

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION TO DETERMINE NEED FOR DOCKET NO. 020262-EI  
AN ELECTRICAL POWER PLANT IN  
MARTIN COUNTY BY FLORIDA POWER &  
LIGHT COMPANY

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PETITION TO DETERMINE NEED FOR DOCKET NO. 020263-EI  
AN ELECTRICAL POWER PLANT IN  
MANATEE COUNTY BY FLORIDA POWER &  
LIGHT.

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VOLUME 1

PAGES 1 THROUGH 159

PROCEEDINGS: HEARING  
BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
DATE: Wednesday, October 2, 2002  
TIME: Commenced at 9:40 a.m.  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
REPORTED BY: LINDA BOLES, RPR  
Official FPSC Reporter  
(850) 413-6734



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5 and R. WADE LITCHFIELD, Florida Power & Light Company, 700  
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7 behalf of Florida Power & Light Company.

8 JON C. MOYLE, JR., Moyle, Flanigan, Katz, Raymond &  
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12 JOSEPH A. MCGLOTHLIN, McWhirter, Reeves, McGlothlin,  
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15 Florida Partnership for Affordable Competitive Energy.

16 JOHN W. McWHIRTER, JR., McWhirter, Reeves, McGlothlin,  
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19 appearing on behalf of the Florida Industrial Power Users  
20 Group.

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22 Florida 32314-5256, appearing on behalf of Florida Action  
23 Coalition Team.

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25

1 APPEARANCES CONTINUED:

2                   MARTHA CARTER BROWN and LAWRENCE D. HARRIS, FPSC  
3 General Counsel's Office, 2540 Shumard Oak Boulevard,  
4 Tallahassee, Florida 32399-0850, appearing on behalf of the  
5 Commission Staff.

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CHAIRMAN JABER: All right. We're ready to start the hearing. Counsel, you have a notice to read.

MR. HARRIS: We do, Commissioners. By notice issued September 3rd, 2002, this time and place is set for a hearing in Docket Numbers 020262-EI, petition to determine need for an electrical power plant in Martin County by Florida Power & Light, and Docket Number 020263-EI, petition to determine need for an electrical power plant in Manatee County by Florida Power & Light. The purpose of the hearing is set out in the notice.

CHAIRMAN JABER: Thank you. Let's take appearances. We'll start on the left.

MR. GUYTON: Charles A. Guyton, John T. Butler, William Hill, Gabriel A. Nieto and Elizabeth C. Daly with the law firm of Steel, Hector & Davis, appearing on behalf of Florida Power & Light Company. Also appearing on behalf of Florida Power & Light Company is R. Wade Litchfield.

CHAIRMAN JABER: Thank you. Mr. Moyle.

MR. MOYLE: Jon Moyle, Jr., with the Moyle, Flanigan Law Firm, appearing on behalf of the Intervenor in this case, CPV Gulfcoast Limited.

MR. MCGLOTHLIN: Joe McGlothlin, 117 South Gadsden Street, Tallahassee, appearing for Florida PACE.

MR. McWHIRTER: John McWhirter, 400 North Tampa

1 Street in Tampa, appearing on behalf of the Florida Industrial  
2 Power Users Group.

3 MR. TWOMEY: Good morning, Commissioners. Michael B.  
4 Twomey, Post Office Box 5256, Tallahassee, Florida 32314-5256,  
5 appearing on behalf of the Florida Action Coalition Team,  
6 Thomas and Genevieve Twomey, Burton Greenfield, et al., in the  
7 second petition I filed.

8 CHAIRMAN JABER: Any other appearances?

9 MS. CARTER: Martha Carter Brown and Larry D. Harris  
10 on behalf of the Commission.

11 CHAIRMAN JABER: Thank you. Okay. Ms. Brown, I know  
12 that there are preliminary matters. I'd like to go through the  
13 ones that I know of and let you check them off the list, and at  
14 the end of that process you can tell me if I've forgotten any.

15 I have a copy of South Pond Energy Park's notice of  
16 withdrawal in the case, and for purposes of the record that  
17 notice of withdrawal is acknowledged.

18 I've got -- and let me just announce right from the  
19 beginning that I have all the motions that I'm going to go  
20 through today and I've got copies of the responses. I have  
21 read the motions and I have read the responses. I will not  
22 need oral argument, I will not be asking for presentations by  
23 the parties on a majority of these motions. The ones where I  
24 will need to hear from the parties I'm going to save to the  
25 end.

1           So the first motion is FP&L's motion for official  
2 recognition of various agenda transcripts. I've read that  
3 motion and I've read the response from CPV and from PACE. Were  
4 there any other responses, Ms. Brown?

5           MS. BROWN: No, Chairman Jaber, not that I'm aware  
6 of.

7           CHAIRMAN JABER: Okay. The ruling is this: That  
8 motion for official recognition of the agenda transcripts is  
9 denied.

10           There is a motion -- petition to intervene filed by  
11 Mr. Twomey on behalf of Tom Twomey and Genevieve Twomey. That  
12 petition to intervene is granted.

13           MR. TWOMEY: Thank you.

14           CHAIRMAN JABER: Florida Partnership for Affordable  
15 Competitive Energy, PACE's request for oral argument. Now I  
16 read that motion and understood that it was withdrawn, that it  
17 may be withdrawn. Ms. Brown, has it been?

18           MS. BROWN: Yes. I think the parties will need to  
19 fill you in on that. It's my understanding that PACE's motion  
20 for official recognition has not been contested. Is that  
21 correct?

22           CHAIRMAN JABER: I'm not on the official recognition.  
23 PACE has filed a request for oral argument related to FP&L's  
24 motion to compel and PACE's motion for protective order.

25           MS. BROWN: Yes. It's my understanding that that's

1 been withdrawn.

2 MR. GUYTON: That motion to compel has been  
3 withdrawn.

4 CHAIRMAN JABER: Okay. So doesn't that make PACE's  
5 request for oral argument moot?

6 MR. McGLOTHLIN: Yes. That was filed only as a  
7 contingency in the event that the other motion went forward.

8 CHAIRMAN JABER: All right. Well, Mr. McGlothlin,  
9 I'll leave it up to you. Are you withdrawing the request for  
10 oral argument or do I need to find it moot? I don't care.

11 MR. McGLOTHLIN: No. It's withdrawn.

12 CHAIRMAN JABER: Okay. Thank you. PACE's motion for  
13 official recognition of Order Number PSC99-2507-S-EU is  
14 granted. The notice of substitution of witness and adoption of  
15 testimony, it is a request by CPV that Mr. Finnerty -- is that  
16 the right pronunciation, Mr. Moyle -- will be substituted for  
17 Douglas Egan, and that request is granted.

18 The motion for summary final order filed by FP&L --

19 MS. BROWN: Chairman Jaber, I'm sorry to interrupt.

20 CHAIRMAN JABER: That's all right.

21 MS. BROWN: There is a petition to intervene of  
22 Burton Greenfield, et al., filed by Mr. Twomey.

23 CHAIRMAN JABER: Yes. Thank you. I had that all  
24 taped together, Ms. Brown, and I neglected to mention it. That  
25 was also filed by Mr. Twomey, and that request for intervention

1 is granted. Thank you.

2 What is the status of FP&L's motion for summary final  
3 order, Ms. Brown?

4 MS. BROWN: I think I should let Florida Power &  
5 Light respond to your question.

6 CHAIRMAN JABER: Mr. Guyton?

7 MR. GUYTON: As I recall, that motion for summary  
8 final order as to -- had to do with FACT's party status;  
9 correct?

10 MR. HILL: Shall I address it?

11 MR. GUYTON: Yes.

12 MR. HILL: Good morning, Commissioners. William  
13 Hill. We took the deposition last night pursuant to the  
14 Commission's ruling. There were a number of questions that  
15 were asked that were not answered. There was a ruling from the  
16 prehearing officer, Commissioner Deason, ordering the answers  
17 be given. The answers were still not given.

18 We're disappointed we didn't get the information we  
19 sought and was ordered, but we've spent enough time and effort  
20 on this and we're prepared to move forward. We'll withdraw the  
21 motion at this time.

22 CHAIRMAN JABER: Thank you, Mr. Hill. FP&L's motion  
23 for summary final order has been withdrawn. For purposes of  
24 the record, I acknowledge that.

25 Now, Mr. Hill, there is an issue in the prehearing

1 order related to standing. Are you asking that that issue be  
2 withdrawn as well?

3 MR. HILL: Yes, Commissioner. Yes, Chairman Jaber.

4 CHAIRMAN JABER: Ms. Brown, is that Issue 18?

5 MS. BROWN: Issue 18.

6 CHAIRMAN JABER: Okay. Issue 18, Commissioners, will  
7 be withdrawn from the prehearing order; Issue 18, Page 35 of  
8 the prehearing order.

9 There is a request to quash subpoena; it was filed by  
10 FP&L. This relates to Mr. Evanson's deposition and his  
11 appearance at this hearing. I don't have a copy of a -- we  
12 just received a copy of the response, Mr. Moyle. I guess that  
13 was filed this morning.

14 MR. MOYLE: Yes, ma'am.

15 CHAIRMAN JABER: Okay. Obviously I have not had time  
16 to read the response, so I will entertain argument on this  
17 motion. Are the parties ready to do that now?

18 MR. LITCHFIELD: We are, Madam Chairman.

19 CHAIRMAN JABER: Okay. FP&L, it's your motion. I'll  
20 let you start.

21 MR. LITCHFIELD: Thank you, Madam Chairman. We have  
22 read our motion. CPV, through Mr. Moyle, served notice of a  
23 deposition for Mr. Paul Evanson, I think it was Tuesday of last  
24 week, and Mr. Evanson was noticed for deposition on Thursday  
25 afternoon. The deposition was taken.

1           Immediately following or perhaps immediately before,  
2 I just don't recall, Mr. Moyle served Mr. Evanson with a  
3 subpoena requiring him to appear at the proceedings this week,  
4 and FPL, as you know, filed its motion to quash, I think,  
5 within a day of that.

6           You've read our motion, so I won't rehash it, but  
7 rather let me spend some time responding to, to the response  
8 filed to our motion by Mr. Moyle.

9           When you read it, you will see that he contends that,  
10 that there, that Mr. Evanson is the person who has admitted  
11 that he is ultimately responsible for the decisions on which  
12 these hearings are based. That's true. Mr. Evanson is the  
13 president of Florida Power & Light Company. Ultimately he's  
14 responsible for all decisions at the company, and I think he  
15 admitted to that in his deposition.

16           But on, on Mr. Moyle's theory then, Mr. Evanson would  
17 be required to appear or could be required to appear at every  
18 proceeding that ever comes before this Commission. We think  
19 that's bad policy and we think that's bad precedent.

20           He indicates that no other FPL witness is in the  
21 position of being able to make the ultimate decision or to  
22 testify regarding the factors that he considered in making that  
23 decision. Well, as I indicated, Mr. Evanson did, in fact, make  
24 the ultimate decision, as he makes the ultimate decisions in a  
25 great many cases in most any things of substance to Florida

1 Power & Light Company.

2 That could probably be stipulated. We don't need  
3 Mr. Evanson here to, to put that into the record. And, in  
4 fact, we have his deposition and that's clear in his deposition  
5 and could be used as a substitute for his live testimony.

6 As to the factors that he considered in making that  
7 decision, the contention is that we don't have any FPL  
8 witnesses here that could discuss the factors that went into  
9 that decision. Well, that's just patently false. The factors  
10 that went into the decision are before you in this docket  
11 through prefiled testimony, exhibits, the need determination,  
12 which were presented to Mr. Evanson in summary fashion, mind  
13 you, and those were the factors upon which he endorsed the  
14 recommendation of Mr. Silva.

15 Mr. Moyle will also argue that the Brook case and the  
16 Halderman cases, which I referred to in our motion, don't stand  
17 for the proposition that, for which they are offered because  
18 they, they deal with state and governmental officials as  
19 opposed to private corporations. Well, we think that  
20 nonetheless the principle is analogous and it should be adhered  
21 to and adopted by this Commission as a matter of policy.

22 Mr. Moyle also contends that, that Mr. Evanson should  
23 be required to appear because, as he states, there's at least  
24 one question in the deposition that Mr. Evanson was instructed  
25 not to answer. Well, that's true as a matter of deposition

1 practice that, that witnesses from time to time are instructed  
2 in certain limited circumstances not to answer a question. And  
3 Mr. Moyle's opportunity then is to pursue that with the  
4 prehearing officer, which, frankly, he indicated to me he  
5 intended to do and had already made sure that Commissioner  
6 Deason was available Friday to air that issue and to have that  
7 resolved before the hearing today. And when he chose not to do  
8 that, I assumed he was going to let that lie. But instead he's  
9 reserved it as an argument in support of his motion or his  
10 contention that Mr. Evanson ought to be compelled or required  
11 to appear here today to answer that question.

12 CHAIRMAN JABER: Mr. Litchfield, what are, what are  
13 those limited circumstances where an attorney can instruct a  
14 deponent not to answer?

15 MR. LITCHFIELD: In my experience, an attorney is  
16 allowed to instruct a witness not to answer if it would tend to  
17 disclose privileged information including attorney work product  
18 or communications, if the questions are to the point where they  
19 are essentially a form of harassment of the witness or if the  
20 information is otherwise confidential or privileged and not  
21 subject to an existing confidentiality agreement. And it was  
22 in that latter case that I instructed Mr. Evanson not to answer  
23 the questions that are the subject of Mr. Moyle's response.

24 The -- so as I said, we're entitled to make certain  
25 objections in the deposition and to instruct the witnesses not

1 to answer. And Mr. Moyle's remedy was, as he had mapped out in  
2 his mind and has articulated to me, was to pursue that with the  
3 prehearing officer before this hearing. And he failed to do  
4 that and now he would have you use that as a reason to compel  
5 Mr. Evanson to appear live today.

6 He indicates, also, that, again, Mr. Evanson was  
7 clearly the person with the final say. And I'll refer you to  
8 Page 4 of his response. "Clearly the person with the final say  
9 in determining the best alternative." Well, again, he is the  
10 president and has the final say on a great many matters. But  
11 as he indicated in his deposition to Mr. Moyle, the  
12 recommendation that was given to him was, was presented by  
13 Mr. Silva and, and the work that was done to produce that  
14 recommendation was done by Mr. Silva or people under  
15 Mr. Silva's direction or control or Mr. Taylor, who is a  
16 witness in this case. And, in fact, the interrogatory and  
17 answer reflected here on Page 4 is clear; the results of the  
18 analysis performed independently by FPL and Mr. Taylor show  
19 that the All-FPL self build option is the lowest cost  
20 alternative to meet FPL's capacity need. Based on these  
21 results and on his own review, meaning Mr. Silva's own review  
22 of noneconomic factors related to different generation capacity  
23 alternatives, Mr. Silva concluded that the All-FPL self build  
24 option is the best alternative. Mr. Silva communicated his  
25 conclusions and the bases for those conclusions to Mr. Evanson,

1 who concurred.

2 I think we have ten witnesses here, including  
3 Mr. Silva, who can adequately and fully address any question  
4 relating to the factors that went into the decision, the  
5 reasons for the decision, the details of the analysis. And I  
6 think it is cumulative, unnecessary and would set a poor  
7 precedent to require Mr. Evanson to appear here at this  
8 hearing.

9 Now having said that, I don't know what Mr. Evanson's  
10 availability is, but clearly if it is the Commission's intent,  
11 and order to have Mr. Evanson appear, we will certainly make  
12 him available. We just think as a matter of practice it  
13 doesn't make sense and we think, frankly, that in this case it  
14 borders on harassment. Thank you.

15 CHAIRMAN JABER: Mr. Litchfield, I may have missed  
16 this. I don't think so. Did you make the offer of admitting  
17 the deposition transcript into the hearing in lieu of  
18 Mr. Evanson being physically here?

19 MR. LITCHFIELD: Yes, we did.

20 CHAIRMAN JABER: Does that offer still stand?

21 MR. LITCHFIELD: It certainly does.

22 CHAIRMAN JABER: Mr. Moyle, response.

23 MR. MOYLE: Sure. And we did just receive the motion  
24 to quash on Monday and worked yesterday in addition to  
25 preparing for this case to put together a response, which you

1 have before you. It was filed this morning. So I will, I will  
2 try to spend a little time summarizing the arguments set forth  
3 in the pleading and make the case we believe why it's  
4 appropriate to have Mr. Evanson called as a witness.

5           Before I get into the legal arguments in the  
6 pleading, I guess I would just note that it's my understanding  
7 that this is the biggest need case that's ever been filed in  
8 the State of Florida. And we've had a lot of discovery in this  
9 case, we've taken depositions and what not. Mr. Evanson was  
10 very much involved in this decision. Ultimately it was his  
11 decision. I think the interrogatory answer which is appended  
12 as part of the motion reflects that.

13           Also attached to the response to the motion to quash  
14 is a sampling of the E-mails that went back and forth between  
15 Mr. Evanson and others regarding various aspects of the need  
16 determination in the case.

17           So just by looking at that, I would argue that  
18 Mr. Evanson played an integral role, it's ultimately his  
19 decision, and he ought, ought to be compelled to appear.

20           With respect to the timing, counsel and I, we've  
21 known Mr. Evanson was going to be a witness for CPV for quite  
22 some time, we've had discussions about his availability. There  
23 was discussions about would he appear voluntarily and what not.  
24 We weren't able to come to an agreement. So as a result, at  
25 the deposition, which counsel and I had worked out as to when

1 it would be held, CPV felt it had no choice but to have him  
2 under a subpoena to compel his availability.

3 If I could just, just briefly talk on a couple of  
4 legal points. It seems that FPL takes the position that  
5 because a deposition is available, that Mr. Evanson is not  
6 needed. Well, I think that misconstrues the role of  
7 depositions and discovery in preparing for a fact-finding  
8 process.

9 If it were always true that depositions could be used  
10 in lieu of live testimony, it seems to me that that would  
11 severely curtail the power of this Commission to have statewide  
12 subpoena power, number one. And, secondly, it would prevent  
13 somebody from putting on a case at a proceeding like CPV plans  
14 to do here. You would have to go through and prepare your  
15 deposition in a way that is wholly different because you would  
16 say, well, wait a minute, this has to come in as, as evidence  
17 of the proceeding. I think if you review the deposition, it  
18 was clear that CPV conducted the deposition as a discovery  
19 deposition designed to elicit information that would then be  
20 used to prepare for cross-examination. So the reliance on  
21 1.330(a)(3) with respect to the deposition, we think, is  
22 misplaced.

23 CHAIRMAN JABER: Mr. Moyle, did you ask in the  
24 deposition questions related to the E-mails that you've  
25 attached to your response?

1 MR. MOYLE: I believe, I believe I did, ma'am;  
2 particularly one that Mr., Mr. Evanson got from Mr. Waters.  
3 And I'll get into it -- the question that I want --

4 CHAIRMAN JABER: Is that deposition dated  
5 September 23rd?

6 MR. MOYLE: I believe that's right.

7 CHAIRMAN JABER: Okay. Go ahead.

8 MR. MOYLE: Okay. Section 120.569(2)(k)(1), Florida  
9 Statutes, under Chapter 120, which is the statute that this  
10 proceeding is being conducted under, sets forth the standards  
11 for quashing a subpoena.

12 And I'll just quote. It says, "Any person subject to  
13 a subpoena may, before compliance in a timely petition, request  
14 a presiding officer having jurisdiction of the dispute to  
15 invalidate the subpoena on the ground that it was not lawfully  
16 issued, is unreasonably broad in scope or requires the  
17 production of irrelevant material."

18 Now I don't think FP&L has argued that the subpoena  
19 was unlawfully issued, I don't think they've argued that it's  
20 unreasonably broad in scope, and I don't think that they've  
21 argued that it requires a production of irrelevant material.  
22 So we would argue as a matter of law that this subpoena is  
23 valid and ought to be enforced. Let Me --

24 CHAIRMAN JABER: How does, how does the argument  
25 related to availability and, and distance, you know, he lives

1 beyond the 100-mile radius, how does, how do you reconcile  
2 those two arguments?

3 MR. MOYLE: My understanding of that is that that's  
4 something that can be used if, if you can establish that the  
5 person is beyond the 100 miles, but it doesn't trump the  
6 subpoena power. For a party putting on a case that feels that  
7 this witness is necessary, if, if a jurisdiction has subpoena  
8 power over them, I do not believe that the, the provision  
9 related to the admissibility of depositions trumps the subpoena  
10 power.

11 CHAIRMAN JABER: And the subpoena Rule of Civil  
12 Procedure you said is?

13 MR. MOYLE: I think it's on the subpoena. I don't  
14 have it right at my fingertips. I'm sorry.

15 CHAIRMAN JABER: Okay. But you cited to some rule.

16 MR. MOYLE: I cited to 120.569, Florida Statutes.

17 CHAIRMAN JABER: Oh, the statutes. Okay.

18 MR. MOYLE: Right. The, the other point that, that  
19 is made in the motion, and I think it's also reflected in a  
20 portion of the transcript was, which was attached, is CPV asked  
21 Mr. Evanson a series of questions related to his authority with  
22 respect to settlements and whether settlements were things that  
23 he would be made aware of and what not.

24 We had that discussion and then referred him to a  
25 piece of testimony from another witness, from another FP&L

1 witness, which we argue shows that if the equity penalty were  
2 not applied, that FP&L's proposal would not be the least cost  
3 alternative. We showed him that, that testimony and asked him  
4 if he knew the person who offered it and knew whether he  
5 considered this person to be trustworthy. He said he did.

6 I then asked Mr. Evanson whether he was aware of why  
7 the entity that had the lower cost proposal was no longer in  
8 the case. Mr. Evanson said, you need to go ask that entity. I  
9 said, well, with all due respect, I'm asking you. He said he  
10 wasn't really aware.

11 I then asked him whether FP&L had entered into a  
12 settlement agreement with that entity taking them out of the  
13 case. Okay? And that was when he was instructed not to answer  
14 the question. Mr. Litchfield and I engaged in some lawyerly  
15 back and forth about the relevancy of that, and I argue that I  
16 consider it relevant to the extent that the statute requires  
17 the most cost-effective determination be made by the  
18 Commission. And to the extent that there was a lower cost  
19 alternative out there and you didn't apply the equity penalty,  
20 if FP&L had entered into a settlement agreement with this  
21 entity and taken them out of the case, that that was relevant,  
22 I would argue, to the proceeding. And Mr. Evanson (sic.)  
23 directed the witness not to answer that question.

24 CHAIRMAN JABER: On that point, before you leave that  
25 point.

1 MR. MOYLE: Uh-huh.

2 CHAIRMAN JABER: With respect to the direction not to  
3 respond, why didn't you then seek recourse from the prehearing  
4 officer? Why not move to compel? I'm trying to understand why  
5 the remedy there is having him appear at the hearing versus ask  
6 the prehearing officer to order the witness to answer.

7 MR. MOYLE: Sure. Sure. I'll tell you, tell you my  
8 thoughts in that regard.

9 Number one, he had been served with a valid subpoena.  
10 I didn't know for sure whether FP&L was going to move to quash  
11 or not. I didn't get the motion to quash until, until Monday,  
12 I believe. Okay. They indicated that they had it prepared but  
13 they, you know, hadn't made a decision. So my --

14 CHAIRMAN JABER: I'm not sure you're answering my  
15 question.

16 MR. MOYLE: Okay.

17 CHAIRMAN JABER: The motion to quash is the motion to  
18 quash the subpoena to have him appear at the hearing.

19 MR. MOYLE: Right.

20 CHAIRMAN JABER: My question goes to the heart of the  
21 deposition and your remedy associated with him not answering  
22 the questions at the deposition. Isn't the appropriate remedy  
23 going to the prehearing officer and seeking that the prehearing  
24 officer compel the response?

25 MR. MOYLE: Well, I'm not sure. I mean, we gave that

1 some thought. But my thought was, listen, if he's going to be  
2 at the hearing, which I had him under subpoena, there had been  
3 no motion to quash filed, then, you know, that decision could  
4 be made by the Commission; if he was instructed again not to  
5 answer, that that decision could be made by the Commission,  
6 number one.

7 And, number two, quite frankly, we were working under  
8 pretty tight time frames. The deposition was last Thursday. I  
9 was in West Palm Beach Friday, you know, came back here  
10 yesterday, I'm losing my track of days, but the bid rule was, I  
11 guess, Monday. So it was, it was a pretty, pretty hectic time.

12 But I would point out, also, that, you know,  
13 Mr. Litchfield says that I said, well, I'd go to the prehearing  
14 officer, and I considered going to the prehearing officer. But  
15 the transcript that's attached on Page 58 says, "Mr. Moyle:  
16 We'll let the Commission sort this out. Mr. Litchfield: I  
17 think that's probably what we need to do." So, you know, the  
18 transcript reflects that I said let's let the Commission sort  
19 this one out. And, you know, I think that's the appropriate  
20 way in which to pursue it.

21 But back on my point, you know, that also points out  
22 the reason, I believe, why he needs to be here personally,  
23 because I think that's a pertinent question to this case. If  
24 FP&L has entered into a settlement agreement with somebody who  
25 had a lower cost alternative and deprived the Commission of

1 that evidence, I think that's relevant to your decision and to  
2 your judgment. And for that reason, you know, I think that the  
3 information he has is, is necessary, and we would ask that you  
4 go ahead and enforce the subpoena power that you have.

5 MR. LITCHFIELD: May I respond, Madam Chairman?

6 CHAIRMAN JABER: Thank you, Mr. Moyle. No, you may  
7 not. I've heard the arguments and I've heard the response.  
8 I've read the pleadings. Here's what we're going to do. The  
9 motion to quash the subpoena to have Mr. Evanson appear at the  
10 hearing is granted. However, the deposition transcript dated  
11 September 23rd, 2002 -- my copy indicates it is 107 pages --  
12 I'm going to leave it up to the parties to make sure it's the  
13 transcript that belongs in this hearing, that this is the  
14 accurate transcript that the court reporter should have. That  
15 transcript will be identified as Exhibit 1 for purposes of the  
16 hearing and it will be admitted into the record.

17 (Exhibit 1 marked for identification and admitted into  
18 the record.)

19 MR. MOYLE: Could I just for the record make one, one  
20 request?

21 CHAIRMAN JABER: Go ahead, Mr. Moyle.

22 MR. MOYLE: With respect to that question that I  
23 contend is very important to CPV's case, would it be  
24 permissible to have that question asked and answered or that  
25 line of questioning asked and answered with respect to the

1 settlement agreements that FP&L has entered into with respect  
2 to other intervenors in this case?

3 CHAIRMAN JABER: Are you asking that I now compel  
4 Mr. Evanson to answer that question?

5 MR. MOYLE: Yes.

6 CHAIRMAN JABER: Is that what you're asking? No.  
7 That request is denied.

8 MR. MOYLE: Okay. Thank you.

9 CHAIRMAN JABER: Okay. The next motion I have in  
10 front of me, Ms. Brown, is the motion in limine to exclude new  
11 testimony by PACE. And I do need to hear argument on that.  
12 FP&L filed a motion. I've got that motion, I've read it. The  
13 time for filing responses obviously has not expired. So --

14 MR. MCGLOTHLIN: Chairman Jaber, we may be able to  
15 call that a moot motion. Mr. Guyton, suggested a work out to  
16 me before we started up here, and on reflection I think it's  
17 acceptable to our side.

18 MR. GUYTON: Madam Chairman, we would withdraw the  
19 motion with the understanding that if Mr. Slater takes the  
20 stand, he would only be allowed to supplement or clarify his  
21 prefiled testimony to the extent that he did so in deposition  
22 that was taken yesterday, with the understanding that if he's  
23 allowed to do that, we would be given the opportunity to  
24 present live rebuttal witnesses as to that supplemental  
25 testimony.

1           CHAIRMAN JABER: Well, let's talk about that. Let me  
2 just tell you for future knowledge as well, there is a -- I  
3 have a strong feeling as it relates to preserving the integrity  
4 of the process and the integrity of having prefiled testimony  
5 that all parties benefit from, prepare their case to and,  
6 frankly, that the Commissioners and staff prepare for the  
7 hearing. So I have a strong feeling as it relates to  
8 preserving that process. I don't want surprises in the next  
9 couple of days. I mean, you all are put on notice. There will  
10 be no surprises. I expect courtesy to each other throughout  
11 the entire week.

12           So, Mr. McGlothlin, I would ask that you make sure  
13 that you sit down with Mr. Guyton and find out what those  
14 supplemental changes, corrections, modifications might be and  
15 understand what the ramifications are. I don't like the idea  
16 of live rebuttal, when clearly the procedure for having,  
17 governing this case has been established by the prehearing  
18 officer for some time now. So give me a little more  
19 information, Mr. McGlothlin.

20           MR. MCGLOTHLIN: The nature of the updated testimony  
21 will be that Mr. Slater, since he filed his prefiled testimony,  
22 has reviewed, with the aid of the confidential instruction  
23 manual, the EGEAS runs and has additional observations, many of  
24 which serve to supplement and reinforce conclusions already  
25 made in the same areas.

1           There are a limited number of observations that are  
2 additional points, but I think what we've arrived at here is a  
3 reasonable work out because there was an issue of some delay in  
4 his ability to review that materials.

5           And we, I think, went the extra mile yesterday by  
6 making him available for a deposition at 4:00 yesterday  
7 afternoon. Mr. Slater drove five miles to a court reporter's  
8 office to accommodate FPL's wishes and need in that regard.  
9 And I think it's acceptable to us to have the content of that  
10 deposition serve as the blueprint for whatever supplemental  
11 testimony would be offered.

12           CHAIRMAN JABER: Mr. Guyton, you are not, you're not  
13 requesting now that you be given an opportunity for live  
14 rebuttal. You're reserving your right to seek that later.

15           MR. GUYTON: Our understanding is that there are  
16 additional points that we would like to rebut based upon the  
17 deposition. There's an elaboration and some additional new  
18 points that had we had it earlier, we could have prefiled  
19 rebuttal testimony, as is our preference. But with the  
20 understanding that that additional information would come in  
21 when he takes the stand, yes, we are asking for leave to offer  
22 two additional witnesses, actually it's two witnesses that are  
23 already preparing rebuttal, but they would elaborate when they  
24 take the stand beyond what they've prefiled to address what  
25 Mr. Slater proposes to elaborate on when he takes the stand.

1 CHAIRMAN JABER: I don't expect that Mr. Slater will  
2 testify today, so let me take that motion and your request  
3 under advisement.

4 MR. GUYTON: That's fine. I mean, the other  
5 alternatives, we're perfectly comfortable with the motion in  
6 limine and proceeding that way as well. But we offered this  
7 accommodation to try to facilitate the process. And, you know,  
8 we'll yield to your judgment as to which you'd prefer.

9 CHAIRMAN JABER: Okay. I'll let you two talk about  
10 it further. Get a clear understanding what the changes are,  
11 Mr. McGlothlin, and I will revisit this later on in the day.

12 All right. Ms. Brown, that's the only motion I want  
13 left outstanding. So are there any other ones I don't know  
14 about?

15 MS. BROWN: I'm not aware of any, Chairman Jaber.  
16 And if the parties are, I'd like them to speak up now.

17 CHAIRMAN JABER: Okay. Go ahead, Mr. Moyle.

18 MR. MOYLE: I'm not sure it's -- well, maybe it is a  
19 motion. It was my intent to invoke the rule prior to witnesses  
20 testifying. I'm not sure we're at that point. But I've raised  
21 it with the prehearing officer and it's usually been my  
22 practice before witnesses are called to invoke the rule, and I  
23 would intend to ask that it be done in this case.

24 CHAIRMAN JABER: I think for purposes of the record  
25 we just need to acknowledge that and leave it up to you to

1 handle the questions with respect to each witness. Do you  
2 intend to do that on every single witness?

3 MR. MOYLE: No, ma'am. What I was intending to do  
4 is, as authorized by the Florida Evidence Code and some case  
5 law, to invoke the rule in that witnesses -- again, let me  
6 start from this premise.

7 CPV Gulfcoast has offered a number of witnesses; I  
8 think one witness of CPV that's going to testify. Our, our  
9 case is going to have to be made largely based on  
10 cross-examination.

11 CHAIRMAN JABER: Uh-huh.

12 MR. MOYLE: I would ask that the rule be invoked to  
13 preclude all of the FP&L witnesses remaining in the room to  
14 hear my cross and the answers and what not because that would  
15 be unfair to CPV Gulfcoast. So at the appropriate time I would  
16 ask that the rule be invoked consistent with Section 90.616,  
17 Florida Statutes, which is the evidence code. And if you want  
18 to take argument on it, I can argue it in greater detail. But  
19 I just didn't know whether this was the time to argue it or  
20 right before we get to --

21 CHAIRMAN JABER: Yeah. I don't know either,  
22 Mr. Moyle.

23 Staff, what, procedurally what is the timing? Can I  
24 just acknowledge the request now or do I actually have to make  
25 a finding now? What is the procedure?

1 MR. HARRIS: Commissioner, generally in civil  
2 practice prior to the swearing of the witnesses the rule is  
3 invoked. It will -- it's been my experience that usually all  
4 the witnesses will be sworn and then they're asked to leave the  
5 courtroom if the rule is invoked and the tribunal decides to  
6 grant that request.

7 CHAIRMAN JABER: Yeah, Mr. Moyle. I think that's  
8 something we handle right before each witness comes up. But I  
9 don't, I don't mind hearing argument on this. Mr. Guyton, do  
10 you have any objection to the request?

11 MR. GUYTON: Yes. And I'd ask Mr. Hill to address  
12 the request.

13 MR. HILL: Thank you, Chairman Jaber. We oppose the  
14 sequestrations of witnesses in this case for a number of  
15 reasons. First, it is based on the Florida Evidence Code,  
16 which is not applicable here. We don't think there's any  
17 purpose for invoking the rule here.

18 Even if the rule of evidence were applicable in this  
19 case, we would note that courts apply it with considerable  
20 discretion, and courts have wide discretion in applying the  
21 rule of sequestration or not applying the rule of  
22 sequestration.

23 The case law makes clear -- and I've got a case I can  
24 hand up, if necessary. I've provided it to Mr. Moyle. The  
25 rule of sequestration is not a strict rule of law. There are a

1 number of exceptions. First and foremost, and this exception  
2 is generally recognized and utilized, experts are generally  
3 outside of a rule of sequestration even when invoked.

4 In this particular case, FPL has -- of course, I  
5 should cite my case when I, when I mention it; Goodman versus  
6 West Coast Brace & Limb, 580 So.2d 193.

7 The recognized exception for experts applies  
8 particularly here. FPL has chosen carefully ten witnesses in  
9 different areas to testify to areas that are within their  
10 particular expertise. These witnesses are either practical  
11 experts or in essence they are experts and their testimony or  
12 their presence will be necessary during all parts of the  
13 presentation of the case in order that they may evaluate  
14 matters and, and apply their expertise.

15 Second, there is an exception to client  
16 representatives. Our witnesses are all, in essence, client  
17 representatives. Generally, generally speaking, people in  
18 courts, the exception for client representative is to a single  
19 representative, but that's not necessarily the case. And here  
20 we have client representatives from various areas of the  
21 company with various areas of knowledge, and we think it's  
22 appropriate to have them here.

23 Additionally, the principle rule underlying or the  
24 principle reason for the rule of sequestration is to avoid  
25 witnesses from listening to other testimony and coloring their

1 testimony as a result. That danger is absent or an absolute  
2 minimum here because we're talking about prefiled testimony.  
3 And this, this is the common sense approach. Every witness  
4 here knows what every witness is going to say, it's been part  
5 of the public record for months, there's no secret about what  
6 these testimonies are going to be. Most of our witnesses have  
7 already been deposed, so there's no issue about the issues that  
8 will be brought up in cross-examination. So the basis  
9 underlying the rule is not present here. There's no danger of  
10 witnesses coloring their testimony.

11 CHAIRMAN JABER: Mr. -- just if I could interject.  
12 Mr. Moyle, it's been my experience since my time here that the  
13 ball gets passed so much as witnesses testify that the guy that  
14 ends up holding the ball at the end of the day is the last  
15 witness, and it just saves so much time when he's heard all the  
16 questions that have gotten referred to him. But it is your  
17 request.

18 MR. MOYLE: Yeah. And I guess, again, it's premised  
19 largely on the situation in which we find ourselves, which is  
20 having to build a case on cross-examination. And I would argue  
21 that it's inherently unfair for all the witnesses to sit in the  
22 room and listen to my cross and then the answers, and it's more  
23 likely than not that answers would dovetail if they were all in  
24 the room.

25 CHAIRMAN JABER: But the choice to build your case on

1 cross-examination was your choice.

2 MR. MOYLE: That's right. That's right. But, but,  
3 again, the case -- I think the case law, the case that Mr. Hill  
4 gave you, if you look at the, the first section there, it says,  
5 quote, "When a party requests that witnesses will be excluded  
6 from a trial proceeding under the sequestration rule, generally  
7 the trial court will exclude all perspective witnesses from the  
8 courtroom," quote, "to avoid coloring of a witness's testimony  
9 by that which he has heard from other witnesses who have  
10 preceded him on trial." And it cites, you know, a number of  
11 different cases.

12 It's always been my practice, trying things over at  
13 the Division of Administrative Hearings or in courts, to invoke  
14 the rule when I felt it would be beneficial to a trial  
15 strategy. Today, without getting, you know, into all of my  
16 trial strategy, you know, the case is largely premised on  
17 cross, and for that reason we think that it's appropriate to  
18 invoke the rule.

19 Just a couple of comments. With respect to --

20 CHAIRMAN JABER: Hang onto that thought. I need to  
21 let Mr. Hill finish. I interrupted him. But I will let you  
22 respond.

23 MR. MOYLE: Okay. Thank you.

24 MR. HILL: Thank you, Chairman Jaber. My next point  
25 was going to be the efficiency point, and there are going to be

1 occasions, we expect, where a witness will simply have to defer  
2 a question either from cross-examination or from the Commission  
3 to another witness. It would be much more efficient to have  
4 the witnesses present. And, as you noted, the last one of the  
5 day is probably going to be answering a lot of questions.

6           So the way this proceeding is set forth, the rule  
7 will not support efficiency, it will detract significantly from  
8 the efficiency of putting on our case. And we believe it will  
9 be much more beneficial to the panel to have the witnesses  
10 present during all phases, during all the questioning.

11           CHAIRMAN JABER: Is it your opinion I have the  
12 discretion to deny this kind of request?

13           MR. HILL: Absolutely. You have, you have wide --  
14 you have the discretion not to even apply the rule of  
15 sequestration here. And we have looked carefully to find  
16 whether this Commission has ever invoked the rule of  
17 sequestration. We were not able to find any purported places  
18 where this Commission has even applied the rule of  
19 sequestration. So you don't -- you can check with staff and  
20 I'd invite you to, but you have the discretion not to even  
21 recognize the rule of sequestration. And certainly if the rule  
22 were applicable here as it were in a court, you would have the  
23 discretion to deny it for the interest of efficiency and, and  
24 putting on an efficient case. So, absolutely, you have the,  
25 you have the discretion.

1           CHAIRMAN JABER: Thank you, Mr. Hill. Mr. Moyle, I  
2 want you to respond to all of that. But two questions for you:  
3 Is there anything in 120 in the APA that's, that is similar to  
4 the provision in Chapter 90 is the first question? And the  
5 second question is, do you agree I have the discretion to deny  
6 your request?

7           MR. MOYLE: Let me start with the second one first  
8 because I don't have to go look. Yeah. I do believe the  
9 standard is a discretionary standard, and it's whether that  
10 discretion is abused or not. So Mr. Hill and I agree on, on  
11 that point.

12           With respect to just a couple of other points that he  
13 made that I think I can concur on. It's been my experience  
14 that when the rule is invoked, that parties are allowed to have  
15 one client representative remain in, and that's, I think,  
16 almost a due process issue so they can be part of the  
17 proceedings and partake.

18           With respect to the efficiency argument, I would  
19 disagree with that because I think it's incumbent on the  
20 lawyers to have the questions to ask the witnesses. And to the  
21 extent that Witness A says, well, Witness B would be better to  
22 answer that question, you know, particularly for me on cross,  
23 then it's going to be my job to say, okay, I need to ask that  
24 question of Witness B. And, you know, the idea that somehow  
25 the witnesses are going to be responsible for that or doing

1 that, I just disagree from an efficiency standpoint. I mean,  
2 it's the lawyers' responsibility to keep track of that and to  
3 pose the questions to the, to the right, right witnesses.

4 With respect to your, your question about, about  
5 Section 90 and 120, I can't give you a definitive answer on  
6 that, candidly. I'm sorry I can't. It's been my understanding  
7 that typically administrative processes follow the evidence  
8 code as guidance. I mean, I think it wouldn't make sense not  
9 to follow the evidence code. It's been put together because  
10 it's been dependable and reliable and the courts of the State  
11 of Florida use it. And I would argue that administrative  
12 tribunals ought to also follow its fundamental tenets, and the  
13 exclusive of witnesses, I would argue, is sort of a fundamental  
14 tenet of the evidence code.

15 I would point out that the administrative procedures  
16 has been known to be a little more lax on certain evidence  
17 things like hearsay evidence can come in so long as it doesn't  
18 serve to prove the essentially fact, as the basis of the  
19 essential fact.

20 So I'm sorry I can't give you a definitive answer on  
21 that. Maybe staff knows or maybe Mr. Hill knows.

22 CHAIRMAN JABER: Thank you, Mr. Moyle. Does that  
23 conclude your response?

24 MR. MOYLE: Yes, ma'am.

25 CHAIRMAN JABER: Staff, I think Mr. Moyle is correct

1 where in the APA, if there isn't a provision on a certain  
2 subject, we do defer to the evidence code. I think that that  
3 is a correct statement. Do you agree with that?

4 MR. HARRIS: Commissioners, my understanding is the  
5 Commission does follow the evidence code when possible. I do  
6 not believe there is a binding requirement that you must follow  
7 it on all occasions.

8 CHAIRMAN JABER: But saying all of that, staff agrees  
9 I have the discretion to the deny the request to invoke  
10 Section 90.616 of the Florida Evidence Code?

11 MR. HARRIS: Absolutely, Commissioner.

12 CHAIRMAN JABER: Okay. Mr. Moyle, I'm going to deny  
13 your request.

14 MR. MOYLE: Okay.

15 CHAIRMAN JABER: I don't think the circumstances you  
16 raise in this case warrant deviation from our practice. And,  
17 frankly, I have confidence in the way this hearing will be  
18 conducted to allay your concerns. This is going to be, as they  
19 always are, fair hearings with witnesses being admonished when  
20 they don't answer the questions and counsel being put on notice  
21 how this hearing will be conducted. So I think your concerns  
22 will be addressed in other ways.

23 MR. MOYLE: And I have, I have no doubt -- don't  
24 understand my comments to suggest any doubt about that.

25 CHAIRMAN JABER: I don't.

1           MR. MOYLE: I was just, you know, making a point with  
2 respect to witnesses hearing others. But I thank you for  
3 considering the request and appreciate the, the ruling.

4           CHAIRMAN JABER: Okay. Any other preliminary  
5 matters?

6           All right. Here's what we're going to do. We're  
7 going to go ahead and swear in the witnesses. I would ask that  
8 the witnesses please stand and raise their right hand.

9           (Witnesses collectively sworn.)

10          CHAIRMAN JABER: Thank you. Now while I see the  
11 witnesses, let me tell you that I expect your responses will  
12 begin with a yes or no where appropriate, with a fair  
13 opportunity for a response or an elaboration. But if a  
14 question calls for a yes or no answer, I'm going to be  
15 listening to a yes or no. And, frankly, I won't wait for an  
16 objection. I will be prepared to remind the witnesses of the  
17 instruction.

18          The attorneys, absolutely you have a right to  
19 preserve the record on appeal by making various objections.  
20 You know, we don't stand in the way of that. But I would ask  
21 that you remember what the big picture is as it relates to this  
22 Commission making a finding at the end of the day. I, for one,  
23 and I know my colleagues share the concern, we want to hear the  
24 substance of the testimony. We want to hear the substance of  
25 the petition so that we can make the most informed decision we

1 can make at the end of this process. I respect the need to  
2 consider objections, and don't get me wrong, I will rule on  
3 objections. But I would ask that we weigh all of that with a  
4 professional courtesy and the understanding of what the  
5 Commissioners are really here to decide throughout this  
6 process.

7 This hearing will get done by Friday. If this  
8 hearing does not get done on Friday, I am not kidding, ask  
9 around, I'm prepared to be here Saturday and I know my  
10 colleagues will be here Saturday. That's not a bluff; right?  
11 We've had Saturday hearings before.

12 I would expect that we conduct this hearing with the  
13 utmost professionalism. We're going to take a short break  
14 before opening statements because I understand there needs to  
15 be a setup over here for the Commissioners in the use of visual  
16 aids.

17 Staff, before we take a short break, is there  
18 anything else we need to discuss right now?

19 MS. BROWN: Not that I'm aware of, Chairman Jaber.

20 CHAIRMAN JABER: We're going to come back at -- we're  
21 going to take a ten-minute break. I think ten minutes is what  
22 you asked for, Mr. Guyton.

23 MR. GUYTON: Yes, Madam Chairman.

24 CHAIRMAN JABER: We'll take a ten-minute break and  
25 then start the hearing. Thank you.

1 (Recess taken.)

2 CHAIRMAN JABER: Let's get back on the record. We're  
3 at the stage now where we can entertain opening statements.  
4 I've been looking at the prehearing order, and it looks like  
5 the prehearing officer allowed opening statements of ten  
6 minutes per party and requested that the parties coordinate  
7 with respect to their openings statements to avoid repetition.  
8 I assume that's been done.

9 I notice also that an opportunity will be given to  
10 FP&L to respond to the arguments, if they decide to. I mean,  
11 that may not be necessary at all, I would imagine, Mr. Guyton.

12 MR. GUYTON: I'll keep that in mind, Commissioner.

13 CHAIRMAN JABER: Okay. We'll start with you,  
14 Mr. Guyton.

15 MR. GUYTON: Thank you.

16 CHAIRMAN JABER: You catch on so fast.

17 MR. GUYTON: Commissioners, in these two companion  
18 proceeding Florida Power & Light Company seeks a determination  
19 of need pursuant to Section 403.519, Florida Statutes, for two  
20 highly efficient low cost power plants that are necessary to  
21 meet the needs of its customers.

22 The first unit is Martin Unit 8. It is a conversion  
23 of two 159-megawatt combustion turbines into a 1,107-megawatt  
24 four-on-one combined cycle unit. This conversion with result  
25 in an incremental capacity of 789 megawatts. The second unit

1 is Manatee Unit 3. It is an 1,107-megawatt four-on-one  
2 combined cycle unit.

3           Commissioners, these cases are the culmination of  
4 almost two years and countless hours of work by Florida Power &  
5 Light Company. As a result of this unprecedented effort, these  
6 two unit additions are the most analyzed and the most carefully  
7 scrutinized capacity additions ever undertaken by Florida Power  
8 & Light Company, and we submit probably in the history of  
9 Florida.

10           FPL's case is extensive and it is well documented.  
11 The same cannot be said of the intervenors' case. I will help,  
12 I will help you or at least I will attempt to help in terms of  
13 giving you some visual idea of the evidence that you will hear  
14 over the next three days.

15           I do that by directing your attention to this table  
16 to my right and to your left. FPL will present prefiled direct  
17 testimony of ten witnesses and their exhibits. That's the pile  
18 on the far, your far left of the table there.

19           Supplementing that as an additional exhibit is this  
20 stack of materials towards the middle of the page, which --  
21 towards the middle of the table, which consist of the Need  
22 Study and all the appendices underlying the Need Study.

23           In addition to that, FPL is submitting confidential  
24 exhibits that include the bid documents that were submitted or  
25 a summary of the economics of the bid documents, and the

1 primary computer runs that FPL used to reach its determination  
2 on cost-effectiveness. Those materials are in the boxes behind  
3 our Need Study and exhibits. That is FPL's direct case.

4 Next to it, this relatively modest stack here next to  
5 the Need Study, is the intervenors' testimony consisting of  
6 about 30 pages of testimony and a few exhibits.

7 Next to it on the right-hand corner is Mr. Maurey's,  
8 the staff witness's testimony, and he testifies as to one issue  
9 in the economic analysis.

10 And then this last pile back closest to me is our  
11 rebuttal testimony where we rebut both the intervenor testimony  
12 as well as Mr. Maurey's testimony.

13 This information, plus whatever you hear on  
14 cross-examination and in the exhibits that are in, will be the  
15 evidence in this case. But that is not all the documentation.  
16 FPL performed hundreds, if not thousands of computer  
17 simulations in its economic evaluation. In addition, it had an  
18 independent evaluator conduct numerous simulations.

19 The intervenors and staff posed 354 interrogatories  
20 to Florida Power & Light Company and 309 request for production  
21 of documents, and they took nine depositions of current and  
22 former FPL employees. FPL produced 21,981 pages of documents  
23 in response to the request to produce.

24 Now you will hear some argument and evidence over the  
25 next two days about openness and transparency. I submit to you

1 that this process and evaluation has been fully and completely  
2 documented and it is in every sense of the word an open process  
3 for the intervenors and you to examine.

4 Now despite the volume of documents that I've drawn  
5 your attention to, I'd like to distill FPL's case into  
6 relatively modest six or seven points.

7 First is FPL needs 1,722 megawatts of additional  
8 capacity in 2005 and in 2006 to meet its Commission-approved  
9 20 percent reserve margin. As best I can tell, this issue is  
10 uncontested.

11 FPL conducted not one, but two capacity solicitations  
12 in which 18 bidders presented 134 alternatives to Martin Unit 8  
13 and Manatee Unit 3. FPL conducted a rigorous, comprehensive  
14 and demonstrably objective economic analysis. FPL used  
15 analytically sound models and reasonable and consistent  
16 assumptions to analyze both the bidders' proposals and FPL's  
17 self-build options.

18 FPL's economic analysis, as the evidence will show,  
19 was conservative and in some ways even favored the bidders.  
20 FPL did not question any of the optimistic assumptions that  
21 were used by a number of the bidders in their proposals and FPL  
22 did not adjust for the caveats or exceptions that were proposed  
23 in their proposals that in all likelihood would have increased  
24 the costs associated with the projects.

25 As to its own self-build options, FPL did not include

1 the residual value that would be associated with its unit after  
2 the life of the unit, which could be considerable. And we did  
3 in our modeling, we recognized revenue requirements associated  
4 with a self-build option, even those these units would be  
5 brought in seven months before we have a revenue sharing  
6 agreement that is set to expire and, therefore, we would not be  
7 able to request a rate increase at the time that these units  
8 were brought into service. Those costs were attributed to us  
9 even though they wouldn't be experienced by customers.

10 With this conservatism, the Martin Unit 8/Manatee  
11 Unit 3 portfolio was still the most cost-effective alternative  
12 over the next best portfolio that didn't include those units by  
13 \$83 million net present value.

14 The Martin Unit 8/Manatee Unit 3 plan costs  
15 approximately \$500 million. That's a half a billion dollars  
16 net present value less than the lowest cost all outside  
17 proposal portfolio.

18 FPL's cost-effectiveness analysis was monitored by  
19 your staff, and FPL's conclusions as to its cost-effectiveness  
20 analysis was confirmed by an independent third-party evaluator  
21 who found that FPL's lowest cost alternative -- or was the  
22 lowest cost alternative by at least \$135 million net present  
23 value.

24 Now before we conducted or my client conducted its  
25 economic analysis, FPL declared three bidders with 18 proposals

1 to be ineligible, and it did so to protect FPL's customers.  
2 One bidder with one proposal was dropped because that bidder  
3 was unwilling to meet a minimum requirement specified in the  
4 supplemental RFP, that being a completion security that was  
5 designed to protect customers.

6 One bidder with five proposals was dropped because of  
7 it's stated intent to miss an in-service date on an existing  
8 power supply agreement and because FPL had concern about its  
9 financial viability.

10 And one bidder with 16 proposals withdrew four and  
11 the other 12 were dropped because the bidder was considered to  
12 be too risky by Florida Power & Light Company to supply its  
13 customers. It had faced allegations of gross misconduct and  
14 FPL also had concerns about its financial condition.

15 Indeed, FPL was concerned about the financial  
16 viability of several of the bidders that submitted proposals,  
17 and FPL made the decision that it would not entrust its  
18 customers' reliability or cost to bidders that were financially  
19 distressed.

20 Commissioners, there is far more evidence in this  
21 case, but that is the essence of FPL's case. Based on that  
22 evidence, we're asking you to grant Florida Power & Light an  
23 affirmative determination of need for Martin Unit 8 and Manatee  
24 Unit 3. As to both units, all four of the statutory criteria  
25 of 403.519 have been met. Both units are needed for system

1 reliability and integrity. FPL needs both units to meet its  
2 Commission-approved 20 percent reserve margin in both 2005 and  
3 2006. Both units are needed for adequately electricity at a  
4 reasonable cost. Both of these units have very low heat rates  
5 and very high availability. And with FPL's demonstrated  
6 ability to run combined cycle units, excuse me, at high  
7 availability and low cost, that will result in more than  
8 adequate electricity at a reasonable cost to customers.

9 FPL's units are the most cost-effective alternatives  
10 available by at least \$83 to \$135 million over any of the  
11 portfolios that do not include both those units and by  
12 \$500 million by a portfolio that only has the best of the  
13 self-build options available. And, finally, there is no DSM  
14 available to FPL that would mitigate the need for either unit.

15 Commissioners, thank you. I'll reserve the  
16 opportunity that will remain in my time to respond to the other  
17 remarks.

18 CHAIRMAN JABER: Thank you, Mr. Guyton. Mr. Moyle?

19 MR. MOYLE: Thank you. I have some prepared remarks  
20 that I'll respond to. But I might just note, if we were doing  
21 this by weight, I think CPV would have a pretty distinct  
22 advantage if you tallied up their counsel's poundage. So  
23 anyway I appreciate Mr. Guyton's pointing out all this  
24 information, but I think this case is not something that's  
25 decided on volumes of information but based on the testimony

1 that you're going to hear from these witnesses.

2 For the record, I am Jon Moyle, Jr., representing  
3 Competitive Power Ventures, CPV Gulfcoast's bid in this project  
4 and I'm here on their behalf today.

5 This case from CPV's perspective essentially involves  
6 three issues: Was the RFP process conducted fairly; did FP&L  
7 tell the bidders how their bids would be judged and the  
8 criteria that would be used to judge their bids as the bid rule  
9 requires; and can FP&L carry its burden of proof that it's  
10 self-build projects are the most cost-effective?

11 I want to take a minute and talk about each of these  
12 and sort of preview a little bit for you some of the evidence  
13 that you will see.

14 Fairness, was the RFP conducted fairly? CPV contends  
15 that it was not for a number of reasons. I don't believe you  
16 have to look much further than the terms of both the original  
17 RFP and the supplemental RFP to see that the RFP was crafted in  
18 a way to give FP&L's self-build options an advantage over other  
19 proposals.

20 I will point out an example. The original RFP had a  
21 legislative out provision which essentially said if the  
22 Legislature made any change with respect to the regulatory  
23 scheme in Florida, that FP&L could get out of a contract that  
24 it entered into.

25 Now the IPPs said this is not fair, it places all the

1 risk on the IPPs, and argued that that legislative out  
2 provision was inherently unfair.

3 FPL in their supplemental RFP did change it, but we  
4 would argue it's still relevant evidence to show the mind set  
5 of FP&L in putting together the RFP.

6 There was a reg out provision that is in the  
7 supplemental RFP that you will see in an internal FP&L E-mail  
8 that FP&L acknowledged this reg out provision is likely to be  
9 disfavored by the Commission. Yet it's our understanding that  
10 that reg out provision was included in the terms of the  
11 supplemental RFP.

12 You're going to hear a lot of talk about an equity  
13 penalty, and FP&L in their supplemental RFP put in place an  
14 equity penalty. I'm not an economist, and you're going to hear  
15 from experts about the equity penalty, but I think there's a  
16 lot of disagreement on the equity penalty. I think FP&L in  
17 their internal E-mails acknowledged that it would be a  
18 controversial item. And CPV would argue that the equity  
19 penalty was in part built in to give FP&L room in the event  
20 that it needed to be applied to declare themselves the winner.

21 And you'll see an E-mail written by Steve Sim, one of  
22 the key people in charge of the RFP, that refers to this equity  
23 penalty as, quote, not the cake, but it may not even be the  
24 icing; it's more like the candle.

25 While FP&L will attempt to explain away this E-mail,

1 remember the power of E-mails written contemporaneously as you  
2 weigh evidence and gauge its significance.

3 CPV would argue that the equity penalty is yet  
4 another example of how the RFP was designed with features that  
5 unfairly favor FP&L.

6 You will also see, and it's appended to the testimony  
7 that CPV has offered, a document that was prepared at the  
8 request of Steve Sim, the person charged with running the RFP,  
9 that suggests how the evaluation process could be conducted.  
10 This memo concludes by listing a seven-step approach to be used  
11 in evaluating the bids.

12 CPV believes this is an important document because it  
13 was prepared before the first RFP was ever issued. And as best  
14 CPV can tell, it's the only internal FP&L document that  
15 formalizes how the evaluation will be conducted.

16 I would tell you when you review this memo that the  
17 second step indicated that FP&L would review the outside  
18 proposals and then it will obtain FP&L's cost of construction.  
19 Regarding FP&L's construction cost, the memo says, quote,  
20 "These costs should be as aggressive as possible to both  
21 minimize the remaining work and increase the defensibility of  
22 any subsequent decision to go with an FPL option." We  
23 interpret that to say they're telling their folks to be  
24 aggressive with their construction numbers.

25 Step five of this document tells, says, it directs

1 that you repeat steps two to four until FP&L's numbers are  
2 lower than the outside bidders. Remember, step two is the step  
3 that says be aggressive in your construction numbers. So we  
4 viewed this as sort of a process that would continue until FP&L  
5 declared itself the winner.

6 This document -- step six says that you enter the  
7 resulting FP&L projects into EGEAS versus the proposals to  
8 ensure that the FPL projects are selected by EGEAS as the  
9 winner. That's a quote from this docket.

10 FP&L produced this to us and we think it's indicative  
11 of sort of the mind set of the folks that were in charge of  
12 evaluating the RFP.

13 There's also another document that is attached to the  
14 testimony of CPV's witness. That's an E-mail from Sam Waters  
15 to Paul Evanson, the president of FP&L, in which Sam is setting  
16 up a meeting, quote, "to discuss a strategy in responding to  
17 the bids received addressing our RFP as well as the long-term  
18 generation strategy."

19 Normally setting up this kind of meeting may seem  
20 rather routine. However, in the same E-mail, Sam states, "I  
21 have to caution everyone that we will not have a proposed list  
22 of bidders or anything approaching a final result of the  
23 analysis." He concludes in his E-mail by saying, quote, "My  
24 intent is to develop a consensus on generation for our  
25 generation plan; i.e., do we want to build or buy or a

1 combination of both? What kind of project should we be  
2 involved in? How long should we be buying for if that is the  
3 choice? Should FPLE," I believe that's FP&L Energy, "be  
4 involved in the projects?"

5 I would argue that that memo is perfectly fine to sit  
6 around and talk about a generation strategy plan if you don't  
7 have an RFP out there. But given the fact that there's an RFP  
8 out there, and by Sam's own words in this E-mail he won't have  
9 final analysis to call a meeting and to have such a meeting to  
10 develop a consensus about which way you want to go, we would  
11 argue is further evidence that, that this process was not  
12 conducted in a fair and impartial manner.

13 Let me move on to the second issue which I've  
14 identified, which is a description of how the bids would be  
15 judged. Did FP&L adequately inform the bidders about the  
16 criteria that would be used and how their bids would be  
17 evaluated?

18 You'll look at the supplemental RFP and it has  
19 language in there that talks about how things may be done.  
20 Here's the criteria that may be used. Your bids may be  
21 grouped. There was no certainty with respect to how it would  
22 be done. And I think your bid rule requires that the  
23 methodology be described in detail about how the bids will be  
24 evaluated.

25 The Martin 3 Unit is being proposed in 2005 to meet a

1 load of approximately 15 megawatts. You're going to hear  
2 testimony about that, and I think Mr. Guyton in his opening  
3 remark mentioned that there was no DSM that could get them to  
4 15 megawatts. Notwithstanding this very, very small shortfall,  
5 rather than going and looking for programs that would meet the  
6 need for the Manatee Unit, FP&L engaged in this process where  
7 they combined all of these bids. So if somebody submitted a  
8 bid, they would be lumped in with a bunch of other proposals,  
9 and you'll hear testimony about this.

10 FP&L, when they decided to negotiate, they only  
11 negotiated it in a face-to-face meeting with one bidder. And  
12 the reason is because, well, this was a low cost bid in this  
13 group of proposals. But to my way of thinking, having a bid  
14 that gets looped in and grouped in with a group of proposals,  
15 the bidder has no authority or say over which proposal it's  
16 grouped in with, and you don't have any ability to control  
17 those negotiations or be at the table. Your whole position is  
18 dependent on how these negotiations between FP&L and one bidder  
19 ensue is not fair. And we think this grouping issue  
20 indicates -- and it was never disclosed fully to the bidders  
21 that that would be the methodology employed. Their RFP says it  
22 may be used. I would argue that it may not be used; it was not  
23 described with certainty.

24 With respect to criteria, we would argue the bid rule  
25 says you need to know the criteria by which you're going to be

1 judged. FP&L reserved the right in their supplemental to have  
2 other criteria. In the testimony you'll see that they indeed  
3 used other criteria in evaluating the bids. Things like  
4 experience in the Florida labor market, that was a criteria  
5 that cannot be found anywhere in the supplemental RFP. Yet in  
6 testimony that will be received by you today, you will see that  
7 the labor market was a factor that was considered.

8 Another factor was the contractual certainty or  
9 contractual commitment of the bidders. That was something that  
10 FP&L placed weight on and emphasis on, yet it was never  
11 disclosed to the bidders in the supplemental RFP.

12 So we're going to show you through cross-examination,  
13 we hope, that there are issues like that where FP&L evaluated  
14 the bids, it was part of the methodology, yet it was never  
15 disclosed to the bidders as being part of the methodology as  
16 required by the rule.

17 The final issue that I've identified for you, and I  
18 want to talk just a minute about, is can FP&L meet its burden  
19 that it has the most cost-effective alternative? We would  
20 argue no for a number of reasons. One, we think that because  
21 the process was not conducted in a fair way that it calls into  
22 question all the decisions that flow from it, number one.  
23 Secondly, without the imposition of an equity penalty, I think  
24 the evidence will reflect that there were a number of proposals  
25 that were more cost-effective than FP&L's self-build options,

1 and that the, we don't believe the equity penalty should be  
2 applied for the results, for the reasons set forth in staff's  
3 testimony that you will be hearing.

4           The FP&L numbers, if you look at that memo, were  
5 aggressive numbers based on estimate, not firm contracts. Bids  
6 were submitted that the supplemental RFP required there to be  
7 guaranteed pricing in them. Had a bid been accepted, a binding  
8 contract would have been entered into, and that contract would  
9 be before you today and you would be making a decision, a  
10 judgment about whether that contract was the most  
11 cost-effective approach in which to meet this need.

12           FP&L doesn't, doesn't have a contract before you  
13 today. What they have before you today are numbers that are  
14 not based on contracts.

15           You will hear questions asked about do you have  
16 contracts for turbines, do you have contracts for construction,  
17 do you have contracts for gas? The answer, I believe, to all  
18 those questions will be no. FP&L does not have firm contracts  
19 for just about any component of these two facilities.

20           I think you'll also hear some testimony, and with  
21 respect to being bound by your numbers, that FP&L indicates  
22 that these numbers are estimates and they will not be bound to  
23 them and that they reserve the right, should something go  
24 wrong, to come back in later and seek additional cost recovery.

25           CPV would argue that that is not fair, that it's not

1 giving you the evidence you need to make the decision that  
2 FP&L's projects are the most cost-effective alternative because  
3 it's based not on contracts but on mere estimates and there's  
4 no willingness to stand by that, that number.

5 In sum, CPV believes that both the Manatee Unit and  
6 the Martin Unit should be denied based on the reasons we've set  
7 forth in this opening statement. However, particularly given  
8 that the Martin Unit, a 600-megawatt unit, is being proposed  
9 for a 2005 date to meet a 15-megawatt need, an amount  
10 representing less than one-tenth of one percent of FP&L's  
11 resources, that the Martin Unit should not receive approval of  
12 its need determination petition. Thank you, and I appreciate  
13 your consideration of my argument.

14 CHAIRMAN JABER: Thank you, Mr. Moyle.  
15 Mr. McGlothlin?

16 MR. MCGLOTHLIN: Joe McGlothlin for Florida PACE.  
17 Mr. Moyle and I compared notes before the oral argument. I may  
18 touch down very lightly on a couple of points that he  
19 mentioned, but I think by and large our focuses are quite  
20 different.

21 CHAIRMAN JABER: Thank you.

22 MR. MCGLOTHLIN: As he said, what you have before you  
23 is, as far as I can tell, by far the largest determination of  
24 need case the Commission has ever considered: 1,900 megawatts,  
25 two large units, construction costs estimated at more than

1 \$1 billion, and numerous alternatives to compare to the  
2 self-build option.

3           In addition, these alternatives, when one looks at it  
4 in the right perspective, were close to the self-build option  
5 in terms of cost. The -- one witness for FPL says of  
6 Mr. Slater's reference to a \$60 million differential, that  
7 looks like a lot of money to me. Well, it does to me, too.  
8 But consider that the overall cost of the two projects is in  
9 the magnitude, order of magnitude of \$40 billion, and that's  
10 net present value, and that's just the project costs. So when  
11 you relate one to the other, you're looking at differentials on  
12 the order of one percent. So it seems to us that this analysis  
13 and evaluation calls for a careful and rigorous scrutiny of the  
14 alternatives.

15           Our witness Kenneth Slater will testify that the  
16 effort of FPL to evaluate the alternatives fell far short of  
17 that standard and they fell far short for two reasons. First,  
18 the use of a tool that was inadequate for the purpose; the  
19 testimony will show that FPL used a computer model called  
20 EGEAS, which is designed to be a screening tool taking a  
21 long-term look at alternatives, but was never intended to be  
22 good at detailed production costing simulations. The  
23 production costs are critical, a critical component of the  
24 analysis of the most cost-effective alternative.

25           As a matter of fact, when FPL points to the, the

1 bottom line of its evaluation, that's expressed in revenue  
2 requirements. EGEAS does that poorly and, because it wasn't  
3 designed to do it well.

4 But in addition to the crude method of using EGEAS to  
5 approximate production costs, there are flaws in the use made  
6 of EGEAS. And Mr. Slater is prepared to testify that because  
7 of the simplistic methods used, FPL did not even employ all the  
8 features that EGEAS is capable of performing.

9 So what you have here is an evaluation that is  
10 riddled with shortcomings and is inadequate to give you  
11 confidence that FPL has selected the most cost-effective  
12 alternatives under the circumstances.

13 And it didn't have to be that way. FPL uses hourly  
14 production costing simulations for other purposes that, where  
15 detailed analysis and refinement of costs is called for. It  
16 could have taken the top six or eight of the EGEAS runs and put  
17 them through an hourly production costing simulation and gotten  
18 a quality result using a tool that looks at the details on an  
19 hourly basis in detail as opposed to a yearly look of rough and  
20 dirty. It chose not to do that.

21 And you may hear them talk about the number of  
22 comparisons they had to run, you may hear them talk about run  
23 time, but we come back to this: A billion dollars, numerous  
24 alternatives to examine, and a need for a rigorous and detailed  
25 review. It didn't happen.

1           In addition to the modeling and the tools used, there  
2 were some assumptions that FP&L employed that are also  
3 problematic. For instance, Mr. Moyle referred to the  
4 aggressive assumptions regarding construction costs. FPL, the  
5 testimony will show, also used aggressive assumptions with  
6 respect to the heat rate and the availabilities assigned to its  
7 self-build options, so aggressive as to be unrealistic. And  
8 that should matter to you because, first of all, these  
9 assumptions have the effect of favoring the self-build options  
10 when compared to the alternatives. And, secondly, because  
11 while they are aggressive, if they are also unrealistic, we  
12 haven't heard FPL say yet that they will commit to live with  
13 them when they, if and when they get to build the units. So I  
14 think it goes to, again, to the confidence you have that the  
15 most cost-effective units have been selected.

16           These shortcomings and these unrealistic assumptions  
17 take on even more significance when you consider that this is  
18 all exacerbated by the tenuous claim of need in 2005 that  
19 Mr. Moyle touched on very briefly.

20           FPL needs 1,122 megawatts in 2005. Manatee is 1,107.  
21 That means if they add Manatee, they need only 15 more to reach  
22 their 20 percent reserve margin in 2005. They propose to meet  
23 that need by adding the 789 megawatts of Martin Unit 8. They  
24 will contend that's because they've stipulated to meet a  
25 20 percent criteria and that's what they intend to do.

1           But it's time to use a little common sense. They  
2 refer to the 20 percent guideline. But in the order accepting  
3 that stipulation, the Commission was careful to reserve its own  
4 judgment and discretion in that regard. And at Page 3 of 7 the  
5 Commission said, "The Commission shall retain the ability and  
6 discretion to consider all facts and circumstances applicable  
7 to a given utility and/or Peninsular Florida. Further with  
8 respect to the evaluation of the adequacy reserves in  
9 Peninsular Florida the Commission may employ any methodology in  
10 considering any facts and circumstances it deems appropriate,  
11 subject to applicable legal requirements."

12           So the Commission has the discretion to view this in  
13 light of facts and circumstances. And I think the fact that  
14 we're talking about a 15-megawatt shortfall, that's certainly  
15 something you should consider with respect to the need to add  
16 Martin 8 in 2005.

17           But even if it's decided that the 20 percent  
18 criterion is the applicable standard, FPL could buy  
19 15 megawatts for a year and meet its standard. FPL, the  
20 evidence will show, didn't investigate that possibility, much  
21 less analyze it. And so we think its application to add the  
22 full amount of capacity it proposes in 2005 fails from that  
23 standpoint.

24           This case reminds me somewhat of the 1992 Florida  
25 Power Corporation case. In 1992, Florida Power Corporation

1 proposed the then unheard of figure of 940 megawatts that it  
2 wanted a determination need for. The Commission in its  
3 discretion decided that only two of the four proposed units  
4 would receive determinations of need because FPC was premature  
5 with respect to the balance of its request.

6 In this case, FPL refers time and time again to a  
7 need for 2005 and 2006. This suggests to me that they would  
8 like to build some sort of big, soft landing place for the  
9 outcome. But what they've asked for is a determination of need  
10 that both Manatee 3 and Martin 8 are needed in 2005, and we  
11 think the evidence will show that they haven't made that case.

12 We think the evidence will show that they haven't  
13 made the case because they have not provided a basis on which  
14 the Commission can have confidence that they have selected the  
15 most cost-effective units. But in any event, they have not  
16 made the case that they should build both units in service in  
17 2005. Thank you.

18 CHAIRMAN JABER: Thank you, Mr. McGlothlin.  
19 Mr. McWhirter?

20 MR. McWHIRTER: May it please the Commission. My  
21 name is John McWhirter, representing the Florida Industrial  
22 Power Users Group. Mr. Twomey and I are here on behalf of  
23 consumers. I represent large consumers of large amounts of  
24 electricity and he is the mom and pop consumer. And he -- I  
25 will give a broad overview, and then he will hit to the heart

1 of the image and, and give you the things that perhaps I omit.

2 The primary litigants in this proceeding are  
3 obviously Florida Power & Light and the disappointed bidders.  
4 The persons primarily interested in the outcome of the case,  
5 however, are consumers.

6 Ironically, the rate stipulation that was referred to  
7 by Florida Power & Light expires shortly before these planned  
8 plants come online. So there will definitely be an impact on  
9 consumers' rates when they come into play.

10 We've come to conclude in the recent past that a  
11 critical part of the ratemaking process is the certificate of  
12 need proceedings. What happens is -- this started out, of  
13 course, as an environmental activity so that you wouldn't build  
14 more polluting power plants than you really needed to meet the  
15 needs of your customers and, secondarily, to give utilities the  
16 opportunity to bring together all of the environmental  
17 interests so that it could be handled in one proceeding rather  
18 than a series of proceedings which would string out the length  
19 of time it takes to build a power plant and the necessary  
20 barriers that have to be overcome, and that's been very  
21 successful.

22 But the outgrowth of the certificate of need  
23 component is that once this Commission has determined in that  
24 process that it's come up with the least, least effective or  
25 the least cost-effective alternative, that that cost is pretty

1 well chiseled in stone for the rate base. And to come in five  
2 years from now and challenge the decisions that are made today  
3 is, and overcome the presumption that what's being built in  
4 this proceeding is not the least, the most cost-effective  
5 construction is a very and almost impossible burden to bear.  
6 So we think this is an extremely important decision that you  
7 make in this case.

8           We're at a unique period in Florida history. We --  
9 as you know, we have 56 utilities that serve customers.  
10 However, in the state there are only two utilities that have  
11 market power and their power is quite significant. These are  
12 Florida Power & Light, of course, that has a proceeding before  
13 you today, and Florida Power that has one in the wings.

14           There are competitive suppliers at the gate, and  
15 these are the people that have protested in this case, some of  
16 whom have dropped out for various reasons, and we're down to  
17 the crux of these competitors seeking to get into the, into the  
18 marketplace.

19           If Florida Power & Light and Florida Power continued  
20 to be the principal suppliers of generation in the state and if  
21 this case is so big that it preempts competitive suppliers from  
22 coming in the state in the future, they, your regulatory  
23 function becomes ever more important because you're dealing  
24 with a monopoly. And the prices the monopoly charges are  
25 extremely significant because all the customers are captive

1 customers. But ironically the sales that generate the cost for  
2 the customers will be made in the wholesale market. And you're  
3 studying that in your GridFlorida case, which is coming up.

4 We think that if the two utilities with market power  
5 are given continuation of that power, the competitive suppliers  
6 in the state will whither and die. We think that the  
7 transmission links to other states make it relatively  
8 improbable that power will come to the State of Florida from  
9 other sources. So we think that it is extremely important in  
10 this case for you to determine that the bid process that was  
11 used was fair and that the competitors have been given a fair  
12 opportunity.

13 If you conclude that that's the case and that the  
14 people with market power should be able to expand that power,  
15 then we applaud your decision because we know it will be a fair  
16 and just decision. But we admonish you to be, take careful  
17 consideration that the details of this case be dealt with in  
18 such a fashion that you are certainly assured that you're  
19 getting the least cost alternative when you accept the  
20 certificate of need, if you do.

21 So having given you those broad observations, which  
22 belabor the obvious, I'll turn it over to Mr. Twomey to move to  
23 the heart of the matter.

24 CHAIRMAN JABER: Mr. Twomey.

25 MR. TWOMEY: Thank you, Madam Chairman and

1 Commissioners. Mike Twomey on behalf of the Florida Action  
2 Coalition Team, Thomas and Genevieve Twomey and Mr. Burton  
3 Greenfield, et al.

4           As Mr. Moyle correctly noted, the weight of evidence  
5 isn't calculated in terms of which parties killed the most  
6 trees. Your statutory duty is found in Section 403.519, and it  
7 is FP&L's burden to demonstrate that it has met the  
8 requirements of the law, especially that portion of the law  
9 that requires it to show you that they have selected the most  
10 cost-effective units. If the proposed units are not the most  
11 cost-effective and this Commission approves them anyway, then  
12 it is a mathematical certainty that FP&L's customers and,  
13 hence, my clients will eventually pay higher rates than they  
14 otherwise would and should.

15           The bid process appears biased for the reasons given  
16 to you by Mr. Moyle and Mr. McGlothlin, especially in the form  
17 of the highly controversial equity penalty.

18           As you'll see from the evidence, that one factor  
19 makes a huge swing in how the units are compared from the  
20 outside bidders to the self-build options. Those biases appear  
21 to bias the decision in turn in favor of the self-build options  
22 which were selected by FP&L. Consequently, the selection of  
23 the self-build options as the, quote, unquote, most  
24 cost-effective appears highly suspect.

25           If the two units are not the most cost-effective,

1 this Commission should deny their need determination approvals.  
2 But you're going to have to ask yourself if you can deny the  
3 approval of these two units even if they are not the most  
4 cost-effective and still keep the lights on.

5           You have heard that you certainly can with respect to  
6 the second unit, which is going to be shown necessary only to  
7 meet the 15-megawatt shortfall. That can be dealt with and  
8 should be dealt with if it's shown not to be cost, most  
9 cost-effective by denying it straight out. Excuse me.

10           Even if you find that both of the units are not the  
11 most cost-effective and that Florida Power & Light has not,  
12 therefore, met its statutory burden, you should consider  
13 denying them both and try to figure some way of having them  
14 rebid on an accelerated basis and trying to find power and  
15 capacity elsewhere in order to keep the lights on.

16           I say that because this Commission should never allow  
17 itself to be placed in the position of being painted in a  
18 corner by the threat of having the lights go out as a result of  
19 time constraints that are statutory in a limited sense, but  
20 prior to the beginning of the statutory time constraints  
21 entirely controlled by the utility in question.

22           So, Commissioners, if you find that the units are not  
23 the most cost-effective, then I would urge you to deny them.  
24 Thank you for your time.

25           CHAIRMAN JABER: Thank you, Mr. Twomey. Any other

1 presentations? Mr. Guyton, you have a few minutes reserved for  
2 response.

3 MR. GUYTON: Thank you, Chairman Jaber. I'll attempt  
4 to be brief.

5 Several parties mentioned the equity penalty used in  
6 the economic analysis. The evidence will show that the equity  
7 penalty employed by FPL was disclosed in both RFP documents; it  
8 is consistent with prior Commission decisions; it is premised  
9 upon the uncontroverted fact that rating agencies treat a  
10 portion of a capacity payment of purchase power contracts as  
11 debt when whether analyzing utilities; it is supported by the  
12 testimony of at least four witnesses; it is not necessary in  
13 the analysis to reach the conclusion that FPL's option is the  
14 most cost-effective alternative; it is the most cost-effective  
15 among the remaining bids without the equity penalty. And,  
16 finally, the evidence will show that it is necessary to be  
17 employed if the self-build and the purchase power options are  
18 to be analyzed on a consistent basis.

19 And I want to address that point in particular. The  
20 evidence will show that the equity penalty adjustment applied  
21 to bidders' proposals had the same effect that FPL's use of a  
22 55 percent equity/45 percent debt incremental capital structure  
23 had on FPL's self-build options. When FPL's self-build options  
24 were analyzed and the costs were developed, we used an  
25 assumption that the incremental capital that would be used for

1 those units would be 55 percent equity and 45 percent debt.  
2 And that would have the effect of leaving FPL's adjusted  
3 capital structure where it is now, at 55 percent/45 percent,  
4 55 percent equity/45 percent debt. No impact on the cost of  
5 capital.

6 FPL could have used a lower equity ratio and reduced  
7 its self-build options and costs in the analysis, but it chose  
8 not to do that out of a matter of fairness.

9 Similarly, when you're analyzing purchase power  
10 options, FPL recognized that new purchase power obligations  
11 would be treated by rating agencies, at least a part of them  
12 would be treated by debt, and that would have the effect of  
13 lowering the equity ratio and raising the debt ratio. And the  
14 equity penalty simply restores that 55/45 percent equity/debt  
15 ratio. So it is absolutely essential that one analyze and  
16 recognize the equity penalty so it's treated the same way as  
17 self-build options.

18 Regarding the fairness arguments that you've heard  
19 much about this morning, CPV offers you very little evidence  
20 that the evaluation evidence or process was flawed or unfair to  
21 bidders. And, indeed, a good part of their evidence will show  
22 that it was not flawed, that it was certainly fair.

23 The fact is that CPV was unable to compete  
24 economically, not only with FPL, but with every other bidder.  
25 Both FPL and the outside evaluator ranked CPV, at least one CPV

1 alternative dead last in the economic evaluation. Unable to  
2 compete on cost, they now unpersuasively argue fairness.

3           The evidence will also show that the cost estimates  
4 for Martin 8 and Manatee 3 are not overly aggressive but are  
5 based on reasonable assumptions. I'd encourage you to explore  
6 this with Mr. Yeager and particularly FPL's experience in  
7 Martin Unit 3 and 4 where we -- the most recent similar type  
8 new construction where we brought in a project \$159 million  
9 below what was forecast.

10           The evidence will also show -- there was mention of a  
11 memorandum that was provided to the parties in discovery and  
12 there's going to be a great deal of evidence about it. I would  
13 ask you to consider that memorandum. It's clearly stamped  
14 "Draft." The testimony will show that this evaluation plan was  
15 preliminary in nature, was not employed in the analysis  
16 ultimately and, most importantly, you're not going to hear  
17 anything from CPV's witnesses about this, but they omit the  
18 last step which is on the memo which reads, "Presents results  
19 to FPL's management, PGD, for them to use in deciding if FPL  
20 will build or buy." The plan from the start was to make the  
21 decision at the end of the analysis once you had the numbers as  
22 to whether or not you were going to build or buy. That's not a  
23 biased process. That is an unbiased process.

24           We have set forth in the supplemental RFP the  
25 evaluation methodology and criteria. So I think the evidence

1 will show that this has been a fair and unbiased process.

2 A brief moment of comment about PACE's witness. He  
3 admits in his testimony that he performed, and I quote, "A less  
4 than exhaustive review," end quote. We do not disagree with  
5 that assessment. The problems that Mr. Slater suggests in his  
6 rebuttal testimony do not exist -- in his direct testimony do  
7 not exist as is shown and documented in our rebuttal testimony.

8 I do want to mention briefly this, the question of  
9 whether or not there is a 15-megawatt shortfall in 2005 that  
10 causes the Martin Unit to be built in 2005 rather than 2006.

11 It is true that the Manatee Unit would leave us  
12 15 megawatts short of our reserve margin if it were constructed  
13 in 2005. We decided to go ahead and build that for, or to  
14 include the Martin Unit in the analysis for a number of  
15 reasons. One, it's needed to meet the reserve margin, and  
16 we've committed to you that we'll meet the entire reserve  
17 margin that you've given to us, not some subset out of it.  
18 Two, the evidence will show that it actually costs customers  
19 less for us to build both units and put them in service in  
20 2005 than it would if we were to defer the Martin Unit to 2006.  
21 So it's in our customers' interests to build Martin 8 in 2005.

22 Indeed, it makes a great deal of sense in terms of  
23 flexibility to deal with unanticipated load growth if we have a  
24 load that grows more than we forecasted. If we have -- if we  
25 have Martin available in 2005, we have the flexibility to meet

1 it. If we have to defer it to 2006 because there are  
2 unanticipated -- we have greater or less load growth than we  
3 anticipate, we can always defer the unit, but we can't  
4 accelerate the construction after the fact. So the flexibility  
5 argues that we should go ahead and build it as well.

6 And, finally, there are two other reasons. One, why  
7 would we defer it? I mean, we've exhausted the market out  
8 there. We've looked at 134 proposals. There's not another  
9 alternative that's more cost-effective. So it doesn't make  
10 sense to start this process over and do it for yet, again, a  
11 third time.

12 And, indeed, it raises serious questions if we had to  
13 do the process over again and go through this exhaustive  
14 analysis again yet when we could even get Martin on in 2006.  
15 And that's what the evidence will show with Mr. Silva.

16 Commissioners, I would conclude by saying it is time  
17 to act on this. The evidence will show that it's time to act  
18 and to act favorably solely to benefit Florida Power & Light's  
19 customers. Thank you.

20 CHAIRMAN JABER: Thank you, Mr. Guyton. Staff, by my  
21 estimation our first witness is Rene Silva.

22 MS. BROWN: Yes, that's correct.

23 MR. GUYTON: Okay. We call Mr. Silva to the stand.  
24 May we take a minute to remove this so staff can see the  
25 witness, Madam Chairman?

1 CHAIRMAN JABER: Yes.

2 (Pause.)

3 MR. GUYTON: Madam Chairman, may I approach to  
4 distribute a --

5 (Pause.)

6 CHAIRMAN JABER: Good morning, Mr. Silva. You were  
7 sworn this morning; right?

8 THE WITNESS: Yes, Madam Chairman.

9 CHAIRMAN JABER: Great. Mr. Guyton?

10 MR. GUYTON: Thank you, Madam Chairman.

11 RENE SILVA

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

14 DIRECT EXAMINATION

15 BY MR. GUYTON:

16 Q Would you please state your name for the record.

17 A My name is Rene Silva.

18 Q By whom are you employed and in what capacity?

19 A By Florida Power & Light Company, and presently I  
20 serve as Director of Resource Assessment and Planning.

21 Q And, Mr. Silva, did you have occasion to prefile  
22 direct testimony in this case consisting of 54 typewritten  
23 pages?

24 A Yes.

25 Q And did you have occasion to have filed on your

1 behalf an errata sheet to that, that testimony?

2 A Yes.

3 MR. GUYTON: Commissioner, those have both been  
4 previously prefiled with the Commission.

5 BY MR. GUYTON:

6 Q If I were to ask you the questions as contained in  
7 your direct testimony today, would your answers be the same as  
8 amended by your errata sheet?

9 A Yes.

10 CHAIRMAN JABER: Mr. Guyton, let me ask you about  
11 that. My copy of the prefiled testimony obviously doesn't have  
12 the corrections contained in the errata sheet made. So are you  
13 suggesting that we just include the errata sheet as an  
14 additional two pages to the testimony?

15 MR. GUYTON: Yes, Commissioner. I would suggest  
16 that. We can file supplemental pages, but we've in the past  
17 found that that is somewhat burdensome on the Commissioners and  
18 the staff. And I think the, perhaps the easier way to do it is  
19 just insert the errata sheet as well as the testimony into the  
20 record.

21 CHAIRMAN JABER: All right. I prefer that,  
22 Commissioners. Let me make sure though that you have copies of  
23 the errata sheet. I think there are -- throughout the hearing  
24 there are errata sheets to testimony and they consist of  
25 corrections. I prefer to just consider these supplemental

1 pages to the testimony in lieu of identifying it as an exhibit  
2 or having the witness go through each one of these orally. Do  
3 the parties have any objection to that? This seems more  
4 efficient. Okay.

5 MR. GUYTON: Commissioner, I have extra copies, if  
6 anyone on the bench or any of the parties need the errata sheet  
7 for Mr. Silva.

8 CHAIRMAN JABER: Thank you, Mr. Guyton.

9 MR. GUYTON: Madam Chairman, we'd ask that  
10 Mr. Silva's direct testimony be inserted into the record as  
11 though read, along with the errata sheet.

12 CHAIRMAN JABER: The prefiled direct testimony of  
13 Rene Silva shall be inserted into the record as though read,  
14 and that would include the one-page errata sheet.

15 MR. GUYTON: Thank you.

16 (REPORTER'S NOTE: For convenience of the record, Mr.  
17 Silva's direct testimony was inserted in the record at Page  
18 78.)

19 MR. MOYLE: Madam Chair, I'm sorry. I just want to  
20 preserve an objection with respect -- I think Mr. Silva had  
21 some testimony related to the equity penalty and what the  
22 rating agencies would do, and I would just make in effect a  
23 standing objection with respect to anybody indicating what  
24 Moody's does or does not do. That -- I don't believe that  
25 that, because it's hearsay based on conversations with Moody's,

1 should serve as the basis for any particular finding as to what  
2 Moody's does or does not do. There's no Moody's from -- no  
3 witness from Moody's. So I would just like to preserve a  
4 standing objection related to that, that issue.

5 CHAIRMAN JABER: Well, at some point before the  
6 conclusion of the hearing though we need to address that  
7 objection and I need to allow an opportunity for response. So  
8 don't let me forget.

9 MR. MOYLE: Okay.

10 CHAIRMAN JABER: And if this is the appropriate time,  
11 Mr. Moyle, we can do that right now.

12 MR. MOYLE: That would be fine. I mean, I just --  
13 you heard in the opening statements, you know, Moody's imposes  
14 this equity penalty. I haven't seen anything where somebody  
15 from Moody's has said, hi, I'm from Moody's and here's what we  
16 do in terms of a witness. I've heard people talk about what  
17 Moody's does. And, of course, it's okay for someone to say,  
18 well, it's been communicated to me, but if it's serving as the  
19 primary basis upon which a factual determination is made, I  
20 would object on hearsay grounds.

21 CHAIRMAN JABER: So is your objection that it's  
22 hearsay and needs corroboration, independent corroboration?

23 MR. MOYLE: Right.

24 CHAIRMAN JABER: Mr. Guyton, your response.

25 MR. GUYTON: Well, of course, hearsay evidence is

1 admissible under the, under the APA. It, it will be  
2 corroborated. Indeed, it is corroborated by the testimony of  
3 Dr. Avera, Mr. Dewhurst, Dr. Sim and Mr. Taylor. And I think  
4 as to this witness, Mr. Silva is simply relying on their  
5 representations in that regard. So I think it's fully  
6 corroborative. It's certainly admissible.

7 CHAIRMAN JABER: Mr. Moyle, at this point I'm going  
8 to deny your request and overrule the objection without  
9 prejudice.

10 MR. MOYLE: Okay. And we can raise it with the  
11 individual witnesses. Thank you.

12 CHAIRMAN JABER: Okay.

13 BY MR. GUYTON:

14 Q Mr. Silva, did you have occasion to prefile along  
15 with your direct testimony exhibits consisting of Document  
16 Number RS-1 through Document Number RS-8?

17 A Yes.

18 Q And have you filed -- does your errata sheet also  
19 address corrections to, to those, those documents?

20 A Yes, it does.

21 Q And is the information contained in your exhibits  
22 RS-1 through RS-8 true and correct to the best of your  
23 knowledge and belief as amended by the errata sheet?

24 A Yes.

25 MR. GUYTON: Madam Chairman, we'd ask that

1 Mr. Silva's -- I'm sorry. I should have done a preliminary  
2 matter, but I didn't. And I -- we're going to ask that  
3 Mr. Silva's exhibit be identified, but we have a question of  
4 the number identification.

5 In the prehearing order we had identified exhibits,  
6 preidentified Exhibits 1 through 23 being FPL's Need Study and  
7 all the supporting appendices, and I failed to mention that  
8 this morning when you identified Mr. Evanson's deposition  
9 exhibit as Exhibit 1. I'm at your pleasure as to how you'd  
10 like to proceed in that regard.

11 CHAIRMAN JABER: Okay. Thank you for the reminder.  
12 For the sake of consistency, let's go ahead and conclude with  
13 the exhibits with Mr. Silva and then we'll come back to the  
14 preliminary exhibits.

15 MR. GUYTON: Very good. We'd ask that Mr. Silva's  
16 exhibits be identified.

17 CHAIRMAN JABER: RS-1 through RS-8 are identified as  
18 hearing Exhibit 2.

19 (Exhibit 2 marked for identification.)

20 CHAIRMAN JABER: And with respect to exhibits --  
21 well, let me ask the parties, do you have any objection to  
22 identifying Exhibits 1 through 16 as a composite exhibit?  
23 Staff?

24 MS. BROWN: Staff has no objection.

25 CHAIRMAN JABER: Okay. Exhibits 1 through 16 are

1 identified as composite Exhibit 3.

2 MR. GUYTON: Those being 1 through 16 in the  
3 prehearing order, Commissioner Jaber?

4 CHAIRMAN JABER: Yes. Thank you for that  
5 clarification. The Need Study Exhibits 1 through 16. Those  
6 are the public documents, Mr. Guyton.

7 MR. GUYTON: Yes, ma'am.

8 (Exhibit 3 marked for identification.)

9 CHAIRMAN JABER: And then it looks like the  
10 confidential -- are those the ones shaded, staff?

11 MS. BROWN: Yes, Chairman Jaber.

12 CHAIRMAN JABER: Exhibits 17 through 23 are composite  
13 Exhibit 4. Exhibits 17 through 23 preidentified in the  
14 prehearing order are composite Exhibit 4.

15 (Exhibit 4 marked for identification.)

16 BY MR. GUYTON:

17 Q Mr. Silva, did you have occasion to sponsor what has  
18 been identified now as composite Exhibit 3, FPL's Need Study  
19 and nonconfidential appendices or portions thereof?

20 A Yes.

21 Q And which portions do you sponsor, sir?

22 A I am sponsoring the following sections: Section I,  
23 Section II, Section VIII. I cosponsor Section V and  
24 Section VII. And I sponsor Appendices A and B of the Need  
25 Study document.

1                                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **FLORIDA POWER & LIGHT COMPANY**

3                                   **DIRECT TESTIMONY OF RENE SILVA**

4                                   **DOCKET NOS. 020262-EI, 020263-EI**

5                                   **JULY 16, 2002**

6  
7           **Q.     Please state your name and business address.**

8           A.     My name is Rene Silva, and my business address is 9250 West Flagler Street,  
9                   Miami, Florida 33174.

10  
11          **Q.     By whom are you employed and what position do you hold?**

12          A.     I am employed by Florida Power & Light Company (FPL), and presently  
13                serve as Director of Resource Assessment and Planning (RAP).

14  
15          **Q.     Please describe your duties and responsibilities in that position.**

16          A.     I manage the group that is responsible for the development of FPL's  
17                integrated resource plan and other related activities, such as analysis of  
18                demand side management programs, system production cost projections,  
19                development of FPL's demand and energy forecasts, and the administration of  
20                wholesale power purchase agreements.

21  
22          **Q.     Please describe your education and professional experience.**

1       A.    I graduated from the University of Michigan with a Bachelor of Science  
2           Degree in Engineering Science in 1974. From 1974 until 1978, I was  
3           employed by the Nuclear Energy Division of the General Electric Company in  
4           the area of nuclear fuel design. While employed by General Electric, I earned  
5           a Masters Degree in Mechanical Engineering from San Jose State University  
6           in 1978.

7  
8           I joined the Fuel Resources Department of FPL in 1978, as a fuel engineer,  
9           responsible for purchasing nuclear fuel. While employed by FPL I earned a  
10          Masters Degree in Business Administration from the University of Miami in  
11          1986. In 1987, I became Manager of Fossil Fuel, responsible for FPL's  
12          purchases of fuel oil, natural gas and coal. In 1990 I assumed the position of  
13          Director, Fuel Resources Department, and in 1991 became Manager of Fuel  
14          Services, responsible for coordinating the development and implementation of  
15          FPL's fossil fuel procurement strategy. In 1998 I was named Manager of  
16          Business Services in the Power Generation Division (PGD). In that capacity I  
17          managed the group that is responsible for coordinating (a) the development of  
18          PGD's strategic plan for the effective and efficient construction, operation and  
19          maintenance of FPL's fossil generating plants, (b) the preparation of PGD  
20          annual budgets and tracking of expenditures, and (c) the preparation of reports  
21          related to fossil generating plant performance. On May 1, 2002, I was  
22          appointed to my current position.

23

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

2       A.     My testimony introduces FPL's Need Study document and appendices and  
3             identifies the sponsors of each of the sections contained within that document.  
4             I also introduce the FPL witnesses in this case and describe the areas of the  
5             case they will cover.

6

7             In addition to this introductory role, my testimony:

- 8             -     Describes FPL's Need Study Document,
- 9             -     Summarizes the focus of each witness' testimony,
- 10            -     Summarizes FPL's need for new resources in the 2005/2006 time  
11            frame, the Supplemental Request for Proposals (Supplemental RFP)  
12            issued by FPL to address those needs, and the results of the  
13            solicitation,
- 14            -     Briefly presents the results of the analysis of bids received in response  
15            to the Supplemental RFP,
- 16            -     Describes selection of the "short list" of bidders and the  
17            communications and negotiations that took place between FPL and  
18            those "short list" bidders,
- 19            -     Discusses a number of qualitative factors which are incorporated into  
20            FPL's decision making process, and
- 21            -     Discusses the adverse consequences to FPL's customers if the  
22            proposed Martin Unit 8 and Manatee Unit 3 projects are not brought  
23            into service by the target dates.

1       **Q.    Are you sponsoring an exhibit in this case?**

2       A.    Yes. I am sponsoring an exhibit consisting of 8 documents attached to my  
3       direct testimony. Those 8 documents are:

- 4
- 5       •    Document RS-1, FPL's generating resources,
  - 6       •    Document RS-2, Summary of FPL's power purchases,
  - 7       •    Document RS-3, Schedule of FPL's QF purchases,
  - 8       •    Document RS-4, List of 16 bidders who responded to FPL's Supplemental  
9       RFP, the types of proposals submitted and technology,
  - 10      •    Document RS-5, List of 31 eligible bids received by FPL in response to its  
11      Supplemental RFP,
  - 12      •    Document RS-6, Summary of results presented to FPL management on  
13      June 18,
  - 14      •    Document RS-7, Updated version, as of July 2, 2002, of Document RS-6,  
15      and
  - 16      •    Document RS-8, Fossil System Net Heat Rate.
- 17

18      **Q.    Are you sponsoring any sections in the Need Study document?**

19      A.    Yes. I am sponsoring the following sections:

20           Section I       Executive Summary

21           Section II      Introduction

22           Section VIII    Conclusion

1 I also co-sponsor Section V with Dr. Steven Sim and Section VII with Mr.  
2 William Yeager.

3  
4 In addition, I sponsor Appendices A and B to the Need Study document.

5  
6 **I. Description of FPL's Need Study document**

7  
8 **Q. Please describe FPL's Need Study document supporting its Petitions for**  
9 **Determination of Need for the Martin Unit 8 and Manatee Unit 3**  
10 **projects.**

11 A. The Need Study document is a comprehensive overview of FPL's planning  
12 process, and of the Supplemental RFP process used to identify the Martin Unit  
13 8 and Manatee Unit 3 projects as the most cost-effective alternatives for new  
14 resources. The document consists of eight sections:

15	Section I	Executive Summary
16	Section II	Introduction
17	Section III	Description of Proposed Power Plants
18	Section IV	FPL's Need for the Proposed Power Plants
19	Section V	FPL's Process for Determining the Best Available
20		Options
21	Section VI	Non-Generating Alternatives
22	Section VII	Adverse Consequences if the Proposed Capacity
23		Additions are not Added on Schedule



1 Section VII discusses the adverse consequences that would result from delay  
2 of licensing the Martin Unit 8 and Manatee Unit 3 projects, including a  
3 deterioration of system reliability and increased costs.

4  
5 Section VIII is a summary of the need for the new capacity, the cost-  
6 effectiveness of the Martin Unit 8 and Manatee Unit 3 projects and the  
7 processes FPL employed to reach these conclusions.

8  
9 **II. Focus of Witnesses' Testimony**

10  
11 **Q. Please summarize the testimony of the other witnesses who will appear on**  
12 **FPL's behalf in this proceeding.**

13 A. Dr. Leonardo Green describes FPL's load forecasting process, discusses the  
14 assumptions used in that process, and presents the resulting load forecast,  
15 which has been used in FPL's integrated resource planning analysis to identify  
16 FPL's resource needs in 2005 and 2006, and in the economic analysis of the  
17 various alternatives proposed by FPL and others to meet those needs. Dr.  
18 Green is the sponsor of Section V.B. of the Need Study, the portion of  
19 Appendix C of the Need Study that discusses FPL's sales and load forecast  
20 models and Appendix G to the Need Study.

21  
22 Dr. Steven Sim describes FPL's resource planning process, identifies FPL's  
23 additional resource needs in 2005 and 2006, describes FPL's proposed self-

1 build options to meet those resource needs, discusses FPL's Supplemental  
2 RFP issued on April 26, 2002, and the proposals received in response to the  
3 Supplemental RFP, explains, in detail, the process FPL followed to perform  
4 the economic evaluation of the eligible outside proposals and the FPL self-  
5 build options, discusses the assumptions used in the analyses, with the  
6 exception of the load forecast and fuel forecast, which are presented by Dr.  
7 Green and Mr. Yupp, respectively, and presents the results of the economic  
8 evaluation. Dr. Sim demonstrates that the combination of FPL's Martin Unit 8  
9 and Manatee Unit 3, both in 2005, results in the lowest cost to FPL's  
10 customers. Dr. Sim is sponsoring Section IV and co-sponsoring Section V of  
11 the Need Study. He is sponsoring the portion of Appendix C that describes the  
12 EGEAS and TIGER models and Appendices C, D, E, F, J and K, and co-  
13 sponsoring Appendices M and N to the Need Study.

14  
15 Mr. Alan Taylor describes his role as an independent evaluator of the new  
16 capacity proposals received by FPL in response to the Supplemental RFP and  
17 of FPL's self-build alternatives, describes the process he followed and the  
18 tools he used to conduct his evaluation, and presents the results of that  
19 evaluation and explains his conclusion that the combination of Martin Unit 8  
20 and Manatee Unit 3 constitutes the most cost-effective portfolio that meets  
21 FPL's resource needs.

22

1 Mr. William Yeager presents the engineering details of FPL's proposed  
2 Martin Unit 8 project, which consists of the conversion of two simple-cycle  
3 combustion turbines to a new state-of-the art 4x1 combined cycle unit, and the  
4 Manatee Unit 3 project, which involves the construction of a new state-of-the  
5 art 4x1 combined cycle unit. Included in his testimony are the cost and  
6 performance specifications of these proposed units, corresponding to the data  
7 used in FPL's analysis. Mr. Yeager sponsors Section III of the Need Study,  
8 except for the transmission integration discussions sponsored by Mr.  
9 Stillwagon, as well as a portion of Appendix L to the Need Study.

10  
11 Mr. Dennis Brandt's testimony presents the details of FPL's DSM goals, and  
12 FPL's DSM programs and plan. He demonstrates that there is not sufficient  
13 DSM potential to avoid the proposed generating units. Mr. Brandt is  
14 sponsoring Section VI and Appendix O of the Need Study.

15  
16 Mr. Donald Stillwagon describes the transmission assessment and calculations  
17 performed under his direction and control to determine the transmission  
18 integration costs associated with those capacity combinations identified by Dr.  
19 Sim's analysis as being economically competitive, and presents the results of  
20 that process. He also presents the transmission integration facilities and costs  
21 associated with Martin Unit 8 and Manatee Unit 3. He sponsors the  
22 transmission integration discussions in Section III of the Need Study and the  
23 direct cost estimates in Appendix M to the Need Study.

1 Dr. William Avera addresses the impact of power purchase contracts on FPL's  
2 financial position and describes the method FPL used to account for this  
3 impact in its evaluation of capacity proposals submitted in response to the  
4 Supplemental RFP. His testimony discusses the financial risks associated with  
5 purchased power contracts and the importance of recognizing these  
6 implications in an economic evaluation of power supply alternatives. Dr.  
7 Avera concludes that FPL's calculation to determine the amount of cost to  
8 impute to the outside bids was based on reasonable assumptions, and that the  
9 application of the resulting equity penalty in its analysis of the capacity  
10 proposals is consistent with both the Standard & Poor's Corporation (S&P)  
11 methodology and prior Florida Public Service Commission (FPSC) practice.  
12 Dr. Avera is co-sponsoring Appendix N to the Need Study along with Dr. Sim  
13 and Mr. Dewhurst.

14  
15 Mr. Moray Dewhurst describes the importance, from the perspective of both  
16 FPL and FPL's customers, of ensuring that the entities with whom FPL may  
17 enter into a capacity and energy contract have, and will maintain, the level of  
18 financial viability necessary to ensure that their facilities will be constructed,  
19 completed on schedule, and properly operated and maintained. Mr. Dewhurst  
20 also explains the need for, and appropriateness of, applying the equity penalty  
21 included in the economic analysis to any plan that results in FPL entering into  
22 a power purchase contract. Mr. Dewhurst sponsors Appendix I to the Need  
23 Study.

1 Mr. Gerard Yupp describes the transportation alternatives available to deliver  
2 natural gas to FPL's Martin Unit 8 and Manatee Unit 3 and explains why FPL  
3 does not need to design Manatee Unit 3 as a dual-fuel unit with light oil  
4 capability. He addresses the ready availability of natural gas for Martin Unit 8  
5 and Manatee Unit 3. Mr. Yupp also supports the fuel price forecast used in  
6 FPL's economic analysis of its self-build option and the outside proposals in  
7 the Supplemental RFP. Mr. Yupp sponsors Section V.B.2 and Appendix H of  
8 the Need Study.

9  
10 **III. FPL's Capacity Need and Supplemental Request for Proposals**

11  
12 **Q. Please describe FPL's electric generating system.**

13 A. To serve its customers, FPL has 17,860 MW of generating resources at 14  
14 sites located throughout its service territory and beyond, including partial  
15 ownership of one unit located in Georgia and partial ownership of two units  
16 located in Jacksonville. The location of these FPL generating units, their fuel  
17 types, and their projected summer capabilities for 2002 are shown in a map  
18 attached to my testimony as Document RS-1.

19  
20 **Q. Does FPL purchase power from other sources in addition to its own  
21 generation resources to meet demand?**

22 A. Yes. FPL purchases from utility/non-utility sources and qualifying facilities  
23 (QFs). Over the next 10 years, to meet seasonal peak demand, FPL will

1 purchase from utility/non-utility sources as much as 2,620 MW (winter). By  
2 summer of 2010, the purchases are expected to decline to 382 MW. A  
3 summary of these power purchases is provided in Document RS-2. FPL also  
4 will purchase as much as 877 MW from QFs within the next 10 years. By the  
5 summer of 2010, QF purchases are expected to decline to 640 MW. A  
6 schedule of QF purchases is provided in Document RS-3.

7  
8 The decline in purchased power and QF purchases is simply a result of the  
9 expiration of a number of different contracts. For example, FPL's current  
10 Unit Power Sale (UPS) purchases from the Southern Companies terminates in  
11 2010, and FPL has not decided how to replace this capacity at this time. A  
12 number of other purchases are shorter-term, intended to help FPL achieve a  
13 20% reserve margin in the near term, but not needed beyond the period FPL's  
14 Supplemental RFP was intended to address.

15  
16 **Q. How much DSM is included in FPL's resource plan?**

17 **A.** Measured from the end of 2001, FPL's cumulative DSM goal is to achieve  
18 approximately 565 MW of additional summer peak demand reduction at the  
19 meter through 2009, the end of the current goal setting period. This reduction  
20 is in addition to the 3,076 MW of demand reduction at the generator already  
21 accomplished through 2001. This reduction to date, after accounting for  
22 reserve margin requirements, translates to an avoidance of more than 3,600

1 MW of generation requirements, while FPL's goals from 2002 to 2009  
2 represent approximately an additional 725 MW of capacity avoidance.

3

4 **Q. What were FPL's actual peaks and net energy for load during 2001?**

5 A. FPL experienced a record summer peak of 18,754 MW in 2001, an increase of  
6 5.3% from the 2000 summer peak. The winter peak for 2000/2001 was  
7 18,199 MW, a 6.7% increase from the previous year. Net Energy for Load  
8 (NEL) in 2001 was 98,404 GWh, up 2.5% from 2000.

9

10 **Q. What is FPL's projected total peak load for the summer of 2005 and**  
11 **2006, respectively?**

12 A. As shown in Dr. Green's testimony, FPL's projected total summer peak loads  
13 for 2005 and 2006 are 20,719 MW and 21,186 MW, respectively.

14

15 **Q. What are FPL's projected additional resource needs for 2005 and 2006,**  
16 **respectively?**

17 A. As shown in Dr. Sim's testimony, in order to maintain a 20% reserve margin,  
18 FPL needs 1,122 MW of new generation capacity by June 1, 2005, and an  
19 additional 600 MW of new generation capacity by June 1, 2006. This results  
20 in a total required increase in capacity of 1,722 by June 1, 2006.

21

22 **Q. Why does FPL apply a 20% reserve margin target to determine its need**  
23 **for 2005 and 2006 ?**

1       A.     In 1998 the Commission staff expressed concern over the projected level of  
2             reserves in the state.   The Commission initiated an investigation of reserve  
3             margins and, in that case, FPL and the other investor-owned utilities in  
4             peninsular Florida proposed and voluntarily agreed to begin using 20% of  
5             annual peak as a reserve margin criterion and to achieve this level of reserves  
6             by summer 2004.   The Commission approved this stipulation in Order No.  
7             PSC-99-2507-S-EU.   FPL continues to use a dual criteria approach to assess  
8             system reliability, leaving in place the 0.1 days/year Loss of Load Probability  
9             (LOLP) standard and a reserve margin standard of 15% of annual peak until  
10            mid-2004, at which time the reserve margin standard becomes 20% of annual  
11            peak.

12  
13       **Q.     Which reliability criterion is the primary driver of the need for new**  
14            **resources?**

15       A.     As discussed by Dr. Sim, FPL's need for new resources is driven by the 20%  
16             summer reserve margin criterion.   Use of LOLP alone would result in a lower  
17             level of resource additions.

18  
19       **Q.     How does FPL plan to meet its 2005/2006 need for new resource**  
20            **capacity?**

21       A.     As discussed by Dr. Sim, FPL has identified a need for approximately 1,722  
22             MW in the 2005/2006 time frame.   FPL plans to meet this need by converting  
23             Martin Unit 8 to combined cycle, which adds 789 MW of summer capacity,

1 and adding Manatee Unit 3 combined cycle, which adds 1,107 MW of  
2 summer capacity to FPL's system. These are the most cost-effective resource  
3 options for FPL's customers.  
4

5 **Q. Do the units identified by FPL require licensing under the Power Plant**  
6 **Siting Act (PPSA)?**

7 A. Yes. Manatee Unit 3 and Martin Unit 8 will each add more than 75 MW of  
8 steam capacity in their proposed configurations, and therefore would require  
9 FPL to pursue licensing under the PPSA, including a Determination of Need  
10 filing with this Commission.  
11

12 **Q. Did FPL issue a request for proposals prior to seeking a Determination of**  
13 **Need for these units?**

14 A. Yes. Not once, but twice.  
15

16 **Q. When did FPL issue its initial request for proposals?**

17 A. FPL issued an announcement of its initial request for proposals on August 13,  
18 2001.  
19

20 **Q. What was the result of the initial request for proposals?**

21 A. FPL received 80 eligible proposals from 15 bidders, and after its analysis, as  
22 well as the analysis of an independent evaluator, FPL determined that building

1 Manatee Unit 3 and expanding Martin Unit 8 to meet its 1,722 MW need was  
2 the lowest cost alternative.

3

4 **Q. When did FPL issue its Supplemental RFP?**

5 A. FPL issued its Supplemental RFP on April 26, 2002.

6

7 **Q. Please summarize the Supplemental RFP.**

8 A. As explained in greater detail by Dr. Sim, the Supplemental RFP requested up  
9 to 1,722 MW of firm capacity in the 2005/2006 time frame. Proposals for  
10 power purchases of from 3 to 25 years and turnkey bids for new units were  
11 specifically noted as acceptable. No technology preference was stated; in fact,  
12 FPL invited any project of any type that would satisfy FPL's capacity needs.  
13 By leaving the timing and technology open, FPL did not preclude sales from  
14 other utility systems, construction of new units, or sales from existing units. In  
15 addition, tolling agreements, under which FPL would purchase and deliver  
16 the fuel utilized at a generating plant owned and operated by an independent  
17 power producer, were specifically noted as acceptable in the Supplemental  
18 RFP. FPL's intent was to make the solicitation as open as possible.

19

20 **Q. How many bidders responded to FPL's Supplemental RFP?**

21 A. FPL received capacity bids from 16 organizations totaling approximately  
22 12,500 MW. The 16 organizations, along with the type of proposal submitted  
23 and the technology, are listed in Document RS-4.

1 **Q. Did any bidders submit multiple projects?**

2 A. Yes. When multiple proposals, with pricing, start date and term-of-service  
3 variations were accounted for, FPL actually received 53 discrete alternatives  
4 in response to its Supplemental RFP.

5  
6 **Q. Were all of these 53 alternatives evaluated in the economic analysis?**

7 A. No. Only 31 separate proposals were eligible to be considered in the economic  
8 analysis. As explained by Dr. Sim, one bidder, who had originally submitted  
9 12 proposals under the initial request for proposals in 2001, submitted 16  
10 proposals in response to the Supplemental RFP on May 24, 2002, but later  
11 withdrew 4 of them to avoid paying the evaluation fee. This reduced the  
12 number of bids to 49.

13  
14 Three of the sixteen bidders were subsequently determined to be ineligible.  
15 Because these 3 bidders were sponsoring 18 separate proposals, their removal  
16 from consideration reduced the number of eligible proposals to 31. These 31  
17 eligible bids are listed in Document RS-5.

18  
19 **Q. Why did FPL declare the bids submitted by three of the bidders  
20 ineligible?**

21 A. In the Supplemental RFP FPL listed nine Minimum Requirements which each  
22 proposal should satisfy and noted that failure to satisfy all of the Minimum  
23 Requirements would be grounds for determining a proposal ineligible. FPL

1 also indicated in the Supplemental RFP that it would undertake an initial  
2 screening of the proposals to determine eligibility. FPL's Supplemental RFP  
3 stated that any such proposals so screened would be returned along with their  
4 associated fees.

5  
6 A number of the Supplemental RFP bidders did not agree to the Completion  
7 Security requirement of the Supplemental RFP. Consequently, FPL notified  
8 each such bidder that the Completion Security requirement amount was a  
9 Minimum Requirement necessary for their proposals to be considered. In  
10 response, all but one of the bidders notified FPL of their willingness to  
11 comply with the Completion Security requirement amount. The single  
12 proposal submitted by the one bidder which did not indicate its willingness to  
13 comply with the Completion Security requirement was determined to be  
14 ineligible.

15  
16 Another bidder is currently under contract with FPL to provide energy and  
17 capacity to FPL in June of 2003 and has informed FPL that it will not be able  
18 to meet its in-service date. Given that bidder's failure to perform under an  
19 existing contract, the bidder's five proposals were determined to be ineligible.  
20 FPL was unwilling to entrust its system reliability to a bidder which had  
21 already announced an inability to perform on another contract, and which  
22 appeared to lack the ability to finance, construct and operate facilities on  
23 schedule.

1 Finally, twelve proposals submitted by another bidder were determined to be  
2 ineligible because, in FPL's judgment, entering into a contract with this bidder  
3 would result in an extremely high level of risk to FPL's customers. The bidder  
4 has been accused of filing misleading financial statements, and of "gaming"  
5 the system in the California energy market. FPL is simply unwilling to entrust  
6 its system reliability to such an entity. Therefore, its twelve proposals were  
7 determined to be ineligible.

8  
9 It should be noted that these determinations of ineligibility were made without  
10 consideration of the economic standing of the bidders' proposals. FPL was  
11 not willing to entrust its system reliability to entities who were unwilling to  
12 post Completion Security to protect customers, who were failing to perform  
13 on another contract with FPL, or who had been accused of gross misconduct.

14  
15 **Q. Do you consider FPL's Supplemental RFP to have been a successful**  
16 **solicitation for new capacity?**

17 **A.** Yes. Based on the large number of both respondents and projects proposed, I  
18 believe that FPL's Supplemental RFP was the most successful investor-owned  
19 utility solicitation in Florida to date. Sixteen bidders, including three bidders  
20 who had not participated in the initial request for proposal, submitted  
21 proposals totaling over 12,500 MW. No other Florida investor-owned utility  
22 has received this volume of responses to its Supplemental RFP. The  
23 Supplemental RFP has certainly served the interests of FPL's customers.

1       **IV. Supplemental RFP Economic Analysis**

2

3       **Q.     What is the objective of the economic analysis?**

4       A.     The objective of the economic analysis is to identify the combination of  
5             resources that results in the lowest cost (i.e., electric rates) to customers. The  
6             economic analysis of competing alternatives must reflect all associated  
7             quantifiable costs, both direct and indirect. For example, in comparing supply  
8             alternatives, such as competing generating units, the direct costs would  
9             include capital costs (or capacity payments), fixed operating and maintenance  
10            (O&M) expenses, capital replacement costs, variable O&M expenses and fuel  
11            costs, transmission interconnection and integration costs, and the cost of any  
12            equity penalty resulting from entering into a power purchase obligation.  
13            Indirect costs would include the change in the fuel costs of other, existing  
14            generating units when the new unit is added to the system. This last item  
15            might either be a cost (increase in other units' fuel costs) or a benefit  
16            (reduction in other units' fuel costs). The totals of these costs for the various  
17            combinations of resources, expressed as revenue requirements, are compared  
18            over time on a cumulative net present value of revenue requirements  
19            (CPVRR) basis.

20

21            Using competing new generation unit alternatives as an example, the  
22            generating alternative with the lowest CPVRR over the period of the analysis,

1 which is equivalent to providing the lowest rates, is generally favored,  
2 although other factors must be considered.

3

4 **Q. Have these direct and indirect costs been reflected in the economic**  
5 **analyses?**

6 A. Yes. As explained by Dr. Sim and Mr. Taylor, all of the above costs have  
7 been appropriately reflected in the economic analyses related to the  
8 Supplemental RFP.

9

10 **Q. Should the costs of transmission integration for the various generation**  
11 **plans be reflected in the economic analysis?**

12 A. Yes. Whether these transmission integration costs are assigned to a specific  
13 project or rolled into overall rates, FPL's customers will pay those costs.  
14 Therefore, for bid comparison purposes, the costs of transmission  
15 enhancements must be, and have been quantified and should remain with the  
16 generator or group of generators that cause the need for the enhancement.

17

18 The analyses performed to determine transmission integration costs are  
19 addressed in the testimony of Mr. Stillwagon. He addresses the load flow  
20 analysis performed, as well as the resulting cost estimates for 28 expansion  
21 plans.

22

23 **Q. What is the equity penalty?**

1       A.     The equity penalty is a real cost associated with power purchases. The cost is  
2             a result of an imputation by rating agencies, such as S&P, of additional debt to  
3             a purchaser who enters into a power purchase contract.

4  
5             The equity penalty is addressed in the testimony of Drs. Sim and Avera,  
6             Messrs. Dewhurst and Taylor. The equity penalty calculations performed in  
7             this analysis are set forth in Appendix N of the Need Study.

8

9       **Q.     What do the results of FPL's analysis show?**

10       A.     The results of FPL's analysis show that the most cost-effective alternative for  
11             FPL's customers when all costs are considered is the construction of a new  
12             combined cycle unit at FPL's Manatee site (Manatee Unit 3) and the  
13             conversion of Martin Unit 8, which currently consists of two simple cycle  
14             combustion turbines (CTs), to a 4x1 combined cycle configuration. There is  
15             no plan consisting entirely of non-FPL options that is even remotely  
16             competitive with this Manatee/Martin plan. As Dr. Sim shows, the smallest  
17             differential between the All-FPL self build plan and the best all non-FPL plan  
18             was greater than \$470 million, (CPVRR).

19

20             Only a few combinations of either FPL's Manatee Unit 3 or Martin Unit 8,  
21             respectively, with one or more non-FPL alternatives had total costs that came  
22             within \$100 million of the All-FPL self build plan. The best of these

1 combination plans is \$83 million, (CPVRR), more expensive than the All-FPL  
2 self build plan.

3

4 **Q. Was FPL's analysis independently verified?**

5 A. Yes. Mr. Taylor's firm, Sedway Consulting, Inc., was retained prior to the  
6 analysis to run an independent study of the outside proposals and the FPL  
7 options. As Mr. Taylor describes in his testimony, he used his own model to  
8 perform the analysis.

9

10 **Q. What did Mr. Taylor's results show?**

11 A. Mr. Taylor obtained similar results from his studies. According to Mr.  
12 Taylor's analysis, the All-FPL self build plan was better than the best  
13 FPL/non-FPL combination plan by \$135 million (CPVRR), and better than  
14 the best all-outside combination by more than \$423 million (CPVRR).

15

16 **Q. Do you believe that these results provide a reasonable basis for**  
17 **concluding that the All-FPL self build plan is the most cost-effective**  
18 **alternative available?**

19 A. Yes. Not only has FPL determined that its own self build options are the most  
20 cost-effective, but also this result has been independently verified. The  
21 analytical process was comprehensive and subject to an internal critical  
22 review. Moreover, FPL undertook initial negotiations with the predominant  
23 bidder in several of the next lowest cost plan; and these negotiations

1 reinforced the conclusion that the All-FPL self build plan is the most cost  
2 effective option.

3

4 **IV. "Short List" Selection and Negotiation**

5

6 **Q. Please address how FPL developed its "Short List" for negotiations?**

7 A. Once Dr. Sim's group developed the lowest cost alternative plans available,  
8 based on analysis results as of June 18, 2002 there were 33 plans that were  
9 within \$200 million of the All-FPL self build plan. Many of these plans  
10 consisted of the same options with different proposed terms of service. For  
11 instance, one entity offering system sales offered the sales for either 3 or 5  
12 year terms. Similarly, some entities offering capacity from one or more new  
13 units offered mutually exclusive contract terms of various lengths from the  
14 same unit(s). One entity offered capacity from units in two different locations,  
15 each unit sufficient to meet all of FPL's need in 2006. Thus, many of the  
16 alternative plans were mutually exclusive, containing options from the same  
17 units but priced differently or with a different term. From this list of 33 plans,  
18 I aggregated the alternative plans that did not include both FPL units into five  
19 separate groups of mutually exclusive combinations (within each group) and  
20 compared the cost of the best combination in each group to the cost of the All-  
21 FPL self build plan. The comparative sheet is Document RS-6.

22

23 **Q. Please describe the five Groups shown on Document RS-6.**

1           A.   The five groups shown in Document RS-6 are labeled Groups A through E.  
2           Except for the bidders that were selected for the short list (i.e., Group A), the  
3           names of the bidders whose proposals are reflected in these groups are coded to  
4           comply with the bidders request for confidentiality.

5  
6           Group A consists of FPL's Manatee Unit 3, 1,107 MW, and a 50 MW system  
7           purchase from Florida Power Corporation ("FPC") in 2005, plus a 708 MW  
8           purchase from an El Paso Merchant Energy Corporation ("El Paso") unit in  
9           2006. There are three plans that consist of some combination of these three  
10          options with varying contract terms, or different costs and locations, for the  
11          FPC and El Paso alternatives. I chose the least cost plan from this Group A for  
12          comparison. This Group A plan had a cost of \$58 million more than that of the  
13          All-FPL self build plan. Subsequent refinements of FPL's analysis based, in  
14          part, on inputs provided by El Paso, result in this cost differential increasing  
15          from \$58 million to \$83 million.

16  
17          Group B consists of FPL's Martin Unit 8, 789 MW, a 200 MW system  
18          purchase from Bidder W, and a 250 MW purchase from a new Bidder X  
19          combined cycle unit in 2005, plus a purchase of approximately 700 MW from  
20          one of two proposed El Paso combined cycle units in 2006. There are six plans  
21          that consist of some combination of these four options, with varying contract  
22          terms, costs, and locations. I chose the lowest cost plan from this Group B for  
23          comparison. This Group B portfolio had a cost of \$59 million more than that

1 of the All-FPL self build plan. Subsequent refinements of FPL's analysis based,  
2 in part, on inputs provided by El Paso, result in this cost differential increasing  
3 from \$59 million to \$87 million.

4  
5 Group C consists of FPL's Martin Unit 8, 789 MW, and a 506 MW purchase  
6 from a new Bidder Y combined cycle unit in 2005, plus a purchase of  
7 approximately 700 MW from one of two proposed El Paso combined cycle  
8 units in 2006. There are four plans that consist of some combination of these  
9 three options, with varying costs and locations. I chose the lowest cost plan  
10 from this Group C for comparison. This Group C plan had a cost of \$87  
11 million more than that of the All-FPL self build plan. Subsequent refinements  
12 of FPL's analysis based, in part, on inputs provided by El Paso, result in this  
13 cost differential increasing from \$87 million to \$122 million.

14  
15 Group D consists of FPL's Martin Unit 8, 789 MW, a 200 MW system  
16 purchase from Bidder W, a 50 MW system purchase from FPC, and a 250 MW  
17 purchase from a new Bidder X combined cycle unit in 2005, plus a purchase of  
18 approximately 700 MW from one of two proposed El Paso combined cycle  
19 units in 2006. There are two alternative plans that consist of some combination  
20 of these five options, with varying costs and locations. I chose the lowest cost  
21 plan from this Group D for comparison. This Group D plan had a cost of \$104  
22 million more than that of All-FPL self build plan. Subsequent refinements of

1 FPL's analysis based, in part, on inputs provided by El Paso, result in this cost  
2 differential increasing from \$104 million to \$141 million.

3  
4 Group E consists of FPL Martin Unit 8, 789 MW, and a 506 MW purchase  
5 from a new Bidder Z combined cycle unit in 2005, plus a 708 MW, purchase  
6 from a new El Paso combined cycle unit in 2006. There are three plans that  
7 consist of some combination of these options, with various contract terms. I  
8 chose the lowest cost plan from this Group E for comparison. This Group E  
9 plan had a cost of \$145 million more than that of the All-FPL self build plan.  
10 Subsequent refinements of FPL's analysis based, in part, on inputs provided by  
11 El Paso, result in this cost differential increasing from \$145 million to \$182  
12 million.

13  
14 **Q. What entities were ultimately named to the short list?**

15 A. The short list consisted of FPC and El Paso, the entities offering the options  
16 that comprised the Group A plan I previously discussed. As I stated above, one  
17 of El Paso's proposals was part of every marginally competitive plan. FPC's  
18 proposal was also included in an alternative plan that included FPL's Manatee  
19 Unit 3 in 2005 and Martin Unit 8 in 2006.

20  
21 **Q. Upon what bases was the short list determined?**

22 A. The primary factors that led to the determination of the short list are as follows:  
23

1 First, it was clear that (1) all of the plans in these Groups were much more  
2 costly than the All-FPL self build plan; (2) the plans in Groups C, D and E  
3 were much more costly than some of the plans of Groups A and B; and (3)  
4 none of the plans would have been even remotely competitive with the All-  
5 FPL self build plan but for the fact that they included one of the two El Paso  
6 options in 2006.

7  
8 These two El Paso bids were particularly competitive, and without those bids  
9 no plan was close to the All-FPL self build plan (other than one plan that  
10 included both FPL units and a short-term utility system purchase). Specifically,  
11 without El Paso, the only plan within \$200 million of the All-FPL self build  
12 plan included both FPL's Manatee Unit 3 in 2005 and FPL's Martin Unit 8 in  
13 2006, plus a short-term 50 MW system purchase from FPC in 2005 to allow  
14 FPL to achieve its reserve margin target. Thus, El Paso was the driver in all of  
15 the top economic plans other than those that included both FPL units.  
16 Consequently, it was clear that El Paso should be on the short list. Moreover, if  
17 an agreement with a reduced price could not be reached with El Paso, there  
18 was no point in negotiating with any of the other bidders.

19  
20 Also, the significantly higher cost of the plans in Groups C, D and E compared  
21 to those in Groups A and B, and to the All-FPL self build plan eliminated them  
22 from further consideration.  
23

1 Second, FPL had concerns about two of the proposals in Group B (and also  
2 Group D). Both proposals were necessary for that plan to meet FPL's reserve  
3 margin requirements. So, the loss of either proposal would make the plans  
4 reflected in Group B (and Group D) insufficient. FPL had a concern with the  
5 Bidder W proposal related to whether it could deliver 200 MW of capacity to  
6 FPL in 2005 through 2011, and still achieve its own 20% reserve margin. FPL  
7 had separate serious concerns with Bidder X that would independently  
8 disqualify Groups B and D. As Mr. Dewhurst testifies, Bidder X's bond rating  
9 was rated below investment grade. This raised serious concerns about Bidder  
10 X's financial viability and its ability to finance, construct, operate and maintain  
11 its proposed facility.

12  
13 Third, it made sense to focus FPL's efforts on negotiation with the entities  
14 offering the plan that was economically closest to the All-FPL self build plan.  
15 Based on the results of FPL's economic analysis, as well as those of the  
16 independent analysis performed by Mr. Taylor, even the plans in Groups A or  
17 B were not economically competitive with the All-FPL self build plan. They  
18 are all at least \$58 million more expensive than the All-FPL self build plan,  
19 and were all more costly than another plan that included both FPL plants and a  
20 50 MW utility system purchase. With the All-FPL self build plan clearly the  
21 economically superior plan, FPL focused its negotiating resources on the  
22 entities and plans that held the most promise as an alternative to the All-FPL  
23 self build plan, especially since the negotiations were likely to be very

1 challenging, given the economic improvements those entities would have to  
2 make to achieve a lower cost than the All-FPL self build plan.

3

4 Therefore, on June 19, 2002, FPL contacted the bidders regarding their status  
5 and announced its short list of FPC and El Paso (i.e. Group A).

6

7 **Q. Please summarize what FPL communicated to the short list bidders.**

8 A. FPL initially contacted both the short list bidders on June 19, indicating that  
9 they had made the short list for negotiations and that follow-up  
10 communications would be sent shortly.

11

12 On June 19, FPL sent a letter to El Paso, inviting El Paso to lower its price,  
13 forwarding a draft purchased power agreement ("PPA") and proposing a round  
14 of face-to-face negotiations on June 27 and, if appropriate, June 28. On June  
15 20, FPL forwarded to El Paso a series of questions regarding El Paso's bids. On  
16 June 21, FPL informed El Paso that El Paso's bids were part of plans that were  
17 not the most cost-effective alternatives available to FPL. FPL requested that  
18 prior to June 27 El Paso provide the responses to the questions, any reactions to  
19 the PPA and any bid price reduction. On June 21, FPL asked El Paso if it  
20 would agree to have Commission Staff observe the negotiations session; El  
21 Paso indicated its agreement, and FPL extended an invitation to the Staff to  
22 observe the negotiations.

23

1 On June 25, FPL again informed El Paso that El Paso's bids were part of plans  
2 that were not the most cost-effective alternatives available to FPL, again  
3 requested that El Paso consider reducing the price of its bids, and extended to  
4 Monday, July 1, the deadline for any price reduction.

5  
6 On June 21, FPL also sent a letter to FPC advising FPC that it was part of a  
7 plan that was not the most cost-effective alternatives available to FPL, and  
8 providing FPC with the opportunity to refine its pricing by a date certain. FPC  
9 responded on June 25, indicating that FPC would not reduce its bid price.

10  
11 On June 27, FPL met with representatives of El Paso, with Commission Staff  
12 in attendance.

13  
14 **Q. Please summarize the key relevant information provided by El Paso**  
15 **during your meeting of June 27, and subsequently via fax on July 1.**

16 **A.** During the day of discussions, in response to FPL's inquiries regarding the  
17 aspects of its proposals that El Paso would be willing to contractually  
18 guarantee, El Paso explained the following:

19  
20 First, El Paso indicated that for both of its bids, the heat rates that had been  
21 provided by El Paso were the "best" heat rates that could be achieved by the  
22 proposed units, not the average heat rates that the units would achieve over  
23 time, as FPL assumed for all alternatives in the evaluation process. El Paso

1 further communicated that the average heat rate that FPL should use to  
2 evaluate El Paso's two bids was 3% higher than the "optimal" heat rate El Paso  
3 had originally submitted in its bids. This was subsequently revised by El Paso  
4 (via fax) to be 1% higher than the "optimal" heat rate. This meant that all  
5 energy produced at El Paso's proposed facilities would be 1% more costly than  
6 had been evaluated by FPL and Mr. Taylor.

7  
8 Second, El Paso indicated that although it had not stated it in its bids, it  
9 intended its bids to be "tolling agreements," where FPL would acquire and  
10 deliver the natural gas required to operate the proposed El Paso units. El Paso  
11 had asked FPL to evaluate El Paso's proposal at the Belle Glade site assuming  
12 that gas would be delivered through the Gulfstream pipeline. However, it is  
13 not known when the Gulfstream pipeline would be extended to reach the Belle  
14 Glade site.

15  
16 El Paso indicated that until the Gulfstream pipeline was actually extended to  
17 reach the Belle Glade site, gas could be transported through the FGT pipeline  
18 to the NUI pipeline (a local distribution company), and then delivered through  
19 the NUI pipeline to the Belle Glade plant. Aside from the cost of transporting  
20 gas through the FGT pipeline to the NUI pipeline, El Paso indicated that NUI  
21 would impose additional charges to deliver the gas through its own pipeline.  
22 This meant that given the higher cost of gas transportation through the FGT  
23 pipeline, compared to the Gulfstream pipeline, and adding the NUI cost,

1 beginning on the in-service date of the Belle Glade unit, all gas used at El  
2 Paso's Belle Glade facility would be more costly than had been evaluated by  
3 FPL and Mr. Taylor.

4  
5 Moreover, it is not clear when Gulfstream would extend its pipeline to reach  
6 the Belle Glade plant, or how long a contractual commitment FGT and NUI  
7 would require FPL to make, paying the higher transportation rate, in order for  
8 FGT and NUI to make the pipeline enhancements that would be necessary to  
9 deliver sufficient gas to the Belle Glade facility at the required pressure.

10  
11 Third, El Paso indicated that, although in its bids it had asked FPL to assume  
12 that its proposed units would operate at approximately 93.6% availability, on  
13 average, El Paso's proposal in fact was a "unit contingent" energy proposal,  
14 where FPL would control and dispatch the unit when and if the unit is  
15 available, but that El Paso's proposal did not guarantee any specific level of  
16 availability. El Paso indicated that a proposal that would offer a performance  
17 guarantee on availability would be more costly.

18  
19 Fourth, El Paso indicated that its bid was very aggressive and hence it would  
20 not further reduce its bid prices. In fact, no price change was received by the  
21 extended July 1 deadline.

22

1       **Q. Please summarize FPL's actions to reflect, in its evaluation, the**  
2       **information provided by El Paso on June 27, and subsequently via fax on**  
3       **July 1, and the results of those actions.**

4       A. FPL reflected in its economic analysis for Groups A through E described above  
5       a 1% increase in the heat rate of each of the two El Paso proposed units and an  
6       increase in the cost of natural gas delivered to El Paso's Belle Glade unit for the  
7       first two years of the proposed 25-year contract (a very conservative  
8       assumption regarding the term of the commitment that FGT and NUI are likely  
9       to demand prior to making the necessary pipeline improvements to provide this  
10      service). El Paso's clarifications increased the cost of the plans in Groups A  
11      through E that included El Paso's Belle Glade proposal by approximately \$24  
12      million (CPVRR). The cost increase for the best plans in Groups A through E  
13      that included El Paso's Manatee proposal is approximately \$11 million.

14  
15      **Q. Did FPL make any adjustments in the economic evaluation due to the**  
16      **clarification by El Paso that its proposals were for "unit contingent"**  
17      **energy?**

18      A. No. Without making any additional adjustments related to the "unit  
19      contingent" nature of El Paso's proposal, FPL's economic analysis already  
20      concluded that the best alternative plan to the All FPL option is \$83 million  
21      more costly than the All-FPL self build plan. Therefore, it was not necessary  
22      to make further adjustments. However, it should be noted that in negotiations

1 El Paso stated that if it provided a more firm proposal, its bid would have been  
2 higher.

3

4 **Q. Aside from the adjustments applied to the best plans in Groups A**  
5 **through E, related to the heat rate and gas transportation cost**  
6 **clarifications provided by El Paso, did FPL make other adjustments to its**  
7 **economic analysis after the June 18 meeting with FPL management?**

8 A. Yes. As explained by Dr. Sim, adjustments were made to reflect the fact that  
9 if only one of FPL's units is built in a plan, the cost of building that single FPL  
10 unit is approximately \$15 million greater (CPVRR) than when built in  
11 conjunction with the other FPL unit. Small adjustments (approximately \$1  
12 million) were also made to the transmission integration costs in some of the  
13 plans. All adjustments are reflected in the results provided in Document RS-7.  
14 As this Document shows, the most competitive of all the plans that do not  
15 include both of FPL's generating units exceed the cost of the All-FPL self  
16 build plan by at least \$83 million.

17

18 **V. Other Factors Considered in Resource Selection**

19

20 **Q. What other factors influence FPL's selection of a generating alternative?**

21 A. FPL considers a number of other factors in the selection of generating  
22 alternatives, including:

23 - Financial viability of the supplier;

- 1 - Extent of contractual commitment of supplier;
- 2 - Feasibility of licensing and construction plans;
- 3 - Delivery risk related to firmness of fuel supply, construction
- 4 schedule, and experience of the seller;
- 5 - Degree of control to be exercised by FPL, including items such
- 6 as dispatchability, and FPL's rights to sell power;
- 7 - Fuel diversity impact of the various alternatives;
- 8 - Technology risk; and
- 9 - Environmental risk.

10

11 **Q. Please describe how these factors may be applied.**

12 A. These factors can cause some proposals to be eliminated from consideration  
13 because of their negative impact on system reliability and costs to customers.  
14 The factors may also be used to raise one alternative above another that, on  
15 the surface, may seem to provide a better economic result.

16

17 For example, if a supplier's financial viability is not strong, it may not be  
18 financially capable of performing its primary obligations under a purchase  
19 power contract, including the timely construction and completion of the unit  
20 and the reliable long-term operation of the resource, thus adversely affecting  
21 system reliability. Mr. Dewhurst addresses this issue in his testimony.

22

1           “Contractual commitment of a supplier” refers to the relative ability and  
2           willingness of a supplier to make a substantial contractual commitment that  
3           gives adequate assurance to FPL of its intention to perform reliably. Absent a  
4           strong contractual commitment, a supplier may find it easier to renege on its  
5           obligations to FPL and FPL's customers if performance difficulties arise.  
6           Consequently, FPL will require a certain level of financial viability and a  
7           certain level of contractual commitment before it enters into a purchase power  
8           contract.

9  
10          “Feasibility of licensing and construction plans” relates to the relative degree  
11          of difficulty that the overall licensing process could have on a generation  
12          resource and the impact that the process could have on the construction of the  
13          resource.

14  
15          “Delivery risk related to firmness of fuel supply, construction schedule, and  
16          experience of seller,” addresses the relative risk associated with (1) projects  
17          that include firm gas supply and transportation contracts, which would have  
18          less delivery risk than those that do not, or (2) projects whose technology  
19          dictates a longer construction process, with greater opportunities for delay,  
20          such as a nuclear plant, which would be disadvantaged when compared to one  
21          with a less involved construction process, such as a combined cycle unit, or  
22          (3) projects in which the seller demonstrates that it has ample experience with  
23          the same type, brand and size of equipment, labor markets, and operating

1 conditions, which would be advantages, compared to those where they do not  
2 have similar experience, and (4) the experience of the bidder with which FPL  
3 is familiar.

4  
5 “Degree of control that can be exercised by FPL, including dispatchability and  
6 FPL's right to sell power” from the resource into the wholesale market (which  
7 results in fuel credits to its customers), relates to how effectively a proposal  
8 allows FPL to have the resource operated and maintained in the same manner  
9 as FPL dispatches, operates and maintains its own units to maximize the  
10 benefit to the customer.

11  
12 “Fuel diversity” is a way of mitigating the risk that one event or market  
13 condition related to a single fuel could adversely affect the availability or cost  
14 of all or a large portion of electricity produced or purchased by FPL. There is  
15 no definite guideline as to how much energy any single fuel source should  
16 provide, but in choosing between, for example, a new coal generating unit and  
17 a new gas generating unit to augment the capacity of the existing system, if  
18 the existing system currently uses much more gas than coal, the new coal unit  
19 would have an advantage based on its greater contribution to fuel diversity.  
20 Similarly, purchasing system power from a diversified system or from a  
21 system that uses fuel types that are different from those used by the purchaser  
22 adds to fuel diversity.

23

1 Another aspect of fuel diversity concerns the degree to which risk can be  
2 mitigated by obtaining the same fuel type (e.g., gas) from different  
3 geographical sources, and/or delivering it through different delivery systems.  
4 An example of this might be in the comparison of two gas-fired options, one  
5 fed from an existing gas pipeline, from which gas is delivered to the existing  
6 system, and the other fed from a separate gas pipeline. The alternative fed  
7 through the separate pipeline would be considered a better contributor to fuel  
8 diversity because some events that affect the first pipeline that feeds the  
9 existing system would not affect the new gas-fired option which is fed through  
10 a different pipeline.

11  
12 “Technology risk” is based, in part, on an assessment of the relative maturity  
13 of a technology. For example, an alternative based on a new gas turbine still  
14 in the prototype stage might be considered a greater risk than a more  
15 commercially developed technology. Also, the lower the degree of experience  
16 that a particular supplier has in constructing, operating and maintaining a  
17 certain combination of equipment, or in a certain operating pattern (e.g.,  
18 cycling up and down), the greater the susceptibility of that supplier's proposal  
19 to technology risk. This risk can be manifested in a generating unit's inability  
20 to maintain the required high level of availability to satisfy FPL customers'  
21 needs.

22

1 "Environmental risk" is a recognition that some technologies, coal and nuclear  
2 for example, may face a higher hurdle in licensing, and run a greater risk of  
3 future tightening of controls than a gas option.

4

5 These factors should be considered in the selection of a generating alternative,  
6 to the extent it is relevant and meaningful to do so.

7

8 **Q. Did FPL consider any of these factors in the evaluation of proposals**  
9 **submitted in response to the Supplemental RFP?**

10 A. Yes. Consideration of two of these factors, financial viability and prior  
11 experienced bidder, led to the elimination of two bidders. The other factors  
12 discussed below would not change the outcome of the economic analysis;  
13 rather, they serve to reinforce FPL's conclusion that the All-FPL self build  
14 plan is the best option to meet the needs of its customers.

15

16 **Q. Please address the first factor, which is financial viability of the bidder.**

17 A. The recent collapse in the credit rating of a number of energy companies has  
18 brought much more attention to this issue. However, this has always been a  
19 concern to FPL, because the long-term financial viability of any purchased  
20 power project needs to be confirmed up front, and then maintained during the  
21 term of the contract, to ensure that FPL's customers would receive the  
22 benefits associated with both the timely initial delivery of capacity and energy  
23 from the generating unit that would be the subject of such a contract, and the

1 reliable performance of that unit throughout the life of the contract. Any  
2 delay in startup or subsequent degradation in performance, whether related to  
3 financial viability or not, jeopardizes the ability of FPL to provide an  
4 adequate, economic supply of electricity to its customers.

5  
6 Therefore, FPL must evaluate, at least qualitatively, whether a supplier can  
7 avoid financial problems, and further, whether the supplier would be willing  
8 and able to complete construction and continue effective operation and  
9 maintenance of the proposed generating facility, even if the supplier were to  
10 experience financial setbacks.

11  
12 On the basis of financial viability, a qualitative comparison of the proposals  
13 received in response to the Supplemental RFP favors FPL's self-build options,  
14 along with power purchases from other utilities, because FPL's credit rating  
15 and those of other utilities are significantly higher than those of the non-utility  
16 bidders. Moreover, even where a developer's current credit ratings meet FPL's  
17 minimum requirement, power purchases from the independent power  
18 producer (IPP) could rate lower due to concerns over the future financial state  
19 of the supplier in question or its corporate parent. Moreover, it is unclear  
20 whether the corporate parent of such an IPP will continue to include power  
21 generation as a key component of its future corporate strategy. To the extent  
22 that the corporate strategy does not expressly include power generation, there

1 is greater uncertainty regarding that supplier's commitment to overcome  
2 problems during construction, operation and maintenance.

3  
4 Given the general effect of recent energy market developments on  
5 independent power producers, in general, it is logical to conclude that a  
6 contractual commitment to buy power from IPPs would present much greater  
7 risk to FPL's customers than would FPL's self-build options. Mr. Dewhurst  
8 addresses more specifically the recent market reaction to IPPs and the  
9 increased financial challenges they face.

10  
11 **Q. Please address the factor - "Feasibility of Licensing and Construction**  
12 **Requirements."**

13 A. FPL's self-build option requires licensing under the Power Plant Siting Act,  
14 including a Determination of Need from the Commission and a Site  
15 Certification from the Governor and Cabinet of the State of Florida sitting as  
16 the Siting Board, after the Florida Department of Environmental Protection  
17 (FDEP) has processed FPL's application. All plans resulting from the  
18 Supplemental RFP similarly would require this licensing for both the FPL unit  
19 and the combined cycle unit(s) proposed by bidders. And although power  
20 purchases from existing plants operated by other utilities require no licensing,  
21 just FERC approval, these types of proposals were small in size and could  
22 only be considered in combination with both an FPL unit and a non-FPL unit,

1 both of which require licensing under the PPSA. Therefore, all portfolio plans  
2 require PPSA action.

3  
4 The fact that FPL proposes expanding existing sites instead of developing new  
5 "greenfield" sites, along with FPL's experience in permitting and constructing  
6 plants in Florida gives FPL an advantage in terms of the feasibility of  
7 environmental licensing and construction requirements.

8

9 **Q. Please address the relative risks related to firmness of fuel supply,**  
10 **construction schedule and experience of the seller.**

11 A. Generation strategies that include firm gas transportation and secure sources  
12 of supply for the gas commodity are favored over those that do not. FPL's  
13 self-build projects will be supported by contracts for firm gas transportation  
14 and supply to ensure that the total firm gas requirements of FPL's system,  
15 including the needs of these new FPL units, are met. Other portfolios that do  
16 not include firm fuel transportation arrangements are inherently more risky in  
17 terms of reliability.

18

19 Since it was not clear in most bids to what extent the bidders' fuel supply and  
20 transportation needs would be met through firm contracts, bidders were not  
21 penalized during the evaluation. This is the kind of issue that was to be  
22 explored during negotiations. However, given the fact that FPL does plan to

1 meet its firm fuel needs through firm fuel supply and transportation contracts,  
2 it is clear that no bidder would have an advantage over FPL in this category.  
3 Construction schedule relates to the likelihood that a proposal can meet the  
4 desired in-service date. To the extent that this issue relates to technology, it  
5 would not be relevant in FPL's Supplemental RFP process, since all proposals  
6 were either combined cycle or combustion turbines, as were FPL's own units.  
7 However, even with a common technology among all new plant proposals,  
8 given the extensive experience that FPL has in permitting, building and  
9 operating combined cycle units in Florida, the All-FPL self build plan has an  
10 advantage in this category.

11  
12 An assessment of the level of experience of the entity proposing to construct  
13 and operate the resource, which considered the number of similar projects  
14 which the supplier has constructed and is currently operating, would favor  
15 FPL. FPL is proposing to build units that are the same as existing units it  
16 operates, using the same equipment.

17  
18 **Q. Please address the factor - "Degree of Control."**

19 **A.** Ultimately, the degree to which this would differentiate the All-FPL self build  
20 plan from power purchase alternatives would be determined by a negotiated  
21 contract. However, it is very difficult to duplicate ownership rights in a  
22 negotiated contract between parties with disparate and often opposing  
23 objectives.

1 As the owner of a generating unit, FPL has complete control over the level of  
2 output of the unit at any point in time, including shutting down the unit or  
3 turning it on, within the engineering limits of the unit. FPL also completely  
4 controls maintenance scheduling for the unit and has the right to sell power  
5 from the unit in the wholesale market when the power is not needed to serve  
6 FPL's retail customers, with the benefit of those sales accruing to the  
7 customer. In purchasing power, FPL attempts to duplicate these rights by  
8 contract. However, the degree of control FPL can exercise under a contract is  
9 never as complete as it is for a unit FPL owns and operates. In light of FPL's  
10 outstanding performance record in operating its generating plants, having as  
11 much control as possible over the generating resources is in the customers'  
12 best interests.

13  
14 **Q. Why can't FPL duplicate through a contract the rights it has through**  
15 **ownership?**

16 A. Such a contract would have to specify clearly when a unit could be turned on  
17 or off, up or down, during the entire term of the contract. Addressing  
18 explicitly in a contract every conceivable combination of fuel prices and  
19 availability, operating capability (which can change due to many factors,  
20 including ambient temperature), maintenance requirements, customer demand,  
21 etc., would be extremely difficult if not impossible. In addition, where a  
22 difference of opinion exists with respect to the terms of a purchased power  
23 contract, exercising control rights that FPL believes to exist may require

1 litigation. It has resulted in litigation in the past. This represents a risk to  
2 customers that is not present with self-build options.

3

4 **Q. Is fuel diversity a significant factor that helps create differentiation**  
5 **among the various bids in the Supplemental RFP?**

6 A. No, not to a significant extent; however, to the extent it does, it gives an  
7 advantage to the All-FPL self build plan over other new construction  
8 alternatives. In this Supplemental RFP, all of the alternatives considered  
9 would be fueled by natural gas or are utility system sales. Thus, the system  
10 fuel price response to changes in any single fuel price would be relatively  
11 similar in all cases. Regarding the mitigation of risk introduced by having  
12 access to separate pipelines, because FPL will be connected to both the  
13 Gulfstream and FGT pipelines, the All-FPL self build plan provides as much  
14 mitigation against fuel risk as the best new construction options. Only the  
15 proposed utility system sales offer greater fuel diversification.

16

17 **Q. Can the FPL and non-FPL alternatives be distinguished based on**  
18 **technology risk as you have presented it?**

19 A. Yes, to some extent. Some of the bids, all of which utilize CTs, have proposed  
20 the use of a specific model/brand of CT with which they have not reported  
21 having any prior experience. This raises concerns regarding these bidders'  
22 ability to operate and maintain the equipment in a manner consistent with the  
23 high level of availability reflected in the proposals. As explained by Mr.

1 Yeager, the All-FPL self build plan, on the other hand, consists of a  
2 standardized plant design, using the same type equipment with which FPL has  
3 had extensive experience. This makes the technology risk of the All-FPL self  
4 build plan less than that of bidders employing CTs that are new to them.

5  
6 **Q. Is environmental risk different for FPL than for non-FPL alternatives?**

7 A. Yes. Although all bids were based on natural gas as a fuel source, there is  
8 little difference in environmental risk; however, there are obvious  
9 environmental and permitting advantages to adding capacity to a “brownfield”  
10 site, i.e., a site with existing generation - as proposed by FPL versus  
11 development of a new “greenfield” site, as proposed by most other bidders.

12  
13 **Q. Did the qualitative factors that you have discussed influence FPL’s**  
14 **decision to pursue the Manatee and Martin projects?**

15 A. Yes. Consideration of the qualitative factors reaffirmed FPL’s finding that its  
16 self-build option is the best strategy for our customers. As discussed above,  
17 both FPL's economic analysis and that performed independently by Mr.  
18 Taylor concluded that FPL's self-build plan is the clear economic winner.  
19 Accordingly, there would have to have been clear and significant qualitative  
20 advantages associated with one or more of the other alternatives to offset the  
21 economic advantages that FPL's self-build plan provides. Most of these  
22 qualitative factors favor the All-FPL self build plan to a greater or lesser  
23 degree over other alternatives and none would make an alternative plan

1 superior to the All-FPL self build plan. Consequently, since the qualitative  
2 considerations I have listed above reinforce the results of FPL's quantitative  
3 analysis, it is clear that FPL's self-build option is by far the best strategy for  
4 FPL's customers.

5  
6 **Q. Couldn't the argument be made that signing a contract with an**  
7 **independent power producer is less risky than "saddling" the customers**  
8 **with a long-term obligation in rate base?**

9 A. The argument is made by some, but it is specious. It ignores the fact that the  
10 commitment made through the power purchase contract places as much or  
11 more of a long-term obligation on the customers as does adding to rate base a  
12 generating unit built by FPL. The fact is that a generating unit built by an IPP  
13 under contract to FPL to meet FPL's customers' needs will be paid for by the  
14 customers through the Capacity Cost Recovery Clause and the Fuel and  
15 Energy Cost Recovery Clause. That recovery will be immediate upon delivery  
16 and will raise those cost recovery costs. In contrast, customers do not face  
17 increased rates for rate base additions until the utility seeks base rate relief.  
18 Further it should be noted that FPL has added over \$13 billion in new plant  
19 over the last seventeen years while actually decreasing rather than increasing  
20 base rates. So, at worst customers will pay for the capacity and energy either  
21 way.

22  
23 **Q. Is FPL predisposed to build its own units rather than to buy power?**

1       A.     No. FPL has a history that demonstrates its willingness to purchase power if  
2             that is the most economic alternative to customers. In 1989, prior to  
3             establishment of the Commission's bidding rule, FPL issued a request for  
4             proposals. After an evaluation of the bids received in response to that request  
5             for proposals, FPL selected an offer of a Unit Power Sale from the Southern  
6             Company as the preferred alternative, with other projects identified as  
7             secondary options. FPL's self-build option was not evaluated to be cost-  
8             effective. FPL eventually purchased Scherer Unit No. 4 after discussions with  
9             Georgia Power and presented the results of its RFP analysis to the  
10            Commission in Docket No. 900796-EI.

11  
12            In 1992, FPL returned to the Commission as a co-applicant in the Petition to  
13            Determine Need for the Cypress Energy Partners, Ltd. Project, Docket Nos.  
14            920520-EQ and 920648-EQ, which consisted of two 400 MW coal-fired units  
15            located near Lake Okeechobee. Although the Commission ultimately found  
16            that this project was not the most cost-effective alternative available to FPL,  
17            the fact that in both cases FPL brought forward non-FPL options demonstrates  
18            that there is no predisposition toward self-building.

19  
20            In addition, as recently as 2001 FPL contracted with IPP's to make significant  
21            short-term purchases during the period 2002-2007. If FPL had been  
22            predisposed to build rather than buy, it could have built out at least part of that  
23            capacity. Instead, it chose to purchase capacity.

1       **Q. Did FPL include an equity penalty and transmission integration costs**  
2       **when it selected the Cypress Energy project?**

3       A. Yes. FPL included \$73 million of equity penalty and \$99 million of  
4       transmission integration costs and still found the project to be cost-effective.

5  
6       **Q. Won't units built by unregulated, "competitive" companies be cheaper**  
7       **than units built by a regulated utility?**

8       A. The fact that FPL is regulated does not mean it is not price competitive.  
9       Being regulated does not affect FPL's ability and willingness to compete on  
10      price as well as quality and reliability. The ultimate proof of FPL's ability to  
11      compete with unregulated companies is found in the results of FPL's  
12      Supplemental RFP process. FPL invited the market to compete and the All-  
13      FPL self-build plan remains the lowest cost, most reliable alternative.

14  
15      **Q. Are there any other qualitative or quantitative factors that could be**  
16      **considered in the comparison that FPL has done?**

17      A. Yes. The residual value of a generating unit is a quantitative factor and refers  
18      to any remaining value in that unit after its useful or expected life has passed.  
19      For example, the combined cycle units proposed by FPL have expected book  
20      lives of 25 years. While this is the life used to calculate depreciation expense  
21      for these units, it is reasonable to assume that they will operate beyond 25  
22      years with reasonable upkeep. Therefore, they will continue to have value  
23      beyond the end of their "book life."

1       **Q. Did FPL quantify the benefit of residual value of the All-FPL self build**  
2       **plan?**

3       A. No. However, Mr. Taylor did. His calculation of residual value increased the  
4       cost differential between the All-FPL self build plan and the next lowest cost  
5       portfolio without both FPL units by more than \$30 million. FPL's analysis in  
6       this Supplemental RFP has taken a conservative approach and did not attempt  
7       to quantify residual value. However, it is reasonable to assume that there will  
8       be some value left in FPL's generating units at the end of their depreciable  
9       life. Thus, residual value is an additional factor that favors the All-FPL self  
10      build plan.

11

## 12      **VI. Adverse Consequences of Delay**

13

14      **Q. Are there any adverse consequences to delaying approval of the Manatee**  
15      **and Martin projects?**

16      A. Yes. Delaying approval could create a threat to system reliability, increase  
17      system fuel cost and cause greater use of oil-fired generation

18

19      The threat to system reliability would come from FPL's inability to meet its  
20      20% reserve margin target if one or both units failed to meet their proposed  
21      June 2005 in-service dates. For example, if both units were delayed and  
22      unavailable in the summers of 2005 and 2006, FPL's reserve margin would  
23      fall to 14.1% and 11.1%, respectively. While falling to these levels of reserve

1 margin does not necessarily result in loss of service to any of FPL's  
2 customers, lower reserve margins certainly increase the possibility of outages  
3 and increase the probability of load control operations.  
4

5 Increased system fuel costs would result from any delayed in-service date of  
6 the proposed combined cycle units. These units will be highly efficient, state-  
7 of-the-art generating units which would displace energy from older, less  
8 efficient units. In addition, as shown in Document RS-8 the addition of these  
9 units will result in a significant reduction in the projected average heat rate of  
10 FPL's fossil units, from 8,402 kwh/MMBtu in 2004, to 8,095 kwh/MMBtu in  
11 2006, a reduction of more than 3.6%. This means that fuel expense during the  
12 second half of 2005 and in 2006 will be significantly lower than it would be  
13 without Manatee Unit 3 and Martin Unit 8. The absence of the new gas-fired  
14 units will result in increased operation of FPL's older units, which generally  
15 are oil-fired, leading to increased oil use.  
16

## 17 **VIII. Summary**

### 18

19 **Q. Please summarize your testimony.**

20 A. The Manatee Unit 3 and Martin Unit 8 projects proposed by FPL are by far  
21 the most cost-effective alternatives to meet the capacity and energy needs of  
22 FPL's customers in 2005, 2006 and beyond. These projects are needed to  
23 maintain system reliability in 2005 and 2006 as measured by FPL's 20%

1 reserve margin criterion. They will provide FPL's customers with an  
2 adequate supply of electricity at a reasonable cost.

3  
4 The Manatee and Martin projects offer a clear economic advantage over the  
5 best of the alternative plans resulting from the Supplemental RFP, as well as a  
6 number of other important non-economic advantages, including the following:

- 7
- 8 - They have potential access to more than one pipeline, resulting  
9 in greater reliability of fuel supply than competing proposals.
  - 10
  - 11 - Ownership offers greater operational flexibility and control  
12 over the generation resource than purchased power for the  
13 benefit of FPL's customers, and eliminates any litigation  
14 potential related to power purchase contracts.
  - 15
  - 16 - Ownership also presents less financial risk than purchased  
17 power from entities that may become financially stressed in the  
18 post-Enron era.
  - 19
  - 20 - There is a residual value for FPL's customers in units owned by  
21 FPL versus units under contract.
  - 22

1 FPL's proposed Manatee Unit 3 and Martin Unit 8 projects meet all of the  
2 criteria required by the Commission and should be granted a Determination of  
3 Need.

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

6 **A. Yes.**

**Errata Sheet**  
**Direct Testimony of Rene Silva**  
**Docket Nos. 020262-EI and 020263-EI**

Page	Line	Correction
5	1	after "Sim" add ", Mr. William Yeager, Dr. Leonardo Green and Mr. Gerald Yupp"
8	12-13	move Appendix C reference to the list that Steve Sim is co-sponsoring so that it reads "Appendices D, E, F, J and K, and co-sponsoring Appendices C, M and N to the Need Study."
9	7	after "Section III" add ", V (D) and VII (C)"
10	12	Delete last sentence
10	22	after "Appendix I" add "and co-sponsors Appendix N"
12	1	replace "2,620" with "2,673"
25	3-4	after the word "coded" replace remainder of sentence with the following: "as a courtesy to the bidders"
27	4	replace first sentence with the following: "Group E consists of FPL Martin Unit 8, 789 MW, a 50 MW system purchase from FPC and a 608 MW purchase from a new Bidder Z combined cycle unit in 2005, plus a 708 MW, purchase from a new El Paso combined cycle unit in 2006."
28	10	The sentence beginning with "Specifically" should be replaced with the following: "Specifically, without El Paso, the only plans within \$200 million of the All-FPL self build plan included both FPL's Manatee Unit 3 and FPL's Martin Unit 8, plus at least one other purchase."
40	10	The sentence beginning with "Consideration" should be replaced with the following: "Consideration of two of these factors, financial viability and the prior experience of the bidder, led to the elimination of two bidders."
42	18	Add an "s" to the word "unit" at the end of the line.

DOCUMENT NUMBER-DATE

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Exhibit RS-2

Columns “Other Firm Capacity Purchases – Winter” and “Total – Winter” should have the following adjusted numbers (for the associated years):

<i>Year</i>	<i>Other Firm Capacity Purchases Winter</i>	<i>Total Winter</i>
2002	593	1910
2003	1317	2634
2004	1356	2673
2005	1306	2623
2006	543	1860
2007	542	1859

Exhibit RS-6

The last row (“E”), third column (“In-Service Year 2005) should be replaced with the following:

PMR / FPC / BIDDER Z  
789MW / 50MW / 608MW

Exhibit RS-7

The last row (“E”), third column (“In-Service Year 2005) should be replaced with the following:

PMR / FPC / BIDDER Z  
789MW / 50MW / 608MW

1 BY MR. GUYTON:

2 Q Mr. Silva, would you please summarize your direct  
3 testimony?

4 A Yes. Good morning, Madam Chairman, Commissioners.  
5 Thank you for giving me the opportunity to summarize my  
6 testimony.

7 In these dockets Florida Power & Light Company, FPL,  
8 seeks that this Commission grant FPL affirmative determination  
9 of need to construct Manatee Unit 3, a four combustion  
10 turbine-based combined cycle unit on FPL's existing Manatee  
11 site, which will add 1,107 megawatts of summer capability, and  
12 to convert Manatee 8, which would combine two existing  
13 combustion turbines at FPL's Martin site, plus two additional  
14 combustion turbines into a four combustion turbine-based  
15 combined cycle unit, which will add a net 789 megawatts of  
16 summer capability.

17 These two projects, which I will refer to here as the  
18 FPL plan, will add together 1,896 megawatts of firm summer  
19 capacity in June 2005. These two units are necessary for FPL  
20 to achieve the Commission-approved 20 percent reserve margin in  
21 2005 and maintain it in 2006. Without these two units FPL's  
22 reserve margin would fall to 14.1 percent in 2005 and to  
23 11.1 percent in 2006.

24 The documents filed by FPL under these dockets  
25 including the Need Study document and the testimony of the

1 witnesses show that for FPL's customers the FPL plan is the  
2 most cost-effective choice and the best overall strategy to  
3 meet FPL's capacity needs in 2005 and 2006. Specifically, as  
4 is shown on this board, the FPL plan compared to the best plan  
5 with --

6 CHAIRMAN JABER: Mr. Silva, I'm so sorry to  
7 interrupt. I need you to speak right into the microphone for  
8 the court reporter. The one you're holding, is that working?

9 THE WITNESS: Hello. Yes.

10 This is the FPL plan consisting of Manatee Unit 3 and  
11 Martin Unit 8. Compared to the best plan that only has one FPL  
12 unit, the FPL analysis shows that the FPL plan is the lowest  
13 cost for FPL's customers and that it is \$83 million cumulative  
14 revenue requirement lower than the best plan with only one FPL  
15 unit.

16 When looking at the independent analysis performed by  
17 Sedway Consulting, that difference is \$135 million in net  
18 present revenue requirement. When compared against the best  
19 plan with only one FPL unit and without the top bidder, the  
20 margin is much greater; more than \$200 million that benefits  
21 the FPL plan. And when compared to a plan that has neither FPL  
22 unit, the margin is almost half a billion dollars in both of  
23 the analysis.

24 When we combine the results of those economic  
25 analysis with the results of our qualitative review of nonprice

1 factors as they relate to the best alternatives available to  
2 FPL, we reaffirm the conclusion that the FPL plan is the best  
3 overall strategy for FPL's customers.

4 This process started with a bid solicitation, the  
5 supplemental request for proposal which was issued on  
6 April 26th, 2002. And our objective was to have a solicitation  
7 that would be as open as possible and we succeeded. We  
8 received 53 bids from 16 bidders. This solicitation had more  
9 participants than any other capacity solicitation in Florida.

10 In order to help put in context during the course of  
11 these hearings the various steps that we took, I will give you  
12 a brief road map of those steps that we did to evaluate the  
13 self-build options and the bids from the bidders.

14 The first step in the evaluation was an initial  
15 screening. Based on our aim to protect the interests of the  
16 customer, based on nonprice factors, three bidders were  
17 determined to be ineligible prior to the performance of the  
18 economic evaluation, and 31 bids from 13 entities were  
19 determined to be eligible and proceeded to the economic  
20 evaluation stage.

21 The economic evaluation was a rigorous and extensive  
22 analysis performed by FPL and independently by Sedway  
23 Consulting to identify the plan or grouping of resources that  
24 would result in the lowest cost to FPL's customers compared in  
25 terms of cumulative present value revenue requirement. These

1 analysis which have correctly reflected all the costs, both  
2 direct and indirect, associated with all competing plans are  
3 described in detail by Dr. Sim and Mr. Taylor.

4           One of those costs, transmission integration costs,  
5 are addressed by Mr. Stillwagon. Different aspects of the  
6 equity penalty costs are discussed by Dr. Avera, Mr. Dewhurst,  
7 Mr. Taylor and Dr. Sim. And other assumptions used in the  
8 economic analysis are presented by Dr. Green, who talks about  
9 the load forecast, Mr. Yupp, who deals with the fuel price  
10 forecast, and Mr. Dewhurst, who addresses financial assumptions  
11 respectively.

12           After the economic evaluation, the next step was the  
13 selection of bidders for the short list. And here are some of  
14 the key observations that we had before us when we made that  
15 decision.

16           First, as the table shows, all plans with no FPL unit  
17 were so costly that they were not economically viable. Also,  
18 all plans with only one of the FPL units were much more costly  
19 than the FPL plan.

20           We did identify a plan with bids from El Paso and  
21 Florida Power Corporation, which also included FPL's Manatee  
22 Unit 3, and it comprised the best plan that did not include  
23 both FPL units due to El Paso's bid. That was the plan that  
24 was \$83 million ultimately higher than the FPL plan.

25           And the reason why that was compared was El Paso's

1 bid. In fact, we had El Paso's bid, which was very aggressive.  
2 None of the plans with only one FPL unit were even remotely  
3 competitive. As I showed on the board, they were \$200 million  
4 costlier than the FPL plan.

5 We looked at the next best plan after the plan with  
6 Florida Power Corporation and El Paso, which included a bid  
7 also from El Paso as well as FPL's Martin Unit 8 and it also  
8 included bids from two other bidders. But FPL determined that  
9 contracting with those two other bidders posed significant  
10 reliability risks.

11 We looked at other plans that had only one FPL unit,  
12 but they were also much more costly than these. Therefore, FPL  
13 selected El Paso and Florida Power Corporation for the short  
14 list in order to focus on the plan that presented the least  
15 uncertainty and the least risk and that had the greatest  
16 potential for being economically competitive.

17 At that point we proceeded to initial negotiations  
18 with El Paso. This was the first step intended to exchange  
19 more detailed information with these selected bidders. In the  
20 case of Florida Power Corporation we discussed issues with them  
21 by phone and via E-mail.

22 If a price reduction with these bidders could  
23 overcome the significant economic disadvantage that they had  
24 against the FPL plan, we would have expected that negotiations  
25 would have continued into August. FPL at that point explained

1 to Florida Power Corp and El Paso that although they were  
2 competitive, they were not the lowest cost and asked them to  
3 reduce their prices. Both indicated that they could not, could  
4 not do that.

5 In fact, during those initial negotiations, El Paso  
6 provided information that modified their bids and required an  
7 upward adjustment in the evaluated cost of their bid, which in  
8 turn affected all the other top plans.

9 So at the end of this extensive analysis and  
10 negotiation effort, FPL and, separately, Sedway Consulting  
11 obtained results that provide compelling evidence that the FPL  
12 plan is the most cost-effective for FPL's customers by  
13 \$83 million in one case and \$135 million in the other.

14 At this point we return to the nonprice factors.  
15 Given the overwhelming economic advantage of the FPL plan, FPL  
16 did not attempt to quantify the relative nonprice merit of  
17 individual's bids or bidders, but rather we performed a  
18 qualitative review of the advantages and disadvantages of  
19 purchasing power from these top bidder versus FPL building,  
20 owning and operating its plants to see if this difference would  
21 change the economic decision. It did not. The results of this  
22 qualitative review reinforced the conclusion that the FPL plan  
23 is the best overall strategy to meet FPL's customers' needs in  
24 2005 and 2006.

25 And the last point in my summary relates to the

1 adverse consequences of delaying approval of these units. If  
2 these units are not placed in service as proposed, FPL will not  
3 be able to meet the Commission-approved reserve margin. As we  
4 know, lower reserve margins increase the possibility of outages  
5 and make the use of load control more probable, and they will  
6 reduce our flexibility in assisting others in the state as  
7 well.

8 But aside from the increased reliability risk, our  
9 customers will definitely incur significantly higher costs if  
10 these units are delayed because they are so efficient.  
11 Therefore, FPL petitions this Commission for an affirmative  
12 determination of need for the construction of Manatee Unit 3  
13 and the conversion of Martin Unit 8. Thank you.

14 CHAIRMAN JABER: Thank you, Mr. Silva. Before you  
15 tender the witness for cross, Mr. Guyton, I should note for  
16 purposes of the record that Exhibit 2, RS-1 through RS-8,  
17 includes a one-page errata sheet on the exhibits as well.

18 MR. GUYTON: Thank you, Madam Chairman. Would it be  
19 helpful to identify the board that Mr. -- exhibit -- that  
20 Mr. Silva presented during his summary as an exhibit?

21 CHAIRMAN JABER: Is this contained anywhere else?

22 MR. GUYTON: This is a summary -- this is not in this  
23 form contained elsewhere. It's taken from, from various  
24 testimonies.

25 CHAIRMAN JABER: We can identify it in the event that

1 anyone has cross-examination on it. I don't have any objection  
2 to identifying it.

3 MR. MOYLE: It's not being admitted? It's just being  
4 identified?

5 CHAIRMAN JABER: For now it's being identified.  
6 Exhibit Number 5, short title, Summary of Economic  
7 Analysis.

8 (Exhibit 5 marked for identification.)

9 MR. GUYTON: With that, I tender Mr. Silva for cross.

10 CHAIRMAN JABER: Thank you, Mr. Guyton.

11 Mr. Moyle, are we -- have you all agreed on which  
12 direction? Okay. Mr. Moyle.

13 MR. MOYLE: Before I jump in, I just wanted to see  
14 what your pleasure was. I probably have, I would guess, 45  
15 minutes to an hour of, of cross.

16 CHAIRMAN JABER: So we better get started.

17 MR. MOYLE: It's 12:00. Well --

18 CHAIRMAN JABER: We better get started.

19 MR. MOYLE: You want to go ahead and, and go?

20 CHAIRMAN JABER: Yes.

21 CROSS EXAMINATION

22 BY MR. MOYLE:

23 Q Good morning, Mr. Silva. I'm Jon Moyle. I represent  
24 one of the intervenors this case. How are you?

25 A Good morning, Mr. Moyle. I'm fine.

1 Q Now I've read your testimony. If I understand it,  
2 you describe FP&L's evaluation process used in evaluating the  
3 bids received in response to the supplemental RFP; correct?

4 A Yes.

5 Q And you were not involved in the initial RFP;  
6 correct?

7 A That's correct.

8 Q Okay. You never put in place a formal plan to  
9 evaluate the responses to the RFP, did you, other than what's  
10 contained in the supplemental RFP?

11 A No documented plan other than what's in the RFP, yes.

12 Q Let's talk a little bit about the methodology that  
13 was used. In your testimony you have a section entitled, Other  
14 Factors Considered In Resource Selection, and I think it's on  
15 Page 35. You do have your prefiled testimony with you, don't  
16 you?

17 A Yes.

18 Q I'm going to ask you some questions about the  
19 criteria and what not.

20 The testimony found on Page 35 to 47, this testimony  
21 generally describes the methodology FPL used in considering  
22 noneconomic factors; correct?

23 A I think the testimony discusses some of the factors  
24 that were used and it discusses the conclusions that we reached  
25 in applying these in a qualitative review when comparing FPL's

1 alternative, meaning the self-build option, to generally the  
2 top bidders. So it describes the process that we followed.

3 Q Okay.

4 A But it was not to look at individual bids, but rather  
5 to look qualitatively at, or conceptually the concept of FPL  
6 building and buying -- building versus FPL buying.

7 Q Right. But you did, you did apply that, the criteria  
8 that's listed in there to certain bids, did you not, in making  
9 judgments?

10 A Yes.

11 Q Okay.

12 A These are descriptions of the criteria that were used  
13 and how they were used.

14 Q Okay. And you heard the Chair, I believe you were in  
15 the room, and the practice usually at the PSC is to answer a  
16 question yes or no and, if explanation is needed, go from  
17 there. So I would just ask that you follow, follow that  
18 process.

19 Let me direct you to Page 43 of your prefilled  
20 testimony. There is reference in there to greenfield sites.  
21 Would you please read that out loud for the Commission?

22 A Could you direct me to the line number that you are  
23 asking me to read?

24 Q Sure. Line 4.

25 A Line 4 begins, "The fact that FPL proposes expanding

1 existing sites instead of developing new greenfield sites,  
2 along with FPL's experience in permitting and constructing  
3 plants in Florida gives FPL an advantage in terms of the  
4 feasibility of environmental licensing and construction  
5 requirements."

6 Q Okay. And isn't it true then that when FP&L was  
7 analyzing this process, the fact that they were building on a  
8 site that was already disturbed, I don't want to call it a  
9 brownfield site, but a site that was already disturbed was  
10 something that was of significance?

11 A Yes. The fact that we are building on a site that is  
12 already disturbed provides, in our view, a greater likelihood  
13 that there would be reduced problems in obtaining permits to  
14 add to the site as opposed to going into a brand new location  
15 and asking for a permit for that site.

16 Q Okay. In the supplemental RFP you didn't tell  
17 bidders that developing on an existing site would be viewed  
18 more favorably as compared to developing on a greenfield site,  
19 did you?

20 A Excuse me a second. In the RFP we did discuss the  
21 difficulties in licensing as an issue that would be considered  
22 for itself and for the impact on construction.

23 On Page 17 where we talk about the proposal  
24 evaluation, we ask for pollution control strategy and  
25 equipment, projected emission rates and cooling method.

1           And on Page 19 we talk about other considerations,  
2 including permitting limitations, the likelihood of success in  
3 receiving all permits to build and operate the facility.

4           So, clearly, under the major heading on Page 42 in  
5 which the paragraph that you asked me to read rests, which is  
6 feasibility of licensing and construction requirements, we did,  
7 in fact, indicate that in the RFP.

8           Q     Okay. I appreciate that and I have some follow-up  
9 questions related to it. But you didn't indicate that you  
10 would give a preference to building on -- or you didn't  
11 indicate that you would have a concern with respect to a  
12 proposal which was building on a greenfield site; correct?

13          A     No. And we didn't really have a concern with the  
14 proposal that was building on a greenfield site. We said that  
15 we were going to evaluate the feasibility of licensing and  
16 construction requirements. And we did not say that brownfield  
17 was better than greenfield in the RFP, but we did say  
18 feasibility of licensing and construction requirements, and  
19 that comes into play in evaluating that criterion.

20          Q     Okay. The feasibility of licensing and construction  
21 requirements, that's a pretty broad category, wouldn't you  
22 agree?

23          A     I think it's fairly explicit. These units have to be  
24 licensed, and how feasible are they of licensing?

25          Q     I understand. But couldn't the feasibility of

1 permitting also relate to whether somebody was trying to  
2 permit, let's say, a coal plant, that that would be viewed as  
3 probably having more difficulty than permitting a combined  
4 cycle unit?

5 A Yes. That could apply to that, too.

6 Q And your answer about pollution technology, that that  
7 was part of it, there's a whole host of pollution technology,  
8 is there not?

9 A Yes. And if we have to consider that when we issue  
10 the RFP, there is no way of knowing how we are going to receive  
11 bids. So we have to make the criteria that we ask for the, for  
12 the bidders to comment on broad enough that we receive whatever  
13 they have to offer; to make it useful for them in being  
14 creative and to give us everything that they can give us, as  
15 opposed to being very restrictive in exactly how we are going  
16 to evaluate each criterion.

17 CHAIRMAN JABER: Mr. Silva, is there anything clearly  
18 stated, any provision in the RFP or statement that makes it  
19 clear to potential participants that FP&L believes that use of  
20 their own greenfield sites gives FP&L an advantage in terms of  
21 obtaining permits and licenses for construction?

22 THE WITNESS: No, Commissioner. To my recollection  
23 there is no such statement in the RFP.

24 BY MR. MOYLE:

25 Q Let me direct you to Page 41, Line 21 of your

1 testimony.

2 CHAIRMAN JABER: Page 41, Line --

3 BY MR. MOYLE:

4 Q Page 41, Line 21. And ask you if you would read for  
5 the record the sentence that starts at the end of Line 21, "To  
6 the extent"?

7 A "To the extent that the corporate strategy does not  
8 expressly include power generation, there is greater  
9 uncertainty regarding that supplier's commitment to overcome  
10 problems during construction, operation and maintenance."

11 Q Was that a factor that was never disclosed to  
12 bidders?

13 A That -- yes. That is a factor that specifically was  
14 not stated to bidders in that fashion. However, the issue of  
15 financial viability and reliability under which this subset is  
16 included was included very prominently in the RFP, and it was  
17 also included separately in a letter that was sent to all  
18 bidders indicating how important the issue of reliability and  
19 financial viability was in FPL's eyes for the protection of the  
20 customers.

21 Q Okay. But the idea about a corporate strategy not  
22 including power generation, that was something you deemed  
23 significant; correct?

24 A It was one of the things that we considered when we  
25 did -- yes. It was one of the things that we considered when

1 we did our evaluation.

2 Q Okay. Did FP&L apply that factor to itself?

3 A Yes.

4 Q Were you aware that FP&L had recently considered  
5 becoming a wires-only company when you applied that factor?

6 MR. GUYTON: Objection. That fact has not been  
7 established in evidence.

8 CHAIRMAN JABER: Mr. Moyle, your response, or do you  
9 want to just --

10 MR. MOYLE: No. I was hoping, I was hoping -- I  
11 mean, I'm not necessarily asking. He may know, he may not  
12 know. But I was simply asking him whether he was aware if FP&L  
13 --

14 CHAIRMAN JABER: Okay. But the objection -- I  
15 understand what you're trying to do. But the objection is that  
16 you haven't laid the appropriate foundation to ask the  
17 question. So do you want to --

18 MR. MOYLE: Okay. I'll back up and ask a couple of  
19 preceding questions.

20 CHAIRMAN JABER: Thank you, Mr. Moyle.

21 BY MR. MOYLE:

22 Q Are you involved in meetings that involve FP&L's  
23 corporate strategy?

24 A I have -- yes, to the extent that they include  
25 generation strategy.

1 Q Have you ever been in meetings in which the future of  
2 FP&L, the regulated company, was discussed as to whether it  
3 would be in the generation business or not?

4 A No. However, every indication that I have ever been  
5 privy to has indicated that generation is a central part of  
6 FPL's strategy.

7 Q Okay. So given your answer there, to the extent that  
8 FP&L was giving consideration to being a wires-only company,  
9 that would, that would cause you to not evaluate their bid as,  
10 as fully as you evaluate, evaluated it previously; correct?

11 MR. GUYTON: Objection. The fact still has not been  
12 established in evidence.

13 MR. MOYLE: And I'm not asking him about the fact.  
14 I'm asking him if he, if he were made aware of that fact, would  
15 it have affected his evaluation?

16 CHAIRMAN JABER: Mr. Guyton, with the question  
17 reworded that way, I don't think your objection is the  
18 appropriate one.

19 MR. GUYTON: No. No. As it was reworded by  
20 Mr. Moyle then, I'll withdraw the objection. It was the prior  
21 question that assumed a fact that wasn't established.

22 CHAIRMAN JABER: Thank you for withdrawing the  
23 objection.

24 Mr. Moyle, there was a distinction in how you just  
25 stated the question to me.

1           MR. MOYLE: I'll try to reformulate it. I might have  
2 to ask the court reporter to read it back.

3           CHAIRMAN JABER: That's fine. But the distinction I  
4 heard, for your benefit, is if he was aware that FP&L wanted to  
5 be a wires-only company.

6 BY MR. MOYLE:

7           Q     Mr. Silva, if you were aware that FP&L had given  
8 consideration to being a wires-only company, would that have  
9 affected your judgment in evaluating the bids?

10          A     No.

11          Q     Why not?

12          A     If I had heard that FPL had considered becoming a  
13 wires-only company, it would not have in any way affected my  
14 evaluation of the bids.

15          Q     And you, and you maintain that, notwithstanding your  
16 testimony that's found on Page 41, that you say, "To the extent  
17 that the corporate strategy does not expressly include power  
18 generation, there is greater uncertainty regarding that  
19 supplier's commitment to overcome problems during construction,  
20 operation and maintenance."

21          A     I think that there is a distinction. In that  
22 statement we say a company who is not involved in generation.  
23 And the question you posed was if I had heard if FPL was  
24 considering it.

25                 And the fact that we consider one thing or the other

1 doesn't affect the way that I evaluate things. It's the stated  
2 strategy of the company that I would look at when I do my  
3 evaluation.

4 Q Who would know if FP&L has given consideration to  
5 becoming a wires-only company?

6 A I don't have any personal knowledge of anybody that  
7 knows that because I never heard that discussed.

8 Q And --

9 A But if someone were to know, it would have to be  
10 executive management, if it had been ever discussed.

11 Q Okay. Do you think Mr. Evanson might know?

12 A I don't know.

13 Q Let me direct your attention to Page 37 of your  
14 testimony.

15 Down at the bottom there's a reference to a labor  
16 market. And I want to ask you to affirm that you used as a  
17 criteria whether a bidder had experience in the Florida labor  
18 market.

19 A No, we did not use that specific criterion to  
20 determine whether a bidder would be at a disadvantage or not a  
21 disadvantage.

22 As I indicated earlier, we looked at these general  
23 criteria saying FPL has a very large economic advantage based  
24 on the economic evaluation. Is there any reason why we should  
25 overturn that outcome based on nonprice factors? So we looked

1 at the strengths and weaknesses of building the plant and some  
2 of the strengths and weaknesses of buying power. And we  
3 reached the conclusion, based on this general discussion of  
4 issues, that there was nothing that would give a general  
5 advantage in these categories to a purchase agreement over the  
6 self-build option. We did not look at each individual  
7 subcomponent of this and say, we are applying it to this bidder  
8 and we find that they're at a disadvantage; therefore, we're  
9 going to grade them down. That was not the process we  
10 followed.

11 We reached the economic evaluation results and then  
12 we asked ourselves, can these be overturned? Are there reasons  
13 for this decision to not be the right decision? Let's look at  
14 all these issues. Whether we included them specifically in the  
15 RFP or not, we know that they could give an advantage to  
16 somebody else. Did they? And we concluded, no, they did not.

17 Q And that was because you did an economic evaluation  
18 in which you were far out in front of others; correct?

19 A That's correct.

20 Q Okay. And if you, if you didn't apply the equity  
21 penalty, the economic analysis would not put you far out front;  
22 correct?

23 A If we had not done the equity penalty, the economic  
24 analysis would have been flawed to begin with because it would  
25 not have reflected all the costs.

1 Q Okay. But my --

2 A But without the equity penalty, the FPL self-build  
3 option would still have been the lowest cost alternative.

4 Q There weren't other, other proposals out there that  
5 had lower numbers than the FPL all proposal if you don't impose  
6 the equity penalty?

7 A If we don't impose the equity penalty, there are no  
8 proposals or combinations that would come out ahead of the FPL  
9 self-build option today.

10 Q Is that related to intervenors who are in the case  
11 now or intervenors who were in the case at any point in time?

12 A I'm not speaking about intervenors. I'm speaking  
13 about bidders who are in -- who bid and maintained their  
14 bids -- who were deemed eligible and maintained their bids  
15 during the course of the evaluation.

16 Q Are you familiar with the testimony of Mr. Sim?

17 A Somewhat.

18 Q All right. And he was in charge of the evaluation  
19 process; right?

20 A Yes.

21 Q Have you read his rebuttal testimony he filed?

22 A Yes, at one point.

23 Q I want to show you a portion of his rebuttal  
24 testimony, and I'm going to ask you to read it but don't  
25 identify the bidder, if I could.

1 CHAIRMAN JABER: Mr. Silva, the caution there is the  
2 confidential nature of what you're about to see, I suppose,  
3 Mr. Moyle; is that correct? That's a confidential document?

4 MR. GUYTON: No, Commissioner. That's not a  
5 confidential document.

6 CHAIRMAN JABER: Okay.

7 MR. MOYLE: No. And I'm asking him just to do it as  
8 a matter of courtesy to the bidder.

9 CHAIRMAN JABER: Thank you, Mr. Moyle.

10 BY MR. MOYLE:

11 Q Just say with X's withdrawal.

12 MR. GUYTON: The reference, Jon?

13 THE WITNESS: It's Page 16, Line 2 of the rebuttal  
14 testimony.

15 BY MR. MOYLE:

16 Q Go ahead.

17 A "With Calpine's withdrawal" --

18 MR. MOYLE: Never mind.

19 CHAIRMAN JABER: It's all right, Mr. Silva. It's,  
20 it's not -- it's really fine.

21 THE WITNESS: "With Calpine's withdrawal of all its  
22 proposals there is no remaining plan that has lower total  
23 revenue requirements than the All-FPL plan even without an  
24 equity penalty."

25 BY MR. MOYLE:

1 Q So do you understand that to indicate that if that  
2 entity were in the case, there would be a plan that had lower  
3 total revenue requirements than the All-FPL plan if the equity  
4 penalty were not imposed?

5 A Yes. If the equity penalty improperly were not  
6 imposed and if we ignored the fact that this bidder withdrew  
7 its bid, then there would be an evaluated combination that  
8 would have a somewhat lower cost than the FPL plan.

9 Q Okay. Do you know why this particular bidder is no  
10 longer in the case?

11 A No. However, I have --

12 Q Who, who might know that?

13 A I don't know who might know that. But my reading of  
14 the statements made by Calpine to investors give me a lot of  
15 reasons why they would have wanted to withdraw from this.

16 Q I'm not asking you to speculate.

17 CHAIRMAN JABER: Mr. Silva -- Mr. Silva, consistent  
18 with the cautions I gave you in the beginning of the process, I  
19 want you to refrain from speculating and stick to the questions  
20 that are being posed to you. And if your attorney thinks that  
21 additional evaluation is necessary, he's going to do that on  
22 redirect. Okay?

23 THE WITNESS: Yes, Madam Commissioner.

24 CHAIRMAN JABER: Thank you.

25 BY MR. MOYLE:

1 Q Okay. Do you know if FP&L has entered into a  
2 settlement agreement with this particular bidder?

3 MR. HILL: Objection to the existence of a settlement  
4 agreement.

5 CHAIRMAN JABER: I didn't even hear the question. Go  
6 ahead, Mr. Moyle.

7 MR. MOYLE: I'm asking him if he knows whether FP&L  
8 has entered into a settlement agreement with this particular  
9 bidder who had the lower revenue requirements --

10 CHAIRMAN JABER: Mr. Silva, do not respond yet. Your  
11 objection was?

12 MR. HILL: The objection is that the existence of a  
13 settlement agreement is probably confidential in nature. And  
14 consistent with long-standing policies of this Commission to  
15 encourage parties to enter into settlement negotiations and,  
16 indeed, to reach negotiated settlements, to require a witness  
17 to testify to a settlement would have a chill on that process.  
18 So we think to encourage the settlement, as is the policy of  
19 this Commission, a witness should not be required to disclose  
20 settlements.

21 CHAIRMAN JABER: Mr. --

22 MR. GUYTON: And, Commissioner, the observation is  
23 that whether or not there is a settlement, there shouldn't be a  
24 line of inquiry as to it because it would chill. We don't mean  
25 to suggest --

1 CHAIRMAN JABER: Let me tell you two something right  
2 off the bat. One of you has to talk at a time.

3 MR. GUYTON: Fair enough.

4 CHAIRMAN JABER: But the other thing is, absolutely,  
5 a long-standing practice of not wanting to chill negotiations  
6 and settlements. But I think what's instrumental here is is  
7 there a confidentiality agreement executed by the parties in  
8 relation to not discussing the settlement? Settlement  
9 negotiations usually come with some sort of agreement to have  
10 those discussions remain confidential.

11 Mr. Guyton?

12 MR. GUYTON: Madam Chairman, I don't know how to  
13 address that without acknowledging whether or not there was  
14 even a settlement discussion. I mean, the difficulty that I  
15 have is that I can't address that issue without addressing the  
16 fundamental premise that we're trying to protect here, and that  
17 is we, we ought not be inquiring about settlements that have,  
18 that might potentially have a chilling effect on parties  
19 reaching a settlement.

20 CHAIRMAN JABER: Yeah. I tend to agree with you. I  
21 see your point. Mr. Moyle --

22 MR. MOYLE: Sure.

23 CHAIRMAN JABER: -- is there a way to ask your  
24 question without delving into whatever settlement negotiations  
25 there were? And if there is, great, do it now. If not, and

1 you all need a few minutes to talk, we may go ahead and break  
2 for lunch.

3 MR. MOYLE: I think it might be helpful to give us a  
4 couple of minutes to speak. But I would just make this point.  
5 We signed a confidentiality agreement, you know. So to the  
6 extent that there needs to be a line of inquiry related to that  
7 that is held in confidence, I think you have the ability, as I  
8 understand it, to clear the room and have that type of  
9 discussion.

10 So, you know, I would argue that it's a relevant  
11 question to the extent that there was a lower cost alternative  
12 out there that was taken out of the case through a settlement  
13 agreement is relevant. So maybe we could take a few minutes  
14 and talk about it.

15 CHAIRMAN JABER: We're going to take a one-hour lunch  
16 break. We're going to come back at 1:30. Try to work this  
17 out. Staff, can I talk to you?

18 (Recess taken.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, LINDA BOLES, RPR, Official Commission  
6 Reporter, do hereby certify that the foregoing proceeding was  
heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
transcribed under my direct supervision; and that this  
9 transcript constitutes a true transcription of my notes of said  
proceedings.

10 I FURTHER CERTIFY that I am not a relative, employee,  
11 attorney or counsel of any of the parties, nor am I a relative  
or employee of any of the parties' attorneys or counsel  
12 connected with the action, nor am I financially interested in  
the action.

13 DATED THIS 3rd DAY OF OCTOBER, 2002.

14

15

  
LINDA BOLES, RPR  
FPSC Official Commissioner Reporter  
(850) 413-6734

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