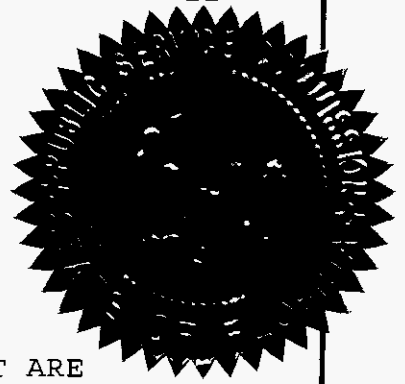


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

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



VOLUME 48
Pages 6448 through 6550

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PROCEEDINGS: HEARING

COMMISSIONERS
PRESENT: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Friday, October 23, 2009

TIME: Commenced at 2:30 p.m.
Concluded at 5:00 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.)

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P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 47.)

4 CHAIRMAN CARTER: We are back on the record,
5 and when we last left, Mr. McGlothlin, you were
6 recognized for cross examination. Mr. McGlothlin.

7 MR. MCGLOTHLIN: Thank you.

CROSS EXAMINATION

8
9 BY MR. MCGLOTHLIN:

10 Q Mr. Davis, let's see if we can find our place
11 again quickly. Prior to the break, I had asked you to
12 agree with me that the existence of a reserve surplus or
13 reserve deficiency under the Commission's rules was an
14 occasion that called for corrective action.

15 And if I understand your answer correctly, you
16 were contending that you disagree because the Commission
17 has in place a remaining life method.

18 When I said, I think we're speaking past each
19 other, here's what I mean: I submit to you that the
20 remaining life methodology in its implementation is,
21 itself, a corrective measure, and by way of illustration
22 would you agree with me that assuming there is
23 identified a reserve surplus, the effect of the
24 remaining life methodology is to return that surplus to
25 customers over the remaining life of the assets,

1 correct?

2 A Correct.

3 Q Now, with respect to the application of
4 remaining life in this case, the evidence supports that
5 on a composite or average basis, remaining life for FPL
6 at this point in time is approximately 22 years. Will
7 you accept that for purposes of our conversation?

8 A Correct, yes, I would.

9 Q So under the remaining life application, the
10 reserve surplus, which FPL identifies to be \$1.25
11 billion and which OPC's witness identifies as closer to
12 \$2.7 billion, would be returned to customers over 22
13 years, correct?

14 A Correct, it would return over 22 years, but it
15 would return it in varying amounts, because the reserve
16 surplus exists in varying levels and in various
17 accounts. So that, in fact, if you do a simple average,
18 it is 57 million, that is what I used in my testimony;
19 if you do it at a vintage account level, the return in
20 the first four years is approximately 72.7 million.

21 And when I say "return," what I mean, that is
22 the effect of the surplus. If you were to remove the
23 surplus, go to -- adjust book depreciation to the
24 theoretical reserve, your depreciation expense would be
25 72.7 million higher because of the absence of the

1 so-called surplus.

2 Q Now, would you agree with me that over time,
3 the customer base or the customer mix of FPL changes.
4 Some customers leave the system, other companies arrive
5 and begin taking service from FPL as time goes on?

6 A Yes.

7 Q So that if the reserve surplus is returned to
8 customers over 22 years, would you agree with me that it
9 is very likely that many of the customers who are on the
10 system at the time the reserve surplus was created, will
11 not be on the system during the time that corrective
12 action is finally accomplished?

13 A I would accept that customers change, and
14 therefore, that may well be. The exact same customers
15 will not be there. Turnover rate, I don't know.

16 Q Now, I think we established prior to the break
17 that the concept of an intergenerational inequity as it
18 relates to depreciation is related to the broader
19 accounting principle of matching concept, would you
20 agree with that?

21 A Generally, yes.

22 Q And would you agree with me that the existence
23 of a reserve surplus or a reserve deficiency is a
24 departure from the attempt to match consumption with
25 cost over time?

1 A No.

2 Q Why would you not agree with that?

3 A You use the term "consumption" there. I am
4 going to back up for one second. Your straight-line
5 depreciation, as we have already talked about, is
6 reestablished every four years. Staff does a
7 comprehensive look-see at all of the underlying
8 assumptions, so it is always using the best information.

9 Absent -- consumption to me is output. Okay.
10 So if I look at an asset, straight-line method is not
11 going to necessarily match the output of the plant. If
12 you're producing a hundred widgets every single year of
13 a plant life, you extend that life, but reduce the
14 output, then you've changed something relative to the
15 straight-line methodology.

16 Q Okay. I think we are talking about semantics
17 here. I used the word "consumption." Perhaps I should
18 have used "benefits," that you want to match the
19 availability of the plant to serve customers with the
20 collection of costs for those customers who are served,
21 would you agree with that?

22 A In terms of benefit, no; in terms of the
23 concept you are trying to get across, the existence of
24 the plant, yes. In other words, it is there, and it is
25 there for say 20 years or it is there for 30 years.

1 Straight line would say you'd depreciate it 20 years,
2 you'd depreciate it 30 years.

3 Q Okay. Using that as the expression of the
4 matching principle with which you are comfortable, you
5 agree with me that identification of a reserve surplus
6 or reserve deficit is a departure from that objective?

7 A Only -- yes, but only in the context of the
8 information known today. I would highlight the nuclear
9 plants. Up until the license was extended on the
10 nuclear plants, everything looked wonderful for a life
11 that ended 2012, 2013. Now it is 2033, '34.

12 That in the context of the theoretical reserve
13 surplus calculation says, hey, we have a surplus. Did
14 we have a surplus the day before that? No. Did we have
15 one the day after? Yes.

16 Q With the understanding that the theoretic
17 reserve and the comparison with the book reserve is a
18 consequence of the rule that requires depreciation
19 studies to be done periodically, and with the
20 understanding that more depreciation studies are going
21 to be performed in the future and the likelihood that
22 the parameters may change again, it remains that with
23 respect to a depreciation study performed now and with
24 respect to the parameters that are adopted as the best
25 approximation of the service life and net salvage now,

1 the existence of the reserve surplus or reserve
2 deficiency is a departure from the matching principle,
3 correct?

4 A I will answer it yes, as of today, not over a
5 period of time.

6 Q And it follows then that the bigger the
7 reserve surplus or reserve deficiency, then the more
8 severe the departure from the matching principles that
9 we've identified?

10 A Yes.

11 Q Would you agree with me that while the
12 Commission has in place rules that prescribe the
13 application of the remaining life methodology, over time
14 remaining life is not the only means available to the
15 Commission to address the elimination of a surplus or a
16 deficiency?

17 A I am not aware of any other approach that is
18 in the rule.

19 Q Well, let's consider the 2005 settlement of
20 the FPL revenue requirements case. You are familiar
21 with the terms of that settlement, are you not?

22 A Generally, yes.

23 Q And isn't it true that under the terms of the
24 settlement, as approved by Commission order, FPL was
25 given the discretion and the option to credit

1 depreciation expense \$125 million per year during the
2 four years that settlement agreement was in place?

3 A Yes.

4 Q And did FPL exercise its option to do so in
5 each of those four years?

6 A Yes.

7 Q And in each of those four years, the exercise
8 of that option had the effect of reducing the reserve
9 surplus that was in place at that point in time by the
10 \$125 million, correct?

11 A Yes.

12 Q And over the four years, that amounted to a
13 reduction in the reserve surplus of \$500 million?

14 A Correct.

15 Q And would you agree with me that happened by
16 means other than the application of remaining life
17 calculation?

18 A Correct. It was a function of a settlement
19 agreement, and for the same reasons I guess people have
20 argued about whether GBRA, you know, there was a
21 precedent set for GBRA. It's the same thing.

22 It was a product of a settlement agreement
23 amongst the parties, the Commission, as I understand it
24 as a lay person, was faced with accept or reject, not
25 line by line, not line item veto, accept or reject.

1 Q Would you agree with me that one aspect that
2 is dissimilar from the GBRA is that this provision gave
3 FPL an option which it could choose to implement or not
4 implement?

5 A That is correct.

6 Q Now, we have established that FPL identified
7 as the reserve surplus in its pending depreciation study
8 to be \$1.25 billion, correct?

9 A 1.245. You can round either way.

10 Q Let's round up.

11 A Why did I know you were going to say that? I
12 will try to remember that.

13 Q Now, during the break, through your counsel I
14 showed you a copy of the rebuttal testimony that you
15 submitted in the 2005 rate case docket. You had a
16 chance to review that, did you not?

17 A Yes, I did.

18 Q And having reviewed that, would you agree with
19 me that in that case, you testified that according to
20 the FPL prepared depreciation study in 2005, the then
21 existing reserve surplus was \$1.3 billion?

22 A No, I would not.

23 Q What do you recall that to be?

24 A 1.6, with your rounding, 1.5, 1.6, take your
25 pick.

1 Q Well, I believe there were two figures there,
2 and we can take a moment to confirm it if you like, but
3 there were two figures, one was given as of July 2005,
4 and I believe that was \$1.3 billion, but if we want to
5 use the range 1.3 to 1.6 for purposes of the next
6 question, I think that will be --

7 A The 1.6 was the study that was accepted and
8 incorporated into the settlement.

9 Q Very good. Let's work with 1.6 then.

10 So it follows that according to FPL, in 2005
11 its reserve surplus was \$1.6 billion, and pursuant to
12 the terms of the settlement agreement, it proceeded to
13 reduce the reserve surplus by a total of four -- \$500
14 million over four years, and here in 2009, FPL
15 calculates that reserve surplus to be \$1.25 billion,
16 correct?

17 A That is correct.

18 Q If notwithstanding the reduction of reserve
19 surplus by \$500 million the reserve surplus stands at
20 \$1.25 billion today, would that suggest to you that the
21 depreciation rates in effect, which have not changed
22 since the 2005 settlement, are so high that they
23 overcome the effect of the 1.25 -- excuse me, the \$125
24 billion annual credit to depreciation?

25 A I have difficulty, and so I will answer no. I

1 don't care for the characterization there, so high the
2 rates reflected the information, the best information
3 that was available at the time the prior study was
4 performed.

5 The theoretical reserve surplus declined by,
6 was it 350 if I am doing the math right, \$350 million?
7 So we are talking about 150 million. I can give you an
8 explanation at least in part for why it would have
9 increased, and at least part of that is the fact that we
10 extended the lives on the various fossil units, the old
11 steam units that Witness Hardy talked about earlier, we
12 extended those lives out to 2020.

13 So there was an increase and it generated more
14 surplus. There's other things happening in that study,
15 I don't mean to just focus on that, but that's one we
16 just talked about.

17 Q All right. Is it true that FPL seeks approval
18 of depreciation rates in this proceeding that are higher
19 than the rates that are in effect between 2005 and 2009?

20 A No.

21 Q The effect of depreciation rates are not
22 higher than those in effect?

23 A No. If I look at the depreciation study, I
24 think you will see -- and I would have to check, but I
25 think your plant balances went up by 17 percent, your

1 depreciation expense went up by six percent. That tells
2 me the rates went down.

3 Q Okay. So the total expense went up, but the
4 rates went down?

5 A Correct.

6 Q Okay. If you will, Mr. Davis, turn to page 9
7 of your rebuttal testimony and review lines 15 through
8 22.

9 A And line 15 starts with the question with the
10 Intervenor witness, is that -- I want to make sure I am
11 dealing with the right deck of cards here.

12 Q That is correct.

13 A Okay. I have read it.

14 Q In response to the question, you contend that
15 the effect of Mr. Pous' recommendation would be to
16 create intergenerational inequities by providing
17 customers during the next four years with an artificial
18 benefit while requiring customers in future periods to
19 pay significantly higher costs solely as a result of the
20 short-term benefit having been provided.

21 Now, with respect to the use of the term
22 "artificial benefit" and your use of "intergenerational
23 inequities," would you agree with me that to the extent
24 FPL currently has a reserve surplus somewhere between
25 \$1.25 billion and \$2.7 billion, according to your

1 witness and ours, that surplus will have been created
2 during the time period when current and past customers
3 were on the system paying rates?

4 A I would say yes, but I would want to add as
5 well that during those periods, at no time did base
6 rates increase as result of depreciation. Certainly
7 depreciation expense went up or down, but rates only
8 went down to the tune of \$600 million partly in '98 and
9 -- I think it was '98 and '02.

10 Q Notwithstanding the direction of base rates,
11 it remains a fact that while current and past customers
12 were paying rates which included a component for
13 depreciation expense, the company amassed the surplus,
14 which is somewhere between \$1.25 billion and \$2.7
15 billion, correct?

16 A Again, I don't like the characterization, but
17 I will agree with your statement.

18 Q Now, in an earlier response, you agreed with
19 me that the effect of the remaining life methodology is
20 to return any existing surplus to customers over the
21 remaining life of the plant, correct?

22 A Correct.

23 Q Now, would you agree that with respect to
24 Mr. Pous' recommendation, the difference between his
25 recommendation and the remaining life is that he would

1 return that surplus to customers over four years rather
2 than 22?

3 A That is correct, and, hence, my
4 characterization is artificial, because it is already
5 being returned to customers over the remaining life.

6 Q Well, in terms of the objective of matching
7 the availability of a unit to provide service on the one
8 hand with the cost of that unit on the other, wouldn't
9 it be desirable to attempt to return the reserve
10 surplus, to the extent possible, to the same customers
11 who provided the surplus in the first place?

12 A No, not necessarily.

13 Q You disagree? On what basis do you disagree?

14 A I'm sorry?

15 Q On what basis do you disagree?

16 A On the -- the basis that I disagree is that
17 during -- I am going to use steam units as an example.
18 During the period of time up to now, steam units have
19 surplus associated with them. They have surplus
20 associated with them largely because we have extended
21 the lives of those units.

22 However, if you look at the expected output,
23 i.e., the benefit provided to our customers during the
24 go-forward period we've extended the life, but we do not
25 expect to run those units anywhere near as much as they

1 did when they were a base load unit.

2 The reason for that is that they are less
3 efficient than the nuclear certainly with the low fuel
4 cost there, but they're also less efficient than the
5 combined cycle units.

6 So in terms of the customer benefit, I would
7 submit that despite the fact we extended the life, there
8 is less benefit being provided there. The benefit is
9 more in terms of flexibility and backup, not
10 through-put.

11 Q In terms of the straight-line depreciation
12 methodology that the Commission prescribes for FPL and
13 the other regulated utilities, isn't it true that if a
14 plant, taking into account net salvage, costs
15 \$100 million and is going to have a service life of 10
16 years, the methodology is to divide the \$100 million by
17 the 10 years and collect \$10 million per year in
18 depreciation expense?

19 A Yes. I would alter it to say include \$10 and
20 cost of service, but, yes.

21 Q In other words, the straight-line depreciation
22 methodology that we have just identified does not take
23 into account any fluctuations in output of the unit over
24 time, does it?

25 A It does not.

1 Q And that same methodology was in place during
2 the time current and past customers paid rates that
3 resulted in the creation of a reserve surplus ranging
4 from \$1.25 billion to \$2.7 billion, correct?

5 A That is correct.

6 Q And if the objective of what we referred to as
7 the matching principle or the desire to avoid
8 intergenerational inequities is to prevent some
9 customers from subsidizing others, wouldn't it be
10 desirable to return the existing surplus, insofar as it
11 is possible to do, to the same customers from whom that
12 surplus was collected?

13 A I do not agree with your statement.

14 Q Well, do you agree that returning --
15 understanding that you disagree with the premise of my
16 question, would you agree that if one were to attempt to
17 identify the group of customers that coincides as
18 closely as possible with the group that paid that
19 surplus, returning the surplus over four years would be
20 a closer proximation to that than returning the surplus
21 over 22 years?

22 A Again, I would not agree, because you keep
23 using the matching principle. Matching principle to me
24 relates to the benefits that are derived. There is an
25 exchange transaction. I pay you something, you provide

1 some benefit to me, whatever that might be, and as I
2 said earlier, the benefit provided -- and I am focusing
3 on the steam units, because it's easier to illustrate
4 that -- the benefit they provide is significantly lower
5 now than it was in the prior years.

6 The surplus exists because we extended the
7 life. During that longer life, they're not going to
8 produce the same number of kilowatt hours that they did
9 during the earlier period; therefore, the benefit that's
10 being provided is less, and, therefore, they should be
11 paying less in depreciation.

12 Now, certainly the Commission wants
13 straight-line versus units of production. Units of
14 production is a way of matching perfectly, but the
15 difficulty of estimating that is just beyond my desire
16 to ever do.

17 So straight-line is the best we have. It
18 works very well. My objection here is not to
19 straight-line depreciation, but to an extreme action
20 relative to a theoretical reserve surplus that ignores
21 the other things.

22 As I said earlier, surplus should be a
23 starting point, look at it. If there is a same economic
24 being provided, maybe you should do something, unless
25 there are other uncertainties out there. If there's

1 considerably less in benefit being provided, then I
2 would submit you should do nothing, let remaining life
3 take care of it.

4 Q And your disagreement with my proposition is
5 based upon your contention that whether to flow back the
6 surplus over a short period of time or a longer period
7 of time should take into account differences in output
8 of the plant?

9 A It should -- building it -- in part, yes. Go
10 back to the yes answer. Yes, because you are building
11 your question on the matching principle. There are a
12 lot of other uncertainties out there.

13 If I look at coal plants, for example, we have
14 already had a lot of discussion today about the
15 uncertainty about coal plants because of climate
16 legislation. In my testimony I talk about the fact we
17 are going to generate deficits with the upper eights
18 because of the normal operation of the depreciation
19 studies.

20 So I am saying if you know these things are
21 going to be happening or you have high risks out there,
22 then I don't think you should take a precipitous action
23 today and set yourself up to then have to deal with a
24 deficit in the future.

25 Q When the utility implements the remaining life

1 methodology prescribed by Commission rule and flows back
2 the surplus or collects the deficiency over the
3 remaining life, does it attempt to vary either the
4 amount collected per year or the time frame on the basis
5 of any perceived or predicted changes in output of the
6 unit involved?

7 A No, we have accepted straight-line, we follow
8 that.

9 Q So you've accepted straight-line for purposes
10 of remaining life, but in response to my contention that
11 the Commission should take into account the severity of
12 the imbalance when it considers the time frame for
13 returning the surplus to customers, you contend that at
14 that point they should take into account some
15 consideration of fluctuating output of the unit?

16 A No. What I am saying -- it is somewhat close,
17 but what I'm saying is it is not so much the size of the
18 surplus that is driving me here. It is basically saying
19 you should follow the remaining life methodology.

20 If you are pondering or considering taking an
21 action that breaks out of that accepted approach, long
22 established approach with the Commission, then I think
23 you need to consider all of the other factors that may
24 affect the consequences of that particular decision. I
25 am not impugning or disagreeing with the straight-line

1 remaining life methodology.

2 Q Again, at page 9, you contend that Mr. Pous'
3 recommendation would provide -- would require customers
4 in future periods to pay a significantly higher cost.

5 Given that the company currently has a reserve
6 surplus, and given that absent corrective action current
7 and past customers will subsidize future customers who
8 will pay less as a result of that surplus, isn't it true
9 that the proposal of Mr. Pous would simply require
10 future customers to pay their fair share?

11 A No.

12 Q And on what basis do you disagree?

13 A The issue -- you predicated your question at
14 various points in there. There were a lot of them, but
15 at least one of them was subsidy, the basic subsidy, and
16 I forget the other one is the one I really disagree
17 with.

18 I am looking at the fact that if you flow it
19 back quickly, the premise upon which my statement there
20 is built is the fact that if you flow it back very
21 quickly, you will have a significant rate increase, and
22 the way I would characterize it, it is like living on
23 borrowed money for a couple of years, counting on the
24 future to be better, and then finding two years, three
25 years down the road after you stop living off the

1 borrowed money, you not only have to pay current living
2 cost, but also pay back that money.

3 Q Okay. You've referred to the rate increase
4 then. I want to turn to page 16, line 5 or 6, I
5 believe.

6 At line 5, you say, "What he" -- and you are
7 referring to Mr. Pous -- "What he fails to address is
8 the rate shock and the dramatic fluctuations in customer
9 rates that result from his recommendations." Is that
10 the point of your testimony to which you are alluding
11 now?

12 A Correct. But there was also the reference on
13 the bottom of whatever page we were on, "pay
14 significantly higher cost solely as a result of the
15 short-term benefit having been provided." That is why I
16 gave you the answer that I gave you. There's further
17 clarification of it over on page 16.

18 Q Well, focusing on page 16, is it true that FPL
19 in this case is asking for approximately a 30 percent
20 increase in base rates over the next two years?

21 A I will accept that, yes.

22 Q And FPL is also asking for an additional
23 \$180 million per year in the form of the first
24 implementation of the generation base rate adjustment,
25 correct?

1 A I view the two as completely separate. You
2 are putting in a new power plant. But I think the
3 answer is yes. I don't remember the 180 million, I
4 just -- but I would accept it.

5 Q I wonder if you see perhaps a little bit of
6 irony in an FPL witness who is on the stand supporting a
7 30 percent base rate increase totalling more than a
8 billion dollars a year by worrying about the rate shock
9 of a four-year amortization that would reduce that
10 request by about \$300 million per year?

11 A Actually -- do I find irony in that?

12 Q Yes.

13 A No, because in preparing for this, what I
14 really came to focus on is that approximately \$300
15 million of the current request is a direct result of
16 that 125 million being reversed from 2002 through the
17 current year. \$300 million of this request. It kind of
18 drives the point home that, as your witnesses have said,
19 they're not questioning whether you have to pay for
20 plant, they are questioning the timing of when to pay
21 for plant --

22 Q Yes.

23 A -- and I am looking at this and saying, hey,
24 this -- that's what bothers me about it. It really
25 drove home the point, it is real.

1 Q You say specifically "He," Mr. Pous, fails to
2 address that the customer's base rates could sole" --
3 could -- I think you meant to say "increase solely as a
4 result of his recommendation, increase by 3.8 percent."

5 And there you're alluding to the fact that the
6 effect of the amortization would be to increase rate
7 base over the next four years by the amount of the
8 increased amortization, correct?

9 A I am only focused on the last part, and the
10 answer is yes, rate base will increase, and that is what
11 drives the -- the big rate increase that will be in the
12 first year following the end of the amortization is a
13 combination of the return on the investment and the
14 absence of the credit. Both of those are illustrated in
15 KMD-2, in the four pages of KMD-2.

16 What I failed to put in there is the fact you
17 then have to depreciate that higher rate base. So that
18 adds anywhere from 50 to 70 million dollars more each of
19 those years.

20 Q Now, you have described the increased rate
21 base that would be occasioned by the amortization of the
22 reserve over four years. Isn't it true that during that
23 same four years, the depreciation rates in effect will
24 continue to lead to increases in the accumulated
25 depreciation, or the depreciation reserve over time,

1 such that four years from now, the company will have
2 collected overall depreciation expense by another four
3 years?

4 A That is correct, and I believe the number
5 that's been used in the rate case is, during
6 approximately that period, maybe a little bit longer, we
7 will be spending \$16 billion in capital expenditures,
8 adding to rate base. I think you add all of those
9 pieces up and you're looking at higher costs.

10 Q Is it also true that if sales and demand on
11 the system increased over the next four years, at the
12 end of that four years the company will spread any
13 increased in revenue requirements over larger number of
14 building determinants?

15 A Based on the assumptions built into your
16 question, yes.

17 Q And any increase in kilowatt hour sales or
18 increase in kilowatt demand that's reflected as building
19 determinants would have the effect of spreading that
20 increase over larger number of units and mitigating the
21 impact of the rate increase, correct?

22 A There will be some mitigation. The trade-off
23 depends on whether or not sales grows faster than costs
24 grow and -- you know, all forms of cost from
25 depreciation to return on investment to O&M costs and so

1 forth.

2 Q Now, the company will earn its overall
3 approved rate of return on any increase in rate base
4 occasioned by the amortization, correct?

5 A Not until you nex that rate. I'll get half --
6 half a year, I suppose, if in the rate calculation you
7 assume average balances and rate base. So presumably
8 you would count half of it -- you know, half of one
9 year, I'm sorry.

10 Q But in any event, the cost of the increase in
11 rate base would be a function of the rate of return, the
12 approved rate of return, that is either authorized or
13 earned by the company during those four years?

14 A Generally, I think so. There is some part I
15 didn't like, but I got it lost in there. But I think
16 you are right. I mean, we theoretically should have an
17 opportunity to earn on our investment, yes.

18 Q In preparing your testimony, you did not
19 perform any analysis of the customers' discount rate or
20 the value of the customers' money to them, did you?

21 A No, I did not.

22 Q So if customers -- if there are a group of
23 customers or subset of customers who are paying
24 25 percent interest on a credit card, they may prefer to
25 have that money back even if it results in the company

1 earning a percent on a larger rate base, correct?

2 A As you have defined the hypothetical, I
3 suppose so.

4 MR. McGLOTHLIN: I hope this is my final
5 series of questions, Commissioners.

6 CHAIRMAN CARTER: Me, too.

7 THE WITNESS: Me, too.

8 MR. McGLOTHLIN: I set myself up for that one,
9 didn't I?

10 CHAIRMAN CARTER: I'm optimistic, I hope it is
11 too.

12 BY MR. McGLOTHLIN:

13 Q We've referred to the circumstances of the
14 settlement agreement in 2005, and we have also described
15 the situation in this rate case, and I want to suggest
16 to you that there is one difference that you have not
17 addressed in your testimony in this case.

18 Isn't it true that with respect to the
19 settlement provisions that gave the company the option
20 to credit depreciation expense by \$125 million per year,
21 when FPL exercised that option, it reduced its expense,
22 but base rates remained the same?

23 A Are you talking about at the time of the
24 settlement, or during the intervening period?

25 Q During the four years in which the settlement

1 agreement was in effect.

2 A It acted exactly the same way anything else
3 would act in this kind of environment between a rate
4 proceeding; in other words, a change in base rates.
5 That happened to be a zero change. So, yes, rates did
6 not change.

7 Q So when FPL exercised the option of credit and
8 depreciation expense, that meant that in a given year,
9 \$125 million of expense went away, but the rates
10 designed to cover that expense continued in effect,
11 thereby increasing FPL's cash flow by \$125 million per
12 year?

13 A I would disagree.

14 Q On what basis?

15 A On the basis that going into the agreement,
16 the 125 million was part and parcel of reaching a
17 negotiated settlement with the parties that there would
18 be zero increase. Therefore, I believe that it was
19 contemplated all along that the 125 was there. It was
20 what took to balance our side of the equation for a
21 negotiated settlement. You are implying that we agreed
22 that we wouldn't use it, we set rates up there, and then
23 we took this and got more cash flow. That's wrong.

24 Q I'm not implying that at all. You
25 misunderstand the question. I am not suggesting that

1 there was any commitment on the company's part not to
2 exercise it, it was the company's option.

3 I am saying that the effect when the company
4 exercised that option was to reduce expenses while base
5 rates remained the same, were not changed?

6 A And I would -- my answer to that would be that
7 that was contemplated originally, and I would have been
8 extremely surprised had we not taken the 125.
9 Therefore, I would submit that by taking the 125 we
10 achieved zero versus the benefit that you're implying
11 exists.

12 Q Well, I would like for us to avoid problems
13 that don't exist.

14 A Me too.

15 Q I am not suggesting that it was not
16 contemplated, so let's take that off the table.

17 A Okay.

18 Q We agree that it was contemplated that FPL had
19 that option and could exercise the option if it chose
20 to?

21 A And intended to do so.

22 Q All right. But when it exercised the option,
23 expenses decreased while base rates remained in effect
24 without any corresponding decrease in base rates?

25 A Correct.

1 Q Had the effect of increasing the company's
2 earnings by the \$125 million and also by increasing its
3 cash flow, because the expense has gone away, but the
4 revenues are still coming in, am I correct?

5 A I would disagree, and I would disagree in the
6 sense that you are starting from zero and saying it went
7 up to 125. I am submitting that it was minus 125, and
8 by taking it, it brought us back up to zero.

9 So we were where we expected to be and we were
10 where I think the other people who negotiated the
11 settlement expected us to be. We would have been in the
12 hole had we not taken it.

13 Q If expenses are reduced by \$125 million but
14 the revenues designed to cover those expenses remain
15 unchanged, does that increase the company's earnings?

16 A Yes.

17 Q Does it also increase the company's cash flow?

18 A Well, in the case of revenues coming in, yes,
19 but I'm -- my argument -- or disagreement, I shouldn't
20 say argue, I shouldn't argue with a lawyer -- my
21 disagreement with you is that I would say we started off
22 minus 125, and by taking it, it restored us to zero.
23 That was the objective of the agreement. Neither party
24 won or lost. We achieved a neutral position.

25 Q Now, in the rate case as proposed by the

1 Office of Public Counsel, there would be a reduction in
2 depreciation expense in the form of the amortization of
3 the reserve surplus that would then be translated to a
4 reduction in revenue requirements and lower base rates
5 than would otherwise be the case, is that correct?

6 A Correct.

7 Q So while the company's earnings would not be
8 affected and its rate of return would not be affected,
9 its cash flow would be affected, correct?

10 A That is correct. And it would
11 necessitate financing. It is akin to capital
12 expenditures, it is the same thing. I am adding to rate
13 base, only the way I would say it here is I am adding
14 bad rate base versus good rate base, good rate base
15 being something that provides a benefit to the customer.
16 Here I am just adding dollars to rate base.

17 Q So pursuant to the 2005 settlement, as a
18 matter of fact, pursuant to the settlements of 2002 and
19 2005, which had similar provisions, the company
20 exercised an option to credit depreciation expense,
21 thereby reducing the reserve surplus, and therefore
22 realized increased cash flow and increased earnings, but
23 in this case where the similar measure would reduce cash
24 flow, FPL is concerned about higher rate base and about
25 future rate shock, correct?

1 A I disagree with you.

2 MR. MCGLOTHLIN: I have nothing further.

3 CHAIRMAN CARTER: Thank you, Mr. McGlothlin.

4 Ms. Bradley, you're recognized.

5 MS. BRADLEY: No questions.

6 CHAIRMAN CARTER: Thank you. Mr. Moyle.

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

8 CROSS EXAMINATION

9 BY MR. MOYLE:

10 Q Good afternoon.

11 A Good afternoon.

12 Q I am going to try not to be redundant of
13 questions Mr. McGlothlin posed to you.

14 You are a certified public accountant,
15 correct?

16 A Correct.

17 Q Would you agree with me that this depreciation
18 topic is, qualitatively speaking, rather dry?

19 A I think that the proper term is boring.

20 Q Because I have found that to be the case, it
21 is not an easy issue to wade into, but I do want to make
22 sure this point is clear.

23 That relative to some of the other issues that
24 we have discussed, this has a very significant impact on
25 ratepayers, correct, in terms of the dollars that they

1 may be asked to pay?

2 A Are you talking about depreciation as a whole,
3 or the theoretical reserve surplus? I think the answer
4 to both is yes, but I'd just like to know what I'm
5 answering to.

6 Q Let's talk about the theoretical surplus, and
7 answer that question, if you would.

8 A I mean, as proposed by OPC's witnesses and
9 some of the other witnesses, yes, \$300 million, that is
10 significant.

11 Q Right, and we -- I don't know if you were
12 here, but the company -- you work for Florida Power &
13 Light, correct?

14 A I am actually employed by Group, but I am an
15 officer of Florida Power & Light, I am their chief
16 accounting officer at Florida Power & Light.

17 Q You are aware a concession was made related to
18 aircraft that was approximately \$16 million?

19 A Correct.

20 Q And a concession related to salary was
21 approximately \$18 million?

22 A Right. I need to correct the aircraft. The
23 16 million is two years.

24 Q Okay. And I guess the point I wanted to make
25 is that this depreciation issue, while dry and boring,

1 represents monies that are ten times plus greater than
2 either the aircraft issue or the salary issue, correct?

3 A That is correct.

4 Q That got my attention. Really this whole
5 depreciation discussion is a matter of timing, right,
6 it's kind of like a pay me now, pay me later
7 proposition?

8 A That is correct, but I -- I think the
9 characterization that I made of it earlier of finding
10 yourself a few years from now paying not only your
11 current costs, but paying back all those costs you
12 didn't pay in the last four years. That's the part that
13 worries me.

14 Q And I heard that and made note of it, because
15 we can't see into the future, correct?

16 A No, but being a natural-born pessimist, I am
17 not betting it is going to be two, three, four times
18 better.

19 Q Okay. And your company does -- with respect
20 to load forecast and growth forecast and things like
21 that, it does expect the future to be better, does it
22 not, than where we are currently today?

23 A It certainly expects things to improve, just
24 don't ask me exactly what the stats are, because I don't
25 know.

1 Q Right. And with respect to current
2 conditions, you would agree that they are exceedingly
3 difficult from an economic standpoint, correct?

4 A Correct.

5 Q So from the vantage point of the customers,
6 you are aware that the customers have indicated we would
7 rather pay later than pay now, correct?

8 A I will accept you telling me that. I don't
9 know that as a fact. I strongly suspect it is true, but
10 I would also say I think it will also be true four years
11 from now when the effect of all of this flow-back is no
12 longer just 300 million as I alluded to, but is 600 or
13 800 million.

14 Q Yes, sir, and I don't want you just to have to
15 accept my representation that customers would rather pay
16 later as compared to pay now. I mean, isn't that what
17 the effect of the testimony of Witnesses Pollock and
18 Pous and others suggest?

19 A To the best of my knowledge, they're not in
20 the service territory of Florida Power & Light.

21 Q But with respect to the entities on behalf of
22 who filed that testimony, you would agree with their
23 proposition is more of a let's pay later as compared to
24 let's pay now proposition, correct?

25 A That certainly is what they advocate. They

1 advocated -- other witnesses appearing as experts for
2 the same entities advocated exactly the same thing in
3 2002, 2005, in the storm hearings. I don't think -- I
4 really don't expect, and I don't mean to be sarcastic, I
5 don't expect to see a witness for FIPUG or Retail
6 Federation or anyone else up here saying raise rates.
7 So I don't understand the point of the question.

8 Q Well, I guess the point of the question is if
9 it is truly a proposition of pay me now or pay me later,
10 I think the customers are suggesting to you that we
11 would rather pay later, hopefully when the economic
12 circumstances in the state improve. Do you understand
13 that?

14 A I understand that, and I guess I would ask a
15 question. Are you committing to come in and recommend a
16 rate increase four years from now when things have
17 improved?

18 Q The nice thing about the lawyers, I get to ask
19 the questions.

20 A I have always wanted to do that, and I
21 apologize for doing it to you.

22 Q Today's your day.

23 CHAIRMAN CARTER: But you only get one.

24 THE WITNESS: Yes, sir.

25 BY MR. MOYLE:

1 Q I think there are a lot of variables in play,
2 as your witnesses have talked about, that may predict
3 and determine when the next rate case takes place, but
4 let me keep along this line, but ask you this question:

5 And you talked about sarcasm, I don't know
6 that this is sarcastic, but let me ask you if you
7 understand or could define paternalism?

8 A I think that is keeping the daddy bank open
9 most of the time. I have daughters, and that will
10 probably get me in trouble, too, but --

11 CHAIRMAN CARTER: I feel your pain.

12 BY MR. MOYLE:

13 Q Also a definition is that the parents are
14 looking out and they know what is best and let them make
15 the decision for the kids, is that fair?

16 A That is a fair characterization, yes.

17 Q That word came to mind when I read your
18 statement in your testimony. On page 3, line -- it
19 starts on line 1 and goes through line 4.

20 A Through "customers"?

21 Q Yes. Would you mind just reading that into
22 the record?

23 A I thought it was already in the record, but I
24 will read it. "My rebuttal testimony will demonstrate
25 why FPL's proposed treatment of the depreciation reserve

1 surplus and capital recovery schedules in this case is
2 both consistent with Commission practice and, most
3 importantly, in the best interest of FPL's customers."

4 Q So you are saying most importantly that you
5 believe your testimony is in the best interest of FPL's
6 customers, notwithstanding the fact that the Intervenors
7 and the Office of Public Counsel, which represents the
8 citizens of Florida, suggest that your position is not
9 in the best interest of customers?

10 A I believe that I am entitled to my opinion. I
11 have expressed that opinion, and I have tremendous
12 respect for the Commissioners to weigh it and deal with
13 it as they deem appropriate.

14 Q But, sir, isn't it true that your testimony is
15 proffered on the best interest of the company of which
16 you are an officer, I believe you said, Florida Power &
17 Light?

18 A That is correct, and I believe it holds true
19 for Florida Power & Light, that Florida Power & Light is
20 a company, believes that it is not in the best interest
21 of our customers to create an artificial reduction in
22 rates that is unsustainable that will be followed
23 immediately by a substantial increase in rates, while at
24 the same time there are substantial uncertainties that
25 will be faced by those future customers.

1 Q And what we have this Commission is being
2 tasked with to make a decision about depreciation,
3 correct?

4 A About the rate case, depreciation is part of
5 it, yes.

6 Q Right. And you are suggesting, well, we are
7 not sure what is going to happen in four years, there
8 are a lot of uncertainties. We do know today that this
9 state is in the worst recession since the Great
10 Depression, correct?

11 A That's what I understand, yes.

12 Q And that is not an uncertainty?

13 A No, I would submit it's a reality.

14 Q And also with respect to how this depreciation
15 can be treated, there is no accounting guideline or rule
16 that says you have to depreciate it over the remaining
17 life of the asset as compared to accelerating the
18 amortization, correct?

19 A I believe that the Commission rules require
20 the use of the remaining life methodology and that this
21 would be a departure from those rules.

22 Q You are aware of the settlement agreement that
23 was reached by Florida Power & Light and Intervenors in
24 the previous rate filing that was made, correct?

25 A Yes, I believe Mr. McGlothlin and I discussed

1 it.

2 Q And didn't that agreement allow for
3 depreciation over a five-year period?

4 A No.

5 Q Huh?

6 A No.

7 Q Are you aware that NARUC -- are you aware of a
8 NARUC public utility depreciation practices document?

9 A I think they have multiple documents, but I
10 don't know which one you are referring to.

11 Q I will give you a copy of what I am referring
12 to.

13 MR. MOYLE: Mr. Chairman, I --

14 CHAIRMAN CARTER: Do you need a number?

15 MR. MOYLE: Yes.

16 CHAIRMAN CARTER: I think we are at 534.

17 Short title, Mr. Moyle?

18 MR. MOYLE: The short title, "Excerpt from
19 Public Utility Depreciation Practices."

20 CHAIRMAN CARTER: Okay. We'll just go with
21 the title that's on it, "Excerpt from Public Utility
22 Depreciation Practices."

23 (Exhibit 534 marked for identification.)

24 CHAIRMAN CARTER: You may proceed.

25

1 BY MR. MOYLE:

2 Q Sir, you have in front of you an excerpt from
3 a NARUC document. Are you familiar with this document?

4 A I have seen the document, I wouldn't say that
5 I'm totally conversant on it, but I am aware of it.

6 Q Fair enough. The reason I am providing it to
7 you, because it does have a section in here about
8 treatment of reserve imbalances, and I wanted to
9 particularly draw your attention to page 189, the last
10 paragraph starting where it says, "Whereas." Do you see
11 that?

12 A So it is the second paragraph on the page?

13 Q Yes, sir.

14 A Correct.

15 Q And it indicates here that if you have a
16 material imbalance, one should make immediate
17 depreciation accrual adjustments. Do you agree with
18 that statement?

19 A I agree it's stated here, yes. Do I agree
20 that you should do that? No.

21 Q Yes, sir.

22 A No.

23 Q Okay. And with respect to what NARUC has
24 indicated in this document as to ways in which to
25 address an imbalance, it says, and I quote, "The use of

1 an annual amortization over a short period of time or
2 the setting of depreciation rates using the remaining
3 life technique are two of the most common options for
4 eliminating the imbalance."

5 I don't need you to confirm that is what the
6 words say, but I'm going to ask you, do you agree that
7 those are the two most common approaches used in a
8 regulatory context for dealing with a surplus?

9 A Actually, the -- my experience is limited to
10 Florida; however, my discussions with Witness Clarke
11 about the use of theoretical reserves point out, number
12 one, that very few other states use theoretical
13 reserves. I don't know that for a fact, that is what he
14 alluded to. But given that, the only one I am familiar
15 with is the remaining life approach.

16 Q So given your answer, you don't have any
17 reason to disagree with this statement that is set forth
18 on the excerpt that I provided to you, do you?

19 A I do not. But I would point out that the
20 preceding paragraph and the sentence immediately
21 following that allude to issues that need to be
22 considered and point out that it is not a binary, easy
23 yes or no decision. There are lots of other issues to
24 be considered, and those are some of the things I
25 discuss in my testimony.

1 Q In making a concession with respect to salary
2 increases, the company partially recognized the tough
3 economic times, and I would ask you to acknowledge and
4 agree that the tough economic times are also an
5 appropriate consideration that this Commission may use
6 when deciding the issue of the theoretical reserve
7 imbalance, would you agree with that?

8 A I guess my opinion is it would be highly
9 presumptuous of me to tell this Commission what they --
10 whether they should consider something like that.

11 Q But you are not aware of anything that would
12 preclude them from doing that?

13 A No.

14 Q And, in fact, hasn't this Commission
15 previously made judgments or considered things in
16 dealing with depreciation on things like whether
17 merchant plants might come into the state?

18 MR. BUTLER: Can you point the witness to a
19 specific reference, Mr. Moyle?

20 MR. MOYLE: I think I can. He has been with
21 the company since 1988, if he has information about
22 it --

23 MR. BUTLER: It was a pretty vague reference.
24 It would help to have something specific for him to
25 refer to.

1 CHAIRMAN CARTER: Just rephrase, Mr. Moyle.

2 BY MR. MOYLE:

3 Q Sir, are you aware if this Commission took any
4 action with respect to depreciation when deregulation
5 was being considered in the state of Florida?

6 A Yes.

7 Q And what was that?

8 A That is what led to some of the innovative
9 depreciation practices back in the '90s. What I would
10 highlight about them is that they would be, as I would
11 characterize it, non-life related.

12 In other words, it was not the fact that the
13 plant was going to end its life, it is that there was
14 tremendous concern here and based on evidence all around
15 the country that there were billions and billions of
16 dollars of stranded cost being -- customers having to
17 pay that with no plant to benefit them, and that was
18 being addressed in that manner.

19 Q And in that case, the specter of merchant
20 plants coming into the state and having stranded assets
21 did not come to be, correct?

22 A Correct. There was a lot of discussion in the
23 Legislature at the time, and that is what caused the
24 action.

25 Q Right. But the action taken by this

1 Commission was to accelerate some depreciation, isn't
2 that right?

3 A It was to accelerate depreciation and to do so
4 with no change in rates, in the rates that were being
5 charged to customers.

6 Q And you've heard of the proposition if it is
7 good for the goose, it is good for the gander?

8 A Certainly, yes.

9 Q So to the extent that there was an imbalance
10 that was not a surplus, but that it was a deficit,
11 hasn't the company in previous practice sought to
12 accelerate depreciation as a way to address the deficit?

13 A There have been -- I am trying to think. You
14 are talking about -- I don't -- there were none done in
15 the context of a rate increase. We certainly used --

16 Q In other contexts?

17 A In other contexts, certainly there were
18 revenue-based depreciation that was used, and the
19 Commission uses capital recovery schedules, but I firmly
20 believe capital recovery schedules are a variation of
21 remaining life, because the intent of a capital recovery
22 schedule is to complete recovery of the cost of an asset
23 that is expected to be retired within a relatively few
24 years, to complete that before that asset is retired, or
25 as close to that as possible.

1 Q Would you agree that if this Commission had
2 the latitude when making a judgment about depreciation a
3 number of years ago, to consider the prospect of
4 merchant plants possibly coming to Florida, that they
5 similarly would have the latitude to consider the dire
6 economic circumstances facing Florida businesses and
7 consumers when making a judgment about depreciation in
8 this case?

9 A I believe the Commission may consider anything
10 it chooses to consider.

11 MR. MOYLE: Mr. Chairman, if I could just have
12 a couple of minutes?

13 CHAIRMAN CARTER: Absolutely.

14 (Brief pause.)

15 BY MR. MOYLE:

16 Q Just a couple of points to focus on specific
17 portions of your testimony. On page 4, line 13, you
18 talk about one of the things that a theoretical reserve
19 surplus, it lowers the risk from premature retirements
20 due to external factors, such as technology changes,
21 climate legislation and hurricanes.

22 As we sit here today, can you name one
23 instance in which -- or tell me how many instances you
24 have had where you've had a premature retirement due to
25 a climate change legislation?

1 A None. There have been dollars expended, it is
2 not gone to the level of that, but climate legislation
3 is what is active in the federal legislative process
4 today.

5 Q And we don't know what is going to happen on
6 climate change, do we?

7 A Well, I would assume that there's -- probably
8 I would say most people have a very high -- I believe
9 there is a high probability that there will be climate
10 legislation that will result in reductions and various
11 things, which -- pollutants, I am trying to think of the
12 right word, which could lead to either higher costs or
13 could lead to the retirement of coal plants.

14 Q Wouldn't you agree it is a dangerous thing to
15 predict actions of Congress that haven't taken place?

16 A I would prefer not to go there, but, yes.

17 Q And to the point, we are kind of having a
18 little fun with it, but there is not any congressional
19 legislation that has passed that's been signed by the
20 President related to climate change, correct?

21 A No, but I would say I believe it is a risk,
22 and I think we should not be going through life ignoring
23 risk. It is like going out on the road with bald tires,
24 that is a risk. The tires still work, but I wouldn't
25 want to get up to 80 miles an hour with them.

1 Q Yes, sir, but in that context, you can go look
2 at the tire, can't you, and see that it is bald?

3 A I can see it's bald, correct.

4 Q In the context of prospective legislation, you
5 don't know whether it's going to happen or not until it
6 does, correct?

7 A Correct. I'll change my -- no, I won't do
8 that, never mind.

9 Q I guess to that point, because it is a risk
10 and if it does happen, isn't that why you have
11 depreciation studies filed every four years so that you
12 can take another look and measure depreciation based on
13 the actual facts and circumstances?

14 A That is correct, and that is precisely why I
15 am so strongly opposed to reversing the so-called
16 theoretical reserve surplus over four years.

17 Q Right. But you would agree it's better to --
18 given the four-year time frame on depreciation studies,
19 it is better to have them filed and deal with the facts
20 as they exist as compared to filing them and then making
21 judgments about this may or may not happen?

22 A I don't agree with that.

23 Q So the question I asked you was about the
24 premature retirements. You said there's no premature
25 retirements related to climate legislation?

1 A Correct.

2 Q Have you ever had any premature retirements
3 related to hurricanes?

4 A Yes, about \$2 billion worth in 2004 and 2005.
5 That is actually the repair cost, but there were tens of
6 thousands of poles, distribution system. There was a
7 tremendous amount of money spent at the nuclear
8 facilities, not the entire facility, but fixed assets
9 were -- had to be replaced.

10 Q Did you take any plants out of service as a
11 result of the hurricanes, or you just repaired them?

12 A No, I repaired them, replaced the parts.

13 Q And the plants have insurance on them, do they
14 not, your generating assets?

15 A Generating assets have insurance with
16 deductibles, yes.

17 Q In your opening statement, you said -- you
18 used the term "400 million," that they would ignore --
19 there was a discrepancy in the numbers.

20 I thought you said in your opening that there
21 might be a rate increase of 400 million further down the
22 road, and on your testimony on page 5, line 3, you use
23 the number 478 million. Did I mishear that?

24 A I'm sorry, which page of my testimony?

25 Q Page 5.

1 A Page 5.

2 Q Of your rebuttal. You are talking about the
3 Intervenor witnesses ignoring a large rate increase, and
4 you used the term "478 million" here, and I thought in
5 your summary you used the figure "400 million."

6 A If you would turn to Exhibit KMD-2, page 2 of
7 4, it illustrates the 300 -- the 400 million. It was my
8 liberal rounding from 399. And I would point out that,
9 as I indicated earlier, I left out the fact that when
10 you start depreciating the billion 245, the 399 will
11 actually be closer to 470.

12 If you go to KMD Exhibit 2, page 4 of 4, you
13 see the \$415 million, and the amortization of the 1245
14 would add another 70, so you are at 485.

15 Q And this would begin in 2014 at the earliest,
16 is that right?

17 A Yes, it depends on the year that the
18 amortization ends, it's the year following.

19 Q Okay. And Mr. McGlothlin asked you some
20 questions, I don't want to head down that road again,
21 but you would agree there are a whole bunch of other
22 variables that may impact that in terms of whether --
23 your revenue growth, your sales growths, the population
24 in the state of Florida, correct?

25 A Correct.

1 Q I think one final point. You and Mr.
2 McGlothlin spent a lot of time wrangling about this
3 intergenerational equity issue. In trying to follow the
4 conversation, let me pose something, and you tell me if
5 I have it right or not.

6 When you originally take an asset, you put it
7 in service and you try to match the depreciation to the
8 life of the asset, correct?

9 A Correct.

10 Q And that is a point in time where that
11 judgment is made when the asset is placed in service,
12 correct?

13 A Correct.

14 Q When you do the snapshot that you are talking
15 about, you actually go and say, well, do you think we
16 have more life on this asset, or less life, correct, the
17 snapshot that you're talking about?

18 A Right, correct.

19 Q And if you have more life, that results in a
20 theoretical surplus, correct?

21 A In the context you are using, yes, I would
22 agree with that.

23 Q And if it is less life, then it is a
24 theoretical deficit?

25 A Correct, or deficiency, however you

1 characterize it.

2 Q And Mr. McGlothlin was saying, well, isn't it
3 true that if you have a surplus that people have,
4 quote/unquote, paid, I know there is a little bit of
5 dispute about paid, but that people historically have
6 paid for that asset, correct?

7 A I am not sure I understand the question. It
8 has been charged to expense in the past, they've paid
9 for it, I'm not going to debate that issue, yes.

10 Q And if you are trying to in effect,
11 quote/unquote, get money back to them even though money
12 is not going back, but make an adjustment, I think Mr.
13 McGlothlin is trying to say that given the fact that
14 people have previously, quote/unquote, paid too much,
15 you ought to do it sooner rather than later, you would
16 agree with that, right?

17 A I would agree that's certainly his position.
18 I would say that you need -- if -- and he was
19 predicating his comments on the matching principle, and
20 I am saying if you are going to do that, then you need
21 to be looking at the benefits that are being derived
22 from that facility before you decide to write it back
23 up, because that's in effect what you are doing.

24 Q Right. So what you're kind of saying is it
25 depends on the vantage point of time that you look at

1 the issue, because I think what you're saying is when we
2 do this snapshot, you are looking at it from the
3 snapshot point in time going forward, and, therefore,
4 customers, it should be reset and they should be
5 depreciated over the life of the asset, correct? Isn't
6 that essentially your view?

7 A It should be over the remaining life of the
8 asset, yes.

9 Q And if it is not over the remaining life of
10 the asset and it is accelerated, you would view that as
11 unfair because the people who receive the benefit of the
12 acceleration are getting a benefit, correct?

13 A A lot of other reasons that are listed out in
14 my testimony, but I would say yes, but it is for a lot
15 more reasons than you describe.

16 Q And on page 7, line 17, I think you made this
17 point, but it states, "A theoretical reserve surplus
18 could indicate that the customer was charged for use of
19 the asset sooner than the snapshot assessment of the
20 future indicates was necessary." That is what creates
21 this surplus, correct, they were charged sooner?

22 A They were charged sooner, I depreciated it
23 sooner, take your pick.

24 Q Okay. So if you had somebody who was living
25 in The Villages -- do you guys serve The Villages, for

1 example, do you know, in central Florida?

2 A I don't believe so, but --

3 Q Century Village, you serve Century Village in
4 Palm Beach County?

5 A Correct.

6 Q Okay. And it was somebody who was retired, if
7 they had been paying rates based on this depreciation
8 that has now been changed as a result of this snapshot,
9 wouldn't it make more sense to try to get that benefit
10 back to them sooner rather than later?

11 A I guess I would disagree with your statement,
12 and the reason that I disagree is not that it should not
13 benefit the customer, but that in the case that we are
14 dealing with here, the customer was never charged more
15 for that depreciation.

16 The rates were set in 1985, '86, and then we
17 had several settlement agreements. Rates never changed.
18 Depreciation expense, depreciation rates, changed
19 dramatically over that time period.

20 Q And I don't want to get into the rates versus
21 depreciation, but the fact is that the depreciation was
22 more than it should have been because it was depreciated
23 over a period of years that was less than the actual
24 life, correct?

25 A I disagree.

1 Q Let me ask you this final question: You
2 wouldn't quibble if a decision were made that the
3 benefit of the doubt with respect to how to handle
4 depreciation ought to go to the benefit of the consumer
5 in these difficult economic times, you wouldn't object
6 to that, would you?

7 A I would again repeat it is not my call, and I
8 would defer to the Commission as to the things that they
9 think appropriate given the facts that are in this
10 particular case.

11 MR. MOYLE: Thank you for your time on dealing
12 with our mutually agreed dry subject.

13 CHAIRMAN CARTER: Thank you, Mr. Moyle. Mr.
14 Wright.

15 MR. WRIGHT: Thank you, Mr. Chairman.

16 CROSS EXAMINATION

17 BY MR. WRIGHT:

18 Q Good afternoon, Mr. Davis.

19 A Good after, Mr. Wright.

20 Q We have met before and again today. I am
21 Scheff Wright. I represent the Florida Retail
22 Federation in this proceeding. I just have a couple of
23 brief lines of questions for you that basically involve
24 a couple of predicates, and then the main question.

25 I think in response to some questioning by Mr.

1 McGlothlin you confirmed that the company under the
2 previous two settlement agreements amortized \$125
3 million a year of prior depreciation reserve surplus,
4 correct?

5 A Correct.

6 Q And you did that by making some accounting
7 entries that essentially amounted to credits against
8 depreciation expense during that time period, correct?

9 A That is correct.

10 Q Would I be correct to believe that those
11 accounting entries that Florida Power & Light Company
12 undertook to make those amortizations, reflect that
13 amortization, were consistent with generally accepted
14 accounting principles?

15 A I would say that generally accepted accounting
16 principles typically -- it is borderline, and I think
17 the Progress Energy controller talked quite a bit about
18 this, I chose not to. You typically deal with a change
19 in estimate.

20 The rules, in fact, say a change in estimate
21 should be accounted for in the period of change and then
22 subsequent periods that are affected by that change. So
23 we are dealing with it in a shorter period of time, but
24 we are also dealing within a regulatory environment.

25 Q Was your treatment inconsistent with generally

1 accepted accounting principles?

2 A The same answer I just gave you. It is
3 borderline. I do not believe it violates generally
4 accepted accounting principles, because I signed the
5 10-K and I sure don't want to go to jail.

6 Q That was what I expected, thank you for that
7 answer. The other brief line I have really just has to
8 do with a very practical example of matching.

9 We are talking about a surplus that exists at
10 a point in time and I just want to talk about FPL's
11 customer base in recent years versus FPL's customer base
12 in future years. Consider, if you will --

13 A I'm sorry.

14 Q No, I was giving you time to write --

15 A I figured this was going to be complex, so I
16 was making a note.

17 Q I really don't think it is.

18 A I will listen then, I'm sorry.

19 Q Give me the benefit of the doubt on this one.
20 FPL had whatever customer base it had over let's say the
21 last four years.

22 A Correct.

23 Q Say 2006 through 2009. And it is going to
24 have some customer base over the next four years, say
25 2010 to 2013, correct?

1 A I certainly hope so, yes.

2 Q Would you agree that there is going to be a
3 pretty high correlation matching of the customers from
4 2006 to 2009, with the customers from 2010 to 2013?

5 A I think generally. I don't think our
6 turnover is -- it is not like we turn over half the
7 customer base.

8 Q Right. And, correspondingly, would you agree
9 that the match between the 2006 to 2009 customers, and
10 the 2010 to 2013 customers, is going to be greater than
11 the match between the 2006 to 2009 customers, and the
12 2024 to 2027 customers?

13 A You have taken me further than I want to go.
14 I mean, I just don't track turnover of customers. But
15 the longer the time period, the less likely it is that
16 you would have an exact match, or the greater difference
17 in the match, let's call it that.

18 MR. WRIGHT: That is all I had, thank you.

19 CHAIRMAN CARTER: Thank you, Mr. Wright.

20 Mr. Wiseman.

21 MR. WISEMAN: Thank you, Mr. Chair.

22 CROSS EXAMINATION

23 BY MR. WISEMAN:

24 Q Mr. Davis, I just have a couple of follow-up
25 questions. I think you just testified in response to a

1 question asked by Mr. Moyle that rates have not changed
2 since 1985, 1986, is that correct?

3 A Base rates have not increased since 1985, '86.

4 Q Now, you would agree that depreciation acts as
5 a reduction against rate base, isn't that right?

6 A It is an expense, part of cost of service with
7 a credit reducing rate base indicating that you have
8 charged that cost to the customer, yes.

9 Q Okay. And isn't it correct that all other
10 things being equal, that the rates that would be derived
11 based upon a lower value rate base would be lower than
12 the rates derived based on a higher value rate base,
13 isn't that right?

14 A That would be correct, all other things being
15 equal; however, you're ignoring capital expenditures,
16 which are substantial and exceed the amount of
17 depreciation recorded in any year that I am aware of.

18 MR. WISEMAN: Thank you. I have no further
19 questions.

20 CHAIRMAN EDGAR: Questions from staff?

21 MS. BROWN: Yes.

22 CROSS EXAMINATION

23 BY MS. BROWN:

24 Q First, Mr. Davis, I have handed out a document
25 to you entitled, "Staff's Second Request for Production

1 of Documents No. 5." Do you have that?

2 A Yes, ma'am.

3 Q Are you familiar with it?

4 A I didn't look at it, I'm sorry.

5 Q Do you want to take a minute?

6 A I assume you don't want me to read every page.

7 Q No. I want you to tell me whether it was
8 prepared by you or under your supervision.

9 A Do you have who signed the document when it
10 was submitted? I have seen thousands and thousands of
11 documents in reviewing the discovery, so I am not being
12 cute.

13 Q I don't have who signed it.

14 CHAIRMAN CARTER: Hang on a second.

15 Mr. Butler, can you help us out here? I feel like we
16 are dancing in the dark on this one.

17 MR. BUTLER: I am advised these are documents
18 related to the clause accounting, something that would
19 have been pulled together for the ECRC clause materials.
20 It is part of the accounting function. I guess
21 ultimately Mr. Davis is responsible for that.

22 I don't believe Mr. Davis had any very direct
23 role in pulling these together. Certainly to the extent
24 he is able to answer questions on it, I have no
25 objection to directing them to him, but I am not sure

1 that he has a lot of direct familiarity with the
2 documents in question.

3 CHAIRMAN CARTER: Thank you. Staff, you may
4 proceed.

5 MS. BROWN: All right, Mr. Chairman, but I
6 would like to point out that we originally prepared this
7 exhibit to ask Mr. Barrett questions and were told that
8 Mr. Davis would be the appropriate person to --

9 CHAIRMAN CARTER: He is. Let's roll.

10 BY MS. BROWN:

11 Q This interrogatory asks FPL to provide the
12 calculations of the composite depreciation rates found
13 in the MFRs, correct?

14 MR. BUTLER: I'm sorry, this is a document
15 production request, isn't it? Am I looking at the wrong
16 thing?

17 MS. BROWN: No. 5, yes.

18 MR. BUTLER: Not an interrogatory?

19 MS. BROWN: I'm sorry, I meant POD.

20 THE WITNESS: It says in the note section --
21 are you asking about No. 5 in the notes section, because
22 the first one asks about reliability complaints, No. 4?

23 BY MS. BROWN:

24 Q We are asking about the notes section, that is
25 correct.

1 A The note section -- okay, that is what the
2 question asks, yes, for the supporting documentation for
3 calculation of the composite depreciation rates.

4 MS. BROWN: Thank you. That's really all I
5 had. We would like to mark this for identification,
6 please.

7 CHAIRMAN CARTER: Commissioner, if you look at
8 your records, we are now up to No. 535, 535. Let's call
9 it -- staff, recommendation on a short title? Did I say
10 535?

11 MS. BROWN: Yes, it's "Staff's Second Request
12 for PODs, No. 5."

13 (Exhibit 535 marked for identification.)

14 CHAIRMAN CARTER: You may proceed.

15 BY MS. BROWN:

16 Q Mr. Davis, I'm passing around staff's
17 interrogatory No. 256, and I have a couple of questions
18 I would like to ask you about it.

19 CHAIRMAN CARTER: It is already in, so we
20 don't need to mark it.

21 MS. BROWN: Yes, it's already in. It's part
22 of staff's 13th set of interrogatories.

23 CHAIRMAN CARTER: Okay. You may proceed.

24 BY MS. BROWN:

25 Q Mr. Davis, that interrogatory states in the

1 second sentence of the answer, that FPL does not
2 specifically identify deferred taxes or investment tax
3 credits for construction work in progress, is that
4 correct?

5 A It does not forecast them. They are
6 identified in the historical accounting record.

7 Q Would you read the second sentence of the
8 answer that starts "The company did not"?

9 A If I may, you need to read the first sentence,
10 "The company has never forecasted" --

11 CHAIRMAN CARTER: You can respond afterwards,
12 but respond to the question first, okay?

13 THE WITNESS: Okay. She wanted me to read the
14 second sentence.

15 CHAIRMAN CARTER: Yes, sir. In your answer
16 you can give the context, but answer the question first.

17 THE WITNESS: Okay. "The company did not
18 specifically identify accumulated deferred income taxes
19 -- income taxes, balances or investment tax credits
20 balances" -- horrible English -- "specifically with
21 construction work in process balances removed from rate
22 base."

23 BY MS. BROWN:

24 Q Thank you. Do you want to explain that?

25 A The only point I wanted to make is the

1 preceding sentence I believe puts this in context that
2 we are talking there about the forecast for the --

3 CHAIRMAN CARTER: Would you like to read the
4 sentence into the record?

5 THE WITNESS: I have made the point. No, sir,
6 I don't think I need to waste your time with it.

7 CHAIRMAN CARTER: Okay. No problem. I want
8 you to fully answer the question. Ms. Brown.

9 BY MS. BROWN:

10 Q The portion of CWIP that is removed from rate
11 base relates to CWIP amounts that accrue AFUDC, is that
12 correct?

13 A Correct. Either accrue AFUDC, or if they
14 relate to a clause, they would also be removed.

15 Q And FPL removes a pro rata share of deferred
16 taxes from capital when it removes the appropriate
17 amount of CWIP from rate base, correct?

18 A That is correct, it does it pro rata across
19 all sources of capital.

20 Q And deferred taxes are primarily derived from
21 the difference between book depreciation and tax
22 depreciation, correct?

23 A I think the term "primarily" -- I believe you
24 are correct; however, I would hasten to add that there
25 are several significant differences between the manner

1 in which the Internal Revenue Code treats construction
2 work in process and GAAP treats construction work in
3 process. So there are deferred taxes associated with
4 CWIP. CWIP being construction work in process, I'm
5 sorry.

6 Q So you are saying -- you would disagree with
7 this statement that CWIP doesn't involve depreciation or
8 any depreciation-related deferred taxes?

9 A No, I would disagree. You don't depreciate
10 construction work in process. What I would disagree
11 with is that a statement that there are no deferred
12 taxes associated with construction work in process,
13 because there are, in fact, deferred taxes associated
14 with it.

15 Q All right. Mr. Davis, we are passing out
16 another document for you. It is the 2009 Supplemental
17 MFR Schedule C-10.

18 CHAIRMAN CARTER: You don't need a number, do
19 you, Ms. Brown?

20 MS. BROWN: No, this is already in.

21 BY MS. BROWN:

22 Q Would you briefly describe what this Schedule
23 C-10 shows?

24 A C-10 is one of the required MFR schedules, and
25 it details the rate case expenses associated with the

1 use of outside consultants in the rate case.

2 Q If you will look at line 5, column 1 shows the
3 ABSG Consulting, Inc., as one of the vendors providing
4 services to FPL for the rate case, correct?

5 A Yes, ma'am.

6 Q Does this document, C-10, show the cost for
7 this firm, including travel, as \$270,000?

8 A It shows the estimated cost of \$270,000.

9 Q Could you explain what services this firm
10 provides to FPL related to this rate case?

11 A ABSG Consulting was Steven Harris, as Witness
12 Pimentel talked about and Witness Harris, they talked
13 about the storm reserve, the modeling of hurricane risk.
14 That is kind of the short answer.

15 Q All right, that is fine. Moving to line 6,
16 column 1, this shows Gannett Fleming, Inc., as one of
17 the vendors providing services to FPL, correct?

18 A Correct.

19 Q And the document shows the cost for this firm,
20 including travel, is 150,000?

21 A Correct. That is, again, a forecast of what
22 it was when the MFRs were prepared.

23 Q Who was the witness from this vendor?

24 A Mr. Clarke. They performed the depreciation
25 study.

1 Q Now, moving to line 7, column 1 shows
2 Financial Concepts and Applications, Inc., as a vendor
3 providing services to FPL, correct?

4 A Yes, ma'am. They show an estimate of 160,000,
5 and the witness was -- that's got to be Bill Avera,
6 William E. Avera.

7 Q All right. And what services did Mr. Avera
8 perform for FPL?

9 A Well, he did the analysis of I believe both
10 capital structure and ROE analysis, prepared testimony
11 and in fact testified.

12 Q All right. Does this schedule show the total
13 amount expected to be incurred for the rate case for
14 each of the firms shown on the schedule?

15 A No, ma'am, it does not. It represents the
16 estimate that was prepared at the time the MFRs were
17 prepared.

18 Q So at the time the MFRs were prepared, this
19 was the total amount expected to be charged?

20 A For consultants, yes, ma'am. You have other
21 internal costs, you have travel costs, you have hotel
22 costs, meals, et cetera.

23 Q Yes. This Schedule C-10 shows a total for
24 outside consultants estimated at 1,255,000 plus 265,000
25 in legal services, correct?

1 A Right, a million -- correct, yes, ma'am.

2 Q And the total rate case expense FPL is
3 requesting per this document is 3,657,000, correct?

4 A Yes, I found it, yes, that's what I was
5 looking for. Yes, 3,657,000.

6 Q How much of that has been spent to date, do
7 you know?

8 A 3,902,430. The estimated total cost is
9 expected to be 4,967,000. The 3,902,000 is as of
10 September 30th, because we do a very comprehensive
11 accrual process contacting vendors and what-have-you to
12 get it in for the quarterly reports.

13 CHAIRMAN CARTER: Mr. Moyle, yes, sir.

14 MR. MOYLE: I think we are getting into new
15 ground here with respect to rate case expense. I have
16 been trying to keep a clean record about relying on
17 exhibits and information filed today.

18 It is my understanding that FPL is not making
19 an effort to seek to recover additional expenses related
20 to the rate case, but this testimony seems to be headed
21 in that direction.

22 So I guess I would object to the extent that
23 it calls for evidence that hasn't been previously
24 produced or subject to discovery or cross examination,
25 kind of consistent with the previous objections I have

1 made, but also maybe a request for clarification as to
2 whether FPL is indeed seeking to recover the numbers set
3 forth on this exhibit, or are they seeking to get a \$5
4 million number?

5 CHAIRMAN CARTER: Mr. Butler.

6 MR. BUTLER: We are seeking the number that is
7 in MFR C-10. We are responding to questions.

8 CHAIRMAN CARTER: Ms. Brown.

9 MS. BROWN: Yes, Mr. Chairman. I think maybe
10 Mr. Moyle is jumping the gun a little bit, if he would
11 let me continue my --

12 CHAIRMAN CARTER: He will let you.

13 BY MS. BROWN

14 Q If FPL were filing a rate case based on the
15 2010 test year only, without a requested increase based
16 on 2011, and without a requested increase based on the
17 GBRA, would the rate case expense be less?

18 A That is a tough question. I do not believe
19 the consultant numbers would change. You might have
20 some change in some of the overtime activity, and I
21 can't really -- that is largely predicated on the amount
22 of discovery.

23 So there would be some decrease, but given the
24 fact that we've substantially in excess of it, I think
25 the 3,657,000 in retrospect is a very fair estimate for

1 2010.

2 MS. BROWN: May we just have one minute?

3 CHAIRMAN CARTER: Yes, I think that would be a
4 good idea for everyone to take a minute. Let's don't
5 leave the building though, just kind of take a minute in
6 place. Mr. Davis, do you need to go to the necessary
7 room while they are taking a minute? Maybe we could
8 spare a minute to do that.

9 THE WITNESS: I don't want to give them a
10 chance to think of any other questions.

11 CHAIRMAN CARTER: Tough it out, stay right
12 there then.

13 MS. BROWN: We are passing out another
14 document. I guess we're not back yet, I'm sorry.

15 (Brief pause.)

16 CHAIRMAN CARTER: You may proceed, Ms. Brown.

17 BY MS. BROWN:

18 Q Mr. Davis, we have just passed out Staff's
19 Fourth Set of Interrogatories, Interrogatory No. 35.
20 Have you had a chance to look that over?

21 A I've scanned it, yes, ma'am.

22 Q Are exempt employees salaried employees?

23 A Ask the question again.

24 Q Are exempt employees salaried employees?

25 A Yes, ma'am, they are.

1 Q Would you then explain why salaried employees
2 are projected to be paid \$450,000 in overtime for work
3 on this rate case as shown on this interrogatory, items
4 little (a)?

5 A Did you finish the question?

6 Q I did.

7 A Okay, sorry, I wasn't sure. The way I would
8 characterize it is this: There are a couple of rare,
9 limited instances where exempt personnel, people that
10 are salaried, if you will, get overtime.

11 One would be in storm situations, and another
12 is a rate case. The rate case started back in calendar
13 '08. None of -- I shouldn't say none, but virtually
14 none of these people were relieved of their day job.

15 So they had both responsibilities, both the
16 rate case, as well as completing basic job
17 accountabilities. May stretch out things, but they
18 still had to get those done. Their salaries are based
19 upon their day job, not their day job plus a rate case.

20 Their bonuses are based on their day job, not
21 a rate case. So they are accorded this. There are
22 significant deductibles that are made. The higher the
23 level you are, the greater the deductible that is taken
24 before you're allowed to earn any overtime dollars.
25 Once you get up into the -- I think it's the manager

1 level, you receive none.

2 Q Would you explain that concept of the
3 deductible with respect to overtime? I am not sure I
4 understand.

5 A Okay. Assume that someone reports 70 hours in
6 a week. If they have a -- they are expected to work the
7 40. If they have a deductible of 10, then that would
8 add up to 50 and they would be paid overtime for the 20,
9 not for the 30 over -- not the amount over 40. You lose
10 10 hours, you eat 10 hours, because you're expected on a
11 routine basis to work a certain amount of overtime.

12 Q And how do you determine the different
13 deductibles?

14 A That is beyond my ability. That would be
15 Kathleen Slattery, who has already been up. It is a
16 Human Resources policy. I can tell you as a concept
17 it's designed to say that people that are in the lower
18 level professional ranks have the smallest deductible.

19 The higher up, greater your salary, the
20 greater your potential to participate in a bonus, the
21 less you should be -- to the point of no entitlement to
22 overtime. Entitlement is a terrible word, too, but --

23 Q That answers my question, thank you.

24 If you would look to item little (c) on
25 interrogatory 35 and tell me, are the amounts that were

1 included on MFR Schedule C-10 for 2009, included in the
2 item (c) of this interrogatory?

3 A Give me one minute.

4 Q Sure.

5 A Yes, they are included on C-10. The biggest
6 number that is there is the contractor -- I'm sorry, the
7 professional services, and that includes the 1255 and
8 the 265 that are on C-10. And there is something else
9 that is in there, and right now I am having trouble
10 finding what it is.

11 Q Why is the amount shown in item (c) on
12 interrogatory No. 35 larger than Schedule C-10?

13 A That is what I was looking for and I have not
14 found it.

15 Q In the MFRs, the amount is 1,520,000 --
16 520,000, and the interrogatory, it is 2,228,000.

17 A Okay. C-10 adds up to 1,520,000, and there's
18 also a professional service not one of the listed firms.
19 I am looking to see if there was a -- this would be
20 miscellaneous, I will call it miscellaneous firms, it
21 was \$83,000, which adds up to the 1603, but it is not
22 one of the listed firms.

23 So it would just be other professional
24 services, and in our particular case, using Deloitte to
25 audit certain costs and some of the other firms in

1 dealing with a couple of issues, we used -- used them
2 for that service, and they, of course, were not listed
3 on C-10.

4 Q But that still leaves about \$600,000
5 outstanding, doesn't it?

6 A I thought you were talking about the million
7 603, I apologize. Temporary payroll would not be listed
8 on C-10. It is not a consultant per se. In my case, I
9 know we brought in two -- a couple of people, two or
10 three people, into my regulatory accounting group to
11 deal with -- to help with the heavy workload on MFRs and
12 discovery requests. So it is the other items that are
13 listed there.

14 I thought you were asking about the million
15 603, and that's the number that the 83 relates to and
16 helps you to reconcile back to C-10. I have rambled on,
17 I'm sorry. What question still is pending?

18 Q I think we followed you and you answered our
19 question.

20 A Okay.

21 Q Could you explain the \$42,000 for rent space
22 as shown on item (f) of interrogatory No. 35?

23 A 42,000 for rent, I'm --

24 Q "Rent-space." It is on the third page of
25 that --

1 A I mean, when we are up here at the hotel, we
2 are renting some, not rooms to live in, but rooms to
3 work in while we were up here. It would also be any
4 space for storage, what-have-you. And I can tell you we
5 have not spent all of that, but we have overspent in
6 other categories.

7 Q Item (d) in interrogatory No. 35 shows a
8 projection for rate case expense related to cellular
9 telephone expense of 28,800, correct?

10 A I am looking for it. Item (b)?

11 MR. BUTLER: (d) as in dog.

12 BY MS. BROWN:

13 Q Yes.

14 A Delta, yes, okay. Cellular telephone expense.
15 And the question?

16 Q The question is, can you explain that
17 expenditure a little better, like when -- what the time
18 period is and is it for cellular telephones up here or
19 just related to the rate case?

20 A Yes, I mean, the answer is yes to all of the
21 items. It would be for up here, it would be for any
22 cellular telephone usage that is charged. I know my
23 phone is based on if I make a call, I pay a certain
24 amount per minute. It is a very reduced rate. So it
25 would be any kind of usage for that. I am looking to

1 see if I have anything that would be more helpful. No,
2 I don't see anything.

3 Q So you don't know what the time frame --

4 A Well, the time frame would be from the time we
5 started. In other words, if we're making -- if people
6 are using their cell phones for that purpose and they
7 can identify that that is the purpose for using a cell
8 phone and they are paying on a per minutes basis, then
9 they could charge it to the rate case versus their own
10 home budget.

11 Q Do you know how many phones would be subject
12 to --

13 A I guess virtually everyone working on the rate
14 case has a phone as a matter of routine. And there
15 would be some that would be up here available for use,
16 so that would -- you know, if there were a monthly fee
17 on those. And I am struggling to look and see if I have
18 any more information, because they put together a really
19 good book, but I studied depreciation instead of getting
20 this.

21 CHAIRMAN CARTER: Commissioner Argenziano.

22 COMMISSIONER ARGENZIANO: Just to -- staff
23 asked a question how many, and the answer was everybody
24 working on a rate case. That doesn't give me any -- how
25 many, do we know?

1 THE WITNESS: I don't know the actual number.
2 Forty people, 45 people that would be working on -- in
3 other words, what I'm saying is most people have cell
4 phones, and if they are charging usage of the cell phone
5 to the company, whether it's from a company phone or
6 from a personal phone where they seek reimbursement
7 for the minutes --

8 COMMISSIONER ARGENZIANO: Right. When they
9 are up here?

10 THE WITNESS: Yes, ma'am.

11 COMMISSIONER ARGENZIANO: So just a cannon,
12 then I'll let staff continue and then I'll have
13 questions afterwards, but just on that line for cell
14 phones.

15 Don't you have a plan that gives you like a
16 certain -- are the cell phones -- I know my plan is --
17 if I had a plan that charged me for every call and every
18 minute, I wouldn't be able to afford a cell phone. It
19 is a certain amount of minutes. Do you have something
20 like that that everybody gets to use?

21 THE WITNESS: We have some plans that are used
22 that way. I am not the expert on those plans, but I
23 know my particular plan, because I don't use a cell
24 phone, I hate talking on a cell phone, I pay on a per
25 minute basis. But there are others that would be on --

1 with so many minutes. We have some people that live on
2 cell phones because they work in the field all the time,
3 and they have very high minute plans.

4 COMMISSIONER ARGENZIANO: Right. And that's
5 when you -- you go for those high minute plans so that
6 you are getting the best bang for your buck, I guess?

7 THE WITNESS: Yes, ma'am.

8 COMMISSIONER ARGENZIANO: And to help me out,
9 when would the work on the rate case actually have begun
10 for everybody?

11 THE WITNESS: For everybody would have started
12 back in the fall of 2008.

13 COMMISSIONER ARGENZIANO: And you're saying
14 about 40 people working on the rate case?

15 THE WITNESS: I'm just pulling it off the top
16 of my head. Please don't hold me to it.

17 COMMISSIONER ARGENZIANO: Okay. And then this
18 number here, this is not a confidential number, is it?

19 THE WITNESS: No. I'm not aware that --

20 COMMISSIONER ARGENZIANO: So for \$28,800
21 starts from the fall of 2008 to now? Does that cover
22 from the beginning to now?

23 THE WITNESS: Remember, that is just an
24 estimate, and I will be honest, I am having a difficult
25 time even finding that line on my actual cost schedule,

1 which tells me it is not a significant cost. So that
2 estimate may well be overstated and rolled other things
3 in there, but I can't find it, so I am very frustrated.

4 COMMISSIONER ARGENZIANO: Okay. Then I'll
5 have other questions after. Thank you.

6 CHAIRMAN CARTER: Ms. Brown.

7 MS. BROWN: Yes, Mr. Chairman, just a couple
8 more questions on this line and then a few more after
9 that.

10 BY MS. BROWN:

11 Q FPL recently filed an appeal of the
12 confidentiality of employee compensation, you're
13 familiar with that, correct?

14 A I am familiar with the basic issue. I'm not
15 privy to the confidential schedules.

16 Q Are the attorneys' fees for those appeals
17 being charged as a rate case expense?

18 A I do not know. I don't even know who is doing
19 the appeal, whether it is being done in-house or -- I
20 guess outhouse is not right -- with external lawyers.

21 Q Do you know who would know and who could
22 provide us the answer to that question?

23 A Well, if turn-about is fair play, I suppose
24 Mr. Butler.

25 CHAIRMAN CARTER: See, Mr. Butler, they always

1 throw the lawyers under the bus.

2 MR. BUTLER: They do, but I would need to
3 confer and get the information. I am sure we can get
4 the information and confirm. I don't have the answer as
5 I sit here.

6 CHAIRMAN CARTER: Okay. You can get it to
7 staff, and they can provide it to the parties.

8 MS. BROWN: Thank you. And now to one last
9 exhibit, Mr. Davis --

10 CHAIRMAN CARTER: Do you need a number for
11 this one, Ms. Brown?

12 MS. BROWN: Yes, I do.

13 CHAIRMAN CARTER: This will be 536, I believe
14 it. Is that where we are now?

15 MS. BROWN: Yes.

16 CHAIRMAN CARTER: One minute, Ms. Brown.

17 (Exhibit 536 marked for identification.)

18 CHAIRMAN CARTER: Commissioner Skop.

19 COMMISSIONER SKOP: Thank you. Just to Mr.
20 Butler, on the prior question from our legal staff with
21 respect to the -- whether the cost for the appellate
22 review related to the confidentiality data was a rate
23 case expense. Can you also find out whether
24 Mr. Richards' appearance before the Commission in that
25 preliminary issue was also a rate case expense?

1 MR. BUTLER: I will.

2 CHAIRMAN CARTER: Ms. Brown.

3 BY MS. BROWN:

4 Q Mr. Davis, this document is entitled "Florida
5 Power & Light Company and Subsidiaries' Rate Case
6 Expenses, October 14th, 2009." You all filed this
7 with the Commission, did you not?

8 A Yes, we did. That is the schedule I have been
9 referring to looking for the actuals.

10 Q All right. I have no further questions on
11 that line. Let me get back to depreciation for you.

12 A Before we leave that, I want to provide one
13 piece of information to Commissioner Argenziano. The
14 line that that cellular telephone should have rolled up
15 into on this October 14th schedule is -- it should be
16 line 36, and that shows a total cost in there of 21,000,
17 and that includes the tie line to take us back to Miami
18 for computers and everything like that.

19 So I think the cellular number is grossly --
20 I'll say grossly overstated in the estimate and I
21 suspect included some other items, but that is the best
22 I can answer at this point.

23 COMMISSIONER ARGENZIANO: Thank you.

24 CHAIRMAN CARTER: Ms. Brown, you may proceed.

25 BY MS. BROWN:

1 Q Mr. Davis, we have passed out a document
2 entitled "FAS 154, Accounting Changes and Error
3 Corrections," a replacement of APB opinion number 20 and
4 FASB statement number three. Are you familiar with
5 this?

6 A Yes, ma'am.

7 Q This accounting statement was issued in May
8 2005 and addresses accounting changes and error
9 corrections for financial reporting purposes, correct?

10 A Yes, ma'am.

11 Q Does this document apply for regulatory
12 accounting purposes?

13 A The answer is all GAAP applies to companies in
14 the U.S., whether they're regulated or not regulated,
15 FAS 71, which is an additional standard which kind of
16 bridges between any unusual things that may be done for
17 a regulatory purpose.

18 So short answer to the question, yes, it
19 applies, but you may have nuances coming about because
20 of regulation that are permitted under FAS 71.

21 Q As part of FPL's 2005 rate stipulation, FPL
22 was authorized to record an annual depreciation expense
23 credit of 125 million each year of the stipulation,
24 correct?

25 A Correct.

1 Q And FPL recorded the 125 million depreciation
2 expense credit for four years for a total of 500
3 million, correct?

4 A Correct, and I would point out there was also
5 a prior -- a prior period four years when we did that
6 from 2002 to 2005. So it is not just the period you
7 refer to.

8 Q And didn't recording this depreciation expense
9 credit violate SFAS 154?

10 A Not in my opinion, no.

11 Q Why not?

12 A One, operating off of a Commission order,
13 albeit the Commission order originated in the approval
14 of a stipulation; number two would be that I am
15 reversing -- to an extent I am reversing previous
16 amounts that were recognized based on a revenue-based
17 depreciation.

18 I think the reason that you're alluding to
19 whether it violates GAAP is talking about the change in
20 accounting estimate. The essence of that particular
21 literature is that you deal with changes in accounting
22 estimates over all future periods that are affected by
23 the change.

24 And I think it was Mr. Moyle and I were
25 discussing our exciting topic of depreciation, we did

1 have some discussion about that there is a borderline
2 there that we are walking on with some of the
3 depreciation activities.

4 MS. BROWN: All right. Thank you. We have no
5 further questions.

6 CHAIRMAN CARTER: I think Mr. Moyle called it
7 a boring, you said exciting, I think he said it was
8 boring.

9 THE WITNESS: It depends on your perspective.
10 I am an accountant, so I've got to reach for things.

11 CHAIRMAN CARTER: I got it now. That would
12 make sense being an accountant. Commissioner
13 Argenziano. I can go to Commissioner Skop and come back
14 if you want to do that. Commissioner Skop, you are
15 recognized.

16 COMMISSIONER SKOP: Thank you. Good
17 afternoon, Mr. Davis.

18 THE WITNESS: Good afternoon, sir.

19 COMMISSIONER SKOP: Mr. Davis, I will try to
20 make this short. I have a few follow-up questions, and
21 I will try and be brief.

22 On page 31 of your rebuttal testimony, you
23 discuss the topic of depreciation and the theoretical
24 surplus and some of the comments of the Intervenor's
25 testimony. I will give you a second to find that. It

1 is generally lines 16 through 22 on page 31.

2 THE WITNESS: Are you talking about the
3 settlement agreement?

4 COMMISSIONER SKOP: Yes, sir.

5 THE WITNESS: I am there.

6 COMMISSIONER SKOP: Okay. I guess there was
7 substantial discussion during the conduct of this case
8 as to why that was done in the settlement agreements and
9 hearing from both sides why it was appropriate to do in
10 the current rate case, and equally hearing from the
11 utility why it is not appropriate to do it.

12 In relation to the question just raised by our
13 legal counsel, I think the company witness asserted that
14 to do so would violate GAAP accounting and a financial
15 standard, and I was wondering if you could briefly
16 articulate why that specifically is the case, because at
17 least from the evidence that I have been able to look
18 at, I am not comfortable in drawing that as a concrete
19 conclusion. So I would like to hear a more specific
20 answer from you, if you are able to provide one.

21 THE WITNESS: I'm confused on one point. I
22 think it was a Progress Energy financial witness that
23 was -- Mr. Garrett that spent a fair amount of time
24 talking about it being a violation of GAAP.

25 COMMISSIONER SKOP: I stand corrected, so I

1 will move to strike my prior --

2 THE WITNESS: No, I will answer the question,
3 I just wanted -- because we had had this discussion
4 inside the company as to whether it was appropriate to
5 do it, and there are some concerns with doing it.

6 There is some question that, for example,
7 should we take the 125 million and take that and credit
8 a regulatory asset type expense, which coincidentally is
9 classified as depreciation in the uniform system, and
10 set up a regulatory asset, because that is one way of
11 doing it outside the depreciation range and is
12 absolutely positively not a GAAP violation as long as
13 there is assurance that you can recover that in the
14 future. So that's how it can be done.

15 The problem that I had expressed to our
16 auditors when I discussed the particular issue was it
17 would quite literally force me to deal with it in a
18 parallel depreciation system, keeping all of the same
19 level of detail for this \$125 million a year credit.

20 And the reason for that is all of the prior
21 accelerated recoveries that occurred, the revenue-based
22 depreciation and so forth, all of them have been
23 allocated to the individual depreciation accounts for
24 plant assets. So you lose track of them, you can't
25 track them.

1 So you either have to create a parallel
2 universe or go ahead and book them into depreciation,
3 and our outside auditors accepted that as an approach to
4 use, because it could have been -- just as easily been a
5 regulatory asset that was created.

6 COMMISSIONER SKOP: So if I heard you
7 correctly, is that what was done in the context of the
8 2005 settlement in terms of the accounting treatment?

9 THE WITNESS: No. We could have created the
10 regulatory asset. We convinced our auditors to go ahead
11 and let us book it as depreciation because we could
12 have. In other words, there was no -- I don't know how
13 else to say it, but like no harm, no foul. We could
14 have done it, and it was too hard to keep up with
15 otherwise.

16 COMMISSIONER SKOP: Okay. So on page 31 of
17 your rebuttal testimony, I think you distinguish between
18 the give and take under a settlement agreement and the
19 current position of some of the intervening parties as
20 to why it is not appropriate to do it now when you have
21 done it previously in the past, and that is the same
22 question I have.

23 I recognize sometimes settlements are give and
24 take, but sometimes settlements aren't always the best
25 settlement. So why now in a prevailing economic

1 conditions where consumers are facing substantial
2 hardship, why would it not be appropriate from the
3 company's perspective with a theoretical surplus to
4 similarly do the same things that it had agreed to in
5 the past by virtue of the 2005 settlement agreement, to
6 produce near term rates for customers, thereby also
7 addressing the intergenerational inequity argument?
8 Long question, sorry.

9 THE WITNESS: Actually, a tough question. I
10 think you've captured the difficulty that I think the
11 Commissioners are going to face. I am going to answer
12 it first from a depreciation perspective.

13 I disliked the 125 in the 2002 agreement, I
14 disliked the 125 in the 2005 agreement. It was a
15 negotiated settlement, it was what took to settle those
16 particular things. So you swallow your pride and you go
17 with it.

18 But the reason I didn't like it was really
19 driven -- aside from a theoretical dislike for it, it
20 was driven home in preparing for this particular rate
21 proceeding, and it relates to the \$300 million that I
22 alluded to of this ask is a direct result of flowing
23 back a billion -- flowing back is a terrible word, but
24 reversing a billion dollars' worth of depreciation.
25 We've increased rate base by that amount, and if you

1 work through the match, it works out to be \$300 million
2 of the ask is that. It is only going to go up. That is
3 the problem that I've got.

4 Maybe I'm a -- well, I guess I am a confirmed
5 pessimist, but I am very worried that this number keeps
6 building and we are going to be faced with a rate
7 increase four years hence that will not only have the
8 300 million leg in it, but it will then have another,
9 however big it is, 400 million, so that is 700 million.
10 And I am assuming they're all additive, not everything
11 is additive in there, but that's my biggest concern.

12 COMMISSIONER SKOP: Do you view the rate case
13 as the -- as an ultimate true-up of all regulatory
14 accounts?

15 THE WITNESS: I don't know that it is always a
16 complete true-up, but it is certainly an opportunity to
17 correct things as we go.

18 COMMISSIONER SKOP: So certainly if there were
19 a depreciation deficit, you would seek to obviously
20 recover that now from the ratepayers, is that correct?

21 THE WITNESS: Correct, over the remaining
22 useful life, and maybe that is the question that would
23 turn it around, with no disrespect intended, but would
24 you as a Commissioner feel comfortable saying that we
25 are going to flow this surplus back because we have a

1 surplus over four years, but we have a billion two
2 deficit and we are going to allow collection of that
3 billion two deficit over it. It is too dramatic an
4 impact on the customer is the concern, it creates rate
5 instability.

6 COMMISSIONER SKOP: How would you temper that
7 in the context of ensuring fair, just and reasonable
8 rates in light of prevailing economic conditions when
9 you had an opportunity to further reduce near term rates
10 for ratepayers by doing such an exercise?

11 THE WITNESS: I will be honest, I am not sure
12 I have an answer for that. I am glad I am sitting here
13 versus sitting there in terms of answering that
14 question. Some of it, you have some tools available to
15 you, reserve transfers, there is various other things
16 that are available to you, whether you go the whole way
17 or not.

18 COMMISSIONER SKOP: Very well. I will move
19 along quickly. To your knowledge, are there any
20 executives or employee bonuses that are contingent upon
21 a result or outcome associated with the pending rate
22 case?

23 THE WITNESS: Not in terms of -- there is a
24 successful -- one of the performance indicators is, I
25 think the terms that Kathleen talked about and I am

1 familiar with it, a successful prosecution of the rate
2 case. I don't know what successful means, because it's
3 being -- I think there is a broad recognition by our
4 Board of the difficult circumstances in which it is
5 being done. I will say it hasn't affected certainly my
6 behavior or anyone that I know about. We are doing what
7 we think is right.

8 COMMISSIONER SKOP: I want to turn your
9 attention now to what has been previously handed out,
10 which is page 101 of Schedule C-10 from the MFRs.

11 THE WITNESS: I moved it, bear with me. I
12 have my -- this other schedule that we gave, but it's --
13 I have most of the C-10 numbers there.

14 COMMISSIONER SKOP: Okay. On Schedule C-10,
15 page 101, line number 13, it identifies the rate case
16 expense for outside legal services. Do you see that?

17 THE WITNESS: Yes, sir.

18 COMMISSIONER SKOP: Do you know how that is
19 broken down or how many approximate hours are associated
20 with those outside legal services?

21 THE WITNESS: Are you talking about the
22 265,000?

23 COMMISSIONER SKOP: Yes, sir.

24 THE WITNESS: That's the Radey Thomas. I know
25 that it relates to the services of Susan Clarke and

1 Terry Deason, I think comes through that line as well,
2 but I don't know what other breakdown you want.

3 COMMISSIONER SKOP: Is there a supplemental
4 schedule that would show a more specific breakdown?

5 THE WITNESS: Let me see what -- I mean, we
6 certainly can provide you with a breakdown if you --

7 COMMISSIONER SKOP: It is not necessary. I
8 was just wondering if there might be ready references,
9 trying to look at the totality of the costs and
10 ascertain the reasonableness. Let me move on to the
11 next question.

12 C-10 just deals with outside consultants and
13 the rate case expenses related for those, correct?

14 THE WITNESS: Correct.

15 COMMISSIONER SKOP: And I think in response to
16 a previous question you mentioned there wee
17 approximately 45 FPL employees working on the rate case
18 from inception to completion?

19 THE WITNESS: And that is a number that came
20 off the top of my head, because I know the number has
21 gone up and down as you -- interrogatories, typically
22 you reach out into a department and you'll have a number
23 of people involved in a particular department, but they
24 may not be working all the time on the rate case. So
25 don't hold me to the number of 45, please.

1 COMMISSIONER SKOP: That's fine, and I won't.
2 Do you know if any members of your corporate
3 communication team were involved in the rate case in
4 billing to rate case expense?

5 THE WITNESS: Let me take a quick look. I do
6 not see any overtime charged by corporate
7 communications.

8 COMMISSIONER SKOP: Would there be any direct
9 salaries charged?

10 THE WITNESS: No, no direct salaries would be
11 charged unless the person was a temporary, in which case
12 that should show up as outside services or temporary.

13 COMMISSIONER SKOP: Very well. On that same
14 schedule you are looking at, would there be any external
15 affairs personnel charging to rate case expense?

16 THE WITNESS: No, sir.

17 COMMISSIONER SKOP: Thank you. I think just
18 two more questions. I guess in relation to some of the
19 testimony that you spoke to, and I know Mr. Moyle had
20 somewhat of an objection, so I'll keep this very benign.

21 But I guess you testified that FPL's increase
22 rate case expense was a result in part of the additional
23 hearing dates necessary to complete the FPL rate case,
24 is that correct?

25 THE WITNESS: Yes, sir.

1 COMMISSIONER SKOP: Okay. Now, would it be
2 reasonably foreseeable to expect that the FPL decision
3 to include and seek recovery of certain costs within the
4 rate case filing, such as compensation and aviation
5 expenses, might prompt certain questioning?

6 THE WITNESS: I guess I am going to hide
7 behind my role as an accountant. I felt like we were
8 doing an effective job of charging those costs out based
9 on the questions that you initiated.

10 There were some issues that were identified,
11 it was still a fairly low error rate. So I guess I'm
12 going to say no, I don't think so, I think we were doing
13 a good job of allocating those costs, but the
14 distraction of dealing with it, it was just not worth
15 it.

16 COMMISSIONER SKOP: I guess that is the key
17 word that I am wanting to focus on. I guess would you
18 agree that it's not fair to characterize legitimate
19 questions resulting from FPL's decision to include these
20 expenses within its rate case filing as distractions as
21 it pertain to collecting rates from your ratepayers?

22 THE WITNESS: Given the size of those
23 particular dollars and the total dollars in question
24 that are part of cost of service, it would seem to be
25 somewhat -- I don't know the right word.

1 We spent a lot of time on that, but yet there
2 were issues that were identified and they were
3 appropriately pursued. So I didn't think the issues
4 were there I guess is what I am trying to say.

5 COMMISSIONER SKOP: Okay. But we obviously
6 found some as a result --

7 THE WITNESS: Absolutely. And we dealt with
8 those, and then finally the decision was made to take it
9 out because, I mean, the things that we had tried to do
10 within the confines of how we could deal with them, it
11 just didn't seem to resolve the issue, and rather than
12 waste the Commission's time further with it, I think
13 that is what drove the decision to remove those dollars.

14 COMMISSIONER SKOP: But ultimately FPL made
15 the decision to include and seek recovery of these costs
16 in its original filing, correct?

17 THE WITNESS: Absolutely, yes sir.

18 COMMISSIONER SKOP: Just one final comment. I
19 did read in a regulatory filing I believe with the
20 Securities Commission that you are scheduled to retire.
21 So I want to congratulate you on your upcoming
22 retirement, if that's accurate.

23 THE WITNESS: It is a start of a process. We
24 want to get somebody in so the overlap -- we haven't
25 made any decisions yet on Florida Power & Light as to

1 how we're going to do that and what. So I can't say
2 that I have a firm exit out the door as much as my wife
3 would like that.

4 COMMISSIONER SKOP: Okay. I thank you for
5 your time, and go Gators to a fellow Gator.

6 THE WITNESS: Absolutely, thank you.

7 CHAIRMAN CARTER: You should listen to your
8 wife more often.

9 THE WITNESS: That is absolutely true, I
10 totally agree with that. And with three daughters at
11 one point, I learned it a long time ago actually.

12 CHAIRMAN CARTER: Commissioner -- you found
13 it. Commissioner Edgar, anything? Redirect?

14 MR. BUTLER: Very briefly, and before I do I
15 wanted to state for the record that I have confirmed
16 that the costs associated with the attorneys' fees for
17 the -- initially the appearance here before the Public
18 Service Commission and then the appeal of the
19 Commission's decision on the confidentiality of the
20 compensation information is not included in our rate
21 case expenses.

22 CHAIRMAN CARTER: That is pursuant to
23 Commissioner Skop's question, as well as staff's
24 questions, so that's preliminary as well as what's going
25 on now with the appeal?

1 MR. BUTLER: That's right, both parts.

2 CHAIRMAN CARTER: Thank you, Mr. Butler.

3 REDIRECT EXAMINATION

4 BY MR. BUTLER:

5 Q Mr. Davis, we have had discussion, several of
6 the parties, as well as Commissioner Skop, have asked
7 you about the 2002 and 2005 settlement, and the
8 \$125 million credit to depreciation expense that was
9 recorded annually through those periods.

10 My question to you is whether that
11 \$125 million per year credit to depreciation expenses
12 was a reduction in cash expenses?

13 A No, it was not. In fact, that was the point
14 of disagreement, I guess, between Mr. McGlothlin and
15 myself, is it was contemplated in the agreement. So the
16 fact that we took it, you know, did not increase cash
17 flow or decrease.

18 Q Thank you. And you made a comment on, I think
19 in response to two or three parties asking you questions
20 about the base rates being -- remaining the same since I
21 think 1985 or 1986, do you recall those comments?

22 A Right, saying that they had not increased, I
23 didn't say stayed the same.

24 Q Okay. Just to clarify on that point, through
25 settlements, has FPL in fact decreased its base rates

1 during that time period?

2 A Yes, they have.

3 Q Do you recall when and in what amounts?

4 A 2002, I believe was 250 million, '98 or '99
5 was 350 million, and then there were some small tax saver
6 dollars, that was my first exposure to regulatory issues
7 back in the early '90s, '88 tax saver.

8 Q So over that period, it would be fair to say
9 something over \$600 million of annual revenue
10 requirement reduction in base rates?

11 A Correct.

12 Q Do you have before you a copy of the document
13 that was marked as Exhibit 534? It is an excerpt from
14 the Public Utility Depreciation Practices Manual of
15 NARUC?

16 A I have it, I just have to find it. I have it.

17 Q You were asked a couple of questions about
18 page 189 in that manual and the excerpt. I think you
19 had actually noted that there are a series of factors to
20 be taken into account at the beginning of the first
21 paragraph there on page 189 in deciding how one would
22 handle a depreciation reserve, surplus or deficit. Do
23 you recall that?

24 A Yes, sir.

25 Q Looking at those factors and applying them to

1 FPL's circumstance, what would be your conclusion as to
2 whether it would be appropriate to amortize the
3 depreciation reserve surplus over a short period of
4 time, or to reflect it through the remaining life
5 technique over the remaining life of the assets in
6 question?

7 A As expressed in my testimony, I am not
8 changing my testimony, I believe it should go over the
9 remaining life. You can look at each particular
10 function and address the risks that are faced in each of
11 those functions where the surplus exists.

12 Q Would it be your conclusion that FPL's
13 proposal to return the depreciation reserve surplus to
14 customers over the remaining life of the plant is
15 consistent with the factors that are set forth in the
16 NARUC manual?

17 A I believe it is. I mean, this manual
18 basically says you need to look at it and consider these
19 things and take action, but action only after the
20 analysis.

21 Q You were asked by Mr. McGlothlin in connection
22 with the 2005 settlement, I think he made the point that
23 FPL had the option of whether or not to utilize the \$125
24 million per year depreciation expense credit, do you
25 recall that?

1 A Yes.

2 Q Does FPL also have the option of whether or
3 not to apply the generation base rate adjustment
4 mechanism to plants that come into service?

5 A I would assume that they did, but I am not
6 comfortable asserting definitively.

7 MR. BUTLER: That is all the redirect that I
8 have. Thank you.

9 CHAIRMAN CARTER: Exhibits?

10 MR. BUTLER: FPL would move the admission of
11 Exhibits 359 through 362.

12 CHAIRMAN CARTER: That's starting on page 41,
13 Commissioners, and 42. Are there any objections?
14 Without objection, show it done, 359 through 362.

15 (Exhibits 359 through 362 admitted into
16 evidence.)

17 CHAIRMAN CARTER: Then let's go to the back
18 pages, everyone. I think those are the only ones that
19 are within the staff's comprehensive exhibit list. Mr.
20 Moyle, 534?

21 MR. MOYLE: I would like to offer it, move it
22 into evidence, please.

23 CHAIRMAN CARTER: Are there any objections?

24 MR. BUTLER: No objection.

25 CHAIRMAN CARTER: Without objection, show it

1 done.

2 (Exhibits 534 admitted into evidence.)

3 CHAIRMAN CARTER: Staff, 535 and 536?

4 MS. BROWN: Yes, we move those.

5 CHAIRMAN CARTER: Are there any objections?

6 MR. BUTLER: No objection.

7 CHAIRMAN CARTER: Without objection, show it
8 done.

9 (Exhibits 535 and 536 admitted into evidence.)

10 CHAIRMAN CARTER: Anything further for this
11 witness from any of the parties or staff? Thank you,
12 sir, you may be excused.

13 (Whereupon, the witness was excused.)

14 (Brief recess at 5:10 p.m.)

15 (The transcript continues in sequence with
16 Volume @.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

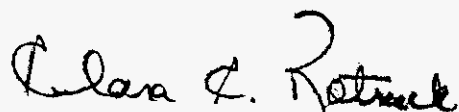
3 COUNTY OF LEON)

4 I, CLARA C. ROTRUCK, do hereby certify that I was
5 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 parties'
13 attorney or counsel connected with the action, nor am I
14 financially interested in the action.

15 DATED this 28th day of October, 2009, at
16 Tallahassee, Leon County, Florida.

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22 CLARA C. ROTRUCK
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