

1                               BEFORE THE  
2                               FLORIDA PUBLIC SERVICE COMMISSION

3   DOCKET NO. 120015-EI

4       In the Matter of:

5       PETITION FOR INCREASE IN RATES  
6       BY FLORIDA POWER & LIGHT COMPANY.  
7       \_\_\_\_\_ /

8       TELEPHONIC  
9       DEPOSITION OF:   DAVID P. VONDLE

10      TAKEN AT THE  
11      INSTANCE OF:     The Staff of the Florida  
                              Public Service Commission

12      PLACE:           Room 154  
13                        Gerald L. Gunter Building  
                              2540 Shumard Oak Boulevard  
                              Tallahassee, Florida

14      TIME:            Commenced at 10:00 a.m.  
15                        Concluded at 11:50 a.m.

16      DATE:            Wednesday, July 25, 2012

17      REPORTED BY:     LINDA BOLES, RPR, CRR  
18                        Official FPSC Reporter  
19                        (850) 413-6734  
20  
21  
22  
23  
24  
25

FLORIDA PUBLIC SERVICE COMMISSION

## 1 APPEARANCES:

2 JON C. MOYLE, JR., ESQUIRE, c/o Keefe Law  
3 Firm, 118 North Gadsden Street, Tallahassee, Florida  
4 32301, appearing on behalf of Florida Industrial Power  
5 Users Group (via telephone).

6 JOHN BUTLER, ESQUIRE, Florida Power & Light  
7 Company, 700 Universe Boulevard, Juno Beach, Florida  
8 33408-0420, appearing on behalf of Florida Power & Light  
9 Company (via telephone).

10 PATRICIA CHRISTENSEN, JOSEPH A. MCGLOTHLIN,  
11 and CHARLES J. REHWINKEL, ESQUIRES, Office of Public  
12 Counsel, c/o The Florida Legislature, 111 West Madison  
13 Street, Room 812, Tallahassee, Florida 32399-1400,  
14 appearing on behalf of the Citizens of the State of  
15 Florida (via telephone).

16 MARTHA BROWN, ESQUIRE, FPSC General Counsel's  
17 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
18 32399-0850, appearing on behalf of the Florida Public  
19 Service Commission Staff.

## I N D E X

## WITNESSES

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NUMBER :

ID.

(REPORTER'S NOTE: No exhibits marked.)

## D E P O S I T I O N

**MS. BROWN:** This is Martha Brown on behalf of the Florida Public Service Commission staff. I have Curt Mouring and Frank Trueblood here with me, and we have a court reporter here. Okay.

**MS. CHRISTENSEN:** Do you want me to go next?

**MS. BROWN:** Yeah, you go next.

**MS. CHRISTENSEN:** Patty Christensen and Joe McGlothlin with the Office of Public Counsel, and we are present with the deponent, Dave Vondle. We also have in the room Tricia Merchant and Tarik Noriega.

**MR. REHWINKEL:** Charles Rehwinkel is on the phone.

**MS. BROWN:** Hi, Charles.

**MR. REHWINKEL:** Hi.

**MS. CHRISTENSEN:** And we also have our notary present, Lisa.

**MS. BROWN:** All right. We'll swear in the witness when we finish taking appearances.

Jon, I guess you're last.

**MR. MOYLE:** Okay. Jon Moyle, Moyle Law Firm, appearing on behalf of FIPUG, and I'm here by myself.

**MS. BROWN:** All right. Well, if you all are ready, we'll go ahead and swear in the witness.

Yes. Oh, John, did I forget you?

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1           **MR. BUTLER:** I'm not sure that we got an  
2 appearance for FPL on the record.

3           **MS. BROWN:** You didn't. I completely forgot  
4 you.

5           **MR. BUTLER:** This is John Butler appearing on  
6 behalf of Florida Power & Light Company. I have here  
7 with me John Noyes, Jennifer Richards, Jordan White, and  
8 Maria Mancada.

9           **MS. BROWN:** Sorry, John. Didn't mean to  
10 forget you.

11           **MS. FUENTES:** This is also Liz Fuentes from  
12 Florida Power & Light.

13           **MS. BROWN:** All right. Anyone else that I've  
14 forgotten?

15           All right. We'll go ahead and swear in the  
16 witness.

17                           **DAVID P. VONDLE**  
18 was called as a witness and, after being duly sworn by  
19 the notary present with the witness, testified as  
20 follows:

21           **MS. BROWN:** All right. Thank you. To the  
22 notary, if you fax the affidavit to us at this number,  
23 that would be very helpful. It's --

24           **MS. CHRISTENSEN:** Go ahead and give us the  
25 number you want us to fax it at.

1           **MS. BROWN:** Right. I was just about to do  
2 that. (850) 717-0118. All right?

3           **MS. CHRISTENSEN:** All right. Well, we're  
4 going to try and do that right now.

5           **MS. BROWN:** Okay. I guess --

6           **MS. CHRISTENSEN:** If you want to go ahead and  
7 proceed.

8           **MS. BROWN:** Yeah. We'll go ahead and --

9           **MS. CHRISTENSEN:** The witness is ready.

10          **MS. BROWN:** Yes. We will go ahead and proceed  
11 now.

12                           **EXAMINATION**

13          **BY MS. BROWN:**

14           **Q**     Good morning, Mr. Vondle. Can you hear me all  
15 right?

16           **A**     I can. Thank you.

17           **Q**     Okay. I wonder if you all could speak up a  
18 little bit or get closer to your phone. You're not  
19 coming through very loud.

20           **A**     All right. We've moved the phone closer.

21           **Q**     That's much better. Thank you.

22                    Would you state your name and business address  
23 for the record, please?

24           **A**     My name is David Vondle. My business address  
25 is 4926 Calle de Tierra, Northeast, Albuquerque, New

1 Mexico.

2 Q And by whom are you employed and in what  
3 capacity?

4 A I'm with Vondle & Associates. I'm the  
5 president.

6 Q Now you filed testimony in this docket  
7 regarding FP&L's transactions with its affiliates;  
8 correct?

9 A Yes.

10 Q I really don't have too many questions to ask  
11 you. Mostly they're going through your testimony to  
12 elaborate a little bit on some of the points that you  
13 make. So if you -- if we get started and you would turn  
14 to page 8 of your testimony.

15 A Yes.

16 Q Starting on line 22 you discuss the  
17 relationship between NEE and FP&L regarding operating  
18 revenues, NOI, and total assets. What, what specific  
19 documents did you rely upon to determine the ratios that  
20 you list?

21 A From the 2011 10K.

22 Q Okay. Now if you move on to page 10, starting  
23 on line 22, you describe your inferences regarding the  
24 characterizations of FP&L's allocation methodologies for  
25 service fees and affiliate management fees.



1           Do you believe that FP&L's atypical affiliate  
2       structure that you identify on page 9, line 8, has any  
3       impact on FP&L's decision to use the allocation  
4       methodologies that they have chosen? You know, you say  
5       that -- you discuss in some detail the fact that they  
6       don't have a separate service company. Has that  
7       affected in your view their decision to use the  
8       allocation methodologies that they have?

9           **A**     I think of them as two different aspects to  
10      the affiliate relationship and not directly connected.  
11      There's one decision that they make on how they're  
12      structured and another decision on how to allocate cost.

13          **Q**     And what, in your view, drives the decision to  
14      allocate costs?

15          **A**     I assume you mean the decision on, on which  
16      allocation methods to select?

17          **Q**     Yes, that's what I mean.

18          **A**     I think that would probably be a better  
19      question for FP&L. I don't know the process they went  
20      through to select their allocation method.

21          **Q**     Okay. Moving to page 12 of your testimony, on  
22      line 17 you're discussing nonregulated affiliate  
23      responsibilities of several of FP&L's officers. I think  
24      you mentioned on page 14 -- or line 14 that there are  
25      six of the 14 NEE executive officers also have a second

1 role as FP&L officers. Could you elaborate on which  
2 nonregulated affiliate responsibilities and which of  
3 FP&L's officers you are referring to?

4 A Yes. This might take a minute.

5 Q You mentioned two, I think, but we just want  
6 to fill in a little bit.

7 A Okay. I'm looking at the NEE FP&L 2011 10K  
8 report on page 23, and some of the examples would be  
9 Paul Cutler, who's the Treasurer of NEE and the  
10 treasurer of FP&L. We have Moray Dewhurst, who's the  
11 CFO for NEE and FPL; Shaun Francis, who's the EVP for  
12 Human Resources for NEE and FPL; Chris Froggatt, the  
13 Vice President of NEE and the -- I'm sorry -- he's  
14 not -- doesn't have an FP&L role. I'm sorry. Lewis Hay  
15 is the CEO of NEE and the Chairman of FPL. Robert  
16 McGrath is the EVP, Engineering, Construction, and  
17 Corporate Services of both NEE and FPL. And there are a  
18 couple more. Do you want me to continue?

19 Q I think we can probably get that information  
20 from, from the 10K, if we need it.

21 A It's just to illustrate that there are a  
22 number of officers with dual roles.

23 Q Yes. And they have -- would you say that they  
24 have the same function in each organization?

25 A They have similar titles. I don't have

1 insight into what they actually do.

2 Q Okay. All right. On page 20 of your  
3 testimony you state, starting on line 20, that it is  
4 possible to comply with federal financial accounting  
5 rules and still overcharge FP&L, but you don't really  
6 give an example of, of how that would happen. Can you  
7 provide a specific instance in which you believe federal  
8 financial accounting rules were properly followed and  
9 FP&L was still overcharged?

10 A I can't provide a specific instance. I can  
11 provide an example of how it could occur.

12 Q Yes. That would be helpful.

13 A The affiliate rule requires affiliates to  
14 charge the lower of market or fully allocated costs to  
15 FPL, and they could charge the higher of market price or  
16 fully outdated costs to FP&L to be compliant with  
17 financial accounting rules but be noncompliant with the  
18 Florida affiliate rules.

19 Financial accounting requires that the revenue  
20 and expenses be properly accounted for. They in general  
21 don't require a particular type of costing or pricing.  
22 Whereas in affiliate, the affiliate will require a  
23 specific type of costing and pricing.

24 Q Right. And that's, that's the asymmetrical  
25 requirements in the affiliate rule?

1           **A**     Yes.

2           **Q**     Okay. All right. On page 24, starting on  
3 line 13, you are referring to transactions between FP&L  
4 and FPLES, and you state it's highly likely that the  
5 market value of these important services is higher than  
6 the cost allocations assigned to FPLES. What do you  
7 base this assertion on?

8           **A**     It is an opinion. The alternative to FPLES  
9 would be to secure the same services on the open market  
10 from a contractor or to do them, provide these services  
11 for themselves with their own employees. They have the  
12 opportunity with the regulated FP&L company to use a  
13 larger scale operation likely with modern equipment and  
14 systems, and it is likely that the cost of the FP&L  
15 provided services is, is probably, in my opinion, likely  
16 lower than a contractor or doing it themselves on a  
17 smaller scale.

18          **Q**     But you have no specific numbers to back that  
19 opinion up; correct?

20          **A**     That's correct. And this particular case is  
21 an example, I think, where FP&L actually has the burden  
22 to prove that the charges are the higher of market or  
23 cost, and they've just provided the cost side.

24          **Q**     Okay. Also on page 24, starting at line 20,  
25 you discuss NEE non-utility affiliates benefiting from

1 vendor contracts and relationships that -- you mentioned  
2 this really earlier -- that have been established by  
3 FP&L. Can you elaborate on the benefits that the  
4 non-utility affiliates receive from these vendor  
5 contracts and relationships?

6 A Yes. And it's similar to the FPLES example we  
7 just talked about.

8 Q Right.

9 A That they are utilizing the scale that FPL  
10 provides and the expertise in supply chain management  
11 that they have, and there's value to the unregulated  
12 affiliate in utilizing the regulated FP&L company scale  
13 and expertise, and it's my reading of the rule that they  
14 should pay FP&L for the value of using their services.

15 Q Okay. On page 27, starting on line 9, you  
16 describe what you believe to be a failure of FP&L to  
17 properly capture the benefits that you've just mentioned  
18 of economies of scale in light of increased planned  
19 capital expenditures.

20 You, you don't mean by that, do you, that  
21 increases in planned capital expenditures shouldn't  
22 result in additional prudently incurred administrative  
23 and general and non-fuel operating and maintenance  
24 expenses, do you?

25 A Would you repeat the question, maybe

1 elaborate? I'm not sure I connected those dots.

2 Q Yeah. Sorry. It was a convoluted question.

3 Your, your premise is that FP&L is, is not  
4 properly capturing the benefits of economies of scale in  
5 light of increased capital expenditures.

6 A May I interrupt? The premise is that they  
7 asserted that there should be economies of scale, and I  
8 think it's their burden to prove that there are  
9 economies of scale. I made a quick look on available  
10 information that they provided and did not see the  
11 economies of scale readily evident there. So the  
12 premise is that they, that FPL has not proven that  
13 they've achieved economies of scale with this affiliate  
14 structure.

15 Q Okay. And you're not -- it would be  
16 reasonable to infer that if you are increasing planned  
17 capital expenditures, there would also be increases in  
18 prudently incurred A&G and non-fuel O&M expenses;  
19 correct?

20 A Yes. But the --

21 Q The two things --

22 A But this paragraph is looking at rates, not  
23 absolute numbers. So the, if the numerator goes up and  
24 the denominator goes up, the ratio would stay the same  
25 or go down.

1           **Q**     Okay. Now on page 31, starting on line 10,  
2     you discuss the use of FPL's brand, the FPL name,  
3     without compensation. And you state that this is  
4     contrary to Rule 25-6.1351, and you attached that to the  
5     back of your testimony.

6                     How do you believe -- do you believe that,  
7     that this practice of not charging affiliates for use of  
8     the FPL name does, in fact, violate the affiliate  
9     transaction rule? And if so, can you point me to where  
10    it does?

11           **A**     Well, I believe the intent of the rule is that  
12    FP&L must charge its affiliates for value that it  
13    provides. The -- and this is an example of the value of  
14    the FP&L brand being used by affiliates without  
15    compensation of any sort.

16           **Q**     But there is nothing specifically in the rule  
17    that would indicate that this is a specific violation of  
18    it.

19                     **MS. CHRISTENSEN:** Well, Martha, is there a  
20    question in there?

21                     **MS. BROWN:** Yeah. The question is does this  
22    violate the rule? And, if so, specifically how does it?

23                     **MS. CHRISTENSEN:** I think he's answered the  
24    first part. He answered the intent. Are you looking --

25                     **MS. BROWN:** Right. My follow-up question was

1 to get confirmation from him that he didn't have a  
2 particular provision in mind in the rule that was  
3 violated. I mean, his answer that the intent of the  
4 rule is that everything should be, be compensated for is  
5 fine. I was just looking for something specific. And  
6 if there isn't, that's fine too.

7 **MR. MOYLE:** Martha, this is Jon. I mean, I  
8 guess the lawyers can, can argue the, you know, the rule  
9 interpretation, the intent, and what it says or doesn't  
10 say. I mean, it sounds a little bit like it's a legal  
11 conclusion.

12 **MS. BROWN:** Yeah. Yeah. I think you're  
13 right.

14 **BY MS. BROWN:**

15 **Q** Moving on somewhat, you have not made an  
16 attempt to quantify the value of FP&L's brand identity,  
17 have you?

18 **A** No. It's not within my field of expertise.

19 **Q** Okay. So your testimony is basically that it  
20 must have some value, but you don't know what it is.

21 **A** Correct.

22 **Q** Okay. All right. Last question. Page 34,  
23 starting on line 18, you discuss your recommendation to  
24 increase FP&L's projected revenues from affiliates by  
25 20% and decrease FP&L's projected allocated costs from



1 affiliates by 20%.

2 Can you please explain how you arrived at  
3 those percentages and why you believe they are an  
4 appropriate representation of the order of magnitude of  
5 the ratepayer subsidization of FPL's affiliates?

6 A Yes. My general conclusion is that FP&L did  
7 not comply with the affiliate rule and did not meet its  
8 burden of proof to establish that the affiliate charges  
9 are reasonable, and I listed nine major deficiencies  
10 with the affiliate relationships and transactions. Many  
11 of these are things that it would be impossible to  
12 quantify the precise impact. For example, many of the  
13 costs are based upon fully allocated costs charged to  
14 affiliates and there's no alternative market price to  
15 compare it to. A number of the relationships are based  
16 upon sole source contracts and there's no market-based  
17 bid price to compare the price to.

18 So based upon my years of experience in  
19 working with affiliate relationships and transactions,  
20 my estimate of the order of magnitude of the  
21 approximation of what this would mean in terms of total  
22 cost revenue requirements is on the order of 20%.

23 I think the Commission, based on my reading of  
24 the rule, could disallow all of the costs since the  
25 company did not meet the burden of proof. But my

1 estimate here is had they been doing things properly,  
2 the order of magnitude effect would be somewhere around  
3 20%.

4 Q Okay. That's -- I think we can take from that  
5 that this is your expert estimate and it's not based on  
6 any real numbers.

7 A I think they're real numbers.

8 Q Well --

9 A But it is, it is my estimate.

10 Q I'm sorry. Yes. Okay.

11 MS. BROWN: If you all will give me, give us a  
12 minute, I think we might be done. I just want to make  
13 sure that we've covered everything.

14 (Pause.)

15 Well, it looks like we're, we're finished with  
16 our part. Thank you, Mr. Vondle, very much.

17 THE WITNESS: Thank you.

18 MS. BROWN: Jon, you want to go ahead?

19 MR. MOYLE: Sure. Thank you.

20 EXAMINATION

21 BY MR. MOYLE:

22 Q I have a few questions for you. Let's just  
23 start with the last questions you were asked by staff  
24 for the Commission related to your 20% estimate.

25 On page 6, if I've done my math correctly, you

1 know, give or take, is it correct that the amount of  
2 adjustment that you recommend is approximately a  
3 \$34 million disallowance because of affiliate  
4 transactions?

5 A Yes.

6 Q And that's because if you just take the 20% of  
7 the 150 million and 20% of the 22 million, that's how  
8 you calculate that; correct?

9 A Yes.

10 Q Okay. And moving through your testimony, I  
11 notice you have some reference to FPL's FiberNet. I  
12 found it on page 8 about the service FiberNet provides.  
13 And then also on page 10, line 20, you talk about a  
14 charge to FiberNet of 1.2 million for pole attachments.

15 A Yes.

16 Q Do you know how this 1.2 million number was  
17 derived?

18 A I believe it's a, a rate that's set per pole  
19 attachment.

20 Q Do you know --

21 (Simultaneous conversation.)

22 **THE COURT REPORTER:** Excuse me. We had  
23 trouble un-muting the phone. This is the court  
24 reporter. I did not get the last answer. The question  
25 being -- well, I didn't get the last --

1 BY MR. MOYLE:

2 Q Okay. I think my question was how, if he knew  
3 how the 1.2 million number per pole attachments was  
4 derived.

5 A Yes. There was -- I didn't include it in the  
6 testimony but I believe there is an interrogatory  
7 response that explained that it's a rate per pole  
8 attachment -- the number of pole attachments times the  
9 rate adds up to the 1.2 million.

10 Q Okay. Are you --

11 A That's actually a better question for FP&L.

12 Q I got you, and we may ask them some questions.  
13 But do you know, is there any charges for long haul  
14 fiber in addition to the pole attachment, the ability to  
15 use fiber-optic cable for communications purposes over  
16 long distances? Are there any accounting adjustments  
17 for, for that value?

18 A I didn't study that relationship in detail. I  
19 can't, I can't say yes or no.

20 Q Okay. Do you know if FPL provided any market  
21 data on the per pole attachment for, for this cost  
22 either in terms of what, what the market is, or did  
23 they, did you see anything related to the market price  
24 for pole attachments in your, in preparing your  
25 testimony?

1           **A**     I did not investigate it. There was some type  
2 of rate setting process that they went through, but I  
3 did not confirm that it was a good or, nor a bad  
4 process.

5           **Q**     Let me ask you, you had identified some  
6 overlapping of executives and I wanted to ask you sort  
7 of a broad question. You would agree as a matter of  
8 principle, would you not, that the interest of a  
9 regulated entity does not necessarily always align with  
10 the interest of an unregulated affiliate company?

11           **MR. BUTLER:** I'm going to object to that  
12 question. It's leading. This is obviously friendly  
13 examination. I don't think there's any place for  
14 leading questions in friendly examination.

15           **MR. MOYLE:** Well, it's discovery and it has a  
16 very broad net that is, that is cast, John. So I --

17           **MR. BUTLER:** That's fair enough. But if it is  
18 something that you would choose to have introduced at  
19 hearing, I would reassert that objection as being an  
20 inappropriate form of question for you crossing this  
21 witness in a very friendly manner.

22           **MR. MOYLE:** Okay. That, that's fine. Why  
23 don't we just -- it'll be noted for the record. And if  
24 the depo gets introduced, I guess we can, you know,  
25 address it then.

1           **MS. CHRISTENSEN:** Jon, can you repeat your  
2 question for the witness?

3           **MR. MOYLE:** Yeah. And I'll try to, I'll try  
4 to rephrase it maybe in a less leading way.

5 **BY MR. MOYLE:**

6           **Q** My original question related to whether the  
7 interests of regulated entities are aligned with  
8 interests of nonregulated entities. But I guess I'll  
9 rephrase it by saying what conflicts of interest, if  
10 any, arise given structures between regulated entities  
11 and nonregulated entities?

12           **A** On the particular point we would prefer to see  
13 the regulated operations and the nonregulated operations  
14 separated structurally as much as possible. So without  
15 the overlapping officers would be our preference.

16           And in the, in my testimony there's a section  
17 on, at the outset on why affiliate relationships,  
18 interests, transactions are important and how the, the,  
19 the ability to charge -- take a specific cost and charge  
20 it to either the regulated utility or a nonregulated  
21 affiliate has great benefit to the company if they can  
22 charge more to the regulated utility and less to the  
23 nonregulated subsidiary.

24           **Q** Okay. And just to take that example, if there  
25 was an officer who had positions with both companies,

1 you just said there are situations that can benefit the  
2 unregulated company and work to the detriment of the  
3 regulated company. Wouldn't you agree that that could  
4 put that officer in a conflict of interest situation?

5 **MR. BUTLER:** Jon, I'd object again to the form  
6 of the question. Same objection.

7 **BY MR. MOYLE:**

8 **Q** You can go ahead and answer.

9 **A** I believe I understand the question, and I did  
10 not address the conflict of interest in my testimony.

11 **Q** Okay. But as we sit here today, can you  
12 comment on it?

13 **A** I would prefer to focus on the, the cost  
14 allocation part of that that if you, if you have one  
15 person serving both regulated and nonregulated entities,  
16 the cost allocation methodology is what I focused on  
17 here as opposed to any potential conflict of interest --

18 **Q** For some reason I lost the last part of your  
19 answer there. I don't know if others did as well.

20 **MR. BUTLER:** Yeah, we did too.

21 **MS. BROWN:** We did too.

22 **THE WITNESS:** The -- I'm not sure where we  
23 left off, but the, the focus of my testimony is on the  
24 cost allocation of a common cost between a regulated  
25 entity, FP&L, and then the nonregulated subsidiary. I

1 did not address any potential conflict of interest that  
2 a dual roled executive might have.

3 **BY MR. MOYLE:**

4 **Q** No. I understand. I understand. But I guess  
5 in terms of why do you suggest that there not be  
6 overlap, that you have as much independence as possible  
7 between the regulated entities and the unregulated  
8 entities?

9 **A** It's certainly much cleaner from a cost  
10 allocation perspective. There, there could be a, a  
11 clarification of interest. And if there are conflicts  
12 of interest, it would certainly reduce any conflicts of  
13 interest that an individual might experience.

14 **Q** Sure. And I guess the way I understood your  
15 testimony is in certain affiliate transactions, if the  
16 regulated entity is overcharged and the unregulated  
17 entity benefits from that overcharge, that works to the  
18 benefit of the unregulated entity and the detriment of  
19 the regulated entity; correct?

20 **MR. BUTLER:** Same objection to form.

21 **THE WITNESS:** No. It's a win-win for the --  
22 I'm sorry.

23 **MS. CHRISTENSEN:** No. You can go ahead and  
24 answer the question. He objected to the form.

25 **THE WITNESS:** It's a win-win for the NEE in



1 that overcharging FP&L results in a higher revenue  
2 requirement. They recover the cost. It also results in  
3 lower expense, therefore higher profits for the  
4 nonregulated subsidiary. So they have a very large  
5 incentive, NEE does, to allocate as much cost as  
6 possible to the regulated affiliate, which will then  
7 recover it in rates, and less cost to the unregulated  
8 subsidiary that would then report higher profits.

9 **BY MR. MOYLE:**

10 **Q** Okay. Thank you for that clarification.

11 So that's the incentive. What is the  
12 disincentive for the companies to overcharge, let's say  
13 overcharge a regulated utility for a good or service, if  
14 there is any?

15 **A** It might come up in a rate case.

16 **Q** And, and the worst that can happen in a rate  
17 case as far as you know is that it would be disallowed?

18 **A** Yes. I'm not aware of any other punitive  
19 measures.

20 **Q** So does that then also color your judgment as  
21 to, as to motivation or possible reason as to why  
22 affiliate transactions would be booked, as you describe  
23 it, in a win-win where if in doubt, it can be placed on  
24 the books of the regulated utility?

25 **A** That is the incentive in the affiliate

1 relationship, yes.

2 **MR. BUTLER:** I'm sorry. You answered before I  
3 could renew my objection, but that's fine.

4 **BY MR. MOYLE:**

5 **Q** Okay. Let me just move on a little bit in  
6 your, in your testimony, page 27. This is in the  
7 section on economies of scale. And you make the point  
8 about certain expenses increasing significantly compared  
9 to the Consumer Price Index; right?

10 **A** Yes.

11 **Q** Okay.

12 **MR. BUTLER:** Object to the form.

13 **BY MR. MOYLE:**

14 **Q** In the -- in your review, did you find any  
15 explanation or reasonable reason as to why the expenses  
16 of FPL increased almost threefold as compared to the  
17 Consumer Price Index?

18 **A** No, I did not investigate that. The -- and  
19 this, this paragraph is in response to FPL's assertion  
20 that, that there should be economies of scale by sharing  
21 the FPL resources with the nonregulated affiliate. But  
22 there was no proof offered, no support offered in the  
23 testimony. So I took a quick look at this one exhibit,  
24 MFR Schedule C33, that had some relevant trend  
25 information, rate -- on a, on a per customer per

1 kilowatt hour basis. And so I took a quick look just to  
2 see if the economies were apparent, and my finding was  
3 that they were not readily apparent.

4 Q Would it have been your expectation if there  
5 was an argument that economies should have resulted,  
6 that maybe the increase would have been less than the  
7 CPI as compared to more than the CPI, particularly, you  
8 know, nearly three times the CPI?

9 MR. BUTLER: Object to the form.

10 THE WITNESS: Again, the, I did not  
11 investigate the underlying cost here, just the ratios  
12 presented on the exhibit. I didn't dig beneath that.

13 BY MR. MOYLE:

14 Q Okay. On the next page you talk, you have  
15 reference to a lack of a service company, page 28, line  
16 8, and I think you had that in some other places in your  
17 testimony. So I want to ask you with respect to the  
18 lack of a service company, do you, do you believe that  
19 affiliate transactions are, are better conducted when  
20 there is a service company in place?

21 A Better conducted kind of implies that it would  
22 be provided more efficiently or effectively. My  
23 recommendation here is they have a service company for  
24 clarity of cost accounting. I'm not asserting that they  
25 would then also be more efficient. There would be

1 better visibility of the costs and how they're  
2 allocated.

3 Q And why is that?

4 A Well, right now there is no service company  
5 and FP&L provides service company like services to  
6 affiliates, and now an affiliate applies service --  
7 supplies service company like services to FP&L. They've  
8 gone -- they go both ways. And the -- it makes for much  
9 muddier accounting for these services, and a service  
10 company structure would provide much more clarity and  
11 visibility of the costs and cost allocations.

12 Q So I guess from that answer I can conclude  
13 that the current status quo situation you would believe  
14 is muddy, cloudy, not very transparent?

15 MR. BUTLER: Object to the form.

16 THE WITNESS: That would, I would like to  
17 characterize it as a service company would be less  
18 cloudy, less muddy.

19 BY MR. MOYLE:

20 Q Okay. And the affiliates, do you -- they're  
21 separate corporate entities, aren't they?

22 A Yes.

23 Q And did I understand your testimony to be that  
24 most of the affiliate transactions are not represented  
25 by contractual agreements?

1           **A**     There are contractual agreements, sole source  
2           contracts. There are not comprehensive service  
3           agreements that we would prefer to see with each  
4           affiliate.

5           **Q**     Okay. And with respect to the sole source  
6           contracts, do you know, was any information provided to  
7           you as to whether those sole source contracts were  
8           tested by a competitive bidding process or if market  
9           prices were otherwise solicited and determined?

10          **A**     The, kind of the definition of a sole source  
11          contract is that it was issued without competitive  
12          bidding.

13          **Q**     Okay. And you in your testimony talk about  
14          the rule that suggests there be a, a market indicator.  
15          Did you see anything to suggest that market indicators  
16          were sought for the sole source contracts that you  
17          testify about on page 28 and 29?

18          **A**     No, I did not. The thing that comes closest  
19          is one document that provided line item comparisons  
20          between FPLES and I believe it was AT&T for some  
21          communication services. There was not a bid from AT&T  
22          provided.

23          **Q**     Then on page 30 you were asked the question  
24          about FP&L utilizing service agreements with the  
25          affiliate, and you identified two. But you also say of

1 the hundreds of affiliate relationships identified by  
2 FPL. I interpreted that to mean that there were not  
3 contractual relationships between affiliate companies  
4 that could be identified with respect to business  
5 transactions, transactions between the affiliate  
6 companies. Is that a correct assumption in your  
7 judgment?

8 A No. It's kind of two things. One, there's  
9 one level that's like a purchase order contract  
10 agreement to buy services or goods at a price, and  
11 that's a lower level of, of scope. For the service  
12 agreements between affiliates, this would be a higher  
13 level and a more comprehensive document that includes  
14 more information, what the responsibilities of each  
15 party are, how, what business services are to be  
16 provided, how they're to be provided, what service  
17 levels are to be delivered, all the standard terms and  
18 conditions, audit rights, that sort of thing, a much  
19 more comprehensive definition of the relationship.

20 Q Okay. And so there are only two such  
21 agreements that you found?

22 A That are similar to that, yes.

23 Q And you're satisfied that a request was made  
24 seeking all such agreements and only two were provided?

25 A Yes, I am satisfied. It was asked and

1 answered and clarified.

2 Q Okay. Now I just have one final area of  
3 inquiry, and it relates to the FPL name. And I think  
4 you're suggesting that there be some recognized value to  
5 being associated with the, with the FPL name; is that  
6 correct?

7 A Yes.

8 Q Okay. And do you know, as part of the, you  
9 know, the term "branding," what does the term "branding"  
10 mean to you?

11 A Well, this is outside my field of expertise,  
12 so this is more of a lay, layman's understanding, but  
13 it's the, the image that the company projects.

14 Q Okay. And did you review, are you aware that  
15 FPL spends monies with respect to advertising and  
16 putting its name or brand out in the marketplace?

17 MR. BUTLER: I object to the form of the  
18 question. Leading.

19 BY MR. MOYLE:

20 Q You can go ahead and answer.

21 A I did not investigate any advertising activity  
22 by FPL.

23 Q And as we sit here today, do you know whether  
24 they advertised or not?

25 A I do not.

1           **Q**     Okay. And then my final question on that,  
2     you, you would agree that if I could form a business and  
3     have it affiliated with Coca-Cola, the Coke brand, that  
4     there would be value in my being affiliated with Coke  
5     for the purposes of selling my product; right?

6           **MR. BUTLER:** Same objection to the leading  
7     form of question.

8           **THE WITNESS:** Again, as a, as a layman, I  
9     would, I would think that there would be value there.

10          **MR. MOYLE:** Okay. Thank you. Thank you for  
11     your, your time.

12          **MR. BUTLER:** All right.

13          **MS. CHRISTENSEN:** John, before you start, can  
14     we take a short break?

15          **MR. BUTLER:** Absolutely. That would be great.

16          **MS. CHRISTENSEN:** Okay. Do you know if you  
17     have quite a few questions or --

18          **MR. BUTLER:** I think that we will be finished  
19     before the morning is over. But, remember, the morning  
20     runs all the way to 11:59.

21          **MS. CHRISTENSEN:** Okay. Well, we're going to  
22     hold you to it, you know, like we did yesterday. So  
23     we'll be back in five minutes then.

24          **MR. BUTLER:** Okay. Very good. So we'll start  
25     at 11:00?



1 MS. CHRISTENSEN: Yes.

2 (Recess taken.)

3 EXAMINATION

4 BY MR. BUTLER:

5 Q Good morning, Mr. Vondle. I'd like to start  
6 with some questions going to your experience.

7 Have you evaluated the affiliate transaction  
8 processes of other holding companies in which there is  
9 only one utility operating company that serves a single  
10 state?

11 A Serving in the -- structures similar to NEE  
12 and FPL?

13 Q Yeah. At least the, you know, the arrangement  
14 in the sense of being a holding company where there's a  
15 single, you know, operating utility operating in a  
16 single state. Have you evaluated affiliate transaction  
17 processes at other holding companies that have that  
18 pattern?

19 A Where it's just a single operating company?

20 Q That's right.

21 A I don't think so.

22 Q In preparing your testimony did you review any  
23 Public Service -- Florida Public Service Commission  
24 audits of FPL's affiliate transaction processes?

25 A No.

1           Q     Going back to the first question I asked you,  
2     would you expect to see the affiliate structure that is  
3     typical for holding companies that have operating  
4     utilities in multiple states be used for a holding  
5     company like NEE that operates or has an operating  
6     utility only in one state?

7           A     Could you repeat that question?

8           Q     I'll try.  Would you expect to see the  
9     affiliate structure typical for holding companies that  
10    have operating utilities in multiple states be used for  
11    a holding company such as NEE that has an operating  
12    utility only in one state?

13          A     Well, I believe the other, the other type of  
14    company that has operating companies in several states  
15    was, they were required to have the service company  
16    structure by CUCA.  And by having studied that  
17    structure, I think it is preferable for situations like  
18    NEE, FPL as well.

19          Q     So you think it would be preferable, and can  
20    you -- I guess your testimony fundamentally explains  
21    why, but can you summarize for me why you would think it  
22    would be preferable for a holding company operating in a  
23    single state that would not have been subject to the  
24    requirements of CUCA, nonetheless to use that model?

25          A     Yes.  I believe it would provide much greater

1 clarity of cost accounting, cost allocation for common  
2 costs. You have a situation now where FP&L must first  
3 determine whether a cost is solely FP&L or it is a  
4 shared cost. And then now if the affiliate is charging  
5 FP&L, you have the same problem with each affiliate.  
6 They first have to identify whether it's an  
7 affiliate-only cost or it's a shared cost, and the  
8 service company provides all, assembles all shared costs  
9 in one place. It's more clear.

10 Q Do you know whether having a service company,  
11 you know, sort of additional structure and additional  
12 personnel that might require, do you know whether that  
13 would add costs overall to the cost of operating a  
14 holding company system such as FPL that doesn't  
15 currently have one?

16 A I don't think it would cause any ongoing  
17 incremental costs. It's a different way to account for  
18 people.

19 Q Have you done any studies or evaluations of  
20 whether there are ongoing incremental costs to  
21 organizing and operating a service company?

22 A Well, there would be a, a legal entity. NEE  
23 has hundreds of legal entities, so it would be another  
24 one.

25 Q But have you done any analysis of whether

1 there are in fact incremental costs associated with  
2 organizing and operating a service company?

3 A No.

4 Q Is there a, an affiliate structure that you  
5 would consider to be typical for a holding company in  
6 which there is only one utility operating company  
7 serving in a single state?

8 A I can't say there's a typical structure  
9 because I haven't studied all of the single operating  
10 companies. But the, the complicating issue here is the  
11 scale of the nonregulated affiliate. There may be only  
12 one operating, regulated operating company but there are  
13 many unregulated affiliates sharing costs. And that's,  
14 that's the problem, challenge here.

15 Q But you're not aware of what is or isn't  
16 typical for holding companies in the circumstance of NEE  
17 and FPL with operations in only a single state, or the  
18 operations in a single state?

19 A No, I have not done a survey of those types of  
20 companies.

21 Q Okay. Do all of the utility holding companies  
22 with which you're familiar have service companies?

23 A No, I, I don't think so.

24 Q So the ones that do not, what is typical in  
25 your experience as to where an employee would work who

1 serves more than one company on a regular material  
2 basis?

3       **A**     Again, not having done a survey, I can't tell  
4 you what would be typical. Often companies have a  
5 headquarters division, a support services division, you  
6 know, shared services division, and employees who serve  
7 multiple subsidiaries might be housed in some, some type  
8 of headquarters or shared services division.

9       **Q**     Okay. And what are examples of holding  
10 companies that have the arrangement you just described  
11 of a shared services division?

12       **A**     Again, I didn't do a survey for this project,  
13 so I don't have a specific example to give you.

14       **Q**     Are you aware of utility holding companies  
15 that have -- the term you use is "virtual service  
16 companies"?

17       **A**     I'm aware of companies, and, again, I probably  
18 won't be able to give you specifics, but that have  
19 headquarters type divisions or shared services  
20 divisions, common services divisions that would be  
21 similar to a virtual service company.

22       **Q**     But are you aware of any that use a virtual  
23 service company, you know, as you're describing that  
24 concept on pages 13 and 14 of your testimony?

25       **A**     And just to clarify, my recommendation, strong

1 preference is for an actual service company, legal  
2 entity service company.

3 Q Understood. But I'm just asking you whether  
4 you are familiar with a, you know, an instance of a  
5 company using the virtual service company approach that  
6 you describe on pages 13 and 14.

7 A I would say it's probably really common to  
8 have a headquarters division, shared services type  
9 division that would be similar to what a virtual service  
10 company would be.

11 Q And what are some examples of instances where  
12 companies have what you consider similar to a virtual  
13 service company?

14 A Again, I didn't do a survey and I don't want  
15 to quote any specifics not knowing the entire story.  
16 I'm just describing from my general background and  
17 experience.

18 Q Okay. On page 15 of your testimony, 15 and  
19 16, you describe three methods used to allocate or  
20 assign costs that I think are listed here from what you  
21 would consider to be the most to the least preferred; is  
22 that right?

23 A Yes.

24 Q Okay. Do you know whether FPL uses all three  
25 of the methods that you describe here on pages 15 and

1 16?

2 A Yes. I believe the, FPL asserts that they,  
3 they do. I'm a little foggy on how the direct charges  
4 are actually accounted for. But, yes, there are -- in  
5 the testimony there would be examples of each of these  
6 three methods.

7 Q Okay. Do you know whether FPL has a hierarchy  
8 of preference among those three methods?

9 A I believe -- I'd have to take a look at the  
10 cost allocation manual, but I think it's generally on  
11 the same preference.

12 Q Same preference, excuse me, I'm sorry, same  
13 preference, which is direct charges is the most  
14 referred, the charges linked to specific cost drivers  
15 for allocation as the second, and then the third least  
16 favored being the general allocator; is that right?

17 A Yes.

18 Q Okay. I'd like to ask you a couple of  
19 questions about your testimony on positive time  
20 reporting. Are you aware of instances where salaried or  
21 exempt workers use positive time reporting?

22 A Yes.

23 Q Okay. Tell me those, each instance you're  
24 aware of where salaried or exempt workers use positive  
25 time reporting.

1           **A**     Well, that means specific companies that based  
2     on my general experience I think it's fairly common now  
3     in, in service companies serving regulated and  
4     nonregulated affiliates.

5           **Q**     Do you have any examples you can point to of  
6     service companies where that is the case?

7           **A**     I did a recent management audit of FirstEnergy  
8     and their Jersey Central Power & Light subsidiary. They  
9     have a service company that uses positive time  
10    reporting.

11          **Q**     Are you aware of any instances other than in  
12    the context of a service company where salaried or  
13    exempt workers use positive time reporting?

14          **A**     Could you repeat that?

15          **Q**     Yeah. Are you aware of any instances other  
16    than in the context of employees for a service company  
17    where positive time reporting is used for salaried or  
18    exempt workers?

19          **A**     Oh, yes. Any, any employee working on a  
20    capital project should use positive time reporting and  
21    typically do. Employees working on any kind of  
22    government grant should use positive time reporting.  
23    It's a very, it's a, it's a very good practice.

24          **Q**     You say should, I think, if I heard you  
25    correctly. Are you aware of instances where they do?



1           **A**     Yes. I think for, like for the capital  
2 projects I think it's common.

3           **Q**     Okay. What is an example of an entity in  
4 which you're aware that salaried workers use positive  
5 time reporting for reporting of their time spent on  
6 capital projects?

7           **A**     Well, the FirstEnergy example would be a good  
8 one.

9           **Q**     And those would be employees of FirstEnergy,  
10 FirstEnergy entities outside of the service company?

11          **A**     No. I'm talking specifically about the  
12 service company -- well, and actually employees in the  
13 operating companies working on a capital project would  
14 charge their time to the capital project.

15          **Q**     They charge their time, but are you sure  
16 that -- do you have information to confirm that they use  
17 positive time reporting as opposed to exception time  
18 reporting for charging their time to capital projects?

19               **MS. CHRISTENSEN:** John, can I ask for  
20 clarification? Are you using the word "positive time  
21 reporting" and "charging to capital projects," are you,  
22 is your question assuming those are two different  
23 things?

24               **MR. BUTLER:** No. No. My question is whether  
25 he -- the last question is whether, confirming whether

1 he is certain that the employees of the operating  
2 utilities would use positive time reporting as opposed  
3 to exception time reporting as he uses those terms in  
4 his testimony for their charges to capital projects.

5 **THE WITNESS:** (Inaudible) -- practice among  
6 utilities.

7 **BY MR. BUTLER:**

8 **Q** I'm sorry. I didn't hear the answer. The  
9 phone broke up.

10 **A** Yes. I believe that for employees working on  
11 multiple capital projects, positive time reporting is a  
12 common practice.

13 **Q** And what are examples of that that you are  
14 personally aware of?

15 **A** The, well, we can use the FirstEnergy to GP&L  
16 example.

17 **Q** On page 17 of your testimony, again on the  
18 subject of positive time reporting, you make a statement  
19 on line 9 and 10, fixed allocations are less accurate  
20 than real-time positive time reporting of how time is  
21 actually spent. Do you see that?

22 **A** Yes.

23 **Q** When you refer to fixed allocations there, are  
24 you referring to exception reporting?

25 **A** Yes. That would include fixed allocations

1 with the exception reporting. Yes. I think the two go  
2 together.

3 Q What evidence do have you that exception time  
4 reporting is less accurate than real-time positive time  
5 reporting?

6 A It's common sense.

7 Q I'm sorry. It's what?

8 A Common sense.

9 Q Common sense. Well, beyond your common sense,  
10 do you have any personal studies or academic literature  
11 otherwise you can point to as support for that  
12 conclusion?

13 A No. You'd have to have someone do it both  
14 ways. And if they did it both ways, they would use the  
15 positive time reporting to correct the fixed allocation.

16 Q Or you could compare organizations that are  
17 doing it the two different ways; correct?

18 A It wouldn't be apples and apples.

19 Q But beyond your, your common sense, you don't  
20 have anything to offer as a support for this statement  
21 that fixed allocations are less accurate than real-time  
22 positive time reporting of how time is actually spent;  
23 is that right?

24 A No, I don't have studies to -- excuse me. I  
25 don't have a study to provide. But I think you can see

1 that if someone records their time on a daily basis on  
2 what they actually did that day, that that would be more  
3 accurate than relying on an estimate made before the  
4 year started.

5 Q Where are you getting the notion of an  
6 estimate made before the year starts? Is that your  
7 understanding of what would happen for exception  
8 reporting?

9 A Well, remember we're talking about, first of  
10 all, fixed time allocation. So that would have to be  
11 based upon some type of estimate or projection. And  
12 then the problem with exception reporting is that the  
13 employee must identify that there's an exception to the  
14 fixed allocation and then they must report the  
15 exception.

16 Q But you would agree they would actually do  
17 that when they are sort of experiencing the exception,  
18 right, as opposed to something that would be projected  
19 at the beginning of the year?

20 A I think human nature works against us on  
21 exception reporting.

22 Q I don't think that answers my question.

23 A Please ask your question again.

24 Q The question is just whether the recording of  
25 exceptions is something that would be done

1 contemporaneous with the existence of the exception as  
2 opposed to something that would be projected, you know,  
3 before a year starts.

4       **A**     Okay. To do good exception reporting the  
5 person would have to do the equivalent of positive time  
6 reporting. They'd have to pause at the end of the day,  
7 reflect on the day, examine how they spent their time,  
8 compare it to the fixed time allocation, and then  
9 correct it, so they might as well do positive time  
10 reporting.

11       **Q**     Do you know whether or not what you've just  
12 described accurately characterizes exception time  
13 reporting at FPL?

14       **A**     No, I do not know how FPL precisely applies  
15 it.

16       **Q**     Okay. One thing for clarification, you use in  
17 several places the term "positive time reporting," but  
18 then you use, particularly in this discussion we've just  
19 been having on the testimony at the top of page 17, the  
20 term "real-time positive time reporting."

21       **A**     Yes.

22       **Q**     Is there a distinction you are intending  
23 between the two terms?

24       **A**     No. Just with positive time reporting it  
25 needs to be similar, it needs to be done similar recent

1 to the activity of time spent. In some cases people  
2 work on big projects for long periods of time and doing  
3 it weekly is okay. If there are lots of activity  
4 during, within a day, doing it daily or multiple times  
5 during a day is best. With some of the new  
6 computer-aided dispatch management systems, you know,  
7 the positive time reporting is done automatically with  
8 opening and closing work orders.

9 Q Okay. I'd ask you to turn page 18 of your  
10 testimony, talking about the Massachusetts Formula. Do  
11 you know whether the input FPL uses for its application  
12 of the Massachusetts Formula are the inputs that are  
13 traditionally used for the Massachusetts Formula?

14 A The three factors?

15 Q Yes.

16 A I didn't go back and look. I just, I looked  
17 at the three factors that FPL used.

18 Q What specific inputs do you propose that FPL  
19 should use for a general allocator as an alternative to  
20 the three factors that FPL did use under the  
21 Massachusetts Formula?

22 A The two major criticisms I have are, one, the  
23 use of payroll as a factor because of the alternative of  
24 using contract labor, and also that FPL as an operating  
25 electric utility has customer service people, T&D

1 people. It's a fairly labor intensive business, so it  
2 has lots of employees.

3 And the other major criticism I have is that  
4 it does not reflect newness and growth, and how  
5 executive attention and corporate services are consumed  
6 by growth and new, new initiatives.

7 Q Right. But my question is asking you to move  
8 from critic to innovator. What inputs would you propose  
9 that FPL use instead of what it is using as the three  
10 factors under the Massachusetts Formula?

11 A I would decrease the use of payroll and add  
12 one or more factors for growth.

13 Q Okay. And what would those factors be for  
14 growth?

15 A It could be -- there are a number of options.  
16 It could be a year-over-year increase in revenues or  
17 year-over-year increase in capital expenditures. It  
18 could be absolute capital expenditures.

19 Q Have you conducted any investigation of the  
20 allocation of costs on a general allocator basis for FPL  
21 and NEE to determine what difference there would be in  
22 the allocation if you used those two factors you just  
23 described year over year --

24 A No.

25 Q -- increases in the absolute capital

1 expenditures?

2           **A**     No, I have not. It would be -- a fairly  
3 rigorous study would be required to look at the  
4 alternatives and then run various scenarios and then  
5 select new factors that are fair to all parties.

6           **Q**     So would it be fair to say you don't know  
7 whether it would increase or decrease the amount of  
8 general allocation to affiliates compared to the  
9 Massachusetts Formula three-factor test?

10          **A**     My general conclusion here is that the, the  
11 Massachusetts Formula as applied by -- the three-factor  
12 formula applied by FPL is probably biased to over  
13 weighting FP&L and under weighting the nonregulated  
14 affiliates and the parent.

15          **Q**     But my question is whether you know, whether  
16 you have any basis for knowing whether the allocation  
17 would be higher, lower, or the same if you used the  
18 different inputs that you described.

19          **A**     No, I have not modeled the alternatives.

20          **Q**     Okay. I wanted to ask you on page 20 of your  
21 testimony, and staff had asked some questions also on  
22 this comment, but the bottom of page 20, lines 20 and  
23 21, where you say that it is possible to comply with  
24 federal financial accounting rules and still overcharge  
25 FPL.



1           A     Yes.

2           Q     Can you identify what federal financial  
3     accounting rules you are referring to there?

4           A     I'm not a financial accountant, but, again, as  
5     more of a layman, the generally accepted accounting  
6     practices, SEC type compliance.

7           Q     So you can't describe any particular  
8     financial, federal financial accounting rules that you  
9     are referring to by this sentence or in this sentence?

10          A     Yeah. This is in response to FP&L's assertion  
11     that they comply with federal financial accounting  
12     rules, and I'm just saying that that's fine. You can  
13     comply with federal financial accounting rules and still  
14     overcharge FP&L.

15          Q     I'm just asking you to identify what the  
16     federal financial accounting rules are that you can  
17     comply with and still overcharge FPL. Just, you know --

18          A     I'm responding to Ms. Ousdahl's assertion.  
19     She said that FPL complies. When we asked how FPL knows  
20     that the, it is being charged the correct amounts by its  
21     affiliates, she said that, well, they, they comply with  
22     financial accounting rules. I hope it's true. But  
23     complying with financial accounting rules doesn't mean  
24     that they comply with the affiliate rules.

25          Q     But, Mr. Vondle, all I'm asking you is to be

1       able to conclude that it is possible to comply with  
2       federal financial accounting rules and still overcharge  
3       FPL, it seems like you'd have to know what the federal  
4       financial accounting rules are. So I'm asking you to  
5       identify what federal financial accounting rules you're  
6       referring to in this statement. Can you do so?

7               **MS. CHRISTENSEN:** I think Mr. Vondle has  
8       responded, John, to your question. He said that he  
9       hasn't identified the specific rules. He's referring  
10      back to Ms. Ousdahl's response to an interrogatory.

11              **MR. BUTLER:** So am I correct in understanding  
12      that Mr. Vondle's familiarity with federal financial  
13      accounting rules is limited to reading that phrase in  
14      Ms. Ousdahl's testimony?

15              **MS. CHRISTENSEN:** No. I think you're  
16      mischaracterizing my statement.

17      **BY MR. BUTLER:**

18              **Q**     Well, then identify -- I'm asking Mr. Vondle  
19      to identify what federal financial accounting rules he's  
20      referring to.

21              **A**     The question is properly addressed to  
22      Ms. Ousdahl. The -- she's the one who brought it up.

23              **Q**     All right. Sitting here today, you cannot  
24      identify any particular federal financial accounting  
25      rules that your statement on page 20, lines 20 and 21,

1 is referring to; is that right?

2 A Yes.

3 Q All right. Thank you. On page 25 of your  
4 testimony, and this is getting back to a point we  
5 covered a moment ago, but just a couple of additional  
6 questions on it concerning the, excuse me, the effects  
7 of growth.

8 What is your basis for concluding that new and  
9 growing unregulated enterprises normally take more time  
10 and energy than a well-established, going concern  
11 regulated utility?

12 A Well, I've been over the years associated with  
13 both, going concerns, regulated utilities, and with  
14 fast-growing unregulated subsidiaries, and the  
15 challenges of managing unregulated growing subsidiaries  
16 is, is substantial.

17 Q But have you done any comparative studies of  
18 the amount of time and energy I guess normalized on some  
19 basis regarding size or, you know, output or customers  
20 or something that provides a, sort of a quantitative  
21 basis for the conclusion?

22 A No, I don't have a study. But that's why  
23 positive time reporting is, is useful. In a situation  
24 like this if you have one employee serving both the, the  
25 well-established regulated utility and new enterprises

1 or fast-growing enterprises, positive time reporting  
2 would accurately allocate the costs between the two.

3 Q Have you done any evaluation to determine  
4 whether in the period, say, 2010 through 2013 FPL's  
5 major nonregulated affiliates are fast growing?

6 A No, I have not done that analysis.

7 Q Okay. Turn to page 27 of your testimony,  
8 please.

9 A Yes.

10 Q And, again, this is something staff had asked  
11 you a few questions about but I want to follow up a  
12 little bit.

13 Have you done any benchmarking of FPL's A&G  
14 expenses per customer for nonfuel costs per kilowatt  
15 hour against other utilities?

16 A No.

17 Q Concerning sole source contracts, do you have  
18 any examples of where FPL is overpaying its affiliates  
19 or receiving less advantageous terms and conditions  
20 because it is contracted on a sole source basis?

21 A I think it is FP&L's burden to prove that.

22 Q Okay. I know that's your position, but I'm  
23 just asking you to answer my question. Do you have any  
24 examples of your evaluation? Did you conclude that  
25 there are specific instances where FPL is overpaying or

1 receiving less advantageous terms and conditions?

2       **A**     You, you can't -- there isn't a do-over. You  
3 can't go back on a, on payments on a sole source  
4 contract and then say what would it, how would it have  
5 been different had the contracts been bid.

6       **Q**     Well, you claim to have had many, many years  
7 of experience in this area, and I'm asking you based on  
8 your experience, the contracts you reviewed, the  
9 information you reviewed from FPL, did you see instances  
10 where in your opinion it appeared that FPL was  
11 overpaying its affiliates or receiving less advantageous  
12 terms and conditions because it had contracted on a sole  
13 source basis?

14       **A**     I would say there's, there's a good reason why  
15 most companies have competitive bidding requirements.  
16 It's a good practice (phonetic).

17       **Q**     May I take it from your answer that you don't  
18 have any specific examples of FPL overpaying affiliates  
19 or receiving less advantageous terms and conditions  
20 because it has contracted on a sole source -- excuse  
21 me -- on a sole source basis?

22       **MS. CHRISTENSEN:** John, I believe Mr. Vondle  
23 had answered your question stating that he cannot go  
24 back and recreate the bidding process on a sole source  
25 contract, so there's no way of knowing. Do you have a

1 different question for him?

2 **MR. BUTLER:** You know, that's not really an  
3 objection. That is telling the witness what to say.  
4 You could have said asked and answered, the objection  
5 could have stood, and we could have gone on with the  
6 deposition.

7 But I'm just asking him to confirm, and I'll  
8 move on if it's the case, that he doesn't have any  
9 specific examples, for whatever reason it may be, which  
10 the provision of goods or services was at FPL's  
11 disadvantage.

12 **MS. CHRISTENSEN:** Same answer as Mr. Vondle  
13 provided before.

14 **MR. BUTLER:** Are you answering for him and  
15 directing him not to answer?

16 **THE WITNESS:** The answer is that I don't have  
17 any specific examples. But the point is it's FP&L's  
18 burden to prove that it's paying the lower of cost or  
19 market.

20 **BY MR. BUTLER:**

21 **Q** I have a similar question for you on page 30  
22 regarding service agreements. Do you have any examples  
23 in which the provision of goods or services by FPL to  
24 affiliates worked to the disadvantage of FPL customers  
25 because there was not a written service agreement in

1 place covering those goods or services?

2 A This is the same type of answer. They weren't  
3 in place, so how can you tell?

4 Q But from your investigation, you didn't, I  
5 gather you didn't find anything that you can cite today  
6 where you think that FPL's customers were disadvantaged  
7 because goods or services were provided in the absence  
8 of a written service agreement.

9 A That's correct. There's no specific example.  
10 My finding is that they, that the service agreements are  
11 good regulatory and management practice. They do not  
12 exist in most of the FPL affiliate relationships, and  
13 that they should be put into place.

14 Q And I have the same question about examples  
15 where goods or services were provided by affiliates to  
16 FPL in the absence of a written service agreement. Any  
17 example there where doing so has in your view resulted  
18 in a disadvantage to FPL customers?

19 A No.

20 Q Hold on just a minute. I'll be right back  
21 with you.

22 (Pause.)

23 All right. Mr. Vondle, we're almost done, and  
24 I'm going to bring it in well within my promise to  
25 finish in the morning.

1 Did you study the use of contract labor at FPL  
2 and its affiliates?

3 A No. I don't know what either, either side  
4 did. The, the reason I, I bring it up as an issue is  
5 payroll as one of the three factors is that contract  
6 labor is a ready substitute for payroll on both sides,  
7 and a -- and it's, it's a difficult factor to have total  
8 labor costs because many contracts include both the  
9 contract labor and the use of equipment and often  
10 material. So it's very difficult to get an accurate  
11 total labor cost.

12 Q Are you aware of other entities in the utility  
13 industry that use contract labor as an input to the  
14 calculation of general allocation factors?

15 A No. And I wouldn't recommend it for the  
16 reasons I just explained.

17 Q I assume you are aware of instances in the  
18 utility industry where payroll or number of employees is  
19 used as a factor in the general allocation factors.

20 A Yes. I believe it is, it is commonly used. I  
21 just don't think it's a good factor.

22 Q Do you know how FPL documents its decisions on  
23 the allocation of costs and what method is used for the  
24 allocation?

25 A We have responses to interrogatories that have



1 various statistics and calculations.

2 Q Did you study that documentation?

3 A To an extent, yes.

4 Q How many hours would you estimate that you  
5 spent studying FPL's documentation?

6 A On the general allocation factor?

7 Q No. More generally on the, you know, its  
8 approach to cost allocation.

9 A I don't know. I would have to go back and  
10 look at my positive time reporting.

11 Q You didn't do this on an exception time  
12 reporting basis?

13 A Oh, no. The Office of Public Counsel is very  
14 strict about using positive time reporting in great  
15 detail.

16 MR. BUTLER: All right. Hold on one more  
17 second for me, please.

18 (Pause.)

19 All right. Thank you for your time,  
20 Mr. Vondle. That's all the questions that we have.

21 MS. CHRISTENSEN: And we have a few questions  
22 on redirect. This is Patty Christensen with the Office  
23 of Public Counsel.

24 EXAMINATION

25 BY MS. CHRISTENSEN:

1           **Q**     Mr. Vondle, do you recall a few minutes ago  
2     Mr. Butler asked you whether you found examples of  
3     contracts that were deleterious to customers regarding  
4     FPL's lack of use of service agreements? Do you recall  
5     those lines of questioning?

6           **A**     Yes.

7           **Q**     In the absence --

8           **MS. BROWN:**   Patty, Patty let me interrupt for  
9     a minute. We're having trouble hearing Mr. Vondle up  
10    here. Can he get a little closer to the phone?

11          **MS. CHRISTENSEN:**   We're trying to share the  
12    phone, so we'll try and speak up a little bit. Would  
13    that help?

14          **MS. BROWN:**   You don't have to speak up but he  
15    does.

16          **MS. CHRISTENSEN:**   I'm sure Mr. Vondle will  
17    answer with the appropriate volume.

18          **MS. BROWN:**   Thank you, Patty.

19          **MS. CHRISTENSEN:**   Let me -- do I need to  
20    repeat the full question or just the second part?

21          **THE COURT REPORTER:**   No. Just, just the  
22    answer, his answer.

23          **THE WITNESS:**   Yes.

24    **BY MS. CHRISTENSEN:**

25          **Q**     All right. In the absence of bidding is it

1 possible to cite examples?

2 **A** No.

3 **Q** Can you explain why?

4 **A** Well, the market conditions exist at a point  
5 in time. So when the sole source contract is left, you  
6 would have to go back in time, which is impossible so  
7 far, to determine what the market conditions were at the  
8 time. And I think to get accurate market prices you  
9 have to actually bid the product or service and award it  
10 to the most advantageous offerer.

11 **Q** Is that why the burden of proof on showing  
12 that these costs are market based is FPL's --

13 **MR. BUTLER:** I object to the form of the  
14 question. You're leading him and he's your witness.

15 **MS. CHRISTENSEN:** I can rephrase the question.

16 **MR. BUTLER:** Of course you can at this point.  
17 He heard your lead.

18 **MS. CHRISTENSEN:** I would disagree that it was  
19 leading, but that's fine.

20 **BY MS. CHRISTENSEN:**

21 **Q** And would you agree that that's the same --  
22 well, would you have the same opinion regarding the  
23 timeliness of bidding and the burden of proof related to  
24 service agreements or the lack thereof?

25 **A** Service agreements would embody price

1 (phonetic). That's one of the elements a service  
2 agreement would cover. And if it is an item that  
3 requires lower of market price for fully allocated  
4 costs, the service agreement should spell out how the  
5 market price is going to be determined, and so it can be  
6 audited that the market price was determined in a fair  
7 and accurate way. And there would also be a paper trail  
8 that says the fully allocated cost, if that's the one  
9 selected, is actually lower than the market price that  
10 was determined in a fair and accurate way.

11 Q Okay. Do you recall Mr. Butler discussing the  
12 Massachusetts Formula?

13 A Yes.

14 Q If the Massachusetts Formula, the use of  
15 payroll is a factor directing too many costs to FPL and  
16 is replaced with a factor that directs fewer costs to  
17 FPL, what would you expect the outcome to be?

18 A I would expect less cost allocation to FPL and  
19 more cost allocation to the nonregulated subsidiaries  
20 and the parent.

21 Q You said you have not developed a specific  
22 alternative to the Massachusetts Formula and it would  
23 require a rigorous study to derive a, derive a formula  
24 that would be fair to all the parties. What did you  
25 recommend the Commission do in that regard?

1           **A**     It would be part of a, my second  
2     recommendation that the Commission open an investigation  
3     into FPL's affiliate relationships and transactions and  
4     address that, the general allocation formula as one of a  
5     number of other items in the service agreements;  
6     asymmetrical pricing -- there are, I think there are  
7     nine different things.

8           **Q**     In response to a question from staff you said  
9     you don't know what consideration led FPL to choose a  
10    particular allocator. Do you recall that question and  
11    answer?

12          **A**     Yes.

13          **Q**     Regardless of what led FPL to choose its  
14    allocators, in your testimony do you comment on whether  
15    its allocators are appropriate?

16          **A**     Yes. In, in general my criticism is that they  
17    underuse direct charging and rates and overuse the  
18    general allocator.

19          **Q**     And do you consider that appropriate?

20          **A**     No. I recommend that they follow the, the  
21    preferred hierarchy and what they in general say --  
22    their hierarchy more closely. That anything that can be  
23    direct charged be direct charged, and positive time  
24    reporting is a big part of that.

25               And secondly, if it can't be direct charged,

1 charged on -- it should then be charged on a rate basis.  
2 And then the smallest part is the remainder that should  
3 be charged with the general allocator.

4 Q With respect to the value of using the FPL  
5 name, you said quantifying the value is not in your  
6 field of expertise. Are you -- are there entities  
7 capable of establishing the value of the FPL brand?

8 A Yes. One of my recommendations is that an  
9 independent expert in the field be engaged to quantify  
10 the value of the FP&L name to the nonregulated  
11 affiliates that use the name, and then use that as a  
12 basis for charging them for the use of the name.

13 Q And currently has FPL placed any market value  
14 on the use of its brand name that you're aware of?

15 THE COURT REPORTER: I can't hear that.

16 MS. BROWN: We couldn't -- Patty, we couldn't  
17 hear that answer.

18 BY MS. CHRISTENSEN:

19 Q Okay. Let me have him repeat it.

20 A No. They specifically do not charge for the  
21 use of the FP&L name.

22 MS. CHRISTENSEN: One moment, please.

23 (Pause.)

24 We're back. That concludes our redirect. And  
25 we would read the deposition and would like to get a

1 copy of it.

2 (Deposition concluded at 11:50 a.m.)

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

4 I, LINDA BOLES, CRR, RPR, Official FPSC Commission  
5 Reporter, do hereby certify that I was authorized to and  
6 did stenographically report the foregoing deposition at  
7 the time and place herein stated.

8 I FURTHER CERTIFY that this transcript constitutes  
9 a true record of the testimony given by the witness.

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

15 DATED THIS 31st day of July, 2012.

16   
17 LINDA BOLES, CRR, RPR  
18 Official FPSC Hearings Reporter  
19 850/413-6734  
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Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

DATE                      DAVID P. VONDLE

FLORIDA PUBLIC SERVICE COMMISSION

CERTIFICATE OF OATHSTATE OF FloridaCOUNTY OF Leon

I, the undersigned authority, certify that David Vondle  
personally appeared before me at Tallahassee, FL and was duly sworn by  
me to tell the truth.

WITNESS my hand and official seal in the City of Tallahassee, County of  
Leon, State of Florida, this 25<sup>th</sup> day of July,  
20  .



Notary Public

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