



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I N D E X

## WITNESSES

NAME:	PAGE NO.
SEAN FINNERTY	
Direct Examination by Mr. Moyle	1022
Prefiled Direct Testimony of Douglas Egan as adopted by Sean Finnerty Inserted	1027
Cross Examination by Mr. Twomey	1047
Cross Examination by Mr. Guyton	1049
Cross Examination by Ms. Brown	1074
Redirect Examination by Mr. Moyle	1074

## ANDREW L. MAUREY

Direct Examination by Ms. Brown	1084
Prefiled Direct Testimony Inserted	1088
Cross Examination by Mr. Litchfield	1120

## MISCELLANEOUS

	PAGE NO.
CERTIFICATE OF REPORTER	1164

## EXHIBITS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	NUMBER:		ID.	ADMTD.
	31	Resumé of Sean Finnerty	1023	1080
	32	DFE-1 through DFE-5	1026	1080
	33	CPV's responses to FPL's first request for admission	1049	1049
	34	SRS-2	1049	1080
	35	CPV's May 24, 2002 proposal in response to FPL's supplemental RFP	1049	1080
	36	(Confidential) FPL responses to staff's first request for production of documents numbers 1, 2, 3; and FPL responses to staff's second request for production of documents numbers 18 and 19	1082	1083
	37	FPL responses to staff's first set of interrogatories numbers 1-5; FPL responses to staff's second set of interrogatories numbers 20-30 & 32-36; FPL responses to staff's first request for production of documents numbers 1-8; FPL responses to Reliant Corporation's second set of interrogatories number 15; FPL responses to CPV Gulfcoast's third set of interrogatories numbers 88-89; FPL responses to staff's second request for production of documents numbers 8-19	1083	1084
	38	ALM-1, ALM-2, ALM-5 through ALM-17	1087	
	39	(Confidential) ALM-3	1087	
	40	7/27/99 Staff recommendation in Docket Number 990249	1157	

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

(Transcript continues in sequence from Volume 7.)

CHAIRMAN JABER: All right. We're ready to get back on the record. Mr. Moyle, would you like to call your witness?

MR. MOYLE: I would, but before we do that, Mr. Guyton and I spoke this morning, and I let him know that after thinking and conferring with my client last night, that I am not going to be calling Ms. Iglesias. So I just wanted to let you know of that.

MR. GUYTON: Madam Chairman, may Ms. Iglesias be excused?

CHAIRMAN JABER: Yes, yes. Thank you both.

MR. MOYLE: Mr. Finnerty has been here for the last couple of days, Madam Chair, but I'm not sure he has been here when you were administering oaths. So I don't think he's sworn.

CHAIRMAN JABER: Thank you.

SEAN FINNERTY

was called as a witness on behalf of CPV Gulfcoast, Ltd., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOYLE:

Q Please state your name, address, and title for the record.

A My name is Sean Finnerty. My address is -- business

1 address is 35 Braintree Hill Park, Braintree, Massachusetts.  
2 I'm employed as vice president of development for Competitive  
3 Power Ventures.

4 Q Are you sponsoring the testimony and exhibits that  
5 have been previously filed in this case by Mr. Doug Egan?

6 A Yes, I am.

7 MR. MOYLE: And we have filed a notice of  
8 substitution. I've handed out an exhibit that has your  
9 qualifications. The exhibit that you have a copy of, that will  
10 be marked as Exhibit -- I believe it's 30?

11 CHAIRMAN JABER: Are you referring to his resumé?

12 MR. MOYLE: Yes, ma'am. Okay.

13 CHAIRMAN JABER: Hearing Exhibit 31 will be  
14 identified for Mr. Finnerty's resumé.

15 (Exhibit 31 marked for identification.)

16 BY MR. MOYLE:

17 Q And that resumé represents your qualifications, does  
18 it not?

19 A Yes, it does.

20 Q Other than the substitution with respect to you and  
21 your information being substituted for Mr. Egan on Pages 1 and  
22 2 of the prefiled testimony, do you have any other changes that  
23 you would like to make today?

24 A Yes, I do.

25 Q Could you please indicate those for the record.

1           A     Yes. Beginning on Page 6 of the testimony at  
2 Lines 20 and 21 delete the phrase, "if not impossible."

3           Q     Okay.

4           A     On Page 7 of the testimony, Line 9, I would delete at  
5 the end of that sentence, delete the quotation marks. On Lines  
6 9 and 10, delete the words "emphasis added" in parentheses. On  
7 Line 10 before the word, "order," insert the word "in."

8           CHAIRMAN JABER: Insert, what, in, I-N?

9           THE WITNESS: In, yes.

10           On Line 11 after the parentheses, insert in  
11 parentheses "emphasis added."

12 BY MR. MOYLE:

13           Q     Just so the record is clear, would you read that  
14 sentence as it's now been corrected, please.

15           A     "In order to determine which proposals would be the  
16 best overall choices for FPL."

17           Q     Okay. That's starting on Line 10 there?

18           A     Yes, starting on Line 10.

19           Q     Do you have any other changes?

20           A     Yes. On Line 17, the start of that sentence, correct  
21 the word after "if" to "the."

22           Q     Okay. Is that it?

23           A     And on Page 14, a grammatical correction on Line 15,  
24 delete the second grammatical period.

25           CHAIRMAN JABER: Mr. Finnerty, I'm very sorry, I

1 can't hear you. You may want to bring the microphone toward  
2 you.

3 THE WITNESS: Sorry, Madam Chairman.

4 CHAIRMAN JABER: That's okay. What was the change?

5 THE WITNESS: On Page 14, Line 15, it is a  
6 grammatical change, just delete the second period. There are  
7 no other changes.

8 BY MR. MOYLE:

9 Q Okay. Given those changes, if I were to ask you  
10 today the questions set forth in the prefiled testimony, would  
11 your answers be the same?

12 A Yes, they would.

13 Q Okay. And you're sponsoring the exhibits to the  
14 testimony except for Mr. Egan's biography?

15 A Yes.

16 Q Okay. Have you prepared a summary of your  
17 testimony --

18 A I have.

19 Q -- today?

20 A Yes, I have.

21 CHAIRMAN JABER: Let's identify the rest of the  
22 exhibits. As I understand it, Mr. Moyle, DFE-1 through  
23 DFE-5 --

24 MR. MOYLE: Yes, ma'am.

25 CHAIRMAN JABER: -- Mr. Finnerty is adopting?

1 MR. MOYLE: Yes, ma'am.

2 CHAIRMAN JABER: Okay. As a composite Exhibit 32,  
3 we'll identify DFE-1 through DFE-5.

4 (Exhibit 32 marked for identification.)

5 CHAIRMAN JABER: And we'll insert into the record as  
6 though read, the prefiled testimony of Douglas F. Egan as  
7 adopted by Sean J. Finnerty.

8 MR. MOYLE: Thank you.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1       **Q: Please state your name, title and business address.**

2       A: I am Doug Egan, the President and Chief Executive Officer of Competitive Power  
3       Ventures. I am in the Silver Spring, Maryland, offices of Competitive Power  
4       Ventures, which are located at Silver Spring Metro Plaza II, 8403 Colesville Road,  
5       Suite 915, Silver Spring, Maryland 20910.

6       **Q: Please tell the Commission about your educational and employment**  
7       **background.**

8       A: I attended Dartmouth University where I graduated with a Bachelor of Arts degree in  
9       1979. I then went to law school at Cornell Law School and obtained my juris  
10      doctorate in 1982. I worked for the law firm of Murtha, Cullina, Richter & Pinney in  
11      Hartford, Connecticut from 1982 to 1987 where I represented, among others, the  
12      Connecticut Resource Recovery Authority on the development and construction of a  
13      series of waste-to-energy projects. In 1987, I joined Intercontinental Energy  
14      Company as General Counsel. In 1991, I joined J. Makowski Associates where I was  
15      responsible for managing several development projects and an operating asset  
16      acquisition. After J. Makowski Associates merged in 1994 with U.S. Generating  
17      Company (now known as PG&E National Energy Group), I was Senior Vice-  
18      President for Development at NEG and charged with running the development  
19      program, consisting of more than a dozen power plant projects around the country.  
20      Under my direction, more than 2250 MW of power were developed and put into  
21      construction. Several additional projects initiated and partially developed during my  
22      tenure have subsequently been put into construction. In 1999, I, along with a group

1 of investors, formed Competitive Power Ventures (“CPV”). CPV is actively  
2 developing projects in Florida and other states across the country. A copy of my  
3 biography is attached to my testimony as Exhibit DFE-1.

4 **Q: How is it that you became involved in this proceeding?**

5 A: CPV Cana, Ltd., a Florida limited partnership, which is an affiliate of CPV,  
6 responded to FPL’s Initial Request for Proposals for Capacity and Energy of August  
7 13, 2001. When FPL issued its Supplemental RFP, and properly identified the FPL  
8 Manatee facility as one of its “next planned generating units,” CPV Gulfcoast Ltd.,  
9 also a Florida limited partnership, with a power plant project located in Manatee  
10 County, Florida responded to the FPL’s Supplemental RFP.

11 **Q: What is the purpose of your testimony?**

12 A: My testimony will point out a number of things that made FPL’s Initial and  
13 Supplemental RFPs unfair to prospective bidders. The careful crafting of the RFP in  
14 a way designed to favor FPL showed that FPL was predisposed to declare itself the  
15 winner of its RFP process from the outset. Indeed, I believe FPL reached a  
16 conclusion that it would self-build its “needed” capacity before the Initial RFP was  
17 ever released. My testimony will also point out the risks that FPL, by selecting its  
18 self-build options, is imposing on its ratepayers. These risks include, but are not  
19 limited to, the risk of construction and associated construction delays and cost  
20 overruns, and the risk of technological obsolescence.

1       **Q:    On what facts do you base this assessment that the RFP was unfair and that FPL**  
2       **is resistant to awarding a contract to an outside bidder?**

3       A:    There are a number of facts that support this view. First, both the Initial RFP and the  
4       Supplemental RFP contain terms that are, at best, commercially unreasonable, and at  
5       worst, skewed to see that FPL can declare itself the winner of its own RFP. (I will  
6       point out some of those specific terms later in my testimony.) Second, FPL has a  
7       long history of opposing the entry of competitors into the Florida wholesale market.  
8       One need not look much past FPL's active opposition to the Duke-New Smyrna Need  
9       Determination (PSC Case No. 981042) and the Okeechobee Generating Need  
10      Determination (PSC Case No. 991462) to realize that FPL has a deeply held  
11      opposition to competition in the wholesale energy market in Florida, particularly  
12      when that competition is in the form of merchant generators. To award a potential  
13      competitor a purchase power contract and to then support a need determination filing  
14      of a potential competitor is not consistent with FPL's view of its own interests.  
15      Third, a former employee of FPL, Michael Caldwell, wrote a letter to the Florida  
16      Public Service Commission and others outlining FPL's long held, but seldom stated,  
17      policy of thwarting competition in the Florida wholesale market place. (See Exhibit  
18      DFE-2). The letter, authored by an FPL insider, is compelling evidence that FPL  
19      never had any intention of awarding any portion of its asserted need to a third party.  
20      Fourth, one cannot ignore FPL's resistance to the creation of Rule 25-22.082, F.A.C.,  
21      Selection of Generation Capacity, commonly known as the bid rule, as it was  
22      originally enacted. More recently, in the ongoing bid rule rulemaking docket, FPL is  
23      challenging the Commission's legal authority to make changes and other

1 improvements to the bid rule that would make the bid rule more fair. If FPL were  
2 truly interested in having an open, transparent and fair bidding and evaluation  
3 process, it is doubtful it would so vigorously oppose some of the changes suggested  
4 by PSC staff and question the Commission's authority to engage in rulemaking  
5 designed to improve the bid rule.

6 **Q. Can you explain why you indicate that it is not in FPL's interest to award a**  
7 **purchase power contract to an independent power producer?**

8 A. Let me try. A number of responses to the FPL's RFP, other than turn-key proposals  
9 and projects with less than 75 megawatts of steam output, were dependent on some  
10 type of contractual relationship with FPL. Power plants with a steam cycle of greater  
11 than 75 megawatts must go through the Power Plant Siting Act, sections 403.501-  
12 403.519, Florida Statutes, and must have a contract with a retail serving entity such as  
13 FPL, to be "an applicant" under the Power Plant Siting Act. *See Tampa Electric v.*  
14 *Garcia*, 767 So.2d 428 (Fla. 2000). Thus, a way of keeping potential competitors out  
15 of the Florida market, particularly with independent power producers who want to  
16 build power plants with a steam cycle greater than 75 megawatts, is to not enter into  
17 contractual arrangements with them. The reason not to enter into a purchase power  
18 agreement is even more compelling if the proposed contractual term is for a short-  
19 term, say three to five years, as the power project would be a merchant plant at end of  
20 the contract term. If one accepts FPL's opposition to merchant plants in Florida, as  
21 one must, then it follows it is not in FPL's interest to accept, in response to FPL's  
22 RFP, a short-term contract from an Independent Power Producer ("IPP") that gives

1 the IPP entry into the Florida market. This is especially true if the proponent of the  
2 short-term contractual bid will be a competitor of FPL's, with a new, large-scale and  
3 efficient power project built in the State of Florida., upon expiration of the contract  
4 term. Thus, one way to avoid this competition is to not accept a bid (and thus enter  
5 into a contract) from an IPP proposing to build a large-scale (greater than 75  
6 megawatt of steam) facility in the state.

7 **Q: You mentioned that certain terms in FPL's Initial RFP and Supplemental RFP**  
8 **were unfair. Would you please specifically identify those terms and indicate**  
9 **what makes them unfair?**

10 A: Yes. Both RFPs, which by their terms seek proposals from bidders to be followed by  
11 negotiations with short-listed bidders, seek to impose contractual terms on the bidders  
12 without negotiations. The RFP requires the bidder to complete a form (Form 9)  
13 which provides: "Bidder must either indicate that they take no exceptions to any of  
14 the terms, conditions or other facets of the RFP or must indicate that they do take  
15 exception(s)." A bidder must then submit alternative revised language in writing to  
16 FPL with its response to the RFP if it takes exception to any term or condition. The  
17 RFP goes on to state that it "will give preference to the bids with the fewest number  
18 of and least significant exceptions."

19 This is unfair in that, prior to the start of negotiations, before a short list is even  
20 developed, an applicant is asked to agree to all significant terms and conditions of the  
21 RFP. If a bidder does not so agree, at a time when it is preparing to respond to the

1 RFP, it must propose, in writing, alternative language. Tellingly, FPL does not say  
2 how the bid will be evaluated if exceptions are raised. Instead, leaving much to the  
3 imagination, it merely states "FPL will give preference to bids with the fewest  
4 number of and least significant exceptions." In other words, object or propose  
5 alternative language at your own risk. Surely, this construct is not "negotiations"  
6 aimed at entering into a contract and is unfair.

7 Additionally, FPL imposed certain regulatory provisions in its RFP that unreasonably  
8 shifted risk to bidders. For example, in its Initial RFP, FPL provided that should the  
9 electric industry in Florida be "deregulated," an undefined term, FPL would have the  
10 option, after giving ninety (90) days written notice, to terminate the negotiated  
11 contract or shorten by half the original contract term and associated payments. This  
12 term, which runs only in the favor of FPL, would surely make a potential lender view  
13 debt loaned on the project as being at subject to an unquantifiable risk. Indeed, this  
14 type of term would likely render the deal, if FPL accepted a bid, unfinanceable. In  
15 its Supplemental RFP, FPL, while deleting the onerous provision described above,  
16 states: "In the event that the Florida Public Service Commission fails to allow cost  
17 recovery of any of the costs incurred pursuant to the contract between FPL and the  
18 bidder, FPL will reduce payments to the bidder in amounts equivalent to the amounts  
19 disallowed." Again, this contractual provision shifts inordinate risk to the bidder and  
20 tends to make financing the construction of the project more difficult, ~~if not~~  
21 ~~impossible~~. All of these type of arrangements described in my testimony, when taken  
22 in total, point out that FPL does not want to award a contract to a bidder, but wants to

1 self-build its projects. It also points out the biased and unfair nature of the way FPL  
2 conducted the RFP.

3 **Q: Are there other provisions of the RFP or RFP process that you consider unfair?**

4 A: Yes. To this date FPL has never revealed the complete list of criteria by which the  
5 proposals were judged or the weights assigned to the various criteria. While FPL  
6 may identify certain factors that it considers, it never reveals how it considers or  
7 weighs certain factors. Consequently, FPL's scoring criteria are akin to a black box  
8 to which only FPL holds the key. (See Supplemental RFP p. 18 which indicates the  
9 bids "will be evaluated for various risk factors and other considerations". (Emphasis  
10 added.) In order to determine which proposal(s) would be the best overall choice(s) for  
11 FPL.") (Emphasis added) Various risk factors and other considerations, which are not enumerated,  
12 hardly give the bidder comfort that the bids will be evaluated in a fair and objective  
13 manner. While FPL did list some risk factors in its supplemental RFP on page 18 and  
14 19, it carefully did not commit to considering them, stating simply that "Factors  
15 which may be considered include, but are not necessarily limited to, the following:"  
16 (Emphasis added.) FPL, when it structures its self-build option, certainly knows  
17 which factors matter most to it. If <sup>the</sup> RFP was designed to elicit the best possible  
18 proposals for FPL to choose from, then just as certainly it would have informed  
19 bidders of the project attributes that most benefit FPL ratepayers.

20 **Q: What other ways, if any, does FPL realize an unfair advantage over the other**  
21 **bidders, including CPV's projects?**

1           A:    FPL has a distinct advantage over the other bidders, including CPV, in a number of  
2                    other ways. The RFP documents and the accompanying evaluation process are  
3                    replete with examples, and I will try to quickly highlight a few. FPL gets to craft the  
4                    RFP, make “the rules” and criteria for judging the responses to its RFP, review all of  
5                    the competing bids received before putting forward its best competing proposal(s),  
6                    selects the short-listed bidders, prepares and presents an onerous draft contract to the  
7                    short-listed bidders, sets the time schedule (an extremely tight one) for  
8                    “negotiations”, (in this case presenting short-listed bidders with little time to  
9                    sufficiently, thoroughly, and completely review the draft contract document), gets to  
10                  negotiate with the short-listed bidders, acts as the judge to declare the winner of the  
11                  RFP, and, when FPL declares itself the winner of the RFP, it is not obligated to stick  
12                  by its “winning bid,” but can seek recovery for cost overruns or other charges which  
13                  result in the numbers represented in its “winning bid” increasing. (This refusal to  
14                  stick by its own winning bid imposes additional risk and potential costs on the  
15                  ratepayers, which is ironic when one considers the bid rule was designed, in part to  
16                  see that ratepayers got the best deal possible from the market.)

17           **Q:    What is the impact of the equity penalty that FPL imposed on competing bids in**  
18                    **this RFP process?**

19           A:    FPL’s decision to impose an “equity penalty” acts to significantly stack the deck in  
20                    favor of FPL. This equity penalty, which seeks to impose a direct penalty against  
21                    non-FPL capacity proposals during the evaluation process is yet another example of  
22                    how the RFP was unfair. Based on my review of the way FPL institutes the equity



1 penalty, it appears that Bidders who submit proposals for either large amounts of  
2 capacity or long-term capacity are penalized relative to those Bidders who submit  
3 proposals for smaller amounts of capacity or short-term capacity. FPL has  
4 established an equity penalty that will be more detrimental to a proposal that offers  
5 larger amounts of capacity for long-term. This effectively precludes any proposal  
6 similar to the FPL self-build options from being able to win the RFP. (It should also  
7 be noted that FPL did not offer bidders any "credit" for assuming the risk of  
8 technological obsolescence or construction risk, yet seeks to impose this equity  
9 penalty.)

10 **Q. What else would you like the Commission to know about FPL's equity penalty?**

11 A. Since FPL used excessive latitude in deciding what it could consider in weighing the  
12 bids, it obviously decided the "equity penalty" was a high card that it could hold in its  
13 hand until it was needed. The fact that FPL designed the equity penalty as its "ace in  
14 the hole", and used it to justify its decision to self-build is reflected in an internal FPL  
15 e-mail, authored by Steve Sim, one of the individuals charged with running the RFP  
16 process. This e-mail, a copy of which is attached hereto as Exhibit DFE-3 is telling,  
17 as it states, "the equity penalty is not only 'not the cake', but may not even be the  
18 icing. It's more like the candle." In my experience, the use of the phrase "icing on  
19 the cake" denotes the item or thing that rounds out or completes the deal. In the  
20 context used in this e-mail, the phrase is used to reflect the fact that FPL imposed an  
21 equity penalty to give itself some room to maneuver in comparing its self-build

1 options against competing bids and evidences FPL's predetermined conclusion that it  
2 would win its own RFP.

3 **Q. What else can you point to support the notion that FPL decided it would win its**  
4 **RFP before the competing proposals were reviewed and evaluated?**

5 A. I have pointed to a number of things previously in my testimony that support the  
6 proposition that FPL determined its preference to self-build the additional "needed"  
7 capacity before it evaluated the competing proposals. However, there are some  
8 additional things that I can point to that support this conclusion.<sup>1</sup> Sam Waters, who  
9 as I understand it, was in charge of FPL's initial RFP, authored an e-mail on October  
10 31, 2001 to FPL Senior Management entitled "RFP/Generation Strategy Meeting,  
11 Friday, Nov. 2" The e-mail is enlightening in a number of respects. First, it states the  
12 purpose of the meeting "will be to discuss strategy in responding to the bids received  
13 addressing our RFP, as well as the longer-term generation strategy." The e-mail next  
14 mentions that the bids are still in the process of being evaluated and that there is no  
15 information available "approaching a final result of analyses." Finally, the e-mail  
16 desires "to develop a consensus on direction for our generation plan, i.e., do we want  
17 to build or buy, or a combination of both? What kind of projects do we want to be  
18 involved in? How long should we buying for, if that is the choice? Should FPLE be

---

<sup>1</sup> CPV still has outstanding certain discovery requests and anticipates conducting some additional discovery on this and related points. What I am testifying to now has been culled from discovery produced to date and I would like to reserve the right to supplement my answer to this question as discovery continues.

1 involved in the projects?” I find it instructive that FPL senior management was  
2 meeting to “develop a consensus” on its generation strategy, i.e., in the words of the  
3 FPL employee charged with running the RFP, “do we want to build or buy”, at a  
4 point in time when no concrete results or analysis of the responses to FPL’s initial  
5 RFP were available.<sup>2</sup> A copy of this FPL e-mail is attached to my testimony as  
6 Exhibit DFE-4.

7 **Q. Is there other documentary evidence that suggests FPL decided it would self-**  
8 **build for its needed capacity before the RFP was even issued?**

9 A. Yes, I believe there is. Another e-mail and related document prepared in response to  
10 the referenced e-mail reflects FPL’s predetermination that it would “win” its RFP.  
11 Steve Sim, one of the FPL employees responsible for conducting the RFP process,  
12 asked another FPL employee, Daisy Iglesias to prepare a document in anticipation of  
13 a meeting called “to discuss how we will actually evaluate proposals we’ll receive  
14 from the RFP”. Sim stated in the e-mail: “ I want you to prepare a page or three  
15 which describes how our section should do the evaluation. We’ll use this document  
16 (be sure to label it as “draft”) for our discussion on Tuesday morning.” The  
17 document prepared by Ms. Iglesias is instructive in that it clearly shows FPL’s

---

<sup>2</sup> It is also interesting to note that the e-mail states: “Tomorrow I will be forwarding materials to you that include a proposed strategy. . . .” However, when CPV Cana, in its Second Request for Production, sought “All documents that Sam Waters or his assistants provided to Paul Evanson or his assistants related to the ‘Request for Proposal/Generation Strategy Meeting, Friday, November 2’ referenced in FPL Document Number 00101969 ND”. FPL responded that no such documents existed.

1 unabated desire to self-build its “needed” capacity. From its title, “RFP Evaluation  
2 (Based on Assumption that FPL can meet or beat lowest bid)” to its critique of the  
3 best way for FPL to “meet or beat” competing bids and its accompanying seven step  
4 “evaluation” process, the document should raise serious concerns about whether  
5 ratepayers, in the long run, are better off with FPL’s self-build options.

6 Among the alarming revelations in the FPL internal document are the following:  
7 “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.” (PGD stands  
9 for FPL’s internal generation department.) Thus, FPL selected a method to evaluate  
10 the bids, not based on what is in the best interests of ratepayers or which deal is  
11 actually the best submitted to FPL for consideration, but based on the “best/most  
12 defensible way” to show that FPL’s own internal costs are “at or below the costs of  
13 the best proposals.” The document goes on to suggest, as Step Number 2, that FPL’s  
14 own construction alternatives be reviewed after evaluation of the competing bids:  
15 “After the proposals are evaluated . . . receive from PGD the costs of each  
16 construction project.” Step Number 2 continues: “These costs should be as  
17 aggressive as possible to both minimize the remaining work and increase the  
18 defensibility (sic) of any subsequent decision to go with an FPL option.”

19 FPL has vigorously resisted suggestions that it be bound to its “winning bid”  
20 numbers, and wants to preserve its ability to come back to the Commission to recover  
21 construction cost overruns. (Remember, FPL’s RFP called on all bidders to submit

1 “binding” proposals.) An FPL internal document suggesting that the assumed  
2 construction costs of the projects “be as aggressive as possible” should raise a red  
3 flag that FPL sought to be overly aggressive in its project construction cost estimates  
4 at best or low-balled its numbers at worst. Revealingly, this document goes on to  
5 suggest other steps to ensure that FPL declares itself the winner as part of its  
6 “evaluation process”.

7 To assure that FPL “wins” the RFP, the document instructs in Step Number 5: “As  
8 **necessary, repeat steps 2 - 4 until it is determined what cost reductions are**  
9 **necessary by FPL so that the proposals’ costs are higher than the VOD benefits**  
10 **of deferring the FPL projects.”** (Emphasis added.) (Remember, Step Number 2 is  
11 to aggressively estimate the construction costs for the project, a step that apparently is  
12 to be repeated as often as necessary until the competing proposals are higher than the  
13 VOD of deferring FPL’s projects!) Step 6 of the evaluation is as follows: “In order to  
14 provide a more complete picture, enter the resulting FPL project costs into EGEAS  
15 versus the proposals to ensure that the FPL projects are selected by EGEAS as the  
16 winner.” Thus, EGEAS appears to be used simply as a tool, after the evaluation  
17 process is repeated as often as necessary to declare FPL the winner, to somehow  
18 “legitimize” this skewed, slanted, and false evaluation process. A copy of the  
19 documents referenced above are attached to my testimony as Composite Exhibit  
20 DFE-5.

1       **Q.    Are FPL's self-build options the most cost effective alternatives available for the**  
2       **ratepayers?**

3       A.    No, I do not believe so. As mentioned above, it seems FPL's evaluation process was  
4       designed to steer toward a pre-designed conclusion, namely that FPL's self-build  
5       options were the preferred choice. Whenever a preordained result is signaled, it leads  
6       me to seriously doubt and question the resulting data. Since FPL's internal  
7       generation group aggressively estimated its project costs, and continued to do so until  
8       FPL's VOD analysis concluded FPL was the winner, coupled with FPL's steadfast  
9       refusal to date to be bound by the terms of its "winning bid", I do not believe FPL's  
10      self build options are the most cost effective alternatives for ratepayers. The bids of  
11      CPV Cana and Gulfoast, had they been accepted and a contract agreed to, would  
12      have been binding. FPL's unwillingness to stick by its number, combined with its  
13      aggressive construction cost estimates, suggests that at some point in the future FPL  
14      will be back before this Commission seeking additional cost recovery for these  
15      projects, something it should not be allowed to do.

16           Additionally, FPL apparently does not recognize the risk associated with construction  
17           and the risk associated with obsolescence of equipment. Neglecting this risk and not  
18           properly factoring into a decision of the type made by FPL acts to impose additional  
19           risk, and potentially costs, on the ratepayers. If a CPV project were selected, the risk  
20           of construction cost overruns and delays would have been shouldered by the private  
21           sector, not ratepayers. Similarly, if a CPV project were selected, the risk of  
22           technological obsolescence would rest with CPV and its investors. With FPL's

1 decision to self-build the capacity in question, these risks are shifted to ratepayers,  
2 making FPL's decision to self-build less cost effective than other alternatives in my  
3 opinion.

4 Finally, had a CPV project been selected, the RFP would have required it to post  
5 completion security. Specifically, it would have been obligated to post " a deposit or  
6 some other form of security acceptable to FPL in the amount equal to Fifty Thousand  
7 Dollars (\$50,000) per MW of guaranteed firm capacity (Completion Security)." For  
8 each day that the project was not available, FPL would be able to draw down from  
9 the Completion Security a sum equal to \$330 per megawatt of guaranteed firm  
10 capacity. (Thus, for one of the bids submitted by CPV Gulfcoast, to provide  
11 approximately 800 megawatts of power, Forty Million Dollars (\$40,000,000) would  
12 have been required to be posted as security for FPL and its ratepayers to ensure that  
13 CPV Gulfcoast would deliver as called for in its purchase power agreement with  
14 FPL.) This would enable FPL and its ratepayers to recoup, or "cover" any losses it  
15 suffered as a result of the contracted for power not being available by purchasing the  
16 needed power in the market. FPL, when it self-selected its own generation projects,  
17 is not going to post any type of completion security guarantee similar to what CPV  
18 Gulfcoast would have been required to post had it been selected. Thus, if FPL  
19 experiences construction delays, the ratepayers are not protected by the \$40 million  
20 dollars completion security instrument in the example above, and may be looked to  
21 for the construction cost overruns and the costs of obtaining the needed power from  
22 the market. Thus, from the completion security perspective, the ratepayers are better

1 off (served more cost-effectively) with a purchased power contract backed up by a  
2 completion security guarantee and other contractual obligations than with FPL's self-  
3 build options. For a host of reasons, FPL's self-build options are not the most cost  
4 effective alternatives available.

5 **Q. What are you asking this Commission to do?**

6 I would ask that they declare FPL's RFP process inherently unfair as implemented by  
7 FPL. I would ask that the need determinations pending before the Commission be  
8 denied, with FPL being directed to attempt to meet any anticipated future need in a  
9 way that is fair and impartial to all parties and bidders.

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

11 **A. Yes.**



1 BY MR. MOYLE:

2 Q Mr. Finnerty, would you please provide a summary of  
3 your testimony today for the Commission.

4 A Yes. The purpose of my testimony is threefold.  
5 First, my testimony points out a number of factors that make  
6 the FPL supplemental RFP unfair to perspective bidders.  
7 Second, the testimony points to CPV's belief that Florida Power  
8 & Light was predisposed that it would self-build the subject  
9 capacity prior to the issuance of the RFP. Third, the  
10 testimony states, it's Competitive Power Venture's belief, that  
11 the FPL self-build options may not be the lowest-cost capacity  
12 available to ratepayers. I'll briefly take each point  
13 individually.

14 The first point, CPV believes that the process by  
15 which FPL issued and evaluated the RFP was unfair to bidders.  
16 Florida Power & Light included in both the initial and  
17 supplemental RFP certain terms and conditions that were unfair  
18 at best and commercially unreasonable at worst. These include  
19 the regulatory out provision which under the supplemental RFP  
20 FPL included a regulatory out provision that if enacted would  
21 reduce the amount of payments made to a bidder under a mutually  
22 negotiated and executed power purchase agreement. The RFP  
23 states, and I quote, in the event that the Florida Public  
24 Service Commission fails to allow cost recovery of any of the  
25 costs incurred pursuant to the contract between FPL and the

1 bidder, FPL will reduce payment to the bidder in amounts  
2 equivalent to the amounts disallowed. It is my understanding  
3 that FPL included this provision despite knowing that this  
4 Commission has in the past rejected this type of unreasonable  
5 provision. This provision shifts inordinate amounts of risk to  
6 the bidder and tends to make financing the construction of the  
7 project more difficult.

8 FPL also never revealed the complete list of criteria  
9 by which the bids would be evaluated. The RFP identified  
10 certain factors, price and nonprice, that it would use in  
11 evaluating the proposals, but it did not reveal all the factors  
12 involved prior to the time the bids were due. This makes the  
13 FPL evaluation process akin to a black box. No one, with the  
14 exception of FPL, knew beforehand how the bids would be  
15 evaluated or on what factors FPL would place emphasis.

16 While the RFP offers bidders the opportunity to take  
17 specific exceptions to items in the RFP that it found  
18 objectionable, the RFP also said that FPL will give preference  
19 to the bids with the fewest number and least significant  
20 exceptions. Therefore, it was unclear if taking even a single  
21 exception would be cause for a bidder's proposal to be  
22 disqualified. As such, CPV chose to take no exceptions on the  
23 PPA proposal and a single exception on its turnkey proposals  
24 and rather hopes to work within the confines of purchased power  
25 agreement negotiations in order to lessen the unreasonableness

1 of these provisions.

2           Second point, CPV believes that Florida Power & Light  
3 was predisposed that it would self-build the subject capacity  
4 prior to the issuance of the RFP. During the course of  
5 discovery, we obtained several documents from Florida Power &  
6 Light that go to CPV's concerns and belief that FPL was  
7 predisposed to select its own generating options to fill the  
8 subject capacity. I believe these documents are telling.

9           The first is an internal memorandum drafted by  
10 Ms. Iglesias of the FPL resource planning department at the  
11 request of Dr. Sim. Ms. Iglesias was the person in charge of  
12 the EGEAS computer models for FPL. The memorandum is in  
13 response to an e-mail dated July 8th, 2001, one month prior to  
14 the issuance of the initial RFP. It is attached to my  
15 testimony as Exhibit 5. In summary, the memorandum outlines a  
16 process by which FPL, based on its planning department's  
17 evaluation of outside bids, would continue to aggressively  
18 revise its cost estimates until it reached a point whereby the  
19 FPL plan was less costly than outside proposals.

20           The second document of concern is an e-mail from  
21 Mr. Sam Waters to FPL's senior management, including  
22 Mr. Evanson, dated October 31st, 2001. That e-mail is attached  
23 to my testimony as Exhibit 4. Again, in summary, the e-mail  
24 describes the purpose of the meeting, quote, will be to discuss  
25 strategy in responding to the bids received addressing our RFP

1 as well as longer term generation strategy. The e-mail states  
2 that the bids are still -- the e-mail states that the bids are  
3 still being evaluated but desires, quote, to develop a  
4 consensus on direction of our generation plan, i.e., do we want  
5 to built or buy or a combination of both? It is very  
6 concerning to me that prior to the completion of the evaluation  
7 of the bids, FPL's senior management was being called together  
8 to, quote, develop a consensus on its generation strategy and  
9 discussing in the context of an ongoing RFP, do we want to  
10 build or buy?

11           The final point to my testimony, CPV does not believe  
12 that FPL's selection of its own generating capacity to fill the  
13 subject capacity is necessarily the lowest-cost capacity for  
14 ratepayers. According to the RFP, and I quote, a bid's  
15 proposed prices must include any and all costs that FPL will be  
16 expected to pay to the bidder for delivering capacity and  
17 energy. Additionally, in describing that FPL would expect to  
18 enter into a pay-for-performance type of purchase power  
19 contract, the RFP goes on to state, quote, payments to be made  
20 would be capped at the prices contained in the bid. CPV along  
21 with others submitted its proposal to Florida Power & Light  
22 with an understanding that it would be at risk if it incurred  
23 cost overruns relative to the prices presented to FPL.  
24 Clearly, it was FPL's intent to obtain proposals from bidders  
25 that reflected all costs that FPL and its ratepayers would be

1 expected to pay for the subject capacity. It does not appear  
2 to CPV that FPL is similarly willing to stick by its numbers.  
3 That concludes my summary.

4 MR. MOYLE: Thank you. The witness is available for  
5 cross.

6 CHAIRMAN JABER: Thank you, Mr. Moyle. I'm going to  
7 start over here and make sure you all don't have questions  
8 before --

9 MR. MCGLOTHLIN: I have none.

10 MR. PERRY: I do not.

11 CHAIRMAN JABER: Thank you.

12 Mr. Twomey.

13 MR. TWOMEY: Just a couple, Madam Chairman.

14 CROSS EXAMINATION

15 BY MR. TWOMEY:

16 Q Sir, the memo from Sam Waters to Mr. Evanson  
17 entitled, "The RFP Strategy Meeting," you said that concerned  
18 you. Why is that?

19 A Yes, it does.

20 MR. GUYTON: Objection. This is direct examination,  
21 not cross-examination. Mr. Twomey has not identified this  
22 witness as part of his direct.

23 CHAIRMAN JABER: Mr. Twomey, tell me your question  
24 again.

25 MR. TWOMEY: It was to ask him on his direct

1 examination -- he said he had a concern with the Waters/Evanson  
2 memo, and I was asking him why it concerned him.

3 CHAIRMAN JABER: I'm going to allow it.

4 THE WITNESS: What's concerning to me in this memo is  
5 that it goes to the fact that Florida Power & Light's senior  
6 management in the context of an ongoing evaluation of RFP  
7 proposals is sitting down to determine, you know, what their  
8 generation strategy is. Everyone knows the world had changed  
9 in late October of 2001, and my belief is, they're sitting down  
10 to reaffirm their strategy on generation.

11 MR. TWOMEY: That's all I have.

12 CHAIRMAN JABER: Mr. Guyton.

13 MR. GUYTON: Madam Chairman, I'd like to hand out  
14 three exhibits that I intend to use during cross. One that I  
15 just want to move it. It's a request for admission to CPV.  
16 The other two I intend to use for cross to kind of facilitate  
17 the speed of this. We'll hand them all out at once.

18 CHAIRMAN JABER: Thank you, Mr. Guyton.

19 MR. MOYLE: CPV has no objection to the request for  
20 admissions.

21 CHAIRMAN JABER: Thank you, Mr. Moyle.

22 Mr. Guyton, did you want these identified separately?

23 MR. GUYTON: If we could identify them in the order  
24 of my cross, which would be the request for admissions first,  
25 the rebuttal document SRS-2 second, and then the bid excerpt

1 third.

2 CHAIRMAN JABER: Okay. Hearing Exhibit 33 is  
3 identified for CPV's responses to FPL's first request for  
4 admission. SRS-2, rebuttal document, is identified as hearing  
5 Exhibit 34. CPV's proposal, May 24th, 2002 proposal, in  
6 response to FPL's supplemental RFP is identified as hearing  
7 Exhibit 35.

8 (Exhibits 33, 34, and 35 marked for identification.)

9 MR. GUYTON: Thank you, Madam Chairman. We'd go  
10 ahead and move 33 since it don't require -- it's just simply a  
11 request for admission.

12 CHAIRMAN JABER: Hearing Exhibit 33 shall be admitted  
13 into the record.

14 (Exhibit 33 admitted into the record.)

15 CROSS EXAMINATION

16 BY MR. GUYTON:

17 Q Mr. Finnerty, when CPV Gulfcoast intervened in this  
18 proceeding, it alleged that its project was part of a portfolio  
19 that was the most cost-effective alternative for FPL to meet  
20 its customers' resource needs in 2005 and 2006. You are not  
21 testifying here today that CPV Gulfcoast is the most  
22 cost-effective alternative available to FPL, are you?

23 A No, I'm not.

24 Q And CPV has examined the bids of all the bidders in  
25 the supplemental RFP, has it not?

1 A I believe so, yes.

2 Q And you know from that examination that CPV Gulfcoast  
3 was not the lowest-cost option bid?

4 A Yes. There were others that were least costly.

5 Q Now, both FPL and the independent evaluator ranked  
6 the supplemental RFP bids, did they not?

7 A That's my understanding.

8 Q And if you would direct your attention to what has  
9 been identified as Exhibit Number 34. Do you have that, sir?

10 A This SRS-2?

11 Q Yes, sir.

12 A Yes, I do.

13 Q And that is the final evaluation ranking by both  
14 Sedway Consulting and FPL for the 2005 RFP proposals, is it  
15 not?

16 A It appears to be, yes.

17 Q Okay. And we discussed this document or a slightly  
18 different version of it without the exhibit number at  
19 Mr. Egan's deposition, did we not?

20 A Yes, we did.

21 Q And you attended Mr. Egan's deposition, didn't you?

22 A Yes.

23 Q And do you disagree with any of Mr. Egan's responses  
24 to my inquiry at deposition?

25 A You would have to refresh my memory on his responses.



1 MR. MOYLE: I would just object. That's a very broad  
2 question. The deposition was very long.

3 MR. GUYTON: That's fine. I just wanted to see if we  
4 had commonality. If we have a need for it, we'll address it as  
5 it arises.

6 CHAIRMAN JABER: Thank you.

7 BY MR. GUYTON:

8 Q Now, looking at Exhibit 34 --

9 COMMISSIONER DEASON: I'm sorry. Let me just ask a  
10 question here. If he's adopting the testimony of a witness,  
11 doesn't he have the responsibility to review that deposition as  
12 if he's in the place of that witness?

13 MR. MOYLE: I'm not sure he has reviewed it and is  
14 familiar with it. My objection was merely limited to an in  
15 toto question related to the deposition.

16 CHAIRMAN JABER: The question was, do you recall the  
17 answers? I had the same thought you did, Commissioner Deason.  
18 I think, though, to the degree Mr. Guyton has specific  
19 questions, you just need to remind him what it is you're  
20 talking about.

21 MR. GUYTON: I'll do that if the need arises, Madam  
22 Chairman. Thank you.

23 BY MR. GUYTON:

24 Q CPV's bids in the supplemental RFP are coded P50,  
25 P51, and P52 in Exhibit 34, are they not?

1 A That's my understanding; correct.

2 Q And in the final rankings, FPL ranked CPV Gulfcoast's  
3 2005 proposals 13th, 14th, and 17th out of 17; correct?

4 A According to this ranking, yes. However, I have seen  
5 a ranking whereby we are -- I believe it's our bid, 50 is  
6 placed 6th in Tier 1 within the need filing.

7 Q And that was an earlier ranking; correct?

8 A That's the ranking that's in the need filing. I  
9 don't know if it's an earlier ranking to this.

10 Q And CPV's bids were ranked by Sedway Consulting 14th,  
11 16th, and 17th out of 17, were they not?

12 A Correct.

13 Q Looking back at the FPL rankings, the closest CPV bid  
14 to the most -- or to the least-cost alternative there was  
15 \$139 million more expensive than the lowest-cost supplemental  
16 RFP bid for 2005, was it not?

17 A Yes.

18 Q And that's without transmission integration costs or  
19 equity penalty, isn't it?

20 A That's not represented here, but if that's -- if that  
21 was the testimony to this document, yes.

22 Q That's your understanding of the document?

23 A Yes.

24 Q And correct me if I'm wrong, but both FPL and the  
25 independent evaluator ranked at least one CPV proposal dead

1 last in its evaluation?

2 A Correct.

3 Q Now, CPV is in the business of -- is not in the  
4 business of owning and operating power plants, is it?

5 A We do not currently own or operate any power plants.

6 Q And indeed, CPV has never owned an operational power  
7 plant, has it?

8 A That is correct.

9 Q And CPV has never operated a power plant, has it?

10 A That is correct.

11 Q CPV has only completed development of one power  
12 plant; correct?

13 A You'd have define "development." We have completed  
14 development of a number of power plants.

15 Q Is the CPV Atlantic project the only project that CPV  
16 has developed and initiated construction for?

17 A Yes.

18 Q And that was sold prior to proceeding to  
19 construction, was it not?

20 A That was sold simultaneous with notice to proceed for  
21 construction.

22 Q So CPV has never assumed the risk associated with  
23 either constructing, owning, or operating a power plant?

24 A At this time, no.

25 Q Mr. Finnerty, if you would, look at what's been

1 identified as Commission Exhibit 35. Rather than introduce  
2 your entire proposal, I've taken excerpts from CPV's  
3 244-megawatt PPA proposal to Florida Power & Light Company from  
4 the supplemental RFP. Does this appear to be an accurate  
5 excerpt from that document, sir?

6 A Yes. It appears to be approximately 13 pages of a  
7 bid that was over a hundred pages in length, yes.

8 Q And part of that is confidential; correct?

9 A Yes, it is.

10 Q But none of the pages here were identified as  
11 confidential, were they?

12 A There is a portion of Page 9 that is confidential, or  
13 Page 9 of 20 using the bottom numbers.

14 Q I'm sorry, the bottom --

15 MR. GUYTON: I apologize. Let's -- I have no  
16 intention of publishing any confidential information. I was  
17 not aware of this.

18 CHAIRMAN JABER: All right. Mr. Guyton, why don't  
19 you approach the witness and have him show you exactly what's  
20 confidential.

21 MR. GUYTON: Okay.

22 CHAIRMAN JABER: Thank you. And I understand.

23 MR. MOYLE: But I also think that to the extent this  
24 is confidential information, he's handed out documents that  
25 have it, he may have to take this particular page out of the

1 exhibit so as to avoid disclosing confidential information.

2 CHAIRMAN JABER: Yes. Thank you, Mr. Moyle.

3 For those folks that received a copy of the exhibit  
4 that I marked Exhibit 35, if you will make it available to  
5 Mr. Guyton.

6 MR. GUYTON: And we just simply need to remove  
7 Page 9. My apologies.

8 Just to remove any confusion, that's Page 9 of 20. I  
9 don't think it's the ninth page in the exhibit.

10 BY MR. GUYTON:

11 Q Now, what remains in Exhibit 35 is nonconfidential  
12 information from CPV's 244-megawatt PPA proposal; correct?

13 A That's correct.

14 Q Would you turn to the first page of Form 4, which is  
15 Page 6 of 20? Do you have that before you, sir?

16 A Yes, I do.

17 Q This bid shows what heat rate for this proposal?

18 A 6838.

19 Q And that's a guaranteed heat rate, is it not?

20 A Yes, it is.

21 Q And that's at 75 degrees Fahrenheit, 100 percent  
22 load, high heat value?

23 A Yes, it is.

24 Q And that's associated with a unit that has a GE 7FA  
25 combustion turbine?

1 A That is correct.

2 Q This is, in CPV's opinion, an achievable heat rate?

3 A Yes, it is. It's a guaranteed heat rate that we  
4 have.

5 Q It is not, in your opinion, an overly aggressive heat  
6 rate for a combined cycle unit that uses a GE 7FA?

7 A Not in the -- as it relates to the CPV Gulfcoast  
8 project, no, it's not.

9 Q On that same page, there is a summer guaranteed  
10 capacity of 230.14 megawatts and a guaranteed winter capacity  
11 of 268.75 megawatts. Those capacity numbers are comparable  
12 with the 244 megawatts shown on the cover, are they not?

13 A Yes, they are.

14 Q They all assume the full steam turbine capacity of  
15 the proposed unit?

16 A Yes, they do.

17 Q And that full steam turbine capacity is approximately  
18 90 megawatts?

19 A Approximately 90 megawatts.

20 Q But that unit is not permitted to operate at that  
21 full steam turbine capacity, is it?

22 A That is correct.

23 Q Its current permits limits operation to  
24 74.9 megawatts; correct?

25 A Correct.

1 MR. MOYLE: Let me just object to the extent this is  
2 beyond the scope of direct, number one. Number two, I don't  
3 see it as going to any issue that's been identified in the case  
4 at this point.

5 CHAIRMAN JABER: Mr. Guyton, the objection is that  
6 this is beyond the scope of Mr. Finnerty's direct testimony.  
7 Your response.

8 MR. GUYTON: Mr. Finnerty's testimony addresses the  
9 fairness of the process. Actually, also in his opening,  
10 addressed some of the bids and what the CPV did and didn't do  
11 in the bids. But this line of cross is designed to go to  
12 whether or not CPV's conduct in this process was entirely fair.

13 CHAIRMAN JABER: And what issue is that?

14 MR. GUYTON: It goes to the credibility of CPV  
15 attacking the fairness of the process. So it goes to the  
16 issues that address the fairness of the process and evaluation.  
17 I think that's the series 11 issues.

18 CHAIRMAN JABER: Issue 11 in the hearing?

19 MR. GUYTON: I think that's right.

20 CHAIRMAN JABER: Mr. Guyton, if you want to reword  
21 your issues to address whether Florida Power & Light employed  
22 fair and reasonable assumptions and methodologies and this  
23 witness's understanding as it relates to that, I'll allow it;  
24 otherwise, I don't think you can ask him questions about the  
25 credibility of CPV's evaluation of a bid. You can reword your

1 questions if you'd like to give that a try.

2 MR. GUYTON: Okay.

3 BY MR. GUYTON:

4 Q Mr. Finnerty, would you agree with me, for FPL to be  
5 able to conduct a fair process, it must receive bids upon which  
6 it can fairly rely?

7 A Yes.

8 Q If you would, look at the last page of what's been  
9 identified as Exhibit 35, please, sir. And if you would, look  
10 at the bold sentence that's highlighted in the second  
11 paragraph, sir.

12 A Yes.

13 Q Would you read that sentence, please.

14 A "Given the fact that the 244-megawatt plant is  
15 permitted, this becomes a highly reliable source of capacity  
16 offered to Florida Power & Light."

17 Q And, Mr. Finnerty, CPV does not have 244-megawatt  
18 plant permitted, does it?

19 A No, it does not.

20 Q All right. If you would -- I've had some question as  
21 to whether or not you're testifying as a fact witness or an  
22 expert witness in this case. Can you tell me whether you're  
23 testifying as a factual witness or an expert witness?

24 A I don't know the legal definition of what's an expert  
25 witness or a factual witness to the extent that I have certain



1 expertise in power development, you know, but I'm here to  
2 testify upon the unfairness of the RFP process.

3 Q You're not testifying as an expert as to FPL's mental  
4 state, are you, sir?

5 A I'm sorry, could you restate the question?

6 Q You are not testifying as an expert as to FPL's  
7 mental state in this case, are you?

8 A No, I'm not.

9 Q You have no personal knowledge as to FPL's mental  
10 state, do you?

11 A No, I do not.

12 Q And you are not now employed, nor have you ever been  
13 employed by FPL, have you?

14 A No, I have not and am not.

15 Q And you have not been retained by FPL, have you?

16 A No, I have not.

17 Q And you've not had occasion to make policy decisions  
18 for FPL, have you?

19 A No, I have not.

20 Q You did not participate in the drafting of FPL's  
21 initial RFP, did you?

22 A The initial RFP, no, I did not.

23 Q And you did not participate in FPL's evaluation of  
24 the initial RFP, did you?

25 A To the extent that CPV filed a bid, no, we were not

1 in the room during the evaluation process.

2 Q Now, you did not draft the supplemental RFP, did you?

3 A No, we did not draft the supplemental RFP.

4 Q You have no personal knowledge of how either the  
5 initial or the supplemental RFP documents were drafted, do you?

6 A No, I do not.

7 Q And you were not present when those documents were  
8 drafted?

9 A No, I was not.

10 Q So when you testify as to FPL's predisposition to  
11 declare itself the winner in the RFP, or when you testify,  
12 quote, as to, quote, FPL's view of its own interest, end quote,  
13 you're not speaking as someone who actually knows FPL's mental  
14 state, are you?

15 A I do not know FPL's mental state. I know what I've  
16 seen in discovery and what I've experienced with FPL in the  
17 past.

18 Q Now, you believe that FPL decided to self-build  
19 Martin Unit 8 and Manatee Unit 3 before it initiated its  
20 initial RFP?

21 A Yes, I do.

22 Q So before August of 2001, it's your belief that FPL  
23 had identified Martin Unit 8 and Manatee Unit 3 as its  
24 self-build options?

25 A I don't believe they had identified the specific

1 units. I believe they had identified that they would  
2 self-select their generation to fill the capacity at hand.

3 Q Well, a minute ago, you told me that FPL had already  
4 identified Martin Unit 8 and Manatee Unit 3. Are you changing  
5 your testimony now?

6 A I misspoke earlier when you asked that question.

7 Q Now, the only documents that you have attached to  
8 your testimony that you suggest show that FPL decided to  
9 self-build Martin Unit 8 and Manatee Unit 3 before it released  
10 its initial RFP are your exhibits DFE-3 through 5; correct?

11 A That is correct.

12 Q And in various depositions of current and former FPL  
13 employees --

14 A I'm sorry. I also believe DFE-2.

15 Q Okay. Now, have you had occasion to review the  
16 depositions taken by your counsel of various FPL employees?

17 A A number of them, not all of them.

18 Q And in a number of those, FPL employees have been  
19 asked whether or not FPL had a predisposition to build;  
20 correct?

21 A Correct.

22 Q Okay. And have you had occasion to review  
23 Mr. Waters' deposition?

24 A No, I have not.

25 Q And in those depositions that you've reviewed, have

1 any of FPL's employees indicated to counsel that there was a  
2 predisposition to build?

3 A I don't recall seeing that, no.

4 Q Now, Mr. Silva testified in his direct testimony that  
5 FPL had no predisposition to self-build, did he not?

6 A I'm not that familiar with Mr. Silva's testimony.

7 Q Okay. Fair enough. Let's look at the documents that  
8 you've attached to your testimony. Let's start with DFE-3, if  
9 you would, please, sir. You had occasion to review documents  
10 that FPL produced during the course of discovery, did you not?

11 A Yes, I did.

12 Q And those documents were extensive, were they not?

13 A There were a large number of documents, yes.

14 Q Prior to Mr. Egan filing his testimony, the only  
15 documents that were called from discovery by you and Mr. Moyle  
16 for Mr. Egan's testimony were documents DFE-3 through 5;  
17 correct?

18 A I believe that is correct.

19 Q Now, DFE-3 and DFE-4 both postdate the initial RFP,  
20 do they not?

21 A Yes, they both do.

22 Q If would you, look at DFE-3. This is an e-mail sent  
23 by Dr. Sim; correct?

24 A Correct.

25 Q Now, Dr. Sim does not state anywhere in this document

1 that FPL was predisposed to select its own generating units,  
2 does he?

3 A No, he does not.

4 Q In fact, the e-mail does not even mention FPL's  
5 self-build options, does it?

6 A No, it does not.

7 Q Would you turn to DFE-4, please. This is an e-mail  
8 that was sent by Mr. Waters to his management?

9 A That is correct.

10 Q Okay. Mr. Waters was in charge of the initial RFP,  
11 is your understanding?

12 A That's my understanding.

13 Q And this e-mail is dated 10/31/01?

14 A Correct.

15 Q So it was sent after FPL released its initial RFP?

16 A Yes, that is the date.

17 Q Is it fair to say that several months after FPL  
18 issued its initial RFP, Mr. Waters sent a memo to his  
19 management saying, do we want to build or buy or both?

20 A It is fair. But I do have to caveat that the world  
21 had changed between the time the initial RFP was issued and the  
22 date of this e-mail, and that I believe Mr. Waters was  
23 reaffirming their generation strategy in this e-mail.

24 Q I'm sorry. Are you suggesting that Mr. Waters had  
25 forgotten what the strategy was, so he was asking them to see

1 if they were going to reaffirm it?

2 A No. I'm suggesting that global circumstances had  
3 changed and that this was a meeting to possibly reaffirm or  
4 amend that strategy.

5 Q Now, where does he say anything about reaffirming or  
6 amending a strategy?

7 A He does not. That's my --

8 Q That's your characterization.

9 A Those are my words and my characterization.

10 Q It's not anything that Mr. Waters said to his  
11 management, is it?

12 A No -- I was not in those meetings. I don't know what  
13 was actually said.

14 Q Well, it's certainly not anything he said in this  
15 memorandum, is it?

16 A That's correct.

17 Q Let's turn to DFE-5. Now, this document does predate  
18 the initial RFP, doesn't it?

19 A Yes, it does.

20 Q And the first page of this memo is a -- or the  
21 first page of this exhibit is a memorandum from Dr. Sim to  
22 Ms. Iglesias; correct?

23 A Correct.

24 Q And if you would, look at the last sentence of the  
25 first paragraph. Dr. Sim refers to the document he is

1 requesting from Ms. Iglesias as a, quote, first cut, end quote,  
2 does he not?

3 A Yes, he does.

4 Q And then in the next paragraph, he tells her to label  
5 the document "draft"?

6 A That is correct.

7 Q Where in this memo does Dr. Sim instruct Ms. Iglesias  
8 that her draft evaluation plan is supposed to yield a certain  
9 result?

10 A He does not.

11 Q Let's look at the next page of DFE-5, Page 2 of 3.  
12 My copy shows that this is stamped "draft" at the top. Is that  
13 consistent with your copy?

14 A Yes, it is.

15 Q Would you read the first full sentence of  
16 Ms. Iglesias's memo, please.

17 A Under Section 1?

18 Q Yes, sir.

19 A "First, we need to determine the least-cost  
20 combination of proposals which meets the desired 1,750-megawatt  
21 cumulative need (of course this is assuming we get enough bids  
22 to reach the RFP proposal amount)."

23 Q If FPL was supposed to win, why was the very  
24 first thing that Ms. Iglesias said is that, quote, we need to  
25 determine the least-cost combination of proposals, end quote?

1           A     I think you have to put this in context as it goes  
2 to, this is the evaluation of the proposals. There is a second  
3 part of this e-mail which discusses the evaluation of PGD's  
4 "meet or beat" evaluation.

5           Q     We'll get to that, but explain, if you would, to the  
6 Commission why the first thing Ms. Iglesias said if this  
7 analysis was supposed to be rigged that, quote, we need to  
8 determine the least-cost combination of proposals, end quote?

9           MR. MOYLE: I may object to the form of the question.  
10 It calls for the witness to speculate as to what was in  
11 Ms. Iglesias's mind.

12           MR. GUYTON: Madam Chairman, the witness has been  
13 speculating about these documents throughout his entire  
14 testimony. His direct testimony draws all kinds of  
15 speculations, deductions, mental conclusions as to FPL. I'm  
16 just simply trying to pursue the line.

17           CHAIRMAN JABER: Well, since the objection has now  
18 come up, why don't you just reword the question?

19           MR. GUYTON: All right.

20 BY MR. GUYTON:

21           Q     Am I correct that the very first thing that  
22 Ms. Iglesias said in the text of her evaluation, her draft  
23 evaluation plan was that FPL needed to, quote, determine the  
24 least-cost combination of proposals?

25           A     You are correct.



1 Q If you would, look at the first -- or I'm sorry, the  
2 third paragraph under Arabic 1.

3 A Yes.

4 Q There, the first sentence of that paragraph,  
5 Ms. Iglesias explains how EGEAS would be used, does she not?

6 A Yes, she does.

7 Q And there she states that it would be used, quote, to  
8 determine the best overall combination of proposals, does she  
9 not?

10 A Yes, of the proposals.

11 Q Now, you know from discovery that this evaluation  
12 plan was not used for the evaluation, do you not?

13 A I know that has been testified to. I have not seen  
14 any other evaluation plan, even though I know we did ask for  
15 one during discovery and were informed that no other document  
16 existed.

17 Q Other than the evaluation plan set forth in the  
18 supplemental RFP?

19 A That's -- I would have to look at the specific  
20 wording of the answer.

21 Q Would you turn to Page 3 of DFE-5, please. Now,  
22 Mr. Finnerty, you know from the testimony in this case and the  
23 discovery that FPL believed that it had the right to meet or  
24 beat any of the supplemental RFP proposals, did it not?

25 A I recall that. I don't recall specifically when that

1 was stated, but I recall that general preference being stated.

2 Q And you also know from this very memo that FPL had  
3 not yet decided whether it would meet or beat, don't you?

4 A I do not know that.

5 Q Well, if you would, look on the third page at Step 7.  
6 In your testimony, you discuss a number of the steps in  
7 Ms. Iglesias's memo, but you don't mention Step 7, do you?

8 A I would have to go back. I don't know if I  
9 specifically mention it or not.

10 Q That's fine. You can take a minute and review your  
11 testimony and see if you can find a reference to Step 7.

12 MR. GUYTON: I'm sorry, Madam Chairman. I'll move  
13 this along.

14 Q Would you just simply read Step 7 for the  
15 Commissioners, Mr. Finnerty?

16 A Yes. This is Step 7 of?

17 Q DFE-5.

18 A Yes. "Present results to FPL management/PGD for them  
19 to use in deciding if FPL will build or buy."

20 Q So Step 7 of this memo showed that the last step was  
21 a decision as to whether or not FPL would build or buy after it  
22 had done its evaluation?

23 A The last step is to present the results to both  
24 management and the power generation division for them to use in  
25 determining whether FPL will build or buy.

1 Q I'd like to ask you a little bit about your testimony  
2 about what you consider to be some of the unfair provisions in  
3 the supplemental RFP. The first provision that you  
4 characterize as unfair is the provision that permitted bidders  
5 to state exceptions to the terms of the supplemental RFP. It's  
6 not unusual for utilities in a capacity solicitation to provide  
7 bidders with an opportunity to state exceptions to the terms of  
8 an RFP, it is?

9 A No, it is not.

10 Q So the inclusion of the opportunity to state  
11 exceptions in an RFP doesn't make the RFP unfair?

12 A The -- could you repeat that? I'm sorry.

13 Q It's not your testimony that the inclusion of an  
14 opportunity to state exceptions in an RFP makes the RFP unfair?

15 A The inclusion of the opportunity does not, no, not in  
16 and of itself.

17 Q Does the opportunity to state exceptions facilitate  
18 negotiations?

19 A In certain cases, yes.

20 Q Now, the supplemental RFP was not a contract, was it?

21 A No, it was not.

22 Q And it wasn't even an offer of a contract, was it?

23 A That's correct.

24 Q Now, in a PPA, one typically sees far more extensive  
25 provisions than were included in the supplement RFP; correct?

1 A More detailed, yes.

2 Q And in response to the supplemental RFP, a bidder did  
3 not have to accept the terms of the supplemental RFP, did it?

4 A No, they did not. They did do that -- if they did  
5 take exceptions, it was at their risk.

6 Q They could state exceptions to anything other than  
7 the minimum requirements; correct?

8 A Yes, they could at risk. Yes.

9 Q Indeed, CPV Gulfcoast stated an exception in one of  
10 its supplement RFP proposals, did it not?

11 A It did state one exception, yes.

12 Q Now, the second term that you characterized as being  
13 unfair was a legislative out term that was in the initial RFP.  
14 There was not a similar term in the supplemental RFP, was  
15 there?

16 A There was not a legislative out in the supplemental  
17 RFP.

18 Q So FPL took that out in response to bidders' concerns  
19 about that, did it not?

20 A FPL removed it. Whether it was in response to  
21 bidders or other reasons, I don't know.

22 Q But it was not in the supplemental RFP?

23 A That is correct.

24 Q Another term that you characterize as being unfair is  
25 the regulatory out clause that's in the supplemental RFP.

1 There was a more demanding regulatory out clause in the initial  
2 RFP; correct?

3 A I would have to take another look at the initial RFP,  
4 but I do recall there was in the initial RFP both a regulatory  
5 and a legislative out clause. That's my recollection, at  
6 least.

7 Q Okay. Now, you've amended your testimony so that it  
8 no longer reads or would be construed to read that the  
9 inclusion of a regulatory out clause would make financing of a  
10 project impossible; correct?

11 A That is correct.

12 Q CPV Gulfcoast planned to finance its project with a  
13 mix of debt and equity, did it not?

14 A I'm sorry, I missed part of that question.

15 Q CPV Gulfcoast planned to finance its project with a  
16 mix of debt and equity, did it not?

17 A Yes.

18 Q And no potential investor in CPV Gulfcoast prior to  
19 CPV submitting its proposal had stated that the inclusion of a  
20 regulatory out clause would make the project unfinanceable, had  
21 they?

22 A No, we had not raised that issue.

23 Q I'm going to ask you a few questions that I asked  
24 Mr. Egan in deposition.

25 A Okay.

1 Q Rating agencies such as S&P impute some portion of  
2 capacity payments in a purchased power agreement to debt, do  
3 they not?

4 A I have heard that. I don't have any personal  
5 knowledge of that.

6 Q And if debt is imputed to a utility's capital  
7 structure, the effect would be to increase the utility's  
8 leverage, would it not?

9 A Yes.

10 Q Okay. I'm going to ask you about the other document  
11 that you attached to your testimony, DFE-2. Prior to Mr. Egan  
12 submitting his testimony, had you or Mr. Egan ever met with  
13 Michael Caldwell?

14 A No, we had not.

15 Q Prior to Mr. Egan submitting his testimony, did  
16 either you or Mr. Egan speak with Mr. Caldwell?

17 A No.

18 Q Now, when Mr. Egan wrote his testimony and  
19 characterized Mr. Caldwell as a, quote, FPL insider, end quote,  
20 neither you nor Mr. Egan knew how long Mr. Caldwell had not  
21 been in FPL's employ, did you?

22 A No. All we knew was what was represented in that  
23 letter.

24 Q When Mr. Egan wrote his testimony and characterized  
25 Mr. Caldwell as an FPL insider, neither you nor he knew whether

1 Mr. Caldwell had ever held a management position at FPL, did  
2 you?

3 A Again, all we knew was what was represented in the  
4 letter.

5 Q And Mr. Caldwell didn't represent that he had held a  
6 management position, did he?

7 A I don't believe he used those words, no.

8 Q When Mr. Egan wrote his testimony, neither you -- or  
9 did you know -- let me ask it this way. When Mr. Egan wrote  
10 his testimony, did Mr. Egan or you know that Mr. Caldwell was a  
11 former employee of FPL?

12 A I believe he states that in his testimony, but I'm  
13 not sure. I'm sorry, in --

14 Q I think it's --

15 A Yeah, I believe that may have been implied from his  
16 letter, but no, I do not know.

17 Q You knew from his letter that he was a former  
18 employee. Did Mr. Egan or you undertake any investigation to  
19 find out the terms under which Mr. Caldwell left FPL's employ?

20 A No, we did not.

21 Q So neither you nor Mr. Egan commissioned any due  
22 diligence or any investigation of Mr. Caldwell or his  
23 allegations before using his letter in this testimony?

24 A No. All we knew of Mr. Caldwell was what was stated  
25 in the letter.

1 MR. GUYTON: That's all I have. Thank you.

2 CHAIRMAN JABER: Thank you, Mr. Guyton.

3 Staff.

4 CROSS EXAMINATION

5 BY MS. BROWN:

6 Q Mr. Finnerty, you said just a second ago that you  
7 have no personal knowledge of rating agencies imputing debt to  
8 utilities from purchased power agreements; is that correct?

9 A That is correct.

10 Q How many purchased power agreements have you been  
11 involved in or power projects have you personally been involved  
12 in?

13 A With what respect do you mean involved with --  
14 involved in --

15 Q Well, have you been involved in negotiations with  
16 utilities in purchased power agreements?

17 A Okay. I have not been involved in a negotiation per  
18 se with a utility on a purchased power agreement.

19 MS. BROWN: All right. Thank you. No further  
20 questions.

21 CHAIRMAN JABER: Commissioners?

22 Redirect, Mr. Moyle?

23 MR. MOYLE: Just a few.

24 REDIRECT EXAMINATION

25 BY MR. MOYLE:



1 Q Mr. Finnerty, you were asked questions about whether  
2 PG -- I'm sorry, whether CPV has ever owned or operated a  
3 plant, and I believe you indicated no. Have any of the  
4 principals ever been involved with companies that have owned  
5 and operated plants?

6 A Yes, extensively.

7 Q And tell the Commission what those companies were and  
8 the type of plants and the number of plants that represents the  
9 experience of CPV.

10 A The two founders of Competitive Power Ventures,  
11 Doug Egan and Mr. Gary Lambert, were the vice president and  
12 senior vice president -- senior vice president and vice  
13 president, respectively, of development for PG&E National  
14 Energy Group, previously US Generating Company. PG&E National  
15 Energy Group has an extensive portfolio of plants that it owns  
16 and operates.

17 Prior to that, both worked for J. Makowski Associates  
18 which was a small regional independent power producer in the  
19 Northeast which also had a modest portfolio of power plants  
20 that it ran, developed, operated, and owned.

21 Q You were asked some questions about a proposal that  
22 CPV made. Mr. Guyton handed out an exhibit along those lines,  
23 and he got into asking you a few questions about those. That  
24 wasn't the only proposal that CPV submitted, was it?

25 A No, it was not. We submitted three proposals. One

1 was a turnkey proposal, and two were purchased power agreement  
2 proposals.

3 Q And the proposal that Mr. Guyton was asking you  
4 about, that plant has received all its permits, has it not?

5 A Yes. In order to enter construction it has.

6 Q And he asked you about the CPV Atlantic project;  
7 correct?

8 A Correct.

9 Q And you said that had been sold?

10 A That was sold, yes.

11 Q Was CPV Atlantic permitted and developed in the same  
12 way as CPV Gulfcoast?

13 A The exact same way, yes.

14 Q When it was sold, was there due diligence done and  
15 legal opinions rendered as to the ability to permit a plant in  
16 that way?

17 A Yes, quite extensive due diligence and a number of  
18 legal opinions.

19 Q You were asked some questions about the mental state  
20 and whether you knew FPL's mental state. Why do you believe --  
21 I think you indicated you didn't know FPL's mental state. Why  
22 do you believe that FPL was predisposed to select its  
23 self-build option?

24 A Quite simply, it can go to -- if you want to boil it  
25 down to one thing, you can go to Ms. Iglesias's memo. When

1 directed to initiate a first cut of an evaluation process, her  
2 immediate reaction was to come up with a process whereby  
3 Florida Power & Light was able to self-select its own  
4 generation to fill the capacity. That's extremely concerning  
5 to me.

6 Q And referring to that memo itself, would you point to  
7 the Commission the steps that are of particular concern to you  
8 as to why you draw that conclusion?

9 A The first general step is an evaluation of outside  
10 proposals. The second general step is having the PGD come in  
11 with costs that are -- I believe she says as aggressive as  
12 possible, and then running and rerunning those PGD cost  
13 estimates against outside proposals. The most concerning step  
14 in this is the fact that PGD keeps repeating their cost  
15 estimates and their -- keeps presenting their internal FPL  
16 proposal to the planning group for analysis. If they don't  
17 win, they go repeat the step as necessary.

18 Q Where is that found? Is that in Step 5?

19 A Step 5, yes. Step 5 is, "As necessary, repeat Steps  
20 2 through 4 until it is determined what cost reductions are  
21 necessary by FPL so that the proposals' costs are higher than  
22 the VOD benefits of deferring the FPL projects."

23 Q Okay. Read Step 6 for the record briefly, if you  
24 would.

25 A "Step 6: In order to provide a more complete

1 picture, enter the resulting FPL projects into EGEAS versus the  
2 proposals to ensure that the FPL projects are selected by EGEAS  
3 as the winner."

4 Q Okay. Now, you filed testimony indicating that you  
5 believe that FPL had a predisposition. Is it based on your  
6 review of documents and not sitting in any FPL evaluation  
7 meetings; correct?

8 A Yes. It's based on my review of documents as well as  
9 my past experiences with Florida Power & Light.

10 Q And what are those?

11 A I previously had worked for PG&E National Energy  
12 Group and was the project manager on the Okeechobee generating  
13 project that had filed a need determination before this  
14 Commission that was vigorously opposed by Florida Power &  
15 Light.

16 Q Do you have a belief that FPL generally opposes  
17 competition from outside entities such as merchant plants in  
18 the state of Florida?

19 A Yes, I do.

20 MR. GUYTON: Objection. I object to this question.  
21 It calls for the witness to testify as to FPL's belief. We've  
22 clearly established he has no basis to testify as to FPL's  
23 mental state or impression, and he has not been offered as an  
24 expert on that.

25 MR. MOYLE: And I'm asking him his belief, not FPL's

1 belief.

2 CHAIRMAN JABER: I'm not going to allow the question.  
3 You need to move on.

4 MR. MOYLE: All right. Just one more line of  
5 inquiry.

6 BY MR. MOYLE:

7 Q You were asked some questions about exceptions and,  
8 you know, did you take exceptions and whatnot. What was your  
9 understanding with respect to what would happen to a bidder if  
10 it took exceptions to the FPL RFP?

11 A Well, we weren't exactly sure what would happen if we  
12 took exceptions. The bid document is clear in that we were not  
13 able to take exceptions to the minimum requirements, but it is  
14 also clear that bids that took exceptions would be viewed less  
15 favorably as compared to bids that had not taken exceptions.

16 Given that fact, we chose to air on the side of  
17 caution and take no exceptions to our PPA proposals and only a  
18 single exception to our turnkey proposal with the belief that  
19 we would be able to negotiate to lessen the burden of those --  
20 what we believed unfair or unreasonable parts of the RFP during  
21 the negotiations of the purchased power agreement. The  
22 exception we did take, we did not believe could be negotiated.

23 MR. MOYLE: Thank you. I have nothing further. And  
24 I appreciate you accommodating the witness with his travel  
25 plans.

1 CHAIRMAN JABER: Thank you, Mr. Moyle. We have  
2 exhibits -- let's see, 31 and 32 are yours, Mr. Moyle.

3 MR. MOYLE: I would move those in, please.

4 CHAIRMAN JABER: Without objection, 31 and 32 are  
5 admitted into the record.

6 (Exhibits 31 and 32 admitted into the record.)

7 MR. GUYTON: I would simply note that as to  
8 Mr. Caldwell's letter, I'd preserve -- or the observation that  
9 that is hearsay and can only be used to corroborate. We would  
10 object to it being admitted as primary evidence of the facts  
11 contained therein.

12 CHAIRMAN JABER: So noted. Thank you. Exhibits 34  
13 and 35 are yours, Mr. Guyton.

14 MR. GUYTON: And I would move both those exhibits,  
15 Madam Chairman.

16 CHAIRMAN JABER: Without objection, Exhibits 34 and  
17 35 are admitted into the record.

18 (Exhibits 34 and 35 admitted into the record.)

19 CHAIRMAN JABER: Thank you, Mr. Finnerty. You are  
20 excused from the hearing.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 CHAIRMAN JABER: And that brings us to Mr. Maurey's  
24 testimony.

25 Staff.

1 MR. MOYLE: Madam Chairman, just one more. I think  
2 it's a housekeeping point. We listed a number of witnesses,  
3 and for a variety of reasons, they're not here. So we've put  
4 on the testimony of Mr. Finnerty, or we've decided not to call  
5 them. I think the only other thing from the perspective of  
6 CPV's case in chief is the deposition of Mr. Evanson which I'd  
7 like to go ahead and enter into the record at this time.

8 CHAIRMAN JABER: I did. You mean the deposition  
9 transcript?

10 MR. MOYLE: Right.

11 CHAIRMAN JABER: That was hearing Exhibit Number 1,  
12 and I admitted it into the record.

13 MR. MOYLE: Okay. I haven't given it to anybody, so  
14 I'll give it to them now.

15 CHAIRMAN JABER: Thank you. Thank you, Mr. Moyle.

16 MS. BROWN: Madam Chairman, before we get started  
17 with Mr. Maurey, per discussions with Florida Power & Light and  
18 the other attorneys, I wanted to have marked for identification  
19 the staff exhibits that are noted on Pages 49 and 50 of the  
20 prehearing order.

21 They include the responses to staff's discovery from  
22 Florida Power & Light. We have two composite exhibits we'd  
23 like to have marked for identification. The first one is a  
24 confidential composite exhibit. It includes Florida Power &  
25 Light responses to staff's first request for production of

1 documents Number 1, and that's Document Number 0020146, and  
2 then there's FPL's responses to staff's request for production  
3 of documents Number 2. That's Document Number 00201423.

4 The third document is FPL responses to staff's  
5 first request for production of documents Number 3. That's  
6 Document Number 00201378.

7 And we only have two more to go. FPL responses to  
8 staff's second request for production of documents Number 18.  
9 That's Document Number 00115909. And finally, FPL responses to  
10 staff's second request for production of documents Number 19.  
11 That's Document Number 00115925.

12 CHAIRMAN JABER: 00115 --

13 MS. BROWN: 925.

14 CHAIRMAN JABER: Thank you. Those responses will be  
15 identified as Composite Exhibit 36.

16 (Exhibit 36 marked for identification.)

17 MS. BROWN: Could we call that confidential composite  
18 exhibit --

19 CHAIRMAN JABER: Absolutely.

20 MS. BROWN: -- for everyone's information?

21 CHAIRMAN JABER: Yes.

22 MS. BROWN: Thank you.

23 CHAIRMAN JABER: And did you indicate to me that that  
24 was a stipulated exhibit?

25 MS. BROWN: Yes. I've spoken to Mr. Moyle,



1 Mr. McGlothlin, and Mr. Guyton about this. I haven't spoken to  
2 Mr. Perry or Mr. Twomey.

3 MR. PERRY: I don't have any problem with it.

4 MS. BROWN: Mr. Twomey doesn't --

5 CHAIRMAN JABER: Okay. Without objection then,  
6 hearing Exhibit 36 is admitted into the record.

7 (Exhibit 36 admitted into the record.)

8 MS. BROWN: Thank you, Madam Chairman. The second  
9 composite exhibit is the nonconfidential documents that staff  
10 received from FPL in response to their discovery.

11 Those documents consist of FPL responses to staff's  
12 first set of interrogatories Numbers 1 through 5. FPL  
13 responses to staff's second set of interrogatories Numbers 20  
14 through 30 and 32 through 36. FPL responses to staff's  
15 first request for production of documents Numbers 1 through 8.  
16 This is the nonconfidential portions. FPL -- then we move to  
17 FPL responses to Reliant Corporation's second set of  
18 interrogatories Number 15.

19 And two more. FPL responses to CPV Gulfcoast's third  
20 set of interrogatories Numbers 88 through 89. And finally, FPL  
21 responses to staff's second request for production of documents  
22 Numbers 8 through 19, the nonconfidential portions of those.

23 CHAIRMAN JABER: Again, seeing -- that will be  
24 identified as hearing Exhibit 37, composite Exhibit 37.

25 (Exhibit 37 marked for identification.)

1 CHAIRMAN JABER: And seeing no objection, composite  
2 Exhibit 37 will be admitted into the record.

3 (Exhibit 37 admitted into the record.)

4 MS. BROWN: Thank you, Madam Chairman.

5 CHAIRMAN JABER: Thank you. Mr. Maurey, you were  
6 here the first day of hearing and you were sworn?

7 MR. MAUREY: Yes, ma'am.

8 CHAIRMAN JABER: Okay.

9 MS. BROWN: May I ask Mr. Perry to please scoot that  
10 microphone to his left down. Thank you very much.

11 ANDREW L. MAUREY

12 was called as a witness on behalf of the Staff of the Florida  
13 Public Service Commission and, having been duly sworn,  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BROWN:

17 Q Would you state your name and business address for  
18 the record, please.

19 A My name is Andrew L. Maurey. My business address is  
20 2540 Shumard Oak Boulevard, Tallahassee, Florida.

21 Q By whom are you employed, Mr. Maurey?

22 A I'm employed by the Florida Public Service  
23 Commission.

24 Q Did you prefile direct testimony consisting of 29  
25 pages and exhibits identified as ALM-1 through 17 in this

1 proceeding?

2 A Yes, I did.

3 Q Would you please identify for the Commissioners which  
4 part of your testimony and which of your exhibits are  
5 confidential.

6 A Exhibit ALM-3 is confidential, and the testimony  
7 beginning on Line 12 of Page 18 through Line 6 of Page 20 is  
8 confidential.

9 Q Thank you. Do you have any changes or corrections to  
10 make to your testimony or exhibits?

11 A Yes, I do.

12 Q What are they?

13 A I am withdrawing Exhibit ALM-4 attached to my  
14 prefiled direct testimony, and I'm striking the portion of my  
15 testimony which addresses this exhibit.

16 Q And why are you doing that?

17 A In light of the fact Mr. Stallcup cannot be here at  
18 the hearing to support this analysis, a recognition that this  
19 analysis is not a fundamental basis for my testimony, and to  
20 spare the Commission unnecessary time spent on  
21 cross-examination on this topic, I've decided to withdraw this  
22 exhibit and the accompanying testimony.

23 CHAIRMAN JABER: Thank you, Andrew.

24 Q With these changes to your testimony and exhibits, if  
25 I asked you the same questions today, would your answers be the

1 same?

2 A Yes. I should direct you to the portion of my  
3 testimony that I am striking.

4 Q Oh, I'm sorry. Please go ahead.

5 CHAIRMAN JABER: She got a little excited. Which  
6 page?

7 THE WITNESS: If you turn to Page 20, beginning on  
8 Line 22 through Line 12 of Page 21.

9 CHAIRMAN JABER: All right. Page 20, Line?

10 THE WITNESS: 22.

11 CHAIRMAN JABER: Through what?

12 THE WITNESS: Through Line 12 on Page 21.

13 BY MS. BROWN:

14 Q With these changes, Mr. Maurey, if I asked you the  
15 same questions today, would your answers be the same?

16 A Yes, they would.

17 MS. BROWN: I would like to ask that Mr. Maurey's  
18 prefiled testimony be inserted into the record as though read.

19 CHAIRMAN JABER: The prefiled direct testimony of  
20 Andrew L. Maurey shall be inserted into the record as though  
21 read.

22 MS. BROWN: And, Madam Chairman, if we could, I would  
23 like to mark Mr. Maurey's Exhibits ALM-1, 2, and 5 through 17  
24 for identification as the compound exhibit to Mr. Maurey's  
25 testimony, and I would also request that confidential

1 Exhibit ALM-3 be marked for identification.

2 CHAIRMAN JABER: Composite Exhibit 38 is identified  
3 for ALM-1, ALM-2, ALM-5 through 17. And hearing Exhibit 39 is  
4 identified for confidential Exhibit ALM-3.

5 MS. BROWN: Thank you.

6 (Exhibits 38 and 39 marked for identification.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## DIRECT TESTIMONY OF ANDREW L. MAUREY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**Q. Please state your name, occupation, and business address.**

A. My name is Andrew L. Maurey. I am employed by the Florida Public Service Commission (FPSC or Commission) as the Public Utilities Supervisor of the Finance and Tax Section in the Division of Economic Regulation. My business address is 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850.

**Q. Please summarize your educational background.**

A. I graduated Magna Cum Laude from Florida State University in 1983 with a Bachelor of Science degree in Finance. I was elected a member of the Beta Gamma Sigma honor society. While with the First National Bank and Trust Company of Naples, I completed course work for and received American Institute of Banking diplomas in Foundations of Banking and Commercial Banking. In 1988, I received a Master of Business Administration degree from Florida State University.

**Q. Please summarize your business experience.**

A. After receiving my Bachelor's degree in 1983, I accepted a position as a credit analyst and commercial loan representative in the commercial loan department of the First National Bank and Trust Company of Naples. Upon successfully completing the holding company management training program, my responsibilities included performing credit analysis, loan review, and other assigned duties in the commercial loan department.

In 1986, I accepted a position as a regulatory analyst with the Hospital Cost Containment Board. In this position, my duties included

1 analyzing and evaluating financial statements and operating budgets of  
2 investor-owned and not-for-profit hospitals for regulatory compliance.

3       Upon receiving my Master's degree in 1988, I accepted a regulatory  
4 analyst position with the Florida Public Service Commission. My duties  
5 included analyzing financial and economic market information regarding  
6 the cost of capital and other finance-related issues.

7       In 1991, I was promoted to Regulatory Analyst Supervisor of the  
8 Finance Section. I was promoted to Public Utilities Supervisor of the  
9 Finance Section in 1994. As part of the agency reorganization in 2000,  
10 I assumed responsibility for the expanded Finance and Tax Section. In  
11 my current position, my primary responsibilities are advising the  
12 Commission on financial and economic matters regarding utility cost of  
13 capital and other finance-related issues.

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

15 **A.** Yes. I am a member of the Society of Utility and Regulatory Financial  
16 Analysts (SURFA). I have served on the Board of Directors and as the  
17 Vice President of the organization. My current term as President of  
18 SURFA runs through April 2004. I was awarded the professional  
19 designation Certified Rate of Return Analyst (CRRRA) by SURFA in 1992.  
20 This designation is awarded based upon education, experience, and the  
21 successful completion of a written examination.

22 **Q. Have you previously testified before the Commission?**

23 **A.** Yes. I have testified on the appropriate return on equity as well as  
24 other cost of capital related issues before this Commission. In  
25 addition, as a member of Commission staff, I have participated in a wide

1 range of regulatory proceedings.

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

3 A. The purpose of my testimony is to present an independent analysis of the  
4 reasonableness of the financial assumptions used in the determination  
5 of the total cost of the Florida Power & Light Company (FPL or the  
6 Company) self-build options and the equity penalty adjustment proposed  
7 by FPL in the evaluation of proposals submitted in response to the  
8 Company's Request for Proposals (RFP).

9 **Q. Please summarize your conclusions regarding the issues you have**  
10 **addressed in your testimony in this proceeding.**

11 A. I have reviewed FPL's financial assumptions reported in Appendix I of  
12 FPL's revised need determination filing as well as the supporting  
13 documentation the Company has provided in response to discovery requests  
14 regarding these assumptions. Based upon this analysis, I recommend that  
15 the financial assumptions proffered by FPL are reasonable for purposes  
16 of this proceeding.

17 I have also reviewed information relating to the equity penalty  
18 adjustment FPL has proposed be recognized for purposes of evaluating  
19 non-FPL proposals submitted in response to the Company's RFP. Included  
20 among this information is Company and intervener testimony and  
21 supporting documentation, credit rating agency and investment banking  
22 reports, and regulatory orders issued by this Commission. Based upon  
23 this analysis, I disagree with the imputation of an equity penalty as  
24 proposed by FPL for purposes of this proceeding. As I discuss in more  
25 detail later in my testimony, I believe the relative risk faced by FPL



1 with respect to purchased power is exaggerated. I believe FPL is  
2 attempting to take a portion of Standard & Poor's (S&P) consolidated  
3 credit assessment methodology and use it for a purpose it was never  
4 intended. In addition, since FPL has not made any similar adjustments  
5 to insulate its ratepayers from the effects of other factors identified  
6 by the investment community as having as much if not a more significant  
7 impact on the Company's financial position, I believe that this  
8 adjustment is discretionary on FPL's part and not compelled by the  
9 Company's current financial position.

#### 10 FINANCIAL ASSUMPTIONS

- 11 Q. What cost of capital inputs does FPL assume in the determination of the  
12 total cost of the Company's self-build option?
- 13 A. As reported in Appendix I of its revised need determination filing, FPL  
14 has assumed that the incremental capital expenditures associated with  
15 the generation projects for the 2005-6 capacity need will be financed  
16 with debt and equity to maintain "adjusted" capitalization ratios of 45%  
17 debt and 55% equity. The Company is assuming a 7.4% cost of debt and  
18 an 11.7% cost of equity.
- 19 Q. What actual equity ratio corresponds to the "adjusted" equity ratio of  
20 55% referenced in the Company's filing?
- 21 A. Presently, an adjusted equity ratio of 55% equates to an actual equity  
22 ratio of approximately 63% for this Company.
- 23 Q. What is the difference between an actual equity ratio and an adjusted  
24 equity ratio?
- 25 A. The actual equity ratio is the level of equity capitalization that

1 actually exists on a company's books. This is the level of equity that  
2 is reported in the financial statements filed with the Securities and  
3 Exchange Commission (SEC), in the Annual Report to Shareholders provided  
4 to investors, and in the monthly surveillance reports filed with the  
5 Commission. With respect to the Commission, all capital costs that are  
6 prudently incurred by a company and ultimately recovered from ratepayers  
7 are based upon calculations that recognize the actual level of equity.

8 The adjusted equity ratio is a factor developed by S&P for use in  
9 its consolidated credit assessment methodology. S&P converts the  
10 actual equity ratio to an adjusted equity ratio to use as a measure,  
11 along with several other factors, to assess the relative level of  
12 bondholder protection. The adjusted equity ratio does not appear in SEC  
13 filings or in the Annual Report to Shareholders. The adjusted equity  
14 ratio is not used by the investment community or regulators to determine  
15 actual costs.

16 **Q. How do FPL's financial assumptions for purposes of its need**  
17 **determination compare with the financial assumptions reported in the**  
18 **filings in its recently settled rate case?**

19 **A.** While not exactly the same, the Company's financial assumptions for  
20 purposes of its need determination are reasonably comparable to the  
21 financial assumptions reported in the filings for purposes of its rate  
22 case, which was resolved by Order No. PSC-02-0501-AS-EI, issued April  
23 11, 2002.

24 **Q. Are FPL's financial assumptions reasonable?**

25 **A.** Based upon a review of FPL's financial assumptions and the supporting

1 documentation the Company has provided, it appears that the assumptions  
2 reported in Appendix I of the Company's revised need determination  
3 filing are reasonable.

4 THE FPL EQUITY PENALTY PROPOSAL

5 Q. What is an "equity penalty"?

6 A. As proposed by FPL for purposes of this proceeding, an equity penalty  
7 is the term used to identify the adjustment the Company has made to the  
8 total cost of each non-FPL proposal submitted in response to the  
9 Company's RFP.

10 Q. What is FPL's rationale for incorporating an equity penalty in the  
11 evaluation process of outside proposals?

12 A. According to FPL witness Avera, the equity penalty adjustment is  
13 necessary to account for the impact additional purchased power contracts  
14 would have on FPL's financial position. Witness Avera testifies that,  
15 because the investment community regards purchased power contracts as  
16 off-balance sheet obligations that increase the financial leverage of  
17 the purchaser, utilities must offset purchased power obligations with  
18 increased equity to maintain bond ratings and financial flexibility.  
19 The equity penalty adjustment is "the method FPL has used to account for  
20 these impacts in its economic evaluation of capacity alternatives  
21 submitted in response to its Supplemental Request for Proposals  
22 (Supplemental RFP)." [FPL Witness Avera Testimony, p. 4]

23 Q. Has the concept of an equity penalty been previously considered by the  
24 FPSC?

25 A. Yes. The equity penalty concept was first raised in the need

1 determination filing of Florida Power Corporation (FPC) in Docket No.  
2 910759-EI. In that case, the hearing officer found:

3 Florida Power's contention that further purchased  
4 power will have a negative effect upon its planning  
5 and operating flexibility did not impact my decision  
6 regarding the "buy vs. build" issues in this case.  
7 I am also not persuaded by the contention that  
8 further purchased power creates a substantial risk of  
9 a negative impact on Florida Power's credit rating.  
10 Florida Power has not demonstrated that it will  
11 experience a downgrade in its credit rating if it  
12 purchases more power. ...

13  
14 I find that increased reliance on this source of  
15 power does not have to portend lower credit ratings.  
16 (Ex. 7, p. 5) Just because a utility increases its  
17 reliance on purchased power does not mean that debt  
18 protection measures will deteriorate and a downgrade  
19 is imminent. In many cases, various qualitative  
20 factors may outweigh the quantitative factors. (Tr.  
21 236-7; Ex. 12, p. 7) ...

22  
23 I recognize that purchased power is not without  
24 risks, just as constructing one's own power plant  
25 contains risks. However, I also recognize that it is

1 generally not possible to point to an increased  
2 reliance on purchased power as the sole reason for a  
3 change in credit rating. (Tr. 176) ...  
4

5 In light of the fact that Florida Power has steadily  
6 improved its financial protection measures since its last  
7 growth cycle, I find Florida Power's claim that additional  
8 purchased power commitments would result in a credit  
9 downgrade to be exaggerated.

10 [Order No. 25805, February 25, 1992, Docket No. 910759-EI, pp. 42-43]

11 The equity penalty concept was next raised in the need  
12 determination petition filed jointly by FPL and Cypress Energy Partners  
13 in Docket No. 920520-EQ. While the equity penalty concept was discussed  
14 in the testimony and exhibits sponsored by certain FPL witnesses in that  
15 case, an equity penalty adjustment was not made to the cost of the  
16 Cypress Project during the evaluation process. [Exhibit ALM-9]

17 The equity penalty concept was raised again in Docket No. 990249-  
18 EG involving FPL's petition for approval of a standard offer contract.  
19 In that case the Commission found:

20 We recognize the effect that purchased power  
21 contracts have on the utility's financial ratios as  
22 calculated by S&P. To be consistent with the terms  
23 of the Stipulation approved in Order No. PSC-99-0519-  
24 AS-EI which allows for the recovery of the "equity  
25 adjustment" through base rates, we approve FPL's

1 adjustment to its standard offer contract to  
2 recognize the effect of purchased power contracts and  
3 to avoid possible double recovery. However, while we  
4 are approving FPL's request in the instant case due  
5 to the unique circumstances surrounding FPL's  
6 Stipulation, the broader policy issue of who should  
7 bear the incremental cost of additional equity to  
8 compensate for purchased power contracts has not been  
9 addressed.

10 [Order No. PSC-1713-TRG-EG, September 2, 1999, Docket No. 990249-EG, pp.  
11 9-10]

12 Finally, the equity penalty concept was raised by FPC in its need  
13 determination filing in Docket No. 001064-EI. While the Commission  
14 recognized FPC's consideration of the equity penalty concept with the  
15 same qualifying language from Order No. PSC-1713-TRF-EG cited above, it  
16 was noted in Order No. PSC-01-0029-FOF-EI that the equity penalty was  
17 not a significant issue for the Panda proposal because the cumulative  
18 present worth revenue requirement (CPWRR) of the FPC-proposed unit was  
19 less than the CPWRR of the Panda-proposed unit without recognition of  
20 an equity penalty. [Order No. PSC-01-0029-FOF-EI, January 5, 2001,  
21 Docket No. 001064-EI, pp. 10-11]

22 **Q. Are any of these cases directly on point with the instant case?**

23 **A.** No. In none of these previous cases has the equity penalty concept been  
24 relied upon to the extent it has been in the instant case to justify the  
25 cost-effectiveness of the utility's self-build option. In Docket No.

1 910759-EI, FPC did not propose the Commission recognize an actual  
2 adjustment for purposes of evaluating alternative proposals. Instead  
3 FPC offered the equity penalty concept as an argument to support its  
4 position that, because of its existing level of purchased power, it was  
5 simply not possible for additional purchased power to be more cost  
6 effective than the utility's proposed self-build options due to credit  
7 rating concerns.

8 In Docket No. 920520-EQ, FPL admitted that it did not recognize  
9 an equity penalty adjustment for purposes of the evaluation process.  
10 The final order disposing of that docket made no mention of the equity  
11 penalty concept. [Order No. PSC-92-1355-FOF-EQ, November 23, 1992,  
12 Docket No. 920520-EQ]

13 In Docket No. 990249-EG, the issue was not whether it was  
14 appropriate to recognize an equity penalty adjustment in the evaluation  
15 of capacity alternatives from outside parties, but rather, whether it  
16 was appropriate to reduce the standard offer price FPL paid QFs and  
17 other small cogeneration power producers for power. Instead of an  
18 adjustment designed to increase the cost of non-FPL proposals, the  
19 equity penalty concept was used to reduce the price FPL paid for power  
20 under the standard offer contract approved in that docket.

21 Finally, while in Docket No. 001064-EI FPC did propose that the  
22 equity penalty be recognized in a manner similar to the way FPL is  
23 proposing it be used in this case, FPC's proposal to recognize the  
24 equity penalty was not subject to careful financial analysis because it  
25 was not a material issue in that case.

1 Q. What precedence do you believe these decisions hold for the instant  
2 case?

3 A. The Commission Orders speak for themselves. I believe these decisions  
4 indicate the Commission has taken a case-by-case approach regarding the  
5 applicability of the equity penalty concept. Consequently, I believe  
6 the Commission should consider the reasonableness of FPL's decision to  
7 make an equity penalty adjustment in this proceeding based upon the  
8 evidence presented in this record.

9 STANDARD & POOR'S APPROACH

10 Q. Please explain how S&P incorporates off-balance sheet (OBS) obligations  
11 into its analysis of electric utility capitalization ratios.

12 A. The primary OBS obligations for electric utilities are purchased power  
13 contracts. Because the benefits and risks of purchased power contracts  
14 depend on a range of factors, S&P conducts both a qualitative and  
15 quantitative analysis of these contracts for purposes of assessing the  
16 level of debt protection measures available to bond holders.

17 The qualitative analysis focuses on the nature of the contracts.  
18 These features include whether the contract is a take-or-pay obligation  
19 or a take-and-pay obligation; whether the power is economical and  
20 needed; whether there are performance standards; how much discretion the  
21 utility has over maintenance and dispatch; whether the contract was  
22 preapproved by regulators; and whether there is a recovery clause for  
23 capacity and fuel payments. An assessment of these factors results in  
24 the assignment of a risk factor which is later used in the quantitative  
25 analysis.



1           In the quantitative analysis, S&P calculates the present value of  
2 future capacity payments discounted at 10%. The 10% is used as a proxy  
3 for the utility's weighted average cost of capital. S&P then multiplies  
4 the present value amount by the risk factor determined in the  
5 qualitative analysis to estimate the OBS obligation. The risk factor  
6 assigned to FPL's existing purchased power contracts ranges from 10% to  
7 40%.

8           The estimated OBS obligation is added to the balance sheet as  
9 additional debt and an interest component is added to the income  
10 statement. Coverage and debt-to-capital ratios are then recalculated  
11 to reflect the imputed debt and benchmark comparisons for the credit  
12 rating are made using the adjusted ratios.

13 **Q. Does S&P recommend regulators recognize its adjusted ratios for rate**  
14 **making purposes?**

15 **A.** No, it does not. S&P does not take official positions in regulatory  
16 proceedings, nor does it make recommendations on how state regulatory  
17 commissions should interpret or respond to its rating pronouncements.  
18 As demonstrated by the Company's response to Staff Second Set of  
19 Interrogatories Nos. 26 and 35 attached as Exhibit ALM-8, there is no  
20 indication the equity penalty concept has been recognized by other state  
21 regulatory commissions nor is there any evidence that this concept is  
22 applied when FPL or its affiliated companies participate in RFPs to sell  
23 power to other investor-owned utilities in other states. With the  
24 exception of Order No. PSC-01-0029-FOF-EI discussed earlier in my  
25 testimony, none of the other state commission orders provided by the

1 Company in response to staff's production of documents request make any  
2 mention of the equity penalty concept. [See Staff Second Set of PODs,  
3 Request No. 10]

4 It is also important to recognize that S&P's constituents are bond  
5 holders. The interests of ratepayers and shareholders are not of  
6 specific concern to S&P. While at times the interests of bond holders,  
7 shareholders, and utility ratepayers are in line, there are other times  
8 when their interests are mutually exclusive. S&P does not judge what  
9 companies or the state regulatory commissions do. S&P simply analyzes  
10 what has occurred along with a prospective view of what it expects to  
11 occur and renders a decision regarding how these actions impact the  
12 consolidated entity's financial measures in terms of bond holder  
13 protection.

14 **Q. Please discuss your understanding of how S&P assigns corporate credit**  
15 **ratings for utility holding companies and their respective operating**  
16 **companies (electric utilities).**

17 **A.** S&P assigns a corporate credit rating based on the risk of default of  
18 the consolidated entity. In the absence of structural or proscriptive  
19 measures to insulate the individual business units, all subsidiaries are  
20 assigned the same corporate credit rating as the holding company. On  
21 September 26, 2001, S&P lowered its rating on FPL from double A minus  
22 (AA-) to A. In discussing the rationale for the downgrade, S&P stated  
23 that:

24 Driving factors in the current ratings determination  
25 include increasing business risk for the consolidated

1 enterprise attributable to the growing non-regulated  
2 independent power producer (IPP) portfolio,  
3 regulatory challenges in Florida, and an aggressive  
4 financing plan and declining credit protection  
5 measures. ... Furthermore, as FPL Group's earnings  
6 mix and capital expenditure requirements shift toward  
7 non-regulated businesses, the consolidated business  
8 profile becomes riskier, requiring greater cash flows  
9 and credit protection measures.

10 [Exhibit ALM-10]

11 Q. Isn't it true that in the report cited above S&P also referenced FPL's  
12 reliance on nuclear facilities and purchased power agreements for  
13 certain percentages of its load and the uncertainty over the outcome of  
14 its rate case settled earlier this year as factors which challenged  
15 FPL's credit profile?

16 A. Yes. S&P noted that FPL's credit profile reflects an above average  
17 business position that is supported by competitive residential and  
18 commercial rates, operational efficiency, increasing energy sales due  
19 to additional customers and increased usage, and well-run generating  
20 facilities. It also noted that these positive attributes are partially  
21 offset by the utility's reliance on nuclear facilities and purchased  
22 power for certain percentages of its load and the uncertainty over the  
23 outcome of its rate case.

24 But I believe a distinction should be made between costs that are  
25 appropriately borne by ratepayers and costs that more appropriately

1 should be borne by shareholders. The cost of maintaining a relatively  
2 high equity ratio to compensate for risk factors that are relevant to  
3 the provision of regulated electric service, such as the risk associated  
4 with a company's generating mix, are appropriately recovered from  
5 ratepayers. The cost of maintaining a relatively high equity ratio to  
6 compensate for risk factors that are irrelevant to regulated operations,  
7 such as the additional cash flow requirements placed on the holding  
8 company to compensate for the increasing risk profile of the  
9 consolidated entity related to its increasing investment in higher-risk,  
10 non-regulated operations, should not be recovered from ratepayers but  
11 rather should be borne by the shareholders.

12 FPL is adamant that this adjustment is a necessary response to  
13 address S&P's concern regarding purchased power to protect ratepayers  
14 from higher total revenue requirements over the long run. I believe it  
15 is revealing that the Company does not assign the same degree of  
16 significance to the concerns expressed by S&P regarding the risk to the  
17 utility, and therefore by extension to its ratepayers, arising from the  
18 non-regulated activities of the holding company.

19 **Q. How does S&P characterize the Florida Commission's regulation with**  
20 **respect to the issue of purchased power contracts?**

21 **A.** S&P views the Commission's regulation of electric utilities in Florida  
22 as supportive. S&P recognizes that the Commission allows full recovery  
23 of capacity payments associated with these contracts through the  
24 capacity cost recovery clause as well as full recovery of energy  
25 payments through the fuel cost recovery clause. In addition, S&P

1 specifically acknowledges the Commission's approval of the recovery of  
2 buy-out costs associated with the termination of select purchased power  
3 contracts as supportive regulation.

4 **Q. Will FPL's corporate credit rating be downgraded if the Company enters**  
5 **additional purchased power contracts?**

6 **A.** If FPL's corporate credit rating is downgraded at some future date, it  
7 will not be as a direct result of the Company entering into pre-  
8 approved, cost-effective purchased power contracts. Purchased power  
9 obligations are only one factor in the rating agency's evaluation, and  
10 to a degree these obligations can be absorbed in the credit quality  
11 assessment. It is generally recognized that coverage and capitalization  
12 ratios may move somewhat within ranges without impacting the credit  
13 quality of the company. While ratios are helpful in broadly defining  
14 a company's position relative to rating categories, S&P is careful to  
15 point out that ratios are not intended to be hurdles or prerequisites  
16 that must be achieved to attain a specific debt rating. In its 2001  
17 Corporate Credit Rating Criteria, S&P noted that risk-adjusted ratio

18 (G)uidelines are not meant to be precise. Rather,  
19 they are intended to convey ranges that characterize  
20 levels of credit quality as represented by the rating  
21 categories. Obviously, strengths evidenced in one  
22 financial measure can offset, or balance, weakness in  
23 another.

24 [Exhibit ALM-11]

25 Moreover, as shown on Table II.B.4.1 on page 14 of its revised

1 need determination filing, FPL's reliance on purchased power will  
2 significantly decline over the next eight years. From a total Summer  
3 2002 level of 2403 MW, the amount of purchased power drops to 1757 MW  
4 in Summer 2005, to 1310 MW by Summer 2007, and to 382 MW by Summer 2010.  
5 To a certain extent two years out, and definitely five years out, from  
6 the expected completion date for this identified capacity need, new  
7 cost-effective purchased power agreements would be replacing existing  
8 contracts that would have ended.

9 In addition, as part of its ongoing construction program, FPL is  
10 in the process of adding approximately 2,000 MW of net new utility-owned  
11 capacity in 2002 and 2003 at its Fort Myers and Sanford sites. [See  
12 Staff Second Set of PODs, Request No. 17, Salomon Smith Barney, April  
13 23, 2002, bates p. 00114544]

14 Finally, it is well documented that FPL has one of the highest  
15 equity ratios in the country. In its rate case, the Company  
16 characterized this level of equity as necessary to compensate for its  
17 reliance on purchased power, among other factors. This actual level of  
18 equity equates to an adjusted equity ratio that is in the upper quartile  
19 of electric utilities [Exhibit ALM-1] and is above the top of the  
20 implied target range for an A rating. [Exhibit ALM-2]

21 The combination of a relatively high equity ratio, the addition  
22 of new utility-owned capacity, and the expiration of existing purchased  
23 power contracts puts the Company in a strong position to balance the  
24 incremental risk associated with adding the capacity contemplated in  
25 this proceeding, regardless of whether the most cost-effective option

1 is to build or buy.

2           However, it is important to note that, while a utility may have  
3 ratios on a stand-alone basis that would support a particular rating,  
4 S&P looks at the company's financial position on a consolidated basis.  
5 When S&P downgraded FPL from AA- to A in the fall of 2001, it  
6 specifically noted that FPL Group's stated intention to expand its non-  
7 regulated generation business will require the firm to strengthen its  
8 consolidated credit protection measures to maintain the A rating. In  
9 an investment banking report dated July 2, 2001 provided in response to  
10 Staff First Set of Production of Documents Request No. 1, analysts at  
11 Merrill Lynch noted, begin confidential

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

end confidential

[Confidential Document No. 15004, Docket No. 001148-EI, Staff First Set of PODs, Request No. 1, Docket Nos. 020262-EI and 020263-EI]

The important point to take from this discussion is that no single factor can be looked at in isolation. As noted earlier in my testimony, there is no S&P mandate that Florida or any other state regulatory commission incorporate its credit rating criteria in their decisions. Moreover, it would be inappropriate to make an adjustment to compensate for one factor, such as the equity penalty adjustment proposed by the Company in this proceeding, while at the same time completely ignoring other factors identified by the investment community as placing even greater stress on the Company's financial position, such as the significant degree of debt leverage used to finance non-regulated growth by other affiliates of the utility.

Q. Can the impact of these other factors on a company's corporate credit rating be observed?

A. ~~Yes. In order to test the relevance of the position that purchased power has a significant impact on a utility's corporate credit rating, I requested a statistical analysis be performed on a group of companies determined to be comparable in risk to FPL. This analysis revealed that~~

1 ~~other factors, such as the actual equity ratio at the holding company~~  
2 ~~level and the relative level of holding company revenue derived from~~  
3 ~~non-regulated operations, are both significant determinants of a~~  
4 ~~utility's corporate credit rating. In fact, this analysis demonstrates~~  
5 ~~that the degree of financial leverage at the holding company level~~  
6 ~~statistically has a greater impact on a utility's corporate credit~~  
7 ~~rating than the utility-specific equity ratio adjusted for the impact~~  
8 ~~of purchased power contracts. Exhibit ALM-4 shows the results of this~~  
9 ~~statistical analysis.~~

10 Q. ~~Has S&P commented on the credit rating impact on FPL resulting from the~~  
11 ~~level of risk associated with FPL Group's growing portfolio of higher-~~  
12 ~~risk, non-regulated investments?~~

13 A. Yes. In an S&P report dated September 27, 2001, S&P noted,  
14 Credit quality for Florida Power & Light Co., the utility  
15 operating company of FPL Group, Inc., reflects the unit's  
16 steady and reliable cash flow attributes, tempered by the  
17 parent's growing portfolio of higher-risk, non-regulated  
18 investments, principally in independent power projects.

19 [ALM-12]

20 In addition, in an S&P report issued January 18, 2002, titled  
21 "U.S. Utilities' Credit Quality Displayed Steep Decline in 2001;  
22 Negative Trend Likely to Continue," S&P categorized its September 2001  
23 downgrade of FPL under the heading,

24 The following downgrades can be traced to investments in  
25 higher-risk non-regulated businesses and weakening credit

1 fundamentals.

2 [ALM-13]

3 Finally, in an S&P report issued June 20, 2002, S&P noted,  
4 Credit quality for FPL Group is characterized by the  
5 activities of its operating utility, Florida Power  
6 and Light and its growing portfolio of higher-risk,  
7 non-regulated investments, mainly in independent  
8 power projects. Ratings for FPL Group and its  
9 affiliates incorporate increasing business risk for  
10 the consolidated enterprise, attributable to the  
11 growing non-regulated, independent power producer  
12 portfolio, an aggressive financing plan, and the  
13 decline in credit protection measures.

14  
15 Standard and Poor's expects to review FPL's strategy  
16 and financial plans for its regulated and non-  
17 regulated segments with a focus on its rapidly  
18 growing and aggressive strategy in the competitive  
19 energy business. The review's outcome could result  
20 in a ratings affirmation or a downgrade.

21 [ALM-14]

22 **Q. Have any other credit rating agencies commented on the link between the**  
23 **credit rating of the utility and the activities of the holding company?**

24 **A. Yes. In a Moody's Investors Service (Moody's) report dated April 16,**  
25 **2002, Moody's stated,**



1 A. No.

2 Q. What are the factors these witnesses offer as justification for FPL's  
3 proposed equity penalty adjustment?

4 A. Witnesses Avera and Dewhurst both cite the implied financial impact of  
5 imputed debt associated with purchased power contracts as justification  
6 for making this adjustment.

7 Q. Do you disagree that S&P considers a utility's reliance on purchased  
8 power contracts when it evaluates its financial position?

9 A. Not at all. My testimony is that, with ratepayers already bearing the  
10 cost of supporting one of the highest equity ratios in the country, the  
11 Company already has the equity cushion to balance the incremental risk  
12 associated with this factor. In addition, as I have discussed earlier  
13 in my testimony, there are other factors identified by S&P that have a  
14 significant impact on FPL's financial flexibility and corporate credit  
15 rating that are not being specifically addressed by the Company.

16 Q. How does FPL's actual equity ratio compare with the equity ratios of  
17 other electric utilities which rely on purchased power?

18 A. Exhibit ALM-1 shows the equity ratios for a group of utilities  
19 comparable in risk with FPL. These ratios are based upon financial  
20 statements filed with the SEC for the period ended December 31, 2001.

21 Exhibit ALM-5 shows the relative percentage of fuel mix for each  
22 of the companies in FPL's peer group. For the period ended December 31,  
23 2001, FPL relied upon purchased power for 20% of its capacity. For the  
24 same period, ten of the companies in the index relied on purchased power  
25 for a greater percentage of their supply. Pinnacle West supported its

1 30% purchased power level with a 49% equity ratio. NSTAR, which sold  
2 all of its fossil plants in 1998 and all of its nuclear plants in 1999,  
3 and DQE, Inc., which sold all of its generating assets in 2000, rely on  
4 purchased power for 100% of their supply. NSTAR has an equity ratio of  
5 40%. DQE has an equity ratio of 32%. Relative to these companies, a  
6 64% equity ratio compares very favorably and demonstrates that FPL  
7 already has more than enough equity capitalization to compensate for the  
8 level of risk perceived to be associated with reliance on purchased  
9 power. The fact that FPL's existing reliance on purchased power will  
10 decline significantly over the next eight years combined with the  
11 continuous addition of new utility-owned capacity erodes the credibility  
12 of the Company's argument that it needs an equity penalty adjustment for  
13 purposes of this proceeding.

14 Q. On page 14 of his testimony, witness Avera refers to an article from the  
15 Wall Street Journal which he asserts indicates that credit rating  
16 agencies are closely scrutinizing the debt levels on power company  
17 balance sheets. Do you agree with his assertion?

18 A. Yes, but only in the most broadest of interpretations of the article.  
19 While the title, *Rating Agencies Crack Down on Utilities*, sounds  
20 alarming, a careful reading reveals the actual subjects of the article  
21 are companies in the energy marketing, trading, and IPP business.  
22 [Exhibit ALM-16] The article is off point with respect to public  
23 utilities. Several of the companies mentioned by name in this article  
24 are also listed as genco (generating company) competitors of FPL Energy  
25 in the July 3, 2001, Salomon Smith Barney report cited earlier. Four

1 of the companies, Allegheny Energy Supply, Calpine, Dynegy, and NRG,  
2 have below investment grade credit ratings.

3 The call for improved balance sheets relates to unregulated energy  
4 companies with 30-35% equity ratios, not regulated utilities with equity  
5 ratios in the mid to high 50s. Rather than confirm the reasonableness  
6 of FPL's capital structure policies, this article implies that FPL Group  
7 is ignoring the message from the capital markets and rating agencies  
8 that it needs to use a greater relative level of equity to fund its non-  
9 regulated operations, currently at 20%. [Exhibit ALM-6] It is also  
10 further indication that responding to these types of comments from the  
11 investment community is discretionary on the part of the Company.

12 **Q. Witness Avera offers several quotes from S&P articles intended to**  
13 **support his position regarding the risks associated with purchased**  
14 **power. Do these same articles address the risk associated with the**  
15 **building of new capacity?**

16 **A.** Yes. On page 7 of his direct testimony, witness Avera offers a quote  
17 from the May 24, 1993 issue of S&P CreditWeek. In that same article,  
18 S&P states:

19 Buying power may be the best choice for a utility  
20 that faces increasing demand. Moreover, purchasing  
21 may be the least risky course. The benefits of  
22 purchasing can be quite compelling. For example,  
23 utilities that purchase avoid the risks of  
24 significant construction cost overruns or that the  
25 plant might never be finished at all. They also may

1           avoid the associated financial stress caused by  
2           regulatory lag typical in building programs.

3  
4           In addition, utilities that purchase power  
5           avoid risking substantial capital. There are many  
6           examples of utilities that have failed to earn a full  
7           return on and of capital employed to build a plant.  
8           Furthermore, purchased power may contribute to fuel  
9           supply diversity and flexibility, and may be cheaper,  
10          at least over the short run. Utilities that meet  
11          demand expectations with a portfolio of supply-side  
12          options also may be better able to adapt to future  
13          demand uncertainty, given the specter of retail  
14          transmission access.

15          [Exhibit ALM-17]

16          The point of this discussion is to rebut the Company's presumption  
17          that purchasing power is risky and building new capacity is not. S&P  
18          makes it clear that regardless of whether a utility builds or buys,  
19          adding capacity means incurring risk.

20   Q.    The implication of the Company witnesses' testimony appears to be that  
21          if the equity penalty adjustment is not recognized in this proceeding,  
22          it will send a signal to the capital markets that the Commission has  
23          become less supportive of the financial integrity of the companies  
24          subject to its jurisdiction. Do you agree?

25   A.    No. As I mentioned earlier, the investment community and the rating



1 agencies both view the regulation in Florida as fair and supportive.  
2 It is the Commission's statutory responsibility to balance the interests  
3 of ratepayers and shareholders. When a situation warrants, this  
4 Commission will make adjustments to the Company's filing. A Commission  
5 decision to hold the utility to a balanced approach in the RFP process  
6 will not undermine the investment community and rating agencies' view  
7 that the Florida Commission is supportive of the financial integrity of  
8 the companies under its jurisdiction.

9 An example of this continuing support can be found in the level  
10 of financial stability this Commission provides companies through the  
11 use of various recovery clauses. Exhibit ALM-7 shows the relative  
12 percentages of expenses and revenues recovered through the various  
13 clauses for each of the four investor-owned electric utilities in the  
14 state. As this exhibit shows, this Commission allowed for the recovery  
15 of 43%, 46%, and 54% of FPL's expenses in 1999, 2000, and 2001,  
16 respectively. This exhibit also shows that 38%, 40%, and 48% of FPL's  
17 revenues in 1999, 2000, and 2001, respectively, were recovered through  
18 various clauses. For 2001, this means that only 52% of FPL's revenues  
19 were subject to recovery through base rates. When nearly half a  
20 company's revenues and more than half its expenses are recovered dollar  
21 for dollar through clauses, its variability in earnings is significantly  
22 reduced relative to companies without such recovery mechanisms. Lower  
23 variability in earnings reduces FPL's risk and is further evidence that  
24 this Commission supports the financial integrity of Florida utilities.

25 Q. Please summarize your conclusions regarding the equity penalty testimony

1 proffered by witnesses Avera and Dewhurst in this proceeding.

2 A. For the reasons outlined above, I believe these witnesses are taking a  
3 portion of S&P's consolidated credit assessment methodology out of  
4 context and are attempting to use it for a purpose it was never  
5 intended.

6 SUMMARY

7 Q. Please summarize your recommendation regarding the financial  
8 assumptions.

9 A. Based upon my analysis of FPL's financial assumptions reported in  
10 Appendix I of FPL's revised need determination filing, I recommend that  
11 these assumptions are reasonable for purposes of this proceeding.

12 Q. Please summarize your recommendation regarding the recognition of an  
13 equity penalty adjustment for purposes of this proceeding.

14 A. Based upon my analysis of the information relating to the equity penalty  
15 adjustment FPL has proposed be recognized for purposes of evaluating  
16 non-FPL proposals submitted in response to the Company's RFP, I disagree  
17 with the imputation of an equity penalty for purposes of this  
18 proceeding.

19 Q. Does this conclude your testimony?

20 A. Yes.

21

22

23

24

25

1 BY MS. BROWN:

2 Q Would you please summarize your testimony,  
3 Mr. Maurey.

4 A Good afternoon. The purpose of my testimony in this  
5 proceeding is to present an independent analysis of the  
6 reasonableness of FPL's decision to include an equity penalty  
7 adjustment in the evaluation of competitive bids submitted in  
8 response to the company's RFP.

9 There are three main points I want to make to explain  
10 why I believe it's inappropriate for this adjustment to be  
11 recognized for purposes of this proceeding. First of all, it  
12 is my testimony that in creating the equity penalty adjustment,  
13 FPL has taken an aspect of Standard & Poor's consolidated  
14 credit rating methodology and used it for a purpose it was  
15 never intended. I agree, Standard & Poor's considers purchased  
16 power contracts and the implied off-balance sheet  
17 obligations -- or the impact off-balance sheets have on the  
18 leverage and financial flexibility of a utility. However,  
19 Standard & Poor's analysis is conducted on a relative basis  
20 with due consideration of a number of factors to assess the  
21 relative level of credit protection for the consolidated  
22 entity, not on an absolute basis in isolation for the purpose  
23 being advocated by the company in this proceeding.

24 Moreover, it has been acknowledged in the testimony  
25 of at least three of the company's witnesses that Standard &

1 Poor's is never recommended or even suggested that this aspect  
2 of its methodology be used to derive an adjustment for the  
3 purpose of evaluating competitive capacity alternatives.

4 I agree with the concept of imputed debt as it's been  
5 promulgated by Standard & Poor's. I disagree with the  
6 company -- with the manner in which it is applying this concept  
7 in this proceeding.

8 The second point I want to make concerns the  
9 company's claim that this Commission must recognize this  
10 adjustment to promote a fair comparison of capacity  
11 alternatives. The facts and circumstances surrounding this  
12 adjustment in this case do not support this claim. First and  
13 foremost, the company's adjustment is entirely one-sided.  
14 There's absolutely no recognition or compensating adjustment  
15 for the benefits and risk avoidance that purchased power  
16 provides to the purchasing utility. In addition, it's one  
17 matter for FPL to assume a high cost of capital in the  
18 determination of the total cost of its self-build option. It's  
19 another matter entirely for FPL to use this same high cost of  
20 capital to derive an adjustment to add to the bid price of  
21 competing alternatives for purposes of the evaluation process.

22 The final point I want to make concerns the company's  
23 claim that this Commission must recognize this adjustment in  
24 this proceeding to recognize an implied cost to the company to  
25 rebalance its capital structure as a result of imputed leverage

1 associated with purchased power contracts. In light of the  
2 significant degree of actual debt leverage used by the holding  
3 company to fund its nonregulated investments, this is not a  
4 credible argument.

5           It is true that the investment community and the  
6 rating agencies are calling for FPL Group to employ greater  
7 equity and less debt leverage to finance its investments.  
8 However, with a 63 percent equity ratio capitalizing the  
9 utility and an equity ratio less than 20 percent capitalizing  
10 the nonutility investments, it's easy to see which business  
11 segment is placing downward pressure on the holding company's  
12 consolidated equity ratio of 47 percent.

13           The company's argument for why the Commission should  
14 recognize this adjustment as a legitimate cost of rebalancing  
15 its capital structure is disingenuous in light of the wide  
16 disparity between the actual capital -- the actual equity ratio  
17 supported by ratepayers of this utility and the equity ratio  
18 the company employs to fund its nonregulated investments.

19           In conclusion, I believe the relative risks faced by  
20 FPL with respect to purchased power has been exaggerated. In  
21 addition, I believe FPL is attempting to take an aspect of  
22 Standard & Poor's consolidated credit rating methodology and  
23 use it for a purpose it was never intended.

24           Finally, since FPL has not proposed any adjustments  
25 to account for the benefits of purchased power contracts or to

1 insulate ratepayers from the effects of other factors  
2 identified by Standard & Poor's and the investment community as  
3 having a significant impact on the utility's financial  
4 position, I believe this adjustment is discretionary on FPL's  
5 part and is not supported by the claims it has made in this  
6 case. This concludes my opening remarks.

7 MS. BROWN: I tender Mr. Maurey for  
8 cross-examination.

9 CHAIRMAN JABER: I think in light of positions taken  
10 in the prehearing order, it would be appropriate to start with  
11 Mr. Moyle on cross and work this way, conclude with FPL.

12 Mr. Moyle.

13 MR. MOYLE: No questions.

14 MR. MCGLOTHLIN: No questions.

15 MR. PERRY: No questions.

16 CHAIRMAN JABER: Okay. Mr. Litchfield.

17 MR. LITCHFIELD: I guess it would surprise everyone  
18 if I had no questions.

19 CHAIRMAN JABER: Were you kidding?

20 MR. LITCHFIELD: No, I was kidding. Thank you.

21 CROSS EXAMINATION

22 BY MR. LITCHFIELD:

23 Q Good afternoon, Mr. Maurey. Would you refer to your  
24 testimony on Page 5, beginning with Line 24? Now, would you  
25 agree that the company identifies the financial assumptions

1 that it used in its evaluation in connection with the RFP in  
2 Appendix I of the company's need determination filing?

3 A Yes.

4 Q And based on your review, you found those assumptions  
5 reasonable; correct?

6 A I found those assumptions -- yes. I found those  
7 assumptions reasonable for a determination of the total cost of  
8 the FPL self-build option.

9 Q You found them unreasonable for purposes of anything  
10 else?

11 A No. I did not evaluate them for any other purpose.

12 Q Did you evaluate them for purposes of determining  
13 whether they were reasonably used in assessing the costs of the  
14 outside proposals?

15 A No.

16 Q You did not?

17 A Can you repeat your question?

18 Q Yes. Did you evaluate the financial assumptions  
19 reflected in Appendix I of the company's need determination  
20 study also for purposes of determining whether they were  
21 reasonable in the context of the company evaluating the costs  
22 of outside power purchased proposals?

23 A Yes.

24 Q And you found them reasonable for that purpose?

25 A No. I found the equity penalty adjustment to be

1 unreasonable.

2 Q Okay. Do you have a copy of Appendix I in front of  
3 you?

4 A No, I do not.

5 Q We'll see that you get a copy.

6 MR. TWOMEY: John, we've got one.

7 A I have Appendix I before me now.

8 Q Before you do that, though, would you read into the  
9 record the question and answer beginning on Page 5, Line 24 and  
10 ending on the following page?

11 A "Question: Are FPL's financial assumptions  
12 reasonable?

13 Answer: Based upon a review of FPL's financial  
14 assumptions and the supporting documentation the company has  
15 provided, it appears that the assumptions reported in  
16 Appendix I of the Company's revised need determination filing  
17 are reasonable."

18 Q There's no qualification there, is there, with  
19 respect to the company's use of the financial assumptions  
20 reflected in Appendix I in computing the costs of outside  
21 purchased power proposals, is there?

22 A Not expressed. No, not expressed. However, it's my  
23 understanding the purpose of this proceeding is to determine if  
24 the FPL proposal is the least-cost alternative to meet the  
25 identified capacity need. My evaluation was done in that



1 context. With the self-build option, the cost of capital used  
2 to determine that price would be compared with competing bids  
3 that would use cost of capital of their choosing, and the  
4 bidding process would work out any inefficiencies that might  
5 exist.

6 My testimony was that it was reasonable for the  
7 company to use the financial assumptions it relied upon in  
8 arriving at the total cost of its self-build option.

9 Q Is that the way you answered that question in your  
10 deposition?

11 A I believe so -- well, not in those words, but that  
12 was my point.

13 Q Okay. We'll move on for the time being, Mr. Maurey.  
14 The equity ratio assumed in Appendix I for purposes of the  
15 company's evaluation is 55 percent; is that not correct?

16 A That is correct.

17 Q And 45 percent debt?

18 A That is correct.

19 Q And that is the capital structure assumed for  
20 financing the self-build option; correct?

21 A No, that's not correct. Those are the numbers that  
22 are on the page, but -- and there's no mention that these are  
23 actually -- represent adjusted ratios. But in reading the  
24 testimony of the witnesses, it's clear that the 55 percent  
25 equity ratio is an adjusted equity ratio. It corresponds to an

1 actually equity ratio of approximately 63 percent, so that  
2 would be the true cost of equity, or a factor in determining  
3 the true cost of equity that's built into the total cost of the  
4 self-build option.

5 Q Can you refer me to the witnesses' testimony for the  
6 proposition you just cited?

7 A Regarding an adjusted versus actual?

8 Q Regarding your understanding that the 55/45 ratio  
9 here reflected on Appendix I was not used for purposes of  
10 calculating the self-build financing costs.

11 A If you can bear with me a moment.

12 Q Mr. Maurey, I'm willing to give you additional time  
13 here, but maybe I can ask a couple of questions --

14 A Sure.

15 Q -- and we won't need to have you locate that in the  
16 testimony.

17 What's your understanding as to the company's  
18 existing adjusted equity ratio?

19 A It's approximately 55 percent.

20 Q Okay. And if the company were going to finance an  
21 additional project, what is the equity ratio at which it would  
22 finance that project? And this is a self-build project. What  
23 is the equity ratio at which the company would finance that  
24 self-build project in order to maintain on an adjusted basis a  
25 55 percent equity ratio?

1           A     If it wants to maintain an adjusted equity ratio of  
2 55 percent, then it would raise equity and debt in that  
3 proportion.

4           Q     So in other words, in order to maintain an adjusted  
5 equity ratio of 55 percent in financing a self-build option, it  
6 would finance it at an actual equity ratio of 55; correct?

7           A     That's incorrect.

8           Q     Explain to me why that's incorrect.

9           A     You appear to be confusing two concepts. Adjusted  
10 equity ratios are an analytical tool used by Standard & Poor's.  
11 They take a company's actual equity ratio, recognize  
12 off-balance sheet obligations, and come up with an adjusted  
13 equity ratio. It's used in their consolidating rating  
14 methodology.

15                     If you were to look at the company's SEC 10K report  
16 or its annual report to shareholders and took those financial  
17 statements and calculated its equity ratio, you would see their  
18 actual equity ratio. And that's shown on some exhibits to my  
19 testimony. It's also revealed in the late-filed deposition  
20 exhibit that was made part of the record earlier today during  
21 Mr. Dewhurst's testimony.

22           Q     I'm sorry, were you complete? Was your answer  
23 complete?

24           A     It's good for now.

25           Q     All right. Tell me then --

1 COMMISSIONER DEASON: Let me ask a question.

2 MR. LITCHFIELD: Sure.

3 COMMISSIONER DEASON: Is your point that if FPL or  
4 any utility wants to self-build and they want to maintain their  
5 adjusted equity ratio after they obtain the financing to  
6 self-build, that they have to acquire that equity ratio and  
7 their debt and the ratio as it appears on their books or as it  
8 appears in an adjusted state?

9 THE WITNESS: In FPL's case --

10 COMMISSIONER DEASON: To finance this project, do  
11 they need to obtain capital in the proportion of 55/45, or do  
12 they need to obtain it in whatever their financial statements  
13 state?

14 THE WITNESS: The latter. Let me make this concept.  
15 This is a relative concept, not an absolute. As the company  
16 raises money, the difference between its actual and adjusted  
17 equity ratio may change over time, particularly if you have  
18 purchased power contracts expiring, that would drive the amount  
19 of off-balance sheet obligations down. The spread between the  
20 actual and adjusted equity ratio would narrow.

21 COMMISSIONER DEASON: Well, now, hold on a second.  
22 Are you saying that the amount of off-balance sheet financing  
23 they have now is going to go down because they're going to  
24 build new additional capacity?

25 THE WITNESS: No. It would be going down over time

1 because contracts expire. As they build new capacity, their  
2 total amount of capital will go up, and they will have to --  
3 let's hold purchased power obligations constant. As they raise  
4 new capital, they will raise it in some mix of debt and equity  
5 to maintain that targeted 55 percent equity ratio. But on  
6 their actual books, it's not going to show 55/45. It's going  
7 to show whatever that relative spread is between actual and  
8 adjusted based on their balance of off-balance sheet  
9 obligations.

10 So say that spread remains constant over time, an  
11 adjusted equity ratio for this company of 55 percent equates to  
12 an actual equity ratio of 63 percent. Where that's important  
13 is in cost recovery. Whenever a company comes before you and  
14 asks for recovery, capital costs aren't recovered based on an  
15 actual -- are not recovered on an adjusted equity ratio. It's  
16 based on the actual level of equity that the company maintains.  
17 And that's where the principle I was trying to discuss earlier  
18 comes in.

19 If the company can say it's targeting an adjusted  
20 equity ratio, but when it comes in for cost recovery, that's  
21 not the relative ratios it's using to determine how much  
22 recovery it receives from ratepayers. And that's not going to  
23 determine how much the relative difference between debt and  
24 equity it actually has to compensate its investors for.

25 COMMISSIONER DEASON: What proportion in debt and

1 equity will FPL have to go to the capital markets to obtain to  
2 finance these projects if they are approved in order to keep a  
3 targeted adjusted equity ratio of 55/45?

4 THE WITNESS: Approximately 63/37.

5 COMMISSIONER DEASON: I'll be honest with you, I  
6 don't follow your logic. So if you want me to believe you,  
7 you've got to explain more than that. I don't follow that.

8 THE WITNESS: All right. Perhaps let me take you to  
9 an exhibit, if we have that luxury. I don't recall the number  
10 of it, but it was identified during Mr. Dewhurst's testimony  
11 earlier today. It was a late-filed deposition exhibit.

12 MR. HARRIS: And I believe that was identified as  
13 hearing Exhibit 28.

14 COMMISSIONER DEASON: I'm sorry. I have Exhibit 28.

15 THE WITNESS: It starts off with "FPL Group, Inc.,  
16 Capital Structure at June 30, 2002" as the heading.

17 COMMISSIONER DEASON: Yes.

18 MR. MAUREY: Okay. If you look at those two columns,  
19 you'll see in the first column the actual equity ratio of  
20 63 percent. The column to the right "adjusted" shows an  
21 adjusted equity ratio of 55 percent. With respect to what's on  
22 the books of the company for purposes of Standard -- or for  
23 purposes of Securities and Exchange Commission and the annual  
24 reports to its shareholders, it's the 63 percent equity ratio.  
25 For purposes of Standard & Poor's consolidating credit rating

1 methodology, they look at 55 percent.

2           You can see that the relevant amount of total equity  
3 is the same, but the ratios are different. So when the  
4 company -- to keep a 55 percent equity ratio, it has to  
5 maintain a 63 percent equity ratio on an actual basis, holding  
6 the amount of purchased power constant.

7           COMMISSIONER DEASON: So you're saying that FPL is  
8 going to have to go out and actually finance these projects at  
9 a 63 percent equity ratio in order to obtain the targeted  
10 adjusted ratio of 55 percent?

11           THE WITNESS: They may not have to necessarily issue  
12 new equity, but they will have to do some form of balancing of  
13 their capital structure to achieve a 63 percent on an actual  
14 basis to maintain a 55 percent on an adjusted basis, yes.

15 BY MR. LITCHFIELD:

16           Q     Mr. Maurey, do you have a calculator with you?

17           A     No, I do not.

18           Q     I think we can furnish you one, a calculator.

19           A     I have one now.

20           Q     Okay. I want you to assume for me that the utility  
21 currently has \$100 of assets financed at an adjusted equity  
22 ratio of 55 percent. Are you with me?

23           A     Yes.

24           Q     All right. So that's \$55 in equity, 45 in debt,  
25 correct, on an adjusted basis?

1 A On an adjusted basis with that premise, I'll agree.

2 Q Now, let's assume that the utility is going to add an  
3 additional power plant at a cost of \$100. Are you with me?

4 A Yes.

5 Q Now, you testified earlier that the utility would  
6 finance that at 63 percent actual equity and 37 percent debt in  
7 order to maintain its adjusted equity ratio of 55; correct?

8 A That's correct.

9 Q All right. Will you do the math then for me and add  
10 an additional \$100 to the company's books at \$63 of equity and  
11 \$37 of debt.

12 A Again --

13 Q And then compute the new adjusted equity ratio for  
14 me.

15 A What you've done is mixed two concepts, adjusted and  
16 an actual. And they are not -- they don't mix in the manner  
17 that you're suggesting. What Standard & Poor's will do is take  
18 whatever the company has on an actual basis, impute new debt  
19 for it, and calculate an adjusted equity ratio. It's two  
20 separate calculations. It's not -- well, it's not the way  
21 you're describing it in the premise of your question.

22 Q All right. Let's go back to the initial premise.  
23 We've got \$100 of assets. Okay?

24 A Yes.

25 Q And those assets are financed on an adjusted basis



1 with 55 percent equity and 45 percent debt; correct?

2 A I think we can work through this, and I think we got  
3 a way. If we do it parallel, if we show actual and adjusted at  
4 the same time, I believe we can work through this analogy.

5 Q Okay.

6 A All right. So you have \$100 of assets at a  
7 55 percent equity ratio on an adjusted basis, and at the same  
8 time, actual, you have \$100 of assets at a 63 percent equity  
9 ratio.

10 Q All right. Let me make sure I follow you. We've got  
11 on an adjusted basis to finance that \$100, \$55 in equity, and  
12 on an adjusted -- I'm sorry, did I say on an adjusted basis  
13 \$55 in equity?

14 A That's correct.

15 Q And then on an actual basis to finance that same  
16 \$100, we have \$63 in equity; correct?

17 A Correct.

18 Q Okay. And now we want to add \$100 of new plant, and  
19 what I'd like to know is, how many dollars of equity will we be  
20 using when we finance that additional plant in order to  
21 maintain on an adjusted basis a 55 percent equity ratio? Can  
22 you do that math for me?

23 A Sure. As I said before, it would be a 63 percent  
24 actual equity to have 55 percent on an adjusted basis.

25 Q We would have \$63 of actual equity in order to

1 realize a 55 percent equity on an adjusted basis, and that's  
2 because we're adding additional off-balance sheet obligations  
3 when we go to the self-build option? I guess more to the  
4 point, my question is, where does the incremental debt come  
5 from?

6 A We are trying to determine using a relative measure  
7 that S&P uses and apply an absolute -- as an absolute measure.  
8 And it doesn't work that way.

9 Q But I am asking you to hold other things constant,  
10 though. Really, all we're looking at is an incremental power  
11 plant and how the utility finances that and how it must finance  
12 that in order to maintain a 55 percent adjusted equity ratio.

13 A All right. Bear with me, and I'll work through here,  
14 the problem for you.

15 CHAIRMAN JABER: While Mr. Maurey is working through  
16 the calculations, I've just discovered that if we're here  
17 tomorrow, we won't have air-conditioning, so -- in the event  
18 that will inspire you all. We will be getting done tonight,  
19 because you have to wear your suits tomorrow if we have to be  
20 here tomorrow, and the Commissioners and I will be in business  
21 casual, just in case you were wondering.

22 THE WITNESS: If you started off with your  
23 hypothetical of \$55 of equity and \$45 of debt on an adjusted  
24 basis and you added \$55 of new equity and \$45 of adjusted debt,  
25 those ratios will stay the same. The company's actual ratios

1 will drop from 63 percent equity to 59 percent equity, and the  
2 actual level of debt will go up from 37 percent debt to  
3 41 percent debt.

4           So you can fix one, but one or the other has to move  
5 if you hold one constant. So the actual levels will go down if  
6 you -- I guess here's where I had trouble with the concept.  
7 When they say "raise capital on an adjusted basis," capital is  
8 raised in discrete amounts, and if you -- you would still have  
9 to determine an amount you were adding to the balance sheet --

10           Q     Mr. Maurey, maybe I can just ask you to assume for  
11 purposes of my questions that the company in fact did finance  
12 on an actual basis for purposes of evaluating the costs of the  
13 self-build on a 55/45 ratio. And then we can -- if you can  
14 assume that for purposes of my questions, we can probably just  
15 move forward.

16           A     Okay. So you're saying you're assuming that they're  
17 going to add \$55 of equity and \$45 of debt.

18           Q     Correct. All right. Assuming that specific capital  
19 structure -- incremental capital structure for purposes of  
20 evaluating the costs of the self-build, that capital structure  
21 assumes a certain financing costs as well; correct?

22           A     Yes.

23           Q     And using that capital structure with the incremental  
24 investment in the new plant, in the company's view, is intended  
25 to hold the company's existing capital structure neutral;

1 correct?

2 A That may be the intent, but as I've done this  
3 example, that's not what occurs.

4 Q Well, assume that then -- okay. We can get past this  
5 as well. Assume for me that in fact that is the intent of the  
6 company, to hold its target capital structure overall neutral  
7 as a result of financing the self-builds.

8 A Yes.

9 Q Okay. Now, that being the case, or at least as we've  
10 discussed for purposes of my questions here, by reflecting the  
11 equity penalty adjustment in the costs of outside proposals,  
12 FPL is assuming that it will rebalance its capital structure to  
13 maintain its targeted equity ratio as well; correct?

14 A Yes, that's the company's testimony.

15 Q And so in other words, the company is attempting to  
16 assess the outside power proposals on the basis of the same  
17 impact on FPL's capital structure; correct?

18 A Yes, but I don't agree with the premise that all  
19 things stay constant. As I did through this numerical example,  
20 if you do add a 55 percent equity or \$55 of equity and \$45 of  
21 debt into this equation, the actual level of debt and equity  
22 does not stay constant. If you keep the actual level of debt  
23 and equity constant, then the adjusted must move. You can't  
24 keep one -- or you can't have both remain constant over time.

25 Q But if we were looking at things strictly on an

1 incremental basis, you would agree with my question; correct?

2 A Strictly -- yes, strictly on an incremental basis.

3 Q Again, on an incremental basis, the cost assumed for  
4 the self-build option will be predicated on a different utility  
5 capital structure than the cost assumed for the impact on the  
6 utility's capital structure as a result of purchased power if  
7 the equity penalty adjustment is not reflected; correct?

8 Again, on an incremental basis.

9 A Yes, with that premise.

10 Q So, again, on this one incremental basis without the  
11 equity penalty adjustment, FPL's analysis would assume more  
12 cost to the self-build option than would be the case if the  
13 self-build option were assumed to be financed at the capital  
14 structure resulting from incremental purchased power; right?

15 Again, just on the incremental basis.

16 A Can you repeat the question?

17 Q Certainly. On this incremental basis, without the  
18 equity penalty adjustment, the analysis would assume more cost  
19 to the self-build option than would be the case if the  
20 self-build option were assumed to be financed at the capital  
21 structure that would otherwise result from incremental  
22 purchased power; right?

23 A The equity penalty adds cost to the bids. It's --  
24 I'm just not following you, I'm sorry.

25 Q I'm asking you to ignore the equity penalty

1 adjustment for the moment. Ignore it, okay? Assume it's not  
2 there. And my question is, then, if it is not there on this  
3 incremental basis that we've been discussing, FPL's analysis  
4 would assume more cost to the self-build option relative to the  
5 case had the self-build option been financed at the capital  
6 structure that would result from taking on incremental  
7 purchased power?

8 A Yes, on purely an incremental basis. However, I'd  
9 like it understood that I don't agree with the assumption that  
10 S&P looks at this on an incremental basis or that the  
11 company -- individual transactions are looked at -- are  
12 assessed individually.

13 CHAIRMAN JABER: Mr. Maurey, tell me just in your own  
14 words why you're having trouble with that premise. Is it that  
15 all those things are not held equal and there is -- is it that  
16 there is no such thing as looking at it from an incremental  
17 cost perspective without debt and equity not moving in the same  
18 fashion?

19 THE WITNESS: Yes, ma'am. When Standard & Poor's  
20 assesses the credit rating of these companies, it looks at all  
21 their activities at all the levels. And on an incremental  
22 basis, new purchase power may increase the implied leverage for  
23 a utility. However, there would be numerous offsetting factors  
24 at the same time. And there's no guarantees -- I mean, the  
25 company says that it's going to raise capital on a certain

1 ratio, but there's no assurance that it will actually raise  
2 capital in those ratios.

3 And there are also other factors that are impacting  
4 it that the leverage at other levels of the holding company  
5 that have an impact that S&P takes into account, so that in a  
6 situation where a well-capitalized utility may take on new  
7 purchased power and on an incremental basis may see some  
8 recognition of imputed debt, there are numerous offsetting  
9 factors which would make that at least in the rating agency's  
10 opinion not a material change.

11 CHAIRMAN JABER: Let me ask you just one additional  
12 question. Has it been your experience that rating agencies  
13 will downgrade a regulated utility's stock -- or their credit  
14 rating just because there's a purchased power agreement that  
15 has the effect of looking like a balance -- on off-balance  
16 sheet obligation?

17 THE WITNESS: No, not for that one element. No.

18 CHAIRMAN JABER: Mr. Litchfield, I interrupted you.  
19 I apologize.

20 MR. LITCHFIELD: No problem.

21 BY MR. LITCHFIELD:

22 Q Would you agree, Mr. Maurey --

23 COMMISSIONER DEASON: Sorry. Let me ask a question.

24 MR. LITCHFIELD: Sure.

25 COMMISSIONER DEASON: You indicated that it's usually

1 done on an incremental basis and that if a utility enters into  
2 a purchased power agreement, that that may or may not have a  
3 material impact upon their capital structure or upon the way  
4 investors view that from an adjusted basis. Am I  
5 characterizing that correctly?

6 THE WITNESS: When all factors are taken into  
7 account, yes.

8 COMMISSIONER DEASON: Now, let's look at this  
9 example. Florida Power & Light adding some 1,700, what is it,  
10 1,700 megawatts?

11 CHAIRMAN JABER: 1,789?

12 COMMISSIONER DEASON: Whatever it is. If they were  
13 to obtain 1,700 megawatts of purchased power, would that  
14 materially affect Florida Power & Light's adjusted capital  
15 structure?

16 THE WITNESS: Yes. And let me add, if that were done  
17 in isolation, yes. If there were 1,700 megawatts of existing  
18 purchased power rolling off the books and the company was  
19 building additional utility-owned capacity, then there may not  
20 be -- there would not be a net change.

21 COMMISSIONER DEASON: Well, is it your understanding  
22 that this RFP is to displace existing purchased power or to  
23 provide capacity for load growth?

24 THE WITNESS: For load growth.

25 CHAIRMAN JABER: And let's keep building on to that.



1 If credit -- if rating agencies could see a commitment or an  
2 understanding of the cost recovery associated with the costs  
3 coming from the purchased power arrangements, would that also  
4 be considered in the decision to downgrade or not the credit  
5 rating?

6 THE WITNESS: Yes, ma'am. They take -- the credit  
7 rating agencies take into account the regulatory environment in  
8 which the company operates. And Florida is viewed very  
9 favorably in that regard with the recovery clauses that it has  
10 in place and the practice of allowing the buy-out and buy-down  
11 costs associated with certain contracts to be recovered.

12 CHAIRMAN JABER: Thank you, Mr. Maurey.

13 Go ahead, Mr. Litchfield.

14 BY MR. LITCHFIELD:

15 Q If Florida Power & Light Company were to add 1,000  
16 megawatts of purchased power tomorrow, would S&P impute an  
17 incremental portion of debt to the utility's balance sheet?

18 A Yes, if that was all that occurred tomorrow.

19 Q You indicate in your testimony that there are  
20 existing purchased power obligations that are expected to --  
21 maybe it wasn't your term but roll off the books?

22 A Yes.

23 Q Do you know when those purchased power agreements are  
24 anticipated to expire?

25 A Over the next two to eight years.

1 Q You agree that this Commission has recognized that  
2 purchased power has an impact on the financial leverage of a  
3 utility; correct?

4 A Yes.

5 Q And you also agree that the incremental debt imputed  
6 by debt rating agencies for purchased power obligations  
7 increases financial risk to the utility, all other things  
8 equal; correct?

9 A Yes, all other things held constant.

10 Q Do you agree that if a utility rebalances its capital  
11 structure by adding equity in place of debt, that that is a  
12 cost to the utility?

13 A Yes. Whenever the utility replaces less expensive  
14 debt with more expensive equity, that will raise its cost.

15 Q You agree that FPL's equity ratio for ratemaking  
16 purposes is not an issue in these need determination  
17 proceedings; right?

18 A Yes.

19 Q And you don't disagree with FPL's existing ratio, do  
20 you? It's what it is; right?

21 A That's correct.

22 Q And it's also true that you cannot say FPL's equity  
23 ratio is too high because utility management has the  
24 prerogative to capitalize the utility at what level it sees  
25 fit; correct?

1 A That's correct.

2 Q And also, in your view, it's up to management's  
3 discretion where they want to set that equity ratio; correct?

4 A That's correct. And it's also up to the regulatory  
5 commission in which it operates to determine what level is  
6 reasonable.

7 Q And you haven't said it's too high in this  
8 proceeding, have you?

9 A No. What I've said is that relative to numerous  
10 objective measures, it is very high, but I have not said it's  
11 too high.

12 Q Now, you are aware of the stipulation and  
13 settlement --

14 CHAIRMAN JABER: I'm sorry, Mr. Litchfield.

15 MR. LITCHFIELD: I'm sorry.

16 CHAIRMAN JABER: And why is that testimony relevant  
17 to this proceeding? In your opinion, you said that the equity  
18 ratio is high but not too high. Why is that factor relevant to  
19 this proceeding? Help me understand that.

20 THE WITNESS: Standard & Poor's evaluation of  
21 purchased power obligations takes relative level of equity into  
22 consideration when it determines if the amount of purchased  
23 power on a utility's books will have a neutral effect or a  
24 detrimental effect or if it's positive effect in balancing its  
25 supply portfolio. If there's a certain amount of different

1 capacities that it has, purchased power has a role in that  
2 balance.

3           If a company is well capitalized with a great deal of  
4 equity, it can absorb additional purchased power without a  
5 detrimental effect to its rating. So when I say that compared  
6 to numerous objective measures an actual equity ratio of  
7 63 percent compared to the equity ratio of other utilities in  
8 its peer group compared to the equity ratio that's maintained  
9 on a holding company level compared to the equity ratio used to  
10 finance nonregulated investments, it's very high relative to  
11 those other measures.

12           CHAIRMAN JABER: Okay.

13 BY MR. LITCHFIELD:

14           Q     You're aware of the stipulation and settlement that  
15 was adopted or approved by this Commission in Docket Number  
16 001148; correct?

17           A     Yes, I am.

18           Q     And that's the stipulation and settlement that  
19 settled FPL's most recent rate case; correct?

20           A     That's correct.

21           Q     And is it also true that FPL's equity ratio for  
22 surveillance reporting purposes pursuant to that stipulation is  
23 capped at 55.83 percent on an adjusted basis in accordance with  
24 Standard & Poor's methodology for computing off-balance sheet  
25 obligations?

1           A     Yes. And it's an important point that while it's  
2 capped at 55.83 on an adjusted basis, that has to translate  
3 into an actual equity ratio for actual surveillance purposes.

4           Q     Would you characterize the purchase of power to meet  
5 the requirements of retail load in fulfillment of a utility's  
6 obligation to serve as a regulated consequence?

7           A     I'm not sure I understand your question.

8           Q     Maybe you can help me out. How is it confusing to  
9 you? I'd be happy to rephrase it.

10          A     A regulated consequence? I'm --

11                CHAIRMAN JABER: What was your question,  
12 Mr. Litchfield?

13                MR. LITCHFIELD: Whether -- I'll ask it again.

14 BY MR. LITCHFIELD:

15          Q     Mr. Maurey, would you characterize the -- well, let  
16 me -- I think I can rephrase it a little better. Would you  
17 characterize the effects of purchased power agreements to meet  
18 the requirements of retail load in fulfillment of a utility's  
19 obligation to serve as a regulated consequence?

20          A     I have never heard the term "regulated consequence"  
21 before, and I'm not sure what you mean by that. The acquiring  
22 of power to serve its load, the recovery of those expenses is a  
23 regulatory item. Does that answer your question?

24          Q     Well, let me -- do you have your deposition in front  
25 of you?

1 A Yes, I do.

2 Q On Page 36 of your deposition, I asked you that -- I  
3 think it was that very question on Line 22. "Would you  
4 characterize the purchase of outside power as a regulated  
5 consequence?"

6 Answer: If the power is used to serve retail  
7 customers, yes."

8 A All right. Which line was that?

9 Q Lines 22 through 25 on Page 36.

10 A I'm still not familiar with the concept, but I agreed  
11 to it, yes.

12 CHAIRMAN JABER: Mr. Litchfield, just so the record  
13 is clear, do you mean by your question, the act of entering  
14 into the purchased power arrangements to buy electricity, is  
15 that a regulatory responsibility, or is that an imposition  
16 imposed by regulation? I think Mr. Maurey is not trying to be  
17 difficult. I think --

18 MR. LITCHFIELD: I agree.

19 CHAIRMAN JABER: So he might be more direct if you  
20 could rephrase the question.

21 MR. LITCHFIELD: I actually think I have another  
22 question that I think will make the point a little better.

23 BY MR. LITCHFIELD:

24 Q Can you refer to your testimony at Page 14,  
25 Mr. Maurey?

1 A Yes, I have that.

2 Q Beginning on Line 24 and then carrying over onto the  
3 next page, you identified two categories here; right?

4 A Yes, I do.

5 Q One regarding risk factors that are relevant to the  
6 provision of electric service and another that consists of risk  
7 factors that are relevant to unregulated operations; right?

8 A That's correct.

9 Q Am I correct that you would place in the category of  
10 regulated operations an incremental purchased power obligation  
11 that the utility might enter as a result of this or any other  
12 RFP; correct?

13 A Yes.

14 Q Okay. That's essentially what I was asking earlier,  
15 so I think we were both on the same page.

16 Mr. Maurey, it's your testimony, is it not, that the  
17 equity penalty adjustment should not be applied for purposes of  
18 the company's evaluation of the costs of self-build options  
19 versus purchased power because it ignores other risk factors  
20 related to FPL Group as a whole which the debt rating agencies  
21 also consider in determining Florida Power & Light Company's  
22 overall debt rating; correct?

23 A Yes, with one qualification. It's not just FPL Group  
24 but how those factors impact FPL, the utility.

25 Q Okay. That's fair. That's what I intended. I think

1 that's a fair characterization. Would you agree, however, that  
2 those risk factors will be present regardless of whether FPL  
3 builds or buys in this instance?

4 A That is correct. But an important point should be  
5 made that if the holding company's equity ratio were higher,  
6 the utility's ability to absorb additional leverage would be  
7 increased. At this point with the balance that the holding  
8 company has, the amount of equity at the utility level compared  
9 to the amount of equity used to finance nonregulated activities  
10 has put -- so on a consolidated basis, you have an equity ratio  
11 that's lower than it would be.

12 If we were using just the utility's equity ratio for  
13 these comparisons, that's very high, and it could tolerate a  
14 certain amount of purchased power without any detrimental  
15 effect. But because of other factors going on at the holding  
16 company that depress the equity ratio on a consolidated basis,  
17 this gets Standard & Poor's attention, and that puts the  
18 company in a position where it must -- or at least in practice  
19 what we're seeing is a very high equity ratio at the utility  
20 level, a relatively much lower equity ratio for nonregulated  
21 investments such that on a consolidated basis at 54 percent,  
22 it's below the target range for a single A credit.

23 COMMISSIONER PALECKI: What nonregulated investments  
24 are you referring to? What category? And explain how they  
25 have the effect you've described.



1 THE WITNESS: Principally, they're the investments of  
2 FPL Energy, but FPL FiberNet is also involved in that. It's  
3 the exhibit that I referenced earlier from Mr. Dewhurst's  
4 deposition. I apologize, I don't recall the number.

5 MS. BROWN: It's Exhibit 28.

6 THE WITNESS: Exhibit 28. And also, at the same  
7 time, if you could turn in my testimony to Exhibit ALM-2. So  
8 when you look at -- returning now to 28. The equity ratio of  
9 the utility at 63 percent and on an adjusted basis of  
10 55 percent, it falls into the category -- well, on an actual  
11 basis, 63 percent, that's above the range implied equity ratio  
12 for a single A credit of 50 to 54 percent. But the equity  
13 ratio of FPL Group on a consolidated basis at 47 percent is  
14 below that range. And it's clearly not because the utility  
15 doesn't have enough equity. It's because other business  
16 segments of the holding company have significantly less equity  
17 to bring that average down.

18 And since S&P uses a consolidated credit rating  
19 methodology, the utility bears the weight, if you will, of the  
20 consolidated credit rating.

21 COMMISSIONER PALECKI: Thank you.

22 BY MR. LITCHFIELD:

23 Q Mr. Maurey, you suggest that the reflection of the  
24 equity penalty is a cost in the evaluation of outside power  
25 proposals is improper because FPL's purchased power obligations

1 are projected to decline over the next several years; correct?

2 That's one of your reasons; correct?

3 A Yes.

4 Q Okay. And to the extent those obligations decline in  
5 the aggregate, FPL will be able to reduce its actual equity in  
6 order to maintain the same targeted equity ratio, correct, on  
7 an adjusted basis?

8 A Yes.

9 Q Would you agree that to the extent FPL's purchased  
10 power obligations are scheduled to decline, that they will do  
11 so independent of whether FPL self-builds or buys on this  
12 instance?

13 A Yes. My point with that response earlier, what he  
14 characterized was that with purchased power -- existing  
15 purchased power contracts expiring and the continuing  
16 development of net new utility-owned generation, that the  
17 utility has the capacity to continue to balance its portfolio  
18 of supply options, including purchased power, without a  
19 detrimental effect.

20 Q You discuss in your testimony several cases that have  
21 been before this Commission in which an equity penalty has been  
22 addressed; correct?

23 A That's correct.

24 Q I'd like to refer you to initially Docket 910759, and  
25 I believe this is the Florida Power Corporation petition for a

1 need determination for Polk Units 1 through 4; right?

2 A I'm sorry, I lost you at the end. Could you repeat  
3 that?

4 Q The docket that I referenced, that's Florida Power  
5 Corporation's request for a determination of need for the Polk  
6 Units 1 through 4; correct?

7 A Okay. That's where you lost me. That's the Hines  
8 plant.

9 Q That's Hines?

10 A Polk was for Tampa Electric Company later. This  
11 unit -- this docket referred to what would have been -- what is  
12 the Hines Unit 1.

13 Q Were they to be constructed in Polk County? Maybe  
14 that's why I'm confused.

15 A That's possible. You're talking about Docket 910759?

16 Q Yes, I am.

17 A Okay. Initially, that was going to be Hines  
18 1 through 4, and it ultimately became Hines 1.

19 Q Okay. Now, at Page 7 and 8 of your testimony, you  
20 quote from the Hearing Officer's findings in that docket;  
21 correct?

22 A Not exactly. I'm quoting the Hearing Officer's  
23 points, but I'm quoting from the final order approved by the  
24 Commission.

25 Q Okay. As I recall, the final order actually included

1 as an attachment the Hearing Officer's findings; correct?

2 A Yes.

3 Q Okay. Were those quotes included in your testimony  
4 as a predicate for a finding by the Hearing Officer or the  
5 Commission in that case that an equity penalty adjustment is  
6 inappropriate?

7 A No. Let me clarify. In that docket, an equity  
8 penalty adjustment was not proposed. The company was raising  
9 the equity penalty concept in a way of avoiding having to bid  
10 for some of this capacity. It really wasn't presented in the  
11 form of an adjustment as it is in this docket.

12 Q So am I correct that Florida Power Company was --  
13 Corporation, excuse me, was arguing -- and to put it in  
14 context, the Bid Rule was not in place at that time; correct?

15 A That's correct.

16 Q Okay. And Florida Power Corporation was attempting  
17 to persuade the Commission that it could not take on additional  
18 purchased power for fear of a downgrade by the debt rating  
19 agencies; correct?

20 A That was FPC's position.

21 Q Okay.

22 A The Commission found that -- or they did not agree  
23 with that necessarily. They allowed the company to build a  
24 portion of the capacity that it had petitioned for and  
25 instructed the company to go back and consider other options

1 for the additional capacity, the total amount that it had  
2 requested in its petition.

3 Q But Florida Power Corporation itself was not  
4 comparing outside power purchase options to a self-build option  
5 in that case; correct?

6 A That's correct.

7 Q You've read Dr. Avera's rebuttal testimony, I  
8 presume?

9 A Yes.

10 Q Do you have it with you?

11 A Yes, I do.

12 Q Would you turn to Page 10?

13 A Yes.

14 Q Would you read the two sentences beginning on Line 7?

15 A "In any event, neither FPL nor I ever claim that it  
16 is necessary to incorporate the equity penalty in order to  
17 avoid a downgrade in FPL's existing bond ratings. Rather, as I  
18 made clear in my direct testimony, in order to conduct a  
19 meaningful economic evaluation of power supply alternatives, it  
20 is necessary to recognize quantifiable differences between  
21 individual proposals."

22 Q That's your understanding of the company's position;  
23 correct?

24 A I understand that that is the position of Dr. Avera.  
25 I would point out that in Dr. Avera's direct testimony on

1 Page 9, beginning on Line 18, he says, "Because investors  
2 perceive additional financial costs with obligations under  
3 purchased power, as reliance on these resources increases, the  
4 utility must offset the associated debt equivalent by  
5 incorporating a higher equity component in the capital  
6 structure or through higher returns on equity, as S&P has  
7 recognized. Because of purchased power, it has been necessary  
8 for FPL to maintain a relatively greater proportion of equity  
9 capital in order to maintain its credit rating."

10 So I took that statement as a presumption that it's  
11 the company's position that they must maintain an equity ratio  
12 that high to avoid a downgrade associated with purchased power.

13 Q Well, has your testimony changed at all now having  
14 reviewed Dr. Avera's clarification in his rebuttal testimony?

15 A I agree that the second sentence is the company's  
16 exact position, and I've never believed it otherwise. However,  
17 I do disagree with the first sentence that the company was not  
18 presuming that absent some recognition of the equity penalty  
19 that its bond rating was potentially threatened.

20 Q Well, if you were to assume that in fact that was the  
21 company's position, would it affect your recommendation in this  
22 case?

23 A No.

24 Q Do you have a copy of the Commission's order in  
25 Docket Number 910759? This was the need determination case for

1 the Hines Units 1 through 4 that we were just discussing.

2 A I do not have a complete copy.

3 Q Do you have a copy of Page 2 of the order?

4 A No, I do not.

5 Q Okay. Well, we'll show it to you. I don't need you  
6 to read it out loud. I'd just like you to look at a particular  
7 passage, and tell me whether you agree with the modified  
8 finding of fact reflected on Page 2.

9 And the modified finding of fact that I would refer  
10 you to is the inset paragraph beginning with "Credit rating  
11 agencies recognize." And you can just read that to yourself,  
12 and then let me know if you agree or disagree with that.

13 A I've read the passage.

14 Q And you do agree with that modified finding of fact;  
15 correct?

16 A Yes, I do. And perhaps I should read it aloud to  
17 give you an -- for my explanation. "Credit rating agencies  
18 recognize that without compensating factors, increased reliance  
19 on purchased power obligations may lower coverage ratios. A  
20 utility can compensate for the financial consequences of  
21 increased purchased power obligations by increasing its equity  
22 ratio (reducing its debt leverage)," --

23 COMMISSIONER DEASON: You need to slow down.

24 THE WITNESS: -- "increasing its earnings, or  
25 petitioning for modified regulatory treatment that allows the

1 utility an opportunity to earn a return on this capacity." And  
2 it's my testimony that compensating factors as this finding of  
3 fact alludes to are present.

4 CHAIRMAN JABER: Was that accepted by the Commission,  
5 Mr. Maurey? That was a finding of fact from a Hearing Officer?

6 THE WITNESS: It is a reworded finding of fact.

7 CHAIRMAN JABER: Mr. Litchfield, I'm sure you can  
8 answer that for me.

9 MR. LITCHFIELD: Yes. It was accepted by the full  
10 Commission.

11 THE WITNESS: Yes.

12 BY MR. LITCHFIELD:

13 Q Okay. You indicate that you believe that there are  
14 compensating factors in this case that would suggest that an  
15 equity penalty adjustment is not appropriate; correct? Did I  
16 understand your testimony just now to that effect?

17 A That is correct.

18 Q Okay. The second sentence of this finding of fact  
19 says, "A utility can compensate for the financial consequences  
20 of increased purchased power obligations by increasing its  
21 equity ratio (reducing its debt leverage), increasing its  
22 earnings, or petitioning for modified regulatory treatment that  
23 allows the utility an opportunity to earn a return on this  
24 capacity." Is that an accurate reading?

25 A Yes. And it's my testimony that with an actual



1 equity ratio of 63 percent, this company has indeed increased  
2 its equity ratio to compensate for purchased power agreements.

3 Q Just so that I understand your testimony, then, when  
4 the Commission found that credit rating agencies recognize that  
5 without compensating factors, increased reliance on purchased  
6 power obligations may lower coverage ratios, that by  
7 "compensating factors," they were referring to -- the  
8 Commission was referring to something other than the two things  
9 that they list in the next sentence, i.e., increasing the  
10 equity ratio or petitioning for the opportunity to earn a  
11 return on the capacity, you're saying that compensating factors  
12 meant something other than those two things.

13 MS. BROWN: Madam Chairman, I think that order  
14 probably speaks for itself, and Mr. Maurey is not an attorney.

15 CHAIRMAN JABER: Mr. Litchfield.

16 MR. LITCHFIELD: I'll withdraw the question.

17 BY MR. LITCHFIELD:

18 Q Can you tell me, Mr. Maurey, whether FPL is allowed  
19 to earn a return on the power it purchases through a PPA?

20 A I don't believe it is allowed.

21 Q Okay. Do you have a copy of the staff recommendation  
22 in Docket 990249? This was FPL's petition for a standard offer  
23 contract.

24 A 990249?

25 Q Yes.

1 A Yes, I do.

2 Q Now, your initials are on the staff recommendation;  
3 correct?

4 A Actually, I had the order. I can't seem to find the  
5 recommendation.

6 Q We can get you copy of the staff recommendation. In  
7 fact, I think I've got copies that can be distributed. Do you  
8 have a copy in front of you now?

9 A Yes, I do.

10 Q Your initials are on the memorandum of transmittal;  
11 correct?

12 A That's correct.

13 Q Okay. And would you turn to Page 10, Issue 2?

14 A Yes.

15 Q Your name is listed under the recommendation;  
16 correct?

17 A That is correct.

18 Q We talked about this at your deposition; right?

19 A I recall that, yes.

20 Q You agree with the staff recommendation with respect  
21 to Issue 2 and the staff analysis that accompanies that  
22 recommendation; right?

23 A Yes.

24 MR. LITCHFIELD: Madam Chairman, I'd like to have  
25 this marked for identification.

1 CHAIRMAN JABER: Yes. Hearing Exhibit 40 is  
2 identified for the July 27th, 1999 staff recommendation in  
3 Docket Number 990249.

4 (Exhibit 40 marked for identification.)

5 BY MR. LITCHFIELD:

6 Q Am I correct, Mr. Maurey, that you believe that it  
7 was appropriate for the Commission to reflect the equity  
8 penalty adjustment in FPL's standard offer contract because the  
9 company just entered into a stipulation which it afforded it a  
10 high equity ratio and capped its equity ratio at an adjusted  
11 level of 55.83 percent based on off-balance sheet obligations,  
12 and by doing the equity penalty concept in this direction, it  
13 lowered the price that FPL paid out of pocket for power than  
14 had the adjustment not been made?

15 MS. BROWN: Madam Chairman, that's an awfully long  
16 question. Could Mr. Litchfield refer Mr. Maurey to where he's  
17 reading from?

18 CHAIRMAN JABER: The objection is it's a long  
19 question.

20 MR. LITCHFIELD: Sure. I'm quoting from Mr. Maurey's  
21 answer in a deposition, and I'm just asking if that's his  
22 testimony.

23 CHAIRMAN JABER: But no one understood your question,  
24 and I was yawning as you were asking it. So you need to reask  
25 it.

1 MR. LITCHFIELD: Well, that is a bad sign, indeed,  
2 then.

3 BY MR. LITCHFIELD:

4 Q Okay. Mr. Maurey, I'm asking you if I am correct  
5 that your understanding of the Commission's decision to approve  
6 an equity penalty adjustment in FPL's standard offer contract  
7 in this Docket 990249 is because the company had just entered  
8 into a stipulation which afforded it a very high equity ratio  
9 which was capped at an adjusted level of 55.83 percent based on  
10 off-balance sheet obligations, that by doing the equity penalty  
11 concept in this direction, it lowered the price that FPL paid  
12 out of pocket for power than had the adjustment not been made?

13 MS. BROWN: Madam Chairman, I think that was the  
14 exact same question.

15 CHAIRMAN JABER: I understand your concern,  
16 Ms. Brown, but I think Mr. Maurey understands the question.  
17 Did you get this in the deposition?

18 THE WITNESS: Yes.

19 A That is correct in part. Also, the reason we  
20 recommended that it be -- the equity penalty be or equity  
21 penalty concept be accepted in this docket was because of the  
22 direction the equity penalty concept was being applied. This  
23 lowered the cost that FPL paid out of pocket to companies who  
24 may have signed up to sell power to FPL under this particular  
25 standard offer contract.

1 Q And lowering the price that FPL paid out of pocket  
2 for power is a good result from the standpoint of customers,  
3 would you agree?

4 A Yes.

5 Q Would you refer to Page 8 of your testimony?

6 CHAIRMAN JABER: Are you about to leave the  
7 recommendation, Mr. Litchfield?

8 MR. LITCHFIELD: Pardon me?

9 CHAIRMAN JABER: Are you about to leave questions  
10 about on the recommendation?

11 MR. LITCHFIELD: Yes.

12 CHAIRMAN JABER: Mr. Maurey, how did the Commission  
13 rule on the recommendation which has been identified as  
14 Exhibit 40?

15 THE WITNESS: It accepted the staff recommendation  
16 modifying the risk factor that was used in the calculation of  
17 the equity penalty concept from 20 percent to 10 percent. And  
18 it did make a statement -- I'm reading from the order  
19 PSC-99-1713-TRF-EG issued September 2nd, 1999.

20 On Page 9, quote, to be consistent with the terms of  
21 the stipulation approved in Order Number PSC-99-0519-AS-EI  
22 which allows for the recovery of the equity adjustment through  
23 base rates, we approve FPL's adjustment to its standard offer  
24 contract to recognize the effect of purchased power contract  
25 and to avoid possible double recovery.

1 CHAIRMAN JABER: Thank you.

2 Mr. Litchfield, go ahead.

3 BY MR. LITCHFIELD:

4 Q Mr. Maurey, do you have your testimony in front of  
5 you?

6 A Yes.

7 Q And you're at Page 8?

8 A Yes.

9 Q You indicate in your testimony on Line 11 that FPL's  
10 petition for a determination of need for the Cypress project,  
11 that an equity penalty was not included in assessing the cost  
12 of that project; correct?

13 A That's correct.

14 Q And you base that assertion on testimony from  
15 Mr. Sam Waters filed in that case; correct?

16 A That is correct.

17 Q And you attach one page of that testimony as an  
18 exhibit to your testimony. It's ALM-9; correct?

19 A Two pages, the cover sheet and the actual page with  
20 the testimony.

21 Q Okay. Can you point me to the excerpt from this  
22 testimony that led you to believe that FPL did not include an  
23 equity penalty adjustment in assessing the costs of the Cypress  
24 project?

25 A I'm referring to ALM-9. "Question: Do these

1 analyses include a cost for the equity penalty associated with  
2 FPL's decision to purchase power from the Cypress project?

3 Answer: No. The equity penalty was quantified by  
4 FPL after the evaluation process described by Dr. Sim in this  
5 testimony and will be applied to future power purchase  
6 evaluations."

7 Q That's the statement upon which you base the  
8 assertion that the equity penalty was not reflected in FPL's  
9 analysis?

10 A Yes.

11 Q Would you read the next sentence?

12 A "The equity penalty associated with the Cypress  
13 project represents an additional cost to FPL of approximately  
14 \$73 million, net present value, \$1,991."

15 Q And the last sentence of that paragraph?

16 A "Even with this equity penalty, the Cypress project  
17 remains the most cost-effective alternative available to FPL."

18 Q And then there's a question that begins on the bottom  
19 of Page 25 on Line 21; correct?

20 A Yes.

21 Q Do you recall reading the full answer to that  
22 question?

23 A I did, but I don't recall what was said.

24 Q I'll ask my colleague to get a copy of that in front  
25 of you.

1 A Yes.

2 Q Okay. I found my copy, Mr. Maurey, I apologize.

3 Okay. There's a paragraph on the following page, Line 15. Do  
4 you see that?

5 A Yes.

6 Q Would you read the second sentence there?

7 A Yes. "Therefore, FPL included in its evaluation of  
8 the Cypress contract the costs of compensating for the  
9 additional debt that S&P will impute."

10 Q And the next sentence?

11 A "This cost is associated with the additional equity  
12 which FPL would need to retain its original level of financial  
13 integrity."

14 Q With that additional information, would you agree  
15 that FPL in fact did include an equity penalty adjustment in  
16 the Cypress project evaluation?

17 A My testimony does not claim that the company did not  
18 consider equity penalty concept. My testimony was based on the  
19 sentence which I already read, do these analyses include a cost  
20 for the equity penalty associated with FPL's decision to  
21 purchase from the Cypress project, and the answer was no.

22 So the reading of the rest of this answer and the  
23 logic that flows is similar to what the company is proposing  
24 today, but the fundamental question, was it included in the  
25 evaluation, and the answer was, after the evaluation process,



1 so I --

2 Q Do you know how the equity penalty was computed in  
3 the instant case, the instant evaluation? Let me rephrase the  
4 question.

5 Do you know when the equity penalty computation was  
6 performed in the evaluation conducted by Dr. Sim in this case?

7 A No, I do not.

8 MR. LITCHFIELD: Madam Chairman, I have additional  
9 questions. I am willing to enter Mr. Maurey's deposition in  
10 lieu of maybe the rest of my questions. I would like a minute  
11 to check to see if there's anything else I'd like to ask him  
12 here, but that certainly would save us some time, if that would  
13 be acceptable to the parties.

14 CHAIRMAN JABER: Well, let's go ahead and take a  
15 break now, come back at 4:30. And you and Ms. Brown talk about  
16 whether the deposition transcript is a problem to come in.

17 MR. LITCHFIELD: Okay. Thank you.

18 CHAIRMAN JABER: Thank you.

19 (Brief recess.)

20 (Transcript continues in sequence with Volume 9.)

21 - - - - -

22

23

24

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 7th DAY OF OCTOBER, 2002.

22

23

*Tricia DeMarte*

24

TRICIA DeMARTE  
FPSC Official Commission Reporter  
(850) 413-6736

25