

State of Florida  
Division of Administrative Hearings

Sharyn L. Smith  
Director and Chief Judge  
Ann Cole  
Clerk of the Division

The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida  
32399-3060

April 25, 2001

Blanca Bayo, Director of Records  
Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

991680-ET

Re: THE COLONY BEACH & TENNIS CLUB, LTD. vs. FLORIDA POWER AND  
LIGHT and FLORIDA PUBLIC SERVICE COMMISSION,  
DOAH Case No. 00-1117

Dear Ms. Bayo:

Enclosed is my Recommended Order in the referenced case.  
Also enclosed is the two-volume Transcript, together with the  
Petitioner's Exhibits numbered 1-6 and 10, the Respondent's  
Exhibit numbered 1, and the Joint Exhibits numbered 1-12 and 14-  
44. Copies of this letter will serve to notify the parties that  
my Recommended Order and the hearing record have been  
transmitted this date.

As required by Subsection 120.57(1)(k), Florida Statutes,  
you are requested to furnish the Division of Administrative  
Hearings with a copy of the Final Order within 15 days of its  
rendition.

Sincerely,

*Lawrence P. Stevenson*

LAWRENCE P. STEVENSON  
Administrative Law Judge

LPS/gl

Enclosures

cc: Bernard F. Daley, Esquire  
Robert V. Elias, Esquire  
Kenneth A. Hoffman, Esquire  
Marc D. Mazo  
Katrina Walker, Esquire  
Catherine Bell, General Counsel  
William D. Talbott, Executive Director

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DOCUMENT NUMBER-DATE

05282 APR 27 2001

FILED IN 00-1117

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THE COLONY BEACH & TENNIS CLUB,	)	
LTD.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 00-1117
	)	
FLORIDA POWER AND LIGHT,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
FLORIDA PUBLIC SERVICE	)	
COMMISSION,	)	
	)	
Intervenor.	)	
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RECOMMENDED ORDER

A formal hearing was held in this case before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on January 22-23, 2001, in Sarasota, Florida.

APPEARANCES

For Petitioner: Bernard F. Daley, Esquire  
901 North Gadsden Street  
Tallahassee, Florida 32303

Marc D. Mazo  
Qualified Representative  
14252 Puffin Court  
Clearwater, Florida 33762

DOCUMENT NUMBER-DATE

05282 APR 27 06

FPSC-REC'D-COM REPORTING

For Respondent: Kenneth A. Hoffman, Esquire  
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Rutledge, Ecenia, Underwood,  
Purnell, & Hoffman, P.A.  
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Post Office Box 551  
Tallahassee, Florida 32302-0551

For Intervenor: Katrina Walker, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard, Room 370  
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STATEMENT OF THE ISSUE

At issue in this proceeding is whether Petitioner, the Colony Beach and Tennis Club, Ltd. ("Colony") is entitled to a refund from Respondent, Florida Power and Light Company ("FPL"), pursuant to statutes and rules cited in the Amended Complaint.

PRELIMINARY STATEMENT

On November 4, 1999, Colony filed a formal consumer complaint with the Florida Public Service Commission ("PSC" or "Commission") against FPL. The Complaint sought a refund from FPL, pursuant to Rules 25-6.093(2) and 25-6.049(5)(a)(3), Florida Administrative Code, and Section 366.03, Florida Statutes. As amended, the Complaint alleges that FPL failed to convert the 232 units at Colony from individual meters billed at residential rates to master meters billed at the lower commercial service demand rate, following an oral request by Colony's chief engineer in late 1988 or early 1989. Colony was converted from individual to master meters in June 1998, and

alleges that it is entitled to a refund for the period between the oral request and the completion of the conversion.

FPL filed an Answer and Affirmative Defenses ("Answer") to the Complaint. The Answer denied that Colony was entitled to a refund and challenged Colony's assertion that it was entitled to master metering under the PSC rules that were in place at the time of the oral request. The Answer asserted that FPL properly charged the individual units at Colony for electric service in accordance with approved tariffs and existing PSC rules and that Colony was not eligible for master metering at the time of the oral request without a waiver of Rule 25-6.049(5)(a), Florida Administrative Code.

On February 7, 2000, FPL filed a motion to transfer the Complaint to the Division of Administrative Hearings. By Order dated March 6, 2000, the PSC granted the motion and forwarded the Complaint to the Division of Administrative Hearings for conduct of a formal hearing. On May 10, 2000, the PSC filed a petition to intervene as a non-aligned party to the proceeding. By Order issued May 23, 2000, the petition to intervene was granted.

On October 11, 2000, FPL filed a Motion for Summary Recommended Order of Dismissal. On October 26, 2000, Colony filed a Motion for Findings of Fact and Summary Final Order. A hearing on both motions was conducted on November 17, 2000,



before Administrative Law Judge Mary Clark. On November 21, 2000, Judge Clark issued an Order that found there were too many disputed issues of fact to warrant the summary disposition sought by either party. Judge Clark's Order also confirmed an agreement among the parties that this proceeding would be bifurcated. The initial phase of the hearing would determine whether Colony is entitled to a refund. If Colony established its entitlement to a refund, the second phase of the hearing would determine the amount of that refund.

The case was transferred to the undersigned, and the initial phase of the hearing was held on January 22 and 23, 2001, in Sarasota.

At the hearing, the parties pre-marked 48 exhibits as Joint Exhibits and stipulated to their authenticity. During the course of the hearing, Joint Exhibits 45-48 were withdrawn. Joint Exhibits 1 through 12 and 14 through 44 were admitted without objection.

Colony presented the testimony of Michael Moulton, Colony's executive vice president; Jerry Sanger, Colony's chief maintenance engineer; Tom Saxon, a former FPL employee; and Mark Mazo, president of Power Check Consultants. Colony Exhibits 1 through 5 and 10 were admitted into evidence without objection. Colony Exhibit 6 was admitted over FPL's objection to its relevance.

FPL presented the testimony of Rosemary Morley, a rate development manager for FPL; Terri Britton, an FPL employee working in its energy conservation program; and Jim Guzman, an FPL service planner. FPL also offered the deposition testimony of Greg Bauer, admitted as Joint Exhibit 43, and of Larry Valentine, admitted as Joint Exhibit 44. FPL Exhibit 1 was also admitted into evidence.

The PSC presented no testimony and offered no exhibits.

A transcript of the hearing was ordered. The Transcript was filed with the Division of Administrative Hearings on February 22, 2001. All parties filed Proposed Recommended Orders on or before the thirty-day deadline established by stipulation at the hearing.

#### FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record of this proceeding, the following findings of fact are made:

##### A. The Colony

1. The Colony Beach Resort was originally built in the 1950s on Longboat Key, a coastal island in the Gulf of Mexico near Bradenton and Sarasota. Dr. Murray J. Klauber purchased the facility in the 1960s. In the early 1970s, Dr. Klauber had most of the existing buildings demolished and built the 232 residential units that stand on the property today. The units

were sold pursuant to a unique financing arrangement that resulted in the establishment of one of the first all-suite resorts in the United States.

2. Each unit of the Colony was sold as a condominium. The purchaser acquired fee simple title to the unit and became a limited partner in a partnership formed to operate a rental pool for the units. Participation in the rental pool was, and is, a mandatory incident of purchasing one of the units.

3. The unit owners are members of a condominium association known as the Colony Beach and Tennis Club Association (the "Association"). The Association was incorporated in 1973. The articles of incorporation state, in relevant part:

The purpose for which the Association is organized is to provide an entity pursuant to [former] Section 711.12 of the Condominium Act, Florida Statutes, for the operation of Colony Beach & Tennis Club, a Condominium Resort Hotel, herein referred to as the "Condominium," located at 1620 Gulf of Mexico Drive, Longboat Key, Sarasota County, Florida.

4. The Declaration of Condominium of Colony Beach and Tennis Club states: "The purpose of this Declaration is to submit the lands described in this instrument and the improvements constructed or to be constructed thereon to the Condominium form of ownership and use in the manner provided by [former] Chapter 711, Florida Statutes, herein called the

Condominium Act." The Declaration defines a "unit" as "a part of the condominium property which is to be subject to private ownership."

5. The cited documents demonstrate that Colony was established under a condominium form of ownership. However, the same documents also establish that Colony was never intended to operate as a typical condominium in which the unit owners may reside at the facility. A prospectus for the sale of the units, dated September 8, 1977, explained the anticipated operation of the facility and the rights of prospective unit owners:

Each purchaser of a Condominium Unit obtains private ownership of the interior of an apartment, and an undivided 1/244th interest in the land submitted to condominium ownership and in those portions of the buildings and improvements in the Project that are not privately owned. . . . In addition, each such purchaser receives an interest as a limited partner ("Partnership Interest") in Colony Beach & Tennis Club, Ltd. (the "Partnership"), a limited partnership organized on December 31, 1973 for the purpose of operating the Project as a resort hotel. . . . The Condominium Unit and the Partnership Interest will be offered and sold to the public only in combination. Neither the Condominium Unit nor the Partnership Interest may be sold or transferred separately. . . . Purchasers will be permitted to occupy each Condominium Unit owned by them for up to thirty (30) days in each calendar year without rental charge. The Condominium Units sold to the public hereunder will be dedicated to operation of the Project as a resort hotel. Because of the required dedication of Condominium Units to the hotel operation,

the Units are not suitable for permanent residence.

The prospectus describes Colony as "a Condominium Resort Hotel."

6. The ownership structure and the right of owners to use the individual units for specific periods of time less than a full year during each year met the criteria of a "timesharing plan" as it was defined in Rule 25-6.049(5)(b)2, Florida Administrative Code, from the early 1980s until its amendment effective March 23, 1997. This amendment is more fully discussed below.

7. Michael Moulton, who has been the executive vice president of Colony for ten years, testified that Colony is operated by Resorts Management, Inc., which also controls the mandatory rental pool as the general partner of the limited partnership.

8. Mr. Moulton testified that Colony operates as a tennis resort, including tennis lessons, all-day programs for children, a spa, and a fitness center. Colony maintains a central registration area for guests, a central telephone switchboard, a restaurant, and a laundry. Signage on the property uses the word "hotel." Colony advertises worldwide for guests.

9. Mr. Moulton's testimony established that most units at Colony are rented more than three times in a calendar year for

periods of fewer than 30 days. Thus, Colony also meets the definition of a "resort condominium" as defined in Subsection 509.242(1)(c), Florida Statutes.

10. Colony has been licensed as a motel with the Department of Business and Professional Regulation ("DBPR") since at least February 1, 1985.

11. Colony has been registered as a hotel for occupational licensing purposes with the Town of Longboat Key since at least September 1987.

12. Colony has been registered as a hotel for occupational licensing purposes with Sarasota County since the county's licensing ordinance took effect on October 1, 1992.

13. In summary, the Colony is a hybrid facility that meets the definitions of a "timesharing plan," a "resort condominium," and in some respects of a transient rental facility such as a hotel or motel.

14. From at least 1973 until June 1998, the units at Colony were individually metered for electric service. No evidence was presented to establish the original reasoning behind FPL's decision to individually meter each unit in the early 1970s.

B. Rule 25-6.049(5), Florida Administrative Code

15. Rule 25-6.049(5)(a), Florida Administrative Code, was originally adopted in November 1980 in response to the federal Public Utilities Regulatory Policies Act, which required state regulatory commissions and regulated utilities to implement measures to conserve electricity. The rule requires individual metering for each separate occupancy unit of: "new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction is commenced after January 1, 1981."

16. As to buildings constructed prior to January 1, 1981, the PSC has stated that its intent was to allow master metered buildings constructed before 1981 to remain master metered, but not to allow individually metered buildings constructed before 1981 to convert to master meters. In re: Petition for Declaratory Statement Regarding Eligibility of Pre-1981 Buildings for Conversion to Master Metering by Florida Power Corporation, Order No. PSC-98-0449-FOF-EI (March 30, 1998).

17. The PSC's rationale for adopting the rule was that individual metering helps to conserve energy by making the individual unit owner or occupant aware of the amount of electricity being consumed by the unit, thus providing an

incentive to reduce consumption and the cost of the electric bill for the unit.

18. The rule exempts a lengthy list of otherwise covered facilities from the individual metering requirement. Among the exempted facilities are "hotels, motels, and similar facilities."

19. From the early 1980s until March 1997, Rule 25-6.049(5)(a), Florida Administrative Code, included a statement that the requirement for individual metering applied to each separate condominium unit and other multi-use facility "whether or not the facility is engaged in a timesharing plan." Prior to March 1997, Rule 25-6.049(5)(b)2, Florida Administrative Code, defined "timesharing plan" to mean:

any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right to use agreement or by any other means, whereby a purchaser, in exchange for a consideration, receives a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years.

20. In 1996, the PSC directed its staff to review the exemptions from the individual metering requirements to determine whether to allow master metering for timeshare facilities. In January 1997, the PSC approved amendments to



Rule 25-6.049(5), Florida Administrative Code, to allow timeshare facilities to be master metered. The amendments deleted the language in subparagraph (5)(a) that required individual metering for a covered facility whether or not it was subject to a timesharing plan. The amendments deleted the definition of "timesharing plan" quoted above, and added language allowing master metering of timeshare facilities and requiring the customer to reimburse the utility for the costs of converting from individual to master meters.

C. The Conversion of Colony to Master Meters

21. Marc Mazo is president and owner of Power Check, a company that consults with commercial clients to find savings in their electric, water, sewer, and telephone bills. Mr. Mazo was retained by Colony in early 1997 to review its utility billings.

22. Prior to starting his work for Colony, Mr. Mazo had been actively involved in the PSC proceedings that led to the amendments to Rule 25-6.049(5), Florida Administrative Code, discussed above. Mr. Mazo testified that he believed the definition of "timesharing plan" in the pre-1997 rule was "broad," and that his goal in the rule amendment proceeding was to persuade the PSC to authorize master metering for timeshares and for resort condominiums. The amendments adopted by the PSC authorized master metering for timeshares, but not for resort condominiums.

23. Mr. Mazo testified that his review of Colony's billings showed that the facility had 232 individual meters. He testified that Colony appeared to operate as a hotel and, thus, should be eligible for master metering under the "hotels, motels, and similar facilities" exemption from the individual metering requirement of Rule 25-6.049(5)(a)3, Florida Administrative Code.

24. In approximately February 1997, Mr. Mazo contacted Jim Guzman, FPL's customer service representative for the Sarasota area. Mr. Mazo requested the conversion from individual to master meters for three separate resort facilities that he represented: Colony, the Veranda, and White Sands.

25. At the time of Mr. Mazo's initial contact, neither Mr. Guzman nor his supervisor, Greg Bauer, was aware of the pending amendments to Rule 25-6.049(5) that would allow master metering of timeshares. They learned of the pending amendments from Mr. Mazo. Neither Mr. Guzman nor Mr. Bauer had ever been involved in the conversion of a facility from individual to master meters.

26. Mr. Guzman and Mr. Bauer confirmed through FPL sources that the pending amendments were as represented by Mr. Mazo. Then, they made a phone call to Colony and asked the person who answered the phone whether Colony was a timeshare. This unidentified person answered in the affirmative. Based on this

answer, Mr. Guzman and Mr. Bauer decided to move forward with the conversion.

27. Mr. Guzman testified that his main concern was to comply with the request of his customer and that this phone call was sufficient to reassure him that Colony qualified for conversion under the pending timeshare amendments.

28. FPL did not conduct a detailed analysis to determine whether Colony qualified for master metering. After the phone call to Colony, Mr. Guzman moved forward with a cost analysis to convert Colony to master metering in accordance with amended Rule 25-6.049(5)(a)5, Florida Administrative Code, which states in relevant part:

When a time-share plan is converted from individual metering to master metering, the customer must reimburse the utility for the costs incurred by the utility for the conversion. These costs shall include, but not be limited to, the undepreciated cost of any existing distribution equipment which is removed or transferred to the ownership of the customer, plus the cost of removal or relocation of any distribution equipment, less the salvage value of any removed equipment.

29. In approximately March 1997, Mr. Bauer and Mr. Guzman met with Mr. Mazo and Tom Saxon, a consultant called in by Mr. Mazo. The discussion dealt with technical issues regarding the conversion of all three resort facilities. There was a disagreement as to the allocation of costs that could not be

settled at the meeting, due to the inexperience of Mr. Guzman and Mr. Bauer with conversion issues. Mr. Guzman testified that it was necessary to seek input from higher in the FPL chain of command.

30. After the meeting, Mr. Mazo and Mr. Guzman engaged in extensive negotiations regarding the cost of conversion, communicating by telephone and written correspondence.

31. The testimonial and documentary evidence indicates that there was a fundamental misunderstanding between Mr. Mazo and the FPL representatives as to the nature of Mr. Mazo's request for conversion of Colony. Mr. Mazo testified that his intent was that Veranda and White Sands should be converted pursuant to the timeshare amendments but that Colony should be converted pursuant to the longstanding "hotels, motels, and similar facilities" exemption in Rule 25-6.049(5)(a)3, Florida Administrative Code.

32. Mr. Guzman and Mr. Bauer testified that they understood Mr. Mazo to be requesting the conversion of all three facilities pursuant to the timeshare amendments, and that all of their actions were premised on that understanding.

33. Mr. Mazo testified that the participants at the face-to-face meeting in March 1997 discussed and agreed with the premise that Colony was a hotel and should be master metered as

a hotel. Mr. Saxon, the consultant brought to the meeting by Mr. Mazo, corroborated Mr. Mazo's recollection of the meeting.

34. Neither Mr. Guzman nor Mr. Bauer recalled discussing with Mr. Mazo whether Colony was a hotel. Mr. Guzman testified that FPL had already decided to go forward with the master metering of all three facilities and that it treated all three facilities as timeshares. Mr. Guzman testified that, once having decided to grant its customer's request for master metering, FPL was unconcerned whether Colony was a hotel or a timeshare.

35. In a memorandum to Mr. Guzman, dated March 19, 1997, Mr. Mazo wrote:

First of all, based on our numerous discussions, it is my understanding that FP&L has agreed that since The Colony has been and continues to operate as a hotel, it is allowed under the old rule 25-6.049(5)(a)3 to be master metered. Therefore, we do have to wait for the amended version of the rule relating to time share resorts to take effect to begin the conversion process. (Emphasis added)

36. Mr. Mazo testified that the emphasized portion of the memorandum contained a typographical error, and should have stated that "we do not have to wait for the amended version of the rule." The context of the statement makes Mr. Mazo's testimony credible on that point. The remainder of the

memorandum deals exclusively with the scope of the work and costs for the conversion of Colony.

37. Mr. Guzman testified that Mr. Mazo's statement that FPL agreed that Colony operated as a hotel was incorrect. He testified that FPL's actions toward Colony and the other two facilities represented by Mr. Mazo were a response to the timeshare amendments, and it was FPL's understanding that all three facilities were the same. He did not contemporaneously respond to the statement in Mr. Mazo's memorandum because the issue of Colony's status as a hotel was irrelevant once the decision had been made to allow the conversion.

38. Mr. Guzman stated that FPL assessed costs as to all three facilities in accordance with the timeshare amendments. He noted that there was no basis in the rules to assess costs for the conversion of a hotel and that a different inquiry would have been made in the FPL chain of command had he been asked to convert a hotel.

39. In a memorandum to Mr. Guzman, dated March 27, 1997, and titled "Master Meter Conversion Projects," Mr. Mazo states:

Also, the owner posed a question that since the Colony has been operating as a hotel for many years now, and should have been converted long ago to master metering, would it fall under the same "cost of conversion rule"?

The balance of this memorandum discusses payment of conversion costs, itemization of the charges, and scheduling of the conversions.

40. Mr. Guzman testified that he "vaguely" recalled responding to the quoted portion of the March 27 memorandum as to how the costs would be assessed on Colony. Again, he stated that Mr. Mazo's contention that Colony was a hotel had no significance to FPL and there was no reason to respond to that contention.

41. In a letter to Mr. Mazo dated November 25, 1997, Mr. Guzman stated a final cost of \$11,152 for the conversion of Colony and requested payment in full prior to release of a work order. The first sentence of the letter reads: "Thank you for your recent inquiry concerning the conversion of your timeshare resort, from individual residential metered units to single master commercial meter." Mr. Guzman testified that this was a form letter, his only independent input being insertion of the numbers reflecting the amount of payment and time required to complete the conversion.

42. Shortly after receiving the letter, Mr. Mazo phoned Mr. Guzman. Mr. Mazo told Mr. Guzman that he wished to proceed with conversion of Colony and agreed to the stated cost. However, Mr. Mazo requested that Mr. Guzman rewrite the letter, substituting the word "hotel" for "timeshare resort." Mr. Mazo

testified that he emphasized to Mr. Guzman that he had never represented that Colony was a timeshare resort and that the reference in the letter should be corrected.

43. Mr. Guzman recalled the conversation, but testified that there was no real discussion as to why Mr. Mazo was requesting the change in the letter. Mr. Guzman discussed the matter with his superior, Mr. Bauer, who instructed him to accede to the request, because it made no difference to the master metering project whether Colony was called a "hotel" or a "timeshare resort." Mr. Guzman made the change and reissued the letter on December 22, 1997.

44. Mr. Mazo sent FPL the payment for the Colony master metering project on April 10, 1998. The project was completed in June 1998.

D. The Refund Claim

45. Mr. Mazo testified that at some point in the latter half of 1997, he was discussing the conversion with Jerry Sanger, Colony's longtime chief maintenance engineer. During the conversation, Mr. Sanger mentioned that he was gratified that Mr. Mazo was able to complete the conversion, because Mr. Sanger had unsuccessfully attempted to do so several years earlier.

46. Mr. Sanger testified that one of his duties at Colony is to monitor energy usage. Some time in 1988 or 1989, he



discovered that the units at Colony were individually metered and separately billed by FPL and that there was a \$6.00 monthly charge for each of the meters. He knew from his prior experience in the construction field that it was possible to service all the units with a single meter and thought that Colony could save money by reducing the number of meters and bills.

47. Mr. Sanger contacted FPL, which sent a representative to Colony. Mr. Sanger could not recall the representative's name. FPL had no record of this meeting.

48. Mr. Sanger testified that he asked the FPL representative whether Colony could move to a smaller number of meters. The FPL representative said that the company would look into the matter and requested a copy of Colony's operating license, which Mr. Sanger provided.

49. Mr. Sanger testified that a couple of weeks later, FPL contacted him and stated that Colony did not qualify for master metering. Mr. Sanger recalled that the FPL representative stated something to the effect that Colony was licensed as a condominium, not as a hotel, and therefore did not qualify.

50. Mr. Sanger testified that this was the end of the matter. He did not pursue the issue further with FPL, though he subsequently had repeated dealings with company representatives.

Colony made no further efforts to obtain master metering until Mr. Mazo arrived on the scene in 1997.

51. Mr. Mazo testified that his conversation with Mr. Sanger gave him the thought that Colony might be entitled to a refund, because it had always operated as a hotel and FPL should have granted Mr. Sanger's request in 1988 or 1989 to convert to the presumably less expensive master meters.

52. Neither Mr. Guzman nor Mr. Bauer of FPL recalled Mr. Mazo ever mentioning a refund request during their 1997 negotiations about the conversion. Mr. Mazo admitted that he could not recall mentioning his intention to seek a refund during those negotiations. Mr. Mazo contended that he did not formulate the intention to seek a refund until the conversion was complete.

53. Mr. Mazo's testimony on this point cannot be credited. As found above, Mr. Mazo's correspondence throughout the negotiations repeatedly asserted that Colony is a hotel, not a timeshare. These assertions would have been irrelevant if Mr. Mazo were seeking only the conversion of the meters, because FPL had already decided to go forward with the conversion. It is reasonable to infer that Mr. Mazo was purposefully creating a record to support his anticipated refund request, and attempting to obtain FPL's acquiescence in terming Colony a "hotel" by not signaling his ultimate intent to seek a refund.

54. Mr. Sanger's testimony is credited as a truthful recollection. However, his recollection is insufficient to support a finding that FPL incorrectly denied his request. Mr. Sanger could not recall precisely when the request was made. There was no written documentation of either the request or of the FPL inquiry into the matter.

55. No evidence was presented to establish that FPL or any of its employees employ a strategy to force customers who may be eligible for master metering to take service on individual meters. To the contrary, the evidence established that when the PSC adopted the timeshare amendments, FPL launched an outreach program to locate those facilities that might qualify for conversion and actively solicited them to convert to master metering.

E. PSC Interpretations of the Rule

56. Rule 25-6.049(5), Florida Administrative Code, has never authorized master metering for a resort condominium. On several occasions, the PSC has been called upon to address hybrid facilities such as Colony, which is a resort condominium possessing characteristics of timeshare facilities and transient rental facilities such as hotels and motels.

57. The evidence presented at the hearing establishes that the PSC's practice in dealing with such hybrid facilities has been through the mechanism of rule waiver proceedings under

Section 120.542, Florida Statutes. In Petition by Holiday Villas II Condominium Association for variance from or waiver of Rule 25-6.049(5)(a), F.A.C., Regarding Electric Metering, Docket No. 980667-EU, the PSC was presented with a factual scenario similar to that of the instant proceeding. Holiday Villas II was registered as a condominium and therefore presumptively subject to the individual metering requirements of Rule 25-6.049(5)(a), Florida Administrative Code. However, Holiday Villas II also had many of the characteristics of a hotel: only two of its 72 units were used for permanent occupancy; the other 70 units were treated by their owners as investments and were let on a daily or weekly basis to vacationers; Holiday Villas II maintained a registration desk and lobby where guests were checked in and out; Holiday Villas II maintained a central telephone switchboard; and the facility was in direct competition with hotels and motels in its area.

58. Holiday Villas II had requested master metering from Florida Power Corporation, which declined the request because of the individual metering requirement for condominiums in Rule 25-6.049(5)(a), Florida Administrative Code. Holiday Villas II then petitioned for a waiver of the rule, which was granted by the PSC in Order No. 98-1193-FOF-EU (September 8, 1998).

59. The PSC has refrained from making a blanket statement regarding the application of Rule 25-6.049(5), Florida Administrative Code, to hybrid facilities such as Colony. PSC staff has taken the position that the rule requires individual metering of all condominiums and that a waiver or variance is required when a condominium also possesses characteristics similar to those of a timeshare or a hotel. In essence, the PSC has recognized that Rule 25-6.049(5), Florida Administrative Code, provides exemptions from the individual metering requirement and has employed the waiver mechanism as a means of ensuring that facilities claiming such exemptions are in fact entitled to them in those instances where the utility has declined an initial request for conversion.

60. The evidence produced at the hearing established that Mr. Mazo was aware of the waiver process employed by the PSC to allow master metering of hybrid facilities. On October 9, 2000, Mr. Mazo filed a petition for variance or waiver from Rule 25-6.049(5)(a), Florida Administrative Code, on behalf of a resort condominium operating under the name of The Dunes of Panama. On October 12, 2000, Mr. Mazo filed such a petition on behalf of Sundestin International Homeowners Association, Inc., a beachfront condominium providing transient accommodations in the manner of a hotel.

61. No petition for variance or waiver was ever filed on behalf of Colony.

#### CONCLUSIONS OF LAW

62. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. Section 120.569 and Subsection 120.57(1), Florida Statutes.

63. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in any proceeding before the Division of Administrative Hearings. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993); Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); and Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In this proceeding, that burden falls on Colony.

64. Colony must demonstrate by a preponderance of the evidence that FPL has violated the rule provisions stipulated to be at issue. Subsection 120.57(1)(j), Florida Statutes. A "preponderance" of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

65. Until its amendment in 1997, Rule 25-6.049(5)(a), Florida Administrative Code, required individual metering of condominium units. While Colony possesses characteristics of a hotel and of a timeshare, it is registered with DBPR as a condominium and the individual units of the facility are separately owned in accordance with the Condominium Act, Chapter 718, Florida Statutes. Colony has been so registered at all times relevant to this proceeding.

66. Even if it is accepted that Mr. Sanger requested a conversion to master meters in 1988 or 1989, FPL was justified in declining the request because of the rule's requirement that condominium units be individually metered. FPL's reading of the rule was at least colorable, and consistent with the PSC's own interpretation as subsequently set forth in Holiday Villas II. After FPL's rejection, Colony did not petition the PSC or take any other steps to pursue the matter further until 1997.

67. FPL argues that it had no authority unilaterally to make the decision to master meter a registered condominium prior to the rule amendments in 1997. FPL argues that it was not until 1997, when the PSC "relaxed" its individual metering requirements to allow master metering for timeshare facilities that there was even a colorable basis for FPL to master meter Colony. While the undersigned is not entirely persuaded that the evidence and cited authorities clearly establish that FPL

had no authority to master meter Colony before 1997, the record does establish that the rule provided FPL with a reasonable basis for declining Colony's request.

68. Colony correctly points out that individual meters are not required under Rule 25-6.049(5)(a), Florida Administrative Code, for certain types of buildings and facilities specifically listed in subparagraph 3 of the rule, including "motels, hotels, and similar facilities." As discussed above, the application of the rule to hybrid facilities has proven problematic. The PSC has interpreted the rule to require individual metering of multi-unit buildings or facilities that fall within the scope of Rule 25-6.049(5)(a), Florida Administrative Code, but that might also qualify for a master meter exception, unless the customer successfully applies for a variance or waiver pursuant to Section 120.542, Florida Statutes. This interpretation may not be the sole permissible reading of Rule 25-6.049(5)(a), Florida Administrative Code, but it cannot be called irrational or arbitrary in terms of serving the underlying goal of the rule, which is to encourage energy conservation.

69. The PSC has demonstrated a willingness to consider expanding the exceptions from the individual metering requirement, where a facility can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, and when application of the rule would create a



substantial hardship or violate principles of fairness. The PSC applied these fairness principles in granting a waiver in Holiday Villas II. While the manner in which Colony operates might have provided a basis for the PSC to exempt Colony from the individual metering requirements of the rule, Colony never made application for a variance or waiver from the strict application of the rule.

70. Colony's claim for a refund must also be denied because it has cited no statutory or rule authority for the relief requested. Colony cited Rule 25-6.106(2), Florida Administrative Code, as authority for the requested refund. Rule 25-6.106(2), Florida Administrative Code, provides:

In the event of other overbillings not provided for in Rule 25-6.103 [applying to meter errors], the utility shall refund the overcharge to the customer for the period during which the overcharge occurred based on available records. If commencement of the overcharging cannot be fixed, then a reasonable estimate of the overcharge shall be made and refunded to the customer. The amount and period of the adjustment shall be based on the available records. The refund shall not include any part of a minimum charge.

71. Overbilling is not an issue in this case. Colony has neither alleged nor proved that FPL billed Colony in excess of the rates that were applicable to the individual meters at the time the bills were distributed. Colony has cited no precedent for expanding the concept of "overbilling" to encompass a

situation in which a customer alleges that it should have been converted to another type of meter that arguably would have led to billings at a lower rate.

72. Colony also cites Rule 25-6.093(2), Florida Administrative Code, which provides:

Upon request of any customer, the utility is required to provide to the customer a copy and/or explanation of the utility's rates and provisions applicable to the type or types of service furnished or to be furnished such customer, and to assist the customer in obtaining the rate schedule which is most advantageous to the customer's requirements.

73. The cited rule requires the utility to "assist the customer" in obtaining the most advantageous rate schedule. However, the rule does not require the utility to provide legal advice to a customer regarding the proper interpretation of the PSC's rules governing individual metering nor does it require the utility to assist the customer in obtaining a variance or waiver of an existing rule.

74. Under the facts of this case, the reading of Rule 25-6.093(2), Florida Administrative Code, urged by Colony would require the utility to guarantee that its customers obtain the most advantageous rate schedule, to affirmatively canvass its customers to make good on that guarantee, and to provide a refund to any customer who is ultimately found not to have received the most advantageous rate, regardless of whether that

customer ever made more than a cursory effort to obtain the desired rate. The PSC may or may not have the authority to promulgate such a rule, but it has not done so with Rule 25-6.093(2), Florida Administrative Code.

75. Finally, Colony contends that its claimed refund is authorized by Section 366.03, Florida Statutes, which provides:

Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect. (Emphasis added)

76. Colony contends that it has been subjected to a competitive disadvantage because of the electric rates it paid in comparison to those paid by the area hotels with which it competes. The bifurcation of this case prevented Colony from actually demonstrating this alleged cost differential in this phase of the proceeding. It is assumed arguendo that Colony would be able to establish the cost differential in the second phase of the proceeding.

77. In arguing that Section 366.03, Florida Statutes, prohibits the competitive disadvantage it presumably suffered, Colony cites Corporation de Gestion Ste-Foy, Inc., v. Florida Power and Light Company, 385 So. 2d 124 (Fla. 3d DCA 1980), wherein the court held that, under Section 366.03, Florida Statutes, "a public utility or common carrier is not only permitted but is required to collect undercharges from established rates, whether they result from its own negligence or even from a specific contractual undertaking to charge a lower amount." 385 So. 2d at 126. Colony argues that the converse must also be true: the utility should be required to pay overcharges from established rates, to avoid providing either a preference or a disadvantage to a given customer.

78. It is concluded that the rationale of Corporation de Gestion is inapplicable, because any "overcharges" paid by Colony were not deviations from "established rates." Corporation de Gestion involved a situation in which an employee of the utility had negligently misread the plaintiff's electric meter for a period in excess of three years, resulting in underbillings of \$99,000 to the customer. The court found that those underpayments must be collected to avoid granting this customer a preference by paying less for the same service than those customers who received accurate bills.


79. In the instant case, Colony has made no allegation that it paid more for its individually metered service than did other customers who received the same service. Rather, Colony contends that it received the wrong type of service as compared to similar customers. As discussed at length above, PSC rules have established a mechanism whereby a utility customer in Colony's situation may petition for relief by requesting a variance or waiver from the individual metering requirement. Colony never availed itself of this mechanism, and should not be allowed to use its own inaction as the basis to claim a refund.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Colony's complaint and request for refund against FPL regarding rates charged for service between January 1988 and July 1998 be DENIED.

DONE AND ENTERED this 25th day of April, 2001, in Tallahassee, Leon County, Florida.

  
\_\_\_\_\_  
LAWRENCE P. STEVENSON  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of April, 2001.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO. 00-1117 *LPs*

01 FEB 22 AM 11:10  
ADMINISTRATIVE  
HEARINGS

THE COLONY BEACH & TENNIS CLUB, LTD., )  
Petitioner, )  
vs. )  
FLORIDA POWER AND LIGHT, )  
Respondent, )  
and )  
FLORIDA PUBLIC SERVICE COMMISSION, )  
Intervenor. )

HEARING

VOLUME I

**ORIGINAL**

BEFORE: LAWRENCE P. STEVENSON  
State of Florida  
Administrative Law Judge

REPORTED BY: CINDY A. ALVAREZ, RPR  
Notary Public  
State of Florida at Large

DATE: January 22, 2001  
Commencing at 9:30 a.m.

PLACE: Sarasota Judicial Center  
2002 Ringling Boulevard, Courtroom 7A  
Sarasota, Florida 34237

APPEARANCES: BERNARD F. DALEY, JR., ESQUIRE  
1210 East Park Avenue  
Tallahassee, Florida 32301  
Appearing on behalf of  
Petitioner

LUCENTE & ASSOCIATES, INC. (941) 954-2221 / 748-3289



APPEARANCES: KENNETH A. HOFFMAN, ESQUIRE  
(Continued) and J. STEPHEN MENTON, ESQUIRE  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 South Monroe Street, Suite 420  
Tallahassee, Florida 32301  
Appearing on behalf of  
Respondent

ALSO PRESENT: Marc Mazo  
Katrina D. Walker

LUCENTE & ASSOCIATES, INC. (941) 954-2221 / 748-3289

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## PROCEEDINGS

1  
2 MR. MENTON: Judge, just so you know, we have over  
3 the course of the last week been going back and forth  
4 trying to get everything in order. We didn't get a  
5 stipulation finalized, but we have agreed on all --  
6 basically all the exhibits, the witnesses, and all that  
7 sort of the thing.

8 THE COURT: I was going to say, if one got filed  
9 Friday, it got filed after I left.

10 MR. DALEY: Okay. We were still back and forth on  
11 Friday.

12 MR. MENTON: We were still going back and forth.  
13 But what we ultimately decided, factual stipulations, the  
14 witnesses are going to testify anyway, they're all going  
15 to come in, so we couldn't come to some resolution on  
16 those sort of things, so we just -- but we do -- we do  
17 have all the exhibits -- or maybe not completely all of  
18 them, but we have stipulated to 40 some odd exhibits that  
19 have been exchanged back and forth and agreed to on  
20 authenticity. So what we would suggest is at the outset  
21 we'll just kind of read those into the record. We've got  
22 them prenumbered, and then that will hopefully speed  
23 things up as we get going.

24 MR. DALEY: And we've got our witnesses we've agreed  
25 on pretty much.

1 MR. MENTON: Pretty much.

2 MR. DALEY: Not totally.

3 MR. MENTON: Pretty much.

4 MR. DALEY: As far as who's going to testify. So we  
5 tried to boil that down a little bit. Even though we  
6 didn't come to a stipulation formally for the Court,  
7 we've worked on it, and I think that we tried to, you  
8 know, move it along as smooth as we can.

9 THE COURT: That's fine. As I look back, I didn't  
10 -- I don't think a stip was required anyway, was it? I  
11 didn't think --

12 MR. MENTON: We were trying to do one. I know that.

13 THE COURT: Well, I mean --

14 MR. MENTON: We tried.

15 THE COURT: I just noticed that Judge Neal  
16 (phonetic) was the original judge.

17 MR. MENTON: Right.

18 THE COURT: And he never requires one. He doesn't  
19 want one. So I'm just assuming it wasn't required, in  
20 any event. But I appreciate all the hard work.

21 MR. HOFFMAN: Your Honor, with the exhibits that we  
22 stipulated to and the witnesses that we believe will  
23 testify, we don't see it going beyond tomorrow. I just  
24 wanted you to know that.

25 MR. MENTON: And we have discussed informally --

1 we've made arrangements for our witnesses -- I think  
2 they'll probably take most of the day today with their  
3 case.

4 MR. DALEY: Right.

5 MR. MENTON: Is my guess. And so we don't even have  
6 the FPL witnesses lined up to come until tomorrow.

7 THE COURT: Okay. So whenever you all get done,  
8 we'll be done for the day.

9 MR. MENTON: Yeah. And we may carry over a little  
10 bit even. I don't know. We'll see.

11 MR. DALEY: Yeah. We did -- we did talk about it.  
12 I didn't want to have their witnesses come up here and  
13 have to spend a day or night without -- you know,  
14 unnecessarily. And I think that's pretty -- you know,  
15 looking at the way it divided and the way it turned out,  
16 that's pretty much I think the way it would work. I  
17 don't know how long we'd have to be here tonight or what  
18 time we'd start in the morning, but either way I think  
19 probably by tomorrow night we'll be done.

20 MR. MENTON: Yeah, I think so. I mean, I don't  
21 anticipate our case in chief, you know, being more than  
22 four hours. Maybe, you know, give or take a little bit,  
23 but somewhere in that vicinity. So even if we have to  
24 carry over a little bit with his today I think we --

25 THE COURT: I mean, as far as the Commission,

1           they're just basically along for the ride? I mean --

2           MR. MENTON: Right. I don't want to speak for  
3           Katrina, but she's made that clear.

4           MR. HOFFMAN: She's not planning on putting on any  
5           witnesses.

6           THE COURT: I understood they were intervening not  
7           on either side.

8           MR. DALEY: Yeah, that's what they've been doing all  
9           along, just listening to the proceedings pretty much.

10          (Off-the-record discussion, after which the  
11          following proceedings were had:)

12          MR. MENTON: All right. Exhibit 1 -- and I guess  
13          we'll just call them joint exhibits because we've  
14          stipulated to all these. And then if there's some that  
15          come up, you know, individually, we'll just, I guess, do  
16          them separately. Or how do you want to do that?

17          THE COURT: One thing -- well, I guess I could just  
18          sit here and listen and take notes. I like to have a --  
19          have a written list of, you know, what's in. Just do it  
20          slow, and I'll just take notes.

21          MR. MAZO: Your Honor, we can provide one later if  
22          you'd like. We could type one up and then print it out  
23          and bring it tomorrow if you want, if you'd like a whole  
24          list of them.

25          THE COURT: That would -- okay. That will work.

1 That will be fine as long as I -- I just need a composite  
2 list of what's been -- what's in and --

3 MR. MENTON: I'd like to have one too.

4 MR. MAZO: If they want --

5 MR. MENTON: Yeah, we'll just call these -- you  
6 know, stipulated Exhibit 1 is a photo of the entry of the  
7 Colony. Exhibit 2 is another -- I don't know how you  
8 want to describe it.

9 MR. DALEY: You just want to make them all a part of  
10 the --

11 MR. HOFFMAN: What's the purpose of this?  
12 (Indicating.)

13 MR. DALEY: Just --

14 MR. MENTON: The driveway to the Colony.

15 MR. DALEY: Yeah, there's just three photos of the  
16 -- I think there should be three.

17 (Off-the-record discussion, after which the  
18 following proceedings were had:)

19 MR. MENTON: 3 is the interior. 4 is the laundry  
20 room. 5 is the spa. 6 is the declaration of -- oh, no,  
21 the prospectus, the condominium prospectus or limited  
22 partnership prospectus. 7 is the tenth amendment to the  
23 limited partnership certificate or limited partnership  
24 agreement. 11 is the declaration of condominium.

25 MR. DALEY: What number is that?

1 MR. MENTON: 11. Oh, I'm sorry. 8.

2 MR. DALEY: 8? Right.

3 MR. MENTON: And in -- we probably --

4 Marc, in this stack we only have the two-page one.  
5 We probably -- I thought you wanted to put the whole one  
6 in.

7 MR. MAZO: We may have to put the rental agreement  
8 up here. I don't care. It's up to you. You want the  
9 total?

10 MR. MENTON: No. I -- Judge, the declaration of  
11 condominium, Exhibit 8, we just have the first few pages  
12 on it. It's a lengthy document, and it's been exchanged  
13 back and forth. I don't really see that there's a lot of  
14 relevance to putting the whole thing in. It's actually  
15 attached to several things in the pleadings already.

16 THE COURT: I've seen that anyway.

17 MR. MENTON: So I think, you know, we can work with  
18 just the first two pages and try to save some trees.

19 MR. DALEY: That's fine.

20 MR. MENTON: 9 is the articles of incorporation for  
21 the association. 10 is a notice to guests. 11 is a copy  
22 of the hotel and restaurant rules, 61(c) -- 61(c)(1), I  
23 guess of the Florida Administrative Code. 12 is -- it's  
24 a staff with recommendation in the Valencia master meter  
25 case. Is that what it is?



1 MR. HOFFMAN: In PSC Docket Number 000643-EU.

2 MR. MENTON: 13 --

3 MR. HOFFMAN: Before we go on, I think that we're  
4 going to maintain an objection to this. We just need to  
5 consider it further.

6 MR. MENTON: And, Judge, basically what we've done  
7 is we've agreed to authenticity on all these documents,  
8 but we have reserved the right, you know, to object on  
9 relevancy grounds as they come in.

10 THE COURT: So we're reading these in, but I'm not  
11 necessarily admitting them at this time?

12 MR. MENTON: I think most of them will be, but there  
13 will be a couple where there are going to be some  
14 relevancy objections. But just a few.

15 MR. DALEY: All right. I'll mark it out here.  
16 We're going to have to argue about that one.

17 MR. MENTON: 13 is September 26, '96 staff  
18 recommendation, and this is in the -- oh, in the 1997  
19 Rule Change Docket, Time-share Docket.

20 MR. DALEY: Okay. So that's yours?

21 MR. MENTON: Actually --

22 MR. DALEY: Oh, it's ours.

23 MR. MENTON: This is yours.

24 MR. DALEY: Okay.

25 MR. MENTON: 14 is a March 19th memo from Marc Mazo

1 to Jim Guzman. 15 is a March 26th memo from Marc Mazo to  
2 Jim Guzman. 16 is a March 27th memo from Marc Mazo to  
3 Jim Guzman. These are -- did I say '97?

4 MR. DALEY: Yeah. Um-hum.

5 MR. MENTON: 17 is an April 17th memo from Mr. Mazo  
6 to Mr. Guzman. April 17th, '97.

7 (Off-the-record discussion, after which the  
8 following proceedings were had:)

9 MR. MENTON: Okay. 18 is the November 25th letter  
10 from Mr. Guzman to Mr. Mazo. November 25th, '97. Okay.  
11 19 is the December 22nd, '97 letter from Mr. Guzman to  
12 Mr. Mazo. 20 is a March 21st, '97 E-mail to Mr. Guzman,  
13 among others, and actually it starts with one from the  
14 21st of '97 from Mr. Guzman and then a follow-up to  
15 Mr. Guzman on March 21st.

16 21 is a series of E-mails dated March 26th. 22 is a  
17 series of E-mails that it begins on the 26th and  
18 continues to the 27th of '97 again. 23 is an E-mail  
19 dated August 1st, '97. 24 is a series of E-mails from  
20 September 3rd and 4th, '97. 25 is a letter dated April  
21 6th, '98 from Mr. Guzman to Mr. Sanger. 26 is a memo to  
22 Mr. Guzman from Mr. Mazo dated April 10th, '98. 27 is a  
23 copy of the current PSC Rule 25-6.049.

24 28 is a copy of -- it's a copy of the cover sheet  
25 and the petition for variance or waiver filed in the

1       Holiday Villas case by Mr. Mazo in Docket Number 980667,  
2       PSC docket number. 29 is the response of Power Check  
3       Consultants in Docket 960020, which is the rulemaking  
4       docket, time-share rulemaking docket.

5               MR. DALEY: Is that 28 or 29?

6               MR. MENTON: 29.

7               MR. DALEY: Okay.

8               MR. MENTON: 30 is a copy of the PSC order approving  
9       the time-share amendments issued March 4th, 1997. 31 is  
10      a copy of the agenda conference of August 18th, '98 for  
11      the PSC in the Holiday Villas docket, 9800 -- or 0667.  
12      I'm sorry.

13              COURT REPORTER: 00667?

14              MR. MENTON: 980667. It's a copy of item six from  
15      that agenda of the transcript.

16              What date was that?

17              MR. HOFFMAN: August 18, 1998.

18              MR. MENTON: 32 is a copy of the PSC order in the  
19      Holiday Villas waiver request, and that's the same docket  
20      980667, and it was issued on September 8th, '98. 33 is  
21      an order and declaratory statement issued by the PSC in  
22      Docket 980449, which -- oh, I'm sorry. Docket 971542.  
23      And this is the -- Reddington Towers case and was issued  
24      March 30th, 1998. Did I confuse that enough?

25              THE COURT: Which towers?

1 MR. MENTON: Reddington Towers.

2 MR. HOFFMAN: Reddington Towers, Your Honor.

3 MR. MENTON: What's the date?

4 MR. HOFFMAN: March 30, '98.

5 MR. MENTON: 34 is the reply to affirmative defenses  
6 filed by Colony Beach in this proceeding. 35 is a  
7 petition for variance or waiver filed by the Dunes of  
8 Panama in PSC Docket 001544. 36 is the petition for  
9 variance or waiver filed by Sun Destin Homeowners  
10 Association in Docket 001543. 37 is a copy of the docket  
11 listing in the rulemaking -- time-share rulemaking case,  
12 PSC Docket 960020.

13 38 is a March 26th, a series of E-mails, FPL  
14 E-mails. '97. 39 is a copy of Rule 256.106 and 6.109,  
15 Florida Administrative Code. 40 is a copy of Rule 26 --  
16 or 25-6.093, Florida Administrative Code. 41 is a  
17 license for Holiday Villas, Department of Business and  
18 Professional Regulation. 42 is the Holiday Villas condo  
19 documents. There's a declaration of condo and the  
20 articles. 43 is a copy of the deposition of Greg Bauer  
21 (phonetic.) And 44 is a copy of the deposition of Larry  
22 Valentine.

23 And, Judge, just for your information, Mr. Bauer and  
24 Mr. Valentine are both FPL employees, and we have agreed  
25 that we would use their depositions. Mr. Bauer, if --

1 depending on certain developments, they may end up -- one  
2 or both of them may end up coming and testifying live.  
3 But we're hoping we can just use depositions and avoid  
4 having to prolong the process.

5 THE COURT: Okay.

6 MR. HOFFMAN: Hold on just a second. Marc?

7 MR. MAZO: What was the last number, Steve?

8 MR. MENTON: 44.

9 MR. MAZO: Is that it?

10 MR. MENTON: That's all.

11 MR. MAZO: Go ahead and mark these.

12 MR. MENTON: There were a couple more in the stack  
13 we had that didn't get into the marked ones.

14 (Off-the-record discussion, after which the  
15 following proceedings were had:)

16 MR. MENTON: 45 through 48 are some -- well, let's  
17 get them on. We will be objecting to 45 through 48. And  
18 45 is a copy of a tariff sheet for Florida Power and  
19 Light, and this is residential service RS1.

20 MR. HOFFMAN: Effective date?

21 MR. MENTON: Effective April 15th, '99.

22 46 is a tariff sheet for FPL, GSD1, effective April  
23 15th, '99. 47 is the tariff sheet regarding classes of  
24 customers effective April 17th, '93.

25 27th. Isn't that what I said?

1 MR. HOFFMAN: Yeah.

2 MR. MENTON: And 48 is the tariff sheet with the  
3 general rules for electric service it looks like  
4 effective June 1st, 1999.

5 MR. HOFFMAN: I think so.

6 MR. MENTON: All right.

7 MR. DALEY: And then whatever else is -- you know,  
8 if there's some.

9 MR. MENTON: Okay.

10 MR. DALEY: Some other way we are --

11 MR. MENTON: Yeah. There are a couple of other  
12 E-mails that somehow didn't get into this stack. But  
13 I'll just go through this with Mr. Guzman.

14 MR. DALEY: Your Honor, we need to -- if we can,  
15 with the Court's permission, take a short break here?

16 THE COURT: That's fine.

17 MR. DALEY: Okay. I appreciate it.

18 (Off the record for a short break, after which the  
19 following proceedings were had:)

20 THE COURT: We set?

21 MR. DALEY: I think so, Your Honor.

22 THE COURT: Okay. This hearing will now be in  
23 order. We're here in Sarasota, Florida for a final  
24 hearing in the case of the Colony Beach and Tennis Club  
25 Limited, petitioner, versus Florida Power and Light,

1       respondent. The Florida Public Service Commission is an  
2       intervenor in the proceeding unaligned with either party.

3             Is that --

4             MS. WALKER: Yes.

5             THE COURT: My name is Lawrence Stevenson, and I've  
6       been assigned as the administrative law judge in this  
7       case. And, for the record, the general case number is  
8       00-1117.

9             Generally, I state what the issue is, and I'll try  
10      to say it as broadly as possible, and it concerns a  
11      billing dispute between the parties. The matter has been  
12      referred by the Public Service Commission, and I know  
13      there are lots of subissues under that that we'll get  
14      into.

15            The proceeding will be governed by the Uniform Rules  
16      of Administrative Procedure and Chapter 120, Florida  
17      Statutes.

18            I'll just commence by getting the attorneys or other  
19      representatives to identify themselves for the record,  
20      beginning with the petitioners.

21            MR. DALEY: Your Honor, I'm Bernard Daley from  
22      Tallahassee on behalf of the petitioner.

23            MR. MAZO: I'm Marc Mazo. I'm the qualified  
24      representative for the Colony.

25            THE COURT: And for FPL?

1           MR. HOFFMAN: Your Honor, my name is Kenneth A.  
2 Hoffman, and with me is J. Stephen Menton. We're with  
3 the firm of Rutledge, Ecenia, Purnell & Hoffman, 215  
4 South Monroe Street, Suite 420, in Tallahassee, Florida.  
5 The zip is 32301.

6           And also in the courtroom from Florida Power and  
7 Light Company today are Dave Bromley, Carlos Diaz, and  
8 Rosemary Morley, who are seated behind me and Mr. Menton.

9           MS. WALKER: Good morning, Your Honor. My name is  
10 Katrina D. Walker. I'm with the Florida Public Service  
11 Commission. The address is 2540 Shumard Oak Boulevard,  
12 Tallahassee, Florida 32399.

13          THE COURT: Okay. A series of questions I generally  
14 go through. Off the record it's been indicated to me  
15 that it's probably useless to inquire whether any  
16 settlement discussion has taken place or whether any  
17 further ones might obviate the need for a hearing, so  
18 we'll pass on that.

19          We've already gone through quite a few of stipulated  
20 exhibits. Are there any other stipulations or anything  
21 else we can do on the record that might speed things up?

22          MR. DALEY: I don't know if we need to put the  
23 witnesses -- list them on the record, Your Honor. We've  
24 -- I think that pretty much in terms of the facts we've  
25 just -- we'll put the witnesses on and let them



1           determine.

2           THE COURT:   Okay.   Well, as long as you all know  
3           who's coming, that's fine.

4           MR. DALEY:   Yes, Your Honor.

5           THE COURT:   We'll see them as they come.

6           All right.   Any other preliminary motions or the  
7           like that we need to talk about before we start?

8           MR. MENTON:   No, sir.

9           THE COURT:   And you all feel free to remain seated  
10          if you're more comfortable.

11          MR. DALEY:   Okay.   Judge, thanks.

12          THE COURT:   I guess the only other thing I have  
13          before we get into openings is just whether we're going  
14          to invoke the rule?

15          MR. DALEY:   I don't think so, Your Honor.   We've  
16          discussed that, and I don't think so.

17          THE COURT:   Okay.   Well, that's all I have.   If you  
18          all don't have any other preliminaries, if you wish to  
19          make an opening statement, now would be the time.

20          MR. DALEY:   Thank you, Your Honor.   On behalf of the  
21          petitioner, I would -- I'm going to request the Court --  
22          to divide my time, I'm simply going to introduce Mr. Mazo  
23          and let him make the opening remarks.

24          And I just want to thank the Court for coming down  
25          for the hearing.   I think that, you know, there was some

1 expense involved, and we appreciate that. We appreciate  
2 that very much.

3 So I want to introduce Marc Mazo right now.

4 MR. HOFFMAN: Your Honor, before Mr. Mazo begins, I  
5 just want to state for the record that FP & L has some  
6 concerns with what appears to be Mr. Mazo's dual role in  
7 this proceeding. Mr. Mazo has been qualified to appear  
8 as a representative of the petitioner. That occurred  
9 before Mr. Daley appeared in the case. It's our  
10 understanding that Mr. Mazo will also be providing  
11 testimony in the case. And as Your Honor is well aware,  
12 the role of advocate and the role of witness are roles  
13 that are not typically performed by the same individual.

14 We have some concerns with that, Your Honor, but we  
15 believe that taking a very firm position on that will, if  
16 nothing else, perpetrate a hardship on Mr. Daley, who has  
17 come late into the case and who has done his best to get  
18 up to speed and who has worked cooperatively with counsel  
19 for FPL. So, Your Honor, we wanted to state that concern  
20 on the record and let you know that we don't intend to  
21 act on the concern because what we're going to try to do  
22 throughout the remainder of the case is do what we've  
23 been doing up to this point in the case, which is to work  
24 cooperatively with Colony Beach and their  
25 representatives.

1 MR. DALEY: Your Honor, if I could respond to that  
2 briefly, we appreciate that position, and also I'm aware  
3 of that concern. Mr. Mazo has obviously worked on this  
4 case a lot. He's very familiar with it. I came in late,  
5 as the Court's aware. I think there are some obviously  
6 elements to this proceeding that I will provide some  
7 service to the Court, particularly in his testimony.  
8 Otherwise, I think we've divided up a good deal of the  
9 work, and if there is any problem with that, we'll -- you  
10 know, I think we'll address it at that time.

11 THE COURT: Okay. We'll take it up as it goes.

12 MR. DALEY: Thank you, Judge.

13 MR. MAZO: Good morning, Your Honor. Again, I'm  
14 Marc Mazo, qualified representative for the petitioner.  
15 As you indicated earlier, the Colony has filed a  
16 complaint against FP & L basically alleging that they  
17 were overcharged for electric service. The Colony in its  
18 complaint asserted that at all times they held themselves  
19 out and operated as a hotel and based on that operation  
20 and the nature of their facility that they were entitled  
21 to be master metered and served on FP & L's commercial  
22 rate.

23 In late 1988 or early 1989 a representative of the  
24 Colony by the name of Jerry Sanger, who's the chief  
25 engineer, approached FP & L and requested the conversion

1 to the master metering and FP & L refused. It was  
2 approximately eight, nine years later the Colony hired a  
3 consultant to again pursue the same issue, went to  
4 FP & L, and at that time FP & L converted the property to  
5 the master-metered commercial rate. The Colony then came  
6 in and asked for a refund, and we're here at this  
7 proceeding on that.

8 FP & L has alleged in their affirmative defenses  
9 that the Colony's complaint was a civil matter and was  
10 not in the jurisdiction of the Public Service Commission.  
11 It also alleged that under Chapter 9511 of the Florida  
12 Statutes, statute of limitations had expired and that the  
13 Colony didn't have a right to go forward.

14 Finally, the affirmative defense said that the  
15 Colony is not -- does not hold itself out or operate as a  
16 hotel. It is registered and licensed with the Department  
17 of Business and Professional Regulation as a resort  
18 condo. And since there are no express exceptions to the  
19 Public Service Commission's master metering rule for  
20 resort condominiums, the Colony was not entitled to  
21 master meter and service under the commercial rate.

22 This court in a partial motion for summary judgment  
23 struck FP & L's affirmative defenses of statute of  
24 limitations and Public Service Commission jurisdiction  
25 saying the statute of limitations didn't apply in this

1 case because it fell under the refund rule -- let me back  
2 up. That the statute of limitations didn't apply in this  
3 case and that it was the Public Service Commission's  
4 jurisdiction.

5 THE COURT: All right. Did -- and I only briefly  
6 read the order. Did he say it was Public Service  
7 Commission jurisdiction, or did he say I'm going to kind  
8 of punt on this because they sent it over and I better  
9 hear it?

10 MR. MAZO: Your Honor, my interpretation -- they may  
11 have a different one. My interpretation of the rule of  
12 the order was that Judge Neal found that it was Public  
13 Service Commission jurisdiction, and he cited some cases  
14 that said it's a rate case and that the jurisdiction of  
15 rates is exclusively with the Public Service Commission.  
16 However, the Public Service Commission may decide not to  
17 take it.

18 So he -- in my interpretation of the order he  
19 basically ruled that the statute of limitations and the  
20 public -- the Public Service Commission jurisdiction was  
21 there and it was exclusive, but he kind of left the door  
22 open and said what you implied that, well, the Commission  
23 sent it over here, so it certainly looked like they felt  
24 it was their issue.

25 THE COURT: And you all have read this a lot more

1       closely than I have, I can assure you. I mean, that was  
2       just from my brief reading.

3           MR. MENTON: And, Your Honor, I hate to interrupt at  
4       this point, but I feel compelled to do so, and this is  
5       part of the concerns that we have is having, you know, a  
6       nonlawyer come in here and start trying to offer, you  
7       know, legal interpretations of some of these records. We  
8       don't intend in this proceeding today to go back through  
9       jurisdictional issues and all that. We're here, we're  
10      here to present the evidence to you and to ask you to  
11      recommend -- to issue a recommended order. And as part  
12      of that, I think you're going to have to deal with some  
13      legal issues, some of which may touch upon matters that  
14      were in those prior orders. We can address all that in  
15      post hearing proposals. I just don't think it makes any  
16      useful -- a good use of anybody's time today to go back  
17      through what Judge Neal meant or what that order says.

18           THE COURT: Yeah. I mean, I'm the one who did that.  
19      You know, I started it, so I apologize. I wanted to be  
20      clear because I wasn't sure whether I had read it  
21      correctly.

22           MR. MAZO: Your Honor, where we're left was that  
23      FP & L's affirmative defense basically comes back and  
24      says the Colony does not hold itself out and does not  
25      operate as a hotel but as a resort condominium.

1           And the Colony operates and has operated as a hotel  
2           since its inception. It's a unique facility. Its  
3           ownership formation was under the condominium statutes,  
4           and it formed that in selling and offering the property  
5           -- the documents will indicate that the Colony, when you  
6           purchased a unit at the Colony, you also had to purchase  
7           -- participate in a limited partnership. You could not  
8           have one without the other. The limited partnership was  
9           formed for the purpose of operating the Colony as a  
10          resort hotel. And because of that, the Colony's  
11          documents say that -- to the public that the units are  
12          not suitable for permanent residency.

13           The licenses that we've admitted into evidence  
14          already will show that the Colony was, in fact,  
15          registered with the Department of Business Regulation as  
16          a hotel -- as a motel, it was licensed with the Town of  
17          Longboat Key, occupational license, as a hotel, and it  
18          was licensed with the County of Sarasota as a hotel. And  
19          the nature of the facility, the type of the facility is  
20          commercial and should have been on the commercial rate.

21           MR. MENTON: Good morning, Your Honor. I have  
22          struggled for the last couple of days trying to find a  
23          succinct way to put this case before you, and after  
24          thinking about it, the best I could come up with is that  
25          this is a unique proceeding. And Mr. Mazo himself said

1       it just a second ago, we're dealing with a unique  
2       facility. We're dealing with some unique factual  
3       circumstances, and we're dealing with some unique legal  
4       issues.

5             And I think this last point is particularly  
6       relevant. If you research the statutes and the rules  
7       that have been cited by the Colony as a basis for their  
8       refund, you will not see any precedent for the type of  
9       action that you have before you today. This is a unique  
10      claim, and I think that you will find as we go through  
11      this that it is a claim that is not justified either on  
12      the law or on the facts.

13            Over the course of the next couple of days you're  
14      going to hear considerable testimony about condominiums,  
15      resort condominiums, time-shares, hotels, motels, et  
16      cetera, and you're going to hear about an alleged verbal  
17      request that was made a dozen years ago by the Colony to  
18      change their metering. And I'm going to discuss that a  
19      little bit more detailed in a minute, but one thing that  
20      you'll find is that there's no written documentation of  
21      this request that was supposedly made 10 or 12 years ago,  
22      and, of course, there was no conversion that took place.

23            Now, approximately nine years after the alleged  
24      verbal request that Mr. Mazo just talked about the Colony  
25      was voluntarily converted from individual meters to



1 master meters by FPL following a change in the applicable  
2 PSC rule. And that rule change, Your Honor, I'm going to  
3 suggest is the critical fact in this whole case. That  
4 rule change loosened the requirement that the PSC had in  
5 its currently existing rule or rule in place in 1997 that  
6 all units of a condominium had to be individually  
7 metered.

8 There will be some confusion and dispute regarding  
9 the circumstances that led to the conversion of the  
10 Colony in 1997, and I'm going to again talk about that in  
11 a little bit more detail later on, but I would suggest to  
12 you that in evaluating the testimony that you're going to  
13 hear both from the Colony representatives and from the  
14 FPL representatives it's going to be important for you to  
15 keep in mind the provisions of the PSC rule that were in  
16 place at the time of the events as they come up.

17 Now, after you hear all the evidence and have a  
18 chance to consider the evidence in conjunction with the  
19 rules in place at the time, I think you'll recognize that  
20 there is no factual or legal basis for the refund that  
21 they've sought.

22 Now, we did file a motion for summary recommended  
23 order with Judge Clark earlier that tried to present some  
24 of these legal issues. Judge Clark heard argument on  
25 those back in November, and she entered an order on

1 November 21st, and essentially her order indicated that  
2 there were allegations of a lot of disputed issues of  
3 fact, and she wasn't prepared to grant a summary  
4 disposition. Thus, she never really got to the merits of  
5 legal arguments that were presented. Luckily, she saved  
6 all that for you. You get to deal with all that.

7 So one of the main points of this case in addition  
8 to the facts that will be presented to you will also be  
9 our attempt to have you look at the legal arguments that  
10 were previously presented to Judge Clark and to make a  
11 determination, because we think that those are absolutely  
12 critical in this case.

13 And I appreciate that you're new to the proceeding  
14 and haven't had an opportunity to go back through all the  
15 lengthy history and the documents, and while it looks  
16 like there's a lot of documents here and a lot of facts,  
17 when you boil it all down this is a simple case. There  
18 really is not much in dispute here. There are a few  
19 extraneous issues over which there may be some bickering  
20 about who said what to whom and et cetera, but most of  
21 those issues really don't matter when you get right down  
22 to it.

23 And, in fact, we've talked last week and tried to  
24 see if we could come to a resolution so we could put all  
25 the facts before you and let you just rule on this,

1       because I think what this case really comes down to is  
2       looking at the rules that were in place at the time,  
3       putting the testimony in perspective. And when you do  
4       that, you will see there was no option to convert the  
5       Colony back in 1988 or '89 as they claim they requested.

6               Now, Your Honor, as you've heard, this case involves  
7       the application of PSC Rule 25-6.049(5)(a), which deals  
8       with measuring customer service or metering. The rule  
9       was initially adopted in November of 1990 in response to  
10      federal legislation known as the Public Utilities  
11      Regulatory Purposes Act or PURPA, as it's often known as.

12             Subsection A of that rule requires, requires  
13      individual electric metering by a regulated utility for  
14      each separate unit of a condominium. This provision  
15      specifically applied to new construction after January  
16      1st, 1981, and it has also been interpreted to apply and  
17      to prohibit the conversion of buildings constructed prior  
18      to 1981 from converting from individual meters to master  
19      meters. This interpretation is reflected in a PSC order  
20      known as the Reddington Towers case, which is Order  
21      Number PSC 98-0449, and that's been marked in the stack  
22      of exhibits we gave to you earlier as Exhibit Number 33.

23             Now, the application of this metering rule to hybrid  
24      facilities or unique facilities such as the Colony has  
25      been a source of continuing controversy before the PSC.

1 Mr. Mazo, through his consulting company, Power Check,  
2 has been an active participant in many of those dockets.  
3 We're going to offer for your consideration a number of  
4 documents related to some of the proceedings which took  
5 place before the PSC, and I think those shed some light  
6 on the issues that are involved in this case.

7 One of the most important things I think for you to  
8 keep in mind as you hear the testimony is that almost  
9 immediately after adoption of the rule some issues arose  
10 with respect to how the individual metering requirements  
11 should apply to resorts and other hybrid facilities.  
12 This led to some changes which will be important as we go  
13 through the course of the proceedings. In 1981 the PSC  
14 specifically rejected a request that time-shares and  
15 similar results -- or similar resorts should be excepted  
16 from the individual metering requirements of the rule.  
17 As a result, the rule as it existed up until 1997  
18 specifically provided that each individual unit of a  
19 multi-unit facility subject to a time-share plan had to  
20 be individually metered, and that's in addition to the  
21 provision in the rule that required each unit of a  
22 condominium had to be individually metered.

23 And, Your Honor, I think it's important for you to  
24 look at the rule, and Exhibit Number 30, which has been  
25 premarked, is a copy of the PSC order that was issued on

1 March 4th, 1997. And this PSC order was -- included some  
2 significant amendments to the time-share provision that  
3 was in the rule going back into the 1980s. This order  
4 was the culmination of over a year of rulemaking activity  
5 by the PSC. The PSC voted in January of '97 to make  
6 these changes reflected in this March 4th order, and they  
7 went into effect in March of 1997.

8 Your Honor, the thing that I think is particularly  
9 important, you can see the strikethrough language that  
10 these amendments made on the first page -- or the second  
11 page, I'm sorry, under Section (5)(a) where it talks  
12 about "Individual metering by utilities shall be required  
13 for each separate occupancy unit of condominiums," et  
14 cetera, and then the second sentence says, "This  
15 requirement shall apply whether or not the facility is  
16 engaged in a time-sharing plan."

17 Now, the -- if you go on further, a time-sharing  
18 plan was defined in the rule as it existed through the  
19 1980s and up till 1997. On page 3 in subparagraph (b)(2)  
20 you can see the strikethrough language as to how a  
21 time-sharing plan was defined. And I'm not going to go  
22 through each line of that now, but I think that these are  
23 the provisions that we think are very important for you  
24 to be aware of.

25 That definition of time-sharing plan is extremely

1       broad. It includes basically any type of arrangement by  
2       which an owner had a right to use for a specific period  
3       of time of less than a year a residential unit, and it  
4       extended for a three-year period or more. So it covered  
5       all types of various arrangements that might have been in  
6       place.

7               And significantly, Your Honor, the time-share plan  
8       definition in the PSC rule did not require that the  
9       facility be a registered time-share under the Florida  
10      Statutes. There is a specific statute regarding  
11      time-share plans and registration of time-share plans. I  
12      believe it's Chapter 711 of the Florida Statutes. The  
13      definition in the PSC rule did not require that the  
14      facility be registered under Chapter 711. Instead, what  
15      it required -- it applied to any type of arrangement for  
16      a multi-unit facility that included the right of the unit  
17      owner to use a particular unit for a period and that  
18      right extended for longer than three years. So it's a  
19      very, very broad definition. And we think that that  
20      definition is really the controlling factor in this case.

21             Now, Colony relies upon subsection (5)(a)(3), which  
22      provides that certain types of specialized use  
23      accommodations such as nursing homes and dormitories,  
24      motels and hotels don't have to be individually metered.  
25      You've already heard Mr. Mazo contend that Colony

1       qualifies as a hotel. In fact, as I'll discuss a little  
2       bit later, a fundamental premise for the refund claim in  
3       this case is that they've been put at a competitive  
4       disadvantage with respect to other hotels. They're going  
5       to claim that the Colony competes with the Hilton and the  
6       Holiday Inn and other hotels in the region.

7               Your Honor, I don't think you're going to hear any  
8       testimony that the Hilton or the Holiday Inn or any of  
9       these facilities, that they've been -- they complain  
10      they've been disadvantaged with respect to having similar  
11      ownership arrangements to what the Colony has. They  
12      don't have a declaration of condominium. They don't have  
13      a limited partnership arrangement. They don't have a  
14      situation where an individual owns a particular unit and  
15      has a right to use that unit for 30 days every year rent  
16      free. So there are very different circumstances, and the  
17      claim that somehow the Holiday Inn and the Hilton are in  
18      the same boat as the Colony, I don't believe you'll hear  
19      any evidence to substantiate that.

20             I think the Colony is a unique facility. It's a  
21      hybrid facility. It's one of those types of facilities  
22      that the original rule perhaps didn't contemplate that  
23      the PSC has struggled with over the course of the last  
24      few years to try to reach some accommodation so that they  
25      in appropriate circumstances on a case by case basis can

1           be master metered.

2           Now, FPL is not going to contest that the units at  
3           the Colony are placed in a rental pool and that transient  
4           accommodations are provided. We don't dispute the  
5           unique, as Mr. Mazo referred to it, type of operation  
6           that has required the Colony to it -- type of operation  
7           that has required the Colony to obtain various licenses  
8           such as a restaurant license, a hotel license, and other  
9           various licenses from state agencies, et cetera. What we  
10          do dispute is that any of those facts compelled FPL to  
11          provide master meters to the Colony prior to the change  
12          in the master meter rule in 1997. And, again, this is  
13          where the timing of the rule is absolutely critical.

14          And we talked -- as I talked about already, the PSC  
15          rule was issued on March 4th, 1997, and it reflects a  
16          culmination of the rulemaking process that had been  
17          ongoing for a while.

18          Mr. Mazo, the consultant who's serving as a  
19          representative for the Colony in this matter,  
20          participated in the rulemaking efforts that led to the  
21          changes reflected in Exhibit Number 30 here. In fact,  
22          Mr. Mazo submitted comments during the course of the  
23          rulemaking proceeding that requested that time-share  
24          resorts and resort condominiums that provide transient  
25          rentals be allowed to convert from individual to master



1 meters.

2 Now, prior to the 1997 amendment, the rule  
3 specifically provided that any time-share as broadly  
4 defined as we talked about that was not master metered in  
5 1982 could not be converted to master metering. You  
6 couldn't just automatically convert. And Mr. Mazo noted  
7 that and was aware of that in his comments submitted in  
8 the rulemaking docket and specifically mentioned that,  
9 quote, resort condominiums, and requested that they be  
10 included by name as an exemption to the individual  
11 metering requirements.

12 Now, no such language was adopted by the PSC in the  
13 rule amendments in 1997 regarding resort condominiums.  
14 What the PSC did do is it adopted some very significant  
15 changes as reflected in Exhibit 30 to the time-share  
16 provisions, and it completely changed the way time-shares  
17 were handled. And as a result of these changes for the  
18 first time beginning in March of 1997 time-shares could  
19 be master metered.

20 Now, shortly after or actually as the rulemaking  
21 process was in finalization, Mr. Mazo contacted FPL and  
22 requested that the Colony be converted to master meters.  
23 And you're going to hear some testimony and there might  
24 be some disputes about who said what to whom during the  
25 course of those discussions, but the bottom line, Your

1 Honor, is is that Mr. Mazo came to FPL at a time these  
2 rules were going into place, FPL took a look at the  
3 situation, immediately recognized that the Colony  
4 potentially qualified under the rule changes, did some  
5 very initial investigations, and confirmed in their own  
6 mind that they did qualify, and put the process into --  
7 well, put into process an attempt to convert the Colony  
8 to master meters. And that conversion actually took  
9 place in June of 1998. So as soon as this was brought to  
10 FPL's attention in the context of the time-share rule  
11 amendments the conversion took place.

12 Now, subsequent to the 1997 amendments, the question  
13 of what hybrid facilities fall within the context of the  
14 new amendments, the time-share amendments, has continued  
15 to be an issue before the Public Service Commission.  
16 There are a couple of additional proceedings. The  
17 Holiday Villas proceeding, which we've marked some  
18 documents and have offered into evidence, will reflect  
19 that some resort condominiums which did not qualify as a  
20 time-share have gone back before the Commission and have  
21 sought a waiver to specifically allow them to convert  
22 from individual meters to master meters. And the Holiday  
23 Villas order will confirm that the PSC on a case-by-case  
24 basis has looked at those facilities, confirmed their  
25 operations, looked at the intent of the master meter

1 rule, and, if it was consistent with the intent of the  
2 rule, they've allowed those facilities to convert.

3 And one of the exhibits that we're going to  
4 introduce for you is the agenda conference from the  
5 Holiday Villas case where the PSC staff person, David  
6 Wheeler, who is very much involved in the application of  
7 this rule, stated unequivocally that if a facility is a  
8 condo, they need to be individually metered until such  
9 time as they get a waiver. If they don't fall under the  
10 time-share provision, they have to get a waiver. And  
11 that's basically what the Holiday Villas case stands for.

12 There are additional proceedings. Mr. Mazo has  
13 actually filed two additional petitions for waiver with  
14 respect to some other condos, and so he's very much aware  
15 of the need for these hybrid facilities that don't  
16 specifically qualify as a resort condominium -- I mean as  
17 a time-share to go back to the Commission and to get a  
18 waiver. And if the facts justify it, they can get their  
19 waiver, and they go ahead and get master metered.

20 One thing that I would like to point out and you'll  
21 hear some testimony about is during the course of the  
22 time-share amendments Florida Power and Light actually  
23 submitted comments supportive of the PSC's proposed  
24 change to loosen the requirements. At that point they  
25 realized that there were some of these resort facilities

1       that were kind of caught in a crunch, that the individual  
2       metering requirements did not necessarily accomplish the  
3       goal of the rule as it was originally adopted with  
4       respect to some of these resorts. So FPL supported the  
5       rule amendment that loosened the requirement for  
6       time-shares.

7             You'll also hear some testimony, Your Honor, and  
8       this throws another little kind of confusing wrinkle into  
9       the process, after the time-share amendments went into  
10      place, FPL took affirmative action to try to solicit  
11      resorts that might be eligible in order to convert.  
12      Terri Britton, an FPL representative, and Larry  
13      Valentine, another FPL representative, spent over a month  
14      going through the yellow pages trying to find resorts  
15      that might qualify under the time-share rule, calling  
16      them, seeking to see whether they might qualify.

17            Now, that effort that was undertaken affirmatively  
18      by FPL was done completely independent of the conversion  
19      of the Colony, because the Colony had contacted the  
20      service representative, another department, the service  
21      department had conducted their own inquiry, decided that  
22      under the new rule provisions Colony was entitled to be  
23      master metered, so they put it into the process to do it.

24            Curiously, when Ms. Britton independently had  
25      undertaken her effort from a separate department of FPL,

1 she started calling numbers, and she called Colony, and  
2 she asked whether they were a time-share. Their response  
3 was yes. She also found out that they do have some  
4 residents who live there full time. As a consequence,  
5 she determined, at least in the program that she was  
6 under, they probably didn't qualify, so she just dropped  
7 it and never even pursued it.

8 So the bottom line is is that FPL's service planners  
9 worked with the Colony, helped them convert. There's a  
10 question about whether or not they even should have been  
11 allowed to convert under the '97 amendments. But FPL, in  
12 an effort to try to work with the Colony, tried to deal  
13 with their concerns, allowed them to convert, and now  
14 this is -- this is what we get for it, a refund claim  
15 going back all the way for 12 years.

16 And there's going to be some questions about -- back  
17 and forth about what the basis for the conversion was.  
18 And Mr. Mazo is going to contend, well, FPL allowed the  
19 Colony to convert because it was a hotel. Your Honor, I  
20 can tell you unequivocally that the FPL people will  
21 uniformly tell you that the reason that they were allowed  
22 to convert in 1997 was because of the time-share  
23 amendment change.

24 At the point in time that Mr. Mazo came to him there  
25 will be some letters where talks about it as a hotel, et

1       cetera. The FPL people just -- those were not even  
2       relevant issues to them. At that point in time Mr. Mazo  
3       did not express to them that he would be seeking a refund  
4       going back to 1988 or 1989. At that point in time he did  
5       not express to them that there had been a previous  
6       request back in 1988 or 1989. I think that some of the  
7       letters that you'll see were Mr. Mazo attempting to set  
8       up his claim for a refund unbeknownst to the FPL people  
9       who were participating. So I would just ask you again to  
10      put all of that testimony in context of the rule change  
11      that was taking place. The FPL people were unequivocal  
12      that the only reason that the conversion took place in  
13      1997 was because of the time-share amendments that were  
14      being adopted.

15             Now, Your Honor, there is one other aspect of this  
16      case that I would like to present to you before we get  
17      into the testimony, and that has to do with the legal  
18      issues. There are three different provisions that the  
19      Colony relies upon in support of its refund claim. The  
20      provisions I think are discussed in their motion that was  
21      filed earlier. And essentially what the Colony is doing  
22      is they're attempting to piece together several statutory  
23      rule provisions to create a makeshift remedy to justify  
24      their refund claim. And I think if you sit down and you  
25      look at the provisions that they rely upon, you'll see

1       that as a matter of law this refund claim is not  
2       justified.

3               The first statute that they cite or the only statute  
4       that they cite actually, I think, is Section 366.03,  
5       Florida Statute, which precludes a utility from making or  
6       giving undue or unreasonable preference or advantages to  
7       any customer or to subject a customer to any undue or  
8       unreasonable prejudice or disadvantage in any respect.

9               Colony advances a creative interpretation of this  
10       statute that somehow it -- somehow it has been  
11       disadvantaged as compared to the Holiday Inn and the  
12       Hilton, as I've talked about earlier. I don't think  
13       you're going to hear any testimony in this proceeding  
14       that the rooms at the Holiday Inn or at the Hilton are  
15       subject to a condominium form of ownership such as the  
16       Colony, and I don't think you're going to hear any  
17       testimony that any unit at the Holiday Inn can be used by  
18       a unit owner 30 days a year rent free. So I don't think  
19       there's any question that -- or I don't think you'll hear  
20       any evidence anyway that neither the Holiday Inn or the  
21       Hilton or these other facilities that they claim to be in  
22       competition with and have been disadvantaged with respect  
23       to would have qualified under the time-share plan  
24       definition as it existed in 1997 prior to the rule change  
25       amendments. So I think you're talking about very

1 different facilities, and I think you need to keep that  
2 in mind.

3 In addition, Your Honor, I think it's important to  
4 note that Section 366.03 does not provide any authority  
5 for a customer to seek a refund for violation or alleged  
6 violation of that statute, and it has never been  
7 interpreted to allow such a refund. The Colony also  
8 relies upon Rule 256093, paren 2, which requires a  
9 utility to provide customers with a copy or explanation  
10 of its rates or charges to assist the customer in  
11 obtaining the rate schedule which is most advantageous to  
12 the customer's requirements. This rule does not require  
13 a utility to contravene the then existing rules of the  
14 PSC to individually meter the units of a condominium as  
15 existed prior to the rule change in 1997.

16 A facility that falls within the definition of a  
17 time-share provision was not as we've already talked  
18 about -- could not be master metered at that point in  
19 time. The rule that they've cited also doesn't require a  
20 utility to provide legal advice or to file a waiver or  
21 the exemption request on behalf of a customer. In 1990  
22 -- or in 1988 if there was an actual request made it  
23 could not be done because of the existing provisions in  
24 the rule that defined time-share plans so broadly. In  
25 order to get master metered at that point they would have



1 had to get a waiver or some sort of exemption from the  
2 time-share definition that existed in the rule at that  
3 time.

4 And, again, Your Honor, I think it's important to  
5 note that this rule that they're citing, this is 6.093,  
6 paren 2, does not provide for refunds for violation of  
7 the provisions in there, even assuming that there is one,  
8 which we clearly don't believe that there was.

9 Finally, Your Honor, Colony relies upon Rule  
10 256.1062, which is the only statute or rule that's been  
11 cited that authorizes a refund. That rule provides for  
12 refunds in the event of overbillings. Now, this is not a  
13 case of overbillings. The rates that were charged by FPL  
14 were the rates applicable to individual residential  
15 meters which were in place in the units at the Colony at  
16 the time the bills were sent out. The rule has never  
17 been applied in the manner in which the Colony is  
18 requesting in this case, which is to backcharge a utility  
19 for 13 years of alleged mismetering based upon a  
20 nondocumented verbal request for a change in metering  
21 that would have been inconsistent with the PSC rules at  
22 the time of the request.

23 Your Honor, at all times throughout the course of  
24 these proceedings FPL has acted in good faith in dealing  
25 with the Colony trying to address the issues related to

1           the conversion of the Colony and other similar  
2           facilities. I've already mentioned the affirmative  
3           program that FPL undertook to try to seek out resorts  
4           that might qualify under the 1997 rule changes. At this  
5           point, Your Honor, I think FPL is at a loss as to how  
6           we're even here. We've tried to cooperate. We've  
7           converted them as quickly as they could. There's some  
8           question about whether they even should be converted at  
9           this point in time. What we end up with is this claim --  
10          massive claim for a refund, which we believe you will  
11          conclude is not justified either on the facts or under  
12          the law. Thank you.

13           THE COURT: Before we call the first witness, just  
14          another question. It may just be that I haven't read the  
15          file real closely. We're not here on the amount of any  
16          alleged refund; is that correct?

17           MR. DALEY: Right, Judge.

18           THE COURT: It's simply liability is all we're  
19          dealing with?

20           MR. DALEY: It's been bifurcated by Judge Clark.

21           THE COURT: Okay.

22           MR. DALEY: And so what we're really here to  
23          determine is if a refund is due. And then if that  
24          decision is made, then there will be a second proceeding.

25           THE COURT: Okay.

1 MR. MENTON: And that's fair. And, Your Honor, I  
2 think what we presented to Judge Clark was that the  
3 issues of the refunds, you know, involve a whole slew of  
4 different disputes, et cetera, and rather than everybody  
5 spending a ton of time, you know, looking at those --  
6 it's possible if we ever got there that, you know, those  
7 could be resolved, I don't know, but rather than even get  
8 into all that, let's figure out whether there's even an  
9 entitlement to it.

10 THE COURT: Yeah. I was wondering how we were going  
11 to get this done in two days.

12 MR. DALEY: Right. That's exactly what we discussed  
13 in Tallahassee was trying to break it up in terms of time  
14 and not wasting the Court's time.

15 THE COURT: Are we ready to call the first witness?

16 MR. DALEY: Yes, Your Honor.

17 THE COURT: You need -- I mean, if you need to take  
18 a break.

19 MR. MAZO: We'll take a quick -- just a quick five.

20 MR. DALEY: Maybe five minutes would be fine, Judge.

21 THE COURT: Okay.

22 (Off the record for a short break, after which the  
23 following proceedings were had:)

24 THE COURT: Before we call the first witness, I was  
25 completely negligent, Ms. Walker, and didn't ask you

1           whether you had anything to say on behalf of the  
2           Commission before we started.

3           MS. WALKER: No, sir, I don't.

4           THE COURT: Okay.

5           MR. DALEY: Your Honor, are you ready?

6           THE COURT: Yeah.

7           MR. DALEY: Okay. We would call our first witness,  
8           who would be Mike Moulton, Your Honor.

9           MR. MAZO: Excuse me. Before we go on, Your Honor,  
10          did you get the original stack of documents?

11          THE COURT: I've got a stack of exhibits up here.

12          MR. DALEY: You'll probably have to pick and choose  
13          from that one.

14          We'll just put them up here. All right. I wrote  
15          down the list.

16       THEREUPON,

17                       MICHAEL MOULTON

18       was adduced as the witness herein, and being first duly sworn  
19       on oath by the Court was questioned and stated as follows:

20                       DIRECT EXAMINATION

21       BY MR. DALEY:

22       Q.    Good morning, Mr. Moulton.

23       A.    Good morning.

24       Q.    Would you go ahead and state your name for the  
25       record.

1 A. Michael A. Moulton.

2 Q. All right. And your address?

3 A. 1620 Gulf of Mexico Drive, Longboat Key, Florida.

4 Q. All right. And your occupation?

5 A. Executive vice-president of the Colony Beach and  
6 Tennis Resort.

7 Q. All right. And how long have you been in that  
8 position?

9 A. I've been at the Colony 15 years. My title,  
10 probably approximately 10 years.

11 Q. Okay. What was your title before that?

12 A. Director of operations.

13 Q. All right. And what did you do before that? Prior  
14 to that?

15 A. Prior to the Colony?

16 Q. Yes, sir.

17 A. I was in commercial real estate brokerage with  
18 Michael Saunders and Company in Sarasota.

19 Q. Okay. All right. I'm going to show you a few  
20 pictures and see if you can identify these.

21 MR. DALEY: And these are actually all five pictures  
22 which we are -- we listed as Exhibits 1 through 5.

23 MR. MENTON: (Nods head affirmatively.)

24 BY MR. DALEY:

25 Q. Do you recognize these? (Hands documents.)

1 A. Yes, I do.

2 Q. Okay. And let's take Exhibit 1. What is -- what is  
3 this a picture of?

4 A. The entrance sign to the resort.

5 Q. Okay. And how long has that been there?

6 A. I believe since the mid '50s.

7 Q. Okay. All right. And what about Number 2? Exhibit  
8 Number 2?

9 A. The right-hand side is the entrance to the  
10 restaurant. The left side is the ramp leading to the front  
11 desk reception area.

12 Q. To the hotel registration?

13 A. Correct.

14 Q. Okay. And what is -- what is Exhibit Number 3?  
15 What is this a picture of?

16 A. Four different pictures. One's the concierge's  
17 desk, the check-in desk, front desk, reservations office.  
18 Let me see this last one. Oh, that's the mail boxes for the  
19 rooms.

20 Q. Okay.

21 A. The keys.

22 Q. All right. All right. And this is Number 4. What  
23 is this -- what is this depicting? It looks like the  
24 laundry. (Hands document.)

25 A. Three out of the four pictures are the laundry, and

1 the other one is just like a sign, a directional sign.

2 Q. Okay. And how about this one, Number 5? (Hands  
3 document.)

4 A. The inside of an elevator, the tennis hostess desk,  
5 and the entrance to the Colony spa.

6 MR. DALEY: Okay. Your Honor, I'd move the  
7 admission of these exhibits, 1 through 5, which were  
8 joint stipulated.

9 Do you have any objection to that?

10 MR. HOFFMAN: Let me just see them for a second.

11 MR. DALEY: Sure. (Hands document.)

12 MR. HOFFMAN: No objection.

13 THE COURT: I'll show I guess what we'll call Joint  
14 Exhibits 1, 2, 3, 4, and 5 admitted.

15 MR. DALEY: All right. Thank you, Your Honor.  
16 Are these marked?

17 MR. HOFFMAN: They need to be.

18 MR. MENTON: For some reason, they weren't marked.

19 MR. MAZO: Just inadvertently.

20 MR. DALEY: Why don't we do that now, then.

21 BY MR. DALEY:

22 Q. I would ask you to -- if you can, to identify this  
23 document. (Hands document.)

24 MR. MENTON: Excuse me, Your Honor. I think this is  
25 not one of the stacks that -- we probably need to get

1           that marked. Just why don't we go ahead and get it  
2           marked right away.

3           MR. DALEY: First before we -- okay. That would be  
4           fine.

5           THE WITNESS: Am I identifying the letter or what's  
6           attached to it?

7           BY MR. DALEY:

8           Q. What's attached to it.

9           A. It's a operational license from the State of  
10          Florida.

11          MR. DALEY: How do you want to do it? You want to  
12          mark them first?

13          MR. MAZO: We'll mark them.

14          MR. DALEY: Okay.

15          MR. MAZO: Sorry, Judge. Sorry, Your Honor.

16          THE COURT: I'll just go ahead and put a mark on  
17          them so I can keep up with my own marks.

18          MR. MAZO: That's easier.

19          THE COURT: Is this a one -- a single composite or  
20          the stack?

21          MR. DALEY: They probably are three.

22          THE COURT: Okay.

23          MR. MENTON: Either way.

24          MR. MAZO: We can make --

25          THE COURT: Just take the first one and mark it as



1       Petitioner's Exhibit 1. And then the one with the  
2       highlighting, that's the Town of Longboat Key  
3       occupational license application, we'll show as  
4       Petitioner's 2. And then the third one, which looks like  
5       also a copy of some kind of a Longboat Key occupational  
6       license, we'll show as Petitioner's 3.

7             All right. We'll make that Petitioner's 4. Why  
8       don't you make that Petitioner's Number 4 and keep them  
9       all together.

10            MR. DALEY: All right, Judge. I believe this is --  
11       this would be in that one sequence with the Petitioner's  
12       Number 4.

13            MR. HOFFMAN: Are these the judge's?

14            MR. MAZO: We'll make copies.

15            MR. MENTON: Is there a 4?

16            MR. DALEY: 4 is this one. (Hands document.)

17            MR. HOFFMAN: (Hands document.)

18            MR. DALEY: Okay. I appreciate it.

19       BY MR. DALEY:

20       Q.     Actually, I'd like to go to Exhibit 6, and I'm going  
21       to show you --

22            MR. DALEY: Judge, with the Court's permission.

23       BY MR. DALEY:

24       Q.     If you can identify this document here, have you  
25       seen that before? (Hands document.)

1           A.    Yes, I have.  It's the prospectus when the units  
2           were sold at the Colony resort.

3           Q.    Okay.  All right.  Now, my question on this document  
4           here, and I want to let you describe this in the most  
5           accurate manner that you can for the Court and for us,  
6           describe for us the -- how the Colony was formed.

7           A.    Okay.  The Colony Beach resort was originally built  
8           I believe in the mid '50s, and Dr. Klauber purchased it from  
9           a man named Herb Field in the late '60s.  He proceeded to  
10          demolish the majority of what people would have thought of  
11          the Colony prior to that and build what you see now.  His  
12          concept was to build an all-suite resort.  I believe it was  
13          the first one in the country.  He also felt that a unique way  
14          of financing was to sell each of the units individually and  
15          if -- with the logic that most of his -- at that time a lot  
16          of his friends to invest, the logic being if it failed as a  
17          resort they would potentially have something, that being the  
18          condominium.  And as we well know, it hasn't -- has not  
19          failed.  It's become a world-renowned resort.

20          Q.    So it was formed actually in what year?

21          A.    I believe 1973.

22          Q.    Okay.  So -- and it's located here -- so the Court  
23          can get a feel for it, where is it located from here?  It's  
24          on Longboat Key, and we're obviously in the city of Sarasota,  
25          so it's --

1           A.     It's on Longboat Key two miles north on the gulf  
2 side of the road. Perhaps 10 miles from here. 7 miles from  
3 here.

4           Q.     Okay. Now, so it was set up to be a resort hotel;  
5 is that correct?

6           A.     Correct.

7           Q.     Okay. Now, tell us about the individual units, that  
8 is the ownership of those units, and what that entails. What  
9 restrictions and so on, for the Court's benefit?

10          A.     All right. A unit owner who purchases it gets a fee  
11 simple title to the unit. They buy the unit subject to a  
12 mandatory rental agreement and limited to the partnership  
13 agreement. In that sense what they get is to use 30 days'  
14 use of their condominium.

15          Q.     Okay. So, all right, if someone buys the unit,  
16 they're allowed to stay there how long?

17          A.     30 days.

18          Q.     30 days?

19                 Okay. And what do they -- do they -- and then after  
20 that point, what control do they have over that unit?

21          A.     Zero.

22          Q.     Okay.

23          A.     Other than disposing of it.

24          Q.     All right. And then the mandatory rental pool,  
25 okay, that is the -- if I've lived there 30 days if I own a

1 unit, let's say, and it gets to that 30th day, then it enters  
2 the mandatory rental pool. And who controls that?

3 A. The general partner.

4 Q. Okay. Who is who?

5 A. Resorts Management is the general partner, a  
6 corporation.

7 Q. Okay. And do I -- if I own a unit, do I get to  
8 furnish that unit?

9 A. You have no say in the interior whatsoever, no.

10 Q. Okay. So during my 30 days if I bring my  
11 furnishings there, I'm not allowed to do that; is that right?

12 A. You certainly can at your expense.

13 Q. Okay. But the other 11 months the owner's  
14 furnishings would not be then a part of the unit?

15 A. What I mean by -- let's help everybody out. Each  
16 unit does have an owner's closet. Some people might have  
17 some little knickknacks they like to put up, that type of  
18 stuff. Perhaps a Christmas -- fake or artificial Christmas  
19 tree at Christmas, that type of stuff.

20 Q. But when that 30 days is up, each unit should  
21 essentially look the same; is that correct?

22 A. Other than a color scheme, yes.

23 Q. Okay. As a hotel in that situation or a unit that  
24 comes in where there's no personal belongings whatsoever of  
25 the owner of the unit?

1 A. Correct.

2 Q. Okay. All right. Have -- now, the -- all right.  
3 So it's rented out. Is any -- is anybody -- let's talk about  
4 a permanent resident. Are there any permanent residents in  
5 the Colony?

6 A. Yes, there are.

7 Q. And who are they?

8 A. There are -- there's only one permanent resident,  
9 and that's Dr. Klauber, the chairman of the board of the  
10 resort.

11 Q. Okay. And he -- so he resides there full time?

12 A. Yes.

13 Q. Okay. He is -- is he related to you?

14 A. My father-in-law.

15 Q. Okay. Other than that, has anyone that you know of  
16 lived there more than the 30-day base?

17 A. Yes. There -- I have lived there. My wife and I  
18 have lived there for two and a half years. And there is --  
19 there are a couple units on property where someone could live  
20 there year-round. They're not part of the mandatory rental  
21 pool, and there is one family that lives there most of the  
22 wintertime, the season.

23 Q. Okay. Now, let me ask you --

24 MR. DALEY: Judge, I'm going to -- do you have any  
25 objection to this, 7?

1 MR. HOFFMAN: (Shakes head negatively.)

2 BY MR. DALEY:

3 Q. Would you identify the -- what has been stipulated  
4 to as Entry 7 here? (Hands document.)

5 A. This is the tenth amendment, which is one of the  
6 numerous amendments to the recreational lease of the resort.

7 Q. Okay. And what is that?

8 A. It's an amendment to the partnership agreement.

9 Q. Okay. And what is that?

10 A. What's the --

11 Q. The content of that. What's the import of that?

12 A. Of this one amendment?

13 Q. (Nods head affirmatively.)

14 A. A lot of the tenth amendment had to do with the --  
15 there's an escalation clause in the recreational lease, and I  
16 believe that this was a settlement upon one of those 10-year  
17 renegotiation points. And I think it talks about other  
18 aspects of the partnership. I think in here there's a waiver  
19 of the monthly maintenance fees, and there's some language in  
20 here relative to some mandatory distributions of the  
21 partnership.

22 Q. Okay. All right. And on the -- now -- I'm now  
23 going to show you what has been previously stipulated and  
24 marked Exhibit Number 8. And would you identify this?  
25 (Hands document.)

1           A.    This is the original declaration of condominium for  
2 the resort.

3           Q.    Okay.  So that declaration of condominium relates to  
4 the Colony?

5           A.    Yes, it does.

6           Q.    It is the Colony's?

7           A.    Yes, it is the original.

8           Q.    All right.  Can you describe for me -- take me  
9 through why -- why is this filed?  Why was it filed?  
10 (Indicating.)

11          A.    Why was it filed?

12          Q.    (Nods head affirmatively.)

13          A.    Purely my personal feeling is probably it was  
14 required by law because of the initial sale of the  
15 condominium units.

16          Q.    Okay.  Was the -- was it ever the intent, though, in  
17 setting up the Colony to sell these units as condominium  
18 units?

19               MR. HOFFMAN:  Objection, Your Honor.  It calls for  
20 speculation.  Mr. Moulton was not working at the Colony  
21 at that time, and the question would call for speculation  
22 as to the intent of others who were involved in that  
23 process.

24               MR. DALEY:  Well, in your -- Judge, he's been there  
25 15 years, and I think that -- I mean, I could rephrase

1 the question.

2 THE COURT: Try to -- try to rephrase it so we get  
3 his knowledge.

4 MR. DALEY: All right, Judge. Okay.

5 BY MR. DALEY:

6 Q. Okay. Within -- within the scope of your time  
7 period there, your employment, was it ever -- has it ever  
8 been the intent of the Colony to operate as a condominium?

9 A. No, it has not been.

10 Q. Okay. Describe a little bit more about the  
11 operation. Do you -- are you -- are there requirements that  
12 you're under hotel versus, let's say, condominium? What are  
13 some of the requirements that you're bound into as the owner  
14 of a hotel?

15 A. You mean from a guest expectation?

16 Q. Some of the things you do that would not be -- that  
17 would not be done if you were a condominium.

18 A. Well, we are considered the premier tennis resort in  
19 the world. It's number -- it's been ranked number one tennis  
20 resort by Tennis Magazine the last six years. We offer  
21 tennis lessons. I don't think you'd find them at a  
22 traditional condominium. We have a complementary program  
23 that takes care of children all day called Kidding Around. A  
24 world-renowned program. We have a spa where you can both go  
25 and get a jacuzzi, sauna, steam, traditional things as well



1 as other services such as salon, facial massages. We have a  
2 full fitness center with one-on-one training.

3 Q. Okay. Do you -- do you advertise?

4 A. Constantly.

5 Q. Okay.

6 A. Worldwide.

7 Q. All right. And you're -- and when you advertise,  
8 you're advertising for what?

9 A. Guests to come stay at the resort.

10 Q. Guests to come and stay at the resort for any period  
11 that they want to; is that correct?

12 A. Yes.

13 Q. Okay. Now, is -- is the Colony ever been -- have  
14 you ever -- have you ever advertised it as a time-share?

15 A. No. To the best of my knowledge, no.

16 Q. Okay. Does it in any way operate as a time-share?

17 A. Not in my opinion.

18 MR. HOFFMAN: Objection, Your Honor. Leading.  
19 Counsel is beginning to lead the witness.

20 THE COURT: Well, overruled. I think he was just  
21 following up on the previous answer.

22 BY MR. DALEY:

23 Q. The -- now, have you been involved in some other  
24 property developments?

25 A. The family business has been involved in other

1 projects, yes.

2 Q. Okay. All right. And have -- have any one of those  
3 other properties been actually a time-share?

4 A. The owner of the --

5 MR. HOFFMAN: Your Honor, I'm going to object to  
6 that question because I think it calls for a legal  
7 conclusion as to what constitutes a time-share.

8 MR. DALEY: Well, I would definitely -- I think that  
9 -- I don't think it involves a legal conclusion on it, in  
10 reality, if he was involved in the development of what is  
11 known as a time-share in that industry.

12 THE COURT: I mean, I understand that he's in the  
13 business, and maybe if we could sort of lay the predicate  
14 as to what his understanding as someone in the business  
15 -- his understanding of what a time-share is, then, you  
16 know --

17 MR. DALEY: All right.

18 THE COURT: -- we'll all at least know what he --  
19 what he calls a time-share.

20 MR. DALEY: All right.

21 BY MR. DALEY:

22 Q. Then let me ask you that question, then. What do  
23 you know is a time-share?

24 A. Okay.

25 Q. What is your -- your understanding?

1           A.    My understanding of time-share interval ownership is  
2   where each unit is owned by -- each week of a unit is owned  
3   by a different entity.  And the ones we've been associated  
4   with there are 51 different owners, and one week it's shut  
5   down for maintenance.

6           Q.    Okay.

7           A.    Granted, some people may own several weeks.

8           Q.    Right.  So that's -- that's your knowledge of how a  
9   time-share operates.

10           What are the variances from that?  Are there -- are  
11   there any variances to what is commonly known in the industry  
12   as a time-share?

13           MR. HOFFMAN:  Objection, Your Honor.  There's no  
14   predicate that this witness has any knowledge as to an  
15   industry knowledge of what constitutes a time-share.  
16   He's already testified as to what his limited knowledge  
17   is.

18           THE COURT:  And I'm understanding his answer to be  
19   based upon that regardless of the precise phrasing of the  
20   question.

21           MR. HOFFMAN:  Okay.

22           THE COURT:  We're going on his understanding of the  
23   time-share, so we'll overrule that with that  
24   understanding.

25           BY MR. DALEY:

1           Q.    All right.  Is the operation of the Colony in any  
2 way a resemblance of what you know to be a time-share or how  
3 it operates?

4           A.    No, it is not.

5           Q.    Do you think that there was any confusion among  
6 people that you dealt with as to whether the fact -- whether  
7 the Colony operated as a hotel or a time-share?

8           MR. HOFFMAN:  Objection, Your Honor.  The question  
9 is vague.  I don't know which people he's talking about.

10          THE COURT:  Can you -- clarify that.  I see the  
11 objection there.

12          BY MR. DALEY:

13          Q.    Among people who -- among people who stay at the  
14 Colony or a group of people that you, I guess, are attempting  
15 to get to stay at the Colony, potential guests.

16          A.    I do not think they would consider us a time-share  
17 in any form.

18          MR. DALEY:  Okay.  Your Honor, just -- if I can just  
19 have a second.

20          Your Honor, Mr. Mazo is going to ask a couple of  
21 questions here.

22          MR. HOFFMAN:  Your Honor, I'm going to object.  We  
23 certainly sat back on pushing further on objections to  
24 Mr. Mazo's participation as an attorney or as qualified  
25 representative and as a witness.  We strongly object to

1           splitting witnesses. That is not the practice before the  
2           Commission, that is not the practice, as I understand it,  
3           before the Division of Administrative Hearings, and we  
4           object to this procedure.

5           THE COURT: I'll sustain it on that. I mean, --

6           MR. DALEY: Okay.

7           THE COURT: -- as to each witness --

8           MR. DALEY: I understand.

9           THE COURT: -- let's just have one lawyer or  
10          representative ask the questions.

11          MR. DALEY: I understand.

12          BY MR. DALEY:

13          Q. I want to refer back to what has already been  
14          identified as the prospectus, and I want to ask you, first of  
15          all, would you read the paragraph about that I've outlined  
16          there?

17          A. Which paragraph?

18          Q. The one -- the --

19          A. The one sentence?

20          Q. Yeah.

21          A. Or two sentences?

22                 "The condominium units sold to the public hereunder  
23          will be dedicated to operation of the project as a resort  
24          hotel. Because of the required dedication of condominium  
25          units to the hotel operation, the units are not suitable for

1 permanent residence."

2 Q. Okay. Is that how the units were offered  
3 originally?

4 A. Through what my father-in-law, Dr. Klauber, tells  
5 me.

6 Q. Right.

7 A. Again, I was not there in the mid to early '70s.

8 Q. Okay. And that's how they worked.

9 So in your experience level or your -- at least your  
10 time period, that's how they were sold?

11 A. And continued to be resold.

12 Q. Okay. Now, I have -- I guess back to the original  
13 question. How did the Colony operate?

14 MR. HOFFMAN: Objection, Your Honor. I think the  
15 question was how did the Colony operate. What period of  
16 time are we talking about?

17 BY MR. DALEY:

18 Q. Well, how does the Colony operate, and has that  
19 changed any?

20 A. The Colony operates as a resort for guests to come  
21 stay on a daily basis.

22 Q. Okay. Has that changed at all?

23 A. No, not during my tenure. No.

24 Q. All right. Has the -- now, how is the Colony  
25 licensed?

1 A. As a hotel.

2 Q. As a hotel.

3 And with whom?

4 A. I think through a combination of entities. The City  
5 of Longboat Key as well as the State of Florida.

6 Q. Okay. Is it -- is it licensed as a residential  
7 condominium?

8 A. No, it is not.

9 Q. Okay. Has it ever been the intent to operate as a  
10 residential condominium?

11 MR. HOFFMAN: Objection. Leading.

12 THE COURT: Well, as far as -- it's leading, and  
13 also I'm not clear on, you know, whose intent we're  
14 talking about. Rephrase it.

15 BY MR. DALEY:

16 Q. Well, the intent, I guess I'm operating from the  
17 prospectus, and was it the -- was it the intent of the owners  
18 of the Colony when they set it up to operate as a residential  
19 condominium?

20 MR. HOFFMAN: Objection. It calls for the same  
21 speculation similar to the prior question, Your Honor.

22 THE COURT: Just do you mean by the question is he  
23 drawing his statement of the intent from the prospectus  
24 itself, from reading the prospectus?

25 MR. DALEY: Yes.

1 THE COURT: I'll overrule the objection to the  
2 question.

3 THE WITNESS: Would you state the question again?

4 BY MR. DALEY:

5 Q. From the prospectus and as you are familiar with the  
6 history of the Colony, has it ever been the intent -- was it  
7 ever the intent to operate this facility as a residential  
8 condominium?

9 A. No, it was not.

10 MR. DALEY: Yeah, the only thing I wanted to do,  
11 Judge, is at this point I would like to move to enter,  
12 and these are -- actually, they are Number 6, Number 7.  
13 Number 8 I have not actually -- yeah, Number 8 also.  
14 Number 9, which I have not had him identify. I'd like to  
15 at this point.

16 MR. MENTON: Bernie, we were not going to object to  
17 that, so you don't need to have him identify it.

18 MR. DALEY: Okay. All right.

19 MR. MAZO: The licenses also.

20 MR. DALEY: And this would be the Number 9, Judge,  
21 which are the articles of incorporation.

22 THE COURT: Um-hum.

23 MR. DALEY: And Number 10 would be the notice to  
24 guests. Let me --

25 BY MR. DALEY:



1 Q. And I do want to ask you a question on this. Take a  
2 look at that. (Hands document.)

3 A. Okay.

4 Q. What is it?

5 And I'm showing him Exhibit Number 10.

6 A. This is an item that's in every suite, as required  
7 by law, to notify the guests as to the maximum charges upon a  
8 daily basis.

9 MR. DALEY: Okay. All right. Your Honor, we would  
10 ask to admit 6 through 10.

11 MR. HOFFMAN: We have no objection.

12 MR. DALEY: Okay.

13 THE COURT: We'll show Joint Exhibits 6, 7, 8, 9,  
14 and 10 have been admitted.

15 MR. DALEY: Oh, yeah. Also, I'm sorry, Judge,  
16 separately marked Petitioner's 1 through 4, we would ask  
17 that those be admitted.

18 MR. HOFFMAN: No objection.

19 THE COURT: Okay. We'll show Petitioner's 1, 2, 3,  
20 and 4.

21 MR. DALEY: Okay. Where are those actually located?

22 THE COURT: I didn't get those back.

23 MR. MAZO: They're right here. Yeah, they're right  
24 here.

25 MR. DALEY: Okay.

1 MR. MAZO: Yeah. The judge marked them.

2 MR. DALEY: All right. Judge, here are those  
3 exhibits. (Hands documents.)

4 THE COURT: Okay. I think I'm still missing 6. 6,  
5 7, and 8.

6 MR. MAZO: (Hands document.) Here's 6.

7 What else are you missing?

8 THE COURT: I think 7 and 8.

9 MR. MAZO: I'll see if he --

10 MR. DALEY: The tenth amendment, which I think we  
11 admitted, and also the --

12 MR. MAZO: Right here. This one. It's right here.  
13 You might ask him about that. This was 8. Here's 8,  
14 Your Honor.

15 THE COURT: Okay.

16 MR. DALEY: And I have 7, Your Honor. I have it  
17 here.

18 THE COURT: Okay.

19 MR. DALEY: Here's number 7. (Hands document.)

20 Your Honor, at this time that's all we -- that's all  
21 the questions that we have of Mr. Moulton.

22 THE COURT: All right. Mr. Hoffman?

23 MR. HOFFMAN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. HOFFMAN:

1 Q. Good morning, Mr. Moulton. Nice to see you again,  
2 sir.

3 A. Good morning.

4 Q. As you know, I'm Ken Hoffman. I represent FP & L.  
5 I'd like to ask you some questions about your testimony.

6 First, when one purchases an individual unit at  
7 Colony Beach, as I understand it, he or she acquires a  
8 percentage interest in the Colony Beach and Tennis Club,  
9 Limited Partnership pursuant to a formula that is laid out in  
10 the partnership agreement. Is that correct?

11 A. Yes, sir.

12 Q. And the owner of the unit becomes a limited partner  
13 in Colony Beach and Tennis Club, Limited; is that correct?

14 A. Correct.

15 Q. And this arrangement, the limited partnership  
16 ownership arrangement, has been in effect since the early  
17 1970s and remains in effect today; is that correct?

18 A. Yes. Yes.

19 Q. A unit owner who participates in the rental pool may  
20 use his unit a maximum of 30 days per year rent free; is that  
21 correct?

22 A. Yes.

23 Q. This is set forth in the limited partnership  
24 agreement when the owner purchases his unit; is that right?

25 A. Yes.

1 Q. And the rental pool is mandatory so that when  
2 someone purchases a unit he or she is required to enter into  
3 that mandatory rental pool agreement; is that correct?

4 A. Yes.

5 Q. Now, there are 232 units, as I understand it, in  
6 that mandatory rental pool. Is that correct?

7 A. Yes.

8 Q. And there are also three two-story penthouses with  
9 individual unit numbers at Colony, but none of those are part  
10 of the mandatory rental program; is that right?

11 A. Yes.

12 Q. Now, the owner of the unit gets 30 days' use of his  
13 unit rent free every year; is that correct?

14 A. Yes.

15 Q. And that continues year after year after year?  
16 There's no limitation as to when that ends; is that correct?

17 A. Yes.

18 Q. That right only ends when the unit is sold by that  
19 particular owner; is that correct?

20 A. It ends to the unit person, the seller. It doesn't  
21 end to the entity of the unit.

22 Q. Yes, sir. It ends with respect to that particular  
23 individual seller?

24 A. The use of the unit, yes.

25 Q. So the use of the unit 30 days per year rent free

1 remains in effect annually for that unit owner until that  
2 unit owner sells his unit; is that correct?

3 A. Yes.

4 Q. Does Colony Beach advertise or hold itself out to  
5 the public as a place with individual units available for  
6 rental for periods of less than 30 days or one month?

7 A. Not in the way you state it, no.

8 Q. Does Colony Beach advertise or hold itself out to  
9 the public as a place with individual units available for  
10 rent?

11 A. No.

12 Q. Does Colony Beach advertise or hold itself out to  
13 the public as a place with individual units available for  
14 occupancy for periods of less than 30 days?

15 A. No.

16 Q. Okay. How does Colony Beach advertise with respect  
17 to the availability of the units and the time frames to which  
18 they are available?

19 A. We advertise as an all-suite resort.

20 Q. Okay. But is the -- does Colony Beach do any form  
21 of advertising where it lays out in the advertisement the  
22 days on which the specific units or the units collectively  
23 are available to be used?

24 A. No.

25 Q. Is the typical Colony Beach unit rented more than

1 three times in a calendar year where each rental period is  
2 less than 30 days or one month?

3 A. Can you state that again, please, sir?

4 Q. Yes, sir. Is the typical Colony Beach unit rented  
5 more than three times in a calendar year where each rental  
6 period is less than 30 days or one month?

7 A. Certainly each unit is rented more than three times  
8 a year and for all different durations of time.

9 Q. Would you agree that each -- that the typical Colony  
10 Beach unit is rented more than three times in a calendar year  
11 where the rental period is less than 30 days?

12 A. Yes.

13 Q. Going back to late 1988 and early 1989, did an owner  
14 of a Colony Beach unit have the right to use his or her unit  
15 for more than 30 days without paying the prevailing occupancy  
16 rate?

17 A. Not of the units that are in the mandatory rental  
18 pool of the partnership agreement.

19 Q. They did not have that right?

20 A. To clarify, I believe they did not have the right to  
21 use it more than 30 days, I believe was your question?

22 Q. Let me restate it so the record is clear.

23 A. Okay.

24 Q. I'm back in that late '88, early '89 time frame. At  
25 that time did an owner of a Colony Beach unit have the right

1 to use the unit for more than 30 days without paying the  
2 prevailing occupancy rate?

3 A. No.

4 Q. Okay. And the same would be true if I asked you  
5 that question today?

6 A. The same would be true. They cannot use it more  
7 than 30 days free.

8 Q. Okay. Let me go back to 19 -- early 1989 again. At  
9 that time did an owner of a Colony Beach unit have the right  
10 to use the unit and the facilities of Colony Beach for a  
11 specific period of time less than a full year during any  
12 given year?

13 A. Can you state that again so -- I got distracted.  
14 Going back to the late '80s; correct?

15 Q. Late 1988 or early 1989.

16 A. Restate the question.

17 Q. Did an owner of a Colony Beach unit have the right  
18 to use his or her unit and the facilities at Colony Beach for  
19 a specific period of time less than a full year during any  
20 given year?

21 A. Yes.

22 Q. And that would be that 30-day period that you talked  
23 about; is that correct?

24 A. Yes.

25 Q. And after that 30-day period, the owner could only

1 use the unit if he paid -- if he or she paid the prevailing  
2 occupancy rate?

3 A. Yes.

4 Q. And that was the case in late 1988 or early 1989?

5 A. Yes.

6 Q. And, again, the same question as I asked you before.  
7 In late 1988, early 1989 that right of use of up to 30 days  
8 per year rent free was granted to the unit owner every year  
9 in perpetuity until that unit owner sold his unit; correct?

10 A. Yes.

11 Q. Now, in 1989 Colony Beach was on individual meters;  
12 is that correct?

13 A. Yes.

14 Q. And Colony Beach had been receiving service from  
15 Florida Power and Light Company through those individual  
16 meters since the time Dr. Klauber had constructed Colony  
17 Beach in the early '70s; is that correct?

18 A. Yes. I'd just like to clarify. I don't know if  
19 Florida Power and Light existed as a named entity in the  
20 '70s. I'm not aware of that.

21 Q. Okay. Thank you. But so far as you know, the  
22 Colony Beach facility since 1973 or so had been on individual  
23 meters?

24 A. Yes.

25 Q. Okay. And that remained the case from 1973 running



1 up through the point in time of June of 1998 when Colony  
2 Beach was converted to master meters; is that correct?

3 A. Yes.

4 Q. Now, the ownership structure of Colony Beach is a  
5 condominium, that was your testimony; is that right?

6 A. Yes.

7 Q. And the owners are part of a condominium association  
8 known as Colony Beach Tennis -- Colony Beach and Tennis Club  
9 Association; correct?

10 A. Yes.

11 Q. And this ownership structure, that is the  
12 condominium ownership structure, has been in effect since the  
13 Colony was built in the early 1970s and remains in effect  
14 today?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. Colony Beach is registered with the State of Florida  
19 as a condominium; is that correct?

20 A. I believe it's registered as a condominium resort  
21 hotel.

22 Q. Colony Beach has filed a declaration of condominium  
23 with the State of Florida, wouldn't you agree that's true?

24 A. Yes.

25 Q. And that document was filed in the early 1970s and

1 remains in effect today?

2 A. Yes.

3 Q. You mentioned Resorts Management. Resorts  
4 Management is a corporation which has been incorporated in  
5 Florida since approximately 1973?

6 A. Yes.

7 Q. Resorts Management is the general partner of the  
8 Colony Beach and Tennis Club, Limited Partnership; is that  
9 right?

10 A. Yes.

11 Q. As I understand it, Resorts Management is  
12 responsible for the oversight of all operations at the  
13 Colony, including the oversight for the provision of electric  
14 utility services that are provided on the premises at Colony  
15 Beach. Is that right?

16 A. It's not responsible for 100 percent of the Colony.  
17 For the room side of it, yes.

18 Q. Okay. So Resorts Management is responsible for the  
19 provision of electric services for the individual units at  
20 Colony Beach?

21 A. Yes.

22 Q. Okay. And Jerry Sanger is not now and has never  
23 been an employee of Resorts Management; is that correct?

24 A. Yes.

25 Q. We talked about this during your deposition,

1 Mr. Moulton. Is it fair to say that you consider yourself an  
2 experienced businessman?

3 A. Yes.

4 Q. You have been extensively involved with overseeing  
5 banking relationships, financial matters, and contract  
6 negotiations for Dr. Klauber's companies and for Colony  
7 Beach; is that correct?

8 A. Yes.

9 Q. You've also overseen the negotiation of loans,  
10 you've dealt with lawyers at closings, and you've dealt with  
11 bankers to obtain lines of credit to obtain renovations,  
12 you've been involved with real estate acquisitions, you've  
13 been involved with real estate sales; is that correct?

14 A. Yes.

15 Q. You also were involved in starting up the Flagship  
16 National Bank in Sarasota some two to three years ago?

17 A. Yes.

18 Q. You put up the initial capital, you helped put the  
19 business plan together, and you currently serve on the board;  
20 is that right?

21 A. I put all the capital, not some of the capital, yes.

22 Q. Okay. I believe your testimony has been that dating  
23 back to 1985 it is your estimate that the Colony experiences  
24 roughly 15 to 20 changes of ownership per year. Is that  
25 correct?

1 A. Yes. Yes.

2 Q. And those 15 to 20 changes of ownership are actual  
3 sales of individual units?

4 A. Yes.

5 Q. And there is a firm, a real estate firm, Michael  
6 Saunders and Company that maintains a location on premises at  
7 the Colony; is that correct?

8 A. Yes.

9 Q. And it is the Michael Saunders and Company Real  
10 Estate firm that assists and is involved in the sale of the  
11 individual units at the Colony; is that correct?

12 A. Yes.

13 Q. Did you have any involvement whatsoever in the  
14 alleged communications that took place between Mr. Sanger and  
15 FPL back in early 1989?

16 A. No direct contact with the communications. Just  
17 being informed by Mr. Sanger.

18 Q. Mr. Sanger was the only individual from Colony Beach  
19 who was involved in those discussions?

20 A. Yes.

21 Q. You were not involved?

22 A. Yes, I was not involved.

23 Q. And as far as you know, there were no letters or  
24 documentation of the discussions; is that correct?

25 A. Yes. To the best of my knowledge, there was no

1 written communication.

2 Q. When you were told by Mr. Sanger that FPL declined  
3 to convert the individual meters at the Colony to master  
4 meters, you did not pursue it further, did you?

5 A. Did not pursue it further, correct.

6 Q. You did not contact FPL?

7 A. No.

8 Q. You did not contact the Florida Public Service  
9 Commission?

10 A. No.

11 Q. As I understand it, it's your recollection that FPL  
12 objected to converting Colony Beach to master meters because  
13 Colony Beach was a condominium; is that correct?

14 A. That's my understanding of it through Jerry Sanger.

15 Q. Did you contact anyone at FPL in 1997 or 1998 to  
16 tell them that you would be seeking a refund dating back to  
17 early 1989?

18 A. I personally did not.

19 Q. Can you tell me who did?

20 A. I believe it was Marc Mazo.

21 Q. Do you know when Mr. Mazo made that contact?

22 A. I believe it was the dates you said. I think it was  
23 19 -- either late '97 or early '98. 1998.

24 Q. Okay. Do you know who he spoke with?

25 A. Individually, no, I do not.

1 Q. Mr. Moulton, are you familiar with the time-share  
2 statutory provisions under the Florida Statutes?

3 A. No, I'm not.

4 Q. Do you know when those provisions were adopted by  
5 the legislature?

6 A. No, I do not.

7 Q. The entrance sign that you talked about in the  
8 beginning of your testimony, I believe in your deposition  
9 that we took back in August of last year you stated that that  
10 sign had been up since the mid-'70s. I think this morning  
11 you said it's picked up 20 years; it's been there since the  
12 mid-'50s. Can you clarify that?

13 A. I believe it's been there since the beginning of the  
14 Colony.

15 Q. Which would have been about 1973?

16 A. No. Since the mid-'50s.

17 Q. Okay. So you would have been mistaken in your  
18 deposition testimony?

19 A. I guess so, based on what you said.

20 Q. Just a few more questions, Mr. Moulton. Are you  
21 familiar with the Public Service Commission's definition of  
22 time-share plan as it existed in PSC Rule 25-6.049 prior to  
23 the changes in the rule in March of 1997?

24 A. No.

25 Q. Let me hand you a copy of what has been marked and

1 identified as Exhibit 8, which is the declaration of  
2 condominium.

3 MR. MENTON: That's just the first two pages.

4 BY MR. HOFFMAN:

5 Q. It's the first two pages of the declaration of  
6 condominium. And let me ask you to read Article I into the  
7 record.

8 A. "The purpose of this declaration is to submit the  
9 lands described in this instrument and the improvements  
10 constructed or to be constructed thereon to the condominium  
11 form of ownership and use in the manner provided by Chapter  
12 711, Florida Statutes, herein called the Condominium Act."

13 Q. Thank you. Are you familiar with Chapter 711,  
14 Florida Statutes?

15 A. No, I'm not.

16 Q. Let me hand you what has been marked as Exhibit 6,  
17 which is the prospectus dated September 8, 1997, and ask you  
18 to read the first sentence of the prospectus into the record.  
19 (Hands document.)

20 A. "Colony Beach, Inc., the company, a Florida  
21 corporation, is continuing the offer for sale of condominium  
22 units, the condominium unit or units, in a luxury resort  
23 condominium project, the project in the vicinity of Sarasota,  
24 Florida."

25 The total -- just the first paragraph? How far did

1 you want me to go?

2 Q. Just the first sentence.

3 A. Is that it?

4 Q. Yes, sir. Thank you.

5 Also, Mr. Moulton, if you could read the fourth  
6 sentence which I've underlined, it starts with "Each  
7 purchaser," into the record.

8 A. "Each purchaser of a condominium unit attains  
9 private ownership of the interior of an apartment and an  
10 undivided 1/244th interest in land submitted for condominium  
11 ownership and in those portions of the buildings and  
12 improvements in the project that are not privately owned."

13 MR. HOFFMAN: Thank you. No further questions.  
14 Thank you, Mr. Moulton.

15 REDIRECT EXAMINATION

16 BY MR. DALEY:

17 Q. Now, on the sale -- you were asked I believe by  
18 Mr. Hoffman about the sale of the units and the operation of  
19 that and how often they take place. If -- does -- if a sale  
20 of a unit is made, does that change in any way the  
21 obligations or the rights of that owner that have already  
22 been established? I mean, does that -- does that in any way  
23 affect the operation of your facility?

24 A. No, it does not.

25 Q. Okay. I'm going to ask you to -- this is part of



1 the prospectus that's been entered and also has been just  
2 recently discussed by Mr. Hoffman. Would you look at the  
3 page 35 of that hotel operations, right here, and would you  
4 read that?

5 COURT REPORTER: Can you read just a little bit  
6 slower?

7 THE WITNESS: What's that?

8 COURT REPORTER: Can you read just a little bit  
9 slower?

10 THE WITNESS: Sure.

11 COURT REPORTER: Thanks. I appreciate it.

12 THE WITNESS: "The Colony Beach and Tennis Club is  
13 operated as a luxury resort hotel. Purchasers of  
14 partnership interests will participate in the profits and  
15 losses of this operation through the partnership in the  
16 manner described in this prospectus. Each purchaser is  
17 also required to make his condominium unit available to  
18 the partnership for use as a rental accommodation in the  
19 hotel operation. Each owner will, however, remain the  
20 owner of his unit and will be responsible for the  
21 ownership costs relating to his unit."

22 MR. DALEY: All right. Thank you. And what I'd  
23 like to do now is exhibit -- Your Honor, if you have the  
24 exhibit, I believe Mr. Hoffman just referred to it and  
25 just asked a question based on it, and that is the

1 declaration -- the declaration of condominium.

2 THE COURT: That's -- yeah. Just for the record --

3 MR. DALEY: I think it's Number 8.

4 THE COURT: -- that's Number 8.

5 MR. DALEY: Your Honor, do you have Exhibit 8 there?

6 THE COURT: (Hands document.)

7 MR. DALEY: Thank you. Appreciate it.

8 BY MR. DALEY:

9 Q. Now, in this -- in this exhibit, which is the  
10 declaration of condominium, would you -- would you read to us  
11 this line right here, identification. (Indicating.)

12 A. Okay.

13 Q. That first sentence only.

14 A. "The name of this condominium is to be identified as  
15 Colony Beach and Tennis Club, condominium resort hotel, and  
16 its address is 1620 Gulf of Mexico Drive, Longboat Key,  
17 Sarasota County, Florida."

18 Q. So even in the declaration of condominium this --  
19 the Colony is referred to as a what? Luxury resort?

20 A. Condominium resort hotel.

21 Q. Okay. Now, also I would like to read -- this is a  
22 -- I'm going to read a subsection of a -- the statute  
23 509.242, and it describes a subsection A, hotel?

24 A. Okay.

25 Q. A hotel --

1 MR. HOFFMAN: I'm going to object. Excuse me,  
2 Mr. Daley. Outside the scope of my examination.

3 THE COURT: I don't know. I mean, you didn't  
4 specifically refer to the statute.

5 MR. DALEY: Certainly the issue of a hotel  
6 condominium is --

7 THE COURT: Did I misunderstand you?

8 MR. HOFFMAN: I didn't hear it, Your Honor. I  
9 didn't -- obviously, I didn't get into any of the  
10 definitions in Chapter 509 per se.

11 THE COURT: Well, let's see what the question is,  
12 and then we'll --

13 MR. DALEY: All right. I'm going to read this  
14 paragraph, and then I'll ask the question, Your Honor, if  
15 that's --

16 BY MR. DALEY:

17 Q. If you listen to me read this, then I'll ask the  
18 question.

19 A. Okay.

20 Q. "A hotel is any public lodging establishment  
21 containing sleeping room accommodations for 25 or more guests  
22 and providing the services generally provided by a hotel and  
23 recognized as a hotel in the community in which it is  
24 situated or by the industry."

25 So my question is do you think -- this is my

1 question. Do you think that the Colony qualifies under that  
2 subsection as a hotel?

3 MR. HOFFMAN: Objection, Your Honor. Calls for a  
4 legal conclusion.

5 MR. DALEY: Well, I would say not as a practical  
6 matter -- not legally but as a practical matter the  
7 question is as someone who operates that facility does he  
8 feel like it meets that definition.

9 MR. HOFFMAN: Your Honor, I think -- I think the  
10 witness can testify if you allow him, if you believe it's  
11 within the scope of my cross, on certain operating  
12 characteristics of the facility. I don't think this  
13 witness is qualified to render an opinion as to whether  
14 the Colony fits within a statutory definition.

15 THE COURT: I think I'm going to sustain on that  
16 one. I mean, I think he's -- we already have his  
17 understanding it's a hotel. I mean, you read the  
18 definition, his understanding, so it looks like we're  
19 trying to -- I think he's done all he can do.

20 MR. DALEY: All right. Well, I think that I'll  
21 withdraw the question, Your Honor, and I don't have any  
22 other questions. Thank you.

23 THE COURT: Anything further on cross?

24 MR. HOFFMAN: No, Your Honor.

25 MR. DALEY: I think -- I'm sorry, Your Honor.

1           Excuse me, Judge, I'm going to hand you back Exhibit 8.

2           THE COURT:   And is Mr. Moulton excused?

3           MR. DALEY:   Yes, Your Honor.

4           THE COURT:   Thank you, sir.

5           MR. DALEY:   Judge, we'll take about a five-minute  
6           break.

7           THE COURT:   Sure.

8           (Off the record for a short break, after which the  
9           following proceedings were had:)

10          MR. DALEY:   Okay, Your Honor.   I think we're ready  
11          to continue.   Both sides are prepared to move forward.  
12          And, Judge, we would call Jerry Sanger to the stand.

13          THEREUPON,

14                               JERRY SANGER

15          was adduced as the witness herein, and being first duly sworn  
16          on oath by the Court was questioned and stated as follows:

17                               DIRECT EXAMINATION

18          BY MR. DALEY:

19          Q.    Good morning -- or good afternoon.

20          A.    Good morning.

21          Q.    Would you state your name for the record.

22          A.    Jerry Sanger.

23          Q.    Okay.   Your address?

24          A.    6804 Washington Place, Bayshore Gardens, Bradenton.

25          Q.    And employment?

1 A. Colony Beach and Tennis Resort.

2 Q. All right. And how long -- in what capacity? I'm  
3 sorry.

4 A. Right now I'm maintenance engineer.

5 Q. Okay. And how long have you done that?

6 A. Oh, approximately 16 years.

7 Q. 16 years?

8 A. Almost 17.

9 Q. All right. And you've had the same job at the same  
10 facility the entire time?

11 A. No. I've worked for them almost 20 years.

12 Q. Okay.

13 A. I ran their carpentry shop for the first three years  
14 or so.

15 Q. All right. And, generally, what are your duties?

16 A. Oversee the operation and care of the equipment,  
17 physical plant, energy conservation, that type of thing.

18 Q. Okay.

19 A. Daily maintenance.

20 Q. Daily maintenance?

21 A. Daily routine. Daily, weekly.

22 Q. Okay. And are the -- and that's basically the  
23 position you've had for this length of time?

24 A. Yes, sir.

25 Q. Okay. And along those lines, you mentioned

1 conservation. Explain that a little bit for me.

2 A. Well, it -- conservation comes in many forms, but we  
3 were one of the -- probably the first company in our area to  
4 recover refrigerant gases before it was mandatory that we did  
5 so. Also, we also were one of the very first companies in  
6 our area, particularly on Longboat Key, to go into recycling.  
7 But beyond that, we get into energy conservation such as  
8 electric, gas, and water.

9 Q. Okay.

10 A. We have over the years switched from LP gas to  
11 natural gas wherever possible. We have through the use of  
12 energy-efficient equipment such as higher SEER rating -- I  
13 switched to three-phase equipment wherever possible. It's  
14 the most efficient rate, use of electricity. We have a  
15 system whereas when the people check out of the hotel on the  
16 checkout day that evening the housekeeping department goes  
17 through the units and they turn the lights off, and the air  
18 conditioners are usually up to 80 or off, depending on the  
19 time of the year. The meeting facilities, the security  
20 checks those, and on the evening shift they turn the air  
21 conditioners generally off or up to 80 again, depending on  
22 the time of the year, and turn the lights off. We've  
23 switched to -- over the years to energy-efficient lighting.

24 I have a system whereas when an air conditioner  
25 begins to get out of the parameters of the design

1 specifications as far as energy use goes, electrical  
2 specifically, I use my older air conditioning condensers and  
3 hook them up in a series. I'm probably one of the only  
4 companies that does that anywhere and brings back the use of  
5 electricity back down into the engineering specifics of that  
6 unit.

7 Q. So you're -- and back to the -- that's on the  
8 conservation. But on the maintenance end you're basically  
9 responsible for the maintenance or the maintaining of these  
10 units, is that correct, as a hotel?

11 A. Yes, sir.

12 Q. All right. So the owners don't -- what  
13 responsibility do the owners, if any, have in terms of the  
14 maintenance or daily maintenance of the facility?

15 A. None that I'm aware of.

16 Q. Okay. And now on the electric you were -- you were  
17 obviously -- your testimony is that you were in that position  
18 in 1988, '89?

19 A. That's right.

20 Q. Okay. And the -- was the Colony individually  
21 metered prior to that time?

22 A. It was individually metered when I arrived there.

23 Q. Okay. And what -- did a point come -- did some  
24 point come where you had an idea or requested or -- that the  
25 Colony's meters be converted to a central meter point or a



1 master metering?

2 A. Yes, sir.

3 Q. Okay. And when did that happen, approximately?

4 A. Probably in '88, '89. In that general area.

5 Q. Okay. All right. And tell me what your -- how that  
6 came up and what your thought process was or the events that  
7 led to that. I guess that's it.

8 A. Well, basically one of my duties is to monitor  
9 energy usage. And, you know, I keep track through the years  
10 of electrical energy usage. I went to the accounting  
11 department at the Colony and reviewed periodically the bills  
12 both for the restaurant and the hotel side of the business,  
13 and it was kind of purely by accident that I realized that we  
14 had an enormous number of meters on the property and that  
15 there was a charge, a monthly charge, just for those meters.  
16 So that's how I became aware of it.

17 Q. Okay. And so then how did you -- then where did you  
18 go from there? What did you do after that?

19 A. Well, I contacted Florida Power and Light, and they  
20 sent a representative out, and I spoke with them and asked,  
21 you know, was it necessary that we have all these meters,  
22 couldn't we go to a much lesser amount. They said it was a  
23 possibility and they'd look into it. They requested a copy  
24 of our operating license. I supplied that to them. And then  
25 it was probably some days or a couple of weeks later they

1 came out and said we didn't qualify, and at that point that  
2 was the end of it.

3 Q. Okay. Back to the idea, then, in that -- you met  
4 with whom? Do you remember who you met with?

5 A. No, I do not. I'm sorry. I do not.

6 Q. Okay. Did you meet with one or more persons?

7 A. There was more than one person.

8 Q. Okay. And where was the meeting held? Where did  
9 you do it?

10 A. On the grounds at the Colony.

11 Q. Okay. Did you -- also, did you -- did it come about  
12 by -- didn't you testify that you phoned him initially,  
13 telephoned him initially?

14 A. Yes, sir.

15 Q. Okay. And that prompted them to --

16 A. To visit the property.

17 Q. Come out and visit?

18 Okay. Where did you -- where did you have the idea  
19 actually on the meters?

20 A. Well, as I said, I realized in the accounting  
21 department that we had some -- this may be slightly off in  
22 numbers but probably in the neighborhood of 250 meters on the  
23 property and that there was a \$6-per-month charge for those  
24 meters. And I wasn't totally naive to this situation because  
25 I had -- my background was in construction, so I asked the

1 question of Florida Power and Light that I know there's such  
2 a thing you can put -- you can put one meter that will supply  
3 a large number of facilities here, and they said yeah, and  
4 then the process of talking with them took place, and  
5 ultimately basically they said we didn't qualify, and I  
6 dropped it at that point.

7 Q. What -- you know, but I'm saying did you have the  
8 idea that other hotels or other --

9 A. No. I -- no. Really, it was something that I  
10 blundered over myself.

11 Q. So just looking at the number of meters?

12 A. That's correct.

13 Q. And the charge per month you decided to ask the  
14 question, hey, is it possible to reduce that?

15 A. Well, I mean, like I say, I have a background in  
16 construction for a number of years, and I've had some  
17 dealings, and we would build large facilities in the state of  
18 Maryland and have one meter for 100,000 square foot of  
19 buildings.

20 Q. Okay. And so when they came out, how many people  
21 came out? One or two?

22 A. Well, it's hard to remember, but the initial contact  
23 I don't remember if it was one or two. But then eventually  
24 there were a couple of people that came out and spoke with  
25 me, and they were gentlemen.

1 Q. Okay. All right. How many times? One time?

2 A. Again, going back ten, twelve years, they were out  
3 there more than once. Whether it was two times or three  
4 times I couldn't say, but it was more than once.

5 Q. And do you remember what they asked you to produce?

6 A. Yes. They wanted a copy of our license, operating  
7 license. I went to the owner's office and basically gave him  
8 a photostatic copy of that license.

9 Q. Okay. Which was a -- which was a license depicting  
10 what?

11 A. Well, it was a license to operate the hotel. I took  
12 it off the wall, took a copy of it, and give it to them.

13 Q. Okay. And what else did you give them? Anything  
14 else?

15 A. That was it.

16 Q. All right. So you showed them the license, and then  
17 they left, and then they came back -- they came back to you  
18 with a decision at a later point?

19 A. That's correct.

20 Q. Okay. And did they come out to tell you that or  
21 just phone you?

22 A. No. They, in fact, as near as I can remember, did  
23 come out to the property, and we had a brief conversation.  
24 Again, when you go through the amount of material and people  
25 that I do in the course of 10 years --

1 Q. Right.

2 A. -- it's really hard to draw.

3 Q. Okay.

4 A. But they did come back to the property, as far as I  
5 can recall. But I'm absolutely certain they told me that we  
6 didn't qualify.

7 Q. And on that note what did they -- what did they say  
8 to you directly? I mean, do you remember -- as far as you  
9 can recollect, what was the response?

10 A. Some conversation that, you know, that we didn't  
11 qualify because we were basically -- our license said we were  
12 a condominium; that, you know, we weren't licensed as a  
13 hotel. Something to that effect. And, again, that's as  
14 close as I'm going to be able to come.

15 Q. Okay. Did you make any notes of those meetings?

16 A. I did not.

17 Q. Okay. And did you make any other record of those  
18 meetings?

19 A. I did not.

20 Q. Okay. Who did you talk to about that request?

21 A. Really, I've only spoken to a couple of people at  
22 the Colony that was aware. Three people at the Colony was  
23 aware that I was making this attempt. The comptroller at the  
24 present time and then Mr. Moulton, and then when I asked for  
25 the license I remember Dr. Klauber asking me what I needed it

1 for, and I told him.

2 Q. So you discussed this with Mike Moulton, who was the  
3 general manager at that time; is that correct?

4 A. Um-hum.

5 Q. Okay. Did the representatives from the utility, did  
6 they -- did they -- did they -- when they told you that you  
7 didn't qualify, did they -- did they suggest or recommend  
8 that you do anything from that point on?

9 A. No. No.

10 Q. So they didn't recommend that you apply to someone  
11 else or ask someone else or go to the Public Service  
12 Commission or whatever else?

13 A. No.

14 Q. Their answer back was, hey, we looked at it, and you  
15 don't qualify?

16 A. Yeah. Yes, sir.

17 Q. Okay. And then the question, then, is if you didn't  
18 record anything from that point, then what did you do after  
19 that?

20 A. On that subject I did nothing.

21 Q. Okay.

22 A. Dropped it.

23 Q. All right.

24 A. Now, I have had Florida Power and Light out there  
25 over the years, you know, to advise me on different energy

1 conservation methods, and we monitored the transformers  
2 together and that type of thing, but, again, that was as far  
3 as we went on that subject.

4 Q. So you had a -- so as the -- you know, as the person  
5 charged with the responsibility of electricity, then you had  
6 a good working relationship with Florida Power and Light  
7 generally?

8 A. I had a working relationship with Florida Power and  
9 Light and maintain that today.

10 Q. So then -- and so then you I guess from your  
11 testimony just accepted the fact that they determined that  
12 you didn't qualify?

13 A. They were the experts, in my opinion.

14 Q. Okay. So you didn't take any other action after  
15 that point?

16 A. No, sir.

17 Q. Okay. And anything between '88 and '89 and the time  
18 eventually that the -- you were involved in the metering when  
19 it eventually changed; is that correct?

20 A. When it took place.

21 Q. Right.

22 A. Yes.

23 Q. So you had a series of meetings I guess with power  
24 folks at that point?

25 A. I only met with the field representative at that

1 time and coordinated the closing of the various buildings to  
2 facilitate the master metering.

3 MR. DALEY: Okay. Excuse me. Judge, can I just  
4 have 10 seconds?

5 BY MR. DALEY:

6 Q. Let me ask you just a couple more questions. Now,  
7 when they -- actually, it's along the same line as when the  
8 FP & L folks told you that you didn't qualify. Did they say  
9 that you didn't qualify because you were a time-share?

10 A. I can't remember the exact verbiage that took place.  
11 They basically said that we did not qualify.

12 Q. Do you remember them using the word "time-share?"

13 A. I don't remember that, no.

14 Q. Okay. In your testimony -- I'm not sure if I heard  
15 it right or not, but let me ask you again. Did the -- the  
16 owners have no responsibility for -- I mean, your -- your job  
17 is energy conservation, so your testimony is that the owners  
18 do not actually have any responsibility themselves for energy  
19 conservation; is that right?

20 A. Right.

21 Q. Okay. That's what I -- that's what I thought you  
22 said.

23 And I guess the last question that I'm going to ask  
24 you is -- I mean, you probably have already answered it, but  
25 you're looking -- your job was to find ways to save money for



1 the Colony; is that correct?

2 A. That's correct.

3 Q. And is that the reason -- is that the reason that  
4 you requested the Florida Power and Light to change the  
5 metering?

6 A. That would have been the reason.

7 Q. The metering scenario?

8 A. Yes.

9 MR. DALEY: Okay. All right. I don't have any  
10 other questions, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HOFFMAN:

13 Q. Good afternoon, Mr. Sanger. Ken Hoffman. I  
14 represent FP & L.

15 A. Yes.

16 Q. I'd like to ask you some questions, sir. You've  
17 been working out at the Colony Beach facility for about 16,  
18 17 years; is that correct?

19 A. In total, almost 20.

20 Q. Almost 20?

21 A. Yes.

22 Q. You have never been employed by Resorts Management,  
23 Inc. During that 20-year period, have you?

24 A. I've never been employed by any other resort other  
25 than the Colony.

1           Q.    Have you ever been employed by Resorts Management,  
2   Inc.?

3           A.    Not that I'm aware of, no.

4           Q.    I believe it was your testimony that so far as you  
5   know, which would be over the last 20 years, Colony Beach  
6   received service from FPL through the individual meters up  
7   until the time of the conversion to master meters in June of  
8   1998. Is that correct?

9           A.    Yes, sir.

10          Q.    Are you aware that Colony Beach is registered with  
11   the State of Florida as a condominium?

12          A.    No.

13          Q.    Was it your testimony previously that FPL declined  
14   to convert to master metering because FPL told you that  
15   Colony Beach was a condominium?

16          A.    Something to that effect, yes, sir. We did not  
17   qualify was basically --

18          Q.    Did not qualify because Colony was a condominium?

19          A.    Well, there again, if I said that, that's -- it  
20   could have been what was said. I can't say for sure. I'm  
21   going back 12 years. But the thing I know they said was we  
22   did not qualify.

23          Q.    Okay. I believe you had previously testified that  
24   the operating license for Colony Beach says that Colony Beach  
25   is a resort. Is that correct?

1 MR. MAZO: Objection, Your Honor. That  
2 mischaracterizes the testimony of the witness.

3 BY MR. HOFFMAN:

4 Q. I was referring to your deposition testimony, so let  
5 me just withdraw that question and ask you again.

6 Does the operating license for Colony Beach reflect  
7 that Colony Beach is a resort?

8 A. I looked over some of those licenses most recently,  
9 and the one for the restaurant says the restaurant, and the  
10 one that's for the hotel side has the hotel word written on  
11 them.

12 MR. HOFFMAN: Okay. Your Honor, before I go any  
13 further, I'd like to renew my objection that there be one  
14 attorney or one qualified representative per witness.

15 MR. DALEY: We'll try to keep that in mind. I  
16 appreciate that.

17 MR. MAZO: Sorry.

18 MR. HOFFMAN: I didn't even look back, and I knew  
19 who it was.

20 MR. MAZO: Natural reaction. Sorry.

21 BY MR. HOFFMAN:

22 Q. Mr. Sanger, I believe your testimony was that the  
23 operating license for Colony Beach on the nonrestaurant part  
24 of the facility is that of a hotel. Is that correct?

25 A. That's my belief, yes.

1 Q. Okay. Let me ask you to look at what has been  
2 marked as Petitioner's Exhibit 1 and ask you to look at the  
3 first paragraph of that letter. (Hands document.)

4 A. I'm sorry. I didn't bring my glasses with me. Do  
5 you mind?

6 Q. I don't mind. I don't mind at all.

7 A. Thank you.

8 Q. Petitioner's Exhibit 1 is a letter from DBPR, the  
9 Department of Business and Professional Regulation, and it  
10 states -- it's a letter to a Darlene Clawson (phonetic.) Are  
11 you familiar with Ms. Clawson?

12 A. No.

13 Q. Okay. She's shown to be the assistant comptroller  
14 at Colony Beach and Tennis Club.

15 It says, "Dear Ms. Clawson, thank you for your  
16 telephone call today which requested information regarding  
17 the opening date of license control numbers 6800115H,  
18 parentheses, motel."

19 Okay. Are you sure whether or not Colony Beach is  
20 licensed as a hotel or motel, having heard what's in the  
21 letter from Department of Business and Professional  
22 Regulation?

23 A. I'm sure of what I've seen most recently on some  
24 documents that the Colony Beach and Tennis Resort had the  
25 word hotel on it. I seen Sarasota County and also Longboat

1 Key, and there was some for the restaurant as well.

2 Q. So we definitely know that there are some licenses  
3 out there at some point in time that have been issued to  
4 Colony Beach as a hotel? That's your testimony?

5 A. That's correct. That's what I've seen, yes.

6 Q. We know that there was a letter from the Department  
7 of Business and Professional Regulation, which has been  
8 admitted into the record, which says Colony Beach has been  
9 licensed also as a motel. Would you agree with that?

10 A. I did, I see, see the word motel on some of those  
11 papers, documents.

12 Q. Okay. I believe that you filed an affidavit as an  
13 attachment to the complaint that was filed in this case which  
14 said that you submitted a license, that the license that  
15 you've been talking about that you gave to FPL was for hotel  
16 accommodations, motel accommodations, tourism accommodations,  
17 and rental apartments. Is that correct?

18 A. That could be correct. I presented a copy of the  
19 license that was -- that was on the owner's wall at that  
20 time. So whatever it said is what it said.

21 Q. Well, you did prepare an affidavit, did you not, for  
22 this case, Mr. Sanger?

23 A. Um-hum.

24 Q. Did you write that affidavit or did Mr. Mazo?

25 A. I wrote that affidavit.

1 Q. You wrote it?

2 Okay. Let me show you that affidavit just to  
3 refresh your recollection. (Hands document.)

4 Can you see it? You want me to read it to you?

5 A. Yes, I supplied that information. That's what I  
6 said, and that's what I did. I supplied that.

7 Q. Yes, sir. So in that late 1988 or early 1989 time  
8 frame the license, the occupational license that you say you  
9 supplied reflected the nature of Colony's business being the  
10 hotel/motel/tourism units and rental apartments, according to  
11 your affidavit?

12 A. Yes.

13 Q. And that's your testimony today?

14 A. That would be my testimony.

15 Q. Does Colony Beach also hold itself out as a resort?

16 A. In all types of advertisements, yes.

17 Q. Would you agree with Mr. Moulton's testimony this  
18 morning that Colony Beach is an all-suite resort?

19 A. Yes, I would.

20 Q. So Colony Beach is a condominium, it's a hotel, it's  
21 a motel, it provides tourism accommodations, it provides  
22 rental apartments, it's a resort, and it's an all-suite  
23 resort; is that correct?

24 MR. DALEY: I would object to that, Judge. I don't  
25 think he's qualified to answer all those

1 characterizations, whether they be legal or not. I mean  
2 he's --

3 THE COURT: Well, overruled. I mean --

4 MR. HOFFMAN: I'm not asking for characterizations.  
5 I'm just going on his testimony. Let me repeat the  
6 question.

7 BY MR. HOFFMAN:

8 Q. Colony Beach is a condominium, it's a hotel, it's a  
9 motel, it provides tourism accommodations, it provides rental  
10 apartments, it's a resort, and it's also an all-suite resort;  
11 fair statement?

12 A. I'm not sure that that's -- I consider that a fair  
13 statement.

14 Q. Okay. Why is that not -- is that an inaccurate  
15 statement? Can you be more specific?

16 A. I have an opinion of what a condominium is, and I  
17 have an opinion of what a hotel is, so when you say it's a  
18 condominium, you know, I take issue with the fact that, you  
19 know, I worked there and have been there for quite a bit of  
20 time, and I don't see it as a condominium. I see it as a  
21 hotel, a resort. You might even loosely call it a motel.  
22 But to call it a condominium, I'm afraid I would take  
23 exception to that.

24 Q. Okay. I don't want to belabor this, so let me just  
25 modify my question.

1           If you accept the fact that there is a document  
2       that's been admitted into this record which is a declaration  
3       of condominium for Colony Beach and you accept the fact that  
4       there is a letter that we just reviewed a few minutes ago  
5       from the Department of Business Regulation that reflects that  
6       Colony Beach has been licensed as a motel, if you accept  
7       those two facts, would you agree that Colony Beach is a  
8       condominium, a hotel, a motel, provides tourism  
9       accommodations, provides rental apartments, is a resort, and  
10      is an all-suite resort?

11       A.    I suppose so.

12       Q.    Is it also a resort condominium?

13       A.    I don't know. I mean, I really don't know. I can't  
14      -- I don't know. I can't answer that question.

15       Q.    That's fine. Do you have a definition for a hotel?

16       A.    Yes, I do. I have an opinion of a hotel.

17       Q.    We talked about this during your deposition.

18       A.    Right.

19       Q.    How would you define a hotel?

20       A.    Well, I would think a hotel would be a place that  
21      you could rent that facility, that it would be offered to the  
22      public in any type of advertisement or media and you could  
23      rent it by the day, week, month. That would basically be my  
24      opinion.

25       Q.    Let me read for you the definition that you gave me



1 during the course of your deposition, and I'll just read this  
2 into the record.

3 MR. HOFFMAN: On page 11, Mr. Daley, line 21 -- line  
4 16 rather.

5 BY MR. HOFFMAN:

6 Q. I asked you:

7 And can you give your explanation as to the  
8 difference between a resort condominium and a hotel.

9 Answer: I can give you my explanation of the  
10 difference as I perceive it between a condominium and a  
11 hotel.

12 Question: If you would, please, answer.

13 Hotel, of course, would be an institution where  
14 people could stay for a day, a week, a month. They  
15 really have no direct influence over what takes place  
16 within that establishment and also -- and also no direct  
17 responsibilities.

18 Do you recall making that statement to me?

19 A. Yes, sir.

20 Q. Do you stick by that statement today, Mr. Sanger?

21 A. I do.

22 Q. Wouldn't you agree that the owners of the individual  
23 units at Colony Beach have direct input into any decisions  
24 made by Colony Beach that are put to a vote of the owners?

25 A. I don't agree with that.

1 MR. DALEY: I would object. I don't think he's  
2 qualified to answer that question. His job is  
3 maintenance supervisor.

4 THE COURT: I think we need to lay some parameters  
5 as to, you know, what he would even know.

6 BY MR. HOFFMAN:

7 Q. Do you have any knowledge as to the ownership rights  
8 of owners of units at Colony Beach?

9 A. Not -- not a lot.

10 Q. Okay. What is your knowledge of what ownership  
11 rights and voting rights the owners of units at Colony Beach  
12 have?

13 A. They can use the facility for 30 days. That goes  
14 along with the purchase of that unit. Anything beyond the 30  
15 days they would pay a rate. They really don't seem to have  
16 much in the way of any real influence over what happens  
17 there, including, you know, they couldn't -- say, for  
18 instance, they couldn't furnish their unit as they wished. I  
19 doubt if any of them even knows what the utility bills are.

20 Q. Okay. Let me switch gears and go back to the early  
21 1989 time frame that you've already talked about. It's your  
22 testimony that you contacted Florida Power and Light Company  
23 to find out if Colony Beach could be switched from individual  
24 meters to master meters; is that correct?

25 A. Yes, sir.

1 Q. And you contacted Florida Power and Light Company in  
2 early 1989?

3 A. '88, '89. In that time frame, yes, sir.

4 Q. Do you recall when?

5 A. In that time frame is as close as I'm going to be  
6 able to come.

7 Q. Okay. You had a general awareness at that time that  
8 there were differences between Florida Power and Light  
9 Company's commercial rates and Florida Power and Light  
10 Company's residential rates; is that right?

11 A. I had some -- some vague awareness of that. That  
12 isn't what my focus was on, though.

13 Q. You didn't know what the actual differences between  
14 the two rates were?

15 A. Not really.

16 Q. And that was not your focus; correct?

17 A. No, it was not.

18 Q. Now, back at some point in the late '88 or early '89  
19 time frame in reviewing the electric bills for Colony Beach  
20 you became aware that Colony Beach had over 200 meters on the  
21 property; is that correct?

22 A. Yes, sir.

23 Q. Okay. Now, did you find out -- that out that there  
24 were more than 200 meters after you reviewed the electric  
25 bills or was that told to you by the accounting department

1 after the accounting department had reviewed the electric  
2 bills?

3 A. I found that out. I went and -- I reviewed the  
4 electric bills periodically there, and I seen that.

5 Q. Let me go to your deposition, Mr. Sanger. We talked  
6 about this on page 68.

7 MR. HOFFMAN: Mr. Daley, I'm on page 68, line 14 of  
8 Mr. Sanger's deposition.

9 MR. DALEY: I appreciate it.

10 BY MR. HOFFMAN:

11 Question: Earlier in your deposition you stated  
12 that the accounting department made you aware of the  
13 number of meters that were serving Colony Beach. This  
14 was back in 1988 or 1989. Do you recall that?"

15 A. Yes.

16 Q. Answer: Yes.

17 A. Um-hum.

18 Q. Okay. So I just want to clarify for the record who  
19 discovered that there were over 200 meters. Was it you, or  
20 was it the accounting department telling you there were over  
21 200?

22 A. I discovered it, but how I went about discovering  
23 it, you know, that's the process that obviously took place.  
24 On their end they're looking at the bills and the meter  
25 charge and having a conversation with the person in charge of

1 paying those bills. So that's -- was the general process of,  
2 you know, how I became aware of it.

3 Q. And I believe your testimony was that your purpose  
4 in contacting FPL was to discuss the possibility of  
5 consolidating the individual meters which were used for the  
6 over 200 units at Colony Beach and thereby reduce the meter  
7 charge that was charged for each meter. Is that correct?

8 A. Yes, sir.

9 Q. I think you testified on direct that your purpose at  
10 that time was to see if you could save Colony Beach money on  
11 the meter charge, and that was it. Is that correct?

12 A. Yes, sir.

13 Q. When you allegedly contacted FPL regarding this  
14 situation, did you have copies of FPL's rate schedules?

15 A. No, sir.

16 Q. Had you done any rate analysis or rate comparisons  
17 of residential versus commercial rates at that time?

18 A. No, sir. Uh-uh.

19 Q. I believe your testimony was that you engaged in  
20 some intermittent discussions with FPL and had a meeting or  
21 two over a period of about a month. Is that a fair  
22 statement?

23 A. That's fair.

24 Q. And you do not remember the individual --

25 A. No, I don't.

1 Q. -- at FPL that you spoke with?

2 You did not keep any notes or files or otherwise  
3 document your discussions with FPL at that time?

4 A. No, sir.

5 Q. Once you were told that Colony Beach did not qualify  
6 for master metering, according to your testimony, from FPL,  
7 you did not pursue it further; is that correct?

8 A. That's correct.

9 Q. You did not ask FPL for their tariff sheets, did  
10 you?

11 A. No.

12 Q. You did not ask FPL for a copy of the applicable  
13 Public Service Commission rules, did you?

14 A. No, sir.

15 Q. You didn't ask FPL to document in writing why they  
16 were declining your request, did you?

17 A. No.

18 Q. And you did not pursue a letter or a complaint or  
19 even a phone call with the Public Service Commission, did  
20 you?

21 A. No.

22 Q. Since your encounter with FPL in late 1988, early  
23 1989 time frame, have you come to believe that FPL should  
24 have been -- should have allowed the Colony Beach facility to  
25 be master metered back in 1988?

1 A. Yes, sir.

2 Q. '89?

3 I'm sorry?

4 A. Yes.

5 Q. Did you reach that conclusion before Mr. Mazo  
6 arrived on the scene at Colony Beach?

7 A. No.

8 Q. That would have been around February of 1997 when  
9 Mr. Mazo arrived on the scene at Colony Beach?

10 A. In that neighborhood.

11 Q. Now, between the time of your alleged discussions  
12 with FPL in '88, '89 and running through the time that Colony  
13 Beach filed its complaint with the PSC, which would have been  
14 toward the end of 1998, Colony Beach never sought any sort of  
15 refund from FPL, did they?

16 A. Not that I'm aware of.

17 Q. And Colony Beach never filed a complaint letter or  
18 any other document with FPL or with the PSC seeking a refund  
19 until the complaint was filed; is that correct?

20 A. Not that I'm aware of.

21 Q. And you were aware of the existence of the Florida  
22 PSC in 1988 and 1989, were you not?

23 A. I knew that there was such a thing.

24 Q. Is the typical Colony Beach unit rented more than  
25 three times in a calendar year where each rental period is

1 less than 30 days?

2 A. In my opinion, oh, yes.

3 Q. The conversion of Colony Beach from individual  
4 meters to master meters which took place during the '97, '98  
5 time frame, that was a result of work initiated by Mr. Mazo  
6 not by you; is that correct?

7 A. That's correct.

8 Q. You are not familiar with Rule 25-6.049 of the  
9 Florida Administrative Code which addresses individual  
10 metering and master metering, are you?

11 A. No, I'm not.

12 Q. Is it a fair statement to say that you believe that  
13 Colony Beach has been a leader in the community in energy  
14 conservation?

15 A. Yes, it is.

16 Q. Do you recall Ms. Terri Britton of Florida Power and  
17 Light Company conducting energy audits at Colony Beach in  
18 1995?

19 A. Yes, I do.

20 Q. Did Colony Beach implement any of Ms. Britton's  
21 energy conservation recommendations as a result of those  
22 audits?

23 A. I don't know that she made any. Her statement to me  
24 was that we were doing such a good job at that time she had  
25 no recommendations. That's what I recall her saying to us.



1 Q. Okay. Did you make any inquiry in the 1995 time  
2 frame when Ms. Britton was out at Colony Beach about  
3 converting the Colony Beach individual units to master  
4 meters?

5 A. No, I didn't.

6 Q. Since late '88, early '89, Florida Power and Light  
7 Company representatives have been back out to the Colony  
8 several times over the course of the last 10 to 12 years; is  
9 that a fair statement?

10 A. That's a fair statement.

11 Q. Did you ever raise the issue of converting the  
12 individual units to master meters during that roughly 10-year  
13 time frame before Mr. Mazo arrived in February of '97?

14 A. No, I didn't.

15 Q. When Mr. Mazo arrived at Colony Beach and was  
16 assisting Colony Beach in the conversion process with FPL in  
17 the February 1997 time frame forward, did you engage in  
18 discussions with Mr. Mazo throughout that process?

19 A. There was a point when that discussion came up, yes.

20 Q. Did Mr. Mazo tell you that he would be seeking  
21 refunds from Florida Power and Light Company once he arrived  
22 on the scene at Colony Beach?

23 A. That conversation came up, yes.

24 Q. And that would have been in February 1997?

25 A. It could have been. In that -- in that time frame.

1 That general time frame.

2 Q. It was in the February/March 1997 time frame?

3 A. In that year. As far as I know, yes.

4 Q. When he told you that he would be pursuing refunds  
5 from Florida Power and Light Company?

6 A. He was looking into that, yes.

7 Q. And during your initial discussions with Mr. Mazo in  
8 February of '97 and March of 1997, you told him about your  
9 alleged verbal request to FPL back in late '88, early 1989  
10 regarding the request to convert to master meters; is that  
11 correct?

12 A. I did inform him of that, yes.

13 Q. And is it fair to say that he used that information  
14 that he gave you to form an opinion that perhaps refunds  
15 could be secured from Florida Power and Light Company? Was  
16 that the gist of the discussion?

17 A. The information I gave him.

18 Q. That specific information?

19 A. I guess that's a reasonable assumption.

20 Q. To your knowledge, did Mr. Mazo contact anyone at  
21 Florida Power and Light Company in 1997 or 1998 to advise  
22 them that Colony Beach would be pursuing a refund from  
23 FP & L?

24 A. Well, it would be my knowledge now that he obviously  
25 did.

1 Q. Okay. I'm talking about prior to the time that the  
2 complaint was filed by Colony Beach at the PSC.

3 A. I had some conversations with Mr. Mazo. Again, the  
4 time frame -- the exact time frame I'm not really sure of.

5 Q. So you don't know when, if ever, he contacted FPL to  
6 talk to them about pursuing a refund claim in '97 or '98; is  
7 that a fair statement?

8 A. Probably a fair statement.

9 MR. HOFFMAN: If I can have a moment, Your Honor.

10 BY MR. HOFFMAN:

11 Q. At the time you allegedly engaged in the discussions  
12 with FPL representatives in late '88 and early -- or early  
13 '89 were you involved -- were you familiar with any of the  
14 rules of the Florida Public Service Commission?

15 A. No, I was not.

16 MR. HOFFMAN: No further questions. Thank you.

17 THE COURT: I just have one before we get into  
18 redirect. You said that back in '88, '89 when FPL told  
19 you that the Colony didn't qualify for the master  
20 metering you dropped it?

21 THE WITNESS: Yes, sir.

22 THE COURT: Dropped the issue?

23 Was that your decision personally? You dropped it,  
24 or did you sort of report to somebody?

25 THE WITNESS: That was my decision.

1 THE COURT: Okay. And that's -- you consider -- I  
2 mean, that's just part of your job? You would be the  
3 person that would kind of like make that call?

4 THE WITNESS: Yes, sir.

5 THE COURT: In your opinion, obviously.

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay.

8 MR. DALEY: Yes. Just a couple more brief  
9 questions, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. DALEY:

12 Q. Now, on -- first of all, let me ask you. On your  
13 conversations with Mr. Mazo regarding any refunds that may be  
14 sought from Florida Power and Light your testimony is, I  
15 believe, that you don't recall when that took place or you're  
16 unsure about it?

17 A. I really don't. I recall the incident but not --  
18 you know, I was introduced to the gentleman, and, you know,  
19 there may be some possibility of a refund here. You know,  
20 we're going to engage him to pursue this. That was the  
21 conversation that took place.

22 Q. You're not sure when that took place?

23 A. The exact time frame, no, I'm not familiar with  
24 when, but I know where.

25 Q. All right. Fair enough. Now, is -- you -- when you

1 asked Florida Power and Light for assistance, I think  
2 Mr. Hoffman asked you if you were aware of the specific  
3 tariffs and Public Service Commission rules and so forth.  
4 You know, what were you actually asking in your job?

5 A. Basically, I was wanting to know if we could reduce  
6 the numbers of meters.

7 Q. And for what purpose?

8 A. To save money.

9 Q. Okay. So you were asking -- is it your testimony,  
10 then, that you just asked to save money? You asked the  
11 utility for assistance in saving money; is that correct?

12 A. That's right.

13 Q. Okay. All right. Now, on -- now I'm going to ask  
14 you this question. You were asked a series of questions here  
15 by Mr. Hoffman regarding the type of facility. I'm going to  
16 ask you if you agree with this. I'm going to read this and  
17 ask you if you agree with this. Does Colony contain sleeping  
18 room accommodations for 25 or more guests and provide  
19 services generally provided by a hotel and recognized as a  
20 hotel in the community in which it is situated by the  
21 industry?

22 A. My opinion, yes.

23 Q. So, in your opinion, the Colony would operate more  
24 as a hotel? Or something else?

25 A. In my --

1 MR. HOFFMAN: Objection, Your Honor. Again, this is  
2 the same line of questioning. It calls for a legal  
3 conclusion. I think Mr. Daley is again reading from the  
4 statute, and he's asking for a legal conclusion.

5 MR. DALEY: Well, again, I was just asking initially  
6 for whether he agrees with the description, not --  
7 certainly not a legal conclusion. I don't think he's --  
8 he's not qualified for that, Judge.

9 THE WITNESS: I cannot comment on the finite letters  
10 of the law. If you ask my opinion, I can give you that  
11 answer.

12 THE COURT: I think he's given all he can give.  
13 Move on.

14 MR. DALEY: I certainly will, Judge.

15 BY MR. DALEY:

16 Q. Let me ask you this. Specifically now on Terri  
17 Britton, an employee of the Florida Power and Light, visiting  
18 your facility. And is it your testimony that she did an  
19 energy audit, and what year was that?

20 A. It was within the last five years. Six -- five, six  
21 years.

22 Q. Okay. Now, did she work with -- well, who did she  
23 work with out there?

24 A. Well, I know that she had some association with Jim  
25 Guzman, and he is now and has been for a few years our

1 representative. These people come and go.

2 Q. Well, actually, I -- let me cut you short. I'm only  
3 asking who did she work with at the Colony? 232 owners? Or  
4 you or --

5 A. Me.

6 Q. Just you?

7 A. Yes, sir.

8 Q. She didn't ask to work with any of the owners of the  
9 facility?

10 A. Well, I'm not aware of that.

11 MR. DALEY: Okay. Judge, we don't have any other --  
12 I don't have any other questions at this time.

13 MR. HOFFMAN: No further questions.

14 THE COURT: Thank you. You folks ready to go get  
15 something to eat?

16 MR. DALEY: I think so. How long -- I'll take you  
17 all's suggestion as to how long we should take.

18 MR. HOFFMAN: We have -- Your Honor, we have, I  
19 think, two witnesses left for today.

20 MR. DALEY: Right.

21 MR. HOFFMAN: I'm anticipating that Mr. Mazo will  
22 probably be the longer of the two.

23 MR. MAZO: Right.

24 MR. HOFFMAN: So we'd certainly like to try to  
25 finish up these two today.

1 MR. DALEY: 2:00.

2 MR. HOFFMAN: Maybe come back at 2 o'clock?

3 THE COURT: 2 o'clock? Okay. We'll come back at 2  
4 o'clock.

5 MR. HOFFMAN: 2 o'clock.

6 THE COURT: We'll be in recess until 2 o'clock.

7 MR. HOFFMAN: Thank you, Judge.

8 (Off the record for a short break, after which the  
9 following proceedings were had:)

10 MR. MAZO: Your Honor, we need to bring an issue to  
11 your attention and ask you in terms of what evidence  
12 we're going to bring in at this point in time.

13 THE COURT: Okay.

14 MR. MAZO: Ken, you want to -- I'll do it.

15 Your Honor, for the record, we want to introduce in  
16 this phase of the proceeding a limited testimony as to  
17 the Colony paid more for its electric when it was  
18 individually residentially metered than it did when it  
19 was commercially metered. We don't want to go into the  
20 amounts, we don't want to go into any of it. We just  
21 want to have it in the record that they paid more than  
22 that rate. Whether there's an entitlement to a refund or  
23 not is for the Court to decide.

24 I think the argument on the other side at this point  
25 is that Judge Clark's bifurcated order kind of limits us



1 from putting it in. Is that the position?

2 MR. HOFFMAN: Your Honor, our position is, and I  
3 think counsel for the Public Service Commission concurs  
4 with us on this point, is that when we went through the  
5 pending motions for summary final order, once those  
6 motions were denied for the reasons that Mr. Menton went  
7 into in the last phase of that hearing before Judge  
8 Clark, we decided that we would bifurcate the hearing  
9 into a liability phase of the hearing and into a damages  
10 phase of the hearing.

11 And what we decided was that phase one of the  
12 hearing, which is I'm calling why we're here today phase  
13 one, would focus on the factual and legal issues  
14 concerning whether Colony Beach is entitled to a refund  
15 and we would not focus on the numbers and the  
16 calculations of potential refunds. And so we have not  
17 prepared our witnesses to address the numbers in this  
18 case, to address higher or lower bills. We have not --  
19 we have not prepared to cross-examine on rate- and  
20 refund-related issues as they concern to the potential  
21 level of the refund.

22 We think that it is clear, and I thought that we had  
23 an understanding on this, that this phase of the hearing  
24 would focus only on the potential liability of FPL under  
25 the applicable statutes, rules, and PSC orders for a

1 potential refund. And if Your Honor were to find that --  
2 or to recommend that Colony Beach was entitled to a  
3 refund and Your Honor were to find that the PSC rules  
4 contemplate the nature of the refund sought, we then go  
5 to phase two of the hearing and we present the testimony  
6 and the -- probably including opinion testimony  
7 addressing the potential refund amount.

8 THE COURT: Why do we need to get into that at this  
9 stage?

10 MR. MAZO: Your Honor, we might not. And the only  
11 question was that based on what our discussions were that  
12 if the Court rules that the Colony was entitled to be  
13 master metered and serviced under the commercial rate,  
14 that's one ruling. But if there's no evidence in the  
15 record that that commercial rate was a lower rate, then  
16 how does the Court determine that a refund is due just  
17 because of master metering.

18 All we wanted to have in the record -- we don't want  
19 to go into any of the numbers, we don't want to go into  
20 the -- if there was any amount, how that would --  
21 calculation, because there were some issues with that.  
22 All we wanted to have in the record was that the Colony  
23 paid more under that residential rate for those years  
24 than it did under the commercial. And if the Court  
25 doesn't need that at this point, that's fine, and we'll

1 go forward.

2 THE COURT: I mean, I guess I've -- I've been  
3 assuming -- I mean, maybe I was wrong in assuming this,  
4 but we wouldn't be here if, you know, we weren't talking  
5 about that kind of a deal. I mean, if they had been  
6 paying more than --

7 MR. HOFFMAN: We agree, Your Honor.

8 MR. MAZO: We asked for a stipulation. I'm sorry.  
9 I didn't mean to interrupt you.

10 MR. HOFFMAN: And we have committed to the obvious  
11 to Mr. Daley, which was by not putting in evidence of  
12 that nature they would not see a post hearing brief from  
13 FP & L requesting that you dismiss their case for lack of  
14 evidence. We just think it's clear that all of the  
15 potential numbers and potential refund calculations and  
16 whether, you know, the specifics on whether bills would  
17 have been higher or lower in a specific year is a whole  
18 host of questions that remain potentially subject to your  
19 review on another day but don't need to be addressed in  
20 this hearing.

21 MR. DALEY: Judge, if I just might add I think that  
22 -- I think Mr. Mazo's concern is that if the Court, and I  
23 think this might have been the question, if the Court  
24 finds that Colony Beach should have been master metered,  
25 is there a chance that it would somehow not send it to

1 the second phase for refund calculation, which was  
2 properly -- or was bifurcated by Judge Clark and we  
3 agreed to certainly. And I think, you know, that may be  
4 the question right there. I mean, I don't know how to --

5 MR. MENTON: And if I can chime in, Your Honor, I  
6 don't think there's any question that if you make that  
7 determination we're going to be into a phase two  
8 proceeding. And the evidence -- they may have evidence  
9 as to what it is, and we may have evidence as to what it  
10 is, but we just haven't focused on all of those issues at  
11 this point in time is our concern.

12 THE COURT: It seems to me if I did find for them I  
13 mean the recommendation would be, you know, well, they  
14 should have been master metered and are entitled to a  
15 refund to be determined in a future proceeding or a  
16 refund, if any.

17 MR. HOFFMAN: Yes, sir. That's exactly what we had  
18 in mind.

19 MR. MAZO: Thank you. Then we're fine.

20 MR. DALEY: I think that answers that particular  
21 question.

22 MR. HOFFMAN: Thank you, Your Honor.

23 THE COURT: Ready for your next witness?

24 MR. DALEY: Yes, Judge. Tom Saxon.

25 MR. MENTON: I'm sorry. Before we get into this,

1       this is one witness I think that we are going to have  
2       some argument over. We discussed this outside a little  
3       bit earlier. At this point I'm not sure exactly what  
4       this witness is going to be testifying to, but I want it  
5       to be clear up front that we do object to his testimony.  
6       We have taken his deposition. We took it last week or  
7       something like that. There were a couple of different  
8       areas that he testified to. I'm not sure which, if any,  
9       we're going to get into today.

10       One of the things I think that, as we understand it,  
11       that he's going to be offering testimony on is a meeting  
12       that may have taken place. When we took his deposition,  
13       we asked him the areas that he was going to testify to.  
14       That was not one of the areas that he identified to us in  
15       his deposition that he would be talking about. So we are  
16       -- we believe we're prejudiced because that was not  
17       disclosed in his deposition that that was an area he was  
18       going to be discussing today. So if that's -- that's one  
19       issue. Then there's an issue that he has done with the  
20       report. I don't know whether you're going to get into  
21       that or not.

22       MR. DALEY: All right, Judge. I think I can answer  
23       -- let me try to answer both of those. The second one  
24       first is that there was a report, and that certainly  
25       could be the potential for some debate here, and I know

1           that the objections would be there. We are not going to  
2           enter into that testimony here, so that eliminates a lot  
3           of it.

4           MR. MENTON: I'm sorry. What did you say, Bernie?

5           MR. DALEY: Not entering into the report.

6           MR. MENTON: You're not going to?

7           MR. DALEY: No. No. We're not going to. So that's  
8           -- and that probably would be the more lengthy. I think  
9           on the first question I was also -- we did it  
10          telephonically, but I was in Tampa or St. Petersburg when  
11          we had that discussion. Now, I'll say that what happened  
12          was there was a side discussion over whether other  
13          properties might be involved and some other questions  
14          that came up. And during that discussion, I think --  
15          well, I think at some point he said he would not be  
16          testifying on whatever we had discussed. Whatever that  
17          question was they're objecting to at the moment. His  
18          testimony on his presence in the meeting was previously  
19          disclosed in Mr. Mazo's testimony at a deposition that I  
20          think Mr. Hoffman took. So there was notice as to his  
21          potential testimony. He was always listed as a witness.

22          And I think there could have been some legitimate  
23          confusion over the fact that he was going to testify on  
24          the report that he had prepared, but various questions  
25          have come up on his status as an expert and so on. But

1       certainly we would -- we just don't want to get into that  
2       right now. I think it's better -- I think some of those  
3       issues have already been covered for you.

4           MR. MENTON: Judge, maybe I can shortcut this. Our  
5       concern is that we're not sure exactly what he's going to  
6       say now because it wasn't an issue that we found out  
7       about in his deposition. If all he's going to say is to  
8       reiterate the version of the meeting that Mr. Mazo has  
9       already given, we know he's going to testify about it  
10      later, you're going to hear from the FPL people that were  
11      involved, if that's all he's going to do, then we think  
12      it's duplicative and unnecessary. But if he wants to put  
13      it on, then that's fine.

14           If he starts getting into a different version than  
15      we haven't heard before, that's what we're concerned  
16      about because we don't know at this point what's coming.  
17      So I just wanted to make sure that that was clear up  
18      front. If it's simply reiterating what Mr. Mazo has  
19      already disclosed has, you know, took place in the  
20      meeting, we can live with that.

21           THE COURT: All right.

22           MR. DALEY: And I do think -- I quickly come in and  
23      add that, from what I understand, that testimony is going  
24      to be pretty much corroborated and pretty limited.

25           MR. MENTON: Okay.

1 MR. DALEY: You know, if that's --

2 THE COURT: That's what I was going to say if it  
3 doesn't corroborate it may actually help you.

4 MR. MENTON: Right. Or if it comes up to --

5 MR. DALEY: Looking into my crystal ball, I'm doing  
6 the best I can.

7 MR. MENTON: And if there's an issue that comes up  
8 that I believe is going to be different or that we  
9 haven't prepared for, I'll let you know, Your Honor.

10 THE COURT: I still have to swear him.

11 THEREUPON,

12 TOM SAXON

13 was adduced as the witness herein, and being first duly sworn  
14 on oath by the Court was questioned and stated as follows:

15 DIRECT EXAMINATION

16 BY MR. DALEY:

17 Q. Okay. Would you state your name for the record?

18 A. Tom Saxon.

19 Q. Okay. And what's your address? Where do you  
20 reside?

21 A. 14109 North Bayshore Drive, Madeira Beach, Florida.

22 Q. All right. And your occupation? Where do you work?

23 A. I work currently with the federal government at Bay  
24 Pines Veteran's Administration.

25 Q. Okay. The -- and previous to that, just generally



1 you've worked where?

2 A. Worked at Florida Power Corporation for five years.

3 Q. Okay.

4 A. Spent a decade in the aerospace and defense industry  
5 before that.

6 Q. All right. Did you work on the -- did you work with  
7 Mr. Mazo for Mr. Mazo in connection with this particular case  
8 here?

9 A. Yes.

10 Q. All right. The Colony.

11 Would you take us -- well, from what time period did  
12 you work? Was it back to -- what year? Do you remember?

13 A. For Florida Power Corp.?

14 Q. No.

15 A. The Colony?

16 Q. Just the Colony.

17 A. Mr. Mazo called me concerning a meeting and some  
18 information associated with the Colony, and that was a couple  
19 of years ago, it seems like.

20 Q. Okay. And your effort was to -- along with him to  
21 convince Florida Power to -- Florida Power and Light, I'm  
22 sorry, to change the meters?

23 A. Yes.

24 Q. Change the metering?

25 A. Yes.

1           Q.    And did you -- did you attend any meetings early on  
2 here on this particular subject?

3           A.    Yes.   With Florida Power and Light and Mr. Mazo and  
4 a couple of representatives.

5           Q.    Okay.

6           A.    Down at one of their stations.

7           Q.    Okay.   So it was one meeting?

8           A.    Yes.

9           Q.    Okay.   And that particular meeting, who else was  
10 there from Florida Power and Light?   Do you remember?

11          A.    There was two gentlemen.   Specifically, I don't  
12 recall the gentleman's name.

13          Q.    Okay.   And your recollection of that meeting, go  
14 ahead and give us your recollection of that meeting.

15          A.    Basically, we went down there and talked about the  
16 master metering of the Colony and the fact that it was a  
17 hotel and that the representative from Florida Power and  
18 Light had been out to the site and agreed that it was a hotel  
19 and that it should be master metered.   The problem at that  
20 point, as I recall, is that he was unable to make that  
21 independent decision and needed to discuss it with some  
22 higher-ups because of the impact that --

23          Q.    Okay.   So it wasn't a -- it wasn't a decision he  
24 thought was a final decision?   It was just a discussion  
25 possibly to lead to that other point?

1           A.     Correct.

2           Q.     And that's all you knew?  You didn't go to any other  
3 meetings involved?

4           A.     No.

5           Q.     Okay.  And so to the best of your recollection,  
6 then, your position or Mr. Mazo's and your position was it  
7 could be metered, eligible to be metered.  And then the  
8 position -- were the position -- or was the position of both  
9 FP & L employees pretty identical, or were they in the  
10 same --

11          A.     Yes.

12          Q.     Okay.

13          A.     Everyone -- everyone agreed that this was, in fact,  
14 a property that had the hotel characteristics and was a  
15 hotel.  It had a hotel sign on it.

16          Q.     Okay.  And you don't recall the names of the FP & L  
17 employees who were at that meeting?

18          A.     If I heard them, I might recall, but I don't recall  
19 right off the bat.

20          Q.     Was -- Jim Guzman, does that ring a bell?

21          A.     Yeah, Jim Guzman rings a bell.

22          Q.     Yeah.  And Mr. Bauer, Greg Bauer?  Does that -- if  
23 you don't recall, you don't recall?

24          A.     Certainly Guzman, but I don't recall the Bauer.

25          Q.     You don't recall?

1           A.     (Shakes head negatively.)

2           MR. DALEY:   Okay.   Fair enough.   That's all the  
3           questions I've got.

4                               CROSS-EXAMINATION

5           BY MR. MENTON:

6           Q.     Good afternoon, Mr. Saxon.   We met by telephone the  
7           other day.   I'm Steve Menton on behalf of FPL.   I just have a  
8           couple of questions to follow up.

9                       Your involvement in this case, was that prompted by  
10          Mr. Mazo calling you and asking you to go down with him to  
11          this meeting?   Is that correct?

12          A.     That's correct.

13          Q.     At that point in time Mr. Mazo was already in the  
14          process of trying to figure out a way to master meter the  
15          Colony; correct?

16          A.     That is correct.

17          Q.     Okay.   And at the time that you first met with  
18          Mr. Mazo regarding this, did you discuss with him the  
19          situation at the Colony and how they were metered at that  
20          point in time?

21          A.     Yes.

22          Q.     Okay.   Did Mr. Mazo mention to you that the Colony  
23          had previously requested to be master metered?

24          A.     Yes.

25          Q.     Okay.   So at the time of this initial meeting

1 Mr. Mazo knew that there was a request that had been made 10  
2 years earlier or so?

3 A. I didn't discuss that portion of it, the fact that  
4 they had made a request.

5 Q. Okay. Did Mr. Mazo indicate to you that at some  
6 point there might be a claim for refunds that would be sought  
7 against FPL?

8 A. No.

9 Q. Okay. Did you subsequently -- well, strike that.  
10 Did you disclose to the FPL representatives at this  
11 meeting that you attended that a representative of the Colony  
12 had previously requested several years earlier to be master  
13 metered?

14 A. No.

15 Q. Okay. You didn't advise them that someone from FPL  
16 had previously denied a request for master metering?

17 A. I didn't -- I didn't have that information.  
18 Whenever I say I didn't -- at that time I didn't have that  
19 information. That wasn't a part of the conversation. The  
20 conversation was basically this is a hotel. It looks like a  
21 hotel, it smells like a hotel, it operates like a hotel, it  
22 must be a hotel.

23 Q. Okay. Do you recall if there was any discussion  
24 during that meeting regarding the Public Service Commission's  
25 efforts to change the master meter rule to delete the

1 time-share requirement?

2 A. No.

3 Q. So you don't think that was discussed at all during  
4 that meeting?

5 A. Not at all during that meeting. In fact, the  
6 primary was changing the bus bars out and some of the methods  
7 of accomplishing that and who would pick up the bus bar cost  
8 associated with setting the primary master meter. Those  
9 types of issues.

10 Q. Did you know that there was a pending rule change  
11 that was going on at the PSC?

12 A. I know that there was some things associated with  
13 time-shares that were going on with the PSC, but I also know  
14 that the rule clearly states in, what is it, 25-6.49 that  
15 hotels can be master metered. And because of my information  
16 associated with Florida Power and those rules, that was --  
17 that was clear.

18 Q. Okay. And were you familiar with the provisions in  
19 the PSC rule as it existed regarding time-shares?

20 A. At that time, no, I'm not -- I'm not familiar with  
21 that specific.

22 Q. Okay. And I'd like you to take a look at what's  
23 been marked as Exhibit 30, which is the PSC order which --  
24 are you familiar with that order? Have you seen that before?

25 A. No.

1           Q.    The order I will represent to you is the PSC's  
2 adoption of amendments to the master meter rule, 25 point --  
3 or 6.049.

4           MR. DALEY: I would object, Your Honor. I don't  
5 think he has any knowledge. He's not testifying to that.  
6 It's pretty limited.

7           MR. MENTON: Your Honor, he just testified a second  
8 ago regarding his understanding of the hotel exemption in  
9 this exact rule.

10          THE WITNESS: No, this actually, sir, is something  
11 to do with time-shares and modification. What I  
12 testified to is the rule states that hotels can be master  
13 metered.

14          BY MR. MENTON:

15          Q.    Okay. And what rule is it that states that?

16          A.    It is that rule.

17          Q.    It is this rule?

18                So you're familiar with this rule?

19          A.    (Shrugs shoulders.)

20          Q.    But you're not familiar with all aspects of it,  
21 you're just familiar with the hotel aspect of it; is that  
22 correct?

23          A.    Primarily, yes, sir.

24          Q.    Okay. So you never looked at the provisions in this  
25 rule regarding time-shares?

1           A.     Never is a big term, sir. I am not intimately  
2 familiar with that change other than the familiarity of the  
3 Public Service Commission was embracing the concept of  
4 allowing time-shares to be master metered.

5           Q.     Okay. And you were aware that Mr. Mazo was actively  
6 involved in that docket before the PSC seeking a change in  
7 the PSC rule regarding time-shares; correct?

8           A.     At what point?

9           Q.     At the point in time that you went to meet with the  
10 FPL people, Mr. Mazo had already submitted comments in  
11 connection with the time-share rule?

12          A.     I don't recall whether or not I was familiar with  
13 that before or after the meeting.

14               MR. DALEY: Judge, the only reason I'm going to  
15 interrupt is I don't think even though -- I think it's  
16 beyond the scope of the direct examination. That's my  
17 objection. And, you know, with all due respect, I just  
18 think that it's beyond the scope.

19               MR. MENTON: Well, and, Your Honor, the reason why  
20 I'm getting into this is because he's discussing a  
21 meeting that took place in February of 1997. There is  
22 going to be testimony in the form of Mr. Bauer's  
23 deposition and from Mr. Guzman tomorrow, from the FPL  
24 representatives, who are going to give you their version  
25 of it.



1           And their version of it is that the meeting and the  
2           efforts that were made on behalf of Colony to convert  
3           from individual meters to master meters were done solely  
4           and exclusively because of the changes that were being  
5           made to the time-share rule by the Public Service  
6           Commission. And so we're going to -- this is one of  
7           these areas where we're going to have a little bit of  
8           difference.

9           What I want to make sure is to see from this witness  
10          whether -- and Mr. Mazo is going to verify that he was  
11          involved in that rulemaking docket, which I referenced in  
12          my opening statement began in 1996, continued on into  
13          1997, was approved -- the rule changes in Exhibit 30 were  
14          approved by the Commission in an agenda conference in  
15          January of 1997, and the Commission issued the order in  
16          March, right in the middle of all of this discussion that  
17          was going on between the Colony and FPL people.

18          And so I just want to get this witness' recollection  
19          of any knowledge regarding the time-share provision,  
20          which is in the exact rule that he's already testified so  
21          clearly about with respect to hotels.

22          MR. DALEY: I still don't think he was directly --  
23          was asked directly by me.

24          THE COURT: I'm still not -- yeah, I'm still not  
25          sure, Mr. Menton, it's within the scope of the direct.

1 MR. MENTON: Okay.

2 THE COURT: I mean, I think you can ask him -- you  
3 know, if it came up at the meeting. I mean, if it was  
4 discussed at this meeting. All I heard was a discussion  
5 of what actually happened at the meeting, not any  
6 preparations he may have made.

7 MR. MENTON: I understand, Your Honor. Thank you.

8 BY MR. MENTON:

9 Q. Did you ever have a subsequent conversation with any  
10 representative of FPL with respect to the conversion of the  
11 Colony?

12 A. No.

13 Q. Did you ever have -- strike that.

14 After the meeting that you had in February of '97,  
15 what was your next involvement? Did you have any further  
16 involvement in the course of the next year with respect to  
17 the conversion of the Colony?

18 A. No.

19 Q. Did you have any further discussions with Mr. Mazo  
20 regarding the Colony?

21 A. I think there was some passing discussions but  
22 nothing that was in depth that I recall any specifics on  
23 other than --

24 Q. Did Mr. Mazo indicate to you that he would be  
25 seeking a refund against FPL?

1 MR. DALEY: I would object also, Your Honor. I just  
2 think it's beyond really.

3 THE COURT: Sustained. It's outside the scope.

4 MR. MENTON: Okay. Thank you, Your Honor.

5 MR. DALEY: No further questions, Your Honor.

6 THE COURT: Thank you, sir.

7 MR. DALEY: Your Honor, could I ask for five  
8 minutes? In all that beforehand I forgot to go down the  
9 hall to the rest rooms.

10 THE COURT: That's fine.

11 MR. DALEY: Thanks. I appreciate it.

12 (Off the record for a short break, after which the  
13 following proceedings were had:)

14 MR. DALEY: Okay. Your Honor, I think we're ready  
15 to move on, and we would call Marc Mazo to the stand.

16 THEREUPON,

17 MARC MAZO  
18 was adduced as the witness herein, and being first duly sworn  
19 on oath by the Court was questioned and stated as follows:

20 DIRECT EXAMINATION

21 BY MR. DALEY:

22 Q. Would you state your name.

23 A. Marc Mazo.

24 Q. And your address?

25 A. 14252 Puffin, P-u-f-f-i-n, Court in Clearwater,

1 Florida.

2 Q. All right. And your occupation?

3 A. I'm a utility telecommunications consultant/rate  
4 analyst.

5 Q. Okay. And how long have you done that?

6 A. Approximately the last 10 years.

7 Q. And under which -- what company is that for?

8 A. Power Check.

9 Q. Okay. And who owns that?

10 A. I do.

11 Q. You do?

12 Okay. So describe what your -- what your work  
13 involves.

14 A. Power Check started around 1990, '91 based on the  
15 idea that you can study the utility and telecommunications  
16 rates and structures and find savings, because somebody  
17 somewhere came up with the fact and recognized that there was  
18 some overbilling issues, there were some incorrect charges,  
19 inadvertent charges. In telephone sometimes there's some  
20 slamming, other things like that. And that there were  
21 savings to be found for customers and businesses. That's  
22 where it started.

23 Q. Okay. So what is the -- what is the term "rate  
24 analyst" or "rate consultant?" How --

25 A. Well, part of this starting the business got some

1 seminars and studies from different people that worked at  
2 utility companies or water companies or telephone companies,  
3 and basically they trained you in how to read the bills and  
4 how to look at the rates and to look at tariffs, how to trace  
5 it all back and decide whether or not a company could be  
6 better off on a better rate than it was being charged. A lot  
7 of that is telephone. Some of it is electric. Some of it is  
8 in water and sewer.

9 Q. So if you -- so the general job, then, would be if  
10 I'm a customer you would -- if I agreed to have you work for  
11 me, you would try to find savings in those particular areas?

12 A. Generally.

13 Q. Generally?

14 A. Generally, that's true.

15 Q. All right. And tell -- tell us how you started in  
16 that. What -- you said 10 years?

17 A. Well, I think I -- I was kind of semi-retired in  
18 Florida, and my father, well, this looks like an interesting  
19 idea, you can consult with businesses and save them money;  
20 it's a win-win situation, why don't you look at it. I  
21 explored it, did some communications with it, and I think  
22 took a class with a company that they did kind of a training.  
23 They trained you in reading bills and interpreting them and  
24 how that's done and where to look and how to check it. They  
25 gave you numbers and names of the public service commissions

1 around the country. This really trained you where to go and  
2 what to look at, what to focus on.

3 Q. Okay.

4 A. And that's how it started.

5 Q. So who was your first client, or do you remember?

6 A. Actually, the Serrotta Beach Resort (phonetic), St.  
7 Pete Beach. It was a -- actually, we found that -- they felt  
8 they were being overbilled for water, and they asked us to  
9 look at it. And what happened with that was we ended up  
10 lobbying with the Pinellas County Board of County  
11 Commissioners to actually have them look at that rate and say  
12 that it was wrong. There was a disparity between one hotel  
13 and the other. So that was the first client.

14 Q. Okay. What -- and then it went from there?

15 A. (Nods head affirmatively.)

16 Q. And what do you think the majority of your clientele  
17 has been?

18 A. Well, it's been across the board. It's been a lot  
19 of it resorts and hotels and condominiums. A cross section.  
20 My background was in hotel and restaurant management, from  
21 Florida State a degree in hotel/restaurant management. So  
22 that's been a lot of it. We've done shopping malls, we've  
23 done freight companies, school districts. We have a couple  
24 of school districts as clients right now. So it's kind of  
25 been a -- carpet companies. I mean, it's been a cross.

1 Companies that use telephone, electric, water and sewer and  
2 garbage.

3 Q. Right.

4 A. Those are a lot of people.

5 Q. A lot of folks.

6 Mostly in the state of Florida, then?

7 A. Not necessarily.

8 Q. Okay.

9 A. It's been Florida and other states.

10 Q. All right. And what do you have to -- what sort of  
11 materials do you have to become familiar with in working with  
12 the utility or --

13 A. Well, you look at the bills. We start -- when you  
14 start those seminars, you start with the customers' bills and  
15 you look at the property. So you do -- you kind of tie it  
16 together how it operates, what the property is, what the bill  
17 looks like, and then you trace back with the bill. You may  
18 have to go to the tariffs that control that bill, how that  
19 bill is actually set up. You may have to go to rules that  
20 control the tariffs. You may have to look at all these  
21 things and put them together and try to come up with whether  
22 or not the billing is what it should be.

23 Q. Okay. So what other training -- if you had to look  
24 at your training, what seminars and --

25 A. I've been to -- been to seminars, one or two

1 seminars with GTE. I've been to a couple with GTE. It was a  
2 seminar that was about hardware, what's right, what's not,  
3 what's more expensive, what isn't and also about -- about the  
4 rates, what's happening in the telephone industry. I've been  
5 to some seminars with Florida Power. The seminars with  
6 Florida Power, my recollection was -- it had to do with load  
7 calculations, rate -- I think it was power factors. Some  
8 issues like that.

9 I attended a seminar, kind of an update seminar that  
10 a company did in Jacksonville that kind of reviewed the  
11 utility and telecommunications auditing, brought in some  
12 offices around the country and just kind of shared  
13 information as to what you're finding, you know, what kind of  
14 things are you finding and that kind of thing.

15 Q. Okay. And, of course, I guess in actually working  
16 on various projects and clients along the way then that would  
17 be probably a cumulative experience level, I'm sure?

18 A. Well, as happens with a lot of things, as you go  
19 through working with clients sometimes you're learning from  
20 the people that you meet. You're meeting with your clients.  
21 And the Serrotta, the first account, they wanted to look at  
22 water. So you start studying it and you start researching,  
23 and, oh, I didn't know that when I looked at it.

24 Q. Right.

25 A. But I found it out. With the -- with some of the



1 other accounts it was something different. Started with Sand  
2 Pebble in 1992, and that's what actually led to the master  
3 metering scenario.

4 Q. And how -- and go ahead and take us through that,  
5 the master metering issue and how you became involved in it  
6 and familiar with it and so on.

7 A. Well, one of our first accounts at the time was the  
8 Sand Pebble. And the Sand Pebble was a time-share resort on  
9 -- oh, shoot. It's Treasure Island, Florida is where the  
10 Sand Pebble is. And we did some rate analysis for them. We  
11 found them some telephone savings, we got some telephone  
12 refunds for them, we got them some reduced rates, and we  
13 found some sewer savings for them. And we looked at the way  
14 they were billed, and we found out that Sand Pebble was a  
15 49-unit time-share in Treasure Island, and it was receiving  
16 49 individual bills. So at the time I had a partner, and we  
17 went over to Florida Power. This was with Florida Power and  
18 not Florida Power and Light.

19 Q. What year was this about?

20 A. It's '91, '92.

21 Q. Okay.

22 A. Went into '93 some.

23 And we went over to Florida Power, and basically we  
24 looked at the tariffs and we said, look, they've got these 49  
25 individual rates, individual bills, and they're paying \$8,

1 Florida Power's rate was the highest in residential customer  
2 charge, and they're paying this every month, there's got to  
3 be something we can do. We went to Florida Power, and we  
4 basically looked at it and said, hey, can we consolidate this  
5 and do one meter. There's one transformer out here, do one  
6 meter. They didn't know.

7 And so they were very nice about it. They said,  
8 We'll look at it. They researched it, and they came back,  
9 and they pointed us in the right direction. And they said,  
10 Here's the Florida Administrative Code, and here's the master  
11 -- excuse me, it's not the master meter rule. Here's the  
12 metering rule.

13 Q. Um-hum.

14 A. And it says the time-shares that were built after  
15 1981 could not be master metered. So at that point we looked  
16 at it and we said, well, let's do a little more research. So  
17 the whole issue, and this is really the genesis of this issue  
18 that's come about, we talked to the Public Service  
19 Commission. I made calls to David Wheeler at the Public  
20 Service Commission and basically asked him and said, What  
21 about this, Florida Power says that you can't do this, and he  
22 gave me the whole history.

23 And the whole history was that conservation was a  
24 big issue in -- in '79, '80 there used to be lines at the gas  
25 station, and the Commission held -- there was a -- there was

1 a docket that included the Veranda Beach Resort over here on  
2 Longboat Key where they had gone in and they'd asked to be  
3 master metered and the Commission denied it in a three-to-two  
4 vote. So David Wheeler provided me with all the  
5 documentation or most of it. I can't say all but some of the  
6 documentation and information saying that it was a  
7 three-to-two vote and I think this could -- we just kind of  
8 discussed it.

9 The input that I got was, hey, it's not really  
10 practical. But the -- what they were saying at the time was  
11 that conservationwise on time-share if you were individually  
12 metered you're more likely to conserve energy because the  
13 owners are supposed to get the bills.

14 Q. Right.

15 A. Well, David acknowledged at that time in that  
16 time-share environment the owners didn't get the bills  
17 because, as it was pointed out earlier today, in the  
18 time-share situation you have a number of owners for the  
19 weeks. So they had a multitude of owners. The management  
20 company that ran the place got the bills. The owners never  
21 saw them.

22 So we took it from there and -- I took it from  
23 there, basically, and gathered a few other clients. Tried to  
24 find the clients saying if this is going to be worth my while  
25 I need some additional clients to go pursue this. Looked at

1 the rules, talked to various people to try to see if there  
2 was anything that we could do to change this thing.

3 I met -- that -- that continued. I met with people  
4 at Marriott. I met with people at Vistanta (phonetic.) I  
5 met with somebody at Florida Power and basically asked them  
6 if we -- if we go pursue this amendment to the rule, will you  
7 oppose it or not, and basically they said they would take a  
8 neutral position one way or the other. They wouldn't do it.

9 So that was the genesis of our involvement. And  
10 then at some point in time Vistanta decided after we met with  
11 them that they would take it upon themselves to file the  
12 amendment or file to -- a petition with the Commission to  
13 amend the rule.

14 Q. And that was on what subject? That was on --

15 A. That was on the time-shares.

16 Q. Time-shares? Okay.

17 A. Time-share only.

18 Q. All right.

19 A. That they would file the petition to amend the rule  
20 to allow time-shares to be master metered and serviced under  
21 the commercial rates.

22 Q. Okay.

23 A. They were under the high residential rates. They  
24 wanted them switched. So Vistanta filed the petition  
25 unbeknownst to me at the time, and it was sometime after that

1 I got word that it had been filed, and I filed the response  
2 that was alluded to earlier. There was a response by Power  
3 Check that went in to the Commission about that docket.

4 Q. Okay. Now, and then on the -- I'm sorry.

5 Take me, then, further on the master metering work  
6 beyond that particular docket. How did it develop?

7 A. Well, the docket took a long time. And in that  
8 docket -- it came about I think over a year, a year and a  
9 half. I'm not sure of the time frame. But the time the  
10 petition was filed it was probably 1990 -- the end of '96,  
11 '97, I think. '97 was when -- March 23rd was when the actual  
12 rule was approved by the Commission or something. I mean,  
13 it's in that time frame when the Commission approved the  
14 master metering rule.

15 Part of that -- we had another client at that time  
16 that was not a time-share and -- actually, we had a number of  
17 clients. We had residential condominium clients, we had what  
18 has been bandied about today as resort condominium clients,  
19 and we had hotel clients. We had a number of them. And we  
20 had time-share clients.

21 Time-share rule to us -- I mean, it was pretty clear  
22 from what was told to us you can't -- you cannot master meter  
23 the time-shares built after '81. That's what the rule said.  
24 The rule also said that there's an exception from the  
25 individual meter requirement, and that says that hotels and

1 motels and similar facilities are excepted from the master  
2 meter -- from the individual meter requirement and are  
3 allowed to take service under the master meter commercial  
4 rates. So we looked at our clients again -- in trying to  
5 save money, we looked at them and said, well, this facility  
6 is very similar to a hotel and motel and why shouldn't they  
7 be involved in this.

8 So in the petition -- the response, actually, that  
9 Power Check filed with the time-share rule, spoke to David  
10 Wheeler about it, and I said, I'm going to file this, but I'm  
11 going to ask for resort condos, because the discussion that  
12 took place was, look, we believe -- Power Check believes  
13 resort condos operate as similar facilities and should be  
14 excepted from the rule, that they shouldn't have to be. And  
15 there was a discussion of, well, we don't -- what is that  
16 similar facility, it's kind of nebulous. And so we wanted  
17 the Commission to go ahead and make that clear determination  
18 that it went with time-shares and changes. So we filed it,  
19 but the response we got was, We don't want to deal with that  
20 right now. This case -- I got in the middle of the case and  
21 -- again, only talking to Mr. Wheeler, not -- I can't speak  
22 for the Commission itself.

23 Q. Right. I understand.

24 A. I don't want to -- that as a staff member on the  
25 case they've had workshops, they had a number of things

1 going, and they didn't want to deal with the resort  
2 condominium issue at that time. So my understanding and my  
3 recollection of the rule, the order, was that they approved  
4 time-shares and they really didn't even deal with resort  
5 condos in that. They just kind of left that part aside at  
6 that time.

7 Q. Now -- okay. And so you I think were pretty heavily  
8 involved in the metering issue, the master metering issue?

9 A. Absolutely. We've done not only -- with a number of  
10 properties we've filed petitions, as we heard earlier, but  
11 been integrally involved in actual conversions and how to  
12 convert and what's the best way to do it, most  
13 cost-effective, and that type of thing.

14 Q. What is the -- I mean, when there is a cost of -- is  
15 there a cost of conversion, obviously, for the client?

16 A. Well, the issue that seems to come up -- I've dealt  
17 with a number of different power companies across the state.  
18 And the amended rule or the new rule that got approved in '97  
19 actually laid out some parameters for those facilities that  
20 chose to convert to master metering. And it kind of laid out  
21 -- in some terms how the cost -- how you come up with those  
22 costs. In other words, who has to pay. They didn't want the  
23 rate payers to pick up all of the costs, so they kind of laid  
24 it out. If you're going to convert, there's certain costs  
25 that you have to pick up to do it.

1           Q.    And that cost is -- just so I understand this, that  
2 cost is then to take the meters out? It costs money to take  
3 the meters out of the --

4           A.    Well, again, it's a little more complex, because  
5 when you're converting from individual meters you've got all  
6 these individual meters up here on these banks, and what you  
7 have to do in that scenario is you close off those meters,  
8 you pop them off, and you close them out. And in the  
9 transformer that services those meters you have to go in and  
10 put in what they call CTs. And those CTs -- that's the  
11 metering device, the CT metering device, that actually  
12 measures the pole, so the electric at that juncture. And  
13 then you also put in a pole or a pedestal with a meter can.

14               And what happens is you've got to split  
15 jurisdiction. The power companies will do part of that work,  
16 and the other part of that work is outside electrician. So  
17 all the work in the transformer belongs to the power company  
18 because that's theirs. All the work with the individual  
19 meters that are on the wall, those were the power company's.  
20 They don't want anybody else to deal with them, so they deal  
21 with that. But the outside electrician has to put in the  
22 pedestal, they have to get the meter can, and then they have  
23 to run a conduit from the meter can into the transformer. So  
24 all that's coordinated.

25               And then what you do is the power company comes out



1 with the other electrician, and the power company will shut  
2 down the transformer, and they will then put in the CTs, and  
3 they'll run the wire through the conduit that the electrician  
4 put in in the meter can. They'll put in the new meter and  
5 wire that. Then over here, the power company's people take  
6 the meters off. And as they take them off, the outside  
7 electrician closes them out. So it's a split between -- so  
8 there's a lot of coordination in that -- in how you do it.

9 Q. Right. And you do -- and that's part of your job is  
10 to coordinate all that with the client to make sure that's  
11 done?

12 A. Absolutely. And one of the things that we've had  
13 all along with this issue from different power companies is  
14 we've had different power companies interpret the portion of  
15 the charge, of what the charge is for this conversion  
16 differently. And in dealing with different -- with different  
17 properties, in the first case, the one we did with Holiday  
18 Villas, the price came in at one level, and it changed four  
19 times. And it's based on they wanted to charge X and we  
20 said, well, no, this shouldn't be and we'd keep talking about  
21 it. It took us three or four months just to discuss that  
22 itself. And that happens -- I've done -- I've been involved  
23 in, I don't know, a dozen or so conversions, and each case is  
24 a little different. Each site is different as to what's  
25 required.

1 Q. So you've been -- you estimated about a dozen actual  
2 conversions or in that area?

3 A. About that. Maybe 10 so far.

4 Q. Okay. So there's not a standard really? Each power  
5 company deals with it differently?

6 A. Well, we think there's a standard. I think there's  
7 a standard. A power company comes in and talks about what  
8 you should be charged for the conversion, and they want to  
9 charge for the CT meters and metering, and there's certain  
10 questions as to, well, if that's part of the rate that's  
11 already in there, then maybe you shouldn't charge for that.  
12 But if you do this, it's different. Again, there's just  
13 certain interpretations of that, and there were questions  
14 about that.

15 Q. Okay. So your -- your business has been open for 10  
16 years; is that correct?

17 A. Approximately.

18 Q. Okay. And you've been involved with different  
19 businesses and malls and companies and so on basically with  
20 electric, phone, and water? Is that about --

21 A. Sewer.

22 Q. Is that pretty -- okay.

23 A. Sewer. Some computer.

24 Q. Okay.

25 A. Sometimes we've done some computer consulting.

1           Q.    Okay.  And then in -- and then take us to the point  
2           of in this particular case of your work with the Colony.  
3           Just start at the beginning and just tell the Court how that  
4           came about.

5           A.    A friend of mine had the Colony was a client -- the  
6           Colony was a client of theirs.  It was a gentleman in  
7           Sarasota, I believe his name was Max Lowe, had known  
8           Mr. Moulton and made contact.  And he was also in the  
9           business of auditing utility bills, and I got a contact that  
10          basically said, I'd like your help.  I had met him at a --  
11          again, it was through him or an ex-partner of mine, one of  
12          them, where they said, Okay, would you help on this.  You're  
13          familiar with these things, help us out.

14          Q.    Right.

15          A.    And it started with telephones with the Colony, and  
16          then it led into the situation where we looked at the Colony  
17          and said, look, Colony has the same type of situation in the  
18          effect that you've got 232 individual meters for the units,  
19          and the nature of the property that we look at and the  
20          facility is that of a hotel.  Then we look at it and say,  
21          well, this doesn't match.  Under the meter -- under the rule,  
22          there's an exception for a hotel.  We think it should be able  
23          to be master metered and should have been on the commercial  
24          rate.  That's how we got involved.  So once that involvement  
25          took place --

1 Q. You said -- did you say anything on the phone?

2 A. We did some work on the phone. And they may have  
3 gotten some more revenue or some savings or something like  
4 that, but, yeah, we did some business with them on the  
5 phones.

6 Q. Okay.

7 A. Absolutely.

8 Sorry. So we went -- at the time I think  
9 Mr. Moulton I think approved it and said, Hey, you know, help  
10 us out and go for it.

11 Q. That's on the -- I'm sorry. I didn't mean to  
12 interrupt you. That's on the issue of the electric?

13 A. Yeah. I don't remember exactly. I remember coming  
14 in with the telephones.

15 Q. Right.

16 A. I remember that was -- that was how we first -- my  
17 contact with the Colony was the telephones.

18 Q. All right.

19 A. Some conversation or something, one led to the  
20 other. I think it was my ex-partner that indicated, Hey,  
21 they've got 232 meters and what can we do. Because if we put  
22 them together, somehow you can save money. He didn't know  
23 much about the rule, but he said, Can you help. So I said,  
24 Certainly.

25 So basically what I did from there was just looked

1 at the property, take a look at it, look at the rule. And at  
2 that time it was -- in my mind it was pretty clear that the  
3 Colony had the hotel license. I looked at the licenses, I  
4 looked at how it operated, I looked at all these factors. I  
5 reviewed whatever rules -- just the things that I look at to  
6 determine what I think.

7 Q. Well, and I meant which -- you know, which  
8 administrative rule would you -- or other rule would you look  
9 at?

10 A. Well, on -- based on that particular time, we looked  
11 at the administrative rule for the metering. We looked at  
12 the administrative rule, the Department of Business  
13 Regulation -- Business and Professional Regulation. We  
14 looked at Chapter -- one of the things we looked at was  
15 Chapter 509242 of the Florida Statutes that define the  
16 classifications of establishments in Florida. And we looked  
17 at that and looked at it and said, Look, here's the  
18 definition, it meets the definition of hotel, let's go talk  
19 to Florida Power and Light. And that's what we did.

20 Q. Now, I'm sorry. In reaching that determination, you  
21 actually look at the property? You look at how it's  
22 operated?

23 A. Absolutely.

24 Q. And so on?

25 A. Did a site survey, looked at the property, talked to

1 Mr. Moulton, talked to people. I don't remember who all I  
2 talked to, but just basically look at it and determine -- in  
3 some cases you get different facts from it, but you do it  
4 from a site survey so you understand what's going on.

5 Q. Right. Okay. And then where do you go from there?

6 A. Well, we approached Florida Power and Light. I made  
7 a call --

8 Q. How many -- I'm sorry.

9 How many meetings do you think you had with Colony  
10 before you approached Florida Power and Light?

11 A. One.

12 Q. One? Okay.

13 A. One.

14 Q. All right.

15 A. Most all the meetings were after that.

16 Q. Okay.

17 A. That was just like, Okay, I mean Mr. Moulton, he has  
18 a business to run and him saying, If you can do this, we'd  
19 like your help and go ahead.

20 So at that time I had to find out who the person  
21 would be to call at Florida Power and Light. And eventually,  
22 I don't really remember how I found out who it was, it was  
23 Jim Guzman was who my contact was. And I picked up the  
24 phone, introduced myself, told Mr. Guzman what I was working  
25 on, and at that time we basically said that, look, the Colony

1 operates like a hotel, it's licensed as a hotel, we believe  
2 it should be converted to master metering, we'd like FP & L  
3 to do this.

4 Q. Okay. And what was the -- what was the reaction at  
5 that point?

6 A. At that point Mr. Guzman said that he would take a  
7 look at it, talk to -- again, I'm -- the recollection -- my  
8 recollection was he indicated he'd talk to his supervisor,  
9 he'd take a look, and he had -- he would have to go out to  
10 the property to see if it operated like a hotel like I was  
11 saying. And that's -- at that point that was the next step.

12 Q. Okay. And when -- when was this time period?

13 A. The original call -- I'm not specific. I don't have  
14 a note as to when the call was, but the call was probably  
15 sometime February '97 is when that happened. I'd say early  
16 to mid-February of '97.

17 Q. Okay.

18 A. Is when that call happened.

19 Q. Right. And then you were -- and you had actually  
20 started -- when do you think you initially met with the  
21 Colony, with Mr. Moulton and so on?

22 A. Okay. I didn't meet with Mr. Moulton at that time.  
23 I met with Florida Power and Light.

24 Q. Right.

25 A. After the call, I contacted Mr. Guzman again or he

1       contacted me, and we basically agreed on having a meeting at  
2       -- down here in Sarasota at his office where he was  
3       headquartered out of to discuss it, and that was the next  
4       step.

5           Q.     Okay. And so you met in Sarasota.

6                     And who was at that particular meeting?

7           A.     At that meeting was Jim Guzman -- and that was --  
8       the end of February is when that meeting was.

9           Q.     Okay.

10          A.     It was Jim Guzman, it was Greg Bauer, it was Tom  
11       Saxon, and myself.

12          Q.     Okay. And tell -- tell me what the -- how that  
13       meeting went and what the content was.

14          A.     Basically, in the meeting we talked about the rule,  
15       the metering rule. Mr. Bauer got out his -- I had a -- it's  
16       a service operations manual or something that he was  
17       referring to. We discussed the rule. We discussed the fact  
18       that the Colony was -- that we were saying it was a hotel and  
19       it would be converted under the meter exception or the  
20       exception to the rule that hotels are allowed to be master  
21       metered. At that meeting everybody agreed with that premise.

22                     The big issue at that time -- there wasn't really  
23       any dispute. My recollection was that Mr. Guzman had done a  
24       site survey, and they came out and said, Yeah, you're  
25       operating like a hotel, and under the rule there's an



1 exception. The big -- the larger question at that meeting  
2 was how to do the conversion. Mr. Guzman was a service  
3 planner, and I think Mr. Bauer -- I don't remember his title,  
4 but they were involved -- they had never done the conversion  
5 to master meter.

6 So there was a lot of discussion on how, and since I  
7 had done them and Mr. Saxon, I believe, had been familiar  
8 with a couple before, we had a talk about the procedure, how  
9 to do the -- really technically how to go do it, which way to  
10 do it from an engineering standpoint.

11 Also talked about at that meeting were the costs,  
12 how to allocate the costs. They hadn't done this, so they  
13 didn't know how to do it. So there was extensive  
14 discussions. So they pulled out -- I informed them at that  
15 time that there was a proceeding before the Public Service  
16 Commission where the Commission had already at that time  
17 proposed a new rule for the meter rule -- an amendment to the  
18 rule and that that amendment to the rule actually laid out  
19 how the costs should be allocated. And the discussion was at  
20 that time that my belief was this was a great parameter to  
21 use because they've already done -- not done that, but  
22 they've laid this out, these are the costs and it makes  
23 sense, rather than sitting there and arguing, that if we go  
24 by that new proposed rule, it wasn't in effect yet, but if we  
25 go by that rule, then we can allocate the costs.

1 Q. So that rule was about to come into effect?

2 A. Yeah, pretty much. My recollection at that time is  
3 that the Commission -- it had been going through its docket  
4 procedure for a year, a year and a half, and at that time the  
5 Commission -- pretty much people knew it was going to happen.  
6 There wasn't any -- there wasn't any objection to it, and it  
7 was -- but that goes back to the other testimony on that was  
8 the time-share. That was that specific issue that we talked  
9 about time-share.

10 And in this meeting again our position was it was  
11 accepted it didn't need an exception, it didn't need a rule  
12 change, it was a hotel. And, again, there was an acceptance  
13 of that, and so we were discussing this pricing. So I faxed  
14 a copy of that, they didn't have that, and I already had a  
15 copy of that. I faxed a copy, I believe, to Mr. Bauer or  
16 Mr. Guzman. I'm not sure which one. I think -- so that we  
17 could discuss it. And there were a lot of discussions from  
18 that point going forward as to how these costs would be  
19 allocated, and they changed. They changed it a number of  
20 different times.

21 Q. Okay. And so what you -- so your recollection is,  
22 then, of this time period is that you were discussing -- the  
23 only time the time-share came up for the time-share rule was  
24 based on the fact that the time-shares had a -- had a kind of  
25 a conversion formula that was being put together by either

1 the PSC or some of the utilities?

2 A. This part is really clear. And I understand the  
3 positions here today because I've been involved in the case.  
4 But I had done my homework, I had done the research, and it  
5 was my opinion at that time that the Colony was clearly a  
6 hotel and it should be master metered under the hotel rule.  
7 I knew what was happening with time-shares, and I didn't want  
8 anybody -- I felt like we've got a problem, because after my  
9 research, the Colony is not a time-share. Mr. Moulton never  
10 said it was a time-share. It didn't -- I mean, it just  
11 wasn't. And I wasn't going to come into FP & L under a false  
12 assumption that they're a time-share so convert them because  
13 this is what's going to happen. We didn't do that. I can  
14 understand where some of the confusion may have taken place.  
15 But I -- I forwarded memos. There were some documents that  
16 were afterwards. And after the meeting I think in March  
17 sometime I followed up the meeting with some documents.  
18 There was some discussion.

19 Q. Okay. And so let me -- who were most of those --  
20 that correspondence between?

21 A. All my correspondence that I recall was with Jim  
22 Guzman or Greg Bauer. Most -- I don't remember if I talked  
23 to Greg Bauer on the phone or we corresponded, but most of  
24 the correspondences were with Jim Guzman about that.

25 Q. Okay. Well, let me ask you to identify, if you

1 will, and this would be -- this would be stipulated at least  
2 for authenticated -- authentic purposes June 1997, which is  
3 Number 14.

4 MR. DALEY: Your Honor, Number 14.

5 BY MR. DALEY:

6 Q. Can you take a look at that?

7 A. Yes.

8 Q. And identify that?

9 A. This is a document that -- it's a memo that we got  
10 back in production of documents, actually, because I didn't  
11 have a copy that I could find. This came from Florida Power  
12 and Light. It was a document that I had sent to Mr. Guzman.  
13 And, again, this basically confirms -- it says that, "I'd  
14 like to recap where we are regarding the master metering of  
15 the Colony Beach and Tennis Resort." And I say, "First of  
16 all, based on our numerous discussions, it's my understanding  
17 that FP & L has agreed that since the Colony has been and  
18 continues to operate as a hotel that it's allowed under the  
19 old rule to be master metered."

20 In the next paragraph there was a typo. It says,  
21 "Therefore, we do have to wait for the amended version."  
22 It's supposed to be, "Therefore, we do not have to wait for  
23 the amended version of the rule relating to time-share  
24 resorts to take effect to begin the conversion process."  
25 Because it was a hotel.

1           And, again, this memo was just confirming on the  
2 record our conversations that that's what we represented to  
3 FP & L, and that's why we wanted to get the change done.

4           MR. DALEY: Okay. We would like to move for the  
5 admission of that document, Number 14.

6           THE COURT: Any objection to 14?

7           MR. HOFFMAN: If I may have a moment, Your Honor.

8           Your Honor, I don't have any objection to the  
9 admission of this memo as written.

10          THE COURT: I'll show Joint Exhibit 14 admitted.

11          BY MR. DALEY:

12          Q. Now, I'm going to show you the next -- the next memo  
13 is Number 16, I believe. Again, identify this, written 3 --  
14 I'm sorry. 3/27/97. And that -- again, that's Number 16 on  
15 the list. (Hands document.)

16          A. Again, this is a memo that I sent to Jim Guzman. It  
17 looks like it's about eight days after the other memo just  
18 being on the record trying to follow up what our  
19 conversations are and what's taking place. And in this memo  
20 it really confirms what I was talking about earlier. It  
21 talks about after our discussion regarding FP & L's charges  
22 for the cost of conversion, it talks about me checking my  
23 notes from my conversation with Alan Gerrington (phonetic.)  
24 So I go back to there was another conversation with somebody  
25 else at FPL besides Jim Guzman and Greg Bauer. I remember

1 speaking to Alan Gerrington. We were talking about cost,  
2 only on cost. I didn't talk to him about whether it should  
3 be or shouldn't be.

4 And then that first paragraph only talks about the  
5 cost of the conversion and how it should be -- again, there  
6 were a lot of discussions on that. And then in the next  
7 paragraph again in the memo sent to FP & L I'm confirming,  
8 and I say that, "The owner has posed a question that since  
9 the Colony has been operating as a hotel for many years now  
10 and should have been converted long ago to master metering,  
11 would it fall under the same cost of conversion rule." In  
12 other words, again we're having discussions about the costs,  
13 and I think his feeling was, well, maybe we shouldn't have to  
14 pay. And that's where that came from.

15 And then we talked about a couple of other  
16 properties that I was involved in that were time-shares that  
17 were, in fact -- and, actually, as a matter of fact, this --  
18 this was the very first 1981 case. It's Vacation Equities,  
19 Inc., and they were a client of mine, because they were the  
20 first ones that went in '81 when the Commission said no. So  
21 we had White Sands and Veranda as a client. They were  
22 time-shares. And we were working with Mr. Guzman, because,  
23 again, they hadn't done the conversion, and they wanted to  
24 test it -- before we got into the bigger project, we wanted  
25 to test it on a smaller project. Veranda was 40 units or

1 something like that. And so that's what we were looking at.

2 And, as a matter of fact, because of the engineering  
3 with White Sands we determined that it couldn't be done, and  
4 we didn't convert it even though it was allowed under the  
5 rule. But that's where we were also talking about  
6 time-shares, because I had two time-share clients. And  
7 Veranda was a time-share and White Sands was a time-share,  
8 and we were saying we're working with them under the  
9 time-share rule. But I think the letter is pretty clear  
10 we're distinguishing between the Colony and these other  
11 properties. So that's what this letter -- and this letter  
12 talks about, "As discussed, we'd like to begin with the easy  
13 conversion first at the Veranda." And that was Jim Guzman  
14 kind of -- that was his idea originally is what I recall.

15 Q. And those other properties were, in fact,  
16 time-shares?

17 A. The Veranda was a time-share. The Veranda was a  
18 time-share, was individually metered, and they were not  
19 allowed to be master metered until the new rule came in. So  
20 we were going to FP & L on behalf of Veranda and White Sands  
21 saying these are time-shares, and the rule's coming in, we  
22 want to convert them under that rule.

23 Q. Okay.

24 A. But that is a very big distinction between the two.

25 MR. DALEY: Okay. Your Honor, we'd like to move

1           this memorandum for admission. It's Number 16.

2           THE COURT: Any objection to Joint 16?

3           MR. HOFFMAN: No objection, Your Honor.

4           THE COURT: Joint 16 will be admitted.

5           MR. DALEY: Thank you, Judge. I'd like to look at a  
6           couple of other exhibits, if I could dip into your list  
7           there, Judge.

8           THE COURT: That's fine.

9           BY MR. DALEY:

10          Q. Now I'm going to ask you on this -- what I'm going  
11          to ask now will be on Exhibit 15, Stipulated Exhibit 15,  
12          which --

13          THE COURT: It's up here.

14          MR. DALEY: Oh, I'm sorry. That's why I probably  
15          missed it.

16          THE COURT: That's 17 going forward, yeah. I'm just  
17          trying to keep them in order.

18          MR. DALEY: I'm trying to go through the memos.

19          THE COURT: That's 15.

20          MR. DALEY: All right. And these are only what?

21          THE COURT: Actually, I've been sort of putting them  
22          -- as they were admitted --

23          MR. DALEY: Oh, yeah. Oh, that's fine. If I can't  
24          find them --

25          THE COURT: Tell me what you need.



1 MR. DALEY: All right.

2 THE COURT: And I'll give it to you.

3 BY MR. DALEY:

4 Q. I'm going to ask you to identify this. It's a memo  
5 written by you or it looks like it was written by you on  
6 3/26/97, which is 15.

7 A. Okay. This is a memo that again these are part of  
8 the conversations that are going on from that meeting that we  
9 talked about in late February where FP & L had basically  
10 said, We agree you're a hotel, you can convert, how are we  
11 going to do it, what's it going to cost. And they were going  
12 -- my understanding was that Mr. Guzman was going higher up  
13 in Florida Power and Light to try to find out how to do this,  
14 because they hadn't -- and how to price it.

15 Q. Right.

16 A. And there were a lot of memos, and I think here  
17 again it's talking about that because there's an  
18 understanding about how they're going to bill it, what's  
19 going to happen. And I mean that's just what this memo talks  
20 about. It's all about how we're going to price out the  
21 conversion. Because there's some -- there's some  
22 disagreements with Mr. Guzman and myself how to do it, so he  
23 wants to check with FP & L, and that's what's going on at the  
24 time. And it's a memo that I did write and send to him.

25 Q. All right. And then also -- oh, I'm sorry, we

1 already covered that.

2 MR. DALEY: So I'd like to move that into admission.

3 15.

4 MR. HOFFMAN: No objection, Your Honor.

5 THE COURT: I'll show Joint Exhibit 15 admitted.

6 MR. DALEY: Yes.

7 All right. Now -- all right. On -- now, Joint  
8 Exhibit 17. While I look here, let me -- let me -- well  
9 -- Judge, I'm looking for 17. Am I looking in the wrong  
10 place?

11 THE COURT: I think all I have up here is 1 through  
12 16.

13 MR. HOFFMAN: I have an April 17, '97 memo.

14 MR. DALEY: Oh, you have it?

15 MR. HOFFMAN: That's what we have listed as 17.

16 THE COURT: Yeah. All the exhibits were in this  
17 pile.

18 MR. DALEY: Yeah.

19 THE COURT: You should have 17 through whatever over  
20 there.

21 MR. DALEY: Okay. Oh, I've got 17, Your Honor. I  
22 found it.

23 BY MR. DALEY:

24 Q. So can you for us identify that, and that is 17,  
25 which is April 17th?

1           A.    Yeah.  It looks like at this point in time we had --  
2           again, we were working on a couple of projects.  We were  
3           working on three projects at the same time.  It looks like it  
4           says, "I've enclosed a check in payment for the conversion  
5           cost for the Veranda."  And in the second paragraph it says,  
6           "As you're aware, the check is paid under protest because I  
7           believe that the costs associated with the CTs and the new  
8           meter and the wire connecting the meter are included in  
9           FP & L's customer charge under the new rate, and, therefore,  
10          they're not separately recoverable under the rules."  That  
11          was just to -- just to be on the record that I didn't agree  
12          but let's go do this thing.

13          Q.    Right.

14          A.    Let's finish it.  And I did -- I sent that.

15          Q.    And that was still on -- and so that's still on the  
16          cost of conversion issue?

17          A.    All of this -- to my recollection, there are no more  
18          memos in the file that have to do with the hotel issue, the  
19          conversion itself.  The rest of them are all talking about  
20          the costs of the conversion and how to work that out and  
21          things of that nature.

22          Q.    Okay.

23          A.    At that point.  I mean, there's some language that  
24          deals with the refund or the requests, but right now the rest  
25          of the things are about conversion costs.

1 MR. DALEY: Okay. We'd move this for admission, 17.

2 MR. HOFFMAN: No objection.

3 THE COURT: I'll show Joint Exhibit 17 is admitted.

4 MR. DALEY: Joint Exhibit 17. Sorry, Judge.

5 BY MR. DALEY:

6 Q. All right. I'm going to show you what has been  
7 marked as Stipulated Joint Exhibit 18 and ask you to take a  
8 look at that.

9 A. Okay.

10 Q. And let me know what you think. (Hands document.)

11 A. I think that this is -- this is -- Exhibit 18 is  
12 dated November 25th, 1997, and it's from FP & L to me. And  
13 basically Jim Guzman wanted to confirm everything in writing  
14 what we were doing, and this is regarding the Colony, because  
15 at that point my recollection is Veranda was already done and  
16 White Sands was -- couldn't be done. I'm not sure about the  
17 timing, but that was what was happening.

18 So this letter is about the Colony, and basically  
19 he's telling me in this letter we -- at this point in  
20 November 25th, 1997 it was already agreed it was going to be  
21 done, and I think we'd finally come to a point on costs that  
22 we said, Let's just do it and if there a dispute on costs  
23 later we'll deal with it. And it says -- in this letter he  
24 said in the first paragraph, "Thank you for your recent  
25 inquiry concerning the conversion of your time-share resort

1 from individual residential metered units to single master  
2 commercial meter. And then it goes on to talk about what the  
3 cost is and the rest -- I mean, it said that this cost is  
4 valid for a period of a year. So, in other words, make your  
5 decision what you're going to do. It talks about proper  
6 coordination and other things. So that memo was sent to me,  
7 and I received that from Mr. Guzman.

8 Q. Okay. And then I'll also then ask you on top of  
9 that to take it -- take a look at what is marked Joint  
10 Exhibit 19 and identify that and tell us a little bit about  
11 that. (Hands document.)

12 A. Okay. This is -- Exhibit 19 is dated December 22nd,  
13 1997. Again, it's a memo from FP & L from Jim Guzman to me.  
14 And, in essence, this is -- and I'd have to compare them, but  
15 my recollection is this is almost identical to that memo, but  
16 this memo says that, "Thank you for your recent inquiry  
17 concerning the conversion of your hotel from individual  
18 residential metered units to single master commercial meter."  
19 Now, the reason for this was I got the memo of November 25th  
20 from Mr. Guzman. I immediately picked up the phone and  
21 called him. I say immediately. A couple days or whatever.

22 Q. Right.

23 A. I got the memo, and I talked to him about it. I  
24 said -- Jim, I said, look -- I said, We did not represent  
25 that it was a time-share, I do not want to be on the record

1 that I've misrepresented something, because the Colony is not  
2 a time-share. We said it's a hotel. Do you mind, do you  
3 have any problem changing your letter and putting in there  
4 that it was hotel. And that's why we asked. He said, No  
5 problem whatsoever and sent the letter.

6 Q. All right. And the rest of the letter, I'm sorry,  
7 went on to almost mirror the first letter; is that right?

8 A. My recollection of reading the two the language is  
9 probably identical except for that part.

10 MR. DALEY: Okay. And we would move these -- both  
11 of these letters for admission.

12 MR. HOFFMAN: No objection.

13 THE COURT: I'll show Joint 18 and 19 as admitted.

14 MR. DALEY: 18 and 19. Thank you, Judge.

15 BY MR. DALEY:

16 Q. Now, let me ask you now after that letter was sent  
17 and then another letter being sent right behind it how many  
18 times -- I'm just curious. How many times did you talk to  
19 him in between just that one -- that one time?

20 A. My recollection is is that between those two memos  
21 it was just the one time where I just picked up the phone and  
22 said, Hey, Jim, this wasn't what we talked about and please,  
23 you know, change it to what we had talked about, and that's  
24 what he did. And I don't remember talking -- I mean, it  
25 wasn't a long conversation. It was something he just took

1 the conversation and he said, Okay, fine.

2 Q. Now, where -- what occurred after that, then, you're  
3 at that point there where you --

4 A. After that letter was done, we were in discussions  
5 in early '98 about when to actually implement the conversion,  
6 and we're talking -- I had some -- a number of different  
7 discussions with Jerry Sanger at the Colony and Jim Guzman.  
8 Because you've got -- I think there were 13 transformers on  
9 the property, and you had to cut the power and they'd be down  
10 for about an hour and a half, two hours. You've got to talk  
11 to guests. Big coordination basically is what was going on.  
12 When to do it. It was coming into season. Florida Power and  
13 Light wanted to do it at a certain time, and then they had  
14 some problems with the scheduling. Colony looked at it and  
15 said they'd like to do it but they'd rather not do it in the  
16 middle of season. So -- and I don't remember exactly, but  
17 that was the gist of the conversations.

18 And there was -- at some point after looking at a  
19 couple of different dates there was an agreement that it was  
20 going to be in May. And then there was -- after that I think  
21 it was finally decided that the best time was somewhere  
22 around the first of June that -- and Jim said it would take  
23 FP & L about a week, and we had to coordinate an electrician  
24 in, had to coordinate between the electrician, FP & L, and  
25 the property to make it happen. And that's all that's

1 happened from that point.

2           There was a point somewhere in there in either '98  
3 when we got the approval, we're going to go forward, we've  
4 got the costs settled, paid the cost to do it, and FP & L set  
5 it up that I had some conversations with Colony. Just kind  
6 of give them a heads up this is what's going on, this is  
7 what's been going on, we're talking about it, we're going on.  
8 And they were happy about it. The conversation at some point  
9 took place with Jerry Sanger, and I mean they were just  
10 really happy that it was being done, that FP & L was doing  
11 it. And it was kind of casual. He said, you know, we tried  
12 to do this and we didn't get it done, so we're glad to get it  
13 done. And that conversation is what started the -- I guess  
14 the wheels turning in my mind looking and saying, Boy, if  
15 they asked for it, maybe it should have been done and maybe  
16 you should have had this rate all along. And that's -- up to  
17 that point I really wasn't focused on it. I'd looked at it,  
18 talked about it with him after he said that, and then started  
19 the wheels in motion.

20           So it was after that point we wanted to -- we looked  
21 at that issue. And when I say "we" looked at it, I talked to  
22 them about it. And I -- did you do this, did you go ask for  
23 this, and what happened? And then Jerry told me the story  
24 like he said today what the story was. And I told  
25 Mr. Moulton at that time or sometime in that frame -- I said,



1 Well -- I said, Based on this, based on the fact you're a  
2 hotel, based on the fact you've never been residential, you  
3 were serviced under the residential rate, you should have  
4 been on the commercial rate, and I think that there's a case  
5 for us to go and ask FP & L to give you a refund. And that's  
6 kind of how it started.

7 Q. And when do you think that was? When do you think  
8 you had that discussion?

9 A. I don't have a specific recollection of when Jerry  
10 Sanger actually told me. I'm going to say that it's sometime  
11 in probably '97. I don't think it was '98. It could have  
12 been, but I'm thinking that it was probably sometime in '97.  
13 Late, middle. I mean, that's my guess.

14 Q. Okay. And the time period here I'm discussing on  
15 these memos is March/February of '97 when you're back at the  
16 point of trying to get it converted. Did you have the  
17 discussions back at that point?

18 A. No.

19 Q. Okay.

20 A. Not at all. Hadn't talked to them. We had so many  
21 issues going on with calculations -- not calculations but  
22 costs of conversion, and that issue was -- that was the  
23 primary thing in getting it done was the primary thing at  
24 that time.

25 Q. Right.

1           A.    Once I talked to Jerry Sanger, then it was in the  
2 back of my mind, Hey, can you do it. And I hadn't even  
3 researched it at that point.

4           Q.    And so you -- so that's when you became aware of the  
5 idea was when you talked to Jerry Sanger?

6           A.    Absolutely. I didn't have any knowledge that they  
7 had asked about it before.

8           Q.    All right. And what did he basically tell you?

9           A.    Well, he just said it was late '88 or early '89 he  
10 went into Florida Power and Light, and really what his -- I  
11 mean, my recollection was what he told me today and what he  
12 had said to the Court today in his testimony, basically.

13          Q.    Okay.

14          A.    That he had asked them -- what I do remember is he  
15 told me he got the documents, he got all the licenses showing  
16 it was a hotel, and he gave them a condominium, the  
17 declaration of condominium showing it was condominium resort  
18 hotel. And his -- again, my recollection of him saying it to  
19 me was that FPL said you're a condominium and you're not --  
20 you can't do it. And that was -- that was really the only  
21 discussion. I only had that discussion with him once, and  
22 then after we started looking at a possible refund we had it  
23 a couple more times.

24          Q.    Okay. And he didn't have any -- he didn't have any  
25 documentation to --

1           A.    I asked him. I said, If you have any -- go through  
2 your files, please. Is there any record that you sent a  
3 memo. And basically he said, Marc, I apologize. I said, No  
4 problem, you deal with them your way. He said, I do most of  
5 my dealings with FP & L on the telephone. I said, That's  
6 fine. That's where it went. And he didn't have any  
7 documents.

8           Q.    All right. Okay. Let me -- let me drop back for a  
9 second on the -- on the -- some of the factors that you look  
10 at when you come into a property. I want to go back to that  
11 just for a minute, if I can. When you look at a property to  
12 see if they qualify without a waiver, what are some of those  
13 items that you look at?

14          A.    I understand that a lot of my on-the-job training  
15 looks at it in reference from that seminar that says, you  
16 know, here are things you look at, here are the things you've  
17 got to -- sometimes to determine whether rates are fair,  
18 whether they're reasonable, whether they are what they should  
19 be you've got to dig. And basically you dig, you look at it,  
20 and you look at it -- we put it together and we looked at the  
21 Florida statute. I looked at it and said, Here's how  
22 properties are classified in Florida. And by that rule -- I  
23 read the rule and looked at it, and, based on what I looked  
24 at, the Colony, it appeared to me that they classified as a  
25 hotel. To me that was very clear under that rule.

1           And the difference is that with the hotel you look  
2 at it and you say there are a lot of factors because that --  
3 the hotels are governed under the Florida Administrative Code  
4 and the Florida Department of Business Regulation --  
5 Professional -- Department of Business and Professional  
6 Regulation. And they regulate lodging establishments, and  
7 they determine how you're supposed to be licensed. So when  
8 you put that together and see the Colony has these licenses,  
9 licensed with the Department of Business and Professional  
10 Regulations as a hotel, then you put it together with the  
11 administrative rules that determine what the criteria is.  
12 And the criteria for the hotels is the strictest of all.  
13 They've got to have additional locks, safety devices that  
14 other properties like -- well, specifically resort  
15 condominiums don't have to have, so it costs them more money  
16 to do business. They're inspected three times a year from  
17 the department. Resort condos are inspected once a year.

18           As -- licensed as a hotel, the Colony has a  
19 requirement they have to post their room rates. Mr. Moulton  
20 testified earlier that sheet, and I've seen them -- been in  
21 the rooms, and I've seen the rate sheet. Well, there's a  
22 statute, I don't remember which one, and it's very specific.  
23 And it says, If there's a violation of that particular -- of  
24 the room rate posted by an establishment, they're subject to  
25 criminal violations, a misdemeanor.

1           Now, it also in that same statute is very clear that  
2 resort condominiums are excepted from that, so they don't  
3 have that same requirement. And that's -- if you don't do  
4 something, that's pretty big. So we look at those, putting  
5 those together and saying here are the licenses, here's how  
6 -- here's what it has to do. Looking at the Public Service  
7 Commission rule that says, "Individual meters are required  
8 for new commercial establishments, condominiums, co-ops, et  
9 cetera. However, these are excepted." And down at the  
10 bottom of that rule it says, "Exceptions are hotels, motels,  
11 or similar facilities." So it wasn't very hard. We took the  
12 position it's a hotel. The license, there it is. Let's  
13 change it.

14           The other thing we look at, you look at power  
15 company tariffs, and I've got tariffs from a number of power  
16 companies, and you look at how they're -- how they're  
17 structured. You look at that, and you see the Commission  
18 rules, and you say the power company is supposed to service  
19 people based on their class of service. Colony was serviced  
20 under a residential rate. And, in my opinion, in looking and  
21 putting all these things together it was improper. They were  
22 always a commercial establishment at all times. They didn't  
23 operate a permanent residency. So, therefore, the rate's  
24 wrong. I mean, that's just my -- going through this whole  
25 process to look at the Colony to get it converted.

1           Q.    And what about the issue of the bills?  When you  
2 look -- I guess when you're looking at the commercial  
3 residential dichotomy -- or do you also look at the fact that  
4 -- who the bills are actually sent to?

5           A.    Absolutely.  In one of the -- in my research with  
6 David Wheeler and the Public Service Commission in looking at  
7 this docket of the -- this is the time-share docket we're  
8 talking about now.  My understanding of the reason for the  
9 rule requiring the individual meters was a conservation  
10 issue, that the Commission came forth and said, If you're  
11 individually metered, if we individually meter these  
12 facilities, they're more inclined to conserve energy, and  
13 that's the reason.  And as a result of that, that's the end  
14 user of the electric, the residential scenario, the owners  
15 should get the bills so that they will be tuned in to  
16 conservation.  And, again, the issue that was explained to me  
17 was power companies want to save money from building the big  
18 generation plants, want to conserve -- it's better to have  
19 enough energy.  Just all those various factors.  And so they  
20 believe the genesis of the rule was that that's what  
21 happened.

22                At the Colony, when you looked at that, you found  
23 out that they had 232 owners and the bills were not in  
24 individual owners' names.  They actually -- actually, the  
25 bills were in the name of the Colony.  Individual owners

1 never got the bills; whereas, our resort condominium  
2 situation that you deal with, in those situations those  
3 owners get those bills. The management doesn't see them. So  
4 at the Colony they were getting the bills, and they're  
5 getting 232 of these, and they're paying them. The owners  
6 aren't paying them. The owners never see them.

7 So based on the conservation side and again in talks  
8 with Jerry Sanger he's telling me, you know, Marc, I do all  
9 the conservation; I take care of that; the owners, really  
10 they can't tell us what to do; we do it. So the conservation  
11 issue was preserved based on the genesis of the rule, in my  
12 opinion and just from my research and my talks with the PSC  
13 people and what I looked at.

14 Q. Go ahead.

15 A. There was another piece that I just remembered in  
16 that -- when you're looking at that on the billing.

17 Q. Right.

18 A. That what happens is that -- my understanding again  
19 through the conversations and how the rates are determined  
20 with the Public Service Commission that what happens is that  
21 in setting the rate tariffs, residential, commercial,  
22 industrial, the various rates that the power companies have,  
23 all of them that are regulated by the Public Service  
24 Commission, that what's considered is load values, and usage  
25 characteristics are included, and they look at the usage

1 characteristics.

2 And the Commission -- and we've got it in one of the  
3 exhibits here. In one of the dockets the Commission has  
4 clearly looked at it and said that the usage characteristics  
5 of the residential customers are more peak intensive and,  
6 therefore, more than commercial customers and, therefore,  
7 tend to have higher rates. And so they're looking at this,  
8 and when I put this together, and this was an older docket,  
9 and you look at the Colony, the usage characteristics of the  
10 electric was clearly commercial. It was absolutely not  
11 residential.

12 And, therefore, when you look at the rate that  
13 they're serviced, they're ending up paying more of these --  
14 if the residential rates have some of the higher costs built  
15 into the cost of service and, therefore, tend to be higher,  
16 the Colony is paying these residential rates when they're  
17 operating a commercial facility and their load  
18 characteristics are, in fact, commercial. So if you put -- I  
19 mean, there's a lot of it there. But if you put all of that  
20 together, that's what we came up with.

21 Q. Well, on that subject let me ask you, then, if you  
22 throw all the -- eliminate for the moment the rule, the PSC  
23 rule, the dockets, whatever, the -- and when you look at a  
24 property, then do you think that that very line that you just  
25 discussed that you think -- or do you think when the Public



1 Service Commission looks at a case that  
2 residential/commercial line is the one you really look at in  
3 a metering situation?

4 A. Again --

5 Q. Regardless of all the dockets and the cases and even  
6 the rule changes in the future.

7 A. In my opinion -- in my opinion, it's very, very  
8 clear that there are a number of dockets out there they've  
9 said, "Transient rentals excepted from the rule." Commission  
10 -- and I can't remember the exact dockets or whatever, but  
11 they said that the Commission has always held that  
12 residential condominiums are to be individually metered.  
13 It's a residence.

14 Again, if you go back to that issue of the owners  
15 getting the bills, that's what that's all about. And that's  
16 -- so when you look at that -- and I always when I look at  
17 various properties, we always come in and we look at the  
18 electric rate. The same with telephone. But in this case  
19 it's just a little different because you look at it and say  
20 is it residence, it is commercial, could it be industrial,  
21 what is it, what's the class of service, and that's what we  
22 look at.

23 MR. DALEY: Your Honor, can we take a short break?

24 THE COURT: I'm guessing a five-minute break?

25 MR. DALEY: Yes, sir. That would be fine. Thank

1           you, Judge. Appreciate it.

2           Judge, I'm going to put these back up here because I  
3           don't think --

4           THE COURT: All right.

5           (Off the record for a short break, after which the  
6           following proceedings were had:)

7           THE COURT: Okay. We can go back on.

8           BY MR. DALEY:

9           Q. Okay. Let me -- I can't remember exactly where we  
10          left off, but let me -- regardless, let me pick up with a  
11          couple of questions.

12          One is you have -- it's been mentioned, even  
13          entered, that you have dealt with some petitions for other  
14          properties?

15          A. Yes.

16          Q. And can you tell us briefly and maybe take each of  
17          the three I think that have been entered here and maybe just  
18          talk to me about it.

19          A. Again, the history of working with this whole rule  
20          and different clients out there, different clients and  
21          different natures, one of the clients that we had was Holiday  
22          Villas, and they were a condominium on Indian Rocks Beach.  
23          And Holiday Villas, again, it was a little different. The  
24          declaration of condominium was total condominium, not  
25          condominium resort hotel, not resort condominium, just

1 condominium. The owners had no use restrictions, so they  
2 could live there for permanent residency.

3 And the fact was when we looked at the property -- I  
4 did a lot of work for them, telephone, a lot of different  
5 things. This was just one issue. We looked at them and  
6 basically said, This is operating similar to your hotels and  
7 motels. It was a hybrid in that you had part residential or  
8 at least the availability to live there on a full-time basis  
9 and some people that actually did that. And we're not  
10 talking management. We're not talking management personnel.

11 Q. Right. Right. Right.

12 A. I'm talking owners of the units that can live there  
13 on a regular basis. But the property -- the sign said it's a  
14 resort condo offering transient rentals to the public.  
15 That's what the sign says.

16 So, again, this is all part of this whole research  
17 that was going on that I talked about earlier. And the  
18 initial idea and again talking to some people at the Public  
19 Service Commission and actually some of the people in the  
20 power company that, well, the rule says similar facilities so  
21 why shouldn't this be master metered. And that was really, I  
22 think, probably the '96 response in the time-share case that  
23 I was trying to go ahead and get that done and get it all  
24 done at once instead of having to deal with the Commission at  
25 different times.

1 Q. Uh-huh.

2 A. It wasn't dealt with. We came back with Holiday  
3 Villas and basically filed a petition at that time. The  
4 first petition filed with Holiday Villas was a petition for  
5 declaratory action, and the petition for the declaratory  
6 action was a request to the Commission in essence to declare  
7 whether Holiday Villas met the criteria as a similar facility  
8 and, therefore, should be master metered.

9 Now, we had a number of discussions with the Public  
10 Service Commission on this petition. Mary Ann Helton  
11 (phonetic) was the attorney at the time dealing with it.  
12 David Wheeler was the staff person. And it had some, again  
13 my understanding of what they said, problems that were  
14 involved in that. It was that they didn't want a declaratory  
15 action set because that then set precedent. And with a  
16 declaratory action then other people could say, well, we're  
17 the same and we're going to go do it without checking them.

18 And we had some discussion because we didn't  
19 necessarily agree. They agreed with me that there were some  
20 similar characteristics of a hotel, but they wouldn't go as  
21 far to say we're going to say -- so what they -- they were  
22 going to take the position -- the staff recommendation was  
23 going to say, We don't think that the Commission should grant  
24 the declaratory action. And that was going to be the staff  
25 recommendation. They did say in the staff recommendation

1 that the Commission has always held that condominium -- that  
2 residential condominiums have to be individually metered, and  
3 they specified that.

4 MR. HOFFMAN: Objection, Your Honor. Move to  
5 strike. I mean, we're getting into a lot of speculation,  
6 nondocumented hearsay of what PSC staff members, who  
7 aren't here to testify, supposedly said. And I think we  
8 ought to be moving this thing along and keep it just to  
9 testimony of witnesses that we can cross-examine.

10 BY MR. DALEY:

11 Q. You know, a little bit on the broad hearsay.

12 A. Okay.

13 Q. I appreciate that.

14 A. Basically what happened was that, based on the  
15 conversations that did take place and some advice that I got,  
16 we -- I withdrew the petition for declaratory action.

17 Q. Okay.

18 A. So there was no ruling on that from the Public  
19 Service Commission.

20 Q. And then you went -- where did that go?

21 A. Followed that -- again, in the research I was given  
22 the information actually from the Commission people, petition  
23 for a variance. That's where I first heard about it. I  
24 hadn't done that research.

25 Q. Okay. So you didn't know that before?

1           A.     That's where I got the information.

2           Q.     Okay.

3           A.     So that's where I did the research, learned how to  
4 do it, and then turned around, I don't know, two months,  
5 three months, four months later, whatever it was, and filed a  
6 petition for a waiver or a variance. And at that time they  
7 were changing uniform rules, so something about the variance  
8 -- you can get a variance from the literal requirements of  
9 the rules.

10                   So we basically then filed a petition. I basically  
11 filed it for Holiday Villas and said, Holiday Villas holds  
12 itself out as a resort condominium, and, therefore, it  
13 operates similar to a hotel/motel and laid out all the  
14 characteristics and things of that nature that were there and  
15 asked the Commission to grant a variance to allow Holiday  
16 Villas to become master metered.

17           Q.     Okay. Now, let me ask you on that -- on the issue  
18 of that property on that residential commercial cutting edge  
19 right there what are just a couple of characteristics that  
20 might differ between the Colony and that property?

21           A.     Well, this was -- this is part of the problem that I  
22 understood that there was with a resort condo. Resort condo  
23 is a hybrid facility in the sense that you have no usage  
24 restrictions, so, therefore, people can live there.

25           Q.     Okay.

1           A.   Nobody can stop them. I mean, that's their right.  
2   They own it.

3           Q.   That's the main differential between the two?

4           A.   That -- that is -- that is a -- that is one of the  
5   big differentials. When you look at resort condo, I talked  
6   about requirements. They're a lot less stringent than  
7   hotels, like we talked about. But the resort condo, the  
8   hybrid, the problem you have is that residential customers  
9   are supposed to receive residential rates. Commercial  
10   customers are supposed to receive commercial rates under the  
11   general tariff structure. But here if you're part  
12   residential and you're part commercial then I think that the  
13   Commission is dealt -- is left with an issue of what do you  
14   do.

15                   And so they didn't make a general statement for all  
16   properties. We came with the petition just for Holiday  
17   Villas that said, Here are the characteristics of this  
18   property, different from others, and would you grant it and  
19   let us do it this way because we generally operate it this  
20   way, and here's how we're doing it. And the Commission came  
21   in and approved the petition for Holiday Villas.

22           Q.   Okay. And on the -- then on the other two  
23   properties which are currently pending in front of the Public  
24   Service Commission, and nobody wants to preempt anything at  
25   this point, but generally then since they have been entered

1 by FP & L attorneys here, what would -- what would those two  
2 be in terms of --

3 A. Again, in the course of my business, some marketing  
4 people have gotten some resort condos, and again we have  
5 hotels, but these couple of resort condos that we have, we  
6 got some telephone savings, some other savings. But, again,  
7 when we looked at them and did the site survey up there in  
8 the Destin area --

9 Q. Both of those -- I'm sorry. Excuse me. Both of  
10 those are up in the Panhandle?

11 A. Yes. They're in Gulf Power's territory. You've got  
12 the Dunes of Panama, and you've got Sun Destin. And Sun  
13 Destin actually only -- they have 280 units, two owners live  
14 there, and they operate it like a hotel. That's the way they  
15 do it, and that's -- that's the way they're structured.  
16 Dunes of Panama, I don't remember if they -- they have a few  
17 more people that actually live there. But, again, these  
18 structures in both of these properties, owners -- if the  
19 owners didn't want the units in the rental pool, they can  
20 pull them out.

21 Q. They have the option?

22 A. When they buy the condominiums there, they buy the  
23 condominiums. They have a choice. They can put them in this  
24 rental pool and rent them as an investment or they can live  
25 there or they can use them for travel, vacation, whatever.



1           So when we looked at those, we said, They're still  
2           operating on a commercial basis, that's the majority of what  
3           they're looking at, they should be on a commercial rate. And  
4           so we filed a petition, and we had done the rate calculation  
5           saying there's a savings, and we looked at Gulf Power's  
6           rates. And we said, Look, it should be commercial. The same  
7           thing, in essence. And so we filed the petition, filed the  
8           petition for Dunes and for Sun Destin to ask the Public  
9           Service Commission to say that we can do this.

10           Now, again there are other ways that I believe we  
11           could have gone. We could have gone to Gulf Power and said,  
12           Look, we believe we operate as a similar facility; convert  
13           us. But the most expeditious and easiest way is to just go  
14           for the petition and get the Commission to stamp it and  
15           sanction it.

16           Q.    Since you now have done that and --

17           A.    Yeah.

18           Q.    And the -- and along that residential/commercial  
19           again, the differential in that case, in the Dunes case, is  
20           the -- the San Destin, <sic> I'm sorry, is the ability of  
21           those owners to live there all year if they want to?

22           A.    Again, that's one of the distinct factors.

23           Q.    One of them.

24           A.    These -- Holiday Villas, Dunes of Panama, and Sun  
25           Destin are all registered with the Department of Business and

1 Professional Regulation as condominiums for transient  
2 rentals. That's why they're registered up there. They have  
3 to be for the transient rentals. They're not registered as a  
4 hotel. So that's a distinct feature, because we're not  
5 saying that the Dunes of Panama is a hotel and should have  
6 been master metered years ago or that Sun Destin is that way.  
7 We're saying that it's a resort condo and under the rules  
8 that we've talked about before a resort condo operates like  
9 hotels. That's why we filed the petition.

10 Q. Okay. All right. And the -- and then now on a  
11 different subject, then, what -- taking you back to the time  
12 that the Colony was master metered, then what took place  
13 after that? Did you attempt to get the refund from Florida  
14 Power and Light?

15 A. Yes.

16 Q. Just briefly.

17 A. Okay. I -- my first recollection is that I tried to  
18 talk to Jim Guzman. I'm not sure, but my recollection is  
19 that I contacted him to find out who the rep was on the  
20 account, and I believe I spoke to a gentleman by the name of  
21 Larry Valentine. This didn't have anything to do with -- it  
22 was -- they didn't get the rates right. They converted it,  
23 but then they didn't quite get them all the way they were  
24 supposed to be. I called Larry. He got it done.

25 Then I called and asked Larry, he wasn't the rep

1 anymore, I believe, and it was Douglas Bucciarelli was a  
2 manager or something with Florida Power and Light, and he was  
3 the first approach that I talked to in terms of refund. And  
4 I think that that direction -- my recollection was that  
5 that's where Jim Guzman directed me.

6 So talked to Bucciarelli and said, Look, we've  
7 operated as a hotel all these years, we should have been on a  
8 commercial rate instead of residential, we believe we should  
9 -- we're entitled to a refund. That started it.

10 He took it, and it ended up going Terri Britton's  
11 direction, and so I wrote a memo, a long memo to Terri  
12 Britton, laid it out. They wanted to see the documents. I  
13 gave them the licenses, the declaration of condo, gave them a  
14 bunch of the documents for them to look at. It went from  
15 Terri Britton, and I believe it went to FP & L counsel. I  
16 got some letters from Wade Litchfield. I don't recall ever  
17 talking to him. I may have once. But basically it was a  
18 discussion of the refund issue. It went on for about six  
19 months, and FP & L wouldn't give a refund, and then we filed  
20 the complaint.

21 Q. So that's when they made the effort at that point  
22 probably for about six months or so to --

23 A. I believe it was about six months trying to talk to  
24 Florida Power and Light about it.

25 Q. Okay.

1 MR. DALEY: All right. Your Honor, I don't have any  
2 other questions at this time.

3 THE COURT: Cross?

4 MR. HOFFMAN: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. HOFFMAN:

7 Q. Good afternoon, Mr. Mazo.

8 A. Good afternoon.

9 Q. When did you talk to Mr. Bucciarelli about a refund?

10 A. My recollection of the first letter -- I don't  
11 remember if I got -- if I sent a letter or got a letter. I  
12 know there was a letter from him, and I think it's in -- it's  
13 sometime after the conversion took place.

14 Q. So you would have talked to Mr. Bucciarelli on or  
15 after June of '98?

16 A. Yes.

17 Q. Do you have a personal financial stake in the  
18 outcome of this case?

19 A. Yes.

20 Q. Your financial interest in the outcome of this case  
21 is 50 percent of any refunds which may be ordered to be paid  
22 by FPL to Colony Beach?

23 A. Yes.

24 Q. And you would also stand to gain financially for  
25 other existing or potential clients who might seek refunds

1 depending on the outcome of this case?

2 MR. DALEY: Objection.

3 THE WITNESS: No, not at all.

4 BY MR. HOFFMAN:

5 Q. You would not?

6 A. No.

7 MR. DALEY: Your Honor, I don't think that deals  
8 with the -- with the issue that we're here on. I think  
9 that's not an appropriate line.

10 But go ahead.

11 MR. HOFFMAN: May I respond to that, Your Honor?

12 THE COURT: Well, he's already answered.

13 MR. HOFFMAN: Oh, I'm sorry.

14 THE COURT: He said it. I don't think -- I don't  
15 think you heard him.

16 THE WITNESS: The answer is no. The answer is no.  
17 I have no other clients, I haven't seen any other clients  
18 that I have this -- under contract to do that, and I  
19 don't see the potential of that out there.

20 BY MR. HOFFMAN:

21 Q. Are you committing at this time, Mr. Mazo, that you  
22 would represent no other clients against investor-owned  
23 utilities in Florida or any other utility in Florida to seek  
24 refunds based on the outcome of this case? Are you making  
25 that commitment this afternoon?

1 A. I don't have any clients today.

2 Q. Are you making that commitment this afternoon? Yes  
3 or no?

4 A. Ask me the question again, please. Let me see if I  
5 -- if I understand what the question was. What commitment?  
6 I understand there's a commitment, but I'm not real clear on  
7 what you said.

8 Q. Are you making a commitment this afternoon that you  
9 will not seek refunds against any utility in Florida in the  
10 future based on whatever the outcome of this case may be?

11 A. I think yes.

12 Q. Thank you. I think during your examination for  
13 Mr. Daley -- by Mr. Daley you stated that the PSC, you were  
14 talking about the PSC, and you said that the Commission has  
15 said that residential condominiums are to be individually  
16 metered. Was that your testimony?

17 A. I believe it was.

18 Q. Okay. Is there anything in Rule 25-6.049,  
19 subsection 5(a) that uses the word residential before the  
20 word condominium?

21 A. Not to my knowledge.

22 Q. Okay. Is there any other adjective or any other  
23 word that is used in that section of the rule before or after  
24 the word condominium?

25 A. Not to my knowledge.

1           Q.    When you were talking about the meeting that you  
2           attended with Mr. Saxon and Mr. Guzman and Mr. Bauer, it was  
3           during that testimony that you stated that Mr. Guzman made a  
4           statement that he expressed some agreement with your position  
5           that Colony Beach operated like a hotel. Was that statement  
6           allegedly made by Mr. Guzman at that meeting, or was it  
7           afterwards sometime?

8           A.    No. At that meeting in the discussion --

9           Q.    Was the statement made at the meeting, or was it  
10          made afterward?

11          A.    The statement by Mr. Guzman -- and I don't recall  
12          that that was my explicit testimony. My recollection of the  
13          testimony --

14          Q.    Excuse me, Mr. Mazo.

15          A.    Okay.

16          Q.    Your testimony -- I took notes. I'm trying to move  
17          this along.

18          A.    Okay.

19          Q.    Your testimony -- and, you know, we disagree with  
20          this. That's why I'm trying to get clarification.

21          A.    I understand.

22          Q.    It was that Mr. Guzman made some sort of statement  
23          that Colony Beach operated like a hotel. Has he ever made  
24          that statement?

25          A.    Yes.

1 Q. Okay. When did he make that statement?

2 A. The statement was at the meeting. I had previously  
3 talked to him about doing a site survey, and he indicated to  
4 me he had done the site survey and there wasn't any question  
5 that it operated as a hotel.

6 Q. Well --

7 A. That was my understanding.

8 Q. Okay. Now your testimony is that Mr. Guzman said to  
9 you that it operated as a hotel. So are you saying that he  
10 said it operated like a hotel? Did he say it operated as a  
11 hotel?

12 A. I don't recall.

13 Q. You don't know?

14 A. No, I don't know.

15 Q. Okay. Okay. Does a resort condominium operate like  
16 a hotel?

17 A. A resort condominium operates similar to a hotel,  
18 but to say like a hotel I think you could probably say it  
19 operates like one.

20 Q. Wasn't it your position in the Holiday Villas case  
21 that Holiday Villas operated like a hotel or motel?

22 A. Yeah.

23 Q. Okay. Are you familiar with the individual metering  
24 rule?

25 A. Yes.



1 Q. In Chapter 366, Florida Statutes -- I'm sorry. In  
2 Section 25-6, Florida Statutes.

3 A. Yes.

4 Q. Which deals with the PSC's regulation of electric  
5 utilities.

6 A. Yes, I am familiar with it.

7 Q. Are you aware of any prior PSC order which has  
8 granted a refund to a customer on the basis that a utility  
9 allegedly failed to provide a customer with a master meter?

10 A. No, I am not.

11 Q. There is no such precedent, is there?

12 A. I'm not aware of any.

13 Q. Mr. Mazo, have you ever performed a cost of service  
14 study for a utility?

15 A. No.

16 Q. Have you ever reviewed a cost of service study for a  
17 utility?

18 A. No.

19 Q. As I understand your position, Mr. Mazo, the purpose  
20 of the rule amendments --

21 MR. HOFFMAN: And I'm talking, Your Honor, now about  
22 Rule 25-6.049.

23 BY MR. HOFFMAN:

24 Q. That were adopted in November of 1980 as stated by  
25 the Commission was to promote energy conservation by

1 promoting individual metering. Is that a fair statement?

2 A. I think that's fair.

3 Q. Let me hand you a copy of what has been marked as  
4 Exhibit 30, which is an order issued March 4, 1997 by the PSC  
5 adopting amendments to the individual metering and master  
6 metering portions of the rule.

7 A. Okay.

8 Q. (Hands document.)

9 This rule amended provisions of the rule which had  
10 been in effect in late 1988 or early 1989 when Mr. Sanger  
11 allegedly approached FPL regarding master metering; is that  
12 correct?

13 A. I don't know.

14 Q. You don't know?

15 A. I haven't read it. Is this --

16 Q. Why don't you take a look at that order for a few  
17 moments, Mr. Mazo, and then I'll repeat my question.

18 A. This is a petition to initiate the rulemaking by  
19 Vistanta to change the time-share rule is what this is, yes.

20 Q. Is that what that is?

21 A. Pardon me? The same thing.

22 Q. Okay.

23 A. Is there a question? I'm sorry.

24 Q. Let me repeat my question.

25 A. Okay.

1           Q.    The rule and the rule amendments that are attached  
2           to the PSC order issued March 4, 1997, which has been marked  
3           as Exhibit 30, the rule that you have in front of you amends  
4           provisions which had been in effect in late '88 or early 1989  
5           when Mr. Sanger approached FPL regarding master metering; is  
6           that correct? And maybe it's easier if I change the word  
7           amend to repeal.

8           A.    I'm sorry. I'm -- I'm not understanding the  
9           question as far as it relates to the 1988. Maybe I missed  
10          it.

11          Q.    Let me -- let me try again.

12          A.    Okay.

13          Q.    Let me try again. If you turn to the first page of  
14          the rule.

15          A.    Okay.

16          Q.    And you look at the sentence under paragraph 5(a)  
17          that is repealed, it is deleted, that provision was in effect  
18          in late 1988, early 1989; is that correct?

19          A.    Yes.

20          Q.    All right. If you would turn the page and go down  
21          to the bottom of that page where you see number two.

22          A.    Okay.

23          Q.    That provision -- that's under subsection 5(b) (2) of  
24          the rule, that provision goes on to the next page, that  
25          provision which provides a definition of time-sharing plan

1 was also in effect late 1988, early 1989; is that correct?

2 A. That provision was amended and adopted in 1997.

3 Q. No, sir. If you take another look at it, this is  
4 the definition of a time-sharing plan. You'll notice that it  
5 is being stricken through as part of this amendment package.

6 A. It's being deleted in this order. Okay.

7 Q. Yes, sir. So obviously it was there and in  
8 existence before it was deleted. Would you agree with that?

9 A. Yes, I would.

10 Q. Okay.

11 A. Yes, I would

12 Q. And so this definition of time-sharing plan, my  
13 question to you, do you agree was in effect in late 1988 or  
14 early 1989 when Mr. Sanger allegedly approached FPL?

15 A. That paragraph existed in the rule at that time,  
16 yes.

17 Q. Okay. And the same would be true if you stay on  
18 that next page, if you go down to number four of the  
19 provision that's stricken through under number four, would  
20 you agree with that?

21 A. Based on -- yes, I believe that's true.

22 Q. Okay. Now, also if we're talking about that same  
23 time frame, late '88, early '89, paragraph 5(a) of the rule  
24 required individual metering for the condominiums; is that  
25 correct?

1 A. Yes.

2 Q. Okay. And as we've previously discussed and as  
3 you've testified to, it also required individual metering for  
4 any facility engaged in a time-sharing plan as that term,  
5 that is time-sharing plan, was defined in the rule; would you  
6 agree with that?

7 A. Yes.

8 Q. All right. Now, if you would, Mr. Mazo, turn to the  
9 definition of time-sharing plan which was in effect in late  
10 '88 and early '89 and which was deleted as part of this rule  
11 amendment package.

12 A. Okay.

13 Q. Okay. Take a moment and look through that  
14 definition, please.

15 A. Okay.

16 Q. Time-sharing plan, as that term was defined in late  
17 '88 or early '89, was defined to mean, "Any arrangement or  
18 right to use agreement or any other means whereby a purchaser  
19 in exchange for consideration receives a right to use  
20 accommodations or facilities or both for a specific period of  
21 time less than a full year during any given year but not  
22 necessarily for consecutive years and which extends for a  
23 period of more than three years."

24 Now, would you agree that an owner of an individual  
25 unit at Colony Beach was subject to a time-share plan as

1 defined by the PSC rule as that rule existed in late 1988 and  
2 early 1989?

3 A. Part of the fifth -- and I'm not sure that -- the  
4 other part of the fifth I'd probably have to take a closer  
5 look, but a lot of it does fit. But I'm not sure that the --  
6 I'm not sure. It looks like a lot of it does fit, but pieces  
7 of it don't fit.

8 Q. Okay. So earlier this morning when I asked  
9 Mr. Moulton this question, he agreed that the components of  
10 the arrangement -- arrangements between the unit owners and  
11 Colony Beach fit within this definition. Do you disagree  
12 with that?

13 A. The only thing that I'm questioning here --

14 Q. Yes, sir.

15 A. -- is when a purchaser in exchange for consideration  
16 receives a right to use accommodations, that part fits  
17 because they receive the right to use it for 30 days.

18 Q. Um-hum.

19 A. But the purchaser, in exchange they owned it, they  
20 bought the condominium. So, yeah, I think that it does -- in  
21 that sense, it does fit, because they got 30 days, and they  
22 had the right to use that for 30 days.

23 Q. Okay.

24 A. So --

25 Q. The owner entered into a limited partnership

1 agreement; correct?

2 A. Yes.

3 Q. In exchange for consideration; correct?

4 A. Yes.

5 Q. And the owner received a right to use his or her  
6 unit or the facilities at Colony or both for a period of 30  
7 days rent free; is that correct?

8 A. Yes.

9 Q. And that arrangement remained in effect until the  
10 owner sold his or her unit; correct?

11 A. Yes.

12 Q. So it would fit within the definition?

13 A. It looks like it, yes.

14 Q. Okay. Now, if you move down that page, that second  
15 page, to what was formerly subsection 5(b)(4) of the rule  
16 which was deleted as part of the so-called time-share  
17 amendments, this again, as you stated, was a provision that  
18 was in effect in late 1988 and early 1989. Now, this  
19 provision provides that individual metering is not required  
20 for any time-share facility for which construction was  
21 commenced before December 23, 1982 where separate occupancy  
22 units were not individually metered; correct?

23 A. Yes.

24 Q. Colony Beach was constructed prior to December 23,  
25 1982; correct?

1           A.    Yes.

2           Q.    And Colony Beach did have individual meters for the  
3 individual units prior to December 23 of '82; correct?

4           A.    To my knowledge, yes.

5           Q.    Dating back to roughly at least 1973 when  
6 Mr. Klauber -- or Dr. Klauber, it's Dr. Klauber,  
7 reconstructed the facility?

8           A.    That's my understanding from Mr. Sanger and  
9 Mr. Moulton, yes.

10          Q.    Okay. Now, wouldn't you agree that this definition  
11 of time-sharing -- time-sharing plan that we've discussed  
12 over the last couple of minutes is a very broad definition in  
13 terms of including hybrid facilities with transient  
14 attributes that are arguably not appropriate for individual  
15 metering?

16          A.    I would -- I would agree that it's -- that it's a  
17 broad definition.

18          Q.    And that's --

19          A.    No question. I would -- I would agree it's a broad  
20 definition.

21          Q.    And as I understand your direct testimony, it was  
22 because of this definition and the way under this definition  
23 that time-share plans were treated by the PSC, i.e. that they  
24 had -- that they were required to be individually metered,  
25 that's why you got involved in the rulemaking proceeding



1 before the Commission to change that. Isn't that correct?

2 A. Early on, yes, that was correct, when I had the  
3 time-share properties. Absolutely.

4 Q. You wanted to eliminate this restrictive language  
5 that was in this definition and get a Commission rule that  
6 authorized both time-shares and resort condominiums to be  
7 master metered; is that correct?

8 A. That's correct.

9 Q. Okay. Now, you participated in that rulemaking  
10 proceeding through your business, Power Check Consultants; is  
11 that correct?

12 A. Very limitedly. In limited fashion, yes.

13 Q. Let me hand you a copy of Exhibit 29 which is  
14 titled, "Response of Power Check Consultants" in Docket  
15 Number 960020. Would you like to take a moment to look  
16 through that?

17 A. You want me to read the whole document?

18 Q. It's up to you. Do you need a moment to look  
19 through it?

20 A. I can.

21 Q. Okay. Let me try asking you a question.

22 A. Sure.

23 Q. In the response that you filed you advocated to  
24 include not only time-share resort -- time-share claims but  
25 also resort condominiums as being eligible for master

1 metering; is that correct?

2 A. Yes, I did.

3 Q. But the Commission rejected your request to include  
4 resort condominiums in the new provisions that were reflected  
5 in the 1997 rules? They only authorized master metering for  
6 time-shares; correct?

7 A. I believe you've got two parts to that question.  
8 One is that they authorized time-shares, which I believe is  
9 absolutely correct. And if you say by implication that they  
10 got -- they dealt with the condominium issue, then yes. But  
11 my understanding was that they didn't deal with it. They  
12 just approved time-share.

13 Q. You advocated to include resort condominiums and the  
14 proposed amendments to the rule, and that position was not  
15 accepted by the Commission; is that correct?

16 A. No, that's not correct.

17 Q. Okay. Can you show me --

18 A. To my knowledge, that was not -- that was not  
19 accepted by the staff member, was my understanding.

20 Q. Let's take it one question at a time, Mr. Mazo. You  
21 said that is not correct?

22 A. To my knowledge, it was not correct that the  
23 Commission chose not to do that.

24 Q. Let me find the order with the proposed rules. Do  
25 you have that in front of you?

1 A. Proposed rules?

2 Q. Right. Can you show me where in that order and the  
3 new rule with the amendments to it reflect that resort  
4 condominiums in accordance with the position that you  
5 advocated were included to be eligible for master metering?

6 A. They were not included in the order.

7 Q. So the position that you took was not -- regarding  
8 resort condominiums was not accepted by the Commission;  
9 correct?

10 A. Was not approved by the Commission, that is correct.

11 Q. Thank you. That's all I was trying to discuss with  
12 you on that. And you would agree that Colony Beach is a  
13 resort condominium, would you not?

14 A. No, I would not. It meets the criteria under  
15 509-242, the criteria where it states what it does and what  
16 you rent out and what time frame --

17 Q. Mr. Mazo, there's not a question pending.

18 A. Okay.

19 Q. Let me hand you a copy of the reply to affirmative  
20 defenses of FPL. I need to get an exhibit number for that  
21 for the record.

22 THE COURT: 34.

23 MR. HOFFMAN: 34?

24 THE COURT: I think.

25 MR. DALEY: That's what I've got, Judge.

1 MR. MENTON: Yeah, that's correct.

2 MR. HOFFMAN: Thank you, Your Honor.

3 BY MR. HOFFMAN:

4 Q. Exhibit 34, this is the reply to affirmative  
5 defenses of FPL.

6 A. Okay.

7 Q. Did you prepare that document?

8 A. I did.

9 Q. Would you read into the record the passage from that  
10 document that I've highlighted in green?

11 A. Affirmative Defense Number Five, "In addition to  
12 being a resort condominium as defined in Section 509, Florida  
13 Statutes, the Colony is more appropriately to its type of  
14 operation" -- I'm sorry. I went farther.

15 Q. You went further, didn't you, Mr. Mazo?

16 A. I'm sorry.

17 Q. Thank you. So the statement that you crafted and  
18 prepared as part of the reply to FPL's affirmative defenses  
19 states, "In addition to being a resort condominium as defined  
20 by Section 509.242(1)(c), Florida Statutes, the Colony is  
21 more appropriately to its type of operation and all material  
22 times, including January '88, has held itself out as and  
23 operates as and legally is a hotel."

24 That was your statement; correct?

25 A. Yes.

1 Q. Does Colony Beach consist of a unit or group of  
2 units that are part of a condominium ownership structure for  
3 which a declaration of condominium has been filed with the  
4 State of Florida?

5 A. Yes, I think that I reviewed the documents, and I've  
6 heard the testimony that the form of ownership was  
7 condominium.

8 Q. And are the units rented more than three times in a  
9 calendar year for periods of less than 30 days?

10 A. Yes, they are.

11 Q. Does Colony hold out to the public or does it  
12 advertise as a place regularly rented for periods of less  
13 than 30 days?

14 A. Yes.

15 Q. Let me ask you about Holiday Villas, because there  
16 was quite of bit of discussion about Holiday Villas. You're  
17 obviously familiar with that case?

18 A. Yes, I am.

19 Q. Let me hand you a copy of Exhibit 28. This is a  
20 petition for a variance or waiver from Rule 25-6.049, sub 5,  
21 sub small A, that you prepared and filed with the PSC on  
22 behalf of Holiday Villas; is that correct?

23 A. Yes.

24 Q. In your petition you represented that Holiday Villas  
25 is a resort condominium under Section 509.242 of the Florida

1 Statutes; is that right?

2 A. Yes.

3 Q. And Holiday Villas had on file a declaration of  
4 condominium with the State of Florida; is that correct?

5 A. Yes.

6 Q. And you also allege in your petition that Holiday  
7 Villas operates in a manner similar to hotels and motels in  
8 the area; is that right?

9 A. Yes.

10 Q. Now, because Holiday Villas was a condominium and  
11 therefore subject to the individual metering requirement, you  
12 sought a waiver from the rule on the basis that Holiday  
13 Villas' operations were transient in nature and essentially  
14 operated like a hotel or motel; is that correct?

15 A. That's what the document says, yes.

16 Q. Thus, you sought the waiver from the individual  
17 metering requirement to allow Holiday Villas, a resort  
18 condominium, to be master metered because it operated like a  
19 hotel and, therefore, was, in your judgment, a similar  
20 facility under Rule 25-6.049(5)(a); is that correct?

21 A. Yes.

22 Q. How long had Holiday Villas been on individual  
23 meters prior to the time you filed your petition?

24 A. Don't really know.

25 Q. Okay. Can you give me an estimate?

1           A.    Estimate, they've been on there ever since they were  
2 built.

3           Q.    Five years?

4           A.    I don't know when they were built.

5           Q.    Okay.

6           A.    I'm not sure. It's been more than that. It was --

7           Q.    It was built maybe 10 years ago?

8           A.    At least.

9           Q.    Okay. You did not seek a refund from Florida Power  
10 Corporation for Holiday Villas, did you?

11          A.    No.

12          Q.    I'm going to hand you a transcript from item six of  
13 the August 18, 1998 PSC agenda conference, which has been  
14 marked as Exhibit 31. (Hands document.)

15                This is the transcript from the Holiday Villas  
16 proceeding, the PSC agenda conference; is that right?

17          A.    That's correct.

18          Q.    Let me ask you to turn to the bottom of page 21 of  
19 that transcript.

20          A.    Okay.

21          Q.    Beginning at line 21 on that page, you'll see where  
22 I've highlighted in green "Mr. Wheeler." Do you see that,  
23 Mr. Mazo?

24          A.    Yes.

25          Q.    Who is Mr. Wheeler?

1           A.     David Wheeler was a staff member in the department  
2 of electric and gas at that time with the Public Service  
3 Commission.

4           Q.     Would you please read into the record what  
5 Mr. Wheeler had to say in that transcript about the  
6 application of Rule 25-6.049 to condominiums, including  
7 resort condominiums such as Holiday Villas?

8           A.     Mr. Wheeler says, "Well, the rule currently requires  
9 individual metering of condominiums period. That's why they  
10 had to come in for the waiver. The rule currently does not  
11 contemplate these resort condominium type entities and  
12 individual metering of condominiums period. That's why they  
13 had to come in for the waiver. The rule currently does not  
14 contemplate these resort condominium type" -- it looks like  
15 it's duplication. I'm not -- okay.

16          Q.     I don't believe it was duplication, Mr. Mazo. The  
17 transcript states beginning on page 21, quoting Mr. Wheeler,  
18 Mr. Wheeler states, "Well, the rule currently requires  
19 individual metering of condominiums period. That's why they  
20 had to come in for the waiver. The rule currently does not  
21 contemplate these resort condominium type entities.  
22 Individual metering of condominiums period. That's why they  
23 had to come in for the waiver. The rule currently does not  
24 contemplate the resort condominium type entities."

25                 Let me move on from Holiday Villas and hand you a



1 copy of a petition which has been marked as Exhibit 36.

2 (Hands document.)

3 A. Okay.

4 Q. This is a petition for variance or waiver from Rule  
5 25-6.049(5)(a) that you filed in October 2000 on behalf of  
6 Sun Destin International Homeowners Association. Do you  
7 recognize this document?

8 A. Yes.

9 Q. It's Sun Destin, is that correct, Mr. Mazo?

10 A. That's correct.

11 Q. Okay. In the Sun Destin case, Sun Destin is  
12 registered with the State as a condominium; is that correct?

13 A. It has a declaration of condominium filed as a  
14 condominium. It's also -- it's licensed as a condominium.

15 Q. All right. And as --

16 A. As a transient resort condominium.

17 Q. Okay. And it has a declaration of condominium on  
18 file with the State; is that correct?

19 A. Yes.

20 Q. And, therefore, it is subject to the individual  
21 metering requirement; is that correct?

22 A. Yes.

23 Q. So you filed the petition.

24 Now, in that petition for Sun Destin you allege  
25 that, and I'm on pages 2 and 3, that Sun Destin fits the

1 definition of a hotel under Section 509.242, Florida  
2 Statutes; is that correct?

3 A. I believe that's correct.

4 Q. Would you please verify that?

5 A. Yes.

6 Q. Sun Destin currently is on individual metering for  
7 roughly 198 units; is that right?

8 A. I think it's 200 and some.

9 Q. Okay. Do you know how long Sun Destin has been  
10 receiving service under individual meters from Gulf Power  
11 Corporation?

12 A. No, I'm not sure.

13 Q. Have you sought a refund in the Sun Destin petition?

14 A. No, we have not.

15 Q. Thank you. Mr. Mazo, let's talk about the Dunes  
16 petition.

17 A. Okay.

18 Q. Which has been marked as Exhibit 35. Let me hand  
19 you a copy of that. (Hands document.)

20 Exhibit 35 is a petition for a variance or waiver  
21 from Rule 25-6.049(5)(a) that you filed on behalf of the  
22 Dunes of Panama Owners Association with the Florida PSC in  
23 October of 2000; is that correct?

24 A. Yes.

25 Q. Okay. And like Sun Destin, the Dunes is registered

1 with the State of Florida as a condominium?

2 A. Yes.

3 Q. If you look at page 2 of Exhibit 35, you'll see  
4 where you have alleged that the Dunes operates in a manner  
5 that meets the definition of a motel under Section 509.242(b)  
6 and a resort condominium under Section 509.242(c) of the  
7 Florida Statutes; is that correct?

8 A. Yes.

9 Q. Do you know how many individual meters there are at  
10 the Dunes facility?

11 A. I think it's 198 at that facility. I'm not sure.  
12 But all of them are individual units.

13 Q. And the Dunes is served by Gulf Power Corporation?

14 A. Yes, it is.

15 Q. Gulf Power Company, excuse me.

16 How long has Gulf Power Company been providing  
17 electric service to the Dunes pursuant to individual meters?

18 A. I didn't check. But I mean I don't know how -- if  
19 Gulf Power's been up there the whole time, they've been on  
20 individual meters the whole time.

21 Q. Okay. Maybe five, ten years?

22 A. That's my guess at least.

23 Q. Have you sought a refund in your Dunes petition?

24 A. No.

25 Q. Have you filed any other complaint with the PSC or

1 other petition on behalf of Dunes or Sun Destin requesting  
2 refunds?

3 A. No.

4 Q. Has the Commission ruled on the Dunes petition?

5 A. No.

6 Q. Has the Commission ruled on the Sun Destin petition?

7 A. No.

8 Q. Let's talk a little bit about the conversion by FPL.

9 A. Okay.

10 Q. Of the Colony Beach facility from individual meters  
11 to master meters.

12 You would agree that FPL made the decision to  
13 convert Colony Beach at around the same time that the rule  
14 amendments authorizing master metering for time-shares were  
15 adopted by the PSC; is that correct?

16 A. Yes.

17 Q. The decision by FPL to master meter the facility was  
18 made near the end of February of 1997, as I understand your  
19 testimony. Is that right?

20 A. That's my recollection.

21 Q. And the time-share amendments to the master meter  
22 rule, to Rule 25-6.049, became effective mid-March of '97,  
23 March 23 or 24, 1997. Is that your recollection?

24 A. Yes.

25 Q. During that February 1997 time frame, both you and

1 the representatives from FPL that you worked with were aware  
2 that the rule change was in process; is that correct?

3 A. I was aware of it. My understanding when I first  
4 met with them was they were not aware of it.

5 Q. Okay. After FPL made the decision to convert the  
6 Colony to master meters, you faxed Mr. Guzman a copy of the  
7 rule amendments; is that correct?

8 A. I believe that's correct.

9 Q. At that point did you advise Mr. Guzman or anyone  
10 else at FPL that you would be pursuing a refund claim?

11 A. Not at that time. That's not my recollection.

12 Q. So the answer is you did not so advise him or anyone  
13 else?

14 A. At that time, no.

15 Q. Did you advise Mr. Guzman at any point prior to the  
16 conversion of June 1998 that you intended to pursue a refund  
17 claim against FPL?

18 A. I don't remember advising him until later on.

19 Q. Right. Because your testimony previously this  
20 afternoon was that the first conversation that you had about  
21 that was with Mr. Bucciarelli at some point in June or  
22 thereafter in '98; is that correct?

23 A. I don't remember if that was my specific testimony.  
24 I thought I indicated that I had -- might have talked to  
25 Mr. Guzman first to direct me. I didn't get

1 Mr. Bucciarelli's name from any -- it had to have come from  
2 Jim Guzman. So the procedure, that's how it went. It went  
3 through Mr. Guzman and then to Mr. Bucciarelli, is my  
4 recollection.

5 Q. Okay. As I understood your testimony, let's make  
6 sure the record is clear, the first conversation that you had  
7 with a representative of FPL regarding a refund, a potential  
8 refund claim or your desire to seek a refund, was with  
9 Mr. Bucciarelli, and it took place on or after June of '98?  
10 I think that was my first question to you, and you said yes.

11 A. No, I'm not certain, and I thought I said that  
12 earlier, but I -- I'm just trying to be specific. I did talk  
13 to Mr. Bucciarelli about a refund. No question about that.  
14 I'm not certain whether I -- when I talked to Mr. Guzman that  
15 I asked him that we wanted -- told him that we wanted to talk  
16 about a refund and who do we talk to and then he gave me  
17 Mr. Bucciarelli, obviously.

18 Q. I mean, you're certain that you did speak with  
19 Mr. Bucciarelli?

20 A. Yes.

21 Q. Now, there's been some testimony about discussions  
22 and correspondence that were exchanged between Power Check  
23 and FPL regarding conversion costs; is that correct?

24 A. Yes.

25 Q. Now, under the rule amendments that became effective

1 on March 23, 1997, these amendments required a customer to  
2 pay the utility's conversion costs only if the conversion was  
3 made as a time-share facility; is that correct?

4 A. I'm not sure it states that. I have to look at it  
5 and see what it states. But I know it was in there for the  
6 time-share facilities. If it states only time-shares, then  
7 whatever it says.

8 Q. Okay. You would agree with my representation that  
9 this rule provides language addressing conversion costs only  
10 with respect to conversions to master meters for time-share  
11 amendments?

12 A. Yes.

13 Q. I'm sorry?

14 A. Yes.

15 Q. There was nothing in the rule amendments that talked  
16 about the application of conversion costs for conversion of a  
17 hotel, a motel, or a similar facility to master metering; is  
18 that correct?

19 A. No. It was only about time-shares.

20 Q. Okay. Now, you represented a time-share facility  
21 known as the Veranda Resort and assisting that facility to  
22 convert to master metering; correct?

23 A. Yes.

24 Q. That was in 1997?

25 A. Yes.

1 Q. Okay.

2 A. Well, I started the process there. I represented  
3 them before that.

4 Q. Okay. Roughly in 1997, '98? In that time frame?

5 A. Yes. When we started working on the Veranda's  
6 conversion.

7 Q. Okay. Let me hand you a copy of Exhibit 17, which  
8 is a letter dated April 17, 1997 from you to Jim Guzman of  
9 FPL.

10 A. Okay.

11 Q. (Hands document.)

12 A. Okay.

13 Q. Now, in that letter your company, Power Check, paid  
14 the conversion costs under protest; is that correct?

15 A. Yes.

16 Q. Okay. Now, what you were protesting there was not  
17 the fact that you were -- that Power Check or Power Check's  
18 client, Veranda, was required to pay conversion costs under  
19 the rule? You were taking issue with the amount; is that  
20 right?

21 A. Yeah. The calculation.

22 Q. Okay. But this letter certainly indicates that you  
23 understood in April of '97 that you had the right to protest  
24 the payment of conversion costs; correct?

25 A. Yes.



1 Q. And did you understand in April of '97 that you  
2 could file a complaint with the PSC concerning conversion  
3 costs?

4 A. Yes.

5 Q. Okay. Let me hand you a copy of Exhibit 26, which  
6 is a memo from you to Jim Guzman. I'll ask you to take a  
7 look at that. (Hands document.)

8 A. Okay.

9 Q. That memo attaches the check for the conversion  
10 costs for the Colony Beach master metering project; is that  
11 correct?

12 A. Yes, it does.

13 Q. And there's nothing on that memo reflecting that the  
14 conversion costs were being paid under protest; is that  
15 correct?

16 A. Not in that memo, no.

17 Q. Now, you agreed that Colony Beach should pay FPL  
18 conversion costs even though you contended that it was being  
19 converted because it was a hotel; is that correct?

20 A. I believe that's what -- in discussions we were  
21 talking about the conversion costs and how to come up with  
22 them, and we basically said, Let's rely on the time-share  
23 rule, that looks like a reasonable way of doing it.

24 Q. It was your position -- as I understand your  
25 testimony in this case, it was your position that Colony

1 Beach should be converted because it was a hotel. Correct?

2 A. Yes.

3 Q. Okay. And you agreed to pay the conversion costs to  
4 FPL, although there were some discussions regarding the  
5 calculations; correct?

6 A. Yes.

7 Q. And you have already testified, have you not, that  
8 conversion costs did not apply to hotels under the PSC's  
9 rule; correct?

10 A. No, I don't think I testified to that. I think I  
11 testified that the rule itself talked about conversion costs  
12 only for time-shares and that's what the rule said.

13 Q. Excuse me, Mr. Mazo. Excuse me. I think your  
14 testimony before was that the rule does not address  
15 conversion costs and does not require conversion costs for  
16 converting a hotel, a motel, or a similar facility to master  
17 metering. Is that your testimony?

18 A. That particular rule does not address anything with  
19 hotels. It said time-share, and it said time-share  
20 conversion costs, and that's all it said.

21 Q. Under that rule, as it was amended in 1997,  
22 conversion costs are only required to be paid by the customer  
23 for a conversion of a time-share arrangement to master  
24 metering; correct?

25 A. I don't think that's correct.

1 Q. Okay.

2 A. I think that rule talks about -- I said it's not  
3 correct, so -- you want me to -- I can elaborate on it, but I  
4 think the rule --

5 Q. Let me ask you another question.

6 A. Okay.

7 Q. Can you show me where in the rule that the rule  
8 requires a customer to pay conversion costs with respect to  
9 the conversion of a hotel, motel, or similar facility?

10 A. The rule does not require that.

11 Q. Thank you.

12 A. Not this rule.

13 Q. Thank -- thank you, Mr. Mazo.

14 Now, your letter where you enclosed a check for the  
15 conversion costs to Mr. Guzman, Exhibit 26, as you stated,  
16 did not reflect any protest to the payment of conversion  
17 costs; correct?

18 A. No, it did not.

19 Q. And you were aware at that time that you could  
20 pursue a claim with the PSC for refunds of conversion costs  
21 or for resolution of a dispute concerning conversion costs;  
22 correct?

23 A. Yes.

24 Q. Let me hand you a copy of a memo from you to Jim  
25 Guzman dated March 1997, which has been marked as Exhibit 14.

1 I'll ask you to review that memo. (Hands document.)

2 A. Okay.

3 Q. Now, in the portion that I've highlighted, which is  
4 the second paragraph.

5 A. Yes.

6 Q. You state that FPL agreed to master meter the Colony  
7 because it has been and continues to operate as a hotel.  
8 That was your statement; correct?

9 A. Yes.

10 Q. You go on to say that there is no need to wait for  
11 the rule amendments to become effective to begin the  
12 conversion process; is that correct?

13 A. That's correct.

14 Q. Okay. I believe you testified earlier today that  
15 you were changing the statement made in that letter. Is that  
16 right? Do I have the right letter?

17 A. That's correct.

18 Q. Okay. Can I borrow that letter from you for just a  
19 second, Mr. Mazo?

20 A. Sure.

21 Q. As I understood your testimony, you were amending  
22 this letter to say, Therefore, we do not have to wait for the  
23 amended version of the rule relating to time-share resorts to  
24 take effect to begin the conversion process. Is that your  
25 position?

1 A. That's correct.

2 Q. Okay. Did you relate that amendment to Mr. Guzman  
3 at any time in 1997?

4 A. We went right ahead with the conversion process. We  
5 didn't wait. We went right ahead.

6 Q. That wasn't my question, Mr. Mazo.

7 Did you send documented letters? Memos? I mean,  
8 there were a lot of memos you were sending at that time. Did  
9 you send him a revised memo correcting that second  
10 sentence --

11 A. No.

12 Q. -- in the second paragraph?

13 A. No.

14 Q. In fact, the first time that that second sentence in  
15 the second paragraph of this letter has been amended, so far  
16 as FPL or its representatives know, was this afternoon during  
17 your testimony; is that correct?

18 A. No. I believe it came up in my deposition, but I'm  
19 not -- I haven't read it, so I'm not sure.

20 Q. Okay. Well --

21 A. Either my deposition or today.

22 Q. Right. Would you accept my representation that it  
23 did not come up in your deposition?

24 A. I would accept that.

25 Q. And would you --

1           A.    I don't really recall whether it did or didn't.  I  
2   don't remember if you asked me questions about the document.

3           Q.    Okay.  Would you accept my representation that you  
4   covered this document with Mr. Guzman in his deposition and  
5   did not notify him of the change you were making to the  
6   second sentence in the second paragraph of Exhibit 14?

7           A.    I don't recall doing it.

8           Q.    Okay.  Let me ask you a few questions about your  
9   amended statement in the second sentence of the second  
10   paragraph of this rule.  Let me just read it to you as  
11   amended.  "Therefore, we do not have to wait for the amended  
12   version of the rule relating to time-share resorts to take  
13   effect to begin the conversion process."

14                  This memo was dated March 19.  I think your  
15   testimony earlier today was that in March of '97 that  
16   everybody, I think was the word you used, knew the rule was  
17   going to happen.  Nobody objected.  Is that a fair statement  
18   of your testimony?

19           A.    I don't understand the term "nobody objected."  What  
20   I recall saying in my testimony was that prior to the  
21   Commission's approval of the rule, people understood that the  
22   rule looked like it was going to be approved.

23           Q.    Well, it was your term.  You had said "nobody  
24   objected."

25                  Would you agree, subject to check, that the language

1 in the proposed rule amendment was approved by the PSC in  
2 January of '97?

3 A. Yes.

4 Q. Okay. And thereafter nobody objected to that  
5 language; is that correct? No parties filed any --

6 A. I'm sorry. I think I -- I thought you were talking  
7 about my memo.

8 Q. No, sir.

9 A. Now you're talking about the Public Service  
10 Commission rule. Nobody objected to the Public Service  
11 Commission rule. That's correct.

12 Q. Okay. And that Public Service Commission -- the  
13 language in that Public Service Commission rule was adopted  
14 by the PSC in January of 1997; is that correct?

15 A. No. January of 1997?

16 Q. Yes.

17 A. My understanding was that the rule was adopted March  
18 23rd of 1997.

19 Q. Okay. But the language in the rule had already been  
20 approved. Let me -- let me not bicker with you on this. Let  
21 me get a copy of Exhibit 37, which is the statement.

22 A. Let me answer it if I can. My -- my understanding  
23 of it was that there was proposed language for the time-share  
24 rule for the amendment. And I had no knowledge that it was  
25 already approved. It was proposed, and the approval date was

1 scheduled -- my understanding was it was March 23rd, 1997.

2 Q. Okay. If you would look at Exhibit I believe it's  
3 37, this is a document -- docket index listing from the PSC  
4 for Docket 960020. You'll see there the date January 9,  
5 1997. It says, "Vote sheet. Approved staff." Do you see  
6 that?

7 A. I see it.

8 Q. Okay. Do you agree that that's when the language  
9 for this rule was approved by the PSC?

10 A. I don't know that.

11 Q. You don't know?

12 A. No. I don't know what that means when it says  
13 "Approved staff." If it means approved the language, then  
14 that's when it approved it. If it means -- I didn't have  
15 that. I don't know.

16 Q. Okay. Oh, you don't -- were you participating in  
17 that docket?

18 A. I told you earlier that I believe I participated in  
19 a very limited fashion in that all I did was file the  
20 response. I was not mailed or sent anything from the  
21 Commission. I didn't participate in the hearings or agenda  
22 or any of that, and I didn't get any other documents on that  
23 except the March 23rd approval.

24 Q. So when you wrote the letter to Mr. Guzman that says  
25 or intended to say, We do not have to wait for the amended



1 version of the rule relating to time-share resorts to take  
2 effect, you didn't know whether or not they had been  
3 approved? Is that your testimony?

4 A. No, that's not my testimony. What I said, they're  
5 two different things. Looking at all that and looking at the  
6 language, my testimony was that I had an understanding from  
7 talking to other people that the Commission was going to  
8 approve the rule to amend time-shares and that that approval,  
9 I talked to somebody at the PSC, procedurally was going to  
10 happen March 23rd. That's all I need.

11 Q. Okay.

12 THE WITNESS: Mr. Hoffman?

13 MR. HOFFMAN: Yes?

14 THE WITNESS: Can we take a quick break?

15 MR. HOFFMAN: Sure.

16 THE WITNESS: If that's all right?

17 MR. HOFFMAN: If that's all right with Your Honor?

18 THE COURT: Yes.

19 (Off the record for a short break, after which the  
20 following proceedings were had:)

21 BY MR. HOFFMAN:

22 Q. All right. Mr. Mazo, let me hand you Exhibit 16,  
23 which is your memo dated March 27, 1997 to Mr. Guzman.

24 (Hands document.)

25 A. Okay.

1 Q. Let me get that back from you for just a moment.

2 A. Certainly.

3 Q. The memo states that, "After our discussion last  
4 night," you're talking to Mr. Guzman, "regarding FPL's  
5 charges for the cost of conversion at the Colony, I checked  
6 my notes from our meeting of February 27, 1997 and notes from  
7 my recent conversation with Al Gerrington," and the letter  
8 goes on. These notes, according to this March 27 memorandum,  
9 deals with the issue of conversion costs discussed at the  
10 February 27th, 1997 meeting; is that correct?

11 A. Yes.

12 Q. Okay. Do these notes that you referred to actually  
13 exist?

14 A. I haven't seen any in my files. They may have at  
15 that time but not now.

16 Q. Okay. These -- these notes were not produced to FPL  
17 at your deposition. Is that because they no longer exist?

18 A. I haven't found them. I've looked for them. I  
19 haven't -- they were -- on the telephone we were talking  
20 about costs, and they're just notes, scribbled notes, little  
21 indications of what's said, and that's all. Really, it's  
22 just cost issues.

23 Q. Okay. Let me hand you a copy of Exhibit 18, which  
24 is a letter dated November 25, 1997 from Jim Guzman of FPL to  
25 you. I think we've already talked about this letter a little

1 bit today.

2 A. Okay.

3 Q. Or you have with your counsel, excuse me.

4 A. Yes.

5 Q. Now, in that letter Mr. Guzman referred to Colony  
6 Beach as a time-share resort; is that correct?

7 A. Yes.

8 Q. This letter was written roughly 11 months after  
9 extensive discussions and the exchange of numerous memoranda  
10 between you and Mr. Guzman concerning the Colony Beach  
11 facility; correct?

12 A. Yes.

13 Q. This letter was written roughly 11 months or perhaps  
14 some nine or ten months after the decision to convert the  
15 Colony Beach facility had -- had been made; is that correct?

16 A. Yes.

17 Q. And this letter was written at a time when the  
18 conversion costs, the issue of the amount of the conversion  
19 costs had been resolved; is that correct?

20 A. I think that this letter was the -- was the -- one  
21 of the ending resolutions. We had just -- we spent a long  
22 time is what my recollection was about costs, and this is  
23 what they came up with.

24 Q. Okay. This letter reflected the final resolution of  
25 the conversion cost amount?

1 A. Right.

2 Q. Okay. Now, again, in that letter Mr. Guzman  
3 referred to Colony Beach as a time-share; correct?

4 A. Yes, he did.

5 Q. Now, even back in March of 1997 Mr. Guzman had wrote  
6 you a letter referring to the Colony as a time-share, isn't  
7 that right?

8 A. Not to my knowledge.

9 Q. Well, let me ask you to --

10 A. I've never received --

11 Q. Excuse me, Mr. Mazo.

12 MR. DALEY: Excuse me, Judge. I think he attempted  
13 to further answer the question.

14 MR. HOFFMAN: He said not to his knowledge, and I  
15 was going to try to refresh his recollection.

16 MR. DALEY: All right.

17 BY MR. HOFFMAN:

18 Q. Let me hand you a copy of your deposition, Mr. Mazo,  
19 that was taken on August 23, 2000 and ask you to read from  
20 page 112, lines 16 through 18.

21 A. Okay. 16 through 18?

22 Q. Yes. Into the record, please.

23 A. It says there was -- "Jim Guzman did write me a  
24 letter in March, but he didn't refer to the time-share rule.  
25 He referred to the Colony as a time-share at that time."

1           Q.    Thank you.  When I took your deposition, Mr. Mazo,  
2                you indicated, as you've just stated into the record, that  
3                Mr. Guzman had wrote you a letter in March of 1997  
4                characterizing the Colony as a time-share.  Are you recanting  
5                that testimony today?

6           A.    I have no recollection, and I don't -- you know,  
7                I've seen the deposition.  If that's what I said, if it's  
8                recorded correctly.  I didn't read it.  I didn't get a copy  
9                of it to read and sign it.  I'm not arguing with what was  
10               said in the deposition.

11                    I know that we had documents produced from Florida  
12               Power and Light, and all the documents that I've seen there's  
13               no document from Jim Guzman to me in all the documents he  
14               produced that said it was time-share.  I think that's an  
15               incorrect statement.  As a matter of fact, I'm sure it was an  
16               incorrect statement that was made and -- because there's  
17               nothing there.  I mean, there are no documents.

18           Q.    So the answer to my question is you're changing that  
19                piece of testimony that we read into the record from your  
20                deposition; is that correct?

21           A.    That piece -- that piece of testimony, to my  
22                knowledge, is not correct in that testimony.

23           Q.    Are there any other aspects of the subjects that we  
24                have addressed in your testimony or that we addressed in your  
25                deposition that you wish to change?

1 A. None.

2 Q. Okay. I believe you previously testified that after  
3 you received the November 1997 letter you contacted  
4 Mr. Guzman and asked him -- and you asked Mr. Guzman to  
5 change the characterization in the letter from time-share to  
6 hotel. Correct?

7 A. Yes. That's correct.

8 Q. All right. And he accommodated you; correct?

9 A. Yes, he did.

10 Q. All right. And that brings us to Exhibit 19, which  
11 is a letter dated December 22, 1997 from Mr. Guzman to you?  
12 Take a look at that. (Hands document.)

13 A. Yes.

14 Q. Are you familiar with that letter?

15 A. Yes, I am.

16 Q. Now, again, in December of 1997 when Mr. Guzman  
17 wrote you this letter and accommodated your request to change  
18 the word hotel -- excuse me, to change the word time-share to  
19 hotel, the decision to convert Colony Beach had long since --  
20 long since been made and the amount of the conversion costs  
21 had been settled on between Power Check and FPL; correct?

22 A. Yes.

23 Q. And at this point in time in December of '97 you had  
24 not advised Mr. Guzman of your intention to pursue a claim  
25 for refund with the PSC; correct?

1           A.    No, I don't believe so. At that time I had not.

2           Q.    Okay. Did you believe this letter to be supportive  
3 of any claim for refunds that you might make?

4           A.    I believe that that supports the position that we're  
5 taking with Colony, yes.

6           Q.    Okay. If you believe it was relevant to you and  
7 supportive of your refund claim, why didn't you disclose that  
8 issue to Mr. Guzman?

9           A.    You're asking me today if it's relevant. I believe  
10 that it is relevant today.

11          Q.    Okay. Did you believe it to be relevant at that  
12 time?

13          A.    At that time the relevancy of that had to do with me  
14 making sure that I had communicated properly and I didn't  
15 misrepresent something.

16          Q.    Mr. Mazo, you've admitted that that letter had  
17 absolutely no value to Colony Beach in terms of the decision  
18 to convert that facility to master metering and in  
19 negotiating and settling the conversion costs. Fair  
20 statement? Those decisions had already been made; correct?

21          A.    Negotiating the conversion costs?

22          Q.    That decision had already been made; correct?

23          A.    That had already been made, that's correct.

24          Q.    And the decision to convert had been made back in  
25 February of '97; correct?

1           A.     That's correct.

2           Q.     The only possible value of calling Mr. Guzman and  
3 asking him to change the word in the letter from time-share  
4 to hotel was to set Mr. Guzman or FPL up for a refund claim;  
5 correct?

6           A.     No, that's not quite correct. There's -- the value  
7 of the letter was that if Mr. Guzman is saying that I said  
8 it's a time-share, then the Colony could have been subject to  
9 -- there's a misrepresentation that didn't happen, because we  
10 weren't saying -- I never went to FP & L and said that this  
11 is a time-share, you should convert it under the new rule,  
12 the amended rule. I said you should convert it under the old  
13 rule because it operates and is licensed as a hotel. And for  
14 my business I needed to make that clear that I didn't  
15 misrepresent that, and that was a misrepresentation of what  
16 we had discussed, and that's why I asked for the change.

17          Q.     If this letter had no value, if your testimony is  
18 this letter was in no way related to a claim for refund that  
19 you were cooking up in 1997, would you be willing to withdraw  
20 that letter from this record?

21          A.     I don't believe it -- you can look at the testimony.  
22 I didn't say that this letter doesn't have any value. This  
23 letter has a value to our claim in supporting the testimony  
24 that I asked FP & L to convert based on it was a hotel.

25          Q.     This letter has, in your mind, significant value and



1 significant relevance to your claim, doesn't it?

2 A. No. It has some. It supports other letters that  
3 say it was a hotel. It supports the testimony that we asked.  
4 It supports Mr. Saxon's testimony that we said it's a hotel,  
5 please convert it.

6 Q. And by the -- I'm sorry.

7 A. It's a piece of it.

8 Q. And by the time you called Mr. Guzman and asked for  
9 the change in that letter by your testimony you had already  
10 talked to Mr. Sanger about the facts that could support a  
11 claim for refund; correct?

12 A. I believe that's probably correct, yes.

13 Q. You did not disclose to Mr. Guzman your discussions  
14 with Mr. Sanger, did you?

15 A. No, I don't recall talking to Mr. Guzman about my  
16 discussions with Mr. Sanger.

17 Q. So the record is clear, you never disclosed to  
18 Mr. Guzman in 1997 your discussions with Mr. Sanger  
19 concerning the alleged communications that Mr. Sanger had  
20 with FPL back in late '88 or early '89 requesting a  
21 conversion to master metering?

22 A. No, I don't remember talking to Mr. Guzman about  
23 those discussions.

24 Q. You did not; correct?

25 A. No. To my knowledge, I did not say anything about

1 my conversations with Jerry Sanger to Jim Guzman.

2 Q. Okay.

3 A. Other than having to do with the conversion,  
4 technical conversion.

5 Q. The prospective conversion?

6 A. Right.

7 Q. Is it your position that Colony Beach would be  
8 entitled to a refund even if Mr. Sanger had not allegedly  
9 contacted FPL in late '88 or early '89?

10 A. I believe there's a good possibility for that  
11 because they were commercial instead of residential, and they  
12 should have had commercial service, not residential service.

13 Q. Okay. So is it your position that Colony Beach  
14 would still be entitled to a refund even if Mr. Sanger had  
15 never called back then?

16 A. I've entertained that, but I haven't taken a clear  
17 position on that one way or the other really.

18 Q. Let me take you back to your deposition.

19 A. A lot of that, so you understand --

20 Q. Excuse me, Mr. Mazo. There's not a question  
21 pending.

22 A. It's the answer -- it finishes the answer on the  
23 366. The answer --

24 MR. DALEY: Your Honor, I would -- I would ask the  
25 Court to allow him to finish the answer.

1 MR. HOFFMAN: Your Honor --

2 MR. DALEY: I think that's what he's doing.

3 MR. HOFFMAN: I didn't mention the word 366.

4 There's not a question pending.

5 THE COURT: Pick it up where you were at.

6 BY MR. HOFFMAN:

7 Q. If you would read into the record, Mr. Mazo, the  
8 highlighted version on page 114 of your deposition beginning  
9 at line 19.

10 A. Okay.

11 Q. Near the end. (Hands document.) If you would  
12 kindly read that into the record.

13 A. It says, "If you take Mr. Sanger's allegation that  
14 he contacted FP & L in late 1988 or early 1989 out of the  
15 equation, Colony Beach had filed a complaint for refund."  
16 And the answer is, "I can't tell you what we would have done.  
17 I can tell you that based on my understanding of the rule we  
18 still would have asked FP & L for a refund and come to them."

19 Q. Thank you. Now, in mid-1998 you represented a  
20 facility by the name of Sea Watch; correct?

21 A. That's correct.

22 Q. Sea Watch is a time-share facility; correct?

23 A. That's correct.

24 Q. And FPL assisted you in converting the Sea Watch  
25 time-share facility from individual meters to master meters;

1 correct?

2 A. That's correct.

3 Q. That was accomplished in the first quarter of last  
4 year?

5 A. If you have dates, I don't recall exactly when that  
6 happened. It was over a period of almost a year, a year and  
7 a half or something like that.

8 Q. You did not seek a refund from FPL for Sea Watch;  
9 correct?

10 A. That's correct.

11 Q. And you did not seek a refund from FPL on behalf of  
12 your Sea Watch client on the basis that Sea Watch should have  
13 been converted to master metering as a time-share rule once  
14 the rule was amended in March of '97?

15 A. That's correct.

16 Q. And the reason you did not seek a refund was because  
17 FPL had initially contacted Sea Watch and Sea Watch had  
18 delayed in seeking master metering from FPL; correct?

19 A. I think that was part of it. But I don't recall  
20 believing that they were entitled to a refund, so we didn't  
21 file for one.

22 Q. Going back to your deposition shortly, Mr. Mazo, but  
23 let me just ask you again. I understood your deposition  
24 testimony to be that the reason you did not seek a refund  
25 from FPL for your Sea Watch client was because FPL had

1 initially contacted the Sea Watch and the Sea Watch had  
2 delayed in seeking master metering from FPL. Is that your  
3 recollection?

4 A. I'm sorry. It's late. I'm trying to follow you  
5 clearly, but I think -- yes, I recall that the -- that Sea  
6 Watch was having a problem with their board of directors  
7 voting. They didn't understand the issue. They weren't  
8 clear. FP & L had originally come out and talked to them,  
9 but they didn't understand. They weren't sure. I mean,  
10 there were a lot of issues, and, so, yeah, having to do with  
11 all that, I mean there wasn't even a refund consideration.

12 Q. It was your judgment that under those set of  
13 circumstances they were not entitled to pursue a refund?  
14 Fair statement?

15 A. Fair statement.

16 Q. But with respect to the Colony it's your position  
17 that Colony Beach would be entitled to a refund even if  
18 Mr. Sanger had not approached FPL; correct?

19 A. I'm not sure that's -- I have looked at the issues  
20 since the deposition. I've been hammering over it, studying  
21 it, looking at it, researching the issue to see if that was a  
22 possibility, if that was a fact, and from everything that I  
23 can see under the Commission rules that that is a possibility  
24 that the Commission -- that's where it is today.

25 Q. Okay.

1 A. And that's been a -- I mean --

2 Q. You don't have -- you don't have an opinion on that  
3 issue; is that what you're saying?

4 A. Yes. And it changes sometimes.

5 Q. Okay. Rule 25-6.049 requires condominiums to be  
6 individually metered; correct?

7 A. Yes.

8 Q. Can you cite me to any Florida PSC precedent which  
9 supports the position that a facility that is both a  
10 condominium and a hotel should be viewed to be only a hotel  
11 for the purposes of Rule 25-6.049?

12 A. A precedent? I'm not aware of any precedent.

13 Q. Can you cite --

14 A. I'm sorry. My recollection is that -- is that that  
15 was the same response that staff indicated that there was no  
16 precedent, that this was a unique issue that hadn't been  
17 raised.

18 MR. HOFFMAN: That wasn't my question. I move to  
19 strike that part of his question, Your Honor.

20 THE COURT: Okay.

21 THE WITNESS: I'm sorry.

22 BY MR. HOFFMAN:

23 Q. Can you cite me to any Florida PSC precedent or  
24 order where refunds have been granted to a customer of a  
25 utility on the basis that the customer had been receiving

1 service under individual meters and allegedly should have  
2 been receiving service on master meters?

3 A. I haven't looked for them.

4 Q. Are you aware of any?

5 A. I'm not aware of any.

6 Q. Thank you. Are you aware of any Florida case law  
7 where a court has found that a customer is entitled to a  
8 refund on the basis that the customer allegedly should have  
9 been receiving service under a master meter rather than  
10 individual meters?

11 A. Not that specific issue, no.

12 Q. You're not aware of any?

13 A. I'm not aware of any.

14 Q. Are you aware of any case or PS -- Florida appellate  
15 court case or PSC order interpreting Section 366.03, Florida  
16 Statutes, to require a refund or a utility has been  
17 determined to have engaged in unduly preferential conduct?

18 A. I'm familiar with some cases that I've researched on  
19 366.03. I don't recall specifically whether they talked  
20 about unduly preferential treatment.

21 Q. Let me ask the question again. I don't think you  
22 answered my question.

23 Are you aware of any PSC order or Florida appellate  
24 court decision interpreting Section 366.03, Florida Statutes,  
25 to require a refund where a utility has been determined to

1 have been engaging in unduly preferential conduct?

2 A. The answer is I'm aware of some appellate opinions  
3 on 366.03 that required refunds. And I can't -- I'm not  
4 clear unless I go read the case whether the whole case talks  
5 about unduly preferential. It's something to do with rates  
6 and rate refunds and unfair, but I can't specifically say  
7 that. But I don't want to say no, because it might -- I  
8 mean, I just can't recall.

9 Q. Okay. You have read a Florida appellate court case  
10 where the appellate court ordered a refund to a customer on  
11 the basis that the utility violated Section 366.03, Florida  
12 Statutes?

13 A. Yes.

14 Q. What case?

15 A. I've got a copy of it, but I can't -- I can't cite  
16 the case. I've got it with me. I can cite it -- I can't  
17 remember the citation. It might be Richter versus Florida  
18 Power (phonetic.) There were a number of cases that I looked  
19 at, but I can't remember which case. And with all the other  
20 rules and things, unless I looked at it and went through my  
21 notes, I don't think I could tell you. I think I've cited it  
22 in one of the --

23 Q. What did Richter versus Florida Power Corporation  
24 deal with? Do you know?

25 A. Today I'd have to sit down and read it. I mean, I



1 really -- as far as my brain today and going through all  
2 this, I remember it had to do with some issue that we had  
3 over the last year in this, and I cited the thing in one of  
4 the briefs or memorandums to the Court.

5 Q. Okay. Just a couple more questions, Mr. Mazo. Is  
6 there anything -- let me hand you a copy again of the rule,  
7 25-6.049. This is the rule as amended. (Hands document.)

8 A. This is the same thing we just looked at?

9 Q. Yes, sir. We've looked at it a few times.

10 A. Okay.

11 Q. Mr. Mazo, is there any language in the PSC rule,  
12 subsection 5(a)(3), Rule 25-6.049, that speaks to any type of  
13 distinguishing or differing treatment for a hotel or a motel  
14 or a similar facility?

15 A. Did you say 5, dash, (a)(3)?

16 Q. Yes, sir.

17 A. Yes, there is.

18 Q. Okay. What language are you referring to?

19 A. It starts on (5)(a), at the very bottom of (5)(a)  
20 right before one it says, "Individual electric meters shall  
21 not be required." And then you go to three, and it says,  
22 "For electric used in specialized use housing accommodations  
23 such as hospitals, nursing homes, living facilities located  
24 on the same premises as and operated in conjunction with a  
25 nursing home or health care facility providing at least the

1 an exception to the rule. If you're a condominium but you're  
2 a hotel, then you're excepted. The other -- the other thing  
3 that's clear here, that the rule says new commercial -- it  
4 says electric -- "individual electric metering by the  
5 utility shall be" --

6 MR. HOFFMAN: Your Honor, I'm going to move to  
7 strike. This is beyond -- beyond my question.

8 MR. DALEY: I'll object to that, Judge.

9 MR. HOFFMAN: I am asking him --

10 MR. DALEY: I think he's trying to answer the  
11 question.

12 THE COURT: I think he's trying to answer.

13 MR. DALEY: That's not an easy question to answer  
14 under any circumstances.

15 THE WITNESS: I'm reading the rule, and it says  
16 that, "Individual electric metering by the utility shall  
17 be required for each separate occupancy unit of new  
18 commercial establishments, residential buildings, and  
19 condominiums."

20 Now, as I -- again, my reading of the rule, if you  
21 then go down, it says at the bottom of that, "But  
22 individual electric meters shall not, however, be  
23 required," and it gives you those not howevers, and  
24 hotels is one of them.

25 So in the same vein when I look at it that if I

1 would set up a new commercial establishment today, then  
2 under this rule a new commercial establishment has to be  
3 individually metered. But if that new commercial  
4 establishment is built as a hotel, it's excepted from the  
5 rule. That's how I read it.

6 The same thing with condominium. A condominium has  
7 to be individually metered. But if that condominium is  
8 set up as a hotel, it's excepted from the rule. That's  
9 how I'm reading it.

10 BY MR. HOFFMAN:

11 Q. Although you filed a petition for waiver in the Sun  
12 Destin case for a facility that is a condominium and a  
13 facility that you allege to be a hotel; correct? Is that  
14 correct?

15 A. Not exactly. It's close. It's not exactly correct.

16 MR. HOFFMAN: I guess that petition will speak for  
17 itself.

18 Thank you. I have no further questions.

19 THE COURT: How long do you think your redirect will  
20 be?

21 MR. DALEY: Not too long.

22 THE WITNESS: Can we do it tomorrow, Your Honor? Is  
23 that --

24 THE COURT: Are you worn out?

25 THE WITNESS: I mean, I'm trying to listen to the

1 questions pretty clearly. I'm a little tired, and it's  
2 -- and it's hard.

3 THE COURT: Is there a problem with going ahead and  
4 recessing for the night and picking up with redirect in  
5 the morning?

6 MR. HOFFMAN: Can we go off the record?

7 THE COURT: Sure.

8 (Off-the-record discussion, after which the  
9 following proceedings were had:)

10 (Thereupon, this proceeding concluded for the day at  
11 approximately 5:50 p.m. to be reconvened at 9:00 a.m.,  
12 January 23, 2001.)  
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COURT CERTIFICATE

STATE OF FLORIDA )

COUNTY OF SARASOTA )

I, CINDY A. ALVAREZ, Registered Professional  
Reporter, certify that I was authorized to and did  
stenographically report the foregoing proceedings and that  
the transcript of Volume I is a true and complete record of  
my stenographic notes.

Dated this 16th day of February, 2001.

  
CINDY A. ALVAREZ, RPR

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NO. 00-1117

*SPS*

RECEIVED  
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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

THE COLONY BEACH & TENNIS CLUB, LTD., )  
)  
Petitioner, )  
)  
vs. )  
)  
FLORIDA POWER AND LIGHT, )  
)  
Respondent, )  
)  
and )  
)  
FLORIDA PUBLIC SERVICE COMMISSION, )  
)  
Intervenor. )

HEARING  
VOLUME II

**ORIGINAL**

BEFORE: LAWRENCE P. STEVENSON  
State of Florida  
Administrative Law Judge

REPORTED BY: CINDY A. ALVAREZ, RPR  
Notary Public  
State of Florida at Large

DATE: January 23, 2001  
Commencing at 9:00 a.m.

PLACE: Sarasota Judicial Center  
2002 Ringling Boulevard, Courtroom 7A  
Sarasota, Florida 34237

APPEARANCES: BERNARD F. DALEY, JR., ESQUIRE  
1210 East Park Avenue  
Tallahassee, Florida 32301  
Appearing on behalf of,  
Petitioner

LUCENTE & ASSOCIATES, INC. (941) 954-2221 / 748-3289

APPEARANCES: KENNETH A. HOFFMAN, ESQUIRE  
(Continued) and J. STEPHEN MENTON, ESQUIRE  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 South Monroe Street, Suite 420  
Tallahassee, Florida 32301  
Appearing on behalf of  
Respondent

ALSO PRESENT: Marc Mazo  
Katrina D. Walker

LUCENTE & ASSOCIATES, INC. (941) 954-2221 / 748-3289

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1 THE COURT: Okay. We can commence. We left on  
2 commencing redirect of Mr. Mazo.

3 MR. DALEY: All right. Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. DALEY:

6 Q. Good morning.

7 A. Good morning.

8 Q. Let me -- on looking at some of the testimony from  
9 yesterday, let me go right to a -- Mr. Hoffman asked you  
10 about a statement that you made in a deposition earlier in  
11 this case.

12 A. Okay.

13 Q. Can you explain -- I think the question was whether  
14 a letter had been sent to you by Mr. Guzman, who's one of the  
15 Florida Power & Light witnesses, in March, and the testimony,  
16 it seemed to be a little bit conflicting. What's your answer  
17 for that, or what's your explanation for that?

18 A. Just now reading -- reading the whole page of it, it  
19 looks like I was trying to recall that he did send a memo  
20 about time-share. And the date when I said March, that was  
21 not correct, but it was correct that I said he sent a memo  
22 about time-share, because the only memo that he sent was what  
23 Mr. Hoffman went over with me yesterday, which was that  
24 November 25th, 1997 memo. That's the only one that was sent  
25 that said time-share.

1 Q. Okay. So you think the date was just wrong?

2 A. Yes.

3 Q. In all the hours of yesterday's testimony or even in  
4 your deposition time --

5 A. Yeah.

6 Q. -- the only thing you got was you got one piece of  
7 paper from him, and that was it in November?

8 A. That's right. All I've gotten from him was the one  
9 memo that said time-sharing on it.

10 Q. Okay.

11 A. Other -- in terms of the conversion. We talked  
12 about conversion costs. But that memo was when they said --  
13 when he said, We're going to convert it because it's  
14 time-share, and that's when I asked him to rewrite the  
15 letter. But that's the only one I got like that.

16 Q. Right. Right. Okay. All right. Let me ask you on  
17 the -- let me go to this -- to this issue on the -- what was  
18 brought in, what has been brought in by Florida Power and  
19 Light, and what you were asked about yesterday was -- was  
20 your filings in other cases and other properties. And here  
21 we've got a situation where you've got rules and statutes  
22 coming in all over the place with definitions. What -- tell  
23 us a little bit about the Dunes, Sun Destin, and Holiday  
24 Villas, if you can maybe differentiate with the Colony a  
25 little bit and just explain that again for the Court based on

1 the properties.

2 A. Okay. The petitions for Dunes, Sun Destin, and  
3 Holiday Villas, those properties are -- they have filed  
4 declaration of condominiums that -- my recollection is from  
5 seeing the documents was that those documents say it's  
6 condominium. It doesn't say condominium resort hotel. It  
7 doesn't say -- doesn't give them -- it gives them ownership.  
8 I don't know if it's fee simple or what type of ownership,  
9 but it gives them ownership of the units for them to live  
10 there if they choose.

11 And the Colony is not that way. Never has been that  
12 way. The owners -- they are bought, and they never could  
13 live there. So that's one of the major differences in the  
14 properties. At those properties some of the owners do live  
15 there. Again, not many. I think the Holiday Villas it was a  
16 couple. It fluctuates, because every year -- you know,  
17 they're still operating on the resort condo or similar to a  
18 hotel operation. But the owners who actually live there full  
19 time fluctuate back and forth because they can come into the  
20 rental pool or not. At the Colony that doesn't happen. It  
21 doesn't fluctuate.

22 The registration -- my recollection, Holiday Villas  
23 registered with the Department of Business Regulation, and  
24 this goes to that is it a resort condo, is it a hotel, what  
25 is it. And I think that sometimes -- you've got commission

1 rules and you've got statutes and you've got administrative  
2 codes, and if you look at the Colony and you --

3 Q. Actually look at the property; right?

4 A. Well, you've got to look at the property. And when  
5 you tie it into the licensing and regulation, if I say that  
6 the Colony is a resort condo, then under the Department of  
7 Business and Regulation -- the Department of Business and  
8 Professional Regulation, then the Colony, they meet the  
9 definition under that rule. They meet the definition of a  
10 resort condo. There's no question. But they -- under their  
11 rule, they're not a resort condo per se, they're a motel,  
12 because what they have to pay is the higher fee. They pay  
13 the fee for the motel.

14 And then the requirements for -- I think I mentioned  
15 earlier in my testimony yesterday that under the rules of the  
16 Department of Business Regulation you had to post room rates.  
17 Well, the resort condos, if you're a -- if you're licensed as  
18 a resort condo by the Department of Business Regulation,  
19 you're exempted for that. There's a specific statute with  
20 them that you don't have to post the room rates. But the  
21 Colony wasn't. The Colony was a motel. They had to post  
22 them. So they were subject to the criminal violations if  
23 they didn't post them.

24 Q. Right.

25 A. So if you say they're a resort condominium under

1 that -- under the Department of Business Regulation, then  
2 they wouldn't have to pay -- they'd pay the lower fee. But  
3 that's not to say that when you read the definition of what a  
4 resort condo is under that chapter that doesn't meet that  
5 definition. The other properties -- Holiday Villas was  
6 condominium, so when you look at Holiday Villas, they don't  
7 have to pay the higher fee and they don't have to comply with  
8 the stricter regulations. And that's -- the same thing with  
9 Sun Destin or Dunes of Panama. And that's where some of the  
10 differences come in.

11 Q. Okay.

12 A. And when the Colony is operating as a hotel and then  
13 you tie it into the commission rule and their license, when  
14 you look at Holiday Villas, they did not have an occupational  
15 license with the City of Indian Rocks as a hotel.

16 Q. What's Colony? What entity, corresponding entity?

17 A. Colony had an occupational license with the City of  
18 Longboat Key or the Town of Longboat Key as a hotel. The  
19 Sarasota County occupational license was hotel. So I mean I  
20 guess you could ask from the standpoint of Sarasota County  
21 they're a hotel. From the standpoint of Longboat Key -- so  
22 that's my answer in terms of the differential. I mean, there  
23 are a lot of other things that I talked about before, but  
24 those are some of the -- I think the relevant points to the  
25 differences in them.

1           Q.    So if you look at definitions, could a property  
2 actually meet, do you think, more than one definition?

3           A.    There's no question it could meet more than one  
4 definition. But what is it. It would seem the way the rules  
5 -- whatever is more appropriately. So if I meet the  
6 definition for resort condominium but I also meet the  
7 definition here, you know, it's -- when I look at it, I think  
8 the interpretation of that is probably a variable. And I'm  
9 not trying to hedge on it because you look at it and I look  
10 at Holiday Villas, and I look at it, and I say I think some  
11 of these properties meet certain definitions. Okay?

12                But they're not licensed there, and I can't say why  
13 they're not or they are, but it seems to me -- and, again,  
14 I'm not trying to seem confused on it, but it's -- if you  
15 read me the definition, I haven't read it for a while, on  
16 motel, I could tell you what it -- what it sounds like,  
17 whether those properties meet it or not. So I guess the  
18 other thing is is they decide -- maybe this is it. Because I  
19 -- in looking at the rule, I can't tell you today why that  
20 they would register -- okay. Condominiums register as a  
21 condominium, Holiday Villas, because it is condominium. When  
22 I'm thinking about the Holiday Villas --

23           Q.    So Holiday Villas, for instance, wouldn't be able to  
24 rent out their entire facility for the Superbowl or a  
25 convention? You look at the actual differentials between the

1 properties?

2 A. Well, I mean that's the other thing. You're looking  
3 at operations. There's -- there were -- when I'm looking at  
4 the type of facility, I think there are some other -- some  
5 other information from the Public Service Commission that  
6 wasn't brought out. I'm trying to remember what it was. I  
7 think it was Valencia.

8 Q. And that's another -- that was a -- well,  
9 Mr. Hoffman asked you about Mr. Wheeler yesterday. Was that  
10 -- was that --

11 A. Mr. Wheeler, again, I worked with on a number of  
12 issues. It was all the master metering issue, basically.

13 Q. Right.

14 A. But Mr. Wheeler -- I think yesterday when  
15 Mr. Hoffman had me look at some of the things that  
16 Mr. Wheeler had stated, it was in a docket with Holiday  
17 Villas, and there are some other dockets -- there's another  
18 docket with Valencia where I think Mr. Wheeler and staff --

19 MR. HOFFMAN: I'm going to object, Your Honor.

20 There were no questions on cross-examination about the  
21 Valencia case.

22 MR. DALEY: Well, the -- there were questions about  
23 Mr. Wheeler and his comments directly, and I think that  
24 that would be -- that would be the narrow scope of my --

25 THE COURT: If we can confine it.

1 MR. HOFFMAN: Your Honor --

2 THE COURT: I appreciate it.

3 MR. HOFFMAN: Just for the record, Your Honor, the  
4 two questions about Mr. Wheeler was who is he, and the  
5 second question was please read from a transcript from  
6 Holiday Villas. This case is not about Mr. Wheeler,  
7 we're not exploring Mr. Wheeler's various activities, and  
8 we never mentioned the Valencia case in our cross.

9 MR. DALEY: I am -- I think we'll similarly confine  
10 it to, you know, reading comments from him, which is the  
11 same individual.

12 THE COURT: I mean, it was my understanding that we  
13 got into Mr. Wheeler just simply because you wanted his  
14 -- a statement of Mr. Wheeler's position on what the rule  
15 requires as far as condos. I mean, that was the only  
16 note I had.

17 MR. DALEY: Your Honor, and that's where it's  
18 confined with us also, the same issue.

19 MR. HOFFMAN: We got into Mr. Wheeler so you would  
20 know who he was. This is who he is, this is who he works  
21 for, and then that was question one. Question two is,  
22 all right, now that we know who he is, please read these  
23 three lines from the transcript in the Holiday Villas  
24 case.

25 Mr. Wheeler does, as Ms. Walker will tell you,



1 hundreds of things at the PSC, which I didn't ask about,  
2 and I think this is well beyond what I asked about on  
3 cross.

4 MR. DALEY: Well, I think -- I think it wasn't a  
5 question of who he was. It was a question of asking him  
6 to read Mr. Wheeler's interpretation of the rule. I  
7 think that's --

8 THE COURT: I'll overrule, but I mean with the  
9 understanding that we have Mr. Wheeler's direct statement  
10 of what the rule says, so whatever else we get may not be  
11 as valuable.

12 BY MR. DALEY:

13 Q. All right. Well, then let me ask you this. And,  
14 also, we've already actually stipulated on this.

15 Let me ask you to read, then, Mr. Wheeler's comments  
16 only as it relates to the interpretation of that rule.

17 MR. HOFFMAN: Excuse me. Mr. Daley, what document  
18 are you --

19 MR. DALEY: Oh, I'm sorry. It's the -- it's the one  
20 that we jointly authenticated as a staff recommendation  
21 on Valencia.

22 MS. WALKER: Do you have an exhibit number?

23 MR. DALEY: Yeah.

24 THE WITNESS: This is dated August 24th, 2000. It's  
25 docket number 000643EU.

1 MR. HOFFMAN: I don't believe we have a copy of  
2 that.

3 THE COURT: Exhibit 12.

4 MR. DALEY: Yeah, I'm sorry. It's which number?

5 THE COURT: From the description, I was going to say  
6 it looks like Exhibit 12 from my notes.

7 MR. DALEY: Right.

8 THE WITNESS: Your Honor, I believe it's that.  
9 (Hands document.)

10 MR. DALEY: Yes, Your Honor, it is 12.

11 BY MR. DALEY:

12 Q. All right. Thank you. Okay. If you -- you've got  
13 it there. Just if you can find your answer to that, I'd  
14 appreciate it.

15 A. The staff analysis cites Rule 25-6049(5)(a), and  
16 then it reads the rule. If it's all right, I can skip  
17 reading the rule on it, can't I?

18 Q. Right. Yes.

19 A. Okay. The analysis -- this is -- the analysis looks  
20 to be of the master metering rule, and it says, "The types of  
21 facilities that are exempted from the individual metering  
22 requirement are those in which due to their nature or mode of  
23 operation it is not practical to attribute usage to  
24 individual occupants."

25 And here it says -- they're talking about Valencia,

1 "The units at Valencia are individually metered, and thus the  
2 unit owner pays for electric that they consume, and there's  
3 no ambiguity at Valencia as to who is responsible for the  
4 electricity used and no difficulty in measuring and billing  
5 such customers. By contrast, hotels and motels are  
6 commercial enterprises in which the occupants of the unit are  
7 not billed for their use of electricity but rather pay a  
8 bundled rate for the use of a room for a limited time." And  
9 then it says Rule 25-6049(5)(a), Florida Administrative Code.

10 And the other part that's highlighted there says,  
11 Again -- it's in the paragraph below that where you  
12 highlighted. "Again, staff believes that the nature of the  
13 facility and its mode of operation are relevant. Unlike  
14 motel and hotel guests, the owners of units in Valencia  
15 reside full time in their units, and there's no difficulty in  
16 attributing and billing their usage of electricity."

17 Q. Okay. All right. Thank you.

18 MR. DALEY: Your Honor, we would ask that this be  
19 admitted into evidence. It's Joint Stipulation 12. It's  
20 a staff recommendation of the Public Service Commission,  
21 public record.

22 MR. HOFFMAN: Your Honor, I'm going to object.  
23 First of all, those statements that are reflected in that  
24 staff recommendation do not go to the issue that was  
25 addressed in my cross-examination, which was

1 Mr. Wheeler's statement as to whether or not a waiver is  
2 required, which is really the issue that is before you.

3 Those statements simply reiterate what everyone  
4 would probably agree on, which is that there are certain  
5 facilities in the master metering rule that are transient  
6 in nature that are available or eligible for master  
7 metering. That's item one.

8 Item two, this is a staff recommendation. This is a  
9 recommendation that was not approved by the Public  
10 Service Commission because it was in a petition for  
11 declaratory statement, not a request for a rule waiver,  
12 and that petition was withdrawn by the Valencia Area  
13 Condominium Association. We would object.

14 MR. DALEY: Well, it's -- Your Honor, first of all,  
15 on the -- on the first issue, I don't think there's any  
16 question that this issue ties directly to the issue of  
17 waivers. You're applying for a waiver based on your  
18 position within this rule, and I don't think there -- I  
19 mean, I think --

20 THE COURT: I'll overrule the objection, and we'll  
21 show as admitted Joint Exhibit 12. I've got it.

22 MR. DALEY: Thank you.

23 BY MR. DALEY:

24 Q. All right. Let me -- let me just jump a little bit  
25 here and talk about one of the issues that came up yesterday

1 that was directly discussed by Mr. Hoffman was the whole cost  
2 of conversion business and your discussions with Florida  
3 Power and Light folks on that issue.

4 Can you explain a little bit about the -- any  
5 confusion that might come up in there or your recollection?

6 A. My recollection of what we were talking about  
7 yesterday was looking at the rule. Do you have a copy? Do  
8 you know what exhibit number that was? It was the rule on  
9 the costs of conversion that I was being asked about.

10 MR. HOFFMAN: This is Exhibit 30, Mr. Daley.

11 THE WITNESS: 30.

12 MR. DALEY: 30? Okay. Thank you.

13 BY MR. DALEY:

14 Q. Do you want to look -- take a look at that. That  
15 would be fine.

16 MR. DALEY: Thank you, Judge. Judge, we've got it.  
17 Do you have it? Thank you.

18 BY MR. DALEY:

19 Q. All right. And this is -- this is what we were  
20 referring to yesterday. Go ahead. I'm sorry.

21 A. In the context that we were discussing it it was  
22 talking about with the Colony and the conversations about the  
23 conversion to master metering.

24 Q. Right.

25 A. And what the costs would be. And I think the

1 questions yesterday had to do with, well, does -- is there  
2 anything in this rule that says something about hotels, that  
3 hotels should be -- that the cost of the conversion should  
4 apply to hotels.

5 Q. Right. Right.

6 A. Basically.

7 And the answer to that is no, but that's not why we  
8 used this rule. At the time we were talking about converting  
9 the Colony to master metering we talked about it, and I think  
10 the memos are in the record that I wrote to Mr. Guzman after  
11 the meeting that we said, It's a hotel, and we want to  
12 convert it, and there are other documents about trying to  
13 come up with the costs.

14 I think I testified earlier today that Florida Power  
15 and Light at that time in that area in Sarasota had not done  
16 a conversion, so they really didn't know what they should  
17 charge for it. They had -- they had to find somewhere -- we  
18 needed a road map, basically. And we didn't come back to  
19 them and say, You've got to use this rule, we think you've  
20 got to use it, or anything like that. We just said, Look,  
21 we're aware of the rule, the proposed rule, and this is  
22 what's happening. And it makes sense, why don't we just use  
23 that as a guideline. And, basically, that's -- they didn't  
24 disagree.

25 Q. Okay. And I asked you that on direct, but I just

1 wanted to -- because it did come up on cross-examination, I  
2 just wanted to re-ask that question. You don't think there  
3 was any confusion, then, in the minds of the employees of the  
4 Florida Power and Light regarding the use of that conversion  
5 rule?

6 MR. HOFFMAN: Objection. Calls for speculation.

7 MR. DALEY: Well, I just -- certainly, I limit that.

8 BY MR. DALEY:

9 Q. I think in your mind at that time do you think it  
10 was a -- it was -- did they -- did they mention --

11 MR. HOFFMAN: Objection.

12 THE COURT: Did they express any --

13 THE WITNESS: In the conversations -- in the  
14 conversations that took place I certainly didn't believe  
15 it from the meeting, from going to the meeting time on  
16 around the end of February. And my understanding from  
17 the meeting was that they agreed it was a hotel and we  
18 could master meter. So when we talked -- and at that  
19 time we brought out -- I think the rule I faxed to them,  
20 they were not aware of the proposed new rule at that  
21 time.

22 BY MR. DALEY:

23 Q. Okay. That was mentioned yesterday.

24 A. Mr. Bauer -- Mr. Bauer and Mr. Guzman. And I  
25 believe I got a copy of the proposed rule that I had had, and

1 I faxed it to them. And, again, I faxed it to them a road  
2 map, here's where we go, and here's -- why not use this  
3 basis. And I don't believe they did. That was what all the  
4 discussions for two or three or four months were about. Did  
5 they go that way and should they and how is that even  
6 interpreted. A lot of questions.

7 Q. So they never did use that? Not as such?

8 A. Well, my opinion from doing it with a number of  
9 companies I think that there were some charges in there that  
10 shouldn't have been in there. How much? I don't know. It  
11 was a tough thing to try to really nail down.

12 Q. All right. Okay. All right. Let me -- let me ask  
13 you on -- let me jump over to another -- to another line of  
14 questioning that was directly brought by Mr. Hoffman  
15 yesterday, and that is the -- that is the issue of the refund  
16 and your thought process on working on the refund, some of  
17 the dates involved with that. And can you -- you know, can  
18 you tell me your -- outline your work on that -- on that  
19 particular issue?

20 A. I don't have a recollection of the exact date that I  
21 asked for refund, but I have a recollection of talking to  
22 Jerry Sanger at some point after my conversations had started  
23 with FP & L but prior to when they finished with FP & L. And  
24 at some point in that time that -- and it was -- I mean, that  
25 was basically the first time I had heard about it. I'm



1 thinking it was mid-'97 to summer, sometime the end of '97,  
2 in that frame, because I don't remember it being in '98.

3 And Mr. Sanger said he was glad we were going to get  
4 this done and he had asked for this before and they turned  
5 him down. So basically what happened at that point -- it  
6 wasn't then that -- I automatically said any time -- I'm  
7 always -- in my business 10 years you're always wanting to  
8 get the client refunds if they're out there. And I'm not --  
9 I don't want to say I never think about refunds because I do.  
10 But in this case that wasn't -- that wasn't the target. All  
11 the work and all the effort was to get this thing done.

12 So when Mr. Sanger said that, I said, Well, you  
13 asked for it, maybe there's grounds and maybe there's  
14 something we can do. He said, You know, we could have had  
15 this years ago. So I started the research on it, and  
16 basically that's where you start learning. Sometimes you  
17 know from years' experience, and sometimes you've got to dig.  
18 And one of the things that I looked at was based on his  
19 request I started looking with the Commission and looking at  
20 the rules and looking for that, looking to determine what we  
21 could do, and there was an administrative code that I looked  
22 at to determine --

23 Q. Let me show you and ask you to -- are these --

24 MR. DALEY: I'm handing him 256093 and 256.0106,  
25 which involve refunds.

1 BY MR. DALEY:

2 Q. Are those some --

3 A. I'd have to look at them.

4 Q. Okay.

5 A. I don't know the numbers by heart, but I -- 256,  
6 dash -- 25-6.093 is information to customers, and this is one  
7 of the rules that I did locate and looked at it and  
8 questioned about it, talked to some people at the Public  
9 Service Commission about it. And it says, "Upon request of  
10 any customer, the utility is required to provide the customer  
11 a copy and/or explanation of the utility's rates and  
12 provisions applicable to the type or types of service  
13 furnished or to be furnished such customer and to assist the  
14 customer in obtaining the rate schedule which is most  
15 advantageous to the customer's requirements." And I think we  
16 have it as a joint exhibit. I don't know which number it is,  
17 but we did put it in.

18 THE COURT: It's 40.

19 MR. DALEY: Yeah. I'm sorry. The second paper  
20 there is what we'll --

21 THE WITNESS: Okay.

22 MR. DALEY: Yeah, we would ask this -- this is the  
23 rule, the administrative rule that's already been a joint  
24 exhibit. We'd ask that it be admitted.

25 MR. HOFFMAN: No objection.

1 THE COURT: Okay. We'll show Joint Exhibit 40  
2 admitted.

3 BY MR. DALEY:

4 Q. Okay. All right. I'll mark it. Yes. I'm sorry.  
5 Go ahead.

6 A. Putting it together and looking at that rule and  
7 saying that the -- Mr. Sanger told me that he asked for  
8 assistance from FP & L and they didn't give him the most  
9 cost-advantageous rate. According to what we believe from  
10 the commercial side, they should have had the commercial  
11 master metering rate. Looked at it and said, Well, you were  
12 overcharged, you should get a refund.

13 And so one of the things we were looking at was what  
14 determines with the Public Service Commission about that.  
15 And that was where we looked -- where I looked at the rule,  
16 the 25-6.106 for underbillings and overbillings. And along  
17 the way we also had to determine -- we didn't -- I didn't ask  
18 for a refund from FP & L until after the conversion had taken  
19 place, because that was the first time we could actually do  
20 it. Up to that point we had estimates of what the -- of what  
21 the savings would be. I mean, speculation.

22 So once you did it, then you could actually do an  
23 actual and know -- and know whether it was worthwhile really  
24 spending time getting a refund. You figure it probably is.  
25 It's a big property. You know, you're getting rid of 230

1 meters. But you don't know how much. There are a lot of  
2 factors in that, but -- so you determine that, and you go  
3 back to the rule.

4 And then the rule -- again, researching the rule,  
5 talking to people at the Commission, just asking about the  
6 rules. And this rule said in paragraph 2 that "In the event  
7 of overbilling not provided for in 25-6.103, the utility  
8 shall refund the overcharge to the customer for the period  
9 during which the overcharge occurred based on available  
10 records. If commencement of the overcharging cannot be  
11 fixed, then a reasonable estimate of the overcharge shall be  
12 made and refunded to the customer. The amount and period of  
13 adjustment shall be based on available records. The refund  
14 shall not include any part of the minimum charge." And then  
15 in looking at that, at the Rule 25-6, dot --

16 MR. HOFFMAN: Your Honor -- excuse me, Mr. Mazo.

17 I'm going to move to object. I think this is going  
18 well beyond my cross-examination. I don't have any  
19 objection to the admission of these rules. I think you  
20 can take official recognition of them.

21 MR. DALEY: That's fine. We can cut it off right  
22 here, Judge. I was about to say something anyway.

23 THE COURT: Just go ahead and admit Joint 39?

24 MR. HOFFMAN: We don't have any objection to the  
25 admission of the PSC's rules.

1 THE COURT: I mean, you know, as to whether they're  
2 admitted or not, then -- so we'll show Joint 39.

3 MR. DALEY: Thank you, Judge.

4 BY MR. DALEY:

5 Q. And so basically those are some of the items that  
6 you were looking at when you were trying to make your  
7 determination of what to do?

8 And so what actually then took place?

9 A. Contacted again -- I believe I contacted -- well,  
10 Jim Guzman was my only contact at the time. I didn't know  
11 anybody else with Florida Power and Light in the Sarasota  
12 area, so it had to be Jim Guzman and Greg Bauer. And I  
13 wasn't talking to Greg, so it must have been Jim Guzman. And  
14 my recollection is that Jim Guzman directed me -- he said he  
15 didn't deal with refund issues, that he directed me to  
16 Douglas Bucciarelli or however you pronounce that at the  
17 time.

18 And then Douglas had dealt with it with me a little  
19 bit. I think there were some letters that went back and  
20 forth from Douglas to me or from me to Douglas, and then it  
21 got turned over some way to Terri Britton, and he kind of --  
22 I think he put over the contact to Terri Britton with me, and  
23 I had communications with Terri Britton on the refund issue.

24 And I think I went through it earlier in the direct.  
25 And that's where it went. It went to Wade Litchfield, that I

1 had some communications with Wade Litchfield. And then  
2 eventually after about six months it ended into the -- in the  
3 complaint.

4 Q. Okay. And so that's -- that's your best  
5 recollection of everything that took place in that?

6 A. Yes.

7 Q. In that proceeding?

8 So you actually then had to read and look at the  
9 bills, see how much savings, and then decide if it was  
10 appropriate to move forward with a refund, which of course  
11 that's your client, you're trying to get a refund for them;  
12 right?

13 A. That's right.

14 Q. Okay. All right. Let me -- let me -- let me ask  
15 you -- let me ask you about time-shares because we've heard  
16 that come up yesterday. And I think you were asked by  
17 Mr. Hoffman about the definition of the rule that could have  
18 encompassed the Colony and was it a time-share.

19 First of all, my question to you is this. As you  
20 know -- as you define different properties, is there any  
21 possible way the Colony would hold itself out as a time-share  
22 or be a time-share, operate as one?

23 A. Again --

24 Q. I'm not talking about a meaning or definition. I'm  
25 just talking about operating as one.

1           A.     In looking at the time-share and researching and  
2 understanding that, I look to the Chapter 718 of the statutes  
3 that define what time-share is there and look at the Colony.  
4 I mean, when I was doing this whole process, I talked to  
5 Mr. Moulton, and I talked to Mr. Moulton to find out if they  
6 were registered as a condominium, if their documents  
7 indicated that they were licensed to register as a  
8 condominium and looked at the statute to see what it said.

9           Q.     I'll hand you that statute for identification  
10 purposes.

11           MR. HOFFMAN: Excuse me. Could I see what document?

12           MR. DALEY: Oh, sure. I'm sorry. It's 718, which  
13 has the time-share.

14           MR. HOFFMAN: Okay. Your Honor, I'm going to  
15 object. I think this is outside the scope of my cross.  
16 I think at this point we're getting into supplemental  
17 direct. I mean, he's now going through conversations he  
18 had with Mr. Moulton in the early stage of this process.  
19 I didn't ask any questions to Mr. Mazo about the  
20 time-share statute. I asked him about the definition of  
21 time-sharing plan and the PSC's rule as it existed in '88  
22 and '89. So I think that we're sort of now recreating  
23 direct and supplementing direct. I object.

24           MR. DALEY: Well, I definitely disagree on that,  
25 because what we definitely talked about yesterday were

1 definitions of time-shares and operation of properties.

2 THE COURT: I agree. We're broad. I'll allow it.

3 MR. DALEY: And I can limit his testimony just to  
4 the time-share. I appreciate it.

5 BY MR. DALEY:

6 Q. Can you take a look at it and see what you might  
7 have looked at in there? On time-share only.

8 A. Chapter 718.103, and it's paragraph 24, and it  
9 states that, "Time-share estate means any interest in a unit  
10 under which the exclusive right of use, possession, or  
11 occupancy of a unit circulates among the various purchasers  
12 of a time-share plan pursuant to Chapter 721 on a recurring  
13 basis for a period of time."

14 And the Colony doesn't have the circulation among  
15 the various purchasers. The owner -- you've heard the  
16 testimony. 30 days, they get it, and then they have -- then  
17 they still have it. I mean, they own the unit. It's just  
18 dedicated to the operation of the hotel. To my knowledge,  
19 they never advertised it as a time-share, and that was the  
20 position. So that was the position that was taken.

21 Q. So this definition or whatever definition, you feel  
22 like it doesn't operate as a time-share?

23 A. It definitely doesn't. The common -- the common  
24 definition -- I mean, in public and even -- with time-share  
25 you get a week -- there's a specified period of time. It's



1 usually a week or two weeks people can buy, and if you own  
2 one unit, then that unit is divided into either 50 or 51  
3 weeks, and there's -- there could be 50 owners. Two weeks  
4 are usually set aside for refurnishing and that type of  
5 situation, maintenance. And so for one unit there could be  
6 50 owners. So for 10 units you get 500 owners, and that's  
7 how they finance it, that's how they operate it.

8 And it's also -- in most cases the operation is that  
9 if I'm an owner, for that week I can come there and live. I  
10 don't pay anything. I come there to live unless I'm in an  
11 exchange program. So every owner -- so for whatever week you  
12 have and there's 50 owners, 50 owners come and use it. If  
13 they don't use it, then they may rent it out. But the owners  
14 have the right to use it for that week that they own it for.  
15 And there are lots and lots of owners in time-share.

16 There's some others. There's some hybrids now with  
17 Marriott Grand -- or Marriott. The Hyatt, they're doing --  
18 Hilton Grand Vacation Clubs. It's that kind of a form of  
19 time-share. Anyhow, just different definitions. But that's  
20 how the time-shares operate, and the Colony does not operate  
21 as a time-share.

22 MR. DALEY: I would -- I would ask it be admitted,  
23 even though it's a Florida statute and it's part of the  
24 record.

25 THE COURT: Has this one been marked as a joint

1 exhibit?

2 MR. DALEY: I don't think it has been.

3 THE WITNESS: No, it wasn't.

4 MR. HOFFMAN: Can I see it for a second?

5 MR. DALEY: Sure.

6 MR. HOFFMAN: Your Honor, we are going to object to  
7 the admission of that exhibit. And the reason is I  
8 understand it's a Florida statute, but it has absolutely  
9 no relevance to this case. This case focuses on what  
10 Colony Beach was or wasn't in 1988 or 1989, late '88 or  
11 early '89. And Colony Beach, as Mr. Moulton has stated  
12 and as Mr. Mazo has stated, was a time-sharing plan under  
13 the PSC rule. That rule does not even reference the  
14 Florida statutes and the definition of time-share under  
15 the Florida statutes. So what a time-share is or is not  
16 under the Florida statutes has no relevance to this case.

17 THE COURT: I understand your point. To me it's  
18 sort of six of one, half a dozen of the other. Whether I  
19 admit it or not, they're going to be able to argue it,  
20 and you're going to be able to argue that it has no  
21 relevance. So just -- I'll just go ahead and admit it,  
22 and we'll just call it Petitioner's 5.

23 MR. DALEY: Petitioner's 5? Okay.

24 MR. MENTON: What's the statute?

25 MR. DALEY: 718.

1 MR. HOFFMAN: 718.

2 MR. DALEY: Point 105.

3 Okay. Okay, Judge, I just marked it on there if  
4 that's okay.

5 THE COURT: That's fine.

6 MR. DALEY: Okay. Thanks.

7 BY MR. DALEY:

8 Q. Do you still have that?

9 A. Yeah.

10 Q. Thanks. All right. I appreciate it. Thanks.

11 Okay. All right. Let's go -- let's go on to the --  
12 to the resort condominium issue. And you were asked  
13 yesterday that -- about affirmative defense. I believe that  
14 you had listed -- had identified Colony as a resort  
15 condominium. Give me your thinking on that and what happened  
16 in that situation.

17 A. Well, again, looking at the property and as the case  
18 goes, look at the law, you look at what it is and look at  
19 what is there in the rules. And when I wrote that to me it  
20 meets the definition, I think that's what that affirmative  
21 defense really is implying that it -- although the Colony  
22 meets the definition under the rule of a resort condominium,  
23 that -- if my recollection of the affirmative defense -- if  
24 you have it, I could look. But my recollection of  
25 affirmative defense I think it was five -- five was what he

1 was talking about. And FP & L had alleged that the Colony  
2 was a resort condo, had held itself out as a resort condo and  
3 that it operated as a resort condo and was legally a resort  
4 condo. And what I was replying to in the affirmative defense  
5 was that, in fact, yes, it meets the definition under  
6 509.242, whichever subsection it is, as a resort condo, but  
7 the Colony has always been with the licenses, even the  
8 declaration of condominium, it was condominium resort hotel,  
9 not just resort condominium.

10 And all the licenses I said -- and I think the clear  
11 response to the affirmative defense was that they said that  
12 it was licensed with the Department of Business and  
13 Professional Regulation. And I'm not sure it was in the  
14 affirmative defense or in a motion right now, because I  
15 haven't looked at it, but they've alleged that. They've  
16 clearly stated that the Colony was registered with the  
17 Department of Business Regulation as a resort condo, and,  
18 therefore, was not entitled to be master metered. And I was  
19 responding saying, no, that is incorrect. The Colony meets  
20 the definition, but the license of the Department of Business  
21 Regulation, the way it operates, it's a hotel and here are  
22 the licenses, and that's what I was responding to.

23 Q. Okay. Now, I think -- I did ask you this question  
24 at the beginning, and I wanted to -- you think properties  
25 could meet two different -- two definitions within what

1 you've seen?

2 A. Well, I guess I could draw a chart if I had a piece  
3 of paper, but the Commission rule says --

4 MR. HOFFMAN: Excuse me, Your Honor, I'm going to  
5 object. This has been asked and answered. I mean, I  
6 think we're really starting to get redundant here. I  
7 think Mr. Mazo has had two or three opportunities to give  
8 his views on all of these issues, and I think we're  
9 retreading the same ground over and over again.

10 THE COURT: We're beginning to get repetitive. I  
11 mean, if we have something new to say.

12 MR. DALEY: I understand.

13 THE COURT: I think I understand Mr. Mazo's  
14 position.

15 MR. DALEY: Okay. We'll try to really limit this  
16 right here.

17 BY MR. DALEY:

18 Q. If you could just answer that, it will be fine.

19 A. Just briefly, if -- according to the rule,  
20 time-share, resort condo, or condo, new commercial  
21 establishment cannot be -- they have to be individually  
22 metered. Then if it's -- there are exceptions. So if a  
23 property is a condominium but it's a hotel, the exception  
24 prevails. And it would be -- in my looking at it it would be  
25 absurd if it wasn't because the exception would be moot.

1 Because if you look at that -- and I think I did state this  
2 that a new commercial establishment -- it says, "New  
3 commercial establishment with separate occupancy units has to  
4 be individually metered."

5 So under that strict -- there's a strict  
6 interpretation that I think that they've asked for in the --  
7 in one of the affirmative defenses, a strict interpretation  
8 of this rule. And I think it doesn't deserve a strict -- the  
9 Commission rules are supposed to be liberally interpreted.  
10 If you interpret it that way, then the new commercial  
11 establishment, if it's built as a hotel, is excepted.  
12 Otherwise, any hotel operator that comes into a power company  
13 is going to be individually metered because they're always  
14 going to be a new commercial establishment.

15 MR. DALEY: Okay. All right. I appreciate that.

16 And no further questions, Your Honor.

17 MR. HOFFMAN: Your Honor, may I ask a few questions  
18 on recross?

19 THE COURT: Sure.

20 RECROSS-EXAMINATION

21 BY MR. HOFFMAN:

22 Q. Mr. Mazo, let me hand you a copy of Exhibit 17,  
23 which dealt with the Veranda where you had paid the  
24 conversion costs under protest.

25 A. Okay.

1 Q. Do you recall that?

2 A. I do.

3 Q. Okay. That was some \$900 that you were taking issue  
4 with with Florida Power and Light?

5 A. Is that what it says in here?

6 Q. That's my recollection from the record.

7 MR. MENTON: There's an attachment to it.

8 THE WITNESS: I mean, I think you're -- I believe  
9 that's the case, but I don't see it in here.

10 BY MR. HOFFMAN:

11 Q. Right.

12 A. Just from my recollection, I believe it was  
13 something like that.

14 Q. You accept that it was roughly \$900?

15 A. Something like that, yes.

16 Q. Okay. So -- so you were -- you were taking issue in  
17 the case with the Veranda's conversion costs with the payment  
18 of some \$900 or so; correct?

19 A. What I -- I guess I -- just to correct it a little  
20 bit, not much, the essence of what you're saying is correct,  
21 1,100, 1,200, maybe it should have been 900, I'm not real  
22 sure. I don't remember. I know there are some memos that  
23 indicate it, but there was some dispute in that range.

24 Q. Okay. Now, when it came to the Colony, your  
25 position, as you've stated time and again in this case, was

1 that at that time you believe the Colony operated like a  
2 hotel and, therefore, should be converted because it was a  
3 hotel; correct?

4 A. Yes.

5 Q. Okay. And you understood at that time that the  
6 rule, the PSC rule, did not require the payment of conversion  
7 costs for a hotel; correct?

8 A. No, that's not what I understood at that time. That  
9 would not be correct.

10 Q. Okay. Excuse me. Was it your understanding at that  
11 time that the PSC rule required the payment of conversion  
12 costs to convert a hotel to master metering?

13 A. If you're talking about a specific PSC rule that's  
14 the metering rule, because PSC rules cover costs, my  
15 understanding, and maybe this is not -- they're regulated,  
16 the utilities. And the costs of service, the cost of, A, the  
17 construction, the cost of all these things are regulated and  
18 included, so there are rules for that.

19 Q. Mr. Mazo, I'm asking about Rule 25-6.049. I'm not  
20 talking about rate cases and all of the costs of an  
21 industrial-owned electric utility. I'm talking about the  
22 individual metering rule.

23 Now, wouldn't you agree, as you did yesterday, that  
24 there is nothing in this rule that requires the payment of  
25 conversion costs to convert a hotel from individual meters to



1 master meters?

2 A. Actually, in the -- when I read it over last night,  
3 I looked at it, and I believe when you look at it there's an  
4 implication in there that anybody that converts -- I know it  
5 talks specifically about time-share, but I believe the  
6 implication in the rule is that anybody that converts from  
7 individual meters to master meters is going to have to pick  
8 up some of the cost. And that's my feeling when I read it  
9 because of the rate payers. You don't want the rate payers  
10 to cover some of that.

11 Q. Are you stating today that that was your feeling at  
12 the time, or is this something that you've come up with at  
13 this point in the case?

14 A. No. What you were talking to me about yesterday you  
15 were isolating this very specific rule to say if it had to do  
16 with that, and all I had said was it was a map, it was a  
17 guideline. It was not telling the hotel had to pay this. It  
18 was always my belief that the Colony should pay something for  
19 the conversion.

20 Q. Okay.

21 A. Anybody should pay something. What is a whole  
22 different issue.

23 Q. That's fine. Okay. Okay. In fact, when you sent  
24 your March 27, '97 letter to Mr. Guzman, you specifically  
25 posed the question of whether the costs of converting the

1 Colony if it operates as a hotel would fall under the cost of  
2 the conversion rule, did you not?

3 MR. MENTON: Exhibit number, Ken?

4 THE WITNESS: Yes, I did.

5 BY MR. HOFFMAN:

6 Q. And you were aware at that time, as you've already  
7 testified --

8 MR. MENTON: What's the exhibit number? Tell the  
9 judge the exhibit number.

10 MR. HOFFMAN: I don't know the exhibit number.

11 MR. MENTON: It's right there. Exhibit 16.

12 MR. HOFFMAN: We were referring to Exhibit 16, Your  
13 Honor.

14 BY MR. HOFFMAN:

15 Q. You were aware at that time, as you've already  
16 stated, that you could file a protest for conversion costs  
17 with the PSC; correct?

18 A. Yes.

19 Q. Okay. And there is nothing in Rule 25-6.049 in the  
20 section that deals with hotels, motels, and similar  
21 facilities that addresses conversion costs; correct?

22 A. In that section -- which section? Which one? Which  
23 paragraph?

24 Q. The one that you're very familiar with, subparagraph  
25 3.

1           A.    Paragraph 3 doesn't say anything about conversion  
2 costs.

3           Q.    Thank you. The conversion costs are only mentioned  
4 in the paragraph that was amended and added in 1997 that  
5 deals with new and existing time-share plans; correct?

6           A.    If you're speaking to this rule, conversion costs,  
7 that would, but if you're speaking to conversion costs in  
8 general -- and that's not what you said. So conversion  
9 costs --

10          Q.    Mr. Mazo --

11          A.    The rule says what it says, and I'm not arguing with  
12 you about it.

13          Q.    Mr. Mazo, I'm trying -- I'm not trying to lengthen  
14 this. I'm trying to get through this.

15          A.    Okay.

16          Q.    I'm asking you a very simple question. This rule,  
17 and I'm only asking you about this rule, not all of the other  
18 rules of the Public Service Commission, this rule only deals  
19 with conversion costs under the paragraph that was added in  
20 1997 that deals with new and existing time-share plans;  
21 correct?

22          A.    I believe there are some other paragraphs that deal  
23 with it. I read it last night, and I believe it's -- there  
24 are some others, and I'll find them for you. Under that  
25 paragraph 5, it talks about when a time-share is converted,

1 and it tells that the customer must reimburse the utility,  
2 and it goes into that. And that paragraph does talk about  
3 the conversion. It only talks about time-share, but it talks  
4 about the cost. It talks about in the other paragraph where  
5 it talks about costs -- and there's another paragraph that  
6 talks about costs, and it refers to the electric's utilities,  
7 and that's what I read last night. It says, "The term 'cost'  
8 as used herein means only those charges specifically  
9 authorized by the electric utility's tariff." That's broad  
10 when you talk about the tariff, and that includes all their  
11 customers. So to say that this rule only talks about costs,  
12 you know, I read it again, and I think that there's more in  
13 there.

14 Q. Did you come up with this position last night?

15 A. Probably about 2:00 in the morning when I read it.  
16 I looked at it because you asked me to read it, and I hadn't  
17 read it for a long time.

18 Q. Let me go back to the pertinent point in time,  
19 Mr. Mazo, which was back in 1997. Again, you protested the  
20 \$900 or so with Veranda, and even though this rule  
21 specifically applies conversion costs when it was amended in  
22 '97 to time-share plans, you went ahead and voluntarily paid  
23 some \$11,000 to convert the Colony to master metering;  
24 correct?

25 A. To answer whether we paid \$11,000, yes, we wrote a

1 check to Florida Power and Light for 11,000 some dollars. I  
2 didn't follow the other part of the question if it was there.  
3 I understood that we paid \$11,000.

4 Q. Well, you converted the Colony to master metering.  
5 You voluntarily paid some \$11,000 of conversion costs? You  
6 didn't protest it, and you did it at a time when the rule had  
7 just been changed to impose conversion costs only on  
8 time-share plans; isn't that correct?

9 A. No, that's not correct.

10 Q. Well, but, Mr. Mazo, you just stated that you only  
11 came up with your -- with your theory that now it doesn't  
12 strictly apply to time-share plans at 2 o'clock last night.  
13 I'm back at the pertinent point in time. That's what you  
14 did.

15 A. No, that's not what I did. You said in that last  
16 statement, and she can read it back, she said that I did it  
17 -- you said that I did it with no protest. First time that  
18 was asked. I paid the check voluntarily. That's true. The  
19 discussions with Mr. Guzman were that we wanted to go ahead  
20 and get it done. We didn't necessarily agree, but we wanted  
21 to go ahead and get it done. That's where it was. Even  
22 today. And the reason was there was a specific reason for  
23 that. In that rule, the time-share rule, we didn't know if  
24 it would apply to the hotel or not.

25 There's an issue of salvage. And the salvage of --

1     what that rule says is that there's a cost of conversion that  
2     the customer is supposed to pay, and there's some costs  
3     split. But it says "less salvage value." And that salvage  
4     value, if the meters are taken off, go back into service with  
5     FP & L, then there's a salvage value of 20 to \$30 per meter  
6     that the Colony didn't get out of that, and that was  
7     something that was an issue. And to this day FP & L doesn't  
8     know whether those meters went back into service or they were  
9     retired. If they were retired, there was no salvage. If  
10    they weren't retired, there's salvage, and the Colony didn't  
11    get that money.

12         Q.    You didn't file a protest because you wanted to  
13    complete the conversion and you wanted to then pursue your  
14    claim for a refund; correct?

15         A.    No, not regarding that subject. Mr. Guzman and I  
16    were talking about that ad nauseam about it. We spent months  
17    on the issue of the conversion costs, and we wanted to get it  
18    done. There were a lot of memos that talked about how you're  
19    going to charge them, what's it going to be. We didn't  
20    agree. But we agreed to disagree, basically. I didn't say  
21    -- I didn't tell him that I was going to file or not file.  
22    It was a difficult thing to try to -- where are those meters,  
23    how can we determine did they go back in or did they not.

24         Q.    And you didn't tell him that you were going to  
25    pursue a refund either, did you?

1           A.    I did talk to him about a refund at some point,  
2 because that's the contact with Douglas Bucciarelli.

3           Q.    You spoke with Mr. Bucciarelli. You didn't speak  
4 with Mr. Guzman, did you, about a refund?

5           A.    Well, I believe what I testified to was -- when  
6 Mr. Daley asked me about the process, and my recollection is  
7 that the contact that I was working with was Mr. Guzman. And  
8 to get to Mr. Bucciarelli -- I didn't know Mr. Bucciarelli  
9 from Adam, I had never met him, I had never talked to him, so  
10 my recollection was that it came from Mr. Guzman or  
11 Mr. Valentine, because Mr. Guzman directed me to  
12 Mr. Valentine also.

13          Q.    Okay. You didn't tell Mr. Guzman any of the  
14 specifics about a potential refund claim, did you?

15          A.    My recollection is that I called him and talked to  
16 him about a refund, and he -- not in specifics that I can  
17 recall.

18          Q.    Thank you. Now, you talked with Mr. Daley about the  
19 subject, and I think your testimony was that in mid-1997 you  
20 started your research on this refund question, and you looked  
21 at the PSC rules, and you tried to figure out what you could  
22 do on behalf of the Colony. Is that a fair statement?

23          A.    I believe that's fair.

24          Q.    Okay. Now, you also said that you didn't ask for a  
25 refund from FPL until after the conversion took place because

1 you couldn't calculate the refunds at that time. Is that  
2 your statement?

3 A. That was part of the statement.

4 Q. Okay. Now, isn't it true that if we're in 1998 when  
5 the conversion took place that whatever calculations you  
6 might do today for the period of 1989 through the period of  
7 1996 or 1997 you could have done in 1998? Correct?

8 A. I'm not sure I follow the question. I'm sorry.

9 Q. All right. Let me restate the question. Let me  
10 take you back to 1997 when you were dealing with Mr. Guzman.

11 A. Okay.

12 Q. Okay? And you were thinking about what you could  
13 put together to pursue a claim for a refund against FPL.

14 My question is there was nothing at that time that  
15 would have prevented you from doing whatever calculations you  
16 might put together for a potential refund against FPL for the  
17 period of 1989 through the period of 1996?

18 A. That's not true.

19 Q. What information was not available to you then that  
20 would be available to you today?

21 A. Okay. In June of 1998 the conversion took place.  
22 Up to that point the Colony was serviced on 232 individual  
23 meters. At that point they were not -- those meters were not  
24 set up to calculate demand charges. When they moved to the  
25 new master metered rate in June of 1998, they were -- they



1 were switched to Florida Power & Light's commercial demand  
2 rate. So at that point in time at that point is when you  
3 first have the actual demand and you can look to see what the  
4 actual dollars are. Up to that it is projected, estimated,  
5 and so when you look at that in '97 I couldn't have gone  
6 back. I had absolutely no data whatsoever other than the  
7 residential billing to tell me what that could be. So I  
8 couldn't do it.

9 Q. All right. But you don't have that data today  
10 either? I mean, you don't have -- Colony wasn't on master  
11 meters during the 1989, 1996, 1997 time frame; correct?

12 A. I agree with that. But I don't agree with the -- I  
13 don't agree with the statement that you don't have the  
14 information that you can use.

15 Q. All right. Let me ask you just one or two more  
16 questions. You were talking about the time-share statute.  
17 Let me again hand you a copy of Exhibit 30, the definition of  
18 a time-sharing plan that was repealed as part of the rule  
19 amendments. We went through this yesterday. Would you agree  
20 that that definition does not reference a statutory  
21 definition of time-share plan or time-share arrangement?

22 (Hands document.)

23 A. If there -- if you're asking a question of whether  
24 there's a specific -- you're asking whether it references a  
25 time-share statute?

1 Q. Yes.

2 A. It absolutely does. And I'm reading from paragraph  
3 5. It says, "For new and existing time-share plans, provided  
4 that all of the occupancy units which are served by master  
5 meters or meters are committed to a time-share plan as  
6 defined in Section 721, Florida Statutes."

7 Q. You didn't answer my question, Mr. Mazo.

8 A. I thought that's what your question was. That's  
9 what it refers to.

10 Q. If you would please listen to my question, I'm not  
11 -- I'm not trying to trick you, Mr. Mazo.

12 A. I'm sorry. I'm sorry. I was tired. I'm really  
13 trying to listen.

14 Q. Okay. We're almost done. My question to you was if  
15 you could just read the definition of time-sharing plan,  
16 okay, not the -- I'm not talking about the language that was  
17 added. I'm talking about the language that was repealed in  
18 1997. Wouldn't you agree that those words do not include any  
19 reference to the Florida statutes? (Hands document.) And to  
20 the time-share statutes?

21 A. Are you specifically talking about right here?  
22 (Indicating.)

23 Q. Yes, sir. I'm talking about the definition.

24 A. The paragraph right here?

25 Q. Yes. The time-sharing plan.

1           A.    Where it lines out -- I don't see a specific  
2 reference to a section of the Florida statutes.

3           Q.    Thank you.

4           MR. HOFFMAN: That time-share statute, Your Honor,  
5 that was Exhibit --

6           MR. MENTON: 5.

7           THE COURT: 5.

8           MR. DALEY: Petitioner's Exhibit 5.

9           MR. HOFFMAN: Petitioner's Exhibit 5.

10          THE WITNESS: Your Honor, could we take a quick  
11 break?

12          MR. HOFFMAN: I've only got --

13          THE WITNESS: Oh, okay.

14          MR. HOFFMAN: -- two or three more questions, Your  
15 Honor.

16          THE COURT: All right.

17          MR. DALEY: Judge, do you have that?

18          THE COURT: You need it?

19          MR. DALEY: Yes. I'll hand that to him. Okay.

20 Thank you, Your Honor.

21          MR. DALEY: Thank you, Mr. Daley.

22 BY MR. HOFFMAN:

23          Q.    Mr. Mazo, I believe the testimony in this case was  
24 that the Colony was built in 1973. Do you recall that  
25 testimony?

1 A. I believe so.

2 Q. Okay.

3 A. Actually, I'm sorry, I think it was originally 1956  
4 or so.

5 Q. Correct. And then it was demolished, and then  
6 Dr. Klauber rebuilt the facility in 1973?

7 A. I agree.

8 Q. Okay. Would you look at the history of Chapter 718,  
9 which is Petitioner's Exhibit 5, and would you agree that  
10 this time-share statute was originally passed and adopted by  
11 the legislature in 1976?

12 A. Show me where it says it, and I'll agree.

13 Q. Down here. (Indicating.)

14 A. Oh, okay. History S1, Chapter 76-2222. That's what  
15 it means.

16 Q. You would accept that representation on that?

17 A. Absolutely.

18 MR. HOFFMAN: Your Honor, I'm going to need to get  
19 an exhibit marked for identification, and I don't believe  
20 we have copies.

21 MR. MENTON: Yeah, we do.

22 MR. HOFFMAN: We do? Great. Okay.

23 THE COURT: It is your first one, isn't it?

24 MR. HOFFMAN: Yes, sir.

25 THE COURT: We'll mark it Respondent's 1.

1 BY MR. HOFFMAN:

2 Q. Mr. Mazo, let me ask you to take a look at a  
3 document that's been marked Respondent's Exhibit 1. It's a  
4 letter from you to Ms. Terri Britton of Florida Power and  
5 Light Company. (Hands document.)

6 A. Okay.

7 Q. Mr. Mazo, that letter reflects the first letter that  
8 you wrote to any representative of FPL regarding your refund  
9 claim; is that correct?

10 A. That recollection I'm not clear on. It might very  
11 well be. I don't remember. We did production of documents.  
12 If you don't have any to Douglas Bucciarelli, it may have  
13 been by phone. But I mean I wrote it. I don't know if that  
14 was the first one, but I think that's the time frame.

15 Q. Okay. To the best of your recollection, is that the  
16 first letter you wrote to FPL addressing your refund claim?

17 A. It's either the first or the second.

18 Q. Okay. Can you produce another document that you  
19 would have written that was written before that letter?

20 A. I don't recall it. I don't see it. I don't  
21 remember keeping it. It may have been phone is all I'm  
22 saying.

23 Q. All right.

24 A. If this is the first, it's the first. I'm not going  
25 to dispute it.

1 Q. Thank you. Let me hand you Respondent's Exhibit 1,  
2 Mr. Mazo. The letter has a few attachments that you sent to  
3 Ms. Britton. You'll see there that you sent as an attachment  
4 to the October 30, 1998 letter your letter -- excuse me,  
5 Mr. Guzman's letter dated December 22 to you where he had  
6 changed the characterization of Colony to a hotel; is that  
7 correct?

8 A. Yes.

9 Q. Okay. And you did not attach to the October 30,  
10 1998 letter that you sent to Ms. Britton the November of 1997  
11 letter that Mr. Guzman had sent to you where he characterized  
12 the Colony as a time-share; correct?

13 A. No. I mean, yes, it is correct.

14 MR. HOFFMAN: Thank you, Mr. Mazo, I have no further  
15 questions.

16 THE COURT: Any follow-up?

17 MR. DALEY: No, Your Honor. No, Your Honor.

18 THE COURT: Oh, okay. I'm sorry.

19 MR. DALEY: I think we're fine. I'm sorry.

20 THE COURT: We'll take about a five-minute break.

21 MR. HOFFMAN: Before we do, Your Honor, could we  
22 move some exhibits into the record?

23 THE COURT: Sure.

24 MR. HOFFMAN: According to my notes, Your Honor, the  
25 exhibits that I presented on cross-examination which we

1 would ask to be admitted are Exhibits 26, 28, 29, 30, 31,  
2 32, 34, 35, 36, and 37, and we would also ask to admit  
3 Exhibit 43, which is the transcript of the deposition of  
4 Greg Bauer.

5 MR. MENTON: And one more. Our Number 1.

6 MR. HOFFMAN: Sorry.

7 MR. MENTON: Our Number 1.

8 MR. HOFFMAN: Yes, as well as Respondent's Exhibit  
9 1, the October 30, 1998 letter to Ms. Britton.

10 MR. DALEY: Can we have just a second?

11 THE COURT: Sure.

12 MR. DALEY: So this -- so you're moving -- besides  
13 the other exhibits that are stipulated, you're moving  
14 this for admission? (Indicating.)

15 MR. HOFFMAN: Yes.

16 MR. DALEY: Okay.

17 MR. HOFFMAN: The letter that Marc wrote.

18 MR. DALEY: Yeah, we don't really -- we don't have a  
19 problem.

20 THE COURT: You don't have a problem?

21 MR. DALEY: No.

22 THE COURT: Any that he's --

23 MR. DALEY: No.

24 THE COURT: I'm going to walk through them just to  
25 make sure I got them.

1 MR. HOFFMAN: Yes, sir.

2 THE COURT: Joint Exhibit 26, Joint Exhibit 28,  
3 Joint Exhibit 29, Joint Exhibit 30, Joint Exhibit 31,  
4 Joint Exhibit 32, Joint Exhibit 34, Joint Exhibit 35,  
5 Joint Exhibit 36, Joint Exhibit 37, and Joint Exhibit 43.

6 MR. HOFFMAN: And Respondent's Exhibit 1.

7 THE COURT: Right. And Respondent's Exhibit 1.  
8 We'll show all of those admitted without objection.

9 MR. HOFFMAN: Thank you, Your Honor.

10 MR. DALEY: Yeah, Your Honor. We'll check our list  
11 and see what we might need to do later to make sure we've  
12 got that.

13 THE COURT: Okay. We'll take five.

14 (Off the record for a short break, after which the  
15 following proceedings were had:)

16 MR. HOFFMAN: Your Honor, may Ms. Morley be seated?

17 THE COURT: Yes.

18 THEREUPON,

19 ROSEMARY MORLEY

20 was adduced as the witness herein, and being first duly sworn  
21 on oath by the Court was questioned and stated as follows:

22 MR. HOFFMAN: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. HOFFMAN:

25 Q. Would you please state your name.



1 A. Rosemary Morley.

2 Q. By whom are you employed?

3 A. Florida Power and Light.

4 Q. Would you provide your educational background to the  
5 ALJ?

6 A. Yes. I have a bachelor's degree in economics from  
7 the University of Maryland and a master's degree in economics  
8 from Northwestern.

9 Q. Ms. Morley, let's go through your employment history  
10 with FP & L. When did you begin employment with FPL?

11 A. In 1983.

12 Q. In what capacity?

13 A. I started out as an assistant economist.

14 Q. And what types of duties did you perform as an  
15 assistant economist?

16 A. My work involved developing forecasts for sales and  
17 for customers by revenue class or general customer  
18 categories.

19 Q. Is that generally known as load forecasting?

20 A. Yes, it is.

21 Q. What are -- what is the purpose or what are some of  
22 the purposes for which load forecasts are used?

23 A. Well, one of the main purposes is to determine how  
24 much -- the power plants we're going to have to build by  
25 looking at what our sales are going to be in the future.

1 It's also used for budgeting purposes.

2 Q. Okay. You mentioned the term "revenue class."  
3 Would you explain to the ALJ what a revenue class is or what  
4 revenue classes are.

5 A. Yeah. It's general categories of customers. It  
6 includes residential, commercial, industrial, street and  
7 highway, railroad, and I think there's an other category  
8 also. They more or less conform with the FERC system of  
9 accounts.

10 Q. Okay. FERC, what is FERC?

11 A. The Federal Energy Regulatory Commission.

12 COURT REPORTER: I'm sorry. What was it?

13 THE WITNESS: The Federal Energy Regulatory  
14 Commission.

15 COURT REPORTER: Thank you.

16 BY MR. HOFFMAN:

17 Q. Okay. Where did you move from there with FPL?

18 A. After about six months, I was promoted to an  
19 economist.

20 Q. Okay. And what did you do as an economist with FPL?

21 A. Very similar type duties with a little bit more  
22 autonomy. I was also involved in I guess forecasting the  
23 inputs that go into the sales forecasts. Those would be  
24 economic variables like housing starts, the level of  
25 employment in Florida, that kind of thing.

1 Q. Okay. Where did you go from your position as an  
2 economist?

3 A. I then moved to what was called the division of  
4 planning administration department.

5 Q. And this was in about 1985?

6 A. That's right. Yes.

7 Q. Okay. And what did you do with the division of  
8 planning administration department?

9 A. I worked in two areas. I did forecasts for what are  
10 called new service accounts, basically new customer hookups,  
11 by division. And I also worked on our quality improvement  
12 program.

13 Q. In what role?

14 A. At that time FPL was very heavily involved in a QIP  
15 program, and we had a lot of QIP quality circle teams. My  
16 particular role was to work as what was called a statistical  
17 specialist. And what I did was I advised the team on  
18 different types of tools and statistical techniques they  
19 could use to look at different problems.

20 Q. QIP, that stands for quality improvement program?

21 A. Yes, it does.

22 Q. Okay. And that was a program FPL had that was  
23 directed toward improving quality of service?

24 A. That's correct.

25 Q. Okay. Where did you go from there with FPL?

1           A.    I then moved to the rate department and assumed the  
2 position of a senior cost of service analyst.

3           Q.    That was in 1986?

4           A.    Yes.

5           Q.    What did you do as a senior cost of service analyst?

6           A.    I worked in a couple of areas. One of my first  
7 projects was doing a research project into the marginal cost  
8 of service, looking at marginal costs and how that might be  
9 incorporated into our rates. I also did work in programming  
10 and testing different procedures that could be used to  
11 develop a cost of service. It was also at this time that the  
12 company was involved in doing preparatory work for a modified  
13 MFR filing that we made in 1990.

14          Q.    Okay.

15          A.    And I should explain at this point what that was.  
16 In a modified MFR filing we had to file all the cost support  
17 and so forth that went into a rate case without actually  
18 going in and asking for rate relief. So that basically  
19 involved doing a cost of service study that was filed with  
20 the Commission.

21          Q.    MFR stands for minimum filing requirement?

22          A.    That's correct.

23          Q.    Those are schedules that are filled out by the  
24 utilities with costs and revenue type information and filed  
25 with the PSC?

1 A. Yes.

2 Q. Okay. How long did you hold the position of senior  
3 cost of service analyst?

4 A. About three years.

5 Q. And where did you go from there?

6 A. I was promoted to the supervisor of cost of service.

7 Q. Now, roughly what time are we in now? What year?

8 A. I believe 1990.

9 Q. Okay. Would you explain your duties as the  
10 supervisor of the cost of service department?

11 A. Yes. I was responsible for all the products  
12 produced by that section. Basically, that included  
13 separation studies. What a separation study is is it looks  
14 at the company's total costs and divides it between our  
15 wholesale customers and our retail customers. It also  
16 included any responsibility for cost of service studies. For  
17 example, at this time we had just made the modified MFR  
18 filing with the Commission, so the Commission staff, I  
19 remember, had a series of questions going through it wanting  
20 information. So that was one of my responsibilities to make  
21 sure that their issues were addressed.

22 Q. You mentioned wholesale costs and our retail costs  
23 and the jurisdiction. Basically speaking, a utility like  
24 FPL, its wholesale costs are regulated by the FERC, and its  
25 retail costs, generally speaking, are regulated by the

1 Florida PSC?

2 A. Yes.

3 Q. Is that a fair statement?

4 A. Yes.

5 Q. Now, you talked about cost of service and cost of  
6 service studies. Would you explain to the ALJ what a cost of  
7 service study is?

8 A. Yes. It's basically looking at the company's costs,  
9 its total cost, and that would include like the fixed costs  
10 like power plants and also all the O and M and so forth and  
11 allocating the costs to different customer classes.

12 Q. Okay. And what are customer classes?

13 A. We have about 30 retail customer classes at FPL.  
14 Basically, it's a group of customers all served under the  
15 same retail rate schedule.

16 Q. And those schedules are reflected in tariffs that  
17 FPL files with the PSC; correct?

18 A. That's correct.

19 Q. And those tariffs are approved by the PSC; correct?

20 A. That's correct.

21 Q. Okay. Can you give me an estimate of how many cost  
22 of service studies you've either worked on or have reviewed?

23 A. Yes. In addition to the modified MFR filing, I've  
24 also produced a FERC cost of service study. I've also over  
25 the years extensively reviewed the cost of service study that

1 FPL filed in its last retail rate schedule. I've also  
2 reviewed cost of service studies filed by other Florida IOUs.

3 Q. Okay. An IOU is an investor-owned utility?

4 A. That's correct.

5 Q. And those would include Florida Power Corporation,  
6 Tampa Electric Company, Gulf Power Company; correct?

7 A. Yes. Yes.

8 Q. Okay. What was the next position that you held with  
9 FP & L?

10 A. I then assumed the position of a principal rate  
11 analyst.

12 Q. That was in what year, roughly?

13 A. I think that was in very late 1993.

14 Q. Okay. What were your duties as a principal rate  
15 analyst with FP & L?

16 A. I was responsible for developing new rate offerings.  
17 For example, at that time we were developing a new rate for  
18 our commercial industrial customers called the real time  
19 pricing program.

20 Q. Um-hum.

21 A. I was heavily involved in that. I also worked on  
22 developing new rate offerings on the FERC side. And since we  
23 were in the midst of a FERC rate case, some of my duties that  
24 I started as the supervisor of cost of service also continued  
25 in that position as well.

1 Q. During that period of time, were you involved in an  
2 overall project that analyzed and looked at FPL's retail  
3 rates as well?

4 A. Yes. I think that we call it like the rate plan,  
5 retail plan. We've really continued to do that over the  
6 years as far as, you know, reviewing our rate schedules and  
7 seeing what other companies are offering, yes.

8 Q. Okay. There reached a point in time in March of  
9 1996 when you moved to a different position. Could you  
10 explain what happened at that point in time?

11 A. Yes. I was promoted to the position of rate  
12 development manager, which was responsible for the  
13 development of rates, the tariff filings, and also rate  
14 administration, although I should add that I did not assume  
15 full responsibility for rate administration until later in  
16 1996.

17 Q. Okay. And as part of your new position at that time  
18 as rate development manager, did you become responsible for  
19 the overall development and filing and administration of the  
20 company's tariffs and rates?

21 A. Yes, I did.

22 Q. So you're very familiar with the company's tariffs?

23 A. Yes.

24 Q. Are you also familiar with the Public Service  
25 Commission rules governing the regulation of investor-owned



1 electric utilities like FP & L?

2 A. I'm familiar with the rules involving rates,  
3 tariffs, metering, service to customers, yes.

4 Q. Okay. And these are rules that are found in Chapter  
5 25-6, Florida Administrative Code?

6 A. Yes, although I believe there's a separate chapter  
7 for the construction of tariffs. I think that's 25-9.

8 Q. Okay. It's also part of your job since you've been  
9 rate development manager to assist the business units at FPL  
10 when they need some help in applying these rules, and you'll  
11 do research, appeals, the orders, and so forth to provide  
12 that type of assistance?

13 A. That's correct.

14 Q. Could you estimate for the ALJ how many filings  
15 you've been involved with at the PSC on behalf of FPL over  
16 the last five years?

17 A. Well, on the retail side probably about 20 that have  
18 been docketed and an equal number that have been  
19 administrative filings.

20 Q. And if you could summarize generally, what did these  
21 filings deal with?

22 A. They covered a range of things. In some cases we  
23 were offering a new rate to our customers. In some cases we  
24 were modifying the terms and conditions of an existing rate  
25 or actually modifying the charges. In other cases we were

1 making changes to what are called standard forms, which are  
2 standard contracts between ourselves and the customer for the  
3 provision of electric service.

4 Q. Okay. Are you familiar with Rule 25-6.106 that  
5 addresses overbillings? I think it's been marked as Exhibit  
6 39 in this proceeding.

7 A. Yes, I am.

8 Q. Generally speaking, what does that rule address?

9 A. Well, the name of the rule is "Underbillings and  
10 Overbillings of Energy," so it refers to cases where there's  
11 a question of energy consumption.

12 Q. Have you ever been involved in any rate proceedings  
13 before the PSC that dealt with rate increases or rate  
14 reductions?

15 A. Yes. I was involved with the rate reduction we gave  
16 our retail customers back in 1999.

17 Q. What was your role?

18 A. I worked on developing a variety of scenarios for  
19 the type of reduction that would be involved and the  
20 magnitude of the reduction. And then once the order came out  
21 specifying a certain level of reduction, I was responsible  
22 for making sure that reduction was reflected in our tariffs.

23 Q. Okay. Have you been involved in any rate cases  
24 before the FERC?

25 A. Yes.

1 Q. What was your role there? When did that occur?

2 A. It started in 1993, and I helped work on testimony,  
3 I answered interrogatories, and, as I mentioned earlier, also  
4 developed a cost of service study.

5 Q. Okay. Now, cost of service studies. You've talked  
6 a little bit about how those are put together. Would you  
7 explain for the ALJ the relationship between cost of service  
8 studies and the development of rates?

9 A. Sure. A cost of service is a prerequisite for a  
10 rate case and for rates themselves. It's one of the inputs,  
11 but it's not deterministic in the sense that it's not the  
12 only input. There are a variety of other factors that also  
13 go into the rate design. These could include, you know,  
14 simplicity, administration, equity, and so forth.

15 Q. Okay. When you conduct a cost of service study, I  
16 believe your testimony was that you first need to separate  
17 the company's wholesale costs and its retail costs; is that  
18 correct?

19 A. That's the process of doing a retail cost of  
20 service, yes.

21 Q. Okay. And your testimony is, then, that cost of  
22 service is one input that is used to develop the final retail  
23 rates? There are other criteria that are taken into  
24 consideration; is that a fair statement?

25 A. That's correct.

1 Q. Okay. I believe your testimony also was that FPL  
2 has certain rate classes that include residential classes and  
3 different types of general service rate classes for  
4 commercial customers. Was that your testimony?

5 A. Yes. Just to add a little bit to that is the  
6 general service rate classes are not specific to commercial.  
7 They also include industrial customers.

8 Q. Okay. Thank you. Are residential customers served  
9 by individual meters?

10 A. Yes.

11 Q. Are commercial customers served on master meters?

12 A. It depends.

13 Q. So some are, and some are not?

14 A. That's correct.

15 Q. Okay. Are some commercial customers individually  
16 metered?

17 A. Yes.

18 Q. Could you give an example of one type of commercial  
19 customer that would be served through an individual meter?

20 A. Yes. An office condominium.

21 Q. Okay. Do residential and commercial customers have  
22 different rate structures?

23 MR. MAZO: Your Honor, I'm going to object just to  
24 the fact that it's leading.

25 MR. HOFFMAN: I disagree, Your Honor.

1 THE COURT: Overruled. You can ask it.

2 BY MR. HOFFMAN:

3 Q. Do residential and commercial customers have  
4 different rate structures?

5 A. Yes. To put it on a high level with residential  
6 customers you have a customer charge and then you have energy  
7 charges. If you're looking at a medium-to-large commercial  
8 customer, you have a customer charge, you have energy  
9 charges, and then you also have a demand charge. So there's  
10 a difference in the structure, yes.

11 Q. Do residential customers have higher rates or lower  
12 rates than commercial customers?

13 A. It depends. As I said previously, the rate  
14 structure is different, so you have to look at the load  
15 characteristics of the customer in order to answer that  
16 question.

17 Q. Okay. Do residential customers have higher electric  
18 bills or lower electric bills than commercial customers?

19 A. Again, it depends. It depends again on the usage of  
20 the customer. It may also depend on taxes. Residential  
21 customers aren't charged a sales tax. Commercial customers  
22 are. And another item to consider is if it's a master meter  
23 commercial customer, if there are submetering costs involved,  
24 that would be another factor. So, again, you can't make a  
25 blanket statement this rate versus that rate or that bill

1       versus this bill is lower.

2           Q.     So based on what you're telling me, if you had  
3       hypothetically a 200-unit building, a multi-unit building,  
4       200 units on individual meters, would that 200-unit building  
5       have lower electric bills or higher electric bills if it was  
6       placed on master meters?

7           A.     And, again, you can't tell. Again, it's the load  
8       characteristics. And just to add to that there's a term we  
9       use, which is called "load factor," which is the relationship  
10      of -- for a customer of their sales to their -- or their  
11      energy to their demand. If you have a customer with a  
12      certain load factor, they may or may not pay a higher or  
13      lower rate under a master meter rate.

14          Q.     So it's going to depend on variables such as load  
15      factor, load characteristics, you had mentioned taxes, cost  
16      of submetering, and so forth?

17          A.     Yes.

18          Q.     Does FPL have a policy of forcing customers who may  
19      be eligible for master metering to take service on individual  
20      meters so FPL can make more money?

21          A.     No.

22          Q.     Does -- to your knowledge, does FPL have programs in  
23      place to help customers lower their electric bills?

24          A.     Yes, we do. There's a variety of optional rates  
25      that the customer may be able to take, and in addition we

1 have a variety of conservation programs.

2 MR. HOFFMAN: Excuse me, Your Honor. I'm trying to  
3 get through this a little quicker, so I'm crossing out a  
4 few questions.

5 BY MR. HOFFMAN:

6 Q. Ms. Morley, I asked you previously about Rule  
7 25-6.106, subsection 2. Do you recall our brief discussion  
8 on that rule?

9 A. Yes.

10 Q. Okay. Let me hand you a copy of that rule, which  
11 has been marked as Exhibit 39.

12 MR. HOFFMAN: Your Honor, I don't know if a copy was  
13 actually presented of Exhibit 39.

14 THE COURT: Of what? Do you mean did they move it  
15 in?

16 MR. HOFFMAN: No, sir. I believe that they had --  
17 that the Colony had listed it, but they had not provided  
18 a copy of it.

19 THE COURT: Yeah, I've got a copy of all the joint  
20 exhibits.

21 MR. HOFFMAN: You do? Okay.

22 MR. MAZO: It was part of the joint ones.

23 BY MR. HOFFMAN:

24 Q. Do you have a copy of the rule, Ms. Morley?

25 A. No, I don't.

1 Q. Well, perhaps you should have one because you're  
2 going to have to answer the questions. (Hands document.)

3 Do you have that -- do you have Rule 25-6.106 in  
4 front of you?

5 A. Yes.

6 Q. Would this rule apply to Colony Beach's refund  
7 request?

8 A. No.

9 Q. Why not?

10 A. First, there's no FPSC order referring to this rule  
11 in granting a refund in the case where there's two different  
12 rate classes involved. Secondly, if you look at the title,  
13 it says, "Under and Overbillings of Energy." And that to me  
14 implies that the amount of energy is at issue in this rule,  
15 not under and overbillings of rates or rate schedules.

16 Also, if you read further down, the very last  
17 sentence, it says, "The refund shall not include any part of  
18 a minimum charge." If you're looking at an issue where  
19 there's two different rate schedules involved, there's not a  
20 single minimum charge. In fact, there's two different sets  
21 of minimum charges.

22 And another thing is if you read, it says, "The  
23 amount and period of the adjustment shall be based on the  
24 available records." Well, if you have a hypothetical case  
25 where there's two different rate classes involved, there are



1 no records for the rate class that the customer was not  
2 billed on. In other words, you don't know what his billing  
3 demand was, you don't know -- there are no bills.

4 Q. In other words, there are no actual bills or  
5 available actual bills for Colony Beach on master meters or  
6 under commercial rates from the period of late '88 or early  
7 '89 up through June of 1998 because they were on the  
8 residential rates; correct?

9 A. Correct. And, again, on the commercial rate there's  
10 a demand charge. They didn't have demand meters. We didn't  
11 know or no one did what their demand would have been in 1990  
12 or 1995 before those demand meters were actually put in.

13 Q. Okay. Was Colony Beach accurately billed under the  
14 residential tariffs for FPL until -- from the period of late  
15 '88 or early '89 until the point of conversion in June of  
16 '98?

17 A. Yes.

18 MR. HOFFMAN: May I have a moment, Your Honor?

19 THE COURT: Um-hum.

20 MR. HOFFMAN: I have no further questions. Thank  
21 you, Ms. Morley.

22 MR. MAZO: Just one minute, Your Honor. Thank you,  
23 Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MAZO:

1 Q. Good morning, Ms. Morley.

2 A. Good morning.

3 Q. I'm Marc Mazo, as you know, and I've got a few  
4 follow-up questions to ask you from Mr. Hoffman. And I think  
5 I'll be a little nicer to you than he was to me, but we'll  
6 see how it goes.

7 Ms. Morley, my understanding was that you said you  
8 were familiar with the metering rule, the Commission's  
9 metering rule?

10 A. Yes, I am familiar with the FAC regarding rates,  
11 tariffs, metering, and service.

12 Q. And were you -- excuse me. Were you --

13 MR. HOFFMAN: I'm going to object, Your Honor. I  
14 specifically and intentionally did not address the PSC's  
15 metering rule, which is Rule 25-6.049. We specifically  
16 excluded that from our presentation, and I think that any  
17 questions on that rule are outside the scope of our  
18 direct examination.

19 MR. MAZO: Your Honor, I think that Ms. Morley has  
20 testified that she is familiar with a whole slew of rules  
21 and tariffs and how they effect -- and she talked about  
22 -- he asked her about master metering, commercial demand,  
23 whether it's this rate or that rate, and I think there's  
24 a lot of testimony in here that goes right to that master  
25 metering rule, and that's what we're here about. One of

1 the reasons.

2 MR. HOFFMAN: Your Honor, there's no question that  
3 that's what we're here about, but there's also no  
4 question that this witness did not address that rule.  
5 The transcript will reflect that there was not even a  
6 mention of Rule 25-6.049 or the individual metering rule  
7 or the master metering rule. I did not ask one question  
8 about that rule.

9 THE COURT: I agree with you, Mr. Hoffman, but I  
10 think I'm going to let him ask it anyway just because  
11 it's -- it is within the -- I'm going to let him go down  
12 the road a little bit anyway, and we'll see if he can tie  
13 it in, tie his questions in with what you had her talk  
14 about on direct.

15 And you're going to have to do that, Mr. Mazo, or  
16 we're not going to --

17 MR. MAZO: I understand.

18 MR. HOFFMAN: Thank you, Your Honor. I would just  
19 suggest that the only rule, just to remind Your Honor,  
20 that we discussed on direct was the overbilling rule,  
21 which is 25-6106.

22 BY MR. MAZO:

23 Q. Ms. Morley, let's leave that aside for just a  
24 minute, and let's talk about some of your costs of service  
25 studies that you discussed earlier. I'd like to show you a

1 document.

2 MR. MAZO: And I'd just like to mark it for  
3 identification purposes. I'm sorry.

4 THE COURT: Okay. This is Petitioner's 6. We're up  
5 to 6.

6 BY MR. MAZO:

7 Q. I'd just like you to take a look at that and see if  
8 you're familiar with that? (Hands document.)

9 A. I'm aware of this rule, yes.

10 Q. Okay. In the cost of service rule that you were  
11 just looking at would it be fair to say that the primary  
12 purpose of the rule is to require that load research that  
13 supports cost of service studies used in ratemaking  
14 proceedings is of sufficient precision to reasonably assure  
15 that tariffs are equitable and reflect the true costs of  
16 serving each class of customer?

17 A. Well, since I have not had a lot of experience in  
18 load research, I don't think I could answer that question.

19 Q. Okay. But you have had experience in cost of  
20 service research, haven't you?

21 A. Yes.

22 Q. And you've had experience in research to determine  
23 load factors for different class of service, for different  
24 customers: residential, commercial, industrial commercial?

25 A. I don't think I've ever computed a load factor for a

1 revenue class, if that's your question.

2 Q. How about a cost of service for residential class?  
3 Have you done studies on that?

4 A. Yes.

5 Q. And cost of service for commercial? Have you done  
6 studies on that?

7 A. Not for -- as I said before, there's a distinction  
8 between the revenue classes and the rate classes. I've never  
9 done a cost of service for a class defined simply as  
10 commercial, no.

11 Q. Are you aware that cost of service studies are used  
12 in ratemaking proceedings?

13 A. Yes.

14 Q. And are you aware that the cost of service studies  
15 help determine that the tariffs are equitable and reflect the  
16 true cost of serving a residential class?

17 A. Yes.

18 Q. Ms. Morley, I'd like to read you a statement and ask  
19 you if you believe that this is accurate. "Rates charged to  
20 various classes of customers are based on unique usage  
21 characteristics of each class. Residential customers tend to  
22 be more peak intensive, and they are allocated relatively  
23 more costs than the less peak-intensive commercial industrial  
24 customers?"

25 A. I think that's a very broad statement and not one

1 that I would concur with in totality, no.

2 Q. Okay. Do you generally agree with that statement?

3 A. I think rate classes are really driven by averages,  
4 and to that extent in, you know, broad sense, in terms of  
5 averages, yes. I don't think that I would draw a conclusion  
6 from that statement to any particular customer.

7 Q. Well, my question was do you generally agree with  
8 that statement?

9 A. I think that statement is a stretch.

10 Q. Okay. So you don't generally agree with it?

11 A. Correct.

12 Q. Okay. I'd like to refer to your deposition  
13 testimony. I'd like you, if you will, to take -- you can  
14 take a look at it and read it, starting at 17, if you will.  
15 (Hands document.)

16 MR. HOFFMAN: Mr. Mazo, could you indicate what  
17 page?

18 THE COURT: Page and line, just for the record.

19 MR. MAZO: I'm sorry. It's page 15, line 17,  
20 through page 16, line -- let me see. I'm sorry. It's  
21 line 3 or 4.

22 BY MR. MAZO:

23 Q. Ms. Morley, do you recall your deposition testimony?

24 A. Yes, I do.

25 Q. Okay. And the statement that I just read to you, is

1 that what's in the deposition in front of you?

2 A. Yes, it is.

3 Q. And can you please tell the Court what your answer  
4 was at that time?

5 A. I think I might have to turn back the page, but I  
6 believe I said generally yes.

7 Q. So in your deposition you indicated that you do  
8 generally agree with the statement, but today you indicated  
9 that you don't generally agree with it. Can you tell me why  
10 you did agree with it then and why you don't agree with it  
11 now?

12 A. Can I see that document again?

13 Q. Certainly. (Hands document.)

14 MR. HOFFMAN: Just for the record, Your Honor, I  
15 think that her testimony was that she thinks it's a  
16 stretch.

17 THE COURT: I understand.

18 THE WITNESS: I think it's a -- I think it is a  
19 stretch, and the reason I answered it the way I did in  
20 the deposition is again looking at rate class averages as  
21 opposed to a particular residential customer versus a  
22 particular commercial customer.

23 BY MR. MAZO:

24 Q. So -- just so I understand, when you were read that  
25 in your deposition, it wasn't clear? I'm not understanding

1 why it's different between today and then. Maybe I just  
2 didn't understand the answer.

3 MR. HOFFMAN: Objection, Your Honor. Asked and  
4 answered.

5 MR. MAZO: I'll go on, Your Honor. I'll go on.

6 THE COURT: Yeah, I think I understand it.

7 MR. MAZO: That's fine. That's fine.

8 BY MR. MAZO:

9 Q. Ms. Morley, you indicated that you're familiar with  
10 -- very familiar with Florida Power and Light's tariffs; is  
11 that correct?

12 A. Yes.

13 Q. Are you -- and I believe you indicated you're  
14 familiar with the residential tariffs, the commercial  
15 tariffs, industrial tariffs, a lot of tariffs? I mean, there  
16 are tons of them?

17 A. Well, 30. Yes.

18 Q. Okay. And you're familiar with a tariff that talks  
19 about class of service?

20 A. Yes. There's a page in our tariff book that defines  
21 different classes of service, yes.

22 MR. MAZO: I'd like to mark this for identification.

23 THE COURT: All right. We'll mark it as  
24 Petitioner's 7.

25 MR. MAZO: Thank you, Your Honor.



1 BY MR. MAZO:

2 Q. I'd like to show you Petitioner's 7 and ask you if  
3 you are familiar with that document? (Hands document.)

4 A. Yes.

5 Q. Okay. And can you identify the document for the  
6 record, please?

7 A. Yes. It's miscellaneous classes of customers. It's  
8 a sheet from the FPL tariff book.

9 MR. MAZO: Your Honor, I'd like to move it into  
10 evidence.

11 MR. HOFFMAN: No objection, Your Honor.

12 THE COURT: I'll show Petitioner's Exhibit 7  
13 admitted.

14 BY MR. MAZO:

15 Q. Ms. Morley, if you will, could you read into the  
16 record what it says residential class of service?

17 A. "Service applied exclusively for domestic purposes  
18 in individually metered dwelling units and in," pardon me,  
19 "and in duplexes and triplexes, excluding the separately  
20 metered, noncommercial facilities of a residential customer."

21 Q. And if you will, please, could you read into the  
22 record the --

23 A. I'm sorry. I would like to read it again. I  
24 believe I said -- read excluding, and it should be,  
25 "Including the separately metered, noncommercial facilities

1 of a residential customer, i.e. garages, water pumps, et  
2 cetera."

3 Q. Thank you. If you will, could you read into the  
4 record the definition of commercial class?

5 A. "For service use" -- I did not do well in reading in  
6 school.

7 "Service used for commercial and professional  
8 activities in establishments and for purposes not otherwise  
9 classified for rate purposes including airports, banks,  
10 billboards, boardinghouses, churches, clubs, commercial  
11 buildings, freight terminals, lodges, hospitals, hotels,  
12 master-metered apartment houses, office buildings, parking  
13 lots, passenger trains, personal service establishments,  
14 restaurants, rooming houses, schools, self-service laundries,  
15 signs, stores, theaters, and the like.

16 Q. Thank you.

17 MR. MAZO: Your Honor, if I may, I'd like to move  
18 Petitioner's Exhibit 6 into evidence.

19 MR. HOFFMAN: Your Honor, I'm going to -- I am going  
20 to object to the admission of this exhibit on the grounds  
21 of relevancy. I don't think that this rule is relevant  
22 to this proceeding, so I'm going to object on relevance.

23 THE COURT: Okay. All right. Again, it's a rule or  
24 a statute, so one way or the other I mean we can fight  
25 over relevance, obviously. I'll show it admitted

1           basically so I'll have it in front of me when the  
2           argument takes place.

3                 Speaking of that, I need 6 and 7. I need to get  
4           those in my hands.

5                 MR. MAZO: I'll let you have them.

6                 THE COURT: All right.

7                 BY MR. MAZO:

8                 Q. Ms. Morley, I'm going to show you another document  
9           and ask you if you can identify this one. (Hands document.)

10                A. It's another sheet from the tariff book. It's the  
11           common use facility rider.

12                MR. MAZO: Okay. (Hands document.)

13                THE COURT: We'll mark that as Petitioner's 8.

14                BY MR. MAZO:

15                Q. And just for the record, if you'll read into the  
16           record what the application of this rate is for, the tariff.

17                A. "To provide for the application of residential rates  
18           for energy used in commonly owned facilities of condominium  
19           cooperatives and homeowners associations."

20                Q. Okay. I'd like to show you another document and ask  
21           you to identify that, please. (Hands document.)

22                A. It's from the rules and regulations section of the  
23           FPL tariff.

24                MR. MAZO: Okay. And that would be which number,  
25           Your Honor?

1 THE COURT: 9. Petitioner's 9.

2 MR. MAZO: Petitioner's 9?

3 THE COURT: Yeah.

4 BY MR. MAZO:

5 Q. In your awareness of the Florida Power and Light  
6 tariffs, are you aware of Section 1.1 of this tariff, of  
7 Petitioner's Exhibit 9?

8 A. I am because we just changed it.

9 Q. Okay.

10 A. Yes.

11 Q. And --

12 MR. HOFFMAN: Excuse me, Mr. Mazo.

13 THE WITNESS: It's not the current form.

14 MR. HOFFMAN: Your Honor, if I may, in looking at  
15 these effective dates of these tariffs, I'd like to go  
16 back and revisit Petitioner's Exhibit 7 and raise an  
17 objection to the admission of that tariff.

18 If you look down to the lower left-hand part of that  
19 page, it reflects that this tariff became effective April  
20 27 of 1993. The issue in this case ultimately is whether  
21 or not Colony Beach should have been placed on a master  
22 meter in late 1988 or early 1989, so this tariff sheet  
23 would have no relevance to this proceeding, and we would  
24 object to its admission.

25 MR. MAZO: Your Honor, the time frame on that -- let

1 me see the document, which one we're looking at. I think  
2 that Ms. Morley testified about the document. She  
3 testified that it's part of the tariffs. I can go  
4 further if we need to and ask her, you know, familiar as  
5 long as it's been available, as long as the tariff's been  
6 there, if the Court would please, but basically it is  
7 what it is. It's their class of services.

8 MR. HOFFMAN: Your Honor, I agree with that, and  
9 that's why I initially did not object to that. That  
10 certainly is what it is, and it says what it says. But  
11 it's of no value to you in this proceeding because it was  
12 -- became effective in 1993, and the issue for you in  
13 this case is what action, if any, should have been taken  
14 in 1988 or '89.

15 THE COURT: Let's see if we can -- see if we can  
16 establish what was going on in '89.

17 BY MR. MAZO:

18 Q. Okay. Ms. Morley, let me go back to Petitioner's  
19 Exhibit 7, if I will -- if you may.

20 A. Um-hum.

21 Q. In your experience with the tariffs with Florida  
22 Power and Light, with that tariff particularly, do you have  
23 any knowledge of that tariff changing over the years?

24 A. Well, I know something on this page changed in 1993.  
25 What it was I could not tell you off the top of my head.

1 Q. Well, let's talk a little bit about what your  
2 understanding is of the class of service that you read. Do  
3 you agree today that the class of service that -- to your  
4 knowledge over the years that you've worked at Florida Power  
5 and Light that there has been a residential class of service?

6 A. Yes.

7 Q. And would you agree that -- would your understanding  
8 be that the class of service that was residential for FP & L  
9 was service applied exclusively for domestic purposes?

10 MR. HOFFMAN: I'm going to object, Your Honor. The  
11 question is vague. I mean, I don't know what's --

12 MR. MAZO: Let me finish reading. I'll finish  
13 reading it. I'm sorry.

14 MR. HOFFMAN: I don't know what period of time his  
15 question is addressing, and that's the basis for the  
16 objection.

17 MR. MAZO: I'm sorry. I believe the period of time  
18 I was asking about was the number of years that she's  
19 been at FPL.

20 BY MR. MAZO:

21 Q. Which was how many years, Ms. Morley?

22 A. Since 1983.

23 MR. MAZO: Okay. That falls within the timeframe of  
24 what we're talking about in this case, Your Honor.

25 THE COURT: I guess to settle on this document the

1 question needs to be, Ms. Morley, you can't say off the  
2 top of your head that you know what changed in '93 that  
3 caused the refile of this tariff, but can you say that it  
4 would or would not have been the section concerning  
5 residential? Or has that been the same more or less --

6 THE WITNESS: I really could not tell you that.

7 BY MR. MAZO:

8 Q. Let me ask it this way, if I may. Ms. Morley, in  
9 your understanding of what the residential class of service  
10 has been that Florida Power and Light has had since you've  
11 been aware of it in 1983, can you tell me what your  
12 understanding of the class of service for residential was?

13 A. In general terms?

14 Q. In general terms.

15 A. For domestic uses.

16 Q. Okay. That's fair enough. And the class of service  
17 for commercial service in your understanding since 1983, what  
18 would that be for?

19 A. It's kind of a catch-all. I don't know if it really  
20 has a specific definition.

21 Q. Would it be fair to say that it was for commercial  
22 industrial usage, and then it kind of -- anything that wasn't  
23 classified at that time was kind of lumped into that  
24 classification? Would that be your understanding?

25 A. Well, I wouldn't put industrial in there since

1 that's a separate category.

2 Q. Well, let's take industrial out. Other than  
3 industrial.

4 A. Um-hum.

5 Q. Would that be fair?

6 A. Could you ask the question again?

7 Q. Yeah. In your understanding of the -- just give me  
8 your understanding of what the commercial class of service  
9 was in 1983 to the best of your recollection.

10 A. Commercial activities that would include things like  
11 stores, banks, things like that. I couldn't give you a  
12 specific list.

13 Q. Okay. Commercial facilities; is that fair?

14 A. Yes.

15 MR. MAZO: Okay. Your Honor, I don't have to put it  
16 on the record.

17 THE COURT: We'll show it as Petitioner's 7 and as  
18 not admitted.

19 MR. MAZO: Withdrawn.

20 THE COURT: Withdrawn. Thank you for the word.

21 BY MR. MAZO:

22 Q. I believe before the objection we were talking or  
23 you were looking at Petitioner's Exhibit 9.

24 A. Yes.

25 Q. We were directing it to Section 1.1.



1           A.    Yes.

2           Q.    Okay.  And I believe I asked you if you were  
3 familiar with that section, and I didn't really -- I don't  
4 think I heard the answer.

5           A.    Yes.  In fact, this is dated it looks like June of  
6 1999.  There was a change to this, if I'm recalling  
7 correctly, this particular passage that you've highlighted in  
8 yellow that became effective in May of 2000.

9           Q.    Okay.  And before that time, do you have any  
10 knowledge -- well, let's read that -- let's read that into  
11 the record, if you will, what that 1.1 says.

12          A.    1.1 --

13               MR. HOFFMAN:  Objection, Your Honor.  I think that  
14 anything that is on this tariff sheet which shows an  
15 effective date of June 1, 1999 is irrelevant to this  
16 case.

17               MR. MAZO:  I'll withdraw it for the moment.

18               BY MR. MAZO:

19           Q.    Ms. Morley, do you have any understanding one way or  
20 the other with FP & L's tariffs since 1983 of whether or not  
21 that service may be obtained upon application in writing or  
22 by telephone?

23           A.    I have to tell you that the tariff book is about  
24 this thick.  (Indicating.)

25           Q.    Okay.

1           A.    And I couldn't -- you couldn't go to any particular  
2 page now and quiz me on when a particular section was --  
3 which change.

4           Q.    That's fine.

5           A.    I really can't tell you.

6           Q.    Okay. Ms. Morley, I believe Mr. Hoffman asked you a  
7 few questions about residential rates and commercial rates,  
8 and correct me if I'm wrong, but I believe he asked you some  
9 questions about whether you can tell whether a customer gets  
10 a lower rate because of residential or master metered. Is  
11 that fair, or is that an incorrect characterization of what  
12 the questions were?

13          A.    I believe that's -- that's fair.

14          Q.    Okay.

15          A.    Yes.

16          Q.    And in that testimony you talked about the fact that  
17 you can't necessarily determine just because they're on a  
18 residential rate or a commercial rate and they switch that  
19 they're going to save money or not; is that correct?

20          A.    Yes.

21               MR. HOFFMAN: Your Honor, if I may, I think so that  
22 the record is clear that that discussion was in the  
23 context of higher or lower electric bills.

24               BY MR. MAZO:

25          Q.    And, Ms. Morley, you've been -- had some involvement

1 in this case before. We talked about your deposition.

2 That's correct?

3 A. Yes.

4 Q. Okay. And in terms of looking at residential rates  
5 versus commercial rates did you happen to do that in this  
6 case with the Colony?

7 MR. HOFFMAN: Your Honor, I'm going to state an  
8 objection at this point just to give notice that we've  
9 already come to an agreement that we are not going to  
10 address in phase one of the proceeding the specific rates  
11 or specific rate differentials or bill differentials for  
12 residential rates versus commercial rates for the Colony.  
13 That issue was not addressed in my direct.

14 MR. MAZO: Your Honor, I would have to say that the  
15 agreement that we had was something that we were going to  
16 put on earlier and we didn't for a particular reason that  
17 we thought we had agreed on, and that reason was that we  
18 talked to the Court, and the Court said that it would be  
19 obvious that if we should have converted to -- if we  
20 should have been allowed to convert to master metering  
21 that we would have saved money. He's brought testimony  
22 in that basically has said that's not necessarily so, and  
23 that's what we were avoiding, I thought. And now all I  
24 want to do is talk to her about that fact.

25 MR. HOFFMAN: Your Honor, there was not one question

1 asked about the actual residential rates or residential  
2 bills paid by the Colony or any hypothetical bills that  
3 would have been paid by the Colony had the Colony been  
4 under commercial rates. My understanding when we reached  
5 a stipulation on this issue was that that matter was  
6 going to be deferred until phase two. It was not that,  
7 well, Mr. Mazo would not talk about it but then he would  
8 turn around and attempt to cross-examine Ms. Morley about  
9 it. It was based on that stipulation that I declined to  
10 get into that area, and that area has not been addressed  
11 in direct.

12 THE COURT: I guess the only question I have is -- I  
13 mean, and maybe I was hearing incorrectly along with  
14 Mr. Mazo, but I just want to be sure that, you know,  
15 we're not trying to have it both ways here and sort of  
16 avoid liability by saying, well, you haven't proven  
17 you're entitled to a refund, you know.

18 MR. HOFFMAN: We reached a stipulation on that, Your  
19 Honor, that there would be no position taken by FP & L in  
20 its post hearing brief in phase one that we would say  
21 that there should be no liability on the basis that there  
22 wasn't evidence of this nature presented. I think that  
23 Your Honor characterized where we would be at the end of  
24 phase one very well. And it was your words yesterday  
25 that what this case is about is to determine whether

1 Colony Beach is entitled to a refund, if any. And if you  
2 determine that that's the case, the level of the refund,  
3 if any, would be addressed in phase two. And, again,  
4 that is why that matter was not addressed in direct  
5 testimony.

6 MR. MAZO: Your Honor, if -- if I may just for a  
7 minute, and this is just kind of posing a little scenario  
8 here that I've been leery of. If we take what Your Honor  
9 had indicated and that -- we take that into the record  
10 and it says that basically you believe that if we prevail  
11 and you rule that there should have been a refund, that  
12 it is in the record that we would have been entitled to  
13 one, that they can't argue -- I guess let me say it a  
14 little clearer.

15 What I'm concerned about was the testimony that came  
16 in that I didn't think was coming in which was an issue  
17 that seems to be on the record that in essence says you  
18 can't tell the difference, you don't know. Just because  
19 they were entitled to be master metered doesn't mean they  
20 were entitled to a refund because they would have paid  
21 more. Based on their testimony, I know it was generic,  
22 and I wasn't arguing that, they didn't bring up the name  
23 of the Colony, but it seemed to me to be in there to say,  
24 well, you know, just because they master metered doesn't  
25 mean they would have saved money. And we're not allowed

1 to have any testimony to say, hey, it did happen, it  
2 didn't happen, this is what's going on. And that's all I  
3 wanted to do. I wanted to keep it very narrow unless  
4 there was already that agreement that we're clear on it.

5 THE COURT: And there was that sort of line of  
6 generic questions. Maybe it will answer their objection  
7 if you'll address your questions more to the questions  
8 that Mr. Hoffman was asking, rather a generic nature,  
9 rather than trying to get into the specifics of the  
10 Colony.

11 MR. MAZO: Unfortunately, I guess that --

12 THE COURT: I guess that -- and, again, I mean I  
13 know what your problem is, and I -- I think I can deal  
14 with that. I mean --

15 MR. MAZO: Okay.

16 THE COURT: As far as, you know, what she said. I  
17 mean, I think some of the answers that she gave are going  
18 to have to be, you know, I don't want to say not  
19 considered, but I felt like some of it was getting into  
20 the whole -- the refund issue and, you know, that there  
21 wasn't an objection, but in my mind I thought we were  
22 beginning to get into that.

23 MR. MAZO: Your Honor, I have -- I'm sorry.

24 What I would do at this time, if appropriate, would  
25 then be to move to strike that particular part of the

1 testimony based on our stipulation and make sure that  
2 that just goes into the record so there can't be any  
3 questions one way or the other.

4 THE COURT: You can do it that way or I can just  
5 tell you that, you know, because this is a bifurcated  
6 proceeding I doubt -- I mean, my order is just not going  
7 to deal with those aspects of her testimony I mean as far  
8 as how you calculate or could you calculate or all that.  
9 I mean, that's just something that would have to be dealt  
10 with in the second phase if it ever gets to the second  
11 phase.

12 MR. HOFFMAN: Your Honor, again just two things.  
13 One, I tried to stay away from and I think I did stay  
14 away from specific questions about the Colony and their  
15 rates. The hypothetical questions that I asked  
16 Ms. Morley were simply hypothetical. However, you know,  
17 I do think they are relevant to the question I had asked  
18 Ms. Morley before during the course of her testimony as  
19 to whether FPL had any type of corporate strategy to push  
20 customers away from individual meters to master meters.  
21 And that hypothetical question is relevant to that  
22 because her answer was basically conceptually,  
23 hypothetically, you know, without a rate analysis you  
24 can't make those determinations.

25 THE COURT: And that's -- I, mean if that's all you

1           were getting at.

2           MR. HOFFMAN: That's what I was getting at.

3           THE COURT: It felt like, you know, the answer was  
4 beginning on treading on, well, we had no way of going  
5 back and figuring out what they were entitled to.

6           MR. HOFFMAN: We will stipulate, Your Honor, that  
7 that was not the purpose of that testimony but that it  
8 was addressed only to what happened in the '88, '89 and  
9 that conceptually, you know, Mr. Sanger stated on the  
10 record that he did not present any type of rate analysis.  
11 And that's all it goes to is that there can't be, you  
12 know, any type of -- without an analysis, you just can't  
13 make a flash-cut decision that bills would be higher or  
14 lower, and that's not -- you know, that wasn't a part of  
15 any type of FPL strategy.

16          MR. MAZO: Your Honor, if I may, just one last  
17 point. Part of what I'm afraid of, and just kind of a  
18 protection, you try to keep everything in the record, and  
19 if I take a hypothetical and I say that the Court denies  
20 or issues a recommended order that says no refunds should  
21 be granted, then we're out. There's no second phase.

22          THE COURT: Well, you know, the rule, if we were to  
23 rule that, it wouldn't be no refund should be granted.  
24 It would be that there was no liability on the part of  
25 FP & L to -- I mean, under the facts that they weren't



1 required to take any further steps as far as changing the  
2 metering after the initial episode with Mr. Sanger. I  
3 mean, that would be the only -- I mean, I wouldn't reach  
4 the question of -- you know, you just wouldn't -- you  
5 wouldn't get to the refund.

6 MR. MAZO: Okay. That's fine.

7 MR. HOFFMAN: And, Your Honor, just so the -- just  
8 so the record is clear, I mean the testimony that we've  
9 presented which we believe to be of significance on the  
10 one rule addressed by Ms. Morley is that overbilling  
11 rule, 25-6.106. And so our position not only is that  
12 they -- Colony Beach would have had to have secured a  
13 waiver of some sort back at that time but that there was  
14 not then and is not now any type of remedy contemplated  
15 by the PSC rules under that overbilling rule and,  
16 therefore, you know, you must determine there is no  
17 liability.

18 MR. MAZO: I think we're arguing our case and not  
19 the --

20 THE COURT: Yeah, I mean I understand, I mean, their  
21 point. There is a little bit of overlap in these things.  
22 But with the understanding that, you know, the essence of  
23 what he was getting at was that there was no corporate  
24 strategy to, you know, keep people, you know, one way or  
25 the other --

1 MR. MAZO: Your Honor, I have no problem with that  
2 whatsoever. If that's all that testimony went to was  
3 corporate strategy and not having anything to do with the  
4 other.

5 MR. HOFFMAN: And indeed, Your Honor, I'll just say  
6 it again. That was the purpose.

7 THE COURT: Okay. Then I think we can move on.

8 BY MR. MAZO:

9 Q. Ms. Morley, just a couple more questions. Let's  
10 talk about the overbilling rule or refund rule of the  
11 Commission. I believe you said earlier that you're aware of  
12 the Florida Administrative Code -- the Public Service  
13 Commission rules?

14 A. As they pertain to rates, tariffs, yes.

15 Q. As they pertain to refunds?

16 A. Well, I'm assuming there was -- there's -- if it's a  
17 refund for electric service, yes.

18 Q. Okay. That's what we're here about, electric  
19 service.

20 A. Okay.

21 Q. So are you familiar with the refund rules from the  
22 Public Service Commission about electric service?

23 A. Yes.

24 Q. And are there any other rules or any other refund  
25 rules that a customer can seek a refund under not for

1 metering purposes other than the rule that we talked about?

2 A. Not that I'm aware of.

3 Q. Okay. So any refunds that the public has questions,  
4 complaints about refunds, then, to your knowledge, other than  
5 any metering issues, are going to come under this rule?  
6 Would that be fair?

7 A. No. For example, if the Commission orders a refund,  
8 then they could specify. That would specify how the refund  
9 would be done. There's also a rule -- you referred to  
10 25-6.10 -- 106 as the refund, I think. There's actually a  
11 refund provision following that, 109, that's just called  
12 "Refunds."

13 Q. And that refund rule, those are the rules that the  
14 customers would seek refunds under other than if they just  
15 went to the Public Service Commission and the Commission  
16 didn't base it on the rule, they just decided they wanted to  
17 give a refund; is that what your testimony is?

18 MR. HOFFMAN: Objection, Your Honor. I don't know  
19 what rule we're talking about here. We're talking about  
20 different rules in these questions, and I'd just ask  
21 counsel to clarify when he's asking these questions which  
22 rules he's talking about.

23 BY MR. MAZO:

24 Q. I'll clarify. Ms. Morley, I think you referred --  
25 let me see that just a second.

1                   25-6.109, Refunds. Are you familiar with that  
2 ruling?

3           A.    Yes.

4           Q.    Okay.

5           MR. HOFFMAN: Mr. Mazo, what rule? I didn't hear  
6 you.

7           MR. MAZO: It's 25-6.109.

8           BY MR. MAZO:

9           Q.    And can you read that Section Number 1 into the  
10 record, please? (Hands document.)

11          A.    "With the exception of deposit refunds and refunds  
12 associated with adjustment factors, all refunds ordered by  
13 the Commission shall be made in accordance with the provision  
14 of this rule unless otherwise ordered by the Commission."

15          Q.    And this rule is from the Florida Administrative  
16 Code, 25-6.109; is that correct?

17          A.    Yes.

18          MR. MAZO: Okay. Your Honor, if I may, I don't  
19 think that's in evidence, is it?

20          THE COURT: Yeah. It's Joint 39.

21          MR. MAZO: Oh, it's Joint 39? Okay.

22          MR. HOFFMAN: Your Honor, I'm going to object. The  
23 first reference to that rule in a case that's been going  
24 on for some two years comes this afternoon. That rule  
25 was not referenced in their complaint. It has never been

1 referenced in any of their pleadings. It has no  
2 relevance to this case. I think that what they're  
3 attempting to do here now is come up with another remedy  
4 that doesn't exist under the PSC rules. You know, we  
5 would object to the admission of this rule because we  
6 think it is irrelevant and is not within the four corners  
7 of their complaint. It's never been discussed in this  
8 case.

9 THE COURT: Well, actually, if I remember correctly,  
10 it was the witness that brought it up first.

11 MR. HOFFMAN: No, sir.

12 THE COURT: And it's in for better or worse under  
13 Exhibit 39. You know, the only thing we talked about at  
14 this point was 106. 109 was also part of --

15 MR. HOFFMAN: The same thing.

16 THE COURT: We can argue relevance later, but I'm  
17 not going to keep it out.

18 MR. HOFFMAN: Thank you.

19 MR. MAZO: Just -- excuse me. Can I take just a  
20 minute, Your Honor? I'm about done. Just a second.

21 BY MR. MAZO:

22 Q. Ms. Morley, in talking about Rule 25-6.106 you agree  
23 that that's the underbilling and overbilling rule?

24 A. Yes.

25 Q. Okay. And do you also agree --

1           A.    I'm sorry.  If I could, I think the title is "Under  
2           and Overbilling of Energy."

3           Q.    Correct.

4           A.    Okay.

5           Q.    And in this rule the utility is not allowed to back  
6           bill for any period greater than 12 months; is that -- is  
7           that right?

8           A.    I'll probably have to reference the rule  
9           specifically to answer that question.

10          Q.    Okay.  Certainly.  (Hands document.)

11          A.    Okay.  Could you ask your question again?

12          Q.    I forgot it.  I think I'm going to withdraw.  I  
13          think -- let me go to a different question and wrap it up.

14                Ms. Morley, you've done a little research on refund  
15          rules having to do with this case, have you not?

16          A.    Yes.

17          Q.    Okay.  Have you determined that there are any Public  
18          Service Commission cases that are similar to this issue in  
19          request for refund?

20          A.    I have not been able to determine any FPSC orders  
21          granting a refund in a case like this.

22          Q.    And are there any precedents that you've found?  
23          Have you looked for any precedents?

24          A.    Yes.  I did a search on Lexis Nexis for FPSC orders.

25          Q.    Okay.  And you didn't find any precedents with this?

1 A. That's correct.

2 Q. Okay. So this is a very unique case, would you  
3 agree?

4 A. I'm not sure I can conclude that. I think what I  
5 said was I couldn't find any orders where a refund had been  
6 granted in such a case.

7 MR. MAZO: Okay. I have no further questions at  
8 this time.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. HOFFMAN:

12 Q. Just a few questions, Ms. Morley. I think Mr. Mazo  
13 asked you a question about Rule 25-6.109, and I'll hand you a  
14 copy of that. (Hands document.)

15 Do you have that rule in front of you?

16 A. Yes.

17 Q. Based on your research, has this rule ever been  
18 applied to order a refund to a customer of an electric  
19 utility under circumstances similar to those that are alleged  
20 by Colony Beach in this complaint?

21 A. No.

22 MR. HOFFMAN: No further questions. Thank you.

23 MR. MAZO: Your Honor, I have no further questions.

24 THE COURT: Thank you.

25 MR. HOFFMAN: May the witness be excused, Your

1 Honor?

2 THE COURT: Yes.

3 MR. MENTON: Your Honor, at this point FPL has two  
4 additional witnesses. I don't think they're going to be  
5 lengthy. I think we could probably complete both of them  
6 I would guess in less than two hours would be my  
7 estimate. At least on direct. I don't know how  
8 extensive the cross would be. I don't know what your  
9 preference is. Maybe what we could do is take a short  
10 break and get some crackers or something and then maybe  
11 we can go through lunch and finish up.

12 MR. DALEY: That would be fine. I think a half an  
13 hour or something like that and then come back and go to  
14 work. That would be fine.

15 THE COURT: We'll shoot for 12:15.

16 MR. MAZO: I'm sorry. I didn't hear you. What  
17 time?

18 THE COURT: Take a recess till about 12:15 and come  
19 back and finish up.

20 MS. WALKER: That's fine with me.

21 (Off the record for a short break, after which the  
22 following proceedings were had:)

23 THEREUPON,

24 TERRI BRITTON

25 was adduced as the witness herein, and being first duly sworn



1 on oath by the Court was questioned and stated as follows:

2 THE COURT: Let everybody get settled in. Ready?

3 Okay.

4 MR. MENTON: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. MENTON:

7 Q. Could you please state your name?

8 A. Terri Britton.

9 Q. Ms. Britton, by whom are you employed?

10 A. Florida Power and Light.

11 Q. Could you provide the judge with a brief rundown of  
12 your employment history?

13 A. Certainly. I started with Florida Power and Light  
14 in June of 1978, Venice district office, customer service  
15 area. I worked there approximately five years, transferred  
16 as a customer service supervisor in Fort Myers where I worked  
17 approximately six years. I then moved back to Sarasota as a  
18 customer service manager over one of our telephone call  
19 centers.

20 I did leave the company for a couple of years and  
21 rehired -- I left in the end of '92 and rehired back the  
22 spring of '95 where I worked in our residential energy  
23 conservation program for approximately two and a half years.  
24 And I am now on the commercial side of that working with  
25 commercial customers.

1 Q. Okay. And, Ms. Britton, picking up with 1995, could  
2 you just describe in a little more detail what your job  
3 responsibilities with Florida Power and Light were?

4 A. Certainly. I worked with our residential customers  
5 doing energy evaluations. My territory of customers were --  
6 was geographically broke down by zip codes. I had specific  
7 areas that I was responsible for assisting customers in  
8 reducing their electric bills.

9 Q. Okay. In connection with that job, did you ever  
10 have occasion to visit the Colony?

11 A. Yes, I did.

12 Q. Okay. And could you describe for the judge the  
13 circumstances that led up to that visit?

14 A. We at the request of the Colony did energy  
15 evaluations on 232 residential units. They specifically were  
16 interested not only in saving money but in the area of  
17 ceiling insulation, so that's where our efforts were.

18 Q. What was the purpose of your visit to the Colony  
19 specifically?

20 A. To help them save money.

21 Q. Okay. And when you went out to the Colony, could  
22 you describe what exactly you did?

23 A. Yes. It was important for us to get into the attics  
24 to take a look at the insulation for the customer and see if  
25 there was anything we could do to help. These units were

1 two-story like a townhouse unit, so we had to go all the way  
2 up to the top to get in the attics in each building.

3 Q. Okay. And so you did actually go into some of the  
4 units out there at the Colony?

5 A. Yes, sir.

6 Q. Okay. How many units did you go into?

7 A. I don't remember exactly, because usually in each  
8 building once we got in one attic we could see the attic  
9 space over the rest of the units in that building. I don't  
10 remember.

11 Q. Okay. And who was your primary contact at the  
12 Colony?

13 A. Mr. Sanger.

14 Q. Okay. And how long did you spend at the Colony  
15 during this first visit with him?

16 A. That took us pretty much an entire day to complete  
17 those.

18 Q. Did you provide Mr. Sanger with any information  
19 regarding how the Colony might save on energy costs?

20 A. Yes, we did.

21 Q. Could you explain for the judge exactly what you did  
22 and recommendations that you made?

23 A. The recommendation was to add some ceiling  
24 insulation. We gave them two options, bringing it up to R19  
25 or R30. Florida Power and Light was going to pay a portion

1 of that, so we have what we called Watt Savers, an incentive  
2 for each individual unit worth a certain dollar amount that  
3 we were going to pay for. We provided them with those as  
4 well as a list of contractors that they could choose from.

5 Q. Okay. So as I understand your testimony, then, FPL  
6 -- you provided Mr. Sanger with information as to how FPL  
7 would actually assist the Colony in saving money on its  
8 energy bill?

9 A. That's correct.

10 Q. And did the Colony implement the suggestions that  
11 you made?

12 A. Not to my knowledge, they did not.

13 Q. Now, when you were out at the site in 1995, did  
14 Mr. Sanger or anybody else from the Colony ever indicate to  
15 you that they had previously requested that the Colony be  
16 master metered?

17 A. No.

18 Q. Did Mr. Sanger or anybody else from the Colony  
19 request any information regarding master metering?

20 A. No, they did not.

21 Q. If a request had been made by someone on behalf of  
22 Colony for master metering, what would you have done with it?

23 A. I would have indicated that in my field notes, and  
24 when I returned to the office that afternoon or evening, I  
25 would have gotten with my supervisor for he or she to help

1 me.

2 Q. Now, after you completed your energy audit in 1995,  
3 did you have a subsequent occasion or did you subsequently  
4 become the FPL business account specialist for the Colony?

5 A. Yes, I did.

6 Q. And could you relate for the judge when that  
7 occurred?

8 A. That was in 1997, the summer of 1997. I moved to  
9 the commercial side where I was responsible for commercial  
10 customers doing a lot of the same things I had done in the  
11 residential sector. And, again, my geographical area  
12 included Longboat Key so --

13 Q. And when you became -- or after you became the FPL  
14 representative, did you subsequently receive from the Colony  
15 a request for a refund regarding the alleged failure to  
16 master meter back seven years?

17 A. I received a request from Mr. Mazo representing the  
18 Colony.

19 Q. Okay. And could you relay for the judge how that  
20 request came about and what you did with it?

21 A. Initially, it was a verbal request from Mr. Mazo. I  
22 had -- I asked him for some additional information such as  
23 maybe who they spoke with, better judge on time frame, when  
24 the request was made, and I also asked Mr. Mazo to put that  
25 in writing and gave him my name and mailing address.

1 Q. Okay. So at this point in time you were the FPL  
2 business account specialist responsible for the Colony;  
3 correct?

4 A. That's correct.

5 Q. And to your knowledge, had there ever been a  
6 previous inquiry from the Colony seeking a refund with  
7 respect to the master metering?

8 A. No. That was the first I had heard of it.

9 Q. Okay. And previously there was an exhibit that was  
10 marked as FPL Exhibit 1. This is a copy of it. Do you  
11 recognize that document? (Hands document.)

12 A. Yes. This was the letter, the follow-up to the  
13 phone call. This was the letter -- the follow-up to the  
14 phone call, this was the letter Mr. Mazo sent me.

15 Q. Okay. And with that letter there were several  
16 attachments; is that correct?

17 A. Yes.

18 Q. Okay. And so that was a letter that you received  
19 shortly after your initial telephone conversation from  
20 Mr. Mazo seeking a refund?

21 A. That's correct.

22 Q. And what did you do when you received that letter?

23 A. Well, again, I was unable to help with the  
24 investigation because there still wasn't enough information  
25 for me, so I forwarded this to my manager for him to

1 investigate.

2 Q. Okay. And I think you indicated earlier in your  
3 initial telephone conversation with Mr. Mazo you had  
4 requested some information from him. Specifically, what were  
5 you looking for?

6 A. Who Mr. Sanger spoke with and whether it was '88,  
7 '89, maybe condense it to maybe a few months that they may  
8 have tried to call us.

9 Q. Okay. And did Mr. Mazo ever provide you with that  
10 information?

11 A. No.

12 Q. And after you received this written request, what  
13 did you do with it?

14 A. Gave it to my manager, Douglas Bucciarelli.

15 Q. Okay. And was Mr. Bucciarelli then the person  
16 responsible for handling any response to Mr. Mazo?

17 A. That's correct.

18 Q. Okay. Now, I want to back up just a little bit and  
19 ask you about your role in FPL's efforts to comply with the  
20 master meter time-share amendments that were adopted in 1997.  
21 Do you recall that?

22 A. Yes.

23 Q. Okay. And could you describe for the judge exactly  
24 what your role was in that regard?

25 A. Certainly. It was shortly after I moved into the

1 commercial side August of '97. Due to the PSC amending the  
2 ruling for time-shares being allowed to be master metered,  
3 FPL took the initiative to try and find out where our  
4 time-share customers were and determine if they qualified for  
5 this conversion and would they benefit from that.

6 Q. Okay. And why was this program initiated? Was  
7 it --

8 A. We had another utility that sent letters to our  
9 customers. Really, the purpose was just trying to identify  
10 who they were.

11 Q. Was this an effort to educate your customers as to  
12 some new rate changes that might benefit them?

13 A. That's correct.

14 Q. Okay. And did you undertake this effort by  
15 yourself?

16 A. No. Myself and Larry Valentine.

17 Q. Okay. And would you explain for the judge how you  
18 identified potential conversion candidates under the new  
19 master meter rule.

20 A. We went to the phone book. Having some knowledge of  
21 customers in Sarasota and Manatee Counties, went to the phone  
22 book. I remember looking under resorts and just calling  
23 customers. It was a telephone blitz to try to identify where  
24 they were.

25 Q. Okay. And how much time did you put into this



1 effort?

2 A. I spent about one month on this project.

3 Q. Okay. And was there a set of criteria developed to  
4 determine whether a particular facility would qualify for  
5 conversion under the time-share amendments to the master  
6 meter rule?

7 A. Yes. There were particular questions when we made  
8 these phone calls during the blitz. Our first question was,  
9 of course, are you a time-share. The second question was do  
10 you have anyone that lives on the property full time. If  
11 they do, they were going to be excluded from the new amended  
12 ruling.

13 Q. Okay. And was that criteria that you had developed,  
14 or were those criteria that someone at FPL had developed?

15 A. My manager had provided me with those.

16 Q. Okay. And what -- this effort was undertaken within  
17 the department that you worked in, and could you describe for  
18 the judge what department that was?

19 A. Yeah. I was on the marketing and sales, which is  
20 the customer service business unit.

21 Q. Okay. And was this effort undertaken in response to  
22 specific inquiries from customers, or was this something that  
23 you went out and actually tried --

24 A. This was a proactive -- proactive project.

25 Q. Okay. So you were making cold calls?

1 A. Correct.

2 Q. Basically trying to see if anyone might qualify?

3 A. That's correct.

4 Q. Okay. And did you undertake this effort in  
5 conjunction with the service planning department or any other  
6 of the departments of FPL?

7 A. No. This was just our unit.

8 Q. Now, as part of this program of seeking out  
9 potential conversion candidates, did you actually contact the  
10 Colony?

11 A. Yes, I did.

12 Q. And could you relay for the judge what took place  
13 and the circumstances surrounding that contact?

14 A. Certainly. Made the phone call and asked if they  
15 were a time-share, and the response was yes. My second  
16 question, do you have anyone living on the property full  
17 time, and the response was yes. So in our project that  
18 disqualified them from the conversion.

19 Q. Okay. Did you make any further inquiries of the  
20 Colony at that time?

21 A. No.

22 Q. Okay. Did you subsequently learn that the Colony  
23 was being converted from individual meters to master meters?

24 A. After that, yes, I did.

25 Q. Was that part of the program with which you were

1 involved?

2 A. No. That was independent. That was something  
3 separate.

4 Q. Okay. So that was something that was undertaken by  
5 a different department?

6 A. By an entirely different business unit.

7 Q. Do you know the basis for the decision to convert  
8 the Colony from individual meters to master meters?

9 A. No, I have no knowledge.

10 Q. Did you advise the service planning department of  
11 the results of their independent contact with the Colony  
12 after you learned that they were being converted?

13 A. No.

14 Q. Okay. Why not?

15 A. You know, I operated by a set of rules provided to  
16 me. I did not know what rules they were using for conversion  
17 to convert or not convert.

18 Q. Okay. Do you know whether the service planners were  
19 aware that the Colony had some permanent residents at the  
20 time they made the decision to convert?

21 A. No, I don't.

22 Q. Okay. As part of the program that you undertook  
23 with Mr. Valentine, were there facilities that were actually  
24 identified that might qualify under the master meter rule for  
25 conversion and were, in fact, converted?

1 A. Yes, there were.

2 MR. MENTON: That's all the questions I have, Your  
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. MAZO:

6 Q. Good afternoon, Ms. Britton.

7 A. Good afternoon, Mr. Mazo.

8 Q. I just have a few follow-up questions for you from  
9 what Mr. Menton had asked regarding your position with  
10 Florida Power and Light as the -- in the residential area.  
11 And I don't remember what the title was. Can you tell me  
12 what your title was?

13 A. Residential rep, I believe is it.

14 Q. Okay. And that was -- we're talking about a time  
15 frame here from '95 forward is what I'm understanding the  
16 testimony was. Is that correct?

17 A. That I worked in the residential group?

18 Q. I'm sorry. Let me back up. How long did you work  
19 with Florida Power and Light in the residential group?

20 A. In the residential, a little over two years, not  
21 quite two and a half.

22 Q. Okay. I believe we talked earlier about a time  
23 frame in 1995. Is that correct?

24 A. Yes, sir.

25 Q. Okay. Was that the first time that you had worked

1 at the Colony or on any effort at the Colony?

2 A. As an employee of Florida Power and Light?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. So prior to 1995, then, you don't have any  
6 knowledge, do you, of whether Mr. Sanger or Mr. Moulton or  
7 anyone from the Colony would have contacted FP & L about  
8 master metering, do you?

9 A. No, sir.

10 Q. Okay. So your knowledge of that only comes from  
11 1995 forward?

12 A. Correct.

13 Q. And your testimony, if I understand it, is that  
14 during the period that you worked with the Colony nobody  
15 asked you to be master metered?

16 A. That's correct.

17 Q. In your role in the residential rep area I believe  
18 you indicated that -- in working with residential accounts,  
19 what type of residential accounts would you work with?

20 A. They were identified by the revenue and rate they  
21 were on, and that would be a residential.

22 Q. Well, did you work with residential homes?

23 A. Yes.

24 Q. Did you work with residential condominiums?

25 A. Yes.

1 Q. Did you work with a lot of residential condominiums?

2 A. I didn't keep track of the split. I mean --

3 Q. Do you remember any statement prior to this saying  
4 that you did energy evaluations for over 100 residential  
5 condominiums a year?

6 A. I believe -- I believe it was hundreds and hundreds  
7 of residential surveys a year.

8 Q. Okay. And a lot of those were residential  
9 condominiums?

10 A. Some would have been condominiums, yes.

11 Q. And, Ms. Britton, do you have an understanding of  
12 the meaning of residential condominiums?

13 A. Probably just --

14 MR. MENTON: Your Honor, I'm going to object. This  
15 goes beyond the scope, first of all, of direct. I think  
16 it also begins to get into asking the witness to  
17 speculate and offer legal opinions so --

18 THE COURT: You know, why do we need to go down this  
19 trail with this witness?

20 MR. MAZO: I'll pass on it, Your Honor. I'll  
21 withdraw.

22 BY MR. MAZO:

23 Q. Ms. Britton, in -- I believe you said was it 1995  
24 when you did your energy evaluation at the Colony?

25 A. Yes.

1           Q.    Okay.  And I believe you said that you did the  
2 energy evaluation for 232 individual owners.  Is that  
3 correct?

4           A.    No.  I said individual units.

5           Q.    Individual units?

6                   Okay.  Typically, when you did residential energy  
7 evaluations for condominiums, would you talk to the owners of  
8 those condominiums?

9           A.    It was whatever the name on our record was.

10          Q.    Okay.  So in doing the energy evaluations for  
11 condominium units you worked with the owner of record?

12          A.    No.  I worked with the name on record.

13          Q.    The name on the record?

14          A.    It may not necessarily have been an owner.

15          Q.    So whoever's name was on the bill itself?

16          A.    That's correct.

17          Q.    So you didn't know whether it was the owners that  
18 were dealing with energy conservation or -- you just knew  
19 that it was some name?

20          A.    Someone that was paying the bill that we were trying  
21 to help.

22          Q.    Okay.  And typically with residential condominiums  
23 you would work with one person or one person's name on each  
24 bill; would that be correct?  Let me phrase that differently.  
25 That -- that didn't come out right.

1                   When you worked with a single residential  
2 condominium, you worked with the person whose name was on the  
3 bill; correct?

4           A.    Usually, yes.

5           Q.    Okay. And in each case of those residential  
6 condominiums that you worked with, would you work with one  
7 person for each condominium unit in general?

8           A.    I suppose. I mean, there are people that own more  
9 than one unit.

10          Q.    Other than the ones that don't own more than one  
11 unit, would you work with one individual person for each  
12 unit?

13          A.    Most of the time.

14          Q.    Okay. And at the Colony, if I understand it, you  
15 didn't work with 232 individual owners. Is that correct?

16          A.    We -- right.

17          Q.    Okay. You only worked with one person; isn't that  
18 correct?

19          A.    Right. We actually met with one person to obtain  
20 keys, and then we were on our own for the day.

21          Q.    But, again, my question was you didn't work with 232  
22 owners?

23          A.    That's correct.

24          Q.    Did you work with 232 people whose names were on the  
25 bill?



1 A. No. As I just stated, all we did was obtain keys.

2 Q. Do you have any knowledge at the Colony whose names  
3 were on the bills for the 232 units?

4 A. Yes, I would have.

5 Q. Okay. And whose name was on there?

6 A. The Colony.

7 Q. So the names of the bills at the Colony were not in  
8 the names of the unit owners; is that correct?

9 A. Yeah. I don't -- well, I don't know who owns the  
10 units.

11 Q. But what you do know is that the billing by FP & L  
12 was not going to individual people; it was going to the  
13 Colony?

14 A. It was in the name of the Colony.

15 Q. Okay. Ms. Britton, I believe you testified that  
16 sometime in -- and please correct me if I'm wrong on this. I  
17 think you said 1997 you made some contact with the Colony on  
18 behalf of a service that FP & L was doing to determine  
19 whether a property was a time-share or not?

20 A. That's correct.

21 Q. Okay. From 1995 to 1997, can you tell me up to that  
22 point -- can you tell me approximately how many conversations  
23 or contacts you had with anybody at the Colony?

24 A. You're asking from the time I did residential  
25 surveys in '95?

1           Q.    Let me back up. I'll clarify it for you. No. I'm  
2 talking about the time in '97 that you testified that you  
3 asked -- made your phone call about whether the Colony was a  
4 time-share. From that period back, can you tell me  
5 approximately how many contacts, communications, either  
6 verbal, in writing, or in person, you had with somebody at  
7 the Colony?

8           A.    We had several -- when we did the 232 units, there  
9 were several conversations between our office and Mr. Sanger.

10          Q.    And when you said your office, would that be you and  
11 Mr. Sanger mostly?

12          A.    There was a second rep involved.

13          Q.    Mr. Valentine?

14          A.    No. Someone else.

15          Q.    So other than those conversations or communications  
16 you had in 1995 and that time period when we're talking about  
17 the energy evaluations, were there other conversations about  
18 other issues that you had up -- prior to that '97 contact?

19          A.    Not that I remember.

20          Q.    Do you remember communicating with Mr. Sanger about  
21 some gas issues?

22          A.    Yes.

23          Q.    Okay. Do you remember when that was?

24          A.    July of 1999.

25          Q.    Okay. During the 1996 period, do you recall having

1 any conversations with Mr. Sanger?

2 A. No, I don't.

3 Q. Okay. In all of your communications or contacts  
4 with the Colony, was your contact person Mr. Sanger?

5 A. Yes. Well, with the exception of the phone call to  
6 determine if they were time-share.

7 Q. Okay. Well, let's talk about that for a minute. Up  
8 to that point for that two-year period that you were the  
9 residential rep for the Colony, all your contacts were with  
10 Mr. Sanger; is that correct?

11 A. Yes, sir.

12 Q. Is there any particular reason when you contacted  
13 the Colony that you didn't call Mr. Sanger to ask him if the  
14 Colony was a time-share?

15 A. No. What we were doing is whoever answered the  
16 phone. We were under a pretty tight time frame. We were  
17 trying to contact a lot of people.

18 Q. So you could have called, and it could have been the  
19 bellman, it could have been the concierge, it could have been  
20 the desk clerk? You really don't have any idea who it was,  
21 do you?

22 A. No.

23 Q. Wouldn't it have made more sense to call Mr. Sanger,  
24 who you had worked with, and ask him?

25 A. That isn't how we did it.

1 Q. I believe you testified after the 1997 period when  
2 that survey was going on that you had some discussions with  
3 Mr. Sanger or maybe I miss -- did you have more discussions  
4 with him?

5 A. After 19 --

6 Q. After 1997.

7 A. I didn't speak with him in '97. But, yes, I did --  
8 in July of 1999 I met with him twice.

9 Q. Okay. And during those -- you had discussions with  
10 him in July of 1999. Did you have any other discussions with  
11 him other than July of 1999 that you can recall?

12 A. We had some informal things here and there where he  
13 would request a copy of a conversion chart or something and  
14 I'd fax it to him. The only other time I remember is it  
15 would have been in December of 1999.

16 Q. And in December 1999 or in that period of 1999 did  
17 you have a conversation with Mr. Moulton and Mr. Sanger or  
18 Mr. Sanger or both?

19 A. My two visits in July were with just Mr. Sanger.  
20 December was with both Mr. Moulton and Mr. Sanger.

21 Q. On any of the visits that you had at the Colony that  
22 you just talked about with Mr. Sanger and Mr. Moulton did you  
23 tell either one of them that you had determined that Colony  
24 was not a time-share?

25 A. Yes, I did.

1 Q. Okay. And do you recall stating how you determined  
2 that the Colony was not a time-share?

3 A. Well, I should say I didn't say they weren't a  
4 time-share. I said they did not qualify.

5 Q. Well, let me back up. My question was did you ever  
6 tell them that the Colony was not a time-share?

7 A. No.

8 Q. So you never told them that the Colony was not a  
9 time-share?

10 A. I told them that they did not qualify for the master  
11 metering as a time-share.

12 Q. Okay. My question is is your testimony that you  
13 never told Mr. Sanger or Mr. Moulton that the Colony was not  
14 a time-share?

15 A. I don't -- I went there specifically on the metering  
16 issue. I don't recall.

17 Q. Well, you talked a little bit about the time-share,  
18 I think, earlier, so let me refer you to -- see if I can  
19 refresh your recollection. Page 32 --

20 MR. MENTON: Your Honor, at this point, I've been  
21 trying to be patient, this really does go beyond the  
22 scope of the direct that we went into. I'm not sure  
23 where he's going, you know, with it, but I don't know  
24 that this witness can provide any insight on any of the  
25 issues that are before you today, which is -- other than

1        what she's already testified about, which is that she on  
2        behalf of FPL made efforts to try to save money for the  
3        Colony and she was never told by the Colony of any master  
4        meter request. And the rest of this really goes into  
5        negotiations regarding settlement with respect to the  
6        refund claim, and I think the settlement aspect of that  
7        is really irrelevant to this proceeding, and I don't  
8        think it's admissible.

9            MR. MAZO: Your Honor, I believe this goes to their  
10        entire argument and their entire case. They brought the  
11        testimony in from Ms. Britton that she did some phone  
12        calls about time-shares. She just testified that she  
13        talked to them about time-shares. She's just now said  
14        one thing and then another and changed it. She said she  
15        never told them that it wasn't a time-share. Then she  
16        said she told them it was disqualified. And all I'm  
17        trying to do -- because I believe that her testimony is  
18        going to show that she did, in fact, tell them that they  
19        were not a time-share. And not only did she say it once,  
20        she said it at least twice, and there's some very  
21        pertinent information of where she got that information  
22        that's right there and that's relevant, absolutely  
23        relevant to this case.

24            MR. MENTON: And, Your Honor, two things. First of  
25        all, he hasn't established that she had any involvement

1 in the decision to master meter them. Mr. Guzman is  
2 here. Mr. Guzman is going to testify in a few minutes.  
3 He will explain to you the decision-making process and  
4 who was involved in the decision-making process in order  
5 to convert the Colony to master meters.

6 The discussions that we're talking about now are  
7 well after Mr. Mazo had filed the complaint seeking a  
8 refund. We're talking about settlement discussions that  
9 were taking place in connection with that. That is  
10 irrelevant. And any discussions -- any conversations  
11 that were held in the context of settlement negotiations  
12 are not admissible.

13 THE COURT: Okay. Maybe I misunderstood. I thought  
14 we were still in the -- in the -- you know, back in '97.

15 MR. MENTON: No, this is '99. He's talking about  
16 December of '99.

17 MR. MAZO: Your Honor, she testified on direct about  
18 her conversations. She testified about --

19 THE COURT: On direct she talked about making a  
20 phone call to somebody at the Colony and asking them are  
21 you a time-share, yes; is anyone living there full time,  
22 yes. I mean, that's --

23 MR. MAZO: Okay.

24 MR. MENTON: That was in '97, Your Honor.

25 MR. MAZO: I'm sorry.

1 MR. MENTON: He's welcome to ask anything he wants  
2 about '97, but when we start getting into '99 --

3 THE COURT: We are getting outside the scope  
4 regardless of, you know, the other objections. We're  
5 outside the scope of direct if we're getting into '99.

6 MR. MAZO: Your Honor, I've been -- I mean, it's on  
7 the record. I've been asking questions about her  
8 conversations sitting here for the last five minutes  
9 about 1999, her conversations about the time-share, and I  
10 was just getting ready to impeach the witness after  
11 already asking the questions.

12 THE COURT: Well, I guess maybe Mr. Menton didn't  
13 jump up and object soon enough.

14 MR. MENTON: And, Your Honor, I'm just trying to  
15 help speed this thing along, and I figured it wasn't --  
16 but when we start getting into settlement negotiations, I  
17 do feel that I have to, you know, protect --

18 THE COURT: That's what we're into. You know, I  
19 don't want to hear about settlement negotiations.

20 MR. MAZO: Your Honor, this is not about settlement  
21 negotiations. Absolutely. I'd be happy to be cut off  
22 and stopped. This is not about settlement.

23 MR. MENTON: It's discussions held within the  
24 context of settlement negotiations.

25 THE COURT: And I'm not -- I guess I need -- tell me



1        why -- what that witness -- what this witness said in  
2        1999 is relevant now. I mean, whether she's saying  
3        something different now than she did then or something,  
4        you know, why do I even care?

5            MR. MAZO: Okay. Your Honor, I believe that they -  
6        that FPL has been trying to make a case and maybe not  
7        much of one, maybe a good case, one or the other, but  
8        they've been trying to say that under this old time-share  
9        rule, of these readings of the rule that somehow the  
10       Colony was a time-share and, therefore, should not have  
11       been allowed to be master metered in 1988 or 1989.

12           Now, if the testimony shows that FP & L says that  
13       they weren't a time-share, I don't know how the two jive,  
14       and that's what we're trying to establish. And she was  
15       the one that made the statements in her deposition  
16       testimony. She's the one who called -- they've used her  
17       testimony to say that she called the Colony to determine  
18       that the Colony was a time-share but it didn't qualify,  
19       so all I'm trying to do is establish she says it was a  
20       time-share, she says it wasn't a time-share, and what was  
21       it, based on her understanding.

22           MR. MENTON: And, Your Honor, this witness has  
23       testified she was not involved in the decision to convert  
24       the Colony from individual meters to master meters.  
25       Mr. Guzman is here. He's going to testify on that.

1 Mr. Guzman's testimony is going to be that he and  
2 Mr. Bauer alone made the determination on behalf of FPL  
3 to allow the Colony to convert from individual to master  
4 meters. He can ask Mr. Guzman all the questions that he  
5 wants regarding that decision-making process.

6 Ms. Britton has testified that she in a separate  
7 department, independent of anything that might have been  
8 going on in the service planning department, had  
9 initiated a proactive attempt to try to solicit people to  
10 convert. That's the only purpose of her testimony, that  
11 she, independent of anything that was going on in the  
12 service planning department, had tried to find out if  
13 there were facilities that might qualify for conversion.  
14 And we just wanted to bring out that there's been some  
15 insinuation here that FPL was in a conspiracy to try to  
16 keep this place on individual meters instead of master  
17 meters.

18 Ms. Britton -- I think all we're trying to show is  
19 that FPL undertook an effort to find out whether they  
20 might qualify independent of what was going on in the  
21 service planning department. That's all we're trying to  
22 show here. And she was not involved in the conversion  
23 process. Based upon the criteria that were given to her  
24 as to what, you know, was required for a time-share to  
25 convert, a quick phone call, they didn't qualify, she

1       dropped it, and that was it. And that's all she -- that  
2       was her only involvement at that time when the conversion  
3       process was going on.

4               MR. MAZO: Your Honor, I would just address one  
5       little issue. I don't think there's been any testimony  
6       that FPL had some conspiracy that's not -- to keep them  
7       from doing something. Things happen. We've never  
8       alleged there was a conspiracy against anybody. Maybe a  
9       misunderstanding of the rule, some wrong interpretations  
10      but no misunderstanding -- I mean no conspiracy.

11             THE COURT: Well, again, from my -- from what I'm  
12      hearing and what I heard on the direct, I'm just -- I  
13      know I understand you have these questions, but it does  
14      sound to me that, you know, Mr. Guzman may be the one to  
15      put these questions to rather than this witness, whose  
16      involvement seems to have been somewhat tangential. I  
17      mean, I'm still not sure how we're tying in '99 to '97  
18      with this witness.

19             MR. MAZO: The only tie-in, Your Honor, is that in  
20      my understanding of the testimony they put on -- again,  
21      they put her on to testify that she made some calls about  
22      the time-share issue, and my -- all I'm saying is she  
23      then came back and made her statement on the record what  
24      you've heard. And to me they're opening the door on the  
25      time-share issue and what she knows and what she's

1 testified to on the time-share issue. I don't think that  
2 it's -- it's relevant whether that what she knows is '98,  
3 '97. She's testified to a period of time, and she has  
4 information about that. And that's in her deposition,  
5 and it's relevant to the case.

6 THE COURT: I guess I -- I guess where I'm hanging  
7 up is I didn't hear her testifying as to any knowledge or  
8 decision that she made. I mean, what I took was she was  
9 almost acting like a telemarketer with a checklist, and  
10 she went down with a checklist and asked these questions,  
11 and if the answer to both of them was yes, she said thank  
12 and hung up and called the next number. I mean -- if she  
13 made some independent judgment back in '97 that they were  
14 or weren't a time-share, I guess we can get into that.  
15 But as to -- I'm not getting why what she thought in 1999  
16 matters if she wasn't in on the decision to master  
17 meter --

18 MR. MAZO: Your Honor, I --

19 THE COURT: -- the facility.

20 MR. MAZO: I understand. And I don't want to  
21 belabor it, but I believe what's important is where she  
22 got her information from to come to that conclusion. And  
23 that -- I mean, basically the record will show that she  
24 got her understanding in saying that the Colony was not a  
25 time-share from FP & L counsel. And I feel that's

1 completely relevant because she was -- she testifies that  
2 she was a conduit, and that's the information that she  
3 testified to. So I'm not -- I mean, we're not making up  
4 evidence. This is what she testified to, and this is  
5 where she got the information.

6 MR. MENTON: And, Your Honor, that has no bearing on  
7 the issues that are before you, number one. Number two,  
8 then we start getting into attorney-client issues, you  
9 know, and settlement discussions and all kind of things  
10 like that. And it just doesn't have anything to do with  
11 a decision that was made to convert them. Mr. Guzman is  
12 here. He'll explain to you why they were converted.

13 THE COURT: I think I'm going to sustain.

14 MR. MAZO: Okay.

15 THE COURT: If only because I think we're outside  
16 the scope of direct, as I understand it.

17 BY MR. MAZO:

18 Q. Just a few more questions, Ms. Britton.

19 Ms. Britton, with the discussion I think I lost track, but  
20 see if you can help me with this. On -- you've identified  
21 this for the record, haven't you, earlier in direct?

22 A. Yes, I did.

23 Q. Okay. And what -- what is this?

24 A. It's a letter I received from you concerning the  
25 refund request.

1           Q.   And based on this letter, after you got this letter,  
2           did you contact Mr. Mazo? I'll speak in the third party and  
3           maybe make it a little easier. Did you contact Mr. Mazo to  
4           respond to this letter?

5           A.   I don't remember whether we had any phone  
6           conversations between the time I received the letter and gave  
7           it to Douglas Bucciarelli. You know, we had one or two  
8           before that.

9           Q.   And I believe you've already testified to what's in  
10          the request, and the request was about master metering;  
11          correct?

12          A.   Correct.

13          Q.   Okay. And your knowledge of that up to this point  
14          of October 30th, 1998 was what basically?

15          A.   Just very limited.

16          Q.   And when you got this -- when you got this letter,  
17          did you have any conversations with other people at FP & L  
18          about it?

19          A.   Again, I gave it to my manager at the time.

20          Q.   And I guess I'm curious. In 1997 when you made the  
21          phone call to Mr. Sanger -- excuse me. Sorry. When you made  
22          the phone call to the Colony and somebody at the Colony  
23          indicated to you that I believe you said that it -- on that  
24          call you said it was a time-share and that somebody lived  
25          there and so it was disqualified. Is that correct?

1           A.    I did not say it was a time-share. I was told it  
2 was a time-share and that somebody lived there.

3           Q.    I'm sorry. I'm not trying to put words in your  
4 mouth. You called and somebody told you on the phone -- you  
5 don't know who it was?

6           A.    Correct.

7           Q.    Somebody told you that it was -- that the Colony was  
8 a time-share?

9           A.    That's correct.

10          Q.    And that somebody lived there?

11          A.    That's correct.

12          Q.    Did you make an independent determination at that  
13 time of whether they qualified for the master metering or  
14 not?

15          A.    Absolutely not.

16          Q.    Okay. I thought you said earlier in your testimony  
17 that after you got that call and they told you somebody lived  
18 on the premises that they were disqualified. Is that not  
19 what you said?

20          A.    They were off my list. I didn't -- I didn't do any  
21 more work with that particular customer. I went on to the  
22 next customer on my list.

23          Q.    Why were they off your list?

24          A.    Because I was told someone lived there full time.  
25 The criteria I was given from my manager is they didn't

1 qualify for conversion.

2 Q. So you were given some criteria whether people  
3 qualified for --

4 A. Preliminary.

5 Q. -- master metering under time-share; is that  
6 correct?

7 A. Yes.

8 Q. So when you received this letter from Mr. Mazo on  
9 October 30th, is your understanding of the letter that  
10 Mr. Mazo is saying that they master metered the Colony  
11 because it was a hotel and now they're asking for a refund?  
12 Is that correct?

13 A. I understood it was master metered and you felt that  
14 you had or someone from the Colony had requested it earlier  
15 and it wasn't done.

16 Q. Okay. Did you -- did you at that time let Mr. Mazo  
17 know that you had already stricken the Colony off your list  
18 as being qualified for master metering?

19 A. No. I had nothing to do with the conversions.

20 Q. But I was talking about what you did with your list  
21 in terms of striking the Colony. Something you said you  
22 struck them off the list because they were not qualified?

23 A. I don't believe you and I discussed that, no.

24 Q. Okay. So you didn't -- you didn't tell Mr. Mazo  
25 anything about that when you got this letter?



1 A. Not to my memory.

2 Q. Okay. When you did your investigation -- I'm going  
3 to withdraw that, Ms. Britton.

4 MR. MAZO: I think I'm finished, Your Honor.

5 THE COURT: I have one. If you know, how do you  
6 spell Bucciarelli?

7 THE WITNESS: B-u-c-c-i-a-r-e-l-l-i.

8 MR. MENTON: Your Honor, I just have a couple of  
9 quick follow-ups just because I know Ms. Britton is  
10 enjoying this so much.

11 REDIRECT EXAMINATION

12 BY MR. MENTON:

13 Q. Ms. Britton, Mr. Mazo asked you about the bills that  
14 were sent by FPL to Colony Beach back in the 1995 time frame.

15 A. Yes.

16 Q. And those bills were for each of the individual  
17 units; correct?

18 A. Yes, sir.

19 Q. And they would reflect the unit number for each of  
20 the units that were receiving monthly service; is that  
21 correct?

22 A. Yes. Um-hum.

23 Q. And did you have any way of knowing who was actually  
24 paying the bills?

25 A. No.

1 Q. Okay. And did Mr. Sanger or anybody else from the  
2 Colony express any concern over the number of bills that were  
3 received at the Colony?

4 A. No.

5 Q. Now, with respect to your effort with Mr. Valentine  
6 in 1997 where you were making phone calls to determine  
7 qualifications, Mr. Mazo asked you about crossing the Colony  
8 off the list, basically. After you crossed them off the  
9 list, did you convey that to anyone else at FPL that the  
10 Colony was not eligible for master meters, and was there a  
11 master list that was being kept by FPL to cross people off?

12 A. We did keep a log of our activities. I believe it  
13 was put in an Excel spreadsheet or in an Excel file, so who  
14 looked at it I don't -- I don't recall.

15 Q. You didn't send that to the service planning  
16 department?

17 A. Oh, no.

18 Q. And tell them that these facilities aren't eligible  
19 for master meters, did you?

20 A. No.

21 MR. MENTON: Thank you. No further questions.

22 MR. DALEY: No further questions.

23 Katrina, do you have any questions? I'm sorry I  
24 didn't ask.

25 MS. WALKER: No.

1 THE COURT: Thank you, Ms. Britton.

2 MR. MENTON: Thank you, Your Honor. FP & L would  
3 call Mr. Guzman. Jim Guzman.

4 THEREUPON,

5 JIM GUZMAN

6 was adduced as the witness herein, and being first duly sworn  
7 on oath by the Court was questioned and stated as follows:

8 DIRECT EXAMINATION

9 BY MR. MENTON:

10 Q. Could you please state your name?

11 A. My name is Jimmy Guzman.

12 Q. Okay. And, Mr. Guzman, by whom are you employed?

13 A. Florida Power and Light Company.

14 Q. Could you provide the judge with a brief rundown of  
15 your employment history?

16 A. Yes, sir. I began work with Florida Power and Light  
17 in 1982 as a Florida Power and Light meter reader. I did  
18 that for approximately five years. Then I was rotated inside  
19 front counter for approximately a year, a year and a half.  
20 And then from there I went out to the service center as a  
21 technician, which took care of primarily like outdoor lights  
22 and service changes. Small intricate jobs. I stayed there  
23 for approximately a year and then went to the sales  
24 department as an MSR, a residential surveyor. I did that job  
25 for less than a year, and then I returned to the service

1 center which -- as a service planner, and I'm still  
2 conducting that job now.

3 Q. Okay. And when did you return to become a service  
4 planner? What year was that?

5 A. I believe it was 1990 -- 1990 -- 1993, I believe it  
6 was. Yes, sir.

7 Q. Okay. And could you explain your current job  
8 responsibilities in the service planning department for  
9 FP & L?

10 A. Service planning basically takes care of facility  
11 issues concerning new customers and existing customers. If  
12 you build a Burger King, I would design the power lines and  
13 the transformer necessary to give them the service they're  
14 requesting.

15 Q. Okay. And, Mr. Guzman, as you know, we are here  
16 today in connection with a case that has been filed by Colony  
17 Beach and Tennis Club. What has been your involvement with  
18 the Colony?

19 A. In early 1997 Mr. Mazo or Power Check Analysis  
20 representing Veranda, the Colony, and also White Sands  
21 contacted me by phone and was -- concerning a new rule that  
22 was being changed concerning time-shares and was actively  
23 pursuing converting to master metering those three  
24 establishments.

25 Q. Okay. And was the Colony and the other facilities,

1 were they within the geographic area for which you had  
2 responsibility as a service planner?

3 A. Yes, sir. At that time. Longboat Key, yes, sir.

4 Q. Okay. And do you recall when in 1997 it was that  
5 you were contacted?

6 A. I think it was in February. I believe so.

7 Q. And prior to the contact that you received from  
8 Mr. Mazo, had you had occasion to deal professionally with  
9 the Colony on prior occasions?

10 A. Prior to '97, I don't believe so. I know that we  
11 did have a transformer failure that I worked with Mr. Sanger  
12 on, but I'm not sure exactly when that was. We had a  
13 three-phase transformer that had failed, and it was late in  
14 the afternoon, and it required a crane, and I did work with  
15 Mr. Sanger just to keep him up to speed on the restoration  
16 time it would take to do that.

17 Q. Did you actually assume responsibility for the  
18 geographic area in which the Colony is situated in  
19 approximately 1996?

20 A. Yes, sir.

21 Q. Okay. And at the time that you assumed  
22 responsibility for that geographic area, were you made aware  
23 of any requests by the Colony to convert to master meters  
24 from individual meters?

25 A. No, sir.

1 Q. Okay. Was there anything that you saw in the  
2 records of FP & L that would indicate that the Colony had  
3 requested a conversion from individual meters to master  
4 meters?

5 A. No, sir.

6 Q. Now, you mentioned that you received a call from  
7 Mr. Mazo in approximately February. Could you explain for  
8 the judge what you remember specifically about that  
9 conversation?

10 A. Only that, like I said, he was acting as an agent  
11 for the Colony, the Veranda, and White Sands and that there  
12 was a pending rule change concerning time-shares allowing  
13 them to convert from single meter to a master metering.

14 Q. Okay. And did you know about the rule change at the  
15 time you were contacted by Mr. Mazo?

16 A. No, sir. No, sir. Not aware of it.

17 Q. And what did you tell Mr. Mazo?

18 A. That I was unaware of it, that I would have to do  
19 some investigating, check with my boss. And I did so.

20 Q. Okay. Who was your boss at that time?

21 A. Greg Bauer.

22 Q. And what did you do after you received the call from  
23 Mr. Mazo?

24 A. I went to Greg, and I explained exactly what I said  
25 is that Mr. Mazo was representing the three entities and

1 there was a pending rule change and that he wanted to pursue  
2 it.

3 Q. Okay. And what did Mr. Bauer tell you?

4 A. There again, he would have to do some investigating  
5 and find out if, in fact, it was happening and the details.

6 Q. Did Mr. Bauer at that time know about the rule  
7 changes?

8 A. No, he did not.

9 Q. Okay. Did you subsequently -- were you subsequently  
10 provided with information with respect to the rule change?

11 A. I believe after Greg did do some investigating and  
12 talking to people up the line, talking up through the  
13 corporate, he did find out there was a pending rule change  
14 concerning time-shares.

15 Q. And as a result of that pending rule change, did you  
16 and Mr. Bauer discuss whether or not the Colony, Veranda, and  
17 White Sands might be eligible for converting from individual  
18 meters to master meters?

19 A. Yes, we did.

20 Q. Okay. And did you subsequently have a face-to-face  
21 meeting with Mr. Mazo with respect to that?

22 A. Yes, we did.

23 Q. And do you recall who was at that meeting?

24 A. I believe it was myself, Greg Bauer, the supervisor,  
25 Mr. Mazo, and then he had an associate with him. I don't

1 recall his name or who it was.

2 Q. Okay. And could you tell the judge what you  
3 remember about that meeting?

4 A. Well, we had talked about the conversion, and it was  
5 all new to everybody, and I think we were the first -- it was  
6 the first conversion. It might even have been in the  
7 company, but it was the first in our area, as far as I know,  
8 and the details were very vague on how to handle it and the  
9 costs associated with that. And Mr. Mazo didn't agree with  
10 the cost that was being conveyed to him concerning the  
11 conversion of the time-share from single meters to master  
12 metering, so that was -- that was the basis of the meeting.

13 Q. Okay. So you indicated that, to your knowledge,  
14 this was the first conversion -- it was the first conversion  
15 you had been involved with; is that correct?

16 A. In this area. The three, the Veranda, the Colony,  
17 and then the White Sands, those were the first ones that I  
18 was involved in, yes, sir.

19 Q. Okay. And, to your knowledge, those were the first  
20 ones that Mr. Bauer was involved with?

21 A. I believe so.

22 Q. Okay. And as a consequence, did you seek input from  
23 the chain of command within FP & L in terms of whether or not  
24 and how to go about converting these facilities?

25 A. Yes, sir. There were several correspondence,



1 internal correspondence, relating to what equitable charges  
2 would be charged to a -- to a time-share converting from  
3 single meter to master metering and back and forth. And it  
4 was conveyed to Mr. Mazo what things that were being passed  
5 on down to us as to what was equitable, and then he would  
6 voice his concern about charges, and we would then take it  
7 back and ask again.

8 Q. Okay. Mr. Guzman, I'd like to refer you to a couple  
9 of E-mails dated March 21st of 1997.

10 MR. MENTON: These are Exhibit Number 20, Your  
11 Honor.

12 BY MR. MENTON:

13 Q. Do you recognize those E-mails?

14 A. Yes, sir, I do.

15 Q. Okay. And could you explain for the judge the  
16 circumstances that led up to the E-mails reflected on this  
17 exhibit?

18 A. Yes, sir. There again, like I said, this was all  
19 new to -- I think to Florida Power and Light after the rule  
20 change took effect. You know, we weren't sure on how to  
21 handle it, and so we were -- we were voicing our concern for  
22 the customer on which charges were applied, and he did not  
23 agree with those, so we were looking for guidance on the  
24 charges, you know, that -- based on that time-share rule  
25 change.

1 Q. Okay. In your position with FP & L were you  
2 analyzing the Colony any different than the other two  
3 facilities that Mr. Mazo had brought to you, that being the  
4 Veranda and White Sands?

5 A. No, sir.

6 Q. Okay. Did you consider each of them to be in the  
7 same boat, so to say, with respect to the time-share  
8 amendments that were in process?

9 A. Yes. That was the initiated call was the response  
10 to the rule change, the time-share rule change, and calling  
11 for those three entities, correct.

12 Q. Okay. Now, in analyzing the costs associated with  
13 the conversions did you analyze those any differently for  
14 Colony as opposed to White Sands or Veranda?

15 A. No, sir.

16 Q. And what was the basis for determining the costs  
17 that would be charged in connection with the conversion?

18 A. Our charges that we were applying were based on that  
19 time-share rule change and equitable charges.

20 Q. Now, in here in this memo, Exhibit 20, dated March  
21 21st there is a discussion in the first memo -- and as I  
22 understand these E-mails, the top is the response and the  
23 bottom is the initial one? Is that correct?

24 A. Yes, sir. That's right.

25 Q. They start at the bottom and go up?

1                   So the first one is an E-mail that you sent;  
2 correct?

3           A.    Correct.

4           Q.    And that reflects a conversation that you had with  
5 Mr. Mazo regarding the costs of the conversion. Do you  
6 recall that?

7           A.    Yes, sir. Correct.

8           Q.    And at this point in time is it your understanding  
9 that FPL had already made the decision that Colony would be  
10 converted?

11          A.    Yes, sir, we did.

12          Q.    Okay. And what was that decision based upon?

13          A.    Well, Mr. Mazo initiated the call concerning the  
14 time-share rule change, and then Mr. Bauer and I, we just  
15 called the Colony, the receptionist, whoever answered, on  
16 speakerphone and inquired, you know, what kind of  
17 establishment, are you a time-share, and the response was  
18 yes.

19          Q.    Okay. So let me back up a second and put this in  
20 perspective a little bit. Was there anybody else at FP & L  
21 responsible for making the decision to convert the Colony  
22 other than you and Mr. Bauer?

23          A.    No, sir. It was just myself and Greg.

24          Q.    And before you and Mr. Bauer reached a decision to  
25 convert the Colony from individual to master meters, did you

1 actually conduct an independent assessment of whether or not  
2 they qualified?

3 A. No, sir. Just based on the phone call.

4 Q. So there was a phone call?

5 A. Yes.

6 Q. And so if you would relate to the judge what  
7 happened with respect to the phone call and why you -- why  
8 you did that.

9 A. Well, there really wasn't a -- we didn't have any  
10 guidance, no criteria. Mr. Mazo, like I said, the whole  
11 basis of his phone call was the rule change concerning the  
12 time-share. That's what spawned everything. And then, you  
13 know, Greg and I called out there to verify, you know, if  
14 they were a time-share, and the lady that answered the phone  
15 stipulated, yes, they were.

16 Q. Okay. Did you ask any further questions at that  
17 time regarding their operations?

18 A. No.

19 Q. Did you actually go out to the scene and make any  
20 assessment of their operations?

21 A. The only reason I went out there was to take field  
22 notes.

23 Q. Okay. And was that in connection with the actual  
24 conversion itself?

25 A. Yes, sir. After the decision was already made.

1 Q. Okay. Now, you talked about this phone call that  
2 you and Mr. Bauer made. Was that on a speakerphone? Were  
3 you actually on the phone with Mr. Bauer when the call was  
4 made?

5 A. Yeah. I was in the office with the door shut, yeah.

6 Q. And Mr. Bauer, was he the one that actually made the  
7 inquiry?

8 A. Yes, sir.

9 Q. Okay. And -- but you heard the representative from  
10 the Colony?

11 A. Correct.

12 Q. Okay. Now, Mr. Guzman, I'd like you to take a look  
13 at what's been marked as Exhibit Number 14, which should be  
14 the first one here. This is a memorandum dated March 19th,  
15 1997 from Mr. Mazo to you. Do you recall that?

16 A. Yes, sir.

17 Q. And the second paragraph of that memorandum  
18 indicates that -- there's some discussion regarding FPL has  
19 agreed that the Colony is a hotel and is allowed to be master  
20 metered under the old rule. Do you see that?

21 A. Yes, sir, I do.

22 Q. Okay. Is that consistent with your understanding of  
23 why the Colony was being master metered?

24 A. No, sir. Our actions were a response to the  
25 time-share rule change and his request under the time-share

1 rule change.

2 Q. Okay. Did -- did his representation here in this  
3 memo mean anything to you at that time?

4 A. No, sir. We were acting based on the time-share  
5 rule.

6 Q. Okay. And had you already made the decision that  
7 the Colony was going to be allowed to convert?

8 A. Correct.

9 Q. Now, Mr. Guzman, I'd like to ask you next to refer  
10 to Exhibit Number 15, which is a March 26th, 1997 memorandum  
11 from Mr. Guzman to you. It should be there.

12 A. Which exhibit?

13 Q. Exhibit 15. I think it should be right there.  
14 (Indicating.)

15 A. Yes, sir.

16 Q. Do you recognize that memorandum?

17 A. Yes, sir. Yes, sir. It's a memo from Mr. Mazo.

18 Q. Okay. Now, the heading for this memo, the writing  
19 on it says, "Master Meter Conversion Projects."

20 A. Correct.

21 Q. Do you see that?

22 A. Yes, sir.

23 Q. Was it your understanding that all three of the  
24 facilities that Mr. Mazo had brought to you were being --  
25 were within the scope of this memo they sent you?

1           A.    Yes, sir.

2           Q.    Okay. And at this point in time were you treating  
3 any of those facilities differently?

4           A.    No, sir.

5           Q.    And the last paragraph of that memorandum talks  
6 about the owners and the charges that they were going to have  
7 to incur in order to convert the facilities. Were those  
8 charges being assessed to the owners of all three facilities  
9 in accordance with the new amendments adopted by the PSC?

10          A.    Yes, sir.

11          Q.    Was there any basis for you to assess charges for  
12 conversion of a hotel from individual meters to master  
13 meters?

14          A.    No, sir. We were -- we were acting on the  
15 time-share.

16          Q.    If you had been asked to convert a hotel from  
17 individual meters to master meters, would you have made a  
18 different inquiry in the chain of command to determine how  
19 the cost would have been assessed?

20          A.    Yes, sir, I would.

21          Q.    Now, Mr. Guzman, next is Exhibit Number 22, which is  
22 a series of E-mails beginning on March 26th. Let me back up  
23 for a second. Going back to Exhibit 15, that memo reflects  
24 that Mr. Mazo was raising some questions with you regarding  
25 the cost of conversion.

1 A. Correct.

2 Q. Do you recall those discussions?

3 A. Yes, sir.

4 Q. And what do you recall Mr. Mazo's concerns being?

5 A. He had issue with the charges for the CTs and the  
6 salvage of the meters.

7 Q. Okay. And did you relay some of those concerns to  
8 your superiors at FPL for guidance as to how to respond to  
9 that?

10 A. Yes, sir, because I was not sure.

11 Q. And do the Exhibits 21 and 22, which are copies of  
12 E-mails, reflect some of those internal discussions regarding  
13 how to handle the cost of the conversions?

14 A. Yes.

15 Q. Okay. And would you explain for the judge what you  
16 recall about those E-mails?

17 A. Well, the question was basically about the salvage,  
18 whether or not we could charge for the salvage, or if the  
19 customers would be getting the benefit of the doubt for the  
20 salvage. And so I bubbled it up to Mr. Bauer. Mr. Bauer  
21 then, in turn, bubbled it to up his superior, Alan  
22 Gerrington, and then the response came back that the charges  
23 were applicable and that was the final cost.

24 Q. Okay. And referring specifically to Exhibit 22,  
25 there's an E-mail there dated March 26th, 1997?



1           A.    Yes, sir.

2           Q.    The bottom one is the one from you that initiated  
3 that string of communications; correct?

4           A.    Correct.

5           Q.    And that -- what's the subject that you listed at  
6 the top of that E-mail?

7           A.    Conversion of time-shares to master metering.

8           Q.    Okay. And in connection with that E-mail, were you  
9 talking about all three of the facilities that Mr. Mazo had  
10 brought to your attention?

11          A.    Yes, sir.

12          Q.    And you were talking about questions that Mr. Mazo  
13 had raised with respect to how much the customer had to pay;  
14 correct?

15          A.    Correct.

16          Q.    And were those again in conjunction with the new  
17 amendments that the PSC had adopted?

18          A.    Yes, sir.

19          Q.    And the responses -- it looks like there are two  
20 responses to your memo. Is that right?

21          A.    Yes.

22          Q.    And those deal directly with the salvage issue that  
23 Mr. Mazo had brought up in connection with conversion costs;  
24 correct?

25          A.    Correct.

1 Q. And the next memo, Exhibit 21, looks like it was  
2 initiated by Mr. Alan Gerrington and then was forwarded on to  
3 you. Do you recall that?

4 A. Yes.

5 Q. And could you tell the judge what you remember about  
6 this E-mail?

7 A. Mr. Gerrington is talking about the rule change  
8 itself concerning time-shares, that the utility is entitled  
9 to recoup cost to convert and the customer is to pay those  
10 charges. And then up above that it talks to -- to Ed  
11 Melenesium (phonetic), which I think he was in the metering  
12 department, talking about the meters themselves. And then --  
13 then that was forwarded to Greg Bauer. And Greg Bauer, in  
14 turn, sent it to myself and copied Kim Stregg (phonetic), the  
15 soon to be supervisor, stating that those costs were right  
16 and do it like this.

17 Q. Okay. So you received this E-mail on March 26th of  
18 1997; correct?

19 A. Yes, sir.

20 Q. And the subject of it again is?

21 A. The conversion of time-shares to master metering.

22 Q. Okay. And Mr. Bauer indicates to you make sure our  
23 final cost is estimated like this; correct?

24 A. Right.

25 Q. And he was talking about the final cost of what?

1           A.    The cost to convert from individual meters to master  
2 meters at the three projects.

3           Q.    For all three projects?

4           A.    Yes.

5           Q.    He said all three projects were again being treated  
6 in conjunction with the rule that Mr. Gerrington had  
7 forwarded on to you and Mr. Bauer?

8           A.    Yes, sir.

9           Q.    Now, were you the primary contact for FPL with  
10 respect to the conversions that were brought up by Mr. Mazo?

11          A.    Yes.

12          Q.    Did you have any other face-to-face meetings with  
13 Mr. Mazo other than the one that you've already talked about?

14          A.    I think we just had the one at the Clark Service  
15 Center. We might have -- I don't think we even met out in  
16 the field. I think it was just the one visit, if I remember  
17 correctly.

18          Q.    Okay. Did you have a number of discussions with  
19 Mr. Mazo subsequent to that regarding the cost of the  
20 conversion?

21          A.    Yes, sir. Many.

22          Q.    And were those discussions limited to the cost of  
23 the conversions as opposed to the reasons for the  
24 conversions?

25          A.    No, sir. Just mainly the cost, disputing the costs

1 and the charges.

2 Q. Okay. So they were just limited to the costs?

3 A. Yes.

4 Q. And did you discuss with him any further about  
5 whether or not the Colony was a hotel, a resort condo, a  
6 motel, a time-share?

7 A. No, sir.

8 Q. Now, Mr. Guzman, I'd like to ask you to look next at  
9 Exhibit Number 17, which is a March 17th, 1997 memorandum  
10 from Mr. Mazo to you. Do you recall that?

11 A. Yes, sir.

12 Q. Okay. And this memo was sent to you specifically  
13 with respect to the Veranda; is that correct?

14 A. Yes, sir.

15 Q. Of the three projects that Mr. Mazo brought to you,  
16 was the Veranda the first one that actually was converted  
17 from individual meters to master meters?

18 A. Yes, sir, it was.

19 Q. And did you negotiate with Mr. Mazo with respect to  
20 the costs of the conversion of the Veranda?

21 A. Yes, sir.

22 Q. Okay. And did you have some disputes with him as to  
23 how much it was going to cost the owner in order to convert?

24 A. Yeah.

25 Q. And is that what is referenced with respect to the

1 check being paid under protest?

2 A. I believe so.

3 Q. Okay. What did you understand he was doing here  
4 with respect to making this payment under protest?

5 A. Well, he wanted to proceed with the conversion to  
6 master metering, but he wanted to make it known that he did  
7 not agree with the charges that FPL was applying.

8 Q. Okay. And did you do anything with respect to the  
9 protest that he had submitted?

10 A. No, sir.

11 Q. You went ahead and converted them?

12 A. Correct.

13 Q. If Mr. Mazo had indicated to you that they would not  
14 pay the conversion charges for the Veranda or some other  
15 facility because they felt they qualified under the old rule  
16 as a motel or a hotel as opposed to the new time-share  
17 amendments, would you have gone forward with the conversions?

18 A. No. We were acting on the time-share change.  
19 Correct.

20 Q. Mr. Guzman, next I would ask you to refer to Exhibit  
21 Number 17. Actually, that's the one we just talked about.  
22 I'm sorry.

23 After you converted the Veranda, did you continue to  
24 have discussions with Mr. Mazo with respect to converting the  
25 Colony?

1 A. Yes.

2 Q. And, again, were those related solely to the costs  
3 that would be associated in connection with the conversion?

4 A. Yes, sir.

5 Q. And did you subsequently reach an agreement with  
6 Mr. Mazo as to what the costs would be to convert the Colony?

7 A. Yes, sir.

8 Q. And did you provide Mr. Mazo with a letter at that  
9 time reflecting the conclusions that you reached?

10 A. Yes, sir.

11 Q. And I'd ask you to take a look at Exhibit Number 18.  
12 Mr. Guzman, you have in front of you a letter dated November  
13 25th, 1997, which is from you to Mr. Mazo regarding the  
14 Colony Beach resort master metering. Do you recall this  
15 letter?

16 A. Yes, sir, I do.

17 Q. And would you explain for the judge the  
18 circumstances which led to you issuing this letter?

19 A. By the end of '97 they had provided us with a  
20 company form letter to provide the customers on the billing  
21 for the time-shares. So that's what this was. All you did  
22 was fill in the amount and then some sort of a scheduling  
23 window on time to allow for the work to be done, performed.

24 Q. Okay. Was this a form letter that had been prepared  
25 by FPL with respect to converting facilities under the new

1 time-share amendments that had been issued by the PSC?

2 A. Yes.

3 Q. Okay. And it reflects in there the conversion of  
4 your time-share; do you see that?

5 A. That's correct.

6 Q. And is that the basis upon which you understood that  
7 the Colony was being converted?

8 A. Yes, sir.

9 Q. Do you recall having any discussions with Mr. Mazo  
10 as to whether or not the Colony was a hotel or motel?

11 A. Not really, no, sir.

12 Q. Okay. Now, subsequent to sending the letter of  
13 November 25th, 1997, there was another letter that you sent;  
14 correct?

15 A. Yes, sir.

16 Q. And that's Exhibit Number 19?

17 A. Yes, sir.

18 Q. And do you have that exhibit in front of you now?

19 A. Yes, I do.

20 Q. And do you recall that letter?

21 A. Yes, sir, I do.

22 Q. Could you explain for the judge the circumstances  
23 that led up to you sending this letter?

24 A. Yes, sir. Mr. Mazo had called and said that he  
25 wanted to proceed with the conversion. He had agreed on the

1 price, but he asked me, could you just make one more change  
2 and change the word time-share to hotel. I went to my  
3 supervisor, Greg Bauer, and I told him what his request was.  
4 He said, Jim, at this point in time it doesn't really matter.  
5 Change it.

6 Q. Did you discuss with Mr. Mazo why he wanted that  
7 word change?

8 A. Not really.

9 Q. Had the decision already been made to convert Colony  
10 under the new PSC rule amendments?

11 A. Yes, sir. Everything we had done at this point was  
12 based on that rule change.

13 Q. Did Mr. Mazo indicate to you at that point that he  
14 would be seeking a refund against the Colony for failure to  
15 convert earlier based upon the old rule?

16 A. No.

17 Q. Did you ever agree with Mr. Mazo that the Colony was  
18 allowed to be master metered under the old rule?

19 A. No, sir.

20 Q. Did you have authority on behalf of FPL to agree  
21 that the Colony could be master metered under the old rule  
22 prior to the 1997 time-share amendments?

23 A. No.

24 Q. Now, ultimately the Colony was converted; correct?

25 A. Yes, sir.



1 Q. And I would refer you to Exhibit Number 26, which is  
2 a letter from Mr. Mazo to you. Do you recall that letter,  
3 sir?

4 A. Yes, sir.

5 Q. All right. And is this the letter that was sent to  
6 you to pay the costs of the conversion at the Colony?

7 A. Yes, it was.

8 Q. And did Mr. Mazo indicate to you that he was  
9 submitting this letter under protest?

10 A. No, sir.

11 Q. Okay. Did Mr. Mazo indicate to you that the Colony  
12 was being converted as a hotel rather than under the  
13 time-share amendments of the rule?

14 A. No, sir.

15 Q. If Mr. Mazo had indicated to you that the Colony  
16 should have been qualified based upon the old rule at this  
17 point, would you have gone ahead with it, or would you have  
18 sent it up for further review by your corporate superiors?

19 A. We would have not proceeded with it.

20 Q. I believe I asked you this earlier, but just to  
21 clarify, did Mr. Mazo at any point during the discussions  
22 that you had with him throughout the process of leading up to  
23 the conversion and then through the conversion process ever  
24 indicate to you that the Colony had previously asked in 1988  
25 or 1989 to be converted to master metering?

1           A.    No, sir.

2           Q.    Did Mr. Mazo at any point during any of the  
3           conversations you had with him indicate that the Colony was  
4           entitled to a refund for failure to convert at an earlier  
5           date?

6           A.    No, sir.

7           Q.    Now, going back to the letter that we talked about,  
8           the December 22nd letter where you made the change that  
9           Mr. Mazo had requested you to make, in making this change was  
10          it your intention to acknowledge that FPL knew or should have  
11          known that the Colony was a hotel under the PSC rule prior to  
12          the time of the conversion?

13          A.    No, sir.

14          Q.    Would you have made the change in the letter if you  
15          knew that Mr. Mazo was going to use that letter as part of  
16          his refund claim against FPL?

17          A.    No, I would not have.

18          Q.    Other than the phone call that you discussed earlier  
19          that you made with Mr. Bauer at the time you were making the  
20          decision on whether or not to convert, did you ever make any  
21          independent assessment as to how Colony Beach was operated?

22          A.    No.

23          Q.    If it was important whether the Colony was a hotel,  
24          would it have been your decision as to whether or not they  
25          qualified?

1           A.    No.

2           Q.    What would you have done?

3           A.    There again, I think I would have gone to Greg Bauer  
4 and said, you know, and he would have then -- he would have  
5 sought help, assistance from the corporate level.

6           Q.    Okay. And I believe you talked briefly earlier  
7 about a site visit that you made to the Colony?

8           A.    Yeah.

9           Q.    And could you explain for the judge again what you  
10 did when you went out there and why you went out there?

11          A.    Well, part of the -- part of the costs in order to  
12 determine your cost you had to visit the site and determine  
13 the number of conductors and the transformers, the number of  
14 meters, if extensions were required in the transformers. You  
15 couldn't just assume certain things needed to be done. You  
16 had to go out there and take an inventory of the transformers  
17 and determine what actual work needed to be done to determine  
18 the cost to convert it.

19          Q.    And is that what you did when you went out to the  
20 site?

21          A.    Yes, sir.

22          Q.    Did you, during your site visit, make an independent  
23 attempt to verify how the Colony was operating and whether or  
24 not it was a hotel?

25          A.    No.

1           Q.    As a service planner, would that have been part of  
2 your job responsibilities to conduct -- to conduct an  
3 evaluation as to how a facility was operated?

4           A.    No.

5           Q.    Mr. Guzman, is there any question in your mind that  
6 the conversion of the Colony from individual meters to master  
7 meters was done as a result of the changes that the PSC made  
8 to the time-share portion of the master meter rule?

9           A.    That's correct.

10          Q.    Did you ever attempt to determine if the Colony  
11 could have been master metered before the amendment or  
12 without the change that had been made by the PSC to the  
13 time-share provision?

14          A.    No.

15          Q.    Do you know whether anybody at FPL ever did?

16          A.    Not to my knowledge, no, sir.

17          Q.    Was Ms. Britton involved with you in any way in the  
18 decision-making process to convert the Colony from individual  
19 meters to master meters?

20          A.    No, sir. No. We basically got contacted prior to  
21 the rule change and were unaware of anybody else doing  
22 anything.

23          Q.    Did Mr. Mazo ever indicate to you that conversion  
24 costs should not be paid to FPL for converting to master  
25 meters?

1 A. No.

2 MR. MENTON: I don't have any further questions,  
3 Your Honor.

4 Thank you, Mr. Guzman.

5 MR. MAZO: Your Honor, if it's okay, I'd just like  
6 to take a short break for a minute.

7 THE COURT: We'll take five.

8 (Off the record for a short break, after which the  
9 following proceedings were had:)

10 CROSS-EXAMINATION

11 BY MR. MAZO:

12 Q. Good afternoon again, Mr. Guzman.

13 A. Good afternoon, Mr. Mazo.

14 Q. I've got a few follow-up questions for you on your  
15 testimony.

16 A. Yes.

17 Q. I believe you testified earlier that you  
18 participated in the decision to master meter the Colony. Is  
19 that correct?

20 A. Yes, sir.

21 Q. Okay. And when you say you participated in the  
22 decision, I believe you indicated that you -- you and  
23 Mr. Bauer made a call to the Colony?

24 A. Yes, sir.

25 Q. Okay. Let me -- and that was -- do you remember

1 what time frame that was? Late February? Early March?

2 A. Yes, sir, I believe it was around that time.

3 Q. In '97?

4 A. Yes, sir.

5 Q. Okay. And prior to that time, had you had any  
6 contact with the Colony?

7 A. Not that I'm aware of.

8 Q. How about Mr. Bauer? Do you know if he had any  
9 contact with the Colony?

10 A. I don't know.

11 Q. Okay. But I believe your testimony was that around  
12 that time one of you all picked up the phone and you called  
13 the Colony after the issue came about to ask whether the  
14 Colony was a time-share?

15 A. Yes, sir.

16 Q. Okay. Do you know who you called?

17 A. No, sir. Just whoever answered the phone. Yes,  
18 sir.

19 Q. Okay. And did you all even think about whether  
20 whoever would answer the phone would have any knowledge of  
21 how the Colony operated?

22 A. Active employee. Just assumed they would know.

23 Q. Well, would you know that it was an employee that  
24 answered the phone necessarily?

25 A. Answered the Colony.

1 Q. Okay. So they answered the Colony, so you figured  
2 the operator answered the phone?

3 A. Yes, sir.

4 Q. And was it -- for you all was it an important  
5 decision to make?

6 A. Not really. You know, kind of yes and no, because,  
7 like I said, when you had called and asked to be converted,  
8 you know, you obviously felt like it would benefit the Colony  
9 and the Veranda and the White Sands, so if we could  
10 accommodate that, you know, under the time-share rule, you  
11 know --

12 Q. But was it important -- let me back up in terms of  
13 what was important. Was it important for you to make the  
14 phone call to the Colony and ask them the question?

15 A. Just reassurance, I guess.

16 Q. So if it was -- if it was important -- I guess I'm  
17 just questioning why you wouldn't ask for somebody in  
18 authority at the Colony that might have an answer for you?

19 A. We wanted a very objective opinion.

20 Q. An objective opinion on -- let me back up.

21 Was the rule that you were dealing with, was it a  
22 very simple rule or a complicated rule, in your eyes?

23 A. Yes, sir.

24 Q. Very complicated?

25 A. No. Very simple.

1 Q. Very simple?

2 Okay. And when did you tell me that you -- when did  
3 you testify that you first learned about it?

4 A. I believe you initiated the phone call to tell me  
5 the pending rule was being changed. I believe we were  
6 notified that the rule had actually changed -- I think it was  
7 either March or -- I think it was March of '97, if I'm not  
8 mistaken, Marc. I'm not sure.

9 Q. Okay. And I believe you testified that it was --  
10 in terms of your decision -- let me back up just a second.

11 After you called the Colony and whoever it was that  
12 answered the phone told you it was a time-share, --

13 A. Yes, sir.

14 Q. -- what did you do then?

15 A. Just followed through with our cost analysis.

16 Q. Okay. Did you -- did you look at any rule to  
17 determine whether it qualified?

18 A. No, sir, we did not.

19 Q. Before you called the Colony, did you look at any  
20 rule to determine whether it qualified?

21 A. We might have glanced at it. You know, like I said,  
22 you initiated the call based on the time-share rule that you  
23 wanted to convert the three entities.

24 Q. I understand that you keep saying that I initiated  
25 it based on the time-share rule. We have some disagreement



1 on that, and we'll deal with it in a minute.

2 A. Okay.

3 Q. But what I'm getting to at this point is that I'm  
4 trying to find out if all you did was you took -- you say  
5 that I said it was a time-share -- or, excuse me, let me back  
6 up. I'm going to say Mr. Mazo for the record so it's clear  
7 that we're talking to somebody else.

8 A. Okay.

9 Q. You say that you talked to Mr. Mazo about the  
10 time-share and made a little call and that was it, and then  
11 FP & L turned around and went through this whole process that  
12 we spent, what, months on talking about conversion costs and  
13 getting it done, and that's all -- that's all the research  
14 you did on the decision, or was there more?

15 A. No, that's basically it. I mean, you know, you  
16 initiated the call, felt like it would benefit the customer,  
17 you know, to go to master metering or you wouldn't have  
18 contacted us, so -- and, you know, we verified that the rule  
19 has been and was being changed to accommodate time-share  
20 conversion.

21 Q. Do you -- did you know at that time whether the rule  
22 was approved?

23 A. When?

24 Q. I'll back up. At the time that you're indicating  
25 that you made the decision with Greg Bauer did you understand

1 at that point that the rule was approved by the Public  
2 Service Commission?

3 A. I don't remember the time frame there, Mr. Mazo.

4 Q. Well, I believe you testified that the calls were  
5 sometime in late February or early March; is that correct?

6 A. Right.

7 Q. And I think you also testified that you were made  
8 aware by Mr. Mazo that the time-share rule was being changed;  
9 is that right?

10 A. Pending rule, yes, sir.

11 Q. So even though it was only pending, you still said  
12 go do it; is that correct?

13 A. We were trying to determine the costs. That's what  
14 you had asked for was a cost.

15 Q. I'm not talking about the cost. I'm talking about  
16 the decision whether to master meter or not. Okay. What I'm  
17 talking about is that when you said it's pending at that time  
18 you still just said go ahead and do it; we agree, let's go do  
19 it without it being approved by the Public Service  
20 Commission?

21 A. To do what?

22 Q. Well, let me back up and see if I can help you. My  
23 understanding from your testimony is that you talked to  
24 Mr. Mazo early February, sometime in February, had a meeting  
25 in late February, and Mr. Mazo, according to your testimony,

1 indicated that the Colony wanted to change to master  
2 metering; is that correct?

3 A. Correct.

4 Q. Okay. You also indicated in your testimony that  
5 Mr. Mazo indicated that the Colony wanted to change to master  
6 metering or convert because it was time-share. Is that also  
7 correct?

8 A. Yes, sir.

9 Q. And I believe that you also testified that about  
10 that time neither you nor Mr. Bauer had any knowledge of the  
11 time-share rule at that point?

12 A. I believe so. That's correct.

13 Q. So from there my understanding of your testimony is  
14 that Mr. Mazo then made you aware of the time-share rule, of  
15 the pending time-share rule?

16 A. Yeah. I believe so.

17 Q. Okay. So at that time that he made you aware of it  
18 you understood that it was pending; is that correct?

19 A. Yes, sir.

20 Q. Okay. And did he also make you aware when it was  
21 approved?

22 A. I don't recall whether it came from you or whether  
23 it came from our corporate.

24 Q. So would it surprise you to find out that the Public  
25 Service Commission time-share metering rule was finally

1 approved on March 23rd, 1997?

2 MR. MENTON: Objection, Your Honor. I think that  
3 mischaracterizes what happened. We've already got  
4 Exhibit 30 into evidence, which was issued March 4th.  
5 The effective date is March 23rd, but the approval  
6 actually took place at an agenda conference back in  
7 January.

8 MR. MAZO: I'll -- I'll rephrase that.

9 BY MR. MAZO:

10 Q. Mr. Guzman, did you -- did Mr. Mazo make you aware  
11 of the effective date of the rule change at any time during  
12 these discussions?

13 A. I don't recall. As I said, I don't recall whether  
14 you indicated when the effective date was or it came from our  
15 corporate channels. I don't recall that.

16 Q. I believe your testimony -- let me go to Exhibit --  
17 I believe it's Exhibit 14. Before I go there for just a  
18 minute, Mr. Guzman, let's talk a little bit about the  
19 communications that took place and the documents that you've  
20 had into evidence, I think you've testified to. You've had a  
21 number of documents that talked about the whole process that  
22 you discussed; is that correct?

23 A. Yes, sir.

24 Q. Okay. And a lot of those documents were produced by  
25 you in depositions; is that correct?

1           A.    Yes, sir.  I believe so.

2           Q.    And I believe that you were asked for all the  
3 documents in that deposition that you had that you were aware  
4 of that involved this issue; is that correct?

5           A.    Yes, sir.

6           Q.    And at that time you produced all of them; is that  
7 right?

8           A.    Yes, sir.

9           Q.    So today in the record there are no other documents  
10 out there that you're aware of that existed regarding our  
11 communications, Mr. Mazo's communication with you on the  
12 master metering issue?

13          A.    None that I'm aware of.  I kept a pretty healthy  
14 file concerning the whole conversion.

15          Q.    Let's talk about all those documents for a minute  
16 just in general terms.

17          A.    Yes, sir.

18          Q.    As the process was going on that you testified to,  
19 did Mr. Mazo send memos to you on various subjects concerning  
20 the master metering rule?

21          A.    Yes.  Several memos.

22          Q.    Do you remember how many?

23          A.    No, I do not.

24          Q.    Okay.  In any of those memos that you have -- and  
25 you have them in front of you?

1 A. Yes.

2 Q. All of them?

3 A. Some of them, yes, sir.

4 Q. Okay. Let's look at the ones you don't have. Do  
5 you know any ones that you don't have?

6 A. No, sir, if I don't have them.

7 Q. Let me go through the list so we have them.

8 Mr. Guzman, do you want to check if you have the memorandum  
9 dated 3/26 1997? I believe that's Exhibit 15.

10 A. From yourself, yes, sir, Exhibit 15. Yes, sir.

11 Q. And a document dated 3/27, 1997, and it looks like  
12 Exhibit 16?

13 A. Yes, sir, I have it.

14 Q. And a document dated 4/17, 1997?

15 A. Yes, sir.

16 Q. And I believe that's Exhibit 17?

17 A. Yes, sir.

18 Q. A document dated November 25th, 1997?

19 A. What date?

20 Q. November 25th.

21 A. Yes, sir.

22 Q. And that's Exhibit Number 18. Do you have that  
23 document?

24 A. Yes, sir, I do.

25 Q. Okay. I'm sorry. And a document dated December

1 22nd, 1997?

2 A. Yes, I do.

3 Q. Exhibit 19?

4 And Exhibit -- or a document dated April 6th of  
5 1998, it's Exhibit 25?

6 A. April 6th.

7 Q. It's Exhibit 6 from your deposition. It's Exhibit  
8 25 here.

9 A. Yes, sir, I have it.

10 Q. Okay. An exhibit dated 3/19/97?

11 A. Yes, sir.

12 Q. And that's Exhibit 14?

13 A. Yes, sir.

14 Q. An exhibit dated April 10th, 1998?

15 A. Yes, sir.

16 Q. Exhibit 26. And it was Exhibit 10 of your  
17 deposition. It's -- oh, that might not be in. It was  
18 electric service standards. Did you bring that today?

19 A. No. No, I don't have that.

20 Q. Okay. An exhibit dated 9/4/97. It's an E-mail to  
21 Jim Guzman?

22 A. Yes, sir.

23 Q. Exhibit Number 24?

24 A. I have it.

25 Q. You have that one?

1 A. Yes, sir.

2 Q. Okay. And a memo dated 3/27/97, Exhibit --

3 A. 22.

4 Q. From Mike Kitely (phonetic.)

5 A. 22, Exhibit 22.

6 Q. Exhibit 22. Thank you.

7 Okay. Another E-mail 3/26/97?

8 A. Yes, sir.

9 Q. What exhibit is that?

10 A. 21, please.

11 Q. Thank you. An exhibit dated 3/21/97. I believe  
12 it's Exhibit --

13 A. 20.

14 Q. 20?

15 A. Yes, sir.

16 Q. And an exhibit dated 3/26/97?

17 A. I don't have that one. I don't -- I believe I've  
18 rattled off all I have.

19 Q. Okay. Let me show you that and ask if you recall  
20 it.

21 A. Oh, yeah, I have it. I'm sorry. I do have it.

22 Q. Okay. Exhibit 21?

23 A. Yes.

24 Q. An exhibit dated 3/26/97 -- I'm sorry. Yeah,  
25 3/26/97 from Alan Gerrington to Jim Guzman?



1 A. Yes.

2 Q. What is that one?

3 A. I believe it's -- I believe it's 21. Exhibit 21.

4 Q. Was that a duplication?

5 MR. DALEY: No, it's two separate ones.

6 MR. MAZO: Okay. Exhibit 21, Bernie?

7 MR. DALEY: Yeah.

8 BY MR. MAZO:

9 Q. And an exhibit dated 3/26/97, author Greg Bauer?

10 A. Yeah, I think that -- I think that's the  
11 continuation.

12 Q. Okay. Is that -- is that the same one I just --

13 A. I only have the one I have in front of me. I don't  
14 know what you have, Marc. Is it this one, sir?  
15 (Indicating.)

16 Q. Okay. We've got 21 is different.

17 A. Does it start off with --

18 Q. Okay. We've got -- this is -- (Indicating.)

19 A. I don't have that one.

20 Q. You don't have that one? You're showing that as  
21 Exhibit 21?

22 A. Yeah.

23 MR. MAZO: Let me check. Your Honor --

24 THE COURT: Exhibit 21?

25 MR. MAZO: 21.

1 THE COURT: That's it.

2 MR. MENTON: What are we doing?

3 THE COURT: Just getting an exhibit straight.

4 MR. MENTON: Okay.

5 MR. MAZO: Okay. Let me back up so we're clear on  
6 that.

7 THE COURT: 21 is not admitted. It's been  
8 identified.

9 BY MR. MAZO:

10 Q. So we clarify it, Exhibit 21 is a memo dated  
11 3/26/97. The author is Greg Bauer. And at the top line it  
12 says, "Make sure our final cost is estimated like this."

13 A. Yes, sir. That's what mine shows.

14 Q. Is that correct?

15 A. Yes.

16 Q. Okay. And that's two pages; is that right?

17 A. Yes, it is.

18 Q. Okay. I'm going to back up, and there's an exhibit  
19 also dated 3/26/97, and it says from Alan Gerrington to Jim  
20 Guzman, subject conversion of time-shares to master metering.  
21 Do you have that one, Mr. Guzman?

22 A. No.

23 Q. All right. That's the one you don't have.

24 MR. MAZO: Do you all have that one? It's Exhibit  
25 16 from his deposition.

1 BY MR. MAZO:

2 Q. Mr. Guzman, I'd like you to identify this document  
3 for the record, if you will, please. (Hands document.)

4 Let me just ask you if you can identify it?

5 A. Yes, sir. It's an internal FPL correspondence from  
6 Alan Gerrington to myself.

7 Q. Okay. And it's one of the documents you produced in  
8 your deposition?

9 A. I believe so, yes, sir.

10 MR. MAZO: And I may have to get a copy. What  
11 number are we on?

12 THE COURT: Oh, if this is a new one, you'd be up to  
13 Petitioner's 10.

14 MR. MAZO: I'll get you a copy. That's going to be  
15 Petitioner's 10.

16 BY MR. MAZO:

17 Q. Okay. And then an exhibit dated 3/26/97 to a whole  
18 slew of people from Greg, and I think that's -- is that  
19 Exhibit 22? Do you have that one?

20 A. No, I do not.

21 MR. MAZO: Do you all have that one? I know we put  
22 it in.

23 MR. HOFFMAN: We have it.

24 MR. MAZO: Okay.

25 MR. HOFFMAN: Let me see the date.

1 MR. MAZO: 3/26/97. Let me just double-check.

2 Your Honor, do you have 22? I want to make sure I  
3 have the same one.

4 (Off-the-record discussion, after which the  
5 following proceedings were had:)

6 BY MR. MAZO:

7 Q. Okay. Mr. Guzman --

8 MR. MAZO: I thought we put it in.

9 MR. MENTON: I think it's 38.

10 THE COURT: Okay.

11 MR. MAZO: That's all right. I know we've got a lot  
12 of them.

13 MR. MENTON: Look at it. I think it might be.

14 THE COURT: 38? Let's see. Yeah, okay.

15 MR. MAZO: Okay. Thank you.

16 BY MR. MAZO:

17 Q. All right. Mr. Guzman, again, the exhibit 3/26/97,  
18 which is Exhibit 38, do you have a copy of that?

19 A. No.

20 Q. Okay. Let's see if you can identify Exhibit 38 for  
21 the record, please? (Hands document.)

22 A. Yes, sir. It's FPL correspondence, internal  
23 correspondence from Greg Bauer it looks like to his service  
24 planning group.

25 Q. And is this -- you were part of the service planning

1 group?

2 A. Yes, sir.

3 Q. Okay. And you received this memo?

4 A. Yes, sir.

5 Q. And you produced this memo in your deposition?

6 A. I believe so, yes, sir.

7 Q. Okay. Mr. Bauer -- Mr. Bauer? Excuse me.

8 Mr. Guzman, we've gone through all the exhibits.

9 Other than the ones you've identified that you don't have  
10 copies of that you did identify for the record, does that  
11 comprise all of the documents, the communications, the  
12 written communications between you, people that you were  
13 working with, Mr. Mazo concerning the master metering issue  
14 for the Colony?

15 MR. MENTON: Your Honor, I'm going to object to that  
16 as being overly broad. I think he can identify that  
17 these relate to it, but to say that's all that there ever  
18 was I think is a little overinclusive.

19 BY MR. MAZO:

20 Q. Let me do it a little differently. Mr. Guzman,  
21 other than the documents that you either have in front of you  
22 or I've shown you and you identified, are there any other  
23 documents that you're aware of that you received from  
24 Mr. Mazo relating to the master metering issue at the Colony?

25 A. None that I'm aware of, no, sir.

1           Q.    In any of the documents that you have, and we've  
2           numbered all the exhibits that we've gone through that you  
3           received from Mr. Mazo, in any of those documents did he  
4           indicate to you that the request to master meter the Colony  
5           was because the Colony was time-share?

6           MR. MENTON:  Your Honor, I'm going to object to that  
7           on a couple of grounds.  First of all, I think that it's  
8           again overly broad and compound because it refers to a  
9           whole series of documents and asks the witness to comment  
10          cumulatively on a stack of documents, which I don't think  
11          is a fair question.

12          Secondly, and perhaps more importantly, he's asking  
13          the witness to comment on what Mr. Mazo may have  
14          commented about.  What Mr. Mazo may have commented about  
15          in here is not really relevant to any of the issues that  
16          you need to deal with.  Mr. Guzman made his own decision.  
17          He can ask Mr. Guzman about the decision that he made.  
18          He can ask Mr. Guzman about the discussions.  But to ask  
19          Mr. Guzman to speculate what was in Mr. Mazo's mind, what  
20          Mr. Mazo intended, or why Mr. Mazo was putting something  
21          down on paper I don't think is fair.

22          THE COURT:  Very well.  The way I understood the  
23          question you were asking -- you weren't asking him what  
24          you were thinking but what you wrote; is that correct?

25          MR. MAZO:  That's correct.

1 THE COURT: I will sustain on the first ground,  
2 which is you're asking -- unfortunately, you know, I know  
3 you're trying to make it shorter here, but I think you  
4 need to go through it document by document in regards to  
5 that.

6 MR. MAZO: That's fine. I have -- I have no problem  
7 in regards to that.

8 BY MR. MAZO:

9 Q. It will take us a little longer, but we'll do it  
10 this way. Sorry.

11 Mr. Guzman, I'd like to direct your attention to  
12 Exhibit Number 15 and ask you if you have a copy of that in  
13 front of you?

14 A. Yes, sir.

15 Q. Okay. And in Exhibit 15 can you tell me what  
16 Exhibit 15 is?

17 A. It's a correspondence from yourself to me.

18 Q. Okay. And is this exhibit relating to the master  
19 metering of the Colony?

20 A. Yes, sir. A conversion.

21 Q. Okay. And is this exhibit itself really talking  
22 about the conversion costs?

23 A. Generally. Yeah, I guess.

24 Q. Is there anything in this memo that indicates --  
25 that Mr. Mazo's indicated in this memo that the Colony should

1 be converted to master metering because it's a time-share?

2 MR. MENTON: Your Honor, I'm going to object and  
3 renew on the second ground now. And I apologize if I  
4 didn't understand your ruling earlier, the first part of  
5 that. I may have missed it. But what Mr. Mazo indicated  
6 in his letters regarding whether it's a time-share or a  
7 hotel is really not the pertinent question here. The  
8 decision was made by FPL. They've made it. He's  
9 explained why the decision was made. If Mr. Mazo wanted  
10 to make it on another grounds, wanted them to make it on  
11 other grounds, you know, that's fine. But the bottom  
12 line is is why did they do it, and Mr. Guzman has already  
13 testified about that.

14 THE COURT: I'll overrule on it. It sounded like at  
15 least at some point, you know, the decision was based on  
16 the representations of Mr. Mazo and some anonymous person  
17 at the Colony made over the phone. So I think -- I don't  
18 think it's entirely irrelevant.

19 MR. MAZO: Your Honor, I'd like to move Exhibit 15  
20 into evidence.

21 THE COURT: It's already in.

22 MR. MAZO: Okay.

23 BY MR. MAZO:

24 Q. Mr. Guzman, I'd like you to look at Exhibit Number  
25 16. Do you have that in front of you?



1 A. Yes, I do.

2 Q. Is there any indication from Mr. Mazo in that memo  
3 that he wants to have the Colony converted by FP & L because  
4 it was a time-share?

5 A. No, I don't see it in there.

6 Q. Okay. And can you tell me from reading this memo  
7 does Mr. Mazo make an indication in this memo of how the  
8 Colony was operated just from the memo itself?

9 A. Yeah. It indicates operating as a hotel.

10 Q. Okay. So in this memo dated 3/27/97, Exhibit 16,  
11 Mr. Mazo is representing to you that the Colony is operating  
12 as a hotel; is that correct?

13 A. I'm sorry. Repeat the question.

14 Q. In Exhibit Number 16 Mr. Mazo's indicating in that  
15 exhibit that the Colony was operating as a hotel; is that  
16 your understanding?

17 A. I guess, yes.

18 Q. Okay. And in that exhibit in that second paragraph  
19 can you read that second paragraph for the record, please?

20 A. Where? Which one?

21 Q. The second paragraph of the memo. It starts with  
22 "Also."

23 A. "Also, the owner posed a question that since the  
24 Colony has been operating as a hotel for many years now and  
25 should have been converted long ago to master metering would

1 it fall under the same cost of conversion rule," question  
2 mark.

3 Q. Now, do you recall responding to Mr. Mazo about the  
4 cost of conversion rule as to where it would fall or where it  
5 would not?

6 A. Vaguely.

7 Q. And do you remember having a myriad of questions, I  
8 believe you testified to earlier, of how this thing should  
9 happen in terms of the cost of the conversion?

10 A. Yes, sir.

11 Q. Okay. And it's pretty clear in the memo that  
12 there's a question how should it happen; right?

13 Let me direct your attention to Exhibit Number 17.

14 A. Okay.

15 Q. In this memo, Mr. Guzman, this memo is primarily  
16 about the Veranda resort, is it not?

17 A. Yes, sir.

18 Q. Okay. And this doesn't say anything about the  
19 Colony, does it?

20 A. No, it does not.

21 Q. Okay. So this memo, Exhibit 17, doesn't indicate  
22 one way or the other in terms of Mr. Mazo's not indicating  
23 anything about the Colony being master metered because it's a  
24 hotel or a time-share; is that correct?

25 A. Yes, sir.

1 Q. Okay. Exhibit Number 18. Let me back up. We'll go  
2 forward a couple of memos. It looks like Exhibit Number 14,  
3 and that's dated 3/19/97.

4 A. Um-hum.

5 Q. Now, in that exhibit can you look at that for me and  
6 tell me if Mr. Mazo has made any indication whatsoever that  
7 the Colony should be converted to master metering because  
8 it's a time-share?

9 A. No.

10 Q. Okay. And in that document, Exhibit 14, what has  
11 Mr. Mazo indicated in the document as to how the Colony  
12 operates?

13 A. Restate your question.

14 Q. Okay. Exhibit Number 14, can you tell me in looking  
15 at it how Mr. Mazo has indicated in that exhibit how the  
16 Colony operates?

17 A. You want me to read the paragraph?

18 Q. That's fine.

19 A. "First of all, based on our numerous discussions, it  
20 is my understanding that FPL has agreed that since the Colony  
21 has been and continues to operate as a hotel it is allowed  
22 under Rule 25-6.049(5)(a)(3) to be master metered.  
23 Therefore, we do have to wait for the amended version of the  
24 rule relating to the time-share resorts to take effect to  
25 begin the conversion process."

1 Q. Now, in that paragraph do you agree that Mr. Mazo is  
2 stating that the Colony has been and continues to operate as  
3 a hotel? Correct?

4 A. The paragraph to me reads that you're stating that  
5 FPL agrees that it's been operating as a hotel.

6 Q. Okay. Now, my understanding from your testimony is  
7 that you received that memo on or about March 19th, 1997.

8 A. Yes, sir.

9 Q. After you received that memo, did you call Mr. Mazo,  
10 or did you send a memo back to Mr. Mazo in response to that  
11 saying, We don't agree, the Colony does not operate as a  
12 hotel, we're doing this because it's time-share?

13 A. I don't recall the phone conversation, and I don't  
14 believe I had anything in my file that I sent to you that I  
15 can recall.

16 Q. In response to this memo?

17 A. Yeah. Yes, sir.

18 Q. Okay. But at the time you got the memo that you  
19 said you received my understanding is that you knew that was  
20 wrong.

21 A. Knew what was wrong?

22 Q. That the master metering that we were talking about,  
23 it says here, I believe you read it, my understanding --  
24 Mr. Mazo's understanding of this memo is that FP & L has  
25 agreed that since the Colony has been and continues to

1 operate as a hotel it's allowed under the rule. My question  
2 is is there any particular reason you didn't call Mr. Mazo or  
3 tell him that that was wrong?

4 A. I'm not sure that I didn't. I'm not -- I don't --  
5 it doesn't say that I -- I didn't type this. I didn't  
6 stipulate that I agreed it's a hotel.

7 Q. I understand. As a matter of fact, I believe your  
8 testimony earlier was that prior to this memo that you and  
9 Mr. Guzman had made the decision about the --

10 A. Bauer.

11 Q. -- master metering based on the time-share rule?

12 A. Correct.

13 Q. So at that time when you got this memo you  
14 absolutely didn't agree?

15 A. Correct.

16 Q. But you didn't tell Mr. Mazo, did you?

17 A. I don't recall. I don't know.

18 Q. Okay. All right. Let's go on to the memo -- before  
19 I go on to the next memo, what you did from that point and if  
20 we look down here at the rest of the memo, there were a lot  
21 of notations in there about the cost of conversion; is that  
22 right?

23 A. Correct.

24 Q. And you do remember, I believe from your testimony,  
25 that we went on and had numerous conversations following that

1 memo about the cost of the CTs and the conversion?

2 A. Absolutely.

3 Q. So we had plenty of those conversations, but still  
4 you never said, No, we're not doing this because it's a  
5 hotel; we're doing it because it's a time-share? Is that  
6 correct?

7 A. Correct. Under the rule, correct.

8 Q. But you never said that to Mr. Mazo in all those  
9 conversations about the conversion costs?

10 A. I don't know that I did or I don't know that I  
11 didn't. I don't have anything in writing that says that I  
12 did. You're correct.

13 Q. You don't recall doing it?

14 A. I don't recall.

15 Q. Okay. Mr. Guzman, let me back up. Let's go back to  
16 Exhibit 15.

17 A. Okay.

18 Q. I think this is -- I'm sorry. It's exhibit -- I've  
19 got my glasses on. I've got to put them on to see you and  
20 take them off to see, and I get blurred when I go --

21 Exhibit 16 is what I'm looking at.

22 A. Yes, sir, I have it in front of me.

23 Q. Okay. Thank you. I believe we talked about this  
24 when you identified it, and you indicated that what it said  
25 was what it said?

1           A.    It says what it says.  Correct.

2           Q.    And, again, this memo says -- Mr. Mazo when he sent  
3 this memo to you is saying that the Colony has been operating  
4 as a hotel for many years; is that correct?

5           A.    That's what it says, yes, sir.

6           Q.    And your understanding at that time was that it was  
7 a time-share; is that correct?

8           A.    My understanding is that we were converting it under  
9 the time-share rule change, correct.

10          Q.    And Mr. Mazo is again telling you -- at that time  
11 he's indicating the Colony is a hotel; is that correct?

12          A.    You mentioned it, yes, sir.

13          Q.    Okay.  And you didn't call, dispute it, or challenge  
14 it?

15          A.    (Shakes head negatively.)

16          Q.    Okay.  And you went on from there and you talked  
17 more about the conversion costs?

18          A.    The costs.

19          Q.    You did that ad nauseam?

20          A.    Time and time again, yes, sir.

21          Q.    Okay.  Let's go to Exhibit Number 18.

22          A.    Yes, sir.

23          Q.    Okay.  This is a memo, and this is -- well, I'm  
24 sorry.  I'm trying to find all the memos from me, from  
25 Mr. Mazo, to you.

1 I believe here's another one, Exhibit 26.

2 A. What's the date on it, sir?

3 Q. It is April 10th.

4 A. Yes, sir.

5 Q. And in that memo -- does Mr. Mazo in that memo  
6 indicate to you that the Colony is a time-share?

7 A. It doesn't say that.

8 Q. Okay. And I believe unless there's one I missed  
9 that's all the memos you've produced or you identified that  
10 Mr. Mazo has sent to you regarding the communications and the  
11 Colony and the master metering issue. Is that correct?

12 A. To the best of my ability, yes, sir.

13 Q. And none of those documents that you've testified  
14 that Mr. Mazo was indicating that the Colony was time-shared  
15 and wanted to convert because it was time-share, did it?

16 A. Not that I recall when we went over these.

17 Q. So the only testimony today is about the discussions  
18 that you're talking about where you're testifying that  
19 Mr. Mazo said on the phone that it was time-share?

20 A. Um-hum.

21 Q. And not a hotel?

22 But his memos following up said it was a hotel?

23 Mr. Guzman, at some point in time, I believe you  
24 said it was just before March 19, you and Mr. Bauer made a  
25 decision to master meter the Colony?



1           A.    Um-hum.  Somewhere around there.

2           Q.    And did that -- in your mind, did that have anything  
3           to do with the time-share or the Public Service Commission  
4           metering rule?

5           A.    Yes, sir, it did.

6           MR. MENTON:  Objection.  Asked and answered.  He  
7           made that pretty clear, I think, in his direct.

8           BY MR. MAZO:

9           Q.    And did you have some knowledge about -- I'm sorry.  
10          I didn't --

11          THE COURT:  Just press on.

12          BY MR. MAZO:

13          Q.    Did you have any -- at that time did you have any  
14          knowledge about the Public Service Commission's metering  
15          rule?

16          A.    When?

17          Q.    At that time.

18          A.    There again, I knew about it early February whenever  
19          you contacted me saying there was a pending rule change.  Did  
20          I know that it had taken effect?  I'm not sure.

21          Q.    Let's talk about your knowledge of the rules before  
22          you heard from Mr. Mazo.  Did you have any knowledge of the  
23          Public Service Commission's metering rules?

24          A.    Never had the opportunity to go over that issue.

25          Q.    So was your decision to master meter based on the

1 Public Service Commission's metering rule?

2 A. Decision to go on with it was based on your request  
3 for your customers at the Colony, Veranda, and the White  
4 Sands to convert from individual meters to master metering  
5 due to the new rule that was pending being changed.

6 Q. Did you research the rule?

7 A. No.

8 Q. Okay. Did you study the rule?

9 A. No.

10 Q. Did you call anybody at the Public Service  
11 Commission and ask them about the rule?

12 A. No, sir.

13 Q. Could you have?

14 A. Typically, that's not my -- that's not my  
15 responsibility. I bubble it up to my immediate supervisor,  
16 and then he, in turn, would -- would do some further  
17 investigation.

18 Q. Mr. Bauer is your immediate supervisor?

19 A. Yes.

20 Q. Did he call the Public Service Commission?

21 A. I don't know.

22 Q. So the only call you made that you recall was to the  
23 Colony; is that correct?

24 A. That's the only one I was involved in.

25 Q. And you didn't -- you just picked out somebody

1 objective to --

2 A. Whoever answered the phone, yes, sir. An employee.

3 Q. Okay. Now, Mr. Bauer --

4 A. Guzman.

5 Q. On -- right before March 19th I believe you  
6 testified -- excuse me. Mr. Guzman. I did it again.

7 A. That's okay.

8 Q. I'm looking -- Mr. Guzman, on March 19th or right  
9 before then you indicated that you and Mr. Bauer had made the  
10 decision to master meter the Colony; is that correct?

11 A. Somewhere around that time frame, yes, sir.

12 Q. And I believe you testified earlier when you saw the  
13 March 19th memo and it said hotel in it that you had already  
14 decided it didn't matter to you it said hotel, you had  
15 already decided it was going to be master metered under the  
16 time-share rule; is that correct?

17 A. Pretty much, yes, sir.

18 Q. Okay. So by March 19th you had decided. And  
19 according to your testimony, you and Mr. Bauer testified that  
20 it was because it was operating as a time-share resort -- or  
21 let me back up. Let me withdraw that. That maybe  
22 mischaracterizes.

23 At that time, at least from your testimony, I'm  
24 understanding, you didn't tell Mr. Mazo that you would  
25 convert the Colony to master metering because it operated as

1 a hotel; is that correct?

2 A. That's correct.

3 Q. Okay. But the fact is that Mr. Bauer indicated that  
4 in a memo, did he not?

5 A. Yes.

6 Q. Okay. And that memo is Exhibit 38, isn't it?

7 A. I guess. That's the one I don't have.

8 Q. The one you have in front of you.

9 A. That's the one I don't have, I believe. Isn't it?

10 Q. I'm sorry. Let me look at it. Just look at the  
11 part -- you can look at the part that's marked.

12 A. Correct.

13 Q. Okay. And in that memo would you just read the part  
14 that's -- what does Mr. Bauer say to you?

15 A. He said, "We will allow it at the Colony because  
16 they are basically operating like a hotel."

17 Q. Now, Mr. Guzman, my question is you got that memo  
18 from Mr. Bauer; is that correct?

19 A. Yes.

20 Q. Did you pick up the phone? Did you walk over to his  
21 office? Did you call Mr. Bauer and say, Hey, Greg, that  
22 ain't right; we said time-share? You didn't call, you didn't  
23 talk to him, didn't say that's not correct?

24 A. (Shrugs shoulders.)

25 THE COURT: You need to answer.

1 THE WITNESS: Oh, I'm sorry. No, I did not.

2 THE COURT: She can't take down a head shake.

3 BY MR. MAZO:

4 Q. Mr. Guzman, the memo -- Exhibit 18 is a memo from  
5 you to Mr. Mazo dated November 25th, 1997?

6 A. Yes, sir.

7 Q. Okay. And you agree that that memo says what it  
8 says?

9 A. Yes, it does.

10 Q. And it says -- you're writing to Mr. Mazo, and  
11 you're saying, "Thank you for your recent inquiry concerning  
12 conversion of your time-share resort?"

13 A. Correct.

14 Q. Now, you recall, do you not, that right after you  
15 sent that memo Mr. Mazo picked up the phone and called you?

16 A. Um-hum.

17 Q. Almost immediately; is that correct?

18 A. Yeah. I don't know if it was immediately, but you  
19 did call, yes, sir.

20 Q. Pretty close, wasn't it?

21 A. Yeah. I --

22 Q. Okay. And Mr. Mazo said, Hey, Jim, please, can you  
23 write that and put hotel?

24 A. Something along that line. Something along that  
25 lines, yes.

1 Q. And your testimony, I believe, or you've indicated  
2 prior to this time that you had no problem with that?

3 A. Correct.

4 Q. Yet earlier you've testified that the reason you've  
5 done a conversion was under the time-share, not because it's  
6 hotel?

7 A. Correct.

8 Q. Okay. Yet in the memo that Mr. Bauer sent he said  
9 we said it was operated as a hotel, and in your memo you  
10 changed it to hotel?

11 MR. MENTON: Objection. This is getting very  
12 duplicative.

13 MR. MAZO: Let me withdraw that. I'll withdraw it.  
14 I understand. Let me just -- one second, Your Honor.

15 Your Honor, I have no further questions.

16 THE COURT: All right.

17 MR. MENTON: Thank you, Your Honor. Just a couple  
18 of follow-ups.

19 REDIRECT EXAMINATION

20 BY MR. MENTON:

21 Q. Mr. Guzman, Mr. Mazo asked you a few questions about  
22 the call that you and Mr. Bauer made to the Colony. Do you  
23 recall that?

24 A. Yes, sir.

25 Q. Okay. And why did you place that call? Were you

1 seeking to confirm anything that Mr. Mazo had indicated to  
2 you?

3 A. Just basically that it was a time-share or hotel,  
4 yes.

5 Q. Okay. Were you trying to find a way to accomplish  
6 what the -- what your customer had asked you to do for them?

7 A. Yeah. Yes, sir.

8 Q. And when whoever picked up the phone at the Colony  
9 said that they were operating as a time-share, was there any  
10 reason for you to ask any further questions at that point?

11 A. No, sir.

12 Q. Did that give you the information that you felt was  
13 necessary in order for you to carry out the request that had  
14 been made to you by the customer?

15 A. Correct.

16 Q. And did the information that you received from the  
17 Colony as part of that telephone call give you a basis for  
18 converting, in your mind?

19 A. Yes, sir. In my mind.

20 Q. Now, Mr. Mazo asked you some questions regarding the  
21 PSC rule change, and from the very beginning that you began  
22 to analyze the situation with respect to converting the  
23 Colony, were you then aware of the pending rule change at the  
24 PSC?

25 A. Yes, sir.

1           Q.   And as part of your analysis and decision-making  
2 process, did you internally confirm through Mr. Bauer, your  
3 supervisor, and his higher-ups that that rule challenge was,  
4 in fact, going into effect?

5           A.   Yes, sir.

6           MR. MENTON: Mr. Hoffman corrected me. Rule change  
7 instead of rule challenge.

8           MR. MAZO: We missed it.

9           BY MR. MENTON:

10          Q.   Now, once you and Mr. Bauer had decided that the  
11 Colony was allowed to convert, did it matter whether it was a  
12 hotel to you?

13          A.   No, sir. Not really. Not in my mind.

14          Q.   Did you ever discuss with anyone at FPL if Colony  
15 could convert it as a hotel as opposed to a time-share?

16          A.   No.

17          Q.   Did the failure of Mr. Mazo to mention time-share in  
18 any of the correspondence that you went through with him, did  
19 that affect your decision-making process?

20          A.   No, sir. We were acting on that time-share rule  
21 change. That was the whole basis.

22          Q.   Did you see any need why you needed to call Mr. Mazo  
23 and tell him that this is a time-share as opposed to a hotel?

24          A.   No.

25          Q.   What was it that Mr. Mazo was seeking from you when



1 he first called you?

2 A. To -- to convert his customers. He felt like his  
3 customers at the Colony, the Veranda, and the White Sands  
4 would benefit from being changed from individual meters to a  
5 master metering.

6 Q. Did you try to find a way to help him accomplish  
7 that goal?

8 A. That was the basis of my actions.

9 Q. Did you think you found a way to help him accomplish  
10 his request?

11 A. Yes, sir.

12 Q. Now, Mr. Mazo asked you several questions with  
13 respect to the November letter and also some other  
14 correspondence where he referred to it as a hotel. Did you  
15 feel that you needed to respond in any way to his  
16 representations as to the operations as a hotel?

17 A. No.

18 Q. Had you already decided at that point you were  
19 giving the Colony what they wanted?

20 A. Yes, sir.

21 Q. If you knew that Mr. Mazo was going to come back in  
22 this proceeding and present all those documents to you as  
23 some sort of indication that you confirmed that you were  
24 converting them as a hotel and use that as a basis for a  
25 refund going back 13 years, would you have responded to him

1 then?

2 A. Absolutely.

3 Q. Did Mr. Mazo's references to a hotel in that  
4 correspondence or Mr. Bauer's statements there about  
5 operating as a hotel, did those have any significance to you  
6 at all in determining whether or not to convert the Colony?

7 A. No.

8 MR. MENTON: No further questions, Your Honor.

9 MR. MAZO: Just a couple more, Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. MAZO:

12 Q. Mr. Guzman, when you first talked to Mr. Mazo  
13 regarding the Colony, did you recall whether he talked about  
14 being a consultant or told you what he was doing or anything  
15 like that?

16 A. You just said you were representing Power Check  
17 representing the three establishments.

18 Q. Okay. And Power Check at that time you understood  
19 was, what, working -- do you have any understanding of  
20 what --

21 A. No, sir. I had never heard of them before.

22 Q. But at that time you did know that Mr. Mazo was  
23 working with Veranda, White Sands, and Colony; is that  
24 correct?

25 A. Yes, sir.

1 Q. And from those meetings you understood, did you not,  
2 that Mr. Mazo had some knowledge about what the subject was  
3 you were talking about; is that correct?

4 A. He seemed to be.

5 Q. Okay. And in talking about Veranda and White Sands  
6 do you recall how Mr. Mazo represented to you that they --  
7 let me -- let me rephrase that.

8 Mr. Mazo represented that the Veranda should be  
9 converted because of time-share; is that correct?

10 A. Yes, sir.

11 Q. Did he do that in documents to you?

12 A. I don't know.

13 Q. Do you recall?

14 A. I don't recall.

15 Q. Okay. How about White Sands? Were there some  
16 documents about them?

17 A. The same. I think they were addressed in one  
18 letter, but I don't -- I don't recall.

19 Q. And they would have referred to time-share; is that  
20 correct?

21 A. The time-share rule change, correct.

22 Q. Absolutely.

23 But with the Colony Mr. Mazo didn't do that, did he,  
24 in the document?

25 MR. MENTON: Your Honor, I'm going to object. We've

1       been through this extensively already both direct,  
2       redirect, cross, et cetera. We went through all the  
3       exhibits one time.

4               MR. MAZO: Just the one point they brought up the  
5       White Sands and Veranda, and that's all I was making.  
6       I'm not going any farther.

7               THE COURT: Overruled.

8               THE WITNESS: What's the question?

9       BY MR. MAZO:

10      Q. I forgot. Withdrawn for now.

11              With the Veranda and White Sands the representation  
12      was that it was time-share; is that correct?

13      A. Yes.

14      Q. But the representation for the Colony in the memos  
15      that you got from Mr. Mazo was hotel; is that correct?

16              MR. MENTON: Your Honor, this goes beyond the scope  
17      of my redirect as well. I mean, I don't recall asking  
18      him any questions about Veranda or White Sands on  
19      redirect.

20              THE COURT: I don't either, actually. I mean, how  
21      much of this --

22              MR. MAZO: I'm done. I mean, this was the last  
23      question on it.

24              THE COURT: With that representation, I'll overrule  
25      it.

1 BY MR. MAZO:

2 Q. Your basis -- if I understood the redirect, your  
3 basis for going ahead and making the decision that the Colony  
4 could be master metered was that one phone call from somebody  
5 you have no idea who it was and what knowledge they had, they  
6 just answered it?

7 A. Well, that along with, like I said, your initial  
8 contact was pertaining to all three. You know, you grouped  
9 them all together saying you represented them and that there  
10 was a pending rule change and you had wanted to pursue  
11 converting them.

12 Q. I understand. Maybe I misunderstood what you said.  
13 I thought you said in answer to his question you called those  
14 people and you just did it.

15 FPL, you make a lot -- let me just --

16 MR. MAZO: I'm done, Your Honor. I'm finished.

17 THE COURT: Thank you, Mr. Guzman.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Anything further?

20 MR. MENTON: Your Honor, we just need to move into  
21 evidence the exhibits that Mr. Guzman talked about, and  
22 specifically I believe they are 20, 21, 22 -- 20, 21, 22.  
23 I believe 18 and 19 are already in.

24 THE COURT: They're in.

25 MR. MENTON: 25 and 26 are already in.

1 THE COURT: In my notes 25 is not. 26 is.

2 MR. MENTON: Okay. 25? We don't need 25, actually.

3 24 I think he did refer to. Actually, no, he didn't  
4 or at least we don't need that.

5 20, 21, and 22 are the ones, Your Honor, that we  
6 would move into evidence.

7 THE COURT: Any objection to those?

8 MR. DALEY: No, Your Honor.

9 THE COURT: Okay. We'll show Joint Exhibits 20, 21,  
10 and 22 admitted.

11 MR. MENTON: Your Honor, we would also move into  
12 evidence Exhibit Number 33, which is the PSC order in the  
13 Reddington Towers proceeding.

14 THE COURT: Any objection on 33?

15 MR. DALEY: No, Your Honor.

16 THE COURT: We'll show Joint 33 admitted.

17 MR. MENTON: Your Honor, I believe that's it for us.

18 MR. DALEY: Is that all for you all?

19 Your Honor, we need to -- we had delayed this a  
20 little bit. We need to -- as I've tried to compile  
21 this from their list, which I borrowed, and from my list  
22 would be I think we've already moved in basically 1  
23 through 11, which was ours.

24 THE COURT: Okay. I'll tell you what I've got on my  
25 list.

1 MR. DALEY: Okay. I appreciate that.

2 THE COURT: I've got 1 through 10 are in. 11 I  
3 don't have. That's the hotel/restaurant rules. I don't  
4 have any indication that those have been admitted.

5 MR. HOFFMAN: Your Honor, our notes indicate that --  
6 are we talking now about petitioner's exhibits or joint?

7 THE COURT: The joint.

8 MR. HOFFMAN: I'm sorry. Joint. Excuse me.

9 THE COURT: I've got 1 through 10, 12, 14 through  
10 22, 26, 28 through 37, 39, 40, and 43.

11 MR. DALEY: Well, we would move -- and, of course,  
12 this is just on the joint exhibits. That's the list  
13 you're going from?

14 THE COURT: (Nods head affirmatively.)

15 MR. DALEY: We would then move 11, Joint Exhibit --  
16 I don't know whether they -- let's see. 13 is actually  
17 -- is 13 admitted?

18 THE COURT: No.

19 MR. MAZO: What was 13?

20 THE COURT: You all want to maybe take five minutes  
21 and compare lists and see what else needs to be moved in?

22 MR. DALEY: Yeah.

23 (Off the record for a short break, after which the  
24 following proceedings were had:)

25 MR. DALEY: All right, Judge.

1 THE COURT: Back on the record.

2 MR. DALEY: Yeah, back on the record. I think I've  
3 narrowed it down. We would move -- we would move Joint  
4 Exhibit 11 into the -- into admission. Joint Exhibits  
5 23, 24, and 25, those were all basically E-mails and  
6 further communication that was used by both sides. 27  
7 into evidence, and I don't think with objections we've  
8 discussed it. 38. 38, 40 through 44.

9 THE COURT: Okay. 40 is in.

10 MR. DALEY: Okay.

11 THE COURT: And 41, 42 -- 43 is in. So --

12 MR. DALEY: Okay.

13 THE COURT: 44. Okay.

14 MR. HOFFMAN: 44, Bernie?

15 MR. DALEY: 44. And then we're not going to move 48  
16 -- 45 through 48. Specifically, not do that. And then  
17 Petitioner's 1 through 6.

18 THE COURT: Those are in.

19 MR. DALEY: Okay.

20 THE COURT: 1 through 6 are in.

21 MR. DALEY: 9 and 10.

22 THE COURT: 9 and 10.

23 MR. DALEY: Kind of get -- oh, I'm sorry, not 9.

24 THE COURT: 9 is the tariff.

25 MR. HOFFMAN: 9 is withdrawn?



1 MR. DALEY: Yeah. 10, which was the elusive last  
2 number that we couldn't come up with.

3 MR. HOFFMAN: And 8 has been withdrawn?

4 MR. DALEY: 8 already was withdrawn.

5 THE COURT: 8 was never admitted. 7 was the one we  
6 let in. What we'll have is 1 through and 6 and move 10.

7 MR. DALEY: Okay.

8 MR. HOFFMAN: Okay. 10 is in?

9 THE COURT: Okay. Any objections on any one he's  
10 moved?

11 MR. HOFFMAN: No, sir.

12 THE COURT: Okay. We'll show -- just let me go  
13 through it, Joint Exhibit 11, Joint Exhibit 23, 24, 25,  
14 27, 38, 41, 42, and 44 admitted, and then we'll show  
15 Petitioner's Exhibit 10 admitted.

16 MR. DALEY: And then 43 was already -- was already  
17 -- you mentioned it was already admitted?

18 THE COURT: 43 was already in. That was -- that was  
19 the deposition of Mr. Bauer.

20 MR. DALEY: Yeah, I believe that covers it all,  
21 Judge. If there's any numbers that are left out that  
22 either one of us have not seen --

23 THE COURT: 13 is the only one left out until we get  
24 up to 43.

25 COURT REPORTER: I'm sorry. I can't hear you. Can

1           you speak just a little bit louder?

2           THE COURT: Oh, I'm sorry. I just said of the first  
3           44 joint exhibits the only one that's not in was Exhibit  
4           13.

5           MR. DALEY: Okay. We talked about that.

6           MR. DALEY: Okay. I don't see any other numbered  
7           exhibits that we would need to move in at this time. Do  
8           you?

9           MR. HOFFMAN: No. I think that does it for us, Your  
10          Honor.

11          THE COURT: Okay. Well, anything else we need to  
12          talk about other than I guess the timing of the --

13          Could we hold it down in the back, please?

14          MR. MAZO: Sorry, Your Honor.

15          THE COURT: The timing of the ROs. Are we going to  
16          order a transcript?

17          MR. HOFFMAN: Yes, sir.

18          THE COURT: So you know the drill as far as under  
19          the rule, you know, the transcript is filed, you have 10  
20          days to file a proposed recommended order, which would --  
21          which triggers the 30-day requirement on me. If you need  
22          more than 10, then that waives the 30-day requirement for  
23          me to get out an RO. But I can represent to you that it  
24          will be pretty close to 20 days after you file, whenever  
25          you file. I mean, I'm just not that busy.

1 MR. DALEY: Judge, we had one issue. Can I have  
2 just a second with Mr. Menton before we leave?

3 THE COURT: Sure.

4 (Off the record for a short break, after which the  
5 following proceedings were had:)

6 MR. DALEY: Okay, Judge, I think -- well, actually  
7 Mr. Mazo and Mr. Hoffman discussed the timing on that and  
8 probably a recommendation on a proposed order, so I think  
9 other than that we're pretty much through.

10 MR. MAZO: I don't think we talked about time.

11 Ken, do you want 20 days instead of 10?

12 MR. HOFFMAN: Your Honor, Mr. Menton and I have a  
13 fairly busy hearing calendar over the course of the next  
14 few months. We would be comfortable if everyone else is  
15 comfortable with 30 days after the transcript.

16 THE COURT: Okay.

17 MR. DALEY: Yeah. Oh, that's not a problem on that.

18 THE COURT: Again, just so you understand, that  
19 operates as a waiver of the 30-day rule on me. Again,  
20 I'll promise you it's not going to be six months. It  
21 will come out pretty quickly after you get them filed.

22 MR. HOFFMAN: Okay.

23 THE COURT: Anything else?

24 I'll show these proceedings are closed. Thank you  
25 all very much.

(Thereupon, this proceeding was concluded at  
approximately 3:05 p.m.)

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COURT CERTIFICATE

STATE OF FLORIDA )

COUNTY OF SARASOTA )

I, CINDY A. ALVAREZ, Registered Professional  
Reporter, certify that I was authorized to and did  
stenographically report the foregoing proceedings and that  
the transcript of Volume II is a true and complete record of  
my stenographic notes.

Dated this 16th day of February, 2001.

  
CINDY A. ALVAREZ, RPR