

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 35  
Pages 4644 through 4718

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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 3:03 p.m.  
Concluded at 5:00 p.m.

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

REPORTED BY: CLARA C. ROTRUCK  
Court Reporter  
(850) 222-5491

PARTICIPATING: (As heretofore noted.)

**ORIGINAL**

DOCUMENT NUMBER - DATE

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I N D E X

WITNESS

NAME:

PAGE NO.

WILLIAM E. AVERA

Cross Examination (cont.) by Mr. Moyle

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Cross Examination by Mr. Wright

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EXHIBITS

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NUMBER:		ID.	ADMTD.
498	TECO Stock Prices	4711	
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## P R O C E E D I N G S

1  
2 (Transcript follows in sequence from  
3 Volume 34.)

## CROSS EXAMINATION (continued)

4  
5 BY MR. MOYLE:

6 Q Are you aware of any other state in the  
7 country which has the clauses that I just read out to  
8 you, other than Florida?

9 A I think all states have clauses, many of them  
10 of the functioning equivalent of Florida. Some have  
11 clauses that go further than Florida. I was just  
12 talking about Connecticut with its embedded cost of  
13 debt, its pension cost clause.

14 Q So that was not a very good question. They  
15 teach you in cross-examination you've got to be real  
16 precise, and that was not a precise question.

17 So what I want to ask you is, I read through  
18 all of these clauses, and I don't want to have to go and  
19 burden the record again. You are familiar with the  
20 clauses I just read through, correct?

21 A Yes.

22 Q Okay. Are you aware of any other state in the  
23 country that has all of the clauses that I just read to  
24 you, yes or no?

25 A I would have to -- some states have all of the

1 clauses. Some states have more -- clauses that go  
2 further on different elements of cost. I would have to  
3 sit here, I have a document that I presented in  
4 discovery, to count to whether there is a state that  
5 overlaps with Florida. My suspicion is that both  
6 Virginia and California would have what Florida has, and  
7 more.

8 Q Sir, isn't it true that you did not conduct a  
9 study to identify the extent to which each of the cost  
10 adjustment mechanisms that I just read through to find  
11 out whether companies in your proxy utility group had  
12 similar cost recovery clauses?

13 A That is correct, because I relied on  
14 investors' indicia of risk to select my proxy group, and  
15 presumably -- or not just presumably, I know that  
16 investors consider the effect of these clauses as they  
17 affect investors' risk in the evaluations they make.

18 Q How do you know that? Have you talked to them  
19 and they told you that that is something that they  
20 consider?

21 A If you look at their publications, there was a  
22 Standard & Poor's publication earlier this year, in  
23 March, *Recovery Mechanisms Help Smooth Electric Utility*  
24 *Cash Flow and Support Ratings*, March 9, 2009. And it  
25 goes over the clauses and discusses, for example, it

1 points out that those states where you have a  
2 construction cycle like Colorado, Idaho, Kansas, South  
3 Carolina and North Dakota and Wisconsin have adjustments  
4 for new construction.

5 Q Do you have an understanding of hearsay and  
6 what it is?

7 A Yes. I'm an expert, and these kinds of  
8 reports are what experts use in forming their opinions.  
9 So my understanding is this is the kind of material that  
10 a person doing a study in a position and with the  
11 education I have would use in the course of their work.

12 Q And you're saying that you inform your opinion  
13 based on hearsay statements of others, you're not  
14 necessarily saying here is what these other people  
15 believe, correct?

16 A Well, hearsay is a legal definition. I'm  
17 using materials that experts such as myself in the  
18 course of their practice use, and bond rating agency  
19 reports are standardly used by experts who are trying to  
20 intuit the cost of capital.

21 Q Let me see if I can ask you a question, and it  
22 may serve, hopefully, to illustrate the point about  
23 hearsay.

24 On page 18 of your rebuttal testimony, line

25 3 --

1           A     Yes.

2           Q     -- you're asked, "Do you have any closing  
3           comments about the opposing witnesses' assessment of the  
4           relative risk of FPL," and you say "Yes."

5           A     You are not on page 18, you're somewhere else.  
6           You are on Exhibit 18. Where are you?

7           Q     I think I'm on page 18.

8           A     Okay. I was in the exhibit myself, I was  
9           mislocated. There we go.

10          Q     Would you just read the first three sentences  
11          in that answer?

12          A     Yes. Yes. "The statement of FPL's Group's  
13          Mr. Hay that FPL is the best utility franchise in the  
14          nation is cited repeatedly, particularly by Mr. Baudino.  
15          He and others apparently equate this statement with an  
16          admission that FPL is a low-risk utility. I do not  
17          think this statement is equivalent to granting that FPL  
18          is low risk; rather, it reflects the pride that the  
19          company feels in its financial strength, reliable  
20          service and ability to surmount the many challenges  
21          inherent in its service area and energy mix."

22          Q     And the fact of the matter is you have one set  
23          of witnesses that say, "Here is what I think Mr. Hay  
24          meant," and then you're saying, "No, no, that's not  
25          right, here's what I think Mr. Hay meant by that

1 statement, 'FPL is the best franchise in the nation,'"  
2 correct?

3 A Yes.

4 Q And the fact of the matter is, if he was here  
5 today and I said, "Mr. Hay, weren't you talking about  
6 Florida's economic growth when you made the statement  
7 it's the best utility franchise in the nation," he could  
8 say yes to that and you and the other experts could be  
9 wrong, correct?

10 A He could say that, but I think -- and here I  
11 find myself in agreement with Dr. Woolridge and Mr.  
12 Baudino. I think statements by utility executives are  
13 the kind of things that experts use. The problem is  
14 that they read into the statement a granting of risk  
15 which I don't think is necessarily there. So I'm saying  
16 their professional assessment of those statements is  
17 incorrect. And I don't think investors would interpret  
18 these statements to suggest that FPL is low-risk.

19 Q But you didn't talk to Mr. Hay about what he  
20 meant when he said, "the best utility franchise in the  
21 nation," did you?

22 A No, sir.

23 Q So your supposition is as speculative as the  
24 witnesses of the Intervenors with respect to what he  
25 meant, correct?



1           A     As to what he said, as to what investors might  
2     take away from what he says. I don't think investors  
3     would take away that he is saying that his utility is  
4     low-risk. I think he's saying his utility is doing a  
5     great job.

6           Q     Wouldn't you agree that this Commission ought  
7     to make its judgment about things like capital structure  
8     and return on equity, not based on what somebody says  
9     out of this proceeding or what Moody's may say, but  
10    based on the evidence that's before them?

11          A     I agree they ought to use the evidence. I  
12    think part of the evidence can be what the rating  
13    agencies say, and especially when experts analyze the  
14    stream of rating agency reports and develop an  
15    understanding of what their position is. So I believe  
16    that's the kind of evidence that the Commission should  
17    consider. I don't think they ought to just say because  
18    the rating agency said it, it's so, but I can it is  
19    indicative of the kinds of considerations that investors  
20    look to.

21          Q     You're aware there's not a witness from the  
22    rating agencies here to testify, correct?

23          A     Yes, I'm aware of that.

24                    ACTING CHAIRMAN EDGAR: Mr. Moyle, this is  
25    already entered, so it is just for illustrative --

1 MR. MOYLE: Yes.

2 ACTING CHAIRMAN EDGAR: All right, thank you.

3 BY MR. MOYLE:

4 Q Sir, I have given you a document, I believe it  
5 has already been entered into the record as 462. It was  
6 offered by staff with Mr. Woolridge, and I want to ask  
7 you some questions about it. Do you have information  
8 about SNL Financial?

9 A Yes.

10 Q Who are they?

11 A They are a consulting group. They took over  
12 part of the practice of Regulatory Research Associates,  
13 and they --

14 Q Do people -- I'm sorry.

15 A And they do a lot more than RRA did, but one  
16 of their products is an RRA-like product.

17 Q Do you know them to be a credible and  
18 trustworthy source of information?

19 A Yes. As I discussed in my deposition, it's  
20 sometimes difficult to interpret the results of an  
21 individual order even if you were there, but I think  
22 it's as good a source as there is about the apparent  
23 effect of the orders.

24 Q One of your criticisms as I read it with  
25 respect to Intervenor expert witnesses was -- and with

1 respect to historical information -- that you thought it  
2 didn't provide a meaningful basis for a decision because  
3 of regulatory lag. Is that in essence correct?

4 A That was one of the four criticisms I made of  
5 putting a lot of weight in decisions in other states.

6 First and foremost, these are not FPL and  
7 these are not Florida. But I think one issue is there  
8 is a lag between when the record is formed and when the  
9 decision ultimately is made by the Commissioners, so  
10 just because these decisions were made in 2008 doesn't  
11 suggest that they used all the data available in 2008.

12 Q And in the description of the document, it  
13 says, "Major Electric Rate Case Decisions, January 2009  
14 to August 2009," do you --

15 A Right, yeah.

16 Q Is that your understanding as to what this  
17 document represents?

18 A Yes.

19 Q And that's because if you look at the column  
20 -- it's about in the middle where it says Date, that's  
21 the date in which certain decisions were issued,  
22 correct?

23 A That's correct.

24 Q Okay. And I want to focus on your concern  
25 about regulatory lag, that that may not be reliable

1 data.

2           Isn't it true that the direct testimony that  
3 you filed in this case was filed on March 18 --

4           A     Yes.

5           Q     -- 2009?

6           A     Yes, sir.

7           Q     And if you look at this list of the dates in  
8 which Commissions made decisions, and I don't want to  
9 spend the time to count them, but just from a quick  
10 look, doesn't it appear that the majority of the  
11 decisions were made after you filed your direct  
12 testimony?

13          A     Yes, the majority were. If you look over in  
14 the column of the date they were asked for, some go back  
15 to 2007.

16          Q     Yes, sir, and I'm just focusing on the date  
17 that they were issued.

18          A     Yes.

19          Q     Okay. And my count was 23 of 38, and I guess  
20 the TECO decision on this chart, you see that, it was on  
21 3/17/09, which was one day before you filed your  
22 testimony, correct?

23          A     Yes, sir.

24          Q     Did you read the TECO opinion --

25          A     I did.

1 Q -- before you filed your testimony?

2 A No, sir.

3 Q All right. And then you would also agree,  
4 would you not, that the return on equity in this chart,  
5 and this is simplistic, but that the average requested  
6 return on equity authorized was 10.51?

7 A I agree it's simplistic.

8 Q Do you agree it's 10.51?

9 A Yes, that's the number.

10 Q Is this more simplistic than the chart on your  
11 rebuttal testimony where you took Mr. Pollock's ranges  
12 and then talked about how you came in within his ranges?

13 A Where -- in my testimony?

14 Q In your rebuttal.

15 A Help me with that.

16 Q I can't locate it right now. If it's in  
17 there, it's in there, and we can take care of it in  
18 briefs.

19 Back on this chart, you could also total up  
20 the common equity on this chart, and if you add it up,  
21 all of the common equity of the rate cases issued in  
22 2009, and divide it by the number of cases, you would  
23 get a common equity ratio average, would you not?

24 A Yes, and there would be a great deal of range  
25 about that, some, like Duke Ohio, 58.28, and some very

1 low.

2 Q I'm sorry, you said Duke Ohio what?

3 A I believe the Duke Ohio, the common equity to  
4 total capital is 58.28.

5 Q That was the ask, correct?

6 A The 51.59 is the allowed, yes, I see that.

7 Q And if you look at the allowed, isn't it true  
8 that the number that you're recommending is greater than  
9 any number on this chart?

10 A Yes. But none of these are FPL.

11 Q And ultimately this Commission has to make a  
12 judgment about FPL, correct?

13 A It does.

14 Q And you said that you thought an appropriate  
15 range was from 11 to 13, correct?

16 A For the ROE, yes.

17 Q Okay, I'm sorry. And you're aware that Mr.  
18 Baudino and Mr. Woolridge, they are also experts who  
19 have filed testimony in this case, correct?

20 A Yes, sir.

21 Q And you don't question their qualifications as  
22 experts, do you?

23 A No. I question their application of the  
24 methods, and that's what my rebuttal details, the  
25 technical differences.

1           Q     Okay.  And ultimately I guess you would  
2 probably question their judgment as to their  
3 recommendation for an ROE, correct?

4           A     I think they have made poor choices relative  
5 to mine.  I don't think they've captured investor  
6 expectations, Mr. Baudino a lot closer than Dr.  
7 Woolridge.

8           Q     Right, but you're not suggesting that they're  
9 incompetent or that they're not qualified experts or  
10 that their recommendation is not supported by competent  
11 substantial evidence, are you?

12          A     No, I'm not claiming any of those things, but  
13 I think the Commission ought to weigh their evidence and  
14 my evidence and any other evidence that comes into the  
15 record and make an appropriate choice.

16          Q     Are you -- I was a little confused about this  
17 notion that an increase in ROE for good management ought  
18 to be something that should be considered.  You believe  
19 that good management warrants an increase in ROE,  
20 correct?

21          A     No.  I'm saying that the selection of the  
22 point in the ROE range should reflect efficiency in  
23 management.  The range that I have goes to 13.  We don't  
24 go outside the range.  Mr. Baudino was mistaken about  
25 that.  We stay in the reasonable range.  I think it's

1 appropriate to use management to pick the point, as Mr.  
2 Pimentel did.

3 Q I guess the point I'm unclear about is are you  
4 testifying that FPL has good management, or are you just  
5 simply saying that when you're picking your point that  
6 it's something that should be considered?

7 A I think it should be considered. I'm not  
8 taking a personal opinion about their management. Mr.  
9 Pimentel is the person in a position to know, and he  
10 presents the evidence.

11 Q So to go to page 73, line 11, in your  
12 testimony, and I quote, you say, "As discussed in the  
13 testimony of FPL witnesses, FPL has distinguished itself  
14 in numerous measures of operating efficiency and  
15 effectiveness while maintaining moderate electric rates.  
16 As a result, consumers in the service area economy have  
17 benefited from FPL's efficient and cost-effective  
18 operations, excellent customer service, improved  
19 reliability and prices that have declined in real  
20 terms." You are, am I not correct, parroting what other  
21 witnesses have said, you're not asserting this  
22 independently, correct?

23 A That's correct. I think every one of those  
24 statements is documented in various FPL witnesses.

25 Q Okay. I appreciate that, because I just



1 wanted to make sure that it wasn't an independent  
2 judgment that you were also offering.

3 A No, sir, it's not.

4 Q You would agree, would you not, that it's also  
5 appropriate for this Commission to consider the impacts  
6 of a rate increase on consumers?

7 A Yes, I think the Commission has a duty to  
8 consider the interests of consumers. My suggestion  
9 would be consider the long-term interests of consumers,  
10 not the short-term, because I think in the long-term  
11 interests, maintaining FPL's strength is in their  
12 advantage.

13 Q And you didn't attend any consumer service  
14 hearings, did you?

15 A No, sir.

16 Q Does it concern you that apparently none of  
17 FPL's top management attended the customer service  
18 hearings?

19 A I don't have a concern. I don't have  
20 knowledge of that area. I just can't say.

21 Q Do you have an understanding as to why they  
22 have consumer services hearing in advance of a rate  
23 case?

24 A Yes, I think it's for the Commission to learn  
25 about the nature of consumers' concerns and for the

1 company to learn, so I think the company probably had  
2 people present and did a recording of what happened at  
3 those hearings so they are available to whomever at FPL  
4 wants to evaluate them.

5 Q I apologize, I have jumped around a little bit  
6 on subject matters, but if you would just bear with me,  
7 I want to try to cover a few more areas and then  
8 hopefully I'll be close to being wrapped up with you.

9 You're not telling this Commission as we sit  
10 here today that FPL cannot get by with a return lower  
11 than 12.5, are you?

12 A No, sir.

13 Q And you're also not saying that a return lower  
14 than 12.5 would send a negative signal to Wall Street,  
15 correct?

16 A No, sir, I don't think the return by itself.  
17 I think Wall Street looks at the totality of the order.  
18 So I think Wall Street would be looking to this order to  
19 say, has the regulatory climate changed in Florida. The  
20 regulatory climate has been very positive, very  
21 supportive. I think the kind of political statements  
22 that are being made has really raised the concern about  
23 the possibility that there could be a change in the  
24 regulatory climate, and I think that's what investors  
25 will be focusing on.

1           Q     Now, earlier you had said, I wrote it down,  
2 you had said that the Commission acts as a market acts,  
3 is that correct? That this Commission acts as a market  
4 would act, it's a regulated monopoly, and this  
5 Commission would --

6           A     I -- yeah, I think the theory of regulated  
7 utilities is that the Commission brings the same thing  
8 to the table that the market would bring in terms of  
9 assuring a reasonable return and making sure that the  
10 customers get safe, reliable and adequate service.

11          Q     And you would agree that markets go up and  
12 markets go down, correct?

13          A     You mean like stock markets or --

14          Q     Any kind of markets. Markets fluctuate?

15          A     Markets fluctuate, some more than others,  
16 natural gas particularly.

17          Q     And with respect to what I wrote down as your  
18 comment about the Commission acts as a market, if you  
19 take that analogy, FPL is not asking that this market go  
20 up from what it's currently enjoying with respect to its  
21 capitalization structure, correct?

22          A     That's correct. I think what FPL is asking is  
23 to continue the strategy of financial strength that  
24 maintains a single A rating that has given the company  
25 the ability to access capital markets during the

1 financial turmoil when most utilities were not able to  
2 access the markets, and gives the company the ability to  
3 deal with nuclear risk, with volatile natural gas  
4 prices, hurricanes and the inherent challenges of their  
5 geography.

6 Q Have you looked at FPL's details with respect  
7 to its financing and its credit facilities?

8 A I have discussed these with Mr. Pimentel. I  
9 know that a number of the credit facilities are going to  
10 have to be rolled over in the next few years, and that's  
11 a matter of some concern, particularly given that a lot  
12 of the companies around that used to give credit  
13 facilities are history.

14 Q And you're aware that this rate case is  
15 looking at 2010, 2011, correct?

16 A Yes, sir.

17 Q Are you also aware that FPL has a short-term  
18 credit facility of 2.75 billion that's not scheduled to  
19 expire during 2010 or 2011?

20 A I understand that to be the case. The exact  
21 numbers and dates, I'm not quite clear on. As I  
22 understand, there are facilities in place. Fortunately,  
23 FPL has facilities out several years, unlike a lot of  
24 other companies, but ultimately they're going to have to  
25 be replaced or restored.

1           Q     And are you also aware -- you have a lot of  
2 testimony about the fourth quarter of 2008 when we had  
3 dire, serious market contractions, access to capital was  
4 very difficult, correct?

5           A     Yes, sir.

6           Q     You're not asking this Commission to make a  
7 judgment in this case based on market conditions a year  
8 ago, are you?

9           A     No, I think the forward-looking perspective is  
10 the right one, but I think the Commission should be  
11 aware that FPL's advantages came -- were apparent during  
12 this market turmoil, and there is no guarantee that the  
13 market turmoil won't return, and happily during the  
14 market turmoil there was not a weather turmoil.

15          Q     Are you aware that FPL went into the market in  
16 March of 2009 and secured long-term debt at a rate of  
17 less than six percent?

18          A     Yes, sir. That's one of the advantages of  
19 being a strong credit.

20          Q     I think you testified earlier that FPL was  
21 able to enjoy these things with having a strong  
22 financial portfolio and balance sheet, and the ROE that  
23 they earned in 2008 was I think you said 10.4, correct?

24          A     That's correct, but let me be clear. I think  
25 that there are two supports of FPL's access to markets.

1 One is this Commission's reputation with investors and  
2 its long history of constructive regulation, and the  
3 strong balance sheet. I think both of those add  
4 together to offset the inherent risk. I think if this  
5 Commission's decision shakes the foundation of the  
6 investors' confidence in regulation, then we are in a  
7 new ball game.

8 Q A couple of brief points. Page 7, line 8, of  
9 your direct --

10 A Yes, sir.

11 Q -- you're pointing out, as I understand it, a  
12 risk related to nuclear power, is that right?

13 A Yes, sir.

14 Q Are you aware as we sit here today of any  
15 action by the NRC within the past five years that has  
16 forced an FPL nuclear power plant to shut down?

17 A No, I'm not aware of it. I know in the past  
18 that NRC has taken such action, for example, in the  
19 Three Mile Island episode, and investors certainly think  
20 that it's a possibility in the future.

21 Q Okay. But again, you're talking about FPL  
22 here, and I was just trying to ascertain what you  
23 understand as to the level of risk of NRC taking action  
24 to force a shut-down, and you have no information about  
25 it and the Three Mile Island is the one that you --

1           A     Again, it's not me. I cite in my testimony  
2 where rating agencies have identified the nuclear  
3 shutdown risk as a relevant risk. So investors regard  
4 this as a relevant risk because they don't know the  
5 future, and it's certainly a possibility.

6           Q     You would agree, we could probably stipulate  
7 that nobody knows the future, right?

8           A     Nobody knows the future, but if you're an  
9 investor, you're putting out money for the future, so  
10 you do the best you can to estimate the future and you  
11 rely on things like analyst forecasts, because they are  
12 the best available information.

13          Q     Yeah. And I had asked you a bunch of  
14 questions about this chart. You testify all around the  
15 country as an expert witness, correct?

16          A     Yes, sir.

17          Q     Is it your understanding -- you see this chart  
18 where it says "Test Year-End"? On the right-hand side,  
19 it's the last column from the --

20          A     Yes, I see that.

21          Q     Doesn't that reflect that most jurisdictions  
22 use a historical test year as compared to a projected  
23 test year?

24          A     Not all, as you can see, but in many  
25 jurisdictions, in fact, most jurisdictions that use a

1 historical test year, they have very liberal known and  
2 measurable changes to go out if there is a new plant  
3 coming in line or if there's a known adjustment in cost  
4 or a known lowering in cost. So the historical test  
5 year doesn't mean that the considerations of the cost  
6 and rate base is limited to what happened in the test  
7 year.

8 Q I understand, but you would agree as a matter  
9 of making judgments that historical information is  
10 probably more certain than forecast information,  
11 correct?

12 A Well, it's more certainly there, but it  
13 doesn't tell you the future. You're making rates for  
14 the future. So it's certain and it's certainly wrong,  
15 because we don't know the future, but we know something  
16 about the future, and I think the concept of making  
17 known and measurable changes is adjusting for the things  
18 you can reasonably expect.

19 Q Do you believe -- another risk I think you  
20 identified with FPL was that they have too much exposure  
21 to gas. Is that your testimony, too much exposure to  
22 natural gas?

23 A No, I think gas is wonderful, I think it's a  
24 clean fuel, it's a flexible fuel and it's a cheap fuel,  
25 and you can produce plants very quickly and reliably.



1 It's environmentally responsible. So I'm not saying  
2 they have too much, but I'm saying with all the benefits  
3 of gas go risk of the gas volatility and financial needs  
4 to be able to withstand the volatility, and also as to  
5 FPL, its geographic location is remote from the network  
6 of national pipelines.

7 Q So when you say on page 27, line 5, quote,  
8 "FPL's significant exposure to natural gas detracts from  
9 the company's credit quality and should be considered in  
10 evaluating a fair ROE," I'm wrong in interpreting that  
11 as to -- as your suggestion that maybe they're  
12 overexposed to natural gas?

13 A You're wrong. I think the choice of natural  
14 gas is a choice jointly made with this Commission. I  
15 think it has many benefits, it makes a lot of sense for  
16 FPL, so I'm not commenting on that.

17 But with those benefits goes a financial  
18 consequence. The financial consequence is, from an  
19 investor's perspective, there is more risk to have  
20 concentration in natural gas, more than 50 percent, and  
21 there are financial needs.

22 Q Are you aware that Florida Power & Light has  
23 over a thousand megawatts of purchase power  
24 agreements --

25 A Yes.

1 Q -- that are expiring in the next few years?

2 A Well, they expire over a period of time. They  
3 disclosed in the 10-K the schedule of retirements, but  
4 they have the JEA and Southern subsidiaries, the  
5 qualifying facilities and others, some of which come off  
6 fairly quickly, some of which persist past 2013.

7 Q Yes, sir. And you would agree that to the  
8 extent that there is a concern about over-reliance on  
9 natural gas, to the extent that you have purchase power  
10 agreements that are not natural gas contracts, that that  
11 would help diversify your exposure to natural gas,  
12 correct?

13 A Just looking at the point of diversification,  
14 diversification is good, investors favor  
15 diversification.

16 Q So that would be yes?

17 A Yes. But I want to make sure, that's not the  
18 only consideration that this Commission and the company  
19 should make in deciding the source of generation.

20 MR. MOYLE: Madam Chair, can I have just a  
21 minute?

22 ACTING CHAIRMAN EDGAR: Yes, you may.

23 (Brief pause.)

24 BY MR. MOYLE:

25 Q Do you have confidence as a general rule in

1 rating agencies?

2 A As a general rule, I do. They're human  
3 beings, they make mistakes, they made a lot of mistakes  
4 in the mortgage area, but I think they've learned from  
5 those mistakes.

6 Q Do you think that they -- as we sit here  
7 today, do you have an opinion as to whether they've  
8 properly rated Florida Power & Light Company?

9 A I don't have an opinion whether it's proper.  
10 I have tried to understand what factors they have  
11 considered. Moody's has recently outlined in some  
12 detail in August of 2009 its considerations, and it  
13 actually used FPL as one of the sample companies to  
14 explain how its ratings work to make them more  
15 transparent. So they certainly have a method. They  
16 have made clear to the world what their method is. I  
17 think it's understandable and is transparent. I can't  
18 say whether I would put exactly the same weight and so  
19 forth as they do.

20 Q What does Moody's rate Florida Power & Light  
21 as we sit here today?

22 A A.

23 Q And you have not endeavored to do an  
24 independent analysis of that or whether you agree or  
25 disagree with that?

1 A No, I have not.

2 Q Generally do you think they get it right?

3 A In my experience, they generally get it right.

4 Q And you would agree, and you had some  
5 discussion with counsel for the South Florida Hospital  
6 Association about the difference between debt, which is  
7 what the rating agencies put letters on, correct?

8 A That's right. Their constituency, as Mr.  
9 Mowrey said, is the debt-holder. They're not looking  
10 out for the interests of the equity-holder.

11 Q That's right. And -- but the question I want  
12 to ask is when the rating agencies make a judgment about  
13 the quality of a company, they consider all sorts of  
14 risk factors; beyond financial risk, they look at  
15 business risk, correct?

16 A That's correct. They look at pass-throughs,  
17 they look at regulatory environment, they look at all  
18 those -- they look at diversification.

19 Q So the notion that there is a distinction  
20 between the debt and the equity, with respect to a  
21 matrix or an indication as to whether these rating  
22 agencies, which you profess confidence in, whether  
23 they're looking at the right information, you would  
24 agree that they're looking at the right information when  
25 making judgments about companies typically, correct?

1           A     I think they look at the information that's  
2 relevant to all investors. The weightings, the  
3 interpretation I think is to favor the fixed income  
4 investor, not the equity investor, and the fixed income  
5 investor has a very different stake in the future of the  
6 company than the equity investor.

7           Q     What is Tampa Electric rated by Moody's?

8           A     BBB.

9           Q     And that's not as good and that's not as high-  
10 quality as Florida Power & Light, correct?

11          A     Correct.

12          Q     And you're aware this Commission has awarded  
13 Tampa Electric an ROE of 11.25, correct?

14          A     I have. But that was in March, the world has  
15 taken a few turns since then, and I expect this  
16 Commission will look at the information for FPL and the  
17 current information in making their assessment of FPL's  
18 ROE.

19          Q     And the world has taken a few turns, I think  
20 you talked about the Wizard from Omaha, I think that's  
21 his name?

22          A     The Oracle of Omaha is Mr. Warren Buffett.

23          Q     Thank you.

24                    Mr. Ben Bernanke I think was quoted in the  
25 paper today as saying the recession is over. Do you

1 generally agree with that?

2 A I agree he said it. My perception, for what  
3 it's worth, is that the economy has quit going down,  
4 it's stronger, but I think it's very fragile.

5 Q And back on this TECO analysis, I'm --  
6 economic theory would suggest if you had \$100 to invest,  
7 that to the extent that there was more risk, you would  
8 require a greater return, correct?

9 A That's correct. Now, if you're investing in  
10 TECO bonds, I think that \$100 would look to the bond  
11 ratings as a possible measure. If you're investing in  
12 TECO equity versus FPL equity, you would look at the  
13 risk to which your \$100 would be exposed as an equity  
14 investor.

15 Q And, at least according to the rating  
16 agencies, FPL presents less risk than TECO, correct?

17 A To the bond investor, because FPL has the  
18 advantage of a strong capital structure and also has had  
19 historically the advantage of regulatory support.

20 Now, since the TECO case and now, I think  
21 there are some questions about the regulatory support  
22 because of the insertion of political leaders into the  
23 regulatory process.

24 Q You would agree that the case is going to be  
25 determined on the facts that are before this Commission,

1 correct?

2 A Yes, sir.

3 Q And to the extent that the economy is getting  
4 better and that the credit spreads are reducing, you  
5 would agree that that's a positive signal for the  
6 investment community, correct?

7 A That's a good thing, but it's only one of the  
8 many factors that investors consider, and I think for  
9 utilities, they are particularly concerned about  
10 regulatory environment.

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

12 ACTING CHAIRMAN EDGAR: Mr. Wright, do you  
13 have questions on cross?

14 MR. WRIGHT: I do, Madam Chairman.

15 ACTING CHAIRMAN EDGAR: If I may, I could use  
16 a short stretch, so I'm just going to presume that  
17 perhaps the witness and others could as well. So we  
18 will come back at five minutes to the hour by the clock  
19 on the wall, and we are on break.

20 (Brief recess.)

21 CHAIRMAN CARTER: We're back on the record,  
22 and when we left, Mr. Wright, you're recognized for  
23 cross-examination.

24 MR. WRIGHT: Thank you, Mr. Chairman.

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CROSS EXAMINATION

BY MR. WRIGHT:

Q Good afternoon, Dr. Avera.

A Good afternoon, Mr. Wright.

Q I have a few follow-up questions from your conversations with the other attorneys, then I have some questions that I had prepared to ask you.

I'd like to start with something I think you said in your summary. You were talking about the various risks that FPL faces, and I think you identified risks related to consumer confidence, the real estate market, natural gas, nuclear and hurricanes. Did I get that about right?

A Well, there was one, I mentioned geography, which includes the remoteness from the transmission grid and the pipeline grid. So that's usually one of the things that regulatory agencies and others mention in assessing the risk of FPL. And then when we say consumer confidence in real estate, it's that the economy is really tied to tourism, not as much as earlier, but still, and real estate, so when consumer confidence fails, that hits -- it's a double whammy, it hits tourism as well as other spending in the service area.

Q What is the geography risk or the geographic



1 risk that you're talking about?

2 A Well, to me, the geography includes both the  
3 nature of the service area and the remoteness of the  
4 service area as part of a peninsula. Again, this is not  
5 my idea, this is something that I see all three rating  
6 agencies, for example, talk about, that FPL is not in a  
7 position to arbitrage wholesale power markets the same  
8 way someone in the middle of the U.S. would be able to  
9 do.

10 FPL, if they need power, has a few places --  
11 replacement power, for example, because of a nuclear  
12 outage, they don't have as many places to go, they don't  
13 have as robust a market to access. And that means  
14 first, more risk, and secondly, they may need more  
15 financial resources to do the type of contracting they  
16 would have to do to get power down here to keep the  
17 lights on. Down here, down there, we're up in  
18 Tallahassee.

19 Q When you take about consumer confidence and  
20 real estate -- let's talk about real estate. Were you  
21 meaning to talk about the -- or meaning to suggest that  
22 there's a risk of reduced sales if the real estate  
23 market goes south as it did last year?

24 A The real estate market clearly has an effect  
25 on FPL's sales. It has been experienced recently, it

1 has already been experienced in the past. So there is a  
2 correlation between the economic vitality of the service  
3 area and the real estate market.

4 Q When you identified risk associated with the  
5 real estate market, that was what you were talking  
6 about?

7 A That's right, as it translates to the sales  
8 and bad debts and all of the things that go when you  
9 have a real estate weakness.

10 Q And is the same true in your reference to  
11 consumer confidence as a risk?

12 A That's correct, because of its effect on  
13 economic activity and the ultimate effect on FPL.

14 Q Now, you mentioned bad debts. The company has  
15 the opportunity to seek bad debt recovery in its rates,  
16 does it not?

17 A So I understand, yes.

18 Q Let's talk about the natural gas risks. I  
19 understood from your conversation with Mr. Moyle that  
20 there's -- the investors perceive some risk associated  
21 with FPL's high exposure to -- or high dependency on  
22 natural gas as a generating fuel, is that correct?

23 A Yes.

24 Q I'm trying to understand the nature of that  
25 risk. Is it the risk that -- in the investors' minds,

1 is it the risk that FPL might have to borrow more money  
2 in the short run if natural gas prices ran up more  
3 quickly than expected?

4 A Well, that's one part of the risk, that in the  
5 time between when there can be an adjustment to the fuel  
6 recovery and the run-up in natural gas prices, the  
7 company can be, in this case, billions out of pocket, so  
8 they have to be in a position to fund in fairly short  
9 order that kind of exposure.

10 But secondly, the volatility itself means that  
11 it has an effect on customers, because there is price  
12 elasticity to electric usage, and also as the market  
13 gets tight, again, FPL is disadvantaged in that it  
14 doesn't have as robust access to the national natural  
15 gas market as other companies that are dependent on  
16 natural gas.

17 And then finally, if there is a curtailment or  
18 an interruption of natural gas supplies, again, the  
19 company doesn't have many options to replace that  
20 generation, given its geographic location.

21 So in reading investors' statements about a  
22 natural gas, those are the kinds of considerations that  
23 are mentioned.

24 Q Now, you mentioned exposure, you suggest into  
25 the billions of dollars. I'm sure you're familiar with

1 what happened to natural gas prices last year?

2 A Yes.

3 Q Would you agree, subject to checking whatever  
4 source you want, that they went up from about \$8 a  
5 million in January to somewhere in the 13 to 14 dollar a  
6 million range in June and July?

7 A They flew up very quickly and to unprecedented  
8 levels.

9 Q And do you know whether FPL came to the  
10 Commission and asked for an additional, what we call a  
11 mid-course correction?

12 A I believe they did.

13 Q Okay. Do you know how much they were behind  
14 when they actually came and asked?

15 A You know, I sat through weeks of the fuel  
16 case, because I was a witness in that, and I heard some  
17 of those numbers, but they didn't stick with me today.

18 Q Well, will you accept, subject to check, that  
19 they were about \$350 million behind when the Commission  
20 decided to give them part recovery for the rest of the  
21 year?

22 A I will accept that.

23 Q And they had projected a total annual  
24 shortfall of something like \$746 million?

25 A Again, I have no reason to dispute that

1 number.

2 Q And the Commission did grant them relief as of  
3 the beginning of July last year, did they not?

4 A So I understand.

5 Q Let's go ahead and talk about hurricanes; I  
6 don't think this will take too long.

7 Is it -- in the minds of investors, as you  
8 couched the analysis, is it the risk that FPL would have  
9 to go to the market to borrow money to restore service  
10 following a hurricane event that influences investors'  
11 considerations?

12 A I think that's one consideration. I think the  
13 fact that it has to be done on such short notice,  
14 because you don't know, and because the company has to  
15 contract for crews and commodities and other things,  
16 which means that if you're doing it on short notice over  
17 the telephone, you have to have a strong financial  
18 position to arrange those kind of resources.

19 Q Well, you mentioned the company having to  
20 contract or -- is it your understanding that FPL has in  
21 place bilateral and multi-lateral agreements with other  
22 utilities that they can call on at need for hurricane  
23 restoration?

24 A I do understand that. Again, I have to look  
25 at the world from the point of view of investors. I

1 think investors think that those resources may not be  
2 adequate, or they may -- in the case of some recent  
3 episodes, they may be needed in the home district when  
4 you have Texas and Florida, for example, being hit at  
5 the same time.

6 Q Wouldn't investors look at the experience in  
7 2004 and 2005 as an indicator of what they would expect  
8 the Florida Public Service Commission to do in response  
9 to FPL's need for storm restoration funds?

10 A Well, I think investors were favorably  
11 impressed with what the Florida Public Service  
12 Commission did, but again, investors are forward-  
13 looking. That \$100 they put into FPL is not buying the  
14 past, it's buying the future.

15 Q Have you read the testimony of Mr. Harris in  
16 this case?

17 A I have reviewed it. I've talked to Mr.  
18 Harris. Given a background in weather, I'm very  
19 interested in what he has to say. So I find him to be  
20 fascinating and I'm generally familiar with his  
21 testimony.

22 Q Do you recall that part of his testimony where  
23 he indicates that he used a -- he assumed for his  
24 analysis an unlimited line of credit with a four percent  
25 interest rate to be able to fund any restoration costs

1 that were not covered by reserve on hand?

2 A Yes, and that was for the purposes of  
3 quantifying the exposure. Mr. Harris can't guarantee  
4 that that would be available.

5 Q Are you aware that FPL's Risk Management  
6 Department gave him that assumption?

7 A Well, I think in order to quantify costs you  
8 have to have some assumption, but I don't think the fact  
9 that that's an assumption translates to taking that off  
10 the table as an investor concern.

11 Q You're aware that FPL's Risk Management  
12 Department gave him that assumption?

13 A That's my understanding, yes.

14 Q And I think you acknowledged in your  
15 conversation with Mr. Moyle that FPL has presently  
16 available to it through 2011 a \$2.75 billion unsecured  
17 line of credit?

18 A That's correct. Now, I understand from Mr.  
19 Pimentel, and he mentioned some of this in his rebuttal  
20 and in my conversations with him, there are a number of  
21 commitments against which that line may be used, so it's  
22 not all going to be sitting there only for storm  
23 restoration, or you can't be sure it will be.

24 Q I think we can agree we all hope we don't have  
25 a big storm?

1 A Yes, sir.

2 Q Okay. I want to talk to you about nuclear.  
3 You had an extensive conversation with Mr. Moyle about  
4 recovery clauses, and I'm actually going to wander into  
5 that a little bit later.

6 In your discussion with Mr. Moyle you made a  
7 statement, and I want to make sure we're clear about  
8 what you meant and didn't mean. I think in response to  
9 a question from Mr. Moyle you indicated that the  
10 utility, Florida Power & Light, does not earn a return  
11 on things in its cost recovery clauses generically?

12 A Generically -- now, there are limitations as  
13 to the need for the recovery and GBRA, because there is  
14 a return on investment cranked in, but as to the huge  
15 part, which is fuel, there is no profit or return.  
16 There's a provision for a commercial paper recovery for  
17 under -- you know, to account for the time value of  
18 money of underrecoveries, but as I testified in my  
19 deposition, that nowhere offsets the opportunity cost.

20 Q And in that last response, you were speaking  
21 of fuel, correct?

22 A Yes.

23 Q Okay. With regard to nuclear, are you  
24 familiar with Section 366.93, Florida Statutes, what we  
25 call the nuclear cost recovery statute?



1           A     I'm generally familiar, again, as investors  
2 have commented on it. I have not read the statute  
3 itself.

4           Q     Is it your understanding that that provides  
5 for the company to recover on a current basis basically  
6 the construction interest at its current -- at the  
7 approved AFUDC rate as of the time the need  
8 determination for a plant was granted?

9           A     That's my understanding, the AFUDC rate would  
10 prevail in terms of the recovery.

11          Q     And would you agree, subject to check, that  
12 the return on equity rate that's built into the AFUDC  
13 rate for FPL is 11.75 percent?

14          A     Yes, it's built in. We can get technical  
15 about the mismatches between AFUDC and cost of capital,  
16 but there is a cost of equity built into the AFUDC.

17          Q     You made a statement in your summary that I  
18 will go ahead and ask you about. Page -- the statement  
19 you made in your summary is that FPL's strong balance  
20 sheet saves customers money, and you made a similar  
21 statement at page 2, lines 17 and 18, of your rebuttal  
22 testimony?

23          A     Yes.

24          Q     Okay. My question for you -- a couple of  
25 questions are, have you made a calculation as to how

1 much money FPL's strong balance sheet, as you use the  
2 term, has saved its customers in this context?

3 A No, I have not. I have seen references to it.  
4 You know, it occurs in many ways. When the firm hedges,  
5 the balance sheet is one of the considerations on the  
6 terms of a hedge. When it enters contracts for  
7 commodities or services there is generally consideration  
8 of counter-party risk, and if you're strong, there's  
9 less counter-party risk than if you're weak. In my  
10 experience, some utilities have to put up a lot of bonds  
11 and other things because they aren't creditworthy, but I  
12 have not tried to put a number on all of those benefits.

13 Q And would it be similarly true that you have  
14 not undertaken to perform any analysis as to what the  
15 difference would be if the Commission were to adopt the  
16 consumers' witness's recommendations for ROE or capital  
17 structure on the balance sheet impacts that you talk  
18 about in your testimony?

19 A Well, I have done an analysis to say, and  
20 relied on Mr. Pimentel's analysis, that the consumers  
21 would dramatically change the capital structure. Some  
22 of the consumer issue -- we have this problem with Dr.  
23 Woolridge, but Ms. Brown and the other witnesses, like  
24 Mr. Baudino, who would change the capital structure,  
25 would affect the creditworthiness of the company and the

1 credit profile. I have not tried to put a number on  
2 that, but it's pretty clear that we're talking about  
3 significant swings from equity to debt.

4 Q Thank you.

5 You had what I thought was an interesting  
6 conversation with Mr. Mendiola about the difference  
7 between a guaranteed return and a guaranteed opportunity  
8 to earn a reasonable rate of return. I have hopefully  
9 one follow-up question on that, and it is this: Don't  
10 you consider a constitutional holding by the United  
11 States Supreme Court that a public utility is entitled  
12 to the opportunity to earn a reasonable rate of return  
13 to be effectively a guaranteed opportunity?

14 A Wrong, Mr. Wright. I don't think it is  
15 effectively, because it depends on, one, how is it  
16 administered, and two, the ability to seek redress at  
17 the Supreme Court.

18 The Supreme Court has said all the right  
19 things not only in *Hope* and *Bluefield*, but subsequent  
20 cases going down to the Verizon case in 2002. But that  
21 does not mean that investors do not believe there is a  
22 real possibility for a utility to have a shortfall, as  
23 evidenced by Moody's pointing out that out of the six  
24 utilities that have gone bankrupt in the last 60 years,  
25 four can be identified as being caused by regulation.

1 Q Thank you.

2 I would like to follow up on some discussion  
3 you had with Mr. Mendiola. You were talking about  
4 widgets, and I think you also used the example of the  
5 product of Brown-Forman, Jack Daniel's. Let me just ask  
6 you: Your conversation with Mr. Mendiola, as I recall,  
7 you were saying that the widget company doesn't have to  
8 ask any Public Service Commission or a Whiskey  
9 Regulatory Price Commission to -- for authority to  
10 increase its prices?

11 A Right, Mr. Wright, and I'm not saying I'm  
12 personally familiar with Jack Daniel's, I'm just saying  
13 that's their product.

14 Q As an aside, I think that might be something  
15 we could also agree on. But the question I want to ask  
16 you is, isn't it also true that Brown-Forman or the  
17 Avera-Wright Widget Company can't go to any regulatory  
18 commission and ask that commission to grant it a price  
19 increase that it can then enforce by a tariff?

20 A That's correct. But, of course, FPL can't  
21 make anybody buy electricity, but it's true that in the  
22 unregulated firm, the companies have to deal with the  
23 consumers directly and have to respond to competitors,  
24 and the role of this Commission is to get the same  
25 ultimate economic result for customers and investors,

1 which is a fair return for investors and good service at  
2 a reasonable price for consumers.

3 Q You had a conversation with Mr. Mendiola about  
4 a case involving Avista in the state of Washington, and  
5 as I understand it, that was ultimately settled,  
6 correct?

7 A Correct.

8 Q Did you recommend a return on equity for  
9 Avista in that case?

10 A My recollection, and we will look at the  
11 testimony if it becomes important, but my recollection  
12 is that case was very much like this. I did a range and  
13 the company chief financial officer chose a point  
14 estimate within that.

15 Q I tried to read through your testimony as best  
16 I could while you were being cross-examined by Mr.  
17 Mendiola. I didn't see a specific number. Do you  
18 remember what number the company asked for in that case?

19 A It may be on this exhibit.

20 Q I didn't see it there, either.

21 A No, it -- I don't recall. It -- I just -- you  
22 know, I do lots of cases, and they kind of run together  
23 sometimes.

24 Q Would I be safe to say that the company's  
25 request was greater than 10.2 percent?

1           A     Yes, I believe it was.

2           Q     Thank you.

3                     You've had some discussion with Mr. Mendiola  
4 regarding the overall cost of capital with different  
5 proportions of debt and equity, do you recall that  
6 discussion?

7           A     Yes, we talked generally about the notion of  
8 optimal capital structure and the range of  
9 reasonableness.

10          Q     Right. You made a remark that -- well, my  
11 recollection is Mr. Mendiola asked you isn't it true  
12 that equity costs more than debt typically, and you  
13 agreed?

14          A     Typically. There are exceptions when you get  
15 on the periphery of bankruptcy.

16          Q     Right, and that was where I really wanted to  
17 go with this question.

18                     You made the remark that at high levels of  
19 debt, there are agency risks and bankruptcy risks that  
20 can drive the overall cost of capital higher with very  
21 high levels of debt, is that accurate?

22          A     Yes, sir, I believe that's kind of what the  
23 financial literature is reporting these days.

24          Q     And my question is, what is a high level of  
25 debt in that context?

1           A     Well, I think it depends, of course, on the  
2 business risk and the facts and circumstances. But  
3 where you get into a situation where bankruptcy is  
4 likely --

5           Q     I'm sorry, is or is not?

6           A     It has a high level of likelihood.

7           Q     Thank you.

8           A     Then the equity owners may be induced to play  
9 games to maximize their position relative to the debt-  
10 holders, and because the equity-holders kind of have the  
11 keys, they may take actions to their benefit, to the  
12 detriment of debt-holders. So in those circumstances,  
13 debt-holders may be actually bearing more risk than  
14 equity-holders, because equity-holders are in a position  
15 to control the actions of management.

16          Q     I was really hoping to get a numeric answer,  
17 like debt percentage in excess of 80 percent, is that  
18 high, 90 percent?

19          A     I think it depends on the circumstances. You  
20 could have a highly leveraged company that had strong  
21 contractual revenues, like an independent power  
22 producer, so that even though it has a lot of debt,  
23 that's non-recourse debt and you're not in a -- you're  
24 in a bankruptcy remote situation.

25                 So I don't think you can put a number on it,

1 Mr. Wright, I think you have to look at the facts and  
2 circumstances.

3 Q Well, FPL's capital structure I think in your  
4 testimony is 55.2 percent equity?

5 A Well, again, it depends how you measure it,  
6 but the number that's built in the starting point I  
7 believe is 55.8, according to Mr. Pimentel, and I've run  
8 the numbers and I get about the same thing, so I think  
9 that's the right answer. And he is an accountant and  
10 I'm not, so I think he's probably right.

11 Q Let me ask you this: Is FPL in any danger of  
12 getting into any meaningful bankruptcy risk if the  
13 equity ratio were to be set by the Commission at 50  
14 percent as opposed to 55.8?

15 A I don't think it would be imminent, but the  
16 more debt, the less financial strength; the less  
17 financial strength, the more it costs to issue debt, the  
18 more it costs to hedge, the more it costs to enter long-  
19 term contracts and the less flexibility you have in  
20 times of financial stress like we've just survived. So  
21 we're not talking about bankruptcy on the horizon, what  
22 we're talking about is the customers would be exposed to  
23 more risk and less security as you move down the scale  
24 of having less financial strength.

25 Q Well, the question that I'm trying to address



1 goes to whether the overall cost of capital for FPL  
2 would be higher if you went from 55.8 percent to 50  
3 percent?

4 A It may be. That's a very hard study to do,  
5 and I've been retained to do those kind of studies for  
6 SBC Communications in connection with Fitch for a number  
7 of years, and it's one of those things, it's what you  
8 assume about the future, the future spread between high  
9 quality debt and low quality debt and how you crank in  
10 the unknowables about the future of the likelihood of  
11 financial stress and the likelihood of having to raise  
12 money in a time of financial stress. If you lock in a  
13 high-coupon debt for 30 years, that's something that's  
14 going to be with the customers a long time.

15 So I don't think it's the kind of thing that  
16 lends itself to a very precise arithmetic study. Mr.  
17 Pimentel in his testimony points out that just comparing  
18 TECO to FPL, that FPL has a lower cost -- total cost of  
19 capital than TECO because of the great advantage on debt  
20 cost.

21 Q That really doesn't address the question  
22 whether FPL would have a lower cost of capital with a  
23 lower equity percentage as to FPL, does it?

24 A No, Mr. Wright, I don't think such a study  
25 with a precise answer is possible, because it's

1 dependent upon the assumptions, and secondly, there is  
2 the problem of getting there from here. Investors do  
3 not like to get jerked around. And if the company  
4 changes its financial strategy from a high-strength,  
5 A-rated strategy to a low-strength, BBB or lower  
6 strategy, a lot of investors who made long-term  
7 commitments with this company in reliance upon its  
8 financial strength are going to suffer. And when you  
9 cause investors to suffer, they have long memories and  
10 they are disconcerted. And it would also make the  
11 rating agencies look pretty bad, and they have long  
12 memories and they don't recover very quickly.

13 So I think moving from this strategy to  
14 another strategy, even if hypothetically we could do a  
15 study, which we can't, to show that it was less costly,  
16 the transition's cost may overwhelm whatever savings  
17 there may be.

18 Q Now, you said it was dependent upon the  
19 assumptions. You're saying that this involves  
20 assumptions about the future?

21 A That's correct, and specifically assumptions  
22 about what the future spread will be between A-rated  
23 bonds and some other rating bonds, what other  
24 implications that has upon the company in its commercial  
25 contracting and things like that, and then you've got to

1 put a value, and I think you certainly need to put a  
2 value, on the benefit of having access to capital  
3 markets at time of stress. High-rated companies do;  
4 low-rated companies don't.

5 Q I think you said in a response about 60 or 80  
6 seconds ago that you can't really do an analysis to show  
7 whether it's less costly. Is that accurate?

8 A No. You can get some numbers, but the problem  
9 is they are very assumption-dependent, and you can make  
10 one set of assumptions and get one answer, and another  
11 set of assumptions to get another answer, and it's very  
12 difficult, in my experience, and I think the academic  
13 literature would support this, to come out with a study  
14 that's robust and reasonable that resolves the issue  
15 down to a yes or no. In other words, if it works, don't  
16 fix it.

17 Q The question I would ask is this: If it could  
18 be made to work better in the interests of consumers,  
19 shouldn't the Commission and FPL fix it?

20 A I think only if first the Commission and the  
21 consumers are persuaded it's broke, and I think there is  
22 evidence to the contrary in terms of the bottom line  
23 rates, service, efficiency of the system; and secondly,  
24 if the Commission and the company acting on behalf of  
25 the customers were sure they were right, Mr. Wright,

1 about the benefits, because you're making a big change  
2 with profound implications for the confidence the  
3 investment community and the analyst community and the  
4 rating agency community would have for your company.

5 Q You know Mr. Davis, I'm sure?

6 A Yes.

7 Q Mr. Davis testifies in his rebuttal testimony,  
8 and this is rebutting the testimony of Mr. Pous, but he  
9 says this: "Mr. Pous's implication that a utility  
10 operates under a self-interest mode ignores the fact  
11 that a utility is under an obligation to serve its  
12 customers and to do so at the lowest possible cost."

13 My question is, do you agree with Mr. Pous, as  
14 -- I'm sorry, Mr. Davis, as did Mr. Olivera, that the  
15 utility is under an obligation to serve its customers  
16 and to do so at the lowest possible cost?

17 A Yes. I think the utilities should act in the  
18 interests of the customers, considering reliability,  
19 safety, all of the considerations, at the lowest cost  
20 possible, given the constraints of being able to respond  
21 to the kinds of challenges that FPL faces because of its  
22 fuel, its geography, its nuclear power and the exposure  
23 to hurricanes.

24 Q I think in response to a question from Mr.  
25 Moyle you did agree that if FPL gets its rates set on

1 return on equity lower than 12 and a half percent, you  
2 can't say that FPL won't be able to provide safe,  
3 adequate, reliable service, is that correct?

4 A No, I can't say, because it depends on the  
5 whole claw of the regulatory order and how it is  
6 perceived by investors. I think we saw with the UIL  
7 case that you can have a low ROE, but if the whole  
8 context of the order is one that preserves the cash flow  
9 and the confidence of investors, there won't necessarily  
10 be negative implications.

11 So Moody's said it very clearly last month:  
12 They don't look at just one or two things about the  
13 order, they look at its total effect on the company. So  
14 I think they would not say because the Commission didn't  
15 allow a certain number that FPL is no longer  
16 creditworthy. I think they would look at all of the  
17 implications and especially whether this Commission is  
18 considering -- continuing its tradition of support for  
19 high credit quality.

20 Q Does it follow from what you just said that  
21 you can't tell the Commission -- I'm going to try to  
22 start over and not use too many negative terms.

23 Can you tell the Commission that FPL's bond  
24 rating -- unequivocally, can you tell the Commission  
25 that FPL's bond rating will decline if the Commission

1 were to set FPL's rates in this case based on a return  
2 on equity of nine and a half percent as recommended by  
3 Dr. Woolridge?

4 A No, I can't tell the Commission that. I  
5 wouldn't presume to tell the rating agencies or the  
6 Commission what their reaction would be, especially  
7 absent any, you know, the total picture of what's being  
8 said. Unlike Mr. Baudino and Mr. Pous and Mr. Lawton, I  
9 don't think it's possible to look at a few numbers and  
10 say the credit rating is going to stay or the credit  
11 rating is going to go.

12 I think the important thing is how investors  
13 perceive the order. Is it consistent with this  
14 Commission's history so that investors can have comfort  
15 in putting their money here, or is it -- is this a  
16 change? Has the world started to turn adverse to  
17 investors? And if they perceive it as a turn, then I  
18 think there will be bad implications. Whether -- what  
19 that means for the bond rating or any particular thing,  
20 I can't say, but it's going to cost the customers money.

21 Q In response to a question by Mr. Moyle, you  
22 made a passing reference to what you were just talking  
23 about, the possibility that a decision could shake the  
24 foundation was the term you used, of how the investors  
25 view regulation. Do you remember saying that?

1           A     I did.

2           Q     Okay, here's my question for you: In your  
3 wildest imagination, can you imagine the Florida Public  
4 Service Commission not making sure that Florida Power &  
5 Light Company had sufficient funds available to pay its  
6 debt service?

7           A     I don't think that this Commission would  
8 intentionally put FPL in a situation where it would be  
9 bankrupt, but I do think that this Commission,  
10 especially given the kinds of statements we see from  
11 political leaders like the statement Governor Crist made  
12 on Monday or the statement on his Web page on August  
13 25th that cautioned this Commission to regard carefully  
14 the outcome of this case and even suggested that the  
15 tenure of these -- or the reappointment of some of the  
16 Commissioners might be in question based on the outcome  
17 of those case. Those are statements by the Governor who  
18 makes the appointment. That's unusual. That's the kind  
19 of political change that rating agencies are very  
20 concerned about.

21                     Let me read you a quote last month from  
22 Moody's: "Those utilities operating in a less developed  
23 regulatory framework or one that is characterized by a  
24 high degree of political intervention in the regulatory  
25 process will receive the lowest scores on this factor,"

1 and that is regulation. In my direct testimony, I have  
2 quotes from Fitch and Moody's specifically about the  
3 concern about political changes affecting the  
4 Commission's policy. Let me cite you -- there are  
5 several, but I think the most trenchant is on page --

6 MR. MOYLE: Mr. Chairman, I'm going to move to  
7 object to all this testimony related to hearsay. I  
8 mean, he's talking --

9 CHAIRMAN CARTER: Overruled. Overruled.

10 You may answer.

11 THE WITNESS: On page 67 of my testimony, I  
12 have two quotes from Fitch, one that specifically  
13 references FPL, and this was made in February 14th of  
14 2008, and it says, "Maintaining a supportive political  
15 and regulatory environment in Florida that permits full  
16 and timely recovery of utility capital investments,  
17 commodity costs and storm recovery is important to the  
18 maintenance of the current rating." More recently they  
19 said, "Regulatory risk remains a recurring theme in this  
20 year's outlook, as the pressure of weak economic  
21 backdrop could result in political pushback to rate  
22 requests."

23 CHAIRMAN CARTER: Mr. Wright, you may proceed.

24 MR. WRIGHT: Thank you, Mr. Chairman.

25 / / / / /



1 BY MR. WRIGHT:

2 Q Surely you don't think that Governor Crist  
3 intends that the Commission would put FPL or any other  
4 Florida investor-owned utility in the position of not  
5 being able to cover its debt service, do you?

6 A I don't think that, but it's not what I think  
7 that's important. I think investors see this as a  
8 change in posture in Florida. I think the long  
9 tradition of Florida is one where the Commission has  
10 been free to exercise its expertise in making decisions  
11 that it thinks are -- serves the customers' long-term  
12 interest. When the political leaders intersect their  
13 judgment, that's the kind of thing that scares  
14 investors, whether it's Governor Crist or we had an  
15 experience in Texas with Governor White. When that  
16 happens -- we had Attorney General Blumenthal in  
17 Connecticut. When those kinds of things happen,  
18 investors say, "Do I really need this when I can put my  
19 dollars elsewhere and not face this kind of  
20 uncertainty?"

21 Q In response to a question by Mr. Moyle, you  
22 made reference to the events that were right at a year  
23 ago when we had what we have referred to I think as the  
24 credit market meltdown.

25 A It occurred, but one of the big events was the

1 failure of Lehman, which I guess was --

2 Q I think a year ago today, I believe.

3 A Yeah. Yeah.

4 Q I think in response to Mr. Moyle's inquiry you  
5 said that most utilities were not able to access the  
6 capital markets. I think you said that. Did you mean  
7 to say that?

8 A I meant to say that, and I think that's true.  
9 I think I have some quotes in my direct testimony to  
10 that effect.

11 Q For what period of time?

12 A Well, I think the period from mid-September  
13 through probably the end of October was very restricted,  
14 and some of the utilities that we worked for, they're in  
15 my proxy group, found it -- found themselves unable to  
16 access capital markets. As we passed October and the  
17 government started a number, and the Federal Reserve  
18 particularly started a number of actions to increase the  
19 liquidity of the markets, things freed up a little bit,  
20 but I think most observers would say only very recently  
21 have we really come to a thaw, and I don't think we're  
22 at a total thaw yet.

23 Q I don't have it with me, because I didn't  
24 expect this testimony, but there was an exhibit in the  
25 Tampa Electric case, I believe it was an article from

1       *Fortnightly*, that indicated that between mid-October and  
2 the end of January there were a whole lot of utility  
3 bond issues. Is that consistent with your understanding  
4 of the market?

5           A       I think so, because there was pent-up demand.  
6 There were virtually no bond issues during the period  
7 September to the end of October, and some utilities had  
8 to do kind of extraordinary things to keep their  
9 operations going. Fortunately, FPL wasn't one of those.  
10 FPL had the access to the markets throughout this  
11 period, which is a great thing, because that's the end  
12 of hurricane season. And it's a great thing we didn't  
13 have hurricanes, but at least FPL would have been in a  
14 position to deal with it if we had.

15           CHAIRMAN CARTER: Just take a moment, Mr.  
16 Wright, take a moment.

17           MR. WRIGHT: Thank you, Mr. Chairman. I have  
18 misplaced one piece of paper.

19           CHAIRMAN CARTER: Not a problem.

20           MR. WRIGHT: I have found it. Thank you.

21           CHAIRMAN CARTER: You may proceed.

22 BY MR. WRIGHT:

23           Q       In response to some questions by Mr. Moyle,  
24 you made the comment that there have been a few turns  
25 since March of this year. Were you referring to the

1 overall economy and credit markets, or were you  
2 referring to the more recent events that you talked  
3 about a minute ago?

4 A I was speaking of the more recent political  
5 events that might foreshadow a change in Florida  
6 regulatory policy.

7 Q Thanks.

8 MR. WRIGHT: What I was looking for,  
9 Mr. Chairman, was Exhibit 492.

10 BY MR. WRIGHT:

11 Q And you have seen this before, Mr. Mendiola  
12 gave it to you this morning, Dr. Avera?

13 CHAIRMAN CARTER: The volatility index?

14 MR. WRIGHT: Yes, sir, the volatility index.

15 THE WITNESS: Yes.

16 BY MR. WRIGHT:

17 Q You would agree that the volatility index even  
18 in March of this year was running in the 40 to 50 range,  
19 and that it has since declined in the last couple of  
20 months to between 25 and 30, is that a fair reading of  
21 the chart?

22 A That's correct, and we upgraded it, or updated  
23 it. I think I checked very recently, it was 29, but it  
24 stayed in the 20 to 30 channel pretty much.

25 Q Thank you.

1           You talked about the cost recovery clauses  
2 with Mr. Moyle for a while. I just want to ask you a  
3 few more questions about that -- and I think also with  
4 Mr. McGlothlin. I could show you the MFRs, particularly  
5 Schedule C-2, but will you accept, subject to check,  
6 that if you look at the cost recovery clause items,  
7 including franchise fee revenues, that are shown on  
8 FPL's own exhibit, MFR C-2, that the percentage of FPL's  
9 total operating revenues for 2010 is projected to be  
10 about 63.4 percent?

11           A     I can accept that. I mean, the numbers that I  
12 had in my mind were historical numbers, so I've been  
13 advised by the company that that's the range that it's  
14 expected in the future.

15           Q     Okay. In -- well, in your testimony and in  
16 financial analysis and in your cross-examination, we  
17 have talked about data. Would you agree that if a  
18 company -- and I'm not asserting that FPL does have  
19 this -- but if a company had governmentally assured  
20 recovery of 100 percent of its costs, that using the  
21 CAPM methodology, the required return would be very  
22 close to the risk-free rate of return?

23           A     No, because I don't know what the other  
24 elements of risk are.

25                     Maybe we can agree on this: If investors

1 didn't perceive there would be any risk in the company,  
2 the return would be the risk-free rate, if that were the  
3 case.

4 Q And we can agree on that --

5 A But that's not the same as 100 percent  
6 recovery, because one thing that can happen is if 100  
7 percent recovery, without any profit, no investor is  
8 going to buy your stock.

9 Q And I'm sure you would agree that the  
10 availability of the cost recovery clauses is beneficial  
11 from a risk mitigation perspective from investor -- from  
12 the perspective of investors, wouldn't you?

13 A It is, but you have to consider that the  
14 clauses are put in place in those cases where there is  
15 risk. When we teach statistics, we talk about the  
16 diaper fallacy, that diapers cause babies because you  
17 observe people who have babies having diapers come to  
18 their house. Diapers don't cause babies. By the same  
19 token, recovery cost clauses come into place because  
20 there is a risk that the regulators and the company  
21 agree should be mitigated.

22 Q Sure. And would you agree that in Florida,  
23 the cost recovery clauses effectively mitigate a very,  
24 very, very high percentage of the risk of these costs?

25 A No, I don't think they mitigate a very, very

1 high percentage. They mitigate some of the risk and  
2 they have this asymmetric characteristic that if you're  
3 getting your money in a recovery clause, the best that  
4 can happen is you recover your cost. And there's always  
5 a chance something less will happen.

6 Q And correspondingly, if you're recovering,  
7 say, fuel costs in base rates, you would have the risk  
8 of underrecovery if fuel costs went up unexpectedly, and  
9 the potential risk to customers of overrecovery if costs  
10 were less than projected when the base rates were set,  
11 right?

12 MR. ANDERSON: Chairman Carter, at the risk of  
13 interrupting a pleasant afternoon --

14 CHAIRMAN CARTER: It was definitely going  
15 nice. Mr. Anderson, you're recognized.

16 MR. ANDERSON: This is about the third or  
17 fourth lawyer asking kind of the same family of  
18 questions, and my suggestion is if there is a new  
19 element to be brought forth and a new question, that  
20 would be great, but otherwise, my suggestion is this is  
21 unduly repetitious cross-examination.

22 CHAIRMAN CARTER: You may proceed.

23 MR. WRIGHT: Thank you.

24 BY MR. WRIGHT:

25 Q Do you want me to try again?

1           A     Please.

2           Q     You made the remark that with cost recovery --  
3 cost recovery clauses show up because there is  
4 volatility and that they do mitigate risk to some  
5 degree?

6           A     That's right, and, as you mentioned, both to  
7 the customers and the company. That's why Commissions  
8 and Legislatures often are the initiating parties for  
9 adjustment mechanisms.

10          Q     If you had base rates, you would still have  
11 risk, it would just change the timetable for the  
12 recovery, correct?

13          A     Well, it also changes the distribution of the  
14 risk, because if you have base rate recovery, the  
15 company has the possibility of getting ahead of the  
16 game, as well as the possibility of getting behind. If  
17 you have a clause, you wipe out the upside, there's  
18 still some downside, you get rid of the volatility.  
19 That's a benefit to the customer, and it attenuates the  
20 risk, but doesn't eliminate the risk to the company.

21          Q     Have you analyzed how much, if any, of Florida  
22 Power & Light Company's costs that are recovered through  
23 pass-through clauses for which FPL sought recovery have  
24 been disallowed in any relevant time period, say, in the  
25 last five years?



1           A     First of all, the relevant question is what do  
2 investors think, and investors know there is exposure.  
3 I was involved in a replacement power case where there  
4 was a disallowance, so disallowances occur, but the  
5 relevant thing is when the investor puts their \$100 in  
6 today, they're not worrying about the past, they're  
7 worrying about tomorrow. And they don't get the past  
8 Commission, they get the future Commission deciding  
9 whether there's a disallowance.

10           CHAIRMAN CARTER: Can you answer the question?

11           MR. WRIGHT: The question was, have you  
12 analyzed how much, if any, of FPL's cost --

13           THE WITNESS: Excuse me, Mr. Chairman, the  
14 answer is no, for the reasons I gave.

15           CHAIRMAN CARTER: Okay, thank you.

16 BY MR. WRIGHT:

17           Q     You have spoken a lot, and you and I have  
18 spoken a little bit, about how investors look at  
19 investments in FPL's stocks or other utilities' stocks.  
20 My question is, do you agree that investors reflect  
21 their expectations about a company's profitability in  
22 the price that they're willing to pay for its common  
23 stock?

24           A     Yes. We can always -- we have to back into  
25 understanding what that means in terms of the return,

1 but presumably if the markets are efficient, the price  
2 incorporates all of what the investor knows, hopes and  
3 fears.

4 Q And we generally do assume, at least in this  
5 context, that the market is efficient, do we not?

6 A That's true. We assume that, and it's a  
7 pretty good working assumption.

8 Q Would you agree that if you observed investors  
9 purchasing a company's stock at -- sorry, you just  
10 answered that.

11 Would you agree that if a company was observed  
12 to be able to sell its common stock at a given price in  
13 substantial volumes, that that would indicate that  
14 investors were willing to invest in that company at the  
15 going price and that they expected a reasonable return,  
16 from their perspective, on their investment?

17 A Yes. We may not be able -- we don't know what  
18 the return is. We have to apply DCF or a CAPM to  
19 understand the return, but in a free, competitive market  
20 for capital, which is what we have, if investors step up  
21 and put real money down for the stock, they must be  
22 expecting to be adequately rewarded.

23 Q And would you similarly agree that if you were  
24 to observe, say, from one day to the next, or from one  
25 week to the next, an increase in the price paid for a

1 stock, that that would reflect an overall belief by  
2 investors that the expected profitability of that  
3 investment had increased as compared to the base time,  
4 the base day?

5 A No. One thing that could happen is the  
6 increase could be because of investors have ratcheted  
7 their risk down, so they expect the same cash flows, but  
8 they're discounting it at a lower rate of return. That  
9 would cause the stock price to go up. So we can observe  
10 it goes up, but we can't say, is it because their cash  
11 flows are increased, their profitability has increased  
12 or their risk is decreased.

13 Q So it could be a risk decrease would drive the  
14 price up?

15 A All else being equal. If the cash flows have  
16 not changed, the mathematics of present value, you lower  
17 the discount rate, the present value gets bigger.

18 Q Or if they did expect profitability were  
19 increasing, that could also cause a price increase,  
20 correct?

21 A Yes. If we hold the discount rate constant,  
22 we increase the cash flows, present value goes up.

23 CHAIRMAN CARTER: Do you need a number, Mr.  
24 Wright?

25 MR. WRIGHT: I do, Mr. Chairman.

1 CHAIRMAN CARTER: It will be 498.

2 MR. WRIGHT: That's what I have.

3 CHAIRMAN CARTER: Short title?

4 MR. WRIGHT: TECO Stock Prices. The time  
5 period is March 2009 through September 2009, but you can  
6 just call it TECO Stock Prices.

7 CHAIRMAN CARTER: TECO Stock Prices sounds  
8 good.

9 (Exhibit 498 marked for identification.)

10 CHAIRMAN CARTER: You may proceed, Mr. Wright.

11 MR. WRIGHT: Thank you, Mr. Chairman.

12 BY MR. WRIGHT:

13 Q I would like to really direct your attention  
14 to the first page behind the cover sheet, which shows  
15 the prices for TECO Energy's stock from March 2 to  
16 April 1 of this year.

17 A Yes.

18 Q Do you recall that the staff recommendation in  
19 the Tampa Electric rate case was issued on March 5?

20 A That sounds approximately correct.

21 Q I can show you the official copy.

22 A No, I don't remember the exact date, but I  
23 read the order and it was mentioned.

24 Q Well, if you would look at what happened to  
25 the closing prices, Tampa Electric Company's stock, from

1 March 5 to March 6, would you agree that it jumped some  
2 67 cents, or about just under eight percent?

3 A Yes.

4 Q Okay. And the volume purchased more than  
5 doubled from March 5 to March 6?

6 A Yes.

7 MR. WRIGHT: 499, Mr. Chairman?

8 CHAIRMAN CARTER: 499. Short title?

9 MR. WRIGHT: FPL Group Stock Prices.

10 CHAIRMAN CARTER: FPL Group Stock Prices.

11 (Exhibit 499 marked for identification.)

12 BY MR. WRIGHT:

13 Q Again, I would like to direct your attention  
14 to the first sheet behind the cover sheet, which shows  
15 FPL Group's stock prices for March of this year. I  
16 think you would agree that from March 5th to March 16th,  
17 March 16th being the date before the Commission's vote  
18 in the Tampa Electric case, stock price increased from  
19 42.87 to 46.65?

20 A Yes. I would note that this is around the  
21 time of the market bottom, and the Standard & Poor's has  
22 gone up I think 30 percent, or maybe as of today 40  
23 percent since that point. So usually when you do an  
24 event study to try to interpret an event for a  
25 particular company, you have to take out the effect of

1 general market movements, especially when they are as  
2 dramatic as we have experienced since between March and  
3 now.

4 Q During that time, wouldn't you agree that the  
5 best information available to investors as to what  
6 return on equity the Florida Public Service Commission  
7 would award would have been its staff's recommendation  
8 of 10.75 percent?

9 A I believe that -- no, I don't believe that's  
10 the best information. I think that would be part of the  
11 information. I think the investors would be considering  
12 that the fact that staff does not make the decision, the  
13 Commissioners do, and they would also be considering the  
14 fact that there's more than an ROE that's relevant to  
15 investors in a Commission order.

16 Q And we actually saw the stock price for FPL  
17 jump about a dollar and a half from March 16 to March 17  
18 when the Commission voted to give Tampa Electric an  
19 extra 50 basis points above its staff recommendation,  
20 correct?

21 A Yes, that's the movement. I don't think we  
22 can -- at least I don't believe you can directly relate  
23 that to the Tampa Electric case, but it's a  
24 corresponding time period.

25 Q Let me put it this way: We can probably agree

1 it didn't hurt anything that the Commission gave Tampa  
2 Electric -- it didn't hurt FPL's stock price that the  
3 Commission gave Tampa Electric a higher ROE than the  
4 staff rec, did it?

5 A No, I can't agree, because there's so many  
6 moving parts. I don't think you can seize on that fact  
7 alone. I think that was a good thing for Tampa  
8 Electric, it was probably a good thing for the  
9 confidence of the investment community and this  
10 Commission, but I think there are many leaps between  
11 that and what happened to FPL on that particular day.

12 Q I was not trying to imply that diapers caused  
13 the stock price jump. My question was --

14 A Good.

15 Q I used to be an economist, even though I went  
16 to the school up the road from Chapel Hill.

17 But my question was, it didn't hurt FPL's  
18 stock price that that occurred, did it?

19 A That fact in isolation I think was probably a  
20 positive fact, but I can't agree that it explains the  
21 movement in FPL's stock.

22 Q Thank you.

23 Would you agree that Tampa Electric and FPL  
24 Group -- certainly you would agree they both are traded  
25 on the New York Stock Exchange?

1 A Yes.

2 Q Or I said Tampa Electric, I should have said  
3 TECO Energy.

4 A Right, yes.

5 Q Do they compete for capital?

6 A Yes.

7 Q Do all the -- do they compete for capital with  
8 the other companies listed on Exhibit 462?

9 A What was 462?

10 Q That's the successor -- the exhibit published  
11 by the successor to RRA.

12 A SNL?

13 Q Yes.

14 A They compete with them, and a lot more. They  
15 compete with all of the investment vehicles that are  
16 available to investors.

17 Q My reading of this table, Exhibit 462,  
18 indicates that there were a couple of utilities who were  
19 awarded by their regulatory commissions the ROE that  
20 they asked for, notably Con Ed and Central Hudson got  
21 five basis points less than what they asked for, but  
22 most of them got less than they asked for, correct?

23 A Right, but the Con Ed is a bad news story,  
24 because Con Ed was immediately downgraded after that  
25 order. So even though the Commission gave Con Ed what



1 it asked for, it was not sufficient to maintain the bond  
2 rating, and in the Con Ed downgrading, they specifically  
3 mentioned the failure of regulatory support.

4 Q Well, I'm not looking for a real long answer,  
5 but I'm having difficulty understanding how that was  
6 interpreted as negative regulatory support when the  
7 company got the exact same ROE it asked for and .47  
8 percent less than its requested equity percentage, 48 as  
9 opposed to 48.47.

10 A I think, and I know a little bit of  
11 background, I was not involved in this case, but I did  
12 watch it, and basically what happened is Con Ed had  
13 previously gotten a lower return, they came in on an  
14 emergency basis to get this return, and what Moody's  
15 said is, "We announced today that it has downgraded the  
16 ratings of Consolidated Edison and its regulated utility  
17 subsidiaries, Con Edison Company of New York and Orange  
18 & Rockland Utilities, two notches." And then it goes on  
19 to discuss, "The downgrade reflects Moody's" -- let's  
20 see -- "reflects Moody's belief that they will continue  
21 to operate in a challenging regulatory and operating  
22 environment for the foreseeable future. Moody's  
23 believes that recent and future regulatory decisions are  
24 unlikely to permit any significant improvement in the  
25 company's financial metrics, as regulators attempt to

1 limit the impact of rising cost pressures on  
2 ratepayers."

3 Q Did you happen to look at what happened to Con  
4 Ed's stock price after that?

5 A No, I did not.

6 (Brief pause at 5:00 p.m.)

7 (The transcript continues in sequence with  
8 Volume 36.)

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

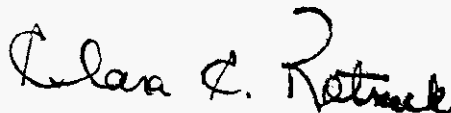
COUNTY OF LEON )

I, CLARA C. ROTRUCK, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings at the time and place herein stated.

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

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

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



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CLARA C. ROTRUCK