

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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In the Matter of :
:
Joint petition for :
determination of need for an :
electrical power plant in :
Volusia County by the :
Utilities Commission, City of :
New Smyrna Beach, Florida, and :
Duke Energy New Smyrna Beach :
Power Company Ltd., L.L.P. :

DOCKET NO. 981042-EM



VOLUME 11

Pages 1421 through 1543

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
Video Teleconferencing from Miami
COMMISSIONER E. LEON JACOBS, JR.

DATE: Friday, December 11, 1998

TIME: Commenced at 8:15 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Florida Public Service Commission
Chief, Bureau of Reporting
(904) 413-6732

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER - DATE
14705 DEC 30 8
FPSC-RECORDS/REPORTING

I N D E X

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P R O C E E D I N G S

(Hearing reconvened at 2:30 p.m.)

(Transcript follows in sequence from
Volume 10.)

CHAIRMAN JOHNSON: Florida Power Corp.

MR. SASSO: We call Vincent M. Dolan.

- - - - -

VINCENT M. DOLAN

was called as a witness on behalf of Florida Power
Corporation and, having been duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. SASSO:

Q Mr. Dolan, could you state your name for the
record and your business address?

A Vincent M. Dolan, 100 Central Avenue,
St. Petersburg, Florida 33701.

Q By whom are you employed and what's your
position?

A Florida Power Corporation, and I'm the
Director of Corporate and Regulatory Strategy.

Q Do you have before you a document entitled
"Direct Testimony of Vincent M. Dolan" as corrected?

A Yes, I do.

Q And does it include your direct testimony

1 for this hearing?

2 **A** Yes, it does.

3 **Q** If you were asked the questions contained in
4 that prepared testimony, would you provide the same
5 answers today?

6 **A** Yes.

7 **Q** Do you adopt your prefiled testimony as part
8 of your testimony here today?

9 **A** Yes.

10 **MR. SASSO:** Madam Chairman, we would ask
11 that Mr. Dolan's prepared testimony, as corrected, be
12 entered into the record as though read.

13 **CHAIRMAN JOHNSON:** It will be so inserted.

14 **Q** **(By Mr. Sasso)** Mr. Dolan, have you
15 included two exhibits to your testimony, VMD-1 and
16 VMD-2?

17 **A** Yes, I have.

18 **MR. SASSO:** Madam Chairman, we ask those be
19 marked for identification. I would point out they
20 were filed with the original form of the prefiled
21 testimony but they are not included in the corrected
22 text.

23 **CHAIRMAN JOHNSON:** It will be identified --
24 be marked 36, composite exhibit DM-1, DM-2.

25 **MR. SASSO:** I'm sorry, it was VMD.

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CHAIRMAN JOHNSON: I'm sorry. VMD-1, VMD-2.

(Composite Exhibit 36 marked for
identification.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for)
Determination of Need for an)
Electrical Power Plant in Volusia)
County by the Utilities Commission,)
City of New Smyrna Beach, Florida,)
and Duke Energy New Smyrna Beach)
Power Company Ltd., L.L.P.)
_____)

DOCKET NO. 981042-EM

October 12, 1998

DIRECT TESTIMONY

OF

VINCENT M. DOLAN

ON BEHALF OF

FLORIDA POWER CORPORATION

Corrected

DOCUMENT NUMBER-DATE
13676 DEC-4 88
FPSC-RECORDS/REPORTING

IN RE: JOINT PETITION FOR DETERMINATION OF NEED
FOR AN ELECTRICAL POWER PLANT IN VOLUSIA COUNTY
BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA
BEACH, FLORIDA AND DUKE ENERGY NEW SMYRNA BEACH
POWER COMPANY LTD., L.L.P.
DOCKET NO. 981042-EM

DIRECT TESTIMONY OF VINCENT M. DOLAN

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

2 A My name is Vincent M. Dolan, and my business address is 100 Central Avenue, St.
3 Petersburg, Florida, 33701.

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

5 A I am the Director of Corporate and Regulatory Strategy for Florida Power Corporation
6 (FPC).

7 **Q What are your duties and responsibilities in that position?**

8 A My responsibilities include dealing with strategic planning and policy issues of
9 significance to FPC. These issues include existing and emerging policy issues for the
10 electric utility industry, including industry restructuring trends in other states and at
11 the Federal level. In addition, my responsibilities include dealing with the full range
12 of regulatory policy issues before the Florida Public Service Commission (the
13 Commission).

14 **Q Please summarize your educational background and employment experience.**

1 generally and discusses the impropriety of resolving those issues directly or by
2 implication in the context of this proceeding.

3 **Q Please summarize your testimony.**

4 **A** Granting the Joint Petition would constitute a complete about-face from the prevailing
5 approach in this State to evaluating, planning, and siting new generation capacity and
6 would require legislative authorization and direction. The Commission is not in a
7 position to address these issues now. Although ostensibly limited to one plant, this
8 case is the tip of the iceberg for merchant plant issues in this State. The Joint Petition
9 calls upon the Commission to change the ground rules for developing new generation
10 capacity in Florida. Yet, the Commission has neither the time nor the resources in this
11 proceeding to address fully the important issues associated with such plants.

12 **INAPPROPRIATENESS OF GRANTING THE JOINT PETITION**

13 **Q From a policy standpoint, is the Commission in a position to pass on the Joint**
14 **Petition at this point in time?**

15 **A** No, it is not. The Joint Petition squarely presents the issue of whether the
16 Commission has the authority to make a determination of need for a merchant plant
17 and, if it has that authority, whether this is an appropriate thing to do. I will not
18 address at this time the Commission's lack of statutory authority to make such a
19 determination of need, which has been discussed in the legal submissions of FPC. The
20 mere fact that we are here today discussing the need petition for the first merchant

1 plant proposal in Florida should give us reason to pause and ask why merchant plants
2 do not currently exist in this State. That fact alone should cause us to stop this
3 proceeding, but perhaps we should discuss other compelling reasons why this is
4 neither the time nor the place for merchant plants to arrive in Florida. Even if one
5 were to imagine that the statutory authority exists, it is quite clear that to take that step
6 would, at a minimum, amount to a major re-working of the currently prevailing
7 regulatory understanding and approach in this State.

8 Recent history tells us that there is neither a critical need to address this issue
9 at this time, nor is the Commission, its Staff, or the Legislature interested in
10 overhauling a regulatory framework that has served the State and its citizens well for
11 over a hundred years. The Commission has already concluded that this issue has wide
12 ranging legal and policy implications, and in addition, the Staff has suggested the need
13 to monitor the developments of early-mover states towards competition, and recent
14 events, such as the recall petitions related to industry restructuring in both California
15 and Massachusetts — arguably the “bleeding edge” states on the competitive front —
16 offer important lessons regarding the need to use caution before deciding to overhaul a
17 system that offers safe, reliable, economic, and environmentally sound energy for all
18 the citizens of Florida.

19 **Q What are some of the relevant lessons one might extract when examining the**
20 **series of events that have transpired over the last few years in such states as**
21 **California and Massachusetts?**

1 A One might look at the states of California and Massachusetts and conclude, from a
2 narrow field of vision, that yes, due to recent legislative changes, new generation,
3 including merchant plants can be built by anyone who desires to enter that business.
4 A closer inspection would offer other critical insights as well. First, both California
5 and Massachusetts have fundamentally restructured their entire electric utility
6 industry, all the way through to the retail level. They are among those early-mover
7 states, almost all with the common characteristic of high electric prices (approximately
8 50% higher than Florida) who, primarily because of their high prices, decided to be
9 pioneers in the world of competition. In undertaking this review (which took in the
10 range of five years in California before legislation was adopted), these states looked at
11 all of the issues and their inter-relationships and impacts on all of the key stakeholders.
12 The point is they took the appropriate amount of time to examine the issues prior to
13 making such momentous changes to the electric industry in their respective states.
14 The range of issues they examined were many, most notably the structure of the
15 market including the applicability of an independent system operator (ISO) and a
16 power exchange, the siting and planning laws, rules for retail suppliers, the role of
17 public power/municipal electric suppliers, public interest programs, taxes, and
18 stranded costs of existing generating resources that were put in place with the
19 expressed approval of the utility commissions in those jurisdictions. Extensive
20 revisions were made to existing statutes and rules to transition to this new system
21 called electric competition. It was not a “piecemeal” approach dealing solely with
22 merchant generation that Duke has proposed for consideration by this Commission.

1 **Q What is the current status of competition in those states and what is the relevance**
2 **to this proceeding?**

3 **A It should be pointed out that as of this date there are pending in both states recall**
4 petitions to revisit key decisions made in establishing the new rules. In November, the
5 voters in both states will speak about whether they feel this new system is truly better
6 than the former model of utility regulation. In addition, the opening of the markets in
7 Massachusetts, as well as in some other New England states, has resulted, by some
8 estimates, in applications to build somewhere in the range of 20,000 MW of new
9 generating capacity, which if built would replace in excess of 50% of the embedded
10 generation (approximately 36,000 MW) in that region. To stop and examine this “free
11 for all” rush to build new capacity in this region, and the impact it might have on both
12 the environment and the integrity of the generation and transmission system, should
13 make us conclude at a minimum that this Duke proposal is not about a single plant at
14 all, but rather it is the “trojan horse” which would unleash unfettered construction of
15 new generating capacity in the State of Florida. Would this result be good or bad?
16 Reasonable people might disagree on the answer to that question, but those same
17 people would certainly agree that the impact of this type of power plant “gold rush”
18 would have broad impacts on all current and prospective market participants,
19 including the consumers we are here to serve, and those impacts deserve the
20 appropriate amount of discussion in the right forum before that type of change is
21 instituted. This narrow proceeding, supposedly about a 30 MW need that has given

1 birth to a 540 MW power plant proposal, is certainly not the appropriate proceeding to
2 take this up.

3 **Q Would a resolution of the important issues raised by the Joint Petition in this**
4 **limited proceeding be consistent with the position that the Commission or its**
5 **Staff has taken on these matters to date?**

6 **A** No, it would not. In late 1997, the Commission Staff conducted workshops that
7 recognized the novelty of the issues presented by merchant plant penetration in this
8 State, and these workshops were attended by representatives from far and wide. Many
9 important and difficult issues were discussed in these workshops. Thereafter, the full
10 Commission denied Duke's request for a declaratory statement.

11 At that time, the Commission said that granting the relief requested "would
12 carry implications for the electric power industry statewide," and it specifically
13 directed the Staff "to discuss with the Chairman appropriate proceedings to review law
14 and policy as to merchant plants being applicants for certificates of need." In
15 re: Petition for Declaratory Statement by Duke Energy New Smyrna Beach Power
16 Company, L.L.P. Concerning Eligibility to Obtain Determination of Need Pursuant to
17 Section 403.519, F.S., Rules 25-22.080 and .081, F.A.C., and Pertinent Provisions of
18 the Florida Electrical Power Plant Siting Act, Dkt. No. 971446-EU, Order No. PSC-
19 98-0078-FOF-EU (Jan. 13, 1998). This need petition filed by Duke Energy falls way
20 short of being the broad policy vehicle that the Commission requested the Staff to
21 return with for further discussion.

1 Also during the agenda conference, the Commission pointed out that the
2 Legislature had expressed a need for restraint in even considering opening the door to
3 merchant plant development in this State. See VMD-1 (letter from James A. Scott to
4 Hon. Julia Johnson) and VMD-2 (letter from Julia L. Johnson to Hon. Jim Scott).
5 This admonition is truly relevant, and consistent with the Commission's view, in the
6 fact that the Legislature recognizes that matters of such significance, such as the
7 introduction of merchant plants, can be contemplated only in a broad industry review,
8 which by necessity must result in legislative changes that would have significant
9 implications for many aspects of the current regulatory structure in Florida.

10 **Q Would it be fair or appropriate to view this proceeding as involving a single**
11 **project?**

12 **A**Not at all. It may be tempting to reason that the Joint Petition in this case involves a
13 single power plant, but the precedent that an affirmative decision in this docket would
14 create could not be so easily contained. No participant in this proceeding can state in
15 complete honesty that this case is about a single power plant. Since Duke has shown
16 no inclination to match plant size with the actual retail need of the Utilities
17 Commission of New Smyrna Beach, one wonders why they did not propose a 3,000
18 MW power plant site to serve this 30 MW need. And what of the other developers
19 that spoke at the merchant workshop? How long will they wait before proposing the
20 next 10,000 MW of plant additions to serve perhaps less than 500 MW of true retail
21 need? The Commission has in the past consistently determined need that is utility

1 specific and tied to retail load in order to avoid such gross mismatches of need and the
2 resources constructed to serve that need. What is at stake is no less than an attempt to
3 duplicate the bulk of the existing generating fleet in Florida and, as a result, to
4 restructure the regulatory framework in this State because of a perception on the part
5 of some that the time is right. Whatever one's views may be on that issue, there is a
6 right way and a wrong way to go about industry restructuring. Now is certainly not
7 the time for Florida to undertake a "piecemeal" approach to such important change as
8 the fundamental restructuring of the electric industry.

9 **Q Is there any compelling reason to consider introducing merchant plants into the**
10 **regulatory framework in Florida at this time?**

11 **A** No. In fact, one must also ask why merchant plants in Florida, and why now? The
12 utilities in this State, under the regulatory guidance of the Commission, have a long-
13 standing history of honoring their statutory obligation to serve, something that they
14 have done successfully for decades without the need for merchant plants. The fact that
15 merchant plants do not exist is, among other things, a reflection of the practical fact
16 that they are not needed. The Commission has no existing legislative or regulatory
17 context to determine how merchants would fit into an environment where they have
18 full regulatory oversight with the existing state-regulated utilities. Duke proposes to
19 play by an entirely different set of rules – rules that they propose should apply only to
20 them. And as a further insult to the Commission and the utilities in Florida it
21 regulates, Duke has opposed any attempt to include in these discussions the very

1 utilities that have consistently honored their obligation to serve the retail customers of
2 Florida. If the Commission is genuinely desirous of a new set of rules — and recent
3 events would suggest they are not — perhaps they should look no further than
4 California and Massachusetts to determine if the benefits of new rules will outweigh
5 the negative impacts, in particular the uneconomic duplication of facilities that were
6 put in place by mutual agreement of the utilities and the Commission to serve the
7 needs of retail customers.

8
9
10 **Q Do the federal laws and rules relating to wholesale competition preempt the State**
11 **from making the ultimate determination of whether, when, and how merchant**
12 **plants should be utilized?**

13 **A** No. In the vast majority of states that have addressed the issue of merchant plants,
14 resolution of the issue was not dictated by the impetus for wholesale competition.
15 Rather, merchants were dealt with in the context of a full review of laws and
16 regulations related to retail and wholesale energy supply in these states. The states
17 have taken the lead in addressing these issues; not the federal government. Federal
18 policy leaves these issues to the states. So it is clear that the Florida Public Service
19 Commission is not required by federal policy to grant Duke's petition.

20 **Q Does Duke provide sufficient assurances in its petition or testimony that**
21 **introducing merchant plants at this time will not have negative or unintended**
22 **consequences for the State?**

1 A Certainly not. Duke offers many empty promises in its petition to help the reliability
2 of Peninsular Florida. Given the fact that the Commission has no regulatory oversight
3 over wholesale merchant plants, what real assurances do the consumers of Florida
4 have that Duke, or any other merchant-plant developer, will consistently and
5 economically provide energy where and when it is needed? Duke will care less about
6 the health, safety, and environment of Florida than its own economic self-interest in
7 selling power to the highest bidder, whether in Florida or outside the State. If Duke
8 were truly interested in serving Florida consumers, why is the vast majority of the
9 proposed capacity remaining uncommitted? If it were truly a good deal for Florida,
10 contracts would already be in place for the plant's full capacity. The fact that the
11 capacity is not under contract should be another indication that the need does not exist.

12 It is ironic that in a state where Duke's parent company sells retail electric
13 service — South Carolina — Duke urged the state's public service commission to
14 address "fundamental changes to the industry . . . in an orderly and responsible
15 manner," arguing that the commission should take "sufficient time" to evaluate all
16 important data, the experience from other states, and other relevant considerations
17 because "[a] poorly managed transition could have a deleterious effect on South
18 Carolina's electric consumers." Electric Industry Restructuring Plan of Duke Energy
19 Corporation d/b/a Duke Power, at 4 (June 30, 1997). The consumers of this State, and
20 those who have served them for many decades, are no less deserving of deliberation
21 and care in any restructuring effort.

1 **Q Can you identify some of the issues that the Commission would need to address in**
2 **a deliberative manner before opening the door to merchant plants in this State?**

3 **A Yes. There are many, and it is impossible to identify all the issues that may emerge in**
4 **this difficult area without the benefit of full and open discussion among all interested**
5 **parties in an appropriate forum. But to name some that come readily to mind:**

6 (1) The Commission would have to consider how it could meet its statutory
7 obligation to ensure that adequate generation capacity exists by relying upon providers
8 that have no obligation to serve and cannot be made subject to one.

9 (2) Since merchant plants would have no obligation to serve, how would the
10 Commission deal with a merchant that changes its plans to build capacity after a need
11 determination is made?

12 (3) Should merchants alter their plans to build, who would bear the consequences of
13 the resulting shortfalls in available capacity? The utilities? The consumers? The
14 Commission?

15 (4) What would be the consequence if a merchant plant were to sell its power to
16 others than those with the "supposed" reliability need?

17 (5) If the Commission attempts to address issues of need on a state-wide basis, what
18 methodology would be used to determine the appropriate amount of need, and what
19 process will be established to assure that the option chosen is the best one, weighing
20 all of the possibilities on the supply and demand side?

1 (6) Can the Commission permit the construction of new merchant plants that may
2 render existing plants redundant in view of its statutory mandate to avoid “further
3 uneconomic duplication of generating . . . facilities?” Section 366.04(5), Fla. Stats.

4 (7) What externalities are associated with merchant plants, and what would be their
5 impact on the electric industry in Florida, the consumers, and the environment?

6 (8) Where would the Commission draw the line? At one plant? Two? Ten?
7 Twenty?

8 **Q Even if the Commission were so inclined, could these issues be addressed**
9 **adequately in this proceeding?**

10 **A** Absolutely not, for many reasons. For statutory reasons and by virtue of the
11 Commission’s own time constraints, this proceeding is on a fast track, and the
12 Commission has precious little time to devote to it. This is the worst possible manner
13 to review and resolve policy issues of this magnitude.

14 In addition, even if the Commission were able to take the time to study these
15 issues, this forum is not conducive to a resolution of the issues. This is an
16 adjudicatory proceeding, not a broad policymaking proceeding.

17 **Q Does the current regulatory approach provide the Commission with sufficient**
18 **tools to address concerns it may have about generation capacity in Florida?**

1 **A** Yes, it does. The current regulatory approach has served this State well for many
2 years and has resulted in an electric industry in Florida that continues to provide
3 affordable and reliable electric supply, while balancing the standards of health, safety,
4 and the environment. We are in a state that has always taken a measured approach to
5 solving issues that are critical to providing essential electric service to the residents of
6 Florida, and we should continue that approach on the issues that bring us here today.

7 FPC acknowledges its utility obligation to provide adequate and reliable power
8 to the consumers in its service territory and fully intends to continue to fulfill that
9 obligation. The Florida law and the Commission's regulations sanction the obligation
10 of the State's utilities to serve the State's electric consumers adequately and reliably.

11 If during the annual review of the utilities' 10-year site plans filed with the
12 Commission, the Commission determines that all or part of the utilities' plans require
13 further discussion, remedies exist to ensure that the Commission is satisfied that the
14 plans adequately address the issues of capacity and reliability. One such remedy is not
15 merchant plants, a "wild card" proposal that would have far reaching implications that
16 require careful consideration in a proceeding much broader than the current one
17 initiated by Duke Energy.

18 **Q** **Does this conclude your testimony?**

19 **A** Yes, it does.

20
21

1 Q (By Mr. Sasso) Mr. Dolan, would you please
2 summarize your testimony?

3 A Yes, I will.

4 Madam Chairman and Commissioners, good
5 afternoon. I appreciate the opportunity to come today
6 and speak on these important issues on behalf of
7 Florida Power Corporation.

8 As I said earlier, I'm the Director of
9 Corporate Regulatory Strategy for Florida Power, and
10 my responsibilities include dealing with strategic
11 planning and policy issues of significance to the
12 company. These issues include existing and emerging
13 policy issues for the electric industry, including
14 industry restructuring trends in other states and at
15 the federal level, and dealing with the full range of
16 policy issues before this Commission.

17 I have filed testimony in this case in
18 opposition to the Joint Petition for Determination of
19 Need.

20 I start with the fact that merchant plants,
21 like the one proposed by Duke New Smyrna, are not
22 being sited in this state today. I defer to our legal
23 counsel for a full discussion of the legal issues, but
24 from a policy standpoint, it is clear that Duke has
25 called upon this Commission to change the way we now

1 operate in Florida. This is significant because even
2 if the current policy permitted the Commission to
3 grant the joint petition, there are no clear
4 guidelines on how merchant plants fit into the
5 existing frame work in this state, and how this
6 decision might impact the existing policies and rules
7 of this Commission.

8 Duke's witnesses have argued, or implied,
9 that a change in federal policy somehow requires this
10 Commission to allow Duke to have its way. This views
11 the matter backwards. The fact is, a limited number
12 of states, on their own initiative, are addressing the
13 issue of merchant plants and industry restructuring
14 more broadly in different ways at different times.
15 Federal policy does not dictate that this Commission
16 must change its traditional approach to determining
17 the existence of a public need for new generating
18 capacity within the state. Whether and how to site
19 merchant plants within Florida is within the state's
20 prerogative.

21 In Florida, the traditional regulatory
22 framework has functioned well for many years and we
23 should not lightly abandon it at the invitation of an
24 enterprising developer who has no mandate to protect
25 the public interest of the citizens of this state.

1 Even if the Commission thought there was merit to
2 introducing merchant plants in Florida, there is a
3 right way and a wrong way to address this issue.

4 We must begin by making sure that
5 legislative authority exists. We believe that it does
6 not, and that any debate of the policy issues must,
7 therefore, begin in the state legislature. We're not
8 alone in this view. When Duke last asked this
9 Commission to say that it had standing to file a need
10 petition, Senator James Scott, Chairman of the
11 Regulated Industries Committee of the Florida Senate
12 wrote to the Honorable Julia Johnson and stated the
13 following, and I quote: "When the Florida Electrical
14 Power Plant Siting Act was enacted during the 1970s no
15 one contemplated the possibility that might some day
16 apply to electric companies that do not serve retail
17 customers in Florida.

18 Without judging the merits of the specific
19 petition before the Commission, I believe that a
20 policy decision of this magnitude should not be made
21 without a full and complete hearing by the
22 legislature."

23 Even if the Commission had the statutory
24 authority to take the significant --

25 **COMMISSIONER GARCIA:** Excuse me. Forgive

1 me. You were quoting from whose letter? Senator
2 Scott's?

3 **WITNESS DOLAN:** Senator Scott's letter.

4 **COMMISSIONER GARCIA:** Okay.

5 **A** (Witness continuing) Even if the Commission
6 had the statutory authority to take the significant
7 step of admitting merchant plants to the siting
8 process in this state, a proceeding like this one is
9 poorly suited to the consideration of the relevant
10 policy issues. Due to the serious time constraints
11 that have been imposed on this proceeding, all
12 interested stakeholders can barely begin to consider
13 whether, how and under what conditions it might make
14 sense to increase wholesale competition in this state.

15 It's really not possible here today to
16 identify all of the issues that may emerge in this
17 difficult decision, and their subsequent impact on the
18 customers, shareholders and citizens of Florida
19 without the benefit of a full and open discussion
20 among all of the stakeholders in the appropriate form.
21 Let me take a minute to mention some of the policy
22 issues that I think deserve our consideration.

23 **First.** The Commission would have to
24 consider how it could meet its statutory obligation to
25 ensure that adequate generation capacity exists by

1 relying upon providers that have no obligation to
2 serve and cannot be made subject to one.

3 Second. Since merchant plants would have no
4 obligation to serve, how would the Commission deal
5 with a merchant plant that changes its plans to build
6 capacity after a need determination is made?

7 Third. Should merchants alter their plans
8 to build, who would bear the consequences of the
9 resulting shortfalls in available capacity, the
10 utilities? The consumers? Or the Commission? And
11 what would be the consequence if a merchant plant were
12 to sell its power to others than those with the
13 supposed reliability need? I think these last three
14 are particularly relevant.

15 If the Commission attempts to address issues
16 of need on a statewide basis, what methodology would
17 be used to determine the appropriate amount of need?
18 And what process will be established to assure that
19 the option chosen is the best one, weighing all of the
20 possibilities on both the supply and the demand side.

21 Can the Commission permit the construction
22 of new merchant plants that may render existing plants
23 redundant in view of its statutory mandate to avoid
24 further uneconomic duplication of generating
25 facilities?

1 The last two: What externalities are
2 associated with merchant plants? And what would be
3 their impact on the electric industry in Florida, the
4 consumers and the environment? And finally, where
5 would the Commission draw the line? One plant? Two?
6 Ten? Twenty?

7 Commissioners, these are just some of the
8 issues that need to be addressed in the appropriate
9 forum with full stakeholder participation. Absent
10 this discussion, and in addition for the reasons
11 discussed in all of our submissions, we respectfully
12 submit that the Commission should deny the Joint
13 Petition.

14 That concludes my summary remarks.

15 **MR. BUTLER:** Thank you, Mr. Dolan. We
16 tender Mr. Dolan for cross examination.

17 **MR. WRIGHT:** Thank you, Madam Chairman.

18 **CROSS EXAMINATION**

19 **BY MR. WRIGHT:**

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

21 **A** Good afternoon, Mr. Wright.

22 **Q** Just a couple of follow-ups on your summary
23 remarks.

24 You are testifying in opposition to the
25 joint petition in this case; is that correct?

1 A Yes.

2 Q Is that Florida Power's position, opposing
3 this power plant?

4 A Yes.

5 Q You made a remark that even if the Florida
6 Public Service Commission thought this proposal had
7 merit, the proposed New Smyrna Beach Power Project had
8 merit and would benefit the ratepayers of Florida,
9 they shouldn't act on it at this time. Is that an
10 accurate characterization of your testimony?

11 A No.

12 Q I remember you making a statement that
13 began, "Even if the Commission thought that this
14 project had merit," what came after that?

15 A I think what I said, Mr. Wright, was that if
16 the Commission believed that this project -- let me
17 step back. If they believe that merchant plants had
18 merit, and if we assume that what we're talking about
19 here, your plant is a merchant plant -- which we
20 should probably talk about what a merchant plant is at
21 some point -- but assuming that's what it is, if they
22 believe merchant plants generally had merit, then
23 there's a right way and a wrong way to approach the
24 issue of merchant plants. And my statement was I
25 don't believe this is the appropriate forum for that.

1 **COMMISSIONER GARCIA:** Let me ask you --
2 excuse me for a second, Schef. Let me ask you for a
3 second -- because Mr. Rib alluded to it, and I guess
4 you're alluding to it too -- should we open a docket
5 about competition in the wholesale market?

6 **WITNESS DOLAN:** Commissioner Garcia, I
7 certainly wouldn't want you to do that based on my
8 opinion solely, but I think if, in fact -- that is
9 certainly one of the avenues that the Commission could
10 pursue. There are others. And I think my point is I
11 don't think this is the right avenue, but certainly if
12 that's an avenue that you wanted to pursue, I would
13 not be troubled by that.

14 **COMMISSIONER GARCIA:** Let me ask you. You
15 mentioned something which intrigued me. You said this
16 is not the proper format. And then you said -- you
17 also said about when and where do we limit entry?
18 What if we limited entry to the point of where it
19 hurts you?

20 **WITNESS DOLAN:** I'm sorry, could you help me
21 a little bit more with that?

22 **COMMISSIONER GARCIA:** Let me put it this
23 way. Let's say we allow Duke Power to come to
24 Florida. We find that there is a need. And next week
25 Mr. Wright comes back with his client and says we want

1 another power plant. So we have another series of
2 hearings and we decide, you know, there's a need for
3 it. And then week after that Mr. Moyle shows up and
4 his clients want to build a thousand megawatts. And
5 they say there's a need. At that point you come to us
6 and say, "Commissioner, if you build these plants,
7 that means that two of our units that have not been
8 written down are going to be shut out and basically we
9 have a stranded investment of \$50 million," as an
10 example? And then we use that as a criteria. We said
11 well, there's no need, because clearly FPC has enough
12 generation to meet the needs that we have out there --
13 and when I say FPC, I refer to all of the utilities,
14 FPC, FPL, Gulf and the municipals in the state -- and
15 we don't allow that unit to come on. Would that be
16 sufficient for you?

17 **WITNESS DOLAN:** Well, I have -- first a no,
18 and then I would like to explain why.

19 **COMMISSIONER GARCIA:** Absolutely.

20 **WITNESS DOLAN:** First off, I think one --

21 **COMMISSIONER GARCIA:** Before you continue,
22 whoever is monitoring the camera, could you put it on
23 the witness, please? Because I'm looking at Schef,
24 and -- it's really doing nothing for the question.

25 (Laughter)

1 I'll wait until they shift the camera. Go
2 ahead and answer.

3 **WITNESS DOLAN:** Just so I recall what your
4 question was about, how to contain it.

5 I think that really is a very relevant
6 question that gets at the heart of a lot of what we
7 talked about both last week and this week.

8 What troubles me, I think, at the front is
9 we haven't established that. So one of the things
10 that bothers me is that we would make this decision
11 about a plant with really no policy and boundaries as
12 to what would come after that. There are certainly
13 ways to limit that, but I have not heard, in the
14 course of this proceeding, how we would propose to do
15 that. And I guess first and foremost, I must say that
16 troubles me. And you mentioned the issue of stranded
17 cost. I think that's a very relevant one for two
18 reasons. I think that --

19 **COMMISSIONER GARCIA:** Clearly you wouldn't
20 say that it's irrelevant in this issue on this case,
21 right?

22 **WITNESS DOLAN:** I think I would say that it
23 is relevant to this case. Yes, I would absolutely.
24 Let me explain.

25 **COMMISSIONER GARCIA:** Okay.

1 **WITNESS DOLAN:** I would start by saying that
2 I don't believe based on what I've heard over the
3 course of this hearing that this decision could
4 contain -- to be contained to one plant. That, I
5 think -- as an example, we heard from Dr. Nesbitt.
6 Dr. Nesbitt offered one hypothesis about the amount of
7 economic plant that could be added. I would submit to
8 you that if and when this state entertains retail
9 restructuring discussions, you will hear from multiple
10 Dr. Nesbitts about how much capacity should be added.

11 So first off, into take one --

12 **COMMISSIONER GARCIA:** Let me stop you right
13 there. Let's say we hear from multiple Dr. Nesbitts,
14 and, you know, what, I really -- I come to the
15 conclusion maybe philosophically they are right, so we
16 have multiple projects of plants. We get a billion
17 dollars of investment in Florida for generation.
18 Let's say the plant after that -- we have five plants
19 come into the state. The next one now starts really
20 getting into the issue of stranded investment. And so
21 I say, you know, I'm for the going to let you build
22 it, or I just say there's no need. We have enough
23 plants in Florida for meet the need, and I stop them
24 there. How does that affect you? When it comes to
25 affecting you -- when it affects someone in a negative

1 way in Florida, then I just -- the Commission's policy
2 comes into effect of not allowing the plant to be
3 built.

4 **WITNESS DOLAN:** Commissioner Garcia, I mean
5 this with all respect, I really would be concerned
6 that we could contain it. I have to say that first
7 and foremost. And if we can't, and I guess -- you
8 know, this was brought up last week -- and I think
9 it's very relevant for this Commission to consider.

10 I would submit to you that the New England
11 region did not behave according to an economic model.
12 We heard testimony. There are applications pending
13 for 33,000 megawatts of new capacity in New England.
14 (mike has distortion) -- my "Ps" I think -- excuse me
15 for that.

16 There are applications pending in New
17 England. The peak demand in New England is 25,000
18 megawatts. I don't believe that businesses and
19 marketers and developers behave rationally against an
20 economic model.

21 Now, that's playing out as we speak. That's
22 not a hypothetical example. That similar situation --
23 to the extent that we open the door, I think it would
24 be very difficult -- I have a lot of respect for this
25 Commission, that they would try to say the right

1 thing, but I think you would be putting yourself in a
2 very difficult position to contain this to a limited
3 number of plants given the evidence that I have heard
4 over the last four days of hearings. That would
5 concern me.

6 **COMMISSIONER GARCIA:** It strikes me that
7 this Commission could draw the line in terms of when
8 these plants have a negative impact on those that we
9 have a -- I guess a duty of some sort to deal with,
10 which is in your case your company, or when it strikes
11 at issues that are within this Commission's
12 jurisdiction.

13 Mr. Rib pointed out an interesting fact. I
14 doubt that any of you are considering building a
15 petroleum plant, an oil plant, in the near future.
16 But if we found we needed that mix, I could understand
17 and see this Commission turning to you, within the
18 powers we have, and saying go for it. We need this
19 plant. We have you build it. You do whatever it is.
20 You build a plant. It's a proceeding we have.
21 Because we're looking for that fuel mix.

22 But I guess the standard that strikes me is
23 one within what this Commission is responsible for and
24 that's several things. Is there a need? Is this
25 going to hurt the ratepayers? Is this going to hurt

1 the company? And is it going to hurt the state of
2 Florida? And as long as none of those people are
3 hurt -- because I'm not even interested if Schef's
4 client is hurt. I could care less if Mr. Wright
5 builds ten power plants that do not affect
6 reliability, that do not affect your shareholders, and
7 do not affect the ratepayers in a negative way. I
8 could care less. For all I care, he could go bankrupt
9 ten times over and invest in ten different plants.
10 That would be \$1.6 billion in the state of Florida.

11 Why would I care about that?

12 **WITNESS DOLAN:** Actually, I think that's an
13 excellent question. I think there are a number of
14 reasons why you should care.

15 I think there's probably four areas -- and
16 it's not limited to these, but I think these are four
17 relevant areas that ought to be considered.

18 First off is the environmental impact of
19 this decision. Second would be uneconomic duplication
20 of facilities that will ultimately have a impact
21 either in the short term or long term on stranded
22 costs. Third is a issue about taxes and the way the
23 Florida tax system works and how it may be altered.
24 And, fourth, I think we've talked a lot about
25 wholesale sales and the impact that that would have on

1 the ratepayers of Florida. Let me explore those a
2 little it, if that's of interest.

3 We're talking about major industrial power
4 plants. We're not talking about strip malls or
5 McDonalds, or a Checkers that we're going to prefab,
6 drop on a street corner and hook up a pipe and a wire
7 to serve power and water. These plants require major
8 commitments of resources: Land, water, fuel,
9 transmission, interconnections. All of these
10 resources have practical and physical limitations.
11 It's not just a simple matter to duplicate the system
12 we have in Florida today.

13 I mentioned the example about New England.
14 This is a real example. This gives me pause to sit
15 here and think, is that what we want for Florida? I
16 don't think so. It's not what I want. Those people
17 were well intentioned. They opened their markets in
18 New England. This is the result. Some people,
19 reasonable people, would disagree as to whether or not
20 that's a good result. I don't necessarily think it's
21 a good result what's happening up there. Did people
22 go into it with their eyes open? Were they well
23 intentioned? I think they were. That's the result.
24 We have a chance to think about that before we make
25 this decision. And I think we ought to think about

1 that.

2 Let me talk about this stranded cost issue.

3 **COMMISSIONER DEASON:** Hang on just a second.

4 And I know you're getting double-teamed here with
5 questions.

6 **WITNESS DOLAN:** That's quite all right.

7 **COMMISSIONER DEASON:** Your last point was
8 that we need to be cautious and think about it. Even
9 well intended people doesn't necessarily mean that
10 you're going to have a well conceived result. But my
11 question is, isn't there some risk associated with
12 that in the sense that if this is a good thing for
13 Florida, if this is a cost-effective alternative that
14 would provide cost-effective generation for Florida,
15 are we risking avoiding that or not taking advantage
16 of that while we go through this deliberative process?

17 **WITNESS DOLAN:** Commissioner Deason,
18 actually I think that's an excellent question. And
19 really my point in all of this -- Florida Power is not
20 here today to say that we think merchant plants are a
21 bad thing for Florida and ought not to be considered.
22 Our point is that I think we're going about it the
23 wrong way.

24 All of these policy implications that we've
25 talked about here today, I would submit to you, we've

1 really not spent the appropriate amount of time
2 considering them. I think we owe it to ourselves to
3 spend the proper time. And if, in fact -- and I'm
4 offering one opinion. There are a lot of other people
5 in the state that will offer their opinion as well. I
6 think certainly we would participate in that
7 discussion if, as Commissioner Garcia suggested, we
8 wanted to take up that docket. I think that's
9 certainly a relevant topic that we ought to consider.

10 My point is there's a right way and a wrong
11 way to do that. And I don't think we should ignore it
12 necessarily. But by the same token, I think before we
13 start down that path we should ask ourselves what the
14 problem is that we're trying to fix. I'm not
15 necessarily sure based on what I've heard in this
16 hearing what it is, the problem is that we're trying
17 to fix. I've heard about economic opportunity. A lot
18 of the concerns that Staff has raised with us through
19 the Ten Year Site Plan and other forums is more about
20 reliability. It's not about economic opportunity. So
21 I think we need to be clear what it is we're trying to
22 fix here on the front end. And if you believe that
23 you'd like to pursue merchant plants, I will tell you
24 that we will certainly show up to have that
25 discussion. I think that's a very relevant topic.

1 So if I can continue on stranded cost, I
2 think there's something important there, and I think
3 Commissioner Garcia has asked repeatedly how that
4 might harm our company.

5 I think there's two things that could happen
6 both in the short term and long term. We have
7 investors in our company the same way that a merchant
8 developer would have in their company. Those
9 investors made decisions to invest in our company
10 based on their understanding of the regulatory
11 environment that exists in Florida today. To the
12 extent this wild card comes in, and others like it
13 come in, and market prices go down, the value of the
14 existing assets they have invested in will be changed
15 and they will be of less value than what they
16 currently are.

17 **COMMISSIONER GARCIA:** Wouldn't that be true
18 if tomorrow I announced -- you know, I announced that
19 I wanted to have a workshop on retail competition in
20 Florida. You don't think your stock prices would be
21 affected?

22 **WITNESS DOLAN:** Commissioner Garcia, I would
23 say that possibility exists. But, certainly, if I was
24 an investor in Florida Progress, I would feel
25 differently about entering into a discussion about

1 what may happen in the future than dealing with a
2 decision on a retroactive basis.

3 **COMMISSIONER GARCIA:** Okay.

4 **WITNESS DOLAN:** Now, as far as the long term
5 on stranded cost, I think there's other risks. There
6 are a number of states that have moved to competition.
7 A lot of reasonable people would argue about whether
8 and when Florida is going to get to that point. I
9 think at some point we will. Whether it's next year
10 or two years or five years is probably for a number of
11 other different people to decide other than myself.

12 But I will tell you I'm aware of a number of
13 states, most recently the state of Pennsylvania, that
14 did not allow 100% stranded cost recovery. So to the
15 extent merchants come in and there's a resulting
16 higher stranded cost associated with existing assets,
17 and to the extent that utilities don't recover 100% of
18 that stranded cost, then I would submit to you that
19 our shareholders are at risk for that. And that's not
20 the understanding that they have today. Unless -- and
21 my understanding that the way the process works in
22 these other jurisdictions, both the legislature and
23 the Commission will have something to say about
24 stranded cost recovery. And unless we're saying here
25 today that Florida Power or Florida Progress's

1 shareholders are assured 100% stranded cost recovery
2 for every increase above the current level based on
3 this decision, then I think our shareholders are at
4 risk. So I would submit to you that's a very
5 important issue we ought to consider.

6 Another issue I mentioned --

7 **COMMISSIONER GARCIA:** But I'm sure Florida
8 Progress is very pleased, as well as all of the
9 companies, that we're allowing you to amortize things,
10 write them off, because we think we're headed to this
11 competitive future. Better to get it in the books
12 now -- get off the books now than have to do it later,
13 correct?

14 **WITNESS DOLAN:** I'm sorry,
15 Commissioner Garcia, I was having trouble hearing your
16 question.

17 **COMMISSIONER GARCIA:** You think -- you
18 obviously realize, I think, we're being relatively
19 generous when we, as a Commission, in terms of writing
20 off things, allowing you to book them and trying to
21 get things written down, we've got a relatively
22 progressive policy in that area, wouldn't you think?

23 **WITNESS DOLAN:** I'm actually -- quite
24 frankly, I'm not that familiar with that particular
25 area. But I would submit to you that yes, I mean, I

1 think certainly we try to work together with the
2 Commission to deal with those types of issues.

3 **COMMISSIONER GARCIA:** And a standard like
4 the one I expressed, we would allow if we saw a need
5 generation to occur as long as none of the parties in
6 our state would be affected in a negative way?

7 **WITNESS DOLAN:** I'm sorry. The volume went
8 down. I'm really having trouble hearing your
9 question.

10 **COMMISSIONER GARCIA:** I think we're having
11 some kind of problem with the audio because I'm
12 getting a feedback here.

13 **WITNESS DOLAN:** That's better. Could I get
14 you to repeat that?

15 **COMMISSIONER GARCIA:** What if this
16 Commission stated a standard and the standard was that
17 as long as we found that there was a need, that the
18 person was an applicant, and that that applicant --
19 that power, by being sold or produced in this state,
20 did not impact our regulated utilities or our
21 ratepayers in a negative way, we allowed it to come
22 in.

23 **WITNESS DOLAN:** The way I would answer that
24 question is I think based on your premise I would tend
25 to agree with that. What I think I said earlier is I

1 would -- I really struggle with our -- the ability to
2 contain it in a way that you just described.

3 **COMMISSIONER GARCIA:** Okay.

4 **COMMISSIONER CLARK:** Mr. Dolan, while you
5 have been interrupted, you said that the situation in
6 New England is an example of what not to do. And I'm
7 not sure I understood the explanation. There's more
8 capacity available than they need.

9 **WITNESS DOLAN:** Commissioner Clark, my
10 understanding of New England, and I think Dr. Nesbitt
11 mentioned this as well, the peak demand in New England
12 is approximately 25,000 megawatts normal peak. There
13 are applications pending to build 33,000 megawatts of
14 new generation in the New England region.

15 My point was that -- I think my main point
16 there was that is obviously going to have an impact on
17 the environment in New England. And I think if
18 knowing that that's happening up there, I think that's
19 something that we ought to consider. You know, to the
20 extent that we open the door and not have a way to
21 contain new generation capacity being built in
22 Florida, I don't necessarily agree with that. Just --
23 Dr. Nesbitt suggested his model would predict 5400
24 megawatts. My suggestion is I don't believe that
25 businesses behave against an economic model. So the

1 fact is people could build twice that or three times
2 that or four times that in the state of Florida and
3 that would be something I think we should give some
4 consideration to before we make this decision.

5 **COMMISSIONER CLARK:** You were saying that
6 it's 25,000 megawatts of peak power in the aggregate.

7 **WITNESS DOLAN:** Yes, ma'am.

8 **COMMISSIONER CLARK:** And how much existing
9 power is there?

10 **WITNESS DOLAN:** Installed capacity?

11 **COMMISSIONER CLARK:** Yes.

12 **WITNESS DOLAN:** I think they are somewhat
13 higher than that. I'm not certain of this but I think
14 it's over 30,000. Probably around 35,000. And I
15 don't know that as a fact. I think that's
16 approximate.

17 **COMMISSIONER CLARK:** So assuming all those
18 plants were built, there would be 63,000 megawatts
19 available to serve 25,000 megawatts of demand?

20 **WITNESS DOLAN:** There would be the existing
21 capacity -- now, that assumes that the existing
22 capacity is not shut down or retired or something
23 else. But assuming it all stayed available, that's
24 how much the installed capacity would be.

25 **COMMISSIONER CLARK:** And your point is being

1 while Mr. -- Dr. Nesbitt's model would predict it's
2 not rational for anyone to come in and build beyond
3 that 5400 in Florida, what has happened in New England
4 would lead you to believe that you can't contain -- it
5 will not self-contain. That it will be -- it will act
6 irrationally and there will be far in excess -- power
7 far in in excess of that which is needed built.

8 **WITNESS DOLAN:** That would be one of my
9 concerns, Commissioner Clark.

10 **COMMISSIONER CLARK:** And your concern with
11 this particular plant is not that the plant -- this
12 sole plant considered by itself would have that
13 impact? But we need to consider now where we draw
14 that line?

15 **WITNESS DOLAN:** If I could say that a little
16 bit differently what I would say is we should
17 consider, as a result of this decision, what other
18 possibilities exist beyond the single plant. I think
19 that would be the prudent thing to do, yes.

20 **CHAIRMAN JOHNSON:** Let met follow up on
21 that. You said there were applications pending but
22 they've not been approved?

23 **WITNESS DOLAN:** Commissioner Johnson, I'm
24 not certain about all of the capacity up there. There
25 have been a series of reports that have gone from

1 15,000 to 20,000 to 25, to 30 to now 33. So there's
2 obviously a tremendous amount of interest up in that
3 area. How much of that is approved, pending, planned,
4 I don't know. I don't know that.

5 **CHAIRMAN JOHNSON:** And are you aware of the
6 process that's being used to determine whether or not
7 the applications will be approved?

8 **WITNESS DOLAN:** I am not intimate with what
9 the new rules up there -- as far as siting and need
10 prescribed, they may be different from state to state.

11 **CHAIRMAN JOHNSON:** So the question I'm going
12 to ask you is somewhat -- calls for some speculation,
13 but I'm assuming that there's some process that they
14 have to go through, through the Utility Commission or
15 Commissions?

16 **WITNESS DOLAN:** I don't know that I would
17 assume that.

18 **CHAIRMAN JOHNSON:** Really.

19 **WITNESS DOLAN:** It would seem to me that if
20 it's an open market in New England -- and most of the
21 New England states have gone through retail
22 restructuring -- there may be some environmental
23 aspects to the permitting. But in terms of the need,
24 it wouldn't be unreasonable to think that the need
25 certification is no longer an issue in New England

1 given the fact that it's a free market-type of
2 environment.

3 **CHAIRMAN JOHNSON:** You're not sure or are
4 you sure -- is there a need kind -- any kind of a
5 regulatory process that takes place there or is it
6 just the environmental?

7 **WITNESS DOLAN:** I honestly don't know at
8 this point. I'd be happy to research that.

9 **COMMISSIONER CLARK:** I think that would be
10 beneficial. But I think, Commissioner Johnson, there
11 are a number of states that don't have the kind of
12 process we do.

13 **COMMISSIONER GARCIA:** Doesn't that give you
14 some feeling of safety that we do have this process?

15 **COMMISSIONER CLARK:** Are you talking to me?

16 **COMMISSIONER GARCIA:** No, no. I'm talking
17 to Mr. Dolan. We have issues and I feel very safe
18 with Florida.

19 **WITNESS DOLAN:** Actually, I think that's a
20 great question. I think that the system that exists
21 today in Florida I think works very well. And I think
22 that before we look for ways to change it, we ought to
23 ask ourselves what is the problem we're trying to fix.

24 **CHAIRMAN JOHNSON:** But even with respect to
25 the process we have in place, to the extent that we

1 determine we have the statutory authority to go
2 forward, we are still within this process saying that
3 it's not just an open market but there is a need
4 determination-type process that will be in place. So
5 unlike those New England states, which we're not sure
6 if they have this -- a step or any step, at least here
7 in Florida there's at least some regulatory oversight
8 unlike New England.

9 **WITNESS DOLAN:** I'd say yes, but I'd like to
10 offer a thought on that.

11 And, again, this is what I think is
12 something that we ought to consider in light of what
13 we've heard.

14 If we say we have regulatory oversight,
15 we're contemplating a decision on the backs of a
16 30-megawatt need, and the balance on the economics. I
17 don't think we very well established what that
18 economic need even means in this hearing, number one.
19 And number two, you know, it's not clear to me, based
20 on what I've heard, what the rational -- what would be
21 the -- on a going-forward basis, what would be the
22 process that we would use to determine as to whether
23 or not this plant is needed.

24 As I said in my testimony, and as was
25 actually talked about at the hearing last week, would

1 we be making the same decision if this was a
2 2,000-megawatt plant? We are -- since we're calling
3 five peaking plants an 875-megawatt plant, suppose we
4 had four of these and we called that a 2,000-megawatt
5 plant or a 3,000? That's -- I think we ought to be a
6 little bit concerned about how it is that we're
7 arriving at the decision and how we go forward from
8 here; if we're looking at the need and the way we're
9 proposing to look at it.

10 **CHAIRMAN JOHNSON:** I think that's a fair
11 statement. Let me make sure I understand. I know
12 that your company and Florida Power and Light would
13 argue that as we look at need in the context when
14 we're evaluating an application from your company, we
15 would look at it in terms of a utility-specific basis,
16 and here we're talking need generally or need in
17 Peninsular Florida.

18 So are you suggesting that if we -- and your
19 fear is that that's pretty ambiguous and that we open
20 the floodgate because we haven't defined it. To the
21 extent that we did have a delineation of what that
22 need meant -- maybe it means more than what it has
23 traditionally meant for you, but we defined what it
24 meant for Peninsular Florida. Would that provide you
25 with more comfort? I don't know how we do it yet.

1 **WITNESS DOLAN:** I would feel the same way as
2 what you just said. I struggle as to how we're going
3 to do that given what I've heard. Certainly that
4 would be better than the path we're currently heading
5 down. (Phone rings from video.) I think it would be
6 important to make sure that (Phone rings from video.)
7 everybody is playing by the same set of rules, and
8 that we understand what the rules are.

9 And I think what's troubling about this
10 particular proceeding, and the narrowness of it, is
11 we're talking about one situation and there are
12 probably a lot of other examples out there. So yes, I
13 think it would be important if we could find a way to
14 better define how you would make that determination,
15 that would certainly be better than the current option
16 that's in front of us today.

17 And, again, I worry as to how we would do
18 that. It's certainly possible -- and as I said
19 earlier, if the Commission saw fit that that was
20 something we needed to take up, I think that's worthy
21 of consideration. But I don't think we've done that
22 in the course of this hearing.

23 **CHAIRMAN JOHNSON:** I see. Thank you.

24 **COMMISSIONER JACOBS:** Mr. Dolan, do you
25 think that there is a nexus -- well, let me step back

1 for a moment.

2 It's my understanding that the prospect of
3 restructuring in the northeast has led to there being
4 a premium value being placed on the generating assets
5 that are in the ground there now. Is that your
6 understanding or do you differ in that view?

7 **WITNESS DOLAN:** Commissioner Jacobs, I think
8 there's a lot to that question. Let me try to address
9 it, if I could.

10 There are a number of different utilities
11 for different reasons, not just economics, that have
12 divested their generation in New England. You would
13 really have to look at each individual situation to
14 say with any certainty what their motivation was.
15 Looking at it on its face, some of their existing
16 assets were sold at a premium. In some situations I
17 think utilities were -- I don't want to use the word
18 "forced" but they were certainly encouraged to divest
19 generation in the context of dealing with stranded
20 cost. There were a number of different situations up
21 there that you'd have to examine carefully before you
22 really drew any absolute conclusions about any one
23 particular situation.

24 **COMMISSIONER JACOBS:** I agree. And my focus
25 is not so much on the stranded cost side of it. But

1 it would occur to me that if we followed the logic of
2 that, allowing too much new capacity into the market
3 is going to -- is going to be a detriment to existing
4 companies and their assets because there may be some
5 economic disincentives. It would appear to me that
6 would have been demonstrated in that market. I mean,
7 it would have appeared for me that those assets
8 wouldn't have been so valuable, have been going at a
9 premium if they did it all. How do you see that?

10 **WITNESS DOLAN:** Well, actually I think
11 that's a good question. And, quite frankly, time will
12 be the judge of that. There are a number of folks
13 that would argue both sides of that. And I will tell
14 you that I think it comes back to somewhat to what I
15 said earlier. Some folks moved in their early, paid
16 substantial premiums. The market is going to
17 determine -- well, let's take one example.

18 There was a company that moved in early and
19 bought some access at a substantial premium. When
20 that company modeled that market, I would wonder as to
21 whether or not they thought they would be in a
22 overbuild situation up there, and whether or not
23 that's the way they modeled how they were going to
24 attract value in the New England market.

25 So how people -- this is the whole point. I

1 mean, different business people make different
2 decisions for different reasons, and I don't know that
3 I would want to sit here and speculate what their
4 overall intentions are.

5 **COMMISSIONER JACOBS:** I understand. I
6 understand.

7 The other question is probably even more
8 speculative. I'm wondering to what extent you might
9 be aware of where the incumbent companies up there
10 have, through their subsidiaries, participating in
11 this -- these -- in the request to build the new
12 plants.

13 **WITNESS DOLAN:** That is possible. I really
14 am not intimate with those details, quite honestly.

15 **COMMISSIONER JACOBS:** Thank you.

16 **WITNESS DOLAN:** I don't think -- we started
17 on a question I don't think I finished. If I could --

18 **CHAIRMAN JOHNSON:** Go ahead. What was the
19 question?

20 **WITNESS DOLAN:** I think the question was
21 from Commissioner Garcia about some of the areas where
22 I would have some concerns. I had two other areas
23 that I wanted to try to address.

24 **COMMISSIONER GARCIA:** You hadn't finished
25 stranded cost, which was your second point, and taxes;

1 taxes and the wholesale market was number four.

2 **WITNESS DOLAN:** Thank you, Commissioner.

3 Yes, those were the other two that -- it's
4 been a while since we were on that one, so --.

5 I think the tax issue is one that we ought
6 to give some time to. The taxes -- this has been one
7 of the most controversial issues -- and, quite
8 frankly, to this day I'm not aware of a state that's
9 really dealt with it effectively. But when folks have
10 moved to restructuring -- we don't even need to talk
11 about it in terms of restructuring. Let's talk about
12 it in terms of context of this plant and others like
13 it.

14 I think we've heard arguments that plants
15 will ultimately be displaced and/or retired. Let's
16 take as an example that we have a number of these
17 plants enter in one community, and let's take Florida
18 Power's fleet as an example. Let's say in Citrus
19 County some of our units at Crystal River are shut
20 down. Those plants have a substantial impact on the
21 tax base in Citrus County, in the local community
22 there.

23 Now, I'm not here to say that we're here to
24 protect the interest of Citrus County. But what I
25 will say is there are a number of those folks that are

1 totally unaware of the potential impact that this
2 decision might have ultimately on their tax base. And
3 I think it would be important for them to understand
4 that as a potential impact of this decision. Because
5 if they find out after the fact, and ultimately they
6 lose existing revenue, I think they are going to have
7 something to say about that.

8 **COMMISSIONER GARCIA:** Mr. Dolan, you're sort
9 of giving me cause for great worry. Are you telling
10 me that some of the plants we're running in Citrus
11 County are insufficient?

12 **WITNESS DOLAN:** Commissioner Garcia, I
13 didn't mean to imply by that those would be the
14 particular plants that would be shut down.

15 **COMMISSIONER GARCIA:** Let's talk about a
16 particular plant. Are you saying that Florida Power
17 Corp has inefficient plants running?

18 If we assume -- part of what occurs here is
19 that efficient plants will displace inefficient
20 plants; that some of those plants would not run. And
21 so these inefficient plants that all of the ratepayers
22 are paying for would not run, and, therefore, they
23 would displace a certain amount of tax revenues that
24 enters Citrus County. Can you hear me? Because I'm
25 getting a feedback here.

1 **WITNESS DOLAN:** Yes, I can hear you.

2 **COMMISSIONER GARCIA:** So are you intimating
3 that FPC has inefficient plants running?

4 **WITNESS DOLAN:** I'm not sure that's a simple
5 question to answer.

6 I think we've heard -- let me try to answer
7 it this way if I can. We've heard arguments about the
8 relative economics of new plants. As a matter of
9 fact -- I mean, I don't dispute the arguments that
10 with new technology that there are plants that could
11 displace some of the existing plants at different
12 times during the year. I think that's a fair
13 argument. As a matter of fact, I think to the extent
14 that the Commission sees fit to allow us to build
15 Hines 2, I think there are times when that will
16 dispatch ahead of some of our existing fleet. But
17 that doesn't mistake how we get there. I mean, you
18 know, we have these plants. We have this system that
19 exists today. There are --

20 **COMMISSIONER GARCIA:** I understand. But you
21 don't think --

22 **WITNESS DOLAN:** If -- may I continue? Thank
23 you.

24 If we look at our system and we look at it
25 from a piecemeal basis and ask ourselves can we fix

1 this piece or that piece, I think we could have a
2 different discussion than if we looked at it as a
3 whole. And that's the system that exists today.

4 I think -- I would be troubled by the fact
5 that we go in and we take one example of one piece of
6 our system, our regulated system here in Florida. I
7 think we could make that argument about a number of
8 parts of our business. But there are a lot of things
9 that are interrelated, and that's why I think it would
10 be important that we understand those
11 interrelationships, and we make a decision with some
12 of those thoughts in mind, not just solely on the
13 basis of would we get some gratification at some point
14 in time from one plant -- you know, being there at a
15 particular moment in time.

16 **COMMISSIONER GARCIA:** Mr. Dolan, but that
17 tax argument is frightening for a lot of reasons.
18 It's frightening because I could see us not approving
19 FPL's cost cutting because it would affect the City of
20 Juno in a negative way since a lot of workers are in
21 Juno or it would affect Miami since FPL has a lot of
22 workers in Miami. And to think that because some of
23 your systems are not going to be paying in, there are
24 going to be others in another part of the state --
25 we're still going to need more megawatts. The state

1 is going to keep growing. Immediately you say the
2 Hines unit, yeah, that's going to do well for people
3 in that area. But, you know, I don't see the tax
4 issue as that centered.

5 **WITNESS DOLAN:** Let me try it a different
6 way, if I might.

7 And I think I said earlier -- and maybe it's
8 appropriate to say it again -- if there are tax
9 consequences to the local municipalities because new
10 plants are built that are needed, legitimately needed,
11 the chips will fall where they may. If we make a
12 decision here today -- let's assume for the moment
13 that the folks in these local municipalities are
14 operating under the same set of assumptions that I
15 think I'm operating under as how plants are sited and
16 needed in Florida today. And now we've changed the
17 rules. I would think that we would owe it to those
18 folks to make them aware of that change but it's
19 openly going to have an impact. And at the very
20 least, they can prepare for that impact. And that's,
21 in fact, the way states are dealing with it during
22 restructuring.

23 Some of the better ideas about dealing with
24 taxes, the one plan that I've seen that makes some
25 sense is in New Jersey, where they've given the local

1 municipalities a grace period of five years. But
2 after that they have to understand that they have to
3 deal with a different set of rules. These people have
4 no understanding that we're sitting here in
5 Tallahassee today contemplating a change in the rules
6 that may impact them.

7 **COMMISSIONER GARCIA:** Mr. Dolan, are you
8 telling me that the municipals and cooperatives of
9 this state are not aware that competition is coming?

10 **WITNESS DOLAN:** No, Commissioner Garcia,
11 that wasn't what I meant to imply by my last
12 statement. What I meant to imply by that was that I
13 don't believe they are aware that this particular
14 decision could lead to a number of plants that could
15 ultimately have a impact on their local tax base. And
16 I would think that if I was in their shoes, I would at
17 least like to know that. And I would rather deal with
18 that on the front end than to find out about it after
19 the fact. Because I think those are the types of
20 people that are likely to show up here in Tallahassee,
21 either at this Commission or over at the state
22 legislature, and voice their concerns. So I think
23 that's a stakeholder group that is going to be
24 impacted by this decision potentially.

25 **COMMISSIONER DEASON:** Mr. Dolan, how is that

1 any different from the situation we have now, or the
2 way the situation is supposed to work? That is, the
3 regulated utility has the responsibility to monitor
4 their current fleet of plants, monitor current fuel
5 prices, monitor changes in technology, and if they can
6 build a plant which lowers their overall cost of
7 providing service, even considering stranded
8 investment or whatever, they have a responsibility to
9 pursue those alternatives. And it could be that that
10 requires a plant in County X to be retired and a plant
11 in County Y to be built. That happens now. Why is it
12 that all of a sudden this change is going to bring
13 such drastic change that it's going to upset the way
14 taxes are collected at a local level?

15 **WITNESS DOLAN:** Commissioner Deason, I think
16 to the extent that we can contain it, as you
17 suggested, I think there's more of a steady pace on
18 how that might occur. I think what my concern is, as
19 I said earlier -- if we make a decision that's not
20 able to be contained, as we've seen played out in the
21 New England region, that would have a substantial
22 impact. That would change the dynamics rather
23 quickly. To say that that could not occur today,
24 that's not what I'm trying to say. I think it could
25 occur today. I think there's less of a likelihood.

1 **COMMISSIONER GARCIA:** Explain to me why
2 there's less of a likelihood? If you have a
3 responsibility to put on line the best, the most
4 efficient system, why is there less of a likelihood?
5 We're seeing that we're running on very tight margins.
6 We're not even sure that 15% is what we should be
7 looking at. We have possibilities of having shortfall
8 in the near future, and I contend to you, Mr. Dolan,
9 the reason we find ourselves in this position is
10 because people are preparing for that future. People
11 are worried about the future because they haven't
12 built plants; the municipals haven't, you haven't and
13 we're running tight. And now that we're getting a
14 little bit of clarity on the future, you're saying
15 wait a minute, the future belongs to the IOUs of
16 Florida. Because that might upset some system out
17 there.

18 I mean, I want you to turn off the plants
19 and don't work. I feel bad for the people of Citrus
20 County if they are affected, but that should have been
21 happening all along.

22 **WITNESS DOLAN:** And perhaps that will. But
23 I don't think that -- I think that we're mixing a
24 little bit of apples and oranges, if I might.

25 **COMMISSIONER GARCIA:** You threw in the

1 apples and the oranges. If tomorrow you put up the
2 Hines plant -- don't look surprised. You're the one
3 that brought in the tax issue. It hadn't even
4 occurred to me and now I realize why it didn't.

5 If tomorrow you put up -- you decide to
6 build the Hines plant and we shut down, we stop
7 dispatching a plant in Citrus County -- if the people
8 of Citrus County were aware of that and came to the
9 Commission, it should have no bearing on it. Your
10 responsibility is to put the least cost, most
11 efficient plant on line when you can to the benefit of
12 the general body of ratepayers in the state of
13 Florida, is it not?

14 **WITNESS DOLAN:** Yes, it is. Let me try to
15 answer your question this way if I can.

16 The distinction I'm trying to draw here is I
17 would submit to you that if you have boundaries and a
18 rational process on how to do this, maybe the ultimate
19 outcome might be more in the range of the number of
20 megawatts that was suggested earlier in the hearing.
21 But to me the possibility exists that won't be that.
22 And if we make a different decision and allow an
23 unlimited number of plants in, I would say that the
24 harm would be more -- certainly the harm would be more
25 at 30,000 megawatts than it would be at 5,000

1 megawatts. And to the --

2 **COMMISSIONER GARCIA:** Mr. Dolan, I contend
3 to you -- and I don't know what's going on in New
4 England; only from your expressions. But I contend to
5 you that they are not going to build 35,000 new
6 megawatts in a market that only receives 25,000. Wall
7 Street is crazy but it isn't that crazy. And the
8 truth is, people may be wanting to build plants but
9 I'll tell you what, only the least cost, most
10 efficient will be able to make a run of it in a
11 competitive market. The rest will either not be
12 built, or they will be built and shut down. But we're
13 not talking about doubling the system that currently
14 exists anyway.

15 **WITNESS DOLAN:** I guess -- all I can say is
16 time will be the judge of that particular issue.

17 The last issue that I wanted to address
18 on -- we don't need to go into this in detail since it
19 was addressed by Mr. Rib -- is just the example of how
20 the wholesale sales are exchanged in Florida today.

21 I think it's important to point out this is
22 not the reason to decide whether or not we want more
23 wholesale competition because we're trying to keep
24 merchants out or whatever. This is a result of -- we
25 have a particular system that first identifies need

1 that's utility-specific and based on retail customers.
2 And I think as a secondary issue, the Commission
3 looked at the current system and said "How can we
4 better optimize this system?" So they created the
5 broker system and they said essentially let's make the
6 best utilization of the existing assets that are
7 needed, and those benefits accrue to ratepayers. So
8 that's a by-product of the system we have today. If
9 that's something that is not -- if that's something
10 that is a casualty of this new decision, I just think
11 we ought to understand that going in. Whether or not
12 that's a good decision or not, I mean that's something
13 that remains to be seen.

14 **COMMISSIONER GARCIA:** Mr. Dolan, let me ask
15 you a question. Let's say the good people of the
16 state of Georgia decided to allow merchant plants to
17 be built. Let's further state that for this scenario
18 that we have very little transmission constraint; that
19 we've got a bunch of transmission lines that come down
20 from Georgia into Florida and there's relatively free
21 flow. So the progressive Commission of the state of
22 Georgia lets ten brand spanking new merchant plants go
23 up and be built in their state, would FPC have a way
24 of preventing that from being dispatched on the
25 wholesale market in our state? Would this Commission?

1 **WITNESS DOLAN:** No, I don't believe it
2 would.

3 **COMMISSIONER GARCIA:** Let's further say, if
4 that power is being sold on the wholesale market was
5 less than the imbedded cost of your plants, wouldn't
6 be you buying it instead of running some of your
7 plants? (Pause)

8 **WITNESS DOLAN:** Certainly that's a
9 possibility.

10 **COMMISSIONER GARCIA:** Tell me how it
11 wouldn't be a possibility? Tell me why this
12 Commission shouldn't be bothered that there is cheap
13 power available on the wholesale market and you're
14 running expensive plants?

15 **WITNESS DOLAN:** Well, I think where I would
16 start is to -- I struggle a little bit with your
17 example. Your example assumes that number one, that a
18 number of these merchant plants would be built at the
19 border to sell into Florida. And number two,
20 additional transmission will be built into the state
21 of Florida, if I understood your example.

22 **COMMISSIONER GARCIA:** Correct. I understand
23 that neither one of those may not be a possibility in
24 the real world, but we have been far astray of the
25 real world, and if you listen to some of Mr. Rib's

1 answers, you know, we have been in the merchant world
2 philosophically all day today and all day last Friday.
3 So that's not where I want to take you. I want to
4 take you to today's world with these two issues.

5 Georgia votes new merchant plants and
6 there's no transmission constraints. I know that's
7 not the reality. We don't have to face them. But the
8 truth is if -- they can sell on our wholesale market
9 and we couldn't stop them, correct?

10 **WITNESS DOLAN:** I believe that's correct,
11 yes.

12 **COMMISSIONER GARCIA:** My hope would be is if
13 that power was cheaper than it was costing you to
14 produce power through your more expensive plants, you
15 would be buying that cheap power rather than running
16 some of your expensive plants, correct?

17 **WITNESS DOLAN:** On an as-available basis, I
18 think that's probably correct, yes.

19 **COMMISSIONER GARCIA:** Okay. You don't worry
20 that -- I think Commissioner Deason stated it well.
21 You don't worry that we're missing an opportunity?

22 **WITNESS DOLAN:** Actually, I do worry about
23 that to some degree.

24 **COMMISSIONER GARCIA:** Okay. Let me
25 follow-up then, since I got you there. Let me ask you

1 about the Hines plant, and I think you're coming in
2 for that in the near future or something to that
3 effect, if I'm not mistaken, correct.

4 **WITNESS DOLAN:** Yes, we are.

5 **COMMISSIONER GARCIA:** Seeing as the fact
6 that we can't require you to buy from this plant, and
7 all that Duke would be able to do is come into that
8 RFP process and bid for some of the power you say
9 you're going to need on the Hines plant, but I don't
10 think their plant is going to come on line in terms of
11 when yours is -- they probably wouldn't be able to bid
12 for that. Don't you think it would be good for us to
13 have the Duke plant, a private merchant plant
14 running -- trying to make itself efficient in a state
15 where you may be building a similar type plant when
16 you build the Hines plant?

17 **WITNESS DOLAN:** Commissioner Garcia, if we
18 get to where you just suggested on the path that we're
19 currently on, then my answer would be no.

20 **COMMISSIONER GARCIA:** Tell me why.

21 **WITNESS DOLAN:** Well, I think that goes back
22 to what I had said earlier, that if we get there based
23 on a positive decision in this case -- which I think
24 would be the wrong decision -- then I think -- my
25 answer is no. I think that would not be a good thing

1 overall for a lot of the reasons that I just went
2 through.

3 **COMMISSIONER GARCIA:** Let me ask you, when
4 you build this Hines plant -- and I don't know -- I
5 guess you do and if don't want to say, that's fine,
6 because that's something that's yet to be filed with
7 this Commission -- but in today's world we shouldn't
8 be burdening the ratepayers with these plants, should
9 we?

10 **WITNESS DOLAN:** Well, actually I think
11 that's a good question. Let me try to answer that
12 this way, if I can.

13 **COMMISSIONER GARCIA:** Okay.

14 **WITNESS DOLAN:** I think one of the
15 assumptions that we -- that I'm not sure I'm
16 comfortable with -- is we keep saying that we're not
17 burdening the ratepayers with these plants. And I
18 guess I would submit to you that if Duke and other
19 merchants like them are suggesting that -- at the time
20 that they sell whether, it's as available or on a
21 contract basis, the ratepayers at that point in time
22 assume the burden of these plants. And if we're
23 suggesting that the capital cost of these plants are
24 not going to be a component of the prices that our
25 ratepayers pay at the time they make that purchase, I

1 have a hard time accepting that as a fact. So, in
2 fact, I think the ratepayers, whether they do it
3 contractually with us as a utility, whether they do it
4 contractually with a third-party developer or whether
5 they do it on an as-available basis, the ratepayers in
6 my opinion are going to pay the capital cost for that
7 plant as well the variable cost.

8 So I struggle with this concept that it's a
9 free plant and there's no risk to the ratepayers for
10 those reasons.

11 **COMMISSIONER GARCIA:** I struggle with the
12 problem that we're presented -- if you came in here
13 with a Hines plant -- and I don't know what you're
14 going to come in with -- but if you came in with the
15 Hines plant, and you said, "Commissioners, here is a
16 brand spanking new plant. You know what? It looks
17 just like the Duke you heard about, so we'll be able
18 to move quickly along in this proceeding because
19 you've heard all about that, and this one is similar.
20 The only difference is I need 30 years to pay this one
21 off." You don't think that there's a problem there,
22 if the market will bear -- I agree with your concept
23 that the ratepayers are going to pay for it anyway. I
24 agree. But one of them is financing for some time and
25 having the stranded costs that we'll have to address

1 later on. The other one is simply letting the market
2 provide for it now and in the future, and if it goes
3 up, it goes up; if it goes down, it goes down.

4 **WITNESS DOLAN:** Commissioner, I can't agree
5 with that for the following reasons. Number one, if
6 we come before this Commission for Hines 2, we come
7 before you because we feel that we have a need for our
8 retail customers. That's the first difference between
9 our proposal and Duke's proposal.

10 Secondly, this is not a single unit when we
11 look at it in the context of the regulation that we
12 live under day-to-day with this Commission.

13 I don't think -- I think to look at this
14 from a capital cost standpoint looks at it very
15 narrowly. Florida Power has a diverse fleet. We can
16 argue about whether or not it's appropriate to
17 allocate those costs to our ratepayers, both capital
18 and variable, on a 30-year basis. I would submit to
19 you that there are pros and cons to that. But I think
20 when we go into that, both us, and ultimately this
21 Commission, will decide whether or not that's the best
22 option for our ratepayers.

23 We have contracts with third parties today
24 as you well know, that are fixed. And I don't think I
25 have to tell you that that's not necessarily something

1 that we are having -- are helping us to keep our
2 current rates down.

3 So I think there are a lot of different ways
4 to approach need, but I think what we always try to do
5 is to approach it within the rules and the policies of
6 this Commission as we understand them. And we will
7 continue to bring forward what we think is need to
8 serve our retail customers because that's the way we
9 understand the rules of the game. And to the extent
10 that it's the Hines 2 plant, or to the extent that
11 this Commission sees fit for us to go out and bid that
12 and allow other parties to submit bids, we're
13 certainly prepared to live with whatever decision this
14 Commission makes. I think I was done with that
15 question finally. Thank you.

16 **COMMISSIONER GARCIA:** Thank you.

17 **COMMISSIONER DEASON:** Mr. Wright, I wish you
18 would speed up your cross examination. (Laughter)

19 **MR. WRIGHT:** Thank you for the counsel,
20 Commissioner Deason.

21 **COMMISSIONER CLARK:** I can't possibly have
22 any more cross examination after that. (Laughter)

23 **MR. WRIGHT:** I think I had asked two
24 questions before the last colloquy began.

25 **Q** **(By Mr. Wright)** I have a number of

1 follow-ups on the questions and the colloquy you just
2 had with the Commissioners, Mr. Dolan.

3 Are you aware of any divestiture sale by any
4 utility in New England that was made at less than book
5 value?

6 A Of the ones that I'm aware of, Mr. Wright,
7 I'm not aware that any were made at less than book
8 values for those assets.

9 Q Without asking you a legal opinion, based on
10 your understanding of the process as it works in
11 Florida today, and leaving aside the question whether
12 my clients are proper applicants here, is it your
13 understanding that all power plants that fall within
14 the definition of "power plant" in the Siting Act have
15 to go through the need determination process and the
16 site certification process, and ultimately be approved
17 by the Governor and Cabinet before any construction
18 may begin?

19 A I want to make sure I understand. I'm
20 sorry. And that was a long question and I'm not -- I
21 want to make sure I understood. Just the part
22 about -- the front end of it, all the power plants.
23 Go ahead.

24 Q Is it your understanding -- again, without
25 asking you for a legal conclusion, but as someone

1 knowledgeable with respect to this subject matter --
2 is it your understanding that all power plants that
3 fit within the specific definition of power plant as
4 used in the Siting Act --

5 A Okay.

6 Q Steam or solar greater than 75 megawatts --

7 A Right. I understand that.

8 Q Is it your understanding that all of those
9 have to be permitted pursuant to both this need
10 determination process and the site certification
11 process, ultimately leading to a decision by the
12 Governor and Cabinet whether to grant the permit
13 before they can be built?

14 A I hope I understand your question. I don't
15 believe all power plants have to go through the need
16 certification. I believe they all have to go through
17 environmental. And ultimately -- no, I'm sorry. Let
18 me correct that. I think the answer to your question
19 is no, I don't believe they all do. Am I not
20 understanding your question?

21 Q I may have used a negative, and if so, I
22 apologize.

23 Is it your understanding that all power
24 plants that fit within the definition of the power
25 plant in the Siting Act have to go through this need

1 determination proceeding and the site certification
2 proceeding before they can be constructed?

3 A All plants that fit within the Act, yes.

4 Q Okay. So aren't there two points, two
5 decision points at which a state agency can say no or
6 draw the line, the PSC here and the Governor and
7 Cabinet at the site certification point?

8 A Yes.

9 Q You're not trying to tell the Commission
10 that they don't have the wherewithal to do their job
11 and draw the line, are you?

12 You made an argument I would characterize as
13 floodgates argument. And that is, if you let Duke in,
14 you're not going to be able to stop the next 35.

15 Don't you think the Commission and the
16 Siting Board, the Governor and Cabinet sitting as the
17 siting board, could draw the line where they felt that
18 the balancing analysis contemplated under the Siting
19 Act required the line to be drawn?

20 A First, I think it would be important that,
21 you know, you don't mischaracterize what I said,
22 Mr. Wright.

23 What I said was there's a right way and
24 wrong way to do it. I didn't suggest that this
25 Commission doesn't understand the right way and the

1 wrong way to do it. So I don't want to be
2 misrepresented as to what I said.

3 What I said was this is not necessarily the
4 type of proceeding that would lend itself to give the
5 Commission due time to make that decision. That's
6 what I said.

7 Q Well, please tell me if I'm incorrect. I
8 thought you said that you had very serious concerns
9 that the PSC might not be able to draw the line. If
10 that's not what you said, then just tell me and I'll
11 move on.

12 A What I said, if I may --

13 **COMMISSIONER GARCIA:** Before you answer,
14 Mr. Dolan. Schef, you need to speak into the mike. I
15 didn't hear the question.

16 **MR. WRIGHT:** The question was, I thought
17 that Mr. Dolan testified that he had very serious
18 concerns as to whether the PSC would be able to draw
19 the line on additional merchant plant need
20 determinations if they let Duke go through this one.
21 Right now I just want to know if that was his
22 testimony.

23 **WITNESS DOLAN:** I believe my testimony was
24 based on what I've heard -- and this is in my opinion,
25 if we were to make this decision to move ahead based

1 on the facts that I've heard last week and this week,
2 it would be difficult for me to determine where that
3 line would be drawn, and, therefore, it would be hard
4 for me to imagine what the rules were as to how that
5 line would be drawn. That's what I said.

6 Q Do you think the Commission and the siting
7 board could draw that line?

8 A Based on this particular -- are we talking
9 about based on this particular petition?

10 Q No. I think we're talking generically or
11 generally about additional petitions that might come
12 forward in the succeeding months or years.

13 A I definitely think there are ways that could
14 be put in place to draw that line, yes, I would agree
15 there would be.

16 **COMMISSIONER GARCIA:** Your argument is more
17 of a legal one. You're sort of saying there's no
18 standard here? I'm agreeing with you, Mr. Dolan.
19 You're saying there's no standard here. We don't know
20 where this will end. Everyone could show up, line up,
21 and basically, yeah, there's this amorphous Peninsular
22 Florida needs. They don't need a contract for the
23 entire amount they are building and so everyone can
24 get through. Is that what you're saying?

25 **WITNESS DOLAN:** That would certainly be one

1 of my concerns, yes.

2 Q (By Mr. Wright) You talked for a while
3 about the proposals to build a fair amount of capacity
4 in New England. Is it your general impression that
5 the environmental movement is very strong and alive
6 and well in New England?

7 A I'm not sure I could say one way or the
8 other. I'm not an expert on the environmental
9 movement in New England.

10 Q Do you know anything about the siting
11 process in Maine, Mr. Dolan?

12 A Not specifically.

13 Q New Hampshire?

14 A No.

15 Q Vermont?

16 A No.

17 Q Massachusetts?

18 A I don't necessarily know about
19 Massachusetts. Given that they just changed a number
20 of rules up there, I'm not up to speed on that.

21 Q Rhode Island?

22 A No.

23 Q Connecticut?

24 A Not specifically.

25 CHAIRMAN JOHNSON: Mr. Wright, I need to

1 take an assessment. We aren't going past 4:30 today
2 so we're trying to figure out if we're going to have
3 to come back next week. How much more do you have?

4 **MR. WRIGHT:** Mr. Chairman, in terms of what
5 I have for Mr. Dolan, and Mr. Steinmeier, I think I
6 have more than 45 minutes of cross examination
7 remaining just in my own right.

8 **CHAIRMAN JOHNSON:** Give me both.

9 **MR. WRIGHT:** I mean total for both.
10 Naturally, it's somewhat difficult for me to predict.
11 I would think -- I've cut out some questions and I
12 would think I probably have another 25 to 35 minutes
13 for Mr. Dolan, depending on the length of the answers
14 and tangents that come off of those.

15 **CHAIRMAN JOHNSON:** For the next witness?

16 **MR. WRIGHT:** For the next witness, I'm
17 thinking between 20 and 40 minutes.

18 **MR. MOYLE:** I'd say for Mr. Dolan ten to 15
19 minutes max, and for the next witness --.

20 **CHAIRMAN JOHNSON:** You said how much? I'm
21 sorry, John.

22 **MR. MOYLE:** Ten to 15 minutes.

23 **CHAIRMAN JOHNSON:** And for the next the same
24 you said?

25 **MR. MOYLE:** Maybe a little longer for

1 Mr. Steinmeier.

2 **CHAIRMAN JOHNSON:** Okay. Staff?

3 **MS. PAUGH:** Staff has no cross examination
4 of Mr. Dolan, and we had cross examination of
5 Mr. Steinmeier but if we can get the deposition that
6 we took of him into the record, we can waive that
7 cross examination as well.

8 **CHAIRMAN JOHNSON:** Joe? Just kidding. Just
9 kidding. We'll keep going for a while a little bit.

10 (Laughter)

11 **MR. WRIGHT:** Thank you, Madam Chairman.

12 **CHAIRMAN JOHNSON:** Okay. We'll keep going
13 for a little while, a little bit.

14 **MR. WRIGHT:** Thank you, Madam Chairman.

15 **Q** (By Mr. Wright) Mr. Dolan, is most of the
16 new capacity proposed for New England new gas-fired
17 combined cycle capacity?

18 **A** I'm not sure. I would suspect that a lot of
19 it probably is.

20 **Q** Are you aware of any analysis that's been
21 done on the net environmental impacts of the proposed
22 capacity for New England?

23 **A** Could you be more specific about net
24 environmental impacts?

25 **Q** Are you aware of any analysis that addresses

1 the question whether total pollution from power
2 generation in New England will increase, stay the
3 same, or decrease if the proposed merchant power
4 plants that you were discussing earlier are built and
5 become operational?

6 A I'm not aware of any specific data that
7 would address the impact on the air emissions of the
8 New England region, no, I'm not.

9 Q Are you aware of any analysis of the affect
10 that building and operating the proposed merchant
11 power plants in New England would have on New
12 England -- on electric rates and electricity costs in
13 New England?

14 A I'm not specifically aware of any studies,
15 but I would certainly imagine a lot of them have been
16 done in light of the restructuring work that has been
17 done up there.

18 Q You've testified that there's a right way
19 and a wrong way. And as I understand your testimony
20 you would suggest that this proceeding is not the
21 right way or the right path. Is that accurate?

22 A Yes.

23 Q What is?

24 A I think there are probably a number of
25 different avenues. I don't know that I would suggest

1 one is better than the other, but I think we've heard
2 at least two today. I've suggested -- and others have
3 suggested, as I said earlier, that the legislature
4 certainly has a interest in this issue and feels that
5 before anything is decided, there ought to be a full
6 and open hearing there. So that would be certainly
7 one other avenue. Commissioner Garcia has offered
8 another thought about a docket related to merchant
9 plants initiated by the Commission. That would be
10 another vehicle. There are probably others. But
11 certainly those would be at least a couple of
12 potential ways to consider this other than the current
13 way.

14 Q I believe you testified that Florida Power
15 does not take the position that merchant plants are a
16 bad thing. Is that an accurate characterization of
17 your previous testimony?

18 A In fairness, I would say that we're -- I
19 don't think we're saying that they are good or bad. I
20 think certainly from my ownself, I've learned a lot in
21 the last week or so on merchant plant. And I think I
22 would certainly take that forward on any additional
23 suggestion on merchant plants before I made a final
24 decision as to whether or not in total that was a good
25 or bad thing for the state of Florida.

1 Q So they may be good or they may be not so
2 good?

3 A They can be either or both.

4 Q Have you done any analysis or evaluation
5 that might identify how they might be good?

6 A I have not done any specifically, no.

7 Q Has your company, to your knowledge?

8 A I don't know that our company has done an
9 analysis that specifically addresses merchant plants,
10 no.

11 Q Is it your understanding that the issue in
12 this case is access -- or one of the issues in this
13 case is access of a part merchant plant, the
14 New Smyrna Beach Power Project, to the permitting
15 process to participate in the wholesale market as
16 opposed to retail competition. You don't think this
17 is a case about retail competition, do you?

18 A Not necessarily. If I can explain.

19 I don't -- I believe this is mostly a case
20 about a merchant power plant. But to say it has no
21 impact on retail, given all of the issues we have
22 discussed that would not be correct to say that. It
23 obviously has an impact on retail. We're sitting here
24 talking about need. Need is certainly related to
25 retail. So I think the two are very interrelated.

1 **Q** But you don't see retail restructuring or
2 full competition as an issue in this case, do you?

3 **A** Quite frankly, Mr. Wright, I think if you
4 make a decision of this magnitude, I can see
5 possibilities where it might have a continuing impact
6 that may ultimately lead to broader discussions than
7 just a single power plant. And one of those -- it's
8 not outside the realm of possibility that retail
9 restructuring could be a part of that discussion.

10 **Q** Will you agree with me that there are a
11 number of states --

12 **COMMISSIONER GARCIA:** Mr. Wright, if I could
13 ask, since it looks like we're going to go long
14 anyway, let me ask you a question. I was trying to
15 hold my tongue. The Chairman warned me, but hopefully
16 she'll let me ask this question. How does this lead
17 to retail competition?

18 Let's say we approve this project and we
19 approve a few more like it, how does this lead to
20 retail competition?

21 **WITNESS DOLAN:** Let me try to restate what I
22 tried to say.

23 I think there are a lot of issues here. I
24 guess I -- I don't want to mischaracterize that it
25 would necessarily lead to retail competition. I think

1 what we've established in this hearing is that there
2 are a number of these issues that are going to impact
3 certainly the way we do retail electric service in
4 Florida today. I think that's really more my concern
5 as to how this decision might impact the retail
6 business in Florida.

7 I don't -- there is some possibility,
8 Commissioner Garcia, that it could push us all the way
9 there. I would view that as probably a low
10 probability.

11 **COMMISSIONER GARCIA:** Because I'm pretty
12 certain that the laws of this state and the federal
13 law does not require us to do either and I go farther,
14 I'm pretty certain that this Commission as a whole is
15 not in favor of retail competition. So, I mean, if
16 you want us to take that leap, I think it's quite a
17 leap, though.

18 **WITNESS DOLAN:** I think my concern would be
19 more the interrelationships of this particular issue
20 on our current retail system, not necessarily that it
21 would lead to open retail competition. I think that's
22 fair.

23 **Q (By Mr. Wright)** And you will agree, will
24 you not, Mr. Dolan, that there are a number of states
25 where merchant plants are allowed that do not have

1 retail competition?

2 **A** Yes.

3 **Q** You mentioned the need for us, perhaps, to
4 define what we mean by merchant plant. Will you give
5 us a working definition of merchant plant, please, for
6 the purposes of our continued discussion?

7 **A** Yes. I'd be happy to.

8 **CHAIRMAN JOHNSON:** While you're thinking
9 about that, we're going to take a short recess, about
10 five minutes. And during that time, Mr. Wright, if
11 you could -- we're trying to determine if it makes
12 more sense to take Steinmeier up because he's flying
13 back and forth, it may disrupt this witness, but it
14 may be a useful exercise. So, if you could also talk
15 to the other attorneys as to order and how we can go
16 about at least wrapping up one of the witnesses today,
17 and preferably the one flying back and forth.

18 **MR. WRIGHT:** Certainly.

19 **COMMISSIONER GARCIA:** Madam Chairman, it's
20 probably clear that we will not take up the Motion to
21 Dismiss, so maybe that will let some people go also.

22 **CHAIRMAN JOHNSON:** Okay. Thank you.

23 (Brief recess.)

24 **CHAIRMAN JOHNSON:** Back on the record.

25 **COMMISSIONER GARCIA:** Madam Chairman, I just

1 wanted to say that my alluding to the Motion to
2 Dismiss in no way meant to ask Judge Sundberg to leave
3 our auspicious gathering here today.

4 **CHAIRMAN JOHNSON:** Okay. Noted for the
5 record.

6 Now, we need to talk about the scheduling
7 and how we're going to work through this.

8 I know, Mr. Wright, you were in a middle of
9 a question, and that's a definition of the merchant
10 plant. For the witness who has excused himself -- I
11 understand you're just trying to help the process
12 along -- is this a convenient breaking point?

13 **MR. WRIGHT:** Yes, ma'am. No problem at all
14 for me.

15 **CHAIRMAN JOHNSON:** Okay. And there's no
16 objection to breaking at this time and taking that
17 witness up. It will not be today. The next time that
18 we have scheduled will be next Friday at about 1:30.
19 Then you are excused until Friday at 1:30.

20 (Witness Dolan temporarily excused until
21 1:30 p.m. Friday, 12-18-98.)

22 We will now take up Mr. Steinmeier.

23 **MR. BUTLER:** He has been previously sworn.

24 - - - - -

25 **WILLIAM D. STEINMEIER**

1 was called as a witness on behalf of Florida Power &
2 Light Company and, having been duly sworn, testified
3 as follows:

4 **DIRECT EXAMINATION**

5 **BY MR. BUTLER:**

6 Q Mr. Steinmeier, would you please state your
7 name and address for the record?

8 A My name is William D. Steinmeier, P. O. Box
9 104595, Jefferson City, Missouri.

10 Q Are you the same William D. Steinmeier who
11 has caused prefiled testimony to be prefiled in this
12 docket?

13 A Yes, I am.

14 Q Do you have before you a document entitled
15 "Direct Testimony of William D. Steinmeier, corrected
16 12-4-98"?

17 A I do.

18 Q If I asked you the questions in that
19 prefiled testimony, would your answers be the same
20 today?

21 A Yes, they would.

22 Q Do you adopt this as your testimony in this
23 proceeding?

24 A I do.

25 **MR. BUTLER:** I request that the testimony

1 inserted into the record as though read.

2 **MR. MOYLE:** Madam Chairman, I have an
3 objection.

4 **CHAIRMAN JOHNSON:** Yes.

5 **MR. MOYLE:** I'd like to conduct voir dire on
6 this witness, please.

7 **CHAIRMAN JOHNSON:** Go ahead. Voir dire voir
8 dire.

9 **VOIR DIRE EXAMINATION**

10 **BY MR. MOYLE:**

11 **Q** Mr. Steinmeier, is it your understanding
12 that you're being offered as an expert on Florida
13 regulatory policy?

14 **A** As an expert on state regulatory policy
15 including Florida.

16 **Q** Do you consider yourself an expert on
17 Florida regulatory policy?

18 **A** I consider myself an expert on matters
19 related to the regulation of utility companies,
20 including transitional competitive issues.

21 **Q** That would include Florida regulatory
22 policy?

23 **A** Yes, sir.

24 **Q** And part of the purpose of your testimony,
25 as I read it, it's to address what you read to be

1 Florida's regulatory policy, correct?

2 A Yes, sir.

3 Q And your reasons why you think the joint
4 petition is inconsistent with Florida's policy?

5 A That's correct.

6 Q Before today how many times have you
7 appeared before the Florida Public Service Commission?

8 A I have filed testimony in one previous
9 docket before the Commission.

10 Q And have you ever appeared before any
11 Florida Circuit Courts or other jurisdictions in which
12 you were representing someone on Florida regulatory
13 policy?

14 A No. I've testified previously before a
15 House Committee of the state legislature.

16 Q And that was on one previous occasion?

17 A Yes, sir.

18 Q Have you ever been qualified as an expert on
19 Florida regulatory law? Has a court, or another body,
20 ever qualified you as an expert on Florida regulatory
21 law?

22 A (Simultaneous conversation.) I'm not a
23 member of the Florida Bar.

24 Q Excuse me?

25 A I'm not a member of the Florida Bar.

1 Q Okay. And my understanding is you do not
2 have to be necessarily -- but I'm asking you if you
3 know -- have you ever been qualified as an expert?
4 That's your lawyer, I'm sure you know, in terms of the
5 Court designates someone an expert. Have you ever
6 been designated by any Florida body as an expert on
7 Florida regulatory law?

8 A No, sir.

9 Q And you said you're not a member of the
10 Florida Bar?

11 A That's correct.

12 Q Have you ever been admitted to practice in
13 Florida on a pro hac vici basis?

14 A No, sir.

15 Q Do you know what section of the Florida
16 Statutes contain the Power Plant Siting Act?

17 A 403.519.

18 Q When was the first time you read that?

19 A I don't recall.

20 Q Was it within the last six months?

21 A In all likelihood.

22 Q And at your depo you testified you weren't
23 familiar with the Commission's bidding rule; isn't
24 that correct?

25 A I've indicated I was not intimately familiar

1 with it. I was generally familiar with it.

2 Q But at your depo, you couldn't mention its
3 fundamental elements, could you? I can refer you to
4 your depo if you need to.

5 A I could not recite them, no, sir.

6 Q A couple of questions about Florida
7 regulatory policy. Do you know what steps the
8 Commission must go through, what the process it must
9 go through to adopt policy?

10 A Not specifically, no.

11 Q Have you ever been asked to formally provide
12 an opinion on Florida regulatory policy before this
13 case?

14 A To render an opinion on Florida regulatory
15 policy --

16 Q Prior to this case?

17 A -- to whom?

18 Q I'm sorry, I didn't get your answer.

19 A To whom?

20 Q To the Florida Public Service Commission or
21 a court in Florida?

22 A As I say, I have previously filed testimony
23 in one other docket in Florida.

24 Q Okay.

25 **MR. NOYLE:** Madam Chairman, in terms of

1 conducting a voir dire on the witness and reviewing
2 the Florida Evidence Code, I think he's -- in his
3 prefiled testimony he's admitted he's here to provide
4 testimony on Florida's regulatory scheme. He has
5 never represented anyone with respect to Florida's
6 regulatory scheme. His testimony is he believes he
7 just read the Florida Power Plant Siting Act within
8 the last six months. I would submit to you that the
9 issue he is here to talk about with respect to
10 Florida's regulatory scheme is something within your
11 province to decide. I mean, that's kind of why we're
12 here. And that, you know, this gentlemen's testimony,
13 while I do recognize that he has experience in
14 Missouri, and has served probably that state well, I
15 don't think it's appropriate for him to be admitted as
16 an expert in this proceeding; to come down to Florida
17 and testify as an expert on Florida's regulatory
18 policy. Analogous would be for you in ten years when
19 you leave the Commission to go to Missouri and pick up
20 the statute, read it in preparation for a case and
21 then hold yourself out as an expert on Missouri's
22 regulatory policy, having never practiced before the
23 Missouri Commission, Missouri courts.

24 I think it's inappropriate to admit the
25 testimony. This body is surely competent to make its

1 own decision and judgment on these issues. You have
2 excellent counsel at the Staff level and what not.
3 And that is a test that's cited in Jersey Insurance
4 Company which is at 209 So.2d 475, that the body, if
5 it's competent to make it own decision, it does not
6 need the expert testimony.

7 I would submit surely that this body has
8 expertise in the area of Florida regulatory policy. I
9 don't believe he's demonstrated any special experience
10 or knowledge which would indicate that this type of
11 testimony is warranted, and for those reasons I would
12 move that his testimony not be allowed.

13 **CHAIRMAN JOHNSON:** Mr. Butler.

14 **MR. BUTLER:** Madam Chairman, last week
15 discussing it, I drew a distinction between what can
16 be and should be Florida law and policy, and we agreed
17 that Mr. Steinmeier properly should testify what it
18 should be. I think his experience outside of the
19 state of Florida is exactly why we have him here
20 testifying today. As his prefiled testimony
21 indicates, he's a past president of NARUC and has
22 served on the executive electricity committees of it.
23 As his deposition reflects, he has testified in
24 several other jurisdictions throughout the country.
25 Because of his experience in Missouri, he has a great

1 deal of background on how these types of issues that
2 are before you today interact with the issues of
3 utilities -- regulated utilities, their duty to serve,
4 et cetera. And I think that his expertise from that
5 perspective is exactly the sort of specialized
6 knowledge that a witness can properly bring before you
7 to assist you in understanding evidence or determining
8 a fact in issue, the test in Section 90.702 of the
9 Florida Evidence Code for when testimony by an expert
10 is proper.

11 **CHAIRMAN JOHNSON:** Anything final?

12 **MR. MOYLE:** Just a couple of points.

13 Mr. Butler talked of a factual issue. I'm not so sure
14 I understand the factual issue that he's providing
15 testimony for. It sounds like it's more policy
16 issues. I don't think that's the appropriate test.

17 The other thing is, in his testimony that he
18 has filed he specifically states, and I quote, "I will
19 address the Joint Petition from the perspective of
20 state regulatory policy, and particularly what I read
21 to be Florida's regulatory policy." And it's that
22 statement with respect to him coming in and providing
23 expert testimony in Florida's regulatory policy which
24 I object to. I don't think it's warranted or needed.

25 And in light of how the proceedings are

1 going with respect to time, I don't know that it will
2 help the Commission in any way make the legal
3 judgment, in effect, that it has to make in
4 interpreting Florida's regulatory policy.

5 **CHAIRMAN JOHNSON:** Thank you.

6 **COMMISSIONER GARCIA:** Madam Chairman.

7 **COMMISSIONER DEASON:** Let me ask a question,
8 Mr. Moyle.

9 Mr. Moyle, I'm trying to understand the
10 basis of your argument. If I understand it, would
11 your argument pertain to Ms. Hesse's testimony as
12 well, and her testimony should not have been allowed?

13 **MR. MOYLE:** Ms. Hesse, as I recall,
14 testified about the number of policy issues with
15 respect to merchant plants and how they were being
16 absorbed into the market. I think she talked about
17 the issue on a national basis.

18 Mr. Dolan got up here. He said he's a
19 policy person. He talked about it from Florida
20 Power's perspective. You know, again, I read this
21 testimony to be offered largely -- he's a lawyer. He
22 served on the -- as a lawyer and as the Commissioner
23 in Missouri, but the plain words in his filed
24 testimony indicate that he's here to provide you what
25 he reads to be Florida's regulatory policy. Now he

1 picked up the statute six months ago and read it. Now
2 he's here being clothed possibly with expert status to
3 tell you about Florida's regulatory policy. I don't
4 think it's appropriate.

5 I think you all are the ones that set,
6 interpret and develop Florida's regulatory policy,
7 and, you know, he doesn't -- when he was deposed,
8 didn't have information about the bidding rule. You
9 know, all of us who practice in this area know about
10 the bidding rule. I think that's prima facia evidence
11 that he is not an expert in Florida regulatory policy
12 and his testimony shouldn't be admitted.

13 **COMMISSIONER DEASON:** Wasn't Ms. Hesse asked
14 the same question? She had no knowledge --

15 **MR. WRIGHT:** Commissioner Deason, my belief
16 is that Ms. Hesse's testimony was offered as general
17 regulatory policy and federal regulatory policy and
18 fundamental purposes of state and federal regulatory
19 policy. I don't think she said "I'm here to tell you
20 about how I read Florida regulatory policy."

21 **CHAIRMAN JOHNSON:** I'm going to allow the
22 witness to testify. I don't think it's been
23 proffered, but at the appropriate time I'll allow it
24 to be inserted into the record as though stated. I do
25 believe that given his background and experience he

1 does have an expertise as to state regulatory policy.
2 And the way that his testimony is couched in terms of
3 policy, I think it's appropriate for him to testify on
4 the topics to which he has submitted testimony.

5 **MR. MOYLE:** Just so the record is clear in
6 this respect, is that related to general regulatory
7 policy? Are you also ruling that he can specifically
8 testify as an expert on Florida regulatory policy?

9 **CHAIRMAN JOHNSON:** I'm ruling that he can
10 testify as an expert on everything that he testified
11 to with this particular document. To the extent he
12 talks about -- as he talks about regulatory policy, to
13 the extent that he makes analogies and provides policy
14 perspectives on Florida and Florida law, I will allow
15 that also.

16 **MR. BUTLER:** Thank you, Madam Chairman. I
17 had requested it be inserted in the record as though
18 read before the objection.

19 **CHAIRMAN JOHNSON:** The objection is noted,
20 but I'm going to allow it to be inserted into the
21 record as though read.

22

23

24

25

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

1517

DIRECT TESTIMONY OF WILLIAM D. STEINMEIER

DOCKET NO. 981042-EM

corrected 12/4/98

1 Q. Please state your name and address.

2 A. I am William D. Steinmeier. My business address is P.O. Box
3 104595, Jefferson City, Missouri 65110-4595.

4

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

6 A. I am an attorney and a consultant on issues related to public utility
7 regulation. My practice is incorporated in the State of Missouri as
8 William D. Steinmeier, Professional Corporation (P.C.)

9

10 Q. Please outline your educational qualifications and experience.

11 A. I hold a Bachelor of Arts degree in political science from Wheaton
12 College, Wheaton, Illinois (1972), and a Juris Doctor from the School
13 of Law of the University of Missouri-Columbia (1975). I served as a
14 Hearing Examiner for the Public Service Commission of Missouri from
15 1980 to 1984, and as Chairman of the Missouri PSC from 1984 to
16 1992. While a member of the Commission, I was active in the
17 National Association of Regulatory Utility Commissioners (NARUC).

1 I am a past president of NARUC and also served on the Executive and
2 Electricity Committees. NARUC is the national organization of
3 regulators of utility services. In 1992, I entered the private practice
4 of law and consulting on issues related to the regulation of investor-
5 owned utilities.

6

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

8 A. I am appearing on behalf of Florida Power & Light Company (FPL).
9 FPL opposes the Joint Petition of the Utilities Commission, City of New
10 Smyrna Beach, Florida (UCNSB) and Duke Energy New Smyrna Beach
11 Power Company Ltd., L.L.P. (Duke). The purpose of my testimony is
12 to provide my perspective, based upon my experience as a state
13 regulator and my knowledge of the utility industry, on the Joint
14 Petition in this case. I will address the Joint Petition from the
15 perspective of state regulatory policy, and particularly, what I read to
16 be Florida's regulatory policy. I will discuss how the Joint Petition is
17 inconsistent with Florida policy in that it does not provide sufficient
18 information for this Commission to make the findings required of it by
19 the Power Plant Siting Act. I will also address how granting a
20 determination of need for this project raises serious concerns for FPL
21 in carrying out its obligations to serve its customers.

22

1 **Q. Please summarize your direct testimony.**

2 A. My testimony reviews what I believe the Florida Electrical Power Plant
3 Siting Act (PPSA), enacted by the Florida Legislature, requires of the
4 Commission. For ease of reference, when I speak of the PPSA, I am
5 including Section 403.519, Florida Statutes as part of the Act. I believe
6 that the Commission should not grant an affirmative decision on need for
7 the Duke/NSB project.

8 Beyond the obvious failure of Duke New Smyrna to meet the standards
9 set by the PPSA, I believe that the proposed Duke/NSB plant creates
10 very real concerns for FPL in meeting its obligation to plan, finance and
11 construct resources to meet its obligation to serve. I also raise several
12 other public policy issues which I believe should be of concern to this
13 Commission, including the potential for uneconomic duplication of
14 facilities, and possible negative rate impacts on utility customers.

15

16 **Q. What is your understanding of what the Joint Petition seeks in this
17 case?**

18 A. The Joint Petition of Duke and UCNSB in this case asks the Commission
19 for an affirmative "need determination" under Section 403.519 for Duke's
20 New Smyrna Beach Project, a proposed new power plant which would
21 have approximately 500 MW of capacity. The Joint Petition does not
22 allege that the plant is required to meet the needs of any Florida utility for

1 maintaining system reliability and integrity, or for assuring adequate
2 electricity at a reasonable cost. The Joint Petition does not allege that
3 the facility is the least cost alternative available for the utility with need for
4 capacity. Instead the Joint Petition alleges that "the Project is consistent
5 with Peninsular Florida's needs for generating capacity to maintain
6 system reliability and integrity," that "the Project is consistent with
7 Peninsular Florida's need for adequate electricity at a reasonable cost,"
8 and that "the Project will be a cost-effective power supply resource for
9 Peninsular Florida." "Peninsular Florida" is a planning convention, not a
10 utility. Duke New Smyrna stops short of saying its plant is needed;
11 instead, it says its project is "consistent with" some general need. Duke
12 New Smyrna has no final purchased power contracts with any Florida
13 utility (including, apparently, UCNSB) for the output of the proposed plant.
14 None of the approximately 500 MW of proposed capacity is associated
15 with any utility's obligation to provide service, except Duke's proposal to
16 sell 30 MW of the output to UCNSB. The Joint Petition provides no
17 information as to the extent, if any, Duke New Smyrna has sought
18 contracts for this power beyond UCNSB.

19
20 **Q. Do you believe that, independent of prior Commission and Supreme**
21 **Court decisions, the PPSA need determination criteria should be**
22 **utility-specific?**

1 A. Even if the prior decisions did not exist, I believe the need determination
2 criteria should be read as utility-specific criteria. While planning and even
3 construction and operation of plants can be done on a combined basis,
4 the obligation to serve customers rests with individual utilities and not
5 with Duke New Smyrna. It is at the individual utility level that the ultimate
6 decision to build or buy is made. Unless the Commission knows the
7 utility or utilities which will receive a power plant's output, the price of the
8 output or the cost of the plant, and the terms and conditions under which
9 the output of a plant will be provided, the Commission cannot
10 meaningfully apply the PPSA need criteria.

11

12 **Q. Please discuss how, as a matter of policy, the need being**
13 **determined in a need determination arises from an obligation to**
14 **provide service.**

15 A. A wholesale provider of power, whether a qualifying facility, an
16 independent power producer or a merchant plant, has no statutory
17 obligation to serve. Consequently, it is my opinion that wholesale power
18 providers cannot demonstrate need on their own. As a matter of policy,
19 it is the obligation to serve which gives rise to a demonstrable need for
20 a power plant.

21

22 **Q. Please explain why it is important that an entity seeking a need**

1 **determination for a plant which will make wholesale sales first have**
2 **a contract with a purchasing utility.**

3 A. Regardless of whether the Commission or the Supreme Court previously
4 had found that an entity seeking to build a power plant to make wholesale
5 sales to a utility must have an executed purchased power contract to
6 initiate a need determination, I think the need determination criteria
7 necessitate such a contract. Without a contract, a wholesale provider of
8 power cannot identify the utility or utilities to which it will sell. Without a
9 contract which addresses the amount and availability of capacity and
10 other terms and conditions affecting performance, the impact of a
11 wholesale provider's plant on "electric system reliability and integrity"
12 cannot be demonstrated. Without a contract identifying the utility to
13 which a wholesale provider will provide power and the price at which the
14 power will be sold, a wholesale provider cannot demonstrate that its plant
15 is needed for "adequate electricity at a reasonable cost;" or that its
16 "proposed plant is the most cost-effective alternative available;" or that
17 there are no "conservation measures taken or reasonably available" to
18 mitigate the need for its plant. Therefore, without a contract that identifies
19 the purchasing utility, the price of the power to the purchasing utility, and
20 the other terms and conditions which affect cost-effectiveness and
21 reliability, a wholesale provider cannot provide sufficient information for
22 the Commission to make an affirmative determination of need.

1 Q. It has been suggested that the Commission and Supreme Court
2 decisions concerning utility-specific need determinations all
3 involved cogeneration and entities that desired to sell to specific
4 utilities and perhaps are not applicable to a merchant plant that has
5 not identified the utilities to which it intends to sell. What is your
6 reaction?

7 A. I have two reactions.

8

9 First, it is not just cases that suggest the Commission's need
10 determination should be utility-specific. As I pointed out earlier, I believe
11 that these interpretations of the PPSA would be correct even if those
12 decisions had not been entered. The need determination criteria should
13 be utility-specific. Utilities are the only entities with an obligation to serve,
14 and the need examined in a need determination should be the need of
15 a utility with such an obligation to serve. The only practical means of
16 implementing this statutory scheme for entities that do not have an
17 obligation to serve but desire to build a power plant to be able to sell to
18 entities with an obligation to sell and a corresponding need is to require
19 such entities to first have a contract or contracts for its output.

20

21 Second, I fail to see how the PPSA could properly be applied differently
22 to different entities. More particularly in this case, I fail to see how the

1 Commission could reasonably find that the PPSA's need criteria are
2 utility- specific when applied to utilities, cogenerators and non-utility
3 generators but are not necessarily utility-specific when applied to a
4 merchant plant.

5

6 In this case, Duke New Smyrna neither identifies the purchasing utility nor
7 communicates the terms and conditions necessary to apply the need
8 determination criteria.

9

10 **Q. Does the Duke/NSB project meet the utility-specific standard of the**
11 **PPSA?**

12 **A.** No. While 30 MW of a roughly 500 MW unit have been identified to meet
13 the needs of the City of New Smyrna Beach, more than 90% of the unit's
14 output may be available but is not committed to address "Peninsular
15 Florida's projected power supply needs." (Duke/UCNSB Joint Petition for
16 Determination of Need, page 2). I think it would be difficult for anyone to
17 argue that the primary need for the unit is the City of New Smyrna Beach.
18 In fact, Commission approval under the PPSA would not be required if
19 Duke was proposing to build only a 30 MW power plant. I do not believe
20 that this Joint Petition meets the intent of the PPSA in balancing the need
21 for the facility with the environmental impact resulting from the
22 construction and operation of the facility. Beyond this obvious imbalance,

1 it appears to me that the Commission would be hard-pressed to make
2 any findings regarding the specific requirements of the PPSA.

3

4 I have already discussed how the PPSA's need for power determination
5 should be utility-specific. How, then, is the Commission to assess the
6 need for this project? Only 30 MW address a specific utility need. The
7 remainder is to be sent out to peninsular Florida, and possibly beyond,
8 without contract or firm commitment from any Florida utility. No utility
9 could rely on the power to meet its need without a contract. Therefore,
10 it would be inconsistent to find that there is a "need" for 470 MW or more
11 of this plant by somehow "assigning" that capacity to any specific utility's
12 need without a contract.

13

14 The second issue for the Commission under the PPSA is the "need for
15 adequate electricity at a reasonable cost." I have already addressed the
16 "need" portion of this standard and shown that it cannot be addressed by
17 this project. The "reasonable cost" cannot be addressed, either. We
18 don't know to whom the project will sell its power, for how long, or at what
19 price. We just have an assertion by the Applicants that utilities will only
20 buy when it is reasonable to do so. I would suggest to the Commission
21 that this vague assertion is not sufficient to justify the utilization of scarce
22 land, air and water resources for a power plant. This assertion would, in

1 fact, be true of any power plant, making all proposals indistinguishable,
2 from the Commission's perspective.

3

4 The next issue the Commission must address is whether the proposed
5 plant is the most cost-effective alternative available. The immediate
6 question is, "alternative to meet what need?" The most cost-effective
7 technology does not necessarily equate to the most cost-effective
8 alternative to meet a specific utility's need. Duke plans to build a
9 combined cycle plant. FPL and other utilities already have combined
10 cycle plants in their ten year plans. Duke/NSB has not presented a total
11 cost or proposed price which can even be used to compare to various
12 utility projects. I fail to see how the Commission can find the Duke/NSB
13 project to be "the most cost-effective alternative available" under the
14 PPSA.

15

16 The conservation issue obviously has the same problem as the others.
17 Without identifying the purchasing utility or utilities, no assessment can
18 be made of whether there are "conservation measures taken or
19 reasonably available" which mitigate the need for the plant.

20

21 **Q. Are there other matters within the Commission's jurisdiction about**
22 **which the Commission should be concerned regarding this need**

1 **determination application?**

2 A. Yes. Under the PPSA the Commission is authorized to consider in need
3 determinations not only the criteria Duke New Smyrna has failed to meet,
4 but also other matters within its jurisdiction which it deems relevant.
5 There are a number of matters within the Commission's jurisdiction that
6 could be impacted by this determination of need. A positive
7 determination could adversely affect FPL's and other Peninsular Florida
8 utilities' ability to meet their service obligations. It could affect those
9 utilities' subsequent determination of need proceedings. It could affect
10 their ability to plan for and meet system needs. It could affect the
11 recoverability of their past and future investments. It could lead to the
12 uneconomic duplication of facilities to meet need. It could adversely
13 affect the customers of Florida utilities. All of these matters are properly
14 within the Commission's jurisdiction and should be considered in this
15 proceeding.

16

17 **Q. How would a grant of the Joint Petition affect subsequent**
18 **determinations of need by the Commission for utilities petitioning**
19 **to meet their own needs?**

20 A. It would put the utilities in a very difficult situation. On the one hand, the
21 utility cannot evaluate the cost-effectiveness of the project versus their
22 own plan. Without a contract with terms and conditions, how can the

1 utility evaluate this option? On the other hand, it would seem almost
2 certain that the petitioners would appear before the Commission making
3 the case that the utility should buy from them. This clearly puts the utility
4 in a "Catch-22," where it does not have the information it needs about the
5 Duke plant to plan for it, but it must do so anyway in order to fulfill its
6 obligation to serve.

7
8 Another problem utilities will face in subsequent need determination
9 proceedings will be how to address the findings of fact the Commission
10 is being asked to make in this case. If the Commission finds that the
11 Duke New Smyrna plant is needed for electric system reliability and for
12 adequate electricity at reasonable cost for Peninsular Florida, that the
13 plant is the most cost-effective alternative to meet Peninsular Florida's
14 need, and that there are no conservation measures taken or reasonably
15 available to mitigate the need for the plant, any Peninsular Florida utility
16 seeking a subsequent determination of need will be faced with findings
17 that the Duke plant meets their needs and is the most cost-effective
18 alternative available to them. This may particularly be true of utilities
19 which participated in this proceeding, even though the relative cost-
20 effectiveness of the utilities' projects would not have been vigorously
21 tested in this case. It seems likely that Duke will argue that the
22 Commission has already addressed the issue and made findings which
23 make Duke the preferred alternative, even though it is apparent that no

1 utility-specific determination of need is being sought or being made in this
2 case.

3

4 Either the findings in this case will be binding and controlling on
5 Peninsular Florida utilities or this case will be a purely academic exercise
6 as to a fictional entity called Peninsular Florida. If the findings are to be
7 binding on Peninsular Florida utilities, then the affected utilities should be
8 given notice and their specific needs should be tried, not a more general
9 collective need for a larger geographic area. If the findings are not to be
10 binding and may be disregarded, then what purpose will this case have
11 served? I believe that if Duke is successful in this proceeding, Duke is
12 likely to use the Commission's findings in this case in subsequent need
13 determination proceedings filed by utilities. This could frustrate the ability
14 of Florida utilities to proceed under the PPSA to meet their individual
15 needs.

16

17 **Q. How would granting a determination of need as requested by**
18 **Duke/New Smyrna affect the obligation of electric utilities to plan for**
19 **and meet the need for reasonably sufficient, adequate and efficient**
20 **service?**

21 **A. Utilities would still have that obligation. That is part of the "Catch-22"**
22 **discussed above. Utilities will still be required to plan to meet their**

1 obligation to serve. They will be required to factor the merchant plant into
2 their plans without knowing if this power will be available, or when it will
3 be available, or at what price, or what the impact of this power will be on
4 the utility's transmission system. The utility must plan and build to meet
5 its obligation to serve. The result is destined to be duplication of facilities.

6
7 **Q. How would granting the Joint Petition affect the recoverability of**
8 **past and future utility investments?**

9 A. Granting the Joint Petition in this case would create a risk that past and
10 future utility investments made to provide service may not be recovered.
11 This could increase the overall cost of providing electric service and
12 impair future service reliability. In fact, the argument that the "merchant"
13 plant is being built at Duke's total risk and that so-called "captive
14 customers" would be held harmless is faulty. Who is responsible for the
15 costs of utility facilities that become underutilized because of "merchant"
16 plants? If the answer is utility customers, then they are not "held
17 harmless." If utility stockholders are responsible for bearing these costs,
18 then the utility's cost of capital will reflect that risk, which, in the long-run,
19 would impact their customers.

20
21 Another misconception that exists on this issue is that, because utility
22 plants are "rate based," utility customers bear all of the risks. This simply

1 is not true. Utilities are not guaranteed cost recovery. Rather, the
2 Commission sets rates which are designed to provide the utility a
3 reasonable opportunity to recover its prudently incurred costs, as
4 determined by the Commission. Many factors, including regulatory
5 decisions, the economy in the service area and the weather, affect a
6 utility's ability to actually recover its costs and earn a return. A key point
7 to remember here is that utilities cannot change their rates without the
8 approval of the Commission. A wholesale merchant plant that has
9 market-based rates can charge whatever the market will bear and is
10 accountable only to its stockholders.

11

12 Duke's suggestion that they will bear all the risk, even if it were true,
13 misses the point. Operating and market risk associated with a power
14 plant is not a criteria under the need statute. Under the PPSA, the proper
15 point of focus is whether there is a utility that needs the power to be
16 provided by the power plant. If there is a need for the power and Duke
17 New Smyrna contracts to meet it, then the concept of risk has little
18 meaning. Recovery will be from the same utility ratepayers who would
19 pay for the same plant built by the utility, and they would face similar
20 performance and operation risks. The real concern under the PPSA is
21 whether there is a need for the power which justifies the environmental
22 impact a plant will certainly have. If there is a risk properly considered in

1 this proceeding, it is the risk that Florida may devote environmental
2 resources for a power plant which has not been shown to be needed to
3 meet a Florida utility-specific need. Duke's discussion of "risk" distracts
4 from the proper focus of this proceeding.

5
6 **Q. If the Commission did not interpret the statutory need criteria as**
7 **"utility and unit specific," how would the Commission maintain grid**
8 **reliability and avoid uneconomic duplication of facilities in need**
9 **determination proceedings?**

10 A. It simply could not. Anyone who feels that they can build, and sell power
11 from, a "merchant" plant will do so. The result will be duplication of
12 facilities, the consumption of limited natural resources and the added
13 costs of excess utility generating capacity. The lack of information about
14 whether or when this power will be available, and where it will be
15 delivered, could also make it more difficult to maintain the reliability of the
16 grid. That is the reason it is so important that Section 403.502 of the
17 PPSA be interpreted by this Commission to require the "need" to be
18 "utility and unit specific." That interpretation would avoid the scenario
19 discussed here and its negative ramifications.

20
21 **Q. When FPL makes an off-system sale, do its shareholders receive the**
22 **benefit of the revenue from that transaction?**

1 A. No. When FPL makes an off-system sale of power (to a municipal utility, for
2 example), most or all of the gain on that sale is returned to FPL's customers
3 through the Fuel Adjustment Clause or the Capacity Clause ("Clauses").
4 However, it should be noted that when Duke/NSB makes a sale from its
5 proposed power plant, the gain from that sale would go to Duke
6 shareholders. Thus, not all Florida ratepayers would necessarily "benefit"
7 from Duke's power sales, and some would lose the benefit of gains that
8 would otherwise flow through to them through the Clauses.

9

10 **Q. How would granting the Joint Petition affect utility customers?**

11 A. As just indicated, utility customers could experience direct rate impacts, in
12 addition to long-term concerns about the ability of utilities to plan accurately
13 to meet future needs, increased risk of utility investments and the potential
14 for uneconomic duplication of facilities. Customers of utilities which lose off-
15 system sales would be harmed, because they will no longer receive the
16 benefits of those sales through the Clauses. Reductions in wholesale sales
17 by utilities may also result in changes in wholesale-retail allocations of costs
18 and rate base, resulting in higher rates for the utility's customers.

19

20 **Q. If Duke New Smyrna were allowed to proceed in a need determination**
21 **proceeding by basing its case on Peninsular Florida needs, how would**
22 **this compare to the showings currently required of Florida utilities,**

1 **qualifying facilities and non-utility generators?**

2 A. It would establish a less demanding standard for Duke New Smyrna than for
3 any other entity seeking a determination of need. If Duke New Smyrna were
4 allowed to proceed based not on a utility-specific showing but on Peninsular
5 Florida showings, then Duke New Smyrna would be held to a less
6 demanding standard for no apparently sound reason. Such an inequitable
7 application of the PPSA would raise fundamental questions of fairness. It
8 seems clear to me that the PPSA should be applied to all applicants in the
9 same fashion. Duke New Smyrna should not be held to a less demanding
10 standard. If it is, then the Commission should rethink the standard applied
11 to all other applicants as well. However, I believe the better approach is to
12 hold Duke New Smyrna to the same utility- specific standards required of
13 other applicants.

14

15 **Q. Why do you find different applications of the PPSA to different types of**
16 **applicants objectionable?**

17 A. Inconsistency in application of the resource planning requirements may raise
18 legal objections, but it is also objectionable from a policy perspective. Florida
19 real estate, air and water resources are finite. It seems clear that the policy
20 of the State of Florida is that, before Florida resources are committed to
21 construction and operation of a new power plant, the developer should have
22 to show that the generation from that plant is committed to meeting Florida's

1 specific and growing needs for generation, that its proposed capacity
2 addition is the most cost-effective alternative available, and that it considered
3 conservation measures that might mitigate the need for the proposed plant.
4 FPL and other utilities which have an obligation to serve will be required to
5 address all of those issues before they will be authorized to build new
6 generation. As a matter of policy, it is not clear to me why those issues are
7 any less important in relation to a "merchant" plant than a "utility" plant.

8
9 **Q. Do you agree with Ms. Hesse that the basic purpose of utility regulation**
10 **is "to promote competitive and efficient resource allocations?"**

11 **A.** No. In my opinion, the overall purpose of utility regulation in Florida is to
12 assure the provision of adequate, reliable and efficient utility service at just
13 and reasonable rates, and to provide utility shareholders a reasonable
14 opportunity to earn a fair return on their investment in the facilities necessary
15 to meet the utility's obligation to serve. The FPSC is also charged with
16 assuring the avoidance of uneconomic duplication of generation,
17 transmission and distribution facilities. The specific purpose of the PPSA is
18 to achieve the right balance between the need for new power plants and the
19 use of the limited natural resources of the State. To that end, the PPSA
20 requires the FPSC to make a utility-specific determination of need before
21 siting any new power plant, and requires the FPSC to consider several
22 statutory factors (discussed earlier in my testimony) in making that need

1 determination.

2

3 **Q. Do you agree with Ms. Hesse that utility regulation is intended to serve**
4 **as a “surrogate for competition”?**

5 A. Yes. I have often said so myself. However, it does not logically follow that
6 the regulatory system must authorize “numerous sellers” in order to be that
7 “surrogate for competition.” (*Hesse Direct Testimony at p. 21.*) By definition,
8 a “surrogate for competition” is a “substitute for” competition, which is
9 different from “being” a system of competition. A more accurate statement
10 is Ms. Hesse’s suggestion that a goal of utility regulation is “to attempt to
11 come as close as possible, in a constrained or structurally imperfect market,
12 to the outcome that would be achieved in a competitive market.” The
13 achievement of an outcome that conserves resources, avoids uneconomic
14 duplication of facilities and assures adequate and reliable electricity at just
15 and reasonable rates accomplishes that goal. That is the goal of the Florida
16 regulatory process, including the FPSC’s need determination under the
17 PPSA. It should also be observed that neither regulation nor competition is
18 a perfect system. Ms. Hesse herself admits that it cannot be concluded “that
19 an ‘optimal’ outcome would be attained” from siting “merchant” plants in
20 Florida. (*Hesse Direct Testimony, p. 19.*)

21

22 Finally, it must be recognized that public policy is seldom a matter of “pure”

1 economic theory. Economics is not physical science. It is not an immutable
2 law of nature, nor the source of all human values. Regulatory policy must,
3 and does, look beyond the theoretical merits of competitive markets to
4 broader human and practical issues. These issues include the public need
5 for adequate and reliable power to support everyday life and commerce in
6 Florida in 1998 and beyond, and the need to protect finite and valuable
7 resources, including land use.

8
9 **Q. Do you agree with Ms. Hesse that, "for the past 20 years, federal energy**
10 **policy has favored and encouraged competition in the wholesale**
11 **generation and supply of electricity in the United States"?**

12 **A.** No. In my opinion, the purpose of the Public Utility Regulatory Policies Act
13 of 1978 (PURPA) was not to promote competition in the supply of bulk
14 electricity, but rather to squeeze every possible drop of energy out of
15 domestic resources in order to achieve what President Carter called, "Energy
16 Independence." We were trying to decrease our reliance on foreign oil in the
17 wake of national energy crises precipitated by the Organization of Petroleum
18 Exporting Countries' (OPEC) oil embargo in 1973 and the political revolution
19 in Iran in 1978-1979, which had sent energy prices soaring. While Ms.
20 Hesse, as chair of the FERC in the late 1980's, began actively promoting
21 competition in the wholesale bulk power electric market, national policy has
22 only done so since the National Energy Policy Act of 1992.

1

2 **Q. Does the potential interest of the FMPA in capacity from Duke/NSB**
3 **demonstrate utility-specific need?**

4 A. No. At least 90% of the capacity from Duke/NSB is not under contract and
5 cannot be tied to any specific utility need for power. Even the Florida
6 Municipal Power Agency, which supports the Joint Petition, will only commit
7 to being willing to “entertain discussions” with Duke about serving a portion
8 of its needs. Mr. L’Engle says in his testimony that, “[s]ubject, of course, to
9 meeting FMPA’s pricing and operational criteria, . . . the New Smyrna Beach
10 Power Project *may be* a facility that FMPA would be interested in purchasing
11 capacity and energy from.” (*Emphasis added*). There are still at least 450
12 to 484 MW of this plant that are totally divorced from any utility-specific need
13 in Florida. In my opinion, the Commission must ask whether it is wise to
14 build 500 or more MW of capacity for every 30 MW of alleged, utility-specific
15 need.

16

17 **Q. Would you please summarize your testimony?**

18 A. The Commission’s determination of need for siting a new power plant under
19 the PPSA should be utility-specific. Since an entity such as Duke has no
20 obligation to serve and no need of its own, in my opinion Duke could
21 demonstrate a utility-specific need only if it had a contract with a specific
22 utility with a need for power. Since more than 90% of the capacity of the

1 proposed Duke/NSB plant is not under contract to any Florida utility, this
2 Joint Petition should not be granted. In addition, the other requirements of
3 the PPSA cannot be met by the Joint Application. It would be impossible in
4 this case to meaningfully fulfill the requirements of the PPSA to consider how
5 this proposed plant would relate to system reliability and integrity, the need
6 for adequate electricity at a reasonable cost, whether the plant is the most
7 cost-effective, or conservation measures. These issues are no less
8 important regarding a "merchant" power plant than for a utility plant in terms
9 of the PPSA's intent of balancing the need for the facility with the broad
10 interests of the public. Duke is essentially asking the FPSC to waive what
11 I understand to be the requirements of the PPSA for purposes of approving
12 its proposed project. In my opinion, a grant of this Joint Petition would be a
13 grave mistake as a matter of policy, as it would essentially circumvent the
14 PPSA.

15
16 Beyond the obvious failure to meet the standards set by the PPSA, I believe
17 that the proposed Duke/NSB plant creates very real concerns for FPL in
18 meeting its obligation to plan, finance and construct resources to meet its
19 obligation to serve, including the "Catch-22" that utilities would be left having
20 to include the "merchant" plant in their planning process without knowing if
21 this power will be available, or when it will be available, or at what price, or
22 what the impact of this power will be on the utility's transmission system.
23 There are several additional public policy issues which I believe should be

1 of concern to this Commission. These include the potential for underutilized
2 utility investments and uneconomic duplication of facilities, and possible
3 negative rate impacts on utility customers.

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

5 **A.** Yes, it does.

6

1 **BY MR. BUTLER:**

2 Q Mr. Steinmeier, will you please summarize
3 your testimony?

4 A Yes, I will.

5 Madam Chairman, Commissioners, I believe
6 that granting the Joint Petition in this case would be
7 a mistake. I say so for several reasons.

8 First, under the Florida Power Plant Siting
9 policies, before any new generating plant can be
10 constructed in Florida, 75 megawatts or larger, this
11 Commission must determine that there is, in fact, a
12 need for that plant for reliability purposes. Having
13 been shown a need for reliability purposes, this
14 Commission must also determine that the proposed plant
15 is the most cost-effective alternative available for
16 meeting that reliability need. In my opinion, for
17 that need determination to be meaningful, it needs to
18 be made on a utility-specific basis.

19 In other words, I believe the Commission
20 should not --

21 **COMMISSIONER GARCIA:** Mr. Steinmeier, before
22 you -- what was your second point? You said first,
23 there is a need for reliability purposes. And then
24 the second one?

25 **WITNESS STEINMEIER:** It is the most

1 cost-effective alternative.

2 **COMMISSIONER GARCIA:** Thank you. I'm sorry
3 for interrupting you. Go ahead.

4 **WITNESS STEINMEIER:** It's quite all right.

5 In other words, I believe the Commission
6 should not make a determination that a plant is needed
7 unless and until there is utility-specific need for
8 the plant to provide system reliability and integrity.
9 Until it has been shown that the plant will provide
10 reliable electricity to a specific utility at a
11 reasonable cost, and until it has been determined that
12 the plant represents the most cost-effective
13 alternative to a specific utility. Otherwise, I don't
14 see how the Commission can evaluate or quantify the
15 need for a new generating plant.

16 Now, in this case only about 6% of the
17 output of the plant is even under contract to any
18 Florida utility. And Duke apparently has made no
19 contractual commitments as to the rest. There seems
20 to be no way for the Commission to make
21 utility-specific findings for a plant where 94% of the
22 output is uncommitted, or not under contract to any
23 Florida utility.

24 I would also observe that there is no
25 assurance that anything more than 30 megawatts of the

1 output of this plant will even be sold in Florida or
2 at what price. The information Duke has provide I
3 think falls well short of what the Commission must
4 have to make a determination of need for this plant by
5 any Florida utility.

6 (Transcript continues in Volume 12.)

7 - - - - -

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