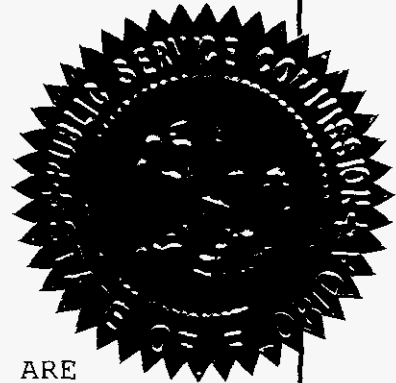


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR INCREASE IN RATES DOCKET NO. 080677-EI  
BY FLORIDA POWER & LIGHT COMPANY.

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2009 DEPRECIATION AND DISMANTLEMENT DOCKET NO. 090130-EI  
STUDY BY FLORIDA POWER & LIGHT  
COMPANY.



VOLUME 1

Pages 1 through 120

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PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Monday, August 24, 2009

TIME: Commenced at 9:46 a.m.

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

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

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FPSC-COMMISSIONER

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16 Office, Box 3350, Tampa, Florida 33601, representing  
17 Florida Industrial Power Users Group.

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21 representing Florida Retail Federation.

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1 APPEARANCES (Continued):

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20 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak  
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23

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I N D E X

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

1  
2           **CHAIRMAN CARTER:** Good morning. I'd like to  
3 call this hearing to order. First of all, let me  
4 apologize to you. We're having some technical  
5 difficulties here. We're trying to save the trees, so  
6 we're trying to put everything on the computer system.  
7 I guess that's probably the easiest way to say it,  
8 computer system.

9           Before we get started this morning I wanted to  
10 take this opportunity to address you all and ask for  
11 your help. We have a monumental task ahead of us over  
12 the next couple of weeks, and our work here couldn't be  
13 anymore critical to the people and the business of this  
14 state.

15           The decisions we make in the coming weeks have  
16 at stake billions of dollars for the consumers of  
17 Florida and for the utilities. I know that everyone  
18 here is keenly aware of what that means. I want and I'm  
19 sure this Commission wants to make the very best  
20 decisions possible to ensure that the maximum benefit to  
21 the public interest is achieved so that the ratepayers  
22 are protected and that the utility has what it needs to  
23 operate efficiently at least to -- and at the least cost  
24 to customers, balancing short-term realities with  
25 long-term stability.

1           I'm aware that all parties to this docket have  
2 felt the sting from recent Commission decisions and I'm  
3 mindful of the increasing level of acrimony that  
4 surrounded this process. I understand it. The  
5 decisions here, whatever they may be, have real  
6 consequences for all of the parties involved and all of  
7 the stakeholders, particularly those who have no choice  
8 but to live with the product this process yields.  
9 Though this is an adversarial process, I ask only that  
10 we all maintain a professional bearing and that we work  
11 together where possible. And when it's not possible,  
12 that we engage one another respectfully and with  
13 dignity.

14           I've seen this group of attorneys work  
15 together in the past and I know all are capable  
16 advocates, and I have no reason to believe that you  
17 won't all strive to maintain the highest level of  
18 professionalism. We as Commissioners will also do our  
19 best. So let's get some good work done today.

20           With that, staff, would you please read the  
21 notice.

22           **MS. BENNETT:** Yes, Mr. Chairman,  
23 Commissioners. By notice duly given, this date and time  
24 and place has been set for a hearing in Docket Number  
25 080677, petition for increase in rates by Florida Power



1 & Light, and also Docket Number 090130-EI, 2009  
2 depreciation and dismantlement study by Florida Power &  
3 Light Company.

4 **CHAIRMAN CARTER:** Thank you. Now let's take  
5 the appearances of the parties.

6 **COMMISSIONER ARGENZIANO:** Mr. Chair?

7 **MR. BUTLER:** Thank you, Mr. Chairman. John  
8 Butler on behalf Florida --

9 **COMMISSIONER ARGENZIANO:** Mr. Chair, excuse  
10 me.

11 **CHAIRMAN CARTER:** Hang on a second.  
12 Commissioner Argenziano, yes.

13 **COMMISSIONER ARGENZIANO:** Yes. I'm sorry. I  
14 hate to interrupt, but I need to make it clear that I am  
15 here. And for anybody who notices an empty chair, I  
16 would be there -- and I know many know already, I broke  
17 my leg, not just a simple break unfortunately for me,  
18 but just so people know why I'm not in that chair. I  
19 will be attending these hearings on the phone throughout  
20 the whole process. And when you leave, that's when I'll  
21 leave. But I just want to make sure people know that I  
22 am here.

23 **CHAIRMAN CARTER:** Thank you, Commissioner.

24 **COMMISSIONER ARGENZIANO:** Thank you.

25 **CHAIRMAN CARTER:** Mr. Butler.

1           **MR. BUTLER:** Thank you. Sorry. Sorry, Mr.  
2 Chairman. John Butler on behalf of Florida Power &  
3 Light Company. Also enter an appearance, appearances  
4 for Wade Litchfield, Mitch Ross, Bryan Anderson and  
5 Jessica Cano.

6           **MS. PERDUE:** Tamela Perdue on behalf of  
7 Associated Industries of Florida, and I would also enter  
8 an appearance for Mary Smallwood.

9           **MR. WISEMAN:** Kenneth Wiseman for the South  
10 Florida Hospital and Healthcare Association, and also  
11 entering the appearances, the appearances of Lino  
12 Mendiola, Meghan Griffiths and Jennifer Spina.

13           **MR. MCGLOTHLIN:** Good morning. Joe McGlothlin  
14 with the Office of Public Counsel. Please reflect  
15 appearances also for Charles Beck and Patty Christensen  
16 of our office.

17           **MS. BRADLEY:** Cecilia Bradley on behalf of the  
18 Attorney General for the citizens of Florida.

19           **MR. MOYLE:** Jon Moyle representing FIPUG, the  
20 Florida Industrial Power Users Group. I'd also like to  
21 enter an appearance for Vicki Kaufman and John  
22 McWhirter.

23           **MR. WRIGHT:** Robert Scheffel Wright and,  
24 behind me, John T. Lavia, III, on behalf of the Florida  
25 Retail Federation. Thank you, Mr. Chairman.

1           **MR. ARMSTRONG:** Brian P. Armstrong on behalf  
2 of the City of South Daytona.

3           **CHAIRMAN CARTER:** Okay, guys. Let's kind of  
4 give the ladies an opportunity.

5           **MS. ALEXANDER:** Stephanie Alexander for  
6 Florida AFFIRM, the Association for Fairness in  
7 Ratemaking. Thank you, Mr. Chair.

8           **CHAIRMAN CARTER:** Thank you.

9           Captain, good morning.

10          **CAPTAIN McNEILL:** Captain Shayla McNeill on  
11 behalf of the United States Air Force and the Federal  
12 Executive Agencies. I'm also joined by Captain Allan  
13 Jungels.

14          **CHAIRMAN CARTER:** Thank you.

15          **MR. STEWART:** Stephen Stewart for Mr. Richard  
16 Unger.

17          **CHAIRMAN CARTER:** Thank you. Before I  
18 recognize staff to make appearances, do we have  
19 appearances made by all of the parties?

20          Mr. Butler.

21          **MR. BUTLER:** I'm sorry. I neglected to make  
22 an appearance also for Susan Clark on behalf of Florida  
23 Power & Light Company.

24          **CHAIRMAN CARTER:** Thank you. Did we, did we  
25 get all of the parties first before I recognize staff?

1           Okay. Staff, you're recognized, recognized to  
2 make appearances.

3           **MS. BENNETT:** It appears that we do not have  
4 an appearance yet for I.B.E.W. System counsel, U-4.

5           On behalf on behalf of staff, Lisa Bennett,  
6 Martha Carter Brown, Jean Hartman and Anna Williams.

7           **MR. IMHOF:** Booter Imhof, advisor to the  
8 Commission. I'm also entering appearances for Mary Anne  
9 Helton, Jennifer Brubaker, Samantha Cibula and Rosanne  
10 Gervasi.

11           **CHAIRMAN CARTER:** Gervasi. Okay.

12           Commissioner Skop.

13           **COMMISSIONER SKOP:** Thank you, Mr. Chairman.  
14 Just a preliminary matter for our staff, please, if I  
15 could, if Mr. Prestwood is available.

16           **MR. PRESTWOOD:** Yes. Commissioner Skop, I'm  
17 here.

18           **COMMISSIONER SKOP:** Thank you. Just a quick  
19 yes or no question. Has FPL -- I mean, excuse me. Has  
20 FPL -- I'm tongue-tied this morning. Has FPL -- why do  
21 I say FPL? Excuse me. Has FPL --

22           **CHAIRMAN CARTER:** You sound like our computer  
23 system this morning.

24           **COMMISSIONER SKOP:** Exactly. Has FPL been  
25 fully compliant with all of staff's discovery requests,

1 including those contained within the motion to compel?

2 **MR. PRESTWOOD:** No, Commissioner Skop.

3 **COMMISSIONER SKOP:** Okay. FPL, if counsel  
4 could respond, is that true?

5 **MR. BUTLER:** I'm sorry, Commissioner. Just  
6 one second. Let me confer.

7 (Pause.)

8 Commissioner Skop, we are not aware of  
9 anything that we have not responded to. You know, we  
10 filed some additional discovery responses last week  
11 after the Commission's Agenda Conference ruling on  
12 staff's motion to compel. We believe that we are  
13 responsive. I guess we would request an opportunity to  
14 confer with staff and understand what they believe that  
15 we have not fully responded to.

16 **COMMISSIONER SKOP:** Okay. Well, I looked at  
17 the data on Friday and I saw quite a bit of blanks  
18 still, and I'll allow Mr. Prestwood to briefly elaborate  
19 upon that.

20 **MR. PRESTWOOD:** Can you hear me? Okay. On  
21 the latest filing of the compensation for executives and  
22 employees making above \$165,000, it appears all the data  
23 that we requested was there for the officers. But with  
24 respect to employees making above \$165,000, all of the  
25 data was there for the year 2008. But for the years

1 2009, 2010 and 2011 the individual components that make  
2 up total compensation were admitted -- omitted. Total  
3 compensation was there for those years as well as the  
4 amount allocated to Florida Power & Light, the utility,  
5 and as well as the amount allocated to O&M expense for  
6 Florida Power & Light, the utility, but not the  
7 components of total compensation.

8 **COMMISSIONER SKOP:** Okay. And would, assuming  
9 that we have the data to calculate that, would that  
10 require additional work for staff or should -- was FPL  
11 just not fully cooperative in terms of providing the  
12 requested data?

13 **MR. PRESTWOOD:** I believe that Florida Power &  
14 Light was just not cooperative in providing the data.  
15 Staff, they gave the staff instructions on how it could  
16 be computed, but they could have computed it just as  
17 well themselves.

18 **COMMISSIONER SKOP:** Okay. Thank you.

19 Mr. Butler, just I thought I had made my  
20 expectations perfectly clear last Tuesday. I would  
21 expect that FPL respectively file all the requested  
22 data, including, if it needs to, I understand there may  
23 be some issues to the extent that operating units budget  
24 accordingly, but it's easy to make a pro forma analysis  
25 and layer that data in so that our staff does not have

1 to do it. I would expect that FPL file that data by  
2 5:00 p.m. today or risk me seeking additional discovery  
3 sanctions through a motion tomorrow, up to and including  
4 dismissal of your rate case.

5 **MR. BUTLER:** Yes, sir.

6 **COMMISSIONER SKOP:** Thank you.

7 Mr. Chair, just one brief matter, and I find  
8 myself, this is very unfortunate, but I find myself in  
9 the unfortunate situation of having to request that our  
10 SGA director be immediately removed from all FPL-related  
11 dockets.

12 Over the weekend this employee advised me that  
13 on or about May 2nd, 2009, he and his wife attended a  
14 private function at the home of an FPL executive in  
15 South Florida. Such inexcusable conduct undermines the  
16 public trust and confidence in the regulatory process  
17 and impugns the integrity of this Commission.

18 I'd further note that this employee has direct  
19 supervision over the staff recommendations directly  
20 related to over \$4 billion of FPL requests currently  
21 pending before this Commission, including this rate  
22 case. I wish to emphasize that these are not  
23 allegations but admissions by the employee; therefore,  
24 the specific details are not important. What is  
25 important is to protect the reputation of the Commission

1 and the integrity of the docketed matters before us.

2 Accordingly, I would respectfully request that  
3 the SGA director be immediately removed from all  
4 FPL-related dockets, and I would hope that the  
5 resignation of this employee would be forthcoming in the  
6 immediate future.

7 Again, there is potential violation of a  
8 Commission rule as well as an implication of a *Florida*  
9 *Statute* 112 violation. Neither of those are important.  
10 What is important is that the employee admitted that he  
11 and his wife were, were in attendance at a private  
12 function at the home of an FPL executive in South  
13 Florida, and that, that conduct cannot go -- I can't  
14 condone that conduct, the Commission should not condone  
15 that conduct, and it can't be ratified by this  
16 Commission. It sends a wrong example to the employees.

17 I've spoken with our Executive Director this  
18 morning. Unfortunately she has a difference of opinion.  
19 And, again, I need to do what's necessary on behalf of  
20 the Commission, on behalf of FPL to protect the  
21 integrity of their docket. And I'm sure that Mr. Butler  
22 would agree with me, the appropriate legal remedy would  
23 be to take that employee off the docket.

24 **CHAIRMAN CARTER:** I'm, I'm at a decided  
25 disadvantage, Commissioner, because I had no knowledge



1 of what you're mentioning or anything like that. I  
2 certainly know that our Executive Director would, whose  
3 employee that would be, would certainly bring that  
4 before the Commission and on a proper forum for those  
5 kind of discussions and all. But you have me at a  
6 decided disadvantage. I have no knowledge of this. And  
7 I certainly would appreciate the opportunity for all of  
8 us to discuss this matter with the Executive Director to  
9 get all of the facts on the table.

10 **COMMISSIONER SKOP:** Mr. Chair, I'd  
11 respectfully suggest that it's my understanding that  
12 this employee has spoken to each of the individual  
13 Commissioners over the weekend, as well as the Executive  
14 Director.

15 **CHAIRMAN CARTER:** Well, you misunder -- you're  
16 wrong, Commissioner. I haven't spoken to anyone over  
17 the weekend. And, Commissioner McMurrin, are you privy  
18 to this discussion?

19 **COMMISSIONER McMURRIAN:** I'm afraid I'm not,  
20 Mr. Chairman.

21 **COMMISSIONER SKOP:** That's, that's not what  
22 was represented to me by the Executive Director  
23 approximately 15 minutes ago in my office, that it was  
24 my understanding that this employee had contacted all  
25 Commission employees -- I mean, all Commissioners over

1 the weekend.

2 But what's most important to me now is because  
3 of the admission, that as an attorney and as an  
4 appointed official of the State of Florida, I cannot  
5 allow that person to be related to these docketed  
6 matters. It has a direct relation to this docket, and  
7 from a legal standpoint he must be insulated from this  
8 docket immediately.

9 **CHAIRMAN CARTER:** Well --

10 **COMMISSIONER ARGENZIANO:** Mr. Chair.

11 **COMMISSIONER SKOP:** I would look, I would look  
12 to our General Counsel too to confirm that.

13 **CHAIRMAN CARTER:** Commissioner Argenziano.

14 **COMMISSIONER ARGENZIANO:** Well, I got the call  
15 this weekend also. I'm sorry. I'm getting reverb here.  
16 Can you hear me all right?

17 **CHAIRMAN CARTER:** I hear you fine.

18 **COMMISSIONER ARGENZIANO:** Okay. I got the  
19 call this weekend also. I wonder if it's something that  
20 could go to the IG to look at for investigation. And I  
21 would broaden it. If we're going to do that for, for  
22 one person, we should do it for everybody, including  
23 Commissioners.

24 **CHAIRMAN CARTER:** Okay. I think,  
25 Commissioners, this is certainly a matter that would

1 require us to as a Commission -- probably a matter for  
2 internal affairs. And as I said is that I'm caught  
3 flat-footed and Commissioner McMurrian didn't know about  
4 it. So whatever representation that all the  
5 Commissioners knew about this is wrong.

6 Secondly, is that it's a matter that I think  
7 that the, our Executive Director should bring to us, and  
8 certainly we could take it to the Inspector General.  
9 But I think that, I think that right now we probably  
10 need to have -- we certainly don't need to have any --  
11 as I said in my opening comments about the process, we  
12 certainly want everyone to have due process in this  
13 process. We want people to be heard, we want the  
14 parties to be able to make their case, and we want the  
15 people, the ratepayers to know that, you know, that the  
16 process is fair and open and honest. And I got to tell  
17 you, this is, it's all new to me. It's new to me. And  
18 it's -- if I had known that over the weekend, I  
19 certainly would have called -- you know, instead of  
20 working on getting our computer system working, I  
21 certainly would have called all of the Commissioners  
22 together for an emergency meeting pending this hearing.

23 **COMMISSIONER SKOP:** Mr. Chair, just with due  
24 respect, I'd like to ask the advice of our General  
25 Counsel with respect to isolating this employee based

1 upon the admissions made to me as a Commissioner, and I  
2 think to do so would be appropriate. But I'd like to  
3 hear from our General Counsel with respect to that one  
4 issue. That, again, I think it's a Commission decision,  
5 the ultimate resolution. I've already spoke to our  
6 Inspector General this morning as well as our Executive  
7 Director. But, again, my concern is that this person  
8 has supervisory, direct supervisory function over this  
9 pending docket as well as the pipeline need  
10 determination. I have concerns about that also. But,  
11 again, I'd like to hear from our General Counsel.

12 **COMMISSIONER ARGENZIANO:** Excuse me,  
13 Commissioner Skop. Did you also introduce that the  
14 individual has something to do with another issue, the  
15 pipeline?

16 **COMMISSIONER SKOP:** Yes. He has direct  
17 supervisory oversight of the staff recommendations  
18 associated with multiple dockets, including this rate  
19 case as well as the pipeline need determination, and  
20 those dockets exceed \$4 billion.

21 **COMMISSIONER ARGENZIANO:** Thank you.

22 **CHAIRMAN CARTER:** Well, I certainly am -- I  
23 think that, Commissioners, we're going to probably have  
24 to go into some kind of emergency session where we meet  
25 with the Executive Director before going forward. We

1 certainly don't want even the appearance of impropriety  
2 on this case.

3 Mr. Imhof?

4 **MR. IMHOF:** I agree with you, Mr. Chairman,  
5 that we need to consult with the Executive Director and  
6 the Inspector General before I can make any kind of  
7 recommendation.

8 **CHAIRMAN CARTER:** Okay.

9 **MR. ARMSTRONG:** Chairman Carter, if I may, on  
10 behalf of the City of South Daytona, obviously this is a  
11 huge revelation. And I have to on behalf of the City  
12 echo the request of Commissioner Argenziano to expand --

13 **CHAIRMAN CARTER:** Hang on. Hang on. Hang on,  
14 Mr. Armstrong. Just hold on. Hold on. Just hold on.

15 **MR. ARMSTRONG:** Okay. I just wanted to make  
16 sure --

17 **CHAIRMAN CARTER:** I think everybody agrees to  
18 that. Not only you, but people on the bench too.

19 **MR. ARMSTRONG:** Thank you.

20 **CHAIRMAN CARTER:** So let's just hold on.

21 Commissioners, we're going to have to take a  
22 recess and I'm going to have to talk with the General  
23 Counsel and see if we can do something where we can get  
24 the Commissioners together. Because, I mean,  
25 Commissioner Skop said he's talked to the Executive

1 Director, he's talked to the Inspector General and got a  
2 call over the weekend. All this is new to me. I think  
3 being a Chairman automatically means that I'm a  
4 Commissioner, so I think I'm due that. Commissioner  
5 McMurrin is also a Commissioner. I think she's due  
6 that as well.

7 **COMMISSIONER ARGENZIANO:** Well, Mr. Chair, is  
8 there any way of determining -- I got a call also from  
9 the individual and he wanted to give a heads-up to  
10 something that may be coming out. And it seems strange  
11 that he only called me and Commissioner Skop. So I  
12 wonder what happened there. And anything you go into,  
13 into recess over, I'd like to be part of.

14 **CHAIRMAN CARTER:** I should hope so,  
15 Commissioner.

16 Commissioner McMurrin.

17 **COMMISSIONER McMURRIAN:** Thank you. And just  
18 to be clear, on my way to work this morning, this is not  
19 something I normally share during a hearing, but on my  
20 way to work this morning I did have a message from the  
21 SGA director. My phone battery was too low, so I was  
22 not able to listen to it. I have plugged my phone in  
23 this morning. Did not realize it was something as  
24 important as that, and actually would have expected that  
25 someone would have perhaps called me another way. But I

1 am, I am prone to keeping my phone on vibrate during the  
2 weekends, don't usually get calls on that phone during  
3 the weekend. So I do believe he tried to reach out to  
4 me, just so the record is clear, but I did not have that  
5 message before we got down here this morning.

6 **CHAIRMAN CARTER:** Well, I'm, I'm usually the  
7 first person here in the mornings, as I was this  
8 morning, and I haven't heard hide nor hair. So what I'm  
9 going to have to do, Commissioners, we have to go on  
10 recess and get with the General Counsel and the  
11 Executive Director and determine how to proceed before  
12 we go. I'm sorry to all the parties and all, but we're  
13 just going to have to -- due process is on the line. So  
14 we're just going to have to get to the bottom of this.  
15 With that, we're on recess.

16 (Recess taken.)

17 We are back on the record. And we had taken a  
18 break for a moment to have our General Counsel and the  
19 Inspector General to kind of get together and brief the  
20 Commissioners on this issue.

21 Mr. Imhof, you're recognized, sir.

22 **MR. IMHOF:** Thank you, Mr. Chairman.

23 My recommendation in this situation is to  
24 remove the person in question from all FPL dockets  
25 pending review by the Inspector General in consultation

1 with the General Counsel's Office. We believe there are  
2 appropriate internal processes that need to be followed  
3 and will be followed, and that currently there is no  
4 impediment to the rate case moving forward at this time.

5 **CHAIRMAN CARTER:** Thank you.

6 Thank you, Commissioners. We'll accept the  
7 recommendation of our General Counsel on this matter.

8 Let me just say this: We have, I thought it  
9 was just a computer problem this morning, but we've had  
10 a few things to come up, but let's do this. In fairness  
11 to the parties and the process, I'm going to give us an  
12 opportunity to kind of go to lunch and come back and we  
13 can all start fresh. And I think that that way the  
14 parties can collect their thoughts, and I know we've got  
15 opening statements and we've got preliminary matters and  
16 all like that, but we can start fresh since there's no  
17 impediment to us proceeding based upon the  
18 recommendation of our General Counsel.

19 With those -- Commissioners, we'll come back  
20 at -- I need to do an hour and 15. Can you do the math  
21 for me? Because I've got two times on three different  
22 clocks.

23 1:00. We're on recess until 1:00.

24 (Recess taken.)

25 We are back on the record. And I know those



1 of you that heard my one-minute warning will probably  
2 say it hasn't been a minute, but it's probably been a  
3 minute somewhere in the world. So welcome back.

4 Staff, preliminary matters.

5 **MS. BENNETT:** Yes, Mr. Chairman and members of  
6 the Commission. I just wanted to update you. We did  
7 recently, within the last few minutes, receive an  
8 expanded version to staff's discovery request, and I  
9 think FPL has also requested to speak about the response  
10 to the motion to compel.

11 **CHAIRMAN CARTER:** Okay. Mr. Butler.

12 **MR. BUTLER:** Thank you, Mr. Chairman. I'll  
13 try to be very brief.

14 Ms. Bennett is correct. We have filed just  
15 literally moments ago the additional compensation  
16 related information that had been the subject of  
17 discussion this morning. Have confirmed with  
18 Mr. Prestwood that that met his needs for completeness,  
19 so I think we're in, I think we're in good shape with  
20 that.

21 I did want to comment briefly on sort of the  
22 context of what we have provided just so the record is  
23 clear of what we had provided before and what we have  
24 added.

25 Following the Commission's decision on the

1 19th to grant staff's motion to compel, FPL provided  
2 staff a spreadsheet showing for each position at FPL  
3 with total annual compensation greater than \$165,000 the  
4 2008 total compensation broken down into several  
5 subcategories. For 2009 through 2011, however, FPL does  
6 not budget compensation for any of the individual  
7 positions other than executives really at either the  
8 total compensation level or by subcategory.

9 To address staff's interest in projected  
10 compensation by position in those budgeted years, 2009  
11 through 2011, FPL had escalated each position's 2008  
12 total compensation by the projected escalation factors  
13 for gross average payroll that are shown on MFR C-35.  
14 We also explained that there was no basis for further  
15 breaking down those projections by subcategory of  
16 compensation.

17 You know, this approach was discussed with  
18 staff and we had not heard any objections to using it  
19 until this morning. In fact, we had understood that  
20 staff was in agreement with that approach.

21 Taken together with the comments quoted in the  
22 *Palm Beach Post* last week that the Commission had what  
23 it needed in confidentiality filings for these rate  
24 hearings, we thought that we had fully addressed the  
25 Commission's information needs in this case.

1                   What we have filed this afternoon --

2                   **COMMISSIONER ARGENZIANO:** Mr. Chair?

3                   **CHAIRMAN CARTER:** Yes, Commissioner.

4                   **COMMISSIONER ARGENZIANO:** I'm sorry. He can  
5 finish. I thought he was done. I'll wait until he's  
6 done.

7                   **MR. BUTLER:** Almost.

8                   **CHAIRMAN CARTER:** Okay. Mr. Butler.

9                   **MR. BUTLER:** Sorry. What we filed this  
10 afternoon simply takes the individual position 2008  
11 compensation by subcategory or subcomponent and ratios  
12 those subcomponents up to 2009, 2011 values using the  
13 same escalation factors from MFR C-35 that we had used  
14 previously for escalating the total compensation.

15                   It really -- it doesn't convey more  
16 information than, than that, and we just wanted to be  
17 sure the Commission understands that because information  
18 isn't budgeted or projected in those subcategories, all  
19 we can really do is express an overall ratio of the  
20 figures.

21                   FPL has been extremely forthcoming in  
22 discovery in this proceeding. We've responded to over  
23 5,000 questions and we've produced over 170,000 pages of  
24 documents and almost 500 CDs of data. We certainly had  
25 no intention of restricting Commission access to the

1 information that the Commission determines that it  
2 needs, and we believe at this point that we have fully  
3 complied with the Commission's requests.

4 Thank you.

5 **CHAIRMAN CARTER:** Thank you.

6 Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** Yes. Well, I want  
8 to address the issue that was just brought up about the  
9 article that was in the paper that the Commission -- and  
10 it wasn't the Commission, it was our PR individual,  
11 Cindy Muir, who made the statement that we had  
12 everything we needed.

13 When I read that, I immediately called my  
14 staff and got with the Director and said that is not  
15 accurate. And that's another issue altogether with what  
16 our staff is directed to tell the media and not. That  
17 was incorrect. That is not to say that that's FPL's  
18 fault in any way. But I was on that very, very quickly,  
19 and that was a misstatement by our individual who  
20 releases that information.

21 And I've asked our Director to make sure that  
22 there is some direction in what's given out to the  
23 media. Because that was incorrect and it obviously led  
24 to the misunderstanding, as Mr. Butler just mentioned,  
25 that they thought we had everything we needed right

1 after we had that hearing that said we did not have  
2 everything we needed. So I needed to express that and  
3 get it on the record. And, again, it's not FPL's fault.  
4 It's our fault, and the lack of direction to our PR  
5 person that there was in not getting the correct  
6 information out there.

7 So with that said, I need to know and I need  
8 to hear from my staff as to if everything that I asked  
9 for and what we discussed at the hearing the other day  
10 has been complied with, because it gets very muddied and  
11 very confusing. And I want to make sure that that is --  
12 I think I just heard FPL say that they have complied. I  
13 want to hear from staff and from my staff, Larry, to  
14 find out if that is the case.

15 **CHAIRMAN CARTER:** Okay. Let's do this,  
16 Commissioner. We'll hear from staff, then Commissioner  
17 Skop.

18 Staff, you're recognized.

19 **MR. PRESTWOOD:** Yes. This is Clarence  
20 Prestwood. I did just recently a few moments ago review  
21 the filing as it was on its way to the Clerk's Office,  
22 and it did have all the information that we had  
23 requested.

24 **CHAIRMAN CARTER:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

1 And, again, thank you, Mr. Butler, for being attentive  
2 to that matter. Again, I appreciate the -- that there  
3 may have been a misunderstanding. But it's important  
4 for our staff to get complete information so they don't  
5 have to fill in the blanks, because it takes their time  
6 away from doing their other job associated with this  
7 rate case. So I do thank you and FPL for trying to  
8 address that situation, and my concerns are resolved  
9 based on Mr. Prestwood's comments. Thank you.

10 **CHAIRMAN CARTER:** Thank you.

11 Staff, any further preliminary matters?

12 **MS. BENNETT:** Several. I want to start first  
13 with we've got a few stipulated issues for the  
14 Commission to consider, and perhaps now would be the  
15 time to consider them.

16 The stipulations fall into three categories,  
17 and the first category is one in which all parties  
18 agree. The second category contains issues in which  
19 some of the parties agree with FPL and staff agrees with  
20 FPL, but the remaining parties take no position. And  
21 the third category contains issues in which staff has  
22 reviewed testimony and discovery responses and, after  
23 review, agrees with FPL's position, while the remaining  
24 parties take no position.

25 In Category 1 there is one issue, Issue 54,

1 listed in Section X of the Prehearing Order on Page 169.  
2 In Category 2 there are two issues, Issues 123 and 127,  
3 listed in Section X of the Prehearing Order on Page 169.  
4 In Category 3 there are 13 issues: Issues 53, 57, 98,  
5 99, 143, 146, 147, 149, 151, 153, 158, 172 and 176  
6 listed in Section X of the Prehearing Order on Pages  
7 170 and 171.

8 There are no factual issues in dispute for  
9 these particular issues, and so you can go ahead and  
10 vote on them at this time if that's your pleasure. And  
11 staff is available to respond to any questions that you  
12 may have on these stipulated issues.

13 **CHAIRMAN CARTER:** Okay. Let's take them one  
14 at a time in terms of those groups that you have broken  
15 them down into.

16 The first category, would you kind of tee that  
17 up, please?

18 **MS. BENNETT:** The first category, Category 1,  
19 is Issue 54, which is the one that all parties agreed.  
20 Basically you're going to take it up in the nuclear cost  
21 recovery clause hearing, I believe, in two weeks.

22 **CHAIRMAN CARTER:** Commissioners, we have a  
23 recommendation from staff based upon stipulation of the  
24 parties on Issue 54. Any questions?

25 The Chair is now open for a motion.

1                   **COMMISSIONER SKOP:** Mr. Chair, I respectfully  
2 move to adopt Issue 54 as fully stipulated by the  
3 parties.

4                   **COMMISSIONER McMURRIAN:** Second.

5                   **CHAIRMAN CARTER:** Commissioners, it's been  
6 moved and properly seconded. Any debate? Any  
7 discussion? Hearing none, all in favor, let it be known  
8 by the sign of aye.

9                   (Unanimous vote.)

10                   All those opposed, like sign. Show it done.

11                   Staff, you're recognized.

12                   **MS. BENNETT:** The next category of issues are  
13 Issues 123 and 127, and those are positions in which  
14 some -- I believe OPC and FPL agreed and staff also  
15 agreed with both OPC and FPL. I think it was OPC's  
16 position that we actually adopted in the position  
17 statement. Staff is available for questions.

18                   **CHAIRMAN CARTER:** Mr. McGlothlin, is that your  
19 understanding?

20                   **MR. MCGLOTHLIN:** Yes.

21                   **CHAIRMAN CARTER:** And you said -- Mr. Butler?

22                   **MR. BUTLER:** It is my understanding as well.  
23 We agree with these positions.

24                   **CHAIRMAN CARTER:** Okay. And there's no  
25 comment from -- no position by the other parties; is



1 that correct?

2 Okay. Staff, and your recommendation?

3 **MS. BENNETT:** We recommend that you approve  
4 those stipulated issues at this time.

5 **CHAIRMAN CARTER:** Thank you.  
6 Commissioner Skop?

7 **COMMISSIONER SKOP:** Thank you, Mr. Chair.  
8 To staff, with respect to the stipulated  
9 Issues 123 and 127, for which all parties have not  
10 approved, is that prejudicial in any way if the  
11 Commission were to adopt that stipulation to the parties  
12 that have not agreed to it?

13 **MS. BENNETT:** No, sir. What the -- the  
14 position the remaining parties took was no position. In  
15 other words, they don't dispute. They just don't  
16 necessarily agree.

17 **COMMISSIONER SKOP:** Very well.

18 **CHAIRMAN CARTER:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you, Mr. Chair.  
20 Based upon the partial stipulations of the parties and  
21 the recommendation of staff, I'd respectfully move to  
22 accept the stipulations as to Issue 123 and 127.

23 **COMMISSIONER McMURRIAN:** Second.

24 **CHAIRMAN CARTER:** It's been moved and properly  
25 seconded. Commissioners, any debate, any discussion?

1 Hearing none, all in favor, let it be known by the sign  
2 of aye.

3 (Unanimous vote.)

4 All those opposed, like sign. Show it done.  
5 Staff, you're recognized.

6 **MS. BENNETT:** And the last category of issues  
7 are issues -- well, there are 13 issues and I can read  
8 them out aloud again. But basically staff has conducted  
9 discovery and, after discovery, has convinced itself  
10 that it agrees with the position of FPL and would  
11 recommend, since all other parties take no position,  
12 that you can go ahead and approve the issues because  
13 there's no factual issue in dispute.

14 **CHAIRMAN CARTER:** Is that the understanding of  
15 all the parties?

16 Okay. Commissioner Skop, you're recognized,  
17 sir.

18 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

19 Just a quick question of staff. Do we need to  
20 address those issues specifically by number or can we  
21 move to approve those as a block?

22 **MS. BENNETT:** You can move to approve those as  
23 a block. They're the issues listed on the Prehearing  
24 Order on Pages 170 and 171.

25 **COMMISSIONER SKOP:** Thank you.

1           Mr. Chair, I'd respectfully, based on staff  
2 recommendation, move to approve the issues as a block  
3 articulated on Pages 170 and 171 of the Prehearing  
4 Order.

5           **COMMISSIONER McMURRIAN:** Second.

6           **CHAIRMAN CARTER:** It's been moved and properly  
7 seconded.

8           Commissioners, any questions? Any debate?  
9 Hearing none, all in favor, let it be known by the sign  
10 of aye.

11           (Unanimous vote.)

12           All those opposed, like sign. Show it done.

13           Staff, you're recognized for further  
14 preliminary matters.

15           **MS. BENNETT:** The parties have indicated they  
16 have no objection to the excusal of staff witnesses  
17 Rhonda Hicks and Dale Mailhot. The Commissioners have  
18 also indicated that they do not have questions of the  
19 staff witnesses. Staff requests that Ms. Hicks and  
20 Mr. Mailhot be excused from the proceeding, and at the  
21 appropriate time their testimony and exhibits will be  
22 entered into the record as though read.

23           **CHAIRMAN CARTER:** Commissioner Skop.

24           **COMMISSIONER SKOP:** Thank you, Mr. Chair.  
25 Based on staff recommendation, I'd move to excuse

1 Witnesses Hicks and Mailhot and have their testimony  
2 entered into the record as though read.

3 **COMMISSIONER McMURRIAN:** Second.

4 **CHAIRMAN CARTER:** Commissioners, it's been  
5 moved and properly seconded.

6 Any discussion? Any debate? All in favor,  
7 let it be known by the sign of aye.

8 (Unanimous vote.)

9 All those opposed, like sign. Show it done.

10 Staff, you're recognized.

11 **MS. BENNETT:** Mr. Chairman, the Attorney  
12 General's Office has filed a motion in limine regarding  
13 late-filed exhibits, and FPL has filed a response. No  
14 party requested oral argument, and the Commission may  
15 announce a ruling from the bench or they may ask for  
16 oral argument at this time.

17 **CHAIRMAN CARTER:** Commissioners,  
18 Commissioners, I think it would be appropriate for us to  
19 hear from the parties. Unless I get some objection from  
20 the bench, I'm going to allow the parties to present the  
21 motion.

22 Ms. Bradley, you're recognized.

23 **MS. BRADLEY:** Thank you, Mr. Chairman. I'll  
24 be very brief. I think it's summarized in our motion.  
25 But the courts look upon late-filed exhibits as a

1 violation of due process where there is, especially in  
2 these cases like you have, there's orders giving the  
3 timing as to when exhibits are supposed to be filed and  
4 all of this information.

5 And when there are late-filed exhibits,  
6 parties don't have an opportunity to cross-examine the  
7 person filing it a lot of times, they don't have an  
8 opportunity to put on rebuttal testimony, and the courts  
9 look upon this as a violation of due process.

10 And Florida Statute, I believe it's  
11 120.569(2)(j), also talks about any time there are  
12 witnesses or exhibits offered, parties are entitled to  
13 cross-examine regarding these matters.

14 So we would -- I know the Commission likes  
15 sometimes late-filed exhibits when they have a question,  
16 and we would suggest that the way to remedy that so that  
17 there's not a due process violation is to allow  
18 subsequent cross-examination of the person that has  
19 prepared the late-filed exhibit and an opportunity to  
20 offer rebuttal testimony in opposition to that. And it  
21 could be done very quickly once they present whatever  
22 the late-filed material has been requested.

23 We would also ask that when there are  
24 late-filed exhibits, it be specifically limited either  
25 to the requested material or to that which has been, a

1 party has asked to file, and not be allowed to throw in  
2 a bunch of extra stuff after the fact.

3 **CHAIRMAN CARTER:** Okay. Mr. Butler.

4 **MR. BUTLER:** Thank you, Mr. Chairman. FPL  
5 believes that the Attorney General's Office motion is  
6 really premature at this point. It's speculative. It's  
7 addressing conceptually problems that could arise with  
8 respect to late-filed exhibits rather than problems with  
9 specific late-filed exhibits where I believe a motion in  
10 limine might be more appropriate.

11 But going to the substance of what Ms. Bradley  
12 had suggested, I don't think that we see a problem in  
13 almost all instances where it's practical to do so with  
14 giving an opportunity for examination of a sponsoring  
15 witness.

16 But the idea of filing testimony in, you know,  
17 response to a late-filed exhibit is going to make, I  
18 think, the proceeding unworkable. We do not, I mean  
19 parties do not have that opportunity now with respect to  
20 exhibits that are attached to rebuttal testimony. They  
21 simply cross-examine witnesses about them.

22 But between the opportunity for  
23 cross-examination, the opportunity to comment on the  
24 late-filed exhibits in briefs, the opportunity to move  
25 to strike late-filed exhibits if the exhibit party feels

1 that it goes well beyond the scope of what the  
2 Commission has asked for in the late-filed exhibit are  
3 all mechanisms available that we feel adequately address  
4 the interest that parties might have in disputing  
5 information that would be contained in a late-filed  
6 exhibit.

7 I think the practical reality of a proceeding  
8 like this, there being so much information, so much  
9 difficulty in anticipating in advance exactly what you  
10 as the Commissioners want to see as, you know, what you  
11 need to be able to make decisions on the issues, that it  
12 would be just unnecessarily tying your hands to make a  
13 prospective across-the-board general decision that  
14 late-filed exhibits would not be appropriately used.

15 Thank you.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioner Skop, then I'm going to go to  
18 Ms. Helton. Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

20 With respect to the issues raised by the  
21 parties, both the AG and FPL's response, if I could ask  
22 Ms. Bennett or Ms. Helton whether the motion in limine  
23 is a proper procedural vehicle to accomplish what the AG  
24 wishes to accomplish. And the second part of that is  
25 whether a contemporaneous objection adequately protects

1 the record for appeal.

2 **CHAIRMAN CARTER:** Commissioner, address it to  
3 Ms. Helton since Ms. Bennett is the attorney on this.  
4 So Ms. Helton is the counsel to the Commission.

5 Ms. Helton.

6 **MS. HELTON:** Actually, Mr. Chairman and  
7 Commissioner Skop, if I could pass the buck to my boss,  
8 the General Counsel, he's prepared to answer the  
9 question.

10 **CHAIRMAN CARTER:** Mr. Imhof.

11 **MR. IMHOF:** At this time I do think that the  
12 request is premature and not proper for a motion in  
13 limine, and recommend that it should be denied, that the  
14 proper motion and the proper procedure would be the  
15 objection at that time.

16 **CHAIRMAN CARTER:** Commissioner McMurrrian.

17 **COMMISSIONER McMURRIAN:** Thank you.

18 I had a question for Ms. Bradley, just to make  
19 sure I understand. And I guess I'll -- this is kind of  
20 an additional comment.

21 I think to the, to the extent that you're  
22 asking that information be limited to the, to that  
23 requested, I think that that -- I think that a  
24 late-filed exhibit should respond to the question posed,  
25 as everyone's understanding is when we leave. Of course



1 sometimes we have some confusion perhaps, and maybe  
2 we'll work on that going forward.

3 But I want to understand the second part of  
4 your request about allowing parties to cross-examine and  
5 such. How do you see that working from a schedule  
6 perspective in reopening the record? Are you suggesting  
7 to reopen the record and allow for cross-examination on  
8 a late-filed exhibit after we've closed the record?

9 **MS. BRADLEY:** Well, whether you close it or  
10 whether you close it pending additional information that  
11 would be introduced through -- obviously you have to  
12 allow the late-filed and to allow a brief period of time  
13 for cross-examination or some type of rebuttal  
14 testimony.

15 To address the point that was made earlier,  
16 when there's, in rebuttal there's additional  
17 information, exhibits that are offered, at least the  
18 parties get a chance, they see those up-front because  
19 they're prefiled and parties can ask about it of the  
20 other witnesses. In this type of situation where the  
21 exhibits are filed after the hearing is closed and  
22 nobody really knows what's going to be put in there,  
23 there's no opportunity to do that.

24 And we would suggest that a motion in limine  
25 is frequently used for this type of thing. We're not

1 asking you how to rule on a particular exhibit, but just  
2 trying to get some procedure established so that we know  
3 how it's going to be handled and then we can make sure  
4 everybody has due process rights covered.

5 **COMMISSIONER McMURRIAN:** Thank you. I think  
6 that's all, Mr. Chairman.

7 **CHAIRMAN CARTER:** Commissioners, anything  
8 further before I go back to Mr. Imhof? Anything further  
9 from the bench?

10 **COMMISSIONER ARGENZIANO:** Mr. Chair?

11 **CHAIRMAN CARTER:** Commissioner Argenziano,  
12 you're recognized.

13 **COMMISSIONER ARGENZIANO:** Don't we have  
14 specific rules regarding late-filed amendments?

15 **CHAIRMAN CARTER:** Mr. Imhof.

16 **MR. IMHOF:** I'll be right with you, Mr.  
17 Chairman.

18 **CHAIRMAN CARTER:** Okay. He's conferring with  
19 Ms. Helton right now, Commissioner.

20 **MR. IMHOF:** Mr. Chairman and Commissioners, as  
21 far as we know, we do not have any specific rules  
22 addressing late-filed amendments. We think that you  
23 could probably address those as you go through the  
24 hearing, if you so desired, to give time lines and times  
25 for objection. It would be at the discretion of the

1 Commission.

2 **CHAIRMAN CARTER:** Commissioner Argenziano.

3 **COMMISSIONER ARGENZIANO:** Okay. I thought, I  
4 thought we did. I'm going to have to take a peek at  
5 something and get back to you. Thank you.

6 **CHAIRMAN CARTER:** Yes. Commissioner  
7 Argenziano, I think you're probably thinking like I was  
8 in the context of the Prehearing Order as they set out  
9 the procedure for the hearing. I thought it was covered  
10 within those, those -- is that, Ms. Helton, is that  
11 right or am I reaching?

12 **MS. HELTON:** The Order Establishing Procedure  
13 lays out the dates for when prefiled direct testimony  
14 and any attached exhibits and prefiled rebuttal  
15 testimony are due. To my recollection, I cannot think  
16 of a procedural form, order, for lack of a better word,  
17 that addresses late-filed exhibits. They don't always  
18 come up in a proceeding. And when they do come up in a  
19 proceeding, we usually -- I mean, circumstances can  
20 change, so we usually deal with them on a case-by-case  
21 basis.

22 **CHAIRMAN CARTER:** Let me do this, Ms. Bradley.  
23 I'm going to withhold judgment and give staff an  
24 opportunity to kind of make some recommendations. Let's  
25 see, let's see if we get to that horse and then we'll

1 cross the bridge or -- sometimes I mix up the metaphors,  
2 but you know what I mean. Let's hold off on ruling on  
3 that for right now. Okay?

4 Staff, preliminary matters?

5 **MS. BENNETT:** Yes, Mr. Chairman. We have a  
6 Comprehensive Exhibit List that we provided to all of  
7 the parties, and the Commissioners also have a copy. We  
8 distributed it last Friday. The Comprehensive Exhibit  
9 List includes -- the list itself is Item Number 1.  
10 Items 2 through 34 are the service hearing exhibits that  
11 we took during our service hearings throughout the  
12 state. Items 35, 36, and 37 are staff's composite,  
13 composite exhibits, the list. And then Items 38 through  
14 382 are prefiled exhibits.

15 I'm going to suggest that after opening  
16 statements the Comprehensive Exhibit List and Items  
17 2 through 34 be entered into the record. For Items 38  
18 through 381, the prefiled exhibits, each sponsoring  
19 witness will be responsible for entering those documents  
20 into the record at the conclusion of their testimony.  
21 And at the conclusion of the hearing, staff will enter  
22 its composite exhibits into the record. Those would be  
23 35, 36 and 37.

24 **CHAIRMAN CARTER:** Okay. You may proceed.  
25 Further preliminary matters?

1           **MS. BENNETT:** You might want to check with the  
2 parties to see if they have any concerns about the  
3 Comprehensive Exhibit List, because we have not  
4 stipulated that list yet.

5           **CHAIRMAN CARTER:** Let's do that at this time.  
6 Mr. Butler.

7           **MR. BUTLER:** FPL does not have any concerns  
8 with it.

9           **CHAIRMAN CARTER:** You're recognized. You may  
10 proceed.

11           **MS. PERDUE:** AIF does not have any concerns  
12 either.

13           **CHAIRMAN CARTER:** Okay. Gentlemen?

14           **MR. WISEMAN:** I don't believe that we have any  
15 issues with the Comprehensive Exhibit List, Your Honor.

16           **CHAIRMAN CARTER:** Mr. McGlothlin.

17           **MR. MCGLOTHLIN:** We have found no errors in  
18 the exhibit list at this point.

19           **CHAIRMAN CARTER:** Thank you.

20 Ms. Bradley.

21           **MS. BRADLEY:** None from me, Mr. Chairman.

22           **CHAIRMAN CARTER:** Mr. Moyle?

23           **MR. MOYLE:** You're asking if we have any  
24 errors or any corrections on the exhibit list? Is  
25 that --

1           **CHAIRMAN CARTER:** Or any objections to it.

2           **MR. MOYLE:** I think we've had discussions with  
3 staff about, you know, everything coming in en masse,  
4 and I think the parties have indicated a concern about  
5 that. If that's not the question that's being asked --

6           **CHAIRMAN CARTER:** That's not the question.  
7 Staff is talking about the Items 2 through 34, which are  
8 the service hearing exhibits, and, and prefiled -- the  
9 other exhibits were 38 through 381 are the prefiled  
10 exhibits of the parties.

11           **MR. MOYLE:** Okay. We're fine on that.

12           **CHAIRMAN CARTER:** Mr. Wright.

13           **MR. WRIGHT:** Thank you, Mr. Chairman. We  
14 don't have any issue with the Comprehensive Exhibit List  
15 or with 2 through 34.

16           At the appropriate time I have a brief  
17 preliminary matter relating to some issues in the  
18 Prehearing Order.

19           **CHAIRMAN CARTER:** I'll come back to you.

20           Mr. Armstrong.

21           **MR. ARMSTRONG:** No objection, Mr. Chair.

22           **CAPTAIN McNEILL:** No objection, sir.

23           **MR. STEWART:** None.

24           **CHAIRMAN CARTER:** Okay. Well, when we, just  
25 so everybody will be on the same page, after we finish

1 the opening statements, then we'll deal with the  
2 Comprehensive Exhibit List. And that would encompass  
3 the list itself and items -- it'll actually be Items  
4 1 through 34. Is that correct, staff?

5 **MS. BENNETT:** That's correct.

6 **CHAIRMAN CARTER:** Okay. Good. All right  
7 then. Staff, let's proceed on other preliminary  
8 matters.

9 **MS. BENNETT:** Yes, sir. Staff notes that  
10 during the service hearings the City of Lauderhill asked  
11 the Commission to address LED streetlights. My  
12 understanding is that OPC has had opportunity to discuss  
13 that with the Mayor of the City of Lauderhill and also  
14 with FPL. And I think Mr. Beck would like to discuss  
15 including an additional issue for this, for this  
16 hearing.

17 **CHAIRMAN CARTER:** Okay. Mr. Beck, good  
18 afternoon.

19 **MR. BECK:** Good afternoon. Thank you, Mr.  
20 Chairman.

21 We've been in discussions with Florida Power &  
22 Light in how specifically to address the issues that  
23 were raised by Mayor Richard Kaplan during the  
24 Plantation service hearing about LED lighting. And at  
25 least between FPL and ourselves we've agreed to an

1 issue, and the issue is this. Should FPL evaluate the  
2 merits of an LED street lighting alternative to its  
3 conventional street lighting rate and, if so, how?

4 And this issue is patterned somewhat the same  
5 way that we addressed the prepayment issue that was  
6 raised by customers in the Fort Myers hearing. We each  
7 have separate positions on that. We've provided the  
8 positions to staff. But we would like to ask that the  
9 Commission add that as an additional issue to be  
10 addressed by the Commission.

11 **CHAIRMAN CARTER:** Mr. Butler.

12 **MR. BUTLER:** Mr. Beck has correctly stated it.  
13 We have no objection to the issue. It seems like  
14 something that probably would be useful to have  
15 identified so we'd have the vehicle for addressing the  
16 concern the mayor had raised.

17 **CHAIRMAN CARTER:** Okay. Before I go to staff  
18 or the bench, are there any, any objection from any of  
19 the parties? Mr. Wright, you look like you're -- we're  
20 just talking about the issue.

21 **MR. WRIGHT:** No objection to the, no objection  
22 to the LED street lighting issue, Mr. Chair. Thank you.

23 **CHAIRMAN CARTER:** Okay. From any of the  
24 parties on that?

25 Okay. Staff.



1           **MS. BENNETT:** If it's the pleasure of the  
2 Commission to include this item, we can add the issue  
3 and the parties' positions as an amendment to the order,  
4 the Prehearing Order, so that everybody knows that  
5 that's included in this hearing.

6           **CHAIRMAN CARTER:** And I think that, because  
7 that was an issue that was raised during the hearings,  
8 Ms. Bradley, that, will that give you sufficient notice  
9 if we were to add that now?

10          **MS. BRADLEY:** We don't have any objection to  
11 adding this issue. I think the parties agreed to that.

12          **CHAIRMAN CARTER:** Okay. From the bench?

13          Commissioner McMurrin, you're recognized.

14          **COMMISSIONER McMURRIAN:** I just want to know  
15 what number we're proposing to make this issue.

16          **CHAIRMAN CARTER:** Who's in charge of issues  
17 numbers?

18          **COMMISSIONER McMURRIAN:** Not me now, I don't  
19 think. Don't ask. Thank you.

20          **MS. BENNETT:** One thousand five hundred and --  
21 no.

22          **CHAIRMAN CARTER:** I should have grandchildren  
23 by then.

24          (Laughter.)

25          **MS. BENNETT:** How about calling it Number

1 173A?

2 **CHAIRMAN CARTER:** 173A. And staff will craft  
3 the language and provide it so that maybe by the next  
4 couple of days or so everyone would get an opportunity  
5 to look it, look it over.

6 Is that okay with you guys if we do it that  
7 way? We'll make it 173A. Staff will craft the language  
8 and give you an opportunity to look it over.

9 And, Commissioners, I think that in view of  
10 what we've heard from the parties and from staff, I  
11 think it would be appropriate for us to, to add this as  
12 an issue, unless there's some disagreement or, or maybe  
13 from, from the bench. Anything from the bench on this?

14 Okay. Show it done.

15 Okay. Next preliminary matter.

16 **MS. BENNETT:** We have one outstanding, maybe,  
17 motion to compel some interrogatory responses from the  
18 City of South Daytona. What has happened is that the  
19 City of South Daytona filed and requested some  
20 interrogatory responses. FPL supplemented. We haven't  
21 heard back from the City of South Daytona whether they  
22 were satisfied, that the supplemental responses  
23 satisfied them or not. It appears to staff that it  
24 does, but we needed confirmation.

25 **CHAIRMAN CARTER:** Let's hear from

1 Mr. Armstrong. Mr. Armstrong.

2 **MR. ARMSTRONG:** Thank you, Mr. Chair. And  
3 actually I did mention it verbally, I believe, that we  
4 did have some issues. What I have done though in the  
5 time that we did discuss it was to go back, and we do  
6 have two -- there are several items that were not  
7 responded to. We have identified two document requests,  
8 our document request number 1 and 8, which we asked the  
9 Commission to compel responses to.

10 As the Commission is aware, I represent the  
11 City of South Daytona, which is a sovereign local  
12 government in the State of Florida. On May 4th the City  
13 requested documents identifying the value of FPL's  
14 assets within the City's limits.

15 FPL confirms that it has a state of the art  
16 asset management system. FPL says it can record assets  
17 meticulously when they are placed into service as well  
18 as when they are retired. FPL must have these assets in  
19 order to conduct a rate case like this one. These  
20 records are produced whenever there's a territory  
21 dispute. Whenever there's a territory exchange before  
22 this Commission between utilities, FPL provides this  
23 type of information. Again, we want their book records,  
24 their asset records for the assets that they have within  
25 the City of South Daytona.

1           The City of South Daytona intervened in this  
2 case as a customer and on behalf of its citizens. The  
3 City has the right to know what assets FPL is suggesting  
4 serves them and are included in rate base and thus rates  
5 charged to South Daytona. For instance, the City and  
6 its residents have the right to know whether they are  
7 subsidizing other customers.

8           In this proceeding, FPL is asking for all  
9 customers, including South Daytona, to pay millions of  
10 dollars for new meters to be installed solely in the  
11 City of Miami or in the Miami-Dade area.

12           Again, FPL has this information, they record  
13 this information, they provide this information when  
14 they're dealing in territory exchanges or in territory  
15 disputes.

16           We believe that since May 4th they had plenty  
17 of time to simply go to their records, do what they  
18 would do in those other type of territorial dockets and  
19 provide that information to the City of South Daytona.

20           We ask the Commission to compel them to  
21 respond and provide us those records. No study is  
22 required here. Provide us those records by Wednesday of  
23 this week to give us an opportunity to review them and  
24 use them for cross-examination in this docket.

25           **CHAIRMAN CARTER:** Thank you.

1 Mr. Butler.

2 **MR. BUTLER:** Thank you, Mr. Chairman.

3 Most fundamentally I just have to agree  
4 (phonetic) with Mr. Armstrong's assertion of fact. It's  
5 not true. FPL does not have those documents. We have  
6 provided in our supplemental response the information at  
7 the best level we have available to provide it, which is  
8 with respect to feeders, the sort of major distribution  
9 lines that run through the City of South Daytona. We  
10 have provided information in response to both POD Number  
11 1 and POD Number 8 for those feeders.

12 The problem that Mr. Ander -- or Mr. Armstrong  
13 apparently has in how he conceives FPL's ability to sort  
14 of sort this information is that what FPL has as a  
15 system and can do quite effectively is if we are given a  
16 particular location of a device and then, you know, the  
17 question is what device exists at that location, various  
18 informations about its cost, et cetera, we can provide  
19 that.

20 What we can't do is the kind of reverse sort  
21 that Mr. Armstrong is asking for, to say, okay, here's a  
22 geographic area. You know, all of the streets, avenues,  
23 blocks, property within the boundaries of the City of  
24 South Daytona, you know, sort your computer records by  
25 what is in that geographic area.

1           We do not have that information. We've made  
2 that clear in our original objections, we made it clear  
3 in our response to his motion to compel, and we have  
4 shown, I think, very good faith by following up and  
5 providing the closest thing we have, which is we can  
6 identify the feeders that, you know, run through the  
7 City of South Daytona. Some of them probably serve  
8 little more than the City of South Daytona. Others  
9 would serve considerably large areas. But where the  
10 feeder goes within that boundaries, we can identify that  
11 and we've provided the information, you know, at that  
12 level. But we simply don't have information categorized  
13 or reasonably ascertainable for all of the pieces of  
14 property that exist within a particular municipality.

15           I'd further note that, you know, this  
16 Commission, you know, we're not asking for, and to the  
17 best of my knowledge the Commission has never set rates  
18 based on sort of a separate rate for each separate  
19 municipality. You know, looking at the cost of service  
20 to serve Fort Lauderdale versus West Palm Beach versus  
21 Daytona versus City of South Daytona, whatever.

22           The focus of this proceeding is on a rate that  
23 will apply to categories of customers that have to do  
24 with the nature of their use, not with their geography.  
25 So the information is of marginal relevance at best to

1 the proceeding and it is not with any reasonable amount  
2 of effort kind of ascertainable and producible by FPL.

3 **CHAIRMAN CARTER:** Ms. -- is it Mr. Imhof or  
4 Ms. Helton? Ms. Helton.

5 **MS. HELTON:** I'd much rather it be Mr. Imhof.  
6 (Laughter.)

7 Is this one that we can take under advisement,  
8 Mr. Chairman? I, I would, I think I would like to look  
9 at the responses that Power & Light gave to  
10 Mr. Armstrong in response to the request. I'm not sure  
11 this is one that I can do off the cuff.

12 **CHAIRMAN CARTER:** Okay.

13 **MS. HELTON:** I think I need to look at the  
14 staff who would be responsible for this type of issue  
15 and have them help me with it.

16 **CHAIRMAN CARTER:** Okay. We'll do that then.  
17 We'll get back with you, Mr. Armstrong and  
18 Mr. Butler. Get back with you at the appropriate time.

19 **MR. ARMSTRONG:** I appreciate that.

20 **CHAIRMAN CARTER:** Okay.  
21 Staff, further preliminary matters.

22 **MS. BENNETT:** Yes, Mr. Chairman.

23 There are some outstanding motions regarding  
24 confidentiality that will be addressed by separate  
25 order.

1 I'm going to take an opportunity to remind  
2 everyone that the record is going to include  
3 confidential information, as the staff and different  
4 parties bring that information to your attention. When  
5 discussing issues that are supported by evidence that is  
6 confidential, we must all take every precaution to avoid  
7 stating the confidential information allowed. So we'll  
8 have to devise our questions very carefully around that  
9 which is redacted.

10 **CHAIRMAN CARTER:** Okay. Go ahead.

11 **MS. BENNETT:** May I move on to the next?

12 **CHAIRMAN CARTER:** No. On the, as we go  
13 through the confidentiality, all parties have signed the  
14 agreements so they can all see that; correct? Is that  
15 where we are?

16 **MS. BENNETT:** I'm not certain that we have  
17 everyone signing confidentiality agreements.

18 **MR. BUTLER:** The great majority of the parties  
19 have. I don't believe that some of the parties who have  
20 not been actively participating in discovery have signed  
21 confidentiality agreements because there hasn't been  
22 confidential information produced to them. I'll  
23 double-check.

24 **CHAIRMAN CARTER:** Okay.

25 **MR. BUTLER:** And will advise you as to which



1 parties, if any, have not entered into confidentiality  
2 agreements with us.

3 **CHAIRMAN CARTER:** Okay. Thank you.

4 Ms. Bennett.

5 **MS. BENNETT:** The next item is I have been  
6 contacted by I believe four different parties that have  
7 some corrections on the Prehearing Order that they would  
8 like to bring to your attention.

9 **CHAIRMAN CARTER:** Okay. Mr. Butler.

10 **MR. BUTLER:** I am, I am one of those parties.  
11 Let me just run through very briefly. On Page, excuse  
12 me, 7 of the Prehearing Order, the issues that are  
13 identified for three of FPL's witnesses got misprinted  
14 here. The issues for J. A. Stall, which is about four  
15 witnesses up from the bottom of the page, that should be  
16 just Issues 17 and 102 instead of that long list that  
17 appears there.

18 **CHAIRMAN CARTER:** 17 and 102?

19 **MR. BUTLER:** That's right. And then for  
20 Ms. Slattery, it should be 100, 102, 103 and 106 rather  
21 than the, excuse me, issues that are listed there for  
22 her.

23 And finally for Mr. Meischeid, the next to the  
24 last name, that would be only Issue 103 instead of the  
25 three issues that are listed.

1           **CHAIRMAN CARTER:** Okay. Did all --

2           **MR. BUTLER:** I'm sorry.

3           **CHAIRMAN CARTER:** Did all the parties get an  
4 opportunity to make those corrections on your Prehearing  
5 Order?

6           Mr. Moyle, you got a question, sir?

7           **MR. MOYLE:** No. I think, I think we're good.  
8 Thank you.

9           **CHAIRMAN CARTER:** Okay. Okay. Next as we  
10 proceed down the line.

11          **MR. BUTLER:** I'm sorry. I have two more  
12 items.

13          **CHAIRMAN CARTER:** You have some more?

14          **MR. BUTLER:** Yes. I'm sorry.

15          **CHAIRMAN CARTER:** Okay.

16          **MR. BUTLER:** For FPL Witness Clarke, which  
17 appears actually at the beginning of the next page, Page  
18 8 at the top.

19          **CHAIRMAN CARTER:** Page 8. Okay.

20          **MR. BUTLER:** At this point in the second week  
21 of hearing, next week, he is available only on  
22 September 2. We're working to try to expand the  
23 availability in that period. But anticipating that for  
24 his rebuttal testimony that might well fall into the  
25 second week, at this point we would need to try to

1 arrange it for him to testify on September 2.

2 And the final point is on Page 149 of the  
3 Prehearing Order.

4 **CHAIRMAN CARTER:** 149?

5 **MR. BUTLER:** Yes. 149.

6 **CHAIRMAN CARTER:** Okay.

7 **MR. BUTLER:** As identified at the beginning of  
8 the Prehearing Order, FPL will have Pamela Sonnelitter  
9 adopting the testimony of James A. Keener. That's  
10 correctly identified up in the list of witnesses. But  
11 here in the list of exhibits we still have listed the,  
12 as the witness who would be sponsoring these particular  
13 exhibits as Mr. Keener. So starting with the JAK-1  
14 through JAK-6, that should be Pamela Sonnelitter instead  
15 of Mr. Keener.

16 **CHAIRMAN CARTER:** It should be whom?

17 **MR. BUTLER:** It's Pamela and then Sonnelitter.  
18 Let me spell the last name for you. It's  
19 S-O-N-N-E-L-I-T-T-E-R.

20 **CHAIRMAN CARTER:** And that's for JAK-6?

21 **MR. BUTLER:** JAK-1 through JAK-6. All the  
22 ones listed there for James A. Keener.

23 **CHAIRMAN CARTER:** Okay. So in reverse order  
24 from JAK-6 to JAK-1?

25 **MR. BUTLER:** That's right.

1                   **CHAIRMAN CARTER:** Okay. Pamela -- I'm not  
2 even going to attempt this pronunciation because I don't  
3 want to mess it up any worse than I already have.

4                   Okay. Mr. Butler.

5                   **MR. BUTLER:** I have, just for your information  
6 here, I think it might be useful. Let me tell you what  
7 we have as the parties who have signed or not signed  
8 confidentiality agreements. I guess focus on the ones  
9 who didn't and we can deal with this later as we need  
10 to.

11                   We do not have an agreement for AFFIRM. I  
12 think we have a mechanism, although we don't have an  
13 agreement for the Attorney General's Office, but I think  
14 we can work through that one. Associated Industries of  
15 Florida we do not. City of South Daytona we do not.  
16 The Federal Executive Agencies we do not. And  
17 Mr. Stewart on behalf of Mr. Unger we do not.

18                   So when we get to confidential information, we  
19 would be disclosing copies of the red folders only to  
20 the, to the other parties in the proceeding, not those,  
21 unless we make arrangements for confidentiality  
22 agreements.

23                   **CHAIRMAN CARTER:** Commissioner McMurrian.

24                   Oh, Ms. Bradley. I was trying to write here  
25 as we were going. I'm sorry.

1                   **MS. BRADLEY:** I'm sorry.

2                   **CHAIRMAN CARTER:** You're recognized.

3                   **MS. BRADLEY:** I don't know whether I  
4 misunderstood Mr. Butler, but we did in fact send him an  
5 e-mail stating that we would comply with the statute  
6 that applies to confidential documents.

7                   **CHAIRMAN CARTER:** Okay.

8                   **MS. BRADLEY:** And I believe I copied counsel  
9 on that as well.

10                  **MR. BUTLER:** Ms. Bradley, what, what is your  
11 understanding at this point of what the Attorney  
12 General's Office would need to do to sort of execute the  
13 expectations of the statute? From your understanding of  
14 your office's role, do we need to have a confirmation  
15 other than simply the e-mail of applicability of the  
16 statute to provide appropriate protection?

17                  **MS. BRADLEY:** May I respond, Mr. Chairman?

18                  **CHAIRMAN CARTER:** You're recognized.

19                  **MS. BRADLEY:** The statute provides that we,  
20 like Public Counsel, have to comply with the statute.  
21 And if the PSC has determined something is confidential  
22 or there is a pending motion for confidentiality under  
23 that statute, then we treat it as confidential. And we  
24 have indicated we will comply with that statute. I  
25 think that's all that's required.

1           **MR. BUTLER:** Okay. With that representation  
2 then, we will provide it to the Attorney General's  
3 Office as well.

4           **CHAIRMAN CARTER:** Okay. So we'd take the  
5 Attorney General's Office off this list.

6           Anybody else want to get off the list? Just  
7 kidding.

8           Commissioner Skop, you're recognized, sir.

9           **COMMISSIONER SKOP:** Thank you, Mr. Chair.

10          Is there, to our staff, is there any way to  
11 work through this issue, or does that require agreement  
12 amongst the parties that have not yet addressed that  
13 confidentiality issue so they can gain access to that  
14 information?

15          **MS. BENNETT:** The parties would need to, that  
16 haven't signed a confidentiality agreement would need to  
17 sign one with FPL.

18          **COMMISSIONER SKOP:** Thank you.

19          **CHAIRMAN CARTER:** Thank you. Okay. So we  
20 know where we are on the confidentiality agreement. You  
21 guys can get with FPL in the interim.

22          Ms. Bennett?

23          **MS. BENNETT:** I believe that Florida Retail  
24 Federation and OPC and one other party had -- FIPUG had  
25 some changes to the Prehearing Order.

1                   **CHAIRMAN CARTER:** Okay. Let's go with OPC  
2 first. Mr. Beck.

3                   **MR. BECK:** Thank you, Mr. Chairman. Issue  
4 103.

5                   **CHAIRMAN CARTER:** Issue 103.

6                   **MR. BECK:** Asks whether --

7                   **CHAIRMAN CARTER:** Let me find that. What page  
8 is that on, Charlie?

9                   **MS. BENNETT:** Page 99.

10                  **CHAIRMAN CARTER:** Page 99. Okay. You may  
11 proceed.

12                  **MR. BECK:** Yes. Mr. Chairman, this is an  
13 issue concerning whether adjustments should be made to  
14 FPL's requested level of salaries and employee benefits.  
15 Our position refers, among other things, to our  
16 positions on Issues 104 and 105, that the Prehearing  
17 Officer determined that those issues were subsumed by  
18 Issue 103. So we have submitted to staff our, our  
19 position on 103 that incorporates what were previously  
20 our positions on 104 and 105. I could read those or  
21 they could just be adopted. I just wanted you to be  
22 aware that we have more specific issues than stated  
23 there.

24                  **CHAIRMAN CARTER:** Staff?

25                  **MS. BENNETT:** So it would be see Issues 100

1 through 103 as your position?

2 **MR. BECK:** No. See the -- our position on 103  
3 would be see 100 through 102, but then we have specific  
4 issues or positions on 103 and 104. I could read those  
5 into the record, if you wish. 103 and 104 are no longer  
6 there to refer to, so they --

7 **MS. BENNETT:** I apologize. I'm a little slow  
8 this afternoon. Can you go ahead and read the position  
9 into the record?

10 **MR. BECK:** This is our position on Issue 103.

11 **CHAIRMAN CARTER:** We never should have given  
12 her lunch, should we, Mr. Beck?

13 (Laughter.)

14 **MR. BECK:** Our position is, yes, see Issues  
15 100 through 102. Additionally, jurisdictional executive  
16 salaries should be decreased by \$27,509,000 in 2010 and  
17 \$29,400,000 in 2011 to remove the portion of executive  
18 compensation that is designed to benefit shareholders  
19 and the portion that exceeds target compensation levels.  
20 Also, jurisdictional nonexecutive salaries should be  
21 decreased by \$5,661,000 in 2010 and \$6,640,000 in 2011  
22 to remove the portion of nonexecutive compensation that  
23 is designed to benefit shareholders and the portion that  
24 exceeds target compensation levels.

25 **CHAIRMAN CARTER:** Linda, did you get that?



1                   **THE COURT REPORTER:** Yes.

2                   **CHAIRMAN CARTER:** Okay.

3                   Commissioner Skop, you're recognized, sir.

4                   **COMMISSIONER SKOP:** Thank you, Mr. Chair.

5                   To our staff, and if I could get you guys to  
6 help me out here. The issue that Mr. McGlothlin -- or  
7 is it Mr. Beck?

8                   **CHAIRMAN CARTER:** Mr. Beck.

9                   **COMMISSIONER SKOP:** You guys changed chairs on  
10 me.

11                   (Laughter.)

12                   Mr. Beck. I thought it was his voice but I  
13 was looking for a different body. But on what page is  
14 Issue 99? Because I'm looking for it and I don't see it  
15 in chronological order -- or 103.

16                   **CHAIRMAN CARTER:** That's 103 on Page 99.

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

18                   **CHAIRMAN CARTER:** And, staff, did you get that  
19 on --

20                   **MS. BENNETT:** Did I get Mr. Beck's position  
21 statement?

22                   **CHAIRMAN CARTER:** Yes, ma'am.

23                   **MS. BENNETT:** I got yes. Can he repeat the  
24 rest of it? No, I'm just kidding.

25                   (Laughter.)

1                   **CHAIRMAN CARTER:** Commissioner McMurrian.

2                   **COMMISSIONER McMURRIAN:** Okay. I just wanted  
3 to check with Ms. Bennett. I'm assuming that what's  
4 happened is just -- maybe it's those scriveners again.  
5 It's some things that were given to the staff to show up  
6 in the Prehearing Order, just didn't make it in. Will  
7 we be getting some kind of statement of OPC and the  
8 other positions that have changed so that we can have it  
9 before us as some kind of amendment to the Prehearing  
10 Order, if I need to do one, that sort of thing? Could  
11 you just --

12                   **MS. BENNETT:** I was going to suggest that  
13 since we're going to do an amendment to the Prehearing  
14 Order to add the other issue, that we would take care of  
15 the additional changes, corrections in that amendment.  
16 We would just take those piece parts and not redo the  
17 whole 200-page order.

18                   **CHAIRMAN CARTER:** Okay. That'll make it  
19 easier for everybody.

20                   Okay. That was Mr. Beck. Who's next?  
21 Mr. Moyle? Oh, Mr. Wright.

22                   **MR. WRIGHT:** Thank you, Mr. Chairman.

23                   The scriveners were at work with all the  
24 issues coming and going.

25                   **CHAIRMAN CARTER:** They're like those little

1 gremlins. Go ahead.

2 (Laughter.)

3 **MR. WRIGHT:** Well, our position on Issue 69  
4 should simply be: No. Agree with OPC --

5 **CHAIRMAN CARTER:** Hang on. Hang on. Issue 69  
6 on page -- give me a page.

7 **MR. WRIGHT:** 75.

8 **CHAIRMAN CARTER:** Page 75. Okay.

9 **MR. WRIGHT:** And that should be with respect  
10 to A. And then our position on 69B is as stated.

11 **CHAIRMAN CARTER:** Okay. Mr. Wright, do that  
12 again, please, sir. I just got to page --

13 **MR. WRIGHT:** Yes, sir. On Page 75, the Retail  
14 Federation's position with respect to subpart A of Issue  
15 69 should be: No. Agree with OPC. Rather than no  
16 position.

17 **CHAIRMAN CARTER:** Okay. All right. Got that.

18 **MR. WRIGHT:** Thank you, sir.

19 Back to Issue 103, which changed around when  
20 104 and 105 were relegated to the status of proffered  
21 issues, our positions on Issues 103A and B should be as  
22 follows.

23 **CHAIRMAN CARTER:** Hang on. Hang on a second.  
24 Let me get to 103 again. It helps if you'd just give me  
25 the page number as you do that.

1           **MR. WRIGHT:** I'm sorry. Page 99.

2           **CHAIRMAN CARTER:** Okay. Thank you. I  
3 appreciate that. Okay.

4           **MR. WRIGHT:** And I did e-mail this to the  
5 parties yesterday afternoon, or evening probably. Our  
6 position on Issue 103A should be as follows: Yes.  
7 Agree with OPC that jurisdictional executive salaries/  
8 compensation should be decreased by at least  
9 \$27.509 million in 2010, and that jurisdictional  
10 nonexecutive salaries should be decreased by at least  
11 \$5.661 million in 2010. See also positions on Issues  
12 100-102.

13           Our position with respect to Issue 103B should  
14 be as follows: Yes. If a subsequent year adjustment is  
15 granted, agree with OPC that jurisdictional executive  
16 salaries/compensation should be decreased by at least  
17 \$29.4 million in 2011, and that jurisdictional  
18 nonexecutive salaries should be decreased by at least  
19 \$6.640 million in 2011. See also positions on Issues  
20 100-102.

21           **COMMISSIONER ARGENZIANO:** I'm sorry. Could  
22 you speak up a little or stay with the mike, because I'm  
23 losing you.

24           **MR. WRIGHT:** I apologize, Mr. Chairman,  
25 Commissioner Argenziano. Would you like me to repeat

1 the whole issue statement for 103B?

2 **COMMISSIONER ARGENZIANO:** I think I've gotten  
3 most of it. I'm just afraid that as you turn away I  
4 lose a word here and there.

5 **MR. WRIGHT:** I apologize, Mr. Chairman.

6 **COMMISSIONER ARGENZIANO:** No problem. Thank  
7 you.

8 **MR. WRIGHT:** I'm reading from a laptop here.

9 We have a change on one more issue that is  
10 simpler than that one, and that is with respect to Issue  
11 129 on Page 113. Well, actually, that's where the issue  
12 shows up. Our position is shown on Page 114 of the  
13 Prehearing Order. And it would be, our position would  
14 normally be agree with OPC, but for these purposes it  
15 can just be shown as no position, because that is OPC's  
16 position on 129.

17 I have one other statement that I would simply  
18 like to make on the record, and that is --

19 **CHAIRMAN CARTER:** Okay.

20 **MR. WRIGHT:** Thank you. This does not pertain  
21 to a specific issue. But just as a preliminary matter I  
22 want to state that it is the Retail Federation's  
23 understanding, and I believe the other consumer parties'  
24 understanding as well, that it is the understanding of  
25 all parties that the excluded issues shown at the back

1 of the Prehearing Order at Pages, Pages 174 through 179  
2 were issues that were proffered by the, by some of the  
3 Intervenor parties, and that they are included in the  
4 Prehearing Order to be identified as such proffered  
5 issues.

6 I just want to preserve our position that  
7 that's their status. We proffered them. The Prehearing  
8 Officer, you know, within her discretion, ruled that  
9 they should not be included, but we want them identified  
10 as such for the record. Thank you.

11 **CHAIRMAN CARTER:** Thank you.

12 And, staff, as you do the amended of the  
13 order, you will capture these recommended changes and  
14 things of that nature. All right?

15 **MS. BENNETT:** Yes, sir.

16 **CHAIRMAN CARTER:** Okay. Who's next?

17 Mr. Moyle?

18 **MR. MOYLE:** Staff indicated that FIPUG had  
19 changes to the Prehearing Order. I think we're okay on  
20 that, but I have one brief preliminary matter at the  
21 appropriate point in time.

22 **CHAIRMAN CARTER:** You're recognized. Yes,  
23 sir. You're recognized now.

24 **MR. MOYLE:** Just one point of clarification.  
25 FIPUG has signed a confidentiality agreement. We may

1 have a question or two related to compensation. And the  
2 exhibit that was just filed a few minutes ago,  
3 presumably that -- was that filed as a confidential  
4 exhibit or not, not a confidential exhibit? And if it  
5 was, if it was confidential, I want to make sure that we  
6 have access to it.

7 **CHAIRMAN CARTER:** Mr. Butler.

8 **MR. BUTLER:** It was filed confidentially.

9 **MR. MOYLE:** Okay. So we can get a copy -- we  
10 can look at it as soon as it's available?

11 **MR. BUTLER:** Yes. We will make that  
12 available, obviously with the same claim of  
13 confidentiality subject to your confidentiality  
14 agreement you have with us.

15 **CHAIRMAN CARTER:** Okay. Anything preliminary?  
16 Mr. Armstrong.

17 **MR. ARMSTRONG:** Yeah. Mr. Chair, if I could  
18 just beg your indulgence and the Commissioners'  
19 indulgence. But I didn't take an opportunity to rebut  
20 with respect to FPL's -- my motion to compel, but I  
21 think it's imperative if Ms. Helton is going to address  
22 this issue in an interim.

23 In the last rate case, FPL's last rate case in  
24 2005, their witness, Geisha Williams, testified that the  
25 asset management system houses records of all existing

1 and proposed facilities with their precise location and  
2 other relevant information displayed in a geographical  
3 format. Besides daily operational benefits, direct  
4 savings are expected from reduced drafting labor costs.

5 In an interrogatory they responded, and I'm  
6 quoting again, the work management system interfaces  
7 with FPL's fixed asset systems nightly to provide  
8 retirement unit number, description, asset location,  
9 in-service year, quantity and original cost.

10 They provide this information in all territory  
11 disputes. They've had three months to provide this  
12 information to the City, and I think the Commission has  
13 to consider over the next few days when you listen to  
14 their testimony that if they're saying something  
15 different from what they said in your last rate  
16 proceeding when they produced testimony interrogatory  
17 responses, you should consider what might change three  
18 years hence, if it's changed from that point in time.

19 They have the information. It's imperative  
20 the City receives that information, Mr. Chair. And I  
21 just want Ms. Helton to be aware, we put this in our  
22 interrogatory response, these quotes are in it, and they  
23 haven't produced the information in over three months.

24 And I appreciate your indulging me. Thank  
25 you.



1                   **CHAIRMAN CARTER:** Thank you.

2                   Anything further, Mr. Butler?

3                   **MR. BUTLER:** I would just note that, as  
4 Mr. Armstrong said, he had already made that argument in  
5 his motion to compel. It's not really rebutting what I  
6 had said.

7                   The same issue applies. I mean, it's exactly  
8 the point that I was trying to address regarding the  
9 inability to sort backwards to equipment from geographic  
10 areas. We do have indeed good information on being able  
11 to identify a given location, what equipment is there.  
12 But for an entire city, the effort of trying to identify  
13 all of the equipment within that city is quite  
14 monumental.

15                   **CHAIRMAN CARTER:** Okay. Ms. Helton, you can  
16 take that up at the appropriate time.

17                   Anything further preliminary from the parties?

18                   **MR. WISEMAN:** Mr. Chairman.

19                   **CHAIRMAN CARTER:** Wait. Wait a minute. Hang  
20 on.

21                   Ms. Bradley, you've been very patient. You're  
22 recognized.

23                   I'll come back to you next.

24                   **MS. BRADLEY:** Thank you, sir. For the  
25 Attorney General and on behalf of the other parties, the

1 matter that came up this morning kind of caught us all  
2 by surprise.

3 **CHAIRMAN CARTER:** Yeah. Me, too.

4 **MS. BRADLEY:** Yes, sir. I understand. But we  
5 don't know very much other than the brief comments that  
6 were made about what was involved in this and what  
7 influence it may have had on these proceedings, and we  
8 would just like to preserve our right to, pending the IG  
9 investigation, to be able to conduct discovery or file  
10 motions or file an appeal on this issue before these  
11 proceedings are finalized.

12 **CHAIRMAN CARTER:** Absolutely.

13 **MS. BRADLEY:** Thank you, sir.

14 **CHAIRMAN CARTER:** Absolutely. I'm, I  
15 apologize if I were unclear on that, but absolutely.  
16 You absolutely have the right to do that.

17 **MS. BRADLEY:** Thank you, sir.

18 **CHAIRMAN CARTER:** Thank you.

19 **MR. WISEMAN:** Mr. Chairman, I want to go back  
20 to the Prehearing Order, if I could, for a moment.

21 **CHAIRMAN CARTER:** Okay.

22 **MR. WISEMAN:** I guess I need to --

23 **CHAIRMAN CARTER:** What page are you on?

24 **MR. WISEMAN:** I'm on Page 7.

25 **CHAIRMAN CARTER:** Okay.

1           **MR. WISEMAN:** I guess I need to fall on my  
2 kneepads a little bit here. When I looked at Page 7, I  
3 realized -- and I'll take the heat for this -- I did not  
4 provide staff with the delineation of the specific  
5 issues that are addressed by each of SFHHA's witnesses.

6           **CHAIRMAN CARTER:** Why don't we do this. We'll  
7 give you an opportunity to get with staff at the break  
8 and you can do that. And then just we'll make it  
9 available to all the parties.

10           Would that be okay with the parties? Any  
11 objection? Mr. Anderson, any objection to that?

12           **MR. BUTLER:** Yes. No.

13           **CHAIRMAN CARTER:** We'll do that.

14           **MR. WISEMAN:** Thank you, Your Honor.

15           **CHAIRMAN CARTER:** I mean, mistakes happen.  
16 That's okay. We'll get it worked out.

17           **MR. WISEMAN:** Thank you, Mr. Chairman.

18           **CHAIRMAN CARTER:** Okay. Not a problem.

19           Mr. McGlothlin, you're back.

20           **MR. MCGLOTHLIN:** Mr. Chairman, OPC --

21           **CHAIRMAN CARTER:** Commissioner Skop, you see,  
22 Mr. McGlothlin is back.

23           (Laughter.)

24           **MR. MCGLOTHLIN:** OPC has at least one and  
25 possibly two witnesses who have limited availability,

1 and it may be necessary to take them out of turn. I'll  
2 get with Mr. Butler during the break to see if we can  
3 come to some recommended disposition of that.

4 **CHAIRMAN CARTER:** Okay. I'll leave that up to  
5 the lawyers to work out. Okay.

6 Any -- oh, Ms. Bradley, you're recognized.

7 **MS. BRADLEY:** I just need to make one  
8 correction. I think I said on behalf of the parties.  
9 Obviously I was not speaking for Florida Power & Light  
10 or affiliated industries, and let me clarify that.

11 **CHAIRMAN CARTER:** I understand. I didn't take  
12 it that way. I did not take it that way. I did not  
13 take it that way at all.

14 **MS. BRADLEY:** Thank you.

15 **CHAIRMAN CARTER:** As the chief legal officer  
16 for the State of Florida, you were just saying on behalf  
17 of the Attorney General's Office. That makes sense to  
18 me. Okay.

19 Did -- Commissioner Skop.

20 **COMMISSIONER SKOP:** Thank you, Mr. Chair. I  
21 just, I had some problem I guess with respect to the  
22 hearing exhibits. I'm having some computer-related  
23 problems, so I would just respectfully request if there  
24 is a possibility before opening statements we might be  
25 able to take a brief break to get IT to fix that.

1                   **CHAIRMAN CARTER:** Okay. We've been having  
2 some minor technical difficulties all morning, but we'll  
3 get that taken care of.

4                   Let me -- Mr. Moyle.

5                   **MR. MOYLE:** Just on a point raised by the  
6 Attorney General with respect to the preservation of  
7 rights.

8                   **CHAIRMAN CARTER:** You'd like to see it too.

9                   **MR. MOYLE:** Presumably that goes to all  
10 Intervenors. I just want to make sure the record is  
11 clear.

12                   **CHAIRMAN CARTER:** It does. It goes to all  
13 Intervenors and all parties.

14                   **MR. MOYLE:** Thank you.

15                   **CHAIRMAN CARTER:** All parties.

16                   Yes, ma'am. You need to come and speak on the  
17 microphone.

18                   **MS. ALEXANDER:** Can I go on this side?

19                   **CHAIRMAN CARTER:** Sure. Absolutely. That's  
20 fine. It's at your convenience. But that's the witness  
21 chair. You probably want to use one of these chairs  
22 these guys are -- they may want to cross-examine you if  
23 you go over there.

24                   **MS. ALEXANDER:** Well, I won't stay here.  
25 But what I did want to ask the Chair --

1                   **CHAIRMAN CARTER:** State your name for the  
2 record.

3                   **MS. ALEXANDER:** Stephanie Alexander for  
4 AFFIRM.

5                   **CHAIRMAN CARTER:** Okay.

6                   **MS. ALEXANDER:** I just want to ask the Chair  
7 and Commissioners for the record if we can be excused  
8 for the parts of the proceedings that we're not involved  
9 in?

10                   **CHAIRMAN CARTER:** Absolutely.

11                   **MS. ALEXANDER:** Thank you, Mr. Chair. Thank  
12 you, Commissioners.

13                   **CHAIRMAN CARTER:** Yes, ma'am. No problem at  
14 all.

15                   Did I get -- I got Ms. Bradley.

16                   Mr. Moyle, I got you?

17                   From any of the parties, are there any other  
18 preliminary matters from any of the parties?

19                   Okay. Let me go back to staff. Any further  
20 preliminary matters?

21                   **MS. BENNETT:** No. There are none.

22                   **CHAIRMAN CARTER:** Okay. Before we go to  
23 opening statements, we're going to -- let me just say  
24 this, is that I think most of the attorneys here have  
25 practiced before us, before the Commission before, and

1 we have this to assist you in your timing. Red is never  
2 good. Okay? And we have, we're tied into the system to  
3 where when you -- the time for your statements, green is  
4 always good. When the amber light comes on -- I said  
5 yellow, but they corrected me and said it's amber. When  
6 the amber light comes on, you'll have two minutes left.  
7 When the red light comes on, you'll have 30 seconds.  
8 When it flashes, something magical will happen. Your  
9 microphone will disengage. Okay?

10 Now for the witnesses, remember last time I  
11 told you for the witnesses, to assist them we have  
12 updated the system, so right in front of them, so rather  
13 than having to look at their notes and look up at me,  
14 they can look at the lights in front of them. And then  
15 when they're doing their opening, they're introducing  
16 their issue, the same for them, is that green they can  
17 go, amber means you got two minutes, and then when red  
18 comes on you got 30 seconds. When it blinks, no mas.

19 Okay. Let's do this. I don't know how long  
20 it's going to take to look over -- we've got to get the  
21 tech guys down and do this and look at the system.

22 Let's do this, Commissioners. I'm looking at  
23 2:05. Let's come back at 2:15.

24 **MR. MOYLE:** Mr. -- just one quick thing.

25 **CHAIRMAN CARTER:** One second. Hang on a

1 second. You've jut got to wait now because we've  
2 disengaged. Okay? I'll come back to you afterwards.

3 **MR. MOYLE:** Okay.

4 (Recess taken.)

5 **CHAIRMAN CARTER:** We are back on the record.

6 And just before we get ready to do the opening  
7 statements, I started about the constellation, the  
8 lights here in front of me. But what we'll do is that  
9 as the parties have a certain amount of time, you just  
10 tell me how much time you're going to have, and then  
11 Chris will -- Mr. Potts, he'll be able to plug it into  
12 the system. And that way -- because I know that the  
13 Intervenors have, each one of you have ten minutes or  
14 whatever, however you want to do it, fifteen, whatever  
15 the case may be, he can preset it. And just kind of  
16 give us a minute to do that before you, before you get  
17 going so you won't, you won't have the red light before  
18 you get the green light, you know. And so we want to do  
19 that.

20 Anything related to the timing or anything  
21 like that about the system before we, before we start?

22 **MR. McGLOTHLIN:** I think we're clear on that,  
23 Mr. Chairman. And with respect to the Intervenors, we  
24 have a block of time. We have negotiated, negotiated  
25 that among ourselves beginning over the weekend and



1 lasting into the morning, and I can tell you the results  
2 of the settlement agreement we've reached.

3 **CHAIRMAN CARTER:** Oh, excellent,  
4 Mr. McGlothlin. You drew the short straw, huh?

5 **MR. MCGLOTHLIN:** This is with respect to the  
6 allocation of time and the order of presentation. And I  
7 have this written down for the technician's use, if that  
8 would help.

9 OPC will go first after FP&L. The Attorney  
10 General -- OPC will have 18 minutes. The Attorney  
11 General, eight minutes. South Florida Hospital and  
12 Health Association, 12. FIPUG, 12. Florida Retail  
13 Federation, eight. City of South Daytona, ten. AFFIRM,  
14 four. Mr. Stewart for Intervenor Unger, two. The  
15 Federal Executive Agencies have waived opening  
16 statements. So that totals 74 minutes. We hereby turn  
17 one back in for extra credit.

18 **CHAIRMAN CARTER:** Outstanding. Let me ask you  
19 this. Chris, do you think you need a copy of that or  
20 are you just going to --

21 **MR. POTTS:** If you give them to me, I should  
22 be able to plot them in quickly.

23 **CHAIRMAN CARTER:** Okay. We'll just take a  
24 minute and give that to Chris so he can plug it into the  
25 system.

1 Outstanding, Mr. McGlothlin.

2 Okay. You ready? One second.

3 **MR. POTTS:** Ten minutes right now?

4 **CHAIRMAN CARTER:** No. No. Not ten minutes  
5 right now. We're going to -- let me hear from FPL and  
6 then we'll see how you developed your time. And FPL and  
7 AIF will be going first.

8 **MR. ANDERSON:** Right. I understand,  
9 Commissioner.

10 **CHAIRMAN CARTER:** Mr. Anderson, you're  
11 recognized.

12 **MR. ANDERSON:** Thank you very much, Chairman  
13 Carter. I understand we've been allocated 30 minutes  
14 between the two of us. Our thought, if it's okay with  
15 you, is just go ahead and set the clock at 30. And I'll  
16 stop and Ms. Perdue will begin. And I should be running  
17 at about the 20ish time period. But if that works for  
18 you, I think that's simpler.

19 **CHAIRMAN CARTER:** That's fine with me, but  
20 just remember the lights.

21 **MR. ANDERSON:** Yes, sir.

22 **CHAIRMAN CARTER:** This is your big chance.  
23 You're on Broadway, you know.

24 **MR. ANDERSON:** Okay.

25 **CHAIRMAN CARTER:** Okay. You wanted to pass

1 that out before we begin? Okay. You may proceed.

2 So, Chris, they get 30 minutes, and then we'll  
3 just go from there.

4 Thank you. Make sure you leave two for the --  
5 you have some Intervenors on the back row there. We'll  
6 begin in a moment. We just want to make sure that  
7 everyone has a copy of the document that Mr. Anderson  
8 will be using for his opening.

9 Okay. We're going to wind up our clock, and  
10 30 minutes. Mr. Anderson, you're recognized.

11 **MR. ANDERSON:** Thank you, Chairman Carter.

12 Good afternoon, Chairman, Commissioners.  
13 We're here today to consider FPL's request for a general  
14 base rate increase, which would be the first such  
15 increase in 24 years.

16 Our company does not approach the Commission  
17 in the midst of this very challenging economy lightly.  
18 We are acutely aware that these are difficult times for  
19 many of our customers. Moving forward with the  
20 investments we made in prior years has helped provide a  
21 measure of relief in the form of a typical residential  
22 customer bill that is the lowest in the state and about  
23 \$340 a year lower than the state's average. We know  
24 that low rates mean a lot to our customers. Likewise,  
25 the investments we are undertaking now will help ensure

1 that our customers' bills are as low as possible as well  
2 in the years ahead.

3 You've read our petition, you've read the  
4 testimony. Now you will hear directly from all the  
5 witnesses on behalf of the parties in this case.

6 I'd like to begin by framing three  
7 foundational points that we think provides the  
8 appropriate context for this entire proceeding and for  
9 the dozens of issues that will be discussed over the  
10 next two weeks. I'll refer you to three exhibits that  
11 have been filed in this proceeding as I describe these  
12 points at a high level.

13 The first point, and if we look at the chart  
14 on the far left, FPL's bill is the lowest in Florida.  
15 It's the chart that we distributed, the first one.  
16 FPL's bill is the lowest, this chart shows, among all 54  
17 companies providing electric service in Florida. If you  
18 look at this exhibit, you can see the bill data arrayed  
19 from left to right, from lowest to highest, and FPL is  
20 there in the far left. Our typical monthly bill is  
21 \$28.50 below the state average, saving customers more  
22 than \$340 a year, as shown on this exhibit.

23 Second key point, our company is a top  
24 performer. In addition to being the low-cost provider  
25 in Florida, FPL is also one of the best performing

1 utilities in the nation. Some of the highlights of our  
2 performance are shown on the next exhibit, which is the  
3 middle exhibit, stating "FPL provides reliable, clean,  
4 industry leading service."

5 There are a number of points on here that  
6 Mr. Olivera will be speaking to, but some of these  
7 points are we are an industry leader in fossil  
8 generating efficiency. That produces billions of  
9 dollars in savings for customers.

10 Our electric distribution reliability, how  
11 reliable the power is to people's houses and businesses,  
12 is 45 percent better than the national average. Has  
13 been the best among Florida investor-owned utilities for  
14 four of the last six years.

15 We have demonstrated industry leading customer  
16 service performance as evidenced by being awarded the  
17 ServiceOne Award for five years in a row now. And, as  
18 will be demonstrated by one of the key expert witnesses,  
19 Mr. Reed, FPL is a top performer in operating efficiency  
20 as measured by operations and maintenance costs per  
21 kilowatt hour. These achievements have provided real  
22 savings and other benefits for customers.

23 Even with the proposed rate increase, a third  
24 key point, most customer bills in 2010 will go down.  
25 And you can see that in our chart on the far right-hand

1 side. You can see that arrow pointing down from 2009 to  
2 2010 and in the modest increase for the typical  
3 residential bill in 2011. We'll see only modest  
4 increases thereafter in 2011 when most observers expect  
5 that the current economic downturn should lift.

6 With respect to commercial customers, it's  
7 important to know that only about 3 percent of all  
8 commercial bills would increase in 2010 if FPL's base  
9 rate proposal is implemented.

10 Now these low-cost, high reliability results  
11 for our customers did not happen by accident. They did  
12 not occur overnight. If FPL's 11,000 employees hadn't  
13 been doing the job they're paid to day in and day out,  
14 if management had not exercised the kind of judgment and  
15 discipline in managing our operations that is expected  
16 of a top flight management team, if this Commission and  
17 prior Commissions had not properly exercised the  
18 regulatory function, including providing the kind of  
19 constructive regulation that facilitates and encourages  
20 good performance, without those things, frankly, FPL  
21 would not be among the top performing and low cost  
22 electric providers in the country and the discussion  
23 here today would likely be a very different debate.

24 And a point that should not escape anyone in  
25 this room is that not one of the parties here has taken

1 issue with those first two points: One, that we have  
2 the lowest bills among all electric companies in  
3 Florida. Two, we're a top performing utility.

4 Those who oppose any type of increase want you  
5 to completely ignore these two facts and the clear  
6 associated customer benefits, even though most  
7 customers, if you ask them, would probably tell us that  
8 the two most important aspects of electric service are  
9 price and quality of service, two areas in which our  
10 company is a top performer.

11 Our opponents really don't disagree with the  
12 third point either, that bills are going to go down even  
13 with the proposed base rate increase. Instead, they  
14 will tell the Commission that you must focus only on the  
15 base rate in this proceeding and that it is just good  
16 luck that fuel prices have come down. Yes, it is  
17 fortunate that fuel prices have dropped, but there's  
18 much more to the story than just lower fuel prices. As  
19 our witness Renae Deaton will show, FPL has provided  
20 customers more than \$3 billion in fuel savings since  
21 2002. Due to improvements in the efficiency of our  
22 power plants, our customer savings will grow to about  
23 \$1 billion per year by 2014. And if fuel prices do  
24 return to higher levels, those efficiency savings will  
25 be even larger. This is not good luck. That is sound

1 planning, it's good management, it's prudent investment.

2 Of course we all know that base rates and fuel  
3 costs are established in separate proceedings and  
4 recovered through separate mechanisms. But it's through  
5 the investments that are intended to be paid for and  
6 recovered through the base rate that customers are  
7 realizing these enormous fuel savings today, which will  
8 continue to grow into the future.

9 And so FPL's request for base rate relief  
10 reflects the need to continue to earn an appropriate  
11 return on the investment that is currently in rate base  
12 and providing fuel savings to customers, and, second, to  
13 allow FPL to continue to attract the large amounts of  
14 capital necessary to make future investments that will  
15 produce additional fuel savings and other benefits for  
16 customers. One is not achieved without the other.

17 But even with regard to the base rate itself,  
18 the Intervenors who oppose this request are asking you  
19 to focus only on a very few cost components in isolation  
20 of other facts and factors and in isolation of the  
21 broader consequences or implications of some of the  
22 actions they're asking you to take: For example, with  
23 respect to the company's rate of return or its capital  
24 structure.

25 Their positions in this proceeding are really



1 no different from positions that the same Intervenors  
2 have advocated in the past. Once again, they will ask  
3 you to take drastic actions to alter and weaken the  
4 company's capital structure, to drastically lower the  
5 return on equity that is needed to attract and retain  
6 the capital necessary to run the business, and to lower  
7 the company's O&M budget even beyond the already  
8 industry leading low levels. Their positions were  
9 shortsighted in the past, they're shortsighted today.  
10 Their positions were rejected by previous Commissions in  
11 favor of a more constructive approach to regulation, an  
12 approach that's played a large role in where our  
13 customers, our company and the Commission are today,  
14 electric service that is among the cleanest, most  
15 reliable and most affordable in the nation.

16 We ask this Commission not to depart from a  
17 course that has served Florida and its residents so  
18 well.

19 What are the Intervenors asking you to do?  
20 I'll mention three items among many in the case where  
21 the Intervenors are asking you to take these drastic and  
22 unprecedented actions to achieve a temporary and  
23 unsustainable impact on the cost of providing electric  
24 service. I'll also point out the things that you would  
25 need to overlook and ignore in order to sustain the

1 position that the Intervenors have offered.

2 I'll begin with the return on equity called  
3 ROE. In contrast to the interest that must be paid to  
4 investors who purchase the company's debt obligations,  
5 ROE is the return that attracts and compensates equity  
6 investors who provide capital to the company. Yet ROE  
7 and not the cost of any other source of  
8 investor-supplied capital always seems to get the most  
9 airplay in any base rate case.

10 So what do the Intervenors want you to ignore  
11 regarding ROE? Here are some of the key things. What  
12 you don't see addressed in their testimony anywhere,  
13 what they have you ignore, is that FPL has \$16 billion  
14 in capital expenditures and investments over the next  
15 five years that are required, that must be financed  
16 through a combination of debt and equity, and which will  
17 require continued access on reasonable terms to the  
18 highly competitive and much more constrained capital  
19 markets of today's environment.

20 They also want you to ignore the fact that  
21 customer rates are based on the weighted cost from all  
22 sources of financing, the overall rate of return, not  
23 simply ROE. They also want you to ignore some basic  
24 arithmetic, the arithmetical conclusion that even with  
25 FPL's requested return of 12.5 percent on equity, the

1 overall return reflected in our request is 7.85 percent,  
2 even lower than the overall return the Commission  
3 recently approved in the TECO base rate proceeding.

4 FPL's request is necessary in light of our  
5 capital needs today and reasonable in light of the  
6 overall costs and value of the service being provided by  
7 the company.

8 The last thing the Intervenors neglect to  
9 mention is that their extreme and unprecedented  
10 proposals for ROEs as low as 9.5 percent and  
11 10.4 percent are in fact lower than any investor-owned  
12 utility in Florida has received in more than 30 years.

13 Turning next to capital structure. With  
14 respect to capital structure there are three essential  
15 matters that the Intervenors would have you overlook.  
16 First, a strong capital structure is imperative in  
17 Florida to maintain ready and reasonable access to  
18 capital markets and provide for the lowest possible  
19 overall cost of capital of the long-term.

20 Second, that FPL's requested capital structure  
21 is based on the actual equity invested in the company,  
22 not imputed equity, not projected equity, the real  
23 dollars invested in the company.

24 And, third, that maintaining the company's  
25 existing capital structure will result in an overall

1 rate of return or cost of capital of 7.85 percent.  
2 Again, lower than the overall return recently approved  
3 for TECO, necessary in light of our capital needs in  
4 today's markets, and reasonable in light of the overall  
5 cost and value of our service.

6 Then there is the matter of FPL's depreciation  
7 reserve. Here are a few critical facts that the  
8 Intervenors' positions would require you to ignore.  
9 First and most fundamentally, what is a reserve surplus?  
10 The evidence will show it's an accounting entry on the  
11 books of the company. It is not a pool of cash, it's  
12 not a deposit account from which refunds can be  
13 disbursed.

14 You'll hear Intervenor witnesses talk about  
15 the prior collection of depreciation expense that they  
16 want returned. But what they won't acknowledge is that  
17 these dollars have been used to operate and reinvest in  
18 the business for the benefit of our customers. Simply  
19 put, reversing depreciation expense is what they're  
20 talking about from a paid to unpaid status does not  
21 generate any funds or cash that can be used to operate  
22 or reinvest in the business.

23 Another thing that the Intervenors failed to  
24 note is that our rates today are lower than they would  
25 have been because of the Commission-approved

1 depreciation rates that have been in effect. They also  
2 won't point out that aggressively eliminating the  
3 reserve surplus over a short period of time, though  
4 temporarily lowering today's revenue requirement, will  
5 actually reverse that benefit by increasing rate base,  
6 imposing significant additional costs on future  
7 customers, including, of course, so many of our current  
8 customers who will continue to be served for years to  
9 come.

10 These aren't the only issues Intervenors have  
11 raised in the case. They take a number of the logical  
12 untenable positions regarding components of O&M and  
13 other elements of the company's cost of service, which  
14 our witnesses will address in detail. They're available  
15 to answer your questions during the course of the  
16 proceeding.

17 What's the Intervenors' objective here? The  
18 Intervenor positions, whether taken individually or in  
19 the aggregate, have one basic objective. Simply put,  
20 they want somebody other than their clients or  
21 constituents to pay for any increases in the base rate  
22 component of the cost of providing electric service,  
23 even though the base rates that they pay today are  
24 essentially the same or less than they were 25 years  
25 ago.

1                   That's true in nominal terms and in real  
2 terms. Customers' base rates are actually 17 percent  
3 less than they were 25 years ago. In comparison, over  
4 that same period of time inflation generally has  
5 increased nearly 100 percent since 1985. Our grocery  
6 bills are all up by more than 105 percent since that  
7 time. Healthcare costs have increased by more than  
8 220 percent. Real cost of FPL's base rates, down by  
9 17 percent during that period of time.

10                   Yet the large commercial customers represented  
11 by the hospital association, the members of the Retail  
12 Federation, which include Publix and Wal-Mart among  
13 their members, and the Florida Industrial Power Users  
14 Group want to continue to pay less than their fair share  
15 for the cost of electric service, while residential  
16 customers pay a disproportionately larger share.

17                   It's not clear to us whether the Office of  
18 Public Counsel and the Attorney General's Office agrees  
19 or disagrees with that position. But the one thing they  
20 appear to have in common with the other Intervenors is  
21 all the Intervenors share a popular yet misguided belief  
22 that FPL's investors rather than customers should bear  
23 any increase in the cost of service. That is neither a  
24 proper nor a sustainable result.

25                   If the company were not allowed sufficient

1 revenues through rates to enable it to continue to make  
2 the kinds of investments in plant and in people that  
3 today has produced top tier performance with the lowest  
4 residential bill in Florida, and if the company's  
5 quality of service were to deteriorate, no one should  
6 have any doubt that these same Intervenor would be here  
7 asking this Commission to require FPL to make capital  
8 investments, to increase levels of O&M and, by way of  
9 punishment or example, to preclude or limit the  
10 company's ability to pass those costs on to customers.

11 And while they will point to economic  
12 conditions as a major factor for not approving the base  
13 rate increase, please keep in mind two things. First,  
14 not one of these Intervenor opposing our request today  
15 has ever supported a request for a base rate increase,  
16 not even in the best of times, yet the prices for the  
17 goods and services of most of the Intervenor  
18 represented here in good economic times and bad continue  
19 to increase.

20 FPL bills in 2010 will go down even with a  
21 base rate increase, so customers are going to see relief  
22 through lower bills in large part because FPL and this  
23 Commission have been doing the right thing over an  
24 extended period of time and making decisions based on  
25 long-term solutions, not short-term fixes.

1           It is quite a different situation if we were  
2 before you as one of the high cost producers in the  
3 state. Fortunately for our customers, we are not. As  
4 evidenced by the uncontroverted record you will find in  
5 this proceeding, cost control is and has been a core  
6 value at FPL. And we've heard some Intervenors say the  
7 words "tightening our belts" for years. That's, that's  
8 what we've been doing. That's what's shown in these  
9 cost decreases and our ability to keep costs low for so  
10 long.

11           Instead, Intervenors are here today arguing  
12 for no increase in the base rate, even a decrease. They  
13 want to pay even less for electric service that is  
14 already among the most reliable and affordable in the  
15 nation, a lower base rate than they paid in 1985.

16           A reasonable question for some of the business  
17 intervenors, who have been among the most out, pardon  
18 me, outspoken regarding this case is this: Will lower  
19 electric rates be reflected in lower prices at Publix or  
20 Wal-Mart? Will lower electric rates result in lower  
21 healthcare costs in our hospitals in South Florida? Let  
22 me suggest the answer to that question by sharing with  
23 you the ROEs reported for companies represented by some  
24 of the Intervenors here today, including the Florida  
25 Retail Federation, the hospital association and FIPUG.



1           The ROE for Publix of 19.3 percent, the ROE  
2 for Wal-Mart of 20.6 percent, the ROE for Praxair of  
3 26.5 percent, the ROE for Tenet Healthcare of  
4 31.8 percent. Given these rates of returns, one could  
5 ask why their customers are not paying lower prices  
6 already. One could also ask whether they would prefer  
7 being regulated and receive a 12.5 percent return on  
8 equity or continue to operate as they are in their, in  
9 their current markets.

10           But to suggest that these businesses need to  
11 pay less, they need to pay lower electric rates in order  
12 to benefit the ultimate consumer through lower prices as  
13 their counsel represented at several of the quality of  
14 service hearings, we submit is quite unbelievable.

15           I'd like to turn to the GBRA and subsequent  
16 year adjustment. These are two important aspects of our  
17 proposal. Despite the fact that the GBRA has been  
18 successfully and smoothly functioning in Florida for  
19 nearly four years, you'll hear some Intervenors suggest  
20 this is somehow radical ratemaking. In fact, quite to  
21 the contrary, GBRA is a progressive ratemaking  
22 mechanism. It's been shown to work effectively and  
23 efficiently here in Florida. GBRA incorporates in the  
24 base rates, as we all know, the large capital costs  
25 associated with new generating units which, when they

1       come online, they deliver higher efficiency, they  
2       deliver fuel savings right then and there on customer  
3       bills that largely offset the incremental base rate  
4       costs. That basic concept of matching costs with  
5       benefits, far from being a radical approach, one of the  
6       basic principles of both accounting and ratemaking.

7               The subsequent year adjustment, you'll hear  
8       opposition to this as speculative. They want you to  
9       dismiss out of hand the full set of minimum filing  
10      requirements and testimony supporting the need for  
11      additional base rate adjustment in 2011. There's no  
12      basis or sound reason to do so. In fact, doing so  
13      simply would tell our company to file a new rate case a  
14      few months from now for rates to be effective January 1,  
15      2011. As FPL witnesses will explain, that will  
16      accomplish nothing but a new case based largely on the  
17      same data and information currently before the  
18      Commission.

19             Indeed, in this case, as for that case that we  
20      file in early 2010, FPL has proposed rates for 2011 to  
21      be effective no sooner than the first of January 2011.  
22      This Commission, we submit, has all the information  
23      necessary to make a reasoned decision now in this  
24      proceeding for rates for 2010 and 2011.

25             Despite our differences of opinion with those

1 who have intervened, we do want to make clear we respect  
2 their right to intervene and to take a position on the  
3 case. That's all part of the regulatory process. But  
4 it is appropriate to put those positions in their proper  
5 context.

6 As our witnesses will testify, we are  
7 positioned to continue to make investments in our  
8 infrastructure that will provide meaningful benefits to  
9 customers. We are aware of the challenges customers are  
10 facing, and we certainly recognize that no increase in  
11 price is ever welcome. We are fortunate that we have an  
12 opportunity to implement this needed increase at a time  
13 when, as we've shown, nearly all customer bills will  
14 actually decrease in 2010. The timing is right.

15 An increase requested by the company is  
16 necessary and appropriate in order for FPL to invest in  
17 our infrastructure, making it more robust, more  
18 resilient, to improve fuel efficiency, to give customers  
19 more choices, more information with which to manage  
20 their energy usage and to work toward a cleaner  
21 environmental footprint. That's what these dollars are  
22 mainly going for.

23 These are tremendously important objectives if  
24 we are to work towards securing Florida's energy future.  
25 These objectives cannot be abdicated to someone else or

1 placed on the back burner for some future consideration.  
2 Taking a shortsighted view even in a challenging economy  
3 would be precisely the wrong approach for our customers  
4 and for the State of Florida.

5 When the Intervenors leave this hearing room  
6 two weeks from now, they will not be leaving with the  
7 obligation to provide safe, reliable electric service to  
8 millions of customers. They will not leave with the  
9 need to fund about \$16 billion of capital requirements  
10 to meet those customers' needs. They also won't leave  
11 here with the regulatory responsibility to ensure that  
12 the company is able to effectively fulfill its  
13 obligations.

14 As I indicated at the outset, there are  
15 certain foundational points for your review and  
16 consideration. You are not presented here today with a  
17 request for a base rate increase from a utility that is  
18 has a poor track record. This is not a company that has  
19 struggled to manage its affairs, that has made imprudent  
20 investments or provided only average or below average  
21 levels of service at above average costs.

22 Instead, you have a base rate request before  
23 you from a utility that has a great track record, one  
24 that has been properly managed and one that has achieved  
25 superior levels of service and has produced billions of

1 dollars of customers savings.

2 As a closing example of this, I'd like you to  
3 refer to the middle exhibit that's been placed up, and  
4 it's in your package. This is sponsored by John Reed of  
5 Concentric Energy Advisors. He focuses just on nonfuel  
6 operations and maintenance expense, and he estimates the  
7 difference between FPL's costs and the costs of three  
8 different groups of utilities, the averages of those.  
9 And what this analysis shows that, just considering this  
10 one cost category, it's translated into increasingly  
11 large annual savings for FPL customers, in most of the  
12 examples exceeding \$1 billion each year for the last  
13 several years. That's the difference between average  
14 industry performance and FPL performance.

15 Interestingly, one can see in comparison on  
16 the far right-hand side of the exhibit, down in the  
17 little right-hand corner there's an arrow down at the  
18 base of that tall green column of savings, that set the  
19 \$60 million mark. That's the comparatively small  
20 revenue requirement impact of 50 basis points of ROE in  
21 this case, roughly \$60 million.

22 It is precisely because of FPL's track record  
23 that we feel you're able to confidently assess the  
24 company's request for a general base rate increase, the  
25 first in 24 years, knowing that FPL is more than simply

1 meeting the basic standards of service and reliability,  
2 and is doing so at cost levels that reflect the success  
3 of years of sustained operational and productivity  
4 improvements, improvements that have produced real  
5 benefits for our customers.

6 Approving our rate proposal will allow us to  
7 continue to make the right investments for the future  
8 and to maintain the level of service for our customers,  
9 the service that they expect. And FPL customer bills  
10 will remain among the very lowest in the State of  
11 Florida.

12 Thank you, Commissioners.

13 **MS. PERDUE:** Good afternoon, Mr. Chairman and  
14 Commissioners.

15 Associated Industries of Florida is involved  
16 in this case for a simple reason. Our members want to  
17 make sure that in your role to balance the utility  
18 environment in this state, that your consideration and  
19 deliberation includes the impact that your decisions as  
20 regulators have on the overall business community and on  
21 Florida's economic status.

22 We hear repeatedly from our members and we see  
23 this reflected in national polling and other studies as  
24 well that the number one thing that businesses need from  
25 government is predictability. In other words, they need

1 to know the rules of the game. Once businesses know the  
2 rules, they'll find a way to work within those rules to  
3 operate their businesses legitimately, to be creative,  
4 to create new growth in the economy and to create jobs.  
5 But when the rules change and the policies and ideals  
6 that businesses rely upon change, those are the times in  
7 which people cannot prosper. When governments  
8 repeatedly engage in generating such chaos, businesses  
9 start looking for other places in which to operate. AIF  
10 does not want this to happen to Florida.

11 As the Florida Public Service Commission, you  
12 have an obligation to the people and businesses here to  
13 regulate and oversee the companies that provide one of  
14 our most basic needs, electric utility service to all  
15 Florida citizens and businesses. This obligation  
16 includes service being readily available, reliable and  
17 affordable. It also requires that you balance the need  
18 of those who purchase this vital service with the needs  
19 of the company providing the service and its  
20 requirements to stay in business and continue providing  
21 this commodity.

22 The truth is that the vast majority of the  
23 issues that will be presented to you in this case really  
24 should not be all that difficult for you to determine.  
25 That's because you have already established procedures,

1 calculation models, methodologies and guidelines to  
2 which FPL has adhered to in its rate request. These  
3 issues include projected test years and proper revenue  
4 and rate classes for those test years.

5 On the specific and other issues in which you  
6 have previously issued guidance, it is imperative that  
7 your prior determinations not be abandoned in this  
8 instant case simply because of politics or popularity.  
9 You must maintain consistency and lend your support to  
10 the utility companies that you regulate. If your  
11 rulings are not supportive of their operations, then the  
12 rest of the country will hear a message that Florida  
13 does not have a reliable electricity delivery system,  
14 and nothing could be further from the truth. Our state  
15 cannot afford that message to be disseminated, and so we  
16 depend on you to rule in a way that encourages  
17 businesses to continue to prosper and thrive here in the  
18 Sunshine State.

19 There are a few specific issues before you  
20 that present the most important areas of potential  
21 controversy and threat to the Florida business  
22 community, that we urge you to cautiously and carefully  
23 consider the impact your decisions will create.

24 The first is continuation of the quality and  
25 reliability of electric service provided by FPL.



1 Mr. Anderson has already provided for you the record of  
2 FP&L in his comments, and their operational reliability  
3 and performance has always ranked among the best among  
4 major Florida-owned utilities as well as their national  
5 peer companies.

6 We also think you should consider the  
7 appropriate payroll and operations issues presented.  
8 FPL provides jobs to thousands of Floridians and  
9 security to their families. It alone has the knowledge  
10 and expertise to determine a reasonable projection of  
11 what is required and how to most efficiently deliver on  
12 its commitments to customer service and reliability.

13 You are also being faced with many decisions  
14 in consideration of FPL's financial estimates and  
15 projections on a myriad of individual items like capital  
16 structure, return on equity, deferred taxes and cost of  
17 debt, to name a few. FPL's existing capital structure  
18 has served customers well by helping support high  
19 quality service at low rates, while enabling FPL to  
20 successfully weather financial challenges such as the  
21 impact of major hurricanes and of the recent credit  
22 crisis.

23 Maintaining this capital structure will  
24 indicate to the capital market the Commission's  
25 continued commitment to support the financial integrity

1 of the company and provide the ability to attract  
2 capital required for FPL to meet its customers' electric  
3 service needs. This is exactly the sort of thing that  
4 companies consider when locating or maintaining their  
5 businesses in Florida.

6 AIF is also keenly concerned about any  
7 portions of the rate case that could impose on Florida  
8 citizens and businesses if rate levels are set too low  
9 as a result of these proceedings and are -- (microphone  
10 disengaged) -- to cover future outcomes and events.

11 For these reasons and based --

12 **CHAIRMAN CARTER:** Mr. McGlothlin, you're on  
13 first?

14 **MR. McGLOTHLIN:** Yes. We need a moment to set  
15 up an easel.

16 **CHAIRMAN CARTER:** Okay. Let's take a moment  
17 to set up the easel.

18 **MR. McGLOTHLIN:** And I have --

19 **CHAIRMAN CARTER:** Now you've given Chris the  
20 list on -- Chris, you've got the list for -- okay. And  
21 he'll reset it for each person. Okay. Take a moment.

22 (Pause.)

23 Mr. McGlothlin, do you have two more?

24 Linda, did you get one?

25 We need two more for the bench. Patty, I knew

1 you were the brains of the outfit. How are you doing  
2 today? One for these two Commissioners here. Okay.  
3 Thank you. Okay. One second. We've got one, there's  
4 one more party that needs a copy.

5 **MR. MOYLE:** I'm okay. You can go ahead.

6 **CHAIRMAN CARTER:** Oh, we have -- she's going  
7 to make extra copies. That's okay?

8 Okay. Mr. McGlothlin.

9 **MR. MCGLOTHLIN:** Good afternoon. Joe  
10 McGlothlin with the Office of Public Counsel.

11 Here's what OPC intends to demonstrate through  
12 its evidence and participation in the proceeding on  
13 FPL's increase, request to increase rates by more than a  
14 billion dollars in 2010.

15 FPL has overstated its cost of capital by half  
16 a billion dollars annually. FPL has overstated the  
17 amount of plant-related depreciation and amortization  
18 expense appropriate for 2010 by half a billion dollars  
19 annually. FPL has ignored the Commission's clear policy  
20 on storm damage accruals articulated in its 2006 storm  
21 financing order, and by doing so has overstated its  
22 annual costs by \$148 million annually. FPL wants  
23 customers to bear \$45 million of employee compensation  
24 costs that should be the responsibility of shareholders.

25 We will present evidence demonstrating that

1 once you apply the standards of fairness and  
2 reasonableness to peel away these and other excesses,  
3 you will recognize this to be an overearnings case. The  
4 Commission should direct FPL to reduce its existing base  
5 rates by \$354.9 million annually.

6 I'm going to briefly preview our testimony and  
7 tell you why it supports the large adjustments I have  
8 identified. The first poster shows our cost of capital  
9 adjustments. They relate to the proposed return on  
10 equity and also to FPL's equity ratio.

11 I'll begin with the return on equity. FPL  
12 asks the Commission to establish a return, authorized  
13 return on equity of 12.5 percent. Our witness,  
14 Dr. Woolridge, will demonstrate that the 12.5 percent  
15 figure is based on unrealistic growth rate assumptions  
16 and unrealistic market expectations. Just how  
17 unrealistic? That's illustrated well by one of the  
18 tests that FPL's expert witness uses, the risk premium  
19 test.

20 The risk premium test measures the risk-free  
21 rate, typically the interest rate on U.S. Treasuries,  
22 then quantifies and adds the premium that investors  
23 require to invest in the equity of a corporation instead  
24 of the risk-free alternative.

25 In his testimony, FPL's witness will claim

1 that the current risk premium is 10 percent. By any  
2 objective standard, we submit that this is over the top.  
3 It's as though FPL starts with the high return on equity  
4 that it wants and then expands the risk premium to fill  
5 the void between the desired equity return and the very  
6 low current risk-free rate.

7 In his testimony, Dr. Woolridge, our witness,  
8 will demonstrate that in view of the appropriate risk  
9 premium indicated by the market, plus FPL's high equity  
10 ratio and such considerations as the 61 percent of total  
11 revenues that FPL collects through cost recovery  
12 clauses, the appropriate return for FPL under current  
13 conditions is 9.5 percent.

14 The difference between our position of  
15 9.5 percent and the 12.5 percent return on equity  
16 desired by FP&L by itself accounts for \$400 million in  
17 annual revenue requirements.

18 I mentioned the equity ratio and how it fits  
19 into the analysis. I want to expand on that for a  
20 moment. Utilities raise capital by issuing stock and by  
21 borrowing money. Because equity costs more than debt,  
22 as the percentage of total capital comprised by equity  
23 increases, the revenue requirements borne by customers  
24 also increase.

25 The utility that, utility that manages its

1 finances in the interest of its customers will employ,  
2 will leverage its capital dollars with an appropriate  
3 amount of debt so as to minimize revenue requirements.  
4 FPL's actual ratio is an extravagant 59 percent. How  
5 extravagant? As OPC's Dr. Woolridge will show, most  
6 other electric utilities have equity ratios in the range  
7 of the mid 40s to high 40s. In rate cases, and you've  
8 seen examples of this, other utilities frequently try to  
9 persuade their regulators to, quote, impute an  
10 additional increment of equity into the capital  
11 structure that they don't really have on their books.  
12 They do so in an effort to justify using an equity ratio  
13 for ratemaking purposes of 50 percent or more.

14 In this testimony, FPL turns this pattern  
15 topsy-turvy. FPL uses its actual equity ratio of  
16 59 percent to quantify its revenue requirements, then  
17 asks the Commission not to increase that ratio, but to  
18 view, but to view it as being lower than it really is.  
19 When an electric utility tries to persuade the  
20 regulators to regard its equity ratio as lower than its  
21 actual value, customers should hang onto their wallets.

22 Our witness, Dr. Woolridge, observed on a  
23 prospective basis FPL plans to maintain an actual equity  
24 ratio of 54 percent, and that's what he used in his  
25 calculations.

1           But there's an important caveat to OPC's use  
2 of 54 percent. Dr. Woolridge will testify that  
3 54 percent equity is still higher than the corresponding  
4 ratios of a proxy group of electricians and higher than is  
5 warranted by FPL's risk profile. Accordingly, FPL's  
6 thick layer of equity in its capital structure must be  
7 taken into account when the Commission determines its  
8 appropriate return on equity.

9           FPL can't have it both ways. FPL cannot  
10 employ a very high equity ratio which lowers its  
11 financial risk and at the same time expect an authorized  
12 return on equity that doesn't correspond with that lower  
13 risk. Dr. Woolridge's 9.5 percent return on equity  
14 takes FPL's high equity ratio into consideration.

15           Our two adjustments in the area of capital  
16 costs amount to more than \$500 million annually, or  
17 roughly half of FPL's 2010 request. This is requested  
18 profit that is not warranted by the conditions of  
19 capital markets currently.

20           The next slide shows adjustments in the area  
21 of depreciation. In the regulatory environment, the  
22 objective of depreciation policy is to match the  
23 recovery of the costs of a plant with the useful life of  
24 that plant. If the cost is collected in equal portions  
25 during each year of the life of the plant, as they come

1 and go, customers served by the plant will pay their  
2 fair share during the periods in which they receive  
3 benefits from the plant.

4 Current customers should not subsidize future  
5 customers. Future customers should not subsidize  
6 current customers. Either situation would create an  
7 intergenerational inequity, a consideration to which  
8 this Commission has been sensitive in the past.

9 In this case, FPL's consultant calculates that  
10 FPL has a current depreciation reserve surplus of  
11 \$1.25 billion when compared to the amount needed by FPL  
12 to be on course. Our witness, Mr. Pous, calculates the  
13 surplus to be \$2.7 billion, and supports that value in  
14 his analysis and testimony.

15 Those are real dollars that have been  
16 collected from current and past customers at a rate  
17 greater than necessary to recover the cost of plant  
18 ratably (phonetic) over the useful life. They represent  
19 a massive current intergenerational inequity.

20 FPL intends to simply roll that surplus into  
21 the standard remaining life calculation and effectively  
22 send it back to future customers over the next 22 years.  
23 And if that approach is adopted in 2010, the, and the  
24 revenue requirements will reflect only 1/22nd return of  
25 that massive imbalance.



1           We contend that the surplus is too enormous  
2 and the inequity to current customers too severe to  
3 consign it to business as usual. Our witness, Jack  
4 Pous, recommends that \$1.25 billion of the \$2.7 billion  
5 surplus be amortized over four years beginning in 2010.  
6 Another witness, Dan Lawton, will demonstrate that FPL  
7 can do so without damage to its strong financial  
8 integrity.

9           Importantly, this adjustment will not prevent  
10 FPL from collecting any capital dollars. It simply  
11 shifts the timing of collection to partially alleviate a  
12 severe intergenerational inequity.

13           Two points on that. FPL's own testimony will  
14 acknowledge that with respect to the type of credit  
15 against depreciation expense, that is something that  
16 they've been doing annually for four years under the  
17 terms of the most recent settlement. So that is a  
18 departure by FPL from the remaining life calculation.

19           You will hear them say in rebuttal that one  
20 reason they oppose OPC's proposal is because the effect  
21 of correcting the surplus will have the -- will result  
22 in an increasing rate base over time.

23           Now let's put aside the fact that FPL's been  
24 doing the same thing for four years, and let's put aside  
25 the fact that if rate base increases over time, so will

1 revenues that will be used to spread that rate base, and  
2 consider the irony of FPL who's presently before the  
3 Commission with a billion-dollar request worrying aloud  
4 about customers' rate shock. We think that the better  
5 policy is to recognize, as you have before, that the,  
6 the matching principle and the intergenerational  
7 inequities that result from a deviation of that matching  
8 principle are something that calls for action,  
9 meaningful action in this case.

10 The surplus relates to past periods. There's  
11 also the question of depreciation rates going forward.  
12 Incredibly, despite showing a surplus of between 1.25  
13 and \$2.75 billion, in this case FPL wants to increase  
14 annual depreciation expense. Its proposed depreciation  
15 rates are the result of overly aggressive assumptions  
16 regarding service lives, salvage and cost of removal.  
17 Mr. Pous analyzes those assumptions account by account.  
18 His alternative parameters, which is of course in  
19 detail, would result in a significant reduction of FPL's  
20 depreciation expense.

21 Our proposals for addressing the reserve  
22 surplus and for reducing future depreciation expense  
23 would lower revenue requirements by \$554 million or,  
24 again, roughly half the increase that FPL seeks in 2010.

25 The next slide shows several other OPC

1 adjustments. The first is the storm damage entry. FPL  
2 requests authority to accrue \$150 million annually to  
3 increase its Storm Damage Reserve, which presently  
4 stands at about \$215 million. The Commission denied a  
5 similar request in its 2006 storm financing order.  
6 Nothing has changed to warrant a different answer.  
7 Because of the availability of the surcharge mechanism,  
8 customers bear the risk of storm costs whether they pay  
9 prior to or after the storm occurs.

10 One thing has changed. Through this proposed  
11 accrual FPL in this case proposes to require the  
12 customers who are now paying for past storm damage  
13 repairs to also pay for the restoration of future storm  
14 damages. Denying FPL's request would decrease its  
15 claimed expenses by \$148 million annually. That's the  
16 jurisdictional portion.

17 In the area of employee compensation, our  
18 witness, Sheree Brown, observes that while a multitude  
19 of companies in the unregulated sector and even some of  
20 FPL's peer utilities are reacting to falling sales by  
21 tightening their belts, including their compensation  
22 belts, FPL's reaction has been to ask customers to  
23 immunize its profits from any impact of the poor  
24 economy, and they, and to continue to fund executive  
25 compensation at handsome and generous levels.

1           To protect customers, the Commission should  
2 pay especial attention to FPL's incentive compensation  
3 programs. Our witness, Sheree Brown, will testify that  
4 a portion of the distributions are based on meeting  
5 financial criteria and objectives, such as corporate  
6 earnings, return on equity and share price. These  
7 objectives benefit shareholders, not customers. For  
8 this reason, a portion of the projected incentive  
9 payments should be removed from revenue requirements  
10 supported by retail rates. Our adjustments, the several  
11 adjustments, including this one, have the effect of  
12 reducing the proposed increase by \$45 million.

13           Time, time will not permit me to describe the  
14 remaining adjustments in any detail, but there are  
15 additional adjustments that amount to \$43.9 million.

16           When all of the adjustments are aggregated,  
17 the total effect is to cancel the entire increase sought  
18 by FPL and then some. The Commission needs to reduce  
19 existing retail rates by \$354.9 million.

20           I want to talk briefly about the subsequent  
21 year adjustment and also the GBRA. First, the  
22 subsequent year adjustment. Bear in mind that over time  
23 the Commission has moved from the use of a historical  
24 test year to a test year that's partially historical and  
25 partially projected, and finally in this case a fully

1 projected test year. With this request for a subsequent  
2 year adjustment on top of a fully projected test year,  
3 FPL simply is pushing the envelope too far. That would  
4 be the case under normal circumstances. It's especially  
5 true now when the economy is reeling and no one knows  
6 when and how a recovery will ensue.

7 FPL says, in effect, we have examined 2011  
8 with the same rigorous scrutiny that we applied to 2010,  
9 but that misses the point. Our objections go to the  
10 necessarily more speculative nature of the projections,  
11 not the process of evaluating them.

12 FPL says the subsequent year adjustment would  
13 avoid the cost of a rate case. That is not true if  
14 speculative projections result in overearnings and  
15 trigger a proceeding to reduce rates. But the main  
16 point is that FPL has the burden of proof in this case,  
17 and customers are entitled to know that the rates they  
18 pay have been based upon accurate and reliable  
19 information. That is not the case with the projections  
20 into 2011.

21 FPL's 2011 projections are bottomed (phonetic)  
22 on the expectation of a poor economy. Based on that  
23 view, FPL requests an increase in 2011. Our witness,  
24 Sheree Brown, will observe that a recovery could occur  
25 in 2011. To that, FPL says, we've looked at that

1 possibility too, and we've concluded that we would need  
2 an increase under that scenario as well. In other  
3 words, FPL seems prepared to justify the need for an  
4 increase in 2011 under any set of projected  
5 circumstances. It appears to us that FPL's pursuit of a  
6 subsequent test year adjustment is more vigorous than it  
7 is rigorous.

8 Let me turn to the generation base rate  
9 adjustment. Our witness, Sheree Brown, will remind you  
10 that the GBRA originated in the 2005 rate case  
11 settlement. It was devised as an exception to a  
12 negotiated four-year base rate freeze. In that context,  
13 it made some sense. Here, FPL wants to turn the  
14 exception into the rule and to apply the rule when, even  
15 when there's no limitation on the utility's ability to  
16 seek a base rate increase.

17 This would be horrendous regulatory policy for  
18 the following reasons. FPL seems to imply that unless  
19 base rates are increased when a power plant begins  
20 service, FPL would not recover the costs associated with  
21 the plant. That's a false premise. Base rates are  
22 designed to recover a multitude of costs, including the  
23 cost of owning and operating plants. In fact, in the  
24 past FPL placed several power plants into service with  
25 no change in base rates. The GBRA would avoid the

1 possibility that existing base rates are adequate to  
2 absorb some or all of the proposed increase. And for  
3 that reason, if they, if FPL decides it needs to -- I  
4 see my time is up. Thank you.

5 **CHAIRMAN CARTER:** Thank you. We want to do  
6 this on the fly. Nobody leaves. How much time do you  
7 guys need to switch -- we're going to change out our  
8 court reporters. So just -- we're going to -- everybody  
9 just hold your place.

10 (Transcript continues in sequence with Volume  
11 2.)

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COUNTY OF LEON     )

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 27<sup>th</sup> day of August, 2009.

Linda Boles  
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