

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 35

Pages 5170 through 5261

PROCEEDINGS: HEARING

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

DATE: Monday, November 19, 2012

TIME: Commenced at 9:32 a.m.  
Concluded at 11:20 a.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.)

RECEIVED-FPSC  
12 NOV 20 AM 9:27  
COMMISSION  
CLERK

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## P R O C E E D I N G S

1  
2 (Transcript follows in sequence from  
3 Volume 34.)

4 **CHAIRMAN BRISÉ:** Good morning. We are calling  
5 this hearing to order. Today is the 19th. Is it the  
6 19th? Yeah. It is 9:32 a.m., and we are continuing  
7 Docket 120015-EI.

8 Before we do that, I have two congratulations  
9 to, to express. One, I want to congratulate  
10 Commissioner Edgar on being elected, elected the second  
11 vice president of NARUC. We, we know that you will  
12 serve NARUC well and serve the State of Florida very  
13 well as you continue to serve.

14 I also want to congratulate our Public  
15 Counsel, Mr. Kelly, for being -- I don't know if it's  
16 elected or appointed secretary of --

17 **MR. KELLY:** I'm not sure if it's  
18 congratulations or condolences.

19 (Laughter.)

20 **CHAIRMAN BRISÉ:** Or condolences. Understood.  
21 But we certainly appreciate your participation and  
22 active involvement in the National Association of  
23 Consumer Advocates. It says, it says a lot about the  
24 State of Florida, that we not only learn as part of  
25 these associations but we inform as well, and,

1 therefore, we are part of the healthy discussion of what  
2 should happen in the regulatory environment moving  
3 forward. So it is important that, that we participate  
4 in these things and continue to participate in these  
5 things, for they provide great benefit to our state.

6 With that, if -- Mr. Young, would you read the  
7 notice.

8 **MR. YOUNG:** Good morning. By notice issued on  
9 November 7th, 2012, by the Commission Clerk, this time  
10 and place has been set for a hearing in Docket Number  
11 120015-EI, petition for a rate increase by Florida Power  
12 & Light. The purpose of the hearing is set out in the  
13 notice.

14 **CHAIRMAN BRISÉ:** All right. Thank you. At  
15 this time we will take appearances. We'll start my  
16 left, your right.

17 **MR. LITCHFIELD:** Thank you. Good morning,  
18 Chairman Brisé, Commissioners. Wade Litchfield, John  
19 Butler, Jordan White, and Maria Moncada with Florida  
20 Power & Light Company, and also Ms. Susan Clark of the  
21 Radey, Thomas firm appearing on behalf of Florida Power  
22 & Light Company.

23 **CHAIRMAN BRISÉ:** Thank you.

24 **MR. MOYLE:** Good morning. Jon Moyle with the  
25 Moyle law firm on behalf of FIPUG, the Florida

1 Industrial Power Users Group.

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

3 **LIEUTENANT COLONEL FIKE:** Good morning.

4 Lieutenant Colonel Greg Fike appearing on behalf of the  
5 Federal Executive Agencies.

6 **CHAIRMAN BRISÉ:** Thank you.

7 **MR. WISEMAN:** Good morning. Kenneth Wiseman  
8 for the South Florida Hospital and Healthcare  
9 Association. And I'd also like to enter the appearances  
10 of Mark Sundback, Lisa Purdy, Bill Rappolt, Peter  
11 Ripley, and Blake Urban.

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

13 **MR. HENDRIX:** Good morning. John Hendricks  
14 appearing pro se.

15 **CHAIRMAN BRISÉ:** All right. Good morning.

16 **MR. GARNER:** Bill Garner, the Nabors law firm,  
17 appearing on behalf of the Village of Pinecrest.

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

19 **MR. SAPORITO:** Thomas Saporito appearing pro  
20 se.

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

22 **MR. WRIGHT:** Good morning, Commissioners.  
23 Robert Scheffel Wright and John T. LaVia, III, both of  
24 the Gardner, Bist, Wiener law firm, appearing on behalf  
25 of the Florida Retail Federation. Thank you.

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

2                   **MR. REHWINKEL:** Good morning, Commissioners.  
3 Charles Rehwinkel, Joe McGlothlin, Patty Christensen,  
4 and J. R. Kelly on behalf of the citizens of the State  
5 of Florida.

6                   **CHAIRMAN BRISÉ:** All right. Thank you very  
7 much.

8                   **MR. YOUNG:** Keino Young, Caroline Klancke,  
9 Martha Carter Brown, and Larry Harris on behalf of  
10 Commission staff.

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

12                   **MS. HELTON:** And Mary Anne Helton, Advisor to  
13 the Commission. I'd also like to make an appearance for  
14 the General Counsel, Curt Kiser.

15                   **CHAIRMAN BRISÉ:** All right. Thank you. Did  
16 we miss anyone that wishes to make an appearance? All  
17 right. Seeing none, are there any preliminary matters  
18 that we need to address?

19                   **MR. YOUNG:** Yes, sir, there are several  
20 preliminary matters.

21                   The first preliminary matter is that some of  
22 the non-signatories wish to lodge objections to this  
23 proceeding, and I'll direct your attention to  
24 Mr. Rehwinkel and Mr. Saporito.

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

1           **MR. REHWINKEL:** Thank you, Mr. Chairman and  
2           Commissioners. The Public Counsel states its objection  
3           to this proceeding and incorporates by reference the  
4           objections that we made on September 27th, 2012, at the  
5           proceeding held to determine the scope of this  
6           proceeding and to the pleadings that we have filed in  
7           Docket 120015-EI.

8           The Public Counsel renews its request that the  
9           motion to approve the settlement filed by FPL and the  
10          signatories on August 15th be denied. The Public  
11          Counsel is participating in this hearing under protest  
12          inasmuch as we believe that it is not authorized by  
13          Chapter 366, *Florida Statutes*, and does not comport with  
14          due process requirements of Chapter 120, *Florida*  
15          *Statutes*, and the procedural and substantive due process  
16          requirements of the Florida and United States  
17          Constitutions.

18          The Public Counsel is a necessary party  
19          inasmuch as he is the plenary and statutory  
20          representative of all of FPL's customers as established  
21          by Florida law and as interpreted by the Florida Supreme  
22          Court in *Citizens v. Mayo*.

23          The signatories to the agreement do not and  
24          cannot, by virtue of the tiny fraction of FPL's  
25          4.6 million customers they actually represent, represent

1 the interests of customers other than those described in  
2 their petitions to intervene and the orders granting  
3 them. Accordingly, the signatories are not authorized  
4 by Florida law to settle the case that FPL filed on  
5 March 19, 2012, and obligate the customers they do not  
6 represent to pay higher base rates in 2013, 2014, and  
7 2016, as well as higher non-base rates and charges on  
8 other portions of the customers' bill.

9 I must note here for the record that the  
10 Public Counsel filed a writ of quo warranto with the  
11 Florida Supreme Court on October 17, 2012, asking the  
12 court to exercise its discretionary authority and issue  
13 appropriate orders to halt this proceeding. In support  
14 of that petition, the Public Counsel alleged, among  
15 other reasons, that the Public Counsel is a necessary  
16 party to any lawful settlement of this case.

17 On November the 15th the Supreme Court  
18 dismissed the petition without prejudice to raise the  
19 same issues on appeal and transferred the necessary  
20 party question to the 1st DCA without instructions or  
21 guidance or even a requirement that the transferred  
22 portion be deemed a petition for quo warranto other than  
23 noting the time sensitivity of the pending case at the  
24 Commission.

25 On that same day the 1st DCA denied per curiam

1 and without comment and without stating a basis for  
2 denial the portion of the petition transferred to it by  
3 the Supreme Court. The Public Counsel does not intend  
4 to seek further review of those decisions.

5 It is the strongly held position of the Public  
6 Counsel that the actions of the two courts are not an  
7 expression of the courts' views on the merits of the  
8 Public Counsel's objections to this proceeding,  
9 including the necessary party contention. As such, we  
10 continue to assert the necessary party objection, among  
11 others, as one of the bases for our fundamental  
12 objection to this proceeding and will continue to assert  
13 that objection in any appeal taken, if circumstances  
14 warrant such an appeal.

15 Having said that, Commissioners, the Public  
16 Counsel is compelled to also state that we have great  
17 respect for this agency and this tribunal, and while our  
18 objections are strongly and honestly held, we intend to  
19 abide by all rulings, all orders, all governing  
20 statutes, and all rules of this Commission, and will  
21 participate in good faith in this proceeding, as we have  
22 always done, and will do so consistent with our  
23 obligations to represent our clients, the ratepayers of  
24 Florida, professionally, zealously, and responsibly.  
25 Thank you.

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

2           Mr. Wright.

3           **MR. WRIGHT:** I would just like to state for  
4 the record that the Florida Retail Federation concurs  
5 both with the objections and with Mr. Rehwinkel's  
6 expression of respect for the Commission and our  
7 commitment to participate in good faith fully throughout  
8 this hearing. Thank you.

9           **CHAIRMAN BRISÉ:** Thank you.

10          **MR. SAPORITO:** Mr. Chairman, this is Thomas  
11 Saporito. And for the record I strenuously object to  
12 all the exhibits in staff's Comprehensive Exhibit List.  
13 I strenuously object to all witnesses who may testify in  
14 this proceeding on behalf and in support of FPL's  
15 proposed settlement agreement. It is my view that this  
16 proceeding is illegal and that the Commission does not  
17 have requisite jurisdiction or authority to hold this  
18 proceeding.

19                 Furthermore, I object to this proceeding  
20 because it's a violation of my due process rights as a  
21 United States citizen and as a citizen of Florida and as  
22 a ratepayer of Florida Power & Light Company. Had I  
23 known that this Commission would, would consider  
24 proposed settlement items such as the GBRA issue at a  
25 rate case subsequent to the Commission's determination

1 for need for those three power plants, I most likely  
2 would have intervened at that time at the, at the  
3 termination hearings. So I was deprived the due process  
4 right to challenge issues related to the GBRAs because  
5 now the Commission is trying to incorporate -- well, is  
6 hearing arguments in the proposed settlement agreement  
7 which could ultimately be placed into the original rate  
8 case. So I, I -- my due process rights are violated  
9 because I never had a chance to challenge those at the  
10 determination hearing.

11 And that extends to all ratepayers of Florida  
12 Power & Light because people who are ratepayers of  
13 Florida Power & Light at this time and want to engage  
14 the Commission in this proceeding are not able to  
15 intervene because the time has passed because it's the  
16 same docket number and they can't legally intervene. So  
17 their due process rights as well are being violated.

18 And I just feel as a citizen I have extended a  
19 great deal of personal funds and made a good faith  
20 effort to follow all the rules throughout this  
21 proceeding, and yet I find myself placed by a government  
22 agency in such a situation that my due process rights  
23 are being thrown under the bus, and I strenuously object  
24 on all those grounds. Thank you very much.

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

1           **MR. GARNER:** Thank you. The Village of  
2 Pinecrest joins the Office of Public Counsel in its  
3 objection and endorses the comments of Mr. Rehwinkel.

4           **CHAIRMAN BRISÉ:** Thank you very much. Okay.  
5 All right. Any further preliminary matters?

6           **MR. YOUNG:** Yes, sir. On today,  
7 November 19th, the Village of Pinecrest filed a motion  
8 to dismiss Florida Power & Light, South Florida  
9 Hospital, FIPUG, FEA, and Algenol Biofuels' joint motion  
10 for approval of settlement agreement. Along with the  
11 motion, Village of Pinecrest also filed a request for  
12 oral argument.

13           **CHAIRMAN BRISÉ:** Okay. All right.

14           **MR. MOYLE:** As a preliminary procedural  
15 matter, before -- FIPUG would suggest before we get into  
16 oral argument, I'm not sure you can file a motion to  
17 strike a motion. I mean, under Robert's Rules of Order  
18 or something, I mean, I've never seen, you know,  
19 somebody file a, you know, a motion to kill somebody  
20 else's motion. So, anyway, I think there's at least a  
21 procedural basis for objecting to, to that.

22           **CHAIRMAN BRISÉ:** Thank you.

23           Mary Anne.

24           **MR. YOUNG:** I will turn it over to Ms. Helton.

25           **MS. HELTON:** Mr. Chairman, can I read to you

1 the rule in the Uniform Rules of Procedure?

2 **CHAIRMAN BRISÉ:** Sure. Please.

3 **MS. HELTON:** Under 28-106.204, unless  
4 otherwise provided by law, motions to dismiss the  
5 petition or requests for hearing shall be filed no later  
6 than 20 days after service.

7 So if you were to in an abundance of caution  
8 and conservatively consider Florida Power & Light's and  
9 the other signatories' motion to approve the settlement  
10 as a new petition, which you have not done and the  
11 Commission has not done, if you were to do that or if  
12 you were to consider your third Order Establishing  
13 Procedure which laid out the process for, that we are  
14 planning to follow today as starting a new petition,  
15 which I do not believe it is, the Village of Pinecrest's  
16 motion is still considered untimely. It is way past the  
17 20-day mark.

18 So I believe that while it is in your  
19 discretion to hear oral argument on it, I don't believe  
20 that that would be appropriate here. I believe that you  
21 all can handily deny the motion to dismiss, if that is  
22 your will, as untimely and we can go forward with this  
23 proceeding as has been noticed and has been prepared for  
24 by all parties.

25 **CHAIRMAN BRISÉ:** All right. Thank you. And

1 due to the fact that it is my understanding that it is  
2 untimely --

3 **MR. GARNER:** May I address the point?

4 **CHAIRMAN BRISÉ:** No. Okay? And so therefore  
5 we will -- I will deny the motion. Okay?

6 Commissioner Graham, you wanted to say  
7 something? No? Okay.

8 **MR. GARNER:** Chairman Brisé, without, without  
9 addressing the motion, may I just make a brief comment?

10 **CHAIRMAN BRISÉ:** Sure. You're welcome to do  
11 that.

12 **MR. GARNER:** It was not the intention of the  
13 Village to disrupt the proceedings or cause delay. In  
14 fact, we came -- I had some arguments to, to these  
15 points. But we came here expecting to, or at least with  
16 the understanding that because of the timely -- the  
17 lateness of the filing, that parties would not have had  
18 a full attempt to review and vet the motion and we would  
19 have waited -- or, or supported the, the Commission's  
20 desire if it was the desire to, to go ahead with the  
21 hearing as planned, and then just at some point before a  
22 decision was made have an opportunity to address the  
23 motion.

24 But as that's apparently not the will of the  
25 Chair, then I just wanted to make it clear that it

1 wasn't our intention to delay or to cause any disruption  
2 in the proceeding.

3 **CHAIRMAN BRISÉ:** That's fine. Understood.  
4 Thank you.

5 Is there another motion that we need to  
6 address, or something for reconsideration or something?

7 **MR. YOUNG:** Oh, yes, sir.

8 **CHAIRMAN BRISÉ:** Let's, let's roll.

9 **MR. YOUNG:** Okay. At the Prehearing  
10 Conference held on, in this proceeding on November 15th,  
11 Mr. Saporito requested the inclusion of an additional  
12 issue in this proceeding. The issue presented was: Is  
13 the settlement agreement provision which increases,  
14 which increases the customer late fee amount in the  
15 public interest? You, as presiding officer, denied that  
16 request, and Mr. Saporito subsequently requested  
17 reconsideration of the, of your ruling before the whole  
18 Commission.

19 Staff would note that an amendatory order was  
20 issued this morning because the word "provision" was  
21 omitted from the ruling section of the Prehearing Order.  
22 So we're now in the right procedural posture.

23 Staff would note that the standard of review  
24 for a motion for reconsideration is whether there was a  
25 point of fact or law that the presiding officer

1 overlooked or failed to consider in reaching his  
2 decision. Staff does not believe that Mr. Saporito has  
3 met the standard for review for the motion for  
4 reconsideration and recommends that the motion be  
5 denied.

6 **CHAIRMAN BRISÉ:** All right. Commissioners?  
7 Commissioner Balbis.

8 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
9 And I know when we had a discussion at the, when we last  
10 discussed this matter, we identified several issues that  
11 were not covered with the record evidence for the rate  
12 case and were very specific in what we added, knowing  
13 that after the inclusion of all of the evidence entered  
14 into the rate case could be considered in this, this  
15 proceeding.

16 So with that, I believe the cost of service  
17 study and other evidence addresses late fees, so I  
18 believe it would be subsumed in, in, in all of the  
19 issues addressed in the previous rate case along with  
20 this one, so I would recommend denial.

21 **CHAIRMAN BRISÉ:** All right. Commissioner  
22 Edgar.

23 **COMMISSIONER EDGAR:** Commissioner Balbis just  
24 made the same points that I was going to, so I second  
25 the motion.

1           **CHAIRMAN BRISÉ:** All right. It's been moved  
2 and seconded. Any further discussion?

3           All right. Seeing none, all in favor, say  
4 aye.

5           (Vote taken.)

6           All right. Thank you. Are there any other  
7 preliminary matters?

8           **MR. YOUNG:** Yes, sir. Staff would note that a  
9 Comprehensive Exhibit List was distributed to the  
10 parties in anticipation of the hearing. The exhibit  
11 list, the Comprehensive Exhibit List includes items 46  
12 -- 4 -- I mean, 649, excuse me, containing the list  
13 itself, Items 650 through 666 containing staff's  
14 composite exhibit, and items 667 through 704 containing  
15 the parties' prefiled exhibits.

16           Staff would suggest that after opening  
17 statements the Comprehensive Exhibit List, 649, be moved  
18 into the record. For Items 6 -- for Items 667 through  
19 six -- I mean, 704, each sponsoring, each sponsoring  
20 witness is responsible for entering those documents into  
21 the record at the conclusion of their testimony.

22           At this time, staff would note -- staff would  
23 like to address the handling of composite exhibits  
24 contained within Exhibits 650 through 666. Staff notes  
25 that all the parties, with the exception of

1 Mr. Saporito, have stipulated to the introduction of  
2 these exhibits into the record. Mr. Saporito, as you've  
3 heard, has objected to the introduction of these  
4 exhibits on the grounds that this proceeding is illegal.  
5 Mr. Saporito has agreed, and he can state for the  
6 record, that his objection will be noted for the record  
7 as these exhibits are moved in.

8 **CHAIRMAN BRISÉ:** Mr. Saporito.

9 **MR. SAPORITO:** That's correct, Mr. Chairman.  
10 I would like to express a continuing objection.

11 **CHAIRMAN BRISÉ:** Thank you very much.  
12 Anything further from staff?

13 **MR. YOUNG:** Not that staff is aware of.

14 **CHAIRMAN BRISÉ:** All right.

15 **MR. SAPORITO:** Mr. Chairman, I have one, one  
16 very quick item here I want to put on the record  
17 relating to the, your recent decision to deny my request  
18 to address the panel on my new issue. And the basis is  
19 I think you -- the Commission violated, along with  
20 staff, procedural rights that I have under the  
21 regulations, and that is, and I have the record here,  
22 the transcript of the record for the Prehearing  
23 Conference where you granted my motion to address this  
24 panel. Staff attorneys assert that you can unilaterally  
25 out of hand take a Commission vote on whether I'm

1 allowed to address the panel, and that's in my view  
2 incorrect because the issue of whether or not the motion  
3 for reconsideration reflects an error of law on your  
4 part during the Prehearing Conference is the issue which  
5 I was granted permission by yourself to address to this  
6 panel. And by not allowing me to address this panel,  
7 you're denying my due process rights under the rules.  
8 Thank you very much.

9 **CHAIRMAN BRISÉ:** Thank you. Just for clarity,  
10 I think I granted the ability for reconsideration, and  
11 reconsideration and actually making a statement are two  
12 separate issues. So understood, and thank you.

13 Now with respect to the rest of this process,  
14 we expect that we will begin tomorrow at 9:00 a.m.  
15 Okay? And we will run until about between 9:00 and  
16 10:00 p.m. tomorrow night, as we will tonight. Okay?  
17 Understanding that Thanksgiving is right down the corner  
18 this week, and we hope to get as much done on the front  
19 end, meaning today and tomorrow, and hopefully we'll  
20 conclude on tomorrow evening. If not, then on Wednesday  
21 midday we hope to be at a place that we can conclude.

22 You can expect that we will break for lunch  
23 between 12:00 and 12:30, depending upon the flow of  
24 where we are and, and how things are moving. We expect  
25 that witnesses are available when they are up, with the

1 few exceptions that we've accommodated for in the  
2 prehearing, at the Prehearing Conference. And we  
3 certainly hope that concerning or dealing with the  
4 timing that we all respect the idea of no friendly cross  
5 and no duplicative cross and those type of things. And  
6 for efficiency, that we manage our exhibits, have them  
7 prepared and so forth so that we can, can hum right  
8 along.

9 And I think in terms of working through this  
10 process, we certainly hope that everyone observes that  
11 layout and that we work efficiently to, to make this  
12 process as efficient as possible. All right. And I'll  
13 ask for one last time, are there any preliminary  
14 matters?

15 **MR. McGLOTHLIN:** Mr. Chairman, I have a small  
16 matter that involves the scheduling.

17 **CHAIRMAN BRISÉ:** Sure.

18 **MR. McGLOTHLIN:** OPC's second witness is Jacob  
19 Pous. Mr. Pous is involved in a proceeding in Montana  
20 today, and the logistics are such that he can't be here  
21 before midmorning tomorrow. That seemed very safe when  
22 we first made those arrangements and he committed to us.  
23 That was prior to the announcement of your intent to go  
24 late. So it may not even be a problem depending on how  
25 things play out. But in the event we reach a point

1 where he's not available, we would ask the Commission  
2 and parties to work with us to reorder the schedule.

3 **CHAIRMAN BRISÉ:** Sure. Okay. Are there any  
4 other preliminary matters?

5 **MR. YOUNG:** Not that staff is aware of.

6 **CHAIRMAN BRISÉ:** All right. So we're going to  
7 move into opening statements.

8 As was decided at the Prehearing Conference,  
9 we will have 20 minutes on each side, recognizing that  
10 there are multiple parties on each side. However, each  
11 party, each side will manage their time accordingly. We  
12 will simply start the clock, and when the clock reaches  
13 20, we will stop. Okay? And that's up to you to decide  
14 amongst yourselves how much time is allotted for each  
15 one. Okay?

16 Okay. And we will begin with the signatories,  
17 and we will begin with, with opening statements at this  
18 time.

19 **MR. LITCHFIELD:** Thank you. Good morning,  
20 Mr. Chairman and Commissioners. This is a very  
21 important case for Florida Power & Light Company and for  
22 its customers, and we genuinely appreciate the  
23 opportunity to be here today to provide you with  
24 additional information and testimony in support of the  
25 settlement agreement.

1 Starting from our customers' perspective,  
2 Commissioners, approval of this agreement will provide  
3 them with four years of competitive and predictable  
4 rates, while also positioning the company to continue to  
5 provide industry leading performance and reliability.  
6 And with regard to our residential customers, who for  
7 some time have enjoyed the lowest bill in the state, a  
8 four-year agreement will provide additional confidence  
9 that they will continue to benefit from the strong value  
10 proposition that Florida Power & Light Company provides  
11 through low rates and reliable service.

12 Now you are going to hear, in fact you have  
13 already heard Public Counsel suggest that only a  
14 minority of Power & Light's customers will benefit from  
15 this agreement. Well, in football that's what's called  
16 a misdirection play and it does not reflect reality.  
17 And that reality is easily verified through the numbers  
18 and the rates that are sponsored by Ms. Deaton, who will  
19 be here today and tomorrow.

20 Keep in mind also that this agreement was  
21 negotiated with people who had very similar, though not  
22 quite as extreme, but very similar positions as OPC, and  
23 an agreement that ignored the interests of some to the  
24 exclusion of others would have done none of the  
25 signatories a bit of good, Commissioners. And as

1 Ms. Deaton and Mr. Dewhurst will testify, at the same  
2 time that we were able to improve the competitiveness of  
3 our commercial rates, we were able to maintain our  
4 residential bills at a level well below the industry  
5 average and the lowest in the state. Why this can be  
6 characterized as a bad thing is both inexplicable and  
7 indefensible.

8 From FPL's investors' perspective, approval of  
9 the agreement will provide the company with a four-year  
10 period during which it can reasonably expect to maintain  
11 the financial strength necessary to support the  
12 \$9 billion of investment in this state over the next  
13 three years. The company remains and is projected over  
14 this period to continue to be the largest single  
15 investor in the State of Florida, creating thousands of  
16 jobs in the process and providing a much needed  
17 financial boost to communities in the state. We have to  
18 remain competitive in order to access the capital  
19 markets and to support this level of investment.

20 Now we know that Public Counsel has been  
21 unreserved in its opposition to the settlement agreement  
22 from the outset, but to date most of their efforts, and  
23 we've seen one more attempt here this morning on the  
24 part of the Village of Pinecrest, most of the effort has  
25 been spent in precluding any additional consideration of

1 this agreement.

2 Most recently, as Mr. Rehwinkel mentioned,  
3 Public Counsel petitioned the Supreme Court to prevent  
4 the hearings from being held today. Among other things,  
5 Public Counsel asserted that the Commission could not  
6 consider a settlement agreement to which Public Counsel  
7 was not a party. As Mr. Rehwinkel indicated, as we all  
8 know, the court rejected Public Counsel's request with  
9 the exception of that single aspect of the petition,  
10 namely the question as to who was a necessary party,  
11 which question was referred or transferred to the 1st  
12 DCA and expedited consideration was requested. Well,  
13 later that same day, in, in as close to light speed as  
14 we will ever see from any judicial body, the 1st DCA  
15 dismissed Public Counsel's petition. And so finally,  
16 after months of some rhetoric and political maneuvering,  
17 we are able finally to see and respond to Public  
18 Counsel's and Retail Federation's substantive opposition  
19 to the settlement agreement. With respect, we do not  
20 find their positions to be persuasive, and we believe  
21 that neither will you.

22 But before I address their positions, there  
23 are two things that I want to note that are conspicuous  
24 by their omission. And the first is this, despite its  
25 strident opposition to the settlement agreement, the

1 Retail Federation has filed no testimony at all on any  
2 of the issues. And keep in mind that during the August  
3 hearings, Retail Federation's only witness to date in  
4 this proceeding testified that what customers pay in  
5 terms of their bill, that's the controlling issue, not  
6 what the utility service provider earns in providing  
7 that service. And we would expect that answer from the  
8 business community, Commissioners. That's one of the  
9 reasons we strive to keep our bills low and our  
10 reliability high.

11 And so, frankly, we continue to be puzzled as  
12 to why the Retail Federation opposes the agreement when  
13 thousands of retailers, including grocery stores and  
14 department stores, will benefit if this agreement is  
15 approved. And frankly and candidly that is a reason why  
16 we are supporting in this settlement agreement some  
17 changes in rate impacts in order to support business in  
18 this state, again, while at the same time we're keeping  
19 our residential bills the absolute lowest in the state.

20 And that leads me to the second noteworthy  
21 omission. Again, for all the complaints about the  
22 alleged cost shifting, not a single line of testimony  
23 has been filed by Public Counsel or the Retail  
24 Federation on this point.

25 Now I'll touch briefly on the four specific

1 issues identified for the taking of additional evidence  
2 in this proceeding. Now in the case of each issue  
3 Public Counsel has filed testimony to show in their view  
4 why that particular provision in itself should result in  
5 the agreement being rejected. We understand why in  
6 Public Counsel's global opposition to the agreement  
7 that, that they feel they must oppose each element, even  
8 things that they have supported in prior agreements, but  
9 these positions that I mention just do not bear up under  
10 scrutiny.

11           The incentive mechanism, that's the first  
12 issue, and I'll treat them perhaps in a different order  
13 than they appear in the Prehearing Order. But with  
14 regard to the incentive mechanism, there really  
15 shouldn't be any question here but that this provision  
16 or element of the agreement is positive for customers.  
17 Customers are guaranteed the first \$46 million of  
18 savings, and then they also receive a share of any  
19 savings above the \$46 million threshold. So,  
20 Commissioners, if nothing else, this could be viewed as  
21 simply a no risk four-year pilot that could provide  
22 significant value to customers. And so contrary to  
23 OPC's contentions, there's really nothing about this  
24 program that would warrant rejecting the settlement  
25 agreement.

1           Now with regard to the flexible amortization,  
2 this also is a very straightforward element of the  
3 settlement agreement that as in prior settlement  
4 agreements, including FPL's current agreement, provides  
5 FPL with a modest but important source of noncash  
6 earnings that we can flexibly use in order to offset  
7 variables such as weather. And the analysis is very  
8 simple with regard to this mechanism. It's one that has  
9 routinely been a part of settlement agreements for years  
10 in this state. It's an appropriate way to handle the  
11 remaining reserve surplus as a result of this current  
12 settlement agreement, and then it's supplemented by a  
13 portion of the fossil dismantlement reserve with only  
14 slight, if any, impacts on future rates.

15           And contrary to Public Counsel's contentions,  
16 customers actually do benefit from this mechanism. What  
17 it does is it limits the requirement for cash rate  
18 increases during the period and, as a result, helps to  
19 keep customer bills low, but, as I said, in this  
20 instance with only very slight rate impact. Again, no  
21 reason with regard to this provision to reject the  
22 settlement agreement. To the contrary, it's a necessary  
23 element of the agreement, just as it has been for a lot  
24 of other agreements in this state.

25           Now number three, whether it's appropriate to

1 defer the depreciation and dismantlement studies.  
2 Likewise, this issue, we think, is very simply answered.  
3 Again, deferral of such studies has been routinely  
4 included in and accepted in prior settlement agreements.  
5 And the reason for that is very straightforward,  
6 Commissioners. Parties to settlements like this,  
7 including customers, we can't agree to lock in rate  
8 levels and then also assume the risk that a significant  
9 component of expense is subject to change, and that's  
10 why this mechanism has been in place in a lot of  
11 settlement agreements.

12 Now, Public Counsel will suggest through one  
13 of their witnesses that there will be another large  
14 depreciation reserve surplus. There's no basis in the  
15 record for that contention. What Mr. Barrett on behalf  
16 of Florida Power & Light Company will testify is that  
17 the company is actually making very large additional  
18 capital investments, primarily, primarily in assets with  
19 fixed lifespans. This tends to increase the  
20 depreciation accrual requirements and, hence, tilt the  
21 imbalance towards a deficit, not a surplus.

22 In short, Commissioners, deferral of these  
23 studies, it's consistent with past practice, it's a  
24 predicate for any agreement of this type, and it helps  
25 preserve customer low bills for four years.

1           Now GBRA, with a generation base rate  
2 adjustment, a very important component of this  
3 agreement, again, we think the picture here also is  
4 very, very clear. We spent enormous sums on these new  
5 very, very efficient power plants. Most of these plants  
6 have been approved by the Commission on not just the  
7 capacity value that they bring to the system, but on the  
8 improvements in their performance. And what I mean by  
9 that is that they reduce fuel costs over the life of the  
10 plants by hundreds of millions of dollars above and  
11 beyond the actual cost of those plants and they generate  
12 power much more cleanly than the plants that they  
13 replace. And these savings and these environmental  
14 benefits, they kick in the moment these plants go  
15 online. But they are a gigantic capital investment; a  
16 billion dollars or more in each instance.

17           And so our investors understandably are  
18 incredibly focused on how, when, and whether we will  
19 recover the costs of these billion dollar projects.  
20 Without GBRA the size of the investments are so large  
21 that we almost certainly will need to be back before you  
22 twice, maybe three times in the next four years for  
23 adjustments to our rates.

24           Now Public Counsel will tell you that that's  
25 the right approach because there's uncertainty in our

1 costs and uncertainty in our, our revenues. And we  
2 agree, there is uncertainty in our revenues and there's  
3 uncertainty in virtually all of our other costs. But  
4 that goes both ways, Commissioners, and that's why GBRA,  
5 we think, makes perfect sense. We know a few things for  
6 certain. We know, we know this, we know that savings  
7 for customers from these power plants are real and  
8 substantial and we know that the costs to generate those  
9 savings are real and substantial. And then we know that  
10 there's uncertainty with respect to almost everything  
11 else.

12 What GBRA does is simply handle appropriately  
13 what is certain. It matches real costs with real  
14 savings and it does not, and this is important, it does  
15 not increase the company's earned return. In fact, it  
16 moves it closer to the midpoint. That leaves everything  
17 else that is not certain to be handled if and as  
18 necessary in subsequent base rate proceedings, and we  
19 believe that is administrative efficiency. Public  
20 Counsel's position, on the other hand, would simply push  
21 us into a series of base rate proceedings, a result that  
22 we believe is the antithesis of efficiency.

23 Now, Commissioners, in general I think, in  
24 concluding, everybody in this room, I think, despite  
25 some positions that have been taken in the proceeding,

1 believe that the investor-owned electricians in this state  
2 do a pretty good job. And certainly we are proud of our  
3 track record at Florida Power & Light Company, and it's  
4 a record that is essentially unchallenged in this  
5 proceeding. Public Counsel themselves are on record as  
6 supporting FPL's quality of service and its overall  
7 performance. And certainly events in the northeast  
8 recently would suggest that one cannot take for granted  
9 the benefits of financially healthy, well-positioned  
10 utilities that have the resources and training necessary  
11 to meet customer needs on a day-to-day basis and also in  
12 times of crisis.

13 Yet OPC's litigation positions, and this is a  
14 very, very fundamental point, their litigation  
15 positions, which remain at the foundation of their  
16 opposition to the agreement, are essentially intended to  
17 take the company to the financial edge. We submit,  
18 Commissioners, this is not the right model either in the  
19 short or in the long-term for our customers.

20 OPC's approach would send this message, that  
21 good performance will not be supported and that bills  
22 simply don't matter. If regulation is supposed to  
23 provide a form of market approximation, then these  
24 things should count, Commissioners. And indeed Chapter  
25 366 indicates that value of service is one of the

1 factors that the Commission can take into consideration  
2 in setting rates.

3           What is needed instead of Public Counsel's  
4 approach, we would submit, is an agreement that strikes  
5 the kind of balance that I outlined to open my remarks:  
6 One that was negotiated in good faith over many months  
7 among parties with strongly held and divergent opinions;  
8 one that provides a four-year resolution to very complex  
9 and highly contested issues and avoids pancake rate  
10 proceedings; one that will provide the kind of financial  
11 platform that FPL's investors require to support the  
12 billions of dollars of beneficial investment for  
13 Florida's customers in this state; and finally an  
14 agreement that will produce low predictable rates,  
15 promoting continued industry leading performance and  
16 reliability for our customers.

17           Commissioners, this agreement accomplishes all  
18 of those things, and for those reasons we respectfully  
19 request and submit that it should be approved as being  
20 in the public interest. Thank you.

21           **CHAIRMAN BRISÉ:** Thank you. There's about  
22 six and a half minutes left.

23           **MR. MOYLE:** Thank you, Mr. Chairman. On  
24 behalf of FIPUG, let me just start by thanking the  
25 Commission for giving us the opportunity today and

1 tomorrow, hopefully not Wednesday, to present evidence  
2 and present facts about the settlement agreement. You  
3 all have a big record that has been developed in August  
4 of a lot of information, the positions of the parties,  
5 and, you know, we were talking around the settlement,  
6 but I think this is a good opportunity to talk about the  
7 facts. There's been a lot of process, a lot of  
8 procedures, you know, but I'm a big believer in the  
9 facts and I think the facts in the next couple of days  
10 will show clearly that this is a, is a fair deal and it  
11 ought to be approved by this Commission consistent with  
12 this Commission's long history of approving settlement  
13 agreements.

14           You'll hear from a FIPUG witness, Jeff  
15 Pollock, who indicates that it's in the, in the public  
16 interest. Feel free to ask him questions as to how he  
17 reaches that conclusion.

18           Just briefly, to point out a couple of things,  
19 it's a four-year deal. I mean, that gives certainty to  
20 the business environment. We know what the rates are  
21 going to be even with the GBRA. We can plan for that.  
22 It's important. The commercial and industrial folks,  
23 we're looking at double digit increases. Now with this  
24 deal they're looking at flat or slightly reduced rates.  
25 That's important, given that we're still kind of in the

1 economic doldrums of the Great Recession. That's an  
2 important piece of it.

3 You know, somewhat overlooked there's  
4 139 million in savings associated with this. I, I  
5 haven't -- I mean, that's not an insignificant amount of  
6 money. And when you do the math on some of the other  
7 rate increases, Gulf, it's in line with where they ended  
8 up at the, you know, at the end of the day.

9 Two, two points that you're going to hear a  
10 lot about, and I just wanted to make a brief comment on  
11 them. The 10.7 ROE, OPC and others have, have witnesses  
12 saying, well, that's, you know, that's, that's too high.  
13 But, again, a settlement is give and take, there's a lot  
14 of pieces to it. It's not really fair to take one piece  
15 and focus on it, which I think is what will be  
16 happening.

17 In the 10.7 ROE, you know, you had another  
18 case before you this year where you awarded 10.5 and  
19 then 10.7 to the extent that a nuclear plant came back  
20 online. So it's not -- you know, the 10.7 is not out of  
21 bounds by any stretch of the imagination, particularly  
22 when you consider the interrelation between the key  
23 components of the settlement agreement.

24 And then the GBRA point, you know, that avoids  
25 a serial rate case scenario. And I think it needs to be

1 pointed out that to the extent that other things happen,  
2 the economy is going great guns and FP&L is overearning,  
3 if they overearn amongst their, you know, the authorized  
4 ROE, you know, we can bring them back in, OPC can bring  
5 them back in, and that's a safety valve that I think  
6 needs to be remembered and not overlooked when we're  
7 having the GBRA conversation.

8 So I want to be respectful of my colleagues  
9 and their time, and thank you for considering the  
10 evidence in this case.

11 **CHAIRMAN BRISÉ:** All right. There's about two  
12 minutes left.

13 **MR. WISEMAN:** Mr. Chairman, Commissioners, I  
14 also want to address the point that OPC suggests that  
15 this settlement is, is supported by a de minimis number  
16 of FPL's customers, and I want to repeat a point I  
17 previously made.

18 In 2011, SFHHA's member hospitals serving  
19 South Florida employed over 79,000 full-time employees  
20 with a payroll of almost \$5 billion. It should be of  
21 paramount importance to this Commission, to OPC, and to  
22 the, to FPL to get FPL's rates right for the hospitals  
23 and their patients, and we believe this settlement moves  
24 a far way in doing that.

25 But when we negotiated this settlement,

1 clearly we're negotiating the settlement to obtain  
2 benefits for SFHHA's members, the hospitals. The  
3 benefits that were provided provide benefits to all of  
4 FPL's ratepayers, and we believe that approval of this  
5 settlement is in the public interest and will be better  
6 for the business community and South Florida than any  
7 litigated result that will occur in this case.

8 And that, I say that recognizing that in a  
9 litigated result you may reach a decision that actually  
10 has a lower, reduces FPL's requested increase by more  
11 than what the settlement would do, but there are other  
12 features of this settlement that are very important.  
13 There's rate certainty for a four-year period. That is  
14 particularly important to the business community. And I  
15 would suggest to you that FPL absorbs the risk of  
16 increasing the cost of capital over the next several  
17 years. That is a risk that actually the settlement  
18 insulates from FPL's business community and residential  
19 ratepayers. So we think taking this settlement as a  
20 whole, it is in the public interest and we strongly ask  
21 that you support it and approve it.

22 **CHAIRMAN BRISÉ:** Okay. You have about a  
23 minute and ten seconds.

24 **LIEUTENANT COLONEL FIKE:** Thank you,  
25 Commissioner, Mr. Chairman.

1           Real quickly, the, the original filing for  
2           FP&L proposed to raise the base revenue rate for the  
3           CAIC (phonetic) 1T rate case, which represents most of  
4           the FEA customers, by 34%, which is well above the  
5           average of 10.8% for the residential, residential  
6           customers and 11% for the past average.

7           The proposed settlement remedies this  
8           inequality and places the FEA where they should have  
9           been in the original filing on par with the rest of the  
10          rate class, which is why FEA supports it.

11          Every dollar of increased utility costs is a  
12          dollar less that an installation commander can spend on  
13          the flying mission, the national security mission, and  
14          the deployment mission, et cetera. In this case,  
15          Patrick Air Force Base, Homestead Air Force Base, Cape  
16          Canaveral Air Station are some of the FEA affected  
17          installations.

18          In summary, the proposal -- proposed  
19          settlement strikes an appropriate balance between the  
20          needs of FPL and its customers. More specifically, it  
21          permits the FEA installations to accomplish their  
22          mission without disruption. Therefore, the FEA  
23          respectfully requests that the Commission approve it.  
24          Thank you.

25                 **CHAIRMAN BRISÉ:** Thank you. You are truly a

1 -- military precision. All right. Right on the dot.

2 All right. Mr. McGlothlin.

3 **MR. McGLOTHLIN:** Before you --

4 **MR. HENDRIX:** Mr. Chairman, before this part  
5 of the proceedings go ahead, I'd like to request that,  
6 that all the parties on this side try to abide by the  
7 agreed time arrangements. Last time I wound up with one  
8 minute rather than the three or four, whatever it was  
9 supposed to be. And I'd like to beg your indulgence  
10 that if they run over time, to remind them. Thank you.

11 **CHAIRMAN BRISÉ:** Okay. Well, I don't know  
12 what time you all have agreed. I will, I will remind  
13 folks when we get to ten so that they're aware. And  
14 then if it helps, when we get to five, if it helps.

15 Okay. Mr. McGlothlin.

16 **MR. McGLOTHLIN:** Good morning, Commissioners.  
17 Joe McGlothlin with the Office of Public Counsel.

18 I want to begin by providing a bit of  
19 perspective on the nature of the August 15th proposal  
20 that is the subject of today's hearing. Our witness,  
21 Donna Ramas, will tell you that if the Commission were  
22 to approve 100% of FPL's test year O&M with no  
23 adjustments and apply the 10.7% return on equity that is  
24 a part of this package to the entire test year rate base  
25 sought by FP&L, again, with no adjustments, the increase

1 in base rates on January 1st, 2013, would be  
2 \$362 million. The August 15th document provides for a  
3 base rate adjustment of \$378 million. So in addition to  
4 the other aspects of the package that I'm going to talk  
5 about, ask yourself how likely would it be for FPL to  
6 prevail on 100% of the dozens of challenges to its  
7 requested test year rate base and test year expense  
8 levels?

9 The signatories asked you to declare the  
10 August 15th package to be in the public interest. That  
11 is a conclusion that must be based upon the application  
12 of a standard. So that gives rise to this question:  
13 What criterion should you apply to that request? And if  
14 you look at the first page of the handout, you answered  
15 this question in the order approving the 2005 FPL  
16 settlement when you said the rates would be fair, just,  
17 and reasonable. And that's perhaps stating the obvious.  
18 It makes sense. How could you find that unfair, unjust,  
19 and unreasonable rates could possibly be in the public  
20 interest?

21 So putting aside the legal issues that OPC has  
22 raised prior, earlier in the case, we believe this is  
23 the litmus test that you must apply to the August 15th  
24 proposal. So let's do so. And the first thing that we  
25 see when we look at the proposal is a 10.7% return on

1 equity coupled with a 59.62 equity ratio that is  
2 implicitly part of the proposal.

3 The signatories ask you to compare the 10.7%  
4 return on equity with decisions in other jurisdictions.  
5 Our witness Kevin O'Donnell has two reactions to that.  
6 First he says if you compare the 10.7 to other  
7 jurisdictions, then you should look at the most recent  
8 ones. In Gulf, decided in early 2012, you compared your  
9 determination only to decisions made in 2011. That's  
10 shown in the next page of your handout.

11 Secondly, Mr. O'Donnell says, reminds you that  
12 as the equity ratio increases, the investment risk  
13 decreases and the return on equity required by investors  
14 also decreases. So when you compare, take equity ratio  
15 into account.

16 The next slides show two schedules from  
17 Mr. O'Donnell's exhibits. Those exhibits show 2012  
18 decisions on return on equity and equity ratio. He will  
19 testify that the 10.7% of return on equity of this  
20 proposed settlement would be the highest return on  
21 equity of any decision in 2012. Further, the 59.62%  
22 equity ratio would be the highest equity ratio of any  
23 decided in 2012. And when you couple those together in  
24 terms of their impacts on revenue requirements, it's a  
25 small wonder that he regards this as a windfall for

1 investors.

2 FIPUG's witness Mr. Pollock will tell you that  
3 he doesn't dispute that 10.7% is higher than average,  
4 but he says that's just one provision, you have to look  
5 at the whole deal. So that raises this question, are  
6 the provisions that provide benefits to customers that  
7 would compensate for an excessively high return on  
8 equity and an excessively high equity ratio?

9 How about the amortization of \$209 million of  
10 fossil dismantlement reserve? Our witness on that  
11 subject is Jack Pous. He will tell you that the  
12 proposal turns the objective of capital cost recovery on  
13 its head. It unfairly enriches FPL at the expense of  
14 customers.

15 Why? First, he will tell you that the proper  
16 objective of the capital cost accounting is the matching  
17 principle, which serves the goal of intergenerational  
18 equity. Instead, in this instance the explicit purpose  
19 of the amortization is to set up a purse that would  
20 enhance FPL's earnings. Mr. Pous will tell you that the  
21 proper method is to perform a detailed study and base  
22 your decision on sound information. Instead, here their  
23 signatories would require an absence of sound  
24 information by postponing studies until after the end of  
25 the four-year term.

1           Mr. Pous will tell you that the objective of  
2 capital cost recovery is best accomplished when the  
3 amortization is reflected in test year revenue  
4 requirements so that base rates are reduced at the same  
5 time the utility applies the amortization that enhances  
6 its earnings.

7           By contrast, here the proposal is structured  
8 in a way that is designed to ensure that the  
9 amortization never appears in a base rate test year and  
10 never serves to reduce rates to the benefit of  
11 customers. So this provision is skewed. It is  
12 one-sidedly in the interest of FPL at the expense of  
13 ratepayers and would lead to unfair, unjust, and  
14 unreasonable rates. There's no offsetting benefits to  
15 ratepayers here that would justify a concession in the  
16 form of 10.7% return on equity.

17           What about the generation base rate  
18 adjustments? Our witness on that subject is Donna  
19 Ramas. She will point out that two of those adjustments  
20 in 2014 and 2016 fall outside the projected test year.  
21 She will also remind you that the revenue requirements  
22 of the plants are overstated because they, first of all,  
23 they use the 10.7% return on equity; and secondly, FPL  
24 applies to that an incremental capital structure that  
25 includes only debt and equity. The impact of the

1 capital structure is to increase the revenue  
2 requirements of those plants by \$50 million per plant  
3 per year. That's one of many substantive issues that  
4 are resolved in FPL's favor within the August 15th  
5 document.

6 She will tell you that the proper base rate  
7 proceeding philosophy and methodology involves this:  
8 Overall costs, revenues, and investments vary over time,  
9 but rates remain unchanged as long as the return on  
10 equity remains within the fair range of reasonableness  
11 established by the Commission. The burden is on the  
12 utility to demonstrate the necessity of the rate  
13 increase.

14 By contrast, the GBRA is a form of what we  
15 call piecemeal ratemaking. Rates and bills would go up  
16 by the full amount of a single cost even if then current  
17 rates would produce earnings that could soak up all or  
18 part of the revenue requirements of the plant and still  
19 produce a fair return. With the GBRA, the objective of  
20 keeping rates unchanged and customers' bills low yields,  
21 it gives way to the utility's desire to protect its  
22 earnings. The GBRA is another one-sided aspect of this  
23 package. It is skewed to favor the utility at the  
24 expense of customers.

25 As a matter of fact, the Commission soundly

1 rejected FPL's proposal to include a GBRA in its last  
2 rate case, and I've included just one paragraph of a  
3 lengthy analysis from that order in which you reasoned  
4 through and concluded it was a bad idea. So there are  
5 no offsetting benefits to customers that would justify  
6 an excessive 10.7% return on equity in the GBRA.

7 What about the expand disincentive mechanism  
8 which FPL calls asset optimization? There's a lot I  
9 wish I could talk about, but because of time limitations  
10 I'll just mention a couple of things.

11 First of all, FPL wants to expand the limited  
12 proceeding to include power purchases. FPL audaciously  
13 proposes to claim an incentive payment when it purchases  
14 power at a price lower than its cost to generate. The  
15 principle of economic dispatch, which is the use of the  
16 most economical sources to satisfy demand, is a  
17 fundamental part of FPL's obligation to serve at the  
18 lowest reasonable cost. That same rationale that  
19 underlies the manner in which it dispatches its own  
20 units should extend to opportunities to purchase power  
21 rather than generate it when power is available at, at  
22 costs lower than the cost of generation. Had the  
23 purchased power feature been part of the original  
24 limited incentive program in 2001, customers by now  
25 would have paid \$46 million more in incentive payments

1 to FP&L.

2           Secondly, this expanded program, open-ended as  
3 it is, gives the potential for unintended consequences.  
4 The proposed expansion could lead to a perverse  
5 incentive to pursue high margin opportunities in ways  
6 that would place reliable and economical service to  
7 retail customers at risk. It would be extremely  
8 difficult to police those kinds of transactions by  
9 analyzing complex transactions --

10           **CHAIRMAN BRISÉ:** We are at the ten-minute  
11 mark. Just letting you know.

12           **MR. McGLOTHLIN:** Further, the incremental cost  
13 of asset optimization that FPL would recover under this  
14 expansion are undefined and would not be subject to  
15 cost-benefit analyses. So we contend that this also is  
16 skewed in FPL's favor. There are no offsetting benefits  
17 here that would warrant an excessive 10.7% return on  
18 equity, a 59% equity ratio.

19           Is there anything else in the package? What  
20 about rate stability? That's an illusory claim. The  
21 August 15th document guarantees base rate increases will  
22 incur in January 2013, June 2013, 2014, and 2016 during  
23 its four-year term. Talk about rate certainty, there  
24 are certain -- it is certain that rates will go up  
25 during that time frame.

1           In addition, FPL will be able to come in for  
2 an increase if its return on equity falls below 9.7%,  
3 which, by the way, is above the midrange of the ROEs  
4 advocated by OPC and South Florida Hospital and the  
5 Federal Executive Agencies. Again, that feature is  
6 one-sided in favor of FP&L.

7           As to administrative efficiency, we contend  
8 that the cost of rate cases pales when you consider the  
9 costs associated with the prospect of the diminished  
10 frequency and intensity of scrutiny. Adjustments  
11 achieved through challenges to the utility overreaching  
12 have provided a, a strong return on customers'  
13 investment.

14           In conclusion, the August 15th package would  
15 not produce fair, just, and reasonable rates. The  
16 principal factor behind it is not listed in the order.  
17 FPL has induced three Intervenors, comprising a relative  
18 smidgen of customers, to sign on by offering to reduce  
19 their classes' revenue responsibility by about  
20 \$50 million. That \$50 million would not be absorbed by  
21 FP&L but would be shifted to other customers. It makes  
22 me think of what you may have heard of also, OPM,  
23 spending other people's money. There's nothing in this  
24 provision to warrant the extreme return on equity, the  
25 extreme equity ratio, and the other egregious and

1 utility favoring terms.

2 The Commission should find that approving the  
3 August 15th document would not be in the public interest  
4 and deny the joint motion. Thank you.

5 **CHAIRMAN BRISÉ:** Thank you. Seven and a half  
6 minutes left.

7 **MR. WRIGHT:** Thank you, Mr. Chairman. Good  
8 morning, Commissioners, Mr. Chairman, parties. And on  
9 behalf of the Florida Retail Federation and its 8,000  
10 plus members, more than 3,000 of whom take service from  
11 Florida Power & Light Company, we thank you for the  
12 opportunity to address you. I'll be brief, not only  
13 because I have to.

14 First, I agree completely with comments made  
15 by Mr. McGlothlin on behalf of the citizens of the State  
16 of Florida, including the 9 million or so individuals,  
17 persons who take electric service from FPL, and the half  
18 million or so commercial and industrial customers who  
19 likewise receive their electric service from FPL.

20 As we said at the outset of the hearing on  
21 FPL's March petition, this case is about FPL's earnings.  
22 It was then and it is now. The evidence of record in  
23 this docket shows that FPL, with no base rate increase  
24 at all, will be able to provide safe and reliable  
25 service in the 2013 test year, while recovering all of

1 its reasonable and prudent costs and still earning more  
2 than \$1.1 billion in NOI and a healthy return on equity.

3 FPL's proposed increases requested in its  
4 March petition and the proposed increases that would be  
5 visited upon its customers if this settlement among four  
6 of the nine parties who remain standing here today were  
7 to be approved are contrary to the public interest, and,  
8 as Mr. McGlothlin noted correctly, are contrary to  
9 public interest and would result in unfair, unjust, and  
10 unreasonable rates for FPL's service.

11 What you've got here is a proposed partial  
12 settlement agreement executed by FPL and three consumer  
13 parties, who together might represent several hundred  
14 customer accounts, as opposed to its 4.6 million  
15 residential customers represented -- 9 million people,  
16 8.9 million people represented by the Public Counsel and  
17 thousands of retail customers who oppose the settlement,  
18 as well as the Village of Pinecrest and the two  
19 individuals.

20 What you've got here is a case where this  
21 proposed settlement would visit two future base rate  
22 increases on FPL's customers without a shred of  
23 compliance with your test year notification rules and  
24 without a shred of compliance with your minimum filing  
25 requirement rules, as well as two other proposals that

1 are not addressed in any test year notification or MFRs.  
2 Approval of this partial settlement is substantively  
3 contrary to the public interest, as I've said, as we've  
4 said.

5 This case is about FPL's earnings. FPL does  
6 not need any base rate increase to fulfill its duty of  
7 providing safe and reliable service. And unnecessarily  
8 taking several hundred million dollars a year out of the  
9 wallets and purses of Floridians to bolster NextEra  
10 Energy's earnings will only further weaken the Florida  
11 economy. The only certainty that the settlement  
12 provides, if approved, is that customers would pay too  
13 much for the benefit of NextEra Energy's earnings.

14 Regarding Mr. Litchfield's repetitive  
15 observation that FPL's bills are the lowest in the  
16 state, our position is simply that FPL's bills can and  
17 should be lower than they are, consistent with its duty  
18 to provide safe and reliable service at the lowest  
19 possible cost.

20 And regarding Mr. Wiseman's reference to the  
21 hospitals' costs of payrolls and providing patient care,  
22 if the rates were lower, as advocated by Public Counsel,  
23 by the citizens, and the Retail Federation, the  
24 hospitals would have more money for patient care and  
25 more money for wages and salaries as advocated by the

1 Public Counsel and the Retail Federation.

2 We urge you to deny this legally  
3 inappropriate, financially overreaching settlement  
4 that's advocated by FPL and a tiny fraction of its  
5 customers inconsistently, by the way, with the positions  
6 they took based on evidence with regard to FPL's  
7 original filing. Thank you for your consideration.

8 **CHAIRMAN BRISÉ:** All right. There's about  
9 three minutes left.

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

11 First, this settlement agreement in its  
12 entirety actually shifts the burden of rates to the  
13 residential rate class off of the commercial and  
14 industrial users group. If you look at the agreement in  
15 its entirety, the residential customers, who are the  
16 majority, the 99.99% of FPL's customers, are going to  
17 bear the higher rates in this case, the higher base  
18 rates.

19 The second point I want to make is, as Public  
20 Counsel has handed out various slides in their  
21 presentation, the standard I would request that you  
22 include fair, just, and reasonable, as you have in the  
23 past consistently, as to whether the settlement  
24 agreement is in the public interest. You have to use  
25 the terms fair, just, and reasonable. That's a

1 precedent, a precedent this Commission itself has relied  
2 on and established.

3 The second point is the Commission has already  
4 said that the GBRAs are not in the public interest in  
5 past cases. That's a legal precedent which you cannot  
6 ignore. It's your own precedent. I would ask that you  
7 apply it in this case, since Mr. Litchfield said that  
8 the GBRAs are a significant part of this agreement.

9 The last point I want to make, which I've been  
10 stressing all along here, is the, my due process rights  
11 as well as other citizens in this state who are  
12 ratepayers of FPL, our due process rights are being  
13 violated here. We didn't have an opportunity to engage  
14 many of the -- or all of these aspects in this rate case  
15 such as the late fees which are proposed to go up 20%.  
16 And the citizens of this state see this Public Service  
17 Commission as a government agency, which it is. And if  
18 you would approve this settlement agreement, you're  
19 going to undercut and undermine public confidence, which  
20 will irreparably harm the public's interests going  
21 forward. Thank you very much.

22 **CHAIRMAN BRISÉ:** All right. There's a minute  
23 and a half left.

24 **MR. GARNER:** Mr. Chairman, I would ask that  
25 you not hold the conduct of the participants in the

1 proceeding against our various clients. May, may Mr. --  
2 I'm sorry, I forgot your name -- Mr. Hendricks and I  
3 have the amount of time we need to, to give our  
4 openings? Mine's very brief and I'm sure his is too,  
5 but I've already used up the time, so, I mean -- I mean,  
6 it's -- I'm not -- I don't know what he has, but mine's  
7 a very insignificant amount of time. And I, I -- it  
8 would be unfair for our clients to not have the benefit  
9 of, of their arguments heard.

10 **CHAIRMAN BRISÉ:** You know, the challenge with  
11 that is that I think we were pretty clear at the  
12 Prehearing Conference that the parties were supposed to  
13 get, get together amongst themselves and figure out how  
14 to use that, that 20-minute block.

15 **MR. GARNER:** I understand. In the grand  
16 scheme of things, it's a very small amount of time and  
17 I'd just request that we be allowed that opportunity.

18 **CHAIRMAN BRISÉ:** Make your statement, and I'll  
19 allow Mr. Hendricks to make his statement, but make it  
20 brief.

21 **MR. GARNER:** Thank you. I will.

22 FPL's opening statement indicates a belief on  
23 its part that they are entitled to set rates by  
24 negotiation. They, they do not have that right. The  
25 law establishes a framework for rate setting which does

1 not expressly include negotiated ratemaking. There's a  
2 defined process. Settlements, including  
3 out-of-test-year plant, are underpinned by stipulations  
4 to key facts which otherwise have no competent  
5 evidentiary support. That is the cost of projects, the  
6 appropriate capital structure, and return on equity.  
7 Clearly significant portions of the customer community  
8 do not stipulate the kind of evidence necessary to  
9 properly establish rates, is not present in the record  
10 for out-of-test-year plant, and for that reason, among  
11 others already stated, the Commission should reject the  
12 settlement proposal.

13 **CHAIRMAN BRISÉ:** Thank you.

14 Mr. Hendricks.

15 **MR. HENDRIX:** I will be brief. The proposed  
16 settlement package has some desirable features, but also  
17 some critical flaws that prevent it from being in the  
18 public interest. I will summarize the key problems with  
19 the GBRA and incentive mechanism proposals.

20 The GBRA provision short circuits the expected  
21 rate case scrutiny for over \$3 billion of new  
22 generation. It enshrines a costly and tax inefficient  
23 equity ratio that substantially exceeds the  
24 determination of need value, it could block ratepayers  
25 from receiving the benefit of corporate income tax

1 reductions, and it could cost ratepayers over  
2 \$500 million in additional costs by eliminating the  
3 typical rate case regulatory lag.

4 The incentive mechanism does address the  
5 opportunity to make the most efficient use of valuable  
6 generation, fuel supply, power and transmission  
7 resources; however, this specific incentive proposal  
8 defines threshold values, allocation percentages, scope  
9 of activities, and contracting outsourcing provisions  
10 that are overly generous to the utility and have the  
11 potential to create windfall profits and blow back.  
12 Please consider adopting some terms from the proposed  
13 settlement in the original FPL proposal, but modify them  
14 to achieve a more balanced outcome.

15 The new generation that FPL is building should  
16 be a very good investment for ratepayers, but the  
17 proposed GBRA financing and incentive mechanism would  
18 destroy much of that value. Thank you. Thank you for  
19 allowing me to have the time.

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

21 All right. I think staff wanted to move some  
22 exhibits.

23 **MR. YOUNG:** Yes, sir. At this time,  
24 Mr. Chairman, staff asks that you mark and move the  
25 Comprehensive Exhibit List, which is Exhibit number,

1 which is identified as Exhibit Number 649 into the  
2 record.

3 **CHAIRMAN BRISÉ:** All right. We'll mark it as  
4 649. And we will move it, recognizing Mr. Saporito's  
5 objection.

6 **MR. YOUNG:** Yes.

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

8 (Exhibit 649 marked for identification and  
9 admitted into the record.)

10 Before we get into opening statements, I mean,  
11 I'm sorry, testimony -- did you have something else,  
12 Mr. Young?

13 **MR. YOUNG:** Yes, sir. All of these exhibits  
14 on the list, except staff's composite exhibit, should be  
15 numbered as indicated and moved into the record during  
16 the sponsoring witness testimony. Also, Mr. Chairman,  
17 at this time staff would like to move into the record  
18 staff's composite exhibit, noting Mr. Saporito's  
19 objection, containing Exhibits Numbers 650 through  
20 666 into the record. And, again, noting Mr. Saporito's  
21 objection.

22 **CHAIRMAN BRISÉ:** All right. We will move into  
23 the record Exhibit Number 650 to 666, recognizing  
24 Mr. Saporito's standing objection. All right. So let's  
25 move -- those are moved into the record.

1 (Exhibits 650 through 666 marked for  
2 identification and admitted into the record.)

3 Anything else, Mr. Young?

4 **MR. YOUNG:** Not, not, not that staff is aware  
5 of, sir.

6 **CHAIRMAN BRISÉ:** All right. Now that we're  
7 done with opening statements and we're about to move  
8 into testimony, we're going to take a five-minute break  
9 at this time, and then we'll come back and begin  
10 testimony. Okay?

11 (Recess taken.)

12 We're going to go ahead and reconvene at this  
13 time. We're going to ask that all the witnesses that  
14 are present at this time, if you would all rise so that  
15 we can swear you in.

16 (Witnesses collectively sworn.)

17 All right. Thank you. I just want to remind  
18 everyone about the friendly cross issue. All right. So  
19 I certainly appreciate you respecting that.

20 Mr. Litchfield.

21 **MR. LITCHFIELD:** Yes. And FPL's witnesses are  
22 very happy that Mr. Moyle is not permitted to cross them  
23 today.

24 (Laughter.)

25 Mr. Chairman, Commissioners, FPL calls

1 Mr. Deason as its first witness this morning.

2 Whereupon,

3 **TERRY DEASON**

4 was called as a witness on behalf of Florida Power &  
5 Light and, having been duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. LITCHFIELD:**

8 **Q** Would you please state your name and business  
9 address for the record, please, sir.

10 **A** My name is Terry Deason. My business address  
11 is 301 South Bronough Street, Suite 200, Tallahassee,  
12 Florida.

13 **Q** And by whom are you employed and in what  
14 capacity?

15 **A** I'm employed by the firm Radey, Thomas, Yon &  
16 Clark as a special consultant.

17 **Q** And have you prepared and caused to be filed  
18 ten pages of prefiled direct testimony in this  
19 proceeding on October 12th, 2012?

20 **A** Yes.

21 **Q** Do you have any changes or revisions to your  
22 prefiled direct testimony?

23 **A** No.

24 **Q** Therefore, if I were to ask you the same  
25 questions contained in your direct testimony today,

1 would your answers be the same?

2           **A**     Yes.

3                   **MR. LITCHFIELD:** Mr. Chairman, I would ask  
4 that Mr. Deason's direct testimony be inserted into the  
5 record as though read.

6                   **CHAIRMAN BRISÉ:** All right. At this time we  
7 will insert Mr. Deason's testimony into the record as  
8 though read, seeing no objections, other than a standing  
9 objection.

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1 **Q. Please state your name and business address.**

2 A. My name is Terry Deason. My business address is 301 S. Bronough Street,  
3 Suite 200, Tallahassee, Florida 32301.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the law firm Radey Thomas Yon and Clark as a Special  
6 Consultant specializing in the fields of energy, telecommunications, water and  
7 wastewater, and public utilities generally.

8 **Q. Have you filed testimony previously in this proceeding?**

9 A. Yes.

10 **Q. Are you sponsoring an exhibit with this testimony?**

11 A. No.

12 **Q. For whom are you appearing as a witness?**

13 A. I am appearing as a witness for Florida Power & Light Company (“FPL” or  
14 the “Company”).

15 **Q. Have you reviewed the Stipulation and Settlement filed in this docket on  
16 August 15, 2012 (the “Proposed Settlement Agreement”)?**

17 A. Yes, I have. The Proposed Settlement Agreement was entered into by FPL,  
18 the Florida Industrial Power Users Group (“FIPUG”), the South Florida  
19 Hospital and Healthcare Association (“SFHHA”) and the Federal Executive  
20 Agencies (“FEA”).

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

22 A. The purpose of my testimony is to provide a contextual background for the  
23 Florida Public Service Commission’s (“Commission”) consideration of the

1 Proposed Settlement Agreement.

2 **Q. What has been the standard applied by the Commission in determining**  
3 **whether a proposed settlement agreement should be approved?**

4 A. The Commission has generally applied a public interest standard.

5 **Q. Does the Commission’s enabling statute establish how this standard is to**  
6 **be applied?**

7 A. No. Chapter 366, Florida Statutes, declares that the regulation of public  
8 utilities is in the public interest and further establishes that its provisions shall  
9 be liberally construed. The determination of what constitutes the public  
10 interest is left to the discretion of the Commission. However, when a  
11 settlement addresses rate levels and rate structures, the Commission has taken  
12 guidance from Section 366.041, Florida Statutes, that the resulting rates  
13 should be just, reasonable, and compensatory. Like so much of the  
14 Commission’s regulatory authority, a determination of reasonableness is an  
15 essential requirement. In its Order No. PSC-05-0902-S-EI, approving a  
16 settlement in FPL’s 2005 rate case, the Commission stated:

17           Upon review and consideration, we find that the Stipulation and  
18           Settlement provides a reasonable resolution of the issues in this  
19           proceeding with respect to FPL’s rates and charges and its  
20           depreciation rates and capital recovery schedules... In conclusion,  
21           we find the Stipulation and Settlement establishes rates that are  
22           fair, just, and reasonable and that approval of the Stipulation and  
23           Settlement is in the public interest.

1 **Q. How much discretion does the Commission have in determining whether**  
2 **a proposed settlement is reasonable?**

3 A. The Commission's discretion, while not unlimited, is extensive and broad.  
4 The Commission has historically exercised abundant discretion to approve  
5 many different and varied proposed settlements that it deemed to be in the  
6 public interest and to result in just, reasonable, and compensatory rates.

7 **Q. What has been the Commission's policy with regard to encouraging**  
8 **settlement?**

9 A. The Commission has had a long standing policy of encouraging and perhaps  
10 even favoring public utilities and intervenors to reach proposed settlements  
11 and to afford them deference. In the same Order No. PSC-05-0902-S-EI that I  
12 earlier cited, the Commission stated: "Nonetheless, this Commission has a  
13 long history of encouraging settlements, giving great weight and deference to  
14 settlement, and enforcing them in the spirit in which they were reached by the  
15 parties."

16 **Q. Why has this been the Commission's long standing policy?**

17 A. The Commission has long recognized that a proposed settlement is an  
18 effective regulatory tool to fulfill its responsibility to regulate in the public  
19 interest and to set rates that are just, reasonable, and compensatory. The  
20 Commission has further recognized that proposed settlements can encourage  
21 innovative solutions to regulatory issues that could be difficult to achieve  
22 within the confines of traditional litigated rate cases. In the Commission's  
23 experience, innovative solutions that have their origin in settlements can later

1           become part of the generally accepted “toolbox” of mechanisms that the  
2           Commission can use to better regulate in the public interest. Thus, settlements  
3           can provide a proving ground for ratemaking innovation.

4   **Q.    Has the Commission’s policy to encourage settlements and show them**  
5   **deference been beneficial?**

6   A.    Yes, it most definitely has. This policy has benefited all stakeholders, most  
7           notably the customers of public utilities. These benefits have been derived by  
8           a regulatory process in Florida that provides ample information upon which  
9           parties can negotiate from positions of strength and engage in substantive  
10          negotiations to achieve these beneficial results. These benefits have also been  
11          achieved by the parties’ hard work, innovative approaches to solve complex  
12          regulatory challenges, and a willingness to find balance.

13 **Q.    Has the Commission generally reacted favorably to proposed settlements**  
14 **that are presented for its approval?**

15 A.    Yes. The vast majority of proposed settlements have been approved by the  
16          Commission. This is not surprising, given Florida’s policy of encouraging  
17          settlements and giving them deference and the efforts of utilities and  
18          intervenors to engage in meaningful negotiations. I know of no settlement  
19          that has been approved that was subsequently overturned on appeal.

20 **Q.    Has there been a standard set of criteria by which the Commission**  
21 **decides whether to approve a proposed settlement?**

22 A.    There is no standard list of reasons or criteria that is used by the Commission  
23          in making its determination as to whether a proposed settlement is in the

1 public interest. Each proposed settlement should be evaluated on its  
2 individual merits, taking into account all of the facts and circumstances at the  
3 time, which is what the Commission has historically done. However, over the  
4 years, the Commission has expressly stated reasons why it accepted particular  
5 proposed settlements.

6 **Q. What are some of these reasons?**

7 A. At various times when considering different proposed settlements, the  
8 Commission has given the following reasons for approving proposed  
9 settlements:

- 10 • The overall reasonableness of the resulting rates
- 11 • Rate stability and predictability
- 12 • The resulting financial strength of the public utility and its ability (and  
13 encouragement) to make needed capital investments
- 14 • The ability of the public utility to maintain or improve its quality of  
15 service and overall reliability
- 16 • The existence of safeguards for the protection of customers and investors
- 17 • The amount of information provided to make a reasoned decision
- 18 • Regulatory efficiency and the minimization of regulatory costs and  
19 burdens
- 20 • The minimization of risk and uncertainty

21 **Q. How would you assess the Proposed Settlement Agreement with respect to**  
22 **these reasons for approval?**

1 A. While it is the Commission's role to weigh all of these matters and make a  
2 final decision on whether the proposed settlement is in the public interest, the  
3 Proposed Settlement Agreement certainly appears to be consistent with and  
4 offer benefits in the areas listed above. As explained in more detail by  
5 witnesses Barrett, Deaton, Dewhurst, and Forrest, the Proposed Settlement  
6 Agreement offers the benefits of reasonable rates with stability and  
7 predictability that also allows FPL to provide high quality, reliable service  
8 with the necessary financial integrity to continue to make investments for the  
9 benefit of its customers. Based on my review of the Proposed Settlement  
10 Agreement and the circumstances that have brought it to this point, I believe it  
11 satisfactorily addresses all of the reasons listed above and, in at least one  
12 notable aspect, surpasses what the Commission has seen in previous proposed  
13 settlements that it has approved.

14 **Q. What is the notable aspect to which you refer?**

15 A. It is the fact that the Commission has taken the previously unprecedented step  
16 of conducting discovery and holding a full evidentiary hearing on the  
17 Proposed Settlement Agreement. Previously the Commission has set  
18 proposed settlements for consideration at an Agenda Conference and allowed  
19 parties to engage in oral argument. In fact, the Florida Supreme Court has  
20 previously determined that this more limited process was sufficient to protect  
21 parties' due process rights. See *SFHHA v. Jaber et al.*, 887 So.2d 1210 (Fla.  
22 2004). Therefore, the more extensive process being followed now should give  
23 the Commission even greater assurances that it has all the necessary

1 information to determine whether the Proposed Settlement Agreement is in  
2 the public interest.

3 **Q. What levels of information did the signatories to the Proposed Settlement**  
4 **Agreement have?**

5 A. The signatories to the Proposed Settlement Agreement had the benefit of a  
6 wealth of information which enabled them to negotiate from a position of  
7 knowledge and strength. The signatories had the benefit of the Minimum  
8 Filing Requirements, direct testimony from FPL and intervenor witnesses,  
9 rebuttal testimony from FPL witnesses, and a vast amount of additional  
10 information in the form of depositions, interrogatory responses, and document  
11 productions. Not all settlement agreements that have been approved by the  
12 Commission have had this much information available to the signatories as  
13 they engaged in their negotiations. The fact that this level of information was  
14 available should give an extra degree of comfort that the Proposed Settlement  
15 Agreement was carefully and thoughtfully negotiated to give due  
16 consideration to all relevant facts and opinions necessary to reach a balanced  
17 outcome. Likewise, the commission has the benefit of the expansive record  
18 developed in the technical hearings and the additional evidentiary record in  
19 the instant proceeding on the Proposed Settlement Agreement.

20 **Q. Are you aware that the Proposed Settlement Agreement does not have the**  
21 **Office of Public Counsel (“OPC”) as a signatory?**

22 A. Yes, I am aware of that and realize that the OPC is openly opposed to the  
23 Proposed Settlement Agreement.

1 **Q. Does this change your conclusion that the Proposed Settlement**  
2 **Agreement satisfactorily addresses the reasons given by the Commission**  
3 **in approving previous proposed settlements?**

4 A. No, it does not.

5 **Q. Please explain.**

6 A. A determination that a proposed settlement is (or is not) reasonable and in the  
7 public interest rests solely with the Commission. While in my experience the  
8 Commission has always recognized OPC's role, and has historically found  
9 comfort in the OPC being a signatory to an agreement, the OPC's position is  
10 not and should not be dispositive of the final outcome. The Commission has a  
11 statutory responsibility to make an independent determination of what  
12 constitutes the public interest. Essentially, all parties submit evidence and  
13 take positions that they are asking the Commission to find to be in the public  
14 interest, but it is up to the Commission to make that determination. The fact  
15 that previous settlement agreements have included the OPC as a signatory  
16 should not become a prerequisite or standard upon which all subsequent  
17 proposed settlements are considered. Parties, including OPC, must remain  
18 free to determine when and whether to negotiate a resolution that they believe  
19 is in the public interest and to submit that resolution for the Commission's  
20 consideration.

21 **Q. Are you saying that the Commission should not be concerned with OPC's**  
22 **position on the Proposed Settlement Agreement?**

1 A. No. To the contrary, the Commission should carefully consider OPC's  
2 evidence in support of its belief that the Proposed Settlement Agreement is not  
3 in the public interest. However, the OPC has the corresponding responsibility  
4 to support its views with evidence for the Commission's consideration.  
5 Simply being opposed is not sufficient.

6 **Q. How should the Commission's decision on approval of the Proposed**  
7 **Settlement Agreement be made?**

8 A. Any final determination, whether it be approval or denial, should be based  
9 upon reasoned consideration of the particular merits of the agreement, taking  
10 into account the facts and circumstances of the agreement. The Commission  
11 should use the reasons I previously identified and any other reasons the  
12 Commission believes to be relevant to its final determination. These reasons  
13 should be clearly communicated at the Agenda Conference and in its final  
14 order. I would strongly encourage the Commission not to deny the Proposed  
15 Settlement Agreement simply because OPC is not a signatory. Doing so  
16 could have significant adverse consequences because it could substantially  
17 chill the prospects for future proposed settlements being brought to the  
18 Commission and give the OPC de facto veto power that was never envisioned.  
19 The best negotiated settlements are those where the public utility and the  
20 intervenors all willingly negotiate from a position of knowledge and strength  
21 with a willingness to engage in compromise to achieve a beneficial balance.  
22 A negotiation in which one intervenor has de facto veto power would not be  
23 conducive to or consistent with this approach.

1 **Q. Should the Proposed Settlement Agreement be rejected if the**  
2 **Commission has concerns with any one provision of the settlement?**

3 A. No. Based upon my experience, rarely if ever are a Commission and all of the  
4 individual commissioners totally happy with all of the provisions contained in  
5 a proposed settlement. The Commission should understand that a settlement  
6 is a carefully balanced compromise and that it must be evaluated as a whole.  
7 If the Proposed Settlement Agreement is determined to be reasonable and  
8 consistent with the public interest *on the whole*, it should be approved. If it is  
9 determined to be unreasonable and inconsistent with the public interest *on the*  
10 *whole*, it should be rejected.

11 **Q. If the Commission were to approve the Proposed Settlement Agreement,**  
12 **would it lose its ability to actively regulate FPL to ensure that rates**  
13 **remain just and reasonable?**

14 A. No. While the Proposed Settlement Agreement binds the signatories, the  
15 Commission preserves its statutory right and duty to insure that FPL's rates  
16 remain just and reasonable. If circumstances change to the extent that the  
17 Commission sees fit to exercise its jurisdiction beyond the confines of the  
18 Proposed Settlement Agreement, it may do so. However, just as is the case  
19 when the Commission approves a settlement, it should show it great deference  
20 and enforce it in the spirit in which it was reached.

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

22 A. Yes, it does.

1 **BY MR. LITCHFIELD:**

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

4 A Yes.

5 Q Would you please offer that at this time?

6 A Yes. Commissioners, the Commission has a long  
7 history of encouraging settlements for the benefit of  
8 utilities and the customers they serve. The Commission  
9 has applied the public interest standard when reviewing  
10 settlements and has exercised its abundant discretion to  
11 approve many different and varied proposed settlements  
12 that it deemed to be in the public interest.

13 The Commission has also consistently given  
14 great weight and deference to settlements and has  
15 enforced them in the spirit in which they were reached.  
16 As a result, settlements have become an effective  
17 regulatory tool that fosters innovative solutions to  
18 regulatory issues that would be difficult to achieve  
19 within the confines of a traditional fully litigated  
20 rate case. Thus, settlements have become a proving  
21 ground for ratemaking innovation.

22 The Commission has considered a number of  
23 factors when determining whether a proposed settlement  
24 is in the public interest. Among them are the overall  
25 reasonableness of the resulting rates; rate stability

1 and predictability; the resulting financial strength of  
2 the public utility and its ability to make needed  
3 capital investments; the ability of the public utility  
4 to maintain or improve its quality of service and  
5 overall reliability; the existence of safeguards for the  
6 protection of customers and investors; the amount of  
7 information provided to make a reasoned decision;  
8 regulatory efficiency and the minimization of regulatory  
9 costs; and, lastly, the minimization of risk and  
10 uncertainty.

11 As explained in more detail by Witnesses  
12 Barrett, Deaton, Dewhurst, and Forrest, the proposed  
13 settlement agreement offers the benefits of reasonable  
14 rates with stability and predictability that also allow  
15 FPL to provide high quality reliable service with the  
16 necessary financial integrity to continue to make  
17 investments for the benefit of its customers.

18 Based on my review of the proposed settlement  
19 agreement and the circumstances that have brought it to  
20 this point, I believe it satisfactorily addresses all of  
21 the factors I just identified. It also provides a  
22 greater amount of information for the Commission to  
23 judge its reasonableness than other settlements have  
24 afforded in the past.

25 The proposed settlement agreement currently

1 before you is also different in another way. It does  
2 not include the Office of Public Counsel as a signatory.  
3 I would strongly urge the Commission not to forgo a  
4 thorough evaluation of the value of the proposed  
5 settlement simply because OPC is not a signatory. Doing  
6 so would have significant adverse consequences that  
7 could substantially chill the prospects for future  
8 proposed settlements being brought to the Commission and  
9 give the OPC a de facto veto power that was never  
10 envisioned.

11 The best negotiated settlements are those  
12 where the public utility and the Intervenors all  
13 willingly negotiate from a position of knowledge and  
14 strength with a willingness to engage in compromise to  
15 achieve a beneficial balance. A negotiation in which  
16 one Intervenor has de facto veto power would not be  
17 conducive to or consistent with this approach. This  
18 concludes my summary.

19 **MR. LITCHFIELD:** Thank you. And FPL would  
20 tender Mr. Deason for cross-examination.

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

22 Mr. Rehwinkel.

23 **MR. REHWINKEL:** Thank you, Mr. Chairman.

24 **CROSS EXAMINATION**

25 **BY MR. REHWINKEL:**

1 Q It's still morning. Good morning, Mr. Deason.

2 A Good morning.

3 Q Before I get into my prepared cross, I would  
4 like to ask you to do me a favor, and could you read the  
5 statement you made regarding what you would strongly  
6 encourage the Commission not to do because the Public  
7 Counsel is not a signatory?

8 A The condensed version in my summary or what's  
9 contained in my testimony?

10 Q In your summary. Well, let's do it this way.  
11 Can you turn to page 9 of your testimony?

12 A Yes.

13 Q And I would direct you to line 14 and 15.

14 A Okay.

15 Q There I read your testimony to say, I would  
16 strongly encourage the Commission not to deny the  
17 proposed settlement agreement simply because OPC is not  
18 a signatory. Is that right?

19 A That's correct.

20 Q Okay. Would you read to me the corollary that  
21 you stated in your summary, please?

22 A I would certainly urge the Commission not to  
23 forgo a thorough evaluation of the value of the proposed  
24 settlement simply because OPC is not a signatory.

25 Q Okay. Is it your intent that you're saying

1 the same thing in your summary as, as in your testimony?

2 A Yes. The words may not be the same; I think  
3 the meaning is the same.

4 Q Okay. Mr. Deason, did you participate in the  
5 negotiations that led to the August 15th settlement?

6 A No.

7 Q Did you review any drafts of the stipulation  
8 or settlement document?

9 A No.

10 Q Okay. Isn't it true that while you were a  
11 Commissioner the Commission never approved a stipulation  
12 in a case where the Public Counsel was a party and  
13 opposed a settlement?

14 A That is true. It was never presented to the  
15 Commission for the Commission to have made a decision  
16 one way or the other. That, that set of facts never  
17 existed when I was on the Commission.

18 Q Isn't it true that the Public Counsel has a  
19 statutory obligation to represent the customers of FPL?

20 A Yes.

21 Q Isn't it true that he is charged with doing so  
22 in his judgment as to what is in the public interest?

23 A Yes. What is in his judgment as is, as what  
24 constitutes public interest.

25 Q Are you familiar with Section 350.0611, the

1 Public Counsel statute?

2 A Generally, yes.

3 Q Okay. Would you agree that it states in  
4 subsection (1) that among his following specific powers  
5 is to recommend to the Commission or the counties by  
6 petition the commencement of any proceeding or action,  
7 or to appear in the name of the state or its citizens in  
8 any proceeding or action before the Commission or the  
9 counties and urge therein any position which he or she  
10 deems to be in the public interest?

11 A Yes.

12 Q Would you also agree that Mr. Kelly, the  
13 Public Counsel, as an attorney also has a separate  
14 obligation to represent the clients, his clients  
15 independently and zealously?

16 A I guess I don't understand the nature of the  
17 question, why this question is different from the  
18 question you asked previously.

19 Q You would, you would agree that what I read to  
20 you from the statute, if you accept my representation,  
21 that I read it accurately from Section 350.0611(1)?

22 A Yes. Yes.

23 Q That's a statutory definition of his duty?

24 A Yes.

25 Q Okay. Would you also agree that -- well, let

1 me ask it this way. You were on the Commission for 16  
2 years?

3 A Yes.

4 Q You served as Chairman twice?

5 A Yes.

6 Q You served longer as a Commissioner than any  
7 Commissioner in the appointed era?

8 A To date, yes.

9 Q Yes, so far. You're the only two-time  
10 Chairman in that, in the appointed era?

11 A To the best of my knowledge, yes.

12 Q Okay. You're aware of the practice of  
13 attorneys before the Commission. You've presided over  
14 many a tribunal and ruled on many an objection or  
15 pleading from, from an attorney?

16 A Yes.

17 Q And you understand attorneys are regulated by  
18 the Florida Bar?

19 A Yes.

20 Q You also understand that attorneys have a  
21 separate and independent obligation to represent their  
22 clients independently and zealously?

23 A Yes.

24 Q Okay. Mr. Kelly as the Public Counsel is not  
25 obligated to subordinate his professional judgment in

1 order to accommodate the wishes of a utility in his  
2 discharge of his duty and professional responsibility,  
3 is he?

4 **MR. LITCHFIELD:** Object to the  
5 characterization of, of the agreement and of FPL's role.  
6 If he wants to restate the question to be a fair  
7 question, I'm comfortable with it.

8 **MR. MOYLE:** And FIPUG would also just raise --  
9 I don't know if the line is going to continue along the  
10 duties as Public Counsel that it owes to clients, but if  
11 that is, then, you know, I think that's more of a  
12 Florida Bar issue as to the duties owed to clients than  
13 anything relevant, you know, in this proceeding.

14 **CHAIRMAN BRISÉ:** Mr. Rehwinkel.

15 **MR. REHWINKEL:** I didn't refer to any  
16 settlement that Mr., Mr. Litchfield is talking about.  
17 Mr. Deason has answered the question I asked before.

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

19 **BY MR. REHWINKEL:**

20 **Q** Would you like me to restate the question?

21 **A** Yes, please.

22 **Q** Okay. Mr. Kelly is not obligated to  
23 subordinate his professional judgment -- well, let me  
24 start over again. And I'm asking you a general  
25 question.

1           Mr. Kelly is not obligated to subordinate his  
2 professional judgment in order to accommodate the wishes  
3 of a utility in his discharge of his statutory and  
4 professional responsibilities, is he?

5           **A**     I agree, he's under no obligation to do so.  
6 Neither do I think it's within my testimony that I am  
7 suggesting that he should.

8           **Q**     Okay. You worked for the Public Counsel for  
9 several years; correct?

10          **A**     Yes.

11          **Q**     In your experience in that office, if the  
12 Public Counsel, after evaluating a proposed settlement  
13 of a case, concluded that it was not in the customers'  
14 best interest and therefore not worthy of his  
15 participation of support, you would expect him to refuse  
16 to execute the settlement agreement proposed and to  
17 oppose it, would you not?

18          **A**     Speaking from experience, I'm not aware of a  
19 settlement in which I participated as an employee of the  
20 Public Counsel's Office that that did not come to  
21 fruition.

22                   However, having said that, I agree with your  
23 statement that the Public Counsel is free to participate  
24 to the extent that he or she feels is appropriate and to  
25 negotiate to the extent they think is appropriate. And

1 if they cannot reach a settlement, they cannot reach a  
2 settlement.

3 Q Okay. In your experience you have seen the  
4 Public Counsel settle some cases; right?

5 A Yes.

6 Q You've seen the Public Counsel litigate some  
7 cases all the way to hearing; correct?

8 A Yes.

9 Q You've also seen the Public Counsel appeal  
10 Commission decisions that he participated in; correct?

11 A Yes. Now just for clarification, you're  
12 talking about cases generally, just not those confined  
13 to settlements; is that correct?

14 Q Yes, sir.

15 A Yes. The answer to the question is yes.

16 Q You have observed the Public Counsel settle  
17 some cases even after the hearing concluded; correct?

18 A Yes.

19 Q You would also agree with me that not every  
20 case settles; right?

21 A Yes.

22 Q There is no presumption that a major file and  
23 suspend rate case will settle, is there?

24 A There's no presumption that it should settle.  
25 I think there is a presumption that if there is a

1 process initiated to engage in negotiations, that those  
2 should be engaged in in good faith with an attempt to  
3 reach settlement, realizing that settlements are not  
4 always accomplished.

5 Q You cannot point me to a rule or statute or  
6 Commission order that states that there is a presumption  
7 that cases will settle, can you?

8 A No. And I don't believe that there is a  
9 presumption that cases will settle.

10 Q Okay. You would also agree with me, would you  
11 not, that there is no such thing as a right to have a  
12 case that a utility files settle?

13 A I agree there's no such right to have a case  
14 settled.

15 Q Okay. You also would agree, and I think your  
16 testimony supports this, that settlements are encouraged  
17 at the Florida Public Service Commission?

18 A Yes, they are.

19 Q They're also hoped for if they are reachable;  
20 correct?

21 A Well, on many occasions when I was on the  
22 Commission I hoped the settlement would be presented.

23 Q But if the parties cannot agree, the default  
24 and presumptive resolution of a file and suspend rate  
25 case is provided by statute and Commission rule;

1 correct?

2           **A**     Yes.  If a settlement is not reached and is  
3 not presented to the Commission, then the Commission has  
4 a process and procedure in place to provide due process  
5 and make a decision that's in the public interest.

6           **Q**     How many Public Counsels did you work for;  
7 three?

8           **A**     You're testing my memory, Mr. Rehwinkel.

9           **Q**     I'm counting Mr. Shreve as one.

10          **A**     Yes, sir.  I did work for Mr. Shreve.  Yes.

11          **Q**     Mr. Henderson as a interim?

12          **A**     I did work for Mr. Henderson.  Yes.

13          **Q**     Was it Larry Levy?

14          **A**     And I worked for Mr. Levy.

15          **Q**     Was there another one?

16          **A**     Mr. Bilenky may have been in the mix at some  
17 point, Mr. Rehwinkel.

18          **Q**     Okay.  So three or four?

19          **A**     Three or four, yes.

20          **Q**     Okay.  The Public Counsels that you worked for  
21 as a, I believe, chief legislative analyst?

22          **A**     Yes.  At one point I was chief analyst.

23          **Q**     These cases did not settle every time, did  
24 they?  The cases that the office participated in during  
25 that, during your period working for those Public

1 Counsels, not every one of them settled; correct?

2 A No. We went to hearing on numerous occasions.

3 Q Isn't it true that at times the Public  
4 Counsels that you worked for entered into some level of  
5 discussions and were unable to reach agreement and  
6 continued on to hearing at times?

7 A Mr. Rehwinkel, I cannot point to a specific  
8 case, but I feel confident that that is true.

9 Q Is it your testimony that the standard for  
10 evaluating a stipulation is not whether rates resulting  
11 from the stipulation are fair, just, and reasonable?

12 A No. I think it is a consideration and has  
13 been expressed by this Commission previously that the  
14 reasonableness of the rates is a key consideration.

15 Q Would you agree that the Commission has  
16 expressed a view that a stipulation to be approved must  
17 result in rates that are fair, just, and reasonable, and  
18 that if that is the case, then the stipulation can be  
19 found to be in the public interest?

20 A Here's the difficulty I'm having with your  
21 question. I would not limit it simply to the  
22 reasonableness of the rates. As I indicated in my  
23 testimony, there are many other reasons that the  
24 Commission has given in the past for approving  
25 settlements. So it's, it's, it's multifaceted.

1           **Q**     Is it your opinion that the Commission can  
2 find that rates in the stipulation are not fair, just,  
3 and reasonable, but that there are other considerations  
4 that override that and the stipulation as a whole can be  
5 in the public interest?

6           **A**     No. I, I believe that the Commission needs to  
7 make a determination that rates are fair, just, and  
8 reasonable, and compensatory as contained in the  
9 statute, and that the Commission should consider other  
10 factors as well as contained in statute, such as the  
11 value of the service and the sufficiency and efficiency  
12 of the service, things of that nature as well.

13           **MR. REHWINKEL:** Okay. Mr. Chairman, I'd like  
14 to pass out an exhibit. We can give it a number, if you  
15 like, but it is a Commission order and I don't -- it  
16 will not be need -- it will not need to be entered into  
17 the record.

18           **CHAIRMAN BRISÉ:** All right. If we were to  
19 give it a number, it would be 705, and I guess we will  
20 --

21           (Exhibit 705 marked for identification.)

22           **MR. REHWINKEL:** I think that would probably be  
23 good for convenience.

24           This order is the 2005 FPL stipulation order,  
25 PSC-05-0902-S-EI.

1 **BY MR. REHWINKEL:**

2 Q Mr. Deason, you are very familiar with this  
3 order, are you not?

4 A I'm familiar with the order.

5 Q Okay. You cite it in your testimony on page  
6 2; correct?

7 A That is correct.

8 Q Okay. And you also were on the Commission  
9 when this order was issued; correct?

10 A Yes.

11 Q Okay. On page 2 -- well, first -- yeah. On  
12 page 2 you state at the top, lines 2 through 4, that the  
13 standard applied by the Commission in determining  
14 whether a proposed settlement agreement should be  
15 approved is a public interest standard; is that right?

16 A Yes.

17 Q You would not agree with me that the standard  
18 is whether the resulting rates are fair, just, and  
19 reasonable, or just, reasonable, and compensatory, and  
20 that the public interest is a conclusion that the  
21 Commission reaches?

22 A I think we may have a small distinction here  
23 that I need to make clear to the Commission. I think  
24 that the standard is one of public interest, and a key  
25 component of determining whether a settlement is in the

1 public interest is whether the resulting rates are fair,  
2 just, reasonable, and compensatory.

3 **MR. MOYLE:** Just for the record, FIPUG doesn't  
4 have any objection to these questions, but I think  
5 ultimately the questions that are being asked are a  
6 legal conclusion, you know, rather than what Mr. Deason,  
7 a non-lawyer's view is. I mean, I don't have an  
8 objection to answering the questions, but I think  
9 ultimately he's treading onto a legal conclusion.

10 **MR. REHWINKEL:** Well, Mr. Chairman, I would --  
11 I appreciate Mr. Moyle's concern about the practice of  
12 law in Florida, but I would ask that we, we not  
13 encourage kind of the speaking objections, especially by  
14 an attorney that's not representing this witness. My  
15 question is based on line 7, which references the  
16 statute.

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

18 **MR. REHWINKEL:** So I think, I think this  
19 witness of all lay witnesses probably can testify about  
20 the law in Florida as it applies to the Public Service  
21 Commission.

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

23 **MR. REHWINKEL:** Thank you.

24 **BY MR. REHWINKEL:**

25 Q Mr. Deason, did you look at Chapter 366 to

1 determine whether the phrase "public interest" appears?

2 **A** Yes, I did make that review.

3 **Q** Did you find it?

4 **A** Yes. There is a provision in this, in  
5 366 that talks about the public interest, and that the  
6 Commission's jurisdiction is liberally construed such  
7 that the Commission can regulate in the public interest.

8 **Q** Okay. But you would agree that the statutes  
9 do not make a statement that settlements or cases should  
10 be -- well, I'll strike that question.

11 Let's --

12 **A** Mr. Rehwinkel, you paused. It gives me an  
13 opportunity to -- I think that maybe there's some  
14 clarity that needs to be made here. It's stated clearly  
15 --

16 **MR. SAPORITO:** Mr. Chairman, I object.  
17 There's no question before this witness. He's just  
18 making a statement.

19 **MR. REHWINKEL:** I don't mind if Mr. Deason  
20 wants to clarify. I appreciate Mr. Saporito's well,  
21 well-reasoned objection, but I don't mind if Mr. Deason  
22 --

23 **THE WITNESS:** With the Chairman's indulgence,  
24 it'll take just a moment.

25 **CHAIRMAN BRISÉ:** Sure. Go right ahead.

1           **THE WITNESS:** On page 2, line 9 and 10 of my  
2 testimony, I clearly state the determination of what  
3 constitutes the public interest is left to the  
4 discretion of the Commission.

5           That's the way I read the statute as a  
6 non-attorney and the way that I felt like the Commission  
7 has treated settlements in the past. And not only that,  
8 has engaged in its overall responsibilities to regulate  
9 in the public interest.

10 **BY MR. REHWINKEL:**

11           **Q**    Okay. So following up on that statement, you  
12 quote on page 2, lines, beginning on line 15, from the  
13 2005 FPL rate case order; correct?

14           **A**    Yes.

15           **Q**    And you quote on lines, starting on lines 20  
16 through 23, the statement, in conclusion, we find the  
17 stipulation and settlement establishes rates that are  
18 fair, just, and reasonable, and that approval of the  
19 stipulation and settlement is in the public interest; is  
20 that right?

21           **A**    Yes.

22           **Q**    And that's a direct quote from the order;  
23 right?

24           **A**    Yes.

25           **Q**    But you would not agree with me that the

1 public interest is a conclusion, and the standard to  
2 reach that conclusion is whether the rates resulting are  
3 fair, just, and reasonable?

4 **A** No. I think I've already answered that  
5 question.

6 **Q** So the plain language of this sentence doesn't  
7 change your view about that?

8 **A** That's correct. I interpret this to mean that  
9 the Commission made a determination that the rates  
10 resulting from the settlement would be fair, just, and  
11 reasonable. And, in addition, the Commission approved  
12 the stipulation and settlement because it was found to  
13 be in the public interest.

14 **Q** Okay. On page 3 of your testimony, quoting  
15 from the same order on line 11 through 15, you identify  
16 what you call a long-standing policy, you identify a  
17 long-standing policy of encouraging settlements; right?

18 **A** Yes.

19 **Q** Now isn't it true that this policy evolved in  
20 an environment where 100% of the cases that settled  
21 where the Public Counsel was an intervened party, he  
22 either supported or did not oppose the settlement that  
23 the Commission considered in this, developing this  
24 policy?

25 **A** I agree that of the settlements that were

1 approved, that the Public Counsel was a signatory, and  
2 that the Commission, when I sat on the Commission, never  
3 had an opportunity to rule on a settlement in which the  
4 Public Counsel was not a signatory. However, there --  
5 at least one case comes to mind in which a settlement  
6 was presented to the Commission in which the Public  
7 Counsel was the signatory and it was rejected.

8 So I guess it just stands for the proposition  
9 that because the Public Counsel is or is not a signatory  
10 is not determinative of whether the settlement is in the  
11 public interest. Clearly that responsibility rests with  
12 the Commission to make that ultimate decision as to  
13 whether it is in the public interest.

14 Q Tell me the case that you just referenced.

15 A Mr. Rehwinkel, it was a case involving  
16 Northeast Telephone Company. I believe it was in the  
17 early '90s, maybe 1991 or 1992.

18 Q Did it have something to do with the bill and  
19 keep surplus subsidy?

20 A It may very well have, Mr. Rehwinkel. You're  
21 -- I'm not sure of all the details. I know that there  
22 was a settlement presented -- excuse me -- and the  
23 Commission rejected it.

24 Q And what is the basis for the Commission's  
25 rejection?

1           A     It was determined that it was not in the  
2 public interest.

3           Q     That's all they said?

4           A     No. There is an order, Mr. Rehwinkel, and --

5           Q     Do you have it with you?

6           A     If you'll give me a moment, I may.

7           Q     Okay.

8                 (Pause.)

9           A     Yes, I have it, Mr. Rehwinkel.

10          Q     Okay. Tell me the, the order number.

11          A     25723.

12          Q     And what was the date?

13          A     February 14, 1992.

14          Q     Now you didn't cite this order in your  
15 testimony; correct?

16          A     I did not cite this order.

17          Q     Have you seen this order cited in any of the  
18 pleadings filed by Florida Power & Light in this case?

19          A     Not to my recollection.

20          Q     Okay. Now has the Public Counsel ever  
21 contended that because he signs a settlement that it's  
22 automatically in the public interest?

23          A     Not to my knowledge, no.

24                   \* \* \* \* \*

25                 (Transcript continues in sequence in Volume

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36.)

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

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  
9 stenographically reported the said proceedings; that the  
10 same has been transcribed under my direct supervision;  
11 and that this transcript constitutes a true  
12 transcription of my notes of said proceedings.

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

18 DATED THIS 20th day of November, 2012.

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LINDA BOLES, RPR, CRR  
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