

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

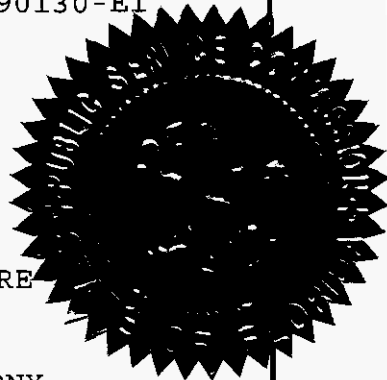
In the Matter of:

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

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

VOLUME 34
Pages 4578 through 4643

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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: Wednesday, September 16, 2009

TIME: Commenced at 12:25 p.m.
Concluded at 3:00 p.m.

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

REPORTED BY: RAY D. CONVERY
Court Reporter
(850) 222-5491

ORIGINAL

PARTICIPATING: (As heretofore noted.)

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I N D E X

WITNESS

NAME:

PAGE NO.

WILLIAM E. AVERA

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EXHIBIT

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497 Excerpt from Craag and Malkiel

4623

P R O C E E D I N G S

(Transcript follows in sequence from
Volume 33.)

CROSS EXAMINATION (continued)

BY MR. McGLOTHLIN:

Q Well, if they look at all factors, among those factors would they consider any time constraints on the regulator's timeline for action?

A Well, I think they would consider it. In all of the FPL reports that I've reviewed, I don't recall seeing any commentary on that aspect of Florida regulation.

Q Do you think it's a relevant aspect?

A I think it depends on how it's implemented, Mr. McGlothlin, whether investors would consider that a viable option or not, and I think it depends on the whole constellation of facts and circumstances.

Q Well, if we assume that it's implemented in the manner required by the statute, would that be a relevant consideration?

A I can't -- it would be a relevant consideration. I don't know the statute, so I can't comment on that specifically.

Q And it's relevant in that it mitigates any risk associated with having to come to the regulators to

1 obtain a modification in rates, correct?

2 A No, it doesn't mitigate any risk. It may
3 mitigate some risk.

4 Q Do you agree that the constraints on time for
5 action mitigates the risk of having to come to a
6 regulator to some extent?

7 A It may to some extent, depending on how it's
8 implemented in the view of investors.

9 Q And I believe you agreed that would be true of
10 the interim ratemaking provision as well, correct?

11 A Yes, sir. I think investors would look at how
12 it's implemented, the whole way it plays out to the
13 bottom line of being able to recover costs and earn a
14 fair return.

15 Q And that would be true of the fuel purchase
16 power cost recovery clause and conservation cost
17 recovery clause, environmental cost recovery clause,
18 nuclear cost recovery clause and storm damage
19 mechanisms, correct?

20 A Well, I don't see how I can apply your
21 question to all of those.

22 Q Well, my question is, do you agree that
23 everything that I've mentioned has this in common: Each
24 has the effect of mitigating or reducing any risk that
25 the investor may perceive with respect to the obligation

1 of a utility to approach a regulator before modifying
2 the rates?

3 A It may mitigate some of the risk. It doesn't
4 mitigate all of the risk, and in some cases, like the
5 nuclear, the fact that you are doing nuclear increases
6 risk, so the clause actually offsets some of the
7 incremental risk. It would be better from the
8 perspective of the investors, from a risk perspective,
9 if the company didn't do nuclear at all.

10 Q I think one of the points you made in your
11 direct testimony, and I think you alluded to it also in
12 one of your earlier answers today, was that an
13 unregulated company can choose whether and where to
14 expand business, is that correct?

15 A Yes, sir.

16 Q Whereas Florida Power & Light serves all
17 customers within the service area. Is that the point
18 that you were making?

19 A Well, that, and as to investor -- investments
20 in a new generation, Florida Power & Light has to come
21 with a need case to this Commission, so Florida Power &
22 Light's service quality measurements are reviewed by
23 this Commission. So this Commission stands in the place
24 of customers, because customers don't have the ability
25 to choose another vendor, but this utility acts as the

1 market acts to overlook the way customers are treated,
2 plus this Commission has the power over decisions the
3 company -- to review decisions, like where and what kind
4 of generation to build.

5 Q You've reminded me of an answer you gave
6 earlier today that I wanted to pursue with you for a
7 moment. In response to a question, you said, with
8 respect to Florida Power & Light company customers,
9 customers have choices. What did you mean when you said
10 customers have choices when you were talking about
11 Florida Power & Light Company?

12 A Well, I may have said, I think, to a limited
13 extent they have choices. They have choices to change
14 their operations, to change their appliances, to change
15 their lifestyle to change the amount of electricity they
16 use. As to commercial and industrial customers, you
17 know, they have a wider set of choices: to go to self-
18 generation, to go to solar, to go to other sources of
19 generation.

20 That's at the margins. I mean, generally, if
21 you are in the FPL certificated service area, FPL is
22 your electric company, and the Commission stands in the
23 place to protect customers and oversee the interests,
24 and for that reason the Commission has authority over
25 things like pricing and requires that Florida Power &

1 Light serve any and all customers that legitimately
2 request service.

3 By the way, I want to make sure -- this
4 reminds me of an earlier answer. As to nuclear, I think
5 the market investors are very sensitive to new nuclear,
6 which is, the nuclear adjustment is focused toward. So
7 I hope that you understand, when I said investors would
8 prefer no nuclear, they prefer no new nuclear, and I
9 cite in my testimony a number of discussions by the
10 rating agencies and other investors at their trepidation
11 going into the next round of nuclear construction.

12 Q When you said earlier that FPL's customers
13 have choice, then you didn't mean to imply that they
14 have the ability to choose another electric utility to
15 provide retail service to them in FPL's service area?

16 A No. They can make substitutions, gas for
17 electric, you know, energy efficiency. They can make
18 some substitutions at the margin, but I think we can
19 agree that FPL is the certificated supplier of
20 electricity in the service area.

21 Q Earlier today in response to a question, you
22 said that one thing that you and Dr. Woolridge agree on
23 is that you and Dr. Woolridge agreed that the actual
24 capital structure should be used, correct?

25 A That's correct, and that is my understanding

1 what FPL has done. I think the disagreement is between
2 Dr. Woolridge and Ms. Brown, where she assumed that his
3 book capital structure was a jurisdictional capital
4 structure, and that the bonds, the storm bonds and so
5 forth, had already been taken out. So if you look at
6 the numbers, and we went through the exercise with Dr.
7 Woolridge to show that his equity is the same as the
8 company's except for the small difference between two-
9 point average and 13-month average.

10 So the disagreement is not between Dr.
11 Woolridge and Mr. Pimentel and myself about what ought
12 to be used; the disagreement is about the actual numbers
13 that Ms. Brown used from Dr. Woolridge.

14 Q If you agree that the actual capital structure
15 is the appropriate capital structure to employ -- strike
16 that and let me begin again.

17 Also in response to an earlier question, you
18 indicated that there is an appropriate range within
19 which to derive the ratio of debt and equity in the
20 capital structure, correct?

21 A Yes. There's not one fine point, and you have
22 to think about where you're coming from, but generally
23 there is a reasonable range in which a company should
24 find itself.

25 Q Yes. And given that you think there's a

1 reasonable range, would you agree that there's also
2 areas outside of the range that would be unreasonable to
3 employ?

4 A There could be outside the range, but that
5 doesn't mean that every company should have the same
6 capital structure, because the capital structure has a
7 lot of moving parts. One is the business risk that Mr.
8 Mendiola and I talked about so much. Another is how
9 important it is to maintain financial strength and
10 resilience.

11 In FPL's case, it's extremely important.
12 Given their geographic location, given the nuclear
13 exposure, the natural gas exposure and the storm
14 exposure, it's very important for FPL to have a strong
15 capital structure, and even with that and this
16 Commission's constructive support, they've been able to
17 hold on to their A rating; they haven't been able to be
18 upgraded.

19 Q Well, given that you agree that there's a
20 reasonable range within which the ratio should be
21 pegged, and given that what is reasonable to one company
22 may not be reasonable for another, would you agree that
23 in determining whether a particular capital structure
24 for a particular utility is reasonable or unreasonable,
25 we should look at the actual capital structure?

1 A Well, not completely. I think you have -- if
2 your purpose is to maintain access to capital markets
3 and to maintain your bond rating, you should look at the
4 capital structure the same way investors and rating
5 agencies look at it, and that's why I think it is
6 reasonable, as this Commission has consistently done, to
7 look at the imputed debt for purchase power adjustments
8 and to review securitized storm bonds, and investors
9 make many other adjustments, like hybrid securities, as
10 Mr. Pimentel discusses in his testimony.

11 So the audience for our capital structure is
12 not the accountants and GAAP. The audience is
13 investors. So in evaluating a capital structure, you
14 ought to look at the kinds of adjustments that investors
15 make, and among those adjustments is some judgment for
16 purchase power obligation where there is a firm
17 commitment to pay capacity payments.

18 Q So on the one hand you agree with Dr.
19 Woolridge that one should look at the actual capital
20 structure, but now you're saying you shouldn't look at
21 the actual capital structure?

22 A No. I think you're mishearing what my
23 testimony was. My testimony was Dr. Woolridge and I
24 agree that in this case the actual capital structure of
25 about 55.8 is a good starting point for the regulatory

1 capital structure. It is not the ending point because
2 you need to adjust it.

3 Now, Dr. Woolridge and I disagree as to
4 whether that capital structure means FPL is low-risk. I
5 say no, he says yes. But the point is, he says he's
6 going to use actual capital structure. Mr. Pimentel
7 uses what is the projected actual capital structure as a
8 starting point. The break in communication is between
9 Dr. Woolridge and Ms. Brown, who assumes that Dr.
10 Woolridge's book capital structure was the
11 jurisdictional capital structure.

12 Q What equity ratio do you contend the
13 Commission should approve for ratemaking purposes in
14 this case?

15 A Well, again, if you look at it from D-1, the
16 -- that was filed that included non-investor-supplied
17 sources of capital -- let's see, I have Mr. Pimentel's
18 testimony here somewhere, but it's in the 40s, but then
19 when you take out non-investor-supplied, it's around
20 55.8. Mr. Pimentel has the exact numbers, but it's
21 what's reflected on the filing MFR's schedule D-1-A.

22 Q Earlier counsel posed a question to you in
23 which he referred to a term used by Mr. Pimentel, the
24 actual adjusted capital structure. How can a capital
25 structure be actual and adjusted?

1 A It could be actual and adjusted because you're
2 starting with the actual capital structure but you're
3 making those adjustments that you think investors make
4 when they look at your capital structure, such as the
5 imputed debt from the purchase power obligations and
6 consideration of the storm bonds that have been
7 securitized.

8 Q Would you agree with me that if you begin with
9 the actual capital structure and you adjust it, then you
10 no longer have the actual capital structure?

11 A It depends what you're looking -- the actual
12 capital structure that's in D-1-A is the actual capital,
13 as I understand it, of the company. Now, when FPL is
14 managing their capital structure pursuant to the
15 settlement, they're looking at a benchmark which
16 includes consideration of the PPAs, and that is actual
17 capital structure as viewed by the rating agencies
18 assuming the Standard & Poor's adjustment. So the
19 capital structure is what it is. It's, do you view it
20 in GAAP terms or do you make the adjustments that
21 investors look at?

22 From a management perspective, the company has
23 to be mindful of how investors are going to look at the
24 capital structure, so I think that is necessary and
25 appropriate for Mr. Pimentel to make the adjustments he

1 does in evaluating the capital structure; but for the
2 purposes of ratemaking, FPL is not asking for the PPAs
3 to be considered as TECO had requested and as I
4 understand Progress is requesting. So FPL is saying,
5 consider these PPAs in evaluating your capital structure
6 because that's what investors do.

7 Q If FPL were to employ or ask the Commission to
8 employ the capital structure or equity ratio that
9 includes the consideration of imputed debt, would that
10 have the effect of increasing or decreasing revenue
11 requirements compared to what it has requested in this
12 case?

13 A Well, Mr. Pimentel would be in a better
14 position to exactly answer that. My impression is that
15 it would increase revenue requirements, but that's
16 subject to the check of Mr. Pimentel.

17 Q Well, how can that be?

18 A Because, if you do as I understand TECO did
19 and you *pro forma* in equity that you don't have, you're
20 getting return on that equity. As I understand FPL's
21 request in this case, they just want a return on the
22 equity they have, and as we demonstrated with Dr.
23 Woolridge, except for that slight difference in how to
24 average, that's the equity he says FPL has.

25 Q Is the actual equity ratio higher or lower

1 than the equity ratio that is the settlement benchmark
2 as you described?

3 A As I understand it, right now they're real
4 close, but it's a little bit lower, and again, we can
5 talk about equity ratio. We need to be more precise.
6 You know, are we talking about year-end 2008? Are we
7 talking about the 13-month average that's reflected in
8 the D-1-A? I mean, I found Mr. Pimentel's rebuttal very
9 instructive where he went over that you could take the
10 same equity ratio and you could look at it different
11 ways and get different numbers, but it's the same equity
12 ratio -- or it's the same capital structure. The way
13 you measure it changes.

14 Q The only question before you is this: If you
15 compare FPL's actual equity ratio with the equity ratio
16 that results as a consequence of imputed debt
17 adjustment, which equity ratio is the higher?

18 A My understanding is, again, when you measure
19 it -- because these PPAs are going down over time, so
20 the amount of the PPA imputation is changing, but I
21 think at present the effect of imputing the PPAs would
22 raise the -- you would lower the observed equity ratio.

23 Q Okay, so if the actual equity ratio is higher
24 than the equity ratio that results from a consideration
25 of the imputed debt, comparing the two, if you calculate

1 revenue requirements on the basis of actual equity
2 ratio, are those revenue requirements higher than or
3 lower than the revenue requirements associated with the
4 lower equity ratio using imputed debt?

5 A Well, I think it depends how you deal with
6 imputed debt. If the effect is to impute equity to
7 offset the debt, that increases the revenue
8 requirements.

9 Q Is that what FPL has done in this case?

10 A No, they have not done that.

11 Q Okay. Consider what they have done in this
12 case for purposes of answering my question.

13 A What they've done in this case is use their
14 actual equity numbers to come up with the D-1-A. They
15 have looked at the effect of debt imputation to
16 demonstrate that -- because that's how they've managed
17 their capital structure pursuant to the settlement, to
18 the 55.8, given the effect of the imputed debt.

19 Q Okay. Now, let's assume that the actual ratio
20 is 57 percent equity. That's about right, isn't it?

21 A Well, again, I think it depends how you
22 measure it, Mr. McGlothlin, and it depends if you also
23 consider the effect of storm bonds to offset the PPA,
24 because that's another adjustment that the rating
25 agencies typically make.

1 MR. ANDERSON: Chairman Carter, at some point
2 here -- we've been going about three hours flat without
3 anybody even standing up. It would be a mercy to have a
4 very, very short break.

5 MR. MCGLOTHLIN: I would like to finish this
6 one line of questions before we do that, Chairman
7 Carter. I understand the need for a break at some
8 point, but I think we can do it at point where we're not
9 midstream in something.

10 CHAIRMAN CARTER: Mr. Avera, can you hang on
11 there?

12 WITNESS: For a little while, Mr. Chairman, a
13 little while.

14 CHAIRMAN CARTER: Throw up the white flag when
15 you -- when you can say *no mas*, throw up the white flag.

16 Mr. McGlothlin?

17 BY MR. MCGLOTHLIN:

18 Q Sir, I want you to assume two different equity
19 ratios. One equity ratio is 57 percent, the other is
20 55.8. All other things being equal, those two equity
21 ratios being the only variables, if you calculate the
22 revenue requirements on the basis of 57 percent, is that
23 quantification, is that number going to be higher or
24 lower than the corresponding revenue requirements
25 calculated on 55.8?

1 A It would be higher if, if, big, big if, you
2 are applying it to the same investment base, if the
3 equity ratio, the dollars are the same as the base rates
4 that you're applying it to. That's the problem with
5 Mr. Woolridge's, Dr. Woolridge's, "only the percentage
6 matter." It's the dollars that matter. And the
7 mismatch between Dr. Woolridge and Ms. Brown is the
8 application to the capital base of the entire company
9 versus the jurisdictional rate base.

10 Q Your answer is, all other things being equal,
11 57 percent produces higher revenue requirements than
12 55.8?

13 A And among the things that must be equal, Mr.
14 McGlothlin --

15 Q Can you just answer --

16 A -- is you're applying it to exactly the same
17 investment base.

18 CHAIRMAN CARTER: You have to answer yes or
19 no, and then you can explain your answer, but --

20 THE WITNESS: Yes. Yes, it would applied to
21 the same investment base.

22 CHAIRMAN CARTER: So are you ready for a
23 break, Mr. McGlothlin?

24 MR. MCGLOTHLIN: Yes, sir.

25 CHAIRMAN CARTER: Oh, you guys, y'all ar

1 getting to be wusses. I thought y'all could hang in
2 there.

3 Okay. Let's do this. Sorry, I'm -- I have
4 y'all at a disadvantage. I can't get up right now.

5 MR. ANDERSON: And, Chairman Carter, just for
6 the record, I didn't hear the last answer to the
7 question because several people were talking and --

8 CHAIRMAN CARTER: The answer to the question?

9 MR. ANDERSON: Right.

10 CHAIRMAN CARTER: He said yes but he explained
11 his answer.

12 MR. ANDERSON: Yes, but he explained his
13 answer.

14 CHAIRMAN CARTER: Do you want to explain it
15 again, sir?

16 THE WITNESS: Yes, if you're applying the
17 equity ratio to exactly the same investment base as the
18 assets that you used to calculate the equity ratio.

19 CHAIRMAN CARTER: Okay, let's do this, guys
20 and dolls. We normally do a 1:00 to 2:15. There's a
21 question out there regarding the flight logs. Why don't
22 I do this, give you guys about a ten-minute on that as
23 well. We'll just do lunch early. Instead of coming
24 back at 1:30, we'll come back at 2:00. That should give
25 you guys plenty enough time to have lunch, take a break,

1 as well as discuss this issue pertaining to the flight
2 logs, okay? So when we come back, we'll be ready to go.

3 With that, we're on lunch, everyone.

4 (Lunch recess.)

5 CHAIRMAN CARTER: We are back on the record,
6 and when we left, Mr. McGlothlin, you're recognized,
7 sir?

8 MR. MOYLE: Mr. Chairman, do you want to go
9 ahead and entertain argument on the flight logs? I know
10 you had talked about --

11 CHAIRMAN CARTER: No, I want to wait until we
12 finish with this witness and do that.

13 MR. MOYLE: Okay. The only point I would like
14 to make is --

15 CHAIRMAN CARTER: Because you guys are going
16 to be talking to another witness on that matter.

17 MR. MOYLE: Right. But to the extent that you
18 determine it's relevant, it would help us to have access
19 to the information before the witness --

20 CHAIRMAN CARTER: You still don't have access
21 to it, is that what you're saying?

22 MR. MOYLE: That's right. And so what I want
23 to do is ask that it be provided in an unredacted form.
24 There's no claim of confidentiality, so it's not a cat-
25 out-of-the-bag situation. There's broad public policy

1 arguments in the state that, you know, open government,
2 open records is the better course of practice, and FPL
3 is saying it's not relevant. Well, the only way to, I
4 think, know that is to look at it and determine whether
5 it's -- you know, it's relevant. I can make a proffer
6 as to why I think some of it is relevant.

7 CHAIRMAN CARTER: Okay, hang on a second.

8 Hang on a second.

9 Mr. Butler?

10 MR. BUTLER: Yes, Mr. Chairman. Do you want
11 me to respond to Mr. Moyle?

12 CHAIRMAN CARTER: Yes, sir.

13 MR. BUTLER: Okay. As I kind have indicated
14 generally earlier, but we'll make it more specific here,
15 what we have provided, all of it is on a non-
16 confidential basis. We provided the logs, the flight
17 manifests for all of the trips that show all of the
18 information except for personal phone numbers. We have
19 redacted that just for kind of personal confidence
20 reasons, but I don't think that's what the discussion's
21 about. It's really over who flew the flights that were
22 for affiliates.

23 What we've provided is all of the information
24 for the FPL flights, all of the information for the FPL
25 Group flights, because FPL flights are, of course,

1 charged 100 percent to FPL. The FPL Group flights, a
2 substantial portion of that is charged to FPL as part of
3 the allocation.

4 What we have redacted, because we don't think
5 it's relevant to this proceeding, is the information on
6 the specifics of who flew and the purpose of their trips
7 for flights that are -- or, you know, legs of flights
8 that are 100 percent affiliate activities, so that, if
9 it's -- NextEra is by far the most common example there.
10 If it's a NextEra flight, a NextEra passenger where that
11 person, you know, is doing nothing for FPL, nothing for
12 FPL Group, is not being charged to FPL either directly
13 or indirectly, you know, our position is that that
14 information is not relevant to the decisions that this
15 Commission would make on the use of the aircraft.

16 We have provided for those flights the fact
17 that it's a NextEra flight and we've provided to and
18 from. We've shown where the flight took off from, where
19 it went, so that if there was an interest in, you know,
20 determining how far those people flew, trying to make an
21 assessment of whether the allocation to NextEra was in
22 an appropriate amount, all of the information necessary
23 to do so is in the -- you know, remains on the log, but
24 the specifics of the trip is something that's not
25 relevant to a decision this Commission would make.

1 Mr. Moyle, you know, represents competitors of
2 NextEra, for example. We think this is very sensitive
3 business information that, because it serves no purpose
4 in this proceeding, shouldn't be a part of the record.

5 And I would note that the -- I would note that
6 under Section 120.569(2)(g), in the Florida APA
7 proceeding -- provision governing proceedings such as
8 this, "irrelevant information shall be excluded from the
9 proceeding;" similar provisions under the Florida
10 Evidence Code, Sections 90.401 and 90.402.

11 And what this Commission has proper access to
12 on affiliate-related information is records of
13 affiliates regarding transactions or cost allocations
14 between the utility and the affiliates. You know, what
15 we've redacted is information that does not relate to
16 making that determination, and that's the basis for our
17 excluding it.

18 CHAIRMAN CARTER: Commissioner Skop, you're
19 recognized, sir.

20 COMMISSIONER SKOP: Thank you, Mr. Chair. I
21 really -- again, that's for the parties to argue as to
22 the relevance.

23 CHAIRMAN CARTER: No, I just want you to speak
24 to whether or not you got what you asked for. The
25 parties can fight their own battle, but I want to make

1 sure that the information you asked for, you got,
2 Commissioner.

3 COMMISSIONER SKOP: It's hard to say, because
4 some of the pages appear to be out of order. What would
5 give me some comfort, again, if there were just a -- you
6 know, I have the fixed-wing records, for the most part,
7 I believe, and so that gives me access to what I had
8 requested. What's hard to discern is if there's any
9 missing information to the extent that, because it's
10 fixed-wing only and the flights are not sequentially
11 numbered because there's been intervening rotary
12 flights, it would be nice to have a master list of all
13 flights from the beginning of 2006 with the date and the
14 tail number, where it be rotary or fixed-wing, and that
15 way you could check off that we have all the records.

16 But as far as the relevance, you know, it
17 would be nice to see, but again, that's for the parties
18 to argue. I have about three pages of questions on the
19 documents that they've presented.

20 MR. BUTLER: Mr. Chairman?

21 CHAIRMAN CARTER: Mr. Butler.

22 MR. BUTLER: To Commissioner Skop, we can put
23 together the list of all of the flights if that, you
24 know, that would be helpful. It might be good to be
25 sure that we're on the same page as to exactly what

1 information you would want to see on that, but that is
2 something that we could provide.

3 COMMISSIONER SKOP: Okay, and I appreciate
4 that. I'm going to ask our staff first, but, I mean, if
5 FPL's offering -- my understanding in response to a
6 prior question raised this morning was that FPL has
7 alleged that they had provided OPC all of the flights
8 via a voluminous document, and this is pretty
9 voluminous, but if it were simply a matter of being able
10 to get from January 1, 2006, to present of all the
11 flights, being the flight log numbers, the date and the
12 tail number of the aircraft, that way you'd be able to,
13 you know, fill in the missing pieces to make sure that
14 we have what we have, which I would have no reason to
15 doubt that we do, all the fixed-wing flights, but just
16 with the log numbers bouncing around, it seems like
17 there might have been a copy jamb because I was going
18 through some pages that didn't kind of match up even
19 though the Bates numbers were sequential. Again, it
20 would be maybe nice to have that additional piece of
21 information, but I think I can ask questions based upon
22 what I've seen.

23 CHAIRMAN CARTER: Okay.

24 MS. BRADLEY: Mr. Chairman?

25 CHAIRMAN CARTER: Ms. Bradley.

1 MS. BRADLEY: May I be briefly heard?

2 CHAIRMAN CARTER: Yes, ma'am.

3 MS. BRADLEY: This is totally inappropriate
4 for a party to make a determination as to the relevance.
5 The party furnishes the information in an unredacted
6 state and the trier of fact is the one that determines
7 whether or not it's relevant and the weight to be given
8 it, if any. If it's irrelevant, you all can determine
9 that and say you're not going to consider it or
10 whatever.

11 But for a party to say and make the
12 determination before anybody else has seen it that it's
13 irrelevant is totally inappropriate, and we would ask
14 that an unredacted copy be provided in time that we can
15 question the witness, because otherwise we're just going
16 to be guessing and have an opportunity to really cross-
17 examine him.

18 CHAIRMAN CARTER: Okay. Let's do this:

19 Ms. Cibula, would you kind of run this over in
20 your mind and get back with me a little bit later on so
21 I make ruling on this? But let's proceed.

22 MR. MOYLE: Can I just -- it's my motion to
23 compel, if I could just be heard to close on it briefly?

24 CHAIRMAN CARTER: Of course, absolutely.

25 MR. MENDIOLA: Mr. Moyle, before --

1 CHAIRMAN CARTER: Mr. Mendiola?

2 MR. MENDIOLA: Thank you, Mr. Chairman.

3 I just wanted to add my concurrence with the
4 statements of Ms. Bradley that as matter of
5 administrative law and practice, it's unusual for one
6 party to make a unilateral decision with respect to
7 relevance, and it could be that we could agree that this
8 information is not relevant, but we have no idea because
9 we haven't seen it, and all we need to do is take a look
10 at it, then we can have a real discussion about whether
11 it's not relevant based on the actual facts.

12 Thank you.

13 CHAIRMAN CARTER: Mr. Wright?

14 MR. WRIGHT: I just want to add that I concur
15 completely with Mr. Mendiola's remarks as to the proper
16 application of admin law.

17 Thank you.

18 CHAIRMAN CARTER: Mr. Stewart? Okay.

19 MR. MOYLE: So, Mr. Chairman, if I could just
20 conclude my --

21 CHAIRMAN CARTER: Absolutely.

22 MR. MOYLE: -- remarks on my motion.

23 CHAIRMAN CARTER: Looking forward to it.

24 MR. MOYLE: Here's why I didn't think that you
25 ought to order that it be open and available.

1 Number one, Florida has a policy of openness
2 and open records; number two, this utility is regulated,
3 decisions ought to be made based on full disclosure of
4 information; number three, to the extent it's
5 irrelevant, well, there's no harm. They're not claiming
6 confidentiality so it's a cat-out-of-the-bag situation.
7 If it's irrelevant, then we just say, you know what,
8 this doesn't go to prove anything.

9 Number four, there's a document, I'll give you
10 the number, 16022, and it's a passenger manifest and it
11 has four people on it from FPL and three people on it
12 from the energy company. It says FPL Nuclear. It has
13 some codes, airport codes that I believe are outside of
14 the state of Florida. The question becomes, why was
15 this trip taken? If it was taken to go see a NextEra
16 nuclear asset and it was all related to NextEra, we
17 would argue it's inappropriate for four FPL people to be
18 charging FPL for the flight, and the reasons for the
19 trip are blacked out. If one of the NextEra people
20 said, go visit an Iowa nuclear plant, you know, that
21 would be relevant, credible information to suggest that
22 it would be inappropriate for the FPL to charge their
23 trip to it.

24 The next reason why I believe that you should
25 rule this is open is I'm not aware of any PSC rule or

1 precedent that allows a party to unilaterally black out
2 information on the grounds of relevancy. If you rule
3 that that's permissible, then I think what's going to
4 happen, as you go forward, there's going to be
5 discovery, people are going to say, here, I'll give you
6 this contract but I've blacked out three pages of it
7 because that's not relevant, and then you're going to
8 have to be making relevancy determinations.

9 Finally, I would point the court or this
10 Commission to the case of *Vozycz*, V-o-z-y-c-z -- it's
11 not a very easy one to pronounce, but it's at 625 So.2d
12 1301, and it talks about, with respect to relevancy,
13 that a court should review the documents in question to
14 be able to determine relevancy.

15 And to the point made by counsel for South
16 Florida Hospital Association, it may be that once the
17 information's provided, you look at it and say, you
18 know, it's not relevant, but relevancy should be made by
19 the trier of fact at the point in time when something is
20 admitted into evidence, and, you know, this morning I
21 was kidding counsel for South Florida, we had the
22 conversation about the gas plan and Laredo or Belmont --
23 Beaumont, Texas, you know, I'm not sure that that was
24 all that relevant, but the proper thing, if somebody
25 wanted to, would be to object at that time, not for one

1 party to make a preemptive determination without showing
2 the information that is in dispute to the others, to
3 claim it's irrelevant.

4 CHAIRMAN CARTER: Okay, Mr. Moyle.

5 MR. MOYLE: Thank you for your indulging me.

6 CHAIRMAN CARTER: Commissioner Skop?

7 COMMISSIONER SKOP: Thank you, Mr. Chairman.

8 And to Mr. Moyle's point but not to his
9 motion, I'm already aware of that specific document and
10 I've got it before me. It's already on my list to ask a
11 question about, so I'm --

12 CHAIRMAN CARTER: No lunch tomorrow, okay,
13 just for -- you guys usually get nutso just before
14 lunch.

15 But anyway, here's what -- basically the
16 motion and the whole thing is premature because we're
17 not there. Given -- your arguments have been heard and
18 I'll rule on them after I talk with Ms. Cibula, but
19 right now it's all premature, so I'll rule on it in a
20 minute, because, really, when you get to whether or not
21 it's relevant it's really -- the document is before a
22 witness and it's before the parties and we'll be dealing
23 with it at that point in time, but at this point in
24 time, my friends and neighbors, she'll get back with me
25 and I'll give you an opportunity to be heard prior to

1 making that ruling.

2 One second. Commissioner Edgar and then
3 Commissioner Skop.

4 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

5 I believe this was discussed this morning, but
6 could I ask either our staff or FPL so that I can be
7 prepared as to which witness that is upcoming here at
8 some point is the appropriate witness to pose questions
9 about these documents?

10 CHAIRMAN CARTER: Mr. Butler?

11 MR. BUTLER: Mr. Pimentel will have
12 information I think primarily on the policies with
13 respect to how the aircraft is used. On details about
14 the allocation of or the projections of costs in the
15 test year, that would be Mr. Barrett, and --

16 COMMISSIONER EDGAR: Okay. And am I correct
17 that Mr. Pimentel is the next witness or is on deck?

18 MR. BUTLER: He is, but I would observe,
19 Commissioner Edgar, that I think he's going to be
20 probably the one with the -- of those two, the least
21 familiar with the specifics on individual flights on the
22 logs or those sorts of details. That's probably going
23 to be Mr. Barrett, and, of course, ultimately as you
24 recall, our witness on this subject specifically was
25 Mr. Bennett, who has been excused, but I suppose in the

1 absolute worst case, we could end up having to deal with
2 a situation of either responding to questions or
3 bringing him back.

4 But I think that Mr. Barrett -- you know, Mr.
5 Barrett, and then to the extent anything gets into
6 accounting, we obviously also have Mr. Davis, who is the
7 chief accounting officer for the company, as people --
8 I'm guardedly optimistic that among those three we'll be
9 able to answer any of the questions that you or the
10 other Commissioners --

11 COMMISSIONER EDGAR: Thank you, Mr. Chairman.
12 It's just, as the order of witnesses has changed to
13 accommodate schedules, I'm having a hard time keeping up
14 with who's up next and who's up when, so I may ask that
15 question again, but thank you for you clarifying that
16 for me.

17 CHAIRMAN CARTER: Commissioner Skop?

18 COMMISSIONER SKOP: Thank you, Mr. Chairman,
19 and I recognize that, to Commissioner Edgar's point that
20 the order of witnesses has changed, and, you know, I'm
21 not -- I don't want to hold up the proceedings, but I
22 think it's important, given the dollar value being
23 requested that, you know, this issue be taken a look at.
24 So I'll try and direct my questions to remaining
25 witnesses. If we need to recall a witness, that would

1 be fine, or I could just proffer my questions, but
2 what's important to me and something that I don't want
3 to be precluded from is being able to ask the questions
4 I have on the data presented, and I think getting the
5 redacted data is important to the parties and I'll let
6 you rule on that motion, but with respect to what's been
7 presented already, I have a significant number of
8 questions that I'd like to get answers to.

9 CHAIRMAN CARTER: Just for Mr. Bradley and Mr.
10 Moyle and those, your objections will be preserved. I'm
11 going to talk to Ms. Cibula myself before I even get to
12 dealing with that. I want to just -- I want to be clear
13 and I need to speak with her on that before we get down
14 that road. I really don't want to get down that road
15 right now because we -- I thought we were making some
16 progress this morning.

17 Ms. Bradley, you're recognized ever so
18 briefly.

19 MS. BRADLEY: I just want to say that the
20 reason we brought this up early is because we didn't
21 want to actually hang things up later by what I think
22 you'll say is going to be relevant or at least we need
23 to see an unredacted copy to determine if it's relevant,
24 then if we have to stop and have the copies made and
25 wait until those are so we can examine the witness about

1 this information, we wanted to bring it up soon enough
2 that that could be taken care of and not hold things up.

3 CHAIRMAN CARTER: I appreciate that, and --
4 believe me, I really do appreciate that, and we will do
5 that, and as I said to y'all at the very beginning, it
6 will seemed like forever ago, is that all parties will
7 get a fair hearing, all parties will get a fair hearing,
8 all parties will get a fair hearing. Okay.

9 MR. MENDIOLA: Mr. Chair, a suggestion, if I
10 may. Could it be the case that FPL begins to make
11 copies of the unredacted versions in the event that the
12 Chair rules to approve the motion to compel so that we
13 don't have to wait for two or three hours for that to
14 happen if that ruling comes out that way?

15 CHAIRMAN CARTER: Anything is possible. And
16 when I say anything is possible, my ruling, on my ruling
17 anything is possible. So the best defense is a good
18 offense, so plan early and plan ahead.

19 Okay. All right. Any further preliminary
20 matters, staff, before we go --

21 MS. BENNETT: No, Mr. Chairman.

22 COMMISSIONER ARGENZIANO: Mr. Chair?

23 CHAIRMAN CARTER: Commissioner Argenziano,
24 good afternoon. You're recognized.

25 COMMISSIONER ARGENZIANO: Thank you. Good

1 afternoon.

2 Well, let me ask you, does that mean that FPL
3 will be ready if we determine that it is relevant?
4 Because I don't want to wait several hours for something
5 they might have known ahead of time.

6 CHAIRMAN CARTER: Well, before we get there,
7 I've told them -- I've just put the motion on hold for
8 Ms. Cibula. I'm going to be taking a break and talking
9 to her, but it would --

10 COMMISSIONER ARGENZIANO: Okay. So we were
11 talking about in a little while we'll have some kind of
12 an understanding?

13 CHAIRMAN CARTER: Absolutely.

14 COMMISSIONER ARGENZIANO: Okay, great.

15 CHAIRMAN CARTER: And my goal, Commissioners,
16 so all of you know, Commissioners, to the Commissioners,
17 is that my goal is to make a ruling in a timely enough
18 manner so that you'll have access to the information as
19 well as the parties. All right. Okay?

20 Okay, let's proceed. Mr. McGlothlin?

21 MR. MCGLOTHLIN: Thank you. First, I did not
22 offer argument on the point but I would like to say that
23 I concur with the basic proposition that --

24 CHAIRMAN CARTER: Oh, I'm sorry, yes, sir,
25 absolutely, for the record.

1 MR. MCGLOTHLIN: For the record, a party can
2 object based upon a claim of irrelevancy, but a party
3 cannot unilaterally make that determination. So that's
4 my --

5 CHAIRMAN CARTER: I remember that from law
6 school.

7 MR. MCGLOTHLIN: Okay, good.

8 BY MR. MCGLOTHLIN:

9 Q Dr. Avera, I have several questions about your
10 utility proxy group which I think appears at WEA-8, if
11 you'll have a chance to turn to that.

12 A Yes.

13 Q You have included some 19 utilities in that
14 proxy group, have you not?

15 A Yes.

16 Q And you typically use a proxy group of about
17 that size, do you not?

18 A Yes, I do.

19 Q Would you agree that your group includes a
20 number of electric utilities that receive less than 50
21 percent of their revenues from regulated electric
22 utility service?

23 A That may be the case. Many have significant
24 gas, steam and other utility operations.

25 Q I want to ask you about several of them.

1 MDU Resources, who is that?

2 CHAIRMAN CARTER: Excuse, Mr. McGlothlin, do
3 you mind yielding to the Chairman for a moment?

4 MR. MCGLOTHLIN: Not at all.

5 CHAIRMAN CARTER: I'm going to -- here's my
6 ruling, Commissioners and to the parties, is that we
7 want the unredacted information made available to the
8 parties and the Commissioners and that way, when this
9 next witness comes up and is available, we can ask those
10 questions. If that witness can't answer those, then
11 we'll have, I believe it will be Mr. Barrett, and Mr.
12 Barrett -- what was it, Mr. Butler? Those are the
13 witnesses if we have to go back and pull -- it was three
14 witnesses that you said that had a -- or two witnesses
15 and one that was gone already. Is that --

16 MR. BUTLER: The three that I mentioned were
17 Mr. Pimentel, Mr. Barrett and Mr. Davis. The fourth
18 that has already been excused is Mr. Bennett.

19 CHAIRMAN CARTER: Okay. And if we have to do
20 that, we'll do that, but just go ahead and provide the
21 information so we don't hold up the process and the
22 parties get an opportunity. I'm going to give you guys
23 a break sometime this afternoon, and during that break
24 you guys can look it over and all of that.

25 All right, that's my ruling.

1 Mr. McGlothlin?

2 MR. BUTLER: Mr. Chairman --

3 CHAIRMAN CARTER: Yes, sir, Mr. Butler.

4 MR. BUTLER: Yes, sorry. We will be
5 requesting confidentiality for the information that you
6 are directing us to provide, so -- it's just a technical
7 matter, but we'll be needing to make a confidential
8 request for that.

9 CHAIRMAN CARTER: We'll cross that bridge when
10 we get to it. That's my ruling.

11 Mr. McGlothlin?

12 BY MR. MCGLOTHLIN:

13 Q Dr. Avera, describe MDU Resources, if you
14 will.

15 A Its other name is Montana-Dakota Utilities.
16 They sell gas and electricity at this time to 85 -- or
17 863,000 customers in North Dakota, Montana, South
18 Dakota, Wyoming, Minnesota, Washington, Idaho and
19 Oregon.

20 Q You have reviewed Dr. Woolridge's testimony,
21 have you not?

22 A Yes, I have.

23 Q And you're aware that he provided a schedule
24 indicating the percentage of revenues that each of your
25 -- some of your proxy companies derived from electric --

1 regulated electric service?

2 A Yes, and in my deposition we talked about the
3 fact that there was no consistent, accurate information
4 on the percentage of electric utility service.

5 Q Would you agree, subject to check, that
6 according to Dr. Woolridge, MDU Resources derives some
7 four percent of its revenues from regulated electric
8 service?

9 A I know that that's what his source says. I
10 don't know that to be the fact. I do know that Value
11 Line has subsequently moved MDU to the gas utility
12 section.

13 Q Okay. Who is Integrys, if I'm pronouncing
14 that correctly?

15 A They are a holding company for Wisconsin
16 Public Service and Peoples Gas and four other utility
17 subsidiaries. They are headquartered in Chicago.

18 Q Now, would you accept, subject to check, that
19 Dr. Woolridge -- according to Dr. Woolridge's schedule,
20 Integrys derives ten percent of its total revenues from
21 electric service?

22 A I understand that's what the schedule says. I
23 don't agree with that number and I don't agree it's
24 relevant.

25 Q Well, what percentage do you believe it

1 derives from regulated electric service?

2 A I have not made an inquiry into that.

3 Q On what basis do you disagree with his number?

4 A Because my familiarity with that source is
5 that those numbers are often inconsistent. In the past
6 I have tried to find the numbers that AUS Utility
7 Service reports and I have not been able to replicate
8 those numbers.

9 Q So you have a general belief that those
10 numbers are precise, but you don't have an alternative
11 to his ten percent value?

12 A No, I think you misspoke. I don't agree that
13 those numbers are reliable, and I don't -- because in my
14 view the benchmark is what investors believe about risk,
15 I used investors' risk measures and I didn't inquire
16 into their personal of revenue. Value Line classifies
17 this company as an electric utility.

18 Q Well, I understand you and Dr. Woolridge may
19 have a disagreement as to the relevancy or the proper
20 treatment of this value, but do you have any basis on
21 which to disagree that Integrys receives some ten
22 percent of its total revenues from electric service?

23 A I can neither agree nor disagree.

24 Q Who is Vectren?

25 A Vectren is an Indiana utility that sells

1 electric and gas in Indiana and Ohio. They were created
2 by the merger of Southern Indiana Gas Company.

3 Q Are they considered an electric utility?

4 A Yes, they are.

5 Q Dr. Woolridge's schedule shows Vectren
6 receives 22 percent of its total revenues from electric
7 service. Do you agree or disagree?

8 A I haven't inquired at the number. We've done
9 a lot of work with Vectren. My impression is the number
10 may be larger. Virtually all their revenues are from
11 regulated electric or gas.

12 Q But you have not inquired?

13 A I have not tried to replicate that number.

14 Q With respect to your utility proxy group, have
15 you provided any exhibits or analyses in this case in
16 which you compare the relative riskiness of this group
17 versus that of Florida Power & Light?

18 A I have presented on my -- in my direct
19 testimony there is an exhibit that summarizes the
20 investors' risk measures for this group. That's WEA-6.

21 Q Turn to WEA-16, if you will.

22 A Yes, sir.

23 Q In WEA-16 you suggest, do you not, that FPL's
24 proposed common equity ratio is comparable to the
25 average of the proxy group?

1 A That's one of the observations I make. I look
2 at WEA-15, which is the operating company's under the
3 holding companies, and then I look at 16, which is the
4 holding companies themselves, and I observe that FPL's
5 within the range, although at the upper end of the range
6 of both groups, but I think that that's appropriate,
7 given the risks and challenges that FPL faces.

8 Q The average shown on WEA-16 is 52.2 percent,
9 correct?

10 A Yes.

11 Q And that's for -- do you know whether that
12 figure, that average figure includes any imputed debt?

13 A It does not.

14 Q Do you know whether FPL's proposed capital
15 structure in this proceeding includes short-term debt?

16 A Yes, it does.

17 Q Does the analysis in WEA-16 include short-term
18 debt?

19 A No, but in the text I present the numbers that
20 if you adjusted those to have the same amount of
21 short-term debt as FPL.

22 Q You also work with a group of non-utility
23 companies, do you not?

24 A Yes, I do.

25 By the way, the -- on page 78 at line 8, I

1 discuss the adjustment for short-term debt.

2 Q Okay. How many companies are in your
3 non-utility group?

4 A 66.

5 Q Please turn to WEA-9. Your group includes
6 Abbott Labs?

7 A Yes.

8 Q And AT&T?

9 A It does.

10 Q Would you agree with me that the average beta
11 for this group shown on WEA-12 is .83?

12 A 12, let's see. I have an average beta
13 calculated on WEA-6 of .84. I don't see an average beta
14 calculated on WEA-12.

15 Q You're correct about that.

16 It is a calculation, and if you say it's .84,
17 I think maybe we've got one of those reasonable ranges
18 to talk about?

19 A Yes.

20 Q Now, if you'll turn to WEA-11, that shows the
21 betas for your utility group, does it not?

22 A Yes, it does.

23 Q And if you'll take a moment and review that,
24 would you agree with me that the range within that group
25 is .55 to .90?

1 A Yes, it is.

2 Q Would you agree that the range for the non-
3 utility group is .55 to 1.40?

4 A If you looked at the numbers, I'll save time
5 and agree with you, subject to check.

6 Q Okay. Do you know what the average beta for
7 the utility group that would correspond to the .83 or
8 .84 --

9 A Yes, it is a .73 compared to I believe .69 for
10 Dr. Woolridge's.

11 Q I have several questions about your discounted
12 cash flow methodology or -- discounted cash flow or DCF.
13 Did you rely on analysts' forecasts as an input to your
14 DCF?

15 A Yes, in addition to the BR plus SV.

16 Q At page 50, if you'll turn to the page 50 of
17 your direct testimony?

18 A Yes, sir.

19 Q Perhaps you'll want to refer to page 49, which
20 is where you begin to quote from the regulatory financed
21 utilities cost of capital, and quoting at page 50,
22 beginning at lines 7 or 8, thereabouts, you quote that
23 article for the proposition that, "Growth forecasts made
24 by securities analysts represent an appropriate source
25 of DCF growth rates and are reasonable indicators of

1 investor expectations and more accurate than forecasts
2 based on historical growth." Do you see that statement?

3 A Yes.

4 Q And then the same source quotes Craag and
5 Malkiel. Am I pronouncing that correctly?

6 A Malkiel.

7 Q Malkiel?

8 A The father of *The Random Walk*.

9 Q Okay. For the proposition that, "The average
10 analyst's expectation is more similar to expectations
11 being reflected in the marketplace than are historical
12 growth rates," you're familiar, obviously, with the
13 Craag and Malkiel source?

14 A Yes.

15 Q I want to provide you with an excerpt from
16 that and have you take a moment to review it.

17 ACTING CHAIRMAN EDGAR: Mr. McGlothlin, do we
18 need to mark?

19 MR. MCGLOTHLIN: Yes, we do.

20 ACTING CHAIRMAN EDGAR: Okay. I am at 497.

21 Thank you.

22 Could we give this a title, please?

23 MR. MCGLOTHLIN: We have called this on the
24 handout Excerpt from *Expectations and the Structure of*
25 *Share Prices*, but if you want to call it Excerpt from

1 Craag and Malkiel, that will be fine as well?

2 ACTING CHAIRMAN EDGAR: Excerpt from Craag and
3 Malkiel?

4 MR. McGLOTHLIN: Yes.

5 ACTING CHAIRMAN EDGAR: Thank you. We will so
6 mark.

7 (Exhibit No. 497 marked for identification.)

8 MR. McGLOTHLIN: And was that 497?

9 ACTING CHAIRMAN EDGAR: 497.

10 BY MR. McGLOTHLIN:

11 Q Dr. Avera, we've provided you with a two-page
12 handout that been marked 497. We included the first
13 page simply to show that the source is the publication
14 by Dr. -- excuse me, by John Craag and Burton Malkiel.

15 Please turn to the second page of that excerpt
16 and you'll see that the second paragraph below the table
17 begins, "The electric utility industry."

18 A Yes, sir.

19 Q Would you read that paragraph for us, please?

20 A Certainly. "The electric utility industry
21 turned out to be one of the more difficult industries
22 for which to make long-term forecasts. This would come
23 as a distinct surprise to participating security
24 analysts, who claimed at the outset that they had some
25 reservations about their abilities to predict earnings

1 for metals and other cyclical companies but had
2 confidence that they could make accurate predictions for
3 utilities. It turned out that the long-term predictions
4 for the utility industry were considerably worse than
5 for metals and cyclicals."

6 Q Now, you'll note that the Malkiel publication
7 is dated in 1982. Do you know what year their study
8 covered?

9 A I think it's indicated at the top it was
10 '63-'68. This is the same kind of study that -- this
11 part of the study -- that Dr. Woolridge did of accuracy.
12 Another part of the Malkiel study, the Craag and
13 Malkiel, and I think the more pertinent, is the
14 correspondence of investors' expectations with what
15 security analysts were forecasting. It doesn't matter
16 how accurate they are if it's in fact what investors
17 use.

18 Q I have several questions about your CAPM
19 approach which is presented on WEA-8. You develop an
20 expected equity risk premium for your CAPM approach, do
21 you not?

22 A Yes.

23 Q And would you agree that your expected equity
24 risk premium for your CAPM analysis includes an expected
25 market return of 13.2 percent?

1 A It does.

2 Q Is that above or below the historic return on
3 stocks?

4 A Well, it depends how you measure it and over
5 what period. On an arithmetic basis it's below -- I
6 mean, above, but if you go back to 1926, there are more
7 years that it was exceeded than not. So if you say what
8 is the most frequently observed return, it would be
9 above 13.2.

10 But, as we discussed earlier, history is not
11 necessarily the benchmark. This is in fact our
12 indication of what investors expect.

13 Q Would you say that current interest rates are
14 high or low by historic standards?

15 A Well, it depends where you start history.
16 They are relatively low by historical standards. They
17 are high relative to, say, the '50s.

18 Q Your 13.2-percent market return, expected
19 market return in the CAPM analysis is determined by
20 applying a DCF to the companies in the S&P 500?

21 A That pay dividends, yes, using analysts', two
22 sources of analysts' forecast average.

23 Q And in the course of that analysis you used a
24 dividend yield for this S&P 500 of 3.6 percent, correct?

25 A Yes.

1 Q And you also used an expected growth rate of
2 9.6 percent for earnings?

3 A Yes.

4 Q Now, under your methodology, or under the CAPM
5 methodology, do you agree that this presumes that the
6 earnings per share for the stock market will grow
7 forever at 9.6 percent?

8 A No. It presumes that this is what investors
9 expect and have in their mind when they buy the stock.

10 Q Okay, so I'll accept that modification. The
11 assumption is that investors expect the S&P 500 to grow
12 earnings at 9.6 percent in perpetuity?

13 A No. As I explained in my rebuttal, the very
14 long term doesn't matter and investors don't try to
15 forecast it. It is the foreseeable future that's
16 relevant to investors. So I think the relevant measure
17 is what do they expect in the foreseeable future, and to
18 me 9.6 is reasonable, but it really -- it came out of
19 the analysts who follow 346 of the largest companies in
20 the country.

21 Q You did agree with me that your methodology
22 consists of applying a DCF to the companies, dividend-
23 paying companies in the S&P 500?

24 A It does.

25 Q Is a growth rate for earnings of 9.6 percent

1 high or low relative to historic trends?

2 A Again, it depends how you measure it. Dr.
3 Woolridge -- and I discussed this in my rebuttal --
4 presents a geometric average over the post-war period.
5 The problem is the relevant measure is the arithmetic
6 average, number one; number two, history may not be a
7 necessary guide to the future; three, Dr. Woolridge uses
8 national income accounts. We're talking about per-share
9 earnings. The owner of a share reinvests part of the
10 earnings. In essence, Dr. Woolridge's analysis assumes
11 100 percent payout. In fact, in the real world share
12 prices reflect the fact that not all of the earnings are
13 paid out in dividends, so it's possible for earnings per
14 share to grow faster than national income corporate
15 earnings.

16 Q In the course of your analysis, is it true
17 that you use an equity risk premium of ten percent?

18 A Yes.

19 Q And that is a component of your risk premium
20 exercise on which you base in part your recommendation
21 of 12.5 percent in the case?

22 A That's correct.

23 Q I believe you're familiar with a case in Ohio
24 in 2004 involving SBC of Ohio that involved both you and
25 Dr. Woolridge, correct?

1 A Yes, sir.

2 Q Was that a general rate case?

3 A It was a case to determine the price of
4 unbundled network elements that SBC Ohio would make
5 available to competitive local exchange carriers.

6 Q So it was an evaluation of TELRIC assets,
7 correct?

8 A Yes.

9 Q And not a general rate case?

10 A That is true.

11 Q What was your recommended return on equity in
12 that case?

13 A As I sit here today, I don't recall.

14 Q Would you accept, subject to check, that it
15 was 13.7 percent?

16 A That sounds in the neighborhood.

17 Q And again subject to check, Dr. Woolridge
18 recommended ten percent in the same case?

19 A That sounds approximately correct. I'll
20 accept it.

21 Q What ROE was deemed appropriate by the Ohio
22 Public Utilities Commission?

23 A As I sit here today, I don't recall.

24 Q Subject to check, was it ten percent?

25 A It may have been.

1 Q Are you familiar with a case in the state of
2 Connecticut involving United Illuminating?

3 A I certainly am.

4 Q And both you and Dr. Woolridge participated in
5 that case, did you not?

6 A We did.

7 Q Do you believe -- I believe you recommended an
8 ROE in that case of 10.75 percent, did you not?

9 A Yes.

10 Q And if you'll recall, did Dr. Woolridge
11 recommend 9.25?

12 A He recommended a range. He adjusted it
13 downward for the possibility of decoupling, so I think
14 he started at 9.5 and then went down to 9.25.

15 Q Would you agree that the Department of Public
16 Utility Control adopted 8.785 for the utility in that
17 case?

18 A They did.

19 Q If you know, has -- I believe the acronym is
20 UI for the utility in that Connecticut case?

21 A Yes.

22 Q Has UI's bond rating changed since that
23 decision?

24 A No, because there was -- the initial decision
25 was in January. There was another decision in February.

1 There was a motion to rehear, and there was a rehearing
2 and a new order filed on June 3rd of 2009. The new
3 order, although it did not change the 8.75, did
4 significant changes to the cash flow of the company,
5 added an adjustment for pension costs and embedded debt
6 costs. So all in all -- and there was only one rating
7 agency for UI. They're a relatively small company. The
8 rating agency felt the cash flow effects -- it's a two-
9 year plan, so it had planned increases out in the
10 future. Looking at the totality of the order, they kept
11 the bond rating in place.

12 So it goes along with what Moody's has said
13 recently that they do not look just at the ROE and the
14 capital structure, they look at the totality of the
15 order. And the order, especially as it was amended in
16 June, allowed the company to earn an acceptable cash
17 flow, especially considering that 30 percent of their
18 assets are FERC jurisdictional and earn 12.49 percent
19 and they have all sorts of ways to earn extra return by
20 going into distributed generation, alternative
21 generation and building gas plants. They are a T&D
22 utility at present.

23 Q A T&D utility, transmission and distribution?

24 A Only. There's no generation.

25 Q Okay. But the decision on the appropriate

1 return on equity in that case was 8.75, and that did not
2 change as a result of the rehearing, correct?

3 A It did not change.

4 MR. MCGLOTHLIN: That's all I have.

5 ACTING CHAIRMAN EDGAR: Thank you.

6 Ms. Bradley, questions on cross?

7 MS. BRADLEY: No questions.

8 CHAIRMAN CARTER: Thank you.

9 Mr. Moyle?

10 MR. MOYLE: Yes, I have some questions.

11 CROSS EXAMINATION

12 BY MR. MOYLE:

13 Q Good afternoon.

14 A Good afternoon, Mr. Moyle.

15 Q I'm going to -- you've been up there a long
16 time and we've been in these proceedings a long time,
17 and I'm going to try to --

18 COMMISSIONER ARGENZIANO: Excuse me, Mr.
19 Moyle, could you speak up? I'm sorry. I'm not hearing
20 you that well.

21 MR. MOYLE: Sure. I was just introducing
22 myself to the witness.

23 BY MR. MOYLE:

24 Q I'm Jon Moyle. I represent the Florida
25 Industrial Power Users Group.

1 There's been a lot of discussion and a lot of
2 answers. You're familiar with the Commission order
3 where questions should be answered yes or no and, if
4 required, an explanation following the yes/no answer,
5 you're familiar with that, are you not?

6 A Yes.

7 Q I'm going to start with one that I think is
8 also a yes/no, and it is a question that you -- that is
9 posed in your c.v., and it's an article that you wrote,
10 *Should Analysts Own the Stocks They Cover?* Was your
11 conclusion no, they should not, in that article?

12 A No. It was yes.

13 Q So in that article you put forward the
14 proposition that you think it was okay for analysts to
15 own stocks they cover, is that right?

16 A Yes, provided they follow the ethical
17 standards of the CFA Institute and other professional
18 organizations.

19 Q And that answer to that question doesn't cause
20 you concerns about conflict?

21 A No, it doesn't, because generally the
22 analyst's position is relatively small compared to the
23 whole universe of shareholders; and secondly, as I
24 explained in the article, the biggest asset that an
25 analyst has is their credibility, and if they do a poor

1 job just to pump up a stock that they're following,
2 their credibility will erode away and they will lose
3 their job. I cite in my rebuttal a 2008 article that
4 actually did a study of the pay and performance and
5 termination of analysts, and it confirmed that. I did
6 my article before the article in the FAF, but it
7 confirmed it.

8 Q You're aware that other commentators have come
9 to the opposite conclusion, that analysts should not own
10 stock that they cover, correct?

11 A Yes.

12 Q Do you own stock?

13 A Yes.

14 Q Okay. And when you purchase stock, do you
15 ever go on cnn.com or one of the websites where you can
16 hit a little button and look at the historical -- how
17 the stock has performed in the last year or three years
18 or six months? Do you ever inform yourself with respect
19 to historical performance of a stock?

20 A I inform myself with everything I can get
21 ahold of, so I punch a lot of buttons before I commit my
22 money to a stock, or my kids' money, I should say.

23 Q Okay, and included in that would be the
24 historical performance of the stock?

25 A That's one of the many measures I look at.

1 Q Okay. I don't think we have a disagreement
2 that, you know, this Commission is being asked to decide
3 some important issues that will have fiscal impacts on
4 the company and on the ratepayers, correct?

5 A Yes, absolutely agree.

6 Q And we would also agree, would we not, that
7 this Commission should inform itself on the most current
8 information available, correct?

9 A The most current relevant information, yes.

10 Q And -- agreed.

11 What was the last 10-Q for FPL that you've
12 reviewed as we sit here today?

13 A I reviewed the third quarter. I don't
14 think -- I mean, excuse me, the first quarter. I don't
15 have a specific recollection of the second quarter.

16 Q Okay, so the first quarter would be the one
17 that ended in March, is that right?

18 A Yes, sir.

19 Q Are you aware that FPL has filed a 10-Q for
20 the second quarter as well?

21 A Yeah, I expect they have, and --

22 Q But you have --

23 A -- I just don't have a specific recollection.
24 I may have looked at it. I've looked at so much stuff,
25 but I don't have a specific recollection.

1 Q Okay. And so you didn't, in terms of
2 preparing for questions that I might ask you today, go
3 and look at the most recent 10-Q, correct?

4 A No, sir.

5 Q All right. You reference the *Hope* and
6 *Bluefield* decisions. Have you read those opinions?

7 A I have, many times.

8 Q Okay. You're not trained as an attorney, are
9 you?

10 A No, sir.

11 Q Okay, a couple of questions about your proxy
12 group.

13 As I understand the proxy group, what you're
14 trying to do is to sort through companies and find
15 companies that are similar to FPL, is that right?

16 A That is correct, in the view of investors,
17 would be viewed as comparable risks.

18 Q And go through a pretty detailed process to
19 look and pick and choose and find ones that in your
20 judgment you believe are -- present comparable risks,
21 correct?

22 A That's not quite correct, Mr. Moyle. I'm
23 trying to put myself in the investor's viewpoint. So
24 I'm trying to choose companies which, in the investor's
25 view, are a comparable risk.

1 Q And that's hard to do, to put yourself in the
2 shoes of an investor, isn't it? I mean, you know, that
3 -- you're an investor, but trying to figure out, you
4 know, if I'm an investor, what I'm thinking, that's not
5 an easy thing to do. You would agree with that, would
6 you not?

7 A I have no idea what you're thinking, Mr.
8 Moyle, but the good news is we don't matter very much
9 because we don't have much money, but for the most part
10 the significant investors -- and FPL is 60 percent owned
11 by institutional investors -- rely on things like bond
12 ratings. They rely on reports like Value Line. So we
13 can get a good line on what investors expect by reading
14 rating agency reports, by reading financial analysts'
15 reports, but looking at Value Line. So we can try to
16 put ourselves into the same information environment as
17 investors.

18 Q Who is the largest institutional investor of
19 FPL?

20 A As I sit here today, I don't know. Mr.
21 Pimentel might know. For most, it's Fidelity, but I
22 don't know if it is for this company.

23 Q So you don't know?

24 A I do not know.

25 Q You said that you don't know what I'm

1 thinking. Similarly, you don't know what the largest
2 investor of FPL is thinking, in that we don't know who
3 it is, correct?

4 A That is correct, but we do have a good sense
5 of the methods they use and the information they use.

6 For the most part, institutional investors
7 subscribe to the Institute of Chartered Financial
8 Analysts' Code of Conduct and Standards of Professional
9 Practice. So that gives us some guidance into how they
10 approach their work.

11 Q And that's an assumption that you're making,
12 correct?

13 A No, sir, I think that's documented.

14 Q Back on the proxy group discussion --

15 A Yes, sir.

16 Q -- am I correct in that the objective, whether
17 it's from your judgment, which I guess you've corrected
18 me and said it's not, but it's the judgment that you're
19 trying to project for the investment group, that the
20 objective is to try to get a proxy group that is very
21 similar in risk profile to Florida Power & Light, is
22 that correct?

23 A That is correct, that are viewed as similar
24 risks, so that when we do the quantitative methods, we
25 have the benefit of sampling and eliminating sampling

1 error by having more than one observation.

2 Q Okay. And there's been some discussion about
3 clauses. You would agree that as a general rule,
4 recovery through a clause presents less risk than
5 recovery through one of these proceedings, correct?

6 A No, I don't think that's automatic, because
7 first, clauses are created by risk. The reason a
8 company has a clause is because there is a risk there
9 that needs to be attenuated. So companies that aren't
10 building nuclear plants don't have nuclear plant
11 construction clauses.

12 Secondly, under a clause, the best that can
13 happen is you get your money back. You can't earn a
14 return under a clause. You can't get ahead of the game,
15 and there's a good chance that there may be a finding of
16 imprudence, or for one reason or another, you don't
17 collect all the money. So I don't think -- it's what we
18 call in finance an asymmetric risk. It's asymmetric
19 since there's no upside for the company and there's only
20 downside.

21 Q And I appreciate that, and we'll probably have
22 a further conversation about that. I'm just trying to
23 focus on, you know, the notion of a clause like a fuel
24 clause and whether that is a better thing from a risk
25 perspective for a utility to have a fuel clause or not.

1 Can you answer that yes or no? Is it better for a
2 utility to have the benefit of a fuel recovery clause?

3 A Yes, generally when the company is facing
4 volatile fuel costs. Some companies do not have
5 volatile fuel costs, so they don't need a clause.

6 Q All right. And I just want to run through a
7 series of questions and ask you generally is it your
8 view that having these recovery mechanisms are a
9 positive thing for a utility and would work to mitigate
10 risk:

11 A general base rate adjustment?

12 A You're talking about -- do you mean general or
13 generation?

14 Q I'm sorry, generation, generation base rate
15 adjustment.

16 A There are some advantages to that for both the
17 customers, certainly for the Commission and the utility.
18 The degree it eliminates risk depends on the facts and
19 circumstances.

20 Q Okay, so you can't answer that one yes or no
21 as to whether that's a good provision to have for
22 mitigating risk?

23 A As from the investor's perspective. I think
24 it's unambiguously good from the Commission's
25 perspective and probably from the company's perspective,

1 because it eliminates some of the fun we're having now.

2 Q Okay. Well, let's keep on the line of
3 questions.

4 From the investors' perspective, is it a
5 favorable thing to mitigate risk to have securitization
6 of storm recovery costs?

7 A If you have the risk of storms, securitization
8 is better than not having it. Not having storm risk is
9 the best of all.

10 Q Okay, so that answer would be yes?

11 A Yes, relative to a company that already has
12 significant storm risk.

13 Q Right. And we're not aware of anywhere in the
14 country that doesn't have a storm risk, are we? Ice
15 storms, windstorms, I mean --

16 A But the relative risk in terms of the effect
17 on the utility, the costs are very small relative to the
18 hurricane risk that this company faces in this state.

19 Q Yes, sir.

20 Customer-funded storm reserve, is that an
21 element that reduces risk from the perspective of the
22 investors?

23 A It attenuates risk where storm exposure is
24 significant.

25 Q So that would be yes?

1 A Yes, where storm exposure is significant,
2 where you have that storm risk inherent in the utility
3 service area.

4 Q Nuclear cost recovery clause.

5 A It attenuates risk when you have the risk of
6 building nuclear plants, which is significant.

7 Q Capacity clause.

8 A Yes, it affects risk when you have the
9 obligation to make fixed capacity payments which have
10 debt-like characteristics.

11 Q Conservation clause.

12 A Yes, it does reduce risk when you're in a
13 situation where you're making substantial conservation
14 investments and incurring loss of load from
15 conservation.

16 Q Environmental clause.

17 A Yes, it does reduce risk in those
18 circumstances where there is significant and uncertain
19 environmental cost.

20 Q I think you've already affirmed fuel clause,
21 correct?

22 A Yes, fuel clause where you're in a situation
23 of having volatile fuel prices.

24 Q Regulatory interim relief within 60 days,
25 having provision to seek interim rate relief within 60

1 days?

2 A Well, we've talked about that a good deal. I
3 don't think you can say it reduces risk until you know
4 how investors will view its implementation.

5 (Brief pause at 3:03 p.m.)

6 (The transcript continues in sequence with
7 Volume 35.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, RAY D. CONVERY, do hereby certify that I was
5 authorized to and did stenographically report the
6 foregoing proceedings at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that the foregoing
9 transcript is a true record of my stenographic notes.

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

15 DATED this 21st day of September, 2009, at
16 Tallahassee, Leon County, Florida.

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21 _____
22 RAY D. CONVERY
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