

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION TO DETERMINE NEED FOR DOCKET NO. 020262-EI  
AN ELECTRICAL POWER PLANT IN  
MARTIN COUNTY BY FLORIDA POWER &  
LIGHT COMPANY

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PETITION TO DETERMINE NEED FOR DOCKET NO. 020263-EI  
AN ELECTRICAL POWER PLANT IN  
MANATEE COUNTY BY FLORIDA POWER &  
LIGHT.

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VOLUME 2

PAGES 160 THROUGH 227

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI  
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, October 2, 2002

TIME: Commenced at 9:40 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE  
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APPEARANCES: (As heretofore noted.)

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## P R O C E E D I N G S

(Transcript continues in sequence from Volume 1.)

CHAIRMAN JABER: We're going to go ahead and get back on the record. Let's see where we left off.

Mr. Moyle, you and Mr. Guyton were going to talk about the question pending of the witness?

MR. MOYLE: That's right. And we've had conversations, and I think they have been -- you know, we have recognized that there are issues on both sides with respect to the question that's pending and also the settlement issue.

I think where we ended up is, I'm willing to just simply have the question asked as to whether there was a settlement agreement or not and leave it at that, and not get into terms or anything like that, just ask that simple question.

I will say, I think -- I have also talked to some folks at the end of the table, Mr. McWhirter and Mr. Twomey, and I think they have some comments as well with respect to that issue. So I think we were trying to come to an agreement, but I'm not sure we're there.

CHAIRMAN JABER: Well, let's take it a step at a time right now. And obviously, if there are comments, I'll wait for the appropriate time, but I want to resolve the objection that was pending when we broke. Are you willing to modify your question and leave the response at that? Is that -- my I

1 understanding you correctly?

2 MR. MOYLE: Yeah, all I would propose to ask him is  
3 whether he's aware if a settlement agreement has been entered  
4 into. And I guess he could say "yes or no." Either yes, he's  
5 aware of it, or no, he's not.

6 And then the next question I would ask him is: Has  
7 there been a settlement agreement that's been entered into?  
8 And he could either say "yes or no." If he says yes, I  
9 wouldn't say, well, what were the terms, I would just leave it  
10 at that.

11 CHAIRMAN JABER: Thank you, Mr. Moyle.

12 Mr. Guyton, does that take care of your objection?

13 MR. GUYTON: Madam Chairman, unfortunately not. I  
14 mean, the rule of evidence here is fairly clear about offer of  
15 a comprise of a claim is not appropriately inquired about.  
16 That's 90.408 of the evidence code. But I think there are  
17 larger issues here in terms of whether the question about the  
18 existing of a -- the existence of a settlement will actually  
19 chill the potential parties in a case from actually entering  
20 into a settlement agreement. And I think the case law is  
21 fairly clear that one has to balance that potential chilling  
22 effect against the potential relevancy here.

23 And I've got another aspect that has occurred to us  
24 is that this inquiry is not at all relevant to this case. I  
25 think what you have to do is, you have to ignore the fact that

1 this particular bidder was not carried forward into the short  
2 list negotiations because the company had made a determination  
3 as of June the 18th that he didn't think it was sufficiently  
4 financially viable to proceed. And at that point, that bidder  
5 was eliminated from this process and from further  
6 consideration.

7           One would have to assume that one would have to  
8 ignore that fact. You'd have to assume that they would have  
9 gotten a firm price; that there wouldn't have been any change  
10 in the bids. You would have to disregard a valid cost, that  
11 being the equity penalty, and only at that point would you come  
12 into a question as to whether this is relevant. But the  
13 process was over at the time that Calpine chose to withdraw  
14 from this case. And the process was the process that was made  
15 to determine whether a particular combination or portfolio was  
16 the most cost-effective.

17           So we would respectfully submit that aside and apart  
18 from the evidentiary code provision, the existence or  
19 nonexistence of a settlement after the fact well into this  
20 proceeding after the fact in terms of how we reached our  
21 decision is just totally and wholly irrelevant.

22           CHAIRMAN JABER: Mr. Moyle, I do want you to address  
23 the objection as it relates to relevance. I think that would  
24 help me in determining whether your question is appropriate to  
25 this witness.

1 MR. MOYLE: Okay. I will. And again, in my  
2 conversation with the other folks, their -- have a question  
3 about the ruling obviously would impact their questions as  
4 well. So that was why --

5 CHAIRMAN JABER: Well, let me let them worry about  
6 their comments.

7 MR. MOYLE: Okay.

8 CHAIRMAN JABER: When they ask questions, I am sure  
9 that they can --

10 MR. MOYLE: I understand.

11 CHAIRMAN JABER: -- you know, seek questions in this  
12 same regard, and FPL is entitled to raise objections. I want  
13 to handle them one at a time.

14 As it relates to your question of this witness,  
15 though, help me understand why your question would lead to  
16 evidence that would go to any of these issues. I really want  
17 to understand.

18 MR. MOYLE: Sure. There is an issue in the case that  
19 says, "Is FPL's proposal the most cost-effective alternative?"  
20 That's a statutory issue. This is a de novo proceeding which  
21 means that, you know, evidence is coming in for the first time  
22 that you-all are hearing it. Okay?

23 I think it's been established that there was another  
24 proposal out there that had a lower cost than FPL's proposal.  
25 Okay? I had him read that portion of the testimony. So to the

1 extent that there is a lower cost proposal out there and there  
2 was action taken to remove that party and to remove that  
3 evidence from the case, I think it's relevant, I think it's  
4 material, and I think it goes to the heart of the bid process.

5 I mean, if a party is able to receive 30 bids and see  
6 that a couple of them are lower than it is, it can -- I don't  
7 know whether they did or they didn't. That's why I want to ask  
8 the question. But they're able to go and strike a deal and  
9 enter into an arrangement, then I think it impacts, you know,  
10 the whole viability of the bid process.

11 CHAIRMAN JABER: Okay. Mr. Moyle, here's what we're  
12 going to do.

13 MR. TWOMEY: Madam Chair?

14 CHAIRMAN JABER: I'm going to overrule the objection.

15 Mr. Twomey, I will let you all comment as you ask  
16 questions, and if there's an objection as it relates to your  
17 questioning --

18 MR. TWOMEY: Yes, ma'am.

19 CHAIRMAN JABER: -- but as it relates to question  
20 that Mr. Moyle asked, I'm going to allow you to ask the two  
21 questions as you suggest. The first one being --

22 MR. MOYLE: The first one is --

23 CHAIRMAN JABER: -- whether he was aware.

24 MR. MOYLE: -- is he aware, and then if he is aware,  
25 what the answer is.





1 A No.

2 MR. MOYLE: I think that did it.

3 Q You're not aware whether an agreement has been  
4 entered into or has not been entered into; correct?

5 A No, I am not aware whether any agreement has been  
6 entered into.

7 MR. MOYLE: Okay. And I think I asked him  
8 previously, you know, who would be, and I think he indicated  
9 his senior management.

10 CHAIRMAN JABER: Let's go ahead and make sure,  
11 Mr. Moyle. I don't recall that question.

12 MR. MOYLE: Okay.

13 BY MR. MOYLE:

14 Q Who would be aware of that if it has taken place?

15 A I have no knowledge of any discussions with this  
16 bidder concerning a settlement. So I would not know who would  
17 be aware.

18 Q Okay. But in the normal course of FPL business,  
19 could you indicate to me who might be made aware of those types  
20 of things? I mean, I think your legal counsel would be. I  
21 would think maybe your president would be. Can you just give  
22 me some information as to who might be aware if a settlement  
23 with this particular bidder had been entered into?

24 MR. GUYTON: Objection. Asked and answered. The  
25 witness has stated that he does not know.

1 CHAIRMAN JABER: Mr. Moyle.

2 MR. MOYLE: I think he's stated he doesn't know  
3 whether there's an agreement or not. I'm not sure he's  
4 indicated that he has no knowledge as to who might know whether  
5 an agreement has been entered into or not.

6 CHAIRMAN JABER: Yeah, let's try to articulate the  
7 question one last time in the most concise fashion you can.

8 BY MR. MOYLE:

9 Q Okay. In your view, who within FPL would know  
10 whether or not a settlement agreement with this bidder has been  
11 entered into?

12 A In my mind, I don't know whether any of these  
13 discussions took place. And I was admonished, Madam Chairman,  
14 not to speculate before. This would be pure speculation as to  
15 who might have taken place if any such negotiations or  
16 discussions took place. So I really would not know if indeed  
17 they did to what level they would have been taken or by whom.  
18 I really don't know.

19 Q Okay. I think before we got sidetracked there was a  
20 pending question about your view of labor markets and  
21 experience in the Florida labor markets. If the FPL self-build  
22 and a competing proposal were neck and neck in terms of the  
23 economics, would the experience in the labor markets have been  
24 something that FPL would have looked to as a non-- as a  
25 qualitative factor?

1           A     I would think that, yes, we would have looked to that  
2 factor, and we would have looked to the entity with whom we  
3 were neck and neck and all other aspects associated with that  
4 entity, as well as all other aspects associated with FPL to  
5 make the best decision for the customer.

6           Q     And with respect to the labor market criteria, that  
7 wasn't disclosed to the bidders specifically in the  
8 supplemental RFP, was it?

9           A     Specifically, knowledge of the labor market was not  
10 stated.

11          Q     And I believe I asked you this question on  
12 deposition, but let me just go ahead and ask it again for the  
13 record here. The criteria, the experience in the labor market,  
14 obviously that gives an advantage to FPL and other Florida  
15 utilities, does it not?

16          A     Yes. Someone who has knowledge of the area in which  
17 they do business would have an advantage in that regard.

18          Q     Okay. Page 37 of your testimony. Another criteria  
19 you considered was the contractual commitment of a supplier;  
20 correct?

21          A     Yes. That's also one of the items that we looked at  
22 in the qualitative review.

23                CHAIRMAN JABER: Page 37, Line 1.

24          Q     And you didn't tell the bidders in the supplemental  
25 RFP that you would consider contractual commitment, did you?

1           A     I would say that we did. We did not use the words  
2 "contractual commitment of the bidder." However, we specified  
3 minimum requirements that the bidder would have to meet. We  
4 stated provisions that were not minimum requirements, but we  
5 asked the commitment -- the bidders to either agree to those  
6 terms and conditions, or if they disagreed, to give us their  
7 alternatives.

8                     We described the evaluation, and asked them to give  
9 us the commitment of guaranteed firm capacity. And we  
10 described -- stated clearly that we would evaluate their bids  
11 in part based on the number and significance of the exceptions  
12 that they took to the provisions in the contract.

13                    Now, all of these components are for the purpose of  
14 describing how we evaluated them contained in the phrase  
15 "contractual commitment of the bidder." If they commit to  
16 these things without challenge, then we would think that they  
17 have a greater commitment. And if they don't, then they have a  
18 lesser commitment. And to us and to our customers, that is  
19 very important. But it certainly was addressed in the RFP.

20           Q     Okay. But the phrase "contractual commitment of  
21 supplier" is not found anywhere in the supplemental RFP, is it?

22           A     No.

23           Q     And in answering that question, I think you said that  
24 you would look to things like whether bidders took exceptions  
25 to terms in the RFP; is that right?

1 A Yes.

2 Q Okay. And how many exceptions would a bidder have to  
3 take before you would make a judgment that they wouldn't be  
4 contractually committed?

5 A In most cases, when we refer to -- when we invited  
6 exceptions, what we were trying to determine is degree of  
7 commitment. So there wasn't any specific number of exceptions.  
8 We were looking at a comparative analysis among bidders, and we  
9 were looking to see whether one had taken more exceptions to  
10 important issues than another. And that's how we would compare  
11 one to another. So it wasn't a go-no-go, if you will, that if  
12 you take three exceptions or four, then you are not  
13 contractually committed. It's a matter of degree.

14 Q Okay. You would agree that this criteria lends  
15 itself to some subject of judgment, would you not?

16 A Yes, it certainly does. We have to evaluate these  
17 bids for the benefit of our customers, that means that we have  
18 to inject our knowledge for their protection.

19 Q Okay. And did you apply this criteria to all  
20 bidders?

21 A We did not apply this criteria specifically to each  
22 bidder. As I said before, we looked at contractual commitment,  
23 and asked ourselves, is there contractual commitment such that  
24 when compared to the FPL self-build option, they would give the  
25 bidders an advantage over FPL sufficient to overcome the

1 economic advantage that the FPL self-build had. And we  
2 answered that question no. Even though some did not take  
3 exceptions, there is no advantage to the bidder over FPL owning  
4 and operating the facility. That's how we did it.

5 Q You did eliminate one bidder applying this criteria;  
6 correct?

7 A In the -- yes.

8 Q Okay. Thanks.

9 MR. GUYTON: May the witness finish his answer? I  
10 think his instruction was, he would be allowed to elaborate  
11 once he did "yes or no."

12 CHAIRMAN JABER: Mr. Guyton, that is correct, but I  
13 would also ask that you remember you have an opportunity for  
14 redirect.

15 MR. GUYTON: Okay.

16 CHAIRMAN JABER: Mr. Silva, go ahead and finish your  
17 thought.

18 THE WITNESS: Thank you, Madam Chairman. The answer  
19 was yes. In a section of the RFP where we did set minimum  
20 requirements and one bidder among all did not meet one of those  
21 minimum requirements, we used that criterion to eliminate one  
22 bidder.

23 BY MR. MOYLE:

24 Q Did you apply this criteria to your self-build  
25 options or to yourself?

1           A     Could you tell me which criterion you're talking  
2 about?

3           Q     The contractual commitment criteria.

4           A     The contractual commitment criterion did not apply to  
5 the FPL self-build per se. In other words, we compared  
6 contractual commitment of bidders or suppliers to FPL's  
7 commitment to its own generation. That's how we compared it.

8           Q     Okay. But you're aware of litigation that's ensued  
9 between IPPs in the state and FPL; correct?

10          A     That's general. I'm not sure that I understand what  
11 you're talking about.

12          Q     Are you aware of any litigation in the state of  
13 Florida between an IPP and FPL in which an IPP has won the  
14 contractual dispute? The Cedar Bay litigation.

15          A     Thank you for clarifying. Yes. There has been  
16 litigation between FPL and an IPP or more in the past few  
17 years. And in that particular one, the Court ruled in favor of  
18 the IPP's complaint.

19          Q     Okay. But this fact that the Court ruled in favor of  
20 the IPP with respect to evaluating contractual commitment was  
21 not considered when you evaluated your self-build options, was  
22 it?

23          A     Not to my recollection.

24          Q     Okay. And also with respect to this contractual  
25 commitment criteria, isn't it true that you would have applied

1 this during the process of negotiations?

2 A Yes. When we are negotiating with a bidder, our aim  
3 is, obviously if we're negotiating with them, it means that we  
4 recognize that they have value to our customer. The  
5 negotiations are aimed at preserving that value through a  
6 purchased power agreement. It's the only vehicle we have. We  
7 can't come after the fact. So we would in fact look to the  
8 general concept of contractual commitment to determine whether  
9 the protection for the customer is there in that purchased  
10 power agreement.

11 Q I may not have made my question clear. I think in  
12 your deposition you said that you would apply this criteria  
13 during negotiations. Wouldn't it be true that in the course of  
14 negotiations, if a bidder who was at the table and negotiating  
15 refused to make a concession on a particular term, that this  
16 criteria, contractual commitment of bidder, could then be used  
17 against them to dismiss their bid?

18 A This general category is, in my view, the essence of  
19 contract negotiation. So, yes, we would apply our need to  
20 protect the customer, so that if the bidder is not committing  
21 contractually to that protection, we would not be able to enter  
22 into that contract, nor could we come to this Commission and  
23 propose a need determination for that arrangement if we thought  
24 the customer was left unprotected by that contract.

25 Q Do you see how that could potentially give FPL a very



1 distinct advantage in negotiations if every time there was a  
2 dispute over a term, FPL was able to say, well, one of our  
3 criteria is contractual commitment, and we don't believe that  
4 you meet that criteria because you're not willing to give on  
5 this term?

6 MR. GUYTON: Objection. I think that's a  
7 mischaracterization of Mr. Silva's testimony.

8 CHAIRMAN JABER: Mr. Moyle.

9 MR. MOYLE: I'll move on.

10 BY MR. MOYLE:

11 Q The financial viability, that was a criteria you  
12 considered; correct?

13 A Yes.

14 Q And the financial viability was a factor that was set  
15 forth in your supplemental RFP; correct?

16 A Yes.

17 Q And wasn't the financial viability the most  
18 significant qualitative factor that you used in reviewing the  
19 bids?

20 A Yes. In this particular RFP, given the bids that we  
21 received and the information associated with those bids, it  
22 turned out to be probably the most important criterion that was  
23 nonprice applied to this RFP.

24 Q Okay. And you never told the bidders in the  
25 supplemental RFP that this criteria was the most important to

1 FPL in making its judgment, did you?

2 A No. And it would have been impossible at the outset  
3 to identify any particular criteria as the most important. We  
4 did, however, in both the RFP and shortly after the RFP  
5 communicate to all the bidders just how important financial  
6 viability was. We didn't just leave it at what was in the RFP.  
7 Immediately after we received the bids, where we had some  
8 concerns about the credit rating of the some of the bidders, we  
9 communicated to them expressing how important it was.

10 It just turned out that because of the condition of  
11 some of the bidders or the financial conditions of some of the  
12 bidders and the market in general, it turned out to be at this  
13 time for this RFP one of the most, if not the most, important  
14 nonprice criterion, but we had no way of knowing how that would  
15 turn out prior to issuing the RFP.

16 Q So as you sit here today, if you were going to issue  
17 an RFP tomorrow, could you put in an RFP that financial  
18 viability was the most important factor that would be  
19 considered of nonprice criteria?

20 A I could not do that for the following reason. Let me  
21 give you a hypothetical. Let's say that in that next RFP all  
22 the bidders turn out to come in with A credit rating, but one  
23 bidder that had a very good price was planning to put a  
24 pulverized coal in Manatee County. Well, now, we would not  
25 separate bidders based on financial criteria because they all

1 were A rated. That would not come into play. But we would  
2 look at environmental feasibility because we would think that  
3 maybe permitting that plant in Manatee County might present  
4 very significant obstacles, and that might become the most  
5 important criteria in that situation. But we have no way of  
6 knowing until we get the bids and identify who the bidders are.

7 Q Mr. Silva, was not being financially viable the basis  
8 for elimination of bids?

9 A Not being financially viable contributed to  
10 determining one bidder ineligible at the outset.

11 Q Okay. I don't really want to get into that. I just  
12 want to ask you -- the specific question was: Financial  
13 viability, was it a basis for elimination?

14 A Yes.

15 Q Thank you. And it was never indicated in the  
16 supplemental RFP, was it, that if you were not financially  
17 viable, that you would be eliminated?

18 A No, we did not say that. We did say that financial  
19 viability was of utmost importance, and if the bidders did not  
20 meet certain criteria, they would have to make up for it in a  
21 manner that would bring them, in our view, to the same level of  
22 financial viability, again, for the protection of our customers  
23 because otherwise we would enter into a contract with someone  
24 who would not or could not perform.

25 Q And you made provision in your RFP to protect FPL in

1 the completion security agreement; correct?

2 A The RFP is not aimed at FPL's self-build unit. It's  
3 to obtain proposals.

4 Q I'm just asking you, sir -- I think it's "yes or  
5 no" -- did you make provision in the RFP to assist FPL if an  
6 entity was not able to provide power on time by having a  
7 completion security arrangement?

8 A Yes.

9 Q Okay. Did you ever determine any bidders to be  
10 financially viable?

11 A Yes.

12 Q How many?

13 A I don't have that information here, but the only ones  
14 that we -- there were only two of the ones that were  
15 economically competitive, meaning within \$200 million of FPL,  
16 that as a result of financial viability were not -- either not  
17 considered eligible, period, or contributed to their not being  
18 chosen for a short list.

19 CHAIRMAN JABER: Mr. Silva, let me try that question  
20 this way. Did you make an affirmative determination one way or  
21 another on each bidder's financial viability?

22 THE WITNESS: Not -- no, Madam Chairman. No, we did  
23 not.

24 BY MR. MOYLE:

25 Q And you said, I think, in response to my question

1 that you determined that, in your view, two were not  
2 financially viable; is that correct?

3 A I spoke of two. And one of them, financial viability  
4 questions was one of the reasons why we eliminated them. The  
5 other one we considered to be not financially viable and was  
6 not moved forward to the short list.

7 Q Did the two that you eliminated because you viewed  
8 them not to be financially viable, did they agree to provide  
9 you with the completion security that you asked for in your  
10 RFP?

11 A Yes.

12 Q So you went outside of the RFP to determine their  
13 financial viability; correct? You looked at other factors, not  
14 necessarily the response to the RFP, to determine their  
15 financial --

16 A The completion security and the financial viability  
17 are two separate portions of the RFP. The completion security  
18 asked for them to post funds in the event that they do not  
19 complete the facility in time and then what the liquidated  
20 damages would be that FPL could draw upon so that the customer  
21 would not be shortchanged in the cost of replacement power.

22 The issue of financial viability, we asked for what  
23 their credit rating was or that of their parent or guarantor,  
24 and we said, we think it should be investment grade rating. If  
25 not, then we have serious questions about your financial

1 viability, and we'll have to consider other alternatives.

2 CHAIRMAN JABER: The question is, that request for  
3 the security agreement, is that within the RFP document itself,  
4 or is that outside the scope of what was published in the RFP?  
5 The request to have that security agreement, and then  
6 subsequently, the response for your request for the security  
7 agreement.

8 THE WITNESS: The security agreement, completion  
9 security agreement, was an integral part of the RFP and stated  
10 as a minimum requirement and is stated in the quantity and at  
11 the drawing rate that we expected to be the minimum  
12 requirement. That was the completion security which goes to,  
13 are they committed, and can they guarantee that that plant will  
14 be there?

15 The other side was, will they have the wherewithal to  
16 back up that? Which is, what's their credit rating? Can they  
17 get financing? Can they invest in this plant? And that is  
18 financial viability. So we had two separate components both in  
19 the RFP very clearly identified.

20 Q And I may have contributed some confusion. Didn't  
21 your RFP say that you only had to complete or agree to complete  
22 the completion security provision if your credit rating was not  
23 at a sufficient level?

24 A No, sir. Everybody had to post completion security  
25 of \$50,000 per megawatt no matter what.

1 Q Okay. And so if somebody bid a thousand megawatts,  
2 that would be -- how much money would have to be posted?

3 A 50,000 times a thousand, 50 million, I suppose.

4 Q And FPL thought that that gave them adequate  
5 protection to move forward with a company if they would post  
6 that completion security guarantee; correct?

7 A No. I said that they had to do that in order to  
8 continue in the evaluation. We also looked separately at the  
9 financial viability of the company, of the bidder, and we asked  
10 that they be BBB or better, which is investment grade, because  
11 that gave us the confidence that that entity would be there and  
12 would be willing to fulfill its commitment, not just of  
13 constructing but of operating and maintaining the unit  
14 appropriately for a period of 20, 25 years.

15 Q You eliminated one company on the basis of financial  
16 viability because they had a downgrading of their bond, is that  
17 correct, of their bond rating?

18 A Their bond rating was -- yes. The bond rating was  
19 junk level.

20 Q And are you still doing business with that company in  
21 the state of Florida today, buying power from them?

22 A I don't know.

23 Q You eliminated PG&E, did you not?

24 A We did not eliminate PG&E on the basis of financial  
25 viability.

1 Q Why did you eliminate them?

2 A We didn't eliminate them per se. We did not select  
3 them forward to go into the short list because the cost  
4 associated with their bid was much higher than a number of  
5 other alternatives.

6 Q The residual value of power plants, that was a factor  
7 that you used in considering the proposals, was it not?

8 Page 51 of your testimony.

9 A The residual value of the plants was a component that  
10 FPL's analysis did not utilize in the calculation. It was a  
11 component that Sedway Consulting, the independent evaluator,  
12 used in their analysis.

13 Q Okay. And you relied on Sedway Consulting, did you  
14 not, to assist you with your decision in this case? Yes or no?

15 A It's a difficult issue to answer "yes or no," Madam  
16 Chairman, but I'll say yes. We relied on them to conduct a  
17 totally independent analysis that corroborated our findings in  
18 the economic analysis that we performed. They did not assist  
19 us in our economic analysis.

20 Q Did the idea of residual value that's found on  
21 Page 51 of your testimony, that never appeared in the  
22 supplemental RFP documents as something to be considered, did  
23 it?

24 A Not to my knowledge.

25 Q Okay. Let me talk a little bit about fuel supply and



1 the firmness of fuel supply. You have some testimony on  
2 Page 43 regarding that issue. Isn't it true that bids which  
3 have firm gas transportation and firm gas supply arrangements  
4 are favored over bids that do not?

5 A Yes, in theory they are.

6 Q Okay. And some of the bids were backed up with firm  
7 gas transportation and firm gas supply arrangements, weren't  
8 they?

9 A Yes.

10 Q Okay. Now, FPL treated itself as having firm gas  
11 transportation and firm supply contracts in place when its  
12 self-builds were evaluated; correct?

13 A Yes, in the sense that we did not give a very great  
14 advantage to bidders who had firm gas contracts at that time  
15 when we were considering whether the difference would be large  
16 enough to overcome the financial or economic analysis results.

17 Q All right. But FPL doesn't have firm fuel  
18 transportation or commodity -- fuel commodity contracts, as we  
19 sit here today, does it?

20 MR. GUYTON: Objection. I think we need to be more  
21 specific. FPL probably has a host of firm contracts, but I  
22 think the inquiry should be as to the supplemental RFP.

23 MR. MOYLE: As it relates to Martin and Manatee, I'm  
24 sorry.

25 BY MR. MOYLE:

1 Q Do you have any firm contracts for fuel for either  
2 the Manatee or the Martin project?

3 A To my knowledge, we do not at this point. Mr. Yupp  
4 would be in a better position to answer that question.

5 Q Okay. And I guess I was puzzled because on  
6 Page 43 of your testimony, you state, However, given the fact  
7 that FPL does plan to meet its firm fuel needs through fuel --  
8 I'm sorry, through firm fuel supply and transportation  
9 contracts, it is clear that no bidder would have an advantage  
10 over FPL in this category.

11 You know, the evaluation, you considered that you  
12 would have firm contracts even though as we sit here today you  
13 do not?

14 A Yes. And that was being contrasted, for example, to  
15 entities that would bid and say, we intend to supply fuel under  
16 an interruptible gas transportation contract by buying gas in  
17 the spot market. In the case of FPL, we know that we will, as  
18 we have in every other instance in the past, enter into firm  
19 transportation contract to supply that need. And it just  
20 hasn't been executed at this time.

21 Q In fact, you haven't even decided which supplier  
22 you're going to take the gas from, have you? If you know.

23 A As I said, Mr. Yupp would be able to answer that  
24 question as to exactly what the status of that is.

25 Q Okay. I'll save that for Mr. Yupp. Let's talk a

1 little bit about negotiations. You were involved in  
2 negotiations related to the supplemental RFP; correct?

3 A If you mean the initial negotiations with El Paso,  
4 yes.

5 Q Okay. Now, isn't it true that in the first RFP FPL  
6 never negotiated with anyone before declaring itself the  
7 winner?

8 A I don't have any knowledge about what took place in  
9 the first RFP.

10 Q In the supplemental RFP, you named two bidders to the  
11 short list; correct?

12 A Yes.

13 Q Okay. Initially -- and I'll introduce this document,  
14 if I can -- you had five bidders on a short list; correct?

15 A No, sir.

16 MR. GUYTON: I'm sorry. Does he mean inquired about  
17 about a document without showing him?

18 CHAIRMAN JABER: Mr. Guyton, the answer to your  
19 question is that, no, I do not believe Mr. Moyle was asking a  
20 question from the document before it was distributed. As I  
21 recall, the question was, when the short list was put together,  
22 were there five bidders.

23 Mr. Moyle, you need to correct us if I'm wrong.

24 MR. MOYLE: No. And I was asking him if he knew  
25 whether there were at one point more potential folks to

1 negotiate rather than the two that were ultimately listed.

2 BY MR. MOYLE:

3 Q But let me refer you to a document that I've  
4 provided, and it's a document that came out of FPL files, Bates  
5 stamped at the bottom 00114951ND through 00114966ND, and ask  
6 the witness if he recognizes this document.

7 A Yes. These are in fact, at least as I relate to  
8 them, two documents. They were two presentations that I made  
9 related to the supplemental request for proposal. One on  
10 May 31st and another one on June 18th, 2002.

11 Q Okay. Let me refer you to the last page of the  
12 document. Isn't that page entitled, "Short List," and doesn't  
13 it have five companies set forth below it?

14 A Yes, it does. And it was my presentation to FPL  
15 management. And what this list represents is those, only those  
16 bidders that I thought should be considered for inclusion in  
17 the short list, not my recommendation or anybody's decision as  
18 to which should be on the short list.

19 CHAIRMAN JABER: I'm sorry. I'm not appreciating  
20 what the difference is.

21 THE WITNESS: I was making a presentation to FPL  
22 management, and we had 13 eligible bidders left in our list.  
23 When I went to that presentation, along with presenting results  
24 of our economic analysis, I said, for your consideration, in  
25 essence, we should eliminate everybody else, and let's

1 concentrate this discussion on these five bidders for  
2 consideration for the short list.

3 CHAIRMAN JABER: That's not a recommendation?

4 THE WITNESS: No.

5 CHAIRMAN JABER: What is that?

6 THE WITNESS: It was a recommendation only in the  
7 sense that these should be considered for it, but the  
8 discussion in the meeting led us to the selection of the short  
9 bid (sic). I did not recommend all of these five.

10 BY MR. MOYLE:

11 Q So during this meeting, I guess the list that's set  
12 forth on this exhibit was paired down to two; is that right?

13 A Yes. Although, I would characterize it as saying it  
14 was at this meeting that two bidders out of this list were  
15 selected for the short list.

16 CHAIRMAN JABER: This is the medium list.

17 Q After you paired the list down to two, you sent  
18 letters to the bidders asking them to lower their price  
19 further; correct?

20 A Yes, to El Paso and Florida Power Corporation.

21 Q Okay. Doesn't a letter like this, after they have  
22 been put on a short list, doesn't the next move where you send  
23 them a letter asking them to lower their bids further, in  
24 essence, ask these bidders to negotiate against themselves?

25 A I don't understand your characterization. We gave

1 them information that -- and so I can't answer that yes or no.  
2 I mean, I would answer no. What we were doing is, we were  
3 telling them, your bid is competitive, but not the lowest cost.  
4 This is your chance to be competitive and to become the lowest  
5 cost.

6 Q So you don't believe that that type of a letter is  
7 properly characterized as asking someone to bid against  
8 themselves?

9 A No. They were in fact bidding against what I would  
10 characterize as the lowest cost, which we were telling them  
11 they were not.

12 Q Okay. And the lowest cost that they were being asked  
13 to bid against, that included a cost that used the equity  
14 penalty; correct?

15 A Yes, that properly included the equity penalty  
16 provision.

17 Q Okay. You never had a first meeting with the  
18 short-listed bidder Florida Power Corporation, did you?

19 A Not face to face, no.

20 Q And El Paso, you had one meeting with them?

21 A Yes.

22 Q And I'm going to introduce into the record the  
23 purchased power agreement, but just for the record, you did  
24 give them a draft PPA agreement for them to review as a  
25 starting point; correct?

1           A     Yes. My recollection is that we sent them the  
2 purchased power agreement on June 19th.

3           Q     And how many days did you give them to review this  
4 document and get it back to you?

5           A     We asked them to give us their preliminary feedback  
6 or comments on the contract within four or five days.

7           Q     Why did you not move forward with TECO on this short  
8 list?

9           A     I have to put it in context. The grouping in which  
10 TECO and Bidder X were included, which also included El Paso  
11 and one of the FPL units, because there was TECO and Bidder X  
12 and we looked at all of them, and in the case of TECO, our  
13 analysis based on ten-year site plan showed that TECO could not  
14 meet their 20 percent reserve margin capability if they  
15 committed the 200 megawatts that their bid said they were  
16 committing to us. And our analysis showed that in some years  
17 their reserve margin would drop below 15 percent.

18                     In the case of Bidder X, as we have discussed before,  
19 we looked at the financial viability that had been downgraded  
20 severely. We looked at their own declaration of their  
21 financial situation to their investors, and it presented a very  
22 grim picture that led us to believe we are going to have  
23 reliability problems if we contract with these entities.

24                     And as a result, we chose not to include that  
25 grouping for the short list selection and rather focussed on El

1 Paso and Corp to minimize uncertainty and risk and also because  
2 they were the most economical alternative to the All-FPL plan.  
3 And we wanted to focus on bringing that to fruition if it could  
4 be. And that's the reason we didn't do TECO or Bidder X, but  
5 it was together, not one separate from the other.

6 Q All right. So as part of the reason, do I understand  
7 you to say that you decided at least partially not to move  
8 forward with TECO because you were concerned about them not  
9 being able to meet their reserve margin requirement?

10 A Yes, if they committed 200 megawatts to us under this  
11 contract.

12 Q Did you ever call TECO or contact them in any way to  
13 discuss this concern?

14 A No.

15 Q This was just a decision you-all made looking at  
16 TECO's proposal that you thought they might have a reliability  
17 or a reserve margin issue, and you didn't pursue it with them  
18 any further; correct?

19 MR. GUYTON: Objection, to the extent that the  
20 witness has testified that it wasn't a TECO-specific  
21 determination, but it had to do with a group of bidders.

22 CHAIRMAN JABER: So what exactly is your objection,  
23 Mr. Guyton?

24 MR. GUYTON: Just simply that the question  
25 mischaracterizes Mr. Silva's testimony.



1 CHAIRMAN JABER: Your response, Mr. Moyle.

2 MR. MOYLE: I can rephrase it.

3 CHAIRMAN JABER: Please do.

4 BY MR. MOYLE:

5 Q I just wanted to ask him -- Mr. Silva, you  
6 unilaterally decided not to short list TECO in part due to  
7 concerns about its not being able to meet its reserve margin;  
8 correct?

9 A Yes. But we were using TECO's own documents, both  
10 the bid that they sent to us and their ten-year site plan.

11 Q Okay. Do you see how a bidder might be able to  
12 perceive it as being unfair if it were grouped with particular  
13 proposals and negotiations ensued, and the bidder who happened  
14 to be in that group was not invited to those negotiations?

15 A I can't answer the question for a bidder, but I can  
16 explain the grouping issue preliminarily. And Dr. Sim can  
17 explain it in great detail.

18 Q I'll tell you what, I'll save that for Mr. Sim. My  
19 question just simply was to you, if -- a lot of these proposals  
20 had three or four bidders in them; correct?

21 A Yes.

22 Q And in your decision to negotiate, you decided to  
23 negotiate with El Paso only; correct?

24 A With El Paso and Florida Power Corporation.

25 Q Okay. So if I was a bidder that was grouped in

1 El Paso combination, my fate, if you will, would be cast in  
2 negotiations that FPL had with El Paso; correct?

3 A No. Each individual bidder brought its own cost to  
4 each combination, and it's necessary in order to answer the  
5 question that I explain this issue of the groupings.

6 CHAIRMAN JABER: Mr. Silva, I'm going to let you  
7 explain because I do want to understand the general rationale  
8 behind the groupings, but on this point, when bidders submit  
9 their proposals to you, if their part of the proposal is  
10 somehow aligned with another company's proposal, are those  
11 submitted together, or are they done separately?

12 THE WITNESS: In this instance, that did not take  
13 place.

14 CHAIRMAN JABER: What did not take place? That they  
15 weren't submitted together?

16 THE WITNESS: They weren't submitted together, and  
17 that was not the reason why we grouped them together.

18 CHAIRMAN JABER: Okay. I need to understand this,  
19 and then I will let you explain, but -- so to the degree  
20 another company's proposal was dependent upon El Paso's  
21 proposal, those bids came in separately.

22 THE WITNESS: Yes.

23 CHAIRMAN JABER: So when you invited El Paso to  
24 negotiations, you did not invite the other companies where the  
25 proposal would have been aligned with El Paso's project.

1 THE WITNESS: That's correct.

2 CHAIRMAN JABER: Okay. Now I want you to explain  
3 that in more general fashion.

4 THE WITNESS: Okay. As you have heard in testimony,  
5 we had a significant capacity need. Over the two years,  
6 722 megawatts. Most of the bids, like FPL's own units, were  
7 for substantially less than that total amount. So you have a  
8 bid with 250 megawatts, another for 50, another with 700.

9 In the economic analysis that Dr. Sim will describe,  
10 the model combined every possible combination that met that  
11 minimum requirement and calculated a cost for each of those  
12 combinations. And then what we were basing our selection of a  
13 short list on is the results of thousands of combinations by  
14 just looking at the top 30 or so. Out of which, we looked at,  
15 well, what's this telling us? And one of the things you asked  
16 and I mentioned in my summary is that El Paso's bid was so low  
17 that there were many combinations with other bidders that  
18 included El Paso that made it to that list of about 32 top  
19 bidders.

20 CHAIRMAN JABER: Were those people invited to  
21 negotiations?

22 THE WITNESS: No, because they were much more  
23 expensive. Those combinations that were not with Florida Power  
24 Corp were much more expensive, in the order of another  
25 \$60 million or higher, than the one with Florida Power

1 Corporation and El Paso.

2 CHAIRMAN JABER: Wouldn't there have been -- just  
3 from an efficiency standpoint, wouldn't there have been some  
4 synergies that could have come out of that and efficiencies  
5 that could have come out of the negotiation process if the list  
6 had been expanded so that all of those companies could  
7 negotiate with each other before you even negotiated with them  
8 yourself, you know? Was that a consideration you all had at  
9 all?

10 THE WITNESS: No. We've never considered having  
11 companies negotiate with each other prior to coming in.  
12 However, in the RFP, we did invite companies, if they wished  
13 to, to submit bids jointly.

14 CHAIRMAN JABER: All right.

15 THE WITNESS: We specifically suggested it for those  
16 that had small bids, but we didn't preclude any others that  
17 were larger to come in with a combined bid.

18 CHAIRMAN JABER: Did you get any combined bids at  
19 all?

20 THE WITNESS: Not to my recollection.

21 CHAIRMAN JABER: Okay. Thank you, Mr. Silva.

22 BY MR. MOYLE:

23 Q Just a few more questions on this combining process.  
24 You were seeking 1,722 megawatts in the RFP; correct?

25 A Yes.

1 Q Okay. And by combining proposals to get to 1,722,  
2 you had fewer proposals than if you had combined proposals to  
3 get to, say, 1,100 just representing the Manatee unit; correct?

4 A I don't know that I could answer that question as  
5 to -- I suppose there would have been more ways of getting to a  
6 hundred -- yes. I suppose there would have been more ways of  
7 getting to 1,122 than to 1,722.

8 Q I guess I could ask Mr. Sim this, but do you know if  
9 your independent consultant raised that question with you to  
10 say, hey, you're only 15 megawatts shy, why don't you go ahead  
11 and combine the proposals to get just to the Manatee unit as  
12 compared to getting to the 1,722 number?

13 A Well, before -- one step that I -- I can't answer  
14 your question there. But one step that I know took place is  
15 that individual bids were first ranked by themselves. In other  
16 words, just take that proposal, be it for 500 megawatts, 700,  
17 200, just put it in, all other things being equal, and then  
18 take another bid for however size and length of contract, and  
19 then have everything else equal, and then calculate the cost of  
20 generation for the system with one and the other. And that was  
21 done for all the individual bids, those that came in in 2005  
22 and those that came in in 2006.

23 So we did look at what impact each of those would  
24 have as part of later on the model combining them into the most  
25 efficient combinations.

1 Q Thank you. And I will ask some of the other  
2 witnesses these questions. I appreciate your explanation. I'm  
3 taking more time than I anticipated, so I'm going to try to  
4 move this along, but let me shift gears and talk about this  
5 15-megawatt shortfall. You're seeking to add both the Manatee  
6 and the Martin units in 2005; correct?

7 A Yes.

8 Q Okay. And the Martin unit, how many megawatts does  
9 it represent approximately? I won't hold you to the exact  
10 number?

11 A It's -- just to give you the exact number, 1,102 --  
12 sorry. Yes, 1,107.

13 Q For Martin?

14 A I'm sorry. For Manatee, it's 1,107; for Martin, it's  
15 789.

16 Q 789 for Martin. And you're proposing to meet a  
17 demand of 15 megawatts in 2005; correct? 2005 if you just did  
18 the Manatee plant, you would be 15 megawatts short of the  
19 20 percent?

20 A That's correct.

21 Q Okay. So your solution to that is to go ahead build  
22 the Martin unit, this 1,700-plus-megawatt unit in 2005;  
23 correct?

24 A No. That's not our solution to the 15 megawatts. I  
25 think that that is not a correct characterization. We looked

1 at the need for 2005 and 2006, and we said, what are the  
2 various many thousands of alternatives to meet those needs?  
3 And the one that came out as the lowest cost was the one that  
4 has Manatee and Martin coming in 2005.

5           It was not because -- I mean, we actually did look at  
6 one that was very close to what has been suggested, which was  
7 Manatee with only a 50-megawatt purchase from Florida Power  
8 Corporation in '05, so that the extra above what we needed  
9 would only have been 35 megawatts, and then Martin in '03 -- in  
10 '06. But the economics associated with that combination were  
11 more expensive.

12           And a lot of the reason for that has to do with the  
13 high efficiency of these units that if you put them in, they  
14 more than overcome the acceleration of the cost of putting them  
15 in service. Putting in Martin in the year '05 means that for  
16 that 12-month period between June '05 and June of '06, fuel  
17 costs are approximately \$55 million lower than they would be if  
18 we defer Martin 6 (sic) later. So it wasn't like we said,  
19 let's meet the '05 need here, and then we have 15, and let's  
20 overwhelm it with 789. We said, this is the strategy overall  
21 that results in the lowest cost of all these combinations to  
22 the customer. And that's why we are proposing it.

23           Q     You're asking this Commission to approve your needs  
24 for both Martin and Manatee for in-service dates in 2005;  
25 correct?

1 A Yes.

2 Q And the Manatee unit alone, and we've gone through  
3 this in your deposition, but just adding the Manatee unit puts  
4 you at a reserve margin figure of 19.92 percent; correct?

5 A That's correct.

6 Q Now, you're doing this to try to get to that  
7 20 percent reserve margin figure; correct?

8 A Yes.

9 Q Okay. And FPL has been operating at a 15 percent  
10 reserve margin for a number of years; correct?

11 A Yes.

12 Q And those operations have generally been satisfactory  
13 and reliable. Wouldn't you agree with that?

14 A Yes, I would.

15 Q Okay. You don't have a reliability concern, do you,  
16 about if the Manatee plant alone were to go in and your reserve  
17 margin figure were to be 19.92 percent, you wouldn't have a  
18 concern about FPL's reliability, would you?

19 A I always have a concern about FPL's reliability, but  
20 if you're saying, could we meet the load with Manatee only,  
21 probably yes, but that's an irrelevant issue here.

22 Q And it's irrelevant because of the stipulation;  
23 correct?

24 A Because of the stipulation which was approved by the  
25 Commission and which has become the rule -- the ground rule for



1 all the bids that we received.

2 For example, when we did the optimization of these  
3 groupings and ran thousands of models, the model seeks out  
4 combinations that meet 20 percent reserve margin, and it  
5 eliminates those that do not. So it would be unfair after the  
6 fact to come in and say, well, this unit provides much more  
7 generation than is actually needed in 2005, even though it's  
8 the most economic combination. Let's defer it because some  
9 people may say that 20 percent reserve margin is not needed.

10 It is what we agreed to do. It is the basis for the  
11 RFP, and it would be unfair to everybody at this stage to pick  
12 another number and apply it retrospectively to what has been  
13 done.

14 Q You would agree that bringing the Manatee unit in in  
15 2005 represents a considerable capital expenditure, does it  
16 not --

17 A Yes.

18 Q -- as compared to deferring it a year; correct?

19 A Yes.

20 Q Okay. And just a few more questions about this  
21 20 percent number. Did you review the order accepting the  
22 stipulation before you made your decision that the 19.92 figure  
23 would not satisfy your reserve margin criteria?

24 A No.

25 Q Did you consider rounding up the 19.92 figure to

1 20 percent as just a mathematical rounding situation to meet  
2 the reserve margin requirement?

3 A No, because there is no rule or reason that we could  
4 call that says, this is appropriate, and this would not be.  
5 There would be no reason why going from 19.92 to 20 percent is  
6 okay, but not from 19 or 18.9. It was what it was, and it was  
7 agreed to by all the parties.

8 Q The DSM -- you have a little bit in your testimony  
9 about DSM, and I read it, I think, to indicate that you guys  
10 have about a 3,076 megawatt reduction in demand since --  
11 through 2002; is that correct?

12 A I'll have to refer to that.

13 Q On Page 12.

14 MR. GUYTON: I think Mr. Brandt is probably the more  
15 appropriate witness to inquire about DSM.

16 CHAIRMAN JABER: Mr. Guyton, there's a -- right  
17 there, "How much DSM is included in FPL's resource plan?"  
18 That's Page 12 of --

19 MR. GUYTON: I agree. I just simply wanted to point  
20 out that Mr. Brandt is prepared to address it in detail. I  
21 mean, certainly Mr. Silva can address his testimony, Madam  
22 Chairman.

23 CHAIRMAN JABER: Thank you, Mr. Guyton, but the next  
24 time you say something, it needs to be an objection; otherwise,  
25 someone might accuse you of leading your witness. So let's

1 wait.

2 MR. GUYTON: I stand corrected.

3 CHAIRMAN JABER: Yes, you do. Thank you, though, for  
4 acknowledging that.

5 Mr. Moyle, repeat your question.

6 BY MR. MOYLE:

7 Q Sure. I was just getting -- asking you to agree that  
8 Florida Power & Light's DSM efforts have accomplished a  
9 3,076-megawatt reduction in demand through 2001; correct?

10 A Yes.

11 Q And you don't believe that there's another  
12 15 megawatts of DSM out there that could be realized by 2005 to  
13 meet the 20 percent reserve margin figure?

14 A I am not an expert in that area; however, in my  
15 conversations with Mr. Dennis Brandt, he has communicated that  
16 there isn't --

17 Q Okay. I'll ask --

18 A -- anything that would be economic.

19 Q I'll ask Mr. Brandt those questions. Just a couple  
20 of questions about the criteria again. The criteria, it seems  
21 to me, were used in large part to eliminate bidders, were they  
22 not?

23 A Some criteria that I have already acknowledged were  
24 used to determine that bidders were ineligible, but others were  
25 not.

1           Q     You eliminated 12 bids because a bidder was accused  
2 of filing misleading financial statements and gaming the  
3 California energy market; correct?

4           A     Yes.

5           Q     Okay. Do you know if those accusations have ever  
6 been proven in a court of law?

7           A     Not to my knowledge.

8           Q     There's been a little discussion about the -- what  
9 the bids were in terms of were they binding on people who  
10 responded, and I think we talked about this in our deposition,  
11 but I just want to clarify. Isn't it your view that if a  
12 bidder doesn't take exception to anything in the RFP, then the  
13 terms and conditions of the RFP are binding on the bidder? You  
14 can answer that "yes or no," I'd appreciate it.

15          A     No. Although, I remember saying that they were in my  
16 deposition. Upon further thinking, I would not consider them  
17 binding if they have not taken exceptions. And the reason is  
18 that the next step would be contract negotiations. And when  
19 you get into contract negotiations, and we ask for something,  
20 and the other side asks for something, and there's trade-offs,  
21 and other than minimum requirements that we specifically  
22 specified, things can be traded so that you can draw the line  
23 in saying, this is absolutely binding because you didn't take  
24 exception at the time.

25                   Obviously, we would have to find other value to

1 replace anything that is lost, but it would be improper to say  
2 that it's binding before getting into negotiations.

3 Q Okay. You agreed that it was binding in your  
4 deposition, didn't you?

5 A Yes. As I said, I said that, and I didn't think  
6 through the process of how we would negotiate with someone when  
7 I answered that question.

8 Q What caused you to rethink your view in that respect?

9 A Just thinking about -- I mean, just reviewing my  
10 deposition and looking at the -- and the answer, and asking  
11 myself, is there anything here that I would say differently?

12 Q Okay. And in the RFP document, the supplemental RFP,  
13 you did seek firm capacity and energy from bidders; correct?

14 A Yes.

15 Q And you were going to rely on those numbers when you  
16 performed your analysis; correct?

17 A Yes.

18 Q Who ultimately made the decision to move forward with  
19 FPL's self-build option?

20 A Ultimately, I would think that I would say  
21 Mr. Evanson did, but it was not a difficult choice. I  
22 presented him with the results of the economic analysis  
23 performed by FPL and the independent Sedway Consulting. And  
24 based on that and based on my own review of the nonprice  
25 factors to see if there would be any reason to offset that

1 economic advantage, I recommended the outcome to him and he  
2 concurred.

3 Q Okay. You don't know, as we sit here today, all the  
4 factors that he considered in making that decision, do you?

5 A I don't know if he considered any other factors other  
6 than the economic analysis and my discussion with him on the  
7 nonprice factors.

8 Q Right. And just so we're clear. I mean, obviously,  
9 you didn't know what was in his mind when he made that  
10 decision?

11 MR. GUYTON: Objection. The witness can't speculate  
12 as to what's in someone else's mind.

13 CHAIRMAN JABER: Mr. Moyle, your response. The  
14 objection is speculation.

15 MR. MOYLE: I think it's obvious.

16 CHAIRMAN JABER: That you're asking --

17 MR. MOYLE: Wanting to know if Mr. Evanson made  
18 the --

19 CHAIRMAN JABER: -- the witness to speculate?

20 MR. MOYLE: -- no -- made the decision with respect  
21 to the RFP. I'm asking him if he knew everything that  
22 Mr. Evanson considered, what was in Mr. Evanson's mind.

23 CHAIRMAN JABER: Okay. I'm going to disallow the  
24 question. Let's move on.

25 MR. MOYLE: I have some documents that I need to get

1 into the record as evidence through this witness. I'm just  
2 about done. I have one line of questioning related to turbines  
3 that I can pursue.

4 CHAIRMAN JABER: Okay. Before we leave this  
5 document, you initially said you wanted it identified, but you  
6 didn't ask officially.

7 MR. MOYLE: Maybe what I'll do is, let me finish my  
8 question, and then we'll just -- I'll move to get documents  
9 introduced that I want to have in the record as part of that  
10 with this witness, if that's okay.

11 CHAIRMAN JABER: That's fine. We just need to speed  
12 it up.

13 MR. MOYLE: Okay.

14 BY MR. MOYLE:

15 Q With respect to FPL's decision to go with the  
16 self-build option, doesn't FPL realize a benefit in that it is  
17 able to place a number of turbines in its own projects,  
18 turbines that FPL Group has contracted for?

19 A I don't know about benefits or the status of those  
20 contracts, if any.

21 Q Who would know that?

22 A I think that Mr. Yeager can discuss the situation  
23 with the turbines.

24 MR. MOYLE: Okay. Madam Chair, for the record, I  
25 wanted to introduce the exhibit that I provided to you all.

1 And we can call that whatever you prefer.

2 CHAIRMAN JABER: I heard the witness refer to this as  
3 a presentation he made regarding the supplemental RFPs -- the  
4 supplemental RFP, and I think the presentations were dated  
5 May 31st and June 18th.

6 Mr. Silva, is that what you said?

7 THE WITNESS: That's correct, Madam Chairman.

8 CHAIRMAN JABER: So for a short title, Mr. Moyle,  
9 "Supplemental RFP Presentation dated May 31st and June 18th."  
10 And that will be Exhibit 6 for purposes of hearing.

11 (Exhibit 6 marked for identification.)

12 MR. MOYLE: Okay. And Number 7 would be the contract  
13 for purchase of firm capacity and energy between "blank" and  
14 Florida Power & Light. This is the draft PPA.

15 CHAIRMAN JABER: Excuse me, Mr. Moyle.

16 MS. BROWN: Madam --

17 CHAIRMAN JABER: Hang on. Did I give you a wrong  
18 hearing number?

19 MS. BROWN: Madam Chairman, may I just inquire, are  
20 we marking these for identification, or are we moving them into  
21 the record?

22 CHAIRMAN JABER: Well, last time I checked we didn't  
23 move things into the record until we were done with the  
24 witness. So I'm just identifying exhibits.

25 MS. BROWN: I wasn't sure Mr. Moyle was aware of



1 that.

2 MR. MOYLE: I'll follow your lead and just have them  
3 marked and move them in. How's that?

4 CHAIRMAN JABER: We are only identifying exhibits.  
5 This is Exhibit 6 for the hearing. And again, it's  
6 "Supplemental RFP Presentation dated May 31st and June 18th."

7 Mr. Moyle, what's the next exhibit? All right.  
8 Mr. Moyle, I have a document in front of me entitled, "Contract  
9 for the Purchase of Firm Capacity and Energy between 'Blank'  
10 and Florida Power & Light." What is it you're seeking with  
11 this document?

12 MR. MOYLE: That it be identified as an exhibit to  
13 the testimony of Mr. Silva.

14 CHAIRMAN JABER: And you'll be asking questions of  
15 the witness of this document?

16 MR. MOYLE: No. I think he acknowledged that the  
17 document was provided to the short-listed bidders. I plan on  
18 pointing out certain provisions in it when we filed papers. I  
19 figure given the hour and your patience in letting me ask a lot  
20 questions, I wasn't going to plow through and point out  
21 specific provisions.

22 CHAIRMAN JABER: Is this a draft purchased power  
23 agreement?

24 MR. MOYLE: Yes. Maybe I need to clear up that this  
25 was the document that was provided to the --

1 CHAIRMAN JABER: That would be helpful for the  
2 record.

3 BY MR. MOYLE:

4 Q Mr. Silva, the document, "Contract for the Purchase  
5 of Firm Capacity and Energy between 'blank' and Florida Power &  
6 Light Company," is this the document that was provided to the  
7 short-listed bidders for their review?

8 A Mr. Moyle, I don't have a copy of that document.  
9 Yes, this appears to be the document that we sent to El Paso  
10 for their review and comments.

11 CHAIRMAN JABER: Hearing Exhibit Number 7 will be  
12 identified as "Contract for the Purchase of Firm Capacity."  
13 (Exhibit 7 marked for identification.)

14 CHAIRMAN JABER: Mr. Moyle, you said you had a second  
15 one? Was this the last document?

16 MR. MOYLE: That was it. That was it. I think  
17 Mr. Yeager I'll use the other one with. So thank you for your  
18 indulgence.

19 CHAIRMAN JABER: Thank you.

20 Mr. McGlothlin.

21 MR. GUYTON: Madam Chairman, might I ask for a short  
22 break?

23 CHAIRMAN JABER: Sure.

24 MR. GUYTON: I apologize for interrupting, but --

25 CHAIRMAN JABER: That's fine. We'll take a

1 ten-minute break.

2 (Brief recess.)

3 CHAIRMAN JABER: We're going to go ahead and get on  
4 the record. And, Mr. McGlothlin, you're in the process of  
5 cross-examining Mr. Silva.

6 CROSS EXAMINATION

7 BY MR. MCGLOTHLIN:

8 Q Mr. Silva, I'm Joe McGlothlin; I represent Florida  
9 PACE in this case. I want to begin with a follow-up question.  
10 You mentioned in a response to Mr. Moyle that one option that  
11 the company looked at was one of the self-build options in  
12 combination with a 50-megawatt purchase from Florida Power  
13 Corporation; is that correct?

14 A Yes.

15 Q Without divulging anything that's confidential in  
16 nature, my question is, what was the nature of that proposed  
17 contract? Was it a peaking contract? Was it something that  
18 required an energy purchase as well?

19 A The one with Florida Power Corporation?

20 Q Yes, sir.

21 A The grouping, if you will, to meet capacity consisted  
22 of the Manatee unit and a system purchase of 50 megawatts based  
23 on average system costs from Florida Power Corporation for, I  
24 believe, a period of a few years. And then our -- that  
25 combination also consisted of our Martin Unit 8 in 2006.

1 Q If I understand your answer correctly, the proposed  
2 contract with Florida Power Corporation, since it was based on  
3 average system costs, contemplated some purchases of energy and  
4 not simply peaking capacity; is that correct?

5 A That's correct.

6 Q All right. I'll refer you to Page 11 of your  
7 prefiled testimony. Beginning at Line 22, you describe the  
8 power that FPL currently purchases from other sources in  
9 addition to its own generation; correct?

10 A Yes.

11 Q And on Page 12, you provide some information about  
12 what that amount would look like in the summer of 2010?

13 A That's correct.

14 Q And I've just summed up a couple of figures that  
15 appear there. You indicate that in the summer of 2010 there  
16 would -- the purchases from utilities and IPPs would decline to  
17 382 megawatts; is that correct?

18 A Yes. That's what it says in the testimony, but for  
19 clarification, this is not to say this is what will happen. In  
20 other words, that we have a strategy to make this happen. This  
21 simply says, the contracts we now have expire at such a rate  
22 that absent any other action, that's where we get to in that  
23 time.

24 Q I'm looking at the first statement on Line 1 of  
25 Page 12. "By summer of 2010, the purchases are expected to

1 decline to 382 megawatts." Do I understand correctly that that  
2 is what is contemplated by your testimony?

3 A That's correct. And it refers to the specific  
4 purchases that we have in place now.

5 Q And in addition to that 382 by the summer of 2010,  
6 you would have QF purchases of 640 megawatts; is that correct?

7 A Yes, that's correct.

8 Q I added those two figures and got 1,022 megawatts in  
9 2010; am I correct?

10 A That's correct. If we look at what we have now in  
11 place and their normal expiration time, by that time in 2010,  
12 that's what will be left of those.

13 Q Now, on Page 11, you have a figure for your total  
14 system of 17,860 megawatts. Is that what FPL currently owns,  
15 owned capacity?

16 A Yes.

17 Q And that's excluding the Manatee 3 and Martin  
18 8 capacity that's being proposed in these dockets?

19 A Yes.

20 Q So that would -- if that were to go forward as you  
21 proposed, that would put FPL at approximately 20,000 megawatts  
22 of owned capacity by 2005; correct?

23 A Yes, it would be a little over 19,000. Yes.

24 Q Now, the next line of questioning I'm going to just  
25 touch on very briefly, the derivation of the 15-megawatt figure

1 that we've all been talking about. Turning to Page 13 of your  
2 testimony, you state there that FPL needs 1,122 megawatts by  
3 June of 2005. I assume that's so that it would be in place to  
4 meet the summer peak of 2005; correct?

5 A Yes, correct.

6 Q And Manatee 3 would provide 1,107 megawatts standing  
7 alone; is that correct?

8 A Yes.

9 Q That's why the questions and answers have been  
10 centered on the proposition that if you build only Manatee in  
11 2005, the shortfall compared to the predicted summer peak in  
12 2005 is 15 megawatts; correct?

13 A Yes.

14 Q And that's to meet the 20 percent reserve margin  
15 criterion?

16 A Yes.

17 Q And I believe you'll agree with Mr. Moyle that if FPL  
18 were to place only Manatee 3 in 2005, the reserve margin would  
19 be 19.92 percent; correct?

20 A That's correct.

21 Q Now, you've stated in response to questions that FPL  
22 proposes the combination of Manatee 3 and Martin 8 in 2005  
23 because that's the most economical way to meet the criterion;  
24 is that correct?

25 A Yes.

1 Q But that assumes that the 20 percent guideline is  
2 going to be met at a minimum; correct?

3 A Yes.

4 Q All right. And when you say that the combination of  
5 Manatee 3 and Martin 8 is the most cost-effective or the most  
6 economical, by that do you mean it's the most cost-effective or  
7 economical of the proposals that you investigated? Am I  
8 correct?

9 A Of all the proposals that we have evaluated, yes.

10 Q Okay. And all the proposals that you evaluated were  
11 those that were received in response to the supplemental RFP;  
12 am I right?

13 A That's correct.

14 Q So the proposals you received in response to the  
15 supplemental RFP are the full universe of everything that the  
16 company considered in reaching the conclusion that you report  
17 here today which is this combination is the most  
18 cost-effective?

19 A Not exactly. I would say that before we put forth  
20 the FPL Manatee 3 and Martin Unit 8, there was some internal  
21 evaluation concerning other possible alternatives to add  
22 generation. And this one came out to be the lowest cost.

23 Q All right. Before you issued the supplemental RFP,  
24 internally you evaluated other self-build options; is that  
25 correct?

1 A Yes.

2 Q And that's what you're referring to by your last  
3 answer?

4 A Yes.

5 Q Okay. So step one was internal evaluation of  
6 self-build, and of that universe, you came up with Manatee  
7 3 and Martin 8?

8 A That's correct.

9 Q And of the full universe of proposals that you  
10 evaluated to compare other possibilities against the self-build  
11 option were those that you received in response to the  
12 supplemental RFP?

13 A Yes.

14 Q Would you agree with me, sir, that if FPL were to  
15 build Manatee 3 to come on-line in 2005 and to enter a power  
16 purchase contract to purchase 15 megawatts of peaking capacity  
17 for one year, that would satisfy your 20 percent criterion for  
18 2005?

19 A Yes.

20 MR. McGLOTHLIN: If you'll bear with me, I have a  
21 document to show the witness.

22 Q Mr. Silva, I'm confident that you are familiar with  
23 the supplemental RFP document, are you not?

24 A Yes.

25 Q I represent to you that the document that Ms. Curry



1 is distributing is an excerpt from the larger document. I was  
2 trying to save some paper in that regard. I have the full  
3 document here if you wish to refer to it to ensure that's the  
4 case.

5 A Thank you.

6 MR. McGLOTHLIN: I ask that this be marked as an  
7 exhibit.

8 CHAIRMAN JABER: Hearing Exhibit 8, short title.

9 MR. McGLOTHLIN: "Excerpt from Supplemental RFP."

10 CHAIRMAN JABER: Thank you.

11 (Exhibit 8 marked for identification.)

12 BY MR. McGLOTHLIN:

13 Q Mr. Silva, are you satisfied that this is an excerpt  
14 from the larger RFP document?

15 A Yes, I agree.

16 Q I'll refer you to Pages 6 and 7 which are the second  
17 and third pages of the handout. Under the caption, "Minimum  
18 Requirements for Proposals," on Page 7, please read aloud  
19 Number 3 term (A).

20 A Number 3 term (A), "The proposed term must be for a  
21 minimum of three years."

22 Q And would you read aloud, please, the Number 5 term,  
23 resource block size.

24 A Number 5, resource block size (megawatt), "Unless the  
25 bid is based on a qualifying facility, QF, the minimum resource

1 block size that FPL will consider in a proposal is  
2 50 megawatts. Bids based on a QF may be less than  
3 50 megawatts."

4 Q Now, a moment ago you agreed with me that Manatee 3  
5 plus a one-year purchase of 15 megawatts of peaking capacity  
6 would satisfy the 20 percent criterion in 2005; is that  
7 correct?

8 A Yes, it would satisfy that criterion.

9 Q That's the question. Thank you, sir. Did you hear  
10 your counsel say that -- in his opening statement that FPL had  
11 exhausted the market in scouring for more cost-effective  
12 alternatives?

13 A Yes.

14 Q In your view, in light of the minimum terms of the  
15 RFP, did FPL exhaust the market for one-year purchases of  
16 15 megawatts?

17 A Not in this document, but we do that as a matter of  
18 course for short-term purchases when and as needed.

19 Q Well, if I understood your answer a few moments ago,  
20 you said that the only things that you considered,  
21 investigated, and analyzed as alternatives to the self-build  
22 option were the responses you received to the supplemental RFP.  
23 Was that true?

24 A Yes, against the FPL plan. What we compared against  
25 it was what we received in the supplemental RFP.

1 Q And I understand from your later response that you  
2 have the ability, if you so desire, to shop for short-term  
3 purchases to satisfy a short-term need; correct?

4 A Yes.

5 Q And you did not do that in comparing alternatives to  
6 the Manatee 3/Martin 8 scenario?

7 A No.

8 Q You mentioned that the Florida Power Corporation  
9 contract that was under consideration at one point that made it  
10 to one of the final cuts was for 50 megawatts. Do I understand  
11 correctly it was for three years or longer?

12 A I believe so.

13 Q And you mentioned also that it was not sheer peaking  
14 capacity but has some energy purchases as well; correct?

15 A That's correct.

16 Q Would you expect a contract of fewer megawatts  
17 reserving peaking capacity only to be cheaper than the contract  
18 that was evaluated?

19 A I don't know.

20 Q You don't know whether peaking capacity would be less  
21 than capacity that has some firmness to it?

22 A No, I don't, because I don't know what I would be  
23 comparing, what terms from one to the other.

24 Q If you'll refer to Page 20 of your prefilled  
25 testimony. At Line 5 this statement appears, "The economic

1 analysis of competing alternatives must reflect all associated  
2 quantifiable costs both direct and indirect." Do you see that  
3 statement?

4 A Yes.

5 Q Would you agree that it's important to quantify those  
6 costs with as much precision as is possible?

7 A To the extent that they can be quantified, yes.

8 Q And on the same page appears this statement,  
9 "Indirect costs would include the change in the fuel costs of  
10 other existing generating units when the new unit is added to  
11 the system." Would the reference there be one aspect of the  
12 production costs that have to be examined?

13 A Yes.

14 Q Again, in his opening statement, counsel for FPL  
15 indicated that one advantage of having both Manatee 3 and  
16 Martin 8 in service in 2005 would be that Martin 8 would  
17 provide for unexpected load growth. Did you hear that  
18 statement?

19 A Yes.

20 Q Martin 8 is 789 megawatts; is that correct?

21 A Yes.

22 Q And we've identified a shortfall of 15 megawatts when  
23 measured against the predicted summer peak for 2005; am I  
24 correct?

25 A Yes.

1 Q The difference there is 774 megawatts?

2 A Yes.

3 Q Do you anticipate needing anything like 774 megawatts  
4 to deal with a load growth for one year?

5 A No, but that's not the reason why Martin in '05 makes  
6 sense to the customer.

7 Q My question had to do with load growth, sir, and your  
8 answer was no; correct?

9 A My answer was no, and I qualified it to explain why  
10 it's important to have Martin in place in '05, for the benefit  
11 of the customers.

12 MR. McGLOTHLIN: Yes, sir. And my question was  
13 limited to load growth, and I think the answer is clear.  
14 That's all the questions I have.

15 CHAIRMAN JABER: Thank you, Mr. McGlothlin.  
16 Mr. McWhirter.

17 CROSS EXAMINATION

18 BY MR. McWHIRTER:

19 Q Mr. Silva, in your testimony, you indicated that your  
20 company owns 17,860 megawatts of generation?

21 A Yes.

22 Q And in 2001 you had a summer peak demand of  
23 18,754 megawatts. That's a differential of 894 megawatts. How  
24 did you meet that additional demand that exceeded your capacity  
25 in place?

1           A     Our reserve margin is met by a combination of owned  
2 capacity and purchased capacity.

3           Q     So you purchased that -- of the 894, was that under  
4 firm contract, or did you purchase it in the spot market?

5           CHAIRMAN JABER: Mr. McWhirter?

6           MR. McWHIRTER: Yes, ma'am.

7           CHAIRMAN JABER: Can you bring the microphone toward  
8 you?

9           MR. McWHIRTER: Yes.

10          CHAIRMAN JABER: Thank you.

11          A     Could you point out to the line that you're looking  
12 at?

13          Q     The generating capacity is on Page 11, Line 13. Your  
14 demand for 2001 is on Line 13 -- I mean, Page 13, Line 5.

15          A     Thank you, sir.

16          Q     Okay.

17          A     There is a combination of contracts for capacity.  
18 They would be firm if they count against the reserve margin.

19          Q     All right, sir. But I'm talking about that moment in  
20 time. Did you have contracts in place that would produce  
21 894 megawatts of capacity so that you could meet that demand?

22          A     So that we could meet our demand? I cannot answer  
23 that question. I don't know what contracts we had in place at  
24 that time, the exact number of megawatts.

25          Q     You do know that by 2005 you're going to reduce your

1 purchase contracts down to 382 megawatts. Is that your  
2 testimony?

3 A No, sir. What I tried to explain is that -- what my  
4 testimony says is that the existing contracts if left alone  
5 will decline to that point. It doesn't address whether we're  
6 going to replace them with other contracts or what we might do  
7 with them. It's just the existing ones, and the normal  
8 expiration rate would get us to that point.

9 Q All right. So you don't know whether your company  
10 plans to renegotiate those contracts that are winding down, or  
11 whether they're just going to let that power go somewhere else;  
12 is that correct?

13 A No. That decision has not been discussed as far as I  
14 know.

15 Q But we do know that there's substantially  
16 500 megawatts of capacity that's out there and available to  
17 purchase by somebody when those contracts wind down?

18 A Yes.

19 Q All right. Now, were your demand side management  
20 programs being operated so that you cut off nonfirm customers  
21 at the time you met the 2001 peak, or do you know?

22 A I don't know.

23 Q You indicated that your current demand side  
24 management programs generate 3,700 -- 3,076 megawatts. And of  
25 course, the reserve margin requirement for 18,750 would be

1 3,750 megawatts for reserve margin. It appears to me by my  
2 lawyer calculation, and I hope you'll correct it if I've made a  
3 mistake, that 82 percent of your reserve margin comes from  
4 customers that can be cut off under a demand side management  
5 program, and 18 percent presently comes from machines and  
6 purchase contracts. Is that a fair calculation?

7 A I would have to do that calculation. I have not done  
8 it.

9 Q Can you tell us how you would do the calculation? Am  
10 I correct in assuming that if you've got 3,076 and you need  
11 3,750, you divide 3,750 into 3,076, and you would see that that  
12 constitutes 82 percent?

13 A I believe that you will get an answer to that  
14 question from Dr. Sim who is typically the person that performs  
15 that calculation.

16 Q All right, sir. Do you know -- assuming that Dr. Sim  
17 confirms that lawyer type analysis, do you know whether you  
18 intend to change that ratio in 2005 and 2006? Are you still  
19 going to rely heavily on cutting off customers as opposed to  
20 building new generation?

21 MR. GUYTON: Objection. I don't know that it's been  
22 established that my client is going to rely heavily or has  
23 relied heavily. It assumes facts not in evidence.

24 CHAIRMAN JABER: Mr. McWhirter, you heard the  
25 objection. Your response.



1 MR. McWHIRTER: Let me restate the question --

2 CHAIRMAN JABER: Thank you.

3 MR. McWHIRTER: -- so that it won't be offensive to  
4 counsel.

5 BY MR. McWHIRTER:

6 Q Do you know whether your company -- what your company  
7 plans with respect to the ratio between demand side management  
8 and machine capacity in the years 2005 and 2006?

9 A No. The only thing that I'm aware of is that from  
10 conversations that I've had with Mr. Brandt, there aren't --  
11 aside from what's stated, there aren't additional economic  
12 means of demand side management; therefore, the increased need  
13 to meet our capacity reserve must come from either generation  
14 capacity that we own or capacity that we purchase on a firm  
15 basis.

16 Q Mr. Brandt told you that the DSM cow is about to be  
17 milked dry?

18 A That there would not be additional economic  
19 capability.

20 Q I'd like to switch the line of questioning, if I may  
21 now, Mr. Silva, to Page 21 where you talk about the equity  
22 penalty, and let me see if I can -- if my understanding of what  
23 the equity penalty is is correct. As I understand it, if you  
24 buy electricity from a third party and enter into a contract to  
25 buy it, the rating agencies when they rate your bond issues,

1 when and if they rate your bond issues, will construe that  
2 acquisition obligation as a debt of the corporation. Is that  
3 the bottom line?

4 A I understand that the rating agencies will impute a  
5 portion of that obligation as debt.

6 Q All right. So there will be an impact upon your  
7 company's debt/equity ratio, and that's what's known as the  
8 equity penalty?

9 A Well, I can only give you a superficial response to  
10 that since it's not -- it also is not my area of expertise.  
11 But the equity penalty is, if you will, an adjustment that is  
12 applied to the purchased power alternatives so that the  
13 ultimate impact of those alternatives on FPL's capital  
14 structure are the same as if FPL is building its capacity. And  
15 that's what the equity penalty consists of.

16 In other words, if we make a choice to build or buy,  
17 the outcome or the impact on capital structure should be the  
18 same, and that requires something that I think has an  
19 unfortunate name, but nevertheless, the equity penalty to be  
20 applied in order to be able to compare apples to apples.

21 Q All right sir. To your right, there's a poster that  
22 you put up, and you handed out a sheet called "Summary Economic  
23 Analysis." When that analysis was made, was the equity penalty  
24 incorporated to come up with the price differentials?

25 A Of course. It's an integral part of the cost, and it

1 was reflected in it.

2 Q And if I look at Exhibit N, which you refer to in  
3 your testimony, this is Exhibit N to the Need Study, you show  
4 the equity penalty that were imposed on each one of the bids.  
5 And the first one is the only one I'll address, that's P1. You  
6 imposed an \$87,997 million net present value penalty to that  
7 bidder as an equity penalty. Is that what happened?

8 MR. GUYTON: I object to the characterization as been  
9 posed.

10 MR. McWHIRTER: That was the way I read it.

11 BY MR. McWHIRTER:

12 Q Would you give me the proper characterization of how  
13 that \$87 million --

14 A I'm sorry, I don't have the document that you're  
15 alluding to. Are you referring to the first line?

16 Q P1, yes, sir.

17 A It shows an equity penalty of eighty-seven million,  
18 nine-hundred-and-some thousand.

19 (Transcript continues in sequence with Volume 3.)

20 - - - - -

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25

1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby  
6 certify that the foregoing proceeding was heard at the time and  
7 place herein stated.

8

9 IT IS FURTHER CERTIFIED that I stenographically  
10 reported the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript constitutes a true transcription of my notes of said  
13 proceedings.

14

15 I FURTHER CERTIFY that I am not a relative, employee,  
16 attorney or counsel of any of the parties, nor am I a relative  
17 or employee of any of the parties' attorneys or counsel  
18 connected with the action, nor am I financially interested in  
19 the action.

20

21 DATED THIS 3rd DAY OF OCTOBER, 2002.

22

23

*Tricia DeMarte*

24

TRICIA DeMARTE  
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25