

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

PETITION FOR INCREASE IN RATES
BY FLORIDA POWER & LIGHT COMPANY.

VOLUME 26

Pages 4013 through 4081

COMMISSION
CLERK

12 SEP -4 AM 11:03

RECEIVED-FPSC

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Wednesday, August 29, 2012

TIME: Commenced at 3:27 p.m.
Concluded at 4:49 p.m.

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

REPORTED BY: DEBRA R. KRICK
(850) 894-0828

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
114 WEST 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

PREMIER REPORTING
(850) 894-0828
premier-reporting.com

DOCUMENT NUMBER-DATE

05983 SEP -4 2

FPSC-COMMISSION CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES

NAME:	PAGE NO.
TERRY DEASON	
Cross Examination (Cont.) by Mr. Rehwinkel	4015
Cross Examination by Mr. Saporito	4037
Redirect Examination by Mr. Butler	4068

EXHIBITS

NUMBER:	ID	ADMTD.
409		4076
598	4039	4076

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

2 (Transcript follows in sequence from
3 Volume 25.)

4 CROSS EXAMINATION (CONT.)

5 BY MR. REHWINKEL:

6 Q So you don't have to accept it subject to
7 check anymore?

8 A That's correct.

9 Q Okay. Would you agree that in the current
10 case, including the land that I reference you to on
11 B-15, that FPL is requesting to include \$230,192,000 of
12 plant held for future use?

13 A Yes.

14 Q Okay. Given the increase over a three-year
15 period of approximately \$160 million in this account,
16 and in your status as a prior commissioner, would such a
17 large increase in plant held for future use give you any
18 concern?

19 A It certainly should be an item that is
20 scrutinized as to why there was a substantial increase,
21 but that increase certainly could, and perhaps has been,
22 justified by the facts of this case.

23 Q If a utility includes in plant held for future
24 use substantial amounts for land that it has not yet
25 acquired, and if the utility has not yet made a final

1 determination whether or not it was going to acquire the
2 parcels of land, would it be your opinion that -- in
3 this hypothetical situation that -- and this would be in
4 a projected test year scenario in my hypothetical --
5 that such projected cost of the land should be included
6 in rate base?

7 A Yes, if the plans to acquire the properties
8 are consistent with a long-range plan by the utility to
9 reliably and cost effectively serve their customers.

10 Q At page 12 of your testimony, you quote from
11 Order Number 5278 that was issued in Docket 70532.

12 A Yes.

13 Q Do you see that? This is a Tampa Electric
14 Company rate case?

15 A Yes.

16 Q Okay. Do you have a copy of that order?

17 A I believe that I might.

18 Q Okay.

19 MR. REHWINKEL: Madame Chairman, I am going to
20 ask questions about two orders, and I have copies
21 of these. These are rather old orders, and if I
22 could distribute them to everyone so they could
23 follow along, this would be a good time to do that.

24 COMMISSIONER EDGAR: Yes, please. And our
25 staff will help with you that.

1 MR. REHWINKEL: Madame Chairman, while those
2 are being distributed, I read the cite to the TECO
3 order, the Tampa Electric order, and then I am also
4 going to pass out a copy of Order Number 5619,
5 which was issued in Docket 71370. And this is a
6 Florida Power Corporation order.

7 COMMISSIONER EDGAR: And when you say the TECO
8 case, that's the 93-0165?

9 MR. REHWINKEL: Yeah.

10 COMMISSIONER EDGAR: Okay.

11 MR. REHWINKEL: Yes. Wait. No. No. The
12 TECO -- there is two TECO orders that have been
13 distributed -- or referenced.

14 COMMISSIONER EDGAR: I had the wrong one?

15 MR. REHWINKEL: Yes. The -- and I will ask
16 about that one that you referenced. That was
17 provided to Mr. Deason earlier.

18 COMMISSIONER EDGAR: Yes.

19 MR. REHWINKEL: And -- but the -- the first
20 Tampa Electric Company order is Order Number 5278,
21 which is a 1971 order. And the second one is Order
22 Number 5619, which is a -- also a 1971 order.

23 COMMISSIONER EDGAR: And of course, as we have
24 been doing, since these are comm -- prior
25 commissioner orders, we will not need to mark them,

1 just take notice.

2 MR. REHWINKEL: That's correct.

3 COMMISSIONER EDGAR: Thank you.

4 MR. REHWINKEL: We will ask for official
5 recognition of these.

6 MR. BUTLER: Mr. Rehwinkel.

7 MR. REHWINKEL: Yes.

8 MR. BUTLER: The cover sheet, as well as, it
9 looks like the -- on the first page of the 5619
10 indicates it's a Florida Power order; is that
11 right? So we have 5619 is a Florida Power, and
12 then you handed out a 5278 that's for TECO?

13 MR. REHWINKEL: That's correct.

14 MR. BUTLER: Okay.

15 MR. REHWINKEL: Yes. And I said 71, but the
16 Florida Power order is December 29, 1972 order.

17 MR. BUTLER: And then the third one you are
18 going to be referring to is what you had discussed
19 earlier, 93-0165?

20 MR. REHWINKEL: That's correct. And this is
21 an order that was passed out to Mr. Du -- Ms. Ramas
22 yesterday, and I have given my copy of that to the
23 witness.

24 MR. MOYLE: I have an extra copy if you need
25 it.

1 MR. REHWINKEL: Well -- thank you. I have
2 another copy too. Thank you.

3 BY MR. REHWINKEL:

4 Q So the Order Number 5278, the Tampa Electric
5 order, do you have that?

6 A I do.

7 Q And is the copy that I -- is the order that I
8 passed out to you, is that a copy of the -- is that the
9 same decision that you reference in your testimony?

10 A Yes.

11 Q Okay. So if I look at -- I think they called
12 them sheets instead of pages back then -- sheet 6 of
13 what I passed out to you, under item number three.

14 A Yes.

15 Q Is that where the quote in your testimony can
16 be found?

17 A Yes.

18 Q So the one, two, three -- the fourth line down
19 in that paragraph, starting "this commission" --

20 A Yes.

21 Q -- is where that quote starts, okay. And then
22 it goes all the way over to sheet seven. Well, let's
23 see. You start, "this commission", and then you end
24 with the word "delay", which is in the fourth line from
25 the bottom of page six -- or sheet six, right?

1 A Yes. Bear with me. I have my testimony
2 quote. I have the order that --

3 Q Okay.

4 A -- I used, and then I have the order that you
5 have passed out --

6 Q Okay.

7 A -- and they are all different versions.

8 Q All right.

9 A But I believe that's correct. Yes. It
10 concludes with the -- it concludes with the words,
11 "policies practices and procedures," is that correct?

12 Q In this area?

13 A In this area.

14 Q Okay.

15 A Okay.

16 Q But if we go up to line 8, you see, "the
17 management would be subject to criticism for delay", and
18 then there is an ellipsis, or the dots in your
19 testimony?

20 A Yes, I see that.

21 Q Okay. And that -- and then you pick back up
22 on the next to the last line of page, or sheet 6, with
23 the word, "until". And that -- that's where the quote
24 picks up from -- with, "until recently", and goes on
25 through line 15 of your testimony, which corresponds to

1 the end of the first partial paragraph on page 7 of the
2 one I passed out?

3 A Yes, I see that.

4 Q Okay. I just wanted to make sure I understood
5 where -- where the quote was.

6 Now, you would agree -- and I am not
7 suggesting that you omitted anything that is in any --
8 in any improper way. But the sentence between "delay"
9 and the word "until" reads, "properties in this category
10 should be subjected to a reasonable test to determine
11 whether it should be included or excluded in a utility's
12 rate base," right?

13 A That's correct.

14 Q Okay. And so you would agree with that as a
15 part of the policy that you advocate, right?

16 A Oh, absolutely. In fact, it was -- when I
17 first drafted this testimony, it was my intent to
18 actually refer to that particular sentence in isolation
19 in answer to another question to give it emphasis. So
20 it was not my desire to exclude it because I wanted to
21 exclude it.

22 But, yes, that sentence actually goes to the
23 heart of my testimony. There should be a reasonableness
24 test on each property, and they should not be excluded
25 just because they may extend it beyond a 10-year

1 threshold.

2 Q Okay. Now, you would agree that in the first
3 sentence of the paragraph that I directed you to,
4 paragraph 3 on sheet 6 of the order, that it indicates
5 that the amount at issue here was \$1,326,000; is that
6 right?

7 A Yes, I see that.

8 Q Okay. Now, would you agree also that the
9 issue before the Commission in the Tampa Electric case,
10 even though it was in the early 70's, that -- that it
11 was a relatively minor amount compared to the amount
12 that's at issue in this case, correct?

13 A I would agree that the differences -- there
14 are differences in magnitude, but as you have already
15 pointed out, I can't say that it was an immaterial
16 amount. TECO is a much smaller company, and this was
17 some 40, 50 years ago? Am I -- anyway, a long time ago.

18 Q Yeah.

19 A So --

20 Q Okay.

21 A But it's definitely a smaller amount.

22 Q All right. And let's go to page eight, or
23 what they call sheet 8 of the order. Can you look at
24 the third full paragraph on the document that I handed
25 out to you. It starts with, "it is the conclusion". Do

1 you see that?

2 A Yes, I see that.

3 Q Okay. Would you read the first sentence of
4 that paragraph into the record?

5 A It is the conclusion of this Commission that
6 so long as the acquisition of the property in question
7 is considered a reasonable and prudent investment, and
8 it appears that it will be used for utility purposes in
9 the reasonably near future, in the light of prevailing
10 conditions, such land should be included in the
11 company's rate base.

12 Q I think you said reasonable, but does it say
13 responsible or reasonable?

14 A My version says, "reasonably near future."

15 Q Oh, look at the third line there.

16 A "Is considered a responsible and prudent
17 investment."

18 Q Okay. Yeah, okay. I think you read
19 reasonable, but I --

20 A Oh, I may have.

21 Q Yeah. It looks like reasonable, I think.

22 A Thank you for the correction.

23 Q All right. But would you agree with me that
24 this sentence here is also part of the policy that the
25 Commission should consider? I mean, what is stated in

1 **this sentence?**

2 A That the property in question should be looked
3 at in terms of whether it was a responsible and prudent
4 investment?

5 **Q Yes.**

6 A Yes, I agree that that should be part of the
7 Commission's policy.

8 **Q What about the concept of "in the reasonably
9 near future," is that a factor that should be
10 considered?**

11 A I think it should be considered. I think the
12 timeframe of the investment and how it fits into the
13 overall long-term planning horizons needs to be a
14 consideration. But I also express my testimony why I
15 think those planning horizons have been extended by
16 necessity by the interaction of a number of dynamics
17 which I identify in my testimony.

18 **Q So would you agree that the concept of "in the
19 reasonably near future" does impose some time limitation
20 on when the land is occur -- is acquired and when it's
21 intended to be used?**

22 A No. It is not a strict time limitation. It
23 is a consideration of the overall reasonableness of the
24 property.

25 **Q I guess my question to you is, would you agree**

1 that it -- it is -- it means that the Commission says
2 that it's not an indefinite timeframe between when it's
3 acquired and when you intend to use it?

4 A I agree with that. And I don't think my
5 testimony supports the concept that there should be no
6 time consideration. It should be part of the
7 reasonableness of the -- of the property in question.

8 Q Okay. Let's turn to the Power Corp order,
9 5619. And would you agree that the -- the copy that I
10 gave you, whether it's the actual version that you used
11 or not, this is the order that you reference in your
12 testimony?

13 A Yes.

14 Q Okay. And I think we have established it
15 involves Florida Power Corporation. And if you look at
16 page six of the order that I passed out. I guess they
17 started numbering them pages now, a year later. The
18 second sentence under Issue 3, or Item 3 on page 6, is
19 that where you quote from page 14 of your testimony --

20 A Yes.

21 Q -- comes from?

22 A Yes.

23 Q Okay. Would you agree with me that the amount
24 of land at issue in this case was \$183,723?

25 A Yes.

1 Q Okay. If you would turn to page 7 of this
2 order. And do you see the -- the first sentence on page
3 7 that starts with the word the availab-- the phrase,
4 "the availability"?

5 A Yes.

6 Q Would you read that sentence aloud from the
7 order?

8 A "The availability of alternate sites, the
9 annual carrying charges, the appreciation of land values
10 and the apparent need within the foreseeable future are
11 all factors, among others, that enter into the
12 consideration as to whether the purchase of a given
13 tract is a prudent and responsible investment."

14 Q And you would agree with that as being part of
15 the policy that the Commission does and should adhere to
16 when evaluating this issue, land held for future use?

17 A Yes.

18 Q Okay. If you look below the table that falls
19 under that sentence, that has a total of 161,533; do you
20 see that?

21 A I do.

22 Q All right. The -- the statement here
23 indicates that two substation sites amounting to \$22,190
24 were not allowed based on not meeting the criteria that
25 the Commission had set out in this order, correct?

1 A Yes, that's correct.

2 Q Do you believe -- well, first of all, you -- I
3 think it's been established here that FPL has proposed
4 for recovery in land held for future use or other -- or
5 the plant held for future use accounts two separate
6 sites in the -- in -- for potential future location of
7 either gas-fired units, solar facilities or a
8 combination of both gas-fired units and solar
9 facilities?

10 A That's my understanding, yes.

11 Q Okay. Is your belief that there should be a
12 limit on the number of sites a utility acquires for
13 potential future generation plants, or should the amount
14 of the sites to be included in rate base be at the
15 company's discretion?

16 A Could you repeat the last part of your
17 question about the company's discretion?

18 Q Yes. Should there be a limit on the number of
19 sites a utility acquires for potential and future
20 generation plants and includes in rate base, or should
21 the amount of the sites to be included in rate base be
22 whatever the company decides it needs?

23 A It -- I apologize. It should be neither.
24 Obviously, the Commission should not allow in rate base
25 what the company -- at their discretion. There should

1 be a burden to demonstrate to the Commission that the
2 investments are necessary, reasonable and all of the
3 other adjectives that go along with that.

4 But there -- now should there be an arbitrary
5 limit on the number of properties? Each property should
6 be evaluated, and if it provides the value that is
7 expected and it falls into the requirements of a
8 long-term plan to cost effectively and reliably serve
9 customers, well, then, there may need to be one, two,
10 three. There may need to be more. It just depends on
11 all of those considerations.

12 Q Okay. Let me ask you -- this is the final
13 order I want to ask you about, which is the '93 Tampa
14 Electric order. And this is the order that you also
15 quote from this order in your testimony, right?

16 A I believe so. Does this have to do with the
17 Port Manatee --

18 Q Yes.

19 A -- site? Yes.

20 Q Okay. But what I want to ask you about, and
21 this is a matter of regulatory philosophy is -- if you
22 could turn to page 92 of this order.

23 A Okay. I am at page 92.

24 Q And I want to ask you about -- first of all,
25 let's look at page 91. And this was -- I guess it looks

1 like you dissented on about three issues in this case?

2 A What page should I refer to?

3 Q 92.

4 A 92?

5 Q Yes. Do you see the dissent there on Item 2?

6 MR. BUTLER: Mr. Rehwinkel, my pagination on
7 this is not following that.

8 MR. REHWINKEL: Okay. I apologize. I wasn't
9 sure if I had the right. I have got one out of The
10 Reporter. Do you -- let's --

11 MR. BUTLER: The copy I have, page 92 has,
12 like, a big Roman numeral IX, other issues in the
13 middle of the page.

14 BY MR. REHWINKEL:

15 Q Okay. Let's do this, look on the second page
16 of the order -- the third page of the order. Do you see
17 a table of contents? Is there a table of contents in
18 yours?

19 A Yes.

20 Q All right. If you could turn in your table of
21 contents to Roman numeral XI, dissenting votes.

22 A Okay.

23 Q Do you see -- and turn to whatever page it
24 directs you in that order.

25 A It says page 91.

1 Q Okay.

2 A Which is not dissenting votes. It must be an
3 error in the --

4 Q What is the Roman numeral there? Is it IX?
5 Is that what Mr. Butler says?

6 A Dissenting votes is Roman numeral XI.

7 Q Okay.

8 MR. BUTLER: Mr. Rehwinkel, in what I have --
9 I don't know if this helps or not, but there is a
10 Roman numeral XI on page 106, which is the
11 dissenting votes. And there's a --

12 MR. REHWINKEL: Let's go there. Thank you.
13 Thank you, Mr. Butler.

14 MR. BUTLER: Mr. Deason, does that show up on
15 your copy as having a Roman numeral XI, dissenting
16 votes?

17 THE WITNESS: Yes.

18 BY MR. REHWINKEL:

19 Q Okay. I just want it to ask you about -- so
20 if everyone -- everyone can follow along if they to
21 go -- what page are you on now? 107?

22 A I am on page 106.

23 Q Okay. And is number two --

24 A My second dissent?

25 Q Yes.

1 A That starts on page 107.

2 Q Okay. And I just want to ask you to read --
3 to -- if you want to review this, but all I want to do
4 is ask you about a sentence that starts with the word
5 "however" and end with the word -- two sentences that
6 start with "however" and ends with the word "inventory"
7 a little past halfway down that dissent?

8 A That one sentence?

9 Q Well, there is two there, I think.

10 A I see that.

11 Q Okay. And I know this doesn't directly relate
12 to land held for future use, but I want to ask you as a
13 matter of regulatory policy, do you think that what you
14 state here in your dissent generally summarizes the way
15 the burden of proof ought to operate in matters of
16 utilities seeking rate increase before the Florida
17 Public Service Commission?

18 A Yes, I generally agree.

19 Q Okay. Would you mind reading this -- these
20 two sentences into the record?

21 A "However, I am not convinced that it is the
22 OPC or any other intervenors' burden to affirmatively
23 establish the valuation of TECO's coal inventory. I
24 believe it is TECO's burden to prove to this commission
25 the fair valuation of its coal inventory."

1 Q Would you agree that, generally speaking, that
2 same regulatory approach ought to apply to the
3 Commission's consideration of the land held for future
4 use issue if this case?

5 A Yes. I believe it is FPL's burden to
6 demonstrate that. And it should be reviewed on a
7 property-by-property basis, and there should not be
8 arbitrary time limits imposed on disallowing properties.
9 They should stand or fall on their merits.

10 Q Okay. And I am going to go quickly through
11 this line of cross. I kind of apologize for asking you
12 about it, but it seems like it's become appropriate to
13 ask about who operates what kind of facilities within a
14 utility if they don't work for the utility.

15 So I am going to just ask you a quick series
16 of questions and ask you, have you ever operated a power
17 plant on behalf of an electric utility the size of FPL?

18 A No.

19 Q Or on behalf of any electric utility?

20 A No.

21 Q Have you ever performed integrated resource
22 planning on behalf of any electric utility the size of
23 FPL?

24 A No, but I have reviewed of lot of those plans.

25 Q Okay. Have you ever overseen the general

1 hiring and human resource and payroll activities of any
2 electric utility the size of FPL?

3 A No.

4 Q Or on behalf of any electric utility?

5 A No.

6 Q Have you ever performed compensation studies
7 on behalf of any electric utility the size of FPL?

8 A No.

9 Q Or on behalf of any utility?

10 A No.

11 Q You don't think that someone needs to be an
12 actual employee of an electric utility to provide
13 competent expert testimony before this or any
14 commission, do you?

15 A Generally, no, but it depends upon the
16 testimony presented.

17 Q Okay. You don't think that a witness
18 testifying as an expert has to have been educated in
19 college in that exact field that he or she is testifying
20 on in order to be an expert; do you?

21 A No.

22 MR. BUTLER: Mr. Rehwinkel -- excuse me.

23 Never mind.

24 THE WITNESS: I am sorry.

25 COMMISSIONER EDGAR: Mr. Butler, were you --

1 MR. BUTLER: It's okay.

2 COMMISSIONER EDGAR: Okay. Go ahead.

3 BY MR. REHWINKEL:

4 Q You would agree, based on your expertise in
5 regulatory policy and experience as a commissioner and
6 twice as chairman, that decades of experience and
7 dedicated rigorous review of a subject matter can
8 provide a sufficient basis for one to give expert
9 testimony before this Commission; do you not?

10 A I agree. It is always the Commission gives
11 it the weight it deems appropriate.

12 Q Okay. I want to ask you one more
13 hypothetical. In your experience in the area of
14 regulatory policy, I would like your opinion on this
15 hypothetical.

16 Let's say a utility is allowed to include \$100
17 million in plant held for future use in a 2014 test year
18 based on a need of 2,000 megawatts of base load
19 generation at a particular site in the year 2021, and
20 that rates go into effect on January 21, 2014. Are you
21 following me so far?

22 A Yes.

23 Q And let's say that after those rates go into
24 effect, the company cancels its plans to build the 2,000
25 megawatts of generation on the site that was associated

1 with that \$100 million of plant held for future use,
2 okay?

3 A Okay.

4 Q And let's assume that on June 1st, 2014, the
5 company sells all of its interests and the assets that
6 make up that \$100 million included in plant held for
7 future use, and that as part of that sale, the company
8 makes a \$30 million gain.

9 A Okay.

10 Q And let's further assume that the next rate
11 case involves a 2020 test year, and that before 2019 or
12 2020, there is no earnings review or base rate
13 adjustment, okay? So prior to January 1, 2020, there is
14 no earnings review or base rate adjustment.

15 A Okay.

16 Q In that circumstance, how would the customers
17 be protected with respect to that plant held for future
18 use?

19 A They would be protect in the sense -- well,
20 they would be protected by the 30 million gain being
21 amortized above the line.

22 Q Would that gain be -- would that amortization
23 be over generally what period, based on your experience?

24 A Generally five years.

25 Q Okay. Would that five-year amortization

1 period expire before the next test year?

2 A Under your hypothetical, yes.

3 Q Okay. So you are saying they would be
4 protected based on the -- was it \$6 million a year being
5 recorded above the line during that five-year period?

6 A Absolutely.

7 Q Okay.

8 A And if I may explain.

9 Q Please.

10 A Okay. The amortization would be recorded
11 above the line, and it would be reflected in earnings.
12 And under the hypothetical, Mr. Rehwinkel said that
13 there was no rate cases, no earning reviews. Well, that
14 might be the reason that there were no rate cases or
15 earning reviews because of that amortization benefiting
16 the customers.

17 It would be inappropriate policy to select the
18 amortization period to coincide or not coincide with
19 rate cases. It should be a consistent policy of
20 recognizing the gain, amortizing -- amortizing it over
21 five years. And the rate -- whether there is a rate
22 case or not a rate case should not dictate when that
23 amortization begins and when it ends.

24 MR. REHWINKEL: I have no further questions,
25 and I glad I am done. Thank you.

1 COMMISSIONER EDGAR: It's almost too tempting,
2 but, no.

3 Mr. Saparito, do you have questions on cross
4 for this witness?

5 MR. SAPARITO: Yes, I do, Madame Chairman.

6 CROSS EXAMINATION

7 BY MR. SAPARITO:

8 Q Hello, my name is Thomas Saparito. I am here
9 a pro se capacity, just representing myself.

10 I am just going to ask you some quick
11 questions on three areas. One being the incentive
12 program that you testified about, another being the ROE
13 adder that you testified about, and the third with
14 respect to the smart meters that you testified about.

15 With respect to the incentive program, on page
16 34, lines 1 through 10 of your testi -- of your rebuttal
17 testimony, you state, to only receive a base salary Gulf
18 employees would be compensated at a lower level than
19 employees in other companies. Therefore, an incentive
20 program is necessary for Gulf's salaries to be
21 competitive in the market.

22 Another benefit of the plan is that 25 percent
23 of an individual employee's salary must be reearned each
24 year; therefore, each employee must excel to achieve a
25 higher salary. When employees excel, we believe that

1 customers benefit from a higher quality service.

2 And you were quoting from a PSC order -- PSC
3 Order Number PSC 02-0787-FOF-E1 in Docket Number
4 01949-EI; is that correct?

5 A Yes.

6 Q And then on page 36 of your prefiled
7 testimony, you were responding to some of Mr. Schultz's
8 testimony. And in lines 13 to 23, you state that he
9 recommend -- he being Mr. Schultz -- recommends a
10 portion be disallowed based on how it is paid because it
11 is performance-based variable pay rather than base
12 salary. It is subject to disallowance, notwithstanding
13 whether the total amount of compensation is reasonable.
14 A focus of any disallowance should be how much is, not
15 how it is paid; is that correct?

16 A Yes.

17 Q Would you agree with me that FPL relies on its
18 employee incentive program to retain employees?

19 A Yes.

20 Q Would you agree with me that FPL's employee
21 incentive program correlates to the employee's
22 performance?

23 A Yes.

24 MR. SAPARITO: At this time, Madame Chairman,
25 I would like to put a document -- identify a

1 document in the record.

2 COMMISSIONER EDGAR: Okay. Do you have copies
3 to be passed out? We will ask our staff to assist.
4 I am showing 598.

5 (Whereupon, Exhibit No. 598 was marked for
6 identification.)

7 MR. SAPARITO: Okay. And for the record, this
8 document is being identified as NextEra Energy,
9 Inc. It's the not notice -- the cover sheet is the
10 notice of 2012 annual meeting, a proxy statement.
11 And the excerpt from that document is page 64,
12 which is entitled at the top, Summary of
13 Composition Table.

14 COMMISSIONER EDGAR: Okay. Let's take just a
15 moment while it's distributed and see if there are
16 any immediate questions.

17 Mr. Butler, may we proceed?

18 MR. BUTLER: Yes.

19 COMMISSIONER EDGAR: Mr. Saporito, go right
20 ahead.

21 BY MR. SAPARITO:

22 Q Okay. And I am just going to point you to
23 quickly, you see there is a bunch of columns in page two
24 of that exhibit, and see the -- one, two, three, four
25 five, six -- the seventh column over talks about the

1 incentive pay compensation. Do you see that column?

2 A I do.

3 Q Okay. And for the years 2010 to 2011, for
4 Employees Lewis Hay, Armando Pimentel and Employee
5 Dewhurst, Employee Robo and Employee Olivera. For each
6 of those employees for the years 2010 to 2011, would you
7 agree with me that their incentive plan compensation
8 decreased year over year?

9 MR. BUTLER: I'm going to object to this line
10 of questions. I really don't see how it connects
11 with the testimony on the policy of incentive
12 compensation that Mr. Deason is testifying to.

13 MR. SAPARITO: I can make a proffer. My next
14 question will tie it in, Madame Chair.

15 COMMISSIONER EDGAR: I'm going to see where it
16 takes us.

17 BY MR. SAPARITO:

18 Q Can you answer?

19 A And you are asking me to compare 2010 with
20 2011?

21 Q Yes, sir.

22 A Yes, I think that this shows that those
23 amounts decreased from 2010 to 2011 --

24 Q Okay.

25 A -- for all of these individuals.

1 Q All right. Thank you.

2 And would you agree with me that to the extent
3 that the amount of employee incentive compensation
4 decreased, that it correlates to a decrease in
5 performance by those employees?

6 A No, I do not agree.

7 Q All right. Now, I would like to move on to an
8 ROE adder. If you are -- I point you to page 49 of your
9 pre -- of your rebuttal testimony, and line 7. Have you
10 found that?

11 A Yes.

12 Q Would you agree with me that you were
13 evaluating Mr. Lawton's testimony, and one of your --
14 one of your remarks at line 7 states, that results in an
15 unended bonus, you are -- you are saying that
16 Mr. Lawsuit essentially gives four reasons for his
17 recommendation to deny the ROE performance adder, or are
18 you -- or a performance adder for four reasons that
19 Mr. Lawsuit cites to, you are addressing those four
20 reasons, correct?

21 A Yes.

22 Q And one of those reasons is at line 7, which
23 states, results in an unneeded, quote, unquote, "bonus,"
24 correct?

25 A Yes.

1 Q And then if you look at lines 18 to 23, you
2 are responding to a question at line 16, which states,
3 how is an ROE performance adder is a well established
4 practice in the state of Florida. And your response was
5 that FPL's requested ROE performance adder is a request
6 to set rates at a target ROE point above the midpoint to
7 recognize exceptional performance.

8 The reciprocal of this is to set rates at a
9 target ROE point below the midpoint for less than
10 satisfactory performance. Setting rates at a point
11 above or below the midpoint is authorized by statute, is
12 a regulatory tool historically used by the Commission
13 and has been upheld in the Florida Supreme Court. Am I
14 reading that correct?

15 A Yes.

16 Q Would you agree with me that a performance
17 adder is already incorporated in the Commission's
18 assignment of a range based ROE to set a midpoint value?

19 A No.

20 Q And I point you to line 50 of your rebuttal,
21 lines 1 through 3. And where you state, "concept of
22 recognizing superior management or penalizing
23 unsatisfactory management is recognized by authoritative
24 sources as an appropriate regulatory tool," is that
25 correct?

1 A Yes.

2 Q Would you agree with me that the Commission
3 should consider management performance beyond having the
4 lowest customer bills, and to include management of
5 projects, for example?

6 A Yes, I believe that the performance adder
7 should consider a myriad of things.

8 Q Okay. And FPL employees -- would you agree
9 with me that FPL employees already receive an incentive
10 performance compensation?

11 A I believe it's part of their compensation
12 plan, and I believe that they do receive -- as a general
13 rule, they do receive that compensation.

14 Q And would you agree with me that an ROE adder
15 of 2.5 percent is duplicative incentive performance
16 compensation?

17 A No.

18 Q Do you recall your testimony today -- and I'm
19 paraphrasing -- that an ROE adder should applied to
20 other regulated utilities in Florida?

21 A If it is justified, yes.

22 Q To the extent that FPL is a monopoly utility
23 with a protected service territory, would you agree with
24 me that the Commission must consider other factors
25 besides lowest electric bills when they assign an ROE?

1 A Yes, I believe there should be other
2 considerations. And let me be clear in my answer. In
3 determining whether there should be an adder approved in
4 this case, there should be a myriad of considerations.

5 **Q All right. Thank you for that clarification.**

6 **Would you agree with me that an ROE adder is**
7 **not required in this docket because the Commission has**
8 **historically recognized a utility's performance by**
9 **assigning a range ROE above and below the midpoint ROE**
10 **assigned?**

11 MR. BUTLER: Object to the form of the
12 question as assuming facts not in evidence.

13 COMMISSIONER EDGAR: Mr. Saporito?

14 MR. SAPARITO: Well, Madame Chairman, he has
15 already testified with respect -- in his rebuttal
16 and here today in person, with respect that the
17 Commission assigns historically an ROE value and
18 then a range around an ROE value, and I am just
19 amplifying on that, getting clarification on now.

20 COMMISSIONER EDGAR: I will allow it.

21 THE WITNESS: Could you repeat the question,
22 please?

23 BY MR. SAPARITO:

24 **Q Absolutely. Would you agree with me that an**
25 **ROE adder is not required in this docket because the**

1 Commission has historically recognized a utility's
2 performance by assigning a range ROE above and below the
3 midpoint ROE assigned?

4 A I interpret your question to mean, is there an
5 ROE adder required in this case; is that correct?

6 Q No, that's not the -- that's not the question.
7 The question is: To the extent that this
8 Commission has historically assigned an ROE to a rate
9 case, and then established a range above and below that
10 ROE, would you agree that an ROE adder is not required
11 in this docket?

12 A No.

13 Q And now I am going to move on to smart meters.
14 And I point you to page 47 of your rebuttal testimony,
15 at lines 8 through 22.

16 And is it true that you testified that the
17 Commission has the authority and responsibility to
18 evaluate and scrutinize all projects; however, once done
19 and approved, it would be inappropriate to hold a
20 company to its projections. There will always be
21 economic, technological, financial and operational
22 changes that will result in the schedule changes and
23 costs being over or under the projected levels.

24 The real issue is whether those changes are
25 prudently managed by the company to minimize increases

1 and maximize savings to the extent reasonably within
2 management's control to do so; is that correct?

3 A That's generally correct. I think you used
4 the term "project" one time when the word was
5 "projections," but with that one modification, I think
6 that's correct.

7 Q All right. Thank you.

8 So if the Commission determines that FPL's
9 projections were not prudently managed, then the
10 Commission should not allow FPL to recovery of related
11 smart meter costs; is that correct?

12 A Yes. If this Commission determines that there
13 were aspects to the management of the deployment of the
14 smart meters that were not done correctly or prudently
15 such that there were unnecessary cost increases, I think
16 the Commission, in its discretion, could disallow some
17 or all of those costs.

18 Q Okay. And at page 48 of your rebuttal
19 testimony, at line 9, you state, "the most current and
20 accurate information projects future net savings," is
21 that correct?

22 A Projects future net savings.

23 Q Yeah, projects. I am sorry. Projects future
24 net savings; that's correct?

25 A Yes.

1 **Q Would you agree with me that 8,000 FP&L**
2 **customers have requested removal of FPL's smart meters?**

3 MR. BUTLER: I object. I don't think that
4 this goes to Mr. Deason's testimony about the Smart
5 Meter Program.

6 COMMISSIONER EDGAR: Mr. Saparito, can you
7 direct me to where in his testimony it discusses
8 some customers electing or requesting to not be
9 included in the smart meter installations.

10 MR. SAPARITO: Well, if I could have a little
11 latitude to link this, I am going to link this with
12 the projections for -- that FPL is alleging that
13 the smart meters will provide the customers in the
14 future.

15 COMMISSIONER EDGAR: Can you direct me to --
16 in his prefiled rebuttal testimony, where he
17 discusses the numbers of customers who have elected
18 or requested to not be included?

19 MR. SAPARITO: Okay. I will withdraw the
20 question, Madame Chairman.

21 COMMISSIONER EDGAR: Thank you.

22 BY MR. SAPARITO:

23 **Q Would you agree with me that if FPL customers**
24 **were to elect to have the smart meters removed from**
25 **their property, that FP&L's projections with respect to**

1 **smart meters would change?**

2 MR. BUTLER: Same objection.

3 COMMISSIONER EDGAR: Which was -- or is?

4 MR. BUTLER: I am sorry. This is simply Mr.
5 Saparito's attempt to circumvent to your ruling on
6 the prior question. He is going to the subject of
7 customers deciding not to participate in the Smart
8 Meter Program. That's not in Mr. Deason's
9 testimony.

10 It's a subject that I believe the Chairman had
11 determined that at the outset of the proceeding was
12 not an appropriate subject of inquiry in this
13 proceeding but, rather, was the subject of
14 workshops. I just don't think it's appropriate
15 here.

16 MR. SAPARITO: And my question is --

17 COMMISSIONER EDGAR: Mr. Saparito -- Mr.
18 Saparito, I will again ask to you direct me to
19 where in the prefiled testimony he --

20 MR. SAPARITO: He testified in his prefiled
21 with respect to FP&L's future projections with
22 respect to the smart meters. And the question is
23 right on point. I am asking if FPL's projections
24 are going to change if customers elect to have
25 their smart meters removed. So it deals with his

1 projected net -- his testimony with respect to
2 FPL's projected future net savings related to the
3 smart meters.

4 MR. BUTLER: May I respond?

5 COMMISSIONER EDGAR: Yes, you may.

6 MR. BUTLER: We had two witnesses, Ms. Santos
7 and then Mr. Barrett, who both were testifying as
8 company witnesses to specifics about projections.

9 Mr. Deason has made clear on numerous
10 occasions through his testimony today that he is
11 testifying about regulatory policy. He is not here
12 to talk about specifics of FPL's projections.

13 So without conceding they would or wouldn't be
14 appropriate questions to those witnesses, had Mr.
15 Saporito wanted to ask these questions, he should
16 have done so of the FPL witnesses with the direct
17 knowledge of the subject matter he is inquiring
18 into.

19 COMMISSIONER EDGAR: Mr. Saporito, I will give
20 you one more chance to respond to that with the
21 understanding that I am asking you again to refer
22 to the prefiled rebuttal testimony.

23 MR. SAPARITO: I will just go ahead and
24 withdraw the question, Madame Chairman.

25 COMMISSIONER EDGAR: Thank you.

1 MR. SAPARITO: I'm finished with this witness.
2 Thank you.

3 COMMISSIONER EDGAR: Okay.

4 MR. SAPARITO: Thank you.

5 THE WITNESS: Thank you.

6 COMMISSIONER EDGAR: Thank you.

7 Mr. Hendricks, do you have questions on cross
8 for this witness?

9 MR. HENDRICKS: No questions for this witness,
10 Madame Chairman.

11 COMMISSIONER EDGAR: Thank you.

12 Questions from staff?

13 MR. YOUNG: No questions.

14 COMMISSIONER EDGAR: Commissioners.

15 Commissioner Brown?

16 COMMISSIONER BROWN: Thank you, and I will try
17 to be very brief because you have been on the stand
18 for a few hours here. So thank you for your
19 testimony and your patience --

20 THE WITNESS: Thank you.

21 COMMISSIONER BROWN: -- today. And it's nice
22 to see you as well, Mr. Deason.

23 You responded to one of Mr. Wright's questions
24 earlier regarding plant held for future use about,
25 the dynamics that support a longer planning

1 horizon. I think -- and just for clarification, I
2 think you said that it was not necessarily specific
3 towards the two proposed future generating plants,
4 is that correct? Those are not dynamics that you
5 addressed in your testimony?

6 THE WITNESS: If I understand the question,
7 the dynamics I address are general policy
8 considerations. If they are applicable -- they --
9 that from a policy standpoint, they are applicable
10 to the specific projects in this case. But as I
11 indicated earlier, I am not expressing an opinion
12 as to whether those specific projects meet the
13 standards or not.

14 COMMISSIONER BROWN: Okay. Yeah. That was
15 the question. Thank you.

16 You had a lot of questions regarding directors
17 and officers liability insurance, and I just have a
18 few followup.

19 To one of Mr. Rehwinkel's questions, you
20 responded, in his hypothetical, that shareholders
21 would be the beneficiaries -- beneficiaries of a
22 successful outcome of a lawsuit. But then in your
23 rebuttal testimony, you also disagree that DOL
24 insurance is primarily protect shareholders. Can
25 you elaborate?

1 THE WITNESS: Yes, I will be happy to.

2 I believe that the DOL insurance is necessary
3 for the company to be able to attract and retain
4 qualified directors and officers. That without
5 that insurance, people would understandably be
6 hesitant to place their personal assets in jeopardy
7 for acting in those capacities. So in that sense,
8 it is a necessary cost of being a corporation and
9 having these positions.

10 I further believe that it also allows the
11 directors and officers greater latitude to exercise
12 their responsibilities in an objective manner,
13 trying to balance the interests of all the
14 different stakeholders with -- once again, without
15 being concerned that those decisions would be
16 subject to liability on their personal assets.

17 In this regard, it enables the company to be
18 able to be run effectively and for appropriate
19 decisions to be made. That is for the benefit of
20 the customers because it enables those functions to
21 take place which are required.

22 COMMISSIONER BROWN: Okay. And I understand
23 what you are saying, but are there tangible
24 benefits to the ratepayers?

25 THE WITNESS: Yes, there definitely are

1 tangible benefits. It is a -- it is an efficient
2 means to provide service to customers to be
3 incorporated with officers and directors. It is --
4 it enables the company to operate efficiently, and
5 enables the companies to attract capital on
6 reasonable terms to be organized in that manner.

7 So, yes, there are tangible benefits
8 associated with being organized in this manner.
9 And by being so organized, it is essential that
10 there be DOL -- DOL insurance.

11 COMMISSIONER BROWN: Okay. Fair enough.

12 And I know you are aware of the more recent
13 commission decisions allocating 50-50 share --
14 ratepayers to company for DOL, but you relied more
15 heavily on previous cases. Does FPL currently
16 share the costs with DOL with the customers?

17 THE WITNESS: I -- yes, I believe so.

18 COMMISSIONER BROWN: So it's 50-50 right now?

19 THE WITNESS: That is my understanding. Yes.

20 COMMISSIONER BROWN: Okay. I don't have any
21 more questions. Thanks again.

22 THE WITNESS: But I would -- I would have to
23 look at the order to be for certain. But I believe
24 that was -- I am not certain, Commissioner. I am
25 really not.

1 I know that there have been some recent
2 decisions for some companies where there was a
3 sharing. I don't know if that was done in the last
4 case or not, but -- I am a little embarrassed that
5 I can't answer your question. I don't know with
6 100 percent certainly.

7 COMMISSIONER BROWN: Okay.

8 COMMISSIONER EDGAR: Commissioner Balbis?

9 COMMISSIONER BALBIS: Thank you, Madame
10 Chairman. I just have a few questions for Mr.
11 Deason.

12 Good to see you again.

13 THE WITNESS: Thank you.

14 COMMISSIONER BALBIS: You discussed at --
15 well, first, a preliminary matter for the chair for
16 staff. Could I confirm that Exhibits 44 and 92
17 have been entered into the record?

18 MR. YOUNG: I believe they have. Just give me
19 one second. 44 yes, and 92, yes.

20 COMMISSIONER BALBIS: Okay. Thank you.

21 COMMISSIONER EDGAR: And that is consistent
22 with my notes as well.

23 COMMISSIONER BALBIS: Okay. Thank you.

24 Mr. Deason, you had a -- answered a lot of
25 questions concerning plant held for future use, and

1 you discussed the standard of review. And I don't
2 want to get into that. I think your answers were
3 pretty clear.

4 But I just wanted to make sure -- because a
5 lot of the questions focused on plant sites, that
6 from a policy standpoint, that the same standard of
7 review applies to all of the categories of plant
8 held for future use, as in the production,
9 transmission, distribution or general plant?

10 THE WITNESS: Yes. Correct.

11 COMMISSIONER BALBIS: Okay. So then just to
12 confirm for the \$237 million that FPL is requesting
13 for the 2013 test year, for all of plant held for
14 future use has to meet that same burden, or that
15 same standard of review?

16 THE WITNESS: Yes.

17 COMMISSIONER BALBIS: Okay. I can skip a few
18 pages of my question that have already been asked
19 and move on to incentive pay.

20 You mentioned in your testimony the recent
21 Gulf rate case, a decision that this Commission
22 made, correct?

23 THE WITNESS: Yes.

24 COMMISSIONER BALBIS: Okay. Are you aware
25 that we made an adjustment of O&M expenses of

1 approximately \$2.3 million to remove a portion of
2 their incentive pay?

3 THE WITNESS: Yes, I am aware of that.

4 COMMISSIONER BALBIS: Okay. And do you know
5 that we made that decision, in part, because Gulf's
6 customers benefited, but also there were portions
7 that the shareholders benefited?

8 THE WITNESS: I understand that that may have
9 been part of the rationale, but I also think that
10 there was an analysis done and -- to result in
11 compensation levels that were considered to be
12 based upon market so that Gulf would be able to
13 attract and retain employees. I think that was
14 part of the Commission's analysis as well. It was
15 just not 100 percent based upon a philosophical
16 sharing.

17 COMMISSIONER BALBIS: Correct. And then what
18 we did was we looked at each employee type, and if
19 we were to reduce it -- eliminate the incentive pay
20 if they fell below the range of other utilities,
21 that was also a consideration, you are correct on
22 that. But doesn't FPL's incentive plan also
23 benefit both FPL customers and shareholders?

24 THE WITNESS: I would say that it does benefit
25 both customers and shareholders, but that does --

1 is not determinative as to whether the costs are
2 reasonable and should be included in rates.

3 If it is a reasonable and necessary cost for
4 FPL to incur to cost effectively serve its
5 customers, it should be recovered in rates because
6 the amount is reasonable. There are not -- other
7 than incentive compensation, there are other costs
8 that are recovered in rates that one could argue
9 also benefits customers and stockholders.

10 I think the ultimate test is to determine
11 whether the costs are reasonable and necessary to
12 provide service.

13 COMMISSIONER BALBIS: Okay. But going back to
14 Gulf's incentive plan -- and I don't -- and if you
15 are not that familiar with it, that's fine. We can
16 move on, but I am fairly familiar with that case.
17 And they provided a very detailed incentive plan
18 that showed detailed metrics on performance of Gulf
19 stock and performance of Southern Company -- I
20 mean, performance of Gulf Company, performance of
21 Southern Company stock, and a lot of detailed
22 information for us to review the reasonableness of
23 those costs.

24 And as far as Florida Power & Light's, the
25 only information that I have seen came from, I

1 believe, Witness Santos, which was a very generic
2 description of how incentive pay is awarded.

3 Do you feel that if that is the only -- well,
4 first all, are you familiar with -- I believe it
5 was Witness Santos' description of FPL's incentive
6 plan?

7 THE WITNESS: I am generally familiar with it,
8 but let me offer this, if it is helpful.

9 It is my understanding that those metrics
10 received scrutiny in the Gulf case. There were
11 some concerns about the financial metrics and
12 whether those were the appropriate metrics, and
13 whether they were weighted correctly. I think
14 there were issues raised about that by the
15 intervenors in the Gulf case.

16 I believe Mr. Schultz, in this case, his
17 testimony was that he didn't -- he didn't find
18 fault with the metrics. He said they were
19 borderline, but he didn't find specific faults with
20 the metrics.

21 So if there is a difference in the amount of
22 information in the Gulf case compared to this case,
23 it may be that it has not been raised to the level
24 of review. That's just a possible -- an
25 observation on my part.

1 But to answer your question, I am familiar
2 generally with the testimony.

3 COMMISSIONER BALBIS: Okay. And I think you
4 answered my next question on the differences with
5 the type of information.

6 Are you also aware that this Commission made
7 O&M adjustments in the Gulf case to account for
8 vacancies and unfilled positions?

9 THE WITNESS: Yes.

10 COMMISSIONER BALBIS: Okay. And the last line
11 of questioning has to do with the ROE adder.

12 On page 51 of your testimony, you cited a
13 commission decision that emphasized that we have
14 some discretion on setting the midpoint ROE and a
15 range of ROE. Do you believe that to be correct?

16 THE WITNESS: That the Commission has
17 discretion --

18 COMMISSIONER BALBIS: Yes.

19 THE WITNESS: -- in crafting what would be an
20 appropriate adder? Is that the question?

21 COMMISSIONER BALBIS: No. No. No. On ROE
22 itself.

23 THE WITNESS: Oh.

24 COMMISSIONER BALBIS: If you look at lines 22
25 and 23 of page 51, you cite a commission decision

1 in '08, and we have some discretion in fixing the
2 point within the range to be determined revenue, et
3 cetera, et cetera. Do you see that?

4 THE WITNESS: Yes.

5 COMMISSIONER BALBIS: Okay. And what I want
6 to focus on is the range because one of the ideas
7 that I brought out to another witness was the idea
8 of raising the high range of the ROE by, say, 25
9 basis points, for example, and whether or not that
10 would provide an incentive to the company without
11 increasing customer rates. Do you agree that that
12 would be an incentive to the company if we were to
13 raise the range?

14 THE WITNESS: Commissioner, I always hesitate
15 to disagree with a commissioner, but I would
16 disagree. I do not think it provides an incentive
17 to the company.

18 It would mean that the company would have to
19 obtain significant cost savings to achieve a rate
20 of return that many basis points above the rate
21 setting point. And to get the full benefit of just
22 adding 25 basis points to the upper end, there
23 would have to be cost savings achieved of 125 basis
24 points. And I think there is testimony in this
25 case that would indicate that that would be

1 somewhere around \$200 million -- or it's -- 25
2 basis points equates to about 41 million, so
3 whatever the math is that that would result from.

4 I think there is also testimony in this case
5 for this Commission to consider that this -- that
6 FPL operates efficiently, and has already embarked
7 upon a number of measures which has increased its
8 efficiency. And that to obtain that degree of
9 efficiency to get the full benefit of the adder
10 probably would not act as a sufficient incentive.

11 And that is -- the reason for the adder is to
12 provide an incentive for the company to continue to
13 operate effectively and to send a signal to other
14 Florida utilities as well, that this is a tool at
15 the discretion of the Commission, in that it can be
16 applied when it's justified.

17 COMMISSIONER BALBIS: But you answered a
18 question for, I believe it was Mr. Saporito, that,
19 you know, the Commission should consider a myriad
20 of things in order to establish the adder, which,
21 once that adder is in place, there are -- there
22 aren't a myriad of things we are looking at. It's
23 solely the typical residential bill.

24 So how do we go from looking at a myriad of
25 things to establish the adder, and then once that's

1 set, now only looking at one aspect, which may or
2 may not have to do with efficiency because a good
3 portion of rates are set through rate cases?

4 THE WITNESS: Yes. I agree with that. I
5 think we need to look back at history, to some
6 extent. And, right or wrong, the Commission, when
7 it has granted an ROE adder, it has been based upon
8 past performance, and that's where the myriad of
9 things comes into effect.

10 I know that when we did it for Gulf Power, you
11 know, we considered the reliability, customer
12 complaints, overall customer service, the
13 availability and the heat rates of the generating
14 units. A lot of things went into that.

15 FPL is proposing, particularly through Mr.
16 Reed's testimony, a number of considerations that
17 they have placed before the Commission to consider
18 as to whether they -- there should be an adder
19 implemented.

20 Never before in the past when the Commission
21 has -- has implemented an adder, there -- that was
22 pretty much close the books on it. The Commission
23 continued to monitor the performances of the
24 company, particularly through earning -- earnings
25 surveillance and through reports concerning

1 reliability and things of that nature. But never
2 before has there been some type of a trigger that
3 would allow the adder to continue or to terminate
4 the adder.

5 I -- I interpret that that FPL was trying to
6 give one additional layer of comfort to the
7 Commission, that if they were awarded an adder,
8 that they would continue to be as efficient as
9 possible. And even, as some would say, put their
10 money where their mouth is and say that we will
11 even put this subject to risk that we would not
12 continue the adder unless we continue to maintain
13 the lowest bill in the state.

14 So I don't think it was an effort to try to
15 limit your review. I think it was just a measure
16 to add additional comfort that this Commission --
17 that this company was committed to the idea of
18 continually providing service in an efficient
19 manner.

20 You have the discretion and the jurisdiction
21 to reopen whatever you want at any time. And if
22 you believe that the adder is not functioning as
23 you envisioned, even though FPL may continue to
24 have the lowest bill in the state, it is -- it's
25 within your discretion to take another look at

1 that. I would not recommend doing that on a whim,
2 which I don't think that you would. But if there
3 is justified reason to initiate a further review
4 for continuation of the adder, I think it's within
5 your discretion to do that.

6 COMMISSIONER BALBIS: Okay. And, Madame
7 Chairman, I do appreciate this opportunity to kind
8 of debate here because it's, again, a unique
9 opportunity with this witness having sat in these
10 seats. But I guess the point that I am struggling
11 with is that FPL used, as its justification, or as
12 an example of its performance, a lot of
13 benchmarking against other utilities -- or
14 benchmarking entities other than themselves. And
15 they did include some year-to-year information that
16 may have shown a different outcome.

17 But with the Gulf case, it was specific
18 reliability criteria for Gulf year-to-year. And
19 that was what this Commission decided in that
20 instance. And I am struggling with a justification
21 for an adder that's based on benchmarks to other
22 utilities and not continuing to assess the
23 performance of FPL to the criteria that we set in
24 order to set the adder. It's like we are almost
25 shifting gears. We are looking at, you know,

1 performance, and then suddenly we are switching to
2 lowest residential bill.

3 So I am not sure there is a question in there,
4 but maybe, you know, if you care to respond to
5 that, I would like to hear your input on that.

6 THE WITNESS: Well, with your permission, I
7 will respond. And that is, I would just reiterate
8 what I said before.

9 I don't think it's a shifting to where it's a
10 single focus on the residential bill. While that
11 is an important metric, I don't think it's a
12 shifting. That's just the threshold, or the
13 requirement has to be met to continue the function
14 of the adder.

15 I think that this record probably will be
16 replete for your consideration of a number of
17 factors, the benchmarking being one of those. And
18 while I agree with you, there probably was not a
19 lot of benchmarking information in the Gulf case.
20 I believe that there is adequate benchmarking in
21 this case.

22 I would say at that this record for FPL is
23 probably fuller than the record for Gulf because
24 Gulf did -- I believe Gulf was entitled to the
25 adder. I think the Commission made the right

1 decision. But I think this record provides
2 probably more information for the Commission to
3 make the determination than even was available in
4 the Gulf case.

5 COMMISSIONER BALBIS: Okay. Thank you.
6 That's all I have.

7 COMMISSIONER EDGAR: Thank you.
8 Anything else from the bench?

9 I have two what I think will be short
10 questions, Mr. Deason. And both have to do with
11 your testimony regarding plant held for future use.

12 In response to a question that you had from
13 Mr. Moyle shortly after we returned from the lunch
14 break, you -- and he was asking you about your
15 testimony, I believe you said made the statement in
16 response to him, which is, "my testimony is
17 regarding the overall policy and standard the
18 Commission should apply to decisions regarding
19 plant held for future use."

20 So my question to you is, what is the standard
21 that you believe the Commission should apply for
22 decisions on plant held for future use?

23 THE WITNESS: Yes. Commissioner, I believe
24 the standard is one of reasonableness. And I know
25 that's probably the standard that applies to just

1 about everything that comes before you, but that is
2 the appropriate standard.

3 The purpose of my testimony was to rebut
4 positions of Ms. Ramas, and I found fault with her
5 analysis because she did not make a
6 determination -- in my opinion, she did not make a
7 determination of reasonableness based upon a review
8 of the specific properties.

9 As a surrogate for that, she wanted to impose
10 time limitations, or a finding of, there has not
11 been a specified use for the property. And I
12 wanted to put that in context with -- that I think
13 that's the inappropriate standard and that there
14 are a number of dynamics in play that would call
15 for a longer planning period, as opposed to a
16 shorter planning period, in Florida specifically.

17 And so -- but I -- it is correct, I -- it is
18 not my position to say that any specific property
19 should be included in rate base and whether that
20 property meets the standard. It is to lay out what
21 I consider for the Commission's consideration what
22 should be the appropriate standard.

23 COMMISSIONER EDGAR: Thank you. And then my
24 last question is -- and you have just touched on
25 this in your reply. But on page 13, lines 10 and

1 11, you say, and I will quote, in essence, "Ms.
2 Ramas' recommended disallowances would not be in
3 the customer's best interest."

4 Can you discuss briefly why those recommended
5 disallowances would not be in the customer's best
6 interest, recognizing that any disallowance would
7 be a reduction in the requested revenue
8 requirement?

9 THE WITNESS: Because if these properties meet
10 the standard, and they are needed, it means that it
11 is the most cost-effective and reasonable way to
12 continue to provide service to customers in the
13 long-term. And that if there are properties that
14 meet those requirements and they are not allowed in
15 rate base, there is the possibility that those
16 properties would be disposed of and would no longer
17 be available for customers in the future.

18 COMMISSIONER EDGAR: Okay. Thank you.

19 Anything else?

20 Mr. Butler, redirect?

21 MR. BUTLER: Thank you, Madame Chairman. I
22 will try to be brief.

23 REDIRECT EXAMINATION

24 BY MR. BUTLER:

25 **Q Mr. Deason, you were asked some questions**

1 about DOL insurance. I want to pose this hypothetical
2 to you.

3 If the Commission were to disallow all or a
4 portion of DOL insurance costs, but the utility felt
5 that it needed to continue providing DOL coverage in
6 order to attract and retain the right sort of directors
7 and officers, would the utility be able to recover its
8 full cost of service in that circumstance?

9 A No, with the caveat that it's been determined
10 that the costs are reasonable and necessary and are a
11 cost of providing service, by definition, the company
12 would not be recovering its full cost of service.

13 Q Okay. A somewhat related topic -- may I ask
14 you a hypothetical? If a utility made an investment --
15 a prudent investment in a power plant that would deliver
16 substantial fuel savings to customers, if that power
17 plant is placed into plant and service and allowed as
18 part of rate base, would shareholders be provided a
19 return on that plant?

20 A Yes.

21 MR. WISEMAN: Madame Chairman, I am going to
22 object. I let the first question go, but these
23 are, once again, leading questions on redirect,
24 which is in -- it's simply not the way that
25 redirect is supposed to be conducted. And I would

1 object on that basis.

2 COMMISSIONER EDGAR: Mr. Butler, can you
3 rephrase?

4 MR. MOYLE: And I also join the objection and
5 indicate that I don't think that Mr. Deason talked
6 about, in his testimony, the -- you know, the
7 monies that shareholders would earn on a gas-fired
8 power plant. I mean, he specifically talks about
9 plant in future use as it relates to these two
10 sites. And Mr. Butler is asking him about, you
11 know, a power plant, you know, a gas-fired power
12 plant, so I think it's beyond the cross.

13 COMMISSIONER EDGAR: Mr. Butler, can you
14 rephrase the question keeping it in the context of
15 the testimony that Mr. Deason has given in response
16 to the questions on DOL?

17 MR. BUTLER: I will. Let me explain why I am
18 raising the topic of a power plant, and if you --

19 COMMISSIONER EDGAR: Can you keep the question
20 within the confines of the testimony that Mr.
21 Deason gave in response to the questions posed to
22 him on DOL?

23 MR. BUTLER: I will.

24 COMMISSIONER EDGAR: Thank you.

25 MR. BUTLER: In fact, with that, I will move

1 off that subject.

2 BY MR. BUTLER:

3 Q Mr. Deason, you were asked about, on the 1993
4 TECO decision, and in particular, the discussion -- the
5 pagination we have, I think it's page 97 -- regarding a
6 reward or a penalty for corporate performance. Do you
7 recall that?

8 A Yes.

9 Q And do you recall that it -- well, tell me
10 what the standard -- or the discussion of regulatory
11 policy enunciated there with respect to when rewards or
12 penalties would be appropriate?

13 A Well, it is clear that the term "fairly
14 extreme" was used. And I will reread this sentence.
15 However, we are reluctant, unless the conditions seem to
16 be fairly extreme one way or the other, to grant a
17 reward or impose a penalty.

18 MR. MOYLE: I'm going to object to this,
19 Madame Chairman. I mean, the document speaks for
20 itself.

21 COMMISSIONER EDGAR: Object to the question or
22 to the answer?

23 MR. MOYLE: Belatedly to the question. You
24 know, the document speaks for itself. It is
25 something that could be referred to. But to go

1 back -- it's kind of like legislative intent, where
2 you are going back and asking, maybe a legislator
3 who served, and say, what was the legislative
4 intent, you know, 10 years ago when you did this.

5 You know, the best evidence of the decision is
6 the record in the case and the order. And, you
7 know, for him now to be given a chance to say,
8 well, even though I use those words extreme now,
9 let me sort of revise and tell you this. I think
10 it's improper, and we object.

11 COMMISSIONER EDGAR: Thank you, Mr. Moyle. I
12 agree with you to the extent that the order itself
13 is the best representation of the order. However,
14 I do believe that questions that were posed on
15 cross opened the door, and I will allow Mr. Butler
16 to reask the question.

17 MR. BUTLER: Thank you, Madame Chair.

18 BY MR. BUTLER:

19 Q Mr. Deason -- honestly, I was not looking to
20 have Mr. Deason comment on the intent on the order
21 930165. Just simply pointing to it as a reference and
22 ask you, Mr. Deason, now, to turn to page 52 and 53 of
23 your rebuttal testimony. And you quote in here from a
24 2001 Gulf Power rate case; is that correct?

25 A Yes.

1 Q Okay. Would you please direct your attention
2 to the description on page 53, lines 4 through 6, the
3 standard that is applied to the determination of whether
4 Gulf would be entitled to a reward -- or an ROE reward?
5 Do you see that?

6 A Yes.

7 Q Okay.

8 A In the Gulf case, the determination was made
9 that there had been superior performance, and that the
10 Commission expected that level of performance to
11 continue, and that was the basis for the granting of an
12 ROE adder.

13 Q And that decision was made more recently than
14 the 1993 TECO decision; is that correct?

15 A Yes.

16 Q Okay. Which of those standards do you
17 consider the most appropriate for this Commission to
18 apply in evaluating FPL's request for the ROE adder?

19 A Well, I believe it is superior performance.
20 But in the context of the TECO case, I am not sure that
21 the term "fairly extreme" means anything more than that
22 there needs to be some consideration as to something
23 beyond or below reasonable, necessary and things of that
24 nature. So superior, to me, means that it is out of the
25 norm, and that is the standard that should be applied.

1 Q Mr. Moyle asked you a few questions about
2 symmetry. I think he got you to agree that symmetry is,
3 all things considered, an appropriate goal of regulatory
4 policy. Do you agree?

5 A Yes.

6 Q Okay. What has this Commission done in
7 instances where utilities have been performing unusually
8 poorly concerning the adjustment of ROE?

9 A There have been downward adjustments in ROE,
10 sometimes in magnitudes greater than the 25 basis points
11 being requested in this case as an adder.

12 Q And what has this Commission done in
13 circumstances where utilities have been performing
14 exceptionally well?

15 A There have been cases of ROE adders put in
16 place. Some have been as low as 10 basis points, and
17 some have been as high as 25 basis points.

18 Q Would you comment on your view of whether or
19 not that represents symmetrical regulatory policy?

20 A Mr. Butler, on its face, it could be argued
21 that it is asymmetric. But I think still it all depends
22 on the facts of each case. And if there were situations
23 where companies were performing at a level that were so
24 low that there needed to be adjustments more than 10
25 basis points, or 25 basis points, that's within the

1 Commission's discretion to utilize that.

2 So it's hard to conclude it's asymmetric, but
3 I believe, as a policy, the Commission should try to be
4 symmetric in the application of this regulatory tool.

5 **Q Finally, Mr. Moyle asked you some questions**
6 **regarding -- excuse me -- FPL's construction of**
7 **gas-fired power plants, and the sort of the relation of**
8 **that to on gas prices. Do you recall those questions?**

9 A Yes.

10 **Q If gas prices were to increase substantially,**
11 **would that make FPL's highly efficient gas plants more**
12 **or less valuable for customers?**

13 A I think that would make them even more
14 valuable for customers because of the efficiencies that
15 they provide.

16 **Q If FPL's ROE adder proposal were accepted by**
17 **this Commission with the trigger of continuing to have**
18 **to maintain the lowest over all typical residential**
19 **bill, and gas prices increase substantially, would FPL**
20 **still be held under its proposal to the trigger of**
21 **having to maintain that lowest overall residential bill?**

22 A Yes. It's my understanding of the proposal
23 that it is the total residential bill, just not base
24 rates.

25 MR. BUTLER: Thank you, Mr. Deason.

1 And thank you, Madame Chair. That's all the
2 redirect that I have.

3 COMMISSIONER EDGAR: Do you have exhibits?

4 MR. BUTLER: I have exhibit 409 to move.

5 COMMISSIONER EDGAR: 409 will be entered into
6 the record.

7 (Whereupon, Exhibit No 409 was received into
8 evidence.)

9 COMMISSIONER EDGAR: Mr. Saporito?

10 MR. SAPARITO: Yes, ma'am, Madame Chairman. I
11 move 598 into the record, please.

12 COMMISSIONER EDGAR: Any objections?

13 Hearing none, 598 will be entered into the
14 record.

15 (Whereupon, Exhibit No. 598 was received into
16 evidence.)

17 COMMISSIONER EDGAR: Mr. Butler, shall we
18 excuse your witness?

19 MR. BUTLER: That would be wonderful. May he
20 be excused?

21 COMMISSIONER EDGAR: Mr. Deason, thank you for
22 your testimony.

23 THE WITNESS: Thank you for the opportunity.

24 (Witness excused.)

25 COMMISSIONER EDGAR: Let me lean to my

1 colleagues. I think we need a break. Commissioner
2 Brisé, short or long? Un poquito?

3 MR. WISEMAN: Madame Chair, before we break --

4 COMMISSIONER EDGAR: Yes, sir.

5 MR. WISEMAN: -- can I raise a housekeeping
6 matter and also a scheduling matter? Maybe to do
7 them in reverse order on the scheduling.

8 I am wondering, since we only have a few
9 witnesses left, it would be helpful for us to know
10 what the Commission's plans are in terms of how
11 late we are going go today; how late we are going
12 to go tomorrow; maybe if we could get an idea of
13 how much cross people have to figure out whether we
14 are going to wrap up tomorrow as opposed to going
15 to Friday.

16 COMMISSIONER EDGAR: I understand. And I was
17 going to request that our chairman give us some
18 thoughts on that. And before I turn to him, let me
19 see, Mr. Rehwinkel, did you also have a comment?

20 MR. REHWINKEL: Yes, Madame Chairman, just
21 something for input into your decision-making. I
22 have been discussing with Mr. Guyton the logistical
23 issues that may come to bear with the next
24 scheduled witness, Mr. Silva. I have a fair amount
25 of cross-examination with him. And at this point,

1 I have provided Mr. Guyton with the exhibits that I
2 intend to use, and that I may use, and many of them
3 contain confidential information.

4 We want to make sure that we don't have any
5 missteps with confidential information. We really
6 haven't had any of that in this hearing at all, and
7 we need some time to confer about that. And I
8 just -- you know, if it impacts your break or how
9 you schedule witnesses, I just wanted to kind of
10 preliminarily raise that issue with you.

11 COMMISSIONER EDGAR: If I may, Mr. Chair,
12 before I turn you to ask another question, and I
13 was going to ask Mr. Butler.

14 With that in mind, Mr. Butler, would -- and I
15 will look to the Chair -- but for his
16 consideration, would it be possible to take
17 Mr. Silva out of order and move on to the next
18 witness or two to give time to confer? Is that an
19 option?

20 MR. BUTLER: I don't think that's going to
21 work well for us to do that. I think we might be
22 better served to try to see what we can work out to
23 get Mr. Silva on in order and just stick with the
24 order that we have.

25 COMMISSIONER EDGAR: All right. Thank you.

1 Then, Chairman Brisé, will you please take the
2 floor?

3 CHAIRMAN BRISÉ: Thank you. We stated on
4 yesterday and the day before that we intend to, as
5 much as possible, finish on Thursday. We were
6 planning, as we stated yesterday, to go to about
7 7:00 p.m. this evening. I think we stated that.
8 And our plan is probably going to stay on to go to
9 about 7:00 this evening.

10 Tomorrow, we will go and go until we are done,
11 okay? That is -- that is our intent tomorrow. So
12 we will -- since we are finishing tonight at 7:00,
13 we will begin tomorrow at 9:00 to maximize as much
14 time as possible, and then we will run to maybe
15 9:00 or 10:00, or wherever it takes us, to be done
16 with the process tomorrow.

17 Hopefully, that helps out. And if -- if the
18 parties need to talk during the break to figure out
19 if there is any swapping that needs to occur so
20 that we can sort of work towards that, you all can
21 do that and come back with a proposal after the
22 break.

23 MR. REHWINKEL: I think the only swapping,
24 from our standpoint, that wouldn't work, would be
25 to bring the potentially long cross witnesses of

1 Avera and -- of Avera and Dewhurst into today.

2 CHAIRMAN BRISÉ: Right. Okay. So you all can
3 have at that conversation, and we will add five
4 minutes to the break to make it a 15-minute break
5 so that we can work those things out. Thank you.

6 COMMISSIONER EDGAR: So we are back at 5:15,
7 and we are in recess.

8 (Brief recess.)

9 (The transcript continues in sequence to
10 Volume 27)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)
4 COUNTY OF LEON)5 I, DEBRA R. KRICK, Professional Court
6 Reporter, certify that the foregoing proceedings were
7 taken before me at the time and place therein
8 designated; that my shorthand notes were thereafter
9 translated under my supervision; and the foregoing
10 pages, numbered 4015 through 4080, are a true and
11 correct record of the aforesaid proceedings.
1213 I further certify that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.18 DATED this 2nd day of August, 2011.
1920 21 DEBRA R. KRICK
22 NOTARY PUBLIC
23 COMMISSION #EE212307
24 EXPIRES JULY 13, 2016