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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:  
DOCKET NO. 140001-EI

FILED DEC 02, 2014  
DOCUMENT NO. 06540-14  
FPSC - COMMISSION CLERK

FUEL AND PURCHASED POWER COST  
RECOVERY CLAUSE WITH GENERATING  
PERFORMANCE INCENTIVE FACTOR.

VOLUME 1 Pages  
Pages 1 through 168

PROCEEDINGS: HEARING  
COMMISSIONERS PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN  
DATE: Monday, December 1, 2014  
TIME: Commenced at 9:30 a.m.  
Concluded at 12:00 noon  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for the  
State of Florida at Large

PREMIER REPORTING  
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TALLAHASSEE, FLORIDA  
(850) 894-0828

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5 CHARLES A. GUYTON, Gunster, Yoakley & Stewart, P.A, 215  
6 South Monroe Street, Suite 601, Tallahassee, Florida  
7 32301, appearing on behalf of Florida Power & Light  
8 Company.

9 CHARLES REHWINKEL, ERIK SAYLER, and JOHN  
10 TRUITT, ESQUIRES, Office of PUBLIC COUNSEL, c/o The  
11 Florida Legislature, 111 West Madison Street, Room 812,  
12 Tallahassee, Florida 32399-1400, appearing on behalf of  
13 the Citizens of the State of Florida.

14 JON C. MOYLE, JR., KAREN PUTNAL, and VICKI  
15 GORDON KAUFMAN, ESQUIRES, Moyle Law Firm, P.A., The  
16 Perkins House, 118 North Gadsden Street, Tallahassee,  
17 Florida 32301, appearing on behalf of Florida Industrial  
18 Power Users Group.

19 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,  
20 ESQUIRES, Gardner, Bist, Wiener, Bowden, Dee, LaVia &  
21 Wright, P.A., 1300 Thomaswood Drive, Tallahassee,  
22 Florida 32308, appearing on behalf of Florida Retail  
23 Federation.

24

25 MARTHA BARRERA, KEINO YOUNG, and KEYSHA MAPP,

1 ESQUIRES, Florida Public Service Commission, General  
2 Counsel's Office, 2540 Shumard Oak Boulevard,  
3 Tallahassee, Florida 32399-0850, appearing on behalf of  
4 the Florida Public Service Commission Staff.

5 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL,  
6 Florida Public Service Commission, 2540 Shumard Oak  
7 Boulevard, Tallahassee, Florida 32399-0850, Advisor to  
8 the Florida Public Service Commission.

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

2 CHAIRMAN GRAHAM: Okay. Call this meeting --  
3 this hearing to order. It's docket number 10 -- I  
4 am sorry, 14-0001-I -- I am sorry -- EI.

5 Let the record show it is Monday, December the  
6 first. And if I can get staff to read the notice,  
7 please.

8 MS. BARRERA: Commissioner, the notice was  
9 given that the Florida Public Service Commission  
10 was to hold a public hearing on December 1st and  
11 2nd. And the purpose of this hearing was to  
12 receive testimony and exhibits relative to Florida  
13 Power & Light's petition to recover oil and gas  
14 exploration and production cost via the Fuel  
15 Clause.

16 CHAIRMAN GRAHAM: Thank you.

17 Time to take appearances. Mr. Butler.

18 MR. BUTLER: Thank you, Mr. Chairman. John  
19 Butler, Scott Goorland and Wade Litchfield on  
20 behalf of FPL. Also appearing for FPL is Charles  
21 Guyton of the Gunster law firm.

22 Thank you.

23 MR. MOYLE: Thank you, Mr. Chairman. John  
24 Moyle with the Moyle law firm on behalf of FIPUG,  
25 the Florida Industrial Power User's Group. I would

1           also like to enter an appearance for Karen Putnal  
2           and Vicki Kaufman with our offices.

3           Thank you.

4           CHAIRMAN GRAHAM: Thank you, sir.

5           MR. LAVIA: Good morning, Mr. Chairman. Jay  
6           Lavia on behalf of Florida Retail Federation. I  
7           would like to enter an appearance for my law  
8           partner, Schef Wright, also on behalf of the  
9           Federation.

10          MR. SAYLER: My name is Erik Sayler with the  
11          Office of Public Counsel on behalf of FPL's  
12          customers and the citizens of the state of Florida.  
13          I would like to enter an appearance also for the  
14          Public Counsel, Mr. J.R. Kelly, Charles Rehwinkle  
15          and John Truitt.

16          CHAIRMAN GRAHAM: Okay.

17          MS. BARRERA: Martha Barrera, Keino Young and  
18          Kyesha Mapp on behalf of the Public Service  
19          Commission.

20          MS. HELTON: I am sorry, Mary Anne Helton, an  
21          Adviser to the Commission.

22          CHAIRMAN GRAHAM: All right. Any other  
23          attorneys of utilities that I need to take  
24          appearance to?

25          All right. Preliminary matters, staff.

1 MS. BARRERA: The Office of Public Counsel has  
2 filed a motion for official recognition. Staff has  
3 no objection to this motion, but we don't know if  
4 any of the parties do.

5 MR. BUTLER: Mr. Chairman, FPL doesn't object  
6 to the Commission taking official notice of  
7 relevant decisions of other states high core  
8 assistance, which is what OPC is requesting. But,  
9 frankly, looking at the cases, we are a little bit  
10 at a loss to understand how they are relevant to  
11 this proceeding and would ask that OPC enlighten us  
12 in that regard.

13 CHAIRMAN GRAHAM: OPC.

14 MR. TRUITT: We agree with FPL, that obviously  
15 the cases aren't precedential before this  
16 commission, however, they govern title to minerals  
17 in Oklahoma, in which this case involves multiple  
18 leases and the issue may come up, so we figured  
19 asking for official recognition ahead of time,  
20 rather than going through that during the hearing  
21 and interrupt cross, would be more prudent.

22 CHAIRMAN GRAHAM: Mr. Butler.

23 MR. MOYLE: Mr. Chairman.

24 CHAIRMAN GRAHAM: Mr. Moyle.

25 MR. MOYLE: Sure. At the appropriate point in



1 time -- I think we have had this discussion before  
2 with the Commission and your legal adviser. But  
3 with respect to official recognition of things like  
4 the PSC orders and statutes and opinions from other  
5 states, it's been my understanding that if we want  
6 to reference those and cite those in our briefs  
7 and making legal arguments, it's not necessary to  
8 have official recognition taken of things like  
9 orders, statute and cases. I just want to make  
10 sure that I am not missing something with respect  
11 to that point.

12 CHAIRMAN GRAHAM: All right. I am trying to  
13 figure it out myself.

14 Mr. Butler.

15 MR. BUTLER: I was just going to add, in  
16 response to Public Counsel's comments, that I guess  
17 we will not object to your taking official  
18 recognition but kind of retain, or reserve the  
19 right to object at the end to it as irrelevant if  
20 it turns out these cases don't end up being used  
21 with respect with respect to cross-examination of  
22 the witnesses, it appears to be the basis for OPC's  
23 request for official recognition.

24 CHAIRMAN GRAHAM: Okay. Well, it doesn't  
25 sound like anybody is opposed to it right now. I

1 am just trying to figure it out so we will move  
2 forward.

3 Staff.

4 MS. BARRERA: Chairman, the -- Mr. Moyle is  
5 correct. You don't normally ask for official  
6 recognition of cases. You put them in your brief  
7 and you make the argument, and the parties have  
8 requested post-hearing briefs. I don't know what  
9 the purpose is, because I am not really clear on  
10 it, but like I said, we have no objection if it  
11 would move the proceedings along.

12 CHAIRMAN GRAHAM: Okay. Then we will take  
13 official recognition, and if we have to deal with  
14 it after-the-fact, we will do that.

15 MR. BUTLER: Okay. That's fine.

16 MS. BARRERA: The second --

17 CHAIRMAN GRAHAM: Hold on, Mary Anne.

18 MS. BARRERA: Pardon?

19 MS. HELTON: I think the difference is that,  
20 whether you are going to use the information in the  
21 document for which you are taking official notice  
22 as a fact or not. If you are going to use  
23 information in the cases that Mr. Truitt mentioned  
24 as fact, then you would need to take official  
25 notice. But if you are just going to use them to

1 further your legal argument, I don't think you  
2 would need to take official notice of them if you  
3 were going to use them in a brief.

4 CHAIRMAN GRAHAM: OPC.

5 MR. TRUITT: I was just following. I know  
6 according to Rule 28.16213 versus official  
7 recognition, it asked us go to through the  
8 evidentiary requirements as I did. So I wanted to  
9 ensure that we were following that to the letter of  
10 the law to make sure that we could get it in there  
11 and use it.

12 CHAIRMAN GRAHAM: Mary Anne.

13 MS. HELTON: I think OPC has done it the  
14 appropriate way. But I also think Mr. Moyle is  
15 right. We have consistently said, if you want  
16 official notice taken of a Florida Statute, Florida  
17 rule or a Florida case, or a Commission order, that  
18 is not necessary. For something out of Florida,  
19 then it is necessary.

20 CHAIRMAN GRAHAM: You know what I hear you  
21 saying right now? The answer is yes, but it's no.

22 MS. HELTON: Yes. Exactly.

23 CHAIRMAN GRAHAM: So are we or are we not  
24 going to take official recognition of this?

25 MS. HELTON: My recommendation to you is to

1 take official recognition of the information for  
2 which Mr. Truitt has made a request.

3 CHAIRMAN GRAHAM: Thank you.

4 MR. MOYLE: And, Mr. Chairman, given that  
5 colloquy and that discussion, out of an abundance  
6 of caution, FIPUG would like there to be official  
7 recognition of PSC Order 13-0023, which was in  
8 docket number 12-0015. That was the order  
9 approving the revised stipulation and settlement in  
10 the FPL rate case, the order, the attachment, we  
11 would just like to, out of an abundance of caution,  
12 to have official recognition taken of that.

13 CHAIRMAN GRAHAM: Mary Anne.

14 MS. HELTON: That is not necessary, but it  
15 it's certainly within your discretion to do so.

16 CHAIRMAN GRAHAM: All right. Let's do it and  
17 let's move on.

18 MS. BARRERA: Okay. The second preliminary  
19 matter is that FPL has requested that Mr. Forrest  
20 be taken last on the order of rebuttal. He is  
21 still first on direct, but he would be taken last  
22 on the order of rebuttal.

23 CHAIRMAN GRAHAM: I take it nobody has got any  
24 problem with that.

25 Okay, staff.

1 MS. BARRERA: Staff is not aware of any other  
2 preliminary matters.

3 CHAIRMAN GRAHAM: Okay.

4 MR. SAYLER: Mr. Chairman, one preliminary  
5 from the Office of Public Counsel.

6 Last week, you made a decision on our motion  
7 to dismiss for lack of subject matter jurisdiction.  
8 I believe now is the appropriate to time to raise  
9 an objection to that decision, just to continue it  
10 for the process should an appeal be taken of this  
11 matter.

12 CHAIRMAN GRAHAM: So --

13 MR. TRUITT: So we are renewing our objection  
14 that this commission has any subject matter  
15 jurisdiction to review any costs or charges, or to  
16 approve those costs or charges, and require the  
17 customers to pay for them.

18 CHAIRMAN GRAHAM: Commissioner Brown.

19 COMMISSIONER BROWN: May I just ask, is that a  
20 motion for reconsideration?

21 MR. SAYLER: No ma'am. It's an objection to  
22 the decision last week.

23 COMMISSIONER BROWN: Okay.

24 MR. MOYLE: And FIPUG would join in that  
25 objection, just for the purposes of the record.

1 CHAIRMAN GRAHAM: Duly noted.

2 MR. BUTLER: And FPL would oppose the  
3 objection, to the extent that's relevant.

4 CHAIRMAN GRAHAM: Prefiled testimony.

5 MS. BARRERA: Yes. Each party will move for  
6 the prefiled testimony of its witnesses to be  
7 entered into the record at the beginning of each  
8 witness' testimony.

9 CHAIRMAN GRAHAM: Exhibits.

10 MS. BARRERA: Yes, Chairman. Staff has  
11 compiled a stipulated comprehensive exhibit list.  
12 Everybody is in agreement that the comprehensive  
13 exhibit list itself will be introduced into the  
14 record as Exhibit 1.

15 The comprehensive exhibit list includes the  
16 prefiled exhibits attached to the witness'  
17 testimony in this case. The list as been provided  
18 to the parties, the commissioners and the court  
19 reporter. This list is marked, it's the first  
20 hearing exhibit, and the other exhibits should be  
21 marked as set forth in the list.

22 Staff recommends that the Stipulated  
23 Comprehensive Exhibit List be entered into the  
24 record as Exhibit 1 at this time.

25 CHAIRMAN GRAHAM: Okay. So we will enter the

1 comprehensive exhibit list into the record.

2 (Whereupon, Exhibit No. 1 was received into  
3 evidence.)

4 MR. MOYLE: So what's being entered into the  
5 record is just the list, not the exhibits?

6 MS. BARRERA: Just the list. That's what we  
7 normally do.

8 MR. BUTLER: Mr. Chairman, for clarification  
9 on that. Issues 17 and 18 are Ms. Ousdahl's  
10 exhibits, KO-5 and KO-6. We filed, on November 5,  
11 errata to that. And I think that this is, as we  
12 think it should be, referring to the corrected  
13 exhibits, KO-5 and KO-6, that were filed as the  
14 errata, but it doesn't literally say that here. I  
15 gist wanted to confirm on the record that the  
16 understanding.

17 MS. BARRERA: Well, we're -- yes. What we are  
18 proffering is the completed exhibit, including the  
19 errata sheets and the signature page.

20 MR. BUTLER: All right. Thank you.

21 MS. BARRERA: Now, staff recommends that  
22 exhibits listed on the comprehensive exhibit list  
23 as Exhibits No. 44 to 54 be entered into the record  
24 at this time. Exhibits No. 2 to 43 will be  
25 proffered at the end of each witness' testimony by

1 the parties.,

2 CHAIRMAN GRAHAM: So you want to enter the  
3 Staff Exhibits 44 through 54 into the record at  
4 this time?

5 MS. BARRERA: Yes.

6 CHAIRMAN GRAHAM: We will do that.

7 MR. MOYLE: Can we be heard? We have some  
8 objections --

9 CHAIRMAN GRAHAM: Mr. Moyle.

10 MR. MOYLE: -- to some of the exhibits. So I  
11 think the easiest way to go through them is to just  
12 reference the interrogatories. There are a whole  
13 host of discovery responses that are being put into  
14 the record.

15 The first objection is to interrogatory  
16 response number 34. It references a report -- an  
17 independent report that was prepared by an expert  
18 who is not here to testify. There is nobody from  
19 the company. The company here, there is reference  
20 in the interrogatory to this report, we don't think  
21 it's proper and would object to that document  
22 coming in.

23 CHAIRMAN GRAHAM: Number 34?

24 MR. MOYLE: 34.

25 CHAIRMAN GRAHAM: The staff exhibit number



1 is -- which one corresponds to number 34?

2 MR. MOYLE: Yeah, so I guess it's technically  
3 within 44. It says, staff's response to second set  
4 of interrogatories numbers --

5 CHAIRMAN GRAHAM: 12 to --

6 MR. MOYLE: -- 12 to 54. So this is 34, so  
7 it's within that scope.

8 And maybe, just to move it along. I know  
9 y'all want to hear witnesses and opening  
10 statements. Maybe I could just -- I shared this  
11 with staff and let them look at my objection list,  
12 but maybe I could just read them into the record,  
13 we could figure it out on a break and maybe make a  
14 ruling later, if you want to it that way.

15 CHAIRMAN GRAHAM: Let's go ahead and read them  
16 through.

17 MR. MOYLE: Okay.

18 CHAIRMAN GRAHAM: And then if leave us a copy  
19 of that so staff can go over it and we could talk  
20 about after the break.

21 MR. MOYLE: Sure.

22 We have objections to 36, 37 and 38. Those  
23 are interrogatories, and they ask questions about  
24 PetroQuest, whether PetroQuest has defaulted on any  
25 financial obligations; whether they are involved in

1 any litigation; whether they have any regulatory  
2 proceedings that could adversely affect them.

3 There is nobody here from PetroQuest to talk  
4 about that. It's hearsay, and you can't make a  
5 finding, you know, based on hearsay, so I want to  
6 preserve that objection.

7 39, there is a question about, will Standard &  
8 Poor's impute debt to this deal. And there is an  
9 answer, but there is nobody -- I mean, it's  
10 speculative. It's kind of like, who knows what  
11 Standard & Poor's may or may not do in the future,  
12 so we would object to 39.

13 MS. BARRERA: Chairman, can we respond at this  
14 time?

15 CHAIRMAN GRAHAM: No. Let's just go ahead and  
16 read them all through, and they will give you that  
17 list, and then when we take a break, if staff can  
18 come and sit down with me and we can go over it.

19 MS. BARRERA: Okay.

20 MR. MOYLE: 86, the same point made with  
21 respect to 36, 37 and 38; hearsay and best  
22 evidence.

23 92 is an interrogatory answer that's sponsored  
24 by witness -- I am sorry, not by witness but by FPL  
25 employee Terry Keith. Terry Keith is not here, so

1           it's a -- we understand it to be an answer that  
2           Terry Keith signed an affidavit and says, you know,  
3           I did this answer, but he is not here. So 92  
4           shouldn't come in on that basis.

5           The same with 128 and 129, which is a risk  
6           profile question, Joseph Balzaro (sic) is the one  
7           who signed the affidavits for those. He is not  
8           here. The same with 140, Melissa Linton and Terry  
9           Keith.

10          And then same objections with 167, 169 --  
11          actually, there is 167, 168, 169, 170, 171, 172,  
12          173, Melissa Linton and Mr. Yupp (sic) are the  
13          people who sponsored those interrogatories. They  
14          are not -- they are not here, so those should not  
15          come in.

16          And then 126, again, is an answer to a  
17          question about this Forrest Garb independent expert  
18          report. It talks about -- the answer talks about  
19          oh, they are independent and people rely on them.  
20          They regulate companies that are SEC traded  
21          companies. Again, there is nobody here from that  
22          company, it shouldn't come in.

23          So those are the objections that we have.

24          CHAIRMAN GRAHAM: The question I have for you,  
25          and it sounds like you have some valid points.

1           Were you not able to cross-examine or question any  
2           of these people that you are speaking of?

3           MR. MOYLE: Well, none of them are witnesses.  
4           The people that we deposed down in Juno Beach were,  
5           you know, were the witnesses that FPL put forward,  
6           their two internal witnesses, and then Mr. Deason.  
7           And then they have a Mr. Taylor, who is not with  
8           FPL, but he is with an FPL subsidiary company.

9           CHAIRMAN GRAHAM: Staff, briefly help me  
10          through this. I know you can get into the details  
11          later, but tell me the people that aren't here that  
12          he wanted to question, why is it that he doesn't  
13          have the opportunity to cross-examine these people?

14          MS. BARRERA: Well, I believe that -- first of  
15          all, it is the Commission's practice to introduce  
16          responses to interrogatories. Having said that,  
17          there was no objection previously filed, so that I  
18          don't believe FPL had the chance to call these  
19          witnesses, or even staff to call these witnesses to  
20          introduce the exhibits into the record. Mr. Moyle  
21          is free to cross-examine the witnesses that are  
22          available as to these statements since,  
23          essentially, the interrogatories were propounded to  
24          FPL, and so it is FP&L's position on these  
25          interrogatories.

1           So if the witnesses are not available -- the  
2           present witnesses are not available to discuss the  
3           matters in the interrogatories at that time, then  
4           the chair is free to make a ruling as to the entry  
5           of these interrogatories.

6           CHAIRMAN GRAHAM:  If he had made an objection  
7           earlier, he could have requested those specific  
8           people to be here, though, to be cross-examined?

9           MS. BARRERA:  Yes, sir.

10          MR. MOYLE:  Well, just so the record is clear,  
11          that -- I didn't get the list of these documents  
12          until last Monday.  You know, I didn't know what  
13          documents staff was going to try to put in until  
14          Monday.  I -- you know, that was two days before  
15          Thanksgiving.  Some of these people are third  
16          parties.  Subpoenas -- I mean, I don't think the  
17          time would go have worked very well for me to get  
18          that.  But even then, I am going to subpoena them  
19          for trial?  I mean, it's kind of a challenge.

20          CHAIRMAN GRAHAM:  I mean, I know --

21          MR. MOYLE:  That's not consistent with how,  
22          you know, the practice here, which is not to have a  
23          lot of live witnesses, to have all the prefiled  
24          testimony.  So -- I mean, I guess if you are going  
25          to say, well, I could subpoena them and put them up

1 as a live witness, I guess I could on a go-forward  
2 basis, but that's not my understanding of how  
3 things typically work here.

4 CHAIRMAN GRAHAM: Well, my -- I am just trying  
5 to get you answers to the questions it sounds like  
6 you have. And if the witnesses they have here can  
7 answer those questions, my -- I am just trying to  
8 understand why those people specifically they need  
9 to talk to. It seems like you have not been given  
10 the opportunity, and I don't know if it's because  
11 you weren't timely enough to give that opportunity  
12 or you just weren't given the opportunity, and  
13 that's what I am trying to weed through.

14 MR. MOYLE: Sure. Yeah -- well, like, for  
15 example, the independent expert report, that's  
16 attached to the testimony of Mr. Taylor. He is  
17 trying to put it in. We are going to say, hey,  
18 that's not proper. I mean, if you have got an  
19 independent expert report, you ought to put the  
20 independent expert report so you can cross them,  
21 and I say, yes, I the independent expert, here's  
22 what I did. You can ask them live questions. You  
23 don't ask Mr. Taylor, who it's all hearsay from Mr.  
24 Taylor, who goes, yeah, I read the report, you  
25 know, and here's what it says. That's not

1 consistent with my understanding with, you know,  
2 trial practice and jurisprudence and cross-examine  
3 of witnesses.

4 CHAIRMAN GRAHAM: Let's -- make sure that  
5 staff has got a copy of that list of objections you  
6 put in there --

7 MR. MOYLE: Okay.

8 CHAIRMAN GRAHAM: -- and then after the break,  
9 staff and I will go through that stuff. But as we  
10 go through, if we hit a sticking point, we will  
11 have to work through it at the time.

12 MR. MOYLE: Sure.

13 MR. BUTLER: Mr. Chairman, may be heard  
14 briefly on this?

15 CHAIRMAN GRAHAM: Sure. Yes.

16 MR. BUTLER: First of all, just a  
17 clarification. Dr. Taylor works for an affiliate  
18 of FPL, it's not a subsidiary of FPL, but more to  
19 the point of Mr. Moyle's comments.

20 First of all, we never received a request to  
21 have a deposition or any other form of inquiry of  
22 these individuals, and certainly would have tried  
23 to accommodate if had -- I understand his point  
24 that he didn't learn that these were going to be on  
25 an exhibit list until late, but I just want to

1 makes it clear that we didn't stand in the way of  
2 anything at FPL.

3 I would also note, regarding Mr. Moyle's last  
4 comment, that Dr. Taylor, I think, will be very  
5 clear as an expert in his field of gas reserve  
6 evaluation, and it's routine for experts to rely on  
7 materials that are of the type that are used within  
8 their field as sources of information to apply  
9 their expertise. And I think you will find, when  
10 you get to that point, that Mr. Taylor -- or Dr.  
11 Taylor is abundantly qualified to have relied upon  
12 the FDA report that Mr. Moyle referred to.

13 CHAIRMAN GRAHAM: I hope you are right. I  
14 think as we go through this, we will figure our way  
15 through it. I know this is new territory we are  
16 going through, so I want to make sure we dot as  
17 many I's and cross as many T's as we can.

18 Any other objections about staff entering  
19 their Exhibits 44 through 54?

20 All right.

21 MR. MOYLE: Just point of clarification, does  
22 that include the deposition of Mr. Forrest and the  
23 errata, which was the contract that was not  
24 attached to Mr. Forrest's original prefiled  
25 testimony is what you are trying to put in now?



1 MS. BARRERA: The complete deposition of Mr.  
2 Forrest is what we are trying to put in now. So  
3 whatever was added, not added, it's the complete  
4 deposition.

5 MR. MOYLE: So does that include the filing  
6 that FPL made as an errata filing, which is a 60-  
7 or 80-page contract that was attached to his  
8 testimony?

9 MS. BARRERA: My understanding -- if I am  
10 mislabeling it -- my understanding was that that  
11 contract was Exhibit G to a direct testimony, not  
12 to the deposition. And it was -- at the time that  
13 we took the depositions, it was discovered, and  
14 then FP&L, everybody agreed, to make it into a late  
15 filing and FP&L filed it. Mr. Butler, I believe  
16 that's -- do I --

17 MR. MOYLE: I don't think everyone agreed to  
18 it.

19 MS. BARRERA: Well, you asked for it -- excuse  
20 me -- so we provided it on the 14th of November.

21 MR. MOYLE: So at the right point in time, I  
22 would like to make an objection to a document, a  
23 contract, that was not produced, that was not  
24 available. It was supposed to be part of Mr.  
25 Forrest's testimony at his deposition, it wasn't

1           there. It was a 60-page document. FPL made a  
2           filing, and they said, this is an errata, the 60  
3           page contract. I don't want to not object at the  
4           right point in time and have somebody say, well,  
5           you missed it, Moyle. It already came in. So  
6           I'm --

7           MR. BUTLER: Just to clarify, Mr. Chairman  
8           that's not an exhibit to Mr. Forrest's deposition  
9           exhibit. It is an errata -- what it is, it's an  
10          exhibit to an exhibit. The exhibit is in Mr.  
11          Forrest's testimony. The exhibit has several  
12          attachments to it.

13          One of the exhibits to that master agreement  
14          was inadvertently omitted. That's what Mr. Moyle  
15          is referring to. We will be asking that it be  
16          included with his exhibits as an errata. But right  
17          now, it's not part of the deposition admission  
18          question that Ms. Barrera is referring to.

19          CHAIRMAN GRAHAM: Okay. Well, we are going to  
20          hold off on the staff's exhibits until after we  
21          take our break and then go over that list that Mr.  
22          Moyle's got, and then we will decide if we are  
23          going to take that up or not.

24          MR. SAYLER: Mr. Chairman, just for  
25          clarification. My understanding is we are

1 discussing Staff's Exhibits 34 through 54.

2 CHAIRMAN GRAHAM: That's correct.

3 MR. SAYLER: It is the depositions there, and  
4 55 to 58, and OPC doesn't have any objections to 44  
5 through 54, but we do have specific objections to  
6 the four deposition transcripts at the appropriate  
7 time.

8 CHAIRMAN GRAHAM: Okay.

9 MS. BARRERA: Yes. Mr. Chairman, we are  
10 requesting the introduction of 55 to 58. I just  
11 made a mistake, because I understood that anything  
12 prior to 54 was stipulated to. So now that we find  
13 out that Mr. Moyle has stip -- not stipulated to  
14 those exhibits, I -- we readdress my introduction  
15 requesting to introduce exhibits of staff from  
16 Exhibit 44 to Exhibit 58.

17 CHAIRMAN GRAHAM: So you are not looking to  
18 introduce them right now?

19 MS. BARRERA: Pardon?

20 CHAIRMAN GRAHAM: Say what you said again,  
21 because you just confused me.

22 MS. BARRERA: Okay. I moved to introduce  
23 Staff's Exhibit 44 to 58, not 44 to 54. It's  
24 actually 44 to 58.

25 CHAIRMAN GRAHAM: Okay. Well, we said that we

1 are going to hold off on 44 to 54.

2 MS. BARRERA: Right.

3 CHAIRMAN GRAHAM: Now let's hear what OPC has  
4 got to say about 55 through 58.

5 MS. BARRERA: Right.

6 CHAIRMAN GRAHAM: Mr. Sayler.

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

8 Good morning. OPC would like to address  
9 staff's request to admit Exhibit 55 to 58. These  
10 are the deposition transcripts of the four FPL  
11 witnesses that were taken earlier in November.

12 OPC does not object to the inclusion of  
13 staff's portion of the deposition transcripts, but  
14 we do object to the inclusion of OPC and FIPUG's  
15 portion of the deposition transcripts. We believe  
16 that it's unnecessary, repetitive and barred by the  
17 Florida Statutes and Rules of Procedure.

18 As a compromise, when this came to light and  
19 we informed staff of our objection to the inclusion  
20 of our portions of those deposition transcripts, we  
21 offered that if staff would identify what portions  
22 of the transcripts they thought were essential for  
23 the record, we would review and potentially  
24 compromise. What we don't want do is to compromise  
25 our case by just flatly introducing all aspects of

1 the depositions, but that was rejected.

2 On an e-mail from staff on November staff  
3 wrote, "as customary, staff will be introducing the  
4 entire transcripts and exhibits of the depositions  
5 of the witnesses. As we all know, under the  
6 evidentiary rules, partial transcripts are only  
7 acceptable if all parties agree. So we will not  
8 agree to stipulate to the portions of the  
9 transcripts so, parties, please go ahead and  
10 prepare to address objections at this time that the  
11 exhibits are offered. Thanks, and have a great  
12 weekend." That's end of the e-mail.

13 Our arguments in support of excluding our  
14 portion of the deposition transcripts are as  
15 follows: One, we know that this is a Section  
16 120.57(1) evidentiary hearing involving disputed  
17 issues of material fact. We know that the Uniform  
18 Rules of Procedure, Chapter 28-106, decisions  
19 determining substantial interest are controlling in  
20 this proceeding, and that the Commission must  
21 comply with the requirements about Chapter 120 and  
22 the Uniform Rules as it relates to this proceeding,  
23 including this evidentiary records.

24 Rule 28-106.206, which governs how discovery  
25 is obtained states, "parties may obtain discovery

1 through the means and in the manner as required by  
2 the rules of Florida's Rules of Civil Procedure",  
3 and it lists those rules. And now we are in the  
4 hearing phase and it's really not the right time to  
5 continue doing discovery during an evidentiary  
6 hearing.

7 Furthermore, pursuant to the rules of -- the  
8 Florida Rules of Civil Procedure, transcripts of  
9 depositions are not filed routinely as a matter  
10 with the Court, or in this case it's not customary  
11 to include deposition transcripts into the record.  
12 The rule that allowed transcripts of depositions to  
13 be just routinely admitted into the record, that  
14 was repealed in 1992.

15 Now, this is the rule that governs the use of  
16 admitting transcripts into the record, that is  
17 Florida Rule 1-310 subsection (f) subsection (3),  
18 subpart (a) states that rule states that  
19 transcripts maybe filed by a party or a witness.

20 Staff has made it abundantly clear on numerous  
21 occasions that staff is not a party to the  
22 proceedings before this commission. And if staff  
23 asserts that it's not a party to this proceeding,  
24 then staff cannot introduce the entire deposition  
25 transcript. There is a question of whether staff

1 can even conduct discovery or even admit any  
2 evidence into the record if they are not a party.  
3 And OPC asserts that staff can't use its non-party  
4 status as both a sword and a shield.

5 Furthermore, Section 120.59(2) subsection (g)  
6 prohibits the inclusion of irrelevant, immaterial  
7 and unduly repetitious evidence into the hearing  
8 record. Let me quote the statute.

9 Quote, "irrelevant, immaterial or unduly  
10 repetitious material, repetitious evidence shall be  
11 excluded," end quote.

12 The depositions conducted by OPC and FIPUG  
13 were truly discovery depositions, so there is  
14 material in those transcripts that is both  
15 irrelevant, immaterial and unduly repetitious and  
16 should be excluded. That's why we asked staff to  
17 identify what portions of the transcripts they  
18 thought were essential for the record.

19 Again, we attempted to compromise, but that  
20 didn't happen. However, I would like to point out  
21 that, back in 2009, during the big FPL and Duke --  
22 or Progress rate cases, when staff was trying to  
23 introduce deposition transcripts into the record,  
24 they worked with all the parties to explain what  
25 portions of the transcripts they would like

1 introduce, and there was compromise between the  
2 parties and staff to allow those deposition  
3 transcripts to be stipulated into the record. But  
4 portions of the transcripts that were not  
5 stipulated into the record, and staff thought was  
6 essential for the record, staff went ahead and  
7 asked those questions live and cross-examined those  
8 witnesses to establish that record.

9 And finally, Rule 0.330 subsection (a) of the  
10 Florida Rules of Civil Procedure governs the use of  
11 depositions at trial, subsection (c)(4) states, if  
12 only a part of the deposition is offered into  
13 evidence by a party, then an adverse party may  
14 require introduction of any other part that is, in  
15 fairness, should be considered and any other party  
16 may introduce those parts.

17 Again, we don't believe the whole transcript  
18 should go in unless it's requested by a party or an  
19 adverse impairment. There is no rule of  
20 completeness as it relates to the deposition  
21 transcripts. And third, if staff is not an adverse  
22 party or a party, then OPC maintains that staff  
23 cannot require the introduction of the transcript.

24 And there may be another issue of Cherry  
25 violation if staff recommends to you that these



1 depositions -- or this evidence should go into the  
2 record because staff is supposed to be neutral, not  
3 take a position by advocating that certain evidence  
4 should go into the record, that could cut against  
5 OPC, it could cut against Florida Power & Light, or  
6 FPL, in the positions that we take. So in that  
7 sense, there is a potential of a Cherry violation  
8 by just wholesale putting evidence into the record  
9 that parties object to.

10 Thank you.

11 MR. MOYLE: Mr. Chairman.

12 CHAIRMAN GRAHAM: Mary Anne.

13 MS. HELTON: I am going to try to address the  
14 arguments that Mr. Sayler raised. I hope that I  
15 hit upon everything. I may have missed some of  
16 them.

17 He quoted to you a part of Section 120.569  
18 subsection (g), but he left out some of that. The  
19 rest of the paragraph says that all other evidence  
20 of a type commonly relied upon by reasonably  
21 prudent persons in the conduct of their affairs  
22 shall be admissible in Section 120.57 proceedings,  
23 and that's what we are in today. Whether or not  
24 such evidence would be admissible in a trial in the  
25 courts of Florida, any part of the evidence may be

1 received in written form, and all testimony of  
2 parties and witnesses shall be made under oath.

3 I am not sure why Ms. Barrera wants the entire  
4 transcript in, but that has been a common practice  
5 in Commission proceedings. There was a time -- I  
6 think Mr. Sayler said it was the 2009 Florida Power  
7 & Light rate case where only portions of  
8 transcripts were in. That case was a very unique  
9 case in Commission history, and I am not sure that  
10 that is a -- while that happened, that's not the  
11 typical practice of Commission proceedings.

12 With respect to the arguments, whether -- that  
13 staff is not a party, and that we are, perhaps,  
14 going down the road of Cherry violations if staff  
15 were to admit -- ask for evidence to be admitted  
16 into the record, or to conduct discovery in the  
17 case, I disagree with that.

18 When you read the South Florida Natural Gas  
19 case, and the LEAF case, when they objected to the  
20 conservation goals back in the early '90s, I think  
21 the Court made it very clear that when the  
22 Commission is going through a rate-making  
23 process -- and I think that we are in a rate-making  
24 proceeding here today -- that you may rely on your  
25 staff to conduct discovery; you may rely on your

1 staff to ask questions during the course of the  
2 proceeding, and that there is no Cherry violation  
3 in doing so, and it is a completely appropriate  
4 practice for the Commission staff.

5 I think, if I remember right, the South  
6 Florida Natural Gas case talks about that you,  
7 sitting as the tribunal, can not be expected to get  
8 into each case and do the digging that you expect  
9 your staff to do. And I don't know how staff can  
10 help you develop a record without conducting  
11 discovery. I don't know how staff can help you  
12 build a record for you to make a decision if they  
13 cannot allow you to see that discovery during the  
14 course of the proceeding.

15 I think that under Rule 1.330 of the Rules of  
16 Civil Procedure, it is appropriate for the  
17 Commission to allow deposition transcripts to go  
18 into the record. The rule that Mr. Sayler quoted  
19 you -- or the paragraph that Mr. Sayler quoted you  
20 in rule number four, it says that, yes, any -- an  
21 adverse party may require the party to introduce  
22 any other part of, in fairness, of a deposition  
23 transcript. But the last part of that paragraph  
24 also says that any party may introduce any other  
25 part.

1 CHAIRMAN GRAHAM: Mr. Moyle.

2 MR. MOYLE: I just wanted to be on the record  
3 joining in the objection that was articulated by  
4 the Office of Public Counsel for the reasons they  
5 set forth. I won't go through them.

6 I guess I would just make one observation,  
7 that this is a factual determination on a new issue  
8 for everyone, including the Commission, and these  
9 depositions were discovery depositions to learn  
10 more about, you know, what is going on.

11 All of the witnesses involved will be here on  
12 the stand, so, you know, the depositions come in. I read  
13 them, you know, they are not that exciting. But  
14 for you all to understand all of the facts  
15 contained in there, I would suggest the better  
16 practice is to ask live witnesses on the stand  
17 questions, as compared to taking wholesale  
18 depositions and then putting them in, particularly  
19 to the extent that findings of fact are going to be  
20 made on them.

21 So we would join in the objection.

22 MR. LAVIA: Mr. Chair, Retail Federation would  
23 join too. This is an issue about protecting the  
24 record.

25 Thank you.

1 MS. BARRERA: Mr. Chairman.

2 CHAIRMAN GRAHAM: This is untouched ground  
3 that we are dealing with right now, and in this  
4 case, especially staff is trying to get as much  
5 information into the record we can get so they can  
6 come up with a final order, or a final  
7 recommendation. So I am going to allow 55 through  
8 58 to be entered. We will come back to 44 through  
9 54 after the break.

10 (Whereupon, Exhibit Nos. 55 through 58 were  
11 received into evidence.)

12 CHAIRMAN GRAHAM: Staff, what's next? Is it  
13 opening statements?

14 MR. SAYLER: Mr. Chairman, for the record, we  
15 object to the ruling, and we will preserve that for  
16 appeal.

17 CHAIRMAN GRAHAM: Duly noted.

18 MR. MOYLE: Mr. Chairman.

19 MS. BARRERA: At this point, Mr. Chairman, it  
20 is the time for opening statements of the parties.

21 CHAIRMAN GRAHAM: Mr. Moyle.

22 MR. MOYLE: Sir, I just had two other brief  
23 preliminary matters. One, in the discussion with  
24 the prehearing officer, FIPUG witness Mr. Pollock  
25 may have an issue, and so I ask that he be allowed

1 to go on Tuesday. I will -- I didn't want to  
2 surprise you. I just wanted to advise you that I  
3 am trying to figure that out, and I will work with  
4 FPL and others on the Mr. Pollock issue.

5 And then secondly, with respect to order of  
6 cross and opening, we have agreed amongst ourselves  
7 that it would go from the set of to the right, with  
8 OPC going first. I think that typically happens,  
9 but I just wanted to make you aware of that as  
10 well.

11 CHAIRMAN GRAHAM: You mean from the right to  
12 the left?

13 MR. MOYLE: Depending on where you are  
14 sitting, right.

15 MS. BARRERA: Well, my understanding,  
16 Chairman, is that FP&L's witnesses go first, then  
17 OPC, then FIPUG. So I am kind of not understanding  
18 what Mr. Moyle means.

19 CHAIRMAN GRAHAM: Well, as far as witness  
20 order goes, as far just as -- just as long as  
21 Florida Power & Light and the other intervenors, if  
22 it doesn't matter to them, it doesn't matter to me.

23 MS. BARRERA: That's fine. Well, it's the  
24 same is all I am saying.

25 CHAIRMAN GRAHAM: Fair enough.

1 All right. Anything else before we go to  
2 opening statements?

3 And it says here that Florida Power & Light  
4 has got 10 minutes, and the intervenors will have  
5 20 minutes to share, I take it, and you guys kind  
6 figure out how to divvy that up, all right.

7 MR. SAYLER: Yes.

8 CHAIRMAN GRAHAM: All right. Mr. Butler.

9 MR. BUTLER: Thank you. Good morning,  
10 Mr. Chairman and Commissioners.

11 We are here today to consider a truly exciting  
12 opportunity, to take a measure of control over what  
13 FPL and our customers pay for the gas that runs  
14 FPL's power plants.

15 In a nutshell, FPL is proposing to replace a  
16 small portion of its existing financial hedging  
17 program with a form of longer term physical hedging  
18 that it is also expected to produce customer fuel  
19 savings. And the approach that FPL proposes to  
20 take is step-wise in nature so that FPL can move  
21 forward with this innovative program in a  
22 thoughtful and measured way, subject to regular and  
23 meaningful commission review.

24 The need for FPL's proposal is clear. In  
25 recent years, FPL has invested in clean, fuel

1           efficient natural gas generation facilities. The  
2           improved efficiencies combined with the currently  
3           lower natural gas prices have helped FPL keep its  
4           customers' bills low. FPL's investments in natural  
5           gas power plants have saved customers more than six  
6           and a half billion dollars in fuel costs since  
7           2001, and they will continue to provide customer  
8           savings for decades.

9           As a consequence of these efforts to keep  
10          customers' bills low and reduce emissions,  
11          approximately 65 percent of the electricity that  
12          FPL supplies to customers comes from natural  
13          gas-fired generation. This means that natural gas  
14          is the largest single component of FPL's fuel bill.

15          In a hearing held in this docket a little over  
16          a month ago, you approved 2015 Fuel Clause factors  
17          that will recover more than \$2.9 billion that FPL  
18          will pay to buy natural gas all at market prices  
19          that are extremely volatile. With natural gas  
20          representing such a large component of FPL's fuel  
21          bill, we have been searching for a way to both  
22          reduce and stabilize the cost of natural gas for  
23          customers. We believe we found the answer.

24          FPL is proposing to invest in gas reserves  
25          that would meet a portion of our gas needs at the



1 cost of production, rather than having to buy that  
2 same volume of gas at market prices. Consistent  
3 with the Commission's established precedent, FPL is  
4 asking to recover the cost for the gas reserve  
5 investment through the Fuel Clause, including a  
6 return on FPL's investment at the midpoint of the  
7 Commission approved ROE.

8 Recovery through the Fuel Clause simply  
9 replaces one form of gas cost with another.  
10 Accordingly, not allowing the cost of gas reserves  
11 to be recovered through the Fuel Clause would be a  
12 significant disincentive to such an investment. At  
13 the same time, Fuel Clause recovery provides  
14 assurance that customers will pay only the actual  
15 cost of the gas reserves with the cost being  
16 subject to routine annual audits by Commission  
17 staff.

18 If approved by the by the Commission, FPL will  
19 house gas reserves in a wholly owned subsidiary in  
20 order to provide greater accounting transparency,  
21 tax advantages and other customer benefits. The  
22 subsidiary would be consolidated with FPL for  
23 regulatory purposes and would transfer gas to FPL  
24 as the cost, raising none of the concerns about  
25 conventional affiliate relationships that OPC and

1 FIPUG suggest.

2 This past spring, FPL identified an excellent  
3 candidate for the first gas reserves project in the  
4 Woodford Shale region of the Oklahoma's Arkoma  
5 basin. The Woodford will allow FPL to partner with  
6 PetroQuest, an industry leader in gas development  
7 and production from the Woodford region, with which  
8 FPL's affiliate, US Gas, already has extensive and  
9 favorable experience. It will be located an area  
10 where PetroQuest and US Gas already have been  
11 producing gas for several years.

12 FPL's witness Dr. Tim Taylor has an exhibit  
13 that vividly illustrates the advantage of this  
14 location. We have put a poster size version up  
15 here on the left. It's his exhibit TT-8.

16 The red boundary lines, roughly rectangular  
17 area on this exhibit, show the area where the  
18 Woodford Project wells will be located. The black  
19 lines show the existing US Gas wells, all of which  
20 are currently producing a strong, predictable flow  
21 of gags. The purple lines on the exhibit show  
22 where the new wells in the Woodford Project will be  
23 drilled for FPL.

24 As you can see, each of the purple lines is  
25 very close to a black line. This means that FPL's

1 new wells will be tapping into the exact same  
2 reservoir of gas as the existing US Gas wells. As  
3 a result, there is an extremely strong likelihood  
4 that the new wells will be just as productive as  
5 the existing ones.

6 You will hear a lot from the intervenors about  
7 the risk associated with the gas exploration  
8 business, but Dr. Taylor's exhibit shows quite  
9 clearly that the Woodford Project isn't gas  
10 exploration. It's the straightforward business of  
11 extracting additional gas from the known producing  
12 reserve.

13 While OPC and FIPUG do their best to conflate  
14 exploration with production risk, the two  
15 activities are not even in the same ZIP Code as far  
16 as the risk profiles. As Dr. Taylor puts it, the  
17 Woodford Project is derisked.

18 Another huge advantage for FPL's customers is  
19 that the Woodford Project will produce what's  
20 referred to as dry gas, meaning that it's almost  
21 all methane. Now, that's exactly what FPL needs to  
22 burn in its power plants. By fortunate  
23 condition -- or coincidence, dry gas isn't the  
24 current focus of oil and gas producers looking to  
25 sell their outputs in the open market. Therefore,

1 the Woodford Project is available to FPL on  
2 extremely favorable terms.

3 Talking about those favorable terms; FPL  
4 estimates that the Woodford Project will save  
5 customers almost \$107 million on a net present  
6 value basis, for an investment of only 191 million.  
7 And those savings are projected to start in year  
8 one and continue in each and every year thereafter.  
9 This is illustrated by FPL witness Sam Forrest  
10 exhibit SF-7, which is the blowup on the right in  
11 front of you.

12 If you look on that exhibit, you will see a  
13 yellow line that is below a red line. The yellow  
14 line represents the estimated cost of production  
15 for gas from the Woodford Project, and the red line  
16 is the projected market price of gas. As you can  
17 see, the yellow line is lower than the red line  
18 throughout the entire life of the project. This is  
19 a remarkable opportunity.

20 You will hear a lot from intervenors about  
21 uncertainty in the gas price forecast used to  
22 evaluate the Woodford Project. It's true that  
23 there is no certainty in gas price forecasting,  
24 because the prices themselves are quite volatile.  
25 But uncertainty in forecasted gas prices shouldn't

1           obscure two fundamental and essential points about  
2           the Woodford Project.

3           First, the Woodford Project is estimated to  
4           generate tens of millions of dollars in net present  
5           value fuel savings for customers under all three  
6           alternative approaches to gas price forecasting  
7           presented by the intervenor witnesses. This is  
8           illustrated on Mr. Forrest's rebuttal exhibit  
9           SF-10, which shows customer savings ranging from  
10          26.8 million to \$90.8 million under the  
11          intervenors' three forecasting approaches. Those  
12          substantial estimated savings show that the  
13          Woodford Project is a great deal for customers  
14          under a wide range of gas price assumptions, even  
15          those underpinning the intervenors' positions in  
16          this case.

17          Secondly, and equally important, the  
18          intervenors' testimony about uncertain gas prices  
19          highlights the value of the Woodford Project as a  
20          fuel price hedge. The cost of production from the  
21          Woodford Project will be the same regardless of  
22          what gas prices turn out to be. This decoupling is  
23          exactly what one wants in a fuel price hedge, and  
24          the Woodford Project can provide this hedging  
25          benefit over a considerably longer timeframe than

1 is achievable under FPL's current short-term  
2 financial hedging program.

3 Another central intervenor theme is that FPL  
4 supposedly will be guaranteed a return on gas  
5 reserve projects. This is simply untrue. In fact,  
6 it's belied by OPC's and FIPUG's frequent  
7 challenges to FPL's recovery of investments and  
8 expenses on a wide range of theories.

9 As is clear from FPL's petition and supporting  
10 testimony in this case, the Commission and the  
11 intervenors will review the prudence of gas  
12 reserves costs. FPL may only recover the costs if  
13 they are prudently incurred. There is no  
14 guarantee.

15 Furthermore, while the intervenors fret about  
16 FPL earning its authorized midpoint ROE on gas  
17 reserves investments, even if customer savings turn  
18 out to be lower than projected, they conveniently  
19 ignore the converse, that FPL will earn no more  
20 than its authorized midpoint ROE if customer  
21 savings turn out to be greater than projected.  
22 That prospect is by no means remote.

23 The estimated \$107 million in customer savings  
24 is a middle of the road figure, based on the same  
25 forecast that FPL used for its 10-year site plan

1 and the recent DSM goals docket. Actual savings  
2 could be either higher or lower.

3 Again, FPL is simply asking to recover the  
4 cost for the gas reserves project in the same  
5 manner that FPL and other utilities recover a host  
6 of other -- or yeah, excuse me, recover a host of  
7 other costs through the Fuel Clause.

8 Finally, let me comment briefly on FPL's  
9 proposed guidelines for future gas reserve  
10 projects.

11 During FPL's search for a suitable initial  
12 project, it became clear that potential  
13 counterparties are unwilling to defer closing on a  
14 project for the amount of time required by  
15 regulatory review and approval. In this instance,  
16 FPL was able to structure an arrangement whereby  
17 its affiliate US Gas initially owns the Woodford  
18 Project but will transfer it at cost to FPL if we  
19 receive your regulatory approval. However, FPL  
20 cannot count on of that arrangement, which amounts  
21 to US Gas giving FPL a free option for future  
22 projects.

23 Therefore, FPL has proposed guidelines within  
24 which FPL could confidently move forward with  
25 future projects that likely would not remain

1 available if FPL had to wait for an advanced  
2 prudence determination. The guidelines in no way  
3 preclude subsequent prudence reviews of such  
4 projects, but rather provide the context within  
5 prudence would be evaluated.

6 In summary, FPL looks forward to presenting  
7 its case to you and responding to your questions  
8 about our gas reserves proposal. We are confident  
9 that the more you understand the proposal, the more  
10 you will appreciate what an exciting opportunity it  
11 will be both to reduce and stabilize of the cost to  
12 customers of the biggest component of FPL's fuel  
13 bill.

14 Thank you.

15 CHAIRMAN GRAHAM: Thank you, Mr. Butler.

16 I take it we are going to start on this end  
17 and work our way through?

18 MR. SAYLER: Yes, sir.

19 CHAIRMAN GRAHAM: All right. Mr. Sayler.

20 MR. SAYLER: All right.

21 CHAIRMAN GRAHAM: You have the top end of 20  
22 minutes.

23 MR. SAYLER: Sir?

24 CHAIRMAN GRAHAM: You have the top end of 20  
25 minutes.



1 MR. SAYLER: All right. Thank you.

2 Good morning, Mr. Chairman, Commissioners.

3 Erik Sayler with the Office of Public Counsel on  
4 behalf of FPL's customers. I'm going to provide a  
5 quick roadmap to my opening argument.

6 First, I am going to provide a brief overview  
7 of FPL's proposal that differs somewhat from how  
8 they characterized it, how that departs from Chapter  
9 366, list some regulatory policy issues that OPC  
10 has with FPL's proposal that we think you should  
11 consider, and list a few things that FPL is  
12 promising but cannot guarantee to the customers and  
13 share some concluding observations.

14 First, we are gathered here today because FPL  
15 has filed a petition in this docket to invest in  
16 natural gas reserves. That is to invest in  
17 quantities of gas that FPL projects will be in the  
18 ground and cost-effective to extract over the  
19 50-year life of these projects.

20 FPL wants to obtain a portion of its natural  
21 gas to generate electricity at what they call as  
22 production cost instead of market cost. It's  
23 important for you to note that, despite FPL's  
24 characterization, acquiring gas at wellhead or  
25 production cost is quite different from the risks

1 associated with obtaining it at market cost.

2 In addition, FPL proposes to presumptively  
3 recover through the Fuel Clause all costs  
4 associated with FPL's gas reserves investments so  
5 long as those investments meet FPL's proposed  
6 guidelines. The important thing for you to  
7 consider today is really the guidelines, because  
8 that's where all the money is at, up to  
9 \$750 million a year.

10 Those costs would be FPL's share -- portion of  
11 the production cost that FPL must pay its natural  
12 gas drilling partners. But to obtain gas at  
13 production costs requires FPL to invest in a highly  
14 competitive and risky natural gas exploration,  
15 drilling and production industry, an industry in  
16 which FPL has no experience. Instead, FPL proposes  
17 to shift all the risks associated with the industry  
18 and its proposed investments to its customers in  
19 exchange for a guaranteed, trued up shareholder  
20 return on those investments so long as they meet  
21 FPL's broad and generous guidelines.

22 Secondly, FPL's proposal is not a hedge. When  
23 you hedge, you eliminate or minimize risks instead,  
24 FPL is proposes to shift all the risk to the  
25 customers without really minimizing or eliminating

1 any risks.

2 FPL's proposal is a clear departure from the  
3 regulatory paradigm established by the Legislature  
4 in Chapter 366. As you know, utilities are allowed  
5 an opportunity, not a guarantee, an opportunity to  
6 earn a regulated return or profit on any utility  
7 investment that is allowed pursuant to Chapter 366,  
8 and that is deemed used and useful in the public  
9 service by this commission.

10 For an electric utility, those investments are  
11 in generation, transmission, distribution plant  
12 services, along with the necessary equipment to  
13 support those functions, trucks, warehouses, heavy  
14 equipment and supplies. If it is deemed used and  
15 useful in the public service, then it's placed into  
16 rate base, and the utility has an opportunity to  
17 earn its regulatory return or profit on it.

18 Similarly, if a cost is determined to be an expense  
19 by this commission, then the utility does not earn  
20 a return on that.

21 For instance, the cost of fuel recovered  
22 through the Fuel Clause is an expense, and thus, an  
23 electric utility does not earn a return or profit  
24 on this cost. But FPL is actually proposing to  
25 earn a profit or return on fuel costs that it flows

1 through the Fuel Clause.

2 Pursuant to Chapter 366, drilling for natural  
3 gas is not a core function for supplying  
4 electricity, nor are natural gas reserve  
5 investment, quote, "fossil fuel related costs  
6 normally recovered through base rates," end quote.  
7 Moreover, to date, no regulated electric utility  
8 has never attempted to invest in gas reserves that  
9 FPL is proposing, \$750 million a year, attempted to  
10 put gas reserve investments into rate base, or  
11 attempted to seek recovery of those costs in its  
12 base rates.

13 So by definition per statute and per prior  
14 Commission orders and precedent, FPL cannot recover  
15 these gas reserves investments through base rates  
16 or, as FPL proposes, through the Fuel Clause.

17 FPL's petition can be summed up as a new way  
18 to decouple shareholder risks from shareholder  
19 profits by shifting all the risks associated with  
20 the natural gas industry to the customer. FPL's  
21 proposal is a significant paradigm shift from the  
22 customer protections automatically built into the  
23 regulatory compact. Its petition is a game  
24 changer, not only for FPL, but for every other  
25 regulated utility in the state of Florida that has

1 natural gas fired generation. Up.

2 Here are a few regulatory policy issues that  
3 the customers have:

4 FPL is petitioning the Commission to approve  
5 as prudent the Woodford Project partnership with  
6 PetroQuest, along with all the future costs  
7 associated, both known and unknown, associated with  
8 this venture.

9 Secondly, the guidelines are something you  
10 should carefully scrutinize because FPL wants the  
11 Commission to approve guidelines that provide for  
12 presumptive prudence determination on the  
13 front-end, and presumptive Fuel Clause recovery for  
14 costs, including shareholder profits, associated  
15 with the future natural gas reserve investments  
16 that FPL makes.

17 Moreover, FPL's proposal under the guidelines  
18 does not allow the Commission to review the  
19 reasonableness or prudence of any of the management  
20 decisions or activities that cause the costs which  
21 FPL seeks to recover. Once FPL invests in a gas  
22 reserves project to its guidelines, it's  
23 essentially on a glide path to recovery.

24 Secondly, Commission staff which does a great  
25 job auditing utilities, will really be limited in

1 their ability to audit the utilities and be limited  
2 to auditing the JIB sheets submitted by FPL's  
3 production partners.

4 Essentially, FPL will be reconciling the  
5 checkbook -- or excuse me, the Commission will be  
6 reconciling the checkbook. They won't be able to  
7 really see if any of those costs incurred were  
8 reasonable or prudent.

9 As noted, FPL proposes to recover its  
10 investments through the Fuel Clause, and they  
11 propose to recover all their investments,  
12 regardless of whether any gas is found or produced,  
13 or whether the gas production costs are at or below  
14 market price.

15 FPL's proposal essentially will transform the  
16 fuel cost recovery clause into a guarantee risk  
17 holder/shareholder profit center for any investment  
18 that FPL claims, projects or forecasts on the front  
19 end, could result in net fuel savings to customers  
20 over 50 years.

21 Those are the things -- these are the things  
22 that FPL promises but can't guarantee. Its  
23 petition is long on promises forecasted fuel  
24 savings to customers, but is short in providing  
25 guarantees that customers realize those fuel

1 savings.

2 One of the contingent requirements to seek  
3 recovery through the Fuel Clause is that the  
4 reserve -- or the investment will result in fuel  
5 savings. However, FPL is not saying that it will  
6 result in fuel savings. They are projecting fuel  
7 savings. And FPL's projections of fuel savings are  
8 based on a lot of variables, almost all of them are  
9 completely outside of FPL's control.

10 For instance, over the next 50 years, FPL  
11 cannot control the market price for natural gas,  
12 let alone accurately forecast the market prices  
13 from year to year.

14 Over the next 50 years, FPL cannot control the  
15 costs of exploration, drilling, hydric fracturing,  
16 or fracking, and the production costs needed to  
17 extract natural gas.

18 OPC mentions fracking because the Woodford  
19 Project is a shale gas play, and the only way to  
20 obtain any shale gas in a sizable quantity is  
21 through fraying.

22 Further, FPL control or ensure the production  
23 costs will remain at or below the market price for  
24 natural gas. And we are talking a 50-year horizon.

25 Further, FPL is cannot control or guarantee

1           that the Woodford Project, or any of its other gas  
2           reserve projects, will produce the projected  
3           volumes of gas necessary to keep the lights on in  
4           Florida. FPL, in its proposal, wants to purpose  
5           about 20 percent -- or replace 25 percent of its  
6           daily natural gas burn with these proposals. And  
7           if FPL cannot secure quantities of gas of that  
8           amount, then FPL will be required to be to go out  
9           into the marked and buy replacement gas, and the  
10          customers will be placed in the position of paying  
11          for the same gas twice.

12                 These are all the risks that FPL proposes the  
13          shift -- excuse me, not only are these variables  
14          outside of FPL's control, but these variables are  
15          also competitive market risks that FPL proposes the  
16          shift to the customers.

17                 FPL's customers, under FPL's proposal, will  
18          indemnify FPL and its shareholders from all  
19          competitive market risks associated with these  
20          activities. FPL and its customers currently do not  
21          face any of these competitive market risks by  
22          obtaining natural gas at market prices. That is  
23          because any competitive market risks associated  
24          with obtaining gas at market prices is already  
25          built into the price of the natural gas.



1           One instance of a variable outside of FPL's  
2           control is this: The financial viability of the  
3           Woodford Project depends upon FPL's ability to  
4           forecast 50-year fuel forecasts, and it sinks or  
5           swims based on FPL's ever-changing forecasts.

6           In its petition, FPL initially projected  
7           \$107 million of fuel savings to customers, and that  
8           was based upon the fuel forecasts that Mr. Butler  
9           site, which was October 2013. And it's also based  
10          as a justification to reject our motion to dismiss.  
11          However, according to discovery responses from FPL,  
12          and using a more recent, current, July 2014  
13          forecast, the projected Woodford Project was  
14          revised downward to \$51.9 million. In less than 10  
15          months, \$55 million in projected customer fuel  
16          savings have evaporated.

17          Other issues with the petition, at an August  
18          issue ID meeting between the staff, the utilities  
19          and the parties, FPL was asked if FPL was willing  
20          to share any of the risks associated with natural  
21          gas reserves investments. FPL's counsel candidly  
22          stated that FPL's shareholders should not bear any  
23          of the, and I quote, "extraordinarily risks", end  
24          quote, associated with FPL's proposal. That begs  
25          the regulatory question this commission should

1 consider. If FPL and its shareholders are  
2 unwilling to bear any of these extraordinary risks,  
3 then why should FPL's customers?

4 Earlier I mentioned that FPL's proposal was a  
5 game changer for all the regulated utilities in  
6 Florida. Just last month, in an interview with  
7 Bloomberg, Duke CFO, Steve Young, stated that Duke  
8 is watching the outcome of this commission's  
9 decision. The implication being that Duke wants to  
10 get a piece of the gas reserves action and a chance  
11 for its shareholders to earn guaranteed returns on  
12 its profit.

13 A couple concluding remarks. First, FPL's  
14 request to approve the guidelines, which are very  
15 important, is reminiscent of the type of  
16 guaranteed, risk free recovery that electric  
17 utilities received in the 2006 nuclear cost  
18 recovery statute before it was amended in 2013.  
19 It's reminiscent, because under FPL's proposal, if  
20 it projects fuel savings, it will receive a  
21 guaranteed, trued up return or profit on its gas  
22 reserves investments, even if those investments do  
23 not produce one module of natural gasp.

24 Secondly, if FPL's gas reserves projected fuel  
25 savings are such assure thing, why is FPL's

1 testimony replete with gambling terminology to  
2 explain those fuel savings? Mr. Forest, in  
3 rebuttal, says, there is an 85 percent probability  
4 of fuel savings. At his deposition, he said that  
5 FPL had these Monte Carlo simulations to calculate  
6 probable fuel savings.

7 And if the Commission allows FPL to invest in  
8 natural gas reserves that are projected to do fuel  
9 savings, then what's to stop FPL, or any other  
10 regulated electric utility, from investing in other  
11 projects, such as uranium mine oring -- or mining  
12 uranium ore, or investing in solar panels  
13 manufacturing, so long as they project that some  
14 fuel savings will result to the customers?

15 And I will conclude with Mr. Lawson's  
16 conclusion. If the Commission were to grant FPL's  
17 petition, the Commission would be guaranteeing FPL  
18 shareholders risk free profits on the Woodford  
19 Project for the next 50 years, as well as risk free  
20 profits on other gas exploring -- exploration,  
21 drilling and possibly fracking activi -- projects  
22 under FPL's proposed guidelines. 50 years is a  
23 long time to receive guaranteed profits on  
24 investments that are not guaranteed to deliver the  
25 promised fuel savings. And, Commission, that

1 inequity is -- basically sums up the customers'  
2 concerns with FPL's proposal.

3 For this and all the reasons in the testimony  
4 of Mr. Lawton and Ms. Ramas, FPL, on behalf of  
5 FPL's cus -- OPC, on behalf of FPL's customers,  
6 request that you deny FPL's request.

7 Thank you.

8 CHAIRMAN GRAHAM: Thank you, sir.

9 There is about seven minutes left.

10 MR. LAVIA: Thank you. Good morning,  
11 Commissioners.

12 Florida Retail Federation supports OPC's  
13 positions in this proceeding, and following the  
14 rule of brevity, we will cede the rest of our time  
15 to FIPUG.

16 CHAIRMAN GRAHAM: Mr. Moyle, still about seven  
17 minutes left.

18 MR. MOYLE: Seven?

19 No thank you. Three words. Very concise.  
20 Stated firmly. Hopefully clearly. No thank you.  
21 That is what, collectively, the customers, the  
22 ratepayers, the consumer interest are trying, in  
23 earnest, to communicate to FPL and to this  
24 commission. No thank you.

25 In this case, you will hear a lot of

1 testimony, it's a new issue for you, but FIPUG  
2 thinks it's important that you look at this  
3 arrangement from the interest of the various  
4 parties.

5 First of all, you have a company called  
6 PetroQuest. Nobody is here from PetroQuest today  
7 to talk to or to ask questions. We think that's a  
8 mistake, since they are going to be the operator --  
9 kind of the entity on point.

10 You will hear that they are not a particularly  
11 high quality company from a financial standpoint.  
12 They are rated below investment grade. We will  
13 explore that. But how does this deal look from  
14 PetroQuest's advantage? I would suggest it's a  
15 pretty good deal.

16 PetroQuest, as I suggested, is not that  
17 financially sound, but they have a regulated  
18 utility, Florida Power & Light, NextEra, coming in  
19 to basically pay a significant portion of the  
20 operating cost of oil drilling in Oklahoma. That's  
21 a pretty good deal for PetroQuest. They then can  
22 take the product and market it. That's their core  
23 business.

24 You know, let there be no doubt that what is  
25 before you today, purely and squarely, is FPL

1 asking your blessing to get into the oil and  
2 natural gas business in Oklahoma, and Texas, and  
3 places beyond. And they are not just asking that  
4 for this project. They have guidelines. They want  
5 you to say, you are good to go from here on out.  
6 \$750 million a year, which, if you are FPL and  
7 looking at from FPL's perspective, that's a pretty  
8 good deal.

9 I think you will hear FPL witnesses admit that  
10 there is very little risk associated to -- with  
11 this project for FPL. They are going to act as  
12 sort of a paper gatherer. They get paper from  
13 PetroQuest, they push it through to the Commission  
14 in the Fuel Clause. You all look at it. They have  
15 very little risk associated with that. They get a  
16 return on those costs, which heretofore, they never  
17 have. So in effect, we think they have kind of  
18 figured out a way how to make money on hedging.  
19 And they are going to get an ROE, return on these  
20 costs, that are being incurred by a third-party in  
21 a competitive business.

22 We are going to ask Mr. Deason some questions  
23 about the policy of this, in effect, allowing a  
24 competitive business to be used to pull costs in  
25 and then, in effect, put those costs into a

1 regulatory construct.

2 And why is this happening? From FPL's  
3 perspective, they have built out a lot of their  
4 power plants, the repowerance about \$1 billion, 1.5  
5 billion they have done. They are long in power.  
6 They don't have much power. How are they going to  
7 grow the company? Here's one way, we will get into  
8 the oil and gas business. We buy a ton of natural  
9 gas, but right now we don't make any money on the  
10 natural gas. If we could come up with a way where  
11 we could make money on the natural gas, earn a  
12 return on it, that will be a good growth vehicle  
13 for our company for years to come. How do we do  
14 that? Bring this in front of the Commission, ask  
15 for the approval of the guidelines and off you go.

16 The ratepayers' perspective, this is not a  
17 good deal. Not a good deal for the ratepayers,  
18 because, as you will hear, the ratepayers are  
19 getting all of the risk put on them just about.

20 Mr. Forrest, I think, will talk about not many  
21 people are willing to take fixed, long-term  
22 positions on natural gas. Maybe, except for the  
23 ratepayers of Florida, because that's what he is  
24 asking. He is saying that the production costs  
25 will be static. You will is a those production

1 costs, and it will be the equivalent of a hedge,  
2 you know. It will be that way for 20 years. So  
3 this risk, this market risk that most people won't  
4 take, they are asking the ratepayers to take.

5 I think it's important, as you hear testimony  
6 today, to note what is not before you. I mentioned  
7 PetroQuest. They are not here. They are the  
8 operator. We submit that's a key player. And for  
9 you to make a decision like this, with significant  
10 policy ramifications, respectfully, you should hear  
11 from the person who is going to be on the point of  
12 the spear, the one that's going to be doing the  
13 drilling, the operating, get a feel for their  
14 business experience. They are not here.

15 Forrest Garb, this is an expert who said, I  
16 have looked at this deal. He has done a report.  
17 FPL is going to ask you to consider his report, but  
18 no one from that company is here to talk to you  
19 about the report that they did.

20 A signed operating agreement, there is -- Mr.  
21 Forrest has a lot of contracts. This is important.  
22 It's a contractual relationship. This document  
23 that we have talked about a little bit, that was  
24 just discovered that it wasn't part of the case in  
25 some depositions, it was provided late, it's -- it



1 doesn't even have a signed operating agreement.  
2 There is no signed operating agreement that FIPUG  
3 can tell that's even before you today. So we think  
4 it's a stretch to ask you to approve a deal worth  
5 hundreds of millions without a signed operating  
6 agreement.

7 There is no written due diligence report. Mr.  
8 Forrest, I think, will suggest there wasn't a  
9 written due diligence report. And there is no risk  
10 analysis that, you know, was that done that FPL  
11 will stand up and say, here is our risk analysis.  
12 There is a ton of risk.

13 We are going to introduce you to a PetroQuest  
14 SEC filing that shows all of the risk that they are  
15 telling investors go along with the oil and gas  
16 business, and the testimony will be all of these  
17 risks ultimately end up on the doorstep of the  
18 ratepayers, and we don't think that is appropriate.

19 We think the right answer to this is, again,  
20 no thank you. And would also suggest that a policy  
21 issue of this magnitude should not rest on the  
22 doorstep of the Commission, but should be something  
23 like they did in Montana. Let the Legislature look  
24 at this. If this is such a good deal, let the  
25 Legislature give you direction.

1 I know you all, I think, sometimes have said,  
2 we execute policy. We don't make policy. This is  
3 purely making policy, and we don't think it should  
4 be done without giving the Legislature a chance to  
5 look at it and say, thumbs up, or thumbs down.

6 So, Mr. Chairman, we look forward to the  
7 hearing. Thank you for the chance to make an  
8 opening statement.

9 CHAIRMAN GRAHAM: Thank you, Mr. Moyle.

10 Okay. It's time to get around to witnesses.

11 Most of you have been before me before, but I  
12 guess to remind you, no friendly cross. When you  
13 ask a question, you need to give the witness one or  
14 two sentences to reply. If you want to, that  
15 person to editorialize, they can talk as long as  
16 they want, that's your discretion. If you want for  
17 them just to answer the question briefly, then let  
18 them know and we will make sure, but you have to  
19 allow them to clarify. They can say yes, and  
20 clarify that yes, or no, and then clarify that no,  
21 or they could ask you to restate the question.

22 Staff, what other things do I need to touch?  
23 That -- y'all know the witnesses are going to be  
24 allowed to summarize in five minutes of their --  
25 summarize their testimony in five minutes. We will

1 enter their prefiled direct testimony into the  
2 record before they speak, and all their exhibits  
3 and other things. If other materials are handed  
4 out, we can enter those into the record after the  
5 witness is done.

6 Are there any other questions about witnesses  
7 before we swear them in?

8 Staff, did I miss anything?

9 MS. BARRERA: There are no questions.

10 CHAIRMAN GRAHAM: Okay. If you are a witness  
11 that's coming before us in this hearing, if I can  
12 get you to stand and raise your right hand, please.

13 (Whereupon, all witnesses currently present in  
14 the hearing room were duly sworn to speak the truth, the  
15 whole truth, and nothing but the truth.)

16 CHAIRMAN GRAHAM: Thank you.

17 All right. I think this is probably a good  
18 time for us to take a brief break. By that clock  
19 back behind us, at five till we will reconvene, so  
20 that's about eight or nine minutes.

21 Thank you.

22 (Brief recess.)

23 CHAIRMAN GRAHAM: All right. Let's reconvene.

24 Before we start with our first witness. Let's  
25 deal with the objection from Mr. Moyle on staff

1 entering the Exhibits 44 through 54.

2 Staff, I see you passed out the exhibits in  
3 question.

4 MS. BARRERA: Yes, we did passed out copies of  
5 the contested interrogatories responses. And at  
6 this time, staff is prepared to address Mr. Moyle's  
7 objections.

8 MS. HELTON: Mr. Chairman, before you hear  
9 from staff, though, you may want to hear from all  
10 of the parties now that they have had an  
11 opportunity to see the exhibits that Mr. Moyle has  
12 questioned, and hear from Florida Power & Light as  
13 well.

14 MR. MOYLE: So I only have the yellow piece of  
15 paper that I think I provided to staff that's now  
16 part of the exhibit. I don't have the other  
17 portion of that exhibit. But for whatever reason,  
18 we should probably just mark them as -- mark them  
19 and have them a part of the record so we are all  
20 clear on this.

21 CHAIRMAN GRAHAM: You don't have --

22 MS. HELTON: I am sorry, I thought that those  
23 were distributed.

24 MS. BARRERA: The parties did not get this  
25 exhibit on the basis --

1 MR. MOYLE: I have the yellow one, but I don't  
2 have the second page.

3 MS. BARRERA: The second page of -- I am  
4 sorry, I don't know what you are talking about.

5 MR. MOYLE: I thought you had described that  
6 there was an exhibit, you had said it was more than  
7 a one-page exhibit.

8 CHAIRMAN GRAHAM: It's all the exhibits that  
9 they want to enter.

10 MR. MOYLE: Okay, it's the actual  
11 interrogatories?

12 CHAIRMAN GRAHAM: Yes.

13 MS. BARRERA: Right.

14 MR. MOYLE: Okay.

15 MS. BARRERA: This is just for me and the  
16 Commissioners to have a copy of the interrogatories  
17 that you objected to.

18 MR. MOYLE: Okay.

19 MS. BARRERA: So I am assuming you have them.

20 MR. MOYLE: I have them in a big pile, but I  
21 didn't get the excerpt portion that you have.

22 MS. BARRERA: They aren't excerpts. They are  
23 the answers.

24 MR. MOYLE: In any event, could we have the  
25 yellow sheet marked as an exhibit?

1 CHAIRMAN GRAHAM: Let's work our way through  
2 this.

3 Mr. Butler, do you have any comments?

4 MR. BUTLER: Not much. We are prepared to  
5 have Mr. Moyle ask the witnesses who are here about  
6 these interrogatories, and will assist in directing  
7 him to the appropriate witness if he chooses. We  
8 are, essentially, indifferent to whether these go  
9 into the record or not. We certainly support  
10 staff's desire to have a complete record, but  
11 aren't really here to charge the hill for their  
12 admission.

13 CHAIRMAN GRAHAM: Retail Federation.

14 MR. LAVIA: We support the objection.

15 CHAIRMAN GRAHAM: OPC.

16 MR. SAYLER: We already stipulated, so we take  
17 no position.

18 CHAIRMAN GRAHAM: Okay. Staff.

19 MS. BARRERA: It's my understanding that FP&L  
20 will stipulate to the authenticity of the responses  
21 of the interrogatories that are contested, is that  
22 correct?

23 MR. BUTLER: It is, yes. We did stipulate to  
24 their authenticity.

25 MS. BARRERA: All right. We have reviewed the

1 list of objections that Mr. Moyle has handwritten.  
2 At this time, our responses are, number one, the  
3 list -- the exhibit list was provided to all the  
4 parties on November 14th. The one that was  
5 provided last Monday with the covering e-mail was  
6 basically made one correction to a number of an  
7 exhibit and deemed it confidential.

8 The OEP basically requests, or dictates that  
9 all responses and discovery be copied with -- every  
10 party should be copied with any and all responses  
11 through the discovery. Thus, the interrogatories  
12 that staff put out were, in essence, beginning, I  
13 think in July. And the responses began to come in  
14 as of July 2014, after the petition was filed.

15 Staff discovery is designed to provide  
16 additional information that staff believes is  
17 necessary to complete the record in its advisory  
18 role. Thus, all exhibits are relevant and  
19 material.

20 All parties were provided an opportunity  
21 through the depositions noticed by FIPUG, OPC and  
22 staff to ask witness deponents about the  
23 information and the contested interrogatories. And  
24 those depositions took place on November 12, 13 and  
25 14.

1           The fact that the evidence sought to be  
2           introduced, which is FPL's responses to  
3           interrogatories, may be detrimental to a party's  
4           position is not a valid objection. Nothing  
5           prevents a party, on cross-examination, to ask a  
6           witness questions regarding the interrogatory  
7           responses, since, of course, the interrogatory  
8           responses are the position of the utility, not of  
9           one specific person.

10           The interrogatory responses are collected and  
11           maintained by staff in the course of staff's  
12           duties, and constitute the official business record  
13           of the agency.

14           On an administrative hearing is governed by  
15           120.569 Florida Statutes and 120.57 Florida  
16           Statutes.

17           Under 120.57, hearsay evidence is allowed in  
18           administrative proceedings as long as it is  
19           supplementing or explaining other evidence. It  
20           shall not be sufficient itself to support a finding  
21           unless it will be admissible over objection. It is  
22           admissible over the objection of hearsay as it is  
23           business records of the Agency. But specifically,  
24           the interrogatories serve to supplement or explain  
25           other evidence.



1           The way that staff proceeds on it is that they  
2           look at the direct testimony and rebuttal testimony  
3           of the witnesses, and then proceeds from there to  
4           ask questions that will address some of the -- or  
5           supplement or explain some of the responses in the  
6           interrogatories.

7           So the interrogatories are based on the  
8           testimony of the parties and we believe that they  
9           should be admitted into evidence.

10          CHAIRMAN GRAHAM: Mary Anne.

11          MS. HELTON: We have already looked at Section  
12          120.59(2)(g) earlier today, and in that provision,  
13          the Legislature said that in administrative  
14          proceedings, the standard for allowing evidence  
15          into the record is broader than what you would find  
16          in a civil proceeding or a criminal proceeding. So  
17          I think you need to think about that backdrop in  
18          making your decision today.

19          I agree with everything that Ms. Barrera said  
20          with respect to why the information in question  
21          should be admitted into the record. I also think  
22          it's important to keep in mind Rule 28-106.211,  
23          which is the rule on the conduct of proceedings,  
24          administrative proceedings. And there, the  
25          Administration Commission has said that the

1           presiding officer before him in cases pending may  
2           issue any orders necessary to effectuate discovery,  
3           to prevent delay and to promote the just, speedy  
4           and inexpensive determination of all aspects of the  
5           case. And I think that's what staff is trying to  
6           do with its exhibits, and my recommendation to you  
7           to admit them.

8                   MR. MOYLE: Can I just be heard on one thing?

9                   CHAIRMAN GRAHAM: Sure, Mr. Moyle.

10                   MR. MOYLE: A couple of points in response.

11           The stipulation with respect to authenticity is  
12           apparently a stipulation between staff and FPL,  
13           because FIPUG has not stipulated to authenticity on  
14           any of those contested interrogatories. I just  
15           want the record to be here on that.

16                   Staff said all of this stuff was made  
17           available November 14. The order establishing  
18           procedure will confirm, but any my recollection is  
19           is that the discovery cutoff deadline was November  
20           13. So in terms of, you know, them saying here is  
21           the stuff we are going to rely on and put into the  
22           record, I got it after the, you know, the discovery  
23           cutoff deadline. So anyway, the records will bear  
24           it out. I just wanted to make that point.

25                   And finally, I guess because it's been handed

1 out, the handwritten notes that I used to state the  
2 objections has been distributed, probably just  
3 better for record purposes if that's marked and  
4 made a part the record.

5 CHAIRMAN GRAHAM: I don't have a problem  
6 entering it. Is there any objections? I will give  
7 it Exhibit No. 59.

8 MR. MOYLE: 69?

9 CHAIRMAN GRAHAM: 59.

10 MR. MOYLE: 59. Thank you.

11 (Whereupon, Exhibit No. 59 was marked for  
12 identification.

13 MR. MOYLE: I guess the only other point,  
14 there was one that was based on speculation that  
15 somebody is saying here is what Moodies is going to  
16 do, and all the staff responses related to hearsay  
17 and other things. I don't know this if that was  
18 specifically, you know, addressed. If it was, I  
19 missed it.

20 MS. BARRERA: Well, speculation is something  
21 that you cross-examine people on. You don't -- it  
22 doesn't form a valid objection to an exhibit.

23 CHAIRMAN GRAHAM: All right. The decision is  
24 going to be enter Exhibits 44 through 54 into the  
25 record.

1 (Whereupon, Exhibit Nos. 44-54 were received  
2 into evidence.)

3 CHAIRMAN GRAHAM: To give you guys an idea of  
4 what to expect today before we start with our first  
5 witness, we are probably going to break for lunch  
6 around 1:00. We will probably -- when we get to a  
7 nice stopping spot, we will stop for about an hour  
8 around for lunch. We will probably break for  
9 dinner around 6:00, depending on a good stopping  
10 spot, and we will stop for about an hour or so.  
11 And I anticipate going tonight until about 10:00 or  
12 11:00, depending on a good stopping spot as well.

13 We will, again, do the same thing tomorrow.  
14 Hopefully, we did can get it done earlier tomorrow,  
15 but we have two days to get it done, so that's why  
16 we are going long today, and if we go short  
17 tomorrow, then God bless you all.

18 Okay. Florida Power & Light, your first  
19 witness.

20 MR. GUYTON: Florida Power & Light calls Sam  
21 Forrest to the stand. I believe he has previously  
22 been sworn.

23 Whereupon,

24 SAM FORREST

25 was called as a witness, having been first duly sworn to

1 speak the truth, the whole truth, and nothing but the  
2 truth, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GUYTON:

5 Q Would you please state your full name?

6 A Sam Forrest.

7 Q And by whom are you employed and in what  
8 position?

9 A Vice-President of Energy Marketing and Trading  
10 business unit for Florida Power & Light.

11 Q Mr. Forrest, did you have occasion to prefile  
12 direct testimony on June 25th, 2014, in this case,  
13 consisting of 45 pages?

14 A Yes, I did.

15 Q And did the company have occasion, on your  
16 behalf, to file an errata sheet for that direct  
17 testimony on November 5th?

18 A Yes, they did.

19 Q And are there any other corrections to your  
20 direct testimony?

21 A No, there are not.

22 Q All right. So if I were to ask you the  
23 questions today that appear in your direct testimony,  
24 would your answers be the same as appear in your direct,  
25 as corrected by your errata?

1 A Yes -- yes, they would.

2 Q Now, you have also prefiled exhibits SF-1  
3 through SF-11 with your direct testimony?

4 A I believe SF-9 -- SF-1 through SF-9 was  
5 direct.

6 Q Thank you.

7 MR. GUYTON: And those have been identified,  
8 Commissioners, as Exhibits 2 through 10 in the  
9 comprehensive exhibit list.

10 BY MR. GUYTON:

11 Q Did you have occasion to file an errata for  
12 your exhibits in this case?

13 A Yes, I did.

14 Q And was that errata filed on November 17th?

15 A I believe that is correct. Yes.

16 Q And did it supplement what has been identified  
17 as Exhibit 5, your Exhibit SF-6?

18 A Correct.

19 Q And is the information as is contained in your  
20 exhibits, or your Exhibits SF-1 through 9, Exhibits 2  
21 through 10, true and correct to the best of your  
22 knowledge and belief?

23 A Yeah, to the best of my knowledge. I think --  
24 let me correct. You said SF-6. SF-4, I believe, is the  
25 errata.

1 Q Thank you.

2 A Okay.

3 Q Would you please summarize your testimony for  
4 the Commission?

5 A Yes.

6 MR. MOYLE: Mr. Chairman.

7 MR. GUYTON: I'm sorry, I would ask that his  
8 testimony be inserted into the record as though  
9 read.

10 MR. MOYLE: So, at the appropriate point in  
11 time, we would like to have a discussion about the  
12 errata supplementation that I previewed, I think,  
13 earlier. You know, I don't want to waive that  
14 objection by having him summarize and talk about  
15 the exhibit. So maybe we should just deal with it  
16 now if that's your pleasure, but the errata --

17 CHAIRMAN GRAHAM: I think we should deal with  
18 that after -- after we are done with all the  
19 cross-examine, when they decide to enter that into  
20 the record, then we can deal with it.

21 MR. MOYLE: Okay. Don't want -- we have had  
22 discussions about when is the right time object.

23 CHAIRMAN GRAHAM: That's fine. You are doing  
24 right.

25 All right. We will enter your prefiled direct

1 testimony as though read.

2 (Whereupon, prefiled testimony was inserted.)

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## ERRATA SHEET

WITNESS: SAM FORREST – DIRECT TESTIMONY

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
33	4	Change capital expenditures from \$119 million to \$125 million.
36	14	Change customer savings from \$61 million to \$60 million.
36	15	Change capital expenditures from \$119 million to \$125 million.
37	23	Volatility factor is 21.6% which rounds up to 22% instead of 21%.

## I. INTRODUCTION

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

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

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

A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as Vice President of the Energy Marketing and Trading (“EMT”) Business Unit.

**Q. Please describe your educational background and professional experience.**

A. I hold a Bachelor of Science in Electrical Engineering from Texas A&M University and a Masters of Business Administration from the University of Houston. Prior to being named Vice President of EMT for FPL in 2007, I was employed by Constellation Energy Commodities Group as Vice President, Origination. In this capacity, I was responsible for managing a team of power originators marketing structured electric power products in Texas, the Western United States, and Canada. Prior to my responsibilities in the West, I was responsible for Constellation’s business development activities in the Southeast U.S.

Before joining Constellation, from 2001 to 2004, I held a variety of energy marketing and trading management positions at Duke Energy North America

1 (“DENA”). Prior to DENA, I was employed by Entergy Power Marketing  
2 Corp. (“EPMC”) in several positions of increasing responsibility, including  
3 Vice President – Power Marketing following EMPC’s entry into a joint  
4 venture with Koch Energy Trading.

5  
6 Prior to my entry into the energy sector, I was involved with a successful  
7 start-up organization in the automotive industry from 1996 to 1998. From  
8 1987 to 1996, I worked for AlliedSignal Aerospace at the Johnson Space  
9 Center in Houston, Texas, in increasing roles of responsibility.

10 **Q. Please describe your duties and responsibilities in your current position.**

11 A. I am responsible for the overall direction and management of the EMT  
12 Business Unit, which handles FPL’s short-term and long-term fuel  
13 management and operations. These fuels include natural gas, residual and  
14 distillate fuel oils, and coal. Additionally, EMT is responsible for FPL’s fuel  
15 hedging program, long-term fuel transportation and storage contracts, power  
16 origination activities and short-term power trading and operations. EMT is an  
17 active participant in the short-term and long-term natural gas markets  
18 throughout the Southeastern United States.

19 **Q. Are you sponsoring any exhibits in this case?**

20 A. Yes. I am sponsoring the following exhibits which are attached to my direct  
21 testimony:

- 22 • SF-1 Map of FPL’s Existing Natural Gas Transportation
- 23 • SF-2 Map of U.S. Natural Gas Transportation Pipelines

- 1           • SF-3 Map of U.S. Shale Gas and Oil Production Locations
- 2           • SF-4 Drilling and Development Agreement (confidential)
- 3           • SF-5 Tax Partnership Agreement (confidential)
- 4           • SF-6 PetroQuest Agreement Term Sheet (confidential)
- 5           • SF-7 PetroQuest Transaction Production Profile
- 6           • SF-8 Results of FPL’s Economic Evaluation (confidential)
- 7           • SF-9 Proposed Transactional Guidelines (confidential)

8   **Q.    What is the purpose of your testimony in this proceeding?**

9    A.    My testimony supports FPL’s primary requests in this proceeding. First, FPL  
10   is seeking a determination by the Florida Public Service Commission (“FPSC”  
11   or “Commission”) that investing through a joint development agreement with  
12   PetroQuest Energy, Inc. (“PetroQuest”) to develop gas reserves in the  
13   Woodford Shale region located in southeastern Oklahoma is prudent and that  
14   the revenue requirements associated with this investment may be recovered  
15   through the Fuel and Purchased Power Cost Recovery Clause (“Fuel Clause”).  
16   My testimony explains why such an investment would be appropriate and  
17   prudent for FPL, how it can be viewed as the next step in our overall strategy  
18   of securing reliable sources of natural gas at more stable prices for our  
19   customers, and why recovery through the Fuel Clause is both appropriate and  
20   necessary.

21

22           Additionally, FPL is requesting the Commission approve a set of guidelines  
23   for acquiring future gas reserve projects, such that FPL would be

1           presumptively eligible to recover revenue requirements through the Fuel  
2           Clause for projects that meet the guidelines, subject to the usual review of  
3           fuel-related transactions that the Commission conducts in Fuel Clause  
4           proceedings. My testimony explains why such guidelines are necessary if  
5           FPL is to continue to participate in this market and make further investments  
6           in gas reserve projects. In this regard, I also explain the limited role that an  
7           affiliate has agreed to play in helping to make the first project a possibility for  
8           FPL.

9           **Q. Please provide a brief summary of your testimony.**

10          A. FPL currently supplies 62% of the electricity consumed in Florida with  
11          approximately 65% of this coming from natural gas fired generation. This  
12          equates to FPL purchasing up to 600 billion cubic feet (“Bcf”) of gas  
13          annually. With such a large demand for natural gas, establishing a  
14          predictable, reliable, and low cost fuel supply is imperative for FPL and its  
15          customers. Since 2002, FPL has had a hedging program in place to help  
16          dampen price volatility over the short run (approximately 12 to 24 months  
17          out) and has recently entered into Commission-approved contracts for gas  
18          transportation on a new, independently routed third pipeline system. FPL is  
19          looking to continue its efforts to ensure a reliable and stable source of delivery  
20          of clean electricity for its customers by investing in natural gas production.

21

22          The PetroQuest transaction provides FPL’s customers with a source of  
23          physical gas supply that provides for stable pricing over the production term

1 of the project, thus mitigating volatility inherent in FPL's natural gas  
2 procurement. The agreement also establishes a source of supply that is low  
3 cost by comparison to FPL's forecast of natural gas prices. This investment is  
4 a real opportunity to capitalize on the advances that have been made in the  
5 exploration and drilling of shale gas reserves.

6  
7 One of the keys to success in this market is being able to move quickly.  
8 Exploration and production companies typically are not willing to wait for a  
9 prospective investor to obtain regulatory approvals before a transaction  
10 becomes effective. The market is too active and drilling decisions need to be  
11 made quickly. To bridge this challenge in this first instance, NextEra  
12 Energy's Gas Infrastructure and Development ("GI") business unit, which has  
13 extensive experience in these kinds of joint ventures, has formed USG  
14 Properties Woodford I, LLC ("USG") to transact with PetroQuest and begin  
15 the drilling program (I will refer to USG and GI collectively as "USG"). USG  
16 is an affiliate of FPL and will assign the PetroQuest transaction to FPL upon  
17 approval by the Commission (as discussed by FPL witness Ousdahl, the  
18 assignee would be a wholly-owned, fully regulated FPL subsidiary, but for  
19 simplicity I will refer to FPL as the assignee). Otherwise, USG will retain the  
20 transaction for its own interest. While this arrangement serves the needs of  
21 FPL and its customers, in this instance, for purposes of framing the proposal  
22 and allowing the Commission to consider this initiative, it amounts to USG  
23 providing FPL's customers a free option to acquire the PetroQuest transaction.



1 Commission establish guidelines under which FPL could participate in future  
2 gas reserve projects and recover the associated costs through the Fuel Clause  
3 without prior Commission approval, subject to the Commission's established  
4 process for reviewing fuel-related transactions in Fuel Clause proceedings.

5 **Q. Why does FPL need the Commission to make a prudence determination**  
6 **with respect to the PetroQuest transaction?**

7 A. While there are multiple utilities across the U.S. investing in gas reserves, the  
8 PetroQuest transaction will be FPL's first acquisition of gas reserve interests.  
9 Due to the size of the investment and the length of the commitments required,  
10 FPL believes it is appropriate to seek a prudence determination from the  
11 Commission before proceeding. FPL cannot justify undertaking such a  
12 sizable financial commitment without assurance that the Commission concurs.

13 **Q. Is FPL's request to recover the gas reserve costs for the PetroQuest**  
14 **project through the Fuel Clause consistent with Commission precedent?**

15 A. Yes. As a matter of policy and practice, the Commission may allow Fuel  
16 Clause Recovery of "fossil fuel-related costs normally recovered through base  
17 rates but which were not recognized or anticipated in the cost levels used to  
18 determine current base rates and which, if expended, will result in fuel savings  
19 to customers." Order No. 14546, Docket No. 850001-EI-B, issued on July 8,  
20 1985. This policy was reiterated in Order No. PSC-11-0080-PAA-EI, Docket  
21 No. 100404-EI, issued on January 31, 2011, which provides that "the  
22 appropriate policy going forward is to restrict capital project cost recovery  
23 through the Fuel Clause to projects that are 'fossil fuel-related' and that lower



1 the delivered price, or input price, of fossil fuel.” Consistent with Order No.  
2 14546, FPL has recovered costs through the Fuel Clause for several projects  
3 that generated fuel savings, such as the Martin gas pipeline lateral project that  
4 was addressed in Order No. PSC-93-1331-FOF-EI. Similarly, it is appropriate  
5 to recover charges paid for gas reserves that result in fuel savings for  
6 customers. The application of the Commission’s precedent to recovering gas  
7 reserve costs through the Fuel Clause, as well as the appropriate regulatory  
8 accounting for those costs in the Fuel Clause proceedings, are addressed in  
9 greater detail by FPL witness Ousdahl.

### 11 III. FPL’S USE OF NATURAL GAS

13 **Q. Does FPL rely heavily on natural gas to fuel electric generation?**

14 **A.** Yes. FPL generated 67.4% of its total energy from natural gas in 2013. This  
15 number will drop to approximately 65% going forward, as shown in FPL’s  
16 most recent Ten Year Power Plant Site Plan (“TYSP”). This is largely a result  
17 of increased nuclear production through the recently completed nuclear uprate  
18 project. In 2013, FPL used approximately 550 Bcf of natural gas,  
19 substantially more than any other investor-owned utility in the country,  
20 according to the U.S. Energy Information Administration (“EIA”). As noted  
21 in its TYSP, FPL’s natural gas usage is expected to remain fairly constant  
22 over the next couple of years before beginning to grow again in 2016 and  
23 beyond. With this continued emphasis on natural gas as its primary fuel, it is

1 important that FPL continue to diversify its fuel portfolio from a supply  
2 standpoint, as well as mitigate volatility and price risk associated with the  
3 supply of natural gas.

4 **Q. Please describe the benefits of natural gas generation for Florida in**  
5 **general and specifically for FPL.**

6 A. In recent years, FPL has invested in clean, fuel-efficient natural gas generation  
7 facilities, significantly reducing emissions compared to older, oil-fired  
8 generation. In addition, the improved efficiencies combined with the  
9 currently lower natural gas prices have helped FPL keep its customers' bills  
10 low. By significantly reducing the amount of fuel FPL uses to generate  
11 power, FPL's investments in natural gas power plants have saved customers  
12 more than \$6.5 billion in fuel costs since 2001, and they will continue to  
13 provide customer savings for decades. Replacing 1960s-era generation units  
14 with Cape Canaveral Next Generation Clean Energy Center, Riviera Beach  
15 Next Generation Clean Energy Center and Port Everglades Next Generation  
16 Clean Energy Center (the "Modernization Projects") is an important extension  
17 of this strategy. These types of investments have helped reduce the annual  
18 amount of foreign oil consumed by FPL over the last decade by more than  
19 99%. The emissions reductions, along with the significantly reduced costs,  
20 have benefited FPL's customers, as well as the rest of Florida.

21

22

1 **Q. Please describe how FPL currently supplies the gas that is burned in its**  
2 **power plants.**

3 A. FPL has a robust supply portfolio that includes more than 40 natural gas  
4 producers and marketers, firm transportation on five pipelines including three  
5 upstream pipelines that provide FPL access to on-shore shale gas supply in  
6 Texas and Louisiana, and 2.5 Bcf of firm natural gas storage. FPL delivers  
7 natural gas to its power plants on the Florida Gas Transmission (“FGT”)  
8 pipeline and on the Gulfstream Natural Gas System (“Gulfstream”) pipeline.  
9 With the Commission’s recent approval for FPL to acquire firm transportation  
10 on both Sabal Trail Transmission (“Sabal Trail”) and the Florida Southeast  
11 Connection (“FSC”) pipelines, FPL is well positioned to provide access to  
12 both conventional on- and off-shore supply and unconventional on-shore shale  
13 supply. A map of FPL’s transportation contracts has been included as Exhibit  
14 SF-1 to my testimony. Additionally, a map of the U.S. natural gas  
15 transportation system has been included as Exhibit SF-2.

16 **Q. How does FPL currently mitigate the price risks inherent in acquiring the**  
17 **large volumes of natural gas needed for its power plants?**

18 A. Price risk is defined as the risk of market fluctuations in natural gas prices.  
19 FPL currently secures physical gas, months or several years in advance, with  
20 pricing formulas based on publicly available index postings. These pricing  
21 formulas are commonly used by industry participants; however, these  
22 formulas can result in a large degree of price volatility due to movements in  
23 the underlying natural gas and/or index postings.

1 Today, FPL's method of mitigating price risk is its short-term hedging  
2 program, which is approved by the Commission. FPL's hedging objectives  
3 are to effectively execute a well-disciplined and independently monitored fuel  
4 hedging strategy to achieve the goal of fuel price stability (volatility  
5 minimization). FPL achieves this objective by financially hedging a portion  
6 of its projected gas consumption for the following year.

7  
8 However, the current hedging program has three substantial limitations that  
9 could be addressed by investing in upstream production (such as gas reserves).  
10 First, the financial market typically does not have the liquidity - i.e., the  
11 volume of gas contracts available without driving up the price of gas - to  
12 provide fixed-price hedges over the 30 years or longer that gas can be  
13 produced from a portfolio of gas reserve projects. Second, during periods of  
14 rising market prices, financial hedges will also reflect rising costs whereas an  
15 ownership interest in gas production is better able to keep long-term costs  
16 low. Investing in gas production will enable FPL's customers to pay lower  
17 prices for gas supply purchases and serve as a low-cost alternative to financial  
18 hedges in a market of rising prices. Third, while FPL maintains a strong  
19 balance sheet, there are nonetheless limits on its ability to provide the credit  
20 support required for a long-term hedging program that provides meaningful  
21 protection against rising prices.

22  
23

1 **Q. Why doesn't FPL simply buy long-term, fixed-price gas?**

2 A. There are significant practical constraints on contracting for long-term, fixed  
3 price physical supply. First, these types of contracts are not readily available,  
4 as gas suppliers typically only hedge on a shorter-term basis. Second, there is  
5 significant credit exposure to a counterparty that has sold at a fixed price. If  
6 the market rises after the sale is made, credit support is required to ensure the  
7 full value of the position is protected. This can often be problematic for the  
8 counterparty, which may not have access to the liquidity required to provide  
9 the required credit support. Conversely, FPL could be forced to provide  
10 significant credit support to the counterparty if the market price for gas falls,  
11 reducing FPL's liquidity and forcing FPL's customers to pay for the credit  
12 support. Not even a balance sheet as strong as FPL's is designed for this type  
13 of credit risk.

14

#### 15 **IV. OPPORTUNITIES FOR FPL IN GAS RESERVES**

16

17 **Q. Please describe the current production of natural gas in the U.S.**

18 A. America is currently experiencing an energy boom that will continue for  
19 decades, according to the EIA. U.S. production of natural gas overall is  
20 projected to grow steadily, increasing 56% from 2012 to 2040. Demand also  
21 is expected to grow. In its *Annual Energy Outlook 2014*, EIA forecasts that  
22 natural gas will replace coal as the largest source of U.S. electricity by 2035.

23

1           Significantly, however, the areas from which natural gas is being produced are  
2           changing dramatically. Production from the Gulf of Mexico has declined  
3           significantly and is projected to remain flat at the current reduced levels  
4           through 2040. Production in the Mobile Bay area, historically a major source  
5           of supply for FPL, has also declined steadily. To address these declining  
6           reserves, significant efforts were undertaken by the gas industry to research  
7           drilling and completion techniques on shale gas formations. The result was  
8           improved drilling and well stimulation methods, which considerably increased  
9           the yield and recovery rate of natural gas from shale formations, previously  
10          thought uneconomic to drill. These improved drilling methods are now being  
11          applied in many parts of the U.S. The result has been a tremendous increase  
12          in natural gas production activity.

13

14          These enhancements in drilling and completion technology have led to a surge  
15          in recent years in natural gas production from unconventional sources of  
16          natural gas, primarily shale formations. U.S. shale production was 10.3  
17          trillion cubic feet (“Tcf”) in 2012, a jump of 21% over the previous year. The  
18          rapid increase in shale production is shown graphically in Exhibit TT-3 to  
19          FPL witness Taylor’s testimony. In 2012, remaining proven U.S. shale  
20          reserves increased 276% from 2008 to 129.4 Tcf. In its *Annual Energy*  
21          *Outlook 2014*, the EIA increased its current estimate of technically  
22          recoverable shale gas reserves in the U.S. to 664 Tcf, which is enough to serve  
23          the entire U.S.’s needs for more than 25 years – from shale gas alone.

1 In 2000, shale gas provided only 1% of U.S. natural gas production; by 2010  
2 it was more than 20% and the EIA predicts that by 2035, 50% of the natural  
3 gas supply in the United States will come from shale gas.

4 **Q. Please describe shale gas and its impact on gas pricing in the U.S.**

5 A. Shale formations are fine-grained sedimentary rocks that can be rich sources  
6 of petroleum and natural gas. Shale rock is highly porous, yet highly  
7 impermeable such that gas gets trapped in the formation. Shale gas refers to  
8 the gas that is trapped within the shale formations. A thorough discussion on  
9 this unconventional source of natural gas supply is provided in FPL witness  
10 Taylor's testimony.

11

12 As mentioned previously, shale gas production has been growing rapidly over  
13 the past few years and is projected to continue this rapid growth in the  
14 future. As a result of the focused investment in shale gas production, the cost  
15 of drilling and producing gas from shale has dropped dramatically, leading to  
16 lower natural gas pricing from shale gas formations, such as the Woodford  
17 Shale in Oklahoma, and an increase in the amount of economically  
18 recoverable gas reserves. This combination of lower prices and additional  
19 reserves means that now is an excellent time to begin investing in gas  
20 reserves.

21 **Q. Why is FPL seeking to invest in gas production?**

22 A. FPL purchases natural gas from more than 25 producers and much of this  
23 supply originates from unconventional sources of supply like shale gas. The

1 gas supply contracts are typically on a one-month to three-year term, and the  
2 prices are not fixed. As a result, the prices FPL pays for gas supply are  
3 subject to significant change based on market conditions. Natural gas fuel  
4 costs are recovered through the Fuel Clause, so FPL customers are directly  
5 exposed to gas price volatility.

6  
7 Because the market price of natural gas is volatile and is a large component of  
8 the price of electricity, it can cause significant short- and long-term swings in  
9 customers' electric bills. Acquiring an interest in natural gas reserves and  
10 drilling operations would provide a longer-term physical hedge against future  
11 increases in natural gas costs for FPL's customers. Because the gas reserves  
12 are effectively delivering both physical supply and prices at or below FPL's  
13 current projections, they would partially supplant the need for financial  
14 hedges and allow FPL to reduce the amount of short-term financial hedges  
15 that it places. At the same time, by procuring only a portion of FPL's gas  
16 requirements through investments in gas reserves, FPL maintains the  
17 flexibility to purchase lower-priced gas in the market, if available, for the  
18 remainder of FPL's needs. This means that FPL customers can benefit should  
19 gas prices unexpectedly or temporarily fall, but will be partially protected by  
20 investment in gas reserves should prices rise over both the short- and long-  
21 term.

22



1 **Q. Does FPL currently procure gas from unconventional supply sources,**  
2 **such as shale?**

3 A. Yes. FPL estimates that roughly 70% of its natural gas supply portfolio is  
4 made up of shale gas, up significantly from just five years ago. These supply  
5 sources include shale formations in Texas, Louisiana, Oklahoma, and  
6 Arkansas, and also now include gas sourced from West Virginia, Ohio, and  
7 Pennsylvania. FPL will remain heavily dependent on this relatively new  
8 source of supply as shale production increases and traditional sources of  
9 supply like the Gulf of Mexico continue to decline. FPL recognized the  
10 projected growth in the shale gas market, combined with the importance of  
11 shale gas as a part of FPL's fuel supply portfolio, and initiated a review of  
12 opportunities to acquire an interest in the production of shale gas in order to  
13 provide customer savings and price stability. A map of the shale production  
14 areas in the U.S. is provided as Exhibit SF-3.

15 **Q. Please describe FPL's review of gas reserve opportunities.**

16 A. FPL began by exploring options with its existing suppliers, specifically  
17 looking for shale areas and suppliers that could meet requirements such as  
18 production from well-established reserves in close proximity to existing gas  
19 transportation pipelines that could deliver the gas efficiently to FPL. FPL  
20 then explored options beyond existing suppliers, with producers who would  
21 be able to meet FPL's conditions. FPL had initial conversations with more  
22 than 25 counterparties. Of those, several were eliminated because they were  
23 not interested in a joint venture under the terms FPL required to ensure

1 savings for FPL customers, or were unwilling to wait the time necessary for  
2 FPL to complete the regulatory process. FPL eventually exchanged data with  
3 the remaining counterparties, but determined that a few of the opportunities  
4 were uneconomic for customers based on engineering consultant reports,  
5 which indicated that estimated reserves for these counterparties were lower  
6 than what the counterparty had indicated, or that the projected capital  
7 expenditures would be higher than what the counterparty had indicated.

8 **Q. Did FPL find a counterparty willing to wait for a final regulatory**  
9 **outcome to consummate a transaction?**

10 A. No. While there were transactions that appeared to be economic, the six-  
11 month or more delay in the required regulatory review proved to be  
12 problematic. Counterparties are looking for a definitive start date to begin (or  
13 continue) their drilling program and cannot wait more than a month or two as  
14 market prices fluctuate. Additionally, without a certain end date to the  
15 regulatory approval process, counterparties are unable to appropriately  
16 manage their annual capital expenditures and drilling programs while  
17 attempting to secure sources of funding. Therefore, they were unwilling to  
18 take the market price risk of waiting for FPL to gain Commission approval,  
19 particularly as there are many other potential drilling partners available that  
20 can make commercial decisions more rapidly than FPL.

21

22

1 **Q. Was FPL nonetheless able to make arrangements with a counterparty to**  
2 **enter a joint venture for investment in gas reserves and production?**

3 A. In this initial instance, yes; however, as I will discuss later in my testimony,  
4 this was only with the assistance of an affiliate that FPL will not have  
5 available on a regular basis going forward. FPL has been able to reach an  
6 agreement with PetroQuest to invest directly in gas reserves and procure  
7 natural gas from the Woodford Shale Gas region (the “Woodford Project”).

8 **Q. Please provide an overview of PetroQuest, the counterparty for the**  
9 **Woodford Project.**

10 A. PetroQuest is a well-known and highly regarded independent oil and natural  
11 gas company, engaged in the exploration, development, acquisition, and  
12 production of oil and natural gas properties in the United States. The  
13 company was founded in 1985 and is based in Lafayette, Louisiana. It is a  
14 publicly traded company under the symbol PQ, with 2013 revenues of \$182  
15 million and a market capitalization of approximately \$438 million as of June  
16 16, 2014.

17  
18 PetroQuest has operations in Oklahoma, Texas, Louisiana, and the Gulf of  
19 Mexico. As of December 31, 2013, the company had approximately 48,000  
20 developed net acres and an additional 59,000 undeveloped net acres in the  
21 Woodford Shale Gas region. It has proved reserves of approximately 302  
22 Bcf-equivalent, with approximately 64% of this located in the Woodford  
23 Shale Gas region.

1 **Q. How has FPL solved the regulatory delay problem for the Woodford**  
2 **Project?**

3 A. USG, an affiliate of FPL, is currently engaged in the exploration and  
4 production of oil and natural gas in many regions of the U.S. USG has  
5 successfully participated in drilling programs in 12 different shale formations  
6 around the country and is a partner in more than 800 producing wells as a  
7 non-operating entity. This includes a successful joint venture with PetroQuest  
8 in the Woodford Shale Gas region. In order to facilitate a successful joint  
9 venture for FPL, FPL and USG worked together to negotiate an agreement  
10 with PetroQuest (the “PetroQuest Agreement”) for the development of  
11 properties not currently being drilled under the joint venture. USG was  
12 willing to make accommodations to begin the drilling program with  
13 PetroQuest on a schedule mutually agreed to by the parties, effectively  
14 providing a no-cost “bridge” for FPL to consummate the transaction.

15  
16 Upon a determination by the Commission that entering into the PetroQuest  
17 Agreement is prudent and that the associated costs may be recovered through  
18 the Fuel Clause, all of USG’s working interests in these properties and its  
19 rights under the PetroQuest Agreement will be transferred to FPL at net book  
20 value. If the Commission determines not to approve the prudence and cost  
21 recovery of the transaction for FPL, then USG would simply retain its interest  
22 and value in the PetroQuest Agreement. Thus, USG is effectively providing a  
23 no-cost “bridge” for FPL to consummate the PetroQuest transaction.

1 **Q. Can FPL plan on USG providing a “bridge” for future transactions?**

2 A. No. The PetroQuest Agreement provides a unique opportunity in an area of  
3 the country where USG already has substantial experience with a known  
4 partner that has produced good operating results. The PetroQuest Agreement  
5 presents economics that are favorable to USG and is of a size that fits within  
6 its profile. However, this set of factors may not be present for future  
7 transactions, and FPL cannot rely upon it occurring again. USG has  
8 undertaken to “hand off” this project at net book value to FPL, should the  
9 Commission provide the relevant authorizations; however, this free option is,  
10 understandably, clearly not part of USG’s ongoing business model. For this  
11 reason, and as I will discuss in detail later in my testimony, FPL is seeking  
12 approval of a framework for future transactions that allows FPL to enter  
13 transactions on a more expedited basis, consistent with the market timing and  
14 commercial terms that are characteristic of the gas drilling industry.

15

16 **V. OVERVIEW OF THE WOODFORD PROJECT AGREEMENT**

17

18 **Q. Please provide an overview of the PetroQuest transaction with USG and**  
19 **FPL.**

20 A. On June 18, 2014, USG entered into the PetroQuest Agreement to invest  
21 directly in shale gas reserves and receive natural gas from the Woodford Shale  
22 region. The PetroQuest Agreement consists of several documents, including:

23

- 1 a. Drilling and Development Agreement (“DDA”): The DDA lays  
2 out the terms of development of future wells per the schedule  
3 established by PetroQuest. The DDA is included as Confidential  
4 Exhibit SF-4. Included as an Exhibit to the DDA is a Form of  
5 Operating Agreement that will govern the operation of the wells  
6 both during drilling and once they are completed and operational.
- 7 b. Tax Partnership Agreement (“TPA”): FPL will have a tax  
8 partnership agreement with PetroQuest that will allow FPL to  
9 expense, for tax purposes, Intangible Drilling Costs (“IDCs”)  
10 incurred during drilling. The IRS defines IDCs as capital costs  
11 related to items with no salvage value such as labor, fuel and  
12 transportation. This enhances the tax treatment for FPL and  
13 accordingly further improves the economics of the gas reserves for  
14 FPL’s customers. The TPA is included as Confidential Exhibit  
15 SF-5.

16

17 In order to provide an opportunity for Commission review of the prudence of  
18 the transaction for FPL’s customers, the PetroQuest Agreement is structured  
19 such that USG may assign all of its benefits and responsibilities under the  
20 Agreement to FPL.

21

22

- 1 **Q. What is PetroQuest’s financial incentive to bring in FPL as a non-**  
2 **operating investor for the Woodford Project?**
- 3 A. The PetroQuest Agreement uses a common approach wherein FPL will be  
4 paying a higher percentage of the capital expenditures (“CapEx”) than FPL  
5 receives as its share of output from a well. This increase in the CapEx share,  
6 which is referred to in the industry as the “carry,” is meant to provide payment  
7 for an ownership interest in the leasehold and associated mineral rights  
8 currently owned by PetroQuest that are located in the area where the wells  
9 either exist or are to be drilled under the PetroQuest Agreement. Without  
10 acquiring the leasehold interest, FPL would not be entitled to any wells drilled  
11 or the associated production on this acreage. Additionally, the carry serves to  
12 compensate PetroQuest for acting as the operator and to reimburse it for  
13 previous expenses incurred and risks taken in purchasing the mineral rights,  
14 developing the acreage and enhancing the drilling and completion tactics that  
15 increase the productivity of future wells in that acreage. This allows firms  
16 such as PetroQuest to obtain capital to continue funding the planned drilling  
17 program while still receiving a benefit for the development efforts incurred to  
18 date. FPL’s investment is defined as a “working interest” in the properties. A  
19 working interest is a well-established form of investment in oil and gas  
20 drilling operations in which the investor is directly responsible for a portion of  
21 the ongoing costs associated with exploration, drilling and production. The  
22 working interest owner also fully participates in the profits of the drilling

1 program, or in the case of the PetroQuest Agreement for FPL, a percentage of  
2 the physical gas.

3 **Q. Is this “carry” arrangement common in the oil and gas industry?**

4 A. Yes. As I indicated, the concept of non-operating working interest owners  
5 “carrying” the operator is standard throughout the oil and gas industry. While  
6 the specifics of the carry arrangements will vary depending on the needs of  
7 each set of agreeing parties, some common “carry” arrangements include one  
8 or more of the following elements:

- 9 • Increased share of all future CapEx paid by non-operating working  
10 interest owner to operator for a fixed share of the working interest.  
11 This structure will be used by FPL and PetroQuest.
- 12 • Upfront payment from non-operating working interest owner to  
13 operator followed by a proportional payment CapEx relative to  
14 working interest received.
- 15 • Increased share of future CapEx paid by non-operating working  
16 interest owner to operator until an agreed upon threshold for “total  
17 carry” has been met, followed by a proportional payment of CapEx  
18 relative to working interest received.

19

20 Each potential structure accomplishes the goal of reimbursing the operator for  
21 efforts undertaken to date in an arrangement that provides value to both the  
22 non-operating working interest owner and the operator. FPL’s “carry”  
23 arrangement under the PetroQuest Agreement is of the first type listed above.



1 As mentioned previously, different structures can be employed based on the  
2 financing or cash flow needs of the parties, each effectively achieving the  
3 same value to each party. In the case of the PetroQuest Agreement, the first  
4 structure met both FPL's and PetroQuest's needs.

5 **Q. Will FPL make a payment to USG related to USG's existing interest in**  
6 **the acreage associated with the PetroQuest Agreement?**

7 A. Yes. As previously mentioned, USG has been in a joint venture with  
8 PetroQuest since 2010 for acreage in the Woodford Shale ("Original JV").  
9 The acreage described in the Woodford Project is already contained in the  
10 Original JV between USG and PetroQuest. As part of the DDA, USG and  
11 PetroQuest will reassign acreage from the Original JV to the new Woodford  
12 Project. Assuming FPL receives Commission approval, FPL will have to  
13 compensate USG for drilling rights in the acreage in which USG had already  
14 earned an interest under the Original JV. Thereafter, USG will have no  
15 remaining economic or ownership interest in any of the proposed wells  
16 contained in the Woodford Project, and FPL will be entitled to the full  
17 working interest as described by the DDA.

18 **Q. Please describe the PetroQuest Agreement in greater detail.**

19 A. USG, as the initial party to the agreement, will begin the drilling program with  
20 PetroQuest. Upon approval from the Commission, FPL will take assignment  
21 from USG of their working interests and continue the drilling program with  
22 PetroQuest.

23

1           The structure of the PetroQuest Agreement is consistent with common  
2 industry practice for contracting to purchase an interest in gas production and  
3 reflects the following:

- 4
- 5           a. PetroQuest will function as the operator for production within an  
6 Area of Mutual Interest (“AMI”) in the Woodford Shale region.  
7 The AMI is defined as 19 sections, within which there are 19  
8 existing horizontal wells operated by PetroQuest. FPL witness  
9 Taylor describes the AMI in greater detail. Dr. Taylor also  
10 includes a map of the Woodford Shale and the AMI as Exhibits  
11 TT-5 and TT-6, respectively. USG has been a partner in 17 of the  
12 existing wells. As noted above, FPL will have no rights and will  
13 not compensate USG for the existing wells located within the AMI  
14 The PetroQuest Agreement contemplates that 38 additional  
15 horizontal well locations will be drilled in the AMI;
- 16           b. USG (FPL upon Commission approval) will pay PetroQuest a  
17 carry amount that reflects a percentage of PetroQuest’s share to  
18 drill and complete each of the sections under a defined drilling  
19 program in the AMI, but may include additional wells in each  
20 section in order to economically optimize gas production;
- 21           c. In exchange, USG (FPL upon Commission approval) will receive a  
22 percentage of PetroQuest’s working interest in the natural gas  
23 production from each well that is developed in the AMI; and

1 d. USG (FPL upon Commission approval) will retain the right to  
2 “non-consent” or not participate in the future wells upon notice to  
3 PetroQuest. This will allow USG (and, ultimately, FPL) to review  
4 and analyze production data and operating costs for each proposed  
5 well to ensure that customers will benefit from any participation.  
6 There is a minimum commitment to drill 15 wells by December  
7 31, 2015. This minimum commitment is subject to PetroQuest  
8 meeting mutually agreed to targets on drilling costs, safety, and  
9 environmental compliance. The minimum commitment provision  
10 is meant to ensure PetroQuest that it will receive enough  
11 investment from USG/FPL to justify acquiring the necessary two  
12 drilling rigs and assembling the team needed to drill those wells.

13

14 It is estimated that FPL will have a total capital expenditure of approximately  
15 \$191 million under the PetroQuest Agreement. A high-level term sheet  
16 providing a more detailed description of the PetroQuest Agreement is  
17 included as Confidential Exhibit SF-6 to my testimony.

18 **Q. Does FPL expect that it will be able to meet the minimum commitment on**  
19 **the drilling schedule?**

20 A. Yes. FPL fully expects to drill more than the minimum 15 wells if the drilling  
21 program is running properly, and as mentioned previously, the commitment  
22 only applies if PetroQuest meets the prescribed drilling cost, safety and  
23 environmental targets on wells that have been drilled. Per the current

1 schedule, PetroQuest plans to begin drilling 14 of the planned new wells  
2 before the end of 2014. USG intends to participate or non-consent for these  
3 new wells prior to assignment of the PetroQuest Agreement to FPL. It is  
4 assumed the first 14 wells will be consented to by USG prior to transfer to  
5 FPL, thus committing FPL to consent to just one more well prior to December  
6 31, 2015. All 38 wells proposed are expected to begin flowing gas by the end  
7 of 2015.

8 **Q. Please describe how the PetroQuest Agreement will be transferred from**  
9 **USG to FPL.**

10 A. Upon the Commission's determination that the PetroQuest Agreement is  
11 prudent for FPL and the costs recoverable through the Fuel Clause, USG will  
12 transfer its working interest to FPL at net book value based on the capital  
13 invested by USG prior to the transfer, less the value of depletion of reserves.  
14 FPL witness Ousdahl will discuss the basis for the transfer price to FPL in  
15 more detail.

16  
17 As mentioned previously, PetroQuest plans to begin drilling approximately  
18 37% of the planned new wells before the end of 2014. Of the 14 wells to be  
19 drilled in 2014, only four will begin producing gas prior to the assumed  
20 January 1, 2015 assignment date to FPL. The remaining 10 wells will still be  
21 undergoing some level of completion prior to the first flow of gas. As a  
22 result, the great majority of gas from these wells will be for the benefit of  
23 FPL's customers if the Commission approves FPL's request by the end of

1           2014. Once the PetroQuest Agreement is assigned to FPL, FPL will receive  
2           the rights to its share of the physical gas produced from the Woodford Project  
3           without any charge to FPL's customers separate from recovery of the revenue  
4           requirements associated with this proposed investment (i.e., FPL will recover  
5           the cost of exploration and production instead of purchasing gas at market  
6           pricing), plus applicable transportation and operating costs, which are all  
7           taken into account in the calculation of customer savings presented later in my  
8           testimony. Going forward, FPL would decide whether to participate in the  
9           development of new wells in the Woodford Project based on expected  
10          production costs, natural gas market price forecasts, and expected production  
11          volume.

12  
13          During the drilling phase, FPL will provide the Commission in its annual Fuel  
14          Clause final true-up filing a report on its decisions related to the number of  
15          wells in which it participates. Additionally, FPL will report annually its costs  
16          and the volume of natural gas received during the life of the proposed  
17          investment in the Fuel Clause. FPL witness Ousdahl will discuss accounting  
18          and reporting in more detail.

19      **Q.    What incremental services, functions and staffing will be required at FPL**  
20      **to manage gas reserves investments?**

21      A.    The primary areas of responsibility for the management of FPL gas reserves  
22      are accounting, technical services and business management. FPL, through an  
23      outsource provider experienced in oil and gas back office accounting, will

1 manage the billing reconciliation process with PetroQuest and process and  
2 report on the costs through the Fuel Clause. FPL will use industry standard  
3 joint interest billing software to track and reconcile all costs, royalties, taxes  
4 and fees from PetroQuest. Technical services will be provided by USG to  
5 FPL under established affiliate services terms. Technical services include  
6 reservoir engineering and operational guidance during the drilling and  
7 production phases. Business management will be handled within FPL's  
8 existing EMT business unit. Financial and operational decisions related to  
9 FPL's investments in gas reserves will be made by FPL. FPL proposes to  
10 include for recovery in the Fuel Clause any incremental costs that are incurred  
11 to manage these activities.

12

## 13 **VI. ECONOMIC EVALUATION OF THE WOODFORD PROJECT**

14

15 **Q. How did FPL estimate the economic benefits of the transaction?**

16 A. FPL utilized estimated natural gas production and projected costs provided by  
17 FPL witness Taylor. These inputs were applied to FPL's economic models  
18 containing current projections on fuel usage and market pricing to calculate  
19 FPL's revenue requirements needed to support the investment.

20

21

1 **Q. Can you describe how the volume of expected gas production was**  
2 **estimated for FPL's prospective investment in the wells in the Woodford**  
3 **Project?**

4 A. Yes. FPL witness Taylor performed what is referred to as an Estimated  
5 Ultimate Recovery ("EUR") analysis, which is described in detail in his  
6 testimony. Dr. Taylor utilized production data from the existing wells in the  
7 AMI to estimate the future volumes of natural gas reserves that can reasonably  
8 be expected to be recovered from the new wells.

9  
10 Within any given section of the AMI, there are numerous working interest  
11 owners besides PetroQuest. Over the 19 sections of the AMI, PetroQuest and  
12 USG currently have on average 60% of the working interest jointly, meaning  
13 the other 40% is represented by other organizations or individuals. These  
14 other 40% working interest owners have varying rights to non-consent to  
15 future wells, meaning they have the right to decide whether to participate in  
16 the drilling of a respective well. If the other working interest owners non-  
17 consent to a well, FPL is permitted, but not required, to pay for their share of  
18 the drilling costs and receive their share of the well's output in return. For  
19 purposes of the evaluation, FPL has conservatively assumed that all working  
20 interest owners with such rights non-consent on all 38 proposed wells, such  
21 that FPL and PetroQuest would step into these other working interest owners'  
22 rights under the carry structure terms of the PetroQuest Agreement. This  
23 conservative assumption results in the highest level of projected capital

1 expenditure by FPL and the highest level of projected gas production for  
2 FPL. As a sensitivity to this base case, FPL also has calculated the estimated  
3 customer savings if all other working interest owners do consent. In this  
4 event, FPL will have an estimated capital expenditure of approximately \$119  
5 million under the PetroQuest Agreement. The results of the economic  
6 evaluation are presented later in my testimony.

7 **Q. What steps has FPL taken to ensure that the estimate of production from**  
8 **the Woodford Project reasonable?**

9 A. First of all, Dr. Taylor has extensive academic training, as well as many years  
10 of experience, in estimating gas reserves. Dr. Taylor's direct testimony  
11 describes his analysis in detail. In addition, FPL retained Forrest A. Garb &  
12 Associates, Inc. ("FGA"), to provide an independent, confirmatory analysis.  
13 FGA performed a formal reserve evaluation, which included an evaluation of  
14 reserves and future net revenues. FGA analyzed the existing wells in detail to  
15 determine their own type curves and reviewed the maps, operating expenses,  
16 CapEx, and development schedule. FGA concluded that Dr. Taylor's analysis  
17 is a reasonable estimate of the volumes of gas to be expected from the drilling  
18 program and, in fact, developed independent estimates which almost exactly  
19 coincide with Dr. Taylor's.

20

21 FPL intends to rely on FPL witness Taylor's expertise on a going-forward  
22 basis to evaluate its non-consent option under the PetroQuest Agreement.



1 **Q. How did FPL determine the revenue requirements for FPL's interest in**  
2 **the Woodford Project?**

3 A. Under the current drilling schedule, FPL's capital investment will be required  
4 in the first year after taking assignment, during which time the planned new  
5 natural gas wells will be drilled. Then, minimal production, processing and  
6 gathering costs will be incurred over the remaining 30-plus year economic life  
7 of the wells. The economic life of a well is determined by comparing the  
8 operating cost of a well to the market price of the natural gas. Production  
9 from a well remains economic when the value of the gas produced from the  
10 well is greater than the ongoing operating costs. The revenue requirements  
11 associated with FPL's investment reflect the assumption that FPL will invest  
12 in the development of all planned wells permitted by the PetroQuest  
13 Agreement.

14  
15 To perform an economic evaluation of this investment, FPL's revenue  
16 requirements were converted to an estimated cost per MMBtu of natural gas,  
17 using the total expected gas production volumes provided by FPL witness  
18 Taylor. As shown on my Exhibit SF-7, that production is expected to be at its  
19 highest annual level during the first few years of the transaction and peak in  
20 the year 2016 at an average volume of approximately 46 million cubic feet  
21 ("MMcf") per day, decreasing to around 7 MMcf per day in 2030. This  
22 production curve closely aligns with the capital investment spend curve  
23 discussed above.

1 It is important to note that FPL's methodology for forecasting fuel prices has  
2 been reviewed and approved by the Commission as reasonable in a number of  
3 Commission dockets. See, e.g., Docket Nos. 110309, 130001-EI and 130009-  
4 EI. The results of FPL's economic evaluation are provided on the attached  
5 Confidential Exhibit SF-8.

6 **Q. What assumptions did FPL make on the gas transportation needed to**  
7 **physically deliver the gas from the Woodford Project?**

8 A. For purposes of the economic evaluation, FPL assumed it would procure firm  
9 transportation on an existing pipeline system to accept gas from the gathering  
10 system and deliver it to the Perryville Hub in Louisiana. From there, FPL  
11 would utilize its existing agreement on the Southeast Supply Header (see  
12 Exhibit SF-1) to move the gas into either FGT or Gulfstream for delivery into  
13 Florida. The costs associated with this incremental natural gas transportation  
14 are included in the economic evaluation included as Confidential Exhibit SF-8  
15 and reflect a conservative approach to how this transaction would be  
16 managed.

17 **Q. When would FPL's customers start to benefit from FPL's investment in**  
18 **the Woodford Project?**

19 A. The benefits will start immediately upon FPL taking assignment of the  
20 PetroQuest Agreement with customer savings beginning in year one, and will  
21 continue over the productive life of the Woodford Project wells. The  
22 PetroQuest transaction is projected to be highly beneficial for FPL's  
23 customers, providing needed natural gas at a lower and more stable cost per

1 MMBtu than would otherwise be incurred if the same amount of natural gas  
2 were to be purchased at market prices.

3 **Q. What are the estimated revenue requirement benefits for customers?**

4 A. The revenue requirements associated with the project, on a cumulative net  
5 present value (“NPV”) basis, are projected to be approximately \$107 million  
6 lower than the cost of the natural gas FPL would otherwise be required to  
7 purchase over the expected economic life of the project. Further, as can be  
8 seen from the production profile in Exhibit SF-7, approximately half of the  
9 expected gas would be produced in the first seven years after taking  
10 assignment of the PetroQuest Agreement, resulting in \$47 million in customer  
11 savings during that period. As was mentioned previously, FPL ran a  
12 sensitivity that assumed all other working interest owners consent to their  
13 participation in the PetroQuest Agreement drilling program. This results in  
14 customer savings of approximately \$61 million on capital expenditures of  
15 \$119 million.

16  
17 In addition to the customer savings, it is also important that the proposed  
18 investment also will provide long-term price stability for a portion of FPL’s  
19 natural gas needs. By disassociating a portion of FPL’s natural gas purchases  
20 from volatile market prices, and instead obtaining a portion of its natural gas  
21 requirements at a stable, lower cost of production, this investment will allow  
22 the Company to replace a portion of its short-term financial hedging program  
23 for fuel purchases with, in effect, a longer-term physical hedge.

1 **Q. Can you provide an example of how investment in gas reserves also**  
2 **provides price stability?**

3 A. Yes. By way of simplified illustration, suppose that FPL procures 25% of its  
4 gas requirements from reserve projects at a stable, unit cost of production.  
5 Further suppose that the price of gas in Year 5 turns out to be \$2.00 per  
6 MMBtu higher than the forward curve projected in Year 1. Without the  
7 investment in gas reserves, FPL's customers would have to pay the full  
8 additional \$2.00 per MMBtu in Year 5, because FPL's short-term financial  
9 hedging program does not extend that far out in time. However, because FPL  
10 would be procuring 25% of its gas requirements on a cost-of-production basis  
11 that is independent of what the Year 5 market price turns out to be, FPL's  
12 customers would only pay \$1.50 of this \$2.00 per MMBtu increase in the  
13 Year 5 market price. This is a valuable form of longer-term volatility  
14 reduction that FPL simply cannot offer through its existing financial hedging  
15 program.

16 **Q. How would the customer savings be affected by movements in forecasted**  
17 **gas prices or changes in the expected production from the wells?**

18 A. FPL evaluated the impact to customers across assumed movements in gas  
19 prices and production levels. The gas price scenarios considered are  
20 consistent with what is included in the Company's annual TYSP filing. The  
21 base case for customer savings assumed the TYSP Base fuel cost forecast,  
22 with sensitivities to the High fuel cost forecast and the Low fuel cost forecast  
23 that reflect the same volatility factor of 21% used for the TYSP. Additionally,

1 the Base production levels for the project were varied to a High case, with  
 2 estimated production being adjusted upwards by 10%, and a Low case, with  
 3 estimated production being adjusted downwards by 10%. As discussed by  
 4 FPL witness Taylor, the 10% adjustment figure is considered to be an industry  
 5 standard for capturing the potential upside or downside case in production. A  
 6 summary of the range of impacts on customer savings is shown below.

7

8

#### Sensitivity Cases for Customer Savings

9		"Low Fuel"	"Base Fuel"	"High Fuel"
10	Low Production	(\$14.4 MM)	\$72.6 MM	\$159.5 MM
11	Base Production	\$10.3 MM	<b>\$106.9 MM</b>	\$203.5 MM
12	High Production	\$34.1 MM	\$140.4 MM	\$246.7 MM

13

14 As can be seen from this table, the Woodford Project is projected to generate  
 15 fuel savings for FPL customers in all but one out of the nine analyzed cases,  
 16 with the most likely case yielding savings of approximately \$107 million on  
 17 an NPV basis.

18

19 In the event lower market fuel prices were to materialize, as in the "Low Fuel"  
 20 sensitivity cases, FPL's customers would enjoy substantial reductions in their  
 21 electric bills due to the reduced cost for gas that FPL would acquire at those  
 22 lower market prices. By way of example, if the "Low Fuel – Low  
 23 Production" scenario materialized, the lower price that FPL would be paying

1 on the 97% of its natural gas requirements that would not be provided under  
2 the PetroQuest Agreement would reduce FPL's typical 1000-kWh residential  
3 customer bill in 2016 by \$4.93 per month. In contrast, the cost impact of the  
4 gas provided under the PetroQuest Agreement would only increase that  
5 monthly bill by \$0.07, leaving a significant net reduction of \$4.86 per month.  
6 In other words, in the event that natural gas prices turn out to be lower than  
7 projected, it would be a very positive circumstance for our customers.

8 **Q. Is it appropriate to recover the costs of FPL's Woodford Project through**  
9 **the Fuel Clause?**

10 A. Yes, as will be described in greater detail by FPL witness Ousdahl, it is  
11 appropriate to recover these costs through the Fuel Clause. The Woodford  
12 Project is eligible for Fuel Clause recovery under Item 10 of Order No. 14546  
13 and subsequent decisions interpreting it, because it is reasonably projected to  
14 lower the delivered cost of fuel and the costs for the project are not recognized  
15 or anticipated in the cost levels used to determine current base rates.

16

17 **VII. GUIDELINES FOR REGULATORY TREATMENT OF FUTURE GAS**

18 **RESERVE AGREEMENTS**

19

20 **Q. Is FPL considering future potential opportunities to invest in gas**  
21 **reserves?**

22 A. Yes. To the extent the proposed investment in the PetroQuest transaction is  
23 approved by the Commission as prudent and recoverable through the Fuel

1 Clause, FPL will be in a position to evaluate similar investment opportunities  
2 to achieve an expanded and continuing level of fuel cost savings and price  
3 stability for its customers. The PetroQuest transaction described herein is an  
4 example of just one agreement in a broad market.

5 **Q. What types of projects will FPL pursue for future investments in gas**  
6 **reserves?**

7 A. As further described in the testimony of FPL witness Taylor, there are a  
8 number of different classifications of reserves that are determined by current  
9 technological and economic conditions, and the distinction between proved,  
10 probable and possible reserves, as defined for reporting purposes, can be  
11 relatively small. Because producers typically own a mix of each category of  
12 reserves, the transactional opportunities would be substantially reduced if FPL  
13 were to pursue only those reserves labeled as Proved. This is demonstrated by  
14 the Woodford Project, where 25 of the proposed wells are characterized as  
15 Proved, while 13 are characterized as Probable. All of the proposed wells in  
16 the Woodford Project are in close proximity, so there is only a low chance of  
17 substantial differences in productivity among the wells regardless of their  
18 current classification.

19  
20 Another dimension in the range of potential projects available in the market is  
21 the mix of hydrocarbons. FPL witness Taylor explains that production is  
22 characterized by a wide array of commodities, from methane to natural gas  
23 liquids (“NGLs”) to oil. FPL will focus on the development of natural gas

1 resources to physically supply its power plants, but also understands the value  
2 of NGLs and oil and the real economic benefit in lowering the ultimate cost of  
3 natural gas from having those hydrocarbons present. Thus, while the  
4 Woodford Project produces dry gas, when analyzing future projects the value  
5 of NGLs and oil will be considered as well.

6  
7 As mentioned previously, FPL currently has natural gas supply from sources  
8 which include shale formations in Texas, Louisiana, Oklahoma, and Arkansas,  
9 West Virginia, Ohio, and Pennsylvania. FPL will remain heavily dependent  
10 on these relatively new sources of supply as shale production increases and  
11 traditional sources of supply like the Gulf of Mexico continue to decline. In  
12 order to maintain a flexible and robust portfolio, FPL will pursue transactions  
13 that provide geographic diversity, such that it does not become too reliant on  
14 any one production area.

15  
16 Finally, FPL believes it is important to pursue a portfolio of assets that  
17 maintains an economically beneficial stream of gas production for our  
18 customers. In order to accomplish this, a mix of all categories of reserves  
19 must be considered so as not to limit FPL's opportunities to deliver economic  
20 benefits for our customers. Additionally, considering a mix of natural gas and  
21 NGLs will be important as there is a real potential to "buy-down" the cost of  
22 gas with the presence of NGLs. FPL witness Taylor discusses NGLs in more  
23 detail in his testimony. Ultimately, a mix of different reserve types will help



1 provide for a steady flow of physical gas deliveries from natural gas  
2 production on favorable terms for FPL's customers.

3 **Q. Are there constraints that limit FPL's ability to enter into future**  
4 **beneficial agreements for gas production similar to the PetroQuest**  
5 **Agreement?**

6 A. Yes. As described earlier in my testimony, most counterparties to date have  
7 been unwilling to wait for standard regulatory approval timing in order to  
8 execute an agreement, and FPL cannot depend on having USG or any other  
9 entity "stand in" until the regulatory review process is completed and then to  
10 simply hand over the project at net book value. Moreover, because of the  
11 volatile nature of the gas markets, the start date of a transaction can have  
12 significant impacts on the value as viewed by the counterparty, as well as the  
13 benefit to FPL's customers.

14 **Q. How does FPL propose to accommodate the need for prompt action on**  
15 **future gas reserve opportunities?**

16 A. FPL is proposing a set of guidelines, which would provide a framework to  
17 allow FPL to consummate a transaction when an agreement has been reached  
18 that meets the guidelines, without having to wait on the normal several-  
19 month-long Commission approval process.

20 **Q. Has FPL developed proposed guidelines within which FPL could make**  
21 **timely investment decisions on future gas reserve opportunities?**

22 A. Yes. In order to ensure that the benefits available to customers can be secured  
23 in a timely fashion, FPL requests that the Commission approve guidelines for

1 gas reserve projects, such that FPL would be eligible to recover through the  
2 Fuel Clause the revenue requirements for future projects that meet those  
3 guidelines, subject to the usual review of the prudence of fuel-related  
4 transactions that the Commission conducts in Fuel Clause proceedings.

5  
6 By allowing FPL to move forward on future projects without the need for  
7 prior approval, the Commission would facilitate FPL's ability to take  
8 advantage of additional opportunities to achieve lower and more stable gas  
9 prices for customers, while maintaining the Commission's ability to review  
10 those projects in the same manner that it reviews other fuel-related  
11 transactions.

12 **Q. Would the adoption of guidelines be consistent with how the Commission**  
13 **has administered the short-term hedging programs?**

14 A. Yes. Starting with a set of initial guidelines in 2002 and then expanding and  
15 refining those guidelines in 2008, the Commission has worked with FPL and  
16 the other investor-owned utilities to develop and implement both a process  
17 and substantive guidance for what should and should not be part of the short  
18 term hedging programs. This collaboration has been effective in giving the  
19 Commission a clear line of sight into the nature and extent of the utilities'  
20 planned short-term hedges, while at the same time giving the utilities comfort  
21 that they can execute on what are often very substantial financial positions  
22 without having their decisions second-guessed as market conditions unfold.  
23 Similar to the hedging guidelines, the Commission could establish a

1 framework whereby the company could enter into several transactions that are  
2 within a range of predetermined terms/guidelines. Also similar to the hedging  
3 guidelines, the Commission should acknowledge that there are potential  
4 drilling/production risks with pursuing gas assets and as long as the  
5 transaction was within the guidelines, it cannot be deemed imprudent based on  
6 the results.

7 **Q. What are FPL's proposed guidelines?**

8 A. FPL's proposed guidelines are attached as Confidential Exhibit SF-9. Certain  
9 key provisions in the guidelines need to be kept confidential, because their  
10 disclosure would disadvantage FPL in negotiating with potential  
11 counterparties for future gas reserve projects, which in turn could reduce the  
12 fuel savings for FPL's customers. Generally, the guidelines describe the  
13 parameters under which FPL will be able to transact on future gas reserve  
14 opportunities. They cover the scope of FPL's project participation as a  
15 percentage of average daily burn, as well as on an annual capital expenditure  
16 basis. They also describe how the deals will be evaluated against FPL's then-  
17 current forecast of natural gas prices. Finally, the guidelines will discuss the  
18 composition (percentage of methane versus NGLs of gas reserves that FPL  
19 can pursue).

20 **Q. Are there other examples of industry participants establishing guidelines  
21 with their commissions for future transactions around gas reserves?**

22 A. Yes. There are other industry examples which exist. For example,  
23 NorthWestern Energy included acquisition criteria for gas reserve properties

1 in its current (2012) Natural Gas Biennial Procurement Plan, as to which the  
2 Montana Public Service Commission commented favorably in May 2013.  
3 While each utility is different in terms of the mix of their fuel portfolio and  
4 every jurisdiction is unique in some way, there has been recognition that  
5 establishing a framework for future deals will help the utility to transact on a  
6 more expedited basis in ways that will benefit customers. Essentially, there  
7 are different specifics on the composition of reserves, but the same general  
8 ideas in terms of the benefits to customers and future gas prices.

9

## 10 **VIII. CONCLUSION**

11

12 **Q. Please summarize why investing in gas reserves will benefit FPL's**  
13 **customers.**

14 A. Fundamentally, investing in gas reserves is about delivering lower and more  
15 stable prices for the commodity that is by far the largest component in FPL's  
16 fuel bill: natural gas. The Woodford Project is projected to deliver  
17 approximately \$107 million of customer savings on a net present value basis.  
18 This is an extremely attractive financial opportunity for our customers. While  
19 future transactions may not present the level of savings the Woodford Project  
20 does, the proposed guidelines will ensure that future gas reserve projects are  
21 also projected to deliver net savings.

22

1 At the same time, gas reserve projects will help stabilize gas costs for our  
2 customers over a longer time frame than can be realistically achieved with  
3 FPL's existing financial hedging program. That program extends only 12 to  
4 24 months into the future, with prohibitive costs and credit risks associated  
5 with extending it for a longer period of time. However, similar to the current  
6 hedging plan, the volatility in the fuel bill will be greatly reduced as additional  
7 reserves are added to the portfolio. The benefit of the gas reserves projects is  
8 that they will provide gas at a well-understood and predictable cost of  
9 production for decades and allow for longer-term volatility reduction without  
10 the potential collateral and liquidity issues of the current hedging program.

11 Finally, if market prices for gas were to fall and were expected to remain low  
12 in the future, FPL could quickly curtail customer exposure to gas reserve  
13 revenue requirements by simply non-consenting on any wells yet to be drilled  
14 in the Woodford Project and not continuing to invest in replacement gas  
15 reserve projects. Once these steps were taken, the rapid gas production and  
16 associated depletion in existing wells would reduce the remaining investment  
17 to a small fraction of its original value in just a few years. In short, gas  
18 reserve projects offer customers an unparalleled opportunity for substantial  
19 savings and certainty in the face of a volatile gas market.

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

21 A. Yes.

1           CHAIRMAN GRAHAM: You can do your five-minute  
2 summary.

3           MR. MOYLE: And I going to ask him questions  
4 about that without waiving my right to object to  
5 this.

6           CHAIRMAN GRAHAM: Yes.

7           MR. MOYLE: Okay.

8           THE WITNESS: Good morning, Mr. Chairman and  
9 Commissioners. I think it's important at the  
10 outset to understand FPL's proposal. Simply put,  
11 FPL is proposing to replace a small portion its  
12 existing financial hedging program with a form of  
13 longer term fiscal hedging that is also expected to  
14 provide customer savings.

15           FPL currently supplies 62 percent of the  
16 electricity consumed in Florida, with approximately  
17 65 percent of this fueled by natural gas. FPL  
18 purchases more natural gas than any other investor  
19 owned utility in the country, making the need to  
20 establish a predictable, reliable and low cost  
21 supply and imperative for FPL and its customers.

22           The Woodford Project does just that. This  
23 transaction offers the opportunity to procure  
24 natural gas at production costs that will be very  
25 stable over the long run, and will provide a hedge

1           against volatile market prices.  Additionally,  
2           these production costs are projected to be  
3           significantly lower than the prices forecasted in  
4           the market.

5                     FPL currently secures physical gas at market  
6           prices which has resulted in large price swings for  
7           customers.  FPL's method of mitigating this price  
8           risk is this Commission approved hedging program  
9           which helps FPL achieve its objective of fuel price  
10          stability by financially hedging a portion of its  
11          projected gas consumption for the following year.

12                    The current hedging program has substantial  
13          limitations, including the lack of liquidity for  
14          fixed price hedges over the long-term.  And while  
15          FPL maintains a strong balance sheet, there are  
16          limits on the ability to provide the current  
17          support required for longer term financial hedges.  
18          Because of these limitations and others, FPL's  
19          customers remain 100 percent exposed to the  
20          long-term volatility inherent in the natural gas  
21          market beyond what can be mitigated by our current  
22          hedging program.

23                    Fortunately, these limitations could be  
24          addressed by investments like the Woodford Project.  
25          Ownership in gas production offers long-term price

1 stability as the cost of gas is tied directly to  
2 production cost, thus concluding decoupling  
3 purchases from the factors that drive market  
4 volatility. Importantly, by procuring only a  
5 portion of FPL's gas requirements through  
6 investments in gas reserves, FPL's customers will  
7 still benefit should gas prices drop, but will be  
8 partially protected by investment in gas reserves  
9 should prices rise over both the short- and  
10 long-term.

11 As this commission well knows, shale gas  
12 production has grown rapidly in recent years. The  
13 cost of drilling and producing gas from shale has  
14 dropped dramatically, leading to lower natural gas  
15 prices and an increase in the amount of  
16 economically recoverable gas reserves.

17 It's worth noting that approximately  
18 70 percent of FPL's current supply is met with gas  
19 from unconventional sources such as shale. Because  
20 of these factors, now is an excellent time to be to  
21 begin investing in gas production. The Woodford  
22 Project is projected to save FPL's customers  
23 approximately \$107 million on a net present value  
24 basis compared to the costs customers are  
25 forecasted to incur over the life of the project,



1 with the benefits of lower fuel cost beginning  
2 immediately in 2015.

3 In addition, to the Woodford Project, FPL is  
4 proposing a set of guidelines similar in nature to  
5 the hedging guidelines, and approved by this  
6 commission in 2008. These gas reserves guidelines  
7 would facilitate FPL's ability to achieve lower and  
8 more stable prices for customers, and maintain the  
9 Commission's ability to review projects in the same  
10 manner that it reviews other fuel related  
11 transaction.

12 The guidelines that have been proposed as  
13 producers are not willing to wait for regulatory  
14 approval before a transaction becomes effective as  
15 capital and schedule decisions need to be made  
16 quickly.

17 For the Woodford Project, an affiliate of FPL  
18 that has experience in these kinds of projects has  
19 already transacted with PetroQuest as a bridge to  
20 Commission approval. If the Commission approves  
21 this transaction, FPL will take assignment of the  
22 agreement at net book value through a wholly owned,  
23 fully regulated FPL subsidiary.

24 If the Commission does not approve the  
25 assignment to FPL, our affiliate will retain the

1 transaction for its own interests. However, FPL  
2 simply cannot depend on our affiliate to provide  
3 this bridge in the future and, therefore, as for  
4 Commission approval of the framework for making gas  
5 reserves investments that would provide reasonable  
6 assurance those transactions will be viewed as  
7 prudent and recoverable.

8 Commissioners, fundamentally investing in gas  
9 reserves is about delivering lower and more stable  
10 prices for the commodity that is the largest  
11 component in FPL's fuel bill, making the Woodford  
12 Project an extremely beneficial transaction for our  
13 customers. In short, gas reserves projects offer  
14 customers an unparalleled opportunity for  
15 substantial savings and predictability in the face  
16 of a volatile gas market.

17 And this concludes my summary.

18 MR. GUYTON: We tender Mr. Forrest.

19 CHAIRMAN GRAHAM: OPC.

20 MR. TRUITT: John Truitt, with the Office of  
21 Public Counsel. Thank you, Mr. Chairman,  
22 Commissioners.

23 CROSS EXAMINATION

24 BY MR. TRUITT:

25 Q Mr. Forrest, good morning.

1           A     Good morning.

2           Q     I kind of -- I know you discussed it in your  
3 direct testimony a little bit of the background of how  
4 FPL came about this, so I want to kind of move through  
5 that first.

6                     Isn't it true that in 2011 your unit Energy  
7 Marketing and Trading business unit, EMT, learned of  
8 other utilities investing in gas reserves and that  
9 knowledge peaked your interest?

10          A     We became aware of a transaction that  
11 Northwestern Natural did in Canada up in the Pacific  
12 Northwest, and it was at that time when we started  
13 pursuing different ideas around potentially taking a  
14 longer term physical transactions.

15          Q     Okay. And then I know in response to one of  
16 staff's interrogatories number 87, which we discussed at  
17 the depo before, you found four orders from other  
18 service commissions allowing investment in gas reserves  
19 in base rates, is that's correct?

20          A     That's correct. A number of -- most of them  
21 are, as I said, in the northwest, but there are a number  
22 of other jurisdictions that have approved these types of  
23 transactions, yes.

24          Q     So of those four orders, isn't it correct that  
25 three of those orders dealt strictly with LDCs that did

1 not burn gas to fuel electricity generation?

2 A That's my understanding, yes.

3 Q Okay. And the fourth one, that one is  
4 Northwestern?

5 A Northwestern Energy, yes, out of Montana.

6 Q Now, Northwestern, it's an LDC and electric  
7 utility, correct, it's combined?

8 A That's correct.

9 Q Okay. Isn't it true that the Northwestern  
10 case in Montana, Montana PSC only allowed the inclusion  
11 of gas reserves in the natural gas utilities base rate,  
12 not as fuel for the electric utility?

13 A I am not entirely positive of that. That  
14 certainly could be true. I know it was done for the  
15 primary benefit of the gas LBC.

16 Q Okay. Did you review the order in that case  
17 at all?

18 A I am familiar with the order. I don't know  
19 that I read it cover to cover, no.

20 Q Okay. I am going to offer an exhibit, it's  
21 going to be that order.

22 MR. TRUITT: What I am handing out, it's the  
23 final order for the Montana Public Service  
24 Commission for this. The order is actually cited  
25 in staff interrogatory number 87. We didn't have a

1 copy of the order, but I would like to offer this  
2 exhibit for the record. I will wait until  
3 everybody has one.

4 CHAIRMAN GRAHAM: Mary Anne, remind me if it's  
5 a different --

6 MS. HELTON: I'm sorry, I am a little bit  
7 confused. Is this one of the orders that we took  
8 official recognition of earlier?

9 MR. TRUITT: No, it is not.

10 MS. HELTON: But did you said it was cited in  
11 an interrogatory?

12 MR. TRUITT: It was in an interrogatory. And  
13 during discovery, we found out that he had looked  
14 at it. And since it's one of the cases that  
15 involves, not an LDC, it's combined, this order is  
16 going to be used to cross-examine exactly where  
17 those gas reserves are.

18 MS. HELTON: And it was an interrogatory  
19 response by Florida Power & Light?

20 MR. TRUITT: To staff, yes.

21 CHAIRMAN GRAHAM: So would we give it an  
22 exhibit number?

23 MS. HELTON: Yes, sir.

24 CHAIRMAN GRAHAM: All right. We will give it  
25 Exhibit No. 60.

1 (Whereupon, Exhibit No. 60 was marked for  
2 identification.)

3 THE WITNESS: And I am sorry, which  
4 interrogatory was that?

5 BY MR. TRUITT:

6 Q It was number 87.

7 A Okay.

8 Q Okay. It's going to be -- it's the copy of  
9 the order of that first part of that interrogatory.

10 If you could for me, I would just like to turn  
11 to the very first page of it, towards the bottom of the  
12 first page, after the cover sheet, of course, under  
13 procedural history.

14 If you could read the one under number one,  
15 please. The, on March 30th, that paragraph starting,  
16 can you read that out loud into the record, please?

17 A Yes.

18 "On March 30th, 2012, Northwestern Energy  
19 filed an application with the Commission seeking  
20 authorization to include the Battle Creek Natural Gas  
21 production and gathering properties "-- Battle Creek in  
22 the parenthesis -- "in the natural gas utility rate base  
23 and to recover associated expenses. Included in the  
24 filing was stipulation and agreement between  
25 Northwestern Energy and the Montana Consumer Council

1 regarding Battle Creek return on equity and capital  
2 structure "-- and ROE slash capital structure is  
3 stipulation in parenthesis.

4 Q Okay. That you. And if could you flip to  
5 page 13 of 14. Okay. Under order -- I am looking  
6 specifically at number eight. If you could read the  
7 first sense out loud, please?

8 A "In approving Northwestern Energy's  
9 acquisition of the Battle Creek reserves, the  
10 Commission's intent is that all of the reserves e used  
11 to serve Northwestern Energy's natural gas customers  
12 until the reserves are completely depleted "-- I am  
13 sorry -- "entirely depleted."

14 Q Okay. So would you agree with me that it  
15 appears in this order the intent was that it goes to the  
16 natural gas utility rate base?

17 A Yes.

18 Q Okay. Now, I am going to fast forward -- I am  
19 done with that. I am going to fast forward to 2014 now.

20 So your unit had been looking for options for  
21 roughly three years investing in gas reserves and filed  
22 this petition June 25th, 2014, specifically seeking a  
23 prudence determination from this commission for a joint  
24 venture with PetroQuest and Woodruff Arkoma in Oklahoma,  
25 correct?

1           A       That's correct.  Yes.

2           **Q       Okay.  Now, isn't it true FPL originally**  
3 **settled on a different partner for a joint venture**  
4 **before PetroQuest?**

5           A       We had a number of discussions with  
6 counterparties over the last couple of years.  We did  
7 get to various stages through the negotiations with  
8 those counterparties.  One counterparty we did move  
9 fairly far down the path, had would what we thought was  
10 an agreement and they backed out of it at the last --  
11 the last minute.

12          **Q       Okay.  Now, that counterparty, that was as**  
13 **recently as May 5th of 2014, correct?**

14          A       On or about, yes, somewhere in that timeframe.

15          **Q       Okay.  And then isn't it true that that**  
16 **tentative agreement after May 5th it fell apart when a**  
17 **particular board member was not supportive the**  
18 **transaction?**

19          A       That is my understanding of what happened.  
20 Yes.

21          **Q       Okay.  And isn't it also true that NextEra, in**  
22 **fact, proposal provided to FPL?**

23          A       They have an existing -- yes, they have an  
24 existing relationship with PetroQuest in the Woodford  
25 Arkoma.  As we have been pursuing these types of



1 opportunity, US Gas, who has a lot of experience dealing  
2 with these types of transactions has been helping us in  
3 that process. They are the ones that brought it forward  
4 and proposed the idea. But I can also tell you that  
5 there has been a lot of things that were happening in  
6 parallel after the May episode with the other  
7 counterparty that this idea was brought forward. It's  
8 been in discussions prior to that.

9 **Q Right, but NextEra brought it to FPL?**

10 **A That's correct.**

11 **Q Correct. Now, the Woodford Project is an**  
12 **unconventional play, I think we heard that in opening, I**  
13 **want to make sure we have it in the record.**

14 **A That's correct.**

15 **Q Okay. So it's an unconventional play, it will**  
16 **involve hydraulic fracturing, correct?**

17 **A That's correct.**

18 **Q Isn't it true fracking operations generally,**  
19 **there is wastewater from the process, which is usually**  
20 **injected in wells elsewhere?**

21 **A There is different ways of injecting it.**

22 **Dr. Taylor certainly can give you a very thorough**  
23 **understanding of what's being done in the Woodford**  
24 **Project. But, yeah, you can inject it into wells or**  
25 **shallower water -- excuse me, shallower deposits.**

1 Absolutely.

2 Q Okay. Now, besides the deal falling through  
3 at the last minute, would you agree with me that there  
4 are other risks investing in gas reserves? Again, I am  
5 talking generally.

6 A Generally speaking, there is -- there are  
7 risks involved in drilling for gas, just as there are  
8 risks involved in everything that we do every day.

9 Q Right. I'm going to go -- I would like to  
10 explore a couple of these risks.

11 So isn't exploration a risk in investing in  
12 gas reserves?

13 A Exploration, in the sense that your  
14 wildcatting.

15 Q No. I don't mean any industry terms like  
16 wildcatting or anything else. I mean when you are  
17 actually going out to pick an area, if a project is not  
18 already set up like Woodford?

19 A Yeah, if you are pursuing -- and, again, I  
20 would defer to interest Taylor for his vast experience  
21 in the area, but when you are pursuing opportunities in  
22 an area to drill, if you are searching for acreage that  
23 doesn't already have existing wells located on it, there  
24 is a level of risk associated with that. Certainly the  
25 quality of data that you receive with respect to seismic

1 data and other information in the area will help in the  
2 understanding of that. In the Woodford Project, there  
3 is a very, very well known set of data that has been  
4 made available to us.

5 **Q I am sorry. I don't mean to interrupt, I am**  
6 **going to get to the Woodford. I am going to talk**  
7 **generally first. I don't want to get the record**  
8 **confused.**

9 A Okay. So to the extent that you are pursuing  
10 opportunities in an area that doesn't have exiting  
11 wells, and they are just pursuing acreage, if you will,  
12 then, yeah, there is a level of risk association with  
13 exploration. But again, a lot of that is driven by the  
14 quality of data that you have about that acreage.

15 **Q Okay. And you would agree with me also that**  
16 **seismic issues can be a risk of investing in gas**  
17 **reserves, correct?**

18 A I am aware there are discussions around  
19 seismic activity in certain areas. I am not aware of  
20 any in this specific area. Again, I know you are  
21 talking about the Woodford Project, in that particular  
22 area, but I know there are people that are kind of lined  
23 up on both sides of the scientific community discussing  
24 seismic activity and potential impacts.

25 **Q Okay. Now, in terms of at the drilling site**

1     **itself, you would agree with me that there are**  
2     **environmental issues at a drilling site that's a risk of**  
3     **investing in gas reserves, such as possible land**  
4     **contamination, or accidents, or anything like that is**  
5     **possible?**

6           A     There is that potential, true.

7           Q     **Okay. And environmental risks could also go**  
8     **over into the wastewater injection site, wouldn't you**  
9     **agree that that's a potential risk as well?**

10          A     Again, there is certainly that possession.  
11     There are mitigants to many of those risks, but there  
12     are risks, yes.

13          Q     **Okay. And isn't it true that the Oklahoma**  
14     **Corporation Commission has issued a memorandum stating**  
15     **it was going to be taking a proactive approach in**  
16     **dealing with links between injection wells and seismic**  
17     **activity?**

18          A     Dr. Taylor could probably talk about that at  
19     length. I am sort of cursory aware of it, but I would  
20     suggest Dr. Taylor is probably a better resource for  
21     that response.

22          Q     **Okay. I am going to have another exhibit.**  
23     **The exhibit they are handing out for me -- thank you --**  
24     **is the memorandum from the Oklahoma Corporation**  
25     **Commission's website regarding seismic activity.**

1                   **CHAIRMAN GRAHAM:** We will give this Exhibit  
2                   No. 61.

3                   (Whereupon, Exhibit No. 61 was marked for  
4                   identification.)

5                   BY MR. TRUITT:

6                   Q       Okay. As I said, this is just -- it's a memo  
7                   they have on the main page of their website that the  
8                   Oklahoma Corporation Commission out, and you said you  
9                   were vaguely aware -- I don't remember the exact word  
10                  you used -- that they had been looking into it, you  
11                  didn't know the exact --

12                  A       Correct.

13                  Q       I just want to look at the second and third  
14                  paragraph. Actually, let's start with the second  
15                  paragraph first, while a direct, could you please read  
16                  that out loud?

17                  MR. GUYTON: Objection. I don't think a  
18                  proper foundation has been read -- been laid for  
19                  this document. We don't even know if this witness  
20                  is familiar with the document.

21                  CHAIRMAN GRAHAM: Let's ask him.

22                  MR. TRUITT: He said he is vaguely familiar  
23                  with their policy. And this is a public record  
24                  that's obviously available on their website, hasn't  
25                  been altered or anything else, so I can ask him the

1 initial question if he is familiar with this  
2 document at all, and then if he says no, then I  
3 will still ask that it be admitted and he doesn't  
4 have to read from it if that would be the  
5 Commission's preference.

6 CHAIRMAN GRAHAM: Let's do it that way. Let's  
7 walk into this a little bit.

8 MR. TRUITT: Okay.

9 BY MR. TRUITT:

10 Q Have you ever seen this document?

11 A No.

12 Q I guess I foreshadowed that.

13 MR. TRUITT: Since this is a public record  
14 from another state jurisdiction, and it would be  
15 the type of evidence that would be normally relied  
16 upon in the course of these proceedings, I would  
17 ask that it be admitted into the record.

18 CHAIRMAN GRAHAM: Mary Anne.

19 MR. GUYTON: If we may object just to its lack  
20 of authenticity, and it is not a self-evident  
21 public record that is appropriately admitted  
22 without any sort of foundation.

23 CHAIRMAN GRAHAM: Mary Anne.

24 And just so you guys know, I am going to  
25 probably go to my attorney quite a bit during this

1 hearing, because we are on unchartered territory,  
2 and when this gets challenged, I want to make sure  
3 that all the I's are dotted and T's are crossed.

4 MS. HELTON: Mr. Chairman, I think the witness  
5 has said that he is not familiar with this  
6 particular document. So I think if Mr. Truitt  
7 wants to ask questions about seismic activity in  
8 general, I think there has been no objection to  
9 that from Florida Power & Light. But what I heard  
10 the witness say was that he is not familiar with  
11 this document. This is a document from Oklahoma.  
12 It's not a document from Florida. While it may be  
13 readily relied upon in Oklahoma, that's not where  
14 we are, and I am wondering if this would have been  
15 better looked at through judicial notice or  
16 official recognition versus trying to get it  
17 admitted into the hearing this way.

18 CHAIRMAN GRAHAM: As far as authenticity of  
19 this, are we doable?

20 MS. HELTON: We have allowed documents in the  
21 past to be admitted that were gained from the  
22 internet from the website, but that's when  
23 generally -- like, for instance, if it was a  
24 Florida Power & Light source from the internet, if  
25 it was a Florida Power & Light document, that would

1           be different than versus an Oklahoma document that  
2           we -- none of us in the room, or most of us in the  
3           room have never seen before.

4           MR. TRUITT: Mr. Chairman.

5           CHAIRMAN GRAHAM: Yes.

6           MR. TRUITT: If I may offer a solution, since  
7           it's -- I will ask a direct question. I won't ask  
8           for it to be admitted and we won't have to worry  
9           about an objection and sustained, overruled in the  
10          record.

11          CHAIRMAN GRAHAM: Sounds perfect.

12   BY MR. TRUITT:

13           **Q     Are you aware that Oklahoma Corporation**  
14   **Commission is not waiting for proof of a direct link to**  
15   **oil and gas activity, seismic activity?**

16           A     I can read that in the second paragraph.

17           **Q     I'm just asking if you are aware besides the**  
18   **document sitting in front of you?**

19           A     Not in those words, no. I am aware that they  
20   are looking at seismic activity, yes.

21           **Q     Okay. Are you aware that they are considering**  
22   **under possible new rules that if seismic activity is**  
23   **linked to injection wells that wells may have to be shut**  
24   **down?**

25           A     I am not aware of that, no. Again, I would



1 defer specific questions to Dr. Taylor on that.

2 Q Okay. I will come back to the risk of that in  
3 just a second.

4 Now, speaking of shutting down wells, are you  
5 aware of any states that have a moratoria on injection  
6 wells, fracking?

7 A Specific states, no, I am not. I am aware  
8 that there are local jurisdictions that are looking at  
9 it, but specific states I am not aware.

10 Q Isn't it true that there is an area in  
11 Arkansas that has a moratoria on injection wells?

12 A Like I said, there are local areas within  
13 states, yes.

14 Q Okay. Isn't it true that, generally speaking,  
15 the moratoria on injection wells is usually from the  
16 wastewater used to actually frack the well itself?

17 A The disposal of that, yes.

18 Q Isn't it also true that there is actually  
19 water that sometimes comes out of these wells as well  
20 that has to be disposed of?

21 A That's my understanding, yes.

22 Q So isn't it true that, even though a well is  
23 currently producing, the water is coming out and being  
24 injected somewhere else, there is a moratoria on  
25 injection and that well would have to stop producing?

1           A     Again, I would defer to Dr. Taylor to answer  
2 any specific questions about the disposal of wastewater.

3           Q     Okay.  And isn't it true that there are  
4 liabilities, like in any legal situation, that would  
5 attach to investing in gas reserves?

6           A     There are certainly liabilities, and there are  
7 certainly mitigants to those liabilities as well.

8           Q     Okay.  So I am going to give you a  
9 hypothetical, we are going to talk some about the DDAs,  
10 I am want to give you a scenario first.

11                   PetroQuest drills a well under this Woodford  
12 agreement, breaches an existing environmental  
13 regulation, which requires a report to a governmental  
14 entity, most environmental breaches do, would you agree  
15 with that?

16           A     I would agree with that, yes.

17           Q     Okay.  Now, I am not worried about negligence  
18 or willful, or anything like that, no legal standards at  
19 all.  How would FPL, and consequently this commission,  
20 know of that breach?

21           A     The operator in this case, PetroQuest would be  
22 responsible for reporting it to the appropriate  
23 regulatory body.

24           Q     Okay.  So PetroQuest is not regulated by this  
25 commission.  How would this commission find out about

1 that breach?

2 A They would find out, I guess, through the  
3 information that's provided by Florida Power & Light.

4 Q Okay. You have your SF-4 in front of you, I  
5 think it's been moved in -- or not yet, but SF-4, I am  
6 looking at page 17 of 78.

7 A Flipped right to it.

8 Q Okay. Now, I know this is confidential, so I  
9 don't want anything actually said out loud of the actual  
10 details and terms. I am going to point to you a  
11 section. Now 17 of 78 is fully confidential, but I am  
12 looking at Section 4.2 sub (a) sub (8), about  
13 three-quarters of the way down page 17 there.

14 A Correct.

15 Q So if you take a second to read that quietly,  
16 please.

17 A Yes, I have that.

18 Q Okay. Now, regarding that hypothetical of  
19 reporting, wouldn't you say that the first eight words  
20 of that term are extremely critical to how information  
21 is passed about?

22 A I would agree with that. As I understand it,  
23 there is a very free flow of information between the  
24 operator and the working interest owners such that this  
25 is not unheard to have request for information.

1 Q Okay, but I am just saying, in terms of the  
2 contract and what we have in front of us, you would  
3 agree that that term is relevant to that question?

4 A Yes.

5 Q Okay. Now, in the Woodford Project, what  
6 happens if one party fails to pay required rentals or  
7 shedding payments, or royalties, something that they  
8 have to pay as part of leases which cause the loss of  
9 the right to drill, what happens?

10 A They would be in default and would be excluded  
11 from any of the benefits of the drilling activities.

12 Q Okay. If we could flip to page 19 of the DDA.  
13 And I am looking at sub (d), it's right before Section  
14 4.5, just below the halfway point.

15 Now, that first -- let's see, I am sorry --  
16 4.4(a)(i). I apologize. It's number one at the top of  
17 the page. I apologize.

18 A Okay.

19 Q Now, you would say that that clause right  
20 through there kind of governs royalties and things that  
21 we are talking about, again, without the details of it?

22 A Yeah. This is details of what the obligation  
23 of the operator are in terms of paying royalties and  
24 associated other costs, yes.

25 Q Okay. Now, if we go down to (d), and wouldn't

1 you say that the first full sentence of subsection (d)  
2 kind of removes a significant number of protection?

3 A Well, there are provisions within the  
4 agreement. Obviously, anything within the gross  
5 negligence or willful misconduct that would put them on  
6 notice and have them be in default, which there are a  
7 number of other obligations that they have through the  
8 operating agreement which would include payment of any  
9 due fees on a timely base.

10 Q Right. And I understand there are -- I  
11 understand there are some other terms. I am just  
12 looking at these two as they link together.

13 You would agree that (d) significantly removes  
14 some of the protection that four point A one gives,  
15 removes some --

16 A Again, I think the operating agreement would  
17 cover that. In the event that they don't pay their  
18 royalty payments to the landowners, they would be in  
19 default.

20 Q Okay. And if we could flip to page 21 of the  
21 DDA. Now, I am looking at section -- subsection (b) of  
22 4.6, okay.

23 And again, confidential, but wouldn't you  
24 agree with me that the terms in this remove a lot of  
25 FPL's ability to use the minerals in the most efficient

1 manner? I will give that you question as you read so  
2 you can keep that in mind.

3 A I am not sure what you are suggesting by that.

4 Q Okay. There is a time clause in subsection  
5 (b) there in 4.6, correct?

6 A That is correct.

7 Q Okay. And that time clause is going to enact  
8 how FPL takes things one way or another from one of  
9 these wells? Again, I am trying to tap dance around the  
10 confidential.

11 A Yes. We have actually spoken publicly that we  
12 are taking our gas in kind.

13 Q Okay, right. But there is -- it could go  
14 another way according to the agreement?

15 A According to the agreement. And please  
16 understand that this agreement was written in a way that  
17 allowed US Gas, as our affiliate, to own the transaction  
18 initially, which they do today, and then provided  
19 provisions where it could be assigned to Florida Power &  
20 Light.

21 Our intent, as Florida Power & Light, is to  
22 take the gas in kind, or take the physical gas, and then  
23 deliver that into our pipeline system for burning in  
24 power plants here in Florida. So that's the primary  
25 intent of any gas reserves transaction that we would

1 look for, is to take our gas in kind and be able to move  
2 it.

3 This particular provision being, references  
4 just that option for us. There are other provisions of  
5 the marketing agreement would allow US Gas to utilize  
6 PetroQuest to sell that gas on their behalf. We don't  
7 have any indent in doing that.

8 Q Okay. So you are saying don't have any  
9 intent. Are you guys going to amend this DDA or are you  
10 leaving it as stands if the Woodford Project goes  
11 through?

12 A We will exercise our rights under 4.6(b) to  
13 take the gas in kind.

14 Q I want to look at page 13 of the DDA. And I  
15 am looking at sub (b). It's right above the halfway  
16 point of the page.

17 A Yes.

18 Q Okay. Now, isn't it true that this provision  
19 places an incentive on FPL to consent at the front end,  
20 regardless of whether it appears promising or not?

21 A I don't agree. The -- this is a nonconsent  
22 right. So we have a right to nonconsent to a number of  
23 wells if things aren't going the way we want them to go.  
24 If there are -- if gas prices have fallen to a level  
25 that these wells are no longer economic, we have the

1 right to nonconsent if a well is proposed.

2 Please also understand that PetroQuest has the  
3 same interest in seeing gas prices at a higher level in  
4 terms of proposing wells, so they may well not be  
5 proposing wells if gas prices are falling.

6 Q I am sorry, just a second. I would love to  
7 hear the rest of the clarification, but what I am  
8 talking about in this one -- I understand the consent  
9 and nonconsent. This is a specific consent term that's  
10 on the first well. And the clause here, doesn't it --  
11 if a consent occurs on the first well, it kind of  
12 affects a lot of options down the line, doesn't it?

13 A For only two of the 19 units. In two of the  
14 19 units, there are no wells drilled today. So those  
15 are called first well drilling units. So of the 17 --  
16 and I think that Dr. Taylor's exhibit was pulled down --  
17 but there are actually two -- two of the 19 units that  
18 don't have any wells drilled on them today. The other  
19 17 units have wells drilled.

20 Those two that have no wells drilled are  
21 called first well drill units. If we nonconsent to the  
22 first well on those first well drilling units, we lose  
23 our rights to those sections. So effectively, if we  
24 nonconsented to the first two in those first well  
25 drilling units, we are forfeiting our rights to those



1 sections, still retaining all of our rights on the other  
2 17 and that same. And that same -- that same provision  
3 does not apply to the other 17. It's just for those two  
4 where the first wells are being drilled.

5 Q So then isn't it true, then, on that unit, you  
6 have an incentive to say yes to the first one if you  
7 want to get to the rest of the wells?

8 A I think we will approach every decision from a  
9 consent versus nonconsent in the same manner. I don't  
10 know that it matters to us whether it's a first well  
11 drilling unit or a subsequent well.

12 Q Now, if we flip to page 24, looking at Section  
13 6.3. Okay -- are you there?

14 A I am, yes.

15 Q All right. We have a liability clause here,  
16 and you would agree that that clause actually gives FPL  
17 some corrections -- or protection, correct?

18 A I agree that it does, yes.

19 Q Okay. Now, you have a model form operating  
20 agreement that got a little late attached as Exhibit G,  
21 do you have that in front of you?

22 A I do.

23 Q Okay. Can you turn to page three of that?  
24 Okay, I am looking under Section B1 sub (e). So again,  
25 above the halfway point of the page.

1 A Okay.

2 Q Now, isn't it true that that clause negates  
3 part of the protections that you had in that other  
4 clause in the DDA?

5 A In what way?

6 Q Joint versus several. Now, the issues here  
7 being how that liability is going to go. Would you  
8 agree that those clauses don't fully mesh? I guess I  
9 will words it that way.

10 A I see in the operating agreement that it says  
11 that they are borne severally. Where it's the same thing  
12 being -- same thing as 6.3 of the DDA covers, any one of  
13 these conflict with one another, the DDA rules.

14 Q The DDA is going to trump the JOA every time?

15 A That's what's been stated in the document,  
16 yes.

17 Q Okay. Now, you have testified that the  
18 Woodford Project and projects under the guidelines, if  
19 approved, should go through the Fuel Clause, correct?

20 A That's correct.

21 Q Okay. Now, the Fuel Clause as it stands  
22 today, we did some hypotheticals in your depo, and I  
23 just want to rehash that whole thing again, so I am  
24 hoping you remember.

25 A Okay.

1           **Q     For a fixed price fuel contract, if the**  
2           **supplier doesn't deliver the fuel, you have collateral**  
3           **where you withhold payment, correct?**

4           A     That is generally true. We withhold  
5           collateral for a fixed price client contract. We would  
6           typically hold collateral, and we would have some remedy  
7           to recover those costs. Yes.

8           **Q     Okay. Now, for a longer term variable price**  
9           **contract, the market is pretty liquid, so you agree with**  
10          **me if the supplier does not deliver, you could obtain**  
11          **fuel from another source, correct?**

12          A     That is generally true. There is a lot of  
13          very liquid points in the physical market. There are  
14          other areas which are much less illiquid. To the extent  
15          that this happened in an area like the Perryville Hub,  
16          which is an incredibly liquid area, where we buy a lot  
17          of our gas on a daily basis, if a counterparty was --  
18          you know, stops delivering gas, we could certainly  
19          procure that gas. There might be some financial  
20          implications, kind of depending upon the terms of how  
21          they were negotiated, but certainly we could find  
22          physical gas elsewhere.

23          **Q     Okay. Now, supposing a supplier does not**  
24          **supply fuel under one of the type of contracts you**  
25          **operate under now, the risk to customers FPL may have to**

1 obtain higher priced fuel from the market, is that  
2 correct?

3 A Say that again, the first part.

4 Q If a supplier does not supply fuel under one  
5 of the contracts that you have now, and suppose you have  
6 to go out and get replacement fuel --

7 A It's a fixed price or it's variable?

8 Q Variable.

9 A Okay.

10 Q So the risk to customers is that if that  
11 happens, then FPL might have to pay for slightly -- or  
12 the customer might have to pay for slightly higher fuel?

13 A There is that potential, yes.

14 Q Now, you stated in your testimony, you would  
15 agree that order 14546 requires fossil fuel related  
16 costs to be the type that normally could be covered  
17 through base rates? I believe you quoted the order.

18 A That's correct.

19 Q And in the quote from your direct testimony,  
20 again you quote that order as saying, quote, "will  
21 result in fuel savings," is that correct?

22 A That's what the order says, yes.

23 Q Okay. And then you also quote from order  
24 number 11-0080, quote, "that lower the delivered price  
25 or input price of fuel," correct?

1           A       That's correct. I think in all of those  
2 instances there have been subsequent follow-on orders  
3 that have clarified certain provisions of that, such as  
4 in the 14546, the will deliver lower cost of fuel has  
5 been clarified in a couple of different occasions, like  
6 the Scherer railroad cars are a great example, where  
7 they use the word estimated -- the Commission has used  
8 the word estimated. It's clear that when any  
9 projections are forecasted, they are based on the best  
10 available information. But there is no guarantee of  
11 that based on where gas price or fuel prices necessarily  
12 come in. So it's typically an estimated level of  
13 savings anyway.

14           Q       Okay. Now, in the guidelines -- I am looking  
15 at pages one of your guidelines -- you actually cite PSC  
16 order 08-0667. It's in the end of the second paragraph.

17           A       That's correct.

18           Q       Okay. And you quote it saying, "reduce the  
19 variability or volatility in fuel costs paid by  
20 customers over time," correct?

21           A       That's correct.

22           Q       Now. I want to -- we don't have a copy of  
23 that in front of us, so I am going to hand out a copy of  
24 that order.

25           A       Thank you.

1 Q And I am going to ask you to flip to  
2 attachment A page one of three. The guidelines are  
3 state cited at page two, but I want to look at page one  
4 for a second.

5 CHAIRMAN GRAHAM: We are going to go ahead and  
6 give this Exhibit No. 62.

7 (Whereupon, Exhibit No. 62 was marked for  
8 identification.)

9 THE WITNESS: I am sorry, you want me to look  
10 where? I am sorry.

11 BY MR. TRUITT:

12 Q Attachment A, page one of three.

13 A Okay.

14 Q All right. And I am looking at Roman numeral  
15 II, where it starts off with hedging activities in  
16 quotes. Do you see that?

17 A That's correct.

18 Q Okay. Could you please read the first  
19 sentence into the record?

20 A Yes. Hedging activities that are  
21 appropriately reported by IOUs and are obtained in  
22 information reports are defined to be natural gas and  
23 fuel oil fixed price financial or fiscal transactions.  
24 Instruments include fixed price swaps options, et  
25 cetera.

1           **Q     Okay.**

2           A     Can I respond to that?

3           **Q     I didn't ask a question for you to respond to,**  
4 **but I am sure we are going to get to one that you will**  
5 **be able to respond to.**

6                     **Now, isn't it true that Woodford Project's**  
7 **production costs are not fixed?**

8           A     Not entirely, no. They are well known.  
9     Again, I think Dr. Taylor will give you a very good  
10  description of those costs that are fixed and those that  
11  are variable. There is a high degree of understanding  
12  of what those costs will be. For an individual well,  
13  once the well is drilled, the vast majority of costs are  
14  understood, with the exception of lease operating  
15  expenses, which can vary, you know, just a tiny amount.  
16  And the overall lease operating expenses make up about  
17  five percent of the overall annual costs. So once a  
18  well is drilled, it's very well understood.

19           **Q     Okay. Now, isn't it true that in these**  
20 **guidelines here where your cite that order, there is no**  
21 **clause in these guidelines that fix production costs in**  
22 **future investments, is there?**

23           A     No, I am not aware of any.

24           **Q     Okay.**

25           A     I am aware that in the guidelines, the main

1 body of it does give the Commission some -- some level  
2 of flexibility to allow the utilities to adjust the  
3 guidelines to the extent that they are to the benefit of  
4 their customers.

5 Q Okay. Now, isn't it also true the customer  
6 savings are not fixed in the Woodford Project?

7 A They are not fixed, no.

8 Q Okay. Now, you would agree with me that one  
9 of the major determinants that protect customer savings  
10 for the Woodford Project is FPL's natural gas price  
11 forecast, correct?

12 A That is certainly one of the inputs, yes.

13 Q Okay. Now, isn't it also true that these  
14 proposed guidelines, we don't have any term in there  
15 that's going to fix customer savings at a certain level,  
16 correct?

17 A That's correct. I am not aware of any  
18 investment that FPL makes that fixes customer savings.  
19 We build a power plant, we make an estimate of what  
20 those fuel savings will be based on the same fuel  
21 forecast methodology we used in this case, and we are  
22 not guaranteeing fuel savings in a power plant. So it's  
23 your best estimate of the information that you have  
24 available at the time the decision is made, and there is  
25 no guarantee beyond that.



1 Q Okay. And isn't it true production levels in  
2 the Woodford Project aren't fixed either?

3 A The production levels at the Woodford Project  
4 are not fixed. They are well understood. Again, I  
5 would encourage you to engage Dr. Taylor to understand  
6 just how well those are projected.

7 Q Now, you would agree with me, though, that if  
8 approved for the Fuel Clause, FPL shareholders will be  
9 allowed to earn an authorized return at 10 and a half  
10 percent, correct?

11 A For prudently incurred costs, yes.

12 Q Right. And you would agree that it's FPL's  
13 intent if the proposed guidelines are approved, under  
14 those guidelines will also earn FPL -- allow the  
15 opportunity to 10 and a half percent for FPL  
16 shareholders, correct?

17 A That's right. It would allow us to earn at  
18 the midpoint of the range for, again, prudently incurred  
19 costs.

20 Q Okay. Now, I would like you to look at SF-9,  
21 your guidelines here. I am looking at guideline 2A  
22 toward the bottom of the page, right before Section 3.

23 Now, isn't it true here, it states that -- for  
24 a prudence determination, isn't it true that this  
25 guideline places this commission inside of a new

1 prudence box by mandating those are the terms of  
2 prudence?

3 A I am not sure I follow your question.

4 Q Okay. It's stated in here that evaluation of  
5 the prudence will be based on showing the project is  
6 estimated to generate savings for customers on a net  
7 print value basis relying solely on information relative  
8 to these guidelines available to FPL at the time the  
9 transaction is entered, including independent  
10 third-party reserve engineering report and FPL standard  
11 fuel price forecasting methodology? I don't see any if,  
12 maybe's or anything else in terms of that. So would you  
13 agree with me that that guideline, if approved, is  
14 telling the Commission what they can look at for a  
15 prudence determination?

16 A I don't agree. I think it's important to  
17 understand when you are looking at the guidelines, there  
18 are several guidelines proposed within this set of  
19 guidelines. These are not exclusive. They are all  
20 ands. You have to meet the threshold of the maximum  
21 amount spent in the year, the maximum percentage  
22 provided in a year, the fact that it provides customer  
23 savings, the fact that it's from a well-known proven  
24 area of reserves. Every one of these are an ands, so  
25 they are not mutually exclusive.

1           With respect to this particular guideline,  
2           what we are basically saying is that we are going to  
3           demonstrate with the best available information that we  
4           have at the time that it presents customer savings. To  
5           the extent that the Commission reviews the transaction  
6           and determines that they were made with flawed analysis,  
7           then it wouldn't be determined to be prudent.

8           **Q     Okay. Now, that references the third-party**  
9           **reserve engineering report. Now, it's true that Forrest**  
10          **A Garb's will review the Woodford Project in this case,**  
11          **correct?**

12          A     That is correct, yes.

13          **Q     And isn't it true that your understanding of**  
14          **the Forrest A Garb review in the Woodford case is that**  
15          **Forrest A Garb obtained information solely from**  
16          **PetroQuest, USG and FPL?**

17          A     That is correct, and that would be the case in  
18          any third-party review.

19          **Q     Okay. So it's true that Forrest A Garb didn't**  
20          **go independently and get anything on their own?**

21          A     No, I wouldn't agree with that. There is  
22          definitely publicly available information. And again,  
23          Dr. Taylor can give you a lot of information about  
24          what's available publicly. There is information  
25          available on the -- I believe it's the Oklahoma's

1 Commission's, but you can correct me if I'm wrong --  
2 that lists all of the.

3 MR. MOYLE: Mr. Chairman, just to interrupt  
4 here, but FIPUG does make the objection related to  
5 this Forrest Garb report. It's an independent  
6 report. Nobody from Forrest Garb is here. I don't  
7 want to interrupt the flow of things. How about if  
8 we just have a standing objection to anything  
9 related to the Forrest A Garb report?

10 CHAIRMAN GRAHAM: Duly noted.

11 THE WITNESS: And Dr. Taylor can certainly go  
12 through the Forrest A Garb cover to cover in great  
13 detail if needed.

14 But with he respect to the publicly  
15 information, Forrest Garb, my understanding is they  
16 went out and got that publicly available  
17 information that shows what the production wells  
18 are and other wells in the area, and verified that,  
19 they verified the input costs. It was a completely  
20 independent evaluation of the project, both from a  
21 public perspective and a cost perspective.

22 BY MR. TRUITT:

23 Q So you stated they only got information from  
24 PQ, USG -- well, PetroQuest, I'm sorry -- USG and FPL  
25 and now you are saying they also got publicly available

1 **information?**

2 A My understanding is that they would have made  
3 use of that publicly available information.

4 Q Okay. Now, going back to the Fuel Clause that  
5 exists today. If the supplier fails to deliver, FPL's  
6 customers are not paying for fuel twice, correct?  
7 Meaning, they didn't pay for fuel that didn't show up  
8 and they didn't pay again when they got fuel; is that  
9 correct?

10 A That is -- if we get cut by a supplier for, of  
11 course, major event, as an example, we will go acquire  
12 new fuel and we only pay for the fuel that's delivered.

13 Q Okay. Now, under the Woodford Project,  
14 assuming a decision to drill is prudent, isn't it true  
15 that FPL's customers are going to pay for the drilling  
16 of that well -- again, it's prudent -- and then if the  
17 well is dry, they are going to have to pay for fuel that  
18 FPL purchases on the market to replace that gas that  
19 didn't come out of that well?

20 A That is correct. I think the chances of a dry  
21 well in this particular area are extremely remote, at  
22 best. Again, relying on Dr. Taylor to provide a lot  
23 more detail behind this, but this is not exploration,  
24 this is true production.

25 Q I understand. But I am saying, in terms of

1 what we have in front of us, there is nothing that would  
2 prevent FPL's customers from paying twice, correct?

3 A That is correct, other than to the extent that  
4 it was due to the gross negligence or willful misconduct  
5 of PetroQuest or some other liability that they own,  
6 that is correct.

7 Q Okay. Now, in the same hypothetical, that  
8 assuming it was prudent to drill and it happened to be a  
9 dry well, the customers pay for it. Now, under that  
10 hypothetical, isn't it true that FPL shareholders are  
11 still allowed to earn a return of 10 and a half percent  
12 under that investment?

13 A Again, if the costs incurred were deemed to be  
14 prudent, then yes.

15 Q Okay. I am going to go to page 38 of your  
16 direct where you have a 9-box.

17 Now, isn't it correct when this was filed with  
18 your original direct testimony with the petition back in  
19 June, that this 9-box is supposed to represent the  
20 sensitivity cases for customer savings?

21 A Yes. And if I can explain what 9-box does.

22 Q Yes.

23 A So essentially, we provide three fuel  
24 forecasts. We have a base fuel forecast which uses the  
25 same methodology that we have used for years in front of

1 this commission that relies heavily on third-party  
2 independent inputs to develop that case. We then go  
3 back and we calculate historical volatility on a forward  
4 basis to determine just how volatile prices can be on a  
5 forward basis and apply that as a low band and a high  
6 band. So in this case, it's around 28 -- excuse me,  
7 22 percent. So we take the base case analysis for our  
8 fuel forecast and then multiply it by plus or minus  
9 22 percent, which creates a band around that. So that's  
10 how we create our high band and low band.

11           And then for the base production, Dr. Taylor  
12 made an estimate of how much production he thought we  
13 were going to get, and then plus or minus 10 percent  
14 estimate on that to determine just exactly how much  
15 production within a certain band.

16           And again, Dr. Taylor can describe why  
17 10 percent is an appropriate number, a number that he is  
18 very comfortable with, and it's a number, on an  
19 individual well, is more appropriate on an aggregated  
20 basis. As you drill more and more wells, that number  
21 gets tighter and tighter to the base.

22           (Transcript continues in sequence in Volume  
23 2.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA R. KRICK, Professional Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 1 through 168 , are a true and correct record of the aforesaid proceedings.

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

DATED this 2nd day of December, 2014.



\_\_\_\_\_  
DEBRA R. KRICK  
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