

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

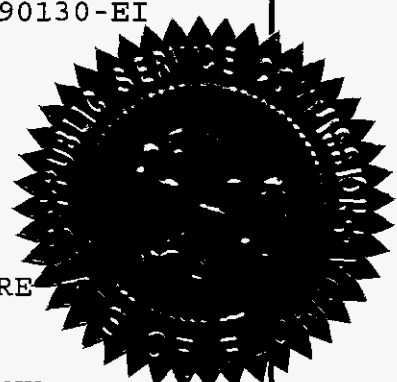
In the Matter of:

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 16
Pages 1997 through 2043

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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: Monday, August 31, 2009

TIME: Commenced at 11:23 a.m.
Concluded at 12:31 p.m.

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

REPORTED BY: RAY D. CONVERY
Court Reporter
(850) 222-5491

ORIGINAL

PARTICIPATING: (As heretofore noted.)

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

I N D E X

WITNESS

NAME:

PAGE NO.

JACOB POUS

Cross Examination by Mr. Butler

2002

Cross Examination by Ms. Hartman

2035

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EXHIBITS

NUMBER:		ID.	ADMTD.
424	Analysis of H.R. 2454	2001	
425	FPUA Annual Report	2020	

P R O C E E D I N G S

1
2 (Transcript follows in sequence from Volume
3 15.)

4 CHAIRMAN CARTER: Similar to my earlier
5 ruling.

6 MR. MOYLE: And I'm predicting Congress is a
7 hazardous business as we --

8 CHAIRMAN CARTER: The person that can do that,
9 they wouldn't be working here, I'm sure.

10 While they're getting the exhibits together,
11 Commissioners and to the parties, for planning purposes
12 -- and I'll only go as far as lunch.

13 Today I'm planning -- my plans are to take a
14 lunch break at 12:30 and we'll come back at 1:45, and
15 the rest of the day, I'll give you that when I come back
16 after lunch, so for right now just kind of -- and my
17 word *fluidity* is still in place.

18 As you notice, we're changing our court
19 reporters without even -- well, a minimum of noise, but
20 anyway, we're going to make sure that we can try to do
21 that in the least disruptive manner, but for planning
22 purposes for the parties and for the Commissioners, our
23 lunch plans today will be from 12:30 to 1:45.

24 Mr. Butler, you said you don't need a number
25 for this, right? This is just for cross-examination,

1 that's what you told me, right?

2 MR. BUTLER: Well, honestly, Mr. Chairman, I'm
3 a little bit confused, because it seems like you have
4 identified a fair number of earlier exhibits that were
5 used specifically for the purpose of cross-examination.
6 My preference would be that we mark this as 424 and that
7 it be -- I will use it for cross-examination purposes.

8 CHAIRMAN CARTER: Well, hang on second.
9 Before we go further with that, we'll just have a
10 slugfest like we did before. We'll just look at the
11 document and have the objections raised. I think
12 Mr. Moyle early on had that, and before we got to the
13 witness we dealt with whether or not -- do you remember
14 that, Mr. Moyle? It seems like forever ago.

15 MR. MOYLE: Yeah, I guess I -- you know, if he
16 wants to ask him some questions about it, I guess I was
17 just pointing out that the questions are premised upon
18 an act of Congress that has not yet been enacted. It
19 seems like it calls for, you know, speculation, but I
20 can wait until he asks the question.

21 (Exhibit No. 424 marked for identification.)

22 MR. MCGLOTHLIN: Mr. Chairman, I have a
23 slightly different request.

24 CHAIRMAN CARTER: Okay. Mr. McGlothlin?

25 MR. MCGLOTHLIN: This is a lengthy document.

1 Could we have -- can we give the witness a couple of
2 minutes in place to become familiar with it before he
3 has to answer questions about it?

4 CHAIRMAN CARTER: Okay, boys and girls. It is
5 fairly lengthy, and Mr. McGlothlin is correct. Let's do
6 this: Let's take ten, everybody, and come back at 35
7 after.

8 (Brief recess.)

9 CHAIRMAN CARTER: We're back on the record.
10 Mr. McGlothlin, have you had a chance to
11 review that?

12 MR. MCGLOTHLIN: Thank you for that break.
13 Yes.

14 CHAIRMAN CARTER: Okay. Mr. Butler, you're
15 recognized.

16 MR. BUTLER: Thank you, Mr. Chairman.

17 CROSS EXAMINATION

18 BY MR. BUTLER:

19 Q And to the witness, have you had a chance to
20 at least glance through the exhibit that's been marked
21 as 424?

22 A I've looked at a few pages. This is obviously
23 quite a bit of material in a very short period of time,
24 and no, I have not looked at the bulk of it.

25 Q Okay. Did you happen to look at page 28?

1 A I was directed that that might be one area I
2 might want to look at.

3 Q That's right. And just for the record, I'm
4 asking you to identify from the first page that this is
5 an analysis prepared in June of this year of HR 2454 by
6 the U.S. Environmental Protection Agency Office of
7 Atmospheric Programs, and if you would turn, Mr. Pous,
8 to page 28, and would you agree that this is EPA's
9 analysis, what they project using modeling of the impact
10 on retirements of existing capacity that could result
11 from enactment of HR 2454?

12 A It may be one of the scenarios. If you look
13 further up in the document, there's pages referencing
14 the uncertainties and the limited amount of analyses
15 that have been performed; therefore, this may be one of
16 many, many scenarios that were run and, you know, really
17 doesn't tell us a whole lot.

18 Q I understand the considerable uncertainty that
19 exists about the future of carbon regulation and its
20 impacts. Would you agree that at least the analysis
21 that EPA chose to present to you on page 28 shows an
22 increase from about five gigawatts of coal capacity that
23 would be retired out through 2025, without HR 2454 being
24 enacted, versus about 27 gigawatts if that bill were
25 enacted?

1 A I see the 27. I see some kind of coloration
2 on the graph. I assume that's coal retirements. I
3 don't know what an ITM209ARRA reference case is. I
4 haven't read that part, so I can't identify where the
5 five came from.

6 Q Okay. So you're not familiar with the way
7 this is laid out enough to see it as a reference case
8 against which the enactment of HR 2454 is being
9 compared?

10 A It says reference case and it has HR 2454.
11 That's plain on its face. Going from there, I can't
12 tell you much more of what the differential is.

13 Q Making the same comparison, would you agree
14 that this is depicting EPA's projection of a change in
15 the level of expected retirements over that period,
16 through 2025, for oil and gas units from about 15
17 gigawatts, without 2454, to about 65 gigawatts of
18 capacity with the enactment of HR 2454?

19 A I see some lines and some different
20 colorations in the bars, so I can't tell you for sure if
21 there's something additional here. Since this is a
22 black-and-white copy, it's hard to distinguish what's
23 being presented, but under the same caveat that, if you
24 assume the reference case was before and the other case
25 was after, and there aren't any other documents that

1 indicate otherwise within this stack of 30-some-odd
2 pages, that's what it might look like, but you're asking
3 me to speculate on that.

4 MR. MOYLE: Mr. Chairman, just for the record,
5 FIPUG would like to maintain an objection as to this
6 line of questioning as it relates to a speculative event
7 that's not yet happened and should in no way serve as
8 the basis for any kind of a finding, so rather than keep
9 objecting, we would just note that we have this
10 objection to this whole line of questions.

11 CHAIRMAN CARTER: Duly noted.

12 You may proceed.

13 MR. BUTLER: Thank you.

14 BY MR. BUTLER:

15 Q Mr. Pous, I'm not going to ask you further
16 questions about that document other than, would you
17 agree that there is a considerable amount of uncertainty
18 at this point as to, first of all, the nature of and
19 specifics of carbon regulation that may occur in the
20 future?

21 A You could say that almost to anything going
22 into the future, but yes, on carbon regulation there are
23 a lot of uncertainties.

24 Q Would you also agree that there is a
25 substantial amount of uncertainty as to what the impact

1 of such legislation would be on the economics of
2 continued operation for older coal units?

3 A Well, again, we don't know what the final
4 outcome is, and also we don't know if it will even stand
5 even if it's passed.

6 For example, in 1978 Congress passed the
7 Fields Use Act that was to remove all gas-fired
8 generation by the end of the 1980s, and that was an
9 actual --

10 MR. BUTLER: Mr. Chairman, I'm going object to
11 this as unresponsive. I asked him if there was
12 uncertainty, and the answer, I think, is just yes.

13 CHAIRMAN CARTER: Mr. Pous, you can answer the
14 question but you will be allowed to explain your answer.

15 THE WITNESS: Okay. There is a lot of
16 uncertainty.

17 BY MR. BUTLER:

18 Q And similarly, quite a bit of uncertainty
19 about what the impact of any future carbon regulation
20 would be on the economic, continued economic viability
21 of oil-fired, gas-fired and conventional steam units?

22 A Of any type of generation.

23 Q Okay, fair enough.

24 I'd like to ask you a few questions about the
25 subject of theoretical reserve surplus and the

1 disposition of it.

2 I'd like you to assume for the purpose of a
3 hypothetical that your proposal to accelerate
4 amortization of \$311 million per year of theoretical
5 reserve surplus is approved and that that continues for
6 four years. And that's pretty much your proposal,
7 correct?

8 A Yes.

9 Q And then I'd ask you to further assume that
10 there is a rate case to set new rates that would go into
11 effect at the beginning of the fifth year, right after
12 the end of that four-year amortization?

13 A Yes.

14 Q With those assumptions, would you agree that,
15 compared to not accelerating the amortization at the
16 time of this rate case in the fifth year, FPL's rate
17 base will be 1.25 billion larger than it otherwise would
18 be?

19 A All else equal, yes.

20 Q And FPL would need additional revenues in that
21 rate case to cover a return on the extra 1.25 billion in
22 rate base, correct?

23 A All else equal, yes, in your hypothetical.

24 Q And FPL's depreciation expense would be higher
25 to recover the additional 1.25 billion of rate base over

1 the then-remaining lives of the affected assets,
2 correct?

3 A Not necessarily on a per-unit basis.

4 Q But somehow overall they would have to be --

5 A Overall, in total dollars, yes, but on a per-
6 unit basis, it could be lower, depending on the growth
7 and other changes.

8 Q And also at that point in this rate case in
9 the fifth year you would no longer have the offset to
10 limiting requirements of the \$311 million credit
11 because, per your proposal, it would expire at that
12 point, correct?

13 A Part of my proposal is for the Commission to
14 look further into the excess reserve that I did not
15 adjust in this case, and so in the rate case five years
16 down the line there may even be a need for a larger
17 annual amortization than the 311 million I'm proposing
18 in this case.

19 Q That's basically -- the answer you just gave
20 depends on what the results would be of the subsequent
21 depreciation study, correct?

22 A And plant additions, plant retirements, a
23 number of factors.

24 Q Is it your understanding that FPL's previous
25 depreciation studies were reviewed and approved by this

1 Commission?

2 A My understanding, there's been stipulations as
3 to rate treatment in the last two cases, so for at least
4 eight years it appears there has been no specific full
5 investigation of rate matters for depreciation purposes.

6 Q So it's your understanding that staff did not
7 review the depreciation studies that were presented in
8 connection with those cases?

9 A I didn't say that. When you have a
10 settlement, many things that may have been challenged in
11 a rate proceeding are not challenged as part of the
12 overall settlement, and since their last two cases did
13 result in settlements, you can't take the adopted rates
14 as being the best proxy of what should have been adopted
15 had there been a fully litigated proceeding.

16 Q Do you believe that this Commission acted
17 improperly in approving those studies?

18 MR. MCGLOTHLIN: Object to the form. He
19 mischaracterized the last statement.

20 CHAIRMAN CARTER: Mr. Butler, rephrase.

21 BY MR. BUTLER:

22 Q I wasn't mischaracterizing or characterizing
23 anything. This is a stand-alone question: Do you
24 believe that the Commission acted improperly in
25 approving any of FPL's prior depreciation studies?

1 A I'm not sure they adopted specific
2 depreciation study results. They adopted settlements, a
3 part of which was the adoption of some form of
4 depreciation, because obviously the companies continued
5 that.

6 The Commission, whatever decision it made in
7 the overall -- accepting the overall settlement, took
8 into account, I assume, all aspects of it, but normally
9 when settlements are presented to Commissions and all
10 the parties are in agreement, I've not seen too many
11 Commissions, you know, deny the settlement adoption,
12 even though they might have tinkered with individual
13 components within the settlement had there been a fully
14 litigated case.

15 Q Thank you for that, but I don't believe that
16 was responsive to my question.

17 Is there anything that you see that you feel
18 represents the Commission acting improperly in approving
19 FPL's prior depreciation studies?

20 A Again, the concept -- I don't know what
21 specifically they've adopted as far as depreciation
22 studies. They adopted overall settlements, and in doing
23 so, they adopted O&M expense, rate base and so forth as
24 a settlement without a litigated aspect.

25 So is anything in improper? No. If they

1 adopt it and the parties agree to a settlement, I don't
2 see anything improper with that. In fact, settlements
3 are normally encouraged before most regulatory bodies.

4 Q I'd like to turn to the subject of
5 dismantlement, Mr. Pous.

6 A Yes.

7 Q Do you have a copy of Ms. Ousdahl's rebuttal
8 testimony accessible to you?

9 A I believe so. I at least have the first 20
10 pages.

11 Q That will do.

12 A No, I take that back. I've got page 1, 2, and
13 then I jump to 12.

14 MR. BUTLER: Oh, we're getting close. Do you
15 have 14?

16 CHAIRMAN CARTER: Let's take a minute and make
17 sure he has the document so that we're on the same page.

18 THE WITNESS: I do have page 14.

19 CHAIRMAN CARTER: Hang on, Mr. Butler.

20 MR. BUTLER: I'm happy to get him a full copy,
21 but my question is specifically about page 14, so if he
22 is comfortable answering about page 14, I think we can
23 proceed.

24 CHAIRMAN CARTER: Mr. Pous, do you have page
25 14?

1 THE WITNESS: Yes, I do.

2 CHAIRMAN CARTER: Okay. You may proceed.

3 MR. BUTLER: Thank you.

4 BY MR. BUTLER:

5 Q On page 14, Ms. Ousdahl describes the
6 dismantlement of FPL's Fort Lauderdale Fossil Units 4
7 and 5 in the question and answer that starts on line 3.
8 Do you see that?

9 A Yes.

10 Q And Ms. Ousdahl's testimony is that the
11 estimate for the dismantling of those two fossil units
12 was \$8.9 million and the actual cost to dismantle them
13 was -- in order to repower the units was 9.8 million.
14 Do you see that?

15 A Yes.

16 Q Do you have any basis to dispute the accuracy
17 of either Ms. Ousdahl's estimate or actual cost figures
18 for the dismantlement?

19 A I've not seen either one, so I know nothing
20 about the numbers other than what's presented on the
21 page.

22 Q Did the Office of Public Counsel ask for any
23 information to confirm those figures in discovery, if
24 you know?

25 A I didn't think discovery existed for rebuttal.

1 In fact, my understanding is discovery expired in the
2 direct case because so many questions had been asked.

3 Q I think you are incorrect in that, but do you
4 know whether Ms. Ousdahl's deposition was taken?

5 A No, I don't.

6 Q Okay. You haven't -- let me ask you this:
7 Have you done anything subsequent to receiving and
8 reviewing Ms. Ousdahl's testimony to confirm the figures
9 that she cites for the estimates and actuals of the Ft.
10 Lauderdale plant dismantlement?

11 A I've made no effort, as my recommendation in
12 this case was not to make any adjustment at this point
13 in time on this particular issue, so there was no reason
14 to expend effort and time that was very precious on an
15 issue that had no dollar impact in this proceeding, at
16 least from my standpoint.

17 Q Would your answer essentially be the same for
18 the discussion of the estimated costs and the actual
19 costs for dismantlement of the Ft. Myers steam units
20 that is described on lines 13 through 21 of page 14 in
21 Ms. Ousdahl's testimony?

22 A Yes.

23 Q Do you have any other information on
24 comparisons of estimates and actual costs of
25 dismantlement for FPL?

1 A I have seen FPL dismantlement studies in the
2 past. I did not go back and review them for this
3 proceeding, given my recommendation in this proceeding.

4 There was a Palatka unit that was retired, I
5 believe, in the past, and my recollection was some of
6 that portion of that plant had been sold as something
7 above scrap value, so it does demonstrate that there
8 were other alternatives to the dismantlement of plants
9 than what the company has proposed in its dismantlement
10 study.

11 If we were to go forward in the future and the
12 company present more options and a more thorough
13 presentation of its dismantlement options, then I would
14 have gone back, and I will go back if I'm retained in
15 the future, to review that when it becomes a dollar
16 issue in a rate proceeding.

17 Q Do you also have page 13 of Ms. Ousdahl's
18 testimony? I think you said you had starting at 12, so
19 hopefully --

20 A Yes, I do have 13.

21 Q Ms. Ousdahl has testimony starting -- well,
22 the question starts on line 8 and the answer starts on
23 line 15, about explosive demolition of stacks at
24 Riviera, Cape Canaveral, Turkey Point plants. Do you
25 see those references?

1 A Yes.

2 Q Okay. Do you have any reason to dispute her
3 testimony concerning the use of explosive demolition for
4 those facilities?

5 A On the chimneys, no, but the concept of
6 explosive demolition was to expand beyond the chimneys.
7 The major cost differential in my testimony, as I
8 pointed out for Nevada Power Company, was that the
9 company did a reverse construction approach for the
10 remainder of the plant, when the contractor came in with
11 demolition not on the chimney but on the support
12 structure for the boilers and so forth with controlled
13 toppling. So these examples of why chimney explosions
14 are reasonable has nothing to do with the cost
15 differential associated with reverse dismantlement that
16 is going on in the industry right now.

17 Q Would you agree that there may be conditions
18 or circumstances in which explosive demolition would be
19 inappropriate or unsafe for a particular site?

20 A Any time you use explosives there has to be
21 additional care taken, but in addition, when you do the
22 reverse construction, one of the reasons why they say
23 the cost is so high is because of the additional safety
24 that has to be taken. When you cut a beam 30 feet, 40
25 feet, 300 feet in the air and have to lower it, you have

1 to make sure that there's safety, that in the event the
2 beam falls, nobody's down below that gets hit or
3 injured. So reverse construction has safety concerns
4 just as any explosive action would have safety concerns.

5 Q Pardon me just one moment.

6 Mr. Pous, you referred in your testimony, I
7 believe, to the dismantlement of the H.D. King
8 Generating Plant at -- that's owned by Ft. Pierce
9 Utilities Authority, correct?

10 A Yes.

11 Q I'll give you a moment to find it. It's on
12 page 92 of your testimony.

13 A Yes.

14 Q Okay. And your testimony there is that the
15 demolition contractor paid the Ft. Pierce Utilities
16 Authority approximately a million dollars for the right
17 to demolish the plant and sell the resulting scrap. Do
18 you see that?

19 A Yes.

20 Q And am I correct the point of that testimony
21 was suggesting that the utility actually received money;
22 instead of having to pay money for the demolition, it
23 got paid a million dollars by this demolition contractor
24 for the right to demolish the plant and sell the scrap?

25 A Yes. The concept is to demonstrate that there

1 are alternatives to look at, that, depending on the
2 conditions of the scrap market and other aspects of the
3 demolition, you can't just assume that a reverse type
4 construction for demolition of a power plant is going to
5 be very costly in and of itself. You have to look at
6 the various options, the timing and so forth.

7 And in this case Ft. Pierce has indicated --
8 directly stated to me that the contractor came in, paid
9 them money, they tore down the plant, they sold some of
10 the plant as scrap, sold some of the plant as operating
11 systems, and the demolition contractor, according to Ft.
12 Pierce, was very happy in the process in paying a
13 million dollars to the Ft. Pierce Authority for the
14 right to do that.

15 Q Do you have page 17 of Ms. Ousdahl's
16 testimony, rebuttal testimony available to you?

17 A Yes.

18 Q Starting at line 5, Ms. Ousdahl cites a
19 June 26, 2009, news article in which it turns out that
20 the Ft. Pierce Utilities Authority ended up spending
21 \$11 million to dismantle the old H.D. King power plant.
22 Do you see that?

23 A Yes.

24 Q Have you followed up to review this news
25 article or otherwise confirm the -- the fact that, as

1 stated here, the Ft. Pierce Utilities Authority ended up
2 spending 11 million instead of receiving one million for
3 the demolition of this plant?

4 MR. MOYLE: I'm going to object to that
5 question, in that it assumes facts not in evidence.
6 Mr. Butler is trying to get the witness to admit that
7 Ft. Pierce cost \$10 million on this plant and he's doing
8 it through like triple hearsay. Ms. Ousdahl's testimony
9 relied on a newspaper story.

10 MR. BUTLER: I simply asked Mr. Pous whether
11 he had reviewed this article, if he, you know, followed
12 up on it. It's clearly a drastically different position
13 on the same point as what he referred to in his
14 testimony, and I'm interested to see whether he followed
15 up, having had the rebuttal testimony for some time now,
16 to confirm the accuracy of the statement.

17 CHAIRMAN CARTER: Ms. Helton?

18 MR. MOYLE: And I guess my problem was, when
19 he says to confirm the accuracy of the statement, it's
20 sort of testifying that the statement is accurate.

21 MR. BUTLER: How about confirming whether the
22 statement is accurate, could you go with that, Jon?

23 MR. MOYLE: Yeah, I guess, so long as you're
24 not offering this to try to have a finding of fact that
25 it cost 10 million bucks. Okay.

1 MS. HELTON: Mr. Chairman, it sounds like Mr.
2 Moyle and Mr. Butler have worked it out amongst
3 themselves and that Mr. Butler can rephrase the
4 question.

5 CHAIRMAN CARTER: Rephrase, Mr. Butler.

6 MR. BUTLER: Thank you, Mr. Chairman.

7 BY MR. BUTLER:

8 Q Mr. Pous, have you undertaken any steps,
9 subsequent to receiving the rebuttal testimony of Ms.
10 Ousdahl, to confirm whether the statement appearing on
11 line 5 through line 10 of her testimony about the
12 ultimate cost to dismantle the H.D. King power plant is
13 correct?

14 A I tried to find the article as -- given the
15 website that was noted. I could not find the article.
16 I went back to my notes, and I relied -- I called the
17 project engineer in Ft. Pierce twice. I confirmed with
18 him that they did give one million dollars, a little
19 less than one million dollars, for allowing the
20 demolition contractor to go and demolish the plant.

21 I can't testify to the veracity of any
22 newspaper article, but I can tell you that I have been
23 at meetings, made a presentation at meetings and then
24 read the newspaper article the next morning, and I
25 apparently wasn't at the meeting, because the newspaper

1 article was so inaccurate that I must not have been
2 there because the facts weren't anything as I presented
3 them.

4 So if you want to rely on a newspaper article
5 as a factual basis rather than calling the project
6 engineer for the actual project, I guess you have that
7 option, but from a credibility standpoint, I think I
8 would stand with the project engineer's statements.

9 MR. BUTLER: Okay. Mr. Chairman, I'd like to
10 distribute an exhibit that is an excerpt from the Ft.
11 Pierce Utilities Authority 2008 Annual Report.

12 CHAIRMAN CARTER: Okay. Do you need a number?

13 MR. BUTLER: Please.

14 CHAIRMAN CARTER: No. 425, Commissioners, 425.
15 Short title?

16 MR. BUTLER: FPUA 2008 Annual Report.

17 (Exhibit No. 425 marked for identification.)

18 BY MR. BUTLER:

19 Q Mr. Pous --

20 A Yes.

21 Q -- if you'll look on the second page of the
22 report, the third and last page of the exhibit handout,
23 it's a letter from the director of FPUA. Do you see
24 that?

25 A Yes.

1 Q I'd like you to take a --

2 CHAIRMAN CARTER: Hang on a second.

3 Commissioner Skop?

4 COMMISSIONER SKOP: Thank you, Mr. Chairman.

5 Which exhibit are we referring to, please?

6 MR. BUTLER: I'm sorry, it's Exhibit 425.

7 It's just three pages, including the cover, the FPUA
8 2008 Annual Report.

9 COMMISSIONER SKOPP: Thank you.

10 CHAIRMAN CARTER: You may proceed.

11 BY MR. BUTLER:

12 Q And, Mr. Pous, I'd like you to, if you would,
13 please, just read into the record the second paragraph,
14 the short paragraph starting with, "In addition."

15 A "In addition to the --"

16 MR. MOYLE: And I would just object to the
17 extent that it's being offered to establish a fact upon
18 which a finding would be based on hearsay grounds.

19 CHAIRMAN CARTER: Mr. Butler?

20 MR. BUTLER: Well, I think that this is
21 exactly the sort of information, the quality of
22 information that has been used on several occasions
23 previously by the Intervenor witnesses. There have been
24 numerous instances of referring to FPL annual reports,
25 FPL proxies, et cetera.

1 This is, you know, the letter from the
2 director of the FPUA in the FPUA annual report, and it's
3 going to the subject of, you know, FPUA's experience
4 with the demolition of the H.D. King plant. It's hard
5 for me to imagine, given what we've previously seen as
6 exhibits, including ones that have been admitted, on --
7 relying on the same type and quality of evidence, that
8 there would be an objection to this.

9 CHAIRMAN CARTER: Ms. Helton?

10 MS. HELTON: Mr. Chairman, under the APA,
11 hearsay evidence is admissible in administrative
12 proceedings, and you may be -- you may use it in making
13 a finding as long as it's corroborated by evidence in
14 the record that is not hearsay. If and when we get to
15 the point, if there is an objection to admit this, my
16 recommendation would be to admit it into the record and
17 to give it the weight that it deserves.

18 MR. MOYLE: And can I just ask a point of
19 clarification on that so that we have a clear record?
20 Would you also be of the view that that objection with
21 respect to hearsay coming in would need to be maintained
22 throughout in order to not have a finding made
23 exclusively on hearsay?

24 MS. HELTON: I'm sorry, Mr. Moyle, maybe my
25 caffeine hasn't kicked in yet. I didn't understand what

1 you just said.

2 MR. MOYLE: I think we're in agreement that a
3 finding of fact can't be premised on a hearsay
4 statement, correct?

5 MS. HELTON: A hearsay statement only, I
6 believe that is the case.

7 MR. MOYLE: And to the extent that a hearsay
8 statement is offered for which no objection is
9 registered, does that change things, in your judgment,
10 if there's not an objection to something coming in as
11 hearsay? Because if it doesn't, then I don't need to
12 object, but if it does, then I want to object to hearsay
13 statements coming in.

14 MS. HELTON: Can we just look at what the
15 actual APA says, just to make sure?

16 CHAIRMAN CARTER: Okay.

17 MS. HELTON: It will just take me a minute,
18 Mr. Chairman.

19 CHAIRMAN CARTER: All right, we'll just take a
20 moment. We're still on the record, but let's just take
21 a moment.

22 MS. HELTON: I've found it, Mr. Chairman.

23 CHAIRMAN CARTER: Okay.

24 MS. HELTON: Section 120.57(1)(c): "Hearsay
25 evidence may be used for the purpose of supplementing or

1 explaining other evidence, but it shall not be
2 sufficient in itself to support a finding unless it
3 would be admissible over objection in civil actions."

4 So I think that -- I agree with Mr. Moyle that
5 that -- that the Commission would take a risk if it made
6 a finding just on hearsay evidence, based on hearsay
7 evidence.

8 CHAIRMAN CARTER: Okay. That's what you said
9 before.

10 MR. MOYLE: And I just don't want to burden
11 the record with a bunch of objections on hearsay --

12 CHAIRMAN CARTER: Okay, duly noted.

13 MR. MOYLE: -- if it's clear that I don't have
14 to do that and you won't make a finding on hearsay,
15 anyway.

16 CHAIRMAN CARTER: No. With all the reams and
17 reams of paper and CDs of information, I think that
18 would be the last thing we would make a decision on.

19 Mr. Butler, you may proceed.

20 MR. BUTLER: Thank you, Mr. Chairman.

21 BY MR. BUTLER:

22 Q Now, Mr. Pous, would you -- as we had asked
23 you before we had the objection, would you please read
24 the second paragraph of this letter from the director of
25 the FPUA?

1 A "In addition to the pressure of rising fuel
2 costs, FPUA had significant costs associated with
3 decommissioning the H.D. King plant. This created
4 additional upward pressure on our electric rates, but it
5 amounts to only a --" and I assume that word is
6 *fraction*, not *traction* -- "of what the impact would have
7 been if we had renovated the H.D. King plant for long-
8 term power generation. We are continuing to explore
9 ways to cut our costs both at the local and wholesale
10 levels."

11 Q Thank you.

12 Did you speak to Mr. -- I'm not sure I can
13 pronounce it -- Thiess, the FPUA director?

14 A No.

15 Q Do you think that the FPUA would have put this
16 statement into its annual report if they did not believe
17 it to be accurate?

18 A Oh, I think they put it in, but the accuracy
19 is questionable because of what it constitutes
20 decommissioning costs to FMPA rather than to Ft. Pierce
21 Utility Authority that owned the generating site. Many
22 of the engineering analyses to determine whether to
23 continue the operation of the unit or to tear it down
24 may be considered decommissioning costs for FPUA but not
25 decommissioning costs to Ft. Pierce because they didn't

1 need to do that.

2 The decommissioning process for Ft. Pierce
3 produced a one million dollar positive value. Any other
4 analysis by another party -- they may identify it as
5 decommissioning, it may be in long-term planning, it may
6 be a number of things, but from this statement you can't
7 tell and it's not for the Ft. Pierce Utility Authority.

8 Q I'm sorry. You've referred to FMPA. Are you
9 aware that this is the Ft. Pierce Utilities Authority
10 Annual Report?

11 A I thought it was FMPA.

12 Q No, it is not. This is for the Ft. Pierce
13 Utilities Authority.

14 A Then we still go to the concept of what is
15 consistent with the concept of decommissioning.

16 If you tear down, it is decommissioning. If
17 you do planning to keep it operating, that's not
18 decommissioning. Those are planning operation costs
19 that would be assigned to normal O&M expenditures.

20 If you make a final decision to tear down the
21 plant, that's when you let the bids, which they did let
22 the bids to the various demolition contractors. They
23 got a bid from a demolition contractor to come in and
24 tear down the plant and pay them money.

25 Q You would agree that that economic deal is not

1 reflected in the Ft. Pierce Utility Authority's director
2 comments on the results of the decommissioning, correct?

3 A Oh, he didn't go into that detail. Like I
4 said, I spoke with the actual project engineer in charge
5 of this twice.

6 Q On page 93 of your testimony --

7 A What page? I'm sorry, I didn't hear you.

8 Q Page 93.

9 A I'm there.

10 Q Okay. You've testified that if the Commission
11 were to make an adjustment to FPL's dismantlement
12 request that it should reduce the cost by 60 percent, is
13 that right?

14 A Yes.

15 Q And that's based on a relationship that you
16 testified having seen between cost estimates and actual
17 demolition costs for Nevada Power Company?

18 A Not that I've seen and staff of the Nevada
19 Commission have seen, the Commission in Nevada has seen,
20 and your witness was part of that case.

21 MR. BUTLER: I'd move to strike that as
22 nonresponsive. It could be answered simply with yes or
23 no.

24 MR. McGLOTHLIN: How many times have we heard
25 FPL witnesses expound on --

1 CHAIRMAN CARTER: Watch it, boys. Okay. I'm
2 going to kick you boys out of the sandbox.

3 MR. MOYLE: Lunchtime, right?

4 CHAIRMAN CARTER: Yeah. See, it happens every
5 day. You get close to lunchtime, everybody gets nutso.
6 That's a technical term.

7 Let's do it this, is that, as I told all of
8 the witnesses that, if you can answer the question yes
9 or no, you can answer yes or no and explain your answer.
10 If you cannot answer, just say, hey, I can't answer.
11 It's just that simple. Okay?

12 MR. MCGLOTHLIN: Yes.

13 CHAIRMAN CARTER: Let's be nice.

14 BY MR. BUTLER:

15 Q Mr. Pous, the last question on that line, if
16 this Commission had a choice between data on the
17 relationship between FPL's estimated and actual
18 demolition costs and information from the utility in
19 Nevada on that utility's estimated and actual demolition
20 costs, wouldn't it be better for the Commission to rely
21 on the FPL information rather than the Nevada
22 information?

23 A Can you repeat the entire question? I had
24 trouble at the beginning.

25 Q If the Commission had a choice between FPL

1 information on the relationship between estimated and
2 actual demolition costs and information from a utility
3 in Nevada on its estimated and actual demolition costs,
4 wouldn't it better for this Commission to rely on the
5 FPL information rather than the Nevada information?

6 A No, not necessarily.

7 Q I'd like to ask you a few questions about
8 your -- that you had answered in your deposition. Do
9 you have a copy of your deposition --

10 A No.

11 Q -- handy?

12 Let me do this. I will ask -- if you don't
13 recall from your deposition, we'll -- okay, we have a
14 copy.

15 CHAIRMAN CARTER: See, I even moved lunch up
16 today because I know that it was getting close to
17 lunchtime, so I said, well, let me move it an hour
18 earlier and then I can probably forego that, but I don't
19 know, I guess it's just a lunchtime concept.

20 Mr. Moyle, have you got a comment on the
21 lunchtime, or --

22 MR. MOYLE: Well, I know Mr. Butler has -- is
23 familiar that the use of a deposition is principally
24 used, if you have a live witness here, to impeach him if
25 he gives an inconsistent answer. If he asks -- he

1 should be given the opportunity to answer the question
2 that was asked live today, and if he gives an
3 inconsistent answer, then use the deposition to impeach
4 him. It's not proper just to read --

5 MR. BUTLER: I haven't even asked a question
6 yet.

7 CHAIRMAN CARTER: Hang on, Mr. Butler. See,
8 getting close to that time.

9 I think we were getting -- we were in the
10 process of getting a copy of the witness's deposition
11 for him before any questions were asked. Is that where
12 we were? Because I saw some movement.

13 MR. BUTLER: Yes. Do you have a copy now, Mr.
14 Pous?

15 CHAIRMAN CARTER: Let's see what happens.

16 Mr. Butler?

17 BY MR. BUTLER:

18 Q Do you have a copy of your deposition now, Mr.
19 Pous?

20 A A document was handed to me, and it's the --
21 yes.

22 Q Would you turn to page 34, and, I'm sorry, I
23 think your copy, if it's structured as mine is, may say
24 page 30 at the bottom, and the deposition page number
25 appears in the upper right midway through the page.

1 A Whoa, whoa, you lost me. Can you repeat what
2 you were saying?

3 Q Reference the bottom of the document, page 30
4 there.

5 A Page 30? I thought you said 34.

6 Q 34 -- this is paginated -- I think it's the
7 same version and it's paginated sort of in two different
8 ways.

9 Do you have on page 30, after line 25, a space
10 in which appears Accurate Stenotype Reporters, Inc., and
11 then 34 out to the side of that?

12 A Yes, I do have that.

13 Q That's what I wanted to confirm. I think
14 that's actually the deposition page number, but we'll go
15 with the numbers at the bottom of the page, that's fine.

16 At the bottom of the page, line 20, 21, you
17 were asked, "Would you agree that Gulf Power Company,
18 Tampa Electric and Progress Energy Florida are all
19 located in Florida?"

20 And you say, "To my knowledge, yes."

21 Now, the question is -- the next question here
22 you were asked, "Based on your knowledge, would you
23 expect that the maintenance practices at these three
24 companies would be similar?"

25 Is it correct your answer is, "No"?

1 A Correct.

2 Q And you were also asked, down on lines 11 and
3 12, whether the three companies would be subject to
4 similar weather conditions. Is your answer also "No" to
5 that question?

6 A Yes.

7 MR. WEISMAN: Your Honor, I'm going to object
8 to the use of the deposition in this manner.

9 CHAIRMAN CARTER: He's just using it for
10 cross-examination. It's proper. He's answering the
11 questions --

12 MR. BUTLER: I can speed this along by just
13 asking him the same questions. I'm just really
14 trying --

15 CHAIRMAN CARTER: He hasn't said anything
16 inconsistent. I mean, the witness has the
17 information and -- overruled. You may proceed.

18 BY MR. BUTLER:

19 Q Mr. Pous, at the bottom of page 31 -- I'll
20 just ask you the question. Would you expect that the
21 three companies we've just been talking about have
22 similar accounting practices and continuing property
23 records?

24 A Was there a question there?

25 Q That is the question. I'm trying to address

1 Mr. Weisman's concern. I'm just asking you the question
2 that appears, and you can answer it.

3 A Do you want me to read the answer, is that
4 what you're asking?

5 Q No, just give your answer.

6 I'll tell you what, I think we'll go back to
7 the other approach. It seemed to be moving more
8 quickly.

9 On page 31 and the top of page 32, you were
10 asked, would you expect those three companies to have
11 similar accounting practices and continuing property
12 records, and your answer there was that you no longer
13 believe that utilities practice common accounting. Do
14 you see that?

15 A I think said I used to think that when I first
16 started out, but it's been shown that too many companies
17 interpret the uniform system of accounts in different
18 manners, that I no longer believe that utilities
19 practice common accounting.

20 Q Okay. You were asked, down on line 17 on page
21 32, whether you would expect that the three companies
22 would be subject to similar environmental laws and
23 disposal costs, and I think if you look over on the top
24 of 33, your answer in the deposition was, environmental
25 laws, you would say yes, but as to disposal costs, no,

1 they can vary. Do you see that?

2 A Yes.

3 Q Is that still accurate?

4 A Yes.

5 Q Okay. And finally down on the -- near the
6 bottom of page 33, you were asked --

7 A Can you speak up a little bit? I'm sorry.
8 Because it's raining --

9 Q I know it's raining pretty hard.

10 Down near the bottom on line 23 --

11 A I'm sorry, now you're too close to the mike.

12 Q Okay, how about this: "Barring some unique
13 circumstances or conditions, would you expect that FPL,
14 Gulf Power, Progress and Tampa Electric Company would
15 incur similar removal costs and realize gross salvage
16 associated with retirements?" And your answer was no
17 there. Is that still your answer?

18 A Yes.

19 Q If what we've just run through of instances in
20 which you think there would be differences for companies
21 within Florida is accurate, would you think that would
22 also be true with respect to companies outside of
23 Florida?

24 A Yes.

25 Q Okay, thank you.

1 MR. BUTLER: That's all the questions that I
2 have for Mr. Pous.

3 CHAIRMAN CARTER: Okay. Commissioners, I'm
4 going to go to staff first and then I'll come back to
5 the bench.

6 Staff, you're recognized.

7 MS. HARTMAN: Thank you. And I'd like to let
8 you know that we have a series of stipulated exhibits
9 that we would like to mark for identification after all
10 testimony is finished.

11 CHAIRMAN CARTER: Okay. Hang on before you
12 go, Jean. Let's see. Now, you guys are all on the same
13 page, right? Okay. Because, you know, we're getting
14 close to lunch, things get kind of squirrely.

15 Okay, you're recognized.

16 MS. HARTMAN: Okay, thank you.

17 CROSS EXAMINATION

18 BY MS. HARTMAN:

19 Q Good afternoon, Mr. Pous. How are you today?

20 A I'm here.

21 Q My questions for you this afternoon have to do
22 with -- deal with the reserve surplus.

23 A Yes.

24 Q First off, can you please look at your Exhibit
25 JP-1 attached to your testimony beginning on page 2 of

1 19? Let me know when you're there.

2 A I'm there.

3 Q Okay. Please look at column J that references
4 accrual rate.

5 A Yes.

6 Q And this is your proposed remaining life rate,
7 is that correct?

8 A Correct.

9 Q Great. And your rates are based on the life
10 and salvage values you're recommending for FPL's
11 production plant accounts?

12 A Yes.

13 Q And for each of the transmission, distribution
14 and general plant accounts, is that correct?

15 A Yes.

16 Q Now, the remaining life rate formula also
17 includes the reserve position of the given account, is
18 that correct?

19 A Yes.

20 Q The reserve position you have included in the
21 remaining life formula is FPL's book reserve, is that
22 correct?

23 A Yes.

24 Q And under your proposed life and salvage
25 values, you've calculated a theoretical reserve shown on

1 your Exhibit JP-2.

2 A Correct.

3 Q And you've calculated a reserve surplus of 2.7
4 billion under the column Excess Reserve, is that
5 correct?

6 A That sounds familiar. I haven't looked at the
7 page.

8 Q Okay, I'll give you a minute to take a look at
9 the page.

10 A (Examining document.) Correct.

11 Q Thank you.

12 And we can compare this to the reserve surplus
13 calculated by FPL of 1.2 billion, is that correct?

14 A That's on column C of the same exhibit.

15 Q But that is correct, we compare your
16 calculation of 2.7 against FPL's 1.2?

17 A Yes.

18 Q And would you agree with me that the
19 calculation of the theoretical reserve is dependent on
20 the given life and salvage values used?

21 A Yes.

22 Q And, to put it another way, the calculation of
23 the reserve surplus will change depending on the life
24 and salvage values used, is that right?

25 A Correct.

1 Q Does a reserve surplus mean that more
2 depreciation has been taken in prior years than was
3 needed under the proposed life and salvage patterns?

4 A Yes, I think you can look at it that way.

5 Q Does that also mean that, all other things
6 remaining equal, the depreciation rates in the future
7 will decrease unless some other corrective action is
8 taken, is that right?

9 A When you say "in the future," in theory, it's
10 recognized in the rates that that would be being
11 reviewed in this case, not just in the future.

12 Q Right, but they'll be lower?

13 A Yes.

14 Q Okay. And --

15 A That's with a surplus.

16 Q Okay. And a reserve deficiency means not
17 enough depreciation has been taken in the past and
18 depreciation rates will need to be increased in the
19 future unless some other corrective action is taken, is
20 that right?

21 A Yes, assuming that the parameters that are
22 being proposed for life and salvage are the adopted ones
23 and are reasonably acceptable.

24 Q Tell me, is a significant reserve surplus just
25 as important to correct as a reserve deficit?

1 A I believe so.

2 Q And why is that?

3 A Well, the intergenerational inequity concept
4 should be the governing concept, and that takes into
5 account other regulated concepts as used and useful.

6 Customers should be paying for the use of a
7 facility. One generation of customers should not
8 overpay or underpay. The intention is to assign the
9 right costs. We know, because it's a forecasted
10 process, there will always be a difference between the
11 forecast and what actually transpires. That creates an
12 intergenerational inequity. We want to minimize it.
13 Normally you would allow some level because there are
14 differences, but when it gets too large, whether it's
15 positive or negative, you want to start correcting it so
16 that we do not penalize one generation of customers for
17 the benefit of another.

18 Q Staying on your Exhibit JP-2, by your
19 calculations is there a perceived reserve surplus for
20 steam production plants in the amount of 816.6 million?

21 A Yes.

22 Q And it's your recommendation that the
23 uncovered costs associated with the near-term retirement
24 of FPL's Cape Canaveral and Riviera plant stations be
25 offset by the reserve surplus you've calculated for

1 steam production plants. Did I get that right?

2 A Yes.

3 Q And if this correction is made, the book
4 reserve for FPL's production plants will be restated to
5 reflect this correction?

6 A Down the line, yes, as it occurs.

7 Q Okay. And can I say that in another way, that
8 the book reserve for steam production plants will be
9 increased by the 816.6 million necessary to offset the
10 unrecovered costs for the Cape Canaveral and Riviera
11 plants? Is that another way to say that?

12 A Do you want to repeat that?

13 Q Okay. So, in other words, the book reserve
14 for steam -- for steam production plants will be
15 increased by the 816.6 million necessary to offset the
16 unrecovered costs for Cape Canaveral and Riviera?

17 A I'm not sure I agree with you, if I understand
18 right. The 816 million is the excess of the theoretical
19 reserve that I have calculated, but I'm not proposing
20 that that full amount be amortized over four years. I'm
21 amortizing the company's \$1.25 billion amount, which
22 would be equivalent to the 410, effectively.

23 Q Okay. Going back to your Exhibit JP-1 -- let
24 me know when you're there, please.

25 A I'm there.

1 Q Okay. Do your proposed remaining life rates
2 shown on JP-1 reflect the restatement of the book
3 reserve if your recommended correction is made?

4 A No.

5 Q Okay. Tell me why not.

6 A Well, first of all, I believe the Commission's
7 own rules say that you're not to make any reserve
8 adjustments until you get prior approval from the
9 Commission.

10 Second of all, in the process of making my
11 recommendation, I'm only amortizing one and a quarter
12 billion dollars rather than the 2.57 billion I'm
13 discussing that I believe exists.

14 Third of all, I didn't propose adjustments to
15 the combined cycle units which I believe the lifespan
16 proposed by the company is woefully inadequate, which
17 would increase the reserve above the \$2.57 billion
18 level. In addition, I didn't make adjustments for the
19 dismantlement studies that I believe are also overstated
20 which would, again, increase the reserve. In addition,
21 I made no adjustments for the fact that the company's
22 nuclear decommissioning trust fund, it's gone to zero
23 for revenue retirement purposes in this case but that's
24 because they've overaccrued. Again, customers have
25 overpaid, and in theory there is an excess reserve

1 there.

2 Since I'm telling the Commission or asking the
3 Commission to make a partial one-step adjustment in the
4 right direction, order the company to come back in four
5 years with a more detailed and better justified study
6 and we could see where the dust settles after we've done
7 all this, the company still has tremendous levels of
8 cushion under my recommendation, so I didn't go back and
9 roll in my reserve adjustment into the rates because
10 that would have been in violation of the Commission's
11 own rules, but it also recognizes all the conservative
12 aspects that I presented in my testimony, and we can get
13 a better picture four years down the line when the
14 company refiles and we can once again determine how much
15 of an excess reserve exists and what actions we want to
16 take at that point again.

17 CHAIRMAN CARTER: Hang on, Ms. Hartman. How
18 much more have you got?

19 MR. HART: Six more questions, and then the
20 entering of the documents.

21 CHAIRMAN CARTER: Okay, let's go play in the
22 rain. We'll take a lunch break now and be back at 1:45.

23 (Hearing adjourned at 12:31 p.m.)

24 (The transcript continues in sequence with
25 Volume 17.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, RAY D. CONVERY, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings at the time and place herein stated.

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

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

DATED this 3rd day of September, 2009, at Tallahassee, Leon County, Florida.



RAY D. CONVERY