BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220069-GU

Petition for rate increase
by Florida City Gas.
___________________________/

VOLUME 5
PAGES 881 - 1031

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, December 13, 2022

TIME: Commenced: 9:30 a.m.
Concluded: 6:15 p.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

APPEARANCES: (As heretofore noted.)

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EXHIBITS

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 4.)

CHAIRMAN FAY: All right. Good morning, everyone. It looks like we have everyone set and ready to go.

I am going to check with our staff real quick and make sure we don't need to take up anything preliminary, but otherwise, we will be back on witness Fuentes, with OPC continuing their line of questioning.

So, Mr. Jones, anything we need to take up before that, or we can go ahead and start with witness Fuentes?

MR. JONES: We would like to enter an appearance for Adria Harper for staff.

CHAIRMAN FAY: Okay. Great. Show that entered. Thank you.

Anything else?

MR. JONES: No, sir.

CHAIRMAN FAY: Okay. Great. Thank you, Mr. Jones.

All right, Commissioners, with that, we will move back to Mr. Rehwinkel for cross of witness Fuentes.

MR. REHWINKEL: Thank you, Mr. Chairman.
Just as a preliminary matter, I have redistributed Exhibit 188, which was the improperly copied exhibit that now has all the pages --
CHAIRMAN FAY: Okay.
MR. REHWINKEL: -- in it.
CHAIRMAN FAY: Give me one second, Mr. Rehwinkel, let me make sure we switch those out. Okay. So this, to your point, was the one yesterday that only had the one-sided, and you have provided us with 188 as double-sided --
MR. REHWINKEL: Correct.
CHAIRMAN FAY: -- or at least single-sided, but has all the pages you want in there?
MR. REHWINKEL: That's correct.
CHAIRMAN FAY: Okay.
MR. REHWINKEL: And I have also distributed another exhibit for Ms. Fuentes that we will get into shortly.
CHAIRMAN FAY: Okay. And that's the 2017 testimony?
MR. REHWINKEL: Yes.
CHAIRMAN FAY: Okay. Great. All right. With that, then, we have 188. And then your other exhibits, Mr. Rehwinkel, you are recognized when

you are ready.

MR. REHWINKEL: Thank you, Mr. Chairman. Let me make sure my microphone is positioned here.

EXAMINATION (continued)

BY MR. REHWINKEL:

Q Okay. Good morning.

A Good morning.

Q I think we stopped yesterday, I was asking you -- I think I had asked you about the labor positions that were -- that the labor cost included in the revenue requirement that is being currently recovered. Do you recall that?

A Yes.

Q And I think I had asked you if those positions had been filled, and you said you did not know; is that right?

A That's correct.

Q Okay. Isn't it true that even though the rates currently in effect assumed labor cost for operating the plant, that FCG has not recorded any labor costs for operating the LNG facility?

A I don't know if we have filled any positions, then we would have actually recorded costs incurred, so I don't know the answer to that.

Q Okay. But you can't sit here today and tell

the Commission that there are labor costs that are being recorded on the books related to the LNG plant, is that right?

A   Right. I don't know.

Q   Okay. And going back to your LF-8, page seven of eight. Does this page of your exhibit show that, if fully completed, the adjustment of 3,828,493 that would have been made to rates by the end of 2019, or in the -- or the in-service date, whichever is later?

A   I am sorry, can you say that again?

Q   Does this page show the revenue requirement that would be collected once the plant -- the additional revenue requirement that would have been collected once the plant went into service?

A   Yes, it does. It's the 3,828,493, which represents the difference between the 6.4 million on this page and the 2.5 million on the next page.

Q   Okay. And as you told me yesterday, that includes a $1.010 million of depreciation on an annual basis, right?

A   In the full revenue requirement of the 6.4 million.

Q   Okay. And that amount of depreciation has not been recorded on the books of the company during 2018, 2019, and year-to-date, is that correct?

A That's correct.
Q And I think, as you indicated previously, that's because the plant is not on the books as plant in-service, is that right?
A That's correct.
Q Okay. Would you agree with me that rates emanating from the 2018 settlement order went into effect June 1, 2018?
A Yes.
Q So wouldn't it be correct that beginning June of 2018, customer rates included depreciation of the LNG facility and a return on the $29 million of 13 -- or the 13-month average of $29 million approved for recovery?
A Yes. But stated it differently, the rates in effect at this point in time include 2.5 million of revenue requirements for the estimated cost of the LNG facility at the point in time of FCG's last rate case.
Q Okay. And looking at page eight of eight of LF-8, would you agree that in 2019, customer rates were based on the company receiving a return of and on $29 million of LNG plant facilities?
A Yes. That's what it shows.
Q And in 2020, were customer rates reflecting a return of and on the -- that $29 million of LNG plant facilities?

A   Yes. That's correct.

Q   And in 2021, rates also reflected a return of and on the $29 million?

A   That's correct.

Q   Okay. In 2022, do current rates reflect the company earning a return of and on the $29 million for the LNG plant facilities?

A   Yes.

Q   And is it true that the current filing includes a request for a return of and on the total projected cost of plant and recovery of the land in a total amount of $68 million?

A   That's my understanding.

Q   Okay. If the company has been recovering a return of and on $29 million for the past -- for the part of 2018 and the years '19, '20, '21 and '22, and now the company is asking for the projected $68 million to be included in rates, how is it that customers are not providing double recovery of some of the costs of the plant?

A   So first I would like to point out that the amount much revenue requirements included in current rates was pursuant to a settlement agreement to which OPC was a party to, and so therefore, we have been collecting that amount in rates pursuant to that.

The amounts we are proposing in this proceeding is the $68 million. And we are only really asking for the incremental amount that is the 3.8 million -- sorry, above the -- sorry. We have the total $68 million included in revenue requirements, and we are asking for the full cost of the recovery. The estimate is different at this point in time. The estimate at the point in time the last case was based on information at that point in time, and it's now been revised, and so we are asking for recovery of the full asset.

Q Okay. On eight of eight of LF-8, you would agree that the annual revenue requirement for the LNG facility included in base rates is 2,530,174, right?

A Yes, that's what it shows.

Q So 4/20/18, customers would have paid approximately $1,475,935, or seven-twelfths of that $2.5 million for that year, right?

A That's correct.

Q And then for 2019, '20, '21, and -- 2019, '20 and '21, and assuming through the end of this year, four times 2.530174 is 10,120,696, subject to check?

A Yes, it is. However, I would like to point out that even though this amount was included for recovery in our current base rates, FCG has continued to underearn, and, therefore, we are not covering the full costs of our revenue requirements today.

Q So adding the '18 amount, and then the four years through the end of this year, customers will have paid 11,596,631 for an LNG facility that is still not used and useful?

A Subject to check on your numbers, yes. However, once again, I would like to point out that FCG has continued to underearn during this time period in which these rates have been in effect.

Q Okay. Would you agree that there is nothing in the settlement agreement order that prohibits the Commission prospectively from ensuring that customers only pay once for the LNG facility?

A I am sorry, can you say that again?

Q Would you agree that there is nothing in the settlement agreement order that prohibits the Commission from ensuring, on a prospective basis, that customers only pay once for the LNG facility?

A I would agree with that.

Q Okay. Let's look at -- go back to 189, which is the settlement agreement, if we can. And I think we were on page 16 of the order.

A I am there.

Q Would you agree with me that the portion of paragraph Roman numeral III A, starting with, the

parties further agree, all the way through the rest of that paragraph, is written such that the parties intended that FCG only recover the cost of the LNG facility one time?

A I would agree with that. I would like to point out, though, that this is a black box settlement agreement at a point in time, based on the facts and circumstances at that point in time. The unit has not been placed into service yet. We revised our estimated cost of the facility and, therefore, we are requesting for recovery of it in this proceeding.

Q Okay.

MR. REHWINKEL: Mr. Chairman, I have passed out an exhibit entitled FCG 2017 Testimony, parenthesis, Becker and Wassell, and I would like for that to be given a number for identification, please.

CHAIRMAN FAY: Okay. One second, Mr. Rehwinkel. Let me make sure -- okay, that will be 190.

MR. REHWINKEL: Okay.

(Whereupon, Exhibit No. 190 was marked for identification.)

BY MR. REHWINKEL:

Q In your testimony, on page 13 of footnote one,

if you could turn to that, please.
A In my direct or rebuttal?
Q I am sorry, your rebuttal.
A You said rebuttal page 13?
Q Yes.
A Lines which?
Q Well, it's the -- it's the footnote one.
A Okay.
Q Do you see that footnote?
A I do.
Q Would you agree with me that you have asked the Commission in this footnote included in your testimony to take a look at evidence from the 2017 FCG rate case in the form of three pieces of FCG company testimony?
A Yes. And it's referencing a few lines in my testimony up above related to the AGLR acquisition adjustment. That testimony was presented in FCG's last rate case supporting the continuation of it in rates.
Q Okay. So in your -- the exhibit that I passed out, it -- the first document is the October 23rd testimony of Gregory Becker.
Do you see that?
A Yes.
Q And then the second piece of testimony is by

an individual named Wassell. And Mr. Becker's testimony goes through 35 pages, so after a couple of exhibits, you will see Mr. Wassell's -- I say it's Mr. Stephen Wassell. Do you see that?

A Yes.

Q Okay. So, didn't FCG tell the Commission and the customers that they had an immediate need for the LNG plant on this date, 20 -- August -- October 23rd, 2017?

A I am sorry. I have a question. You referenced my testimony related to the acquisition adjustment?

Q Yes.

A That's not the same testimony that you just gave me.

Q That's correct.

A Okay. So, sorry, what's your question?

Q I am asking you about what the Commission was told at the time, through testimony, leading up to the settlement agreement?

A Okay. I don't know. And the testimony that you just presented to me for Mr. Becker and Mr. Wassell, I haven't seen this before.

Q Okay. But you asked the Commission to take note of testimony so they could interpret the

acquisition adjustment piece of the settlement agreement. And I am asking you to take a look at -- I am asking the Commission to take a look at the testimony the Commission was given by the same entity to interpret this provision on page 16 of the settlement order. So I would ask you to turn to page 15 of Mr. Becker's testimony.

MR. WRIGHT: Chairman Fay, I apologize. We are getting pretty far afield of Ms. Fuentes' testimony. The need and the in-service date were subjects of Mr. Howard's direct and rebuttal testimony. Ms. Fuentes does not offer any testimony around those issues.

CHAIRMAN FAY: Yeah, Mr. Rehwinkel. The -- witness Fuentes spoke to the cost and the timing of those costs. I think your question is more the idea that the utility needed it to be in-service at a certain time, is that where you are going?

MR. REHWINKEL: No. Mr. Chairman, we haven't gotten to the acquisition adjustment testimony, but the company is asking you to take note of extraneous information to interpret a provision of the agreement as it applies to the revenue requirement that you are being asked to approve in this case on an acquisition adjustment issue.

On this LNG issue, we are being told that there is a settlement agreement, and there is an -- there are terms in it, on page 16, that you should rely on. And I am going to ask the Commission, because we've heard testimony that there was a deal made, and the basis of the deal and understanding, the witness has said, well, I don't understand what was in peoples minds. So I want to ask -- I want to take a limited opportunity for the Commission to see what was in the commission's, the customers', the U.S. Military's mind when they entered into this settlement agreement.

Four years lapsed since this facility was agreed to the -- where the customers agreed to pay, and there is evidence here about what you were told about when that facility would go into service, and how much it would cost, and how it was needed.

CHAIRMAN FAY: Yeah. So I am -- I am going to allow the line of questioning, Mr. Rehwinkel. I do want to add that, as Ms. Fuentes pointed out, your correlation to this was her footnote, essentially, to some testimony related to the docket itself, where we've now veered from that into just the docket holistically, and what could be included.

So I presume Ms. Fuentes might not be able to opine on what this testimony from these witnesses have meant or included. But holistically, as this relates to revenue requirement, I see it being within the scope, so go ahead and ask your questions and we will see if Ms. Fuentes can respond.

MR. REHWINKEL: Thank you, Mr. Chairman.

BY MR. REHWINKEL:

Q So would you agree with me, Ms. Fuentes, on page 15, the question is asked: Does FCG currently hold sufficient capacity to meet the needs of all its sales and essential use customers? And do you see where it says, no?

A Yes.

Q Do you see on line 12 where it says: What is the identified need for added gas capacity -- cap-- I am sorry. What is the identified need for added gas supply capability for FCG? And the answer is: FCG needs approximately 43,000 dekatherms per day of aggregate gas supply capability to meet the forecasted needs of transportation customers on its distribution system today.

Do you see that?

A Yes.

Q And on page 16, it says: There is -- well, I

am sorry. At the bottom of page 15, line 24, the question: Why does FCG need this added gas supply capability?

The answer is: Without a firm supply -- on page 16, line one -- without a firm supply of natural gas to serve all the load in FCG's service territory, we may not be in a position to maintain gas supply service on the coldest of days.

Do you see that?

A Yes.

Q And if I could get you to turn to Mr. Wassell's testimony, first going back to page 11. On line nine, there is a question that says: Why does FCG seek cost recovery for an LNG facility at this time?

Answer: Without the facility, FCG cannot meet all the potential demand as explained in the testimony of witness Becker. The facility is needed now. As witness Becker explains in his testimony, this facility cannot be delayed. And to do so, jeopardizes our need -- or ability to meet demand.

Do you see that?

A Yes.

Q Wouldn't you agree that this testimony given to the Commission would have been persuasive to the parties in entering into an agreement to pay for a

facility that was intended to go in service in 2019?

MR. WRIGHT: Objection. Calls for speculation.

CHAIRMAN FAY: Mr. Rehwinkel, that does call for some significant speculation as to that agreement. Do you have another way you can ask the question?

MR. REHWINKEL: Yes.

BY MR. REHWINKEL:

Q Let's go to page eight of Mr. Wassell's testimony. Do you see on line nine -- 12, there is a question: When would the plant be completed?

And the answer is: Engineering design work has started, and would continue through May 2018. Equipment procurement would start in January 2018 and continue through October 2018. Construction would start in May 2018 and be completed in January 2019. Commissioning would be complete in January 2019.

Question on line 18: What is the estimated cost?

Answer: The plant would cost approximately $58 million.

Do you see that?

A Yes.

Q Is there really any need to speculate about

what was in the minds of the customers when they signed the agreement?

MR. WRIGHT: Chairman, I will renew my objection.

MR. REHWINKEL: I will withdraw the question.

BY MR. REHWINKEL:

Q Would you agree, would you not, that FCG told custo -- the Commission and customers on October 23rd, 2017, they would be unable to meet demand if it wasn't -- if the LNG wasn't built, right?

MR. WRIGHT: Chairman, I am -- again, I apologize. We are continuing to ask questions about the need for the facility. That is not Ms. Fuentes' scope of her testimony. Mr. Howard testified yesterday. He was here. He could have testified about the need and the in-service date for the facility. That's not Ms. Fuentes.

CHAIRMAN FAY: Yeah. Go ahead, Mr. Rehwinkel.

MR. REHWINKEL: I think Mr. Howard testified he wasn't around and couldn't testify about that.

CHAIRMAN FAY: Yeah. And I do think, to the extent your questionings are being responded to Ms. Fuentes that her knowledge is limited as to that. I do think as to the number, the 58 and 68, and the discussion as to that seems relevant. As to the actual decision-making process that occurred at this time, I am not sure how that correlates to the revenue requirement.

MR. REHWINKEL: That's fair. I appreciate that.

CHAIRMAN FAY: Okay.

MR. REHWINKEL: Thank you.

BY MR. REHWINKEL:

Q Ms. Fuentes, wouldn't you agree that the parties to the settlement agreement couldn't have reasonably contemplated that, at least four years later, the customers would have paid $11 million for a phantom LNG facility?

A I am sorry, I don't quite understand your question.

Q Is it reasonable for customers to pay $11 million for a facility that is not providing any benefit to them?

A The amount that the customers are paying right now are pursuant to the 2018 settlement agreement agreed to by all parties, which was part of the total amount of the base rate increase at that point in time. The forecast used at that point in time was used to -- as the basis for the amount of the general base rate increase. We are now requesting recovery of the costs as of today. And once again, we are continuing to underearn even with the $2.5 million that are included in current rates.

Q Isn't there a return on the investment -- I am sorry. We've talked about the return of and return on. Wouldn't you agree that the return on the investment is calculated by applying a WACC, or weighted average cost of capital, to the investment balance?

A Generally, yes, that's correct.

Q And wouldn't you also agree that the WACC includes an element of shareholder profit?

A It includes an authorized ROE as part of the calculation.

Q Okay. And you would agree that is profit for the shareholders?

A Yes.

Q What incentive to the shareholders have to finish the project if they have no penalty for -- I am sorry, let me -- let me withdraw that question and ask: What incentive do the shareholders have to finish this project expeditiously if they are earning a return on it?

A Well, first I would like to point out that customers do not pay ROE. They pay rates on their bills. So the rates that customers pay right now are not sufficient to cover the full cost of our current revenue requirements. That's exactly why we are in here for a base rate revenue increase.

Q If the Commission were to decide that customers are entitled to receive a credit for their advanced payment on plant not used and useful, wouldn't it be fair to do so by establishing a regulatory credit for liability that can be amortized over a period of time in the future?

A I am sorry, what's your reference to a credit?

Q Well, if the customers have essentially prepaid for the facility, can't the Commission order you to create a regulatory liability and amortize it forward to offset the cost of plant?

A I don't get your characterization that they've prepaid for an asset.

Q Okay. All right. I think we'll stop there on the LNG facility, and I want to go to the acquisition adjustment now.

So in your rebuttal testimony, on page 13, lines 11 through 20, is this where you note that the OPC did not oppose the acquisition adjustment in the Docket 20170179-GU?

A That's correct. I offer -- also reference my Exhibit LF-9, which is some exhibits from OPC witness

Willis' testimony in the 2017 rate case that clearly shows the acquisition adjustment is listed on there on rate base, and OPC recommended no adjustments to what the company proposed in its 2017 test year.

Q Okay. Is it your testimony there that the OPC's failure to make an adjustment to operating income for the amortization expense, or oppose the acquisition adjustment, precludes the OPC from making a recommendation in this case?

A No, it doesn't. But it was very clear at that point this time that OPC did not have any opposition to including it in rates.

Q Is it your testimony -- you are the sole witness on the acquisition adjustment issue, right?

A That's correct.

Q Okay. Your direct testimony did not address this issue, did it?

A No.

Q Okay. On page 10 of your rebuttal, on lines two through five, is it your testimony that FPL was the entity that purchased FCG from Southern?

A I am sorry, which page?

Q Page 10.

A Page 10 is not on acquisition adjustment.

CHAIRMAN FAY: Direct or rebuttal?

BY MR. REHWINKEL:

Q This is rebuttal. Are you on rebuttal?

A I am look looking at page 10.

Q All right. Let me --

A It's rate case expense.

Q I apologize. Let me -- let me skip that question and --

CHAIRMAN FAY: Mr. Rehwinkel, it looks like it starts on page 12 for the acquisition adjustment. That might be what you are referring to.

MR. REHWINKEL: Thank you, Mr. Chairman. Let me see.

CHAIRMAN FAY: If you need a minute, that's fine, Mr. Rehwinkel. Go ahead.

MR. REHWINKEL: Hopefully not to be in Mr. Campbell's rebuttal.

Thank you, Mr. Chairman.

BY MR. REHWINKEL:

Q And, yes, I meant to ask you about page 12, lines two through five.

The -- you are not saying here that FPL was the entity that acquired the FCG from Southern, are you?

A No, I am not.

Q Okay.

A FPL did not purchase FCG.

Q In 2018, you would agree that NextEra, through a subsidiary called 700 Universe, LLC, purchased FCG from Southern Company, right?

A That's correct.

Q And wasn't FCG purchase at the same time as a part of this same overall transaction as the Gulf Power acquisition?

A It was part of an overall transaction. I think the acquisitions took place at different points in time, though.

Q Okay. I am going to ask you, if you could --

MR. REHWINKEL: I have an exhibit, Mr. Chairman, that is a -- it's a fairly thick exhibit. It says NextEra Energy 3Q 2018, Form 10-Q.

CHAIRMAN FAY: Okay. And I believe we are on 191.

MR. REHWINKEL: Okay.

(Whereupon, Exhibit No. 191 was marked for identification.)

BY MR. REHWINKEL:

Q Ms. Fuentes, do you have a copy of Exhibit 191?

A I do.

Q Do you have any general familiarity with filings made by your company with the SEC, or Securities

and Exchange Commission?
A General, yes.
Q Isn't it true that you are occasionally called upon to provide information, or review information for filing?
A Yes, very little typically, though.
Q Would you agree that if -- and the pages I am going to reference are located in the lower right-hand corner, on page one of 83, do you see that page?
A Yes.
Q Would you agree that this is a Form 10-Q for the period ended September 30, 2018?
A Yes.
Q Okay. And it is filed by NextEra Energy and Florida Power & Light Company, right?
A That's correct.
Q Can you turn to page 43 of 83, please?
A I am there.
Q And do you see footnote -- or note, I should say, seven, acquisitions?
A Yes.
Q Okay. Would you agree with me that there is an indication here, four lines down, that NextEra, it says NEE, N-E-E, which is NextEra Energy, right?
A Yes.

Q Intends to finance the total cash purchase price of $5.1 billion through the issuance of debt?
A Yes, that's what it says.
Q Okay. And do you see, about three lines below that, it indicates that FCG was acquired for $530 million in cash, subject to certain adjustments?
A Yes.
Q Okay. And then it says: Upon closing, NEE transferred FCG to FPL, right?
A That's correct.
Q Okay. And is it your understanding that the transaction was, in general terms, accomplished along these lines?
A That's what it says. However, I am not familiar with the transaction. I didn't participate in the acquisition.
Q Okay. I am going to ask you about the issue that is Issue 15. And would you agree with me on some no, I'm nomenclature that when I talk about the AGL acquisition adjustment, I am talking about the acquisition adjustment that's in dispute and it's the $21,656,835 acquisition adjustment?
A Yes, I am good with that.
Q Okay. I am going to try to refer to that. And that is the acquisition adjustment when that

occurred when -- well, tell me what your understanding of the transaction that gave rise to that acquisition adjustment?

A So in 2004, AGLR Resources acquired NU -- NUI Corporation, which includes FCG. And in 2007, the Commission issued an order approving an acquisition adjustment for the amount Mr. Rehwinkel quoted, and include it in rates.

Q Okay. So when we say AGL acquisition adjustment, we will be talking about that?

A That's correct.

Q Okay. And I am going to use a term NEE, or acquisition premium.

Would you agree that NextEra Energy, through 700 Universe, paid a premium for FCG when they acquired it?

A That's my understanding. But once again, I didn't participate, so I am not 100 percent sure.

Q Okay. And isn't is it also true, and I think it's in your testimony elsewhere, is that that acquisition premium was not transferred to FPL and the books of FCG?

A That's correct. FCG was brought onto the books and records at the cost at the time of the acquisition, therefore, no additional premium was recorded on FCG's books and records, nor is there anything included in this proceeding associated with it.

Q All right. I am going to ask the question, I have a feeling I know your answer, but do you know the basis for the NEE acquisition premium? In other words, what was the amount that would be deducted from the $530 million to yield a premium?

A I don't know.

Q Okay. Would you agree that the acquisition adjustment would be -- would have been included in whatever cost was deducted from the purchase price to give an acquisition premium by NextEra?

A I am sorry, can you say that again, please?

Q Yes.

So you would agree generally that any acquisition premium that is recorded on the books of NextEra, somewhere not on FPL's books, that that would be based on the purchase price of roughly 530 million minus a basis, a fair value?

A I generally agree with that. Typically, my understanding is, is that there is a purchase price for an entity. There is a net book value on the books and records. The difference is typically an acquisition adjustment absent any goodwill.

Q Okay. So the net book value you just

referenced there, to the extent it was included in a calculation that NextEra Energy performed to determine the acquisition premium, that net book value would have included the AGL acquisition adjustment, is that your understanding?

A Yes, because the AGLR acquisition adjustment that we are talking about in this proceeding, once it made its way to the books and records as an acquisition adjustment it becomes part of the cost of plant. So when we acquired the plant, that was included in there.

Q Okay. Isn't it true that -- well, let me strike that.

On page -- let me double check, Mr. Chairman, since I messed up the reference before.

All right. On page 12 of your testimony, line eight, you use the phrase actual amounts, is that right?

A That's correct.

Q Actual amounts here is not synonymous with the original cost of the assets, is that right?

A That's correct, because this is talking -- about the reference you have made relates to actual amounts on the balance sheet at the time FCG was acquired from Southern Company Gas.

Q Okay. And that included the AGL acquisition adjustment?

A That's correct.

MR. REHWINKEL: All right. Ms. Fuentes has given me answers to questions I don't have to ask, so if I could just take a second to skim through here.

CHAIRMAN FAY: Sure. Go ahead.

BY MR. REHWINKEL:

Q Okay. On page 12, lines 14 through 17, when you say, FPL's that, quote, rate base remains unchanged, isn't it true that you assume that the 2018 settlement order allowed to you roll forward the AGL acquisition adjustment into this rate setting proceeding for continued recovery?

A Absolutely. It's part of the cost of utility plant that was acquired, therefore, we brought it onto our books and records.

Q Okay. We've looked at -- let's open up Exhibit 189 again. This is the settlement agreement order.

Would you agree with me that this order was issued on April 20th, 2018?

A Yes, that's correct.

Q And would you also agree with me, referencing page two of the second full paragraph of that order, that the settlement agreement was dated March 12th of

2018?

A That's correct.

Q Okay. And would you also agree with me that the hearing in that case referenced in the third paragraph was originally scheduled for March 26th?

A That's what it says, yes.

Q Actually, it says that in the first paragraph, but the hearing on the settlement was -- took place instead on March 26th, is that right?

A Yes.

Q Okay. So the order approving this agreement, would you agree with me that -- that approximately 30 days after this order was issued on April 20th, that NextEra bought FCG?

A We bought FCG, are you --

Q Well, let's leak at --

MR. REHWINKEL: I have another exhibit, Mr. Chairman, and this is -- it's a May 23rd 8-K?

CHAIRMAN FAY: Okay. Go ahead and label that 192, Mr. Rehwinkel. It's the May 23rd, 2018, Form 8-K?

MR. REHWINKEL: Yes. Yes, sir.

CHAIRMAN FAY: Okay.

(Whereupon, Exhibit No. 192 was marked for identification.)

MR. REHWINKEL: And we called this 192?
CHAIRMAN FAY: Yes.
MR. REHWINKEL: All right. Thank you.
CHAIRMAN FAY: We still need 189, Mr. Rehwinkel, or --
MR. REHWINKEL: Yeah. I think we may need to hold on to that.
CHAIRMAN FAY: Okay.
BY MR. REHWINKEL:
Q Would you agree with me that this, if you -- and again, I am going to use the pagination in the lower right-hand corner.
A Uh-huh.
Q Okay. On page two of 179 --
A Okay.
Q -- and the lower quadrant of that page says Florida City Gas acquisition?
A Yes, I see it.
Q It says, on May 20, 2018, NEE and the purchaser entered into a stock purchase agreement. Do you see that?
A Yes, I see that. That's the date that the agreement was entered into. That's not the date the acquisition took place.
Q That's a good point.

So the purchase agreement was signed on May 20th, and I think we've heard elsewhere, and it may in this document, that that transaction was closed in July of 2018, is that right?

A That's correct.

Q Okay. So going back to 189, you would agree with me that on page four of the order, it shows that a party wanting to appeal this order would have 30 days to do so, right? The last four lines there.

A A notice of appeal, is that what you are looking at?

Q Yes, ma'am.

A Yes. That's what it says.

Q So would you agree with me that by all appearances, FCG, Southern Company and NextEra waited 30 days for the order to become final and then signed the agreement to purchase FCG?

A I don't know. I didn't participate in the negotiations or the acquisition of FCG.

Q Okay. The calendar kind of works out that way, doesn't it?

A Yes, timing-wise, yes.

Q Okay. Would you agree with me that while FCG was before the Commission seeking a rate increase, that Southern Company and NextEra were negotiating to buy the

company?

A I don't know. I didn't participate so I can't speak to that.

Q Okay. Is it reasonable to expect that a transaction that included Gulf Power and FCG would have been -- would have been initiated and consummated in the 30 days after the order was issued?

A I don't know.

Q Okay. Do you know whether there is any information on file with the SEC that gives a chronology about when the discussions with NextEra and Southern began?

A I don't know.

Q Okay. Would you agree that there is no evidence that FCG -- that neither FCG or any of the parties to the transaction told the Commission that a sale of the company was pending during the run-up to the March 26th hearing?

A I don't know. I didn't participate in the last rate case.

Q Okay. In your rebuttal testimony, on page 13, at lines 11 through 20. I will give you a minute to get there.

A Okay.

Q By invoking the settlement agreement and Mr.

Willis' participation in it, are you suggesting to the commission that the company relied upon the fact that the OPC did not contest the continuation of the AGL acquisition adjustment in its -- in testimony?

A I am sorry, can you say that again, please?

Q Yes.

In your rebuttal, on page 13, at lines 11 through 20, by invoking the settlement agreement and Mr. Willis' participation in it, are you suggesting to the Commission that the company relied upon the fact that the OPC did not contest the continuation of the AGL acquisition adjustment?

A I don't think I can answer that fully. But what I can tell is you what's clearly represented in the docket in the last rate case. That's the only thing I have in front of me to base my opinion, but it was very clear in the 2017 rate case that OPC did not take issue with the acquisition adjustment.

Q Okay. Can you open up Exhibit 189 and tell me where in it there is a mention of the acquisition adjustment and any approval?

A I don't need to open it, but I know there is no mention of the acquisition adjustment at all, therefore, there is no reason to believe that we can't continue to include it in rates.

Q Okay.

A In fact, if I can point out real quickly, on my Exhibit LF -- sorry, give me a second. I think it's LF-8, there was a discovery response we provided in this proceeding. It was Interrogatory 159 by OPC's 5th set of Interrogatories, where we provided an attachment to data requests that were in response to Commission staff's questions related to the settlement agreement in the 2017 rate case.

And the Commission staff clearly asked FCG do we believe that we fulfilled our obligation to demonstrate the prudence of the acquisition adjustment? And our response was, yes, we believe that we've made sufficient documentation -- demonstration that the continued prudence of the acquisition adjustment is appropriate.

Q Okay. And is that part of the settlement agreement?

A It's not part of the settlement agreement, but it's very clear based on that communication with Commission staff what our position was.

Q Is that more or less clear than the testimony of Mr. Becker and Mr. Wassell about the in-service date of the LNG facility?

A To me, this is very clear. It's -- we have evidence that demonstrates what's been included. We have an order from the Commission that says that we can include the AGLR acquisition adjustment in rates for recovery.

In that particular order, the Commission asked FCG to come back in its next base rate proceeding and present information related to the continuing -- to continuing the acquisition adjustment in rates, which we did. And the Commission approved our settlement agreement, which included very clear communication to staff that we intended for the -- I am sorry, that the prudence of the acquisition adjustment had been fulfilled and that we could continue to include it in rates.

Q When did the Commission tell you to come back, FCG?

A In the 20 -- 2007 order -- and I can take you there if you would like me to. But in the 2007 order, it clearly says that the AGLR acquisition adjustment can be included in rates, and that the -- that FCG would be required to come in in its next base rate proceeding to discuss and address the continued recovery of it in rates, which is what FCG did in numerous testimonies in the 2017 rate case.

Q Did they know that the company was going to be

sold in the future?

A   I have no idea.

Q   Okay. The staff, when they asked the question in the 2017 agreement, did they know that FCG had been sold?

A   I have no idea, but I don't know how much that's really relevant. The acquisition adjustment is part of utility plant, and utilities are offered the opportunity to recover that plant, and therefore, that's why we believe it's appropriate to continue to include it.

Q   Just to be clear, I think -- I thought -- you agree -- well, let me ask it this way: Utility plant in-service never includes an acquisition adjustment, does it?

A   Not in plant in-service. But if you look at the Code of Federal Regulations for gas utilities, acquisition adjustments, which is recorded in account 114, is part of the total cost of utility plant.

Q   But it's not -- it's not depreciable plant in-service, right?

A   It's not plant in-service. It does get amortized, though, similar to what you have for depreciation.

Q   And it's not what is considered original cost

of the plant when it's first devoted to utility service, is that correct?

A Not when it's first devoted to utility service. However, it becomes part of the cost of utility plant on an entity's books and records.

Q Okay. Does FPL believe that OPC is an essential party to any validity of any settlement agreement?

A I am not an attorney. I can't answer that.

Q Okay. Are you aware that the company has argued to the Commission and the Supreme Court that the Public Counsel is not an essential party before?

MR. WRIGHT: Objection, Chairman. We are getting a little far afield here of FCG in this base rate case.

CHAIRMAN FAY: Mr. Rehwinkel, this is getting a little beyond her scope.

MR. REHWINKEL: Well, she's testified that Mr. Willis, who is a member of the Public Counsel's office, did or didn't do something, and as a part of the settlement agreement, the company can rely on it. So the question arises, is the Public Counsel an essential party to a settlement agreement such that the Commission can rely on their putative reliance on the Public Counsel's participation in settlement agreements. It's right in her testimony on page 12.

CHAIRMAN FAY: Yes. Then I think maybe the better question is can she rely on that kind of testimony to make that decision, if OPC is a required party for any sort of conclusionary --

MR. REHWINKEL: She said she doesn't know, so I will accept that.

CHAIRMAN FAY: Okay.

MR. REHWINKEL: Thank you.

CHAIRMAN FAY: Yep.

BY MR. REHWINKEL:

Q On page 15, lines six through nine of your testimony.

A In rebuttal?

Q Yes, ma'am.

A Page 15?

Q Yes.

A And lines which? I am sorry.

Q Six through nine.

A Okay.

Q Make real sure that's the right ones. Yes.

You say there that the proposed treatment of the AGL acquisition adjustment is, quote, consistent with the 2018 settlement agreement, right?

A That's correct.

Q Now, can you show me in the 2018 settlement agreement where that consistency is found?

A I cannot, because there is no discussion of the acquisition adjustment in the actual 2018 settlement agreement. However, I have already pointed out that we've had discussions with staff in our data responses related to the settlement agreement in the 2017 rate case that clearly states that we believe that the continued prudence of the acquisition adjustment in rates has been fulfilled, and therefore, there is no more need to discuss it or present any other evidence.

Q On page 16 of your rebuttal testimony -- well, I have given myself a wrong reference here. Let's see. I am sorry, yes, on -- starting on line two. Do you see where it says: In fact, FCG's AGLR acquisition adjustment already survived a subsequent acquisition for ratemaking purposes. FCG was acquired by AGLR in 2004, and the positive AGLR acquisition adjustment was approved in the AGL order issued on November 13, 2007. Subsequently, on July 1, 2015, AGLR was acquired by Southern Company, and FCG became a subsidiary of Southern Company Gas. Despite the subsequent acquisition by Southern Company Gas, the AGLR acquisition adjustment was continued.

Did I read that right?

A Yes.

Q Okay. So just so we understand the chronology, the 2004 acquisition adjustment resulting when Atlanta Gas & Light bought FCG from NUI was not approved until the 2007 rate case, is that right?

A I don't believe there was a 2007 rate case. I think that order was issued outside of a rate case proceeding.

Q Okay. The 2007 order?

A Yes.

Q But it wasn't an order specifically to approve the acquisition, because the Commission doesn't approve mergers of gas companies, right?

A My understanding is, is that order for the Commission was specific to the acquisition adjustment that we are discussing here today.

Q Okay. The Commission doesn't approve a merger of a gas -- of two gas companies. They are just addressed in a future proceeding, right?

A I don't know if I know the answer to that.

Q Okay. The subsequent merger that you are talking about was when AGL was acquired by Southern, is that right?

A That's correct.

Q Okay. And wouldn't you agree that this case is the very first opportunity for the Commission and others to address the Southern acquisition?

A The Southern acquisition?

Q Are you saying -- I'm sorry. I apologize. Let me strike that question.

So the very first opportunity for the Commission and others to address the Southern acquisition was in the 2017 rate case, right?

A That's correct.

Q And that -- but the acquisition by Southern of AGL occurred in 2015, as you testified, right?

A I believe I corrected it to 2016.

Q Okay.

A Yes.

Q But the -- okay.

And as we've discussed, you mentioned the staff discovery that's a part of your -- your testimony -- rebuttal testimony exhibit, at pages 14, lines nine through 26. You indicate that that lends support to an implicit approval of the AGL acquisition adjustment?

A That reference was specific to the data response to Commission staff's questions related to the settlement agreement.

I would like to point out that in the 2017 rate case, there were a few witnesses that provided testimony around multiple factors associated with the continued recovery of the acquisition adjustment that was filed, I believe, in direct testimony.

Q And those are the three testimonies in the footnote that I directed you to earlier --

A That's correct.

Q -- on page 13?

A Yes.

Q Okay. Isn't it true that the staff's discovery that you have referenced only asked about the demonstrated continuity -- continuation of the 2007 approved acquisition adjustment and not whether it survived a subsequent purchase, is that right?

A My reading of the data response was related to the continuance of the acquisition adjustments in rates. It did not discuss subsequent acquisitions.

Q Well, to be clear, the question I asked you was: There is nothing in the discovery response -- questions from the staff or the response from the company about the issue of whether a subsequent purchaser is allowed to continue the acquisition adjustment that was recorded by a previous purchaser, does it?

A It does not, but I don't if that's really relevant.

Q Okay. Wouldn't you agree that NextEra and FPL did their own independent due diligence and did not rely on anyone else for determining the value of the assets they were buying from the Southern Company?

A I did not participate. However, my understanding is as part of any due diligence, the company has all public available information to it, so I am -- I am sure it was relied on as part of the process.

Q Well, what is the it that you mentioned there. You said it was relied on, what are you --

A We usually have a group of folks that work on mergers and acquisitions. I don't participate in those, but I am sure those folks rely on anything that's available when they are reviewing acquisitions.

Q Okay. Let's go to, if we can, we are on Exhibit 192, and ask if you could turn to page 101 of 179. Do you see that?

A Yes.

Q Would you agree that this is the beginning page of the stock purchase agreement between 700 Universe, LLC, and Southern for FCG?

A Yes. That's what it appears to be.

Q Okay. And if you could turn to page 134 of

179.

A Okay.

Q And at the top, do you see Section 4.8, Independent Investigation?

A Yes.

Q And it says, purchaser, and that would be NextEra, Universe -- 700 Universe, right?

A Yes.

Q Has -- purchaser has such knowledge and experience in financial and business matters as is required for evaluating the merits and risks of its purchase of the shares, and is capable of such evaluation. Purchaser acknowledges and agrees that it has conducted its own independent review and analysis, and, base based thereon, has formed an independent judgment concerning the business, affairs, assets, liabilities, conditions, results of operations and prospects of the company.

Did I read that right?

A Yes.

Q And it specifically mentions assets, right?

A Yes.

Q And this is consistent with what you just testified that there is a group within the corporation that does due diligence and investigation in advance of

mergers?

A That's correct. Sometimes we hired outside independent consultants to assist as well.

Q Okay. Now, I thought before I asked you about this, that you -- you said that this group would have looked at it, and were you also -- were you referring to the PSC information?

A I was referring to public available information --

Q Okay.

A -- in general.

Q It sounded like you were pretty confident that that would include the 2018 order?

A It can. Yes.

Q Okay. You would agree that neither FPL, nor NextEra or 700 Universe, asked the Commission about the survivability of the AGL acquisition adjustment as a part of any independent determination they performed?

A I have no idea.

Q Okay. Well, did you come across any evidence that the Commission was asked any questions about this before the May 20th, 2018?

A No. I don't know.

Q Okay. If they had made such an inquiry, it would have disclosed that NextEra was in -- in a secret

effort to buy FCG, wouldn't it?

MR. WRIGHT: Objection. Assumes evidence not in the record.

MR. REHWINKEL: There has been some testimony that there is -- there has been no evidence that the company told the Commission that they were for sale during the rate case.

CHAIRMAN FAY: Yeah. I will allow it to the extent at that you can answer, Ms. Fuentes. I mean, if that's beyond sort of what your knowledge would be of that process, then that's a fair response, but I don't see it being off limits.

THE WITNESS: I am not aware of anything.

BY MR. REHWINKEL:

Q Okay. So you don't have -- so that would mean you don't have any direct knowledge of whether the independent determination that NextEra told Southern they were undertaking involved reviewing the two acquisition adjustment extinguishment orders that Mr. Schultz cites, do you?

A I don't know.

MR. REHWINKEL: Okay. Let's now, Mr. Chairman, look at an exhibit.

CHAIRMAN FAY: The two orders?

MR. REHWINKEL: The big fat one that I put out here.

CHAIRMAN FAY: Okay. The two orders?

MR. REHWINKEL: Yes.

CHAIRMAN FAY: Okay.

MR. REHWINKEL: This would be -- what are we giving this, 193?

CHAIRMAN FAY: Yes.

(Whereupon, Exhibit No. 193 was marked for identification.)

MR. REHWINKEL: And the title of this is Orders 2000-1165 and 2005-1242.

BY MR. REHWINKEL:

Q So, do you have Exhibit 193?

A I do.

Q Okay. And I apologize for the heft of this, but I thought I would just be complete.

In your testimony, on page 15, lines 18 through 20 -- 22, you refer to the two Commission orders and argue that they are taken out of context, is that right?

A That's correct.

Q Have you read the orders, or at least the relevant parts of them?

A I have.

Q Okay. Would it be fair to say that you had

not seen these orders before the -- Mr. Schultz filed his testimony?

A That's correct.

Q Would it also be fair to say that you don't have any idea whether these orders were known to NextEra before they acquired FCG?

A I don't know, but these orders are very specific to the facts and circumstances in those particular dockets. I would like to point out that those are water and wastewater utilities, that they are not related to gas utilities.

Q Let's go, if we can, to the 1165 order, which is -- let's -- let's look on page -- well, the very first page, this is Order No. PSC-00-1165-PAA-WS, issued on June 27, 2000. And it's for Sun Communities Finance Limited Partnership in Lake County, right?

A Yes.

Q And it appears to be a overearnings investigation, right?

A Yes.

Q Okay. And if we could go to page 17 of this order. The first full paragraph reads -- are you there?

A Yes.

Q Okay. Acquisition adjustments are determined by companies -- by comparing the purchase price to the

net original cost of the property when first devoted to service. Therefore, the comparison would be made between the purchase price paid by Sun Communities and the net original cost of the assets. Acquisition adjustments do not survive subsequent purchases of the utility's assets.

Do you see that?

A That's what it says.

Q Is the reference in those sentences to the nature of the company or the utility?

A It does not.

Q Okay. Is there anything else in the order that you are aware of that limits this statement to water and wastewater companies?

A No, nor does it have anything in it that suggests that it goes beyond water and wastewater utilities.

Q Okay. The first sentence there, as a CPA and a longtime practitioner before the Commission and regulatory utility world, is this something you agree with factually?

A Yes. However, I don't know if I would say that the -- for the second part, where you compare the purchase price to the net original cost when the unit first was devoted to service. Sometimes there is capital additions that take place after something goes into service, so I would say that it would be based on the net book value at the point in time of the acquisition.

Q Okay. But other than that, you generally agree?

A In general, yes.

Q Okay. And again, there is nothing about this sentence that is utility specific. This would be -- this is a generic statement about how utility acquisition adjustments are determined, right?

A That's correct.

Q Well, let's go to -- I kind of got to go almost halfway back, to page 21 of the next order. If you could keep your finger there, I just want to take you back to page one of that order, just so we see -- this is Order No. PSC-05-1242-PAA-WS, right?

A Yes.

Q And this is a large transfer docket in the water and wastewater world from dealing with Florida Water Services Corporation and Aqua Utilities, is that right?

A Yes.

Q Okay. So let's go back to page 21.

MR. REHWINKEL: Excuse me, Mr. Chairman. I

need to get my bearings here --
CHAIRMAN FAY: Okay.
MR. REHWINKEL: -- on this page.
BY MR. REHWINKEL:
Q So the second full paragraph, it says: Acquisition adjustment and accumulated amortization. Do you see that?
A Yes.
Q It says FWSC's general ledger for June 30, 2024, included AA balances -- you would agree that means acquisition adjustment, right?
A That's what it says, yes.
Q Of $649,373 and negative $339,459. Do you see that?
A That's correct.
Q So it looks like there is a positive acquisition adjustment and a negative acquisition adjustment?
A That's my understanding. Yes.
Q For water and wastewater respectively. Consistent with prior Commission decisions, acquisition adjustments do not survive subsequent transfers. Do you see that?
A I do.
Q And there is a footnote, and that footnote

references the order that we just reviewed, 1165, right?

A That's correct.

Q Okay. Is there anything about this order, other than it being in a WS docket, that limits it just to water and wastewater companies?

A No. But the Commission's decision in this particular docket -- as you can see, it's complicated. There is a positive acquisition adjustment, a negative acquisition adjustment, and so based on the facts and circumstances of this particular case, the Commission ruled in that manner.

I would like to point out, though, that the AGLR acquisition adjustment that's included in this proceeding, as we've already discussed, survived one acquisition after that, and I am aware of one other that the Commission has ruled on for Peoples Gas as well.

Q I have questions about Peoples, but why don't you go ahead and tell us how Peoples factors into this.

A The reference to Peoples Gas, and they had an acquisition adjustment approved by the Commission when it was acquired from Southern Company Gas. And after that acquisition, there was another one that took place by TECO for 1997, then again by Emera in 2016, and then Peoples Gas came in for a rate case and had an order for the 2020 docket, and nothing was included in that order that disallowed the continued recovery of that acquisition adjustment. So thereby, it survived multiple, actually, acquisitions after the point in time the Commission initially approved the acquisition adjustment.

Q Just while we are -- while we are here, the acquisition by Emera was of Tampa Electric -- well, it was by TECO Energy, right? Which -- and this as a subsidiary of. There wasn't a direct transfer of Peoples Gas to Emera, right?

A I don't know all the specifics in that case. I just know the summary of the timeline of what took place related to the acquisitions.

Q Okay. You didn't include that in your rebuttal testimony, right?

A I did not. I found out about that subsequent to filing my rebuttal testimony.

Q Okay. So you didn't rely on that order in rebuttal to Mr. Schultz, right?

A I did not. But I did rely on the fact that the AGLR order -- the acquisition adjustment did survive a subsequent acquisition when I made that statement.

Q In your testimony, you also indicate that there is a rule, 25-30.0371?

A Yes. That's specific to water and wastewater utilities.

Q And do you contend that that -- the fact that there is a rule has any bearing on the applicability of orders 1165 and 1242 to AGL acquisition adjustment?

A Not necessarily. However, I mean, the two -- the order was issued -- went into effect, I believe, in 2002, therefore, it came after one of the orders we just talked about, but before one of the orders we just talked about. And I was just making the point that there is a specific water and wastewater rule that utilities must follow relating to acquisition adjustments. There is not a likewise one for gas utilities.

Q You would agree that -- I think that you said the -- correctly stated that this rule went into effect on 8/4/02?

A Yes.

MR. REHWINKEL: Mr. Chairman, I passed out a copy of the rule as an exhibit. It's a one-pager. I don't really need to make it an exhibit.

CHAIRMAN FAY: Identify for the public. You have that, Ms. Fuentes?

THE WITNESS: I do.

BY MR. REHWINKEL:

Q Would you agree that August 4, 2002, was the

tech effective date of this rule?

A Yes.

Q And Order 1242, that that order was issued December 20, 2005, right?

A Yes, that's what it says.

Q All right. And so there is nothing in it rule, because you have clearly shown the chronology that there was the 2000 order, the rule in 2002, and then an order in 2005. If there was any -- the Commission had intended for the 30.0371 rule to undue, or undermine the impact of the 2000 acquisition adjustment order, it would have said so in the 2005 order, right?

A Right.

Q Okay. And I think you agree that, in your view of the two orders, 1165 or 1242, that they don't mention Rule 25-30.0371?

A I don't recall.

MR. REHWINKEL: Okay. Mr. Chairman, I am at a breaking point in this part of my cross if a break is in order. I can keep going. It's up to you.

CHAIRMAN FAY: I think, Mr. Rehwinkel, we will keep going --

MR. REHWINKEL: Okay.

CHAIRMAN FAY: -- until about, probably 11:30 and then break for the court reporter for lunch, and then probably come back around 1:00 is my plan. So if you are able to break around that timeframe --

MR. REHWINKEL: Absolutely.

CHAIRMAN FAY: -- or finish with this line and the next line of questioning, that would work.

MR. REHWINKEL: I just feel bad about going on last night and making -- I just -- I sometimes lose track of time, so, as you can see.

CHAIRMAN FAY: We are good. It's 10:50 right now, so go ahead.

MR. REHWINKEL: Okay.

BY MR. REHWINKEL:

Q Isn't it true that you have not identified any case or order where the issue of whether an acquisition adjustment survived when a subsequent purchaser acquired the company was raised, and then it was affirmatively decided by the Commission to allow continued recovery of the acquisition adjustment?

A I am sorry, that was a little long. Can you repeat that for me, please?

Q So you have not identified any case or order where the issue of whether an acquisition adjustment survived when a subsequent purchaser acquired the company, that issue was raised and then it was

affirmatively decided by the Commission to allow continued recovery of the acquisition adjustment?

A Let me try to answer that for you.

I haven't done an exhaustive research of all orders and all the details in those specific orders. What I can tell you is that I know for certain that the AGLR order allowed FCG to record an acquisition adjustment. It was addressed in its next base rate proceeding, which was a 2017 rate case, and the Commission issued an order approving our case in that proceeding. Therefore, we have been including the recovery of it there since.

Q Okay. But you would agree with me that in the 2017 FCG case, no one raised the issue about whether the AGL acquisition adjustment survived the acquisition by Southern, correct?

A I don't recall seeing anything in the prior rate case; however, I don't believe that's really relevant.

Q Well, that would be for the Commission to decide, you would agree, right?

A That's correct.

Q Okay. But you have presented evidence about Mr. Willis' testimony, about staff discovery. In all of that scrubbing of the record, you didn't find where

someone said, hey, does this acquisition adjustment survive because Southern bought FCG from it?

A That's correct. I don't recall seeing anything.

Q Okay. If an error is made and policy is inadvertently not followed by the Commission, does that mean that they have to keep perpetuating the error?

A Are you asking if the Commission makes an error?

Q Yes.

A I am not certain what the Commission needs to do.

Q Okay. Do they have to -- well, and my question is, if the Commission overlooked its policy and allowed an acquisition adjustment, do they have to keep allowing it even if they think it's the wrong thing to do?

A I am not an attorney. I am not certain what the commission is required to do.

Q That's a fair answer. Thank you.

If you had discovered an order that had affirmatively and expressly allowed a subsequent purchaser to continue to roll forward an acquisition adjustment over the objection of a party, you would have brought that to the Commission's attention, like you

just did with the PGS order, right?

A I am sorry, can you say that again, please?

Q If you had discovered a Commission order, or a ruling that expressly and affirmatively allowed the roll forward of an acquisition adjustment when a -- there was a subsequent purchase over the objection of a party, you would have brought that to the Commission's attention, right?

A Most likely.

Q Okay. You are not aware of any document that was created before you filed the case that demonstrates that NextEra affirmatively relied on Mr. Willis' testimony in the 2017 FCG rate case as a part of the due diligence in Section 4.8, have you?

A Once again, I didn't participate in that process so I am not aware of any document.

Q Okay. I don't know what the name of that horse is, but I am finished beating it, so we will go on to -- I just have a few more questions.

Is it your testimony that there is no merger or sale of either all or a part of the FCG under consideration?

A Yes, I am not aware of anything.

Q Would you be aware if there was?

A Not necessarily.

Q Okay. On page 17, line 16 of your rebuttal.
A I am sorry, which line?
Q Line 16.
A Okay.
Q I think you say there it is entirely unknown. Do you see that?
A Yes. That's what it says.
Q Okay. What is it that is entirely unknown?
A Well, the prior line is discussing whether or not -- that it's inappropriate to incorporate any impacts of a future acquisition in this base rate proceeding when it's entirely unknown what that may be, and to include it in rates would be inappropriate.
Q Okay. And what is it?
A An acquisition.
Q Okay. And the impact of that?
A And the impact of that acquisition.
Q Okay. I apologize for not recalling the terminology, but you filed something like a notice of subsequent adjustments?
A Notice of identified adjustments.
Q Okay. And when was that filed, do you know?
A It's my Exhibit LF-10. It was filed on August 16th, 2000 -- 2022.
Q Okay. And just for the record, that -- that

-- if there had been any mergers or anything that would affect the forecasted employee complement or A&G expenses, or anything like that, you would have put that in that notice, right?

A I don't know.

Q If you knew about it, you wouldn't have put it in?

A I don't know because it's a hypothetical transaction you are speaking of. I don't know if we would have, you know, sufficient information to be able to incorporate. It's too speculative.

Q Okay. Are you aware that the Commission has stated in an order in the past that if an acquisition -- I mean, if a merger or sale was pending during a rate case, or immediately after a rate case, that it could make the rates it sets inappropriate?

A I am not aware.

Q Okay. With that answer, I appreciate your patience with me. Thank you for your testimony.

A You are welcome.

MR. REHWINKEL: Thank you, Mr. Chairman.

CHAIRMAN FAY: Great. Thank you.

All right. FEA?

CAPTAIN DUFFY: No cross from FEA.

CHAIRMAN FAY: Okay. Mr. Moyle?

MR. MOYLE: Thank you. I do have some questions.

EXAMINATION

BY MR. MOYLE:

Q Good morning.

A Good morning.

Q I am going to just pick up a little bit on this acquisition adjustment discussion you have been having with Mr. Rehwinkel.

You are aware, are you not, that the acquisition adjustment rule that he has provided doesn't make any reference to a water utility, correct?

A It doesn't. But at the top of the rule, it does say 25-7 point, I don't remember the exact numbers, and the seven indicates that it's part of the water and wastewater sector.

Q Do you see the rule-making authority section underneath the exhibit?

A Are you talking about the rule?

Q That's right.

A Yes, I see it.

Q And so the rule-making authority is 350.127(2), correct?

A That's what it says.

Q That doesn't reference water in any way

either, does it?

A It doesn't. I don't even know what those numbers mean.

Q Okay. And then the same question with respect to the second reference, 367.121, do you know if that references water specifically?

A It doesn't. However, again --

Q You said it does not?

A I am sorry, at the top it says 25 dash -- it's 30.0371, acquisition adjustments.

When I have researched rules before on the Commission's web site, that 30 means that it's part of water and wastewater.

Q Okay. And I am -- but I am directing you to statute -- statutes authority, right?

A Okay.

Q And did you go look at the statutory authority?

A No.

Q Okay. So you don't -- you don't know whether those statutory authorities reference water or not one way or the other?

A I don't know.

Q So it's your belief and testimony that the acquisition adjustment rule is limited only to water and

wastewater utilities?

A This particular rule, in my opinion, relates to acquisition adjustments for water and wastewater utilities only.

Q And you would assume -- I mean, rules -- rules give guidance to the PSC and authority to the PSC to take certain actions and provide criteria, correct?

A That's correct.

Q And so there is no similar guidance or authority with respect to adjustments for electric or natural gas companies, correct?

A Are you asking about acquisition adjustments specifically?

Q Yes.

A Yes. There is no such rule for either gas or electric.

Q Have you made any judgments as to whether any of the criteria set forth in this Rule 25-30.0371 acquisition adjustments, would any of the provisions would make sense to also apply to other -- other utilities, like electric or natural gas?

A I would say in some sections, yes, I would agree, and it's consistent with what's in the CFR.

Q And this AGLR acquisition, you would agree, I mean, it's an issue in this case, correct?

A I believe it's an issue in this case. However, I would take the position that it's already been addressed.

Q Okay. And I am going to let -- let your lawyer ask you some follow-up questions on that so, you know, it's sufficient just to say, yes, it's an issue in the case.

A Okay.

MR. WRIGHT: Chairman, she can explain her answer. If he doesn't like the answer, that's -- that doesn't change the fact that she's allowed to explain her answer. She answered yes or no. She's allowed to clarify and explain her answer.

CHAIRMAN FAY: Yeah, Mr. Moyle, she's able a loud to provide clarification. To your point, if she moves on to another subject, or elaborates on that, interrupt and move on to the next question.

MR. MOYLE: I appreciate that. I mean, earlier on she was putting in the tag line, however, we are still below earnings, we are still below earnings. That didn't have anything to do with the question. It was just a tag line. So I have a series of questions, I would just prefer if we can that -- you know, Mr. Wright is a good lawyer, if he thinks it's a point that needs to be followed up on, he can, but I will -- I will try to be conversational and also be efficient.

CHAIRMAN FAY: Yeah, I understand.

And, Ms. Fuentes, I will allow some leeway, as this is a rate case, and I think the Commission should intake whatever information appropriate within our scope and jurisdiction. With that said, Mr. Moyle pointed out, if it's a response that's a yes or no, and you are trying to address something for another topic, or something that you have repeated before isn't necessary. Feel free to answer yes or no and then move on to the next question.

THE WITNESS: Okay.

CHAIRMAN FAY: Thank you.

BY MR. MOYLE:

Q One of the provisions in this acquisition adjustment rule I assume that you would think makes sense for consideration is found in the paragraph two, where it says, anticipated cost efficiencies. Do you see that?

A I am sorry, which line?

Q Sixth line.

A That's one of multiple things that are stated in that section.

Q Right. And do you agree that that cost efficiency is a factor that this commission should consider when making a judgment with respect to acquisition adjustments?

A Yes.

Q You would -- you would agree with me that the discussion that you have had with Mr. Rehwinkel with respect to the LNG facility was not a model for efficient -- efficient siting and construction of an LNG facility, correct?

A I am sorry, I am not quite sure I understand your question as it relates to this rule.

Q I am just asking you, shifting topics to LNG --

A Okay.

Q -- you provide testimony about LNG and the LNG facility, correct?

A Yes.

Q Mr. Rehwinkel, if I understood some of the points he was making, is this LNG facility, in prior testimony, you all said, we need this now. It's going to be important to the people in south Florida that they have gas, hospitals, wastewater treatment facilities, that prior testimony said we need it now in order to serve these customers, correct?

A That's what the testimony stated, but I am not testifying to the LNG facility itself in this proceeding.

Q Okay. But with respect to recovery, you are testifying with respect to recovery of the LNG facility, and it's been something that you have been recovering for for five years, correct?

A Yes, I am testifying to the recovery of it in this proceeding based on the estimated costs at this point in time.

Q Right. And it was originally supposed to go in service back in that 2017 case, you know, within a year from the testimony, correct?

A That's what the testimony referred to, but the order actually contemplates it going beyond that date.

Q So -- and again, I am just asking you if you can say, yes, that's what it said, the testimony said it was supposed to go into effect in 2017, 2018, but as we sit here today, it's still not operational or in effect, correct, the LNG facility?

A That's what witness Howard had testified to yesterday.

Q Okay. And with those facts, my question is, is you would agree that the fact pattern with respect to that LNG facility is not a shining example of an

efficient process to get an LNG located and built and sited, correct?

A I can't speak to that process. I am not involved in it.

Q And you know they had to change sites from one site to another, correct?

A I am aware of that. Yes.

Q And you know that they did engineering drawings and analysis for a site that never -- never became fruitful?

A I am aware of that.

Q And that's something that you should try to avoid if you can when you are locating facilities, correct?

A I don't know if I necessarily agree with that 100 percent. There is lots of nuances involved. Witness Howard testified that -- to that yesterday.

Q And he essentially testified that the zoning on the property was not lined up and in order at the point in time when the decision was made to move forward with siting the LNG facility there, correct?

A I don't recall everything he testified to yesterday.

Q This whole acquisition adjustment issue, issue, I mean, I think it's in this order, but typically

how it works in a regulatory context is if you are buying another regulated entity, the amount that is in rate base of the other entity, the acquisition target, if you will, that it gets transferred onto the books of the acquiring entity at net book value, correct?

A   Typically, yes.

Q   And then just tell me -- tell me your understanding. You are a CPA licensed in Virginia, correct?

A   Yes.

Q   Tell me what net book value is.

A   Net book value typically represents the original cost of an asset less accumulated depreciation at a point in time.

Q   So for an example, if I am building a facility that serves customers in the natural gas world, and it costs $100 million just to keep the math simple, how does depreciation work to reduce the value of that asset?

A   Well, it depends on the service life of the asset and how long that asset would be depreciated. So as you move forward in time, it will slowly be depreciated. And ultimately, at the end of the useful life, it should be zero.

Q   Okay. And so ratepayers will pay on, you

know, on the value of the asset, say, starting at 100 million. Year two, there is some depreciation. It would be, you know, 95 million that they would pay on, or some lower number. And then in year three, it would be here, and they would keep paying until it's zeroed out, is that right?

A That's typical ratemaking. Yes.

Q Okay. And have you found that that typically works well, that that's part of the regulatory compact?

A I am sorry, can you say that question again, please?

Q Sure.

Have you found that what we just talked about with respect to how depreciation works, that that typically works well, and it's part of the regulatory compact that exists between consumers, utilities and the Public Service Commission, or the regulating entity?

A Yes.

Q You would agree that -- that the depreciation associated with the RSAM mechanism, that is also something that is before this commission today, that that makes a different use of depreciation, correct?

A Could you define different use of depreciation for me, please?

Q Well, you do have some testimony about the

RSAM, correct?

A Very little.

Q Yeah. And do you have an understanding of what the RSAM is?

A I do.

Q So could you explain that?

A So witness Campbell is the witness that testifies to the four-year rate plan, which includes the use of an RSAM. I think he might be the better person to ask the specifics of.

Q Well, I may have some questions for him, but he is not -- not a CPA, is he?

A I don't believe he is.

Q Yeah. And you have been providing accounting related advice and services to FPL for how many years?

A Oh, boy, I have been -- probably about the last 15 or 16 years.

Q Okay. So do you have an understanding of how depreciation is used in the RSAM --

A Yes.

Q -- method?

A Yes.

Q And can you tell me about that, what your understanding is?

A So within the RSAM, we have what we call RSAM adjusted depreciation rates, which are attached to my direct testimony as Exhibit LF-5B -- I am sorry, is it 3B. It's 5B, I am sorry -- and those depreciation rates have different service lives than those that are in the 2022 depreciation study. And those resulting depreciation rates under the RSAM scenario are used as part of the company adjustment that I have included in my revenue requirement calculation, which results in $2.7 million of lower revenue requirements than if the depreciation rates used in the 2022 study were used.

Q But fundamentally in the RSAM methodology, and how it's used, you don't use the depreciation like we talked about earlier, where you use the depreciation to pay down the balance of the asset, correct? You use the depreciation to make changes within your books and records related to earnings, is that fair?

A Not quite. I believe attached to witness Campbell's direct testimony is MC-6, which describes the RSAM mechanism and how it's accounted for.

Q But you would agree that the RSAM method uses depreciation in a way different than you and I just discussed a few minutes ago?

A Yes. I believe that's correct.

Q Do you still receive training in accounting? Lawyers have to take CLE courses. Do you have to do

that as part of your professional training or staying up-to-date?

A Yes.

Q What do you have to do?

A In order to maintain my license, I have to have a certain amount of credit hours on an annual basis for keep my CPA license.

Q And do you do that?

A Of course.

Q You have never had any training or education that suggests that the use of an RSAM methodology is an accounting mechanism that is widely recognized and approved, correct?

A No. However, it's --

Q I am sorry, that was a bad question. Is it correct that you have never received that training? If you go yes or no and then provide the explanation.

A That I have never received RSAM specific training?

Q That's right, in any of your educational updates and staying up to speed on accounting mechanisms?

A Not outside of FPL. However, I have received internal training on it.

Q Okay. But you can't -- that internal

training, you can't -- you can't use to satisfy any requirements that you are accredited and up to speed on the accounting requirements that the state of Virginia requires, correct?

A I don't know if that's 100 percent true. We do internal training that covers multiple topics associated with accounting items, which we do receive CPE credit for.

Q Are you familiar with FASB?

A Somewhat. I am not a technical accountant. I am more of a regulatory accountant.

Q What is FASB?

A Financial Accounting Standards Board.

Q Do you know if they have put forward any information with respect to this accounting approach that you are asking the Commission to approve in your rate case, this RSAM approach?

A I have no idea, but I do know that for regulatory purposes, because we are a regulated entity, that our GAAP results look to what the Commission allows us to recover through rates.

Q Are you aware of any situation in which RSAM has been approved in a way that you are asking for the Commission to approve it today in any other jurisdiction in the world?

A I don't know. Witness Allis might have been a good person to ask that question. But I do know this commission has approved a never similar mechanism for Florida Power & Light numerous times.

Q And that has always been approved pursuant to a settlement agreement, correct?

A That's correct.

Q And with respect to settlement -- settlement agreements, I know you have testified that you haven't been involved in some of them, but you have a general understanding that settlement agreements are bilateral and involve give and take, and parties negotiate and sometimes horse trade things, correct?

A Correct.

Q And you are also aware that the Commission, when they are considering a settlement agreement, that there is typical -- it's typical for them not to have the ability to pick and choose provisions that they like and they dislike, and say, we don't like this provision. We think this is bad policy, that the settlement agreements are typically presented to them in an, in effect, take it or leave it that says you have to approve everything or the deal doesn't move forward, correct?

A I am not an attorney, so I am not sure what the Commission is allowed to do and what they are not allowed to do.

Q There was a settlement agreement that Mr. Rehwinkel shared with you. Do you a review settlement agreements ever as part of your work responsibilities?

A Yes.

Q And the provision I described, have you seen that in settlement agreements, where all of the provisions have to be approved by the Commission in order for things to move forward?

A I don't recall.

MR. MOYLE: If I can have a couple of minutes, Mr. Chair.

CHAIRMAN FAY: Okay.

BY MR. MOYLE:

Q The LNG facility, Mr. Rehwinkel asked you about -- about how -- how that -- how that would work with ratepayers paying for an LNG facility that is not providing any useful service to the customers now. You would agree that ratepayers have paid, what, approximately $11 million thus far for this LNG facility that's still not operational?

A I would agree.

Q And you would also agree that the Commission is free to make whatever decision they see as the right

decision, given the facts that they've heard with respect to this LNG facility, correct?

A Correct.

Q And you are not telling them they have to do one thing or the other? I mean, if they find the argument of OPC and others persuasive to say, wow, you know, this has taken a long time. There has been no service provided. Maybe we should take that 11 million that's already been paid and give it as a credit to the customers, that could be done, correct?

A It could. However, I would like to point out that the company, even with the recovery of the estimated amount of the LNG facility since its last base rate proceeding, that the company continues to underearn, therefore, we are not recovering our full revenue requirements.

Q But that doesn't have -- I mean, the LNG facility doesn't have really anything to do with the fact that there is underearnings taking place, correct?

A The -- I disagree. The revenue requirements associated with the LNG facility that were contemplated in the 2018 settlement agreement are part of a overall general base rate increase at that point in time. And is I have already pointed out numerous times, the company has been continuing to underearn under its current rates, therefore, I would disagree with any refund.

Q And the point you are making is essentially, well, even though this LNG facility is a big expense and has a lot of rate -- rates associated with it moving forward -- what is it, 67 million is what the projected cost is now?

A I believe it's $68 million.

Q Right. And you already have in hand 11, right?

A We have in hand, based on the math you provided, 11 -- approximately 11 million of revenue requirements that we have been recovering over the last four years. However, we are not recovering our full cost at this point in time.

Q Right. Can you think of any other business where someone goes out and spends money to build something and the end product is not yet being delivered where -- where the business is making money on the delays associated with an effort?

A No, I can't think of anything.

Q I had -- I have been warned about using analogies that may not be in tune with the times, and so I am a little hesitant, but Muhammad Ali, do you know Muhammad Ali?

A Yes.

Q Do you know the bolo punch, does the bolo punch ring a bell?

A Nope.

MR. WRIGHT: Chairman, before we get too far along the line, can we just keep the questions to the facts that are specific to this case and not famous boxers?

BY MR. MOYLE:

Q I promise I won't bring up Perry Mason, but I do just want to make a point that the LNG facility, I mean, that doesn't have a whole lot to do with the point that you have made three or four times, that you are underearning, correct?

A I believe it does.

Q You think it does --

A Yes.

Q -- because it's a big number?

MR. MOYLE: Well, that's all I have. Thank you.

CHAIRMAN FAY: Okay. Thank you, Mr. Moyle.

All right. Staff?

MR. JONES: Thank you, Chairman.

EXAMINATION

BY MR. JONES:

Q Good afternoon, Ms. Fuentes.
A Good afternoon.
Q Is it correct that FCG is requesting an implementation date of February 1st, 2023, for the revised depreciation rates in this case?
A Yes. And that's consistent with the timing of when we are requesting base rates to be in effect.
Q Is it correct that FCG's 2022 depreciation study includes data through December 31st, 2022?
A Yes.
Q Are you familiar with Rule 25-7.045?
A Is that the depreciation rule?
Q Yes, ma'am.
A I am a little familiar with it, yes.
Q I am going to read an excerpt from it. The rule states that submitted data, including plant and reserve balances, for company planning involving estimates shall be brought to the effective date of the proposed rates. Can you please explain how an implementation date of February 1st, 2023, comports with Rule 25-7.045(4)(d)?
A I am sorry, I have the rule here. Can you point me to where you were reading?
Q Absolutely, it's (4)(d).
A Okay.

Q Yeah. I will read the excerpt again for you.
Submitted data, including plant and reserve balances, for company planning involving estimates shall be brought to the effective date of the proposed rates. Can you please explain how an implementation date of February 1st, 2023, comports with this rule?

A I will try to answer your question for you.
So the rates that are in the depreciation study were based on forecasted data through the end of 2022. The resulting rates under the company's alternate scenario were used to calculate depreciation expense as a company adjustment, as I have in my testimony. Therefore, I believe that we've -- that we've complied with this requirement.

Q Awesome. Thank you.
For my next set of questions, I am going to be referring to Exhibit 42 and Exhibit 2.

A I don't know what those are.

Q Those are the MFR schedules, MFR A-3 with and without RSAM, MFR A-4 with and without RSAM.

A I need to get those.

Q All right. Do you have those? And if not, we can provide those for you.

A No, we have electronic copies, but if you have a hard copy, that might be quicker.

Q All right. I will get that to you?

CHAIRMAN FAY: Just one minute, Ms. Fuentes, and let's see if we have a hard copy available. If not, we can -- would you be able to work off the laptop?

THE WITNESS: I can. I would need to know what those MFRs are again.

CHAIRMAN FAY: Okay. Mr. Jones, go ahead.

THE WITNESS: Thank you very much.

BY MR. JONES:

Q Those MFRs are going to be MFR Schedule A-4, MFR Schedule A-4 with RSAM, MFR Schedule A-3 and MFR Schedule A-3 with RSAM.

A Okay. I have them here.

Q All right. So please turn to MFR Schedule A-4, line three, Column 5.

Is it correct that this reflects a projected test year amount of 20,501,181 for depreciation and amortization expense based on FCG's 2022 depreciation study?

A No.

Q All right. Please turn to MFR -- excuse me, why not?

A The amount that's reflected for depreciation amortization expense on MFR A-4 in Column 5 relates to the depreciation at current depreciation rates, as well as other amortizable property.

Q Thank you.

If the Commission approves a February 1st 2023 implementation date for the revised depreciation rates, do you believe there should be an adjustment made to the projected test year amount?

A I don't believe so. All of our MFRs that we have prepared in the proceeding are based on a calendar year, so it's based off of January through December of 2023. We are just asking for rates to be implemented on February 1st.

Q Thank you.

Please turn to MFR Schedule A-4 with RSAM, line three in Column 5.

Is it true this reflects a test year amount of 17,316,572 for a depreciation and amortization expense based on FCG's RSAM proposal?

A Actually, yes, I believe so. And I would need to correct my statement on the prior MFR with the without RSAM scenario. I didn't notice the heading up here. I thought this was just the per book amounts without any adjustments, so I apologize.

Q Yeah, no problem.

If the Commission approves a February 1st,

2023, implementation date for the revised depreciation rates, do you believe there should be an adjustment made to that amount?

A I don't believe so, for the same answer I provided on the without RSAM.

Q Thank you.

Please turn to MFR Schedule A-3, line five, Column 5.

Is it true that this reflects a projected test year balance of 209,404,639 for the accumulated depreciation and amortization based on FCG's 2022 depreciation study?

A Yes, however, I think you quoted the amount incorrectly.

Q What is the correct amount?

A 209,484,639.

Q All right. Thank you.

If the Commission approves a February 1st, 2023, implementation date for the revised depreciation rates, do you believe there should be an adjustment made to that amount?

A No, for the same reasons I have stated before.

Q Thank you.

Please turn to MFR Schedule A-3 with RSAM, line five, Column 5 -- line five Column 5.

Is it true that this reflects a projected test year balance of 207,905,346 for accumulated depreciation and amortization based on FCG's RSAM proposal?

A That's correct.

Q If the Commission approves a February 1st, 2023, implementation date for the revised depreciation rates, do you believe there should be an adjustment made to that amount?

A No, for the same reasons I have already stated.

MR. JONES: All right. Thank you. No further questions, Chairman.

CHAIRMAN FAY: Great. Thank you.

Commissioners?

Commissioner La Rosa, you are recognized.

COMMISSIONER LA ROSA: Thank you, Chairman.

I just got a quick question maybe a little bit out of the weeds.

When developing your revenue requirements, what do you consider -- what did you consider when you are looking at a higher cost environment that we are currently going through as interest rates and costs?

THE WITNESS: So the forecast witness, Mr. Mark Campbell, could probably provide some more clarity around that.

We forecast, I know, by the end of -- I think our forecast was locked down at the end of 2021, and therefore, lots of MFRs to prepare. So we have to look down the forecast at a certain point in time, otherwise we would not make our filing date. But he might be able to provide more clarity on that for you.

COMMISSIONER LA ROSA: Thank you.

CHAIRMAN FAY: Okay. Great.

Ms. Fuentes, I just have a quick question for you.

I know, starting on page 12 of your rebuttal is your testimony related to the acquisition adjustment, and you include some testimony about the rule and the process of what's previously been done, and how we are -- how we have been situated at this current point.

How do you envision -- so when you talk about two being removed, how do you envision the Commission, based on your testimony here, makes a session on that acquisition adjustment? I mean, it's a specific issue in the Prehearing Order, and so we have the positions on it, but if the presumption that it's been decided and there is nothing else to be included, what should the Commission be looking at to make our decision?

THE WITNESS: So you could look at the prior rate case and the evidence that was presented in that docket. Like I mentioned before, there were a few witnesses that provided testimony around the continuance of the acquisition adjustment and rates. There were specific factors that they need to address. They are all laid out in those testimonies. And to the fact that we responded to staff's questions in the prior docket that we believe that all issues related to the continued recovery has been resolved.

CHAIRMAN FAY: Okay. And then typically the petitioners have the burden to prove something up and in a filing. When you talk about the removal, are we looking for something in the record that would allow us to remove that acquisition adjustment if that's the decision we are making, or do you still believe it's upon the utility to show within this testimony that it's been satisfied?

THE WITNESS: I think that in this particular docket, we did not need to present any additional evidence on the continued recovery of it. It's been quite some time since the initial acquisition adjustment was approved by this commission, and we complied with all prior Commission requirements associated with the continued recovery of it.

And I did provide some evidence today related to subsequent acquisitions that have taken place, and the continued recovery of those acquisition adjustments and rates in those particular entities.

CHAIRMAN FAY: Okay. Great. Thank you.

With that, Mr. Wright, I will move to you for redirect.

MR. MOYLE: Mr. Chairman, if I could ask for your indulgence. There was one point that I addressed in my opening that I overlooked in my notes that I have, like, two or three questions I would like to ask the witness out of order.

CHAIRMAN FAY: I will allow it, Mr. Moyle, just for the recognition that out of order is a concern, because once everybody has asked their questions, then if there is a topic that wants to be addressed following that, procedurally, there as due process issue there. If these are not questions related to anything that's just been asked after your questions, then I will deem it appropriate, but --

MR. MOYLE: Okay.

CHAIRMAN FAY: -- I do also want to see if the utility has any concern with that.

MR. WRIGHT: We'll allow it with a short leash.

CHAIRMAN FAY: All right. Mr. Moyle, you are recognized for your questions.

MR. MOYLE: I might be able to do it in one question?

CHAIRMAN FAY: Okay.

FURTHER EXAMINATION

BY MR. MOYLE:

Q This is related to the RSAM. In my opening comments, I made a representation that I thought that FPL had earned at the top of its range through the years in which it's been able to employ the RSAM. Is that true, to the best of your knowledge, that FPL has been able to earn at the top of its range in the years that it is making use of the RSAM?

A I don't know for certainty if it was every single year, but I know for a fact that FPL has been earning within its ROE range since its settlement agreement.

Q And do you do those calculations for FPL?

A I do not, but I do see them regularly.

Q Okay. Thank you.

CHAIRMAN FAY: Okay. Mr. Moyle.

Mr. Wright, when you are ready, redirect.

MR. WRIGHT: Thank you, Chairman.

FURTHER EXAMINATION

BY MR. WRIGHT:

Q I have got a couple redirects to follow up here just to clean up a little bit. I want to follow up first on Chairman Fay's question regarding what's in the record to support removal of the acquisition adjustment.

Is FCG proposing to remove an acquisition adjustment as part of this case?

A No, it's not.

Q Okay. I want for just make sure we understand chronology a little bit. When was FCG acquired by AGLR?

A In 2004.

Q Okay. And when was the order approving the acquisition adjustment approved?

A 2007.

Q And did that order require FCG to address the permanence of the acquisition adjustment in its next base rate case?

A Yes.

Q And then FCG was acquired by Southern Company, correct?

A That's correct.

Q And when did that occur?
A In 2016.
Q And then after the acquisition by Southern, there was the 2017 rate case, correct?
A Correct.
Q And to your knowledge, did FCG address the permanence in the 2017 rate case?
A Yes.
Q Okay. And the 2017 rate case resulted in a settlement, correct?
A That's correct.
Q And subject to check, would you agree that settlement was signed on March 12th, 2018?
A I believe so.
Q Okay. And you referred to your Exhibit LF-8, page three, which is an Interrogatory No. 159, do you recall that?
A Yes.
Q And if you know, was this discovery request on the settlement itself?
A No.
Q Does it ask --
A I am sorry, yes -- yes, it is specific to the settlement agreement.
Q And does it ask the position of whether the

company believes the acquisition adjustment had been addressed in the proceeding and is addressed in the settlement?

A Yes.

Q Yesterday you were asked a lot of questions about -- around the parent debt adjustment in FCG's annual reports, do you recall that?

A Yes.

Q And you were asked about MFR C-26, do you recall that?

A Yes.

Q Do you have that? If not, I can provide a copy to you.

A Yes, if you give me one moment. I have it.

Q Okay. And what year is MFR C-26 for?

A The historical year, 2021.

Q Okay. And you were asked several times about the note on the bottom. Can you, just to get us reoriented here, could you repeat the note, or reread the note?

A Sure.

Florida City Gas is not including an income tax adjustment for interest expense of Florida Power & Light Company's investment in equity of Florida City Gas. Florida City Gas' dividends to parent have exceeded equity contributions from parent.

Q Okay. And you were asked a number of questions about OPC cross-examination Exhibit 186. Do you still have that?

A Yes.

Q Can you turn to page 20?

A Okay, I am there.

Q All right. And this is a statement of retained earnings from an FCG annual report, correct?

A Correct.

Q And for what year is shown on page 20?

A 2021.

Q Okay. So based on the information shown on page 20 of OPC cross-examination Exhibit 186, is the note on the bottom of MFR C-26 correct?

A Yes.

Q And just for clarity, were the dividends higher than the contributions from FPL in 2021?

A Yes.

Q And although you sponsored MFR C-26 for the historical data for year 2021, who's the witness from the company that addresses the parent debt adjustment?

A FCG witness Campbell.

Q You were asked a lot of questions today about -- yesterday and today about the LNG facility, and in

particular about the 2.5 million of revenue requirements for the LNG facility that are included in current rates. I am sure you recall that line of questioning, correct?

A Yes.

Q All right. You referred multiple times to your rebuttal exhibit, LF-8, pages seven and eight, to support the fact that the 2.5 million is included in current rates, correct?

A Correct.

Q First, this exhibit that's included in LF-8, did you produce that to parties in discovery in this case?

A Yes.

Q And was the revenue calculation shown on pages seven and eight prepared for this case?

A No. They were prepared in the 2017 rate case docket.

Q Okay. And do you have an understanding of why that was prepared for the 2017 rate case?

A The initial response in the 2017 rate case was provided in a response to a POD. I have no knowledge other than that. However, I do know it was updated based on -- in negotiation settlements in the 2018 rate -- I am sorry, the 2017 rate case, which is the amounts that we see here on my exhibit.

Q Is it your understanding this revenue requirement was provided to parties in the 2017 rate case?

A Yes.

Q And is it your position that the 11.5 million revenue increase agreed in the settlement in the last rate case included the 2.5 million associated with the LNG facility?

A Yes, that's my understanding.

Q And to your knowledge, did Office of Public Counsel sign that settlement agreement?

A Yes.

Q And was that settlement agreement approved by the Commission?

A Yes.

Q And I believe Mr. Moyle asked you -- you participated in settlements before, correct?

A Maybe one or two.

Q Okay. And are you generally aware that a settlement on revenue requirement is a compromise of positions and has puts and takes?

A Yes.

Q So the 11.5 million increase agreed to in the 2018 settlement agreement could have involved other considerations and concessions, correct?

A Absolutely.

Q You were asked by OPC about incentive for shareholders to finish the LNG facility, do you recall that?

A Yes.

Q Would you agree that the 3.8 million additional revenue increase upon the in-service would provide an incentive to finish the LNG facility as soon as possible?

A Yes.

Q I believe yesterday you were asked about your statement on page 18 of your rebuttal testimony. I will give you a moment to turn there.

A Okay.

Q All right. And you were asked about your statement where you disagree with OPC witness Schultz's recommendation regarding the revenue requirements for the LNG facility included in current rates.

My question is: Is it your understanding that OPC witness Schultz recommends that FCG should not have been recovering the 2.5 million in current rates?

A That's my understanding.

Q And I know you disagree with witness Schultz, but if witness Schultz is correct, would you agree that the parties to the settlement in the last rate case

still agreed to the 11.5 million increase?
A Yes.
MR. MOYLE: That calls for speculation. I mean, he is asking her about a settlement. She wasn't a participant in it. It's in a couple of questions --
MR. WRIGHT: I am asking if the parties agreed in the settlement.
MR. MOYLE: The settlement is in the record.
CHAIRMAN FAY: Mr. Wright, do you have more questions regarding the settlement?
MR. WRIGHT: No, that is my last question.
CHAIRMAN FAY: Great. Thank you.
All right. With that, Commissioners, let's go ahead, we will take in exhibits before we complete this witness, and then we will look to break for lunch.
So with that, first, let me go to you, Mr. Wright, and make sure we get the right listed exhibits in the record here, so you wouldn't want to go ahead and identify?
MR. WRIGHT: Sure. FCG would move exhibits identified as 17 through 22, and Exhibits 107 through 112.
CHAIRMAN FAY: Okay. And I originally had

also 23, which is LF-6 in here.

dmr. wri: I'm sorry. I think that's the second time I have missed it. Yeah -- I am sorry, let me try again. 17 through 23 and 107 through 112.

CHAIRMAN FAY: Okay. No worries. I just want to make sure we get it right. So we have 17 through 23 and then 107 through 112. Any objections to entering those exhibits into the record? Seeing none, show those entered into the record.

(Whereupon, Exhibit Nos. 17-23 & 107-112 were received into evidence.)

CHAIRMAN FAY: And then, Mr. Rehwinkel, I have 186 through 193 for --

MR. REHWINKEL: We would move them, yes.

CHAIRMAN FAY: Okay -- OPC's exhibits for witness Fuentes, seeing any objections 186 through 193. Showing no objections, those are entered into the record.

(Whereupon, Exhibit Nos. 186-193 were received into evidence.)

CHAIRMAN FAY: All right. With that, Mr. Wright, would you like your witness excused?

MR. WRIGHT: Yes. We would ask that

Ms. Fuentes be excused.

CHAIRMAN FAY: Okay. Ms. Fuentes, thank you for your time and your testimony today. We appreciate it.

THE WITNESS: Thank you.

CHAIRMAN FAY: Travel safe.

THE WITNESS: Thank you.

(Witness excused.)

CHAIRMAN FAY: All right. Commissioners, with that, we will be moving to witness Slattery and witness Campbell after the break. We do have rebuttal only for witness Slatter, and so we will take those up and see how the afternoon goes. If we are close to concluding today, we might run a little long just to go ahead and conclude and accommodate schedules. And if not, we will take it back up tomorrow morning.

So with that, we will break for lunch and come back here at 1:15. Thank you.

(Lunch recess.)

CHAIRMAN FAY: All right. Welcome back, everyone.

We will jump into our next witness. I will have Florida City Gas call their next witness. And just real quick for the record, we have -- Ms.

Crawford is stepping in for Mary Anne, and so just we'll take an appearance for you, and with that, we will move to Florida City Gas to call their next witness.

MR. BAKER: Thank you, Chairman Fay. Florida City Gas calls Kathleen Slattery to the stand.

Whereupon,

KATHLEEN SLATTERY

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

EXAMINATION

BY MR. BAKER:

Q Ms. Slattery, could you please state your full name for the record?

A Kathleen Slattery.

Q Have you been sworn?

A Yes.

Q And is your business address 700 Universe Boulevard, Juno Beach, Florida, 33408?

A Yes.

Q By whom are you employed and in what capacity?

A I am the Senior Director of Executive Services and Compensation at Florida Power & Light Company, which is the direct parent of Florida City Gas.

Q On October 3rd, 2022, did you file 19 pages of rebuttal testimony in this docket?
A Yes.
Q Do you have any corrections to your rebuttal testimony?
A No.
Q If I asked you the same questions contained in your rebuttal testimony, would your answers be the same?
A Yes.
MR. BAKER: Mr. Chairman, I would ask that Ms. Slattery's rebuttal testimony be entered into the record as though read.
CHAIRMAN FAY: Okay. Show it entered.
(Whereupon, prefiled rebuttal testimony of Kathleen Slattery was inserted.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 20220069-GU

FLORIDA CITY GAS

REBUTTAL TESTIMONY OF

KATHLEEN SLATTERY

Topics: **Payroll and Staffing Levels, Incentive Compensation, Benefits and Payroll Taxes**

Filed: October 3, 2022

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Kathleen Slattery. My business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida, 33408-0420.

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

A. I am employed by Florida Power & Light Company ("FPL") as the Senior Director of Executive Services and Compensation.

Q. Please describe your duties and responsibilities in that position.

A. I am responsible for the overall design and administration of all compensation programs. I share responsibilities with a peer for the total rewards strategy and programs of FPL and its subsidiaries, including Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG" or "Company").

Q. Please describe your educational background and professional experience.

A. I am a Florida native and attended Florida State University, where I earned a Bachelor of Science and a Juris Doctor degree. Before joining FPL, I worked in labor relations and served as a trustee of two outside electrical worker unions' pension and health and welfare funds. I began working at FPL in 1996 as a benefit plan administrator and have held various positions of increasing responsibility in Human Resources ("HR") since that time. My experience has included qualified and non-qualified benefit plan design and administration, salary and incentive compensation plan design and administration, and legal compliance of such plans and programs. I have extensive knowledge of the Company's compensation and benefits philosophy, plans and programs, as well as its HR practices and payroll system. As part of my responsibilities, I regularly rely on surveys and reports produced by third party organizations to stay abreast of trends in compensation and benefits throughout the utility industry and other industries and businesses with which the Company competes for talent.

Q. Did you previously submit direct testimony?

A. No.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to rebut the direct testimony of Office of Public Counsel ("OPC") witness Helmuth W. Schultz, III regarding staffing and payroll, incentive compensation, benefits, and payroll tax expense of FCG.

Q. Before addressing the specific issues and recommendations raised by OPC, do you have any general observations?

A. Yes. FCG's projected compensation and benefits expense is reasonable and prudent, and no intervenor has filed testimony providing empirical evidence to the contrary. Furthermore, FCG's expense request for 2023 does not include any type of compensation or benefits expense that the Florida Public Service Commission ("Commission") has not previously approved for recovery. The only witness to take issue with any aspect of FCG's compensation and benefits is OPC witness Schultz, who recommends several adjustments. Those recommended adjustments should be rejected.

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

A. Yes. I am sponsoring the following exhibits with my rebuttal testimony:

- Exhibit KS-1 – FCG Cash Incentive Compared to Market
- Exhibit KS-2 – FCG Position to Market – 2022 Base Pay

II. PAYROLL AND STAFFING LEVELS

Q. OPC witness Schultz has made recommendations regarding FCG's projected staffing and payroll for 2023. Has he evaluated the required staffing level in view of FCG's specific workload or requirements?

A. No. OPC witness Schultz has arbitrarily selected the headcount level of 173 as of a random date without contemplation of FCG's staffing forecast or requirements in the 2023 Test Year. He evidently made no attempt to analyze either industry or FCG's specific workload trends and growth requirements, which are much better predictors of actual needs and, in fact, are the basis for budgeting. FCG witness Howard addresses these requirements in his rebuttal testimony.

Q. Please explain the gap between forecast and actual staffing that OPC witness Schultz has identified.

A. The staff level forecasts are FCG management's reasonable estimates of what is needed to do the required work based on optimal staffing levels. From a historical perspective, in both 2019 and 2020, actual headcount exceeded planned headcount to support replacement of certain services and functions previously provided by Southern Company, insourcing, and growth in the business. In 2021, every effort was made to fill the forecasted positions, but a number of factors made it difficult for the Company to fill every one of them. Among these are limited availability of a technical and engineering related labor force, desirability of and competition for in-demand technology skills, fluctuations in the housing market, and the fiscal restraints the Company has placed on the competitiveness of its pay and benefits package. In addition, there was a skilled labor shortage in 2021 due to changes in hiring trends associated with the pandemic and the Great Resignation and the rise of the remote work environment. As a result of these unanticipated factors, the hiring process lagged behind expectations in 2021.

Despite these hiring difficulties, there have been significant efforts in 2022 to fill these positions. FCG hired 12 new positions from January to June of 2022. Additionally, as of September 22, 2022, 8 additional new positions were filled in the third quarter of 2022 (*i.e.*, since responding to OPC's 1st Set of Interrogatories Nos. 75 and 80), which increased the headcount to 180. FCG anticipates filling the last 4 new positions and replacing 3 open positions by the end of 2022. This will result in the planned staffing level of 187, consistent with the 2023 Test Year forecast.

Q. OPC witness Schultz asserts that FCG failed to include a vacancy factor in its headcount forecasted for the 2023 Test Year. Do you have a response?

A. Yes. Since hiring costs and the savings associated with vacancies are offsetting, no explicit vacancy factor was applied. The impact of vacancy costs due to turnover are borne by all companies when an employee's service terminates. Initially, there are overtime costs associated with other staff handling the work. Then, there are costs related to recruiting, onboarding, and training replacement employees. Any potential savings realized from unfilled positions are offset with these unplanned costs.

Q. OPC witness Schultz recommends a staffing level, and corresponding payroll reductions, for the 2023 Test Year. Do you agree with his recommendations?

A. No. OPC witness Schultz's recommendations are premised on the incorrect assumption that the payroll budget is solely a function of staffing levels. FCG has estimated employee projections based on optimal staffing levels. This is because FCG budgets employee projections at the staffing level necessary to most efficiently get the work done to ensure the Company delivers on its customer service and reliability commitments. As discussed previously, market conditions and workforce demographic factors caused the Company to fall slightly short of its staffing goals in 2021. The result is that, at times, the Company has to rely on less efficient staffing models (such as overtime, temporary labor, etc.), which drives costs up. In order to insulate customers from these potentially higher costs, the Company focuses on total compensation and benefits at optimal staffing levels when formulating its forecast. Therefore, the methodology employed by OPC witness Schultz, which only considers one input in a dynamic equation, is an incomplete analysis, underestimates FCG's actual requirements and costs, and should be rejected.

Q. Do you have other concerns with OPC witness Schultz's methodology?

A. Yes. Although he presents multiple years of data on his exhibit (HWS–2), OPC witness Schultz elects to base his recommended adjustment as of a specific date of June 30, 2022, rather than on the growth trend of staffing. His analysis shows that the Company had higher headcount than planned in both 2019 and 2020, with 2021 being an anomaly due to the reasons I previously explained, and 2022 showing the result of recruiting efforts made by the Company. Even if one accepted his methodology, and I do not, it would be difficult to consider using a point in time rather than business requirements to forecast the employee complement in any industry or company. It shows a lack of understanding of the variability and complexity of the work, as well as the fact that the

FCG rate case is based on a forecasted Test Year and not a historic Test Year, as further explained by FCG witness Campbell.

III. INCENTIVE COMPENSATION

Q. On page 40 of his testimony, OPC witness Schultz recommends that FCG exclude incentive compensation in the calculation of FCG's base rates consistent with Order No. PSC-2010-0153-FOF-EI. Are you familiar with this Order?

A. Yes. This Order was issued in FPL's 2010 rate case. In that Order, all executive incentive compensation was excluded from base rates. For non-executive stock-based incentive compensation, 50% of restricted stock and target performance share awards were excluded, as well as 100% of any expense above target for performance shares. FPL consistently has reported the exclusion of these portions of executive and non-executive incentive compensation from net operating income on its earnings surveillance reports to the Commission since 2010.

Q. Did FCG make these same exclusions to its incentive compensation expense for the 2023 Test Year in its original filing?

A. No, there is no specific order requiring FCG to make such an adjustment to its incentive compensation expense.

Q. Is FCG making an adjustment to its 2023 Test Year net operating income related to incentive compensation?

A. Yes. Although there is no specific order requiring FCG to make such an adjustment, FCG has elected to make an adjustment to its 2023 Test Year executive incentive compensation expense consistent with the FPL methodology and has included those adjustments as part of its recalculated revenue requirements. However, we continue to believe these expenses are necessary and reasonable, a critical component of cost of service, a significant driver behind FCG's performance, and properly recoverable in rates. They are effective tools in attracting, retaining, and engaging the required workforce, and play a significant role in delivering value to customers.

These adjustments to the 2023 Test Year incentive compensation expense are reflected in FCG witness Fuentes' Exhibits LF-11 and LF-12, Recalculated Revenue Requirements with and without RSAM, which removes $505,222 in affiliate charges from FPL (includes both direct charges and corporate services charges) related to executive cash and stock-based incentive compensation.

Q. Do these adjustments remove SERP expenses from the corporate service charges as suggested by OPC witness Schultz?

A. No. Consistent with the adjustments made by FPL pursuant to the order in the 2010 rate case, FCG made no adjustments to remove SERP benefit expenses from the corporate service charges.

Q. Are there any executive incentive compensation or stock-based compensation expenses remaining in the 2023 Test Year?

A. No. These expenses have now been removed entirely from the affiliate charges, and FCG does not utilize stock-based compensation for FCG employees. Only non-executive cash incentive compensation expense remains in the test year, and such expense has been consistently permitted in FCG's and in FPL's recovery for as long as I am aware.

Q. What is OPC witness Schultz's recommendation regarding non-executive performance-based cash incentive?

A. OPC witness Schultz recommends a disallowance of 100% of the $163,461 in long-term cash incentive expense and a disallowance of $922,865 (or 70%) of the short-term cash incentive expense of $1,321,611. OPC witness Schultz focuses on a flawed philosophy that advocates the sharing of cash incentive compensation costs between customers and shareholders, without offering any evidence that limiting recovery of one component of FCG's market-competitive total compensation program will not harm FCG's ability to attract and retain the required workforce to deliver on FCG's commitments to its customers. OPC witness Schultz's recommendation should be rejected.

Q. OPC witness Schultz cites portions of the 2009 Progress Energy Florida ("PEF") rate case order in Docket No. 20090079-EI related to cash incentive compensation disallowance. Does OPC witness Schultz provide a comparison of the 2009 PEF incentive program design with current FCG incentive program design?

A. No, he does not.

Q. Are there other rate case orders addressing cash incentive compensation recovery that OPC witness Schultz has not cited?

A. Yes. For example, in its April 2012 order in Gulf Power Company's ("Gulf") rate case, Order No. PSC-12-0179-FOF-EI, the Commission rejected OPC's recommendation to disallow all incentive compensation, calling it "unreasonable" and citing the negative impact such disallowance would have on Gulf employees' compensation compared to market median.[1] The Commission therefore allowed recovery of 100% of Gulf's employee cash incentive compensation. In that same order, the Commission also stated:

> We recognize that the financial incentives that Gulf employs as part of its incentive compensation plans may benefit ratepayers if they result in Gulf having a healthy financial position that allows the Company to raise funds at a lower cost than it otherwise could.

Id. at p. 94.

Q. Is non-executive performance-based cash incentive compensation a typical and necessary component of a utility's total compensation program?

A. Yes. Market data from World at Work shows that 85% of U.S.-based companies include performance-based variable pay as part of their total compensation package. FCG simply cannot compete in the current highly competitive labor market without inclusion of a comparable, market-based cash incentive compensation program.

Q. Is FCG's non-executive performance-based cash incentive compensation program above market?

A. No, it is at or below market. The Company designs and manages its incentive compensation program as one element of a market-competitive total compensation package. We regularly benchmark the components of the total compensation package, including base salaries, annual pay increase programs, and variable pay awards, compared to relevant market data, using a variety of nationally recognized third-party compensation survey sources. Our benchmarking sources include World at Work, Willis Towers Watson, Mercer, Aon Hewitt, and Empsight. These surveys aggregate and assess comparative data from other national and regional employers, both in

[1] Order No. PSC-12-0179-FOF-EI, Docket No. 110138-EI, p. 97, which is available at: http://www.psc.state.fl.us/library/filings/2012/02020-2012/02020-2012.pdf.

general industry and in the utility industry (representing the labor market in which we compete for talent). As shown in Exhibit KS-1, our most recent study found that FCG's variable incentive pay awards have been below market every year for the period 2019 through 2022.

Q. If FCG's non-executive performance-based cash incentive compensation program was reduced or eliminated, would FCG's base salaries alone provide a market-competitive compensation package?

A. No, they would not. FCG performs an annual benchmarking analysis of its base pay rates. Exhibit KS-2 demonstrates that FCG's 2022 median base pay is below the market median or 50^{th} percentile, specifically 4.9% below median for salaried employees and 8.6% below median for hourly employees. Additionally, FCG's 2023 forecast includes a 3.0% performance-based "merit" pay increase program. A 3.0% increase will be at or below market median for a merit-based 2023 salary increase program according to surveys published in the summer and fall of 2022, which are predicting a market median 3.5% merit program. Finally, as shown on Exhibit KS-1, market median levels of performance-based variable pay have recently been at 9.6% of base salaries for this employee complement. In the aggregate, FCG employees would be compensated approximately 9.6% below market median if performance-based cash incentive compensation were eliminated. Clearly, without the inclusion of performance-based cash incentive compensation, the total compensation package would not be competitive and FCG would not be able to attract and retain the number and caliber of employees that are required to deliver on its commitments to its customers.

Q. On page 38 of his testimony, OPC witness Schultz asserts the fact that other utility companies offering incentive compensation does not justify or result in it being included in rates. Do you agree?

A. No, I do not agree. Based on the prevalence data I have cited, which indicates cash incentive compensation programs are offered by 85% of employers, and based on the current at or below market positioning on FCG's cash incentive and base salary programs as demonstrated by Exhibits KS-1 and KS-2, FCG must continue to offer a market-competitive cash incentive compensation program as part of its total compensation package in order to compete with other employers for attracting and retaining necessary talent. FCG has demonstrated that the level of cash incentive compensation and the overall compensation paid to FCG employees is necessary and reasonable.

Although he acknowledges other utility companies offer cash incentive compensation, consistent with my assertion that it is a necessary component of pay, OPC witness Schultz nonetheless suggests that it would be appropriate for the expense to be partially excluded from rates. I disagree with OPC witness Schultz. Legitimate, reasonable expenses incurred in delivering service to our customers should be recovered. I submit that 100% of the performance-based cash incentive expense is necessary and reasonable and, therefore, 100% of the expense should be included in rates.

Q. OPC witness Schultz criticizes FCG's lack of studies of what incentive compensation expense is allowed or not allowed for recovery in other jurisdictions. Why do you not have any such study?

A. Allowance or disallowance in other jurisdictions is in no way material to the Company's annual benchmarking study used to determine the market-competitive pay practices and pay levels necessary for FCG to attract, motivate and retain the high-performing workforce needed to deliver safe, reliable, cost-effective service to our customers. No utility company can afford to lose increasingly scarce trained, technical, and professional talent by cutting its incentive compensation opportunity to less than market-competitive levels.

Q. Would FCG need to consider restructuring its total compensation package if any non-executive performance-based cash incentive compensation was excluded?

A. FCG believes its current market-competitive total compensation program, with its emphasis on performance-based pay, is optimal and significantly benefits customers. However, if denied recovery of its necessary, prudently-incurred cash incentive compensation expense, FCG would need to consider reallocating its pay mix to assure cost recovery for a reasonable, competitive level of total compensation. This could potentially lead to a reduction in performance-based variable cash incentive compensation and an increase in base salaries and/or other fixed-cost programs. We do not believe this would be the ideal result, but if regulatory policy were to preclude recovery of a portion of total compensation just because it is labeled incentive compensation, then FCG (and perhaps other utilities) may be induced to redesign its programs.

Q. On page 39 of his testimony, OPC witness Schultz raises concerns with the documents that FCG provided in support of its incentive compensation plans. Do you have a response?

A. Yes. The Company provided three incentive compensation-related documents responsive to the OPC's First Request for Production of Documents No. 19, which were comprehensive and adequate documentation of FPL's and FCG's incentive compensation plans and programs for which Company employees are eligible. These same documents have been filed in response to similar OPC requests for production of documents in FPL's 2012, 2016, and 2021 rate case dockets and have been accepted.

Q. On pages 36 and 37 of his testimony, OPC witness Schultz complains that the number of FCG employees denied a performance-based incentive compensation payout due to poor performance for 2019 through 2021 should have been higher. Do you have a response?

A. Yes. The Company's robust performance management system provides multiple opportunities during the annual performance cycle for self and supervisor assessment, feedback sessions, and course corrections where necessary. In addition, the Company's emphasis on pay for performance, including the inclusion of a performance-based cash incentive opportunity in the market-competitive total compensation package, helps develop a culture of employee commitment to individual, business unit, and company performance. As a result of the regular check-ins and pay-for-performance culture, few Company employees who intend to stay with the Company fail to meet supervisor expectations by the end of the performance period.

Q. As further support for his recommendation for partial disallowance, OPC witness Schultz criticizes FCG's goal setting and achievement. How does FCG establish its goals under the non-executive performance-based cash incentive compensation program?

A. FCG's performance indicators are typically consistent from year to year; however, the goals for these indicators are set annually and some goals are adjusted based on prior years' achievements. As an example, the call volume goal is based on trends from the prior year's actual call volume. The goal for each indicator is assessed annually based on relevant information, which might include, depending on the indicator, industry benchmarks, Company plans and forecasts, and historic performance. The Company employs a robust, iterative process to establish challenging but achievable annual performance goals, which are designed to drive employee improvement. Goals typically have some "stretch" to them. For example, OSHA goals are aggressive goals, underscoring the high degree of importance the Company places on safety.

Q. Did the setting of stretch goals result in lower than prior year incentive payouts for performance years 2020 and 2021?

A. Yes. A certain number of goals were not met in plan years 2020 and 2021 and, as pointed out by witness Schultz and as demonstrated by Exhibit KS-1, the cash incentive payouts for those years were at levels below the payout levels for plan years 2018 and 2019. However, FCG's 2022 performance through August was better than plan for the majority of its indicators, and employee cash incentive payouts are expected to be similar to historic levels. For the 2023 Test Year, FCG has forecasted the same payout level as for plan year 2019. As shown on Exhibit KS-1, the 2020 payout for plan year

2019, while higher than the payouts for plan years 2020 and 2021, was still below market.

Q. OPC witness Schultz criticizes the increase in cash incentive compensation cost from $1,315,053 in 2019 to $1,772,728 in 2023 as shown in the Company's response to OPC's First Set of Interrogatories No. 61. Is his criticism warranted?

A. No. Per the Company's response to OPC's First Set of Interrogatories No. 54, for plan year 2019 the total number of employees who received an incentive compensation award was 139. As discussed earlier in my testimony, the Company's 2023 planned staffing level is 187, and actual headcount as of September 22, 2022 is 180. The growth in performance-based cash incentive compensation cost correlates to the growth in headcount and to the growth in salaries over time. As I previously stated, the 2023 forecast assumes that the aggregate employee payout level for plan year 2023 will be similar to the payout level for plan year 2019, not higher.

Q. OPC witness Schultz takes issue with recovery of 2023 performance-based cash incentive expense before 2023 performance is known and delivered. Is this an appropriate argument?

A. No. FCG's proposed rates are based on a projected 2023 Test Year and, therefore, the performance-based cash incentive expense is based on a forecast of necessary and reasonable expenses. As I have explained above, performance-based cash incentive compensation is necessary to attract and retain talent and FCG's 2023 forecasted payout levels are reasonable based on the benchmarking discussed herein and as shown on Exhibit KS-1. Accordingly, it is appropriate to include the projected expense in the 2023 Test Year net operating income.

IV. BENEFITS AND PAYROLL TAXES

Q. OPC witness Schultz has recommended an adjustment of $49,533 in benefits cost for 2023 as a flowthrough of his recommended payroll adjustment based on employee headcount. Do you have concerns with his recommendation?

A. Yes. For reasons explained above, his adjustment to the 2023 Test Year headcount should be rejected and, therefore, his corresponding flowthrough adjustment to payroll should also be rejected. Based on the optimal staffing levels as forecasted in the 2023 Test Year and the Company's need to offer a benefit package to each employee, all expenses that are included in the forecast are necessary and appropriate.

Q. OPC witness Schultz has recommended an adjustment of $122,767 in payroll taxes for 2023 as a flowthrough of his recommended payroll adjustment based on employee headcount and incentive compensation. Do you have concerns with his recommendation?

A. Yes. For reasons explained above, his adjustment to the 2023 Test Year headcount should be rejected and, therefore, his corresponding flowthrough adjustment to payroll taxes should also be rejected. OPC witness Schultz's calculation of the reduced payroll tax expense of $51,822 based on his arbitrary recommendation to reduce headcount regardless of the need to properly staff the Company to service customers should be disregarded. The remaining portion of OPC witness Schultz's payroll tax adjustment of $70,945 is related to his flawed logic on excluding non-executive performance-based cash incentive compensation expense. FCG must continue to provide a competitive and appropriate market-based cash incentive program to continue to attract and retain talent in the current labor market. It is necessary to pay all required payroll taxes associated with all payroll and incentive compensation expenses therefore the recommendation made by OPC witness Schultz should be rejected.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BY MR. BAKER:

Q Ms. Slattery, do you have Exhibits KS-1 and KS-1 that were attached to your rebuttal testimony?

A Yes.

MR. BAKER: Mr. Chairman, I would note that these are Exhibits 131 and 132 on staff's comprehensive exhibit list.

CHAIRMAN FAY: Okay.

BY MR. BAKER:

Q Ms. Slattery, were these exhibits prepared under your direction or supervision?

A Yes.

Q Do you have any corrections to these exhibits?

A No.

Q With that, Ms. Slattery, would you please provide a summary of your rebuttal testimony?

A Yes.

Good afternoon, Mr. Chairman and Commissioners.

My testimony rebuts the testimony of OPC witness Schultz regarding FCG staffing levels and the company's payroll, incentive compensation, benefits and payroll tax expenses, and explains why his recommended adjustments should be rejected.

Without performing any of staffing level analysis, OPC witness Schultz arbitrarily selected a suggested headcount level as of a random historical date, and used it to recommend a partial payroll and benefits exclusion. He made this recommendation without evaluating FCG's required staffing levels, workload trends or growth requirements. Yet FCG's employee complement has been growing. And despite temporary post-pandemic hiring difficulties, FCG is on target to reach the forecasted 2023 headcount.

Witness Schultz's recommended adjustment to payroll and benefits shows a lack of understanding of the variability and complexity of the work, of the need to forecast employee complement based on business requirements, and of the fact that this rate case is based on a forecasted test year rather than a historical test year. OPC witness Schultz also recommends adjustments to incentive compensation expense.

My rebuttal testimony demonstrates that FCG has voluntarily adjusted its expense request to eliminate the portions of incentive compensation that have been excluded by FPL since its 2010 rate case order, even though Florida City Gas is under no such order, and that any additional reduction is unsupported and should be rejected.

Only nonexecutive cash incentive compensation expense remains in the test year. And such expense has been consistently permitted in FCG's and FPL's recovery for as long as I am aware. OPC witness Schultz's recommended disallowance of 100 percent of employee long-term cash incentive and 70 percent of employee annual cash incentive expense is unsupported and should be rejected.

In my testimony, I provide data demonstrating that performance-based cash incentive compensation is a typical and necessary component of a utility's total compensation program, and that FCG's program is at or below market, as shown on Exhibit KS-1.

I further demonstrate that FCG's base salaries are at or below market, as shown on Exhibit KS-2, and that the 2023 forecast includes a performance-based merit pay increase program that is at or below market.

The level of cash incentive compensation and the overall compensation paid to FCG employees is necessary and reasonable. And if FCG's cash incentive program was reduced or eliminated, FCG's base salaries alone would not provide a market competitive pay package. OPC witness Schultz nonetheless suggested it would be appropriate for the employee cash incentive expense to be partially excluded from rates. We disagree.

Legitimate reasonable expenses incurred in delivering service to our customers should be recovered. 100 percent of the performance-based cash incentive expense is necessary and reasonable and, therefore, 100 percent of expense should be included in rates. OPC witness Schultz's recommended adjustment should be rejected.

This concludes the summary of my rebuttal testimony.

Q Thank you, Ms. Slattery.

MR. BAKER: Florida City Gas tenders the witness for cross-examination.

CHAIRMAN FAY: Okay. Thank you.

All right. Ms. Wessling, you are recognized.

MS. WESSLING: Thank you, Mr. Chairman.

EXAMINATION

BY MS. WESSLING:

Q And good afternoon, Ms. Slattery.

A Good afternoon.

Q Okay. So if we could start on page 13 of your rebuttal testimony, which is your only testimony, lines one through 20. If you could just take a look at that and let me know once you have read through that again.

A Yes, I am there.

Q Do you dispute Mr. Schultz's claim that, in

other jurisdictions, regulators require a sharing of incentive compensation?

A I am not an expert on regulatory recovery in other jurisdictions, so I have no comment on that subject.

Q All right. And also on page 14, lines one through 10 -- well, you voice a concern here that a utility could lose personnel if incentive compensation is not fully allowed in rates, correct?

A What I am stating is that you -- the utility will not be able to attract and retain employees if we do not have a market competitive incentive compensation program; and that whether or not it is allowed in other jurisdictions is immaterial to our benchmarking, which shown on Exhibit KS-1 to my testimony, that proves that we need a market competitive incentive compensation program for our employees.

Q But your incentive compensation is based on a market that includes other utilities, correct?

A That's correct. We benchmark with other utilities, but our benchmark sources do not gather data in their surveys about recoverability, only about pay levels.

Q And on page 16, lines 15 through 20.

A Yes, I am of I am there.

Q You acknowledge here that the 2020 and 2021 incentive compensation results were less than 2019?
A Yes. That's true, which demonstrates that our programming -- our program is working as designed. In years where our stretch goals are not all met, for example, the pay -- the payouts will be lower than in years where more goals are met.
Q So it's fair to say that results can vary from year to year?
A Yes. However, they are not that different from year to year, as shown on Exhibit KS-1 to my testimony.
And furthermore, in 2022, at midyear when I last checked, the metrics for incentive plan, we were on track to have a payout level that was more consistent with plan year, I believe it's 2019. Yes, plan year 2019.
Q It's also fair to say that the costs one year might be lower than another year, correct?
A It's true that in 2020 and 2021, our payout levels were lower than in prior years. But in 2022, as I have stated, we are on track for payout level consistent with 2019, which is also the level that we budgeted from the test year.
Q So is that a yes to that particular

question --

A Yes.

Q -- including that?

A Yes. Absolutely.

Q Okay. Now, if you could turn to page 17, lines 14 through 23.

A Yes, I am there.

Q All right. So it's fair to say that FCG has no concrete evidence that the results for 2023 will not be similar to the results in 2020 or 2021, correct?

A That is correct. But as I stated in my -- in my introductory summary, this test year is a forecast test year, not a historic test year, and we have included in our 2023 forecast a payout level for incentive compensation consistent with 2019, which was actually lower than 2018.

Q And going back to pages eight and nine of your rebuttal testimony.

A Yes, I am there.

Q All right. So between those two pages, you discuss the incentive compensation issue that we are dealing with in this case, correct?

A Yes. These pages are about incentive compensation.

Q And you also mention there that you are

familiar with Order No. PSC-2010-0153-FOF-EI, correct?
A Yes.
Q All right. And you acknowledge that the Commission excluded both executive incentive compensation and a portion of the nonexecutive incentive compensation in that order, correct?
A That is correct.
Q And on lines 21 and 23 of page eight, you state that FCG has elected to exclude some executive incentive compensation consistent with the FPL methodology, correct?
A Yes.
Q But I am correct that you have not excluded a portion of the nonexecutive incentive compensation, correct?
A That's not correct. We have excluded portions of nonexecutive stock-based compensation. FPL recovers 100 percent of nonexecutive cash incentive compensation.
Q Do you have a copy of Mr. Schultz's testimony?
A I do not.
Q Are you familiar with Mr. Schultz's testimony with regard to what FPL did in Docket No. 20210015-EI?
A I am familiar with his testimony. I have not committed it to memory.
Q Sure. We'll see if we can work our way

through.

Do you know if Mr. Schultz states that FPL excluded a portion of nonexecutive incentive compensation?

A I believe he stated that, but I say I agree with that. We do exclude a portion of nonexecutive cash incentive compensation, and it's the stock-based incentive compensation.

Q And I am referring back to your rebuttal testimony, you state that FCG did not make an exclusion of incentive compensation because there was no specific order requiring FCG to do so?

A In our initial filing, FCG did not make an adjustment because it was under no order to do so. That's correct. That's what I state in my testimony. We subsequently made an adjustment that we've shown on Exhibit to witness Fuentes' rebuttal testimony. I think it's LF-11 and LF-12.

Q Was Florida City Gas an affiliate of Florida Power & Light in any of the previously litigated cases?

A I am sorry, could you please repeat the question?

Q Was Florida City Gas an affiliate of Florida Power & Light in previously litigated cases?

A No.

Q Is the incentive compensation plan used by Florida City Gas the same that's used by Florida Power & Light?

A The current plan is consistent with Florida Power & Light's nonexecutive cash incentive compensation plan, yes.

MS. WESSLING: One moment. Nothing further.

CHAIRMAN FAY: Okay. FEA?

CAPTAIN DUFFY: No cross from FEA.

CHAIRMAN FAY: Okay. Thank you.

Mr. Moyle?

MR. MOYLE: Thank you.

EXAMINATION

BY MR. MOYLE:

Q Good afternoon.

A Good afternoon, Mr. Moyle.

Q Could you -- could you just describe for the Commission what the benefits are for folks who work for Florida City Gas?

A Yes. So you are asking about the employee benefits?

Q That's right.

A Yes. We have a package of benefits available for employees of Florida City Gas that include 401(k), cash balance style pension, medical, dental, vision.

Those are the primary benefits. There is also some other voluntary benefits and discount programs.

Is that sufficient a description? I could go into more detail.

Q As long as that covers the categories?

A It covers the main categories. I mean, there is also short-term disability, long-term disability, paid time off programs. We have -- you know, we provided a list of and description of all of them in discovery.

Q Okay. And how much, like, on the medical, is there an employee contribution and an employer contribution, or does the employer pick up 100 percent? What's the split, if any, on medical?

A The split of our medical plan is designed to be 65 percent employer, 35 percent employee. And it's primarily a high deductible health insurance plan. That's what most of our employees are in, a high deductible plan, with a health savings account, where they put aside their own money to cover the high deductible.

Q Okay. And in answer to a prior question, you had said that nonexecutive stock compensation was excluded from executives, I believe, and partially excluded from line employees, or is excluded from

everybody?

A So if you are asking what we've excluded in this case, the answer is 100 percent of executive compensation and 100 percent of stock-based compensation.

Only in -- again, the reason that there is no stock-based compensation is there were no nonexecutives at FCG receiving stock. There was some charges coming in through affiliate charges with some stock-based compensation for executives. And we've excluded all of that. All that is left in this case is nonexecutive FCG employees cash incentive compensation.

Q What's the average salary of those folks?

A That's on Exhibit KS-2 to my testimony. Let me cite that for you.

As shown on Exhibit KS-2, the median salary of our salaried employees is 91787, and median based salary for hourly employees is 53,040.

Q And are your non-salary employees represented by a union, or unions, plural?

A Not currently. How -- you know, I am not sure about what will happen in the -- that is, you know, will happen in the future, but we are currently only dealing with nonunion employee salaries in this group of this dataset.

Q And does -- so the company doesn't have anyone who works for them that is with a union?

A Not currently. Not yet. I will say there has been some union organization that has been going on in the company, but I am not privy to what will happen with that in the future. I just know that when I have been benchmarking these employees, it's all nonunion salaries and benefits that I have been benchmarking.

Q And when you benchmark it, do you benchmark it also to union salaries as well?

A We benchmark job descriptions in salary surveys that we purchase from a number of sources that include Willis Towers Watson, Aon, Mercer and Empsight. So currently, as I said, these positions are nonunion, and we are primarily looking at nonunion data.

Q Right. But the parent company of Florida City Gas has a number of union contracts, does it not?

A Yes.

Q And are those typically at a higher rate than what you are seeing in the subsidiary?

MR. BAKER: I'm going to object here. This is starting to get into the territory of Florida City Gas' parent as opposed to Florida City Gas itself.

MR. MOYLE: Well, she's talking about -- she's in charge of compensation and uses benchmarking. I am trying just to understand whether they use their parent company in any material way for benchmarking the compensation levels.

CHAIRMAN FAY: Yeah, I am going to overrule. I mean, I think you can speak to an experience what you utilize for Florida City Gas, and that may be FPL's model. It may be another model.

THE WITNESS: Okay. To benchmark the compensation of Florida City Gas employees, we purchase surveys from third-party salary survey companies, which is necessary because antitrust law prevents us from directly benchmarking with other utilities. And those sources include well-respected national organizations such as WorldatWork, Empsight, Willis Towers Watson and Aon Hewitt, Mercer and others.

We purchase those surveys because we need to match the job description for each job in the company to, you know, folks with similar skills, responsibilities, duties and impact at other utilities. And we -- you know, we benchmark at median, and that is why Exhibit KS-2 is showing our position to market against median. And these are considered, you know, the Best Practices in compensation benchmarking.

BY MR. MOYLE:

Q When you are looking at these surveys, do they tell you the companies that have been surveyed?

A Each survey includes a list of companies that participate in the survey, yes. We do not know which companies reported which particular positions. So, you know, the incumbents that reported all the data is aggregated and deidentified. And then, you know, median, you know, top quartile, bottom quartile is reported from that deidentified dataset.

Q Do you make any adjustments with respect to cost of living?

A No. We do not have a cost of living adjustment, nor do we have a cost of living adjustment program. We have a performance-based merit pay increase program one time per year, which I describe in my testimony, has been budgeted at 3.0 percent in the test year.

Recent survey data that we've purchased from Aon Hewitt and Mercer shows that that is low compared to the current market projection for merit base pay programs in 2023. It's gone up to 3.5 percent to 4.0 percent, but our forecasts were all completed back at the end of 2021. So at that time, 3.0 percent seemed reasonable. Now we know it will be at or below market.

Q So 3.0 is below market as you sit here today?

A We are predicting that it will be slightly below market compared to the most recent surveys that we received in the fall of 2022.

Q And what do those show as a --

A 3.5 percent from Aon Hewitt. I believe 4.0 percent Mercer.

Q And did you use information from Peoples or Florida Public Utilities Corporation in the benchmarking?

A Again, we are not permitted to directly benchmark with a utility because of antitrust law, but utilities do participate in the benchmark surveys that we purchase and receive.

Q Right. But those other companies come before the Commission like you are and seeking public comment and testimony and information about salaries. Did you look at the testimony or anything related to the salaries? I mean, my understanding of antitrust is somewhat you can't talk and collude with other people, not that you can't look at information that's publicly available.

A That's correct. I do look at information that's publicly available, and I do sometimes look at, you know, testimony of HR witnesses in cases before the

Commission. But as you know, any information about individual salaries is confidential, and when it's submitted as a discovery response, it is all treated as confidential and I don't have access to that. I only know, for example, Exhibit KS-1 and KS-2 to my testimony, I see exhibits like that.

Q Okay. Are you familiar with any other industry in which the benefits include both a 401(k) plan and a pension plan?

A Yes. Absolutely. In addition to benchmarking against other utilities, we benchmark our benefits programs against general industry. We recently completed such a benchmark with Aon Hewitt. They do a comparison of benefits across industries.

And we have a pension and a 401(k), but our pension is a cash balance style pension which has a lower benchmark value than a traditional final average pay program, and therefore, although, we have both a 401(k) and a pension, we recently benchmarked at, I think we were below median in total retirement benefits. I think probably like on a benefits index of 100, we were at, like, 97 or 98. We were not at median.

Q When you say you benchmark, was the benchmark looking at regulated businesses?

A We benchmark with regulated utilities. We also benchmark with general industry, because we compete for talent, not only with other utilities, but also with other industries.

So for example, you know, if we are hiring engineers, IT professionals, even technicians, we are not just competing against other utilities. We are competing against phone companies, engineering companies, et cetera.

So we benchmark both utility and general industry. And as I said, for general industry we are still below median for our retirement benefits package.

Q I got a sense that the direction of benefits was going in a general way of offering a 401(k), phasing out pensions. Is that generally your sense in a broad fashion?

A I would agree with you, that there has been a move in that direction. But I am proud to say that Florida Power & Light was on the leading edge of the retreat when, in 1997, it discontinued its final average pay pension plan and replaced it with a cash balance style plan, which was we were one of the first utilities to do so. I am not aware of any of utility that did it before us. That significantly reduced the pension burden on FPL customers.

I have an example of it in this case. This forecast test year includes a $1.3 million credit against expense from the pension plan, because the pension assets which are prudently invested are more than enough to cover the pension costs for the employees' accrued benefits. So that leading edge of the retreat from 1997 is certainly paying off for customers today, and FCG, which was acquired by FPL, is reaping some of the benefit of that.

Q What is your pension average return? You just -- you said there is a credit now --

A Yes.

Q -- I guess because the pension overearned in terms of meeting the demands?

A I would have to look that up. I do have interrogatory responses related to pension, but I would have to look it up through interrogatory responses. I have not committed to memory the return on asset, but that is a big part of the story here that is producing the $1.3 million credit.

Q You can ballpark it. I am not going to hold you exactly.

A I don't want to speculate.

Q Okay.

A Luckily, I have got benefits folks that do that every year, and I am not close enough to have memorized it.

Q If it's easily found, I would be interested to know the number.

A I am not sure which one of the interrogatories on pension actually has it.

Q I tell you what, if counsel will agree, I can just have it read into the record at a subsequent point, if it's in the record. Her testimony is in the record. She doesn't know where to find it, if that's okay.

A It's not in my testimony. It's in interrogatory responses.

Q And that's part the record, I assume?

A Oh, okay.

MR. BAKER: I would think so. I will --

CHAIRMAN FAY: Do you have any objection? I mean, it's already -- that response would already be part of the record. I am sorry, Mr. Moyle, are you just asking to verify that that number is in the record?

MR. MOYLE: Yeah, and just tell us what the number is, you know, if they know where it is.

CHAIRMAN FAY: Well, I think Ms. Slattery would be the witness to provide that. So, Ms. Slattery, if you can find that for us so that we can have that within the record, and we can give you a minute to do so. And if not, it seems like counsel for the utility would allow that to be placed in, or recognized, I guess, in the record at some point so you could utilize it in a brief or post-hearing.

THE WITNESS: Okay.

CHAIRMAN FAY: No pressure, Ms. Slattery. Don't worry, we are --

THE WITNESS: I have this very large notebook of discovery.

MS. CRAWFORD: Mr. Chairman, just for clarity, Mr. Moyle, do you happen to know the number, or you are asking the witness to provide it?

MR. MOYLE: I am asking the witness.

MS. CRAWFORD: Thank you.

THE WITNESS: Okay. I have -- I do have some discovery. This was in response to FEA's 2nd Request for Production of Documents, Request No. 12, regarding the pension asset. And it shows that the return on asset is 7.35 percent.

BY MR. MOYLE:

Q And what is the amount paid pursuant to the pension?

A Paid to a retiree?

Q Well, there is a surplus -- there is a surplus

that earns 7.35 percent, and you said there is a credit going back to customers. So that would tell me that the amount paid out pursuant to the pension plan was less than 7.35 percent?

A I don't think it works that way. It's not that -- it's not a netting.

Q Okay. The last -- the last thing I just want to understand and have on the record is that you said that there is -- FPL led the way by transitioning out of a traditional pension plan.

A Uh-huh. Yes.

Q My understanding of a traditional pension plan, I will try to repeat it for brevity, but it's essentially when you retire, you get a set payment for the rest of your life, is that right?

A That's correct. A traditional final average pay pension plan was based on accruing a benefit based on age and years of service that would produce either a single-life annuity or a joint survivor annuity for the rest of your life based on retirement. That is not the type of plan that FPL, and now FCG, has had since 1997.

Instead, we have a cash balance style plan where, for the first five years of employment -- well, for the first year of employment, there is no eligibility. After the first year of employment, it's a

4.5 percent of salary crediting, which goes up to six percent of salary after five years of employment. So it's -- we call this a career averaging plan because it's not based on age and years of service.

Q Then how do you determine the benefit?

A That's how the benefit is determined, the way I described. It's basically a percentage of salary that accrues in a cash balance style account that then earns interest credit on the amount that's been accrued from prior years, in between the service credit each year and the interest credit from prior years. An account balance that looks and feels like a lump sum. It's a lumping sum of cash accrues. And upon retirement, the employee can have that converted into an annuity or take it as a lump sum.

Q But the employee can't have it paid out, and say, I think I am going to live for 30 years, pay me out --

A No, they can.

Q -- one-thirtieth for the next 30 years?

A They can, yes. So when the employee retires and wants to take a pension, the choices are lump sum payment, single life annuity payment over the rest of the retiree's life, or joint survivor annuity payment with 50 percent rights for the survivor, joint survivor

100 percent right for the survivor, it's actuarially calculated what the amount would be.

But in general, because this is a career average plan, and not a final average pension plan based on age and years of service, it is -- it is benchmarking lower in value to the employee than a traditional final average pay pension plan would, meaning it's worth less, and, you know, that has been beneficial to customers, because our pension asset more than covers those service credits and credits that are accruing each year.

Q Okay. And everything you described, that also applies to FPL, correct?

A That's correct.

Q Okay. Well, thank you for the information. I appreciate it.

MR. MOYLE: I don't have any further questions.

CHAIRMAN FAY: Okay. Thank you, Mr. Moyle.

All right. Redirect? Oh, excuse me, staff, I apologize.

MR. JONES: Staff has no questions.

CHAIRMAN FAY: Okay. Commissioners? No.

Okay. Now Mr. Baker, redirect.

MR. BAKER: We have no redirect for Ms. Slattery.

CHAIRMAN FAY: Okay. With that, Mr. Baker, we have 131 and 132 --

MR. BAKER: Correct.

CHAIRMAN FAY: -- on the comprehensive exhibit list. Okay. We will enter those into the record without objection. Showing no objection, 131 and 132 are entered into the record.

(Whereupon, Exhibit Nos. 131-132 were received into evidence.)

CHAIRMAN FAY: No cross exhibits.

With that, Mr. Baker?

MR. BAKER: If we may excuse Ms. Slattery.

CHAIRMAN FAY: We will. Ms. Slattery, I will say, as an undergrad in FSU law alumni, thank you for being here. I didn't want to bias the testimony. I wanted to wait until after it was done.

THE WITNESS: Thank you. I did notice that in your bio that we have that in common.

CHAIRMAN FAY: Yeah. Safe travels. Thank you for your testimony.

THE WITNESS: Thank you.

(Witness excused.)

(Transcript continues in sequence in Volume 6.)

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 3rd day of January, 2023.

DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024