

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120015-EI

In the Matter of:

PETITION FOR INCREASE IN RATES
BY FLORIDA POWER & LIGHT COMPANY.

VOLUME 4

Pages 353 through 488

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 21, 2012

TIME: Commenced at 9:33 a.m.
Concluded at 12:00 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

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

4 **CHAIRMAN BRISÉ:** Good morning, everyone. We
5 will reconvene this morning. Docket Number 120015-EI.
6 Mr. Young.

7 **MR. YOUNG:** Mr. Chairman, we have a
8 housekeeping matter. Yesterday Mr. Reed presented
9 direct and rebuttal testimony, and I think
10 Mr. Litchfield would like to make a request.

11 **MR. LITCHFIELD:** We'd like to have Mr. Reed
12 excused from the rest of the hearing.

13 **CHAIRMAN BRISÉ:** That is perfectly fine.
14 Mr. Reed is excused.

15 **MR. LITCHFIELD:** That's very good, because
16 he's in Montreal and I'd hate to have to call him back.

17 (Laughter.)

18 **CHAIRMAN BRISÉ:** All right. Mr. Young, are
19 there any other issues that we need to tend to this
20 morning?

21 **MR. YOUNG:** Yes, sir. On August 20th,
22 Mr. Saporito filed a motion in limine regarding any
23 testimony related to the proposed settlement agreement
24 between Florida Power & Light, the Florida, the Florida
25 Industrial Power Users Group, the South Florida Hospital

1 and Healthcare Association, and the Federal Executive
2 Agency.

3 **CHAIRMAN BRISÉ:** All right. Thank you.

4 Mr. Saporito.

5 **MR. SAPORITO:** Good morning, Mr. Chairman and
6 Commissioners.

7 I filed this motion in limine to protect my
8 due process rights in this proceeding and the due
9 process rights of the other non-signatory parties to the
10 proposed FP&L joint settlement agreement.

11 As the Chairman knows, this proceeding went
12 forward after the Commission unanimously voted to deny
13 OPC's motion to dismiss or deny that joint motion for
14 settlement. And the Chair elected to, I suppose the
15 term could be referee the proceeding going forward and
16 to determine whether or not any testimony proffered in
17 this proceeding presented material testimony in support
18 or related to the proposed FPL motion for joint
19 settlement.

20 Well, that process didn't seem to work very
21 efficiently nor fairly in my view, and in fact
22 jeopardized and trampled on my due process rights as far
23 as I'm concerned, because on more than one occasion
24 myself, OPC, and FRF voiced objections more than once
25 because of what we believed to be a violation of the

1 Chairman's directive with respect to bringing in,
2 soliciting testimony related to that proposed FPL joint
3 settlement agreement.

4 The procedure that this Chairman has
5 authorized in refereeing this proceeding in that manner
6 with respect to soliciting testimony related to the FPL
7 proposed settlement agreement causes me significant
8 problems in exercising my rights to participate in this
9 proceeding as an Intervenor party, because now I have to
10 deal with what I consider to be two rate cases, because
11 no decision has been made by this Commission on either
12 of the rate cases and they're both continuing in a dual
13 mode fashion.

14 So that puts me in a very uncomfortable
15 position of having to monitor witness testimony in a
16 dual mode, one in mode with respect to the instant
17 docket before this Commission, and in the secondary
18 mode, trying to analyze witness testimony and
19 understanding what the terms and conditions of this
20 proposed settlement agreement is and whether any of that
21 testimony relates to that document, and juggle all these
22 things at the same time. And, you know, quite frankly,
23 I can't do that effectively to protect my due process
24 rights.

25 And so, therefore, this Commission, this

1 Commission in my view needs to do more than just referee
2 in the matter that has been taking place. And that's
3 why I proffered this motion in limine, to provide the
4 Commission with the necessary authority to ensure for
5 the protection of my due process rights in this
6 proceeding and the due process rights of other
7 non-signatory parties to the proposed FP&L joint
8 settlement agreement.

9 In the alternative, I would strenuously urge
10 this Commission to engage in an up or down vote on that
11 FPL proposed joint settlement document so that it could
12 either be approved or disapproved today. There's two
13 elephants in this room right now. It's that document
14 and it's my due process rights.

15 **COMMISSIONER GRAHAM:** Mr. Chairman. Mr.
16 Chairman.

17 **CHAIRMAN BRISÉ:** Mr. Saporito, there seems to
18 be a question or a comment.

19 **COMMISSIONER GRAHAM:** Mr. Chairman, I've got a
20 point of order. I've got a point of order. Didn't we
21 address this issue and deal with it yesterday?

22 **CHAIRMAN BRISÉ:** We did, but there's a motion
23 that has been filed. So it's one of these things that
24 we have to deal with apparently.

25 **COMMISSIONER GRAHAM:** Is, I guess to the

1 staff, is this motion any different than the motion we
2 dealt with yesterday? I thought this was the same
3 question that Mr. Wright asked.

4 **MS. HELTON:** It is the same question that
5 Mr. Wright asked, but I think Mr. Saporito has filed his
6 motion, I guess it was late yesterday, in response to
7 the course of the proceeding, and I believe that he -- I
8 don't want to speak for Mr. Saporito, but I think that
9 he feels that the timing is ripe again to file another
10 one, and I don't think that he is prohibited from doing
11 so.

12 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

13 **CHAIRMAN BRISÉ:** Thank you, Commissioner
14 Graham.

15 **MR. BUTLER:** Mr. Chairman. Mr. Chairman,
16 it's John Butler over here for FPL.

17 **CHAIRMAN BRISÉ:** Yes, sir.

18 **MR. BUTLER:** The last point that Mr. Saporito
19 made, though, is actually going beyond his motion. His
20 alternative of an up or down vote on our settlement
21 proposal is nowhere in his motion in limine, and we
22 would object to his arguing it for that reason.

23 **CHAIRMAN BRISÉ:** Thank you.

24 **MR. McGLOTHLIN:** Mr. Chairman?

25 **CHAIRMAN BRISÉ:** If everyone could just wait a

1 few minutes. I think Commissioners have a few comments
2 before we proceed, and it may help us be in a better
3 procedural posture as to where we need to be.

4 Commissioner Edgar, then Commissioner Balbis,
5 then Commissioner Brown.

6 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
7 Just one very quick question to staff.

8 When was this motion filed?

9 **MS. HELTON:** I saw it this morning after I was
10 here, and I got here at 8:15. So sometime between 8:15
11 and afterwards I think it came in, but I'm not sure.
12 Maybe Mr. Young might know better.

13 **MR. YOUNG:** I was told about 9:21 last night.

14 **COMMISSIONER EDGAR:** If I might, Mr. Saporito,
15 is that approximate to, to when this motion was filed
16 with the Commission?

17 **MR. SAPORITO:** I can't testify to the exact
18 time, but I do see them posted on the PSC website right
19 now, both of these, this motion and another one I filed.

20 **COMMISSIONER EDGAR:** At what time?

21 **MR. SAPORITO:** I don't know. It gives a date
22 of August 21st for this motion.

23 **COMMISSIONER EDGAR:** Which is today.

24 **MR. SAPORITO:** Yes.

25 **COMMISSIONER EDGAR:** Okay. Mr. Chairman, I, I

1 believe I will have some comments, but I'd like to wait
2 and hear first. Thank you.

3 **CHAIRMAN BRISÉ:** Thank you.

4 Commissioner Balbis.

5 **COMMISSIONER BALBIS:** (Not on microphone.)

6 **CHAIRMAN BRISÉ:** Okay. Commissioner Brown.

7 **COMMISSIONER BROWN:** Thank you.

8 I have a question for staff. I did like the
9 suggestion yesterday by Mr. Kiser, so I'm interested in
10 hearing what the effectual difference is between a
11 motion in limine and giving the Chair discretion, as we
12 did yesterday.

13 **CHAIRMAN BRISÉ:** Mr. Kiser.

14 **MR. KISER:** Mr. Chairman and Commissioners, I
15 think it's probably one of -- where the Chair has
16 discretion, obviously they can choose to hear something
17 that would involve the settlement, thinking it's just a
18 minor reference or insignificant reference, et cetera.

19 A motion in limine I think is pretty final.
20 It's going to be a clear line, black and white. You're
21 either -- if it deals with that subject matter, it's out
22 of bounds and you can't take it, and the Chair would not
23 have the discretion then to allow it. It would be
24 across the board zero tolerance, in my opinion. Whereas
25 the use of discretion, as happened yesterday when

1 references were made to different comments, phrases that
2 were only involved in the settlement document, he used
3 his discretion to allow that to come in.

4 And under -- passing the motion in limine --
5 and, by the way, I would add that yesterday when I was
6 describing that, I said you can, for example, you could
7 vote it down now or defer it, but at any time in the
8 future, if you feel that the way things have gone you
9 need to go back to it, it can be raised again at any
10 time. And that was, that was part of my comments.

11 So I think it's one of just not giving any
12 discretion, it would be a clear line that, no, nothing
13 comes in on that. And you can then, if you want to, you
14 can then deal with how to handle those questions that
15 you think might be appropriate but just not at this
16 time.

17 For example, they could be held in abeyance,
18 noted, and then when, at some future time when the
19 settlement does come up, those would be admissible to be
20 asked at that time. So you could still, could still get
21 to those, providing the witnesses are still here.

22 **COMMISSIONER BROWN:** And I think, with no
23 offense to the Chairman whatsoever, I think this makes
24 it just much more cleaner. I think it's a real clean
25 approach to take.

1 Staff, is this your recommendation?

2 **MR. KISER:** (Not on microphone.)

3 **CHAIRMAN BRISÉ:** We couldn't hear that.

4 **MR. KISER:** I'm sorry. I said yes. I'm
5 sorry.

6 **CHAIRMAN BRISÉ:** Thank you.

7 Commissioner Balbis.

8 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman,
9 and thank you, staff, for your recommendation. I think
10 that one of the issues we dealt with throughout the day
11 yesterday was it seemed to be -- at times we kind of
12 slowed down a little bit because there were multiple
13 objections to not only questions or statements
14 associated with the settlement agreement, but also
15 questions of witnesses that were either outside the
16 testimony, et cetera.

17 I mean, I would recommend that, if this is a
18 way to tighten things up, to do so. And I think that
19 not only should we focus on discussions dealing with the
20 settlement, but also when there's questioning and
21 cross-examination of witnesses, we spend a lot of time,
22 you know, and I believe the Chairman showed a lot of
23 patience with cross-examination questions. And I think
24 any way we can tighten this procedure up so we can get
25 to the issues at hand would be beneficial. And if this

1 is a way to do so, I would be in favor of it, but I
2 welcome other comments from my fellow Commissioners.

3 **CHAIRMAN BRISÉ:** Okay. Just to continue the
4 process, hearing from those who, who have comments from
5 those who are before us.

6 Mr. Saporito, are you finished explaining your
7 motion? And please stick to the motion.

8 **MR. SAPORITO:** Thank you, Mr. Chairman. Yeah.
9 And just concluding, it's just that, you know, I'm just,
10 I just feel that I'm in a very uncomfortable position,
11 and I, and I can't deal with, with this situation any
12 further and it's impinging on my due process rights.

13 I came here to engage in this proceeding. I
14 paid all the expenses and everything and I followed all
15 the rules, and I just want to participate in a fair and
16 just manner without my due process rights being stepped
17 on. Thank you very much.

18 **CHAIRMAN BRISÉ:** Thank you very much.

19 Mr. McGlothlin.

20 **MR. MCGLOTHLIN:** Very briefly. I think
21 Ms. Helton made an important observation, which is that
22 this motion has been made with the benefit of
23 yesterday's experience.

24 I believe when you first took up the matter
25 yesterday, Mr. Chairman, you had every right to expect

1 that your guidelines, your expression of your witnesses,
2 and even your cautionary statements would be sufficient
3 for the purpose.

4 Unfortunately there emerged a very clear
5 pattern and strategy of using this proceeding as an
6 opportunity to inject references to in support of this
7 purported settlement agreement. I think in light of
8 that, the, the hard and fast remedy of the ruling on
9 limine is called for.

10 **CHAIRMAN BRISÉ:** Thank you very much.

11 Any further comments from Intervenors or
12 petitioners on this issue?

13 **MR. BUTLER:** From FPL, yes.

14 **CHAIRMAN BRISÉ:** Mr. Butler.

15 **MR. BUTLER:** First of all, I would object to
16 Mr. McGlothlin's characterization yesterday. I think if
17 there was any pattern at all, it was of using objections
18 to obstruct the proceeding.

19 But putting that aside, you know, you don't
20 need a motion in limine, and I don't think a motion in
21 limine is going to address the concern that has been
22 expressed from the bench.

23 First of all, as Mr. Saporito's papers
24 suggest, you know, one of the main purposes of a motion
25 in limine is in jury trials, where you are concerned

1 that relatively inexperienced lay participants in the
2 decision process might end up hearing something that
3 they just shouldn't hear. You'd end up having to
4 discontinue the trial or something because they
5 shouldn't have that information before them, and it's
6 focused on particular pieces of information that are
7 actually at that time before the, the judge for deciding
8 whether the jury should see that information or not.

9 This isn't like a jury trial. This is, you
10 know, if you want to analogize it to a court proceeding,
11 it's very much like a bench trial, where you have the
12 judges themselves are making the decisions of fact as
13 well as the rulings on law. And in that setting, you
14 know, there are multiple cases.

15 There's a wonderful one that we found in
16 southern -- a federal district court case from the
17 Southern District of Texas that just really excoriated
18 the plaintiff for seeking a motion in limine, saying
19 that it just, it didn't fit the context of the bench
20 trial. The courts routinely hear information and make
21 decisions on whether they do or don't want to consider
22 that in their decision. It's very different from a jury
23 trial setting.

24 And to the sort of, you know, the concern
25 about not knowing exactly where the line is or what the

1 -- whether objections might be limited, I just don't see
2 how you're really going to improve things by granting a
3 motion in limine.

4 You're still going to be getting questions
5 that are of all flavors and all gradations of
6 relationship or lack of relationship to the proposed
7 settlement. There isn't a document that we're looking
8 at and saying, okay, this document goes in or doesn't go
9 in.

10 So you, as Chair, are going to continue to be
11 called upon to make judgment calls about whether a
12 particular question is objectionable because it relates
13 to the settlement, whether it's objectionable because
14 it's too far from the issues in the case, et cetera.

15 So, in our mind, nothing would be served by
16 granting Mr. Saporito's motion in limine, and in fact
17 it's just not a device that is well suited to this
18 proceeding.

19 Thank you.

20 **CHAIRMAN BRISÉ:** Mr. Moyle.

21 **MR. MOYLE:** Let me indicate that I don't think
22 the granting of Mr. Saporito's motion is appropriate in
23 terms of drawing that hard and fast line for a number of
24 reasons. One is which, you know, you said yesterday,
25 you ruled on it yesterday. You know, arguably it's the

1 law of the case. You made a ruling. Were the events of
2 yesterday such to warrant reconsideration? Maybe.

3 But I think there needs to be some measure of
4 flexibility, because I'm going to -- you know, I think I
5 have due process rights to ask Mr. Silagy because ROE is
6 an issue in the case, and it's also an issue in the
7 settlement. So if I say, Mr. Silagy, can you do okay
8 maybe, possibly without an 11.25 ROE? You know, I think
9 that's a fair question.

10 Now, to the extent that that, you know, gets
11 in, you know, well, you know, there's a statement in an
12 SEC filing that has a different number. I think, I
13 think that evident -- from an evidentiary standpoint,
14 you know, should, should be considered.

15 I guess the thing that I, I would find
16 helpful, because I don't -- you know, we want to move it
17 along. I mean, I view the current situation not as a
18 denial of due process for those who oppose the
19 settlement, but really almost tantamount to double due
20 process.

21 Because if the intent is to have this hearing
22 and then have a second hearing on fairness of the
23 settlement, you know, then, you know, arguably they
24 would have -- if I asked Mr. Silagy, because yesterday
25 you made a ruling, you said I'm denying the, you know,

1 the motion in limine. We'll allow something. I made my
2 opening statement, I said we support the settlement,
3 it's fair. I was explaining the difference between the
4 litigation position and the settlement position, it's
5 fair, and I said that.

6 Now, you know, if -- I don't want to go
7 through this whole proceeding and have somebody say,
8 well, you didn't put on any evidence that it was fair.
9 So if I ask Mr. Silagy is it fair, and he says, yes, I
10 have evidence. But if the plan is to say, Mr. Moyle,
11 don't ask that question with respect to fairness because
12 it gets to the core of the settlement, we're going to do
13 that in a subsequent proceeding. As long as I know that
14 and will have the opportunity to put on evidence at a
15 subsequent point in time, you know, then that's fine.

16 But at this point I'm not 100% clear, you
17 know, how it is going to proceed. So, you know, I
18 don't, I don't perceive that I can't in serving my
19 client at least try to, you know, build a bit of a
20 record that supports what I said in my opening
21 statement.

22 But if there is concretely going to be this
23 second proceeding, I'll refrain from asking the fairness
24 question, but I sure should be able to ask questions
25 about, you know, the CILC credit, which is a big issue

1 in the case for us. It's, it's squarely teed up in the,
2 in the litigated case, and Mr. Pollock is saying it
3 needs to go up significantly. But if I start asking
4 Mr. Silagy about that and they say, well, objection, the
5 CILC was part of the settlement, then my due process is,
6 is impinged upon if I can't put on evidence about an
7 issue that is, you know, in both the settlement and in
8 the, in the case.

9 So, you know, to the extent that the intent is
10 to have a subsequent hearing and that's made clear and
11 made known, then, you know, I can tailor my questions in
12 a way that stays away from, you know, the fairness
13 stuff. I mean, I probably will still, I think it's fair
14 game to, you know, to ask on the CILC and the ROE, but
15 that's, that's kind of how, you know, how FIPUG views it
16 at, as we sit here right, right now. And I don't think
17 that, you know, a hard and fast line motion in limine
18 is, is the proper way, because that almost requires you
19 to anticipate the questions that might be asked, you
20 know. And it's kind of -- you're probably going to have
21 to deal with it either way. But I think the discretion,
22 you know, to make the judgment should be retained.

23 And to the extent that there is the -- you're
24 envisioning having a subsequent hearing, you know, on
25 it, then the whole due process argument, at least in my

1 mind, if it's coupled with some discovery and other
2 things, I don't see it as a denial of due process. You
3 know, I see it almost as double due process. But thank
4 you.

5 **CHAIRMAN BRISÉ:** Thank you, Mr. Moyle.

6 Any more Intervenors or Petitioners need to
7 make comments on this issue at this time?

8 Seeing none, Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

10 I have a question for Mr. Saporito as to your
11 motion. In the statement of the facts on page 3, you
12 write that one or more signatories to the settlement on
13 more than one occasion solicited witness testimony
14 related to the settlement in defiance of the Chairman's
15 directive. Can you give me an example of that from
16 yesterday, realizing we had, we did have just one
17 witness?

18 **MR. SAPORITO:** The statement is based on the
19 objections we launched on the record, and my
20 recollection is more than once, where we, we addressed
21 this what I perceive as a violation of the Chairman's
22 directive with an objection to protect the record.

23 **COMMISSIONER EDGAR:** Can you give me an
24 example?

25 **MR. SAPORITO:** I'll have to go review the

1 transcripts, but I can if I can look at the transcripts.
2 I was up all night, Commissioner, so, you know, I'm
3 running on zero.

4 **COMMISSIONER EDGAR:** I was up almost all
5 night, so I feel your pain. Okay. So, so no example.
6 And this is why -- and, yes, I was up almost all night,
7 as I'm sure many of us were and will continue to be, so
8 perhaps my, my memory is perhaps a little blurry.

9 I do recall objections to statements in
10 opening statements, but that of course is not witness
11 testimony. And I recall an objection that Mr. Rehwinkel
12 raised to a term that was used by a witness in response
13 to a question that I was asking, and that obviously
14 doesn't fall into this, this category. And the question
15 that I asked was very much on point to Issue 54, which
16 is an issue in the case. And there may have been other
17 examples. I'm just not recalling them right now,
18 examples that fit into your statement of the facts here.

19 And if Mr. Rehwinkel -- again, I'm just trying
20 to refresh my memory as well.

21 **MR. REHWINKEL:** Yes. Commissioner, my
22 recollection is that Mr. Moyle was using an exhibit to
23 cross-examine Mr. Reed, and the subject matter was
24 related to employment. And an objection was lodged by
25 Ms. Christensen and I think joined in by others about it

1 straying as well as it being friendly cross. And that,
2 that was, that was in there.

3 Because one of the arguments that, that, that
4 FIPUG has advanced is that the purported settlement will
5 help with the employment situation. And we objected on
6 the basis that it was interjecting issues related to
7 that. Yeah.

8 **COMMISSIONER EDGAR:** I was just going to say
9 thank you for refreshing my memory. I do recall the
10 discussion as to there being friendly cross between
11 FIPUG and FPL, and if indeed that were the case, being
12 an unusual situation. And I do remember the testimony
13 and questions as to, I think it was maybe Bureau of
14 Labor market statistics or something along those lines.
15 I am less clear as to whether that questioning did or
16 would fall into direct solicited witness testimony to
17 the settlement in, in defiance.

18 I, I appreciate the desire of my colleagues
19 and our staff to use appropriate procedures to focus
20 this hearing on the issues that are before us. I'm just
21 not completely convinced that this motion would actually
22 do so, realizing that if the motion were to be granted,
23 that there would still potentially be an opportunity for
24 an objection by any party, signatory or not, and then
25 that would require a ruling from the Chair, which would

1 require the presiding officer's discretion as to that
2 particular factual situation.

3 So, again, recognizing I have a desire, I
4 believe my colleagues all have a desire, as do the
5 parties, to, to focus on the hearing sort of before us
6 and to make this proceeding as fair and efficient and
7 effective as possible, I'm not sure this motion helps us
8 get there.

9 **MR. REHWINKEL:** Mr. Chairman, if I might say
10 one thing. And I think there is a, there is a very
11 palpable tension in this hearing that is only going to
12 be enhanced. We made our arguments yesterday and the
13 motion in limine was made by FRF. We agreed with it.
14 It was left to kind of a case-by-case adjudication on
15 those things.

16 And then we have now been accused this
17 morning, I assume that it was directed at me, of
18 engaging in an obstructionist objection tactic to delay
19 or disrupt the hearing. And, and we're put in that
20 position. I'm not -- we have been very professional in
21 advancing our objections. We have not engaged in
22 extended or disruptive motion practice with respect to
23 these objections. That's our only option to protect the
24 record.

25 We were very clear in what we thought the

1 prejudice of having this document hanging over this
2 hearing was, and I believe that the elephant in the room
3 is sticking its nose under the tent, and it will
4 continue. And left to the discretion of the parties to
5 try to kind of ease and work around the ruling or the
6 case, the law of the case, is going to drive the same
7 behavior. We have to protect the record because we, we
8 feel strongly about our rights.

9 So I just felt like I needed to explain the
10 reasons we made our limited objections yesterday. Thank
11 you.

12 **CHAIRMAN BRISÉ:** Sure.

13 Before I go to Commissioner Brown, I have a
14 question on, sort of a follow-up to the question that
15 was posed, or posed and comment made by Commissioner
16 Edgar regarding the, the exhibit that was proffered by
17 FIPUG relating to something that would be generic in
18 nature. And so I suppose this goes to the ruling that I
19 made yesterday on that particular exhibit.

20 If the question is posed with respect to, say,
21 growth rate in terms of employment and so forth, that is
22 a broad and generic term, a broad and generic issue that
23 is dealt with or can be dealt with in the rate case. So
24 I don't understand how that infringes on anyone's rights
25 to move forward.

1 So I'm just unclear as to, and maybe staff can
2 help me understand, where that line is. Because if, if
3 there is sort of a broad generic issue that relates to
4 the issue within strictly the rate case, are those
5 questions not available to be asked?

6 **MS. HELTON:** If you're asking me, Mr. Chairman
7 --

8 **CHAIRMAN BRISÉ:** Yes, I am.

9 **MS. HELTON:** -- I believe that if there is a
10 line of questioning that directly relates to the rate
11 case, directly relates to testimony as was filed in the
12 original petition or in response to the testimony filed
13 in the original petition, or directly relates to one of
14 the issues in the case, I believe that is fair game,
15 even if it also relates to the settlement.

16 **CHAIRMAN BRISÉ:** Okay.

17 **MR. REHWINKEL:** The only, the only thing I
18 would add, Mr. Chairman, is the response to our
19 objection was -- that was my last question on this
20 line -- and there was no real explanation that it was
21 intended to be within the scope of the, of the case as
22 filed.

23 **MR. MOYLE:** I can give you that explanation
24 now, if you would like.

25 **CHAIRMAN BRISÉ:** Mr. Moyle, I really don't

1 need the explanation right now.

2 Commissioner Brown.

3 **COMMISSIONER BROWN:** Thank you. Thank you.

4 And I know that we just got this motion as well, and I
5 just read it this morning.

6 But, Mr. Butler, you raised some compelling
7 arguments, and I would be curious to know if you would
8 be planning on filing a response to this motion.

9 **MR. BUTLER:** We can, if we are asked to do so.
10 I consider our response, you know, orally here -- sure.
11 We'll file a response. When would you like it filed?

12 (Laughter.)

13 **COMMISSIONER BROWN:** Commissioners, I
14 personally would like to hear, would like to hear more
15 on the response from, from FPL particularly with regard
16 to this motion before we make a ruling on it.

17 **CHAIRMAN BRISÉ:** Okay.

18 Commissioner Balbis.

19 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
20 And I, I agree with Commissioner Brown on allowing FPL
21 to respond, and I look forward to their response.

22 I have a question for Mr. Rehwinkel, actually.
23 And it may -- I just want to give you a hypothetical
24 situation, because I'm trying to work my way through
25 this and understand your objections. But if, for

1 example, this, the motion to accept the settlement was
2 never filed, or if it's withdrawn, there is nothing to
3 prevent either Mr. Moyle to ask any question as long as
4 it has to do with, with the case or the testimony, et
5 cetera.

6 So in that case, he could still move forward
7 with as much questioning to maybe in the back of his
8 mind argue the settlement agreement, and you would have
9 no, no place to object to it as long as it pertained to
10 it.

11 So do you agree with that? Or I'd like to
12 hear your comments on that hypothetical situation.

13 **MR. REHWINKEL:** I agree with everything you
14 said. The, at the outset we noted that -- I mean, I
15 think you and Commissioner Graham asked the correct
16 question about withdrawing or just denying the petition.
17 That would rid this process of any concern that we had
18 whatsoever.

19 But we are now, in addition to the case that
20 we had planned before August 15th, we now have to guard,
21 be on guard to protect the record from what we consider
22 to be improper late-filed requests by the company. So
23 we are always going to have to be trying to be vigilant
24 about that.

25 And I agree with exactly what you said. You

1 make a good point. It's going to be somewhat subjective
2 in our minds about where this is going. And, you know,
3 we had a response that, that -- I'm sure that the
4 Commissioner had no idea she was going to get an answer
5 that had a phrase that was lifted out of that settlement
6 agreement. But the witness uttered the words, we waited
7 until she finished her cross and then objected. But,
8 you know, we knew right then, but my goal was not to
9 jump in and disrupt the Commissioner's questions about
10 that.

11 So we're always going to be trying to evaluate
12 that. You, you, you make a good point, and I agree with
13 your hypothetical. But it's just something that we're
14 going to have to deal with if there's not some sort of
15 more specific guidelines that a motion in limine would
16 give with some concrete --

17 **COMMISSIONER BALBIS:** So what would the
18 difference then be? If, if they withdraw the settlement
19 agreement or the motion to approve the settlement
20 agreement and then resubmit the exact same agreement at
21 the end of the hearing, have the opportunity to enter in
22 or ask whatever questions they feel appropriate, when
23 you now have no real valid reason to object to the line
24 of questioning, what's the difference between that and
25 what we're faced with today, where it's in front of us

1 but we're not going to vote on it now? What's the
2 difference?

3 **MR. REHWINKEL:** Okay. The difference would be
4 if it was withdrawn, you would not be considering it at
5 all. Okay. The fact that it is pending and there is
6 some lack of clarity about its status as far as how you
7 can consider it and how you can take evidence on it, the
8 record is not clear as to what the evidence is being
9 taken on.

10 If they refile it after the case, they're
11 subject to whatever requirements there are for a
12 document that's filed in that state. I'm assuming no
13 other parties would join on. It's not a comprehensive
14 agreement among the parties to the case. Then you have
15 to decide what its status is as far as a filing. Is it
16 a new case, is it, is it an offer of settlement, a
17 unilateral offer of settlement or, as you, as we think
18 you characterize it correctly, the analogy between a
19 prosecution and a prosecution agreement?

20 I mean, we think it is a friendly agreement
21 that FPL has brought forward. So if you see that at the
22 end of the, at the hearing, it'll be what it will be.
23 And I wouldn't have any concerns if it was withdrawn and
24 then we dealt with, with whatever state it, it would
25 have after this case is concluded, or after the record

1 closes on this case.

2 **COMMISSIONER BALBIS:** Okay. Thank you.

3 And, thank you, Mr. Chairman, for the, the
4 leeway you've given me. I mean, my goal is to keep this
5 proceeding moving. And whether it's approving the
6 motion in limine or not, my goal is to keep it moving
7 and, you know, having these objections, while still
8 preserving all the parties' rights is my goal. So
9 however we get there I'll fully support.

10 **MR. LITCHFIELD:** Mr. Chairman, one, one quick
11 point, if I could.

12 Public Counsel continues to say that they are
13 prejudiced by the fact that there is a partial
14 stipulation in play in the case. There are partial
15 stipulations in play in every case, and I've never yet
16 heard a party say my rights, my due process rights are
17 prejudiced because some of the parties in this case
18 agree to a position, or even resolution of all of the
19 positions.

20 This is a very novel, creative, and I think an
21 obviously obstructionist position that OPC is taking in
22 order to prevent a partial stipulation from moving
23 forward in any way, shape, or form. They've already
24 asked us to, to withdraw it. They've asked that you
25 dismiss it.

1 It is business as usual for this Commission to
2 have a partial stipulation in play during the course of
3 a proceeding. And then it is within the Commission's
4 purview, based on the record evidence, to agree or
5 disagree with that stipulation. It is as simple as
6 that.

7 **MR. SUNDBACK:** Mr. Chairman, if we could.
8 It's the Hospitals. We've refrained from entering this
9 fray so far this morning. We are now eating up the
10 second morning in a row of this hearing, arguing over
11 the same points we ate up yesterday morning over.
12 Administrative agencies are a creation of the 20th
13 century to create what are expected to be sophisticated
14 triers of fact who can deal with a fluid, dynamic
15 environment, not a 19th century court of law.

16 We would like to get some progress in the
17 hearing. The witnesses are lined up. If we understood
18 the Chair yesterday, these issues are going to be taken
19 up in greater detail on Thursday.

20 And instead of rehashing the same issue over
21 and over again from the same litigants even before the
22 hearing started, eating up the first morning of the
23 hearing, now well into the second morning of the
24 hearing, if we simply proceeded along the, the route
25 that was outlined by the Chairman initially yesterday

1 morning, we would be getting through this hearing and
2 you would be able to determine eventually what weight
3 the evidence was entitled to and the purposes to which
4 that evidence could be applied.

5 So we'd respectfully request, first, that the
6 motion be denied, and, second, we get after our
7 business.

8 **MR. MOYLE:** Mr. Chairman, just one, one quick
9 point. Yesterday -- I commend the Florida Retail
10 Federation for indicating that they would like to have a
11 standing objection as it relates to testimony coming in
12 about the settlement, and we're fine with that. We're
13 not going to say you waived your rights. We're not
14 going to say you waived your rights to OPC.

15 But if OPC would likewise register a standing
16 objection and not, you know, throughout the course of
17 the proceedings, including in opening statements, keep
18 objecting, objecting, I think, you know, the record
19 should be sufficiently preserved and we can get on about
20 having some, some testimony.

21 **CHAIRMAN BRISÉ:** Commissioner Graham.

22 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

23 I couldn't have said it any better than the
24 representative for the Hospital. I think we beat this
25 thing up for about two and a half hours yesterday. I

1 think the point that Commissioner Balbis just made
2 earlier, no matter how you go about moving forward, it's
3 going to come down to the discretion of the Chair to
4 move this hearing forward.

5 I was completely satisfied the way we were
6 yesterday afternoon moving forward, so I move that we
7 deny the motion and move forward.

8 **CHAIRMAN BRISÉ:** Okay. It's been moved and
9 seconded. Any further comments?

10 **COMMISSIONER BROWN:** I just want to say I want
11 it -- I don't know if I can support the motion at this
12 moment, because I'd like to hear a more thorough
13 response from FPL. I thought they raised some good
14 comments today, and I'd like to see those before we --
15 before I make a decision, so.

16 **CHAIRMAN BRISÉ:** Okay. Are we ready for a
17 vote or, okay, or any further discussion?

18 Okay. No further discussion.

19 All in favor, say aye.

20 **COMMISSIONER EDGAR:** Aye.

21 **COMMISSIONER BALBIS:** Aye.

22 **COMMISSIONER GRAHAM:** Aye.

23 **CHAIRMAN BRISÉ:** Aye.

24 Okay. Any opposed?

25 **COMMISSIONER BROWN:** Nay.

1 **CHAIRMAN BRISÉ:** All right. Motion carries.
2 Okay. We have Mr. Silagy on the stand.

3 **MR. LITCHFIELD:** Thank you, Mr. Chairman. FPL
4 has called Mr. Silagy to appear here this morning, and
5 he was sworn yesterday at the outset of the hearings.
6 Whereupon,

7 **ERIC SILAGY**

8 was called as a witness on behalf of Florida Power &
9 Light Company, and, having been duly sworn, testified as
10 follows:

11 **DIRECT EXAMINATION**

12 **BY MR. LITCHFIELD:**

13 **Q** Mr. Silagy, would you please state your name
14 and business address.

15 **A** Eric Silagy, 700 Universe Boulevard, Juno
16 Beach, Florida.

17 **Q** And by whom are you employed and in what
18 capacity?

19 **A** President, Florida Power & Light.

20 **Q** And have you prepared and caused to be filed
21 21 pages of direct testimony in this proceeding?

22 **A** I have.

23 **Q** And you filed errata with regard to your
24 testimony in one of your exhibits on Thursday,
25 August 16th; correct?

1 **A** That's correct.

2 **Q** Other than the changes reflected in the
3 errata, do you have any further changes or revisions to
4 your prefiled direct testimony?

5 **A** I do not.

6 **Q** Then considering the errata changes in
7 connection with your testimony, if I were to ask you the
8 same questions today set forth in your direct testimony,
9 would your answers be the same?

10 **A** They would.

11 **MR. LITCHFIELD:** Mr. Chairman, I would ask
12 that Mr. Eric Silagy's prefiled direct testimony, with
13 the corrections made with the errata filed on Thursday
14 of last week, be inserted into the record as though
15 read.

16 **CHAIRMAN BRISÉ:** Okay. Mr. Silagy's prefiled
17 testimony shall be entered into the record as though
18 read, if there are no objections.

19 Okay. Seeing none.

20 **BY MR. LITCHFIELD:**

21 **Q** Are you sponsoring exhibits to your direct
22 testimony as well, Mr. Silagy?

23 **A** I'm sorry?

24 **Q** Are you filing exhibits along with your direct
25 testimony?

1 **A** Yes.

2 **Q** And those exhibits consist of ES-1 through
3 ES-3?

4 **A** That's correct.

5 **MR. LITCHFIELD:** Mr. Chairman, I would note
6 that these exhibits have been premarked for
7 identification as numbers 135 through 137, respectively.

8 **CHAIRMAN BRISÉ:** Okay. Thank you.

9

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ERRATA SHEETWITNESS: **ERIC SILAGY - DIRECT**

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
5	5	"25" to "24"
12	2	"25" to "24"
14	17	"25" to "24"
17	19	"3" to "2"
18	4	"4" to "3"
ES-2, Page 1	Second column in chart	Change total bill amount for January 2013 from "\$96.33" to "\$94.49"
ES-2, Page 1	Third column in chart	Change total bill amount for June 2013 from "\$97.10" to "\$96.80"

I. INTRODUCTION

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Q. Please state your name and business address.

A. My name is Eric Silagy. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

Q. By whom are you employed and what is your position?

A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as President.

Q. Please describe your duties and responsibilities in that position.

A. I have overall responsibility for the operations of FPL.

Q. Please describe your educational background and business experience.

A. I have a Bachelor of Arts in Economics from the University of Texas at Austin and a Juris Doctorate from the Georgetown University Law Center. I was appointed to my current position in 2011. My professional background is described in more detail in Exhibit ES-1.

Q. Are you sponsoring any exhibits in this case?

- A. Yes. I am sponsoring the following exhibits:
- ES-1 - Eric Silagy Biography
 - ES-2 - FPL Projected Typical 1,000-kWh Residential Customer Bill for December 2012, January 2013 and June 2013
 - ES-3 - Change in FPL Typical 1,000-kWh Residential Customer Bill Compared to Changes in Other Consumer Costs

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to provide an overview of FPL’s filing and an
3 introduction of the witnesses who are submitting direct testimony on FPL’s
4 behalf in support of the filing.

5 **Q. Please provide a background and current status of the Company as it
6 relates to the requested rate relief.**

7 A. For more than 86 years, FPL has helped power Florida, through both boom
8 times and economic challenges. As the state has grown, the Company has
9 grown, too – building and adapting an electrical infrastructure year after year
10 to meet the energy needs of a vibrant, ever-changing population. In its first
11 year in business, FPL served about 10 percent of the state’s 1.5 million people
12 with 70 megawatts of generating capacity and fewer than 1,500 total miles of
13 power lines.

14
15 Today, FPL directly powers close to half of the 19 million people that call
16 Florida home with approximately 4.6 million residential, commercial and
17 industrial customer accounts. FPL’s 10,000 employees operate and maintain
18 more than 71,000 miles of power lines and 25,000 megawatts of generating
19 capacity to keep the lights on across more than 27,500 square miles of 35
20 Florida counties.

21
22 We recognize the essential nature of what we do, and we are committed to
23 doing it right. We are honored to be recognized nationally as a leader in our

1 industry for the significant value we provide our customers, and we are
2 always looking for ways to improve.

3
4 Currently, FPL's typical residential 1,000 kilowatt hour ("kWh") customer
5 bill ("typical bill" or "typical residential bill") is 25 percent lower than the
6 latest national average, helping keep Florida competitive economically.
7 Within Florida, FPL's typical bill is the lowest of the state's 55 electric
8 utilities; and even with the total base rate increase we are requesting, it would
9 remain the lowest. At the same time, as FPL witnesses describe, the Company
10 delivers nationally-recognized award-winning service, excellent reliability,
11 and one of the cleanest generation emissions rates of large U.S. utilities.

12
13 There is a basic, underlying reason for this. We strive for efficiency and
14 excellence in our operations so we can deliver reliability and satisfaction in
15 our service. We invest in improvements and innovation today so we can
16 better serve our customers tomorrow. With excellent reliability, clean
17 generation and outstanding customer service – all for a comparatively better
18 price – we believe that our performance reflects a deep, long-standing
19 commitment to our customers and our state.

20
21 Our performance is, in part, the result of major infrastructure investments like
22 the new, high-efficiency energy center currently under construction near Cape
23 Canaveral. FPL is financing this \$1 billion modernization in order to produce

1 significant savings and benefits for our customers and their families for years
2 to come.

3
4 Our performance is also the result of our consistent, strong commitment to
5 operating efficiently, with our cost-per-kWh performance placing us among
6 the best utilities nationwide. We are not immune to the pressures of the rising
7 costs of goods and services we must purchase in order to provide affordable,
8 reliable, clean energy, but as FPL witness Reed will discuss in more detail, we
9 have been successful at keeping operational costs down compared with much
10 of our industry.

11
12 Furthermore, to maintain our combination of strong reliability and lower bills,
13 we must continue to make major capital investments in our infrastructure.
14 FPL is already the largest private investor in Florida. From 2011 through
15 2013, as addressed by FPL witness Dewhurst, we will be investing
16 approximately \$9 billion, or approximately \$3 billion annually – far more than
17 the Company earns in income in any year. In order to pay for and sustain this
18 level of investment cost effectively, obtaining an appropriate return on equity
19 (“ROE”) and recovering through base rates prudently incurred costs is crucial.

20
21 Finally, it is also important to note that, since 2010, we have been operating
22 under a Commission-approved settlement agreement (“2010 Rate
23 Agreement”) that was supported by the Company, major intervenors and the

1 Commission staff. It effectively froze our base rates, with the exception of
 2 adjustments for completed components of the extended power uprates project.
 3 This agreement provided for interim recovery of West County Energy Center
 4 unit 3 through a non-traditional recovery mechanism and also allowed the
 5 Company to maintain an 11.0 percent return by providing flexibility in the use
 6 of non-cash depreciation reserve surplus amortization. Designed as a
 7 temporary financial bridge, the 2010 Rate Agreement expires at the end of this
 8 year.

9

10 **II. SUMMARY OF BASE RATE REQUEST**

11

12 **Q. Please describe why the Company is requesting a base rate increase in**
 13 **2013.**

14 A. We know that there is never a good time for a rate increase. While there are
 15 signs that the economy is improving, it is still a challenging time. We
 16 continue to be mindful of this fact when working to balance the impact on
 17 customer rates with the need to maintain a high quality of service as well as
 18 the financial integrity of the Company.

19

20 We also have a responsibility to continue to plan and invest on a long-term
 21 basis to ensure that we will meet the needs of our customers, not just this year
 22 or next, but many years into the future. In fact, this sustained, long-term
 23 investment is one reason that we currently have the lowest residential bill in

1 the state. The 2010 Rate Agreement essentially precluded any general base
2 rate increases for three years and deferred a base rate case, but it did not avoid
3 the underlying need for a base rate increase. As a result, FPL's base rate
4 request for 2013 is being driven in large part by the significant impact of the
5 accelerated amortization of available non-cash surplus depreciation ordered by
6 the prior Commission.

7
8 Also, the Company's investment in the construction of a high-efficiency,
9 combined-cycle, natural gas-fired power plant will be completed in mid-2013.
10 FPL's Cape Canaveral Next Generation Energy Center ("Canaveral
11 Modernization Project") will immediately improve system efficiency and
12 reduce our overall fuel consumption rate – the savings from which are passed
13 directly to our customers through the fuel clause. As discussed by FPL
14 witness Barrett, FPL's decision to meet our customers' 2013 need for power
15 by modernizing the Cape Canaveral plant is projected to save customers about
16 \$600 million over the life of the project.

17
18 Further, the need for rate relief in 2013 is a result of the increase in operating
19 costs due to the infrastructure and manpower required to serve Florida's
20 growing population. Between the end of 2010 and the end of 2013, FPL
21 anticipates growth of almost 100,000 new service accounts. At the same time,
22 while our focus on efficiency and productivity has lessened the impact of
23 inflation, the costs of many materials and products that the Company must

1 purchase in order to provide affordable, reliable power have risen significantly
2 over the past few years. Much in the way that the prices of food, healthcare,
3 gasoline and many other everyday products and services have been increasing
4 in recent years, the costs of copper wire, steel and other essential utility needs
5 have been rising as well. We expect FPL to maintain its position among the
6 top utilities nationally in operating and maintenance (“O&M”) expense
7 performance, but these cost pressures nonetheless contribute to our need for
8 rate relief.

9
10 Finally, the 2010 Rate Agreement has enabled FPL to earn an 11.0 percent
11 ROE, much closer to our actual cost of equity; however, the mechanism that
12 makes this result possible is not sustainable. Without a base rate increase in
13 2013, the Company’s earnings will drop rapidly and significantly. A utility’s
14 ability to earn is crucial to its cost of investing in major infrastructure
15 improvements on behalf of customers. FPL’s allowed retail regulatory ROE
16 midpoint of 10.0 percent – currently the lowest of all Florida investor-owned
17 utilities (“IOUs”) and among the lowest nationally, based on decisions
18 rendered since our last base rate proceeding – disadvantages the Company,
19 and ultimately our customers, because we must compete for the capital
20 necessary to fund investments on behalf of customers.

21
22 Through this proceeding, we are seeking an adjustment in our allowed ROE
23 midpoint that, as FPL witnesses Avera and Dewhurst explain, (a) better

1 reflects the market cost of equity to firms against which we compete for
2 capital and (b) is supportive of the level and quality of performance that will
3 continue to help us deliver the lowest bill in the state for our customers.
4 Fundamentally, we believe that sound regulatory policy suggests that
5 companies with a proven record of delivering better value for their customers
6 should be encouraged to continue their best-in-class performance. This
7 provides a strong incentive to continue to deliver high levels of performance,
8 and in fact encourages others to do the same. We believe that an appropriate
9 allowed retail regulatory ROE midpoint for FPL is 11.25 percent. Also, as
10 addressed by FPL witness Dewhurst, included in our requested base rate
11 increase is a 0.25 percent ROE performance adder that would be applied if,
12 and only if, FPL maintains its position as the lowest-cost electric provider in
13 Florida, based on a typical 1,000-kWh residential customer bill.

14

15 Other FPL witnesses explain these drivers and provide detailed justifications
16 for each through testimony and exhibits. They will also present key
17 performance benchmarks and other fact-based indicators to demonstrate our
18 Company's commitment to delivering value for our customers.

19 **Q. Please describe the specific rate relief that the Company is requesting.**

20 A. As FPL witness Ousdahl describes, and as is presented in the minimum filing
21 requirements ("MFRs"), the Company is requesting a \$516.5 million increase
22 in base rates effective in January 2013. As addressed below, this increase will

1 enable the Company to meet the mounting cost pressures that were
2 temporarily bridged by the 2010 Rate Agreement.

3
4 In addition, we also are requesting a base rate step increase to address the
5 costs of the Canaveral Modernization Project that is scheduled to go into
6 service in June 2013. Effective with the in-service date, our customers will
7 begin receiving the benefits of the plant, i.e., lower fuel costs and lower
8 overall system emissions. (To reflect the lower fuel costs, FPL will propose a
9 step decrease in the fuel factor effective on June 1, 2013, concurrent with the
10 planned in-service date of the unit). As FPL witness Barrett explains, the base
11 rate step increase will better match our obligation to pay for the approximate
12 \$1 billion cost of the unit with projected customer benefits. This base rate
13 step increase will be \$173.9 million; however, as discussed by FPL witness
14 Barrett, FPL's decision to meet our customers' 2013 need for power by
15 modernizing the Cape Canaveral plant is projected to save customers about
16 \$600 million over the life of the project.

17

18 **III. ACTIONS TAKEN TO DEFER THE NEED FOR AN INCREASE**

19

20 **Q. What actions has FPL taken to control costs and defer the need for this**
21 **increase?**

22 **A.** As discussed in more detail below and also by several of FPL's witnesses, the
23 Company has worked hard over time to manage and control costs. This is one

1 reason that the typical residential bill for an FPL customer is the lowest of all
2 55 electric utilities in Florida and 25 percent lower than the national average,
3 as discussed by FPL witness Deaton.

4

5 In addition, the 2010 Rate Agreement, which effectively froze base rates,
6 essentially deferred necessary recovery of continued investment in the
7 electrical infrastructure and postponed addressing the inflationary pressures
8 that have been and continue to drive increases in our O&M costs.

9

10 FPL prides itself on operating efficiently. FPL witness Reed addresses our
11 overall O&M costs. His benchmarking shows that FPL has out-performed
12 similarly-sized companies across an array of financial and operational metrics.
13 Specifically, in terms of O&M expense performance, FPL is the top performer
14 in Florida, and is consistently ranked in the top quartile among comparable
15 companies nationwide. The benefits of FPL's strong performance are indeed
16 substantial. For 2010 alone, if FPL had been just an average performer among
17 the 28 benchmarked electric companies instead of having exceptional
18 performance, our non-fuel O&M costs would have been approximately \$1.6
19 billion higher than actual costs. Simply put, if we were an average performing
20 company with an additional O&M expense of \$1.6 billion, our typical base
21 bill would be higher by about \$16 – an increase of about 37 percent over the
22 current level.

1 FPL's fossil fleet generation performance, as addressed by FPL witness
2 Kennedy, has resulted in significant savings to customers, thereby reducing
3 the potential impact of a base rate increase. The transformation of our fossil
4 fleet over time has resulted in substantial improvements to operating
5 performance by reducing heat rate, CO₂ and other air emissions, forced outage
6 rate and total non-fuel O&M costs. As an illustration, compared to our
7 efficiency just 10 years ago and using a conservative annual fuel cost of \$3.5
8 billion, our industry-leading performance in lowering our heat rate represents
9 customer savings of about 19 percent or approximately \$650 million per year.
10 And while these are fuel savings and not base rate savings, they arise from our
11 investments in highly efficient generation, directly benefiting customers and
12 in turn helping to minimize the impact of a base rate increase on customer
13 bills.

14
15 Further, several of FPL's witnesses explain how productivity and process
16 improvements have helped to mitigate the scope of our requested increase.
17 Our need is significantly less than it otherwise would have been because the
18 improvements we implemented since 2010 have resulted in \$76 million worth
19 of savings in our 2013 revenue requirements.

20
21 Finally, as discussed earlier, FPL has a history of working to tighten our belts
22 year after year. Over the past 25 years, FPL has continued on a steady march
23 toward highly efficient operations. For example, as FPL witness Morley

1 explains, FPL has gone from serving 2.6 million customers in 1985 to serving
2 4.6 million customers in 2012, a 75 percent increase. However, the number of
3 FPL employees decreased 27 percent over the same time frame, from
4 approximately 13,700 in 1985 to about 10,000 today. FPL's ability to serve
5 75 percent more customers with 27 percent fewer employees, all while
6 providing nationally recognized reliability and customer service, is a simple
7 illustration of the Company's commitment to continuous improvement in
8 operational efficiency. Such efficiency and performance do not happen by
9 accident.

10

11 IV. PROVIDING OUTSTANDING VALUE TO CUSTOMERS

12

13 **Q. Please address FPL's overall performance and service to its customers.**

14 A. FPL customers receive service that is recognized as top-tier in many
15 operational aspects. These are described in more detail as follows:

- 16 • FPL witness Deaton explains that FPL currently has the lowest
17 typical residential bill of all 55 electric utilities in Florida and is 25
18 percent lower than the latest national average. This has been the
19 case, on a 12-month-ending basis, since 2009; and even with our full
20 requested increase, FPL would continue to be the lowest as
21 compared to the current rates of all other Florida electric utilities.
- 22 • FPL witness Kennedy addresses the efficiency and performance of
23 the Company's fossil generation, which has been a major contributor

1 to our ability to keep rates lower over time. Our performance has
2 consistently exceeded national averages and has frequently been top-
3 decile or best-in-class when compared to other large fossil fuel-
4 generating fleets within the industry. As a result, the Company has
5 been able to cut fuel costs by a cumulative \$5.5 billion since 2001,
6 and every dollar of those savings has been received by customers
7 through the fuel adjustment factors on their bills. This figure is
8 equivalent to more than an entire year's worth of fuel at current
9 prices. At the same time, emissions have been reduced significantly,
10 benefitting not only FPL customers and all Floridians today, but also
11 for years to come.

- 12 • FPL witness Santos describes how the Company provides superior
13 customer service, while at the same time maintaining a low-cost and
14 highly efficient operation. In 2011, FPL received the ServiceOne
15 award for an unprecedented eighth year in a row. This award
16 recognizes outstanding performance across a number of functional
17 areas within the Customer Service organization.
- 18 • FPL witness Hardy addresses the Company's excellent distribution
19 reliability. Over the past decade, FPL's System Average Interruption
20 Duration Index ("SAIDI"), the most complete overall measure of
21 reliability, has been the best overall when compared with Florida's
22 other IOUs. Additionally, FPL's Distribution 2006-2010 SAIDI
23 performance ranks in the first quartile in a recently completed Davies

1 Consulting Inc. reliability benchmarking study, which included 31
2 utilities in approximately 30 states, each of which serves between
3 300,000 and 5 million customers.

4 • FPL also delivers excellent transmission reliability, as presented by
5 FPL witness Miranda. The industry reliability study conducted by
6 SGS Statistical Services in 2011 shows that FPL was in the top ten
7 percent of national survey participants for 2008 through 2010. And
8 while 2011 study data is not yet available, FPL's 2011 transmission
9 reliability continued to improve by another 21 percent over 2010. In
10 addition, FPL has had the best transmission and substation average
11 reliability of all Florida IOUs during the five-year period from 2006
12 through 2010.

13 • As addressed by FPL witness Stall, our nuclear fleet has been
14 another important factor in our ability to keep our bills low and
15 service high. Over their lifetime, FPL's nuclear units have operated
16 safely and delivered billions of low-cost kilowatt hours to customers
17 with zero emissions. The availability of these units since their
18 construction has been excellent, providing significant, ongoing
19 benefits for customers. Since 2000, FPL's nuclear generation has
20 resulted in more than \$14 billion in fuel savings for our customers.

21

1 These significant accomplishments highlight FPL's superior overall service to
2 customers over the years and demonstrate the value that our customers
3 receive.

4 **Q. How should FPL's request be viewed from a customer's perspective?**

5 A. We recognize that no increase in costs is ever welcomed, and so we believe it
6 is important to recognize the fact that while the costs of other everyday goods
7 and services have gone up in recent years, FPL's typical residential bill has
8 gone down. FPL witness Morley addresses some common consumer costs,
9 noting that although the annual rate of inflation as measured by the Consumer
10 Price Index ("CPI") has been relatively low in recent years, the cumulative
11 increase from 2006 to 2012 was 14.2 percent. Some goods and services have
12 experienced even more substantial price increases. For instance, over the
13 same time period, the prices of groceries and healthcare have gone up by
14 about 20 percent and 24 percent, respectively, while the price of a gallon of
15 gas has gone up by more than 41 percent. At the same time, FPL's total
16 typical residential bill has gone down by 13 percent. And from 2012 to 2013,
17 as FPL witness Deaton explains, while the impact of the rate increase on the
18 base bill would be an increase of 16 percent, the total residential bill would
19 increase by a net of only 3 percent due to fuel savings, lower fuel costs and
20 other reductions. Moreover, even with FPL's requested increase the typical
21 residential bill in 2013 would still be 10 percent lower than it was in 2006.

1 Similarly, FPL witness Deaton explains that FPL business customers' total
2 bills have decreased, on average, about 14 percent from 2006 to today. Our
3 request is for an increase in the base portion of the bill that, for most business
4 customers, will vary from 4 percent to 16 percent depending on the rate class.
5 However, due to fuel savings, lower fuel prices and other adjustments, the net
6 impact on most business customers' total bills will range from an increase of 4
7 percent to an actual overall decrease of 3 percent.

8
9 Our request addresses cost increases over a period of several years, not just for
10 a single year, and, as FPL witness Deaton states, even with the total requested
11 increase of \$690.4 million, FPL's typical residential customer bill would still
12 be the lowest of all 55 electric providers in Florida based on current rates.
13 Given our standing as the lowest-cost provider and the favorable position of
14 FPL's typical residential bill compared to the rising costs of other goods and
15 services, as well as the overall value of the service we provide our customers,
16 we believe the requested increase is reasonable.

17 **Q. Please summarize your conclusions with regard to the relative impact of**
18 **the proposed price increase.**

19 A. We are proud of the fact that we bring exceptional value to our customers.
20 We are also aware of the significant responsibility we have as the largest
21 electric utility in Florida, the state with the fourth largest gross domestic
22 product in the U.S. – and 17th in the world. In order to fulfill that
23 responsibility, we must first maintain the ability to continue delivering value

1 for customers so that Florida remains an attractive place to live and a
2 competitive environment for business. Our request will ensure that continued
3 viability.

4

5

V. INTRODUCTION OF WITNESSES

6

7 **Q. What are the main topics addressed in the testimony filed on FPL's**
8 **behalf?**

9 A. The testimony submitted by the other witnesses on behalf of FPL in this
10 proceeding is offered to explain and support:

- 11 • An overview of FPL's outstanding performance and the value that
- 12 FPL's customers receive as a result of this performance, including low
- 13 O&M costs, low rates, excellent reliability and customer service,
- 14 highly efficient fossil generation, and an outstanding emissions rates
- 15 profile;
- 16 • The need for a general increase in base rates effective January 2013;
- 17 • The need for a base rate step increase beginning in June 2013 to
- 18 recover the costs associated with the Canaveral Modernization Project;
- 19 • An ROE of 11.25 percent together with a performance adder of 0.25
- 20 percent for maintaining the lowest typical residential bill in Florida;
- 21 • Adjustments that the Commission requires FPL to make or should
- 22 allow to be made in establishing FPL's rates; and

- 1 • The proposed rates and service charges that implement the requested
2 rate relief.

3 **Q. Who will be testifying on FPL's behalf in this proceeding?**

4 A. In addition to me, the following Company witnesses will testify as part of
5 FPL's direct case:

- 6 • William E. Avera, Ph. D., Financial Concepts and Applications, Inc. –
7 ROE and capital structure;
- 8 • Robert E. Barrett, Jr. – FPL's financial forecast;
- 9 • Renae B. Deaton – Rate design;
- 10 • Moray P. Dewhurst – Need for requested revenue increases, ROE,
11 capital structure, storm reserve and accrual;
- 12 • Joseph A. Ender – Cost of service;
- 13 • George K. Hardy – Distribution costs and quality of service;
- 14 • Roxane R. Kennedy – Power Generation costs and performance;
- 15 • Manuel B. Miranda – Transmission and Substation costs and quality of
16 service;
- 17 • Dr. Rosemary Morley – Sales and load forecast;
- 18 • Kim Ousdahl – Calculation of the revenue requirements and requested
19 revenue increases, accounting issues and Company adjustments;
- 20 • John J. Reed, Concentric Energy Advisers – FPL's operational and
21 financial performance relative to industry benchmarks;
- 22 • Marlene M. Santos – Customer Service costs and quality;
- 23 • Kathleen Slattery – Human Resources costs and benefits; and

- 1 • J. A. Stall – Nuclear cost and performance.

2

3 Some of these individuals, as well as others, also may provide rebuttal
4 testimony on behalf of FPL.

5

6

VI. CLOSING COMMENTS

7

8 **Q. Do you have any closing comments?**

9 A. Yes. In closing, on behalf of the 10,000 Floridians with whom I have the
10 privilege of working as a FPL employee, I want to convey a simple message
11 to the Commission and to our customers: at FPL, we focus not only on what
12 we must do to deliver value for customers today but also what we can do to
13 deliver value for customers in the future. This approach, in the form of
14 sustained investments and a commitment to efficiency, helps us deliver
15 excellent service, strong reliability and the lowest typical bill in Florida.
16 Again, we are very mindful of the impact that any increase in costs can have
17 on our customers, and with this in mind, we are requesting what we believe is
18 necessary to preserve our ability to continue to provide our customers with the
19 exceptional value of low bills, high reliability and excellent customer service
20 that they have come to expect.

21 **Q. Does this conclude your direct testimony?**

22 A. Yes.

1 **BY MR. LITCHFIELD:**

2 Q Mr. Silagy, have you prepared a summary of
3 your direct testimony?

4 A I have.

5 Q Would you please provide that summary to the
6 Commission at this time.

7 A Good morning, Mr. Chairman and Commissioners.
8 On behalf of Florida Power & Light's 10,000 dedicated
9 employees who live and work here in Florida, I thank you
10 for the opportunity to be here today.

11 For more than 86 years FPL has helped power
12 Florida, and today we serve nearly half of the
13 19 million people that call Florida home. We understand
14 the tremendous responsibility this obligation carries.
15 We're committed to providing excellent value to all of
16 our customers.

17 We also know there's never a good time for a
18 rate increase, and we are mindful of the fact that the
19 economy remains uncertain. That is why we want to be
20 sure that we clearly explain why our rate proposal is
21 the right course of action at this time.

22 Accordingly, my testimony and that of our
23 witnesses will explain the key drivers in this case.
24 They will also focus on what we've done over the past
25 several years and what we'll continue do in the future

1 to provide the excellent value proposition that our
2 customers have come to expect. That is, excellent
3 reliability, outstanding customer service, clean
4 generation, and all at an affordable price.

5 As you're aware, FPL has been operating under
6 a settlement agreement since 2010 that effectively froze
7 our base rates. It was also supported by the company
8 and all of the major Intervenors. However, it also
9 provided an important mechanism for the company to
10 recover the revenue requirements associated with the
11 West County Energy Center Unit 3, and also allowed the
12 company to maintain an 11% return on equity by providing
13 us flexibility in the use of theoretical noncash
14 depreciation reserve surplus.

15 Designed as a temporary bridge, the 2010 rate
16 agreement expires at the end of this year and that,
17 combined with the financial challenges that lie ahead,
18 is why we are here today.

19 Our rate proposal will allow the recovery of
20 the Cape Canaveral Next Generation Energy Center, a
21 \$1 billion investment by our shareholders that is
22 currently under construction. Because it will use 33%
23 less fuel on a per-megawatt-hour basis, the plant will
24 effectively pay for itself through fuel savings. At the
25 same time, it will generate far fewer emissions and

1 continue to support our efforts to deliver exceptional
2 service reliability.

3 The company also anticipates adding nearly
4 100,000 new customer accounts between 2010 and 2013,
5 which will require us to install new poles, wires,
6 transformer -- transformers, and all other related type
7 of infrastructure.

8 And like the cost for many other businesses,
9 the cost for these and many other materials and products
10 that we must purchase in order to provide affordable and
11 reliable power have risen. While we have focused on
12 efficiency and productivity to lessen this impact, we
13 are not immune to the effects of inflation.

14 Furthermore, to maintain our combination of
15 low bills and high reliability, we must continue to make
16 capital investments in our infrastructure. Between 2011
17 and 2013, FPL's shareholders will invest nearly
18 \$9 billion in new infrastructure, that's \$3 billion
19 every year, to strengthen and improve our electric
20 generation and our delivery system.

21 And finally, we're seeking an adjustment in
22 our allowed equity midpoint. Despite the fact that we
23 provide our customers with the lowest typical
24 residential bill in all of Florida, the highest
25 reliability among IOUs in Florida and among the best in

1 the nation, outstanding award-winning customer service,
2 our current allowed midpoint of 10% is the lowest among
3 all the Florida IOUs and in the bottom one-third of the
4 nation.

5 In addition, we're asking for an equity adder
6 of one-quarter of 1% to recognize our excellent
7 performance. We believe it's in the public interest and
8 it's also sound regulatory policy to encourage companies
9 with a proven track record of top performance to
10 continue such performance. This incentive, as addressed
11 by FPL Witness Dewhurst, would be applied if and only if
12 we continue to provide the lowest typical residential
13 bill out of all Florida's 55 electric providers.

14 Our witnesses will explain the key drivers and
15 key factors in this case through their testimony and
16 exhibits. We will also present key performance
17 benchmarks and other fact-based indicators to
18 demonstrate our commitment to delivering the value for
19 our customers.

20 We've worked extremely hard to improve the
21 efficiency and the productivity of our company. In
22 fact, the company's operating and performance benchmark
23 is in the top 10% of all utilities nationwide, and this
24 saves our customers over a billion dollars every single
25 year.

1 Commissioners, all of us at FPL work very hard
2 every day to provide our customers with a value
3 proposition and a customer experience that is second to
4 none. And I commit to you that we will continue to
5 strive for excellence every single day.

6 Thank you.

7 **MR. LITCHFIELD:** Mr. Silagy is available for
8 cross-examination.

9 **CHAIRMAN BRISÉ:** All right. Mr. Moyle.

10 **MR. MOYLE:** Thank you, Mr., Mr. Chairman.

11 **CROSS EXAMINATION**

12 **BY MR. MOYLE:**

13 **Q** Good morning, Mr. Silagy.

14 **A** Good morning.

15 **Q** Your testimony, on page 4 you say that the
16 purpose of the testimony is to provide an overview of
17 FPL's filing and to introduce the, the witnesses who are
18 submitting direct testimony. I take it from that that
19 you have an overview understanding of, of the case as
20 filed?

21 **A** That's correct.

22 **Q** Okay. So would you be comfortable if I have,
23 in my cross-examination of you, you know, ask you
24 questions, not necessarily designed to get down into the
25 weeds, because I understand you have witnesses, but, you

1 know, general, broad overview questions with respect to
2 your case, and then some issues that have been raised,
3 including an issue that FIPUG has raised related to the
4 CILC credit? Would you be comfortable with those
5 questions?

6 **A** I'll do my best to answer them.

7 **MR. MOYLE:** Okay. I have an exhibit I'd like
8 to use with, with the witness.

9 **MS. KLANCKE:** I believe we're on Exhibit
10 Number 482.

11 **CHAIRMAN BRISÉ:** That's correct. 482.

12 (Exhibit 482 marked for identification.)

13 **BY MR. MOYLE:**

14 **Q** Mr. Silagy, I've handed you MFR E-13(a). And
15 you're aware that your company files MFRs in advance of
16 a rate case; correct?

17 **A** That's correct.

18 **Q** Okay. And this MFR, what I wanted to ask you
19 about is the percent increase reflected on column 5 on
20 page 1 of 1. Do you, do you see that?

21 **A** Yes.

22 **Q** Okay. So, so I understand this exhibit to
23 show in effect what the various customer classes, the
24 percent increase that they may receive if your case as
25 filed is approved. Is that, is that your understanding?

1 **A** Mr. Moyle, I'm not familiar with this
2 particular document, so I think Witness Deaton could go
3 into great detail as to what these exact percentages
4 represent.

5 **Q** Okay. The column says increased percent;
6 right?

7 **A** That's correct.

8 **Q** Okay. And whether you need this document or
9 not, do you have an understanding with respect to a
10 number of clients that I represent in terms of the rate
11 schedule that, that they're on?

12 **A** Could you read the question --

13 **Q** Sure. I represent large industrial users.

14 **A** Uh-huh.

15 **Q** People that use a lot of, a lot of power. And
16 do you know, do you have any information with respect to
17 whether any of them are on the CILC-1T rate?

18 **A** Yes. I'm generally familiar that there are
19 industrial customers that are on the CILC rate
20 structure.

21 **Q** Okay. And under the third column, we don't
22 even have to refer to this, but this shows a 34%
23 increase under this line number. If you go down to the
24 third one, CILC-1T, and you go across to column 5, it
25 shows percent increase, 34%. I understand Ms. Deaton

1 may ask this, but is, do you have an understanding with
2 respect to the amount of increase that your filed rate
3 case would have with respect to the CILC-1T?

4 **MR. McGLOTHLIN:** Objection. The witness
5 answered the same question a moment ago and said he was
6 not familiar with the document and could not answer the
7 question. It's asked and answered.

8 **CHAIRMAN BRISÉ:** Okay.

9 **MR. MOYLE:** I've tried to take it away from
10 the document and ask him if he knows irrespective of the
11 document.

12 **MR. McGLOTHLIN:** No. The question directed
13 him to a particular value and a particular column on a
14 document with which he said he was unfamiliar.

15 **CHAIRMAN BRISÉ:** Okay. Objection sustained.

16 **BY MR. MOYLE:**

17 **Q** Do you know if the military bases, Patrick Air
18 Force Base, Homestead Air Force Base, NASA, if they are
19 taking service under the CILC-1T rate?

20 **A** I'm not familiar whether they are or not.

21 **Q** Same question with respect to the hospitals?

22 **A** I'm not familiar specifically.

23 **MR. MOYLE:** Thank you. Mr. Chairman, this is
24 482?

25 **CHAIRMAN BRISÉ:** Yes. It is 482.

1 Are there any objections to 482? I'm trying
2 to deal with these as they come through.

3 Okay. Seeing none, thank you.

4 **BY MR. MOYLE:**

5 **Q** Now, Mr. Silagy, there was an exhibit that was
6 admitted into evidence yesterday, 472. There's already
7 been a little discussion about it this morning with
8 respect to a document compiled by the Bureau of Labor
9 Statistics. I have a copy of that, but I'd like to
10 share that with you. Did you have a chance to look at
11 that document or no?

12 **A** Not yesterday during the hearings, no.

13 **MR. MOYLE:** Can I, can I get him a copy of
14 that?

15 (Document handed to witness.)

16 **BY MR. MOYLE:**

17 **Q** And Mr. Reed, I asked Mr. Reed some questions,
18 asked him to do some math, and on the second to the last
19 page of that document under manufacturing, my
20 recollection of his testimony was that there were
21 approximately 3,500 lost manufacturing jobs from
22 June 2012 to July 2012.

23 **A** I see that.

24 **Q** Okay. And then on the next page, with the
25 healthcare and education, 6,700 jobs lost from June 2012

1 to July 2012.

2 A I see that as well.

3 Q All right. So if you add those up, my math is
4 over 10,000 jobs lost month to month in those two
5 sectors. Would you agree?

6 A 10,200 specifically, if my math is correct.

7 Q And isn't that about the size of your company?

8 A Florida Power & Light has about 10,000
9 employees. That's correct.

10 Q Yeah. And you're one of the biggest employers
11 in the State of Florida, aren't you?

12 A We're one of the larger employers in the State
13 of Florida.

14 Q Okay.

15 A I don't know about everybody in the rest of
16 state.

17 Q And now, to kind of hopefully tie this back
18 together, but wouldn't you agree -- you're an economics,
19 you have an economics degree from the University of
20 Texas; isn't that right?

21 A Yes, that's correct. A long time ago.

22 Q Okay. So just to get into some macroeconomic
23 conversations and discussions, wouldn't you agree that
24 if your rate case is approved -- well, hold on a second.
25 Let me just have a quick conversation about the CILC

1 credit. Okay?

2 You're aware that some of my clients are on
3 interruptible tariffs; correct?

4 A Yes, sir.

5 Q And that essentially says that if you agree to
6 have your power turned off during times of peak demand,
7 you get a credit, in broad terms.

8 A That's correct.

9 Q Okay. And that's a valuable service; correct?

10 A I'm sorry? It's about able service?

11 Q It's a valuable --

12 A Oh.

13 Q -- a valuable thing, the ability to shut
14 somebody off when you have a peak load?

15 A Yes, it is.

16 Q Okay. And that credit typically is pegged to,
17 because it, it allows you to avoid building peaking
18 power plants; correct?

19 A That's correct. That's the theory, is that it
20 provides you the ability to defer the building of
21 peaking power plants, which of course reduces the amount
22 of capital expenditure. And I think there, there's a
23 balance and there's a sweet spot in there to find,
24 wherever that is.

25 Q Okay. And when costs are going up to build

1 power plants, Mr. Reed, you heard him yesterday say the
2 costs for building power plants are going up. Is that
3 your understanding?

4 **A** I think that's generally true.

5 **Q** Yeah. And so it would follow logically, based
6 on the concept of the CILC credit, that also the CILC
7 credit might warrant an increase; correct?

8 **A** Again, I think you have to look at it in the
9 context of what are you trying to offset? And we build
10 power plants not just for peaking load. We build power
11 plants to serve baseload, load around the clock, and so
12 there's a balance of offsetting peak load versus
13 providing the system reliability through baseload
14 generation.

15 So I think there's a, again, there's a sweet
16 spot of trying to find, and I think reasonable minds can
17 differ on where that is, but there is a place that
18 optimizes, if you will, the need to provide baseload
19 generation, system reliability, and then offsetting that
20 peak load as well.

21 You still also need those peak plants in place
22 to a certain extent so you can, you know, hit the button
23 and in a few seconds bring incremental power on for
24 those times when it's simply not enough to be able to
25 deploy CILC.

1 Q And I'm not suggesting that you have no need
2 for peaking plants. I'm simply suggesting that the
3 theories you describe with respect to an interruptible
4 credit and large customers agreeing to be turned off
5 works against having to build more peaking plants;
6 correct?

7 **MR. SUNDBACK:** Excuse me, Mr. Chairman. I
8 apologize for interrupting. But we'd like to move to
9 strike a portion of Mr. Silagy's last answer. He was
10 asked the question, if memory serves, whether the price
11 of constructing power plants has increased, because
12 apparently Mr. Moyle was trying to correlate the lack of
13 movement in CILC credit to the increase in power plants.

14 Mr. Silagy proceeded to provide a discourse
15 that went way beyond that topic in which he purported to
16 explain to us, for instance, why various power plants
17 are constructed. That didn't relate to the question
18 that was asked, and, in fact, moved beyond his prepared
19 testimony.

20 So we'd move to strike that as just larding
21 the record with some information that wasn't called for
22 by the question and wasn't even a follow-up on his
23 prepared testimony.

24 Sorry for the interruption.

25 **CHAIRMAN BRISÉ:** Mr., Mr. Litchman --

1 Litchfield. Sorry.

2 **MR. LITCHFIELD:** I really don't have any
3 strong feelings about this one way or the other. I, I
4 heard it as a fair response to a fair question. But I
5 really don't have strong feelings one way or the other,
6 Mr. Chairman.

7 **MR. MOYLE:** I'm indifferent.

8 **CHAIRMAN BRISÉ:** All right. We'll allow that
9 answer. But moving forward, if the question is a yes or
10 no question, offer the yes or the no, and then, if
11 necessary, maybe some editorial comment as allowed by
12 the questioner.

13 **THE WITNESS:** Yes, sir.

14 **BY MR. MOYLE:**

15 **Q** Okay. So let's kind of just run back. We
16 don't need to have that answer again. But you would
17 agree that construction costs for power plants have gone
18 up; correct?

19 **A** Generally I agree, yes.

20 **Q** And you've described the theory with respect
21 to the CILC theory in that it obviates or mitigates the
22 need to build additional peaking plants; correct?

23 **A** Generally, yes.

24 **Q** Okay. And that that credit typically is
25 pegged to cost of construction of power plants; correct?

1 **A** No. I don't believe I said that.

2 **Q** Is that your understanding with respect to the
3 theory?

4 **A** Again, I'm not an expert on the theory of how
5 CILC rates are designed.

6 **Q** Okay. Are you aware that the CILC credit has
7 not been increased in many, many years? I think, I
8 think it may be 12. Do you have information about that?

9 **A** I do not, Mr. Moyle. No.

10 **Q** Okay. Now, to try to tie this somewhat
11 together, you would, you would agree that to the extent
12 that a business is confronted with a 34% rate hike, that
13 to the extent that the CILC credit was, say, adjusted
14 upward in a way that provided additional credit for
15 customers on that rate, that it would have the effect of
16 mitigating against a 34% price increase; correct?

17 **A** Well, I would first say --

18 **Q** Yes, no, if you can, and then explain.

19 **A** Yes. However, that's 34% on the base rate.
20 So I think what you're talking about is a CILC credit
21 actually offsetting the total bill, and that base --
22 that increase of the total bill is significantly less
23 than a 34%.

24 **Q** Okay. And I just want to talk about base
25 rates. I don't want to mix the fuel in with it if we

1 can at this point. But I think, I think, I think I got
2 you to acknowledge that to the extent that less than
3 34% -- well, if 34% is awarded and there's a CILC
4 credit, that that will have a mitigating impact. You
5 would agree, to the extent it does have a mitigating
6 impact, that that would result in having the businesses
7 who take advantage of this credit having additional
8 capital in their pocket; correct?

9 **A** I would agree that they would have additional
10 revenue. I cannot speak to how they would utilize that.

11 **Q** Okay. So, but if you have additional revenue,
12 then you have the ability to make judgments as to how to
13 use it. You can build new plants, you can hire new
14 employees, you can provide returns to your investors,
15 you can hold on to it for a rainy day. It gives you
16 additional funds to make decisions with; correct?

17 **A** I would agree with that. Yes.

18 **Q** And to the extent that a business is
19 confronting tough economic pressures, or segments are,
20 as I think reflected in Exhibit 472 with the loss of
21 jobs, wouldn't you agree to the extent that jobs were
22 important, that it would warrant serious consideration
23 of an upward adjustment of a credit?

24 **MR. LITCHFIELD:** Let me object to the form of
25 the question. There's first a narrative and then a

1 compound question. And I've let a few of these go, but
2 would request that counsel ask just a question as
3 opposed to prefacing those questions with his own
4 testimony.

5 **CHAIRMAN BRISÉ:** Thank you. I think we
6 addressed some of that on yesterday, so if we can clean
7 up our questions.

8 **MR. MOYLE:** I can, I can break it down. I
9 tried to wrap it all up in one to save a little time,
10 but I'll break, break it down.

11 **BY MR. MOYLE:**

12 **Q** So I think I've gotten you to agree that, that
13 having an adjustment in the CILC would mitigate the 34%
14 rate increase. I think I've also gotten you to agree
15 that that would result in having additional capital in
16 the --

17 **CHAIRMAN BRISÉ:** Mr. Moyle.

18 **MR. LITCHFIELD:** Same objection.

19 **CHAIRMAN BRISÉ:** Mr. Moyle.

20 **MR. MOYLE:** Okay. I'm sorry.

21 **CHAIRMAN BRISÉ:** One question at a time.

22 **MR. MOYLE:** Okay.

23 **BY MR. MOYLE:**

24 **Q** If a company has additional capital, do you
25 think that would make it more likely or less likely

1 that, that they could not have to cut jobs?

2 A More likely.

3 Q More likely that they would not have to cut
4 jobs?

5 A I thought that's what you asked me, yes. More
6 likely they would not have to cut jobs.

7 Q Okay. Okay. It was not very well worded. I
8 just wanted to make sure we weren't talking past one
9 another.

10 A It was a double negative.

11 Q Okay. Let's, let's move on to, to some other,
12 another area.

13 On page 5, line 23 --

14 A I'm there.

15 Q -- you talk about Canaveral and you say that
16 FPL is financing this 1 billion modernization in order
17 to produce significant savings and benefits for our
18 customers and their families for years to come.

19 I want to spend a little time with you talking
20 about financing. It can be a little complex, but I want
21 to try to have an overview conversation, you know, with
22 you about financing. So how specifically, when you say
23 FPL's financing this 1 billion mechanism, how is it
24 doing so?

25 A Well, again, let me start by saying that

1 Witness Barrett is, is prepared to go into great detail
2 for you as the Vice President of Financing on Canaveral.

3 Q And for me to understand it better, I need an
4 overview. I don't, I don't need the detail, but go
5 ahead.

6 MR. LITCHFIELD: I'll object to any questions
7 that seek discovery at this point in the proceeding.

8 THE WITNESS: So from a financing standpoint
9 we have to go out and access the capital markets or the
10 debt or equity in order to borrow the money to pay for
11 these plants in advance.

12 You know, in the fossil generation fleet, when
13 we go out and we build plants like Cape Canaveral, as an
14 example, we are not earning a return. We're not getting
15 recovery on those plants until they actually go into
16 commercial operations.

17 So from the time that we actually start the
18 construction until the time that they go into commercial
19 operations, we are financing those plants. After they
20 go into commercial operation is when we are seeking Cape
21 Canaveral as an example for the revenue requirement to
22 then go and begin to impact the base bill concurrent
23 with our fuel adjustment factor also be adjusted
24 downward to offset for the system efficiencies that come
25 with bringing in Canaveral.

1 BY MR. MOYLE:

2 Q So you go -- in order to finance a new plant,
3 you get debt and equity; correct?

4 A Correct.

5 Q And is, is that the same -- that would hold
6 true for your future construction plans that you have
7 for your upcoming plants, that you would --

8 A Yes.

9 Q -- access capital? And then with respect to
10 the mix of debt and equity, do you have specific mixes
11 that go in? Like, out of the billion dollars for
12 Canaveral is a certain percent debt and a certain
13 percent equity?

14 MR. LITCHFIELD: May I object to the question?

15 CHAIRMAN BRISÉ: Sure.

16 MR. LITCHFIELD: I think we're getting into
17 the details that are sponsored and discussed in
18 particular by other witnesses in this case. I think, I
19 think we've gone well past an overview type of question
20 here.

21 CHAIRMAN BRISÉ: Okay. I would tend to agree.

22 MR. MOYLE: Mr. Chairman, I'm going to
23 hopefully make a point here. I'm not intending to get
24 into the weeds on finance, but I think it's a fair
25 question with respect to knowing, you know, what the

1 break is between debt and equity.

2 **CHAIRMAN BRISÉ:** I think on yesterday, when
3 some of the other individuals were asking questions, we
4 asked people to remain focused on what the, the person
5 who is testifying offered in their prefiled testimony
6 and so forth, so we're going to ask that we keep down
7 that path.

8 **MR. MOYLE:** Okay. I appreciate that.

9 **BY MR. MOYLE:**

10 **Q** Mr. Silagy, so you do, you do testify about
11 financing Cape Canaveral; correct?

12 **A** On a general basis, that's correct.

13 **Q** Okay. And on a general basis do you know the
14 debt/equity split?

15 **MR. McGLOTHLIN:** Objection. That has been
16 ruled on about 30 seconds ago.

17 **MR. MOYLE:** Did you rule against me?

18 **CHAIRMAN BRISÉ:** I sure did.

19 **MR. MOYLE:** Okay. Sorry.

20 (Laughter.)

21 **BY MR. MOYLE:**

22 **Q** All right. In, with respect to debt, there's
23 a lot of rating agencies that, that assign ratings to
24 you; is that right?

25 **A** Again, I would, I would defer any technical

1 aspects of this to Witness Dewhurst, who is our Chief
2 Financial Officer. But, yes, we have credit rating
3 agencies.

4 Q And the ratings that they issue are for your
5 debt, not for your equity; correct?

6 MR. LITCHFIELD: Objection. Outside the scope
7 of this witness's testimony.

8 CHAIRMAN BRISÉ: Objection sustained.

9 BY MR. MOYLE:

10 Q How much is your -- how much are you seeking
11 to increase your ROE in this case from the current
12 midpoint to the, to what you filed?

13 A Our current allowed midpoint is 10%, and we
14 are seeking an 11.25% plus a 25 basis point adder for
15 performance.

16 Q So it goes from 10% to 11.5?

17 A The current allowed midpoint is 10%. We're
18 currently earning actually an 11%. So from a standpoint
19 of what we're earning to what we're asking for, it goes
20 from 11 to 11.25. And then if the Commission saw fit
21 for the 25 basis point adder, that would also be added
22 to that.

23 Q All right. So I just want to, I just want to
24 go midpoint to midpoint. Your current midpoint is 10;
25 correct?

1 A That's correct.

2 Q And in this case you're asking, with the
3 adder, for 11.5.

4 A With the adder, that's correct.

5 Q Okay. How much does that represent in terms
6 of dollars?

7 A That is going to be about \$160 million.

8 Q 160 --

9 A Subject, subject to check.

10 Q Isn't it 160 per 100 basis points?

11 A Yes, you're correct. You go from the
12 10 midpoint to the 11.5, that's correct. It would be
13 240 million.

14 Q 240 million?

15 A That's correct.

16 Q And with respect to your capital needs, your
17 capital needs in the test year, your Capex spend, did I
18 understand your testimony to be that it's a \$3 billion
19 Capex spend in the test year?

20 A That's correct. Roughly we'll be spending
21 about \$3 billion every year for the next three years, or
22 from 2011 to 2013. Pardon me.

23 Q And you've testified, and part of the reason,
24 if I understand it, that you need an increase in return
25 on equity is to access capital markets; is that right?

1 **A** Again, I would defer the technical aspect of
2 this to Witness Dewhurst, who goes into great detail
3 about the need to access the capital markets. But
4 generally speaking, in order for us to be able to
5 continue to invest in the infrastructure, yes, we need
6 to access the capital markets.

7 **Q** And actually you talk about the ROE on page
8 9 of your testimony, starting at line 10.

9 **A** That's correct.

10 **Q** And you say, a utility's ability to earn is
11 crucial to its cost of investing in major infrastructure
12 improvements on behalf of customers; is that right?

13 **A** That's correct.

14 **MR. MOYLE:** I have an exhibit I'd like to use.

15 **CHAIRMAN BRISÉ:** This exhibit number will be
16 483, if I'm correct.

17 (Exhibit 483 marked for identification.)

18 **MR. MOYLE:** Thank you, Mr. Chairman.

19 **MR. LITCHFIELD:** Mr. Chairman, I'm looking at
20 the exhibit, and I appreciate the opportunity to see it
21 before we move on with questioning.

22 I'm going to object to the line of questioning
23 relative to this exhibit. This purports to, to lay out
24 facts and figures that have not yet been presented in
25 this case, not yet been established, and I don't think

1 Mr. Moyle can or should establish any of this through
2 this witness, because this is well outside the scope of
3 Mr. Silagy's testimony.

4 If Mr. Moyle would care to discuss this
5 exhibit with Mr. Dewhurst, I would have absolutely no
6 objection.

7 **CHAIRMAN BRISÉ:** Okay.

8 **MR. MOYLE:** Mr. Chairman, I mean, he, he, he
9 said he's an economics major, he says he's talking about
10 financing, he says ROE is needed with respect to the
11 ability to attract capital. We've already had
12 conversations about a number of these things. This is a
13 couple of follow-up questions with respect to that
14 conversation.

15 The only thing that I think that we may have
16 to establish through another witness, which we'll do,
17 and I'll ask him to assume, is the 1% interest
18 differential between the current credit rating and the
19 next highest credit rating. I think it's, I think it's
20 very appropriate for me to wrap up this line of
21 questioning using, using an exhibit.

22 **MR. LITCHFIELD:** There's not a single
23 reference in Mr. Silagy's testimony to the cost
24 differential between credit ratings. It's just not
25 there. But that is a subject of Mr. Dewhurst's

1 testimony, and so thus my objection. We're not really
2 going to be efficient here in moving through a line of
3 questioning.

4 A company president, as you know, speaks at a
5 general level to a lot of topics, and part of the
6 purpose of his testimony is to introduce those topics
7 and the witnesses that then will follow him to support
8 the -- and provide the evidence in great detail. This
9 is a case where Mr. Dewhurst is the witness to address
10 this exhibit, and I would encourage Mr. Moyle to talk to
11 Mr. Dewhurst about this.

12 **MR. MOYLE:** Mr. Chairman, as a matter of
13 litigation strategy, I can make decisions about, I
14 think, who I wish to ask certain questions of with
15 respect to what's in their testimony. He put it in his
16 testimony. I think I have every right in the world to,
17 to ask questions about it.

18 **CHAIRMAN BRISÉ:** Thank you.

19 Mary Anne.

20 **MS. HELTON:** Where is it in his testimony,
21 Mr. Moyle?

22 **MR. MOYLE:** Well, he talked about financing
23 Canaveral, which we've already, we've already talked
24 about. He says on page 5, line 23, quote, FPL is
25 financing this \$1 billion modernization. So he's

1 talking about financing there. And then he comes over
2 and on page 9 talks about the increased request for the
3 ROE because it's crucial to the utility's ability to
4 invest in major infrastructure.

5 And then they go on down on line 19, and he
6 says, because we must compete for the capital necessary
7 to fund investments on behalf of customers.

8 **MS. HELTON:** Mr. Chairman, those sound like
9 awfully general questions to me. And looking at this
10 exhibit, based on the few economics courses I had in
11 college, this looks like it's a lot more specific. My
12 recommendation is to follow Mr. Litchfield's suggestion.
13 This does not seem to be the correct witness.

14 **CHAIRMAN BRISÉ:** Okay. So this is beyond the
15 scope of this witness.

16 **BY MR. MOYLE:**

17 **Q** You were, you were involved in the last rate
18 case, weren't you?

19 **A** Not directly, no.

20 **Q** But you were, you were here in Tallahassee,
21 weren't you?

22 **A** I was involved in the, more in the settlement
23 agreement that followed the rate case.

24 **Q** Okay. If I asked you some questions about the
25 last rate case, would that, would you have information

1 with respect to being able to answer them?

2 **MR. LITCHFIELD:** Well, I would, I would pose
3 an objection here to the extent that it's outside the
4 scope of Mr. Silagy's testimony, and would ask Mr. Moyle
5 first to direct us to where Mr. Silagy speaks about
6 that.

7 **MR. MOYLE:** Well, I think, I think they talk
8 in there about the bad result, the negative signal to
9 investors. I mean, I can go find it.

10 The question I want to ask him is with respect
11 to the results of the last rate case, isn't it true that
12 FPL's continued to perform well, as indicated by
13 Mr. Reed yesterday in all his benchmark material, that
14 they've continued to perform well and score out in the
15 top percent. They got an A, notwithstanding the results
16 of the rate case. I think it's a fair question.

17 **MR. LITCHFIELD:** No objection to that
18 question.

19 **CHAIRMAN BRISÉ:** I think that's a fair
20 question as well.

21 **THE WITNESS:** I thank you for recognizing our
22 excellent operational performance. And, yes, we have,
23 we've done a nice job operationally. I would say on a
24 financial basis though we have not actually performed
25 well. We are currently earning the lower cash return

1 than we have in the last two decades.

2 **BY MR. MOYLE:**

3 **Q** But you're earning 11%, aren't you?

4 **A** We earn a book return of 11%, and that is
5 almost exclusively due to the large amount of
6 theoretical surplus cash depreciation -- noncash
7 depreciation reserve that we are able to utilize, which
8 this year we're projecting to be over \$500 million.
9 That's a book return.

10 On a cash return we're earning closer to an
11 8%. And it's important, because on a cash basis that's
12 what we pay the bills with. So far I've not been able
13 to get anybody to take theoretical depreciation, noncash
14 surplus depreciation in lieu of cash.

15 **Q** Well, I'm impressed that the general
16 conversation has gone into a concept of theoretical
17 surplus depreciations. But with respect to the question
18 I posed, I mean, you're doing okay, notwithstanding the
19 results of the last rate case; correct?

20 **MR. LITCHFIELD:** Asked and answered.

21 **CHAIRMAN BRISÉ:** I would agree. It's been
22 asked and answered.

23 **BY MR. MOYLE:**

24 **Q** Okay. After the last rate case, I think there
25 were some announcements that you weren't going to move

1 forward with Cape Canaveral; is that right?

2 **A** No, not specifically. The announcement was is
3 that we were going to review the modernization projects,
4 given the decision, and then make a decision after
5 reviewing those projects. Subsequently we did move
6 forward with them, and the settlement agreement was an
7 important part of the decision to do so.

8 **Q** So, so you are moving forward with, with
9 Canaveral and Riviera?

10 **A** As I stated in my testimony, Canaveral is
11 under construction. Riviera also is under construction.

12 **Q** Okay. And you've been able to, to do that,
13 you've been able to do that, notwithstanding the 7% of
14 your ask in the last rate case and a 10% ROE; is that
15 correct?

16 **A** We have -- first off, I would, I would
17 disagree with the 7% characterization. That's not
18 accurate at all. We, we -- after the decision was
19 rendered by the Commission, we entered into a settlement
20 agreement, which all of the Intervenors, major
21 Intervenors who are here at the table, signed. And that
22 actually resulted in a significant difference from the
23 outcome of the Commission.

24 In fact, we received over \$300 million worth
25 of benefit from that settlement agreement, including,

1 and importantly, the full recovery revenue -- well,
2 subject to the fuel limitation, actually, for West
3 County Energy Center Unit 3, and that was critical in
4 our decision-making for being able to move forward with
5 Canaveral and Riviera.

6 Q And I may have had it wrong, so what is, what
7 is the number with respect to your last rate case? What
8 was asked for and what was awarded by the Commission, if
9 you know?

10 A It would be closer to 25 to 30%.

11 Q As to what the Commission ordered or what the
12 settlement resulted in?

13 A As to what the result was and how we're
14 running our business.

15 Q Okay. So, so the specific question, after the
16 rate case last time and the Commission made a decision,
17 what was the percent, if you know, that this, that this
18 Commission, that the Public Service Commission awarded
19 to Power & Light in the order?

20 **MR. LITCHFIELD:** I'll object to the question.
21 I think it's terribly misleading. The Commission order
22 is the Commission order, but that's not the result and
23 outcome of the last case. The result and outcome of the
24 last case was the settlement agreement that Mr. Moyle
25 entered into on behalf of his client, Mr. Wright entered

1 into on behalf of his clients, and that subsequently was
2 approved by the Commission, and that was the economic
3 platform by which the company moved forward, not the
4 original Commission order. So I object to the question.
5 It's misleading.

6 **MR. MOYLE:** Mr. Litchfield is free to bring
7 these points back up on redirect. It's a fair question
8 with respect to what the result of the Commission
9 decided. And if he wants to say, well, yeah, we entered
10 into a settlement and that was better for us and it's a
11 different percent, I think that's fine. But I think
12 absolutely, if he knows, I have the right to ask him the
13 question.

14 **MR. LITCHFIELD:** Well, if Mr. Moyle is
15 contending that the Commission's subsequent order
16 approving the settlement agreement did not supersede the
17 prior Commission order, that would be news to the
18 company.

19 **CHAIRMAN BRISÉ:** Mary Anne?

20 **MS. HELTON:** I think the order speaks for
21 itself. I mean, the order sets out what the Commission
22 approved. And I'm still kind of having a hard time kind
23 of following where Mr. Moyle is going here. I don't --

24 **MR. MOYLE:** I don't want to take the time to
25 get the order to have him do the math and do that. If

1 he knows the percent based on the order, he can answer.
2 If he doesn't know, he doesn't know, I mean. And where
3 I'm going is simply saying, hey, last time you asked for
4 a lot of money, you didn't get much, but you're doing
5 okay.

6 **CHAIRMAN BRISÉ:** All right.

7 **MR. MOYLE:** And I don't have a friendly cross
8 objection, I know.

9 **CHAIRMAN BRISÉ:** If, if I understand your
10 questioning, you asked about the settlement, and then
11 you're going to the precursor of the settlement.

12 **MR. MOYLE:** He gave an answer related to the
13 settlement --

14 **CHAIRMAN BRISÉ:** No. No. Answer my question.

15 **MR. MOYLE:** No. I disagree, because I asked
16 him about the result of the rate case, the litigated
17 rate case, and he didn't answer that question. He went
18 in and said, well, we got a settlement and depreciation,
19 and talked about the, you know, the settlement that
20 occurred after the PSC order. I'm trying to ask him
21 with respect to what FPL sought in their last rate case
22 and what the result that the Commission, after the
23 hearing, everybody filed their briefs, they voted on the
24 rate case, what percent of their original ask that
25 represented.

1 I'm not worried about the settlement and the
2 subsequent order. I'm trying to focus him on the
3 litigated result of the last rate case.

4 **MR. LITCHFIELD:** But then, Mr. Chairman, he's
5 asking the witness to opine as to how well FPL faired,
6 given the --

7 **CHAIRMAN BRISÉ:** Circumstances.

8 **MR. LITCHFIELD:** -- initial order that was
9 superseded in terms of the economic impact for the
10 company.

11 **MR. MOYLE:** I think if we take it one step at
12 a time and if he could answer that question, then I
13 probably could move into the next. And, and if there's
14 an objection, he can pose it.

15 **CHAIRMAN BRISÉ:** I think I agree with, with,
16 with, with FPL on that one. So if you could move on to
17 another question.

18 **BY MR. MOYLE:**

19 **Q** Mr. Silagy, you would agree, would you not,
20 that notwithstanding the events following the last rate
21 case, that in the interim period of time between that
22 case and this case, that FPL has operated efficiently,
23 effectively, provided reliable power to its customers;
24 correct?

25 **A** You know, I apologize, but you lost me on the

1 notwithstanding on -- are you suggesting post settlement
2 between now? I'm just trying to understand what time
3 frame you're asking me. I apologize if I just didn't
4 follow.

5 Q Just, just from when you filed your, filed
6 your rate case. I mean, there's been a continuum of you
7 all providing safe, dependable electricity from when you
8 filed your last rate case up until today; correct?

9 A So operationally you're saying from the time
10 that we filed our last rate case until today?

11 Q Yes.

12 A Have we been able to maintain our operational
13 ability? And the answer to that is yes.

14 Q Right. And you would also agree, would you
15 not, that the, the, the primary concerns of businesses
16 and people in Florida is the, is the operational
17 concern? They want to make sure the lights are on;
18 right?

19 A What I would agree is that --

20 Q Yes or no, and then if you would explain,
21 please.

22 A Yes and no. Yes, I would agree that our
23 customers expect the lights to be on today and tomorrow.
24 Our customers also expect us to be able to continue to
25 have the ability to invest and make sure that we're

1 investing in technology that keeps the lights on
2 efficiently and affordably next year and a decade down
3 the road.

4 **MR. MOYLE:** Thank you for, for your time
5 Appreciate it.

6 **THE WITNESS:** You're welcome.

7 **CHAIRMAN BRISÉ:** Is that it, Mr. Moyle?

8 **MR. MOYLE:** Yes.

9 **CHAIRMAN BRISÉ:** Thank you very much.

10 South Florida Hospital Association.

11 **MR. SUNDBACK:** Good morning. Thank you, Mr.
12 Chairman.

13 **CROSS EXAMINATION**

14 **BY MR. SUNDBACK:**

15 **Q** Good morning, sir.

16 **A** Good morning.

17 **Q** Let's look at what's been designated as your
18 Exhibit ES-1, which is marked as 136, if the note taking
19 at this end is correct.

20 You state there that you were Chief
21 Development Officer at FPL?

22 **A** I'm sorry?

23 **Q** You state in that CV that you were Chief
24 Development Officer at FPL.

25 **A** Oh, yes.

1 Q I apologize if I'm not pronouncing it,
2 pronouncing clearly.

3 A No. No. That's --

4 Q And what were the years in which you served in
5 that capacity?

6 A From 2000 and -- towards the end of 2007
7 until, I believe it was the beginning of 2010, subject
8 to check.

9 Q And then what years did you serve as Senior
10 Vice President, as you've identified in your CV?

11 A From that time, roughly 2010, until December
12 of last year.

13 Q Okay. And was 2007 the beginning of your
14 employment at FPL?

15 A At Florida Power & Light. But prior to that I
16 was with what is now NextEra Energy Resources.

17 Q And how long were you with NextEra Energy
18 Resources?

19 A I began employment there in April of 2003.

20 Q And you were working there in the development
21 of generating projects as well?

22 A I was primarily focused initially on mergers
23 and acquisitions, the acquisitions of projects. And
24 then after that in what we call business management,
25 which is actually the management of operating assets in

1 other parts of the country.

2 Q Okay. And let's look at page 14 now of your
3 direct, if we could, lines 7 through 8. There you
4 reference the company's commitment to continuous
5 improvement in operational efficiency. When did the
6 company's commitment to continuous improvement in
7 operational efficiency begin?

8 A Long before I joined the corporation.

9 Q And it was an ingrained part of the culture
10 when you arrived; right?

11 A That's correct.

12 Q Okay. Now, when you moved over to the utility
13 side of the house, you brought with you the experience
14 you had obtained when you were working on the merchant
15 side of the house; right?

16 A That's correct.

17 Q And you believe that helps you attain what's
18 been characterized by FPL as excellence in management;
19 right?

20 A I think it's one element of my experience that
21 helps.

22 Q And you want us to weigh the background that
23 you've summarized in your CV in order to determine
24 whether your testimony has a sufficient basis; isn't
25 that correct?

1 **A** I provided my CV as background for you to make
2 your own judgments.

3 **Q** Let's look at your direct, page 20, line 6,
4 through page 21, line 1, where you list the witnesses.
5 With the exceptions of Witnesses Reed and Avera, these
6 individuals work in the NextEra organization; correct?

7 **A** No. Witness Stall is also not with, not as an
8 employee at this point.

9 **Q** Thank you. In the past was he employed by FPL
10 or NextEra?

11 **A** Yes, he was.

12 **Q** And when they do work, when these individuals
13 do work for FPL, they report directly or indirectly to
14 you; correct?

15 **A** Yes. Generally speaking, that's right.

16 **Q** And you're responsible in that sense for
17 determining whether these individuals have performed in
18 accordance with the criteria that are articulated for
19 instance in your testimony; right?

20 **A** I'm part of the determination. Obviously we
21 have a pretty rigorous performance review process, which
22 I'm sure Witness Slattery can provide information.

23 **Q** Okay. Now, at page 12 of your testimony,
24 lines 10 through 22, you discuss Mr. Reed's study a bit;
25 right?

1 **A** Excuse me. That's correct.

2 **Q** Did you review his work before you filed your
3 testimony?

4 **A** Generally. Not in detail.

5 **Q** I see. You state that Mr. Reed's study, and
6 this is at lines 11 and 12, shows that FPL has
7 outperformed similarly sized companies. In your
8 opinion, why is it important to look at similarly sized
9 companies?

10 **A** I think it's important because it's, it's
11 critical to compare apples to apples on companies. I
12 don't say that it is the only factor, but being able to
13 compare companies to like companies is an important
14 methodology in benchmarking.

15 **Q** And one of the reasons you might want to use
16 similarly sized companies is you can determine how
17 successfully different enterprises of the same size have
18 captured and exploited scale economies; is that correct?

19 **A** Scale economies is one element of any
20 benchmarking performance. But I would have to defer to
21 Mr. Reed to explain how he came up with his methodology.

22 **Q** And similarly, looking at similarly sized
23 enterprises allows you to determine whether the manager
24 of the enterprise has successfully captured synergies
25 from that enterprise, compared to other similarly sized

1 enterprises; correct?

2 **A** Generally speaking, I would say that's
3 correct.

4 **Q** Thank you, sir.

5 Can we look at an exhibit that got marked
6 yesterday with Mr. Reed, and we'll distribute it again.
7 It's marked as hearing Exhibit 478.

8 And, in particular, if you'd turn your
9 attention to what's marked as attachment number 1, page
10 1, which is the middle of five sheets. Do you have that
11 page, sir?

12 **A** I believe I do.

13 **Q** Okay. Now, looking under the straight
14 electric group, that first array of data, it's not your
15 testimony that a company like Public Service of New
16 Mexico, which is the fifth entity from the last in the
17 straight electric group, is similarly sized to FPL, is
18 it?

19 **A** I am not familiar personally with the size of
20 Public Service Company of New Mexico.

21 **Q** Would it be your testimony that a company that
22 has about a ninth of the number of customers that FPL
23 has is similarly sized to FPL?

24 **A** No.

25 **Q** And so the other entities on that list, for

1 instance, Dayton Power & Light and TECO, that have a
2 fraction, maybe an eighth or a seventh of the number of
3 customers of FPL, those aren't similarly sized either to
4 FPL, are they?

5 **A** Again, I think it's a matter of opinion of
6 what's a similar sized company. But I don't know if
7 those accurate -- if that's an accurate reflection of
8 their size. I don't know.

9 **Q** Do you think that Mr. Reed was working from
10 flawed or incorrect data?

11 **MR. LITCHFIELD:** Let me object to the question
12 in this line of questioning. Again, I think this
13 particular counsel now is asking misleading questions in
14 referring to work papers of Mr. Reed and focusing on the
15 straight electric group as opposed to the large utility
16 group. So I object to the form of the question as
17 misleading.

18 **MR. SUNDBACK:** I'm sorry. I didn't mean to --
19 is Mr. Litchfield done, Mr. Chairman?

20 **CHAIRMAN BRISÉ:** You may proceed.

21 **MR. SUNDBACK:** The witness has made a
22 characterization about similarly sized companies in the
23 Reed study in his testimony and he doesn't limit it or
24 qualify it, and we're trying to test whether that
25 assertion is in fact accurate or whether it's a

1 mischaracterization of the study and the group of
2 entities that were utilized in this study by Mr. Reed.

3 We're entitled to probe whether his
4 characterization of Mr. Reed's material, which he
5 purports to rely on, is accurate, or whether it's
6 incorrect, whether he misunderstood what was represented
7 in those data.

8 **MR. LITCHFIELD:** Well, I think Mr. Reed
9 testified yesterday that he included three separate
10 proxy groups for the sake of completeness or for
11 reference. I don't think he, I don't think he was
12 suggesting, even Mr. Reed, that he was focused only on
13 the straight electric utilities group or only on the
14 Florida group or only on the large utilities group.

15 **MR. SUNDBACK:** Your Honor, Mr. Chairman,
16 Mr. Litchfield may be drawing two salaries now, one as a
17 lawyer and one as a witness. We're waiting to hear from
18 Mr. Silagy for a response to an answer, not from
19 Mr. Litchfield.

20 **CHAIRMAN BRISÉ:** Sure. I'll allow the
21 question.

22 **MR. SUNDBACK:** I'm sorry, Mr. Chair?

23 **CHAIRMAN BRISÉ:** I will allow the question.

24 **MR. SUNDBACK:** Thank you, sir.
25

1 **BY MR. SUNDBACK:**

2 Q So you're not contending that Mr. Reed's data
3 were flawed or incorrect in any way, are you?

4 A No.

5 Q Thank you.

6 You'll recall you had a discussion with
7 FIPUG's counsel earlier today, and you said that FPL had
8 not been performing well from a financial perspective
9 since the last rate case. Do you recall that?

10 A Yes, I do.

11 Q Okay. And similarly, on page 9 of your direct
12 at lines 15 through 20, you assert that FPL is
13 disadvantaged because of its 10% midpoint ROE; do you
14 see that?

15 A I do.

16 **MR. SUNDBACK:** Okay. Mr. Chairman, if we
17 could have marked with the next appropriate exhibit
18 number a series of excerpts from an FPL presentation.

19 **CHAIRMAN BRISÉ:** That would be 484.

20 **MR. SUNDBACK:** Okay. Thank you, sir.

21 (Exhibit 484 marked for identification.)

22 **BY MR. SUNDBACK:**

23 Q Sir, do you have a copy of this material?

24 A I do.

25 Q Okay. And in this instance, NextEra Energy,

1 Inc., is, through these materials, providing information
2 to European investors; correct?

3 A That's correct.

4 Q And that's an effort by NextEra Energy, Inc.,
5 to expand or maintain its funding base; correct?

6 A Generally speaking, yes, it's an effort to
7 actually have a dialogue with investors in Europe.

8 Q Okay. On page 2 of this handout, there's a
9 reference to, in the caption, two strong businesses.
10 Would you agree that one of the two strong businesses
11 that's referenced in that caption is FPL?

12 A I'm sorry. Page 2 in my exhibit is the cover
13 page.

14 Q I'm sorry. I'm not giving you the right
15 information there. Let's look at the third page, which
16 in the upper, in one corner is labeled page 2 of 5.
17 That didn't contemplate the cover sheet, and I apologize
18 for that mislabeling.

19 Would you agree that the caption on that page
20 that references two strong businesses includes a
21 reference to FPL?

22 A Yes.

23 Q Okay. If you'd turn to the next page, you'll
24 see a caption, attractive investment opportunity. Would
25 you agree that the first bullet point under that

1 caption, which references visible growth opportunities
2 at both primary businesses, also refers to FPL as well
3 as NextEra Energy Resources?

4 **A** Yes.

5 **Q** Okay. Let's look at the next page, please.
6 You'll see a set of four bar charts, if you're on the
7 same page as, as I am. And the caption indicates that
8 there's an expected shift to a more regulated and
9 long-term contract business by 2014. Does that
10 contemplate more revenue arising from FPL, among other
11 things?

12 **A** I didn't produce this document, so I can't
13 tell you exactly what the calculations were. I can tell
14 you it contemplates more regulated business, which also
15 includes regulated businesses outside of Florida.

16 **Q** Okay. Okay. And one reason the shift that's
17 detailed on this page to more regulated businesses is
18 important is outlined on the next page, isn't it, the
19 potential to pay more dividends?

20 **A** Yes.

21 **Q** Okay. Let's look at your prepared testimony
22 again, page 9. And it's a fairly long sentence, lines
23 15 through 20. Towards the end of that sentence you
24 make an assertion that FPL has to compete for capital.
25 Do you see that?

1 **A** I do.

2 **Q** Okay. Now, that competition comes from both
3 utilities and nonutility entities; is that not correct?

4 **A** That's correct. We compete for capital on a
5 global basis.

6 **Q** And, in fact, even within the NextEra Energy
7 organization, presumably FPL has to justify access to
8 capital; is that not correct?

9 **A** That's correct.

10 **Q** Okay. And you, you experienced that on both
11 sides of the house, did you not, when you were working
12 for the nonutility functions of NextEra Energy?

13 **A** That's correct.

14 **Q** Okay. On that same page, just before that
15 reference to competition for capital, on lines 13
16 through 15 you reference a utility's ability to earn; do
17 you see that?

18 **A** I'm sorry. Could you point me to -- oh, yes,
19 on line 13? Yes, sir.

20 **Q** Yes. Yes, sir. I would like to explore that
21 with you for just a moment. Presume that a company
22 that's not rate regulated simply replaced some of its
23 existing equity with debt, didn't change the overall
24 level of capitalization, just changed its capitalization
25 structure a hair.

1 In that instance, earnings per share of that
2 enterprise would increase because the earnings would be
3 spread over a smaller equity base; is that not correct?

4 **A** Again, I would defer, if this is getting into
5 capital structure, to Witness Dewhurst.

6 **Q** You've testified, sir, about a utility's
7 ability to earn; right?

8 **A** I have.

9 **Q** And I want to explore that with you just a
10 bit, especially given your experience on both sides of
11 the house. And you've said you have to compete with
12 others to attain capital for FPL; correct?

13 **A** That's correct. We have to --

14 **Q** And I'd like to understand how that
15 competition works. Now, are you unable to tell me of
16 your own knowledge that if an unregulated enterprise
17 simply reduces its equity component and ups --
18 substitutes for that equity more debt, that earnings per
19 share will not increase because those earnings will be
20 spread over a smaller equity base?

21 **A** No. I believe that would be correct.

22 **Q** Okay. If FPL's capital structure was changed,
23 for instance, in this rate proceeding for regulatory
24 purposes, by replacing some of its existing equity with
25 debt, earnings per share of FPL would not increase

1 automatically, would they? They could be reduced.

2 **A** Again, I would defer to Witness Dewhurst as to
3 what the impacts overall of the corporation would be.
4 The key on the capital structure, in my opinion, as
5 somebody who is responsible for the operations of the
6 company, is maintaining a strong financial position on
7 the balance sheet so we can continue to access the
8 capital markets when we need to to either invest in
9 infrastructure or to address issues that come up in the
10 regular course of business that are uncertain.

11 **Q** All right. So, Mr. Silagy, are you telling me
12 that you don't even know, even though you're here
13 testifying before the Commissioners now and spearheading
14 the rate case, whether if, from a regulatory
15 perspective, the capital structure of the company was
16 deemed to include more debt and less equity, whether
17 that would affect the level of equity per share, the
18 dividends per share that could be paid, for instance, to
19 the parent, NextEra Energy, Inc.?

20 **A** What I'm telling you is, is that I believe
21 weakening the capital structure of the company has an
22 adverse impact on our ability to be able to attract
23 capital and operate the company in a manner that
24 continues to provide what I think is exceptional service
25 to our customers.

1 **MR. SUNDBACK:** Mr. Chairman, I'd move to
2 strike the question -- the answer in its entirety. It
3 was as straightforward as you can get. A yes or no
4 works just fine. And if he wanted to provide an
5 explanation, he could.

6 But it strains credulity to believe that the
7 president of a utility cannot determine whether a change
8 in the capital structure is going to affect, for
9 instance, earnings per share of the utility.

10 I guess if his answer is I don't know, that's
11 also useful information, but he hasn't even volunteered
12 that. He hasn't said yes, no, I don't know. He's given
13 you a different -- he's answered a different question.

14 **MR. LITCHFIELD:** Well, I object to counsel's
15 characterization of the witness's answer. I think the
16 witness is providing an answer to Mr. Sundback. It may
17 not be the answer that Mr. Sundback would like to
18 receive, but the witness is entitled to provide an
19 answer consistent with his understanding.

20 **CHAIRMAN BRISÉ:** Okay. I think we'll, we'll
21 strike the whole answer. You can pose the question
22 again. Maybe if we start with a yes or no, and then
23 move forward.

24 **MR. SUNDBACK:** Thank you, Mr. Chairman.
25

1 BY MR. SUNDBACK:

2 Q Do you need the question back, sir?

3 A Yes, please.

4 Q Let's see if we can pull it together.

5 A Thank you.

6 Q If FPL's capital structure was changed by
7 replacing some of its existing equity with debt for
8 purposes of setting rates, earnings per share of FPL
9 would not automatically increase, would they?

10 A No.

11 Q Thank you.

12 And so in that sense there's a distinction
13 between regulated, rate regulated entities and
14 enterprises whose rates are not regulated concerning
15 capital structure; is that right? In that sense.

16 A In that sense, there's a distinction between
17 rate regulated entities and unregulated entities.

18 Q Okay. Let's look at your direct, page 16, if
19 we could, lines 9 through 12.

20 A I'm there.

21 Q Thank you, sir. The referenced study of
22 transmission substation average reliability, that study
23 didn't adjust for differences in relative age of
24 equipment between utilities, did it?

25 A I'm not familiar with the exact elements of

1 the study.

2 Q Would you agree that, all else being equal,
3 older equipment tends to be more prone to malfunction or
4 being worn out, just, just like older people?

5 A No. I would not agree to that in
6 transmission.

7 Q Okay. Let's look at page 19, line 7, through
8 page 20, line 2 again, where you've got, got the --

9 A I'm sorry. Which line again?

10 Q Starting at page 19, line 7, through page 20,
11 line 2, where you summarize the main topics. Do you see
12 that?

13 A Yes.

14 Q Main topics addressed in the testimony. That
15 list doesn't include the issue of whether FPL's
16 efficiently managing the level of equity capitalization
17 in its capital structure, does it?

18 A No, it does not.

19 Q So from FPL's perspective that's not an
20 important issue.

21 A No, I would not agree with that statement.

22 **MR. SUNDBACK:** Okay. Thank you for your time,
23 sir.

24 No further questions, Mr. Chairman.

25 **CHAIRMAN BRISÉ:** Thank you, Mr. Sundback.

1 We are -- it's almost 11:30. We're going to
2 go to lunch at 12:00. So we're going to go ahead and
3 work through 12:00, and then we'll take our, our break
4 at that time.

5 At this time we'll hear from FEA.

6 **LIEUTENANT COLONEL FIKE:** Thank you, Mr.
7 Chairman.

8 **CROSS EXAMINATION**

9 **BY LIEUTENANT COLONEL FIKE:**

10 **Q** Good morning, Mr. Silagy.

11 **A** Good morning, Colonel.

12 **Q** I just have a couple of questions, couple of
13 questions for you.

14 Just to clarify, you're testifying in regard
15 to Issue 127 in the case, which is what economic impact
16 will FPL's request for rate increase have on customers,
17 businesses, and communities in Florida. Is that
18 correct?

19 **A** Yes. I believe I'm listed on that as well as
20 Witness DeRamus.

21 **Q** And on page 18, line 2 through 4 of your
22 testimony, you state, Our request is for an increase in
23 the base portion of the bill that, for most businesses,
24 business customers, will vary from 4% to 16%, depending
25 upon the rate class. Is that a true statement?

1 A Yes, sir.

2 Q Isn't it also true then that some business
3 customers will have an increase in the base portion of
4 their bill that is greater than 16%?

5 A In the base portion of the bill, yes, sir.

6 Q According to your petition, the CILC-1T rate
7 class is projected to see a 34% increase in the base
8 revenue from the sale of electricity; isn't that true?

9 A I'm not familiar with the exact amount on
10 that. I saw that in the previous schedule, so I believe
11 that to be true.

12 Q Earlier this morning you stated you're
13 generally familiar with the customers that reside within
14 each respective rate class; isn't that true?

15 A Generally speaking, yes, sir.

16 Q And you are aware then that some of your
17 customers in the Federal Executive Agencies represent
18 customers such as NASA, Cape Canaveral, Patrick Air
19 Force Base, and Homestead Air Force Base?

20 A Yes, sir.

21 Q Are you aware that Cape Canaveral resides
22 within the CILC-1T rate class?

23 A I'm not specifically aware of that.

24 Q Are you aware that NASA resides within the
25 CILC-1T rate class?

1 **A** Again, I'm not specifically aware of that.
2 Subject to check, I would agree.

3 **Q** Are you aware that Patrick Air Force Base
4 resides within the CILC-1T rate base?

5 **A** Again, same answer.

6 **Q** Are you aware that utility bills for federal
7 agencies, the payment of those bills comes out of the
8 same pot of money that Congress appropriates to those
9 facilities for base operations?

10 **A** I understand that the military receives an
11 appropriations through Department of Defense. But I
12 don't know exactly how it is divided up amongst the
13 military installations.

14 **Q** And are you aware right now that the
15 Department of Defense is projected to face severe budget
16 cuts as part of the so-called fiscal cliff in 2013?

17 **A** No, I'm not aware of specifics around what the
18 budget cuts are.

19 **Q** Are you aware that the federal government will
20 be facing tough choices in how it spends the taxpayer
21 dollars within the next coming years?

22 **A** Yes, Colonel, I am very aware that there are
23 difficult choices to be made. And that's why I am
24 frankly very proud of the fact that we offer the lowest
25 bills in the state to not only our residential

1 customers, but among the lowest bills to all
2 installations, including the military.

3 And I do respect greatly the mission that the
4 military provides. I am the son of an Air Force colonel
5 who spent, you know, a career, including combat, and I
6 completely understand the mission at hand.

7 I'm very proud of the fact that not only do we
8 do the lowest bills, but we have in the last ten years
9 moved off of being the largest user of oil in this
10 country to generate electricity to one of the least
11 users, 97% reduction, which is \$4 billion worth of
12 customer money that we're not sending overseas.

13 So I appreciate very much what you do, and we
14 are trying our hardest to be part of the solution by
15 providing low bills and high reliability.

16 Q Are you familiar with what a Base Realignment
17 and Closure committee is?

18 A I am familiar with BRAC on a very general
19 basis. Yes, sir.

20 Q And are you aware that currently right now in
21 the Capitol there is serious consideration of another
22 round of BRAC committees to take place in the coming
23 years?

24 A No, sir, I'm not familiar that there is
25 another round of BRAC, but I will take your word for it.

1 **MR. SAPORITO:** Mr. Chairman, I would like to
2 lodge an objection, as this testimony is outside the
3 scope of his prefiled testimony, is it not?

4 **LIEUTENANT COLONEL FIKE:** Mr. Chairman, I'm,
5 I'm merely addressing the issue that the witness is, is
6 here to testify on, which is what does the economic
7 impact of FPL's request for a rate increase have on
8 customers.

9 **CHAIRMAN BRISÉ:** Thank you. I'll overrule
10 that objection.

11 **BY LIEUTENANT COLONEL FIKE:**

12 **Q** Would you agree that the utility bills that
13 need to be paid out of the budget allocated to an Air
14 Force base or NASA would be a factor that a BRAC
15 committee would consider in determining whether to close
16 a base or facility?

17 **A** Yes, sir, I would agree. Having worked on
18 defense appropriations myself a long time ago, I believe
19 that all elements are considered. And when a military
20 base or installation is compared to other installations
21 in deciding which ones will remain open and which ones
22 will remain closed, a large number of factors are
23 included, and obviously the expenses related with
24 running that particular installation are important.

25 And that's why I think our bills, being not

1 only the lowest in Florida but well below the national
2 average, actually help Florida's military installations
3 stay open, because we're actually positioning them to be
4 more advantageously positioned -- excuse me -- to be,
5 you know, greater benefits to keeping those open than a
6 military installation in another state that has higher
7 electric bills.

8 **CHAIRMAN BRISÉ:** I'm going to caution the
9 witness to answer the question at hand and sort of cut
10 down on the editorial.

11 **THE WITNESS:** I apologize, Mr. Chairman, but I
12 think, I believe the question was about, you know, the
13 bills being an impact to the installation. And I think
14 the low bills in our state that FPL provides actually is
15 an advantage to including -- if we receive 100% of our
16 requested ask, we will still have bills that are
17 significantly below the national average, which I think
18 actually advantages Florida's military installations.

19 **LIEUTENANT COLONEL FIKE:** One last question,
20 Commissioner, Mr. Chairman.

21 **CHAIRMAN BRISÉ:** Sure.

22 **BY LIEUTENANT COLONEL FIKE:**

23 **Q** If those, as you call it, low bills for Air
24 Force bases and, and executive agencies in, Federal
25 Executive Agencies in Florida were to be raised by 34%,

1 would that not be an adverse factor that a BRAC
2 commission would consider in determining whether to
3 close that facility or installation?

4 **A** Colonel, I will -- no, because our bills are
5 not going up by 34% for the military installations.
6 That is on the base portion of the bill, not the net
7 portion, which is in fact what the military
8 installations pay.

9 Moreover, I think it is not just low bills,
10 but reliability that the military relies on to, to be
11 able to provide its mission that they also look at. And
12 I think our exceptional reliability and our low bills
13 would look favorably by BRAC in Florida.

14 **LIEUTENANT COLONEL FIKE:** No further
15 questions, Mr. Chairman.

16 **CHAIRMAN BRISÉ:** Thank you very much.

17 At this time we'll hear from Algenol.

18 **MR. HAYES:** We have no questions. Thank you.

19 **CHAIRMAN BRISÉ:** All right. The Office of
20 Public Counsel.

21 **CROSS EXAMINATION**

22 **BY MR. McGLOTHLIN:**

23 **Q** Mr. Silagy, in response to a question from
24 Mr. Moyle, I believe you agreed that if a customer on a
25 particular rate schedule that he referred you to were

1 able to spend less money for electricity, that customer
2 would have more money. Do you remember that question
3 and answer?

4 **A** No, sir. I don't remember it that way. I
5 remember about the -- and forgive me if I'm getting this
6 wrong. I think it was whether or not a customer would
7 generate more revenue through CILC was the line of the
8 questioning, but I, I may be mistaken.

9 **Q** I believe you agreed that if a customer had a
10 bigger credit, that customer would have more money at
11 the end of the day; correct?

12 **A** I agreed that if a customer generated more
13 revenue through the credit, that they would have the
14 ability, as Mr. Moyle, I believe, put it, was to
15 determine how to deploy the capital. I'm paraphrasing.

16 **Q** Well, more generally, if a customer on any
17 rate schedule were able to pay less for electricity on a
18 net basis, would it be true of any customer, that that
19 customer would have more money?

20 **A** Yes, sir. I think if we're able to lower
21 bills across anything, whether it's milk or electricity,
22 people have more disposable income in their pockets.

23 **Q** On page 7 of your prefiled testimony.

24 **A** I'm there.

25 **Q** And at lines 6 and 7, you say, Designed as a

1 temporary financial bridge, the 2010 rate agreement
2 expires at the end of this year. That term, temporary
3 financial bridge, you are characterizing that settlement
4 from FPL's perspective, are you not?

5 **A** I'm characterizing specifically the use of
6 noncash depreciation reserve surplus, which is going
7 away at the end of 2013, as the noncash component that
8 acted as a temporary bridge. It's what has allowed us
9 to earn 11% return on equity, which we discussed at
10 length during the settlement discussions, and everybody
11 agreed that was an important element.

12 **Q** But my point is, your characterization of the
13 agreement as a temporary bridge is FPL's
14 characterization, is it not?

15 **A** It is my characterization.

16 **MR. McGLOTHLIN:** No further questions.

17 **CHAIRMAN BRISÉ:** Okay. Thank you.

18 Mr. Wright, from Florida Retail Federation.

19 **MR. WRIGHT:** Thank you, Mr. Chairman.

20 **CROSS EXAMINATION**

21 **BY MR. WRIGHT:**

22 **Q** Good morning, Mr. Silagy.

23 **A** Good morning, Mr. Wright.

24 **Q** You're offered as the company's witness, first
25 company witness with respect to Issue 127 regarding the

1 economy, and I just have a couple of fundamental
2 predicate type questions with respect to that.

3 Will you agree that, that we are hopefully
4 coming out of the worst recession in our lifetimes,
5 since the 1930s?

6 **A** Yes. I hope we are coming out of it.

7 **Q** When do you mark the, what's been called the
8 Great Recession as having started?

9 **A** Probably in the 2008 time frame.

10 **Q** Would you agree that the stock market bottomed
11 in March of 2009?

12 **A** Subject to check, I will -- I think that's
13 about right.

14 **Q** And the housing market probably bottomed in
15 2009 or 2010?

16 **A** I think that's generally right in Florida and
17 probably nationally as well.

18 **Q** And I think in your testimony you used the
19 word challenging, but would you agree, generally
20 speaking, that Florida's economy is still struggling?

21 **A** Yes. I would generally agree it's still
22 struggling, although we have seen signs of recovery.
23 But I do believe that it is tepid, comparatively
24 speaking, to where it was before.

25 **Q** Thank you.

1 **A** You're welcome.

2 **Q** Will you agree that it is FPL's duty to
3 provide safe and reliable service at the lowest possible
4 cost?

5 **A** No, sir, I don't agree with that.

6 **MR. WRIGHT:** Okay. Then I have an exhibit.
7 Mr. Chairman, I think this is 485.

8 **CHAIRMAN BRISÉ:** Yes, that's correct.

9 (Exhibit 485 marked for identification.)

10 **MR. WRIGHT:** Thank you. Mr. Chairman, these
11 are excerpts of the testimony of three IOU presidents,
12 Mr. Olivera, Mr. Dolan, and Mr. Crosswhite from Gulf
13 Power Company.

14 In the interest of offering optional
15 completeness, I do have copy, one single copy of the
16 complete transcripts that I'd be happy to make available
17 to, to parties. But these are, obviously, by their
18 seals and the date stamp, copies -- excerpts from copies
19 of the official Commission transcripts.

20 **CHAIRMAN BRISÉ:** If any parties have
21 objections, please make those known now so we can
22 efficiently move forward.

23 **MR. MOYLE:** I guess I'm trying to understand
24 what, what the use of this is for.

25 **MR. WRIGHT:** It's to -- well, I asked him a

1 question, like questions others of us on, at the table
2 have asked over the years, does Mr. Silagy agree that it
3 is FPL's duty to provide safe, adequate, reliable
4 service at the lowest possible cost. He says, no, he
5 would not agree. This is for purposes of testing that
6 statement.

7 **CHAIRMAN BRISÉ:** Okay.

8 **MR. MOYLE:** Okay. Thank you.

9 **CHAIRMAN BRISÉ:** Thank you. You may proceed.

10 **BY MR. WRIGHT:**

11 **Q** Mr. Silagy, if you'd look at, I think it's the
12 fourth page in, in the upper right-hand corner it's
13 numbered page 520.

14 **A** I'm there. Sorry. I'm there.

15 **Q** This is an excerpt from the transcript of
16 Mr. Olivera's testimony during the 2009 rate case,
17 Docket 080677, in which I asked him would he agree that
18 the utility has an obligation to serve its customers and
19 to do so at the lowest possible cost.

20 You'll agree with me that Mr. Olivera
21 answered, I would agree that that is one of our
22 obligations. Would you not agree with that?

23 **A** I see that.

24 **Q** Okay. Were you here when he gave that
25 testimony?

1 **A** I don't recall if I was in the room or if I
2 saw it on TV.

3 **Q** Okay. I'd like to ask you to turn a couple of
4 pages further on. You'll come to a page that has the
5 number 257 in the upper right-hand corner.

6 **A** I'm there.

7 **Q** This is the testimony of Mr. Vincent Dolan,
8 President of Progress Energy Florida at the time. At
9 lines 12 through 16 he was asked, Will you agree that
10 Progress Energy Florida has a duty to provide service,
11 safe, adequate, reliable service to its customers at the
12 lowest possible cost? And he answered, Yes, I would.
13 Correct?

14 **A** I see that.

15 **Q** Okay. And finally, the last three pages are
16 an excerpt from the transcript of Mr. Crosswhite, Mark
17 Crosswhite, Gulf Power Company's testimony in its recent
18 rate case before the Florida Public Service Commission.

19 If you'll look at the last page of my exhibit,
20 page number 91 in the upper right-hand column, in
21 cross-examination by Mr. McGlothlin the question and
22 answer went like this.

23 Mr. Crosswhite, you would agree with me, would
24 you not, that Gulf Power Company has an obligation to
25 pursue service at the least cost for customers?

1 Answer: Yes, sir.

2 Do you see that too?

3 A I do.

4 Q Okay. Now we've got three Florida IOU
5 presidents, including your predecessor, agreeing that
6 it's the utilities' duty to provide service at the
7 lowest possible cost. How can you disagree with that?

8 A I disagree with it because it is not my
9 reading of the statute of 366, which specifically, and
10 rather than paraphrase I'll read it, it says that each
11 public utility shall furnish to each person applying
12 therefore reasonably sufficient, adequate, and efficient
13 service.

14 It is not our duty to provide it at the least
15 cost. Moreover, I don't think it's, I don't think it's
16 good operational practice. I wouldn't want to be
17 sacrificing safety, as an example, in order to provide
18 least cost. I wouldn't want to be providing worse
19 reliability or customer service simply for least cost.
20 I think it's a function of trying to find the balance
21 between those.

22 At Florida Power & Light, we clearly strive to
23 provide the least cost, and I think we've demonstrated
24 we've done that, but we haven't done it at the sacrifice
25 of reliability, at customer service, or at safety.

1 Q Did you understand my question to suggest in
2 any way that you should sacrifice safety or reliability
3 in order to provide service at the lowest possible cost?

4 A I did actually, because I believe in the
5 practical world that I live in, I don't look at just the
6 least cost. And you specifically asked me if it was my
7 duty and the company's duty to provide least cost, and
8 in a practical sense I don't think that's correct.

9 Q Mr. Silagy, I believe that I asked you the
10 question, do you agree that it's the company's duty to
11 provide safe, adequate, and reliable service at the
12 lowest possible cost?

13 A Again, if, if it is a function of making sure
14 that we're providing reliable and safe and excellent
15 customer service, all at the least cost, that is our
16 desire, but under the statute it is not our duty.
17 Providing exceptional service, whether it be in cost or
18 reliability, is not our duty, but it is our desire. And
19 I think that's what separates your, our interpretation
20 of it.

21 Q I think with one more question we can move on.
22 When you say it is FPL's desire, would you
23 agree that it is FPL's goal to do that?

24 A Our goal is to provide the least cost, most
25 affordable generation, and the most reliable, and the

1 most outstanding customer service, and also the cleanest
2 generation that we can. And I think we've proven that
3 year in and year out.

4 Q Thank you. You testify in a number of places
5 in your testimony about the company's request for base
6 rate increases in this case, including pages 10, 18, and
7 elsewhere, I think, on 8 and 11 with respect to
8 Canaveral.

9 My question for you is this, is it your
10 testimony that FPL needs an additional \$516.5 million a
11 year in base rate revenues in order to meet its goal or
12 desire of providing safe and reliable service in 2013?

13 A Yes. It is my testimony that we have
14 requested what we need, as Witness Ousdahl will provide
15 great detail over.

16 Q Is it also your testimony that FPL needs an
17 additional \$173.9 million a year in base revenue
18 requirements in order to meet its goal of providing safe
19 and reliable service starting in June of 2013, when the
20 Cape Canaveral unit is scheduled to achieve commercial
21 service?

22 A Yes, it is.

23 Q Just bypassing briefly, just so we'll have
24 something to talk about in simple terms, regarding FPL's
25 requested base rate increase, the January 2013 increase,

1 do I have it right that the increase represents roughly
2 a 12% increase in total base revenues?

3 A Subject to check. I haven't looked at it that
4 way. Yeah.

5 Q I can tell you, I calculated it by dividing
6 516.521 million from your MFR A-1, by 4,266,616,000 from
7 your MFR C-1, and got right at 12%. Does that sound --
8 can we work with that?

9 A We can.

10 Q Thank you.

11 A You're welcome.

12 Q Okay. Will you agree with me that the simple
13 fact that a utility adds a power plant to its generating
14 fleet does not mean that the utility needs an immediate
15 rate increase?

16 A No, I don't think I will agree with that. I
17 believe we went through a very extensive need
18 determination process around the Cape Canaveral plant.
19 The Commission ruled that the plant was necessary.
20 We've gone to the market and accessed the billion
21 dollars to build the plant, and I do -- we need to get
22 the -- be able to have the revenue requirements to
23 recover for that plant when it goes into service.

24 Q But isn't it true that, that needing the
25 revenue requirements is different from needing an

1 increase in base rates?

2 **A** I'm not sure I'm following you. I see them as
3 one and the same. If you have a -- I'm not following
4 you. I apologize.

5 **Q** Well, then I apologize also.

6 Will you agree with me that between 1985 and
7 2005 FPL had no base rate increases?

8 **A** No, I would not.

9 **Q** What base rate increases did FPL have between
10 1985 and 2005?

11 **A** We had a number of increases as plants came
12 into service, specifically related around the 2005
13 settlement agreement, which I believe you were a
14 signature to. That included generation base rate
15 adjustment, which provided for a base rate increase when
16 Turkey Point 5 came into service, West County Unit 1
17 came into service, West County Unit 2 came into service.
18 Off the top of my head, those are three examples of base
19 rate increases that did occur.

20 Subsequent adjustments in the fuel factors
21 were also made, so there was a, a mitigated net impact
22 to customer bills.

23 **Q** Excluding those three units that you just
24 mentioned, which came in pursuant to the terms of the
25 settlement agreement that was negotiated in 2005, did

1 FPL have any other base rate increases between 1985 and
2 the first GBRA increase for Turkey Point 5 that
3 occurred, I think, in 2005?

4 **A** Yes. When the EPU's came in in January of
5 2010, and then also a base rate increase -- did I
6 miss -- then may -- please repeat the question, if
7 I'm -- I can tell somehow I'm not answering your
8 question.

9 **MR. WRIGHT:** Thank you.

10 Mr. Chairman, I apologize for any distraction
11 I caused by reaching for another exhibit.

12 **THE WITNESS:** Okay.

13 **BY MR. WRIGHT:**

14 **Q** My question was, still addressing the time
15 period between 1985 and 2005, Mr. Silagy, and you just
16 answered with respect to 2010, so --

17 **A** I apologize. I am not familiar between '85
18 and, and 1990, but I'm happy to look at something, if
19 you can provide me the numbers.

20 **MR. WRIGHT:** Okay. Mr. Chairman, I've asked
21 Mr. Lavia to hand Ms. Farley our next exhibit, which I
22 guess will be 486?

23 **CHAIRMAN BRISÉ:** Yes. That's correct. 486.

24 (Exhibit 486 marked for identification.)

25 **MR. WRIGHT:** I will aver to you and all

1 parties that this is a document that I obtained from the
2 staff of the Commission. That is a summary of revenue
3 reductions and increases ordered by the Florida Public
4 Service Commission from 1960 to the present. This
5 particular edition was revised last December.

6 I have only included the section for electric
7 companies. I left out the -- is that true? Yes. I
8 left out telecommunications, gas, and water and
9 wastewater.

10 **MR. LITCHFIELD:** I'm sorry, Mr. Chairman. May
11 I ask counsel again to articulate the source of this
12 document?

13 **MR. WRIGHT:** I obtained this from the
14 accounting section of the Florida Public Service
15 Commission staff.

16 **MR. LITCHFIELD:** Thank you.

17 **CHAIRMAN BRISÉ:** You may proceed, Mr. Wright.

18 **MR. WRIGHT:** Thank you, Mr. Chairman.

19 **BY MR. WRIGHT:**

20 **Q** Mr. Silagy, if you would look at the third
21 page in, counting the cover page as page 1, in the upper
22 right-hand corner you'll see page 2, and at the upper
23 left in bold type you'll see --

24 **A** Yes, I'm there.

25 **Q** -- you'll see Florida Power & Light Company.

1 Let me just ask you a simple predicate type
2 question. Are you generally -- how familiar are you
3 with Florida Power & Light Company's rate case history
4 before this Commission?

5 **A** I'm generally familiar going back probably
6 into the early 1990s. I do not claim to be a historian
7 on all of FPL's rate cases.

8 **Q** Okay. Well, I pretty much wanted to talk
9 about the period after 1985, although we may talk a
10 little bit about the period preceding 1985.

11 Why don't you take a minute to look, if you
12 start at the middle of the page, on the left-hand side
13 there's a docket, 880355-EI, which is apparently,
14 appears to me to be the first tax savings proceeding
15 conducted by the Commission after the Tax Reform Act of
16 1986.

17 Does that -- is that generally consistent with
18 your understanding of history there?

19 **A** I'm not familiar with the tax, with the
20 implications of the Tax Reform Act on the proceedings.

21 **Q** Okay. Well, if you'll just look down from
22 that 1988 proceeding to the bottom of the page, you
23 don't see any rate increases.

24 **MR. LITCHFIELD:** I'll object to the form of
25 the question as misleading again. Counsel is presenting

1 a very incomplete picture here. Without taking into
2 account the settlement agreements that accompanied many
3 of these resolutions, which included terms and
4 conditions that would have had the effect of increasing
5 cash returns to the company, it's a very incomplete
6 picture, and I think this line of questioning is very
7 misleading without each and every one of those
8 settlement agreements and a review of those terms and
9 conditions.

10 So I object to the line of questioning on the
11 grounds that it's misleading.

12 **MR. WRIGHT:** Mr. Chairman.

13 **CHAIRMAN BRISÉ:** Mr. Wright.

14 **MR. WRIGHT:** I have copies of each of the
15 settlement agreements and the full orders approving them
16 that I intend to offer into cross -- into evidence
17 through cross-examination of Mr. Silagy.

18 **MR. LITCHFIELD:** Then I would request that if
19 that's so, then Mr. Wright be prepared to give
20 Mr. Silagy copies of those settlement agreements and
21 sufficient time to review them in the context of this
22 chart prior to being asked questions on the subject of
23 what the ultimate impact for the company was with regard
24 to particular outcomes in particular cases.

25 **CHAIRMAN BRISÉ:** Okay.

1 **MR. MOYLE:** And I have a question as well on
2 the document. I mean, I'm looking at the one for
3 Florida Power & Light and it looks like it goes through
4 Docket Number 080001. I guess maybe I'm getting my
5 years confused. It doesn't seem like that long ago that
6 that was the last rate case, but --

7 **MR. WRIGHT:** Mr. Chairman?

8 **CHAIRMAN BRISÉ:** Yes, Mr. Wright.

9 **MR. WRIGHT:** If I might respond. As I said, I
10 obtained this from the accounting staff. It has the
11 revision date of 12/11/2011 on it. I honestly don't
12 know why the orders in, both the rate case order and
13 the, and the order approving the stipulation in Docket
14 080677 were not included here.

15 I do have a copy of the stipulation order that
16 was approved by the Commission on February 1, 2011, that
17 I'll provide as well.

18 And in response to Mr. Litchfield's request,
19 I, I would suggest that it might be a good idea for me
20 to hand, for us to hand out the orders that I
21 referenced, the stipulation from 19 -- stipulation,
22 settlement agreement orders from '99, 2002, 2005, and
23 2010, '11. That settlement was executed in August of
24 2010. For some reason it wasn't approved by the
25 Commission until February 2011.

1 But maybe I could hand those out before we
2 adjourn for lunch and then we could go ahead and adjourn
3 for lunch. Just a suggestion.

4 **CHAIRMAN BRISÉ:** I think that that may be a
5 good way to proceed. We are four minutes away from,
6 from lunch, so we will -- if you could hand out those
7 documents or have those documents handed out. And then
8 when we return at 1:00, then we could move forward with
9 the testimony.

10 **MR. SUNDBACK:** Mr. Chairman, one, one
11 housekeeping item --

12 **CHAIRMAN BRISÉ:** Sure.

13 **MR. SUNDBACK:** -- if we could at this point.
14 The Hospitals had asked to have identified Exhibit
15 Number 484, and I don't know which procedure we're
16 working with, whether we move admission as soon as the
17 cross-examination has been had on that document or at
18 the end. But if this is an appropriate time, we'd move
19 the admission of 484.

20 **CHAIRMAN BRISÉ:** We move them all in at the
21 end, but we just want to make sure that there are no
22 objections so that we're not dealing with those on the
23 back end, rather than on the front end.

24 **MR. SUNDBACK:** Thank you. Thank you, Mr.
25 Chairman.

1 **CHAIRMAN BRISÉ:** Okay. So once these
2 documents have been distributed, then we will recess for
3 lunch and reconvene at 1:00.

4 **MR. LITCHFIELD:** Mr. Chairman, I would just
5 note then, if we needed to express our objections to
6 exhibits at the, at the conclusion of cross, that there
7 was one that Mr. Moyle attempted to use that we had
8 objected to, and we would retain that objection.

9 **CHAIRMAN BRISÉ:** Sure.

10 **MR. LITCHFIELD:** Thanks.

11 **CHAIRMAN BRISÉ:** Are those all the documents
12 that need to be distributed? All right.

13 **MR. LITCHFIELD:** Mr. Chairman, the first one
14 that has just been distributed, not yet marked, but it
15 is simply the order, and it does not include the
16 stipulation or the terms of the agreement that was
17 approved, truly is what we need in order to give full
18 effect and a full understanding of the situation and the
19 economic impact.

20 **CHAIRMAN BRISÉ:** Mr. Wright.

21 **MR. WRIGHT:** We'll get that, Mr. Chairman.
22 For some reason it's not available on the Commission's
23 website, nor is it available in any online service that
24 we could find. We'll get it.

25 **MR. LITCHFIELD:** Well, but this, this leaves

1 us in a bit of a pinch, because we don't have the
2 opportunity to see it and, and have Mr. Silagy prepared
3 to discuss it.

4 It is -- I guess I'll make, I guess I'll make
5 an objection of relevance generally at this point. It
6 seems like we're setting ourselves up to spend a lot of
7 time looking at prior Commission results, which at this
8 point is past history. I mean, what we're about here
9 today is, is the prospective need for rate relief for
10 Florida Power & Light Company to continue to meet its
11 obligations both to customers and to shareholders.

12 Past cases strike me as being only remotely,
13 if at all, relevant. And it seems like we're setting
14 ourselves up to spend a lot of time talking about past
15 history that, that just seems to have no application
16 whatsoever to the present facts, figures, and
17 circumstances that are here with us today and given
18 today's costs, today's projected sales, today's
19 projected revenues, today's projected capital market
20 needs.

21 **CHAIRMAN BRISÉ:** All right. When we return
22 we'll deal with, with all those matters.

23 Are those all the documents that have to be
24 distributed at this time?

25 All right. So at this time we will recess for

1 lunch until 1:00 p.m.

2 (Recess taken.)

3 (Transcript continues in sequence with Volume

4 5.)

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1 STATE OF FLORIDA)
 2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
 4 I, LINDA BOLES, RPR, CRR, Official Commission
 5 Reporter, do hereby certify that the foregoing
 6 proceeding was heard at the time and place herein
 7 stated.

8 IT IS FURTHER CERTIFIED that I stenographically
 9 reported the said proceedings; that the same has been
 10 transcribed under my direct supervision; and that this
 11 transcript constitutes a true transcription of my notes
 12 of said proceedings.

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

18 DATED THIS 23rd day of August,
 19 2012.

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