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I N D E X

MISCELLANEOUS

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Motion to Strike	15

WITNESSES

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EXHIBITS

NUMBER	IDENTIFIED	ADMITTED
1	(Dolan) RDD-1 through 5	48

P R O C E E D I N G S

(Hearing convened at 9:40 a.m.)

CHAIRMAN CLARK: We'll call the hearing to order.
Would you please read the notice.

MS. BROWN: By notice issued April 5th, 1995, this time and place was set for a hearing in Docket 941101-EQ, petition for determination that its plan for curtailing purchases from qualifying facilities in minimum load conditions is consistent with Rule 25-17.086, Florida Administrative Code, by Florida Power Corporation. The purpose of the hearing is set out in the notice.

CHAIRMAN CLARK: We'll take appearances.

MR. MCGEE: James McGee, P. O. Box 14042, St. Petersburg, 33733, appearing on behalf of Florida Power Corporation. Also appearing on behalf of Florida Power Corporation is James Fama, same address, and Gary Sasso and Ronald Tenpas of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P. O. Box 2861, St. Petersburg, 33731.

MR. MAY: Bruce May with the law firm of Holland & Knight. 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32301, appearing on behalf of Auburndale Power Partners. Also appearing today is Karen Walker, same firm, same address, on behalf of Auburndale.

MR. MCGLOTHLIN: My name is Joseph A. McGlothlin, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas,

1 315 South Calhoun Street, Tallahassee. I appear for Orlando
2 CoGen Limited. Enter an appearance for Vicki Kaufman of the
3 firm, also.

4 MR. PRESNELL: If it please the Commission, my name
5 is Gregory A. Fresnell. P. O. Box 231 Orlando, Florida 32802,
6 appearing as co-counsel with Mr. McGlothlin on behalf of
7 Orlando CoGen Limited.

8 MR. WATSON: I'm Ansley Watson, Jr. of the law firm
9 of Macfarlane, Ausley, Ferguson & McMullen, P. O. Box 1531,
10 Tampa, Florida 33601, appearing on behalf of Pasco Cogen,
11 Limited.

12 MR. JOHNSON: Barret G. Johnson, law firm Johnson &
13 Associates, P. O. Box 1308, Tallahassee, Florida 32302,
14 appearing on behalf of Panda Energy Company and Panda
15 Kathleen, L.P.

16 MR. ZAMBO: Richard Zambo, 598 S.W. Hidden River
17 Avenue, Palm City, Florida 34990, appearing on behalf of Ridge
18 Generating Station.

19 MR. WRIGHT: Robert Scheffel Wright, law firm of
20 Landers & Parsons, 310 West College Avenue, Tallahassee,
21 Florida 32301, appearing on behalf of Montenay-Dade, Limited,
22 Metropolitan Dade County and Lake Cogen, Limited.

23 MS. RULE: Marsha Rule of the law firm Wiggins &
24 Villacorta, P. O. Box 1657, Tallahassee, Florida 32302,
25 appearing on behalf of Orange Cogeneration Limited

1 Partnership, Polk Power Partners, L.P, and Tiger Bay Limited
2 Partnership.

3 MS. BROWN: Martha Carter Brown for the Florida
4 Public Service Commission Staff, 101 East Gaines Street
5 Tallahassee, Florida 32399. I'd also like to put in a
6 appearance Vicki D. Johnson and Lorna Wagner on behalf of the
7 Commission Staff.

8 MR. BELLAK: Richard Bellak, same address;
9 representing the Commission.

10 CHAIRMAN CLARK: Okay. Are there any preliminary
11 matters?

12 MS. BROWN: Madam Chairman, there are a few
13 preliminary matters. The first thing I think we need to deal
14 with is a couple of minor corrections to the Prehearing Order.
15 It went out on a fairly short time schedule and we need to do
16 some clean up.

17 The one correction that I have to make is to Page 9.
18 In APP's basic position there were two words left out. That
19 position should read -- the first sentence should read "APP
20 takes no position on whether FPC's plan complies and is
21 consist it 25-17.0826."

22 Then I think Florida Power Corporation has some
23 corrections to make to the exhibit list.

24 MR. MCGEE: Madam Chairman, the exhibit list on
25 Page 33 doesn't include reference to Florida Power's rebuttal

1 exhibit. The witness list early on does include thoses
2 witnesses and the issues that they deal with. But on Page 33
3 it should indicate that Witness Southwick will sponsor
4 exhibits HIS-5 through 10. And that rebuttal Witness
5 Brousseau, B-R-O-U-S-S-E-A-U, will sponsor rebuttal exhibits
6 LDB-1 and 2.

7 MS. BROWN: Madam Chairman, as far as I know those
8 are the only corrections to be made to the Prehearing Order
9 unless the parties have anything else to add.

10 MR. ZAMBO: Excuse me, Madam Chairman, I just have a
11 question. Richard Zambo on behalf of Ridge Generating
12 Station.

13 Issue 2 is divided into three portions, and when we
14 filed our prehearing statement we took positions on subissues
15 A, B and C. Not having taken a position at all on the overall
16 Issue No. 2, and I guess I'm a little confused as to how these
17 positions are going to be reflected.

18 For example, we took no position on Subpart A and B
19 but we did take a position on Subpart C, but our position on
20 Issue 2 is reflected as no position.

21 I don't intend to be critical I'm just a little
22 confused as to how I may have --

23 CHAIRMAN CLARK: I understand you take no position
24 on the overall issue, but you may take a position on a subpart
25 of the issue, C.

1 COMMISSIONER KIESLING: But there's no position
2 reflected.

3 CHAIRMAN CLARK: I'm sorry, I thought I heard you
4 say you took a position.

5 MR. ZAMBO: I did take a position on C.

6 MS. BROWN: At the top of Page 19, very top.

7 MR. ZAMBO: Yes, it is reflected. Our position on
8 2c is "no."

9 CHAIRMAN CLARK: Okay. All right. Thank you.

10 MR. PRESNELL: Madam Chairman, there was a matter
11 that Florida Power and I discussed this morning concerning a
12 portion of the testimony of one of Florida Power's rebuttal
13 witnesses.

14 CHAIRMAN CLARK: I understand that. But I think
15 what we were on right now is if there are any further changes
16 to the Prehearing Order.

17 MS. BROWN: As far as I know there are no others.

18 CHAIRMAN CLARK: Are there any more changes to the
19 Prehearing Order? Any more preliminary matters?

20 MS. BROWN: There are two motions outstanding.
21 You'll find those on Page 34. Orlando CoGen's request for
22 official recognition.

23 There's been no adverse response to that request.
24 Staff has no objection to the Commission taking official
25 recognition of the New York State Commission case.

1 CHAIRMAN CLARK: The case or the order?

2 MR. MCGLOTHLIN: The order, Chairman Clark.

3 If I may add, Mr. Slater's prefiled testimony refers
4 to the order. We've distributed copies so that the Commission
5 and parties will see the full content of it.

6 COMMISSIONER KIESLING: I guess I need to ask, what
7 do you want us to do? At the time that witness is introduced
8 you'll ask us to take official recognition of it?

9 MR. MCGLOTHLIN: I think you can rule on that now,
10 Chairman Clark.

11 CHAIRMAN CLARK: The only thing is the Prehearing
12 Order doesn't indicate to me what the order number is from
13 that case. I'd have to look at the motion.

14 MR. MCGLOTHLIN: I have that reference if you'd
15 like. There's no order number. It's case number 88-E-081,
16 order of the New York Public Service Commission, June 27,
17 1989.

18 CHAIRMAN CLARK: Without objection, we'll take
19 official recognition of that order.

20 MS. BROWN: Chairman Clark, in the prehearing
21 conference -- well, before that Orlando CoGen moved to file
22 supplemental testimony that resulted from some problems in
23 interpreting and transferring computer language source code
24 from Florida Power Corp's system to Mr. Slater's that held up
25 analysis of Florida Power Corporation's case.

1 As I remember, in the prehearing conference you
2 withheld a decision on whether you would allow that
3 supplemental testimony and directed the parties to work
4 together to come up with a reasonable solution to a short time
5 period.

6 Florida Power Corporation has filed rebuttal
7 testimony to that, and it seems to me that the parties have
8 been able to work out an accommodation on that matter. But
9 still the decision has not been made whether to allow that
10 supplemental testimony.

11 CHAIRMAN CLARK: Did Florida Power Corporation
12 pursue an objection to filing of the supplemental testimony?

13 MR. MCGEE: At your instruction, Madam Chairman, we
14 worked with counsel for OCL and worked out a schedule for
15 filing our response to that as well as providing them the
16 opportunity to depose the witness.

17 CHAIRMAN CLARK: We'll allow the supplemental
18 testimony and I understand you have filed supplemental
19 rebuttal testimony.

20 MR. MCGLOTHLIN: Just so you are aware, Chairman
21 Clark, we intend to move --

22 CHAIRMAN CLARK: To object to that, and we'll take
23 that up when we get on it.

24 But you filed that supplemental rebuttal testimony
25 today?

1 MR. MCGEE: Yes, it was provided by fax to the
2 parties on Friday, but it was formally filed with the
3 Commission this morning.

4 CHAIRMAN CLARK: Okay. Anything further?

5 MS. BROWN: As far as I know there's nothing further
6 except for the Orlando CoGen's motion.

7 MR. MCGLOTHLIN: I have one other small point that I
8 think we can take care of first.

9 Just to inform you, Chairman Clark, the division of
10 labor between Mr. Presnell and myself is such that at times he
11 and I will both cross examine the same witness on the basis of
12 subject matter, and as necessitated by a medical situation
13 within his firm that led us to divide it this way on short
14 notice. And we've checked with Florida Power Corporation on
15 it and there's no objection to it.

16 CHAIRMAN CLARK: Okay. Staff has informed me of
17 that and indicated that there's no objection and that you will
18 conduct part of the cross examination; Mr. Presnell conduct
19 another part of it. And I have no objection to that. You
20 have one other matter.

21 MR. MCGLOTHLIN: Yes.

22 As Ms. Brown discussed with you, Florida Power
23 Corporation and Orlando CoGen and Pasco Cogen arrived at a
24 procedural workout to accommodate the scheduling of
25 supplemental testimony on the part of witness, Mr. Slater,

1 addressing unit commit programs on the one hand, and Florida
2 Power Corporation's opportunity to file rebuttal testimony to
3 that supplemental testimony on the other.

4 On April 25th, Mr. Slater filed seven pages of
5 supplemental testimony, all directed to his comments on the
6 unit commit simulations that had been sponsored by Florida
7 Power Corporation.

8 Last Friday, the agreed upon day, we received some
9 27 pages of rebuttal testimony of witness, Linda Brousseau,
10 attaching two exhibits.

11 We have informed Florida Power Corporation that we
12 regard much of the content of that supplemental testimony to
13 be -- to exceed the scope of proper rebuttal, and we want to
14 move to strike that testimony. And I'd like to present an
15 argument and identify the portions of the testimony that we
16 believe is not in the nature of rebuttal.

17 CHAIRMAN CLARK: Mr. McGlothlin, I have not had an
18 opportunity to look at that testimony, and what I would like
19 to do is reserve the argument on that until the time when the
20 rebuttal testimony is presented. But I would appreciate it if
21 you would give us the precise pages and lines of the testimony
22 that you will be objecting to.

23 MR. MCGLOTHLIN: I can do that.

24 In terms of the time for the consideration of the
25 motion, I'd like to request that the Commission find a time

1 prior to the time Mr. Slater takes the stand because depending
2 on the outcome of the motion, we may have requests in the
3 alternative that may affect the scope of his comments.

4 CHAIRMAN CLARK: Prior to the time he takes the
5 stand on his direct testimony?

6 MR. MCGLOTHLIN: Yes.

7 CHAIRMAN CLARK: We'll try to accommodate that.

8 MR. MCGLOTHLIN: The Motion to Strike will include
9 the following portions of testimony: Page 4, Line 22 through
10 Page 7, Line 7.

11 CHAIRMAN CLARK: Page 7 what line?

12 MR. MCGLOTHLIN: Line 7.

13 CHAIRMAN CLARK: Okay.

14 MR. MCGLOTHLIN: Page 7, Lines 9 through 23 through
15 Page 8, Lines 1 through 6. Then Page 10, Lines 17 through 20.
16 Page 11, Lines 2 through 7.

17 CHAIRMAN CLARK: Page 11.

18 MR. MCGEE: Joe, where did that begin on Page 10?

19 MR. MCGLOTHLIN: Lines 17 through 20.

20 Page 20, Lines 7 through 14. Page 21, Lines 1
21 through 25, continuing through to Page 27, Line 3.

22 MS. BROWN: Excuse me, could you repeat that please?

23 MR. MCGLOTHLIN: Yes. Page 21, Lines 1 through 25.
24 Continuing through Page 27, Line 3. We'll move to strike
25 exhibits LDB-1 and LDB-2. Page 17, Lines 26 -- I'm sorry,

1 Page 17, Lines 16 through Page 18, Line 5. Page 18, Lines 7
2 through Page 19, Line 20. That's it.

3 CHAIRMAN CLARK: Okay. I will endeavor to look at
4 this testimony, the supplemental direct testimony of
5 Mr. Slater, and be prepared to hear your argument, I guess, at
6 the conclusion of the direct case of Florida Power
7 Corporation.

8 MR. MCGLOTHLIN: Very good.

9 CHAIRMAN CLARK: And would ask Florida Power
10 Corporation to be prepared at that time to respond to that
11 motion.

12 Anything else?

13 MS. BROWN: As far as I know, Madam Chairman, there
14 are no other preliminary matters.

15 CHAIRMAN CLARK: Mr. Zambo.

16 MR. ZAMBO: Madam Chairman, one minor point.
17 Page 24 of the Prehearing Order, the position that's stated
18 there for Ridge seems to have been mis-taken from Tiger Bay's
19 prehearing statement. Ridge's position at that point should
20 be no position. We do not intend to take a position.

21 CHAIRMAN CLARK: Oh, they have been transposed.
22 Okay. Thank you.

23 Commissioners, at the prehearing conference there
24 was a request for opening statements. I've indicated it would
25 be limited to 20 minutes a side. And since it is Florida

1 Power Corporation's petition, we'll hear from you first.

2 MR. MCGEE: Mr. Fama will make the opening
3 statement.

4 MR. FAMA: Thank you, Chairman Clark.

5 Commissioners, we are here today to consider Florida
6 Power's petition for approval of its curtailment plan as being
7 consistent with the Commission's rules, in particular
8 Rule 25-17.086. You're going to hear a lot about that rule in
9 the next few days.

10 Florida Power developed this plan last fall to deal
11 with the situation where we have too much generation and too
12 little load on the system. This light loading situation
13 occurring mainly at night, during mild weather when customers
14 are using neither heat nor air conditioning.

15 The plan affects all 22 cogenerators and QFs that
16 sell to Florida Power. However, virtually all of the
17 opposition to the plan comes from just two QFs: Orlando CoGen
18 and Pasco Cogen who you see here today. Both of those QFs
19 have instituted antitrust litigation against Florida Power.

20 This proceeding is governed by the PURPA statute,
21 and you will hear from the QFs in this case is that the
22 purpose of the PURPA statute is to encourage cogeneration. I
23 suspect you'll hear that comment more than once.

24 But Florida Power urges you not to lose sight of
25 another important principle in that statute and that's the

1 principle of ratepayer neutrality.

2 In other words, ratepayers shouldn't be made worse
3 off as a result of the statutorily mandated QF purchases.

4 The principle of ratepayer neutrality is found
5 throughout PURPA. Most importantly it's found in the notion
6 that a utility should not pay more than its avoided cost.
7 That is, the utility should pay no more than it would pay if
8 it built the generation itself or it purchased the power
9 elsewhere.

10 This avoided cost principle comes into play in the
11 curtailment situation. There can be operational circumstances
12 where if the utility purchases QF energy, the ratepayers would
13 be worse off from a cost standpoint than if the utility
14 instead temporarily curtailed the QF purchase and met the load
15 through other resources.

16 The inquiry on PURPA and the curtailment situation
17 starts with FERC's rules. Under PURPA, FERC was instructed to
18 promulgate rules, which it did, to govern the relationships
19 between investor-owned utilities and QFs. And in turn the
20 state commissions were to put out their own rules, which were
21 to be consistent with the FERC rules, and this Commission did
22 that. And the oversight of many of the QF matters was left to
23 the discretion of the states, including the discretion over
24 curtailment disputes, if you will, between QFs and
25 investor-owned utilities. So we need to start with the FERC

1 rule.

2 And the rule is entitled, "Periods during which
3 purchases are not required," and I want to read a part of the
4 rule. "Any electric utility which gives notice will not be
5 required to purchase electric energy or capacity during any
6 period which, due to operational circumstances, purchases from
7 qualifying facilities will result in costs greater than those
8 which the utility would incur if it did not make such
9 purchases but instead generated an equivalent amount of energy
10 itself."

11 So what sort of situation did FERC have in mind when
12 it wrote this curtailment provision into its rules.

13 At the time that FERC issued its QF rules, it did
14 what a lot of regulatory bodies do, it issued an order
15 explaining the intent behind its rule. And this order has
16 become the preamble to FERC's rule, and it's sort of the
17 legislative history of rule, if you will.

18 And the preamble, which I'm going to read a piece of
19 in a few minutes, states that the curtailment rule typically
20 applies to light load or minimum load situations; precisely
21 the sorts of situations addressed in Florida Power's
22 curtailment plan. Let's take a look at what that preamble
23 said because you'll see how much it's on point to the
24 situation we have here today.

25 This section was intended to deal with a certain

1 condition which can occur during light loading periods. "If
2 the utility operating only baseload units during these periods
3 were forced to cut back output from the units in order to
4 accommodate purchases from qualifying facilities, these
5 baseload units might not be able to increase their output
6 level rapidly when the system demand later increased. As a
7 result, the utility would be required to utilize less
8 efficient, higher cost units with faster start-up to meet the
9 demand that would have been supplied by the less expensive
10 baseload unit had it been permitted to operate at a constant
11 output."

12 Obviously, this curtailment circumstance described
13 in FERC's preamble is the same sort of circumstance that's
14 before you today in Florida Power's curtailment plan.

15 Well, I've told you a little bit about what FERC
16 did. Well, what about what this Commission did? What's the
17 Florida rule say?

18 Well, the Commission's curtailment rule is 25-17.086
19 as I've said, and it tracks FERC's rule very closely, and I'm
20 not going to belabor that point by reading the rule aloud.
21 But I would like to point out what this Commission said 12
22 years ago when it first issued that curtailment rule. In the
23 order promulgating that curtailment rule, this is what they
24 said: "We've retained the provisions of the original rule
25 excusing a utility from its obligation to purchase under

1 certain circumstances, and have added to it to make clear that
2 a utility is not required to purchase from a QF when to do so
3 would result in costs greater than those which the utility
4 would incur if it did not make such purchases." Here it gets
5 right to the point. "We believe that this is most likely to
6 happen during a utility's off-peak periods where it may be
7 cycling its baseload units and QF purchases which forces to
8 shut down the units altogether." That's Order No. 12634, and
9 that was issued in October of 1983.

10 So once again, the intent of the curtailment rules
11 is clear: To allow a utility to curtail QFs during light load
12 situations if the cost circumstances call for it.

13 What about Florida Power's contracts? What do
14 Florida Power's contracts say about Florida Power's right to
15 curtail?

16 Section 6.3 of the contract that we signed with
17 Pasco and Orlando, and several other QFs, state that Florida
18 Power may have to curtail under this specific rule. The
19 contract says it right in the body, that we may have to
20 curtail under the rule, and, in fact, the rule, the
21 Commission's rule, is incorporated by reference to the
22 contract and attached as an appendix to the contract.

23 So, Commissioners, I've gone through this chain of
24 rule and contract provisions to make it clear that there are
25 no surprises going on here. From Day One, the QFs have known

1 that Florida Power has a right to curtail them during light
2 load hours, and the right has been spelled out; it's spelled
3 out in FERC's rules; it's spelled out in FERC's preamble; it's
4 spelled out in this Commission's rules; it's spelled out in
5 the order issuing this Commission's rule, and spelled out in
6 the contract that the QF signed with Florida Power.

7 However, now that the curtailments have become a
8 reality, the QF's have come before this Commission crying
9 foul, and making arguments to the effect that you'll hear a
10 lot of in the next few days; that Florida Power's curtailments
11 really are not the kind of curtailments that PURPA
12 contemplated. You're going to hear a lot of those kinds of
13 argument.

14 But when the smoke clears, I think that the
15 Commission will see that these protestations on behalf of the
16 QFs are nothing more than an attempt to dishonor the deal that
17 they struck. The QFs want the benefits of PURPA; that is the
18 ability to force Florida Power to buy their power, but they
19 don't want the corresponding obligation that went along with
20 it. That obligation to hold the ratepayers harmless. The
21 ratepayer neutrality obligation I discussed earlier.

22 You're going to hear a lot in the next few days
23 about a term "negative avoided costs" and I want to touch on
24 it for a minute.

25 Assuming there isn't a reliability problem, your

1 curtailment rules require that Florida Power demonstrate
2 negative avoided costs before implementing a curtailment plan.
3 Let me get into this term for a second.

4 Like many of these obscure PURPA terms, this one can
5 be traced back to the FERC staffers. And in the FERC rule
6 preamble, FERC discusses this term "negative avoided costs."
7 FERC is talking about, in this section I'm going to read to
8 you, what happens if a utility purchases from a QF in a light
9 load situation?

10 FERC says, "The result of such a transaction would
11 be that rather than avoiding costs as a result of the purchase
12 from a qualifying facility, the purchasing utility would incur
13 greater costs than it would have had had it not purchased
14 energy or capacity from the qualifying facility. A strict
15 application of the avoided cost principle set forth in this
16 section would assess these additional costs as negative
17 avoided costs, which must be reimbursed by the qualifying
18 facility." So this is where the term came from.

19 "In order to avoid this anomalous result forcing a
20 qualifying facility to pay an electric utility for purchasing
21 its output, the Commission proposed in its rule," it's
22 referring to, "that an electric utility be required to
23 identify periods during which the situation would occur so
24 that the qualifying facility could cease delivery of
25 electricity during those periods."

1 Florida Power foresaw that these negative avoided
2 cost situations described by FERC were coming up. And so
3 Florida Power developed the curtailment plan before you today
4 to protect the ratepayers from these negative avoided cost
5 situations.

6 The evidence that you'll see in this case offered by
7 Florida Power indicates that we would have incurred negative
8 costs if we did not have this plan in place. Those costs
9 would have been borne by the ratepayers. And this plan is
10 designed to avoid these sorts of events. One in particular,
11 the cycling off of baseload coal units, the negative avoided
12 cost situation that can occur if that happens.

13 But the cycling costs of these baseload coal units
14 is just part of the problem, this negative avoided cost
15 problem. It's exacerbated by the fact that Florida Power
16 might not be able to put these coal units promptly back on
17 line the next morning. We might have to run higher cost
18 intermediate units to meet the load. And I think part of the
19 FERC preamble I read you before refers to that.

20 There's another factor exacerbating the cycling
21 costs. We can incur cycling costs in addition to just the
22 immediate cycling costs, some other cycling costs, and we have
23 a witness, Mr. Lefton, who is going to testify as to those.

24 So how often is Florida Power going to use this
25 curtailment plan? The short answer is not very often. We

1 hope. We instituted the plan in 1994. To date we've used it
2 seven times. And the reason we're not using the plan very
3 much is because we've done a lot of work to minimize these
4 curtailment situations. We've entered into various side
5 letters which contain voluntary curtailments. In fact,
6 earlier in May this Commission approved many of those side
7 letters. And just last week we entered into a side letter
8 with a QP, which we haven't filed with the Commission today,
9 but which Mr. Dolan is going to tell you about with Auburndale
10 which provides some additional voluntary curtailment. So, we
11 have done a lot of work to get enough voluntary curtailment to
12 try to avoid these situations of mandatory curtailment.

13 We've reached an agreement with the Southern Company
14 to reduce the amount of a must-take contract. Mr. Southwick
15 can talk about that. We've worked with our coal plants to
16 lower the minimum levels of those coal plants to the lowest
17 possible level. We have worked to sell economically
18 off-system as much energy as we can. All of these things
19 we've done to minimize the need for curtailment -- to mitigate
20 the situation, if you will, in a cost-effective way. However,
21 none of these efforts are enough in the eyes of Orlando CoGen
22 and Pasco Cogen because they don't ever want to see a
23 curtailment, so they raise various interpretations of the
24 curtailment rules, interpretations which we think are quite
25 tortured, that would result in Florida Power never exercising

1 its right to curtail, regardless of the damage that it does to
2 ratepayers. In effect, what Pasco and Orlando want this
3 Commission to do is have Florida Power's ratepayers subsidize
4 the QF purchases.

5 There are various QF attacks on Florida Power's plan
6 and I'm just going to touch on a few of those and then close.

7 Orlando CoGen and Pasco Cogen claim that Florida
8 Power shouldn't be allowed to curtail because we imprudently
9 bought too much QF capacity. That's one of their main
10 arguments. But, of course, this amounts to just a collateral
11 attack on prior Commission decisions approving Florida Power's
12 generation plans, including the decision to enter into the QF
13 contract. So this argument that we bought too much is just as
14 much an attack on the Commission as it is an attack on Florida
15 Power, and we think that argument is easily dismissed.

16 You're going to hear from Orlando and Pasco that
17 Florida Power is trying to obtain, through its curtailment
18 plan, dispatch rights that it failed to negotiate at the time
19 the contract was entered into. We think this argument misses
20 the boat as well because they are mixing apples and oranges.

21 Dispatchibility has to do with load following
22 ramping plants up and down on a minute-by-minute basis to
23 follow load. Curtailment is not a synonymous term -- a term
24 synonymous with dispatchibility. Because we had the right to
25 curtail under the PURPA statute and the rules, and because we

1 reaffirm that right in our contract, we remedied the light
2 loading problem through our curtailments right, so we didn't
3 have to obtain dispatch in our contracts, and that's why there
4 is no dispatch right in the contract. And so we think this
5 dispatch argument you're going to hear from the QFs is a red
6 herring.

7 You're also going to hear some contradictory
8 arguments that are a little hard to follow to the effect that
9 curtailment events have to be unforeseeable. To be a true
10 curtailment event under the rules it has to be unforeseeable.
11 But you're also going to hear that Florida Power should plan
12 its curtailments a week ahead of time. We have some trouble
13 reconciling these arguments. Of course, there's no
14 requirement in the rule that a curtailment event be
15 unforeseeable, and, in fact, the rule has notice provisions.

16 FERC and this Commission wanted us to give as much
17 notice as we possibly could. And we've given notice, lots of
18 notice, and there really isn't much debate about the notice.
19 So we don't understand how curtailments have to be
20 unforeseeable, how we can give reasonable notice at the same
21 time. So we don't think that argument goes anywhere.

22 Lastly, you're going to hear from the QFs, that
23 Florida Power has failed to adequately mitigate the problem by
24 not selling QF power off-system for any price. For any price
25 at or above zero. We sell off-system as much as we can

1 economically, but it's important to recognize that there's no
2 requirement in the rules to mitigate, and there certainly
3 isn't any requirement to mitigate in a noncost-effective
4 manner.

5 As I told you before, we have mitigated, we've taken
6 our coal plants down; we've backed off on our Southern Company
7 purchase; we've sold off-system as best we can economically.
8 But what the QFs are suggesting is sort of a
9 buy-high-and-sell-low approach, which will guarantee that the
10 ratepayers will take it in the pocketbook and the QFs will be
11 subsidized. So that's another argument that we would urge
12 this Commission to reject.

13 In conclusion, Florida Power believes that the facts
14 and the law that are going to be put forth in front of you in
15 the next day or so will overwhelmingly demonstrate our
16 curtailment plan meets all of the federal and state statutes
17 and regulations and it's worthy of this Commission's approval.

18 I hope you will find my comments useful as you
19 listen to testimony and argument over the next few days, and I
20 appreciate the opportunity to make this opening statement.

21 Thank you. That's all I have.

22 CHAIRMAN CLARK: Okay. Commissioner Johnson has
23 some questions.

24 COMMISSIONER JOHNSON: Just a couple of quick
25 questions. You cited to the Commission's Order 12634.

1 MR. FAMA: Yes.

2 COMMISSIONER JOHNSON: -- the provision that you
3 cited. Could you cite to the page.

4 MR. FAMA: Yes. It's the last page of that order.
5 Let me get it for you. It's Page 23 of that order.

6 COMMISSIONER JOHNSON: Where was that again? Could
7 you repeat?

8 MR. FAMA: It's Page 22 and 23 of this Order
9 No. 12634, October 27th, 1983. At that time the Commission
10 was amending its cogeneration rules.

11 COMMISSIONER JOHNSON: And you also cited to the
12 FERC rule, and I know the witnesses will go into this in great
13 detail, and because there's some question as to interpretation
14 and authority, if you could, the FERC rule that you cited to,
15 could you cite to the section that you were referring to.

16 MR. FAMA: Certainly. The FERC rule is section --
17 in the CFR, Code of Federal Regulations, 18 C.F.R. 292.304(f).
18 292.304(f), and it's entitled "Periods during which purchases
19 are not required." And there's a preamble to the rule and
20 that preamble is included as an attachment, I think, to
21 Mr. Shanker's testimony.

22 COMMISSIONER JOHNSON: Okay. Thank you.

23 CHAIRMAN CLARK: Mr. McGlothlin.

24 MR. MCGLOTHLIN: Mr. Watson will begin our
25 presentation.

1 MR. WATSON: As Mr. McGlothlin indicated, this will
2 be the beginning of a joint opening by Pasco and Orlando CoGen
3 Limited.

4 To meet the demands on its system for electricity,
5 Florida Power Corporation relies on its own generating units,
6 on purchases from other utilities and on energy and/or
7 capacity which it purchases from a number of cogenerators or
8 QFs.

9 More than a thousand megawatts of FPC's generation
10 resources consist of power supplied by QFs pursuant to
11 contracts which provide for the delivery of firm energy and
12 capacity. These contracts, such as the ones between Pasco
13 Cogen and FPC, and Orlando CoGen and FPC, obligate Florida
14 Power to purchase the QFs' committed capacity output.

15 FPC seeks from the Commission in this proceeding an
16 order finding that its curtailment plan is consistent with
17 Rule 25-17.086. It takes the position that if the
18 requirements of the rule are satisfied and its plan complies
19 with the rule, that it may curtail its purchases from the QFs.
20 That is, that it will be relieved of its contractual
21 obligation to purchase the QFs committed capacity. Remember,
22 we have a contract here.

23 Your rule as adopted to implement rules promulgated
24 by the FERC pursuant to PURPA. The rule creates two very
25 narrow exceptions to a utility's obligation to purchase from a

1 QF. One of those set forth in 292.307 of the FERC rules,
2 which Mr. Fama has indicated are found at 18 C.F.R, is a
3 system emergency. The term "system emergency" is defined in
4 the FERC regulations. Although Mr. Dolan will mention this
5 section in his testimony, we think that you'll find that
6 Florida Power's plan is not supportable based on this
7 exception to the obligation to purchase created by PURPA and
8 the contract.

9 The other exception on which FPC does appear to rely
10 is found in 292.304(f) of the FERC rules. To be excused under
11 this rule from its obligation to purchase QF power, a utility
12 must demonstrate that operational circumstances exist which
13 would cause it, if it purchased QF power, to incur negative
14 avoided costs.

15 Mr. McGlothlin will discuss the utility's obligation
16 under this rule to mitigate the circumstances giving rise to
17 the need to curtail QF purchases. He'll also discuss the
18 deficiencies of FPC's plan with respect to mitigation and
19 FPC's failure to incur negative avoided cost.

20 I'd like to focus on the term "operational
21 circumstances." We believe the evidence will show that FPC's
22 minimum load conditions are not the short term, unexpected and
23 extraordinary operational circumstances that the FERC
24 contemplated when it adopted 292.304(f). We believe it will
25 further show that FPC itself recognized that the Commission

1 rule has a limited application to extreme conditions only.

2 There was nothing short term or unexpected about
3 FPC's purchase obligations under its firm contracts with the
4 QFs. The contracts set the compensation, and the operational
5 obligations of the QFs based on the explicit recognition that
6 the QFs would be supplying firm generation thereby avoiding
7 FPC's construction of its own units over terms as long as 30
8 years.

9 The evidence will show that FPC made a conscious
10 choice to negotiate with the QFs; indeed to insist upon
11 contracts which were must-run instead of dispatchable. Which
12 type of contract to enter into was debated internally at FPC.
13 Before signing the contracts, FPC apparently concluded it
14 would not need dispatch rights from the QFs, and/or that it
15 didn't want to incur the increased costs that may have been
16 associated with obtaining those rights.

17 Thus, to the extent FPC's firm QF purchase
18 obligations may now be at odds with its minimum load
19 conditions, the Commission should recognize that this
20 situation is the result of, among other things, FPC's
21 conscious planning decision to pursue nondispatchable
22 contracts rather than possibly more expensive dispatchable
23 contracts which would have provided FPC more control over the
24 QFs output.

25 Now, by that last statement I don't mean to imply

1 that Florida Power's decision to enter into these contracts
2 was in any way imprudent. To the contrary, we believe FPC
3 should be commended for the cost-effective manner in which it
4 satisfied its forecasted need for additional capacity during
5 the 1991 to '95 time frame through these QF contracts.

6 However, having made the choice of nondispatchable
7 contracts, FPC should not now be allowed to obtain at no cost
8 under the guise of curtailment the benefits of dispatch
9 rights. That's precisely what FPC is attempting to achieve in
10 this proceeding. And FPC's motivation in this regard will be
11 shown by its own document.

12 As part of its long-term bargain with the QFs to be
13 nondispatchable, FPC explicitly assumed whatever might be the
14 downside cost of not being able to dispatch the QFs.
15 Presumably FPC's decision was based on the long-term benefits
16 it foresaw over the entire course of the contracts from lower
17 payments versus the potential costs associated with a lack of
18 dispatch rights.

19 Now, as justification for curtailment, FPC is
20 focusing only on those periods when it may be incurring some
21 of the costs it anticipated, bargained for and explicitly
22 assumed, while ignoring the associated benefits it has
23 received and will receive on into the future.

24 We think the Commission, after it has heard all of
25 the evidence, will agree this is wholly inappropriate and that

1 Rule 25-17.086 cannot be read as entitling FPC to ignore the
2 firm commitments to purchase from the QFs that it assumed by
3 its contracts. They simply can't have it both ways.

4 Mr. McGlothlin will continue.

5 MR. MCGLOTHLIN: Madam Chairman, I'm going to be
6 using the easel so I need just a moment to see if I can
7 position myself next to the microphone there. (Pause)

8 Mr. Watson described the aspects of FPC's proposed
9 curtailment plan that relate to its long-term planning. I'm
10 going to give you a brief overview of the evidence you will
11 hear that relates to shorter term considerations:
12 Specifically, FPC's efforts to mitigate so as to avoid an
13 imbalance between generation and load, and the proper
14 assessment of whether FPC would incur a negative avoided cost
15 if it accepted QF deliveries. As I talk you will see there
16 are both similarities and contrasts with respect to FPC's
17 positions and ours.

18 The evidence will show similarities in the area of
19 FPC's mitigation efforts. FPC's proposed plan and its actions
20 today call for FPC to reduce its own generation, reduce its
21 purchases from other utilities, and try to sell the excess
22 generation off-system.

23 We agree with those measures but contend that FPC
24 hasn't gone far enough in dealing with purchases and sales.
25 So while FPC will say in testimony that we're trying to read

1 into the regulations standards and requirements that are not
2 there, the real differences here are matters of degree. But
3 the differences are significant.

4 To avoid an imbalance, FPC stops purchasing from
5 utilities under all of its interchange agreements except one.
6 Under its contract with Southern Company, the UPS contract,
7 the contract calls for FPC to purchase minimum takes under
8 certain conditions.

9 The evidence will show that during two occasions
10 when FPC was curtailing QF purchases, the amounts it bought
11 from Southern under that provision exceeded the amount of the
12 needed curtailment.

13 FPC will claim that we're proposing that FPC breach
14 the Southern contract. Dr. Shanker will testify that to the
15 contrary; to allow utilities to subordinate purchases from QFs
16 to its utility contracts would be to provide utilities whose
17 reluctance to deal with the QFs was overcome only by the
18 passage of national legislation, a means with which to
19 frustrate the intent of that law.

20 Should a utility be able to avoid its obligation to
21 purchase from QFs by the simple expediency of contracting to
22 buy more of its requirements from other utilities? That's the
23 logical extension of FPC's approach. Dr. Shanker will
24 demonstrate that that's an abuse of the curtailment
25 regulation.

1 As to sales, our witnesses will testify that FPC has
2 failed to modify its practices to take into account the very
3 different circumstances of an excess energy situation.

4 I want to quickly preview two boards which are
5 enlargements of exhibits that our witnesses will use to make
6 that point. And again you'll be hearing many references to
7 the same language. But I want to point out that the FERC
8 regulation, which all parties agree as being implemented by
9 the Commission's rule, treats purchases from QFs which, due to
10 operational circumstances, will result in costs greater than
11 those which the utility would incur if it did not make such
12 purchases, but instead generates an equivalent amount of
13 energy itself.

14 So the focus of the regulation is on a comparison of
15 what it would cost the utility to run its generators without
16 QFs compared to what it would cost the utility to run its
17 generators with QFs.

18 The second part I want to show you quickly is an
19 enlargement of one of Mr. Slater's exhibits. It shows how a
20 sale enables a utility to rid itself of excess energy without
21 affecting the status of its own generation.

22 This left-hand bar shows a condition in which the
23 total load is 2,100 megawatts, but the generation consisting
24 of 2,000 megawatts of utility units operating at their
25 minimums, and 200 megawatts of purchase from QFs totals 2,200.

1 This should be part of the green. (Indicating)

2 So there's a 100 megawatt excess in that situation.
3 The excess could be removed by curtailing 100 megawatts of
4 purchase from QFs. In that situation, the utility generators
5 continue to operate at their minimums, at 2,000, and there's
6 no excess; there's a balance between generation and load. The
7 utility's generators have not been affected in terms of the
8 level of output and, therefore, their costs of generation have
9 not changed. But the same result could be achieved by a sale
10 of the excess.

11 The right-hand graph shows the condition in which
12 the utility sells 100 megawatts to a utility off its system,
13 in which case the total load is now 2,200 megawatts. That
14 enables the utility to receive 200 megawatts from the QFs
15 without curtailment, and at that time the utility generators
16 are still operating at their minimum, 2,000 megawatts. Again,
17 through this sale, the operating status of the utility's
18 generators have not changed. And in addition, this cost of
19 generation has not changed. By definition, there's no
20 operational circumstance and no negative avoided cost
21 associated with the sale of the excess off-system.

22 Mr. Slater will make this very important additional
23 point. This holds true, the result that there's no negative
24 avoided cost holds true regardless of the price at which the
25 sale takes place. Because what the FERC regulation focuses on

1 is the change in the operational status of the units and the
2 change in the cost of generation, and is not affected by a
3 price in which the sale takes place.

4 The evidence will show that some interutility
5 transactions are taking place during periods when FPC is
6 curtailing purchases from its QFs. FPC is not aggressively
7 competing for those sales.

8 It should recognize that in an excess situation it
9 has no incremental cost of generation associated with the
10 excess energy and go after any market for that power.
11 Mr. Slater will provide examples of utilities in other
12 jurisdictions, all of whom abide by the same FERC pricing
13 standards for wholesale transactions that affect Florida Power
14 Corporation, who price excess energy in the manner we suggest.

15 Now, I'm going to change subjects and talk about the
16 proper measurement of avoid costs with and without QF
17 generation.

18 Our view, and FPC's, are poles apart in terms of
19 FPC's burden of proof, the time frame applicable to the
20 measurement of costs and the kinds of costs to be considered.
21 Our position stems from the fact that we have a firm contract
22 mandated by national legislation. FPC has an obligation to
23 regard firm QF generation as it would any other firm resource,
24 including its own. Our witnesses will testify that the
25 question of negative avoided costs is a factual issue to be

1 determined by empirical evidence. We believe the curtailment
2 regulation requires a demonstration of the extraordinary and
3 limited operational circumstances, as well as strict proof of
4 negative avoided cost.

5 Now here comes the biggest contrast in the case.
6 FPC comes at this subject very differently. FPC acknowledged
7 during the prehearing conference that it has the burden of
8 proof in this case, something that you should not forget, yet
9 its position appears to be that it doesn't have to prove much
10 at all.

11 FPC says a situation in which it would have to cycle
12 off a baseload unit in order to keep QFs involves negative
13 avoided cost virtually by definition. That the regulations
14 treat this determination as a given. FPC hopes you will
15 equate a minimum load situation with negative avoided cost and
16 give it blanket approval of future curtailments without trying
17 to plan around the situation and without the requirement of a
18 fact-specific measurement of negative avoided cost before each
19 decision.

20 We intend to show through the evidence that the
21 reason why FPC regards negative avoided cost as a given is
22 because its methodology for measuring those costs is skewed to
23 lead to that result.

24 I want to show you a very simple time line designed
25 simply -- conceptually show the sequence of events, and this

1 assumes away any issue of operational circumstance or adequate
2 mitigation efforts.

3 But over time, during a minimum load situation, the
4 load on FPC's system drops to the point where it has to remove
5 an imbalance between generation and load. It can do that --
6 let's say it can do that either by curtailing QFs or by
7 cycling off a baseload unit, and that's the decision it has to
8 make.

9 During that period of time one or the other takes
10 place. Either it has removed a unit or it has curtailed
11 purchases from QFs. But as load picks up, the imbalance comes
12 to an end, and depending on the course of action it took, if
13 the QFs were curtailed, they return to the system. And as FPC
14 acknowledges in testimony, at that point they begin affording
15 positive benefits in the form of generation delivered at a
16 cost less than it would cost FPC to generate itself. On the
17 other hand, if it cycled off an unit, and the minimum load
18 situation terminates, FPC will restore that unit to service,
19 at which point, beyond this curtailment period or beyond the
20 minimum load period, it would incur the start-up cost
21 associated with bringing that unit back. And depending on the
22 circumstance at the time, if the unit did not return in time
23 to pick up load, it may have to bring on a replacement unit at
24 a higher cost, at which point it will incur some replacement
25 cost, all costs that have been identified in the regulation.

1 Now, I want to point you to the passage from the
2 preamble that Mr. Fama referred to earlier. And this is the
3 second time you have heard this but it's important for the
4 point.

5 The preamble applicable to this situation says
6 "These baseload units might not be able to increase their
7 output level rapidly when the system demands later. As a
8 result, the utility would be required to utilize less
9 efficient, higher cost units with faster start-up to meet the
10 demand that would have been supplied by the less expensive
11 baseload unit."

12 Two quick points. First of all, basal units might;
13 whether they will or won't is an empirical question to be
14 measured with factual evidence.

15 Secondly, it's obvious that the regulation
16 necessarily contemplates analyzing a period of time that
17 extends beyond the curtailment period, or beyond the minimum
18 load situation, because that's when those costs are incurred.
19 That's when it would incur start-up costs and when it would
20 incur replacement costs. And when it performs its comparison
21 of the with-and-without cases, in calculating the costs of
22 generation, the base case, FPC does incorporate, identifies
23 and incorporates in its analysis the start-up costs and any
24 replacement costs. But in what is called the "no-curtailment
25 case," when it compares that to the cost it would incur if it

1 accepted deliveries, FPC plugs those QF deliveries back into
2 the equation only during the curtailment period; only during
3 minimum load situations. So that if, after those hours pass,
4 the QFs would have been on line delivering benefits in the
5 form of positive avoided cost. Those offsetting benefits are
6 not captured and incorporated in the comparison. In other
7 words, FPC's measurement of negative avoided costs is a
8 complete mismatch.

9 Mr. Slater will testify that when the analysis is
10 extended so that it incorporates both costs and the benefits,
11 one must conclude in all seven events to date, FPC would not
12 have incurred any negative avoided cost. And he will testify
13 that while he believes the appropriate period of analysis
14 should be the weekly commitment schedule that FPC applies to
15 the selection of other units, he will testify that his
16 conclusion -- that is, that there were no negative avoided
17 costs in any of these cases, attaches to a time frame much
18 shorter than a week. You don't have to go that far to reach
19 the conclusion that there are no negative costs.

20 I predict when you've heard all of the evidence
21 you'll conclude that the load patterns and unit return
22 characteristics on FPC's system are such that FPC has little
23 to fear from negative avoided costs during a low load
24 situation as a result of either the start-up costs or the
25 replacement costs that the FERC regulation contemplated as

1 underlying the analysis.

2 Now, finally, in some scenarios, FPC incorporated a
3 different category of costs called unit impact costs. They
4 consist primarily of future depreciation and maintenance that
5 Mr. Lefton says must be attributed to cycling units up and
6 down or on and off over a long period of time; the life of the
7 unit.

8 We will show through evidence that these long-term
9 costs are speculative, and that in any event they are
10 irrelevant to the type of short-term operational issues that
11 are presented by FPC's proposed plan.

12 Thank you.

13 CHAIRMAN CLARK: Any questions, Commissioners?

14 MR. WRIGHT: Chairman Clark, I realize our side is
15 slightly over time. I had wanted to say something briefly.

16 CHAIRMAN CLARK: I assumed you all had worked it
17 out, so --

18 (Simultaneous conversation)

19 MR. MCGLOTHLIN: I apologize, Chairman Clark. We
20 did time it and if we ran over, I sincerely apologize. I hope
21 that you won't let my inadvertence affect his right to say
22 something.

23 CHAIRMAN CLARK: Mr. Wright, do you have something
24 to add beyond what has been covered?

25 MR. WRIGHT: Yes.

1 CHAIRMAN CLARK: I'll give you two minutes.

2 MR. WRIGHT: Thank you very much.

3 MR. MCGLOTHLIN: And I thank you, also.

4 MR. WRIGHT: Commissioners, this is not just a
5 hearing about whether Florida Power's efforts at dealing with
6 low load conditions are reasonable. It's also about
7 protecting cogeneration facilities and waste energy
8 facilities, and their contracts with Florida Power, as well as
9 Florida Power's ratepayers within the context of your rules,
10 and the applicable FERC rules.

11 I have two basic things to say. First, my clients
12 do not concede that Florida Power has established its rights
13 to invoke the Commission's rules or the FERC's rules to
14 curtail purchases from us or from any of the other QFs.

15 Nonetheless, we will address through cross, and
16 through our brief, some suggestions for improving FPC's plan
17 and procedures if and when it is entitled to curtail pursuant
18 to your rules.

19 The other point I wanted to make is if you do get
20 through all the other issues and determine that Florida Power
21 has the right to curtail pursuant to your rules, then
22 Montenay, Dade County and Lake Cogen believe that the specific
23 curtailment priority system, the Group A, B and C priority
24 system, embodied within the plan is fair and reasonable.

25 Thank you.

1 CHAIRMAN CLARK: That it is or is not?

2 MR. WRIGHT: Is fair and reasonable. Yes, ma'am.
3 Thank you.

4 CHAIRMAN CLARK: Okay. I think Mr. Dolan is the
5 first witness.

6 MR. FAMA: Florida Power calls Robert Dolan.

7 MS. BROWN: Chairman Clark, if I might interrupt for
8 a minute, perhaps it would be a good time to swear in all of
9 the witnesses.

10 CHAIRMAN CLARK: Thank you very much.

11 (Witnesses collectively sworn.)

12 - - - - -

13 ROBERT D. DOLAN.

14 was called as a witness on behalf of Florida Power Corporation
15 and, having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FAMA:

18 Q Please state your name and position with Florida
19 Power?

20 A I'm Robert Dolan, Manager of Cogeneration Contracts
21 and Administration.

22 Q Are you the same Robert Dolan who sponsored prefiled
23 direct testimony and exhibits in this proceeding?

24 A Yes, I am.

25 Q Are there any corrections you need to make to the

1 text in your prefiled testimony?

2 A Only on Page 3. It said I'm a registered
3 professional engineer, registered in 1978, and that line
4 should read 1988. I'm not quite that old.

5 Q With the exception of the correction you just made,
6 if I were to ask you today the questions that appear in your
7 prefiled direct testimony, would you give the same answers?

8 A Yes, I would.

9 MR. FAMA: I would move to have the prefiled
10 testimony inserted into the record as though read.

11 CHAIRMAN CLARK: The prefiled testimony of
12 Mr. Robert Dolan will be inserted in the record as though
13 read.

14 Q (By Mr. Fama) Mr. Dolan, are you sponsoring
15 prefiled direct exhibits which have been marked as RDD-1
16 through 5?

17 A Yes, I am.

18 Q Mr. Dolan, are there any corrections to those
19 exhibits that you need to make?

20 A Yes. In Exhibit 3, last week we signed a settlement
21 which included pricing and --

22 CHAIRMAN CLARK: Mr. Dolan, can you tell me what
23 page that will be on?

24 MR. FAMA: Commissioner, you have to look at the
25 exhibit designation in the lower right corner. It's RDD-3,

1 Page 2 of 10.

2 CHAIRMAN CLARK: Thank you.

3 A (Continuing) Yes. We updated this exhibit last
4 week due to a settlement of the Auburndale pricing issue,
5 which included some different and more curtailment
6 arrangements. And I have an updated copy of this exhibit that
7 we can hand out.

8 CHAIRMAN CLARK: I believe you have handed it out
9 and it's on our --

10 MR. FAMA: Yes, Chairman. I've already handed it
11 out to all of the parties this morning. It bears just a
12 minute of explanation.

13 This one-page handout is a correction, as Mr. Dolan
14 said, to the summary because we've changed slightly the
15 curtailment we're getting from Auburndale in the settlement.

16 I also have copies of the entire settlement itself,
17 a subset of which has the curtailment provision. So I would
18 propose just to introduce this summary at this time. But if
19 the parties have any trouble with that, I'm willing to
20 introduce the entire settlement.

21 MR. MCGLOTHLIN: Mr. Fama, we'd appreciate a chance
22 to see the entire document; not that you have to introduce it
23 now but could we have a chance to see a copy of it?

24 CHAIRMAN CLARK: At this point we will substitute
25 the new Page 2 of 2 for RDD-3. And that will be the

1 correction to the exhibit. Okay?

2 MR. FAMA: Thank you. Chairman Clark, could I have
3 the exhibits, RDD-1 through 5 marked as a composite exhibit.

4 CHAIRMAN CLARK: That will be marked as Exhibit 1.
5 (Exhibit No. 1 marked for identification.)
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FLORIDA POWER CORPORATION
DOCKET No. 941101 -EQ

DIRECT TESTIMONY OF
ROBERT D. DOLAN

1 **I. INTRODUCTION AND QUALIFICATIONS**

2

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

4 **A. My name is Robert D. Dolan. My business address is Post Office Box**
5 **14042, St. Petersburg, Florida 33733.**

6

7 **Q. By whom are you employed and in what capacity.**

8 **A. I am employed by Florida Power Corporation ("Florida Power" or "the**
9 **Company") and I am currently the Manager of Cogeneration Contracts**
10 **and Administration in Florida Power's System Planning Department.**

11

12 **Q. Please describe your duties and responsibilities in that position.**

13 **A. I have responsibility for implementing Florida Power's cogeneration and**
14 **small power production ("QF") policies, which include contract**
15 **negotiation and administration. I have been involved in the Company's**
16 **QF matters since 1986, except for the period of time between**
17 **approximately December 31, 1990 and February 18, 1991, when I was**
18 **working on behalf of another subsidiary of Florida Progress. I have been**
19 **responsible for the administration of all of Florida Power's QF contracts**

1 since June 1991. In addition, I am familiar with the measures taken by
2 the Company to administer or clarify its various QF contracts.

3

4 **Q. Please describe your educational and business background.**

5 **A. I have a Bachelor of Science Degree in Electrical Engineering from**
6 **Christian Brothers University. In June, 1977, I was employed by Allen**
7 **& Hoshall Consulting Engineers where I conducted numerous studies for**
8 **municipal and REA electric utilities.**

9

10 **In 1980, I was employed by Dashiell. My duties there included turn-key**
11 **substation and transmission line design and construction for industries,**
12 **industrial cogenerators and utilities.**

13

14 **In 1982, I was employed by Turner, Collie & Braden. My duties**
15 **included high voltage substation design including structures, equipment**
16 **selection, configuration, relaying and specifications; process and**
17 **building electrical design; and site design including electrical distribution,**
18 **medium voltage substations and lighting.**

19

20 **In 1983, I was employed by Florida Power as an Industrial Services**
21 **Engineer in the Northern Division located in Monticello. In that capacity,**
22 **I was responsible for cogeneration and large industrial/commercial**
23 **customers. My duties included oversight of cogeneration**
24 **interconnections and participation in the contracting process for various**
25 **cogeneration projects located in North Florida. In 1986, I assumed the**

1 position of Senior Cogeneration Engineer. My responsibilities in that
2 position were to provide project management for QF interconnections.
3 I also performed technical and economic analyses of a wide range of
4 cogeneration projects, negotiated contracts for firm capacity and energy
5 from QFs, and developed the Company's guidelines for Interconnection
6 Standards.

7
8 In 1990, I was appointed Project Manager, Cogeneration Projects. My
9 responsibilities included continued exploration of cogeneration
10 opportunities for Florida Power Corporation. In 1991, I was appointed
11 to my current position as Manager, Cogeneration Contracts and
12 Administration.

13
14 **Q. Are you a member of any professional organizations?**

15 **A. Yes. For the past several years I was a member of the Edison Electric**
16 **Institute Cogeneration Task Force. In addition, I am a member of the**
17 **Institute of Electrical and Electronic Engineers and the Association of**
18 **Energy Engineers.**

19
20 **Q. Do you hold any professional certifications or licenses?**

21 **A. I am a registered Professional Engineer in the State of Florida. I became**
22 **registered in 1978.**

23
24 **Q. Have you ever testified before the Florida Public Service Commission?**

1 A. Yes. I have testified several times before this Commission concerning
2 QF matters, including proceedings requesting the approval of several QF
3 contracts, a proceeding to authorize installation of new Company-owned
4 generating units, annual planning hearings, bidding and rulemaking
5 hearings.

6
7 **II. PURPOSES AND ORGANIZATION OF TESTIMONY**

8
9 **Q. What are the purposes of your testimony?**

10 A. My testimony has six basic purposes. First, I will introduce Florida
11 Power's witnesses in this proceeding. In addition to myself, the
12 Company is sponsoring the direct testimony of Messrs. Henry I.
13 Southwick, III, Charles J. Harper and Steven A. Lefton.

14
15 Second, I will provide background information concerning Florida
16 Power's capacity and energy purchase arrangements with QFs.
17 Currently, Florida Power buys more QF capacity and energy than any
18 other Florida utility.

19
20 Third, I will explain the federal and state rules under which QF
21 purchases take place. I will demonstrate that the applicable rules permit
22 a utility to interrupt or curtail QF purchases under minimum load
23 conditions.

1 Fourth, I will show that each of the Company's QF contracts and rate
2 schedules contemplated that Florida Power would retain the right to
3 curtail purchases in minimum load conditions. These contracts and rate
4 schedules refer specifically to the applicable curtailment rules.

5
6 Fifth, I will briefly summarize the extensive efforts that have been made
7 to clarify or supplement the existing QF contracts to establish voluntary
8 QF output reduction plans which will help to mitigate the excess
9 generation conditions that would otherwise occur during minimum load
10 periods. By agreeing to these arrangements, a number of QF suppliers
11 have shown a willingness to participate cooperatively in the Company's
12 efforts to mitigate a significant operational problem.

13
14 Finally, I will provide a tally of (i) the total amounts of QF capacity and
15 energy available to the Company before voluntary reductions; (ii) the
16 amounts which can be voluntarily curtailed under the negotiated output
17 reduction plans; and (iii) the net amount of QF power which may be
18 subject to involuntary curtailments. Although Florida Power and many
19 of its QF suppliers have successfully negotiated the initial responses
20 which will be made during minimum load periods, the numbers show
21 clearly that Florida Power may have to resort to additional curtailments
22 from time to time.

23
24 Q. Are you sponsoring any exhibits in this proceeding?

1 A. Yes. As the Company's first witness, I am sponsoring Exhibit No.
2 1 (RDD-1) which is Florida Power's October 12, 1994 "Generation
3 Curtailment Plan For Minimum Load Conditions" ("the Curtailment
4 Plan"). Messrs. Southwick and Harper also will discuss and support
5 various aspects of the Curtailment Plan. In addition, I am sponsoring
6 Exhibit No. 1 (RDD-2) which provides a brief description of each QF
7 supplier from whom the Company buys capacity and/or energy; Exhibit
8 No. 1 (RDD-3) which updates Appendix A of the Curtailment Plan;
9 Exhibit No. 1 (RDD-4) which updates Appendix B of the Curtailment
10 Plan; and Exhibit No. 1 (RDD-5) which shows an example of the likely
11 amounts of QF power available to the Company before and after
12 implementation of voluntary output reduction plans.

13
14 Q. Are you testifying on policy issues relating to Florida Power's QF
15 purchases or on the relative merits of one curtailment strategy versus
16 another?

17 A. No, I am not testifying on either of those subjects. My testimony is
18 meant to set the stage for other witnesses who will explain the
19 measures being taken by the Company to minimize the need for QF
20 curtailments; the development of the Curtailment Plan and the principles
21 which underlie that Plan; and the Company's experience to date
22 operating under the Curtailment Plan. Mr. Southwick is the Company's
23 principle policy witness in this docket.

III. INTRODUCTION OF WITNESSES

1
2
3 **Q. Who are the Company's other witnesses in this docket?**

4 **A. Mr. Henry I. Southwick, III, is Florida Power's Director of Energy**
5 **Control. Mr. Southwick has management responsibility for the**
6 **Company's Energy Control Center ("ECC"). This includes transmission**
7 **operations, power supply and system dispatch functions. In this**
8 **capacity, Mr. Southwick has day-to-day experience with Florida Power's**
9 **inter-utility purchase and sale arrangements, the Company's QF**
10 **purchase commitments, all of the Company's own generating units and**
11 **their operating characteristics, the operation of the interconnected**
12 **transmission grid, and a wide variety of related matters. Mr. Southwick**
13 **will explain Florida Power's load and resource profile; how the problem**
14 **of excess generation during minimum load conditions arises; the extent**
15 **of that problem on the Florida Power system; how that problem affects**
16 **reliability and imposes cost burdens on Florida Power and its native load**
17 **customers; the efforts which Florida Power has made and will continue**
18 **to make to address minimum load conditions in ways that will minimize**
19 **the need for QF curtailments; and how the Curtailment Plan satisfies**
20 **this objective.**

21
22 **Mr. Charles J. Harper is Manager of System Control. He oversees the**
23 **Company's 15 system dispatchers and four assistant dispatchers. Mr.**
24 **Harper's direct testimony will explain the "nuts and bolts" of the**
25 **Curtailment Plan, including the specific instructions provided to the**

1 system operating personnel in Appendix C of the Plan. He will also
2 summarize the Company's actual curtailment experience under the Plan
3 when it was first implemented on October 18-19, 1994. Mr. Harper
4 will show that the Company's initial experience operating under the
5 Curtailment Plan proceeded reasonably smoothly, although it also served
6 to highlight a couple of areas for improvement. Improved internal
7 procedures and channels of communication with QFs helped to make
8 later curtailments in January, 1995 go even smoother.

9
10 Mr. Steven A. Lefton is the Vice President For Special Projects at
11 Aptech Engineering Services, Inc. Mr. Lefton provides additional
12 support for the conclusion in the Curtailment Plan that Florida Power
13 cannot reliably or cost-effectively cycle off its baseload coal units or
14 dispatch its Crystal River 3 nuclear unit in response to minimum load
15 conditions. This support is based upon Mr. Lefton's knowledge of
16 Florida Power's facilities as well as his extensive national experience in
17 the electric utility industry.

18
19 **IV. BACKGROUND CONCERNING FLORIDA POWER'S**
20 **QF PURCHASES**

- 21
- 22 **Q. Are capacity and energy purchases from QFs a significant part of Florida**
23 **Power's total power supply portfolio?**
- 24 **A. Yes. As Mr. Southwick details in his testimony, Florida Power's total**
25 **system net generating capacity for the winter and spring of 1995 is**
26 **approximately 8,817 MW. Of that amount, roughly 1,032 MW, or more**

1 than ten percent, is attributable to QF purchases. The Company's QF
2 purchases will increase to more than 1,100 MW later in 1995. Florida
3 Power currently buys more QF capacity than any other Florida utility.
4 This is true both in terms of absolute purchase volumes and as a
5 percentage of total generation.

6
7 **Q. Please describe the various categories of QF purchases made by Florida**
8 **Power.**

9 **A. A useful way to distinguish between the types of QF purchases**
10 **available to the Company is to consider three broad categories of QF**
11 **supply. First, there is a small amount of QF generation available from**
12 **industrial cogenerators which are able to supply their excess self-**
13 **generated energy to Florida Power on an as-available basis. This energy**
14 **is purchased under the as-available energy tariff which the Company has**
15 **on file with this Commission. In the case of these non-firm suppliers,**
16 **the tariff format simplifies the purchase and sale process for both the**
17 **Company and the industrial cogenerator.**

18
19 **A second category of QF includes those choosing to sell both capacity**
20 **and energy to Florida Power under standard offer contracts that are also**
21 **required to be on file with this Commission. Under the Commission's**
22 **current rules, these QFs are either projects less than 75 MW or resource**
23 **recovery facilities.**

1 The third and largest category of QFs consists of larger projects and
2 those smaller projects opting not to enter into standard offer contracts.
3 These QFs are free to negotiate for individual contracts. Florida Power
4 has entered into negotiated power purchase contracts with 16 QFs. All
5 of those contracts have been filed with and approved by this
6 Commission. I should note that a QF with a firm capacity contract may
7 elect to supply more power to the Company than the contract defines
8 as the firm "Committed Capacity." This excess is treated as "as-
9 available" energy for which there is no sales commitment and,
10 therefore, there is no capacity payment.

11
12 **Q. Are the Company's QF purchases all attributable to a few large QF**
13 **facilities?**

14 **A. No.** Florida Power's capacity purchases from QFs (as projected through
15 1996) will come from more than 17 facilities ranging in individual
16 generation from as little as 11 MW to as much as 218 MW. All but
17 seven of these capacity purchases are below the 75 MW threshold. In
18 addition, Florida Power purchases small amounts of energy from a
19 number of existing self-service cogenerators which are able to make
20 energy sales under the Company's as-available tariff.

21
22 **Q. Have you prepared an exhibit which shows which of Florida Power's QF**
23 **suppliers fall under each of the three purchase categories that you have**
24 **described?**

1 A. Yes. My Exhibit No. 1 (RDD-2) shows (i) the name of each QF supplier
2 from whom Florida Power purchases capacity and/or energy; (ii) the
3 category into which each QF supplier falls; (iii) the amount of
4 Committed Capacity, if applicable; and (iv) the approximate amount of
5 as-available energy typically supplied. Note that the expected level of
6 as-available purchases is approximate because, by definition, as-
7 available sales carry no defined volume commitment and can vary over
8 time.

9
10 Q. Please summarize the conclusions to be drawn from Exhibit No.
11 1 (RDD-2).

12 A. This exhibit shows that Florida Power has contracted to purchase
13 approximately 116 MW of capacity under standard offer contracts and
14 approximately 1,038 MW of capacity under negotiated contracts. Not
15 all this capacity is on-line yet.

16
17 **V. THE PURPA FRAMEWORK FOR QF PURCHASES**

18
19 Q. Are you familiar with the rules of the Federal Energy Regulatory
20 Commission ("FERC") and this Commission dealing with utility
21 purchases of capacity and energy from QFs?

22 A. Although I am not a lawyer, I have read those rules as well as the
23 statutory provisions which they were designed to implement. In
24 addition, as the Company's Manager of Cogeneration Contracts and
25 Administration, I have responsibility for negotiating contracts with QF

1 suppliers that will comply with the applicable rules. In particular, I am
2 referring now to (i) Section 210 of the Public Utility Regulatory Policies
3 Act of 1978 ("PURPA"); (ii) Sections 292.304(f)(1) and 292.307(b) of
4 the FERC's regulations; and (iii) this Commission's Rule 25-17.086.

5
6 **Q. Please summarize the statutory requirements as set forth in Section 210**
7 **of PURPA.**

8 **A. Section 210 stated an intention by Congress to encourage the**
9 **development of QFs. To further that objective, the FERC was instructed**
10 **to issue rules generally requiring electric utilities to buy power from and**
11 **sell power to QFs. Those rules, however, had to meet additional**
12 **statutory tests. They had to ensure acceptable levels of reliability**
13 **(including reliability during emergencies) and they had to ensure that the**
14 **utility's payments for QF power (i) would be just and reasonable to the**
15 **utility's consumers and (ii) would not exceed the utility's incremental**
16 **cost of alternative power (i.e., its avoided cost). Section 210 also**
17 **directed state utility commissions to promptly implement the required**
18 **FERC rules.**

19
20 **Q. What actions did the FERC take to accomplish these PURPA objectives?**

21 **A. The FERC issued a series of rules dealing with QFs in Part 292 of its**
22 **regulations (18 C.F.R. Part 292). Section 292.303 repeated the general**
23 **rule in PURPA that utilities are required to buy capacity and energy**
24 **made available by a QF. Section 292.304 dealt with the rates for QF**

1 capacity and energy, including the required relationship between those
2 rates and the utility's avoided costs.

3
4 Section 292.304(f)(1) is particularly relevant to Florida Power's
5 Curtailment Plan. That section created an exception to the general
6 purchase obligation set forth in Section 292.303 whenever the utility's
7 purchase from a QF would cause the utility to incur more cost than it
8 would incur without the purchase. Other subparagraphs of Section
9 292.304(f) required notice to state regulators and affected QFs and
10 further provided for state commission verification of the circumstances
11 requiring temporary relief from the purchase obligation. Because
12 Section 292.304(f)(1) bears directly on the Company's Curtailment
13 Plan, I will quote it in its entirety (emphasis added):

14 *(f) Periods during which purchases not required.*
15 (1) Any electric utility which gives notice
16 pursuant to paragraph (f)(2) of this section will
17 not be required to purchase electric energy or
18 capacity during any period during which, due to
19 operational circumstances, purchases from
20 qualifying facilities will result in costs greater
21 than those which the utility would incur if it did
22 not make such purchases, but instead generated
23 an equivalent amount of energy itself.

24
25 Q. Is there any evidence that the FERC intended this rule to relieve a utility
26 from purchasing QF power during minimum load conditions?

27 A. Yes. In fact, the FERC specifically stated that its rule was intended to
28 address "light loading periods." The rationale for Section 292.304(f)(1)
29 was explained as follows (Order No. 69, RM79-55-000, 45 Fed. Reg.
30 at 12227, February 25, 1980):

1 This section was intended to deal with a certain
2 condition which can occur during light loading
3 periods. If a utility operating only base load
4 units during those periods were forced to cut
5 back output from the units in order to
6 accommodate purchases from qualifying
7 facilities, these base load units might not be able
8 to increase their output level rapidly when the
9 system demand later increased. As a result, the
10 utility would be required to utilize less efficient,
11 higher cost units with faster start-up to meet the
12 demand that would have been supplied by the
13 less expensive base load unit had it been
14 permitted to operate at a constant output.

15
16 The result of such a transaction would be that
17 rather than avoiding costs as a result of the
18 purchase from a qualifying facility, the
19 purchasing electric utility would incur greater
20 costs than it would have had it not purchased
21 energy or capacity from the qualifying facility. A
22 strict application of the avoided cost principle set
23 forth in this section would assess these
24 additional costs as negative avoided costs which
25 must be reimbursed by the qualifying facility. In
26 order to avoid the anomalous result of forcing a
27 qualifying utility to pay an electric utility for
28 purchasing its output, the Commission proposed
29 that an electric utility be required to identify
30 periods during which this situation would occur,
31 so that the qualifying facility could cease delivery
32 of electricity during those periods.

33 This language clearly contemplates an interruption of QF purchases
34 under the minimum load conditions described in the testimony of
35 Messrs. Southwick and Harper.

36
37 **Q. How is Section 292.307 of the FERC's rules relevant to the minimum
38 load emergency problem?**

39 **A. As I have said, Section 292.304(f)(1) clearly permits curtailment of QF
40 purchases during minimum load emergencies. Even if that were not the
41 case, however, Section 292.307(b) of the FERC's rules broadly**

1 authorizes the discontinuance of QF purchases during any type of
2 system emergency if continuation of the purchases would contribute to
3 the emergency condition. Obviously, continuing to accept energy from
4 third parties would contribute to and exacerbate a minimum load
5 emergency.

6
7 **Q. How did this Commission implement the standards set forth in the**
8 **FERC's rules?**

9 **A. This Commission implemented the PURPA/FERC requirements by issuing**
10 **its own regulations under the Florida Administrative Code. Rule 25-**
11 **17.086 is the immediately relevant provision. That rule permits a utility**
12 **to curtail purchases from QFs whenever the purchases "will result in**
13 **costs greater than those which the utility would incur if it did not make**
14 **such purchases, or otherwise place an undue burden on the utility...."**
15 **Other Company witnesses in this proceeding explain that Florida Power**
16 **would, in fact, incur greater costs and be unduly burdened from both a**
17 **cost and reliability perspective if forced to purchase QF power in a**
18 **manner inconsistent with the Curtailment Plan.**

19
20 **Q. When the FERC issued Section 292.304(f)(1), did that agency describe**
21 **the rule as an absolute excuse from buying QF power irrespective of the**
22 **utility/QF power purchase contracts?**

23 **A. No, it did not. In Order No. 69, which I referred to earlier (45 Fed. Reg.**
24 **at 12228), the FERC explained that Section 292.304(f)(1) was not**
25 **intended to override enforceable contract obligations. However, as I will**

1 discuss in the next section of my testimony, all of Florida Power's
2 existing contracts and rate schedules were written to permit
3 curtailments in the circumstances described in Rule 25-17.086, not to
4 contractually prohibit such curtailments. Therefore, there are no
5 contractual obstacles which would override the purchase exemption
6 authorized by the FERC's rules and this Commission's rules.

7
8 **VI. CURTAILMENTS UNDER FLORIDA POWER'S QF**
9 **RATE SCHEDULES AND CONTRACTS**

10
11 **Q. Do all of the rate schedules and contracts under which the Company**
12 **buys QF capacity and/or energy preserve the Company's right to avoid**
13 **QF purchases under the circumstances described in Rule 25-17.086?**

14 **A. Yes. As I have said previously, Florida Power's QF purchases fall**
15 **generally into three categories -- (i) as-available energy purchases under**
16 **a standard tariff; (ii) capacity and energy sales under standard offer**
17 **contracts; and (iii) capacity and energy sales under individual negotiated**
18 **contracts. All of the contracts and rate schedules provide for QF**
19 **curtailment under Rule 25-17.086, although not in exactly the same**
20 **ways.**

21
22 **Q. How does the as-available energy tariff address the question of**
23 **curtailments under Rule 25-17.086?**

24 **A. As-available energy is purchased under Florida Power's Rate Schedule**
25 **COG-1. That schedule contains a "Limitation of Service" section which**
26 **makes all service subject to each of the Commission's Rules 25-17.080**

1 through 25-17.091. This obviously includes Rule 25-17.086.

2 According to COG-1 (emphasis added):

3 All service pursuant to this schedule is subject to
4 the Company's "General Standards for Safety
5 and Interconnection of Cogeneration and Small
6 Power Production Facilities to the Electric Utility
7 System" and to FPSC Rules 25-17.080 through
8 25-17.091, F.A.C.

9 Rate Schedule COG-1 also states that:

10 Service under this rate schedule is subject to the
11 rules and regulations of the Company and the
12 Florida Public Service Commission.

13 Again, this section unquestionably incorporates Rule 25-17.086 -- a
14 "rule" of the Commission.

15
16 Q. How did the standard offer contracts implement Rule 25-17.086?

17 A. The early standard offer contracts began by noting the parties' mutual
18 intent to purchase and sell "electricity to be generated by the QF
19 consistent with Florida Public Service Commission (FPSC) Rules 25-
20 17.080 through 25-17.091, Florida Administrative Code." Those
21 contracts further stated that:

22 The Company agrees to pay the QF for energy
23 produced by the Facility and delivered to the
24 Company in accordance with the rates and
25 procedures contained in Rate Schedule effective
26 January 26, 1988, COG-2 attached hereto as
27 Appendix B, as may be amended from time to
28 time, except as stated herein....

29 Both the Commission rules and the COG-2 firm capacity and energy rate
30 schedule were attached to the standard offer contracts as appendices.
31 Like COG-1, COG-2 also was subject to "FPSC Rules 25-17.080
32 through 25-17.091, F.A.C." and also stated that all service is "subject

1 to the rules and regulations of the Company and the Florida Public
2 Service Commission." In addition, Appendix A to COG-2 contained the
3 following language which expressly adopted the purchase exemption set
4 forth in Rule 25-17.086:

5 The Company shall be relieved of its obligation
6 under FPSC Rule 25-17.082 F.A.C. to purchase
7 electricity from a Qualifying Facility when
8 purchases result in higher costs to the Company
9 than without such purchases, and where service
10 to the Company's other customers may be
11 impaired by such purchases. The Company shall
12 notify the Qualifying Facility(ies) as soon as
13 possible or practical, and the FPSC of the
14 problems leading to the need for such relief.

15 The Company's more recent standard offer contract form contains
16 curtailment language similar to that which is included in the negotiated
17 contracts.

18
19 **Q. How do the Company's negotiated contracts deal with Rule 25-17.086?**

20 **A. The Company has entered into a number of negotiated QF contracts**
21 **since the late 1980s. Some of these contracts were negotiated**
22 **versions of the standard offer model described previously. Most of**
23 **them were based on a separate negotiated contract format. Like the**
24 **standard offer contracts, the negotiated contract format stated that:**

25 ... the QF desires to sell, and the Company
26 desires to purchase, electricity to be generated
27 by the Facility and made available for sale to the
28 Company, consistent with FPSC Rules 25-
29 17.080 through 25-17.091 in effect as of the
30 Execution Date....

31 In addition, these negotiated contracts included an Appendix E, which
32 was incorporated by reference and which consisted of Rules 25-17.080

1 through 25-17.091 as in effect on the date of contract execution. The
2 contracts' Appendix B Parallel Operating Procedures included an
3 Operating Standard requiring that:

4 The QF shall reduce, curtail, or interrupt
5 electrical generation or take other appropriate
6 action for so long as it is reasonably necessary,
7 which in the judgment of the QF or the Company
8 may be necessary to operate and maintain a part
9 of either Party's system, to address, if
10 applicable, an emergency on either party's
11 system.

12 Moreover, recognizing the Company's ability to refuse deliveries under
13 the conditions described in Rule 25-17.086, the negotiated contract
14 format described the pricing ramifications that would result from such
15 curtailments. Section 6.3 of the contracts stated:

16 6.3 If the Company is unable to receive part or
17 all of the Committed Capacity which the QF has
18 made available for sale to the Company at the
19 Point of Delivery by reasons of (i) a Force
20 Majeure Event; or (ii) pursuant to FPSC Rule 25-
21 17.086, notice and procedural requirements of
22 Article XXI shall apply and the Company will
23 nevertheless be obligated to make capacity
24 payments which the QF would be otherwise
25 qualified to receive, and to pay for energy
26 actually received, if any. The Company shall not
27 be obligated to pay for energy which the QF
28 would have delivered but for such occurrences
29 and QF shall be entitled to sell or otherwise
30 dispose of such energy in any lawful manner;
31 provided, however, such entitlement to sell shall
32 not be construed to require the Company to
33 transmit such energy to another entity.

34 I should note that this section preserved the revenue stream available
35 to the QF through the payment of capacity charges, but relieved the
36 Company of the obligation to pay for curtailed energy deliveries.

1 Q. What do you conclude from the rate schedule and contract provisions
2 which you have mentioned?

3 A. I conclude that all of Florida Power's QF purchases -- whether made
4 under the as-available tariff, a standard offer contract or a negotiated
5 contract -- are subject to the curtailment provisions of Rule 25-17.086.
6 I know of no Florida Power contract or rate schedule that would override
7 that rule.

8
9 **VII. POST-CONTRACT NEGOTIATED CURTAILMENT PLANS**

10
11 Q. Has Florida Power taken further actions since execution of its QF
12 purchase agreements to address the issue of curtailments during
13 minimum load emergencies?

14 A. It has. The Company anticipated that a minimum load problem would
15 develop in the fall of 1994, when large new QF capacity increments
16 were scheduled to come on-line. Therefore, well in advance of that
17 time, Company personnel began to investigate ways to cope with the
18 problem. For example, the Company carefully examined the capability
19 of its own units to run at reduced operating levels. In addition, we
20 approached our QF suppliers on numerous occasions in an effort to
21 develop cooperative procedures that would help to reduce system
22 generation during minimum load periods. A fundamental goal of these
23 discussions was to mitigate the minimum load problem while addressing
24 stated QF operating concerns. All of the negotiations were conducted
25 from the premise that Florida Power already had and would retain

1 curtailment rights under the rules of the FERC and this Commission.
2 Where possible, however, the Company hoped to reduce the need for
3 involuntary curtailments by structuring voluntary output reductions
4 during off-peak periods.

5
6 **Q. If the existing rate schedules and contracts already authorized the**
7 **Company to curtail purchases in minimum load emergencies, then why**
8 **was it necessary to approach the QFs at all?**

9 **A. Although the contracts and rate schedules authorized curtailments when**
10 **permitted by Rule 25-17.086, they did not lay out specific procedures.**
11 **Nor did they specify particular off-peak periods during which individual**
12 **QFs might be willing to reduce output or schedule maintenance, thereby**
13 **mitigating the likelihood of a minimum load emergency. The Company**
14 **wanted to develop output reduction plans to clarify and supplement the**
15 **curtailment provisions which already existed in the contracts and rate**
16 **schedules. In this manner, each side would have a clearer**
17 **understanding in advance of the practices that would be followed to**
18 **address falling loads on the Company's system. In addition, the**
19 **negotiation process enabled the affected QFs to raise their particular**
20 **operating concerns and gave Florida Power a chance to accommodate**
21 **those concerns if possible. This was viewed as serving the business**
22 **interests both of the QF and the Company. As the Curtailment Plan**
23 **acknowledges, the Company remains willing to negotiate further**
24 **voluntary reduction plans that address the parties' mutual needs.**

1 It was not anticipated that the negotiated output reductions would
2 alleviate all need for Company-initiated curtailments. Thus, the output
3 reduction plans were designed to describe the first steps for reducing
4 QF purchases. They also acknowledged that additional curtailments
5 might be required.

6
7 **Q. How many QFs have entered into negotiated curtailment arrangements?**

8 **A. As of October 12, 1994, there were seven. As of today there are nine,**
9 **now including Orange Cogen and Lake Cogen. My Exhibit Nos. 1 and**
10 **1 (RDD-3 and RDD-4) update Appendices A and B of the Curtailment**
11 **Plan to include brief descriptions of the new negotiated curtailment**
12 **plans and to revise the curtailment priority groups.**

13
14 **Q. Are all of the negotiated curtailment plans the same?**

15 **A. No, they are not. During the course of negotiations, different QFs**
16 **raised different operating issues to which the Company's personnel**
17 **attempted to respond. To repeat, the objective was to achieve the**
18 **maximum amount of voluntary output reductions so as to minimize the**
19 **need for involuntary curtailments under this Commission's rules, and to**
20 **do so in a way that would respond to the QFs' legitimate operational**
21 **concerns where feasible and consistent with the various QF contracts.**

22
23 **Q. Has Florida Power filed all of these negotiated output reduction plans**
24 **with the Commission?**

1 It was not anticipated that the negotiated output reductions would
2 alleviate all need for Company-initiated curtailments. Thus, the output
3 reduction plans were designed to describe the first steps for reducing
4 QF purchases. They also acknowledged that additional curtailments
5 might be required.

6
7 **Q. How many QFs have entered into negotiated curtailment arrangements?**

8 **A. As of October 12, 1994, there were seven. As of today there are nine,**
9 **now including Orange Cogen and Lake Cogen. My Exhibit Nos. 1 and**
10 **1 (RDD-3 and RDD-4) update Appendices A and B of the Curtailment**
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18 **maximum amount of voluntary output reductions so as to minimize the**
19 **need for involuntary curtailments under this Commission's rules, and to**
20 **do so in a way that would respond to the QFs' legitimate operational**
21 **concerns where feasible and consistent with the various QF contracts.**

22
23 **Q. Has Florida Power filed all of these negotiated output reduction plans**
24 **with the Commission?**

- 1 A. Yes. In addition, each of the plans is summarized in Appendix A to the
2 Curtailment Plan, as updated by my Exhibit No. 1 (RDD-3).
3
- 4 Q. The Curtailment Plan cites the voluntary arrangement with Auburndale
5 Power Partners as a good example of the output reduction plans which
6 the Company has negotiated. Please provide a brief description of that
7 arrangement.
- 8 A. The arrangement with Auburndale provides for automatic output
9 reductions without a specific request from Florida Power. Between
10 October 1 and November 14, and between March 15 and April 30 of
11 each year, the Auburndale plant will reduce deliveries to the Company
12 by 36 MW -- or 24 percent -- daily between the hours of 12:00 a.m.
13 and 6:00 a.m. Between November 15 and March 14, Auburndale will
14 reduce its output during the same hours by 50 MW -- or approximately
15 one-third of the plant's capacity. Thus, for the seven-month period
16 from October through April, Florida Power can depend on nightly output
17 reductions. In addition, Auburndale has agreed to reduce its deliveries
18 by 150 MW -- 100 percent -- for a maximum of five times per year, not
19 to exceed two times per week or four hours at a time. Moreover,
20 Florida Power can determine when, during low load months, the
21 Auburndale plant will be shut down for annual maintenance. The
22 Company is using these discretionary output reductions and
23 maintenance scheduling options to further mitigate minimum load
24 problems.

1 Q. Appendix A to the Curtailment Plan shows "Additional Commitments"
2 pertaining to the Tiger Bay and Dade County voluntary output reduction
3 plans. Please describe the additional commitments applicable to Tiger
4 Bay.

5 A. Florida Power's negotiated output reduction plan with Tiger Bay, as
6 memorialized in a December 23, 1993 letter, reflects the Company's
7 recognition that Tiger Bay and other QFs who have agreed to such plans
8 have acted responsibly to contribute to the solution of a difficult system
9 operating dilemma. As noted in the Curtailment Plan (Exhibit No.
10 1 (RDD-1) at 22-23), because these QFs have "stepped up to the
11 plate," it would be unfair to require still greater interruption of deliveries
12 from them until after the remaining QF suppliers have been called upon
13 to bear their fair share of the needed output reductions.

14
15 Q. How does the Tiger Bay arrangement achieve this fairness principle?

16 A. The December 23, 1993 letter to Tiger Bay, which in this limited
17 respect also applies to other similarly-situated QFs, stated that if, after
18 Tiger Bay's voluntary reductions, other curtailments are required under
19 Rule 25-17.086, then:

20 FPC would initially curtail purchases from only those
21 cogenerators that have not agreed to reduce their off-
22 peak electrical output. Only if such curtailments
23 were insufficient to remedy FPC's operational
24 problems would FPC then begin to curtail purchases
25 from Tiger Bay and the other cogenerators who have
26 contractually agreed to reduce their off-peak electrical
27 output.

28 This commitment is reflected in the Curtailment Plan's Appendix B
29 groupings of QF suppliers by placing all those QFs with negotiated

1 reduction plans into Curtailment Group A. This grouping is discussed
2 in more detail by Mr. Southwick.

3
4 **Q. Turning to the Dade County arrangement, would you please explain the**
5 **"additional commitments" applicable to that QF.**

6 **A. The commitments to Dade County are essentially the same as for Tiger**
7 **Bay, except for 1995. In all years but 1995, the November 16, 1993**
8 **agreement with Dade County provides that:**

9 FPC will minimize its request for output
10 curtailment by the Facility by prioritizing the
11 Facility in the last curtailment group of
12 cogenerators and small power producers on
13 FPC's system.

14 The agreement also states that, if Florida Power refuses energy under
15 Rule 25-17.086:

16 FPC will treat Dade County as a small power
17 producer in a separate class from any
18 cogenerators or small power producers who have
19 not agreed to voluntary output curtailments.

20 Based upon these commitments, Dade County is included as a Group A
21 QF on Appendix B to the Curtailment Plan.

22
23 **Q. In what way is Dade County treated differently during 1995?**

24 **A. In 1995, Dade County expects to install new emissions equipment at its**
25 **resource recovery facility. The County advised the Company that, as**
26 **a result of these activities, it would have more difficulty meeting its**
27 **solid waste disposal requirements in 1995 than in other years if**
28 **compelled to make further plant output reductions. To accommodate**

1 this transitory problem, the Company agreed to minimize curtailments
2 during 1995 only as follows:

3 except for the reductions (stated earlier in the output
4 reduction plan), FPC will minimize its requests for
5 output curtailment by the Facility by prioritizing its
6 curtailment requests such that Dade County will not
7 be requested to reduce the Facility's output until all
8 other cogenerators and small power producers have
9 been sought for maximum curtailment.

10
11 **Q. Is this unique arrangement accounted for in the Curtailment Plan?**

12 **A. Yes, at page 4 of Appendix C, which instructs Florida Power's system**
13 **operating personnel to place the Dade County facility in the last**
14 **curtailment group during calendar year 1995 only.**

15
16 **Q. Based on your knowledge of the Company's QF contracts and the**
17 **negotiated output reduction plans, is it your opinion that the Curtailment**
18 **Plan rationally and fairly implements those arrangements?**

19 **A. Yes.**

20
21 **VIII. SUMMARY OF NEGOTIATED OUTPUT REDUCTION VOLUMES**

22
23 **Q. Please refer to your Exhibit No. 1 (RDD-5) and explain how much QF**
24 **power will be available to the Company before and after implementation**
25 **of the negotiated output reduction plans.**

26 **A. It is difficult to supply exact numbers because the various arrangements**
27 **call for output reductions during different hours and at different times**
28 **of the year. Also, individual QF units may be out of service (scheduled**

1 or unscheduled) at different times. Therefore, Exhibit No. 1 (RDD-5)
2 provides a representative example with footnotes detailing the
3 assumptions which I have made.

4
5 The exhibit shows that without any of the negotiated arrangements,
6 Florida Power would have about 1,032 MW of QF power available to it.
7 Under the stated assumptions, this amount can be reduced to roughly
8 745 MW during minimum load periods. The difference -- 287 MW --
9 represents the maximum amount by which involuntary curtailments will
10 have been mitigated. It should be noted that in early March, 1995,
11 Orange Cogeneration will begin making deliveries to the Company.
12 Orange Cogeneration has agreed to reduce its output to zero MW every
13 night. This represents another 87 MW of voluntary curtailments, and
14 will bring the total to 347 MW. This is a significant amount, but not
15 enough to avoid curtailments under the minimum load emergency
16 conditions discussed by Messrs. Southwick and Harper.

17
18 Q. Mr. Dolan, does that conclude your prepared direct testimony?

19 A. Yes.

1 Q (By Mr. Fama) Mr. Dolan, would you like to
2 summarize your testimony?

3 A Yes, I would.

4 I will be short on the FERC and the FPSC rules since
5 you've heard a lot about them already. But my testimony
6 demonstrates that both the applicable FERC and FPSC QF rules
7 allow curtailments. FPC's minimum load conditions are the
8 exact operational circumstances contemplated by these rules.
9 All of FPC's contracts retain the rights to curtail QF
10 purchases during minimum load conditions.

11 FPC's curtailment plan should be approved because a
12 failure would cause FPC's ratepayers to incur greater costs
13 and subsidize QF purchases.

14 Even though FPC has retained the right to curtail QF
15 purchases, we took extensive mitigation efforts to date to
16 reduce the need for involuntary reductions for QF capacity by
17 negotiating cooperative voluntary reductions from FPC's QFs to
18 reduce their generation during minimum load periods. This was
19 viewed as serving the business interests of both the QFs and
20 the Company.

21 FPC has over 350 megawatts of voluntary reductions,
22 of which most are nightly reductions. FPC can also cycle off
23 two facilities: Auburndale ten times a year, as indicated by
24 this revised settlement summary, and Tiger Bay for three
25 two-week periods.

1 The company is using these discretionary output
2 reductions and maintenance scheduling operations to further
3 mitigate the minimum load problems.

4 These mitigation efforts have reduced our QF
5 capacity during minimum load periods from over 1100 megawatts
6 to approximately 750 megawatts. In addition, FPSC carefully
7 examined the capability of its own units to run at reduced
8 operation levels.

9 As Mr. Southwick will explain, FPC has taken a
10 balanced approach, and we will continue to take reasonable and
11 cost-effective steps to minimize the need for curtailments.
12 FPC's curtailment plan is a fair and reasonable approach to
13 curtailment implementation.

14 As I just stated, the curtailment plan is reasonable
15 and can be demonstrated by the following: Before
16 curtailments, FPC will reduce off-system purchases without
17 breaching its power supply contracts. We will maximize
18 economic off-system sales; we will reduce self-generation to
19 minimums, which include cycling off all intermediate steam
20 units, cycling off the University of Florida cogen unit. This
21 is over 1,700 megawatts which we cycle off. We also reduce
22 coal plants to minimum reliable and secure levels with the
23 ability to follow loads.

24 FPC then curtails using the C-B-A grouping method.
25 The groups are as follows: Group C, the as-available

1 purchases; Group B, the firm QFs without contractual voluntary
2 reductions and Group A, the firm QFs with contractual
3 voluntary reductions.

4 The curtailment proceeds as follows: We curtail the
5 as-available purchases, or Group C, to zero or 100% of their
6 sales to FPC. Then Group B up to 50% of their committed
7 capacity. And then Group A up to 50% of their commitment
8 capacity.

9 If additional curtailments are still required, then
10 finally we do Group A and B together by the same percentage
11 required to match generation and load. If curtailments are
12 needed, our plan provides reasonable advance notice. It
13 fairly recognized the different characteristics of QF
14 supplies; as-available versus firm; committed reductions
15 versus iffy reductions.

16 These QFs with voluntary contractual reductions have
17 stepped up to the plate. It would be unfair to require still
18 greater interruption of deliveries from them until the
19 remaining QF suppliers have been called upon to bear their
20 fair share of the needed output reduction.

21 It should be noted that the people with voluntary
22 contractual reductions have substantially mitigated need for
23 involuntary reductions and our curtailment plan recognizes
24 that. And then we curtail only as needed to balance expected
25 generation load. We then provide follow-up notice to the

1 Commission.

2 We have several witnesses after me in direct that
3 can explain other details. Chuck Harper will describe in his
4 testimony how the plan has been implemented efficiently during
5 the seven required curtailment events successfully managing
6 the minimum load problem. Mr. Lefton in his testimony will
7 describe the cycling cost of FPC units. And, finally, Mr.
8 Southwick will describe in his testimony why the plan is
9 proper, FPC's mitigation efforts to date, and if FPC didn't
10 curtail QF purchases, negative avoided cost would be incurred.

11 And that's the end of my summary.

12 MR. FAMA: I tender the witness for cross
13 examination.

14 CHAIRMAN CLARK: Ms. Walker.

15 MS. WALKER: We don't have anything.

16 CHAIRMAN CLARK: Mr. McGlothlin.

17 CROSS EXAMINATION

18 BY MR. MCGLOTHLIN:

19 Q Good morning, Mr. Dolan.

20 A Good morning.

21 Q Mr. Dolan, is it true that as early as 1993 FPC
22 anticipated it would experience a minimum load situation
23 developing in 1994?

24 A It's true in '93 we thought it might occur, and
25 that's also when we started -- negotiated voluntary reductions

1 from FPC's QF suppliers, and also looking at FPC's own units.

2 Q You anticipated that you would have that situation
3 as early in 1993 because you were aware that there would be a
4 substantial block of QF generation coming on line in 1994?

5 A It became obvious that all of the QFs that FPC had
6 contracted for would be coming on line in that late '93 to
7 summer of '94 time frame.

8 Q And a substantial portion of that block of QF power
9 consisted of firm contracts that emanated from FPC's 1991 RFP;
10 is that correct?

11 A Probably about 75% of that block of capacity came
12 from the contracts negotiated in the '91 time frame.

13 Q And the contracts negotiated as a consequence of the
14 RFP and executed in 1991 included my client's contract,
15 Orlando CoGen, and Pasco Cogen; is that right?

16 A Yeah. They were signed in the RFP that was issued
17 January 11 and executed in March of '91.

18 Q Those contracts that lead to a block of QF power
19 coming on line in the '93-94 time frame were nondispatchable
20 in nature; is that correct?

21 A They were nondispatchable in nature in that they
22 didn't have minute-by-minute dispatch arrangements but they
23 definitely retain the rights, in Section 6.3, to curtail QF
24 purchases during minimum load periods.

25 Q Yes, sir. My question is whether they are

1 nondispatchable in nature. Are you suggesting by your answer
2 that the inclusion of a reference to the rule had the effect
3 of incorporating dispatchability in the contract?

4 A They had the effect of incorporating a subset of
5 dispatchability which is curtailment.

6 Q You see one equated to the other?

7 A No. I think I said curtailment is a subset of
8 dispatch. Dispatch is a more broader term on a
9 minute-by-minute basis where you vary the load continually
10 rather than under just certain circumstances.

11 Q Did the otherwise --

12 COMMISSIONER JOHNSON: Not to interrupt but you
13 didn't understand -- I don't know if he directly answered your
14 question. Could you ask the question again?

15 MR. MCGLOTHLIN: Yes. My question is whether he
16 equates -- the most recent question was whether he equates
17 dispatchability on the one hand with the curtailment rights
18 provided under federal and state regulations on the other.

19 COMMISSIONER JOHNSON: Okay. I didn't understand
20 your answer then.

21 WITNESS DOLAN: I think previously I said
22 curtailment is a subset of dispatch and it's not synonymous,
23 as Mr. Fama used the term; curtailment and dispatch are not
24 synonymous terms.

25 Dispatchability means changing the output of a unit

1 on a minute-by-minute basis to follow load. Curtailment is a
2 subset of dispatch in that you're reducing the load of a unit
3 only during specific times, such as minimum load periods.

4 COMMISSIONER JOHNSON: Thank you.

5 Q (By Mr. McGlothlin) Does it follow if you had a
6 provision for dispatchability in a contract, there would be no
7 need to curtail pursuant to the regulations that are referred
8 to in the contract?

9 A A dispatchable QF contract typically doesn't have
10 the broad dispatch rights that an IPP contract or a utility
11 constructed unit would have. So if we had gotten
12 dispatchability, it may or may not have prevented the need for
13 curtailments, because QF contracts require efficiency
14 standards that they meet, so it would have been a negotiated
15 dispatch right with set points.

16 Q And any negotiated dispatch rights would have
17 provided FPC with control over the output of the QF facility;
18 is that correct?

19 A Provided control according to the terms of the
20 contract. I mean, if you look at the dispatchable contract
21 FPC has, which is CFR, they had the rights to override the
22 dispatch provisions and just pay an economic penalty. Because
23 they had overriding things that they may have to do, such as
24 provide steam to the steam host so they would prefer taking
25 the economic penalty rather than adjusting their load per our

1 system.

2 Q Yes. I understand that terms and conditions can
3 change with negotiations, but generally speaking is it true
4 it's possible to provide dispatchability in a QF contract of a
5 type that would provide the utility with control over the
6 output of a facility?

7 A It depends on the contract that would have been
8 negotiated.

9 If you look at our dispatchable contract, it didn't
10 provide that ultimate control because they could override it.

11 Q My question, sir, acknowledged that there is
12 differences in terms and conditions in negotiations. But it's
13 possible to include in a QF contract provisions that give the
14 utility control over the output of that facility?

15 A Yes. According to the terms and conditions of the
16 contract.

17 Q Now, was the fact that this block of QF generation
18 coming on line in the '93-94 time frame was nondispatchable in
19 nature explained in part why FPC anticipated it would have a
20 minimum load situation beginning in 1994?

21 A Well, part of the reason was that we did not have
22 direct control over the units except under Section 6.3 during
23 the curtailment period as defined in the contract, which is
24 why we, in '93, started gearing up for the eventuality that we
25 may have to curtail QFs under that provision of the contract.

1 Q Mr. Dolan, if you have dispatchability in a contract
2 such that the utility controls the output of the QF facility,
3 would you ever reach this situation where you have a minimum
4 load situation?

5 A We may have been in this exact situation if we
6 didn't get over 350 megawatts of dispatchability rights in
7 your QF contracts.

8 We have gotten, through voluntary negotiations, 350
9 megawatts of negotiated curtailment. So the dispatch rights
10 would have had to have been at least 350; 350 megawatts out of
11 the 1,100, plus the largest curtailment event we have had to
12 date. So we would have had to have gotten -- which I believe
13 in the 250, 260 megawatt range, so we would have had to have
14 gotten dispatchability rights down to at least 40% of their
15 committed capacity.

16 Q As I understand your answer, you've testified that
17 the nondispatchable nature of the contracts explained in part
18 why FPC anticipated it would have a minimum load situation
19 beginning in 1994. And FPC at that time began pointing
20 towards controlling that minimum load situation through
21 exercise of what rights it believed it had under the
22 curtailment provisions; is that correct?

23 A That's correct. And we also at that time started
24 undertaking extensive mitigation efforts so that we wouldn't
25 need involuntary QF curtailments.

1 Unfortunately, we are in the situation that
2 mitigation efforts didn't eliminate the need for the QP
3 curtailments.

4 CHAIRMAN CLARK: Mr. McGlothlin, can I interrupt you
5 just a minute. I sometimes have trouble following the
6 questions because they seem to be -- they have a lot of
7 conditions on them. So let me follow up on your question and
8 an answer that you had made.

9 The contracts that were coming on in 1994, you said
10 approximately 75% of them were a result of negotiating and
11 signing contracts in 1991.

12 WITNESS DOLAN: Of the block of contracts that were
13 coming on line, about 650 megawatts of them were coming on
14 line from the RFP or the CFR renegotiation, or the EcoPeat
15 contract. They were all in the March through November time
16 frame of '91.

17 We also had an older contract coming on line called
18 Tiger Bay, which is utilizing the old General Peat contract.
19 That's our largest facility, about 220 megawatts, that
20 primarily -- four of their five contracts are some old
21 pre-1990 contracts.

22 CHAIRMAN CLARK: Let me ask it a different way.

23 I think it was 1993 that you anticipated some
24 problems, minimum load problems, and your anticipation of
25 those load problems came after you signed those contracts; is

1 that right?

2 WITNESS DOLAN: We, when we negotiated the
3 contracts, put in the curtailment provisions into those '91
4 contracts; it became, I guess you could say, obvious to us in
5 '93.

6 CHAIRMAN CLARK: That's what I wanted to know. In
7 '93 you anticipated, because of the contracts that would come
8 on line, the units that would have come on line in '94, that
9 you would have problems with minimum load that might
10 necessitate invoking the rule on curtailments. Is that
11 correct?

12 WITNESS DOLAN: That's correct.

13 CHAIRMAN CLARK: Now, Mr. McGlothlin asked you about
14 dispatchability, and I understood the response to that to mean
15 that if you had known -- I suppose if you had known you might
16 not have signed the contracts -- but if you had been able to
17 negotiate dispatchability into those contracts, are you saying
18 that in order to meet the minimum load problems, you would
19 have had to include in that the ability to limit their output
20 to 40% of their --

21 WITNESS DOLAN: Committed capacity.

22 CHAIRMAN CLARK: Committed capacity.

23 WITNESS DOLAN: But when I said the 40%, I was
24 looking at all of the contracts we had signed. We've got
25 about 1,100 megawatts of QF capacity. You would have almost

1 have to have had -- there was 332 megawatts of old contracts
2 that make up the 1,100 megawatts, so in that group in '91 you
3 would have probably had to have negotiated that they get down
4 to 15 to 20% level to have completely mitigated the need for
5 QF curtailments under the situation we're in sitting here in
6 '94.

7 CHAIRMAN CLARK: Let me ask you one other question.
8 If you had negotiated all of your contracts to be
9 dispatchable, would there be any reason to have a rule on
10 curtailment?

11 WITNESS DOLAN: If we had complete rights of
12 dispatchability, including shutting them off, not just
13 dispatching them between levels but including cycling off, you
14 wouldn't have needed the curtailment rule.

15 CHAIRMAN CLARK: So that goes to your qualification
16 of your response to Mr. McGlothlin on dispatchability depends
17 on what you negotiate.

18 WITNESS DOLAN: That's right, Chairman Clark. And
19 you can look at dispatchable contracts all over the state of
20 Florida and they are all different. From the AES contract
21 with Florida Power and Light to our CFR contract.

22 The utilities that have the most freedom in their
23 dispatchable contracts are those that are with IPPs. Some of
24 the VEPO contracts that are with IPPs have complete
25 curtailment rights where they can turn them to zero.

1 CHAIRMAN CLARK: And you couldn't get that, say, on
2 the board of power, the one at the University of Florida,
3 because they have to meet the needs of the steam host?

4 WITNESS DOLAN: Florida Power -- the utility unit we
5 own at the University of Florida?

6 CHAIRMAN CLARK: That's right. It's your unit.

7 WITNESS DOLAN: We have sufficient backup boilers
8 that we, in our curtailment plan, cycle it off if the backup
9 boilers are operational. We have, I think, three backup
10 boilers. Florida Power's unit, we can cycle it off or run it
11 at 12 megawatts. We are not bound to meet the 45% efficiency
12 standard that the QFs are to maintain their QF status.

13 And that's part of the difficulty when we negotiated
14 the CFR contract, which has a lot of dispatchable provisions
15 even though they can be overrode by CFR, that we would only
16 dispatch them down to like 50%.

17 CHAIRMAN CLARK: Okay.

18 WITNESS DOLAN: Because if they got below that level
19 for any length of time, they wouldn't have been able to
20 maintain their QF status. So being a QF definitely
21 complicates the dispatchability provisions because they've got
22 to meet these other standards.

23 CHAIRMAN CLARK: Thank you.

24 COMMISSIONER GARCIA: If you just relied on the
25 curtailment rule, you wouldn't need dispatchability, would

1 you; dispatchability provisions? In other words, why would
2 you want to control it if you can use the rule for
3 dispatchability to meet your needs?

4 WITNESS DOLAN: Dispatchability gives you more
5 control in 8,760 hours a year. The curtailment provisions, if
6 you look at our record, we have had seven curtailments; maybe
7 the average event has been four hours. That's 28 hours we
8 controlled the output of the QFs in question.

9 So curtailments don't create the economies of
10 dispatch that you get on a hour-by-hour basis, and that's why
11 I was trying to differentiate between curtailments and
12 dispatch.

13 Dispatch means you look at all of your system. You
14 decide how much output from them on a most economical basis.
15 And curtailment also just has to do with this very unique
16 situation in this where accepting the QF energy creates this
17 negative avoided cost, or accepting the energy means they
18 would have to pay us to accept it under the FERC rules.

19 CHAIRMAN CLARK: Go ahead, Mr. McGlothlin.

20 Q (By Mr. McGlothlin) Mr. Dolan, you were involved in
21 the drafting and preparation of the contract that led to the
22 issuance of an RFP and the issuance of that block of QF
23 capacity; is that correct?

24 A I was in the Cogeneration Department during the --
25 when the initial drafts were being done, and I participated in

1 the group that was drafting it.

2 Q Is it true that before proceeding with the RFP
3 Florida Power Corporation considered and deliberated
4 internally whether it should include dispatchability
5 provisions in that draft contract?

6 A Florida Power, both before, during the drafting of
7 the contract and after the initial drafts, we looked at
8 dispatchability and whether it would, on a forecasted basis,
9 save our customers money.

10 MR. MCGLOTHLIN: Yes, sir. My question is very
11 specific.

12 CHAIRMAN CLARK: Excuse me just a minute.

13 Mr. Dolan, if you would answer yes or no and then
14 qualify it helps us in understanding where you are going.

15 WITNESS DOLAN: Okay, I'm sorry. Yes, but before
16 what I just said. (Laughter)

17 Q (By Mr. McGlothlin) And after weighing the pros and
18 cons, FPC chose not to include dispatchability in this
19 particular contract, correct?

20 A That's true. And if you read some of those internal
21 correspondence, it was inconclusive that there would be any
22 ratepayer savings due to having dispatchability or not having
23 it.

24 Q Is it true that FPC's decision to incorporate an
25 explicit reference to the curtailment rule in Paragraph 6.3 of

1 that contract was in part a consequence of the nondispatchable
2 nature of the contracts it had developed and executed as a
3 result of the RFP?

4 A Yes. We included that rule in case we did in the
5 future develop minimum load problems we could deal with by
6 cycling off the QFs.

7 Q Your answer is yes.

8 A Yes.

9 Q I believe you said in response to an earlier
10 question that you are familiar with some QF contracts in other
11 jurisdictions. Are you familiar with any contracts that VEPCO
12 utility has entered with its QFs?

13 A I'm not familiar. I have had copies of some of the
14 VEPCO contracts in the past. I'm more familiar with one of
15 their IPP contracts with Diamond.

16 Q Do you know whether any VEPCO QFs are dispatchable?

17 CHAIRMAN CLARK: Mr. Dolan, would you identify who
18 VEPCO is?

19 WITNESS DOLAN: Oh, the utility up in Virginia.
20 Virginia Electric Power Company. It took me a second to
21 remember what the initials stood for.

22 I do not know whether they -- you know, they may
23 have some dispatchable QF contracts. I'm familiar with their
24 dispatchable IPP contract with Diamond Energy.

25 MR. MCGLOTHLIN: That's all the questions I have,

1 Chairman Clark.

2 CHAIRMAN CLARK: Mr. Presnell, is this a witness you
3 share cross examination on?

4 MR. PRESNELL: This is not a split witness.

5 CHAIRMAN CLARK: Mr. Watson.

6 CROSS EXAMINATION

7 BY MR. WATSON:

8 Q Mr. Dolan, do your firm contracts, the ones that
9 emanated from the 1991 RFP process, do those contracts give
10 FPC any rights to curtail purchases other than whatever rights
11 it may have under this Commission's and the FERC's rules?

12 A Well, I believe it has one additional inclusion, if
13 I can find where that contract provision is.

14 The section that contract uses -- it has two
15 provisions on when we can accept energy. One is a force
16 majeure event and the other is "or pursuant to FPSC
17 Rule 25-17.086."

18 Q Well, that prompts my next question. You've
19 referred to Section 6.3 of the negotiated contract. Doesn't
20 this section really describe what happens if there's an event
21 of force majeure, or if FPSC curtails purchases rather than
22 granting FPC the right to curtail?

23 A I think it clearly contemplated that we could have
24 curtailments in the future. Otherwise, why would we lay out
25 in detail that we would continue to make capacity payments

1 under a force majeure curtailment or a curtailment under
2 25-17.086 but would not pay for the energy.

3 Q I recognize, Mr. Dolan, in other portions of the
4 contract there's a provision that the Commission's rules then
5 in effect are incorporated into the contract. And I
6 understand it's Florida Power's position that that
7 incorporation of 25-17.086 gives you the right to curtail.
8 But Section 6.3 of the contract does not say that Florida
9 Power may curtail under these conditions, does it? It simply
10 says what happens if you curtail.

11 A Yeah. But I think it also says that the company is
12 unable to receive part of the committed capacity pursuant to
13 this rule.

14 Q If you're unable to receive it pursuant to the rule
15 then something happens. It doesn't say you may refuse to
16 receive it pursuant to the rule.

17 A When I read this section, it explains to you how you
18 handle a curtailment under the PSC rule. The contract clearly
19 contemplated that this situation may arise.

20 Q 6.3, Section 6.3 of the negotiated contracts nowhere
21 mentions the term "minimum load conditions," does it?

22 A No, I don't think it did, because 25-17.086 goes
23 into detail on that and so does the Commission Order.

24 Q All right. Mr. Dolan, almost all of the remaining
25 questions I have for you assume that obviously without

1 deciding -- but the assumption is that Florida Power is
2 entitled to curtail purchases from QFs under the rule.

3 A And that's a good assumption.

4 Q I'm simply assuming it for purposes of the questions
5 that follow.

6 Does FPC have any voluntary arrangements with Pasco
7 Cogen with respect to reduction of Pasco's megawatt output
8 during a low load period?

9 A Pasco Cogen, when they can, reduces their output
10 level from 109 to 95, but they have not contractually
11 committed to that. And there are occasions, according to the
12 steam host requirements, that they do not reduce to near those
13 levels.

14 Q Okay.

15 CHAIRMAN CLARK: Is that a yes or a no?

16 WITNESS DOLAN: Yes. They have some voluntary
17 reductions that are not contractually committed to and they do
18 not follow strictly each night, depending on the conditions of
19 their facility. So I mean it's -- they try to help when they
20 can.

21 CHAIRMAN CLARK: And how have they expressed that to
22 you?

23 WITNESS DOLAN: Over the phone.

24 CHAIRMAN CLARK: Okay.

25 Q (By Mr. Watson) That was going to be my next

1 question, Mr. Dolan. Those arrangements have not been
2 formalized by written agreement as have your arrangements with
3 the QFs under Group A under Florida Power's plan?

4 A I didn't understand.

5 Q Pasco arrangements have not been formalized in
6 writing as have your arrangements with the Group A QFs?

7 A The Pasco cogeneration arrangements have not been
8 formalized. We encouraged Pasco Cogen to do that and they
9 chose not to so that they could be allowed to be in Group A.

10 Q Mr. Dolan, your voluntary arrangements with, I
11 believe, nine QFs, is that the number now included in Group A?

12 A That's correct. Nine.

13 Q In essence, aren't these amendments to the
14 negotiated contracts that FPC has with these QFs?

15 A I don't know whether they are amendments or not
16 amendments. We did submit them to the Commission and the
17 Commission did approve them.

18 Q But don't they change the agreement from the one
19 that was signed earlier?

20 A Some of them require changes, but not all of them.
21 Some of them, like the Tiger Bay, we had to change; they were
22 on an overall capacity factor situation and due to these
23 curtailments, we had to recognize and convert it to an on-peak
24 capacity factor arrangement.

25 I don't think the Pinellas County, Pasco, Resource,

1 Lake Cogen could be contemplated as amendments. It cleared up
2 some rights that may have otherwise been in the contracts,
3 such as coordination of maintenance. Lake agreed to go down
4 from 110 to 95 each night and there was no overall capacity
5 factor arrangement there.

6 Q We can take a long time to do this or a short time.
7 If you would listen to the question.

8 You filed contract amendments with the Commission,
9 did you not, in some of these?

10 A No. I think what we filed, and if you read the
11 filing is, we filed with the Commission all of our side
12 letters and said if approval -- to the extent approval is
13 needed. And not all of the side letters in that Commission
14 Order that came out, I guess, last week, and the vote that
15 took place two or three weeks ago said they needed approval.
16 Some they did.

17 Q Let me back up. When you initially signed these
18 negotiated contracts, was there any provision in the contract
19 originally signed about what megawatt output a facility would
20 be at during your low load hours? Is there anything in the
21 contract about that?

22 A Well, the CFR contract had dispatch rights.

23 Q Let's limit it to Pasco and Orlando Cogen.

24 A Well, you didn't limit it to Pasco, you limited it
25 to the nine a minute ago.

1 Q Let's limit it to the eight that were approved in
2 July of 1991 and that do not include CFR Bio-Gen.

3 A That's a little bit different question.

4 Q Did those contracts have any provision about the
5 output to be maintained by the QF during what you would
6 consider your typical low load hours?

7 A No, they didn't, other than whatever rights we had
8 under the curtailment.

9 Q Now, let's forget about curtailment, too. So there
10 was nothing in the provision about what output they would
11 maintain during off-peak hours.

12 A Except under -- there was no provisions in the
13 contract that said what output they would need to be at under
14 most minimum load periods except for those periods covered
15 under curtailment.

16 Q Was there anything in the contract that said what
17 output they would be at if they were curtailed?

18 A Other than, again, there was no specific megawatt
19 listed in the contract, but the curtailment provisions in the
20 QF contracts, and the FPSC rules alluded to that they can be a
21 megawatt level they are curtailed down to.

22 Q So I think the answer to my question was no, there
23 were no specific megawatt output requirements during off-peak
24 hours in the contracts as originally executed.

25 A There were no specific megawatt reductions in the

1 contract except for those that could be implied upon by the
2 Commission curtailment rule.

3 CHAIRMAN CLARK: I think he's answered the question,
4 Mr. Watson.

5 MR. WATSON: I think he has, too.

6 Q (By Mr. Watson) The side letters you've mentioned
7 that were filed with the Commission, do those contain output
8 levels to which the QFs will reduce during what you would
9 consider your off-peak and typical low load hours?

10 A Some of the side letters have minimum load or daily
11 minimum load period reductions. Some have reductions that we
12 call upon. Some more explicitly specify our maintenance
13 rights and how they will do maintenance rather than the loose
14 language in the contract that said coordinate maintenance.
15 There's a variety of things in the side letters that try to
16 mitigate minimum load and they are not all the same.

17 Q But to the extent the side letters deal with matters
18 that were not included in the contract as originally executed,
19 are those not changes from the contract as originally
20 executed?

21 A I'm not sure I would call them changes. They're
22 not -- they are things that weren't specifically addressed in
23 the contract. Some didn't change anything. It isn't like
24 this superceded a provision in the contract. Some were
25 additions.

1 Q Mr. Dolan, is there anything in Pasco's contract
2 that requires it to assist FPC in minimum load situations or
3 any other factual circumstances?

4 A No, there's nothing in the contract that requires
5 Pasco Cogen to do these voluntary arrangements that they've
6 done. The only thing in the contract in our position is that
7 during these curtailment events they are required to do
8 specific things.

9 Q Is there anything in Pasco's contract that requires
10 it to negotiate amendments, such as those that Florida Power
11 has entered into with the QFs in Group A?

12 A There's nothing in the contract other than it may
13 have made good business sense for Pasco to have contractually
14 agreed upon those reductions that they are doing each night so
15 they could have moved into Group A.

16 Q So your answer is no.

17 A Yes.

18 Q Do all of your formal voluntary arrangements with
19 Group A QFs, with respect to reduction of output during low
20 load periods, provide for at least 50% reductions from
21 committed capacity by each QF?

22 A As I said earlier, all of them are different. Some
23 go up to 100%. One reduces capacity by 22%. One goes down by
24 15 megawatts out of 110. Two go off-line completely, I think
25 I said that, and one curtails by 50 to 60 megawatts.

1 Q So the answer again is no, there are some that are
2 more than 50 and there are some that are less.

3 A That's correct. They are all different.

4 Q Are you familiar with your voluntary agreement with
5 Tiger Bay?

6 A Yes, I am.

7 Q Let's just take it as an example, and I realize it's
8 more complex than this, but doesn't the Tiger Bay agreement
9 provide, among other things, that Tiger Bay will reduce its
10 output below its original contract committed capacity during
11 certain load hours?

12 A Yeah. I think I even went through the Tiger Bay
13 contract in my testimony.

14 Q But to answer my question --

15 A Tiger Bay reduces their output by 22%, or a
16 specified period of time, which changes according to what
17 season it is.

18 Q Does that agreement also provide that Florida Power
19 will not ask Tiger Bay for any further curtailment until after
20 Florida Power has sought involuntarily curtailments from other
21 QFs?

22 A Well, it's not in the agreement that -- no, the
23 voluntary curtailment agreement doesn't address that, but I'm
24 not going to leave the answer there. It was addressed in
25 another letter that was executed after the curtailments. Do

1 you recognize that we would only go back to them until we've
2 curtailed all other people who have not contractually agreed
3 to voluntary curtailments.

4 Q So whether it is in the original side letter or a
5 subsequent side letter, I believe the answer to my question
6 was yes.

7 A Well, your question was, was it in the side letter
8 that gave dispatch rights. And that's no. It was in another
9 side letter.

10 Q Okay.

11 A So if you want exact answers on your questions, it
12 was a no. And then I volunteered that it was in a different
13 letter.

14 And we went through that detail in my testimony.
15 We're not trying to hide that fact. And I think I even said
16 it in my summary.

17 Q And this last mentioned part of your arrangement
18 with Tiger Bay has been given effect by placing Tiger Bay in
19 Group A under Florida Power's curtailment plan?

20 A It's been done by placing Tiger Bay into Group A.

21 Q Now, you would agree with me that Pasco Cogen
22 receives some benefit from the curtailment arrangement between
23 FPC and Tiger Bay?

24 A It receives great benefit from the Tiger Bay
25 arrangement. The Tiger Bay arrangement has both the one we

1 signed with those two-week outages and what we did in a verbal
2 conversation has probably eliminated the need for 10 or 15
3 curtailments for Pasco Cogen.

4 Q So, again, the answer to my question is yes.

5 Would you also agree, Mr. Dolan, that Pasco Cogen
6 had no part in Florida Power's negotiations with Tiger Bay
7 that culminated in the side letters between the two?

8 A That's correct. Pasco Cogen wasn't there.

9 Q Would you agree with me that whatever benefit, or
10 benefits, whether they are large or small, Pasco receives, it
11 didn't bargain for in any way?

12 A It didn't bargain for but it is getting the benefit
13 of them.

14 CHAIRMAN CLARK: Mr. Watson, how much more do you
15 have?

16 MR. WATSON: I thought this was going to be fairly
17 brief, but -- I may have another 10 minutes.

18 CHAIRMAN CLARK: We're going to go ahead and take
19 take break now and come back in ten minutes.

20 (Brief recess.)

21

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22 CHAIRMAN CLARK: We'll reconvene the hearing. Mr.
23 Watson.

24 Q (By Mr. Watson) Mr. Dolan, at Page 24 of your
25 direct testimony, Lines 5 to 13, you say that "FPC's voluntary

1 output reduction arrangement with Tiger Bay" -- and I'm
2 quoting now -- "reflects FPC's recognition that Tiger Bay and
3 other QFs who have agreed to such plans have acted responsibly
4 to contribute to the a solution of a difficult system
5 operating dilemma."

6 You also say, and I quote, "Because these QFs have,
7 quote, 'stepped up to the plate,' close quote, it would be
8 unfair to require still greater interruption of deliveries
9 from them until after the remaining QF suppliers have been
10 called upon to bear their fair share of the needed output
11 reductions." End quote.

12 Now, you say that Tiger Bay and some of the other
13 QFs acted responsibly. Can you point me anywhere in the
14 contracts or the Commission's rules to some responsibility on
15 the part of these QFs to act in any way at all?

16 A There's nothing in the rules that would have
17 required Tiger Bay to have negotiated these curtailment
18 arrangements, but it was better for both parties to negotiate
19 these arrangements. It was better business for both parties
20 to understand where each other stood.

21 Q But there's nothing in the contract and there's
22 nothing in the rules that imposes on the QF an obligation to
23 act responsibly in assisting Florida Power in mitigating or
24 eliminating minimum load conditions?

25 A There's nothing explicit in the contract or the

1 rules, but it just makes good business sense in a 20- to
2 30-year commitment for both parties to respond to difficulties
3 the other one may be having.

4 Q Now, is that what you mean when you use the phrase
5 "step up to the plate"?

6 A "Step up to the plate" meant they agreed to mitigate
7 the need for curtailments of QFs in an involuntary fashion.
8 And they stepped up to the plate to help solve a problem that
9 Florida Power and the QFs were experiencing.

10 Q What do you consider the fair share of a QF when it
11 comes to the amount by which it should curtail in a minimum
12 load situation?

13 A I think the fair share is in the eyes of both the QF
14 and Florida Power, because we have allowed all types of
15 arrangements to allow QFs to move into Group A.

16 Q Mr. Dolan, isn't the upshot of the voluntary
17 agreements you've entered into with the Group A QFs that
18 during your typical low load hours, Florida Power has
19 different QFs with different committed capacities?

20 A Florida Power has QFs with all kinds of committed
21 capacities; from 5.1 megawatts to 218 megawatts.

22 Q But in essence, let's take Pasco as an example that
23 has a committed capacity under its contract which has never
24 been modified of 109 megawatts. Would you agree with that?

25 A Pasco's contract was modified from 102 megawatts to

1 109 megawatts.

2 Q Per the contract?

3 A But I mean it was modified pursuant to the contract.

4 You mean modified to address minimum load periods?

5 Q I mean is Pasco Cogen's committed capacity under its
6 contract today 109 megawatts?

7 A That's correct.

8 Q Okay. Now, you have other QFs that are in Group A
9 whose committed capacity -- let's just assume one that was 100
10 megawatts. By agreement, during low load hours, they are
11 required to be at no more than something less than 100
12 megawatts. Is that not the upshot of your agreement with
13 them?

14 A I'm not sure I understood the question. Why don't
15 we just use Lake Cogen as an example.

16 Q Let's use Lake.

17 A I mean, Lake Cogen has a committed capacity of 110
18 megawatts, and during the typical low load hours they reduce
19 down to 95 megawatts.

20 Q Okay. So have they not changed the capacity that
21 Florida Power, absent curtailment, is required to accept from
22 them during low load hours?

23 A They changed from that we would only accept 95
24 megawatts during low load periods rather than it being
25 whatever they produced or could have produced.

1 Q They basically reduced the amount that you're
2 required to accept, absent curtailment during those hours?

3 A During those specific hours, that's correct.

4 Q Had you been unable to negotiate these voluntary
5 output reductions during the low load hours, would you have
6 expected to be able to curtail the firm QFs with which you
7 have contracts other than on a pro rata basis from their
8 committed capacity?

9 A When we developed our curtailment plan, we knew we
10 had the groupings required by some of those side letters of
11 the A-B -- at least an A-B scenario, those with side letters
12 and those without. I mean we never spent a lot of time
13 worrying about what other curtailment plan would have looked
14 like absent those side letters.

15 Q So it was the agreement you entered into with the
16 Group A QFs that caused you to pursue curtailment under your
17 plan as filed on some basis other than pro rata from the
18 initial committed capacity? I mean was that your response?

19 A Our response -- I never responded on how we got to
20 Group A and B.

21 We had side letters with two QFs, Dade County and
22 Tiger Bay, that specifically stated that they would not be
23 curtailed until those without written contractual agreements
24 had been curtailed. And that created the groupings, those two
25 side letters. Then we later had Lake Cogen entered into an

1 agreement, formalize their agreement that they had had an
2 agreement just like Pasco where it was informal over the
3 telephone. And they formalized their agreement to move into
4 Group A, and others we had negotiated agreements, but we did
5 not address, such as Ridge, Mulberry, the Group A-B in that
6 side letter that contained minimum load curtailments.

7 Q Let's say that all you had were the contracts that
8 were initially approved by the Commission and you didn't have
9 any side letters, and you were developing a curtailment plan.

10 Do you believe it would be fair to curtail the QFs
11 on anything other than a pro rata basis from their committed
12 capacity under the contract? In other words, curtail
13 everybody 20%; that's what you need?

14 A If we had had the totally unusual situation where
15 nobody would agree to any voluntary reductions, then most
16 likely we would have just curtailed everybody on a pro rata
17 basis and it would have been a bunch more times than seven
18 times. It would have probably been in the 50s.

19 So the QFs, even though they didn't negotiate and
20 get into Group A, they are getting a free ride, so to speak,
21 from the Group A curtailment group.

22 Q But you've already indicated that the Group B QFs
23 who are getting the free ride didn't really bargain for that
24 benefit, whatever it is?

25 A They did not participate in the negotiations, but

1 they know they are getting that benefit.

2 Q But they didn't bargain with Florida Power for that
3 benefit?

4 A Florida Power tried to mitigate the situation by
5 creating --

6 CHAIRMAN CLARK: Mr. Watson, I thought he answered
7 that before the break, quite specifically.

8 Q But under your plan, the priority system, the C-B-A,
9 and I'm concerned more about the B-A order, a Group B QF can
10 be required to reduce its output during a curtailment event by
11 up to 50% of its committed capacity, while a Group A QF might
12 never be curtailed by more than, say, 20% of its committed
13 capacity pursuant to its voluntary agreement with Florida
14 Power. Isn't that how it works?

15 A I don't understand your question. I mean --

16 Q When you get to a Level 4 emergency.

17 A Right.

18 Q And the voluntary curtailments are not enough, does
19 not Florida Power's plan require all Group B QFs to reduce by
20 as much as 50% of their committed capacity before any further
21 curtailment is required of the Group A QFs, even though their
22 voluntary arrangements may have been only a 20% reduction from
23 committed capacity?

24 A Our plan is very clear on that. We curtail the
25 Group Bs by up to 50% before we go to the Group As to ask for

1 more curtailment than they have already given us.

2 CHAIRMAN CLARK: The answer is yes, is that correct?

3 WITNESS DOLAN: Right. And they may be giving us
4 more than 50% on a voluntary basis. I don't necessarily agree
5 with your 20% number you threw out.

6 Q But you told me that there are Group A QFs whose
7 voluntary reductions are less than 50% of their committed
8 capacity during low load hours?

9 A And there are some that are more than 50%. And you
10 characterize the whole group as only giving 20%. The whole
11 group gives 350 megawatts, and there are probably only around
12 700 megawatts in that group.

13 Q Okay. But in essence, Mr. Dolan, doesn't your plan
14 subordinate Group B QFs to, for example, Tiger Bay, in the
15 event FPSC requires involuntary curtailments pursuant to its
16 plan?

17 A I think our plan is clear on that, Ansley. We go to
18 the Group Bs before we go ask for more reductions from the
19 Group A.

20 MR. WATSON: Madam Chairman, I think you'll agree
21 again the answer is yes.

22 Q (By Mr. Watson) Doesn't this actually change
23 Pasco's right under its contract with FPC?

24 A I don't know that it does change their rights. The
25 contract had a curtailment provision in it. FPC developed a

1 plan that we thought was fair and reasonable. I don't see how
2 that changed its rights under the contract.

3 Q Did the contract say you'd curtail Pasco by up to
4 50% before you required others to go below 20%?

5 A The contract didn't specify how the curtailments
6 would take place.

7 Q But I think you admitted earlier that had you had
8 none of these side agreements you would have thought the best
9 thing to do would be to curtail everyone pro rata from their
10 contract committed capacity?

11 A I said that probably would have been the way we do
12 it. I don't think I said we would do it that way. And I also
13 previously said we didn't have that situation when we
14 developed a curtailment plan.

15 Q Mr. Dolan, do you consider the placement of a QF in
16 Group A as the consideration for that QFs voluntary agreement
17 to reduce its output during low load conditions?

18 A Do I consider what? I didn't hear --

19 Q Do you consider Florida Power's placing a QF in
20 Group A under the curtailment plan as the consideration for
21 that QFs voluntary agreement to reduce output during low load
22 conditions?

23 A We put them -- yes, we put them into the Group A
24 because they had already "given at the office," to coin an old
25 phrase, rather than those that hadn't given.

1 Q Do any of our formal voluntary agreements with Group
2 A QFs provide benefits to a QF other than that QFs being
3 included in Group A under your plan? Such as change in
4 location of facility from the location specified at the time
5 the contract was executed.

6 A The agreements speak for themselves, Ansley. I
7 didn't review the agreements for other than dispatch rights.
8 The one I think you're mentioning is Tiger Bay gave us 2 1/2
9 additional dispatch rights under the Timber Energy contract.

10 Q Weren't you involved in negotiating virtually all of
11 these side agreements?

12 A Yes. But I have not reviewed them lately. I could
13 sit here and review them. They are right here.

14 Q I don't care really about getting into any
15 specifics, but were there any benefits provided to QFs in
16 these side agreements other than being included in Group A
17 under your curtailment plan?

18 A When we negotiated some of the side letters -- I
19 just glanced today to make sure -- we settled, in addition to
20 getting some of these voluntary reductions, other issues that
21 may have been outstanding between the companies.

22 Q Well, were any of those -- did any of those issues
23 involve a change in the location of the facility from the
24 location specified at the time the contract was executed?

25 CHAIRMAN CLARK: Mr. Watson, if you know if there is

1 one maybe you could direct him to it.

2 Q (By Mr. Watson) Do any of the side agreements for
3 Tiger Bay contain such a provision?

4 A You know, the Tiger Bay side letter where they
5 changed the 2nd just addressed that Timber Energy; it was
6 assignment, a contract assignment from the previous owner,
7 Timber Energy, to the new owner, Tiger Bay.

8 Q Where was the Timber Energy contract?

9 A The Timber Energy contract was never constructed.
10 It was a six megawatt contract that originally had been
11 contemplated in the language that this Commission has heard
12 many, many hearings on.

13 I think the language says "contemplated to be built
14 near Telogia, Florida" -- I think is the exact contract
15 language. We had extensive hearings on a similar language,
16 called CFR, that eventually this Commission approved a
17 movement of that contract to Bartow, Florida.

18 Q How far is Telogia from Bartow approximately? I
19 won't hold you to exact mileage.

20 A Five hours in driving time. I have no idea.
21 Telogia is 50 minutes that way, and Bartow is probably four
22 hours south.

23 I mean, that language in the contract had been
24 debated about at this Commission in front of some of these
25 Commissioners. I think maybe Commissioner Deason and

1 Commissioner Clark were on the Commission when Florida Power
2 tried to terminate a contract just like that from moving
3 locations by 70 mile, and was not allowed to terminate that
4 contract, and that contract eventually ended up in the same
5 county, Polk County, that Timber Energy landed into.

6 Q Let me ask you my question again.

7 Do your formal voluntary arrangements with Tiger Bay
8 provide any benefits to Tiger Bay other than its being
9 included in Group A? And I think you've indicated that you
10 agreed that the Timber Energy contract could be moved from
11 Telogia to Bartow.

12 A Timber Energy was not addressed in agreeing to move
13 it from Telogia -- and if I said Bartow a minute ago it's Fort
14 Meade. It did not address it. Here's the letter. It's one
15 page. It did not address it. It just said "This contract is
16 duly executed and in full force and effect."

17 Q Do any of your formal voluntary agreements, whether
18 there's one or more with the same QF, involve the resolution
19 of backup fuel disputes?

20 A Again, that would only be the Orange agreement where
21 we -- the agreement where backup fuel was settled and dispatch
22 were separate agreements.

23 Q Were they negotiated or executed at the same time?

24 A They were executed in the same time frame, but when
25 we negotiated the Mulberry curtailment agreement, which had

1 | been a year earlier, Mulberry is owned by the same parties
2 | that own Orange, Orange Cogen, they had said they wanted to
3 | address a similar situation in their Orange Cogen contract but
4 | they were busily financing Mulberry. And they said we'll get
5 | around to it later. And later was when we were settling the
6 | fuel backup dispute.

7 | CHAIRMAN CLARK: Mr. Dolan, I'm unclear if that was
8 | a yes or no. Mr. Watson, would you ask your question again?

9 | Q Was the resolution of your backup fuel dispute with
10 | Orange Cogen -- excuse me -- was the agreement to resolve that
11 | dispute and the agreement which ultimately resulted in Orange
12 | Cogen's being placed in Group A under your curtailment plan
13 | negotiated and/or executed in the same time frame?

14 | A My answer was yes, they were executed in the same
15 | time frame, but it's misleading to think that one led to the
16 | other.

17 | Q Now, you mentioned Mulberry and that you had had
18 | some negotiations with Mulberry. You have a voluntary output
19 | reduction arrangement with Mulberry Cogen, do you not?

20 | A That's correct. Mulberry cycles off each night or
21 | goes to zero for seven hours.

22 | Q All right. Did not Florida Power file a protest at
23 | the FERC to Mulberry's QF status?

24 | A Yes. Florida Power filed a protest at FERC.

25 | Q Was that protest subsequently withdrawn?

1 A That protest was withdrawn. Florida Power was
2 satisfied with the QF arrangement they were making. They were
3 changing their QF status from a CO2 plant to a alcohol plant, I
4 think.

5 Q Was the withdrawal of that protest or did the
6 withdrawal of that protest and the execution of your voluntary
7 output reduction agreement with Mulberry, did those occur at
8 or about the same time?

9 A Yes, they did. But, again, and Mulberry's witnesses
10 are on record that one didn't lead to the other.

11 The FERC filing may have added impetus to settling
12 the curtailment or minimum load problem, but did not result in
13 that agreement being settled or signed.

14 Q Mr. Dolan, generally what's the duration of these
15 voluntary arrangements you have entered into with the QFs in
16 Group A; say shortest time period to the longest time period?

17 A I think the shortest is through 1999. Probably was
18 executed in '94, so it would be -- that's six years, just
19 under six years, and the longest or further duration of the
20 contract.

21 Q Which would be what, 20 years?

22 A 20 or 30, according to the --

23 Q Haven't your own witnesses acknowledged that the
24 occurrence of these minimum load conditions and the need for
25 curtailment is not expected to last more than four, five, six

1 years?

2 A I think Florida Power has probably -- I don't know
3 if our witnesses have said it. I think I mentioned it in some
4 testimony that we thought it was a short-term occurrence; may
5 be over in five years. It is a problem we think will lessen
6 over time.

7 Now, if we hadn't have gotten this 350 megawatts of
8 voluntary reductions, that would have added -- minimum loads
9 run 1.5, 2½ a year. You're looking at 2,000 megawatts. That's
10 40 megawatts a year. That 350 megawatts probably took seven
11 years off of the minimum load problem.

12 The negotiated agreements we've done today --
13 because our minimum load is growing about 40 megawatts a year.
14 If you divide 40 times 350 -- in fact, I did the math wrong --
15 that would be about eight and three-quarters years that the
16 minimum load problem would be with us.

17 Right now we anticipate it to be about, if you grow
18 at 40 megawatts a year, and the largest problem was, say, 250
19 megawatts, that's what, six years -- but the problem wouldn't
20 have been 250 megawatts if we hadn't have had these voluntary
21 reductions. It would have been much more than that.

22 Q But, nevertheless, you have some of these voluntary
23 arrangements you have been able to get from certain QFs that
24 extend for the duration of the contract, which may be 20 or 30
25 years?

1 A I'm not sure the Commission and the FERC rules got
2 so much in the mitigation. It seems like common sense that
3 both parties try to eliminate a problem, if they can. It just
4 makes sound business sense. I think the Commission in the LFC
5 change and location -- I finally remembered one that changed
6 in location from Monticello and Madison to the Auburndale
7 project, said it made good sound business sense to negotiate
8 those types of arrangements rather than just depend on the
9 curtailment rights under 25-17.086. I'm sorry if I
10 paraphrased you wrong, Chairman Clark. There was some
11 discussion during that agenda conference.

12 Q Will you at least agree that it is the policy and
13 intent of the Commission's and the FERC's rules regarding
14 curtailments, that a utility is supposed to continue to buy
15 from QPs except when it just really can't.

16 A Yes. Utilities have an obligation to purchase
17 except for under certain circumstances, such as 25-17.086.

18 Q And will you agree that that obligation to purchase,
19 as embodied in law and rule, at least implies a duty of
20 Florida Power Corporation, and any other utility to take what
21 you called reasonable and cost-effective steps to minimize
22 curtailments?

23 A I don't know that that rule implies that, Schef. I
24 don't agree with you that FERC implied that. I can't find
25 anything that implies that. But it just makes sound business

1 sense that you try to avoid, if you can, a situation like
2 25-17.086, so both parties know where they stand. If you want
3 to go to implied, I think the New York State Commission, which
4 is not this Commission and not FERC, want a little bit over
5 implied and wanted Niagara-Mohawk to negotiate voluntary
6 arrangements if they could come to some with their QF
7 suppliers.

8 Q Would it be fair to say that Florida Power
9 Corporation is amenable to additional suggestions as to how it
10 may reasonably and cost-effectively minimize the need to
11 curtail QF purchases.

12 A Yes. That's correct. And we stated that in our
13 testimony. And we've also stated that in meetings with the
14 QFs.

15 Q I wanted to ask you a few questions that relate to
16 your exhibits. You may not be the best witness to answer and,
17 of course, if you're not, feel free to tell me who is and
18 we'll go on.

19 If I could ask you to look at your exhibit, RDD-1,
20 Page 9 of 52, it's a pie chart that shows Florida Power Corp's
21 total system net generating capacity.

22 Basically, I have two questions. One, how much
23 load?

24 COMMISSIONER GARCIA: Sorry, where are you?

25 MR. WRIGHT: Mr. Dolan's exhibit RDD-1, Page 9 of

1 52. It's a pie chart that looks like this, Commissioners.
2 (Indicating)

3 WITNESS DOLAN: I think it's on Page 6 of the
4 curtailment. Page 6 of the curtailment plan. It's probably
5 the first exhibit behind the green sheet.

6 Q (By Mr. Wright) The generic question I want to ask
7 is how much load can Florida Power Corporation serve with one
8 of its coal units cycled off but without cycling on an oil or
9 an oil\gas unit?

10 A Oh, cycle off our biggest coal plant.

11 Q Actually I wanted to ask the question with respect
12 to each of Florida Power's Crystal River coal units, 1, 2, 4
13 and 5.

14 A If I had a calculator I probably could do it. I
15 mean these are, subject to check, and I'm going from memory on
16 what these numbers are. I've got one. I need an engineering
17 calculator to do this rather than a financial.

18 You want to cycle off which coal plant?

19 Q Let's start with Crystal River 1.

20 A And include the QF purchases?

21 Q Yes, sir.

22 A How about 3500 megawatts.

23 Q Does that include the QF purchases at 922 or at
24 1,032?

25 A That included them at 750, which is their minimum

1 load contracted demand. You wanted the other number?

2 Q I wanted to know --

3 A Oh.

4 Q -- what Florida Power Corporation was capable of
5 serving with the QPs at their full committed capacity, which I
6 thought including Orange Cogen was 1,032 megawatts.

7 A It's about -- with Orange it's about 1,050 or so.
8 It's about 3,800 megawatts.

9 Q Okay. Same question with respect to Crystal
10 River 2.

11 A That would be 3,700 megawatts.

12 Q Crystal River 4.

13 A 3,500.

14 Q The same answer for Crystal River 5?

15 A Crystal River 5 is 3,500, the same size.

16 Q Does that also -- do those values include the
17 assumption that you can buy the 450 megawatts from TECO and
18 Southern Company?

19 A No. That was just Florida Power's units.

20 Q So if I wanted to know what you could serve from
21 Florida Power's units, plus your firm cogen purchases plus the
22 TECO and Southern, I could just add 450 to each of the numbers
23 you just gave me?

24 A Yep.

25 Q Thank you.

1 A Although that may not be the economical way to serve
2 the load, but you could exercise those -- the TECO contract is
3 such higher priced than our coal units.

4 Q Mr. Dolan, during your deposition, I asked you some
5 questions about your experience with the development of
6 certain cogeneration projects that ultimately came to fruition
7 and which now have contracts with Florida Power. Do you
8 recall that conversation?

9 A I don't recall the details of it but I know you
10 asked a bunch of questions about that.

11 Q Okay. Well, just to refresh your memory, during
12 1990 and into early 1991, isn't it true that you were working
13 with a subsidiary of Florida Progress called Power Cogen, Inc.
14 or Power Cogen, Incorporated?

15 A That's correct.

16 Q Isn't it also true that in the course of your
17 activities with Power Cogen you were working on the
18 development of some cogeneration projects?

19 A That's correct.

20 Q I asked you at your deposition when you were working
21 in the development of these projects, did you ever discuss the
22 possibility of curtailments with your counterparts at or
23 affiliated with your partner, which is Peoples Cogen?

24 A And I think I answered I don't remember.

25 Q Thank you. This may be redundant to a question that

1 Mr. Watson asked you, but I will be brief.

2 I understood you to say during your deposition that
3 after four or five years the frequency of curtailments is
4 expected to be pretty low. Is that accurate?

5 A Pretty what?

6 Q Pretty low. That is you expect there to be
7 relatively few curtailments beyond four, five years from now?

8 A If our voluntary arrangements stay in place and our
9 forecasts are correct, it should be very low.

10 Q In your discussion with Mr. Watson did I understand
11 you to say that time horizon of what is now four, five years
12 has been significantly shortened by the execution or by the
13 entering into of the voluntary agreements?

14 A Yes. I said it had been shorten. Minimum load is
15 growing at, say, approximately 40 megawatts a year, I don't
16 mean to be redundant, and we've got about 350 megawatts of
17 voluntary reductions. So you can divide those numbers and you
18 get eight and three-quarters years.

19 Q So absent -- would it be a correct inference in your
20 last statement that absent the voluntary curtailments, the
21 numbers would be greater in the early years and they would
22 extend out for something like 12 or 13 years from today?

23 A That's correct.

24 Q If you know, when does Florida Power Corporation now
25 plan to add its Polk 1 and 2 units?

1 A I don't know, Schef. I don't remember the exact
2 date.

3 Q Okay.

4 A We are planning on being able to cycle them off each
5 night.

6 Q You answered my question. Thank you.

7 Just like your Bartow, Anclote, Swanee units and
8 your peakers, under the plan as it exists today, right?

9 A That's correct.

10 Q As you know, Mr. Dolan, I represent Montanay-Dade,
11 Limited, the operator of the Dade County Resources Recovery
12 facility. I also do, for the purposes of this hearing,
13 represent Metropolitan Dade County and Lake Cogen.

14 One of the matters at issue for my clients, and, in
15 fact, an issue on which we agree with Florida Power, is the
16 curtailment priority system established by the plan whereby
17 you have established Groups A, B and C and treat them
18 differently in priority, in low load conditions.

19 So I want to ask you a few questions about that, ask
20 you some opinions, and also ask you to get some factual
21 illustrations for the Commissioners and parties as to what
22 actually happens during curtailments.

23 In your opinion is it reasonable and appropriate to
24 have these priority groups at all?

25 A Yes, sir. And I said that in my direct testimony.

1 Q Is the designation of the groups reasonable?

2 A The groups C, E, A?

3 Q Yes?

4 A Yes.

5 Q In your opinion is the designation and
6 categorization of QFs into these groups based on objective
7 criteria?

8 A Yes.

9 Q Mr. Watson asked you a question as to what the fair
10 share of curtailments would be, and you responded that that
11 might depend on the relative perspective of Florida Power and
12 the QFs involved. I wanted to ask you a related question, and
13 that is would it be appropriate to measure fair share of
14 contributions to curtailments by the different QFs or by the
15 different groups of QFs, I should say, in total megawatt hours
16 curtailed?

17 A Yes, you could look at it in that manner.

18 Q But do you think that that's an appropriate way to
19 look at it?

20 A Yes.

21 Q Do I understand correctly that three of the Group A
22 NUGs under the plan have specific provisions in their
23 voluntary agreements with Florida Power that require Florida
24 Power to give them priority treatment if and when additional
25 curtailments beyond those which they already agreed are

