

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NOS. 020262-EI, 020263-EI
FLORIDA POWER & LIGHT COMPANY**

SEPTEMBER 11, 2002

**IN RE: PETITION FOR DETERMINATION OF NEED FOR
PROPOSED ELECTRICAL POWER PLANT
IN MARTIN COUNTY
OF FLORIDA POWER & LIGHT COMPANY**

**IN RE: PETITION FOR DETERMINATION OF NEED FOR
PROPOSED ELECTRICAL POWER PLANT
IN MANATEE COUNTY
OF FLORIDA POWER & LIGHT COMPANY**

REBUTTAL TESTIMONY & EXHIBITS OF:

STEVEN R. SIM

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5 **SEPTEMBER 11, 2002**

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

8 A. My name is Steven R. Sim and my business address is 9250 West Flagler
9 Street, Miami, Florida 33174.

10
11 **Q. Have you previously provided testimony in these dockets?**

12 A. Yes.

13
14 **Q. What is the purpose of your rebuttal testimony?**

15 A. My rebuttal testimony addresses various aspects of the direct testimonies of
16 Mr. Douglas Egan of Competitive Power Ventures, Inc. (CPV) and Mr.
17 Kenneth Slater for The Florida Partnership for Affordable Competitive
18 Energy (PACE). Both testimonies contain a number of inaccuracies and
19 misleading statements. I will not attempt to address all of these but shall
20 address specific aspects of each testimony that are representative of their
21 entire testimonies. An absence of a comment regarding an aspect of the
22 testimony from these two men should not be read that I agree with their
23 comments. I shall address each testimony separately starting with Mr. Egan's
24 testimony.

1 **I. Mr. Egan’s Testimony**

2

3 **Q. What aspects/statements in Mr. Egan’s testimony will you address?**

4 A. I shall address 9 aspects/statements in Mr. Egan’s testimony.

5

6 **1) Mr. Egan’s Criticisms of RFP Terms**

7

8 **Q. Mr. Egan testifies at pages 3-7 of his testimony that four terms of the**
9 **initial RFP and the supplemental RFP were either unfair, commercially**
10 **unreasonable or skewed, specifically the aspect of the RFP that allowed**
11 **bidders to take exceptions to the terms of the RFP, the “legislative out”**
12 **provision of the initial RFP, the “regulatory out” provision of the**
13 **Supplemental RFP and FPL’s listing of the non-price factors in the**
14 **Supplemental RFP. Please address his observations.**

15 A. I have several comments.

16

17 First, the sheer volume of responses to both FPL capacity solicitations refutes
18 Mr. Egan’s conclusions. Fifteen bidders submitted 81 proposals in response
19 to FPL’s initial RFP and 16 bidders submitted 53 proposals in response to
20 FPL’s Supplemental RFP. In total, 18 different bidders submitted 134
21 proposals in response to FPL’s RFPs. Such a massive response completely
22 refutes his suggestion that the RFPs contained terms that were perceived as
23 unfair or commercially unreasonable.

1 Second, each proposal generally had to be accompanied by \$10,000 in fees to
2 be evaluated. It is difficult to conceive that sophisticated business
3 organizations would be willing to offer proposals at a \$10,000 cost if they
4 considered the terms of the RFP to which they were responding were
5 commercially unreasonable or unfair.

6
7 Third, the bidders were provided the opportunity to state exceptions to all or
8 any of the terms of the RFPs except for Minimum Requirements. A number
9 of bidders stated absolutely no exceptions to the terms of the RFP documents.
10 This is further evidence that a number of bidders did not share Mr. Egan's
11 position.

12
13 Fourth, and perhaps most revealing, CPV Gulfcoast, L.P., the bidder owned
14 by Mr. Egan's firm, submitted three bids to FPL's Supplemental RFP. In at
15 least one of those bids, there were limited exceptions stated, but CPV did not
16 take exception to any of the terms that Mr. Egan now characterizes in his
17 testimony as unfair, commercially unreasonable or skewed.

18
19 This fact alone suggests that Mr. Egan's testimony regarding these terms is
20 simply an argument of convenience or opportunity. Either CPV did not then
21 believe that the terms were unfair, commercially unreasonable or skewed and
22 thus felt no need to state an exception or CPV did consider such terms to be
23 unfair but was negligent by not stating exceptions.

1 **Q. Mr. Egan argues (page 5) that the provisions of the Supplemental RFP**
2 **that allowed bidders to state exceptions to the terms of the Supplemental**
3 **RFP were unfair because they sought to impose terms on bidders without**
4 **negotiations. Please address this aspect of Mr. Egan’s testimony.**

5 A. Mr. Egan misconstrues the purpose and intent of the provisions of the
6 Supplemental RFP that required bidders to state exceptions. Moreover, in the
7 space of two sentences, he contradicts himself.

8
9 The purpose of soliciting exceptions was not to impose contract terms without
10 negotiations; in fact, just the opposite is true. Allowing bidders to state
11 exceptions is evidence of FPL’s flexibility and willingness to consider
12 alternative terms. Allowing exceptions and requiring alternative language that
13 the bidder preferred was meant to: (1) identify bidders who took issue with
14 FPL’s preferred terms, (2) provide a basis for comparing proposals, and (3)
15 facilitate negotiations that might ensue.

16
17 FPL did not ask any bidder “to agree to all significant terms and conditions of
18 the RFP.” It gave the bidder a choice to state whether it took no exceptions or
19 if it took exceptions. In other words, it asked a bidder to state whether they
20 agreed or disagreed with the terms of the Supplemental RFP. The fact that
21 FPL gave bidders the choice to agree or disagree with the Supplemental RFP
22 terms is just the opposite of FPL attempting to impose contract terms. If FPL
23 had sought to impose contract terms without negotiations, it would not have

1 allowed any exceptions; it would have sent out a set of non-negotiable terms
2 and conditions and not permitted exceptions.

3
4 Mr. Egan's suggestion that FPL did "not say how the bid would be evaluated
5 if exceptions are raised," is contradicted by the statement from the
6 Supplemental RFP he quotes not once but twice on pages 5 and 6 of his
7 testimony: "FPL will give preference to bids with the fewest number of and
8 least significant exceptions." FPL could not be more specific about how it
9 would evaluate exceptions without knowing the nature and extent of
10 exceptions. However, to give bidders guidance in a general sense it stated the
11 unsurprising preference for fewer exceptions. There is nothing ominous,
12 inappropriate or unfair about that observation. If there is no disagreement
13 between a bidder and FPL as to terms, then all other things being equal, FPL
14 will prefer that bid over another bid that takes issue with FPL's preferred
15 terms.

16
17 From FPL's perspective, permitting exceptions and asking for alternative
18 language when a bidder disagrees with an RFP term facilitates rather than
19 frustrates potential negotiations. Many bidders offered "indicative" terms or
20 prices subject to change in negotiations. Such uncertain proposals are difficult
21 to evaluate, because prices are likely to change in negotiations. By requesting
22 exceptions where applicable, FPL sought to gain insight not only as to the

1 potential focus of subsequent negotiations, but also as to the likelihood of
2 whether a bidder might change its price in negotiations.

3
4 In summary, allowing exceptions and requiring alternative language is fair to
5 both FPL and the bidder. It avoids imposing terms on bidders, it removes
6 some uncertainty, it can enhance analysis, and it facilitates potential
7 negotiations.

8

9 **Q. At page 6, lines 7-14 of his testimony, Mr. Egan criticizes FPL for**
10 **including a “legislative out” term in its initial RFP. Please respond.**

11 A. His criticism is irrelevant, as this term was not included in the Supplemental
12 RFP. This was one of several terms criticized by some bidder/intervenors
13 after the initial RFP. In response to that criticism, FPL did not carry it
14 forward to the Supplemental RFP.

15

16 **Q. Mr. Egan also criticized FPL’s inclusion of a “regulatory out” clause in**
17 **its Supplemental RFP as being unfair because it shifted risk to bidders.**
18 **Please respond.**

19 A. First, Mr. Egan fails to give FPL credit for voluntarily responding to bidder
20 criticisms of the initial RFP. In the initial RFP, FPL included a “regulatory
21 out” provision that allowed FPL to terminate the entire agreement if any cost
22 were disallowed by the Commission. Bidders complained that this was
23 onerous. FPL responded by changing the “regulatory out” clause in the

1 fashion that it understood bidders were suggesting. Despite FPL having
2 responded to bidder criticisms, Mr. Egan still argues FPL is “unfair.”

3
4 Second, Mr. Egan’s observation in his testimony that a regulatory out clause
5 may make the financing of a project impossible raises the issue of whether
6 CPV’s bids were made in good faith. As previously mentioned, CPV did not
7 state an exception to the “regulatory out” clause in the Supplemental RFP
8 when submitting its bids. To hear Mr. Egan suggest now that this term might
9 make his projects incapable of being financed when CPV did not take an
10 exception to this term makes FPL wonder whether CPV submitted bids it had
11 reason to believe it could not finance.

12
13 Third, a regulatory out clause is appropriate. Developers have argued to the
14 Commission for years that they are willing to assume risks. If the
15 Commission were to disallow costs from a contract with such self proclaimed
16 risk takers, it is only appropriate they assume the risk of the disallowance.

17
18 **Q. The final aspect of the Supplemental RFP process that Mr. Egan**
19 **criticizes as “unfair” is his statement that FPL “never revealed the**
20 **complete list of criteria by which the proposals were judged or the**
21 **weights assigned to the various criteria.” Please respond.**

22 **A.** In this case, Mr. Egan is only half wrong. FPL did list the criteria it might use
23 in evaluating outside proposals in both its initial and Supplemental RFP

1 starting on pages 20 and 17, respectively. The RFP documents stated that
2 there would first be a “pass/fail” step that would then be followed by an
3 economic evaluation. The “pass/fail” criteria are clearly laid out and, by
4 definition, there are no “weights” assigned to these. A proposal either meets
5 these and passes on to the next step or fails to meet them and is dropped from
6 further consideration.

7
8 The RFP documents then state that after the economic evaluations are
9 completed, the remaining or surviving proposals would be subjected to an
10 examination of non-price factors. Here, Mr. Egan is correct in his assertion
11 that FPL has not published the “weights” associated with these factors.

12
13 FPL consciously chose not to preassign weights to these criteria in the
14 Supplemental RFP. That decision was based on its prior experience in a
15 capacity solicitation that preassigning weights simply does not work and is
16 very difficult to implement. Preassigning weights does not remove subjective
17 judgment. Moreover, it suggests a mathematical precision that does not exist.
18 It runs the risk of causing an incorrect decision to be made because the utility
19 could not adequately predict all the relevant factors and properly assign
20 weights in advance. Mathematical weights were never assigned to the criteria,
21 and they should not have been. The Commission appropriately concurred
22 with this logic when it decided not to require a prescription of weights in the
23 RFP document when it adopted the Bid Rule.

1 Mr. Egan's protest about not ever knowing the criteria and how they were
2 used makes me wonder if he has read all of FPL's need filing. The Need
3 Study document explains the evaluation in great detail as does Mr. Silva's and
4 my direct testimony. FPL fully explains the basis for determining certain
5 projects to be ineligible, the economic analyses undertaken, the basis for
6 selecting the short list, and the conclusions reached as a result of negotiations.
7 The economic advantages of the All FPL plan were so compelling that further
8 evaluation of some of the non-price factors was not warranted. Nonetheless,
9 Mr. Silva addresses in his testimony how they would have been assessed.
10 FPL has fully explained its evaluation process in its filing and, more
11 importantly, the bidders were apprised of the evaluation elements prior to
12 bidding by the discussion of the evaluation elements in the Supplemental RFP
13 document.

14
15 **2) Mr. Egan's Use of the Michael Caldwell Letter**

16
17 **Q. What was your reaction to Mr. Egan's use of the Michael Caldwell letter**
18 **to Chairman Jaber?**

19 **A.** My reaction was somewhere between bewilderment and amazement. Mr.
20 Egan mischaracterizes Mr. Caldwell as "an FPL insider," Mr. Caldwell has
21 not been employed by FPL for some nine years. In addition, Mr. Caldwell
22 states that he was a Regulatory Coordinator and that his work focus included

1 “generation expansion”, yet his letter exhibits little or no knowledge of the
2 regulatory process or generation expansion.

3
4 **Q. Why does this bewilder/amaze you?**

5 A. I’ve been a supervisor in FPL’s planning department since 1991, and for
6 almost all of that time my responsibility has been the preparation of FPL’s
7 resource expansion plan. I don’t recall even hearing of Mr. Caldwell (much
8 less dealing with him) until the discovery phase of these proceedings.
9 Subsequently, I’ve been informed that Mr. Caldwell was dismissed from FPL
10 in 1993, that he never held a management position at FPL, and that he had no
11 responsibility for formulating FPL policy or “philosophies.” Since I had no
12 dealings with Mr. Caldwell in 1991 and 1992 concerning FPL’s resource
13 expansion plan, and he left FPL in 1993, any “insight” Mr. Caldwell might
14 have of FPL’s resource planning work could only be based on possible
15 discussions, etc. that would have taken place more than 10 years ago.
16 Furthermore, he clearly had no part in, nor first-hand knowledge of, FPL’s
17 RFP preparation and evaluation work.

18
19 In addition, even his “Regulatory Coordinator” responsibilities and experience
20 must have been limited since his letter calling for “..a public hearing..., with
21 all interested parties having a chance to participate, see documents, and to ask
22 questions” shows that he is unaware that a Determination of Need proceeding,
23 that includes a hearing (that precisely fits his description of a “public

1 hearing”), is required in order to gain approval of power plants like those
2 which are the subject of this hearing.

3
4 In short, far from being “an insider” with a depth of knowledge about subjects
5 related to these proceedings, Mr. Caldwell is a former FPL employee who left
6 FPL nine years ago, he has had nothing to do with FPL’s resource planning
7 work for at least a decade, and he does not appear knowledgeable about the
8 regulatory process that is now underway. Mr. Egan’s characterization of Mr.
9 Caldwell as “an insider” is just plain misleading.

10

11 **Q. Mr. Caldwell’s letter contains the following quote: “FPL’s philosophy**
12 **was then (and I’m sure still is) to take whatever action is necessary to stop**
13 **or minimize competition from such outside energy companies.” In regard**
14 **to the issues before the Commission in these proceedings, at any time**
15 **were instructions of any kind given to you or by you to structure either**
16 **the RFP documents or the evaluation so that FPL would have an**
17 **advantage or be guaranteed to win?**

18 A. No. Since I was responsible for both preparing the RFP documents and
19 supervising the evaluation work, I would have had to know if any such
20 directive had been given, because I would have had to carry it out. No such
21 instructions of any kind were ever given to me, and I never gave such
22 instructions to anyone.

23

1 **3) Mr. Egan’s Comments Regarding FPL’s Purported Unwillingness To**
2 **Enter Into Short-Term Contracts**

3
4 **Q. Please respond to Mr. Egan’s comments about FPL’s supposed**
5 **unwillingness to enter into a purchase power contract especially “if the**
6 **proposed contractual term is for a short-term, say three to five years, as**
7 **the power project would be a merchant plant at the end of the contract**
8 **term.”**

9 **A. Several things come to mind. First, he is simply incorrect. In 2001 FPL**
10 voluntarily signed seven firm power purchase agreements for over 1,100 MW.
11 These contracts are all short-term (ranging from one to six years), and all but
12 one of these contracts are with independent power producers who bid into one
13 or both of FPL’s RFP solicitations.

14
15 Second, this comment that FPL is particularly biased against short-term
16 contracts is one that Mr. Egan himself contradicts on Page 9, line 1 in which
17 he states that “...it appears that Bidders who submit proposals for either large
18 amounts of capacity or long-term capacity are penalized relative to those
19 Bidders who submit proposals for smaller amounts of capacity or short-term
20 capacity.” After reading these two comments, I was left wondering what Mr.
21 Egan really believes: is FPL more biased against short-term or long-term
22 purchases? Maybe he just believes we’re biased against all purchases
23 (although that still leaves unaddressed the facts that FPL just signed up 1,100

1 MW of new power purchases and that FPL signed a long-term power purchase
2 agreement and acted as a co-applicant in a need determination proceeding
3 with an independent power producer even before the Bid Rule was adopted).

4
5 **4) Mr. Egan’s Arguments That The RFP Process Gives FPL Advantages**

6
7 **Q. Mr. Egan comments on page 8 that FPL has a “distinct advantage over**
8 **other bidders, including CPV.” Please respond.**

9 **A.** Mr. Egan appears to lose sight of the fact that the objective of the RFP process
10 was to ensure that customers are served by the best, cost-effective capacity
11 additions available, not to ensure a certain level of business for independent
12 power producers. FPL has an obligation to serve and will be the party
13 entering into a contract with any successful bidder. As such, it is the
14 appropriate entity to develop the RFP, conduct the evaluation of competing
15 proposals consistent with its needs, and negotiate any resulting agreement to
16 arrive at the best alternative for customers. Any decision by FPL is subject to
17 Commission review and approval. The Bid rule recognizes this responsibility
18 and directs the actions of the utility.

19
20 FPL not only carried out its RFP-related responsibilities, it went beyond the
21 Bid Rule’s requirements by charging an independent evaluator, Sedway
22 Consulting, Inc., to run a parallel evaluation of the bids and by inviting the
23 Commission Staff to monitor FPL’s bid evaluation process and subsequent

1 negotiations. (However, Mr. Egan’s listing of what FPL did in its RFP work
2 somehow failed to mention these facts).

3

4 **5) Mr. Egan’s Mischaracterization of My Equity Penalty E-mail**

5

6 **Q. Mr. Egan refers to the equity penalty as FPL’s “ace in the hole” and**
7 **points to a reply memo you wrote referring to “a cake” as evidence of**
8 **this. What is your reaction?**

9 A. My first reaction is that once again Mr. Egan has misinterpreted the facts. He
10 refers to the equity penalty as FPL’s “ace in the hole”. In the use of this term
11 with which I’m familiar, “ace in the hole” refers to a card/object that is hidden
12 from the other players in the game but which can be played later. However,
13 FPL never tried to hide the fact that it would include the effects of proposals
14 on its cost of capital in its RFP evaluations. This fact is plainly written on
15 page 18 of the Supplemental RFP. In addition, the initial RFP document and
16 the initial RFP filing documents all clearly portray the fact that an equity
17 penalty calculation would be/was used. Therefore, every bidder to FPL’s
18 Supplemental RFP knew that an equity penalty calculation would be included
19 in the evaluation.

20

21 **Q. But what about the “cake” reply e-mail he mentions?**

22 A. Let’s see what Mr. Egan did with this reply e-mail. He grabs a phrase used in
23 the note, “icing on the cake”, stretches this to mean that the equity penalty is

1 the “icing on the cake”, and leaps to the conclusion that “..this phrase is used
2 to reflect the fact that FPL imposed an equity penalty to give itself some room
3 to maneuver in comparing its self-build options against competing bids and
4 evidences FPL’s predetermined conclusion that it would win its RFP”.

5
6 Such stretching and leaping is yet another example of Mr. Egan
7 mischaracterizing the facts.

8
9 What the note actually says is “...once we got all of the cost data, the equity
10 penalty is not only ‘not the cake’, but it may not even be the icing. It’s more
11 like the candle.”

12
13 **Q. What is the real meaning of the note?**

14 A. The real meaning of the note was that the equity penalty was not the deciding
15 factor in the economic evaluation.

16
17 At that point in mid-January, the closest plan economically to the All FPL
18 plan was a combination plan (Combination Plan 1) that was approximately
19 \$60 million (CPVRR) more expensive than the All FPL plan without the
20 equity penalty.

21
22 Interestingly, the evaluation results FPL saw in mid-January for the initial
23 RFP; i.e., that the All FPL plan was the better economic choice without

1 applying an equity penalty, matches the current results for the Supplemental
2 RFP. With Calpine's withdrawal of all of its proposals, there is no remaining
3 plan that has lower total revenue requirements than the All FPL plan even
4 without an equity penalty.

5
6 This is shown in my Rebuttal Document No. SRS-1 attached to my testimony.
7 This is in the same format as my Document No. SRS-8 that was attached to
8 my direct testimony. On the first page of Rebuttal Document No. SRS-1, I
9 have restated Document No. SRS-8 to reflect the adjustments to El Paso unit
10 costs that were necessitated by revelations during negotiations (and
11 corrections to two lines were also made). Previously, I supplied an El Paso
12 adjustment to Mr. Silva for the plans he summarized in his testimony, but I
13 did not make these changes to my Document No. SRS-8. The shaded lines on
14 page two of this exhibit indicate the plans that contained the Calpine
15 proposals. Page three of my Rebuttal Document No. SRS-1 is the same page
16 but with all expansion plans that contain Calpine proposals removed.

17
18 **Q. Why is it appropriate to remove the plans that included Calpine**
19 **proposals?**

20 A. When Calpine withdrew from these proceedings, they also withdrew their
21 Supplemental RFP bids. Those options, and the plans containing those
22 options, are no longer available for consideration to meet FPL's 2005 and
23 2006 capacity needs.

1 **6) Mr. Egan’s Mischaracterization of Mr. Water’s Memorandum**

2

3 **Q. Mr. Egan states that FPL had “predetermined” that it would win the**
4 **RFP, and he uses an October 31, 2001 memo from Sam Waters to Paul**
5 **Evanson and other high-ranking FPL officials as “evidence” of that**
6 **belief. Do you agree?**

7 A. No, although it shows more evidence of Mr. Egan leaping to conclusions.
8 Let’s put Mr. Waters’ note in perspective. Mr. Waters was the head of FPL’s
9 Resource Assessment & Planning business unit and thus had overall
10 responsibility for the RFP work. Also, Mr. Waters reported directly to Mr.
11 Evanson, FPL’s President. Therefore, if anyone would know if FPL
12 management had a preference for buying or building, he should know. Yet in
13 his memo he is clearly asking, “...do we want to build or buy...?” (Emphasis
14 added)

15

16 Mr. Waters’ note shows exactly the opposite of what Mr. Egan claims it
17 means. It shows that FPL had not decided from the start that it was going to
18 win.

19

20 In addition, this note was written approximately 2 months after FPL had
21 issued its initial RFP. Therefore, contrary to Mr. Egan’s allegations, FPL
22 clearly did not craft an RFP designed to ensure that FPL would win, and FPL

1 did not have a preference as to build versus buy even months after the RFP
2 had been issued.

3

4 **7) Mr. Egan's Reconstruction of Ms. Iglesias' Memo**

5

6 **Q. Mr. Egan points to a memo written by one of your co-workers to you as**
7 **evidence that FPL had predetermined that it would win the RFP**
8 **evaluation. What problems does he have with this memo?**

9 A. Among the passages in this memo that Mr. Egan selected and deemed
10 "alarming" and "instructive in that it clearly shows FPL's unabated desire to
11 self-build its 'needed' capacity" are the following:

12

13 - The title of the memo: "RFP Evaluation (Based on Assumption that FPL can
14 meet or beat lowest bid)";

15 - "PGD's costs will have to be at or below the costs of the best proposals. The
16 best/most defensible way to show this is through the VOD analysis."

17 - "These (PGD's) costs should be as aggressive as possible to both minimize
18 the remaining work and increase the defensibility of any subsequent decision
19 to go with an FPL option."

20 - "As necessary, repeat steps 2 – 4 until it is determined what cost reductions
21 are necessary by FPL so that proposals' cost are higher than VOD benefits of
22 deferring the FPL projects."

1 - "In order to provide a more complete picture, enter the resulting FPL project
2 costs into EGEAS versus the proposals to ensure that the FPL projects are
3 selected by EGEAS as the winner."

4
5 In addition, Mr. Egan states that '..EGEAS appears to be used simply as a
6 tool, after the evaluation process is repeated as often as necessary to declare
7 FPL the winner to somehow "legitimize" this skewed, slanted, and false
8 evaluation process.'

9
10 Mr. Egan apparently sees this memo as detailing the evaluation plan that FPL
11 actually used and misinterprets it to mean that FPL will keep evaluating until
12 it wins the evaluation.

13
14 **Q. Does this memo accurately portray the actual evaluation process that**
15 **FPL used for either the initial or Supplemental RFP?**

16 A. No. The memo from Ms. Iglesias was in response to a July 18, 2001 memo
17 from me (that is included in Mr. Egan's Composite Exhibit DFE-5) in which I
18 explain that our group will have a meeting in a few days "to discuss how we
19 will actually evaluate proposals we'll receive from the RFP" and that I want
20 her to take "a first cut at developing an evaluation plan" (emphasis added). I
21 then pose a number of questions for her to consider in her draft and close with
22 the statement that this "first cut" document that she'll prepare "..should give
23 us a very good start at getting ready."

1 It should be clear from these passages that her response is simply a first draft
2 at developing an evaluation plan and that at least one subsequent meeting will
3 be held to discuss her draft. A final evaluation methodology was not
4 developed until well after that meeting had been held. More importantly,
5 neither the final evaluation methodology used by FPL in evaluating the initial
6 RFP, nor the final evaluation methodology used by FPL in evaluating the
7 Supplemental RFP, was the methodology initially suggested in Ms. Iglesias'
8 memo.

9
10 **Q. Please address the specific passages in Ms. Iglesias' memo that seem to**
11 **trouble Mr. Egan so much?**

12 **A.** Let's examine them one at a time to see what they really mean.

13
14 1) (The title of the memo) "RFP Evaluation (Based on Assumption that FPL can
15 meet or beat lowest bid)":

16 The "meet or beat" language refers to FPL's understanding that the
17 Commission's intent under the Bid Rule has been to allow the utility which
18 issued that RFP to ultimately lower the price of its self-build option to either
19 meet or beat any bid that is more economic than the self-build option. The
20 concept is to give the utility's customers the best possible price regardless of
21 whether the utility or a bidder provides the capacity (and, if the utility chooses
22 to "beat" that price, the customers benefit even more).

23

1 This idea that the utility would have the opportunity to meet or beat at the end
2 of the evaluation was assumed in the remaining text of the draft memo. It did
3 not mean that the utility would necessarily be selected, merely that it would
4 have the opportunity at the end to decide if it can and wants to meet or beat
5 any lower cost option.

- 6
7 2) “PGD’s costs will have to be at or below the costs of the best proposals. The
8 best/most defensible way to show this is through the VOD analysis.”

9 The first sentence refers back to the “meet or beat” premise. In order to meet
10 or beat, the FPL self-build options simply “have to be at or below the costs of
11 the best proposals.” The second sentence reflects Ms. Iglesias’ thought in this
12 draft of the evaluation plan that the best way to determine which option is
13 more economic is through a Value of Deferral (VOD) analysis approach. This
14 shows the preliminary nature of the memo, because the VOD approach was
15 discarded and never used in the evaluations performed for either the initial
16 RFP or the Supplemental RFP.

- 17
18 3) “These (PGD’s) costs should be as aggressive as possible to both minimize
19 the remaining work and increase the defensibility of any subsequent decision
20 to go with an FPL option.”

21 The term “aggressive” simply refers to the evaluation team’s desire to get the
22 lowest realistic cost for the FPL self-build options at the start. This will
23 minimize the iterative evaluation work (discussed below in regard to “steps 2

1 – 4”) that might be performed. Such an approach also helps show in any
2 subsequent review of the evaluation that FPL always intended to give
3 customers the lowest price possible from an FPL self-build option.

- 4
- 5 4) “As necessary, repeat steps 2 – 4 until it is determined what cost reductions
6 are necessary by FPL so that proposals’ cost are higher than VOD benefits of
7 deferring the FPL projects.”

8 Ignoring the reference to the VOD evaluation approach that was never used,
9 the concept that is being discussed here is an iterative evaluation approach if
10 FPL got to the “meet or beat” stage. (FPL never got to this stage since the All
11 FPL plan was the economic winner after the evaluation was completed.) This
12 iterative approach could be carried out if FPL’s self-build options were not the
13 lowest cost options once the evaluation of all options had been completed and
14 if FPL attempted to see if it could meet or beat the cost of the lowest cost
15 option.

- 16
- 17 5) “In order to provide a more complete picture, enter the resulting FPL project
18 costs into EGEAS versus the proposals to ensure that the FPL projects are
19 selected by EGEAS as the winner.”

20 If the iterative VOD approach outlined had been followed (which it was not),
21 then to ensure that the VOD-derived values necessary for FPL to be able to
22 meet or beat were accurate, they would need to have been entered into
23 EGEAS to see if EGEAS provided the same answer. That is all that I

1 understand the phrase “to ensure that the FPL projects are selected by EGEAS
2 as the winner,” signifies.

3

4 **Q. Did FPL actually employ in its Supplemental RFP evaluation an iterative
5 process such as the one outlined in Ms. Iglesias’ memo?**

6 A. No. Because FPL’s self-build options were lower cost alternatives than any
7 other, FPL never had to decide whether it would meet or beat a bid price.

8

9 **Q. Please address Mr. Egan’s claim regarding Ms. Iglesias’ memorandum
10 that “..EGEAS appears to be used simply as a tool, after the evaluation
11 process is repeated as often as necessary to declare FPL the winner to
12 somehow ‘legitimize’ this skewed, slanted and false evaluation process”?**

13 A. Mr. Egan is again incorrect. EGEAS was the sole computer model used
14 throughout FPL’s evaluation. There was no preliminary VOD analysis as he
15 alleges and there was no iterative process to investigate potential revisions to
16 the costs of the FPL self-build options.

17

18 **Q. Is there anything else about Ms. Iglesias’ memo that should be pointed
19 out?**

20 A. Yes. Since Mr. Egan uses the memo as clear “evidence” that FPL had
21 predetermined that it would win the RFP, it should be pointed out that the
22 memo concludes with the following Step 7: “Present results to FPL
23 management/PGD for them to use in deciding if FPL will build or buy”

1 (emphasis added). I simply can't stretch/leap well enough to see how the
2 phrase "in deciding if FPL will build or buy" is evidence that FPL had
3 definitely decided in July 2001 to build (especially given Mr. Waters' end of
4 October 2001 memo in which he was still seeking guidance as to Company's
5 preference, if any).

6
7 **8) Mr. Egan's Arguments Regarding "Other Risks"**

8
9 **Q. Mr. Egan complains that FPL did not recognize "other risks" including**
10 **cost overruns and equipment obsolescence. What are your thoughts on**
11 **this?**

12 **A.** There are a variety of risks in any large-scale development project such as the
13 combined cycle plants represented in CPV's bids and in FPL's self-build
14 options. Either a utility or an independent power producer could face similar
15 problems of the type he mentions. However, Mr. Egan gives the impression
16 that consideration of such risks favors only a non-utility bidder. Let's take a
17 look at these two risks and see.

18
19 First let's look at the risk of obsolescence of a combined cycle (CC) plant. For
20 argument's sake, let's look at a CC plant that the utility can build or a CC-
21 based 20-year contract that a bidder enters into with a utility. Assume that 10
22 years after the CC plant begins operating, the CC unit technology becomes

1 “obsolete” in the sense that, due to the subsequent development of more
2 efficient technologies, it no longer operates at as high a capacity factor.

3 The contribution to recovery of an investment in a utility generating plant
4 decreases over time as the investment is depreciated. In other words, the
5 “cost” to the customers decreases as the plant ages. In addition, since the
6 utility has to maintain a given reserve margin, it will be inclined to maintain
7 the plant and allow it to move along the natural “cycle” of fossil generating
8 units from a base load plant to an intermediate, or even a peaking plant. In
9 other words, the already largely paid for utility CC plant will remain useful by
10 assuming another role in the system dispatch while contributing to the utility’s
11 reserve margin.

12
13 In a similar situation, the picture is different for a bidder’s CC unit. Based on
14 the bids recently submitted to FPL in response to the RFP solicitations, the
15 bidder’s contracted payments, both for fixed and variable costs, will generally
16 start low and escalate over time. Faced with lower capacity factors, the
17 revenue from variable cost payments to the bidder drops as the unit’s capacity
18 factor drops. A bidder, particularly one that has requested high variable O&M
19 cost payments, may face pressure to attempt to renegotiate with the utility, to
20 cut back on costs through lower maintenance regimes or other operational
21 approaches, or to walk away from the project. At least two, and perhaps all
22 three, of these actions would negatively affect the utility’s customers.

23

1 Therefore, I view the risk of technological “obsolescence” as one that
2 advantages the utility owning the plant, not an independent owner under
3 contract. In addition, unlike the equity penalty that is readily quantifiable,
4 there is no readily quantifiable adjustment for technological obsolescence.
5 Finally, the combined cycle technology being proposed by FPL and most of
6 the bidders has a low risk of becoming obsolete.

7

8 **Q. What about the risk of cost overruns?**

9 A. First let’s take a brief look at costs that are passed on to FPL’s customers from
10 new capacity additions. If a power purchase contract is signed and approved,
11 the contract costs are passed directly through the capacity clause, thus
12 increasing customers’ electricity rates due to the higher capacity clause
13 amount. This direct and immediate passing on of contract costs was assumed
14 in FPL’s evaluation.

15

16 The evaluation also assumed that the revenue requirement costs of a utility
17 self-build option would also be immediately passed on to customers. Thus,
18 both types of options, buy and build, were treated equally in the evaluation.

19 With this in mind, let’s take a look at potential cost overruns. Any recovery of
20 costs for a utility’s self-build option must be approved by the Commission.
21 Therefore, only costs that are justified in the eyes of the Commission would
22 be approved. If the utility fails to convince the Commission that the costs in
23 question are justified, then it is the utility’s investors, not the utility’s

1 customers that pay the cost. If there are cost underruns, they accrue to the
2 benefit of customers.
3 Mr. Egan states that cost overruns by a bidder would be “shouldered by the
4 private sector, not ratepayers”. This is true in only one of three possible
5 scenarios that might occur if the successful bidder faced cost overruns: 1) the
6 bidder absorbs these costs; 2) the bidder attempts to renegotiate with FPL; or
7 3) the bidder, unable to do either of the above, walks away from the project. If
8 either 2) or 3) occur, the utility’s customers may be negatively impacted. If a
9 bidder experiences cost underruns, the benefits accrue to the bidders’
10 shareholders.

11
12 Therefore, I view the risk of cost overruns as one that has the potential to have
13 some impact on utility customers regardless of whether a bidder or FPL builds
14 the plant. It also has the potential to impact shareholders for either type of
15 entity. Because there is no regulatory guarantee that utility cost overruns
16 would be recovered from utility customers, I disagree with Mr. Egan’s
17 suggestion that cost overruns would necessarily be shouldered by utility
18 customers. Similarly, I disagree that cost overruns by a bidder would
19 necessarily not have any impact on utility customers. If they are significant
20 enough, the bidder will either seek additional costs from the utility or walk
21 away from its investment. Either alternative would impact utility customers.

22

1 However, in performing the economic analysis, the proper approach is to
2 assume that neither the bidders nor FPL would incur cost overruns. That
3 treats both options the same. There is no basis to assume that either option
4 will incur cost overruns, no basis to quantify any potential cost overruns, and
5 no basis on which to assume how potential cost overruns may ultimately
6 impact customers. Consequently, potential cost overruns should not be
7 included in the economic analysis.

8
9 **9) Mr. Egan’s Statement That Bids Are “Binding.”**

10
11 **Q. The final item on your list for Mr. Egan is his statement that, in regard**
12 **to CPV’s bids, “...had they been accepted and a contract agreed to, would**
13 **have been binding”. How do you react to that comment?**

14 A. I have several reactions to this statement.

15
16 First, he acknowledges, perhaps unintentionally, that CPV’s bids were not
17 binding. He asserts an important qualifier, “had they been accepted and a
18 contract agreed to.” CPV included language in its bids that showed its bids
19 were not binding but were contingent on subsequent developments. Before
20 bids are “accepted and a contract agreed to,” there are negotiations. All types
21 of adjustments can and do happen in negotiations. The initial negotiations in
22 this case are evidence that bids are anything other than certain or binding.

1 Until negotiations are concluded and a contract is signed, there is no
2 commitment.

3
4 Even after a contract is signed, there is no certainty that the commitment will
5 be adhered to. Entities contracting with FPL can and have come back to FPL
6 seeking renegotiation of terms or have sued FPL because the terms they
7 agreed to are no longer commercially practicable or because they
8 subsequently read the terms differently than FPL does. So a suggestion that
9 bids that are binding without a contract or even after they are committed to
10 contract is not accurate.

11
12 Second, my reaction is that CPV's bids should have been binding, even
13 though they were not. The bids offered by CPV were anything but competitive
14 in price. In fact, as a group, their bid prices were clearly among the very
15 highest FPL received in response to either the initial RFP or the Supplemental
16 RFP. Not only were they not competitive with FPL's self-build options,
17 virtually every other bid offered in response to either RFP beat CPV's bids.
18 In fact, CPV's bids were approximately twice the cost of the lowest cost
19 outside proposals.

20
21 To understand just how non-competitive CPV's bids were, one needs to
22 consider how they ranked against the other Supplemental RFP bids. Both
23 FPL and Sedway, the independent evaluator, performed such a ranking

1 analysis. The final ranking are shown on my Rebuttal Document No. SRS-2.
2 CPV's proposals were code numbered P50, P51 and P52. They were ranked
3 by FPL as 13th, 14th and 17th out of the 17 bids for 2005 capacity, and they
4 were ranked by Sedway as 14th, 16th and 17th. In other words, both FPL and
5 the independent evaluator ranked one of CPV's proposals dead last and the
6 rest of CPV's proposals were ranked almost as low. As I said, such high-
7 priced, non-competitive bids should have been binding. They appear to have
8 been designed to yield an extremely high rate of return.

9
10 Boasting that such high priced bids "would have been binding" is analogous
11 to offering to sell an item for \$10 when numerous other suppliers can provide
12 it for \$5, but trying to justify the very high price by stating that your price is
13 "binding." Such an approach is not likely to be successful in a competitive
14 bidding environment.

15
16 **Q. What is your overall view of Mr. Egan's testimony?**

17 A. I actually found what Mr. Egan did not say in his testimony as interesting as
18 what he did say. Mr. Egan never claims, as his firm's petition to intervene
19 claimed, that Competitive Power Ventures' bids were the most cost-effective
20 bids. (Perhaps through the discovery process Mr. Egan now realizes how non-
21 competitive his company's bids really were.) He'll only go as far as to say
22 they were "binding," even though he acknowledges they were not binding
23 until committed to a contract.

1 What Mr. Egan does say is that: (a) the process is “unfair”, and (b) FPL
2 determined in advance that it would win and evaluated the outside proposals
3 accordingly. However, in regard to (a), he actually points out that FPL simply
4 carried out its RFP responsibilities. (However, he conveniently doesn’t
5 mention that FPL even went beyond those responsibilities by issuing a
6 Supplemental RFP (in essence a “do-over” for the bidders), arranging for an
7 independent evaluator to run a parallel evaluation, and inviting the
8 Commission Staff to monitor the evaluation and negotiations).

9
10 In regard to (b), Mr. Egan offers several exhibits that he believes are
11 “evidence” of an FPL predetermination to win the RFP from the start.
12 However, a correct reading of these same documents shows that, at best, he is
13 simply misunderstanding them and, at worst, he is attempting to skew their
14 true meaning to prove a preconceived hypothesis of his.

15
16 Overall, Mr. Egan’s testimony is reflective of his company’s proposals to the
17 RFPs. His company’s proposals were not even close to being competitive and
18 he admits the bids were not binding until a contract was agreed to. Unable to
19 compete economically, Mr. Egan is left only with the excuse that the process
20 is “unfair”. He attacks RFP terms that were either abandoned in the
21 Supplemental RFP or which he could have raised exceptions to in his bid but
22 chose not to (even though he raised exceptions to other terms). He readily
23 contradicts himself and consistently mischaracterizes documents. His

1 inaccurate characterization of FPL's Supplemental RFP and evaluation
2 process as "unfair" is no more compelling than his company's woefully non-
3 competitive bids.

4

5 **II. Mr. Slater's Testimony**

6

7 **Q. What aspects/statements in Mr. Slater's testimony will you address?**

8 A. I shall address 9 aspects/statements in Mr. Slater's testimony.

9

10 **1) Mr. Slater's Understatement of the Margin of the Economic Analysis**

11

12 **Q. Mr. Slater testifies at page 4 that there is "...only \$60 million between**
13 **FPL's proposal and other alternatives" and that "this is a very small**
14 **margin..". What is your reaction?**

15 A. My first reaction is "only \$60 million" and "small margin!" What does he
16 consider to be real money? Interestingly enough, he never explains what level
17 of difference he would deem as a significant amount.

18

19 My second reaction is that he has his facts wrong. As Mr. Silva's testimony
20 states, the final differential after the negotiations with El Paso were completed
21 between the All FPL plan and the most economic combination plan that does
22 not contain both FPL self-build options is not \$60 million, but \$83 million. As
23 I mentioned earlier in my testimony, I have prepared Rebuttal Document No.

1 SRS-1 to show the impact of the El Paso adjustments on the information in
2 my Document No. SRS-8. It shows the next best plan not containing both
3 FPL units to be \$83 million, not \$60 million, more costly than the All FPL
4 plan. Also, this is not just \$83 million in nominal dollars, it is \$83 million net
5 present value in 2001 dollars.

6
7 My third reaction is that it should be remembered that the most economic plan
8 consisting solely of outside proposals was approximately \$500 million
9 (CPVRR) higher. Surely even Mr. Slater would not consider half a billion
10 dollars (CPVRR) to be a “small margin.”

11

12 **2) Mr. Slater’s Inability to State That The Outcome of FPL’s Analysis**
13 **Was Wrong**

14

15 **Q. Mr. Slater stated in his conclusions on page 5 that in regard to FPL’s**
16 **evaluation “..the wrong result may have been reached” (emphasis added).**
17 **What is your response to that?**

18 **A.** Mr. Slater has not shown FPL’s analysis to be in error in any fashion. The
19 facts are that the analysis was rigorous and sound as explained in our direct
20 testimony. We have confidence in the results which have been independently
21 confirmed. The Commission should have confidence in the analysis as well.

22

23 **3) Mr. Slater’s “Problems” with EGEAS Modeling**

1 **Q. Mr. Slater’s testimony at page 6 discusses a couple of “problems” with**
2 **the evaluation. Please comment on the points he raises about the EGEAS**
3 **modeling?**

4 A. Mr. Slater points out two “problems” he sees in the EGEAS modeling: not
5 modeling “startup costs” in EGEAS, but modeling them “off-line”, and not
6 accounting for seasonal variations in output and heat rate for combined cycle
7 units.

8
9 Mr. Slater is incorrect in regard to his first assertion. While it is true that in the
10 initial RFP evaluation work we did calculate startup costs outside of EGEAS
11 and added them after the EGEAS work was completed, that is not the way
12 startup costs were modeled in the Supplemental RFP evaluation. In this
13 evaluation, the annual startup costs were calculated based on the cost per
14 startup information submitted in each bid and then added to each bids’ O&M
15 costs. Therefore, the modeling of each bid in the EGEAS optimization work
16 included the startup costs.

17
18 In addition, I wonder why he even bothers mentioning startup costs. If one
19 were to take the startup costs for one of FPL’s units at the projected number of
20 6 startups per year, and assume no startup costs for any of the outside
21 proposals, the relative NPV cost reduction benefiting any outside proposal
22 would be less than \$0.8 million. If \$60 million rates as a “very small margin”

1 for Mr. Slater, it is curious that a cost that is two orders of magnitude lower
2 rates mentioning.

3
4 In regard to Mr. Slater's assertion that FPL did not model seasonal variation in
5 CC units, he is correct. This is because the CC units, regardless of whether
6 they are bidders' units or FPL units, will all have relatively similar seasonal
7 variations. I believe that any relative differences between these CC units due
8 to seasonal variation would be negligible.

9
10 Instead, FPL concentrated its evaluation efforts on more meaningful
11 differences in the CC units. There was wide variation between the CC units
12 proposed in the bids in regard to their operational modes. Some units offered
13 duct firing, peak firing, etc. modes while others claimed only a "base"
14 operational mode. FPL changed its forms for the Supplemental RFP to more
15 easily enable bidders to provide this type of information so that the evaluation
16 could accurately capture the effects of these different operational modes
17 between CC-based bids.

18
19 **4) Mr. Slater's Inaccurate Observations About Modeling Variable O&M**

20

21 **Q. Mr. Slater's testimony at page 6 raised concerns about "the application**
22 **of variable O&M". Please comment on this.**

1 A. Mr. Slater makes the following statements: “Bids based on combined cycle
2 units, would have included, variable O&M charges based on variable
3 maintenance expenses as well as consumables involved in operation. FPL
4 included such bid charges in its modeling for non-FPL bids, but only included
5 the very much smaller consumables charges for its own units, choosing to
6 ‘off-line’ estimates of the much larger variable maintenance expense.”

7
8 Mr. Slater is again incorrect. We did not take variable O&M costs for outside
9 proposals and FPL options, divide them into components, and then decide to
10 model outside proposals differently than we would model FPL options. We
11 evaluated and modeled the variable O&M costs given to us both by bidders
12 and by FPL’s PGD business unit exactly as they were provided to us.

13
14 Let’s first look at “operation and maintenance” type expenditures. FPL
15 typically projects costs for a new plant by addressing such expenditures in
16 three categories of costs: fixed O&M, variable O&M, and capital replacement.
17 What is important is that the total projected operation and maintenance
18 expenditures (given a likely capacity factor range for the unit) are all
19 accounted for by the sum of costs in these three categories. There is no single
20 correct way to divide these costs up into these categories. PGD’s approach for
21 the FPL self-build options resulted in low variable O&M costs (approximately
22 4 cents/MWh) with the fixed O&M and capital replacement categories picking
23 up the majority of the total costs. FPL presented this approach in the “next

1 planned generating unit” tables in the initial RFP and Supplemental RFP
2 documents, and in its initial RFP Need filing documents. Therefore, FPL’s
3 approach was known to bidders prior to their bid preparation.

4
5 The bids actually showed a very wide range of variable O&M costs. At least
6 two bids appeared to follow FPL’s approach with low variable O&M costs of
7 less than \$0.25/MWh while other bids ranged up to as high as approximately
8 \$6.50/MWh. This wide disparity in the variable O&M estimates for basically
9 similar types of generating units reinforces the point that there is no single
10 correct way to allocate operating and maintenance costs between the various
11 cost categories. It appears that the bidders based their cost allocations at least
12 in part on desired levels of fixed versus variable payment streams.

13
14 However, regardless of how the variable O&M costs were allocated and
15 presented in their bids, FPL evaluated them as they were received without
16 modifications. In addition, the total O&M costs for FPL’s self-build units
17 were included in the evaluation.

18
19 **5) Mr. Slater’s Call for a Purchased Power Quota**

20
21 **Q. Mr. Slater’s suggested at page 8 that the Commission should seek a**
22 **“balance” of resources especially given “that FPL has a relatively small**

1 **portion of resources in the form of power purchase contracts”. Do you**
2 **believe that this suggestion has merit?**

3 A. No. First let me address the comment that “FPL has a relatively small portion
4 of resources in the form of power purchase contracts”. In regard to this
5 comment, Mr. Slater does not state what FPL’s power purchase amount is
6 being compared to. Whatever it is, it must be pretty big. FPL currently has
7 approximately 3,300 MW (Summer) of firm purchased power contracts that
8 represents about 16% of its total capability. More telling, if this purchased
9 power amount were a separate utility in Peninsular Florida, it would rank as
10 the 4th largest utility. That doesn’t seem very “small” to me.

11
12 In regard to his suggestion that the Commission should seek “an overall
13 balance to the mixture of resources with which FPL serves its ratepayers”, he
14 appears to be advocating a “quota” of a certain amount of power purchases
15 which FPL’s customers will be required to support. My initial reaction upon
16 reading this was to ask if his client, PACE, really believes that their industry is
17 so ill-equipped to compete in Florida that they need to bypass the Bid Rule
18 entirely in favor of establishing a quota system?

19
20 In any case, what Mr. Slater is suggesting is a 180 degree change of direction
21 from the Bid Rule’s objective of ensuring that customers are served by the
22 best capacity options. A “resource quota” is not a new idea; a similar idea of a
23 demand side management (DSM) resource quota was argued before the

1 Commission in the 1990s. The Commission wisely decided against that and
2 ensured that only cost-effective DSM resources should be implemented.
3 Hopefully, it will continue to feel the same way now in regard to power
4 purchase resources.

5

6 **6) Mr. Slater's Filler Unit Comments**

7

8 **Q. Please address Mr. Slater's comments at page 8 about the use of "filler"**
9 **units in the FPL evaluation.**

10 A. Mr. Slater states that there are two "problems" in regard to the filler units. The
11 first of these is that we used "greenfield" filler units. He goes on to say that
12 "FPL attributes the higher costs of the 'greenfield fillers to the respondents'
13 bids, and this biases comparisons with the self-build options".

14

15 This last statement is incorrect. We did not "attribute costs" of the filler units
16 "to the respondents' bids". Filler units are used in all expansion plans that
17 were evaluated to ensure that FPL's reserve margins were met in all years of
18 the analysis. Each plan, whether it is the All FPL plan, a combination plan, or
19 an All Outside plan, included at least a half-dozen filler units. Between these
20 types of plans the filler units were all of the same type for a given year with
21 only the overall total number and timing of the filler units varying from one
22 plan to another. The number and timing of the filler units depended totally on
23 the size and term-of-contract that a given outside proposal had brought to that

1 plan. When replacement capacity was needed to maintain reserve margins, a
2 filler unit was added by EGEAS. Consequently, Mr. Slater's assertion that
3 "FPL attributed the higher costs of the 'greenfield fillers' to the respondents'
4 bids" is inaccurate and misleading. The costs of the filler units were added to
5 all plans including the All FPL plan.

6 However, his main bone of contention in regard to the "greenfield" fillers is
7 that FPL should have used "brownfield" costs for the fillers since brownfield
8 unit costs are generally less expensive than greenfield costs.

9
10 **Q. Did the evaluation team consider this approach?**

11 A. Yes. In developing its evaluation approach, FPL did consider this approach.
12 However, the analysis period is approximately 30 years and at least a half-
13 dozen new filler units would be added to all plans, including the All FPL plan,
14 in the analysis. Therefore, at some point FPL would likely run out of
15 brownfield sites and begin to develop greenfield sites. My belief is that the
16 majority of the filler units in this period will be built at greenfield sites. Based
17 on this, and the knowledge that all plans would contain essentially the same
18 number of filler units, the decision was made to stick with greenfield costs
19 throughout the study period.

20

21 **Q. Were the costs of these greenfield filler units unusually high?**

22 A. No. Although the costs of the greenfield filler units were higher than the
23 Martin and Manatee units that are the subject of this proceeding, the

1 greenfield filler units 'were actually less costly than most of the combined
2 cycle-based outside proposals. In Alan Taylor's direct testimony on page 9 of
3 his Document No. AST-2, Mr. Taylor states: "Of the 13 combined-cycle
4 facilities that were proposed in FPL's supplemental solicitation, the filler
5 resource was less expensive than nine of them. Thus, Sedway Consulting
6 believes that the filler resource assumptions provided a favorable backdrop for
7 all of the proposed power supply agreements that had expiration dates prior to
8 the end of the study period."

9
10 Therefore, since about 70% of the combined cycle-based bids were higher
11 cost than the filler units used in the analyses, then one must conclude that the
12 filler unit costs are at least reasonable, and may be inexpensive, in the eyes of
13 most of the bidders.

14
15 **Q. But is Mr. Slater correct in his assertion that analyses with a lower cost**
16 **filler unit were not conducted?**

17 A. No. Mr. Slater appears not to have read the testimony of Mr. Taylor of
18 Sedway Consulting, Inc. (Sedway), the independent evaluator charged with
19 running an evaluation parallel to FPL's. Sedway's approach to including the
20 costs of replacement capacity was fundamentally different than FPL's. Rather
21 than assume that the replacement capacity would be made up of a series of
22 utility filler units to continually maintain a reserve margin, Sedway assumed
23 that each MW of purchase that went away when the contract was up would be

1 replaced, MW for MW. In Sedway's approach, there was no concern over
2 expansion plans over a study period for which a reserve margin level had to be
3 maintained.

4
5 In addition, Sedway's approach to the cost of this replacement capacity was
6 different. The cost of filler units in FPL's approach was based on a traditional
7 declining revenue requirements stream. Sedway provided this replacement
8 capacity with an escalating cost pattern. This pattern is based on an escalating
9 cost stream as shown by most of the outside proposals. Consequently,
10 Sedway's approach essentially assumed that new purchases, rather than utility
11 filler units, would make up the replacement capacity.

12
13 Sedway based the starting cost of this replacement capacity on the cost of the
14 greenfield CC unit FPL used as its filler. However, recognizing that it might
15 be possible to delay one of FPL's units (say Manatee 3) several years and use
16 it as the first filler unit, Sedway also ran a sensitivity case in which Manatee 3
17 assumed the role of the first filler unit as outside proposals made up the
18 remainder of the 2005 -2006 capacity need. As Mr. Taylor explains on page
19 20 of his testimony, this sensitivity case still resulted in the All FPL plan
20 being more economic by at least \$125 million (NPV). This was \$125 million
21 instead of the \$135 million (NPV) Mr. Taylor calculated in his base case.
22 Thus, this brownfield instead of greenfield adjustment that Mr. Slater

1 advocates does not begin to change the bottom line conclusion that the All
2 FPL plan is the most cost-effective alternative.

3
4 Consequently, Mr. Slater's concern about the cost of greenfield versus
5 brownfield filler units has already been addressed in the evaluation, and no
6 change in the overall evaluation results showing the All FPL plan as the most
7 economic choice occurred.

8

9 **Q. Did Mr. Slater have a second concern regarding the filler units?**

10 A. Yes. Mr. Slater is concerned that the filler units' firm gas transportation costs
11 were assumed to be FGT-based rather than Gulfstream-based.

12

13 In both FPL's analyses and Sedway's base analyses the assumption of firm
14 gas transportation cost for the filler units was FGT. This approach was taken
15 based on the premise that the filler units would be "greenfield" sites and that
16 all expansion plans would have essentially the same number of these filler
17 units. In addition, FGT already covers a substantially larger portion of the
18 state than Gulfstream is projected to cover. It seemed logical that a majority of
19 these new greenfield filler units would likely be served by the broader expanse
20 of the FGT system. This premise was backed up by the fact that a number of
21 the bids received stated that they would be served by FGT. Consequently,
22 FGT costs were chosen as the basis for the firm gas transportation costs for
23 the filler units.

1 Nevertheless, in the Sedway sensitivity case that was just discussed, the
2 delayed Manatee 3 “filler unit” was assumed to be served by Gulfstream gas.
3 As previously discussed, there was no significant change in the results of this
4 evaluation; the All FPL plan was a \$125 million (NPV) winner.

5
6 **7) Mr. Slater’s Mischaracterization of FPL’s Self-Build Performance**
7 **Assumptions**

8
9 **Q. Mr. Slater testifies at page 10 that FPL included “overly optimistic”**
10 **performance assumptions for the FPL self-build options in its economic**
11 **analysis. Please address this claim.**

12 **A. He states that the two FPL self-build options’ performance data “appear to**
13 **describe the units operating in ‘new and clean’ condition”. In addition, he**
14 **claims that the units appear to have “a most aggressive availability**
15 **assumption.” He is incorrect in both claims. As stated on page 41, starting on**
16 **line 10, of my testimony for the initial RFP, assumptions for average expected**
17 **values for these units’ performance were used from about the middle of that**
18 **evaluation to its conclusion. Those performance assumptions have not**
19 **changed for the Supplemental RFP and represent the units’ expected**
20 **performance averaged between the time when the units come out of a major**
21 **overhaul to the time when they come off-line for a major overhaul. Mr.**
22 **Yeager addresses this point further in his rebuttal testimony. In addition, Mr.**
23 **Slater overstates the adjustment associated with moving from “new and clean”**

1 to average heat rates. The bidder which made such an adjustment in
2 negotiations adjusted the heat rate 1% to bring the unit to average
3 performance conditions.

4
5 **Q. What about his claim of a “most aggressive availability assumption” for**
6 **these units?**

7 A. A first glance may give that appearance. However, after accounting for the
8 fact that the peak firing component of FPL’s options will only be available to
9 be operated 1% of the hours in a year, the overall availability of the 1,107
10 MW FPL units used in the evaluation is actually 94.7%.

11
12 This availability value is certainly in-line with the majority of the bids
13 received. An availability calculation for all years for all eligible proposals
14 yields a MW-weighted average availability of 94.9%. If FPL’s availability
15 assumptions are “aggressive”, they are also clearly in-line with the bidders’
16 assumptions.

17
18 **8) Mr. Slater’s Statements Regarding “Binding Bids”**

19
20 **Q. Mr. Slater states at page 8 that “..when the services of a unit have been**
21 **included in a binding bid in response to FPL’s RFP, the bidder assumes**
22 **these risks”. Please comment on this.**

1 A. Since I've already commented on how the customers can still end up paying
2 for various risks from a binding contract in my discussion of Mr. Egan's
3 testimony, I won't address these points again. However, I will address the
4 reality of how "binding" the bids FPL received really were.

5
6 FPL's initial and Supplemental RFP asked for firm prices in a respondent's
7 bid. In many cases, that is not what we got. A number of the bids clearly
8 stated that this was an "indicative" bid only. I also received telephone calls
9 from bidders, particularly in the initial RFP work, to the effect that "why
10 worry so much about the numbers we gave you; we just want to sit down in
11 negotiations where we can 'work something out.'" Still other bids stated that
12 the bid numbers were still "subject to management approval."

13
14 The key point is that in evaluating bids received in response to an RFP, FPL's
15 experience is that many of them are not binding bids. Consequently,
16 statements alluding to all of the protection provided to FPL's customers from
17 "binding bids" are simply not based in reality.

18
19 **Q. In this same area of his testimony, Mr. Slater makes the following**
20 **comment about FPL's quantification of equity penalty costs: "When the**
21 **one-sided equity penalty is ignored, about a dozen of the plans combining**
22 **both FPL and competitor resources are less costly than the All FPL**
23 **plan." Is this statement correct?**

1 A. No. First, FPL's equity penalty is not "one-sided" as suggested by Mr. Slater.
2 FPL analyzed both its self-build options and purchases so that the resulting
3 adjusted FPL capital structure would have a 55%/45% equity/debt ratio. The
4 equity penalty for purchase options is the corollary to the 55%/45%
5 equity/debt incremental capital structure assumed for the FPL self-build
6 options. FPL analyzed all options so that the same corporate capital structure
7 would be preserved. Consequently, the equity penalty (or an equivalent
8 adjustment to the financing of the FPL self-build options) was a necessary and
9 balanced analytical step.

10

11 Second, Mr. Slater appears to be basing his comment on Document No. SRS-
12 8 in my testimony. It shows that about a dozen plans, out of literally thousands
13 examined, consisting of a combination of an FPL unit and one or more outside
14 proposals would beat the All FPL plan if the equity penalty costs are not
15 included.

16

17 However, as I have previously pointed out, my Document No. SRS-8 did not
18 include the El Paso adjustments. Moreover, after my testimony was filed but
19 before Mr. Slater's testimony was filed, Calpine withdrew all of its bids. In
20 making the comment above, Mr. Slater has neglected to re-examine Document
21 No. SRS-8 and include the El Paso adjustments and remove all plans that
22 include a Calpine proposal. Had this been done, he would see that no plan

1 exists that is more economical than the All FPL plan even without the equity
2 penalty. This is shown on my Rebuttal Document No. SRS-1.

3
4 **9) Mr. Slater's Improper Assessment of the Impact of Delay**

5
6 **Q. Please address Mr. Slater's calculation of the impact of delaying a**
7 **decision in this case for a year.**

8 A. First, he is very vague regarding the details of the calculation but reveals
9 enough to show that there are problems with his assumptions. Second, the
10 calculation premise itself is fundamentally flawed, thus rendering the results
11 of his calculation meaningless.

12
13 **Q. What does he reveal about the details of his calculation?**

14 A. Not much. However, one of his statements is that: "My data base captures all
15 of the generating resources that Peninsula Florida load could call on to
16 maintain reliable service, including merchant peaking capacity that is not
17 included in any utility's calculation of its individual reserve margin (emphasis
18 added) and resources which exceed a utility's target reserve margin"
19 (emphasis added).

20
21 These two descriptions of components in his database are troubling. In the
22 first he is clearly including plants that have not signed firm purchase contracts
23 with utilities. He gives no indication of the number or capacity of these plants,

1 or whether they currently exist or are merely “projected”. The second
2 description, “resources which exceed a utility’s target reserve margin”, is so
3 vague that I have no idea what he has included. From these descriptions the
4 only thing that is clear is that he has ignored the long-standing premise in
5 Florida that for reliability purposes you only count firm resources. Instead, he
6 has included an unknown amount of additional non-firm capacity.

7
8 The only other statement that reveals any real detail is the following: “I have
9 combined three separate sums for each of FPL’s self-build options, the impact
10 on operating costs of a 2% increase in heat rate, the impact on capacity of a
11 2.5% drop in capacity and the impact of a 5% increase in fixed costs”.

12
13 **Q. What problems are shown by these assumptions?**

14 A. There are several problems here. First, the 2% increase in heat rate and the
15 2.5% decrease in capacity appear to be based on his earlier stated assumption
16 that FPL’s unit performance is based on “new and clean” instead of average
17 conditions. (He earlier stated that a change from “new and clean” to average
18 conditions would increase heat rate by about 2% and decrease capacity by 2-
19 3%.)

20
21 I’ve already stated that his assumption that FPL’s unit performance is based
22 on “new and clean” conditions is incorrect, so the heat rate and capacity
23 “impacts” in his calculation should be ignored. Second, no basis is given for

1 his assumption of a 5% increase in fixed costs; it comes out of the blue with
2 no justification. (Therefore, why not a 5% decrease instead?)

3

4 **Q. Do you see any problems with the calculation results or methodology?**

5 A. Yes. It is never explained if the results are in nominal or net present value
6 dollars. It is never explained how many years the calculation covers. Also
7 interesting is that we don't know if, since he increased the cost of the two FPL
8 units, he also increased the cost of all of the filler units in each expansion plan
9 (which would seem logical since they are identical units except for sites). If
10 so, are the increased costs of the filler units "netted out" against the cost he
11 has added to the two FPL units?

12

13 However, such questions are immaterial since the calculation premise is
14 fundamentally flawed. Mr. Slater is attempting to shift the focus from how
15 FPL must meet reliability criteria for its service area to a much broader,
16 inappropriate perspective of Peninsula Florida as a whole. He ignores the fact
17 that FPL has the obligation to maintain the reliability of its system for its
18 customers.

19

20 He then compounds his problems by introducing a reliability criterion, EUE,
21 that is not only not used by FPL for its service area, it is not even used by the
22 Florida Reliability Coordinating Council (FRCC) for evaluating the reliability
23 of Peninsular Florida. The FRCC judges the reliability of Peninsular Florida

1 by reserve margin. FPL judges the reliability of its system by LOLP and
2 reserve margin, but its reliability needs are currently driven solely by reserve
3 margin.

4
5 Therefore, in addition to having some inaccurate assumptions (that degraded
6 heat rates and capacity values are needed and an unjustified cost increase will
7 occur) and an unknown scope of the calculation (costs applied to all similar
8 units or just to FPL's two units), Mr. Slater's calculation is based on an
9 inappropriate perspective (Peninsular Florida rather than FPL's service area)
10 and uses an incorrect reliability criterion (EUE instead of reserve margin). For
11 at least these reasons, his calculation is fundamentally flawed and the results
12 are meaningless.

13
14 **Q. What is your overall view of Mr. Slater's testimony?**

15 A. Just as in Mr. Egan's testimony, I found something Mr. Slater did not say as
16 more meaningful than what he did say. What he did not say is that FPL did
17 not select the most cost-effective options. The most he did say is that "the
18 wrong result may have been produced".

19
20 Then, skipping over his listing of perceived problems with assumptions that
21 I've already addressed, he essentially makes two recommendations to the
22 Commission.

23

1 One of these recommendations is to set up a quota system by which a utility
2 such as FPL is required to have a certain “balance” of purchased power in its
3 generation mix. This recommendation would completely ignore the objective
4 of determining the best cost-effective new capacity options for the customers.
5 The Commission has correctly rejected similar recommendations before that
6 have been made for other types of resource options (DSM) and has kept the
7 focus on determining which options are cost-effective. It should continue this
8 practice and reject this recommendation.

9
10 His second recommendation is to delay any action in approving FPL’s two
11 new units and turn its attention to “take whatever measures are needed to
12 ensure that the next procurement process is designed to ensure that
13 alternatives are fairly assessed, resulting in the least-cost option for
14 ratepayers”. This is a strange recommendation. He wants a “no decision” in
15 these proceedings and then a focus on changing the process for the next time.
16 He offers a calculation designed to show that delaying a decision a year is
17 acceptable. However, not only is his calculation fundamentally flawed, but it
18 would invite losing parties to raise concerns in any subsequent proceeding,
19 without having to prove anything. The Commission should also reject this
20 recommendation and proceed with this hearing, understanding that neither of
21 the two witnesses have provided any evidence that the results of the
22 evaluation FPL has presented are in error.

23

1 Consequently, the Commission should find that the two FPL self-build
2 options are the most cost-effective options to meet FPL's' capacity needs for
3 2005 and 2006.

4

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

6 A. Yes.

Summary of Best Plans : with Total Costs
(Final - Revised 8/28/02)
Reflects El Paso Initial Negotiation Adjustments

Plan Ranking	Plan Description	2005 Additions	2006 Additions	Revised * EGEAS Costs	Transmission Integration Costs	Equity Penalty Costs	Subtotal Costs	Adjustment for One FPL Unit Only	Total Costs	Total Cost Differential
1	All FPL Plan	Manatee, Martin	----	41,658	28	0	41,686	0	41,686	0
2	Combination w/ Martin & Manatee separated	Manatee, P5	Martin	41,655	52	1	41,708	0	41,708	21
3	Combination w/ Martin & Manatee separated	Manatee, P26	Martin	41,642	70	49	41,761	0	41,761	75
4	Combination w/ Manatee only	Manatee, P5	P 42	41,628	45	81	41,754	16	41,770	83
5	Combination w/ Manatee only	Manatee, P6	P 42	41,630	45	82	41,757	16	41,773	86
6	Combination w/ Martin only	Martin, P3, P24	P 44	41,627	26	105	41,759	15	41,773	87
7	Combination w/ Martin & Manatee separated	Martin, P32	Manatee	41,670	28	78	41,776	0	41,776	90
8	Combination w/ Martin only	Martin, P3, P24	P42	41,628	40	102	41,770	15	41,785	99
9	Combination w/ Martin only	Martin, P3, P25	P 44	41,629	26	117	41,772	15	41,787	101
10	Combination w/ Martin & Manatee separated	Martin, P3, P26	Manatee	41,693	45	58	41,796	0	41,796	110
11	Combination w/ Martin only	Martin, P3, P25	P42	41,630	40	114	41,784	15	41,799	113
12	Combination w/ Manatee only	Manatee, P5	P4, P42	41,651	45	87	41,783	16	41,799	113
13	Combination w/ Martin only	Martin, P31	P44	41,656	26	111	41,793	15	41,808	122
14	Combination w/ Martin only	Martin, P31	P42	41,657	32	108	41,797	15	41,812	126
15	Combination w/ Martin & Manatee separated	Manatee, P32	Martin	41,687	52	78	41,817	0	41,817	131
16	Combination w/ Martin only	Martin, P3, P26	P 44	41,635	26	141	41,802	15	41,817	131
17	Combination w/ Manatee only	Manatee, P3	P 42	41,656	64	89	41,809	16	41,825	139
18	Combination w/ Martin only	Martin, P3, P6, P26	P 44	41,644	26	142	41,812	15	41,827	141
19	Combination w/ Martin only	Martin, P3, P26	P 42	41,637	40	138	41,815	15	41,830	144
20	Combination w/ Martin only	Martin, P3, P6, P26	P 42	41,645	31	139	41,815	15	41,830	144
21	Combination w/ Manatee only	Manatee, P5	P 44	41,628	112	84	41,824	16	41,839	153
22	Combination w/ Manatee only	Manatee, P24	P 42	41,688	64	93	41,845	16	41,860	174
23	Combination w/ Manatee only	Manatee, P24	P 44	41,687	63	96	41,847	16	41,862	176
24	Combination w/ Martin only	Martin, P6, P20	P 44	41,685	26	142	41,853	15	41,868	181
25	Combination w/ Manatee only	Manatee, P5	P4, P44	41,651	66	138	41,855	16	41,871	184
26	Combination w/ Martin only	Martin, P6, P20	P 42	41,686	32	139	41,856	15	41,871	185
27	Combination w/ Manatee only	Manatee, P31	P 42	41,708	45	108	41,861	16	41,877	191
28	Combination w/ Martin only	Martin, P32	P 44	41,692	26	161	41,879	15	41,894	208
29	Combination w/ Manatee only	Manatee, P3	P 44	41,656	132	92	41,881	16	41,896	210
30	Combination w/ Martin only	Martin, P32	P 42	41,693	32	158	41,883	15	41,897	211
31	Combination w/ Manatee only	Manatee, P31	P 44	41,708	64	111	41,883	16	41,899	213
32	Combination w/ Martin only	Martin, P20	P 42	41,719	32	137	41,888	15	41,902	216
33	Combination w/ Martin only	Martin, P6, P32	P 44	41,700	26	163	41,889	15	41,904	217
34	Combination w/ Martin only	Martin, P6, P32	P 42	41,701	32	159	41,892	15	41,907	221
35	All Outside Plan	P6, P20, P31	P 42	42,012	5	166	42,183	0	42,183	497
36	All Outside Plan	P5, P20, P32	P 42	42,001	5	215	42,221	0	42,221	535

* Values reflect effects on costs from initial negotiations with El Paso.
Note: Corrected values from Document No. SRS-8 are shown in bold type.

**Summary of Best Plans : with Total Costs
(Final - Revised 8/28/02)**

Reflects El Paso Initial Negotiation Adjustments and Highlights Plans Including Calpine Bids

Plan Ranking	Plan Description	2005 Additions	2006 Additions	Revised * EGEAS Costs	Transmission Integration Costs	Equity Penalty Costs	Subtotal Costs	Adjustment for One FPL Unit Only	Total Costs	Total Cost Differential
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3	Combination w/ Martin & Manatee separated	Manatee, P26	Martin	41,642	70	49	41,761	0	41,761	75
4	Combination w/ Manatee only	Manatee, P5	P 42	41,628	45	81	41,754	16	41,770	83
5	Combination w/ Manatee only	Manatee, P6	P 42	41,630	45	82	41,757	16	41,773	86
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14	Combination w/ Martin only	Martin, P31	P42	41,657	32	108	41,797	15	41,812	126
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* Values reflect effects on costs from initial negotiations with El Paso.

Expansion Plans containing Calpine bids.

Note: Corrected values from Document No. SRS-8 are shown in bold type.

Summary of Best Plans : with Total Costs
(Final - Revised 8/28/02)
Reflects Incremental Costs of Building One FPL unit only and El Paso Adjustments

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Note: Corrected values from Document No. SRS-8 are shown in bold type.

**Individual Rankings of Outside Proposals w/2005 Start Date
(Final)**

Sedway Consulting						FPL Rankings				
Rank	Bidder #	Capacity MW	Net Levelized Fixed Price \$/kW-mo	Term (years)	Comments	Rank	Bidder #	CPVRR (\$millions)	Difference CPVRR (\$millions)	Comments
1	P 6	50	\$5.42	5	---	1	P 5	41,841	0	---
2	P 5	50	\$5.58	3	Mutually exclusive to P 6	2	P 6	41,843	2	Mutually exclusive to P 5
3	P 31	506	\$5.80	10	---	3	P 32	41,856	15	---
4	P 21	1216	\$5.83	15	---	4	P 26	41,862	21	---
5	P 20	608	\$6.02	15	Mutually exclusive to P 21	5	P 24	41,866	25	Mutually exclusive to P 26
6	P 32	506	\$6.04	20	Mutually exclusive to P 31	6	P 31	41,888	47	Mutually exclusive to P 32
7	P 24	250	\$6.37	10	---	7	P 25	41,896	55	Mutually exclusive to P 26
8	P 1	800	\$6.51	15	---	8	P 3	41,899	58	---
9	P 25	250	\$6.55	15	Mutually exclusive to P 24	9	P 19	41,899	58	Mutually exclusive to P 3
10	P 3	200	\$6.77	7	---	10	P 20	41,904	63	---
11	P 19	200	\$6.77	7	Mutually exclusive to P 3	11	P 21	41,959	118	Mutually exclusive to P 20
12	P 26	250	\$6.87	25	Mutually exclusive to P 24	12	P 1	41,978	137	---
13	P 40	418	\$7.86	9	---	13	P 52	41,980	139	---
14	P 51	730	\$8.71	22	---	14	P 50	41,983	142	Mutually exclusive to P 52
15	P 41	418	\$8.93	26	Mutually exclusive to P 40	15	P 40	42,008	167	---
16	P 50	230	\$11.84	20	Mutually exclusive to P 51	16	P 41	42,017	176	Mutually exclusive to P40
17	P 52	230	\$13.63	26	Mutually exclusive to P 51	17	P 51	42,058	217	Mutually exclusive to P 52