

BEFORE THE

## FLORIDA PUBLIC SERVICE COMMISSION

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 : DOCKET NO. 900796-EI  
 In re: Petition of FLORIDA :  
 POWER AND LIGHT COMPANY for : HEARING  
 Inclusion of the Scherer Unit :  
 No. 4 Purchase in Rate Base, : THIRD DAY  
 including Acquisition Adjustment :  
 -----  
AFTERNOON SESSION

VOLUME VI  
 Pages 840 through 963

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Florida Public Service Commission

Hearing Room 106  
 Fletcher Building  
 101 East Gaines Street  
 Tallahassee, Florida

December 13, 1990

Met pursuant to adjournment at 8:00 a.m.

**BEFORE:** COMMISSIONER MICHAEL McK. WILSON, Chairman  
 COMMISSIONER GERALD L. GUNTER  
 COMMISSIONER BETTY EASLEY  
 COMMISSIONER FRANK S. MESSERSMITH

**APPEARANCES:**

(As heretofore noted.)

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P R O C E E D I N G S

(Hearing reconvened at 12:30 p.m.)

CHAIRMAN WILSON: Next witness.

MR. HOWE: We call Mr. Carlton W. Bartels.

CHAIRMAN WILSON: Has he been sworn?

MR. HOWE: Yes, he has. He was sworn  
yesterday morning.

CARLTON W. BARTELS

was called as a witness on behalf of the Citizens of  
the State of Florida and, having been duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. HOWE:.

Q Mr. Bartels, are you the same Carlton W. --  
first of all, would you state your name and address for  
the record?

A Yes, I'm Carlton W. Bartels. I work for the  
Tellus Institute at 89 Broad Street, Boston,  
Massachusetts 02110.

Q Mr. Bartels, did you prepare and cause to be  
filed in this proceeding a document entitled, "The  
Direct Testimony of Carlton W. Bartels," consisting of  
27 pages and a six-page attachment of your  
qualifications?

A Yes, I did.

1           Q     Considering the time frame in which this  
2 testimony was filed, was that -- is this testimony  
3 correct to the best of your knowledge and belief, based  
4 on the information you had at that time?

5           A     Yes, it is.

6           Q     If you were to be asked the same questions  
7 today, based on the information available to you at  
8 that time, would your answers be the same?

9           A     Yes, it would, or they would.

10           MR. HOWE: Mr. Chairman, I would ask that Mr.  
11 Bartels' testimony be inserted into the record as  
12 though read.

13           CHAIRMAN WILSON: Without objection, it will  
14 be so inserted into the record.

15           MR. HOWE: Chairman Wilson, I'd also ask that  
16 Mr. Bartels be allowed to summarize his testimony and  
17 then be allowed to address what he has heard from the  
18 Company's witnesses and the exhibits that have been  
19 introduced in the case thus far on the company's direct  
20 case.

21           CHAIRMAN WILSON: Without objection, at this  
22 point, that would be fine.

23  
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## QUALIFICATIONS

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Carlton W. Bartels, and my business address is 89 Broad Street, Boston, Massachusetts 02110.

Q. WHAT IS YOUR EMPLOYMENT?

A. I am an Associate Scientist with the Energy Systems Research Group (ESRG) of the Tellus Institute.

Q. COULD YOU PLEASE DESCRIBE THE TELLUS INSTITUTE'S BUSINESS?

A. Tellus is a non-profit research corporation engaged in energy research, the analysis of utility planning and ratemaking issues, and research into solid waste management and other environmental issues. Tellus was formerly named Energy Systems Research Group, Inc. The new name was adopted January 1, 1990, to reflect the increasing scope of our research on resources and the environment. ESRG is now one of the four operating groups of Tellus. Staff of ESRG/Tellus have had extensive experience testifying before regulatory bodies in over forty states and advising public

1 agencies in the United States and overseas. Tellus witnesses have testified before the  
2 Florida Public Service Commission. Tellus has analyzed the plans, costs, rates and  
3 financial situation of natural gas, electric, water and telephone utilities.  
4

5 Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL  
6 EXPERIENCE.  
7

8 A. I received a Bachelor's of Engineering Degree (Electrical) from the State  
9 University of New York at Stony Brook in 1979. In October of that year, I joined the  
10 Power Planning Division of Green Mountain Power Corporation. At Green Mountain  
11 Power, I worked on a wide spectrum of power planning issues including the  
12 development of power supply budgets, monitoring power supply expenses, analyzing and  
13 arranging short- and long-term power purchases and sales, calculating avoided costs and  
14 developing power costs for rate cases.  
15

16 I left Green Mountain Power in 1981 to become the first Public Service  
17 Electric Planning Engineer for the Vermont Department of Public Service (hereafter,  
18 the Department). In 1983, I became the Director of Regulated Utility Planning for  
19 the Department.  
20

21 My work at the Department touched upon virtually every aspect of the electric  
22 utility business. The Planning Division, under my supervision, undertook a  
23 comprehensive planning exercise which described the theoretical underpinning and

1 goals of regulation as practiced in Vermont, presented a thorough situation analysis of  
2 the state electric utility industry's supply and demand balance and business  
3 environment, and culminated in the development of an action plan for state agencies  
4 and utilities.

5

6 In addition, I participated in the negotiation of firm power purchases, the  
7 design and implementation of the system by which Vermont utilities comply with  
8 PURPA regarding the purchase of output from small power producers and  
9 cogenerators, and participated in the continued evolution of the retail tariff structures,  
10 particularly the transition to marginal cost based seasonal rates.

11

12 During my tenure at the Department I earned a Master's of Business  
13 Administration (awarded 1985) from the University of Vermont. I left the Department  
14 in 1986.

15

16 In 1987, I joined Energy Systems Research Group (ESRG). At ESRG, I have  
17 worked on a wide variety of projects involving the assessment of energy and regulatory  
18 policy; and the evaluation of electric energy systems including production costs,  
19 operations, cost allocation, rate-making, mergers and acquisitions, and resource  
20 planning.

21

22 My resume is attached as Attachment A.

23



## PURPOSE AND SUMMARY

1

2

3 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

4

5 A. I have been retained by the Office of the Public Counsel (OPC), on behalf of  
6 the citizens of Florida, to review the proposed purchase of Scherer #4 by Florida  
7 Power and Light Company (FPL) from Georgia Power Company (GPC) pursuant to  
8 the terms of a Letter of Intent dated July 30, 1990 (Attachment A to FPL's petition).  
9 In particular, I am testifying on the implications of this purchase for FPL's ratepayers.

10

11 Q. WHAT ARE THE CONCLUSIONS YOU HAVE DRAWN FROM YOUR  
12 REVIEW?

13

14 A. It has been impossible to draw definitive conclusions regarding the prudence of  
15 the proposed purchase given the limited time available to investigate this matter.  
16 Because the proposed purchase has undergone insufficient regulatory scrutiny, the OPC  
17 is compelled to object to any guaranteed rate treatment of the resultant costs of the  
18 purchase.

19

20 Q. THE OPC PARTICIPATED IN THE REVIEW OF FPL'S GENERATION  
21 PLANS IN DOCKET NOS. 890973-EI AND 890974-EI. DIDN'T THAT REVIEW  
22 SUFFICIENTLY PREPARE THE OPC FOR TAKING A POSITION REGARDING  
23 THIS PURCHASE?

1

2 A. No it did not. Those dockets focused upon FPL's specific plans regarding the  
3 Lauderdale Repowering Project (Units 4 & 5) and the Martin Combined Cycle Project  
4 (Units 3 & 4). The Scherer #4 purchase was not an option analyzed in those dockets.

5

6 The elements of FPL's plan beyond Lauderdale 4 & 5 and Martin 3 & 4 were  
7 treated in a generic fashion in that proceeding. The IGCC units were not examined  
8 with sufficient scrutiny that the OPC could take a firm position on their prudence  
9 without further investigation. Specifically, FPL assumed that IGCC units would "fill in"  
10 the resource plan to meet capacity requirements after the Lauderdale and Martin units  
11 began operation.

12

13 It is these hypothetical IGCC units that FPL represents would be avoided by  
14 the Scherer #4 purchase and it is the economics of these units that the Scherer #4  
15 purchase is justified against. It is interesting to note that the Electric Power Research  
16 Institute (EPRI) classifies the IGCC Technology Development Rating as  
17 "Demonstration", and its Design and Cost Estimate Rating as "Preliminary" (EPRI  
18 Technical Assessment Guide, September 1989). This underscores the uncertainty  
19 embedded in this comparison. Therefore, the justification of this purchase based upon  
20 its displacement of these IGCC units should only be given limited consideration.

21

22 Furthermore, the OPC's review of FPL's generation expansion plans in those  
23 dockets raised considerable doubts regarding the benefits of developing (or purchasing)

1 new capacity versus expanding FPL's demand-side management (DSM) effort, including  
2 a fuel switching program. The OPC continues to be concerned by this deficiency and  
3 believes it deserves reexamination in this docket in light of the potentially enhanced  
4 value of such programs arising from the recently passed Clean Air Act.

5

6 Q. DO YOU BELIEVE THAT THERE IS A SPECIFIC NEED FOR AN  
7 EXPEDITED HEARING IN THIS MATTER WHICH OUTWEIGHS THE  
8 TRADITIONALLY RECOGNIZED NEED TO FULLY INVESTIGATE A LARGE  
9 POWER PURCHASE SUCH AS THAT PROPOSED?

10

11 A. No, I do not. The Letter of Intent (hereafter, the Letter) between GPC and  
12 FPL does have a nominal termination date of December 31, 1990. However, the  
13 contents and terms of the Letter make definitive provisions for delays in the receipt of  
14 the requisite regulatory approvals. Paragraph 15 provides for delays in the receipt of  
15 all required approvals as late as June 30, 1990, and federal (i.e., FERC and SEC)  
16 approvals beyond that date.

17

18 Specifically, these provisions provide for a temporary sale of 300 MW of UPS  
19 power from GPC to FPL. This provision has two important implications. First, that  
20 the parties do not intend the December 31, 1990 date to be a firm "drop dead" date.  
21 Second, that FPL will receive power during the period this case is being litigated.

22

1 Q. WHILE THE LETTER OF INTENT MAY IMPLY THAT THE PARTIES  
2 ARE LIKELY TO EXTEND THE DECEMBER 31, 1990 TERMINATION DATE  
3 OF THE AGREEMENT, IS IT NOT TRUE THAT GPC WOULD NO LONGER  
4 BE LEGALLY BOUND TO EXTEND THAT DATE AND THEREFORE FPL  
5 COULD POTENTIALLY LOSE THE RIGHTS TO PURCHASE SCHERER #4?

6  
7 A. The legal obligations of either party under the Letter is uncertain. The Letter  
8 includes several escape provisions which would appear to allow either party to vacate  
9 the agreement. In this respect, consummation of the purchase appears to be  
10 contingent on it remaining in both parties' best interests rather than on any particular  
11 legal obligations.

12  
13 The question of the legal implications of the Letter raises serious questions  
14 regarding the extent to which it should be relied upon as evidence in the evaluation of  
15 this purchase. These concerns are addressed in more detail later in this testimony.

16  
17 Q. ASSUMING THERE IS A DELAY IN THIS COMMISSION'S HEARINGS,  
18 WHAT IS THE ECONOMIC IMPLICATION OF DELAYING THE PURCHASE?

19  
20 A. The answer to this question depends upon whether or not the delay in the  
21 issuance of this Commission's order is, in fact, the cause for a delay in the  
22 consummation of the purchase. It should be remembered that the purchase can not be  
23 consummated without the approvals of the Federal Energy Regulatory Commission

1 (FERC) and the Securities Exchange Commission (SEC), as well as the state  
2 commission of Florida, and perhaps, of Georgia. If the Florida Commission expedites  
3 its hearing process but any of the other commissions do not, then the haste will have  
4 been to no avail -- consummation of the purchase, if it occurs at all, will wait until the  
5 last approval is issued.

6  
7 If Florida expedited its review but at least one other agency did not, the only  
8 potential economic implication of rushing the hearings is a negative one. Basically, the  
9 economic implications would result from deficiencies in the record of an expedited  
10 hearing, and thereby reflected in the order, which might be avoided by a more  
11 thorough exploration of the purchase.

12  
13 On the other hand, if a more thorough hearing before this Commission were to  
14 result in a delay, the economic impact would equal the difference in power costs for  
15 those few months the decision was pending. If an expedited decision would have  
16 supported FPL's purchase, the difference in power costs would be created by the  
17 purchase of 300 MW under the temporary UPS agreement versus the 150 MW  
18 purchase of Scherer #4. If the decision would not have supported FPL's purchase, the  
19 difference in power costs would depend on FPL's alternative power purchasing strategy.  
20 FPL has not supplied any estimates of whether such a delay would increase or decrease  
21 short-term costs. The cost implications are difficult to predict because the size of the  
22 UPS and unit purchase differ, as well as their pricing, (300 MW of UPS vs. 150 MW  
23 for Phase 1 of the purchase), and it is unknown what FPL will do if its petition is

1 rejected.

2

3 Q. WHAT ARE YOUR PARTICULAR CONCERNS REGARDING THE  
4 PROPOSED PURCHASE WHICH YOU THINK MUST BE ADDRESSED  
5 BEFORE A WELL-INFORMED DECISION CAN BE MADE?

6

7 A. There are three general concerns which must be addressed. They are:

8

9 • Is Scherer #4 an appropriate component to FPL's least cost plan?

10

11 • Was the purchase of Scherer #4 a direct result of FPL's capacity  
12 solicitation? And if so, was the selection of Scherer #4 appropriate?

13

14 • Should ratepayers pay for the acquisition premium?

15

16 Of course the answers to these questions are somewhat inter-related, and each  
17 entails myriad other questions.

18

19 SCHERER #4 AS A COMPONENT OF FPL'S LEAST COST PLAN

20

21 Q. PLEASE DESCRIBE YOUR CONCERNS REGARDING THE PROPRIETY  
22 OF SCHERER #4 AS AN ELEMENT OF FPL'S LEAST COST PLAN.

23

1 A. The my concerns can be divided into two groups. First, there are the general  
2 concerns regarding the treatment of DSM alternatives in FPL's planning process and  
3 how that treatment creates unnecessary costs to ratepayers, use of energy resources and  
4 environmental damage. These concerns were presented before the Commission in  
5 Docket Nos. 890973-EI and 890974-EI.

6  
7 Second, there are concerns regarding the specific operating, economic and  
8 environmental implications of Scherer #4. It is necessary to reemphasize that the OPC  
9 has not had the opportunity to determine, if in fact, the Scherer #4 purchase is or is  
10 not an appropriate addition to FPL's power mix. Therefore, it would be inappropriate  
11 for the OPC to take a specific position at this time. However, the OPC does believe it  
12 is vital to establish this fact prior to approval.

13  
14 Q. WHAT ARE YOUR CONCERNS REGARDING THE OPERATION OF  
15 SCHERER #4?

16  
17 A. The operating, economic and environmental implications of Scherer #4 are  
18 intertwined. In this instance, we are referring to any economic penalties which might  
19 arise due to physical constraints imposed on the system as a result of the purchase of  
20 Scherer #4. There are two types of potential constraints which are of particular  
21 concern: 1) lost opportunities to make other purchases from the Southern Companies,  
22 qualifying facilities, or other Florida utilities because of transmission limitations, and 2)  
23 limitations on the future operations at Scherer #4 resulting from environmental

1 constraints.

2

3 Q. PLEASE EXPLAIN THE TYPES OF LOST OPPORTUNITIES TO MAKE  
4 OTHER PURCHASES TO WHICH YOU REFER.

5

6 A. This issue embraces the displacement of other potential purchases. Potential  
7 sellers who may effectively be blocked from selling to FPL due to transmission  
8 limitations include: qualifying facilities in northern Florida, other Florida utilities, and  
9 other types of sales from the Southern Companies. We are concerned about the  
10 potential lost opportunities associated with firm power, economy and other transactions  
11 which might be displaced by this purchase due to transmission limitations.

12

13 The Letter of Intent addresses both companies working toward upgrading the  
14 Florida-Southern Companies interface. This ostensibly would allow for economic and  
15 all firm power transactions. However, what would be the economic ramifications if this  
16 up-grade did not take place? Furthermore, even with this up-grade, are there  
17 sufficient opportunities to fill the available transmission with other purchases?

18

19

20 Q. PLEASE DESCRIBE THE POTENTIAL OPERATING LIMITATIONS TO  
21 WHICH YOU REFER.

22



1 A. The second issue embraces potential limitations on the future operations of  
2 Scherer #4. No litigation involving Scherer #4 has taken place yet in Florida,  
3 therefore it is important that any assumptions made regarding the plant be limited.  
4 One area where caution may be merited is in the assumed unconstrained operation of  
5 the plant. There may be issues, of which we are as yet unaware, which could  
6 potentially limit the continued operation of this plant. Remember, upon the  
7 completion of this sale, the host state of Georgia will be unaffected by any imposed  
8 limitations or conditions on the operation of the plant. This could add additional  
9 impetus and strength to any local parties advocating limitations on the unit's operation.

10

11 Furthermore, FPL has stated that the sale comes with emission allowances. It  
12 is implied that the emission allowances will be sufficient for Scherer #4 to be operated  
13 without constraint or penalty. Constraints may entail limits on operation or on the  
14 quality of fuel which must be utilized by the unit to keep annual emissions within the  
15 associated allowances. Penalties would be the cost associated with purchasing  
16 additional allowances as needed.

17

18 It is unclear what level of emission allowances will be assigned to Scherer #4  
19 because the unit only came on-line at the very end of the baseline period (1980-1989)  
20 specified in the Clean Air Act for determining emission allowances. The exact amount  
21 of emission allowances and the implications, if any, on the operation or costs of  
22 Scherer #4 should be determined before the purchase can be evaluated.

23

1 Q. WOULDNT THE EMISSION ALLOWANCE PROVISIONS OF THE  
2 CLEAN AIR ACT ALSO AFFECT THE COST OF THE OTHER OPTIONS?

3

4 A. This is undoubtedly true. A proper analysis may reveal that the purchase of  
5 Scherer #4 with sufficient allowances might have advantages over a new generating  
6 unit that would need to acquire allowances.

7

8 The Clean Air Act also has important implications for the economics of DSM  
9 programs. This is due both to DSM options' lack of emissions and to special emission  
10 credits which are awarded to utilities that pursue conservation.

11

12 In conclusion, it is obvious that the recently passed Clean Air Act has  
13 important ramifications for the economics of the Scherer #4 purchase.

14

15 Q. DO YOU HAVE ADDITIONAL CONCERNS REGARDING THE  
16 ECONOMIC IMPLICATIONS OF SCHERER #4?

17

18 A. Yes. FPL's testimony does not support the claim that Scherer #4 is the lowest  
19 cost option available to FPL. Putting the specific criticisms aside for the moment, the  
20 information displayed in Mr. Waters' exhibits can not be relied upon without an  
21 opportunity to examine the supporting studies. His presentation of these results does  
22 not even address the most obvious questions regarding these studies. The options  
23 represent generation additions of different sizes which come on-line during different

1 time frames. Without examination of the underlying studies, acceptance of Mr.  
2 Waters' findings requires a grand act of faith.

3

4 Q. DO YOU ALSO HAVE CONCERNS REGARDING THE EVIDENCE  
5 THAT IS PRESENTED FOR REVIEW?

6

7 A. Yes, I do. Even if one had reason to believe that Mr. Waters' analysis was  
8 preformed correctly, the evidence presented would still be inadequate to accept the  
9 proposition that the Scherer #4 purchase is FPL's least cost option.

10

11 Mr. Waters testifies to the economic advantage of the Scherer #4 purchase  
12 compared to an Integrated Gasification Combined Cycle (IGCC) facility, a Scherer  
13 Unit Power Sale, and a purchase under FPL's standard offer (which is based upon a  
14 500 MW coal unit). These comparisons represent far too narrow a selection of options  
15 to support the economic superiority of the Scherer #4 purchase.

16

17 An immediate criticism is that the comparison is made solely against supply-side  
18 options. This eliminates an entire category of options which may well prove to be not  
19 only the most cost-effective for the utility but the least costly to Florida as a whole,  
20 especially if environmental and economic development considerations are included.  
21 Furthermore, as mentioned above, the economics of these options may have been  
22 greatly enhanced by the recent passage of the Clean Air Act.

23

1           Second, the selection presumes the necessity of base load generation, for these  
2 are the only units examined. There is no evidence presented to support this  
3 contention. Peaking units (e.g., combustion turbines) may be the best type of addition.

4

5           Third, Mr. Waters has not included some of the most cost effective supply-side  
6 options, such as standard combined-cycle generation.

7

8           Fourth, the record is insufficient to support the contention that the Scherer #4  
9 purchase was the best proposal received in response to FPL's solicitation. In fact, it is  
10 not clear from FPL's prefiled testimony whether GPC offered a sale of Scherer #4 or  
11 simply a UPS sale form Scherer #4 in response to FPL's solicitation. Did the sale of  
12 the unit evolve from that solicitation, or did it result from parallel negotiations? If it  
13 did not result directly from the solicitation, what are the implications for the solicitation  
14 process? I will reserve discussion regarding the selection of Scherer #4 from FPL's  
15 RFP for later in my testimony because it entails a larger set of issues than the present  
16 one.

17

18           Fifth, there are several important issues regarding the future supply and cost of  
19 fuel for Scherer #4 which are not sufficiently addressed in FPL's evidence yet need to  
20 be. Is FPL's acceptance of a 25% ownership in the on-going station fuel contract  
21 proper given the expected operating level for the four units? What are the terms and  
22 costs under this contract? Does FPL expect to continue purchasing fuel for Scherer  
23 #4 in conjunction with the other units at the station, or to negotiate its own fuel

1 contract? If FPL decides to purchase fuel under a separate arrangement, are there any  
2 potential fuel delivery difficulties?

3

4 Q. IS IT NOT SUFFICIENT THAT MR. WATERS COMPARED THE  
5 PURCHASE TO THE NEXT UNIT SPECIFIED IN FPL'S GENERATION  
6 EXPANSION PLANS, I.E., AN INTEGRATED GASIFICATION COMBINED  
7 CYCLE?

8

9 A. Such a comparison may have been adequate if the selection of the IGCC had  
10 been thoroughly investigated, approved as the best next addition, and conditions had  
11 not changed in the interim. However, the last generation planning case did not  
12 explicitly examine the appropriateness of an IGCC as the next unit, much less approve  
13 one for construction.

14

15 Instead, the IGCC simply served as a future option required to balance the  
16 demand/supply mix in the studies. It is a necessity of these types of studies to utilize  
17 such generic units as "filler" in order to examine the specific effects of the units under  
18 investigation, which in that case were the Lauderdale repowering and the Martin  
19 combined-cycle units. These generic IGCC additions are better categorized as "best  
20 guesses" rather than thoroughly examined selections. It was never proposed nor  
21 assumed in that case that the Commission was approving the construction of an IGCC  
22 plant.

23

1 Q. ARE THERE ANY DIMENSIONS OF THE PROPOSED PURCHASE IN  
2 ADDITION TO THE ESTIMATED REVENUE REQUIREMENT IMPACT ON  
3 FPL WHICH YOU BELIEVE NEED EXPLORATION BEFORE AN INFORMED  
4 DECISION CAN BE MADE?

5

6 A. Yes, I believe it is essential that the risk profile of the purchase be understood  
7 and compared to that of the other options. The risk profile defines which parties are  
8 at risk for any costs associated with problems with the unit's performance or  
9 unexpected changes in its cost of operation. This is of special interest in the present  
10 case because the Scherer #4 purchase has several unique attributes compared to the  
11 other options.

12

13 Q. WHAT ARE THE PARTICULAR RISK RELATED ATTRIBUTES TO  
14 WHICH YOU ARE REFERRING?

15

16 A. The proposal is for a purchase of a plant which would become an asset on  
17 FPL's books and would be included in rate base. It differs from the other potential  
18 FPL owned options (i.e., the hypothetical IGCC) in that FPL did not undertake or  
19 directly supervise its construction, commissioning, or operation and maintenance.  
20 Experience shows that utility constructed plants, even later units at the same station,  
21 can be subject to severe operating problems. Hence, there is no inherent performance  
22 guarantee on Scherer #4 resulting from GPC's experience at with the other Scherer  
23 units.

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9 Q.

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12 A.

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The differences in risk profile are even more distinct between the proposed purchase and any contract sale. Contract power sales, whether they be with another utility or a qualifying facility, inevitably have performance standards which the seller must satisfy. Failure to perform up to contract requirements almost always results in a corresponding decrease in the utility's payment for power. Thus, the seller bears a significant portion of the performance risks.

HASN'T FPL PROPERLY ACCOUNTED FOR THESE DIFFERENCES IN ITS PLANNING?

FPL has noted that non-price issues are an integral part of its evaluation of the responses to its capacity solicitation. FPL's evaluation criteria, provided on Denis Exhibit No. \_\_\_ Document No. 2, includes at least nine criteria that address the division of risks between the utility and the seller (i.e., 4. price risks, 5. security of fuel supply, 11. completion security, 12. security of payment in excess of value, 13. financial viability of facility and respondent, 14. plant maintainability and availability, 15. respondent's experience, 16. level of development, and 18 contract terms and conditions).

While we concur with FPL regarding the importance of these criteria, we have difficulty accepting one assumption that appears to be implicit in FPL's filing; that is, that a project owned by FPL is superior regarding these criteria than one that is not.

1 Ownership would give FPL more control over the unit than a contract purchase would;  
2 however, ownership also brings additional risk, along with control. In the case of utility  
3 owned units, only shareholders and ratepayers are available to absorb any additional  
4 costs, direct or indirect, resulting from the unit's performance. It can not simply be  
5 assumed, as FPL appears to have, that the additional control of the unit resulting from  
6 ownership more than off-sets the additional risk. This issue merits further  
7 investigation.

8  
9 Q. HAS FPL PROVIDED SUFFICIENT EVIDENCE TO EVALUATE THE  
10 RISKS ASSOCIATED WITH THIS PURCHASE?

11  
12 A. No, in fact the record is lacking the most fundamental piece of evidence  
13 regarding the riskiness of this proposed purchase -- the purchase contract. The  
14 contract - and only the contract - will define the legal division of risk between FPL and  
15 GPC. In my opinion, no definitive conclusions regarding the attractiveness of this sale  
16 can be reached until after the contract has been reviewed.

17  
18 Q. FPL HAS PROVIDED THE LETTER OF INTENT OUTLINING THE  
19 TERMS THAT ARE INTENDED TO BE IN THE PURCHASE AGREEMENT, IS  
20 THIS NOT SUFFICIENT EVIDENCE?

21  
22 A. No, it is not. There are two major problems with relying upon the terms of the  
23 Letter of Intent as evidence. First, what is the legal the relevance of the Letter? The



1 terms discussed in the Letter will be superseded by the final contract, so when it comes  
2 time for any enforcement, the terms in the Letter are moot.

3

4 Second, is the generality of the terms described in the Letter. They are much  
5 too vague, or simply absent, with regard to many of the aspects of risk we are  
6 concerned about. The Letter does not even speak to the responsibilities of GPC  
7 regarding the condition and continued performance of the plant.

8

9

#### EVALUATION AND SELECTION OF RFP RESPONSES

10

11 Q. MOVING ON TO YOUR SECOND GENERAL CONCERN, WHAT IS THE  
12 NATURE OF YOUR CONCERNS REGARDING THE SELECTION OF  
13 SCHERER #4 FROM THE RESPONSES TO FPL'S RFP?

14

15 A. The propriety of the selection of Scherer #4 as the winning bid out of the  
16 thirty-four received has implications for both the propriety of Scherer #4 as a resource  
17 option in FPL's least cost plan and for the treatment of the acquisition premium.

18

19 Regarding the first point, FPL claims that its screening process indicated that  
20 Scherer #4 was the best overall proposal received in response to its solicitation, though  
21 it appears that the proposal was for a UPS rather than a direct sale of the unit. It is  
22 easy to believe that an operating plant would receive a relatively strong score,  
23 especially when compared to proposed facilities which have yet to be sited. However,

1       regardless of how intuitively appealing this selection might be, it must be thoroughly  
2       justified.

3

4               As explained later, the ability to collect any of the acquisition premium should  
5       be contingent upon this purchase being an arms-length transaction. This amplifies the  
6       requirement that the selection process be unbiased and fair.

7

8               Furthermore, the fact that another utility won the solicitation should compel  
9       FPL to make a more thorough disclosure of the basis of that selection than might  
10      otherwise be necessary. Failure to demonstrate the appropriateness of this selection  
11      might damage the credibility of future solicitations. This would result in decreased  
12      interest and response by potential bidders, ultimately resulting in higher costs to Florida  
13      ratepayers. This issues is particularly important because it appears that GPC's response  
14      to the solicitation was a UPS sale from Scherer #4, not a unit sale.

15

16              Nonetheless, FPL has not even attempted to present any hard evidence in  
17      support of Scherer's selection. Mr. Denis's testimony on the selection process is  
18      entirely superficial and inadequate. Mr. Denis' testimony could be summarized in four  
19      sentences: FPL had a solicitation. There were many responses. FPL reviewed them  
20      according to its criteria. Scherer #4 UPS was judged the best proposal.

21

1           What Mr. Denis' testimony did not discuss is: How the criteria were applied,  
2           except to say that it is proprietary. How Scherer #4 UPS best met any of the 18  
3           criteria listed on his Exhibit \_\_\_\_ (Document No. 2).

4  
5           All that Mr. Denis did present in support of Scherer #4's selection was a bar  
6           graph which he claims represents the final scores of the best options.

7  
8           Once again the only way this element of FPL's testimony can be accepted is as  
9           an act of faith.

10  
11   Q.       YOU HAVE INDICATED THAT THE RECORD IS UNCLEAR AS TO  
12           WHETHER OR NOT THERE IS A DIRECT CONNECTION BETWEEN THE  
13           UNIT SALE OF SCHERER #4 AND FPL'S SOLICITATION. WHY IS THIS  
14           RELATIONSHIP IMPORTANT TO ESTABLISH?

15  
16   A.       The relationship of the purchase to the solicitation is important for the reasons  
17           just described. These concerns would be greatly exacerbated if it were discovered that  
18           the Scherer #4 purchase did not directly evolve from GPC's proposal to FPL in that  
19           solicitation, but resulted from separate negotiations.

20  
21           The validity of the solicitation itself can be called into question if it appears  
22           that FPL had been negotiating a unit purchase with GPC prior to the solicitation, yet  
23           did not establish a purchase price until after the solicitation responses were reviewed.

1 This might indicate a "sweetheart deal" between the two utilities at the expense of the  
2 FPL's ratepayers (if the acquisition price increased as a result) and the other bidders  
3 (the cost of preparing their proposals).

4

5 Again it is important to emphasize, that the OPC is not arguing that the  
6 purchase nor the method it was arrived at were inappropriate. The OPC is simply  
7 arguing that there are some very important issues which are not addressed by FPL's  
8 submissions yet need to be established in this docket.

9

#### 10 ACQUISITION PREMIUM

11

12 Q. PLEASE EXPLAIN WHAT THE ACQUISITION PREMIUM REPRESENTS  
13 IN THIS CASE?

14

15 A. The Acquisition Premium is the difference between the price paid by FPL for  
16 the Scherer #4 asset and the original cost of that asset to GPC less accumulated  
17 depreciation (i.e., net book value).

18

19 The total price paid by FPL is reputedly equal to or less than the fair market  
20 value of the asset. If it were not FPL, should not be allowed to purchase it. The  
21 Commission should only consider an Acquisition Premium to the extent it represents  
22 the difference between the asset's fair market value and its net book value.

23

1           For this purchase, FPL claims an Acquisition Premium of approximately \$111  
2 million.

3

4 Q.           IS THIS THE SAME TYPE OF ACQUISITION PREMIUM WHICH  
5 OCCURS WITH BUSINESS MERGERS AND ACQUISITIONS?

6

7 A.           It is a part of, but not all of, the Acquisition Premium involved in utility  
8 mergers and acquisitions. The difference is very important to regulation.

9

10           The Acquisition Premium associated with the merger or acquisition of an entire  
11 business embraces the differences between market and book values of all the assets  
12 involved; however, it also involves an additional asset known as Goodwill.

13

14           Goodwill is the difference in cost between what is paid by the acquiring  
15 company and the fair market value of all the assets of the acquired concern. In other  
16 words, Goodwill is the value the purchaser places on the business, as a business, above  
17 and beyond the value of the tangible assets involved.

18

19           Goodwill is an intangible asset. Not surprisingly, Goodwill is the subject of  
20 considerable discussion and debate when regulated businesses are involved.

21

22 Q.           DOES THE TREATMENT OF THE ACQUISITION PREMIUM IN THIS  
23 CASE INVOLVE ANY CONSIDERATION OF THE REGULATORY

1 TREATMENT TO BE AFFORDED TO GOODWILL?

2

3 A. No, it need not. The purchase price of Scherer #4 does not include any  
4 Goodwill. Consequently, the issues involved with the treatment of the Acquisition  
5 Premium are narrower. Is the purchase price at or below fair market value? Does it  
6 matter if the sale is between two regulated utilities?

7

8 Accordingly, rate base treatment of, any or all of, the Acquisition Premium  
9 involved in this case should not have a precedent setting affect on the regulatory  
10 treatment of Goodwill in future proceedings.

11

12 Q. PLEASE EXPLAIN THE IMPLICATIONS THE SELECTION PROCESS  
13 HOLD FOR THE RATE TREATMENT OF THE ACQUISITION PREMIUM?

14

15 A. The implications of the resource selection process draw us to my third general  
16 area of concern -- how should the acquisition premium be treated?

17

18 Traditional regulatory ratebase theory argues against allowing an acquisition  
19 premium on a utility asset to be allowed into ratebase.

20

21 Q. WHY MIGHT THE PROPOSED PURCHASE BE EXEMPTED FROM THE  
22 TRADITIONAL RATE BASE TREATMENT AFFORDED TO INTER-UTILITY  
23 TRANSACTIONS?

1

2 A. In this case the validity of the acquisition premium is tied to the validity of the  
3 purchase price representing the fair market value. This in turn, is directly tied to  
4 validity of FPL's solicitation and award process. Ratebase treatment might only be  
5 justified in this instance because this resource was acquired as a result of a competitive  
6 bidding process. This process suspends traditional cost-of-service treatment in favor of  
7 quasi-marketplace competition.

8

9 Accordingly, if there is any reason to doubt the validity of that process as an  
10 unbiased competition (including un-intentional biases) then no rate base treatment  
11 should be allowed for the acquisition premium. These concerns would embrace the  
12 relationship between the purchase ultimately agreed upon and GPC's proposal to the  
13 solicitation, which was discussed earlier in this testimony.

14

15

#### CONCLUSIONS

16

17 Q. WHAT IS YOUR CONCLUSION REGARDING FPL'S REQUEST  
18 PRESENTED BY MR. WOODY IN HIS TESTIMONY (PAGE 9) THAT "THE  
19 COMMISSION ... FIND THAT THE PURCHASE OF SCHERER NO. 4 IS  
20 NECESSARY, REASONABLE AND PRUDENT, AND THAT FPL CAN INCLUDE  
21 THE ENTIRE PURCHASE PRICE IN ITS RATE BASE."?

22

1 A. At this point, FPL's claims can be treated only as assertions. There has been  
2 no provision of evidence that vaguely comes close to that demanded by a reasonable  
3 reviewer. Accordingly, I see no way that this Commission can reach the conclusions  
4 requested by FPL. I believe that failure to allow sufficient investigation may prove  
5 damaging to FPL's ratepayers both directly from this purchase and from the impact it  
6 might have on future solicitations.

7

8 Furthermore, I see no reason why this purchase requires an expedited hearing.  
9 FPL has provided for replacement power in the event that this decision is delayed, and  
10 therefore, FPL customers are not exposed to a short-fall of generating capacity.

11

12 Q. WHAT IS YOUR RECOMMENDATION?

13

14 A. I strongly recommend that the Commission extend the investigation of this  
15 purchase to allow sufficient exploration of the issues. If this is not allowed and the  
16 purchase is approved, I believe that the Commission should not allow rate base  
17 treatment of the acquisition premium.

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20

21 A. Yes, it does.



**ATTACHMENT A****CARLTON WILLIAM BARTELS**

Associate Scientist  
Tellus Institute  
Energy Systems Research Group

**Education**

Masters of Business Administration: University of Vermont, 1985.  
Bachelor of Engineering: State University of New York at Stony Brook, 1979.

**Experience**

1987 - Present: Energy Systems Research Group, Inc. Responsibilities include assessment of energy policy impacts; evaluation of electric energy systems including production costs, cost allocation, power planning.

1981 - 1986: Vermont Department of Public Service, Montpelier, Vermont, 1983-1986: Director of Regulated Utility Planning - supervised planning staff; responsible for strategic planning for electric utility industry statewide; member of state negotiating team for power supply contracts; state utility economics expert. 1981-1983: Public Service Electrical Planning Engineer.

1979 - 1981: Green Mountain Power Corporation. March 1981 - November 1981: Energy Planning Engineer. October 1979 - March 1981: Electrical Engineer.

**Consulting Services Not Resulting in ESRG Report or Testimony**

<b>Client</b>	<b>Dates</b>	<b>Services Provided</b>
Town of Weybridge, Vermont	Feb. 1990	Valuation of Hydro Electric Station.

Pennsylvania Office of Consumer Advocate	Jan. 1990	Consulting on Incentive Regulation.
Vermont Department of Public Service	Aug. 1989	Aided in Development of Strategy to Mitigate Adverse Impact of FERC Decision Denying Vermont DPS Rights to Preference Power.
Nevada Office of Consumer Advocate	May 1989 - Oct. 1989	Analysis of Purchased Power and Select Resale Issues in Regard to Annual Power Adjustment Clause.
Utah Committee of Consumer Services	Feb. 1989 - June 1989	Attended Multi-Jurisdictional Conferences on Cost Allocation Issues Resulting from the Merger of PacifiCorp and Utah Power and Light.
Minnesota Department of Public Service	Mar. 1989 - Oct. 1989	Organizational Audit Focused on Changes Necessary to Support a Least Cost Planning Process; Assisted in the Development of Comments in response to Commission Investigation into Financial Incentives and Bidding Systems; and Assisted in the Development of Comments regarding a Proposed Rule Governing the Resource Planning Process.
Colorado Office of Consumer Counsel	Jan. - June 1989	Quantitative Analysis Regarding Colorado Public Service's Proposed Ratemaking Treatment if Fort Saint Vrain Nuclear Facility Were to be Converted to Natural Gas Firing.
Missouri Office of Public Counsel	July - Dec. 1988	Survey of Least Cost Planning Processes in Selected States Focusing Upon Their Impacts on Regulatory Responsibilities and Staffing.

### ESRG Testimony

Agency	Case or Docket No.	Date	Topic
Kansas Corporation Commission	(Tellus 90-123)	Nov. 1990	Review of Kansas City Power & Light Company's proposed acquisition of Kansas Gas & Electric Company from ratepayers' standpoint.
Public Service Corporation of Utah	90-035-06 (Tellus 88-140B)	Aug. 1990	Investigation into the Reasonableness of Allocations and its Rates and Charges for Utah Power & Light Company.
Rhode Island Public Utilities Commission	1972 (Tellus 90-010)	Jun. 1990	Siting Permit for Manchester Street Station Repowering.
New Hampshire Public Utilities Commission	DR-89-244 (ESRG 90-019)	Mar. 1990	Rate Impact of Northeast Utilities take-over of Public Service Co. of N.H.
Vermont Public Service Board	5372 (ESRG 89-201)	Feb. 1990	Power Cost Issues in Central Vermont Public Service Rate Request.
Vermont Public Service Board	5330 (ESRG 89-078)	Dec. 1989	The role of Hydro-Quebec Power in a least-cost energy resource plan for Vermont.
Vermont Public Service Board	5270 (ESRG 88-18)	Aug., Sep., Oct. 1988	Generic Least Cost Planning Investigation.

### Vermont Department of Public Service Testimony

Agency	Docket No.	Date	Topic
Vermont Public Service Board	5078	Jan. 1986	Concerning Cost Benefit of Hydro Quebec Phase II Contract

Vermont Public Service Board	4906-A	May 1985	Surcharge Associated with Vermont Yankee IGSCC Outage; Cost Estimate and Rate Design
Vermont Public Service Board	4882/4877/ 4966	Feb. 1985	Fuel Adjustment Clause of Burlington Electric Department
Vermont Public Service Board	4968/4972	Feb. 1985	Cost Benefit Analysis of Proposed Moretown #8 Hydroelectric Facility
Vermont Public Service Board	4905	May 1984	Cost Benefit of Firm Power Contract Between Department of Public Service Contract and Hydro Quebec
Vermont Public Service Board	4906	Apr. 1984	Central Vermont Public Service Rate Case
Vermont Public Service Board	4759	Dec. 1983	Central Vermont Public Service Rate Design
Vermont Public Service Board	4804	June 1983	Establishment of Statewide PURPA Rates
Vermont Public Service Board	4796	Apr. 1983	Green Mountain Power Rate Case and Rate Design
Vermont Public Service Board	4609/4637	Sep. 1982	Green Mountain Power Rate Design for Ripple System

#### ESRG Publications

- Nov. 1990: *Kansas City Power & Light Company's Proposed Acquisition of Kansas Gas & Electric Company: Issues Affecting Kansas Ratepayers.* A report to: Citizens' Utility Ratepayers Board. Tellus Study No. 90-123. Co-author.
- Aug. 1990: *A Review of the Tariff Policies and Procedures of the Tasmanian Hydro-Electric Commission. Stage One: Situation Analysis and Terms of Reference.* A report to The Tariff Steering Committee - Tasmania. Tellus Study No. 90-076. Author.
- July 1990: *District Heating from the Manchester Street Station - Public Policy Perspective.* A report to: Rhode Island Governor's Office of Housing, Energy and Intergovernmental Relations. Tellus Report 90-034. Co-author.

- May 1990: *Evaluation of Repowering the Manchester Street Station.* A report to Rhode Island Division of Public Utilities and Carriers; Rhode Island Department of Administration, Division of Planning; and Rhode Island Governor's Office of Housing, Energy, and Inter-governmental Affairs. Tellus Report 90-010. Principal Author and Project Manager.
- Mar. 1990: *The Northeast Utilities Plan for Public Service Company of New Hampshire: Issues Affecting New Hampshire Consumers.* A report to: State of New Hampshire, Office of the Consumer Advocate. Tellus Report No. 90-019. Co-Author.
- Dec. 1989: *The Role of Hydro-Quebec Power in a Least-Cost Energy Resource Plan for Vermont.* A Report to the Public Service Board of Vermont on behalf of the Department of Public Service. ESRG Report No. 89-078. Co-author.
- Oct. 1989: *Evaluation of Staffing Requirements for the Minnesota Department of Public Service Imposed by Potential Least-Cost Planning Processes.* A Report to the Department. ESRG Report No. 89-18A. Co-author.
- Aug. 1989: *Regulating the Kingsley Hydro-Electric Facility and Dam to Provide Scouring Flows on the Platte River.* A Report to the National Audubon Society. ESRG Report No. 89-134. Co-author.
- Dec. 1988: *Least Cost Integrated Planning in Vermont: Issues and Directions.* A Report to the Vermont Department of Public Service. ESRG Report No. 88-18A. Co-author.
- Dec. 1988: *Least Cost Integrated Planning Processes for Electric Utilities: Implementation in Five States.* Prepared for the Missouri Office of Public Counsel. ESRG Report No. 87-62. Co-author.
- Sep. 1988: *An Overview of the Processes by Which Power is Purchased from Qualifying Facilities in New England.* ESRG Report No. 88-90. Co-author.
- July 1988: *The Cost to Ratepayers of the Proposed LILCO Settlement.* A Report to Suffolk County. ESRG Report No. 88-23. Co-author.
- Apr. 1988: *Report on the Cost Allocation Issue Arising from the Proposed Merger of Utah Power and Light and Pacificorp, Maine.* A Report to the Public Service Commission of Utah on behalf of the Committee of Consumer Services. ESRG Report No. 87-107C. Co-author.

Apr. 1988: *An Evaluation of Central Maine Power Company's Proposed Purchase of Power from Hydro Quebec. A Report to the Maine Public Utilities Commission Staff. ESRG Report No. 87-30. Co-author.*

**Vermont Department of Public Service Publications**

Sep. 1988: *Twenty-Year Electric Power Plan.*

July 1984: *The Development of Rates Pursuant to Public Service Board Rule 4.100.*

Nov. 1983: *The Development of Rates Pursuant to Public Service Board Rule 4.100 (June 1983, revised November 1983).*

Feb. 1983: *Electric Power Supply in Vermont.*

Feb. 1983: *Twenty-Year Electric Power Plan by Vermont Department of Public Service.*

11/90

1           Q     (By Mr. Howe) Would you please provide a  
2 summary of your testimony, Mr. Bartels?

3           A     Yes, I would. I think -- I'd like to do this  
4 as expediently as possible, so I would like to just put  
5 my entire case into context quickly and then go through  
6 the specific points, if I may.

7                     The way I view this case is the company has  
8 made a claim that it has done an extensive -- it has an  
9 ongoing planning process of which it has gone -- which  
10 was studied, general expansion plans, and then a very  
11 specific set of options, and it's accumulated in a  
12 Letter of Intent in July 31, 1990.

13                     It was about two months later that the  
14 company finally filed its testimony in this case, and  
15 the testimony that was filed in the direct case and  
16 that I received, which is the basis of my prefiled  
17 testimony, was, in my opinion, very thin testimony. It  
18 essentially gave no information that a reasonable  
19 analyst could say supported the claims. And this sort  
20 filing made me a little bit curious. Then I heard that  
21 we were facing an expedited hearing, and this may be a  
22 bit suspicious, frankly. We had, you know, supposedly  
23 a large basis of studies, yet the evidence was not  
24 offered immediately. We had basically a single fast  
25 round of discovery, which has only been really

1 supplemented and gotten behind through this rather  
2 painful process of the last two days of cross  
3 examination of witnesses. And I'd say, at this point,  
4 we really have the sort of level of information that I  
5 would have expected a company to file in the first  
6 place on an -- when-requested, expedited consideration.

7           Based upon -- I believe that this  
8 solicitation or the purchase that is offered needs  
9 careful consideration. It needs a full record. It  
10 needs a full record because this -- the fact that this  
11 purchase is coming in, and in essence supplanting the  
12 RFP process and all the units in there, need a full  
13 explanation to those that responded to that RFP  
14 process, why they were rejected and this purchase is  
15 being recognized as superior. I think that absent  
16 that, even if this purchase is absolutely the best  
17 purchase, if you don't offer that full record, it will  
18 have -- cast a shadow over future solicitations.

19           I think the acquisition premium, the  
20 acceptance of an acquisition premium or acquisition  
21 adjustment, must be subject to the satisfaction that  
22 the price paid for this purchase is at or below the  
23 market price of power, the best available for the least  
24 cost option. In my opinion, the evidence that is now  
25 on record does not support that claim. The evidence



1 which is only the company's studies -- there have been  
2 no time to prepare independent studies -- shows that  
3 the best option is a UPS purchase starting in 1996; and  
4 that that case, compared to the company's claimed total  
5 revenue requirements for the purchase as amended by  
6 Exhibit 22, would show a net present value savings of  
7 about \$78 million.

8           In my opinion, just based upon the  
9 circumstantial evidence I have, I think that the UPS --  
10 the cost of the UPS contract appear to be overstated in  
11 a few respects. The difference in the cost of fuel in  
12 these two cases that we're comparing, between the  
13 purchase and the UPS, has not really satisfactorily  
14 been explained. There have been contradictory and  
15 inconsistent claims made by the company. On the one  
16 hand, Mr. Denis had testified that one reason FPL could  
17 get cheaper fuel is that they'll burn more fuel through  
18 the Scherer Unit. Why would they burn more fuel  
19 through the Scherer Unit if they owned it versus the  
20 UPS is because other -- if they did own it and they  
21 were buying UPS, Georgia would -- and Southern would  
22 supply it from other units under alternative energy,  
23 supplemental energy replacement, all the different  
24 economy, all the different schedules. However, when  
25 you look at the UPS, the company claims that we don't

1 believe that power is going to be there, and therefore,  
2 we don't give any credit to economy purchases. This is  
3 an inconsistency that prejudiced the UPS case, which  
4 still looks to be the most favorable case.

5 Same rationale applies to the additional  
6 transmission costs which are an overwhelming aspect of  
7 a cost penalty against the UPS case. It costs more  
8 because we'll have access to this power that we're  
9 claiming is not going to exist.

10 I believe that the RFP would allow for  
11 negotiations, and an aspect of that negotiations would  
12 be to eliminate a cost that is supposed to support a  
13 benefit that you would not get. I would believe that  
14 would be at least welcome to, you know, to be placed on  
15 the table.

16 The difference in the fuel cost also has a  
17 substantial impact on the modeling in the PROSCREEN  
18 runs of the UPS purchase versus the -- or UPS versus  
19 the Scherer purchase, particularly with the impact on  
20 how the UPS will be used in the system, and therefore,  
21 the effect on the other system fuel costs.

22 If you were to look on Exhibit 23, the final  
23 page, Line 28, Columns 3 and 4 show that all the direct  
24 costs of the UPS contract are less than the Scherer  
25 purchase, so all the savings the company is claiming to

1 the Scherer purchase are associated with the fact that  
2 the Scherer purchase has a better -- fits better into  
3 their supply mix and displaces more high expensive  
4 energy. And the difference is shown on Line 32,  
5 Columns 3 versus 4.

6 Now, Mr. Waters in his testimony yesterday  
7 claimed that difference in fuel costs shouldn't affect  
8 the dispatch of the UPS contract versus the Scherer  
9 purchase. And based upon that, and based upon the fact  
10 that the UPS has a 90% availability, a higher  
11 availability than the Scherer purchase, the other  
12 system fuel costs should be less. This shows that  
13 there's some problem in the modeling that is  
14 inconsistent with Mr. Waters' testimony.

15 Getting to those capacity factors, that's  
16 further evidenced by Exhibit 24, which shows a side-by-  
17 side comparison of the capacity factors for the UPS  
18 purchase and the Scherer purchase. In some years,  
19 right around the year 2005, running for about -- until  
20 2010, the UPS purchase with its higher availability is  
21 being dispatched at a lower amount than the Scherer  
22 purchase would. This is not explained. And what this  
23 is all hinting at is there's more behind these numbers  
24 than one can just take a face value, and we have not  
25 had really any opportunity to explore the studies that

1 underlie these numbers.

2           So when you correct the UPS case in  
3 reflection of the inconsistency in the base fuel cost  
4 that Mr. Waters was cross examined on, and he said up  
5 until the purchase of UPS, the years prior to '94, the  
6 total system cost should equal the base case system  
7 cost, which also didn't have any IGCC or any purchase  
8 coming in at that time. If you do make that  
9 adjustment, the UPS contract does look better.

10           When you further push the UPS contract down  
11 two years to '96, you reveal even greater savings based  
12 upon a -- based upon basically doing no action, no  
13 purchase action before 1996 and then taking the  
14 contract, and the difference is \$78 million. That's  
15 per my calculations. This means that we have to then  
16 say that the intangible benefits, those benefits that  
17 have been cited but not quantified, are worth more than  
18 \$78 million in net present value. One cited was the  
19 ability to buy the power early. The company's case  
20 shows that that costs a lot of money; that is not a  
21 benefit, that that is a penalty.

22           The emission credits. I would note  
23 immediately that the purchase does not come with enough  
24 emission credits to operate the unit at the levels  
25 claimed. We don't -- even if they get all the emission

1 credits that the formula will lend them, which may be  
2 prorated down by the terms of the Act, the company will  
3 still have to buy more at some penalty, and that's not  
4 reflected. It's true the UPS purchase may have some  
5 cost-of-emission credits flowing -- that flow through  
6 also, and those would be probably comparable in  
7 magnitude to the differential in the fuel costs that I  
8 find so suspicious.

9           The value of holding emission credits after  
10 the unit is retired, they may have a value, and it may  
11 be a significant value. On the other hand, we're  
12 talking about a period that's going to be about 37, 40  
13 years from now. The Clean Air Act that's just been  
14 amended wasn't even in existence 40 years ago. So I  
15 don't know what will be in place 40 years from today.  
16 So I think that you have to be -- view those benefits,  
17 you know, give them basically the proper weight. They  
18 are rather speculative at this point.

19           The life extension of the unit, well, the  
20 UPS, RFP, on just the cover page says 30 years or the  
21 life of the unit. Even if you were just to take 30  
22 years, starting in 1996, the plant is going to be 37  
23 years old at that point. But, it seems that you could  
24 even get a life-of-the-unit purchase if you wanted to  
25 negotiate that. What's the value? So that means if

1 you can purchase under contract for the life of the  
2 unit, then basically the difference is that once the  
3 unit is dead and retired, you own an old unit in  
4 central Georgia. Now, what's the value of a plant site  
5 in Georgia to a Florida utility 40 years from today?  
6 Again, we don't even know whether that's positive or  
7 not. The depreciation schedule is designed at a  
8 negative salvage value, that they're going to collect  
9 110% of the unit because of the unit's cost in order to  
10 -- because they expect a cost of salvaging it. Is  
11 Georgia going to let me you repower a station for  
12 export to Florida?

13 MR. CHILDS: I'm going to object. I realized  
14 that the witness would be given the opportunity to  
15 comment on the documents that were put in. I don't  
16 think it should be an opportunity to comment on all of  
17 the witnesses' answers in cross examination by the  
18 other parties, and I really think that rhetorical  
19 questions are not evidence.

20 WITNESS BARTELS: I'm responding --

21 MR. HOWE: If I might. Commissioners, we've  
22 heard a good bit of evidence in this proceeding. I  
23 believe it's in Mr. Woody's testimony. It was also the  
24 subject of cross examination in comparison with UPS,  
25 specifically with Mr. Woody, about their claims that

1 the unit would last. If they purchased it, they would  
2 have a 40-year life as opposed to the 30 years  
3 available under the UPS. Mr. Denis was also questioned  
4 on the subject. I believe Mr. Bartels has been  
5 addressing specific issues that have been identified in  
6 cross examination, in direct testimony and which have  
7 been addressed in exhibits introduced in the proceeding  
8 thus far. I think the nature of this proceeding  
9 requires a full airing of every issue raised by the  
10 company, and that is what Mr. Bartels is doing.

11 CHAIRMAN WILSON: Go ahead.

12 WITNESS BARTELS: Let me just wrap this up  
13 rather quickly. Just to complete the list, the last  
14 benefit -- nonquantified benefit was -- that it would  
15 perpetuate or expedite enhancement of the interface.  
16 This is the same inter -- the enhanced interface is  
17 needed to bring in the same economy, power, that the  
18 company has been testifying is going to disappear and  
19 does not reflect a benefit to the UPS contract which  
20 would allow access to that.

21 And finally, I think that the fact that we're  
22 looking at a Letter of Intent and judging on that, is  
23 relevant. One amendment to the Letter of Intent has  
24 already displaced half of the savings that the company  
25 originally laid claim to. And I think that until those

1 terms are finalized, we really don't know what we're  
2 looking at, if one amendment can have such an impact.

3 And that concludes my summary.

4 Q (By Mr. Howe) Mr. Bartels, have you prepared  
5 any exhibits that summarize your position as expressed  
6 in your summary?

7 A Yes, I did. I've prepared one exhibit that  
8 reflects the -- compares the total cumulative present  
9 value of the cases as presented by the company. All  
10 the numbers here are of the company's exhibits.

11 MR. HOWE: Could you please take a moment,  
12 Mr. Bartels, while we distribute copies.

13 WITNESS BARTELS: Certainly.

14 MR. HOWE: Chairman Wilson, I'd ask that we  
15 have an exhibit number for identification, please.

16 CHAIRMAN WILSON: That would be Exhibit No. 30.

17 (Exhibit No. 30 marked for identification.)

18 A Or I can just take questions on it. It  
19 purports to the numbers that I mentioned in my summary.

20 The first Case A, if you look all the way --  
21 and the right-hand column, the cumulative present  
22 values are the numbers that the Company is offering as  
23 the relevant measures of cost of the different options,  
24 and they are constructed from these other components.

25 The purchase has a total impact on revenue



1 requirements creating the cumulative present value of  
2 all revenue requirements of the \$42,805,601, and that  
3 matches Mr. Waters exhibit, Document No. 10. Directly  
4 below that is the number that reflects the Exhibit No.  
5 22. Correction to that number due to the amendment of  
6 the Letter of Intent.

7           The Case B is the Company's UPS-RFP  
8 calculation and that shows that the -- I have directly  
9 below that the difference between the Scherer purchase  
10 case and that case, and that this is the Company's  
11 case, that the purchases, \$6 million -- because these  
12 are in thousands -- 872,000 net present value is  
13 superior to the UPS case.

14           However, in that case, as cross examination  
15 of Mr. Waters verified, and I was suspicious of  
16 earlier, the years prior to the UPS did not match the  
17 base case and if you adjust those years --

18           MR. CHILDS: I'm sorry to interrupt, I can  
19 hardly hear you. Could you please speak a little -- my  
20 apologies but I can't hear you.

21           WITNESS BARTELS: Certainly.

22           The Case C, the UPS case with no changes  
23 except to adjust the years 1991 to 1993 to match the  
24 base case offered by the Company.

25           CHAIRMAN WILSON: That comes from Exhibit 21.

1                   WITNESS BARTELS: That comes from Exhibit 21.  
2 The front page of Exhibit 21, the total system cost for  
3 the years '90 through '93 have been substituted for the  
4 same numbers on the second page. For some reason the  
5 numbers on the second page for those years were  
6 different. We asked Mr. Waters why they were  
7 different. He said they should be the same; he didn't  
8 know why.

9                   Making that adjustment it changes the  
10 relative costs of the purchase versus the UPS, and it  
11 shows that the UPS is now \$19 million cheaper than the  
12 Scherer purchase.

13                   If you were to look at that first page on  
14 Exhibit 21 again you notice that delaying for another  
15 two years, to '96, compared to the UPS case yields even  
16 more savings. Now, the UPS offer was for 1996 and if  
17 you make that adjustment the difference is \$78.9  
18 million difference in net present value. This does not  
19 say that the UPS is the best option. It just says that  
20 out of the options that are presented here it's the --  
21 shows it's the cheapest option. There are entire  
22 categories of options that have not even been looked  
23 at.

24                   CHAIRMAN WILSON: Such as?

25                   WITNESS BARTELS: There's been no discussion

1 of demand-side management or conservation which could  
2 have an effect by the year 1996. And these economics  
3 have probably improved due to the passage of the Clean  
4 Air Act since the last time they were viewed, because  
5 they do not require emissions, and you can actually get  
6 emission bonus allowances for qualifying programs.

7 CHAIRMAN WILSON: What's the second best  
8 option of the options we have presented here if UPS is  
9 the first? Your first option is UPS beginning in 1996.

10 WITNESS BARTELS: Right. Out of the four  
11 options we have before us, I must say I didn't have an  
12 opportunity to delve into the standard offers at the  
13 same level and give them -- we have had a lot of  
14 constraints in the time to do this.

15 I would surmise that unless there are  
16 comparable corrections to the standard offer, the rest  
17 of the exhibit probably is as the Company has put  
18 forward. So the second best would be -- would appear  
19 to be the Scherer purchase.

20 CHAIRMAN WILSON: All right.

21 Q (By Mr. Howe) Does that complete your  
22 summary, Mr. Bartels?

23 A Yes, it does.

24 Q We would tender Mr. Bartels for cross  
25 examination.

## CROSS EXAMINATION

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BY MR. CHILDS:

Q Mr. Bartels, when were you contacted by the Office of the Public Counsel to participate in this proceeding?

A I did not -- I was not involved in the initial contact. I personally got involved in this case about the second week of November, I believe, and I don't know when the initial contacts or discussions were between Tellus and --

Q Do you know when Florida Power and Light Company filed its petition and the direct testimony of its witnesses in this proceeding?

A It was September 28th.

Q All right. Have you read that petition that was filed by Florida Power and Light Company?

A Yes, I read the petition, and the direct testimony.

Q Would you agree that the petition requested expedited consideration and noted that testimony was filed at that time to facilitate that?

A Yes. I noted in my summary that the Company requested expedited consideration.

Q You mentioned demand-side planning. Are you familiar with the process by which conservation

1 programs are reviewed and approved by the state of  
2 Florida by this Commission?

3 A I cannot say I am.

4 Q Are you familiar with the conservation  
5 programs that Florida Power and Light Company has in  
6 place at this time?

7 A I have not had the opportunity to review them  
8 in this case.

9 Q I'm sorry, sir?

10 A I said I have not had the opportunity to  
11 review them in this case.

12 Q Are you aware that every single conservation  
13 program that is in effect by Florida Power and Light  
14 Company in this state is filed with this Commission for  
15 review and approval?

16 A No, I'm not aware of that.

17 Q Have you reviewed Florida Power and Light  
18 Company's demand-side management plan for the 1990's?

19 A I wished I had had the time to. I have not.

20 Q Did you ask for it?

21 A I did not ask for it. I did not have the  
22 time to do a review of it.

23 Q Do you know when it was filed with this  
24 Commission?

25 A I do not.

1 Q Do you know what disposition of that filing  
2 has been made by this Commission?

3 A I can't say that I do.

4 Q Do you know how Florida Power and Light  
5 Company's demand-side management programs compared to  
6 those of any other Florida utility?

7 A No, I cannot. Or do not.

8 MR. CHILDS: Thank you. That's all I have.

9 CROSS EXAMINATION

10 BY MR. MURRELL:

11 Q Mr. Bartels, in Mr. Childs' cross examination  
12 just a minute ago you said that the Company or you  
13 agreed that the Company had filed for expedited hearing  
14 and the Company had filed testimony to assist the  
15 various parties in preparation for an expedited  
16 hearing. Is that a fair statement of what was  
17 discussed there in the initial part of your discussion  
18 with Mr. Childs?

19 A He said they had requested expedited and that  
20 they were filing direct testimony.

21 Q Did you find that direct testimony that they  
22 filed to include sufficient information for you to be  
23 able to evaluate their request?

24 MR. CHILDS: Excuse me, I'm going to object.  
25 The witness has already testified that the summary

1 which went beyond is filed direct on the subject.

2 CHAIRMAN WILSON: The question has already  
3 been asked and answered at least once.

4 Q (By Mr. Murrell) Mr. Bartels, I'd like you  
5 to refer to hearing Exhibit No. 23.

6 A Yes.

7 Q Have you seen anything in the information  
8 provided by Florida Power and Light that in your  
9 opinion tends to support the use of a lower  
10 depreciation rate for the Scherer evaluations than the  
11 depreciation rates used for all of the other options?

12 A No, I haven't seen any justification for any  
13 of these depreciation rates.

14 Q In your opinion would such justification be  
15 important to you?

16 A It certainly would affect the economics of  
17 the comparison.

18 Q Let me ask you the same question regarding  
19 the escalation factors found on lines 25, 28, and 30.

20 MR. CHILDS: Excuse me. I anticipate the  
21 ruling from the bench, but I must object once again.

22 I think that the witness has, in his summary,  
23 gone beyond his direct. I understand why, and I  
24 understand the Commission's reaction to that due to the  
25 circumstances, but I don't think it's proper cross

1 examination when he didn't even reach this to go back  
2 and ask him these kinds of questions in an attempt to  
3 build your own direct case. This is cross examination.

4 MR. MURRELL: Mr. Chairman, if I might  
5 respond very briefly.

6 This witness testified in his direct that on  
7 Page 4, starting at Line 14 going through Line 18, that  
8 it's been impossible for him to draw the appropriate  
9 conclusions and necessary conclusions because of the  
10 dearth of information.

11 I'm trying to inquire into whether this  
12 particular type of information I have an interest in is  
13 specifically of interest to him in coming up with an  
14 appropriate evaluation of the information or  
15 recommendation and proposal that Florida Power and  
16 Light has put in front of this Commission.

17 COMMISSIONER EASLEY: Mr. Chairman, the only  
18 problem I have is in relying on this witness' direct  
19 testimony at this point, after the witness has kind of  
20 added to his direct testimony a great deal of  
21 information and made the statement in his summary that  
22 had he had this information, that it is now at the  
23 point that it should have been for an expedited case  
24 when it was filed. So I'm having a little bit of  
25 trouble with the question the way it is framed based on



1 direct testimony.

2 MR. MURRELL: My question to him is the  
3 information he's seen as of today, as of right now.

4 COMMISSIONER EASLEY: But you're relying on  
5 the direct testimony --

6 MR. MURRELL: Yes, ma'am.

7 COMMISSIONER EASLEY: -- in your explanation  
8 and that's what I'm having trouble with.

9 MR. MURRELL: I'm trying to find out if that  
10 is changed.

11 MR. CHILDS: But I think counsel, when he  
12 offered this witness, I thought he said on several  
13 occasions questions about the witness' testimony based  
14 upon what he knew at the time he prepared the direct  
15 testimony and that's fine. And then he expanded with  
16 his own commentary. And so I think if you're asking  
17 him cross examination that's improper.

18 MR. MURRELL: I don't believe that at all,  
19 Mr. Chairman. This is cross examination. I'm asking  
20 him whether these particular factors would be important  
21 to him and whether the lack of the information on these  
22 factors would jeopardize a valid evaluation of any of  
23 these projects. That's the issue before the  
24 Commission.

25 MR. HOWE: Mr. Chairman, if I might, you may

1 recall from the prehearing conference you stated that  
2 you never saw the reason why a witness on direct would  
3 be artificially constrained to his prefiled direct.  
4 And I believe our witness should have, and has had, the  
5 opportunity to address his prefiled testimony, but also  
6 in our direct case, which we're engaged in now, to  
7 address anything that has come up in the Company's  
8 prefiled or hearing direct testimony.

9 CHAIRMAN WILSON: And I agree with you but  
10 that's not what we're talking about.

11 MR. MURRELL: We're talking about an exhibit,  
12 though, that Mr. Waters put in before us last night.

13 CHAIRMAN WILSON: Counselor here wants this  
14 witness to comment on evidence that he's interested in  
15 that's been brought up by other witnesses in the case.  
16 The fact that your witness on his direct presentation  
17 has an opportunity to comment on that is a completely  
18 different question.

19 MR. HOWE: I think that it would be  
20 appropriate to ask my witness whether he has reviewed  
21 this and included a review of this in his direct case,  
22 and I think Mr. Bartels specifically referred to  
23 Exhibit 23.

24 CHAIRMAN WILSON: I'm going to allow the  
25 question. I want the point to be clear that that is

1 not the same situation that was discussed at the  
2 prehearing conference. I'm going to allow limited  
3 cross examination in this area.

4 MR. MURRELL: I just have three or four  
5 questions is all I have for this witness.

6 Q (By Mr. Murrell) Mr. Bartels, looking at the  
7 average escalation factor found on line 25 for fuel  
8 costs, have you seen anything in the information  
9 provided in discovery or in evidence presented in this  
10 hearing from Florida Power and Light Company that tends  
11 to support the use of a lower escalation factor for  
12 fuel for the Scherer evaluations than for any of the  
13 other option evaluations?

14 MR. CHILDS: I will object unless a predicate  
15 is established the witness has the ability to evaluate  
16 escalation rates even if he saw a explanation.

17 CHAIRMAN WILSON: You may wish to lay a  
18 predicate for your question. I think that's a  
19 legitimate objection.

20 MR. MURRELL: I appreciate that. I thought I  
21 had, Mr. Chairman, and I will do a better job. I  
22 apologize. I was trying to be brief.

23 Q (By Mr. Murrell) Mr. Bartels, can you tell  
24 me whether escalation factors would be important to an  
25 evaluation of the various options that were presented

1 by Florida Power and Light in its hearing Exhibit No.  
2 23?

3 A Yes, that would be very important.

4 Q Do you consider yourself capable of  
5 evaluating the escalation factors such as average  
6 escalation factor found on line 25, and the underlying  
7 support for that to determine whether or not a  
8 particular escalation factor is empirically based?

9 A Yes, I would be able to examine the evidence  
10 and the support.

11 Q Do you believe if an escalation factor used  
12 is not empirically based, is not an appropriate or  
13 reasonable escalation factor, that it might have a  
14 detrimental impact on the reliability of any study?

15 A All the escalation factors have to have a  
16 reasonable basis. And to be consistent across the  
17 cases based upon the fundamental assumptions, economic  
18 assumptions. So yes, I think --

19 Q Looking at Line 25, just looking at this  
20 information that is presented in the exhibit here --  
21 hearing Exhibit No. 23, do they appear to be consistent  
22 in your opinion? Just looking at the document on Page  
23 1.

24 A I have no information to say whether they are  
25 consistent or inconsistent. I would definitely ask for

1 an explanation, you know, explore why there is such a  
2 difference. I would definitely need a good  
3 explanation. I cannot draw the conclusion.

4 Q Would that information -- strike that. Let  
5 me start again.

6 Would that information that is the basis for  
7 the escalation factors and how they are developed,  
8 would that be important for you in determining whether  
9 or not the presentation made in hearing Exhibit No. 23  
10 is a valid and reasonable presentation or evaluation?

11 A Definitely.

12 Q Look at line 28.

13 CHAIRMAN WILSON: Did you ask for that  
14 information? Have you seen any of that information?

15 WITNESS BARTELS: We asked for the  
16 information underlying the studies. I can't recall  
17 exactly how we phrased it. To the point that you get  
18 summary information, then you have to go back for a  
19 second round and ask for it. We haven't had an  
20 opportunity --

21 CHAIRMAN WILSON: When did you first file  
22 your discovery?

23 WITNESS BARTELS: I believe it was about two  
24 days after I got the case.

25 CHAIRMAN WILSON: Which was when?

1 WITNESS BARTELS: It's dated information.

2 MR. HOWE: Chairman Wilson, our First Set of  
3 Interrogatories went out on November the 9th, and our  
4 First Request for Production of Documents that same  
5 date.

6 MR. MURRELL: For the record, I might point  
7 out I think the record will reflect the second set --  
8 Second Request for Production from Citizens went out on  
9 November 15.

10 CHAIRMAN WILSON: Did it contain questions  
11 about the escalation factors involved and fuel prices  
12 for alternatives to including the Scherer and  
13 alternatives to that?

14 MR. MURRELL: I know that ours did, Mr.  
15 Chairman.

16 CHAIRMAN WILSON: When did you file yours?

17 MR. MURRELL: Our first set of the  
18 interrogatories went out of my office on November 12,  
19 1990. Our second set went out on November 20, 1990. I  
20 don't remember which of those -- I believe the first  
21 set on November 12 was the set that inquired into that  
22 and we got some information.

23 CHAIRMAN WILSON: You asked for the backup to  
24 the escalation factors for fuel?

25 MR. MURRELL: Mr. Chairman, I have it here.

1 With the Commission's indulgence, I'll just have this  
2 marked.

3 CHAIRMAN WILSON: I'll accept your reading or  
4 representation if you tell me that you asked for that.

5 MR. MURRELL: Yes, sir. My question was,  
6 "What's the basis for coal transportation escalation  
7 for each of the three locations considered in S. S.  
8 Waters Document 2?", which included St. Johns River  
9 Power Park, which was used for Options 5 and 6. It  
10 included Scherer and it included the Martin IGCC unit.  
11 And if I could get a number I'd like to go ahead and  
12 sponsor this as an exhibit at this point.

13 CHAIRMAN WILSON: You're going to need a  
14 witness to be able to do that.

15 MR. MURRELL: Okay. I was planning on doing  
16 it on my evidence, Mr. Chairman. I thought if you had  
17 an interest in seeing it I would provide that.

18 And I note, just for the record, Mr.  
19 Chairman, that that was in my First Set of  
20 Interrogatories, Interrogatory No. 3. And also while  
21 we're on that, in my First Set of Interrogatories,  
22 Interrogatory No. 1, the question is, "Regarding the  
23 difference in escalation of coal prices comparing  
24 expected prices at St. Johns River Power Park (SJRPP),  
25 Martin County, Plant Scherer (S. S. Waters Exhibit

1 Document 2), explain A, the difference in the  
2 assumptions if any regarding the calculation of  
3 escalated prices for the three locations; B, the  
4 reasons for the wide variation between the projected  
5 prices of coal at Plant Scherer and Martin County. C,  
6 the reasons for the difference in coal price."

7 CHAIRMAN WILSON: Whoa, whoa.

8 MR. MURRELL: I'm sorry. I'm sorry. My  
9 apologies to the court reporter. (Laughter)

10 CHAIRMAN WILSON: You probably got about  
11 every seventh word. And you don't need to read that  
12 point. Let's get back to cross examination.

13 MR. MURRELL: That's not the first time I've  
14 done that, regrettably.

15 I don't know where I was, Mr. Chairman.  
16 (Laughter)

17 Q (By Mr. Murrell) Let me ask you, Mr.  
18 Bartels, on line 28 of hearing Exhibit No. 23, if you  
19 have seen anything in the documents that you have been  
20 able to review in this matter filed by Florida Power  
21 and Light Company or any other party, or anything in  
22 the testimony that would tend to lead you to a  
23 conclusion of whether or not the escalation factors  
24 used for O&M fixed expenses found on line 28 are  
25 reasonable and appropriate?



1 MR. CHILDS: Objection once again. I think  
2 it's inappropriate, beyond the scope of direct as  
3 expanded by the witness. Once again I think it's  
4 improper to cross that way. I think he's failed to  
5 establish that the witness -- and the witness didn't  
6 offer initially, even himself, that he has the basis to  
7 do that evaluation or establish that he did that  
8 evaluation.

9 MR. MURRELL: I thought he did say he has the  
10 ability to do that evaluation, Mr. Chairman. I thought  
11 he just said that on the last factor. I didn't ask him  
12 about line 28. I was trying to get through in this  
13 cross examination.

14 MR. CHILDS: I think you asked him if he  
15 thought he could and I would submit that that does not  
16 qualify the witness when the witness says "yes". The  
17 point of qualifying is does he have the basis, the  
18 training, the information to support his testimony or  
19 his conclusion as to the evidence submitted.

20 MR. MURRELL: I'll be happy to inquire. I  
21 withdrew that question and start with this one.

22 Q Mr. Bartels, can you tell me whether in your  
23 opinion you have the basis and training in order to  
24 evaluate average escalation factors used for O&M  
25 expenses?

1           A     I would say that I have the educational and  
2 professional background; that I reviewed many of these  
3 assumptions down the entire list for reasonableness and  
4 I have done time and time again.

5           Q     In other circumstances, other situations you  
6 have done it several times before?

7           A     I was the Director of Planning in the state  
8 of Vermont. Before coming to Tellus I was responsible  
9 for developing the state's 20-year Plan, which all the  
10 electric utilities had to use as a benchmark to comply  
11 with any purchase of or construction of generating  
12 capacity. So I have done these with significant  
13 ramifications.

14           CHAIRMAN WILSON: When you were looking at  
15 those plans, did everybody use the same escalation  
16 rate?

17           WITNESS BARTELS: I did those plans.

18           CHAIRMAN WILSON: Did you use the same  
19 escalation rate?

20           WITNESS BARTELS: We used consistent --

21           CHAIRMAN WILSON: That's not what I asked  
22 you. I asked if you used the same escalation rate.

23           WITNESS BARTELS: And what I'm saying is that  
24 "same" is not what is proper, consistent, as I  
25 mentioned with fuel.

1                   CHAIRMAN WILSON: Did you use different  
2 escalation rates?

3                   WITNESS BARTELS: We used different in that  
4 different technologies do escalate at different rates,  
5 but they were consistent under the underlying  
6 assumptions that supported them.

7                   CHAIRMAN WILSON: The fact that you see  
8 different escalation rates or either different  
9 technologies or different plants does not in itself  
10 give rise to a conclusion that either of them is  
11 improper.

12                  WITNESS BARTELS: As I answered with the  
13 fuel, the fact that they are different does not  
14 indicate -- as a matter of fact, if they are identical  
15 I would be equally suspicious.

16                  Q     (By Mr. Murrell) Would it be important, Mr.  
17 Bartels, to see the underlying methodology on which the  
18 escalation factors are based?

19                  A     It would be important to understand what they  
20 were based upon and the justification for them.

21                  Q     That would include the methodology, is that  
22 correct?

23                  A     Yes, it would.

24                  Q     Now, going to line 28, I've already asked you  
25 if you have the training, education and training and

1 the ability to perform evaluations of escalation  
2 factors such as those used on line 28. My question to  
3 you now is did you have the information to perform such  
4 an evaluation?

5 A No, I did not.

6 Q And is it a fair statement, Mr. Bartels, that  
7 you attribute the lack of that information to the  
8 truncated nature of these proceedings?

9 MR. CHILDS: Objection. I think the witness  
10 has already testified when he got involved in this  
11 proceeding.

12 CHAIRMAN WILSON: Objection is sustained.

13 MR. MURRELL: I'm sorry.

14 CHAIRMAN WILSON: Objection sustained.

15 MR. MURRELL: Could I have just a response  
16 from the witness just to establish a record, Mr.  
17 Chairman, an offer of proof?

18 CHAIRMAN WILSON: No.

19 Q (By Mr. Murrell) Mr. Bartels, looking at  
20 line No. 30, do you have the education, background  
21 experience and training to enable you to evaluate the  
22 average escalation factors for variable O&M expenses  
23 found on Line 30?

24 A Yes, I do.

25 Q Do you have the information?

1 A The information to evaluate them.

2 Q Yes.

3 A No, I have not had the opportunity to. I  
4 have not seen that information.

5 Q Would that information be important to you in  
6 attempting to determine whether or not the evaluation  
7 shown on hearing Exhibit No. 23 are reasonable?

8 A Yes, it would.

9 Q Would your answer be the same for line number  
10 28 that is the average escalation factor for fixed O&M  
11 expenses?

12 A Yes. It would.

13 Q Would your answer be the same for line number  
14 25, average escalation factor for fuel costs?

15 A Yes.

16 Q Is it your understanding in fuel costs at  
17 lines 20 through 25, Mr. Bartels, all of those fuels  
18 considered there are coal?

19 A Yes. It is.

20 Q Would you expect the basic methodologies for  
21 coal escalation to be approximately the same or  
22 somewhat similar?

23 A I would definitely look for a very good  
24 explanation of why there are discrepancies.

25 CHAIRMAN WILSON: That's not really the

1 question. Would you expect escalation of the  
2 methodologies or amounts to be --

3 MR. MURRELL: Not amounts, Mr. Chairman, I'm  
4 asking about amounts, I'm just talking about  
5 methodologies.

6 CHAIRMAN WILSON: Methodologies to be  
7 different for different kinds of coal; is that what the  
8 question was?

9 MR. MURRELL: My question specifically was  
10 would this witness expect escalation methodologies for  
11 these different coals to be substantially similar? The  
12 methodology itself?

13 WITNESS BARTELS: Yes.

14 MR. MURRELL: That was my question, Mr.  
15 Chairman. And those are all my questions. Thank you.

16 CHAIRMAN WILSON: All right. Mr. McGlothlin.

17 CROSS EXAMINATION

18 BY MR. MCGLOTHLIN:

19 Q Mr. Bartels, is it fair to say that your  
20 analysis concentrated on a comparison of the two  
21 Scherer scenarios, the purchase of Scherer versus the  
22 UPS Scherer?

23 A Yes. I focused in quickly on what appeared  
24 to be the most competitive.

25 Q And I believe you acknowledged in an earlier

1 response that you did not address the standard offer  
2 cases with the same level of attention or detail that  
3 you brought to the Scherer transaction, is that  
4 correct?

5 A That's correct.

6 Q Considering that, would it be fair to say  
7 that you don't have the basis to make any conclusion  
8 with respect to how the standard offer cases would  
9 compare relative to the two Scherer cases had you made  
10 that more detailed investigation of assumptions?

11 A That is correct.

12 Q Do I understand correctly, Mr. Bartels, that  
13 in your participation in this case you do not concern  
14 yourself with consideration of the policies and rules  
15 which govern the adoption of the statewide avoided unit  
16 or the designation of standard offer contracts and that  
17 mechanism regulated by the Commission, which is  
18 independent of the RFP process.

19 A That is correct.

20 Q And you did not consider how those policies  
21 might or should apply to the Company's request in this  
22 proceeding.

23 A That is correct.

24 MR. MCGLOTHLIN: No further questions.

25 MR. CHRIST: No questions.

1                   CHAIRMAN WILSON:  If this case is decided on,  
2 I guess, sort of a market basis, as we look at the  
3 comparative prices of this capacity, does that render  
4 the existence or nonexistence of an acquisition  
5 adjustment irrelevant in your opinion?

6                   WITNESS BARTELS:  The existence -- you  
7 mean --

8                   CHAIRMAN WILSON:  Does it matter that there  
9 is an accounting classification of an amount of this  
10 purchase as an acquisition adjustment if we're looking  
11 at comparative sort of market prices?

12                   WITNESS BARTELS:  I would say as my prefiled  
13 testimony stated, if it is a market determination then  
14 the purchase price is the important measure.  The  
15 composition of that, whether it has an acquisition  
16 premium, I would agree that that is not of first order  
17 of importance.

18                   CHAIRMAN WILSON:  I got the impression from  
19 some of the testimony in your prefiled testimony that  
20 -- and I may be incorrect from picking this up, it was  
21 just kind of a general impression from a number of  
22 places, that you think probably purchased power, a  
23 utility purchasing power from, I guess, a third party  
24 is probably generally preferable to a utility building  
25 its own generation?



1 WITNESS BARTELS: No. I wouldn't agree with  
2 that at all. I think that --

3 CHAIRMAN WILSON: You think it's less risky  
4 to purchase it from another party than it is to build?

5 WITNESS BARTELS: It depends on the  
6 conditions. And my testimony really says you have to  
7 look at the risks and the comparable risks. But I  
8 would not say that categorically one is better than the  
9 other. (Pause)

10 CHAIRMAN WILSON: Does the exhibit that you  
11 provided, No. 30, where in those numbers or do these  
12 numbers show where the Letter of Intent, the supplement  
13 to the Letter of Intent, eliminated half of the benefit  
14 that had been previously calculated?

15 WITNESS BARTELS: If you --

16 CHAIRMAN WILSON: Does that show up in these  
17 numbers?

18 WITNESS BARTELS: If you were to compare  
19 Option A and Option A1, you'll notice that the  
20 correction that is shown in A1 increased the total  
21 costs by about \$8.3 million. The Company's testimony  
22 comparing Case A to B showed that the advantage was  
23 only \$15 million.

24 CHAIRMAN WILSON: Okay. (Pause)

25 Any questions, Commissioners? Redirect?

1 MR. HOWE: No, Chairman Wilson. I do believe  
2 I just noticed on Exhibit 30, that might require some  
3 clarification, the use of the phrase "savings from  
4 Scherer No. 4 purchase case." In one case it's a  
5 negative, in another case it's a positive.

6 CHAIRMAN WILSON: Yeah, which?

7 WITNESS BARTELS: I apologize, this was  
8 presented late last night, prepared. It's really the  
9 savings compared to the Scherer case; so that when it's  
10 negative, that means that that option costs more than  
11 the Scherer purchase case; and when it's positive, that  
12 shows there's a positive savings compared to the  
13 Scherer purchase case.

14 CHAIRMAN WILSON: Okay. So on this Exhibit 30,  
15 the Case B, the UPS from the RFP, which began in 19- --

16 WITNESS BARTELS: 94.

17 CHAIRMAN WILSON: -- 94 shows a cost of  
18 6,872,000, and the UPS Case D, which simply pushes it  
19 out to 1996?

20 WITNESS BARTELS: It corrects the base case  
21 numbers --

22 CHAIRMAN WILSON: It corrects the base case  
23 numbers and pushes it out to 1996?

24 WITNESS BARTELS: Yes.

25 CHAIRMAN WILSON: So these are cumulative.

1 C corrects the base case?

2 WITNESS BARTELS: Right.

3 CHAIRMAN WILSON: And D corrects the base  
4 case plus pushes it out to 1996?

5 WITNESS BARTELS: Correct.

6 CHAIRMAN WILSON: And each of those show a  
7 savings?

8 WITNESS BARTELS: Yes.

9 CHAIRMAN WILSON: And those savings are  
10 compared to the base case?

11 WITNESS BARTELS: No, they're compared to the  
12 Scherer case.

13 CHAIRMAN WILSON: They're compared to the  
14 Scherer case?

15 WITNESS BARTELS: The Scherer purchase as  
16 corrected by --

17 CHAIRMAN WILSON: Corrected, which is A1?

18 WITNESS BARTELS: Yes.

19 CHAIRMAN WILSON: All right.

20 MR. HOWE: I have no redirect, but I would  
21 move the admission of Exhibit 30.

22 CHAIRMAN WILSON: All right, without  
23 objection, Exhibit No. 30 is admitted into evidence.

24 (Exhibit No. 30 received in evidence.)

25 CHAIRMAN WILSON: Thank you.

1 (Witness Bartels excused.)

2 CHAIRMAN WILSON: Let's take about ten  
3 minutes and then come back with the next witness.

4 (Brief recess.)

5 - - - - -

6 CHAIRMAN WILSON: Is this in response to my  
7 request last night?

8 MR. BUTLER: That's right.

9 CHAIRMAN WILSON: You may want to go back and  
10 give it another try.

11 MR. BUTLER: About what?

12 CHAIRMAN WILSON: Numbers.

13 MR. MURRELL: Commissioners, before I call  
14 Mr. Wells, we would like to call Rene Silva by  
15 deposition as an adverse witness. And I do not intend  
16 to read in the deposition, I would just like to  
17 distribute it at this time and we'll make reference at  
18 a later time.

19 CHAIRMAN WILSON: All right, now, I'm sorry,  
20 what are you going to do?

21 MR. MURRELL: I want to use the deposition of  
22 Mr. Silva just on my case in chief. I'm just going to  
23 establish --

24 CHAIRMAN WILSON: As a cross examination?

25 MR. MURRELL: It might be at that point in

1 time when he comes on. But in the event he is not  
2 offered as a rebuttal witness -- which is, of course,  
3 the option of counsel for Florida Power and Light --  
4 then I would have this in the record. Also it's going  
5 to be of interest to me in my examination of Mr. Wells.

6 CHAIRMAN WILSON: Well, there's no limitation  
7 on you using it in the -- well, there may be.

8 MR. CHILDS: We do intend to call Mr. Silva.

9 MR. MURRELL: I would just like to do this  
10 for my case in chief. You may not ever read it, I'm  
11 not going to read it to you, I'm not going to waste the  
12 Commission's time, but I would like to just go ahead  
13 and provide it in my case in chief and have it of  
14 record.

15 CHAIRMAN WILSON: All right, the deposition  
16 of an expert witness?

17 MR. PRUITT: It's not an exhibit, it becomes  
18 part of the testimony and the record. It is received  
19 into evidence, if it's received.

20 MR. CHILDS: I didn't hear that.

21 MR. PRUITT: One party --

22 COMMISSIONER EASLEY: I'm not sure he  
23 understands it.

24 CHAIRMAN WILSON: I want to make sure what  
25 the proposal is here.

1           MR. MURRELL: My proposal is to call Mr. Rene  
2 Silva as an adverse witness and an expert witness and a  
3 witness more than 100 miles away as far as residence,  
4 although he is perhaps here today.

5           MR. CHILDS: He is.

6           MR. MURRELL: My proposal is to call that  
7 adverse witness by deposition and just provide that  
8 deposition to the Commission. I'm requesting to file  
9 it and I will request that it be admitted; and I have  
10 an exhibit to the deposition that I would like an  
11 exhibit number for.

12           MR. CHILDS: We would object. Mr. Silva is  
13 here, we have a procedure for the identification of  
14 witnesses and you didn't identify him. His deposition  
15 has been taken for some time, and, --

16           MR. MURRELL: Mr. Chairman, his deposition  
17 was taken --

18           CHAIRMAN WILSON: Just a moment.

19           MR. CHILDS: -- and I think it's  
20 inappropriate to simply say, "I'm going to put a  
21 deposition into evidence in case I need it."

22           CHAIRMAN WILSON: What do the rules either  
23 allow or require? (Pause)

24           MR. CHILDS: I would suggest that from my  
25 perspective I believe it requires unavailability of the

1 witness and a designation of the portions that they  
2 intend to offer and the opportunity to read it. And I  
3 think we have the witness available.

4 MR. MURRELL: Mr. Chairman, my position on  
5 this is simply this: It's my case in chief. I'm  
6 offering this, I understand Mr. Silva may be present.  
7 I'm offering this, I don't have the right --

8 CHAIRMAN WILSON: Mr. Silva is present.

9 MR. MURRELL: -- to call Mr. Silva in my  
10 case in chief. I did not list him in my case in chief  
11 as a live witness. I was going to take him on  
12 rebuttal; I can take him right now and just ask him the  
13 same questions that I had to him on deposition. That's  
14 fine with me if that's preferential to the Commission.  
15 I would just like to establish a few things before I  
16 put Mr. Wells on.

17 CHAIRMAN WILSON: Did you advise --

18 MR. MURRELL: I didn't take his deposition  
19 until last Friday. Pardon me, Mr. Chairman.

20 CHAIRMAN WILSON: Did you advise any of the  
21 parties that you intended to use his deposition in  
22 evidence today?

23 MR. MURRELL: No, sir. The deposition was  
24 taken for all purposes when it was taken pursuant to  
25 the rules. Which all purposes including for use at

1 trial.

2 CHAIRMAN WILSON: Customary practice at the  
3 Commission is to advise parties when you intend to ask  
4 that pieces of a deposition -- all or any part of the  
5 deposition -- is to be put into the record so parties  
6 are on notice, can review the deposition to determine  
7 whether there are any questions or answers that may be  
8 objectionable, and to determine whether they have any  
9 objection to the use of that deposition in that  
10 fashion.

11 MR. MURRELL: Mr. Chairman, I was just  
12 reading the new order, I didn't realize that was  
13 implied in it. I was reading the provision of the  
14 Prehearing Order that related to depositions, I did not  
15 understand that to be part of that order.

16 CHAIRMAN WILSON: I don't remember what the  
17 language is in the prehearing order is as to  
18 depositions.

19 MR. HOWE: Mr. Chairman, it appears at Page  
20 3, I have it before me. It says, "Use of deposition  
21 and interrogatories," and states, "If any party desires  
22 to use any portion of a deposition or an interrogatory,  
23 at the time the party seeks to introduce that  
24 deposition or a portion thereof the request will be  
25 subject to proper objections and the appropriate



1 evidentiary rules will govern. The parties will be  
2 free to utilize any exhibits requested at the time of  
3 the depositions subject to the same conditions."

4 MR. PRUITT: Mr. Chairman, maybe I can help  
5 you a little more on that.

6 Under the provisions of Rule 1.330(a), the  
7 Rules of Civil Procedure of the State of Florida, "At a  
8 trial or an interlocutory hearing, any part or all of a  
9 deposition may be used against any party who was  
10 present or represented at the taking of the deposition,  
11 assuming, of course, admissibility and proper notice.  
12 A deposition may be used for the purpose of  
13 contradicting or impeaching the testimony of the person  
14 testifying. The deposition of any witness may be used  
15 by any party for any purpose if it is shown:

16 "One, that the witness is dead;

17 "Two, the witness is at least 100 miles away  
18 from the place of hearing so long as his absence is not  
19 procured by the party offering the deposition;

20 "Three, the witness is unable to attend  
21 because of age, illness, infirmity or imprisonment;

22 "Four, the party offering the deposition has  
23 been unable to compel attendance of the witness by  
24 subpoena; or,

25 "Five, under exceptional circumstances in the

1 interests of justice, a deposition may be used instead  
2 of oral testimony; or

3 "Six, the witness is an expert or a skilled  
4 witness."

5 CHAIRMAN WILSON: When the rule says it may  
6 be used for any purpose, does that mean in lieu of a  
7 direct --

8 MR. PRUITT: It means that is in your  
9 discretion.

10 MR. MURRELL: We certainly do believe that  
11 with the representations made about Mr. Silva that he  
12 is presented as an expert.

13 MR. CHILDS: I beg your pardon?

14 MR. MURRELL: We believe that every question  
15 regarding the coal aspects of the studies and how  
16 certain assumptions were raised relative to the  
17 analyses of the coal prices used, including the  
18 escalation assumptions, were at the behest of Mr.  
19 Silva. And Mr. Silva was offered -- and my impression  
20 was Mr. Silva was offered as the individual who was  
21 going to testify about that.

22 MR. CHILDS: Well, I think, as I heard what  
23 Mr. Pruitt was saying, is that as part of the  
24 conditions of calling or using a deposition included  
25 the unavailability of the witness.

1 MR. MURRELL: No, it says "or."

2 CHAIRMAN WILSON: As you read the rule, is it  
3 saying that the expert also has to be unavailable? Or  
4 does it say that the deposition of an expert may be  
5 used for any purpose?

6 MR. PRUITT: Used "or."

7 CHAIRMAN WILSON: They're all "or"?

8 MR. PRUITT: "Or" between each one of them.

9 CHAIRMAN WILSON: That's the way I understood  
10 the rule as well, that the deposition of an expert  
11 witness may be used for any purpose.

12 Is that --

13 MR. PRUITT: Mr. Chairman, the purpose is  
14 used to impeach the credibility of a witness or impeach  
15 his testimony, but it can be used for other purposes.

16 CHAIRMAN WILSON: Can it be submitted as a  
17 direct case in lieu of the witness himself presented?

18 MR. PRUITT: You have the discretion to  
19 receive it. Generally, that's done after the witness  
20 is put on the stand and he testifies; and if the other  
21 parties think that his testimony is deficient in some  
22 aspect and they have a deposition to the contrary or  
23 that expands on what he says, they put it in.

24 CHAIRMAN WILSON: The normal use that we've  
25 made of depositions at this Commission was to save time

1 in cross examination within the hearing; and parties  
2 have had an opportunity to supplement those pieces  
3 placed in the record in order to give a more complete  
4 answer or to supplement the answers that appear in the  
5 deposition. But not over the objection of parties in  
6 lieu of direct examination. Have we ever used it in  
7 that fashion over the objection of parties?

8 MR. PRUITT: I don't recall a case of it.

9 CHAIRMAN WILSON: Is it your intention to use  
10 the entire deposition or selected portion of it?

11 MR. MURRELL: Mr. Chairman, I'm not going to  
12 select portions of it because it would take more time  
13 to designate it than it was worth, so I was tendering  
14 the entire deposition, yes, sir.

15 CHAIRMAN WILSON: It may take more time than  
16 it's worth but it sure cuts down the amount of reading  
17 that we have to do and it gives the party an  
18 opportunity to look at exactly what you're going to use  
19 so that they can formulate the objections. That's been  
20 the practice in front of this Commission for a number  
21 of years.

22 COMMISSIONER EASLEY: May I ask a question?  
23 Is the same purpose not achieved on cross examination  
24 of Mr. Silva when he is here on rebuttal? Can't you  
25 accomplish the same?

1 MR. MURRELL: I sup- -- I'm sorry, I didn't  
2 mean to interrupt.

3 COMMISSIONER EASLEY: That's all right.

4 MR. MURRELL: I believe that many of the same  
5 purposes can be served. I wanted to do it while I was  
6 in my case in chief because I have some control of what  
7 does or does not go into evidence in my case in chief.  
8 I may be laboring a little bit under my background in  
9 litigation rather than administrative hearings, but  
10 that's a concern I have and I just wanted to just  
11 establish the record while was my case in chief.

12 It is my case in chief. I just opened, I  
13 wanted to call this witness, expert witness, also an  
14 adverse witness. I wanted just to tender the  
15 deposition, the entire deposition. I don't want to  
16 take the time right now, Mr. Chairman, but I certainly  
17 can go back and identify specific portions that are of  
18 real interest to me and that I would really tender.  
19 But I was going to propose the entire deposition; but I  
20 can go back at some break and quickly fashion exactly  
21 which pages and lines I have the greatest deal of  
22 interest in.

23 MR. CHILDS: Commissioner, I realize you're  
24 going after the rule. I want to note our objection. I  
25 think it is improper to use a deposition for the

1 purpose of putting on a so-called "case in chief" when  
2 the witness is here. And I think it is doubly improper  
3 even if the witness is here to call the witness to  
4 testify live, because if that's what we're going to do,  
5 I don't think we're going to have much prefiled  
6 testimony in proceedings. And I think one of the  
7 purposes of prefiled testimony and notice is so the  
8 parties know in advance what is going to be presented  
9 to the Commission to facilitate the hearing process.

10 I don't think this facilitates it at all.

11 CHAIRMAN WILSON: Well, in terms of notice,  
12 though, you were present at the deposition and know the  
13 questions that were asked of this witness.

14 MR. CHILDS: We know that questions that were  
15 asked of the witness, Commissioner. But, on the other  
16 hand, I think that if, for example, that if he wants to  
17 offer the deposition as part of the case in chief, it  
18 is fair for all parties to know in advance that that is  
19 the purpose -- particularly here when we know the  
20 witness is scheduled to testify -- so that there can be  
21 some opportunity to react and give some thought to what  
22 that means.

23 I don't think, for example, that simply to  
24 say wholesale, "I'm going to put the whole deposition  
25 in, I'll tell you later," even gets over the issues of

1 relevance, materiality, or whether it's consistent with  
2 positions that this party has taken, and I don't think  
3 that is proper practice.

4 MR. HOWE: Mr. Chairman, may I add a little  
5 bit to the confusion? I have my deposition folder with  
6 me and I have an excerpt from the Florida Practice and  
7 Procedure Manual that addresses this particular  
8 subject. And under Section 16-6, which refers to  
9 depositions of experts, it states:

10 "Testimony of an expert or skilled witness  
11 may be taken at any time before trial in accordance  
12 with the other discovery rules and may be used at trial  
13 regardless of the witness's place of residence or  
14 whether he is within the 100-mile distance prescribed  
15 in Rule 1.330(a)(3). This rule conflicts with the  
16 complex predicate under Rule 1.280(b)(3) and has been  
17 in conflict with the work product privilege as applied  
18 to the expert witnesses since its enactment in 1949 as  
19 a statute. The rule has apparently been forgotten by  
20 lawyers in appeals on the questions. It has been  
21 ignored by the courts."

22 CHAIRMAN WILSON: Well, there's nothing to do  
23 but ignore it as well. I mean, if it's good enough for  
24 the courts, by golly, it ought to be good enough for  
25 us. (Laughter)

1           Enlighten me as to what the purpose of your  
2 reciting to me from the practice manual is, Mr. Howe?

3           MR. HOWE: Just the general proposition that  
4 where experts are concerned, as I understand the use of  
5 deposition, they can be used for any purpose. For  
6 example, you can put an expert witness on the stand and  
7 introduce his deposition while he's sitting there. For  
8 whatever reason, the Rules of Civil Procedure have  
9 carved out this exception as it applies to experts.  
10 And as far as I know, there is no limitation on the use  
11 of a deposition --

12           CHAIRMAN WILSON: In terms of logic or  
13 reason, why would you do that and have the expert  
14 sitting right there in front of you in the audience who  
15 is going to come to the stand?

16           MR. HOWE: You might use it for traditional  
17 reasons of impeachment or so forth.

18           CHAIRMAN WILSON: I don't see a problem with  
19 that.

20           MR. HOWE: But, honestly, I don't know what  
21 the distinction is. All I can tell you is it seems to  
22 be one that has been recognized, it has been in the  
23 Florida Rules of Civil Procedure for a long time.

24           CHAIRMAN WILSON: And nobody ever uses it.

25           MR. HOWE: No, it is used, it just has never



1    been explained, I would have to say.

2                   CHAIRMAN WILSON:  It's been used?

3                   MR. HOWE:  Yes, it has been consistently  
4 recognized that the rule specifically allows for an  
5 expert's deposition to be used for any purpose,  
6 irrespective of the availability of that witness.

7                   CHAIRMAN WILSON:  You're familiar with  
8 instances where the deposition has been used as a  
9 direct presentation by an expert witness when the  
10 expert witness was sitting right there to testify  
11 himself?

12                   MR. HOWE:  This is old memory you're asking  
13 for.  I think -- on that, I don't remember that  
14 specific point.  All I remember reading is that  
15 uniformly they are just given weight to the words for  
16 any purpose.

17                   COMMISSIONER EASLEY:  Does that also  
18 contemplate the fact that a party wants to call the  
19 expert witness as an adverse witness by the use of that  
20 deposition?  Is that part and parcel?

21                   MR. HOWE:  Commissioner, I would have to  
22 assume that it would not make any difference.  You  
23 could call a witness as an adverse witness and  
24 introduce his deposition under the terms of the rule.

25                   COMMISSIONER EASLEY:  But would that assume

1 that the party wanting to call the adverse witness  
2 would have gone through the normal notice identifying  
3 the adverse witness, --

4 COMMISSIONER GUNTER: The witness list.

5 COMMISSIONER EASLEY: -- the witness list and  
6 all the things that would be done from the beginning?

7 MR. MURRELL: If I may respond to that?

8 CHAIRMAN WILSON: Did you identify him as one  
9 of your witnesses in the prehearing order, did you --

10 MR. MURRELL: No, no, I did not. Mr.  
11 Chairman, I wasn't able to take --

12 CHAIRMAN WILSON: Excuse me.

13 MR. MURRELL: I'm sorry.

14 CHAIRMAN WILSON: Don't interrupt me, please.

15 MR. MURRELL: I apologize to you.

16 CHAIRMAN WILSON: I don't like it.

17 Did you identify this as one of your  
18 witnesses in either the Prehearing Order or your  
19 Prehearing Statement?

20 MR. MURRELL: No, sir.

21 CHAIRMAN WILSON: Did you notify any party  
22 before this point that this was going to be an adverse  
23 witness?

24 MR. MURRELL: Except by notice. The notice  
25 itself, the notice of deposition --

1           CHAIRMAN WILSON: No, I'm talking about using  
2 this party here today to be called as an adverse  
3 witness, did you notify anyone of that?

4           MR. MURRELL: I do not believe so, Mr.  
5 Chairman.

6           CHAIRMAN WILSON: Well, --

7           MR. MURRELL: Could I say one thing? One  
8 thing I want to say is I wasn't allowed, I wasn't even  
9 able to take this witness' deposition until last  
10 Friday; and I got the deposition transcript in  
11 essentially, well, I got it in Monday. That's how  
12 quickly this has come on me. So it's not a matter of  
13 anticipated ambush, I just got the document, which was  
14 after I had, you know, I had --

15           CHAIRMAN WILSON: This case was filed on  
16 September the 28th?

17           MR. MURRELL: Yes, sir, that's correct.

18           CHAIRMAN WILSON: You've had the direct  
19 testimony since that time. You filed your first  
20 discovery on November 12th, your second discovery on  
21 November 20th, we've held a Prehearing Conference, you  
22 filed prehearing statements, and you're telling me last  
23 Friday was the earliest and only opportunity you've had  
24 to take the deposition of this witness?

25           MR. MURRELL: Yes, sir, that's right. Now,

1 let me explain that. This witness was identified by  
2 Mr. Waters in his deposition. And when I went to the  
3 Prehearing Conference, Mr. Childs for Florida Power and  
4 Light and I discussed depositions. And I called his  
5 office back and said that I wanted to take the  
6 deposition of Mr. Silva that afternoon; that is, at the  
7 Prehearing Conference. I was not entitled or able or  
8 whatever, the schedules didn't work, until last Friday  
9 at 2:00 o'clock p.m. is the first time I had a crack at  
10 Mr. Silva.

11 I had just found out about Mr. Silva in Mr.  
12 Waters' deposition, which was just, I don't have the  
13 dates in front of me, but it was very, very recently.

14 I would just point out I agree with you, Mr.  
15 Chairman, that this petition was filed on the 28th but  
16 we did not petition to intervene until October 12, we  
17 didn't receive permission to intervene until October 24th.

18 CHAIRMAN WILSON: Did you file discovery on  
19 the day you filed your request to intervene?

20 MR. MURRELL: No, sir, I didn't know I was  
21 entitled to. I thought I had to wait until I was  
22 allowed to intervene before I could file discovery.

23 CHAIRMAN WILSON: And you intervened on what  
24 date?

25 MR. MURRELL: We were allowed to intervene --

1 the order is dated October 24th. I don't have a note  
2 of when I actually received the order. And I went to  
3 Mr. Waters deposition which was set by the Office of  
4 Public Counsel.

5 CHAIRMAN WILSON: Well, I'm going to deny  
6 your request. I think that rule that is to make sense,  
7 at least common sense, and I think Mr. Silva is here;  
8 that would be the preferable course of action is to  
9 cross examine Mr. Silva. He's not been previously  
10 identified as a direct witness and I would suggest you  
11 go ahead and proceed with your examination of your  
12 witness.

13 - - - - -

14 H. G. "PAT" WELLS  
15 called as a witness on behalf of the Coalition of Local  
16 Governments, having been first duly sworn, testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. MURRELL:

20 Q Would you state your name, please?

21 A Pat Wells.

22 Q And your business address?

23 A P. O. Box 4748, Clearwater, Florida.

24 Q What's your occupation, Mr. Wells?

25 A I'm director of the Coalition of Local

1 Government.

2 Q Are you the same H. G. "Pat" Wells who  
3 prefiled testimony on behalf of Coalition of Local  
4 Governments in this docket?

5 A Yes.

6 Q Would you describe for the Commission which  
7 entities are in the Coalition of Local Governments that  
8 are also in the Florida Power and Light service  
9 territory?

10 A The city the Daytona Beach Shores.

11 COMMISSIONER GUNTER: Is that the one that's  
12 listed in his testimony.

13 MR. MURRELL: I understood the Chairman to  
14 say he wanted that specifically listed when we put this  
15 witness on.

16 CHAIRMAN WILSON: Were there any in addition  
17 to those that were listed in his testimony?

18 MR. MURRELL: I'd have to ask, Mr. Chairman.

19 Q Any in addition to those that were listed in  
20 your testimony, Mr. Wells?

21 A There may be some who are principally in  
22 Florida Power territory, for instance, Orange County  
23 that may go into Florida Power and Light, but I don't  
24 even know if they are or not, so I did not list any  
25 where I was uncertain.

1 Q Do you have any changes to your testimony  
2 that you wish to make at this time?

3 A The changes I would make are just based on  
4 better but not conclusive information, and would not be  
5 material to any findings. And in the interest of time,  
6 I would desire not to make any changes at this time.

7 Q Is there an exhibit, an attachment to your  
8 testimony, Mr. Wells?

9 A Yes.

10 MR. MURRELL: Mr. Chairman, we'd like an  
11 exhibit number for that document.

12 CHAIRMAN WILSON: I think it would be 31.

13 (Exhibit No. 31 marked for identification.)

14 (For the convenience of the record, Witness  
15 Wells' testimony is inserted into the record here.)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION****COALITION OF LOCAL GOVERNMENTS****TESTIMONY OF H. G. "PAT" WELLS****DOCKET NO. 900796****NOVEMBER 20, 1990**

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

2     **A.    My name is H. G. "Pat" Wells. I am Director of the Coalition of Local Governments.**

3           Our address is Post Office Box 4748, Clearwater, Florida 34618.

4

5     **Q.    Please summarize your background and experience.**

6     **A.    My career spans a period of 40 years and includes a variety of experience including**  
7           **heavy construction, engineering, manufacturing, mining, transportation, and utility**  
8           **planning. More particularly I was employed for approximately 13 years by Florida**  
9           **Power Corporation of St. Petersburg, Florida. During that period I held a variety of**  
10          **positions, including Transmission Engineering, System Planning, Computer Services,**  
11          **Electric Rates, Budgeting and Corporate Planning. During that time I served on a**  
12          **number of industry committees and associations, most notably as Chairman of the Florida**  
13          **Operating Committee during the mid-70's. This committee coordinated the planning and**  
14          **operation of the electric grid and power supply for the state of Florida, and was later**  
15          **replaced by the current Florida Electric Power Coordinating Group. During those days,**  
16          **planning was made somewhat more difficult by the fact that our electric ties to Alabama**  
17          **and Georgia were so weak that a disturbance in Florida resulted in a separation of the**  
18          **Florida grid from the rest of the nation. While with Florida Power Corporation I was**



1 responsible for the company's pioneering efforts in the probabilistic modeling of electric  
2 power supply. At the end of that period, I was made President and Chief Executive  
3 Officer of Electric Fuels Corporation, which originally was a subsidiary of Florida Power  
4 Corporation, later becoming an affiliated company owned by Florida Progress  
5 Corporation, the holding company which owns Florida Power Corporation. While with  
6 Electric Fuels Corporation we started from the position of being the highest cost coal  
7 supplier in Florida and progressively improved to become among the lowest cost  
8 suppliers by the end of my tenure at Electric Fuels in 1987.

9  
10 Q. What is the purpose of your testimony?

11 A. The purpose of my testimony is to examine the Florida Power & Light ("FPL") system  
12 with an emphasis on its demand and energy requirements, its need for additional base  
13 load generation and its expected requirements in the near term. In addition, I will  
14 examine FPL's rather unique RFP process, some critical assumptions FPL made in its  
15 analysis of the proposals, and its final decision leading to the petition before the  
16 Commission. During my examination I will show that FPL has not yet instituted  
17 sufficient incentives or demand side management particularly toward shaping its load  
18 curves, both from a demand and energy perspective. I will also show that a critical  
19 assumption in FPL's analysis was the differential delivered cost of coal to plant Scherer  
20 and the Martin site in Florida. I will discuss the location of the Scherer Plant on the  
21 Norfolk Southern Rail System and its probable long term impact on coal prices. I will  
22 also point out some potential difficulties in the design of the Scherer Plant itself.  
23 Ultimately, I will show that FPL's petition should be denied at this time. My testimony  
24 is offered on behalf of the Coalition of Local Governments, which is an association

1 representing local government entities which are retail customers of Florida Power &  
2 Light Company ("FPL"), including the City of Daytona Beach Shores, Florida, the City  
3 of Hialeah Gardens, Florida, the City of South Daytona, Florida, the city of Stuart,  
4 Florida, the city of Ft. Myers, Florida and Union County, Florida.

5  
6 **Q. Please provide an overview of the FPL system.**

7 **A. FPL is by far the largest electric utility system in Florida, accounting for almost half of**  
8 **the total electric retail sales in the state. FPL has been a pioneer in establishing gas as**  
9 **a fuel in Florida and in providing incentives for gas transmission capability into Florida.**  
10 **FPL has also pioneered in the use of nuclear energy to produce power in the state. Coal**  
11 **is notably absent, however, on the FPL system. Instead, FPL has turned to the**  
12 **alternative of purchased power for most of its coal requirements. The company's only**  
13 **ownership position in a coal fired facility is in participation with the Jacksonville Electric**  
14 **Authority at the St. Johns River Power Park, which consists of two large coal fired units**  
15 **near Jacksonville. For the past two years, FPL has had the highest average cost per**  
16 **megawatt hour sold at retail among the six largest retail electric suppliers in Florida. In**  
17 **the future, FPL will need to add generating capacity. In order to increase its fuel**  
18 **diversity, FPL needs to include coal as a fuel in its future plans. Since the deregulation**  
19 **of the gas industry, FPL should also consider other pioneering efforts with that fuel, such**  
20 **as incentives for further increasing gas transmission capacity into Florida and the**  
21 **purchase of gas at the well head or possibly even exploring for gas for its own**  
22 **account.**

23

1 Q. Have you examined Florida Power & Light Company's load and capacity status?

2 A. Yes, I have.

3

4 Q. Would you please explain your findings?

5 A. I have started by analyzing FPL's load duration curve for the test year 1990 submitted  
6 under Docket 900038 EI. Upon that load curve I have superimposed the existing base  
7 load generation. Additionally I have superimposed the coal by wire purchases or unit  
8 power contracts (UPCs) as reported by FPL. While this is a simple method, it provides  
9 a very good check of the more sophisticated loss of load probability studies customarily  
10 used in system planning. From this data one can readily see that FPL is long on base  
11 load and that for 1990 FPL had more than adequate peaking capacity to serve the peak  
12 load, since the intercept of the UPC and base load generation is less than 10% by significant  
13 margin. In addition, I have examined the daily system loads with particular emphasis  
14 on the heavy usage times during summer peaks. The FPL daily load curve is one of the  
15 most severe of any electric system in the world. In 1990 this daily load curve peaks at  
16 around 12,000 megawatts with a minimum slightly over 6,000 megawatts. This means  
17 the FPL's daily operation involved bringing on-line about 6,000 megawatts from 5  
18 o'clock in the morning to 6 o'clock at night. In other words, FPL is bringing on the  
19 equivalent of a 500 megawatt unit almost every single hour. From a system operation  
20 standpoint, this is a difficult task indeed. This leads me to immediately examine the  
21 incentives the FPL has provided its customers to move load from the peak hours to off  
22 peak hours. In recent years new technology has been introduced as well as  
23 improvements in old technology which allow effective thermal storage. An excellent  
24 example of thermal storage involves the operation of air conditioning units during off

1 peak hours and the later release of this stored thermal energy during peak hours. From  
2 an energy conservation perspective, thermal storage represents far more true conservation  
3 than all of the programs reviewed under the conservation docket. For instance, a typical  
4 modern school has a demand around 750 kilowatts. Almost a third of this is air  
5 conditioning compressors, so the potential from a demand perspective is a reduction of  
6 250 kW per school. From an energy conservation perspective, an air conditioning  
7 compressor unit operating during the cooler nighttime hours (instead of the much hotter  
8 daytime hours) will achieve an increase of efficiency of at least 15% and frequently 20%.  
9 These savings more than offset losses in the thermal storage scheme many times over.  
10 Considering the number of modern schools on the FPL system, this alone could  
11 dramatically improve FPL's system load factor, which would result in better utilization  
12 of its existing plant. The resulting improved load factor would in turn lead to recognition  
13 from securities analysts which issue opinions and recommendations on FPL stock.  
14 Lastly, this cooling method would reduce FPL's peak system demand, thereby deferring  
15 the time when additional generating capacity would be needed. An additional factor is  
16 that the generation mix required between peak generators and base load generators would  
17 be reduced, again improving overall fuel efficiency of the system and lowering costs.  
18 Since FPL has recently been a high cost supplier, this method would probably do more  
19 for its overall price performance than anything available to it in the short run. Certainly,  
20 time will be required for such incentive rates to be designed and implemented and for  
21 customers to become convinced to install thermal storage equipment. One could expect  
22 a period of one to six years to accomplish a significant change in the daily and annual  
23 load curves. However, the payoffs are tremendous. In the event more time is required  
24 than expected, peaking units, which might later become part of coal gasification

1 combined cycle units, can be installed on short lead time to handle any short fall in  
2 capacity. My exhibit is titled "Wells Document 1".

3  
4 **Q. Have you reached any conclusion as a result of your examinations of FPL's load**  
5 **capacity status?**

6 **A. Yes. I believe that FPL's best alternative is to commence a vigorous program leading to**  
7 **improvement of the company's daily and annual load duration curves. -I believe this to**  
8 **be a superior alternative to continuing to accommodate whatever demand in energy**  
9 **requirements are put to it by its customers both present and future.**

10  
11 **Q. Have you examined FPL's RFP and its recommendations concerning the Scherer**  
12 **Plant of Georgia Power?**

13 **A. Yes I have.**

14  
15 **Q. Would you please explain your findings?**

16 **A. There are several aspects of Scherer Plant which I have examined. First, the plant is**  
17 **located near Macon, Georgia. Experience has taught me that the transportation of**  
18 **electric energy is more expensive than the transportation of fuel in almost all cases.**  
19 **FPL's first priority should be to examine generation alternatives nearer its load centers.**  
20 **While I commend FPL for increasing its fuel diversity by the acquisition or construction**  
21 **of coal fired generation, I believe that new base load generation is not their current best**  
22 **alternative. Nevertheless, I have examined the Scherer Plant. The plant, near Macon,**  
23 **Georgia, is situated on and captive to the Norfolk Southern Railway. Only a few major**  
24 **suppliers of so-called standard coal or compliance coal exist on the railroad, and as of**

1 this date the Norfolk Southern has not made foreign coal readily accessible to Plant  
2 Scherer. Many more suppliers capable of producing the low sulfur compliance coal  
3 happen to be located on the CSX rail system. For this reason, over the long term there  
4 may be more supply/demand imbalance attended with plants on the Norfolk Southern  
5 Railroad, such as Scherer, than on the CSX Railroad. I believe that this is one of the  
6 major reasons George Power is interested in selling Scherer No. 4. This can be  
7 contrasted to the Martin site, which has access to both CSX Transportation as well as  
8 potential access to water borne coal, including inexpensive off-shore coals. At any rate,  
9 Georgia Power's Plant Scherer currently suffers from some of the highest delivered coal  
10 costs in the nation. Until we see information from our discovery requests, we can only  
11 speculate on exactly how this situation would impact on the cost of producing power at  
12 Scherer Number 4. I believe that Scherer would continue to provide high priced power  
13 compared to other power plants of similar age, based upon the cost of fuel alone.

14  
15 **Q. Have you examined the fuel cost escalation and pricing of coal in the analysis of its**  
16 **RFP submissions?**

17 **A. Yes I have. During the 28 year analysis period, the projected price of coal delivered to**  
18 **Martin Plant has an average escalation of 6½%, while the Scherer Plant escalated**  
19 **delivered price escalates at 4½%. The net result at end of period is a \$100 per ton**  
20 **difference between coal delivered to Martin and Scherer, with coal delivered to Martin**  
21 **having the higher cost. This projected difference does not make sense to me, and falls**  
22 **outside of my experience in purchasing coal and coal transportation for use in Florida.**  
23 **The energy market is generally quite competitive, with various fuels seeking a fairly**  
24 **common level over time. For coal delivered to one place as compared to another to vary**

1 by \$100 per ton is unimaginable to me, and is not supported by current facts. This is  
2 especially true given the fact that the Scherer Plant has relatively poor access to  
3 compliance coal as compared to Martin. There is some probability that in the long run  
4 the Scherer Plant may have to go to Wyoming for its fuel supply, with an extremely long  
5 rail haul between the Wyoming mines and Macon, Georgia. Western coals have recently  
6 been tested at Scherer in units 1 and 2, and additional tests are planned at this time for  
7 units 3 and 4. This could put Scherer in jeopardy for further escalating prices for a  
8 company which certainly needs to move toward decision in their near term which will  
9 bring it into line with other electric suppliers in Florida. Add to this the current  
10 confusion about how Scherer may be required to respond to changes in the Clean Air Act  
11 (Acid Rain Amendments), and we see that the case for purchasing Scherer Unit 4 is not  
12 strong.

13

14 **Q. Are FPL's projected differences in the cost of coal delivered to the Scherer Plant**  
15 **compared to the Martin site justified by differences in coal purchase and coal**  
16 **transportation costs?**

17 **A. No.** As I mentioned earlier, the Scherer Plant site is captive to the Norfolk Southern  
18 Corporation rail system ("NS"). Current rates to Scherer on the NS are believed to be  
19 in excess of \$12.00. These do not compare favorably with the cost of delivering coal  
20 to Florida. The cost of rail delivery to the St. Johns River Power Park is not  
21 substantially above that of getting coal to Scherer. Additionally, I believe that the cost  
22 of moving coal to Florida Power Corporation's Crystal River plants is also much less  
23 expensive on a mills per mile basis, and competitive with the Scherer rates. The plants  
24 near Jacksonville and at Crystal River have some access to water competition, which

1 causes the delivering rail carrier to offer competitive rates to those plants. Modal  
2 competition could also be developed for potential power plant sites for an FPL unit,  
3 yielding relatively low transportation costs. Additionally, the plant at the Martin site  
4 would have more flexibility on sourcing its coal, with access to offshore coals, western  
5 coal (by water), and all of the producers on the CSX Transportation railroad. The  
6 Martin site could also consider the use of higher sulfur coal, since some stack gas  
7 cleaning technology would be required for a new coal fired unit built in Florida. High  
8 sulfur coal is projected to be significantly less expensive than compliance coal over the  
9 next several years. The net result is that coal delivered to Martin has the real potential  
10 to be substantially cheaper than coal delivered to Scherer, particularly if Unit 4 is  
11 required to take coal from the current extremely high cost suppliers now shipping coal  
12 to Plant Scherer.

13  
14 **Q. Are there any other aspects of the Scherer Plant which you have studied that would**  
15 **have impact on this petition of FPL?**

16 **A. Yes. The design of the cooling tower has an approach temperature which appears to be**  
17 **4 degrees Fahrenheit from optimum. Time has not permitted a closer examination of this**  
18 **aspect of the plant design under this accelerated hearing procedure. If my original**  
19 **thinking on this is borne out by further engineering examination, this cooling tower**  
20 **design could have an enormous impact on the overall plant efficiency. At this point in**  
21 **time, I cannot say that this is a problem that can be corrected through improvement of**  
22 **the existing cooling tower but at best it would require additional capital expenditure to**  
23 **correct.**

24



1 Q. Based on your analysis, have you reached a conclusion?

2 A. Yes. FPL's petition should be denied at this time. Sufficient time should be permitted  
3 to reasonably evaluate changes to FPL's load curve by providing effective incentives for  
4 off peak power use.

5

6 Q. Does this conclude your testimony?

7 A. Yes.

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1 Q (By Mr. Murrell) Would you summarize your  
2 testimony, Mr. Wells?

3 A The Coalition of Local Governments is aware  
4 of Florida Power and Light's status as the highest cost  
5 supplier among Florida's six largest retail utilities,  
6 electric utilities, for the past couple of years.

7 And while we are expecting improving  
8 efficiency from the company since they have embraced  
9 the Deming management philosophy, we also recognize  
10 Deming points out clearly the fact that only  
11 management, not the workers, ultimately improve the  
12 system of production.

13 Addition of a new large production facility  
14 or any of the other alternatives being considered in  
15 this docket represent an opportunity to improve the  
16 system of production, and hopefully should take the  
17 largest step possible to bring Florida Power and Light  
18 closer into line with the more competitive electric  
19 utilities in Florida.

20 The gap is somewhere around over \$70 per  
21 megawatt hour for Florida Power and Light and something  
22 under \$60 per megawatt hour for the each of the two  
23 least-cost companies in Florida.

24 In reviewing Florida Power and Light's  
25 filing, and the subsequent evidence that's come forward

1 in this hearing, I'd like to summarize some of the  
2 things about -- of my findings on some of the  
3 alternatives.

4 Scherer Plant is located about -- I'm at some  
5 trepidation here -- about 400 miles from the load  
6 center of Florida Power and Light (Laughter)

7 COMMISSIONER GUNTER: Not from Fernandina,  
8 though.

9 WITNESS WELLS: And converts energy at the  
10 rate of about something slightly over 9 million Btus  
11 per megawatt hour as compared to the newest technology  
12 of anything offered in this hearing of the IGCC, which  
13 I believe will be in the mid-8's, about 8.5 million Btu  
14 per megawatt hour. It's fairly close to the numbers  
15 that Florida Power and Light has filed.

16 Indicative of Scherer's cost among Southern  
17 Company's units is the capacity factor in the recent  
18 past of only 17%. And while I do believe after  
19 examining particularly some of the data that's come in  
20 in the last couple of days, that the acquisition of  
21 Scherer would be an improvement to the FPL system, and  
22 would certainly be more advantageous than some other  
23 options, which I may have advocated, such as peaking.  
24 I still believe peaking would be good to serve the load  
25 but it would not reduce cost and I think these other

1 options would reduce cost and Scherer is among that.

2 In examining the evidence I find that the  
3 principal cause for Scherer's high cost is -- in  
4 comparison to the other Southern units -- is its  
5 location and the type of coal that is utilized in the  
6 unit.

7 They are located on the Norfolk-Southern  
8 Railroad, which has much less compliance coal than  
9 other sources on the CSX, for instance, and, in fact,  
10 at a reasonable capacity factor for such a plant would  
11 use over a fourth of the available production of  
12 compliance coal off the Norfolk-Southern Railroad.

13 Another factor against Scherer is the 9%  
14 loss, which was I think presented last night by Florida  
15 Power and Light. My own estimate was about 8 to 10 or  
16 I thought about 8-1/2 so I was pretty close, but 9% is  
17 a fairly large amount to lose from a plant due to its  
18 location in another state, and that's for the life of  
19 the plant.

20 The next problem that I saw -- that I see  
21 with this thing is that we are forecasting  
22 substantially higher escalation for the poorer quality  
23 coals, for the various alternatives in here. As  
24 compared to escalation for the high quality coal.

25 This is completely beyond any experience I

1 have had in the coal industry for the past ten or 12  
2 years, and in the energy business in general for most  
3 of my life, and you can see that I'm no spring chicken.

4 Coal prices tend to stay pretty close  
5 together. The premiums are paid when they become more  
6 than just a fraction of a percent, are paid basically  
7 for very unusual quality such as your very fine coking  
8 coals which are used in the metallurgical industry. We  
9 just don't find big differences in coal prices. When  
10 you crank transportation in you can get some  
11 differences, but those differences don't escalate  
12 usually even as fast as the coal prices do.

13 So there are -- have been a few aberrations  
14 in rail rates where fuel has had some step  
15 discontinuities in its escalation which are very  
16 familiar with this Commission.

17 But I find that this particular assumption,  
18 which as I understand it, was given rise partially at  
19 least by the coal procurement strategy, which was  
20 assumed for the comparison. And I would challenge that  
21 it's inappropriate to use completely different  
22 strategies for two competing options when maybe the  
23 same strategy, or at least a similar strategy, would be  
24 available. But even with those two separate strategies  
25 for coal procurement, the one being for Scherer and St.

1 John's River, those strategies were shown as a mixed  
2 bag of procurement options with different suppliers,  
3 different contract terms and a mix of spot and long  
4 term and so forth, which I would call a fairly good  
5 philosophy for a long-term project as opposed to the  
6 IGCC, which was a full requirements spot contract or  
7 one-year contract to be negotiated each and every year.  
8 Even with that, I would submit that the escalation  
9 factor on the poorer quality coal would be somewhat  
10 less than the escalation factor on the higher quality  
11 coal.

12 I've done a quick, back-of-the-envelope, just  
13 bringing the escalation factors together, and I reduced  
14 the cost of the IGCC by over \$500 million. I  
15 recognize, however, there may be some irreducibles, and  
16 that number may be somewhat high, but it is well over  
17 \$500 million, which would bring the two projects pretty  
18 close together.

19 As to the UPS comparison with Scherer, I do  
20 believe that it would be difficult for Florida Power  
21 and Light to improve very much on going forward, at  
22 least, on what Southern would be able to do in the  
23 purchase of coal. Southern is among the largest coal  
24 buyers anywhere, and I would not wish to compete with  
25 them and expect to beat them very much, very many years

1 out of long-term contract.

2 That's a summary of what I have.

3 MR. MURRELL: Mr. Chairman, I have two  
4 documents that I'd like numbered. They are  
5 interrogatory and responses -- interrogatories placed  
6 upon Florida Power and Light and their responses to  
7 them. I need two exhibit numbers.

8 CHAIRMAN WILSON: All right. That would be  
9 Exhibit No.s 32 and 33. Go ahead and distribute those.

10 MR. MURRELL: For the record, 32 will be  
11 Florida Power and Light Docket 900796, Coalition of  
12 Local Governments First Set of Interrogatories,  
13 Interrogatory No.1, Pages 1 through 3 of 3. That will  
14 be Exhibit No. 32.

15 And Exhibit No. 33 will be Florida Power and  
16 Light, same docket, Coalition of Local Governments,  
17 First of Interrogatories, Interrogatory No. 3, Pages 1  
18 through 3 of 3.

19 (Exhibits Nos. 32 and 33 marked for  
20 identification.)

21 Q (By Mr. Murrell) Mr. Wells, do you have  
22 those two documents I just described?

23 A Not yet.

24 MR. MURRELL: With the Chair's permission,  
25 I'd wait until Florida Power and Light's counsel has

1 them.

2 Q (By Mr. Murrell) Mr. Wells, did you review  
3 these interrogatory responses between the time you  
4 filed your prefiled testimony and giving your summary  
5 this afternoon?

6 A Yes.

7 Q And does your summary this afternoon  
8 incorporate to a certain extent the information  
9 provided by Florida Power and Light?

10 A Yes, it does.

11 Q In these interrogatory responses?

12 A Yes.

13 Q Did you also have an opportunity to review  
14 the deposition of a Mr. Rene Silva, Florida Power and  
15 Light Company?

16 A I did have a brief time to look at the  
17 document, yes.

18 Q And did you incorporate any of the  
19 information contained in that deposition into your  
20 summary?

21 A I don't recall anything in addition to these  
22 questions here.

23 Q You were responsible with Florida Power  
24 Corporation and Electric Fuels Corporation for coal  
25 purchase and coal transportation for quite some time,



1 is that correct?

2 A Yes.

3 Q Have you been presented with enough  
4 information in these interrogatory responses to let you  
5 understand whether or not the methodology used to  
6 develop the various escalation factors is appropriate?

7 A No, sir, I haven't.

8 MR. CHILDS: Objection. I object to the  
9 question. And since I think he started, I'd move to  
10 strike the answer, at least until there is a ruling.

11 The witness has prefiled testimony. The  
12 witness went beyond the prefiled testimony in his  
13 summary, which I guess is a practice, but I don't think  
14 it's fair or proper to pull out an interrogatory and  
15 say, "Did you read the answer? Do you think it's  
16 adequate?" I don't think it has any evidentiary value  
17 at all.

18 MR. MURRELL: It's just evidentiary value.  
19 That's something for the Commission to determine. And  
20 this is discovery that was not made available until  
21 after Mr. Wells filed his testimony. And it seems to  
22 me that the two options are to permit some breadth in  
23 the examination of this witness or provide an extension  
24 until we can continue to complete discovery and come  
25 back for final hearings.

1           MR. CHILDS: Well, perhaps I should but I  
2 take exception to the implication with the phrasing of  
3 discovery that wasn't made available until after he  
4 filed his testimony. Perhaps part of that reaction  
5 relates to the characterization of discussions that we  
6 had about depositions of Mr. Silva and the conditions  
7 under which he would be made available.

8           I would submit that we have made an  
9 extraordinary effort to respond to the discovery  
10 request by this party and others in this proceeding,  
11 and that that discovery by this party wasn't even  
12 initiated until substantially after we filed our  
13 testimony and our petition. And I don't think that  
14 it's proper to offer it in any event, and object.

15           CHAIRMAN WILSON: Proper to offer what?

16           MR. CHILDS: The questions critiquing an  
17 answer to an interrogatory with the explanation that  
18 when he prepared his testimony they did not have the  
19 opportunity to obtain the information.

20           CHAIRMAN WILSON: Let me hear your question  
21 again.

22           MR. MURRELL: I'm going to have to have it  
23 read back, Mr. Chairman.

24           CHAIRMAN WILSON: Why don't you just rephrase  
25 your question. Do I understand the nature of your

1 question was do you have an opinion about whether the  
2 escalation --

3 MR. MURRELL: Whether there is sufficient  
4 information contained in these interrogatory responses.

5 CHAIRMAN WILSON: Why don't you ask him the  
6 ultimate question, that might be the best way to  
7 proceed here. Ask him whether he's formed an opinion  
8 about the escalation rates.

9 Q Have you formed an opinion about the  
10 escalation rates used by Florida Power and Light in  
11 their study of the various options which are presented  
12 on Exhibit 23, hearing Exhibit 23.

13 A Yes.

14 Q And what is that opinion?

15 A I believe they are incorrect.

16 Q What's the basis for that opinion, Mr. Wells?  
17 What's the substance of your opinion?

18 MR. CHILDS: Wait a minute. I object. I  
19 think it's a little unorthodox. We didn't offer this,  
20 and to say "Well, I'm going to offer it into evidence  
21 and then I'm going to ask you or ask my own witness to  
22 tell me why it's incorrect."

23 CHAIRMAN WILSON: Well, I don't take that to  
24 be the question at this point.

25 MR. CHILDS: All right.

1           CHAIRMAN WILSON: Neither of these exhibits  
2 have been offered. You don't have a witness on the  
3 stand who can authenticate them because he didn't  
4 prepare the answers.

5           MR. CHILDS: All right.

6           CHAIRMAN WILSON: I've heard three questions:  
7 one, do you have an opinion, and then the second is  
8 what is it, and the third is what do you base that on?  
9 You may hear an objectionable answer here but I don't  
10 think we've heard one yet.

11           Q     (By Mr. Murrell) What do you base your  
12 opinion on, Mr. Wells?

13           A     My opinion is that the higher quality coals  
14 in the long run will escalate at higher percentages  
15 each year over the long run than the low quality coal.  
16 And in this particular proceeding, the high quality  
17 coals are required by Scherer Plant, and the low  
18 quality coals are required by IGCC, and a number of the  
19 other options.

20           Q     Mr. Wells, I'd like to --

21           COMMISSIONER GUNTER: Let me ask a question  
22 if I can right there.

23           Mr. Wells, I want to lay a predicate for my  
24 conversation.

25           I have been to Coolwater and discussed

1 performances of the gasification process with Texaco.  
2 I have been to Baton Rouge and discussed the  
3 gasification process with the Dow Chemical folks. I  
4 was to Houston and discussed the gasification process  
5 with the Shell folks.

6 I take it as a result of your response to  
7 that last question that somewhere you have seen a study  
8 or performance criteria which would indicate lesser  
9 quality coals, in fact, can be used in gasification  
10 facilities.

11 WITNESS WELLS: Yes.

12 COMMISSIONER GUNTER: I have not. I wish at  
13 some point you would direct me to where those studies  
14 are.

15 There were some -- for instance, with Dow  
16 they did one -- the last time I was there, they did one  
17 1,000 ton run and that was a No. 6 -- I believe it was  
18 No. 6 Illinois that they had used, and I would like --  
19 and I'm not badgering you here. I'm looking for  
20 information because I'm very interested in this  
21 technology.

22 WITNESS WELLS: I could respond now or later  
23 to that.

24 COMMISSIONER GUNTER: Okay.

25 WITNESS WELLS: If you would like to hear

1 what I have to say about that right now it's very  
2 brief.

3 WITNESS WELLS: Electric Fuels Corporation  
4 was involved in the supply to the Tennessee Eastman --  
5 Division of Eastman Kodak coal gasification facility in  
6 Kingsport, Tennessee for a number of years. We were  
7 the sole supplier of coal to that. We were mining from  
8 the Powell Mountain Joint Venture from which I'm sure  
9 you're familiar, the lowest quality coal we had in that  
10 project and we were the only supplier. It was a low  
11 quality coal relative to anything else that we mined  
12 there. I know that after startup problems were ironed  
13 out at Kingsport, that they ran pretty much flat out  
14 all the time except for their planned maintenance on  
15 that coal.

16 COMMISSIONER GUNTER: Where is that again?  
17 I'd like to see if I can make arrangements to --

18 WITNESS WELLS: It's Eastman Kodak; it's  
19 their Tennessee Eastman plant. It's located in  
20 Kingsport, Tennessee. To my knowledge they are still  
21 running. They are probably up in the seven, eight, 10  
22 years now, maybe 10 -- probably not that long, but  
23 seven or eight.

24 CHAIRMAN WILSON: How big a plant is that?

25 WITNESS WELLS: I just do not remember,

1 Chairman. We sold them a lot of coal. It wasn't like  
2 a big power plant, but it was a substantial amount of  
3 coal, and it was a steady contract, and still is as far  
4 as I know.

5 COMMISSIONER GUNTER: Good, I'm glad to hear  
6 that because the reason I wanted to lay the predicate  
7 for my question is the places I have been that looked  
8 as though -- of course, Coolwater was power plant  
9 application. That was the largest --

10 WITNESS WELLS: Yes, sir

11 COMMISSIONER GUNTER: -- of its kind. And  
12 the one at Dow is used, the residual is used in the  
13 furnace, and, of course, the one at Shell was not used  
14 for power plant application.

15 WITNESS WELLS: It is true they need  
16 consistency. They couldn't take coal this kind one day  
17 and that the next. They had a narrow band and it had  
18 to be the same all the time. But they tuned their  
19 plant to that coal and they ran the heck out of it.

20 Q (By Mr. Murrell) What was the percentage  
21 sulfur of that coal, Mr. Wells, if you remember?

22 A About 2.8% and I think a Btu is 12.3.

23 Q 12,300 Btus per pound.

24 A Yeah.

25 Q Mr. Wells, let me take you to line 25 and to

1 ask you to look at the escalation factors that have  
2 been used on line 25, average escalation factors for  
3 fuel costs.

4 CHAIRMAN WILSON: You're referring now to  
5 exhibit --

6 MR. MURRELL: Exhibit 23, I apologize Mr.  
7 Chairman.

8 Q (By Mr. Murrell) On that exhibit can you  
9 tell me if you understand why is it that an escalation  
10 factor of 7.15% is used for the Martin IGCC option?

11 A No. I do not understand why it's that high.

12 Q Based on your experience in the coal  
13 industry, Mr. Wells, does it make sense to you that the  
14 difference between escalation factors would be that  
15 which is reflected comparing Martin IGCC to the Scherer  
16 purchase option?

17 A I'm sorry, I didn't quite catch that.

18 Q Based on your experience in the coal  
19 industry, Mr. Wells, do you have an opinion as to  
20 whether the use of a 7.15% escalation factor in the  
21 Martin IGCC evaluation is reasonable when compared  
22 against a 4.99% escalation factor for the Scherer  
23 purchase option?

24 A No. I would expect the escalation of what I  
25 believe to be the lower quality coal would be at a



1 lower rate than the higher quality coal.

2 Q Mr. Wells, you notice -- have you seen before  
3 in any of the materials filed that they intend to use a  
4 13,000 Btu high sulfur coal?

5 A No. That was not in the original. I did not  
6 know of that being in the original.

7 Q Is this the first time -- when this Exhibit  
8 23 was filed and served upon the parties at this  
9 hearing was the first time that you saw that?

10 A Yes.

11 Q Can you tell me whether you know if that  
12 combining of very high Btu and high sulfur is common or  
13 uncommon coal?

14 CHAIRMAN WILSON: I'm sorry, I don't know  
15 what common --

16 MR. MURRELL: I'm sorry. Is commonly found,  
17 is produced in large quantities.

18 WITNESS WELLS: I'd say that it's more scarce  
19 and I, frankly, don't know why they are specifying  
20 that.

21 Q (By Mr. Murrell) Do you know what part of  
22 the country that combination of very high Btu and high  
23 sulfur coal is located in?

24 A There may be other places but that coal is  
25 available in Pennsylvania and maybe far northern West

1 Virginia. There may be other places.

2 Q In your opinion and based upon your  
3 experience at Electric Fuels Corporation, Mr. Wells, is  
4 that the most advantage freight district from which to  
5 ship coal to South Florida?

6 A No.

7 Q Are there other high sulfur coals that are  
8 much closer?

9 A Yes.

10 Q Do you know whether those other high sulfur  
11 coals are more expensive or less expensive on average  
12 than the high sulfur, high Btu coal?

13 A I'm not that familiar with the Pennsylvania  
14 high sulfur in recent times. I might be able to dig  
15 through here and find something, but I'm not, off the  
16 top of my head, no, I don't know what those  
17 Pennsylvania coals are.

18 Q In your opinion, would it be expensive to  
19 transport Pennsylvania and northern West Virginia coals  
20 to southern Florida?

21 A Yes.

22 Q Some witnesses have indicated, in fact, this  
23 Exhibit 23 indicates, Mr. Wells, that Florida Power and  
24 Light feels it will be able to purchase coal on a  
25 adjusted basis about \$7.50 per ton cheaper than

1 Southern Company Services. Do you know how much coal  
2 Southern Company Services purchases each year?

3 A Under 50 million; probably 43, 45 million  
4 tons per year.

5 Q Mr. Wells, in your experience would it be  
6 likely that a company which purchases a couple of  
7 million tons of coal would be able to purchase coal to  
8 the same facility at a cost difference of \$7.50 per  
9 ton?

10 A Not in my opinion. Unless they had some  
11 geographical advantage.

12 Q I'm talking about to the same power plant.

13 A No.

14 Q I just want to ask, I wasn't sure it was  
15 clear, Mr. Wells, when you first spoke earlier you said  
16 that Plant Scherer, considering all four units, if run  
17 at a reasonable capacity factor or at a fairly standard  
18 capacity factor, would have how much percentage of the  
19 total in-place production of Norfolk-Southern  
20 compliance coal going to that one facility?

21 A A little over a fourth.

22 Q And over 25% of the total in-place compliance  
23 coal production.

24 A Yes.

25 MR. MURRELL: Thank you. Those are

1 questions. Mr. Chairman, at this time or later after  
2 cross examination I would like to move the exhibits.

3 CHAIRMAN WILSON: We'll wait until he  
4 completes his testimony.

5 MR. MCGLOTHLIN: No questions.

6 MR. HOWE: No questions.

7 CROSS EXAMINATION

8 BY MR. CHILDS:

9 Q Can you tell me which of the members of  
10 Coalition of Local Governments that you have identified  
11 in your testimony are participating in this proceeding?

12 A Those I listed, all of them.

13 Q They have all decided to participate?

14 A Yes.

15 Q Okay.

16 CHAIRMAN WILSON: Those are the ones that are  
17 listed in your testimony.

18 WITNESS WELLS: Yes. As I say, there may be  
19 others that are -- have authorized us to do all things.  
20 Like Orange County, I don't know whether they are a  
21 customer of Florida Power and Light or not.

22 Q (By Mr. Childs) You mention a Tennessee  
23 Eastman facility, I believe, in response to a question  
24 from Commissioner Gunter. Does that facility generate  
25 electricity?

1           A     They have the capability of using the coal  
2 gas in an electric facility. To my knowledge they've  
3 never done so.

4           Q     When did you review the contracts that relate  
5 to -- the existing contracts that relate to the supply  
6 of coal for Plant Scherer?

7           A     All I have done there is review the prices.

8           Q     Did you review the contracts?

9           A     No, I have not reviewed the contracts.

10          Q     Do you know what their term is?

11          A     I'm sorry?

12          Q     Do you know what their term is?

13          A     I understand they're various. Some are --

14          Q     Well, do you know how many contracts there  
15 are?

16          A     I understand there are three, but I'm not  
17 sure that's all of them. I may be -- I'm not fully  
18 aware of all the contracts.

19          Q     Do you know what those contracts call for in  
20 terms of the amount of coal to be furnished  
21 year-by-year?

22          A     I don't know what the contracts call for. I  
23 have some data on what's been delivered, but I --

24          Q     Do you know at what capacity factor Plant  
25 Scherer has operated? I mean Plant Scherer as opposed

1 to Unit 4?

2 A No. I do not.

3 Q Do you know whether the capacity factor, if  
4 you don't know what it is exactly, do you know whether  
5 that capacity factor is high or low?

6 A My understanding is it's low.

7 Q For all of those? Would you expect that  
8 Southern Company or whoever purchases fuel for Plant  
9 Scherer would contract for coal at a level higher than  
10 that relating to their intended level of operation of  
11 the facility?

12 A Not for long.

13 Q Beg your pardon?

14 A Not for long, they wouldn't.

15 Q All right. Do you know at what capacity  
16 factor Plant Scherer or Unit No. 4 is intended to  
17 operate under the UPS proposal that has been presented  
18 by Florida Power and Light for evaluation in this  
19 proceeding?

20 A Yes. I do.

21 Q What is that?

22 A I believe it's 90%. But I think that also  
23 has some other units in it, as I recall.

24 Q Yes, sir. And my question to you is: That  
25 UPS relates to 90%, but do you know how much or at what

1 capacity factor Plant Scherer Unit No. 4 is intended to  
2 operate in connection with the UPS proposal being  
3 presented?

4 A Oh, the UPS proposal?

5 Q Yes, sir.

6 A I believe that's 85%, best of my memory.

7 Q Now, let me try again. I'm drawing a  
8 distinction between --

9 A I'm sorry, there was some noise and I  
10 couldn't hear you.

11 Q Consider the UPS proposal that is being  
12 presented for comparison to the Scherer purchase  
13 option.

14 A All right.

15 Q I'm talking about the UPS purchase by Florida  
16 Power and Light from Southern Company.

17 A Yes, sir.

18 Q What I'm asking you is have you reviewed or  
19 obtained data to tell you at what capacity factor Plant  
20 Scherer Unit No. 4 is expected to operate if power is  
21 furnished under that UPS proposal?

22 A Okay. That was a little different than I  
23 understood. I'm not sure I have that, but I may.

24 Q Okay. It is your understanding, however,  
25 that under the UPS proposal, capacity and energy may

1 come from units other than Unit No. 4, is it not?

2 A That is my understanding.

3 Q What's your definition of a baseload unit?

4 (Pause)

5 A About 7500 hours of a year scaled down for  
6 unit unavailability.

7 Q That's approximately 85% capacity factor?

8 A Less. Before you take off the maintenance  
9 and forced outages, yes, sir.

10 Q Turn to your Document No. 1.

11 A All right.

12 Q There, you show a figure on this graph of  
13 11,705 megawatts which I believe you have identified as  
14 FPL baseload generators?

15 A Yes.

16 Q What I would like to ask you is would you  
17 tell me of the 11,705 megawatts what percentage has  
18 operated at the 85% capacity factor in the last year,  
19 scaled down for availability?

20 A I don't know the answer to that.

21 MR. CHILDS: Thank you, that's all I have.

22 MR. TELLECHEA: We have no questions.

23 MR. MURRELL: Mr. Chairman, we'd move the --

24 CHAIRMAN WILSON: Just a moment.

25 MR. MURRELL: I'm sorry. (Pause)



1 CHAIRMAN WILSON: On Page 7 of your  
2 testimony, you say that, "Georgia Power's Plant Scherer  
3 currently suffers from some of the highest delivered  
4 coal costs in the nation"? Do you see that?

5 WITNESS WELLS: No, sir, not yet.

6 CHAIRMAN WILSON: I'm sorry, on Page 7, Line  
7 9 and 10?

8 WITNESS WELLS: Yes, I see it. Right.

9 CHAIRMAN WILSON: That would imply to me  
10 that, if they do have the highest delivery coal costs  
11 in the nation, that it would be possible to beat that  
12 price or beat that cost, is that a correct --

13 WITNESS WELLS: It may be.

14 CHAIRMAN WILSON: -- supposition?

15 WITNESS WELLS: It may be if they can get out  
16 of contracts.

17 CHAIRMAN WILSON: Any questions?

18 MR. MURRELL: Just one on that same issue,  
19 Mr. Chairman.

20 REDIRECT EXAMINATION

21 BY MR. MURRELL:

22 Q Mr. Wells, do you know whether or not those  
23 contracts that you refer to on Lines 9 and 10 are the  
24 same contracts that Florida Power and Light would be  
25 required to assume its ratable share of if it purchases

1 Unit 4?

2 A That's my understanding of what I've heard  
3 here, they would.

4 MR. MURRELL: That's it, Mr. Chairman.

5 CHAIRMAN WILSON: Nothing further? Thank you  
6 very much.

7 MR. MURRELL: We move the admission of  
8 Exhibits 31, 32 and 33, Mr. Chairman.

9 CHAIRMAN WILSON: 31 without objection. 32,  
10 any objection? No objection. 33 without objection.

11 (Exhibits Nos. 31, 32 and 33 received in  
12 evidence.)

13 (Witness Wells excused.)

14 CHAIRMAN WILSON: Next witness.

15 MR. BUTLER: I believe the next witness would  
16 be Mr. Waters on rebuttal.

17 CHAIRMAN WILSON: All right. Let's take five  
18 minutes or ten minutes before he testifies.

19 (Brief recess.)

20 (Transcript follows in sequence in Volume  
21 VII.)

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