

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

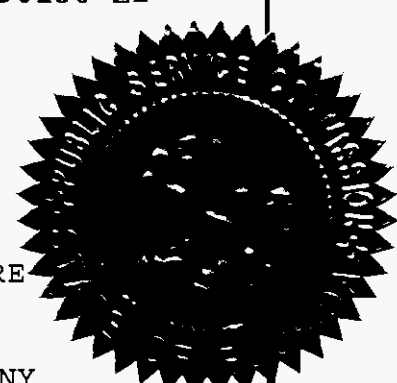
In the Matter of:

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

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

VOLUME 8
Pages 898 through 945

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, August 26, 2009

TIME: Commenced at 6:00 p.m.
Concluded at 7:00 p.m.

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

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

PARTICIPATING: (As heretofore noted.)

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ORIGINAL

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I N D E X

WITNESS

NAME: PAGE NO.

J.A. STALL

Cross-Examination by Mr. Young 914

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EXHIBITS

NUMBER:	ID.	ADMTD.
85 through 94		927
403		928
404 Poached FPL employees, 2007 to May 2009	898	

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 7.)

CHAIRMAN CARTER: Commissioners, for the
record, this will be a placeholder for late-filed No.
404.

Short title, Mr. Young?

MR. YOUNG: Poached, 2007 to 2009, 2007 to
year-to-date, May, of FPL employees.

(Exhibit No. 404 marked for identification.)

THE WITNESS: Mr. Chairman, may I add one
other thought?

CHAIRMAN CARTER: Yes, sir.

THE WITNESS: I think, also, that one of the
other things that is quite germane to this issue, and
Witness Slattery I believe will be able to speak to
this, you have the poaching issue which we have been
discussing, but the salary benchmarking that our
Department of Human Resources does in the nuclear
industry I think shows very clearly the results of
the poaching; in other words, what the going rate has
been and how it's been escalating over time. So I
think that that also helps to clarify, you know, and
add some credence to the issue around the poaching is
legitimate and it is reflected in the salary

1 benchmarking data.

2 CHAIRMAN CARTER: This is what Mr. Moyle was
3 talking about, is that you get down the slippery
4 slope -- I'm not putting words in your mouth, Mr.
5 Moyle, but I'm saying that's what I understood your
6 objection to be, is that once you do that, then the
7 camel's nose is under the tent and -- I'm about to
8 run out of metaphors.

9 Commissioner Skop?

10 COMMISSIONER SKOP: Thank you, Mr. Chairman.
11 I just wanted to go briefly to Mr. Moyle's point and
12 correct the record.

13 My nuclear experience is limited to five
14 years of building nuclear submarines for the United
15 States Navy at General Dynamics, and I'm very
16 familiar with FPL's nuclear operations, but I have
17 never personally worked for FPL's nuclear division.

18 MR. MOYLE: I'm sorry, I knew you had nuclear
19 experience, didn't know the specifics of it.

20 Mr. Chairman, I had one other minor matter in
21 which I would ask --

22 CHAIRMAN CARTER: Now is a good time.

23 MR. MOYLE: -- your indulgence.

24 Staff -- we've had some conversations with
25 staff about the process of entering things into the

1 record, and I think at one point there was discussion
2 about staff maybe going before the parties, but in
3 any event, I -- there's one interrogatory that I
4 would ask to be able to ask just a couple of limited
5 questions about that has been provided of the
6 witness.

7 CHAIRMAN CARTER: To this witness here?

8 MR. MOYLE: Yes, sir.

9 CHAIRMAN CARTER: Which interrogatory are
10 you --

11 MR. MOYLE: I'll tell you what I want to ask.
12 It's the interrogatory number 234.

13 CHAIRMAN CARTER: Mr. Young, was that one of
14 the interrogatories listed in the grouping that you
15 gave us initially?

16 MR. YOUNG: Yes, sir.

17 MR. MOYLE: It's staff's set of
18 interrogatories, and the question is, "Please explain
19 whether FPL's collections made to assure the
20 availability of adequate decommissioning funds for
21 each nuclear unit exceed the NRC minimum
22 requirements; if so, please indicate by how much the
23 fund for each unit currently exceeds the NRC minimum
24 amount."

25 And then the answer shows, in effect,

1 overcollection to the tune of about \$600 million, and
2 I want to inquire as to whether that overcollection
3 is such that it could be refunded back to ratepayers.

4 MR. ROSS: Mr. Chairman, could I be heard on
5 Mr. Moyle's request?

6 CHAIRMAN CARTER: Yes, sir, you're
7 recognized.

8 MR. ROSS: I object to Mr. Moyle being able
9 to ask any questions about this document. This
10 document has been available to the parties. It was
11 identified in the staff's exhibit list. Mr. Moyle
12 could have cross-examined Mr. Stall about it, and he
13 has finished his cross-examination so he's not
14 entitled to ask any questions about it. If we open
15 it up to him we're going to have to open it up to the
16 rest of the parties as well.

17 CHAIRMAN CARTER: That's not going to happen.
18 Ms. Helton?

19 Do you want to take a moment?

20 I want you guys to notice how I've been
21 trying to use this word all day, but it would be
22 inappropriate if I was going to talk about the
23 fluidity of our court reporter change. You guys
24 didn't even notice that, did you? See how seamless
25 that was?

1 Let's take a moment and let Ms. Helton confer
2 with staff on this. We're going to go off the
3 record, but we're not leaving, we're just off the
4 record.

5 (Brief pause.)

6 CHAIRMAN CARTER: We're back on the record.

7 Ms. Helton, you're recognized.

8 MS. HELTON: First, if we could just step
9 back a minute and think about staff's role in this
10 proceeding.

11 Staff, in my mind, and I think that the case
12 law supports, is not an adversarial party in a rate
13 case proceeding. We're sitting here as a -- and
14 you're performing a quasi-judicial role, but you're
15 also performing a quasi-legislative role, because
16 it's my understanding that ratemaking is a
17 legislative process.

18 And part of staff's role is to make sure that
19 the record is complete. We have historically
20 attempted to do that by asking quite a bit of
21 discovery questions prior to a case, and then staff
22 goes through that discovery and looks at it and tries
23 to think about what should be in the record for it to
24 be complete. And we have always attempted to get the
25 parties to stipulate to that to make the process

1 shorter so that we don't have to go through
2 everything in front of you.

3 The parties have objected to that kind of
4 mass stipulation into the record, which is their
5 right to do so, so we have tried to work out
6 processes, it's my understanding, with the parties to
7 make things go as smoothly as possible, but give
8 everybody their due process rights.

9 So it's my understanding that Mr. Young this
10 morning discussed with all the parties stipulating
11 the discovery exhibits into the record that he listed
12 a little while ago, and the parties have had those
13 documents in hand since this morning, and that all of
14 the parties agreed to do so. So Mr. Moyle had that
15 document in hand and knew that staff was going to
16 enter it into the record when Mr. Moyle conducted his
17 cross-examination, so I do not think that it's
18 appropriate for Mr. Moyle to go back now and conduct
19 any cross-examination for an exhibit that he
20 believed -- or that he knew staff was going to be
21 entering into the record pursuant to its stipulation
22 with all the parties.

23 CHAIRMAN CARTER: Overruled, Mr. Moyle.
24 Let's proceed.

25 MR. MOYLE: The question I want to ask is --

1 CHAIRMAN CARTER: It's overruled.

2 MR. MOYLE: Right, so I can ask the question.
3 The objection was made, so you have overruled and I
4 can ask the witness a question. Mr. Stall --

5 CHAIRMAN CARTER: I'm sorry, hang on a
6 second. I must have had a brain cramp. The
7 objection was sustained. I was listening to Ms.
8 Helton, I'm sorry, I had one of those brain cramps.
9 What I meant was, that's consistent with your
10 recommendation, so the objection was sustained. I'm
11 sorry, Mr. Moyle, that was my mistake.

12 MR. MOYLE: With your indulgence and
13 permission, I think part of the problem, and we're
14 going to, I guess, get into this, is that I have a
15 different understanding of the role of the parties
16 here. I mean, my understanding of it is that there
17 is a petitioner who has filed a rate case and says, I
18 want over a billion dollars from the ratepayers, and
19 it's their obligation to put on evidence and proof as
20 to why they are entitled to it, and it's our right to
21 cross-examine that and raise issues about it.

22 I don't understand, in an adjudicatory
23 process, you know, the judge or Division of
24 Administrative Hearings hearing officer, that the
25 judicial assistant is putting records and evidence

1 into the record. So that's kind of a fundamental
2 point I think where we were having a disagreement.
3 And I apologize that it has taken some time to kind
4 of work through it, but that's one point.

5 What -- the other point, I just want to make
6 a proffer with respect to the questions that I would
7 have asked, had I been permitted, in exercise of your
8 discretion, relates to the interrogatory, staff's
9 twelfth set of interrogatories, interrogatory number
10 234. Y'all are charged with deciding the facts and
11 making judgments on the facts, and the question
12 relates to --

13 CHAIRMAN CARTER: Let me respond to your
14 first statement about -- staff is not the equivalent
15 of a law clerk. We are a separate entity set up by
16 statute, a creature of the Legislature. We have
17 quasi-judicial functions we have that are delegated
18 to us in the ratemaking process and legislative
19 functions, and staff is an impartial, professional
20 group of people to provide assistance to the
21 Commission, as well as sometimes administrative in
22 the process of gathering the data and all like that.
23 So I think that your characterization is way off base
24 on that point, but to your issue --

25 MR. MOYLE: Yes, sir.

1 CHAIRMAN CARTER: -- whenever someone attacks
2 the process, I take umbrage with that.

3 MR. MOYLE: Please understand, it's not an
4 attack in any kind of personal, *ad hominem* --

5 CHAIRMAN CARTER: No, it's not personal, but
6 it's a process. The Legislature set the PSC up, we
7 started in -- you don't want to hear the lecture back
8 to 1881, do you? Anyway, just know -- you've been
9 practicing law long enough to know that there's
10 different functions for a court of law versus a DOAH
11 hearing, things of that nature.

12 You said you wanted to proffer some
13 information. Is that what you want to do?

14 MR. MOYLE: Yes, sir.

15 CHAIRMAN CARTER: Okay, we can do that.

16 MR. MOYLE: The proffer would be with respect
17 to the interrogatory 234 and the --

18 CHAIRMAN CARTER: Let me do this -- Ms.
19 Helton, you're recognized.

20 MS. HELTON: Mr. Chairman, before Mr. Moyle
21 makes his proffer, if I could do one more thing to
22 clear up the record with respect to staff's role?
23 And then I'll be quiet on the subject.

24 CHAIRMAN CARTER: You are recognized.

25 MS. HELTON: The Supreme Court has addressed

1 staff's role in a ratemaking proceeding in the *South*
2 *Florida Natural Gas Company vs. Florida Public*
3 *Service Commission*, 534 So. 2nd 695. In that case,
4 the utility was questioning staff's role in that
5 proceeding, and the Court said -- if you'll give me
6 the indulgence to read this into the record?

7 CHAIRMAN CARTER: You're recognized.

8 MS. HELTON: "We find that the Commission is
9 clearly authorized to utilize its staff to test the
10 validity, credibility and competence of the evidence
11 presented in support of an increase. Without its
12 staff, it would be impossible for the Commission to,"
13 quote, "investigate and determine the actual
14 legitimate cost of the property of each utility
15 company actually used in the public service," end
16 quote.

17 CHAIRMAN CARTER: That was the point I was
18 making, Mr. Moyle.

19 Ms. Bradley, yes, ma'am?

20 MS. BRADLEY: I don't mean to attack the
21 process or anything, but I think it was just
22 troubling, the words that were used about completing
23 the record, in line of Florida Power & Light's burden
24 of proof in this case, and --

25 CHAIRMAN CARTER: I think they have the

1 burden and I don't think anybody up here would
2 venture a guess that they don't have. It's a rate
3 case, they have the burden of proof and I think that
4 that's clear and I don't think the Supreme Court's
5 case says anything otherwise.

6 MS. BRADLEY: It was just kind of troubling,
7 I guess it was just a bad choice of words, but the
8 concept of staff completing something that Florida
9 Power & Light has failed to put into the record is --
10 kind of sounds troubling. It may be picky, but it's
11 troubling.

12 CHAIRMAN CARTER: It was a bad choice of
13 words, and I will accept the fault for that as my
14 own. That would be my fault as a bad choice of
15 words.

16 MS. BRADLEY: I'm not trying to place blame.

17 CHAIRMAN CARTER: No, I'll do that as
18 chairman, that will be my responsibility, and I'll
19 take the blame.

20 MR. MOYLE: If I could finish my proffer?

21 CHAIRMAN CARTER: Before you do that, did you
22 want to proffer or are you yielding to Mr. Moyle on
23 this matter here?

24 MS. BRADLEY: Certainly.

25 CHAIRMAN CARTER: Okay. Mr. Moyle, you're

1 recognized.

2 MR. MOYLE: In interrogatory 234, so the
3 record is clear, "Please explain whether FPL's
4 collections made to assure the availability of
5 adequate decommissioning funds for each nuclear unit
6 exceed the NRC minimum requirements; if so, please
7 indicate by how much the fund for each unit currently
8 exceeds the NRC minimum amount."

9 The answer: "FPL's decommissioning funds
10 exceed the NRC minimum balance. Summarized below are
11 the decommissioning trust fund balances and
12 corresponding NRC minimum amounts as of December 31,
13 2008, for the St. Lucie and Turkey Point nuclear
14 units." The overfunded numbers for St. Lucie Unit 1,
15 185 million; St. Lucie Unit 2, 135 million; Turkey
16 Point Unit 3, 115 million; Turkey Point 4, 174. My
17 total is approximately 600 million.

18 If permitted, the questions would have been,
19 is there an overrecovery of nuclear decommissioning
20 cost currently going on, is it projected to go on in
21 the future, would any of this money have been
22 appropriate to apply against the moneys sought by
23 Florida Power & Light in this rate case.

24 So, thank you, Mr. Chairman, for allowing
25 me --

1 CHAIRMAN CARTER: No problem. Before you go
2 further, let's make sure that she has it on the
3 record the areas, just in case, so make sure that we
4 have the exact area that you were quoting into the
5 record. I want to make sure that the court
6 reporter --

7 MR. MOYLE: Sure. It's Florida Power & Light
8 Company, the rate case, staff's twelfth set of
9 interrogatories, interrogatory number 234, page 1 of
10 1, and I think I articulated the numbers. Did you
11 get them okay?

12 THE COURT REPORTER: Yes, sir.

13 MR. MOYLE: Thank you, Mr. Chairman.

14 CHAIRMAN CARTER: Thank you, Mr. Moyle.

15 MR. ROSS: Could I just add one item to
16 complete the record in the event that Mr. Moyle's
17 client take this up on appeal?

18 CHAIRMAN CARTER: You are recognized.

19 MR. ROSS: The response to the interrogatory
20 question --

21 CHAIRMAN CARTER: We've been throwing a lot
22 of jargon around here today, but for the court
23 reporter just say, "I'm referring to," so she can
24 have it in the record. That way when you guys get
25 ready for your appeal, you know where it is.

1 MR. ROSS: Okay. With respect to Mr. Moyle's
2 proffer, I'm referring to FPL's response to staff's
3 twelfth set of interrogatories, interrogatory number
4 234. That interrogatory response was served on the
5 parties, including Mr. Moyle, on August 12th. He has
6 had this document for two weeks, so he cannot claim
7 surprise or undue prejudice by the fact that he chose
8 not to cross-examine the witness on the document.

9 And the second point is that the
10 decommissioning issue is not identified as a
11 litigated issue in this case, it's not relevant to
12 any issue in this case. Thank you very much.

13 CHAIRMAN CARTER: Thank you.

14 Mr. Young? Things get squirrely close to
15 closing time. You're recognized.

16 CROSS EXAMINATION

17 BY MR. YOUNG:

18 Q Quickly, Mr. Stall, I want to ask you a
19 series of questions as relates to the -- still
20 keeping with the employees.

21 Could you tell me what percentage of employee
22 turnover for 2006 for the nuclear business unit was a
23 result of poaching, do you know that, by other peer
24 organizations?

25 A I do not have that information available to

1 me.

2 Q 2007, do you have that information?

3 A I do not.

4 Q What about 2008?

5 A I do not.

6 Q Based on percentage. We're looking at a
7 percentage.

8 You mentioned that -- you mentioned earlier
9 that you were informed about certain employees being
10 poached. How many times were you informed this year
11 of employees being poached?

12 A Multiple times. I can tell you, you know,
13 not just this year, but going back the last several
14 years --

15 MR. MOYLE: Object on hearsay grounds.

16 CHAIRMAN CARTER: You may proceed.

17 BY MR. YOUNG:

18 Q Can you give me a number, a guesstimate --

19 A Dozens of times.

20 MR. MOYLE: Objection on hearsay grounds.

21 CHAIRMAN CARTER: So you're --

22 MR. MOYLE: He's trying to put on the record
23 the number of poached employees, which we don't think
24 is proper, he's asking to put it in, and it's
25 hearsay, somebody told me the number was, can't form

1 the basis for a finding of fact in and of itself.
2 Just want to make sure I've made that objection.

3 CHAIRMAN CARTER: I thought you had the
4 objection, Mr. Moyle, when we dealt with Exhibit No.
5 404, late-filed, pending introduction.

6 MR. MOYLE: But he's asking now about
7 statements made to him out of court with respect to
8 the number of employees who have been poached.

9 CHAIRMAN CARTER: Here's how I was looking at
10 that, the reason that I went on, is that I was
11 looking at 404 because that line related to it as a
12 composite. Particularly he asked about -- this says
13 about the numbers from '07 to present. He asked
14 about the percentages, and it seems to me that it's
15 all related, and then particularly this would give an
16 opportunity for all of the parties to look at this
17 information prior to going forward. That's why I did
18 that.

19 If you want me to go and deal with the
20 objection back and forth now, we can do that, but I
21 was just trying to put it in the posture, since it's
22 related to 404, for ease of operation for all of the
23 parties. And as I said to you, we will preserve your
24 objection for that, as well as Ms. Bradley's
25 objection to this.

1 MR. MOYLE: I guess I didn't understand that
2 this question was tied to 404, that it was the same
3 issue.

4 CHAIRMAN CARTER: Well, no. I said I read it
5 that way because, one, he's talked about the numbers,
6 that's what 404 says, poached 2007 year-to-date FPL
7 employees. Then he asked a question about the
8 percentage of employees that were poached. Then he
9 asked about the number of times that people have
10 approached him about being poached. And I was
11 looking at it in a global sense, but if it works for
12 you that way, we can break it down, but I was just
13 looking at it from that way. If we're going to deal
14 with an exhibit dealing with poached employees, we
15 can just deal with it that way. But if you prefer --

16 MR. MOYLE: I'd prefer we just deal with it
17 later when we have the exhibit rather than this line.

18 CHAIRMAN CARTER: That's fine, we can do
19 that.

20 Ms. Bradley, are you cool with that?

21 MS. BRADLEY: Yes, sir.

22 CHAIRMAN CARTER: Okay. Absolutely.

23 THE WITNESS: I would just also say, and I
24 didn't have a chance to complete my thought, though,
25 that I think we're missing a fundamental point here

1 regarding this whole discussion on poaching.

2 We can certainly go back and dig through the
3 archives and look at how many people have been
4 poached, but the broader point here is that putting
5 these retention programs in place are all designed to
6 prevent poaching. Had we not had those programs, the
7 magnitude of successful poaching would have been much
8 larger than what the numbers are going to show.

9 So we don't want to put ourselves in a
10 position, when we know there's a critical shortage of
11 talent, of waiting for the shoe to drop that says,
12 why didn't we do something, and then they have
13 already left. We need to take action today to keep
14 them on the payroll.

15 CHAIRMAN CARTER: As I said, I will withhold
16 ruling on that when it gets to that.

17 Mr. Young, are there any other questions
18 relating to poaching so that when we get to 404 we
19 have one document that everyone can look at and they
20 can have the cross-examination? Because I think this
21 witness will be available for rebuttal, is that
22 correct?

23 MR. YOUNG: Yes, sir.

24 CHAIRMAN CARTER: And also there was another
25 witness, Slattery, is that right?

1 COMMISSIONER ARGENZIANO: Mr. Chair?

2 CHAIRMAN CARTER: Commissioner Argenziano.

3 COMMISSIONER ARGENZIANO: Yes, and if we get
4 to that point, I think the other question that I
5 asked, as it is a two-way street, is I would like to
6 know how many they poached from other companies. I'd
7 like to have all that information if we're going to
8 have it on record.

9 CHAIRMAN CARTER: That makes sense on a
10 composite for 404. And this is the reverse poaching
11 clause.

12 I think that for all the parties involved, as
13 well as for the Bench, is that we will have one
14 document dealing with that particular issue and it
15 will give us an opportunity to look it over and then
16 subject it to a cross-examination, and, as I said, I
17 will withhold any ruling on the objection, but your
18 objections will be preserved until we get this
19 document, because it may not be what it's purported
20 to be when we get it, and I think that's what Ms.
21 Bradley is concerned about. Am I right?

22 MS. BRADLEY: Yes.

23 CHAIRMAN CARTER: Mr. Young?

24 BY MR. YOUNG:

25 Q Mr. Stall, earlier you talked -- your

1 discussions with Mr. Moyle, you talked about the
2 spent fuel -- the spent fuel settlement agreement
3 with the Department of Energy. Do you remember that
4 conversation?

5 A I do.

6 Q And correct me if I'm wrong, you have settled
7 a certain part of that case with the Department of
8 Energy, correct?

9 A Yes.

10 Q And can you elaborate further on that,
11 briefly elaborate on that briefly?

12 A Well, as we discussed earlier, we were a
13 party to a lawsuit with DOE for specific performance
14 on that particular contract, which they were
15 obligated to pick up spent fuel beginning in 1998.
16 We reached a settlement the spring of this year, I
17 think it was, where we essentially recovered costs,
18 capital and O&M associated with costs, if you will,
19 that we would not have otherwise incurred had they
20 met their obligation. And we have received some cash
21 payments, which we have described in our 10-Qs
22 regarding the settlement.

23 The second piece of the settlement regards
24 future expenditures, and we have an element of this
25 agreement that allows us to recover ongoing costs

1 associated with managing the spent fuel that we have
2 been discussing until such time that they would begin
3 to pick this fuel up as per the contract, and I think
4 it's on an annual basis we would go into the DOE and
5 submit our claims and they would review those claims
6 and, hopefully, at that point in time make the
7 payment to us.

8 Q Now, turning to -- during the course of your
9 deposition, you discussed the second set of -- OPC's
10 -- FPL's response to the second set of
11 interrogatories from OPC, correct, number 134? Do
12 you remember that discussion?

13 A I do. I'm trying to find the particular
14 document in this package that you gave me. Can you
15 refer me to where that is?

16 I found it.

17 Q Okay. And while you have that document in
18 front of you, if I can turn your attention, because I
19 want to do both at the same time for efficiency,
20 starting on page 16 of your deposition and it's
21 beginning with the Q. Do you see the first Q on that
22 page, the only Q?

23 A I see that. Now, we're still on
24 interrogatory 237?

25 Q Yes.

1 A Okay.

2 Q Would you agree -- and looking at number 134,
3 would you agree that the projected savings before
4 amortization and income tax of 4.93 million for 2010
5 and 3.65 million for 2011 should be included in the
6 calculation of the company's revenue requirements?

7 A I think I'm out of sync here.

8 MR. ROSS: Mr. Young, I think you referred
9 him to page 16 of his deposition, which talks --
10 which he's asked about --

11 BY MR. YOUNG:

12 Q I'm sorry, it's page 20, beginning on page 20
13 on your deposition.

14 A Where would you like me to --

15 Q Page 20 at the bottom, the last Q, line 25.

16 A I see it.

17 Q And your interrogatory number 34. Do you see
18 that discussion?

19 A And that has to do with the NAMS, not the
20 spent fuel settlement.

21 Q Yes, we're passed the spent fuel settlement.

22 A All right.

23 Q All right, so let me repeat the question.

24 Referring to OPC's second set of
25 interrogatories, number 134, would you agree that the

1 projected savings before amortization and income tax
2 of 4.93 million for 2010 and 3.65 million for 2011
3 should be included in the calculation of the
4 company's revenue requirements?

5 A I see that. The question is, again?

6 Q Do you agree they should be included in the
7 company's --

8 A I think that when we had the deposition, I
9 think that either I misunderstood the question or it
10 was not clear to me. The savings in 2010 and 2011
11 are the 4.93 and the 3.65 million as represented in
12 the interrogatory; however, those savings are offset
13 by the depreciation, not only for those two years,
14 but for the first five years or so of the project.
15 So the net effect is that there is no direct savings
16 that accrue to the customers or the company during
17 that period of time. However, after that initial
18 five-year period, then these savings are real and
19 legitimate and will begin to manifest themselves.

20 MR. YOUNG: Mr. Chairman, if I could have one
21 minute?

22 CHAIRMAN CARTER: Yes, sir, you can have a
23 moment.

24 (Brief pause.)

25 / / / / /

1 BY MR. YOUNG:

2 Q If you can look on page 20, the -- line 20 on
3 page 20?

4 A Okay.

5 Q Do you see the question, "All right, we're
6 back. I just have some clarifying questions, Mr.
7 Stall. On your clarified response to questions we
8 asked about the projected savings before amortization
9 and taxes," do you remember that discussion?

10 A I do.

11 Q Okay. And what was your response to that?
12 And for ease of reference, we can just look at the
13 continuous -- if you want to take a second to look at
14 page 21.

15 A Okay, let me read that. (Examining
16 document.)

17 I think my answer is the same as I just gave
18 a moment ago. I think that the savings that we have
19 identified in 2010 and 2011, respectively the 4.93
20 million and the 3.65 million, are legitimate.
21 However, those savings are, again, offset by the
22 depreciation that we're going to have on this package
23 as it's being depreciated over a five-year period of
24 time, so for the first five years, those savings do
25 not translate through to direct O&M reduction.

1 Q But looking at before amortization and before
2 income taxes, would you agree that they should be
3 included in the company's revenue requirements?

4 A I'm not in a position to speak to what should
5 be included in the revenue requirements or not. I
6 think that would be better addressed by Witness
7 Ousdahl. All I can tell you is that the savings we
8 worked hard to identify, then they are legitimate and
9 they do form a basis of a business case for this NAMS
10 project; however, those savings, again, are offset by
11 the depreciation of the software during the first
12 five years.

13 Q But you're not at liberty to speak on should
14 they be included before amortization and before
15 income tax in the company revenue requirement, is
16 that your statement, correct?

17 A My statement is I'm not qualified --

18 Q You are not qualified to speak on it, right?

19 A That's correct.

20 MR. YOUNG: Okay. With that, I have no
21 further questions.

22 CHAIRMAN CARTER: Commissioner McMurrrian?

23 COMMISSIONER McMURRIAN: Thank you, Mr.
24 Chairman.

25 I think I was listening pretty closely

1 earlier, Mr. Stall, when you were crossed by Mr.
2 Moyle, and I think I heard you say with respect to
3 the federal government's obligation to remove waste
4 starting in 1998, I think I heard you say one time
5 that the federal government had not been able to
6 perform, and I guess my question is, is that your
7 final answer?

8 THE WITNESS: I hope that it's not the final,
9 final answer, but as we sit here today, the
10 government has clearly not met their obligations to
11 pick up and dispose of this spent nuclear fuel, and
12 we, as operators of these nuclear plants in the
13 industry, are left with no choice but to take
14 alternative measures to make sure that we can
15 continue to operate these plants safely and reliably.

16 So I see no -- and my personal view is I see
17 no way that they're going to open up Yucca Mountain
18 and that it's going to be real. As you probably are
19 aware, they have given the license to the Nuclear
20 Regulatory Commission, but they're being starved of
21 the resources to even review the license, so it's
22 clearly going nowhere.

23 COMMISSIONER McMURRIAN: And I guess what I
24 was suggesting was, is it your belief that the
25 federal government is unable or has been unable to

1 perform that obligation?

2 THE WITNESS: I think that they lack the
3 political will to make it happen. I think
4 technically there is no reason that this fuel could
5 not have been sent to Yucca Mountain. I've been
6 there, I've seen it, I have studied it. I know that
7 it's a -- I believe it's a suitable location for
8 underground storage of spent nuclear fuel. It's just
9 a lack of political will, in my opinion.

10 COMMISSIONER McMURRIAN: Thank you.

11 That was all I needed, Mr. Chairman.

12 CHAIRMAN CARTER: Commissioners, anything
13 further from the bench? Redirect?

14 MR. ROSS: No redirect.

15 CHAIRMAN CARTER: Exhibits?

16 MR. ROSS: FPL moves admission of Exhibits 85
17 through 94.

18 CHAIRMAN CARTER: Are there any objections?

19 Without objection, show it done. 85 through
20 94, is that right?

21 (Exhibit Nos. 85 through 94 admitted into the
22 record.)

23 CHAIRMAN CARTER: All right. Now we have --
24 where -- oh, there you are. I was looking around.
25 No. 403.

1 MS. SPINA: No. 402, I believe, I would like
2 to move the admission of 402 on behalf of SFHHA.

3 CHAIRMAN CARTER: 402 is yours?

4 MS. SPINA: Yes.

5 A VOICE: Mr. Chairman, I have 402 as the
6 exhibit we identified for, actually, Ms. Slattery,
7 concerning the --

8 CHAIRMAN CARTER: That's right. Ms. Slattery
9 is 402.

10 MS. SPINA: Okay, well, then, I guess I'm
11 403, so move the admission of 403.

12 CHAIRMAN CARTER: Any there any objections?
13 Without objection, show it done.

14 (Exhibit No. 403 admitted into the record.)

15 CHAIRMAN CARTER: Anything further for this
16 witness?

17 We're not going to touch 404. Now, remember
18 though, guys, when we get 404, we want the poached
19 2007 year-to-date FPL employees, we want the number,
20 want the percentage, want the numbers spoken to on
21 this witness, is that correct? And Commissioner
22 Argenziano wanted to find out about the number of
23 reverse -- I call it reverse poaching, but the number
24 of employees that FPL has poached.

25 Is that right, did I capture everything?

1 MR. YOUNG: Yes, Mr. Chairman, I think you
2 did. But we have the discussion as relates to the
3 deposition transcript of Mr. Stall. Earlier --

4 CHAIRMAN CARTER: Let me -- I'm in one of
5 my -- let me finish this first.

6 Now, did I cover everything for 404? Mr.
7 Moyle and Ms. Bradley have pending objections. We're
8 not going to rule on those. We're going to look at
9 the documents first and we'll deal with it at that
10 point in time. I want to be clear on 404 first.
11 Does that meet everyone's -- are we all on the same
12 page on that? Okay.

13 MR. MOYLE: I mean, my objection has been
14 made and I guess you're taking it under advisement.

15 CHAIRMAN CARTER: Yeah, we're -- everything
16 is pending on this 404 and I want to make sure that
17 it's preserved for that and Ms. Bradley's objection
18 to it, because she and I had this discussion about
19 documents coming in late-filed and it's not what it's
20 purported to be, and so we don't want that to happen.
21 That's my language, I use that. So we will do it at
22 that point in time.

23 Mr. Young?

24 MR. YOUNG: Mr. Chairman, thank you. Mr.
25 Chairman, although staff will not be seeking to admit

1 item number 77, which is part of staff's Composite
2 Exhibit No. 35, and it's item number 77, which is the
3 deposition transcript of Art Stall from its staff
4 composite exhibit list into the record until the end
5 of the proceeding, staff would like to go ahead and
6 address any objections to the entry of this item at
7 this time and to have a ruling on the admissibility
8 of this document.

9 CHAIRMAN CARTER: Any objections?

10 Mr. McGlothlin?

11 MR. MCGLOTHLIN: Yes, I believe I and perhaps
12 others indicated to the staff that we would object to
13 this and other transcripts.

14 At the outset, of course, I am objecting
15 based on my capacity today as representing OPC, but I
16 also have the perspective of somebody who spent eight
17 and a half years as a PSC staff lawyer, doing the job
18 that staff is doing now.

19 And at the outset, I want to say that I agree
20 with everything that was said by the Chairman and Ms.
21 Helton with the respect to the capacity and role of
22 the staff and the fact that they're not aligned with
23 any party, and I understand that very well.

24 We're dealing at the moment with the
25 transcript of the deposition of Mr. Stall, and if

1 this were an exceptional, stand-alone issue, our
2 position might be different, even though Mr. Stall is
3 not standing at the moment, but this is one of
4 several transcripts of depositions --

5 CHAIRMAN CARTER: Hang on a second. We don't
6 need the witness for any of this that we're
7 discussing now, do we?

8 MR. MCGLOTHLIN: No, sir.

9 CHAIRMAN CARTER: Mr. Stall, you're on
10 recess. We'll see you later.

11 Go ahead, Mr. McGlothlin.

12 MR. MCGLOTHLIN: We see the notion of using
13 transcripts of depositions on something of a broad,
14 wholesale basis as problematic. For one thing, Mr.
15 Stall is here, he can be questioned now, and so
16 the -- it's not necessary to have the transcript as
17 an exhibit. And had staff posed the questions to him
18 that they were interested in eliciting, we probably
19 would have spent less time crossing him than talking
20 about the transcript. That's partly because his
21 testimony, relatively speaking, is not broad in
22 scope, he has a relatively narrow role in this case.

23 One problem with the idea of introducing
24 transcripts, complete transcripts of depositions, is
25 that it changes the nature of the discovery process.

1 I know that I regard the deposition as an
2 opportunity to develop discovery; I'm sure the other
3 parties do, too. And I don't approach it from the
4 standpoint of I have to be on guard against the
5 possibility that this transcript is going to become
6 supplemental direct testimony.

7 The principal use of a deposition transcript
8 is to impeach departures from what the witness said
9 under oath at an earlier point in time. There are
10 exceptions to that that are acknowledged by the rule,
11 but there is one aspect of the rule under 1.330, sub
12 (c), that sheds, I think, some light on the subject.
13 It says, "A party does not make a person the party's
14 own witness for any purpose by taking that person's
15 deposition. The introduction into evidence of a
16 deposition or any part of it for any purpose other
17 than that of contradicting or impeaching the deponent
18 makes the deponent the witness of the party
19 introducing the deposition." And then there's a
20 caveat: "But this shall not apply to the use by an
21 adverse party of a deposition under subdivision
22 (a) (2) of this rule," (a) (2) referring to that
23 portion of the rule that says you can require the
24 adverse party to identify a corporate representative.
25 So that's an exception that isn't really at work

1 here.

2 "At the trial or hearing, any party may rebut
3 any relevant evidence contained in a deposition,
4 whether introduced by that party or by any other
5 party." And so there are built into the rules some
6 limitations and some provisions for mechanics in the
7 event that a deposition is used for purposes other
8 than impeachment.

9 If the Commission were to adopt the practice
10 of using transcripts of depositions in lieu of cross-
11 examination, either because it would save time or for
12 whatever reason, a party would have to ask himself
13 questions such as, do I have the resources and can I
14 incur the cost to attend depositions that I might
15 have foregone because it's a discovery deposition?
16 During the deposition, a party would have to focus
17 less on developing facts and more on, what do I
18 object to in the course of the deposition.

19 And so I think for those reasons and for the
20 reason that, by and large, the witnesses are here to
21 be questioned, the better practice is to limit the
22 use of depositions unless exceptional circumstances
23 warrant the broadening of their use.

24 I'd like to add one more thought, and I will
25 use counsel for FPL's recent objection as an

1 illustration.

2 To Mr. Moyle, he said, you had your chance,
3 your cross is closed, and now if staff introduces
4 something, you're precluded from questioning it.
5 Well, think about the potential for prejudice in that
6 situation. As I readily agreed, staff is not aligned
7 with any party, but during cross-examination, if one
8 party adverse -- in this instance, to FPL -- sponsors
9 a cross-examination exhibit, it's very unlikely
10 that's going to be prejudicial to the others who are
11 aligned with that party. If staff, in its neutral
12 role, offers something that it believes is pertinent
13 and useful and -- but the party sitting here thinks,
14 well, the answer from the witness doesn't tell the
15 whole story and if I had an opportunity, I could make
16 that point, the ruling should not be, you've had your
17 chance, because that would say, to Mr. Moyle in this
18 example, you've got staff's composite list, you knew
19 they were interested, you should have anticipated the
20 possibility and hauled out an exhibit that you would
21 never have sponsored in the first place so that you
22 can preempt that development.

23 So I would suggest that there should be no
24 hard and fast practice to the idea that a party would
25 never have an opportunity to cross based upon

1 something that staff did, that perhaps the rule
2 should be you have to show good cause for that, you
3 have to show why a particular line of inquiry would
4 harm your interest if you were not permitted to get
5 back in.

6 Thanks for allowing me to wax on to that
7 extent.

8 CHAIRMAN CARTER: I always enjoy our legal
9 discussions, Mr. McGlothlin.

10 Yes, sir?

11 MR. WISEMAN: Thank you. I just want to add
12 one additional thought.

13 COMMISSIONER ARGENZIANO: Who's speaking?

14 MR. WISEMAN: This is Ken Wiseman for the
15 South Florida Hospital and Healthcare Association.

16 COMMISSIONER ARGENZIANO: Okay, thank you.

17 MR. WISEMAN: The entire mechanics of a
18 deposition are --

19 CHAIRMAN CARTER: Get a little closer.

20 MR. WISEMAN: The entire mechanics of a
21 deposition are performed in such a way that they
22 don't lend themselves to simply taking the deposition
23 wholesale and putting it in into the record.
24 Specifically what I'm talking about is in most
25 depositions that I have ever participated in, and

1 every deposition, to my knowledge, that has taken
2 place in this specific proceeding, objections are
3 preserved to all questions, except to -- as form --
4 except to objection as to form. So questions may be
5 asked that are improper for many different reasons
6 during a deposition with the full understanding of
7 the parties, both the party asking the questions and
8 the party -- the parties who are participating on
9 other bases, that they're not waiving their
10 objections to the questions, they're not agreeing
11 that the question is appropriate, they're not
12 agreeing that the answer to the question is
13 appropriate. All of that is preserved for a later
14 point in time so that during the hearing or trial, as
15 the case may be, the deposition -- if someone wants
16 to use a deposition to attempt to impeach a witness,
17 then at that point in time it's appropriate to raise
18 any valid objections to a question that was asked.

19 If a deposition, though -- if a deposition
20 now is permitted to come into the record wholesale
21 without -- simply take it and put it into the record,
22 then the parties will have effectively waived all of
23 the objections that they preserved in the first
24 place. They'll never have been given an opportunity
25 to point out to you, to discuss with you why those

1 objections were proper, why those questions were
2 improper, and the result being that evidence is
3 admitted into the record which nobody has had an
4 opportunity to determine in advance was appropriately
5 admitted or not. It would modify in its entirety the
6 way depositions would have to be taken, and it would
7 draw them out. They would -- instead of taking an
8 hour or two hours, they may take full days or three
9 days or however many. So I think that's an
10 additional reason why it's inappropriate to simply
11 take a deposition and put it in the record in this
12 circumstance.

13 CHAIRMAN CARTER: Okay. I'll hear from the
14 company before I go to Ms. Helton.

15 MR. MOYLE: I just would also like to join in
16 the objection on behalf of FIPUG for the reasons
17 articulated by Mr. McGlothlin and by the South
18 Florida Hospital Association, and make one other
19 point, which is, you know, ultimately there's a lot
20 of information as we have already seen that's being
21 put forward, and ultimately the decisions that need
22 to be made are your decisions, and to the extent that
23 evidence comes in through witnesses and discussion
24 back and forth, then it serves to fully inform.

25 Some of these depositions are this thick.

1 They come in, a finding is based on them and a
2 recommendation, it may be a matter that was never
3 talked about or discussed, and I think as a matter of
4 policy, it's better practice to have the facts come
5 in at the hearing with live witnesses. I'll be quiet
6 now.

7 CHAIRMAN CARTER: Ms. Bradley?

8 MS. BRADLEY: Just briefly, we would join in
9 the objection. I don't think the rules contemplate
10 the introduction of wholesale depositions under these
11 circumstances. In depositions you ask a lot of
12 questions that really don't go anywhere and they're
13 not very probative and I think this unduly burdens
14 the record when we just let in a whole-scale
15 deposition.

16 CHAIRMAN CARTER: Mr. Wright?

17 MR. WRIGHT: Thank you, Mr. Chairman. I and
18 the Florida Retail Federation would join in the
19 objections as articulated by other counsel.

20 Depositions are inherently discovery. You
21 ask the witness questions so you'll know what they
22 say when you ask them the question at the trial or
23 the hearing. The whole transcript is just not
24 appropriate. We don't use them for that purpose. We
25 want to find out the answer that the witness is going

1 to give when they appear at the hearing. We then ask
2 them questions, and if they testify inconsistently
3 with their deposition transcript, we use the
4 deposition transcript as provided for by the rules
5 and normal practice for impeachment. We join the
6 objection. Thank you.

7 CHAIRMAN CARTER: Thank you. Let's hear from
8 federal agencies.

9 MS. SPINA: The Federal Executive Agencies
10 would also like to join this objection.

11 CHAIRMAN CARTER: Thank you. We'll hear from
12 the company before I go to Ms. Helton. Mr. Butler?

13 MR. BUTLER: Thank you.

14 FPL doesn't object to the staff practice of
15 stipulating into the record deposition transcripts.
16 We recognize that it sort of elevates the taking of
17 the deposition to something a little bit more formal
18 than it might be if it were being used purely for
19 fact-finding sort of discovery purposes. But the
20 rules certainly have provisions contemplating the use
21 at a trial or a hearing such as this of depositions
22 of party witnesses, including officers of the party,
23 which certainly Mr. Stall is, and as many of our
24 other witnesses are. It also has provisions for use
25 of expert witness depositions at a hearing or a

1 trial.

2 But beyond that, I mean, the view that we
3 really are looking to is the practical one, which is
4 that there's a lot of information, a lot that gets
5 covered in these depositions. We all try to keep
6 these hearings as streamlined as possible. It seems
7 like it's a way particularly that has been used to
8 limit the necessary scope of the live hearing. If
9 people have troubles with anything that's said in the
10 deposition, it's certainly something I think is fair
11 game for them to bring up, ask, dispute what the
12 witness said during the deposition. If they raised
13 objections during the deposition, which you are
14 supposed to do if you want to preserve them,
15 certainly the party would be entitled to ask for
16 rulings on those objections at the time that the
17 transcript is being offered into the record.

18 But it's a very useful, effective efficiency
19 mechanism, and as such, I think it doesn't detract
20 from the fairness or the due process of a proceeding,
21 and we wouldn't object to them being used for that
22 purpose.

23 CHAIRMAN CARTER: Before I go to Ms. Helton,
24 Commissioner Skop?

25 COMMISSIONER SKOP: Thank you, Mr. Chairman.

1 I just wanted to go back to Mr. McGlothlin briefly to
2 make sure I fully understood the objection.

3 As I understood it, the objection to
4 admitting the deposition as a whole is because there
5 is adequate opportunity to hear direct testimony and
6 cross-examine the actual witness, and that entering
7 the deposition without stipulation by all parties
8 effectively denies the intervenors the opportunity to
9 conduct cross-examination with respect to all the
10 testimony provided at the deposition. Is that
11 correct?

12 MR. MCGLOTHLIN: That's a good summary, yes,
13 sir.

14 CHAIRMAN CARTER: Commissioner Argenziano?

15 COMMISSIONER ARGENZIANO: At this point I
16 just want to make an opinion. I think I've been
17 persuaded by what I just heard from OPC. I think
18 they deserve the opportunity, and if the individuals
19 are there to testify, that's the best thing to do, in
20 just my opinion.

21 CHAIRMAN CARTER: Thank you, Commissioner.

22 Ms. Bradley?

23 MS. BRADLEY: I just want to respond to one
24 thing Mr. Butler said. He was talking about
25 exceptions for party witnesses. The exception

1 involves introduction by an adverse party, and in
2 this case, staff is not supposed to be an adverse
3 party to these proceedings, so they would not be
4 permitted to introduce an entire deposition under
5 that rule.

6 CHAIRMAN CARTER: Okay. Mr. Wright?

7 MR. WRIGHT: Very briefly, just want to
8 respond to two things.

9 One, the request was made that we stipulate
10 to the exhibit -- to the deposition transcript coming
11 in. If we stipulated, we wouldn't have a problem.
12 We don't, it's that simple, as regards Mr. Butler's
13 use of the word *stipulation*.

14 Secondly, he refers to streamlining the
15 proceeding. What you've got, if you allow the
16 wholesale admission of deposition transcripts, is
17 you're trading off some hearing time for the addition
18 of, in the case of Mr. Stall, it's 40 pages or
19 something, it's not a real long transcript, but in
20 the case of some of these other witnesses, it's
21 hundreds of pages. So you're trading off some saving
22 of time, which we, using a deposition, would say,
23 "Mr. Stall, isn't it true that," and he says no;
24 "Well, didn't you testify," and so on. But you're
25 trading off some saving of hearing time for a vastly

1 expanded, un-streamlined paper record. Thank you.

2 CHAIRMAN CARTER: Okay. Finally, Ms. Helton,
3 let's hear from you.

4 MS. HELTON: This has all been very thought-
5 provoking. I appreciate Mr. McGlothlin's perspective
6 especially, because I know that he was a respected
7 member of the staff when he was here, he has worked
8 in private practice and he's now representing the
9 citizens of the state. So he has given me some food
10 for thought. And I appreciate Mr. Wiseman's
11 perspective, too, and I agree with him, actually.

12 There's -- in *David v. City of Jacksonville*,
13 534 So.2d 784, and I'm just reading the case note,
14 "Failure to object to questions and answers during
15 discovery deposition does not amount to waiver of
16 right to make objections thereto at trial except on
17 errors and irregularities and manner of taking
18 deposition."

19 So it's making me ponder how we can make our
20 process accommodate those types of objections. But I
21 also know that -- or believe that in Rule 1.330 of
22 the Rules of Civil Procedure, in (a)(3) it states,
23 "The deposition of a witness, whether or not a party,
24 may be used by any party for any purpose if the court
25 finds," and the last part of that is in f., "the

1 witness is an expert or skilled witness."

2 And the Third DCA, in *Robinson v. Fain*, 525
3 So.2d 903, has -- agrees with what has always been my
4 interpretation, that you can admit a deposition of an
5 expert witness into a proceeding wholesale.

6 And so what I would really like to do, Mr.
7 Chairman, if I could, could I think about this
8 overnight and give you my recommendation in the
9 morning?

10 CHAIRMAN CARTER: Let's sleep on it. Y'all
11 go home and have a good dinner. 9:30 tomorrow.

12 (Hearing adjourned at 7:00 p.m.)

13 (The transcript continues in sequence with
14 Volume 9.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

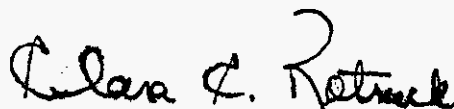
3 COUNTY OF LEON)

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

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

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

16 DATED this 31st day of August, 2009, at
17 Tallahassee, Leon County, Florida.

18
19
20 

21
22 _____
23 CLARA C. ROTRUCK
24
25

Docket No. 080677-EI (FPL Rate Case)

Exhibit No. 386 -

Witness: Olivera/Barrett

Description: Proposed Versus Approved 2010 and 2011 Capital Expenditure
Budgets

(Barrett Deposition: Late Filed Exhibit Number 4)

Offered into Evidence by: FIPUG

Capital Expenditure Reductions
 Excludes New England Division
 (\$millions)

	Notes	2010 Proposed Budget	2010 Approved Budget	2010 Increase (Decrease)
Power Generation		\$ 449	\$ 410	\$ (39)
Nuclear		679	682	3
Transmission		397	314	(83)
Distribution		669	491	(178)
Customer Service		171	181	10
Engineering & Construction and Project Development (E&C/PD)				
GBRA, pipeline and clauses	(1)	859	983	124
Other E&C/PD		55	72	17
Other	(2)	115	170	55
Total		\$ 3,394	\$ 3,303	\$ (91)

		2011 Proposed Budget	2011 Approved Budget	2011 Increase (Decrease)
Power Generation		\$ 474	\$ 428	\$ (46)
Nuclear		427	484	57
Transmission		389	339	(50)
Distribution		721	538	(183)
Customer Service		216	170	(46)
Engineering & Construction and Project Development (E&C/PD)				
GBRA, pipeline and clauses	(1)	771	1,007	236
Other E&C/PD		52	48	(4)
Other	(2)	119	243	124
Total		\$ 3,169	\$ 3,257	\$ 88

Notes:

(1) Includes solar projects recoverable through the environmental clause, new nuclear expenditures through the nuclear rule, and the EnergySecure pipeline, which will be CWIP earning AFUDC.

None of these projects impacts ratebase during the test years 2010 and 2011.

(2) Primarily Information Management projects, AFUDC and capitalized overheads.

Q.

Please explain whether FPL's collections made to assure the availability of adequate decommissioning funds for each nuclear unit exceed the NRC minimum requirements. If so, please indicate by how much the fund for each unit currently exceeds the NRC minimum amount.

A.

FPL's decommissioning funds exceed the NRC minimum amount. Summarized below are the decommissioning trust fund balances and corresponding NRC minimum amounts as of December 31, 2008 for the St. Lucie and Turkey Point nuclear units:

	St. Lucie Unit 1 (\$000)	St. Lucie Unit 2 (FPL) (\$000)	Turkey Point Unit 3 (\$000)	Turkey Point Unit 4 (\$000)
Total Decommissioning Funds	561,887	456,316	479,204	538,000
NRC Minimum - Required at shut down	376,730	320,000	366,363	363,303
Over/(Under)	185,157	135,323	115,901	174,697

?

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1
185
135
115
174

599

600 M