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BEFORE THE

2 FLORIDA PUBLIC SERVICE COMMISSION

3

4 DOCKET NO. 060658-EI

5 In the Matter of:

6 Petition on behalf of Citizens of

the State of Florida to require

7 Progress Energy Florida, Inc. to

to refund customers $143 million.

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10 VOLUME 10

11 Pages 1383 through 1544

12

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14 THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

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PROCEEDINGS: HEARING

17

BEFORE: CHAIRMAN LISA POLAK EDGAR

18 COMMISSIONER MATTHEW M. CARTER, II

COMMISSIONER KATRINA J. McMURRIAN

19

DATE: Thursday, April 5, 2007

20

TIME: Commenced at 2:07 p.m.

21 Concluded at 4:28 p.m.

22 PLACE: Betty Easley Conference Center

Room 148

23 4075 Esplanade Way

Tallahassee, Florida

24

REPORTED BY: MARY ALLEN NEEL, RPR, FPR

25

APPEARANCES: (As heretofore noted.)

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2 WITNESSES

3

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DAVID J. PUTMAN

5

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1 P R O C E E D I N G S

2 (Transcript follows in sequence from

3 Volume 9.)

4 CHAIRMAN EDGAR: Call this hearing back to

5 order. Welcome back, everybody. Any matters to address

6 before we get started?

7 I guess, actually, I have one. For the

8 record, I will note that Mr. Twomey, Mr. McWhirter, and

9 Mr. Brew have requested to be excused, which has been

10 granted. And they relayed that they had no cross,

11 shocking, shocked that they had no cross for the

12 witnesses this afternoon.

13 And so, Mr. McGlothlin, you can call your next

14 witness.

15 MR. McGLOTHLIN: We call David Putman.

16 Mr. Putman has not been sworn.

17 CHAIRMAN EDGAR: Okay. If you would, stay

18 standing and raise your hand with me, and we'll go ahead

19 and swear you in.

20 Thereupon

21 DAVID J. PUTMAN

22 was called as a rebuttal witness on behalf of the

23 Citizens of the State of Florida, and having been duly

24 sworn, testified as follows:

25 CHAIRMAN EDGAR: Thank you. Have a seat.

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1 DIRECT EXAMINATION

2 BY MR. McGLOTHLIN:

3 Q. Please state your name and your business

4 address for the record.

5 A. My name is David Putman. I live at 2236 Royal

6 Crest Drive, Birmingham, Alabama, and that's my business

7 address.

8 Q. Mr. Putman, did you prepare and submit on

9 behalf of the Office of Public Counsel rebuttal

10 testimony in this proceeding?

11 A. I did.

12 Q. Do you have that document with you?

13 A. I do.

14 Q. Do you adopt the questions and answers

15 contained in this document as your testimony before the

16 Commissioners today?

17 A. I do.

18 MR. McGLOTHLIN: I request that the prefiled

19 testimony be inserted at this point.

20 CHAIRMAN EDGAR: The prefiled rebuttal

21 testimony of the witness will be entered into the record

22 as though read.

23

24

25

1420

1 BY MR. McGLOTHLIN:

2 Q. Mr. Putman, do you have any exhibits to your

3 testimony?

4 A. I do not have any exhibits.

5 Q. Have you prepared a summary for the

6 Commissioners?

7 A. Yes, I have.

8 Q. Please proceed.

9 A. Good afternoon. I'm a mechanical engineer

10 with 37 years of experience working in and with

11 coal-powered power plants. Most of that experience was

12 while employed with Southern Company. I've held

13 responsible positions building plants, operating plants,

14 maintaining plants, and acquiring appropriate coal for

15 power plants.

16 Prior to my retirement from Southern, I had

17 general management responsibility for the USA's largest

18 coal fuel program, acquiring coal from all regions in

19 the US and from the key areas of the world markets.

20 This included the planning, purchasing, and transporting

21 of up to 19 million tons of PRB coal annually to be

22 burned in 10 different units at four different plants.

23 Some of this PRB coal went to power plants partially

24 owned by Florida utilities, including Gulf Power,

25 Florida Power & Light, and Jacksonville Electric

1421

1 Authority.

2 My testimony provides perspective from a

3 utility similarly situated to Progress Energy that was

4 making decisions for the acquisition of coal for the

5 benefit of ratepayers during the time period that is the

6 subject of this hearing. My testimony expresses from my

7 experience complete amazement at the very different

8 conclusions and results reached at Southern Company

9 compared to those from Progress Energy.

10 Beginning in the early 1990s, Southern saw a

11 compelling opportunity based on changes in the relative

12 delivered cost of PRB coal and CAPP coal to save money

13 for its customers by converting several units to burn

14 PRB coal. I was responsible for the coal program for

15 those units during their conversion and subsequent

16 operation using PRB coal. The plants included Plant

17 Scherer at Georgia Power, Plant Miller at Alabama Power,

18 Plant Daniel and Plant Watson at Mississippi Power.

19 None of these units were designed to burn PRB coal.

20 Unlike the out-of-the-air capital cost

21 requirements that Mr. Hatt stated would be required at

22 Crystal River, those that added up to about $61 million,

23 the initial conversion at the Southern plants were

24 relatively low cost in relation to the immediate and

25 large fuel savings experienced. Test burns were run

1422

1 over short periods, unlike Mr. Hatt's long-term

2 requirements. Best practices at other utilities were

3 studied and adopted. Original equipment manufacturers

4 were consulted and plant modifications made. Those

5 modifications were the addition of some soot blowers,

6 upgrades to the dust suppression systems, and the

7 establishment of work practices that treated the PRB

8 coal appropriately to its nature.

9 The results of these conversions were very

10 successful. The bigger boiler boxes at Scherer and

11 Miller were able to run at full load without a derate,

12 and in some cases, were able to increase their net

13 output because of reduced internal power needs. Based

14 on the information gained from initial conversion work

15 on the units, two of these plants moved on to convert

16 fully to 100 percent PRB coal sourcing. Those plants

17 were Miller, four units, and Plant Scherer, four units,

18 very large plants.

19 Progress Energy claims that they did not

20 receive PRB bids and therefore did not, could not

21 consider a fuel switch. I do not understand why this

22 one utility was excluded. Southern Company and

23 utilities I discussed the topic with at the time were

24 covered up with coal people selling or begging to

25 come -- begging us to come visit the PRB region and to

1423

1 their mines so we would consider their coals. The

2 railroads ran regular special trains of classic cars

3 into the basin for the ticket price of listening to

4 their sales pitch. What was different about Progress

5 Energy, and why did Progress Energy not inquire about

6 why they were excluded? Some of the most aggressive

7 bidding competitions I experienced at Southern involved

8 PRB opportunities.

9 My testimony expresses from the perspective of

10 my experience a professional frustration at the efforts

11 of Progress Energy to create reasons not to try and burn

12 coal that Southern found to be significantly cheaper

13 than other sources, and an apparent unwillingness to

14 accept the challenge of solving the same problems that

15 so many other utilities were able to solve in order to

16 meet their fiduciary duty to their customers.

17 One critical example is the failure of

18 Progress Energy to conduct the acceptance test of the

19 new Crystal River units with the design fuel of

20 50 percent PRB coal and 50 percent CAPP coal. This

21 unconscionable and totally unexplained failure has led

22 to all the issues under discussion in this proceeding.

23 Another example is Progress Energy's apparent

24 refusal to accept the responsibility for treating PRB

25 coal appropriately and managing a well-maintained, safe,

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1 employee-friendly work environment. I worked in

2 coal-powered power plants. I managed power plant

3 employees, and I was very concerned about the safety of

4 the employees. But it was clear to me that a well-run

5 plant could be safe with PRB coal. However, because of

6 Progress Energy's fear of this responsibility that has

7 been accepted by over 40 utilities that now burn over

8 440 million tons of PRB coal each year, the customers of

9 Progress Energy paid millions of dollars on their

10 electric bill each year.

11 I discuss in my testimony that Progress Energy

12 elected not to pursue the possibility of an all rail

13 movement to the plant when they were in a great position

14 to use rail routes to create a competitive bidding

15 situation. They also did not consider the McDuffie

16 Terminal in Alabama as a route option.

17 The McDuffie Terminal route has received a lot

18 of bad press in this hearing. Southern moved coal on

19 the Burlington Northern route from PRB to McDuffie and

20 loaded it on barges for delivery to Plant Watson. They

21 did this successfully and economically. I spent five

22 years after retirement moving coal into and out of

23 McDuffie for a coal company. McDuffie was very easy to

24 work with and very professional in their performance.

25 We were able to negotiate demurrage out of the rail

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1 contracts for delivering coal because of the railroad's

2 willingness to accept that responsibility, and the ship

3 demurrage on shipments out of McDuffie was a very rare

4 occurrence.

5 And I finally in my testimony discuss

6 Mr. Hatt's view of the inadequacy of the existing coal

7 conveyor system and the need to replace the existing

8 stacker/reclaimers. I am surprised that he recommends

9 an underground reclaim system as a replacement at a

10 location with a high water table where the hopper would

11 be under water most of the time.

12 I totally disagree with his conclusions and

13 view his positions as additional examples of an

14 unexplained effort to avoid the obvious opportunity to

15 switch fuel sources and save the customers money, an

16 opportunity that has clearly existed since the early

17 1990s.

18 Thank you.

19 MR. McGLOTHLIN: Tender the witness.

20 CHAIRMAN EDGAR: Ms. Bradley?

21 MS. BRADLEY: I do have a couple of questions.

22 CHAIRMAN EDGAR: Okay. Go right ahead.

23 MS. BRADLEY: I even got on my microphone this

24 time.

25 / / /

1426

1 CROSS-EXAMINATION

2 BY MS. BRADLEY:

3 Q. Mr. Putman, historically has there been

4 problems with fire and explosions with bituminous coal?

5 A. Unfortunately, yes. Coal is by its nature

6 combustible. That's why we use it in power plants.

7 And, yes, there are fires. There are fires in mines,

8 and there are fires in power plants. I personally

9 experienced occasions, several occasions at different

10 power plants with explosions using all CAPP coal,

11 bituminous coal. Yes, it's dangerous, and you've got to

12 treat it with respect.

13 Q. Has that improved as you've learned how to

14 handle it?

15 A. Oh, absolutely. We're always learning, and

16 safety is always a big concern. So, yes, different

17 kinds of methodologies, different kinds of equipment,

18 different kinds of work practices, which is the main

19 tool, have been put in place and are successful. That

20 doesn't mean that the risk is not there. It's still

21 there. It still has to be treated carefully whether

22 it's PRB coal or bituminous coal.

23 Q. I think there was some testimony yesterday

24 about maintaining the plant and making sure that it was

25 clean and the dust was gone. Have you visited the

1427

1 Crystal River plant?

2 A. Yes, I have. I took a short tour through

3 there.

4 Q. Is there anything about that plant that would

5 be prohibitive to burning PRB coal?

6 MR. BURNETT: Objection, Madam Chairman.

7 Friendly cross.

8 MS. BRADLEY: Madam Chairman, I don't know

9 that anyone has addressed that yet.

10 CHAIRMAN EDGAR: It seems like a very broad

11 question to me. Can you perhaps be a little more

12 specific?

13 MS. BRADLEY: Okay. Let me try to narrow it

14 down to what I was talking about. I'm sorry.

15 BY MS. BRADLEY:

16 Q. Is there anything about the maintenance of the

17 Crystal River plant that would prohibit PRB coal from

18 being burned there?

19 MR. BURNETT: Same objection. I'm very sorry,

20 sir. Same objection. It's still bolstering his opinion

21 that PRB coal can be safely used. It's obvious friendly

22 cross.

23 CHAIRMAN EDGAR: And I note your objection,

24 and my standing request and admonition to limit friendly

25 cross remains. So limit it, and you may proceed for a

1428

1 limited amount of time.

2 MS. BRADLEY: Thank you.

3 BY MS. BRADLEY:

4 Q. Do you understand my question, or am I --

5 A. Oh, I understand your question.

6 Q. Okay.

7 A. I will say that my short examination of the

8 plant -- I was there about two hours. I saw that the

9 plant had been built with provisions for safely handling

10 coal, whether it's PRB or bituminous coal.

11 Some of the maintenance practices were very

12 shocking to me as an experienced plant person. Some of

13 the dust suppression systems had been removed from the

14 equipment. And my tour through what's called the

15 tripper floor, which is an upper floor where coal is

16 distributed to the bunkers, was amazing to me. You

17 walked through a significant amount of coal dust in that

18 room. I would be very concerned that if there was a

19 smoker around who had dropped a cigarette into that

20 area, there could have been a fire. It was -- the

21 maintenance at that plant that I observed was very

22 unsatisfactory, but the equipment, water lines, fire

23 lines were there. The maintenance practices were very

24 poor.

25 Q. Was there any need to remove dust suppression

1429

1 equipment when you're burning bituminous coal?

2 A. Dust suppression of coal is always a good

3 idea. Dust from coal, bituminous or sub-bituminous,

4 does get in people's lungs. It does cause significant

5 problems. It's a health issue as well as a fire hazard.

6 So, yes, you should be always keep bituminous and

7 sub-bituminous coal clean and be careful about how it's

8 handled, absolutely.

9 Q. Now, I have one other question on a different

10 area. In building and designing the CR4 and 5 plants to

11 burn a 50/50 mix of bituminous/sub-bituminous, did that

12 make the building or construction of this plant more

13 expensive?

14 A. Yes. I worked on Plant Miller, a plant

15 similar to Crystal River, in the construction department

16 and saw the cost, saw the design. And when I compare

17 that to the cost and design of the Crystal River units,

18 and with the benefit of Joe Barsin's information, the

19 information said there was about $44 million extra spent

20 on each of those units to make them capable of burning a

21 50/50 blend. So that was a significant extra investment

22 to allow these plants to operate at the level they were

23 intended to operate at.

24 MS. BRADLEY: Thank you. Nothing further.

25 CHAIRMAN EDGAR: Mr. Burnett.

1430

1 MR. BURNETT: Thank you.

2 CROSS-EXAMINATION

3 BY MR. BURNETT:

4 Q. Good afternoon, Mr. Putman.

5 A. Good afternoon.

6 Q. Mr. Putman, to start out, in your summary, you

7 said that the hopper/reclaimer system that Mr. Hatt

8 suggests would be under water most of the time and that

9 the Crystal River site has a low water table. Can you

10 show me where that's at in your prefiled testimony?

11 A. It was a detailed addition to my comment in my

12 prefiled testimony about the disagreement with the need

13 or the wisdom in changing out that reclaimer.

14 Q. Can you give me a page and a line number,

15 perhaps, sir?

16 A. Well, I would go to page 29, starting on line

17 22, where I say, "Based on my experience and my

18 observations at Crystal River, Mr. Hatt's projection of

19 the need and the cost of blending equipment, et cetera,

20 were not well founded."

21 Q. Anything there about water tables or under

22 water, sir, that you can see?

23 A. No. That was an add.

24 Q. Okay. Thank you. Sir, you would agree with

25 me that PRB has the properties that Mr. Hatt describes

1431

1 in his prefiled testimony in this case; correct?

2 A. I would agree it does have that nature, yes.

3 Q. Now, you would agree with me that you have

4 either seen or heard about units derating using PRB

5 coal; correct?

6 A. For units that were not designed to burn PRB

7 coal or to operate at a lower Btu level, there will be a

8 derate, absolutely.

9 Q. And you agree with me that when Southern

10 Company Plant Daniel was called upon to generate more

11 often at full production, it switched from PRB coal back

12 to higher Btu bituminous coal to generate higher output;

13 correct?

14 A. Yes. Plant Daniel was one of the units that

15 we converted to PRB coal, and there was an opportunity

16 for a period of time to save money burning PRB coal, but

17 it did suffer a derate, because it had a smaller box.

18 That unit, those plants were designed to burn oil, and

19 therefore the boiler box was smaller. When they finally

20 began to move up in the economic dispatch order and got

21 called on more often, it became the economic solution to

22 move away from PRB coal to a different, higher Btu coal.

23 Q. Thank you, sir. I would like to pass out a

24 document and then ask you a question. This document is

25 already in evidence.

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1 MS. BENNETT: Madam Chair?

2 CHAIRMAN EDGAR: Yes, ma'am.

3 MS. BENNETT: Could Mr. Burnett state where in

4 the record this is?

5 MR. BURNETT: Yes. I'm sorry, Ms. Bennett.

6 This is JBC-6. It was the testimony of Mr. Crisp that

7 was stipulated into evidence yesterday, and I'm working

8 on the exhibit number now. It's 149.

9 BY MR. BURNETT:

10 Q. Mr. Putman, in following up on plants having a

11 derate, if you assume for me that there was a

12 124-megawatt derate as reflected on Mr. Crisp's

13 testimony that was undisputed and entered into the

14 record yesterday as a stipulation, are you aware that

15 under the three possible scenarios that Mr. Crisp has

16 stipulated, using Commissioner Carter's bottom line

17 approach could yield respectively in a 700 million, an

18 800 million, and an almost $1 billion cost to PEF's

19 ratepayers?

20 A. I was with you until your last comment about

21 what ratepayers would be penalized. This appears to be

22 a calculation of 124 megawatts. What that's tied to,

23 what units suffered that megawatt decrease, I mean, I

24 can't -- no, I cannot accept this. I don't know what it

25 means.

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1 Q. Well, have you read Mr. Crisp's stipulated and

2 undisputed testimony in this case?

3 A. I have not.

4 Q. Okay, sir.

5 A. I mean, I would agree with you that a derate

6 costs money, but whether or not a 124-megawatt derate

7 means anything or whether or not that number in Florida

8 would be different than one in Southern Company, I don't

9 really know all the things behind that.

10 Q. Okay. Thank you, sir. Mr. Putman, you would

11 agree with me that increased tons of coal would be

12 needed to sustain operations at CR4 and 5 using a 50/50

13 blend of PRB and CAPP coal compared to 100 percent CAPP

14 coal; correct?

15 A. I would agree with that statement.

16 Q. Bear with me. I'm trying to get rid of some

17 of the questions I addressed with Mr. Barsin yesterday.

18 Sir, you agree with me that over the last 20

19 years, plants using PRB coal have learned from their

20 experiences with it; correct?

21 A. Yes.

22 Q. You agree with me that PRB coal can cause

23 fires and explosions in certain circumstances; correct,

24 sir?

25 A. Yes, just like gasoline.

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1 Q. By the way, when Southern Company had PRB coal

2 fires, the general procedure for dealing with them was

3 to scrape them up, dig them out, and let them burn;

4 correct?

5 A. Could you give me the first -- was that

6 Southern Company? What was the start? I'm sorry.

7 Q. Yes, sir. I'm sorry. I'll read it slower.

8 When Southern Company had PRB coal fires, the general

9 procedure for dealing with them was to scrape them up,

10 dig them out, and let them burn?

11 A. That's correct.

12 Q. You were asked some questions by Ms. Bradley

13 about extra investment that was made in Crystal River 4

14 and 5, and you mentioned a $44 million number that

15 Mr. Barsin alleges in his testimony. You would,

16 however, agree with me that CR4 and 5 can burn a wide

17 range of coal specifications; correct?

18 A. I'm not sure about all your preceding lines.

19 I would agree that that plant can burn a wide range of

20 coal, and they were able to do that because they

21 invested the money in it, yes.

22 Q. And you agree with me that the equipment on

23 CR4 and 5 as there and as built would be useful

24 irrespective of the type of coal that PEF has used in

25 the plants; correct?

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1 A. I would agree that it is useful, but I would

2 also say that it has been underutilized.

3 Q. Sir, you also agree with me that a coal unit

4 is like an automobile in a way, because it may run fine

5 when you first buy it, but you're really not going to

6 know what's going on until you've got a lot of miles on

7 it; correct?

8 A. Yes, I would agree with that. And I also

9 would agree you've got to maintain an automobile or a

10 power plant.

11 Q. Sir, you also agree with me that even if PRB

12 coal is the lowest cost option for a plant in one year,

13 market conditions can change and make other types of

14 coal more economic in other years; correct?

15 A. Correct.

16 Q. You also agree with me, sir, don't you, that

17 the transportation component of coal cost is

18 significantly higher than the fuel cost itself?

19 A. In the case of PRB coal, that's correct. It

20 may not be true at other locations.

21 Q. Mr. Putman, you would agree with me that

22 before a company switches to PRB coal, it should do test

23 burns, evaluate operational issues, recheck economics to

24 make sure they're still in the money, and maybe even do

25 a second test burn; correct?

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1 A. I would agree with that. In fact, it brings

2 back a memory we went through when we first tried to

3 decide to burn PRB coal at a Southern unit, Plant

4 Scherer. When we first did the analysis within our

5 group and presented that analysis to our upper

6 management, I can clearly recall the conference room

7 where I was yelled at. My vice president said, "These

8 numbers cannot be right. They're too wide spread. The

9 dollar savings are too great. Go back and do it again."

10 So we went back, and we redid the analysis and finally

11 convinced them that it was real money.

12 Q. Thank you. Mentioning Southern Company, you

13 agree with me that Southern Company is one of the

14 largest investor-owned utilities in the country;

15 correct?

16 A. Yes.

17 Q. And you agree with me that Southern Company is

18 significantly larger than Progress Energy Florida;

19 correct?

20 A. Yes.

21 Q. As one of the country's largest investor-owned

22 utilities, you would agree with me that each year

23 Southern Company acquired large quantities of coal;

24 correct?

25 A. That's correct, although I guess now would be

1437

1 an appropriate time to say that Southern Company did not

2 acquire coal. The individual operating companies

3 acquired coal, with Southern Company acting as their

4 procurement agent. But the individual operating

5 companies actually bought the coal.

6 Q. Would those be affiliate companies?

7 A. Yes.

8 Q. And Southern Company or their affiliates, as

9 you corrected me, bought a substantial quantity of PRB

10 coal during the time that you worked there; correct?

11 A. That's correct.

12 Q. And Southern Company or its affiliates had

13 significant market power because it or they bought

14 significant quantities of PRB coal; correct?

15 A. We felt like we did, but I guess you would

16 need to ask the coal salesmen that question.

17 Q. But you agree with me that they did have

18 significant market power?

19 A. Yes. We bought a lot of coal.

20 Q. And Southern Company or its purchasing

21 affiliates were taken very seriously as a purchaser

22 given the amount of PRB coal it or they bought; correct?

23 A. That's correct.

24 Q. Now, there were about six PRB coal suppliers

25 that participated in RFPs that Southern Company would

1438

1 send out for PRB coal during your time there; correct?

2 A. I think I said in my deposition that that was

3 a number we often saw. But the PRB suppliers are

4 limited. I've not heard this really discussed, but the

5 coal mines in PRB are all along a highway that runs

6 north and south between Wyoming and Montana, and there

7 are a limited number, maybe 10 or 12 when I was buying

8 coal. So you're not talking about a huge number. But,

9 yes, six would have been a reasonable kind of number of

10 bids to receive.

11 Q. And there were times that not all six of those

12 suppliers responded to Southern Company's RFPs; correct?

13 A. That not all the PRB suppliers bid, that's

14 correct. Again, there were more than six suppliers.

15 Six would have been an average number of bids we would

16 have gotten from the total number of suppliers.

17 Q. Well, let me just clear that up just to make

18 sure that we're talking the same thing. Let me

19 reference you to page 83 of your deposition there. I

20 just want to make sure I understood you.

21 A. Okay.

22 Q. When I asked how many PRB producers generally

23 participated in RFPs solicited by Southern Company, I

24 believe you clarified there, telling me that once that

25 you knew that Southern was looking for 8,800 Btu

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1 suppliers, the 8,800s would participate, and I asked you

2 how many of those, and you said your recollection would

3 be about six.

4 A. That's correct.

5 Q. Okay. And again, out of those six bids,

6 sometimes you didn't receive six bids -- if you sent it

7 to all six, there were times when you didn't receive

8 responses from all six; correct?

9 A. I would say we sent it to more than six, and

10 six would have been about the average number we

11 received. I'm not sure what the difference is.

12 Q. Well, in this case, you don't dispute the fact

13 that there was times that PEF, like Southern Company,

14 did not receive bids from some of the PRB suppliers that

15 they sent RFPs to; correct?

16 A. Correct. I would agree you do not get bids

17 from everybody you send an RFP to.

18 Q. When considering converting its units to PRB

19 coal, Southern Company considered capital and O&M costs

20 compared to projected savings; correct?

21 A. Correct.

22 Q. And when considering converting its units to

23 PRB coal, Southern Company considered whether their

24 plants would have a megawatt loss; correct?

25 A. Correct.

1440

1 Q. And when Southern Company did switch to PRB

2 coal in some of its plants, it had to pay millions of

3 dollars to terminate existing contracts for other coal

4 that they had at the time; correct?

5 A. I would say those were two separate decisions

6 made. We did have contracts that we negotiated out of

7 because they were high cost and not really at the

8 current market. Separate and apart from that, we bought

9 PRB coal.

10 Q. And when negotiating out of those contracts,

11 Southern Company did often have to pay millions of

12 dollars to terminate them; correct?

13 A. That's correct.

14 Q. And Southern Company had real trouble

15 negotiating out of those long-term contracts for non-PRB

16 coal; correct?

17 A. I would say we definitely struggled to get

18 there. We -- I mean, people don't give up coal

19 contracts easily, so there were some serious, hard

20 negotiations, sometimes over long periods of time.

21 Q. Now, during in your time at Southern Company,

22 you agree with me, Mr. Putman, that Southern Company

23 used a bus bar analysis to evaluate its coal purchases;

24 correct?

25 A. Sometimes we used a bus bar; sometimes we used

1441

1 a delivered cost analysis.

2 Q. But actually, I believe you told me in your

3 deposition that you used both, but always included a bus

4 bar; isn't that correct?

5 A. I guess I would be surprised if that's what I

6 said, because what we always used was the delivered

7 cost. If it was coal we were very familiar with, we

8 would be less inclined to use a bus bar.

9 Q. And again, we may be saying the same thing.

10 Let me just clarify it, though, for the record. Page 55

11 of your deposition, I say there on line 5, "Southern

12 Company, during your time there, did they use any of

13 those variants we talked about to evaluate coal

14 commodities?"

15 "Yes."

16 "Which one?"

17 "Both. We evaluated them to the plant on a

18 Btu basis, and we also factored in performance and had

19 penalties associated with how it would perform in the

20 boiler to make it a bus bar cost."

21 Is that accurate?

22 A. That's correct.

23 Q. Okay. And I believe, just like I read there

24 and in other references where we talked about this in

25 your deposition, Southern Company would come up with

1442

1 evaluated prices where it would assign financial

2 penalties to a certain type of coal; correct?

3 A. If that was appropriate, yes.

4 Q. Now, I don't know if you were here for the

5 first day, Mr. Putman. I don't think you were, but we

6 had a lot of testimony and questions about synfuel. You

7 would agree with me that at least by September 2000,

8 Southern Company began purchasing synfuels; correct?

9 A. That's correct.

10 Q. And the main reason Southern Company bought

11 synfuel was to maximize the tax advantages the

12 government was offering for those fuels; correct?

13 A. That's correct.

14 Q. Now, I believe you mentioned in your prefiled

15 summary Mr. Hatt's O&M and capital estimations, and you

16 said that they were pulled-out-of-the-air costs. I

17 would like to speak to you about some of the cost

18 savings and expenses that you mention in your prefiled

19 testimony. If I could reference you to page 3, line 21

20 and 22, of your prefiled testimony, you say there, sir,

21 that the expenses for converting to PRB coal, the

22 modifications were extremely minor; correct?

23 A. Correct.

24 Q. Yet you can't tell me the amount of those

25 expenses, can you?

1443

1 A. No. I do not have access to that information

2 any longer since my retirement.

3 Q. And again, going to page 3, line 23, what you

4 call the obvious fuel savings that you're comparing

5 those conversion expenses to, you can't tell me the

6 amount of those savings that you allege, can you?

7 A. Not accurately, no.

8 Q. So obviously, not knowing the expenses and not

9 knowing the fuel savings, I can't calculate in my head

10 mathematically whether they are significant or not;

11 correct, sir?

12 A. That's correct.

13 Q. Going on to page 10 -- actually, there are

14 several of these, so I'll try to move through them very

15 quickly. Page 13, line 11 of your testimony, those

16 significant additional savings -- I think we used in

17 your deposition a shorthand of "same answer," that you

18 couldn't tell me what those amounts are. We can use

19 that shorthand here. Is it the same answer, that you

20 can't tell me those savings?

21 A. That's correct.

22 Q. And same answer for line 20 down there?

23 A. Correct.

24 Q. Same answer for page 16, line 3?

25 A. Correct.

1444

1 Q. And same answer for page 16, line 11?

2 A. Correct.

3 Q. Only a few more of these. Page 31, line 3,

4 same answer?

5 A. Now, that one I think I -- I'm not sure that

6 is in the same category as the rest of them.

7 Q. But nonetheless, you can't quantify what those

8 savings are; correct?

9 A. That's correct. I guess, though, I would say

10 that in all this shorthand where I'm saying that those

11 savings occurred, I do agree I cannot give you exact

12 numbers, but I did state in my testimony, which is now

13 sworn testimony, that those savings did occur.

14 Q. Yes, sir. And the very last one there on page

15 31, line 12, same answer there?

16 A. This one for sure, it was a projection of

17 possible lost opportunities on your part, so I cannot --

18 I never had those numbers.

19 Q. Okay. Now, at page 6 of your testimony, line

20 13, you criticize Mr. Heller for not analyzing whether

21 there's an all rail movement from the PRB mines in

22 Wyoming to Crystal River and analyzing whether that

23 would be possible; correct?

24 A. That's correct.

25 Q. Yet you have not done that analysis either,

1445

1 have you?

2 A. I have not analyzed the economics of that

3 movement. I did look on a map and see that there is

4 such a route.

5 Q. And Mr. Sansom did not perform that analysis

6 with respect to economics either, did he?

7 A. I did not see that. I don't know whether he

8 did or not.

9 Q. And on page 29 of your testimony, line 7, you

10 criticize Mr. Heller for not analyzing rail coal

11 movement to McDuffie and then water to Crystal River;

12 correct?

13 A. That's correct.

14 Q. Yet again, you didn't perform such an economic

15 analysis for delivering coal in that manner to Crystal

16 River either, did you?

17 A. Not to Crystal River, no.

18 Q. And you don't know whether Mr. Sansom did as

19 well; correct?

20 A. I had the view that he did look at that, yes.

21 Q. I just want to be clear again, page 50 of your

22 depo.

23 "Again, do you recall Mr. Sansom doing that

24 analysis in his testimony?"

25 And you say, "Not specifically. I don't

1446

1 really remember whether he did an economic analysis. I

2 know he commented on it, but I don't remember an

3 economic analysis."

4 That's correct?

5 A. That was correct at the time. I heard

6 testimony yesterday that would put a little different

7 light, that implied that he did do that.

8 Q. Well, certainly as you sit here today, can you

9 point me to a page and line in his testimony?

10 A. No.

11 Q. Now, you began working on this case February

12 9, 2007; correct?

13 A. Correct.

14 Q. You mentioned earlier you were on-site about

15 two hours at the site inspection of Crystal River?

16 A. Well, based on your numbers, it was actually

17 three hours on-site, two hours outside and one hour in.

18 Q. I'll take two if you want to give me that.

19 A. It was probably more like three.

20 Q. You finalized your testimony between about

21 February 22 and March 6, and that's about two weeks;

22 right?

23 A. Correct.

24 Q. In preparing your testimony in this matter,

25 you did not look at any documents outside of the

1447

1 exhibits attached to Mr. Barsin's testimony; correct?

2 A. I looked at Mr. Sansom's testimony.

3 Q. I just want to refer you to your deposition

4 again, page 36. I ask you there on line 19, "You didn't

5 look at anything outside of the exhibits Mr. Barsin has

6 included?" And you say, "That's correct." Did I read

7 that properly?

8 A. You read that. I'm not sure -- I guess I had

9 in mind that the flow of conversation at that point was

10 about Mr. Barsin's testimony.

11 Q. And just speaking of Mr. Barsin, you only

12 scanned over his exhibits, as we see right above that;

13 correct?

14 A. That's correct.

15 Q. You had not read the acceptance test burn

16 report for CR4 and 5 at the time of your deposition;

17 correct?

18 A. That's correct.

19 Q. You've never worked at CR4 or 5 as an employee

20 or contractor; correct?

21 A. I have not.

22 Q. You've never operated any controls at CR4 and

23 5; correct?

24 A. That's correct.

25 Q. You also have given testimony about train and

1448

1 rail deliveries, and you mentioned that in your summary.

2 You've never researched or studied PEF's experience with

3 receiving train deliveries of coal at CR4 and 5, have

4 you?

5 A. I have not.

6 Q. You've never researched or studied PEF's

7 experience with receiving barge deliveries of coal at

8 CR4 and 5, have you?

9 A. I have not.

10 Q. You have never researched or studied whether

11 there are any rules or regulations dealing with what

12 kind of trains can come onto Crystal River because there

13 is a nuclear plant there, have you?

14 A. I have not.

15 Q. You have never researched or studied whether

16 there are rules and regulations dealing with what kind

17 of barges can come onto the Crystal River site because

18 there is a nuclear plant there, have you?

19 A. I have not.

20 Q. And finally, you have never researched or

21 studied whether there are any physical constraints as to

22 what kind of barges can come onto Crystal River, have

23 you?

24 A. My observation of the size of the river said

25 there was some, but I have not studied it, no.

1449

1 MR. BURNETT: Thank you, sir. No further

2 questions.

3 CHAIRMAN EDGAR: Are there questions from

4 staff?

5 MS. BENNETT: Two.

6 CROSS-EXAMINATION

7 BY MS. BENNETT:

8 Q. You just talked about receiving bids from PRB

9 suppliers; is that correct?

10 A. Yes, ma'am.

11 Q. Isn't it true, Mr. Putman, that Southern

12 Company became interested in Powder River Basin coal

13 based on a direct offer from Burlington Northern

14 Railroad to provide discounted transportation for the

15 product?

16 A. That is correct. That is how we piqued our

17 interest, was an offer from Burlington Northern, who

18 came and knocked on our door.

19 MS. BENNETT: I have no further questions of

20 this witness.

21 CHAIRMAN EDGAR: Commissioner Carter.

22 COMMISSIONER CARTER: Thank you, Madam

23 Chairman. Good afternoon.

24 THE WITNESS: Good afternoon.

25 COMMISSIONER CARTER: I was listening with

1450

1 great interest in your testimony this afternoon. And I

2 just want to ask a few questions, Madam Chairman, if I

3 may be permitted to do so. I'm thinking three, but it

4 may go a little longer than that, please.

5 I notice that you mentioned that you had been

6 part of a situation at the Southern Company where they

7 went through the conversion of power plants --

8 THE WITNESS: Correct.

9 COMMISSIONER CARTER: -- to PRB coal; right?

10 THE WITNESS: Yes.

11 COMMISSIONER CARTER: Do you remember what it

12 cost you guys to convert your plants?

13 THE WITNESS: Again, I do not have access to

14 the actual numbers, so I cannot give you a real, actual

15 number, but they were minor. As I said in my testimony,

16 they were not significant compared to the fuel savings,

17 but I cannot tell you an actual dollar amount. But they

18 were small.

19 COMMISSIONER CARTER: As I understand it, you

20 were here yesterday?

21 THE WITNESS: Yes.

22 COMMISSIONER CARTER: You heard my discussion

23 about the cost, a dialogue with the witnesses about the

24 cost for the refund, if any, as well as the cost of

25 conversion, if any, and the maintenance costs? Do you

1451

1 remember that?

2 THE WITNESS: Yes, sir.

3 COMMISSIONER CARTER: What about the cost

4 after the conversion was made? Do you remember the cost

5 of the maintenance and operation of those plants once

6 they were converted over to burn that type of coal?

7 THE WITNESS: There were numbers that got

8 built into the entire maintenance, employee situation,

9 so I don't have numbers. I don't have access to those

10 numbers. Again, like I say, Southern Company, as I was

11 asked, is a very successful operating company, and it

12 was our experience that we were able to make these

13 conversions and run successfully, and that the money

14 that it cost to make the initial conversion and the

15 ongoing O&M costs were a wash. I mean, they were small.

16 They would get lost in the decimals.

17 COMMISSIONER CARTER: Does Southern Company

18 own any nuclear plants?

19 THE WITNESS: Yes, they do.

20 COMMISSIONER CARTER: But you're primarily

21 coal, though, aren't you? Is that your primary source?

22 THE WITNESS: About 20 percent of the Southern

23 generation is nuclear, about 6 percent is hydro, and the

24 rest is fossil.

25 COMMISSIONER CARTER: Okay. Fossil would be

1452

1 coal primarily?

2 THE WITNESS: Mostly coal. They've been

3 adding -- since I left and quit buying coal, they've

4 been buying a lot of natural gas plants, but still

5 relatively small, still by far a coal generating

6 company.

7 COMMISSIONER CARTER: I'm about through in

8 this line, Madam Chairman, but I do have two other lines

9 of questions, with your permission.

10 Do you remember the length of time for the

11 conversion of these plants that you went through while

12 you were at the Southern Companies?

13 THE WITNESS: The time to make the decision

14 was much longer than the physical changes necessary to

15 burn the coal. They were in matters of months, well

16 under a year.

17 COMMISSIONER CARTER: The physical changes

18 were under a year?

19 THE WITNESS: Physically to make the changes;

20 right.

21 COMMISSIONER CARTER: Okay. Let me ask you

22 this then, still on that same line, Madam Chair. The

23 plants that you converted, were they the same size as

24 what we've been discussing here with CR4 and CR5?

25 THE WITNESS: Some bigger, some smaller. The

1453

1 Scherer plants, four units in Georgia, are bigger than

2 Crystal River. The Miller plants, which were also built

3 and designed by B&W, the same boiler manufacturer as

4 Crystal River, were a little bit smaller. But they were

5 similar in size in the big picture, but Scherer was

6 bigger and Miller was smaller. And the ones over in

7 Mississippi were a good bit smaller than the Crystal

8 River units.

9 COMMISSIONER CARTER: Madam Chairman, if I

10 could indulge. Mr. Burnett, do you have that slide that

11 showed the aerial view of the plant where you had those

12 three circles on it about the location of the coal

13 piles, the nuclear plant, and CR4 and CR5?

14 MR. BURNETT: Sir, we don't have that plugged

15 up, but I may have some hard copies, if I could search

16 through the boxes.

17 COMMISSIONER CARTER: I was just beginning to

18 enjoy having that put up on the screen.

19 MR. BURNETT: I've very sorry, sir. I should

20 have left it plugged up.

21 COMMISSIONER CARTER: That's okay.

22 MR. BURNETT: I can try to find it and put it

23 up here, sir.

24 COMMISSIONER CARTER: That's okay.

25 You've been to Crystal River, have you not?

1454

1 THE WITNESS: I have.

2 COMMISSIONER CARTER: And you've seen the -- I

3 suppose we had it up there one time yesterday too.

4 You've seen the configuration of the -- thank you for

5 your indulgence, Madam Chairman.

6 CHAIRMAN EDGAR: And through the wonders of

7 technology.

8 COMMISSIONER CARTER: Have you got the one

9 with the circles on it that shows the coal? You know

10 which one I'm talking about?

11 That's the one right there. There we go.

12 CHAIRMAN EDGAR: Focus.

13 COMMISSIONER CARTER: There we go. You're

14 familiar with this slide? You've seen it?

15 THE WITNESS: Yes, sir.

16 COMMISSIONER CARTER: We had it up yesterday.

17 Thank you, Mr. Burnett.

18 Do you know of any coal and nuclear power

19 plant in the country configured like this, as proposed

20 in this slide here, where the PRB coal would be, where

21 the circle on the bottom, which would be the

22 southernmost portion, and to the northeast would be the

23 other coal pile over there, coal pile? Do you know any

24 plant in the country that's configured like that where

25 you have a nuclear power plant and coal plants on the

1455

1 same site?

2 THE WITNESS: I do not know any that share

3 sites between nuclear and coal-fired, no, sir.

4 COMMISSIONER CARTER: Any in the world that

5 you know of?

6 THE WITNESS: I'm not knowledgeable about

7 that, so I really couldn't answer that. I have no

8 personal knowledge of any anywhere in the world.

9 COMMISSIONER CARTER: I was just beginning to

10 enjoy this.

11 CHAIRMAN EDGAR: Keep going. Although if

12 you're just beginning and it's day four, then I think

13 we --

14 COMMISSIONER CARTER: Oh, okay. No further

15 questions, Madam Chairman.

16 CHAIRMAN EDGAR: Mr. McGlothlin.

17 MR. McGLOTHLIN: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. McGLOTHLIN:

20 Q. Mr. Putman, Mr. Burnett asked you to agree

21 that even if Powder River Basin coal is cheaper at a

22 given point in time, things could change such that a

23 different coal could be cheaper later on. Do you recall

24 that question and answer?

25 A. I do, yes.

1456

1 Q. Is it also true, sir, that even if bituminous

2 coal is cheaper at a point in time, things could change

3 and Powder River Basin coal could become the more

4 economical choice?

5 A. Absolutely, and that was our experience in the

6 early '90s.

7 Q. Mr. Burnett asked you to agree that it's

8 necessary to conduct a test burn of a facility before

9 utilizing a coal. Do you have a view as to when it

10 would be appropriate to perform a test burn of the coal

11 that a particular unit was designed to burn over the

12 life of the unit?

13 A. Clearly, if you're going to design a unit to

14 burn a particular coal, it should be test burned with

15 that coal for the initial acceptance test. I mean, it

16 is unconscionable to me to build a unit, spend $44

17 million extra on that unit, and then not run it with the

18 coal that it was designed to burn.

19 Q. Mr. Burnett asked you to agree that Southern

20 Company as agent for the operating companies had market

21 power in the coal markets. Do you recall that question

22 and answer?

23 A. I do.

24 Q. If you know, was Southern Company the only

25 utility purchasing Powder River Basin coal during this

1457

1 time frame?

2 A. I do know we were not the only ones purchasing

3 Powder River Basin coal.

4 Q. Mr. Burnett asked you about the experience of

5 Plant Daniel, and in your summary you indicated that

6 Plant Daniel was relatively speaking a smaller box unit.

7 Would you explain what you meant when you used the term

8 "smaller box" as opposed to a big box?

9 A. The boiler is a box that's made up of water

10 wall tubes. The water flows up through the box. You

11 have a big fire going on in the box exchanging heat

12 through the water wall tubes. If you get enough heat,

13 you get enough steam. If you get enough steam, you get

14 enough flow. It goes to a turbine and runs the turbine,

15 and you make electricity.

16 Well, the box I'm talking about is the box

17 made up of the water wall tubes. You can have a big

18 box, meaning it takes up a lot of length, width, and

19 height, or you can have a smaller box. The size of the

20 box is heavily dependent in the design on how much steam

21 flow you want to end up with. You have to have enough

22 box size to exchange heat from the fire into the water

23 to make the steam.

24 So if you're going to be putting a lot of BTUs

25 in there in a compact manner like with oil, then you

1458

1 don't need as big a box. You can get that heat exchange

2 with a smaller box. If you're going to use a lower Btu

3 product like Appalachian coal compared to oil and a

4 lower Btu like PRB, you always have to keep making the

5 box bigger, because you've got to have space in there to

6 burn the product, whether it's oil or coal, in order to

7 exchange that heat with the water wall tubes and get

8 enough steam to run the turbine at the design level.

9 So if you have a box that was designed for

10 oil, it is smaller. You cannot put physically as much

11 coal into that box to have a big enough fire to get

12 enough heat out to make enough steam. And that was the

13 problem with Plant Daniel, and that was the problem with

14 Plant Watson. Both of those units were designed for oil

15 originally, converted to coal some time ago, and they

16 were not big enough to get full load capacity out of the

17 coal you could put into that box.

18 Plant Miller and Plant Scherer, because of the

19 time they were built, they were built for coal, they

20 were built to be reliable, and so they fortunately had

21 big boxes. And that allowed us to put volumes of coal

22 in there, 100 percent PRB, therefore a much lower Btu

23 level than we're talking about with Crystal River, and

24 still have the space and still get enough heat out to

25 the water walls to generate at their full load capacity

1459

1 without a derate.

2 In all honesty, I will admit that those units

3 were fortunate. It was almost luck that they were

4 designed and built big enough, for reasons of

5 reliability versus reasons of burning a particular coal,

6 and that allowed them to be successful.

7 Progress Energy had some farsighted people,

8 and it amazes me that when they designed the Crystal

9 River plants back in the late '70s when Powder River

10 Basin coal was on the horizon, yes, they were mining

11 some of that coal, but it was certainly was not foreseen

12 as the solution to the coal needs of the United States

13 like it is today. But those farsighted people said, "We

14 want to build a unit that can burn Powder River Basin

15 coal," not just low Btu coal, but Powder River Basin

16 coal. And they said, "Build me a plant that will burn

17 50/50, and we're willing to spend the extra money,

18 because you're going to have to build a bigger box,

19 you're going to have to build a bigger unit," all those

20 things Joe Barsin talked about yesterday. "It's going

21 to be much bigger and cost more money. We want that.

22 That will give us a heads-up," a lead for being able to

23 burn the kind of coal that some farsighted people said

24 would be available. And those brilliant people designed

25 it and paid for it.

1460

1 What amazes me even more is that for some

2 unknown reason, between the time of those visionaries

3 and the people who sat down in a room somewhere and made

4 the decision, all right, what are we going to test this

5 unit with, those people said, "We're going to just burn

6 Central Appalachian coal." I just do not understand

7 that, but that's what the record shows.

8 That was a long-winded answer. I apologize.

9 Q. Just one quick follow-up to put this in the

10 same framework of earlier questions and answers. You

11 have seen Crystal River 4 and 5, have you not, sir?

12 A. I have.

13 Q. Are they small boxes or big boxes?

14 A. Big boxes.

15 Q. You were asked several questions about those

16 references in your testimony to the substantial savings

17 that Southern Company realized for its customers, and

18 you acknowledged that you don't have access to the

19 precise numbers. Without divulging any confidential

20 information, and speaking in terms of order of

21 magnitude, can you provide us some insight as to the

22 difference between the delivered cost of Powder River

23 Basin coal on the one hand and the delivered cost of the

24 coal that it would replace on the other that would

25 perhaps shed some light on the opportunity you

1461

1 described?

2 MR. BURNETT: Objection. Outside of the

3 scope, and vague and ambiguous as to any temporal

4 constraint on that question, or any facts or details

5 where the witness could answer in a meaningful form.

6 MR. McGLOTHLIN: It's not outside the scope,

7 because the spread between the two coals has a direct

8 bearing on the order of magnitude of the savings

9 realized. And in terms of temporal questions, I'll put

10 it in terms of Mr. Putman's own tenure with Southern

11 Company, and he can address it in that fashion.

12 CHAIRMAN EDGAR: I'll allow.

13 A. The best example, because it relates the

14 closest to Crystal River, is Plant Miller, B&W boilers.

15 Prior to conversion to PRB, those plants were burning

16 the highest priced coal in the United States. Those

17 plants were burning coal that was mined in Alabama

18 almost right next door to this plant.

19 Those coal contracts had gotten way out of

20 line. They were terrible. We were able to negotiate

21 out of some of them. We had a price review on one of

22 them, and we were able to get out of that contract

23 because we had an option with the Powder River Basin

24 coal.

25 When we converted those plants, they became

1462

1 the lowest cost generation in the Southern Company of

2 all the coal-powered plants, and they were just higher

3 than the nuclear plants as far as cost. They were in

4 the range of 1.25 per million Btu fuel cost. A fair

5 comparison of our options as we went through those

6 market reviews at that time, compared to that $1.25,

7 other coal, bituminous coal delivered either from

8 Alabama or from Central Appalachia were more in the 2.25

9 range. So you're talking about a dollar per million

10 BTUs, and on any kind of calculation, that is a large

11 amount of money.

12 Q. And just to be clear, Mr. Putman, are both of

13 these delivered, including transportation costs?

14 A. Yes, they do include -- and if there had been

15 any penalties, that would include those penalties, but

16 they did not.

17 Q. In response to a question from Mr. Burnett,

18 you acknowledged that Southern Company paid millions of

19 dollars to terminate certain contracts. Do you recall

20 that?

21 A. Yes.

22 Q. Why would Southern Company pay millions of

23 dollars to get out of contracts?

24 A. Well, the market had gotten so out of line

25 with our contracts compared to the market -- I guess the

1463

1 market didn't get out of line. We got out of line. We

2 had coal contracts that went for long periods of time

3 that we were paying an extensively high price.

4 So we took the approach and aggressively went

5 after those contracts, and we offered those suppliers a

6 fixed amount of money. And when we negotiated those

7 deals and we paid them an up-front lump sum of money,

8 then we were able to spread that, with Public Service

9 Commission approval, spread that money off against every

10 ton we bought from the replacement coal. And when you

11 added the replacement coal price plus that buyout cost,

12 we still saved, again, a significant amount of money on

13 a dollar per million Btu basis of the old cost compared

14 to the new cost of replacement coal plus the buyout. So

15 we saved lots of money for the ratepayers at that time.

16 Q. If I could just have a second to review my

17 notes.

18 Mr. Burnett asked you to agree that Southern

19 Company performs a bus bar analysis among the other

20 comparisons that Southern Company conducts when

21 evaluating particular coals. Do you recall that

22 question and answer?

23 A. I do.

24 Q. Does a bus bar analysis take into -- consider,

25 among other things, transportation cost of the fuel?

1464

1 A. You start that analysis with a delivered cost,

2 which would have included the transportation cost, so

3 that gets it to the plant. And then to make it a bus

4 bar cost, you add in any pluses or minuses of the cost

5 of burning that coal.

6 Q. To the extent that the transportation cost is

7 overstated, what effect would that have on the evaluated

8 cost generated with the bus bar analysis?

9 A. If any component is overstated or incorrect,

10 then you get a wrong analysis. Because transportation

11 -- as John said, transportation is usually the bigger

12 component, so if there's some error in the

13 transportation piece, then you get sort of a weighting

14 effect that makes it even more out of line. So every

15 component has got to be right. Transportation is a big

16 number, so it's got to be the most right, I guess.

17 Q. Mr. Burnett asked you to agree that utilizing

18 a blend containing Powder River Basin coal, it would be

19 necessary to supply a greater quantity of tons to the

20 units as compared to the bituminous coal product. Do

21 you recall that question and answer?

22 A. I do.

23 Q. Why is it necessary to provide more tons with

24 the blend than with the pure bituminous coal?

25 A. I won't go back through my long description of

1465

1 boiler boxes, but what you've got to do is, you've got

2 to put BTUs into the furnace. If you have a smaller,

3 lower Btu product like PRB, then you have put more tons

4 into the box. You have to design the box to do that,

5 and you have to design the components to move the coal

6 in there. But that's why you put more tons in, because

7 you've still got to get the same number of BTUs into the

8 box.

9 Q. Have you seen and are you aware of any

10 information that would indicate Progress Energy is

11 confident it can supply the needed BTUs to the box

12 utilizing a 50/50 blend of bituminous and sub-bituminous

13 coal?

14 A. I have. I've been shown a permit application

15 for environmental changes at Crystal River that implies

16 that they're going to build scrubbers and other devices

17 there and that their intent, or at least from a design

18 standpoint, is to burn a combination of Illinois Basin

19 coal and Powder River Basin coal, and that the net BTUs

20 of that combination would be a couple hundred BTUs per

21 ton less than the design of the Crystal River units. So

22 they apparently feel comfortable that with the even

23 lower Btu content than the 50/50, they can still reach

24 full generation.

25 MR. McGLOTHLIN: Those are all my questions.

1466

1 CHAIRMAN EDGAR: Okay. The witness is

2 excused. Thank you.

3 THE WITNESS: Thank you.

4 CHAIRMAN EDGAR: Mr. McGlothlin, call your

5 next witness, please.

6 MR. McGLOTHLIN: We call Steve Smallwood. We

7 need to swear the witness.

8 CHAIRMAN EDGAR: Okay. If you would, raise

9 your right hand.

10 Thereupon,

11 STEPHEN SMALLWOOD

12 was called as a rebuttal witness on behalf of the

13 Citizens of the State of Florida, and having duly been

14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. McGLOTHLIN:

17 Q. Please state your name and your business

18 address for the record, sir.

19 A. My name is Stephen Smallwood. My business

20 address is 1608 Eagles Landing, Unit 64, Tallahassee,

21 Florida.

22 Q. Mr. Smallwood, did you prepare and submit on

23 behalf of the Office of Public Counsel rebuttal

24 testimony in this proceeding?

25 A. Yes.

1467

1 Q. Do you have that document with you, sir?

2 A. Yes.

3 Q. Do you adopt the questions and answers

4 contained in this document as your testimony before the

5 Commission today?

6 A. Yes, I do.

7 MR. McGLOTHLIN: I would ask that the prefiled

8 testimony, rebuttal testimony of Mr. Smallwood be

9 inserted at this point.

10 CHAIRMAN EDGAR: The prefiled rebuttal

11 testimony will be inserted into the record as though

12 read.

13 BY MR. McGLOTHLIN:

14 Q. And, Mr. Smallwood, did you provide the three

15 exhibits that are attached to this testimony?

16 A. Yes.

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1 BY MR. McGLOTHLIN:

2 Q. Have you prepared a summary to give this

3 morning?

4 A. Yes, sir, I have.

5 Q. This afternoon, excuse me. Please give the

6 Commissioners your summary.

7 A. Commissioners, I am a Florida registered

8 professional engineer who specializes in air pollutant

9 source permitting. I received my degree in mechanical

10 engineering from the West Virginia University Institute

11 of Technology in 1966.

12 For the past 14 years, I've worked as a

13 consulting engineer. During the past seven years, I've

14 been self-employed doing business as Air Quality

15 Services. Prior to joining the FDER, which was the

16 predecessor of the current FDEP, I worked as a project

17 engineer for the West Virginia Air Pollution Control

18 Commission in Charleston, West Virginia, and later as

19 their regional manager for the Commission's Northern

20 Panhandle regional office. That was from 1966 to 1978.

21 In my summary testimony today, I will briefly

22 discuss one issue that was raised by Progress Energy

23 Florida's witness Michael Kennedy in his written

24 testimony concerning the air permitting of Crystal River

25 Units 4 and 5. Specifically, I'll be addressing the

1480

1 question concerning the significance of the company

2 omitting reference to the Powder River Basin coal in its

3 initial Title V permit application. I consider this

4 issue to be the most important issue that was raised in

5 his testimony. Additional information on this issue and

6 other related issues has been provided in my written

7 testimony.

8 In his testimony, Mr. Kennedy disputed the

9 assertion by OPC witness Sansom that PEF took steps to

10 abandon its authority to burn sub-bituminous coal in the

11 Crystal River Units 4 and 5 when it omitted any

12 reference to that fuel in the section of the Title V air

13 permit application that called on the applicant to

14 identify the fuels it proposed to burn in those units.

15 My comments: As I read his testimony,

16 Mr. Kennedy was saying that the company lost nothing,

17 because it could come back later and add sub-bituminous

18 coal to the permit. In my view, by failing to designate

19 sub-bituminous coal as among the fuels for which it

20 wished authority in its initial application for a Title

21 V permit, PEF did give up something that had value.

22 One: Under the conditions of certification,

23 PEF could burn the blend of bituminous coal and

24 sub-bituminous coal and be in compliance as long as it

25 conducted the necessary stack tests to demonstrate that

1481

1 it was meeting the applicable emission limits.

2 Two: On the other hand, the Title V permit is

3 fuel specific. The important point is that once the

4 federal Title V permit was issued in a form that did not

5 include sub-bituminous coal explicitly, PEF no longer

6 had the authority to burn the blend, even though the

7 blend continued to be permitted by the conditions of

8 certification that had been issued pursuant to a state

9 statute. The reason for that is because the Title V

10 permit is a federally enforceable air operation permit

11 that takes precedence over all previously issued air

12 permits.

13 Three: I've been informed by OPC that PEF

14 began a test burn in 2004, but halted it when its

15 environmental department informed the plant that the

16 initial Title V permit that was issued did not authorize

17 PEF to burn PRB coal in Units 4 or 5. The introduction

18 to the subsequent application for a construction permit,

19 which would authorize the needed test burn, reflects in

20 its first overtures to the FDEP following this incident,

21 PEF said that the conditions of certification allowed

22 PEF to use a blend in Units 4 and 5 and argued that a

23 permit should be unnecessary. The FDEP did not agree

24 that a test burn could be lawfully conducted for a fuel

25 that was not identified in the Title V permit without

1482

1 first obtaining an air construction permit that would

2 authorize the test burn.

3 Four: PEF's application for construction --

4 CHAIRMAN EDGAR: Mr. Smallwood, I'm sorry to

5 interrupt, but you're about two minutes over your

6 summary time. Can you finish up?

7 THE WITNESS: Yes. I'm about finished.

8 CHAIRMAN EDGAR: Thank you.

9 THE WITNESS: PEF's application for a

10 construction permit to conduct the necessary test was

11 later granted, and a test burn was conducted on Unit 5

12 during May of 2006.

13 Conclusions: Based on my experience as the

14 senior manager for FDEP's air program, I believe the

15 inclusion of using sub-bituminous and bituminous coal

16 during the utility's application for its first Title V

17 permit would have been straightforward and relatively

18 simple if PEF had conducted the needed test burn on the

19 50/50 blend within a reasonable time after the plant was

20 built and submitted that data to the FDEP as part of the

21 initial Title V application. In my opinion, PEF's after

22 the fact approach to permitting the PRB coal has been

23 more time consuming, complicated, and costly, because

24 the company chose not to test the units when the units

25 were first built.

1483

1 CHAIRMAN EDGAR: Thank you. Mr. McGlothlin.

2 MR. McGLOTHLIN: We tender the witness.

3 CHAIRMAN EDGAR: Ms. Bradley.

4 MS. BRADLEY: No questions.

5 CHAIRMAN EDGAR: No questions. Mr. Burnett,

6 Ms. Triplett.

7 MS. TRIPLETT: Hi. Thanks.

8 CROSS-EXAMINATION

9 BY MS. TRIPLETT:

10 Q. Good afternoon, Mr. Smallwood.

11 A. Good afternoon.

12 Q. While you were at the Department of

13 Environmental Regulation, you were not involved with the

14 conditions of certification for CR4 and CR5; is that

15 right?

16 A. No, I was not.

17 Q. And you were also not involved in the Title 5

18 permit application process that was filed by PEF for CR4

19 and 5; is that right?

20 A. That's correct.

21 Q. You agree that PEF had to comply with

22 emissions limits for CR4 and CR5 pursuant to its

23 conditions of certification; correct?

24 A. Yes, they did.

25 Q. And those emission limits included particulate

1484

1 matter and opacity limits; correct?

2 A. That's correct.

3 Q. And it was DEP's, or formerly DER's job to

4 enforce those emission limits; correct?

5 A. That's correct.

6 Q. And if a utility violated these emission

7 standards, the DEP would impose a fine on the utility;

8 is that right?

9 A. They would when I was there.

10 Q. And you would agree that if PEF had burned a

11 sub-bituminous and bituminous coal blend at CR4 and 5

12 prior to 1996, it would have to demonstrate that it was

13 meeting those emission limits; is that correct?

14 A. That one doesn't have a simple yes or no. Let

15 me explain. In the conditions of certification, as I

16 understand it, the company had identified the blend and

17 also using bituminous coal. That was -- and they

18 submitted information that was adequate to basically get

19 the construction part of the certification, which is a

20 matter of saying based on the engineering analysis, it's

21 reasonable to believe that you can comply with the

22 limits.

23 After the unit was constructed, then the

24 second part kicks in, and that's when you have to go and

25 actually test the units to find out if they can actually

1485

1 comply. So under the conditions of certification, the

2 company could have conducted a test for the blend the

3 same as they did for the West Virginia coal, because it

4 was part of the conditions of certification. The

5 problem was that after the Title V permitting kicked in,

6 they could no longer do that, because it did not include

7 the blend as one of the coals that could be used, and

8 that's why they had to get a construction permit to get

9 authority to do that.

10 Q. Okay. But you just said that PEF could have

11 done a test burn. So you would agree that prior to

12 1996, in order to demonstrate that it was meeting the

13 emission limits, it would have had to do a test burn

14 with sub-bituminous and bituminous coal; is that

15 correct?

16 A. That's correct.

17 Q. And you also agree that a utility cannot just

18 send DEP a design document for the boiler or the ESP of

19 the unit to demonstrate satisfactory compliance with

20 emission standards; is that right?

21 A. That's correct.

22 Q. And in fact, you agree that sometimes the air

23 pollution control equipment that is built does not work

24 as well as it was designed; is that right?

25 A. That's not uncommon.

1486

1 Q. And in fact, agencies like DEP always insist

2 that regardless of how good the design looks, the proof

3 is to take it out there and test it and see what

4 happens; is that right?

5 A. That's correct.

6 Q. Now, if a utility had called you up while you

7 were at DEP or DER and asked for your opinion about

8 whether burning a different type of coal would violate

9 and result in an emissions violation, you would not have

10 given such an opinion; correct?

11 A. Probably not. I would have probably discussed

12 the subject with them or asked them to talk to Clair

13 Fancy, who was in charge of permitting.

14 Q. You would also agree, in fact, that a utility

15 would have to do a test burn to see whether the emission

16 limits would be met with the new coal; correct?

17 A. Let me think about that a minute.

18 In general, I think the answer would be yes.

19 And the reason that I thought about that for a minute,

20 when the company went out to obtain the bituminous coal

21 from West Virginia, there are a lot of different coal

22 products you can purchase in that state. The ones that

23 were purchased are from the southern part of the state,

24 and it's pretty high grade coal and a lot of it.

25 So I guess the question comes down to what

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1 constitutes a different coal, and my guess is that the

2 Department would have probably accepted coals from

3 different counties in southern West Virginia as long as

4 it was part of the same general coal seam. It's kind of

5 a matter of, is it reasonable to assume that this is the

6 same or that this will work. Obviously, if you went up

7 into the northern part of the state and bought some coal

8 and said, "Well, we think it will work as good," I would

9 have said, "No, it won't." You would have to run a

10 test. So you can't really give a yes or no answer to

11 that.

12 Q. What about if it was going from a bituminous

13 coal to a sub-bituminous coal? Would that be something

14 different?

15 MR. McGLOTHLIN: Objection. It assumes facts

16 not in evidence. We've never recommended straight

17 sub-bituminous coal.

18 MS. TRIPLETT: I'm assuming you mean straight

19 sub-bituminous coal, not bi --

20 MR. McGLOTHLIN: Your question --

21 MS. TRIPLETT: I'll rephrase.

22 BY MS. TRIPLETT:

23 Q. What about if it was from bituminous coal to a

24 50/50 blend of bituminous and sub-bituminous coal?

25 Would you consider that to be a different type of coal

1488

1 such that a test burn would be needed?

2 A. Yes. And under the conditions of

3 certification, the company was authorized to do that up

4 until the time that we had the Title V permit. But

5 after that time, they were not authorized to do that

6 anymore, because they didn't include that in the Title V

7 permit.

8 Q. Now, you would agree that even if PEF had done

9 an initial stack test for sub-bituminous/bituminous coal

10 when CR4 and CR5 came on line, they would in fact have

11 to do another stack test prior to the Title V permit

12 application?

13 A. That's another one of those that's not all

14 black or white. If the company had done a test on the

15 blend, let's say, within a reasonable time after the

16 units were in operation, and -- you would have then

17 known whether there were problems instead of waiting

18 years to find out. And if you passed those tests by a

19 significant margin, then the Department in later years

20 possibly would not ask for another test. I think what

21 they would look at is, first, is there anything about

22 the coal that's really different or anything about the

23 plant that's really different than, let's say, five or

24 ten years ago.

25 And perhaps more importantly, what they would

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1 do, they would look at the test methods that were used,

2 and if they were comparable to what was being used

3 today, they might accept those old tests, but that would

4 be again a judgment call as to whether those earlier

5 tests were something that could be relied on.

6 Q. I understand. And just to make the record

7 clear, do you remember when Mr. Walls took your

8 deposition in this case?

9 A. Mr. --

10 Q. Mr. Walls, Mr. Mike Walls. Do you remember

11 him --

12 A. Yes.

13 Q. Do you have a copy of your deposition

14 transcript with you up there?

15 A. I think I do.

16 Q. Okay. Can you just turn to page 48, and I'll

17 let you get there.

18 A. Page 48?

19 Q. Yes, sir.

20 A. Okay.

21 Q. And I'm looking at line 18.

22 A. Okay.

23 Q. And I'm going to read this, and you tell me if

24 I read it correctly. "It's your opinion that had PEF

25 done a stack test when the units became operational on a

1490

1 blend of PRB and bituminous coals, they would still have

2 needed to do a freshened stack test before applying for

3 the Title V permit; is that accurate?"

4 "Answer: I think that would probably be the

5 case, but that would have been up to the Department."

6 "And what is a freshened stack test?"

7 And onto the next page, "Answer: They just

8 have to do another one."

9 Did I read that correctly.

10 A. Yes.

11 Q. And when you use the term "freshened stack

12 test," you really mean just another stack test; right?

13 A. Yes. That was probably a bad choice of words.

14 What I meant was -- what I was thinking when I said

15 that, there is more than one pollutant that has to be

16 tested. There's a list of them, as you mentioned

17 before, and there's a different test method for each of

18 those. And things like particulate or opacity, the test

19 method hasn't really changed much over the last 20

20 years.

21 On something like nitrogen oxide, if you go

22 back, you know, late '70s, early '80s, the methods used

23 then are not now considered reliable, so it's quite

24 possible that you might have to do a test for nitrogen

25 oxide, but maybe not anything else.

1491

1 Again, what the Department is going to be

2 looking at is, is the test that was conducted still

3 something that can be relied on, and if it can, then

4 they're going to accept that. If they can't, or if they

5 can't accept part of it, then they would ask for maybe

6 one test and not a full series of tests.

7 Q. But again, when you use the term "freshened

8 stack test," you mean you have to do another stack test?

9 A. Yes.

10 MR. McGLOTHLIN: Objection. Asked and

11 answered.

12 THE WITNESS: Yes. My assumption was that --

13 MR. McGLOTHLIN: Just a minute, Mr. Smallwood.

14 That's the same question that was posed before, and he

15 answered it.

16 CHAIRMAN EDGAR: Sustained.

17 BY MS. TRIPLETT:

18 Q. Now, I think you referred to the time

19 difference in test burns. And you would agree that

20 there will be wear and tear on a unit's emission control

21 equipment over time; is that correct?

22 A. That's correct, even if you maintain it well.

23 Q. And you agree that it is possible that

24 sub-bituminous coals cause higher particulate matter and

25 opacity levels than burning bituminous coals; correct?

1492

1 A. It's possible, but it's not something that's

2 an absolute certainly.

3 Q. And you admit that you do not have any

4 independent opinion or testimony as to whether the

5 design documents for CR4 and CR5 actually guarantee that

6 they would have met a 20 percent opacity limit for a

7 sub-bituminous/bituminous coal blend; is that correct?

8 A. I do not personally have that, because those

9 documents, from the Department's point of view, or let's

10 say from the professional engineer who reviews those

11 documents, is basically looking for answering the

12 question as to whether the design that's being proposed

13 is something that you might reasonably expect to be

14 capable of meeting the standard.

15 And, of course, you don't know. That's why

16 you have a two-step process. And if it seems like it's

17 reasonable, that it's something that, from what you can

18 do with analysis, it would stand a reasonable chance to

19 work, then they say, "Okay, you get a construction

20 permit. Go build it, test it, and if it doesn't work,

21 then you can fix it."

22 Q. And PEF could not have just written down PRB

23 coal or sub-bituminous coal on its Title V permit

24 application; is that right?

25 MR. McGLOTHLIN: Object. It's vague.

1493

1 THE WITNESS: I don't understand the question.

2 MS. TRIPLETT: What's vague about it?

3 CHAIRMAN EDGAR: If the witness doesn't

4 understand it, let's rephrase.

5 MS. TRIPLETT: Okay.

6 BY MS. TRIPLETT:

7 Q. When PEF was applying in 1996 for its Title V

8 permit, it couldn't have just written down PRB coal or

9 sub-bituminous coal as an allowable fuel on its permit?

10 MR. McGLOTHLIN: Same objection, unless the

11 witness understands the question.

12 CHAIRMAN EDGAR: Mr. McGlothlin, I'm sorry.

13 I'm not understanding you. Could you repeat, please?

14 MR. McGLOTHLIN: I don't understand the

15 question. It seems vague to me, and so I object unless

16 the witness says he knows he can answer the question.

17 CHAIRMAN EDGAR: The objection seemed a little

18 vague as well.

19 MR. McGLOTHLIN: I'll withdraw. Let's see

20 what the witness can do with it.

21 THE WITNESS: I think I can answer the

22 question.

23 MR. McGLOTHLIN: I'll withdraw the objection.

24 THE WITNESS: If my answer doesn't seem to be

25 responsive to what's in your mind, tell me.

1494

1 BY MS. TRIPLETT:

2 Q. Fair enough.

3 A. I think the short answer to your question is

4 no, but that question requires a little more than a yes

5 or no. Part of the permit application for -- well, let

6 me back up just a minute.

7 The Title V permit is a facility-wide permit

8 that is to address all the requirements that apply to

9 that facility, and part of that application asks what

10 fuels and raw materials do you ever plan to use. You

11 don't have to promise that you will, but if you want to

12 use anything, you have say so, because if you don't say

13 so, then you can't use that. And the part about fuels,

14 they wouldn't have to say a whole lot more than we plan

15 to use Eastern bituminous coal, and we also plan to use

16 a 50/50 blend, you know, of Powder River Basin and CAPP

17 coal.

18 And, of course, the implication is that you'll

19 have to meet the emission standards, but that part of

20 the application is just saying what kind of fuels are

21 you going to use. So in that sense, yes, they could

22 just say this is what we plan to use as far as fuels,

23 but they had also in order to actually get the Title V

24 permit would have to have some other documentation that

25 shows that they could meet the emission limits that go

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1 along with that. But that's going off on a place I

2 don't think you want to go.

3 Q. That's fine. Thank you, Mr. Smallwood.

4 You agree that PEF's initial site

5 certification application and subsequent proceedings

6 were matters of public record; correct?

7 A. They should have been.

8 Q. And you also agree that PEF did not conceal

9 and could not conceal its certification actions?

10 A. I don't know. I don't know if they could. I

11 have no reason to believe they -- I don't really know

12 how to answer that.

13 Q. Okay. Well, let me see if I can help. If you

14 can turn to page 61 of your deposition.

15 A. Okay.

16 Q. And I'm going to ask to you look at lines 10

17 through 13 when you get there.

18 A. Okay. Page 61?

19 Q. Yes, sir.

20 A. Lines 10 --

21 Q. Are you there?

22 A. Okay.

23 Q. Okay. I'm going to read this.

24 "Question: Would you agree with me then that

25 PEF did not conceal and could not conceal its

1496

1 certification actions?"

2 "Answer: No, I don't think it did."

3 Did I read that correctly?

4 A. Yes. That's the same answer as what I was

5 trying to say.

6 Q. Okay. Thank you. The Title V permit

7 application process is also a matter of public record;

8 correct?

9 A. Yes.

10 Q. And the Title V permit application process is

11 well noticed so that anyone who has an interest will

12 know about it; is that right?

13 A. They certainly should.

14 Q. And you agree that PEF's Title V application

15 in 1996 and the subsequent permit were not concealed

16 from the public; is that right?

17 A. I don't have any reason to think it would be.

18 I don't -- I just don't know.

19 MS. TRIPLETT: Thank you, Mr. Smallwood. No

20 further questions.

21 CHAIRMAN EDGAR: Are there questions from

22 staff?

23 MS. BENNETT: No, ma'am.

24 CHAIRMAN EDGAR: Commissioners? No questions.

25 Mr. McGlothlin.

1497

1 MR. McGLOTHLIN: No redirect.

2 CHAIRMAN EDGAR: Thank you. Okay. Mr. -- oh,

3 let's take up the exhibits. I'm sorry. We have -- I

4 have 204, 205, and 206.

5 MR. McGLOTHLIN: I move Mr. Smallwood's

6 Exhibits 204, 205, and 206.

7 CHAIRMAN EDGAR: Exhibits 204, 205, and 206

8 will be moved into the record as evidence.

9 (Exhibits Number 204, 205, and 206 marked for

10 identification and admitted into evidence.)

11 CHAIRMAN EDGAR: Mr. Smallwood, you are

12 excused. Thank you very much.

13 THE WITNESS: Thank you.

14 CHAIRMAN EDGAR: Mr. McGlothlin.

15 MR. McGLOTHLIN: May we tell Mr. Putman he can

16 go home?

17 CHAIRMAN EDGAR: Yes, you may.

18 MR. McGLOTHLIN: Thank you.

19 MR. BURGESS: Madam Chair, we would call Todd

20 Bohrmann to the stand.

21 Thereupon,

22 TODD F. BOHRMANN

23 was called as a rebuttal witness on behalf of the

24 Citizens of the State of Florida, and having been duly

25 sworn, testified as follows:

1498

1 DIRECT EXAMINATION

2 BY MR. BURGESS:

3 Q. Mr. Bohrmann, have you been sworn in?

4 A. Yes, I have.

5 MR. BURGESS: May I proceed?

6 CHAIRMAN EDGAR: Yes.

7 MR. BURGESS: Thank you.

8 BY MR. BURGESS:

9 Q. Would you state your name and business address

10 for the record, please.

11 A. My name is Todd F. Bohrmann. My business

12 address is 5073 Monroe Forest Drive, Jacksonville,

13 Florida, 32257.

14 Q. And did you compile and prepare prefiled

15 testimony that has been submitted in this docket?

16 A. Yes, I have.

17 Q. And can you tell me on behalf of what party

18 that you have filed this testimony?

19 A. The Office of Public Counsel.

20 Q. Do you have any changes to make to the

21 testimony that has been prefiled?

22 A. No, I don't.

23 Q. If the questions posed to you in the prefiled

24 testimony were posed today, would your answers be the

25 same?

1499

1 A. Yes, they would.

2 MR. BURGESS: Madam Chair, we would ask that

3 Mr. Bohrmann's prefiled testimony be entered into the

4 record as though read.

5 CHAIRMAN EDGAR: The prefiled rebuttal

6 testimony will be entered into the record as though

7 read.

8 MR. BURGESS: Thank you.

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1 BY MR. BURGESS:

2 Q. Mr. Bohrmann, could you provide a -- let me

3 ask before that and get this out of the way. Do you

4 have any exhibits to your testimony?

5 A. No, I don't.

6 Q. Thank you. And do you have a summary to your

7 testimony that you could provide for the Commission?

8 A. Yes, I do.

9 Q. Would you proceed?

10 A. Yes. My name is Todd F. Bohrmann. From 1997

11 to 2006, I was the lead technical analyst for the fuel

12 clause for the Florida Public Service Commission staff.

13 I base my rebuttal testimony on personal knowledge on

14 how FPSC Order Nos. 12645 and 13452 impacted the manner

15 in which staff addressed issues raised within the fuel

16 clause. The purpose of my testimony is to rebut

17 portions of Stephen M. Fetter's prefiled direct

18 testimony.

19 Specifically, Mr. Fetter indicates that the

20 prudence of costs recovered through the fuel clause

21 should have been determined prior to or at the true-up

22 proceeding. It is my testimony that he is incorrect.

23 Based on the orders mentioned previously, the Commission

24 and only the Commission can determine whether a utility

25 has prudently incurred a cost eligible for recovery

1508

1 through the fuel clause.

2 Moreover, the Commission can only do so once a

3 party or its staff has raised the question of prudence

4 as an issue and the parties and the staff have presented

5 all relevant information regarding such prudence as

6 evidence in a hearing. No staff member or any party

7 through any action or inaction has the authority to

8 determine whether a utility has incurred a fuel cost in

9 a prudent manner.

10 By Order No. 12645, the Commission explicitly

11 and vehemently maintains jurisdiction over costs

12 recovered through the fuel clause until the Commission

13 rules whether the utility has incurred those costs in a

14 prudent manner, for you see, the utility possesses all

15 the information that is relevant to determining whether

16 or not those costs are prudent. They control the timing

17 and the amount of information that they file with this

18 Commission. And if they chose not to disclose all that

19 information, then the utility bears the uncertainty that

20 those costs may be ruled imprudent at some future time.

21 By Order No. 13452, the Commission explicitly

22 recognizes a quid pro quo exists under the fuel clause,

23 and that trade-off is this: One, the utility receives

24 timely collection of fuel costs incurred based upon

25 projected costs that the utility has filed, and in

1509

1 return, the Commission maintains jurisdiction over such

2 costs until all parties have had an opportunity to

3 present all facts regarding the prudence of such costs

4 and the Commission rules on the prudence of such costs.

5 The Florida Supreme Court subsequently

6 endorsed this quid pro quo. The fuel clause worked in

7 practice just as Commission laid it out those orders.

8 Although the fuel clause has evolved since Order No.

9 12645, the quid pro quo that protects the interests of

10 the customers has not changed.

11 Given the information that the utilities file

12 to explain and describe the billions of dollars in fuel

13 costs the utilities collect annually and the amount of

14 time between such filing and the fuel hearing, staff did

15 not have the resources to conduct a prudence review on

16 every single dollar requested prior to the hearing.

17 Staff would conduct a less rigorous analysis to

18 determine whether the projected costs fell within a

19 reasonable range of expectations for the upcoming

20 calendar year. Following a hearing on projections and

21 the true-up periods, when I recommended that the

22 Commission allow a utility to begin collecting costs, I

23 fully understood that I was not recommending and that

24 the Commission was not adjudicating that these costs

25 were prudently incurred.

1510

1 This concludes the summary of my rebuttal

2 testimony.

3 MR. BURGESS: Thank you, Mr. Bohrmann. We

4 tender the witness.

5 CHAIRMAN EDGAR: Thank you. Ms. Bradley.

6 MS. BRADLEY: No questions.

7 CHAIRMAN EDGAR: No questions. Mr. Burnett.

8 MR. BURNETT: Thank you, Madam Chairman.

9 CROSS-EXAMINATION

10 BY MR. BURNETT:

11 Q. Good afternoon, Mr. Bohrmann.

12 A. Good afternoon.

13 Q. I'm going to be very brief if I can, and I

14 wanted to talk to you about the process you've described

15 in your testimony regarding the annual fuel docket.

16 Mr. Bohrmann, you would agree with me that

17 Progress Energy Florida -- I'm going to use PEF for

18 shorthand -- files monthly FPSC Form 423s with this

19 Commission; correct?

20 A. Yes.

21 Q. And you agree that issues of prudence can

22 sometimes be raised by information in those reports;

23 correct?

24 A. The information filed in the Form 423s could

25 be considered a starting point to consider whether or

1511

1 not those costs were prudently incurred. And if I may

2 give a real world example, you know, I've been away from

3 home for four days, and when I return home, my wife may

4 give me a receipt that she spent $200 in shoes, and that

5 receipt in and of itself, like a Form 423, you know,

6 doesn't tell me necessarily, you know, where those shoes

7 were bought, were those shoes for my wife or for my

8 daughter, were they bought at Stride Rite or Payless.

9 And until I understand all that information, I really

10 don't know whether or not those costs were reasonable or

11 prudent or whether they were not.

12 So getting back to the question, the

13 information on the Form 423s is necessary, but not

14 necessarily sufficient to determine whether costs are

15 prudently incurred.

16 Q. This may take longer than I thought then,

17 Mr. Bohrmann. Let me ask you that question one more

18 time. You would agree with me that issues of prudence

19 can sometimes be raised by information that staff sees

20 in Form 423s?

21 MR. BURGESS: I'll object. That has been

22 asked and answered.

23 MR. BURNETT: Madam Chair, I never heard an

24 answer. If it was there, I missed it.

25 CHAIRMAN EDGAR: I'm going to allow it.

1512

1 A. I said that staff or any other party to the

2 docket may see something on the Form 423s that raises a

3 red flag and eventually causes an issue to be raised,

4 and that issue may be whether or not costs were

5 prudently incurred.

6 Q. And you also agree with me, don't you,

7 Mr. Bohrmann, that PEF files Schedule A's with the

8 Commission each month; correct?

9 A. Yes.

10 Q. And that filing can also give rise to the

11 identification of prudence issues; correct?

12 A. Yes, that's possible.

13 Q. And you would agree with me that PSC staff has

14 quarterly fuel docket meetings with the investor-owned

15 utilities in this state; correct?

16 A. They did prior to January 2006. I can't speak

17 personally to what happened after that date.

18 Q. And I'll limit my questions to your time with

19 the Commission. Okay?

20 A. Okay.

21 Q. If we could just have that as an

22 understanding.

23 A. Okay.

24 Q. And those quarterly meetings can certainly

25 bring to light some issue with respect to prudence;

1513

1 correct?

2 A. That is possible.

3 Q. And in each annual fuel docket, all parties

4 can request production of documents from utilities;

5 correct?

6 A. Yes.

7 Q. And they could also issue interrogatories;

8 correct?

9 A. It's my understanding that a party to the

10 docket as well as staff has discovery rights in this

11 docket.

12 Q. Including depositions also?

13 A. Yes.

14 Q. And requests for admissions?

15 A. Yes.

16 Q. And the discovery we just described is another

17 way that prudence issues can be identified; correct?

18 A. Yes, through that discovery, one could

19 identify issues of prudence.

20 Q. And you would agree with me that Commission

21 employees conduct annual fuel audits of investor-owned

22 utilities; correct?

23 A. Yes.

24 Q. And you also agree that issues of prudence can

25 be identified in these annual audits; correct?

1514

1 A. It's possible that issues of prudence might

2 arise from those audits.

3 Q. And you agree with me that any party to the

4 annual docket has the opportunity and right to raise an

5 issue of prudence and have the Commission rule on it;

6 correct?

7 A. A party has the right to raise issues of

8 prudence, but that right does not go into a

9 responsibility. The responsibility is on the utility to

10 bring issues of prudence to the Commission's attention

11 when necessary.

12 Q. And you believe that Commission staff should

13 bring at least a basic level of curiosity regarding fuel

14 costs to his or her job on a day-to-day basis and

15 inquire on prudence issues as they see fit; correct?

16 A. Based upon their level of knowledge and the

17 amount of information that is before them at that time,

18 staff should bring a basic level of curiosity on a

19 day-to-day basis.

20 Q. In fact, Mr. Bohrmann, you think that

21 disciplinary actions may be appropriate against PSC

22 staff members in some situations if he or she sees an

23 issue with prudence and fails to raise it; correct?

24 A. I feel if a person is not meeting

25 expectations, then that matter should brought up under

1515

1 the appropriate action between that person and his or

2 her supervisor.

3 Q. And that could include disciplinary actions in

4 some instances; correct?

5 A. That is correct. But once again, failure of

6 staff to bring up an issue of prudence does relieve the

7 utility of bringing forth information that might be

8 relevant to the issue of prudence.

9 Q. And you certainly don't disagree with me, do

10 you, Mr. Bohrmann, that Commission staff should look at

11 fuel costs each year, quote, at a level of detail

12 appropriate to its role as a regulator to make sure

13 those costs that were being collected from the utility's

14 ratepayers were fair, just, and reasonable; correct?

15 A. I believe that the staff, part of their job is

16 to look at information at a level of detail that is

17 commensurate with their role as a regulator to ensure

18 that those costs are fair, just, and reasonable. Yet

19 once again, the failure to do so does not relieve the

20 utility to bring forth information that is relevant to

21 issues of prudence before the Commission in a timely

22 manner.

23 Q. And with respect to the data and information

24 PEF files with the Commission each month and each year,

25 you agree with me that staff reviews that data and

1516

1 information to see if it falls within a reasonable range

2 of what staff would expect to see; correct?

3 A. I would expect that staff would use that data

4 to support the recommendations that they make at the

5 conclusion of the fuel clause hearing.

6 Q. Mr. Bohrmann, I'm really trying to move along,

7 and it would be helpful if you could give me a yes or no

8 if possible, but let my try that question one more time.

9 With respect to the data and information PEF files with

10 the Commission each month and each year, you would agree

11 with me that staff reviews that data and information to

12 see if it falls within a reasonable range of what staff

13 would expect to see; correct?

14 A. Yes.

15 Q. And in reviewing that data and information, if

16 staff identifies something that looks inconsistent or

17 out of the ordinary, staff would inquire of the utility

18 and see if there was an explanation for it; correct?

19 A. If based upon -- yes, based upon their

20 information and knowledge at that time, if staff was to

21 see something that was inconsistent or fell outside of a

22 reasonable range, I would expect staff to raise an

23 issue.

24 Q. And if no reasonable explanation is given to

25 staff to that question, what you call the regulatory

1517

1 process would begin where staff would make the issue a

2 formal issue in the fuel docket, the utility responds,

3 parties do discovery, present testimony, and then

4 there's a ruling; correct?

5 A. Yes, I would expect that process would take

6 place.

7 Q. Now, despite all the things we just talked

8 about the Commission and the staff does each year in the

9 fuel docket, you still maintain the position that the

10 PSC does not rule on the prudence of fuel costs each

11 year in the annual fuel docket; correct?

12 A. To the extent that issues identified do not

13 speak specifically to certain costs recovered from the

14 ratepayers by the utility -- to the extent that issues

15 are not identified -- to the extent that issues are not

16 identified -- excuse me. To the extent that issues are

17 not identified by a party or staff among the list of

18 issues in the fuel hearing, those costs have not been

19 determined to be prudent or not prudent.

20 Q. Mr. Bohrmann, you maintain the position that

21 from 1995 until today, not a single dollar of fuel cost

22 passed on to the ratepayers in Florida have been

23 reviewed for prudence for Florida Power & Light, PEF,

24 TECO, Gulf, and FPUC unless those utilities specifically

25 asked for a prudence determination; correct?

1518

1 A. I would say yes, with the exception that any

2 party or staff has the right to raise issues of prudence

3 or imprudence in a fuel hearing or a fuel-related

4 docket.

5 Q. And you would agree with me, Mr. Bohrmann,

6 that since 1995, several billions of dollars in fuel

7 costs have been passed on to ratepayers; correct?

8 A. Yes.

9 Q. And several billion dollars is a lot of money,

10 is it not, Mr. Bohrmann?

11 A. Yes.

12 Q. And fuel charges represent a significant

13 portion of a customer's bill, do they not?

14 A. Yes.

15 Q. And you would agree with me that passing on up

16 to $10 billion a year to customers should not be taken

17 lightly; correct?

18 A. It should not be taken lightly, and it is not

19 taken lightly.

20 Q. I agree. And you agree that passing on tens

21 of billions of dollars to the ratepayers each year

22 deserves significant regulatory attention; correct?

23 A. Yes.

24 Q. And you agree with me that a responsible

25 regulator in Florida should raise any issue it has with

1519

1 fuel costs if they know about it; correct?

2 A. To the extent that staff or a party is aware

3 of an issue of prudence, that party or staff should

4 raise the issue regarding prudence. However, failure to

5 do so does not relieve the utility of bringing forth

6 information relevant to the prudence of specific costs.

7 Q. Mr. Bohrmann, despite these amounts of money

8 we discussed, it's your position that this Commission

9 has no self-executing mechanism to ever determine

10 whether or not one dollar of those billions passed on to

11 the ratepayers each year are reasonable and prudent;

12 correct?

13 A. No, there is no self-executing mechanism in

14 place. What's required is for a party or staff to raise

15 an issue of prudence.

16 Q. Mr. Bohrmann, I think you were here when

17 Commissioner Carter asked Mr. Sansom how did staff miss

18 143 million in overcharges over the past ten years, and

19 Mr. Sansom replied that it was because of the

20 confidentiality of affiliate information. You were here

21 for that?

22 A. I was in and out of --

23 MR. BURGESS: Excuse me. I'll object to the

24 question, because I don't think he has fully stated the

25 response by Mr. Sansom.

1520

1 MR. BURNETT: I'll move along, Madam Chairman.

2 CHAIRMAN EDGAR: Thank you.

3 BY MR. BURNETT:

4 Q. Let me ask you this. Is it your experience in

5 staff that there is a Florida Statute and a Florida

6 Administrative Code rule that covers confidentiality in

7 the documents submitted to the Commission under

8 confidential status?

9 A. Yes.

10 Q. And under that statute and that Administrative

11 Code rule, you are aware, correct, that staff has access

12 to those documents and information if they follow

13 certain procedures; correct?

14 A. I understand that staff has access to those

15 documents. I also understand that access to those

16 documents to other parties are limited to the extent

17 that they sign a nondisclosure agreement or there's an

18 order that -- I'm not 100 percent certain about this,

19 but I believe Public Counsel falls into a special case

20 when it comes to reviewing those confidential documents.

21 Q. That's right. But I believe, as you

22 acknowledge, OPC and the intervenors do have a

23 methodology to make that information, that confidential

24 information accessible to them if they want to see it as

25 long as they follow the procedure.

1521

1 A. As I understand, there is a process in place

2 to allow parties access to those documents. However,

3 that be must be taken in the context that we have

4 approximately 60 days, maybe 65 days between the time

5 projection information is filed and the time we're in a

6 hearing situation. And given the time lag between the

7 time that the utility files those documents and the time

8 that a nondisclosure agreement comes into place or any

9 other process is executed, that severely cuts into those

10 65 days. And then the party has to review that

11 information, and the time to review that information and

12 hire a witness and have that witness file testimony is

13 severely limited.

14 Q. Mr. Bohrmann, you're aware too that one of the

15 reasons a party can ask for confidential protection is

16 to protect proprietary business information that would

17 jeopardize that entity's competitive business interests

18 if others in the public found out about it; correct?

19 A. Yes.

20 Q. Are you aware in this very proceeding,

21 Mr. Sansom himself asked for some of his information to

22 be protected under those grounds?

23 A. Subject to check, I would say yes.

24 MR. BURNETT: I have no further questions.

25 CHAIRMAN EDGAR: Are there questions from

1522

1 staff?

2 MS. BENNETT: No questions.

3 CHAIRMAN EDGAR: Commissioner McMurrian?

4 COMMISSIONER McMURRIAN: Thank you. I have

5 about four, I think.

6 CHAIRMAN EDGAR: I expected that you would.

7 Go right ahead.

8 COMMISSIONER McMURRIAN: Hi, Mr. Bohrmann.

9 It's good to see you.

10 Is it your testimony that it's not possible to

11 determine prudence in the course of an annual fuel

12 hearing?

13 THE WITNESS: No, it's not my testimony that

14 it's not possible. It is my testimony that given the

15 information provided, it's difficult at best to review

16 the prudence of all those costs that are recovered

17 through the fuel clause. The staff and the parties can

18 determine whether or not certain costs are prudent or

19 not, but that takes time and other resources away from

20 other issues, and so there's a balancing act that must

21 be played out among the parties and staff separately to

22 determine where best to employ their resources. And so

23 what I'm saying is, it's not -- it's very difficult, if

24 not impossible, to determine whether or not those costs

25 are prudent, all those costs are prudent every single

1523

1 year for each utility.

2 COMMISSIONER McMURRIAN: If the staff or

3 another party to the case believed that prudence should

4 be determined, a schedule for a spin-out on prudence

5 that following year could be set up; correct?

6 THE WITNESS: Yes.

7 COMMISSIONER McMURRIAN: I've asked this, and

8 you probably heard me ask it yesterday. If you can help

9 me determine what specifically in your opinion needs to

10 be done in a prudence determination that's not being

11 done in the course of a fuel hearing?

12 THE WITNESS: You mean what would occur in a

13 prudence determination that we can't do in a fuel

14 hearing? Is that your question?

15 COMMISSIONER McMURRIAN: Yes. Other than the

16 wording of the issue being different, what extra steps

17 would we need to take?

18 THE WITNESS: Within the context of the fuel

19 hearing or in a spin-out docket?

20 COMMISSIONER McMURRIAN: I suppose either, but

21 if it's a different answer with each, then you can

22 answer with respect to each. But my main focus is the

23 difference in determining prudence versus determining

24 reasonable costs through the fuel clause as we do it

25 today.

1524

1 THE WITNESS: Well, the main purpose of the

2 fuel clause hearing is to set a factor so that the

3 utilities can recover their projected costs for the

4 upcoming calendar year. Prudence is secondary to that.

5 If staff or a party were to identify an issue of

6 prudence, there would be significantly more information

7 provided in the record, as we've witnessed over the last

8 four days, and the stakes, as they were, would be much

9 higher. Once a decision of prudence is made and

10 appellate opportunities are exhausted, then the

11 Commission's decision pretty much stands.

12 Ordinarily, in a fuel hearing, you know, a

13 party or staff may -- there may be some questions about

14 fuel costs, but they take solace in the fact that it

15 will be trued up, you know, and only actual costs are

16 going to be recovered through the fuel clause anyway.

17 So there is a certain level of comfort built into the

18 fact that those costs are subject to true-up and there

19 is potentially the opportunity to review the prudence of

20 those costs if such a question is ever raised. I hope

21 that's responsive to the question.

22 COMMISSIONER McMURRIAN: It is, it is. You

23 talked about additional information and, of course, the

24 ability of the parties to sort of revisit an issue

25 whenever there hasn't been a prudence decision. But are

1525

1 there additional steps in our evaluation for prudence?

2 Are there additional audits or -- I would guess maybe

3 additional discovery. Can you help me? Are there

4 additional steps that staff would go through in

5 determining prudence as opposed to the steps that are

6 taken now in fuel other than collecting more information

7 and perhaps additional discovery with more focus?

8 THE WITNESS: I think what we've witnessed

9 over the last four days is very indicative of what you

10 would see if an issue of prudence is raised in the fuel

11 hearing. That being said, these costs represent about

12 1.6 percent of the fuel revenues of one utility over a

13 10-year period of time. If all the costs by PEF were

14 scrutinized to this extent, and then you also have four

15 other utilities, you can see that it would be a very

16 time-consuming process, as well as other

17 resource-consuming process.

18 COMMISSIONER McMURRIAN: Just one more,

19 Chairman.

20 Should I ask for a determination of prudence

21 on all proposed fuel costs to have the comfort that

22 we're setting proper rates for fuel to be charged to

23 Florida's consumers?

24 THE WITNESS: To me, I don't see there's a

25 reason to change what has been in place for about 23

1526

1 years, since Order No. 12645 has been put into place.

2 Issues of prudence, what we've been discussing over the

3 last four days, it's a rare occurrence. They do come up

4 from time to time. But what we have in place works

5 well. The utility has timely collection of those costs,

6 but yet the Commission maintains jurisdiction over those

7 costs, and those are the rules of the game that have

8 been in place pretty much from the time most of us

9 became involved with this process. There might be a few

10 exceptions, but most of us have only known life in the

11 Order 12645 world, even though sometimes it's rarely

12 invoked on a level of this nature as we've experienced

13 today and earlier this week.

14 CHAIRMAN EDGAR: Commissioner Carter.

15 COMMISSIONER CARTER: Thank you, Madam

16 Chairman.

17 Mr. Bohrmann, you've been here all week?

18 THE WITNESS: Yes, I have.

19 COMMISSIONER CARTER: You heard my -- I'm

20 fairly transparent when I ask questions, so you heard me

21 go through my discourse with practically everyone I've

22 talked to; right?

23 THE WITNESS: Yes.

24 COMMISSIONER CARTER: Do you remember

25 Mr. Lawton, as I talked to him -- and I'm picking up

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1 from your discourse both under cross-examination and

2 your response to the questions by Commissioner

3 McMurrian. You remember Mr. Lawton said, quote, that no

4 determination has been made in this case as to the

5 prudency of fuel charges over the 10-year period covered

6 in this case?

7 THE WITNESS: That is correct.

8 COMMISSIONER CARTER: And that's your position

9 too?

10 THE WITNESS: That up until this point, there

11 has been no determination of prudence of these costs.

12 COMMISSIONER CARTER: So basically, our staff,

13 for whatever it's worth -- before I ask you that

14 question, do you remember Mr. Sansom, my questions to

15 him?

16 THE WITNESS: I may have been in and out of

17 the room at that time. I can't honestly say that I

18 heard all of that discussion.

19 COMMISSIONER CARTER: Would it shock you to

20 know that he said that for the past 10 years, or during

21 the 10-year period covered here, that the PSC staff

22 missed a $143 million overcharge for fuel and

23 transportation in this case?

24 THE WITNESS: I -- subject to check, he said

25 that.

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1 COMMISSIONER CARTER: Well, sure. I wrote it

2 down. He said it.

3 THE WITNESS: I'll accept that he said that.

4 COMMISSIONER CARTER: Well, okay. What do you

5 say then? Because here's what I'm getting, is that

6 you're saying that what staff does on an annual basis

7 and what staff does on a quarterly basis and what the

8 Commission does in review of the fuel docket is that no

9 prudency or reasonableness is determined. So are you

10 suggesting that for whatever the case may be,

11 notwithstanding Mr. Lawton or Mr. Sansom, you're saying

12 that staff is missing it and the Commission is missing

13 it every year, and they have for the last -- the years

14 of this time frame, from '96 to '06.

15 THE WITNESS: Those two witnesses may have

16 characterized that staff or the Commission may have done

17 something not within its -- they may have done something

18 wrong, and I'm not taking that position at all. I'm

19 saying that based upon the information and the knowledge

20 before the staff and the Commission at that time, they

21 did -- you know, they did the job that was before them.

22 You know, if there's any responsibility for

23 not bringing information to the table for the Commission

24 and the staff to evaluate, it falls upon the utility.

25 The staff did not have the information before them prior

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1 to this time. The utility did. So I'm not going to say

2 that the staff or the Commission did anything wrong in

3 not determining whether or not those costs were prudent

4 or not.

5 COMMISSIONER CARTER: Well, what's what I

6 heard you say from your discussion today. Mr. Sansom

7 and Mr. Lawton said it specifically and unequivocally.

8 And I was looking at your biographical data, and I see

9 that the time of your employment here at the Commission

10 is covered during this time.

11 THE WITNESS: Yes, it is.

12 COMMISSIONER CARTER: 1996 to '06, as an

13 analyst.

14 THE WITNESS: Yes, it is.

15 COMMISSIONER CARTER: So you're saying

16 basically you missed it.

17 THE WITNESS: No, I'm not saying that I missed

18 it or any of my colleagues missed it. What I'm saying

19 is that that -- the information bearing on the prudence

20 of those costs were not before us or the Commission at

21 that time. It only came to light through this docket.

22 COMMISSIONER CARTER: The litany of questions

23 asked to you by Mr. Burnett on cross-examination, you

24 were fairly succinct in your answers about the Schedule

25 A, the other form that he asked you about that could be

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1 used to create a cause of action if one were deemed

2 necessary --

3 THE WITNESS: Yes.

4 COMMISSIONER CARTER: -- by staff or the

5 Commission. Did you not say that?

6 THE WITNESS: Yes, I did.

7 COMMISSIONER CARTER: So help me to understand

8 how is it that -- you know, I'm really struggling with

9 trying to understand how -- the perspective is, staff

10 dropped the ball, but there's nothing to show that -- I

11 don't see anything here that's showing where, if there

12 was a reasonable consideration by staff or a suspicion

13 by staff that Progress Energy, or any other utility, for

14 that matter, were not being forthcoming with the

15 necessary information in the fuel docket, they would

16 have brought it forward. I mean, notwithstanding a

17 staff function, just a moral perspective would have

18 caused them to do that, don't you think?

19 THE WITNESS: Well, I think looking at the

20 testimony put forth by the other witnesses sponsored by

21 OPC, I think there's information by them that indicates

22 such information was not provided by PEF. And to say

23 that staff dropped the ball, I would respectfully

24 disagree, sir. I don't think the ball was ever passed

25 to us.

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1 COMMISSIONER CARTER: Well, that's what you're

2 saying today. That's what you said, that's what

3 Mr. Sansom said, and that's what Mr. Lawton said. And

4 your response to questions by Commissioner McMurrian and

5 on cross-examination by Mr. Burnett, you're saying the

6 same thing, and I just don't see that.

7 It just seems to me that if there were a

8 situation that warranted it, we have adequate tools --

9 she asked you specifically -- Commissioner McMurrian

10 asked you specifically what should we do outside of what

11 we're doing now to get that, and I didn't hear you say

12 anything different. I heard you said that the process

13 that has been in effect for 20 years is appropriate.

14 Did I not hear you just say that?

15 THE WITNESS: Yes, I said that the process

16 that's set up under 12645 provides a reasonable balance

17 and a reasonable quid pro quo of timely collection of

18 costs based upon projections filed by the utility and

19 the Commission maintaining jurisdiction over those

20 costs.

21 The utility does file voluminous amounts of

22 information with the Commission and the staff on a

23 monthly basis, and looking for an issue such as this is

24 like looking for a needle in a haystack. In fact, it's

25 more like looking for a needle in a stack of needles,

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1 and sometimes it takes time to look at the information

2 in totality and put all the pieces together. Perhaps

3 someone from outside the group such as Mr. Sansom, you

4 know, it takes his perspective to look and see something

5 that others may not have seen. And once Mr. Sansom

6 pointed it out, it's like, there it was all the time,

7 but until he did so, it may not have been apparent to

8 anyone else.

9 COMMISSIONER CARTER: He said that there was a

10 problem with confidentiality, he said the documentation

11 required was not substantial enough, said staff needs

12 some prudency auditors for staff, and he said they also

13 need to hire some outside consultants like him.

14 I'm going to tell you something. I haven't

15 been here very long, but the time that I've been here,

16 we have one of the finest staffs in the country, of any

17 public utility regulatory agency.

18 THE WITNESS: And I would agree with that.

19 COMMISSIONER CARTER: And I really, really,

20 really -- I take it personal when people slam my staff.

21 THE WITNESS: And it's not -- I don't believe

22 it's my testimony that staff has any reason to believe

23 that they did not do their responsibility.

24 COMMISSIONER CARTER: Well, for four days I

25 sat here, and I listened to the documentary evidence, I

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1 listened to the testimonial evidence, and it seems to me

2 that in order to accept your perspective, I'll have to

3 say that our staff is incompetent at best and fraudulent

4 at worst, and I think that's ludicrous. I could

5 probably think of some other descriptors, but they

6 wouldn't be appropriate for Sunday school.

7 THE WITNESS: And once again, I'm not saying

8 that staff did anything wrong. When issues of prudence

9 needed to be raised, those were raised. But until the

10 relevant information, all the relevant information

11 bearing on the prudence of specific costs are brought

12 before the Commission and the staff and the rest of the

13 parties, that responsibility is borne on the utility,

14 because the utility has all that information.

15 COMMISSIONER CARTER: You're saying that our

16 staff missed at least 143 million in overcharges for

17 fuel and fuel transportation over the last 10-year

18 period. That's what you're -- that's your testimony.

19 THE WITNESS: My testimony is that the

20 prudence or imprudence of those costs have not been

21 determined.

22 COMMISSIONER CARTER: But I didn't hear you --

23 excuse me, Madam Chairman. I don't mean to be

24 argumentative, but I do take things personal. I'm just

25 trying to find out.

1534

1 I listened very, very -- I mean, I was holding

2 on to every syllable that you enunciated when you were

3 responding to Commissioner McMurrian, and I didn't hear

4 you say anything different that staff could have done or

5 should have done that they did not do in the

6 proceedings, so you understand what kind of a position

7 you left me in here.

8 THE WITNESS: Yes, I do. You know, my

9 testimony indicates that -- does the Commission have the

10 jurisdiction to rule on the prudence of these costs?

11 And my testimony is that they do have the jurisdiction.

12 My testimony also says, have they used that jurisdiction

13 in the past? Yes, they used that in the Maxine Mine

14 case. And then the other witnesses that have filed

15 testimony on behalf of Public Counsel have answered the

16 question, should the Commission rule whether or not

17 these costs were imprudent? And the testimony of those

18 witnesses indicate that, yes, those costs were imprudent

19 to the extent listed by Mr. Sansom.

20 And based upon the evidence presented over the

21 past four days and the recommendation filed by the

22 staff, I understand the position that you're in. And

23 what I'm saying is that staff -- over the last 10 years,

24 the information that was presented to us, if there was

25 an issue of prudence, it was raised. That was the

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1 responsibility borne by me as the lead analyst, to raise

2 issues that were brought to my attention. But if the

3 utility did not bring information to my attention, then

4 how could we have raised an issue about that?

5 COMMISSIONER CARTER: I hate to beat a dead

6 horse to sleep, Madam Chairman, but I just want to ask

7 maybe one more question, maybe no more, but just bear

8 with me momentarily.

9 When staff propounds interrogatories to

10 parties, do they not have the right to ask whatever

11 questions that they may deem necessary in the fuel

12 docket?

13 THE WITNESS: I would say yes. However, not

14 being an attorney, there may be areas which are not

15 discoverable. I don't know what those would be. But to

16 the extent that certain information is discoverable,

17 staff does have a right to ask those questions.

18 COMMISSIONER CARTER: Follow-up, Madam

19 Chairman?

20 CHAIRMAN EDGAR: Yes, sir.

21 COMMISSIONER CARTER: Secondarily, in the

22 process of propounding those interrogatories, does not

23 our legal staff work in tandem with our substantive

24 staff in drafting those?

25 THE WITNESS: Yes.

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1 COMMISSIONER CARTER: And in that process,

2 would it not be reasonable to expect professional staff

3 to ask the necessary questions to get to the necessary

4 answers to determine whether or not in a fuel docket the

5 cost for fuel -- that's what we're talking about,

6 whether or not the costs were reasonable.

7 THE WITNESS: Yes, that's a reasonable

8 expectation.

9 COMMISSIONER CARTER: Thank you. No further

10 questions.

11 CHAIRMAN EDGAR: Mr. Burgess.

12 MR. BURGESS: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. BURGESS:

15 Q. I'm going to have to go back to some of the

16 questions that you've been asked by not only

17 Mr. Burnett, but the Commissioners as well. And let me

18 start by asking some questions about the area where you

19 were asked what extra steps would be necessary to take

20 to reach a determination that all the cost being passed

21 through in the fuel clause is prudent. Is prudence

22 considered in -- let me back up. Have you participated

23 in base rate cases at all?

24 A. I have participated in base rate proceedings,

25 although I've never -- well, there's only been one or

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1 two occasions where it has actually come to a Commission

2 vote on the base rate issues. The others were

3 stipulated.

4 Q. Is prudence considered in base rate cases?

5 A. Yes.

6 Q. And you're familiar with that?

7 A. Yes.

8 Q. How long of a period of time does a base rate

9 case take?

10 A. I believe it's eight months.

11 Q. And how many companies is the Commission and

12 its staff able to scrutinize during a base rate case?

13 A. One per docket.

14 Q. So one company takes eight months in order to

15 determine whether its base rate costs are prudent. Can

16 you tell me any comparative approximate ratio between

17 the amount of revenues that are collected through base

18 rates versus through fuel rates?

19 A. It's my understanding that approximately 50

20 percent of a utility's revenue is collected through base

21 rate revenues, and 50 percent is collected through

22 clause revenues.

23 Q. So as much revenue is collected through fuel

24 adjustment as is collected through base rates. And how

25 much time do you have for the fuel adjustment clause

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1 cases?

2 A. From the time the projection filings come in

3 until the hearing, I believe it's 60 days.

4 Q. And how many companies do you have to reach a

5 determination for in a fuel adjustment docket?

6 A. There's five utilities that are currently

7 within the fuel docket, and then beyond that is the

8 environmental docket, the electric conservation docket,

9 the PGA, and the gas conservation docket.

10 Q. Do you have any general familiarity with the

11 minimum filing requirements that come in with a base

12 rate case?

13 A. Yes, I do.

14 Q. Do you have any understanding or any general

15 familiarity with the volume of information that comes in

16 in those cases?

17 A. Yes, I do.

18 Q. Do you have any familiarity with the

19 comparative amount of data that comes in initially in a

20 base rate case versus the amount that comes in initially

21 in a fuel adjustment case?

22 A. In a fuel clause docket, the amount of data is

23 substantially less than what's filed in a base rate

24 proceeding.

25 Q. So you start with less -- in a fuel adjustment

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1 docket, you start with less data, you have more

2 companies, and you have less time?

3 A. That is correct.

4 Q. And you mentioned the Gulf Power Maxine Mine

5 case. Did the Public Service Commission go back and

6 require refunds be made to Gulf Power's customers?

7 A. Yes.

8 Q. Do you recall how many years they went back?

9 A. I believe it was three years.

10 Q. So they went back over three years of

11 decision-making that they had already applied to Gulf

12 Power Company?

13 A. Yes.

14 Q. In that case, in that order that came out on

15 that, do you recall whether the Public Service

16 Commission in any way said, stated, implied, or in any

17 other way communicated that they thought that the staff

18 had failed in not uncovering the information?

19 A. No, I don't remember reading anything like

20 that.

21 Q. When you were on the staff, after each of the

22 hearings, did you consider the question of prudence to

23 have been resolved?

24 A. No.

25 Q. Who has the authority to decide whether an

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1 issue of prudence is going to be heard and adjudicated

2 in a fuel adjustment case?

3 A. Ultimately, the prehearing officer decides

4 which issues will be determined to be adjudicated during

5 a docket.

6 Q. A Commissioner?

7 A. Yes.

8 Q. Who determines ultimately whether a prudence

9 issue has been adjudicated?

10 A. The Commission and the Florida Supreme Court.

11 Q. Do the Commission orders that are issued

12 following fuel adjustment true-up proceedings speak to

13 the issue of whether the Commission has adjudicated the

14 issue of prudence in those proceedings?

15 A. Most orders have some language which indicate

16 that those costs are subject to true-up as well as a

17 prudence review.

18 Q. I'm sorry. So when an order comes out that

19 establishes the trued-up amount for a utility during a

20 particular period, what is the statement as to the

21 prudence review of those numbers?

22 A. Unless there has been a specific issue

23 identified regarding the prudence of such costs, the

24 question of prudence has not been answered.

25 Q. And is that stated in the order?

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1 A. I believe it is in the ordering language.

2 MR. BURGESS: Thank you. That's all I have on

3 redirect. Thank you, Madam Chair.

4 MR. BURNETT: Madam Chair, would you entertain

5 one question on recross?

6 MR. BURGESS: Commissioner, I would object.

7 This is beyond what -- we've run long, and this is

8 beyond what has been contemplated in the prehearing

9 process.

10 CHAIRMAN EDGAR: Mr. Burnett, the answer is

11 no.

12 MR. BURNETT: Yes, ma'am.

13 CHAIRMAN EDGAR: Thank you. Commissioner

14 Carter.

15 COMMISSIONER CARTER: I did hear him say that

16 he never considered -- to one of your questions, he said

17 he never considered the issue of prudence to be resolved

18 in any case while he was here at the PSC in the 10-year

19 time frame. Did he not -- that's correct, isn't it?

20 MR. BURGESS: That's correct, and the

21 Commission orders reflect that.

22 COMMISSIONER CARTER: Thank you.

23 MR. BURGESS: Thank you.

24 CHAIRMAN EDGAR: Okay. The witness is

25 excused. Thank you.

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1 THE WITNESS: Thank you ma'am.

2 CHAIRMAN EDGAR: And as we all know, that is

3 our last witness. And I appreciate everybody's

4 cooperation in helping us get through this afternoon.

5 We'll go over dates, and then we'll see if

6 there are any other matters that we need to discuss

7 before we adjourn this hearing. The dates that I have

8 before me are that the transcript is to be available on

9 the 16th of April, that briefs are due the 30th of

10 April. Briefs are limited to 60 pages. The Prehearing

11 Order is fairly prescriptive as to how those 60 pages

12 will be used, so I direct everybody to that. The

13 recommendation is due on June 7th, scheduled for

14 post-hearing agenda on June 19th.

15 Are there any questions about any of that?

16 MR. BURNETT: No, ma'am.

17 CHAIRMAN EDGAR: No questions, no questions,

18 no questions. Okay.

19 MS. BENNETT: I'll point out a procedural.

20 FPL, FPUC, TECO, and FRF are excused from filing

21 post-hearing briefs.

22 CHAIRMAN EDGAR: Thank you. Are there any

23 other matters that it would be helpful to discuss while

24 we are all for the most part still gathered here

25 together?

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1 MR. McGLOTHLIN: I have none.

2 CHAIRMAN EDGAR: No?

3 MR. BURNETT: No, ma'am.

4 CHAIRMAN EDGAR: No? Anything else from

5 staff?

6 MS. BENNETT: No.

7 CHAIRMAN EDGAR: Commissioners, anything else?

8 All right. Then thank you to all of our

9 participants, and we are adjourned.

10 (Proceedings concluded at 4:28 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA:

4 COUNTY OF LEON:

5 I, MARY ALLEN NEEL, Registered Professional

6 Reporter, do hereby certify that the foregoing

7 proceedings were taken before me at the time and place

8 therein designated; that my shorthand notes were

9 thereafter translated under my supervision; and the

10 foregoing pages numbered 1383 through 1544 are a true

11 and correct record of the aforesaid proceedings.

12 I FURTHER CERTIFY that I am not a relative,

13 employee, attorney or counsel of any of the parties, nor

14 relative or employee of such attorney or counsel, or

15 financially interested in the foregoing action.

16 DATED THIS 15th day of April, 2007.

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