

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : Docket No. 890148-EI
:
Petition of the Florida : HEARING
Industrial Power Users Group :
to Discontinue Florida Power : FIRST DAY - MORNING SESSION
and Light Company's Oil Backout :
Cost Recovery Factor. : VOLUME - I
----- :

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FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0871

SEP 11 1989

Florida Public Service Commission

Tuesday, August 22, 1989

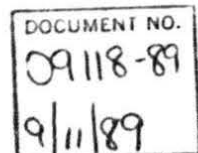
Met pursuant to notice at 9:30 a.m.

BEFORE: COMMISSIONER MICHAEL McK. WILSON, Chairman
COMMISSIONER GERALD L. GUNTER
COMMISSIONER JOHN T. HERNDON
COMMISSIONER THOMAS M. BEARD
COMMISSIONER BETTY EASLEY

APPEARANCES:

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JEFFRY POLLOCK

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P R O C E E D I N G S

(Hearing convened at 9:37 a.m.)

CHAIRMAN WILSON: We will call the hearing to order.

Read the notice.

MS. RULE: This time and place have been set for hearing in Docket No. 890148-EI, the Petition of Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor. The purpose of this hearing shall be to allow the Florida Industrial Power Users Group to present its testimony and exhibits in support of its petition to discontinue FPL's oil backout cost recovery factor; to permit any intervenors to present testimony and exhibits concerning this matter, and for such other purposes as the Commission may deem appropriate.

CHAIRMAN WILSON: Let's take appearances of counsel.

MR. CHILDS: My name is Matthew M. Childs, of the firm of Steel, Hector and Davis, Tallahassee, Florida, representing Florida Power and Light Company.

MR. GUYTON: My name is Charles Guyton with the same law firm, representing Florida Power and Light Company.

MR. HOWE: I am Roger Howe, the Office of Public Counsel, the mailing address is c/o the Florida Legislature, 111 West Madison Street, Room 801, Tallahassee, Florida 32399-1400, appearing on behalf of the Intervenor, the Citizens of the State.

1 MR. McGLOTHLIN: I am Joe McGlothlin, Lawson,
2 McWhirter, Grandoff and Reeves, 522 East Park Avenue,
3 Tallahassee, for the Florida Industrial Power Users Group.

4 MR. MCWHIRTER: I am John W. McWhirter, Jr., appearing
5 with Mr. McGlothlin on behalf of the same group.

6 MS. RULE: Marsha Rule, appearing for the Staff of the
7 Public Service Commission, 101 East Gaines Street, Tallahassee,
8 Florida.

9 MR. PRUITT: I am Prentice Pruitt, same address,
10 Counsel to the Commissioners.

11 CHAIRMAN WILSON: Commissioner Herndon tells me he has
12 been advised that Mr. Paul McKee, who is a witness in the 01
13 docket, has a commitment and needs to testify today. So what I
14 think we are going to do is probably take him at 1:00, or
15 immediately after the lunch break if 1:00 is not when we come
16 back. Does anybody have any objection to that; Public Counsel,
17 anybody?

18 MR. HOWE: This is the witness who will be testifying
19 on Crystal River?

20 CHAIRMAN WILSON: Yes.

21 MR. HOWE: Do I understand correctly, his testimony is
22 just to put -- to describe the parameters from the Company's
23 perspective, and that our opportunity for detailed cross
24 examination, and so forth, will come when we take it up at a
25 later date?

1 CHAIRMAN WILSON: That's my understanding.

2 MR. HOWE: I have no objection.

3 COMMISSIONER HERNDON: He is going to be out of the
4 country beginning tomorrow and he will not be available.

5 CHAIRMAN WILSON: Any preliminary matters that need to
6 be taken up?

7 MS. RULE: There are two motions that have been filed
8 recently. Florida Power and Light has filed a Motion to Take
9 Official Recognition, and FIPUG has also filed a similar motion.
10 Those should probably be taken up at this time. (Pause)

11 COMMISSIONER HERNDON: Mr. Chairman, can I just ask Ms.
12 Rule? I apologize, I have misplaced in my memory banks the
13 comment that you made with respect to this revised prehearing
14 order that you gave me.

15 MS. RULE: On Issue Number 19, Staff has reworded its
16 position slightly. The position has not changed.

17 COMMISSIONER HERNDON: That's fine, thank you.

18 CHAIRMAN WILSON: All right. Let's take up the Florida
19 Power and Light's Motion to Take Official Recognition. First of
20 all, are there any objections to the motion?

21 MR. MCGLOTHLIN: We don't object.

22 CHAIRMAN WILSON: Public Counsel, do you object?

23 MR. HOWE: No objection.

24 CHAIRMAN WILSON: All right.

25 MR. GUYTON: I would just simply point out the

1 documents that we have asked you to take official notice of are
2 enclosed in a black notebook that we filed, and I think it would
3 be helpful if you had access to during the hearing today. We are
4 prepared to refer to this black notebook.

5 CHAIRMAN WILSON: Now, these are constituted of prior
6 orders of this Commission, Florida Supreme Court decisions --

7 MR. GUYTON: Commission rules.

8 CHAIRMAN WILSON: Some rules.

9 MR. GUYTON: Commission forms.

10 CHAIRMAN WILSON: Commission forms.

11 MR. GUYTON: And then the last five tabs contain
12 transcript excerpts from five different prior oil backout
13 proceedings that this Commission has heard. And we had asked
14 that these be recognized in lieu of asking you to take notice and
15 review what is literally a box and a half of transcripts.

16 I would point out to you that Counsel for FIPUG has
17 suggested that we have been a bit selective in our selection of
18 transcripts; we have, that was intentional, and not to keep
19 something from you, but trying to point out what we thought was
20 salient and trying to avoid a review of the entire boxes. We
21 have no objection if FIPUG wants to go ahead and request notice
22 of those entire records, but this is what we intend to use and
23 bring to your attention.

24 CHAIRMAN WILSON: All right. We are going to grant the
25 motion to grant official recognition of those documents.

1 Now, FIPUG has a request. Are there objections to
2 FIPUG's request for official recognition?

3 MR. McGLOTHLIN: May I speak to his point for just a
4 second?

5 CHAIRMAN WILSON: Yes, to that point.

6 MR. McGLOTHLIN: While we do not object to the notice
7 of the items that were incorporated in the notebook, we do
8 suggest that it would be appropriate, because in some instances
9 context is important, for you simply to take notice of the entire
10 proceedings. That way each party could argue in its brief those
11 portions that it thought pertinent to the issues before the
12 Commission. I would make that request of you at this time.

13 CHAIRMAN WILSON: What you are asking for is permission
14 to go back and argue the context within which the documents that
15 Florida Power and Light has asked for official recognition?

16 MR. McGLOTHLIN: Yes. In addition, there may be some
17 things in there that either argue against Florida Power and
18 Light's point or for FIPUG's. And my point is simply that in a
19 record of this size there is probably something there for each
20 side.

21 CHAIRMAN WILSON: I'm sure there is. But what I am
22 trying to find out is exactly what you are asking for is
23 permission to use those things that you find there when you file
24 your brief?

25 MR. McGLOTHLIN: Yes.

1 CHAIRMAN WILSON: And put the documents that Florida
2 Power and Light has asked for official recognition of, to place
3 those in context in making your argument, or are you asking to be
4 able to go back and find anything that you want in that
5 transcript to use?

6 MR. MCGLOTHLIN: It is the latter; it's both. In other
7 words, Florida Power and Light says that the past oil backout
8 proceedings are irrelevant to the issues before the Commission.
9 If that's the case then I would like to have the ability to be
10 able to argue what is relevant and what is not. I think if you
11 will have a chance to look at the notebook you will see that in
12 some instances it's difficult to determine from the excerpts
13 provided by FP&L exactly what the context of the statements was.
14 Others, I could not even be certain who was speaking without
15 reference to further pages.

16 In addition, there are some passages in those
17 transcripts that may argue against the very points they try to
18 support. So if they want the Commission to take official notice
19 of past oil backout proceedings, I think the first thing to do is
20 take official notice of the entire record and leave it to the
21 parties to brief it.

22 COMMISSIONER GUNTER: Mr. Chairman, I have some
23 difficulty -- you have already ruled, but there are pieces of
24 Florida Power and Light's motion which I have difficulty with,
25 and it's sort of compounded with FIPUG. I have zero problem

1 taking recognition of the Commission's orders, rules, laws,
2 whatever, but I really begin to have problems, because of the way
3 records are developed, of going back and finding ourselves not
4 only burdened of trying to go -- once you get the briefs and then
5 find yourself having to go through and read those records and
6 read those transcripts, either on the part of Power and Light,
7 because certainly there are pieces here.

8 I have read some of this information, some of it I
9 remember and some of it I don't remember, and in order to do
10 that, to take official recognition of the records, I would
11 respectfully request that we don't do that because we are loading
12 that wagon up big time in trying to read all of those previous
13 transcripts.

14 CHAIRMAN WILSON: Mr. McGlothlin, when you said you had
15 no objection that really wasn't accurate, was it; that is, you do
16 have an objection?

17 MR. MCGLOTHLIN: And I delineated that in my response,
18 Commissioner.

19 CHAIRMAN WILSON: Not when I first asked you if you had
20 an objection. You said you had no objection and, in fact, you do
21 have an objection?

22 MR. MCGLOTHLIN: That's correct. Well, I don't object,
23 if you want to limit the official recognition to that put forward
24 by FP&L, I have no objection to that. I would suggest, and I do
25 request, that if you extend it to include the entire record, if

1 you limit your ruling, it would be without an objection from
2 FIPUG. I do have pending a counterpart request that I think you
3 should consider in light of your ruling on FP&L's. We have our
4 own request for official notice pending.

5 COMMISSIONER EASLEY: Mr. Chairman, could I ask a
6 newcomer's question?

7 CHAIRMAN WILSON: Yes.

8 COMMISSIONER EASLEY: If the records, or the
9 transcripts, are as selective or incomplete as to who said what
10 out of context, or whatever, do you not have the opportunity to
11 draw that to our attention or clarify that without having to ask
12 us to take official notice of the entire boxes? Is that not
13 available to you?

14 MR. MCGLOTHLIN: Commissioner, I believe it is not, if
15 the ruling is limited to recognition of only those portions put
16 forward by FP&L in its request. Because those records are not
17 automatically part of this proceeding.

18 COMMISSIONER EASLEY: I understand.

19 MR. MCGLOTHLIN: And if there is a limited request and
20 the ruling is made accordingly, then I don't think I would have
21 that full ability.

22 CHAIRMAN WILSON: Mr. Pruitt, maybe you can help me out
23 here. I am trying to recall the context within which one can
24 take official recognition of documents, and it seems to me that
25 at some point I read a case, or perhaps part of the Evidence

1 Code, that indicates that final orders of a Commission or the
2 products of hearings may be officially recognized, but the
3 evidence underlying that decision cannot be officially
4 recognized. Does that sound familiar to you?

5 MR. PRUITT: Yes, sir, that's true, Commissioner. And
6 the reason for that is that the Supreme Court has told you that
7 official notice, or judicial notice in the court, will be
8 exercised with great caution, that which is judicially noticed,
9 or officially noticed, in the common general knowledge,
10 authoritatively established, and free from doubt or uncertainty.
11 What I have told you, Commissioner, in previous hearings is that
12 you may notice your official acts but you cannot officially
13 notice the facts that those acts were based on.

14 CHAIRMAN WILSON: Now, are you proffering the excerpts
15 from those prior hearings as substantiating factual matters, or
16 for what purpose?

17 MR. GUYTON: Largely, to show that the issues that are
18 being raised in this case have previously been raised by FIPUG,
19 or other parties, and have been resolved.

20 CHAIRMAN WILSON: And that is the purpose of raising,
21 or of proffering those excerpts from the transcripts of prior
22 hearings?

23 MR. GUYTON: Either that, or to show contemporaneous
24 Commission intent or Staff comments about how the rule should be
25 applied and interpreted for those two aspects as reasons that we

1 have offered the transcript references.

2 I would submit that there have been some changes since
3 the case law that you looked at, Commissioner Wilson, under that
4 case that was decided to that effect was based on a specific
5 Commission rule but limited official notice. That has since
6 been repealed, and now your Commission's rules say that you can
7 take -- that you can consider as evidence anything that a
8 reasonable person would consider as appropriate. It is
9 consistent with the APA.

10 There is case law that we have cited, as well as
11 authority from the Evidence Code and the Administrative
12 Procedures Act in our contemporaneous legal memorandum supporting
13 our motion, showing that you can go beyond mere prior orders and
14 rules and look at the underlying record evidence. And we would
15 ask that you do that in this case for the two limited purposes
16 that we have suggested here: One is to show that these issues
17 have been raised before and have been resolved, resolved
18 adversely to FIPUG; and also to show in some instances that there
19 are statements by Commissioners, Staff persons, as to the
20 appropriate interpretation of application of rules. We think
21 it's just helpful guidance in terms of applying the rule now for
22 you to understand the historical context of this development.

23 COMMISSIONER BEARD: Mr. Chairman, my concern with that
24 is, as we are all wont to know, that even Commissioners can be
25 taken out of context, and even taken in context are only one of

1 five votes. That's the reason we issue orders, to clarify
2 finally what was accomplished and done. I get a little
3 concerned, I guess, about contextually what can be done with a
4 transcript as opposed to an order.

5 CHAIRMAN WILSON: Well, the reason I asked what the
6 purpose was for which it was being proffered, if it is to
7 indicate that the issue came up and was discussed and is not
8 offered to support any factual grounds or policy with respect to
9 it, that makes it two different questions. If it is not offered
10 as evidence of the facts contained therein, but at that point is
11 offered as evidence of the fact that those issues did come up and
12 were discussed at the proceeding.

13 COMMISSIONER BEARD: Well, you know, I understand that,
14 and to the extent that they came up and were discussed then my
15 next question would be, "So what?" If we did not take action on
16 them, or there is not something in the order to clarify what the
17 intent -- you know, the underlying discussion is all beautiful
18 and it might give me some insight into some questions that I
19 might want to ask, you know, or reask since I was not a party to
20 those, okay, but the point is that in the order is where it is
21 clarified, the end results of those discussions, and what the
22 Commission ruling was on which it would be based. We have many
23 discussions, sometimes relevant and sometimes not. I'm just
24 getting a little concerned; I don't know.

25 MR. GUYTON: Mr. Chairman, perhaps it would help: We

1 have no problem if FIPUG feels that something is taken out of
2 context, or needs to be supplemented contextually so that there
3 is a fair representation, so that you know who said what and the
4 context in which it was said, we don't have any problem with
5 supplementing the record in that regard if they want to do that.
6 We tried to file something limited simply for ease of decision
7 making here so that you would not have to wade through
8 transcripts that literally comprise about a transfer box and a
9 half of transcript volumes.

10 There is a lengthy history to this rule, its
11 application and interpretation by the Commission, much of which
12 is embraced in these earlier orders, Commissioner Beard, but a
13 lot of which is observations, both by witnesses back in the
14 context of raising issues, and by Commissioners when they were in
15 the throes of initially applying it. We have tried to point that
16 out; we think it's helpful in terms of resolving this issue but,
17 of course, we will yield to the Commission's ruling on this.

18 CHAIRMAN WILSON: Commissioners, I would officially
19 recognize that and allow FIPUG the opportunity to argue in its
20 brief, or to place those items in context, but to reopen that
21 entire record as something noticed by this Commission is
22 burdensome and we are not going to do that. That is my feeling.

23 Now, FIPUG had the opportunity as well to go back
24 through those transcripts and select portions of them to support
25 your case, if that was your desire, and now you have the

1 opportunity to respond and to place those in context.

2 COMMISSIONER GUNTER: I am not real sure I understand
3 that, Mr. Chairman. Sometimes I have a problem grasping where we
4 are at.

5 If, in fact, the transcripts of the proceedings which
6 led to the adoption of the rule and other testimony, because
7 there is testimony of Mr. Cook and other folks -- in fact, there
8 are some conversations with Mr. McGlothlin asking, you know, "Did
9 you provide a witness on specific issues," and one thing or
10 another. FIPUG comes in and, you know, they pick their piece,
11 but their piece is not before us; you know, it's not limited to
12 that piece.

13 Then in order to make sure I understand and do
14 Mr. McGlothlin -- and it looks as though this time it's rather
15 an odd marriage because some of the issues that are before us
16 today have been argued 180 degrees by Public Counsel and it will
17 be interesting how we get there today -- but in order to do them
18 justice it's almost that I have to go back and read, if we have
19 got a situation that I won't know what the position is until it's
20 argued in the briefs, not argued here before us, but it's argued
21 in the briefs and we open those, then in order to make sure what
22 I think folks are kind of veiled alleging one another, "If you
23 pick the piece that applies to you and I'll go pick the piece
24 that applies to me," and then it says that I've got to go read
25 that. When heretofore I have read the orders, and the orders say

1 what the orders say within the four corners of the page, and
2 that's troubling to me if that's what we are leaving open.

3 CHAIRMAN WILSON: Well, let me tell you what my
4 understanding is of what we are leaving open.

5 COMMISSIONER GUNTER: Fine.

6 CHAIRMAN WILSON: Florida Power and Light has come
7 forward and said, "These portions of the transcripts stand for
8 whatever proposition." FIPUG can now come forward and say,
9 "Well, if you looked at the page before that you will find that
10 that is not what that statement says." But it does not allow
11 FIPUG to say "Well, yes, that's what it says, but 250 pages
12 further over here in the transcript there's a whole new
13 discussion of the issue and now we want you to look at that kind
14 of stuff." That is not what we are allowing. It's only to
15 counter the proposition that those items asked by Florida Power
16 and Light to be officially recognized, in fact, do or do not
17 stand for what they are put forward for.

18 COMMISSIONER GUNTER: Then we are following the
19 procedure where when you use excerpts out of a deposition somebody
20 says, "Well, I want to move Pages 4, 5 and 6." Then the other
21 folks raise their hand and say, "Wait a minute, I want to include
22 Pages 2 and 7 and 8 in order that the whole thing is covered,"
23 and I agree with you, that's no problem, because that means the
24 only thing I have got to do is to try and go back and review that
25 piece. But I understood Mr. McGlothlin's request, as the basis

1 of his motion, was that he be allowed to go look anywhere in that
2 record, if it would fill up this room or this table, anywhere in
3 that record to bolster his position at least in the briefs. Am I
4 incorrect about that?

5 CHAIRMAN WILSON: That's what he asked for but that's
6 not what is being granted.

7 COMMISSIONER GUNTER: That's what you asked for but --
8 okay. I'm just listening and trying to understand.

9 CHAIRMAN WILSON: Now, FIPUG also has a request for
10 official recognition.

11 COMMISSIONER GUNTER: I guess I am jumping ahead.

12 CHAIRMAN WILSON: Any objections to FIPUG's request?

13 MR. GUYTON: Mr. Chairman, we have no objection.

14 CHAIRMAN WILSON: Public Counsel?

15 MR. HOWE: No objection.

16 CHAIRMAN WILSON: All right. We will so recognize
17 that. Are there any other preliminary matters?

18 MS. RULE: Not at this time.

19 COMMISSIONER HERNDON: Mr. Chairman, let me ask you a
20 procedural question before we get into the testimony itself.

21 Coincidentally, on Friday, as I recall, I received a
22 copy of Florida Power and Light's 10-year site plan -- well,
23 actually, "generation site plan" I guess is the proper title --
24 which, while it has no, at least not that I am aware of, official
25 status in this particular proceeding, it is not an exhibit and is

1 not anybody's presentation, it's certainly the topic of much
2 discussion and it's referred to in a number of the documents.
3 And since it is a public document that is published by Florida
4 Power and Light, it has been submitted to the Department of
5 Community Affairs and a courtesy copy was sent to us, I wanted to
6 know what its status was because I was going to ask a couple of
7 questions about it today. I would rather get it out of the way
8 now than wait and get an objection someplace down the road after
9 I have asked the questions. So can you help me understand where
10 I am at with respect to something like that?

11 CHAIRMAN WILSON: Yes. If you want to ask a Florida
12 Power and Light witness about the 18-year site plan, you may feel
13 free to do so.

14 COMMISSIONER HERNDON: All right.

15 MR. GUYTON: We will have no objections, Commissioner.

16 COMMISSIONER HERNDON: Right. I just wanted to know so
17 I didn't waste everybody's time.

18 CHAIRMAN WILSON: Are we ready to begin or do we have
19 any other preliminary matters?

20 MS. RULE: No other preliminary matters that I am aware
21 of.

22 CHAIRMAN WILSON: All right, if all of the witnesses
23 who are going to testify today are in the room I am going to
24 swear you all at once. If you will stand and raise your right
25 hand.

1 (Witnesses sworn collectively.)

2 CHAIRMAN WILSON: Thank you. Please be seated. Call
3 your first witness.

4 MR. GUYTON: Commissioners, we had asked if we might
5 make an opening statement, particularly to review the oil backout
6 rule. We think it would be helpful to put the rule in context.

7 CHAIRMAN WILSON: All right. Before the first witness
8 takes the stand -- does FIPUG likewise have an opening statement?

9 MR. MCGLOTHLIN: Yes, sir.

10 CHAIRMAN WILSON: All right. Let's go ahead with those
11 then.

12 MR. MCGLOTHLIN: Mr. McWhirter will make the opening
13 statement.

14 MR. MCWHIRTER: Do you want us to proceed first, Mr.
15 Chairman?

16 CHAIRMAN WILSON: Yes, please do.

17 MR. MCWHIRTER: Procedurally, we requested Florida
18 Power and Light to produce Mr. Babka as an adverse witness in
19 this cause.

20 MR. GUYTON: Mr. Babka is here, or can be here. John,
21 can you tell us when you would like him?

22 MR. MCWHIRTER: We would like to call him after Mr.
23 Pollock testifies.

24 MR. GUYTON: Do you intend to put Mr. Pollock on for
25 both his direct and his rebuttal at the same time or are you

1 going to split him?

2 CHAIRMAN WILSON: No, sir.

3 MR. GUYTON: You are going to split him?

4 MR. McWHIRTER: I am going to split him.

5 CHAIRMAN WILSON: We are going to do this like a real
6 court case.

7 MR. McWHIRTER: Yes, sir. Did you want to go at one
8 time? We really hadn't discussed that.

9 MR. GUYTON: Do you want him at the end of direct or at
10 the end of rebuttal? That's really my only question.

11 MR. McWHIRTER: We would want him after the direct. We
12 may combine them.

13 CHAIRMAN WILSON: Mr. McWhirter?

14 MR. McWHIRTER: Sir?

15 CHAIRMAN WILSON: What's your pleasure?

16 MR. McWHIRTER: What's the plan?

17 CHAIRMAN WILSON: What's your pleasure on presenting
18 your witness?

19 MR. McWHIRTER: Just one time. We will not call him as
20 rebuttal to Waters.

21 CHAIRMAN WILSON: All right, proceed.

22 MR. McWHIRTER: Ms. Easley and gentlemen, the clients I
23 represent are industrial manufacturing firms and a convenience
24 store chain, which operate in Florida Power and Light's service
25 area. It's a good service area, has a salubrious climate, has an

1 eager work force anxious to acquire higher-paying manufacturing
2 jobs, and it's an area rich in some natural resources, such as
3 limestone, which cement companies can operate. I have
4 represented these industrial customers for about 16 years, and
5 that is a relatively short period of time in the history of
6 mankind, but it has been probably one of the most traumatic
7 periods, both for manufacturing in Florida and for utility
8 companies, to our recollection. This case is about this
9 traumatic period.

10 I had a haunting specter of this traumatic era last
11 week. I took my boys on a trip down to the Florida Keys, which
12 is in the south of the Florida Power and Light's service
13 territory, and we rode down the Tamiami Trail to the Great
14 Cypress Swamp in the northern tip of the Everglades, and then we
15 turned right down Highway 997, also known as Chrome Avenue. And
16 there on the right was a gigantic structure.

17 It brought into vivid relief our concerns in this case.
18 This gigantic structure, as we approached it, we saw that the
19 paint was peeling off of these six large silos. They were
20 overgrown with grass and the sign out front, which once proudly
21 proclaimed that this was General Portland Cement Company, the
22 letters were falling off and the plant was dead.

23 COMMISSIONER GUNTER: You can see one of those in
24 Tampa, too, can't you?

25 MR. McWHIRTER: That's right.

1 COMMISSIONER GUNTER: Okay.

2 MR. McWHIRTER: That's right. Now they are called
3 Le'Farge (phonetic) Cement. I don't know if that's Madam
4 Le'Farge or somebody else.

5 CHAIRMAN WILSON: Did they have knitting needles on the
6 silos?

7 MR. McWHIRTER: I reflected upon seeing that specter,
8 and I remember that during my 16 years of practice before this
9 Commission I also represented Lehigh Cement, which isn't here
10 anymore; Lone Star of Florida, which isn't here anymore; Maule
11 Industries, which is bankrupt. The survivors in the cement
12 industry are people who import cement from foreign countries
13 where they can compete with us better. There are two other
14 survivors, there are survivors in the Florida Power Corporation
15 service area, where there is another limestone deposit. But one
16 of those survivors sells electricity to Florida Power and Light.
17 The cement industry isn't the only one that is affected
18 by what is going on in the economy in these points in time.
19 Florida Steel, whom I represent, closed down its Indiantown plant
20 in Florida Power and Light's service area. Eastern Air Lines for
21 many reasons, some of which are related to electric power, is in
22 the bankruptcy court. Tropicana, which is one of Florida Power
23 and Light's largest customers, is now going to fully supply its
24 needs through cogeneration. Other industrial customers are doing
25 the same. Union Carbide, one of the clients, is fighting for its

1 life in court today because its rivals in competition several
2 miles -- a few miles away from them -- can buy electricity at a
3 35% cheaper rate than is offered by Florida Power and Light
4 Company.

5 It has been a traumatic era, this 16-year period in
6 Florida, but it hasn't been traumatic for manufacturing alone.
7 It has also been traumatic for Florida Power and Light. Florida
8 Power and Light has reacted, as it appropriately should under the
9 circumstances, and this Commission has acted appropriately.
10 During the early part of the period, in 1971, Florida Power and
11 Light saw the need for rate relief when it completed some new
12 facilities, and it came in and asked this Commission for \$79
13 million in rate relief. And after extensive hearings the
14 Commission granted 14 million. In 1974 they asked for 143 and
15 the Commission granted 77 million. In '76 they asked for 349
16 million and the Commission granted 195.

17 Now, I remember vividly in this very room ten years ago
18 Mr. John J. Hudiberg, the Chief Executive Officer and Chairman of
19 Florida Power and Light, came before this Commission and he said,
20 "Commissioners, our Company has a cash flow problem of major
21 magnitude. It's as though blood were flowing from an artery
22 because of the OPEC oil crisis and the fuel problems that we are
23 experiencing."

24 The Commission reacted to that great concern that Mr.
25 Hudiberg had, and the reaction was to give a projected fuel

1 adjustment proceeding in which the utilities could collect their
2 fuel costs up front, in anticipation of what the changes were
3 going to be.

4 Shortly after that, in 1982, Florida Power and Light
5 came in and asked for \$281 million in rate relief and the
6 Commission gave them 100 million. In 1982, later in the year,
7 they asked for \$256 million in connection with the St. Lucie
8 plant, and the Commission gave them 237 million. In 1983, the
9 very next year, they were back and they asked for 335 million and
10 the Commission granted 81 for 1984 and then an additional 120
11 million for 1985.

12 Another thing happened in the 1982-83 era, and that is
13 the oil backout proceeding. Florida Power and Light has not been
14 back for rate relief since the oil backout case in 1982. The
15 reason why it hasn't is that instead of now having rate cases
16 when you add new increments of capacity as we have in the past,
17 that is all flowed through in the fuel cost. Florida Power and
18 Light now collects some, I think, \$600 million -- or \$300 million
19 a year in capacity charges that it pays to Southern Company.

20 In 1982 in the oil backout proceeding the Commission
21 also said, "One of the great things about this oil backout
22 project is the fact that by buying power in Georgia during the
23 cold level, we can delay constructing the Martin 3 and 4 Plants,
24 and an unsited electric plant, and the customers are going to
25 save a lot of money as a result of that because we would invest

1 something in excess of \$2 thousand a kilowatt for that new
2 construction."

3 In 1982 they said, "We would like to start collecting
4 on these savings that we are giving to the customers now," and
5 the Commission said, "No, we will look at that later. But we
6 will allow you, through an oil backout recovery factor, to
7 collect for the cost of the transmission line to buy electricity
8 in Georgia. And we will also allow you to pay Alabama Power and
9 Georgia Power a return on their investment in generating
10 facilities, which they are going to pass along to you in capacity
11 charges under an interchange agreement."

12 The Commission in 1983 had given the utility a 15.6%
13 return on equity as the mid-point, 16.6 as the maximum, and that
14 is still in effect.

15 I guess the reason FIPUG is here fussing today -- we
16 fussed back in 1982 -- but we realized in 1987 and 1988, for the
17 first time the Commission had allowed some additional charges to
18 be imposed upon the company in addition to the carrying cost on
19 the oil backout proceeding, they allowed a charge to the
20 customers for the money the customers "saved" by not building the
21 Martin Plant. Let me put that in proper perspective for you:
22 Blondie Bumstead came home from Cutberry's Department Store and
23 said, "Dagwood, I have saved you a ton of money because I spent
24 \$500 on clothing on sale, and it would have cost \$1,000." She
25 said, "I have saved you a lot of money."

1 COMMISSIONER GUNTER: You have been listening at my
2 door, haven't you?

3 MR. McWHIRTER: Is that right?

4 COMMISSIONER EASLEY: Careful, Mr. McWhirter, I
5 understand that logic. (Laughter)

6 MR. McWHIRTER: Well, that's fine. In fact, I would
7 like to carry that logic through to its conclusion. This case is
8 all about savings, and what measure of savings you use when you
9 are trying to be fair to the utilities and to the companies.

10 CHAIRMAN WILSON: The company's customers? When you
11 said "company's" you meant "customers"?

12 MR. McWHIRTER: The customers in the power companies as
13 well.

14 You will see in our testimony, and something that Power
15 Company fusses about a lot, is Mr. Pollock says, "You are correct
16 by buying electricity in Georgia and Alabama instead of producing
17 it in Florida or producing it from the plants that you have that
18 burn oil as a fuel. In 1989 you will save \$214 million in the
19 fuel price differential." That's a good deal for customers. But
20 then he says, "However, you are charging the customers \$700
21 million in 1989 to achieve these fuel savings, and maybe that's
22 not such a good deal."

23 Florida Power & Light's response to that is that, "Mr.
24 Pollock, you are comparing apples and oranges. There are two
25 kinds of fuel savings: One is energy savings and the other is

1 capacity savings. You set one off against the other.

2 The testimony will show in this case that in order to
3 attain lower fuel cost in 1989 the Utility is going to pay
4 Georgia Power Company in capacity charges some \$522 million --
5 no, strike that -- I have already told you what they are paying
6 Georgia Power. The amount of money they would have spent this
7 year for carrying costs on the Martin plants and the unsited
8 plant is in the range of \$522 million.

9 Now, to calculate that \$522 they used their 1982
10 projections of construction costs and their 1982 projections of
11 cost of capital for equity. They say, "Customers, you didn't
12 have to pay that \$522 million for the Martin plant and we have
13 saved you a lot of money, and as a result of that this year, in
14 1989, the customers will be charged \$150 million." That's like
15 Blondie saying to Dagwood, "Dagwood, I spent \$500 on the clothes
16 but I would have spent a thousand had they not been on sale, so I
17 want you to pay me an additional \$150." That's what this case is
18 all about.

19 Florida Power and Light says, "FIPUG, you cannot
20 complain about what the Commission has done because this decision
21 was made in 1982 and it was an irreversible decision. We are
22 entitled to those funds and you can't look at it again because we
23 passed the primary test in 1982."

24 Ms. Easley and gentlemen, I would suggest to you, and
25 we will prove today, that a lot of things have changed since

1 1982. The things that have changed are that oil prices didn't go
2 up to \$60 a barrel that was anticipated; the savings are not
3 nearly as great as was anticipated when you entered that order
4 back in 1982. You applied those charges on a kilowatt hour basis
5 because you said, "Really, the people who will get the benefit of
6 these savings are the high load factor customers because they
7 consume more electricity per unit of capacity, and therefore the
8 capacity charges ought to be placed in that way." It hasn't
9 worked out that way. The savings are nowhere near the capacity
10 charges. They are about \$300 million apart each year.

11 And then this other, capacity savings, is on the other
12 leg of this two-pronged formula. Florida Power and Light says
13 that in 1982 it had decided to build the Martin plants. But the
14 facts are that the Martin plants were not built. We don't think
15 the Martin plants would have been built, but if they had of been
16 built they would have cost far less. So when the savings are
17 calculated, the savings on capacity are not what they were
18 represented to be.

19 Dagwood didn't buy Blondie's story, and I think when
20 you hear the evidence in this case you may not buy Florida Power
21 and Light's saving constant. Thank you very much.

22 CHAIRMAN WILSON: Thank you, Mr. McWhirter. Mr.
23 Guyton?

24 MR. GUYTON: Roger, do you have anything?

25 MR. HOWE: No, I haven't.

1 MR. GUYTON: Commissioners, I have a prepared statement
2 but I would like to briefly address three important factual
3 issues that I would at least take issue with with Mr. McWhirter.
4 One, Florida Power and Light Company has had base rate relief
5 since the oil backout rule was adopted and the oil backout
6 project was qualified in 1982. It had a base rate case, as Mr.
7 McWhirter noted, in 1984, and then a subsequent year adjustment
8 in 1985.

9 Second, Mr. McWhirter would like to leave you with the
10 impression that FPL is relying upon its original cost estimate
11 for the Martin units in calculating capacity deferral benefits.
12 I think you need to understand that. There was in place in 1979
13 a contract for FPL to build those units. And the original
14 estimate of capacity deferral benefits was based on that
15 construction cost. Then Mr. Howard escalated that for projected
16 escalation rates and capital cost rates in effect at that time
17 using a 19% equity rate.

18 Those aren't the estimates that we put in front of you,
19 and those are not the estimates that we have used to recover
20 capacity deferral benefits, or to calculate capacity deferral
21 benefits that have been recognized in actual net savings. We did
22 use the original Bechtel construction cost estimates because
23 that's what we would have had to have spent in base level
24 dollars. But we have escalated them with actual escalation rates
25 since 1980, and we have used FPL's actual cost of capital since

1 then; not the 19% return on equity that we originally projected,
2 but the Commission's authorized return on equity in each year
3 since then, as well as our actual senior security costs. So I
4 think you need to understand those basic factual differences from
5 the start.

6 Commissioners, a little over nine years ago the Florida
7 Legislature passed the Florida Energy Efficiency and Conservation
8 Act, FEECA. In FEECA the Legislature stated an intent to
9 conserve expensive resources, particularly petroleum fuels. Now,
10 to accomplished that goal, in Section 366.0822, the Legislature
11 required the Commission to adopt appropriate goals for increasing
12 the efficiency of energy consumption, specifically including
13 goals designed to increase the conservation of expensive
14 resources, such as petroleum fuel. Simply stated, in 1980 the
15 Florida Legislature established legislative policy to conserve
16 the use of oil in the generation of electricity in Florida.

17 As you well know from the most recent legislative
18 session, this provision was re-enacted; that legislative policy
19 has not changed. Despite some change in oil prices since then,
20 the legislative policy of the state is still to avoid dependence
21 on foreign oil.

22 Now, as is the Commission's fashion, the Commission has
23 taken this legislative mandate to heart. It first adopted
24 conservation rules in a conservation rule with conservation
25 goals, Rule 25-17.002. Subsection (6) of that rule provides, in

1 part, "The use of oil as generating fuel shall be reduced to the
2 greatest practicable and cost effective extent."

3 The Commission later, in January of 1982, adopted its
4 rule regarding oil backout cost recovery factors. That
5 implemented FEECA as well as the conservation goal rule. Now,
6 that rule, the oil backout rule, is Tab A in your notebook, and
7 you will be referred to it a number of times today. And that
8 rule is the foundation of this case. FPL's oil backout project
9 was qualified under an earlier version of that rule, and FPL's
10 cost recovery for its oil backout project and coal-by-wire
11 purchases has been made pursuant to the oil backout rule.
12 Because of the importance of that rule I would like to briefly
13 summarize several of the important provisions. You may want to
14 turn to Tab A and take a look at them.

15 Section 2 of the rule addresses the rule's purpose, and
16 it reflects the legislative mandate of FEECA. Subsection (2)(a)
17 provides, "Oil backout cost recovery factors are to be used for
18 the recovery of costs of any of several different oil
19 conservation measures, the primary purpose of which is the
20 economic displacement of oil-fired generation." One of the
21 specific types of projects included for recovery in Subsection
22 (2)(a)(2) was transmission line construction costs. Subsection
23 (3) of the rule deals with project qualification. Subsection
24 (3)(a) sets forth three criteria, or tests, a project must
25 satisfy to qualify for recovery of costs through an oil backout

1 cost recovery factor.

2 The Commission must find: (1) The primary purpose of the
3 proposed project is the economic displacement of oil-fired
4 generation in the state of Florida.

5 (2) It has been shown by a preponderance of the
6 evidence that there will be a positive cumulative present value
7 of expected net savings to retail customers in Florida within the
8 first ten years of commercial operation of the proposed project.

9 (3) It has been shown by a preponderance of the
10 evidence that a proposed project is the most economical
11 alternative available. If these criteria are met a proposed
12 project qualifies for cost recovery under an oil backout cost
13 recovery factor.

14 Subsection (4) of the rules addresses cost recovery
15 through the factor. Subsection (a) identifies the elements of
16 cost recovery. They are: Project revenue requirements which
17 consists of straight-line depreciation, cost of capital, actual
18 tax expense, and oil/non-oil O&M expense differential. Plus it
19 also includes two-thirds of actual net savings of the project if
20 they are positive.

21 Now, net savings, Commissioners, is defined in
22 Subjection (1)(c) of the rule, but it can be summarized very
23 simply. It's simply the net of all identifiable project costs
24 and all identifiable project benefits. It's combined costs and
25 benefits, and that's your net, net savings.

1 Subsection (4) of the rule also has other relevant
2 provisions regarding cost recovery. Subsection (4)(b) prevents
3 double recovery of oil backout project costs, doesn't allow a
4 utility to recovery the costs both through base rates and through
5 an oil backout cost recovery factor. Subsection (4)(c) may be
6 fairly read -- it's a bit unclear because it has a reference to
7 an earlier rule provision before the rule was amended -- but it
8 may be fairly read despite that to say that the costs to be
9 recovered through the oil backout recovery factor upon full
10 depreciation of a project are O&M expenses, in this case project
11 transmission line O&M expenses, and coal-by-wire costs associated
12 with coal-by-wire purchases. And those are to be recovered
13 through the oil backout cost recovery factor until they are
14 included in a utility's base rates.

15 Now, Subsection (4)(d) is particularly important to
16 this case. The first two sentences are very important. "Once
17 approved by the Commission, the costs of a qualified oil backout
18 project shall continue to be recovered through the oil backout
19 cost recovery factor until such time as they are included in the
20 base rates of the utility. Normally, the remaining and
21 unrecovered costs of the qualified oil backout project shall be
22 rolled into the utility's base rates without altering the
23 depreciation period at the utility's next rate base filing, and
24 cost recovery for the qualified oil backout project through the
25 oil backout cost recovery factor shall terminate at the time new

1 rates are placed into effect." This provision clearly provides
2 that there is to be no gap in the recovery of a utility's oil
3 backout project costs. The oil backout cost recovery factor is
4 to continue until cost recovery is rolled into new base rates,
5 and typically those new base rates are to be placed into effect
6 in the utility's rate base filing.

7 Subsection (4)(e) provides recomputation and true-up of
8 the oil backout cost recovery factor every six months, and
9 requires as a part of that exercise an estimate of kilowatt hour
10 sales.

11 Subsection (5) of the rule prescribes separate
12 accounting on the oil backout project. That facilitates the
13 Commission's review of the project rather than frustrating it.

14 Subsection (6) of the rule provides that once all
15 project costs are recovered, the oil backout cost recovery factor
16 is continued. It makes no mention of full depreciation. It
17 simply speaks of once costs are recovered.

18 Commissioners, I have taken you through this rule not
19 only because you will be referred to it a number of times today,
20 but primarily because FIPUG invokes the rule when they think it
21 helps them and then they ignore it or they indirectly attack it
22 when it works against them. For instance, FIPUG argues that it
23 is not revisiting qualification in this proceeding, or asking you
24 to reconsider your decision qualifying FPL's project. Yet if you
25 look at Mr. Pollock's testimony there are references to all three

1 of the qualification criteria under Subsection (3)(a) of the
2 rule.

3 FIPUG asks you to terminate the oil backout cost
4 recovery factor outside of a rate case, without putting any new
5 base rates into effect. Such relief, particularly before FIPUG
6 realized the project would be fully depreciated this month, is
7 clearly inconsistent with the first two sentences of Subsection
8 (4)(d) of the rule.

9 Moreover, there is no rule provision for disqualifying
10 a project. And the evidence today will show that the Commission
11 has interpreted this rule as a matter of law that project
12 qualification is not to be revisited. Mr. Pollock suggests --
13 another example: Mr. Pollock suggests that capacity deferral
14 benefits of the project should not be recognized in the
15 computation of actual net savings. Yet Subsection (1)(c) clearly
16 provides that any other benefits specifically conferred by the
17 project are to be included in the net savings computation.

18 Commissioners, you are not without guidance as to the
19 proper interpretation and implementation of the rule. In fact,
20 the Commission has previously applied the rule to FPL's oil
21 backout project in several proceedings. Relevant excerpts of
22 those proceedings comprise most of the documents that we asked
23 you to officially notice in the notebook; in particular, I would
24 refer you to Tabs F through J.

25 Commissioners, we have had a hard time defending this

1 case, not because there is any substantive merit in FIPUG's
2 claims, but because FIPUG's theory of the case changes every time
3 we get a new document from them. Let me give you two examples.
4 In its petition dated January 27th, 1989, FIPUG asked you to find
5 that the project has failed to achieve its primary purpose. Now,
6 Mr. Pollock's direct testimony, filed some seven months later,
7 where he belatedly realized that the primary purpose was a term
8 of art used in the qualification order, Order No. 11217, which
9 Tab G, Mr. Pollock changes the focus and he testified that the
10 project has failed to economically displace oil. Yet two weeks
11 later in rebuttal testimony, filed some seven months after the
12 petition, we see a change yet again in the FIPUG position. Now
13 they no longer want you to focus on whether the project has
14 achieved its primary purpose of economically displacing oil; now
15 they want you to focus on the primary use to which the project is
16 being put today. They have restated their allegation, and it is
17 not consistent with their original petition.

18 Another example: On the recognition of capacity
19 deferral benefits, and the computation of actual net savings, the
20 petition alleges that the basis for not recognizing capacity
21 deferral benefits of the project is that they are mythical; that
22 they are based on fictional units not in FPL's current generation
23 expansion plan. Seven months later in direct testimony Mr.
24 Pollock develops another argument: That the capacity deferral
25 benefits shouldn't be recognized because the costs of the Martin

1 units are overstated. That position wasn't in their original
2 petition.

3 In rebuttal testimony filed two weeks later Mr. Pollock
4 concocts yet another theory: The Martin units weren't deferred
5 by the coal-by-wire purchases, they would have been deferred
6 anyway because of the drops in load forecasts between '83 and
7 '86. Once again, you have the shifting nature of the FIPUG
8 theory of the case.

9 Commissioners, this case is a lot like trying to shoot
10 quail. Every time you just about get one in your sights you
11 flush another one and it distracts you. Now, Commissioners --

12 COMMISSIONER GUNTER: Huh-uh, when you shoot quail you
13 shoot that first one and you get that second one, too.

14 MR. GUYTON: That's right, and we have plenty of shots
15 here.

16 COMMISSIONER GUNTER: Okay. I just wanted you to know
17 that that's the way I shoot quail. You start trying to pick them
18 out like that, which one looks bigger, and you ain't gonna kill
19 any.

20 MR. GUYTON: Maybe that's why I never was a very good
21 quail hunter.

22 COMMISSIONER GUNTER: Okay. Go ahead.

23 MR. GUYTON: Commissioners, let's look at the heart of
24 FIPUG's new case, this latest version. FIPUG would have you look
25 forward and forget about the past. They would have you forget

1 what you and your predecessors said and did in previously
2 applying the oil backout rule to FPL, and look only to the
3 future.

4 Commissioners, it's fine to look to the future, but
5 this particular project has a history that can't be glossed over.
6 This Commission has regularly reviewed FPL's oil backout project
7 every six months since September of 1982. You have addressed it
8 in FPL's last two base rate cases, and you have even requested
9 intermittent reports, like this general summary that Commissioner
10 Gunter requested, in 1986.

11 When FPL's project was initially analyzed by the
12 Commission in 1982, in Final Order 11217, the Commission chose to
13 look at it over a ten-year horizon, 1982 to 1992, and that's
14 consistent with your oil backout rule. We are only seven years
15 into that initial ten years of operation. FIPUG says to forget
16 about those seven years; forget about the \$600 million of net
17 fuel savings that the project has conferred on customers and
18 focus on the future. They argue that the opportunity for fuel
19 savings has diminished, and that the project and the coal-by-wire
20 purchases are not now being used -- they are now being used to
21 meet load growth in the last three years of that horizon, so the
22 primary purpose of the project has changed.

23 Commissioners, circumstances haven't changed. FPL is
24 using the project, and the coal-by-wire purchases in the latter
25 part of that ten-year period in exactly the fashion that we

1 projected in the original qualification proceeding. Of course,
2 if you ignore the past, if you don't review the history, you
3 wouldn't know that;

4 Commissioners, you have to examine the past to get a
5 complete picture. When you look to the past you realize that
6 this case is nothing more than a rehash of tired, long-resolved
7 arguments for the most part. The only arguments not resolved in
8 1982, when FPL's project was qualified and cost recovery was
9 authorized, have since been addressed in subsequent cost recovery
10 proceedings since 1987, or in FPL's tax savings dockets.

11 When you look at this project over its first ten years
12 of operation, as the Commission originally did and the oil
13 backout rule requires, you see that even though oil prices have
14 changed and are lower than what was originally projected for much
15 of that period, the project still has net fuel savings of some
16 \$651 million that exceed project revenue requirements of only
17 some \$295 million. You see that the project's primary purpose is
18 still the economic displacement of oil-fired generation. If you
19 would look at all of the projects and all the project costs over
20 those ten years, you see that project benefits exceed project
21 costs, even if you don't quantify what Mr. Pollock says are very
22 real benefits and improved system reliability benefits. What you
23 see over the ten-year horizon is a project with multiple
24 benefits: Economic oil displacement benefits, capacity deferral
25 benefits, and enhanced system reliability benefits. The

1 Commission recognized that the project had all of those benefits
2 in 1982 when it authorized oil backout cost recovery recovery,
3 but you wouldn't know that if you didn't review the past.

4 FPL's customers, virtually every electric utility
5 consumer in Peninsular Florida, has tremendously benefited from
6 the project and the associated coal-by-wire purchases. Customers
7 are much better off today, and for the foreseeable future,
8 because this project and the purchases were entered into, the oil
9 backout rule and the project have worked just as they were
10 originally envisioned. And the Commissioners responsible for the
11 rule should be able to look back with satisfaction as to how well
12 this innovative approach to regulation has worked.

13 Here we are today; essentially, the project is fully
14 depreciated, and ratepayers from here on out will derive the full
15 benefits of this project. And up until this point in time they
16 have paid less than they otherwise would have if the project
17 hadn't been constructed and the coal-by-wire purchases hadn't
18 been entered into. The lines are in place; they will be in place
19 for decades; they will be improving reliability; they will be
20 transporting power purchases that will defer capacity; they will
21 be providing a means for the displacement of oil-fired generation
22 in Florida. Fuel savings will be incurred and, most importantly,
23 these lines provide Florida with protection, a hedge against the
24 dependence on foreign oil for years to come.

25 Now, FIPUG acknowledges most, if not all, of these

1 benefits, yet what do they seek? They seek the refund of \$280
2 million of revenues already collected through the factor;
3 revenues which represent only two-thirds of the actual net
4 savings of this project for the last two years. After this
5 month, when the project is fully depreciated, the customers will
6 get all of those benefits, but FIPUG wants those two-thirds
7 benefits for the last two years back as well. They seek
8 termination of the oil backout cost recovery factor, and
9 termination of the cost recovery on the project and the
10 coal-by-wire purchases completely. They ask you to terminate the
11 oil backout cost recovery factor and not make a concurrent
12 adjustment to FPL's base rates, effectively denying FPL any
13 recovery of its project costs or the coal-by-wire costs, even
14 though they acknowledge the numerous, multiple benefits of the
15 project. And Mr. Pollock should testify today that FPL was
16 reasonable in building the project.

17 Commissioners, FIPUG's requested relief is inconsistent
18 with the oil backout rule, your prior orders on qualification and
19 cost recovery. It's legally impermissible for a host of reasons
20 that we will address in our brief. However, the basic reason
21 that you shouldn't accept FIPUG's argument is that it's just not
22 right; it's just not fair. FPL doesn't think it's fair, and we
23 are confident that once you hear the evidence you won't think
24 it's fair either. Thank you.

25 CHAIRMAN WILSON: Thank you. We're going to take a

1 five-minute break so people can get a cup of coffee to gird
2 themselves for the balance of the morning.

3 Mr. Howe, Public Counsel's position, and I just want to
4 make sure I understand it, is that you are adopting and
5 supporting in total FIPUG's case, is that correct?

6 MR. HOWE: Yes, sir. For purposes of the Prehearing
7 Order, and our initial position is that whether it develops that
8 way in briefs after the record that might change, our focus is
9 on --

10 CHAIRMAN WILSON: Does that mean that you are going to
11 at some point tell me the places where you disagree with FIPUG's
12 case, or what?

13 MR. HOWE: At this point we have no disagreements with
14 FIPUG's case. I would just want to make clear that I need to see
15 how this record develops. (Laughter) This is one of those areas
16 where, in large measure, the industrial customers and the general
17 body of ratepayers I think are on the same footing. If the
18 record, in fact, diverges from that --

19 CHAIRMAN WILSON: Does that include the allocation of
20 costs either according to a per-KWh basis as well, as opposed to
21 the cost methodology that is used in a rate case?

22 MR. HOWE: It does to the extent that the net savings
23 included are associated with the purportedly deferred Martin
24 units. Our focus is generally on the deferral of the Martin
25 units and on the rate of return applicable under the tax savings

1 rule. The reason for that is when the Commission qualified this
2 project for oil backout purposes in 1982, it did it based on the
3 deferral of capacity attributable to these planned Martin units.
4 Necessarily, and I believe the evidence of the Company at that
5 time and included in the excerpts in the notebook which FP&L
6 asked the Commission to take official notice of, the Company
7 indicated that these were future costs, and at the time net
8 savings appeared it would be appropriate for them to take those
9 under the rule, under the two-thirds of the net savings as
10 accelerated depreciation. I think inherent in that determination
11 was the fact that those units would be deferred at the time the
12 Commission started to allow net savings calculated on their
13 deferral.

14 What we have here is a situation where it appears that
15 it was expected the units would be deferred; it was expected they
16 would be deferred until -- I believe it was an expected 1987
17 in-service date; therefore, the deferral benefits could be
18 calculated from that time. However, it also appears likely on
19 the facts of this case that the transmission project, the 500 kv
20 lines, in fact, caused one of two circumstances to eventuate.
21 One, the deferral was pushed back, or, two, the units were --

22 CHAIRMAN WILSON: Pushed out?

23 MR. HOWE: Pushed out farther into the future such that
24 1987 isn't the appropriate time to begin calculating them into
25 the net savings.

1 CHAIRMAN WILSON: That's sort of a definition of
2 "deferral," though, isn't it?

3 MR. HOWE: Yes, it is. But, also, 1991 or later is
4 also a deferral period. So the Commission, when they set up the
5 project, established that there would be a future review of net
6 savings associated with the deferred units. I think the
7 Commission has to address in this proceeding whether, one, those
8 units were deferred; or, secondly, can there be a deferral
9 benefit with units that weren't deferred, that it had developed
10 that the units themselves were not needed at all. Is it
11 appropriate to calculate a deferral benefit on that basis. So
12 our office is concerned with those two aspects of it.

13 CHAIRMAN WILSON: Now, are you going to answer my
14 question?

15 MR. HOWE: I'm sorry, sir, I thought I had.

16 CHAIRMAN WILSON: No, you haven't.

17 MR. HOWE: I'm sorry. Could you restate the question
18 then?

19 CHAIRMAN WILSON: Well, FIPUG has indicated that the
20 cause of the allocation of the costs on this on a per-KWh basis,
21 their share of the costs have been in excess of those that would
22 have been if they had been allocated according to the cost of
23 service study that was used in FP&L's last rate case, and I want
24 to know whether you support that position or not.

25 MR. HOWE: No, sir.

1 COMMISSIONER WILSON: Then you do not support FIPUG's
2 case 100%, as it indicates in the Prehearing Order?

3 MR. HOWE: Well, I think the way those issues are
4 framed, that particular issue is not clearly defined. I went
5 through that Prehearing Order myself and, as we originally filed
6 our prehearing statement, we agreed with all of FIPUG's issues I
7 think except Issue No. 3, which at that time stated that their
8 position was they thought that rate recovery was discriminatory.
9 Our feeling is if the project continues, if the net savings are
10 continued to be calculated as the Commission has found in the
11 past, then the energy charge is the appropriate way to collect
12 that. If, however, the Commission believes that the net savings
13 are not calculated appropriately, then we think it needs to
14 retreat from its grant of the two-thirds of net savings as
15 accelerated depreciation, which has been borne by all customers.

16 CHAIRMAN WILSON: Let me ask you another question --
17 well, go ahead if you have something on this.

18 COMMISSIONER GUNTER: So the capacity payments,
19 payments for capacity, split the two, energy and capacity, and I
20 think, unless I misunderstand, it's FIPUG's position that the
21 capacity payments should not be borne by them on a kilowatt hour
22 basis.

23 MR. HOWE: I believe that is their position.

24 COMMISSIONER GUNTER: And that shift then if you have
25 capacity payments, if you take part of the population out, it

1 leaves it for the remainder of the population, which would be, if
2 you followed the cost of service methodology, you would have a
3 shift from FIPUG customers over to the other classes of
4 customers. That's the reason I said what I did a while ago is
5 because I remember a very eloquent argument based on a recent
6 agenda conference where you went the other way.

7 MR. HOWE: Uh-huh. Commissioner Gunter, in this case
8 --

9 COMMISSIONER GUNTER: And there is where I was having
10 trouble trying to reconcile the two when the basis, at least I
11 think the kernel that's still left on the cob is that FIPUG's
12 position is the same as it was from conservation, and others,
13 that the capacity charge should not be on a kilowatt hour basis.
14 I think when you get through -- when you cut through all of it
15 that's really what they are after is to change that methodology
16 and to have the energy charge and a reduced capacity charge. And
17 through the pounds of paperwork that's the crux of the argument,
18 I think.

19 CHAIRMAN WILSON: It took a while to get there, Mr.
20 McWhirter, I can tell you.

21 MR. HOWE: Commissioner Gunter, I should explain, also,
22 one of the things that has been assumed, and I think --

23 CHAIRMAN WILSON: Do you agree with Commissioner
24 Gunter's analysis?

25 MR. HOWE: I do, except I would clarify that whether

1 the Utility would actually be able to impose any base rate
2 increase on the customers would depend on an overall review,
3 which would include such things as cost of capital, so that I
4 will not concede that if this --

5 COMMISSIONER GUNTER: Well, that's another issue.

6 CHAIRMAN WILSON: That's an entirely different subject.

7 MR. HOWE: Exactly. But if there were a shift, for
8 example, into base rates that it would necessarily entail an
9 increase in rates to the customers given the dynamics of the
10 economy and everything at this time.

11 COMMISSIONER GUNTER: That's entirely different. I'm
12 not even talking about that.

13 CHAIRMAN WILSON: But I think for purposes of the
14 inquiry that Commissioner Gunter is making, as an assumption you
15 would accept that, everything else being equal, the result of
16 this argument would be that costs would shift from one class of
17 customers to the other.

18 MR. HOWE: I will accept that.

19 CHAIRMAN WILSON: And his question is, I think, do you
20 support that position in this case?

21 MR. HOWE: No. I don't support any shift of expenses
22 to the general body of ratepayers from the industrial customers.

23 CHAIRMAN WILSON: It's okay with you if nobody has to
24 pay it, but it's not okay with you if the customers have to --

25 MR. HOWE: Exactly.

1 CHAIRMAN WILSON: -- if the customers have to pay it.

2 I understand.

3 MR. HOWE: Yes, sir.

4 COMMISSIONER GUNTER: Let me ask one question before we
5 break, if I could, Mr. Chairman. It's FIPUG's position for us to
6 discontinue the oil backout rule, is that correct?

7 MR. MCWHIRTER: Commissioner Gunter, our position is,
8 yes, that the revenues be rolled into base rates.

9 COMMISSIONER GUNTER: Okay, just discontinue the rule,
10 and we would have to just --

11 MR. MCWHIRTER: Well, not discontinue the application
12 of the rule in this specific case because it has achieved all of
13 its purpose. It's time for it to be rolled into the base rate.

14 COMMISSIONER GUNTER: Okay.

15 MR. MCWHIRTER: We do not want to deny Florida Power
16 and Light the right to recover a fair and reasonable return on
17 its investment.

18 COMMISSIONER GUNTER: No. The reason I asked the
19 question, just bluntly, you know, I just wanted to know what your
20 position was; if you want us to kill the rule.

21 MR. MCWHIRTER: No, sir, we are not trying to kill the
22 rule.

23 CHAIRMAN WILSON: You want to terminate the project?

24 COMMISSIONER GUNTER: You just want to terminate this
25 project?

1 MR. McWHIRTER: Yes, sir, this project.

2 COMMISSIONER GUNTER: Okay. I misunderstood. I
3 thought you wanted to kill the rule and I said all the players
4 are not in the room if you wanted to kill the rule.

5 MR. McWHIRTER: No, we are only looking at this
6 application of the rule.

7 COMMISSIONER GUNTER: At Gannon Station and those kinds
8 of things, other oil backout programs.

9 MR. McWHIRTER: No, sir.

10 COMMISSIONER GUNTER: Okay, I've got you.

11 MR. GUYTON: Mr. Chairman, we have got one other
12 preliminary matter that we would bring to your attention. On
13 Page 23 of the Prehearing Order, Issue 16 states, "Should FPL be
14 required to refund these tax savings to customers?" And FPL has
15 taken a position, and that position is entirely accurate. We
16 don't think there are any tax savings to refund. But we think
17 perhaps we should have added, and we would want the record to
18 reflect that our position is that we don't think this issue is
19 properly raised in this proceeding.

20 CHAIRMAN WILSON: All right. We are going to take a
21 five-minute break and then come back and take our first witness.

22 (Brief recess)

23 CHAIRMAN WILSON: Are you ready? Go ahead.

24 MR. McGLOTHLIN: We will call Jeffry Pollock to the
25 stand.

1 JEFFRY POLLOCK

2 appeared as a witness on behalf of the Florida Industrial Power
3 Users Group and, having been first duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. McGLOTHLIN:

7 Q Would you state your name and address for the record,
8 sir?

9 A Yes. My name is Jeffry Pollock, my business address is
10 12312 Olive Boulevard, St. Louis, Missouri 63141.

11 Q Mr. Pollock, did you prepare direct and rebuttal
12 prefiled testimony on behalf of FIPUG for submittal in this case?

13 A Yes.

14 Q Do you have any changes or additions or corrections to
15 that testimony?

16 A Yes, I do. The errata we which is distributed covers
17 all the changes to the testimony and schedules.

18 MR. McGLOTHLIN: We distributed an errata sheet,
19 Commissioners, which you should have before you, which identifies
20 the changes to be made.

21 CHAIRMAN WILSON: What I would like to ask you to do,
22 we have got the corrected schedules here, but what I would like
23 for you to do, for the benefit of the court reporter, is submit
24 those pages with the corrections on them so that she can insert
25 those into the record.

1 MR. McGLOTHLIN: Substitute those for the others?

2 CHAIRMAN WILSON: Correcting these, yes, the
3 substitution on those pages.

4 MR. McGLOTHLIN: All right.

5 COMMISSIONER HERNDON: Let me ask you, Mr. McGlothlin,
6 before you go much further, a quick question about the errata
7 sheet.

8 MR. McGLOTHLIN: Yes, sir.

9 COMMISSIONER HERNDON: I am looking at the correction
10 that is labeled seven and eight, Page 30, Line 9, replace the
11 phrase "These cases," which I cannot find on those lines. So I'm
12 not sure what to replace anymore. I find "In those cases."

13 WITNESS POLLOCK: That's the correction.

14 COMMISSIONER HERNDON: Is that what you meant?

15 WITNESS POLLOCK: That's right. We should file an
16 errata of the errata. It should be "those" and not "these."

17 COMMISSIONER HERNDON: That's all right, I just wasn't
18 sure. I was going to make that assumption but I wasn't sure.

19 CHAIRMAN WILSON: Will you file an errata sheet
20 correcting your errata sheet? (Laughter)

21 WITNESS POLLOCK: Certainly, at the Commission's
22 discretion.

23 Q (By Mr. McGlothlin) With those corrections that are
24 described on the errata sheet, Mr. Pollock, do you adopt the
25 direct testimony and the prefiled rebuttal testimony as your

1 testimony here today?

2 A Yes.

3 Q Did you also prepare exhibits to the direct testimony
4 which have been identified, consisting of 13 schedules,
5 identified as exhibits 601 through 613 in the Prehearing Order?

6 A Yes.

7 Q Were those schedules prepared by you or under your
8 supervision?

9 A Yes.

10 (Exhibit Nos. 601 through 613 marked for
11 identification.)

12 MR. MCGLOTHLIN: Commissioners, I would request that
13 Mr. Pollock's direct testimony and rebuttal testimony be inserted
14 into the record at this point as though read.

15 CHAIRMAN WILSON: Without objection they will be
16 inserted into the record.

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**Before the
Florida Public Service Commission**

In Re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power & Light Company's Oil Backout Cost Recovery Factor

Docket No. 890148-EI

Testimony of Jeffry Pollock

9 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

10 A Jeffry Pollock, 12312 Olive Boulevard, St. Louis, Missouri.

11 Q WHAT IS YOUR OCCUPATION AND BY WHOM ARE YOU EMPLOYED?

12 A I am a consultant in the field of public utility regulation and a
13 principal in the firm of Drazen-Brubaker & Associates, Inc., utility
14 rate and economic consultants.

15 Q WOULD YOU PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE?

16 A This is set forth in Appendix A to the testimony.

17 Q ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS DOCKET?

18 A I am testifying on behalf of the Florida Industrial Power Users Group
19 (FIPUG). The FIPUG participants in this Docket are customers of
20 Florida Power & Light Company (FP&L) and are substantial consumers
21 of electricity, primarily for manufacturing. During the year 1987,

1 these customers purchased over 430,000,000 kilowatthours from FP&L
2 under various rate schedules.

3 Q WHAT IS THE SUBJECT OF YOUR TESTIMONY?

4 A I shall testify in support of FIPUG's Petition to Discontinue FP&L's
5 Oil Backout Cost Recovery Factor. Specifically, I shall present
6 evidence that:

- 7 (1) FP&L's Transmission Project has failed to
8 economically displace oil which led the
9 Commission to qualify it under Rule
10 25-17.016, F.A.C., and the Project is needed
11 to enable FP&L to meet projected load
12 growth;
- 13 (2) In light of actual experience, the prospec-
14 tive application of the energy-based Oil
15 Backout charge for recovery of costs associ-
16 ated with the 500 kV transmission lines and
17 the UPS capacity charges would be unjust,
18 unreasonable and unduly discriminatory;
- 19 (3) All Oil Backout revenues based on alleged
20 benefits associated with the deferral of the
21 Martin coal units have been improperly col-
22 lected from customers; and
- 23 (4) The separation of Oil Backout investment and
24 revenues has the effect of understating
25 FP&L's earned return on common equity (ROE)
26 and resulted in a \$6.7 million understate-
27 ment in the refund under the Commission's
28 Income Tax Savings Rule.

29 Q ON THE BASIS OF YOUR ANALYSIS, WHAT RELIEF IS FIPUG REQUESTING IN
30 THIS DOCKET?

31 A FIPUG is requesting that the Commission:

- 32 (1) Direct FP&L to refund to customers all
33 "accelerated depreciation" revenues

- 1 associated with the inclusion of alleged
2 Martin deferral benefits in the calculation
3 of net savings;
- 4 (2) Order FP&L to terminate the Oil Backout
5 charge;
- 6 (3) Direct FP&L to reflect the investment, reve-
7 nues and expenses associated with the Oil
8 Backout Project in its Surveillance Report;
9 and
- 10 (4) Instruct FP&L that recovery of costs associ-
11 ated with the Oil Backout Project must
12 henceforth be accomplished through the oper-
13 ation of the utility's base rate.

- 14 Q WERE YOU RESPONSIBLE FOR THE AFFIDAVIT WHICH WAS FILED WITH FIPUG'S
15 PETITION IN ATTACHMENT 3?
- 16 A Yes, I was. The Affidavit was based on an analysis and review of
17 various documents which were readily available at the time. This
18 included FP&L's Fuel and Purchased Power and Oil Backout filings;
19 the Ten-Year Power Plant Site Plans; testimony presented by FP&L in
20 the Nonfirm Load Methodology proceedings (Docket No. 870198-EI);
21 FP&L's APH filing (Docket No. 880004-EU); and various FP&L surveil-
22 lance and financial reports. I have also reviewed FP&L's testimony
23 and various Commission Orders in Docket No. 820155-EU, the Petition
24 of Florida Power & Light Company for Approval to Recover the Cost of
25 its 500 kV Transmission Project Through an Oil Backout Recovery
26 Factor. The analysis and conclusions contained in the Affidavit,
27 thus, were developed without benefit of discovery from FP&L.

1 Q HAS FIPUG NOW HAD THE OPPORTUNITY TO SUBMIT DISCOVERY REQUESTS TO
2 FP&L?

3 A Yes. To date, FIPUG has submitted four rounds of discovery re-
4 quests, including four requests for production of documents and
5 three interrogatories. Thus far, we have received responses to only
6 the first set of production of documents requests and the first and
7 second sets of interrogatories. It may, therefore, be necessary to
8 further supplement this testimony pending the receipt and analysis
9 of additional discovery responses from FP&L.

10 Q WOULD ANY OF YOUR RECOMMENDATIONS CHANGE BASED ON FP&L'S RESPONSES
11 TO FIPUG'S DISCOVERY REQUESTS?

12 A No. Although some of the numbers and calculations presented in the
13 Affidavit have been updated, the revised analysis continues to sup-
14 port the relief sought by FIPUG, as stated above.

15 Q DO YOU HAVE ANY EXHIBITS TO SUBMIT WITH YOUR DIRECT TESTIMONY?

16 A Yes. I am sponsoring Exhibit JP-1 (G01), consisting of thirteen
17 schedules.

18 SUMMARY

19 Q PLEASE SUMMARIZE YOUR TESTIMONY.

20 A Since October 1982, the Oil Backout Cost Recovery Factor (OBCRF) has
21 been used by FP&L to recover the cost of constructing and operating
22 two 500 kV transmission lines (the Transmission Project) and all of

1 the capacity charges incurred under the Unit Power Sales (UPS)
2 Agreements with the Southern Company. The Transmission Project
3 strengthened the then existing interties with Georgia Power Company.
4 This improved system reliability (by reducing FP&L's vulnerability
5 to system separations and to single contingency line and generator
6 trips); enabled FP&L to avoid potentially serious problems such as
7 thermal overloads and low voltage conditions; and it removed exist-
8 ing transmission constraints to economic dispatch within the FP&L
9 system enabling FP&L to fully utilize generating capacity located in
10 Northeast Florida.

11 The Project also enabled FP&L to contract for and make larger
12 quantities of coal-by-wire purchases from the Southern Companies
13 than would have otherwise been possible. This capacity and energy
14 was thought to have a limited availability, a phenomenon which was
15 characterized as a temporary "coal bubble." It was expected, how-
16 ever, that these coal-by-wire purchases would provide power cheaper
17 than FP&L could produce in its oil-fired units, because coal was
18 cheaper than oil. Further, the gap was expected to widen in the
19 future. Projections made by FP&L in 1982 suggested that the Trans-
20 mission Project would generate nearly \$3.5 billion in net fuel cost
21 savings during the first ten years of commercial operation.

22 Our analysis reveals that the circumstances which may have
23 once justified treating the transmission lines as an Oil Backout
24 Project no longer prevail. Instead of an increasing gap between oil
25 and coal prices, the gap has been substantially reduced due to the

1 dramatic decrease in oil costs. As a consequence, \$2.2 billion of
2 projected net energy cost savings have failed to materialize. In
3 fact, circumstances prevailing today suggest that the function being
4 served by the Transmission Project is not oil displacement but to
5 enable FP&L to meet the growing demands of its service territory.
6 Oil displacement is possible only when the utility has surplus ca-
7 pacity. While in the past FP&L's reserve margins were generally
8 above the levels necessary to maintain reliable service, the future
9 promises to be much different. For this reason, FP&L has signed new
10 UPS Agreements. These Agreements entitle FP&L to purchase up to 900
11 MW of firm capacity through the year 2010. Rather than a temporary
12 "coal bubble," the UPS Agreements, instead, have become a long-term
13 source of base load capacity. FP&L considers these purchases to be
14 a vital cog in its generation expansion plan.

15 These dramatic changes in circumstances, coupled with the fact
16 that the Oil Backout Rule prohibits the inclusion of any projects
17 whose primary purpose is to meet load growth, justify discontinuing
18 the OBCRF at this time. While it is understandable that the expec-
19 tation and fear of continuing rising oil prices, which dominated
20 everyone's thinking in 1981-1982, swayed FP&L and the Commission to
21 treat the recovery of the Transmission Project under the OBCRF, the
22 Project has not produced the expected results. Consequently, there
23 is no longer any valid justification for continuing to recover oil
24 backout costs through kWh charges. The Transmission Project revenue

1 requirements and the UPS capacity charges should be collected
2 through base rates.

3 Besides the above-described changes in circumstances, there
4 are two other reasons for discontinuing the OBCRF. First, FP&L is
5 not in compliance with the Oil Backout Rule because (1) it is recov-
6 ering costs which are clearly related to load growth, and (2) by
7 assuming a 15.6% return on equity, the utility is recovering more
8 than its actual costs associated with the Oil Backout Project. The
9 Rule clearly states that only the actual costs associated with a
10 project are subject to recovery under the OBCRF. FP&L agreed to
11 utilize a 13.6% ROE in determining the refunds under the Income Tax
12 Savings Rule but it did so excluding the Oil Backout Project. Ex-
13 cluding the rate base and net income associated with the OBCRF in
14 applying the Rule resulted in FP&L understating the required refund
15 by about \$6.7 million.

16 Second, the continued recovery of what are essentially demand-
17 related costs through a kWh charge is unduly discriminatory. As a
18 result, Rate GSLD/CS customers are paying 28% more in revenues than
19 their corresponding responsibility for the oil backout costs.

20 Besides discontinuing the OBCRF, FIPUG also recommends that
21 the Commission order FP&L to refund \$285 million of revenues col-
22 lected under the OBCRF that are associated with accelerated depreci-
23 ation. Under the Rule, FP&L has included two-thirds of any positive
24 net savings which it alleges have occurred. (These savings are
25 utilized as accelerated depreciation to reduce the net investment of

1 the Project.) The only reason for collecting any net savings in the
2 OBCRF is the fact that, since June 1987, FP&L has included the costs
3 associated with deferred coal-fired generation capacity in the net
4 savings calculation . FP&L's theory is that, but for the construc-
5 tion of the Transmission Project, it would have built and placed
6 into commercial operation three coal-fired units--in June 1987
7 (Martin Unit 3); December 1988 (Martin Unit 4); and January 1990
8 (Unsited Unit 1). Consequently, 700 MW of deferred capacity bene-
9 fits were included in the net savings calculation beginning in June
10 1987 and an additional 700 MW of savings were included beginning in
11 December 1988.

12 FIPUG contends that it is improper to include deferred capac-
13 ity in the net savings calculation. First, FP&L concedes that the
14 Transmission Project would have been built in any case, even in the
15 absence of the Oil Backout Rule.

16 Further, the units in question have not been, and may never
17 be, built. Consequently, the investment which FP&L is using to
18 calculate the deferred capacity carrying charges is neither used nor
19 useful. As a matter of accepted regulatory practice, utilities
20 cannot include in their rates the recovery of costs of facilities
21 that are not used and useful, absent extraordinary circumstances.
22 There are no longer any extraordinary circumstances to justify this
23 practice. To require ratepayers to pay higher rates because of the
24 deferral of three, nonexistent, coal-fired units would be tantamount
25 to paying twice for the same capacity. This is because two-thirds

1 of the net savings (which consist primarily of the deferred capacity
2 carrying charges) is added to the UPS capacity charges in deter-
3 mining the revenues to be recovered through the OBCRF.

4 FP&L has also inflated the net savings by using unrealisti-
5 cally high construction costs and by assuming a 15.6% return on
6 equity in calculating both the AFUDC rate and the return on invest-
7 ment associated with the deferred capacity. At the very least, the
8 Commission should order FP&L to refund these inflated costs.
9 Finally, the Commission should also deny any attempt by FP&L to
10 include Unsited Unit No. 1, which FP&L also alleges to have deferred
11 in the calculation of net savings. FP&L did not make any commitment
12 to construct any of the unsited units.

**FP&L'S 500 KV TRANSMISSION PROJECT HAS FAILED
TO ECONOMICALLY DISPLACE OIL-FIRED GENERATION**

3 Q WHY DID THE COMMISSION QUALIFY THE 500 KV TRANSMISSION PROJECT FOR
4 SPECIAL RATE-MAKING TREATMENT UNDER THE OIL BACKOUT COST RECOVERY
5 MECHANISM?

6 A The Commission determined that the proposed 500 kV Transmission Line
7 Project would likely economically displace oil-fired generation.

8 Q HAS THE PROJECT RESULTED IN THE ECONOMIC DISPLACEMENT OF OIL?

9 A No. When FP&L applied to the Commission to qualify the 500 kV
10 Transmission Project for recovery under the OBCRF, it projected net
11 fuel savings of \$3.5 billion (nominal). These savings were predi-
12 cated on the assumption that oil would become increasingly more
13 expensive relative to the cost of importing coal-fired generation
14 from The Southern Company (i.e., the coal-by-wire purchases).

15 The projections on which approval of the Project under the
16 OBCRF have not materialized. Instead, oil prices have decreased
17 dramatically. Based on FP&L's actual experience and current fore-
18 cast, the net fuel savings will be only about \$1.3 billion (nomi-
19 nal), or only 37%, of FP&L's original projections. The total costs
20 of the Project, including the UPS capacity charges, have exceeded
21 fuel savings by \$1.6 billion. The actual net savings, thus, are
22 \$0.8 billion less than FP&L had originally projected, as shown in
23 Exhibit JP-1 (601), Schedule 1, and in the table on Page 11.

**Comparison of Out-of-Pocket Costs and Actual Net Savings
(Billions)**

<u>Line</u>	<u>Description</u>	<u>Original Forecast*</u>	<u>Actual/ Current Forecast</u>
	Savings:		
1	Avoided Fuel	\$ 9.627	\$ 4.045
2	Spinning Reserve	0.170	0.078
3	Total Fuel Savings	\$ 9.797	\$ 4.123
	Costs:		
4	Trans. Project Rev. Req.	0.846	0.292
5	Trans. Project O&M	0.005	0.005
6	Capacity Cost "UPS"	3.482	2.577
7	Capacity Cost "E"	0.096	0.072
8	Energy Cost	6.167	2.755
9	Total Costs	10.595	5.701
10	Net Savings (Losses)--L3-L9	\$(0.798)	\$(1.578)
11	Net Fuel Savings (L3-L7-L8)	\$ 3.534	\$ 1.296

*Source: Exhibit JP-1 (601), Schedule 1

I have excluded the so-called capacity deferral benefits--which are associated with the deferred construction of three 700 MW coal-fired units--because I believe that these benefits have been improperly collected, as explained in more detail beginning on Page 19 of the testimony.

Schedule 1 is a summary of the analysis both in a graph (Page 1) and as a table (Page 2). Referring to Page 1, the projected net

1 savings are shown by the blue bars, while the actual net savings are
2 shown in the green bars. The red bars are based on FP&L's latest
3 projections. These were developed in response to FIPUG's First Set
4 of Interrogatories, No. 17.

5 Q WHY DID THE COMMISSION APPROVE THE PROJECT UNDER THE OBCRF IF FP&L
6 WAS PROJECTING TO ACCUMULATE SUCH SUBSTANTIAL NET LOSSES?

7 A The Commission, apparently, believed that the projected fuel savings
8 were conservative and that additional savings would have materialized
9 in the form of Alternate and Supplementary energy purchases under the
10 UPS Agreement. Had these alternatives been reflected in FP&L's
11 original projections, the projected net fuel savings would have been
12 materially higher. In other words, the Project would possibly have
13 been projected to be economical even ignoring deferred capacity.
14 (The fact that these alternatives are reflected in the actual/cur-
15 rently forecasted net savings analysis, but not in FP&L's original
16 projections, suggests that the differences in net savings quantified
17 in Schedule 1 are understated.)

18 The Commission chose, however, to also include benefits asso-
19 ciated with deferring the construction of Martin Unit Nos. 3 and 4--
20 which would have consisted of two 700 MW coal-fired units--from 1987
21 and 1988, respectively, to 1992 and 1994, respectively. In addition,
22 the Commission determined that a third 700 MW coal-fired unit,
23 referred to as Unsited Unit No. 1, would also have been deferred from
24 1990 to 1993, because of the temporary "coal bubble." Taking these

1 deferral savings into account, the Commission determined that the
2 Project would have accumulated positive net savings to the ratepayers
3 within the first ten years of commercial operation.

4 Q WHAT FACTORS HAVE CAUSED THE EXPECTED NET FUEL SAVINGS TO BE \$2.2
5 BILLION LESS THAN WAS ORIGINALLY PROJECTED?

6 A The Commission recognized, in 1982, that:

7 "Whether this project will ultimately prove
8 to be cost-effective to FPL's ratepayers
9 depends on the price differential between
10 oil that would have been burned by FP&L to
11 generate electricity and coal that will be
12 burned by Southern to provide the power
13 purchased by FPL." (Order No. 11217, Page
14 5)

15 The projections made by FP&L and utilized by the Commission, took
16 into account the Company's forecast of oil prices, the price of
17 purchased power, the quantities of power to be purchased. Exhibit
18 JP-1 (602), Schedule 2, demonstrates that the failure of the Pro-
19 ject to produce the expected savings has not been due to any sig-
20 nificant difference between actual and projected load growth. Simi-
21 larly, there has been no material discrepancy between actual and
22 projected amounts of purchased power, as shown in Exhibit JP-1
23 (603), Schedule 3. The reason why the net fuel savings are ex-
24 pected to be \$2.2 billion less than the original projection lies in
25 the substantial differences between projected and actual oil prices,
26 as shown in Exhibit JP-1 (604), Schedule 4.

1 For example, FP&L was originally projecting a composite oil
2 price of \$55.41 per barrel in 1989. FP&L is currently forecasting
3 the price of residual oil to be \$21.26 per barrel, for 1.0% sulfur
4 content and \$21.91 per barrel for 0.7% sulfur content. The latter
5 is \$33.50 per barrel, or 60% lower, than the original projection.

6 Because oil prices have dropped significantly relative to coal
7 prices, FP&L at times can generate electricity from oil cheaper than
8 it can purchase coal-by-wire from Southern. Exhibit JP-1 (605),
9 Schedule 5, is a comparison between the fuel cost associated with
10 oil generation and the coal-by-wire energy charges since the com-
11 mencement of the OBCRF, in October 1982. Initially, the difference
12 between oil and coal-by-wire ranged from 1.5¢ to 2.0¢ per kilowatt-
13 hour. The differential has since fallen dramatically. In some
14 recovery periods, oil was cheaper than coal-by-wire. (Had The
15 Southern Companies not made a concession by offering Schedule R to
16 enable FP&L to meet its minimum annual purchase obligation under the
17 Unit Power Sales Agreements, with cheaper resources, coal-by-wire
18 energy would have been more expensive and, therefore, less economi-
19 cal than oil.)

1 Q FP&L, IN ITS MOTION TO DISMISS FIPUG'S PETITION, ALLEGES THAT FIPUG
2 HAS MISCHARACTERIZED THE OIL BACKOUT RULE AND HAS MISREPRESENTED THE
3 "PRIMARY PURPOSE" TEST WHICH THE COMMISSION PRESCRIBED IN ITS FINAL
4 ORDER IN DOCKET NO. 820155-EU. HOW DO YOU RESPOND TO FP&L'S ALLEGA-
5 TIONS?

6 A Contrary to the allegations made in FP&L's Motion to Dismiss, the
7 analysis presented in my original Affidavit and updated herein in
8 Schedule 1 was not intended to parallel the "primary purpose" test
9 which was utilized by the Commission for a limited purpose in the
10 1982 case. My sole purpose was, and continues to be, to demonstrate
11 that the promised savings have not materialized. FIPUG is not now
12 asserting that the Project must requalify prospectively using the
13 same "Primary Purpose" test, or that the special rate-making treat-
14 ment is justified if the Project now passes that test. Our position
15 is that the OBCRF should be discontinued because extraordinary rate-
16 making treatment is no longer warranted due to the dramatic changes
17 in circumstances that have transpired since 1982. These changed
18 circumstances render that particular Test useless for evaluating the
19 primary purpose of the Project, at the present time.

20 Q WHAT WAS THE SO-CALLED "PRIMARY PURPOSE TEST?"

21 A It was a test devised by the Commission during the qualification
22 phase to determine whether the intended primary purpose of the pro-
23 posed oil backout project was oil displacement. The Primary Purpose
24 Test was limited to comparing the net fuel savings to the total cost

1 of a project during the first ten years of commercial operation.
2 Net fuel savings are the difference between (1) the sum of the
3 avoided fuel and spinning reserve benefits and (2) the sum of the
4 energy-related costs and the fuel displacement benefits foregone.
5 Capacity-related costs (other than Schedule E) were not included in
6 the determination. If the net difference is greater than the Pro-
7 ject revenue requirements, then it was assumed that the primary
8 purpose of the Project was oil displacement.

9 Q CAN YOU ILLUSTRATE HOW THE TEST WAS APPLIED IN DOCKET NO. 820155-EI?
10 A Referring to Order No. 11217, Attachment 1 to FIPUG's Petition, Page
11 5, the Primary Purpose Test was applied as follows:

**Application of the "Primary Purpose" Test
to FP&L's 500 kV Transmission Project
in Docket No. 820155-EI
(Dollar Amounts in Billions)**

	<u>Amount</u>
Total Fuel Savings	\$9.797
Energy Costs:	
Coal-by-Wire	6.263
Fuel Displacement	
Benefits Foregone	<u>2.138</u>
Total Energy Costs	<u>8.401</u>
Net Fuel Savings	\$1.396
Total Project Costs	\$0.851
Passed Test	Yes

Source: Late Filed Exhibit No. 6X,
Page 3 of 12, Docket No.
840001-EI

- 19 Q WHAT ARE THE RESULTS OF THE PRIMARY PURPOSE TEST AS APPLIED TO
20 ACTUAL/CURRENT FORECAST CONDITIONS?
- 21 A As shown in the table below, FP&L computes net fuel savings of \$607
22 million. These savings, however, are nearly \$789 million less than
23 the original projections.

**Application of "Primary Purpose" Test
to FP&L's 500 kV Transmission Project
Actual/Current Forecast
(Dollar Amounts in Billions)**

	<u>per FP&L(a)</u>
Total Savings	\$4.123
Energy Costs:	
Coal-by-Wire	2.827
Fuel Displacement	
Foregone	<u>0.689</u>
Total Costs	<u>3.516</u>
Net Fuel Savings	\$0.607
Total Project Costs	\$0.297
Passed Test	Yes

(a) FP&L Response to FIPUG's First Set of Interrogatories, No. 17.

Because these are well in excess of the \$297 million cost of the Project, FP&L claims that the primary purpose of the Project continues to be the economic displacement of oil-fired generation.

1 Q ARE THE RESULTS OF THE PRIMARY PURPOSE TEST MEANINGFUL IN TODAY'S
2 ENVIRONMENT?

3 A No. In today's environment, the ability to purchase firm coal-by-
4 wire capacity and all of the many reliability benefits associated
5 with the Project more than outweigh any prospective oil displacement
6 benefits. The emphasis, thus, has changed since 1982 from oil
7 displacement to enabling FP&L to reliably serve the growing demands
8 of its customers.

9 Even if the Project were not a vital cog in enabling FP&L to
10 maintain system reliability, the Primary Purpose Test is seriously
11 flawed for several reasons. The Test was not designed to specifi-
12 cally quantify the various reliability benefits associated with the
13 Project. For example, what is the cost of not providing service
14 because of frequent outages? What are the costs of thermal over-
15 loads, low voltage problems and system separations? These very real
16 benefits cannot and should not be ignored especially when FP&L will
17 no longer have considerable surplus generating capacity. Further,
18 the Test assumes that coal-by-wire purchases always displace oil.
19 In reality, there may be other ways to economically displace oil.
20 For example, FP&L is relying more on natural gas in its overall
21 generation mix. Several planned unit additions are to be fueled
22 primarily by natural gas.

23 I also question FP&L's current estimate that the total cost of
24 the Transmission Project would be \$300 million (including O&M ex-
25 pense) over the first ten years of commercial operation. In an

1 earlier forecast, by contrast, the cost of the Transmission Project
2 was estimated to be \$578 million. It is not clear what would account
3 for the nearly 50% reduction in the cost of the Project. Because
4 FP&L has not yet responded to FIPUG's Second Request for Production
5 of Documents, No. 18, requesting detailed backup of the calculations
6 supplied in response to Interrogatory No. 17, I have not yet had an
7 opportunity to review FP&L's calculations and assumptions.

8 Coal-by-wire may not always be the most economical energy
9 available to FP&L. Under the UPS Agreements, FP&L is obligated to
10 schedule more expensive base energy whenever designated units are
11 operating at minimum levels. The cost of this energy may, in fact,
12 be quite high because the UPS units tend to have high fuel costs
13 relative to other Southern coal-fired resources. Because FP&L has
14 no other alternative than to schedule this energy, it is inappropriate
15 to categorize these minimum purchases as displacing oil.

16 Q HOW HAS FP&L TREATED THESE MINIMUM SCHEDULING OBLIGATIONS IN ITS
17 VARIOUS OIL BACKOUT FILINGS?

18 A FP&L has totally ignored these required minimum purchases in its
19 calculations because it has included all coal-by-wire energy in
20 determining net fuel savings (except for 100 MW of Schedule E capacity
21 and energy which pre-dated the Oil Backout Rule). These minimum
22 purchases, in fact, may actually be quite expensive in relation to
23 oil-fired generation because of the substantial drop in oil prices
24 relative to coal-by-wire energy, as shown in Schedule 5.

1 Q WHAT WOULD BE THE IMPACT OF ELIMINATING THE MINIMUM SCHEDULING
2 REQUIREMENTS FROM THE AVOIDED FUEL SAVINGS CALCULATION?

3 A Assuming that the minimum scheduling requirements would account for
4 15% of the coal-by-wire purchases since 1985 (when oil prices became
5 more competitive with, and, at times, even less expensive than,
6 coal), then this would eliminate more than \$400 million of the
7 claimed avoided fuel savings. Eliminating the \$400 million from the
8 net savings calculation--because these minimum purchases are required
9 under the UPS Agreements whether or not they economically displace
10 oil--reduces the net fuel savings to \$207 million. This is less than
11 the \$297 million cost of the Transmission Project now estimated by
12 FP&L.

13 Q ARE THERE ANY OTHER PROBLEMS WITH THE PRIMARY PURPOSE TEST AS IT WAS
14 APPLIED IN DOCKET NO. 820155-EU?

15 A Yes, there are. Circumstances have changed such that oil backout is
16 not now the primary purpose of the coal-by-wire purchases.

17 Q PLEASE EXPLAIN.

18 A For the primary purpose of the project to be oil backout, the pur-
19 chases must provide capacity in excess of FP&L's reserve require-
20 ments. In other words, the coal-by-wire purchases must be displacing
21 oil generation and not merely supplying electricity to meet load
22 growth. This is the same basis on which FP&L calculates the avoided

1 energy fuel savings. As described by FP&L Witness, Mr. William H.
2 Smith:

3 "The avoided energy fuel savings were calcu-
4 lated using the 'Average of Displaced Fuels'
5 method. This is the method used in previous
6 Oil Backout Cost Recovery period filings.

7 Under this method, the calculation of the
8 avoided energy fuel savings is derived from
9 two PROMOD simulation cases. The assump-
10 tions used in these PROMOD cases are the
11 same as those used in the Fuel Adjustment
12 PROMOD case for the April - September, 1989
13 period. The first PROMOD case includes the
14 projected coal-by-wire energy purchases, as
15 shown in Schedule OB-B1. The second case
16 excludes these coal-by-wire purchases. The
17 avoided energy fuel savings are developed by
18 calculating the difference in fuel costs
19 between the two PROMOD cases. These savings
20 represent the fuel cost of an amount of
21 energy equivalent to the coal-by-wire en-
22 ergy, if such energy had been generated by
23 FPL energy sources." (Testimony filed in
24 Docket No. 890001-EI, Page 8)

25 To be valid, the removal of the coal-by-wire purchases in the second
26 case must assume that there is sufficient capacity and energy to
27 maintain reliable service. If FP&L did not have sufficient capacity
28 to meet the expected demands and to provide adequate reserves in the
29 absence of the coal-by-wire purchases, then the primary purpose
30 would be to supply capacity for increasing loads, not energy to
31 displace oil.

32 Q HAS FP&L'S CAPACITY VS. LOAD SITUATION CHANGED SINCE 1982?

33 A Yes, it has. In the past, FP&L's reserve margins were generally
34 well above the levels necessary to maintain reliable service. This

1 is shown in Exhibit JP-1 (606), Schedule 6. Except for 1983, the
2 summer peak reserve margins (Page 1) have ranged from 25% to 38%
3 during the 1982 to 1988 time frame. FP&L's planning reserve margin,
4 by contrast, is currently 15%. Page 2 shows that the winter peak
5 reserve margins were even higher--ranging from 26% to 46%. This
6 surplus of capacity provided an ideal opportunity to utilize coal-
7 by-wire energy to displace less economical oil-fired generation.

8 Because FP&L is currently experiencing rapid load growth, the
9 future promises to be much different. FP&L is projecting much lower
10 reserve margins. This means that all resources, including coal-by-
11 wire capacity, will be needed by FP&L to maintain reliability.

12 Q WOULD FP&L'S PROJECTED RESERVE MARGINS BE ADEQUATE IN THE ABSENCE OF
13 THE COAL-BY-WIRE PURCHASES?

14 A No. This is shown in Exhibit JP-1 (607), Schedule 7. Page 1 of
15 the analysis is based on FP&L's projected summer peak demands, ad-
16 justed for load control and qualifying facilities. These are the
17 projected demands on which FP&L assesses the adequacy of its capac-
18 ity resources. Page 2 of the analysis is based on FP&L's projected
19 winter peak demands.

20 Referring to Schedule 7, Page 1, the projected summer peak re-
21 serve margins, including the additional coal-by-wire capacity, would
22 range from 26% in 1989 to 19% in 1998. Removing the coal-by-wire
23 capacity would reduce the projected summer peak reserve margins to
24 between 7% and 18%.

1 Schedule 7, Page 2 demonstrates that the projected winter peak
2 reserve margins would generally be lower both with and without the
3 coal-by-wire capacity. In fact, the projected winter peak reserve
4 margin without the coal-by-wire resources would remain below 15%
5 during most of the forecast period.

6 The above analysis and FP&L's own statements concerning the
7 importance of the coal-by-wire capacity compel the conclusion that
8 the primary purpose of the transmission lines--both now and in the
9 future--is to enable FP&L to meet its growing system demands.

10 Q DIDN'T THE COMMISSION, IN 1982, BELIEVE THAT THE COAL-BY-WIRE PUR-
11 CHASES WERE A TEMPORARY PHENOMENON?

12 A Yes. Quoting from the Final Order in Docket No. 820155-EU, the
13 Commission stated that:

14 "Southern expects to have power produced
15 from coal-fired generation available for
16 sale on a firm basis in varying amounts
17 through the mid-1990s. This is sometimes
18 referred to as the coal bubble. Because of
19 the projected price differential between
20 coal and oil, FP&L, who relies heavily on
21 oil-fired generation, has purchased up to
22 2,000 MW of Southern's coal-by-wire."
23 (Order No. 11217, Page 2, emphasis added)

24 Similarly, on Page 8 of the same Order, the Commission quoted FP&L's
25 Witness, Mr. Scalf, who testified that:

26 ". . . the 500 kV line project appears to be
27 a unique and short-lived coal bubble . . ."

1 Q WHAT IS THE CURRENT STATUS OF THE COAL-BY-WIRE PURCHASES?

2 A In June 1988, FP&L entered into new Agreements with The Southern
3 Company under which Southern will be obligated to provide up to 900
4 MW of firm capacity beginning in 1993 and continuing through the
5 year 2010. These new UPS Agreements are similar to the original
6 Agreements which ramp down beginning in 1993.

7 Q WHAT IS THE SIGNIFICANCE OF THE NEW UPS AGREEMENTS WITH SOUTHERN?

8 A According to FP&L, these purchases are, in fact, a vital cog in its
9 current generation expansion plan (Source: FP&L's Ten-Year Power
10 Plant Site Plan: 1988-1997). Extending the coal-by-wire purchases
11 for an additional fifteen years means that FP&L will be purchasing
12 firm capacity for at least twenty-eight years. Rather than pro-
13 viding a temporary source of capacity, the UPS Agreements are nearly
14 the equivalent of owning base load generation--both from a planning
15 and an operating perspective.

16 Q DOES THE OIL BACKOUT RULE PERMIT THE INCLUSION OF PROJECTS WHOSE
17 PRIMARY PURPOSE IS TO SERVE INCREASED LOAD?

18 A No. Quoting the Rule:

19 "The Oil-Backout Cost Recovery Factor shall
20 not be used for either the recovery of the
21 costs of a project the primary purpose of
22 which is to serve increased megawatt demand
23 or for the recovery of the costs of a new
24 generating unit." [Rule 25-17.016, F.A.C.,
25 Paragraph (2)(b)]

1 To the extent that the UPS Agreements are, in fact, a substitute
2 for, rather than a deferral of, new generating capacity, the con-
3 tinued recovery under the OBCRF would be contrary to the Rule.

4 **THE PROSPECTIVE APPLICATION OF THE OBCRF WOULD BE**
5 **UNJUST, UNREASONABLE AND UNDULY DISCRIMINATORY**

6 Q IN WHAT RESPECTS WOULD THE PROSPECTIVE APPLICATION OF THE OBCRF
7 RESULT IN UNJUST AND UNREASONABLE RATES?

8 A FP&L's rates would be unjust and unreasonable because, under the
9 OBCRF, the utility is allowed to earn a 15.6% ROE, and it is per-
10 mitted automatic increases in fixed operation and maintenance ex-
11 penses associated with the Project. The 15.6% ROE provides FP&L
12 with a windfall because for all other purposes, including the ap-
13 plication of the Commission's Income Tax Savings Rule, FP&L has
14 offered to set rates for its nonoil-backout rate base using a 13.6%
15 ROE.

16 Q IS A 15.6% ROE REASONABLE, IN YOUR OPINION?

17 A No. Although I have not conducted a formal study of FP&L's cost of
18 equity, there are several observations which support the unreason-
19 ableness of a 15.6% ROE. These observations are summarized in Ex-
20 hibit JP-1 (608), Schedule 8. The 15.6% ROE was authorized in a
21 1984 rate case (Docket No. 830465-EI). Since that Docket, interest
22 rates have fallen dramatically and utility stocks, including FP&L,
23 are now selling at prices well above book value. In recognition of

1 these changed circumstances, the utilities have offered, and the
2 Commission has accepted, lower ROEs than were authorized in each
3 utility's last general base rate case in implementing the Income Tax
4 Savings Rule. The Commission has also approved a settlement autho-
5 rizing a 12.6% ROE to calculate the base revenue requirement in the
6 recent Florida Power Corporation rate case (Docket No. 870220-EI).

7 Q **HAVE OTHER REGULATORY COMMISSIONS RECENTLY AUTHORIZED A 15.6% ROE?**
8 A No. I'm not aware of any regulatory commission which has authorized
9 a 15% or higher ROE since 1987. In fact, the median authorized ROE
10 has ranged from 12.8% to 13.0%, as shown in Exhibit JP-1 (),
11 Schedule 8. Most of these awards have been in the 12.0% to 14.49%
12 range, as shown in Exhibit JP-1 (609), Schedule 9. Similarly, the
13 current FERC benchmark ROE is 12.44%.

14 On the basis of these observations, it is my contention that
15 a 15.6% ROE does not represent the actual cost associated with the
16 Oil Backout Project. The continued use of a 15.6% ROE, therefore,
17 would be contrary to the Oil Backout Rule quoted earlier.

18 Q **IS THERE EVIDENCE TO SUGGEST THAT FP&L HAS CHANGED VARIOUS COST**
19 **PARAMETERS TO REFLECT ACTUAL CONDITIONS?**

20 A Yes. In fact, FP&L is using different estimates of O&M expenses
21 associated with the deferred Martin coal-fired units than the pro-
22 jections that were originally made during the qualification Docket.
23 Similarly, all cost increases as well as changes in capital costs

1 and tax rates are being incorporated in the determination of Project
2 revenue requirements and deferred capacity carrying charges.

3 It would be unreasonable to permit FP&L to automatically re-
4 cover increases in fixed costs without similarly taking into account
5 all circumstances which would lead to lower costs, such as a change
6 in the cost of common equity. Such automatic recovery should, if
7 anything, reduce FP&L's risk and, therefore, lower its cost of
8 equity. FP&L is not afforded a similar luxury for all of its other
9 regulated investment and expenses. In fact, as previously men-
10 tioned, FP&L has agreed to use a lower ROE in determining the income
11 tax savings refunds.

12 The OBCRF was implemented in response to extraordinary circum-
13 stances--the expected high cost of oil. Now that these extraor-
14 dinary circumstances are no longer applicable, there is no reason to
15 treat the purchases from the Southern Company and the revenue re-
16 quirements associated with the 500 kV Transmission Project any
17 differently from FP&L's other regulated rate base and operating ex-
18 penses.

19 Q WHAT ELSE IS WRONG WITH THE OBCRF?

20 A The OBCRF is applied to kilowatthour sales at the meter. The oil
21 backout costs, however, serve the same function as FP&L's other non-
22 nuclear power supply costs and, therefore, are more closely demand-
23 related.

1 Q HOW MUCH OF THE OIL BACKOUT COSTS WOULD BE ALLOCATED TO GSLD/CS
2 CUSTOMERS IF THEY WERE TREATED LIKE ALL OTHER NON-NUCLEAR PRODUCTION
3 AND TRANSMISSION CAPITAL COSTS?

4 A In FP&L's last rate case, about 14.3% of the non-nuclear production
5 and transmission capital costs were allocated to the GSLD and CS
6 rate classes.

7 Q HOW DOES THIS COMPARE TO THE PERCENTAGE OF COSTS RECOVERED FROM THE
8 GSLD/CS RATE CLASSES UNDER THE OBCRF?

9 A The corresponding percentage of oil backout costs recovered from the
10 GSLD/CS rate classes is 18.3%. As shown in Exhibit JP-1 (),
11 Schedule 10, the GSLD/CS revenue responsibility is four percentage
12 points, or 28%, higher than the corresponding cost responsibility
13 assuming that the oil backout costs were treated the same as all
14 other non-nuclear production and transmission capital costs. Given
15 that \$2.2 billion of promised fuel savings have failed to materi-
16 alize and the fact that the coal-by-wire purchases made possible by
17 the Project are a vital cog in FP&L's plans to meet future load
18 growth, it would be unduly discriminatory to continue the extraordi-
19 nary rate-making practice of charging the GSLD/CS classes rates
20 which are 28% higher than their corresponding cost responsibility,
21 as is presently the case under the OBCRF in which costs that are
22 essentially demand-related costs are recovered solely on a kilowatt-
23 hour basis.

1 Q HAS THE COMMISSION EVER ADOPTED A COST ALLOCATION METHOD IN WHICH
2 ALL FOSSIL STEAM PRODUCTION AND TRANSMISSION-RELATED COSTS WERE
3 CLASSIFIED AND ALLOCATED ON ENERGY?

4 A No. To my knowledge, the Commission has never approved a cost-of-
5 service method in which all production and transmission fixed costs
6 are allocated to customer classes based solely on kilowatthour sales
7 at the meter. I recognize, of course, that the Commission has em-
8 ployed various energy-based allocation methods in certain base rate
9 cases, including FP&L. In FP&L's last base rate case, however, only
10 7% of the non-nuclear production and transmission costs were clas-
11 sified to energy, and they were, unlike the OBCRF, allocated rela-
12 tive to energy at the generation level rather than sales at the
13 meter. The Commission has always recognized, both in class cost-of-
14 service studies and in the Fuel and Purchased Power Cost Adjustment
15 Clause, that it is appropriate to adjust energy-related costs to
16 recognize differences in losses.

17 Q ARE THE OIL BACKOUT COSTS DEMAND-RELATED?

18 A The UPS capacity charges are the major component of the costs which
19 FP&L is passing through the OBCRF. These costs are demand-related
20 because the capacity being purchased is needed by FP&L to maintain
21 system reliability; that is, to meet the projected peak loads and to
22 provide adequate reserves. The continued coal-by-wire purchases are
23 a vital cog in FP&L's plans to maintain system reliability in light
24 of current projections of summer and winter peak demands. Further,

1 these costs are functionally equivalent to the capital costs associ-
2 ated with FP&L's non-nuclear generating resources. The Commission
3 has previously classified these costs primarily to demand.

4 Similarly, the Transmission Project also provides substantial
5 reliability benefits to FP&L and, therefore, these costs are also
6 demand-related. As previously noted, the Project has enabled FP&L
7 to import firm coal-by-wire capacity and to defer the construction
8 of the Martin Unit Nos. 3 and 4. Because of the Project, FP&L's
9 system is less vulnerable to the type of incidents which formerly
10 would have caused severe outages. These benefits are described in
11 a November 1980 study by Stone & Webster commissioned by FP&L en-
12 titled "Review of Planning and Operation of Bulk Power Transmission
13 System." On Page 5-2, the Report states:

14 "FP&L's system operators are today loading
15 the transmission system to the point where
16 single contingencies such as line or gener-
17 ator trips cause damage to equipment if
18 operator action is not taken in a reasonable
19 time. While it is acceptable to operate the
20 system in this manner, it is not good prac-
21 tice to plan the system so that it must be
22 stretched to the limit of operator ingenuity
23 even when the generation plans remain on
24 schedule and the load growth rates meet
25 predictions."

26 Another section of this Report states the following:

27 "Currently, to prevent system separation
28 upon loss of the largest unit, power trans-
29 ferred to Florida from Southern Company
30 would have to be limited to essentially
31 zero. This limit is caused by voltage dips
32 near Kingsland, Georgia that occur during
33 the stability swing following the loss of a
34 unit in Florida." (Page 4-1)

1 Q WOULD THE TRANSMISSION PROJECT HAVE BEEN CONSTRUCTED EVEN IN THE AB-
2 SENCE OF THE OIL BACKOUT RULE?

3 A FP&L has admitted this to be the case. Not only was the utility ad-
4 vised by Stone & Webster of the potentially serious problems associ-
5 ated with the then planned transmission system, FP&L itself has
6 recognized the need to construct the Project. For example, in its
7 April 1981 Petition to the Florida Public Service Commission to
8 Commence Determination of Need for the Duval-Poinsett 500 kV Pro-
9 ject, FP&L states:

10 "D. Correct Thermal Overload and Low Voltage
11 Conditions:

12 There are several transmission facilities
13 which will be subject to thermal overloads
14 in the 1980s if the Duval-Poinsett 500 kV
15 Project is not built. They are: (1)
16 Brevard-Malabar 230 kV #1 and #2; (2)
17 Putnam-Volusia 230 kV #1 and #2; (3)
18 Gillette-Big Bend 230 kV (tie with TECO);
19 (4) Midway-Ranch 230 kV; (5) Putnam-Rice 230
20 kV #1 and #2; (6) Sanford-North Longwood 230
21 kV (tie with Florida Power Corporation)."

22 On Page 8 of the same Report, FP&L states:

23 "Paragraph E. Improved System Reliability:

24 Sudden loss of a large generator in penin-
25 sular Florida has occasionally resulted in
26 a system separation accompanied by underfre-
27 quency load shedding. Completion of the
28 Duval-Poinsett 500 kV Project will substan-
29 tially increase the ability of the system to
30 withstand major system disturbances such
31 that the need for dropping customer load
32 will be virtually eliminated."

1 And finally, Page 9 of the Report contains the following language:

2 "Paragraph G. Accommodate Load Growth:

3 This 500 kV transmission will insure ample
4 transmission capacity for future load growth
5 in the FP&L Service Territory through which
6 the Duval-Poinsett 500 kV lines will pass."

7 There are several locations in the Duval-Poinsett Petition which
8 support FP&L's need for this transmission to properly dispatch its
9 generation and transport available coal-fired generation from North-
10 ern Florida. On Page 1, the Petition states:

11 "In order for FP&L to fully utilize the
12 Southern purchase, FP&L/JEA joint coal
13 units, Seminole plant transfers, and maxi-
14 mize the economics of oil displacement in
15 Southeast Florida, this project, along with
16 other related 500-kV projects in various
17 stages of planning or construction, is re-
18 quired." (Emphasis added)

19 On Page 3 of this Petition, the following is listed as a principal
20 benefit of this Project:

21 "3. Remove Existing Transmission Con-
22 straints to Economic Dispatch Within the
23 FP&L System."

24 And finally, on Page 21 of the Petition, an adverse consequence of
25 not building the Duval-Poinsett 500 kV Project is listed as:

26 "3. The Loss of Adequate and Reliable
27 Transmission Capacity Between Duval and
28 Poinsett."

29 This final point refers to the part of the State where the coal-
30 fired Seminole Plant and joint FP&L/JEA St. Johns River Project
31 Plants are in operation.

1 Q DO THE RELIABILITY BENEFITS DESCRIBED ABOVE AND THE DISPROPORTIONATE
2 SHARE OF OBCRF COSTS BORNE BY GSLED/CS CUSTOMERS EXEMPLIFY YOUR CLAIM
3 THAT THE OBCRF IS UNDULY DISCRIMINATORY?

4 A Yes. In the absence of some extraordinary circumstances, the reli-
5 ability benefits not only of the Transmission Project but of the
6 firm coal-fired capacity which FP&L is counting on to supply its
7 future load growth needs exemplify the reasons why the costs being
8 recovered through the OBCRF should be allocated among customer
9 classes and collected through base rates on a basis that appropri-
10 ately reflects the demands which give rise to the need for these
11 costs.

12 **OIL BACKOUT REVENUES BASED ON ALLEGED**
13 **BENEFITS ASSOCIATED WITH THE DEFERRAL OF**
14 **COAL-FIRED GENERATING UNITS HAVE BEEN**
15 **IMPROPERLY COLLECTED FROM CUSTOMERS**

16 Q EARLIER, YOU TESTIFIED THAT FP&L IS INCLUDING THE COSTS ASSOCIATED
17 WITH DEFERRED GENERATION CAPACITY AS PART OF THE CALCULATION OF NET
18 SAVINGS IN DETERMINING THE OBCRF. IS THAT CORRECT?

19 A Yes.

20 Q HOW MUCH OF THE DEFERRED CAPACITY COSTS HAVE BEEN COLLECTED BY FP&L?

21 A Through September 1989, FP&L has recovered about \$285 million
22 (0.190¢ per kWh) of costs (excluding add-on revenue taxes) that may
23 be attributable to deferred capacity benefits. These are quantified
24 in Exhibit JP-1 (), Schedule 11. In other words, if FP&L had

1 not included the deferred capacity benefits in its Oil Backout fil-
2 ings, it would not have recovered \$285 million of accelerated depre-
3 ciation associated with the Transmission Project.

4 Q WHAT UNITS ARE BEING INCLUDED IN FP&L'S ANALYSIS OF THE DEFERRED
5 CAPACITY SAVINGS?

6 A Presently, the deferred capacity savings are based on Martin Unit
7 Nos. 3 and 4. Presumably, FP&L will include at least one unsited
8 unit in the analysis beginning in December 1990, the date on which
9 the latter was assumed to have begun commercial operation.

10 Q ARE THE MARTIN UNITS PART OF FP&L'S GENERATION EXPANSION PLAN?

11 A No. None of the units are under construction at the present time,
12 contrary to the assumptions made in 1982-83, when the Project was
13 qualified under the OBCRF. They have been supplanted by other op-
14 tions. Given the availability of alternatives, it would appear
15 highly unlikely that any of these units will be built in the fore-
16 seeable future. According to FP&L's Ten-Year Power Plant Site Plan:
17 1989-1998, the utility is not planning to construct 700 MW (net)
18 pulverized coal-fired units of the type similar to Martin Unit Nos.
19 3 and 4 during the forecast period. According to FP&L Form 6, Page
20 2, the Martin site is listed as a preferred site for planned and
21 prospective generating capacity additions. Specifically, Footnote
22 3 states:

23 "These sites will be considered along with
24 FP&L's existing plant and substation sites

1 in determining an appropriate location for
2 the designated combined-cycle and IGCC units
3 or future, unspecified, generating units
4 whose in-service dates are beyond the re-
5 porting period." (Page 83)

6 To assert that the same Martin coal-fired units will be constructed
7 is to engage in sheer speculation. As a matter of regulatory prac-
8 tice, rates should never be set based on speculation nor should they
9 include any costs associated with capacity that has not yet been
10 built and is not used and useful in providing service to FP&L's
11 customers.

12 Q PLEASE EXPAND ON THE POINT THAT RATES SHOULD NOT BE SET BASED ON
13 CAPACITY WHICH IS NOT USED AND USEFUL IN PROVIDING SERVICE.

14 A The Martin units have not been, and may never be, built. Therefore,
15 they cannot be used and useful in providing service to FP&L's cus-
16 tomers. As a matter of accepted regulated practice, utilities can-
17 not include in their rates recovery of costs of facilities that are
18 not used and useful, absent extraordinary circumstances.

19 Even though the Martin units may have once been part of FP&L's
20 generation expansion plan, FP&L has recognized long ago that these
21 units are no longer consistent with least-cost planning. That is,
22 FP&L chose other options besides constructing the Martin units be-
23 cause they were expected to be more cost-effective. Now that FP&L
24 has opted for the least-cost plan, it is entitled to recover the
25 prudently incurred costs of facilities included in that plan that
26 provide used and useful capacity. As a matter of regulatory

1 practice, utilities are not allowed to raise rates to reflect the
2 cost of plans rejected. Yet, this is exactly what is happening in
3 the OBCRF by allowing FP&L to include deferred capacity costs asso-
4 ciated with the Martin and unsited coal-fired units. To now require
5 ratepayers to pay higher rates to reflect deferred capacity carrying
6 charges would be tantamount to charging twice for the same capacity.

7 Q PLEASE EXPLAIN.

8 A The OBCRF is comprised of three elements: (1) all costs of the
9 Transmission Project; (2) the costs associated with the firm UPS
10 capacity; and (3) two-thirds of any positive net savings. Because
11 the present coal-oil energy cost differential is not sufficient to
12 offset the very high UPS capacity charges, the only reason that FP&L
13 is able to claim positive net savings is due to the inclusion of
14 deferred capacity costs of the Martin and Unsited coal units in the
15 net savings calculation. Recall, however, that the availability of
16 firm UPS capacity allowed FP&L to defer the Martin units. There-
17 fore, recovering both the UPS capacity costs and the Martin deferred
18 capacity carrying charges, simultaneously, would effectively result
19 in a double recovery of the same capacity.

1 Q DIDN'T THE COMMISSION, IN ITS ORDER DENYING PETITIONS FOR RECON-
2 SIDERATION IN DOCKET NO. 820155-EU, PERMIT FP&L TO INCLUDE THE SAV-
3 INGS ASSOCIATED WITH DEFERRED CAPACITY?

4 A Yes. However, it deferred the issue of quantifying the proper
5 amount of savings associated with capacity deferral.

6 Q HAS THERE BEEN ANY CHANGE IN CIRCUMSTANCES TO WARRANT REVISITING THE
7 ISSUE OF WHETHER THE DEFERRED CAPACITY SAVINGS ASSOCIATED WITH THE
8 MARTIN AND UNSITED COAL-FIRED UNITS SHOULD BE INCLUDED IN DETERMIN-
9 ING THE NET SAVINGS UNDER THE OBCRF?

10 A Yes. When the Commission issued its Order Denying Petitions for
11 Reconsideration, these units were still part of FP&L's generation
12 expansion plan. In fact, it was thought that these units would
13 eventually be built because of the short-lived availability of coal-
14 by-wire capacity. As noted above, the coal-by-wire capacity is no
15 longer a short-lived phenomenon. Further, none of the units in
16 question are in FP&L's current generation expansion plan. Not only
17 is FP&L not actively involved in constructing any of the 700 MW
18 pulverized coal-fired units, but it is unlikely that any of these
19 units will be built in the foreseeable future. Because these cir-
20 cumstances are clearly different from the ones which prevailed when
21 the Commission denied the Petitions for Reconsideration, I believe
22 the issue of whether to include the Martin and Unsited coal-fired
23 units in the deferred capacity savings analysis must be revisited.

1 Q DOES THE RULE PERMIT A UTILITY TO INCLUDE DEFERRED CAPACITY SAVINGS
2 IN DETERMINING THE OBCRF?

3 A No, not necessarily. The Rule provides that only two-thirds of the
4 *actual* net savings associated with an oil backout project (if posi-
5 tive) can be recovered through the OBCRF and applied as accelerated
6 depreciation. Therefore, if the deferred units are either actually
7 being constructed or are likely to be built within the foreseeable
8 future, it is conceivable that the costs associated with these units
9 could be included in the determination of net savings in the OBCRF.
10 In this case, however, the units in question do not exist, are not
11 under construction and may not be built in the foreseeable future.
12 Further, these units have not been in FP&L's expansion plan since at
13 least 1986. Given these different circumstances, it is highly ques-
14 tionable whether FP&L is in compliance with the Rule when it uses
15 the costs of the Martin and Unsited coal-fired units to determine
16 the deferred capacity savings.

17 Q ARE THERE ANY OTHER PROBLEMS WITH RESPECT TO FP&L'S ESTIMATES OF THE
18 DEFERRED CAPACITY BENEFITS?

19 A Yes. Because FP&L has chosen, in this instance, to use the original
20 cost estimates of constructing Martin Unit Nos. 3 and 4--adjusted
21 only for the difference in escalation rates, it has significantly
22 inflated the deferred capacity benefits. For example, the direct
23 construction cost of the Martin units which is being used to calcu-
24 late the deferred capacity benefits are as follows:

**Martin Coal-Fired Unit Nos. 3 and 4 Investment
Used in Quantifying Deferred Capacity
Carrying Charges in the OBCRF**

	<u>Direct Cost</u>	<u>AFUDC</u>	<u>Total Installed Cost</u>
<u>Investment (000)</u>			
Unit 1	\$1,119,400	\$ 611,508	\$1,730,908
Unit 2	<u>755,800</u>	<u>403,085</u>	<u>1,158,885</u>
Total	\$1,875,200	\$1,014,593	\$2,889,793
<u>Unit Cost (\$/kW)</u>			
Unit 1	\$ 1,599	\$ 874	\$ 2,473
Unit 2	1,080	576	1,656
Average	\$ 1,339	\$ 725	\$ 2,064

Source: Testimony of D. L. Babka, Document No. 2, filed
in Docket No. 890001-EI (January 13, 1989)

17 Q HOW DO THESE COSTS COMPARE WITH OTHER COST ESTIMATES OF SIMILAR TYPES
18 OF UNITS?

19 A Exhibit JP-1 (62), Schedule 12, is a comparison of the various
20 cost estimates to construct a two-unit 700 MW (net) pulverized
21 coal-fired generating station. These estimates were compiled from
22 information provided by FP&L in response to FIPUG's First Request for
23 Production of Documents. Although the numbers are not totally com-
24 parable because of the different in-service dates, it is instructive

1 to note that the \$1,339 per kW direct cost being used by FP&L is
2 substantially above the \$1,009 to \$1,128 per kW direct cost estimates
3 taken from more contemporaneous studies.

4 Rather than update its cost estimates--which would have re-
5 sulted in significantly lower capacity deferral benefits--FP&L has
6 once again chosen to "stick with the past."

7 Q WHAT ASSUMPTIONS DID FP&L MAKE WITH RESPECT TO THE TOTAL INSTALLED
8 COSTS OF MARTIN UNIT NOS. 3 AND 4?

9 A The total installed costs of these units averages about \$2,064 per
10 kW. This assumes no CWIP in rate base, a 15.6% return on equity and
11 an average cost of senior securities based on actual long-term debt
12 and preferred stock issues during the assumed construction period.
13 All of these assumptions, and particularly the 15.6% ROE, would have
14 the effect of maximizing the total installed cost. This would, in
15 turn, maximize the so-called deferred capacity benefits associated
16 with the Project.

17 Q SHOULD FP&L BE ALLOWED TO REFLECT THE DEFERRED CAPACITY BENEFITS
18 ASSOCIATED WITH AN UNSITED COAL-FIRED UNIT?

19 A No. Even though I contend that it is inappropriate to reflect the
20 costs of the deferred Martin coal-fired Unit Nos. 3 and 4 in the
21 calculation of net savings, it is even less appropriate to include
22 any costs associated with unsited coal-fired units. FP&L has not
23 made any commitment to purchase equipment or to enter into a contract

1 to build these unsited units. Other than the Martin site, FP&L has
2 not certified any other sites suitable for 700 MW coal-fired units.
3 Further, the Martin site can only accommodate up to two 700 MW coal-
4 fired units. Finally, FP&L has never applied for an application for
5 site certification for any coal-fired units other than Martin Unit
6 Nos. 3 and 4.

7 Rate-making should not engage in such endless speculations
8 about what the future may have turned out to be if a different deci-
9 sion had been made. Allowing FP&L to claim capacity deferral bene-
10 fits of units that do not, and may never, provide used and useful
11 capacity would be highly inappropriate absent some proof that FP&L
12 had made formal commitments to build specific units and that, in
13 light of declining peak load forecasts and oil prices in the mid-
14 1980s, these units would have been needed and would have been the
15 most economical alternatives.

16 **IMPACT OF EXCLUDING OIL BACKOUT COSTS**
17 **FROM THE CALCULATION OF REFUNDS UNDER**
18 **THE INCOME TAX SAVINGS RULE**

19 Q HOW WERE OIL BACKOUT RATE BASE AND NET OPERATING INCOME TREATED BY
20 FP&L IN DETERMINING THE AMOUNT OF REFUND NECESSARY UNDER THE COMMIS-
21 SION'S INCOME TAX SAVINGS RULE?

22 A FP&L has completely removed all Oil Backout costs from the adjusted
23 jurisdictional rate base, rate of return and net operating income in
24 determining the required refunds. It did so under the guise that
25 removing these costs is required by the Commission.

1 Q IS THERE ANYTHING IN THE INCOME TAX SAVINGS RULE WHICH REQUIRES FP&L
2 TO REMOVE OIL BACKOUT COSTS FROM THE ANALYSIS?

3 A No.

4 Q WOULD FP&L'S REQUIRED REFUND HAVE BEEN DIFFERENT IF OIL BACKOUT COSTS
5 HAD BEEN INCLUDED?

6 A Yes. The required refund would have been about \$60.0 million rather
7 than \$53.3 million, a difference of \$6.7 million. These amounts are
8 derived in Exhibit JP-1 (613), Schedule 13.

9 Referring to Schedule 13, Page 1, Column 1 shows the deriva-
10 tion of the refund proposed by FP&L which excludes the Oil Backout
11 revenues and costs. Column 2 shows the same calculations with the
12 Oil Backout net operating income and rate base included. The deri-
13 vation of the Oil Backout operating income and rate base under both
14 the old and new tax rates is shown on Page 2 of Schedule 13.

15 Schedule 13, Page 3, shows the derivation of the capital struc-
16 ture and stipulated cost of capital with the inclusion of the Oil
17 Backout investment. Because the latter is financed with higher cost
18 capital, the combined cost of capital with a stipulated 13.6% return
19 on common equity yields an overall 9.31% rate of return. Even
20 accounting for the higher cost of senior securities, FP&L continues
21 to earn a higher return on its Oil Backout investment because it
22 continues to use the 15.6% ROE approved in its last general rate
23 case, in 1984.

1 **RECOVERY OF OIL BACKOUT COSTS MUST HENCEFORTH**
2 **BE ACCOMPLISHED THROUGH THE OPERATION OF THE**
3 **UTILITY'S BASE RATES**

4 Q FIPUG IS RECOMMENDING THAT THE OBCRF BE TERMINATED AND THAT THE
5 RECOVERY OF THESE COSTS SHOULD BE ACCOMPLISHED THROUGH BASE RATES.
6 IF THE COMMISSION GRANTS FIPUG'S REQUEST, WOULD THIS NECESSITATE
7 INCREASING FP&L'S BASE RATES AT THIS TIME?

8 A It is not clear whether FP&L would require a base rate increase to
9 absorb the costs which are currently being recovered through the
10 OBCRF. Further, I would not recommend a base rate increase to
11 compensate for the OBCRF without a full and complete review of FP&L's
12 overall revenue requirements and, in particular, O&M expenses and
13 return on equity. Despite all of the increases in investment and
14 expenses incurred by FP&L since its last base rate case, in 1984,
15 the Company has already implemented a \$53 million refund in 1987 and
16 is proposing to implement an additional refund in 1988, under the
17 Commission's Income Tax Savings Rule. I would further note that FP&L
18 absorbed nearly \$200 million of additional rate base due to the
19 unsuccessful litigation concerning the Martin Dam repairs and the
20 Turkey Point steam supply costs without the necessity of a base rate
21 increase. FP&L is also absorbing the costs of the St. John's coal-
22 fired units, again without the need for a base rate increase.

23 In the final analysis, FP&L should have to demonstrate to this
24 Commission that it would require a base rate increase after consider-
25 ing all factors, including the termination of the OBCRF. Further,
26 mechanisms exist which are designed to enable FP&L to avoid any

1 prejudice which might result if current rates are inadequate to
2 absorb the Oil Backout costs.

3 Q PLEASE EXPLAIN.

4 A FP&L always has the ability to file an application with the Commis-
5 sion for interim rate relief. I am advised by Counsel that the
6 Commission has the statutory authority to grant interim rate relief
7 on an expedited basis provided that FP&L has made a proper showing.
8 Thus, any financial integrity concerns can be properly and expediti-
9 ously addressed in a separate proceeding.

10 Q DOES THAT CONCLUDE YOUR DIRECT TESTIMONY, AT THIS TIME?

11 A Yes, it does, at this time.

1 **Qualifications of Jeffry Pollock**

2 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A Jeffry Pollock, 12312 Olive Boulevard, St. Louis, Missouri.

4 Q WHAT IS YOUR OCCUPATION AND BY WHOM ARE YOU EMPLOYED?

5 A I am a consultant in the field of public utility regulation and am
6 a principal in the firm of Drazen-Brubaker & Associates, Inc.,
7 utility rate and economic consultants.

8 Q PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

9 A I am a graduate of Washington University. I hold the degrees of
10 Bachelor of Science in Electrical Engineering and Master of Busi-
11 ness Administration. At various times prior to graduation, I
12 worked for the McDonnell Douglas Corporation in the Corporate Plan-
13 ning Department; Sachs Electric Company; and L. K. Comstock & Com-
14 pany. While at McDonnell Douglas, I analyzed the direct operating
15 cost of commercial aircraft. Upon graduation, in June, 1975, I
16 joined the firm of Drazen-Brubaker & Associates, Inc. My work
17 consists of preparation of financial and economic studies related
18 to electric and gas utilities, including revenue requirements,
19 cost-of-service studies, rate design, site evaluations and service
20 contracts. I am also responsible for the development of seminars
21 on utility regulation.

22 I have testified before the regulatory commissions of Alabama,

1 Arizona, Delaware, Florida, Georgia, Illinois, Iowa, Louisiana,
2 Minnesota, Missouri, Montana, New Jersey, New Mexico, Ohio, Penn-
3 sylvania, Texas and Washington. I have also appeared before the
4 City of Austin Electric Utility Commission, the Board of Public
5 Utilities of Kansas City, Kansas, the Bonneville Power Administra-
6 tion, and the U.S. Federal District Court.

7 The firm of Drazen-Brubaker & Associates, Inc. was incorpo-
8 rated in 1972 and has assumed the utility rate and economic con-
9 sulting activities of Drazen Associates, Inc., active since 1937.
10 In the last five years, our firm has participated in more than 700
11 rate cases in forty states and Canada.

12 The firm provides consulting services in the field of public
13 utility regulation to many clients, including large industrial and
14 institutional customers, some utilities and, on occasion, state
15 regulatory agencies. In addition, we have also prepared depreci-
16 ation and feasibility studies relating to utility service. In all
17 these cases, it was necessary to analyze the utility's operating
18 and financial records, including property records, depreciation
19 studies, revenues, expenses and taxes. We also assist in the nego-
20 tiation of contracts for utility service for large users and pre-
21 sent seminars on utility regulation.

22 In general, we are engaged in regulatory consulting, economic
23 studies and contract negotiation.

1

Before the

2

Florida Public Service Commission

3

In Re: Petition of the Florida Industrial)

4

Power Users Group to Discontinue Florida)

5

Power & Light Company's Oil Backout Cost)

6

Recovery Factor)

7

Docket No. 890148-EI

8

Rebuttal Testimony of Jeffry Pollock

1 Q

PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A

Jeffry Pollock, 12312 Olive Boulevard, St. Louis, Missouri.

3 Q

ARE YOU THE SAME JEFFRY POLLOCK WHO HAS PREVIOUSLY SUBMITTED AN

4

AFFIDAVIT AND PREFILED DIRECT TESTIMONY IN THIS DOCKET ON BEHALF OF

5

FIPUG?

6 A

Yes.

7 Q

WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

8 A

I shall respond to various allegations and misstatements contained

9

in the testimony of Samuel S. Waters, on behalf of FPL. Predictably,

10

FPL has chosen to rehash the past to support its contention that the

11

OBCRF should continue in effect. Specifically, FPL has relied upon

12

the 1982 qualification proceedings in general, and the original

13

Primary Purpose Test, in particular, to assert that the Project has,

1 and continues to, economically displaced oil-fired generation. That
2 test is inapplicable under present circumstances, as discussed
3 beginning on Page 19 of my direct testimony. There are, however,
4 significant flaws in FPL's application of the Test, as described
5 later in my rebuttal testimony.

6 FPL also continues to assert, without factual support, that
7 Martin coal-fired Unit Nos. 3 and 4 would have been built and placed
8 in-service in June, 1987 and December, 1988, respectively, had the
9 Project not been constructed and had firm coal-by-wire capacity not
10 been made available through the UPS Agreements. FPL's assertions
11 about the Martin units are speculative.

12 Finally, FPL has asserted a novel rate-making theory that
13 because neither FIPUG nor Public Counsel has complained about he
14 OBCRF since the qualification docket, neither party is entitled to
15 do so now. FIPUG disagrees with FPL's "estoppel" theory.

16 Q IS THIS CASE PRIMARILY ABOUT THE PAST?

17 A No. Except for the \$285 million of accelerated depreciation which
18 FIPUG contends was improperly recovered from ratepayers, this case
19 is primarily about the future.

20 Presently, FPL states that the Southern Company purchase will
21 provide a fuel cost savings to its customers of \$214,515,000 for the
22 calendar year 1989. To obtain this savings, it is presently charging
23 its customers at the rate of \$540,000,000 a year. It appears
24 that the time has come to re-examine the justification for continuing

1 this unique rate-making procedure which requires customers to pay
2 rates based on a generating plant that is not in useful service and
3 to require FPL's present customers to subsidize future customers by
4 paying the full cost of a transmission line that will be used for at
5 least twenty more years. Specifically, FIPUG contends that:

- 6 (1) The continuation of the OBCRF is unwarranted
7 because the extraordinary circumstances
8 giving rise to the Factor--high and escalat-
9 ing oil prices and the ever widening cost
10 differential between coal and oil-fired gen-
11 eration--no longer prevail;
- 12 (2) Because the primary function of the Project
13 is to enable FPL to maintain system relia-
14 bility and to import capacity needed to meet
15 the growing electrical demands of its ser-
16 vice territory, continuation of the OBCRF
17 would be contrary to Rule 25-17.016, F.A.C.;
- 18 (3) The continuation of the OBCRF would be un-
19 just and unreasonable because FPL is recov-
20 ering more than its actual costs (e.g., a
21 15.6% return on equity, et cetera) and be-
22 cause the inclusion of deferred capacity
23 carrying charges--in addition to the UPS
24 capacity charges--means that ratepayers are
25 not only paying for capacity which is not
26 used and useful (e.g., Martin Unit Nos. 3
27 and 4), but they are paying for the same
28 capacity twice;
- 29 (4) Because of the substantial capacity-related
30 benefits now and in the foreseeable future
31 derived from the Transmission Project and
32 the continuation of the UPS Agreements, an
33 equal cents per kilowatthour allocation
34 would be unduly discriminatory against high
35 load factor customers and it would now be
36 appropriate to treat the Oil Backout costs
37 the same as FPL's other non-nuclear power
38 supply-related costs; and
- 39 (5) If the Project is to be completely written
40 off by October, 1989 (as suggested in FPL's
41 response to FIPUG's discovery requests), the
42 Rule requires that the OBCRF be terminated,

1 and the costs must be recovered through
2 present base rates unless FPL can justify a
3 base rate increase in a separate docketed
4 proceeding before the Commission.

5 **PRIMARY PURPOSE TEST**

6 Q AT PAGES 9 THROUGH 13 OF THE TESTIMONY, MR. WATERS RESURRECTS THE
7 PRIMARY PURPOSE TEST UTILIZED BY THE COMMISSION DURING THE QUALIFI-
8 CATION HEARINGS AND CRITICIZES FIPUG FOR DISTORTING THE TEST. HOW
9 DO YOU RESPOND TO MR. WATERS' TESTIMONY?

10 A Mr. Waters has mischaracterized FIPUG's position as explained begin-
11 ning on Page 15 of my direct testimony.

12 Q AT PAGE 16 OF HIS TESTIMONY, MR. WATERS CLAIMS THAT THE PROJECT
13 WOULD PASS THE TEST TODAY BASED ON ACTUAL DATA AND ON FPL'S LATEST
14 PROJECTIONS. ARE THERE ANY PROBLEMS WITH ANY OF THE ASSUMPTIONS
15 UNDERLYING FPL'S APPLICATION OF THE PRIMARY PURPOSE TEST?

16 A Yes. As stated in my direct testimony, I am very skeptical about
17 several of the parameters and assumptions made by FPL in reconsti-
18 tuting the Primary Purpose Test. Specifically, it appeared that the
19 revenue requirements associated with the Transmission Project were
20 too low and that the claimed avoided energy cost savings were too
21 high. A review of the discovery responses received subsequent to
22 the filing of my direct testimony confirms these problems.

1 Q WHAT IS THE BASIS FOR YOUR CONTENTION THAT FPL HAS UNDERSTATED THE
2 REVENUE REQUIREMENTS OF THE TRANSMISSION PROJECT?

3 A The reason why the current \$300 million revenue requirement is
4 nearly 50% below the 1984 estimated cost of \$578 million is that the
5 former includes the effect of accelerated depreciation. According
6 to FPL's analysis, the Project would be completely written off by
7 October, 1989. This is because, with the inclusion of capacity
8 deferral benefits associated with Martin Unit Nos. 3 and 4, the
9 utility is claiming that substantial net savings--two-thirds of
10 which (or \$285 million through September, 1989)--can be taken as
11 accelerated depreciation. FPL's version of the Primary Purpose
12 Test, thus, compares actual/projected net energy cost savings
13 against the cost of the Project reduced by two-thirds of the antici-
14 pated net savings. Not only is this comparison circular reasoning,
15 it is contrary to the Test because the effects of the capacity de-
16 ferral benefits have been intertwined with the net energy cost sav-
17 ings. By contrast, the Commission (in Docket No. 820155-EU) and FPL
18 (in its direct testimony in this Docket) separated the fuel and
19 capacity costs and savings in applying the Primary Purpose Test.

20 Q WHAT WOULD THE REVENUE REQUIREMENTS OF THE PROJECT HAVE BEEN IF
21 ACCELERATED DEPRECIATION HAD NOT BEEN INCLUDED?

22 A Assuming no accelerated depreciation, the revenue requirement of the
23 Project during the first ten years of commercial operation would be
24 about \$156 million higher than FPL's estimate.

1 Q IS THERE ANY INEQUITY IN THE FACT THAT THE PROJECT WOULD BE COM-
2 PLETELY WRITTEN OFF BY OCTOBER, 1989, ACCORDING TO FPL'S ANALYSIS?

3 A Yes. The costs of the Transmission Project would be completely
4 borne by past and present ratepayers despite the fact that the
5 transmission lines will provide continuing benefits for many years
6 to come. By contrast, the often stated justification for normaliz-
7 ing income tax expense is to preserve inter-generational equity;
8 that is, to ensure that the costs of a project are spread over its
9 useful life and thereby avoid subsidization of present ratepayers by
10 future ratepayers. Just the opposite is true with respect to the
11 Oil Backout Project: unless the accelerated depreciation is re-
12 versed, present ratepayers will have subsidized future ratepayers.

13 Q WHAT IS THE SECOND FLAW WITH FPL'S APPLICATION OF THE PRIMARY PUR-
14 POSE TEST?

15 A As discussed in my direct testimony at Pages 20 through 24, FPL has
16 made the erroneous assumption that each and every kilowatthour of
17 coal-by-wire energy economically displaces oil-fired generation.
18 This assumption is unwarranted because of the operational realities
19 of the UPS Agreements and the substantial decline in oil prices
20 relative to coal. In fact, for other purposes, FPL assumes that it
21 would have to schedule at a minimum between 15% and 25% of its unit
22 capacity entitlement in its Rate of Return model. Because base
23 energy is typically the most expensive coal-by-wire purchased, it is

1 unlikely that these minimum purchases would always be more economi-
2 cal than oil-fired generation, as FPL assumes.

3 Q ON PAGE 14 OF HIS TESTIMONY, MR. WATERS LABELS AS UNTRUE FIPUG'S
4 CONTENTION THAT THE PROJECT HAS FAILED TO MEET ITS PRINCIPAL PUR-
5 POSES DUE TO LOWER THAN PROJECTED OIL PRICES AND THAT THE COMMISSION
6 RELIED ON FPL'S FORECAST TO QUALIFY THE PROJECT. IS MR. WATERS
7 CORRECT?

8 A As to Mr. Waters' contention that the Commission relied on several
9 forecasts, not all of which were prepared by FPL, he is technically
10 correct. This is, however, a small point because it was FPL who
11 chose the specific forecasts prepared by others to be included in
12 its presentation.

13 With respect to his first contention, Mr. Waters would claim
14 the Project to be a success because, according to his measurement,
15 it resulted in significant fuel cost savings. Mr. Waters' notion of
16 success is analogous to a sports team continuing to pay top dollar
17 for a high draft choice even though his performance fails to live up
18 to the management's extraordinary expectations. What he overlooks
19 is the reality that a significant portion of the projected \$3.5
20 billion of net fuel savings--which the Commission deemed to be con-
21 servative--have failed to materialize. It was the extraordinary
22 nature of the projected net savings which, in my opinion, swayed the
23 Commission to adopt the OBCRF and to recover the costs of the Proj-
24 ect and of the UPS Agreements on an equal cents per kilowatthour

1 basis. The OBCRF is, after all, an extraordinary rate-making mech-
2 anism. Quoting the former Chairman of the Commission,

3 "Mr. McGlothlin addresses the question of how to
4 recover it. And I believe that obviously it ought
5 to be recovered on a cents per kilowatthour basis
6 because the primary purpose is reduction in energy
7 costs and if you are going to start spending money
8 to reduce energy costs, then you are going to take
9 those dollars and somehow allocate them on a de-
10 mand basis. It seems to me that the benefits are
11 misappropriated." (Transcript of Agenda Confer-
12 ence, Page 751)

13 In other words, because the projected cost savings were supposed to
14 offset the projected costs, the Project would have met the "no-
15 losers" test. In reality, the Project has failed to live up to its
16 "extraordinary" expectations because \$2.2 billion of fuel cost sav-
17 ings have failed to materialize and because the tangible costs of
18 the Project have exceeded the tangible benefits. Therefore, the
19 OBCRF--which was implemented as an extraordinary response to combat
20 extraordinary circumstances--should be terminated.

21 Q ON PAGE 15 OF HIS TESTIMONY, MR. WATERS OFFERS AN OPINION THAT IT IS
22 IMPROPER TO "REQUALIFY" A PROJECT THROUGH HINDSIGHT AND TO DO SO IS
23 DIFFICULT AND UNFAIR. IS FIPUG PROPOSING TO REQUALIFY THE PROJECT?

24 A No. Mr. Waters' testimony mischaracterizes FIPUG's position. FIPUG
25 is not saying that the Project should be requalified, nor is it
26 saying that FPL is not entitled to recover the legitimate costs
27 associated with the Project, including the carrying charges at a
28 reasonable rate of return, O&M expense and the UPS capacity and

1 wheeling charges. What FIPUG is saying is that the appropriate
2 level of these costs should be recovered through base rates.

3 Q AT VARIOUS PLACES IN HIS TESTIMONY--SPECIFICALLY, PAGES 7-8 AND
4 PAGES 18-19--MR. WATERS ASSERTS THAT FIPUG HAS HAD THE OPPORTUNITY
5 TO CHALLENGE THE OBCRF BOTH DURING THE QUALIFICATION HEARINGS AND
6 DURING RECENT HEARINGS IN WHICH THE COMMISSION AUTHORIZED A SPECIFIC
7 FACTOR. IS THIS TESTIMONY RELEVANT?

8 A No. The only relevance that I see is that FPL is using the past to
9 assert that FIPUG's Petition merely rehashes issues which have al-
10 ready been decided. In other words, because the 500-kV transmission
11 lines were previously qualified as an oil backout project and be-
12 cause the Commission has already adopted specific recovery factors,
13 which included capacity deferral benefits, FIPUG is "estopped" from
14 challenging the recovery mechanism. FPL's assertion mischaracter-
15 izes FIPUG's Petition because, as I previously testified, this case
16 is not about the past, but it is primarily about the future.

17 Q DO YOU AGREE WITH FPL'S ESTOPPEL THEORY?

18 A No. I am advised by Counsel that the Commission has continuing
19 review over all costs recovered under the various adjustment
20 clauses, including the OBCRF. Further, the propriety of establish-
21 ing the OBCRF in 1982 and the prudence of the Transmission Project
22 and UPS Agreements are not at issue. Taking FPL's estoppel theory
23 to its logical conclusion, the Commission would be prohibited from

1 reducing a utility's allowed return on equity in response to lower
2 interest rates and the circumstance that the utility's stock was now
3 selling at substantially above book value. Just as the Commission
4 is not estopped from reconsidering a utility's ROE in every base
5 rate case, it also has the authority to determine whether monies
6 were appropriately recovered through an adjustment clause and
7 whether the continuation of an extraordinary rate-making prac-
8 tice--i.e., the OBCRF--are warranted even though the extraordinary
9 circumstances that gave rise to this practice no longer prevail.

10 **DEFERRED CAPACITY**

11 Q BEGINNING ON PAGE 18 OF HIS TESTIMONY, MR. WATERS TESTIFIES THAT
12 FPL'S JUSTIFICATION FOR USING THE MARTIN COAL UNIT TO QUANTIFY THE
13 CAPACITY DEFERRAL BENEFITS WAS BECAUSE THESE WERE THE UNITS DEFERRED
14 AS A RESULT OF THE PROJECT AND THE RELATED UPS AGREEMENTS WITH THE
15 SOUTHERN COMPANIES. IS THIS A VALID JUSTIFICATION?

16 A No. As stated in my direct testimony (beginning at Page 34), in-
17 creasing the OBCRF to reflect the assumed costs of the Martin coal
18 units is inappropriate because:

- 19 (1) The Martin units are not used and useful--
20 both today and in the foreseeable future;
21 and
- 22 (2) Collecting deferred capacity carrying
23 charges *in addition to* the UPS capacity
24 charges is tantamount to paying twice for
25 the same capacity.

1 Further, I take issue with FPL's assumptions that:

2 (1) The commercial in-service dates of these
3 units would have remained the same as was
4 originally projected in 1981 despite a de-
5 cline in peak load forecasts that followed;
6 and

7 (2) They would have been more expensive than
8 similar units actually placed in commercial
9 operation and cost estimates provided from
10 alternative sources, including FPL's most
11 recent APH filing.

12 Q WOULD YOU PLEASE AMPLIFY YOUR CONTENTION ABOUT THE COMMERCIAL IN-
13 SERVICE DATES OF THE MARTIN COAL UNITS?

14 A Mr. Waters contends (at Page 23 of his testimony) that had FPL not
15 committed to the Project and to the UPS Agreements, it would have
16 had to construct Martin Unit Nos. 3 and 4, and these units would now
17 be in operation. Consistent with FPL's OBCRF filings, Mr. Waters
18 has assumed that these units would have been placed into service in
19 June, 1987 and December, 1988, respectively. These are the same
20 dates that were also assumed during the 1982 qualification Docket.

21 Considering all factors that have transpired since 1982, FPL's
22 assumption that the in-service dates would have remained identical
23 for so long a period ignores the dynamics of the generation planning
24 process. First, there is never any assurance that a project of this
25 magnitude--with an over \$2.8 billion price tag--could have been
26 completed in the required time frame especially since these were the
27 first coal-fired units constructed by FPL. Second, it is also not
28 clear whether FPL would have had the financial wherewithal to begin

1 constructing these units in the early 1980's, when FPL was also in
2 the midst of completing St. Lucie Unit No. 2, and it was also seek-
3 ing substantial rate relief. FPL had even requested CWIP treatment
4 for the deferred units during the implementation of the OBCRF in
5 order to maintain its financial integrity.

6 Q WOULD THE MARTIN UNITS HAVE BEEN NEEDED FOR CAPACITY IN 1987 AND
7 1989, RESPECTIVELY, BASED ON FORECASTS MADE SUBSEQUENT TO THE OIL
8 BACKOUT QUALIFICATION PROCEEDING?

9 A No. Based on FPL's own load forecasts conducted subsequent to 1982,
10 these units would not have been needed for capacity in 1987 and
11 1989, respectively, because of reduced peak load forecasts. The
12 chart below summarizes the projected reserve margins based on fore-
13 casts made by FPL during the period 1983 through 1986:

**FPL's Projections of Summer Peak Reserve Margins
Including the Martin and Unsited Coal-Fired Units*
Made Subsequent to 1982**

<u>Year of Forecast</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
	(1)	(2)	(3)	(4)
1983	29%	25%	31%	34%
1984	38	33	39	42
1985	34	29	35	35
1986	33	29	37	40

***In-Service Dates:**

Martin 3 - June, 1987
Martin 4 - December, 1988
Unsited 1 - January, 1990

1 For example, with Martin Unit No. 3 in-service in June, 1987, FPL's
2 1987 summer peak reserve margin was projected to range from 29% to
3 38%. Similarly, with both the Martin units in-service, FPL's 1989
4 summer peak reserve margin was projected to range from 31% to 39%.
5 The corresponding 1990 reserve margins, with Unsited Unit No. 1
6 in-service, were projected to be 34% to 42%. These are well in
7 excess of FPL's planning reserve margin.

8 Q WHEN WOULD THE MARTIN UNITS HAVE BEEN NEEDED FOR CAPACITY BASED ON
9 FPL'S OWN PEAK DEMAND FORECASTS?

10 A As shown in the chart below, the Martin coal-fired units would not
11 have been needed until 1991 and 1992, respectively, at the earliest,
12 based on FPL's projected summer peak demands and a 15% minimum plan-
13 ning reserve margin. FPL's 1986 forecast, by comparison, shows that
14 the units would not be needed until 1994 and beyond.

15 **Year When Martin Unit Nos. 3 and 4**
16 **Would Have Been Needed for Capacity**
17 **Based on FPL's Projected Summer Peak Demands**
18 **and a 15% Minimum Planning Reserve Margin**

<u>Year of Forecast</u>	<u>Martin 3 (1)</u>	<u>Martin 4 (2)</u>
1983	1991	1992
1984	1993	After 1993
1985	1991	After 1994
1986	1994	After 1994

1 Q DO THE ABOVE FACTS SUGGEST THAT, EVEN IN THE ABSENCE OF THE UPS
2 AGREEMENTS, FPL COULD HAVE DEFERRED BUILDING THE MARTIN COAL-FIRED
3 UNITS?

4 A Yes. Given that FPL's own forecast suggested that it would have had
5 substantial excess generating capacity and because inflation rates
6 had begun to decline, deferral of the Martin units beyond 1987 and
7 1988 may have been both prudent and consistent with Commission policy
8 as articulated in 1982:

9 "However, no witness disagreed with the truism
10 that as long as the increased cost of construction
11 does not exceed the increased cost of capital,
12 deferral of the construction of a generation fa-
13 cility, *until the capacity is needed*, is a prudent
14 economic decision, and in the best interest of the
15 ratepayers." (Docket No. 820155-EU, Order No.
16 11217, Page 8, emphasis added)

17 Q IF FPL HAD DEFERRED THE CONSTRUCTION OF THE MARTIN AND UNSITED COAL
18 UNITS IN RESPONSE TO LOWER PEAK LOAD FORECASTS, WOULD THE UNITS HAVE
19 BEEN MORE COSTLY TO BUILD?

20 A No, not necessarily. FPL, in a 1984 analysis, identified several
21 factors which indicated that slipping the construction schedule could
22 have made the units less costly to build. For example:

23 "1. The escalation projections used to develop
24 the Oil Backout estimates are significantly
25 higher than the escalation projections used
26 in Co-Generation. Since Co-Generation cash
27 flows reflect a 5½ year deferment of Martin
28 Unit #3, planned expenditures are occurring
29 during a period of time in which FPL is pro-
30 jecting a significantly lower inflation
31 rate. Conversely, the Oil Backout cash
32 flows reflect the high inflation that we
33 experienced in the 1980-83 time frame, and

1 higher than currently projected inflation
2 for the 1984 to 1988 time frame.

- 3 2. The Oil Backout estimates for Martin Coal
4 reflected construction performed on a Force
5 Account Labor basis, with contracts on major
6 specialty work; i.e., turbine & boiler erection,
7 etc. To the contrary, the Co-Generation
8 estimates reflect a 100% contract package
9 (lump sum bidding) concept, which limits
10 FPL's cost overrun exposure and also reduces
11 FPL risk in general. This methodology was
12 changed to take advantage of the highly competitive
13 and depressed market conditions that exists in today's
14 power plant construction industry, which brings with it
15 significantly lower profit margins bid by major
16 contractors. This shift in lower profit
17 margins is visible on the St. Johns River
18 Project, where bids are coming in significantly
19 lower than originally estimated.
20

- 21 3. The change to a contract package - lump sum
22 bidding approach, also impacts the cash flow
23 curve by pushing heavier construction expenditures
24 out later in time, to allow for the completion of
25 engineering drawings and specifications which are
26 required for obtaining lump sum bids. The force
27 account approach reflected in the Oil Backout
28 estimates allows construction to start earlier in
29 the project cycle, where engineering is approximately
30 35% to 45% complete, versus 80% to 95% complete
31 required for a contract package job. The shifting
32 of cash flow occurring in the contract package
33 approach (Co-Generation estimates) will reduce the
34 accumulation of AFUDC charges and tend to reduce
35 total project cost.
36
37

- 38 4. The Co-Generation estimates reflect lower
39 base prices for major equipment and material
40 commodities which is due to the depressed market
41 conditions and curtailment of many power generation
42 projects. In other words the significantly decreased
43 demand for power plant components has made it a
44 "buyer's market" versus the "seller's market" that
45 existed in the late 1970's and early 1980's when
46 the original Martin Coal project estimate was prepared
47 (the oil backout estimates
48

1 were based on estimates prepared by Bechtel
2 in 1979).

- 3 5. The Co-Generation estimates reflect a lower
4 and more realistic cost allowance for the
5 FGD System, due to a firming up of FGD
6 design concepts and associated costs. The
7 oil backout estimates, on the contrary, in-
8 cluded very conservative cost allowances for
9 an FGD system that was relatively new to the
10 power industry at the time the original Mar-
11 tin Coal Plant Conceptual estimates were
12 developed."

13 (Source: Memorandum to Mr. E. Hoffman, from:
14 Project Management Department, dated October 11,
15 1984, Attachment "B"--emphasis added)

16 Q WHAT CONCLUSIONS CAN BE DRAWN WITH RESPECT TO THE TIMING AND COST OF
17 THE MARTIN COAL-FIRED UNITS?

18 A Contrary to FPL's assertions that FIPUG misunderstands the dynamics
19 of the generation planning process, it is FPL who is guilty of "sta-
20 tic" thinking. Based on the above facts, it is certainly not a
21 forgone conclusion that the Martin coal units would have been built
22 and placed in commercial operation in June, 1987 and December, 1988,
23 respectively. Nor is it evident that these units would have been as
24 expensive particularly if the in-service dates had been delayed
25 several years. FPL's own analysis suggests that construction costs
26 would have been lower because of changes in the industry, the use of
27 a different construction procedure (i.e., 100% contract package
28 rather than force account labor), lower inflation and a lower and
29 more realistic cost allowance for the FGD System. By locking in on
30 the "very conservative cost allowances for an FGD System that was

1 relatively new to the power industry at the time the original Martin
2 coal plant conceptual estimates were developed" in 1979, FPL has
3 overstated the construction cost--and, consequently, the capacity
4 deferral benefits--of the Martin coal units.

5 Q DID FPL PREVIOUSLY ATTEMPT TO LOCK-IN THE ASSUMPTIONS ASSOCIATED
6 WITH THE CALCULATION OF DEFERRED CAPACITY BENEFITS?

7 A Yes. In Docket No. 820001-EU, FPL made such a proposal. The Com-
8 mission, however, responded that:

9 "We do not agree with that proposal. None of the
10 assumptions are such that we cannot fix them more
11 accurately through retrospection than through pro-
12 jection. We do not consider it appropriate to
13 lock ourselves into assumptions prior to the time
14 we will be applying them." (Order No. 11210, Doc-
15 ket No. 820001-EU, Page 9)

16 Q IF THE MARTIN UNITS COULD HAVE BEEN DEFERRED, EVEN IN THE ABSENCE OF
17 THE UPS AGREEMENTS, MIGHT THIS HAVE BOUGHT FPL TIME TO MORE CLOSELY
18 EXAMINE OTHER ALTERNATIVES?

19 A Yes. It is possible that FPL could have considered other supply and
20 demand-side alternatives. The supply-side alternatives might have
21 included purchasing surplus in-state coal-fired capacity (e.g.,
22 TECO), importing nonfirm energy from the Southern Company (e.g.,
23 Schedule E), promoting the development of qualifying facilities and
24 examining alternative generating technologies. FPL could also have
25 more aggressively pursued load management and interruptible rates to
26 minimize the need for additional generating capacity. Deferral,

1 thus, could have bought sufficient time to enable FPL to determine
2 whether any of the above supply and demand-side options would have
3 been cheaper prior to the time that it would have incurred substan-
4 tial expenditures to construct the Martin units.

5 Q WAS A SIMILAR PROPOSITION RAISED IN THE QUALIFICATION DOCKET?

6 A Yes. FPL Witness, Mr. James E. Scalf, testified:

7 "It would be our hopes that in that time
8 frame [between now and 1985] we might see
9 some change in the commercial availability
10 of alternatives that may produce cheaper
11 types of construction. Also, that there
12 might be some easing of the capital market
13 so that the financing would be less severe.

14 Q (By Chairman Cresse): You have mentioned
15 two candidates that may possibly become
16 lower costs between now and 1985. Are there
17 any other potential cost components that you
18 think have a good chance of lessening in
19 that time frame?

20 A Well, we certainly would not rule out addi-
21 tional purchases as an alternative, to bring
22 them in in that time frame, if in fact there
23 are quantities of power that would be avail-
24 able and that it would be the economic deci-
25 sion.

26 Q (By Chairman Cresse): Okay. Of those
27 three, that is improvements in technology
28 that would allow you to bring the unit in at
29 a lower cost, a lower cost of capital and
30 additional coal-by-wire purchases, which do
31 you think is the most likely to happen be-
32 tween now and 1985?

33 A I would be in hopes that all three would.
34 I'm not sure that I could say which one
35 would be the most likely to occur.

36 Q (By Chairman Cresse): Do you seriously
37 anticipate that any of those three events
38 will occur?

1 A Two I would and the third Mr. Howard might
2 be able to comment on the capital costs. I
3 think there is significant progress being
4 made in research today in some of the coal
5 conversion technologies. To mention only
6 one as looking promising would be coal con-
7 version and gasification which would then be
8 used in a combined cycle type plant, which
9 should have a much lower capital cost than
10 the conventional coal units that we see
11 today." (Docket No. 820155-EU, Hearing
12 transcript, Pages 395 396)

13 Q IS THERE ANYTHING IRONIC ABOUT MR. WATERS' CONTENTION THAT THE MAR-
14 TIN UNITS WERE NEEDED FOR CAPACITY?

15 A Yes. It is ironic in the extreme that FPL can claim that, on the
16 one hand, the Martin units (i.e., the deferred capacity) would have
17 been needed to enable FPL to meet projected load growth and to pro-
18 vide an adequate reserve margin while, on the other hand, the pri-
19 mary purpose of the Transmission Project and the coal-by-wire capac-
20 ity made available under the UPS Agreements continues to be oil
21 displacement. The two objectives cannot coexist in the same time
22 frame. It is impossible to meet increased megawatt load growth
23 while, at the same time, to economically displace oil-fired genera-
24 tion. If anything, this supports FIPUG's contention that, in the
25 future, FPL will have only limited opportunity to displace oil and
26 that all resources will be needed to meet increased megawatt load
27 growth. In other words, the primary purpose of the 500-kV transmis-
28 sion lines has fundamentally changed since the qualification Docket.

1 Q ON PAGES 24 THROUGH 27 OF HIS TESTIMONY, MR. WATERS CONTENDS THAT
2 THE MARTIN COAL-FIRED UNITS WOULD HAVE BEEN THE ONLY ALTERNATIVES
3 AVAILABLE TO FPL TO MEET ITS CAPACITY NEEDS. WOULD THIS HAVE NECES-
4 SARILY BEEN THE CASE?

5 A No, not necessarily. Mr. Waters can only speculate about what might
6 have transpired had FPL not entered into the UPS Agreements. FPL
7 did not even begin to study the alternatives until February, 1984.
8 In a report entitled "Analysis of Timing and Feasibility of Generat-
9 ing Technologies," dated February, 1984, FPL stated that:

10 "In recent years Florida Power & Light (FPL) has
11 not produced a long-range generation expansion
12 plan. This has been due to a combination of sev-
13 eral factors:

- 14 1. Our purchase of 2,000 MW of unit power from
15 the Southern Companies;
- 16 2. Forecasted load growth continuing to decline
17 due to conservation and other demand-side
18 activities;
- 19 3. FPL (and the State as a whole) is projected
20 to have sufficient capacity through the
21 early 90's.

22 For these reasons, there has not been a critical
23 need to develop a long-range expansion plan.
24 Because of the uncertainty and many options avail-
25 able to FPL, we do need to be examining the issues
26 through the generation planning process. We need
27 to know which of the emerging new technologies we
28 should be pursuing in R&D. We need to know the
29 impact of unit retirements and examine the issues
30 surrounding extending the operating life of units.
31 Joint projects and unit power purchases need to be
32 examined closely. The impact of different load
33 growth rates should be assessed." (Introduction,
34 Page 1)

1 Mr. Waters' testimony is also devoid of any discussion concerning
2 demand-side alternatives, such as load management, interruptible
3 rates and purchases from qualifying facilities. FPL had not even
4 implemented an interruptible rate program until 1988. Although he
5 discusses various supply-side alternatives, he did not provide a
6 quantitative analysis to support his position that the completion of
7 the Martin units would have been more cost-effective than cancella-
8 tion. Finally, Mr. Waters ignored the fact that FPL was not the
9 only utility in the State that faced declining load growth in the
10 mid-1980's. Other utilities--notably TECO--had plenty of additional
11 capacity for sale following the completion of Big Bend Unit No. 4.

12 In summary, Mr. Waters' contentions about the Martin coal
13 units are based on endless speculations about what would have trans-
14 pired in the absence of the UPS Agreements. Yet, it is these end-
15 less speculations about the Martin units--and not higher costs--that
16 are primarily responsible for the very high level of OBCRF recover-
17 ies experienced since the April, 1987, filing. Because rates should
18 be based on cost and not on speculation, I believe it is inappropri-
19 ate for FPL to have recovered \$285 million of accelerated depreci-
20 ation, which is attributed solely to the inclusion of capacity de-
21 ferral benefits since the April, 1987, filing.

22 Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

23 A Yes, it does.

1 Q (By Mr. McGlothlin) Mr. Pollock, would you please
2 summarize your direct and rebuttal testimony?

3 A Yes, sir. Commissioners, this is the case of contrast.
4 In 1982 the Commission approved the oil backout rule; they
5 qualified the 500 kV transmission project for recovery under the
6 oil backout rule, and at the same time decided to include in that
7 recovery factor the recovery of capacity and wheeling charges
8 related to the unit power sales agreements between Florida Power
9 and Light and the Southern Company.

10 The oil backout cost recovery factor, in my experience,
11 is a unique ratemaking tool. It was designed to encourage the
12 economic displacement of oil-fired generation, and it covered
13 costs which were traditionally recovered in base rate: Things
14 like transmission-related costs and power supply-related costs,
15 which had heretofore been recovered entirely in base rates. And,
16 of course, as you have heard previously, the oil backout clause,
17 unlike base rates, all the costs are recovered on a kilowatt hour
18 sales basis not adjusted for losses.

19 The oil backout factor was an answer to a unique
20 problem and a unique set of circumstances. Those are the very
21 high oil prices, the percol operation.

22 Another unique circumstance was the fact that Southern
23 Company had made available to FPL, and other utilities, a source
24 of coal-fired capacity, firm power, that it did not need to serve
25 the requirements of its own system. This power was thought to be

1 available to the year 1995. It's sometimes referred to in the
2 final order the "Coal Bubble."

3 The other unique circumstance in the 1982 proceeding is
4 that capacity was not needed by FPL for at least five years, and
5 pel operation.

6 Another unique circumstance was the fact that Southern
7 Company had made available to FPL, and other utilities, a source
8 of coal-fired capacity, firm power, that it did not need to serve
9 the requirements of its own system. This power was thought to be
10 available to the year 1995. It's sometimes referred to in the
11 final order the "Coal Bubble."

12 The other unique circumstance in the 1982 proceeding is
13 that capacity was not needed by FPL for at least five years, and
14 perhaps longer, depending upon subsequent circumstances. And
15 despite the reliability benefits acknowledged in the transmission
16 project and the UPS agreements, these benefits took a back seat
17 to the opportunity that the Commission and FPL had to implement a
18 device which would help FPL achieve \$3.5 billion in fuel savings.
19 Today, however, circumstances are totally different, the changes
20 of the magnitude that were not really contemplated in 1982. Many
21 of these circumstances were not contemplated. For example,
22 nobody predicted that oil prices would come down, and
23 substantially. In 1989 the oil price is around \$22 a barrel,
24 some 60% lower than the 1982 forecast.

25 Further, the dramatic cost escalations feared in the

1 1982 time period are not expected to occur, and as a consequence
2 the project, excluding the deferred capacity-related benefits
3 have not -- have failed to materialize to the tune of \$2.2
4 billion of savings. Said better: The net savings achieved by
5 the Company are 63% lower than when the Company projected it.

6 There is also no coal bubble. The Southern purchases
7 are now available well beyond the year 1995. Without the
8 coal-by-wire reserves would fall on the FPL system below
9 unacceptable levels. The Company has, in fact, acknowledged that
10 the coal-by-wire purchases are a vital cog in its ability to
11 maintain reliable service. Therefore, it is our contention that
12 the UPS agreements and the corresponding costs, as well as the
13 500 kV transmission project, are functionally equivalent to FPL's
14 other production/transmission facilities, the costs of which are
15 recovered in base rates and not on a cents-per-kilowatt-hour
16 basis.

17 Finally, or petition argues that a cents-per-kilowatt
18 hour allocation discriminates against high load factor customers.
19 I should emphasize the fact that the charge applies to all
20 customers. It is FIPUG's position that the oil backout clause
21 should be discontinued and the costs be recovered through the
22 operation of base rates. We are not proposing to deny FPL the
23 opportunity to recover these costs, but whether or not FPL
24 requires an increase to accomplish this is properly considered in
25 a separate docket in which the Commission, and all parties, have

1 the ability to evaluate all of FPL's costs, including its cost of
2 capital.

3 Another facet of the petition is that FPL should be
4 required to refund 285 million, which has been recovered as
5 accelerated depreciation, and this amount should be restored to
6 the transmission project rate base. The source of the \$285
7 million is the Martin coal-fired units. But for the inclusion of
8 the costs, both capital and operating costs of the Martin
9 coal-fired units, which were based on estimates and not actual
10 units built and constructed by FPL, there would be no accelerated
11 depreciation.

12 The issue of the deferred costs, deferred capacity
13 costs, and the accelerated depreciation really hinges on one
14 assumption, the assumption -- basically, two assumptions: That
15 the Martin units would have been built and in commercial
16 operation in June of 1987 and in December of 1988, and that the
17 costs of those units would have exceeded \$2,000 a kilowatt.
18 While FIPUG acknowledges the fact that the coal-by-wire purchases
19 did provide FPL the opportunity to defer construction, we take
20 strong exception to the assumptions regarding the timing and cost
21 parameters of the Martin units. Subsequent load forecasts
22 showed, for example, that these units would not have been needed,
23 or could have been deferred to 1991 and '92 at the very earliest,
24 based on projections that load forecasts would decline. Further,
25 at a cost of over \$2,000 a kilowatt, that cost is very high

1 relative to the cost of comparable coal units of comparable size
2 and type.

3 More importantly, if you look at the results of the oil
4 backout clause over the last several years, you find that the
5 Company has collected a substantial amount of additional money
6 related to accelerated depreciation over the past two years.
7 Coupled with the fact that the projected fuel savings in those
8 two years were much less than was originally anticipated, FIPUG
9 contends that this causes, or creates, a serious
10 inter-generational in equity; that the lion's share of the costs
11 of the line have, and will have been paid for by past and present
12 rate payers, but the lion's share of the benefits of the line
13 will continue to accrue to all ratepayers over the next 20 to 25
14 years. We also believe that it's improper to set rates based on
15 the speculative costs of generating units which have not and may
16 not be built in the foreseeable future, and have not been part of
17 FPL's generation expansion plan for some time. In short, this
18 capacity is not used and useful, and thereby increasing rates
19 based on the cost of that capacity, requires customers to
20 effectively pay twice for the same thing.

21 Finally, FIPUG asserts that the Company, by virtue of
22 being allowed a 15.6% return on equity, and by virtue of the fact
23 that the application of the income tax savings rule, the oil
24 backout costs and investments, were excluded in the determination
25 of the refund, effectively caused FPL to refund less than it

1 should have under an appropriate application of the rule.

2 That concludes my summary.

3 MR. MCGLOTHLIN: Mr. Pollock is available for cross
4 examination.

5 COMMISSIONER EASLEY: I have a question, Mr. Chairman.

6 CHAIRMAN WILSON: Yes, Commissioner.

7 COMMISSIONER EASLEY: Mr. Pollock, I am having a little
8 bit of difficulty with what argument you are positing over there.
9 The difference in your statement, the difference between the
10 words "not needed" and "deferred," I don't know whether I am
11 reading in something or not, but I am hearing you distinguish
12 between the deferral of the Martin plant, as it was contemplated
13 originally as being part of the fuel savings, the oil savings,
14 and the fact that it wasn't needed until 1992, or 1990. Are you
15 making a distinction between the kind of deferral, as
16 contemplated by the building of these transmission lines,
17 coal-by-wire, and some other kind of postponement of the Martin
18 plant?

19 WITNESS POLLOCK: Yes, Commissioner, I am.
20 Specifically, I am saying that FPL would have built the
21 transmission project in any event. And even though the Company
22 had entered into the UPS agreements, declining load forecasts in
23 the period subsequent to the oil backout qualification hearing
24 would have caused FPL to defer the in-service date of that
25 capacity. So ignoring the coal-by-wire purchases, we believe

1 that declining load growth would have enabled FPL the opportunity
2 to have deferred the in-service date of those units.

3 COMMISSIONER EASLEY: You are saying that they would
4 have built it anyway, but they didn't; and the reason they didn't
5 was only this, or the reason they didn't was because they didn't
6 need it, or what? That's where I am having trouble.

7 WITNESS POLLOCK: I understand your difficulty, and let
8 me approach it this way: A utility will plan to add generation
9 capacity in anticipation of the day when its reserve margins will
10 fall below an accepted level.

11 COMMISSIONER EASLEY: All right.

12 WITNESS POLLOCK: The planning process is very dynamic
13 in the sense that once you do a load forecast, you don't just do
14 one for one year and base your plans accordingly, you do
15 sensitivities but you continue to review the situation year after
16 year after year.

17 COMMISSIONER EASLEY: Uh-huh.

18 WITNESS POLLOCK: If you proceed from that base and
19 start in 1983 and say were the Martin units necessary to enable
20 FPL to maintain reliable service in 1987 and 1988 in the absence
21 of the coal-by-wire agreements, my conclusion is that based upon
22 the then-projected load growth in 1983, and the years beyond,
23 that FPL would have concluded that it would have been prudent to
24 defer constructing those units to the 1991-92 time frame or
25 beyond.

1 CHAIRMAN WILSON: They would have made that decision in
2 1982?

3 WITNESS POLLOCK: No, sir. They would have begun to
4 consider deferral in 1983 in response to a marked decline in
5 their load forecast for 1987 and beyond.

6 COMMISSIONER EASLEY: But you said they would have
7 built the transmission lines anyway?

8 WITNESS POLLOCK: That's correct. FPL was committed,
9 even before the oil backout rule to construct the two 500 kV
10 transmission lines.

11 COMMISSIONER EASLEY: So you are saying avoided plant
12 in this instance is not avoided?

13 WITNESS POLLOCK: The transmission project I don't
14 believe is avoided. What the Company was able to avoid was
15 having to construct its own generating capacity.

16 COMMISSIONER EASLEY: Wasn't that one of our goals?

17 WITNESS POLLOCK: Pardon me?

18 COMMISSIONER EASLEY: Wasn't that precisely one of our
19 goals, was to avoid another generating capacity using oil?

20 WITNESS POLLOCK: Absolutely, and to avoid incurring
21 the high cost of the generation. But what I'm saying is I think
22 the Company could have done that even outside of the oil backout
23 rule; in other words, because of the fact that the Company was
24 seeing declines in their load forecast, deferral would have been
25 the proper choice even if they had not entered into the unit

1 power agreements.

2 COMMISSIONER BEARD: If I understand that, then you are
3 saying that the lines would have been built on a reliability
4 standpoint, right?

5 WITNESS POLLOCK: They were certainly needed for that
6 purpose.

7 COMMISSIONER BEARD: Well, if you had not built the
8 lines, and just accepting for the moment that they would have
9 built the Martin plants, okay, your plants would have been
10 significantly closer to your load population, which is Miami
11 predominately, and I question the reliability factor associated
12 with building lines from that point north into Georgia, and the
13 associated benefit, and why they would have done that.

14 WITNESS POLLOCK: They would have done that because the
15 existing inter-ties between what amounts to two very large
16 utility systems were simply inadequate; that whenever a large
17 generating unit went out of service in south Florida, that caused
18 reverberations that went all the way up into south Georgia. The
19 net effect was that the systems would separate, the Utility would
20 have to drop load in some cases and certainly operate with
21 overloaded transmission lines in order to maintain service, to
22 the extent that they could. So that the transmission project was
23 originally envisioned as a way of strengthening the ties between
24 Georgia and Florida, and therefore preventing the separation
25 problems that occurred that caused customers to sustain

1 significant outages of their electricity.

2 COMMISSIONER BEARD: And we would have authorized that
3 as prudent, absent the avoided unit methodology that we then, I
4 think, and currently use, which would project the next avoided
5 unit which was at that point in when, 1991, 1992, and is now
6 1995, and we would have found that prudent?

7 WITNESS POLLOCK: I think that because of the inherent
8 reliability problems, and the instability of the system without
9 the ties, I think, as I said, FPL was committed to building those
10 ties anyway. They had studies that showed that those ties were
11 essential to maintaining stability in the system, and they were
12 committed to building those lines even before the oil backout
13 rule.

14 COMMISSIONER GUNTER: Mr. Pollock, if I may ask you one
15 question. I have for another purpose -- that's what I have been
16 scrambling around for was trying to find it -- I had Staff
17 provide me with a spread sheet talking about the results of
18 conservation programs. And one of the things that comes in, in
19 reading everybody's testimony about forecasts and actuals, you
20 know, and what have you, have you ever done a study as to the --
21 and Florida-specific -- as to the overall reductions that have
22 resulted from the conservation programs, excluding oil backout,
23 in the state of Florida since 1982?

24 WITNESS POLLOCK: No, sir, I haven't.

25 COMMISSIONER GUNTER: Well, there is a piece of this

1 equation that troubles me somewhat; that is, with the passage of
2 the FEECA Act in 1980, this is a piece, oil backout, that came
3 from that element. And there is much to do in testimony about
4 actual load versus forecasted load. Do you agree with that
5 generalization?

6 WITNESS POLLOCK: Certainly, there is much contention
7 over the accuracy of forecasts.

8 COMMISSIONER GUNTER: Mr. Chairman, I don't quite know
9 how to do this, but I had Mr. Floyd back in July, and it had to
10 do with looking at some acid rain legislation, wherein they were
11 talking about having credits available and emissions, you know,
12 some sort of a fuzzy situation where you got some credit on
13 emissions based on the amount of conservation hours that had been
14 saved, and what have you, as is being proposed in the
15 Administration, the President's bill, and I believe that number
16 is 3030. I had Mr. Floyd calculate for me, and it's on an annual
17 basis beginning in 1982 and it runs through the last year
18 reported in 1988, of where you had a gigawatt hour saved total
19 during that time period of 2294 gigawatt hours, and a gigawatt
20 hour being a million kilowatt hours. I don't quite know how to
21 get what that effect would have been on any peak demand that
22 occurred in any given year, but it's certainly a piece that
23 somebody needs to address when we are doing forecasts -- you
24 know, when you are taking the results of total conservation
25 programs, and we are pulling out one piece when we are talking

1 about projected demand versus actual demand, because certainly
2 that has an effect in changing the timing of building power
3 plants. Because one of the goals, as I recall, under the FEECA
4 Act was to reduce peak demand, and the programs were geared to do
5 that.

6 Now, I would like for somebody to address what the
7 savings that were accomplished, and that data is available here
8 in the Commission, it's a public record, the engineering
9 calculations of what effect the conservation program had on the
10 reduction of peak demand. I think all the players that are
11 sitting here participated in those proceedings, and there was
12 some reduction in peak demand. And since that is a primary
13 thrust; one, timing of additional construction and, two, planned
14 peak demand versus actual, because we are going back and we are
15 talking about a projection that was done in 1982, which was sort
16 of the infancy of conservation and nobody knew what was going to
17 happen.

18 COMMISSIONER HERNDON: Commissioner, can I ask you a
19 question?

20 COMMISSIONER GUNTER: Yes.

21 COMMISSIONER HERNDON: I missed something in your
22 conversation. The 2000-odd gigawatts saved for a result of --

23 CHAIRMAN WILSON: Conservation.

24 COMMISSIONER GUNTER: Conservation.

25 COMMISSIONER HERNDON: Statewide conservation program,

1 not FP&L?

2 COMMISSIONER GUNTER: No, not FP&L.

3 COMMISSIONER HERNDON: Well, I mean they were one of.

4 COMMISSIONER GUNTER: They were one of, that's correct,
5 and them being roughly 50% of the total demand in the state, you
6 could generally, you could come pretty close to the
7 generalization that that would be half of it. I didn't even
8 think about this until the conversation got started this morning
9 and I said I had better run down and get that because we are
10 looking at a piece of the FEECA Act, we are not looking at all of
11 it. And we are saying that a piece of the rule that came out as
12 a result of the FEECA Act, that we should make some modification.
13 I am troubled about one piece of it and not considering at all,
14 particularly when we are are talking about projections versus
15 actual. I don't know what to do about that. You all are welcome
16 to a copy of this if you care to have it.

17 MR. McWHIRTER: We would like to have a copy.

18 COMMISSIONER GUNTER: All right. Could you get some
19 copies and give it to everybody?

20 CHAIRMAN WILSON: Do you have any other questions at
21 this point?

22 COMMISSIONER GUNTER: No. I think I muddled the water
23 enough.

24 MR. McWHIRTER: Would you like an observation on that
25 subject from an unlearned person?

1 CHAIRMAN WILSON: Is it testimony?

2 COMMISSIONER GUNTER: I am troubled, and I guess I
3 would welcome Counsel, if it would be all right with the
4 Chairman, I am troubled with -- well, let me restate just for a
5 second.

6 One, we started going down actuals versus projections
7 that were done in 1982, what you said you were going to do versus
8 what you did. And where there were deviations from that, I think
9 any logical person begins to say, "What would be the result of
10 that? What would have caused that?" And I don't know how
11 substantial a piece, but a piece of that would certainly have
12 come from the conservation effort, of which this is a piece, you
13 know, as a result of the FEECA Act, as the results of
14 conservation would have been from the FEECA Act. Now, how
15 material it is, I don't know.

16 MR. McWHIRTER: I think, essentially, it's a different
17 subject, that you are talking about two things.

18 COMMISSIONER GUNTER: Not when you talk about deferral
19 of capacity, it's not.

20 MR. McWHIRTER: All right.

21 COMMISSIONER GUNTER: And not when you read the law,
22 which talks about the purposes to reduce peak demand, which is
23 one of the thrusts of capacity construction.

24 MR. McWHIRTER: All right, let me explain that.

25 COMMISSIONER GUNTER: Yes.

1 MR. MCWHIRTER: You talked about 2000 gigawatt hours of
2 consumption, and that would be consumption not peak demand.

3 COMMISSIONER GUNTER: Well, you don't know, you don't
4 know when it occurred.

5 MR. MCWHIRTER: Well, that's true. But this plant did
6 not defer capacity. All the transmission line did was enable
7 people in Florida to buy capacity in Georgia. It delayed
8 construction in Florida but capacity was still constructed in
9 Georgia. There may have been some economic benefit from that,
10 but it really didn't have any impact on peak demand whatsoever, I
11 don't think.

12 COMMISSIONER GUNTER: Well, Mr. McWhirter, one of the
13 queestions that has been raised -- and I apologize for being out
14 while I had to search for this -- but one of the discussions was
15 about what the projection of building 3 and 4 was at Martin and
16 the timing of doing that. And, certainly, if you had a timing
17 situation of where you originally thought it was going to be '86
18 or '87 or '88, or whatever time period, your growth in peak
19 demand would certainly drive your -- and your projections --
20 would certainly drive your construction schedule. Would you
21 agree with that?

22 MR. MCWHIRTER: They didn't have to construct in
23 Florida because the construction was done in Georgia.

24 COMMISSIONER GUNTER: Oh, I understand that.

25 MR. MCWHIRTER: Now, this rule is the oil backout rule.

1 The conservation thing that was addressed in this rule was that
2 we were burning coal as a fuel as opposed to oil as a fuel, and
3 the rule did not --

4 COMMISSIONER GUNTER: Let me carry you to an exhibit so
5 we are talking together. You are too bright for me to sit and
6 have a battle of wits with. You are like talking to -- what's
7 the skinny fellow from the co-ops?

8 MR. MCWHIRTER: The skinny fellow from the co-ops?
9 (Laughter)

10 COMMISSIONER GUNTER: Skinny, you know who I am talking
11 about.

12 MR. MCWHIRTER: Fred Bryant?

13 COMMISSIONER GUNTER: No, Chandler.

14 MR. MCWHIRTER: Mr. Chandler. (Laughter)

15 COMMISSIONER GUNTER: It's like having a battle of wits
16 with Mr. Chandler; he's fighting an unarmed man. That's just as
17 blount as I can put it, too. But when I get over and I start
18 looking at some of Mr. Pollock's exhibits -- and that's the
19 reason, I guess, the thing that kind of tweaked me to run and get
20 this. But when you start talking about -- and I'll have to find
21 them, if you will just bear with me for just a second and I will
22 show you what my concern would be -- is you started talking on,
23 for instance, calculation reserve margains and what their actual
24 loads were against what was projected. I began to start asking
25 myself some questions of what would happen if you had not had

1 conservation. And I'm not trying to muddy the water, I think it
2 is a legitimate question, is what happened to demand. There are
3 other factors that can enter into demand, other than the chill
4 the wind or the heat of the sun. And I would like to think that
5 there was some positive effect as a result of the conservation
6 program. That's kind of bottom line. He covered that in his
7 exhibits to his testimony quite well. It's really thought
8 provoking. That's the only reason I --

9 CHAIRMAN WILSON: Commissioner, your inquiry is if Mr.
10 Pollock will testify that the load growth forecasts were
11 declining, the question is why?

12 COMMISSIONER GUNTER: Yes, that's right.

13 CHAIRMAN WILSON: And we know two things that are
14 probable causes. One is conservation programs, or at least we
15 hope that has had an effect, and the other is price. Isn't that
16 it, Mr. Pollock?

17 WITNESS POLLOCK: Certainly.

18 CHAIRMAN WILSON: If you raise the price you lower the
19 demand?

20 WITNESS POLLOCK: Yes.

21 CHAIRMAN WILSON: The effect of having more oil backout
22 costs would raise the price?

23 WITNESS POLLOCK: Yes, it did raise the price.

24 CHAIRMAN WILSON: Probably contributed to lower that
25 demand, too, didn't it?

1 WITNESS POLLOCK: Well, I think that it's not the fact
2 that it raised the price so much as how it raised the price.

3 CHAIRMAN WILSON: Raised it up?

4 WITNESS POLLOCK: Raised it up, certainly, in any
5 event, whether you collected it in the oil backout clause or
6 whether you recovered it in base rates, it would of had the same
7 impact on the company. It would have had the same impact on the
8 rates, generally speaking.

9 COMMISSIONER GUNTER: Excuse me, Mr. Chairman. I
10 apologize.

11 CHAIRMAN WILSON: Mr. Childs?

12 CROSS EXAMINATION

13 BY MR. CHILDS:

14 Q Mr. Pollock, I will try to --

15 CHAIRMAN WILSON: Is your microphone on?

16 MR. CHILDS: Yes, the microphone is on.

17 CHAIRMAN WILSON: Is it working? (Pause)

18 Q (By Mr. Childs) Mr. Pollock, you are familiar the
19 petition that was filed by FIPUG, are you not?

20 A Yes.

21 Q And you reviewed that before it was filed?

22 A Yes, I did.

23 Q Would you agree that the significant reason that we are
24 here today is because --

25 REPORTER: I am sorry, Mr. Childs, I not hearing you

1 very well.

2 CHAIRMAN WILSON: Are the microphones not working?

3 REPORTER: No, sir, I don't believe they are.

4 CHAIRMAN WILSON: All right, let's be in recess until
5 we get something done about these.

6 (Brief Recess.)

7 CHAIRMAN WILSON: All right, let's get started back.
8 We are definitely going to go ahead and have lunch here and work
9 through the lunch hour, so if you will have folks make
10 arrangements for getting something to eat, go ahead and do that.

11 MR. CHILDS: All right.

12 Q (By Mr. Childs) Mr. Pollock, I'm going to try to start
13 over again.

14 A Ready.

15 Q Did you review the petition that was filed by FIPUG in
16 this proceeding?

17 A Yes.

18 Q Are you familiar with the relief requested in that
19 petition by FIPUG?

20 A Yes, I am.

21 Q Would you agree that a primary reason, or a principal
22 reason, that we are here today is because FPIUG requested the
23 Commission in this docket to determine that FPL's transmission
24 project has failed to achieve the primary purpose which led the
25 Commission to qualify it under Rule 25-17.016?

1 A Yes. I believe that is a quote from the petition.

2 Q You described the primary purpose test, as used by the
3 Commission, beginning on Page 15 of your direct testimony. And
4 would you agree, though, that the description on Page 14, Line
5 23, should have the word "economic" inserted?

6 A Give me the page reference again, please, sir?

7 Q I'm sorry. I think it's Page 15, Line 23.

8 A Insert the word "economic" before "oil displacement"?

9 Q Yes, sir.

10 A I would agree with that, yes.

11 CHAIRMAN WILSON: The word "economic" where, "economic
12 oil displacement"?

13 WITNESS POLLOCK: Yes.

14 CHAIRMAN WILSON: Okay.

15 Q (By Mr. Childs) And would you also agree that it's
16 clear from your testimony, beginning on Page 16, that in applying
17 the primary purpose test that capacity costs, other than Schedule
18 E, are not subtracted from net benefits?

19 A Yes. The primary purpose test that the Commission
20 adopted in the qualification proceeding had a separate analysis
21 of the fuel savings and the capacity savings. In the end the two
22 were subtracted out to determine the net benefits, but for
23 purposes of applying the primary purpose test the comparison was
24 made of the net fuel savings to the project revenue requirements.

25 Q My point is simply, to make it clear, that both

1 capacity benefits and capacity costs were excluded expressly from
2 the Commission's primary purpose test?

3 A Yes. The order did not reveal specifically the numbers
4 used for the capacity cost savings, and in that sense the
5 capacity savings were not discussed explicitly in that portion of
6 the order describing the primary purpose test. The exhibit on
7 which the Commission relied upon, however, did show the capacity
8 savings and the fuel savings.

9 Q Mr. Pollock, are you saying that in applying the
10 primary purpose test that the Commission did recognize capacity
11 costs and capacity savings?

12 A I think the Commission recognized that there were two
13 types of savings and both types of savings were quantified in the
14 hearing Exhibit 15-J that was then used in applying the primary
15 purpose test. The language in the order, however, was limited to
16 a description of the fuel cost benefits, or the fuel cost
17 savings.

18 Q Would you go to Page 5 of that Order No. 11217?
19 (Pause) That is Tab G, I believe, in the book.

20 A Okay, I have that.

21 Q Would you agree that the paragraph at the top of Page 5
22 involves a discussion of the Commission's application of the
23 primary purpose test?

24 A Yes.

25 Q And that paragraph refers to Exhibit 15-J?

1 A Yes, it does.

2 Q Would you read the last sentence of that top paragraph?

3 A Beginning with "this"?

4 Q "Thus."

5 A You want to read the last two sentences?

6 Q Go ahead.

7 A It's your question. What would you like me to do?

8 Q Well, let's just do this: Would you agree that what
9 the Commission referred to in making its conclusion as to the
10 primary purpose test was to compare net fuel savings only to the
11 revenue requirements for the line?

12 A Yes, with this qualification: That's clearly what the
13 language in the order says. However, if you look at the exhibit
14 it shows both capacity savings and fuel savings, and logically
15 one could make a comparison to determine which of the two was
16 bigger.

17 Q So you are saying that the Commission perhaps was
18 deciding that it would look at net fuel savings and net capacity
19 savings and determine the primary purpose by measuring which of
20 those net savings, capacity or fuel, was larger?

21 A I'm saying that that's certainly a possibility insofar
22 as both sets of savings were shown on the same exhibit.

23 Q Would you look to the second sentence of that very
24 paragraph, which says; "We reject the Staff's position of simply
25 comparing gross savings as wholly determinative"?

1 A Yes, I see that.

2 Q So doesn't that clearly say that the Commission
3 rejected the approach that would compare capacity savings to net
4 fuel savings?

5 A I am not that familiar with the methodology to say that
6 that is what the Commission rejected. I am simply pointing out
7 that the exhibit which was relied upon shows both sets of
8 comparison.

9 Q Well, let's turn to the prior page, and we can perhaps
10 find some explanation of what the Staff did. It's under the
11 heading "The Primary Purpose Test," and the second sentence reads
12 as follows; "The Staff took the position, in which they were
13 joined by the Company, that if the gross fuel savings expected
14 from the project outweighed all other gross savings, as they did
15 in this case, that fact alone conclusively established oil
16 displacement as the primary purpose of the project." Would you
17 agree that was the Staff's method?

18 A I agree that is what it says. I am not certain how I
19 would interpret the words "gross fuel savings" as used in that
20 context. Does that mean gross fuel savings before subtracting
21 the energy costs associated with the coal-by-wire? It's not
22 clear to me what it is that they are specifically referring to.

23 Q So you are unclear as to what the primary purpose test
24 was?

25 A No. I said I was unclear as to what the Staff was

1 using when they said that you compare the gross savings, gross
2 fuel savings expected from the project, with all other gross
3 savings.

4 Q Well, wouldn't you expect that those other gross
5 savings would have to at least include capacity deferral savings?

6 A Yes, probably so.

7 Q All right. And doesn't your own testimony, however,
8 beginning on Page 15, discuss the primary purpose test developed
9 by the Commission, and then you say, beginning at Line 23, "The
10 test was limited to comparing the net fuel savings to the total
11 cost of the project." And then you note that capacity-related
12 costs were not included in the determination, and that's at Lines
13 5 and 6 on Page 16.

14 A That's what it says, and that's a paraphrase of the
15 language in the Commission Order at Page 5.

16 MR. CHILDS: Do you have the copy of the FIPUG petition
17 in front of you?

18 A Yes, sir.

19 Q (By Mr. Childs) Paragraph 7 of that petition
20 references the oil backout rule, and points out that the rule
21 states that its primary purpose is the economic displacement of
22 oil. Do you agree?

23 A Yes.

24 Q And then Paragraph 8-A points out that a utility must
25 find or must prove that the primary purpose of the project is

1 economic displacement.

2 A Yes.

3 Q Correct? And then Paragraph 11 asserts that the
4 Commission approve the project based on projections that the
5 lines would economically displace oil.

6 A Yes.

7 Q And then Paragraph 12-A and 13, we have similar
8 allegations about economic displacement, don't we?

9 A Sorry, can you repeat that, please?

10 Q Paragraph 12-A --

11 A Yes.

12 Q -- and 13 have similar allegations about economic
13 displacement and the primary purpose.

14 A Well, similar in the sense that it refers to the
15 components of the costs being recovered in the oil backout
16 clause, different in the extent that rather than looking at the
17 circumstances in 1982 we're now looking at the circumstances as
18 they have occurred since 1982 and are projected to occur in the
19 future through 1992.

20 Q I understand that. But my question was with respect to
21 the allegation in the petition, they focus on economic
22 displacement and primary purpose, do they not?

23 A Well, again, I'm having trouble with the idea that they
24 focus on it. Certainly those terms are used in the petition --

25 Q Sure.

1 A -- as grounds for relief based upon the circumstances
2 that exist.

3 Q Mr. Pollock, that's my point, that there are several
4 references in the petition, and I've gone to various paragraphs,
5 which reference the reliance upon the argument about the primary
6 purpose of the project and what the Commission relied upon in
7 approving the project.

8 Mr. Pollock, I note that your testimony, however,
9 expressly rejects the thought that FIPUG is now applying the
10 Primary Purpose Test as it was applied by the Commission when
11 this project was qualified. Is that correct?

12 A Yes.

13 Q Okay. Are you aware that Florida Power and Light
14 Company filed a motion to dismiss the FIPUG petition?

15 A Yes, I am.

16 Q Did you review that motion?

17 A Yes.

18 Q Do you recall that the motion argued that the petition
19 was in error as to the method to determine the primary purpose of
20 the project?

21 A If you have a specific reference in mind I can review
22 that.

23 Q I think that's Page 5. There is a heading which says,
24 "FIPUG misrepresents and misapplies the Primary Purpose Test."

25 (Pause)

1 MR. MCGLOTHLIN: What's the tab reference to that?

2 MR. CHILDS: I don't have a tab reference. Do you have
3 a copy of the motion?

4 Q (By Mr. Childs) Let's turnover to Page 7 of it and
5 read that paragraph that says, "What Mr. Pollock has done is to
6 deduct capacity deferral benefits as if they did not exist, and
7 subtract the capacity cost paid by FP&L to Southern from the fuel
8 savings." Do you have a copy of that?

9 A No. Mr. McGlothlin is getting me one.

10 Q All right. I'll wait until you get a copy. (Pause)

11 A Okay. I have a copy.

12 Q The point is, is that in that Motion to Dismiss,
13 Florida Power and Light Company commented on the analysis you had
14 in your affidavit that was attached to the petition, and
15 attempted to point out that the analysis that you performed was
16 different than the analysis performed by the Commission for its
17 Primary Purpose Test.

18 A Yes, that's true. That's what the Motion to Dismiss
19 says.

20 Q Right. Do you recall whether the response by FIPUG to
21 the Motion to Dismiss acknowledged or pointed out that the test
22 that you were attempting to apply and FIPUG was urging was, in
23 fact, different than the Primary Purpose Test applied by the
24 Commission in qualifying project?

25 A I don't recall the response.

1 Q Do you have a copy of the response?

2 A I don't believe so, no.

3 Q Have you seen it?

4 A Yes, I have. Not recently though.

5 Q Did you review it before it was filed?

6 A Yes, I believe I did.

7 Q Would you refer to Page 10 of the response?

8 A Yes, I have that.

9 Q Paragraph 21 is headed, "Capacity Deferral; Primary
10 Purpose Test." And one of the things it does is it argues, says,
11 to FPL's motion and in the first sentence says, "FPL's attempts
12 to contest FIPUG's factual assertions with respect to claimed
13 capacity deferral benefits in the Primary Purpose Test."

14 Then if you read down to the bottom of that page there
15 is a sentence which says, "Similarly the dispute about the proper
16 calculation of fuel savings (FP&L offers its own untested
17 quantification in its Motion to Dismiss) and the quote "weight"
18 to be given to Mr. Pollock's analysis must take place after an
19 evidentiary hearing, not in a motion to dismiss."

20 Would you say that the untested methodology suggested
21 by FP&L is, in fact, identical to the Primary Purpose Test used
22 by this Commission when it approved the transmission line
23 project?

24 A Yes. It's identical in terms of the components that
25 were included for comparison. I believe, however, it may be

1 somewhat different in terms of how those components or how those
2 quantities were arrived at.

3 Q Would you refer to Page 11 of your direct testimony?

4 A Yes.

5 Q Would you agree that -- excuse me for a minute.

6 Would you agree that if the analysis to determine
7 whether the project has economically displaced oil were the same
8 as that applied by the Commission for qualification, that the
9 positive savings would be the \$1.296 billion that you show on
10 Line 11 of that chart? (Pause)

11 A Well, it was the explanation in prefacing that chart
12 was, it was not intended to be a replication of the Primary
13 Purpose Test as described in the final order.

14 Q No, sir. My question is that if you did, if you
15 applied the Primary Purpose Test as the Commission applied it in
16 qualifying the project, using the numbers that you show on your
17 chart, on Page 11, wouldn't the net fuel savings be \$1.296
18 billion?

19 A If the Primary Purpose Test had been applied instead of
20 the analysis shown in the table on Page 11, the net fuel savings
21 would have been the numbers shown on pages 17 and 18 of the
22 testimony.

23 Q Yes, sir. But those are based upon different
24 assumptions, are they not?

25 A No. Well, maybe I ought to ask you what different

1 assumptions are you referring to? They are based on the same
2 identical cost parameters. Different forecasts, but the same
3 cost parameters.

4 Q So then we would have net fuel savings of the \$1.396
5 billion?

6 A Yes. As shown on Page 17, Line 12, of the testimony.

7 Q Okay. The calculation which you show on Page 11 was
8 based upon Florida Power and Light Company's response to FIPUG's
9 Interrogatory No. 17?

10 A Yes.

11 Q And would you agree that that interrogatory response
12 shows that the cumulative benefits from the economic displacement
13 of oil through 1988, and based upon the Commission's method of
14 calculating the primary purpose, are \$664 million? (Pause)

15 A \$651 million?

16 Q I think I said \$664 million. Do you have a different
17 number?

18 A As a quick reference I refer to Mr. Waters' exhibit,
19 Document No. 4, and looking at Line W of that exhibit, the total
20 is 651 million.

21 Q That's good enough.

22 A I figured you'd accept that.

23 Q Mr. Pollock, your reliance upon the argument about the
24 economic displacement of oil is to support FIPUG's request to
25 terminate recovery of costs through the oil backout cost recovery

1 factor?

2 A Yes, in part.

3 Q Can you refer me to anything in the oil backout rule,
4 the qualification proceedings in Docket No. 820155, or in the oil
5 backout cost recovery proceedings that support that request in
6 terms of policy or law?

7 A I obviously can't respond in legalistic terms, but I
8 can respond in terms of my impression of the ratemaking process
9 generally. And generally that impression is that the Commission
10 has the obligation to ensure that rates are just and reasonable
11 under the circumstances, and it's our contention in this case,
12 FIPUG's contention in this case, that continuation of the oil
13 backout clause is not consistent with the just and reasonable
14 ratemaking standard under which the Commission approves all
15 rates, whether it be in the oil backout clause, through base
16 rates or through any other ratemaking mechanism that affects
17 customers.

18 Q So is the answer yes, with qualification?

19 A Yes. Implicitly in that all of the ratemaking
20 functions of the utility, or of the Commission, come under, as I
21 understand it, the just and reasonable ratemaking standard.

22 Q And you don't believe, or you don't know whether the
23 Commission has ever had occasion to speak to the policy or the
24 law with respect to the termination of recovery of oil backout
25 project costs once a project has been qualified?

1 A There is obviously language in the oil backout rule
2 that attempts to address that. However, I think that one has to
3 keep in mind the circumstances under which the rule was drafted
4 and implemented, and I think that we're not questioning whether
5 or not the Commission should or should not have drafted the rule
6 in the way they did. We're simply saying circumstances are
7 different, and, therefore, those differences justify different
8 ratemaking treatment at this time.

9 Q Mr. Pollock, with al. due respect I think your -- what
10 you just said is not a qualification of the answer but is
11 additional testimony. Part of it, in fact, is your original
12 direct. I'm trying to find out whether you are aware of any
13 policy statement or statement of interpretation of law by this
14 Commission which would support the relief you have requested of
15 terminating recovery under the oil backout cost recovery factor.

16 A Other than the explanation that I have previously given
17 there is no specific qualification and no specific language in
18 the rule itself that addresses termination other than when a
19 project has been completely depreciated.

20 Q Okay. Have you reviewed Commission Order No. 11599
21 which was entered in Docket No. 830001-EU on February 10, 1983?

22 A Yes.

23 Q You have a copy of that?

24 A Yes, I do.

25 Q All right. Had you reviewed that in preparing your

1 testimony for this proceeding?

2 A I reviewed a number of documents similar to this, yes.

3 Q All right. Do you recall it? Because I'm going to ask
4 you some questions about that order?

5 A I'm sorry, I don't recall everything in the order which
6 -- denying motions for reconsideration.

7 Q Do you happen to, or please look down to the last
8 sentence of the next to the last paragraph where it talks about a
9 request by Public Counsel in using different versions of the
10 rule.

11 MR. CHILDS: Commissioners, I'd like to have this order
12 marked for identification as an exhibit.

13 CHAIRMAN WILSON: What's the next Exhibit number?

14 MS. RULE: 614.

15 CHAIRMAN WILSON: 614 .

16 (Exhibit No. 614 marked for identification.)

17 Q Mr. Pollock, in the last paragraph on that page would
18 you agree it says, "We reject Public Counsel's argument both as a
19 matter of law and of policy. The purpose of a qualification
20 proceeding under the oil backout rule is to determine whether a
21 proposed project meets the criteria embodied in the rule for a
22 cost effective supply side oil backout measure."

23 And then it goes on in the two sentences after that,
24 and says, "If a project qualifies under the rule, a utility is
25 assured recovery of the normal revenue requirements associated

1 with the project."

2 A Yes, that's what it says.

3 Q Then the order goes on and notes that under the amended
4 rule the Commission desired to permit even additional benefits to
5 be recovered to the oil backout clause.

6 A Yes.

7 MR. CHILDS: Okay. Commissioners, I would like to
8 renew our motion to dismiss, and in the alternative for summary
9 disposition of the FIPUG petition as it relates particularly to
10 the request to terminate recovery under the oil backout cost
11 recovery factor. And I do so because we argued in the motion to
12 dismiss that the test that was applied by the Commission, and the
13 test that was applied in implementing the rule, was just exactly
14 what this witness has now told us was the test. The response to
15 the motion to dismiss, in fact, said that we were submitting an
16 untested version and that the matter should go to hearing.

17 I submit that the basis upon which FIPUG has requested
18 termination is improper. I also would object to us getting to
19 this point in a hearing seven months after the petition was filed
20 and only now finding out, or only when the direct testimony was
21 filed, finding out that they never intended, or, at least,
22 changed their contentions about the Primary Purpose Test.
23 Setting that aside, I renew the motion to dismiss.

24 CHAIRMAN WILSON: Mr. McGlothlin?

25 MR. MCGLOTHLIN: I have several responses.

1 First of all, if it's true that Florida Power and
2 Light's calculations were untested at the time they filed their
3 motion to dismiss because that did not stand cross examination or
4 evaluation by our witness, In fact, in his testimony, Mr. Pollock
5 addresses Florida Power and Light's application of the so-called
6 Primary Purpose Test, and testifies that there should be some
7 significant adjustments made,. So we are in the process of
8 testing their claimed application of the test, and this hearing
9 is in part for that purpose.

10 Secondly, the question of the Commission's authority to
11 terminate, and responsibility to terminate the oil backout charge
12 if circumstances warrant, and if circumstances no longer support
13 the reasonableness of this sort of action, is a legal issue that
14 has been addressed in this proceeding and will be briefed at the
15 appropriate time. So we think that we are on course with respect
16 to the proper resolution of these issues, that you should
17 continue to take evidence, and resolve the legal issue of the
18 Commission's authority at the appropriate time, that is after we
19 have had a full opportunity to brief that legal issue.

20 CHAIRMAN WILSON: Does the Commission have the
21 authority to depart from the requirements of the rule; to waive
22 them in other words, because that's what your request is, is it
23 not?

24 MR. McGLOTHLIN: It is not. We request --

25 CHAIRMAN WILSON: Well, now, wait just a minute. We

1 just went through that rule, the lengthy discussion of the rule
2 in the opening statement, as we were going through there I was
3 reading it, and it seems to me there are terms in the rules that
4 say when you terminate the oil backout project, what the
5 consequences of that is, and what is to be done at that point in
6 terms of base rates for the next revenue requirement proceeding
7 of the Company.

8 Now, tell me why what you are proposing is not a waiver
9 of the terms of that rule.

10 MR. McGLOTHLIN: Because this Commission has an
11 obligation to interpret, construe and apply that rule in
12 conformity with its statutory obligation. And has the statutory
13 obligation to make sure that the rate structure and individual
14 charges imposed by a Utility are just and reasonable under the
15 statutory criteria, and that means in light of the statute and
16 the circumstances which Mr. Pollock describes, it has a
17 responsibility to alter or remodify or modify the earlier
18 determination.

19 CHAIRMAN WILSON: Well, don't we have to change the
20 rule?

21 MR. McGLOTHLIN: No, sir.

22 CHAIRMAN WILSON: Well, I understand what your argument
23 is.

24 COMMISSIONER BEARD: It says, "shall". It says,
25 "shall".

1 CHAIRMAN WILSON: You're saying that the rule is now
2 contrary to the statute?

3 MR. McGLOTHLIN: No, sir.

4 CHAIRMAN WILSON: Well, you've got to be, because
5 otherwise we're going to have to waive the rule in order to do
6 what you're asking. We're either going to apply the rule or
7 we're not going to apply the rule. If we don't apply the rule
8 then we have to waive the rule because the rule seems to address
9 all of the elements that you've raised in this case.

10 MR. McGLOTHLIN: I'm suggesting that the language of
11 the rule does not specifically address all possible scenarios,
12 all possible circumstances. And in applying that rule to the
13 various circumstances, which may come before you, you have to
14 interpret and apply it in light of your statutory mandate, and to
15 apply it in light of the statutory mandate, you have not only the
16 ability but the obligation to revisit the reasonableness of the
17 continuation of the charge in light of the present circumstances.

18 CHAIRMAN WILSON: I don't believe you've addressed what
19 my question was or my concerns.

20 The rule does address termination of the oil backout
21 projects for collection of the oil backout revenues, does it not?

22 MR. McGLOTHLIN: It does.

23 CHAIRMAN WILSON: Now, it also addresses the
24 opportunity to put it in base rates, does it not?

25 MR. McGLOTHLIN: Yes.

1 CHAIRMAN WILSON: What's left?

2 MR. MCGLOTHLIN: My point is that the language of the
3 rule does not contemplate, foresee or address every possible
4 circumstance.

5 CHAIRMAN WILSON: And what possible circumstance are we
6 looking at here that the rule does not address?

7 MR. MCGLOTHLIN: The changes in circumstances described
8 by Mr. Pollock in his testimony, which render the continued
9 application of the oil backout charge unreasonable under existing
10 circumstances.

11 CHAIRMAN WILSON: All right. Now is what you're
12 proposing or suggesting this Commission do contrary to the rule?

13 MR. MCGLOTHLIN: No, sir.

14 CHAIRMAN WILSON: Is it in conformance with the rule?

15 MR. MCGLOTHLIN: It is not specifically addressed by
16 the rule, but in applying the rule, to the circumstances, I think
17 the Commission has the discretion and the authority to provide
18 the relief requested to get from where you are to.

19 CHAIRMAN WILSON: I'm having trouble getting to your
20 point from the rule after having read the terms of this rule to
21 get the position you're advocating at this point. I have to have
22 a lot of help.

23 COMMISSIONER EASLEY: Could I ask a question?

24 CHAIRMAN WILSON: Yes, please do.

25 COMMISSIONER EASLEY: You're saying Mr. Pollock's

1 testimony is that circumstances have changed and that is what is
2 not addressed by the rule?

3 MR. MCGLOTHLIN: What is not addressed specifically by
4 the rule is the possibility that circumstances would render the
5 continued application of the charge unreasonable prior to, or in
6 the absence of, a base rate proceeding or prior to the complete
7 depreciation of the investment in the project.

8 My contention is that the fact it does not specifically
9 delineate it as one possibility in the rule, does not alter the
10 Commission's discretion and ability and responsibility to apply
11 that rule in that manner in light of the statutory mandate to
12 make sure that over time the rates charged by a utility are
13 reasonable under the circumstances.

14 CHAIRMAN WILSON: Now, the rule says, at 4-D, it says,
15 "Once approved by the Commission," you will concede this has been
16 approved by the Commission I assume, "The cost of a qualified oil
17 backout shall continue to be recovered to the oil backout cost
18 recovery factor until such time as they are included in the base
19 rates of the utility."

20 COMMISSIONER BEARD: How do you get around that
21 statement?

22 CHAIRMAN WILSON: You're telling me that your proposal
23 here does not contradict that language.

24 MR. MCWHIRTER: Mr. Chairman, what we're suggesting to
25 you is that the time has now come to roll it into base rates.

1 The rule does not contemplate that the only time you roll it into
2 base rates is when the Utility, in its discretion, comes in and
3 files a rate case. The rule says, "normally the remaining
4 unrecovered costs will be rolled in to the utility's base rates
5 without altering the depreciation period." That's what's
6 normally done. But it doesn't make that the exclusive remedy.
7 You can roll it into the base rates at any time you wish to do
8 so.

9 If you accepted the logical conclusion of Florida Power
10 and Light's position, once it makes projections that this plant
11 is going to be qualified, this Commission would then be hog-tied
12 to a position that it could never change its determination
13 irrespective of any factual change. We think that construction
14 of the rule is overly strict.

15 I'd like to point out one other thing in the rule.

16 COMMISSIONER BEARD: One thing, don't leave out the
17 next sentence because I get wrapped in "shalls." "Factors shall
18 terminate at the time the new rates are placed into effect."
19 Okay.

20 MR. McWHIRTER: That's correct.

21 COMMISSIONER BEARD: Shall terminate.

22 MR. McWHIRTER: What we're suggesting to you is --

23 COMMISSIONER BEARD: We're going to put new rates into
24 effect as a result of this hearing today?

25 MR. McWHIRTER: Yes, sir, you can do that.

1 COMMISSIONER BEARD: Rate base rates as a result of
2 today?

3 MR. McWHIRTER: You can certainly do that, yes.

4 You may also conclude that there is no further need --

5 CHAIRMAN WILSON: Do you agree with that, Mr. Howe?

6 COMMISSIONER BEARD: I want to hear this.

7 MR. McWHIRTER: It was done with the Martin Dam you
8 rolled into the base rates. It's been done with the St. Johns
9 facility. It's been done with every increase in this Utility's
10 rate base that's occurred since 1983. Those things are absorbed
11 in the base rates. The question that you would face is do the
12 base rates now need to be adjusted to pick up the cost.

13 CHAIRMAN WILSON: What is the amount that would be
14 rolled into or be collected and covered through base rates?

15 MR. McWHIRTER: Of course, this is a question -- we
16 dispute the facts, Mr. Babka says presently the Utility should
17 earn a return of something like \$5 million each six months on the
18 oil backout portion. And then in addition to that --

19 CHAIRMAN WILSON: What's the amount of investment that
20 would be recovered in base rates if we were to agree with your
21 suggestions here today?

22 COMMISSIONER BEARD: And where in the rate structure
23 would it be placed?

24 MR. McWHIRTER: At the present time, according to the
25 testimony of Mr. Babka, the remaining investment in this

1 transmission line is \$8 million. The undepreciated balance.

2 CHAIRMAN WILSON: Do you all contend that number?

3 MR. MCWHIRTER: We want to ask questions about it. We
4 haven't gotten to that point, yet.

5 CHAIRMAN WILSON: Are you contesting that number?

6 MR. MCWHIRTER: We think the number should be higher,
7 which may surprise you. We think it should be higher because we
8 think the plant was written down too fast.

9 CHAIRMAN WILSON: Assuming the depreciation that has
10 occurred thus far has been appropriate, is the amount remaining
11 to be depreciated, or the amount that would go into base rates at
12 this point be \$8 million?

13 MR. MCWHIRTER: Mr. Babka says the undepreciated
14 balance of the plan is \$8 million. He does not identify what
15 that is. I presume it's land cost and things of this nature. If
16 that's what it is, and they can support it, then we have no
17 objection to that.

18 CHAIRMAN WILSON: Do you contest that number?

19 MR. MCWHIRTER: We haven't gotten supplemental -- we
20 don't know what that number represents. That number is an okay
21 number as far as I'm concerned.

22 MR. CHILDS: Commissioner, as to any representation
23 that the amount that might be rolled into rate base is \$8
24 million, with all due respect we're talking about hundreds of
25 millions of dollars related to the UPS capacity cost which --

1 CHAIRMAN WILSON: That's what I'm trying to figure out,
2 exactly what we're talking about here and what we're not talking
3 about here.

4 MR. McWHIRTER: I haven't gotten to that aspect of it
5 but that's another aspect of it.

6 CHAIRMAN WILSON: I still haven't gotten beyond
7 application of the rule yet. Nobody has carried me there through
8 any logic I can follow yet.

9 MR. McWHIRTER: Let me suggest to you that if you apply
10 the rule you should look at 4-A, and 4-A tells you the costs to
11 be recovered through the rule. And I would defy you to read, or
12 Mr. Childs or anyone else to read in there, anywhere, that you're
13 authorized to recover the UPS capacity charges. The rule does
14 not permit that. The Commission, when it entered its order in
15 1982, for purposes of convenience said, "We will recover those
16 capacity charges under the rule." The rule does not permit it.
17 The Commission, by its previous actions, has ignored its own rule
18 on a variety of occasions.

19 CHAIRMAN WILSON: By doing something that is not
20 contained in the rule, that the rule does not address?

21 MR. McWHIRTER: Mr. Chairman, Mr. Childs is suggesting
22 a strict construction of the rule. And the strict construction
23 of the rule would prohibit a collection of the UPS capacity
24 charges through the oil backout factor. If he wants the goose,
25 he's got to be stuck with the gander.

1 CHAIRMAN WILSON: Now, you're not advocating yourself a
2 strict construction of the rule? As a matter of fact, you're not
3 arguing application of the rule at all, are you?

4 MR. NEWHARTER: We think the time has come for the
5 termination of the utilization of this rule, and that you,
6 because the extraordinary circumstances which calls for the --
7 caused you in 1982 to apply the rule, no longer exists.

8 CHAIRMAN WILSON: Are you asking for termination of the
9 project, or termination of the rule?

10 MR. NEWHARTER: Termination of the application of the
11 rule to this project.

12 CHAIRMAN WILSON: Now, how do I do that without violating
13 the rule?

14 MR. NEWHARTER: The rule says that at any point in time
15 the unrecovered portion, the cost of the project can be rolled
16 into base rates. We suggest to you that you do that. We also
17 suggest to you that the base rates be considered to determine how
18 you treat the \$330 million each six months that are being paid
19 for capacity charges from Georgia Power Corporation. Is it
20 appropriate to make this a fuel charge? It's not a fuel charge,
21 it's a capacity charge, and you need to look at it from that
22 viewpoint.

23 CHAIRMAN WILSON: There are other capacity charges that
24 are currently being passed through fuel adjustment via companies,
25 purchased power, are there not?

1 MR. McWHIRTER: Occasionally that happens.

2 CHAIRMAN WILSON: As a matter of fact, it's happened on
3 a number of occasions, has it not?

4 MR. McWHIRTER: No, sir. I think probably the best
5 illustration of it would be in the St. Lucie Plant. The
6 conclusion the Commission made in the cost of service study with
7 the St. Lucie Plant was that there was a great benefit in fuel
8 savings that came about with respect to this new capacity. So to
9 a degree, with the St. Lucie Plant it was determined that there
10 -- you should employ what is known as a capital substitution
11 concept and you collected part of that through an energy charge
12 as opposed to a capacity charge.

13 In this case you were using the same logic and that
14 same theory. You said, "We're going to save \$3.5 billion in
15 energy cost so there is some logic to utilizing capital
16 substitution because of the great difference between oil and coal
17 price." But the circumstances have changed and that doesn't
18 exist anymore.

19 CHAIRMAN WILSON: Mr. McWhirter, I have been sitting on
20 fuel adjustment for a few years now, and I know that there are a
21 number of the schedule of power purchases that occur between and
22 among utilities, and between utilities in this state and those in
23 Southern Company, that include capacity charges that are passed
24 through the fuel adjustment clause and it comes up almost every
25 six months.

1 MR. McWHIRTER: Let me tell you the logic that we think
2 that you have followed when you started down that trail. You
3 know, sometimes you start down a trail and the results are
4 unanticipated.

5 CHAIRMAN WILSON: I think that's something we're
6 experiencing here today.

7 MR. McWHIRTER: When you've got a plant that is
8 generating electricity, and it's in your service area, you
9 collect your base rates associated with that plant, the demand
10 charges and the energy charges. Sometimes you can buy
11 electricity from another location at a price that is less than
12 the price to operate just the energy portion of your existing
13 plant. It makes good sense to buy and import that electricity.
14 The customers benefit from it. The high load factor consumers
15 and the other consumers are not injured under those circumstances
16 where you incorporate a portion of the capacity charge in with
17 the energy charge when it's less than the energy charge alone
18 would be on burning a peaking unit. So we don't come in and
19 object to that. Just realistically, it makes good sense.
20 However, when you do what's happening here, and the capacity
21 charges exceed the savings by some \$300 million every six months
22 we say to you at that point you have gone too far.

23 COMMISSIONER GUNTER: Let me ask you a question, Mr.
24 McWhirter.

25 You know, you've characterized, like St. John's Power

1 Park we've changed rates and what have you. I want to make sure
2 the record is complete; those changes were as a result -- those
3 changes in rates and revenue requirements were after a due
4 process proceeding, wasn't that correct?

5 MR. McWHIRTER: I'm not sure -- I was involved in
6 all of that. My recollection was that the Martin Dam and then
7 the --

8 COMMISSIONER GUNTER: Those were separate, Martin Dam
9 and the Turkey Point steam generators those were tied together.

10 CHAIRMAN WILSON: Martin County was litigated in at
11 least two rate cases. I mean fully litigated with a complete
12 record. The determination, the decision may have been delayed
13 over a period of time, but those are both the subject of
14 hearings.

15 MR. McWHIRTER: What happened was they were in a rate
16 case. The Utility wanted to incorporate those items in the rate
17 base. This Commission ruled that it could not do it until the
18 determination --

19 COMMISSIONER GUNTER: Your characterization is that we,
20 on our own hoof, went and changed those rates. That's what I
21 interpreted you to say. I just wanted the record to be complete
22 that there was a due process proceeding and the timing of
23 implementation was not concurrent with all the other actions that
24 took place.

25 MR. McWHIRTER: Mr. Gunter, this is a due process

1 proceeding.

2 COMMISSIONER GUNTER: I understand. Well, one of the
3 things, see, I have a question for you.

4 You know, we've changed the cost of service methodology
5 at the last revenue requirements proceeding that we conducted.
6 So you're talking about if we change rates, are you talking
7 about the same time just changing rates, or reviewing what I feel
8 is the key, is working on the rate structure. You can't change
9 one without changing the other, and I'm trying to get -- as your
10 request of us is to change base rates, is your request also to
11 get the pot right on cost of service? And would you have us do
12 that as a result of this proceeding? Now, you might get what you
13 asked for, as far as I'm concerned.

14 MR. McWHIRTER: Commissioner Gunter, we don't have any
15 fear of addressing with you at anytime cost of service
16 methodology.

17 COMMISSIONER GUNTER: We have a proceeding here before
18 us now, Mr. McWhirter, where you're asking us to take one action
19 in a vacuum; is to only look at one piece, because what you
20 charge customers is how you charge customers. And if you change
21 -- if we grant what you want, say, "Fine, we'll go ahead put that
22 capacity charge over there," but at the same time period it would
23 appear to not be inappropriate as to how we do it. Is that fair?

24 MR. McWHIRTER: I have no problem with that. I would
25 suggest to you that your first step is let's look at this oil

1 backout proceeding. Is it still accomplishing the purpose that
2 it was designed to do? We say it is not and we want to offer
3 testimony to show that it hasn't. Mr. Childs says -- using a
4 technicality, he says that under his technicality the precise
5 language of the rule doesn't deal with how you roll it into the
6 base rates. I say it does deal with that; you can do it at any
7 time.

8 COMMISSIONER GUNTER: You're just restating the
9 position that's been stated and you all were very eloquent the
10 first 30 minutes you were here this morning. I'm just saying
11 what do we do if we were to grant you the relief you requested.
12 The relief you request -- bottom line, again, finding that acre,
13 is to put that capacity cost not through fuel adjustment flow
14 through, to put that capacity cost over in base rates. Isn't
15 that correct?

16 MR. McWHIRTER: Let's break it down into its component
17 parts.

18 COMMISSIONER GUNTER: Is that correct?

19 MR. McWHIRTER: Yes.

20 COMMISSIONER GUNTER: Now, the second piece of that,
21 before we implemented that, if we were to grant your request,
22 would it not be appropriate then to look at the cost of service
23 methodology and how you charge those rates? Is that not
24 appropriate?

25 MR. McWHIRTER: If you determine that a rate increase

1 is necessitated, then you would do that.

2 Now, let me break it into the component parts. We're
3 asking you to do two things: We're saying you collected from
4 today's customers \$285 million to pay for a line that will be
5 used 25 years in the future. We would suggest to you that the
6 rational way to deal with that aspect of the case is to refund
7 those monies back in the same fashion they were collected.

8 CHAIRMAN WILSON: But isn't that an attack on the
9 primary purpose piece of the rule? And if not, why not? You're
10 suggesting the primary purpose of this is to secure the capacity
11 for 25 years.

12 MR. McWHIRTER: The primary purpose of the rule is to
13 determine whether this project economically displaces oil. You
14 made that determination. At that time the Utility said, "Now we
15 want you to pay us some money on the savings by way of
16 accelerated depreciation." You said, "We're not going to do that
17 now. We're going to do it later." And later came along in 1987,
18 '88 and '89, and we have filed our petition during that later
19 period and we're saying you should not now be recovering that
20 accelerated depreciation for the factual reasons we're going to
21 show you. That's the facts we want to deal with. It doesn't
22 have anything to do with the technicalities of the rule and it
23 falls totally within the ambit of the rules. The other thing --

24 CHAIRMAN WILSON: You say it does come within the ambit
25 of the rules?

1 MR. McWHIRTER: Yes, sir.

2 CHAIRMAN WILSON: You are asking us to apply our rule?

3 MR. McWHIRTER: Beg your pardon?

4 CHAIRMAN WILSON: You're asking us to apply the rule.

5 MR. McWHIRTER: Yes, sir. You can apply the rule and
6 you can determine that the money that was taken for accelerated
7 depreciation was taken improperly under the circumstances and
8 should be paid back, and this is what we suggest that you do.

9 The other aspect of the rule is that since the energy
10 savings do not offset the capacity cost, we suggest you look at
11 that. And this, Mr. Gunter, is the point that you're bringing
12 up. What do you do if you determine the capacity charges need to
13 be paid by the customers?

14 Okay. The first step you say, is Florida Power and
15 Light overearning already and can it absorb these capacity
16 charges? If you make that determination then there is no need to
17 do anything with respect to the rates. And we're not suggesting
18 that they be -- not be able to collect their capacity charges
19 that they legitimately pay. If you determine they are not
20 overearning and there is a need to pass some along then we get to
21 that step that you talked about, how do you pass it along? I
22 would suggest to you that we could probably come up with rational
23 stipulations as to how it can be done for the protection of all
24 the people. The Public Counsel is here to deal with that. But
25 if we can't do that, we have no objection to your doing a full

1 cost of service study and would welcome that.

2 COMMISSIONER GUNTER: Okay.

3 MR. McWHIRTER: The issue before us now is do we stop
4 these proceedings at this juncture because there is allegedly no
5 technical compliance under Mr. Pollock's testimony with the
6 requirements of the rule. We argue that we're totally within the
7 ambit of the rule and it's just a matter that now is the time to
8 terminate.

9 CHAIRMAN WILSON: Mr. Howe -- briefly.

10 MR. HOWE: Commissioners, I agree with Mr. McWhirter,
11 that it would be premature to terminate these proceedings at this
12 time.

13 To answer some of your questions, Mr. Chairman, I think
14 your point about don't you have to either be within a rule or
15 waive it? Well, no, you don't have to. You can be within it,
16 you can waive it, if you find that the facts fit the rule. But
17 you can also find that facts that develop such that a situation,
18 even a company that was previously within the rules, is no
19 longer. An example might be somebody like Reedy Creek Utilities.
20 You used to have a lot of rules that applied to Reedy Creek. You
21 neither apply the rule nor waive it as far as Reedy Creek is
22 concerned. Reedy Creek is no longer covered by the rules.

23 CHAIRMAN WILSON: And why is FP&L no longer covered by
24 this rule?

25 MR. HOWE: Okay, I'm saying that is one interpretation

1 is that as facts now exist, this rule is meant to capture oil
2 backout projects.

3 CHAIRMAN WILSON: So you're saying that this is no
4 longer an oil backout project?

5 MR. HOWE: That is one reasonable interpretation, and
6 as I peruse --

7 CHAIRMAN WILSON: Is that the interpretation that you
8 are pursuing?

9 MR. HOWE: Not in this case, no, because I was just
10 answering your question.

11 CHAIRMAN WILSON: Well, you need -- I want to know what
12 you're doing here, and what the the basis of it is, and I can't
13 get a straight answer.

14 MR. HOWE: Okay. Our office is focusing on the effects
15 of the Martin units. Now, those effects are in the accelerated
16 depreciation which is the \$265 million figure that Mr. McWhirter
17 was referring to. If you accept our position on those units, you
18 will find that the Utility was not entitled to that accelerated
19 depreciation and should be returned to the customers whether this
20 project stays within or without the rule.

21 The second point we are focusing on is the income tax
22 affect. The tax savings -- the fact that this Utility is earning
23 15.6% on its oil backout investment, whereas it's only earning
24 13.6% on its other investments. So that's our point of focus.

25 Now, as far as the motion to dismiss on the rule

1 itself, the Commission, when it passes a rule, finds it as a
2 declaration -- a statement of general applicability. Matters can
3 develop after that time.

4 As I peruse the documents that Florida Power and Light,
5 for example, included in the -- we'll call it the Official Notice
6 Notebook, I find Mr. Cook, for example, at one point stating, "As
7 I understand the rule, it does provide that the actual cost in
8 the future will determine the precise ratemaking treatment." And
9 so there is a self-correcting factor.

10 Seemingly, the Company's witness contemplated that you
11 would -- you make decisions in the future based on what was
12 actually happening.

13 Commissioner Cresse, later on I see him stating -- and
14 admittedly this is out of context, but that's all I've got --
15 "There are points in time when projects can be terminated,
16 deviated or continued based upon the latest economic analysis."
17 Pick termination, what if for some reason they had to terminate
18 this project altogether because it could no longer import
19 coal-by-wire. This rule would not cover that situation. It
20 would then be outside the scope.

21 CHAIRMAN WILSON: So there wouldn't be a calculation of
22 any savings to provide any accelerated depreciation.

23 MR. HOWE: That's true.

24 CHAIRMAN WILSON: I mean, it would still fall under the
25 rule. There just wouldn't be any result of it.

1 MR. HOWE: I don't think it would fall under the rule
2 because it would no longer be an oil backout project. It would
3 be changed circumstances of such significance that the rule
4 itself would no longer be applicable.

5 I note at a later point Commissioner Cresse stating --

6 CHAIRMAN WILSON: I appreciate your hypothetical
7 arguments, and this is a very interesting discussion, but tell me
8 whether you are arguing application of the rule, or waiver of the
9 rule or the rule no longer applies.

10 MR. HOWE: My position would be circumstances have
11 changed to such an extent that the facts that previously
12 justified application of the rule to Florida Power and Light --

13 CHAIRMAN WILSON: It no longer qualifies.

14 MR. HOWE: -- no longer obtain, and as such, the
15 rule is not applicable at this time, and for the foreseeable
16 future, to their oil backout project, which is the 500 kV
17 transmission lines.

18 CHAIRMAN WILSON: So this is no longer an oil backout
19 project.

20 MR. HOWE: Yes, sir.

21 CHAIRMAN WILSON: It no longer qualifies as an oil
22 backout project.

23 MR. HOWE: Yes, sir.

24 CHAIRMAN WILSON: That's your position.

25 MR. HOWE: If I might, one other statement I'd like

1 to --

2 COMMISSIONER EASLEY: Let me clarify that, please.
3 That was not FIPUG's answer, was that correct? You stated, Mr.
4 McWhirter, that you were not taking the position that the project
5 no longer qualified, if I recall. I want to be sure I
6 understand.

7 MR. MCWHIRTER: I'm comfortable with what Mr. Howe
8 said.

9 CHAIRMAN WILSON: But it's not what you said. It's not
10 what you said five minutes ago.

11 COMMISSIONER EASLEY: In response to the direct
12 question, Mr. McWhirter, I believe you said flat, for the one of
13 a few times you said a flat "yes" or "no," I believe you said
14 "no" to a question by the Chairman of whether or not this project
15 no longer qualified. And your answer was "No, it still
16 qualifies, but other things have changed."

17 MR. MCWHIRTER: It was qualified in 1982, and the fact
18 that it was qualified then is fine. The rule says and the
19 testimony in this case is that the --

20 COMMISSIONER EASLEY: Please, Mr. McWhirter, please.
21 Let me ask the question one more time.

22 Mr. Howe says, "This no longer qualifies under the
23 rule." Period. Do you agree with that statement?

24 MR. MCWHIRTER: I'll say yes; yes.

25 COMMISSIONER EASLEY: Okay.

1 MR. MCWHIRTER: If I said something inconsistent with
2 that before, I have to go back and see the context in which I
3 said it.

4 But I think the rule itself says once the costs of the
5 qualified oil backout project have been recovered, the
6 applicability of the oil backout cost recovery factor shall
7 terminate.

8 COMMISSIONER EASLEY: Mr. McWhirter, do you disagree
9 that that is different from saying the project no longer
10 qualifies? If I understand what you just read to me and what
11 I've read in here, there can be a project that doesn't qualify.
12 But that's different from saying a qualified project has now
13 recovered all of its cost and, therefore, the factor terminates.
14 Do you disagree with that?

15 MR. MCWHIRTER: I follow you 100%.

16 COMMISSIONER EASLEY: Okay. Now what I just asked was
17 this is a project that doesn't qualify. Mr. Howe's answer was
18 "yes," and you just said you agreed with that. That's different
19 from they've recovered all their costs and, therefore, the factor
20 ends.

21 MR. MCWHIRTER: The qualifications criteria is does
22 this facility still economically displace oil?

23 COMMISSIONER EASLEY: And has it recovered all of its
24 costs. There is a second part of that, isn't there? Isn't that
25 the point at which it terminates is when they've recovered all

1 their costs?

2 MR. McWHIRTER: Well, that's another -- even if it
3 qualified, if it recovered all its cost it could be terminated.

4 COMMISSIONER EASLEY: Right.

5 MR. McWHIRTER: So our position is it either isn't
6 economic anymore, or even if it is economic, it's recovered all
7 of its costs, except the nominal remaining costs, and it should
8 be terminated for that reason.

9 CHAIRMAN WILSON: If I didn't do it, terminated under
10 the rule?

11 MR. McWHIRTER: Yes, sir. Terminated under the rule,
12 either way.

13 CHAIRMAN WILSON: Which are you advocating terminated
14 under the rule?

15 MR. McWHIRTER: It's a dual winner. I advocate that
16 it's no longer economically displacing oil and, therefore, it
17 should be terminated, and I further argue that all the nominal
18 costs have been recovered, so there's no justification for
19 keeping the oil backout.

20 Now query: If you give us a refund, then you
21 reinstitute part of these costs. \$285 million, if we reduce the
22 plant from 850 down to \$8 million, if you give us that money
23 back, then there is some unrecovered costs in the project, so how
24 do you address that?

25 The way we'd address that under the rule is even though

1 it is still qualified as an oil backout project, the time is now
2 rational to roll that into base rates. Why? Because each year
3 in January Florida Power and Light gets a tax refund. This year
4 there's some dispute as to whether it should be 28 million or 58
5 million. This can be a source without the necessity of oil
6 backout in the base rates, and then eliminate all or a portion of
7 that tax refund.

8 CHAIRMAN WILSON: What is the amount that you're
9 proposing that ought to be refunded?

10 MR. McWHIRTER: \$285 million.

11 CHAIRMAN WILSON: \$285 million. What is that number?

12 MR. McWHIRTER: That number is the amount of money that
13 has been collected in accelerated depreciation of --

14 CHAIRMAN WILSON: Is that net of normal depreciation?

15 MR. McWHIRTER: Yes, in excess of normal depreciation.
16 That number was calculated by taking the cost of the Martin Plant
17 and the "savings to the customers" because those plants weren't
18 built, and they said write down the transmission line by \$285
19 million. We said, "Why write it down now and make people pay for
20 it today when it's going to be used for 25 more years?" That's
21 inconsistent with the normalization of taxes and the maximum
22 procedures that you use in all other proceedings.

23 CHAIRMAN WILSON: Is that 285 also net of the revenue
24 requirement associated with that investment that would have been
25 included in rate base?

1 MR. MCWHIRTER: Yes, sir.

2 CHAIRMAN WILSON: Base rates?

3 MR. MCWHIRTER: Yes, sir.

4 CHAIRMAN WILSON: Do you have a schedule that shows
5 that calculation?

6 MR. MCWHIRTER: Do we have a schedule that shows that,
7 Mr. Pollock?

8 WITNESS POLLOCK: Bearing Exhibit 611, Mr. Chairman,
9 shows the calculation of the amount of the accelerated --

10 CHAIRMAN WILSON: Where would I find that?

11 WITNESS POLLOCK: I'm sorry, in my testimony, my
12 exhibits.

13 CHAIRMAN WILSON: Your direct -- your exhibits?

14 WITNESS POLLOCK: My exhibits.

15 COMMISSIONER GUNTER: Don't show us one that looks like
16 that, you see. We've got the working man's copy.

17 CHAIRMAN WILSON: You did.

18 COMMISSIONER GUNTER: I did.

19 CHAIRMAN WILSON: You say it's Schedule 11.

20 WITNESS POLLOCK: Yes. Line 6, the very first column
21 is a summation of the saving -- two-thirds of the net savings
22 actually taken by FP&L in the oil backout cost recovery factor
23 true-up filing since April of 1987. And the number is basically
24 through September of 1989 based upon FPL's earlier oil backout
25 filing. The number there is shown on Line 6.

1 CHAIRMAN WILSON: Have you all completed your response
2 to the renewed motion to dismiss?

3 MR. CHILDS: Yes, sir.

4 MR. HOWE: Commissioner, if I might. As I read what
5 went on throughout, it was generally understood, and it stated,
6 that these issues might come up at a later date. For example, I
7 think I can cite to it, Commissioner Cresse specifically stated
8 that it could come up in a rate case, for example. But I want to
9 make Public Counsel's position hopefully clear.

10 As I see it, there are three issues that we are
11 concerned with. One is the oil backout project itself and that
12 is whether it should be recovered through a separate cost
13 recovery factor. Our concern is not with that issue.

14 The second issue is if they obtain net savings from
15 their oil backout project within the rule, are they entitled to
16 take accelerated depreciation equal to two-thirds of those
17 savings, and that depreciation to be in the form of a rapid
18 recovery of their investment. And the narrative of the
19 transcripts of the proceeding seems to be that the Commission
20 envisioned that as a sharing of benefits between the Utility and
21 its customers; that the utility would receive two-thirds and the
22 customers would receive one-third, but that's the net savings
23 within the rule.

24 The third factor is the income tax savings. And our
25 concern is with the latter two.

1 COMMISSIONER HERNDON: I thought you were also
2 concerned about the return.

3 MR. HOWE: Well, that's in the tax savings, the 15.6%.

4 CHAIRMAN WILSON: Actually, it's more properly
5 characterized as overearnings associated with that rate of return
6 and not tax savings.

7 MR. HOWE: That's a fair characterization. It enters
8 into all the calculations, of course, as to the cost of the unit
9 and also of the Martin units, I should say, in calculating net
10 savings and also in the tax savings or the overearnings, as you
11 characterized it.

12 CHAIRMAN WILSON: Mr. Childs, would you like to close?

13 MR. CHILDS: I have a few comments.

14 CHAIRMAN WILSON: I thought you might.

15 MR. CHILDS: So that the Commission understands and
16 Public Counsel --

17 CHAIRMAN WILSON: Before you do that, I'm sorry.

18 MS. RULE: Staff's position would briefly be that we're
19 constrained by the rule. And as I understand it right now, we're
20 addressing Mr. Childs' renewed motion to dismiss.

21 My reading of the rule says that regardless of what
22 Commissioner Cresse anticipated might happen, the rule says that
23 the project costs shall continue to be recovered until such time
24 as they are included in base rates. It does not suggest that
25 until such time as we might feel fit to include them in rate

1 base. But they actually have to be in the rates. Absent some
2 other proceeding at this point given the testimony, I don't see
3 that we have, under the rule, the authority to do exactly what
4 FIPUG would like in the absence of another proceeding.

5 CHAIRMAN WILSON: So your recommendation is what?

6 MS. RULE: I would agree with FP&L on this point.

7 CHAIRMAN WILSON: We have how many issues? Is that the
8 whole case or is that some of the issues, part of the issues, all
9 right.

10 MR. CHILDS: Some.

11 MS. RULE: There are several issues that would be left
12 over.

13 COMMISSIONER HERNDON: Well, that's what I wanted to
14 ask you. For example, with respect to the rate of return
15 question.

16 MS. RULE: Actually I believe -- that could be handled
17 I believe in the fuel docket. Basically --

18 COMMISSIONER HERNDON: Yes, but I mean Mr. Childs'
19 motion, I took Mr. Childs' motion to dismiss everything.

20 MR. CHILDS: No. No, sir.

21 COMMISSIONER HERNDON: Well, restate it then, Mr.
22 Childs, if you would. What's left? Maybe it would be better to
23 ask it that way.

24 MR. CHILDS: I'm not sure that I can identify what's
25 left. I will try to identify the scope of the motion.

1 The scope of the motion was to dismiss the petition as
2 it related to any termination of the continuation of the clause.
3 It doesn't relate to a quantification of what the savings might
4 be, but the suggestion and the specific request of FIPUG is
5 terminate cost recovery pursuant to the factor. And I move to
6 dismiss that.

7 I have some additional comments and response and I'll
8 try to be brief if you'd like to hear them at this time.

9 CHAIRMAN WILSON: Sure. I don't know why not. I hope
10 they will be brief, but go ahead.

11 MR. CHILDS: The motion was premised in part upon the
12 allegations in the petition by FIPUG, and the distinction between
13 those allegations in the petition and what the witness is now
14 saying as to how the Primary Purpose Test was to be applied.
15 I'd like to point out that that's not, in my view, a technical
16 interpretation of the rule at all. It's what the rule calls for
17 and it's what was alleged in the petition.

18 I would also point out that the order that I referred
19 to earlier, Order No. 11599, in Docket 830001-EU, has a sentence
20 in the last paragraph of Page 1, which says, on this issue, "The
21 rule requires demonstration of qualification once; it is not a
22 finding that's periodically revisited."

23 As to the cost to be recovered. Mr. McWhirter
24 suggested that he would defy me to show a basis for it. I'd like
25 to read the third paragraph on Order No. 10554 in Docket 810241,

1 which is the docket where the rule was amended. And it says,
2 "Rule 25-17.16 is intended to be used by investor-owned electric
3 utilities for the recovery of costs of implementing certain
4 supply side conservation measures which will economically
5 displace oil generated electricity."

6 As to the way the costs are recovered, the Commission,
7 the first time it had the question about where to recover the
8 costs, decided to recover them through the oil backout factor
9 noting that they could as well have permitted them to be
10 recovered through the fuel adjustment.

11 And I would also point out that Florida Power and Light
12 Company did have a rate case since the oil backout project was
13 qualified and did ask that the cost be recovered in base rates,
14 and that request was denied. So I urge you to dismiss that
15 portion of the FIPUG petition.

16 CHAIRMAN WILSON: Commissioners?

17 COMMISSIONER GUNTER: I have no problem hearing what
18 the rest of them have, the questions. I'm not sure what the
19 relevancy is.

20 Mr. Chairman, there's enough question in my mind, and
21 I've been going through this now for a number of years, but I
22 have no objection to hearing the remainder of the testimony that
23 I think would be cut out or eliminated, regardless of how
24 appealing that might sound, to going ahead and hearing the
25 remainder of the testimony.

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22 have no objection to hearing the remainder of the testimony that
23 I think would be cut out or eliminated, regardless of how
24 appealing that might sound, to going ahead and hearing the
25 remainder of the testimony.

1 COMMISSIONER HERNDON: Mr. Chairman, maybe one thing
2 that would help me, and this may be a serendipitous time, this is
3 -- even in light of Mr. Child's clarification, I'm not clear what
4 issues, using that word very intentionally, would be left and
5 which ones would be eliminated by virtue of their motion. It
6 might be beneficial to take up the FPC witness in 01 and let
7 counsel, Staff and others go down to the other conference room
8 and talk about that and come back after they are done.

9 I have a certain amount of sympathy for Mr. Childs'
10 motion, but there are some aspects of this case that I do not
11 believe should be dismissed.

12 CHAIRMAN WILSON: I agree. There are some that I would
13 like to hear. Not only that, but I have some questions for some
14 of the witnesses that I would like to have an opportunity to be
15 educated on. But I think that's probably a very good suggestion,
16 that counsel look at what issues would be affected by the
17 granting of a motion to dismiss that you've made, Mr. Childs, and
18 then we'll come back and do that.

19 Let's take about two minutes and reorganize and let's
20 take Mr. McKee.

21 (Brief recess.)

22 (Transcript follows in sequence in Volume II.)

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