BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of Need of Hines Unit 2 Power Plant.	)	**DOCKET NO. 001764-EI**
	)	Submitted for Filing: September 25, 2000

NOTICE OF FILING

Florida Power Corporation ("FPC") hereby gives notice of filing and service of testimony in response to Staff's preliminary issue number 6 and in rebuttal to the testimony of Billy R. Dickens profferred by Staff on preliminary issue number 6. By filing this testimony FPC does not agree that preliminary issue number 6 is properly before the Commission in this proceeding. Rather, FPC objects to the inclusion of preliminary issue number 6 in this proceeding and reserves its right to move to strike that issue as irrelevant, immaterial, and beyond the Commission's jurisdiction. Subject to this objection and express reservation of right, and without waiving same, FPC submits the following testimony:

1. Rebuttal Testimony of John J. Flynn; and [redacted]
2. Rebuttal Testimony of Charles J. Cicchetti, Ph.D. 12051

Respectfully submitted,

FLORIDA POWER CORPORATION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY the foregoing Notice of Filing, Rebuttal Testimony of John J. Flynn, and Rebuttal Testimony of Charles J. Cicchetti have been served via hand delivery to Deborah Hart, as counsel for Florida Public Service Commission and via U.S. Mail to all other parties of record this 25th day of September, 2000.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need of Hines Unit 2 Power Plant	)	DOCKET NO. 00164-EI
	)	Submitted for filing: September 25, 2000

REBUTTAL TESTIMONY OF JOHN J. FLYNN

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IN RE: PETITION FOR DETERMINATION OF NEED BY FLORIDA POWER CORPORATION FPSC DOCKET NO. 001064-EI

REBUTTAL TESTIMONY OF JOHN J. FLYNN

I. INTRODUCTION AND BACKGROUND.

Q. Please state your name and business address.

A. My name is John J. Flynn, and my business address is Florida Power Corporation, 200 Central Avenue, St. Petersburg, Florida 33701.

Q. By whom are you employed?

A. I am employed by Florida Power Corporation ("FPC" or the "Company"), as the Manager of Regulatory Policy.

Q. Please describe your duties and responsibilities.

A. I am responsible for managing regulatory policy issues for FPC. In this connection, I am closely involved in monitoring, understanding, and analyzing the impact of regulation of Company affairs by the Florida Public Service Commission ("PSC" or the "Commission") and the Florida Legislature and discussing and managing these issues from the Company's point of view with PSC staff and the Commission, as may be appropriate.

Q. What is your education and employment background?

A. I received a Bachelor of Science degree in Accounting from Fairfield (Connecticut) University in May 1984. After graduation, I spent three years with the firm of Arthur Andersen & Co. in its Hartford, Connecticut office, specializing in the firm's electric and gas utility practice. Following my tenure with Arthur Andersen, I spent 12 years with Northeast Utilities in various financial, strategic, and regulatory roles. Northeast Utilities, based in Connecticut, has three major utility operating subsidiaries that serve customers in Connecticut, Massachusetts, and New Hampshire. I have testified before regulatory and legislative bodies in Connecticut and New Hampshire on a variety of financial, ratemaking, and policy issues, including a number of policy issues related to industry deregulation. I assumed my current position at FPC in April 1999.

Q. As a regulatory policy analyst, have you participated in the transition from a regulated electric utility environment to a deregulated environment in other states?

A. Yes. From mid-1997 through April 1999, I acted as Project Director for Restructuring Implementation on behalf of Northeast Utilities. In that role, I was responsible for all regulatory activity related to the restructuring of the electric industry in the states in which Northeast Utilities operated. As I mentioned previously, I appeared as a witness on a number of policy and implementation issues related to deregulation. Prior to 1997, I was the Manager of Financial

Planning at Northeast Utilities, with responsibility for all corporate financial projections and analyses, including projections and analyses of company operations in the then-future deregulated marketplace.

II. PURPOSE AND SUMMARY OF TESTIMONY

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

A. I am responding to, and rebutting, the Direct Testimony of Billy R. Dickens.

Q. Please summarize your testimony.

A. Mr. Dickens suggests that utilities might want to enter into short-term power purchase agreements to meet their needs for capacity resources rather than to build facilities of their own or be subjected to a regulatory requirement to test rate-based facilities against supposed "market conditions" periodically. He contends that short-term contracts or commitments may protect ratepayers from future market risks that might arise when and if electric markets are deregulated.

His analysis is speculative and indefensibly one-sided. Nowhere does he identify any particular short-term contract option actually available to FPC to meet its needs. He provides no concrete information whatsoever that casts any doubt on FPC's judgment to build Hines 2. Rather, Mr. Dickens discusses only potential advantages that ratepayers might enjoy if the market takes a favorable turn, and "[i]f a more cost effective alternative becomes apparent" (p. 8), and he fails to acknowledge the substantial disadvantages of exposing ratepayers to

market volatility by entering into short-term agreements that provide ratepayers with no protection after the contract term expires.

Mr. Dickens touts the flexibility that may be provided to purchasers of power by market entrepreneurs. Ironically, these entrepreneurs have by their actions uniformly contradicted the very premise of his discussion. If Mr. Dickens were correct in implying that long-term supply arrangements favor the supplier rather than the purchasing utility, then we should expect to see merchant developers aggressively marketing long-term contracts. In fact, however, merchant developers around the country and in Florida consistently avoid entering into long-term supply contracts, betting that prices will go up not down in future years.

Further, Mr. Dickens' only empirical "proof" for his observations—the fact that long-term cogen contracts have turned out to be disadvantageous to utilities—cuts exactly the other way. Regulated utilities did not build and do not own cogen facilities. To the contrary, utilities were required to contract with non-utility generators who—like entrepreneurial merchants and other independent power producers ("IPPs") have their own best interests at heart. The lesson of the cogen contracts is that it is better to build and own electric generating facilities than to attempt to negotiate contracts with those who do—entrepreneurs who seek to capture the benefits of ownership for their shareholders rather than Florida ratepayers.

Finally, Mr. Dickens' conclusion and recommendation that the PSC test the Hines 2 plant against the market periodically is neither an appropriate subject

for this proceeding, nor is it sound regulatory policy. To begin with, Mr. Dickens rightfully does not challenge FPC's conclusion that the Hines 2 plant is the most cost-effective alternative available to meet the Company's needs, based on what we know today. Mr. Dickens bases his proposal on speculation that circumstances might change in the future and seeks to make FPC an insurer against all potential downside risk, while at the same time denying FPC the benefit of any upside developments.

FPC is seeking a determination in this proceeding, of course, that the Hines 2 plant is needed. As Mr. Dickens acknowledges, the "orthodox regulatory compact has approached need determination based on a hedging strategy with capital cost recovery guaranteed over a fixed long-term time horizon." (P. 4). If the PSC wishes to break this regulatory compact, as a matter of regulatory policy this is neither the time nor the place to do it. Neither Mr. Dickens nor anyone else can predict at this time whether or when deregulation will arrive in Florida or, if it does, what it will look like. Until current laws and regulations are changed in a comprehensive and appropriate manner, utilities like FPC must be permitted to plan and manage their systems in accordance with current regulatory policy. I cannot and will not comment on the legality of what Mr. Dickens proposes, but I can say that making piecemeal changes to regulatory policy that violate the existing "regulatory compact" upon which utilities must rely can only impair the operation of the existing system before any cogent alternative has been developed. Mr. Dickens' proposal will have a chilling effect on the willingness of Florida utilities to invest in new generating plants at a time when the Commission has

expressed its interest in having utilities add new capacity to the state, and when no suitable, concrete, and cost-effective power purchase alternatives exist.

Further, Mr. Dickens' recommendation amounts to a "heads I win, tails you lose" proposition. He suggests that FPC might be permitted to charge regulated rates when those rates are lower than market prices (thus foregoing the opportunity to earn the same profits that an unregulated entrepreneur would earn), but that FPC would be made to absorb any difference in rates when regulated rates might be higher than market prices. All the while, market entrepreneurs would charge market prices and reap the profits when prices are high and tighten their belts when prices are low. Under Mr. Dickens' proposal, FPC would always tighten its belt and would never have an opportunity to earn a return that would be commensurate with the relevant risk. If Mr. Dickens is proposing to have regulation mimic the market, this approach surely will not accomplish that result. This is not deregulation; it is asymmetric regulation.

III. REBUTTAL TESTIMONY

Q. At page 2 of his testimony, Mr. Dickens states that "economic uncertainty, due to the advent of electric generation restructuring, raises potential risks for Florida ratepayers." To begin with, is the prospect of electric generation restructuring in Florida clearly defined?

A. No, it is not. The Legislature has not adopted restructuring legislation, and the current laws and rules are still in place in Florida. At this time, it is premature to predict whether or when electric generation restructuring will take place, and, if it

occurs, what it will look like. The Governor's Study Commission is currently studying the many complex issues associated with restructuring of the electric industry. If there are to be changes in the fundamental policies that govern the regulation of the electric industry, it is there that such issues should be addressed, not here in the Hines 2 need determination proceeding.

Q. Given the uncertainty whether, when, or how the electric generation market may be restructured in Florida, does it make good policy to adulterate existing regulatory policy on a piecemeal basis?

A. Absolutely not. State after state has fallen on its face jumping into deregulation prematurely. Reports are legion that state regulators and consumer advocates now have a "dwindling faith in deregulation" and that "[i]n deregulated electricity markets, prices have been far more volatile than expected, at times jumping to extraordinary levels during shortages." New York Times C 1 (Sept. 15, 2000). As one industry observer recently reported:

> [F]or millions of people, especially in New York and California, the doctrine of the sovereign consumer has come into question this summer around a commodity that most had taken completely for granted: electricity. A recently deregulated energy market that was supposed to increase choices and reduce prices has, for most residents, done nothing of the kind. Many community leaders and politicians, calling for investigations and caps on rising electricity bills—up 30 to 40 percent from those of last August in many areas—have denounced energy deregulation as either a failure or a fraud.
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> "Deregulation and privatization were sold implicitly on the assumption that everybody can win from this, but I'm hard-pressed to find an example in the real world where that has happened," said

> Willis Emmons, a professor in the strategy, public policy and ethics department of Georgetown University's business school. Right now, Professor Emmons added, "maybe somebody is winning, but it isn't the consumer."

New York Times 46 (Aug. 17, 2000) (emphasis added).

It is not too difficult to determine who has benefited most from deregulation. As Power Markets Week reported earlier this month (Sept. 11, 2000), "Following a summer of skyrocketing power prices in California's wholesale energy market, Houston-based Dynegy, Inc. has nearly paid off the investments it made in generation assets there." (P. 1).

Unless and until state lawmakers and regulators study deregulation issues thoroughly, and develop a comprehensive approach to such issues, it would be ill-advised and dangerous for regulators to fiddle with existing policy based on sheer speculation about what might or might not happen.

Q. Mr. Dickens asserts (at page 2 of his testimony) that "[m]arket conditions are moving from ownership of generation to procurement in generation." Do you agree with this statement?

A. No. It is contradicted by the actual facts in Florida. In the last several need cases, the petitioning utilities have all elected to build their own generation facilities, concluding—as we have—that the new combined cycle units provide attractive ownership options. See Gulf Power Corporation, Order No. PSC-99-1478-FOF-EI (Aug. 2, 1999); City of Lakeland, Order No. PSC-99-0931-FOF-EM (May 10, 1999); KUA and FMPA, Order No. PSC-98-1301-FOF-EM (Oct. 7, 1998); City of Tallahassee, Order No. PSC-97-0659-FOF-EM (June 9, 1997); Seminole Elec.,

Order No. PSC-94-0761-FOF-EC (June 21, 1994). In each instance, the petitioning utility tested its self-build proposal against clearly defined market alternatives, and in each instance the utility concluded—and the Commission agreed—that the self-build alternative was the most cost-effective alternative available.

Q. Mr. Dickens argues (at pages 2-3) that captive ratepayers may be subject to an "economic penalty" when a regulated utility builds its own unit and that ratepayers may thereby "forfeit efficient alternatives." Do you think this is a fair statement?

A. No, I do not. Mr. Dickens' argument amounts to a gross generalization of the real world, and it implies that only good things can happen when markets are deregulated. His position is based purely on speculation that future market conditions will be more advantageous to electric power consumers than a utility's current self-build options. The fact is, many ratepayers have been burned in states that have deregulated, forcing them to pay higher not lower rates than regulation would permit as entrepreneurs have taken advantage of the volatility of the marketplace.

By building Hines 2, FPC will protect its ratepayers from such volatility and secure for them into the future the benefits of a technology that nobody questions. It is revealing that the entrepreneurs whom Mr. Dickens appears to favor are building natural gas-fired, combined cycle plants themselves, investing their own money in this technology. This provides empirical confirmation that

the "market" believes that there are significant economic benefits to building and owning plants of this nature. As we have demonstrated in our submissions to the Commission, FPC has the opportunity to take advantage of a below-market contract right to purchase this technology for the Hines 2 plant. Turning our backs on that opportunity to seek hypothetical short-term contracts posing highly risky futures would subject our ratepayers to a demonstrable "economic penalty" and would "forfeit [an] efficient" alternative that is simply too good to ignore.

Further, there is a critical difference between an IPP's building a combined cycle (or any other) plant and FPC's building the exact same plant. The IPP will seek to recover its investment over a much shorter time frame than the life of the plant—say over five to ten years (or even less, as in the case of Dynegy in California). And the IPP will be able to do this by virtue of the fact that an IPP can sell power from a new plant as long as it can beat the worst plant in some utility's stack by a penny. In the case of such a purchase, the utility would save a penny, but the IPP will reap the difference between its (relatively low) cost and the market price.

If FPC builds the same plant, its ratepayers get the entire benefit of the efficiencies obtained from the new technology. This is true because FPC will be limited to cost-of-service rate treatment.

Q. Mr. Dickens states (at pages 3-4 of his testimony) that, when a utility builds a plant, it shifts to the ratepayers the risk of paying for the capital cost of the asset and the risk of paying higher-than-expected fuel costs through the fuel

cost recovery clause. Will ratepayers avoid these risks when a utility enters into short-term power purchase contracts that are priced to market?

A. Most certainly not. IPPs or other sellers of power will have to price their contracts in such a way as to recover not only their marginal operating costs, but also their capital investment and fuel costs. There is no such thing as a free lunch. Entrepreneurs all demand a return of their investment and a return on their investment (often much higher than a regulated utility's rate of return). Naturally, the necessary revenues come from the ultimate consumers of power—the ratepayers—one way or another.

In fact, rational IPPs will charge whatever the market will bear. FPC, by contrast, will be permitted to charge only cost-of-service rates for power produced from its own generating facilities. That is why we may expect Florida ratepayers to come out ahead when they get power from a regulated utility-built plant rather than an unregulated IPP, when both are using comparable technology.

Q. Do you agree with Mr. Dickens' statement that "[t]he orthodox regulatory compact has approached need determination based on a hedging strategy with capital cost recovery guaranteed over a fixed long-term time horizon?"

A. Yes, with one qualification. A utility is never "guaranteed" cost recovery. A utility may be denied cost recovery in the case of management imprudence. But otherwise Mr. Dickens correctly recognizes that, under long-standing regulatory policy in Florida, regulated utilities are assured the recovery of costs that they reasonably incur, based on circumstances known at the time decisions were made,

as the quid pro quo for meeting their obligation to serve. Utilities may not be expected to continue to meet their obligation to serve if the State does not honor its part of the bargain.

Q. At page 4 of his testimony, Mr. Dickens implies that building long-term assets creates "market distortions." Do you agree?

A. No, I do not. It is not logical to criticize a decision by a regulated utility to build a plant as creating a "market distortion." By definition, that kind of decision takes place in a regulated environment, not in a deregulated market environment. The electric utility industry in Florida has not been deregulated, and unless and until this occurs it is neither fair nor sound policy to speak of actions by regulated utilities as "market distortions." The fact is, regulation is designed—and has operated successfully for decades in Florida—to provide ratepayers with numerous protections and assurances that are lacking in the "market."

Q. Mr. Dickens expresses concern that FPC's ratepayers "could be held financially liable for an asset which may not be the least cost alternative in the not too distant future." (P. 4). Does he provide any basis for this statement?

A. No, he does not, and no objective basis exists. FPC has conducted a thorough evaluation of supply-side alternatives and concluded with ample support that building Hines 2 will be the least cost option for FPC's ratepayers. Again, Mr. Dickens can offer only speculation to cast doubt on that decision. In fact, IPPs all

over the country are investing in identical technology based on objective indications that gas-fired, combined cycle plants will be financially viable for many years to come. FPC has made the same judgment, and Mr. Dickens offers no facts to contradict that judgment.

Moreover, even in the absolute worst case, FPC could "walk away" from the Hines 2 plant at some point in the future, leaving behind only the capital cost, which will be depreciated every year. FPC pays more than that each year for 800 MW of power from its cogen suppliers, and FPC does not have the option of "walking away" from those contracts.

Q. Mr. Dickens argues that short-run contracts would minimize risk associated with future changes in technology and fuel cost. Do you agree?

A. No. Mr. Dickens' arguments focus only on the potential upside of short-run contracts. He correctly acknowledges that "greater reliance on short-run market changes exposes participants to the possibility of greater price volatility" (p. 5), but then he advocates the use of short-run contracts based on unsupported speculation that opportunities to take advantage of favorable short-term price or technology shifts will outweigh the downside potential of unfavorable pricing. The wholesale market plainly reads the future differently, as demonstrated by the fact that merchant suppliers have strenuously avoided making long-term commitments, predicting that the future will be more advantageous to sellers, not buyers.

In addition, by dwelling on generalities and conjecture, Mr. Dickens has overlooked the concrete advantages offered by Hines 2 to FPC's ratepayers. As FPC has demonstrated in its testimony and exhibits, FPC will be able to build Hines 2 at a below-market cost and thus capture exceptional economic benefits for its ratepayers for many years to come. Whatever the virtues of short-term contracts in the abstract, even Mr. Dickens would have to agree that a provider of power will occasionally be confronted with a long-term asset that is simply too good to pass up. He admits that "sometimes long-term contracts are good for ratepayers and energy providers." (P. 5). That is certainly the case here.

This is true not only because of advantageous contract terms, but also because Hines 2 will provide FPC's fleet with beneficial fuel diversity. Mr. Dickens does not acknowledge these advantages. FPC must run a system, and FPC's entire system benefits its ratepayers. By incorporating a flexible unit like Hines 2 into its fleet, FPC will significantly enhance its opportunities to shift reliance on different units and fuels at different times, thus achieving exactly the kind of "speed of adjustment" among technology and concomitant fuels that Mr. Dickens supports.

Q. Do you agree with Mr. Dickens' contention that Tom Hernandez's statements at the 1997 Ten Year Site Plan Workshop support reliance by FRCC utilities on short-term contracts?

A. No, I do not. Mr. Dickens has mischaracterized Mr. Hernandez's statements and omitted discussion of the context of the statements and the position taken by the

Commission and Commission Staff, which cut decidedly against the position that Mr. Dickens now advocates.

To begin with, Mr. Hernandez was not at all addressing the issue whether utilities should build their own plants or enter into short-term power purchase agreements. Mr. Hernandez was discussing and explaining the FRCC aggregate ten-year site plan for the State and was talking about the lead time for building new plants. In this context, he pointed out that utility plans needed to be more firm in the first five years of the planning period precisely because the lead time for building new plants was now under five years. As he put it, "to the extent that you've got short construction lead times and relatively shorter permitting times for the 9,000 megawatts or so of existing site that I've mentioned before and the fact that it really gets down to a utility-by-utility analysis, I'm not concerned about showing lower reserve margins in the out years." (Tr. excerpt, p. 2) (emphasis added). Mr. Hernandez's explanation cannot fairly be construed as endorsing short-term power purchase agreements in lieu of utility-built units.

What makes Mr. Dickens' argument even more troubling is that the Commission and its Staff reacted vehemently to the softness of utility plans in the "out years," the last five years of the ten-year planning period, as is evident from even the short excerpt that was included with Mr. Dickens' testimony. The FRCC aggregate plan lacked specificity during the last five years primarily because two utilities, Florida Power & Light ("FPL") and Jacksonville Electric Authority ("JEA") relied heavily in their individual plans on "unspecified purchases" during the last five years of the planning horizon. The Staff initially

classified FPL's plan and JEA's plan as unsuitable because these utilities relied on unspecified purchases instead of making plans to build their own units, thus inducing FPL and JEA to withdraw their plans in 1997.

Consistently since that time, the Commission and its Staff have adamantly opposed utility reliance on "unspecified purchases" in their planning documents, pointing out that these place holders in the planning documents provide inadequate assurance that utilities would have adequate hard assets on the ground to meet the capacity needs of their ratepayers. As recently as last year (1999), Staff stated in its Review of Electric Utility 1999 Ten-Year Site Plans (December 1999), "[i]f utilities . . . hesitate to build new needed generating units, capacity shortages may become a certainty in the near future." (P. 40).

It is ironic that FPC has stepped up to the plate with its Hines 2 project responding exactly to the concerns that the Commission and its Staff have been expressing over the last several years, only to be met with an argument by the very same Staff to rely instead on unspecified short-term purchases to satisfy reserve margin requirements!

Q. Do you agree with Mr. Dickens' contention that the utilities' experience with cogen contracts militates in favor of utilities entering into short-term power purchase agreements instead of building their own units?

A. I do not agree with this argument. In fact, I think our cogen experience militates strongly in the direction of the self-build alternative.

FPC's cogen contracts demonstrate the perils of attempting to meet capacity needs by contract rather than building facilities that will be owned and controlled by the regulated utility and operated for the benefit of the ratepayers. In the case of these contracts, FPC and other utilities were forced to forego building their own units and to enter into power purchase contracts with non-utility generators in the interest of pursuing a well-intended, but ultimately misconceived federal policy. Every contract negotiation is a zero-sum game. What the supplier gets, the purchaser gives up. Most significantly, the purchaser gives up the optionality and flexibility of ownership and tries as best it can to anticipate and emulate the benefits of ownership.

For example, in the case of FPC's cogen contracts, with the benefit of hindsight it is apparent that FPC was not able to take full advantage of the actual technology of the units used to service the contracts because the contracts used coal-based pricing as a proxy to gauge how best to price the power. In the case of every contract, the supplier will insist on negotiating terms that are favorable to the supplier, not to the utility. Though the utility will use its best efforts to negotiate a deal most favorable to its ratepayers, negotiations require reading forward-looking projections, no less than building a plant. And every option that the utility is successful in negotiating will have a price. Suppliers are not willing to give utilities the flexibility and optionality of ownership without pricing the contract to protect the suppliers. Of course, once a contract is signed, it may actually provide less flexibility than a power plant incorporated into a larger fleet.

That is what happened in the case of the cogen contracts. As it turned out, the sellers made out better than the purchasers under the terms of these agreements.

In addition, Mr. Dickens ignores the fact that the parties who responded to FPC's Request for Proposals in this case did not offer favorable contract alternatives. As FPC has demonstrated in its confidential filings the contract options that FPC actually had to choose from were inferior in many respects to the self-build alternative. So putting abstract generalities aside, we know that in this case FPC's most attractive option was to build Hines 2.

Further, Mr. Dickens overlooks compelling empirical evidence that supports FPC's decision to build its own units. In contrast to FPC's experience with its cogen contracts, which did not produce efficient outcomes, FPC has achieved very efficient outcomes indeed with its own generating plants. FPC has achieved great efficiencies and economies for its ratepayers with its generating units. Thus, the actual facts support self-build, and raise serious questions about contract alternatives.

Finally, the Commission has no effective means to deal with a bad contractual outcome, but the Commission can exercise oversight over FPC's management and operation of its own plant. In this sense, too, the self-build alternative provides greater protection to ratepayers over the long run, not less.

Q. Do you support Mr. Dickens' recommendation that the Commission should require FPC to test the Hines 2 plant to market every five years in order to determine whether to continue to allow cost recovery?

A. No, I do not. First, I should point out that Mr. Dickens correctly does not challenge FPC's conclusion that the Hines 2 plant is the most cost-effective alternative available to the Company, based on our best current information. Thus, Mr. Dickens does not argue that the Commission should deny the determination of need that we seek. Instead, what Mr. Dickens proposes is to change the ground rules for how utilities do business in this State—without the benefit of restructuring legislation—based on speculation about how the future may develop.

This is simply not a proper subject for this proceeding. As Mr. Dickens concedes, the "orthodox regulatory compact has approached need determination based on a hedging strategy with capital cost recovery [largely] guaranteed over a fixed long-term time horizon." (P. 4). It is neither fair nor sound regulatory policy suddenly to propose violating this compact in the middle of a need proceeding, when the utility has planned to meet its resource needs under existing rules and policies, and has relied on behalf of its customers on existing policy.

It is neither fair nor appropriate to attempt to change the ground rules at this time and in this manner, in anticipation that deregulation of the market might take place at some unspecified date in the future, without any clear understanding of whether or when such change will occur, or what it will look like if and when it does occur. As restructuring activity has proliferated through many areas of the country, there have been many lessons learned. One of those lessons, and the one that stands out above all others, is that any attempt to restructure the marketplace and alter the fundamental regulatory compact must involve a thorough and

comprehensive process that examines all of the many complex, interrelated issues and involves all of the relevant stakeholders. Attempting to restructure the industry one issue at a time, where each issue is evaluated in a vacuum, is a recipe for disaster. FPC must be permitted to plan and act upon the rules currently in place unless and until they are changed in an appropriate manner.

Putting aside issues of procedure and fairness, Mr. Dickens' proposal would not make sound regulatory policy. He is essentially proposing a "heads I win, tails you lose" approach under which FPC would be able to obtain cost recovery for the Hines 2 plant so long as regulated rates were below market, but could not recover anything in excess of market rates when regulated rates might be above market. If the underlying goal is seeking to have regulation track the market, this proposal plainly does not accomplish that result. To the contrary, market entrepreneurs (e.g., IPPs) charge market rates whether they are above or below cost-of-service regulated rates, reaping huge profits when market rates are above regulated rates and tightening their belts when rates fall. He would have FPC forego the opportunity to make profits when market prices are high and absorb losses when market prices are low. No market supplier would enter into such an arrangement, and this type of approach will be greatly injurious to regulated utilities.

As Mr. Dickens freely concedes, this is not the regulatory compact under which regulated utilities have operated for decades, which involves a quid pro quo for consumers and utilities. To the contrary, this would amount to an unfairly asymmetric regulatory balance to the exclusive benefit of consumers.

Finally, Mr. Dickens' proposal would violate fundamental principles of regulatory policy concerning prudence review. It is an article of faith in the utility industry that management decisions must be evaluated for prudence based on the circumstances that existed at the time the decisions were made. Mr. Dickens is basically proposing that, even if FPC's decision to build Hines 2 makes perfect sense at this time, taking into account market information available at this time, FPC may be denied cost recovery in the future based on circumstances that later develop. This would represent a critical change in the way utilities and regulators do business in Florida and in the industry, and would make owning and operating regulated utilities absolutely untenable.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.