exactly the type of
15 cost that the clauses were designed to capture, simply because
16 it would fall through the cracks if it were not. It is not a
17 normal recurring cost as the Commission has defined for setting
18 base rates.

19 Q Okay. Now, in addition to the other methodologies
20 available to the Commission, one more is settlement, correct?

21 A I'm sorry, one more is what?

22 Q Settlement.

23 A Settlement?

24 Q Settlement. The Commission can entertain a
25 settlement between a utility and the parties, correct?

1 A Absolutely.

2 Q Now, would I be correct -- you are aware, of course,
3 that the Commission -- in your duties in following what the
4 Commission does in regulating electric utilities that the
5 Commission recently approved a settlement between Gulf Power
6 Company and the Office of Public Counsel and FIPUG, is that
7 correct?

8 A Yes, it did.

9 Q Did you read the settlement?

10 A Yes, I did.

11 Q Okay. Now, my understanding is that Gulf Power
12 Company through the settlement agreed to forgo collecting from
13 its customers roughly half of its 2004 storm cost-recovery
14 charges. Am I generally correct there?

15 A I believe so.

16 Q What I want to ask you is was Gulf Power Company
17 generous in doing that, were they financial imprudent, or both?

18 MR. WALLS: I'm going to object that it calls for
19 speculation and is clearly irrelevant.

20 CHAIRMAN BAEZ: Sustained, Mr. Twomey.

21 MR. TWOMEY: Fine, Mr. Chairman.

22 BY MR. TWOMEY:

23 Q Do you believe -- don't you believe that if this
24 Commission gives your company everything you are asking for
25 here that Gulf Power Company's shareholders will view them to

1 have made a mistake?

2 MR. WALLS: Object, calls for speculation and
3 irrelevance.

4 CHAIRMAN BAEZ: Mr. Twomey, I am going to sustain it
5 again. There are any number of questions that you can ask
6 based him on the Gulf Power --

7 MR. TWOMEY: Mr. Chairman, that's fine. I will stop
8 right there.

9 CHAIRMAN BAEZ: -- what he knows about the Gulf Power
10 settlement, but those aren't one of them.

11 MR. TWOMEY: That's fine. I will stop right there.
12 Thank you. I'm finished.

13 CHAIRMAN BAEZ: Well, you didn't say that.

14 MR. TWOMEY: I meant I will stop right there.

15 CHAIRMAN BAEZ: Staff.

16 MS. BRUBAKER: Thank you. Staff has just a few
17 minutes worth of cross.

18 CROSS EXAMINATION

19 BY MS. BRUBAKER:

20 Q Mr. Portuondo, if I could have you refer, please, to
21 Progress's response to staff's interrogatory Number 48. And if
22 you will look at the staff composite exhibit that you are
23 holding right there, it is the Bates stamped Number 97.

24 A Yes, ma'am.

25 Q And are you familiar with this response, were you the

1 person responsible for it?

2 A Yes.

3 Q Okay. In this response you outline the mechanics of
4 Progress's proposed storm cost-recovery clause factors, is that
5 correct?

6 A Yes, it is.

7 Q And that is based on the current time schedule that
8 is pretty much established in this docket at this point?

9 A Yes.

10 Q In your response you propose three separate sets of
11 factors by rate class to be effective the 1st of July through
12 December 2005, January through December 2006, and January
13 through June 2007, correct?

14 A That is correct.

15 Q And this continues to be the method that Progress
16 advocates?

17 A Yes, it is.

18 Q There have been no changes or modifications to it?

19 A No, there hasn't.

20 Q You indicate also in this response that factors will
21 be developed for each of the three periods based on the updated
22 sales forecasts by rate class for each period, is that correct?

23 A That is correct.

24 Q And these factors would also be revised to reflect
25 the actual dollar amount that the Commission approves for

1 recovery?

2 A Yes, it would.

3 Q And that would also include any applicable interest
4 the Commission might deem appropriate?

5 A Yes.

6 Q Is it your understanding that under the method that
7 is outlined, the initial factors would be based on a forecast
8 of kilowatt hour sales for the period July through December
9 2005 for the initial factors?

10 A Yes.

11 Q And tariffs reflecting these factors would then be
12 filed by Progress for approval following the Commission's vote?

13 A Yes.

14 Q Is it also Progress's proposal to file in conjunction
15 with its other cost-recovery clause filings revised factors
16 that would be effective January through December 2006?

17 A Yes, it would.

18 Q And the filing would incorporate a true-up
19 calculation?

20 A Yes, it would.

21 Q And it would also reflect the actual cost occurred by
22 Progress and the actual revenues collected?

23 A Yes, it would

24 Q And, again, the factors would be calculated based on
25 the kilowatt hour sales forecasts for calendar year 2006?

1 A Yes, it would.

2 Q And for the period January through June 2007,
3 Progress would file revised factors in conjunction with its
4 other cost-recovery filings for 2007?

5 A Yes, we would.

6 Q And that would also, again, include a true-up between
7 projected and actual revenues?

8 A Yes.

9 Q And those factors would be based on Progress's
10 projected kilowatt hour sales for the period January through
11 June 2007?

12 A Yes, they would.

13 Q Is my understanding correct that the proposed clause
14 if it were approved would expire at the end of June 2007?

15 A It would if there was no remaining true-up necessary
16 to be collected.

17 Q To the extent that there is any over or underrecovery
18 of storm-related costs that remains at the end of June 2007,
19 what would Progress's proposal be to deal with that?

20 A One possibility would be to allow Progress Energy to
21 incorporate that in one of the other standing clauses that the
22 Commission has.

23 Q Are there any other mechanisms that were discussed or
24 contemplated?

25 A That is the only one that I have considered.

1 Q If I could also kind of talk about -- earlier there
2 was a line of questioning by Mr. McWhirter, you expressed
3 agreement that it might be appropriate to carve out the
4 deferred taxes related to storm damage from base rates?

5 A Yes, ma'am.

6 Q And I suppose recognizing through a storm recovery
7 mechanism?

8 A Incorporate the benefit on the calculation of the
9 carrying costs, yes.

10 Q So you would agree that the interest should be
11 calculated net of the tax, is that correct?

12 A Yes.

13 Q Could you please clarify how that would impact the
14 accumulated deferred taxes that would be recognized in base
15 rates?

16 A You would have a specific adjustment to remove the
17 deferred taxes associated with the storm given that they are
18 being recognized in the cost-recovery mechanism.

19 Q So the accumulated deferred taxes would be removed
20 from base rates?

21 A Yes.

22 Q And there would be an adjustment to deferred taxes
23 and the cost of capital?

24 A Yes.

25 Q Would you also agree that it is appropriate to remove

1 the negative storm damage reserve from base rates and earnings
2 surveillance consideration?

3 A Absolutely.

4 Q In essence, do you agree then with Witness Brown's
5 calculation of interest?

6 A Sort of maybe. I have to refresh my memory on her
7 calculation, but the gist of it upon further contemplation I do
8 agree that we should take that deferred tax into the clause.

9 Q Would you be willing to file a late-filed exhibit
10 which would have an updated calculation of interest? I can
11 refer you to your JP-2 to your testimony. There is one for
12 2005, one for 2006, if we could get an updated calculation of
13 interest for those?

14 A Yes.

15 MS. BRUBAKER: Mr. Chairman, if I could have
16 identified as --

17 CHAIRMAN BAEZ: I have 49, is that --

18 MS. BRUBAKER: 49.

19 CHAIRMAN BAEZ: Mr. Portuondo, any idea how long it
20 would take you to provide the exhibit?

21 THE WITNESS: You will have it tomorrow.

22 CHAIRMAN BAEZ: Okay. Show it marked as 49. Are you
23 clear on what they're asking?

24 THE WITNESS: Yes.

25 (Late-filed Exhibit 49 marked for identification.)

1 MS. BRUBAKER: And with that, staff has no further
2 questions. Thank you.

3 CHAIRMAN BAEZ: Thank you, Ms. Brubaker.
4 Commissioners, do you have any questions?

5 Commissioner Deason.

6 COMMISSIONER DEASON: Mr. Portuondo, as I understand
7 your testimony, you are seeking recovery of all direct cost of
8 storm recovery with the exception of incremental capital costs,
9 is that correct?

10 THE WITNESS: No, in addition to incremental capital
11 costs.

12 COMMISSIONER DEASON: You are seeking incremental
13 capital costs in addition to all direct costs?

14 THE WITNESS: Well, the direct costs are the O&M
15 costs and then the incremental is that above --

16 COMMISSIONER DEASON: I'm sorry, the normal cost of
17 capital you are giving separate treatment to, is that correct?

18 THE WITNESS: Yes, sir.

19 COMMISSIONER DEASON: I misspoke. The incremental
20 capital cost is part of the recovery. Normal capital costs
21 that would have been incurred regardless of the storm, even
22 though they are related to the storm, you are treating those
23 separate giving them more of a traditional approach?

24 THE WITNESS: Oh, absolutely. As well as the same
25 type of O&M is being absorbed in future periods by the

1 company's so-called catch-up work.

2 COMMISSIONER DEASON: And you are doing this -- it is
3 also your testimony this is consistent with the methodology
4 that has been followed internally by your company since 1993?

5 THE WITNESS: Yes.

6 COMMISSIONER DEASON: Has that received Commission
7 approval in the form of acknowledgment through an order or
8 rule?

9 THE WITNESS: As I have mentioned previously, it was
10 an outcome of the self-insurance proceeding. The company,
11 having not been told by the Commission that they were taking
12 exception to the methodology that the then Commission asked us
13 to put forward, we went forth and implemented that on the
14 assumption that the Commission had accepted it and we needed to
15 comply with the Commission's acceptance of that process and
16 have not deviated from it for the last ten years.

17 COMMISSIONER DEASON: Prior to the filing in this
18 proceeding, was there ever a recovery of capital costs,
19 carrying costs associated with a negative balance in the
20 reserve?

21 THE WITNESS: No, the reserve had not gone negative
22 in that period of time. It got close, but --

23 COMMISSIONER DEASON: And when it was positive, which
24 obviously is the goal -- when it was positive there were no
25 earnings calculated on that, it was just part of the working

1 capital calculation in determining base rates and in
2 surveillance reporting, is that correct?

3 THE WITNESS: That is correct.

4 COMMISSIONER DEASON: So it would be a deviation to
5 allow interest on this negative balance from what has been done
6 prior to this filing, is that correct?

7 THE WITNESS: Well, there hasn't been a negative
8 balance. The reserve, in essence, lowers your overall cost of
9 capital in base rates thereby reducing the customers' carrying
10 costs on capital, and that is why --

11 COMMISSIONER DEASON: But the reverse of that would
12 be -- to have a negative balance would be to have a negative
13 amount in calculation of working capital and an increase in
14 rate base, and it would be costs you would absorb in base
15 rates, is that correct?

16 THE WITNESS: It would be a higher cost of capital,
17 yes, sir.

18 COMMISSIONER DEASON: Prior to Andrew in '93, when
19 there was insurance available, did that insurance provide for
20 the recovery of the same level of costs you are seeking for
21 recovery in this proceeding, i.e., all direct costs?

22 THE WITNESS: Yes, it did.

23 COMMISSIONER DEASON: And that includes labor costs
24 of recovering from the storm, correct?

25 THE WITNESS: Yes, it did.

1 COMMISSIONER DEASON: Did that include both hourly
2 wages as well as a proration of salaried labor costs?

3 THE WITNESS: All direct costs.

4 COMMISSIONER DEASON: And that would include salary,
5 as well?

6 THE WITNESS: Yes, it would.

7 COMMISSIONER DEASON: Of all the direct labor costs
8 that you are seeking recovery in this proceeding, do you know
9 how much of that is salaried and how much of that is hourly?

10 THE WITNESS: I don't have it with me, but I believe
11 we have answered it in a discovery question. We could provide
12 that to you.

13 COMMISSIONER DEASON: Okay. I guess my only concern
14 is that going to be part of the record in this proceeding,
15 staff? Can you identify the discovery?

16 THE WITNESS: I would have to take some time to find
17 it. We have provided a great deal of detail on whether it was
18 bargaining unit, whether it was salaried or nonsalaried
19 employee payroll in the discovery questions.

20 CHAIRMAN BAEZ: Commissioner, if it will help, I
21 remember a similar question being asked with a similar
22 response. If there is a way that we can go ahead -- Mr.
23 Portuondo?

24 THE WITNESS: Yes. I believe that, in fact, Issue 3,
25 the intervenors identify the management labor to be

1 5.4 million.

2 COMMISSIONER DEASON: 6.4 million?

3 THE WITNESS: Yes.

4 CHAIRMAN BAEZ: Is that satisfactory to you,
5 Commissioner, because otherwise what I was going to suggest is
6 that if it has been produced in discovery we can just make
7 sure -- if it hasn't been entered into the record that we can
8 obtain it.

9 THE WITNESS: I'm not sure if this is part of staff's
10 exhibit, but there was Interrogatory 43 of staff. Of Sugarmill
11 Woods.

12 MR. WALLS: Sugarmill Woods' Interrogatory Number 43.

13 COMMISSIONER DEASON: Is Sugarmill Woods'
14 Interrogatory 43 in the record?

15 MR. WALLS: I don't believe so.

16 COMMISSIONER DEASON: Is there any objection to
17 putting it in the record?

18 CHAIRMAN BAEZ: Right, that was going to be the
19 question.

20 MR. TWOMEY: No, sir, there is not.

21 CHAIRMAN BAEZ: I reached the limits of my -- you
22 know.

23 MR. WALLS: No objection.

24 CHAIRMAN BAEZ: No objections? Then, staff, can
25 you -- I guess you are the best ones to see that that happens.

1 Can we just give it a number?

2 MS. BRUBAKER: I suppose we could simply identify it
3 as Exhibit 50.

4 CHAIRMAN BAEZ: Let's identify it as Exhibit 50, and
5 just for clarity sake, can we go ahead and -- did you have it
6 there?

7 THE WITNESS: Yes, sir.

8 CHAIRMAN BAEZ: And what is the title on it or the
9 identifying interrogatory number?

10 THE WITNESS: Interrogatory Number 43.

11 CHAIRMAN BAEZ: Of Sugarmill Woods?

12 THE WITNESS: Of Sugarmill Woods.

13 CHAIRMAN BAEZ: Okay. Boy, that was easy.

14 COMMISSIONER DEASON: Thank you, Mr. Chairman.

15 CHAIRMAN BAEZ: No problem.

16 (Exhibit 50 marked for identification.)

17 COMMISSIONER DEASON: And I want to explore with you
18 just a moment if there is any relevancy to distinguishing
19 between hourly labor costs and salaried labor costs when it
20 comes to calculating overall direct labor costs in storm
21 recovery calculation. I understand from your testimony,
22 particularly in your rebuttal testimony you indicate that there
23 is a substantial amount of deferred labor costs because there
24 are functions from employees that the work does not go away
25 when their activities have to be directed toward restoration of

1 service, such as connections and installing new infrastructure,
2 all of those things that have to be done on an ongoing basis,
3 correct?

4 THE WITNESS: That is correct.

5 COMMISSIONER DEASON: But my question is when it
6 comes to salaried employees, and I think you indicated that
7 none of your salary has been allocated, but there are number of
8 salaried employees. What functions do they normally perform as
9 part of their salary that does not get performed during storm
10 restoration and then has to be done by those salaried employees
11 subsequent to storm restoration? Can you give me some examples
12 of that?

13 THE WITNESS: Well, I mean, there are a number of
14 administrative tasks that still need to be accomplished, of
15 course. All the proceedings before this Commission, we still
16 have deadlines, we still need to meet those obligations of
17 filing with this Commission, as well as other external
18 financial reporting obligations to the SEC. There are NRC
19 regulations that need to be met and so forth.

20 COMMISSIONER DEASON: Have you gotten any extensions
21 of time to file any of those things because the managers had to
22 be on storm restoral duty as opposed to filing reports?

23 THE WITNESS: We did get some, but there are other
24 normal tasks for which deadlines had not been extended and they
25 just kind of pile up on each other. We did get a little bit

1 more time before this Commission, which we were very
2 appreciative of, but they tend to still cause this backlog of
3 work.

4 The other factor that needs to be considered is that
5 to the extent that you don't have revenues coming in, you are
6 actually not recovering the costs that you are incurring. In
7 the concept of ratepayers are reimbursing the company for its
8 normal recurring costs in those months, if the revenue is not
9 coming in then we are not getting the revenues that would
10 directly offset those costs. So that is another variable that
11 needs to be taken into consideration.

12 COMMISSIONER DEASON: Did your insurance provide --
13 coverage prior to Andrew provide you a coverage for lost
14 revenue?

15 THE WITNESS: I don't believe it did, but like we
16 discussed a few minutes ago, it covered all of our direct
17 costs, similar to what we are asking the Commission through
18 this clause. We are not asking the Commission for lost
19 revenues, we are only asking for the direct costs necessary to
20 restore.

21 COMMISSIONER DEASON: This is part of the problem I'm
22 having and maybe you can help me with it. I can understand
23 that if there is a crew working on a truck and that their
24 normal job is to maybe inspect transformers and replace
25 defective ones, and that is work that has to be done. And if

1 their activities get diverted away from doing that to
2 restoration of service, that doesn't mean that work goes away,
3 it has to be done at some future time.

4 THE WITNESS: That's correct.

5 COMMISSIONER DEASON: But when it comes to a manager,
6 I'm having difficulty getting that concrete example where there
7 is a function that a manager does that has a salary, because
8 what I have experienced is -- and this Commission is a great
9 example. I mean, we get by with what we have. We earn a
10 salary, all of our employees earn a salary, and if you and
11 Power and Light both file a rate case at the same time, we
12 don't get to defer a little bit of that to a future time. The
13 job is here and we do the work. And that is generally the
14 requirement of salaried employees. The work load is what it
15 is. It may go up, it may go down, but you are expected to get
16 the job done.

17 And I'm not trying to take anything away from the
18 heroic effort of both hourly and salaried employees. I'm not
19 trying to take one iota away from that, but it just seems like
20 that -- I'm having difficulty understanding how management
21 salaries -- there is this big back load, I mean, a backlog of
22 work that is going to have to be done subsequent to storm
23 restoral. So help me with that, please.

24 THE WITNESS: Sure. One way to look at it is for
25 every crew that you are sending out you have got supervisory

1 personnel that are also managing those crews. So they will be
2 spending incremental time in the future to coordinate those
3 crews.

4 I think the best way to look at the salaried
5 employees is that the costs were incurred, no revenues were
6 received for those costs during that period of time. Their
7 salary during that period of time had no corresponding revenues
8 to offset. So, therefore, there was no collection. I mean,
9 they have been characterized as double-dipping. There is no
10 double-dipping. There were no revenues during that period of
11 time, so, therefore, there was nothing coming in to cover those
12 costs. So that is one variable to consider. And, again, the
13 fact that for every line crew and transmission line crew that
14 is out there restoring, there are management personnel that are
15 directly involved in all of that process.

16 COMMISSIONER DEASON: Well, you didn't hire any
17 additional managers, did you? Are you having to hire any
18 additional managers in the post-storm period to carry out the
19 backlog of work that needs to be accomplished?

20 THE WITNESS: I do not know the precise execution of
21 how they were dealing with their backlog, whether they have had
22 to hire supervisory personnel in order to manage the additional
23 crews that they have had to hire to accomplish the work. That
24 is a possibility. I'm not the right witness for that.

25 COMMISSIONER DEASON: Thank you, Mr. Chairman.

1 CHAIRMAN BAEZ: Redirect. Well, let me ask. I saw
2 you look at the watch, and I probably should have, too, Mr.
3 Walls. How much redirect are we talking about? It's probably
4 considerable, I'm sure.

5 MR. WALLS: Well, I've been trying to eliminate
6 things as I have heard the testimony, so it's hard for me to
7 gauge how long it would take, and that's why I looked at my
8 watch.

9 CHAIRMAN BAEZ: Well, my plan was to break no later
10 than 1:30, and I think if we go for 45 minutes we can be back
11 at 2:15 and we can start your redirect if that is all right.
12 We are in recess until 2:15.

13 (Lunch recess.)

14 CHAIRMAN BAEZ: We will reconvene the hearing. And I
15 think we were at the point of redirect, Mr. Walls?

16 MR. WALLS: Yes. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. WALLS:

19 Q Mr. Portuondo, let me deal with this issue quickly.
20 You were asked a number of questions about securitization.
21 What is your understanding of the status of securitization?

22 A It is a bill before the legislature and its outcome
23 is yet to be determined.

24 Q So do you have any way right now to know what that
25 bill will look like even if it comes out of the legislature?

1 A No, I do not.

2 Q Mr. Portuondo, I would like to turn to the questions
3 you received about accounting for storm-related costs. In
4 particular, what costs can be charged to the storm damage
5 reserve. If you would turn to the self-insurance order in the
6 Progress Energy Florida case, which I believe you have been
7 handed at least twice, and that is Order Number PSC-93-1522 in
8 Docket Number 930867-EI?

9 A Yes.

10 Q And if you look at -- I'm not sure which page this is
11 on. It's on the page in what Mr. McGlothlin handed you. It
12 has got 93-FPSC-10:256.

13 A Yes.

14 Q In the second paragraph of that order, is that where
15 the Commission directed the company to submit a study?

16 A Yes, they did.

17 Q And was that study required to be similar to the one
18 that was required of FPL in its self-insurance docket?

19 A Yes, it was.

20 Q And what in particular did the Commission require the
21 company to address in the study?

22 A The Commission required the company to identify
23 exactly what types of costs it would charge against the reserve
24 that would be approved. It required the company, of course, to
25 identify the level of accrual, which would be, of course,

1 predicated on the types of costs that one would incur as a
2 result of restoration. And, thirdly, the Commission asked that
3 we continue to monitor the insurance industry.

4 Q And did the Commission indicate in this order that
5 the answer to any one of those questions that it wanted
6 answered was more important than any other question?

7 A No, it did not.

8 Q Do you believe that the company was free to ignore
9 the Commission's request for the study?

10 A Absolutely not.

11 Q Do you believe the company was free to answer only
12 one or two of the questions that the Commission asked the
13 company to address in that study?

14 A No.

15 Q Do you understand that the Commission was going to
16 grant the company's full request in the self-insurance docket
17 without that study?

18 A I don't believe they were.

19 Q And was the 1993 self-insurance docket kept open
20 until the study was submitted to the Commission?

21 A Yes, it was.

22 Q Did the company incur time and expense answering all
23 the questions the Commission asked it to address in that study?

24 A Yes, they did.

25 Q In your experience, has the Commission required the

1 utility to incur time and expense to prepare a study for the
2 Commission for no reason?

3 A Not to my knowledge.

4 Q And did the company, in fact, file a study with the
5 Commission that addressed all the questions that it was asked
6 to answer by the Commission in this order?

7 A Yes, we did.

8 Q And when did you do that?

9 A February 1994.

10 Q Did the Commission reject the company's study?

11 A No, they did not.

12 Q Did the Commission find any answer to the questions
13 that the Commission had asked the company to address in that
14 study deficient in any way?

15 A No, they did not.

16 Q And was the self-insurance docket opened in 1993
17 closed after PEF submitted its study in 1994?

18 A Yes, it was.

19 Q And what happened to the accrual to the storm reserve
20 in 1994?

21 A The accrual was increased to \$6 million.

22 Q Okay. And how did the company come up with that \$6
23 million, what makes up that \$6 million?

24 A The \$6 million is made up of the same type of costs
25 that the company identified in its study in response to the

1 Commission's question of what would be charged to the reserve.
2 The reserve, of course, has to be set at a level that will
3 accept the charges and they should be the same type of charges.

4 Q And, was it the company's belief that the study had
5 been accepted by the Commission?

6 A Yes, it was.

7 Q And what was the company's answer to the study with
8 respect to what storm-related costs the company would charge
9 against the storm damage reserve?

10 A We indicated to the Commission that it would be all
11 direct costs associated with restoration, preparation and
12 restoration in the event of a major storm.

13 Q And does the study give examples of the type of costs
14 that the company intended to charge against the storm damage
15 reserve?

16 A Yes, it does.

17 Q And can you direct us to that in the exhibit to your
18 rebuttal testimony, which is Exhibit 43? I'm sorry, 42.

19 A Yes. JP-3, Exhibit Number 3 in Section 7. Two
20 pages. It goes through and identifies the various types of
21 costs that would be charged to the reserve and which the
22 accrual was based on.

23 Q And does that study also include an exhibit that
24 outlines the types of costs that would be charged against the
25 reserve?

1 A Yes, it does.

2 Q And is that Exhibit 3 to the study?

3 A Yes, it is.

4 Q And in determining what the accrual should be in
5 addition to determining the historical experience of
6 hurricanes, was this type of cost included in determining how
7 to come up with the \$6 million accrual?

8 A Yes, it was.

9 Q And by the way, on the accrual you have been asked a
10 number of questions about your Exhibit JP-1, which indicated
11 the historical record of what has been charged against the
12 reserve. What was the basis for the identification of the
13 types of storms that would be included within the accrual in
14 the reserve?

15 A Well, the study looked back in time and attempted to
16 simulate the various paths of previous storms and quantify the
17 impact based on that path to Florida Power's at the time
18 service territory. And based on the extent of the -- based on
19 the force of the storm when it hit the territory, and based on
20 these types of costs that would be incurred, the model
21 attempted to project what the annual level of expense and what
22 the appropriate accrual should be.

23 Q If you applied the same philosophy today and looked
24 backward at historical experience, including 2004, would that
25 probably look a lot different than it did when you prepared the

1 study in 1994?

2 A Yes, it would.

3 Q And how did the company account for the storm-related
4 costs that it incurred after it filed the study with the
5 Commission in 1994?

6 A We accounted for it consistent with the presentation
7 in our study in Exhibit 3 and Exhibit 4. Exhibit 4 shows the
8 actual T accounts of how we were going to account for these
9 costs.

10 Q And for how many storms and hurricanes did you
11 account for costs in the manner in which your study since 1994?

12 A Nine storms.

13 Q And there were several hurricanes during that time
14 period of, right?

15 A Yes, the majority were hurricanes.

16 Q And was your accounting for costs and charging them
17 against the reserve done in secret?

18 A No, it wasn't.

19 Q Do you think people were aware that Hurricane Opal,
20 for example, had occurred?

21 A Very much so.

22 Q Do you think they were aware that the costs, the
23 company had incurred costs to restore power after Hurricane
24 Opal?

25 A Yes.

1 Q Has anyone, the Commission or any of the intervenors
2 in this case ever questioned PEF's charges against the storm
3 damage reserve before 2004?

4 A No.

5 Q After the company filed its study with the Commission
6 in 1994, why didn't the company account for storm-related costs
7 in a manner different from what it said it would do in its
8 study?

9 A We believed that the Commission had ruled and they
10 had ruled in acceptance of our accounting proposal, and we
11 followed through in implementing that order.

12 Q Do you believe it would be appropriate for the
13 company to change its method of charging costs to the storm
14 damage reserve from what it told the Commission it would do in
15 answer to the Commission's question?

16 A No, unless it petitioned the Commission for a
17 deviation from that order.

18 Q And how did the company determine what costs should
19 be charged to the storm damage reserve for the 2004 hurricanes?

20 A Exactly the same way as we presented in the study.

21 Q And has there been any other Commission action which
22 lends you to believe that the Commission accepted the company's
23 study?

24 A Well, I believe they have had interaction with Power
25 and Light whereby they had approved the accounting in

1 accordance with their study, which, again, we prepared ours to
2 be similar to theirs, so --

3 Q And you were certainly aware that FPL had been
4 ordered to prepare a study prior to your self-insurance docket,
5 right?

6 A Yes, it was part of our order.

7 Q And you were aware of that study being filed -- or,
8 'm sorry, when was the FPL study filed?

9 A I believe in '93, October of '93.

10 Q And was the company aware of that filing?

11 A Yes, we were.

12 Q And did the company review that filing before it
13 prepared and filed its own study in 1994?

14 A Yes, we did, given the fact that the Commission
15 requested that it be similar to that study.

16 Q I want to direct you to some of the other orders that
17 you were handed by a number of the intervenors, starting with
18 the self-insurance docket for FPL, which was Order Number
19 PSC-93-0918 in Docket Number 930405. Do you have that one?

20 A Yes.

21 Q And I believe that at least two, if not three of the
22 intervenors asked you to read a particular paragraph on Page 5
23 of that order regarding the storm repair expense. **Not the type**
24 of expenditure that the Commission has traditionally earmarked
25 for recovery through an ongoing cost-recovery clause. Do you

1 recall that?

2 A Yes, I do.

3 Q And at that point in time had the Commission ever had
4 the opportunity to order the recovery of cost for a
5 catastrophic storm through a cost-recovery clause?

6 A No.

7 Q If you will turn to Page 6 of that same order. And,
8 by the way, I believe you heard Mr. Twomey say that that
9 paragraph he asked you to read on Page 5 foreclosed the
10 opportunity for the utility to get cost-recovery. Do you
11 recall that?

12 A Yes, I do.

13 Q If you would turn to Page 6 of the same order, and
14 read the fourth paragraph down.

15 A The one that begins, "Given our decision not to
16 authorize?"

17 Q On Page 6, "The Commission will expeditiously
18 review," do you see that?

19 A That is the first paragraph.

20 Q Oh, you've got a different copy. I'm sorry.

21 A And I believe I have read this one before, too, but,
22 "The Commission will expeditiously review any petition for
23 deferral amortization or recovery of prudently incurred costs
24 in excess of the reserve. Our vote today does not foreclose or
25 prevent further consideration at a future date for some type of

1 a cost-recovery mechanism either identical or similar to what
2 has been proposed in this petition."

3 Q That's enough, Mr. Portuondo. Does that indicate to
4 you that the company had foreclosed consideration of a
5 cost-recovery clause for costs incurred in excess of the storm
6 reserve in this order?

7 A No, the Commission did not foreclose it.

8 Q And are you aware that the Commission has on several
9 occasions determined that the FPL study that was submitted in
10 its self-insurance docket was adequate?

11 A Yes, I have.

12 Q You were also handed another order of the Commission
13 dealing with the FPL storm self-insurance program, Order Number
14 PSC-98-0953 in Docket Number 971237 issued July 14th, 1998?

15 A Yes.

16 Q And I believe it was Mr. McWhirter who asked you to
17 read a particular sentence out of this order on Page 4
18 regarding the funding level sufficient to protect an Andrew
19 type event. Do you recall that?

20 A Yes, I do.

21 Q If you would turn to Page 5 of that same order?

22 A Yes.

23 Q Would you read the last two sentences of the
24 carryover paragraph from Page 4 to Page 5 beginning with FPL's
25 financial resources?

1 A Yes, sir. "FPL's financial resources from the line
2 of credit and the fund appear to be sufficient to cover most
3 storm emergencies. However, the cost of storm damage incurred
4 over and above the balance in the reserve and the cost of the
5 use of the line of credit will still have to be recovered from
6 the ratepayers."

7 Q Does that indicate to you that the Commission was
8 aware even in this order in '98 that --

9 MR. MCGLOTHLIN: I object to questions that lead the
10 witness on redirect. This has been done a number of times and
11 I think counsel can rephrase so not to indicate the answer he
12 wants to his question.

13 CHAIRMAN BAEZ: That would have been my instruction,
14 Mr. Walls, if you can do it.

15 MR. WALLS: I will rephrase.

16 BY MR. WALLS:

17 Q Mr. Portuondo, what does this indicate to you about
18 the Commission's position with respect to the excess recovery
19 above the storm damage reserve for FPL?

20 A Well, it indicates to me that the Commission was well
21 aware that the companies would be seeking recovery of that
22 deficiency from ratepayers.

23 Q Mr. Portuondo, I believe it was OPC's questions
24 regarding the study with respect to the basis of the study. Do
25 you agree or disagree with their argument that the only reason

1 the company used the method in the study of charging costs to
2 the storm damage reserve was to ease a move back to third-party
3 insurance if it became available?

4 A I disagree.

5 Q And why is that?

6 A We have always had third-party insurance for other
7 areas of the company. So, the concept of moving back or not, I
8 think, was not a primary focus of the company. It was the fact
9 that in an emergency state like we were in and would be in in a
10 storm event, normal accounting practices just don't work. You
11 do not have the flexibility of planning for and making sure
12 that certain crews are working on certain types of work and be
13 able to track it.

14 These employees are sent out into the field, they are
15 doing everything and anything they have to do to get things
16 back restored and everything is getting charged to one place.
17 It is not segregated such that you can actually differentiate
18 whether it is an O&M activity or if it is incremental or not.
19 It definitely would reduce the effectiveness of our restoration
20 process.

21 Q And did FPL address the incremental approach in its
22 study?

23 A To a great length, I believe. They articulated the
24 drawbacks of the incremental method in their -- I believe their
25 testimony, and in their study which we were instructed to

1 prepare ours similar to theirs.

2 Q And do you agree that there are drawbacks with the
3 incremental approach?

4 A Yes. The analysis that they provided indicated that
5 it would be more costly if you attempted to identify every
6 incremental cost that was the result of the hurricane because
7 as you are redeploying your work force other areas of the
8 company are still functioning, and those areas need to
9 accomplish the basic needs of the company and may have to do
10 that through working those remaining employees extra hours or
11 hiring other individuals to facilitate getting that work
12 complete.

13 Q And, again, what approach did you follow heading into
14 the 2004 storms?

15 A The exact same approach we told the Commission we
16 would follow.

17 Q And is that an actual restoration cost approach?

18 A Yes, it is.

19 Q So did you go into the storms trying to identify all
20 the incremental impacts that might occur from the storm?

21 A We did not set up the infrastructure in order to even
22 attempt to quantify that.

23 Q And, by the way, do you continue to have insurance
24 coverage for storms for part of your system?

25 A Yes. I believe I have mentioned that, of course, for

1 our power plants we have insurance coverage, for our
2 substations we have insurance coverage.

3 Q And do you continue to have a combination then of
4 insurance and self-insurance?

5 A Yes, we do.

6 Q And what accounting method do you follow for the
7 storm costs for that part of your system that is covered by
8 insurance?

9 A The exact same.

10 CHAIRMAN BAEZ: Mr. Walls, can I just ask a quick
11 question. I think the answer may have come out in another
12 context, but I just wanted to be clear. Business losses are
13 not part of your insurance package?

14 THE WITNESS: No, it is not.

15 CHAIRMAN BAEZ: Okay.

16 BY MR. WALLS:

17 Q Mr. Portuondo, when the utility approached the
18 Commission for self-insurance, why did it do that?

19 A The market for third-party insurance had reached a
20 point where it really was unaffordable for customers. It had
21 shrunk in size because of Hurricane Andrew and the cost had
22 just increased so significantly that it would have really
23 caused price shock to the customers to pursue that avenue.

24 Q Who paid the insurance premiums and deductibles under
25 third-party insurance for T&D and who pays that today for the

1 third-party insurance you do have?

2 A Customers.

3 Q Was Progress Energy Florida seeking less coverage for
4 its storm-related costs in the self-insurance program when it
5 approached the Commission?

6 A No.

7 Q Did the company view the self-insurance program as a
8 win-win for the customer and the utility?

9 MR. McGLOTHLIN: Objection, leading.

10 CHAIRMAN BAEZ: Rephrase.

11 BY MR. WALLS:

12 Q Was the self-insurance program a win-win for the
13 tility and the customer?

14 MR. McGLOTHLIN: Objection, leading.

15 CHAIRMAN BAEZ: Ask him how he would characterize.

16 BY MR. WALLS:

17 Q Mr. Portuondo, how would you characterize the
18 self-insurance program that the utility proposed to the
19 Commission?

20 A It was a win-win, and as I mentioned before it was a
21 win-win because the annual obligation to customers was
22 extremely lower, I believe, than would have otherwise have been
23 had we gone with third-party insurance.

24 CHAIRMAN BAEZ: I will send you the bill later, Mr.
25 Walls. (Laughter.)

1 BY MR. WALLS:

2 Q Mr. Portuondo, was there any reason for the
3 Commission to say in its self-insurance order that the company
4 could come back and seek coverage -- I'm sorry, recovery of
5 costs in excess of its reserve if they were covered in base
6 rates?

7 A No, I don't think so. I think that it would have
8 been self-evident. If they had meant for costs to just be
9 absorbed in base rates, they would have not acknowledged that
10 the utility had an opportunity to seek cost recovery through
11 alternative mechanisms.

12 Q And I believe you may have testified on this subject
13 before, but what is the company's position with respect to
14 whether an event like the 2004 hurricane season should be
15 included in base rates every year?

16 A I don't support it. I don't think it is a component
17 of base rates.

18 Q And why not?

19 A I have mentioned this numerous times. It is not a
20 normal recurring cost which the company can readily predict and
21 which the Commission has deemed to be a component of base
22 rates.

23 Q Mr. Portuondo, you were asked a number of questions
24 about the rate case stipulation, in particular the 10 percent
25 ROE that is referred to in that stipulation. **Are you familiar**

1 with those questions and that stipulation?

2 A Yes, I am.

3 Q How are the intervenors using that 10 percent ROE in
4 the stipulation?

5 A It appears to me that they are using it as a ceiling
6 on earnings.

7 Q And is that what it is, Mr. Portuondo?

8 A I don't believe so.

9 Q Why not?

10 A I believe it was part of the overall agreement with
11 the intervenors that we would reduce customer rates by 125
12 million and we would attempt to manage our business such that
13 we would be allowed to retain the savings from operating costs
14 in exchange for sharing the revenues. We moved to a revenue
15 sharing mechanism. The 10 percent was a floor which was agreed
16 to in the event that the projected operating costs and the
17 projected revenues following the reduction somehow did not sync
18 up, and the financial integrity of the utility was in jeopardy,
19 and the 10 percent would, therefore, protect the company's
20 ability to continue to provide customers with service.

21 Q Do you believe that what the intervenors are arguing
22 with respect to the rate case stipulation is consistent with
23 the Commission's rules?

24 A I don't believe so. I don't recall a Commission
25 decision where a utility has been driven to a floor. Usually

1 the Commission will reset rates to the midpoint in order to
2 align itself with the ratemaking concept of a reasonable rate
3 of return.

4 Q And you recall a number of questions by Mr. Twomey
5 asking you if you were recovering costs in a past period of
6 time, do you recall that?

7 A Yes, I do.

8 Q And you are familiar with Rule 25-6.0143, correct?

9 A Yes.

10 Q Could you read Subsection (4)(b) of that rule,
11 please?

12 A Subsection (4), which passage, (b)?

13 Q (b).

14 A (b), "If a utility elects to use any of the above
15 listed accumulated provision accounts, each and every loss or
16 cost which is covered by the account shall be charged to the
17 account and shall not be charged directly to expense. Charges
18 shall be made to accumulated provision accounts regardless of
19 the balance in those accounts."

20 Q And what does that rule then say about permitting the
21 company to expense its costs in 2004?

22 A It says that -- and I believe I mentioned this
23 before, that I was not permitted to expense those costs in '04.

24 Q And how do you read the intervenors' position with
25 respect to reducing the company's earnings to 10 percent ROE,

1 is it consistent or inconsistent with this rule?

2 A It is inconsistent with this rule.

3 Q Why?

4 A Because it prohibits me, absent Commission action, to
5 expense those costs.

6 Q You are familiar with the rate case stipulation,
7 right?

8 A Yes.

9 Q I think you may have even been handed it over there.
10 Are you familiar with any provision of that rate case
11 stipulation that seeks a waiver of Rule 25-6.0143?

12 A No.

13 Q Cost of removal. Mr. Portuondo, you were asked a
14 number of questions about cost of removal by Mr. McGlothlin, I
15 believe Mr. McWhirter, as well. Does the company plan to
16 account for cost of removal as part of capital costs that will
17 not be part of the extraordinary O&M costs it seeks to recover
18 under the clause?

19 A That is correct.

20 Q How has the company accounted for its cost for
21 putting up new units of property during the hurricanes that
22 will be charged to capital and carried forward to the next base
23 rate proceeding?

24 A Given the fact that the labor component cannot be
25 directly identified to the capital asset that was installed due

1 to the fact that, you know, crews are being sent out there and
2 everybody is doing multiple things at the same time, the
3 process is, as I explained, that we identify the units of
4 property, because that is readily available through the fact
5 that it is coming out of inventory and we know that a pole was
6 utilized, or a conductor was run. We take the cost of the
7 material and then we utilize our work management system to
8 identify what the normal cost of installation would be for that
9 material, and that is the amount that we remove from the
10 project and charge to capital.

11 Q Have the intervenors objected to that methodology for
12 accounting for the total installed cost of units of property
13 nstalled during the hurricanes?

14 A No, they haven't.

15 Q What have they, in fact, done?

16 A I think they stipulated to that issue.

17 Q How has PEF accounted for its cost to remove units of
18 property as it installed new units during the hurricanes?

19 A We are using the exact same approach. We are
20 identifying the units that were removed, and again using our
21 work management system to identify the normal labor costs
22 necessary to have removed those facilities and recording that
23 to the capital accounts.

24 Q I believe Mr. McWhirter had asked you a number of
25 questions about the alternative methods for recovering the

1 storm costs. Do you recall that?

2 A Yes.

3 Q And why is the company seeking recovery under the
4 storm cost-recovery clause?

5 A It is our position that these costs inherently are
6 not part of the ratemaking formula for base rates. They are
7 volatile, unpredictable, nonrecurring, and, therefore, these
8 extraordinary costs should be treated like other extraordinary
9 costs, through a pass-through mechanism.

10 Q And do you have such other extraordinary costs that
11 are covered by similar clauses?

12 A The post-9/11 costs were deemed to be of this nature
13 and recovered through the fuel adjustment clause.

14 Q And you also recover fuel through a clause, right?

15 A Fuel, although it is recurring, it is volatile, and
16 the impacts on price is much of the time beyond the control of
17 management.

18 Q Do you think it would be fair for someone to propose
19 that you should share the cost of fuel with your customers?

20 A No, I do not.

21 MR. WALLS: If I could just take a moment to look
22 through my notes, I might be finished. That's all the
23 questions I have.

24 CHAIRMAN BAEZ: Thank you, Mr. Walls. Exhibits.

25 MR. WALLS: Yes. At this time we would move JP-1 and

1 2, JP-3, 4, 5, 6, and 7.

2 CHAIRMAN BAEZ: Mr. McGlothlin, you had objections to
3 some of the exhibits and not all of them.

4 MR. MCGLOTHLIN: I have objections to two of them,
5 the testimony and the excerpt of the audit report of
6 Ms. Piedra. I hope I'm not mispronouncing her name.

7 CHAIRMAN BAEZ: Piedra.

8 MR. MCGLOTHLIN: Piedra.

9 CHAIRMAN BAEZ: So that will be 46, and which was the
10 other one?

11 MR. MCGLOTHLIN: I believe that first one we
12 identified was 43. No, I'm sorry, the other one to which I
13 object is 43, the Florida Power and Light Company replacement
14 study. And if I may, I will start with Ms. Piedra's testimony
15 for purposes of my objection, and I am reminded a little bit of
16 the kind of picture puzzle. The one that says there are ten
17 things wrong with this picture, how many can you find. I may
18 not get them all, but I will try.

19 Ms. Piedra's testimony addresses an audit she
20 performed for Florida Power and Light Company, not PEF. The
21 testimony was submitted in another docket, not this one. The
22 testimony is not even part of the record in that docket. The
23 testimony has not been sworn, nor has it been subjected to
24 cross examination. And because it addresses an audit performed
25 of another company, it is irrelevant to the issues for this

1 one.

2 And I think this bears in the question also. There
3 was an audit performed of PEF's storm replacement, and that
4 auditor submitted testimony in this case. If PEF was unhappy
5 with the audit report, it had the opportunity to require that
6 person to be present and cross-examined on that subject. They
7 chose not to. For all of those reasons, and because we have no
8 opportunity to cross-examine the witness here today, I object
9 to both the prefiled testimony and the attachment.

10 CHAIRMAN BAEZ: Mr. Walls.

11 MR. WALLS: Yes. My response is that the testimony
12 of the auditor on behalf of staff is in evidence along with the
13 staff audit report, and that this is in direct response to that
14 submittal into evidence. That is what it is identified in Mr.
15 Javier Portuondo's rebuttal testimony as addressing and that is
16 what it is directed at is the audit report. And what we intend
17 to show here is simply that the audit was undertaken in our
18 docket without a review of the PEF study, while the audit
19 report indicated in the FPL audit was undertaken with a review
20 of that study.

21 We are introducing it to rebut the testimony of
22 Ms. Stephens and her audit report to show that she did not
23 undertake the same methods and apply the same study review
24 prior to doing the audit that was done in the other audit. And
25 I would think the Commission would also want to be aware of

1 whether the utilities are being treated consistently during the
2 course of these audits.

3 MR. MCGLOTHLIN: May I briefly? If there were any
4 shortcomings perceived by PEF with respect to the audit that
5 was performed of PEF as a result of its activities, those
6 points could have been made through cross-examination of the
7 auditor in this case. What may or may not be the situation in
8 another docket involving another utility is irrelevant for the
9 purpose of this hearing.

10 CHAIRMAN BAEZ: Mr. Walls, I will tell you the
11 problem that I have. First of all, I think Mr. McGlothlin
12 makes a compelling argument. There is a lot of infirmities
13 with admitting this, although I see the value of the point
14 behind the submission. It seems to me that there lot of other
15 ways that could have been -- that the differences could have
16 been addressed and brought to light. And I am not comfortable
17 allowing testimony again that hasn't been vetted through the
18 process in order to prove that point, so I am inclined to
19 disallow this particular exhibit.

20 MS. BRUBAKER: Chairman Baez, may I chime in just a
21 moment?

22 CHAIRMAN BAEZ: Yes, please.

23 MS. BRUBAKER: I think there is also kind of a middle
24 ground that could be accommodated for both parties. Ms.
25 Stephens, the staff auditor in this dockets testimony has been

1 stipulated to. It is my understanding that Progress would like
2 to enter into the record her deposition. I certainly have no
3 objection to it, and I don't believe as far as I know that any
4 party has an objection to that deposition. **In that deposition**
5 is a brief discussion about the FPL audit and what it did and
6 what this one did not, so I think some of the company's
7 concerns can be addressed through the deposition.

8 CHAIRMAN BAEZ: And, again, going back to one of the
9 points that I made that gave me trouble, if there is a way --
10 if there is an alternative way, and it seems like Ms. Brubaker
11 has brought one to light that is fairly easily addressable, I
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15 you know, the question is before you if there are any
16 objections. I know Ms. Brubaker may have put words into your
17 mouth, but --

18 MR. McGLOTHLIN: I believe I am on record as having
19 not objected to the admission of the deposition transcript.

20 CHAIRMAN BAEZ: Very well. And so the ruling of
21 inadmissibility stands as to the exhibit. **I leave it -- I**
22 don't know if I can leave it to the parties to figure out what
23 the proper mechanism is to get the deposition into the record.

24 MR. WALLS: Well, we would like to go ahead and just
25 move it in now as the next exhibit, Number 50, I believe.

1 CHAIRMAN BAEZ: All right. And I'm going to need
2 some help identifying it. I have 51, Mr. Walls, for the
3 record, and that will be the deposition of Iliana Piedra.

4 MR. MCGLOTHLIN: No.

5 CHAIRMAN BAEZ: I'm sorry.

6 MS. BRUBAKER: Jocelyn Stephens.

7 CHAIRMAN BAEZ: Of Jocelyn Stephens, I'm sorry.

8 (Exhibit 51 marked admitted.)

9 MR. MCGLOTHLIN: Consistent with your ruling, Mr.
10 Chairman, the lines of testimony that address the prefiled
11 testimony of Ms. Piedra I move to strike begins on Page 40 of
12 the rebuttal testimony of Mr. Portuondo, Line 16.

13 CHAIRMAN BAEZ: Hold on, Mr. McGlothlin, because I am
14 not there. What was that reference?

15 MR. MCGLOTHLIN: In the rebuttal testimony of Mr.
16 Portuondo, Page 40, beginning at Line 16 and continuing the
17 balance of that page, all of 41 and through Page 42, Line 4.

18 CHAIRMAN BAEZ: All of 41. I'm sorry, what was the
19 last --

20 MR. MCGLOTHLIN: Page 42, Lines 1 through 4.

21 CHAIRMAN BAEZ: All right. I don't know if we just
22 have to let the record reflect that in accordance with the
23 ruling the page numbers and line numbers as identified should
24 be stricken from the testimony. Will that suffice on those
25 terms?

1 MS. BRUBAKER: Yes.

2 CHAIRMAN BAEZ: Okay. Now, that takes care of 46 and
3 we are on 43.

4 MR. MCGLOTHLIN: With respect to the FPL study, I
5 would point out that this record establishes that it was not
6 prepared by the witness or anyone with Progress Energy. It was
7 not used by Progress Energy in support of its self-insurance
8 program application. The contention is that the studies are
9 similar, but the record also establishes that with respect to
10 the actual implementation or the practice of the two utilities
11 there are significant dissimilarities. So even if similarity
12 was a factor, it doesn't pass muster in this instance. So, for
13 those reasons, because, again, this is something that is being
14 imported from another docket, prepared for and sponsored by
15 another utility in an application by that other utility, we
16 think it is inappropriate to be admitted in this record.

17 CHAIRMAN BAEZ: Mr. Walls.

18 MR. WALLS: Yes. I am actually kind of surprised
19 that this objection is still coming since Mr. McWhirter asked
20 Mr. Portuondo a number of questions about the FPL study without
21 objection by Mr. McGlothlin from OPC, so there is already
22 testimony in by one of the intervenors without objection about
23 the study. He didn't object to any of my questions to Mr.
24 Portuondo about the study, and I asked him after seeing that
25 Mr. McWhirter was allowed to ask the same questions. I would

1 also point out that the evidence is clear that our company was
2 aware of the study from FPL being filed in advance of preparing
3 its study. They reviewed it and they were aware of it when
4 they filed their study in 1994.

5 And I would also point out that the intervenors put
6 in a Commission order, the Commission order in the
7 self-insurance docket that directed the company to file a study
8 similar to the FPL study, which makes it directly relevant to
9 this case.

10 Finally, I would say that Mr. McGlothlin asked Mr.
11 Portuondo a number of questions about orders dealing with FPL's
12 insurance docket, the same orders that discussed this study of
13 FPL, and also the same orders that discuss the study as being
14 adequate as determined by the Commission. And so it seems odd
15 to me that they want to be able to ask questions out of the FPL
16 insurance dockets when they are favorable to them, but they
17 don't want anything coming in that might be unfavorable. So I
18 think it is clear that this is relevant and it has not been
19 objected to through the course of this proceeding to this point
20 and it should be entered.

21 CHAIRMAN BAEZ: Mr. McGlothlin.

22 MR. MCGLOTHLIN: The distinction is that it is
23 appropriate to refer to orders, but with respect to testimony
24 or exhibits that were part of the record before those orders
25 were entered, that it is inappropriate from an evidentiary

1 standpoint. We referred to the order for the proposition that
2 the Commission expressed certain policy positions with respect
3 to how it would entertain and dispose of requests for recovery
4 of certain costs. And to the fact that PEF was quote, aware
5 of, end quote, the existence of another study doesn't make it
6 relevant or admissible in this case.

7 CHAIRMAN BAEZ: Well, Mr. McGlothlin, I tell you
8 what, I think that in light of the testimony that has been
9 elicited from all the parties, because that much I was here
10 listening to, I haven't read the FPL study, but to the extent
11 you make an interesting point in the fact that if there are
12 dissimilarities to the FPL studies, they will there for
13 everybody to exploit as they see fit, just like whatever
14 similarities are relevant to our consideration will be there
15 for everyone to exploit as they see fit. **So as to this**
16 exhibit, I'm going to allow its admission.

17 MR. MCGLOTHLIN: All right.

18 CHAIRMAN BAEZ: Does that take care of any objections
19 to other exhibits?

20 MR. PERRY: Yes. FIPUG had objections to the same
21 exhibits that Mr. McGlothlin did.

22 CHAIRMAN BAEZ: They were just piggybacking?

23 MR. PERRY: Yes.

24 CHAIRMAN BAEZ: I'm sorry I didn't get to call on
25 you, Mr. Perry.

1 MR. PERRY: That's fine. We would have deferred to
2 Mr. McGlothlin in any instance.

3 CHAIRMAN BAEZ: Very well. If that takes care of any
4 objections on the balance of Mr. Portuondo's exhibits. Just
5 for the record I am showing Exhibits 24, 25, 42, 43, 44, and 45
6 are hereby admitted into the record without objection.

7 (Exhibits 24, 25, 42, 43, 44, and 45 admitted into
8 the record.)

9 CHAIRMAN BAEZ: And I think we already moved 51,
10 correct?

11 MS. BRUBAKER: Yes, that is correct.

12 CHAIRMAN BAEZ: I know I marked it. I don't recall
13 moving it.

14 MS. BRUBAKER: 51, that is correct.

15 CHAIRMAN BAEZ: Show 51 admitted into the record.

16 And then I'm showing also one late-filed, Number 49,
17 which I think Mr. Portuondo indicated that it would be provided
18 by tomorrow?

19 MR. PORTUONDO: Tomorrow morning.

20 CHAIRMAN BAEZ: You don't have to oversell, but by
21 tomorrow. I'm assuming it will be admitted conditionally upon
22 inspection by the parties and subject to any objections that
23 there may be. And that leaves me with Number 50, which is in
24 our possession.

25 MS. BRUBAKER: It is.

1 CHAIRMAN BAEZ: And we can go ahead and admit that
2 without objection, if I didn't already. And I think that does

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14 straight. There were references, in fact, during testimony,
15 during questioning to Mr. Scardino's testimony as part of the
16 original self-insurance docket for Progress. And I think the
17 witness did quote from the testimony and now that will
18 testimony in whole, I guess --

19 MR. WALLS: Yes.

20 CHAIRMAN BAEZ: -- a transcript of his testimony is
21 being offered into evidence.

22 MR. WALLS: His prefiled testimony.

23 CHAIRMAN BAEZ: His prefiled testimony in that
24 particular --

25 MR. MCGLOTHLIN: At the time the company applied for

1 approval of the self-insurance program, is that the docket
2 number?

3 CHAIRMAN BAEZ: Yes. Can you just cite the docket
4 number, I guess, if you want for clarity sake.

5 MR. MCGLOTHLIN: Well, I didn't object to the
6 quotation, but I object to the wholesale importing of prefiled
7 testimony in another case.

8 CHAIRMAN BAEZ: Mr. Twomey.

9 MR. TWOMEY: I object, as well. This is like this
10 company adding another witness to the case at hearing. His use
11 of the -- I didn't ask him to use the transcript. We were
12 talking about a quotation for it.

13 CHAIRMAN BAEZ: I don't remember who asked who
14 frankly at this point, but I hear what you are saying. Mr.
15 Walls, I don't think it is absolutely necessary, certainly not
16 from our perspective, to have the totality of it. To the
17 extent that he quoted from the testimony and it will be helpful
18 to us in your consideration, I think that should suffice. So,
19 we are going to disallow admission of that exhibit. Well, it
20 wasn't even an exhibit. I don't think we even gave it a
21 number.

22 MR. WALLS: No, we did not.

23 CHAIRMAN BAEZ: So we can let the conversation pass
24 into the wind, then.

25 MS. BRUBAKER: Mr. Chairman, if I may take advantage

of that number to be named later. In response to a line of
2 questions by Commissioner Deason, Exhibit 50 was identified and
3 has since been entered into the record. That was Sugarmill
4 Woods' Interrogatory Number 43. **Staff has since gone back and**
5 located copies and we have them available to pass out if
6 anybody wants to see them. It is from staff's first set of
7 interrogatories to Progress. It is Number 11, and it is simply
8 a fuller breakout of the information Commissioner Deason was
9 asking about. We thought it might help supplement the record
10 on that question, and we would simply ask that Exhibit 52 be
11 identified, and if there is not objection, moved into the
12 record on that point.

13 MS. CHRISTENSEN: Commissioners, I might be able to
14 help. I believe that is already part of an admitted exhibit,
15 Hearing Exhibit Number 47. It was part of a composite exhibit
16 entered by FIPUG, which is PEF's response to staff's first set
17 of interrogatories Number 8, including Number 11 with
18 Attachment E.

19 MS. BRUBAKER: My apologies for the duplication,
20 then.

21 CHAIRMAN BAEZ: You know what, if we can confirm
22 that, then we can leave the hearing at this point at an even
23 50. Mr. Perry, can you help us out?

24 MR. PERRY: Yes, it is part of Composite 47.

25 MS. BRUBAKER: My apologies. Thank you.

1 CHAIRMAN BAEZ: Very well. Mr. Portuondo, thank you.
2 Why don't we break for ten minutes and we can set up
3 our next witness.

4 (Recess.)

5 (Transcript continues in sequence with Volume 6.)
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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4 I, JANE FAUROT, RPR, Chief, Office of Hearing
5 Reporter Services, FPSC Division of Commission Clerk and
6 Administrative Services, do hereby certify that the foregoing
7 proceeding was heard at the time and place herein stated.

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

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

18 DATED THIS 1st day of April, 2005.

19 

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23 Administrative Services
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