

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060426-EI

In the Matter of:

PETITION FOR EXEMPTION UNDER RULE
25-22.082(18), F.A.C., FROM ISSUING
REQUEST FOR PROPOSALS (RFPs), BY
FLORIDA POWER & LIGHT COMPANY.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 9

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER ISILIO ARRIAGA
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. TEW

DATE: Tuesday, August 29, 2006

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

REPORTED BY: JANE FAUROT, RPR
 Official Commission Reporter
 (850) 413-6732

1 PARTICIPATING:

2 TIMOTHY J. PERRY, ESQUIRE, representing Florida
3 Industrial Power Users Group.

4 CHARLIE BECK, ESQUIRE, representing the Citizens of
5 the State of Florida.

6 SUSAN F. CLARK, ESQUIRE, representing Florida Power &
7 Light Company.

8 SUSAN GLICKMAN, representing Natural Resources
9 Defense Council.

10 COCHRAN KEATING, ESQUIRE, and TOM BALLINGER,
11 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We'll go back on the record, and we
3 are on Item 9.

4 MR. BALLINGER: Good afternoon, Commissioners.

5 Item 9 is staff's recommendation on Florida Power and
6 Light Company's petition for exemption from the RFP
7 requirements for its planned advanced coal technology units
8 with estimated in-service dates of 2012 and 2013.

9 Staff is recommending approval of the exemption
10 limited to May 1st, 2007. Staff believes that removing the RFP
11 requirement will allow FPL to remain on schedule to install the
12 plants, which will enhance fuel diversity and reliability for
13 its customers. If FPL does not remain on schedule, mainly
14 their only option will be to add additional natural gas
15 capacity. And if FPL continues to add natural gas capacity, by
16 2015 FPL will serve its load with over 73 percent natural
17 gas-fired generation capacity. Staff is concerned about the
18 risk this would place on FPL's customers due to the volatility
19 of natural gas prices.

20 Staff would like to emphasize that the exemption from
21 the RFP requirement is not an approval of the proposed plants.
22 That will be the subject of a future need determination
23 proceeding. It does not remove FPL's burden to prove that the
24 proposed coal units are the best options for its ratepayers.
25 Again, that will be at a future need determination proceeding.

1 There are several parties here to speak today, and
2 staff is available for any questions.

3 CHAIRMAN EDGAR: Thank you.

4 Ms. Clark.

5 MS. CLARK: Thank you, Madam Chairman. My name is
6 Susan Clark. I am here today on behalf of FP&L. I am with the
7 law firm of Radey, Thomas, Yon and Clark, and our address is
8 301 South Bronough Street, Suite 200, Tallahassee, Florida
9 32301.

10 FPL supports your staff's recommendation to grant the
11 petition for exemption from the bid rule requirement to issue
12 an RFP for the coal plant FPL proposes to build. Granting the
13 exemption will expedite the realization of the benefits of the
14 advanced coal technology FPL is proposing to build. Those
15 benefits include enhancing system reliability by increasing
16 diversity and generation technology, fuel sourcing and fuel
17 delivery, and reducing the effect of future natural gas price
18 spikes by slowing the increase in the use of natural gas in
19 electric generation and substituting a fuel with low price
20 volatility.

21 This Commission, the Governor, and the state
22 legislature have all recognized that fuel diversity is an
23 important part of the state's energy future. Indeed, as a
24 result of legislative action this past session, the need for
25 fuel diversity and supply is a factor that must be considered

1 in need determinations.

2 You will recall that as part of the stipulation that
3 you approved in the West County Need Case, FPL committed to
4 filing a request for exemption from the bid rule by June 2nd,
5 2006. We complied with that commitment by filing this petition
6 on May 26th, 2006. The exemption requested is for a project
7 consisting of two advanced technology super-critical pulverized
8 coal units. The specific size of the units will be determined
9 based on optimizing the units' output and economics, thereby
10 maximizing the benefits to customers of the economies of scale
11 available from this technology.

12 FP&L has identified the need for new generation in
13 2012/2013, and the proposed units are the best alternatives
14 available to meet that need. This exemption will help FPL add
15 the two coal units at least six months, and I say at least six
16 months earlier than if an RFP is required. And granting the
17 exemption for both units together, as recommended by your
18 staff, will save from 400 to \$600 million relative to a
19 one-unit exemption. These savings result from a second unit
20 being developed in tandem with the first, thus providing
21 substantial synergies in planning, permitting, contracting,
22 procuring equipment, and constructing the two units together.

23 This exemption will help expedite the in-service date
24 of the two units, and result in customers realizing the
25 benefits of diversity in generation technologies and diversity

1 in fuel supply sooner than if an RFP is required. This earlier
2 realization of benefits from the proposed coal technology
3 exists irrespective of when FPL files the need determination.
4 However, as provided in your staff recommendation, FPL will
5 file that need determination petition by May 1st, 2007.

6 I have described to you what FPL is seeking approval
7 of, but I think it is equally important to describe what FPL is
8 not seeking, and your staff has just touched on this. FPL is
9 not seeking to be excused from its obligation to demonstrate
10 the need for the project and commits to providing all
11 information necessary to prove to the Commission's satisfaction
12 that the project meets the requirements for the finding of
13 need. FPL will be required to, and it is prepared to, provide
14 the evidence that the proposed plant is the best alternative
15 available to meet this need.

16 We respectfully request that you grant the petition
17 for an exemption from the bid rule for issuing an RFP. I would
18 like to reserve some time to respond to the other parties'
19 presentations.

20 Thank you, Madam Chairman.

21 CHAIRMAN EDGAR: Thank you, Ms. Clark.

22 MR. PERRY: Good afternoon, Commissioners. My name
23 is Timothy Perry of the McWhirter, Reeves, and Davidson law
24 firm, and I am appearing today on behalf of the Florida
25 Industrial Power Users Group, FIPUG.

1 Your vote today will decide whether you approve
2 FPL's request for an exemption from the Commission's bid rule,
3 which would otherwise require FPL to issue a request for
4 proposals in connection with FPL's proposed advanced technology
5 coal project. The bid rule is an important tool in ensuring
6 that a public utility's selection of a proposed generation
7 addition is the most cost-effective alternative available
8 through the use of an RFP process.

9 FIPUG supports a limited exemption from the RFP
10 process for FPL's two proposed coal plants, provided that
11 adequate protections for consumers are put in place during the
12 need determination process and beyond. These include, one,
13 ordering the appointment of an independent evaluator to oversee
14 the costs of the plant during the need determination proceeding
15 and beyond; two, ordering FPL to file detailed information
16 about the plant concurrent with its petition for determination
17 of need; three, clarifying that any bid rule exemption is
18 limited to FPL's petition only; and four, clarifying that the
19 Commission is supportive of other types of advanced coal
20 technology, such as IGCC.

21 However, FIPUG does not support staff's
22 recommendation at this time. In our opinion, it does not go
23 far enough to protect ratepayers. Staff's recommendation
24 adequately addresses only one of FIPUG's four concerns. FIPUG
25 believes that the staff recommendation, along with FPL's

1 response to FIPUG's petition to intervene, adequately addresses
2 FIPUG's concern that any exemption granted by the Commission
3 would be limited to FPL's petition only and will not foreclose
4 the application of the Bid Rule in future need determinations.

5 However, the staff recommendation does not fully
6 address FIPUG's other concerns related to the need for an
7 independent evaluator, the need for adequate information upon
8 the filing of FPL's need termination petition, and a
9 clarification regarding the consideration of other types of
10 advanced coal projects in future need determination
11 proceedings.

12 I will address the issue of the independent evaluator
13 at this time. FPL's proposed coal plants will be the first of
14 their type to be brought before the Commission by an
15 investor-owned utility, the first investor-owned utility
16 proposed coal plant in a decade, and if FPL's petition is
17 granted, these plants will not be selected through a
18 competitive RFP process.

19 FPL's justification for waiving the Bid Rule is based
20 in part upon the proposition that we are dealing with new
21 technology that does not lend itself to competitive bidding
22 because, in the words of FPL, there are few qualified entities
23 capable of undertaking such a project; that is, bidders don't
24 know enough about the cost to bid intelligently.

25 This is the precise reason that FIPUG suggests that

1 an independent evaluator familiar with the technology is
2 needed. Like potential competitive bidders, your fine staff
3 has a high degree of competence in its ability to evaluate
4 existing power plants. But as far as we know, it hasn't had
5 oversight over the innovations in clean coal technology, nor
6 has it been schooled in the nuances of this evolving
7 technology.

8 In addition, FIPUG's request that the Commission
9 appoint an independent evaluator is rooted in the Commission's
10 policy that a finding of need is also a finding of prudence for
11 cost-recovery purposes. Therefore, a utility is given the
12 opportunity to recover the cost of a plant absent some
13 intervening changed circumstances. This determination is made
14 during an expedited hearing time frame of only 135 days from
15 start to finish. Were this not the case, we wouldn't be here
16 today with this request.

17 The problem we face on behalf of consumers is that if
18 at the expedited need hearings the FPL cost estimate is
19 accepted, it becomes almost certain that the plant will go into
20 the rate base at this price, approximately \$2 billion, with
21 little or no post-construction prudence evaluation. These are
22 rough estimates, but we calculate that this would result in a
23 yearly rate increase of \$400 million or more.

24 This is not the type of rate increase that should be
25 approved in an expedited hearing on the basis of nothing more

1 than estimates. FIPUG is concerned about the policy of using a
2 preliminary cost estimate as the basis for rate base approval,
3 but when this policy is burdened with an expedited hearing
4 process on top of a bid rule exemption, the circumstances cry
5 out for careful review before, during, and after construction
6 is complete.

7 FIPUG believes that given these circumstances it is
8 in the public interest to involve an independent evaluator to
9 review the cost of FPL's proposed plant during the need
10 determination process and during construction in order to
11 ensure that the costs to be borne by ratepayers are
12 appropriate.

13 FIPUG would suggest that an appropriate choice as an
14 independent evaluator would be an engineering firm that has
15 experience evaluating the cost of plants similar to FPL's
16 proposed plants. Such evaluations are commonly performed by
17 engineering firms on behalf of lending institutions to ensure
18 that power plant construction costs are reasonable.

19 The cost of the IOU plants approved by the Commission
20 over the last decade have not required review by an independent
21 evaluator because they were vetted by the RFP process set forth
22 in the Commission's Bid Rule and they utilized mature natural
23 gas technologies whose costs are readily known by the
24 Commission staff and intervenors. Moreover, the cost of such
25 plants was less capital intensive than FPL's proposed coal

1 projects. As a result, there was a greater certainty that the
2 reasonable cost of such plants could be established through the
3 typical ratemaking process.

4 In lieu of an independent evaluator reporting to you
5 from time to time as to his or her observations during the
6 six-year construction process, FIPUG would suggest in the
7 alternative that the Commission include as part of its order in
8 this proceeding an explicit statement that approval of the
9 plant and the expedited need evaluation process will in no way
10 inhibit this Commission nor any succeeding Commission from
11 conducting a thorough post-construction prudence evaluation
12 before the \$2 billion plant is accepted into rates. The bottom
13 line, if FPL is to receive the benefit of a bid rule exemption
14 on the front end of the process, then ratepayers should receive
15 the benefit of additional rate review at the end of the
16 process.

17 Another of FIPUG's concerns is the need for adequate
18 information to be filed with the Commission concurrent with
19 FPL's need determination filing. If the Commission grants FPL
20 an exemption from the Bid Rule, the Commission should take
21 steps to ensure that all parties receive adequate information
22 to properly investigate the cost of FPL's proposed coal plants.
23 At a minimum, FPL should be required to provide the same
24 information it would be required to disclose if the plants were
25 put out to bid.

1 The Bid Rule provides for the disclosure of
2 significant, specific cost information that goes above and
3 beyond what is required to be disclosed as part of a need
4 determination petition. For example, the Bid Rule requires the
5 utility to provide detailed technical information about the
6 utility's proposed plant, including the financial assumptions
7 and parameters associated with the plant. In contrast, the
8 rules related to need determinations require the disclosure of
9 only general details about the projects and require the utility
10 to merely approximate the cost of the proposed plant.

11 The problem of the lack of information as a result of
12 an exemption is compounded by, in this case, by the fact that
13 advanced technology like the technology to be employed by FPL
14 by its nature will include costs that are new and not commonly
15 understood.

16 In the absence of the RFP process, public interest
17 would be well served if the Commission, as a condition to
18 granting FPL's exemption, required detailed information about
19 the plant, including detailed cost estimates to be filed
20 concurrent with FPL's need determination petition. Such
21 information is required if the Commission, an independent
22 evaluator, and intervenors are to fill the void left by the RFP
23 exemption and address the reasonableness of the cost of the
24 proposed plants within the 90-day statutory hearing window and
25 the 135-day full hearing process.

1 Finally, FIPUG would like the Commission to reserve
2 its power to evaluate and approve in future proceedings an
3 advanced technology coal project that may differ in the type
4 from the plant proposed by FPL. Specifically, FIPUG would like
5 the Commission to clarify that the granting of FPL's petition
6 is not an expression of preference for one type of advanced
7 coal plant over another. Such a clarification would leave the
8 marketplace open to compete for the addition of future coal
9 generation capacity using different technologies, such as IGCC.

10 Thank you, and I'm more than happy to answer any
11 questions you may have.

12 CHAIRMAN EDGAR: Mr. Perry, I know I have a couple of
13 questions, and I suspect my colleagues might, as well. But I
14 think what we will do for consistency is go on down the line
15 and hear from each of you and then come back, if it's all
16 right, for questions and discussion.

17 Mr. Beck.

18 MR. BECK: Thank you, Madam Chairman. Charlie Beck
19 with the Office of Public Counsel.

20 I simply wanted to share with you today,
21 Commissioners, that we support the comments of FIPUG and share
22 their concerns. So we are here in support of what they have
23 told you today.

24 Thank you.

25 CHAIRMAN EDGAR: Thank you.

1 Ms. Glickman.

2 MS. GLICKMAN: Hi. Good afternoon, Commissioners.
3 My name is Susan Glickman, and I'm with the Natural Resources
4 Defense Council.

5 The request for a proposal process required by
6 Florida Administrative Code Rule 25-22.082 serves a vital
7 function in the power plant approval process. As Florida
8 regulations themselves express, the use of a request for
9 proposals process is an appropriate means to ensure that a
10 public utility's selection of a proposed generation addition is
11 the most cost-effective alternative available. This
12 requirement is appropriate for every power plant proposal in
13 order to ensure that each individual plant provides the
14 electric generation capacity where it is needed in a manner
15 that is truly most cost-effective, taking into consideration
16 all the relevant case-specific factors, the changing
17 characteristics of the power industry and new technological
18 advances.

19 Approving what amounts to an exclusive no-bid
20 contract for electric power generation is fundamentally
21 contrary to the public interest that the Public Service
22 Commission exists to serve. This approach undermines the
23 regulatory mechanism that the state relies upon to ensure the
24 competitiveness of its electricity pricing and the tool that
25 otherwise ensures that power generation projects accurately

1 reflect market conditions.

2 As I will discuss in more detail, in this case the
3 cost-effectiveness of coal generated electricity for any
4 proposed plant will be heavily influenced by the regulation of
5 carbon emissions, which are most universally recognized as
6 imminent. Moreover, because the regulatory and technological
7 landscape is changing and will continue to change rapidly, an
8 RFP for every individual plant proposal is more important than
9 ever.

10 On July 17th at your Internal Affairs meeting, Dan
11 Lashoff (phonetic), who is the science director of the Natural
12 Resources Defense Council, the organization that I represent,
13 presented to you all the financial risks associated with carbon
14 emissions. As he discussed, a cap on carbon is imminent. Dr.
15 Lashoff talked about the sense of the Senate resolution that
16 the full U.S. Senate passed last year. He distributed the U.S.
17 Senate Energy Committee's white paper on the design elements of
18 a greenhouse gas trading system.

19 There are nine legislative proposals in the pipeline
20 in Congress to regulate carbon emissions. States are taking
21 actions with a plethora of measures. Nine states have state
22 greenhouse gas reduction targets. Twenty-one states have state
23 climate plans to guide CO2 reduction efforts. And even the
24 Florida Energy Commission, whose members but for one have just
25 recently been named, they will be developing a plan with

1 greenhouse gas reductions for Florida.

2 Such legislation will impose real costs on coal-based
3 electricity and these costs could be significant. At the low
4 end -- and all of you who are in Tallahassee may be watching,
5 the City of Tallahassee that is in the process of considering
6 their 20-year IRP as we speak, is considering a cost for carbon
7 in their analysis of their different utility options, and
8 that's actually a first in the state of Florida. So on the low
9 end you have eight or \$12 a ton, and on the high end, in the
10 European Union they're getting as much as \$50 a ton for costs
11 of carbon. Therefore, a failure to appropriately consider
12 these costs will mean an inaccurate estimate of lifetime
13 facility cost-effectiveness.

14 Based on emissions data that had been provided to us
15 in the Florida Power and Light's St. Lucie proposal, which was
16 for a 1,700-megawatt plant over there that I was very familiar
17 with, there was an estimate of 12 million tons of carbon
18 dioxide emissions per year. I don't know what that would mean
19 for this new proposal, but I can tell you those were the
20 emissions data they provided us before.

21 So, therefore, any bad assumptions will greatly
22 underestimate the cost to ratepayers. Soliciting alternatives
23 will help to ensure that the final project includes a realistic
24 estimate of carbon costs, which is good public policy. As was
25 mentioned before, technology is advancing very quickly, so the

1 PSC and Florida Power and Light cannot rely on old cost
2 estimates.

3 In particular, technologies like integrated
4 gasification combined cycle, or IGCC, are advancing very
5 rapidly. In fact, David Hicks, who is senior director of
6 project development at Florida Power and Light, was quoted in
7 June in the Palm Beach Post, and he said, "Our view is to
8 really push the IGCC forward. We need the industry to be more
9 creative in its thinking," and NRDC couldn't agree more.

10 Even aside from the cost implications of upcoming
11 carbon legislation, what FPL has asked the PSC to do in this
12 case is contrary to the very plain language and intent of the
13 governing regulations. The Florida Administrative Code
14 25-22.082 requires competitive proposals, specifically to
15 provide the Commission the information to evaluate a public
16 utility's decision regarding the addition of generating
17 capacity and to ensure that the public utility's selection of a
18 proposed generation addition is the most cost-effective
19 alternative possible.

20 The RFP must address the next generating unit
21 addition planned for construction by a public utility. And the
22 RFP itself must contain the price and nonprice attributes of
23 the next planned generating unit in order to solicit and screen
24 competitive proposals. Among other things, the RFP must
25 include a general description of the public utility's next

1 planned generating unit, including its planned in-service date,
2 its megawatt size, its location, which we don't know now, fuel
3 type and technology, as well as a detailed technical
4 description of the public utility's next planned generating
5 unit or units on which the RFP is based, as well as the
6 financial assumptions and parameters associated with it. Not
7 surprisingly, much of the required information is site
8 specific, and that bears on the particular characteristics of
9 the proposed plant that will influence its initial and ongoing
10 costs.

11 In this case, however, FP&L has not put forward a
12 power plant proposal at all. To our knowledge, FP&L has not
13 confirmed a location for the facility, which will influence,
14 among other things, the cost of fuel transportation,
15 transmission, cooling water and other factors. Nor has FP&L
16 provide detailed technical specifications about the plant that
17 it plans to build, such as those specifically required in
18 connection with an RFP.

19 Thus, in essence, FPL is requesting that the Public
20 Service Commission issue a blank check for it to build some
21 unspecified future power plant without any obligation to do so
22 in a competitive environment. Clearly, Florida's regulations
23 contemplate the existence of an actual proposal. A specific
24 project that can be scrutinized and compared with competitive
25 alternatives based on site-specific factors.

1 In fact, it appears, based on the information, that
2 FPL has provided about its, quote, next planned generating unit
3 that it would not currently be able to issue an RFP because it
4 does not have sufficiently specific information to provide the
5 information that is needed for such a document. Accordingly,
6 FP&L's request to be exempt from the competitive process for a
7 project that exists only as a hypothetical is not only
8 inappropriate, but inconsistent with applicable regulations.

9 Based on the considerations above concerning the
10 significant cost implications of future carbon emissions
11 regulation and the hypothetical nature of FP&L's next project,
12 the PSC should reject FP&L's request for an exemption and
13 should require that FP&L issue a valid and complete RFP. If
14 the PSC does not reject the petition outright, it should at the
15 very least forego any decision on the FP&L request until FP&L
16 has a more definite project proposal to put forward. Anything
17 less would be contrary to the interests of Florida's rate
18 paying public.

19 Thank you.

20 CHAIRMAN EDGAR: Thank you, Ms. Glickman.

21 Okay. Mr. Perry, a couple of quick questions.

22 MS. CLARK: Madam Chairman, did you want me to
23 respond briefly to their points or --

24 CHAIRMAN EDGAR: Actually, if it's all right, let me
25 ask a question or two.

1 MS. CLARK: Sure.

2 CHAIRMAN EDGAR: Because I need to go back, and then
3 we'll be glad to recognize you to respond.

4 Mr. Perry, in your opening comments you had mentioned
5 the figure 400 million or more to consumers. Can you go back
6 to that and tell me how you got to that number?

7 MR. PERRY: The figure of 400 million is based on a
8 return on the \$2 billion investment on the plant plus taxes,
9 depreciation expense of 80 million a year, and local taxes and
10 franchise fees of 54 million a year.

11 CHAIRMAN EDGAR: Okay. And briefly, when you went
12 through your comments you outlined four points, one of which
13 was the request for an independent evaluator, a prudence
14 evaluation. Another was the need for adequate information
15 always, but especially in the instance if there were to be an
16 exemption that would perhaps leave, in your words, a void or an
17 information gap. The third point was -- or request was to not
18 express a preference for one type of coal plant technology over
19 another. And I'm sorry, could you tell me what the fourth
20 point was again?

21 MR. PERRY: Yes. The fourth one was to clarify that
22 the Bid Rule exemption would be limited to FPL's petition only.
23 And that one, I believe, has been adequately addressed both by
24 the staff recommendation and the comments filed by FPL in
25 response to our petition to intervene.

1 CHAIRMAN EDGAR: All right. Thank you.

2 MR. PERRY: You're welcome.

3 CHAIRMAN EDGAR: I was afraid I had missed one.
4 Commissioner Tew.

5 COMMISSIONER TEW: I have one on the point about not
6 expressing a preference for one type of coal technology over
7 another. And, Mr. Perry, I just wanted to ask you is there
8 something in staff's recommendation as it stands that suggests
9 that you think we are expressing or if we adopted their
10 recommendation that we would be expressing a preference for a
11 certain type of coal plant?

12 MR. PERRY: Not necessarily. I don't know that there
13 is necessarily anything in the staff recommendation itself that
14 expressly states that. However, I think that granting an
15 exemption from the Bid Rule for the plant is a rather
16 extraordinary measure, and I think that perhaps people in the
17 marketplace will take that as a signal that perhaps the
18 Commission would see this project as a safe bet as opposed to
19 another type of project. I think that is our concern. It's
20 more one of avoiding, perhaps, an unintended consequence,
21 rather than, I think, that it is something the Commission is
22 doing intentionally.

23 COMMISSIONER TEW: For my part, I don't see anything
24 wrong with a statement such as that. But I do want to hear
25 from the other parties about all of the points you raised, or

1 at least the three that is not already addressed in the staff
2 recommendation. Specifically, I would like to ask Ms. Clark
3 about your second point about needing adequate information.
4 And I think you explained that it wouldn't be the same
5 information -- in a need determination sense you wouldn't get
6 the exact same details that you would get if you issued an RFP.
7 Would FPL propose to file that kind of data in the course of
8 the need determination docket, even if it were not required?

9 MS. CLARK: Two things. FP&L would bear the burden
10 of proof in the need determination that there is a need for
11 this plant, and that this plant is the best available
12 alternative, taking into account those things that you need to
13 take into account under the need determination statute,
14 including fuel diversity. Certainly to the extent those things
15 listed in the RFP are relevant to showing the need for the
16 plant and that this plant meets that need and it is the best
17 alternative available will be provided. And to the extent the
18 parties need more information, there is the discovery process
19 that is available to them. And your staff, likewise, is
20 entitled to ask for that information and get the information.

21 I think what needs to be kept in mind is because FP&L
22 has the burden of proof, they bear responsibility in that way.
23 And if they can't satisfy you as to the need for this plant, it
24 is subject to being rejected by the Commission.

25 CHAIRMAN EDGAR: Commissioner Carter.

1 COMMISSIONER CARTER: Thank you, Madam Chairman. I'm
2 trying to find out why it would be against the public interest
3 for us to approve staff's recommendation that would save an
4 estimated between 400 and \$600 million for the ratepayers.

5 MR. PERRY: Is that directed at me?

6 COMMISSIONER CARTER: The three of you.

7 MR. PERRY: I don't know that we stated that it would
8 not be in the public interest to approve that. I think what we
9 stated is it's also in the public interest if you were to take
10 additional measures to ensure that the 400 to 600 million is a
11 good number. And, in addition, that there is not additional
12 dollars that would be left on the table that perhaps would go
13 unnoticed in the absence of an RFP process and the presence of
14 an independent evaluator to point out that perhaps the cost of
15 the plant is higher than it should be. I think that's our
16 concern.

17 COMMISSIONER CARTER: But you would agree, though,
18 that there is such a thing as the time -- Madam Chairman?

19 There is such a thing as the time value of money,
20 correct?

21 MR. PERRY: I would agree that there is a time value
22 to money.

23 COMMISSIONER CARTER: And that if you could spend a
24 dollar today that's the equivalent -- depending on the rate of
25 inflation, it could be the equivalent of maybe spending up to

1 five or ten dollars tomorrow. I'm saying in the future.

2 MR. PERRY: And I think that that is true, but I also
3 think that, you know, the same thing applies to my comments,
4 that there is a time value to an inflated cost of a plant being
5 in rates. And that time value of money is borne by the
6 ratepayers paying an inflated price for a plant.

7 MS. GLICKMAN: And I think the cost savings to
8 ratepayers, also -- there should be considered the balance of
9 the future cost of carbon emissions. So if you calculate the
10 cost of a plant or the savings of a plant, and you don't factor
11 in the cost for carbon, and you have got a power plant that is
12 going to have a very long life, then, you know, we are making
13 decisions for what is the cost savings sort of this week. But
14 if we need to worry about 30 years down the road and 40 years
15 down the road, we need to prudently look at the reality that
16 carbon emissions are coming down the pike.

17 So if Florida Power and Light is trying to expedite
18 from a time point of view to move this and keep -- it is always
19 interesting to hear this conversation about advanced coal
20 technology. I mean, you can have that argument, and I'm sure
21 it will be had during the need determination process about what
22 exactly constitutes advanced technology. Is it a
23 super-critical pulverized coal? I did understand that that's
24 what they are proposing from Ms. Clark's original comments. So
25 others might want to say, you might want to look at

1 gasification, because that, perhaps, has the capacity to
2 capture carbon emissions.

3 So if you look at what those future carbon costs --
4 but if in 2006 you go ahead and sort of okay a plant -- well, I
5 realize it is not going to come until 2007, but you okay a
6 plant and then in 2008 or 2009, carbon emission caps come in
7 and there's a cost for that carbon, then the ratepayers then
8 get stuck with that money. So there may be a savings sort of
9 in the immediate as we see it now, but we have this sort of
10 changing, rapidly changing technology and a rapidly changing
11 environment dealing with the carbon emissions issue.

12 So I just think it's something -- I know it's really
13 new territory that we are on here, so I want to work in
14 cooperation with you all, you know. And FPL -- NRDC and FPL
15 and a bunch of other folks who are involved in dialogues all
16 through the process of their power plant proposal. And at the
17 time we had numerous meetings and asked them to do -- actually,
18 we suggested sort of a red team/blue team approach that as they
19 looked at the super-critical pulverized coal plant, they were
20 simultaneously looking at gasification.

21 Because literally each month there are sort of new
22 developments and new plants being announced. So that's, I
23 think, sort of the perspective of the National Resources
24 Defense Council, is there are costs that, because we don't have
25 a federal cap on carbon, even though, you know, most of the

1 rest of the world does, you know, it is coming in just a few
2 years. So we would really be remiss when we are siting a plant
3 that's going to have a 60-year life if we are not, you know,
4 thinking down the road.

5 The City of Tallahassee is factoring in the cost of
6 carbon in their 20-year plan. So it's, again, new territory
7 for us all to be on, but I hope that that's part of the
8 consideration here.

9 COMMISSIONER CARTER: A follow-up. But you would
10 agree that -- and then I think this Commission is on record as
11 supporting various and sundry types of alternative fuels, but
12 you would agree that whatever type of plant, there is a need
13 for the plant, because -- I mean, have you looked at the
14 population trends for Florida lately? So, I mean, we would all
15 agree that there is a need for a plant. Am I right?

16 MS. GLICKMAN: One of the slides that Dr. Lashoff
17 showed you all was a slide that compared energy consumption
18 between Florida and California. And as you will probably
19 recall, and I note you were handed these, energy consumption in
20 California has remained flat for three decades. And the
21 average Floridian uses twice the energy of the average
22 Californian, and that is because of these commitment to
23 efficiency type things.

24 One of the these -- I am very aware that -- I'm a
25 native Floridian, born in Tampa. I do understand the growth

1 and 1,000 people moving here a day. But what we would like to
2 see is a commitment in this state to serious efficiencies and
3 conservation. And those are things that I'm sure we will all
4 be talking about over time. So I know we will get into the
5 details of the needs determination at the time, and one of the
6 things we will want to be looking at is that those efficiencies
7 that Florida really has just not even begun to explore and dig
8 into.

9 So I'm not suggesting or telling you that
10 definitively they don't need a plant. That's not what I'm
11 suggesting. I'm just saying that what you are looking at is a
12 cost savings sort of in the short-term for not having to go
13 through the IRP process might be completely wiped out by the
14 cost of carbon if they are going to build a power plant that is
15 going to be putting 12 million tons of carbon dioxide emissions
16 into the atmosphere. And of all the states in the nation, you
17 know, we are way behind on doing anything about it, and we are
18 the most vulnerable. And that was something Dr. Lashoff, you
19 know, went through with you again with sea level rise and
20 public health implications and what it means to our agriculture
21 community. And it's sort of on and on. It's a whole another
22 presentation to have.

23 So I think that we need to look at these future costs
24 of carbon and not just what it is going to save them to not go
25 through an RFP process. Now, they could do no RFP and have a

1 no bid and choose to do IGCC or carbon capture. That's what
2 NRDC would most like, to work very closely with Florida Power
3 and Light. They are the biggest wind energy producer in the
4 country. They have low emissions. And they're typically a
5 very clean green company. We want to work with them to advance
6 this technology, as David Hicks said. And that is what we
7 would like to see considered.

8 So we would most like to see an alternative. When
9 they are looking at super-critical pulverized coal, that they
10 also look at the gasification technology and look at -- you
11 know, as I said, if there is a cost of carbon that comes in and
12 gasification may end up being less expensive and better for
13 ratepayers. So that's our priority and our focus.

14 COMMISSIONER CARTER: Madam Chair, just one
15 itty-bitty follow-up, please.

16 So, basically, you're saying is that you are not
17 against the RFP -- them foregoing the RFP process, you're just
18 against it because there is a potential to build a coal plant?

19 MS. GLICKMAN: Well, I think that -- I wouldn't say
20 that. I have concerns about, you know, a tradition of -- there
21 is a reason that there is an RFP bid process, and I don't know
22 the whole history of how often you all, you know, put that
23 aside for one reason or another. But the issues that are
24 brought to the table during the RFP process have a lot of
25 value, and it's a little hard to comment on the plant when I --

1 to be honest, I have no idea where it is going. So we don't
2 know what the costs are for transportation. We don't know what
3 the accessibility to water is. So it is very difficult to
4 comment on it.

5 So, I mean, we do have concerns about traditional
6 coal burning power plants that emit carbon dioxide emissions,
7 absolutely. But I'm not, you know, prepared to speak on this
8 particular plant, because there is so much about it that I
9 don't know.

10 COMMISSIONER CARTER: Thank you, Madam Chair.

11 CHAIRMAN EDGAR: Ms. Clark.

12 MS. CLARK: I would just like to respond briefly to
13 two points that Ms. Glickman made. First of all, I agree with
14 her, her issues are a whole another proceeding. It is in the
15 need proceeding that those issues would be taken up, and also
16 in DEP's review of the site chosen.

17 With regard to her advocacy or asking FP&L to look at
18 IGCC or other technologies, the fact that FP&L is proceeding
19 with pursuing a pulverized -- a super-critical pulverized coal
20 plant does not mean that they are not looking at other
21 technologies. And I think they stated that to you as part of
22 their 2005 presentation they made to you. And I believe they
23 also touched on that in the need case for the West County
24 Units.

25 With regard to the history of the Bid Rule, the Bid

1 Rule itself contains in it the flexibility for you to grant the
2 exemption, and that's what we are asking for, an exemption from
3 the Bid Rule. We're not asking for an exemption for proving
4 the need for the case and that this is the best alternative
5 available and comparing it and addressing those issues that
6 Ms. Glickman has brought up.

7 But with respect to this particular case, what we
8 believe is that doing an RFP would serve no practical purpose.
9 And I think this was Commissioner Deason's point awhile back
10 when we were considering the Bid Rule and actually put in that
11 language. The recent experience of FP&L with regard to the
12 plants that they have done needs for is that there are fewer
13 entities capable of bidding. The pool of those entities that
14 have the financial wherewithal to bid is growing shallower, and
15 it certainly is true with respect to a capital intensive long
16 lead time project like this is. And I think even in your
17 staff's report on clean coal technologies it was mentioned that
18 Standard and Poor, at least, does not believe that there are
19 going to be merchant companies that are interested in building
20 this kind of plant.

21 We also believe that the bids we would receive, if we
22 received any bids, would be indicative and not suitable for a
23 fair comparison to the self-build technology. I would also
24 like to tell you neither before nor since FP&L filed its
25 petition has any evidence come to light that any entity has

1 sought to obtain control of the site for a plant, and no entity
2 has informed FP&L of any concrete plans to develop coal
3 generation. To FP&L's knowledge, none of the equipment or
4 service suppliers with whom FP&L has ongoing communications
5 have been approached by an entity expressing a desire to
6 propose such a competing plant.

7 I think it is also significant that you have no
8 potential bidders intervening in this case. Certainly, if
9 there was a potential bidder out there, you would think they
10 would intervene in the case to suggest that there are people
11 out there ready, willing, and able to bid on these plants.

12 That is where we find ourselves now. We have asked
13 for this exemption for this particular project. We are not
14 asking you to state a preference for a particular kind of
15 technology. We will have to prove that as part of the need
16 case.

17 Madam Chairman, at the appropriate time, I would also
18 like to address the independent evaluator and --

19 CHAIRMAN EDGAR: Ms. Clark, go right ahead.

20 MS. CLARK: Okay. We don't believe an independent
21 evaluator is needed. And I would point out that I think
22 employing such an independent evaluator would essentially take
23 away any benefits of granting this exemption. We agree with
24 your staff that the need determination proceeding is the place
25 that FP&L will be required to provide the evidence on the need

1 for the plant. There is the opportunity for discovery in that
2 proceeding, and we also believe that your staff has the
3 experience necessary to evaluate the proposal.

4 What FP&L is proposing in this case is similar to the
5 plant that Seminole just recently was granted a determination
6 of need for, a super-critical pulverized coal plant, so your
7 staff does have experience with respect to this technology. It
8 is not new technology. It is known technology with significant
9 performance data demonstrating its reliability and efficiency.
10 And in the past need determinations, your staff has dealt ably
11 with evolving technologies and evolving plant designs. So we
12 don't think there is any need to employ an independent
13 evaluator. In fact, it would essentially take away any benefit
14 of granting the exemption from the RFP.

15 With respect to the cost and Mr. Perry's concern
16 regarding assuring that the costs are reasonable and prudent,
17 again, the need determination is the first and a very extensive
18 opportunity to test the facts and evidence that FP&L will
19 produce to show the plant is needed, that it is the best
20 available alternative and the estimate of the cost of that
21 plant. As FP&L has done in other need determinations, you have
22 requested that they provide information comparing the proposed
23 costs with the actual costs. FP&L would do that in this case.

24 Additionally, FPSC has the authority to conduct
25 audits of actual costs incurred during construction and after

1 the project is completed. And once the units are placed in
2 service, costs would again be subject to review as part of the
3 base rate review.

4 And, finally, I would point to your rule that you
5 recently amended. I guess maybe not recently now, a couple of
6 years ago. And in that rule the utility is precluded from
7 recovering costs in addition to those identified in the need
8 determination unless the utility demonstrates such costs were
9 prudently occurred and were due to extraordinary circumstances.
10 So I think contrary to what Mr. Perry is suggesting, there are
11 adequate procedures in place to assure the reasonableness of
12 the cost of this plant.

13 CHAIRMAN EDGAR: Commissioner Arriaga.

14 COMMISSIONER ARRIAGA: Mr. Perry, Ms. Susan Clark
15 was just -- she caught the attention that intrigued me
16 regarding the independent evaluator, because I was really
17 intrigued. As you were reading the description of what the
18 independent evaluator would do, it seemed to me you were
19 reading the job description of our staff. I really think that
20 that is what our staff does. And unless you have any doubts
21 that the analysis our staff does is independent, honest,
22 truthful, and professional, I wouldn't see a reason for an
23 independent evaluator. So I'm intrigued. Why the need if we
24 have a capable, professional staff that can do that?

25 MR. PERRY: I think it's -- the independent evaluator

1 that we are proposing is a lever for your staff. The way that
2 we see it, this type of plant is, like I said, it's the first
3 coal plant that the utilities have proposed in more than ten
4 years. It has been a long while since your staff, itself, has
5 looked at a coal plant, let alone an advanced technology coal
6 plant that is going to go into base rates of an investor-owned
7 utility.

8 And the reason that we are proposing this is that we
9 think that it will act as a lever on your staff's already high
10 level of capabilities. We are not saying that your staff isn't
11 capable of doing this, we think that they'll be able to do an
12 even better job. And I can --

13 COMMISSIONER ARRIAGA: Thank you. You made a comment
14 about us not having the experience of approving coal plants,
15 but I just want to remind you that just a few months ago, maybe
16 a month and a half ago, we just approved an IGCC and we
17 approved the Seminole coal plant. And I think our staff did a
18 pretty good job. I think they know how to do that, wouldn't
19 you agree?

20 MR. PERRY: I'm not saying that your staff is not
21 capable of approving those plants through a need determination
22 process. But those are different circumstances than what you
23 are facing here. Neither one of those plants involved an
24 investor-owned utility. If I remember right, the IGCC was for
25 Orlando Utilities Commission, and the other plant was for

1 Seminole. And, frankly, those are different than
2 investor-owned utilities.

3 The Orlando Utilities Commission, obviously, is
4 providing service for its citizens. The Seminole Electric
5 Cooperative is a cooperative. It is consumer-owned. There is
6 a totally different set of incentives for those entities as far
7 as those plants going into rates. And, in addition, your staff
8 doesn't review their rates the same way that they review FPL's
9 rates. There is only limited PSC jurisdiction over those
10 entities, and I believe it's only with respect to the structure
11 of the rates. It doesn't go into the -- it doesn't go down to
12 the level of detail of the rates themselves, which is what you
13 would be seeing when FPL puts these plants into service.

14 COMMISSIONER ARRIAGA: I appreciate the answer.
15 Thank you.

16 IGCC, I had the opportunity of visiting the one that
17 is run by TECO, and I looked carefully at what the Orlando
18 Utilities is doing in partnership with Southern Company, which
19 happens to be a regulated company, not by us, by other states.
20 Do you know that both the TECO plant and the Orlando Utilities
21 has a subsidy from the Department of Energy of approximately
22 \$100 million?

23 MR. PERRY: It is my understanding that they both
24 have a subsidy.

25 COMMISSIONER ARRIAGA: So being subsidized that way

1 that may not be the most appropriate technology that you seem
2 to be advocating for us to look at.

3 MR. PERRY: I'm actually not advocating one
4 technology over the other. What my comments were addressed at
5 was to not create the unintended consequence of giving the
6 marketplace a signal that one technology is preferred over the
7 other. You know, we would prefer that all types of competing
8 technologies would compete against one another to provide the
9 lowest cost option. And in certain circumstances, and this may
10 be one of them, you may even want to look outside of the lowest
11 cost option for purposes of reliability if a different fuel
12 source was needed to do that.

13 COMMISSIONER ARRIAGA: I have one last question.

14 Ms. Glickman, one last question. You mentioned
15 during your intervention that FPL's request may be inconsistent
16 with applicable regulation. When we dictate rules here in the
17 Commission, we quasi-legislate, we get guidance. We look
18 deeply as to what is the intent of the legislator. And it
19 seems to me that the legislature just sent a very strong
20 message in the last session when they, regarding nuclear
21 plants, which seems to be an issue of fuel and diversity, they
22 did away with the Bid Rule for nuclear plants. I don't think
23 that by -- and, also, the Bid Rule allows us to grant that
24 exemption, so I don't see how if the Legislature is legislating
25 something as powerful as the law that a bid rule can be done

1 away with. And our Bid Rule allows us to grant the exemption,
2 how are we inconsistent with applicable regulation?

3 MS. GLICKMAN: Just in my reading of the
4 administrative rule that you have a bid and there is a reason
5 behind the process. That is why I went through sort of some of
6 the information that would come out in the Bid Rule. So that
7 was the point what I was -- what I was trying to get at. The
8 main sort of take-away that I want you to understand that the
9 Natural Resources Defense Council is concerned about is making
10 sure that in making a fiscally prudent decision that the
11 consideration of these long-term carbon emissions is part of
12 the process, and it may offset the savings that you all are
13 looking at. So that's our main area of interest, and I think
14 that the RFP process brings out, you know, the technologies and
15 all of the details about the plant that's being proposed.

16 And, of course, we don't have that to look at to
17 comment today. So I was looking at the original, you know,
18 sort of what is in the administrative code, and what has been
19 historically done, and I'm very familiar with what went on in
20 the legislature. And, you know, obviously, there are so many
21 new things. This whole idea of, you know, the technology is
22 changing very rapidly, so there are certainly a lot of things
23 to consider in here, and we want to make sure that that is done
24 very carefully.

25 And some of these -- people are calling it advanced

1 technology, but I would call it an older technology, which puts
2 out all of these carbon emissions. We want to make sure we're
3 not sort of pushing that more quickly in an environment where
4 we will be looking at these costs for carbon and we're in a
5 posture where we are not considering them yet, because it's not
6 part of our process. So those are -- those are my main, you
7 know, points. Thank you.

8 CHAIRMAN EDGAR: Commissioner Tew.

9 COMMISSIONER TEW: I would just like to get staff's
10 thoughts on the three remaining issues that FIPUG and OPC are
11 supporting regarding the independent evaluator and not stating
12 a preference for any type of coal plant and adequate
13 information with the filing.

14 MR. BALLINGER: I will take the independent evaluator
15 first. It may add a layer of additional information, but I
16 think staff approaches a need determination from the aspect of
17 how robust is the plant being proposed. We look a lot at
18 sensitivities. We look at changes in fuel forecasts, load
19 forecasts, construction costs, capital costs, things of this
20 nature. And that's where you get a sense of is the plant the
21 best project for the customers, not so much how much does this
22 bolt cost going into this plant. You don't have to get to that
23 specific.

24 The follow-up to that is I think there are safeguards
25 in place during construction, after construction we have

1 audits. It is also staff's belief that a need determination is
2 not a blank check. That a utility is -- it is incumbent on
3 them to prudently manage their resources. If they were to see
4 costs getting out of whack as they went through construction,
5 if they were to see carbons, let's say, go through the roof to
6 where the cost of this plant was getting prohibitive, it's
7 incumbent on them to re-evaluate and say do we keep going with
8 this project, do we scrap it, do we start something else. And
9 I think staff expects that out of the companies as prudently
10 managed companies.

11 As far as providing detailed information, the
12 utilities do basically provide about the same level of detail
13 in every need determination that they do in an RFP. They
14 provide the capital costs, the O&M, fuel cost. And then the
15 first sets of discovery that go out look at sensitivities.
16 And, in fact, because of the tight time frame, it is very
17 typical for companies to get with staff and lay out what they
18 have to see if there are any holes missing. And staff will
19 request these things to come in as exhibits to speed up the
20 process. They know they are coming. They are going to be
21 either interrogatories or part of the original filing. And
22 they are typically part of the original filing. So getting the
23 detailed information is not a problem. It's virtually provided
24 every time they file a need.

25 The final one is the support of other coal projects.

1 This exemption is specifically just for these projects. It has
2 nothing to do with the technology. It's the situation FPL is
3 in at the moment. They are looking to try to build some sort
4 of solid fuel for their system for fuel diversity. The
5 exemption from the RFP is an attempt to help keep them on
6 schedule to meet those deadlines. It has no preference to any
7 type of coal technology one way or the other.

8 COMMISSIONER TEW: A couple of follow-ups. You
9 mentioned that you would get with the company that was
10 proposing the plant and go over a lot of the detailed cost
11 information and things, and all the detailed information that's
12 similar to what you would get in an RFP about the plant. Are
13 the other parties, and I'm not sure whether they are all
14 parties yet, but are any of the parties to that case privy to
15 the same information that you have?

16 MR. BALLINGER: Yes. And we typically, before we
17 have a meeting, will notify at least Public Counsel. Typically
18 FIPUG, we'll let them know we're having a meeting. It is not
19 anything secret. It's more we want to see what they've got.
20 And we say you guys have got a hole here. You want to fix it
21 before you go? Because they understand the tight time frame,
22 and they want the process to move smoothly. So if they have
23 left something out, it is not that we are saying this cost is
24 right, we're just saying is enough information there to make,
25 you know, a decision.

1 CHAIRMAN EDGAR: Commissioners, any further
2 questions?

3 Commissioner Deason.

4 COMMISSIONER DEASON: Move approval of staff's
5 recommendation, Madam Chairman.

6 COMMISSIONER CARTER: Second.

7 CHAIRMAN EDGAR: Okay. Commissioners, we have a
8 motion and a second for the staff recommendation. Is there
9 further discussion? Seeing none, all in favor of the motion
10 say aye.

11 (Unanimous affirmative vote.)

12 CHAIRMAN EDGAR: Opposed? Show the motion adopted.
13 Thank you.

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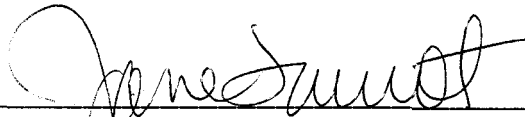
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 6th day of September, 2006.



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