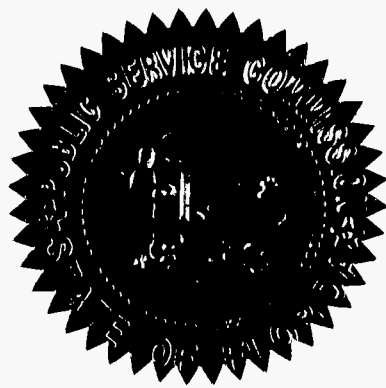


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.
_____ /



VOLUME 4

Pages 613 through 766

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PROCEEDINGS: HEARING
BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
DATE: Friday, September 12, 2008
TIME: Commenced at 9:40 a.m.
Concluded at 12:14 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734
APPEARANCES: (As heretofore noted.)

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I N D E X

WITNESSES

NAME:	PAGE NO.
KATHY L. WELCH	
Prefiled Direct Testimony Inserted	621
CARL VINSON and ROBERT LYNN FISHER (Panel)	
Direct Examination by Mr. Young	629
Joint Prefiled Direct Testimony Inserted	633
Cross Examination by Mr. McGlothlin	638
Cross Examination by Ms. Cano	645
Redirect Examination by Mr. Young	647
WILLIAM P. LABBE, JR.	
Direct Examination by Mr. Anderson	655
Prefiled Rebuttal Testimony Inserted	657
Cross Examination by Mr. McGlothlin	671
Cross Examination by Mr. McWhirter	692
Redirect Examination by Mr. Anderson	707
STEVEN D. SCROGGS	
Direct Examination by Mr. Anderson	712
Prefiled Rebuttal Testimony Inserted	714
Cross Examination by Mr. McGlothlin	724
JOHN J. REED	
Direct Examination by Ms. Pettus	734
Prefiled Rebuttal Testimony Inserted	736
Cross Examination by Mr. McGlothlin	757
CERTIFICATE OF REPORTER	766

EXHIBITS

1
2
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4
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12
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NUMBER :

ID. ADMTD.

36		620
37		620
38		620
39		620
40		654
44	FPL Sole Source Justification	617
45	(Confidential) Modification Estimate Summary	618
46	NADB Procurement Policies and Procedures	760 764

P R O C E E D I N G S

1
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(Transcript follows in sequence from Volume 3.)

CHAIRMAN CARTER: Good morning to one and all.

COMMISSIONER ARGENZIANO: Good morning.

CHAIRMAN CARTER: Hope everyone is doing well this morning.

Staff, preliminary matters before we get started on -- I think when we finished yesterday we finished with OPC's case in chief on OPC and we're beginning today with staff's case. But are there some preliminary matters?

MS. BENNETT: Yes, Chairman. There are two exhibits that we looked at yesterday that did not get into the record.

Exhibit 44 was Nuclear Plant Overview and Sole Source Justification and 45 was a confidential FPL exhibit. At least I've got them identified as 44 and 45. I don't know whether FPL wants to have it entered into the record and if there's any objections to it.

CHAIRMAN CARTER: Mr. Anderson.

MR. ANDERSON: FPL offers them into evidence.

CHAIRMAN CARTER: Okay.

MR. MCGLOTHLIN: I think I'll object to 45 for lack of relevance.

CHAIRMAN CARTER: For 45?

MR. MCGLOTHLIN: Yes.

CHAIRMAN CARTER: And 45 was again -- what's 45?

1 MS. BENNETT: 45 was the confidential exhibit. I'm
2 struggling to explain what it is. I know that we --

3 CHAIRMAN CARTER: Let's do this then, let's back up
4 to 44 first. There's no objections on 44. Give me a title for
5 44.

6 MS. BENNETT: 44 I have as Nuclear Overview and Sole
7 Source Justification.

8 CHAIRMAN CARTER: How about sole source, FPL Sole
9 Source Justification? Does that work for you guys?

10 MR. MCGLOTHLIN: I need a bit more help in
11 identifying which document that was.

12 CHAIRMAN CARTER: I beg your pardon?

13 MR. MCGLOTHLIN: Was that one of FPL's handouts
14 yesterday?

15 MS. BENNETT: Yes. It was the, the nuclear plant
16 overview and then the one with the sole source.

17 CHAIRMAN CARTER: Yes. It's the one with the
18 pictures, the color coded.

19 MR. MCGLOTHLIN: Okay. No objection to that one.

20 CHAIRMAN CARTER: Okay. All right.

21 (Exhibit 44 admitted into the record.)

22 Now the objection is on 45, which is what's been
23 shown as Exhibit B which is the redacted rebuttal testimony.
24 Is that --

25 MR. MCGLOTHLIN: I'm going to withdraw my objection.

1 CHAIRMAN CARTER: I beg your pardon?

2 MR. McGLOTHLIN: I withdraw my objection.

3 CHAIRMAN CARTER: Okay. Great. I love it when a
4 plan comes together.

5 Subject for this one?

6 MS. BENNETT: If Mr. Anderson would help me here
7 because I don't know which parts are confidential and which are
8 not.

9 MR. ANDERSON: A good name for this would be FPL
10 Modification Cost Estimate Summary.

11 CHAIRMAN CARTER: That's -- let's try, let's break it
12 down a little more, shorten it. Let's shorten it a little bit.

13 MR. ANDERSON: Just call it Modification Estimate
14 Summary. Is that okay?

15 CHAIRMAN CARTER: Excellente. Modification Estimate
16 Summary.

17 MS. BENNETT: And that would be Number 45.

18 CHAIRMAN CARTER: And without objection, show it
19 done. Okay.

20 (Exhibit 45 admitted into the record.)

21 MR. ANDERSON: Could this please be considered my
22 verbal notice of intent with respect to confidentiality for
23 that exhibit, which will be followed by the appropriate
24 paperwork?

25 CHAIRMAN CARTER: Okay. That'll be fine.

1 Now before staff gets into its case in chief, let me
2 ask the parties, anything preliminary from the parties before
3 we go forward?

4 Okay. Hearing none, Ms. Bennett, you're recognized.

5 MS. BENNETT: Staff's witness Kathy L. Welch has been
6 excused from the proceeding. We would ask that her testimony
7 be entered into the record as if read.

8 CHAIRMAN CARTER: Any objections? The prefiled
9 testimony of Witness Welch will be entered into the record as
10 though read.

11 MS. BENNETT: And with Ms. Welch's testimony she
12 provided four exhibits. They are identified as 36, 37, 38 and
13 39. We'd ask that they be entered into the record at this time
14 also.

15 CHAIRMAN CARTER: Hang on a second. Before we do
16 that, let me ask the parties, are there any objections to
17 Ms. Welch -- I think she's a stipulated witness. Is there any
18 objection to her being stipulated as a witness?

19 MR. ANDERSON: No objection.

20 MR. McWHIRTER: No objection.

21 MR. McGLOTHLIN: No objection.

22 CHAIRMAN CARTER: Commissioners? Okay. Now that
23 we've got her in, now let's deal with her exhibits. You're
24 recognized.

25 MS. BENNETT: Exhibits 36, 37, 38 and 39 are

1 sponsored by Ms. Welch. We'd ask that they be entered into the
2 record at this time.

3 CHAIRMAN CARTER: Okay. Exhibits 36 through 39. Are
4 there objections? Without objection, show it done. Exhibits
5 36 through 39.

6 (Exhibits 36, 37, 38 and 39 admitted into the
7 record.)

8 Okay. Ms. Bennett.

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1 DIRECT TESTIMONY OF KATHY L. WELCH

2 **Q. Please state your name and business address.**3 **A.** My name is Kathy L. Welch and my business address is 3625 N.W. 82nd Ave.,
4 Suite 400, Miami, Florida, 33166.

5

6 **Q. By whom are you presently employed and in what capacity?**7 **A.** I am employed by the Florida Public Service Commission as a Public Utilities
8 Supervisor in the Division of Regulatory Compliance.

9

10 **Q. How long have you been employed by the Commission?**11 **A.** I have been employed by the Florida Public Service Commission since June, 1979.

12

13 **Q. Briefly review your educational and professional background.**14 **A.** I have a Bachelor of Business Administration degree with a major in accounting
15 from Florida Atlantic University and a Masters of Adult Education and Human Resource
16 Development from Florida International University. I have a Certified Public Manager
17 certificate from Florida State University. I am also a Certified Public Accountant licensed
18 in the State of Florida, and I am a member of the American and Florida Institutes of
19 Certified Public Accountants. I was hired as a Public Utilities Analyst I by the Florida
20 Public Service Commission in June of 1979. I was promoted to Public Utilities
21 Supervisor on June 1, 2001.

22

23 **Q. Please describe your current responsibilities.**24 **A.** Currently, I am a Public Utilities Supervisor with the responsibilities of
25 administering the District Office and reviewing work load and allocating resources to

1 complete field work and issue audit reports when due. I also supervise, plan, and conduct
2 utility audits of manual and automated accounting systems for historical and forecasted

3

4 **Q. Have you presented testimony before this Commission or any other**
5 **regulatory agency?**

6 **A.** Yes. I have testified in several cases before the Florida Public Service
7 Commission. Exhibit KLW-1 lists these cases.

8

9 **Q. What is the purpose of your testimony today?**

10 **A.** The purpose of my testimony is to sponsor the staff audit reports of Florida Power
11 & Light Company (FPL or Utility) which address the Utility's application for nuclear cost
12 recovery. We issued three audit reports on FPL in this docket. The first audit report was
13 issued May 28, 2008 to address the 2007 power uprate costs for the Turkey Point and St.
14 Lucie nuclear power plants. This audit report is filed with my testimony and is identified
15 as Exhibit KLW-2. The second audit report is a supplemental report to the power uprate
16 report and was issued July 31, 2008. This audit report is filed with my testimony and is
17 identified as Exhibit KLW-3. The third audit report was issued July 30, 2008 to address
18 the 2007 pre-construction costs and site selection costs for Turkey Point 6 & 7. This audit
19 report is filed with my testimony and is identified as Exhibit KLW-4.

20

21 **Q. Were these audits prepared by you or under your direction?**

22 **A.** Yes, I was the audit manager in charge of these audits.

23

24 **Q. Please describe the work you performed in these audits.**

25 **A.** For the uprate audits, we reviewed all entries in the general ledger accounts and

1 reconciled them to the filing and we reviewed FPL's internal audit report of the uprate
2 issued July 24, 2008. We judgmentally selected a sample that included the high dollar
3 items and an assortment of the various vendors charged to the project and traced the
4 sample to source documentation. For payroll, we obtained a list of all employees working
5 on the uprate and reviewed where several employees charged their payroll in 2006 to
6 determine if their salaries were already recovered through base rates. For charges from
7 FPL affiliates, we obtained supporting documentation for the actual payroll, the overhead
8 rates charged, and travel costs. In addition, we reviewed the rates charged by non-
9 affiliated companies to determine if FPL was charged the lower of cost or market. For
10 vouchers charged, we compared the amounts paid to the contractor to the supporting
11 invoices. We toured the plant and interviewed personnel about plant due to be retired and
12 replaced before the uprate was scheduled. We reviewed the plans for the outages and
13 compared the plans to the previously scheduled maintenance work to determine if there
14 were duplicates. For the journal entries charged, we compared the accruals to amounts
15 paid in 2008. We traced the jurisdictional factor to supporting documentation and the
16 ownership allocation percentages to supporting documentation.

17 For the new plants, Turkey Point 6 & 7, we reviewed all entries in the work
18 orders for site selection and pre-construction costs and reconciled them to the filing. We
19 judgmentally selected a sample that included the high dollar items and an assortment of
20 the various vendors charged to the project and traced the sample to source documentation.
21 For payroll, we obtained a list of all employees working on the new nuclear plants and
22 reviewed where several employees charged their payroll in 2005 to determine if their
23 salaries were recovered through base rates. (FPL began paying site selection costs in
24 2006, so we compared these costs to payroll in 2005.) For charges from FPL affiliates,
25 we obtained supporting documentation for the actual payroll and the overhead rates

1 charged. For vouchers charged, we compared the amounts paid to the contractor to the
2 supporting invoices. We toured the plant and interviewed personnel. For the journal
3 entries charged, we compared the accruals to amounts paid in 2008. We traced the
4 jurisdictional factor to supporting documentation and the ownership allocation
5 percentages to supporting documentation. We recalculated carrying charges and
6 compared the calculation to Commission rule 25-6.0423, Florida Administrative Code.

7
8 **Q. Please review the audit findings in the first audit report, KIW-2, which**
9 **addresses the 2007 power uprate costs for the Turkey Point and St. Lucie nuclear**
10 **power plants.**

11 **A. Audit Finding No. 1**

12 Audit Finding No. 1 discusses payroll. FPL charged \$353,286.91 in payroll costs
13 to the nuclear uprate. Some of the employees were former Seabrook employees and
14 therefore the associated payroll was not recovered through FPL's base rates. Some
15 employee payroll costs were charged to capital projects the previous year and thus not
16 recovered through base rates. Some employees were replaced by new staff so that they
17 could work on the project. Some, however, were FPL employees and their payroll costs
18 were recovered through base rates in the prior year. In April 2008, the utility removed
19 \$49,790.98 of the above salaries because they were already recovered in base rates. The
20 amount is still included in the 2007 filing but will be reduced in 2008. Since carrying
21 charges were not added in 2007, there should be no adverse effect of making the
22 adjustment in 2008.

23 The salary of an additional employee (\$3,351.71 charged to the uprate) also
24 should have been removed because the employee costs had not been charged to capital
25 projects in 2006 and was not replaced. FPL has stated that it will adjust this out in May

1 2008.

2 Another employee has not been replaced yet, but FPL plans to replace him. The
3 salary charged to the uprate for him in 2007 was \$18,056.59. Until he is replaced, his
4 salary is still in base rates and should be removed. FPL has stated that it will adjust this
5 out in May 2008 also.

6 **Audit Finding No. 2**

7 Audit Finding No. 2 discusses affiliate overhead. Florida Power and Light Energy
8 (FPLE) Seabrook Station charged FPL for two employees that were assigned to the
9 Extended Power Uprate Feasibility Study. In 2007, \$30,657.08 of salary was charged to
10 the FPL uprate. FPLE charged 77.37% in overhead to the base salary. The overhead
11 consists of 36.85% of non-productive charges. This loaded rate is then charged with
12 payroll benefits and a space allocation. The non-productive rate includes sick time,
13 vacation time, etc. and is based on FPLE non-productive pay code costs divided by total
14 payroll costs.

15 Affiliate transactions should be charged to the utility at the lower of cost or
16 market. The range of rates of FPLE employees with overhead, excluding travel, was less
17 than the rate of the outside contractor. We traced actual costs to payroll detail and expense
18 reports. It appears that the FPLE employee rates are in compliance with the Commission
19 rule.

20 **Audit Finding No. 3**

21 Audit Finding No. 3 discusses retirements. FPL will be incurring costs for new
22 equipment and charging it to this clause long before the removal of old equipment during
23 the outages. After the outages, several pieces of equipment will be retired and several
24 may be sold for salvage. The retirements and salvage should be used to offset the costs
25 reflected in this filing. This may cause a negative true-up after the outages. FPL needs to

1 maintain detailed records of the items removed, retired, and sold. FPL should develop a
2 methodology for recording these items.

3 **Audit Finding No. 4**

4 Audit Finding No. 4 discusses an over-accrual. The utility made several accruals
5 at the end of 2007 for items ordered prior to the end of the year. The following chart
6 shows the amount accrued compared to the actual support provided for the amount paid in
7 2008 related to these accruals.

8	<i>VENDOR</i>	<i>ACCRUAL</i>	<i>SUPPORT</i>	<i>DIFFERENCE</i>
9			<i>PROVIDED</i>	
10	Areva	310,000.00	251,912.43	58,087.57
11	Shaw, Stone & Webster	590,000.00	515,348.26	74,651.74
12	Shaw, Stone & Webster	590,000.00	540,944.56	49,055.44

13 The Areva difference was not re-accrued because it was below the accrual
14 threshold. Therefore, it was reversed in January 2008 and was not booked again until it
15 was actually paid. As of December 31, 2007, the accruals overstate the expenses by
16 \$181,794.75.

17 **Audit Finding No. 5**

18 Audit Finding No. 5 discusses transformers at the end of the useful life. An
19 engineering evaluation for the extended power uprate project for St. Lucie Units 1 and 2
20 discusses the main transformer. The report states: "Based on their relatively long lives to
21 date together with a relatively more troublesome operating lifetime condition history,
22 replace the PSL Unit 2 MT's (Main Transformer) with new units. This plan to replace
23 these two MTs is considered especially appropriate when considering that these relatively
24 old units would, with the Extended Power Uprate (EPU), be loaded to their highest ever
25 MVA levels at a time when end-of-useful-life is, by all industry measures, already

1 | approaching.” Based on this report, it appears that the transformers may have needed to
2 | be replaced even if Florida Power and Light was not doing the uprate. An FPL
3 | representative has responded that the transformers have 10 more years of useful life.
4 |

5 | **Q. Please review the audit findings in the second audit report, KLW-3, which**
6 | **addresses the 2007 power uprate costs for the Turkey Point and St. Lucie nuclear**
7 | **power plants.**

8 | **A. Audit Finding No. 1**

9 | Audit Finding No. 1 in the supplemental audit report for the uprate addresses an
10 | internal audit report issued July 24, 2008. This internal audit report addresses costs
11 | charged to the nuclear uprate. The results of the internal audit are addressed in Exhibit
12 | KLW-3, Finding No. 1.
13 |

14 | **Q. Please review the audit findings in the third audit report, KLW-4, which**
15 | **addresses the 2007 pre-construction costs and site selection costs for Turkey Point 6**
16 | **& 7.**

17 | **A. Audit Finding No. 1**

18 | Audit Finding No. 1 discusses payroll. Payroll of \$823,172.29 was charged to site
19 | selection and \$274,267.94 to pre-construction costs. Some of the employees were FPLE
20 | employees and therefore the costs were not recovered through FPL’s base rates. Some
21 | employees’ payroll costs were charged to capital projects the previous year and thus not
22 | recovered through base rates. Some employees were replaced by new staff so that they
23 | could work on the project. Some, however, were FPL employees and their payroll costs
24 | were recovered through base rates in the prior year. In the 2007 filing, the utility removed
25 | \$127,529.37 of the above salaries because they were already recovered in base rates. An

1 additional amount of \$32,450.43 still needs to be removed from 2007. The amount is still
2 included in the 2007 filing but adjusted in 2008 and will reduce the 2008 costs. The
3 remaining amount is immaterial and should not have a major impact on carrying charges
4 which were only computed for three months in 2007.

5 **Audit Finding No. 2**

6 Audit Finding No. 2 discusses affiliate overhead. Florida Power and Light Energy
7 (FPLE) charged FPL for four employees that were assigned to the Turkey Point 6 & 7
8 project. Affiliate transactions should be charged to the utility at the lower of cost or
9 market. The range of rates of FPLE employees with overhead, excluding travel, was less
10 than the rate of the outside contractor. We traced actual costs to payroll detail and expense
11 reports. It appears that the FPLE employee rates are in compliance with the Commission
12 rule.

13 **Audit Finding No. 3**

14 Audit Finding No. 3 discusses relocation costs and signing bonuses. FPL paid
15 relocation costs and signing bonuses to attract new employees to work on the nuclear
16 project. FPL reversed a portion of the signing bonus expense and will be amortizing it
17 monthly to the project over the commitment period. The remaining bonus will be
18 reversed in July 2008 because of an internal transfer of the position in June 2008.

19

20 **Q. Does that conclude your testimony?**

21 **A. Yes.**

22

23

24

25

1 MS. BENNETT: And with that we would call Carl Vinson
2 and Lynn Fisher to the stand.

3 CHAIRMAN CARTER: Mr. Vinson and Mr. Fisher, you've
4 already been sworn. No problem. Good morning and welcome
5 again.

6 MR. VINSON: Good morning.

7 CHAIRMAN CARTER: You're recognized.

8 MR. YOUNG: Thank you, sir.

9 Whereupon,

10 CARL VINSON and ROBERT LYNN FISHER
11 were called as witnesses on behalf of Staff and, having been
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. YOUNG:

15 Q Good morning, gentlemen.

16 A (By Mr. Vinson) Good morning.

17 A (By Mr. Fisher) Good morning.

18 Q You've been sworn; correct?

19 A (By Mr. Vinson) Yes.

20 A (By Mr. Fisher) Yes.

21 Q All right. Can you please state your name and
22 business address for the record, please?

23 A (By Mr. Vinson) Carl Vinson, 2540 Shumard Oak
24 Boulevard, Tallahassee, Florida.

25 A (By Mr. Fisher) Robert Lynn Fisher, and the business

1 address is 2540 Shumard Oak Boulevard.

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

3 A (By Mr. Vinson) Florida Public Service Commission as
4 a Public Utilities Supervisor.

5 A (By Mr. Fisher) And I'm employed by the Florida
6 Public Service Commission as a Government Analyst II.

7 Q You have jointly, you have jointly prefiled testimony
8 consisting of five pages in this docket; correct?

9 A (By Mr. Vinson) Yes.

10 A (By Mr. Fisher) That's correct.

11 Q And part of that testimony pertains to Florida Power
12 & Light; correct?

13 A (By Mr. Vinson) Yes.

14 A (By Mr. Fisher) Yes.

15 Q Do you have any changes or corrections to that
16 testimony?

17 A (By Mr. Vinson) Yes. I have the same correction that
18 I made yesterday in the, in presenting this testimony regarding
19 Progress Energy, and that is on Page 2, Line 9, I would like to
20 delete the words "In each case" in the sentence that begins
21 with those words so that that sentence would now begin "The
22 assignments required extensive."

23 Q Okay. With that change, if I were to ask you the
24 same questions today as in your joint prefiled testimony, would
25 your answers be the same?

1 A (By Mr. Vinson) Yes, they would.

2 A (By Mr. Fisher) Yes.

3 MR. YOUNG: Mr. Chairman, we did this for Progress
4 Energy Florida, but at this time I'd ask that the joint
5 prefiled testimony be inserted into the record as though read
6 for Florida Power & Light.

7 CHAIRMAN CARTER: The prefiled testimony will
8 be entered into the record as though read for Florida Power &
9 Light.

10 BY MR. YOUNG:

11 Q Do you have one exhibit attached to your testimony
12 which is the project management internal controls relating to
13 Florida Power & Light nuclear plant uprate and construction
14 projects?

15 A (By Mr. Vinson) Yes.

16 Q Do you have any changes or corrections to that
17 exhibit?

18 A No.

19 MR. YOUNG: Mr. Chairman, for identification purposes
20 that will be Number 40 on the staff Comprehensive Exhibit List,
21 VF-2.

22 CHAIRMAN CARTER: For identification purposes
23 Commissioners, that's number 40 on our list and VF-2. Thank
24 you.

25 MR. YOUNG: Thank you.

CHAIRMAN CARTER: For identification.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**2 **COMMISSION STAFF**3 **DIRECT TESTIMONY OF CARL VINSON AND ROBERT LYNN FISHER**4 **DOCKET NO. 080009-EI**5 **AUGUST 6, 2008**

6

7 **Q. Mr. Vinson, please state your name and business address.**8 A. My name is Carl Vinson. My business address is 2540 Shumard Oak Boulevard,
9 Tallahassee, Florida 32399-0850.

10

11 **Q. By whom are you employed?**12 A. I am employed by the Florida Public Service Commission as a Public Utilities
13 Supervisor.

14

15 **Q. What are your current duties and responsibilities?**16 A. I supervise a section of management auditors in the Bureau of Performance Analysis of
17 the Division of Regulatory Compliance. My group performs reviews and investigations of
18 Commission-regulated electric, telephone, gas and water utilities, usually focusing on the
19 effectiveness of management and company practices, adherence to company procedures and
20 the adequacy of internal controls. Written audit reports such as the ones attached to this
21 testimony are prepared by the auditors under my direction and supervision.

22

23 **Q. Please describe your educational and relevant experience.**24 A. I earned a Bachelor of Business Administration degree in Finance from Stetson
25 University in 1980. From 1980 to 1984 I worked as a bank loan officer, and from 1985 toDOCUMENT NUMBER DATE
06906 AUG-6 8

1 1989 I worked as a research analyst for Ben Johnson Associates, a consulting firm specializing
2 in utility regulation.

3
4 At Ben Johnson Associates, I participated in regulatory proceedings and dockets in
5 several states, including two nuclear unit prudence proceedings in Texas. From 1987 through
6 1989, I assisted in the analysis of prudence issues regarding the South Texas Project and the
7 Palo Verde Nuclear Generating Station. In both instances, the inclusion of construction costs
8 in rate base was contested due to schedule delays and project management problems that led to
9 substantial cost overruns. ~~In each case,~~ the assignments required extensive research into the
10 owning utilities' processes for decision-making, contractor selection, oversight of project
11 contractors, project status reporting, and project cost tracking.

12

13 I joined the Commission staff in 1989 as a management auditor and served in that
14 capacity until 1999 when I became the section supervisor. The audits I have performed and
15 overseen have covered a wide range of issues and industries. During my time with the
16 Commission, my work related to nuclear prudence issues included participation in a docket
17 examining the causes and costs of an extended maintenance outage during 1997 at Progress
18 Energy-Florida's Crystal River 3 unit. These issues were resolved via a settlement among the
19 parties, and no audit report was necessary.

20

21 **Q. Mr. Fisher, please state your name and business address.**

22 A. My name is Robert Lynn Fisher. My business address is 2540 Shumard Oak
23 Boulevard, Tallahassee, Florida 32399-0850.

24

25

1 **Q. By whom are you employed?**

2 A. I am employed by the Florida Public Service Commission, as a Government Analyst
3 II, for the Bureau of Performance Analysis in the Division of Regulatory Compliance.

4

5 **Q. What are your current duties and responsibilities?**

6 A. I perform reviews and investigations of Commission-regulated utilities, usually
7 focusing on the effectiveness of management and company practices, adherence to company
8 procedures and the adequacy of internal controls. I assisted Mr. Vinson in conducting reviews
9 of project management internal controls of nuclear plant uprate and new construction projects
10 underway at Florida Power & Light Company and Progress Energy of Florida.

11

12 **Q. Please describe your educational and relevant experience.**

13 A. In 1972, I graduated from Florida State University with a Bachelor of Science degree
14 in Marketing. My relevant background includes approximately nineteen years with the
15 Florida Public Service Commission in management auditing, utility investigation, and
16 complaint resolution. Prior to joining the Commission in 1989, my experience included more
17 than twelve years of experience within the telephone industry, in both regulated and non-
18 regulated environments, where I have managed multi-state marketing operations for a large
19 independent telephone company, assisted with implementing corporate level training
20 programs, and conducted operations reviews as a member of the corporate Market Planning
21 Staff. Since joining the Commission, I have participated in numerous reviews of utility
22 operations, processes, systems and controls.

23

24 **Q. Please describe the purpose of your testimony in this docket.**

25 A. Our testimony primarily consists of the attached audit reports entitled *Review of*

1 *Progress Energy – Florida’s Project Management Internal Controls for Nuclear Plant*
2 *Uprate and Construction Projects* (Exhibit VF-1) and *Florida Power & Light’s Project*
3 *Management Internal Controls for Nuclear Plant Uprate and Construction Projects*
4 (Exhibit VF-2). These reviews were requested by the Commission’s Division of Economic
5 Regulation to assist with the evaluations of nuclear cost recovery filings. The reports present
6 evaluations of the project management internal controls to be employed by Progress Energy-
7 Florida, Inc. and Florida Power & Light Company in managing both their uprate projects and
8 new nuclear plant construction projects. The reports present our observations regarding the
9 reasonableness and adequacy of the internal controls in place at this time.

10

11 **Q. Are you sponsoring any exhibits?**

12 A. Yes, our audit reports are attached as Exhibit Numbers VF-1 and VF-2.

13

14 **Q. Are there any additional topics to be addressed in your testimony?**

15 A. Yes. We have some observations on the Commission’s nuclear cost recovery review
16 process under Rule 25-6.0423. Since this is the first nuclear cost recovery proceeding, we
17 believe it is appropriate to examine the process that has evolved this far and to determine how
18 it can more efficiently and effectively serve its purpose. The relatively tight timetable of
19 annual filings requires an efficient process that will allow timely but thorough cost recovery
20 determinations.

21

22 Participating in these initial reviews of the uprate projects and the new unit
23 construction projects for both Progress Energy-Florida, Inc. and Florida Power & Light
24 Company has led us to conclude that improvements to the current process are needed. We
25 believe that the companies should present significantly more affirmative support for the

1 reasonableness and prudence of their cost recovery requests.

2

3 We note that Progress Energy-Florida, Inc. witness Roderick and Florida Power &
4 Light Company witness Reed did prefile testimony that is somewhat similar to what we are
5 describing. However, we believe that even more extensive and detailed and examinations of
6 internal controls and project management controls should be performed to fully substantiate
7 their adequacy and effectiveness. In addition to this testimony, each company could provide
8 an internal audit report describing a complete review of the adequacy and effectiveness of
9 internal controls and project management controls.

10

11 Thorough prefiled testimony on the controls would help to establish a firm basis for
12 each company's position that adequate oversight and controls exist to prevent imprudent or
13 unreasonable expenditures. Internal audit results would serve to familiarize the parties with
14 the relevant project management issues that arose during the preceding year and provide
15 insight into how management corrected any problems noted. These vehicles would provide a
16 starting point upon which the parties to the proceeding could build to develop a thorough
17 assessment of the reasonableness and prudence of the costs requested for recovery.

18

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

20 **A. Yes.**

21

22

23

24

25

1 BY MR. YOUNG:

2 Q Can you please summarize your testimony?

3 A (By Mr. Vinson) Yes, sir.

4 Commissioners, our testimony presents the management
5 audit report regarding the internal controls for project
6 management that Florida Power & Light is using on its uprate
7 projects and its new unit construction at the Turkey Point
8 6 and 7 units. We also present in our testimony some comments
9 about the nuclear cost recovery process that the Commission is
10 using.

11 MR. YOUNG: With that, Mr. Chairman, we tender the
12 witnesses for cross.

13 CHAIRMAN CARTER: Thank you, Mr. Young.

14 Mr. McGlothlin.

15 CROSS EXAMINATION

16 BY MR. MCGLOTHLIN:

17 Q Good morning.

18 A (By Mr. Vinson) Good morning.

19 A (By Mr. Fisher) Good morning.

20 Q I believe, based upon the way questions were divvied
21 up in the deposition, the questions I have this morning are for
22 Mr. Vinson. But if I'm mistaken about that, please correct me.

23 As I understand it, one of staff's points in its
24 testimony and in Exhibit 40 or VF-2 is that with respect to
25 this initial cycle of hearing activities you were constrained

1 in terms of the scope and depth of the analysis that you were
2 able to perform by the, by the time requirements and by the
3 fact that we're engaged in a new undertaking. Is that a fair
4 summary of your comments at the outset?

5 A (By Mr. Vinson) Yes, largely the time available.

6 Q Okay. With respect to Exhibit VF-2, on Page 20 of
7 that document this statement appears in bold following
8 discussion of contractor selection. "FPL appears to have
9 followed its contractor selection procedures. Given the unique
10 challenges and circumstances of the nuclear industry, FPL's use
11 of sole source selections for the uprate project to date is in
12 keeping with reasonable business practices." And that is with
13 respect to the uprate projects; correct?

14 A (By Mr. Vinson) Yes.

15 Q And a similar statement with respect to the new units
16 appears on Page 38; correct?

17 A (By Mr. Vinson) Yes.

18 Q Turning back to Page 19 of the exhibit, you have a
19 chart there displaying information about one, two, three, four
20 contracts. Do I understand correctly that these four contracts
21 comprise contracts in excess of \$1 million value that are
22 screened and identified by the nuclear filing requirements that
23 FPL prepared?

24 A (By Mr. Vinson) Yes.

25 Q Of course, FPL in conjunction with its uprate

1 activities entered into numerous other contracts; is that
2 correct? The universe of contracts associated with the uprate
3 is far larger than these four.

4 A (By Mr. Vinson) Yes. There are additional contracts.

5 Q And the two of you did in the course of your review
6 look at contracts other than these four.

7 A (By Mr. Vinson) That's correct.

8 Q And some of those other contracts were either single
9 source or sole source contracts; correct?

10 A (By Mr. Vinson) Yes.

11 Q Do I understand correctly that with respect to the
12 depth of review these four that were filtered by the criteria
13 of the NFRs received more attention than the others that you
14 reviewed?

15 A (By Mr. Vinson) That is correct.

16 Q And is it -- do I also understand correctly that with
17 respect to the others, not these four but the others, you did
18 not assess (phonetic) whether FPL followed its contractor
19 selection criteria to depart from competitive bidding on those
20 contracts?

21 A (By Mr. Vinson) I think that would be a correct
22 statement.

23 Q So, so when we look at this statement that says "FPL
24 appears to have followed its contractor selection procedures,"
25 you're referring solely to the four contracts that exceeded

1 \$1 million in costs that are shown on Page 19.

2 A (By Mr. Vinson) Yes.

3 Q Now I believe yesterday you mentioned at the outset
4 of the testimony in the first phase that the two of you
5 performed a management audit and not a financial audit. Do you
6 recall that statement?

7 A (By Mr. Vinson) Right. That's correct.

8 Q Is that true of your work on the FPL aspects also?

9 A (By Mr. Vinson) Yes.

10 Q Do I understand correctly that in your review of
11 these four contracts and the others you were not concerned with
12 assessing the reasonableness of the amounts of the contract?

13 A (By Mr. Vinson) Right. Not the dollar amount.

14 Q Not the dollar amount. Well, the dollar amount or
15 whether that dollar amount was reasonable; correct?

16 A (By Mr. Vinson) Correct.

17 Q Okay. Now in conjunction with your review you became
18 familiar with what we've referred to as NP-1100 and the, and
19 the corresponding contractor selection criteria that FPL
20 follows for the new units, have you not?

21 A (By Mr. Vinson) Yes.

22 Q Is it your understanding that FPL's standard for
23 procurement is competitive bidding, that it prefers competitive
24 bidding?

25 A (By Mr. Vinson) Yes. That's stated in the

1 procedures.

2 Q And do you approve of that? Do you think that
3 competitive bidding has advantages relative to other forms of
4 procurement?

5 A (By Mr. Vinson) Yes, it does in many cases.

6 Q Okay. And is it your understanding that sole source
7 or single source contracts are exceptions to the otherwise
8 acceptable standard of competitive bidding?

9 A (By Mr. Vinson) For FPL that is, that is as stated in
10 their procedures. That's correct.

11 Q Okay. And to justify the departure from competitive
12 bidding, FPL is required by its procedures to show that
13 competitive bidding is infeasible either because there's only
14 one source or because, even though there's more than one
15 source, for compelling reasons the contract should be awarded
16 to one without soliciting bids. Is that the way it works?

17 A (By Mr. Vinson) I'm not sure I followed your question
18 in its entirety. Could you repeat that?

19 Q All right. We've established that competitive
20 bidding is the standard and that sole source and single source
21 contracts are an exception that have to be justified.

22 A (By Mr. Vinson) Yes.

23 Q Okay. With respect to the required justification,
24 the first aspect of that is to, is that FPL must demonstrate to
25 its internal decision-maker that for whatever reason, either

1 because there's only one provider or there's business reasons
2 why bids should not be solicited, the contract should be
3 awarded without first entertaining bids. In other words,
4 competitive bidding is infeasible under the circumstances.

5 MR. YOUNG: Mr. Chairman, at this time I'm going to
6 object to that line of questioning. I think this might be
7 outside the scope of Mr. Carl Vinson and Mr. Robert Lynn
8 Fisher's testimony. So I would basically object, object based
9 on outside the scope of testimony.

10 MR. McGLOTHLIN: Mr. Chairman --

11 CHAIRMAN CARTER: Mr. McGlothlin.

12 MR. McGLOTHLIN: Yes. The, the conclusion that staff
13 is sponsoring is that in their view FPL has followed their
14 contractor selection criteria. I think fundamental to that is,
15 is a discussion of what those criteria are that in staff's view
16 FPL has followed. I'm simply trying to establish the framework
17 that, that they considered in, in their analysis.

18 MR. YOUNG: With that, Mr. Chairman, I'll make it
19 easier. I'll withdraw that objection.

20 CHAIRMAN CARTER: Okay. You may proceed.

21 MR. VINSON: To answer the question, I believe you're
22 asking me to ascertain the intent of the FPL procedure. To the
23 extent that's what you're asking, I believe that's the general
24 intent of that procedure.

25 BY MR. McGLOTHLIN:

1 Q Is it, is it true also that there's a second prong to
2 the criteria, and that is that when FPL seeks permission to
3 depart from competitive bidding, it has to provide assurance
4 that the cost of the sole source or single source contract is
5 reasonable?

6 A (By Mr. Vinson) I believe that's correct.

7 Q Okay. And again with respect to the statement that
8 appears on Pages 20 and 38 of Exhibit 40, when you say that FPL
9 appears to have followed its contractor selection procedures,
10 you are speaking only to the contracts that exceed \$1 million
11 and only to the decision to go sole source and single source,
12 but not to the reasonableness of the resulting contracts.

13 A (By Mr. Vinson) That's correct.

14 MR. MCGLOTHLIN: I have no further questions.

15 CHAIRMAN CARTER: Thank you, Mr. McGlothlin.

16 Mr. McWhirter.

17 MR. McWHIRTER: No, sir.

18 CHAIRMAN CARTER: McWhirter.

19 MR. McWHIRTER: I have no questions.

20 CHAIRMAN CARTER: I gave you a promotion today.

21 Mr. Twomey.

22 MR. TWOMEY: No, sir.

23 MS. CANO: Good morning. Thank you.

24 CHAIRMAN CARTER: You're recognized.

25 CROSS EXAMINATION

1 BY MS. CANO:

2 Q I just have a few questions for you, Mr. Vinson.

3 A (By Mr. Vinson) Okay.

4 Q You conducted an audit of the project management
5 controls used by FPL for both the uprates and Turkey Point
6 6 and 7; correct?

7 A (By Mr. Vinson) Yes.

8 Q And the result of that audit was a 46-page audit
9 report.

10 A (By Mr. Vinson) I think it's 41.

11 Q Okay. Thank you.

12 A (By Mr. Vinson) Plus the testimony would total 46.

13 Q Okay. And in that report you made certain findings
14 or reached certain conclusions with respect to FPL's project
15 management controls; correct?

16 A (By Mr. Vinson) Yes.

17 Q Okay. Certain of those controls and procedures that
18 you reviewed are specifically designed to manage contractor
19 selection; right?

20 A (By Mr. Vinson) Yes.

21 Q And with respect to the uprates project you
22 determined both that FPL followed its procedures and that its
23 selection of those sole source contractors was in keeping with
24 reasonable business practices; correct?

25 A (By Mr. Vinson) That's correct.

1 Q And similarly with respect to the Turkey Point
2 6 and 7 project you concluded that FPL followed its contractor
3 selection procedures and that FPL's use of sole source
4 contractors was in keeping with reasonable business practices.

5 A (By Mr. Vinson) Yes. That's correct.

6 Q Okay. Now the scope of your detailed review of the
7 contracts was for those that were in excess of \$1 million. Is
8 that what you stated?

9 A (By Mr. Vinson) Yes.

10 Q But in your review of the smaller contracts did you
11 see anything that would lead you to believe that FPL would not
12 follow its procedures with respect to those?

13 MR. MCGLOTHLIN: Objection. The witness has stated
14 in earlier answers that they did not consider --

15 CHAIRMAN CARTER: You went down this line, so I'm
16 going to allow her some leverage on that. You opened this area
17 up, so I'm going to allow her to ask a question on that matter.
18 You may proceed.

19 MS. CANO: Thank you.

20 BY MS. CANO:

21 Q Would you like me to repeat the question?

22 A (By Mr. Vinson) Regarding -- no. Regarding the
23 smaller contracts, we did not see anything that gave us
24 concern.

25 MS. CANO: Okay. Thank you. That's all the

1 questions I have.

2 CHAIRMAN CARTER: Thank you. Commissioners? Staff?

3 MR. YOUNG: Just two quick questions.

4 REDIRECT EXAMINATION

5 BY MR. YOUNG:

6 Q Can you briefly tell me what was the purpose of your
7 audit?

8 A (By Mr. Vinson) The purpose of our audit was, was to
9 establish and to examine the internal control procedures by
10 which the company will manage and keep track and control both
11 the costs and the schedule of these major projects.

12 Q Okay. Did you -- and the determination that you
13 reached, you said FPL -- did you say FPL followed its
14 procedures or appeared to follow its procedures?

15 A (By Mr. Vinson) The statement reads, "FPL appears to
16 have followed its contractor selection procedures."

17 Q Do you think that's different from "FPL followed its
18 procedures"?

19 A (By Mr. Vinson) I'm sorry. Could you repeat that?

20 Q Do you think that's distinguishable from the
21 statement "FPL followed its procedures"?

22 A (By Mr. Vinson) It's barely to be distinguished from
23 that. There's barely a difference. Of course, an audit by
24 definition is somewhat of a sampling. We do not see every
25 effort that FPL made over this period of time. We do not know

1 every single analysis made. But from the work we did, from the
2 information we gathered they appear to have followed their
3 procedures.

4 MR. YOUNG: Okay. Thank you, Mr. Chairman. No
5 further questions.

6 CHAIRMAN CARTER: Commissioner Argenziano.

7 COMMISSIONER ARGENZIANO: I guess just a question to
8 make sure it's -- in reading, I guess, hold on one second, your
9 direct on Page 5, you do indicate though that -- let me read
10 it. We note that Progress -- sorry -- and Florida Power &
11 Light, witness did prefile testimony -- hold on a minute.
12 "However, we believe that even more extensive and detailed and
13 examinations of internal controls and project management
14 controls should be performed to fully substantiate their
15 adequacy and effectiveness." Is that -- that is correct?

16 MR. VINSON: Yes.

17 COMMISSIONER ARGENZIANO: Okay. And in the future
18 what is your position? What do you do as public service staff
19 to ensure that that is taking place?

20 MR. VINSON: Well, as I stated yesterday, there are
21 likely to be meetings among staff after this initial
22 run-through of the nuclear cost recovery proceeding to
23 strategize and plan for next year. And our role is not
24 certain, it's not been defined yet. As I said yesterday, I
25 believe that the role we played this year needs to be carried

1 out through a combination of whatever actors or whatever means
2 are used, but our role is not certain.

3 And part of this, let me add this, that part of
4 what I stated on Page 5, I mean, I'm sorry, on Page, yeah,
5 Page 5 pertains to additional activity by the companies that
6 could be done. So there's two sides of it, what staff does and
7 what the companies do.

8 COMMISSIONER ARGENZIANO: Right. And I understand
9 that. But in, in reading those words what I see is that we
10 think that so far they've, you know, done pretty good here and
11 it's looking okay, but we think that more extensive and more,
12 you know, examination needs to be done to make sure that we
13 have this adequacy and effectiveness.

14 MR. VINSON: Right. More by the company and then a
15 continued effort like we've done.

16 COMMISSIONER ARGENZIANO: So when you say your role
17 is not certain in the future, I'm not sure who goes and checks
18 if they have continued to strengthen that, the effectiveness
19 and the adequacy. Is that part of your role in the future or
20 do you --

21 MR. VINSON: It could, it could be, and I would
22 encourage it to be a role of staff. I'm speaking here
23 specifically for my --

24 COMMISSIONER ARGENZIANO: So does that, does that
25 come, I'm sorry, from direction from the Commission? How does

1 that happen? Because if people are looking at this out
2 there -- I'm having a question if you're telling me you're not
3 certain of your role. Do we give them that, that direction?
4 And if somebody could help me. Because if somebody is watching
5 this at home, they probably have the same question. I'm not
6 certain and --

7 CHAIRMAN CARTER: I believe, I believe we do in that
8 process because in addition to looking at the reasonableness
9 and the prudence, I always mess that word up when I say
10 prudence, but as we look at the prudence and look at the
11 reasonableness and look at whether they dotted the I's and
12 crossed the T's as well as was the money spent in a manner
13 consistent with what they proposed to do, we will look at all
14 of those things. And as staff brings those recommendations to
15 us after having conducted those audits they'll say we think we
16 need more information here or more information here so that we
17 can give you, the Commission, an opportunity to look at all of
18 the facts and have an open and transparent process.

19 COMMISSIONER ARGENZIANO: And I appreciate that. But
20 I'd like to get it on record that I would like to make sure
21 that staff has that direction to, to keep looking to making
22 sure. I'm pleased that the company, you know, has done a
23 pretty good job. But as we mentioned yesterday with Progress,
24 the same thing applies here if -- and I think I asked the
25 question yesterday, if it's, if it's sole bidding that has

1 occurred and they have the right to do that, then how do we
2 know at the point -- all we have left to us at that point is
3 prudence. And I asked the question, how do we know what is
4 prudent if we don't have other bids?

5 So I would hope that staff would continue to work
6 with the company to make sure that, that there is, that we can
7 prove prudence. And, you know, if we have a combination of
8 factors that have to go into determining what is prudent at
9 that time, I don't want staff at that time smack up against
10 that time we have to make a decision to finally say, well, you
11 know, we're just looking back into it. And I'd like continued
12 direction to the staff to, to work with the company and hoping
13 that they do improve.

14 I mean, I'm glad that they are where they are. But
15 just for safeguarding I'd like to make sure that's on the
16 record and that people maybe at home understand. Because when
17 you hear staff say, well, we're not sure what our role is, that
18 would make me scratch my head and go, oh, you know. So I think
19 explaining that helped me and maybe anybody who is watching at
20 home.

21 CHAIRMAN CARTER: And, staff, for the record, staff,
22 for the record as we proceed further, we want all of this
23 information readily available to all of the Commissioners so
24 that we can have an open and transparent process so that the
25 people -- I mean, I think it's important that they understand

1 what we're doing and why we're doing it the way we're doing it.
2 And I think that, staff, govern yourselves accordingly when you
3 bring back to us the recommendations and also the information
4 both from our legal staff as well as from technical staff.

5 MS. BENNETT: That's correct. We -- the legal staff
6 and the technical staff will be following through with the,
7 especially the recommendations that we've heard from the
8 auditors. It's, it's more a matter of which person is assigned
9 the job.

10 CHAIRMAN CARTER: Okay.

11 COMMISSIONER ARGENZIANO: Commissioner, that sounds a
12 lot better than we're not certain what we're doing.

13 MR. VINSON: Right. That -- could I just add --

14 COMMISSIONER ARGENZIANO: And I don't mean that
15 derogatory against you.

16 MR. VINSON: Right. I just wanted to add that in, I
17 think what Ms. Bennett is saying that in our role as auditors
18 we're not in the decision-making to decide and assign
19 (phonetic). But by virtue of the fact that they engaged us, I
20 believe they would have those same concerns that you have and
21 want to continue with our effort.

22 COMMISSIONER ARGENZIANO: Absolutely. Thank you.

23 CHAIRMAN CARTER: Okay. Thank you.

24 Commissioner Skop.

25 COMMISSIONER SKOP: Thank you, Mr. Chairman.

1 And I think Commissioner Argenziano's points are well
2 taken. It seems, at least listening to the discussion from my
3 colleagues as well as the points being made, that OPC, their
4 central issue seems to be directed more towards that the
5 sufficiency of the justification provided within the sole
6 source procurement justification, not necessarily that FPL has
7 departed from its underlying procedures or done anything wrong,
8 but also too that perhaps that, you know, competitive bidding
9 would be the preferred course over sole source procurement.
10 But in instances, nuclear, like I say, I think that there's,
11 there's not very many people that you can go to in some cases.

12 But I did have two quick questions for staff, if I
13 could, and just to try and clarify the point. Because I think
14 that, you know, I've been trying to follow along and I'm pretty
15 good at that, but I think it's getting blurred in terms of what
16 the issues were. And, again, I'm trying to better understand
17 what OPC is trying to allege that FPL has done wrong because
18 it's not very clear to me.

19 So to staff, I guess in reading NP-1100, does
20 Section 2.2 of NP-1100 require FPL to prepare a sole source
21 justification in those instances where valid business reasons
22 support sole source procurement?

23 MR. VINSON: Yes.

24 COMMISSIONER SKOP: And I guess you guys, staff is
25 best positioned to know this because they've reviewed the

1 contracts extensively. But for each contract under which you
2 reviewed that sole source procurement was selected, was there a
3 supporting sole source justification provided in each of those
4 instances?

5 MR. VINSON: Yes.

6 COMMISSIONER SKOP: So in accordance with NP-1100,
7 FPL followed its internal procedures?

8 MR. VINSON: Yes.

9 COMMISSIONER SKOP: All right. Thank you.

10 CHAIRMAN CARTER: Thank you. Thank you,
11 Commissioners. Anything further from the bench? Thank you.
12 We're ready for our exhibit. That would be Number
13 40.

14 MR. YOUNG: Yes, sir.

15 CHAIRMAN CARTER: Any objections? Without objection,
16 show it done.

17 (Exhibit 40 admitted into the record.)

18 MR. YOUNG: Mr. Chairman, can these witnesses be
19 excused?

20 CHAIRMAN CARTER: We want to keep them here and let
21 them -- no. Thank you, guys, very much for your participation,
22 Mr. Vinson and Mr. Fisher. Have a great day.

23 Okay. I believe that -- staff, anything further on
24 your case in chief?

25 MS. BENNETT: No.

1 CHAIRMAN CARTER: Okay. I think we're back to you,
2 Mr. Anderson.

3 MR. ANDERSON: Thank you. FPL would call as its next
4 witness Mr. Labbe, who previously testified and has been
5 previously sworn.

6 CHAIRMAN CARTER: Good. Mr. Labbe, good morning to
7 you.

8 THE WITNESS: Good morning.

9 MR. ANDERSON: May we proceed?

10 CHAIRMAN CARTER: You're recognized.

11 MR. ANDERSON: Thank you.

12 Whereupon,

13 WILLIAM P. LABBE, JR.

14 was called as a rebuttal witness on behalf of Florida Power &
15 Light Company and, having been duly sworn, testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. ANDERSON:

19 Q Good morning, Mr. Labbe.

20 A Good morning.

21 Q You've been previously sworn?

22 A Yes. That's correct.

23 Q Have you prepared and caused to be filed 12 pages of
24 rebuttal testimony in this proceeding?

25 A Yes, I have.

1 Q Do you have any changes or revisions to your rebuttal
2 testimony?

3 A No, I do not.

4 Q If I asked you the same questions contained in your
5 rebuttal testimony, would your answers be the same?

6 A Yes, they would.

7 MR. ANDERSON: FPL asks that Mr. Labbe's rebuttal
8 testimony be inserted into the record as though read.

9 CHAIRMAN CARTER: The rebuttal testimony of the
10 witness will be inserted into the record as though read.

11 BY MR. ANDERSON:

12 Q And to be clear, you're the same Mr. Labbe who
13 testified yesterday, and the same position and the same address
14 and all those things; right?

15 A That's correct.

16 Q Okay. There are no exhibits to your rebuttal
17 testimony; is that right?

18 A That's correct.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF WILLIAM P. LABBE, JR.**

4 **DOCKET NO. 080009-EI**

5 **August 21, 2008**

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

8 A. My name is William P. Labbe, Jr., and my business address is 700 Universe
9 Boulevard, Juno Beach, FL 33408.

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

11 A. I am employed by Florida Power & Light Company (“FPL”) as Director of
12 the Extended Power Uprate projects in the Nuclear Division.

13 **Q. Please briefly summarize your professional experience and qualifications.**

14 A. I received a Bachelor of Science degree in Mechanical Engineering from the
15 Maritime Academy in 1985. I worked in the maritime industry for
16 approximately 18 months before joining the Maine Yankee Atomic Power
17 Company as an Operator at the Maine Yankee nuclear power plant. While
18 working at the Maine Yankee plant, I received a Reactor Operator’s license
19 from the Nuclear Regulatory Commission (“NRC”). In 1993, I left the
20 Operations Department, holding various other positions in the Maintenance
21 and Engineering Departments at the station—mostly working on various
22 projects. During the period of 1997 through 2001, I worked as a Project
23 Manager at two other nuclear power plants. Specifically, I managed refueling
24 outage support services at the San Onofre Nuclear Generation Station

1 (“SONGS”), owned by Southern California Edison, and the separation of
2 systems and components at Northeast Utilities’ Millstone Units 1 and 2.

3
4 In 2001, I accepted a position as the Assistant Outage Manager at the
5 Seabrook nuclear power station. At the time I was hired, Seabrook station
6 was owned by NAESCO, but it was bought by FPL Energy shortly thereafter.
7 In 2002, I was promoted to the position of Work Controls Manager with
8 responsibility for scheduling and coordinating all online and outage
9 preventative and corrective maintenance activities. In 2004, my
10 responsibilities were increased to include major station project activities as
11 well. In 2006, I was promoted to the position of Director of Projects, with
12 responsibility for both of the FPL Energy nuclear units, Seabrook and Duane
13 Arnold. In 2007, I was assigned to the FPL Juno Beach office to support a
14 study of the feasibility of potential power uprate projects at the FPL St. Lucie
15 and Turkey Point nuclear power plants which led to my current position of
16 Director of Extended Power Uprate projects.

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

18 A. My testimony rebuts certain statements made in the Revised Direct Testimony
19 and Exhibits of William R. Jacobs, Jr., filed by the Office of Public Counsel.
20 Specifically, I address Dr. Jacobs’ interpretation of the appropriate accounting
21 practice regarding required equipment replacement, and the various
22 characterizations made in his testimony regarding FPL’s business case
23 justifications for certain single and sole source contracts that support the

1 Extended Power Uprate (“EPU”) projects at the Turkey Point and St. Lucie
2 nuclear power plants.

3
4 **EQUIPMENT REPLACEMENT RECOVERY**

5 **Q. Do you agree with Dr. Jacobs’ interpretation of the appropriate method**
6 **to determine when the costs of replacement equipment are recoverable**
7 **through the Nuclear Cost Recovery Clause (“NCRC”)?**

8 A. No, Dr. Jacobs’ suggestion that the appropriate recovery for the EPU projects
9 should be limited to the so-called “incremental costs” (the difference between
10 the cost of like-kind replacement components alleged to be at or near their end
11 of life and the cost of the new component capable of handling the post-EPU
12 output) is neither realistic nor supported by the NCRC Rule.

13
14 Even if it were as simple to segregate “end of life” components from the
15 “required to upgrade” components as Dr. Jacobs suggests (and it is not), his
16 analysis fails to consider that the entire cost of an upgraded component is
17 necessary to support the EPU. In situations in which component upgrade is
18 required, the failure to replace the component with a more capable item either
19 severely limits or entirely prevents FPL from achieving the anticipated
20 increase in electrical generation from the facilities. In other words, when an
21 entire component must be replaced with a more robust design, it must be
22 replaced in its entirety—regardless of its present capability. It is important to

1 note that FPL is only performing work and installing equipment needed for
2 the EPU Projects.

3

4 **Q. Has the EPU project performed evaluations to ensure that only**
5 **equipment that is required to support the intended improvement in unit**
6 **electrical output is being replaced?**

7 A. Yes. The EPU project recognizes that certain pieces of equipment can be
8 upgraded without completely replacing them. The engineering processes used
9 by FPL as part of its EPU project development have looked extensively at
10 opportunities to reduce the overall project costs by refurbishing and/or
11 enhancing existing components, when feasible, rather than replacing them.
12 The success of this approach can be demonstrated using one of Dr. Jacobs'
13 examples. While it is true that the main output transformer for the St. Lucie
14 Unit 2 EPU project is being replaced, the main output transformer (which has
15 a slightly different design) for the St. Lucie Unit 1 EPU project is simply
16 having additional cooling capacity installed. This shows that FPL has
17 carefully evaluated the extent of upgrades and replacements needed to
18 implement the EPU Projects and is taking the most cost-effective approach in
19 each instance.

20 **Q. Are any components being replaced as part of the EPU projects intended**
21 **to extend the life of the plant?**

22 A. No. While it is true that replacing certain major components will likely result
23 in an increase in overall plant reliability, this rationale played no part

1 whatsoever in the evaluation of component replacement for the EPU projects.
2 Every component that is being either upgraded or replaced as part of the EPU
3 project is—on a stand-alone basis—necessary to support the increase in unit
4 electrical output.

5 **Q. Are the cost projections presented in FPL’s direct testimony regarding**
6 **the EPU both necessary and reasonable?**

7 A. Yes, they are. All of the 2008 actual/estimated and 2009 projected costs are
8 for activities that are necessary to the EPU projects and are appropriately
9 undertaken in 2008 and 2009 in order to maintain the project schedule.

10
11 **SOLE / SINGLE SOURCE CONTRACT JUSTIFICATIONS**

12 **Q. Do you agree with Dr. Jacobs’ contention that FPL’s single and sole**
13 **source contract justifications were inadequate or incomplete?**

14 A. No. Although Dr. Jacobs acknowledges that FPL prepared a justification in
15 each and every case a single or sole source contract was utilized by the EPU
16 project, his testimony incorrectly characterizes the qualitative analyses for
17 certain contracts as inadequate. Dr. Jacobs’ testimony also seems to suggest
18 that quantitative analyses used to support a single or sole source contract must
19 be complex and detailed in order to be valid. This is simply not realistic given
20 the commercial reality of limited suppliers, proprietary commercial and
21 technical data, and reasonable schedule considerations.

22

1 In every example cited by Dr. Jacobs, FPL reasonably utilized both its
2 business and commercial judgment in reaching the decision to award a sole or
3 single source contract, the judgment was documented by supporting evidence,
4 and the conclusion independently approved—all as required by approved FPL
5 procedures.

6 **Q. Do you agree with Dr. Jacobs' assertion that FPL should be required to**
7 **provide a detailed spreadsheet-styled analysis to establish the commercial**
8 **reasonableness of each and every single or sole source contract?**

9 A. No. Although many smaller, fungible product contracts easily lend
10 themselves to an exhaustive quantitative analysis, other contracts for relatively
11 unique products and/or services do not. The reality of large power generation
12 projects such as the EPU is that there is a very small number of qualified
13 suppliers for major engineering and manufacturing and many (if not all) of
14 these suppliers carefully guard both their technical data and commercial
15 terms. In fact, in the case of performing revisions to a nuclear reactor safety
16 analysis for a specific fuel vendor (which, coincidentally, Dr. Jacobs cited in
17 two of his examples), there may literally be only a single company in the
18 entire world that can do the work. Furthermore, given the limited world-wide
19 production capability for critical manufactured components, there are very
20 real time constraints placed upon the EPU project if FPL is to successfully
21 accomplish all of the required tasks in the timeframe necessary to meet the
22 expected demand growth while also minimizing potential impacts on its
23 existing generation and ultimately costs to customers.

1 **Q. Why is the ability of a vendor to meet the EPU project schedule a**
2 **reasonable consideration to make a prudent contract decision?**

3 A. Although it is not repeated in every contract/vendor analysis performed by
4 FPL in support of the EPU project, the ability to meet established project
5 milestones is critically important. This is because there are certain, key
6 assumptions contained in every EPU project decision: 1) the only available
7 time to perform the majority of the physical construction activities involved in
8 the EPU project are during scheduled unit outages, and; 2) the timing of the
9 unit outages have already been optimized in terms of system reliability
10 (during off-season peak demands), nuclear fuel production and utilization, and
11 temporary craft personnel availability. Delays can be expected to increase
12 overall costs based on escalation and forego system benefits such as reduced
13 fuel consumption or reduced emissions. Any deviation in EPU project
14 schedule that would likely impact the corresponding unit outage schedule or
15 duration is therefore unacceptable. Likewise, any deviation in the overall
16 EPU schedule (extending the project into further nuclear unit outages) could
17 potentially adversely affect overall system reliability and is also unacceptable.

18 **Q. Are all of the single or sole source justifications for the EPU contracts**
19 **mentioned in Dr. Jacobs' testimony both commercially reasonable and**
20 **consistent with FPL policies and procedures?**

21 A. Yes. In each case that the EPU project awarded a single/sole source contract,
22 the award was fully justified. While it is true that the justification sometimes
23 contained reference to the project schedule within it, as I explained above,

1 reference to the schedule was clearly understood by everyone involved to
2 embed the substantial commercial analysis that originally went into creating
3 and optimizing that schedule.

4 **Q. Can you explain how this rationale applies to the specific examples of**
5 **single/sole source contracts mentioned in Dr. Jacobs testimony?**

6 A. Yes, but I will limit my testimony to the examples Dr. Jacobs' used that
7 pertain to the EPU project. The testimony of Steven Scroggs will address the
8 other contract justifications mentioned in Dr. Jacobs' testimony.

9

10 Westinghouse

11 Although the justification involving the Westinghouse contract for the nuclear
12 site engineering, licensing, and design activities does mention schedule
13 constraints, it is important to place that statement in context. There are very
14 few (perhaps three) nuclear fuel vendors in the global nuclear market that are
15 capable of performing the necessary work, and each of these vendors' safety
16 analyses (and to a lesser extent their methodologies) are entirely dependent on
17 their unique fuel design. Thus, it is not simply a matter of finding a company
18 that can perform the mathematics—it is a matter of finding a company that
19 has the proprietary design data with which to start the work. Any delay in
20 getting the data would result in a (at least) day-for-day slippage in the project
21 schedule—and thus potentially increased costs.

22

1 While it might not be “impossible” to negotiate a contract with the existing
2 fuel vendor to provide support for another vendor to perform the required
3 analysis (assuming the second vendor’s bid were less expensive to begin
4 with), the need to negotiate a second contract with the existing fuel vendor
5 under which they would share their intellectual property (the current nuclear
6 fuel analysis) with their competitor would be prohibitively expensive.
7 Realistically though, it is not in the realm of commercial likelihood that any of
8 these vendors with extraordinarily specialized nuclear fuel design analyses
9 would ever be willing to share their most closely guarded intellectual property
10 with a competitor.

11
12 Areva

13 Mr. Jacobs’ example involving Areva is essentially identical to the one
14 involving Westinghouse in which work was being done that required access to
15 a nuclear fuel vendor’s proprietary design data. The only difference here is
16 that the specific vendor is different because it involves a different nuclear
17 plant (with different fuel). Whereas the Turkey Point plant uses nuclear fuel
18 designed by Westinghouse, the St. Lucie plant uses fuel designed by Areva.
19 The analyses required to support the EPU project at both plants is virtually the
20 same, and for exactly the same reasons that Westinghouse is unquestionably
21 the best (only) available vendor for this work at Turkey Point, Areva is the
22 best (only) vendor available to perform the identical work at St. Lucie.

23

1 Shaw Stone & Webster

2 The justification in the example cited by Dr. Jacobs involving balance of plant
3 engineering evaluations to be performed by Shaw Stone & Webster clearly
4 states that “Shaw Stone & Webster is considered the only Architect
5 Engineering firm ... that could perform the scope of work in the required time
6 frame.” FPL does not operate in a vacuum. We are well aware that many of
7 our peers are experiencing problems with vendors that simply cannot attract or
8 retain the level of experience and expertise necessary to successfully complete
9 projects as large and complex as an EPU at a nuclear facility. Furthermore, it
10 is not enough to simply find a company that can “do the math.” The work to
11 be done under this contract is a cornerstone on which later elements of the
12 project would be built. And, unless FPL were willing to bear the very real
13 risk of that additional work needing to be re-done, it was extremely important
14 that it had a justifiable expectation that the engineering analysis and its
15 supporting documentation would be approved by the NRC. There is a very
16 real benefit to having access to an experienced, capable vendor with a proven
17 track record at the very project you are asking them to perform. The fact that
18 they are also the only firm that meets your desired schedule is an additional
19 benefit as well—even if that benefit doesn’t easily lend itself to spreadsheet
20 analysis either.

1 **Q. Is Dr. Jacobs' assertion that "[t]he use of sole or single source contract**
2 **appears to be routine" correct?**

3 A. No, it is not. Although it is true that single and/or sole contracts are
4 sometimes awarded, in each and every example cited by Dr. Jacobs there were
5 specific, unusual circumstances that justified the deviation from FPL's
6 preference for competitive bidding.

7
8 These early contracts are highly specialized in that they require information
9 that is generally only available from the original equipment manufacturer,
10 require unique knowledge of the nuclear regulatory approval process, or are
11 the only available vendor who can perform essential heavy equipment
12 manufacturing in an acceptable time period. In other words, these specific
13 contracts are the foundation upon which the remainder of the EPU project will
14 rest. Now that it is approaching the more routine aspects of power plant
15 engineering and construction, FPL expects that it will be possible to
16 competitively bid the vast majority of the remaining EPU project contracts. In
17 fact, FPL is currently reviewing proposals for engineering and construction
18 support at both St. Lucie and Turkey Point.

19
20 Finally, I would like to point out that it is telling that every one of the
21 contracts called into question by Mr. Jacobs was awarded to a different vendor
22 (even when the work to be performed under the contract was essentially
23 identical to another contract). This further supports FPL's contention that,

1 consistent with the requirements of NP-1100, it fully and carefully evaluates
2 the unique circumstances, including commercial reasonableness, involved in
3 justifying and potentially awarding any single or sole source contract.

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

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

1 BY MR. ANDERSON:

2 Q Have you prepared a summary of your rebuttal
3 testimony?

4 A Yes, I have.

5 Q Please provide your summary to the Commission.

6 A Good morning, Chairman Carter and Commissioners.
7 My rebuttal testimony responds to claims made by
8 Dr. Jacobs concerning FPL's selection of several uniquely
9 qualified vendors to perform engineering design work at the
10 beginning of the uprate project in a cost-effective way.

11 Let me be clear, FPL fully complied with its
12 procurement procedures. FPL had numerous good reasons for
13 retaining these vendors. The work performed and costs incurred
14 for the uprate projects in 2007 are prudent.

15 For purposes of time I'd like to focus FPL's
16 selection on two vendors. Westinghouse Electric Company
17 designed the nuclear steam supply system for the proprietary
18 nuclear fuel design at FPL's Turkey Point. No other company in
19 the world has that design information or the right to use that
20 design information.

21 Westinghouse has also successfully with FPL, worked
22 successfully with FPL on other nuclear projects in a
23 cost-effective way. It should therefore be no surprise that
24 FPL hired Westinghouse because it is the only vendor capable of
25 performing the preliminary engineering design work for the

1 nuclear steam supply system at Turkey Point.

2 Westinghouse's costs were also reviewed for
3 reasonableness based on FPL's past experience. FPL's selection
4 and documentation complied with FPL's procedures. Clearly this
5 was the right business decision for FPL to make on behalf of
6 the customers.

7 The same thing is true for FPL's use of Areva
8 Company. The St. Lucie plant uses a fuel design performed and
9 owned by Areva. Areva was therefore hired to perform the same
10 kind of work as Westinghouse did for Turkey Point. Each vendor
11 did preliminary engineering and design that it only had the
12 information and expertise to perform.

13 Dr. Jacobs criticized the fact that FPL's procurement
14 documents mentioned the ability to meet schedule as the factor
15 for hiring Westinghouse. What was missing from Dr. Jacob's
16 testimony is any mention of any of the good reasons for hiring
17 Westinghouse, which is described in my testimony and appear in
18 FPL's single sole source documentation. These include having
19 the required design information, having performed the current
20 license basis for major nuclear components, having performed
21 the same scope of work for many of the other uprates, including
22 Turkey Point and Seabrook uprates.

23 With Areva, as with Westinghouse, Dr. Jacobs
24 criticized the fact that FPL's procurement documents mention
25 Areva's ability to satisfy schedule requirements. Again, he

1 makes no mention in his testimony of the many good reasons for
2 FPL's decision to use Areva to perform work that it is uniquely
3 qualified to do. This document has complied with FPL's
4 procurement controls and is properly documented. I am happy to
5 answer questions you may have on these procurements or FPL's
6 processes.

7 In conclusion, FPL fully complied with its
8 procurement guidelines. The uprate project is being properly
9 managed with close scrutiny of all costs. We request that the
10 Commission approve the 2007 uprate costs as prudent and 2008
11 and 2009 costs as reasonable. This concludes my testimony.

12 MR. ANDERSON: Mr. Labbe is available for
13 cross-examination.

14 CHAIRMAN CARTER: Thank you.

15 Mr. McGlothlin.

16 CROSS EXAMINATION

17 BY MR. MCGLOTHLIN:

18 Q Mr. Labbe, do you have with you or available to you a
19 copy of the nuclear division nuclear policy procurement control
20 that we've referred to in your testimony and others?

21 A Yes, I do.

22 MR. MCGLOTHLIN: Commissioners, that's item number
23 11 in the staff's comprehensive exhibit stack. But for my
24 purposes I'm going to refer to only three or four sentences, so
25 it may serve just that we do it this way.

1 BY MR. MCGLOTHLIN:

2 Q I'm looking at the first page of that document,
3 Mr. Labbe. And just to establish a few basics for the
4 questions to follow, referring to Section 1.2, is it true that
5 competitive bidding is FPL's standard approach for the
6 procurement of materials and services with an estimated total
7 value of \$25,000 or greater?

8 A That's correct.

9 Q And referring to Section 2.1, does that provide that
10 sole or single source procurement should be used on a limited
11 exception basis and only when they can be justified?

12 A In Section 1.2 (sic.), that's correct.

13 Q And in terms of the required justification, looking
14 at Section 2.6, the following page, does that section require
15 FPL, when considering a sole source or single source contract,
16 to explain why the chosen contractor has a unique capacity to
17 meet procurement requirements or it's not in the best business
18 interest of FPL to obtain multiple bids?

19 A Section 2.6 describes that.

20 Q And does the policy also require that in the course
21 of justifying a sole source or single source contract other
22 than competitive bidding the requester within FPL provide
23 assurance that the resulting contract is reasonable?

24 A That's correct.

25 Q And looking at the last bullet on the page that

1 begins with 2.6, does it provide that "Except for emergent
2 issues, schedule adherence criteria and/or inadequate timing
3 for bidding are not justifiable circumstances to proceed with
4 sole and/or single source procurement"?

5 A Yeah. That is described.

6 Q Now this is the procurement policy that governs the
7 uprate activities; correct?

8 A Uprate activities are in compliance with NP-1100.

9 Q Uprate activities must conform to and adhere to those
10 policies; correct?

11 A That's correct.

12 Q And the NP-1100 was not suspended or, or caused to be
13 inapplicable to the uprate project, was it?

14 A No. This NP-1100 is in effect today.

15 Q Okay. I'm going to ask my co-counsel to pass out a
16 document. It's been previously identified as an exhibit to
17 Dr. Jacobs' testimony. It's WRJ-2, which is the sole source
18 justification prepared by FPL in conjunction with the
19 Westinghouse contract.

20 CHAIRMAN CARTER: Thank you.

21 BY MR. MCGLOTHLIN:

22 Q Let me revert for one more question to the
23 NP-1100 and how that is implemented. As I understand it, if
24 someone within FPL wishes to utilize sole source or single
25 source contracts in lieu of competitive bidding, that request

1 must be presented to the company vice president, who has
2 responsibility for the actual procurement; is that correct?

3 A That's correct. That's correct.

4 Q And the requester would submit to that vice president
5 who has the decision-making authority the justification for
6 using the sole source or single source contract; correct?

7 A Yeah. That vice president would be actively involved
8 in that decision-making.

9 Q Yes. And what I've distributed is the sole source
10 justification that was presented for approval of a contract
11 with Westinghouse without first soliciting bids; correct?

12 A That's correct.

13 Q And this is, this was prepared in terms of the
14 implementation of NP-1100; correct?

15 A That's correct.

16 Q I'll direct you to the second full paragraph under
17 the caption "Justification" and ask you to read the sentence
18 that begins, "Meeting this schedule."

19 A I'm sorry. Can you state that again?

20 Q Yes. Do you see the caption on Page 1 of 2,
21 "Justification"?

22 A Yes.

23 Q The second full paragraph under that caption contains
24 a last sentence that begins "Meeting this schedule." Would you
25 read that, please?

1 A "Meeting this schedule requires performance of the
2 technical work on a very aggressive timeline in order to
3 receive the necessary regulatory approvals."

4 Q Now there follows a paragraph in which there's a
5 discussion of the items that you mentioned in your summary;
6 correct?

7 A That's correct.

8 Q Now near the bottom of the page there's a sentence
9 that begins, "Performing the work scope." Would you read that
10 sentence, please?

11 A Right after the parens, "Which are required to
12 perform this work. Westinghouse has performed this work in the
13 past for numerous uprates, including Turkey Point performed in
14 the mid-1990s and the recent Seabrook station. No other vendor
15 has the required documentation for, for St. Lucie or Turkey
16 Point. Performing this scope of work with another vendor would
17 not be cost-effective or prudent from a schedule perspective."

18 Q Yes, sir. That last sentence is the one I have in
19 mind for purposes of the next question.

20 Isn't it true, sir, that the discussion of such
21 things as the possession of design information and other items
22 are all considered in conjunction with whether or not the work
23 can be done within the schedule that FPL has, has set for this
24 activity?

25 A It would be a, one of the considerations. That's

1 correct.

2 Q Well --

3 A It is not the sole consideration.

4 Q Well, again, referring to this sentence which appears
5 to me to be the bottom line conclusion that follows the
6 discussion above, "Performing this work scope with another
7 vendor would not be cost-effective or prudent from a schedule
8 perspective." Isn't it true that this entire discussion of who
9 has information and who has certain advantages are all geared
10 toward a determination of whether the schedule can be met?

11 A Yeah. Perhaps I need to describe that in a little
12 bit more detail what, how we can put that statement in the
13 justification for the sole source justification.

14 But the Westinghouse is a good example for the
15 reasons why, as we have described, they are the sole proprietor
16 of the information. That information is not available to
17 another vendor. In order to make that information available to
18 another vendor we would have to change the fuels that are
19 inside that station right now. So in order to change the fuel,
20 that's a three-cycle evolution not normally performed, the fuel
21 is a competitive bid. The fuel, the fuel that we purchase is
22 on a, on a plan that could be five to seven or longer years.
23 In order to interrupt that process and insert a new vendor is
24 not practical.

25 Q Yes, sir. Is any of that information contained in

1 this sole source justification that was submitted to the vice
2 president for decision?

3 A That's the uniqueness of this industry. When I write
4 that statement, the vice president that signed this document is
5 very familiar with the requirements associated with what would
6 be required in order to have a new fuel vendor selected.

7 Q Does it state that a new fuel vendor would be, would
8 be required anywhere in this docket?

9 A It does not state that. That's what's inferred.
10 We've had multiple discussions with the vice president. He
11 understands why that statement is in there.

12 Q And so again, the, the impact of the selection of
13 someone other than Westinghouse relates to schedule primarily,
14 correct, because of your reference to the three-cycle necessity
15 of going with anyone else?

16 A The schedule is a, is a factor, but it's not the only
17 factor.

18 Q Okay. Let me ask Mr. Burgess to hand out one more
19 document.

20 Mr. Labbe, we have provided to you and the
21 Commissioners and parties a document captioned "Sole Source
22 Justification for Areva." It was previously attached and
23 admitted in evidence as an exhibit to Dr. Jacobs' testimony.
24 You're familiar with this document?

25 A Yes, I am.

1 Q Turning to Page 1 of 2, in the first, in the second
2 full paragraph under "Justification," would you read the
3 sentence that begins "Meeting this schedule"?

4 A "Meeting this schedule requires performance of the
5 technical work on a very aggressive timeline in order to
6 receive the necessary regulatory approvals."

7 Q And that is identical to the sentence that appeared
8 in the earlier justification memo, is it not?

9 A Yeah. That's correct. Because Areva is performing a
10 similar scope of work that Westinghouse would be performing.

11 Q And, similarly, toward the bottom of the page there's
12 a reference to the conclusion that performing this work scope
13 with another vendor would not be cost-effective or prudent from
14 a schedule perspective. That is also identical language, is it
15 not?

16 A That's correct. And perhaps it's best to describe
17 how we can, how we can come up with that statement inserted in
18 the justification. And I could describe the process by which
19 we ensure that it's prudent and it's, and it's reasonable.

20 And probably the best example is -- and I'll just
21 have some similarities between Westinghouse and Areva as I go
22 through my discussion. But back to the point on the fuels
23 analysis, that's proprietary information that's held by the
24 vendor. In order to change out the fuels, that would be, that
25 would take three cycles. That would be 4.5 years. The

1 schedule does not fit in 4.5 years. I plan to have this
2 project done in 4.5 years.

3 But as it relates to Westinghouse, let me describe
4 the process by which we can ensure that this is prudent and
5 reasonable. The engineering staff that we have wrote a
6 technical document that describes the scope of work. The
7 technical document was given to Westinghouse to review and come
8 back with their proposal. That proposal was returned to us and
9 it had a detailed description of the man-hours that were
10 required and the analysis that would be performed in order to
11 support the uprate.

12 In order to ensure that that information, that we
13 were comfortable and fully vetted, I took the director of the
14 fuels organization for the Florida Power & Light Company and
15 had him go to Westinghouse to review that document in detail
16 with the senior managers and with their staff. He spent
17 approximately four weeks in Pittsburgh going through that to
18 ensure that that document was robust and it met our
19 deliverables.

20 He then brought that proposal back to the engineering
21 director for the project. They reviewed it, had a challenge
22 session, and then we brought the senior managers for
23 Westinghouse to our Juno office and had a separate one-off
24 challenge session with them to ensure that the scope was clear,
25 the man-hours were appropriate and that they had the staff and

1 the resources to support our project.

2 Now realize in addition to Point Beach we have two
3 other projects that are going on at the same time, St. Lucie
4 and Turkey Point. So we wanted to ensure that this project
5 would not jeopardize the other projects.

6 That review was conducted in Juno Beach. After the
7 two directors, Mr. Villard for fuels, Mr. Hale for the
8 engineering, for the project had gone through it, had that
9 challenge session, the results of that challenge session were
10 presented to the vice president to ensure that he had a full
11 understanding that there was scope, man-hours and the schedule
12 would be satisfied.

13 Q I have a more general question about proprietary
14 information. We've seen several references to vendors who use
15 proprietary information.

16 Let's assume that, and, again, this is a general
17 question, we have a, FPL has a vendor who has, who has been
18 awarded a contract and fulfills that contract and either
19 because it already has proprietary information or develops it
20 in the course of the work continues to hold the proprietary
21 information, and the occasion arises where FPL needs similar or
22 related work in a new project and a new contract. Does the
23 fact that a vendor has worked for FPL in the past and in the
24 course of the work has used or has gained proprietary
25 information, does that mean that the same vendor necessarily is

1 going to have a lock on future business because of the
2 proprietary nature of the information?

3 A No. The, the best way to think about proprietary
4 information is it's tiered. There's multiple levels of
5 proprietary information. If an analysis is done by the
6 original equipment manufacturer, the results of that analysis
7 is given to us, it could be proprietary. And then they -- it
8 doesn't mean that we cannot share that information with
9 somebody else, but it doesn't mean that that business is going
10 to be rewarded to them in the future.

11 But proprietary information, again, back to, you
12 know, the tiered level approaches to it, the results of an
13 analysis, in the case of Westinghouse, the results of a
14 calculation, the results of a methodology verification, those
15 results are proprietary, but it can be shared with other
16 vendors, provided that there's an agreement on the proprietary
17 information with that other vendor. And that does happen every
18 day. It is going on in this project with our other vendors.
19 It is a case of normal business with Siemens and a case of
20 normal business for Shaw. It's the results of that proprietary
21 information that is shared as it relates to the execution of
22 this project, which is different than the -- if you go back to
23 what I was saying, the results are shared but the method by
24 which you calculated those results, that methodology is not
25 shared and that's what they are holding as proprietary.

1 Q Is it possible you could have a situation in which a
2 vendor has performed work and possesses proprietary
3 information, but the same or similar work could be performed by
4 a separate vendor using a separate system or proprietary
5 information that is specific to them?

6 A Well, again, I go back to my original example. The
7 results that can be shared as proprietary, the methodology by
8 which that analysis is performed is not shared. It would
9 have to -- it could be performed by somebody else, but that
10 would require prior NRC approval in order for that to happen.

11 Q It would have to have what kind of approval?

12 A Prior NRC approval.

13 Q NRC approval?

14 A That's correct.

15 Q Well, let's take an example of a situation in which
16 Vendor A which has proprietary information has done work for
17 FPL before. FPL has a need for similar work, scope of work for
18 a new project, and you approach the vendor and, and say can you
19 do it and how much would you charge? And they say, well, yes,
20 we can do it and the price is X. And you say, well, that's
21 three times as much as you charged last time. And the vendor
22 says, well, let me remind you, we have proprietary information
23 and, come to think of it, we want two X. Is FPL without
24 recourse in a situation like that? Does the fact that the
25 vendor has worked for FPL before with proprietary information

1 mean that it's suddenly an unregulated monopoly?

2 A No. I understand your question. And we don't -- I
3 mean, there are other mechanisms, there are other ways in
4 which, you know, we're not held hostage to that example that
5 you've just proposed.

6 Q What other ways are those?

7 A There's -- let me give you an example as it relates
8 to the work that we have with Siemens.

9 When you look at the scope of work that we have for
10 the uprate projects, it's a replacement of the high pressure
11 turbine, low pressure turbines at St. Lucie, the main generator
12 rotor, it's a stator rewind and an exciter replacement. Those
13 are all Siemens, Siemens documents. Siemens manufactures the
14 equipment and they've installed it.

15 And we did do a competitive bidding at Point Beach
16 for those components, and there's an analysis that was
17 performed on, it would be the turbine overspeed analysis.
18 There's analysis that would be required for the uprate and we'd
19 have to take that analysis and submit it into the LAR. That's
20 part of the document that we'd get approval from the NRC. In
21 order to use another vendor we would still need that analysis
22 from Siemens; say it was another vendor for the turbine. We do
23 use as, you know, owners and operators of that equipment rights
24 to take that analysis and transfer it to a successful bidder
25 that could use that analysis as it relates to the LAR.

1 Q And that comes about as a, as a term or condition of
2 your prior arrangement with the successful vendor? You retain
3 the ability to acquire and transfer the proprietary information
4 if you're not able, if they are not able to win the contract?

5 A That's correct.

6 Q Do I understand correctly then that even though a
7 vendor may have proprietary information, it would be possible
8 to conduct a solicitation and it would be possible that a new
9 vendor could be the successful bidder and be entitled by virtue
10 of your relationship with the first vendor to have access to
11 the information necessary to perform the work?

12 A That's the case with some equipment manufacturers but
13 it's not the case with fuels.

14 Q But, again, speaking generally, and, and I note your
15 comment about the three-cycle implications of the Westinghouse
16 situation.

17 A It's significant.

18 Q Yes. But in a more general view of the role that
19 proprietary information takes, it is possible and even feasible
20 based upon contractual terms to entertain bids from vendors
21 other than the one that has performed the work before with
22 proprietary information.

23 A And that's, that's correct. When you look at the
24 scope of work that we have for Turkey Point and St. Lucie,
25 we're just at the phase now where we have completed our

1 analysis. We will be in a position now to start procurement of
2 long-lead materials, and we'll be changing out a lot of
3 components, feedwater heaters, pumps, motors, valves. All of
4 those components will be competitively bid.

5 Q Even though proprietary information is involved in
6 some or all of those situations?

7 A In those cases, it will be, the proprietary
8 information may no longer be applicable because we'll be using
9 new components, new motors, new pumps, new valves. That's why
10 all of the components that we are going to procure for these
11 uprates will be competitively bid.

12 Q Then it would follow, would it not, that the presence
13 of proprietary information in and of itself would not be
14 sufficient justification for a sole source or a single source
15 contract?

16 A Only when it relates to the accident analysis and the
17 fuels.

18 Q To provide some more context to the subject of fuels,
19 did you hear Dr. Jacobs say yesterday, yesterday that the
20 provision of nuclear fuel is a competitive business?

21 A Yes, I did.

22 Q Do you agree with that?

23 A The nuclear fuels is competitively bid at Florida.

24 Q Have there been situations in the utility industry
25 where a utility would decide to change providers of fuels over

1 the course of a nuclear unit?

2 A I believe that's the case.

3 Q Has FPL ever changed fuel suppliers?

4 A Yes, they have.

5 Q When, when and where was that?

6 A I don't know the, the date of when that occurred, but
7 it was at the St. Lucie unit.

8 Q Who was the first provider and who became the second
9 provider?

10 A I'm not familiar with that.

11 Q Well, certainly each provider of fuel has its own
12 proprietary design.

13 A That's, that's correct. And they carry with it that
14 design and they're not going to share that with somebody else.

15 Q Right. But it is possible within the right situation
16 for a utility to decide to, notwithstanding the specific design
17 criteria, the first provider, to change providers and
18 prospectively use that second design criteria.

19 A Yeah. That's correct.

20 Q Let's take the example of a vendor or contractor who
21 has performed work for FPL in the past with whom FPL has a good
22 track record, a good experience and who has some advantage in
23 the form of knowledge of the operation. Let's even assume that
24 vendor has the advantage of proprietary information.

25 Do you think that if that vendor is aware that it has

1 been singled out as a single source contractor it would have
2 less incentive to take a sharp pencil to the costs than it
3 would have if it were aware that FPL was entertaining other
4 potential providers?

5 A No, I do not believe that's the case. And as I
6 described, you know, the evolution that we went through for the
7 selection of Westinghouse at St. Lucie Unit 2 and Turkey Point
8 was a detailed line-by-line review of the scope and the
9 associated man-hours with that. Those man-hours are very
10 competitive with the rest of the industry. Those man-hour
11 billing rates are competitive with the rest of the industry.
12 So the rest of the industry knows the billing rates for
13 engineers, analysts, technicians. That band, if you will, of
14 rates is very competitive.

15 Q When FPL decides to award a contract on the basis of
16 a single source determination, does that contractor know that
17 there will be no additional bids or, or competitors for the
18 business?

19 A If I understand your question correctly, would the
20 vendor know that there would be no other bidders?

21 Q Yes.

22 A Perhaps. But it's not something that we would
23 necessarily communicate with them. We wouldn't, you know, make
24 that knowledge -- that wouldn't necessarily be part of the
25 conversation.

1 Q And why would you not disclose that?

2 A There would be no reason to.

3 Q Well, wouldn't one reason be the fact that if they
4 were aware there were no competitors, they would have no
5 incentive to provide the lowest price?

6 A Yeah. Probably the best way to --

7 Q If you would, answer my question first, sir.

8 A Yeah. The -- this -- all of our vendors are, have
9 other work associated --

10 Q Excuse me. The pending question, the pending
11 question is one reason would be that you would not want them to
12 realize that there is no competing price that they would have
13 to match or better.

14 A Their price -- you know, if the price is not
15 reasonable, then we're going to have a conversation with them
16 to ensure that the price is reasonable. Just because -- if, if
17 they provide a proposal and they come up with a rate for that
18 proposal and a cost for that proposal, that doesn't mean that's
19 what we've accepted for that proposal. There's a lot of
20 negotiation that goes on to ensure that the price is reasonable
21 for the scope of work that's performed. Just because the
22 proposal is received by us doesn't mean that we accept that
23 proposal. As I described, we spent two and a half to three
24 months going through the Westinghouse proposal just as it
25 relates to St. Lucie 2 and Turkey Point 3 and 4.

1 Q I don't --

2 A But, I was going to say, let me close with what I was
3 going to say in the beginning.

4 Now there is other work that Westinghouse or Areva or
5 these other vendors do perform for us. What we're talking
6 about is a small scope of work as it relates to the uprates.
7 They are a partner with FPL for other scopes of work that is
8 competitively bid. So it's not like this is the only scope of
9 work that is performed.

10 Q If you will, Mr. Labbe, turn to Page 10 of your pre,
11 of your rebuttal testimony. Under the discussion of the Shaw
12 Stone & Webster contract beginning at Line 15 you say, "There
13 is a very real benefit to having access to an experienced,
14 capable vendor with a proven track record at the very project
15 you are asking them to perform."

16 Would you agree that there are other vendors in the
17 same business with Shaw Stone & Webster who, who are
18 experienced and capable?

19 A I would agree that there are other vendors available.

20 Q Now you also say, "The fact that they are also the
21 only firm that meets your desired schedule is an additional
22 benefit as well."

23 Did you ask any other vendor whether they could meet
24 your desired schedule?

25 A Yeah. As you know, this, this is, we've done many

1 uprates, a previous uprate at Seabrook station, which is an FPL
2 Energy affiliate. And at FPL Energy Seabrook Station we
3 competitively bid the license amendment scope of work and we
4 tested the market, and through that competitive bid process
5 there were two other vendors. Technically they met the
6 requirements of that competitive bid process but they were not
7 able to meet the deliverable or their price was significantly
8 higher than the Shaw Stone & Webster. So having that
9 information just recently performed for the Seabrook uprate was
10 a consideration for competitively bidding the other Turkey
11 Point and St. Lucie.

12 In addition to that, the other piece that -- and,
13 again, I'll go back to this, this unit is, Turkey Point is not
14 the only uprate that's being performed. We have the St. Lucie
15 uprate and we have the Point Beach for the FPL affiliate
16 uprate. There's six units that are being uprated. That scope
17 of work is being performed by Shaw Stone & Webster. And a key
18 consideration for that: Is the vendor capable of performing
19 multiple uprates at the same time? And Shaw Stone & Webster
20 has that experience to perform multiple uprates. They have
21 previously completed eight simultaneously. So that was a key
22 consideration to that decision, and based on the knowledge that
23 we had with the Seabrook Station competitive bid process.

24 Q To be clear though, you did not provide an
25 opportunity to anyone other than Shaw Stone & Webster to say

1 they could or could not meet the schedule for the uprate here
2 in Florida.

3 A That's correct. The other piece that is very
4 important to this is the risk associated with using another
5 vendor. We've had previous success with Shaw Stone & Webster.
6 And a key consideration for the license -- this is specific to
7 the license amendment work for the balance of plant components.
8 It's nonnuclear safety. This is back to the turbine and
9 generator.

10 But the license amendment, there's a lot of analysis
11 performed, as we've discussed, with Westinghouse, but that
12 information, that sharing information has to go back and forth
13 to the balance of plant person that is putting together the
14 license amendment. They have done a significant number of
15 uprates and that has been in connection with Westinghouse
16 units. So there's a very good, strong working relationship
17 with Westinghouse. We have the two organizations sitting
18 together at the stations so that there is clear alignment,
19 there is efficiencies that are gained and there's transfer of
20 knowledge that is very critical for this to be successful.

21 Q Speaking more generally now and not limiting it to
22 the Shaw Stone & Webster situation, would you agree with me
23 that it is possible to construct a request for proposals that
24 would identify as one of the criteria for evaluating bids the
25 ability and commitment of the bidder to conform to the schedule

1 identified by the issuer --

2 A By the proposal.

3 Q -- of the RFP?

4 A That's correct.

5 Q Would you agree that it's possible to construct an
6 RFP that would identify the experience and qualifications as
7 one of the criteria that would be evaluated by those, by the
8 issuer of the RFP?

9 A Yeah. That's correct.

10 Q Do you think those are good ways to accomplish both
11 the objectives of, of the utility issuing the bid while
12 continuing to test the market before determining the, before
13 awarding the contract?

14 A And that was the case that, that we had just
15 previously completed for Seabrook.

16 Q For Seabrook but not in Florida?

17 A That's correct.

18 MR. MCGLOTHLIN: Those are all the questions I have.

19 CHAIRMAN CARTER: Thank you.

20 Mr. McWhirter.

21 CROSS EXAMINATION

22 BY MR. McWHIRTER:

23 Q Mr. Labbe, what is the current status of the Stone &
24 Webster bankruptcy action?

25 A I am not familiar with that case.

1 Q Did the fact that the company was in bankruptcy, was
2 it given any consideration in your determination to deal with
3 that company?

4 A Yes. Part of the contract review and approval
5 process looks at the health of the organization. The criteria
6 by which they review and approve that I'm not familiar with.
7 But I get a recommendation from the legal team and our
8 contracts organization.

9 Q When you approve a purchase under the new legislation
10 that is the subject matter of this proceeding, is there any
11 portion of the cost that FPL is required to pay that is
12 retained by FPL as opposed to passed directly through to the
13 customers or a return on that amount of money you pay passed
14 through to the customers?

15 A I'm not sure I understand that question. Could you
16 repeat it again?

17 Q I'm not sure I understand it either.

18 A I'll try to stay with you.

19 Q Do you know how this legislation differs, the
20 legislation, the subject matter of this proceeding, do you know
21 how it differs from the existing regulatory procedures that
22 govern the oversight of your company?

23 MR. ANDERSON: I'd just note that this is beyond the
24 scope of the direct. Our witness really isn't testifying
25 concerning the operation of the rule and things. That was

1 Ms. Ousdahl. It's more of a legal matter.

2 CHAIRMAN CARTER: Mr. McWhirter?

3 MR. McWHIRTER: Well, my question was is he aware of
4 the difference? But if he isn't aware --

5 CHAIRMAN CARTER: Well, wait. Wait. Don't ask the
6 question. We're dealing with the objection right now.

7 MR. McWHIRTER: All right. Well, my question is does
8 he know? And then I would ask questions about what he knew.

9 CHAIRMAN CARTER: Did you hear Mr. Anderson's
10 objection?

11 MR. McWHIRTER: But the objection is that it's a
12 legal matter. And he may know the legal matter since he's
13 responsible for purchasing for the company and should be aware
14 of the law that governs those purchases.

15 MS. HELTON: I think he can ask if he's aware of the
16 regulatory scheme and the statutes. And I guess I don't think
17 we have gone far enough yet to know whether his knowledge, if
18 he has any, would be relevant to the prefiled testimony that
19 he's filed and subject to cross-examination.

20 CHAIRMAN CARTER: Okay.

21 MR. McWHIRTER: Do you overrule the objection?

22 CHAIRMAN CARTER: You may proceed. You may proceed.

23 BY MR. McWHIRTER:

24 Q Are you aware, Mr. Labbe?

25 A Yes, I am.

1 Q And would you briefly describe the difference in the
2 procedure under the new legislation from the procedure under
3 the old legislation?

4 A Yeah. I am aware but I couldn't articulate very well
5 the difference between the old and the new. The only thing I
6 will say, it doesn't change the manner in which we execute the
7 nature of this project. Those procedures and policies and
8 programs are established irregardless of how the costs are
9 associated with it.

10 Q Are you aware that under the new legislation the risk
11 of the cost that's related to the purchases you make is assumed
12 entirely by the consumer as opposed to being assumed by the
13 company?

14 A I am aware.

15 Q And is that an accurate statement?

16 MR. ANDERSON: Could -- I'm sorry. I couldn't hear
17 the question or answer. Could we -- what was that question?

18 BY MR. McWHIRTER:

19 Q Could you read it back? I'm not sure I can restate
20 it back.

21 A What you're interested in is how does that compare
22 previous legislation to today's legislation?

23 Q Yes, sir.

24 A Yeah, I am aware of it, but I am not familiar with
25 how the financial accounting is associated. The way that I

1 operate the project is no different today than I have operated
2 previous projects; the same manner in which we've always
3 conducted our business.

4 MR. McWHIRTER: All right, sir. I have no further
5 questions of this witness, Mr. Chairman.

6 CHAIRMAN CARTER: Thank you, Mr. McWhirter.
7 Staff?

8 MR. YOUNG: No questions.

9 CHAIRMAN CARTER: Commissioner Argenziano, you're
10 recognized.

11 COMMISSIONER ARGENZIANO: Just one, maybe just one.
12 I guess everybody is aware that bidding, putting out for
13 proposal can be, you know, more cost-effective sometimes and
14 sometimes I guess sole source procurement given particular
15 criteria could be more cost-effective. And to that point, and
16 I'm going to reverse this in a sense, and I guess I know the
17 answer but I want to hear it, I guess, could it be less
18 cost-effective to not meet schedules that are especially
19 aggressively pursued? Could it wind up costing more money to
20 be off schedule?

21 THE WITNESS: I don't believe so. You know, we look
22 at the capability, vendor capability and make sure that, you
23 know, the time lines that we lay out, the milestones that we
24 want to satisfy, that they can fit inside of those, you know,
25 that it's a reasonable approach to executing the project.

1 Where we don't want to be is having to ensure that the vendor
2 has to do extra, you know, work additional hours or bring in,
3 you know, somebody else to help them to meet those milestones.
4 As long as we can ensure that they are capable of performing
5 the work in the window we've provided, then I think, you know,
6 then we can say that we're not incurring additional costs for
7 an aggressive schedule.

8 COMMISSIONER ARGENZIANO: No. I think what, I think
9 what I'm really asking is if you are off schedule, can you, can
10 it be less cost-effective?

11 THE WITNESS: If we, if the project falls behind
12 schedule, then there is risk associated with that. And the
13 risk is that you'll have to spend extra time, extra resources
14 to make, to recover that schedule.

15 COMMISSIONER ARGENZIANO: And just one other question
16 because I've been involved with procurement at the state level.
17 When you do go into contract on those bids, whether they're
18 sole source procurements or proposals for bid, does the
19 contract, can the, can the lowest bidder come in and then amend
20 later on? I know this is kind of off, but it's for me.

21 THE WITNESS: No. That's okay.

22 COMMISSIONER ARGENZIANO: Can they amend that later
23 on to then increase costs if they find that costs have gone up
24 and does that happen?

25 THE WITNESS: There's probably a couple of pieces

1 that I'd like to answer on this.

2 In the, in the procurement process, as I was
3 describing, we have a scope description document that just
4 articulates all the requirements that we're looking for on the
5 deliverables. That scope description document goes through a
6 technical evaluation to make sure that that vendor can deliver,
7 you know, what we're interested in.

8 At the same time we have a commercial evaluation done
9 by a separate organization to make sure that the commercial
10 aspect of it makes sense. And then the two documents come
11 together at the manager level to make sure that, you know, we
12 choose the best evaluated bidder as it relates to the scope of
13 work that needs to be performed. Then that contract is entered
14 into as it relates to that scope document.

15 So the only reason we would have a change is if they
16 were not able to perform that scope of document or we were
17 asking, we were asking for a change to that scope of document
18 to do something additional. And if there's a change to that
19 document, then it goes through the same review and approval
20 process as the original document. So there is the potential,
21 but it would be at the request of the, of the vendor or at our
22 request and it would have to make sense to both parties.

23 COMMISSIONER ARGENZIANO: And I guess what I'm trying
24 to get at is that I've seen before -- and I'm not saying it
25 would happen in this case, and I'm trying to look at all sides

1 of this. I've seen with state procurement that there have been
2 the lowest bidders who come in in the hopes of getting, you
3 know, the best deal that you can, the best bang for your buck,
4 and then many times later see amendments to that contract that
5 then the price goes up afterwards. And I didn't know if
6 that's, if there's a possibility there or if that's taken care
7 of through some type of contracting language or something.

8 THE WITNESS: Yes, Commissioner. As you described,
9 you have to be extremely careful that you don't take the lowest
10 bidder if there is risk associated with the lowest bidder not
11 being qualified to perform that scope of work. So that's
12 partially that commercial evaluation as I described.

13 COMMISSIONER ARGENZIANO: Okay. Thank you.

14 CHAIRMAN CARTER: Commissioner McMurrin, then
15 Commissioner Skop.

16 COMMISSIONER McMURRIAN: Oh, thank you. Hello.

17 THE WITNESS: Good morning.

18 COMMISSIONER McMURRIAN: I wanted to follow up a
19 little bit, and I think we've had a lot of questions along this
20 same line this morning, but I just wanted to ask it maybe a
21 different way.

22 I know yesterday when Mr. Anderson was questioning
23 Mr. Jacobs there was some discussion about no other company in
24 the world having the proprietary design info. And I believe
25 that Mr. Jacobs said, yes, but others have similar design info.

1 And I guess I'm just trying to get straight in my mind the fact
2 that others may have similar design info. What is it, what is
3 your testimony with respect to statements like that? How do I
4 get straight in my mind that with the single source contracts
5 that you have, and we've gone through the justifications and we
6 explained why you've made the decisions you've made with these
7 single and sole source contracts, but how can we be sure that
8 ratepayers are getting the best deal even with those, those
9 contracts?

10 THE WITNESS: It -- Commissioner, let me describe
11 that in a, in a couple of ways. The -- as it related to the
12 first piece, the analysis, is there any other person in the
13 world that has access to that analysis? And the answer as it
14 relates to the fuels is no because the fuels analysis is
15 protected and that fuels analysis is not going to be shared.
16 But there are other analyses that are performed. So there's
17 probably three that you need to be aware of. One is the fuels
18 analysis, and that stays with the fuel that's in the reactor
19 vessel. The next is the component analysis, and that's the
20 components that are inside of the containment building. And
21 then there's the accident analysis, and that's the result of an
22 event that occurs, and that ensures that the structure and the
23 systems respond as a result of that accident. So there's three
24 tiers to that. The one that is the most proprietary and the
25 most protected is the fuels analysis, and that is something

1 that by its nature a power uprate is going to change.

2 CHAIRMAN CARTER: You're recognized.

3 COMMISSIONER McMURRIAN: And actually one, one
4 follow-up along the lines of just how, you know, the
5 competitive bidding process and all works. Is there any kind
6 of a ballpark number about how much it costs to do a
7 competitive bid and evaluate it in these types of contract
8 negotiations?

9 I mean, are there times -- I guess what I'm getting
10 at is are there times when doing a competitive bidding process
11 is really more expensive than what you would get out of it?

12 THE WITNESS: Yes.

13 COMMISSIONER McMURRIAN: And is there any kind of
14 ballpark number?

15 THE WITNESS: Yeah. But it can be a very significant
16 burden to the bidders. We're, you know, we go through the bid
17 process and they do spend a significant amount of time and
18 energy on, on these bids, and we, and so do we. And we bring
19 the vendors in, we have all-day sessions with these bidders,
20 and they have committed a significant amount of resources on
21 the bid process. So some -- that depends on the nature of
22 which the bid is, you know, trying to, the scope that we're
23 trying to manage.

24 For smaller scopes of work, you know, if we're going
25 to replace a pump or a motor, the amount of effort is not as

1 significant as, hey, we need to competitively bid the
2 engineering associated with all the modifications at Turkey
3 Point and St. Lucie. So to say that there's a ballpark number
4 for the bidding process is probably, you probably can't give
5 that justification.

6 COMMISSIONER McMURRIAN: I think that's it.

7 CHAIRMAN CARTER: Commissioner Skop.

8 COMMISSIONER SKOP: Thank you, Mr. Chairman.

9 Just some general questions and then some specific
10 questions to the witness.

11 I guess from the discussion I've heard it seems that
12 part of the tension here, although in each instance under which
13 FPL's undertaken sole source procurement there has been the
14 preparation of a sole source justification for each of those
15 instances, it seems like a lot of the discussion is focused on
16 OPC taking exception to the discussion of schedule within the
17 body of each justification. And I just want to make sure that
18 I'm correct to understand that schedule is not the sole basis
19 for the justifications that have been provided. Is that
20 correct?

21 THE WITNESS: That's correct.

22 COMMISSIONER SKOP: Okay. And with respect to
23 NP-1100, that's an internal controls document that FPL would be
24 free to revise at any time as it deemed fit; is that correct?

25 THE WITNESS: Yes. That's correct.

1 COMMISSIONER SKOP: Okay. With respect to the sole
2 source justifications that have been provided, I think your
3 testimony indicated that the extent of the discussion is not
4 lengthy or in full detail on some issues to the extent that
5 it's implicitly understood by management that deals directly
6 with nuclear issues on a day-to-day basis of the rationale
7 behind the justification being provided; is that correct?

8 THE WITNESS: Yes, Commissioner. That is correct.

9 COMMISSIONER SKOP: Okay. Going to move quickly just
10 because I think a point raised, was raised that I guess I'd
11 like to get a little bit more fleshing out on, and that was my
12 general comments. I'm going to get to a more specific issue.
13 But there was much discussion about the, specifically about the
14 Shaw Stone & Webster procurement contract. And if you could
15 refresh my memory exactly what that contract, what services
16 were to be provided under that contract.

17 THE WITNESS: Yes. Certainly, Commissioner. The
18 Shaw Stone & Webster scope of work is for the license amendment
19 submittals for St. Lucie and Turkey Point as it relates to the
20 balance of plant components.

21 COMMISSIONER SKOP: Okay.

22 THE WITNESS: Now maybe I should carry that a little
23 bit further.

24 COMMISSIONER SKOP: Let me just stop you because,
25 again, I'm looking at a confidential document, so I don't want

1 to go -- you know, I know it was raised, so I assume that -- I
2 don't want to get into any confidential information, but I was
3 just trying to, to better understand, and I'll let you finish
4 your response.

5 THE WITNESS: Okay. Now the -- now Westinghouse and
6 Areva will provide a piece of that document, Shaw Stone &
7 Webster will provide a piece of that document. That will be
8 given to FPL and we have some pieces that we'll put together.
9 We'll assemble, we are responsible for putting the entire
10 document together, and then it will go through the station
11 review and approval process, and then that is the vehicle by
12 which we submit it to the NRC.

13 COMMISSIONER SKOP: Okay. And with respect to other
14 vendors, would a firm, say Black & Veatch, be capable of
15 providing similar services for, you know, uprates and balance
16 of plant type analysis?

17 THE WITNESS: Yes. And we -- and, again, a unique
18 market knowledge that we're very familiar with as a result of
19 the Seabrook uprate. That process was competitively bid and,
20 again, Shaw Stone & Webster came in as technically qualified
21 and by a considerable amount the least cost.

22 COMMISSIONER SKOP: Okay. Going to the statement
23 that you just made with respect to the Seabrook uprate, which,
24 I guess, is on the --

25 THE WITNESS: It's now complete.

1 COMMISSIONER SKOP: Excuse me?

2 THE WITNESS: That uprate is now complete.

3 COMMISSIONER SKOP: Okay. That's, that's one of your
4 affiliate company reactor plants that --

5 THE WITNESS: That's correct.

6 COMMISSIONER SKOP: Is that the same reactor design
7 as St. Lucie and Turkey Point?

8 THE WITNESS: It's a similar design but it's not
9 exactly the same.

10 COMMISSIONER SKOP: Okay. With respect to the point
11 that was raised about Shaw Stone & Webster being currently in
12 bankruptcy, and, again, I don't know that to be fact, I'm just
13 taking the representation that has been made, what adequate
14 protection is in place to protect the ratepayers from being in
15 a contract with a company that's currently in bankruptcy?

16 THE WITNESS: And, again, before, before we enter
17 into that contract arrangement the health of that financial
18 organization is reviewed by our legal department, and they --
19 before I enter into that agreement they give me permission, and
20 they are actually signers of the contract.

21 COMMISSIONER SKOP: Okay. And with respect to, going
22 back to Seabrook again, the reference to Seabrook is just
23 merely intended to show past performance on a project rather
24 than any relevance to doing the exact same design for the
25 Turkey Point and the St. Lucie units; is that correct?

1 THE WITNESS: Yes. That's correct.

2 COMMISSIONER SKOP: Thank you.

3 CHAIRMAN CARTER: Thank you, Commissioners. Anything
4 further from the bench?

5 Ms. Pettus or Mr. Anderson. Mr. Anderson.

6 MR. ANDERSON: One moment.

7 CHAIRMAN CARTER: We'll kind of jog in place,
8 Commissioners, and then we'll, after this witness we'll give
9 the court reporter a break.

10 MR. ANDERSON: I'll have just a couple of questions.
11 And just to clarify, Stone & Webster was acquired by Shaw out
12 of bankruptcy. So it is not a bankrupt entity, since we're
13 going down that path. And Mr. Reed can tell you about that, if
14 you want to know, but it's not a bankrupt entity we're in
15 contract with.

16 COMMISSIONER SKOP: And thank you for that
17 clarification.

18 MR. ANDERSON: Okay. Pardon the delay to figure that
19 out.

20 CHAIRMAN CARTER: That was very helpful. Thank you.

21 MR. McWHIRTER: Is that under oath, Mr. Chairman?

22 MR. ANDERSON: I'm always under oath.

23 CHAIRMAN CARTER: Neither were you, Mr. McWhirter.
24 Turn about is fair play, wouldn't you agree? Thank you.

25 REDIRECT EXAMINATION

1 BY MR. ANDERSON:

2 Q Mr. Labbe, in the big picture the dollars for these
3 fuel analyses and safety designs that go into the NRC licensing
4 document, that's a small amount of work at the beginning of the
5 uprate project; is that right?

6 A Yes. That's correct.

7 Q I think I heard you say earlier in response to a
8 question from Mr. McGlothlin that in order to use a different
9 vendor for this fuel analysis you'd have to be using different
10 fuel inside that reactor vessel. Do I understand that right?

11 A Yeah. That's correct.

12 Q You mentioned that it's a three-cycle process to
13 change fuel vendors. How long is that in months?

14 A Each cycle is 18 months.

15 Q So that would be -- three times 18 is 54 months or
16 four and a half years to change fuel vendors; is that right?

17 A That's correct. And it would be longer than that
18 because the fuel would have to be fabricated, and that's
19 usually a year or longer in advance of that.

20 Q So in order to potentially save arguably a very small
21 amount of money to competitively bid this engineering and
22 design work at the beginning of the project, would it have been
23 in the best interest of FPL's customers to stop the uprate
24 work, go out, bid the fuel, wait at least four and a half
25 years, maybe five and a half years, come back and with that

1 result in hand go ahead and restart the uprate project?

2 A No, that would not be prudent.

3 Q Why not?

4 CHAIRMAN CARTER: Hang on a second, Mr. -- could you
5 remember your train of thought?

6 MR. ANDERSON: Yes, sir.

7 CHAIRMAN CARTER: Hang on one second.

8 Commissioner Skop.

9 COMMISSIONER SKOP: I'm sorry. And I'll let
10 Mr. Anderson continue, I just had two additional questions. So
11 at his leisure, I can ask those now or reserve those.

12 MR. ANDERSON: Okay. Perhaps if the witness could
13 answer this one, and then we'd turn to yours.

14 CHAIRMAN CARTER: You're recognized.

15 BY MR. ANDERSON:

16 Q Do you remember the question, Mr. Labbe?

17 A Yeah. That would not meet the project objectives.

18 Q Well, what do you mean by that? Would you be able to
19 have these uprates online to save customers money in 2011 and
20 2012?

21 A That, that is the project objective is to ensure that
22 we can reliably produce 400 megawatts of generation, additional
23 generation by the summer of 2012.

24 Q And if we took five years to rebid the fuel, that
25 would be what? 2008 plus five is 2013.

1 MR. McGLOTHLIN: Object to the leading form of these
2 questions. I think counsel can --

3 MR. ANDERSON: I can put them in an open-ended form.
4 BY MR. ANDERSON:

5 Q If you were to rebid the nuclear fuel inside the
6 reactor vessel in order to competitively bid the little bit of
7 engineering design work, how long would it be, do you think,
8 before customers would have the benefit of these uprates?
9 Would you meet your schedule?

10 A No, we would not. And it would be at least a couple
11 of year delay.

12 Q So the uprates, if I understand you, would not be in
13 service in 2011 and 2012. It would be sometime years beyond
14 that.

15 A That's correct.

16 MR. ANDERSON: That's all we had.

17 CHAIRMAN CARTER: Commissioner Skop.

18 COMMISSIONER SKOP: Thank you, Mr. Chairman.

19 And I guess the question I had was somewhat similar
20 and I should have probably asked it previously, but it goes to
21 a different point. Certainly with respect to the uprates
22 there's a benefit to the extent that you're gaining additional
23 nuclear generation which is emission free and results in fuel
24 savings.

25 I guess in looking at Section 2.6 of NP-1100 I just

1 wanted to get your opinion whether, you know, such an uprate
2 would be an emergent issue under that last bullet on Page 2 of
3 5. In the context to the extent that if there was ability to
4 theoretically make an investment that would save, ultimately
5 save consumers money in terms of fuel savings, would that
6 arguably be an emergent issue as you see it? I don't know.
7 I'm just, I'm just merely asking because to me the emergent
8 issue is not very well defined. It seems to be kind of broad.
9 So I'm just trying to --

10 THE WITNESS: Commissioner, in the context as it's
11 written on NP-1100 as in the scope of this project, we would
12 not consider the project to be an emergent issue in order to
13 satisfy the deliverables. This is more in the context of as it
14 relates to the execution and operation of the unit.

15 COMMISSIONER SKOP: Okay.

16 THE WITNESS: And if something needed to be done in a
17 very short order, then we would invoke this piece.

18 COMMISSIONER SKOP: So in that context would it be
19 correct to understand that an emergent issue would be like a
20 failure of a pump or something where you had to go do something
21 quick to get the plant online?

22 THE WITNESS: That's correct.

23 COMMISSIONER SKOP: Okay. All right. Thank you for
24 that clarification.

25 And then just one point, and to recognize that we're

1 dealing with a body of confidential information, but in
2 relation -- and if you can answer it, great, if not -- but in
3 relation to the Areva and the Westinghouse contracts, what is
4 the magnitude of the, the Shaw Webster or Shaw Stone & Webster
5 contract? Do we know?

6 THE WITNESS: Yeah, I do. I'm just trying to --

7 COMMISSIONER SKOP: Okay. I mean, much smaller, I
8 mean, much smaller, orders of magnitude smaller or --

9 THE WITNESS: I can give you order of magnitude for
10 each. The Westinghouse is, for Lucie and Turkey the
11 Westinghouse scope of work is \$44 million.

12 COMMISSIONER SKOP: Okay.

13 THE WITNESS: And the Shaw Stone & Webster is 20.

14 COMMISSIONER SKOP: Okay. Thank you.

15 CHAIRMAN CARTER: Thank you.

16 Mr. Labbe, just one question. Is it true that FPL
17 engaged in the sole source contracts to make sure that they had
18 the most efficient and lowest cost for these, this equipment to
19 the ratepayers?

20 THE WITNESS: Yes. That's correct.

21 CHAIRMAN CARTER: Thank you.

22 Commissioners, anything further from the bench?

23 Mr. Anderson, anything? Okay. I think Dr.,
24 Mr. Labbe, I think you may be excused.

25 You may call your next witness. Wait a minute. Not

1 you, Mr. Labbe. I forgot about the court reporter. I'm sorry,
2 Linda. Let's do this, let's give the court reporter, she's
3 been going a couple of hours -- well, yeah. Let's take a
4 break. I looked at the clock to my right yesterday. How about
5 I look to the one to my left today and we'll come back at, on
6 the half hour.

7 (Recess taken.)

8 We are back on the record. And we gave the court
9 reporter a break and now, Mr. Anderson, you're recognized.

10 MR. ANDERSON: Thank you. FPL would call Steven
11 Scroggs as its next witness.

12 Whereupon,

13 STEVEN D. SCROGGS

14 was called as a rebuttal witness on behalf of Florida Power &
15 Light Company and, having been duly sworn, testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. ANDERSON:

19 Q Good morning, Mr. Scroggs.

20 A Good morning.

21 Q Have you been sworn?

22 A I have.

23 Q Did you previously provide your name, business
24 address and title?

25 A Yes, I have.

1 Q Have you filed seven pages of prefiled rebuttal
2 testimony in this case?

3 A Yes, sir, I have.

4 Q Do you have any changes or revisions to your prefiled
5 rebuttal testimony?

6 A No, I do not.

7 Q If I asked you the same questions contained in your
8 rebuttal testimony, would your answers be the same?

9 A Yes, they would.

10 MR. ANDERSON: FPL asks that Mr. Scroggs' prefiled
11 rebuttal testimony be inserted into the record as though read.

12 CHAIRMAN CARTER: The prefiled rebuttal testimony
13 will be entered into the record as though read.

14 BY MR. ANDERSON:

15 Q Am I correct that you have no exhibits to your
16 rebuttal testimony?

17 A That's correct.

18

19

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25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF STEVEN D. SCROGGS**

4 **DOCKET NO. 080009-EI**

5 **August 21, 2008**

6

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

8 A. My name is Steven D. Scroggs and my business address is 700 Universe
9 Blvd., Juno Beach, FL 33408

10

11 **Q. Have you previously provided testimony in this docket?**

12 A. Yes.

13

14 **Q. What is the purpose of your rebuttal testimony?**

15 A. My rebuttal testimony addresses the direct testimony provided by William R.
16 Jacobs on behalf of the Office of Public Counsel. Contained in Dr. Jacobs
17 testimony are statements or conclusions that indicate he may have overlooked
18 or been unaware of certain facts pertaining to FPL's procurement procedures
19 and processes as they pertain to the Turkey Point 6 & 7 project. My rebuttal
20 testimony seeks to provide this information in response to the issues raised by
21 Dr. Jacobs, and clarify any areas where misperceptions may be possible.

22

23 **Q. In general terms, what issues in Dr. Jacob's testimony will you address?**

1 A. I will direct my comments to three areas: (1) FPL's procurement process as it
2 applies to Sole/Single Source Justifications for the Turkey Point 6 & 7 project
3 and the specific items mentioned by Dr. Jacobs, and (2) Dr. Jacobs
4 conclusions as to what should be provided to demonstrate reasonableness of
5 the costs in this project and (3) expressed concerns regarding FPL's use of
6 Single or Sole Source Justifications to procure services.

7

8 **I. FPL's Procurement Process**

9 **Q. What statements lead you to be concerned regarding Dr. Jacobs review of**
10 **FPL's Procurement Process?**

11 A. On page 13, line 6, Dr. Jacobs states that he has reviewed NP-1100 Revision
12 15. This is the relevant control procedure for the Extended Power Uprate
13 projects. However because the Turkey Point 6 & 7 project is managed by an
14 organization outside of the Nuclear Division, the relevant control procedure
15 that guides the procurement of equipment and services is General Operating
16 (GO) Procedure 705.3 entitled "Purchasing Goods and Services – Using
17 Purchase Orders and Contracts."

18

19 **Q. What are the differences between NP-1100 and GO Procedure 705.3?**

20 A. The procedures are fundamentally similar in approach and requirements;
21 however, in contrast to NP-1100, the GO Procedure 705.3 does not include
22 the discussion of schedule as a mitigating factor. In pointing out this
23 distinction, I do not mean to imply that adherence to schedule is a justifiable

1 circumstance for a Sole or Single Source procurement in one part of the
2 company, and not in another. The point is that GO procedure 705.3 which
3 governs the preparation of Sole or Single Source Justifications for the Turkey
4 Point 6 & 7 project does not address scheduling and therefore Dr. Jacobs
5 conclusion that documents providing Single Source Justifications for McNabb
6 Hydrogeologic Consulting and the Black & Veatch feasibility study (Bates
7 Numbers 017133 – 017134 and 017140) do not conform to the applicable
8 procedures is incorrect.

9
10 **Q. Is it your opinion that Dr. Jacobs may have misconstrued the discussions**
11 **regarding the fact that time was of the essence in these procurement**
12 **decisions?**

13 A. Yes. On page 14, line 16 – 18, Dr. Jacobs draws a conclusion
14 implying an improper influence of schedule on the procurement process.
15 Specific to the two Turkey Point 6 & 7 Single Source Justifications identified
16 by Dr. Jacobs, the primary factors supporting the decision are specifically
17 described in the documentation. The Single Source Justifications provide
18 solid support for the selection of the vendor based on their unique service
19 capabilities that have been proven to FPL through other similar engagements.
20 Further, both vendors have conducted recent similar scope activities for FPL
21 allowing FPL to assess the reasonableness of their costs relative to recent past
22 experience and those of other similar service providers.

23

1 Certainly, time was and is a consideration, but not as a “primary factor” or a
2 “justifiable circumstance” that rationalizes a Sole or Single Source
3 Justification. Project management must be aware of the impact that all
4 activities have on the overall project schedule, particularly as it pertains to the
5 delay that may be created and the cost of those delays to FPL customers. The
6 applications being developed for the Turkey Point 6 & 7 project require the
7 timely inclusion of a wide range of information in order to meet milestone
8 dates that support delivery of the project on the current schedule. Delays in
9 the project at this stage could have impacts that compound costs in the future.
10 As identified in my testimony in Docket 070650-EI, page 52, beginning at line
11 14, the potential impact of a six month delay could result in the addition of
12 \$400 to \$600 million dollars in interest costs alone. Additionally, delays can
13 be expected to increase overall costs based on escalation and can cause our
14 customers to forego system benefits such as reduced fuel consumption or
15 reduced emissions. Therefore, as prudent project managers, we must be
16 mindful of avoiding unnecessary delays.

17

18 **II. Reasonableness of Costs**

19 **Q. Does Dr. Jacobs draw conclusions regarding the methods by which**
20 **reasonableness of cost may be demonstrated?**

21 A. Yes. At page 22, lines 3-4 Dr. Jacobs broadly concludes that “...benchmarks
22 or analyses must be provided to demonstrate the reasonableness of the
23 costs...”.

1

2 **Q. Are such analyses required by GO Procedure 705.3?**

3 A. No.

4

5 **Q. Why would GO Procedure 705.3 not require such benchmarks or**
6 **analyses?**

7 A. The procedures clearly establish a standard that must be met in order for
8 Single or Sole Source Justifications to be considered; however, they also
9 recognize that an overly prescriptive procedure would not be applicable in all
10 areas. Certainly, all procurement decisions are not presented with the same
11 available market information by which to evaluate reasonableness of costs.
12 Some decisions can and should be supported by quantitative analysis;
13 however, substantive differences in scope, schedule, expertise and other
14 market parameters often preclude the ability to provide an analysis that meets
15 an arbitrarily defined standard. In such cases, the procedures appropriately
16 recognize and rely upon the experience of managers to evaluate each
17 individual situation per the guidelines and use their best business judgment to
18 determine the appropriateness of a Sole or Single Source decision and the
19 reasonableness of cost for such services.

20

21 **Q. Are there specific considerations relative to the Turkey Point 6 & 7**
22 **project that may affect the ability to provide “benchmarks or analyses”?**

1 A. Yes. The deployment of new nuclear units has not been conducted in the
2 United States since the 1980's. Accordingly, the number of firms that are
3 experienced and qualified to provide services or equipment to the Nuclear
4 Industry are limited. In some cases there is only one provider of services or
5 equipment.

6

7 **Q. Did FPL use benchmarks or conduct analyses to determine if the costs**
8 **quoted for the McNabb and Black & Veatch services were reasonable?**

9 A. Yes. Both Single Source Justification documents state that cost information
10 for both vendors were analyzed. In the case of McNabb, the costs were
11 compared to other quotes for similar activity on other projects and found to be
12 "below market value". Regarding Black & Veatch, FPL's experience with
13 consultants in this marketplace were used as benchmarks to ensure that the
14 proposed costs were "reasonable for the services provided". These analyses
15 are common in the decision making process used by managers, albeit not
16 always formally documented.

17

18 **III. FPL's Use of Single or Sole Source Procurement**

19 **Q. Do you agree with Dr. Jacobs conclusions regarding FPL's use of Single**
20 **or Sole Source Justifications?**

21 A. No. I do not agree that FPL has used or uses Single or Sole Source
22 procurement "extensively". With regard to the Turkey Point 6 & 7 project, I
23 have identified how project staff conformed to the applicable procedures and

1 analyzed and documented the review for reasonableness of costs. This
2 standard is and will be met when any Single or Sole Source procurement
3 decision is made.

4

5 **Q. Do you foresee the need for future Single or Sole Source procurement**
6 **decisions in regard to the Turkey Point 6 & 7 project?**

7 A. Yes. As I have described, the nature of this project will necessarily require
8 additional Single or Sole Source justification. These decisions will be made
9 in conformance with required procedures and will be based upon, where
10 applicable and feasible, analysis or benchmarks that verify the reasonableness
11 of costs.

12

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

14 A. Yes.

1 BY MR. ANDERSON:

2 Q Have you prepared a summary of your testimony?

3 A Yes, I have.

4 Q Please provide your summary to the Commission.

5 A Yes, I will.

6 Good morning, Chairman Carter and Commissioners. The
7 purpose of my rebuttal testimony is to respond to claims made
8 by Dr. Jacobs on behalf of the Office of Public Counsel
9 concerning FPL's use of sole and single source procurement as
10 one tool to perform the work supporting the Turkey Point 6 and
11 7 project.

12 Contrary to the characterization provided by
13 Dr. Jacobs, FPL has fully complied with its procurement
14 guidelines and bases its decisions on solid business reasons.
15 I can assure you that senior management at FPL takes its
16 responsibilities in this area seriously and holds myself and
17 the project team to a very high standard.

18 Recognizing the limitation of time in this summary,
19 I'd just like to discuss why FPL is uniquely capable of
20 effectively using single and sole source procurement as a tool
21 and discuss why sole source and single source procurement is
22 going to be necessary as a tool in new nuclear project
23 deployment.

24 FPL has first-hand experience with many national
25 level engineering firms, including knowledge of market-based

1 billing rates charged by these service providers for various
2 services. We not only test the market routinely, but we're, in
3 fact, a sizable portion of the power generation engineering
4 services market in North America. FPL has extensive experience
5 in designing the scope of the work for engineering assignments
6 that result in tightly focused analyses that can fully satisfy
7 the needs of the project. Combined this in-depth knowledge of
8 the market, our position in the market and the experience of
9 managing these service providers allows FPL to review any
10 proposal for work with an informed, critical eye that assures
11 procured services will be reasonably priced.

12 As documented in the single source justifications,
13 the selected vendors have unique experience in their selected
14 areas. It just makes good sense for FPL to bring to bear the
15 most qualified and experienced practitioners in a given area,
16 particularly when it can be done in a way that ensures that FPL
17 will get exactly what it needs and no more for a reasonable
18 market price.

19 Finally, a few comments about the practice of single
20 and sole source procurement. While it's not FPL's preferred
21 means of procuring goods and services, sole and single source
22 procurement is a necessary and appropriate tool in business and
23 particularly in the business of new nuclear deployment. The
24 unique nature of building the first new nuclear plants in over
25 25 years will require us to carefully use this tool.

1 MR. MCGLOTHLIN: Mr. Chairman, I don't enjoy
2 interrupting a witness, but I find that his summary is not a
3 summary of anything in prefiled rebuttal. The rebuttal
4 contains comments relating to Dr. Jacobs' specific points, and
5 this is more in the nature of an enlargement of a discussion in
6 direct. And I think because of the, the nature of the
7 proceeding and our preparation practices, we need to confine
8 the summary to the contents of the rebuttal testimony.

9 CHAIRMAN CARTER: Mr. Anderson.

10 MR. ANDERSON: Mr. Scroggs' testimony talks about the
11 types of analyses we use for single and sole source procurement
12 and its role. I think he's just about done anyway. Whatever
13 the Chair's preference is.

14 MR. YOUNG: Mr. Chairman, since I think Mr. Anderson
15 is correct, and also you're dealing with relevancy here and
16 it's a very thin line, a thin threshold for relevancy, so I say
17 overrule the objection.

18 CHAIRMAN CARTER: Overruled. You may proceed.

19 THE WITNESS: Thank you, sir.

20 Speaking to the fact that we're beginning the first
21 new nuclear projects in over 25 years and there's some specific
22 features that bear on our discussion here: For example, the
23 nature of licensing a new nuclear project requires that a
24 commitment be made to a specific design in order to develop the
25 applications, and that requires the commitment to a specific

1 vendor of that design. And, additionally, there are many
2 specific areas as we've talked about in the need determination
3 process such as ultra heavy forgings where there is only one
4 provider of this capability in the, in the earth, in the world
5 right now.

6 Finally, the last point to make sure we understand is
7 that our experience as an owner and operator of nuclear
8 generation facilities teaches us time and time again that
9 selection of the most qualified service provider commonly
10 reduces both cost and risk for the benefit of our customers.
11 Delays in maintaining the plant, maintaining current existing
12 plants create delays in bringing those plants back online,
13 which costs in additional fuel costs for our customers, they
14 feel that directly; to delay new units, that cost in terms of
15 the billions of dollars of fuel savings that these units are
16 projected to provide. The fact is that the added scrutiny
17 associated with single and sole source procurement assures that
18 decisions are made in the best interest of FPL customers. That
19 concludes my summary.

20 CHAIRMAN CARTER: Thank you.

21 Mr. McGlothlin, you're recognized.

22 CROSS EXAMINATION

23 BY MR. MCGLOTHLIN:

24 Q Your summary or rather your comments this morning
25 focused heavily on advocating the use of sole source and single

1 source contracts. Is it true with respect to the new units as
2 it is true of the uprates that the standard for procurement
3 under FPL's guidelines is competitive bidding?

4 A The preferred procurement method is competitive
5 bidding.

6 Q You're not suggesting by your comments here this
7 morning that you believe competitive bidding should not be the
8 preferred?

9 A I believe my comments this morning are meant to
10 identify that sole source and single source procurement is a
11 reality of the business that we're in. It's not to advocate
12 it, it's not to put it above competitive bidding. It's just to
13 recognize it as a reality of our business.

14 Q Do you think that reality should continue to be
15 exceptions to preferred preference for competitive bidding as
16 opposed to tools that can be implemented without justification?

17 A I believe that as we've described and as Mr. Labbe
18 described it we are complying with FPL's procurement procedures
19 by looking first at competitive bidding. And when that is not
20 available for sound business reasons, that we justify that and
21 get the appropriate approvals.

22 Q Well, that's the purpose of my question because it
23 appeared to me, listening to your comments this morning, you
24 were advocating the use of sole source and single source
25 contracts without reference to the overriding criterion, which

1 is competitive bidding where that is feasible. So you continue
2 to see the use of sole source or single source contracts as an
3 exception that has to be justified; correct?

4 A That's our procedures. Yes, sir.

5 Q At Page 3, Line 20 of your rebuttal testimony, this
6 is a discussion of the McNabb contract and the Black & Veatch
7 feasibility study. Have you found Page 3, Line 20?

8 A Yes, I have.

9 Q You say, "Further, both vendors have conducted recent
10 similar scope activities for FPL allowing FPL to assess the
11 reasonableness of their costs relative to recent past
12 experience and those of similar service providers."

13 Were McNabb and Black & Veatch awarded their prior
14 contracts as a result of a competitive bid?

15 A Yes, sir.

16 Q And so there were other contenders who were
17 unsuccessful in that effort; correct?

18 A That's correct, sir.

19 Q Is it possible, do you think, that if FPL were to
20 solicit bids for this work, those same contenders would try to
21 sharpen their pencils and be more competitive on price?

22 A Our assessment was that the results of the previous
23 competitive bid showed such a strong determination and
24 capability on these vendors that the likelihood was, was low.
25 But also within our procedures and as good business practice

1 we're encouraged to leverage our purchasing power with vendors
2 who demonstrate good quality and good competitive costs. So
3 we're encouraged to leverage that in, in certain instances, and
4 these were certainly instances in which that was applied.

5 Q Well, when FPL leverages its purchasing power, it
6 leverages that purchasing power across the universe of
7 potential vendors, does it not?

8 A As was established through the competitive bidding
9 process, yes, sir.

10 Q The competitive bidding process prior to this use of
11 a single source contract; correct?

12 A That's correct, sir.

13 Q So it is possible that unsuccessful contenders in the
14 last RFP would attempt to be more competitive on price if
15 they'd had that opportunity.

16 A That's a possibility.

17 Q Would you agree that a competitive bid is the best
18 way to test the market in terms of cost?

19 A Competitive bidding is simply one way to test the
20 market. I think in testing the market FPL is continuously out
21 in the market as a procurer of all these types of services. We
22 have a very strong read on the capability of these contractors,
23 the market price, the going price for these services, and can
24 continually test that in a number of ways, of which competitive
25 bidding is one, only one way.

1 Q Do I understand correctly your earlier answer was
2 just that FPL's preferred method of procurement is competitive
3 bidding?

4 A That's correct.

5 Q And it would prefer competitive bidding because it
6 regards competitive bidding as superior to other forms where it
7 can be done; correct?

8 A I think that the standard is competitive bidding, but
9 the reason that neither rule, statute or our own procedures
10 require competitive bidding in every situation is because it's
11 not equally applicable in every situation, and our procedures
12 recognize that. Managers are given the responsibility to use
13 that tool when it's appropriate, and we believe we've done so.

14 Q Where applicable and appropriate do you agree that
15 the competitive bidding is the best way to test the market for
16 price?

17 A It is definitely a good, sound way to test the
18 market.

19 Q Are you, are you resisting the notion that it's a
20 superior way?

21 A Speaking of it hypothetically without a specific
22 instance in front of me, it would be very difficult to agree
23 that in all instances that it's the preferred method.

24 Q Would you concede that FPL must have a reason to
25 designate competitive bidding as its preferred method of

1 procurement?

2 A Because in most instances that's the case, yes, sir.

3 Q Turn to Page 4, Line 21, please.

4 A Yes, sir.

5 Q The question posed above that asks, "Does
6 Dr. Jacobs draw conclusions regarding the methods by which
7 reasonableness of cost may be demonstrated?" And you answer,
8 "Yes. Dr. Jacobs broadly concludes that 'benchmarks or
9 analyses must be provided to demonstrate the reasonableness of
10 the costs.'"

11 And then turning the page, "Are such analyses
12 required by GO Procedure 705.3?" And your answer is, "No."
13 You're not suggesting by that answer, are you, that under
14 GO Procedures 705.3 FPL has no obligation, responsibility to
15 demonstrate the reasonableness of costs resulting from a sole
16 source or single source contract?

17 A No, I'm not. In fact, it does request that we
18 provide an assurance of the reasonableness of proposed costs.

19 Q And turning to Page 6 in response to another question
20 about whether FPL used benchmarks or conducted analyses, you
21 describe FPL's experience with consultants as a form of
22 benchmark to ensure that the proposed costs were reasonable for
23 the services provided. Then you say, "These analyses are
24 common in the decision-making process used by managers, albeit
25 not always formally documented."

1 Are you, is it your testimony that with respect to
2 the guidelines that govern procurement for the new nuclear
3 units that there is no requirement that this assurance of
4 reasonableness be documented in, in the course of justifying
5 the decision to depart from competitive bidding?

6 A I believe the, the single source justification
7 portion of the procedure requires the party to explain why it's
8 not in the best interest. That's the requirement in the
9 procedure.

10 To elaborate on that a little bit, realize these
11 documents are internal controls documents that are meant to go
12 to senior managers that have years of experience in this arena
13 and are knowledgeable of the marketplace themselves. So we're
14 having the team present memos and documentation to a
15 knowledgeable reviewer. So they're not meant to be
16 stand-alone, highly specific exhibit type memos. They're meant
17 to be a communication from a knowledgeable project team to a
18 knowledgeable reviewer.

19 Q A knowledgeable reviewer who bases a decision upon
20 the facts or evidence presented by the requesting managers;
21 correct?

22 A Both the facts and evidence presented by the
23 requesting manager, that person's knowledge and any amplifying
24 discussions that that manager would want to have with the
25 person presenting the request.

1 Q And with respect to the assurance that the cost is
2 reasonable, which is one of the, one of the fundamental inputs
3 to the decision to depart from competitive bidding, would that
4 be documented in the course of asking for authority to enter a
5 single source or sole source contract?

6 A Again, in the process that, in meeting our compliance
7 with our code or our requirements, no specific documentation is
8 mandated. In general, the requirement that we demonstrate
9 reasonableness of costs through an explanation is there and is
10 contained in the single source justifications that we provide.

11 Q So you regard the justification memo itself as, as
12 the vehicle, as the document that contains the assurance that
13 is the, that is required by the procedure?

14 A Yes, sir, I do.

15 Q Would you agree that that justification memo needs to
16 be adequate for the purpose of supporting the contention that
17 the costs are reasonable?

18 A Within the context of its application in FPL for a
19 knowledgeable requester and a knowledgeable reviewer, yes, sir.

20 Q Inasmuch as those decisions and the supporting
21 memoranda justifying the decisions to use single source or sole
22 source contracts are going to be significant not only for FPL's
23 internal purposes but for demonstrating to parties of this
24 proceeding and the FPL's regulators that the request to collect
25 costs are based upon contracts that are reasonable in amount,

1 do you think that that perhaps provides increasing impetus to
2 the need to develop the basis for the contention that the costs
3 are reasonable fully in the context of the justification memo?

4 A These procedures have been in place at FPL for many
5 years before I came along and they've been used before this
6 body to justify single source justifications in the past. You
7 know, I think we feel that we're doing the right thing, we
8 continue to comply with our own guidance and that that is, is,
9 is what we're doing.

10 MR. MCGLOTHLIN: I have no further questions.

11 CHAIRMAN CARTER: Thank you.

12 Mr. Twomey.

13 MR. TWOMEY: No, sir.

14 CHAIRMAN CARTER: Staff.

15 MR. YOUNG: No questions.

16 CHAIRMAN CARTER: Commissioner Skop.

17 COMMISSIONER SKOP: Thank you, Mr. Chairman.

18 Just one quick question to touch upon the testimony,
19 or actually two questions to touch upon the testimony the
20 witness gave.

21 Am I correct to understand that FPL in making its
22 sole source procurement selections has not expressly violated
23 any statutory provision, Commission rule or any of its internal
24 procedures?

25 THE WITNESS: To my knowledge that's correct, sir.

1 COMMISSIONER SKOP: Okay. But in all fairness to
2 OPC, Public Counsel and the Intervenors, in light of some of
3 the concerns that are being raised and in staff testimony that
4 there's always room to fine-tune existing internal controls
5 that, you know, have proven to be adequate over years past, is
6 FPL willing to work with the various parties to address some of
7 the concerns that it brought forth during the course of this
8 hearing?

9 THE WITNESS: FPL is always willing to accept ideas
10 and incorporate them where they're appropriate. Yes, sir.

11 COMMISSIONER SKOP: Thank you.

12 CHAIRMAN CARTER: Thank you. Anything further?

13 Mr. Anderson.

14 MR. ANDERSON: No questions, sir.

15 CHAIRMAN CARTER: And there are no, no exhibits for
16 rebuttal for this witness; right?

17 MR. ANDERSON: That is correct.

18 CHAIRMAN CARTER: Thank you, Mr. Scroggs. Have a
19 nice day.

20 Call your next witness.

21 MS. PETTUS: FPL calls John Reed.

22 CHAIRMAN CARTER: John Reed.

23 Whereupon,

24 JOHN J. REED

25 was called as a rebuttal witness on behalf of Florida Power &

1 Light Company and, having been duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MS. PETTUS:

5 Q Mr. Reed, have you been sworn?

6 A Yes, I have.

7 Q Would you please state your name and business address
8 for the record, please.

9 A John Reed, 293 Boston Post Road, Marlborough,
10 Massachusetts.

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

12 A I am the Chief Executive Officer of Concentric Energy
13 Advisors.

14 Q Have you prepared and caused to be filed in this
15 proceeding eight pages of rebuttal testimony?

16 A Yes, I have.

17 Q Do you have any modifications, additions, revisions
18 to make to your prefiled rebuttal testimony?

19 A No, I do not.

20 Q If you were asked the same questions contained in
21 your prefiled rebuttal testimony today, would your answers be
22 the same?

23 A Yes, they would.

24 MS. PETTUS: Mr. Chairman, I would ask that
25 Mr. Reed's prefiled rebuttal testimony be entered into the

1 record as read.

2 CHAIRMAN CARTER: The prefiled testimony of, the
3 prefiled rebuttal testimony of the witness will be entered into
4 the record as though read.

5 BY MS. PETTUS:

6 Q Mr. Reed, you are not sponsoring any exhibits to your
7 rebuttal testimony; is that correct?

8 A That is correct.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

REBUTTAL TESTIMONY OF JOHN J. REED

DOCKET NO. 080009-EI

August 21, 2008

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

2 A. My name is John J. Reed. My business address is 293 Boston Post Road West,
3 Marlborough, Massachusetts 01752.

4 **Q. Are you the same John J. Reed who previously filed direct testimony in this**
5 **docket?**

6 A. Yes. I filed direct testimony on behalf of Florida Power and Light ("FPL" or the
7 "Company") on May 1, 2008.

8 **Q. What is the purpose of your testimony in this proceeding?**

9 A. The purpose of my testimony is to respond to certain proposals made in the direct
10 testimony of William R. Jacobs, Jr. PhD appearing on behalf of the Office of Public
11 Counsel, including his suggestion to limit recovery in this proceeding to certain
12 incremental costs and his review of the Company's use of sole and single source
13 procurement practices. Specifically, I address Dr. Jacobs' suggestion that the
14 Commission should disallow recovery of any costs that relate to components that are
15 expected to be replaced during the extended power uprate projects at Turkey Point Units
16 3 & 4 (PTN 3 & 4) and St. Lucie 1 & 2 (PSL 1 & 2, collectively the "EPU Projects") if
17 those components are nearing the end of their useful life at the time of replacement. In

1 addition, I will address Dr. Jacobs' concerns regarding FPL's use of sole or single source
2 procurement practices in order to complete the EPU Projects and to construct two
3 additional units at the Company's Turkey Point site (i.e., PTN 6 & 7).

4 **Q. Please describe how the remainder of your testimony is organized.**

5 A. The remainder of my testimony is organized into four sections. The first section briefly
6 summarizes the thorough evaluation that Concentric conducted of FPL's project
7 management processes for the EPU Projects and PTN 6 & 7, including procedures for
8 those projects. In section II, I discuss Dr. Jacobs' proposal to limit cost recovery in this
9 proceeding to only "incremental costs" and discusses the nuclear cost recovery
10 mechanisms in other states. In Section III, I discuss industry practices with regard to
11 sole or single source procurement policies and Dr. Jacobs' concerns regarding FPL's use
12 of sole and single sourced contracts. Finally, I provide my conclusions in Section IV.

13
14 **Section I – Overview of Concentric Project Management Review**

15 **Q. Please describe the process by which you reviewed FPL's project development**
16 **capabilities.**

17 A. In order to assess FPL's project development, risk management and cost estimation
18 capabilities, my staff and I reviewed numerous documents provided to us by FPL.
19 These documents included FPL's general corporate procedures, the Company's nuclear
20 procedures and instructions, various status reports prepared by the Company to monitor
21 the progress of the Projects, contracts executed by the Company for materials and
22 services related to the Projects, and the Company's cost estimates for the Projects for the
23 calendar years 2008 and 2009. In addition, our team interviewed several members of

1 FPL's project teams at FPL's corporate offices in Juno Beach, Florida. These interviews
2 focused on the individual's knowledge of the Company's policies and procedures and
3 ways in which they had implemented the Company's policies and procedures in their
4 day-to-day activities.

5 **Q. During your review were there any documents to which you did not have access?**

6 A. No. The Company was entirely responsive to our data requests and their employees
7 ensured that we had access to any information which we requested.

8

9 **Section II – Dr. Jacobs' Cost Segmentation Proposal**

10 **Q. Please describe Dr. Jacobs' proposal related to "incremental costs".**

11 A. Based upon my review of Dr. Jacobs' testimony in this proceeding, he is proposing to
12 segment and disallow certain EPU Project costs. Dr. Jacobs would require the Company
13 to evaluate each component that must be replaced during the EPU Projects to determine
14 if that component has reached the end of its useful life. For those components which
15 have reached the end of their useful life, Dr. Jacobs would require the Company to
16 determine the costs of replacing these components with a new component of a similar
17 capacity (i.e., the "replacement costs"). These costs would then be compared with the
18 costs to replace the components with those capable of handling the facility's increased
19 capacity, thus establishing the "incremental costs". Dr. Jacobs would then exclude from
20 recovery in this proceeding any replacement costs. Dr. Jacobs proposes that FPL be
21 required to collect the replacement costs in a future base rate case.

1 **Q. Does the Nuclear Cost Recovery Rule provide any support for Dr. Jacobs’**
2 **proposal?**

3 A. I can find no evidence that suggests the Nuclear Cost Recovery Rule requires the
4 Company to perform an analysis similar to what Dr. Jacobs is suggesting in his Direct
5 Testimony. In fact, Section 1 of the rule states that the rule “The purpose of this rule is
6 to establish alternative cost recovery mechanisms for the recovery of costs incurred in
7 the siting, design, licensing, and construction of nuclear or integrated gasification
8 combined cycle power plants in order to promote electric utility investment in nuclear or
9 integrated gasification combined cycle power plants and allow for the recovery in rates
10 of *all* such prudently incurred costs”.¹ Thus, it would appear that the rule envisions
11 recovery on the full cost of EPU components and does not require the sort of
12 “incremental” analysis proposed by Dr. Jacobs.

13 **Q. Have other states implemented measures for the recovery of nuclear construction**
14 **costs similar to the rule implemented in Florida?**

15 A. Yes. A number of other states have implemented similar mechanisms in some form.
16 These states include North Carolina, South Carolina, Louisiana, and Virginia, among
17 others.²

¹ See Florida Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery, Emphasis added.

² See North Carolina Session Law 2007-398.

See South Carolina Base Load Review Act (S.C. Code Section 58-33-210).

See Virginia Senate Bill 1416 and House Bill 3068.

See Order in Docket No. 29712.

1 **Q. Do any of these states make a distinction between replacement and incremental**
2 **costs in their statutes or rules authorizing cost recovery?**

3 A. No. As in Florida, their rules provide for the recovery of all costs incurred in order to
4 construct the facility.

5 **Q. Would Dr. Jacobs' proposal that FPL recover a return under the Nuclear Cost**
6 **Recovery Rule on only the "incremental" portion of the replaced components**
7 **reduce the ultimate cost of the EPU Projects to FPL's customers?**

8 A. No. Dr. Jacobs' position is that all prudently incurred costs, both "replacement" and
9 "incremental" costs, should be recovered through rates. To the extent that FPL did not
10 receive a current cash return on the "replacement" cost of an EPU Project component
11 under the Nuclear Cost Recovery Rule, FPL would instead accrue AFUDC on that cost.
12 The AFUDC would ultimately be added to the cost of the Project when it is shifted into
13 Plant In Service. Thereafter, customers would pay a higher return to FPL through base
14 rates because the return would apply to the AFUDC as well as the actual cost of the
15 component. In essence, Dr. Jacobs is simply using regulatory lag as a vehicle for *delaying*
16 the recovery of prudently incurred "replacement", without actually *reducing* those costs.
17 In fact, the accumulation of AFUDC will result in customers paying more total dollars
18 over time.

19 **Q. Does Dr. Jacobs' proposal reduce the certainty of recovering the Company's**
20 **reasonable and prudently incurred costs?**

21 A. Yes. Dr. Jacobs' proposal already creates uncertainty regarding the Company's ability to
22 recover its reasonable and prudently incurred costs. The implementation of an extended
23 power uprate at an existing facility requires the expenditure of hundreds of millions

1 dollars. Understandably, investors in these projects are concerned with their ability to
2 earn a return on their investment in a timely manner when those costs are deemed to be
3 reasonable and prudently incurred. The Florida Nuclear Cost Recovery Rule was
4 specifically implemented to address this concern and to give investors additional
5 certainty regarding the Company's ability to recover these costs. Dr. Jacobs' proposal
6 would explicitly reverse much of this certainty by delaying the Commission's review, and
7 the Company's return on, a large portion of FPL's prudently incurred cost until the
8 Company's next base rate case.

9
10 **Section III. Dr. Jacobs' Sole and Single Source Procurement Concerns**

11 **Q. Please describe Dr. Jacobs' concerns with respect to the Company's single and**
12 **sole source procurement activities.**

13 A. Dr. Jacobs appears concerned with the level of quantitative analysis performed by FPL
14 in preparing a sole or single source justification memorandum in accordance with the
15 Company's policies and procedures. Dr. Jacobs believes these memos have not included
16 a sufficient level of analysis to be considered reasonable, and as such has recommended
17 disallowing the Company from recovering the Company's equity return on its
18 investment to-date. In the alternative, Dr. Jacobs has recommended withholding 10
19 percent of the Company's carrying charges until such time as the Company demonstrates
20 that the costs are reasonable.³ Dr. Jacobs does not provide any basis for his
21 recommended disallowance amounts, nor has he indicated what level of analysis he

³ Interestingly, Dr. Jacobs has made no claim that the costs incurred or projected to be incurred under these contracts are unreasonable or imprudent. Thus it would appear that Dr. Jacobs is only concerned with the use and language of the sole and single source justification memoranda and not the costs or projected costs.

1 believes would indicate the costs FPL has incurred in accordance with the Nuclear Cost
2 Recovery Rule are reasonable. Lastly, Dr. Jacobs indicates that the Commission could
3 “consider this first round of hearings as uncharted territory, and for that reason decide to
4 allow FPL to collect the entire amount of carrying charges.” If this occurs, Dr. Jacobs
5 states that the Commission should “place FPL on notice that on a going forward basis
6 the Commission intends to require a rigorous and detailed justification for any departure
7 from competitive bidding.”

8 **Q. Which sole or single source justifications has Dr. Jacobs cited in describing his**
9 **concerns?**

10 A. Dr. Jacobs cites a number of sole and single source justifications including memoranda
11 for the following contracts:

- 12 • Westinghouse Electric Company (“Westinghouse”) for engineering, licensing and
13 design activities associated with the EPU Projects
- 14 • Shaw Stone & Webster, Inc (“S&W”) for engineering evaluations, licensing
15 reports and major equipment specifications
- 16 • Areva NP (“Areva”) for fuel related engineering, licensing and design activities
17 related to the EPU Projects
- 18 • McNab Hydrogeologist Consulting (“McNabb”) for certain permitting activities
19 related to PTN 6 & 7
- 20 • Black & Veatch (“B&V”) for a desalination plant feasibility study related to PIN
21 6 & 7

1 **Q. Have you reviewed each of these sole or single source justification memoranda?**

2 A. Yes. The Company provided Concentric with copies of these documents in April 2008
3 as part of Concentric's project management evaluation that I described earlier in my
4 testimony. We reviewed these documents at that time and concluded that FPI had
5 complied with its policies regarding single and sole source procurement activities.

6 **Q. Please explain the basis for your conclusions that the Company had complied**
7 **with its policies regarding sole and single source procurement activities in the**
8 **case of the Westinghouse contract.**

9 A. First, it is important to understand the relevant corporate procedures that govern sole
10 and single source procurements. In the case of the EPU Projects, Nuclear Procedure-
11 1100 governs the use of sole or single source procurement activities. Similarly, General
12 Operating Procedure 705.3 governs single and sole source procurements for PTN 6 & 7.
13 Both of these procedures require that the person requesting the procurement submit a
14 sole or single source justification memorandum that describes the basis for the
15 procurement. However, General Operating Procedure 705.3 does not prohibit
16 adherence to a schedule as the basis for the justification. Both of the procedures also
17 require the submitter to provide a valid business reason for the procurement.
18 In the instance of the justification memorandum for Westinghouse, the document clearly
19 states that "Westinghouse possess all of the required design information and has
20 performed all of the current licensing basis analyses for the major NSSS components,
21 nuclear fuel (excluding St. Lucie Unit 1), and systems (e.g., Emergency Core Cooling
22 Systems), which are required to perform this work." The document goes on to state
23 "No other vendor has the required design documentation for St. Lucie or Turkey Point."

1 While it might be possible to negotiate a contract for another vendor to use
2 Westinghouse's design information, it has been my experience in nuclear transactions
3 that Westinghouse strictly limits the distribution of its data to third parties. In some
4 cases in which I have been involved, Westinghouse has required guarantees from the
5 third parties that limit the use of its data. Thus the Company's use of a sole source
6 justification in this case appears entirely reasonable.⁴ A similar situation exists with
7 regard to the Areva sole source justification.

8 **Q. Is there similar language with regard to the S&W contract?**

9 A. Yes, the single source justification for S&W states the following:

10 "[S&W] has completed power uprate projects for 46 operating
11 nuclear units. Included in their uprate experience is both
12 Westinghouse (Turkey Point) and Combustion Engineering (St.
13 Lucie) PWR designs. In fact, [S&W] performed the BOP engineering
14 services for the successful 4.5% power uprate for Turkey Point Units
15 3 & 4 in the mid-1990s. [S&W] has ready access to the design
16 documents developed for that Turkey Point uprate such that cost and
17 efficiency savings should be realized for the proposed Turkey Point
18 EPU."

19 While the language Dr. Jacobs cites regarding schedule adherence appears earlier in the
20 justification memorandum, it is clear from this statement that S&W was selected based
21 on its prior experience, access to key information and the likelihood of costs savings, not
22 simply schedule adherence. It has been my experience in other projects that this access

⁴ It should be noted that Dr. Jacobs' citation of a justification based solely on schedule appears in only the second to last sentence of this memorandum (i.e., after the other justifications described above).

1 to information and ability to leverage extensive prior project experience can be critical to
2 achieving any cost savings as well as receiving a high quality work product.

3 **Q. Please describe the basis for your conclusions regarding the single source**
4 **justifications for McNabb and the sole source justification for B&V.**

5 A. The McNabb single source justification memorandum states that the single source
6 justification is based on three points, which include: McNabb's relevant experience; that
7 McNabb is capable of providing permitting and on-site support which is expected to
8 reduce the cost of the necessary permitting; and McNabb has previously provided high
9 quality expert testimony supporting the permitting process. The background section of
10 the memorandum also states that there is a requirement for continuity in developing the
11 work product and that the project schedule was relatively aggressive. After reviewing
12 this document it is clear that while the project's schedule was considered in the
13 justification of this contract, many other valid business reasons exist to justify retaining
14 McNabb. A similar description is included in the justification to retain B&V. The
15 Company also cited prior experience with contracting with vendors for conceptual
16 engineering studies for its conclusion that the cost of B&V's services was reasonable. In
17 both cases I found that the Company relied on valid business reasons including
18 prospective cost savings and the vendor's abilities when deciding to utilize a sole or
19 single source justification.

1 **Q. Are there any other sole or single source justification memoranda with which Dr.**
2 **Jacobs takes issue?**

3 A. Yes, Dr. Jacobs also takes issue with a benchmarking analysis that was used to support a
4 sole source justification with Siemens Power Generation, Inc (“Siemens”) for the
5 reservation of manufacturing slot for low-pressure steam turbine rotors.

6 **Q. Please describe Dr. Jacobs’ concerns related to the Siemens benchmarking**
7 **analysis.**

8 A. Dr. Jacobs appears to be concerned that the data underlying the analysis was originally
9 compiled for another utility in 2002 escalated to current year dollars and adjusted for the
10 scope of services necessary for the EPU projects.

11 **Q. In your experience have you seen similar estimates prepared by other utilities?**

12 A. Yes, it is quite common in the nuclear industry for a utility to utilize a feasibility study or
13 scoping information from another utility in order to benchmark the company’s estimate.
14 I have encountered this methodology in another recent engagement, whereby a widely
15 recognized construction firm based their 2006 cost estimate on work that was performed
16 in the late 1980s and stated that this prior project was the only suitable basis for scoping
17 the current project due to the lack of recent nuclear construction in the United States.

18 **Q. Within the Company’s sole source justification memorandum has FPL provided**
19 **any other justifications for retaining Siemens?**

20 A. Yes, the Company also points out in the sole source justification memorandum that no
21 other vendor has the required design documentation for St. Lucie and Turkey Point.

1 **Q. Do FPL's corporate policies and procedures require the type of additional**
2 **analysis advocated by Dr. Jacobs?**

3 A. No. While it is not entirely clear what level of analysis Dr. Jacobs believes is sufficient to
4 justify the reasonableness of the cost, it is obvious that the Company's policies and
5 procedures do not require this type of analysis in every instance of a sole or single source
6 procurement strategy. As discussed earlier in my testimony and in more detail by
7 Company Witnesses Steven D. Scroggs and William P. Labbe, Jr., these policies and
8 procedures provide for a number of other foundations for pursuing such a strategy.
9 However, there are certainly instances where such a detailed analysis is either
10 unnecessary or impractical due the limited amount of information that may be available.

11 **Q. Are there unique characteristics of the nuclear industry that limit the Company's**
12 **ability to perform the type of analysis advocated by Dr. Jacobs?**

13 A. Yes, as recognized by the Commission Staff in its *Review of Florida Power and Light's Project*
14 *Management Internal Controls for Nuclear Plant Uprate and Construction Projects*, since the 1960s
15 and 1970s a number of vendors have chosen to exit the nuclear power industry⁵. Thus
16 the number of potential suppliers has been reduced substantially. In many cases, this has
17 left only one or two vendors who are either capable of performing such work or which
18 have the requisite level of experience to perform the work to the required quality
19 standards and on a cost competitive basis.⁶ In addition, much of the nuclear
20 construction work that has been completed is not thoroughly documented which

⁵ See, for example, Review of Florida Power and Light's Project management Internal Controls for Nuclear Plant Uprate and Construction Projects dated August 2008, pg. 17.

⁶ As stated on page 27 of my direct testimony, the number of suppliers certified to perform safety related work has fallen five fold since 1980.

1 prevents a convenient basis for comparison, particularly given the recent run-up in
2 commodity prices.

3 **Q. Have you reviewed the sole or single source procurement practices of other**
4 **companies with nuclear assets?**

5 A. Yes, as described in my direct testimony, I have been involved in prudence reviews and
6 audits of various companies involved in the construction and ownership of nuclear
7 facilities. In addition, I have reviewed certain single and sole source procurement
8 practices of nuclear facilities as part of Concentric's experience as financial advisor in
9 most of the recent sales of nuclear power plants.

10 **Q. How do FPL's policies and procedures compare with the other policies and**
11 **procedures you have reviewed?**

12 A. FPL's policies and procedures are very comparable to the practices of other companies
13 with which I have been involved. For instance, as with most companies with which I
14 have worked, FPL's procurement policy states a preference for competitive bidding
15 opportunities where possible. Further, these companies recognize the current state of
16 the nuclear industry requires a number of exemptions to this preference due to the very
17 limited number of suppliers involved and the substantial amount of engineering analysis
18 that is required to support the construction of a new nuclear plant or the modification of
19 an existing facility. As such, similar to FPL's policies, these practices require that the
20 individual seeking approval of the purchase order or contract must first submit a sole or
21 single source justification memorandum, whichever is applicable. These justifications
22 require the sponsor to provide a basis for entering into the contract. This basis may be
23 established through a comparison of the expected cost to the historical cost for similar

1 work, that only one vendor exists that is capable of performing the work, that a
2 particular vendor has previously proven its work to be cost effective and of an extremely
3 high quality or that the vendor is in a unique position to perform the work because it has
4 previously completed an analysis required to complete the work. In no instance, in my
5 experience, have these policies required in all cases the type of in-depth quantitative
6 analysis advocated by Dr. Jacobs.

7 **Q. Have other companies allowed sole or single source justifications on the basis of**
8 **meeting a proposed schedule.**

9 A. Similar to the policies and procedures of FPL, other companies have generally not
10 allowed a project's schedule to be the sole basis for justifying a single or sole sourced
11 contract. That being said, other companies' policies and procedures seem to recognize
12 that a sole or single source contract may be necessitated by a project's schedule when a
13 substantial amount of analysis is required and retaining an alternative vendor would add
14 substantially to a project's schedule due to the need for the alternative vendor to recreate
15 the analysis that has already been conducted by the selected vendor. In addition, other
16 companies have recognized that a rapidly evolving market such as the nuclear power
17 industry may require swift movement in order to secure queue positions for the
18 manufacture of certain large components with long production lead times.⁷

⁷ At least one company with which I have worked did not even have a sole or single source policy. Instead that company relied upon a few guidelines that contained a statement which suggested that a justification letter on the basis of valid business reason should be completed.

1 **Q. Are there examples of single or sole source procurement policies outside of the**
2 **utility industry that do not require the type of analysis advocated by Dr. Jacobs?**

3 A. Yes. There are a number of examples of sole or single source procurement policies from
4 outside the utility industry that do not require Dr. Jacobs' proposed level of analysis. For
5 example, both the European Bank for Reconstruction and Development and the North
6 American Development Bank (both entities that are obviously concerned with efficient
7 use of public funds) have established guidance for their borrowers that governs the
8 borrowers' procurement strategies. However, neither of these entities requires the level
9 of analysis advocated by Dr. Jacobs. Indeed, both entities' procedures provide for single
10 source procurement, but neither includes a procedure that includes a requirement to
11 conduct a quantitative analysis in order to justify the acquisition.⁸

12 Similarly, the Federal Aviation Administration's procurement policies permit the use of
13 sole source contracts by stating the following:

14 "The single-source method of procurement is appropriate when
15 technical requirements, business practices, or programmatic needs
16 have determined that a specific location, site, or unique need is
17 required to meet the FAA's mission, or when it has been determined
18 that only one source is reasonably available that can meet the
19 requirement."

20 In order to justify the use of the single source procurement the FAA indicates that the
21 user should, but is not necessarily required to conduct a market survey or appraisal using
22 at least three sources of analysis. The policy goes on to state that the user must

⁸ See European Bank for Reconstruction and Development Procurement Policies and Procedures, August 2000.
See North American Development Bank Procurement Policies and Procedures.

1 document the rational basis for the determination.⁹ These activities are similar to the
2 justifications completed by FPL, including a quantitative justification where it is
3 applicable.

4 **Q. Do you believe the Commission should require that the Company perform an**
5 **analysis similar to that being advocated by Dr. Jacobs before entering into a sole**
6 **or single sourced contract?**

7 A. No, I do not. Often such analysis is either not possible or simply not necessary. Such
8 instances may occur when the Company chooses to use a vendor that has performed
9 similar work for other companies. These vendors are thus able to avoid the setup costs
10 or initial engineering that is required to perform the service. While another vendor may
11 be capable of performing the same work, due to the amount of work that has previously
12 been completed for other clients, it is simply not likely that another vendor could
13 provide a competitive cost with comparable quality. In addition, given the unique
14 requirements of the nuclear industry, instances exist whereby changing vendors for one
15 component could cause the Company to change vendors for other associated
16 equipment. Because of the cost of changing multiple pieces of equipment or fuel, the
17 cost of using another vendor may simply not be cost competitive without unrealistic
18 discounts. In other instances, only the original equipment manufacturer is capable of
19 providing a replacement component or performing the engineering analysis necessary to
20 complete the projects.

21 The Commission Staff also seems to recognize that it is not always necessary to perform
22 the types of quantitative analysis advocated by Dr. Jacobs. In its review of the

⁹ FAA Acquisition Management Policy, Revised August, 2008.

1 Company's internal controls, the Commission Staff noted that FPL's nuclear policy does
2 not exclude the use of approved sole and single source providers when valid business
3 reasons support making such a purchase.¹⁰

4 **Q. Has the Commission Staff commented on the Company's sole or single source**
5 **procurement activities?**

6 A. Yes, in the Commission Staff's audit of the Company's internal controls the Commission
7 Staff stated the following when responding to the question "Has FPL's selection of the
8 current set of contractors and vendors been reasonable?"

9 "FPL appears to have followed its contractor selection procedures.

10 Given the unique challenges and circumstances of the nuclear

11 industry, FPL's use of sole source selections for the uprate project to

12 date is in keeping with *reasonable business practices*."¹¹

13 **Q. Has Dr. Jacobs provided any evidence that indicates the Company's cost or terms**
14 **related to the Company's sole or single source procurements are unreasonable?**

15 A. Dr. Jacobs has not provided any evidence whatsoever indicating that the costs or terms
16 of these agreements are unreasonable. In fact, Dr. Jacobs has made no assertion that the
17 costs or terms of these agreements are unreasonable. Similarly, Dr. Jacobs has made no
18 claim that the Company's policies and procedures are unreasonable. Dr. Jacobs is
19 instead solely focused on whether the Company has performed an in-depth quantitative
20 analysis that is not necessarily required by the Company's policies and procedures.

21

¹⁰ Review of Florida Power and Light's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects, pg. 18.

¹¹ *Ibid* at 20. Emphasis added.

1 **Section IV - Conclusions**

2 **Q. What are your conclusions regarding the recommendations of Dr. Jacobs in this**
3 **proceeding.**

4 A. While Dr. Jacobs raises several issues for the Commission's consideration, his
5 recommendations are without merit in this instance. Dr. Jacobs' recommendation for
6 segmenting certain costs related to the EPU Projects is simply unworkable from a policy
7 perspective and is not supported by either the language of the Nuclear Cost Recovery
8 Rule or the policies of other states that have implemented similar cost recovery
9 measures. Similarly, Dr. Jacobs' recommendation to disallow certain costs related to the
10 Company's use of sole and single sourced contracts is not supported by the Company's
11 policies and procedures and also contradicts the audit report produced by the
12 Commission Staff. Finally, the requirement to perform the level of quantitative analysis
13 advocated by Dr. Jacobs is simply not supported by general industry practices or the
14 current state of the nuclear industry. Thus the Commission should reject Dr. Jacobs'
15 recommendations in this proceeding.

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

17 A. Yes it does.

1 MS. PETTUS: The witness is available for
2 cross-examination.

3 CHAIRMAN CARTER: Thank you.

4 Mr. McGlothlin.

5 MS. PETTUS: I'm sorry.

6 CHAIRMAN CARTER: Oh, one second. Hang on.

7 BY MS. PETTUS:

8 Q Mr. Reed, have you prepared a summary of your
9 rebuttal testimony?

10 A Yes, I have.

11 CHAIRMAN CARTER: I was with you. We had that Jedi
12 Knight thing going on.

13 MS. PETTUS: I was trying to work with you. Sorry
14 for the interruption.

15 CHAIRMAN CARTER: No problem. Mr. Reed, you're
16 recognized.

17 THE WITNESS: Thank you. Good morning.

18 The purpose of my rebuttal testimony is to respond to
19 the direct testimony of Dr. William Jacobs. My testimony
20 reviews FPL's use of sole and single source procurements and
21 presents Concentric's view within the confines of our audit
22 that FPL has complied with its corporate policies and
23 procedures by documenting reasonable business reasons for such
24 procurements.

25 First, I want to point out that Dr. Jacobs has not

1 claimed that any of FPL's costs are unreasonable. He has also
2 not concluded that FPL picked the wrong contractors not even in
3 a single instance. Nevertheless, Dr. Jacobs proposes to
4 disallow certain of FPL's costs because of his concerns with
5 the level of documentation provided by FPL while preparing a
6 single or sole source justification memorandum.

7 Concentric reviewed each of the sole and single
8 source justifications with which Dr. Jacobs takes issue and
9 FPL's corporate policies and procedures during our original
10 audit of FPL's project management activities. He has not
11 raised any issue or any document that we did not review.

12 For reasons more thoroughly described in my rebuttal
13 testimony I believe FPL has complied with its policies and
14 procedures by identifying and documenting valid business
15 reasons for entering into each of these agreements.

16 In addition, FPL's corporate policies and practices
17 are fully consistent with industry standards. These practices
18 are at times driven by the relatively small number of qualified
19 suppliers which are available to perform nuclear-related work.
20 My testimony addresses industry comments that at the end of the
21 last cycle of nuclear construction there were 500 contractors
22 nationwide that were certified to work on nuclear facilities.
23 Today there are less than 100, one-fifth as many.

24 Concentric has also reviewed the cost benchmarking
25 analysis performed by the company to justify its single source

1 justifications with which Dr. Jacobs has taken issue. Based on
2 my very recent experience with other new nuclear projects, the
3 cost benchmarking performed by the company is consistent with
4 industry standards and reflects the market reality for nuclear
5 project procurement.

6 FPL's cost analysis uses the best available
7 information to which the company has access to ensure that the
8 anticipated cost of the procurement is reasonable. It is also
9 certainly worth noting that the Florida Public Service
10 Commission staff has agreed with the results of our audit and
11 has concluded that FPL's practices comply with its corporate
12 policies.

13 In conclusion, the question before this Commission is
14 whether the costs FPL is seeking to recover are reasonable. In
15 my opinion, reasonable costs flow from prudent decisions. You
16 heard yesterday your counsel's standard that prudence is
17 determined by what a reasonable person in the nuclear power
18 industry would do. I am firmly convinced that what FPL has
19 done fully satisfies that standard. Thank you.

20 MS. PETTUS: Now, Mr. Chairman, the witness is
21 available for cross-examination.

22 CHAIRMAN CARTER: I'm still with you though. Thank
23 you.

24 Mr. McGlothlin.

25 CROSS EXAMINATION

1 BY MR. McGLOTHLIN:

2 Q Mr. Reed, please turn to Page 16 of your prefiled
3 rebuttal testimony.

4 A Yes, I have that page.

5 Q Preliminary question, you're aware that FPL's policy
6 is that it prefers competitive bidding where, where that can be
7 applied. Are you aware of that?

8 A Could you -- I didn't hear the end of that. Where it
9 can be applied what?

10 Q Are you aware of the policy which states that FPL's
11 preferred means of procurement is competitive bidding?

12 A Yes.

13 Q Do you approve of that being the preferred method?

14 A Yes. Within the confines of their policy where a
15 competitive market exists that is the preferable approach.

16 Q Okay. At Page 16, beginning at Line 7 in response to
17 the above, question above, you discuss the company's decision
18 to use a vendor that has performed similar work for other
19 companies. And at Line 10 you say, "While another vendor may
20 be capable of performing the same work, due to the amount of
21 work that has previously been completed for other clients, it
22 is simply not likely that another vendor could provide a
23 competitive cost with comparable quality." And a few lines
24 below you say, "Because of the cost of changing multiple pieces
25 of equipment or fuel, the cost of using another vendor may

1 simply not be cost competitive without unrealistic discounts."

2 Do you see those statements?

3 A Yes.

4 Q Would you agree that the only way to determine
5 whether a cost-effective discount is available is to invite
6 bids to see what the alternatives are?

7 A No, I would not agree with that. I think it is very
8 common practice in the industry for people who are experienced
9 in this field to make that judgment based upon their knowledge
10 of the market and the order of magnitude. If you're talking
11 about a \$10 million contract and what is in rough numbers
12 \$100 million to change out the equipment necessary to allow
13 another bidder to compete, you're obviously able to make that
14 judgment without having to go through a competitive
15 solicitation.

16 Q Well, the judgment -- you say it's possible that such
17 a more cost-effective arrangement is not likely; correct?

18 A Yes.

19 Q That's different than the ability to say with
20 certainty that it's impossible. Do you see there's a
21 distinction?

22 A Yeah. I certainly see the distinction.

23 Q You refer at Page 15 to the Federal Aviation
24 Administration's procurement policies. I'm looking at Lines 12
25 through 19. Is that the same procurement mechanism that has

1 brought us the air traffic control system infrastructure that
2 we appreciate today?

3 A The FAA does have responsibility for air traffic
4 control.

5 Q Isn't it true that the FAA's procurement policy
6 documents specify that its objective is to encourage
7 competition in procurement?

8 A Yes, and that is the same as FPL.

9 Q You also refer to the North American Development Bank
10 at Lines 5 and 6. And you say, "Neither of these entities
11 requires the level of analysis advocated by Dr. Jacobs." The
12 North American Development Bank is a joint undertaking by the
13 governments of the United States and Mexico; is that correct?

14 A Yes, I believe so.

15 Q And it has as its purpose the lending of money to
16 develop infrastructure, environmentally sensitive
17 infrastructure near the border of the two countries?

18 A I don't think it has to be near the border, but, yes.

19 Q I'm going to ask for Dr. Jacobs to allow me to pass
20 out a document.

21 DR. JACOBS: Give one to Mr. Reed?

22 MR. MCGLOTHLIN: Yes. Yes. The court reporter and
23 the Commissioners.

24 Dr. Jacobs is experienced in this, but he has handed
25 out things less frequently than that.

1 Chairman Carter, may I have an exhibit number for
2 identification?

3 CHAIRMAN CARTER: That would be -- let me get my
4 other stack.

5 MS. BENNETT: It would be Number 46.

6 CHAIRMAN CARTER: I think we're at 44, 45.

7 MS. BENNETT: 46.

8 CHAIRMAN CARTER: I knew that. That will be
9 Exhibit 46.

10 (Exhibit 46 marked for identification.)

11 Give me one second before we -- let me change my
12 pages here. How about a good title for it, Mr. McGlothlin?

13 MR. MCGLOTHLIN: North American Development Bank
14 Procurement Policies and Procedures.

15 CHAIRMAN CARTER: Okay. Hang on one second before we
16 do that.

17 MR. MCGLOTHLIN: No creativity involved there, but I
18 think it serves the purpose.

19 CHAIRMAN CARTER: How about NADB Procurement Policies
20 and Procedures, will that work for you?

21 MR. MCGLOTHLIN: That's fine. Yes, sir.

22 CHAIRMAN CARTER: Commissioners, NADB Procurement
23 Policies and Procedures.

24 BY MR. MCGLOTHLIN:

25 Q Mr. Reed, we provided to you a document which has

1 been marked Exhibit 46 and captioned North American Development
2 Bank Procurement Policies and Procedures. Is this the
3 procurement policy to which you referred in your testimony?

4 A Yes, it appears to be.

5 Q Let me direct your attention to Page 5. Would you
6 read for us the first sentence that appears under Section 2.1
7 at the top of the page?

8 A The sentence reads, "The underlying principle of the
9 Bank's policies is that public sector contracts should normally
10 be awarded on the basis of open competitive bidding."

11 Q And continue to the second sentence, please.

12 A "Only in special cases should contracts be awarded on
13 the basis of selective bidding or direct purchase."

14 Q Now if you'll learn, if you'll turn to Page 6 of the
15 document, and I'll give you a moment to review at the bottom of
16 that page Section 3.2.

17 A I've reviewed that.

18 Q Would you agree that under this procurement policy
19 document as defined by the North American Development Bank that
20 the bank would consider public utilities to be among those
21 applicants who would be defined as public sector operations?

22 A Yes, generally.

23 Q And turning to Page 7 then, a public utility
24 applicant to the North American Development Bank would be
25 subject to the procurement process which includes opportunities

1 for bidding.

2 A Yes.

3 Q And if you'll now turn to Page 9, I'll give you a
4 moment to familiarize yourself, I'm going to refer to 3.8, Open
5 Bidding, and 3.9, Selective Bidding.

6 A I've reviewed those.

7 Q Okay. Would you agree that if a public utility were
8 to approach the North American Development Bank and inform the
9 bank that the very, the universe of potential vendors is very
10 small, there's only three or four potential candidates, the
11 North American Development Bank would nonetheless regard that
12 as a form of selective bidding and would instruct the applicant
13 for a loan to conduct an RFP even for those few contenders?

14 A That would depend on whether any condition in
15 Section 3.11 on direct purchase is applicable. If 3.11 is not
16 applicable, under the circumstances you described selective
17 bidding would be used.

18 MR. MCGLOTHLIN: Okay. Those are all the questions I
19 have.

20 CHAIRMAN CARTER: Thank you.

21 Mr. Twomey. Staff.

22 MR. YOUNG: No questions.

23 CHAIRMAN CARTER: Commissioners?

24 Okay. FPL, we're back to you.

25 MS. PETTUS: No redirect.

1 CHAIRMAN CARTER: No redirect. Okay. So this
2 witness may be excused. Have a nice trip.

3 MS. BENNETT: Mr. Chairman, we marked Exhibit 46. We
4 haven't moved it into the record.

5 CHAIRMAN CARTER: Oh, hang on a second. Hold the
6 phone. Do you have -- you would like to be -- you want this to
7 be entered; right?

8 MR. MCGLOTHLIN: Yes. I move Exhibit 46.

9 CHAIRMAN CARTER: Let's hear from the parties. Do
10 you have any objection to this being entered into the --

11 MR. ANDERSON: We have no objection to the specific
12 pages referenced if that works for Mr. McGlothlin because the
13 balance of the document hasn't been interrogated about and
14 really isn't relevant to the case.

15 CHAIRMAN CARTER: Do you want those certain pages or
16 you want the entire document? What do you --

17 MR. MCGLOTHLIN: I'd move the entire document. If
18 counsel wants to excerpt the pages, that's all right with me
19 too.

20 CHAIRMAN CARTER: We can give it whatever weight,
21 Mr. Anderson.

22 MR. ANDERSON: With that noted we have no objection.

23 CHAIRMAN CARTER: Thank you. Show it, Commissioners,
24 this will be, the NADB Procurement Policies and Procedures will
25 be entered into evidence. Thank you.

1 (Exhibit 46 admitted into the record.)

2 Staff, you're recognized for, before we close this
3 out you're recognized for --

4 MS. BENNETT: We, I think, have been, have finished
5 with the testimony. I think the record is complete except for
6 the Commission's decision. And I would note that staff is
7 prepared to, if you were to choose to do a bench decision
8 today, we are prepared, or we also are prepared to provide a
9 written recommendation.

10 CHAIRMAN CARTER: No, we're not prepared. Skip over
11 that part.

12 MS. BENNETT: Okay. We would ask -- the Prehearing
13 Order says that prehearing briefs are due on the 24th of
14 September, but that contemplated this hearing going into next
15 week. Since we are early in our completion, we would ask that
16 prehearing briefs be due on September 19th. The transcripts
17 will be available September 15th.

18 CHAIRMAN CARTER: Does that pose any hardships to any
19 of the parties?

20 MR. ANDERSON: We are here to serve and will meet
21 that schedule.

22 CHAIRMAN CARTER: Thank you. Also, staff, did we
23 communicate that yesterday as we closed out the Progress case
24 as well?

25 MS. BENNETT: I do not believe we did, but I will

1 communicate that with --

2 CHAIRMAN CARTER: Mr. Burnett.

3 MR. BURNETT: No problem, sir.

4 CHAIRMAN CARTER: Okay. Make it so.

5 Ms. Bennett?

6 MS. BENNETT: There are no other matters to bring to
7 the Commission's attention.

8 CHAIRMAN CARTER: Ms. Helton, you look like you're
9 ready to say something. Did I miss --

10 MS. HELTON: No, sir. I'm ready to adjourn, just as
11 I think everybody else is.

12 CHAIRMAN CARTER: I have the unfortunate predicament
13 of standing between y'all and lunch. So in an exercise of
14 wisdom, I think with all preliminary matters and all matters
15 within both parties' cases in chief, as well as staff, all
16 matters being taken into consideration as well as the
17 posthearing procedures, we are adjourned.

18 (Hearing adjourned at 12:14 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 15th day of September

2008.

Linda Boles
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