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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:  
PETITION BY FLORIDA POWER DOCKET NO. 20170235-EI  
& LIGHT COMPANY (FPL) FOR  
AUTHORITY TO CHARGE FPL  
RATES TO FORMER CITY OF  
VERO BEACH CUSTOMERS AND  
FOR APPROVAL OF FPL'S  
ACCOUNTING TREATMENT FOR  
CITY OF VERO BEACH  
TRANSACTION.

\_\_\_\_\_/ DOCKET NO. 20170236-EU  
JOINT PETITION TO  
TERMINATE TERRITORIAL  
AGREEMENT, BY FLORIDA  
POWER & LIGHT AND THE CITY  
OF VERO BEACH.  
\_\_\_\_\_/

VOLUME 2  
PAGES 236 through 411

PROCEEDINGS: HEARING

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW GILES FAY

DATE: Thursday, October 18, 2018

TIME: Commenced: 9:00 A.M.  
Concluded: 1:00 P.M.

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

APPEARANCES: (As heretofore noted.)

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## I N D E X

## WITNESSES

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EXHIBITS

NUMBER:		ID	ADMITTED
63	Utility Commission meeting minutes, August 9, 2016	381	
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1 P R O C E E D I N G S

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

4 MR. ANDERSON: May we proceed?

5 CHAIRMAN GRAHAM: Sure.

6 MR. ANDERSON: FPL calls as its next witness,  
7 Terry Deason.

8 Whereupon,

9 TERRY DEASON

10 was called as a witness, having been previously duly  
11 sworn to speak the truth, the whole truth, and nothing  
12 but the truth, was examined and testified as follows:

13 EXAMINATION

14 BY MR. ANDERSON:

15 Q Good morning, Mr. Deason.

16 A Good morning.

17 Q Were you sworn earlier?

18 A I was.

19 Q Will you please tell the Commission your name  
20 and business address?

21 A Yes. My name is Terry Deason. My business  
22 address is 301 South Bronough Street, Suite 200,  
23 Tallahassee, Florida.

24 Q By whom are you employed, and in what  
25 capacity?

1           A     I am employed by the Radey law firm as a  
2 consultant specializing in regulatory and utility  
3 matters.

4           Q     Have you prepared and caused to be filed 16  
5 pages of prepared direct testimony and 29 pages of  
6 supplemental direct testimony in this proceeding?

7           A     Yes.

8           Q     Do you have any changes or revisions to that  
9 testimony at this time?

10          A     No.

11          Q     If I asked you the questions contained in your  
12 direct and supplemental direct, would your answers be  
13 the same?

14          A     Yes.

15               MR. ANDERSON: Mr. Chairman, FPL asks that the  
16 direct and supplemental testimony of Mr. Deason be  
17 inserted into the record as though read.

18               (Whereupon, prefiled testimony identified in  
19 the record was inserted.)

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## I. INTRODUCTION

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

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

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

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

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

A. I have over forty years of experience in the field of public utility regulation spanning a wide range of responsibilities and roles. I served a total of seven years as a consumer advocate in the Florida Office of Public Counsel (“OPC”) on two separate occasions. In that role, I testified as an expert witness in numerous rate proceedings before the Florida Public Service Commission (“Commission”). My tenure of service at OPC was interrupted by six years as Chief Advisor to Florida Public Service Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory Analyst when I was first appointed to the Commission in 1991. I served as Commissioner on the Commission for sixteen years, serving as its chairman on two separate occasions. Since retiring from the Commission at the end of 2006, I have been providing consulting services and expert testimony on behalf of various clients,

1 including public service commission advocacy staff, county and municipal  
2 governments, and regulated utility companies. I have also testified before  
3 various legislative committees on regulatory policy matters. I hold a Bachelor  
4 of Science Degree in Accounting, summa cum laude, and a Master of  
5 Accounting, both from Florida State University.

6 **Q. Are you sponsoring an exhibit?**

7 A. Yes. I am sponsoring the following exhibit:

- 8
  - TD-1 – Biographical Information for Terry Deason

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

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

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

13 A. The purpose of my testimony is to address the regulatory policy  
14 considerations for acquisition adjustments in general and how those policy  
15 considerations should be applied to FPL’s proposed acquisition of the City of  
16 Vero Beach (“COVB”) electric system (“COVB Transaction”). Based upon  
17 these regulatory policy considerations and the clear benefits the COVB  
18 Transaction has for FPL customers, I recommend that the Commission  
19 approve the acquisition adjustment which FPL is requesting in this  
20 proceeding.

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## II. ACQUISITION ADJUSTMENTS

**Q. What is an acquisition adjustment?**

A. According to Rule 25-30.0371, F.A.C. Acquisition Adjustments (“the Rule”), an acquisition adjustment is defined as the difference between the purchase price of utility system assets to an acquiring utility and the net book value of the utility assets. A positive acquisition adjustment exists when the purchase price is greater than the net book value. A negative acquisition adjustment exists when the purchase price is less than the net book value.

**Q. Is Rule 25-30.0371, F.A.C. Acquisition Adjustments, applicable to electric utilities?**

A. Specifically, no; this Rule is applicable to water and wastewater utilities subject to the Commission’s jurisdiction. However, the definition of an acquisition adjustment should be the same for all industries regulated by the Commission.

**Q. Is there a similar rule on acquisition adjustments applicable to electric and gas utilities?**

A. No, there is not. Acquisition adjustments in the water and wastewater industry occur more frequently and have historically been a significant and contentious issue before the Commission. The Rule was first adopted in 2002 to establish a consistent policy upon which parties could rely and help remove some of the controversy surrounding acquisition adjustments. The

1 Commission then made amendments to the Rule in 2010 to provide even more  
2 clarity, especially in regard to negative acquisition adjustments.

3 **Q. Do you believe that Rule 25-30.0371 provides guidance for the**  
4 **appropriate regulatory treatment of positive acquisition adjustments for**  
5 **electric utilities?**

6 A. Yes, it does. The Rule establishes that a positive acquisition adjustment shall  
7 not be included in the utility's rate base absent extraordinary circumstances.  
8 The Rule further contains a list of factors to be considered which demonstrate  
9 whether the extraordinary circumstances test is met to allow a positive  
10 acquisition adjustment to be included in rate base. These factors include:

- 11 • Quality of service to customers;
- 12 • Regulatory compliance;
- 13 • Rate levels and stability of rates;
- 14 • Cost efficiencies; and
- 15 • Whether the purchase was an arms-length transaction.

16 Just as these factors are applicable to a water or wastewater utility acquisition  
17 to determine if it is in the public interest, these same factors can also be  
18 applicable to an electric utility acquisition.

19 **Q. Should only these factors, and no others, be considered for the**  
20 **appropriate treatment of a positive acquisition adjustment for an electric**  
21 **utility?**

22 A. No, these factors are only a guide. The ultimate test is whether the acquisition  
23 is in the public interest such that the positive acquisition adjustment should be

1 allowed in rate base. The Commission should exercise its considerable  
2 discretion in this area to encourage acquisitions which are in the public  
3 interest and to discourage those which are not. By allowing a positive  
4 acquisition adjustment in rate base for an acquisition that is in the public  
5 interest, the Commission will encourage such transactions in both the near  
6 term and longer term.

7 **Q. Has the Commission addressed positive acquisition adjustments for**  
8 **utilities other than water and wastewater companies?**

9 A. Yes, the Commission has done so for both electric and gas utilities. There are  
10 three cases involving gas utilities that are particularly relevant. The most  
11 recent of these is the acquisition of Indiantown Gas Company by Florida  
12 Public Utilities Company ("FPUC") in Docket No. 120311-GU. In this case,  
13 the Commission approved the acquisition and allowed the \$745,800 purchase  
14 price premium for the acquisition to be recorded as a positive acquisition  
15 adjustment and amortized over 15 years. The Commission went on to identify  
16 five factors that have historically been considered by the Commission in  
17 determining whether an acquisition and any resulting positive acquisition  
18 adjustment are in the public interest. The factors identified by the  
19 Commission are: (1) increased quality of services; (2) lower operating costs;  
20 (3) increased ability to attract capital for improvement; (4) lower overall cost  
21 of capital; and (5) more professional and experienced managerial, financial,  
22 technical and operational resources.

1           The second relevant case is the acquisition of FPUC by the Florida Division  
2           of Chesapeake Utilities Corporation (“Chesapeake”) in Docket No. 110133-  
3           GU. Based upon its review of the evidence, the Commission allowed the  
4           requested \$34.2 million positive acquisition adjustment. And in the third case,  
5           the Commission approved a \$21.7 million positive acquisition adjustment for  
6           the acquisition of Florida City Gas by AGL Resources, Inc. in Docket No.  
7           060657-GU. In all of these cases, the Commission ultimately determined that  
8           the acquisitions were in the public interest such that the positive acquisition  
9           adjustments should be approved and recognized in setting rates on a going  
10          forward basis.

11   **Q.    Can you provide an example of a positive acquisition adjustment being**  
12   **allowed for an electric utility?**

13   A.    Yes, a good example is the acquisition of the Sebring Utility System by  
14   Florida Power Corporation in Docket No. 920949-EU. Similar to FPL’s  
15   proposed acquisition of the COVB system, this case involved the acquisition  
16   of a municipal electric utility by an investor-owned electric utility. In its  
17   Order No. PSC-92-1468-FOF-EU, the Commission stated:

18                   Florida Power Corporation and its ratepayers will benefit from  
19                   the acquisition of this system through increased revenues,  
20                   improved system efficiencies, and the resolution of  
21                   longstanding territorial conflict.

1           Sebring’s customers will benefit from the sale to FPC because  
2           they will receive immediate relief, even with the rider.  
3           Sebring’s customers will also receive improved customer  
4           services from a professionally managed public utility, and the  
5           opportunity to participate in FPC’s energy conservation  
6           programs, including FPC’s successful load management  
7           program.

8  
9           It is our opinion that this acquisition will benefit all concerned,  
10          and thus we will permit Florida Power Corporation to include a  
11          “going concern value” for the purchase of the Sebring system  
12          in its rate base as a positive acquisition adjustment.

13   **Q.    What did the Commission mean by the term “going concern value”?**

14    A.    In the context of its Order, the Commission was referring to the premium paid  
15          in excess of book value as being attributable to Sebring’s going concern value.  
16          In the broader context, going concern value recognizes that an existing  
17          business with customers, revenue streams, and a valued product is often worth  
18          more than the net book value of its assets or market value of its individual  
19          assets. In accounting terminology, this additional benefit is referred to as the  
20          existing business’ goodwill.

1 **Q. What do you mean by goodwill?**

2 A. In an accounting context, goodwill refers to an intangible asset representing  
3 the future economic benefits arising from other assets acquired in a business  
4 combination that are not individually identified and separately recognized.

5 **Q. Is the Commission prohibited from allowing a positive acquisition  
6 adjustment that can be attributable to goodwill?**

7 A. No, it is not. Section 366.06, Florida Statutes, only prohibits the inclusion of  
8 goodwill or going concern value to the extent it exceeds payments made by  
9 the acquiring utility. Therefore, an arm's length transaction to acquire the  
10 assets of another utility is a situation where goodwill is potentially eligible for  
11 inclusion in rate base, because a quantifiable payment has been made. The  
12 effect of this statutory provision is to make two points clear: (1) absent an  
13 acquisition, a utility's rate base should be based on net book value (original  
14 cost less accumulated depreciation); and (2) in the event of an acquisition, the  
15 acquiring utility may not increase its rate base by more than it actually paid  
16 for the acquired assets.

17 **Q. Is FPL proposing a positive acquisition adjustment based on an amount  
18 in excess of the purchase price?**

19 A. No. FPL is only seeking inclusion of a positive acquisition adjustment based  
20 on its actual payment in excess of COVB's net book value.

1                   **III. VALUATION AND CUSTOMER BENEFITS**

2

3   **Q.    What is the role of studies which estimate the market value of an**  
4   **acquired system?**

5   A.    Such studies are often used to make allocations of purchase price to the  
6   various pieces of a multiple system acquisition and to otherwise assist in  
7   making accounting entries consistent with generally accepted accounting  
8   principles. Such studies can also be used to give assurances that the purchase  
9   price of an acquired system is not totally outside the bounds of  
10   reasonableness.

11   **Q.    Have studies estimating the market value of an acquired system ever been**  
12   **presented to the Commission?**

13   A.    Yes, there was such a study presented in the acquisition of FPUC by  
14   Chesapeake, Docket No. 110133-GU, which I earlier discussed.

15   **Q.    How was this study used?**

16   A.    It was used to allocate the purchase price among FPUC's gas, electric, and  
17   propane lines of business. Based on the study, the portion of the purchase  
18   price allocated to the gas business resulted in a positive acquisition adjustment  
19   of \$34.7 million being calculated for that business. Chesapeake then adjusted  
20   this number to \$34.2 million and requested that it be included as a positive  
21   acquisition adjustment. The Commission found the acquisition to be in the  
22   public interest and allowed the \$34.2 million positive acquisition adjustment.

1 **Q. Has FPL provided a study on the market value of the COVB utility**  
2 **system?**

3 A. Yes. As discussed by FPL witnesses Ferguson and Herr, the study performed  
4 by Duff & Phelps indicates that the market value of the COVB electric system  
5 exceeds the negotiated purchase price upon which the requested positive  
6 acquisition adjustment is based.

7 **Q. On what basis is FPL asserting that its proposed acquisition of the COVB**  
8 **electric system provides benefits to its customers?**

9 A. FPL correctly bases its assertion that the acquisition will benefit customers by  
10 showing that the projected incremental revenues received from former COVB  
11 customers exceed the projected incremental costs to existing FPL customers.  
12 While there may very well be operational efficiencies and related cost  
13 reductions, those efficiencies are not the focus of FPL's evaluation. To  
14 demonstrate the benefit, FPL provides a cumulative present value of revenue  
15 requirements ("CPVRR") analysis, as discussed in the testimony of FPL  
16 witness Bores.

17 **Q. Is this an appropriate means to demonstrate the benefit of the COVB**  
18 **acquisition?**

19 A. Yes, it is. The difference between the projected incremental revenues and the  
20 projected costs represents the impact of the COVB Transaction on existing  
21 FPL customers. This basic approach is a proven regulatory tool to evaluate  
22 the cost effectiveness of a transaction.

1           **IV. SUBSEQUENT REVIEW OF ACQUISITION ADJUSTMENT**

2

3   **Q.    Does Rule 25-30.0371 provide any other guidance relevant to electric**  
4           **utility acquisitions, in general, or to the COVB Transaction in particular?**

5    A.    Yes it does.  It provides that the Commission may modify a positive  
6           acquisition adjustment should the benefits justifying the adjustment not  
7           materialize.  Such a review is not required by the Rule and is at the discretion  
8           of the Commission.  In addition, the permissible period to conduct such a  
9           review is limited to within five years of the order approving the acquisition.

10   **Q.    Why is the review permissive and limited to five years?**

11   A.    The Commission wanted to give some finality to such decisions and provide  
12           reasonable assurances that once approved, a positive acquisition adjustment is  
13           not the target of continued litigation.  Such assurances are important to  
14           encourage utilities to pursue beneficial acquisitions and to mitigate  
15           unnecessary regulatory uncertainty.  In addition, the Commission recognized  
16           that there should be a materiality consideration and thus made any review  
17           permissive and not a requirement.

18   **Q.    Has the Commission dealt with the need for subsequent reviews for**  
19           **utilities other than water and wastewater utilities?**

20   A.    Yes, the Commission has done so on a case-by-case basis.  A good example is  
21           the acquisition of FPUC by Chesapeake, Docket No. 110133-GU, which I  
22           earlier discussed.  In this case, the Commission was concerned about some of  
23           the assumptions and escalations used to calculate cost savings and required

1 the cost savings to be reviewed in Chesapeake's next rate case. The  
2 Commission was also apparently concerned about the acquisition's impact on  
3 earnings, as it ordered Chesapeake's earnings surveillance reports to be filed  
4 with and without the effect of the acquisition adjustment.

5 **Q. Should these same requirements be imposed on the COVB Transaction?**

6 A. No, these requirements are not warranted for the COVB Transaction. Each  
7 case should be evaluated on its specific facts and circumstances and the  
8 exercise of the Commission's discretion. I would note some significant  
9 differences between the Chesapeake acquisition and the COVB Transaction.  
10 First, the Chesapeake acquisition was based on numerous factors with their  
11 own set of calculations and assumptions. The benefits giving rise to the  
12 acquisition adjustment were dependent on the assumption that Chesapeake  
13 would take certain future management actions. The Commission felt that a  
14 review would be appropriate to confirm that Chesapeake actually took those  
15 actions. In contrast, the benefits to customers from the COVB Transaction are  
16 measured by a CPVRR calculation, which takes a holistic view and is derived  
17 by spreading fixed costs over a larger base. The calculation is not predicated  
18 on any specific set of future management actions that would need to be  
19 monitored. Another significant difference is that the COVB Transaction is  
20 much smaller on a relative basis. The size of FPL in comparison to the COVB  
21 is such that the acquisition's impact would not have a material impact on  
22 FPL's surveillance reports.

## V. CONCLUSION

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**Q. What are your conclusions with regard to the COVB Transaction?**

A. My conclusions are:

- The COVB Transaction should be reviewed within the framework of the policies previously used to evaluate the appropriateness of positive acquisition adjustments.
- There is no given checklist of factors that must be considered in every case. Previous factors can be a valuable guide, but each acquisition should be evaluated on its specific facts and circumstances.
- FPL's CPVRR analysis is an appropriate regulatory tool and shows \$105 million in CPVRR benefits to FPL's current and future customers.
- There is no statute or regulatory policy that would prevent FPL from including in rate base a positive acquisition adjustment that includes "going-concern value" or "goodwill," so long as the amount to be included does not exceed the amount FPL paid therefor. "Going-concern value" or "goodwill" is inherent in the determination of a positive acquisition adjustment, so its existence is not a reason to deny an otherwise beneficial positive acquisition adjustment.
- Imposing a subsequent review of an approved positive acquisition adjustment should only be done when the facts and circumstances require it. The facts and circumstances in this case do not warrant

1           such a review. Automatic and perhaps unneeded reviews and  
2           reporting requirements may act as a deterrent to utilities pursuing  
3           beneficial acquisitions.

4           • Based upon the regulatory policy considerations that I have discussed  
5           in my testimony and the clear benefits the COVB Transaction has for  
6           FPL customers, I recommend that the Commission approve the  
7           acquisition adjustment which FPL is requesting in this proceeding.

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

9   **A.    Yes, it does.**

**I. INTRODUCTION**

1

2

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

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

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

7 A. I am employed by Radey Law Firm as a Special Consultant specializing in the  
8 fields of energy, telecommunications, water and wastewater, and public  
9 utilities generally.

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

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

13 **Q. Did you previously file testimony in this case?**

14 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original  
15 petition. In that testimony I address the regulatory policy considerations for  
16 acquisition adjustments in general and how those policy considerations should  
17 be applied to FPL’s proposed acquisition of the City of Vero Beach  
18 (“COVB”) electric system.

19 **Q. Is there anything in your previously filed testimony that you wish to  
20 change at this time?**

21 A. No, I adopt that testimony in its entirety.

22 **Q. Are you sponsoring an exhibit with your supplemental direct testimony?**

23 A. No.

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

2 A. The status of this case has changed since the original petition was filed back in  
3 November 2017. After a series of comprehensive data requests by  
4 Commission Staff and the Office of Public Counsel (“OPC”) and a  
5 recommendation filed by Commission Staff on May 25, 2018, the  
6 Commission issued a proposed agency action order on July 2, 2018, Order  
7 No. PSC-2018-0336-PAA-EU (“PAA Order”). This order was protested by  
8 the Florida Industrial Power Users Group (“FIPUG”) and others and the  
9 matter has been set for an evidentiary hearing. The purpose of my  
10 supplemental direct testimony is to provide further context on appropriate  
11 acquisition adjustment policy and associated issues in light of the current  
12 status of the case.

13

14

## II. THE PAA ORDER

15

16 **Q. What did the Commission decide in its PAA Order?**

17 A. The Commission proposed to approve FPL’s petition for authority to charge  
18 FPL rates to the former customers of COVB, to terminate its territorial  
19 agreement with COVB, and to approve FPL’s accounting treatment for the  
20 resulting positive acquisition adjustment.

1 **Q. Is the proposed accounting treatment of the acquisition adjustment a**  
2 **necessary component to enable the transfer of COVB customers to FPL?**

3 A. Yes. This is explained in FPL's petition, in direct testimony accompanying  
4 the petition, and in responses to data requests from Commission Staff and  
5 OPC. Without the proposed accounting treatment, the Asset Purchase and  
6 Sale Agreement ("PSA") between FPL and COVB would not be  
7 consummated and all of its associated benefits would be lost to both FPL  
8 existing customers and the current customers of COVB.

9 **Q. What was the Commission's basis for its decision in its PAA Order?**

10 A. The Commission made two key determinations as the basis for its decision.  
11 First, the Commission found that there are extraordinary circumstances that  
12 warrant the approval of a positive acquisition adjustment. Second, the  
13 Commission found that allowing FPL's requested positive acquisition  
14 adjustment will not harm FPL's existing customers.

15 **Q. What standard did the Commission use in making its decision?**

16 A. The Commission correctly applied the public interest standard. In its PAA  
17 Order, the Commission quoted from a series of court cases referencing the  
18 public interest. One of the cases referenced by the Commission is *Gulf Coast*  
19 *Electric Cooperative v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999). In this  
20 case, the Florida Supreme Court stated: "However, in the final analysis, the  
21 public interest is the ultimate measuring stick to guide the PSC in its  
22 decisions." As I stated in my direct testimony, the ultimate test is whether the  
23 acquisition is in the public interest. I went on to state that the Commission

1           should exercise its considerable discretion to encourage acquisitions that are  
2           in the public interest and to discourage those which are not. In its PAA Order,  
3           the Commission exercised its discretion in evaluating the facts and concluded  
4           “unique problems require unique solutions, and under this particular set of  
5           extraordinary circumstances as described in this order, we believe our  
6           decision is in the public interest.”

7   **Q.   Is the Commission’s decision in its PAA Order consistent with**  
8   **Commission policy?**

9   A.   Yes, it is. As I discuss in my direct testimony, Commission policy is to  
10   evaluate positive acquisition adjustments on a case by case basis and to not  
11   allow them unless there are extraordinary circumstances. In its PAA Order,  
12   the Commission states: “Our policy with respect to acquisition adjustments  
13   has been to evaluate the specific facts and circumstances on a case by case  
14   basis and to determine whether there are extraordinary circumstances that  
15   warrant the approval of a positive acquisition adjustment.” The Commission  
16   evaluated the facts of the case and made a finding that extraordinary  
17   circumstances exist which justify the positive acquisition adjustment. This is  
18   consistent with Commission policy.

19   **Q.   Is the Commission’s decision in its PAA Order consistent with**  
20   **Commission precedent?**

21   A.   Yes, it is. The only case addressing a major acquisition of a municipal system  
22   by an investor-owned utility in Florida is the acquisition of the Sebring  
23   Utilities system by Florida Power Corporation (“Florida Power”) in 1992 in

1 Docket No. 920949-EU. In its Order No. PSC-92-1468-FOF-EU (“Sebring  
2 Order”) (page 11), the Commission stated “To those who would view our  
3 decision here as precedent, we unconditionally state that this decision has no  
4 precedential value.” Nevertheless, in its PAA Order, the Commission quoted  
5 from the Sebring Order and stated that the Sebring case provides guidance in  
6 addressing FPL’s petition. I too referenced the Sebring Order in my direct  
7 testimony as support for a positive acquisition adjustment and concur that it  
8 does indeed provide guidance.

9

### 10 III. THE SEBRING ACQUISITION CASE

11

12 **Q. Are you personally familiar with the Sebring acquisition case?**

13 A. Yes, I am. While I did not participate in that decision, I was serving on the  
14 Commission at the time that my colleagues, Commissioners Beard and Easley,  
15 made their decision.

16 **Q. The Commission stated that the Sebring decision should not be viewed as  
17 precedent. Please comment.**

18 A. The Sebring Order itself describes the fact that the Sebring case presented a  
19 unique set of facts and raised difficult questions of fairness and what  
20 ultimately would be in the public interest. Based on my review of the  
21 Commission’s transcript, it is apparent that Commissioners Beard and Easley  
22 viewed their decision to be uniquely crafted to address the Sebring situation.  
23 Herein lies the true essence of their decision though. Their decision stands for

1 the principle that every acquisition is unique and based upon facts specific to  
2 it. Therefore, it only reinforces (and perhaps initially helped establish) the  
3 Commission's policy to evaluate the specific facts and circumstances on a  
4 case by case basis and to determine whether there are extraordinary  
5 circumstances that warrant the approval of a positive acquisition adjustment  
6 outside of a rate case. While the specific facts differ, the Sebring Order does  
7 indeed provide guidance to the Commission in considering FPL's petition.

8 **Q. Beyond the need to evaluate each acquisition on its own unique facts, does**  
9 **the Sebring Order provide any additional guidance?**

10 A. Yes, it does. The Sebring Order clearly establishes and emphasizes the  
11 importance of weighing the benefits for all affected customers, both the  
12 customers of the acquired system and the existing customers of the acquiring  
13 company. This was perhaps the dilemma that weighed the heaviest on the  
14 Commission. The Sebring Order identified the benefits for the former Sebring  
15 customers, such as lower rates, improved customer service from a  
16 professionally managed utility, and the opportunity to participate in Florida  
17 Power's energy conservation and load management programs. The Sebring  
18 Order also identified benefits for the existing Florida Power customers, such  
19 as the increase in revenues to be paid by the former Sebring customers,  
20 improved efficiencies, and the resolution of longstanding territorial conflict.  
21 It is also interesting to note that all of these benefits identified in 1992 for the  
22 customers of the two utilities involved in that transaction are applicable today  
23 in regard to the proposed acquisition of COVB by FPL.

1 **Q. Why was the weighing of benefits between the Florida Power customers**  
2 **and the Sebring customers such a dilemma for the Commissioners?**

3 A. The unique facts of the Sebring case made it clear that a rate rider on the  
4 former Sebring customers was an inevitable outcome to allow the acquisition  
5 to take place. It was Florida Power's position that the acquisition should be  
6 approved but that only a portion of the acquisition costs should be allowed in  
7 base rates. Their petition asked for the remaining acquisition costs to be  
8 recovered from former Sebring customers by means of a rate rider. In fact, at  
9 the time that the Commission voted on the Sebring acquisition on December  
10 8, 1992, Florida Power's attorney addressed the Commission and stated:

11           You should approve the transaction as filed because rate basing  
12           the entire cost of the Sebring transaction we don't think is a  
13           good alternative. It will cause Florida Power's management to  
14           walk away from this deal, because it will put too much pressure  
15           on the rates of our general body of ratepayers. It will cause us  
16           to come in for another rate case in the very near future.

17 [Transcript – Docket No. 920949-EU, Vol. IV, page 395, lines 15-22]

18 So the Commissioners were faced with this reality—a negotiated deal with  
19 benefits for both groups of customers – together with their strong desire to  
20 minimize the impact of a rate rider on the Sebring customers. To achieve that  
21 outcome, the Commission identified and determined values for four discrete  
22 items: the Sebring customer base; the value of Sebring's maps and records;  
23 the value of trained and experienced Sebring personnel; and the avoidance of

1 the costs of further territorial and annexation disputes. The Commission  
2 summed these items to determine a “going concern” value of \$5,741,000. The  
3 Commission recognized this amount as a positive acquisition adjustment.

4 **Q. Why did the Commission not recognize a higher going concern value?**

5 A. There were three reasons. First, the Commission did not want to jeopardize  
6 the transaction with too high of a going concern value that may have caused  
7 Florida Power to walk away from it. Second, the Commission was cognizant  
8 that it had an obligation to protect existing Florida Power customers. And  
9 third, the Commission was limited to what was presented to it in the record  
10 and all it had was evidence concerning the discrete items identified. In the  
11 Sebring Order, the Commission stated: ... “we cannot find reasonable support  
12 for a higher amount in the record, and we must insure that the amount we  
13 approve for recovery from FPC’s general body of ratepayers is related to the  
14 benefits that they receive.”

15 **Q. Is this the factual situation with the proposed acquisition of COVB by**  
16 **FPL?**

17 A. The proposed COVB acquisition is the same as the Sebring acquisition in one  
18 very important way. However, it lies in sharp contrast to the Sebring  
19 acquisition in two significant ways.

20 **Q. How is the proposed COVB acquisition the same as the Sebring**  
21 **acquisition?**

22 A. Like the management of Florida Power in the case of the Sebring acquisition,  
23 the management of FPL does not want to consummate an acquisition that

1 would put upward pressure on the rates of its existing customers. This was a  
2 principal requirement in pursuing the COVB acquisition and in the  
3 negotiations that resulted in the PSA. The principal requirement to cause no  
4 harm to its existing customers is identified and further explained in FPL's  
5 petition and the testimony that accompanies it.

6 **Q. What are the two ways in which the proposed COVB acquisition is in**  
7 **contrast to the Sebring acquisition?**

8 A. First, in the Sebring case the Commission did not have the benefit of a  
9 comprehensive fair value study. In determining the amount of going concern  
10 value and the resulting justified amount of the positive acquisition adjustment  
11 in the Sebring acquisition, the Commission was very limited in the amount  
12 and type of record evidence before it. As I stated earlier, in the Sebring  
13 acquisition the Commission was limited to an evaluation of only four discrete  
14 items to determine a going concern value. In contrast, FPL has provided a fair  
15 value study conducted by an internationally recognized firm in the field, Duff  
16 & Phelps LLC. This study concludes that the highest and best use of the  
17 acquired Vero electric system would be realized by its acquisition by another  
18 utility which would allow the acquired assets to continue to be operated as  
19 part of a going concern utility. This study and FPL witness Herr's direct  
20 testimony corroborate the purchase price as representative of the COVB  
21 electric system's going concern value.

1           And secondly, the Commission did not have a comprehensive study on the  
2           associated rate impacts. In contrast to Sebring, FPL has provided an analysis  
3           of the cumulative present value of revenue requirements (“CPVRR”) of  
4           acquiring the COVB system. Through this analysis, FPL is taking a holistic  
5           approach by looking at the overall impact on customer rates of all aspects of  
6           revenues and costs on an incremental basis of adding the COVB customer  
7           base. This contrasts sharply with the very granular approach of identifying  
8           only a select few areas of avoided costs and an estimate of the value of  
9           Sebring’s customer base, as was presented to the Commission in the Sebring  
10          case.

11

12

#### IV. THE CPVRR ANALYSIS

13

14   **Q.    What is a CPVRR analysis?**

15    A.    It is an effective and generally accepted tool used by decision makers,  
16          including regulatory commissions, to measure and weigh the revenue  
17          requirement impacts of two competing alternatives. As its name implies, it  
18          calculates the total revenue requirements of the two competing alternatives  
19          over an established time horizon, usually thirty years, and puts them on an  
20          appropriate comparable basis by calculating their respective cumulative  
21          present values at an appropriate discount rate.

1 **Q. How is it used by decision makers?**

2 A. Decision makers compare the cumulative present value of the competing  
3 alternatives to determine which alternative has the lower value and by how  
4 much. All other things being equal, the alternative with the lower cumulative  
5 present value is judged to be more economic and/or cost effective and thus is  
6 deemed to be the preferred alternative.

7 **Q. Has the Commission evaluated and used the results of a CPVRR analysis**  
8 **in other cases?**

9 A. Yes, the Commission has consistently done so over many years in various  
10 types of cases where competing alternatives were being considered. For  
11 example, the setting of conservation goals, determining recoverable costs in  
12 nuclear cost recovery proceedings, the evaluation of potential buyouts of  
13 power purchase agreements (“PPAs”), and need determinations for new  
14 generation capacity, are all cases in which the Commission has evaluated and  
15 accepted the results of CPVRR analyses.

16 **Q. Can you cite any specific cases that were recently decided by the**  
17 **Commission?**

18 A. Yes, there are two. First, is the Commission’s consideration of FPL’s  
19 proposed buyout of the Indiantown Cogeneration Plant PPA in Docket No.  
20 20160154-EI. In its Order No. PSC-2016-0506-FOF-EI approving the  
21 requested accounting treatment of the transaction, the Commission determined  
22 that the buyout was cost-effective based on a CPVRR analysis. It is  
23 interesting to note that this order also referenced and gave credence to the fact

1 that the buyout purchase price was determined by negotiations between  
2 independent, unrelated parties and that the fair value of the purchased  
3 cogeneration plant was substantiated by an evaluation conducted by Duff &  
4 Phelps. This is exactly the same situation for FPL's proposed acquisition of  
5 the COVB system.

6  
7 Second is the need determination for FPL's Dania Beach Clean Energy Center  
8 Unit 7, Docket No. 20170225-EI. In its Order No. PSC-2018-0150-FOF-EI,  
9 the Commission determined the Dania Beach Unit 7 was the most cost  
10 effective alternative that maintained system reliability and was more cost  
11 effective than the alternative of continuing the operation of the Lauderdale  
12 Units 4 and 5. The Commission's cost-effectiveness determination was based  
13 on a CPVRR analysis.

14 **Q. Should the results of a CPVRR analysis be the only evidence considered**  
15 **and dictate the outcome of the choice between competing alternatives?**

16 A. No. While a CPVRR analysis certainly constitutes meaningful, and hopefully  
17 persuasive evidence, it should not dictate the choice between competing  
18 alternatives. The Commission has great discretion and has a responsibility to  
19 make choices that are in the public interest. As such, all relevant evidence  
20 should be carefully considered and weighed. For example, in a need  
21 determination, the Commission must weigh cost-effectiveness as shown by  
22 the CPVRR analysis with other public policy considerations, such as fuel

1 diversity, system reliability, impacts on conservation, and economic  
2 development.

3 **Q. How should a CPVRR analysis be used in an acquisition case?**

4 A. The ultimate test in an acquisition case is whether the acquisition is in the  
5 public interest. This overriding principle and test established by the  
6 Commission is a crucial consideration in the determination of whether the  
7 regulatory treatment associated with the negotiated transaction should be  
8 approved, including the allowance of a positive acquisition adjustment in rate  
9 base. Two important considerations in making the public interest  
10 determination are whether existing customers are protected (at least not  
11 harmed) and whether there are extraordinary circumstances. These two  
12 considerations are directly linked and a CPVRR analysis can and should be  
13 used to make informed judgements on both.

14 **Q. In its PAA Order, the Commission stated that the CPVRR analysis did  
15 not demonstrate extraordinary circumstances. Do you disagree?**

16 A. I do not disagree that it is within the Commission's discretion to find in a  
17 particular case that customer savings alone may not be sufficient to  
18 demonstrate extraordinary circumstances. At the same time, I also believe  
19 that the Commission should not foreclose itself to opportunities to approve  
20 negotiated transactions that would deliver customer savings and which  
21 otherwise are in the public interest, but which are predicated on the need to  
22 approve an acquisition adjustment. A categorical statement that CPVRR  
23 value could never support a finding of extraordinary circumstances is

1 tantamount to suggesting that the public interest could never be served solely  
2 by providing customers (both new and existing) with savings. That in my  
3 judgment is not a good result as a matter of public policy and, therefore, I do  
4 not read this part of the PAA Order as a policy pronouncement that a CPVRR  
5 analysis cannot be used as competent evidence and a relevant component  
6 supporting a finding of extraordinary circumstances.

7

8 A CPVRR analysis nonetheless is relevant in assessing whether an acquisition  
9 is in the public interest – the “ultimate test.” In Sebring, an acquisition  
10 adjustment was approved in an amount sufficient to hold Florida Power  
11 customers harmless and a surcharge on Sebring customers was imposed to  
12 recover the balance of the purchase price paid. In this case, as I noted earlier,  
13 the constraints of the negotiated transaction were that COVB customers  
14 receive FPL rates and, similar to the FPC constraint, FPL’s customers were  
15 held harmless. In fact, based on the CPVRR analysis, FPL’s customers are  
16 expected to benefit, not just be held harmless, and *without* the need to impose  
17 any surcharge on COVB customers. This is the kind of result that is clearly  
18 in the public interest, extraordinary, and which supported the approvals  
19 reflected in the Commission’s PAA Order.

## V. EXTRAORDINARY CIRCUMSTANCES

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**Q. What does the PAA Order say about extraordinary circumstances?**

A. The PAA Order succinctly and accurately describes how rates in Florida are based on the original cost of utility assets less accumulated depreciation, or net book value, and how this typically results in fair rates. Any amounts in rate base above net book value, such as an acquisition premium, must be scrutinized and allowed only when extraordinary circumstances exist indicating that it is in the best interest of customers to allow the acquisition adjustment.

**Q. What are some of the considerations that could demonstrate that an acquisition is in the customers' best interest?**

A. Historically, the Commission has used a broad range of considerations, such as greater efficiencies through economies of scale, lower (or at least not higher) rates for all customers, improved quality of service, a greater access to capital at lower rates, more professional and experienced management, and the end of territorial disputes and accompanying litigation. Usually the Commission uses a combination of these or other case-specific considerations to find extraordinary circumstances and that an acquisition is in the best interest of customers. However, of all these considerations, a showing of lower (or at least not higher) rates has been the most pervasive and perhaps the most extraordinary.

- 1 **Q. Are there any specific cases to which you can refer?**
- 2 A. Yes, I refer to three acquisition cases involving gas utilities in my direct  
3 testimony. In all of these cases, the Commission acknowledged its policy of  
4 extraordinary circumstances before approving a positive acquisition  
5 adjustment. They all identify specific criteria to help make that determination  
6 and chief among them is that there would be customer savings, even after  
7 considering the impacts of the positive acquisition adjustments. In the most  
8 recent of these cases, in re: Petition for approval of positive acquisition  
9 adjustment to reflect the acquisition of Indiantown Gas Company by Florida  
10 Public Utilities Company (“FPUC”), Docket No. 120311-GU, the  
11 Commission analyzed five enumerated factors and concluded: “FPUC has  
12 demonstrated that there will be sufficient future savings to offset the  
13 amortization of the acquisition adjustment over 15 years.” [Order No. PSC 14-  
14 0015-PAA-GU, page 11]. On page 3 of this order, the Commission cited a  
15 long list of cases in support of its factors and the need to find customer  
16 benefits, including net customer savings. One of the older cases cited and in  
17 which I participated is in re: Application for a rate increase by Florida Public  
18 Utilities Company, Docket No. 040216-GU. In this rate case was an issue of  
19 a positive acquisition adjustment resulting from the acquisition of South  
20 Florida Natural Gas (“SFNG”). The Commission analyzed several factors  
21 including, improved quality of service, lower cost of capital, and lowered  
22 operating costs, to conclude that the acquisition was in the public interest and

1           resulted in savings to both the former SFNG customers and to the existing  
2           customers of FPUC. [Order No. PSC-04-1110-PAA-GU, pages 8-11]

3   **Q.   In its PAA Order addressing FPL's petition to acquire COVB, the**  
4   **Commission stated that the gas cases are not determinative. Do you**  
5   **disagree?**

6   A.   No, I do not disagree. All acquisition cases are fact specific and unique in  
7           their own ways. Also, when you consider that the ultimate test is one of the  
8           public interest and that the Commission has great discretion in determining  
9           the public interest, I agree that these gas cases are not determinative.  
10          Nevertheless, they are extremely informative and go directly to the heart of  
11          the Commission's policy on acquisitions. I also believe that the Commission  
12          should attempt to reconcile and harmonize its decisions to the greatest extent  
13          possible. The three gas cases I identified in my direct testimony, plus the  
14          older case I just referenced, all support the same policy and support the  
15          decision in the Commission's PAA Order. Even though these cases are gas  
16          cases, the fundamental policy of acquisitions transcends industry boundaries.  
17          I firmly believe the Commission can benefit from these gas acquisition cases  
18          in helping it judge what is in the public interest for electric company  
19          acquisitions in general and specifically in regard to FPL's acquisition of  
20          COVB.

1 **Q. Why has a finding of lower rates been pervasive throughout these gas**  
2 **cases as well as the Sebring case?**

3 A. Higher rates for the existing customers of the acquiring utility would simply  
4 be a non-starter. This was readily apparent in the Sebring case. The only way  
5 that higher rates for the acquired customers would be accepted is if the  
6 acquired utility was in financial jeopardy or that the quality of service was so  
7 dismal that customers accepted higher rates to obtain quality service. Either  
8 situation would be exceedingly rare.

9 **Q. Why should a finding of lower rates be a relevant consideration in**  
10 **determining whether there are extraordinary circumstances associated**  
11 **with and arising from a particular negotiated acquisition?**

12 A. Recall that Florida is an original cost jurisdiction, i.e., ratemaking in Florida is  
13 based on net book value. The presumption of this regulatory approach is that  
14 rates are considered fair by allowing a return only on net book value, plus the  
15 recovery of all necessary and reasonable expenses. This would be the  
16 presumption for all regulated utilities whose rates are set by a regulatory  
17 authority using original cost ratemaking. The corollary presumption (or the  
18 ordinary expected outcome) is that disturbing this equilibrium by one utility  
19 acquiring another utility at a premium could only result in unfair rates, i.e., the  
20 rate base of the combined utility would be higher than the sum of the two  
21 stand-alone rate bases and cause rates to increase. This ordinary outcome is  
22 based on the assumption that all other things are equal, for example that the  
23 expense side of ratemaking stays the same for the combined utility, as if there

1           were still two stand-alone utilities. However, we know that rarely are all other  
2           things equal. This is the reason the Commission uses a standard of  
3           extraordinary circumstances to evaluate acquisitions. If an acquisition (even  
4           with an acquisition premium added to rate base) can result in lower rates for  
5           all customers, it would be extraordinary and worthy of the Commission's  
6           consideration and most likely its approval.

7           **Q. Does the CPVRR analysis presented by FPL support a finding of**  
8           **extraordinary circumstances and no customer harm?**

9           A. Yes, it does. The CPVRR analysis presented by FPL witness Bores  
10          demonstrates that FPL's acquisition of COVB is expected to result in lower  
11          rates, even with the inclusion of the positive acquisition. This is an  
12          extraordinary outcome. The CPVRR analysis, along with the direct testimony  
13          of FPL witness Forrest, also demonstrates that there would be no customer  
14          harm. This supports the Commission's finding of no customer harm in its  
15          PAA Order.

16          **Q. Please summarize the considerations present with this transaction that**  
17          **support a determination of extraordinary circumstances.**

18          A. I begin by reiterating the foundational determination reached by the  
19          Commission in the PAA Order: "we believe our decision is in the public  
20          interest." That determination informs all aspects of the proposed transaction  
21          including the presence of extraordinary circumstances. In this case, there are  
22          numerous benefits supporting such a determination and the individual weight  
23          given to each certainly lies in the discretion of the Commission. But taken

1 together, in their totality, the following factors and considerations  
2 overwhelmingly support the Commission's preliminary determination of  
3 extraordinary circumstances:

- 4 1. Lower rates for both COVB and FPL customers;
- 5 2. Improved quality of service, reliability and storm restoration;
- 6 3. Improvements and modernization of the grid in the former COVB  
7 territory;
- 8 4. Greater access to capital;
- 9 5. More experienced operations and management;
- 10 6. An end to years of litigation before this Commission, Indian River  
11 County circuit courts and The Florida Supreme Court;
- 12 7. An end to the disenfranchisement of approximately 60% of the COVB  
13 customers who reside outside the city limits;
- 14 8. The availability of the Office of Public Counsel to provide  
15 representation of these citizens on electric utility matters before this  
16 Commission; and
- 17 9. The unique, pervasive nature of the beneficiaries of this transaction:  
18 specifically, citizens and electric customers of the COVB, FPL,  
19 Orlando Utilities Commission and the nineteen municipalities who  
20 receive power from Florida Municipal Power Agency each of whom  
21 approved this transaction.

## VI. NET BOOK VALUE

1

2

3 **Q. What is net book value?**

4 A. Simply stated, it is the amount of investment actually expended to build or  
5 obtain utility assets at the time that they were first devoted to public service,  
6 less accumulated depreciation. Since Florida is an original cost jurisdiction, it  
7 is an integral part of rate base.

8 **Q. What is the role of net book value in consideration of an acquisition  
9 adjustment?**

10 A. As I explain in my direct testimony, it is the foundation for the calculation of  
11 the amount of any acquisition adjustment and is used to determine the  
12 appropriate accounting for the acquisition on the books of the acquiring entity.  
13 A positive acquisition adjustment is the difference between the purchase price  
14 and net book value, when the purchase price is greater than net book value. It  
15 also establishes the amount of property, plant, and equipment that will be  
16 transferred over to the acquiring utility in the appropriate FERC accounts and  
17 continues to be depreciated on a going forward basis. The positive acquisition  
18 adjustment is booked into a separate FERC account and is subject to  
19 amortization, not depreciation.

20 **Q. What role does net book value have in determining the economic value of  
21 an acquired system?**

22 A. Little, if any. Net book value is simply a number reflecting historical  
23 accounting, not the current economic value of an asset or system.

1 **Q. What role does net book value have in determining whether an**  
2 **acquisition is in the public interest?**

3 A. Again, little if any. Net book value only determines the amounts to be booked  
4 in the appropriate accounts, not whether the acquisition price is fair or  
5 whether the acquisition is in the public interest. For example, a purchase price  
6 far in excess of book value may be entirely reasonable, prudent, and in the  
7 public interest, if the accompanying benefits justify it. Likewise, an  
8 acquisition at less than book value does not necessarily mean that the purchase  
9 price is reasonable, prudent, and in the public interest. Rather, the use of a  
10 fair value study and a CPVRR analysis can be used as relevant and  
11 meaningful tools to make those determinations.

12

### 13 **VII. OTHER POLICY CONSIDERATIONS**

14

15 **Q. In addition to extraordinary circumstances and no customer harm, does**  
16 **the CPVRR analysis support other policy considerations?**

17 A. Yes, it does. From a broad perspective, the CPVRR analysis highlights the  
18 fact that FPL is a very efficient utility that provides quality service at low  
19 rates. The fact that FPL can make the acquisition at a premium and still  
20 provide service to all customers at lower rates is a testament to FPL's  
21 economies of scale, overall efficiency, and the quality of its management and  
22 employees. Such efficient providers should be afforded the opportunity to

1 serve additional customers when reasonable opportunities present themselves.

2 This is both good public policy and good regulatory policy.

3 **Q. How is this good regulatory policy?**

4 A. Let me be clear, I support Florida's regulatory framework in which there are  
5 delineated service territories with utilities that are accountable to either the  
6 Commission, municipal governments, or boards elected by cooperative  
7 members. I served on Florida's Energy 20/20 Study Commission in the years  
8 2000-01 when fundamental questions of Florida's regulatory approaches and  
9 the potential for more competition were discussed and recommendations were  
10 made to not abandon Florida's basic regulatory approach. Florida's approach  
11 has and continues to serve Florida well.

12  
13 Nevertheless, the proposed acquisition of COVB by FPL is a rare occurrence  
14 that can capture the efficiencies and benefits that a competitive model would  
15 theoretically achieve. Regulation is often thought of as a substitute for  
16 competition and that regulation should mimic competition when it is  
17 compatible with other regulatory goals and constraints. Certainly, the  
18 acquisition of COVB by FPL is an outcome that competitive forces would  
19 encourage, if not demand. By approving the positive acquisition adjustment  
20 and enabling the COVB acquisition, the Commission would not only be  
21 consistent with its acquisition policy and precedent, it would also be taking an  
22 action that competitive forces would advance. Where the Commission is able

1 to support market-based results within the existing regulatory framework, it  
2 should do so.

3 **Q. Are there other overall public policy considerations of the COVB**  
4 **acquisition by FPL?**

5 A. There are several. First, FPL would be paying a myriad of taxes such as ad  
6 valorem, federal and state income taxes, gross receipts taxes, and regulatory  
7 assessment fees, all at lower rates to customers. Neither would FPL be  
8 dependent on tax free bonds as a source of low-cost financing. In addition,  
9 with lower rates for public entities such as schools and law enforcement  
10 agencies, lower energy budgets could put downward pressure on taxes.

11 Lower rates also unleash the tremendous forces of economic development and  
12 the rippling effect that such development has on a community and region. For  
13 example, a large retail grocery chain may wish to build a store in a location  
14 that it had previously shunned because of high electric rates. This would  
15 benefit the grocery chain's profits and serve new customers that perhaps did  
16 not have that grocer as an option. In addition, the grocer would also be paying  
17 taxes just like FPL. Customers would also greatly benefit by the deployment  
18 of smart meters, have access to a myriad of energy conservation programs, be  
19 protected by the Commission's regulation of rates and service, and have the  
20 benefits of OPC advocacy on their behalf.

1                   **VIII. TERMINATION OF TERRITORIAL AGREEMENT**

2

3   **Q.    In the event that the Commission approves FPL’s petition for authority**  
4       **to charge FPL rates to former COVB customers, should the Commission**  
5       **also approve the Joint Petition to Terminate Territorial Agreement?**

6    A.    Yes. In order for FPL to charge FPL rates to former COVB customers, the  
7        area previously served by COVB will need to become part of FPL’s service  
8        territory.

9   **Q.    Is it in the public interest to approve of the termination of the existing**  
10       **territorial agreement between FPL and COVB?**

11   A.    Yes. Assuming approval of the main petition, it would be both necessary and  
12        in the public interest to approve the petition related to the territorial  
13        agreement.

14

15                   **IX. CONCLUSION**

16

17   **Q.    What are your conclusions with regard to FPL’s proposed acquisition of**  
18       **the COVB electric system?**

19   A.    I accept the conclusions of my direct testimony and make the following  
20        supplemental conclusions:

- 21               • The Commission’s decision in its PAA Order is consistent with  
22               Commission policy and precedent.

- 1           • While the specific facts differ, the Sebring Order provides  
2           guidance to the Commission in considering FPL’s petition and  
3           reinforces the Commission’s policy to evaluate the specific  
4           facts and circumstances on a case by case basis and to  
5           determine whether there are extraordinary circumstances that  
6           warrant the approval of a positive acquisition adjustment  
7           outside of a rate case. The four cited gas company acquisitions  
8           are also informative and helpful in this determination.
- 9           • Two important considerations of a positive acquisition  
10          adjustment are whether existing customers are protected (at  
11          least not harmed) and whether there are extraordinary  
12          circumstances. These two considerations are directly linked  
13          and a CPVRR analysis can and should be used to make  
14          informed judgements on both.
- 15          • Net book value is used to determine the amount of an  
16          acquisition adjustment and the appropriate accounting entries  
17          subsequent to an acquisition. It has little or no relevance to the  
18          questions of whether a purchase price is reasonable and  
19          whether an acquisition is in the public interest.
- 20          • Based on the totality of factors and considerations arising from  
21          this transaction, the Commission should approve FPL’s petition  
22          for its requested treatment of the positive acquisition  
23          adjustment resulting from its proposed acquisition of COVB.

1                    Doing so would be consistent with precedent and would  
2                    constitute good regulatory and public policy.

3    **Q.    Does this conclude your supplemental direct testimony?**

4    **A.    Yes, it does.**

1 BY MR. ANDERSON:

2 Q Mr. Deason, you had an exhibit, TD-1, attached  
3 to the direct testimony?

4 A Yes.

5 Q Was that prepared under your direction,  
6 supervision or control?

7 A Yes.

8 MR. ANDERSON: Chairman Graham, I believe that  
9 was already admitted into the record as Exhibit 14;  
10 is that right, Mr. Murphy?

11 CHAIRMAN GRAHAM: That is correct. Duly  
12 noted.

13 MR. ANDERSON: Great. Thank you.

14 BY MR. ANDERSON:

15 Q Mr. Deason, did you prepare and cause to be  
16 filed 18 pages of prefiled rebuttal testimony in this  
17 case?

18 A Yes.

19 Q Do you have changes or revisions to your  
20 prefiled rebuttal testimony?

21 A Yes. Consistent with the stipulation with  
22 Office of Public Counsel, there were some changes to the  
23 rebuttal testimony.

24 Q And those are contained in the group Exhibit  
25 60 that was admitted earlier; is that right?

1           A     Yes.

2           Q     Okay.  With those changes, if I asked you the  
3     questions contained in your prefiled rebuttal testimony,  
4     would your answers be the same?

5           A     Yes.

6           MR. ANDERSON:  Chairman Graham, I would ask  
7     that Mr. Deason's prefiled rebuttal testimony be  
8     inserted as though read.

9           CHAIRMAN GRAHAM:  We will insert Mr. Deason's  
10    prefiled rebuttal testimony into the record as  
11    though read.

12                   (Whereupon, prefiled testimony was inserted.)

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**I. INTRODUCTION**

1

2

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

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

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

7 A. I am employed by Radey Law Firm as a Special Consultant specializing in the  
8 fields of energy, telecommunications, water and wastewater, and public  
9 utilities generally.

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

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

13 **Q. Did you previously file testimony in this case?**

14 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original  
15 filing. In that testimony I address the regulatory policy considerations for  
16 acquisition adjustments in general and how those policy considerations should  
17 be applied to FPL’s proposed acquisition of the City of Vero Beach  
18 (“COVB”) electric system. I also filed supplemental direct testimony on  
19 August 6, 2018. In that testimony I provide further context on appropriate  
20 acquisition adjustment policy and associated issues in light of the current  
21 status of the case.

22 **Q. Are you sponsoring any exhibits with your rebuttal testimony?**

23 A. No.

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

2 A. The purpose of my rebuttal testimony is to respond to certain assertions and  
3 conclusions drawn by OPC witness Kollen and various witnesses sponsored  
4 by the Civic Association of Indian River County (“CAIRC”).

5

6 **II. REBUTTAL TO OPC WITNESS KOLLEN**

7

8 **Q. What does OPC witness Kollen recommend?**

9 A. Witness Kollen states that OPC supports FPL’s acquisition of the COVB  
10 electric utility and he recommends Commission approval of FPL’s request to  
11 charge its rates to the former COVB customers. However, he further  
12 recommends that the Commission reject FPL’s proposed ratemaking and  
13 accounting treatment, including the amortization of and return on the positive  
14 acquisition adjustment. Thus, he recommends that FPL not be allowed to  
15 recover the investment necessary to consummate the acquisition he and OPC  
16 support. The dichotomy of his position is as perplexing as it is unreasonable.  
17 It is also contrary to a basic tenet of ratemaking. In effect, witness Kollen is  
18 advocating rejection of the transaction.

19 **Q. How is witness OPC Kollen’s position contrary to basic ratemaking?**

20 A. A basic tenet of ratemaking is that all investments prudently made to serve  
21 customers are recoverable in rates, through both a return component and a  
22 recovery component. The return component is achieved by applying a  
23 reasonable return to the remaining undepreciated or unamortized balance of

1 the investment. The recovery component is achieved through an annual  
2 allowance for depreciation or amortization of the investment in rates over an  
3 appropriate period of years. This basic tenet is equally applicable to an  
4 investment in tangible assets (such as a generating plant) as it is to an  
5 intangible asset (such as a positive acquisition adjustment resulting from an  
6 acquisition). If the investment is prudently made to serve customers it should  
7 be recoverable in rates. However, witness Kollen simplistically supports the  
8 proposed acquisition while opposing the Commission recognizing and  
9 providing for recovery of FPL's investment in the acquisition. This is both  
10 unfair and unrealistic.

11 **Q. What would be the result of accepting OPC witness Kollen's**  
12 **recommendation?**

13 A. There would two undesirable results, one of an immediate effect and the other  
14 of a longer-term effect. First, the immediate effect would be to kill the COVB  
15 acquisition. This is explained in FPL's petition, in direct testimony  
16 accompanying the petition, and in responses to data requests from  
17 Commission Staff and OPC. Without the proposed accounting treatment, the  
18 Asset Purchase and Sale Agreement ("PSA") between FPL and COVB would  
19 not be consummated and all of its associated benefits would be lost to both  
20 FPL existing customers and the current customers of COVB.

21

22 The second undesirable result would be the chilling effect on any future  
23 acquisitions. The Commission's policy has been and should continue to be to

1 encourage acquisitions that are in the public interest. However, witness  
2 Kollen's recommendation is contrary to this policy and would cause utilities  
3 to not attempt to seek and consummate future acquisitions where a positive  
4 acquisition adjustment would be necessary to have them consummated.  
5 Regrettably, the Commission would not have the opportunity to consider these  
6 future acquisitions and test them to determine whether they are indeed in the  
7 public interest. This could impose significant costs on Florida' citizens and its  
8 economy in the form of missed opportunity costs.

9 **Q. Does OPC witness Kollen provide reasons for his recommendation?**

10 A. Yes, he identifies and discusses six reasons that purport to support his  
11 recommendation. However, his reasons are inconsistent with Commission  
12 policy and are not supported by the facts of this case.

13 **Q. Do you have any responsive comments to his six reasons?**

14 A. Yes, I will address them in the order as presented in his testimony:

15 1. Witness Kollen concludes that FPL's proposed accounting  
16 treatment will "impose certain and known costs and harm onto  
17 the general body of FPL customers, all else equal." I address  
18 this in my supplemental direct testimony at page 20, line 9  
19 through page 21, line 15. There I point out that rarely are all  
20 other things equal, which the facts in this case clearly support.  
21 The evidence in this case clearly shows that the proposed  
22 acquisition of COVB will not only result in no harm, but in  
23 actual savings to customers;

- 1           2. Witness Kollen surmises that the acquisition premium is an  
2           “exit” fee with “minimal or no value to existing FPL  
3           customers.” In actuality, the acquisition premium is not an exit  
4           fee. Rather, it is an arithmetic calculation of the difference  
5           between the arms-length negotiated purchase price of the  
6           COVB system (which necessarily included the costs to buy out  
7           COVB’s long term purchase power commitments) and the net  
8           book value of the acquired COVB assets. In addition to being  
9           the result of an arms-length negotiation between sophisticated  
10          entities who knew what additional purchase power obligations  
11          had to be satisfied in order for this transaction to work, the  
12          purchase price is also substantiated as being reasonable by the  
13          Duff & Phelps fair value study presented by FPL witness Herr.  
14          The resulting acquisition premium is then included in FPL’s  
15          Cumulative Present Value of Revenue Requirements  
16          (“CPVRR”) analysis to conclude that the acquisition will create  
17          benefits for existing FPL customers through lower rates;
- 18          3. Witness Kollen opines that “FPL’s claim of offsetting savings  
19          to existing FPL customers is uncertain and unknown.” It is  
20          true that the magnitude of the savings to FPL’s current  
21          customers cannot be known with absolute certainty at this time,  
22          which is the same reality for any such proposal with competing  
23          alternatives which comes before the Commission for approval.

1           However, FPL’s CPVRR analysis clearly shows that there will  
2           be savings to current FPL customers. This is supported by the  
3           fact that there will be a larger customer base over which to  
4           spread FPL’s fixed costs which is why, in part, the CPVRR  
5           analysis shows net savings on a present value basis. The  
6           CPVRR analysis has been and continues to be a generally  
7           accepted tool used by the Commission to make determinations  
8           of customer benefits between competing alternatives. In my  
9           supplemental direct testimony (page 12, line 14 through page  
10          14, line 13), I describe the role and purpose of a CPVRR  
11          analysis as a valuable regulatory tool and identify examples in  
12          which the Commission has consistently relied upon CPVRR  
13          analyses to make informed decisions between competing  
14          alternatives. What is known with absolute certainty is that the  
15          savings that would be achieved by the acquisition of COVB by  
16          FPL will not be achieved if witness Kollen’s recommendation  
17          were accepted and the acquisition adjustment were not  
18          approved;

19          4. Witness Kollen states: “The Company’s proposal to recover the  
20          acquisition premium would change the historic depreciated  
21          original cost of plant ratemaking paradigm to a fair value  
22          ratemaking paradigm, at least for the acquired assets.” He also  
23          states that this would strip away basic ratemaking protections.

1 I will respond to each of these statements. First, there will be  
2 no change in the Commission's long-held approach of  
3 including tangible assets in rate base at their original cost less  
4 accumulated depreciation, or net book value. Please see my  
5 supplemental direct testimony (page 23, line 1, through page  
6 24, line 11) for a more comprehensive discussion of the role of  
7 net book value in ratemaking and its limited use in determining  
8 the prudence of an acquisition. As such, the acquired COVB  
9 assets will be booked in their appropriate FERC accounts at  
10 original cost and will be depreciated according to FPL's  
11 Commission-approved depreciation rates on a going forward  
12 basis. Witness Kollen's hyperbolic warning that Florida would  
13 be changing its basic approach to ratemaking is simply not the  
14 case.

15 Second, there would be no stripping away of ratemaking  
16 protections. To the contrary, the very nature of this proceeding  
17 that was initiated back in November of last year has been to  
18 provide ratemaking protections to FPL's customers. This  
19 docket has attracted protesters and intervenors who have  
20 engaged in discovery and filed testimony. In addition,  
21 Commission Staff has been actively engaged in discovery. The  
22 Commission will have before it an abundant record upon which  
23 to base its decision and provide needed ratemaking protections.

1 This is all consistent with the Commission's long-held policy  
2 of approving positive acquisition adjustments only after a  
3 showing of extraordinary circumstances. However, under  
4 witness Kollen's myopic view, he would have the Commission  
5 disregard its long-held policy and simply reject out-of-hand  
6 any proposed acquisition that requires a positive acquisition  
7 adjustment, because he would have the full investment in the  
8 acquisition not included in rates. His view would simply not  
9 allow the Commission to use its considerable discretion to have  
10 proposed acquisitions brought to it and approve acquisition  
11 adjustments if they are determined to be in the public interest;

12 5. Witness Kollen opines that there are no extraordinary  
13 circumstances in this case. He specifically takes issue with the  
14 customer savings being an extraordinary circumstance and the  
15 resolution of territorial disputes being an extraordinary  
16 circumstance. First, customer savings has been a predominant  
17 consideration (among other considerations) that the  
18 Commission has historically relied upon to approve positive  
19 acquisition adjustments. In my supplemental direct testimony  
20 (page 17, line 3 through page 21, line 6), I discuss in greater  
21 detail why this has been the case historically and identify  
22 numerous cases that provide guidance to the Commission in  
23 this regard. I will not repeat all of that here. As for territorial

1           disputes being an extraordinary circumstance, I would point to  
2           the Sebring acquisition case in which the Commission  
3           specifically identified the resolution of territorial disputes as a  
4           relevant consideration to approve the Sebring acquisition (at  
5           page 9 of Order No. PSC-92-1468-FOF-EU). However, in the  
6           proposed acquisition of COVB, the overall public interest  
7           consideration goes way beyond the mere resolution of a  
8           territorial dispute. The consideration also goes to the fact that  
9           more than 60 percent of COVB's customers reside outside the  
10          City's municipal borders and have felt disenfranchised as a  
11          result. This is aptly described by the Commission in its PAA  
12          order in this docket (page 13 of Order No. PSC-2018-0336-  
13          PAA-EU) as a basis for the Commission's determination that  
14          the sale of the COVB system involves extraordinary  
15          circumstances. The Commission appropriately has great  
16          discretion in determining what is in the public interest and what  
17          constitutes sufficient extraordinary circumstances to approve  
18          an acquisition. In this case, both the prospect of customer  
19          savings and the end of territorial disputes and customer  
20          disenfranchisement are considerations sufficient, either in  
21          isolation or together, to make an ultimate finding that the  
22          proposed COVB acquisition is in the public interest;

1           6. Witness Kollen concludes by stating that “this case may well  
2           be viewed by a future Commission as a precedent for future  
3           and larger acquisitions by FPL and other utilities.” This  
4           statement is quite perplexing for at least two reasons. First and  
5           foremost, if his recommendation were approved, there would  
6           likely be no future acquisitions requiring a positive acquisition  
7           adjustment brought to the Commission. In that situation, this  
8           case would set a very bad precedent and would be contrary to  
9           the Commission’s policy of encouraging acquisitions that are  
10          in the public interest. If witness Kollen’s concern is that a  
11          decision to approve the proposed COVB acquisition  
12          adjustment could set a bad new precedent, he has no reason to  
13          fear. That is because the Commission already has a full set of  
14          cases establishing precedent that each acquisition is a unique  
15          situation that must be evaluated on its unique set of facts and  
16          circumstances. A decision to approve the proposed COVB  
17          acquisition adjustment would be entirely consistent with this  
18          already existing precedent.

19  
20          Second, his statement appears to be a warning to the  
21          Commission that it should be fearful of potential future  
22          acquisitions. If this is his intention, it is totally misplaced. In  
23          contradiction to the notion that the Commission should be

1 fearful of future acquisitions, I believe the Commission should  
2 embrace the prospect. It means that its policies are working  
3 and that future acquisition adjustments can be thoroughly  
4 reviewed and appropriately considered, as is currently  
5 happening with the proposed COVB acquisition. An  
6 opportunity for the Commission to appropriately exercise its  
7 jurisdiction to protect customers and promote the public  
8 interest should not be feared. As I said earlier, it should be  
9 embraced.

10 **Q. Does OPC witness Kollen also discuss the timing of the Commission's**  
11 **consideration of the proposed COVB acquisition?**

12 A. Yes, he suggests that the Commission defer a final decision until FPL's next  
13 base rate proceeding.

14 **Q. Should the Commission defer consideration of the quantification and**  
15 **recovery of any acquisition premium until its next rate case?**

16 A. No, the issues have been fully litigated in this proceeding with a full and  
17 complete record being developed. Thus, it is ripe for a decision. In addition,  
18 there are other reasons that the decision should not be deferred:

19 1. It has been Commission practice to consider some acquisition  
20 adjustments outside of a rate case. Indeed, from time to time,  
21 acquisition adjustments have been considered by the  
22 Commission as part of the initial acquisition and prior to a  
23 post-acquisition rate case. Please see Order No. PSC-2007-

- 1                   0913-PAA-GU, Order No. PSC-2012-0010-PAA-GU, and  
2                   Order No. PSC-2014-0015-PAA-GU;
- 3                   2. Positive acquisition adjustments and the accompanying  
4                   benefits that give rise to them must be demonstrated in the  
5                   record to the Commission, whether or not the request is made  
6                   in connection with a general rate proceeding. While FPL  
7                   recognizes that such acquisition adjustments are not routine,  
8                   the Company has presented evidence to support the  
9                   Commission finding in this case that the adjustment is  
10                  warranted to facilitate an otherwise beneficial proposal.  
11                  Furthermore, delaying such a finding until the next general rate  
12                  proceeding would result in prolonged regulatory uncertainty  
13                  and would effectively terminate the transaction. For that  
14                  reason, and particularly for an investment of this magnitude,  
15                  such a delay will preclude the closing of the transaction;
- 16                  3. Most acquisitions are complex with matters that are time-  
17                  sensitive. To bring these transactions to a successful  
18                  conclusion that brings customer benefits, it is important to have  
19                  them considered expeditiously and to have needed regulatory  
20                  certainty. Otherwise, parties may be reluctant to enter into  
21                  such complex negotiations when unnecessary delays may bring  
22                  more uncertainty. In this case, after many years of negotiations  
23                  and public debate within the COVB, FPL and COVB have

1           successfully negotiated an agreement for the purchase and sale  
2           of the COVB electric utility which also involves related  
3           transactions involving Orlando Utilities Commission and the  
4           Florida Municipal Power Agency. Requiring parties such as  
5           those involved in this series of transactions to attempt to  
6           negotiate on a schedule that corresponds with the possible  
7           timing of a general rate proceeding would make it virtually  
8           impossible for an acquisition such as this to take place;

9           4. The COVB acquisition is of such great public importance that  
10          it should be expeditiously considered outside of a rate case.  
11          The COVB electric utility is a municipally-owned electric  
12          provider to the City, portions of Indian River County and the  
13          Town of Indian River Shores. Of the approximately 35,000  
14          customers served, approximately 63 percent are geographically  
15          located outside of the City limits. These customers feel that  
16          they do not have adequate recourse to address or challenge  
17          decisions concerning the operations and rates of the COVB  
18          utility as currently constituted. They have sought recourse  
19          through both their local and state-level elected officials as well  
20          as through the courts and the Commission. These initiatives  
21          have taken place over a long period of time and have taken

1 various forms.<sup>1</sup> Because FPL's residential rates, which will  
2 become the rates of current COVB customers, are among the  
3 lowest in Florida, the COVB City Council and their electric  
4 customers overwhelmingly support the proposed acquisition  
5 and naturally desire to see the transaction approved as  
6 expeditiously as possible.

7

### 8 III. REBUTTAL TO CAIRC WITNESSES

9

10 **Q. Do you have any comments in response to the CAIRC witnesses?**

11 A. Their positions do not address matters within the jurisdiction of the  
12 Commission and I have no basis to either agree or disagree with their  
13 allegations concerning local issues. I would simply focus on two points. First,  
14 I believe there to be a strong public policy benefit to putting the management  
15 of the Vero Beach utility system in the hands of managers with extensive and  
16 proven utility managerial experience and to hold the resulting managerial  
17 decisions accountable by an independent regulatory authority that has the duty

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<sup>1</sup> Disputes over the provision of electric service provided by the COVB electric utility have resulted in significant litigation involving a number of parties and amici, including but not limited to the Commission, the City of Vero Beach, the Town of Indian River Shores, Indian River County, FPL, OUC, FECA and FMEA. The litigation includes the following: Docket No. 20140142-EM (Petition for declaratory statement or other relief regarding the expiration of the Vero beach electric service franchise agreement, by the Board of County Commissioners, Indian River County, Florida); Docket No. 20140244-EM (In re: Petition for declaratory statement regarding the effect of the Commission's orders approving territorial agreements in Indian River County, by the City of Vero Beach); Docket No. 20160049-EU (In re: Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores); Town of Indian River Shores et. al. v. City of Vero Beach (Indian River Circuit Court Case No. 2014-CA-000748); and Board of County Commissioners of Indian River County v. Art Graham et. al., 191 So. 3d 890 (Fla. 2016).

1 to protect the interests of all customers, regardless of which political  
2 subdivision they may reside in. The obvious way to achieve this outcome is  
3 to approve FPL's proposal, have all customers protected by the jurisdiction of  
4 the Commission, and have all customers represented by OPC.

5  
6 Second, I do take issue with witness Kramer's statement that no extraordinary  
7 circumstances exist because Vero Beach is financially stable. I do not dispute  
8 that Vero Beach is financially stable. What I disagree with is his implication  
9 that an acquired utility must be facing financial difficulty before a finding of  
10 extraordinary circumstances can be found. That simply is not the case. The  
11 financial distress of the City of Sebring was a contributing factor in the  
12 Sebring acquisition, but was not the single determinative factor in that case.  
13 Likewise, there have been numerous approvals of acquisition adjustments  
14 when the acquired utility was facing no financial distress. Indeed, the  
15 Commission should prefer and welcome instances where a proposed  
16 acquisition that depends on a request for recovery of an acquisition adjustment  
17 does not involve a financially distressed utility.

**IV. CONCLUSION**

1

2

3 **Q. Have any of the positions and arguments made by the various intervenor**  
4 **witnesses changed your conclusions in your direct and supplemental**  
5 **testimonies that the proposed acquisition of the COVB system by FPL**  
6 **should be approved?**

7 A. No. I stand by my previously stated conclusions for all the reasons stated in  
8 my direct and supplemental direct testimonies.

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

10 A. Yes, it does.

1 BY MR. ANDERSON:

2 Q Mr. Deason, have you prepared a summary of  
3 those three pieces of testimony you told us about?

4 A Yes, I have.

5 Q Please provide that combined summary to the  
6 Commission.

7 A Good morning, Mr. Chairman, Commissioners.  
8 It's a pleasure to be here.

9 The Commission has a long history of  
10 encouraging acquisitions that are in the public  
11 interest, which is the ultimate test. And the  
12 Commission has established policy on how to evaluate a  
13 positive acquisition adjustment. Each acquisition  
14 adjustment must be evaluated on its unique set of facts  
15 and circumstances, and there is no given checklist of  
16 factors that must be considered in every case.  
17 Nevertheless, these factors, when applied to proposed  
18 Vero acquisition clearly shows that granting the  
19 approvals requested in this proceeding is in the public  
20 interest, and that the requested accounting for the  
21 positive acquisition adjustment should be approved.

22 The Commission's decision in its PAA order is  
23 consistent with Commission policy and precedent. And  
24 while the specific facts differ, the acquisition of  
25 Sebring Utilities by Florida Power Corporation in 1992

1 provides guidance to the Commission in determining  
2 whether extraordinary circumstances exist that warrant  
3 the approval of a positive acquisition adjustment.

4 The four gas company acquisitions I cite in my  
5 testimony are also informative and helpful in this  
6 determination.

7 All of this precedent supports the approval of  
8 the proposed accounting treatment of the Vero  
9 acquisition. Doing so would be consistent with  
10 precedent and would constitute good, regulatory and  
11 public policy.

12 Witness Kollen supports the acquisition of the  
13 Vero utility system by FPL, but he recommends that the  
14 Commission reject FPL's proposed accounting treatment of  
15 the positive acquisition adjustment. Thus, he  
16 recommends that FPL not be allowed to recover the  
17 investment necessary to consummate the acquisition he  
18 supports. The dichotomy of his position is as  
19 perplexing as it is unreasonable. In contradiction to  
20 his assertions the facts of this case support the  
21 following:

22 One, the proposed acquisition will not only  
23 result in no harm, but in actual savings to customers.

24 Two, while the magnitude of customer savings  
25 cannot be known with 100 percent certainty at this time,

1 FPL's CPVRR analysis clearly shows that there will be  
2 savings to current FPL customers.

3           Commissioners, what is known with absolute  
4 certainty is that none of the savings or benefits will  
5 be achieved if Witness Kollen's recommendations were  
6 accepted.

7           Three, there will be no reductions or  
8 rate-making protections. To the contrary, the very  
9 nature of this proceeding has been to provide  
10 rate-making protections to FPL customers.

11           And lastly, No. 4, both the prospect of  
12 customer savings and the end of territorial disputes and  
13 customer disenfranchisement are considerations  
14 sufficient, either in isolation or together, to make an  
15 ultimate finding that the proposed Vero acquisition is  
16 in the public interest.

17           Witness Kollen also suggested the Commission  
18 defer final decision until FPL's next rate proceeding.  
19 This should not happen. The issues have been fully  
20 litigated in this proceeding and are ripe for a  
21 decision.

22           Finally, I concluded there is a strong public  
23 policy benefit to putting the management of the Vero  
24 Beach utility system in the hands of managers with  
25 extensive and proven utility managerial experience. The

1 obvious way to achieve this outcome is to approve FPL's  
2 proposal, have all customers protected by the  
3 jurisdiction of this commission, and have all customers  
4 represented by the Office of Public Counsel.

5 This concludes my summary. Thank you.

6 MR. ANDERSON: Mr. Chairman, Mr. Deason is  
7 available for cross-examination.

8 CHAIRMAN GRAHAM: Mr. Deason, welcome back to  
9 these chambers.

10 THE WITNESS: Thank you.

11 CHAIRMAN GRAHAM: You didn't have any problems  
12 finding it this morning, did you?

13 THE WITNESS: No.

14 CHAIRMAN GRAHAM: Ms. Larkin.

15 MS. LARKIN: Thank you.

16 EXAMINATION

17 BY MS. LARKIN:

18 Q Good, morning, Mr. Deason.

19 A Good morning.

20 Q Regarding your credentials, which are many, I  
21 am unfamiliar with a nonlawyer, and forgive me, giving  
22 legal opinions in testimony, so I would ask when you  
23 were Commissioner, or when you worked at the Commission,  
24 did you rely on staff legal opinions or did you do your  
25 own work?

1           A     I relied upon staff legal advice. I relied  
2 upon my aid for legal advice, who was an attorney. At  
3 the same time, I have extensive experience as a  
4 Commissioner and as a staffer at the Commission and as  
5 a --

6           Q     We understand that. Yeah, I said that's  
7 probably, you know, clear from your background, but I  
8 just wondered, you were relying on staff, and in this  
9 particular --

10          A     You did not let me conclude my answer, if I  
11 may.

12                   I also relied upon my own experience. I can  
13 read the English language, I can read Florida Statutes,  
14 and I can understand those, but I did -- yes, I relied  
15 upon legal advice from both staff and from my advisor.

16          Q     Great. I can't tell you how many of my  
17 clients have told me that they can read language and not  
18 gotten it right, but you are special.

19                   Since you were -- let's see, that's 16 years.  
20 You were seven years at OPC as well, and now you have  
21 done expert witness testimony several times?

22          A     Yes.

23          Q     Okay. You cited a few cases in your testimony  
24 just generally, both on the docket and some cases, did  
25 you shepardize or look through the history -- sorry --

1 of those citations yourself?

2 A Yes, I did.

3 Q Okay. So you know how to do that?

4 A Yes, I do.

5 Q Okay. And how did you do it? On-line?

6 A Yes, I -- many of the orders I downloaded from  
7 the Commission's website, which is a tremendous tool to  
8 use. So, yes, some of these cases I was familiar with  
9 myself because I participated in those. And there is  
10 always some legal research done at the law firm where I  
11 work to maybe find some of the older cases.

12 Q Okay. So all the cases that you cited, you  
13 found the conflicting cases that went along with them,  
14 other cases that cited them?

15 A I don't understand your question. Maybe you  
16 could rephrase it or repeat it.

17 Q No, that's okay.

18 So let's see, as far as acquisition  
19 adjustments, you cited a great many of the opinions,  
20 mostly gas company, I believe, or water company cases?

21 A Well, yes, out of necessity, because there has  
22 only been one electric acquisition since 1992. That was  
23 the first. This is the second.

24 Q Right. And so the Sebring is the one that you  
25 cited -- you said it was the best example. I just found

1 it to be the only example, so I thought perhaps you knew  
2 of another one.

3 In your testimony on page five, line 13 --

4 A May I ask which? I have three pieces of  
5 testimony.

6 Q Oh, I am sorry. I am doing the direct right  
7 now.

8 A I am sorry, page what?

9 Q Page five, line 13. You cite the rule about  
10 acquisition adjustments, and the rule itself states it's  
11 not applicable to electric utilities, but according to  
12 your opinion, it should be. Have you found law that  
13 supports your opinion?

14 A Well, first of all, you have misstated my  
15 position in your question. So if I may correct your  
16 question.

17 I am not saying that the wastewater rule --  
18 water and wastewater rule is applicable for an electric  
19 utility. What I am saying is it does provide guidance.  
20 And I also state that as a matter of regulatory policy,  
21 to the extent that policies can transcend industry  
22 boundaries, and be read comprehensively and be  
23 reconciled with each other, that should be the goal of  
24 regulation.

25 Q I am just rechecking because I made a note

1 here.

2 A Commissioners, I can say that I was on the  
3 Commission when the first wastewater rule was adopted in  
4 2002, and it was adopted for water and wastewater  
5 because we had numerous cases --

6 CHAIRMAN GRAHAM: Mr. Deason -- Mr. Deason,  
7 let's wait for her to ask you a question, please.

8 THE WITNESS: Okay.

9 MS. LARKIN: Thank you.

10 BY MS. LARKIN:

11 Q Yes. You do, indeed, say -- I am sorry --  
12 that the definition of acquisition adjustment should be  
13 the same for all industries, and that includes electric.  
14 That was your opinion. So according to you, it should  
15 be -- that rule should include the electric. And I am  
16 just wondering, has there been some law that you are  
17 basing this on, or is it just your opinion?

18 A The definition of an acquisition adjustment,  
19 without question, is the same, regardless of industry.

20 Q But it doesn't apply -- I am sorry, I will  
21 rephrase my question just so it's clear.

22 The rule itself is not applicable to electric  
23 utilities, but according to you, it should be. Have you  
24 found any specific law or any basis for that, or is this  
25 just -- not just, I shouldn't say just -- or is this

1 **your opinion on that law?**

2 A Again, you are mischaracterizing my testimony.  
3 If I may correct you.

4 **Q I can read it for you, if you would like.**

5 A I am not saying that the water and wastewater  
6 rule is applicable to electric utilities, okay. But I  
7 am saying that the definition of acquisition adjustment  
8 is the same for all industries.

9 **Q Okay. Let me just read you your statement.**

10 **It says: Specifically, no, the acquisition**  
11 **adjustment is not applicable to electric utilities in**  
12 **answer to that question. The rule is applicable to**  
13 **water and wastewater utilities subject to the**  
14 **Commissioners' jurisdiction; however, the definition of**  
15 **an acquisition adjustment should be the same for all**  
16 **industries regulated by the Commission.**

17 **I am just asking you what legal background you**  
18 **used for making that opinion.**

19 A This is not a legal background. It's not a  
20 legal question. This is an accounting definition, and  
21 the definition of an acquisition adjustment is the same  
22 regardless of industry.

23 **Q Okay. Well, I will take that as no.**

24 **On page eight, line 13, this is what we just**  
25 **talked about a little bit, that Sebring was the only**

1 case.

2 In this case, you are saying it's not to be  
3 considered -- oh, the case itself says it shouldn't be  
4 considered, legally speaking, as a precedent. But you  
5 are suggesting basically that it is, that it sets an  
6 example for applying an acquisition adjustment for  
7 electric situations, electric utilities. How do you  
8 reconcile that? Are you saying it's not a precedent but  
9 it is a precedent?

10 A My testimony is stating that it was the  
11 Commission's desire that it not be considered precedent  
12 because of the very unique circumstances which existed  
13 for that acquisition. However, that case has been cited  
14 as precedent even by the Commission staff in this case.  
15 And I agree that it does provide -- help provide  
16 guidance to the Commission. So the case is -- it says  
17 what it is. It does provide guidance for the  
18 Commission's consideration in this case.

19 Q Well, yeah, but you state it's a good example  
20 of -- and that's exact from your statement. And since  
21 many of the facts are not the same, I just didn't  
22 understand. Are you relying on, then, other statements  
23 in this docket to say that it's a good example?

24 A The case speaks for itself, and it is not only  
25 a good example, it is the only example.

1 Q That doesn't make it a good one.

2 A Well, in my opinion, it does, ma'am.

3 Q And your opinion is based on your opinion?

4 A My opinion, which I value.

5 Q Let's see, on page nine, line 20, go just a  
6 little further on, you say: The going concern value  
7 includes good will. There is a question about what  
8 inclusion of good will should be or should not be. And  
9 you state that the customer's revenue stream, et cetera,  
10 is a valued product, and to the extent it exceeds  
11 payments it's made through the acquiring a utility.

12 Can you give me, again, any citations as to  
13 how good will should be, then, folded into this deal?

14 A Yes, ma'am, I can.

15 I am referring to 366.06(1) of Florida  
16 Statutes. And in this provision, it discusses rates and  
17 procedure for fixing and changing rates, and one  
18 particular section of this refers to good will. And it  
19 states: When determining rate base, that it shall not  
20 include any good will, or going concern value, or  
21 franchise value in excess of payment made therefor.

22 So what this means is that, as a normal course  
23 of business, good will or going concern value is not  
24 included in rate base, but it is permissible, but it  
25 cannot exceed payment made therefor. So Florida

1 Statutes certainly envisioned this as a result, and the  
2 Commission has followed this consistently when it's  
3 considered acquisition adjustments.

4 Q Okay. So the statement in 366.06(1) where it  
5 says you can't include good will, you are saying that  
6 the later statement about -- I mean, good will is always  
7 paid for, so I am not sure what the distinction is here.  
8 If a company pays for the good will, that means, then,  
9 it can be recovered?

10 A If they paid value for that, and the  
11 Commission determines that it is fair value, and that  
12 there are sufficient circumstances and benefits for  
13 customers to justify the inclusion, then, yes, the good  
14 will would be included, and it would be reflected in  
15 accounting purposes as an acquisition adjustment, which  
16 Mr. Ferguson just discussed.

17 Q Yes. I am just trying to get to the nuts and  
18 bolts of how that gets -- good will is excluded and then  
19 suddenly included. Since it's always paid for, I didn't  
20 see the distinction.

21 A Well, first of all, the statute does not say  
22 it is excluded --

23 Q I didn't ask you a question, sorry.

24 CHAIRMAN GRAHAM: Ms. Larkin, you -- it's  
25 almost like you are testifying. You really can't

1           **put a statement out there.**

2           MS. LARKIN: Okay. Let me add -- I was going  
3           to add a question to it.

4           CHAIRMAN GRAHAM: Okay. Thank you.

5           MS. LARKIN: Thanks.

6           BY MS. LARKIN:

7           **Q     My question was, if you are trying to**  
8           **distinguish at a time of when it's paid for -- when it's**  
9           **always paid for, can you give me a case where good will**  
10          **has been included in an acquisition adjustment?**

11          A     Well, yes. The Sebring case, there was an  
12          amount included and the Commission referred to that as  
13          good will. It was the amount paid in excess of book  
14          value, which the Commission gave -- used the terminology  
15          good will; but, in essence, it's the acquisition  
16          adjustment.

17          **Q     Right, but other than Sebring, I am sorry,**  
18          **because Sebring, of course, is slightly different than**  
19          **our case.**

20          A     Well, yes. There is a gas case, and I can't  
21          recite the exact case, but there was a request made by a  
22          gas company that sought good will in excess of the  
23          amount paid. They presented a financial analysis  
24          showing that they were going to be substantial benefits  
25          for customers, and they wanted to include an amount in

1 excess of what they paid because of those benefits, and  
2 the Commission rejected that.

3 Q Okay. Thank you.

4 Throughout the testimony, you talk about this  
5 being an arm's-length transaction. Can you define  
6 arm's-length transaction for us?

7 A Yes. It's a transaction involving two  
8 unrelated parties, normally sophisticated parties, who  
9 have equal standing to understand the issues and to  
10 protect their interest, and to reach a mutual agreement  
11 as to what is beneficial for each party so that the  
12 transaction can be consummated.

13 Q Okay. Thank you.

14 So I am moving into your supplemental direct,  
15 not just the direct. You talk a lot in your  
16 supplemental direct about the Commission's order on  
17 July 2nd and the hearing.

18 Can you tell me, was any of the hearing on  
19 July 2nd based on sworn testimony and evidence?

20 A No, it was -- there was no sworn evidence. It  
21 was a proposed agency action order.

22 Q Okay.

23 A Just to be clear, there was evidence presented  
24 in the form of prefiled testimony, but that was not in  
25 the record at the time the decision was made.

1           **Q     Right. Yeah. I am talking about this -- at**  
2 **the hearing.**

3           **Let's see, you state on page 19, line three,**  
4 **that the cases you cite aren't determinative, but they**  
5 **are informative. And as a lawyer, forgive me, I need to**  
6 **know what difference that makes to you, the difference**  
7 **between determinative and informative?**

8           **A     I am actually referring to language that was**  
9 **used by the Commission in its PAA order, and I am in**  
10 **agreement it that the gas cases are not determinative.**  
11 **And, in fact, that's the very foundation of my**  
12 **testimony, is each acquisition is so unique, it has to**  
13 **be reviewed upon its unique set of facts and**  
14 **circumstances, but the gas cases do provide significant**  
15 **guidance in making that ultimate determination.**

16           **Q     But there is no legal distinction between**  
17 **those two terms?**

18           **A     I am making no legal distinction. I am just**  
19 **using the terminology that was contained in the PAA**  
20 **order.**

21           **Q     Okay. As far as extraordinary circumstances**  
22 **go, on page 22, line one, you talk about lower rates.**  
23 **And going to the accounting issues that have been**  
24 **presented by Mr. Kollen and the discussion we had with**  
25 **Mr. Ferguson -- I don't mean to make this too long, but**

1    **how can you be sure that there will be lower rates when**  
2    **there are so many factors that are still in question, at**  
3    **least as far as the evidence goes?**

4           A     Here again, it is not 100 percent certainty.  
5    It is the preponderance of the evidence.  And the  
6    preponderance of the evidence clearly shows that will be  
7    savings for customers.

8           **Q     And so you relied on FPL's assessments of**  
9    **that?**

10          A     Yes, and the fact that they used the CPVRR  
11    analysis, which is a tool that has consistently been  
12    used by the Commission in making such determinations.

13          **Q     But we do have Mr. Kollen relying on that same**  
14    **stuff, same background, and coming up with different**  
15    **numbers, correct?**

16          A     I reviewed Mr. Kollen's testimony, and I think  
17    that he found some -- what he considered to be some  
18    errors.  I think there was rebuttal testimony filed by  
19    FPL which rebutted that.  I do not recall Mr. Kollen  
20    actually coming up with a specific number that he  
21    thought was correct.

22          **Q     Yeah, I think you are correct.  I don't think**  
23    **there was a number.**

24                   **You speak to improved quality of service.  Are**  
25    **you familiar with City of Vero Beach electric service?**

1           A     Not intimately. I am familiar with the city  
2 as to its size and its service territory and its rates,  
3 but I don't have intimate knowledge of the inner  
4 workings of the City's utilities.

5           Q     Okay. It's not the T&D, or the customer  
6 service, or anything like that?

7           A     No, I have not reviewed that.

8           Q     Okay. Let's see, and I will ask you sort of  
9 the same thing I asked Mr. Ferguson.

10                    You also state that there would be more  
11 experienced personnel. Have you talked to any of the  
12 managers in operations and customer service in the City  
13 of Vero Beach offices?

14           A     I have not.

15           Q     Okay. Thanks.

16                    As far as an end of the litigation, which a  
17 lot of people have emphasized, and why this has gone on  
18 so long, do you know how long these litigations have  
19 gone on?

20           A     Well, I have heard testimony here earlier  
21 today that it's been in excess of 10 years. I have no  
22 basis to disagree with that.

23           Q     You haven't been involved in any of those  
24 litigations, have you?

25           A     Yes, I have. I -- to a very limited extent.

1           **Q     Okay. To what extent?**

2           A     I was retained by the Town of Indian River  
3 Shores as a consultant as it tried to navigate its way  
4 through to trying to find some relief for its  
5 customers -- I am sorry, for its citizens.

6           **Q     Okay. Let's see, are you aware that those**  
7 **years of litigation, none have been successful to this**  
8 **point?**

9           A     Well, it depends on how you define successful.

10          **Q     Well, there are one or two that are still**  
11 **pending, so they haven't been resolved, so I wouldn't**  
12 **say that's successful; but the ones that have been**  
13 **actually decided have been in favor of the City, is that**  
14 **correct?**

15          A     I would generally agree with that. I think  
16 the County has had litigation. I think the shores has  
17 had some litigation. There -- but as you pointed out,  
18 and which I agree, there is still pending litigation --

19          **Q     Correct.**

20          A     -- that if this acquisition is consummated  
21 would make that litigation go away. I guess it would  
22 become moot.

23          **Q     So you recommend that this be passed because**  
24 **you want those litigations to end, or you feel it's a**  
25 **good thing?**

1           A     I think ending the litigation is a good thing,  
2     but it is not the only consideration why this  
3     acquisition should be approved.

4           Q     **Right. But it is one of those things?**

5           A     It is one consideration.

6           Q     **Okay. So would you, perhaps, suggest to**  
7     **future clients that they do a lot of litigation prior to**  
8     **bringing one of these types of cases?**

9           A     No, I would not recommend that. I would  
10    recommend just the opposite, that the best solution is  
11    for reasonable people to enter into negotiations and to  
12    reach an amicable outcome that benefits all customers,  
13    which is the situation we have here in front of the  
14    Commission.

15          Q     **Part of the situation we have here, though, is**  
16    **a lot of people relying on the fact that ending**  
17    **litigation is exceedingly important, and --**

18                    **CHAIRMAN GRAHAM: Ms. Larkin, questions and**  
19    **not testimony, please.**

20                    MS. LARKIN: Yes. Sorry. I am just giving a  
21    background to the next --

22                    CHAIRMAN GRAHAM: All right.

23    BY MS. LARKIN:

24          Q     **I forgot what I was saying. I am getting**  
25    **older.**

1           In other words, to bring an end to litigation  
2   is a plus in this case, is what I am saying; and that is  
3   then rewarding people for having brought this litigation  
4   to make a problem that they can then fix?

5           MR. ANDERSON: Asked and answered.

6           CHAIRMAN GRAHAM: I will allow him to answer  
7   it.

8           THE WITNESS: No, I disagree with your  
9   characterization.

10          I don't think that litigation should be  
11   pursued if it could be prevented. I think the  
12   history of this case shows that litigation was a  
13   step which ultimately brought us to where we are,  
14   and it is a beneficial thing to end the litigation.  
15   But I don't think what's in front of us now is any  
16   type of an incentive or a message to people to  
17   enter into litigation before they attempt to sit  
18   down and to try to negotiate their differences and  
19   reach an amicable solution.

20   BY MS. LARKIN:

21          Q     Okay. Thank you.

22                When we talk about the disenfranchisement of  
23   the outside customers, can you tell us how many cities  
24   are in the situation that Vero Beach is, as far as  
25   having outside customers outside their city borders?

1           A     I cannot.

2           **Q     Okay. Are there, do you know, more than one?**

3           A     My -- well, I can't give you the exact number.  
4     Just based upon my experience, I would say that there is  
5     probably a number of cities that have customers outside  
6     the boundaries of the city. That situation would not be  
7     unusual.

8           **Q     Correct.**

9           A     The situation of Vero, though, would be  
10    unusual in that the number, and the fact that there has  
11    been this ongoing unrest that the customers don't have  
12    adequate input into the setting of the rates.

13          **Q     Okay. So the number of customers make a**  
14    **difference outside the borders?**

15          A     I think it's a consideration, yes. But I  
16    don't think there is any magic number that, you know, if  
17    it's 60 percent, or 30 percent, or 20 percent, that it  
18    somehow triggers something. I think, again, each  
19    situation is unique and has to be looked upon the facts  
20    and circumstances.

21          **Q     Well, disenfranchisement is a rather large**  
22    **claim to make. I mean, you are talking about your**  
23    **constitutional right to a vote supposedly. So if there**  
24    **were 10 families outside that were disfranchised, that**  
25    **wouldn't be important enough?**

1           A     Again, if such a case were brought, it would  
2     depend upon the facts and circumstances.  But if there  
3     is disenfranchisement, it doesn't matter if it's one  
4     person or 35,000.

5           **Q     Yeah, I would agree.**

6                   **So can you tell me what the legal definition**  
7     **of a tax is?**

8           A     I cannot give you a legal definition.  I am  
9     not an attorney.  I can give you my understanding of  
10    what a tax is.

11          **Q     Go ahead.**

12                   MR. ANDERSON:  May I interject?  Could this  
13    please be tied to the testimony and why this is  
14    within the scope of direct examination of the  
15    witness?

16                   CHAIRMAN GRAHAM:  Ms. Larkin, can you see  
17    where in his testimony, supplemental testimony,  
18    rebuttal testimony he goes down this path?

19                   COMMISSIONER CLARK:  Well, he talks about  
20    disenfranchisement and being -- and that's being  
21    taxed without representation.  And so this links  
22    to -- I mean, that's the basic tenet of what  
23    disenfranchisement is supposedly in this case, is  
24    that people are paying their bills and that somehow  
25    a tax on them and they are not represented.

1 CHAIRMAN GRAHAM: Ask your question again.

2 MS. LARKIN: Sure.

3 BY MS. LARKIN:

4 Q So when we are talking about customers being  
5 **disfranchised**, we are talking about the fact that they  
6 are claiming that they are paying taxes to the City by  
7 paying their electric bills and they have no vote on how  
8 their taxes are being spent. I want to know what tax we  
9 are considering here.

10 A First of all, I don't accept the premise of  
11 your question. Nowhere in my testimony I use the term  
12 taxation without representation. I do use the term  
13 disenfranchisement.

14 Q Right. So what does your disenfranchisement  
15 mean?

16 A It's the situation in this case where there  
17 are customers in the electric utility who do not have  
18 the ability to influence the setting of their rates and  
19 the quality of their service because they do not have  
20 the ability to elect those persons who make that  
21 decision.

22 Q Okay. And so if they had FPL, they would be  
23 able to elect people?

24 A No, to the contrary. They would have the same  
25 benefits that all customers in the state of Florida have

1 who were served by an investor-owned utility. They  
2 would have the benefit of the regulation of the Florida  
3 Public Service Commission, and they would have the  
4 benefit of the representation of the Office of Public  
5 Counsel.

6 Q I am sorry, that's in your supplement again.  
7 I am sorry.

8 You talk on page 26, line five, about  
9 additional benefits. And here you talk about taxes paid  
10 by FPL. Do you have an amount --

11 A No.

12 Q -- that FPL would pay?

13 A No. It would just be the -- the amounts would  
14 be calculated according to tax returns and tax filings.

15 Q Okay. So none of that has been determined at  
16 this time?

17 A No. I am not trying to say that a certain  
18 amount is -- has to be identified. I am just stating  
19 that, as a matter of policy, there would be taxes paid.

20 Q Okay.

21 CHAIRMAN GRAHAM: Ms. Larkin, how much longer  
22 do you have for questioning for this witness?

23 MS. LARKIN: Let's see. Almost done.

24 CHAIRMAN GRAHAM: Okay.

25 MS. LARKIN: Is that good?

1 CHAIRMAN GRAHAM: I was going to take a break,  
2 but we can wait until you are done.

3 MS. LARKIN: Yes, it should be very quick.

4 CHAIRMAN GRAHAM: Sure. Sure.

5 MS. LARKIN: Thanks.

6 BY MS. LARKIN:

7 Q On line 10, you claim that lower taxes, again,  
8 are -- do you mean lower taxes for -- will be a result  
9 of this transaction --

10 MR. ANDERSON: What page and line, please? I  
11 am sorry, I am not following the page and line  
12 counsel is referring to. I don't see that.

13 MS. LARKIN: Page 26.

14 MR. ANDERSON: Page 26.

15 MS. LARKIN: Page 26, line 10.

16 MR. ANDERSON: The could put downward pressure  
17 on taxes, that line?

18 MS. LARKIN: Right.

19 MR. ANDERSON: Okay. Thank you.

20 MS. LARKIN: Sorry.

21 THE WITNESS: That's my testimony, yes.

22 BY MS. LARKIN:

23 Q Yes.

24 And downward pressure on taxes for whom? Can  
25 you just clarify?

1           A     For the people who pay taxes that support  
2 schools and law enforcement agencies.

3           Q     I see.

4                   And as far as -- did you do any review of  
5 those same taxes?

6           A     No. Again, it's just a matter of policy. I  
7 did not attempt to quantify the amount of potential  
8 downward pressure on taxes.

9           Q     Okay. So losing -- you didn't -- it wasn't  
10 your goal to compare what our taxes are now -- our, in  
11 the City taxes are now to what they might be after they  
12 lose the income from the utility, that wasn't what you  
13 were speaking about?

14          A     I was not speaking to that you just  
15 referenced.

16          Q     Okay. Thanks.

17                   On line 17, you mention smart meters, and the  
18 benefits thereof. Are you aware there is opposition to  
19 smart meters?

20          A     Yes.

21          Q     And do you know why there is opposition to  
22 smart meters?

23          A     There is a small minority of customers who  
24 feel that there could be some consequences of that  
25 technology which would be adverse to their well-being.

1           Q     Okay.  And is -- are you aware -- I am not  
2     sure this is in your bailiwick -- but that the customers  
3     will be paying if they don't want to have a smart meter  
4     installed?

5           A     Yes, I am very familiar with that.  I  
6     testified as an expert in that case, and that helped  
7     establish the policy of the Commission that set forth  
8     that charge, which makes sure that customers paying the  
9     costs that they impose on the system.

10          Q     Thank you.

11                MS. LARKIN:  And that's all.

12                CHAIRMAN GRAHAM:  Thank you, Ms. Larkin.

13                We are going to take a break for about until  
14     11:30 by that clock back there, about nine minutes,  
15     I apologize to our court reporter.

16                MS. LARKIN:  I apologize, there was rebuttal,  
17     but I would be happy to wait.

18                CHAIRMAN GRAHAM:  What's that?

19                MS. LARKIN:  I didn't get to the rebuttal for  
20     Mr. Deason.  I'm sorry.

21                CHAIRMAN GRAHAM:  Okay.  Well, we will come  
22     back to that.

23                MS. LARKIN:  Yeah, we can come back.

24                CHAIRMAN GRAHAM:  Normally I stop every two  
25     hours for our court reporter to rest her little

1 hands, and so she's been there for about two and  
2 half hours, so we are going to take a break for the  
3 next eight minutes, by 11:30.

4 Thank you.

5 (Brief recess.)

6 CHAIRMAN GRAHAM: Okay. We are probably going  
7 to go straight into one o'clock, which we will have  
8 lunch. And then after lunch, as I said, we will  
9 take the public testimony.

10 Ms. Larkin, you have the floor.

11 MS. LARKIN: Thank you very much.

12 BY MS. LARKIN:

13 Q Mr. Deason, in your supplemental testimony, I  
14 skipped over just one or two questions. There was --  
15 let's see, you agreed -- regarding the Sebring case, you  
16 agree there is no financial distress for the City of  
17 Vero Beach. We are all relieved to know that. And is  
18 that a current opinion, or have you reviewed the City's  
19 status, their finances, their budgets?

20 A I have not reviewed their budgets. I just  
21 know that they have a solid bond rating.

22 Q Okay. And so you haven't done any projections  
23 should they lose the income that they get from the  
24 utility, you are just basing it on now?

25 A Based upon their status now, correct. And I

1 made no assumptions as to what their income would be  
2 post acquisition.

3 **Q Okay. Great.**

4 MS. LARKIN: That's all I have. Thank you.

5 CHAIRMAN GRAHAM: That's all you have?

6 MS. LARKIN: Yes.

7 CHAIRMAN GRAHAM: Staff?

8 MR. MURPHY: No questions.

9 CHAIRMAN GRAHAM: Okay. We will go to the  
10 Commission.

11 Mr. Deason, your direct testimony, page 22,  
12 lines four through 21, extraordinary circumstances.

13 THE WITNESS: This is in the supplemental  
14 direct, Mr. Chairman?

15 CHAIRMAN GRAHAM: This is in -- I think it's  
16 your direct -- supplemental direct.

17 THE WITNESS: Okay. I am sorry. Page 22?

18 CHAIRMAN GRAHAM: Correct.

19 THE WITNESS: Okay.

20 CHAIRMAN GRAHAM: Now, are you saying that we  
21 should do this acquisition adjustment based on one  
22 of these? Half of these? All of these  
23 collectively?

24 THE WITNESS: I am saying that the Commission  
25 has great discretion to make its ultimate decision

1 of what's in the public interest.

2 All of these, in my opinion, are factors that  
3 the Commission can address or rely upon, maybe some  
4 more than others; maybe eliminate some and just  
5 rely on others. It's all within the Commission's  
6 discretion.

7 CHAIRMAN GRAHAM: Okay. Let's go through  
8 these.

9 The first one, lower rates for City of Vero  
10 Beach and for Florida Power & Light customers. The  
11 deal on the table is -- and let me refresh my  
12 memory, it's \$185 million?

13 THE WITNESS: That's the purchase price, yes.

14 CHAIRMAN GRAHAM: And the net book value is  
15 what?

16 THE WITNESS: I think that the positive  
17 acquisition adjustment is somewhere in the  
18 neighborhood of 114 million. So the net book -- I  
19 mean, the net book value, I guess, would be roughly  
20 the difference between 185 and 114, something in  
21 that neighborhood.

22 CHAIRMAN GRAHAM: Okay. So 71 million?

23 THE WITNESS: I will rely upon your math.

24 CHAIRMAN GRAHAM: Okay. Well, just for the  
25 sake of this argument, we are not going to hold you

1 this, but we will use 185, 114 and 71.

2 Lower rates for the City of Vero Beach and  
3 Florida Power & Light customers. What are the  
4 lower rates for Florida Power & Light customers?

5 THE WITNESS: It's reflected in the cumulative  
6 present value of revenue requirements analysis,  
7 which shows that over a 30-year period, that the  
8 revenue requirements would be less. And when  
9 revenue requirements are less, that would put  
10 downward pressure on rates, which would ultimately  
11 result in lower rates.

12 CHAIRMAN GRAHAM: Over the period of 30 years?

13 THE WITNESS: On a present value basis, yes.  
14 And when I say lower rates, lower than they  
15 otherwise would be, because we don't really know  
16 for sure what other parameters may be out there  
17 that would put upward pressure on rates, but we are  
18 just -- we are comparing with acquisition and  
19 without acquisition, and doing the CPVRR analysis  
20 based upon those two possibilities.

21 CHAIRMAN GRAHAM: Well, your recommendation is  
22 to put this \$114 million burden on the ratepayers  
23 of Florida Power & Light. Can you, through the  
24 lower rates you are talking about, is there an  
25 accounting way to, say, put that over in a pot, so

1 over the period of time that pot accumulates to,  
2 you get the savings that you are speaking of, and  
3 use that money to pay off that \$114 million  
4 acquisition adjustment?

5 THE WITNESS: Well, in essence, that's what's  
6 being proposed. The amount of acquisition  
7 adjustment is going to be included in rate base.  
8 And when the next rate case, it will be in the rate  
9 base, and there will be an amortization of that  
10 over 30 years.

11 So that's going to be in the rates, but also  
12 you are going to have all of the revenues that  
13 would otherwise would not exist from the Vero  
14 customers. And those revenues, according to the  
15 analysis, are going to be sufficient to not only  
16 cover the cost of the acquisition and the  
17 amortization of the acquisition adjustment, but to  
18 also put downward pressure on rates to the tune of  
19 \$135 million.

20 CHAIRMAN GRAHAM: But I am just looking for --  
21 I am looking for -- to clarify all of this. I am  
22 looking for the ratepayers of Florida Power &  
23 Light, you know, they are sitting back saying, wait  
24 a minute, why are we paying this amount, you know?  
25 We are not getting any direct benefit from it. We

1 are not getting any lower rates today, like the  
2 City of Vero Beach will be getting. We are taking  
3 a system that has a higher load, and it's not as  
4 efficient as our system is right now, so can't you  
5 just going ahead and generate this over here so I  
6 don't feel -- now, granted there is so many  
7 customers, I really don't feel -- they are going go  
8 to say the argument is you don't feel it. Well,  
9 let's go ahead and put it in a bucket and make it  
10 clear that way.

11 THE WITNESS: Mr. Chairman, I am not saying it  
12 can't be done. I have never seen it. And sitting  
13 here right now, I am having a hard time envisioning  
14 how that would be done according to the Uniform  
15 System of Accounts, and even how the entries would  
16 be calculated.

17 Now, there is probably smarter people than me  
18 that could probably figure it out, but I don't -- I  
19 think, to the best of my knowledge, it's never been  
20 done before, and I don't really know how it would  
21 be.

22 CHAIRMAN GRAHAM: Well, you are definitely  
23 smarter than me when it comes to accounting, so I  
24 don't have any suggestion on how to do it. I am  
25 just -- I am asking you the question, can't we do

1           it, and why don't we do it?

2           Improve quality of service, reliability and  
3 storm restoration. Okay. So how does that benefit  
4 the Florida Power & Light customers? It benefits  
5 the City of Vero Beach and Indian River, but does  
6 that benefit the Florida Power & Light customers?

7           THE WITNESS: I don't think it's a net  
8 incremental benefit for the existing customers. I  
9 think it's a net incremental benefit for the Vero  
10 customers.

11           And again, the ultimate test is to cause no  
12 harm to the existing customers. And there is not  
13 going to be no harm to the existing customers.  
14 There is not going to be degradation to their  
15 quality of service or their reliability.

16           CHAIRMAN GRAHAM: All right. Well, let's just  
17 go back to the savings, the annual savings of the  
18 current customers. If it's \$300 a month -- I am  
19 sorry, \$300 a year, they stay no harm, why don't  
20 you just keep them at their current rate, and then  
21 when that dollar amount adds up to \$114 million,  
22 then use that to pay off that distance you are  
23 talking about, that acquisition adjustment, and  
24 still there is no harm to them, because they are  
25 getting, as the earlier witness said, better

1 service, better efficiency, you know, second to  
2 none, you know, definitely we've seen how Florida  
3 Power & Light is with storm restoration, so it's  
4 win, win, win, win, but yet you keep them at the  
5 same current rate and not dropping it down?

6 THE WITNESS: Mr. Chairman, I understand the  
7 question. The simple answer is, is that if that  
8 were done, we won't have a transaction in front of  
9 us. I mean, that was one of the very most initial  
10 goals when the parties sat down to negotiate.

11 Now, I was not part of the negotiations. I am  
12 just getting this information from Mr. Forrest and  
13 other witnesses as to how that transpired. But  
14 that was one of the most initial things, is that  
15 for the City to be willing to sell their utility,  
16 it was a requirement that their customers -- all  
17 customers of the City, in the City and in the  
18 County, would receive Florida Power & Light rates.

19 So that was -- if that -- if there could  
20 not -- if that could not have been achieved, there  
21 would not even -- we would not be here today.  
22 There would not be a proposal in front of the  
23 Commission.

24 CHAIRMAN GRAHAM: And we are not in a position  
25 to negotiate this deal. We are just basically in a

1 position to accept or not accept your accounting  
2 structure.

3 I am not going to go through all nine of  
4 these. Let's skip down to the No. 7,  
5 disenfranchisement of 60 percent of Vero Beach's  
6 customers.

7 Now, I am sure you are aware that there is six  
8 other municipals in the state of Florida that have  
9 more than 50 percent outside of their city.  
10 Actually, if you -- if you are aware, all but three  
11 of them have customers outside of their city.

12 So if there is truly a disenfranchisement  
13 there, isn't that something the Legislature should  
14 handle? I mean, why is it something that we are  
15 trying to fix here with a negotiated deal when the  
16 Legislature should be fixing that, if that is truly  
17 a problem?

18 THE WITNESS: I can't speak the other cities  
19 and, you know, those customers may be very happy  
20 with their quality of service and the rates that  
21 they pay, so I can't speak to those, so -- but we  
22 do know for a fact that in this case, the customers  
23 who live outside feel disenfranchised, and that's  
24 been -- it's been obvious by the litigation that  
25 has been going on for a number of years.

1           So -- I am sorry, I lost track of the  
2           question. I apologize.

3           CHAIRMAN GRAHAM: Well, I was just saying, if  
4           it's disenfranchised, if it's something -- it  
5           sounds like it's something that should be fixed.  
6           And I guess my question is, should -- I mean, you  
7           sat in this seat for a number of years. Is that  
8           something that should be here? Is that something  
9           the Legislature should fix?

10          And we are only talking about the electric  
11          customers right now. There are so many mother  
12          water and wastewater customers that a county or  
13          city system is providing for people outside of  
14          their area, and those people can be charged up to  
15          25 percent more. Now, there has got to be  
16          disenfranchisement there as well.

17          THE WITNESS: Yes. And thanks for bring me  
18          back on being track, Mr. Chairman.

19          As you know, as well as I do, that the  
20          Commission has its jurisdiction and has to operate  
21          with the parameters set forth by the Legislature,  
22          and you have to operate within the tools that are  
23          given to you.

24          The tools that are given to you now by the  
25          Legislature, this is a clear case where you can

1 exercise your jurisdiction. You have the  
2 discretion to at least address this situation. So  
3 you should address this situation, in my opinion.  
4 Correct it by this transaction. If there are other  
5 situation, if this is a problem that is  
6 widespread -- and I don't know that it is or it is  
7 not. I do agree with you, that it's something that  
8 the Legislature could, probably should address,  
9 give you further guidance, or give you further  
10 tools to look at that situation.

11 But as Florida has grown over the years, and  
12 we know that Florida has been a fast-growing state,  
13 it's just a natural consequence of municipalities  
14 that serve an area that, as more people move to the  
15 community, they may move into a residential area  
16 that is outside the corporate limits of the City,  
17 but it's the most economical provisioning of  
18 service to have the City just extend the lines a  
19 little bit further.

20 And, you know, there is nothing wrong with  
21 that. It's probably the most efficient way to  
22 provide service. But at some point, if that  
23 continues, and customers feel disfranchised, they  
24 have to find recourse some way. And perhaps it is  
25 something that the Commission -- I am sorry -- that

1 the Legislature should give some consideration to.  
2 But here again, I am trying to focus on this one,  
3 and there is a solution for this situation.

4 CHAIRMAN GRAHAM: Well, what about the  
5 possibility of kicking open Pandora's box by  
6 dealing with it this way?

7 THE WITNESS: Oh, Mr. Chairman, I disagree.  
8 You are not kicking open Pandora's box, because  
9 this deal was 10 years in the making, and it is a  
10 very unique circumstance. And just because this --  
11 if this deal were consummated and was -- the  
12 accounting treatment approved, I don't think that  
13 it is -- you are not pushing dominoes and there is  
14 going to be more and more.

15 I think, again, this is only the second case  
16 in 26 years of an electric utility acquire a  
17 municipal utility.

18 CHAIRMAN GRAHAM: I guess my question is  
19 what's to stop the City of Key West coming in  
20 because they have 46 percent of their people  
21 outside of the city limits?

22 THE WITNESS: I am sorry, Mr. Chairman, you  
23 say come in, how? With a petition to the  
24 Commission or --

25 CHAIRMAN GRAHAM: Well, just come in saying

1           they are disenfranchised because they are have no  
2           say.

3           THE WITNESS: Well, I think that's probably  
4           the subject matter of a number of the litigation  
5           cases that have been before the Commission or  
6           before the courts. And I am not sure that they  
7           have a way to bring it to the Commission like we  
8           have here, unless there is some desire on the City  
9           of Key West to enter into a negotiation like Vero  
10          did and to reach an agreement as to an amount to  
11          sell their utility to another utility.

12          Here again, we are in a very unique situation  
13          here. I just don't see that this case is going to  
14          lead to other cases unless there is similar  
15          circumstances where the City wants to sell. I  
16          don't think -- no one can compel the City to sell  
17          their utility to another entity.

18          CHAIRMAN GRAHAM: Okay. Let's skip down to  
19          No. 9 on that same page.

20          Explain to me what benefits Florida Power &  
21          Light gets from the settlement of this FMPA deal.

22          THE WITNESS: I am sorry, Mr. Chairman, I  
23          didn't understand the question.

24          CHAIRMAN GRAHAM: No. 9 on page -- line 17,  
25          page 22.

1 THE WITNESS: Yeah, I see that.

2 CHAIRMAN GRAHAM: You are listing  
3 beneficiaries to the transaction, you have City of  
4 Vero Beach, Florida Power & Light, Orlando  
5 Utilities and the 19 members of the municipal FMPA.

6 So when you are saying that there is a benefit  
7 to Florida Power & Light, are you just basically  
8 restating item number one again, talking about the  
9 lower rates, or is there some other benefit that  
10 they get from that FMPA settlement?

11 THE WITNESS: No. I think that the benefit  
12 for FPL is the fact that there is going to be  
13 downward pressure on the rates for its customers;  
14 and it gets to serve an area that's already  
15 contiguous to its territory, which is efficient for  
16 them to do. So, yeah, in a nutshell, I think  
17 that's the benefit to FPL.

18 CHAIRMAN GRAHAM: I mean, I am just -- I am  
19 trying to get to an understanding on why the  
20 Florida Power & Light customers are picking up this  
21 tab, and so the one thing -- one reason is because  
22 you are saying there is going to be lower rates for  
23 them eventually?

24 THE WITNESS: Yes. When you use the  
25 terminology pick up the tab, I agree that there is

1 going to be a cost of the acquisition that's going  
2 to be reflected in the rates on a going forward  
3 basis at some point. But the best information we  
4 have in front of us right now is that that net cost  
5 is not zero. That net cost is negative in the  
6 sense that there are actually benefits, because  
7 those lower rates, or the downward pressure on  
8 lower rates is after you consider the impacts of  
9 the acquisition adjustment and the amortization of  
10 that adjustment.

11 So it's not like -- the 135 million benefit on  
12 the cumulative present value basis already  
13 considers that cost, so it is truly a net benefit.

14 CHAIRMAN GRAHAM: Mr. Deason, as always, thank  
15 you for your time and for your answers.

16 THE WITNESS: Thank you.

17 CHAIRMAN GRAHAM: I don't know who was first,  
18 so let's go with Commissioner Brown.

19 COMMISSIONER BROWN: Thank you. And I  
20 appreciate the Chairman getting into some of the  
21 tough, more difficult questions about the  
22 transaction.

23 Mr. Deason, you have, over the years, become  
24 the acquisition adjustment guru. You were here  
25 when the rule was created for the water and

1 wastewater utilities. You started to get into that  
2 discussion with one of the intervenors. Would you  
3 like to elaborate on that?

4 THE WITNESS: Well, I just wanted to say that  
5 that rule was adopted by the Commission, the first  
6 rule in 2002. It was subsequently amended after I  
7 left the Commission, but it wasn't so much on  
8 positive acquisition adjustments it was amended, it  
9 was for the negative acquisition adjustments that  
10 it was amended.

11 The Commission routinely had issues with  
12 acquisition adjustments in water and wastewater  
13 cases, and it got to be enough decisions over time  
14 that the Commission felt confident in going to a  
15 rule-making. And when that rule was adopted, there  
16 were a number of factors listed out that would be  
17 considered -- that the Commission should consider  
18 to determine if a positive acquisition adjustment  
19 was in the public interest.

20 And it was tailored -- it was tailored for the  
21 water and wastewater industry, but I can say that  
22 when the Commission was considering that, it wasn't  
23 trying to say these factors were not also -- could  
24 not also be applicable to other industries, and  
25 similar considerations were routinely applied in

1 gas utility acquisitions.

2 COMMISSIONER BROWN: And when you were  
3 responding to the Chairman's question on  
4 disenfranchisement, that sole factor is not the  
5 reason for your decision for this Commission to  
6 grant the full positive acquisition adjustment; is  
7 that correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER BROWN: What would you say is the  
10 most compelling reason here? Obviously, there are  
11 a lot of different factors here, the time that this  
12 case has gone on, a lot of the litigation. You  
13 list a lot of the other factors, but our pinnacle  
14 guiding principle would really be public -- whether  
15 this is in the public interest. So what would you  
16 say is the most compelling factor?

17 THE WITNESS: To me, the most compelling  
18 factor is the downward pressure on rates for all  
19 customers. Granted, the Vero customers will see  
20 immediate rate relief, but they will then become  
21 part of the group of customers that that  
22 acquisition is going to even put further downward  
23 pressure on rates. That benefits all the  
24 customers. That is, indeed, a truly extraordinary  
25 circumstance when that happens.

1           Now, again, as I said in my testimony, we  
2           don't know with 100 percent certainty if the amount  
3           is going to be 135 million. It could be more. It  
4           could be less. But we do know that if this  
5           acquisition is not approved, and this acquisition  
6           is not consummated, that whatever benefits, both  
7           financial and service-wise that would otherwise  
8           accrue to customers, they will not exist. We know  
9           that for a fact.

10           COMMISSIONER BROWN: Thank you. Thank you for  
11           being here.

12           CHAIRMAN GRAHAM: Commissioner Polmann.

13           COMMISSIONER POLMANN: Thank you, Mr.  
14           Chairman.

15           Good morning, Mr. Deason.

16           THE WITNESS: Good morning.

17           COMMISSIONER POLMANN: Looking at your direct  
18           testimony, the original, page 10, line 17 through  
19           20. And I think I understand this, but just the  
20           way it's written at the bottom of page 10, is FPL  
21           proposing positive acquisition adjustment based on  
22           the amount in excess? You say: No, it's based on  
23           actual price in excess of COBV net book value.

24           Can you please elaborates on that as it  
25           relates to all the other components of the

1 transaction, the Orlando PPA and the FMPA, and so  
2 forth? What is included in that net book value?

3 THE WITNESS: The term net book value is  
4 normally associated with the assets that are being  
5 acquired, and --

6 COMMISSIONER POLMANN: That's where I am  
7 struggling.

8 THE WITNESS: -- and the calculation of  
9 acquisition adjustment is purchase price less the  
10 net book value.

11 For this transaction to be consummated, or  
12 potentially consummated, there were a number of  
13 other factors that had to be included. The  
14 requirements for the OUC contracts, and then the  
15 long-term commitments associated with the Florida  
16 Municipal Power Agency, all of those have to be  
17 included and addressed for everybody to sign off  
18 that they will participate and agree to this  
19 transaction.

20 So that purchase price includes all of those  
21 numbers, which are obligations that have to be  
22 addressed. It's like when you are in a more simple  
23 acquisition, if there is debt that has to be  
24 retired, that's also part of the obligation that  
25 the purchase price has to cover.

1           So these are obligations that the City of Vero  
2           Beach has to address, and through careful  
3           negotiations and some outside-of-the-box thinking,  
4           there were solutions finally reached, but all of  
5           this includes all of those considerations.

6           COMMISSIONER POLMANN:   Okay.   Thank you.

7           My simple reading, it was the capital assets  
8           of the utility structure and so forth.   But you are  
9           saying it's all of the obligations, not simply the  
10          plant.   I understand.   Yeah, it's everything.

11          THE WITNESS:   It's everything is included in  
12          the 185 million purchase price, which is the number  
13          from which you subtract the net book value to  
14          determine the acquisition adjustment.

15          COMMISSIONER POLMANN:   Thank you.

16          Your statement earlier in response to  
17          questions was there will be no harm to customers,  
18          and in response to commissioners, you are including  
19          all FPL customers, not just the City of Vero Beach?

20          THE WITNESS:   That's correct.   There should be  
21          no harm, and in this case, there should be benefit.

22          COMMISSIONER POLMANN:   The positive  
23          acquisition adjustment that's being sought,  
24          approximately \$114 million, how -- and because you  
25          indicate, in response to the Chairman, that the

1            expectation is that that will -- it is going into  
2            rate base and is going to come back in the next  
3            rate case, because it's being amortized over a  
4            period of time, it will be on the books for a  
5            while. How is that being accounted in the sense  
6            that that number will be reducing over time and, in  
7            a sense, we will see it again, have a different  
8            numeric value?

9            THE WITNESS: Yeah, the acquisition adjustment  
10           will be amortized over time, and I think it's  
11           proposed to do over 30 years. And that  
12           amortization will commence regardless of whether  
13           there is a rate proceeding or not. When there is a  
14           rate proceeding, whatever is the net amount left  
15           after amortization has begun, that would be the  
16           amount in rate base. And then the yearly  
17           amortization would be an expense included also in  
18           the revenue requirement calculation in that rate  
19           proceeding.

20           COMMISSIONER POLMANN: I am trying to  
21           understand, Mr. Deason, how -- we are looking at  
22           the notion of no harm to customers and, in fact, a  
23           benefit in downward pressure on rates, how the  
24           positive acquisition adjustment, which is showing  
25           up as a cost, compares and relates to the savings

1           that you are projecting on the CPVRR reduction  
2           because you are -- what you referred to is  
3           approximately 135 million. I mean, one is  
4           offsetting the other, which is then -- provides  
5           this downward pressure -- the 114, which is, if  
6           approved, that becomes a hard number which is  
7           amortized. But the 135 isn't a hard number, it's  
8           an estimate. So one is fixed and is accounted,  
9           amortized over a certain period of time. The other  
10          is an estimate, but they are offsetting each other.

11                    Can you please elaborate and explain that  
12          further to me? I am trying to get a good handle on  
13          that.

14                    THE WITNESS: Yes.

15                    It's basically two sides of an equation. The  
16          acquisition adjustment and the amortization of the  
17          acquisition adjustment, that's going to be a known  
18          number --

19                    COMMISSIONER POLMANN: Right.

20                    THE WITNESS: -- and it will be reflected in  
21          rates at some point in the future when there is a  
22          rate proceeding. That's one side of the equation.

23                    The other side of the equation is the fact  
24          that there is going to be an acquisition, and you  
25          are adding 35,000 customers. You are adding all

1 the revenues that they are going to generate, which  
2 helps support all of those costs. And, in fact,  
3 the result of the CPVRR analysis, what it shows is  
4 that all of those revenues that are going to be  
5 coming from the new customers, not only does that  
6 fully pay for the acquisition adjustment and the  
7 amortization of the acquisition adjustment, there  
8 is enough of that revenue that contributes to the  
9 fixed cost of FPL that puts downward pressure to  
10 the tune of \$135 million on a present value basis.

11 COMMISSIONER POLMANN: Okay. So is that a net  
12 revenue when you take off the operating expense?

13 THE WITNESS: Well, the CPVRR analysis takes  
14 all of that incremental revenue which was coming  
15 from the new customers, it also includes the  
16 additional expenses of serving those customers.  
17 That's all part of that side of the equation. But  
18 that additional revenue is sufficient to not only  
19 cover the incremental expenses, but to make  
20 contributions to the fixed cost of FPL and to pay a  
21 return on the acquisition adjustment and the yearly  
22 amortization of the acquisition adjustment. It is  
23 truly an extraordinary circumstance.

24 COMMISSIONER POLMANN: Okay. Well, thank you  
25 for that.

1 Mr. Chairman, that's all I had. Thank you.

2 CHAIRMAN GRAHAM: Thank you, Mr. Polmann.

3 Mr. Clark.

4 COMMISSIONER CLARK: Thank you, Mr. Chairman.

5 Thank you, Mr. Deason for being here this  
6 morning.

7 In relating to the last statement that you  
8 were making in terms of how the cost is handled, is  
9 this similar to -- if you looked at what the  
10 incremental cost to serve these customers is,  
11 wouldn't that be significantly less than the  
12 incremental cost to acquire a new customer? Isn't  
13 that part of the ability to spread some of those  
14 fixed -- some of the new revenue over a much larger  
15 number of customers -- the fixed cost over a much  
16 larger number of customers?

17 THE WITNESS: Yes. Absolutely. It's part of  
18 the benefit of acquiring an existing utility  
19 company that already has established customers with  
20 known revenue streams and usage patterns. I am  
21 sure that's part of the considerations that Mr.  
22 Forrest and his team engaged in when they were  
23 trying to determine what would be a fair value to  
24 pay. I am sure this is something that Mr. Herr  
25 considered in his fair value analysis.

1           So it is to be expected that when you are  
2           acquiring an existing utility company with existing  
3           customers, that that value is going to be in excess  
4           of just the book value of the assets which is used  
5           to serve those customers.

6           COMMISSIONER CLARK: My second question goes  
7           to the payments of FMPA and to OUC. My  
8           understanding is the OUC payment is for a long-term  
9           contract that existed between Vero and OUC. Does  
10          FPL take the benefit of the capacity that came with  
11          that contract in the purchase?

12          THE WITNESS: That's a detail that I just  
13          really don't know the answer to. Mr. Forrest may  
14          know that answer.

15          COMMISSIONER CLARK: Assuming that it does, if  
16          they do get the capacity that comes along with  
17          that, is there a potential benefit that comes with  
18          the additional capacity?

19          THE WITNESS: Yes, it would be. It may not be  
20          the most cost beneficial. If FPL needed the  
21          additional capacity, they might not would have  
22          acquired it from OUC, but it was just part of the  
23          negotiated deal to reach all of the benefits that  
24          the deal creates for all customers. It's just part  
25          of that negotiation.

1           COMMISSIONER CLARK: And if they did not get  
2           the capacity, would that pass the benefit along to  
3           other OUC customers for having additional capacity  
4           that had already been paid for?

5           THE WITNESS: Under your scenario, which I  
6           don't know is factually the case, I would agree.

7           COMMISSIONER CLARK: And what about the FMPA  
8           payment, are you familiar with it?

9           THE WITNESS: Not in detail.

10          COMMISSIONER CLARK: Okay. That's all, Mr.  
11          Chairman. Thank you.

12          CHAIRMAN GRAHAM: Commissioner Fay.

13          COMMISSIONER FAY: Thank you, Mr. Chairman,  
14          for a series of questions?

15          CHAIRMAN GRAHAM: Sure.

16          COMMISSIONER FAY: Thank you.

17                 I guess I will start here. So, Mr. Deason, I  
18                 am hard pressed to find someone who is more  
19                 experienced or qualified with the Commission and,  
20                 at the same time, I can only question your judgment  
21                 when you decide to work with a bunch of lawyers on  
22                 a day-to-day basis, and so I will keep that in mind  
23                 as I try to keep you on the right path here.

24                 Part of your testimony on page six in the  
25                 original direct file, talks about the ultimate test

1 as to whether the acquisition is in the public  
2 interest such that a positive acquisition  
3 adjustment should be allowed in rate base. I know  
4 we talked about some of those components in your  
5 supplemental direct that make an analysis in the  
6 totality.

7 Are there any of those items that specifically  
8 would lead to an acquisition adjustment being  
9 presumed or not being presumed, or is it the  
10 Commission's discretion to take all of those  
11 individually and provide weight to them to make  
12 that decision?

13 THE WITNESS: Again, I think it's within the  
14 Commission's discretion as to what factors they  
15 wish to consider, and how much weight they wish to  
16 give to them.

17 In my opinion, the most pervasive factor, and  
18 the one that has been relied upon most by the  
19 Commission over the many years of acquisitions in  
20 the gas industry, and in the water and wastewater  
21 world as well, is the fact -- is the consideration  
22 of the impact on rates of the existing customers of  
23 the acquiring utility. And that is what the  
24 purpose of the CPVRR analysis is, is to show that  
25 impact over a 30-year analysis.

1           And, granted, there are projections associated  
2           with that, but that tool is a very valuable tool,  
3           and it has been relied upon by the Commission in  
4           other situations, so I put a great deal of credence  
5           into that analysis.

6           And if that outcome shows that there is going  
7           to be downward pressure on a cumulative present  
8           value basis, to me, that is the most persuasive  
9           argument, and is certainly an indicator of  
10          extraordinary circumstances.

11          COMMISSIONER FAY:   Okay.   Thank you.

12          If you wouldn't mind turning to page 10 of  
13          that direct -- your original direct testimony.  
14          Starting on line seven, you talk about Section  
15          366.06, and the language essentially not limiting  
16          the inclusion of a good will or going concern value  
17          presuming it doesn't exceed the value that's paid  
18          for the entity.

19          Is there more than one way to potentially get  
20          to that number for the good will or going concern  
21          value?   Would that -- I mean, all of these  
22          acquisitions seem to be evaluated on a case-by-case  
23          basis depending on the facts that are in front of  
24          us.   And so would there -- is that calculated the  
25          same way every time, or is that also something that

1 would be analyzed for a potentially different  
2 application?

3 THE WITNESS: Let me start answering by saying  
4 that the terms good will, going concern value,  
5 those terms have certain meaning in the accounting  
6 world and how certain amounts are booked, and  
7 what's permissible under generally accepted  
8 accounting. And Mr. Ferguson addressed that, and I  
9 am in agreement with his testimony.

10 But from a regulatory policy perspective, it's  
11 the statute that uses the terms going concern value  
12 or good will. And it was -- those terms were used  
13 by the Commission in the acquisition of Sebring by  
14 Florida Power Corporation.

15 And in looking at that order, and in reviewing  
16 that and having gone back and reviewed the staff  
17 recommendation, the Commission's order, I even  
18 reviewed the transcripts of that proceeding,  
19 because I was on the Commission then but I didn't  
20 participate in that case as a decision-maker.

21 Going back and looking at all of that, to me,  
22 the Commission was pretty much using those terms  
23 interchangeably, and it pretty much represented the  
24 value in excess of book value, which is the  
25 definition of acquisition adjustment.

1           So for purposes of my discussion, and the way  
2           I have applied it, and the way I looked back at  
3           previous cases, in looking at the statute, it's  
4           basically the difference between purchase price and  
5           the net book value of the assets. That is the  
6           acquisition adjustment. It's also synonymous with  
7           good will or going concern, as it has been used in  
8           the regulatory world.

9           Mr. Ferguson has a better understanding of how  
10          it's applied in the accounting world and GAAP. But  
11          the way the Commission has used it, it's pretty  
12          synonymous, acquisition adjustment is the amount  
13          that's in excess of book value, and that can be  
14          attributed to going concern or good will.

15          There has to be a reason why someone is  
16          willing to pay more than book value, and that's  
17          because you have a going concern utility, it has  
18          customers, it has revenue streams which adds value  
19          to that entity far in excess of just of the net  
20          book value of the assets which serve those  
21          customers.

22                 COMMISSIONER FAY: Okay. Thank you.

23                 CHAIRMAN GRAHAM: Okay. Redirect?

24                 MR. ANDERSON: No redirect.

25                 CHAIRMAN GRAHAM: Okay. Exhibits. We have

1 already put in, I think, his exhibits.

2 MR. ANDERSON: They are in the record.

3 We would just ask the witness be excused.

4 CHAIRMAN GRAHAM: Okay. Mr. Deason, I think  
5 they are going to let you go.

6 THE WITNESS: Thank you, Mr. Chairman.

7 (Witness excused.)

8 CHAIRMAN GRAHAM: Okay. Mr. Walls, I think  
9 your witness is next.

10 MR. WALLS: Yes. The City of Vero Beach calls  
11 Mr. O'Connor.

12 MR. MURPHY: Mr. Chairman, will they confirm  
13 that he has been sworn? It's been a little time  
14 since you swore people in.

15 MR. WALLS: I will ask the question.

16 Whereupon,

17 JAMES R. O'CONNOR

18 was called as a witness, having been first duly sworn to  
19 speak the truth, the whole truth, and nothing but the  
20 truth, was examined and testified as follows:

21 EXAMINATION

22 BY MR. WALLS:

23 Q Mr. O'Connor, will you please introduce  
24 yourself to the Commission, and provide your business  
25 address?

1           A     I am james R. O'Connor. City Manager of City  
2 of Vero Beach. That's 1053 20th Place, Vero Beach,  
3 32961.

4           Q     And have you already been sworn in as a  
5 witness?

6           A     Yes, I have.

7           Q     Have you prefiled rebuttal testimony and  
8 exhibits in this proceeding?

9           A     Yes, I have.

10          Q     And do you have exhibits to your rebuttal  
11 testimony JRO-1 through JRO-5?

12          A     Yes, I do.

13                 MR. WALLS: And those are Exhibit 29 through  
14 33 in the stipulated exhibits.

15 BY MR. WALLS:

16          Q     Do you have a copy of your prefiled rebuttal  
17 testimony and exhibits with you?

18          A     Yes, I do.

19          Q     Do you have any changes to make to your  
20 prefiled rebuttal testimony?

21          A     No, I do not.

22          Q     If I asked you the same questions asked in  
23 your prefiled rebuttal testimony today, would you give  
24 the same answers?

25          A     Yes, I would.

1           MR. WALLS: We request the rebuttal testimony  
2           of Mr. O'Connor be moved into evidence as if it was  
3           read in the record today.

4           CHAIRMAN GRAHAM: We will enter Mr.  
5           Connor's -- O'Connor, I apologize -- prefiled  
6           rebuttal testimony into the record as though read.

7           (Whereupon, prefiled testimony was inserted.)

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1 **I. INTRODUCTION AND QUALIFICATIONS.**

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

3 A. My name is James R. O'Connor. My business address is City Hall, P.O. Box 1389,  
4 City of Vero Beach, Florida 32961.

5  
6 **Q. Who do you work for and what is your position?**

7 A. I am employed by the City of Vero Beach ("COVB") as the City Manager. I was  
8 appointed the COVB City Manager effective July 25, 2011. The COVB is a municipal  
9 government with home rule powers under Florida law.

10  
11 **Q. Have you previously provided testimony in Docket No. 20170235 and Docket No.**  
12 **20170236-EU?**

13 A. No.

14  
15 **II. PURPOSE AND SUMMARY OF REBUTTAL TESTIMONY.**

16 **Q. What is the purpose and summary of your rebuttal testimony?**

17 A. The purpose of my rebuttal testimony is to address the pre-filed direct testimony of  
18 some of the witnesses for the Civic Association of Indian River County ("CAIRC"). I  
19 am not testifying that their testimony has any bearing on the issues to be decided by  
20 the Florida Public Service Commission ("FPSC") in this consolidated proceeding,  
21 because the CAIRC witnesses' testimony address primarily local government political  
22 matters. However, I am testifying because certain statements made by these witnesses

1 should be corrected or placed in proper context, should the FPSC have some interest in  
2 them in resolving the issues before the FPSC.

3 To summarize, I explain that (1) the COVB Council, duly elected by and  
4 representing the citizens of the COVB, directed the negotiations for the sale of the  
5 COVB electric utility with Florida Power & Light Company (“FPL”) through outside  
6 counsel twice retained by the COVB to independently represent the COVB’s interests  
7 in such negotiations; (2) the COVB twice submitted resolutions to the COVB citizens  
8 with respect to the sale of the COVB electric utility and the citizens of COVB twice  
9 voted in favor of those resolutions; (3) the COVB Utilities Commission is an advisory  
10 commission to the COVB Council, but its members had the opportunity to review the  
11 Asset Purchase and Sale Agreement by and between the COVB and FPL dated  
12 October 24, 2017 (the “APA”) and meet with outside counsel for the COVB to discuss  
13 the terms of the APA prior to the COVB Council vote on the APA; and (4) the  
14 regulatory approvals by the FPSC in these proceedings are conditions precedent to the  
15 sale of the COVB electric utility to FPL under the APA.

16  
17 **Q. Do you have any exhibits to your testimony?**

18 **A.** Yes, I am sponsoring the following exhibits to my testimony:

- 19 • Exhibit No. \_\_\_\_ (JRO-1), COVB Municipal Code Section 2-102 explaining  
20 the role of the COVB Utilities Commission;
- 21 • Exhibit No. \_\_\_\_ (JRO-2), a composite exhibit of the COVB “letters of  
22 interest” sent by the COVB to a representative of all municipal electric  
23 utilities, the largest municipal electric utilities, and all investor owned electric

1 utilities in Florida inquiring about their interest in purchasing the COVB  
2 electric utility;

- 3 • Exhibit No. \_\_\_\_ (JRO-3), Resolution No. 2011-33 certifying the results of the  
4 Referendum on Lease of City Power Plant Site;
- 5 • Exhibit No. \_\_\_\_ (JRO-4), Resolution No. 2013-09 certifying the results of the  
6 Referendum on Sale and Disposition of Vero Beach Electric Utility; and
- 7 • Exhibit No. \_\_\_\_ (JRO-5), the APA.

8 All of these exhibits are true and accurate.

9

10 **III. THE COVB AND ITS NEGOTIATION OF THE APA WITH FPL FOR THE  
11 SALE OF THE COVB ELECTRIC UTILITY TO FPL.**

11 **Q. Have you read the direct testimony of the CAIRC Witnesses in this proceeding?**

12 A. Yes, I read the testimony of Mr. Herb Whittal, Mr. Jay Kramer, Mr. Thomas P. White,  
13 Mr. Jens Tripson, and Mr. Ken Daige.

14

15 **Q. Do you plan to respond to everything these witnesses say in their testimony?**

16 A. No. Much of their testimony expresses their personal opinions and perceptions of the  
17 COVB Council, FPL, and supporters of the sale of the COVB electric utility to FPL  
18 both inside and outside the city. They, like anyone else, are entitled to their opinions.

19

20 **Q. Why are you filing rebuttal testimony in this proceeding?**

21 A. I am addressing statements made by Msrs. Whittal, Kramer, and White regarding the  
22 rights of the COVB electric utility customers within and outside the city limits. I am  
23 also addressing statements these witnesses made about the role of the COVB electric

1 utility customers within the City, the COVB Council, and the COVB Utilities  
2 Commission in the negotiations of and ultimate decision to enter into the APA with  
3 FPL. I want to correct the impression created by these witnesses that electric utility  
4 customers outside the COVB limits have the exact same rights to representation on the  
5 COVB Council as electric utility customers inside the city limits. I also want to  
6 correct the impression created by these witnesses that the COVB electric customers  
7 inside the City did not support the sale of the COVB electric utility to FPL or that the  
8 COVB Council and Staff did not independently negotiate for them, misled them, or  
9 did not allow them or the COVB Utilities Commission access to information about the  
10 APA or to publicly express their opinions on this important issue to the COVB.

11 I am therefore filing this rebuttal testimony to provide the proper context for  
12 the events leading up to the APA between the COVB and FPL, to the extent they are  
13 relevant at all to the issues to be decided by the FPSC, because FPSC approval of the  
14 petitions in this proceeding is a condition precedent to the sale of the COVB electric  
15 utility to FPL and, as a result, critical to the COVB.

16  
17 **Q. Are you providing rebuttal testimony to the direct testimony of Mr. Daige or Mr.**  
18 **Tripson?**

19 **A.** No. Since Mr. Daige only addresses the CAIRC standing to actually participate in this  
20 proceeding, and Mr. Tripson appears to express only his personal opinion regarding  
21 the sale, I am not providing any rebuttal testimony to their testimony.

22

1 **Q. Do electric utility customers located outside the COVB limits have all the same**  
2 **rights as electric utility customers located inside the COVB limits?**

3 A. No. Both Mr. Kramer and Mr. White testify in the exact same words that customers in  
4 the County, or customers outside the COVB limits, “are able to participate just like  
5 City customers.” They both give the same examples of serving on committees,  
6 speaking at public hearings, and participating in elections for City Council through  
7 lobbying and funding of campaigns. This testimony ignores the fact that only  
8 customers inside the COVB limits can vote for the COVB Council. It also ignores the  
9 fact that City Council members must live in the COVB limits and, therefore, they  
10 represent only residents of the City. These differences may not be important to Mr.  
11 Kramer and Mr. White, but I know from my position as City Manager in dealing with  
12 COVB electric utility customers outside the City and their representatives with the  
13 Indian River County Board of Commissioners and the Town of Indian Rivers Shores  
14 Council that these are important differences to many if not all the COVB electric  
15 customers outside the City.

16  
17 **Q. What about the COVB Utilities Commission, does that Commission include**  
18 **COVB electric customers outside the COVB limits and therefore provide those**  
19 **customers equal participation rights as Mr. Kramer and Mr. White suggest?**

20 A. The COVB Utilities Commission does include members who are COVB citizens and  
21 members who are citizens of the County and the Town of Indian Rivers Shores.  
22 However, the COVB Utilities Commission is by the COVB municipal code an  
23 advisory commission to the COVB Council. Its members can advise the COVB

1 Council regarding matters related to the COVB electric utility, including electric rates  
2 and fees, but they cannot vote on such matters and they cannot vote to set or change  
3 those rates and fees for electric service. Only members of the COVB Council can vote  
4 on utility matters, including rates and fees to charge all electric utility customers for  
5 their service. The members of the COVB Council are not elected by COVB electric  
6 customers outside the City and they cannot and do not live outside the City and  
7 therefore they serve only COVB citizens. A copy of COVB Code, Section 2-102,  
8 Advisory Commissions, which sets out the purpose of the COVB Utilities  
9 Commission is attached to my rebuttal testimony as Exhibit \_\_\_ (JRO-1).

10  
11 **Q. Mr. Kramer also testifies that the COVB Council only sent a “letter of interest”**  
12 **to a “few” utility companies, not an official Request for Proposal, when asked if**  
13 **the COVB Council advertised to “all possible buyers.” Do you agree that the**  
14 **COVB did not solicit interest from all possible buyers when contemplating selling**  
15 **the COVB electric utility?**

16 **A.** No. I have reviewed the “letters of interest” that Mr. Kramer refers to in his testimony  
17 and what Mr. Kramer fails to mention is that these “letters of interest” were sent to the  
18 Florida Municipal Power Agency (“FMPA”), the Orlando Utilities Commission  
19 (“OUC”), Jacksonville Electric Authority (“JEA”), Gulf Power Company, Tampa  
20 Electric Company (“TECO”), Progress Energy Florida, Inc. (now Duke Energy  
21 Florida, Inc.), and FPL. That is, the COVB contacted the largest municipal electric  
22 utilities and the power agency for Florida municipal electric utilities, and every  
23 investor owned electric utility in the State of Florida, regarding their interest in

1 purchasing the COVB electric utility. Mr. Kramer also fails to mention that the COVB  
2 “letters of interest” was predicated on the purchasing utility providing COVB electric  
3 customers the lowest electric utility rates in the State at the time of the purchase. Only  
4 FPL showed any real interest in responding to the COVB’s “letter of interest.” Copies  
5 of the “letters of interest” are attached as Composite Exhibit \_\_\_ (JRO-2) to my  
6 rebuttal testimony.

7  
8 **Q. Mr. Kramer criticizes the COVB referenda regarding the sale of the COVB**  
9 **electric utility. Do you agree with his criticisms?**

10 A. No. Mr. Kramer testifies that the COVB citizens who twice voted for resolutions with  
11 respect to the sale of the COVB electric utility were uninformed or misled because, in  
12 his opinion, the ballot questions were not “proper,” contained terms with “no real  
13 meaning,” or, apparently, should have contained all the terms of the APA, all required  
14 regulatory approvals, and all “future impacts.” Mr. Kramer bases his testimony solely  
15 on his personal opinion without any support whatsoever beyond hearsay statements  
16 made to him by unidentified, claimed “legal experts” he allegedly consulted at some  
17 unidentified point in time.

18  
19 **Q. Were the referenda regarding the sale of the COVB electric utility reviewed by**  
20 **legal counsel prior to them being placed on the ballot?**

21 A. Yes. Mr. Kramer fails to mention that both COVB resolutions were reviewed by the  
22 COVB City Attorney prior to being placed on the ballot and determined to meet all  
23 legal requirements. No one challenged the legality of either referendum before or after

1 the referendum was submitted to COVB voters. Mr. Kramer nowhere in his testimony  
2 claims that occurred. Indeed, despite his stated belief that both the first and the second  
3 referendum were improper and misleading, and that he was told so by unidentified  
4 “legal experts,” Mr. Kramer does not testify that he or these “legal experts” took any  
5 action to challenge the legality or propriety of either the first or second referendum.  
6

7 **Q. Can the referenda regarding the sale of the COVB electric utility include all**  
8 **potential terms of the sale, all potential regulatory approvals, and all potential**  
9 **impacts from the sale as Mr. Kramer seems to suggest?**

10 A. No, of course not. The referenda cannot possibly include all such terms, approvals, or  
11 impacts or they would be hundreds of pages long. The referenda were used to  
12 determine whether the COVB citizens favored pursuing general aspects related to the  
13 sale of the COVB electric utility, that is, the lease of the COVB power plant site and  
14 the sale to FPL on general terms that had been discussed and debated at numerous  
15 COVB Council and other public meetings. The exact terms of the lease and the sale  
16 were left to the COVB Council with the assistance of the COVB City Attorney, City  
17 Manager, COVB Staff, and outside counsel, as is the case for most if not all other  
18 matters affecting COVB citizens that come before the COVB Council. That is what  
19 the members of the COVB Council are elected by the citizens to do every day, rely on  
20 the COVB Attorney, City Manager, COVB Staff and retained consultants to make  
21 decisions for the benefit of COVB citizens. The referenda regarding the sale of the  
22 COVB electric utility were discussed and voted on by the COVB Council and, as I

1 have explained, reviewed and approved by the COVB City Attorney before they were  
2 placed on the ballot.

3  
4 **Q. Does Mr. Kramer attach the referenda or explain how the COVB citizens voted**  
5 **on these referenda in his testimony?**

6 A. No, he does not, even though they are public records and available to the public upon  
7 request. I have attached as Exhibit \_\_\_ (JRO-3) to my rebuttal testimony Resolution  
8 No. 2011-33 certifying the results of the Referendum on Lease of City Power Plant  
9 Site. I have also attached as Exhibit No. \_\_\_\_ (JRO-4) to my rebuttal testimony,  
10 Resolution No. 2013-09 certifying the results of the Referendum on Sale and  
11 Disposition of Vero Beach Electric Utility. Approximately 66 percent of the COVB  
12 citizens who voted did so in favor of the Referendum on Lease of City Power Plant  
13 Site. Approximately 64 percent of the COVB citizens who voted did so in favor of the  
14 Referendum on Sale and Disposition of Vero Beach Electric Utility.

15  
16 **Q. Mr. Kramer and Mr. Whittal also seem to testify that FPL controls the COVB**  
17 **Council and that FPL, not the COVB Council, “negotiated” the sale of the COVB**  
18 **electric utility to FPL with no real input from the COVB citizens, the COVB**  
19 **Council, or the COVB Utilities Commission. Do you agree?**

20 A. That is what they seem to say, but this is the factually baseless opinions of citizens  
21 who are unhappy with the majority vote of the COVB citizens in two referenda, and  
22 the majority vote of COVB Council members duly elected by those same COVB  
23 citizens, with respect to the sale of the COVB electric utility to FPL. The testimony

1 that there “has never been any actual negotiations between FPL and” the COVB and  
2 that the COVB Utilities Commission “were instructed not to discuss the sale of Vero  
3 Electric to FPL” at the “last meeting” of the COVB Utilities Commission in August  
4 2017 are misleading or simply not true. The COVB Council twice entered into  
5 negotiations with FPL regarding the sale of the COVB electric utility to FPL by  
6 retaining independent outside counsel compensated by the COVB to negotiate on the  
7 COVB’s behalf. Both outside counsel firms met with the COVB City Attorney, City  
8 Manager, COVB Staff, and the COVB Council during the course of those negotiations  
9 and received direction on behalf of the COVB. Both times the negotiations resulted in  
10 sales transaction agreements and exhibits that were presented to and reviewed by the  
11 COVB City Attorney, City Manager, COVB Staff, the COVB Utilities Commission,  
12 and the COVB Council.

13           There were actual negotiations, I know, because I participated in some of them,  
14 and at all times during these negotiations the COVB was represented by independent  
15 outside counsel representing the COVB’s interests. The APA was presented to the  
16 COVB Council, and the COVB Utilities Commission members and the COVB  
17 Finance Commission members. Members of these Commissions and the COVB  
18 Council were provided the opportunity to review the APA’s terms and to meet with  
19 COVB’s outside counsel to ask questions about and discuss the negotiations and terms  
20 of the APA prior to the COVB Council vote on the APA in October 2017. Outside  
21 counsel was present for questions at the COVB Council meeting where the APA was  
22 discussed and debated by the COVB Council. This was a duly noticed public meeting  
23 where the public was provided the opportunity to comment on the sale before the

1 COVB Council voted. The COVB Council then voted to approve the APA and the  
2 sale of the COVB electric utility to FPL. The APA was executed that same day and is  
3 attached as Exhibit \_\_\_\_ (JRO-5) to my rebuttal testimony.  
4

5 **Q. Do you have any closing remarks you would like to make about the allegations in**  
6 **Witness Kramer's testimony?**

7 A. Yes. I sincerely hope that Mr. Kramer's misstatement of the facts do not distract the  
8 Commission from the obvious benefits of this carefully balanced deal. There is no  
9 doubt the thousands of residents who receive more costly service from the COVB will  
10 benefit greatly from the transaction. But this carefully balanced deal also will bring  
11 tangible benefits to the COVB as well. Proceeds from the sale will allow the COVB to  
12 pay off debt, meet pensions liabilities, and provide approximately \$30 million in  
13 unrestricted funding to meet the COVB's needs. Transactions like this one -- that  
14 benefit all and resolve complex and long-standing disputes -- are rare. It would be  
15 tragic if the Commission were to allow this extraordinary deal to die for lack of  
16 regulatory approval.  
17

18 **Q. Is approval of the FPL petitions in these dockets a condition precedent to the sale**  
19 **of the COVB electric utility to FPL?**

20 A. Yes. Termination of the territorial agreement between the COVB electric utility and  
21 FPL, FPSC approval to charge COVB electric customers FPL's existing retail electric  
22 rates, and FPSC approval of regulatory accounting matters including treatment of any  
23 acquisition adjustment arising from FPL's purchase of the COVB assets as a

1 regulatory asset are conditions precedent to consummation of the sale of the COVB  
2 electric utility to FPL.

3  
4 **IV. CONCLUSION.**

5 **Q. Has the COVB determined that the sale of the COVB electric utility to FPL is in**  
6 **the best interest of the citizens of the COVB and its electric utility customers?**

7 A. Yes. The COVB citizens have twice voted for referenda supporting the principle of  
8 selling the COVB electric utility to FPL, the COVB Council has held numerous public  
9 meetings to allow its citizens and members of the public to discuss and debate this  
10 issue, and the duly elected COVB Council has voted in favor of the sale of the COVB  
11 electric utility to FPL under the terms of the APA.

12  
13 **Q. Does this conclude your direct testimony?**

14 A. Yes it does.  
15

1 BY MR. WALLS:

2 Q Mr. O'Connor, do you have a summary of your  
3 prefiled rebuttal testimony?

4 A Yes, do I.

5 Q Will you please provide that to the Commission  
6 at this time?

7 A Sure will.

8 Good afternoon, Commissioners. My name is Jim  
9 O'Connor. I am the City Manager of the City of Vero  
10 Beach. I have provided rebuttal testimony in this  
11 proceeding to correct some things some witnesses have  
12 gotten in, in my opinion, wrong.

13 First, the City Utility Commission is an  
14 advisory board to the City Council. It has no vote on  
15 any matter before the council.

16 Members of the Utility Commission who live  
17 outside the City cannot run for City Council. They have  
18 no vote on the utility rate or service matters. Being a  
19 member of the Utility Commission is not the same as  
20 being a member of the City Council.

21 As a City Manager, I can tell you the lack of  
22 representations on the City Council is an important  
23 to -- it important to the City's utility customers who  
24 live outside the City.

25 Second, the City has held two referenda on the

1 sale of the City electric utility. No, these referenda  
2 did not include every term or condition of the sale.  
3 That would be impossible. There is -- that would be  
4 impossible, but they were about the basic principles  
5 behind the sale; and both times, they were favored by a  
6 majority of the City citizens.

7 Third, the agreement for the sale of the  
8 utility was negotiated. I know because I participated  
9 in most of those negotiations. A public hearing was  
10 held on the sale of the agreement before the City signed  
11 it. An opportunity was provided before the hearing to  
12 members of the Advisory Commission and the City Council  
13 to review the agreement and ask staff and our legal team  
14 questions. The City Council voted in favor of the sale  
15 after the public hearing.

16 The City wants to sell the electric utility to  
17 FP&L, and it needs your help to do it. Your decisions  
18 in favor of FPL petition and our joint petition in this  
19 proceeding are conditions precedent to the sale under  
20 our agreement.

21 On behalf of the City, I ask you to help us  
22 and approve these petitions.

23 Thank you very much.

24 MR. WALLS: We tender Mr. O'Connor for cross.

25 CHAIRMAN GRAHAM: Thank you.

1 Mr. O'Connor, welcome to our chambers.

2 THE WITNESS: Thank you.

3 CHAIRMAN GRAHAM: Ms. Larkin.

4 MS. LARKIN: Thank you.

5 EXAMINATION

6 BY MS. LARKIN:

7 Q Good afternoon, Mr. O'Connor.

8 A Good afternoon.

9 Q Let me start with actually your position,  
10 which is a difficult one being City Manager, we all  
11 know.

12 Are you a decision-maker, or is the  
13 legislative body the decision-maker?

14 A We are a policy positions, the City Council is  
15 the decision-maker. For decisions on how to carry out  
16 those policies would be under the City Manager  
17 administration.

18 Q Correct. Yes. Thank you.

19 On page six, line three of your rebuttal  
20 testimony, and I think in your summary you mention that  
21 all customers are not equal since they can't vote. Now,  
22 does the Council ever raise rates?

23 A Does the Council raise utility rates?

24 Q The City Council, uh-huh.

25 A Yes, ma'am, they do.

1           Q     Okay.  And can the voters stop them if they  
2     want to?

3           A     No, ma'am, they cannot.  The voters, by  
4     unelecting them, they obviously will change the rates.

5           Q     But if they elect somebody, they are just  
6     relying on them to make those decisions, correct?

7           A     Yes, ma'am.  We are a republic, but they same  
8     time, they do have recourse.  And on our particular  
9     case, it's on an annual basis.

10          Q     To your knowledge -- now, you started in 2011,  
11     correct?

12          A     Yes, ma'am.

13          Q     Yeah.  Do voters ever want to have higher  
14     rates?

15          A     I have not talked to a voter yet that would  
16     like to have higher rates.  No, ma'am.

17          Q     I haven't either.

18                     Now, you stated too, and again in your  
19     summary, but on page six, line nine, you talk about how  
20     the City Council members, they have to live in the City,  
21     and so they only represent the City residents.

22                     Can you tell me why you made that statement?  
23     Do you think they don't?

24          A     The reason I made the statement is because the  
25     City Council members are elected by the people within

1 the corporate limits of the City, and so therefore,  
2 represent those people directly.

3 It's the typical, you know, what is the power  
4 of the vote? If I a power to vote, then I have power in  
5 my hands. If I don't have the power to vote, then  
6 obviously that reduces my effectiveness, I would think.

7 **Q So you mean sort of officially represent? You**  
8 **don't --**

9 A Officially represent within the corporate  
10 limits. Yes, ma'am.

11 **Q So you are not saying that they don't care**  
12 **about the outside customers?**

13 A No. I think all elected officials care about  
14 an awful lot of people. It's just the nature of the  
15 business that they are in.

16 **Q Do you think they listen to the outside**  
17 **customers?**

18 A Yes, ma'am. I think they listen to all  
19 customers.

20 **Q As I say, you came to Vero in 2011. It was**  
21 **just after this controversy began, so I am not sure you**  
22 **have information on this or not. But the citizens that**  
23 **went to FPL to ask about a sale, that started in around**  
24 **2009; is that about right?**

25 A Let me give you the history I found since I

1 have sort of been in this quagmire ever since I have  
2 been at Vero Beach. It actually dates back to, like,  
3 2000 -- or 1954, where the Commission had a whole group,  
4 and a citizens advisory group went to the City Council  
5 and said, you ought to sell the electric utility to  
6 FP&L --

7 Q Can I interrupt? I am really sorry.

8 A Okay. I was sort of giving you my history on  
9 it.

10 Q Yeah. Well, and that's, you know, history  
11 that we can read --

12 A Right.

13 Q -- but I am just talking about your personal  
14 contact with this.

15 CHAIRMAN GRAHAM: Ms. Larkin, I don't mean to  
16 cut you off. I want to make sure -- there were  
17 some things that you wanted to make sure that we  
18 entered into the record. You are talking about  
19 minutes for meetings and things on that line.

20 MS. LARKIN: Right.

21 CHAIRMAN GRAHAM: If Mary Anne can explain to  
22 you what you need to do as we are going through  
23 this, to make sure that gets entered into the  
24 record -- I don't want you to miss the opportunity  
25 and later on try to get something into the record.

1           So if she can tell you what it is to hit the -- to  
2           come close to hitting the need.

3           MS. LARKIN: Right.

4           CHAIRMAN GRAHAM: Mary Anne.

5           MS. HELTON: Mr. Chairman, it's my  
6           understanding, and y'all correct me if I'm wrong,  
7           that all of these have been authenticated. So we  
8           all agree that these are actually minutes of the  
9           City of Vero Beach, I guess City Council or --

10          MS. LARKIN: Utilities Commission.

11          MS. HELTON: Joint Utilities Finance  
12          Commission, so we are all in agreement to that. So  
13          I believe that the objection is that these --  
14          whether these are relevant.

15                 So I believe, to show whether they are  
16          relevant, you will need to ask questions of each  
17          set of exhibits -- or each set of minutes, rather.  
18          And I am assuming this is the only witness that you  
19          will be able to do that with, because I think he is  
20          the only other witness left that might have any  
21          information about these meetings.

22          MS. LARKIN: Correct.

23          MS. HELTON: And then once you can show that  
24          each set is relevant, then we can address whether  
25          they should be -- whether the Chairman agrees that

1           they are relevant and can be admitted into the  
2           proceeding.

3           MS. LARKIN: Right.

4           CHAIRMAN GRAHAM: I didn't mean to cut you  
5           off.

6           MS. LARKIN: That's all right.

7           CHAIRMAN GRAHAM: I didn't mean to cut you  
8           off, but I have been in this situation before when  
9           the opportunity has passed and there is really no  
10          going back, so I just want to make sure you are  
11          fully aware of your obligation if you wanted to  
12          move this stuff.

13          MS. LARKIN: Thank you. Yeah, I will have a  
14          list and I will try to keep to it.

15          CHAIRMAN GRAHAM: Sure.

16 BY MS. LARKIN:

17           **Q     Yes, I was addressing just this current**  
18           **controversy, and so I wasn't sure how much of your**  
19           **information regarding who has been represented and who**  
20           **has been cared about from the outside customers was**  
21           **basically from your current 2011 forward, you have been**  
22           **involved in this while this controversy has been going**  
23           **on?**

24           A     Yes, ma'am, I have.

25           **Q     Okay. You haven't been in office, or in your**

1 situation when there hasn't been any controversy?

2 A That is correct.

3 Q Okay. On page six, line 20, you talk about  
4 the Utility Commission and how it includes the County  
5 and the Shores members. I know you state it's only  
6 advisory, but let me go to the Utilities Commission  
7 meetings on August 9, 2016 -- does the witness have --

8 A No, ma'am, I don't.

9 Q I can read portions of it for you.

10 CHAIRMAN GRAHAM: I will make sure staff gets  
11 that to you.

12 MS. LARKIN: Thanks.

13 CHAIRMAN GRAHAM: Now, do the attorneys all  
14 have that as well? Is that a yes? We need to make  
15 sure that counsels on both sides also have that in  
16 front of them.

17 MR. WALLS: The only one I have as a handout  
18 is actually the May 2, 2017, City Council minutes.

19 CHAIRMAN GRAHAM: There is about seven or  
20 eight of these things in front of us. Let's make  
21 sure that --

22 MS. LARKIN: Should be eight, right.

23 CHAIRMAN GRAHAM: -- specifically the attorney  
24 for City of Vero Beach has got that in front of  
25 them.

1           While we are doing that, let's go ahead and  
2           number this as Exhibit 63.

3           (Whereupon, Exhibit No. 63 was marked for  
4           identification.)

5           CHAIRMAN GRAHAM: And the short title will be  
6           City of Vero Beach meeting minutes of August 9th --  
7           Utility Commission meeting minutes.

8           Mr. Walls, let me know when you have that.

9           MR. WALLS: I have it now. Thank you.

10          CHAIRMAN GRAHAM: Okay. Ms. Larkin, you can  
11          continue.

12          MS. LARKIN: Good.

13          BY MS. LARKIN:

14           **Q     Can you see at the top the names of the**  
15           **members?**

16           A     Yes, ma'am. This is the August 9th, 2016, at  
17           9:00 a.m.

18           **Q     Right.**

19           A     Right.

20           **Q     And you are aware of who lives where, so I am**  
21           **just entering this in as, you know, Mr. Auwaerter, he is**  
22           **a representative of?**

23           A     Indian River Shores is where his residence is,  
24           is my understanding.

25           **Q     Yes. And Steven Lapointe?**

1           A     I am not sure. He may be Indian River Shores.  
2 I am not positive.

3           Q     How about J. Rock Tonkel?

4           A     He is in the unincorporated areas.

5           Q     Of the county?

6           A     County.

7           Q     Okay. So at least three in this particular  
8 meeting?

9           A     Yes, ma'am.

10          Q     And then we go to July 16th -- yeah, I think  
11 that's it. Good. Okay.

12                   And are those members still on the Commission?

13          A     No, ma'am. Some of those have changed.

14          Q     Okay. And can you tell me who's now in the  
15 Commission?

16          A     No, ma'am. I don't have that list with me  
17 right now.

18          Q     Do you have the December 6th -- oh, no, that's  
19 2016, sorry.

20                   Anyway -- August 9, 2016 -- let's see --

21                   CHAIRMAN GRAHAM: Ms. Larkin, we need to move  
22 along, please.

23                   MS. LARKIN: Yeah, sorry. I thought I had a  
24 page number on that one, but I don't. Anyway, that  
25 will -- two for August 9.

1 BY MS. LARKIN:

2 Q Now, you state, on page six, line 20, that the  
3 Utility Commission is only advisory. Has it been your  
4 experience that the City Council normally ignores the  
5 advice of the Utility Commission?

6 A I can't say ignore, but at times they do take  
7 opposition and make a difference.

8 Q So does the Council -- I mean, sorry, does the  
9 Commission also take advice from outside customers, the  
10 Commission, the Utilities Commission?

11 A The Utility Commission are always held in  
12 public meetings and the public is invited to address,  
13 yes. And we have had public address the Utility  
14 Commission.

15 Q Okay. Are you aware -- I know this is in  
16 testimony that was already entered, Herb Whittal's  
17 testimony, he is a member of the Utilities Commission --  
18 or was. I am not sure it's still the case.

19 His testimony was that, in his time, he has  
20 had maybe two -- and that's over about 10, 12 years --  
21 maybe two members of the public show up for all of his  
22 commission meetings --

23 MR. MAY: Mr. Chairman, could we have her  
24 refer back to the testimony that she's talking  
25 about right now? I am confused as to is she now

1 talking about Mr. Whittal's?

2 CHAIRMAN GRAHAM: Mr. May, you need to work  
3 all of this through Mr. Walls. I apologize. If  
4 you want a second to talk to him, that's fine. I  
5 was going to give you a couple of minutes to talk  
6 to him.

7 MR. WALLS: I share Mr. -- I share the IRS  
8 counsel's concerns here, that she's referring the  
9 witness the testimony and he doesn't have it in  
10 front of him. And in fairness, he should have the  
11 testimony in front of him if she wants him to  
12 comment on somebody else's testimony.

13 CHAIRMAN GRAHAM: Do you have copies of that  
14 testimony for the witness and the attorneys and for  
15 us to follow as you are asking these questions?

16 MS. LARKIN: Oh, I am sorry. I thought it was  
17 part of the record. Not copies, no. That's 22  
18 copies, I guess.

19 CHAIRMAN GRAHAM: You can ask the question.  
20 If he does not recall, or does not know, then  
21 that's a fair response to answer that question.

22 MS. LARKIN: Exactly. Yeah.

23 CHAIRMAN GRAHAM: Okay.

24 BY MS. LARKIN:

25 Q I am not trying to make you responsible for

1 Mr. Whittall's statements. I am just giving you  
2 background on what has already been entered into the  
3 record. And I didn't know if you were aware of any --  
4 how many -- I forgot -- I lost my train -- how many  
5 customers, outside customers or inside customers, have  
6 come to the Utility Commission meetings prior to this  
7 controversy to discuss rates?

8 A No, ma'am. I don't have any number in mind.  
9 There have been people, but I have no numbers.

10 Q Okay. So nothing before 2011, you wouldn't  
11 have those numbers?

12 A No, ma'am, unless I went back in the records,  
13 as you have done.

14 Q Okay. Let's see, and as I stated earlier, you  
15 are not the decision-maker. Can you speak to the views  
16 of the Council members for whom you work?

17 A Can I speak to the views of the individuals?

18 Q Yes, their intent. Their goals.

19 A I would not attempt to address any elected  
20 official and what their intents are, or what their views  
21 are. As a collective body, I can tell what you they  
22 have done at that point.

23 Q Yeah, that we know.

24 On page seven, line 16, you reference the  
25 letters of interest that were sent out to various

1     **companies, I think -- were they attached to your**  
2     **rebuttal testimony?**

3           A     I think they are exhibits that I have on  
4     the -- that I have presented. Yes, ma'am. And I don't  
5     know if it was in my rebuttal, but I did provide that  
6     list and also information on the responses.

7           Q     **Right. Are you familiar with a request for**  
8     **proposal, a normal request for proposal for contracts**  
9     **and such?**

10          A     Yes, ma'am.

11          Q     **I am sure you have done plenty those?**

12          A     We have done plenty of those.

13          Q     **Right. Have you ever seen them done by via a**  
14     **one-page letter of interest?**

15          A     Yes, ma'am, I have. We have done some of  
16     those type of projects, the request for proposals that  
17     may not require by law that you have to do a formal  
18     request. It may be services being provided, or other  
19     types of activities the City would have.

20                   We usually do a request for proposals, or  
21     there could be a request for interest in -- for example,  
22     we have had a couple of requests for the interest to see  
23     what companies, what people may be interested in  
24     providing those services. That gives us a little  
25     background as to what we are delving into. And that

1 would be one page in many cases.

2 **Q So would that be used in a situation normally**  
3 **like this, that is exceedingly complicated?**

4 A Well, I think it would be in the fact that you  
5 want to identify who would be interested in getting into  
6 this type of situation. You know, I am not sure that,  
7 for example, a company out of the northeast would be  
8 interested in trying to purchase the City of Vero Beach  
9 utility and get involved in the quagmire that we  
10 typically get ourselves involved in. And so you have to  
11 have the letter of interest -- are you interested? This  
12 is something we may contemplate. And a request for  
13 formal proposals may go out at a later date that would  
14 have more of the specifics in it.

15 **Q Okay. So when you are sending out an RFP --**  
16 **well, it's not an RFP. When you are sending out a**  
17 **letter of interest that doesn't have a lot of detail in**  
18 **it, would you expect that the people receiving them**  
19 **would understand the nature of the purchase, or the**  
20 **nature of what they are being asked to purchase?**

21 A By the title showing your interest, we would  
22 not anticipate someone out of the blue to sit at their  
23 desk and send us a response back. We typically get a  
24 call, hey, what is this? Give me more details. And  
25 they will talk to the individuals involved. Sometimes

1 it's myself. Sometimes it would be our financial  
2 director. May be our electric director --

3 **Q And did you -- I am sorry.**

4 A -- but through a request for interest, we  
5 would anticipate them to show some interest outside of  
6 just trying to respond to a one-page.

7 **Q Did you get any interest, any calls, any**  
8 **informal requests, as you say?**

9 A I did not personally, but it was my  
10 understanding there were two of the utilities that did  
11 call and ask for information, and then we got the formal  
12 from Florida Power & Light. But there were  
13 conversations, as I understand, with Orlando Utilities,  
14 they had conversations with them, and I believe maybe --  
15 it might have been Tampa Electric as well.

16 **Q But you weren't part of those?**

17 A No, ma'am, I was not.

18 **Q So we won't know exactly how far they went, or**  
19 **how detailed?**

20 A No, I do not.

21 **Q Is there somebody that would know, or who they**  
22 **spoke to?**

23 A I wouldn't dare guess that. And in some of  
24 those cases, those proposals probably talked to people  
25 who are no longer with the City organization. For

1 example, when those proposals, or those letter of  
2 interest went out, I believe we had a different utility  
3 director than we do now, and I believe we might have had  
4 a different finance director than we do now.

5 **Q This is before Cindy Lawson?**

6 A Yes, I believe it was.

7 **Q Okay.**

8 A And I don't have the date of when that letter  
9 went out, but she was back in 2011 as well.

10 **Q Right, okay.**

11 I want to direct you to the August 16, 2016,  
12 Utility Commission meeting. And on the second page,  
13 Ms. Pam Roush is speaking. I am sorry, these don't have  
14 lines, so it's a little harder to put this specifically,  
15 but about halfway down.

16 A Halfway down --

17 **Q Yeah.**

18 A -- or the last paragraph on that page, on  
19 page --

20 **Q No, the first paragraph on page two. And**  
21 **right halfway through that paragraph, she said that Mr.**  
22 **Forrest would be presenting their final offer to the**  
23 **City. Do you see where that is?**

24 A The proposal that says Sam Forrest,  
25 Vice-President of Energy, Marketing and Trading, this

1 would be --

2 Q No, down a little farther.

3 A A little farther.

4 Q I am sorry. This is difficult, isn't it?

5 It starts with -- the line starts with the  
6 word does, period. And then she said, Mr. Forrest would  
7 be presenting their final offer to the City.

8 A Okay.

9 Q Okay. In this particular meeting,  
10 August 16th, 2016, attorney Schef Wright, who is at the  
11 time the attorney, you are to be discussing the proposal  
12 made by Florida Power & Light for the purchase of Indian  
13 River Shores. This was just Indian River Shores at that  
14 time. So we had a letter of intent, is that correct?

15 A That is correct.

16 Q And Mr. Forrest speaks, and let's see now,  
17 this is at the bottom about six lines up from the  
18 bottom. He said that they reviewed the Indian River  
19 Shores analysis as performed by the City's consultants,  
20 and he believes that they made two reasonable changes to  
21 the model to show that the customers would be kept  
22 whole. Do you see that?

23 A I do.

24 Q Okay. And on page -- let's see. I am sorry,  
25 experts, experts.

1                   Okay, I am sorry, on page six, one, two,  
2                   three, the fourth paragraph down, we have Mr. Auwaerter,  
3                   who is the -- at the time he was Vice-President of the  
4                   Utilities Commission, and he is also from Indian River  
5                   Shores, as we've pointed out. And he explains that they  
6                   are looking at the notices, and they believe that --  
7                   let's see, they are getting the money back. And he  
8                   concluded by saying that the \$30 million offer from FPL  
9                   is a win-win situation, and so Council -- Vice-Mayor of  
10                  Indian River Shores, okay --

11                  MR. WALLS: Is there a question any time soon?

12                  CHAIRMAN GRAHAM: You took the words right out  
13                  of my mouth.

14                  Is there a question soon?

15                  MS. LARKIN: There will be. Yes.

16                  CHAIRMAN GRAHAM: Okay.

17                  MS. LARKIN: I am sorry. I didn't realize you  
18                  were in a hurry.

19                  BY MS. LARKIN:

20                  Q        Here we go. Oh, I can't find it. All right.  
21                  Well, maybe not quite now.

22                  I will go to the end of that, it was on page  
23                  five, and then to page six for Mr. Auwaerter -- oh, here  
24                  we go. Page seven, Mr. Brian Barefoot interjected his  
25                  opinion. Mr. Toby Hill, Richard Gilmore -- in other

1 words, there were a lot of County players in that  
2 meeting, correct?

3 A Yes. There is always a lot of, either County,  
4 Indian River Shores and City of Vero Beach.

5 Q And during that meeting, which you attended --

6 A Correct.

7 Q -- did you feel that the County and Shores  
8 people were being listened, were they being considered?

9 A Yes, I do. And especially since the  
10 Chairman -- or the Vice-Chairman was from Indian River  
11 Shores, I do.

12 Q Right. Thank you.

13 CHAIRMAN GRAHAM: Before you move on, we are  
14 going to give that an Exhibit No. 64.

15 MS. LARKIN: That's what I just was going to  
16 ask. Thanks. 64.

17 CHAIRMAN GRAHAM: Short title will be City of  
18 Vero Beach minutes, August 16th, 2016.

19 (Whereupon, Exhibit No. 64 was marked for  
20 identification.)

21 MS. LARKIN: And then to December 6th, if you  
22 are ready, to the December 6th meeting in 2016.  
23 This was a City of Vero Beach regular meeting.

24 CHAIRMAN GRAHAM: We will give that Exhibit  
25 No. 65.

1                   (Whereupon, Exhibit No. 65 was marked for  
2     identification.)

3     BY MS. LARKIN:

4           **Q     And this is where the City Council was**  
5     **discussing the partial sale, and they talk about the**  
6     **letter of intent, and you recall this?**

7           A     I don't recall this specific meeting, but I do  
8     recall the letter of intent. I do recall the partial  
9     sale, and a lot of the discussions that went around  
10    about the partial sale.

11          **Q     Okay. On page seven, in the fourth paragraph,**  
12    **Mr. Winger talks about doing due diligence on the issues**  
13    **having to do with the partial sale, a number of them. I**  
14    **won't go through them all. And he asked that it be made**  
15    **a mutual due diligence in the letter of intent, stating**  
16    **that they never did due diligence with FMPA, and he was**  
17    **worried about the due diligence. Do you recall that?**

18          A     I recall Mr. Winger having concerns about the  
19    partial sale. It was an issue with him.

20          **Q     Do you know if a due diligence was ever done?**

21          A     No, ma'am, I don't think there was any formal  
22    due diligence.

23                   What we tried do is analyze internally,  
24    through the finance department, what that would really  
25    mean. Personally, as the City Manager, and I believe

1 the finance director, at the same time in our  
2 discussions with the electric utility director felt very  
3 comfortable with the \$30 million, based on our  
4 information.

5 Q Okay. Do you know if Cindy Lawson did an  
6 analysis at that time? Did she have the numbers?

7 A She had the numbers, obviously was involved in  
8 some of the conversation. Did she do a formal analysis?  
9 I do not know that.

10 Q Okay. Thank you.

11 On page nine, and this is one, two, three,  
12 four, five, six, seven, Mayor Moss was -- Mayor Moss was  
13 Mayor at the time of this meeting. She asked you about  
14 some concerns. And your response was that you had met  
15 with Sam Forrest, and as well as Mr. Brian, and that you  
16 were basically relying on FPL's information, when we are  
17 talking about a reasonable separation interaction costs.  
18 Was there anything tells other than FPL's numbers that  
19 that you were talking about?

20 A Well, we, again, took a lot of that  
21 information, and I would rely on the electric utility  
22 director as well as the financial director to review  
23 that information and give me what they thought if there  
24 was any real negative, and we did not find anything that  
25 was.

1 Q Were they able to review that?

2 A Any information that I had that they had to  
3 review.

4 Q Okay. So your electric utility director did  
5 review these things?

6 A Yes, ma'am. If I had it, the electric utility  
7 director had it.

8 Q Well, he may have had it. Did he review it?  
9 Analyze the numbers?

10 A I would rely on him for his comments on it.  
11 Yes, ma'am.

12 Q Okay. We don't have them, all righty.

13 A And this was a different electric utility  
14 director than we have today.

15 Q Oh. When did that change?

16 A I am not positive, but probably about a  
17 year-and-a-half ago.

18 Q Yeah, so 2017 sometime?

19 A Probably sometime in 2017.

20 Q Okay. At the very bottom of the page, you  
21 say -- the very last paragraph, you say that they would  
22 need to have an attorney review the document, but the  
23 letter of intent has as many outs as there are -- with  
24 as many outs as there are, it's not a big issue.

25 So had you not had an attorney review this at

1     **this time?**

2           A     Again, I would have to rely on memory, but the  
3     City Attorney would receive any of those documents, and  
4     I would presume that the City Attorney would have  
5     reviewed them.

6           Q     Well, this looks like you are looking to the  
7     future. You said that you would need to have the  
8     attorney review the document.

9           A     Yes.

10          Q     So it looks like he hadn't at that point?

11          A     Well, again, if we have the documents, it  
12     would go through our legal department. And then the  
13     legal department, if we go forward, would also have that  
14     review by any -- and also by any external attorney that  
15     we may employ for the --

16          Q     Okay. It just looked to me like it hadn't  
17     been done at that point.

18                     And let's see, on page 10, the one, two,  
19     three, four, five, sixth paragraph down, Mr. Winger is  
20     speaking, and he said that never in the history of the  
21     city had they not allowed time for their commissions to  
22     look at matters for the public to understand and go over  
23     them, stating that the commissions have not looked at  
24     these contracts or the letter of intent.

25                     Can you say why that happened?

1 A No, ma'am, I cannot.

2 Q Okay. That wasn't your decision?

3 A Well, again, it's a collective decision. I  
4 can't --

5 Q Your decision?

6 A I mean, I do take a lot of stuff to the both  
7 Finance and the Utility Commission at my discretion that  
8 I will take and place it on their agenda, assuming that  
9 the Chairman of those respective commissions will allow  
10 that to occur.

11 Q Right.

12 A But we do that on a pretty regular basis.

13 Q It's so the chairs are in charges of the  
14 agenda, right?

15 A Right. The chair and the Commission itself,  
16 they have their own protocol.

17 Q You see at the bottom of the page, Mayor Moss,  
18 Mayor at the time, said that the Utilities Commission  
19 did discuss the partial sale. And she said the Finance  
20 Commission is free to discuss it, and she hopes they  
21 will.

22 Do you know if that ever occurred?

23 MR. WALLS: Can I object at this point? I  
24 have let her go on for, like, 10 minutes talking  
25 about two-minute meetings that deal with the

1 partial sale that we are not here on. So I don't  
2 understand the relevance of this line of  
3 questioning, because all of these questions are  
4 directed to a time period when they were discussing  
5 the partial sale, and we are here on an agreement  
6 that was signed a year later, which was for the  
7 full sale.

8 CHAIRMAN GRAHAM: Ms. Larkin.

9 MS. LARKIN: And I am talking about two things  
10 here. One is the nature of the negotiation and our  
11 statement that the commissions, for these past  
12 couple of years, haven't been involved in giving  
13 expert support for the previous one, which this  
14 partial sale ends up being parts of this sale that  
15 we are talking about now, this contract. And so it  
16 is aligned with how the entire thing has been  
17 handled.

18 The partial sale ended up in the entire  
19 contract. And because that is a rather major  
20 portion of the contract, I am going through the  
21 initial involvement of the County and Shores about  
22 how they were included in the discussion, but also  
23 what kind of due diligence was done for that  
24 portion of the contract.

25 CHAIRMAN GRAHAM: I will let you continue.

1 MS. LARKIN: Thank you. I will try to be  
2 brief.

3 BY MS. LARKIN:

4 Q So where was I?

5 Okay. Mr. Peter Gorey was at this meeting.  
6 You will see on page 11, one, two, three, four, five,  
7 six, the seventh paragraph down, he was, and I think  
8 still, is the Chair of the Finance Commission?

9 A No, ma'am. He is no longer chair of the  
10 Financial Commission.

11 Q He is no longer Chair. He was at the time?

12 A Correct.

13 Q And he had some questions about understanding  
14 the significant amount of misinformation given to the  
15 public, and he said that the Finance Commission has  
16 never looked at this deal.

17 Would you confirm, is that your understanding,  
18 at that point, Mr. Gorey was correct?

19 A No, ma'am, I do not agree. I think Mr. Gorey,  
20 on many occasions -- and this is my view of where he  
21 is -- he makes his personal opinions, and I am not sure  
22 that documentation of that misinformation is really  
23 accurate.

24 Q I am sorry, yes. I kind of tied that to the  
25 misinformation. Let me put it to you this way, this

1 will be more simple.

2 He says the Finance Commission has not yet  
3 looked at the partial deal, the intent and such at that  
4 point. Do you know if that is correct?

5 A No, ma'am, I don't know if that was correct.

6 Q Okay. Nine pages, that's it for that.

7 Okay. Let me talk to you about the referenda  
8 that have occurred. I know you are not a legal expert  
9 either, but do you know what is legally sufficient in a  
10 referendum?

11 A No, ma'am. I will rely on the City Attorney.  
12 So he has to come up with the title and then what is  
13 encased. It's my understanding under State law, there  
14 are strict provisions as to what can be in the titled,  
15 the number of words, et cetera.

16 Q Right. And since nobody challenged the  
17 legality of this, which takes a bit of doing, you found  
18 that it was, that particular referenda, at least the  
19 first one on the leasing of the land, that it was  
20 suitable?

21 A Yes, ma'am.

22 Q Is the only way to challenge that via  
23 basically bringing suit to challenge the wording of  
24 that?

25 A I guess you could come to a City Council

1 meeting and vote your opinion there. We had no one do  
2 that.

3 **Q Are you sure there was no one there?**

4 A I don't recall someone doing that. That's  
5 much more accurate.

6 **Q There -- well, from the record of some of**  
7 **these meetings, as a matter of fact -- 12/16, okay --**  
8 **let me just make note in the record, I don't want to go**  
9 **through page by page of all of these meetings. It would**  
10 **take a lot of time. But several of these meetings**  
11 **include discussion of what outside voters, inside voters**  
12 **thought about the referendum.**

13 A Oh, I am sure there were. And I am sure there  
14 was discussion as to the description of the title.

15 **Q Right.**

16 A But there was -- there was not a protest that  
17 I am aware of.

18 **Q No.**

19 A The key was is that the City Attorney came up  
20 with what the title of the referenda would be, and then  
21 City Council members, as their right to do -- well, they  
22 take out the as, or the is, or was, or whatever it is,  
23 and we change those things around. So we do go through  
24 that type of discussion.

25 Again, the City Attorney is very clear as to

1 the number of words that are in that title, and it has  
2 to be descriptive of what has taken place.

3 Q Right. And in your testimony, you stated it  
4 would be impossible to put all the terms of the deal,  
5 and you are quite correct. You can't put the entire  
6 contract in the vote. But is it possible to put into  
7 the vote something more specific than we are just doing  
8 a sale?

9 A I guess you -- the answer to the question is,  
10 is anybody can come up with whatever they want to put in  
11 there, but we -- you know, we tried to make it as  
12 descriptive as possible.

13 There was many, many, many hours of discussion  
14 over this entire sale throughout the process, including  
15 the Finance Commission, the Utility Commission and the  
16 City Council. So if someone wanted to be involved and  
17 wanted the information, and all of these had extensive  
18 press coverage, and so you had article after article as  
19 to what was taking place.

20 Q Well, you might agree with me that sometimes  
21 the newspapers aren't as reliable, so as far as finding  
22 the actual facts behind the referendum, would they have  
23 to come in and read the background?

24 A Either read the background or call. And they  
25 could call and get information. We have a website you

1 can go on. You don't even have to come in, and you can  
2 find the minutes and the description of what took place.

3 **Q Right. But I mean, to ask questions?**

4 A Yes, you could come in -- the answer to the  
5 question is yes. You could send an email and ask  
6 questions. We try to be very responsive to that. You  
7 can go to a Utility Commission, Finance Commission or  
8 City Council, or you could come in and ask either the  
9 financial director, myself, the city clerk  
10 information -- about information.

11 **Q So do you know what people, when they saw this**  
12 **referenda -- actually, let's talk about the first one,**  
13 **the sale of the -- the lease of the land, which didn't**  
14 **become pertinent, how many people called in to ask about**  
15 **a background on that?**

16 A I have no idea how many people, but I had  
17 several folks that did call my office, and that sparked  
18 the interest of what is it that you are doing here.

19 **Q Okay. So several?**

20 A Several.

21 **Q Five to 10?**

22 A Maybe 10 to 15.

23 **Q Okay. Let's see, in the 2013 referendum,**  
24 **which was actually about the sale, there were a lot of**  
25 **mailers and a lot of ads in the newspapers about what**

1 does this vote mean. And basically most of them said  
2 just vote on the deal. And as you will recall, it says,  
3 with terms that are reasonably related to a contract.  
4 It wasn't a specific contract.

5 Was there a contract at that time that people  
6 could go into the City Council and look at -- or into  
7 the City building?

8 MR. WALLS: I'm going to object to the form of  
9 the question. There was like a five-minute  
10 statement prior to asking the question. So if we  
11 could just move to the question and strike what was  
12 before that.

13 MS. LARKIN: Well, I thought the foundation  
14 was important since we don't have necessarily  
15 everything in front of Mr. O'Connor.

16 MR. WALLS: Well, it does require a fact  
17 witness to provide that foundation.

18 MS. LARKIN: Well, what's a fact --

19 CHAIRMAN GRAHAM: Let's ask the question and  
20 see if you have to go back for the foundation.

21 MS. LARKIN: Okay.

22 BY MS. LARKIN:

23 Q Was there a contract, a piece of paper at City  
24 Hall that people could go to at the 2013 referendum and  
25 read it, and find out what the actual terms were at that

1 **time, at the time of the referendum?**

2 A I do not know that as a fact. The presumption  
3 is, is either we had the contract or we had a draft. I  
4 mean, before we would put it out to referendum, I would  
5 presume that we would have a document that you are  
6 talking about. It's not something you just dream up and  
7 put out a referendum and say we want to sell the  
8 electric utility system.

9 Q Well, yeah. And that's sort of the point. In  
10 Mr. Kramer's testimony, he pointed out that there wasn't  
11 a document.

12 A And I don't recall.

13 Q Okay. So if there wasn't a document to rely  
14 on, would they have had to call you, or somebody, to ask  
15 what the details of that contract were?

16 A Yes, ma'am.

17 Q Okay. So the referendum itself didn't have  
18 the price, the details, how much the rates would lower,  
19 any of the basic things?

20 A No. What we were trying do is find out if the  
21 citizens within the corporate limits of the City of Vero  
22 Beach endorsed a sale of the electric utility. And as I  
23 recall, there were in excess of excess of 60 percent of  
24 the people who voted yes to that question.

25 Q Without knowing what the details were?

1           A     Do you want to sell the electric utility?  
2     Yes, ma'am, in excess of 60 percent of the people said  
3     yes.

4           **Q     Yep. Let's see, on page nine --**

5           A     We are still on December 6th?

6           **Q     I am sorry, I am switching back to your**  
7     **testimony.**

8           A     Oh, okay.

9           **Q     We did enter six, didn't we? August 6th,**  
10    **yeah, 65. Keep track of me.**

11                   On page nine, line 10 of your testimony, you  
12    state that Mr. Kramer is asking for all the terms, all  
13    the approvals and all the impacts to be included in the  
14    referendum. Can you point out to me where Mayor Kramer  
15    said that in his direct testimony?

16           A     Okay. Mine was responding to a question that  
17    says: Can a referenda regarding the sale of the City of  
18    Vero Beach electric utility include all potential terms  
19    of the sale, all potential regulatory approvals and all  
20    potential impacts from the sale, as Mr. Kramer seems to  
21    suggest. He didn't say it was a suggestion. That's the  
22    way I interpreted it, and the answer to that question  
23    was no.

24           **Q     So this was just an opinion of what Mr. Kramer**  
25    **was saying. You didn't find anywhere where Mr. Kramer**

1 was actually saying that?

2 A No. It appeared to be suggested, in my  
3 opinion.

4 Q Okay. Same page, line 14, you are talking  
5 about voting in general terms -- voting on general terms  
6 were discussed at numerous council and other public  
7 meetings. So if a person didn't attend any of those  
8 meetings, and sadly, as we know, many of the public do  
9 not even watch those meetings as scintillating as they  
10 are, would they have a place to get that information?

11 A Yes, ma'am. They could call City Hall.  
12 Again, any documents, any information that we would  
13 have, call the City Clerk's Office, call me, they could  
14 call the finance director, they could call the electric  
15 utility director or call the City Attorney's office.

16 Q So individually they would all have to confer  
17 with you or some part of staff?

18 A Yes, ma'am, they could make the calls.

19 Q About the details of a very complex contract?

20 A The City Attorney or the contract attorney  
21 that we would have at that time is who we would  
22 recommend.

23 And we did open it up even for our attorneys  
24 that were under contract that the public could call and  
25 ask questions.

1 Q So if the public didn't do that, they might  
2 not have been informed about what the details were,  
3 especially since there wasn't a contract to refer to?

4 A If they asked no questions, they would have no  
5 answers. That's correct.

6 Q And so the public may not have been informed  
7 on that referendum, then, if they didn't ask?

8 A If they asked no questions, they would not  
9 have the information.

10 Q Okay. And I believe you attached, as an  
11 exhibit, the referenda language, right, on your --

12 A I do have -- the answer to the question is it  
13 may be one of the exhibits.

14 Q I think it is. I didn't want to add it if it  
15 wasn't already there. If it was already there.

16 A Yes.

17 CHAIRMAN GRAHAM: Ms. Larkin, how much more  
18 questions do you have with this witness?

19 MS. LARKIN: Yes -- oh, how many more?

20 CHAIRMAN GRAHAM: Yeah.

21 MS. LARKIN: Let's see, one, two, three, four,  
22 five. And then just to make sure we covered the  
23 data in here, which wouldn't be too many questions.

24 CHAIRMAN GRAHAM: Okay. Well, it's about one  
25 o'clock, so I think we are going to take that break

1 for lunch.

2 MS. LARKIN: Sure.

3 MR. WILLIAMS: So you are talking about the  
4 minutes for basically all the ones you have for  
5 2017?

6 MS. LARKIN: Yes.

7 CHAIRMAN GRAHAM: Okay.

8 THE WITNESS: Just to, again, respond, they  
9 are attached, Exhibit 4 and Exhibit 5 -- excuse me,  
10 Exhibit 3 and Exhibit 4 are the two referendums  
11 that took place.

12 CHAIRMAN GRAHAM: Ms. Larkin, I don't know if  
13 it -- for expediency, if you are just trying to get  
14 these minutes in, you may want to talk to Mr. Walls  
15 about stipulating some of that stuff, or if it's  
16 easier for you go to through them.

17 MS. LARKIN: If they wanted to waive  
18 relevance.

19 CHAIRMAN GRAHAM: Well, once again, that's  
20 your decision, I mean, but for expediency when we  
21 come back, we can do it one way or the other.

22 All right. We will break until two o'clock  
23 and we will come back here for the public testimony  
24 and conclude the hearing after that.

25 I apologize. If you are here for the public

1 testimony, if you are going to be back here for the  
2 public testimony at two o'clock, Cindy Muir will be  
3 up here at the podium taking your names. I need  
4 you to sign up on the sheet. I appreciate it.

5 Thanks.

6 (Lunch recess.)

7 (Transcript continues in sequence in Volume  
8 3.)

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON        )

I, DEBRA KRICK, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said 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 19th day of October, 2018.



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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020