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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140001-EI

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

_____ /

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Pages 872 through 994

PROCEEDINGS:

HEARING

COMMISSIONERS
PARTICIPATING:

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

DATE:

Tuesday, December 2, 2014

TIME:

Commenced at 12:00 p.m.
Concluded at 3:20 p.m.

PLACE:

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

REPORTED BY:

MICHELLE SUBIA, RPR
Notary Public in and for
the State of Florida
at Large

APPEARANCES:

(As heretofore noted.)

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I N D E X

WITNESSES

NAME :	PAGE NO .
TERRY DEASON	875
Direct Examination by Mr. Butler	875
Cross Examination by Mr. Rehwinkel	915
Cross Examination by Mr. Moyle	929
Cross Examination by Ms. Barrera	958
Redirect Examination by Mr. Butler	988

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EXHIBITS

NUMBER :	ID.	ADMTD.
33		992
67	921	993

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

2 (Transcript follows in sequence from
3 Volume 6.)

4 MR. BUTLER: Mr. Deason has not testified
5 previously, but I do believe he's been sworn.
6 Thereupon,

7 TERRY DEASON

8 was called as a witness, having been previously duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BUTLER:

12 Q Is that correct, Mr. Deason?

13 A Yes.

14 Q Okay. Thank you.

15 Would you please state your name and address,
16 business address for the record?

17 A Yes. My name is Terry Deason, and my
18 business address is 301 South Bronough Street, Suite
19 200, Tallahassee, Florida.

20 Q Thank you. By whom are you employed and in
21 what capacity?

22 A I'm employed at the Radey Law Firm as a
23 special consultant.

24 Q Okay. Have you prepared and caused to be
25 filed 34 pages of prefiled rebuttal testimony on

1 **October 13, 2014 in this proceeding?**

2 A Yes.

3 Q Do you have any changes or revisions to your
4 **prefiled rebuttal testimony?**

5 A No.

6 Q Okay. So if I asked you the same questions
7 **contained in your rebuttal testimony today, would your**
8 **answers be the same?**

9 A Yes.

10 Q Okay.

11 MR. BUTLER: Mr. Chairman, I would ask that
12 Mr. Deason's prefiled rebuttal testimony be
13 inserted into the record as though read.

14 CHAIRMAN GRAHAM: We will enter Mr. Deason's
15 prefiled rebuttal testimony into the record as
16 though read.

17 MR. BUTLER: Okay.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **PETITION FOR PRUDENCE DETERMINATION**

4 **REGARDING ACQUISITION OF GAS RESERVES**

5 **REBUTTAL TESTIMONY OF J. TERRY DEASON**

6 **DOCKET NO. 140001-EI**

7 **OCTOBER 13, 2014**

8

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

10 A. My name is Terry Deason. My business address is 301 S. Bronough Street, Suite
11 200, Tallahassee, FL 32301.

12 **Q. By whom are you employed and what position do you hold?**

13 A. I am a Special Consultant for the Radey Law Firm, specializing in the fields of
14 energy, telecommunications, water and wastewater, and public utilities generally.

15 **Q. Have you previously submitted direct testimony in this proceeding?**

16 A. No.

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

18 A. I have thirty-seven years of experience in the field of public utility regulation
19 spanning a wide range of responsibilities and roles. I served as a consumer
20 advocate in the Florida Office of Public Counsel (“OPC”) on two separate
21 occasions, for a total of seven years. In that role, I testified as an expert witness in
22 numerous rate proceedings before the Florida Public Service Commission
23 (“Commission” or “PSC”). My tenure of service at OPC was interrupted by six

1 years as Chief Advisor to Florida Public Service Commissioner Gerald L. Gunter. I
2 left OPC as its Chief Regulatory Analyst when I was first appointed to the
3 Commission in 1991. I served as Commissioner on the Commission for sixteen
4 years, serving as its chairman on two separate occasions. Since retiring from the
5 Commission at the end of 2006, I have been providing consulting services and
6 expert testimony on behalf of various clients. These clients have included public
7 service commission advocacy staff and regulated utility companies, before
8 commissions in Arkansas, Florida, Montana, New York and North Dakota. My
9 testimony has addressed various regulatory policy matters, including: regulated
10 income tax policy; storm cost recovery procedures; austerity adjustments;
11 depreciation policy; subsequent year rate adjustments; appropriate capital structure
12 ratios; and prudence determinations for proposed new generating plants and
13 associated transmission facilities. I have also testified before various legislative
14 committees on regulatory policy matters. I hold a Bachelor of Science Degree in
15 Accounting, summa cum laude, and a Master of Accounting, both from Florida
16 State University.

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

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

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

21 A. The purpose of my rebuttal testimony is to respond to many of the positions and
22 recommendations contained in the testimony of witnesses Donna Ramas and Daniel
23 J. Lawton on behalf of OPC and witness Jeffrey Pollock on behalf of the Florida

1 Industrial Power Users Group (“FIPUG”). Collectively, I refer to these witnesses
2 as “the intervenor witnesses.”

3 **Q. What do the intervenor witnesses recommend?**

4 A. They all recommend that FPL’s gas reserves project costs not be recovered through
5 the Fuel Clause. In making their recommendation, they rely on misguided opinions
6 on the risks of the project and incorrect interpretations of regulatory principles on
7 how to manage risk for the benefit of customers. In some situations, they contort
8 regulatory principles to fit their conclusion which, in the end, would be
9 counterproductive to the Commission’s goal and responsibility to regulate in the
10 public interest.

11 **Q. Are you sponsoring any rebuttal exhibits?**

12 A. Yes. I am sponsoring Exhibit JTD-1, which is my curriculum vitae.

13 **Q. How is your rebuttal testimony organized?**

14 A. I first discuss the appropriate use of the Fuel Clause mechanism to recover eligible
15 costs, including costs associated with FPL’s gas reserves project, and address the
16 intervenor witnesses’ overly restrictive and myopic view of previous Commission
17 decisions. Second, I discuss the regulatory policy basis by which the Commission
18 should consider FPL’s proposal, and I identify incorrect interpretations of policy
19 that are expressed by the intervenor witnesses. Lastly, I discuss how the
20 Commission appropriately regulates in the public interest and the intervenor
21 witnesses’ ill-founded concerns over the Commission’s ability to do so here.

22

1 **I. Fuel Clause Mechanism**

2

3 **Q. What is the Commission's policy on the recovery of costs through the Fuel**
4 **Clause?**

5 A. The Commission has a long and consistent policy of allowing timely and complete
6 recovery through the Fuel Clause of fossil fuel-related expenses which are subject
7 to volatile changes. This policy has served the Commission, utilities and their
8 customers well over the years, by allowing rates to reflect the current cost of fuel
9 and thereby provide prompt and accurate price signals to customers, without the
10 need for expensive and time-consuming rate cases.

11

12 At the same time, however, the Commission recognized that allowing timely and
13 complete recovery of fuel costs could reduce incentives for utilities to keep those
14 costs low. The Commission has addressed that concern in two ways. First, when
15 the Fuel Clause was initially amended to provide for recovery of projected costs
16 and true-up to actual costs, the Commission included the Generation Performance
17 Incentive Factor to provide an incentive to utilities to operate their generating units
18 efficiently and at a high availability. Second, the Commission's policy was refined
19 in an investigation docket in 1985 (Docket No. 850001-EI-B). At the conclusion of
20 its investigation, the Commission, in its Order No. 14546, reiterated its desire to
21 have utilities pursue opportunities to achieve fuel savings. The tenth item of a list
22 of items eligible for recovery through the Fuel Clause reads:

23

1 Fossil fuel-related costs normally recovered through base rates but
2 which were not recognized or anticipated in the cost levels used to
3 determine current base rates and which, if expended, will result in
4 fuel savings to customers. Recovery of such costs should be made
5 on a case by cases basis after Commission approval.

6

7 Thus, Item 10 encouraged utilities to pursue innovative ways to lower fuel costs, by
8 giving them an opportunity to seek prompt, Fuel Clause recovery of costs incurred
9 to achieve fuel savings.

10 **Q. Doesn't witness Ramas reference this same language from Order No. 14546 to**
11 **support her conclusion?**

12 A. Yes, but this is a prime example of how she is contorting Florida regulatory policy
13 to support her misguided conclusion.

14 **Q. Please explain.**

15 A. Witness Ramas interprets two specific phrases from Item 10 in an incorrect and
16 overly restrictive manner.

17

18 First, she concludes that the phrase "normally recovered through base rates"
19 automatically excludes FPL's investment in the gas reserves project from
20 consideration for recovery through the Fuel Clause, apparently because Florida
21 electric utilities have not heretofore recovered that specific form of investment in
22 base rates. That is the wrong standard and is not consistent with the intent of Item
23 10. The intent was and continues to be a policy statement to encourage prudent

1 investments which benefit customers by saving fuel costs, regardless of the nature
2 of the investment. It was the intent of the Commission to emphasize that any
3 prudent investment (regardless of whether or not it otherwise might have been a
4 rate base type item) should be pursued to save customers money. In a sense, it was
5 a declaration to utilities to “think outside the box” by looking for innovative ways
6 to save fuel costs without being worried that an overly restrictive application of the
7 “rate base versus clause” distinction would place recovery in jeopardy. Ironically,
8 witness Ramas is urging exactly the sort of restrictive application of the Fuel Clause
9 that Item 10 is intended to avoid.

10 **Q. What is the second phrase from Item 10 that witness Ramas incorrectly**
11 **interprets?**

12 A. It is the phrase “will result in fuel savings to customers.” She mistakenly interprets
13 this phrase to require that fuel savings must somehow be guaranteed for recovery to
14 be allowed. This interpretation should be rejected for at least two reasons.

15
16 First, it would amount to the use of hindsight in evaluating forward-looking utility
17 decisions. That approach would be fundamentally inconsistent with the accepted
18 and appropriate standard of prudence for either rate base inclusion of an investment
19 or the recovery of costs through the Fuel Clause. A good example is the inclusion
20 in rate base of a new generating plant that has gone through a need determination
21 pursuant to the Power Plant Siting Act. In order to be built, the plant must be
22 shown to be the most cost-effective alternative available. The standard is one of
23 prudence, not that it must always show savings throughout its operating life in

1 comparison to other alternatives that were considered and rejected. Given that
2 technologies will change and prices of inputs will also change, it would be
3 inconsistent with both fundamental fairness and sound regulatory policy to require a
4 utility to show consistent and always net positive savings over an investment's 40
5 or 50 year life.

6
7 Second, her interpretation again flies in the face of the purpose of Item 10, which is
8 to encourage innovative ways to save fuel costs. In fact, following her
9 interpretation would have just the opposite effect, i.e., it would be a tremendous
10 disincentive for a utility to pursue innovative approaches to fuel savings. In effect,
11 it would be a "heads I win, tails you lose" proposition that no rational investor
12 would be willing to pursue.

13 **Q. So Item 10 does not prevent the Commission from considering the recovery of**
14 **FPL's gas reserves project through the Fuel Clause?**

15 A. That is correct. Not only does it not prevent it, FPL's gas reserves project is exactly
16 the type of innovative investment that Item 10 is designed to encourage.

17 **Q. Is there a subsequent Commission decision that provides insight as to the**
18 **proper interpretation of the language you and witness Ramas quote from**
19 **Order No. 14546?**

20 A. Yes. In Order No. PSC-11-0080-PAA-EI, the Commission explicitly addressed the
21 proper interpretation of the language both I and witness Ramas quote from Order
22 No. 14546. Four passages are of particular importance.

- 23 • First, immediately after quoting the passage from Order No. 14546, the

1 Commission made the following statement: “We find that the appropriate
2 interpretation of this section of Order 14546 is that capital projects eligible
3 for cost recovery through the Fuel Clause should produce fuel savings based
4 on lowering the delivered price of fossil fuel, or otherwise result in burning
5 lower price fuel at the plant.” The Commission went on to note in that same
6 paragraph that the fuel savings in that comparison would be “estimated.”

7 • In the very next paragraph the Commission also noted, “As Order 14546
8 states, projects that request recovery of costs through the Fuel Clause should
9 be ‘fossil fuel related.’”

10 • In Attachment A to Order PSC-11-0080-PAA-EI, which the Commission
11 characterized as “a complete review of the capital costs that have been
12 recovered through the fuel clause pursuant to Order No. 14546,” the
13 Commission made the following summary statement regarding a number of
14 the Commission orders allowing capital recovery pursuant to Order No.
15 14546: “Order 14546 allows a utility to recover fossil-fuel related costs
16 which results in fuel savings when those costs were not previously
17 addressed in determining base rates.”

18 • Finally, the Commission summarized its going forward interpretation of this
19 provision in Order No. 14546: “...we believe that the appropriate policy
20 going forward is to restrict capital project cost recovery through the Fuel
21 Clause to projects that are ‘fossil fuel-related’ and that lower the delivered
22 price, or input price, of fossil fuel. At the same time, we reaffirm our

1 practice of reviewing the eligibility of projects for recovery on a case-by-
2 case basis.”

3 **Q. So this order shows that witness Ramas’ interpretation of the Commission’s**
4 **policy is incorrect?**

5 A. Yes. Order No. PSC-11-0080-PAA-EI gives further clarification of Order No.
6 14546 and clearly shows that both of witness Ramas’ interpretations of Order No.
7 14546 are erroneous. First, her interpretation of the “normally recovered through
8 base rates” language in Order No. 14546 as requiring gas production costs to have
9 previously been in rate base completely misses the point – which is whether the
10 costs of a Fuel Clause capital project are already reflected in base rates. This is
11 seen best in Order PSC-11-0080-PAA-EI where the Commission repeatedly states
12 in Attachment A of the Order: “Order 14546 allows a utility to recover fossil-fuel
13 related costs which results in fuel savings *when those costs were not previously*
14 *addressed in determining base rates.*” (Emphasis added) This clearly does not
15 mean that a project must have previously been in base rates at some point in time
16 before it is eligible for recovery through the Fuel Clause. Second, witness Ramas’
17 interpretation of the following language from Order No. 14546, “will result in fuel
18 savings to customers” as requiring certainty of fuel savings is entirely at odds with
19 the Commission’s explicit acknowledgement that the savings to customers were
20 “estimated.” There is nothing certain about an estimate or projection, yet the
21 Commission acknowledged in Order No. PSC-11-0080-PAA-EI that it relies upon
22 fuel savings estimates in determining eligibility for Item 10 recovery.

1 **Q. In two decisions since Order No. PSC-11-0080-PAA-EI, Fuel Clause recovery**
2 **under Item 10 has been limited in each year to the actual fuel savings resulting**
3 **from the projects in question, with any portion of that year’s revenue**
4 **requirement that is not recovered being deferred for recovery in future years**
5 **when the level of fuel savings permit. Would that approach be appropriate for**
6 **FPL’s gas reserves project?**

7 A. No. The orders in question approved Fuel Clause recovery for fuel conversion
8 projects at two Tampa Electric Company (“TECO”) power plants (Polk Unit 1 --
9 Order No. PSC-12-0498-PAA-EI and Big Bend Units 1-4 – Order No. PSC-14-
10 0309-PAA-EI). The approach taken in those orders would not be appropriate here
11 for several reasons:

- 12 • In its petitions for both of the fuel conversion projects, TECO proposed to
13 limit its annual recovery of project costs to that year’s fuel savings, and the
14 orders accepted the proposed limitation. Thus, it would not be accurate to
15 characterize that limitation as arising out of an interpretation of Order No.
16 14546; rather, it appears that the Commission merely approved TECO’s
17 proposal to impose the condition. Two of the Commissioners commented
18 on this feature of TECO’s petition at the agenda conference where the Big
19 Bend fuel conversion project was approved, characterizing it as specific to
20 the unique factors of TECO’s particular project, without an expectation that
21 other utilities would follow suit.
- 22 • The relationship over time between fuel savings and costs to be recovered
23 for the TECO fuel conversion projects appears to be quite different from

1 what one expects with gas reserves projects. TECO is depreciating the
2 investment in its fuel conversion projects over a short, fixed period of five
3 years. TECO expects that the generating units at which the projects have
4 been implemented will remain in service -- and the projects will continue to
5 generate fuel savings -- for many years thereafter. Thus, deferral of cost
6 recovery as a result of the fuel-savings cap would impose little risk of
7 ultimate non-recovery. In contrast, recovery of the gas reserves project
8 investment occurs via depletion that is proportional to the volume of
9 produced gas each year as a fraction of the total expected production
10 volume. At the point when only a small portion of the gas reserves
11 investment remains to be recovered, the volume of gas remaining to be
12 produced will be small as well. Thus, if the market price of fuel were to be
13 lower than forecasted for the first several years of the project, when most of
14 the gas is produced, there never would be a period when FPL could
15 reasonably expect to recoup deferred costs out of "surplus" fuel savings.
16 This would impose an asymmetric risk of recovery. I discuss this point
17 elsewhere in connection with witness Ramas' testimony.

18 • Imposing a fuel-savings cap would also be logically inconsistent with one of
19 the important benefits of a gas reserves project: providing a form of long-
20 term hedging against volatility in natural gas market prices. When a hedge
21 is used to mitigate market volatility, it is expected that the hedge price will
22 remain relatively constant while market prices go up *and* down. This means
23 that the hedge price can reasonably be expected to exceed market price at

1 times, just as it is expected to fall below market price at other times.
2 Because of this reasonable expectation that prices under a well-designed
3 hedge will occasionally exceed volatile market prices, a fuel-savings cap on
4 recovery for hedging costs could result in an under-recovery. This would be
5 an illogical and punitive outcome. It also would be inconsistent with the
6 Commission's established practice concerning the recovery of hedging costs
7 through the Fuel Clause, whereby costs incurred consistent with a utility's
8 approved hedging plan are recoverable without regard to whether they lead
9 to savings or costs in a particular period. I discuss the Commission's policy
10 on hedging later in my testimony.

11 **Q. Does witness Ramas misuse another Commission order in arguing against**
12 **FPL's gas reserves petition?**

13 A. Yes, she refers to Order No. 20604 and argues that gas reserves project costs should
14 not be recovered through the Fuel Clause because those costs would not reflect
15 market prices for natural gas. In doing so, she completely misses the point of FPL's
16 proposal and the benefits it offers customers.

17

18 Witness Ramas is correct that in 1989 the Commission decided to change to a
19 market-based pricing for coal that was purchased from an affiliated company. The
20 first ordering paragraph of Order No. 20604 reads: "ORDERED by the Florida
21 Public Service Commission that as a matter of general policy, market-based pricing
22 for affiliate fuel and fuel transportation services shall be used for the purposes of
23 fuel cost recovery where a market for the product or service is reasonably

1 available.” In reaching its decision, the Commission concluded that the then-
2 current system had been “generally successful in allowing only reasonable and
3 prudent costs to be passed through” but cited concerns over administrative costs and
4 lingering suspicion over contract negotiations. However, witness Ramas’
5 interpretation of that order with relation to FPL’s gas reserves project is misguided
6 and myopic.

7 **Q. Please explain.**

8 A. Ms. Ramas’ reference to Order No. 20604 suggests that the situations there and
9 here are analogous. They are not, for several reasons:

- 10 • First, FPL is not proposing to buy any gas from an unregulated affiliate.
11 FPL is proposing to make an investment through a wholly-owned
12 subsidiary, which merely preserves certain accounting benefits for
13 customers that FPL witness Ousdahl has explained. For purposes of
14 ratemaking and cost-recovery policy, however, it is a distinction without
15 meaning. Nor will FPL be negotiating the terms of the gas reserves
16 investment with an affiliate. Instead, FPL affiliate USG Properties
17 Woodford I, LLC (“USG”) will be making an upfront investment in a gas
18 reserves, which will entitle USG to a stated percentage of the natural gas
19 output from that reserve, regardless of what the market price of natural gas
20 may be at any given time. USG will then transfer its investment and
21 concomitant gas entitlement to FPL’s wholly-owned subsidiary at USG’s
22 cost, upon Commission approval of FPL’s proposal to recover its
23 investment through the Fuel Clause. Review of USG’s investment (and

1 FPL's assumption of it) is more akin to an upfront prudence determination,
2 much like a need determination for new generating plants subject to the
3 Power Plant Siting Act. Furthermore, the gas output will be for the purpose
4 of lowering the cost of generating electricity for FPL customers and will not
5 be sold as a profit making enterprise as was the case for much of the coal
6 output from the affiliated coal companies addressed in Order No. 20604.

7 • Second, contrary to intimations from witness Ramas, the Commission did
8 not find that the cost-plus standard previously used for coal (even as an
9 affiliate purchase of fuel) resulted in any unreasonable or imprudent costs.
10 Rather, the Commission cited concerns over administrative costs and
11 lingering suspicions arising from the nature of affiliated contract
12 negotiations. Addressing these affiliate-contract negotiations, the
13 Commission stated:

14 In contrast to this, the typical affiliate contract is let without the
15 benefit of competitive bidding. Instead, confident that the contract
16 will be given to the affiliate, representatives of the two companies
17 negotiate the rate at which the product or service will be purchased.
18 They must do so recognizing that a favorable contract concession to
19 the utility (and its ratepayers) comes at the expense of the affiliate
20 and, ultimately, the parent holding company. Conversely, terms
21 favorable to the affiliate come at the expense of the utility and,
22 because of the pass-through nature of the fuel adjustment clauses, its
23 customers.

1 As I stated earlier, FPL will be making an upfront investment and there will
2 be no negotiations with an unregulated affiliate over the prices to be paid for
3 the fuel that could pit the interest of the utility against the interest of its
4 affiliate. So a major reason for relying on market prices for coal in 1989
5 does not apply to FPL's gas reserves project.

6 • Finally, it is undisputed that natural gas has now become the dominant
7 source of fuel for utilities in Florida. The market for natural gas is
8 inherently volatile and fundamentally different than the market that existed
9 for coal in 1989. In fact, in 2002 as part of its investigation into risk
10 management for fuel procurement (Docket No. 011605-EI), the Commission
11 approved a framework for fuel hedging initiatives that in great part was
12 precipitated by the increasing reliance on natural gas as a fuel source to
13 generate electricity and the high level of volatility in those prices. In
14 accepting a proposed resolution of the issues, the Commission
15 acknowledged the importance of managing fuel risk when the reliance on
16 one type of fuel grows. Order No. PSC-02-1484-FOF-EI states: "...the
17 greater the proportion of a particular fuel or purchased power it relies upon
18 to provide electric service to its customers, the greater the importance of
19 managing price volatility associated with that energy source." FPL is
20 proposing a project that is a long-term physical hedge fully consistent with
21 the Commission's policy on hedging; and the fact that it is made through a
22 subsidiary is entirely understandable and, in my view, appropriate to the
23 circumstances.

1

2

Witness Ramas' heavy reliance upon Order No. 20604 shows that she has a blind faith in the natural gas market and the prices that it charges. But the FPL gas reserves project challenges that blind faith with a fundamental and important question: "Is there a better way to protect customers than simply assuming that 100% reliance on natural gas market prices is best?" As shown in the direct and rebuttal testimony of FPL's witnesses, the answer is a clear "yes." Neither Order No. 14546 nor Order No. 20604 should be interpreted in a way that interferes with the Commission's and FPL's ability to use this better way for the benefit of customers.

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II. Regulatory Policy Considerations

13

14 **Q. What are the regulatory policy considerations relevant to the Commission's**
15 **consideration of FPL's gas reserves project?**

16 A. Unsurprisingly, they are the same considerations as those that are applied to any
17 investment made by a regulated utility to provide service to its customers. Among
18 these are:

19

- A regulated utility has the obligation to provide reliable and cost-effective service to its customers and to deploy capital to meet this obligation. Inherent in this obligation is a responsibility to manage costs and mitigate risks where reasonably possible.

21

22

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- All investments are subject to a determination of prudence, based on the

1 reasonably anticipated costs, risks, and benefits of said investment that are
2 known or reasonably known at the time that the investment is made.
3 Concomitant with this principle is that future changed circumstances that
4 can be known and applied only in hindsight are not a valid basis to reverse a
5 previous determination of prudence.

- 6 • All prudently incurred investments that are used and useful in providing
7 service are to be afforded rate recovery treatment, both in the form of a
8 reasonable return on the investment and a reasonable return of the
9 investment, generally over the useful life of said investment.
- 10 • The reasonable rate of return is a necessary cost to provide service and
11 should be set at a level to adequately compensate investors for the risk of
12 their investment and to be fair to customers on whose behalf the capital is
13 deployed. Inherent in this principle is the expectation that customer and
14 investor interests are balanced in a fair and symmetrical manner.
- 15 • While the reasonable return on investment is not guaranteed, there is an
16 expectation that rates will be set to afford a utility a reasonable opportunity
17 to actually earn its authorized rate of return. Without that reasonable
18 opportunity, the allowed return would have to be substantially higher, and
19 over time this would result in higher electric rates for customers.
- 20 • The reasonable rate of return is set and monitored to fall within an
21 established band, so that the return is neither excessive nor deficient.

1 **Q. Do the intervenor witnesses adhere to these principles?**

2 A. No, not consistently. There are at least three significant instances in which the
3 intervenor witnesses stray from these principles or at least do not appreciate the
4 need to evaluate FPL's gas reserves project consistent with them.

5 **Q. What is the first such instance?**

6 A. The first instance concerns the concept of risk mitigation and witness Ramas'
7 apparent misunderstanding of the purpose of the gas reserves project. This is aptly
8 illustrated by the following quote from page 27 of her testimony: "Under FPL's
9 approach, 100% of the risk associated with FPL entering into gas exploration,
10 drilling and production projects – whether from unconventional or conventional
11 sources – would be pushed onto ratepayers." Obviously, witness Ramas does not
12 understand or simply chooses to ignore the fact that one of the central purposes of
13 the gas reserves project is to mitigate risks through hedging for the benefit of
14 customers. There is no risk shifting from investors to customers, merely a proposal
15 to better manage and mitigate a risk that is currently being borne by customers.

16 **Q. Please explain what risk the customers are currently bearing.**

17 A. Customers are already bearing the price risk associated with the high volatility of
18 the natural gas market. This volatility is felt directly by customers through the
19 functioning of the Fuel Clause, in which fuel costs are passed directly through to
20 customers. The drillers and producers of natural gas are not concerned about the
21 prices paid by customers. In fact, it is in their best economic interest to have prices
22 as high as possible. It is only natural and expected that drillers and producers will
23 seek to maximize their returns when they are not constrained by regulation. In

1 contrast, FPL is proposing to make an investment to mitigate this risk by making
2 the output of the gas reserves available exclusively to benefit its customers and to
3 have its return on investment limited to a reasonable level (its authorized level)
4 consistent with its role as a regulated utility. In short, FPL's gas reserves project
5 mitigates and manages risks that customers already bear. The project represents a
6 natural extension of FPL's obligation as a regulated utility to provide service
7 reliably and cost-effectively and to mitigate risks where reasonably possible.

8 **Q. What is the second instance in which the intervenor witnesses stray from**
9 **regulatory principles?**

10 A. Witness Ramas appears to suggest that it would be inappropriate for FPL to be
11 allowed a return on its prudently incurred investment. This is illustrated by the
12 following passage from pages 27 and 28 of her testimony:

13 If the Commission approves FPL's request without modification,
14 the result would be that FPL's investors, who are ultimately the
15 shareholders of NextEra Energy, Inc., would earn additional
16 returns through the operation of FPL's fuel cost recovery clause
17 and such returns would be guaranteed. This would result as FPL
18 would be applying a rate of return to the associated capital costs in
19 the fuel clause calculations. That return includes a return on equity
20 component at the Commission's authorized rate of return on equity
21 for FPL, which is essentially the earnings or profit that is applied
22 on behalf of investors.

1 **Q. What is incorrect in her statement?**

2 A. First and foremost is her inference that it would be inappropriate for FPL to earn a
3 return on an investment, even though it is being made as a regulated utility
4 exclusively for the benefit of its customers. Consistent with the regulatory
5 principles I previously identified, all such investments that have been determined to
6 be prudent and incurred to produce benefits for customers are an appropriate cost
7 and should be allowed for recovery, including a reasonable return. Second is her
8 misleading characterization that FPL would “earn additional returns” on future gas
9 reserves projects. It is true that, if additional investments are made, those
10 investments should be allowed to earn a rate of return. However, this would be the
11 same allowed return that is earned on all other regulated investments and simply
12 illustrates the unremarkable mathematical outcome that if the level of investment
13 goes up then the dollars (but not the rate) of return will increase proportionately.

14

15 While witness Ramas’ apparent concern is that customers would be paying for an
16 additional return in their rates, the more meaningful question is how much
17 customers are already paying in their rates to provide unregulated returns to the
18 drillers and producers of natural gas. While this would be an interesting exercise to
19 try and ascertain, it is really not germane to the issue at hand. The real issue is
20 whether the gas reserves project is prudent and produces benefits for customers.
21 The regulated return earned by FPL is but one cost component in making that
22 overall determination. Contrary to witness Ramas’ apparent concern, there is
23 nothing inappropriate or untoward for a regulated utility to earn a reasonable return

1 on additional investments prudently made to serve customers. In fact, it is essential
2 and is a healthy thing, both for customers and investors.

3 **Q. Does OPC witness Lawton address the return component of FPL's gas**
4 **reserves project?**

5 A. Yes. He refers to a 2011 Commission order that, in turn, refers back to Order No.
6 6357 that was issued in a 1974 investigation docket (Docket No. 74680-CI). In
7 Order No. 6357 the Commission stated that "a utility does not make a profit on its
8 fuel costs." Mr. Lawton opines that the return component of FPL's gas reserves
9 project would result in FPL earning a profit in excess of the cost of fuel and that
10 doing so would be inconsistent with the order. However, witness Lawton is
11 completely wrong in his assertion.

12 **Q. Please explain.**

13 A. Witness Lawton apparently does not understand or simply fails to appreciate the
14 fact that the Commission's policy and practice is to allow the recovery of all
15 prudent fuel costs incurred by a utility in generating electricity for its customers.
16 And this recovery is generally restricted to the actual cost, except perhaps for
17 rewards or penalties pursuant to the Commission's Generation Performance
18 Incentive Factor. The phrase cited by witness Lawton simply means that no
19 recovery is allowed beyond those prudent costs, like a mark-up on the commodity
20 price of fuel purchased. The Commission's policy appropriately recognizes that the
21 determination of "fuel cost" properly includes a cost of capital component for any
22 investments prudently incurred to obtain fuel reliably and cost-effectively. Order
23 No. 6357 recognizes this: "The charge reflected on a customer's bill each month is

1 designed only to provide for a recovery of fuel costs experienced by the utility in
2 generating the customer's power....” Order No. 6357 also states: “Certainly, all
3 reasonable costs incurred up to the time the fuel is burned represent a part of a
4 utility's fossil fuel expense” and in addressing the trade-off between capital and
5 fuel, the Order states: “In our judgment, the proper design criterion is to minimize
6 both capital and fuel costs combined.”

7
8 It should also be emphasized that since 1974, the Commission has supplemented its
9 policy by encouraging utilities to look for innovative ways to reduce fuel costs and
10 to engage in hedging activities to mitigate the impacts on customers of fuel price
11 volatility. As previously noted, one of those changes in policy was made in 1984 in
12 Order No. 14546, Item 10. Order PSC-11-0080-PAA-EI explains this change in
13 policy in great detail and explicitly notes that the new policy is an extension of the
14 policy established in Order No. 6357.

15 In Order No. 14546 we approved the stipulation of the parties and
16 adopted them as our own. We found that the stipulated provisions
17 (including the fuel clause exception to base rate recovery) [Item
18 10], were an appropriate extension of the policy established by
19 Order No. 6357.

20 Order PSC-11-0080-PAA-EI goes on to give an extensive discussion of “capital
21 projects eligible for cost recovery through the Fuel Clause.” Such recovery
22 necessarily includes a return on the capital investment in the project.

23

1 Contrary to witness Lawton’s assertion, there is nothing in Order 6357 that would
2 suggest that the return component of FPL’s investment in gas reserves would result
3 in a recovery that exceeds the amount of fuel costs “experienced by the utility in
4 generating the customer’s power.” Moreover, subsequent Commission decisions
5 extending Order No. 6357 make it explicitly clear that certain capital projects can
6 be recovered through the Fuel Clause, and that a necessary cost for such projects is
7 a return on investment. See, Order No. 14546, Order No. PSC-11-0080-PAA-EI
8 and the orders cited in Attachment A to Order No. PSC-11-0080-PAA-EI.

9 **Q. Has the Commission addressed how the return on investment is to be**
10 **calculated for capital investments eligible for recovery through the Fuel**
11 **Clause?**

12 A. Yes. The practice of allowing utilities to earn a return on investments through the
13 Fuel Clause and other clauses has become so well established that the Commission
14 approved in 2012 a stipulation setting out the details of how the weighted average
15 cost of capital for such investments is to be calculated. Order No. PSC-12-0425-
16 PAA-EI. OPC and FIPUG were parties to that stipulation.

17 **Q. What is the third instance in which the intervenor witnesses stray from**
18 **regulatory principles?**

19 A. The third instance can be succinctly stated as witness Ramas’ “heads I win, tails
20 you lose” philosophy. She recommends that the Commission tell FPL that if it goes
21 forward with its gas reserves project then the benefits must be guaranteed or there
22 will be no cost recovery. In essence, she wants FPL to take all the risks of the
23 project and recover costs only to the extent that actual benefits result – and to do so

1 for only a reasonable regulatory rate of return. She takes the foundational concepts
2 of fairness and symmetry embedded in the regulatory principles I earlier identified
3 and turns them on their heads.

4 **Q. Please explain.**

5 A. Witness Ramas' unfair and asymmetrical position is stated on page 30 of her
6 testimony: "the recovery of the cost of natural gas obtained by FPL from such joint
7 ventures will be limited to the market price of gas." She continues by directing the
8 Commission to: "ensure that any recoveries by FPL of its proposed investments
9 each year are limited to the actual resulting fuel savings." What she does not
10 address in a symmetrical fashion is the situation where market gas prices exceed the
11 cost of the gas produced from the reserve project (which is the expected outcome
12 from most of the scenarios analyzed). In that situation, she wants to deviate from
13 her basic position that the market price of gas is the best and most fair price for
14 customers to pay, such that customers would continue to pay FPL only the actual
15 cost of production for the gas. In essence, she wants to have her cake and eat it too.

16 **Q. Is there a way to make her position symmetrical?**

17 A. Yes, but doing so would strip FPL's gas reserves project of all benefits for
18 customers.

19 **Q. Please explain.**

20 A. For witness Ramas' proposal to be fair and symmetrical, FPL would have to be
21 compensated for gas from the gas reserves project at the market price of natural gas
22 regardless of whether the market price were above or below the cost of production.
23 Should the market price of natural gas fall below the cost of gas from the reserves

1 project, the market price would be used in the Fuel Clause and FPL would incur a
2 loss. Should the market price of natural gas exceed the cost of gas from the
3 reserves project, the market price would still be used in the Fuel Clause and FPL
4 would achieve a gain. While this would be symmetrical, it would not be consistent
5 with other basic tenets of regulation and would not produce any customer benefits
6 compared to the current status quo of buying all gas on the open market.

7
8 In contrast, FPL's proposal is entirely consistent with the concept of a regulatory
9 rate of return and other fundamental tenets of rate regulation. FPL's proposal is
10 designed to provide significant benefits for customers within the established
11 principles of rate regulation that I earlier identified.

12 **Q. Are these benefits limited to the potential for cost savings?**

13 A. No. While the potential for significant cost savings are an integral part of FPL's
14 proposal, there are also hedging benefits that must be considered.

15 **Q. What is the Commission's policy on fuel hedging?**

16 A. In Docket No. 011605-EI, opened to address public utility risk management
17 policies and procedures, the Commission approved a settlement among the parties,
18 which included OPC and FIPUG. The settlement endorsed the use of hedging, both
19 financial and physical hedges, as a risk management tool to mitigate price volatility
20 for the benefit of customers. In Order No. PSC-02-1484-FOF-EI, the Commission
21 stated:

22 We find that the Proposed Resolution of Issues, modified as set
23 forth above, provides a reasonable resolution of all issues in the

1 docket. The Proposed Resolution of Issues establishes a
2 framework and direction for the Commission and the parties to
3 follow with respect to risk management for fuel procurement. It
4 provides for the filing of information in the form of risk
5 management plans and as part of each IOU's final true-up filing in
6 the fuel and purchased power cost recovery docket, which will
7 allow the Commission and the parties to monitor each IOU's
8 practices and transactions in this area. In addition, it maintains
9 flexibility for each IOU to create the type of risk management
10 program for fuel procurement that it finds most appropriate while
11 allowing the Commission to retain the discretion to evaluate, and
12 the parties the opportunity to address, the prudence of such
13 programs at the appropriate time. Further, the Proposed
14 Resolution of Issues appears to remove disincentives that may
15 currently exist for IOUs to engage in hedging transactions that may
16 create customer benefits by providing a cost recovery mechanism
17 for prudently incurred hedging transaction costs, gains and losses,
18 and incremental operating and maintenance expenses associated
19 with new and expanded hedging programs. For these reasons, we
20 approve the attached Proposed Resolution of Issues, as modified
21 above.

22 **Q. Is FPL's proposed gas reserves project consistent with this policy?**

23 A. Yes, it is. In particular, the policy recognizes that the Fuel Clause is an appropriate

1 mechanism to effectuate cost recovery for hedging initiatives, that there should be
2 flexibility in structuring hedging proposals, that there should be a determination of
3 prudence, that customer benefits should be the emphasis of a hedging initiative, that
4 potential disincentives to hedging should be removed that otherwise could prevent
5 achieving customer benefits, and that both gains and losses can result from prudent
6 hedging initiatives. Consistent with this policy, FPL is seeking a determination of
7 prudence for its gas reserves project that is anticipated to provide costs benefits
8 along with its hedging benefits.

9 **Q. Would the approach recommended by the intervenor witnesses be a**
10 **disincentive to achieving the benefits of a gas reserves project as a prudent**
11 **hedging initiative?**

12 A. Yes. I cannot imagine any utility being willing to pursue a gas reserves project
13 under the conditions that they recommend.

14

15 III. Public Interest Regulation

16

17 **Q. Where does the Commission derive its authority and obligation to regulate**
18 **utilities in the public interest?**

19 A. The Commission's authority and obligation to regulate in the public interest is
20 derived from Section 366.01, Florida Statutes, which says: "The regulation of
21 public utilities as defined herein is declared to be in the public interest and this
22 chapter shall be deemed to be an exercise of the police power of the state for the
23 protection of the public welfare *and all the provisions hereof shall be liberally*

1 *construed for the accomplishment of that purpose.*” (Emphasis added)

2 **Q. How is this relevant to FPL’s gas reserves project?**

3 A. FPL’s gas reserves project is a new innovative approach that provides benefits to
4 customers by investing in gas reserves. Such an initiative has not been attempted
5 before by an investor-owned utility in Florida. It has been attacked by the
6 intervenor witnesses because it is new and different from traditional approaches.
7 Witness Ramas even declares that the costs of the reserve project are ineligible for
8 recovery because “capital investments in gas exploration, drilling, and production
9 are so foreign to an electric utility’s regulated monopoly business that such items
10 are incompatible with the system of accounts that the Commission prescribes for
11 electric utilities.” She continues: “As such, these costs do not qualify for recovery
12 through the fuel cost recovery clause under the order upon which FPL relies.”
13 Witness Ramas’ positions are shortsighted and inconsistent with Chapter 366,
14 Florida Statutes.

15 **Q. Please explain.**

16 A. Witness Ramas attempts to limit the Commission’s discretion to determine what
17 activities and investments are eligible for cost recovery to those that have
18 traditionally been undertaken by “regulated monopolies.” However, her standard is
19 not the correct one. Section 366.01, Florida Statutes, makes it clear that the public
20 interest is the ultimate test and not whether an investment incurred to provide
21 electric service to customers at a lower and more stable fuel cost has been
22 traditionally done or whether it fits neatly in a Uniform System of Accounts
23 designation. If a project can be shown to be in the public interest, it should be

1 considered on the same basis that other investments are considered. The
2 Commission certainly has the discretion to do so, and perhaps the obligation to do
3 so as well.

4 **Q. What does the statute say about the recovery of utility investments?**

5 A. Section 366.06 requires the Commission to “investigate and determine the actual
6 legitimate costs of the property of each utility company, actually used and useful in
7 the public service” and that the net investment “shall be used for ratemaking
8 purposes and shall be the money honestly and prudently invested by the public
9 utility company in such property....” So, succinctly stated, the standard is one of
10 prudently incurred costs in property which serves the public.

11 **Q. Does FPL’s proposed gas reserves project fall within this statutory provision?**

12 A. Yes. FPL is seeking the Commission’s determination that its investment in the gas
13 reserves project is prudent and is used and useful in serving the public, such that it
14 is in the public interest and eligible for cost recovery. What is being sought is
15 squarely within the statutory framework and is eligible for cost recovery through
16 the Fuel Clause.

17 **Q. Does witness Ramas present other arguments in support of her position that
18 FPL’s gas reserves project should be ineligible for cost recovery?**

19 A. Yes, she presents a variant of her primary argument that the gas reserves project is
20 new and different. She opines that the Commission would be unable to audit the
21 project and that the Commission is ill equipped to regulate the project stating:
22 “While the Commission has some very qualified and experienced auditors and
23 analysts on its staff, I suspect that the PSC audit and technical staff also lack the

1 specialized expertise in the unique and ‘very specialized’ accounting requirements
2 associated with the competitive gas exploration, drilling and production industry.”

3 **Q. Are witness Ramas’ concerns well-founded?**

4 A. No. She is correct that the Commission does indeed have very qualified and
5 experienced auditors and analysts. I can personally vouch for that based on my
6 first-hand knowledge and experience with the Commission as a consumer advocate,
7 PSC staffer, commissioner, and expert witness over the past 37 years. However, in
8 those 37 years, this is the first time that I recall a witness concluding that a public
9 interest determination be constrained by what they believe to be deficiencies in the
10 ability of PSC staff to understand and effectively oversee a new proposal. Witness
11 Ramas’ concern is ill-founded and, frankly, fails to appreciate the talents of the PSC
12 staff.

13 **Q. Please explain.**

14 A. The Commission’s role is to regulate in the public interest and in so doing should
15 not be constrained by witness Ramas’ “business as usual” considerations. Stated
16 differently, the scope of regulation should be determined by what is needed to serve
17 the public interest and not have the determination of what is in the public interest
18 constrained by the existing scope of regulation. This would be the proverbial “tail
19 wagging the dog” situation. If a new proposal can be shown to be in the public
20 interest, it is the responsibility of the regulator to adapt to the requirements to
21 effectively regulate it in the public interest. This is something that I have seen the
22 Commission do very well as technology, governmental policies, risk factors, and
23 economic considerations have changed over the years. By necessity, regulating in

1 the public interest is a dynamic undertaking. It is my opinion that the Commission
2 and its staff have the ability to effectively regulate FPL's gas reserves project.
3 Even if this means that existing staff expertise needs to be refined and expanded, I
4 have every confidence that staff will be able to do so.

5 **Q. Is witness Ramas correct in her assessment that the Commission would be**
6 **unable to audit the gas reserves project?**

7 A. No. The Commission staff would be able to audit the gas reserves project in the
8 same manner and to the same extent that it audits the whole range of utility
9 transactions with third parties. FPL's investment in the project would be auditable.
10 In addition, FPL would be able to audit transactions with its joint venture partner
11 and the Commission auditors would have access to the results of those audits.

12

13 Witness Ramas asserts that this conventional approach to auditing utility
14 transactions would be insufficient here and declares that this asserted deficiency is
15 "germane to OPC's position that the transactions fall outside the limits of the
16 Commission's regulatory domain." She apparently believes that the Commission
17 must have the ability to directly audit the third party operators and suppliers as a
18 prerequisite for the gas reserves project to be eligible for cost recovery. However,
19 hers is the wrong standard and could result in unnecessary and ill-advised rejections
20 of third party arrangements that would be beneficial for customers.

21 **Q. Please explain.**

22 A. The Commission has full audit capability over Florida regulated utilities and their
23 affiliates which do business with the regulated utility. This enables the

1 Commission to ascertain the correctness and the reasonableness of costs which are
2 sought for recovery through rates. The Commission does not have the authority to
3 audit third party operators or suppliers. However, the Commission still retains its
4 authority and ability to judge the reasonableness of costs incurred from third
5 parties.

6
7 A good example is a regulated utility's purchase of power from a third party
8 cogenerator. The Commission does not have the authority to directly audit the third
9 party cogenerator, but still determines the reasonableness of the costs incurred by
10 the regulated utility to obtain the power. The Commission can and does rely on the
11 regulated utility's audits and other verifications that the power is being delivered
12 consistent with the contracts that have been approved by the Commission. This is
13 analogous to what is being proposed for the gas reserves project.

14
15 Witness Ramas' incorrect standard would call into question a whole array of third
16 party arrangements that have produced benefits for customers, such as cogenerated
17 power and joint venture arrangements like FPL's co-ownership of Plant Scherer in
18 Georgia. Obviously, the Commission does not have the ability to audit Georgia
19 Power Company ("Georgia Power"). However, the Commission did thoroughly
20 review and ultimately approved FPL's co-ownership arrangement with Georgia
21 Power and routinely relies on FPL audits and transactional verifications in judging
22 contract compliance and the reasonableness of costs flowing from those
23 transactions with Georgia Power. This too is analogous to what is being proposed

1 by FPL for the gas reserves project. Another analogous third party arrangement
2 that has produced benefits for customers is FPL's ownership interest in JEA's St.
3 Johns River Power Park, as discussed in the rebuttal testimony of FPL witness
4 Ousdahl.

5 **Q. Please summarize your testimony.**

6 A. FPL's gas reserves project is an innovative approach to provide fuel savings and
7 hedging benefits for customers. Like any other capital expenditure made by a
8 regulated utility for the benefit of its customers, eligibility for cost recovery should
9 be governed by a prudence determination that is based on an informed assessment
10 of its costs, benefits, and risks. Cost recovery should also be treated consistent with
11 the sound principles of ratemaking that I identified and not by the inconsistent and
12 asymmetrical application of those principles as suggested by the intervenor
13 witnesses.

14
15 FPL's gas reserves project is an innovative approach to reducing fuel costs of the
16 type that is contemplated and encouraged by the Commission's policy on Fuel
17 Clause eligibility as contained in Order No. 14546. Such a project is especially
18 needed in today's environment of increasing reliance on natural gas to generate
19 electricity and the volatile nature of the market price for natural gas. Indeed, the
20 project is also consistent with the Commission's hedging policies.

21

22 The intervenor witnesses contort previous decisions of the Commission to support
23 their incorrect conclusion that the gas reserves project should be ineligible for cost

1 recovery. They do not understand or simply choose to ignore the benefit of the
2 project in mitigating risks that are currently borne by customers. Consistent with
3 the Commission's responsibility to regulate in the public interest, the Commission
4 should ask this question: "Does the gas reserves project offer a better way to protect
5 customers from the vagaries of the natural gas market than simply continuing with a
6 100% reliance on natural gas market prices?" If the Commission answers this
7 question in the affirmative, then the costs for the project should be recoverable
8 through the Fuel Clause. Not only would this be the appropriate treatment for the
9 project, but also it would reconfirm the Commission's commitment to encourage
10 the development of innovative ways to reduce fuel costs and mitigate fuel risks for
11 the benefit of customers.

12 **Q. Does this conclude your rebuttal testimony?**

13 A. Yes, it does.

1 BY MR. BUTLER:

2 Q And, Mr. Deason, you have attached to your
3 testimony one exhibit; is that correct?

4 A Yes.

5 Q Do you have any changes or corrections to
6 that exhibit?

7 A No.

8 Q Is it true and correct to the best of your
9 knowledge and belief?

10 A Yes.

11 Q Okay. I would note that that is marked as
12 Exhibit 33 on staff's comprehensive exhibit list.

13 And with that, Mr. Deason, I would ask that
14 you give your oral summary of your testimony, please.

15 A Yes. Good morning, Commissioners, it's still
16 morning. The Commission has a long and consistent
17 policy of allowing timely recovery to the Fuel Clause
18 of the fossil-related expenses. This policy has served
19 the Commission, utilities and their customers well over
20 the years by allowing rates to reflect their current
21 cost of fuel and thereby provide prompt and accurate
22 signals to customers without the need for expensive and
23 time-consuming rate cases.

24 The Commission's policy also encourages
25 utilities to pursue innovative ways to lower fuel costs

1 by giving them an opportunity to seek prompt Fuel
2 Clause recovery of cost incurred to achieve fuel
3 savings.

4 Contrary to assertions about the intervenor
5 witnesses, FPL's gas reserve project is fully
6 consistent with the Commission's policy. It is an
7 innovative approach to provide fuel savings and hedging
8 benefits for customers. It is not a transference of
9 risks from stockholders to customers. It is a means to
10 mitigate risk already borne by customers.

11 Like any other capital expenditure made by a
12 regulated utility, for the benefit of its customers,
13 eligibility for cost recovery should be governed by a
14 prudence determination that is based on an informed
15 assessment of its cost, benefits and risks.

16 Consequently, cost recovery for an approved
17 gas reserve project should be treated consistent with
18 the sound principles of ratemaking that I identify in
19 my prefiled testimony and not by the inconsistent and
20 asymmetrical application of those principles as
21 suggested by the intervenor witnesses.

22 FPL's gas reserve project is the type of
23 innovative approach that is specifically contemplated
24 and encouraged by the Commission's policy on Fuel
25 Clause eligibility as contained in Order Number 14546

1 because it is directly aimed at reducing the delivered
2 cost of fuel that customers pay. Such a project is
3 especially valuable in today's environment of
4 increasing reliance on natural gas and the volatile
5 nature of the market for natural gas.

6 FPL's gas reserve project is also consistent
7 with the Commission's hedging policies, which encourage
8 utilities to come forward with innovative forms of
9 financial and physical hedges to mitigate price
10 volatility for customers. The asymmetric cost recovery
11 conditions that the intervenor witnesses wish to impose
12 on FPL's gas reserve project would have the exact
13 opposite effect. I cannot imagine a utility being
14 willing to pursue the hedging benefits of a gas reserve
15 project under the conditions that they recommend.

16 The intervenor witnesses struggle mightily to
17 say no to FPL's proposal. They contort previous
18 decisions of the Commission to support their incorrect
19 conclusion that the gas reserve project should be
20 ineligible for cost recovery. They do not understand
21 or simply choose to ignore the benefits of the project
22 in reducing costs and mitigating risks that are
23 currently borne by customers.

24 Consistent with the Commission's
25 responsibility to regulate in the public interest, the

1 Commission should ask this question. Does the gas
2 reserve project offer a better way to protect customers
3 from the vagaries of the natural gas market than simply
4 continuing with a 100 percent reliance on natural gas
5 market prices?

6 If the Commission answers this question in
7 the affirmative, then the cost for the project should
8 be recoverable through the Fuel Adjustment Clause. Not
9 only would this be the appropriate treatment for the
10 project, but it would also reconfirm the Commission's
11 commitment to encourage the development of innovative
12 ways to reduce fuel costs and mitigate fuel risk for
13 the benefit of customers. This concludes my summary.

14 **Q Thank you, Mr. Deason.**

15 MR. BUTLER: I tender the witness for cross
16 examination.

17 MR. MOYLE: And, Mr. Chairman, before we
18 begin cross, just for the record, FIPUG filed a
19 Motion to Strike portions of Mr. Deason's
20 testimony as inappropriate expert testimony on
21 matters of law and things like that. It was ruled
22 on by the Prehearing Officer.

23 I just wanted to not sit on my hands and make
24 the Commission aware of that, and Mr. Butler aware
25 of that, so that we're not waiving anything

1 related to that, you know, that argument that was
2 made.

3 MR. BUTLER: Well, your motion was denied.

4 MR. MOYLE: No, I understand. I just -- for
5 record purposes, I just wanted to make everybody
6 aware of it. It was denied. So we'll continue
7 on, but I just don't want anyone to say, well,
8 Moyle, you sat there and didn't say anything when
9 Mr. Deason took the stand.

10 MR. BUTLER: We're pretty sure you won't do
11 that.

12 CHAIRMAN GRAHAM: Mr. Rehwinkel.

13 MR. REHWINKEL: Thank you, Mr. Chairman.

14 CROSS EXAMINATION

15 BY MR. REHWINKEL:

16 Q Now good afternoon, I think.

17 A Good afternoon.

18 Q You would agree that the Public Service
19 Commission only has the powers that the Legislature
20 delegates to it, would you not?

21 A I agree.

22 Q You would also agree that the Public Service
23 Commission cannot legislate or do the things that are
24 reserved just to the Legislature, right?

25 A I agree.

1 Q You would also agree that the Public Service
2 Commission cannot create its own jurisdiction?

3 A I agree.

4 Q You would also agree with me that no company
5 regulated by the Public Service Commission, no electric
6 utility has ever had an investment in the actual fuel
7 commodity production included in its rate base,
8 wouldn't you?

9 A I'm going to have to ask you to repeat the
10 question, please.

11 Q Okay. You would agree with me that no
12 electric utility regulated by the Public Service
13 Commission has ever had the investment in the actual
14 fuel commodity production included in its rate base?

15 A I would agree with that, yes.

16 Q You would agree with me that the three orders
17 that you cite in your testimony, the Martin lateral,
18 the Scherer railcars, and the fuel conversion case do
19 not involve an investment of a source of fuel
20 production?

21 A I would agree with that.

22 Q You would also agree with me that with
23 respect to the Scherer railcar case that you cite, that
24 the estimate there was as to the volume of commodity
25 purchase and not a forecast of the commodity price?

1 A I would agree. The commodity price was not
2 relevant in the case of the cars because the cars were
3 going to be used to transport tons of coal. So, yeah,
4 it would not have been a relevant consideration.

5 Q Thank you. I think you agree also that you
6 have never testified in a case involving an electric
7 utility's investment in gas reserves before now, right?

8 A That's right.

9 Q Can you also agree with me that your
10 testimony does not in any way bear on FPL's ability,
11 experience or competence to manage the proposed
12 Woodford gas reserve investment strategy?

13 A That question is not just a straight yes or
14 no, and if I can explain. The answer to your question
15 is I agree that I do not testify as to the
16 qualifications or the ability of FPL to manage this
17 particular project or their expertise in doing so.
18 However, it is true that FPL has a good track record by
19 -- in making investments for the benefit of its
20 customers to reduce costs and otherwise manage risks
21 and that this particular project would fall into that
22 more general category.

23 Q But you didn't file that last statement as
24 part of your prefiled rebuttal testimony, did you?

25 A No, that was an answer I gave in a

1 deposition.

2 Q You did not make an independent inquiry into
3 the marketplace risks of the proposed gas reserve
4 venture into the Woodford area, did you, FPL's proposed
5 gas reserves venture.

6 A I did not.

7 Q You also did not perform an evaluation or
8 analysis of the variability of costs that FPL could
9 experience in the Woodford Project over any period of
10 time, be it 50 or five years, did you?

11 A I did not.

12 Q In fact, you do not know what all of the
13 types of fixed and variable costs are that FPL could
14 incur in the proposed Woodford area, do you?

15 A I do not. That's the testimony of other
16 witnesses at FPL.

17 Q Would you agree that FPL cannot give
18 customers significant price stability by delaying the
19 drilling plan and/or reducing production volumes from
20 existing wells in the event of unexpected price
21 declines?

22 MR. BUTLER: Mr. Rehwinkel, are you asking
23 him about the contractual terms of the proposed
24 project?

25 MR. REHWINKEL: I'm just asking him about

1 what FPL can do.

2 THE WITNESS: Could you repeat the question,
3 please?

4 BY MR. REHWINKEL:

5 Q **Isn't it true that FPL cannot give customers**
6 **significant price stability by delaying the drilling**
7 **plan and/or reducing production volume from existing**
8 **wells in the event of unexpected price declines?**

9 A I'm having difficulty understanding the basis
10 of the question and the relevancy of the question. So
11 if you could rephrase it some way, I would be happy to
12 try to answer it.

13 Q **You can't answer my question?**

14 A Not as you have phrased it, no.

15 Q **Okay. Now, you've testified, I believe, that**
16 **you believe this project is a hedge?**

17 A I do.

18 Q **Is price stability one of the goals of a**
19 **hedge?**

20 A It is.

21 Q **So my question to you is, can FPL take any**
22 **actions to delay its drilling plan with PetroQuest or**
23 **reduce production volume from the wells that they might**
24 **drill with PetroQuest in the event of unexpected price**
25 **declines in order to give price stability to customers?**

1 A Well, your question is premised on a fact
2 that I don't personally know as to whether FPL or its
3 affiliate would have the ability to reduce the drilling
4 or the production at wells based upon the price of
5 natural gas.

6 Q Fair enough. Thank you.

7 You didn't do any analysis about how much of
8 an opportunity FPL would have to add gas reserves
9 beyond the Woodford if the proposal and the guidelines
10 were approved, did you?

11 A I did not.

12 Q Are you aware that Duke has indicated an
13 interest in the outcome of this docket?

14 A I've read a press account to that effect.

15 Q Okay.

16 MR. REHWINKEL: Mr. Chairman, I would like to
17 pass out an exhibit.

18 CHAIRMAN GRAHAM: Sure.

19 MR. MOYLE: We'd be willing to stipulate that
20 Duke's interested in this.

21 MR. REHWINKEL: Mr. Chairman, this is an
22 exhibit, the title of it is Bloomberg Article,
23 Duke Energy Sees Potential Shale Gas Investment.
24 And I would ask that it be given a number.

25 CHAIRMAN GRAHAM: We'll give it number 67.

1 MR. REHWINKEL: Okay.

2 (Exhibit No. 67 was marked for
3 identification.)

4 BY MR. REHWINKEL:

5 Q Is this the press account or similar press
6 account?

7 A Yes, it is either the press account or it's
8 certainly similar to what I read earlier.

9 Q Okay. I would ask you if you could -- in the
10 time that we took to pass this exhibit out, have you
11 had a chance to kind of read this quickly?

12 A Very quickly, yes.

13 Q Okay. Can I get you to turn to the fourth
14 paragraph that starts with "Duke now buys"?

15 A Yes, I see that.

16 Q Would you read that couple of sentences,
17 three sentences into the record, please?

18 A "Duke now buys gas in the open market,
19 leaving it subject to price swings that are passed
20 through to customer bills. By investing at the
21 wellhead, Duke would lock in prices for customers, he
22 said. In exchange, it would seek state regulators'
23 approval to earn a guaranteed profit on the
24 investment."

25 Q From the context of the article, is the "he

1 **said" Chief Financial Officer Steve Young of Duke, as**
2 **reported in this article?**

3 MR. BUTLER: I'm going to object to the
4 question. It's vague as to what parts of the
5 article he's referring to. Clearly the article
6 has some parts that appear to be at least
7 paraphrasing the individual in question and other
8 parts it's clearly the reporter's own writing.

9 CHAIRMAN GRAHAM: I agree with the objection.

10 MR. REHWINKEL: I don't understand what the
11 objection is.

12 MR. BUTLER: The objection, Mr. Rehwinkel, is
13 unless I'm misunderstanding, you're suggesting
14 that because there's a reference to "he said" in
15 that paragraph, that all of this is coming from
16 the mouth of the Duke official, chief financial
17 officer, that is quoted in the first paragraph,
18 and I don't think that's a fair reading of the
19 article.

20 If you want to refer to particular parts of
21 it and ask Mr. Deason if he understands that's,
22 you know, a quote or a direct paraphrase of
23 Mr. Young, that's fine. But to suggest that the
24 entire article is, is what I'm objecting to.

25 MR. REHWINKEL: That's exactly what I'm

1 asking him to do. I'm asking if the paraphrase of
2 "by investing at the wellhead," et cetera, those
3 two sentences, appear to be attributed in the
4 article to Duke CFO Steve Young. That's my
5 question.

6 MR. BUTLER: And the two sentences being
7 what? That paragraph has three sentences.

8 MR. REHWINKEL: "By investing at the
9 wellhead," that sentence, and the one that starts
10 with "In exchange," Those two.

11 MR. BUTLER: Okay. The one that follows it,
12 right?

13 MR. REHWINKEL: Yes.

14 BY MR. REHWINKEL:

15 **Q Is the way you read this article, does the**
16 **authors of this attribute that statement to Mr. Young?**

17 A It's vague. There is the two words he said,
18 but it's not in quotes like an earlier provision in the
19 article. And then the last sentence of that paragraph,
20 there's no indication as to who said that.

21 **Q Okay. So there's no other person named in**
22 **this article other than Mr. Young, right?**

23 A Well, I guess the person who wrote the
24 article.

25 **Q Well, okay. All right. So one, two, three,**

1 **four, five. If the top five articles -- or paragraphs**
2 **are the article and the one that says "To contact the**
3 **reporters" is just not part of the article, can you**
4 **accept my assumption there?**

5 A I mean, I don't think it's relevant whether
6 that's part of the article or not. But apparently it
7 was written by someone and those persons are identified
8 at the bottom.

9 Q **Let me ask you this. Do you agree that a gas**
10 **reserve project locks in prices for customers like the**
11 **Woodford Project?**

12 A Well, that would depend upon your definition
13 of "lock in." And it would be -- it's my opinion that
14 the Woodford Project would be closer to locking in
15 prices than relying upon the market. But that's not to
16 say the Woodford Project is going to have a price that
17 is not going to fluctuate some, but the anticipation it
18 will fluctuate less than the open market.

19 Q **And would you also agree that the return that**
20 **the utility that would receive Public Service**
21 **Commission approval would allow them to earn a**
22 **guaranteed profit on the investment?**

23 A I do not agree with that.

24 Q **Okay. So if this is truly what Duke said,**
25 **they're under a false impression, a misapprehension of**

1 **the case?**

2 MR. BUTLER: So you're asserting that the
3 last sentence in this paragraph is truly what Duke
4 said?

5 MR. REHWINKEL: Yeah. I said, if that's what
6 they said.

7 THE WITNESS: Well, there's a lot of ifs
8 there.

9 BY MR. REHWINKEL:

10 **Q Okay.**

11 A If the gentleman did, in fact, say that,
12 which I don't know that he did, I would disagree with
13 his assessment that it's guaranteed, but I don't
14 disagree that maybe that's what he thinks, if, in fact,
15 he did say it.

16 **Q Okay. Page 18 of your rebuttal, line 17, you**
17 **use the phrase "Price risk"?**

18 A Yes.

19 **Q Okay. Is it your testimony that you**
20 **understand all of the risks that are associated with**
21 **the Woodford Project for purposes of testifying as to**
22 **its characteristics or qualities as a hedge?**

23 A I am not the best witness to discuss all of
24 the risks associated with the project. However, I have
25 an understanding of the nature of the project enough to

1 satisfy myself that it is a hedge and would provide
2 benefits to customers in that regard.

3 **Q Okay. Do you know whether the project could**
4 **encounter unexpected costs in the form of delay**
5 **rentals?**

6 A I have heard testimony to that effect and
7 that is a possibility. I would rely on the witness who
8 testified on that as to whether the -- what degree of
9 risk is associated with that.

10 **Q What about past due royalties, is that a risk**
11 **that the project would face?**

12 A Yes. And maybe we could short-circuit this
13 to some degree. If you have a long list here, I'm
14 thinking my answer is going to be the same. I think I
15 could summarize it in this regard, is that to the
16 extent that the Woodford Project has those types of
17 risks associated with the production of natural gas, my
18 assumption is that those types of risks would also be
19 generally in the market for the production of natural
20 gas and those risks would be part of the costs and,
21 hence, the prices of natural gas in that market. So
22 these are risks that customers are already bearing.

23 **Q So you would agree that those risks in the**
24 **market could cause the cost -- the price of natural gas**
25 **in the commodity market to vary, correct?**

1 A Under the assumption that all risks would be
2 reflected in the true competitive market.

3 **Q So yes?**

4 A The answer is yes.

5 **Q Okay. You testify about order 110080. Do**
6 **you see that?**

7 MR. BUTLER: Can we get a page reference,
8 please?

9 MR. REHWINKEL: I believe page 7 and 8 of
10 your testimony.

11 THE WITNESS: Yes, I do see that.

12 BY MR. REHWINKEL:

13 **Q Okay. Do you have a copy of that order with**
14 **you?**

15 A I do. I'm sorry, I do.

16 **Q Okay. And I think --**

17 MR. REHWINKEL: Madam Chairman.

18 COMMISSIONER EDGAR: Mr. Rehwinkel?

19 MR. REHWINKEL: We just -- Mr. Guyton passed
20 out a copy of this order so I don't think I need
21 to do it again if everyone still has a copy of it.

22 COMMISSIONER EDGAR: Will you tell me the
23 number again?

24 MR. REHWINKEL: It's 110080.

25 COMMISSIONER EDGAR: I have it. Everybody

1 good?

2 (Affirmative response.)

3 COMMISSIONER EDGAR: Thank you.

4 BY MR. REHWINKEL:

5 Q Do you have that order with you?

6 A I do.

7 Q Okay. Now, I think -- I just want to make
8 sure I understand. On the bottom of page 7, continuing
9 through the top of page 9, you quote from this order?

10 A Yes.

11 Q Now, it would be fair to say that where you
12 quote, you don't quote entire paragraphs in any part of
13 that order, do you?

14 A I would be surprised if I quote entire
15 paragraphs, but I'm not for sure that perhaps it did
16 not happen.

17 Q Well, do you see anywhere in the quote that
18 comprises of an entire paragraph of that order?

19 A Just looking at it here at the moment, I
20 can't say one way or the other.

21 Q Okay. But by not quoting an entire
22 paragraph, you're not -- you don't think there's
23 anything wrong with that, do you, that not every piece
24 of paragraph is entirely relevant to the point you're
25 making, is it?

1 A I agree that sometimes for expediency and to
2 reduce the number of pages that have to be produced in
3 testimony, you try to concentrate on the most relevant
4 aspects of an order.

5 Q **Okay. I just want to make sure I understood**
6 **that.**

7 A But I'm sure if I missed something, that
8 you'll point that out to me, Mr. Rehwinkel.

9 Q **I don't think I have a reason to do that**
10 **today.**

11 MR. REHWINKEL: Mr. Chairman, those are all
12 the questions I have for Mr. Deason. Thank you.

13 CHAIRMAN GRAHAM: Thank you. Retail
14 Federation.

15 MR. LAVIA: No questions, Mr. Chairman.

16 CHAIRMAN GRAHAM: FIPUG.

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

18 CROSS EXAMINATION

19 BY MR. MOYLE:

20 Q **Good afternoon, Mr. Deason.**

21 A Good afternoon.

22 Q **So Exhibit Number 67 that you were provided,**
23 **that you talked about with Mr. Rehwinkel, this**
24 **Bloomberg report, right?**

25 A Right. I see it, yes.

1 **Q** And there's another name actually in there
2 besides the author of the article and the chief
3 financial officer for Duke, right, and that's Mr. Moray
4 Dewhurst, the chief financial officer of NextEra
5 Energy?

6 MR. BUTLER: I'm sorry, is your question
7 about Duke or NextEra?

8 MR. MOYLE: No, he just said, when he was
9 responding to questions from Mr. Rehwinkel, he
10 said there were two names in here, and there's a
11 bunch of additional names, including Mr. Dewhurst.

12 BY MR. MOYLE:

13 **Q** Right?

14 A I do see Dewhurst's name in the last
15 paragraph.

16 **Q** Do you know who Mr. Dewhurst is? I mean, do
17 you know him personally?

18 A I do know him, yes.

19 **Q** Yeah. He's pretty business-like, isn't he?

20 A Yes.

21 **Q** But your experience and expectation is that
22 when he's making comments to investors and people on
23 Wall Street, that he's talking about things that
24 materially impact a business as compared to the weather
25 and the football game, correct?

1 A Yes. He is a highly regarded individual in
2 the financial community and he has the responsibility
3 to communicate with the financial community on behalf
4 of NextEra and he is a person of authority.

5 Q **Right. So it's a reasonable assumption that**
6 **if he's talking to investors about this reserve**
7 **petition, that it's a meaningful matter to the company,**
8 **correct? You can deduce that?**

9 A Well, you know, I can't judge whether it's
10 meaningful to the company. I would suspect that it is
11 relevant to this article and I would expect that it is
12 probably meaningful to the company, that this request
13 that's pending before the Commission, that the expected
14 decision time for that is something that's relevant to
15 the operations of NextEra.

16 Q **I appreciate that.**
17 **You're testifying today as an expert, right?**

18 A Yes.

19 Q **Okay. And just to be clear, what are you**
20 **professing expertise in?**

21 A Regulatory policy.

22 Q **But you're not a lawyer?**

23 A I am not.

24 Q **Okay. But you would agree that the**
25 **Commission's regulatory policy is established by**

1 statutes, right, and there's a series? So if you would
2 work with me on this, I would appreciate it. The way
3 it works --

4 MR. BUTLER: Do you mean exclusively
5 established by statute? That's one of the things
6 that --

7 MR. MOYLE: Yeah, let me come at it at a
8 different way.

9 BY MR. MOYLE:

10 Q I'll tell you my understanding of how this
11 Commission works and you tell me if I got it wrong, all
12 right?

13 A All right.

14 Q This Commission is a creature of the
15 Legislature, correct?

16 A Yes.

17 Q And it's housed in the Legislative Branch,
18 correct?

19 A I would generally agree with that, yes.

20 Q It's not -- do you have an understanding of
21 that specifically like the Department of Environmental
22 Protection, their secretary reports to the Governor,
23 that administratively the PSC is part of the
24 Legislature?

25 A I would agree that PSC is part of the

1 Legislature. The Executive Branch does have a
2 fundamental role to play in selecting Commissioners.

3 Q Okay. And the PSC is not a creature of
4 Constitution or anything so if the Legislature said,
5 you know what, we don't want a PSC, they could pass a
6 bill that would extinguish the PSC in theory, correct?

7 A In theory.

8 MR. BUTLER: I'm going to object to the
9 question because I believe that it assumes a fact
10 not in evidence. I believe the Constitution does
11 mention the PSC. I could be wrong on that, but
12 unless Mr. Moyle can establish it doesn't, I have
13 my objection standing.

14 CHAIRMAN GRAHAM: I think the way he posed
15 the question was, let me tell you how I think the
16 PSC is set up, you let me know if I'm right or
17 wrong.

18 MR. MOYLE: I'm not sure it's that material,
19 let's try to move it along.

20 BY MR. MOYLE:

21 Q So, also, Mr. Deason, the Legislature
22 empowers this Commission, it gives it duties and
23 responsibilities, it gives this Commission
24 jurisdiction, correct?

25 A Yes.

1 Q And this Commission cannot act unless it has
2 been given authority to act by the Legislature,
3 correct?

4 A I would agree, yes.

5 Q Okay. And this Commission, when it sets
6 forth its policy, it does it in a couple of ways that's
7 recognized by law? It can enact rules, correct?

8 A Yes.

9 Q And it can craft orders and issue orders,
10 correct?

11 A Yes.

12 Q And for somebody who is trying to understand
13 the Commission policy, the sources that I identified
14 with respect to the Florida Statute, Commission rules
15 and Commission orders are the three source documents
16 that are used in an effort to understand a policy,
17 correct? You would agree with that generally?

18 A Yes, I would agree with that generally.

19 Q And you were a Commissioner here for how many
20 years?

21 A Sixteen.

22 Q Sixteen. And you served as Chair for a
23 couple years -- I mean, I'm sorry, a couple of terms?

24 A On two different occasions.

25 Q Okay. Is part of what you are testifying to

1 with respect to Commission policy, stuff that you
2 gained because you have special insight or because of
3 your involvement in particular cases?

4 A I have experience and expertise in the field,
5 and I am providing information to the Commission that I
6 hope the Commission finds helpful in their
7 deliberation.

8 Q Right. So with respect to special knowledge
9 or insight, that would be yes, that you think you do
10 have special insight into the orders and rules and
11 statutes, given your past experience? And if you can
12 go yes or no, that would be appreciated.

13 A Well, certainly more so than the average
14 person walking around on the street.

15 Q How about compared to Mr. Butler?

16 A You asked me that question in deposition, and
17 my answer would be the same. I'm a humble person and I
18 would not put my knowledge above that of Mr. Butler.

19 Q How about Mr. Moyle?

20 A You are now testing the limits of my
21 humility, Mr. Moyle.

22 Q Touché, point -- so I want to ask you a
23 question. With respect to the consumer interest -- let
24 me back up.

25 With respect to specific statutory authority

1 to act on a set of facts that everyone's kind of
2 admitted or knew in novel oil and gas exploration in
3 Oklahoma, can you point me to a statute that says, this
4 Commission is authorized to consider oil and gas
5 drilling in Oklahoma?

6 A No, that's not in the statute and it doesn't
7 need to be in statute.

8 Q Okay. Can you point me --

9 A In fact, the fuel adjustment, which is the
10 document we're here --

11 Q Just work with me on this, if I could. I'm
12 not wanting to get into fuel adjustment orders or
13 anything, I just --

14 A Ask me the question on redirect then,
15 Mr. Moyle.

16 Q Mr. Butler is taking good notes.

17 A I'm sure he is.

18 Q I want to focus on the statute, okay?

19 A Okay.

20 Q And we talked about and agreed that the
21 Legislature gives the Commission authority per the
22 statute.

23 Is there a statute that you believe is out
24 there that says, this Commission has the ability, it
25 should consider this issue?

1 A Yes, I believe I provided statutory cites in
2 my testimony.

3 Q Okay. And what is the statute? Is it
4 **366.01?**

5 A Well, that statute, as well as the general
6 ratemaking statutes that direct the Commission per --
7 establish the parameters for establishing fair, just
8 and reasonable rates.

9 Q Okay. And the 366.01 focuses on the public
10 **interest, right?**

11 A Yes, it does.

12 Q Have you done research into how other states
13 **have considered oil and gas reserve matters, how they**
14 **have handled that? Is that part of what you've done?**

15 A No.

16 Q So you don't have any information as to what
17 **other states -- what Montana has done or what other**
18 **states have done with respect to oil and gas reserves?**

19 A Only to the extent it's been discussed here
20 in this hearing.

21 Q And you heard Mr. Forrest read a statute, a
22 **Montana Statute that suggests in Montana, anyway, the**
23 **Legislature acted on an oil and gas issue?**

24 A I seem to recall that.

25 Q Do you believe that this Commission -- that

1 the Commission should be the executor of the laws that
2 the Legislature passes, that the Legislature sets
3 policy and the Commission should act to execute policy?

4 A As a general proposition, I would agree with
5 that. But there's not a definite black and white line
6 or distinction between simply executing policy and
7 implementing policy at the Commission consistent with
8 the broader guidelines provided within statute.

9 Q I just want to understand your understanding
10 with respect to the respective roles. So I think we
11 can agree that the Legislature makes policy and the
12 Commission execute policy, no bright line with respect
13 to what's within execution; is that fair?

14 A I would generally agree with that, yes.

15 Q If this Commission wanted to put in place a
16 renewable portfolio standard because somebody filed a
17 petition to do it and said, this is really something
18 that's good and here is a lot of evidence that suggests
19 it's in the public interest under 366.01, would you
20 think that's something the Commission could do?

21 A I would answer yes, but I would provide some
22 caution here. Renewable portfolio standards was a
23 subject of legislation not too distant in the past.
24 And as I recall, it required the Commission to conduct
25 a study and to review the matter and to provide a

1 report and perhaps recommendations to the Legislature.
2 And I think the Legislature accepted that but did not
3 take further action.

4 Now, if I had my facts wrong, please correct
5 me, but the point being that renewable portfolio
6 standards is something that has had some legislative
7 input. So I think the Commission would be very
8 cautious to do anything contrary to whatever direction
9 was given by the Legislature. And some could say the
10 direction was none because they failed to take any
11 action based upon the recommendations of the
12 Commission.

13 So that's one subject matter where at least
14 the Legislature has tipped their toe into the pool of
15 water. I'm not so sure that it's really any concrete
16 policy from the Legislature.

17 **Q So you don't interpret -- you think that the**
18 **Commission, if our friends at SAES (phonetic) filed a**
19 **petition for a renewable portfolio standard, you think**
20 **this Commission could consider that, based on your**
21 **understanding of 366.01, correct?**

22 **A** As a nonlawyer, just based upon my
23 experience, I think the Commission could consider that.
24 Whether they should is an entirely different matter.
25 But I think they have enough discretion in their broad

1 statutory powers to consider such a petition.

2 Q Right. So this will give you another
3 opportunity to ding me a little bit, but I think others
4 might suggest, well, wait a minute, you know, the
5 Legislature specifically acted on a significant policy
6 matter, whether it would have a renewable portfolio
7 standard, and asked the Commission to take a closer
8 look at it and passed a bill that said, please look at
9 it and develop a rule, put the rule back in front of us
10 and, you know, we'll consider the rule.

11 You don't think that their passing that law,
12 telling the PSC, suggests that maybe the PSC didn't
13 have that authority on their own?

14 A I would agree with you that could be a valid
15 argument. Whether it would control it at the end of
16 the day, I could not say.

17 Q All right. So, you know, we can go through
18 some facts. We talked about -- in your deposition
19 about a uranium mining operation. And if we just
20 substituted in this case, rather than doing oil and
21 gas, we said, you know what, the utility is paying too
22 much for uranium, they're running their nuclear plants
23 and they're going to get into a uranium mining
24 operation, you're of the view that that also could be
25 done under the Commission's jurisdiction, correct?

1 A It could be. Whether it should be, again, is
2 a different matter and would be subject to a proceeding
3 similar to this. But it's something the Commission
4 could entertain.

5 **Q And the same question with respect to a solar**
6 **facility, if the FPL or another utility thought they**
7 **could buy a solar manufacturing facility and get solar**
8 **panels for less money, that's something the Commission**
9 **could consider as well, according to your understanding**
10 **and your view, correct?**

11 A My view is the Commission has broad
12 discretion and needs to regulate in the public
13 interest. And regulation in the public interest is not
14 a static thing. It changes as the economy changes, as
15 technology changes.

16 And so, yes, the Commission has to regulate
17 in the public interest. And if such things, as you
18 mention, can be shown, which may be a very steep burden
19 to show, but if it can be shown that is the best way to
20 serve customers, that's something the Commission could
21 entertain.

22 **Q So just to test your understanding a little**
23 **bit further, you would take the position that really**
24 **there's no limitation on what the Commission could**
25 **consider under the auspices of the public interest**

1 **test, correct?**

2 A Well, you know, that's a very emphatic
3 statement. And when you say, you know, there's
4 nothing, I'm not sure I would agree with that.
5 Certainly it's got to be related to the provision of
6 regulated electric service to customers. And then a
7 very second and very important step is, is that in the
8 public interest to do so.

9 Q Mr. Butler, in his arguments the other day in
10 front of the Commission, said -- I'll paraphrase --
11 made the point that FPL drives a lot of cars and they
12 buy cars from Ford or General Motors. And, you know,
13 if FPL had a good deal on cars where they could invest
14 in a car company and get the cars at a really good rate
15 and save ratepayers money, would that be something that
16 the Commission could consider, in your view, save
17 ratepayers money?

18 A If it could be shown that it is an integral
19 part of providing utility service to customers and that
20 it meets the public interest standard by saving money
21 or mitigating risks or other public interests, things
22 that are in the public's interest, well, then yes,
23 that's something the Commission could consider. But
24 whether the Commission should is an entirely different
25 matter.

1 Q Do you have a view with respect to -- and
2 again, broad picture -- my understanding of the
3 Commission, you tell me if I got it wrong, is that
4 they're here largely because the utilities they
5 regulate are monopolies and they're not subject to
6 forces of competition so that the PSC is set up as a
7 body to regulate the monopoly. Is that consistent with
8 your understanding?

9 A In general terms, I would agree.

10 Q And the Commission doesn't have jurisdiction
11 over non-monopoly interests, correct?

12 A I would agree that the jurisdiction the
13 Commission has under its statutory directives are to
14 regulate monopoly utilities, and then it also has some
15 jurisdiction over other utilities that are municipals
16 or rural electric cooperatives, some limited
17 jurisdiction.

18 Q Okay. And as a matter of policy, with
19 respect to markets where there's competition, be it the
20 sale of cars, oil and gas, areas where you have the
21 competitive market pressures that are there, you would
22 agree that that's not an area that's appropriate for
23 the Commission to assert jurisdiction over, correct,
24 because you have competitive market forces at play?

25 A I'm not sure that's exactly a yes or no

1 answer. Let me put it in this context. Clearly the
2 Commission doesn't have jurisdiction over entities that
3 engage in a competitive market and they themselves are
4 not a monopoly regulated by the Commission's
5 jurisdiction. So to that extent, I would agree with
6 you.

7 But an entity that is subject to the
8 regulation of the Commission and if providing that
9 regulated service can provide inputs to that in a cost
10 effective way that is in the public interest and
11 basically extend the vertical length of that vertically
12 integrated utility, that would be something different
13 and something that is subject to the Commission's
14 review and consideration. And, in fact, the subject
15 matter currently in front of the Commission fits
16 squarely into that.

17 And you gave the example of automobiles.
18 Certainly automobiles and trucks are an essential part
19 of providing service, but I'm not sure it rises to the
20 extent that what we have here is to where fuel is a
21 large component of providing service and one fuel
22 comprises 65 percent of the largest cost component of
23 providing service to customers to provide that
24 regulated service. So that's what has opened this door
25 for this consideration.

1 Q I understand. And, you know, I want to test
2 your understanding with some examples. So, really,
3 it's just a matter of degree. I mean, you say, well,
4 it's 65 percent, cars are an integral part, but they
5 are probably not as integral as natural gas to an
6 electric utility, correct?

7 A Not as integral. In fact, there is a
8 competitive market for trucks and automobiles, and
9 there is a competitive market for natural gas. But the
10 central question here is -- and it's contained in my
11 testimony and my summary -- is for the Commission to
12 answer is there a better way to protect customers from
13 the prices that are obtained from that competitive
14 market and the fluctuations in those prices? Is there
15 a better way?

16 Q I understand. I understand. But that same
17 argument could be put forward with respect to cars, is
18 there a better way to buy cars for the utilities and
19 save customers money, correct?

20 A At a theoretical level, I would agree. I'm
21 not so sure from a factual and practical standpoint it
22 would ever come to the Commission.

23 Q It's hard to look beyond the horizon,
24 correct?

25 A Yes. Who would have thought that Florida

1 would have been 65 percent reliant on natural gas back
2 when coal plants were being proposed to the extent that
3 they were. There's been a very monumental shift.

4 Q All right. Let me just continue along with
5 the questions as related to involvement in competitive
6 markets. You're aware that issue with respect to
7 natural gas has never been in front of this Commission
8 before, correct?

9 A The issue of investing in gas reserves?

10 Q That's right, in foreign jurisdictions:
11 Oklahoma, Texas, Pennsylvania.

12 A I would agree. To my knowledge, it's never
13 come before the Florida Commission.

14 Q And you've been in this hearing room for the
15 last couple of days, there's been a little bit of talk
16 about a couple of places have done this, but not many,
17 right?

18 A Well, I think it's been more than a couple,
19 but there have been instances of it being pursued in
20 other jurisdictions.

21 Q Right. But we just talked about that, you
22 don't have any firsthand information about that, right,
23 you're just relying on what you've heard in the hearing
24 room?

25 A I'm relying on what I've heard from other

1 witnesses.

2 Q Doesn't that present -- you know, this issue,
3 this new issue that everybody kind of said is a new
4 issue -- doesn't that present, in your opinion, a
5 pretty significant policy question where it's kind of a
6 green light, red light thing, do we -- you know, do we
7 go down this road where we're getting involved
8 significantly in a competitive market and taking the
9 costs that are resulting from a competitive market and
10 in effect having those become part of a regulated rate
11 base? In your judgment, isn't that a significant
12 policy call?

13 A That was a lot there, Mr. Moyle. If you
14 could --

15 Q Okay.

16 A -- perhaps more succinctly state your
17 question.

18 Q The decision as to whether to permit FPL to
19 invest capital in a competitive market, you would agree
20 the natural oil and natural gas is a competitive
21 market, correct?

22 A Yes, I would agree.

23 Q Okay. The decision as to whether to permit
24 FPL to take customer ratepayer dollars to invest in a
25 competitive unregulated market like the oil and gas

1 market in significant ways up to 750 million bucks per
2 year under the guidelines, you would agree, would you
3 not, that that's a significant policy question?

4 A I would agree. I mean, that's why we're
5 here. I mean, this is why this Commission has devoted
6 so much time and resources to this very question.

7 Q And given our prior discussion about policy
8 and who sets policy, would you think that it would be
9 inappropriate for the Florida Legislature to consider
10 this issue?

11 A Would it be inappropriate?

12 Q Right.

13 A I'm not sure it would be inappropriate,
14 neither is it inappropriate for this Commission to hear
15 this issue.

16 Q So you're saying, no, it would not be
17 inappropriate for the Florida Legislature to consider
18 this significant policy issue, correct?

19 A Not in my opinion, it would not be
20 inappropriate if the Legislature were so inclined and
21 felt that they needed to provide additional input. I'm
22 not to say that they should not do that, but I am here
23 saying that this Commission has adequate authority,
24 under current statutes, to consider the current
25 proposal.

1 **Q And that's all in your testimony, those**
2 **statutes, 366.01. Is there anything else that you talk**
3 **about?**

4 A The general ratemaking statutes, that and the
5 Commission's policy on fuel adjustment, which is not in
6 statute but has been around for decades without being
7 in statute.

8 **Q There is no statutory authority for the Fuel**
9 **Clause, right?**

10 A That's correct. But it's been in existence,
11 it's been a fundamental policy, and it is a means by
12 which the Commission meets its responsibilities to
13 regulate in the public interest.

14 **Q Are you aware of a legal theory that just**
15 **because something's been done for a long time, if**
16 **there's no statutory backing, that the fact that it's**
17 **been done a long time works to mitigate against the**
18 **lack of a statutory authority?**

19 A Well, I am aware that there has been
20 challenges in the past, in the distant past, of the
21 functioning of the Fuel Adjustment Clause at the
22 Commission and it has not been overturned by a court of
23 competent jurisdiction.

24 **Q Okay. And we talked about that in your**
25 **deposition. Your deposition is in the record. We'll**

1 save everyone a repeat of that conversation. Is that
2 fair?

3 A That's certainly okay with me.

4 Q A couple of other questions and then I think
5 we'll be done.

6 There was a question asked yesterday by a
7 couple of the Commissioners about ways to possibly
8 protect ratepayers if this venture moves forward and
9 the Commission sees it as a good idea, which I guess
10 they'll decide. You were here for that, right?

11 A Well, I've been here for the duration of the
12 hearings, but if you could be more specific in your
13 reference.

14 Q Well, let's just talk about the Commission
15 setting policy. You're aware, are you not, that with
16 respect to solar energy, that the Commission, I think
17 it was just last week or maybe the week before, decided
18 that they would open a docket to look at -- strike
19 that, it wasn't a docket, I think it was a rule
20 making -- they were going to do a workshop. Tell me
21 what your understanding is with respect to the
22 Commission and what they've done with solar in the last
23 month.

24 A Well, my understanding -- and I don't think
25 it's been reduced to an order yet -- but my

1 understanding is that the Commission has continued
2 interest in pursuing solar and the direction from the
3 Legislature in solar and that the Commission is going
4 to take a further look at that.

5 Now, whether that's a workshop or rule
6 making, I would anticipate it's probably going to be a
7 workshop as opposed to rule making. It seems to be
8 kind of early in the process to go straight to rule
9 making, but it may ultimately go to rule making. But
10 it would work itself through the process.

11 **Q And workshops, everybody can come and give**
12 **their thoughts and share, and it's part of what the**
13 **Commission does to formulate policy, correct?**

14 A It is a tool.

15 **Q The same with rule making as a 120 process,**
16 **that the Commission can use to set forth their policy**
17 **through rules, correct?**

18 A As are litigated proceedings such as this.

19 **Q Litigated proceedings such as this don't**
20 **provide as wide an opportunity for people to come**
21 **before the Commission, correct?**

22 A You know, I'm not really sure. I'm sure
23 there are certain standards that have to be met and
24 someone to show that they have standing to intervene.
25 Maybe that showing is not as substantial for a

1 workshop. I would agree with that.

2 Q Are you aware that PCS Phosphate was not
3 allowed to participate in this proceeding?

4 A I'm aware of that, yes.

5 Q But with respect to a workshop, anybody can
6 come to the workshop, right?

7 A I've never known the Commission to deny
8 anyone participation at a workshop.

9 Q I guess in terms of an issue of this
10 magnitude, do you think it would be a bad idea to
11 protect customers, to maybe slow it down a little bit
12 and say, you know, this is an intriguing idea but a
13 lot's happening really quickly, maybe we should, like
14 we're doing with solar, do a workshop? Do you think
15 that would make any sense?

16 A No, to this extent. I think what's in front
17 of the Commission at the present time is a potentially
18 extremely beneficial project for customers, and it does
19 have a time sensitive nature to it.

20 USG has the rights to the gas and are willing
21 to transfer those over to FPL affiliate at net book
22 value to consummate this, if the Commission approves
23 it. I'm not sure that it would be fair to USG to hold
24 this particular project in limbo for six months or a
25 year for there to be some type of a workshop and then

1 perhaps a rule making on the results of that workshop.

2 So the evidence -- there's plenty of evidence
3 in this proceeding -- and, of course, it's up to the
4 Commission to judge that evidence -- but there's plenty
5 of evidence that there are going to be benefits for
6 customers. Those benefits may go away if there's not a
7 decision on this specific project within the general
8 parameters that this docket has set out. So that may
9 be -- may put it in jeopardy.

10 Now, there may be other projects in the
11 future, but we don't know that. We don't know if there
12 are going to be projects of this size or this potential
13 benefit. There may be. And if there's going to be a
14 further exploration of that, perhaps those projects in
15 the future could be captured. But I think this project
16 would be put in jeopardy and I think that would be a
17 detriment to the customers.

18 **Q Okay. I appreciate that.**

19 **I mean, really, you don't have a**
20 **contemplation that this is the only project that this**
21 **Commission is ever going to see, correct? I mean, we**
22 **got these guidelines, they're not put out because**
23 **Woodford is it?**

24 **A I'm hopeful there would be more projects.**
25 **And if there are more projects, that means there's**

1 going to be more potential benefits for customers.

2 Q Have you ever heard of the saying about the
3 tail wagging the dog?

4 A Yes, I used it in my testimony.

5 Q What does that mean?

6 A I used it in the context of not regulating in
7 the public interest over some concerns that this has
8 not been done before and that it could cause some
9 questions about the ability to effectively regulate it.
10 And I basically said that if this project and future
11 projects were cast aside and not considered on its
12 merits because it's not been done before would be the
13 proverbial tail wagging the dog.

14 Q Would it, in your opinion, in terms of the
15 appropriate use of the saying, also be to say, wait a
16 minute, this is going really fast, no workshops, no
17 rule making, no opportunity for people who have not
18 demonstrated standing, we got a really big policy call
19 here whether to let FPL invest hundreds of millions of
20 dollars on this one project on a go-forward basis,
21 billions of dollars, that maybe to protect customers
22 and make sure we get this right, that maybe we should
23 slow this down a bit?

24 And then you would say, well, wait a minute,
25 no, you shouldn't do that because we have this deal on

1 the table now that might go away. And if the deal on
2 the table goes away, you know, the customers are
3 saying, that's okay. But isn't that -- the deal on the
4 table now, isn't that the tail wagging the dog on the
5 larger issue?

6 MR. BUTLER: I'm going to object to this as
7 argumentative. It is Mr. Moyle testifying and
8 basically not having any question in it, other
9 than a question mark at the end of the statement.

10 CHAIRMAN GRAHAM: I'll allow the question.

11 THE WITNESS: Thank you. I'm going to do my
12 best to answer your question.

13 The answer to your question is, no, it is
14 not. Mr. Moyle, have you been involved in the
15 same proceeding I have been? This proceeding has
16 been going on for six months. It has -- there
17 have been reams and reams and round and round of
18 discovery in this docket. There have been three
19 days of depositions. There have been two days --
20 more like three days of hearings compressed into
21 two days. This is a very thorough vetting of this
22 project and the guidelines in front of the
23 Commission. I'm not so sure what more a workshop
24 would have for the Commission.

25 Now, obviously the Commission has ongoing

1 jurisdiction. If the Commission feels that at
2 some point there needs to be a workshop or even a
3 rule making and invite more people to participate
4 in terms of future gas reserve projects, it's
5 certainly within their discretion to do. And if
6 they feel that that's appropriate, I certainly
7 would not object to that, I would encourage it.

8 But I would not put this project in jeopardy,
9 and I would certainly not downplay the
10 thoroughness of the vetting of this project which
11 has gone before this Commission and the very
12 thorough job that the staff has done in this --
13 and the intervenors, including you, Mr. Moyle.

14 BY MR. MOYLE:

15 Q Thank you. And I think there are a lot of
16 witnesses that probably would say, yeah, I have been
17 involved in this for the last six months and it's a lot
18 happening quickly.

19 You're also aware in the regulatory world
20 things don't always happen quickly, correct?

21 A Things do not always happen quickly. And
22 that's one of the reasons why we try to take steps to
23 minimize regulatory lag and to give regulatory
24 certainty, to the extent we can, like in the form of
25 guidelines.

1 Q Do you have a concern -- now, you had
2 mentioned solar and that the Legislature mentioned
3 intent to let's move forward on solar.

4 Do you have a concern that this petition is
5 in effect putting the Commission pretty far out on a
6 limb with respect to making a big policy decision that
7 the Legislature hadn't expressly weighed in on? Does
8 that concern you at all?

9 A It doesn't concern me.

10 Q You're not a --

11 A I'm not a Commissioner right now. But, no, I
12 don't -- here again, I think the Commission has
13 adequate jurisdiction and adequate discretion to
14 consider this proposal on its merits without any
15 further guidance from the Legislature. But if further
16 guidance were to be given by the Legislature, I'm sure
17 the Commission would be happy to get it and would
18 certainly abide by that guidance.

19 Q You would agree when this Commission is
20 tasked with determining what's in the public interest,
21 that the views of the consumers should be considered,
22 correct?

23 A Yes.

24 Q And you would also agree that the views of
25 the consumers are an important and significant

1 **component of determining the public interest, correct?**

2 A Yes. It is not the determining factor, but
3 it is a significant component.

4 Q And you're not unclear in your mind, are you,
5 with respect to the position -- the collective position
6 of all of the consumer interests that we're saying, no
7 thank you to this project? You understand that, right?

8 A Yes, I've heard you say it several times.

9 Q And when you were on this Commission, did you
10 ever deny a utility request when the consumers were
11 urging, no thank you?

12 A Yes.

13 Q Okay.

14 A On occasions I --

15 Q All I need is a yes or a no. I appreciate
16 your time today. It's always enjoyable to talk with
17 you, more so when you're not under oath.

18 A Thank you.

19 CHAIRMAN GRAHAM: Staff.

20 CROSS EXAMINATION

21 BY MS. BARRERA:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Mr. Deason, I think it's been established
25 that you're testifying in this case as a policy

1 witness; is that correct?

2 A Yes.

3 Q And you're not offering fact testimony on the
4 costs to be incurred or the forecast relied upon by
5 other witnesses, but rather on the policy implications
6 on whether the Commission should approve FPL's request
7 in this proceeding for the investment in the Woodford
8 Gas Reserves Projects to be found prudent and the
9 associated revenue requirement appropriate for recovery
10 for the fuel costs; is this correct?

11 A It is correct.

12 Q And would you agree that FPL's request in
13 this proceeding, if approved, could be described as
14 growing rate base through the Fuel Clause?

15 A It could be described as such. I think it
16 would be a more apt description to say it would be a
17 appropriately growing rate base in the Fuel Clause.

18 Q And would you agree from the perspective of
19 risk of recovery, that there's a difference between an
20 opportunity to earn the midpoint return on equity, on
21 capital and rate base, and the assurance of earning the
22 midpoint return on equity on capital recovered through
23 the Fuel Clause?

24 A And there are two different mechanisms. I'm
25 not sure that one provides a better assurance of

1 recovery. There are things working in opposite
2 directions in that regard.

3 In terms of a rate base item that is
4 recovered through base rates, that item has to go
5 through -- basically to be included in rates, it would
6 have to be part of a rate case and that be considered.
7 There's usually delay in that consideration. That's
8 one of the reasons why the Commission has the policy of
9 encouraging investments that produce fuel savings and
10 allow those through the Fuel Clause to avoid that
11 regulatory lag.

12 But, yes, there's some regulatory lag
13 associated with base rate recovery, so that offers some
14 element of risk. And there's ongoing prudence
15 determinations, but there's also ongoing prudence
16 determinations in the fuel docket. And the fuel docket
17 is every year. So once the determination is made in
18 base rate, it's kind of, while the Commission has
19 ongoing jurisdiction and the ability to audit, usually
20 there's not an in-depth prudence review until the next
21 rate case. In the fuel docket, you have that every
22 year, along with the true-ups and determinations
23 associated with that.

24 So while there's more regulatory alacrity in
25 the fuel docket, there's more regulatory scrutiny and

1 review on a more current basis. So, you know, to say
2 that one is more assured than the other, I'm not really
3 sure.

4 I do know that it is a purpose -- and I would
5 agree with this -- it is a purpose of the fuel docket
6 to provide more timely recovery of prudent costs. And
7 in that context, there is more likelihood that the
8 allowed rate of return is going to be actually earned
9 on those investments if they are determined to be
10 prudent.

11 **Q Okay. And would you agree that there are**
12 **significant policy implications associated with growing**
13 **rate base through the Fuel Clause?**

14 A There are policy considerations, and that's
15 what we're here doing today, is to determine whether
16 there are going to be fuel savings, the likelihood of
17 fuel savings, with the added benefit of hedging
18 benefits or stabilization of fuel costs through the
19 clause. And that if those benefits can be shown to the
20 Commission with enough assurance that they're going to
21 materialize, those investments not only are eligible
22 for recovery, they should be recovered. And it's
23 Commission's policy to encourage those type of
24 investments.

25 **Q Okay. I have no more questions. Thank you.**

1 **CHAIRMAN GRAHAM: Commissioners.**

2 **Commissioner Brise.**

3 **COMMISSIONER BRISE: Thank you, Mr. Chairman.**

4 **Good afternoon, Mr. Deason.**

5 THE WITNESS: Good afternoon.

6 COMMISSIONER BRISE: First question. Has the
7 Legislature ever rebuffed the Commission?

8 THE WITNESS: Rebuffed in the sense that it
9 told the Commission that it did something, went
10 too far with something?

11 COMMISSIONER BRISE: Yeah.

12 THE WITNESS: You know, sitting here right
13 now, nothing comes to mind. But through the long
14 history of the Commission, I would be surprised if
15 that had not happened before. But I can't think
16 of an example right now.

17 COMMISSIONER BRISE: Sure.

18 THE WITNESS: Maybe you have an example.

19 COMMISSIONER BRISE: Has the Legislature,
20 through either a series of actions or through its
21 interaction with the Commission, reacted to either
22 a series of decisions or a particular decision to
23 express its discontentment with the approach of
24 the Commission?

25 THE WITNESS: Yes, that's happened before,

1 many occasions. And I'm -- there's some actions
2 to that regarding the very recent past. There was
3 also in the very distant pass where the
4 Legislature expressed dissatisfaction with the
5 functioning of the Fuel Clause and wanted the
6 Commission to change it or do away with it. And
7 the Commission, in its discretion, did not do that
8 and continued the Fuel Clause.

9 COMMISSIONER BRISE: Okay.

10 THE WITNESS: But it was not a statute passed
11 by the Legislature. If there had been a statute
12 passed, the Commission would have obviously abided
13 by the statute.

14 COMMISSIONER BRISE: There was a conversation
15 about the tail wagging the dog and so forth. Do
16 you think -- I think we would agree that what
17 we're in, the posture that we're in right now is
18 what would be considered a seminal moment in terms
19 of what we're looking at in terms of reserve,
20 right?

21 THE WITNESS: (Nodding head affirmatively.)

22 COMMISSIONER BRISE: Do you think, from the
23 perspective of prudent policy making, if we're
24 going to enter into that realm, that it would be
25 appropriate to establish guidelines before a

1 particular project is taken up and not do it in
2 conjunction with a particular project?

3 THE WITNESS: In a perfect world, I would
4 agree with that, that that may be a preferable
5 way. But we're not in a perfect world and we do
6 have a specific proposal in front of the
7 Commission. And I don't know what shelf life it
8 has. I'm sure it's probably not indefinite, so
9 that is a consideration.

10 There's also the other side of the coin is
11 that oftentimes a Commission -- I know when I was
12 on the Commission, I found benefit in seeing,
13 instead of just talking in the abstract and in
14 generalities, well, show me a specific, show me an
15 example. Well, you have that in front of you
16 today. You do have the benefit of that to show
17 this particular project meets the guidelines which
18 FPL is proposing. So you have something that you
19 can wrap your hands around, to some extent, and
20 probe and explore and scrutinize and ask the
21 questions over. So to that extent, it's a
22 benefit. So, you know, I can see pros and cons of
23 going in either direction.

24 COMMISSIONER BRISE: Sure. And I could
25 recognize that and I could see that. Now having

1 to address a particular project that has a
2 potentially short shelf life from the perspective
3 of having to act on it, then rises the -- I mean,
4 increases the pressure with respect to how to get
5 it right so that the issues, such as the risk
6 associated with it for the consumers, if we're
7 talking about this within the context of hedging,
8 that we are looking at a 50-year hedge, which
9 doesn't exist anywhere else, how, from your
10 perspective, do we do that appropriately so that
11 consumers aren't negatively affected while the
12 impact to the company is minimal?

13 THE WITNESS: Okay. It's a very good
14 question, and I'll try to offer my thoughts on it.

15 There are several considerations which I
16 think are important. One is that while this is
17 the -- the proposal is a significant proposal and
18 it is -- it's very important and it is an
19 important policy consideration, it is one small
20 step in the grand scheme of things. As we were
21 shown earlier on the posters, while this project
22 may have a 50-year life, the majority of the
23 benefit is going to be in the early years, okay.

24 So while those wells may be producing over 50
25 years, the costs are going to be incurred in the

1 early years. And a majority of that cost is going
2 to be the depletion, which is appropriate because
3 if you get the gas out, you're going to recognize
4 the depletion.

5 And even at those early years, this
6 particular project, at its maximum, as I
7 understand it, is only going to be 2.7 percent of
8 the total fuel, natural gas purchases that are the
9 burn that FPL would have. So, you know, it's
10 important, it's significant, but it's not that
11 significant. So it gives you an opportunity to
12 test the waters, to some degree, to see what the
13 experience is going to be.

14 So to that extent, it's -- I think you should
15 take some comfort in the fact that this particular
16 project, while it's important, is not going to
17 have that significant of an impact one way or the
18 other, but it could lay a very strong foundation
19 for significant impacts in the future.

20 Now, there are other aspects to your
21 question, and I want to fully answer it.

22 COMMISSIONER BRISE: Sure. The second
23 portion of my question dealt with the risk with
24 respect to the amount of risk that the consumers
25 are taking on and the amount of risk that the

1 company is taking on in being in such a long-term
2 relationship with this one particular project or
3 similarly-situated projects, if we agree with it.

4 THE WITNESS: I agree there are risks
5 associated with the project. But I think what the
6 Commission needs to keep its mind on is that there
7 are risks associated with the current way that
8 fuel is procured. And what is being proposed is
9 just another -- a different way of procuring fuel
10 that is going to be burned by the utility to
11 generate electricity.

12 So there are already risks on the customers
13 right now associated with fuel procurement. So
14 the question, is there a better way to help
15 minimize some of that risk or manage that risk?
16 That's going to be a judgment for the Commission
17 to make.

18 In return for that cost reduction which is
19 anticipated, and the mitigation of the risk and
20 hopefully the hedging benefits of the more stable
21 prices, to achieve that goal is going to take an
22 investment in the gas reserve to lock them in, to
23 have the ability to actually produce that gas and
24 use it for the benefit of customers.

25 That's the cost of the project. It's a

1 legitimate cost and it has to be recovered. And
2 that is a benefit to FPL, but it is also -- FPL
3 has, you know, opportunity cost of capital, too.
4 And if they don't deploy that capital for this
5 project, they've got other projects, that perhaps
6 NextEra can deploy that.

7 And so they're making the decision, the
8 proposal to the Commission that -- saying,
9 Commission, we're willing to make this investment
10 for the benefit of our customers and we're willing
11 to subject it to a regulated return. There are
12 benefits of that.

13 It's generally assumed that return is going
14 to be earned with some assurity. But if they took
15 that capital and invested it elsewhere, they would
16 not be subject to that regulated return, and
17 depending on the prudence of their investments and
18 the ability to which they are able to manage those
19 investments, they could earn much more than
20 10.5 percent, but they also have the risk that
21 they can earn much lower than 10.5 percent.

22 That's the quid pro quo of the regulatory
23 compact, and that's what is being presented for
24 the Commission to determine whether you want to
25 vertically integrate the utility one more step on

1 that ladder to go and start locking down some gas
2 reserves, knowing that currently and into the
3 future there's going to be probably 60 percent
4 plus use of natural gas to generate electricity
5 for this utility.

6 COMMISSIONER BRISE: Thank you. And that's
7 all I have for you this morning -- this afternoon,
8 really.

9 CHAIRMAN GRAHAM: Commissioner Balbis.

10 COMMISSIONER BALBIS: Thank you,
11 Mr. Chairman. And thank you, Mr. Deason, for your
12 testimony. It's always good to have you on the
13 stand.

14 I want to focus on the guidelines and not so
15 much on the Woodford Project, because I believe
16 that not to let the perfect be the enemy of the
17 good, if I got that correct.

18 But as far as the guidelines, which allow up
19 to 25 percent investment or percentage of the gas
20 burn or \$750 million a year, is there a percentage
21 or investment amount that would still allow FPL
22 the flexibility to enter into this space and for
23 customers to realize a significant benefit without
24 having that level of investment? So, for example,
25 say, 25 percent or 10 percent or 5 percent versus

1 the 750 million, having that reduced so that the
2 benefits are still there but the investment is
3 less?

4 THE WITNESS: Well, it could be done on a
5 slower pace or with a smaller goal in mind. But
6 to get the same amount of benefits, I'm not
7 sure --

8 COMMISSIONER BALBIS: No, the benefits would
9 be reduced as well, but it would still be
10 something significant to insulate customers from
11 price volatility.

12 THE WITNESS: Well, I think it's important to
13 realize -- and I think I've answered this to a
14 previous question -- is that this is one small
15 step, and there are going to be other projects to
16 follow, and they're not going to be instantaneous,
17 and that the 750 million is not a target but it is
18 a cap.

19 And this Commission is going to have
20 experience, if it approves the Woodford Project,
21 it's going to have that experience and it's going
22 to learn -- and this is going to be a learning
23 process for everyone involved. I think FPL has
24 been very upfront about that.

25 And once you gain more experience, you will

1 be in the position to ascertain whether the
2 guidelines need to be changed, whether there need
3 to be other changes associated with the
4 administration of these type projects. So I just
5 see it as a step in the right direction. But at
6 this point, it is a step, it's a significant step,
7 but it's not to the extent to where there's going
8 to be a tremendous harm to customers. There's
9 going to be a benefit, anticipated benefit.

10 I think the record is replete with testimony
11 to the fact that the only way there's going to be
12 harm to customers is if gas prices fall much lower
13 than the projections that are in the economic
14 analysis. If that happens, though, there's still
15 going to be 98 percent plus of the gas being
16 burned by FPL that's going to be lower than what
17 is anticipated at this point, and that's going to
18 be a tremendous benefit for customers.

19 COMMISSIONER BALBIS: Now, you mentioned a
20 learning process and the Commission can look at
21 how this process is working. But the guidelines
22 themselves, my understanding is that once the
23 guidelines are approved, FPL can immediately move
24 forward with seeking opportunities, investing in
25 opportunities, as long as it doesn't exceed the

1 cap or doesn't exceed that rate. So I'm not sure
2 if specifically in the guidelines it includes or
3 references additional controls. And if it
4 doesn't, would you recommend any to allow the
5 Commission to have that oversight so that it could
6 be more of a controlled process?

7 THE WITNESS: Give me just a moment.

8 I think that there is -- there's some
9 language in one of your orders dealing with the
10 performance incentive factors and in dealing with
11 guidelines for hedging. And I found this language
12 pretty instructive, and I think it probably
13 applies to the guidelines for the gas reserve
14 projects. And I'm looking at Order Number PSC
15 080667, page 10.

16 And in referencing the guidelines, the
17 Commission says the guidelines will -- now, this
18 is not in relation to the gas reserves, these are
19 guidelines in relation to hedging.

20 It says, The guidelines will provide
21 additional clarity regarding the timing and scope
22 of the review of hedging results. However, we
23 must retain our ability to review the prudence of
24 a utility's conduct. In approving the guidelines,
25 any regulatory risk that could be associated with

1 hedging is minimized.

2 I think that's the purpose of the guidelines
3 here. I think FPL is looking for some indication
4 from the Commission that if we abide by the
5 guidelines, that there is the presumption that the
6 project meets the guidelines. And, of course,
7 that's the responsibility of FPL to prove that up.
8 But if it meets the guidelines, that those are
9 going -- the guidelines will be the rules of the
10 game and that it will minimize regulatory risk,
11 but there's still an ongoing responsibility for
12 the Commission to review the prudence of the
13 utility's conduct, even within those guidelines.

14 So we're trying to reach a balance by trying
15 to give some assurances to the utility that the
16 rules of the game are not going to be changed in
17 midstream, that if they make an investment
18 consistent with the guidelines, there's going to
19 be a presumption, but there's also ongoing
20 responsibility to manage that project in a way
21 that it, to the greatest extent possible, it's
22 going to produce the anticipated benefits for
23 customers.

24 So guidelines may be changed and it should be
25 changed if circumstances dictate that they should

1 be changed, but they should be changed
2 prospectively so that if the Woodford Project
3 comes in and another project comes in, and then
4 experience shows that the guidelines need to be
5 changed, it's certainly within your discretion to
6 change those. But they certainly would not be
7 retroactive, they would be for future projects.

8 COMMISSIONER BALBIS: Okay. And then just to
9 follow up on the first question I asked, and I'm
10 not sure you answered it, or you did but -- so if
11 the Commission were to revise the guidelines, so
12 instead of 25 percent ultimate percentage, it's
13 15 percent or 10 percent or whatever it may be,
14 does that limit the flexibility that FPL would
15 need to engage in these activities and, therefore,
16 limit the benefits to customers?

17 I mean, other than the magnitude of the
18 benefits, and the same question for the
19 750 million, if we were to approve 500 million or
20 300 million per year?

21 THE WITNESS: To precisely answer that
22 question -- and I'm glad you clarified it a little
23 bit more for me -- yeah, I agree that it has the
24 potential to reduce the absolute amount of benefit
25 that could be achieved, but it may give some

1 assurance that the next projects are going to be
2 pursued and that for those projects that the
3 maximum amount of benefit can be obtained with the
4 expectation that if a good track record is
5 achieved, that the Commission could be comfortable
6 to extend that from 15 percent to 20 percent or to
7 increase the cap from 500 million to 600 million,
8 maybe in a step-wise fashion.

9 But if the Commission were to adopt
10 guidelines that were significantly less than
11 what's being proposed, I think it would be prudent
12 for the Commission to also allow FPL to come
13 before the Commission with a specific petition
14 saying, Commission, we have this wonderful
15 opportunity that's going to be more than -- say,
16 in the revised guidelines instead of 750 million,
17 it's 250 million, just as an example -- and come
18 before the Commission and say, we have this
19 tremendous project out here and it's going to be
20 more than 250 million and it's something that the
21 Commission should consider but it would have to be
22 considered rapidly, because that's the nature of
23 the guidelines is to be able to give the ability
24 for FPL to react to the market and try to capture
25 benefits as quickly as possible. So that's the

1 give and take, the balance that's trying to be
2 reached.

3 I think there's testimony that the
4 750 million is not the target, it's the cap. And
5 it's probably that high so that if there are
6 projects that become available, that it would not
7 necessitate coming in with a special petition, but
8 certainly it's within the Commission's discretion
9 to try to balance all of those things and, you
10 know, try to test the waters to some extent. And
11 you're certainly free to revise those guidelines
12 on a going-forward basis after you get more
13 comfort with the projects that may come in under
14 those guidelines.

15 COMMISSIONER BALBIS: Okay. Thank you.
16 That's all I have.

17 CHAIRMAN GRAHAM: Commissioner Edgar.

18 COMMISSIONER EDGAR: Thank you. Good
19 afternoon.

20 THE WITNESS: Good afternoon.

21 COMMISSIONER EDGAR: I've got a couple of
22 questions in a couple of different areas, so I'll
23 try to do it orderly, but I will be jumping around
24 a little bit.

25 You had a few questions earlier today in

1 which I believe you responded that you were
2 testifying as an expert in regulatory policy; is
3 that correct?

4 THE WITNESS: Yes.

5 COMMISSIONER EDGAR: And if memory serves, at
6 an earlier time in your professional career, you
7 worked as a member of the Office of Public
8 Counsel; is that correct?

9 THE WITNESS: Yes.

10 COMMISSIONER EDGAR: Would it be accurate to
11 say that your time as a professional member of
12 that office contributed to your current level of
13 knowledge and expertise?

14 THE WITNESS: Yes.

15 COMMISSIONER EDGAR: You've also testified
16 that the project that is contained within the
17 documents here before us would be a hedge against
18 the volatility in the natural gas market. Are
19 natural gas prices volatile now?

20 THE WITNESS: I would say that they are
21 volatile. They are probably less volatile now
22 than they have been in the recent past, but there
23 have been instances of volatility. The polar
24 vortex was a situation and there's some unknowns
25 on the horizon that could affect volatility.

1 Commissioner, you experienced volatility in
2 natural gas prices from hurricanes. Hopefully,
3 hurricanes will not impact the Woodford Project,
4 but there are also other things, we don't know
5 what may happen in the future with fracking
6 regulations. We don't know what's going to happen
7 with the export of LNG. We don't know what's
8 going to happen with 111(d). There are numerous
9 factors out there.

10 And one thing is for sure, traditionally
11 natural gas has been volatile, perhaps more
12 volatile at some times than others. Right now we
13 may be in a little bit of a lull with that
14 volatility, but I see there are a lot of things on
15 the horizon which could change that temporary
16 lull.

17 COMMISSIONER EDGAR: And you have heard me
18 say numerous times, almost everybody has heard me
19 say numerous times, that the volatility and the
20 price spikes in natural gas early in my time as a
21 Commissioner has definitely made an impression on
22 me as I deliberate on many, many issues.

23 Do you believe that natural gas prices have
24 been volatile in, say, over the past two years?

25 THE WITNESS: Yes. Volatility is a relative

1 term, and in that context --

2 COMMISSIONER EDGAR: And I agree. And I
3 apologize, sir, I do agree that it is a relative
4 term. And that's kind of one of the points that
5 I'm trying to get at, because in your testimony
6 you use that term and others have used it. So I'm
7 trying to pin that down a little bit more.

8 THE WITNESS: Yes, relatively speaking, it is
9 volatile and has been volatile, but there have
10 been times where it has been more volatile.

11 COMMISSIONER EDGAR: And are you aware that
12 at one or two points in time over the last few
13 years, this Commission has had some discussions
14 considering whether to do away with the natural
15 gas hedging program that the utilities have been
16 authorized to conduct?

17 THE WITNESS: I understand that there have
18 been discussions along those lines, but as of
19 present, the hedging programs are still a part of
20 the Commission's policy to try to mitigate price
21 volatility.

22 COMMISSIONER EDGAR: And do you believe it
23 would be accurate to say that this Commission,
24 within the last few years, made an affirmative
25 decision for those hedging programs to continue?

1 THE WITNESS: I would agree with that
2 assessment.

3 COMMISSIONER EDGAR: Slightly switching
4 gears. For regulatory policy and practice, of
5 course in the evidentiary hearing, as we have
6 here, we have the company presenting witnesses to
7 advocate for their request or position, and we
8 have the Office of Public Counsel and other
9 interveners advocating for their position and
10 requested policies. And our job, of course, is to
11 balance somewhere within the scope of all of the
12 evidence that we hear.

13 So with that in mind, for this particular
14 project, and then also the guidelines, because I
15 do see them as two different things before us,
16 what protections do you believe are built in for
17 the consumers? And I do mean protections. The
18 potential cost savings is one thing and it's
19 certainly a very important factor, but what are
20 the protections that are built in for consumers?

21 THE WITNESS: Okay. The protections that are
22 built in for consumers are the same protections
23 that exist for any investment that is made by a
24 regulated utility for the exclusive benefit of its
25 customer. It's no different than investing in a

1 power plant in the sense that a utility has an
2 obligation to make investments which benefit their
3 customers and provide reliable service. They have
4 an obligation to demonstrate to the Commission
5 that it's the prudent thing to do. They have an
6 ongoing obligation to manage that in a manner that
7 continues, to the extent possible, to produce the
8 benefits that are anticipated.

9 It would be no different with this project.
10 There would be ongoing scrutiny. There would be
11 an ongoing obligation of the utility to manage and
12 to execute the Woodford Project in a way that best
13 benefits its customers. And they have the
14 obligation to do that with the full and
15 appropriate expectation that they would earn a
16 rate of return on their investment consistent with
17 the regulated return that the Commission found to
18 be reasonable.

19 Here again, it's the regulatory compact. So
20 to the extent that the regulatory compact provides
21 safeguards for customers in rate-based
22 proceedings, it would be the same type of
23 regulatory compact that exists for this proposal
24 that would be recovered through the Fuel Clause.

25 COMMISSIONER EDGAR: So what specific actions

1 will FPL be required to take to balance the risks
2 and the benefits to the ratepayers from investing
3 in this project?

4 THE WITNESS: Once again, to the analogy that
5 I provided earlier, they would have the
6 obligation, to this project and any future
7 projects, to identify a project, thoroughly
8 analyze the economics of it to determine whether
9 there are going to be benefits for customers, to
10 make an assessment of that, to subject it to
11 sensitivity analyses, to present to the Commission
12 those findings, and hope -- and to demonstrate to
13 the Commission -- it's ultimately the Commission's
14 decision whether to approve that or not. If it is
15 approved, there's still the ongoing obligation to
16 manage the project.

17 I can't point to a specific mechanism, other
18 than there are things in the guidelines which
19 limits -- and I had a discussion with Commissioner
20 Balbis about that earlier -- and there could be
21 some discretion as to where those guidelines are
22 established.

23 But I think it's safe to say that you're not
24 opening the floodgate, so to speak, in giving a
25 direction to the Commission to go -- I mean, to

1 FPL to go out and pursue these projects and not
2 give due consideration to the economics of them
3 and the likelihood that they will provide benefits
4 for customers.

5 COMMISSIONER EDGAR: It's been mentioned a
6 couple of times during these proceedings, these
7 last two and almost three days, about the months
8 of work that has gone into getting us to this
9 point, as is the case with almost everything that
10 comes before us. But most of what I've heard and
11 read has to do with basically the first three
12 issues, whereas issues four, five and six, to me,
13 it seems, has received a little less discussion,
14 anyway. I know there's definitely writings. And
15 you're listed as testifying on all of them. So I
16 want to look at those for a moment.

17 Issues four and five deal with the
18 guidelines. And I'm a little confused by the
19 language between the issues and the issue
20 positions because in some places they're referred
21 to as guidelines and some places they're referred
22 to as criteria and some places as a framework.
23 I'm not sure those are all synonymous terms.

24 But from your knowledge and expertise, what
25 would be the practical reality of moving forward

1 if the guidelines were to be approved versus if
2 the Commission were to take more time to consider
3 those since we have spent a lot time on this
4 specific project that does have a timeline?

5 THE WITNESS: Yeah. I see while the
6 guidelines and the Woodford Project are
7 intertwined to a degree, they are separable also,
8 okay. I think the Commission has the discretion
9 to either vote yes or no on this particular
10 project and consider the guidelines separate.

11 I think this particular project, though, does
12 give you some useful information in terms of
13 evaluating the guidelines in terms of the
14 magnitude of the project and how the project would
15 work. And it just helps you better envision
16 projects that would be submitted to you under the
17 guidelines.

18 COMMISSIONER EDGAR: Certainly makes that
19 less abstract than it could have been otherwise.

20 THE WITNESS: Absolutely. But I see that if
21 the Commission is desirous to delve deeper into
22 the guidelines and to take some additional time to
23 look at the guidelines, you know, having sat there
24 I know how important it is for a Commissioner to
25 be comfortable with -- before he or she makes a

1 vote.

2 And I would -- you know, instead of -- I
3 would suggest and even recommend that you become
4 comfortable with the guidelines, take additional
5 time. I would not put it on the back burner
6 indefinitely. I know that while the Commission
7 certainly has a full agenda or a full docket on
8 things, their agenda is coming up, maybe the
9 February time period might be a time that you
10 could -- I would not want to -- I would not
11 recommend indefinitely delaying the consideration
12 of the guidelines.

13 But I do know that there -- that this
14 particular Woodford Project, that there is some
15 time sensitivity associated with it, as I
16 characterize it. It does not have an indefinite
17 shelf life. I don't know what the shelf life is,
18 but it's been sitting there for a while.

19 I think that it has been scrutinized to the
20 extent that the Commission should be prepared to
21 give that an up or down vote. And delaying the
22 guidelines, to some extent, I think would not be
23 harmful to the process as long as those guidelines
24 are dealt with, you know, within a reasonable
25 period of time.

1 COMMISSIONER EDGAR: The specific project
2 that is before us I personally find intriguing.
3 We'll still be weighing through the evidence, of
4 course, over the next few weeks, but I am still
5 also wrestling with how the guidelines would
6 interact with our procedures on a going forward
7 with those other projects that may or not be out
8 there and are still somewhat abstract to me. So
9 that's just a comment as an aside.

10 Okay. I mentioned issues four, five and six.
11 That touches on four and five. Issue six
12 addresses the settlement and stipulation that was
13 passed by this Commission, I believe in December
14 of 2012. And I believe you were a witness in the
15 hearing that eventually led to that decision by
16 the Commission?

17 THE WITNESS: Yes.

18 COMMISSIONER EDGAR: Can you speak to the --
19 to issue six, which is basically does that
20 stipulation and settlement that was approved by
21 this Commission preclude FPL from seeking these
22 sorts of costs through the Fuel Clause?

23 MR. MOYLE: With all due respect to you --

24 COMMISSIONER EDGAR: Really.

25 MR. MOYLE: -- FIPUG raised that issue.

1 We're good with the record as we have it now and
2 would not -- we would object to Mr. Deason
3 providing --

4 COMMISSIONER EDGAR: Opining?

5 MR. MOYLE: Yeah, opining, providing
6 testimony, his view of the world.

7 COMMISSIONER EDGAR: Overruled.

8 MR. MOYLE: We're comfortable with that. If
9 does do, I would like to have a chance to follow
10 up on him just as a matter of consistency with due
11 process.

12 COMMISSIONER EDGAR: I think that was an
13 objection, Mr. Chairman.

14 CHAIRMAN GRAHAM: That's my job. Overruled.

15 COMMISSIONER EDGAR: Briefly, Mr. Deason.

16 THE WITNESS: Okay. I think I understand the
17 question. And if I don't answer it, please --

18 COMMISSIONER EDGAR: You know I will.

19 THE WITNESS: -- tell me that I didn't answer
20 your question and maybe rephrase it.

21 The settlement dealt with base rates. We're
22 in a proceeding that's in the fuel docket. This
23 proposal is consistent with the Commission's
24 policy concerning the handling of investments
25 which save fuel costs. It's appropriately before

1 the Commission within the fuel docket.

2 I do not see a conflict between considering
3 this investment in terms of the fuel docket in
4 that it being somehow prohibited or being somehow
5 in conflict with the settlement.

6 COMMISSIONER EDGAR: All right. That's good.
7 Obviously that's for us to decide, but I
8 appreciate your comment.

9 THE WITNESS: Sure.

10 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

11 CHAIRMAN GRAHAM: Redirect.

12 MR. BUTLER: Thank you, Mr. Chairman. I'll
13 try to be very brief.

14 REDIRECT EXAMINATION

15 BY MR. BUTLER:

16 Q Mr. Deason, you had some discussions with --
17 I believe it was with Mr. Moyle -- about statutory
18 authority for the Fuel Clause. Do you recall that?

19 A Yes.

20 Q Okay. Would you please comment on what, if
21 any, statutory authority you believe there is for the
22 Commission to have the Fuel Clause and execute it as it
23 does?

24 A Well, I think it's just inherent within the
25 scope of jurisdiction which has been granted to the

1 Commission to regulating the public interest and also
2 to set rates that are fair, just and reasonable based
3 upon the ability of a utility to make investments and
4 to seek a reasonable return on that investment such
5 that rates are compensatory and fair to customers at
6 the same time. I think it's interwoven within that
7 general statutory authority and discretion that has
8 been granted to the Commission.

9 **Q Staying on the topic of the Fuel Clause and**
10 **the eligibility of this project for it. If FPL spends**
11 **money to buy fuel in the -- buy natural gas in the**
12 **natural gas markets at market prices and uses that**
13 **natural gas to generate electricity, would it be**
14 **eligible to recover its expenditures for that fuel**
15 **through the Fuel Clause?**

16 A Yes. And assuming those costs are prudently
17 incurred, those costs would be recovered through the
18 clause.

19 **Q And FPL's proposal is essentially to spend**
20 **money in the form of capital investment and expenses to**
21 **get fuel that it would burn through the -- or I'm**
22 **sorry -- burn in its power plants, correct?**

23 A Yes.

24 **Q Okay. What is your opinion as to --**

25 MR. MOYLE: Could we have nonleading

1 questions.

2 MR. BUTLER: Okay.

3 MR. MOYLE: He's leading him.

4 BY MR. BUTLER:

5 Q What is your opinion as to whether the costs
6 that FPL incurs to procure that fuel and burn it in its
7 plants would be recoverable through the Fuel Clause?

8 A It would be recoverable, and it's irrelevant
9 as to whether the costs are capital or direct costs
10 incurred to buy the commodity price of the fuel.
11 What's being proposed is just a way to accrue -- to
12 procure those gas molecules, and part of it is an
13 initial investment being made. And if -- here again,
14 consistent with the Commission's policy -- if that
15 investment can be shown to provide benefits to
16 customers, it's eligible for recovery through the
17 clause.

18 Q Thank you.

19 You were asked about Exhibit 67, which is
20 this Bloomberg Article on Duke Energy. Do you have a
21 copy of that available to you there?

22 A Yes.

23 Q Okay. Does Duke Energy, to your knowledge,
24 operate in more than one state?

25 A Yes.

1 Q Is there any indication in this article, to
2 the best that you can discern, on what jurisdiction the
3 Duke financial -- chief financial officer, Mr. Young,
4 was referring to in his comments about locking in
5 prices and earning a return?

6 A Based upon my reading, there's no indication
7 one way or the other.

8 Q Okay. Public Counsel asked you a series of
9 questions that were intended to distinguish, in their
10 view, between the Commission's decision allowing Fuel
11 Clause recovery of the purchase of Scherer railcars and
12 the Woodford Project under consideration here. Do you
13 recall those questions?

14 A Yes.

15 Q Okay. Would you please compare and advise
16 the Commission as to what you see that is similar about
17 the Scherer railcar purchase and the Woodford Project?

18 A Yes. There's similarity in that the
19 investment in the railcars, the purchase of the
20 railcars, that was a cost, an investment that had not
21 traditionally been included in base rates, so there's
22 that similarity. It was an investment made that showed
23 net savings for customers, projected net savings for
24 customers, similar to the project that's in front of
25 the Commission presently. There is a distinction in

1 the magnitude of the dollars.

2 The project currently in front of the
3 Commission is higher in absolute number of dollars, but
4 I'm not sure if that's particularly relevant. If
5 anything, it shows that there's going to be more
6 potential benefits for customers consistent with the
7 amount of dollars that are being invested.

8 I'm not sure it's the Commission's policy
9 when it adopted Order 14546 that there was some --
10 there was no limitation put on the amount of dollars
11 that could be invested. So there's some similarities
12 and there's some differences, but I think there are a
13 lot of the similarities.

14 **Q Thank you. That's all the questions that I**
15 **have.**

16 **CHAIRMAN GRAHAM: Exhibits.**

17 MR. BUTLER: We would move the admission of
18 Exhibit -- which number is it here -- 33?

19 CHAIRMAN GRAHAM: Any objections?

20 (No response.)

21 CHAIRMAN GRAHAM: Seeing none, we'll enter
22 Exhibit 33 into the record.

23 (Exhibit No. 33 was received in evidence.)

24 CHAIRMAN GRAHAM: Any other exhibits?

25 MR. REHWINKEL: 67 Public Counsel moves.

1 CHAIRMAN GRAHAM: Any objections?

2 (No response.)

3 CHAIRMAN GRAHAM: Seeing none, we'll enter 67
4 into the record.

5 (Exhibit No. 67 was received in evidence.)

6 CHAIRMAN GRAHAM: All right. My clock in the
7 back there says we got about a quarter till.
8 Let's take a ten-minute break, because I know we
9 have one witness left, so I'm going to mush on and
10 not stop for lunch. So at five till, we'll be
11 back here and we'll knock out this last witness.

12 MR. BUTLER: May Mr. Deason be excused?

13 CHAIRMAN GRAHAM: Yes.

14 MR. BUTLER: Thank you.

15 (Whereupon, a recess was taken. Proceedings
16 continued in Volume 8.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MICHELLE SUBIA, Registered Professional 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 875 through 994, 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 3rd day of December, 2014.



MICHELLE SUBIA, RPR
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