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October 28, 2004

**VIA HAND DELIVERY**

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard, Room 110  
Tallahassee, FL 32399-0850

Re: Fuel and Purchased Power Cost Recovery Clause and Generating  
Performance Incentive Factor – Docket No. 040001-EI

Dear Ms. Bayó:

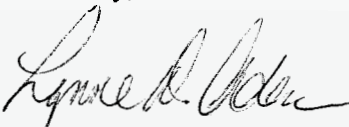
Enclosed for filing on behalf of Florida Power & Light Company (“FPL”) are an original and seven (7) copies of FPL’s Motion to Compel and Supporting Memorandum of Law in the above-referenced docket.

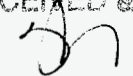
Also included in this submittal is a computer diskette containing FPL’s Motion in Word format. Please contact me if you or your Staff have any questions regarding this filing.

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NFS:ec  
Enclosures

Sincerely,

  
for Natalie F. Smith

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power )  
Recovery Clause and Generating )  
Performance Incentive Factor )  
\_\_\_\_\_ )

DOCKET NO. 040001-EI

Filed: October 28, 2004

**FLORIDA POWER & LIGHT COMPANY’S MOTION TO COMPEL AND  
SUPPORTING MEMORANDUM OF LAW**

Florida Power and Light Company (“FPL”), by and through its undersigned counsel, files this Motion to Compel and Supporting Memorandum of Law (“Motion”) pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.310(c) and 1.380(a), Florida Rules of Civil Procedure. FPL respectfully requests: 1) that the Florida Public Service Commission (“PSC” or “Commission”) compel the Florida Industrial Power Users Group (“FIPUG”) to instruct its witnesses to respond to the questions that they were instructed not to answer during the October 26 and 27, 2004, depositions, as well as related follow-up questions; 2) that the depositions of FIPUG witnesses Knauth and Vogt be continued for the purpose of allowing FPL to engage in such a line of inquiry; and 3) that the Prehearing Officer expedite consideration of this Motion, and in support states:

Background

1. On September 9, 2004, in accordance with the Order Establishing Procedure, Order No. PSC-04-0161-PCO-EI (issued Feb. 17, 2004), FPL pre-filed direct testimony in the above-referenced docket in support of its petition for levelized fuel and capacity cost recovery. As part of this filing, FPL requested approval for purposes of cost recovery through the capacity cost recovery clause and the fuel and purchased power cost recovery clause of Unit Power Sales (“UPS”) Replacement Contracts with

subsidiaries of the Southern Company representing 955 MW of capacity. As expressed in the testimony of FPL Witness Thomas L. Hartman, the purpose of the UPS Replacement Contracts is to allow FPL to cost-effectively continue many of the benefits provided by the current supply arrangements under the Unit Power Sales Agreement between FPL and subsidiaries of the Southern Company that is set to expire May 31, 2010.

2. The UPS Replacement Contracts present a unique opportunity for FPL and its customers that could be missed if the Commission's review is delayed. As discussed in the testimony of Mr. Hartman, FPL believes the Contracts are in the best interests of its customers.<sup>1</sup> But to be certain that the Commission would agree, FPL filed the Contracts for Commission approval. Understandably in order to preserve its option to market the power elsewhere if necessary, Southern Company was reluctant to agree to an open-ended condition precedent such as Commission approval without a time limitation. The most that Southern Company was willing to agree to is to allow FPL until the later of (i) the date when FPL secures the necessary transmission rights to deliver the SoCo power to FPL's system, or (ii) approximately six months (180 days) after the contracts were

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<sup>1</sup> As described in Mr. Hartman's testimony, the benefits of the UPS Replacement Contracts are significant and include a reduction in energy price volatility due to the firm coal component, as well as the ability to purchase low cost base load energy from the Southeastern Electric Reliability Council region during the off-peak periods. These contracts also provide increased system reliability due to the ability to purchase power from outside the State, as well as delivery of gas to these units via a pipeline that is independent of the two existing pipelines in Florida. The shorter term nature of the contracts allows FPL to broaden the range of generation options for the future as opposed to an accelerated commitment to additional natural gas generation in 2010. Further, these contracts enable FPL to retain firm transmission rights that will give FPL greater resource choices in the future. FPL believes that these benefits more than offset any perceived advantages associated with accelerating the construction of combined cycle self-build options listed in its Ten Year Site Plan, thus making the UPS Replacement Contracts the best alternative for FPL's customers.

executed to terminate the contracts if the Commission does not approve them. If transmission rollover rights are granted prior to the expiration of the 180 days, --a distinct possibility--, FPL would have until early February 2005 by which to obtain a final order from the Commission, or could be constrained to reject the contracts.

3. FPL respectfully submits that the only interests served by the loss of such a window of opportunity would be those of the merchant power industry. Not surprisingly, the two witnesses whose testimony FIPUG sponsors are employees of merchant power companies – Kerrick Knauth is Asset Manager for Northern Star Generation Services Company, LLC (“Northern Star”)<sup>2</sup> and Michael Vogt is Project Manager of LS Power Development, LLC (“LS Power”) (Northern Star and LS Power may be referred to as the Merchants).<sup>3</sup> The Merchants would oppose a rollover of transmission rights to FPL and its native load customers because it would make bringing power from out of state (and not from in-state merchant assets) more feasible, thereby putting downward pressure on wholesale power prices in Florida and diminishing the market value of in-state merchant assets. For the same reasons, the Merchants also would benefit from the failure of FPL to conclude any resource acquisition that does not include them.

4. Upon request of counsel for FPL, FIPUG’s counsel made FIPUG witnesses Knauth and Vogt available for telephonic depositions that occurred on October

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<sup>2</sup> Northern Star has been engaged in the ownership and operation of power plants for approximately 10 months. [Knauth Deposition Tr. at pp. 8-9].

<sup>3</sup> LS Power “is an independent power producer that develops, owns, operates and manages large-scale power generation projects in the United States.” [Vogt Testimony, p. 1, lines 21-23].

26, 2004, and October 27, 2004, respectively.<sup>4</sup> The transcript of the deposition of FIPUG witness Kerrick Knauth on October 26, 2004, is attached as Exhibit A to this Motion. The transcript of the deposition of FIPUG witness Michael Vogt on October 27, 2004, is attached as Exhibit B to this Motion.

5. During the telephonic deposition of FIPUG witness Knauth on October 26, 2004, counsel for FPL asked questions regarding compensation arrangements between Knauth or his company and FIPUG related to Mr. Knauth's participation as a witness in this docket. For example, the following exchange occurred:

Q. (FPL's Counsel, Ms. Smith) Do you know if Northern Star's compensating FIPUG for its participation in FPSC docket 04001 – 0001-EI in which you submitted testimony?

Mr. McGlothlin (FIPUG's counsel): I'm going to object to any questions relating to compensation of that nature. I think it's a harassing and annoying type of question, it's been ruled in another docket as beyond the scope of discovery and I'm going to structure [sic] the witness not to answer.

Ms. Smith: And you can answer. And I'm going to respond that it is relevant to show the witness' interest in and participation in this docket.

Mr. McGlothlin: I'm instructing the witness not to answer that question.

Ms. Smith: On what grounds?

Mr. McGlothlin: On the grounds I just stated earlier.<sup>5</sup>

Ms. Smith: I don't believe those are grounds in the Florida Rules of Civil Procedure for instructing a witness not to answer.

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<sup>4</sup> A notary was present with each of the FIPUG witnesses to administer the oath and provided a signed Certificate of Oath that is attached as Exhibit 1 to each of the deposition transcripts.

<sup>5</sup> Mr. McGlothlin had earlier objected to a similar question on grounds of relevance and harassment.

[Knauth Deposition Tr. at pp. 27-30]. Another question posed by counsel for FPL to FIPUG witness Knauth that elicited similar objections is as follows:

Ms. Smith: ... [T]o your knowledge, is there any sort of contingency fee arrangement regarding FIPUG's participation in this docket whereby FIPUG would get paid a certain amount if it achieves a certain result?

Mr. McGlothlin: I'll object and instruct on the same grounds.

[Knauth Deposition Tr. at 49-50]. Had Mr. Knauth been permitted to answer FPL's questions, FPL may have had additional questions based on those responses.

6. On the record, counsel for FPL made an oral motion to compel FIPUG to answer questions related to compensation arrangements between FIPUG and witness Knauth. [Knauth Deposition Tr., p. 42]. At the request of Florida Public Service Commission Staff ("Staff"), the parties agreed to submit memoranda in support of their arguments on the compensation issue raised during the deposition. [Knauth Deposition Tr. at pp. 47-48].

7. The following day, on October 27, 2004, counsel for FPL asked additional questions related to the compensation arrangement between FIPUG and witness Vogt. For example, the following exchange occurred:

Q (by FPL's counsel, Ms. Smith): Were you contacted by FIPUG's counsel regarding the [UPS Replacement Contracts]?

A. No.

Q. Did you contact FIPUG's counsel?

A. Yes.

Q. Why did you contact FIPUG's counsel?

Ms. Kaufman (FIPUG's counsel): At this point I'm going to object. Communications of this nature are attorney-client privileged.

Ms. Smith: Are they your client?

Ms. Kaufman: I beg your pardon?

Ms. Smith: Is LS Power your client?

Ms. Kaufman: You're not taking my deposition, Miss Smith.

Ms. Smith: Well, you just objected on grounds of attorney-client privilege. I'm just trying to determine if the privilege is applicable here.

Ms. Kaufman: The privilege is applicable. Mr. Vogt is appearing on behalf of the Florida Industrial Power Users Group as a witness. Communications between FIPUG members are privileged both as attorney-client and work product.

[Vogt Deposition Tr. at pp. 22-23].

Q: When did you contact counsel for FIPUG?

A: **Probably** four weeks ago, five weeks. It was a week or so after we learned about it.

Q: Who did you contact with FIPUG?

A: Our initial contact would have been with one of Vicki's colleagues, Joe McGlothlin maybe.

Q: **Were you a client of** – was LS Power a client of the McWhirter firm before you contacted –

A: No, we were not.

Q: Is LS Power a *client* now?

Ms. Kaufman: I'm going to object to further inquiry about the relationship that LS Power had with its attorneys as privileged.

Ms. Smith: I think we need to establish that there's a client before the privilege attaches.

Ms. Kaufman: I'm going to object to any further inquiry regarding LS Power's relationship with my firm as privileged. I don't know how much more establishment you need than that.

Ms. Smith: Could you please state the basis for your objection for the record?

...

Ms. Kaufman: Inquiry in regard to communications that LS Power has with attorneys is privileged and are attorney-client privileged.

Ms. Smith: But you won't affirm they are a client.

...

Ms. Kaufman: I believe that information's privileged. I don't know how much more clear to make it.

[Vogt Deposition Tr. at pp. 24-25]. Later in the deposition, a further exchange occurred as follows:

Q: Is your company compensating FIPUG or its counsel for its participation in docket 040001-EI?

Ms. Kaufman: Now I'm going to object to that question, Natalie, on the basis that that information is privileged and that the Commission has ruled in other dockets that inquiries into that kind of compensation are outside the scope of discovery.

Ms. Smith: And we are going to on the same grounds that we did yesterday move to compel Mr. Vogt's response to this question. We believe that it is directly relevant. ...

[Vogt Deposition Tr. at pp. 33-34].

8. Per Staff's recommendation, the parties agreed to make this filing and include their respective arguments regarding the propriety of FPL's line of inquiry related to the compensation arrangements between FIPUG and its witnesses. [Vogt Deposition Tr. at p. 35]. FPL proceeded to ask witness Vogt several additional questions on the record that are also covered by this filing, and would likely have had additional questions depending upon the witnesses responses to such questions. FPL's additional questions were as follows:



Q: What is the compensation arrangement between LS Power and FIPUG, if any?

Ms. Kaufman: Object to that as beyond the scope of discovery and privileged.

[Vogt Deposition Tr. at p. 36].

Q: To your knowledge, is there any sort of contingency fee arrangement regarding FIPUG's participation in this docket?

Ms. Kaufman: Again, I would object and I would instruct Mr. Vogt not to respond.

Ms. Smith: Do you know whether LS Power's a client of the McWhirter Reeves law firm?

Ms. Kaufman: Again, I would object and I would instruct him not to respond, same basis as discussed.

Ms. Smith: Do you know whether Northern Star Generation is a client of the McWhirter Reeves law firm?

Ms. Kaufman: I again would object on the same basis, to the extent he knows.

...

Q: Is there any sort of retainer agreement or contract between LS Power and FIPUG related to your filing testimony in this docket?

Ms. Kaufman: Object. Beyond the scope of discovery and privileged.

[Vogt Deposition Tr. at pp. 36-39]. FPL asked that the deposition be continued should the Commission determine that FPL's line of inquiry is permissible. [Vogt Deposition Tr. at p. 36].

#### Argument

9. Rule 1.310(c), Florida Rules of Civil Procedure provides that:

A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a

limitation on evidence directed by the court, or to present a motion under subdivision (d).<sup>6</sup>

Under Rule 1.310(c), Mr. Knauth was required to answer the questions posed by FPL's counsel. None of the exceptions which would authorize Mr. Knauth to not answer these questions were raised by counsel for FIPUG. Instead, opposing counsel instructed Mr. Knauth not to answer the subject questions based on relevancy objections. This is improper. See Quantachrome Corporation v. Micromeritics Instrument Corporation, 189 F.R.D. 697 ( S.D. Fla. 1999) (under Fed.R. Civ. P. 30(d)(1) which mirrors Rule 1.310(c), Florida Rules of Civil Procedure, it was "improper to instruct a witness not to answer a question based on form and relevancy objections.").<sup>7</sup> Such improper instructions are clearly frowned upon as shown by the following admonition of the Fourth Circuit Court of Appeals:

The action of plaintiff's counsel in directing [deponent] not to answer the questions posed to him was indefensible and utterly at variance with the discovery provisions of the Federal Rules of Civil Procedure... The questions put to [deponent] were germane to the subject matter of the pending action and therefore properly within the scope of discovery. They should have been answered and, in any event, the action of plaintiff's counsel in directing the deponent not to answer was highly improper. The Rule itself says "Evidence objected to shall be taken subject to the objections," and Professor Wright says it means what it says, citing Shapiro v. Freeman, D.C.N.Y.

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<sup>6</sup> The Committee Notes to Rule 1.310, 1996 Amendment, state "[s]ubdivision (c) is amended to state the existing law, which authorizes attorneys to instruct deponents not to answer questions only in specific situations." The reference to subdivision (d) of the Rule refers to provisions that allow a party or deponent to move to terminate or limit a deposition.

<sup>7</sup> Where federal civil procedure rule is nearly identical to Florida rule, federal case law in which the rule is interpreted is pertinent and highly persuasive. Smith v. Southern Baptist Hospital of Florida, 564 So.2d 1115, 1117 (Fla. 1<sup>st</sup> DCA 1990); City of Jacksonville v. Rodriguez, 850 So.2d 280, 283, fn. 3 (Fla. 1<sup>st</sup> DCA 2003).

1965, 38 F.R.D. 308, for the doctrine: “Counsel for party had no right to impose silence or instruct witnesses not to answer and if he believed questions to be without scope of orders he should have done nothing more than state his objections.” Wright & Miller, Federal Practice and procedure: Civil s. 2113 at 419, N. 22 (1970).

Ralston Purina Co. v. McFarland, 550 F.2d 967, 973 (4<sup>th</sup> Cir. 1977).

10. Further, the questions posed by FPL to witnesses Knauth and Vogt are relevant and, at minimum, reasonably calculated to lead to the discovery of admissible evidence.<sup>8</sup> It is well established that parties need information concerning a witness’s potential bias, as such information goes to the credibility of the witness’s testimony. See, e.g., Allstate Insurance Co. v. Boecher, 733 So. 2d 993 (Fla. 1999) (“Allstate”). Allstate involved a claim by an alleged victim of an accident against Allstate Insurance, his uninsured motorist carrier. Interrogatories propounded on Allstate sought information concerning the financial relationship between Allstate and the accident reconstruction expert retained by Allstate. In Allstate, the court found that financial information sought from an accident reconstruction witness in a medical malpractice accident was “directly relevant to a party’s efforts to demonstrate to the jury a witness’s bias” and determined that “[a]ny limitation on this inquiry has the potential for thwarting the truth-seeking function of the trial process.” See id. at 997. According to the court:

The more extensive the financial relationship between a party and a witness, the more it is likely that the witness has a vested interest in that financially beneficial relationship continuing. A jury is entitled to know the extent of the financial connection between the party and the witness, and the cumulative amount a party has paid an expert during their relationship. A party is entitled to argue to the jury that a witness might be more likely to testify favorably on behalf of the party because of the witness’s financial incentive to continue the financially advantageous relationship.

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<sup>8</sup>See Rule 1.280(b)(1), Florida Rules of Civil Procedure.

See id. (emphasis supplied). FPL and the Commission are entitled to know the extent of the financial connection between FIPUG and its witnesses in this docket and to have that information in the record. FIPUG has sponsored testimony of two merchant power company witnesses whose companies have an interest in delaying or otherwise preventing FPL from receiving Commission approval of the UPS Replacement Contracts for their own competitive purposes. FPL suspects that the witnesses were motivated to submit testimony sponsored by FIPUG in an effort to delay or otherwise prevent FPL from moving forward with the UPS Replacement Contracts. FPL further suspects that the merchant power companies realized that their competitive economic interests were insufficient for them to obtain standing in this docket, and so the merchant companies used the intervention by FIPUG as a vehicle for gaining entry into the proceeding. FPL suspects that LS Power and Northern Star are the true clients driving FIPUG's litigation actions, and it suspects that the opinions expressed in the testimony of witnesses Knauth and Vogt are tainted by their competitive interests in this proceeding.

11. FPL needs discovery from FIPUG related to any compensation arrangements between FIPUG and their merchant witnesses to test the suspicions described above and to demonstrate any witness bias. FPL must have the opportunity to elicit evidence of witness bias and interest on the record to point to in later arguments, and the Commission would need record evidence if they were to make any decisions on grounds of bias of these witnesses.

12. FIPUG suggests that FPL's questions are annoying and harassing to the witnesses. However, case law and well-established discovery practice put witnesses on notice that their bias and interest will be inquired into during the proceeding. It is not

annoying or harassing for a witness to be required to disclose information about their relationship with the party in the case – it is expected. This is especially true where, as here, the witnesses have testified in deposition that they are not receiving any compensation for their testimony in this docket. [Knauth Deposition Tr. at pp. 33-34; Vogt Deposition Tr. at pp. 32-33]. Other parties are necessarily more curious about the motivations behind the witnesses' testimony when the interest is not evident. On balance, the probative value of the information sought by FPL outweighs any annoyance and embarrassment to the witnesses caused by the line of inquiry related to the compensation arrangements between FIPUG and its witnesses and their companies.

13. Any reliance by counsel for FIPUG's on Order No. PSC-04-0547-PCO-EI ("Order No. 04-0547"), issued May 26, 2004, and Order No. PSC-04-0498-PCO-EI ("Order No. 04-0498"), issued May 13, 2004, in Docket No. 031033-EI, is misplaced. In Order No. 04-0547, the Commission denied a motion by Tampa Electric Company ("Tampa Electric") to compel a group of residential customers to respond to a number of discovery requests directed toward counsel for the residential customers. Tampa Electric suspected that the attorney for the residential customers was also directly or indirectly representing one or more suppliers of coal or coal transportation services who sought to remain anonymous and who funneled funds through various entities to remain anonymous.

14. The Commission rejected Tampa Electric's motion to compel the residential customers to respond to the discovery directed toward their attorney and asking the residential customers to divulge the sources of their litigation funding. The Commission determined that the questions directed to counsel for customers, on their

face, appeared to be privileged attorney-client communications or attorney work product, and Tampa Electric had not shown why it did not have an adequate opportunity to test the basis of the expert witness's opinions through deposition questioning. For its conclusion that funding of the residential customers' litigation efforts was not discoverable, the Commission pointed to the case Estate of McPherson ex rel. Liebreich v. Church of Scientology, 816 So. 2d 776 (Fla. 2d DCA 2002), where the court found that disclosure of funding assistance for the plaintiff's wrongful death action would have a chilling effect on receiving future funding and was not relevant or reasonably calculated to lead to admissible evidence.

15. Were FPL moving to compel discovery of communications between FIPUG's counsel and clients of FIPUG's counsel that were "not intended to be disclosed to third persons," Orders 04-0498 and 04-0547 would be directly applicable. See § 90.502(1)(c), Fla. Stat. (2003); Corry v. Meggs, 498 So. 2d 508, 510 (Fla. 1<sup>st</sup> DCA 1986) (holding that, under the circumstances, an attorney could not be required to divulge the identity of a client who was paying the legal fees for another client). However, the questions asked of FIPUG's witness about compensation arrangements between LS Power and Northern Star go to the bias and interest of actual witnesses in the case whose motivations are directly at issue by virtue of being witnesses who have submitted prefiled testimony. This line of inquiry is clearly within the bounds of permissible discovery. The moment a client steps out of the shoes of a client and into the role of witness, discovery concerning the bias and interest of that person is at issue in the case. Were this not so, all any party would have to do to defeat the discovery process would be to ensure that each client in the matter is a witness.

16. Concerns about a chilling effect on litigation by requiring the experts to answer FPL's line of question related to witness compensation are not present here. In fact, the converse is true because FIPUG's position could encourage litigation. If the Commission permits FIPUG's witnesses to avoid the questions asked by FPL, competitive interests seeking to delay and disrupt Commission proceedings will be given a road map of on how to do so. There will be no irreparable harm to FIPUG and other parties who traditionally have standing in Commission litigation. Instead, there will be irreparable benefit because competitive interests will know that all they must do to have their interests heard is become a client of counsel for a party and submit testimony on behalf of that party.

17. FIPUG's counsel has not presented a valid basis for instructing its witnesses not to answer the questions posed during the depositions of Mr. Knauth and Mr. Vogt. The questions are within the scope of permissible discovery in this proceeding. Further, counsel did not establish a predicate for its assertion of attorney-client privilege because counsel instructed the witness not to answer FPL's questions about whether LS Power or Northern Star is a client of the attorney's law firm. FPL requests that the depositions be continued and that FIPUG be compelled to instruct its witnesses to respond to the questions that were not answered during the October 26 and 27 depositions, as well as related follow up questions.

**WHEREFORE**, for the foregoing reasons, FPL respectfully requests: 1) that the Commission compel FIPUG to instruct its witnesses to respond to the questions that they were instructed not to answer during the October 26 and 27, 2004, depositions, as well as related follow-up questions; 2) that the depositions of FIPUG witnesses Knauth and Vogt

be continued for the purpose of allowing FPL to engage in such a line of inquiry; and 3) that the Prehearing Officer expedite consideration of this Motion.

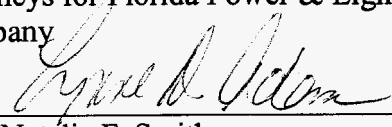
Respectfully submitted this 28th day of October, 2004.

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By:   
for Natalie F. Smith



**CERTIFICATE OF SERVICE**  
**Docket No. 040001-EI**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Motion to Compel and Supporting Memorandum of Law has been furnished by United States Mail this 28th day of October, 2004, to the following:

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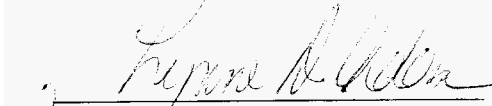
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ORIGINAL

# EXHIBIT A

DOCUMENT NUMBER-DATE

11689 OCT 28 3

FPSC-COMMISSION CLERK

Page 1

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
 2 Docket No. 040001-EI  
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 5 **In Re: Fuel and Purchased Power Cost Recovery Clause**  
 and **Generating Performance Incentive Factor**  
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 10 **TELEPHONIC DEPOSITION OF KERRICK KNAUTH**  
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 Tuesday, October 26, 2004  
 12 3:14 - 4:37 p.m.  
 13 700 Universe Boulevard  
 Juno Beach, Florida 33408  
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 16 **Reported By:**  
 Marianne Martini Holmes, RPR  
 17 Notary Public, State of Florida  
 Esquire Deposition Services  
 18 West Palm Beach Office  
 Phone: 800.330.6952  
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1 **APPEARANCES:**  
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 Tampa, Florida 33602  
 9 - and -  
 David Roth, General Counsel for Northern Star  
 10  
 11 On behalf of Thomas Churbuck:  
 12 **Jon C. Moyle, Jr., Esquire** (appearing by phone)  
 William Hollimon, Esquire (appearing by phone)  
 13 **Moyle, Flannigan, Katz, Raymond & Sheehan, P.A.**  
**The Perkins House**  
 14 118 North Gadsden Street  
 Tallahassee, Florida 32301  
 15  
 16 On behalf of Florida Public Service Commission:  
 17 **Cochran Keating, Esquire** (appearing by phone)  
 Florida Public Service Commission  
 18 2540 Shunnard Oak Boulevard  
 Tallahassee, Florida 32399-0850  
 19  
 20 On behalf of Office of Public Counsel:  
 21 Patricia Christensen, Esquire (appearing by phone)  
 111 West Madison Street, Room 812  
 Tallahassee, Florida 32399  
 22 **ALSO PRESENT:**  
 23 **Michael Vogt** (appearing by phone)  
 24 **Kory Dubin**, Esquire (appearing by phone)  
 25

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1 **PROCEEDINGS**  
 2 - - -  
 3 Deposition taken before Marianne Martini Holmes,  
 4 Registered Professional Reporter and Notary Public in  
 5 and for the State of Florida at Large, in the above  
 6 cause.  
 7 - - -  
 8 **MS. SMITH:** Okay. This is Natalie Smith.  
 9 I'm appearing on behalf of Florida Power & Light  
 10 in this deposition.  
 11 This deposition is being conducted  
 12 telephonically of Mr. Kerrick Knauth in FPSC  
 13 Docket 040001-EI.  
 14 **The notary is with Mr. Knauth, I understand,**  
 15 to administer the oath, and the court reporter is  
 16 with me.  
 17 **Mr. Knauth -- should we take appearances or**  
 18 **go ahead and administer the oath?**  
 19 **Let's go ahead and administer the oath to**  
 20 **Mr. Knauth.**  
 21 **MS. ROSS:** Mr. Knauth, do you swear or affirm  
 22 that the testimony you are about to give will be  
 23 the truth and nothing but the truth?  
 24 **THE WITNESS:** I do.  
 25 **MS. ROSS:** Thank you.

1 MS. SMITH: And, Miss Ross, could you  
 2 please -- I know that we provided at least a form  
 3 for a certificate of oath.  
 4 MS. ROSS: Yes.  
 5 MS. SMITH: If you could please fax that to  
 6 us so that the court reporter could attach that as  
 7 an exhibit.  
 8 And I'd like that to be identified as  
 9 Exhibit 1 to the deposition transcript.  
 10 Do you have our fax number?  
 11 MS. ROSS: No.  
 12 Could you please give it to me?  
 13 MS. SMITH: Yes. It's area code  
 14 (561)691-7135.  
 15 MS. ROSS: Okay.  
 16 MS. SMITH: And if you could put it to the  
 17 attention of Natalie Smith.  
 18 Thereupon,  
 19 (KERRICK KNAUTH)  
 20 having been first duly sworn, was examined and  
 21 testified as follows:  
 22 DIRECT EXAMINATION  
 23 BY MS. SMITH:  
 24 Q. Mr. Knauth, have you ever had your deposition  
 25 taken before?

1 for this deposition today?  
 2 A. Yes.  
 3 Q. What did you review?  
 4 A. The testimony of Mr. Hartman or rebuttal of  
 5 Mr. Hartman, the testimony of the progress witness and  
 6 my own testimony.  
 7 Q. Anyone else?  
 8 A. No.  
 9 Q. Did you bring any documents with you to the  
 10 deposition?  
 11 A. The four that I mentioned, and I've got about  
 12 four pages of handwritten notes on Mr. Hartman's  
 13 testimony.  
 14 Q. You have those documents in front of you?  
 15 A. Yes.  
 16 Q. Do you have anything else with you?  
 17 A. No.  
 18 Q. Is there anyone in the room with you besides  
 19 the notary and your general counsel, the general  
 20 counsel of Northern Star Generation?  
 21 A. Mr. McGlothlin and the notary have left the  
 22 room.  
 23 Q. Okay. Anyone else?  
 24 A. No.  
 25 Q. Mr. Knauth -- am I pronouncing that

1 A. No.  
 2 Q. So you're not familiar with the deposition  
 3 process.  
 4 A. No.  
 5 Q. I'll be asking you questions.  
 6 If at any point you don't understand a  
 7 question that I've asked you, please let me know, and I  
 8 will try to rephrase the question.  
 9 A. Okay.  
 10 Q. It's important that your answers be  
 11 verbalized. We are on the phone, as you know, and the  
 12 court reporter needs to be able to accurately record  
 13 your responses to my questions.  
 14 A. Okay.  
 15 Q. Mr. Knauth, please state your name, phone  
 16 number and business address for the record.  
 17 A. It's Kerrick Knauth, (713)580-6341. My  
 18 address is 2929 Allen Parkway, Suite 200, Houston,  
 19 Texas, and the zip code is 77018.  
 20 Q. Have you discussed your deposition with  
 21 anyone prior to your deposition today?  
 22 A. Yes, with Mr. McGlothlin.  
 23 Q. Anyone else?  
 24 A. No.  
 25 Q. Have you reviewed any documents in preparing

1 correctly?  
 2 A. Yeah, that's good.  
 3 Q. Okay.  
 4 -- where are you currently employed?  
 5 A. I work for Northern Star Generation Services  
 6 at the address I gave you earlier.  
 7 Q. How long have you been employed by Northern  
 8 Star?  
 9 A. About three months.  
 10 Q. In what business is Northern Star engaged?  
 11 A. The ownership and operation of power plants.  
 12 Q. When you say "operation of power plants,"  
 13 what does that entail?  
 14 A. Some of the power plants that Northern Star  
 15 owns, we actually operate them also. So we have some  
 16 operation staff.  
 17 Q. I can't understand.  
 18 A. All right. I'll repeat.  
 19 In addition to owning some power plants, we  
 20 also operate some power plants. We have some  
 21 operations personnel.  
 22 MS. SMITH: Who just joined the call?  
 23 MR. HOLLIMON: This is Bill Hollimon just  
 24 called in.  
 25 MS. SMITH: Hi, Bill.

1 BY MS. SMITH:  
 2 Q. Mr. Knauth, one more time. So Northern Star  
 3 operates power plants, and I --  
 4 MS. SMITH: If you could read back his  
 5 response.  
 6 (Thereupon, a portion of the record was  
 7 read back.)  
 8 BY MS. SMITH:  
 9 Q. Is that correct?  
 10 A. Yes.  
 11 Q. Okay. How long has Northern Star been  
 12 engaged in the business you just described?  
 13 A. I think since January 1st of this year.  
 14 Q. So for about ten months?  
 15 A. Right.  
 16 Q. How did they get into the business, to your  
 17 knowledge, in January of this year?  
 18 A. Could you be more specific?  
 19 Q. The business that you described to me, the  
 20 ownership and operation of power plants, you said they  
 21 started this business in January of this year.  
 22 How was Northern Star formed?  
 23 A. It was formed by two companies primarily, AIG  
 24 Highstar, which is a fund, and Ontario Teachers Pension  
 25 Plan Board, and each of them contributed some money

1 into Northern Star Generation Services which is the  
 2 parent of Northern Star -- I'm sorry, Northern Star  
 3 Generation which is the parent of Northern Star  
 4 Generation Services, and Northern Star Generation  
 5 acquired some generation assets from El Paso  
 6 Corporation.  
 7 Q. So this is a new company; is that correct?  
 8 A. Yes.  
 9 Q. Never owned or operated power plants before  
 10 January of 2004?  
 11 A. Right.  
 12 Q. Mr. Knauth, under what circumstances did you  
 13 become employed by Northern Star?  
 14 A. I used to work for El Paso as did a lot of  
 15 the staff here at Northern Star. Northern Star wanted  
 16 to capture some of the institutional memory and  
 17 expertise that El Paso had when it operated its plant,  
 18 so it brought over a lot of the staff from El Paso who  
 19 had been with the plant for a number of years.  
 20 Q. So what incented you to join Northern Star  
 21 then?  
 22 A. Well, I moved with the assets. I had worked  
 23 with the Vandolah power plant at El Paso, and when  
 24 Northern Star acquired Vandolah and some other plants,  
 25 they made offers to some of us at El Paso, and some of

1 us accepted the offer and joined Northern Star.  
 2 Q. Okay. So you state on page 3 of your  
 3 testimony that you accepted your present position when  
 4 Northern Star acquired certain of El Paso's assets,  
 5 correct?  
 6 A. Right.  
 7 Q. What assets did Northern Star acquire from  
 8 El Paso?  
 9 A. They bought 15 plants, and I don't know the  
 10 names of all of them off the top of my head.  
 11 Q. Do you know the names of the ones in Florida?  
 12 A. Yes. There are four in Florida: The  
 13 Vandolah power plant which is located in Hardee County  
 14 which is a 680-megawatt plant. There's another one in  
 15 Orlando called Orlando Cogen, and there are two smaller  
 16 ones called Mulberry and Orange.  
 17 Q. What are your responsibilities with respect  
 18 to these assets?  
 19 A. I describe them as contract management. The  
 20 asset managers like myself typically deal with  
 21 commercial arrangements and the contractual structure  
 22 around each project, so -- particularly the PPAs for  
 23 selling the power to counterparties.  
 24 Q. You just do that for Vandolah?  
 25 A. I do that for Vandolah and Orlando and

1 another project that is still with El Paso but may  
 2 cross the ownership line here to Northern Star called  
 3 Mid Georgia.  
 4 Q. And so you actually negotiate the PPAs?  
 5 A. Well, the PPAs on the projects that I work on  
 6 were already in place when I started working on those  
 7 projects.  
 8 Q. Do your job responsibilities include  
 9 negotiation of the PPAs for the output of these assets?  
 10 A. To the extent there's an amendment to a PPA,  
 11 yes. But as I said, the PPAs themselves were already  
 12 in place on the assets that I work on.  
 13 Q. I'm referring to new PPAs, any replacements.  
 14 A. It's possible, yes.  
 15 Q. Why do you think El Paso sold these assets to  
 16 Northern Star?  
 17 A. What they said in the press is that they had  
 18 borrowed too much money in the past and were trying to  
 19 sell assets off to lower their debt obligations.  
 20 Q. You state on page 1 of your testimony that  
 21 you're the asset manager for Northern Star; is that  
 22 correct?  
 23 A. Yes, that's my title here.  
 24 Q. Do you have any other job titles?  
 25 A. No.

1 Q. You also state on page 1 of your testimony  
2 that you're responsible for the development and  
3 commercial aspects of a power generation project owned  
4 by a Northern Star subsidiary, correct?

5 A. Yes.

6 Q. What do you mean by "development and  
7 commercial aspects" as stated on page 1 of your  
8 testimony?

9 A. I think commercial aspects is what I was  
10 trying to say earlier about dealing with the  
11 contractual structure around each project. And to the  
12 extent there are opportunities to develop additional,  
13 for example, outputs from a project, I would also be  
14 involved in that.

15 **So these are not necessarily commercially**  
16 **static arrangements.** To the extent we can do something  
17 creative, I get involved in that also.

18 Q. Do your job responsibilities with Northern  
19 Star include building and bringing power projects on  
20 line?

21 A. No. I think that's primarily of a technical  
22 nature and I don't really get involved in the building.

23 Q. How about selling power, selling the output  
24 of the assets. Do your job responsibilities include  
25 selling the output of the assets?

1 A. No.

2 Q. Do your job responsibilities include  
3 negotiating PPAs?

4 A. Not at present.

5 Q. Do your job responsibilities for  
6 Northern Star include acquiring transmission rights for  
7 Northern Star projects?

8 A. Not at present.

9 Q. Do your job responsibilities include  
10 transmission planning?

11 A. I'd say we do look at that from time to time.

12 Q. Do you personally look at that?

13 A. I don't have transmission expertise, no, so I  
14 guess I'm struggling here a little bit because your  
15 question, I'm not sure how specific it is.

16 **But to the extent that somebody does load**  
17 **flow analysis which is sort of a technical phrase for**  
18 **figuring out whether there might be transmission**  
19 **constraints, I do not get involved in that.**

20 Q. So you have no transmission expertise.

21 A. No.

22 Q. Just to make sure, do your responsibilities  
23 include acquiring transmission rights or transmission  
24 services for projects?

25 A. Not at present.

1 A. Dealing with the, with the particulars of the  
2 power purchase agreements, yes.

3 Q. Do your job responsibilities include finding  
4 a buyer for the output of Northern Star projects?

5 A. Not on the two projects that I work on now  
6 because both of the projects I work on now have  
7 long-term contractual arrangements.

8 Q. Do they end? Do the long-term contractual  
9 arrangements end at some point?

10 A. Yes. On the Vandolah project they end in  
11 2012, and on the Orlando project, I don't know the date  
12 off the top of my head, but later than that.

13 Q. And so when those contracts end, you'll be  
14 the guy who will find buyers for the output of those  
15 units.

16 A. Possibly.

17 Q. Who else might it be?

18 A. **Perhaps someone else here at Northern Star or**  
19 **they may bring in, you know, a consultant to deal with**  
20 **that specifically. It's a fairly specialized field of**  
21 **expertise to negotiate a PPA.**

22 Q. Do you have that expertise?

23 A. **I've done some of it in the past, yes.**

24 Q. Do your job responsibilities at Northern Star  
25 include determining the price at which to sell power?

1 Q. Do your job responsibilities include having  
2 knowledge regarding FERC orders on transmission access?

3 A. No.

4 Q. You state on page 2 of your testimony that  
5 when you were employed by Coastal Power Company you,  
6 quote, explored and developed power development  
7 opportunities in numerous international settings,  
8 correct?

9 A. Yes.

10 Q. What did that involve?

11 A. Two broad categories. Some would be  
12 acquiring -- one category would be acquiring existing  
13 assets. So an acquisition. The second broad category  
14 I would call Greenfield development which would be  
15 starting a project from scratch, trying to find an  
16 offtaker, trying to put in place the financing, some of  
17 the other commercial arrangements for a nascent  
18 project.

19 Q. **So did you build and bring power projects on**  
20 **line for Coastal Power?**

21 A. One in El Salvador. Again, I don't build  
22 them. I was down in El Salvador for a year and there  
23 was a commercial office set up in the capitol, and I  
24 kind of dealt with the commercial end of things more  
25 than the construction end of things.

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1 And the commercial end of things would  
2 involve moving things through Customs, setting up an  
3 office, start to hire staff, putting in place  
4 procedures, company procedures, employee procedures,  
5 that kind of thing.  
6 Q. Okay. Did you find a buyer or buyers for the  
7 output of the Coastal Power projects that you worked  
8 on?  
9 A. No. There was, there was already a power  
10 purchase agreement in place when I joined that project.  
11 Q. So you never negotiated PPAs for Coastal  
12 Power?  
13 A. Not that PPA. Other PPAs, yes, and there was  
14 an amendment to the PPA in El Salvador that I was  
15 involved in negotiating.  
16 Q. Did you engage in transmission planning for  
17 Coastal Power?  
18 A. Would you define "transmission planning"?  
19 Q. Either acquiring transmission rights or  
20 transmission services for the projects.  
21 A. No.  
22 Q. You state on page 2 of your testimony that  
23 you were employed by Oxbow Corporation, correct?  
24 A. Yes.  
25 Q. In what business was Oxbow Corporation

Page 18

1 engaged?  
2 A. A business very similar to that of Northern  
3 Star, ownership and operation of power plants, merchant  
4 power plants.  
5 Q. During what time frame were you employed by  
6 Oxbow?  
7 A. I'm thinking probably 1999 through 2000.  
8 Q. I'm trying to make sure I have something  
9 covering all the different points.  
10 So you were employed by Oxbow -- you're  
11 employed by Coastal Power from '94 to '98.  
12 Did you go immediately from Coastal Power to  
13 Oxbow?  
14 A. Yes.  
15 Q. And then from Oxbow to El Paso?  
16 A. No. I had another job for about a year in  
17 between.  
18 Q. Okay. We'll get to that in a second.  
19 A. Okay.  
20 Q. In regard to Oxbow, you state that you were  
21 responsible for the financial management of Oxbow's  
22 geothermal power plants in the Philippines and  
23 Costa Rica, correct?  
24 A. Yes.  
25 Q. What did being responsible for the financial

Page 19

1 management of geothermal power plants entail?  
2 A. It was a role very similar to that I have now  
3 at Northern Star. It involved, in the case of the  
4 Philippines, it was an operating power plant, so it  
5 involved dealing with all of the contractual structure  
6 around the project, also getting involved in operations  
7 budgets, commercial issues primarily.  
8 Q. Um-hum. So you didn't build and bring power  
9 projects for Oxbow on line?  
10 A. No. Again, I don't get involved in the  
11 building of the plants.  
12 Q. Did you find buyers for the output of those  
13 projects?  
14 A. No. Both of those also had power purchase  
15 agreements when I became involved.  
16 Q. So you didn't negotiate PPAs for Oxbow?  
17 A. No.  
18 Q. Did you determine the price at which to sell  
19 power?  
20 A. No.  
21 Q. Did you engage in transmission planning for  
22 Oxbow, and the same meaning for transmission planning  
23 that I said before, acquiring transmission rights or  
24 transmission services for projects?  
25 A. No.

Page 20

1 Q. What was your -- where did you work after you  
2 left Oxbow?  
3 A. I started a small translation company,  
4 translation -- translating documentation from English  
5 to Spanish and Spanish to English based in Houston.  
6 Q. How long were you there?  
7 A. I'm still there. I started it, was involved  
8 for about a year, and it's now being managed by a  
9 manager down in Mexico.  
10 Q. Okay. And this business is unrelated to the  
11 merchant power industry?  
12 A. Initially a lot of the documentation we  
13 translated were power purchase agreements and other  
14 documentation related to the independent power industry  
15 in Central and South America.  
16 Q. And all you did was translate? That was your  
17 only responsibility with that company?  
18 A. I started the company, opened an office in  
19 Houston, opened an office in El Salvador, hired people  
20 and did all the marketing and kind of built a customer  
21 base and then after a year turned the day-to-day  
22 management over to the general manager who's still  
23 there.  
24 Q. Okay.  
25 A. I'm still the owner.



1 Q. And at what point did you join El Paso?  
 2 A. In 2001.  
 3 Q. Did you work anywhere else between Oxbow and  
 4 El Paso other than the translation company that you  
 5 started?  
 6 A. No.  
 7 Q. Okay. You state on page 2 of your testimony  
 8 that you joined El Paso Corporation in 2001, correct?  
 9 A. Yes.  
 10 Q. And you state that among other assignments  
 11 for El Paso, you became involved with the Vandolah  
 12 power generation project, correct?  
 13 A. Yes.  
 14 Q. What were your other assignments and  
 15 responsibilities with El Paso in 2001?  
 16 A. My initial primary responsibility was  
 17 something called Greenfield development which is one of  
 18 the two categories I mentioned earlier which was  
 19 basically to try and develop projects from the ground  
 20 up for El Paso, power projects.  
 21 Q. What did development involve?  
 22 A. Everything from acquiring land rights to  
 23 financing -- locating financing; in some cases, trying to  
 24 find cooling water. Again, all the commercial  
 25 arrangements associated with, with an independent power

1 plant.  
 2 Q. Did you have any other responsibilities with  
 3 El Paso?  
 4 A. I was part of the Greenfield group, but part  
 5 of my time was seconded to the asset management group  
 6 working on the Vandolah power plant.  
 7 MS. SMITH: Who just joined?  
 8 MS. CHRISTENSEN: This is Patty Christensen  
 9 with the Office of Public Counsel. I'm sorry  
 10 we're joining late.  
 11 MS. SMITH: That's all right. Hi, Patty.  
 12 MS. CHRISTENSEN: Hi. We'll go ahead and put  
 13 you on mute. We'll just listen in for now.  
 14 BY MS. SMITH:  
 15 Q. Mr. Knauth, did you bring, build and bring  
 16 power projects for El Paso on line?  
 17 A. Again, I don't get involved in the building,  
 18 Vandolah did come on line while I was involved. I got  
 19 involved before the commercial operation date in June  
 20 of 2002 and then was involved through commercial  
 21 operations.  
 22 MS. SMITH: Is that someone on this line? I  
 23 hear a ringing.  
 24 BY MS. SMITH:  
 25 Q. With respect to El Paso, did you find a buyer

1 for the output of those projects or buyers?  
 2 A. In the case of the Greenfield development  
 3 project, I did look for buyers. In the case of the  
 4 Vandolah project, there was also a power purchase  
 5 agreement in place.  
 6 Q. Did you negotiate any purchase power  
 7 agreements for El Paso?  
 8 A. None that came to fruition.  
 9 Q. Did you determine the price at which to sell  
 10 power?  
 11 A. I didn't determine it, but I was involved in  
 12 the negotiation of a price.  
 13 Q. When you say "involved," what was your  
 14 involvement?  
 15 A. We visited parties who would be interested in  
 16 purchasing the offtake -- I'm thinking of a particular  
 17 project I worked on in Manatee County, and we visited  
 18 people who might be interested in buying the offtake of  
 19 that project, and we discussed some preliminary  
 20 commercial terms for selling the offtake to those  
 21 people.  
 22 Q. Including price?  
 23 A. Yes.  
 24 Q. Did you engage in transmission planning for  
 25 El Paso?

1 A. Yes. I think as you defined it earlier, yes.  
 2 Q. What did you do with respect to transmission  
 3 planning?  
 4 A. In the case of the project in Manatee County,  
 5 submitted applications to Florida Power -- I think it  
 6 was then Florida Power Corp. to interconnect to the  
 7 grid, got in the queue for interconnections, dealt with  
 8 an interconnection study there.  
 9 And in the case of the Vandolah project, when  
 10 I first got involved in the project, the project was in  
 11 the queue with Florida Power Corp. for long-term firm  
 12 transmission, and there was some study, there was kind  
 13 of a global study that was being performed by Florida  
 14 Power Corp. to look at the interconnection of Vandolah  
 15 and several other plants at that time, and I was  
 16 involved in the site.  
 17 Q. So did your job responsibilities include  
 18 having knowledge of FERC orders regarding transmission  
 19 access?  
 20 A. Not that I recall.  
 21 MS. SMITH: Did someone just join us?  
 22 Okay.  
 23 BY MS. SMITH:  
 24 Q. Mr. Knauth, have you ever been involved in  
 25 resource planning for a regulated utility that has a



1 native load and an obligation to serve?  
 2 MR. McGLOTHLIN: This is Joe, Natalie.  
 3 Would you repeat that question more slowly?  
 4 BY MS. SMITH:  
 5 Q. Have you ever been involved in resource  
 6 planning for a regulated utility that has a native load  
 7 and an obligation to serve?  
 8 A. No, I have not.  
 9 Q. So you don't consider yourself an expert in  
 0 resource planning for a regulated utility, correct?  
 1 A. Correct.  
 2 Q. Have you ever been involved in transmission  
 3 planning for a regulated utility that has a native load  
 4 and an obligation to serve?  
 5 A. I have not.  
 6 Q. So you wouldn't consider yourself an expert  
 7 in transmission planning for a regulated utility,  
 8 correct?  
 9 A. Correct.  
 0 Q. Have you ever had a job that required you to  
 1 be knowledgeable about FERC orders regarding  
 2 transmission access?  
 3 A. I'm trying to remember when FERC order 888  
 4 came out, because I was involved. I mean, I remember  
 5 reading it. I'm trying to remember if it related to

1 the Vandolah project or not.  
 2 Could you please repeat the question? I'm  
 3 sorry.  
 4 Q. Have you ever had a job that required you to  
 5 be knowledgeable about FERC orders regarding  
 6 transmission access?  
 7 A. I'll say yes.  
 8 Q. Do you consider yourself an expert regarding  
 9 FERC orders on transmission access?  
 10 A. No.  
 11 Q. When did you first learn about FPL's purchase  
 12 power agreements with Southern Company about which you  
 13 submitted testimony?  
 14 A. Several weeks ago.  
 15 Q. How did you learn about it?  
 16 A. I think my boss told me, if I remember right.  
 17 Q. Who's your boss?  
 18 A. Gentleman named Vincent Schager,  
 19 S-c-h-a-g-e-r.  
 20 Q. And he's your boss at Northern Star?  
 21 A. Right, Northern Star Generation service.  
 22 Q. Do you know how he learned about it?  
 23 A. I do not.  
 24 Q. What did he tell you?  
 25 A. I think he forwarded on to me some of the

1 information, I think particularly the testimony of Tom  
 2 Hartman.  
 3 Q. Do you know who he received it from?  
 4 A. He received it from Joe McGlothlin.  
 5 Q. Do you know why Joe sent it to him?  
 6 A. I do not.  
 7 Q. And about when did you receive that e-mail?  
 8 MR. McGLOTHLIN: Did you say e-mail?  
 9 MS. SMITH: Yes.  
 10 THE WITNESS: It was a fax.  
 11 BY MS. SMITH:  
 12 Q. Oh, a fax. I thought -- when you say  
 13 forwarded, I thought e-mail.  
 14 When did you receive the fax?  
 15 A. I think the first one I got was about mid  
 16 September.  
 17 Q. Do you know how your boss knows Joe  
 18 McGlothlin?  
 19 A. I think as part of an effort to get up to  
 20 speed on the regulatory structure in the Florida  
 21 market.  
 22 Q. Do you know if he contacted Mr. McGlothlin?  
 23 A. I don't know.  
 24 Q. Do you know if Northern Star's compensating  
 25 FIPUG for its participation in FPSC docket 04001 --

1 0001-EI in which you submitted testimony?  
 2 MR. McGLOTHLIN: I'm going to object to any  
 3 questions relating to compensation of that nature.  
 4 I think it's a harassing and annoying type of  
 5 question, it's been ruled in another docket as  
 6 beyond the scope of discovery and I'm going to  
 7 structure the witness not to answer.  
 8 MS. SMITH: And you can answer.  
 9 And I'm going to respond that it is relevant  
 10 to show the witness' interest in and participation  
 11 in this docket.  
 12 MR. McGLOTHLIN: I'm instructing the witness  
 13 not to answer that question.  
 14 MS. SMITH: On what grounds?  
 15 MR. McGLOTHLIN: On the grounds I stated  
 16 earlier.  
 17 MS. SMITH: I don't believe those are grounds  
 18 in the Florida Rules of Civil Procedure for  
 19 instructing a witness not to answer.  
 20 MR. McGLOTHLIN: Do you want to repeat your  
 21 question? Let's make sure we understand what the  
 22 question is.  
 23 MS. SMITH: The question is whether  
 24 Mr. Knauth knows whether Northern Star is  
 25 compensating FIPUG for its participation in the

1 docket in which Mr. Knauth submitted testimony.  
 2 MR. McGLOTHLIN: And, again, I'm going to  
 3 repeat the objection. I find it to be a harassing  
 4 and annoying and oppressive type of question and  
 5 grounds for instructing the witness not to answer.  
 6 I'll also object because it's been ruled in  
 7 docket 031033 that that type of information is  
 8 beyond the scope of discovery, and I think it's an  
 9 abuse of the discovery process to pursue it in  
 10 this forum.  
 11 MS. SMITH: I think it is reasonably  
 12 calculated to lead to the discovery of admissible  
 13 evidence in this docket. And I again contend that  
 14 the grounds on which you're instructing the  
 15 witness not to answer are not grounds for  
 16 instructing a witness not to answer pursuant to  
 17 the Florida Rules of Civil Procedure which govern  
 18 these proceedings and this deposition.  
 19 MR. McGLOTHLIN: Natalie, with due respect,  
 20 I'm instructing my witness not to answer. And if  
 21 you want to take it before a hearing officer,  
 22 we'll do that, if necessary.  
 23 On the other hand, if you want to use this  
 24 opportunity to ask him germane questions germane  
 25 to his testimony, this is your opportunity.

1 MS. SMITH: Again, I believe these questions  
 2 are germane to his testimony and participation in  
 3 this docket.  
 4 I'll move on and perhaps we can take this up  
 5 at the end  
 6 BY MS. SMITH:  
 7 Q. So you said you learned about FPL's purchase  
 8 power agreements with Southern Company from your boss  
 9 who received a fax from Joe McGlothlin and forwarded to  
 10 you; is that correct?  
 11 A. Yes.  
 12 Q. And is that when you learned about the PSC  
 13 docket where FPL is asking for PSC approval of the PPAs  
 14 with Southern Company?  
 15 A. Yes.  
 16 Q. Who first contacted you about filing  
 17 testimony in FPSC docket 04001 -- 001-EI?  
 18 A. Again, it was my boss Vincent Schager.  
 19 Q. And why did he tell you he wanted you to  
 20 submit testimony?  
 21 MR. MOYLE: Object to the form. That calls  
 22 for speculation.  
 23 MS. SMITH: Mr. Moyle, you're not his  
 24 attorney.  
 25 MR. MOYLE: I have a client in the case. And

1 I think to the extent the deposition's going to be  
 2 used, I have a right to interpose objections.  
 3 MS. SMITH: I think that is absolutely  
 4 incorrect, and I instruct the witness to ignore  
 5 that objection and continue and answer.  
 6 THE WITNESS: Could you pose the question  
 7 again, please?  
 8 BY MS. SMITH:  
 9 Q. Who first contacted you about -- well; no,  
 10 that's your boss.  
 11 A. It's two questions past that.  
 12 MS. SMITH: Could you please read the  
 13 question.  
 14 (Thereupon, a portion of the record was  
 15 read back.)  
 16 BY MS. SMITH:  
 17 Q. Why did your boss tell you that he wanted you  
 18 to submit testimony in this docket?  
 19 A. I'm trying to remember the specifics.  
 20 I think because he felt that FPL should have  
 21 consulted or should have conducted a more transparent  
 22 and open process to find the source of its capacity for  
 23 the time frames that they are looking for.  
 24 Q. Did he tell you anything else?  
 25 A. No.

1 Q. Did anyone else contact you besides your boss  
 2 about filing testimony in the PSC docket?  
 3 A. As I mentioned earlier, I talked to Joe about  
 4 it, Joe McGlothlin about it.  
 5 Q. Anyone else?  
 6 A. No.  
 7 Q. Is your company a member of FIPUG?  
 8 A. No.  
 9 Q. Were you familiar with FIPUG before your boss  
 10 contacted you about filing testimony in this docket?  
 11 A. I heard of them in the past, yes.  
 12 Q. In what context?  
 13 A. I don't recall.  
 14 Q. Do you recall what you heard?  
 15 A. I think just that it was kind of an umbrella  
 16 group that represented industrial, looked out for the  
 17 interests of industrial users as purchasers of power.  
 18 Q. Is FIPUG compensating you for your testimony  
 19 in this docket?  
 20 MR. McGLOTHLIN: Objection. I'm going to  
 21 instruct the witness not to answer.  
 22 MS. SMITH: On what grounds?  
 23 MR. McGLOTHLIN: First of all, it is a  
 24 harassing and oppressive type of question and  
 25 grounds for instruction. Secondly, it's beyond

1 the scope of discovery as the Commission ruled in  
2 other dockets.

3 MS. SMITH: Mr. McGlothlin, are you  
4 submitting Mr. Knauth's testimony as an expert  
5 witness?

6 MR. McGLOTHLIN: This is a question -- this  
7 is a deposition for you to question Mr. Knauth,  
8 not me.

9 MS. SMITH: Well, the Florida Rules of Civil  
10 Procedure allow FPL to inquire about the  
11 compensation arrangements of expert witnesses, and  
12 it appears to me that Mr. Knauth has included  
13 opinion testimony in his direct testimony filed in  
14 this docket, and therefore I think that it's  
15 certainly within the bounds of permissible  
16 discovery for me to question the compensation  
17 arrangements between Mr. Knauth and FIPUG.

18 And, additionally, I again repeat that the  
19 grounds you stated are not grounds for instructing  
20 a witness not to answer. He should be permitted  
21 to answer the questions. And if you want to take  
22 it up with the Commission at a later time, you can  
23 certainly do so.

24 MR. McGLOTHLIN: The question is whether  
25 FIPUG is compensating Mr. Knauth?

1 A. No.

2 Q. Who decided that the testimony you filed in  
3 this docket would be submitted on behalf of FIPUG?

4 A. I don't know.

5 Q. Who reviewed and approved the testimony you  
6 submitted on behalf of FIPUG in this docket?

7 A. My boss, Vincent Schager.

8 Q. Anyone else?

9 MR. McGLOTHLIN: When you pose the question,  
10 was that in terms of review by FIPUG or what?

11 MS. SMITH: Anyone, to his knowledge, that  
12 reviewed and approved the testimony he submitted.

13 THE WITNESS: Mr. Schager and Joe McGlothlin  
14 both read it.

15 BY MS. SMITH:

16 Q. Anyone else?

17 A. No.

18 Q. On page 1 of your testimony, you state that  
19 FIPUG is an ad hoc group of industrial customers,  
20 correct?

21 A. Right.

22 Q. What do you mean by "ad hoc group"?

23 A. Just a group that share the common interests  
24 in increasing competition for generation in order to  
25 get the best price possible.

1 MS. SMITH: This question is whether FIPUG is  
2 compensating Mr. Knauth.

3 MR. McGLOTHLIN: All right. I misunderstood  
4 the question.

5 I don't object to his answering that  
6 question.

7 THE WITNESS: No, they are not.

8 MS. SMITH: I have a few questions related to  
9 compensation, and we'll address these after I've  
10 finished with my other questions.

11 BY MS. SMITH:

12 Q. Have you been retained by anyone in this  
13 docket?

14 A. No.

15 Q. Was there any agreement or arrangement under  
16 which you agreed to submit testimony on behalf of FIPUG  
17 in this docket?

18 A. No.

19 Q. Who at FIPUG did you talk to before you filed  
20 testimony on behalf of FIPUG in this docket?

21 A. Nobody.

22 Q. You didn't talk to any members of FIPUG?

23 A. No.

24 Q. You didn't visit any members' places of  
25 business or sites, jobsites?

1 Q. On page 2 of your testimony, you state that  
2 FIPUG favors the use of competition.

3 Is that a correct statement from your  
4 testimony?

5 A. Yes.

6 Q. Who told you FIPUG favors the use of  
7 competition?

8 A. I don't recall.

9 Q. How did it come to be included in your  
10 testimony?

11 A. As I said, I'd heard earlier of FIPUG and the  
12 role that they had played.

13 Q. On page 3 of your testimony, you state that  
14 FIPUG supports wholesale competition.

15 Is that an accurate statement of your  
16 testimony?

17 A. Yes.

18 Q. Who at FIPUG told you that FIPUG supports  
19 wholesale competition?

20 A. As I mentioned, I hadn't spoken to anyone  
21 directly at FIPUG.

22 Q. So who told you that? No one told you?

23 A. As I said, I heard about FIPUG in the past.  
24 I also talked to Joe about it as well.

25 Q. Do you know who the members of FIPUG are?

1 A. I do not.  
 2 Q. So you didn't talk to any members of FIPUG,  
 3 only FIPUG's counsel, before filing testimony on  
 4 FIPUG's behalf.  
 5 A. Correct  
 6 Q. How do you know your testimony represents  
 7 FIPUG's view if you only spoke to counsel?  
 8 A. To the extent that I think FIPUG is  
 9 interested in increasing competition in order to get  
 10 the best rates possible for FIPUG's users, I think my  
 11 testimony is relevant.  
 12 Q. On page 6 of your testimony, you state,  
 13 quote, I am informed that before either utility could  
 14 proceed with construction of such a unit, it would be  
 15 required to conduct a detailed, end quote, RFP,  
 16 correct?  
 17 A. Yes.  
 18 Q. Who informed you of that?  
 19 A. Joe McGlothlin.  
 20 Q. When did he inform you of that?  
 21 A. Sometime in the last several weeks. I don't  
 22 recall the exact date.  
 23 Q. So it's not your personal understanding,  
 24 correct?  
 25 A. Well, I'm familiar with the RFP procedure,

1 A. No.  
 2 Q. So I assume you haven't spoken with him or  
 3 corresponded with him about, "him" being Jon Moyle,  
 4 about FPL's PPAs with Southern Company or this docket?  
 5 A. I've not spoken with him about this. I've  
 6 never spoken with him.  
 7 Q. Do you know Joe Regnery?  
 8 A. No.  
 9 Q. Do you know Schef Wright?  
 10 A. No.  
 11 Q. Do you know Mike Green?  
 12 A. I had met Mike Green before.  
 13 Q. Have you spoken with him or corresponded with  
 14 him regarding FPL's PPAs with Southern Company?  
 15 A. No. I met him once about four years ago.  
 16 Q. Have you spoken with anyone employed by  
 17 Calpine Corporation regarding FPL's PPAs with Southern  
 18 Company?  
 19 A. No.  
 20 Q. About this docket?  
 21 A. No.  
 22 Q. Have you spoken with anyone other than  
 23 FIPUG's attorney in this matter about FPL's PPAs with  
 24 Southern Company?  
 25 A. No.

1 but I think I had some understanding of it before I had  
 2 talked to Joe.  
 3 Q. Do you know the citation to Florida's bid  
 4 rule?  
 5 A. No.  
 6 Q. Did you read the bid rule before filing your  
 7 testimony?  
 8 A. No.  
 9 Q. What did you review in order to prepare your  
 10 testimony?  
 11 A. The testimony of witness Hartman or rebuttal  
 12 witness Hartman, the testimony of Samuel Waters and my  
 13 own testimony.  
 14 Q. Did you review the PPAs between FPL and  
 15 Southern Company before filing your testimony?  
 16 A. No.  
 17 Q. Are you familiar with the competitive power  
 18 lobbying group in Florida known as PACE?  
 19 A. I've heard of them, yes.  
 20 Q. Is your company a member of PACE?  
 21 A. No.  
 22 Q. Did any member of PACE contact you regarding  
 23 FPL's PPAs with Southern Company?  
 24 A. No.  
 25 Q. Do you know Jon Moyle?

1 Q. Have you ever testified or submitted  
 2 testimony before a state PSC or Public Utility  
 3 Commission before?  
 4 A. No.  
 5 Q. Have you ever testified or submitted  
 6 testimony before any court of law before?  
 7 A. No.  
 8 MS. SMITH: My only remaining questions  
 9 relate to the compensation issues to which  
 10 Mr. McGlothlin is objecting.  
 11 If I could have just a moment, I'd appreciate  
 12 it.  
 13 THE WITNESS: Sure.  
 14 (Thereupon, a recess was taken from  
 15 4:07 p.m. until 4:10 p.m.)  
 16 MS. SMITH: Okay. This is Natalie. I'm  
 17 back.  
 18 Joe, I have several questions related to the  
 19 compensation arrangement between -- well, any  
 20 compensation arrangement between Northern Star and  
 21 FIPUG or information about how any compensation  
 22 coming from Northern Star or other parties to  
 23 finance FIPUG's participation in this document.  
 24 It's my understanding you're objecting and  
 25 instructing the witness not to answer on the

1 grounds that these questions are harassing. Is  
 2 that true?  
 3 MR. McGLOTHLIN: That's partial, that is  
 4 partially the reason I am instructing him not to  
 5 answer.  
 6 MS. SMITH: What's your other reason?  
 7 MR. McGLOTHLIN: Harassing and oppressive and  
 8 the questions ask for information that's beyond  
 9 the scope of discovery as the Commission has  
 10 established in another docket and as case law  
 11 beyond the Commission has established.  
 12 You posed I think similar questions through  
 13 other discovery routes to which we intend to  
 14 object. And I don't think we have to waive our  
 15 objection simply because you're also asking them  
 16 in the form of questions at deposition, we don't  
 17 have to abandon those objections for the purpose  
 18 of the deposition.  
 19 So I do intend to if you pursue that, I do  
 20 intend to ask for a protective order on those  
 21 grounds.  
 22 MS. SMITH: Cochran, are you still on the  
 23 phone?  
 24 MR. KEATING: I'm here.  
 25 MS. SMITH: Do you know whether the

1 pre-hearing officer is available?  
 2 MR. KEATING: Yes, I can, I can do that.  
 3 Give me just a moment.  
 4 I will let you know we have been able to  
 5 sometimes in the past to get the pre-hearing  
 6 officer to make a ruling on these sorts of things.  
 7 I think just for information because I was on  
 8 the phone, it's probably less likely it's going to  
 9 happen on oral motions made during the deposition  
 10 as much in the future --  
 11 (Thereupon, there was an interruption in the  
 12 proceedings.)  
 13 (Discussion held off the record.)  
 14 MR. KEATING: Okay. To complete what I was  
 15 saying, I do not know how this pre-hearing officer  
 16 would like to handle it, so let me check with him.  
 17 MS. SMITH: Okay. And, Cochran, do you need  
 18 anything else, anything from us, any more  
 19 information from us before going to him?  
 20 MR. KEATING: I think I came in right as we  
 21 got to -- I had to step out for a moment. I think  
 22 I came right in as you guys got to the question in  
 23 dispute.  
 24 And if you could, Natalie, if you could  
 25 restate for me what the questions are that you

1 pre-hearing officer is available?  
 2 MR. KEATING: I do not know.  
 3 MS. SMITH: Our purpose in going to him would  
 4 be an oral motion to compel FIPUG's witness to  
 5 answer questions regarding the compensation  
 6 arrangement between his employer and FIPUG.  
 7 Could you maybe check and see whether he  
 8 would be available to make a ruling? If not, we  
 9 could possibly hold the deposition record open to  
 10 ask these questions at a later time.  
 11 MR. KEATING: Okay.  
 12 Can you hear that phone ringing?  
 13 MS. SMITH: I can. I don't know --  
 14 MR. KEATING: It's making it hard for me to  
 15 hear. But I think I got the gist of that.  
 16 THE WITNESS: Is there somebody on speaker  
 17 phone that is giving you call? Can they pick up?  
 18 MS. SMITH: We are on speaker phone, but we  
 19 only have one line, so it isn't us.  
 20 THE COURT REPORTER: May I go off the record  
 21 on this?  
 22 (Discussion held off the record.)  
 23 MS. SMITH: Cochran?  
 24 MR. KEATING: Yes.  
 25 MS. SMITH: Could you check to see if the

1 want to ask.  
 2 MS. SMITH: Okay.  
 3 MR. KEATING: Not what the exact questions  
 4 are but what the context is you want to cover?  
 5 MS. SMITH: Well, the question I asked that  
 6 initially raised the issue was whether Northern  
 7 Star, which is Mr. Knauth's company, is  
 8 compensating FIPUG for FIPUG's participation in  
 9 this docket.  
 10 MR. KEATING: Okay.  
 11 MS. SMITH: And Mr. McGlothlin instructed the  
 12 witness not to answer.  
 13 And among my primary contentions is that his  
 14 grounds for instructing the witness not to answer  
 15 are grounds not articulated in the Florida Rules  
 16 of Civil Procedure for instructing a witness not  
 17 to answer.  
 18 MR. KEATING: And, Joe, what were -- what was  
 19 the basis for your objection again so I make sure  
 20 I've got this correct?  
 21 MR. McGLOTHLIN: There are several. I object  
 22 on the grounds that the question is harassing and  
 23 oppressive, which do constitute grounds for  
 24 instruction.  
 25 I object on the grounds that it has been

1 established both by the Commission and by case law  
 2 under the Rules of Civil Procedure that questions  
 3 that go to the funding of litigation are beyond  
 4 the scope of discovery, so that the question's not  
 5 relevant and not calculated to lead to the  
 6 discovery of admissible information.  
 7 I also object on the grounds that FPL has  
 8 posed similar questions in the form of  
 9 interrogatories to which we intend to object, and  
 10 we -- I think it's an abuse of discovery to  
 11 attempt to require FIPUG to more or less lose by  
 12 default on its objection simply by the expedient  
 13 of posing questions in a deposition.  
 14 MR. KEATING: Okay, thank you. Give me just  
 15 a minute and I will see what I can find out.  
 16 But I would say for Natalie, I wouldn't hold  
 17 my breath on getting a ruling on this today, but  
 18 I'll see what I can do.  
 19 MS. SMITH: Okay, thank you.  
 20 MR. McGLOTHLIN: Are we off the record?  
 21 THE COURT REPORTER: Yes.  
 22 (Discussion held off the record.)  
 23 MS. SMITH: While we're off the record, I'd  
 24 like to go back on the record briefly for the  
 25 purpose of entering into the record the

1 MS. SMITH: Yes.  
 2 MR. McGLOTHLIN: Yes.  
 3 MR. KEATING: Has it been worked out yet, I  
 4 ask hopefully?  
 5 I assume there hasn't been a resolution since  
 6 I left.  
 7 MS. SMITH: No.  
 8 MR. KEATING: All right. I did not get to  
 9 talk to the pre-hearing officer. I spoke with his  
 10 aide in his office.  
 11 And I think what we'd like to do, we'd like  
 12 to get this resolved expeditiously, but we can't  
 13 get a ruling on it now.  
 14 What we'd like to do is get as quickly as we  
 15 could a filing from each side that would indicate  
 16 what their arguments are on this issue.  
 17 As I understand, the basic issue is whether  
 18 the funding of litigation is beyond the scope of  
 19 discovery here and whether these particular  
 20 questions are harassing or oppressive.  
 21 If that's something that you all can -- both  
 22 sides could provide in a short time frame, we can,  
 23 we can get a quick turnaround on a decision.  
 24 MS. SMITH: FPL can do that.  
 25 MR. McGLOTHLIN: I can certainly do that.

1 stipulation that we agreed to at the beginning of  
 2 this deposition relating to parties' witnesses.  
 3 I think the stipulation is that all parties'  
 4 witnesses may participate by phone in the  
 5 deposition of other witnesses for purposes of this  
 6 proceeding, docket number 040001-EI only.  
 7 Does that sound like an adequate, accurate  
 8 representation of the stipulation?  
 9 MR. McGLOTHLIN: With one addendum, and for  
 10 purposes of this, of the November hearing.  
 11 MS. SMITH: Okay, that's fine.  
 12 MR. MOYLE: Did you write it down, Natalie?  
 13 MS. SMITH: No.  
 14 MR. MOYLE: Are we still off the record?  
 15 MS. SMITH: No.  
 16 MR. MOYLE: If you would be so kind to read  
 17 it back again just once.  
 18 THE COURT REPORTER: Yes, sir.  
 19 (Thereupon, a portion of the record was  
 20 read back.)  
 21 MR. MOYLE: Thank you. I think that will be  
 22 acceptable to Mr. Churbuck.  
 23 (Discussion held off the record.)  
 24 MR. KEATING: This is Cochran. I'm back.  
 25 Everybody there?

1 I will require enough time to get back to the  
 2 office. I'm supposed to fly back tonight and be  
 3 in the office in the morning. I could have  
 4 something by midday probably.  
 5 MR. KEATING: Okay. You guys are the ones  
 6 who are preparing for the litigation.  
 7 Do you want, do you want until Thursday, both  
 8 sides until Thursday to do this? Is that adequate  
 9 time? Too little time?  
 10 MS. SMITH: That's more than adequate for  
 11 FPL.  
 12 MR. McGLOTHLIN: That's more than adequate  
 13 for FIPUG.  
 14 MR. KEATING: Okay. And if you can do that  
 15 sooner, that will be fine as well. But let's say  
 16 Thursday by close of business.  
 17 MS. SMITH: Okay.  
 18 MR. KEATING: And we will try to turn around  
 19 a ruling quickly.  
 20 MR. McGLOTHLIN: What are the chances that we  
 21 could have the transcript in time to see it before  
 22 we have to file?  
 23 THE COURT REPORTER: I can do that.  
 24 MR. McGLOTHLIN: Joe McGlothlin, just asking  
 25 when the transcript might be available.

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1       **THE COURT REPORTER: I have to go off the**  
2       **record.**  
3       **(Discussion held off the record.)**  
4       **MS. SMITH: Are we back on?**  
5       **MR. KEATING: And, Natalie, it will help to**  
6       **know what all might be at issue. Whatever**  
7       **questions you do have on the subject, if you do**  
8       **want to go ahead and ask them on the record today,**  
9       **I guess that would let the pre-hearing officer**  
10       **know, the Commission know what --**  
11       **MS. SMITH: Certainly.**  
12       **MR. KEATING: -- what specific questions**  
13       **might be the subject of these pleadings.**  
14       **MS. SMITH: All right. And maybe Joe will**  
15       **allow the witness to answer some of these.**  
16       **MR. McGLOTHLIN: Okay.**  
17       **MS. SMITH: I'll go ahead and start now.**  
18 **BY MS. SMITH:**  
19       **Q. The question that was initially objected to**  
20       **again was, is Northern Star Generation compensating**  
21       **FIPUG for participation in this docket?**  
22       **MR. McGLOTHLIN: Objection stands.**  
23       **Instruction stands.**  
24 **BY MS. SMITH:**  
25       **Q. Another question is to your knowledge, is**

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1       there any sort of contingency fee arrangement regarding  
2       FIPUG's participation in this docket whereby FIPUG  
3       would get paid a certain amount if it achieves a  
4       certain result?  
5       **MR. McGLOTHLIN: I'll object and instruct on**  
6       **the same grounds.**  
7 **BY MS. SMITH:**  
8       **Q. Is your company a member of any industry**  
9       **trade association involved in Florida?**  
10       **MR. McGLOTHLIN: Would you repeat that**  
11       **question?**  
12 **BY MS. SMITH:**  
13       **Q. Is your company a member of any industry**  
14       **trade organization involved in Florida, to your**  
15       **knowledge?**  
16       **MR. McGLOTHLIN: I have no objection to that**  
17       **question.**  
18       **THE WITNESS: Not that I'm aware of.**  
19       **MS. SMITH: That's it.**  
20       **And we'll hold open the record in the event**  
21       **we get a ruling from the pre-hearing officer that**  
22       **would allow us to ask these questions. We'd ask**  
23       **those questions at that time and...**  
24       **MR. McGLOTHLIN: For the record, in addition**  
25       **to the objections I raised earlier, I object on**

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1       the grounds that I believe the question is  
2       conducted in bad faith in that I think this very  
3       question has been resolved by the Commission and  
4       in conformity with rulings by the courts, and I  
5       think the question is abusive in that respect and  
6       also because we have pending objections that would  
7       be filed responding to the same questions in the  
8       form of interrogatories.  
9       **MS. SMITH: I have no further questions.**  
10       **MR. MOYLE: Mr. Churbuck has no questions.**  
11       **MR. KEATING: Commission staff has no**  
12       **questions.**  
13       **MS. CHRISTENSEN: Patty Christensen for the**  
14       **Office of Public Counsel, we have no questions.**  
15       **MR. McGLOTHLIN: Well, I have -- if that's**  
16       **everyone, I have one by way of clarification.**  
17       **CROSS (KERRICK KNAUTH)**  
18 **BY MR. McGLOTHLIN:**  
19       **Q. Mr. Knauth, earlier you were asked to**  
20       **identify persons who reviewed your testimony prior to**  
21       **its submission.**  
22       **And my question to you, when you identified**  
23       **certain individuals, you were speaking in terms of**  
24       **persons of your personal knowledge reviewed the**  
25       **testimony; is that correct?**

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1       A. Correct.  
2       **Q. And so you don't know if perhaps the**  
3       **testimony was given to a FIPUG representative. That's**  
4       **not something you would have reason to know.**  
5       **MS. SMITH: Objection, leading.**  
6       **THE WITNESS: Correct on both counts.**  
7       **MR. McGLOTHLIN: I have no further questions.**  
8       **MS. SMITH: No redirect.**  
9       **MR. McGLOTHLIN: The witness will read and**  
10       **sign.**  
11       **MS. SMITH: Okay, thank you.**  
12       **THE COURT REPORTER: Before we leave,**  
13       **Mr. McGlothlin, would you like a transcript?**  
14       **MR. McGLOTHLIN: Yes.**  
15       **THE COURT REPORTER: Mr. Moyle?**  
16       **MR. MOYLE: I don't think that's necessary --**  
17       **actually, when is it going to be available?**  
18       **THE COURT REPORTER: Tomorrow, Wednesday.**  
19       **MR. MOYLE: Yeah, if you can e-mail it to me,**  
20       **I'll take a copy.**  
21       **THE COURT REPORTER: Mr. Keating?**  
22       **MR. KEATING: Yes, I will have our internal**  
23       **court reporters here at the Commission contact you**  
24       **to order a copy of it.**  
25       **THE COURT REPORTER: Miss Christensen?**



1 MS. CHRISTENSEN: Yes, we'd like to get a  
 2 copy.  
 3 (Deposition Exhibit No. 1 marked for  
 4 identification.)  
 5  
 6 (Witness excused.)  
 7 (Thereupon, the deposition was adjourned at  
 8 4:37 p.m.)  
 9  
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1 DATE: October 26, 2004  
 2 TO: Mr. Kerrick Knauth  
 c/o Joseph McGlothlin, Esquire  
 3 McWhirter, Reeves, McGlothlin,  
 Davidson, et al.  
 4 400 North Tampa Street, Suite 2450  
 Tampa, Florida 33602  
 5  
 6 IN RE: Fuel and Purchased Power Cost Recovery Clause  
 and Generating Performance Incentive Factor  
 7 Please take notice that on Tuesday, the 26th  
 day of October, 2004, you gave your deposition in the  
 8 above referred matter. At that time, you did not waive  
 signature. It is now necessary that you read and sign  
 9 your deposition.  
 As previously agreed to, the transcript will  
 10 be furnished to you through your counsel. Please read  
 the following instructions carefully:  
 11 At the end of the transcript you will find an  
 errata sheet. As you read your deposition, any changes  
 12 or corrections that you wish to make should be noted on  
 the errata sheet, citing page and line number of said  
 13 change. DO NOT write on the transcript itself. Once  
 you have read the transcript and noted any changes, be  
 14 sure to sign and date the errata sheet and return these  
 pages to your counsel.  
 15 If you do not read and sign the deposition  
 within a reasonable time, the original, which has  
 16 already been forwarded to the ordering attorneys, may  
 be filed with the court. If you wish to waive your  
 17 signature, sign your name in the blank at the bottom of  
 this letter and return it to your counsel.  
 18 Very truly yours,  
 19 MARIANNE MARTINI HOLMES, RPR  
 ESQUIRE DEPOSITION SERVICES  
 20 515 Flagler Drive  
 Suite 200-The Pavilion  
 21 West Palm Beach, Florida 33401  
 I do hereby waive my signature:  
 22  
 23 KERRICK KNAUTH  
 24 cc via transcript: Natalie F. Smith, Esquire  
 Patricia Christensen, Esquire  
 25 Jon C. Moyle, Jr., Esquire

1 CERTIFICATE  
 2  
 3  
 4 THE STATE OF FLORIDA)  
 5 COUNTY OF PALM BEACH)  
 6  
 7 I, Marianne Martini Holmes, Registered  
 Professional Reporter, State of Florida at large, do  
 8 hereby certify that I was authorized to and did report  
 said deposition in stenotype; and that the foregoing  
 9 pages are a true and correct transcription of my  
 shorthand notes of said deposition.  
 10 I further certify that said deposition was  
 taken at the time and place hereinabove set forth and  
 11 that the taking of said deposition was commenced and  
 completed as hereinabove set out.  
 12  
 13 I further certify that I am not attorney or  
 counsel of any of the parties, nor am I a relative or  
 14 employee of any attorney or counsel of party connected  
 with the action, nor am I financially interested in the  
 15 action.  
 16 The foregoing certification of this  
 transcript does not apply to any reproduction of the  
 17 same by any means unless under the direct control  
 and/or direction of the certifying reporter.  
 18 Dated this 26th day of October, 2004.  
 19  
 20  
 21  
 22 Marianne Martini Holmes, RPR  
 in and for the State of Florida  
 23 My Commission Expires: 6-31-05  
 My Commission No.: DD042489  
 24  
 25

1 CERTIFICATE  
 2  
 3  
 4 THE STATE OF FLORIDA)  
 5 COUNTY OF PALM BEACH)  
 6 I hereby certify that I have read the  
 7 foregoing deposition by me given, and that the  
 8 statements contained herein are true and correct to the  
 9 best of my knowledge and belief, with the exception of  
 10 any corrections or notations made on the errata sheet,  
 11 if one was executed.  
 12  
 13 Dated this \_\_\_\_ day of \_\_\_\_\_,  
 14 2004.  
 15  
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 20 KERRICK KNAUTH  
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1 ERRATA SHEET  
2 IN RE: Fuel and Purchased Power Cost Recovery Clause  
and Generating Performance Incentive Factor

3 DEPOSITION OF: Kerrick Knauth

4 TAKEN: October 26, 2004

5  
6 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

7 PAGE # LINE # CHANGE REASON

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16  
17 Please forward the original signed errata sheet to this  
office so that copies may be distributed to all  
18 parties.

19 Under penalty of perjury, I declare that I have read my  
deposition and that it is true and correct subject to  
20 any changes in form or substance entered here.

21 DATE: \_\_\_\_\_

22 SIGNATURE OF DEPONENT: \_\_\_\_\_  
23 (MMH)

24  
25

STATE OF TEXAS  
COUNTY OF HARRIS

CERTIFICATE OF OATH

I, the undersigned authority, certify that Kerrick Knauth personally appeared before me at 2929 Allen Pkwy, Suite 2200 Houston, TX 77019, and was duly sworn by me to tell the truth.

WITNESS my hand and official seal in the City of Houston, County of Harris, State of Texas, this 26th day of October, 2004.



*Taryn M. Ross*  
\_\_\_\_\_  
Notary Public  
State of Texas

My Commission Expires: July 30, 2005

Personally known  or who has produced \_\_\_\_\_  
Type of identification produced \_\_\_\_\_

EXHIBIT  
*1 - Knauth*  
*MH 10-26-04*

ORIGINAL

# EXHIBIT B

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1           BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2                           Docket No. 040001-EI  
3  
4  
5   In Re:   Fuel and Purchased Power Cost Recovery Clause  
6           and Generating Performance Incentive Factor  
7  
8  
9

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10                           TELEPHONIC DEPOSITION OF MICHAEL F. VOGT

11   Wednesday, October 27, 2004  
12   11:06 - 12:10 p.m.  
13   700 Universe Boulevard  
14   Juno Beach, Florida 33408

15  
16   Reported By:  
17   Marianne Martini Holmes, RPR  
18   Notary Public, State of Florida  
19   Esquire Deposition Services  
20   West Palm Beach Office  
21   Phone: 800.330.6952  
22           561.659.4155

23  
24  
25

1   APPEARANCES:  
2   On behalf of Florida Power & Light Company:  
3         Natalie F. Smith, Esquire  
4         R. Wade Litchfield, Esquire  
5                           Page 1

4 Florida Power & Light Company  
700 Universe Boulevard  
5 Juno Beach, Florida 33408

6 On behalf of Northern Star:

7 Vicki Kaufman, Esquire (appearing by phone)  
McWhirter, Reeves, McGlothlin, Davidson, et al.  
8 400 North Tampa Street, Suite 2450  
Tampa, Florida 33602  
9

10 On behalf of Thomas Churbuck:

11 Jon C. Moyle, Jr., Esquire (appearing by phone)  
Moyle, Flannigan, Katz, Raymond & Sheehan, P.A.  
12 The Perkins House  
118 North Gadsden Street  
13 Tallahassee, Florida 32301  
14

15 On behalf of Florida Public Service Commission:

16 Cochran Keating, Esquire (appearing by phone)  
Florida Public Service Commission  
17 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
18

19 On behalf of Office of Public Counsel:

20 Earl Poucher, Esquire (appearing by phone)  
111 West Madison Street, Room 812  
21 Tallahassee, Florida 32399

22 ALSO PRESENT:

23 David Dismukes (appearing by phone)  
24  
25

1 - - -  
2 I N D E X  
3 - - -

4 WITNESS DIRECT CROSS REDIRECT RECROSS

5 MICHAEL F. VOGT

6 By Ms. Smith 5  
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NUMBER	DESCRIPTION	PAGE
Exhibit Number 1	Certificate of Oath	50

4

P R O C E E D I N G S

- - -

Deposition taken before Marianne Martini  
Holmes, Registered Professional Reporter and Notary  
Public in and for the State of Florida at Large, in  
the above cause.

- - -

MS. SMITH: This is Natalie Smith. I'm FPL's  
attorney.

This deposition is being conducted  
telephonically.

The notary is with you, Mr. Vogt, to  
administer the oath, and the court reporter is

14 Vogt depo transcript.10.27.04.txt  
with me.

15 Notary, could you please administer the oath  
16 to Mr. Michael Vogt.

17 MS. KAUFMAN: would you say it louder so the  
18 court reporter can hear you?

19 NOTARY PUBLIC: Your oath, do you swear that  
20 you are Michael F. Vogt?

21 THE WITNESS: Yes, I do.

22 NOTARY PUBLIC: Do you swear to tell the  
23 truth?

24 THE WITNESS: Yes, I do.

25 MS. KAUFMAN: Is that sufficient?

5

1 Hello?

2 MS. SMITH: Yes, that's fine.

3 MS. KAUFMAN: Okay. And, Natalie, I think  
4 you had a number you wanted her to fax the  
5 affidavit to you?

6 MS. SMITH: Yes, please. It's area code  
7 (561)691-7135.

8 MS. KAUFMAN: Okay.

9 MS. SMITH: And if you could put it to my  
10 attention Natalie Smith.

11 MS. KAUFMAN: we'll do that.

12 MS. SMITH: And I'd ask that the affidavit of  
13 Mr. Vogt be identified as Exhibit 1 to the  
14 deposition transcript.

15 THE COURT REPORTER: Yes, ma'am.

16 DIRECT EXAMINATION

17 BY MS. SMITH:

18 Q Mr. Vogt, have you ever had your deposition

19 taken before?

20 A No, ma'am, I have not.

21 Q Are you familiar with the process for a  
22 deposition?

23 A Generally.

24 Q Okay. I'll be asking you questions.

25 If at any point you don't understand a

6

1 question that I've asked you, please let me know, and  
2 I'll try to rephrase the question.

3 A Okay.

4 Q It's important that your answers be  
5 verbalized -- again, we are on the telephone -- and the  
6 court reporter needs to be able to accurately record  
7 your responses to my questions.

8 A Okay.

9 Q Mr. Vogt, please state your name, phone  
10 number and business address.

11 A Michael F. Vogt. Business address is 400  
12 Chesterfield Center, Suite 110, St. Louis, Missouri,  
13 63017. Phone number is (636)532-2200.

14 Q Mr. Vogt, did you participate by phone during  
15 the deposition of Kerrick Knauth that took place  
16 yesterday by telephone?

17 A Yes, ma'am.

18 Q Did you hear the questions that FPL asked of  
19 Mr. Knauth?

20 A Yes, ma'am.

21 Q Did you hear Mr. Knauth's responses?

22 A Yes, ma'am.

23 Q Did you hear the objections posed by counsel



24 for FIPUG, Joe McGlothlin?

25 A Yes, I did.

7

1 Q Have you discussed your deposition with  
2 anyone prior to the beginning of your deposition this  
3 morning other than counsel for FIPUG?

4 A Yes, I have.

5 Q With whom have you spoken?

6 A Larry Willick.

7 Q Who is Larry Willick?

8 A He is a director of business development with  
9 LS Power.

10 Q And what was the substance of the  
11 communication between you and Larry Willick regarding  
12 this deposition?

13 A Just general preparation for it.

14 Q What did you discuss?

15 A Just a minute.

16 Just general things related to, questions  
17 related to what we expected to be asked.

18 Q What potential questions did you identify?

19 MS. KAUFMAN: At this point, Natalie, I'm  
20 going to object because I was involved in these  
21 discussions, and I think that is privileged.

22 MS. SMITH: Okay. He didn't make -- he  
23 didn't notify me that you were involved in those  
24 discussions.

25 MS. KAUFMAN: Well, I'm notifying you now.

8

1 BY MS. SMITH:

2 Q Mr. Vogt, have you reviewed any documents in  
Page 6

3 preparing for this deposition?

4 A Yes, ma'am.

5 Q What documents did you review?

6 A I reviewed the order denying the motion for  
7 spin-out, the progress response to the FIPUG motion,  
8 Mr. Hartman's rebuttal to my testimony, the motion by  
9 FIPUG and the Office of Public Counsel to remove the  
10 issues from the docket, the order establishing  
11 procedure for the docket, the direct testimony of  
12 Samuel Waters and his exhibits to this docket, the  
13 testimony of Mr. Tom Hartman for this docket and his  
14 exhibits.

15 Q Do you have any documents with you today?

16 A Yes, the same documents I just referred are  
17 with me today.

18 Q Do you have any other documents?

19 A No, ma'am.

20 Q Are these documents in front of you right  
21 now?

22 A Yes, they are.

23 Q Is there anyone other than your attorney,  
24 Vicki Kaufman, and the notary in the room with you now?

25 A No, there are not.

9

1 MS. KAUFMAN: The notary is no longer here,  
2 Natalie.

3 MS. SMITH: Okay.

4 BY MS. SMITH:

5 Q Is there anyone with LS Power other than  
6 Vicki Kaufman on the phone with us?

7 A Not to my knowledge. I mean, we did a  
Page 7

8 roll-call, so...

9 Q Did you submit or cause to have submitted  
10 testimony on behalf of the Florida Industrial Power  
11 Users Group or FIPUG in docket number 040001-EI?

12 A Yes.

13 Q Where are you currently employed?

14 A LS Power Development, LLC.

15 Q What does LS stand for?

16 A Just the name of our company.

17 Q Does it stand for anything?

18 A No.

19 Q Who are the predecessor companies to LS Power  
20 that are referenced on page 1 of your testimony?

21 A That would be LS Power, LS Power, LLC and  
22 LS Power Corporation.

23 Q Is that it?

24 A Yes.

25 Q How long have you been employed by LS Power?

10

1 A Seven years.

2 Q In what business is LS Power engaged?

3 A They are an independent power producer  
4 involved in development, permitting, owning and  
5 operating power generation facilities in the United  
6 States.

7 Q So it's not merely a development company. It  
8 also owns and operates its projects?

9 A Yes, ma'am.

10 Q All of its projects?

11 A We have in the past owned and operated  
12 generating facilities.

13 Q Do you own and operate all of the generating  
14 facilities?

15 MS. KAUFMAN: I'm going to object. That  
16 question was vague. When you say "all," is there  
17 some time frame you're referring to?

18 MS. SMITH: Past seven years.

19 MS. KAUFMAN: Can you re-ask the question?

20 BY MS. SMITH:

21 Q Have you owned and operated all of the power  
22 generation projects during the seven years you've been  
23 employed by LS Power or are there any projects you've  
24 purely developed?

25 MS. KAUFMAN: I'm going to object again as to

11

1 compound question, and I don't understand it. I  
2 don't know if Mr. Vogt does.

3 THE WITNESS: No, I do not.

4 BY MS. SMITH:

5 Q Okay, that's fine.

6 You state on page 1 of your testimony that  
7 your title with LS Power is project manager; is that  
8 correct?

9 A Yes, ma'am.

10 Q Do you have any other job titles?

11 A No, ma'am.

12 Q Have you had any other job titles while  
13 you've been employed by LS Power?

14 A No, ma'am.

15 Q You state on page 1 that with LS Power,  
16 you've been involved in site selection for independent  
17 power projects.

18 what does that involve?

19 A Site selection involves evaluating criteria  
20 for determining locations that would be suitable for  
21 power generation facilities.

22 Q To what extent have you been involved?

23 A **Directly involved.**

24 Q Has anyone else at LS Power been involved in  
25 site selection with you?

12

1 MS. KAUFMAN: Objection. Again, that's  
2 vague.

3 Are you talking about all the LS Power  
4 projects or a time frame?

5 BY MS. SMITH:

6 Q During the seven years you've been employed  
7 there, have there been other employees of LS Power that  
8 have been involved with site selection other than you?

9 A Yes.

10 Q Are you the manager of site selection?

11 A No.

12 Q Who is?

13 A We have a senior vice-president in charge of  
14 development with our company who would be -- he's my  
15 boss and would be the most directly involved in that  
16 activity.

17 Q You state on page 1 that with LS Power, page  
18 16 your testimony, that with LS Power, you've been  
19 involved in community relations.

20 what does that involve?

21 A Community relations, as the name I suppose  
22 would imply, going to the communities that we are

23 developing facilities in and interacting with them in a  
24 way that helps explain what we are doing in terms of  
25 project development and educating them about the

13

1 process that we would go through to permit, develop and  
2 ultimately build the facility.

3 Q To what extent have you been involved in  
4 community relations for LS Power?

5 A Directly.

6 Q Does it take up a significant amount of your  
7 time?

8 A Yes.

9 Q You state on page 1 of your testimony that  
10 with LS Power, you've been involved in permitting  
11 independent power projects.

12 What does that involve?

13 A Permitting would involve either preparation  
14 directly of permit applications or managing consultants  
15 to prepare permit applications for air permit, waste  
16 water discharge permit, water withdrawal permits, corps  
17 of engineer permits, cultural resource analysis and  
18 things of that nature.

19 Q So basically any permit that LS Power needs  
20 for its projects, you're involved in getting those  
21 permits?

22 A Either managing a consultant to obtain it or  
23 preparing the application myself and interfacing with  
24 the regulatory agency that is issuing the permit.

25 Q You state on page 1 of your testimony that

14

1 with LS Power, you've been involved in development of  
2 independent power projects.

3 what does that involve?

4 A Basically the same types of things we just  
5 talked about from community relations and permitting.

6 The additional activities would be securing  
7 real estate for the project site, any easements  
8 associated with it, filing for and securing  
9 interconnection to the transmission grid, power  
10 marketing activities.

11 Q Power marketing?

12 A Yes, ma'am.

13 Q What have your marketing activities been with  
14 LS Power?

15 A Typically the initial contact with potential  
16 customers, educating them about the various projects  
17 that we have in development.

18 Q Are those your only marketing  
19 responsibilities with LS Power?

20 A Generally, yes.

21 Q You state on page 1 of your testimony that  
22 with LS Power, you have been involved in financing.

23 what does that involve?

24 A The only involvement in financing I would  
25 have would be on the supporting end in terms of

15

1 documents that are required for financing: Due  
2 diligence documents, preparation of books that would  
3 have all of our permit applications and permit  
4 approvals, coordinating with an independent engineer  
5 who does the analysis of the project, you know, that

6 type of thing.

7 Q So you haven't been involved in obtaining  
8 financing for the projects other than due diligence  
9 type involvement?

10 A To support the people within our company who  
11 are directly interfacing with the lending community,  
12 that's correct.

13 Q You state on page 1 of your testimony that  
14 with LS Power, you've been involved in management.  
15 what does that involve?

16 A Managing the same types of activities that I  
17 just described.

18 Q And those are your current job  
19 responsibilities as project manager?

20 A Yes.

21 Q Have your job responsibilities with LS Power  
22 included building and bringing power projects on line?

23 A No.

24 Q Do they currently?

25 A No.

16

1 Q Have your job responsibilities with LS Power  
2 included selling power?

3 A Only as I previously described the power  
4 marketing activities.

5 Q Do your current job responsibilities include  
6 selling power?

7 A Only as I've previously described.

8 Q Have your job responsibilities with LS Power  
9 included finding a buyer for the output of LS Power  
10 projects?



Vogt depo transcript.10.27.04.txt  
11 A Again, only as I previously described with  
12 the power marketing activities.

13 Q And your current job responsibilities, do  
14 they include finding buyers for the output of the  
15 projects?

16 A Only as previously described with the power  
17 marketing activities.

18 Q Have your job responsibilities with LS Power  
19 included negotiating purchase power agreements for  
20 LS Power?

21 A No.

22 Q Have they included determining the price at  
23 which to sell power?

24 A No.

25 Q Do your current job responsibilities with

17

1 LS Power include negotiating purchase power agreements?

2 A No.

3 Q Determining the price at which to sell power?

4 A No.

5 Q Have your job responsibilities with LS Power  
6 included transmission planning?

7 A No.

8 Q Do your current job responsibilities include  
9 transmission planning for LS Power projects?

10 A It depends on what you mean by "transmission  
11 planning." I do not work for a utility that plans how  
12 the system should be built and operated.

13 If that's what you're asking, the answer is  
14 no.

15 Q By "transmission planning," I mean acquiring

16 transmission rights or transmission services for the  
17 power projects.

18 A That I have been involved in.

19 Q Could you please describe your involvement?

20 A My involvement has been coordinating with our  
21 transmission person to ensure that the proper  
22 applications for interconnection, for transmission  
23 service requests are made, reviewing studies associated  
24 with those documents and just general understanding of  
25 how the transmission system works and how our service

18

1 can be granted, you know, not granted, that type of  
2 thing.

3 Q Have your job responsibilities with LS Power  
4 included having knowledge regarding FERC orders on  
5 transmission access?

6 MS. KAUFMAN: I'm going to object to what you  
7 mean by "having knowledge," if you want to clarify  
8 that.

9 BY MS. SMITH:

10 Q Have your job responsibilities included  
11 requirements that you be familiar with FERC orders on  
12 transmission access?

13 MS. KAUFMAN: Object again. Talking about  
14 all FERC orders on transmission access?

15 MS. SMITH: Yes.

16 MS. KAUFMAN: Do you want to narrow it down?

17 MS. SMITH: No.

18 MS. KAUFMAN: Okay.

19 BY MS. SMITH:

20 Q Please answer the question.

Vogt depo transcript.10.27.04.txt  
MS. KAUFMAN: Do you want to restate it?

21

MS. SMITH: No.

22

23 BY MS. SMITH:

24 Q Do you understand the question, Mr. Vogt?

25 A No.

19

1 Q Have your job responsibilities with LS Power  
2 included having knowledge or being familiar with FERC  
3 orders on transmission access?

4 MS. KAUFMAN: I'm going to object. I'll  
5 allow him to answer. I think that question is  
6 vague.

7 MS. SMITH: Okay.

8 MS. KAUFMAN: To the extent he can, I'll let  
9 him answer.

10 THE WITNESS: Yeah, I'm not an attorney, so I  
11 don't study these orders to know whether they are  
12 legally accurate or not.

13 I have a general just industry knowledge of  
14 what FERC order 888 means and other kinds of FERC  
15 orders related to independent power producers, but  
16 it's just a general kind of industry familiarity,  
17 is all.

18 BY MS. SMITH:

19 Q So your job responsibilities, do they include  
20 having a general working knowledge of transmission  
21 rights and transmission access?

22 A I would say yes.

23 Q Mr. Vogt, you state on page 1 of your  
24 testimony that you were employed by Black & Veatch  
25 Corporation from 1992 through 1997, correct?

20

1 A Yes.

2 Q In what business was Black & Veatch  
3 Corporation engaged when you were employed for them?

4 A They are a construction and engineering  
5 design firm that builds power generation facilities.

6 Q You state that you're a mechanical engineer  
7 involved in the design, startup and testing of power  
8 generation facilities, correct?

9 A Yes.

10 Q What were your job responsibilities with  
11 Black & Veatch?

12 A Thermal cycle design for power generation  
13 facilities, specification writing for major equipment  
14 for power generation facilities, thermal testing and  
15 troubleshooting during startup with power generation  
16 facilities, being on the site to actually physically  
17 test them and troubleshoot problems with them during  
18 startup.

19 Q With Black & Veatch, did your  
20 responsibilities include building and bringing power  
21 projects on line?

22 A Yes. Only as described in my testimony as  
23 you ask and as I mentioned.

24 Q Do you have any other experience in the power  
25 industry other than with Black & Veatch and LS Power?

21

1 A No.

2 Q Have you ever been involved in resource  
3 planning for a regulated utility that has a native load  
4 and an obligation to serve?

5           A     No.

6           Q     Have you ever been involved in transmission  
7 planning for a regulated utility that has a native load  
8 and an obligation to serve?

9           A     No.

10          Q     You don't consider yourself an expert in  
11 transmission planning, correct?

12          A     No.

13          Q     You don't consider yourself an expert in  
14 resource planning for a regulated utility, correct?

15          A     No.

16                 Yes, correct, I do not consider myself an  
17 expert.

18          Q     Okay, thank you.

19                 Have you ever had a job that required you to  
20 be an expert regarding FERC orders on transmission  
21 access?

22          A     No.

23          Q     You don't consider yourself an expert  
24 regarding FERC orders on transmission access, correct?

25          A     No, I do not.

22

1           Q     When did you first learn about FPL's purchase  
2 power agreements with Southern Company about which you  
3 submitted testimony?

4           A     Six weeks ago or so.

5           Q     How did you learn about the contracts with  
6 Southern Company?

7           A     Through a regulatory news service that we  
8 subscribe to.

9           Q     Which news service is that?

10 A The Cruithards Report.  
11 Q Cruithards?  
12 A C-r-u-i-t-h-a-r-d-s, I believe.  
13 Q Did you hear about it from any other source?  
14 A It was also in the, one of the trade press,  
15 Global Power Report or Power Market Daily, maybe, one  
16 of those two. I don't recall exactly.  
17 Q Did you hear about the purchase power  
18 agreements from anyone else?  
19 A No.  
20 Q Were you contacted by FIPUG's counsel  
21 regarding the purchase power agreements?  
22 A No.  
23 Q Did you contact FIPUG's counsel?  
24 A Yes.  
25 Q Why did you contact FIPUG's counsel?

23

1 MS. KAUFMAN: At this point I'm going to  
2 object. Communications of this nature are  
3 attorney-client privileged.  
4 MS. SMITH: Are they your client?  
5 MS. KAUFMAN: I beg your pardon?  
6 MS. SMITH: Is LS Power your client?  
7 MS. KAUFMAN: You're not taking my  
8 deposition, Miss Smith.  
9 MS. SMITH: Well, you just objected on  
10 grounds of attorney-client privilege. I'm just  
11 trying to determine if the privilege is applicable  
12 here.  
13 MS. KAUFMAN: The privilege is applicable.  
14 Mr. Vogt is appearing on behalf of the Florida

15 Industrial Power Users Group as a witness.  
16 Communications between Mr. Vogt and myself as well  
17 as between FIPUG members are privileged both as  
18 attorney-client and work product.

19 BY MS. SMITH:

20 Q Mr. Vogt, you did contact counsel for FIPUG,  
21 correct?

22 A Yes.

23 Q Mr. Vogt, when did you learn about the FPSC  
24 docket where FPL is asking for approval of the PPAs  
25 with Southern Company?

24

1 A At the same time as I just previously  
2 described.

3 Q Which time? I'm not clear on which time  
4 you're talking about.

5 A Six weeks or so ago through the regulatory  
6 news service and the industry trade press that I  
7 mentioned.

8 Q So you learned from The Cruithards Report  
9 about the FPSC docket.

10 A Yes.

11 Q Six weeks ago.

12 A Roughly. I don't remember the exact date.  
13 On that order.

14 Q When did you contact counsel for FIPUG?

15 A Probably four weeks ago, five weeks. It was  
16 a week or so after we learned about it.

17 Q Who did you contact with FIPUG?

18 A Our initial contact would have been with one  
19 of Vicki's colleagues, Joe McGlothlin maybe.

20 Q Were you a client of -- was LS Power a client  
21 of the McWhirter firm before you contacted --

22 A No, we were not.

23 Q Is LS Power a client now?

24 MS. KAUFMAN: I'm going to object to further  
25 inquiry about the relationship that LS Power had

25

1 with its attorneys as privileged.

2 MS. SMITH: I think we need to establish that  
3 there's a client before the privilege attaches.

4 MS. KAUFMAN: I'm going to object to any  
5 further inquiry regarding LS Power's relationship  
6 with my firm as privileged. I don't know how much  
7 more establishment you need than that.

8 MS. SMITH: Could you please state the basis  
9 for your objection for the record?

10 MS. KAUFMAN: I think I just did.

11 MS. SMITH: Could you please state it one  
12 more time?

13 MS. KAUFMAN: Inquiry in regard to  
14 communications that LS Power has with attorneys is  
15 privileged and are attorney-client privileged.

16 MS. SMITH: But you won't affirm that they  
17 are a client.

18 MS. KAUFMAN: I beg your pardon? I'm sorry.

19 MS. SMITH: But you won't affirm that  
20 LS Power is a client of your law firm.

21 MS. KAUFMAN: I believe that information's  
22 privileged. I don't know how much more clear to  
23 make it.

24 BY MS. SMITH:



25 Q Mr. Vogt, who first contacted you about

26

1 filing testimony in this docket?

2 MS. KAUFMAN: I'm going to object. I don't  
3 think it's been established that somebody  
4 contacted Mr. Vogt about it.

5 BY MS. SMITH:

6 Q Mr. Vogt, when did you first determine that  
7 you would file testimony on behalf of FIPUG in this  
8 docket?

9 A About four weeks ago.

10 Q How did you determine that you would file  
11 testimony on behalf of FIPUG?

12 MS. KAUFMAN: I'm going to object. That is  
13 vague. And to the extent it would require him to  
14 reveal attorney-client communications, I would  
15 caution him in that regard.

16 You can go ahead and answer, if you can.

17 THE WITNESS: Would you restate the question,  
18 please?

19 BY MS. SMITH:

20 Q How did you decide to file testimony on  
21 behalf of FIPUG in this docket?

22 A Simply nothing more than our interest in  
23 supporting a robust wholesale market in the Southeast,  
24 and it appeared from conversations we had with FIPUG's  
25 attorney that that was their position as well.

27

1 Q Was it your decision at LS Power?

2 A Yes, it was.

Vogt depo transcript.10.27.04.txt  
3 You mean mine personally or LS Power's

4 decision?

5 Q I mean yours personally or was it some other  
6 management decision?

7 A Not mine personally.

8 Q Was it a management decision at LS Power?

9 A Yes.

10 Q Mr. Vogt, how did you first learn about  
11 FIPUG?

12 A When we contacted Vicki.

13 Q Who directed you or told you to contact  
14 FIPUG?

15 A Nobody.

16 You mean who directed me within the company  
17 or...

18 Q Anyone. Did anyone suggest that you contact  
19 FIPUG?

20 A No.

21 Q How did you make the decision to contact  
22 FIPUG?

23 MS. KAUFMAN: Object. I don't understand the  
24 question. I don't think he testified that he  
25 contacted FIPUG.

28

1 BY MS. SMITH:

2 Q Or FIPUG's counsel.  
3 How did you decide to contact FIPUG's  
4 counsel?

5 MS. KAUFMAN: I think this has been asked and  
6 answered, but he's welcome to answer it again.

7 THE WITNESS: We did not make a direct, I

8 don't know how do I say this, we did not directly  
9 look to contact FIPUG's counsel.

10 BY MS. SMITH:

11 Q Why did you call Joe McGlothlin?

12 MS. KAUFMAN: I'm going to object. Again,  
13 we're getting into areas of attorney-client  
14 privilege if LS has had contact with attorneys to  
15 discuss this case or anything else.

16 MS. SMITH: The privilege doesn't apply prior  
17 to the contact.

18 I'm just trying to inquire about his mental  
19 impressions and why he contacted FIPUG, Joe  
20 McGlothlin.

21 MS. KAUFMAN: It does apply if it's in  
22 furtherance of seeking advice, is my  
23 understanding.

24 MS. SMITH: I'm simply asking why he  
25 contacted Joe McGlothlin in the first place.

29

1 MS. KAUFMAN: Again, I think that has been  
2 asked and answered at least three times now, but  
3 if you can make it more clear, why don't you do  
4 so.

5 THE WITNESS: I did not directly contact  
6 them. An attorney within our firm found them and  
7 first contacted.

8 BY MS. SMITH:

9 Q Do you know why the attorney contacted  
10 them -- contacted Joe McGlothlin?

11 A I believe it was simply to gain legal  
12 understanding of the case in question.

13 Q Do you know whether anyone suggested that  
14 your attorney contact Joe McGlothlin?

15 A No, I do not.

16 Q Is your company a member of FIPUG?

17 A No, we are not.

18 Q Who at FIPUG did you talk to before you filed  
19 testimony on behalf of FIPUG in this docket?

20 MS. KAUFMAN: Excuse me. I'm going to object  
21 to vague. If you could clarify when you say "who  
22 at FIPUG."

23 BY MS. SMITH:

24 Q Anyone.

25 Did you -- which attorney at FIPUG did you

30

1 talk to, any FIPUG attorneys, before you filed  
2 testimony on behalf of FIPUG in this docket?

3 MS. KAUFMAN: So your question is did he  
4 contact any FIPUG attorney?

5 BY MS. SMITH:

6 Q Did you talk to any FIPUG attorneys before  
7 you filed testimony on behalf of FIPUG in this docket?

8 A Yes.

9 Q Who did you talk to?

10 A Vicki Kaufman.

11 Q Anyone else?

12 A No.

13 Q Did you talk to any of the members of FIPUG  
14 before you filed testimony on behalf of FIPUG in this  
15 docket?

16 A No.

17 Q Did you visit any members' sites or places of

18 business before you filed testimony on behalf of FIPUG  
19 in this docket?

20 A No.

21 Q Do you know who any members of FIPUG are?

22 A Just a couple. I believe Anheuser-Busch is  
23 one and IMC. Those are the only two that come to mind.

24 Q When did you learn that?

25 A Following initial discussions with Vicki.

31

1 Only as a general reference.

2 Q Who reviewed and approved the testimony you  
3 submitted on behalf of FIPUG in this docket?

4 A That's two questions.

5 Who reviewed it would be Frank Hardenbergh,  
6 our chief operating officer, Larry Willick, and these  
7 people are employees of LS Power Development, Larry  
8 Willick who's a director of business development,  
9 Robert Collozza who's an associate project manager,  
10 Vicki Kaufman.

11 Q Anyone else on reviewing?

12 A Just a minute.

13 I believe FIPUG generally reviewed the  
14 testimony.

15 Q When you say "FIPUG," who do you mean?

16 A All I know is that counsel for FIPUG said it  
17 was reviewed and approved by them. That's as much as I  
18 know.

19 Q To your knowledge, who approved the testimony  
20 you submitted on behalf of FIPUG in this docket?

21 A I do not know.

22 Q Do you know any members of FIPUG who are FPL

23 customers?

24 A No, I do not.

25 Q So you didn't speak with any members of

32

1 FIPUG, only FIPUG's counsel before you filed testimony

2 on FIPUG's behalf; is that correct?

3 A Yes.

4 Q How do you know your testimony represents

5 FIPUG's view if you only spoke to counsel?

6 A Simply by reviewing their kind of mission  
7 statement or their views that are published in a white  
8 paper.

9 Q A FIPUG white paper?

10 A Yes.

11 Q Is FIPUG compensating you for your testimony  
12 in this docket?

13 MS. KAUFMAN: I'm going to object.

14 MS. SMITH: On what grounds?

15 MS. KAUFMAN: I think there was extended  
16 discussion about this yesterday, and any inquiry  
17 into compensation and those areas is privileged.

18 MS. SMITH: In fact, Joe McGlothlin did  
19 object to this question and then reviewed his --  
20 excuse me, he withdrew his objection to this  
21 question.

22 MS. KAUFMAN: Okay. Ask the question again,  
23 Natalie. I'm sorry, I might have jumped the gun  
24 there.

25 MS. SMITH: Okay.

33

1 BY MS. SMITH:

2 Q Is FIPUG compensating you, Mr. Vogt, for your  
3 testimony in this docket?

4 A No.

5 Q So you're not receiving any compensation for  
6 your participation in this docket.

7 A No, I am not.

8 Q Is LS Power being compensated for its  
9 participation in this docket?

10 A No, they are not.

11 Q Is your company compensating FIPUG or its  
12 counsel for its participation in docket 040001-EI?

13 MS. KAUFMAN: I'm sorry, I was shuffling my  
14 papers. Could you ask that again? I apologize.

15 BY MS. SMITH:

16 Q Is your company compensating FIPUG or its  
17 counsel for its participation in this docket?

18 MS. KAUFMAN: Now I am going to object to  
19 that question, Natalie, on the basis that that  
20 information is privileged and that the Commission  
21 has ruled in other dockets that inquiries into  
22 that kind of compensation are outside the scope of  
23 discovery.

24 MS. SMITH: And we are going to on the same  
25 grounds that we did yesterday move to compel

34

1 Mr. Vogt's response to this question. We believe  
2 that it is directly relevant. And I don't know  
3 that you've stated the grounds for asserting  
4 attorney-client privilege here.

5 MS. KAUFMAN: Well, if you want me to, I'll  
6 be happy to quote the Commission, what the

7 Commission has said about it, if I can find it.

8 MS. SMITH: If we can, we may want to save  
9 that.

10 I think that this and a few other questions  
11 that I'm about to ask may be covered by the motion  
12 to compel that we're planning to file tomorrow,  
13 and if it's Cochran's will, we could save these  
14 arguments for the motion to compel that we're  
15 filing tomorrow.

16 MS. KAUFMAN: That's fine.

17 MS. SMITH: Cochran, do you want to make a  
18 recommendation here?

19 MR. KEATING: My will's always we don't have  
20 any arguments to resolve.

21 MS. KAUFMAN: I agree with you.

22 MR. KEATING: But I would agree that since  
23 we're going to be addressing essentially the same  
24 issue at yesterday's -- Vicki, I don't know if Joe  
25 informed you, but what the pre-hearing officer's

35

1 suggested was that to resolve the issue quickly,  
2 that both sides provide a filing in support of  
3 their position by close of business tomorrow.

4 That's something that both sides agreed to  
5 yesterday.

6 As the issues are the same, it may be  
7 something that can be covered -- we can cover both  
8 yesterday and today's deposition in that filing.

9 MS. KAUFMAN: That's fine with me.

10 I do understand the line of inquiry to be the  
11 same as what was discussed at some length



12 yesterday. So if we can save time and submit the  
13 memos tomorrow, that's fine with me.

14 MR. KEATING: Okay, thank you.

15 MS. SMITH: And FPL will do that as well.

16 I would ask that the record of this  
17 deposition be held open for the purpose of  
18 pursuing this line of inquiry to the extent the  
19 Commission decides that we should be able to ask  
20 these questions of Mr. Vogt and Mr. Knauth.

21 MS. KAUFMAN: I'm certainly not going to  
22 agree to that now, but you can make the request.

23 MS. SMITH: I'd like to ask the additional  
24 questions so we can get them on the record. And  
25 to the extent Mr. Vogt is able to answer these

36

1 questions, FPL would appreciate it. But if not,  
2 we'll also pursue these in the motion to compel  
3 we'll file tomorrow.

4 MS. KAUFMAN: Can we just go off the record  
5 for one second?

6 MS. SMITH: Um-hum.

7 MS. KAUFMAN: I'm just a little confused, and  
8 I just want to get this clarified, if that's okay.

9 MS. SMITH: Sure.

10 (Discussion held off the record.)

11 BY MS. SMITH:

12 Q All right, back on the record.

13 I'm now going to proceed with asking a few  
14 questions on the record again related to the  
15 compensation issue.

16 what is the compensation arrangement between  
Page 30

17 LS Power and FIPUG, if any?

18 MS. KAUFMAN: Object to that as beyond the  
19 scope of discovery and privileged.

20 BY MS. SMITH:

21 Q Will you respond, Mr. Vogt?

22 MS. KAUFMAN: I'm directing him not to  
23 respond.

24 BY MS. SMITH:

25 Q Mr. Vogt?

37

1 A I've been directed by my attorney not to  
2 respond.

3 Q Okay. To your knowledge, is there any sort  
4 of contingency fee arrangement regarding FIPUG's  
5 participation in this docket?

6 MS. KAUFMAN: Again, I would object and I  
7 would instruct Mr. Vogt not to respond.

8 BY MS. SMITH:

9 Q Do you know whether LS Power's a client of  
10 the McWhirter Reeves law firm?

11 MS. KAUFMAN: Again, I would object and I  
12 would instruct him not to respond, same basis we  
13 discussed.

14 BY MS. SMITH:

15 Q Do you know whether Northern Star Generation  
16 is a client of the McWhirter Reeves law firm?

17 MS. KAUFMAN: I again would object on the  
18 same basis, to the extent he knows.

19 BY MS. SMITH:

20 Q Is your company a member of any industry  
21 trade association?

22 A Any industry trade association?  
23 Q Any involved in Florida. I'd limit it to  
24 that.  
25 A No.

38

1 Q So your company's not a member of any  
2 industry trade association involved in Florida.

3 A That's correct.

4 Q Is there any sort of retainer agreement or  
5 contract between LS Power and FIPUG related to your  
6 filing testimony in this docket?

7 MS. KAUFMAN: Object. Beyond the scope of  
8 discovery and privileged.

9 MS. SMITH: On what grounds is it beyond the  
10 scope of discovery? I think it's reasonably  
11 calculated to lead to the discovery of admissible  
12 evidence.

13 MS. KAUFMAN: Well, if I understood the  
14 question, and maybe I didn't, if you want to  
15 restate it, but I thought that it went back to  
16 this issue of litigation funding.

17 Did I misunderstand?

18 MS. SMITH: It could, but not necessarily.

19 MS. KAUFMAN: Why don't you, if you wouldn't  
20 mind re-asking it, I'll listen more closely and  
21 then decide if I need to object.

22 BY MS. SMITH:

23 Q To your knowledge, is there any sort of  
24 retainer agreement or contract between LS Power and  
25 FIPUG related to your filing testimony in this docket?

39

1 MS. KAUFMAN: I would maintain my objection.

2 BY MS. SMITH:

3 Q Mr. Vogt, have you been retained by anyone in  
4 this docket to file testimony?

5 MS. KAUFMAN: I'm going to object to the  
6 vagueness of the word "retained."

7 BY MS. SMITH:

8 Q Has anyone entered into a contract with you,  
9 Mr. Vogt, to appear as a witness in this docket?

10 A No.

11 Q On page 2 of your testimony, you state that  
12 FIPUG is a, quote, ad hoc group of industrial  
13 customers, correct?

14 MS. KAUFMAN: Can you direct us to a line?

15 MS. SMITH: I can.

16 THE WITNESS: All right.

17 BY MS. SMITH:

18 Q It is line 18.

19 A which page again? I'm sorry, I...

20 Q Page 2, line 18.

21 A Okay.

22 Q You state that FIPUG is an ad hoc group of  
23 industrial customers, correct?

24 A Yes.

25 Q what do you mean by "ad hoc group"?

40

1 A Simply a group that is banded together.

2 Q what do you mean by "banded together"?

3 A You know, I don't know exactly what the  
4 nature of the relationship is between the members

5 I'm using that term simply in my own way to  
6 describe what I know of them.

7 Q Um-hum.

8 On page 2 of your testimony, you state that  
9 it is your understanding that the FIPUG group actively  
10 supports the competitive wholesale market for power; is  
11 that correct?

12 A Yes.

13 Q what is your understanding based on?

14 A The white paper that I referenced previously  
15 in my testimony.

16 Q who gave you the white paper?

17 A Vicki Kaufman.

18 Q Is it based on anything else? Your  
19 understanding, is it based on anything else?

20 A No.

21 Q On page 3 of your testimony, you state that  
22 you further understand that FIPUG also strongly  
23 supports the Florida Public Service Commission's  
24 mission statement.

25 what did you mean by "strongly supports"?

41

1 A Again, from the white paper, they described  
2 that they do.

3 Q So it's not your personal understanding,  
4 correct?

5 A That's correct. Only from reviewing the  
6 white paper.

7 Q Do you know the citation to Florida's bid  
8 rule?

9 A I'm sorry? I did not understand the

10 question -- or did not hear the question.  
11 Q Do you know the citation to Florida's bid  
12 rule?  
13 A I don't recall it exactly, no.  
14 Q Did you read the bid rule before filing your  
15 testimony?  
16 A Yes.  
17 Q When did you read it?  
18 A Immediately before.  
19 Q Who gave it to you?  
20 A Vicki Kaufman.  
21 Q When you say "immediately before," what do  
22 you mean?  
23 A You know, the day it was filed.  
24 Q Had you ever read it before that day?  
25 A No.

42

1 Q What did you review in order to prepare your  
2 testimony?  
3 A The documents listed in my testimony.  
4 Q Did you review anything else?  
5 A No.  
6 Q And for the record, the documents listed in  
7 your testimony are -- could you read that for us,  
8 page 4?  
9 A The testimony of Tom Hartman of FPL in  
10 Exhibits TLH-1 through TLH-6 dated September 9th,  
11 2004 filed in this docket, direct testimony of  
12 Samuel S. Waters of Progress Energy dated  
13 September 9th, 2004 filed in this docket.  
14 Q Did you review anything else?

Vogt depo transcript.10.27.04.txt  
15 A No, I did not.  
16 Q Did you review the purchase power agreements  
17 between FPL and Southern Company before you filed your  
18 testimony?  
19 A They are contained in Exhibits TLH-1 through  
20 TLH-3, so yes.  
21 Q Are you familiar with the competitive power  
22 lobbying group in Florida known as PACE?  
23 A I am familiar with them, yes.  
24 Q Is your company a member of PACE?  
25 A No, we are not.

43

1 Q Did any member of PACE contact you regarding  
2 FPL's PPAS with Southern Company?  
3 A No, they did not.  
4 Q Have you contacted any member of PACE  
5 regarding the PPAS?  
6 MS. KAUFMAN: I'm going to object to the  
7 extent I'm not sure that Mr. Vogt knows who the  
8 members are.  
9 BY MS. SMITH:  
10 Q Do you know the members of PACE?  
11 A I believe I know a few of them. I believe  
12 Calpine, Constellation, Mirant, I believe Competitive  
13 Power Ventures maybe. Those are the only ones I can  
14 recall.  
15 Q Did you contact anyone with any of those  
16 companies regarding the PPAS with Southern Company?  
17 A Yes.  
18 Q Who did you contact?  
19 A Joe Regnery with Calpine.

Vogt depo transcript.10.27.04.txt  
20 Q When did you contact him?  
21 A About five weeks ago.  
22 Q Why did you contact him?  
23 A To gain a general understanding of what he  
24 knew about the contracts that were up for approval.  
25 Q What did Joe Regnery tell you?

44

1 A That they were up for approval as part of  
2 this docket.  
3 Q Did he suggest -- did Joe Regnery suggest  
4 that LS Power get involved in this docket?  
5 A No, he did not.  
6 Q Did he suggest that you contact anyone  
7 regarding this docket?  
8 A No, he did not.  
9 Q Did he make any suggestions to you regarding  
10 this docket?  
11 A No.  
12 Q Have you spoken with Joe Regnery since then?  
13 A No, I have not.  
14 Q Did you speak with any other members of PACE  
15 regarding this docket?  
16 A A member of Constellation Energy.  
17 Q Who did you speak with at Constellation  
18 Energy?  
19 A I don't remember the person's name. He was,  
20 he was involved in I think power marketing.  
21 Q What did you talk about?  
22 A His, his understanding of these contracts  
23 that were up for approval in this docket.  
24 Q When did you speak with him?



25 A About the same time, five weeks, four or five

45

1 weeks ago.

2 Q Did you speak with Constellation prior to  
3 contacting FIPUG's counsel?

4 A I believe, yes. I don't recall exactly. But  
5 I believe, yes.

6 Q Did they suggest that you contact FIPUG's  
7 counsel?

8 A No.

9 Q Did they suggest that you get involved in  
10 this docket?

11 A No.

12 Q Did you ask Constellation whether they were  
13 going to get involved in this docket?

14 A Yes.

15 Q what did they say?

16 A No.

17 Q Did you ask Joe Regnery whether he was going  
18 to get involved in this docket?

19 A Yes.

20 Q what did he say?

21 A I don't believe he told us.

22 Q Did he say anything?

23 MS. KAUFMAN: I'm going to object. That's  
24 very vague.

25 BY MS. SMITH:

46

1 Q Did Joe Regnery say anything about whether  
2 they were going to get involved in this docket?

3 A I don't recall him specifically saying one

4 way or another what they were going to do.

5 Q But he said they were considering it?

6 A Again, I don't recall him saying anything  
7 specifically about what he intended to do with this  
8 case.

9 Q Did you speak with any other members of PACE  
10 besides Calpine and Constellation Energy?

11 A I'm sorry, the phone cut out there. Could  
12 you restate the question?

13 Q Did you speak with any other members of PACE  
14 regarding this docket besides Joe Regnery of Calpine  
15 and Constellation Energy?

16 A No.

17 Q Has any representative of PACE contacted you  
18 regarding FPL's PPAs with Southern Company?

19 A No.

20 Q Do you know Jon Moyle?

21 A Yes.

22 Q Have you spoken with or corresponded with Jon  
23 Moyle about this docket?

24 A No.

25 Q How do you know Jon Moyle?

47

1 A Yesterday he was on the phone.

2 Q Did you know him prior to yesterday?

3 A I did not know him prior to yesterday.

4 Q Do you know him since yesterday?

5 A As I've just described.

6 Q Okay.

7 A And maybe I should.

8 MR. MOYLE: Not much of a relationship.  
Page 39

9 MS. KAUFMAN: These long-distance things  
10 never work.  
11 THE WITNESS: Yeah.  
12 I'm sorry, but a little levity never hurts, I  
13 suppose.  
14 BY MS. SMITH:  
15 Q Do you know Schef wright?  
16 A No.  
17 Q Do you know Mike Green?  
18 A No.  
19 Q Have you spoken with anyone other than Joe  
20 Regnery of Calpine, other than Joe Regnery that is  
21 employed by Calpine regarding FPL's PPAS with Southern  
22 Company?  
23 A When we talked to Joe, there was another  
24 person on the phone that connected us to him, but I do  
25 not recall his name.

48

1 Q Do you know what type of person, what type of  
2 employee it was? Was it an attorney?  
3 A I do not recall. I do not recall.  
4 Q Have you spoken with anyone other than  
5 FIPUG's attorney in this matter about this docket?  
6 A No, I did not.  
7 Q No one other than Joe Regnery and the  
8 Constellation Energy person?  
9 A I have not spoken with anybody other than  
10 those two people.  
11 Q Have you ever testified or submitted  
12 testimony before a state Public Service Commission or  
13 Public Utility Commission before?

14 A I have never testified or given testimony  
15 before a state Public Service Commission before.

16 what was the other entity?

17 Q well, Public Service Commission or some  
18 states call them Public Utility Commissions.

19 A No.

20 Q Have you ever testified or submitted  
21 testimony before any court of law or administrative  
22 forum in the past?

23 A One time I gave testimony to a South Carolina  
24 House subcommittee on merchant energy facilities.

25 Q when did you do that?

49

1 A Summer of 2002.

2 Q what was the nature of what you testified on?

3 A Nature of what I testified on was the  
4 importance of merchant generator -- generating  
5 facilities to a state; in that case, South Carolina.

6 Q Have you ever testified before FERC?

7 A No.

8 MS. SMITH: That's all I have.

9 MS. KAUFMAN: Does the staff or anyone else  
10 have any questions?

11 MR. KEATING: Staff has no questions.

12 MR. MOYLE: This is Jon Moyle. I have no  
13 questions.

14 MS. KAUFMAN: well, then I take that to mean  
15 that we're concluded.

16 THE COURT REPORTER: Read or waive?

17 MS. KAUFMAN: Absolutely, he would like to  
18 read and sign, yes.

Vogt depo transcript.10.27.04.txt

19 THE COURT REPORTER: Should I type this?  
20 MS. SMITH: Yes.  
21 THE COURT REPORTER: Vicki, would you like a  
22 copy?  
23 MS. KAUFMAN: I'm sorry, I'm having a hard  
24 time hearing.  
25 Yes, I would, please.

50

1 THE COURT REPORTER: Mr. Keating?  
2 MR. KEATING: Yes, just as yesterday, I will  
3 have our court reporters contact you to order a  
4 copy.  
5 THE COURT REPORTER: Thank you.  
6 Mr. Moyle?  
7 MR. MOYLE: Not at this time.  
8  
9 (Deposition Exhibit No. 1 marked for  
10 identification.)  
11  
12 (Witness excused.)  
13 (Thereupon, the deposition was adjourned at  
14 12:10 p.m.)  
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C E R T I F I C A T E

THE STATE OF FLORIDA)  
COUNTY OF PALM BEACH)

I, Marianne Martini Holmes, Registered Professional Reporter, State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 27th day of October, 2004.

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Marianne Martini Holmes, RPR  
in and for the State of Florida  
My Commission Expires: 6-31-05  
My Commission No.: DD042489

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1 DATE: October 27, 2004

2 TO: Vogt depo transcript.10.27.04.txt  
Mr. Michael F. Vogt  
3 c/o Vicki Kaufman, Esquire  
McWhirter, Reeves, MCGlothlin,  
4 Davidson, et al.  
400 North Tampa Street, Suite 2450  
5 Tampa, Florida 33602

6 IN RE: Fuel and Purchased Power Cost Recovery Clause  
and Generating Performance Incentive Factor

7 Please take notice that on Wednesday, the  
8 27th day of October, 2004, you gave your deposition  
in the above referred matter. At that time, you did  
9 not waive signature. It is now necessary that you  
read and sign your deposition.

10 As previously agreed to, the transcript  
will be furnished to you through your counsel.  
Please read the following instructions carefully:

11 At the end of the transcript you will find  
an errata sheet. As you read your deposition, any  
12 changes or corrections that you wish to make should  
be noted on the errata sheet, citing page and line  
13 number of said change. DO NOT write on the  
transcript itself. Once you have read the  
14 transcript and noted any changes, be sure to sign  
and date the errata sheet and return these pages to  
15 your counsel.

16 If you do not read and sign the deposition  
within a reasonable time, the original, which has  
17 already been forwarded to the ordering attorneys,  
may be filed with the court. If you wish to waive  
your signature, sign your name in the blank at the  
18 bottom of this letter and return it to your counsel.

19 Very truly yours,  
20 MARIANNE MARTINI HOLMES, RPR  
ESQUIRE DEPOSITION SERVICES  
515 Flagler Drive  
21 Suite 200-The Pavilion  
West Palm Beach, Florida 33401

22 I do hereby waive my signature:

23 \_\_\_\_\_  
24 MICHAEL F. VOGT

25 cc via transcript: Natalie F. Smith, Esquire

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C E R T I F I C A T E

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THE STATE OF FLORIDA)

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COUNTY OF PALM BEACH

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I hereby certify that I have read the

Vogt depo transcript.10.27.04.txt  
7 foregoing deposition by me given, and that the  
8 statements contained herein are true and correct to the  
9 best of my knowledge and belief, with the exception of  
10 any corrections or notations made on the errata sheet,  
11 if one was executed.

12 Dated this \_\_\_\_ day of \_\_\_\_\_,  
13 2004.

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18 MICHAEL F. VOGT

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1 E R R A T A S H E E T

2 IN RE: Fuel and Purchased Power Cost Recovery  
3 Clause and Generating Performance Incentive  
Factor

4 DEPOSITION OF: Michael F. Vogt

5 TAKEN: October 27, 2004

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7 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

8 PAGE # LINE # CHANGE REASON

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18 Please forward the original signed errata sheet to  
19 this office so that copies may be distributed to all  
parties.

20 Under penalty of perjury, I declare that I have read  
21 my deposition and that it is true and correct  
subject to any changes in form or substance entered  
here.

22 DATE: \_\_\_\_\_

23 SIGNATURE OF

24 DEPONENT: \_\_\_\_\_ MMH

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