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ORIGINAL

March 10, 2000

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By Hand Delivery

RECORDS AND
REPORTING

03 MAR 10 PM 2:41

RECEIVED-FPSC

Re: DOCKET NO. 991462-EU

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket No. 991462-EU are the original and fifteen (15) copies of FPL's Motion to Strike Certain Statements in the Testimony of Sean Finnerty and Certain Statements in the Exhibits to Okeechobee Generating Company's Petition.

If you or your staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton

- AFA
- APP
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- ES
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Enclosure
cc: Parties of Record

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03154 MAR 10 8

Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo Rio de Janeiro Santo Domingo

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Petition for Determination)
of Need for an Electrical Power)
Plant in Okeechobee County by)
Okeechobee Generating Company, L.L.C.)
_____)

DOCKET NO. 991462-EU

Filed: March 10, 2000

**FLORIDA POWER & LIGHT COMPANY'S MOTION
TO STRIKE CERTAIN STATEMENTS IN THE TESTIMONY
OF SEAN FINNERTY AND CERTAIN STATEMENTS IN THE
EXHIBITS TO OKEECHOBEE GENERATING COMPANY'S PETITION**

Florida Power & Light Company (FPL), through its attorneys and pursuant to Rule 28-106.204 of the Florida Administrative Code, moves to strike certain statements in the prefiled testimony of Sean Finnerty and certain statements in the Exhibits to Okeechobee Generating Company's (OGC's) Petition for Determination of Need, and states:

1. OGC submitted with its Petition a set of Exhibits (hereinafter "the Exhibits") which contain, among other materials, a narrative description of OGC's positions on various issues in this case. The statements in the narrative portion of the "Exhibits" were sponsored by several OGC witnesses, including Sean Finnerty. Numerous statements in the portions of the Exhibits sponsored by Mr. Finnerty, and in Mr. Finnerty's October 25, 1999, prefiled testimony, express opinions on the alleged reliability and environmental benefits of the OGC project and its alleged effect on wholesale electric prices.

2. FPL deposed Mr. Finnerty on February 17, 2000. At that deposition it was revealed that Mr. Finnerty had no expertise from which to make or sponsor the above-described statements. Indeed, Mr. Finnerty has disclaimed any special expertise over the matters addressed in his testimony, affirmatively stating that he is not testifying as an expert in this case.

DOCUMENT NUMBER-DATE

03154 MAR 10 8

FPSC-RECORDS/REPORTING

Accordingly, FPL now moves to strike those statements of opinion made or sponsored by Mr. Finnerty which Mr. Finnerty is, by his own admission, not competent to make.¹

3. FPL also moves to strike an exhibit to Mr. Finnerty's prefiled testimony that was created by Commission staff for use in another proceeding, because its sole sponsor, Mr. Finnerty, lacks sufficient knowledge to establish a foundation for its introduction into evidence.

I. Statements Outside Mr. Finnerty's Expertise

4. Mr. Finnerty's prefiled testimony and certain portions of the Exhibits that Mr. Finnerty sponsors, express the following opinions and conclusions on issues of electric power planning, economics and environmental science:

- "The state is experiencing a tremendous need for new generating capacity as illustrated by the shrinking generation reserve margins and the continuing power shortages and interruptions during the hot summer months." (Finnerty Test. p. 7, lines 3-8)
- "[Exhibit SJF-5] depicts declining trends in Peninsular Florida's reserve margins and projects a large amount of firm load that would not be served should a Christmas 1989 low temperature event occur." (Finnerty Test. p. 7, lines 11-15)
- "Florida also has a fleet of generating units that is aging and relatively inefficient and costly to operate. This results in higher power supply costs and higher rates than if the same amount of electricity were generated from a new, highly efficient, natural gas-fired combined-cycle facility. . ." (Finnerty Test. p. 7, lines 17-21)

¹ In its response to Florida Power Corporation's Motion to Strike Portions of Prefiled Testimony of Gerard Kordecki and Sean Finnerty, OGC argues that the narrative portion of its Exhibits, essentially a summary of OGC's litigation positions created by OGC for purposes of this proceeding, is not the testimony of any OGC witness. However, FPL notes that this "exhibit," is not an extrinsic document introduced as evidence, but rather was created by OGC solely for purposes advocating OGC's interests in this proceeding. Such documents are admissible, if at all, only if properly sponsored. Thus, if the OGC witness that sponsors an opinion made in the narrative is incompetent to render that opinion, the proper remedy is to strike the statement. Any other result would allow OGC to bypass the requirements that witnesses be competent to render the opinions they make, by merely labeling impermissible or questionable statements an "exhibit."

- “Natural gas-fired combined cycle technology is the most efficient and environmentally favorable method of generating commercially viable electricity using fossil fuels. Because of this, OGC expects that the Project will help reduce the amount of total emissions from power plants in the state.” (Finnerty Test. p. 9, lines 11-16; p. 15, lines 1-4)
- “It is not logical to develop a plant in Florida to make sales in another market (i.e., Georgia, Alabama, or Mississippi). . . . [T]he clearing price for electricity is lower in those markets than in Florida, as is the cost of fuel transportation. In short, developing a merchant plant in Florida to serve a market outside of Florida which has lower embedded costs does not make economic sense.” (Finnerty Test. p. 12, lines 3-17)
- “Every day the Project is delayed means: (1) the State’s reserve margins, which are already thin, will not be enhanced by the presence of the Okeechobee Generating Project; (2) the absence of cost-effective power that would provide downward pressure on wholesale prices; (3) postponement of the realization of reductions in air pollution emissions, that will result from the significantly greater efficiency of the Project, and its use of clean natural gas, as compared to the efficiency and emission rates of power supply resources that will be displaced by the Project; and (4) the Commission’s goal of ensuring a robust, competitive wholesale power market is frustrated by delaying the Project’s reliable, cost-effective capacity and energy from serving the market.” (Finnerty Test. p. 15, lines 14-22, p. 16, lines 1-8)
- “The Okeechobee Generating Project will increase the reliability of the electric power system in the state as well as assist in reducing the overall cost of electricity to Floridians.” (Finnerty Test. p. 16, lines 18-21)
- “Virtually all of the Project’s output is expected to be sold . . . for use in Peninsular Florida.” (OGC Petition Ex. p. 1)²
- “The [OGC] Project will contribute meaningfully to the reliability of the power supply system in Peninsular Florida, to lower the cost of electric generation, to enhance efficiency in electricity generation in Peninsular Florida, and to improve the environmental profile of power generation in Florida.” (OGC Petition Ex. p. 7)
- “Th[e] additional generation capacity [of the OGC project] will meet the power

² Mr. Finnerty has stated that he is the sponsor of all of Pages 1 and 7 of the Exhibits. (Finnerty Deposition Tr. p. 45, lines 1-2, p. 47, lines 1-2). An excerpt of the pertinent portions of the transcript of the deposition of Mr. Finnerty is attached as Exhibit “A.”

supply needs of Okeechobee Generating Company, LLC and will significantly increase the reliability of power supply in peninsular Florida.”³ (OGC Petition Ex. p. 44)

- “It is unlikely that power produced from the [OGC] Project will be consumed outside Florida. In Georgia, Alabama and Mississippi, the wholesale market clearing price for electricity is typically lower than in Florida and the cost of fuel transportation to these states is less than in Florida. . . . Moreover, transmission export capability at the Florida/Georgia interface is limited.”⁴ (OGC Petition Ex. p. 54-56)
- “[The OGC Project] will provide reliable, competitively priced, environmentally clean power in the Florida wholesale market without risk to Florida’s retail electric customers. . . . The addition of the Project will help create a robust, competitive wholesale power market in Florida.”⁵ (OGC Petition Ex. p. 58)
- “[T]he Project’s output will be sold . . . for use, predominantly, if not entirely, within Florida.”⁶ (OGC Petition Ex. p. 63)
- “Delaying the construction and operation of the Okeechobee Generating Project will adversely affect the reliability of the Peninsular Florida bulk power system, will adversely affect the availability of adequate electricity at a reasonable cost, and will adversely affect the environment of Florida.”⁷ (OGC Petition Ex. p. 69)
- “The Project’s high reliability – an equivalent availability factor of 93 percent – assures its contributions to *improving the reserve margins and reliability* of the Peninsular Florida Power supply system.” (OGC Petition Ex. p. 69)

³ Mr. Finnerty is the sole sponsor of this statement. (Finnerty Deposition Tr. p. 50, lines 24-25, p. 51, lines 1-4).

⁴ Mr. Finnerty is the sole sponsor of this statement. (Finnerty Deposition Tr. p. 53, lines 20-24).

⁵ Mr. Finnerty is the sole sponsor of this statement. (Finnerty Deposition Tr. p. 54, lines 13-18).

⁶ Mr. Finnerty is the sole sponsor of this statement. (Finnerty Deposition Tr. p. 55, lines 10-14).

⁷ Mr. Finnerty is the sole sponsor of page 69 in the OGC Petition Exhibits, with the exception of the third paragraph on that page, which is not at issue in this Motion. (Finnerty Deposition Tr. p. 56, lines 10-14).

- The OGC project “will improve reliability and reduce peninsular Florida’s exposure to outages due to extreme weather or unanticipated events such as major outages.” (OGC Petition Ex. p. 69)
 - “The Project’s high efficiency assures its contributions to reducing wholesale power supply costs in Florida.” (OGC Petition Ex. p. 69)
5. Mr. Finnerty is, by his own admission, not qualified to render the above opinions.

He admittedly has no expertise in electric system planning and reliability, the economics of electric generation in Florida and nearby states, or the economic and environmental impacts of the OGC project:

- In response to deposition questioning about his experience with electric planning, Mr. Finnerty’s response was “I don’t have any.” (Finnerty Deposition Tr. p. 39, lines 22-24)
- Mr. Finnerty conceded at deposition that he has no education or training in the field of electric planning, and could not answer basic questions about load loss probability analyses. (*Id.* at p. 40, lines 8-23)
- When asked if considered himself an expert on (1) electric system reliability planning, (2) electric system planning, or (3) electric system reliability, Mr. Finnerty, on each occasion, answered “no.” (*Id.* at p. 42, lines 11-22) Mr. Finnerty then confirmed that “observations or opinions in [his] testimony regarding electric system reliability are . . . not the opinions of an expert.” (*Id.* at p. 42, lines 23-25, p. 43, line 1)
- When questioned about reserve margin analysis Mr. Finnerty admitted he had never performed a reserve margin calculation (*Id.* at p. 135, line 23, p. 136 lines 21-22) and could not adequately explain the procedure for calculating a reserve margin (*Id.* at p. 135, lines 23-25, p. 136-37). Mr. Finnerty also could not recall whether he had ever even reviewed the Commission’s reserve margin formula. (*Id.* at p. 137, lines 17-19).
- Mr. Finnerty admitted that he has no expertise in economics. The statements that the project will lower electric costs are, according to Mr. Finnerty, not the expert opinion of an economist (or any other type of expert). (*Id.* at p. 58, lines 1-7)
- Nowhere is it claimed in Mr. Finnerty’s prefiled testimony that he has any expertise whatsoever that would allow him to opine on whether the OGC project

would, for example, “improve the environmental profile of power generation in Florida.”

Indeed, Mr. Finnerty has stated broadly that none of his opinions are those of an expert in the pertinent field, and he is “not testifying as an expert” in this proceeding. (Finnerty Deposition Tr. p. 58, lines 5-7)

6. Section 90.702, Florida Statutes, requires that any person giving opinion testimony be qualified by “knowledge, skill, experience, training or education” to make the proffered opinion. Indeed, Florida case law has required strict adherence to the principle that persons may not render opinions on matters outside their particular field of expertise. *Goodyear v. Ross*, 660 So. 2d 1109, 1110 (Fla. 4th DCA 1995); *United Technologies v. Industrial Risk Insurers*, 501 So. 2d 46, 49 (Fla. 3d DCA 1987); *Husky Industries, Inc. v. Black*, 434 So. 2d 988, 992 (Fla. 4th DCA 1983); *Sea Fresh Frozen Products, Inc. v. Abdin*, 411 So. 2d 218, 219 (Fla. 5th DCA), *rev. denied*, 419 So. 2d 1195 (Fla. 1982); *Prohaska v. The Bison Co.*, 365 So. 2d 794, 797 (Fla. 1st DCA 1978); *Consolidated Mutual Insurance Co. v. Hampton Shops, Inc.*, 332 So. 2d 101 (Fla. 3d DCA 1976).

7. For example, in *United Technologies, supra*, a witness proffered an opinion on the effects of an acid spill on computer equipment. The witness, a chemical engineer, had extensive expertise dealing with chemical fires and explosions, but no expertise in the specific field of chemical corrosion. Accordingly, he was not allowed to express an opinion as to the corrosive effects of a chemical. *See also, Goodyear*, 660 So. 2d at 1110 (expert in the general field of traffic control devices was not competent to testify about portable speed bumps, as he had no specific expertise with such devices); *Seafresh Frozen Products*, 411 So. 2d at 219 (witness with

general expertise in marine biology was not competent to express an opinion on marine algae, which was outside the witness' prior expertise). Because Mr. Finnerty has professed no expertise in the areas of electric system planning, economics, or environmental regulation or sciences, he is simply not competent to render or sponsor opinions on such matters.

8. Mr. Finnerty and OGC apparently believe that they can sidestep the requirement that opinion witnesses have demonstrated expertise by merely stating that Mr. Finnerty is "not testifying as an expert." (Finnerty Deposition Tr. p. 58, lines 5-7). However, Florida's rules of evidence anticipate and prohibit this ruse. Expertise must be demonstrated for all opinion testimony, with the limited exception of the narrow category of opinions that may be made by lay witnesses.⁸ Such lay opinion testimony is only allowed when: (1) the testimony relates to facts and events perceived by the witness himself, (2) the witness cannot readily communicate what he perceived without testifying in terms of inferences or opinions and (3) the opinions and inferences do not require special skill, experience or training. § 90.701, Fla. Stat.; *Floyd v. State*, 569 So. 2d 1225, 1231 (Fla. 1990); *Fino v. Nodine*, 646 So. 2d 746, 748 (Fla. 4th DCA 1994). Thus, lay witnesses can testify to opinions such as "distance, time size, weight, form and identity," so long as the opinion is based on the actual perceptions of the witness. *Fino*, 646 So. 2d at 748-49; *Nationwide Fire Ins. v. Vosburgh*, 480 So. 2d 140 (Fla. 4th DCA 1985). They obviously cannot, however, render opinions on complex matters of economics and power system reliability planning.

9. Mr. Finnerty's opinions about power system planning, the relative economics of

⁸ See 24A Fal. Jur. 2d Evidence § 1068 (1999 Supp.) ("If opinion testimony calls for special knowledge, skill, experience or training, the expertise of the witness must be established before the court can admit the opinion testimony.")

power production in Florida and other states, and the effects of the OGC project on power system reliability, wholesale electric prices and the environment of Florida are clearly not “within the ken of an intelligent person” without special knowledge, skill, experience or training. *See Fino*, 646 So. 2d at 748; *Floyd*, 569 So.2d at 1232. Moreover, Mr. Finnerty’s opinions cannot be characterized as based on facts or events perceived by him. The statements are not based on facts at all: they are merely conjecture (apparently not based on any expertise) about the future effects of the OGC project in Florida. Such statements fall well outside the scope of admissible lay opinions and should be stricken. *See Fino*, 646 So. 2d at 748-49.

10. In sum, the statements of opinion quoted in Paragraph 4 above are admissible only if made by a person with expertise in the pertinent field. Because Mr. Finnerty has disclaimed any such expertise, the opinions are not admissible evidence and should be stricken. *United Technologies*, 501 So. 2d at 50 (opinions outside the witness’ field of expertise are inadmissible).

II. Exhibit SJF-5

11. Exhibit SJF-5 to Mr. Finnerty’s prefiled testimony is a set of graphs created by the Commission Staff for use in a September 16, 1999 Ten-Year Site Plan Workshop. The proceeding for which that document was created never went to hearing. Thus, the document was never tested by cross-examination and was never the subject of a decision by the Commission. In essence, OGC is trying to introduce the untested opinion of an unknown PSC staff member as evidence in this proceeding, to prove the truth of that staff member’s opinion on historical reserve margins. And, since neither the data underlying the opinion nor the methodology used to derive it are known to its sponsoring witness, OGC would deprive FPL from any meaningful opportunity to test the reasonableness and accuracy of the conclusions depicted in the graphs.

This is simply improper; if OGC wishes introduce an opinion on reserve margin trends, the person that holds that opinion must be called as a witness. *Smithson v. V.M.S. Realty*, 536 So. 2d 260, 261 (Fla. 3d DCA 1989) (a testifying expert may not be used as a conduit for presentation of the opinion of a non-witness; if an outside person's opinion is to be presented that person should be called to testify directly); *Sikes v. Seaboard Coast Line R. Co.*, 429 So. 2d 1216, 1223 (Fla. 1st DCA 1983) (same).

12. Exhibit SJF-5 is essentially an illustration of the opinion of a Commission Staff member on historical reserve margins over a period of time. The law is clear that for such an exhibit to be admitted, the foundation necessary to introduce the opinions reflected therein must be established: (1) the opinions reflected in the document must be helpful to the trier of fact; (2) the author of the document must be qualified as an expert in the field at issue; (3) the factual basis for the opinions must be offered at trial; and (4) pursuant to section 90.403, Florida Statutes, the evidence, although technically relevant, must not present a substantial danger of unfair prejudice that outweighs its probative value. *Pierce v. State*, 718 So. 2d 806, 809 (Fla. 4th DCA 1997).

13. When questioned about the exhibit, Mr. Finnerty stated that he was unsure of the underlying source of the information reflected in the graphs, did not know who prepared the document, did not know when it was prepared and did not know if the document had ever been subjected to cross examination or approved by the Commission. (Finnerty Deposition Tr. p. 158, lines 22-23, p. 59 lines 1-25). Mr. Finnerty also could not answer even basic questions about the methodology used to calculate the reserve margin estimates depicted in the graphs. (*Id.* at p. 160, lines 1-23). A proper foundation is therefore clearly lacking for introduction of Exhibit SJF-5:

- (A) It is not known whether the person who created the graphs would qualify as an expert in reserve margin analysis and would therefore be competent to make the opinions and conclusions depicted therein.
- (B) The author of the graphs has not been called to authenticate them and is not subject to cross examination. Without such adversarial testing, it is impossible to determine whether the graphs would be helpful to the Commission or the weight they should be accorded.
- (C) Because the data from which the graphs were compiled and the methodology used have not been disclosed, it is impossible to determine whether each graph is “a fair and accurate depiction of what it purports to be” or whether each graph is appropriately supported by the underlying facts or factual assumptions. *Pierce*, 718 So. 2d at 809.

If OGC wished to introduce the graphs it should have laid an appropriate foundation, such as introducing the testimony of the author and underlying data into the record. It chose not to do so. OGC cannot simply introduce the graphs into evidence through Mr. Finnerty, who knows nothing about them, and thereby avoid any meaningful inquiry as to the accuracy and reasonableness of the conclusions depicted. *See, Smithson v. V.M.S. Realty*, 536 So. 2d 260 (Fla. 3d DCA 1989); *Sikes*, 429 So. 2d at 1233.


Conclusion

14. For the reasons discussed above, FPL requests that statements in Mr. Finnerty’s prefiled testimony and the Exhibits to OGC’s Petition quoted in Paragraph 4 above, and OGC Exhibit SJF-5, be stricken. Counsel for FPL has conferred with counsel for the other parties.

Counsel for OGC objects to this motion. Counsel for Florida Power Corporation, Tampa Electric Company and LEAF have no objection. Counsel for Staff takes no position regarding this motion.

Respectfully submitted,

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Facsimile (850) 222-8410

By: 
Matthew M. Childs, P.A.
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Motion to Strike Certain Statements in the Testimony of Sean Finnerty and Certain Statements in the Exhibits to Okeechobee Generating Company's Petition was served by Federal Express (*) or hand delivery (**) this 10th day of March, 2000 to the following:

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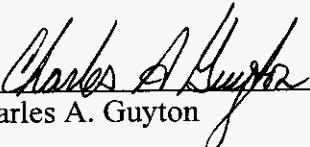
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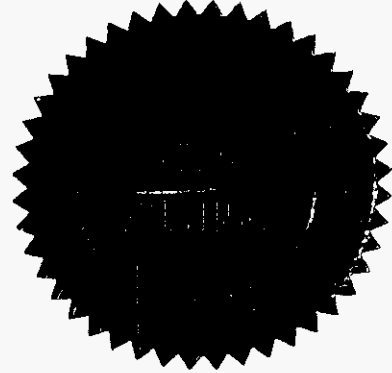


Charles A. Guyton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991462-EU

VOLUME 1
Pages 1 - 112



IN RE: Petition for Determination
of Need for an Electrical Power Plant
in Okeechobee County by Okeechobee
Generating Company, L.L.C.,

THE DEPOSITION OF: SEAN J. FINNERTY

DATE: Thursday, February 17, 2000

TIME: Commenced at 9:00 a.m.
Concluded at 6:10 p.m.

LOCATION: 118 North Gadsden Street
Tallahassee, FL 32301

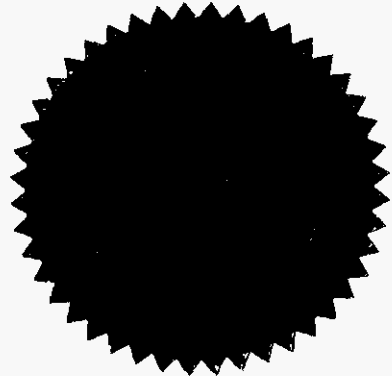
REPORTED BY: SANDI DIBENEDETTO-NARGIZ
Certificate of Merit
Notary Public in and for
State of Florida at Large

ACCURATE STENOTYPE REPORTERS, INC.
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TALLAHASSEE, FLORIDA 32301
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991462-EU

VOLUME 2
Pages 113 - 245



IN RE: Petition for Determination
of Need for an Electrical Power Plant
in Okeechobee County by Okeechobee
Generating Company, L.L.C.,

THE DEPOSITION OF: SEAN J. FINNERTY

DATE: Thursday, February 17, 2000

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ACCURATE STENOTYPE REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
850/878-2221

1 chambers of commerce, generally reviewed legislative
2 initiatives on environmental matters, energy-related
3 matters.

4 Q When you spoke of industry in your answer,
5 you were speaking of industry in a broader context than
6 the electric utility industry?

7 A Yes. And it was basically very parochial,
8 what mattered and what were the issues inside the
9 legislator's district.

10 Q Do you recall what, if any, specific energy
11 issues you worked on?

12 A I was appointed to a conservation and load
13 management task force at that time. The development of
14 economic -- the creation of economic development rates,
15 whether or not the chairman at that time, senator,
16 would support the creation of those rates for local
17 industry. General bad feelings about rate increase at
18 the time.

19 Q How much of your time was spent on energy
20 issues in that position?

21 A Two-thirds maybe.

22 Q Tell me about your experience as an electric
23 system planner.

24 A I don't have any.

25 Q Have you ever held a position with PG&E

1 Generating where you were responsible for planning
2 system reliability for an electric system?

3 A No.

4 Q Have you ever held a position in the state
5 of Massachusetts where you were responsible for
6 planning electric system reliability?

7 A No.

8 Q Were you trained in college as an electric
9 system reliability planner?

10 A No.

11 Q Have you been trained outside of college as
12 an electric system reliability planner?

13 A No.

14 Q Have you ever performed a loss load
15 probability analysis?

16 A I have not.

17 Q What is a loss load probability analysis?

18 A I don't specifically know. My understanding
19 is it's an analysis of the probability of having -- the
20 inability to meet the demand for a particular utility.

21 Q Do you know how a loss load probability
22 analysis is performed?

23 A I do not.

24 Q Do you know what computer models are
25 commonly employed to employ loss load probability

1 analyses?

2 A No.

3 Q What's your understanding of what loss load
4 probability measures?

5 A As I just stated, I believe it's a measure
6 of the probability of not -- of a particular utility,
7 particular retail load-serving utility not being able
8 to meet demand.

9 Q Have you ever performed an analysis to
10 determine what an appropriate loss of load probability
11 standard should be for an electric utility?

12 A No.

13 Q Have you ever performed an analysis to
14 determine the appropriate reserve margin criterion for
15 an electric utility?

16 A No.

17 Q Have you ever had occasion to run an
18 electric system production costing model?

19 A No.

20 Q Have you ever had occasion to supervise an
21 integrated resource plan for an electric utility?

22 A No.

23 Q Have you ever performed a reliability
24 assessment for an individual utility?

25 A No.

1 Q Have you ever performed a reliability
2 assessment for an entire state?

3 A No.

4 Q If you were asked to perform a reliability
5 assessment for a state, what analysis would you
6 perform?

7 A I don't know.

8 Q Have you been asked to perform a reliability
9 assessment for the State of Florida?

10 A No.

11 Q Do you consider yourself an expert regarding
12 electric system reliability planning?

13 A No.

14 Q Do you consider yourself an expert regarding
15 electric system planning?

16 A No.

17 Q Do you consider yourself an expert regarding
18 electric system reliability?

19 A No.

20 Q Are you testifying in this docket as an
21 expert on electric system reliability?

22 A No, I am not.

23 Q So any observations or opinions in your
24 testimony regarding electric system reliability are not
25 the opinions of an expert?

1 A Correct.

2 MR. GUYTON: We'll be here a good while here
3 today. I could use a break, could you?

4 THE WITNESS: That will be fine.

5 (Brief recess.)

6 BY MR. GUYTON:

7 Q Mr. Finnerty, Mr. Wright suggested that I
8 probably ought to ask you this and he is absolutely
9 right. I probably should ask you this.

10 Do you have any corrections to your prefiled
11 direct testimony?

12 A Yes, I do.

13 Q Would you share those with us?

14 A Okay. Page 9, line 21, Norm Karloff is no
15 longer a witness. The witness is now Bevin Hong.

16 On page 6 -- I apologize for going
17 backwards. Page 6, line 15, the word unregulated
18 should read competitive.

19 Q I am used to going backwards.

20 While we are there, what is the difference?

21 A Unregulated suggests not regulated at all,
22 the changes made because PG&G gas transmission is
23 regulated by FERC as are energy trading as a FERC
24 certificate.

25 Q Okay. I apologize for the interruption. It

1 just seemed logical to go ahead and ask it.

2 A On my attachment 1, page 2, the
3 associations, Northeast Energy Commerce Associations
4 should read 1997-1999.

5 I believe that's all.

6 Q You tried to help us out here in your
7 testimony, but I'm a little bit uncertain about which
8 portions of the exhibit to the petition that you are
9 supporting. I would like to go through the references
10 that you have in your testimony. And I think you have
11 a copy here.

12 You have a reference to page 6 of your
13 testimony where you give pages in the exhibit to the
14 petition where you are sponsoring the narrative text;
15 correct?

16 A Correct.

17 Q I want to go through and make sure that I
18 understand which of those pages that you list there are
19 the text that you support. And for some of them I
20 suspect it may not be the entire page and I want to
21 make sure that we identify the portion that you
22 sponsored.

23 First one is pages 1 through 3. Are you
24 sponsoring the narrative text in its entirety on pages
25 1 through 3 of the petition's exhibit?

1 A Pages 1 and 2 in their entirety, page 3
2 through site description and location.

3 Q To site description and location or through
4 it?

5 A Through it.

6 Q So you do not sponsor the discussion on page
7 3, description of the power plant and related
8 facilities?

9 A Upon reading it, in part, it does continue
10 on to page 4 which would have been -- I would have
11 relied on the engineering department.

12 Q I am sorry. I just didn't understand that.

13 A Starting with description on page 3,
14 description of power plant and related facilities, I
15 would have sponsored that in conjunction with the
16 engineering department. That would have been Bill
17 Sullivan.

18 Q Which portion of the subsection description
19 of power plant and related facilities are you
20 sponsoring?

21 A I am sorry, I probably did not phrase that
22 correctly. I am sponsoring that. I am sponsoring
23 that.

24 Q So far we have established that you are
25 sponsoring the entire narrative of pages 1, 2, and 3,

1 and the narrative at the top of the page, page 4, down
2 to fuel supply?

3 A Yes, I am not sure if I would be classified
4 as the primary sponsor of that, but yes.

5 Q Primary sponsor of what?

6 A Primary sponsor of everything on the
7 description of power plant and related facilities.

8 Q So you sponsored everything on 1 and 2, and
9 down to the description of power plant and related
10 facilities on page 3?

11 A Correct.

12 Q And then you co-sponsor with Mr. Sullivan
13 the discussion of description of the power plant and
14 related facilities on pages 3 and 4?

15 A He would be the person I would have
16 co-sponsored that with.

17 Q Okay. Now, the next passage that you
18 identified in your testimony as sponsoring are pages 5
19 through 12 of the petition exhibit.

20 A Uh-huh.

21 Q Is that the discussion that begins with the
22 heading on page 5, project costs and financing?

23 A Yes. On page 5.

24 Q And then all of page 6?

25 A Yes.

1 Q All of page 7?

2 A Yes.

3 Q All of page 8?

4 A Yes.

5 Q All of page 9?

6 A Yes.

7 Q All of page 10?

8 A Yes.

9 Q Figure 1 on page 7?

10 A Correct. And all of page 12.

11 Q Okay. Now, you also sponsor figure 2 on
12 page 13?

13 A Yes.

14 Q I guess that runs on to page 14 as well?

15 A Yes, it does.

16 Q Now, the next page that you list in your
17 testimony as sponsoring is page 21. Are there any
18 pages between 14 and 21 that you sponsor?

19 A On page 15, I probably had input into
20 section A, site location and land use designation.
21 That is more likely than not being sponsored by Fred
22 Sellars.

23 Q That's what I understood. I just wanted to
24 make sure I know what you are sponsoring so I know what
25 to ask you about as opposed to someone else.

1 Beginning at page 21, are you sponsoring --
2 what portion of page 21 are you sponsoring?

3 A A portion of the first full paragraph.

4 Q The first full paragraph in its entirety?

5 A No, a portion of that.

6 Q Which portion?

7 A Beginning with the last -- the last
8 sentence, beginning with the words: The projects
9 direct --

10 Q Anything else on page 21 that you are
11 sponsoring?

12 A No.

13 Q The next page that you -- let me back up.
14 You also sponsor a portion of table 1 which is found at
15 page 23 and 24.

16 A Correct.

17 Q What portion of table 1 do you sponsor?

18 A Certification status, status with the
19 federal agencies.

20 Q At the bottom of page 23?

21 A At the bottom of page 23.

22 Q Anything else on table 1?

23 A On page 24, direct construction costs.

24 Q Anything else on 24?

25 A No.

1 Q The next page that you list in your
2 testimony as sponsoring, the next page of the exhibits
3 supporting the petition which you are sponsoring is
4 page 30?

5 A Correct.

6 Q What portion of page 30 do you sponsor?

7 A I believe under associated facilities, first
8 sentence -- first sentence, second sentence in
9 parenthesis.

10 Q The first two sentences?

11 A Yes.

12 Q Anything else on page 30?

13 A No.

14 Q The next page of the exhibit that you list
15 in your testimony as sponsoring are pages 33 and 34.
16 Am I correct that what you sponsor there are the
17 sections identified as F, capital costs to the
18 Okeechobee Generating Project, and G, project
19 financing?

20 A Correct.

21 Q Anything else on page 33 or 34?

22 A Nothing else on page 33 or page 34.

23 Q The next page that you list in your
24 testimony that you sponsor is page 41 of the exhibit
25 supporting the petition. What portion of page 41 of

1 the exhibit supporting the petition do you sponsor?

2 A The top paragraph relating to the schedule,
3 permitting schedule and certification schedule.

4 Q That's a continuation of a discussion that
5 begins on page 36. Do you have responsibility for
6 anything on page 36?

7 A On page 36 it would be its regulatory and
8 permitting schedules.

9 Q So subsection L in its entirety, beginning
10 at page 36 and ending on page 41?

11 A Correct.

12 Q You also show in your testimony that you
13 sponsored a portion of page 44 of the petition
14 exhibit. What portion of page 44 do you sponsor?

15 A Section A, power supply needs of Peninsular
16 Florida.

17 Q You are sponsoring that by yourself or
18 co-sponsoring it?

19 A Co-sponsoring that.

20 Q With whom?

21 A It would be Dr. Nesbitt. I would have to
22 review his testimony to make sure of that, but that's
23 my belief.

24 Q Okay. Is there anything in the discussion
25 at page 44 that you sponsor alone and not in

1 conjunction with Dr. Nesbitt?

2 A I believe the top paragraph, the
3 introductory paragraph, the rest would be sponsored by
4 or co-sponsored with Dr. Nesbitt.

5 Q The discussion on page 44, continues on page
6 53, I believe. That's not a page that you listed as
7 sponsoring. By all means, tell me, but I had the
8 impression that the discussion in subsection A that
9 began on 44 and continued on pages 53 and 54 were
10 sponsored by Dr. Nesbitt. But if I am mistaken and
11 they are sponsored by you, I need to know.

12 A No, he would be the primary sponsor for
13 this.

14 Q Well, let's do it this way. You have not
15 listed table 3, which is page 45, as something that you
16 are sponsoring. Are you responsible for table 3?

17 A No, I am not.

18 Q Who is?

19 A Dr. Nesbitt.

20 Q Who is responsible for figure 16 on page 46?

21 A You mean figure 15?

22 Q Yes. Thank you.

23 A That would be Dr. Nesbitt.

24 Q Who is responsible for figure 16 on page 47?

25 A Dr. Nesbitt.

1 Q Who is responsible for table 4 on page 48?

2 A Dr. Nesbitt.

3 Q And who is sponsoring page 49, figure 17?

4 A It should be Dr. Nesbitt.

5 Q Who is sponsoring table 5, page 50?

6 A Dr. Nesbitt.

7 Q And who is sponsoring table 6, page 51?

8 A Dr. Nesbitt.

9 Q And table 7, page 52?

10 A Dr. Nesbitt.

11 Q The discussion that begins at page 44 of the
12 exhibit for petition and continues on pages 53, 54, 56,
13 57, through the top of page 58, what portions of that
14 are you responsible for or are sponsoring?

15 A I am sorry. Do you want to begin at page
16 44?

17 Q If you would.

18 A The top paragraph of page 44. I am sorry,
19 what page did you want to go through?

20 Q Continuing from -- I'm really trying to find
21 out about subsection A under Roman Numeral IV, the
22 power supply needs and potential of Florida, which runs
23 from page 44 through 58, I am trying to find out which
24 of those pages you are sponsoring.

25 A On page 44, the top paragraph.

1 Q Just the top paragraph?

2 A Yes.

3 Q Okay.

4 A Nothing else in paragraph A which ends at
5 the top of page 58.

6 Q So Dr. Nesbitt sponsors subsection A?

7 A Yes.

8 Q In its entirety?

9 A Yes.

10 Q And you do not?

11 A I do not.

12 Q Okay. We have shortened your deposition.
13 You probably lengthened poor Dr. Nesbitt's, though.

14 Q So the reference in your testimony at page
15 6, line 6, where you say you sponsor narrative text at
16 page 54, is that in error?

17 A No, I am sorry. I do sponsor a portion of
18 page 54.

19 Q What portion of page 54 do you sponsor?

20 A Second full paragraph starting with power
21 produced by the project through the first sentence of
22 the first full paragraph on page 56, excluding table 8
23 which is at the top of page 55. I apologize for
24 omitting that in my quick review.

25 Q That's quite all right. I just need to know

1 what we need to hold you accountable for. Turning back
2 to page 56, down through the first sentence of the
3 first full paragraph on page 56, you are sponsoring?

4 A First sentence of the first full paragraph
5 starting with the advanced technology through
6 Peninsular Florida utilities.

7 Q And you sponsored the continuation of the
8 preceding paragraph as well?

9 A Correct.

10 Q Is there anything else on page 56 that you
11 sponsor?

12 A Not to my knowledge.

13 Q Okay. Now, did you also list in your
14 testimony that you sponsor the narrative text of the
15 exhibit on pages 58 and 59? Would that be the text
16 that begins with subsection B, power supply needs of
17 Okeechobee Generating Company, LLC?

18 A Yes, all of paragraph B.

19 Q Do you sponsor paragraph C?

20 A Yes, I do which ends on the middle of page
21 59.

22 Q Okay. Now, the next portion of the exhibit
23 to the petition that you indicate you sponsor are pages
24 63 and 64. What portions of pages 63 and 64 are you
25 sponsoring?

1 A The last sentence in the top paragraph.

2 Q That reads: As distinguished from Florida
3 additional utility-built generation in Florida,
4 customers will only pay for power that they use from
5 the project, that sentence?

6 A Correct, as well as the continuation of that
7 sentence.

8 Q Through the word options?

9 A Yes.

10 Q Anything else on page 63?

11 A A portion of the entire second paragraph.

12 Q I am sorry, you say a portion of it, then
13 you say entire. You sponsored the entire --

14 A The entire second paragraph.

15 Q Do you sponsor the paragraph that begins at
16 the bottom of page 63?

17 A No, I do not.

18 Q What do you sponsor on page 64?

19 A Nothing to my knowledge.

20 Q So we probably ought to remove that
21 reference to page 64 on line 6 of your testimony?

22 A Yes.

23 Q Okay. Then the other pages in the narrative
24 that you say that you sponsor are pages 69 through 71
25 of the petition exhibit. Which portion of that do you

1 sponsor?

2 A In paragraph A, the first, second, third
3 sentence -- the first full paragraph.

4 Q Not the paragraph preceding it?

5 A Yes, I am sorry, that paragraph, also, the
6 introductory paragraph.

7 Q What about the last paragraph --

8 A I was just going to state the last paragraph
9 on page 69.

10 Q That continues on to page 70?

11 A Correct.

12 Q You sponsor that?

13 A Correct.

14 Q You're sponsoring everything on page 69
15 except for the third paragraph?

16 A That is correct.

17 The second or the first full paragraph on
18 page 70.

19 Q Okay.

20 A Paragraph B, power supply costs,
21 consequences of delay.

22 Q You sponsor the first paragraph of that?

23 A Yes, I do.

24 Q And you sponsor the second paragraph or is
25 that Dr. Nesbitt?

1 A Primarily it would be Dr. Nesbitt.

2 Q I am going to follow up. Does that mean you
3 sponsor it in part or does that mean Dr. Nesbitt
4 sponsors the second paragraph?

5 A Second paragraph would be a result of
6 Dr. Nesbitt's analysis, so he would sponsor that.

7 Q Okay. The first full paragraph on page 71,
8 do you sponsor that?

9 A That would be Dr. Nesbitt.

10 Q You sponsor any of subsection C on page 71?

11 A The first sentence, paragraph C.

12 Q Anything else?

13 A No, I do not.

14 Q Okay. We have gone through the pages that
15 you list. Are there any other pages of narrative in
16 the petition exhibit that you don't list that you
17 sponsor?

18 A I don't believe so.

19 Q Okay. When you state at page 7 of the
20 petition exhibit that the project will contribute
21 meaningfully to reliability of power supply system in
22 the Peninsular Florida, that's not an expert opinion as
23 a system planner; is it?

24 A No, it's not.

25 Q And when you say that the project will

1 contribute meaningfully to lower the cost of
2 electricity generation, that's not an expert opinion as
3 an economist?

4 A No, it's not.

5 Q Is it an expert opinion?

6 A It's not -- I am not testifying as an
7 expert.

8 Q Mr. Finnerty, bear with me, I am trying to
9 make sure now that I have established what you are
10 sponsoring.

11 A Take your time.

12 Q At page 59 of the petition exhibit you have
13 a sentence there that I understand you are sponsoring
14 now that says: As a merchant plant, the project will
15 provide power with no risk to Florida electric
16 customers.

17 What do you mean by no risk to Florida
18 electric customers?

19 A They will not be obligated to absorb any
20 costs of this facility, nor will they be put at the
21 risk that this plant will not be available when it is
22 obligated or the power -- the operator of this project
23 will not be available when it is committed to them.

24 Q Let's look at the first aspect of that lack
25 of risk.

1 If the plant doesn't operate as it's
2 projected to operate, do the customers face the risk of
3 utilities having to buy more expensive replacement
4 power costs?

5 A Not necessarily. That will depend on the
6 terms and conditions of any contract for the uproot of
7 the power from the facility.

8 Q So customers could face the risk of
9 increased replacement power costs if the unit doesn't
10 operate as projected?

11 A Again, it depends on the terms and
12 conditions of the contract. If there is an obligation
13 to provide power, the power will be provided, whether
14 from this facility or from another facility, under the
15 terms and conditions of a contract.

16 Q Is that the only type of contract you
17 envision entering into with Florida utilities, one
18 where you guarantee the power delivery?

19 A No, we'll enter into any type of a contract.

20 Q And indeed, the way the unit has been
21 modeled thus far really envisions that it would be
22 selling into the wholesale energy market on a
23 day-to-day basis, doesn't it?

24 A Yes, it will only make sales into the
25 wholesale market.

1 Q It would only be on an energy basis?

2 A I am sorry?

3 Q It would only be on a day-to-day energy
4 basis?

5 A Not necessarily.

6 Q Isn't that the way it's been modeled by
7 Dr. Nesbitt?

8 A By Dr. Nesbitt. I'd have to look through
9 again and review his models, but I believe he did an
10 energy only modeling.

11 Q So there may be a risk to Florida customers
12 if this unit doesn't operate as it's projected to
13 operate, it depends upon what the terms of the
14 contracts are?

15 A Not necessarily. Yes, it depends on what
16 the terms of the contract are.

17 Q If a Florida utility didn't have the
18 Okeechobee unit committed by firm contract, but
19 nonetheless, relied upon it for meeting its reserve
20 margin requirements, if the plant didn't operate as
21 projected, would the customers face a reliability risk?

22 A My understanding is that the utilities,
23 individual utilities would only be able to rely on it
24 if it was a firm contract.

25 Q From your perspective, that's appropriate

1 Q It's not due to a decision of the utility
2 or to the Public Service Commission?

3 A No, but they do -- the utility subject to
4 the approval of the Public Service Commission does
5 select the generating resources that it uses to supply
6 those customers.

7 Q You would agree that these captive customers
8 are not without protection; wouldn't you?

9 A Protection? What way -- what do you mean by
10 protection?

11 Q I mean, there is the Office of Public
12 Counsel and more importantly, the Florida Public
13 Service Commission is out there to protect the
14 interests of these captive customers?

15 A That's correct.

16 Q And there is nothing in your testimony where
17 you intend to suggest or infer that the Commission is
18 not doing a good job of protecting the interest of
19 those customers?

20 A No, I would not infer that.

21 Q What's the proper way to calculate a reserve
22 margin?

23 A I have never calculated a reserve margin.
24 But my understanding is that it is a calculation of the
25 firm load or firm demand and the firm generating

1 resources or supply side resources that can be used to
2 meet that demand.

3 Q Take firm demand and subtract firm
4 generating resources?

5 A Yes, subtract from firm generating resources
6 firm supply resources, firm demand.

7 Q Okay. And that gives you the reserve
8 margin?

9 A For particular utilities, yes.

10 Q Is it done differently if it were done for a
11 system of utilities, say like Peninsular Florida?

12 A My understanding is that the Peninsular
13 Florida, if it's done for Peninsular of Florida, it
14 takes all of the region and all the individual
15 utilities and aggregates them whereas on a utility
16 basis, it's where the utilities -- for that utility's
17 service territory.

18 Q You have not done that type of a calculation
19 for an individual utility or for Peninsular Florida,
20 reserve margin calculation?

21 A I have not done a reserve margin
22 calculation.

23 Q For Peninsular Florida do you have an
24 opinion as to whether the coincident or noncoincident
25 peak would be appropriate to use?

1 A No, I do not.

2 Q Can you explain to me how in a properly
3 performed reserve margin calculation load management is
4 treated?

5 A Again, I have not done a reserve margin
6 calculation. My understanding is that you did say
7 conservation, correct?

8 Q No, I said load management.

9 A I am sorry. My understanding is that
10 because it's not a firm -- whether it's a firm or
11 nonfirm resource. If it's a firm resource, it is
12 counted into its reserve margin. If it's not a firm
13 resource, it's not counted into reserve margin.

14 Q How is it counted into the reserve margin?
15 Is it part of the firm generation resources?

16 A Part of the firm supply resources, yes.

17 Q Have you had occasion to examine the
18 Commission's formula for calculating reserve margin?

19 A I may have. I don't recall.

20 Q You don't have an opinion as to whether you
21 agree or disagree with it; do you?

22 A No, I don't.

23 Q In your testimony you state that an analysis
24 was performed for OGC for its bulk power supply market
25 and of the subregional markets within the overall bulk

1 load-serving entities in Florida that filed 10-year
2 site plans.

3 Q Which portion of SJ5 is an aggregation of
4 10-year site plans?

5 A Page 2, 3, page 2 and 3.

6 Q Do you know why the years 1984, 1995, and
7 1999 were used?

8 A I am sorry, you said '84, 1985, and 1989.

9 Q If I did, I misspoke. I meant to say 1984,
10 1995 and 1999?

11 A I do not know, no.

12 Q Have you examined the underlying source
13 documents for your SJ5, page 2 and 3?

14 A I have examined the 10-year site plans of
15 Florida Power and Light and Florida Power Corp.

16 Q Do you know if Florida Power Corporation's
17 and Florida Power and Light's 10-year site plans for
18 1988 -- 1998 or 1999 are one of the source documents
19 for SJ5 page 2 --

20 A I believe.--

21 Q -- 3 to 5?

22 A I believe they are but I don't know
23 specifically.

24 Q Who prepared Exhibit SJF-5?

25 A Staff of the Public Service Commission.

1 Q Who on the staff?

2 A I don't know.

3 Q Have you discussed with anybody on staff?

4 A No, I have not.

5 Q When was it prepared?

6 A I don't know when it was prepared. I know
7 it was -- it's dated September 16th, 1999.

8 Q Why was it prepared?

9 A I believe it was a review of the 10-year
10 site plans and related workshops related to those
11 10-year site plans.

12 Q Was it subject to cross examination?

13 A I do not know.

14 Q Do you know if it's been approved by the
15 Commission?

16 A I don't know.

17 Q Do you know if any of the 10-year site plans
18 that were used to develop the data on SJ5 were approved
19 by the Commission?

20 A I believe the 1998 plans and 1999 plans, I
21 can speculate as to plans prior to that.

22 Q Do you know if the 1998 plans, 10-year site
23 plans, were used for SJ5?

24 A I do not know.

25 Q Do you know if 1999 Florida Power

1 Corporation or Florida Power and Light Company's
2 10-year site plan was used for the preparation of SJ5,
3 page 2 and 3?

4 A I do not know, but I assume they were,
5 seeing this is an aggregation of 10-year site plans.

6 Q Do you know what reliability criteria were
7 in effect in Florida when the 1984 plan or the 1984
8 forecast that is shown on SJ5 pages 2 and 3 was
9 submitted?

10 A No, I do not.

11 Q Do you know why the reserve margins were so
12 high in the 1984 forecast?

13 A I do not specifically know, but it may be
14 because of oil backout.

15 Q We had some oil backout down here. Why do
16 you believe it may be due to oil backout?

17 A I believe I heard somewhere. I don't recall
18 where.

19 Q So you don't know if the high reserve
20 margins that you show on this exhibit were due to
21 meeting a reliability criteria or due to some other
22 factor?

23 A Correct.

24 Q Do you know if the reserve margins that are
25 shown in these two pages, pages 2 and 3, are coincident