

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION TO DETERMINE NEED FOR
AN ELECTRICAL POWER PLANT IN
MARTIN COUNTY BY FLORIDA POWER &
LIGHT COMPANY

DOCKET NO. 020262-EI

PETITION TO DETERMINE NEED FOR
AN ELECTRICAL POWER PLANT IN
MANATEE COUNTY BY FLORIDA POWER &
LIGHT.

DOCKET NO. 020263-EI

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PROCEEDINGS: HEARING

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

DATE: Friday, October 4, 2002

TIME: Commenced at 8:30 a.m.
Concluded at 8:15 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Official Commission Reporter

APPEARANCES: (As heretofore noted.)



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I N D E X

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NAME: PAGE NO.

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P R O C E E D I N G S

1
2 (Transcript continues in sequence from
3 Volume 9.)

4 CHAIRMAN JABER: So our next witness is Alan S.
5 Taylor.

6 ALAN S. TAYLOR

7 was called as a witness on behalf of Florida Power and Light
8 Company and, having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NIETO:

11 Q Good evening, Mr. Taylor. You have previously
12 testified in this docket, correct?

13 A Yes.

14 Q And do you have before you your prefiled rebuttal
15 testimony?

16 A Yes, I do.

17 Q Was that testimony prepared under your direction or
18 control?

19 A Yes, it was.

20 Q And if I were to ask you today the same questions
21 that are in your prefiled rebuttal testimony, would your
22 answers be the same?

23 A Yes, they would.

24 MR. NIETO: Madam Chairman, I would ask that Mr.
25 Taylor's prefiled rebuttal be entered into the record as though

1 read.

2 CHAIRMAN JABER: Sure. The prefilled rebuttal
3 testimony of Alan S. Taylor shall be inserted into the record
4 as though read.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF ALAN S. TAYLOR**

4 **DOCKET NOS. 020262-EI, 020263-EI**

5 **SEPTEMBER 11, 2002**

6

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

8 A. My name is Alan S. Taylor, and my business address is 5511 Northfork Court,
9 Boulder, Colorado, 80301.

10

11 **Q. Did you submit prefiled direct testimony in this proceeding?**

12 A. Yes.

13

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

15 A. I will address various allegations and criticisms that were raised by intervener
16 witnesses Kenneth Slater and Douglas Egan and Florida Public Service
17 Commission (FPSC) staff witness Andrew Maurey. To summarize, the
18 intervener witnesses contend that FPL's solicitation process and economic
19 evaluation were not fair and may have yielded incorrect results. On the
20 contrary, I believe that FPL employed a good, sound, unbiased process, using
21 state-of-the-art utility planning models to perform a rigorous and fair analysis
22 of its power supply options. FPL's economic conclusions were supported by
23 my independent evaluation of the responses to FPL's supplemental request for

1 proposals (Supplemental RFP). I am an expert in conducting power supply
2 solicitations, having been involved with numerous such solicitations around
3 the country over the last ten years. As an independent evaluator in FPL's
4 solicitation, I used my own model to evaluate the responses to FPL's
5 Supplemental RFP and concluded that the Martin Unit 8 and Manatee Unit 3
6 projects represented the best, lowest-cost resources for meeting FPL's 2005-
7 2006 resource needs.

8

9 **Q. Please describe the specific allegations that were made by the intervener**
10 **witnesses.**

11 A. I will start with those introduced by Mr. Slater. Mr. Slater raised several
12 criticisms of the economic evaluation and utility simulation modeling process
13 in an effort to challenge the results of the evaluation. His criticisms can be
14 segregated into two general categories: modeling issues and risk-assessment
15 issues. In the modeling area, he took issue with start-up costs, seasonal
16 variations in generating unit operating characteristics, variable operation and
17 maintenance (O&M) expenses, and operating assumptions for the FPL
18 facilities as well as for future resources. In the risk-assessment area, he
19 dismissed the use of an equity penalty and discussed the trade-offs inherent in
20 buy-versus-build decisions.

21

22 **Q. Starting with the modeling issues, what was Mr. Slater's concern with**
23 **start-up costs?**

1 A. Mr. Slater expressed concern that FPL's utility simulation model, EGEAS,
2 does not calculate the number of start-ups for generation facilities when it
3 executes its utility dispatch and production costing procedures. Mr. Slater
4 was concerned that the costs for facility start-ups were calculated outside of
5 the model and added to the fixed costs for each resource option.

6

7 **Q. Is there any merit in his concern?**

8 A. No. This is too small of a cost issue to have affected the modeling results.

9

10 **Q. How did FPL calculate start-up costs?**

11 A. FPL used the same procedure for all bids and self-build options. For
12 intermediate/baseload resources (such as natural-gas-fired combined-cycle
13 facilities – which was the type of technology proposed in virtually all of the
14 bids and in the self-build options), FPL assumed six starts per year. These
15 combined-cycle units are operated for most hours of the year; thus, they have
16 few start-ups because they are rarely taken off-line. The FPL modeling team
17 adopted its start-up assumptions after discussing typical facility operations
18 with those individuals who dispatch FPL's system. Again, the same
19 assumption was used across all combined-cycle facilities. It is plausible that
20 combined-cycle facilities with higher-than-average variable costs might be
21 dispatched less (i.e., run for fewer hours during the year). Such facilities
22 might be taken off-line at night when utility load requirements decrease, only
23 to be restarted the next morning to serve the daytime loads. This would

1 translate into more start-ups per year. The FPL self-build options had
2 competitive, low variable costs; thus, they are likely to run all the time and
3 continue to operate through each night. However, some of the higher-
4 variable-cost proposals would not be run as consistently and arguably could
5 have been modeled with a greater number of start-ups per year, resulting in
6 greater annual start-up costs. This was not done. Such proposals were given
7 the benefit of the doubt and modeled with the same six starts per year as all
8 other combined-cycle resources.

9
10 **Q. So you believe that the start-up costs of some of the outside proposals**
11 **may have been underestimated, thereby making the proposals look more**
12 **attractive than they would have – had FPL employed more precise start-**
13 **up modeling?**

14 **A.** Yes. However, start-up costs are still a rather small component of a project's
15 total costs, so I do not believe that the more precise modeling would have
16 made an appreciable difference in the evaluation results. This brings me to a
17 more important point. Resource solicitations are complex evaluation projects
18 with numerous areas of analysis. In any one area, one could always spend
19 more time to develop more precise results. The ultimate goal is to model
20 everything at a sufficient level of detail to determine reasonably accurate
21 results for a selection decision. I believe that FPL did that. One must avoid
22 putting too much time and effort into one small analytic area in pursuit of
23 precision, only to rob other analytic areas of the attention that they require to

1 contribute to the overall reliability of the evaluation results. The objective of
2 any evaluation team should be to establish a balance between the various
3 analytic areas. Start-up costs represent but one small area.

4
5 **Q. Do you believe that FPL established an appropriate balance in its**
6 **evaluation?**

7 A. Yes. Had FPL used a simulation model that internally determined the number
8 of generating unit start-ups, as Mr. Slater seems to advocate, such precision
9 would have come at the expense of more important aspects of the evaluation.
10 I am familiar with such utility planning models, and they are rather slow and
11 time-intensive – appropriate for some types of analysis but not others.
12 Because FPL chose to use EGEAS, the evaluation team was able to evaluate
13 literally tens of thousands of combinations of proposals in an attempt to find
14 the lowest-cost portfolios of resources that would meet FPL's capacity needs.
15 Using slower models to capture small nuances and differences in start-up
16 costs would have severely limited the number of proposal combinations that
17 FPL could have evaluated – perhaps to a few dozen. Recognizing that the
18 possible universe of proposal combinations in FPL's solicitation numbered
19 well over a hundred thousand, it would have been improper to pursue
20 excessive precision in start-up costs and sacrifice the evaluation of a
21 sufficiently broad set of proposal combinations. I believe that FPL struck the
22 right balance in its evaluation efforts.

23

1 **Q. Mr. Slater stated that combined-cycle facilities have seasonal variations**
2 **that were not captured in the EGEAS modeling. Do you agree?**

3 A. Yes, although, for all of the same reasons as I discussed above, I believe that
4 such nuances would not have had a significant impact on the evaluation
5 results. The same level of precision was employed consistently by FPL in
6 modeling its existing fleet of resources, the outside proposals, and its new
7 self-build options. Therefore, the same advantages would have been reflected
8 in all alternatives, adding no value to the effort to differentiate among
9 alternatives. Conversely, to have run EGEAS in a monthly dispatch mode
10 instead of annual would likely have increased the model runtime twelve-fold,
11 allowing significantly less time for evaluating portfolios of proposals.
12 I believe that FPL used EGEAS appropriately in its resource evaluation and
13 modeled all resources (both outside and self-build) with a consistent and
14 appropriate level of precision.

15
16 **Q. Mr. Slater expressed concern that the variable O&M costs for the FPL**
17 **self-build options were too low and therefore distorted the evaluation**
18 **results. Do you agree with him?**

19 A. No. First, let me define variable O&M costs. These are the non-fuel-related
20 expenses associated with generating energy from an electric power plant and
21 are expressed in \$/MWh. Such costs might include consumables (e.g.,
22 chemicals for water treatment, lubricants for pumps and motors) and, perhaps,
23 certain labor costs that might increase with the amount of generation that is

1 produced by a facility. The variable O&M charge in a power supply contract
2 dictates how much money will be paid to a facility owner for every MWh of
3 generation that the facility actually produces.

4
5 That said, my response to the “low FPL variable O&M cost” concern is two-
6 fold. First, all of the variable O&M costs – for both outside proposals and
7 self-build resources – were modeled exactly the same way. The variable
8 O&M costs were modeled exactly as they were proposed. Second, the cost
9 structure for recouping the total O&M expenses of a facility is entirely up to
10 the power provider.

11
12 In my years of evaluating power supply proposals, I have seen a wide range of
13 fixed and variable pricing. Some bidders seek to recover their O&M expenses
14 through higher fixed charges (e.g., capacity prices) and offer low variable
15 O&M prices; others offer lower fixed charges but higher variable charges. In
16 the end, it is up to the bidder to decide what its preferred ratio should be.
17 FPL’s Power Generation Division (PGD) chose to place more of the total
18 O&M costs for the self-build options in the projections for fixed charges.
19 That was PGD’s decision, and it was clearly published in the Supplemental
20 RFP. Outside bidders were free to adopt whatever pricing structures they felt
21 would be appropriate.

22

1 **Q. Mr. Slater believes that the FPL self-build options have overly optimistic**
2 **operating characteristics, such as unit availability and heat rates, and**
3 **that these estimates distorted the evaluation results. Do you agree?**

4 A. No. Let us start with the heat rates. Heat rates are a measure of a generating
5 facility's efficiency. Mr. Slater complains that PGD offered heat rate
6 estimates that reflect brand new unit generating unit conditions, whereas
7 bidders were required to submit guaranteed heat rates that presumably would
8 reflect on-going conditions over the duration of the proposed contract. I
9 raised this very issue with FPL during the initial solicitation. I wanted to
10 make sure that we had an apples-to-apples comparison between PGD's heat
11 rate estimates and the heat rates offered in bidders' proposals. PGD's original
12 estimates seemed aggressive, so I encouraged FPL's Resource Planning group
13 to question PGD and ensure that the values were representative of what PGD
14 expected over the life of the facilities. PGD acknowledged that its original
15 estimates for capacities and heat rates reflected brand new conditions and
16 submitted revised estimates that reflected capacity and heat rate degradation.
17 Thus, the Martin and Manatee options in both solicitations were in fact
18 evaluated with lower capacity values and higher heat rates (i.e., lower
19 operating efficiencies) than originally provided. These revised values do not
20 represent brand new conditions; instead they reflect the degradation and
21 deterioration expected with on-going power plant operations.

22

1 **Q. What did the evaluation team assume about the outside bidders'**
2 **proposed operating capabilities?**

3 A. The evaluation team assumed that all capacities and heat rates included in the
4 outside proposals were for average on-going operations and reflected values
5 that the bidders could stand behind. Thus, the outside proposals were given
6 the benefit of the doubt. In fact, when FPL commenced negotiations with one
7 of the bidders, FPL learned that the heat rates included in the bidder's
8 proposal represented brand new conditions and had to be adjusted.

9
10 **Q. Mr. Slater also complained that the availability assumptions for the**
11 **Martin and Manatee facilities were too optimistic and therefore distorted**
12 **the results of the evaluation. Do you agree?**

13 A. No. As stated in Dr. Steven Sim's rebuttal testimony, the implicit availability
14 assumptions for the Martin and Manatee facilities was less than 95% and was
15 comparable to the assumptions used for the outside proposals. I understand
16 that FPL has a strong track record in the operation of power plants and believe
17 the utility is capable of achieving the estimated availabilities with the Martin
18 and Manatee projects. However, my primary focus is on the second part of
19 the question – whether aggressive availability estimates distorted the
20 evaluation results. I have a great deal of experience with production cost
21 models and, based on that experience, I believe that using lower availability
22 estimates for Martin and Manatee would not have significantly affected the
23 overall FPL system production costs in EGEAS. Particularly considering that

1 these units are being simulated in a utility system with a 20% reserve margin,
2 it is unlikely that decreasing the availability percentage for these plants from
3 the mid 90s to, say, the low 90s would have much of an impact on FPL's
4 production costs. Given FPL's 20% system reserve margin, there is enough
5 additional capacity available to economically replace any lost capacity or
6 energy from the marginal unavailability of the Martin or Manatee projects.

7

8 **Q. What basis do you have for such a claim?**

9 A. In fact, Mr. Slater himself performed an analysis that concluded that FPL
10 could lose both of the proposed facilities in 2005 and suffer no more than
11 \$3,000 in expected unsupplied energy costs. This is the equivalent of
12 reducing both units' availability assumptions to zero. While I do not agree
13 with the results of Mr. Slater's analysis, his own numbers indicate that one
14 could reduce the assumptions for the Martin and Manatee availability
15 percentages from the mid 90s to zero with virtually no annual cost impact.
16 Thus, I am inclined to believe that the availability percentages could be
17 reduced from the mid 90s to the low 90s with no significant impact on the
18 EGEAS production costs.

19

20 **Q. Mr. Slater took issue with FPL's use of a "greenfield" "filler" plant in the**
21 **evaluation of short-term proposals. He also noted that the filler unit was**
22 **assumed to be supplied with firm transportation service from the more**
23 **expensive Florida Gas Transmission (FGT) pipeline rather than**

1 **Gulfstream and contends that such assumptions skewed FPL’s evaluation**
2 **results in favor of the utility’s self-build units. Do you agree?**

3 A. No. I reviewed FPL’s assumptions for future resources (i.e., the filler units
4 that might be developed on the heels of the expiration of a short-term
5 purchase contract) and believe that they were reasonable. Nonetheless, I too
6 was interested to know how the results of the evaluation might be affected by
7 costs assumptions for the filler unit. Mr. Slater argues that FPL should have
8 examined the effect of the filler unit being a less expensive “brownfield” unit
9 – such as a deferral of one of FPL’s self-build units – and assumed a supply of
10 gas from the less expensive Gulfstream pipeline. That is exactly what I did.

11
12 **Q. You performed the very analysis that Mr. Slater advocated?**

13 A. Yes. As part of my independent evaluation, I performed a sensitivity analysis
14 whereby I replaced the filler unit in Sedway Consulting’s Response Surface
15 Model with the Manatee project, supplied from the Gulfstream pipeline. This
16 is described in Sedway Consulting’s Independent Evaluation Report that was
17 provided as an exhibit to my testimony in Document No. AST-2. In that
18 report, the base case analysis yielded the conclusion that the All-FPL portfolio
19 was less expensive than the next best portfolio that did not include both FPL
20 units by \$135 million. The sensitivity analysis – with the lower cost filler unit
21 – still showed that the All-FPL portfolio was less expensive by a margin of
22 \$125 million.

23

1 **Q. You have addressed the modeling issues raised by Mr. Slater. What were**
2 **Mr. Slater's concerns regarding the risk-assessment issues?**

3 A. He complained that FPL's use of an equity penalty skewed the results of the
4 evaluation and that purchase power contracts have certain risk-shifting
5 benefits that were not similarly quantified.

6

7 **Q. Do you agree with his contentions?**

8 A. No. On the issue of the equity penalty, it is important to note that this is a real
9 cost, not some construct that was developed by FPL. Rating agencies are the
10 source of this issue. They view some portion of a utility's purchase power
11 capacity payment obligations as the equivalent of debt. FPL quantified the
12 equity penalty associated with each top-ranked power supply proposal using
13 the same procedure as I have seen employed by other utilities seeking power
14 supplies. The assumptions and formula are consistent with the statements that
15 have been published by Standard and Poor's on this matter.

16

17 **Q. What about the issue of purchase power contracts having certain risk-**
18 **shifting benefits that Mr. Slater argues are not reflected in FPL's**
19 **evaluation?**

20 A. I agree that there may be certain risk-shifting benefits associated with
21 purchase power contracts relative to utility ownership. However, such risks
22 and benefits are difficult to quantify, cannot practicably be modeled, and may
23 cut both ways or be offset by other non-quantifiable risk factors that favor

1 self-build options. Instead, such risks are usually considered in resource
2 selection decisions as non-price factors.

3

4 **Q. Please describe these hard-to-quantify risks.**

5 A. One example is the risk of obsolescence for current technology. If a utility
6 opts to purchase power under a short-term contract (e.g., for the next five
7 years), it may find that less expensive construction options (or lower market
8 prices) are available at the end of the short-term contract. However,
9 construction costs and market prices may be higher than expected at the end
10 of five years as well; so this risk cuts both ways. It is a judgment call. In
11 recent history, technology improvements have reduced the cost of new
12 generation, at least in real (i.e., non-inflation) terms. Assuming this trend
13 continues and that inflation stays low, one might argue that short-term
14 purchases provide a means for a utility to wait for better, less expensive
15 technology. In effect, the short-term power supplier is accepting the risk that
16 current technology may be rendered obsolete by new developments in the
17 future. On the other hand, if inflation takes off, the purchasing utility may
18 wish it had built its own power plant at the original construction costs.

19

20 **Q. But weren't future power costs included in FPL's evaluation in the form
21 of the filler unit assumptions?**

22 A. Yes. So, essentially, this risk was quantified for one specific future scenario
23 in FPL's evaluation. However, the unquantified risk that I am describing

1 involves the consideration of a full range of costs and the possibility that
2 future costs may be higher or lower than the filler unit costs. To some extent,
3 a lower-cost assessment was captured by the sensitivity analysis that I
4 performed. There is always a chance that future costs could be lower.
5 However, I believe that FPL's filler cost assumptions were reasonable and the
6 actual future costs could also be higher than the evaluation envisioned. FPL
7 assumed that construction costs for future resources would escalate at 1.7%
8 per year. If inflation heats up, future power development costs may be much
9 higher than what was assumed in FPL's analysis.

10

11 **Q. This risk is most relevant when considering short-term versus long-term**
12 **resource decisions, right?**

13 A. Yes.

14

15 **Q. Were attractive short-term bids offered in FPL's solicitation?**

16 A. There was a small 50 MW system sale that was offered for a term of three or
17 five years. However, the most economically-competitive proposals were large
18 offers beginning in 2006 for terms of 25 years.

19

20 **Q. So the obsolescence risk is moot for these large proposals that were the**
21 **most competitive?**

22 A. Yes. When comparing 25-year purchase power opportunities and 25-year
23 self-build options, the purchases do not provide any protection against

1 technology obsolescence. Both avenues are long-term commitments to
2 current generating technologies. In fact, in some respects, owning the facility
3 is better than purchasing its output from another owner. If retrofitting
4 technology opportunities arise that may improve the facility (e.g., make it
5 more efficient), a utility owner can invest in the facility and its customers will
6 reap all of the benefits. If the facility is owned by another company, that firm
7 can choose to forego the investment and continue to earn its expected return
8 under the existing contract or make the investment and reap the benefits for its
9 owners, not FPL's customers.

10

11 **Q. Are there other hard-to-quantify risks inherent in either build or buy**
12 **decisions?**

13 A. Yes. Mr. Slater identifies construction cost risk, operating cost risk, and
14 performance risk. Once a contract is executed, those issues that are
15 specifically addressed in the contract may indeed contribute to reduce the risk
16 regarding those specific issues. However, there are three important points
17 here. First, if the utility builds the facility and the costs are lower than
18 projected, the customers will only pay the actual costs, not the higher
19 projections. Conversely, in a power supply contract, if the seller's costs are
20 lower than expected, the seller reaps the cost savings; the utility buyer and its
21 customers still pay the higher prices specified in the contract. Second, the
22 prices and conditions identified in a power supply proposal do not constitute a
23 contract and may change during negotiations. Indeed, when FPL entered

1 negotiations with one of the shortlisted bidders, it learned that the proposed
2 power supply costs would be higher than what was provided in the letter of
3 the proposal. Thus, the price certainty offered in power supply agreements is
4 not firm until a contract is signed. Third, even after a contract is signed, there
5 may be contract terms that permit adjustments, attempts by suppliers to
6 renegotiate unforeseen costs, or litigation – particularly if the supplier
7 becomes financially insolvent or otherwise finds it economically
8 advantageous to attempt to amend or avoid its obligations under the power
9 purchase agreement. So, even signing a contract does not remove all risk
10 from the utility and its customers.

11

12 **Q. What do you conclude about the points raised in Mr. Slater's testimony?**

13 A. I believe that his points concerning modeling issues and the use of EGEAS
14 were off the mark. I believe that FPL employed a rigorous, balanced,
15 unbiased evaluation process that yielded reliable results and was corroborated
16 by an independent evaluation.

17

18 The pursuit for greater precision in start-up costs or seasonal variations in
19 power plant operations would have added little value and instead sacrificed
20 much more important parts of the evaluation – such as the broader review of
21 many different combinations of proposals.

22

23 The FPL self-build options were modeled with heat rates and capacities that

1 were representative of average on-going operating conditions, not the brand
2 new conditions that Mr. Slater claimed. The FPL evaluation effort gave
3 outside bidders the benefit of the doubt on this issue. The variable O&M
4 costs for the facilities were reasonable and were incorporated into the analysis
5 just like the variable O&M costs proposed by outside bidders. Each bidder
6 had the choice to structure its fixed and variable charges as it saw fit.

7
8 Equity penalties represent a real financial cost associated with the way rating
9 agencies assess the impact of power purchase agreements on a utility's
10 balance sheet. Given the events of the last year in the energy/financial
11 markets, the importance of an energy company maintaining a strong balance
12 sheet has rarely been greater. Although there are other risks associated with
13 the buy-versus-build decision, they are hard to quantify and, in some
14 instances, cut both ways. I do not believe that one should discard a
15 quantifiable cost such as the equity penalty just because there are unquantified
16 risks. Unquantified risks can be considered by decisionmakers in a qualified
17 fashion.

18
19 **Q. Turning now to Mr. Egan's testimony, what specific allegations were**
20 **made that you wish to address?**

21 **A.** Mr. Egan contends that FPL's Supplemental RFP was unfair and included
22 commercially unreasonable terms. He suggests that the Supplemental RFP
23 should have included weights assigned to various criteria and objects to FPL's

1 oversight role in the entire solicitation process. In addition, he raises some of
2 the same equity penalty and risk-shifting issues that Mr. Slater discusses and
3 which I have already addressed.

4
5 **Q. Concerning FPL's Supplemental RFP, do you believe that the**
6 **Supplemental RFP was fair?**

7 A. Yes.

8
9 **Q. Do you believe that it included commercially unreasonable terms?**

10 A. No. The contracting requirements that were included in FPL's Supplemental
11 RFP were similar to those that I have seen in other utility RFPs. Also, I
12 believe that there are two important points to recognize with RFP contract
13 terms. First, bidders have the option to object to RFP contract terms. In fact,
14 with FPL's Supplemental RFP and most other RFPs that I have seen, bidders
15 are required to include any significant exceptions to the RFP's terms in their
16 proposals. The basic contract terms are included in an RFP to facilitate
17 eventual negotiations. If there is no prior understanding of what basic
18 guarantees or provisions that a buying utility must have in a power supply
19 contract, the early negotiations with a potential power supplier are likely to be
20 unnecessarily difficult. The seller may feel ambushed by a list of
21 requirements that were not factored into the pricing of the proposed power
22 sale. Having a mutual understanding of the parties' general contract positions
23 from the start of the proposal evaluation process is essential and ensures that

1 all proposals are evaluated consistently. Also, if a potential bidder does not
2 like the contract terms in an RFP, the option always exists not to bid at all.
3 The level of participation in FPL's solicitation suggests that the Supplemental
4 RFP terms were not commercially unreasonable.

5
6 **Q. Mr. Egan states that the regulatory cost recovery provision in FPL's**
7 **Supplemental RFP (where contract payments may be reduced if the**
8 **Commission disallows recovery of the contract's costs) shifts inordinate**
9 **risk to the bidder. He asserts that this provision makes project financing**
10 **difficult, if not impossible, and proves that FPL does not want to award a**
11 **contract to a bidder. Do you agree with his assertion?**

12 A. No. First, I have seen similar provisions in other utility RFPs. It is
13 understandable that a utility does not want to be liable for power supply costs
14 that its regulatory commission will not allow to be recovered. Similarly, it is
15 understandable that a developer does not want to build a facility, only to have
16 contract payments reduced by regulatory fiat. An appropriate balance needs
17 to be struck in the final contract. Second, from the standpoint of a potential
18 bidder in FPL's solicitation, there was always the option to take exception to
19 the provision.

20
21 **Q. Mr. Egan suggests that FPL's Supplemental RFP should have revealed**
22 **all of the evaluation criteria and included weights assigned to each**
23 **criterion. Do you think that this makes sense?**

1 A. No. I have been involved in solicitations where efforts were made to develop
2 prespecified scoring systems, weights for various evaluation criteria, and
3 formulaic approaches for the selection of proposals. This concept was popular
4 in the mid-90s. Although it lends a perception of “transparency” to the
5 evaluation process, I can say from experience that the process is difficult to
6 engineer, prone to gaming, and does not necessarily result in the best selection
7 of resources. The industry has generally moved away from this concept.

8

9 **Q. Why don't prespecified weights work in power supply evaluations?**

10 A. Basically, they do not work because one finds that the weights need to be
11 flexible and responsive to the proposals that are submitted for evaluation. To
12 lock in the weights before the proposals are reviewed can have unintended
13 consequences and distort the eventual evaluation results. If two proposals are
14 similarly priced but have significant differences in their risks, they may be
15 ranked rather closely in a scoring system that was weighted predominantly on
16 price. A different scoring system that was weighted heavily toward a specific
17 risk may result in the selection of projects that are low-risk in that one area but
18 much higher cost or higher risk in other areas. In the end, I believe that it is
19 best to grant the evaluation team the necessary flexibility to make its selection
20 based on the types of proposals received and leave that team with the burden
21 of defending its evaluation decision at the end of the process.

22

1 **Q. Mr. Egan expresses frustration that FPL was the administrator and**
2 **judge in the solicitation process, suggesting that this provides FPL with**
3 **an unfair advantage. Do you agree?**

4 A. No. FPL bears two substantial burdens in this process – one is the obligation
5 to serve its customers and the second is the burden of proof in the regulatory
6 process that the company is pursuing the best resource alternatives for
7 meeting its customers' needs. Ultimately, FPL is the firm that must live with
8 the outcome. Therefore, it must have the power and authority to review
9 proposals, assess the economic and non-economic benefits and risks of each
10 offer, reach its conclusions, negotiate power supply contracts if outside
11 bidders submit competitive proposals, and move ahead with the best resource
12 plan. The checks and balances of the process come from the Commission and
13 intervener review of the entire solicitation process. In addition, the use of an
14 independent evaluator and the oversight afforded the Commission Staff in this
15 instance further enhanced the process by providing a second, independent
16 review of the resource options and the evaluation decisions.

17
18 **Q. Do you think that some other entity – the Commission or an independent**
19 **evaluator – could insert itself into the process and replace the utility in**
20 **one or more parts of the solicitation to ensure perfect independence in the**
21 **decisionmaking or negotiating tasks?**

22 A. No. The utility will need to live with the results of the solicitation. I believe
23 it would be unwise to force the utility to accept some other entity's decisions.

1 The burden of proof rests on the utility, and the regulatory oversight is the
2 appropriate mechanism for ensuring that the utility conducts a fair solicitation
3 and selects the best resources for its customers. To insert some other entity
4 into the process and force the utility to live with the consequences of decisions
5 or negotiated contracts in which it did not have full authority could be
6 disastrous – particularly if the selected resources failed to materialize for
7 whatever reason.

8
9 **Q. Do you believe that FPL conducted a fair solicitation process?**

10 A. Yes.

11
12 **Q. Were you ever instructed to come to a particular conclusion?**

13 A. Never. Instead, I was encouraged to make suggestions for improvements
14 anywhere in the process, and I was charged with the task of performing an
15 independent economic evaluation and presenting what my analysis indicated
16 were the least-cost resource options to meet FPL's capacity needs.

17
18 **Q. Do you believe that it is surprising that a utility such as FPL might win in
19 its own solicitation?**

20 A. I stand by the results of the evaluation. The numbers are what the numbers
21 are. I think that it is perfectly reasonable that FPL has been able to compete
22 with the nation's top independent power producers. It has extensive
23 experience and expertise in developing and operating generation facilities.

1 Like many utilities around the country, it has improved and streamlined its
2 operations to become a lower cost provider. In a sense, I would say that
3 FPL's customers are already enjoying the benefits of a competitive wholesale
4 electricity market, even if the customers are served by new ratebased facilities
5 – because these new facilities have to compete with the best offers from the
6 marketplace. That said, while I had no pre-conceived notions as to how FPL
7 would fare in this process, I am not surprised that FPL would be able to put
8 forth self-build options that are more cost-effective than any of the other bids
9 received in response to its solicitation. FPL is an organization that can offer
10 competitively-priced generation facilities, but it must do so each time or
11 accept superior offers from the marketplace.

12
13 **Q. What do you conclude about the points raised in Mr. Egan's testimony?**

14 A. I believe that FPL's Supplemental RFP was fair. It included contractual terms
15 that were reasonable for an RFP, and all bidders had the opportunity to take
16 exceptions to these terms in their proposals. The number of proposals that
17 were submitted in response to the Supplemental RFP suggests that it was a
18 good document. I believe that it went into sufficient detail concerning the
19 evaluation process and the criteria that FPL intended to use in selecting the
20 best resources. I would recommend against adopting a formulaic scoring
21 system with criteria weights that would be documented in the RFP. What
22 benefits such systems may yield in seeming objectivity and transparency are
23 outweighed by the rigidity of that system and the potential for incorrect

1 selections and gaming.

2

3 The evaluation itself was conducted fairly, and I found no evidence of
4 preferential treatment. I have performed numerous power supply solicitations
5 and believe that FPL's economic analysis was rigorous and consistent with the
6 modeling practices at other utilities.

7

8 **Q. Concerning FPSC Staff witness Maurey's testimony, is there an element**
9 **in his testimony on which you wish to comment?**

10 A. Yes. Mr. Maurey asserts that the equity penalty concept should not be
11 approved by the Commission because it has not been reflected in regulatory
12 orders associated with resource solicitation analyses in other states. I would
13 like to address his premise and then his conclusion. As for the lack of equity
14 penalty discussions in other commission's orders, I would not conclude that a
15 lack of discussion indicates that the equity penalty concept was not employed.
16 For example, I was involved in a solicitation in the Midwest in which the
17 utility included an equity penalty in its evaluation process. The solicitation
18 culminated with orders from the regulatory commissions of Illinois, Iowa, and
19 South Dakota – none of which included references to the equity penalty
20 concept because it was not a significant factor in the evaluation. Also, some
21 states have implemented a deregulated market structure in which vertically
22 integrated utilities have been dismantled; thus, decisions concerning self-build
23 options versus power purchases have been eliminated.

1 As for Mr. Maurey's conclusion that the equity penalty concept should be
2 dismissed, I wish to reiterate my statement that recent market events have
3 resulted in considerable recent attention being paid to energy companies'
4 balance sheets and their off-balance-sheet obligations. Even if one presumes
5 that other states have not focused on the equity penalty issue in the past, I
6 would not be surprised to see more state commission's examining the equity
7 penalty issue in solicitation decisions from this point forward.

8

9 **Q. What do you conclude about FPL's solicitation?**

10 A. I conclude that the All-FPL portfolio is the least-cost portfolio and concur
11 with FPL's decision to move forward with Martin Unit 8 and Manatee Unit 3.
12 The solicitation process yielded the best results for FPL's customers while
13 treating developers fairly. The FPL Supplemental RFP was sufficiently
14 detailed to provide necessary information to bidders. The economic
15 evaluation methodology and assumptions were appropriate and unbiased, and
16 the independent evaluation procedures provided a cross-check of FPL's bid
17 representation in EGEAS and confirmed FPL's EGEAS results.

18

19 **Q. Does this conclude your rebuttal testimony?**

20 A. Yes.

1 BY MR. NIETO:

2 Q Mr. Taylor, would you please summarize your rebuttal
3 testimony?

4 A Certainly. My rebuttal testimony addresses various
5 challenges to FPL's RFP document itself, and the overall
6 evaluation process, primarily from the two intervenor witnesses
7 and the one Commission staff witness.

8 As far as Mr. Slater, he criticized various modeling
9 issues arguing for greater precision, and issues such as
10 start-up costs and seasonal variations of resources. I do not
11 believe that this increased precision would have yielded a
12 better result. Any sort of increased attention toward
13 precision in one area of a complex evaluation comes at the
14 expense of attention in other areas, and I believe that FPL
15 employed a very balanced approach and has conducted the process
16 in a rigorous and appropriately balanced fashion.

17 In fact, I think that if some of the issues brought
18 up by Mr. Slater were addressed in greater precision and
19 involving all the additional time for that, I actually believe
20 that the results would have shown an even greater favoring of
21 the FPL self-build options.

22 I think that also Mr. Slater has argued that they are
23 optimistic estimates for the self-build facilities,
24 particularly in the areas of heat rates, availability, variable
25 O&M. I testified that the heat rates indeed were not brand new

1 heat rates, they represented the average heat rates over the
2 expected operating lifetime of the resources. I think that the
3 availability numbers, which are less than 95 percent, are right
4 in the line with what we saw in a lot of the other proposals.

5 And I think the variable O&M issue, all of the bids
6 in the self-build options were evaluated on the same basis. It
7 is really up to the bidder to decide how they want to try and
8 recover their costs through variable and fixed O&M. And the
9 fact that PGD, FPL's self-build department putting forth the
10 self-build options opted to recover most or almost all of the
11 costs in fixed O&M is their prerogative. I do not believe that
12 that in any way distorts the results of the solicitation.

13 As far as the equity penalty, Mr. Slater urged that
14 it should be ignored and set aside because other nonquantified
15 risks weren't appropriately incorporated. I believe that all
16 quantified costs should be included in the economic evaluation,
17 and I do believe that the risks were identified and considered
18 by FPL in their consideration of the resources and the
19 appropriate selection process.

20 As far as Mr. Finnerty, he argued that the RFP had
21 terms that were commercially unreasonable. I found that the
22 RFP actually was very typical of what I have seen elsewhere
23 throughout the industry. Bidders were allowed to take
24 exceptions to elements of the RFP that they didn't agree with,
25 or they could choose not to bid whatsoever and certainly the

1 response to the RFP I think is testament to the fact that the
2 RFP was a very reasonable and sufficient document for its
3 purposes.

4 Mr. Finnerty also argued that a particular weight
5 approach or some specification of a formulaic approach with all
6 of the different criteria would be a recommended way to design
7 an RFP. I have actually done this. It was a process that was
8 more popular back in the mid-'90s. I would have to say that
9 although it perhaps gives a perception of transparency, it is
10 very difficult to engineer, it is prone to gaming, and it can
11 lead to unintelligent, unexpected decisions. I think it is
12 better to give a bid evaluation team flexibility and then place
13 upon them the burden to come and justify their decision at the
14 end of the process.

15 As far as Mr. Maurey, he indicated that there was
16 sparse documentation in state commission orders about equity
17 penalty. I believe that the issue of equity penalty has been
18 raised in its importance due to recent market events in the
19 last nine months, and I think that the sparsity of
20 documentation on the issue is not going to continue into the
21 future, so I don't think that that is a good justification for
22 saying that the issue should be set aside.

23 Therefore, I conclude that the FPL RFP was a fair and
24 sufficient document. It is typical of what I have seen
25 elsewhere in the industry, and that the FPL evaluation process

1 was indeed unbiased, balanced, and rigorous. It was
2 corroborated by my independent evaluation and it appropriately
3 accounted for all quantifiable costs.

4 That concludes my summary.

5 MR. NIETO: Madam Chair, I have two questions for Mr.
6 Taylor to address the opinions of Mr. Slater.

7 CHAIRMAN JABER: Make sure you can show me where it
8 was related to Mr. Slater's direct.

9 MR. NIETO: Certainly. Well, actually to Mr.
10 Slater's redirect, there were new opinions that came out then.

11 CHAIRMAN JABER: Yes.

12 BY MR. NIETO:

13 Q Mr. Taylor, Mr. Slater testified for the first time
14 today regarding what he termed modeling and segments, was that
15 necessary in this instance?

16 A I don't believe so. I think that this goes to the
17 whole issue of greater precision. And I think for various
18 decisions at a utility, it is appropriate to use more detailed
19 models and detailed modeling conventions. You will typically
20 see these production cost tools with multi-segment presentation
21 of generating units used for budgeting issues or rate case work
22 where there may be a forecast period of 12 months, or at most
23 24 months.

24 We are talking about an evaluation process that
25 starts three years from now and goes off into the 25-year time

1 horizon to the year 2030. I do not believe that the increased
2 precision associated with more refined segmentation or
3 fragmentation of resources would have improved the result of
4 the solicitation. I think that ultimately the models, any
5 model that you use is only going to give as precise a result as
6 the inputs that go into it. And where those inputs may be
7 forecasted with some degree of certainty over the next 12 or 24
8 months, I think trying to predict issues like load forecasts,
9 new technologies, fuel prices out in the year 2025 really there
10 is enough uncertainty there that the precision of the algorithm
11 for treating these inputs is not justified at the level of
12 precision that Mr. Slater is arguing.

13 I would also make one other point that I think is
14 very important in the context of FPL. FPL is a very large
15 utility system, it has got a peak of close to 20,000 megawatts
16 and it has got 91 units. So 91 units being dispatched into a
17 load curve as Mr. Slater was describing of up to 20,000
18 megawatts is going to give you effectively the same kind of
19 segmentation as you would have on a system that was, say, 2,000
20 megawatts with 9 units where each of the 9 units were broken
21 into ten little slices. So I believe that that kind of
22 segmentation already is accomplished just by virtue of the fact
23 that FPL is such a large system and has so many generating
24 units.

25 Q And, Mr. Taylor, Mr. Slater also testified for the

1 first time today that in his opinion no sensitivity analyses
2 were conducted, is that correct?

3 A No. In my independent evaluation, I actually did
4 conduct a sensitivity analysis. He raised this issue in his
5 rebuttal testimony that he believed that one of the self-build
6 units really should have been represented as one of these
7 filler resources that we have heard a little bit about in the
8 various testimony over the last day or so.

9 A filler resource is simply the recognition of those
10 resources that would come in after the resource acquisition
11 period of 2005 and 2006. And he argued that Manatee or Martin
12 should be one of those filler resources under the pretense that
13 perhaps packaged with various proposals you could have one FPL
14 unit in either 2005 or 2006 with resources with outside
15 proposals, and then the second unit come in on the tail end
16 sometime in the 2007 or beyond time frame. That is exactly the
17 sensitivity that I performed in my independent evaluation, it
18 is documented in my direct testimony, the independent
19 evaluation report that I provided with that direct testimony.

20 MR. NIETO: Thank you. I tender Mr. Taylor for
21 cross.

22 CHAIRMAN JABER: Mr. Moyle.

23 MR. MOYLE: Yes, I do have some cross of this
24 witness.

25 CROSS EXAMINATION

1 BY MR. MOYLE:

2 Q Mr. Taylor, you have a copy of your rebuttal
3 testimony in front of you, do you not?

4 A Yes, I do.

5 Q Let me refer you to Page 1, Line 21. You talk about
6 FPL employing good sound unbiased processing using state of the
7 art planning models. Isn't it true that the EGEAS model that
8 was used in this case was vintage early '90s?

9 A I believe that it has continued as many computer
10 models out there to be embellished over time and that this is a
11 recent version that FPL has.

12 Q So you do not -- FPL didn't use the updated version
13 of EGEAS with the new improvements, did they?

14 A I don't know exactly what version they have used. I
15 believe it is one of the most current versions with recent
16 capabilities.

17 Q Would it surprise you if there was deposition
18 testimony to the contrary?

19 A It wouldn't surprise me. It would not invalidate my
20 concern in the sense that I believe that the issue of
21 piece-wise linear convolution, the mathematic formulas that are
22 used in these models are still what I refer to as state of the
23 art for resource planning purposes.

24 Q At Page 3, at the top of the page you are responding
25 to some concerns expressed by Mr. Slater about the start-ups.

1 And on Lines 7 and 8 you are asked the question, "Is there any
2 merit in his concern?" And your response is, "No, this is too
3 small of a cost issue to have affected the modeling results."
4 When you say "this," what are you referring to?

5 A This issue of whether start-ups are internally
6 calculated by EGEAS and the impact on the results of the
7 solicitation.

8 Q Can you put a dollar figure for me on this start-up
9 issue?

10 A Generally we see resources in these size ranges of
11 200 to 1,000 megawatts having start charges, which mean
12 literally the cost of bringing the facility on-line of
13 something in the neighborhood of \$10,000 to \$20,000. So we
14 were looking at combined cycle resources, the predominant
15 resource in the solicitation, where these resource would
16 probably be started up six times a year. So we are looking at
17 numbers that are somewhere on the order of 60 to \$120,000 per
18 year, and that is just not going to make an appreciable
19 difference in the results.

20 Q Let's go to the top, and it is 120 per year per unit?

21 A Per unit.

22 Q And how many units are we talking about?

23 A Could be talking about two in the case of the All-FPL
24 plan. And what we would really be talking about is a
25 differential between plans. So if you are talking about two

1 plans, each of which have two units, you might have no
2 differential on the start-up costs. In fact, we found in
3 evaluating a lot of these resource portfolios that their
4 start-up costs, the present value of the start-up costs for all
5 the resources were basically the same.

6 Q Let me flip to Page 5. You talk about using slower
7 models, and some of the analysis that Mr. Slater thought ought
8 to be done would be rather slow and time intensive. Is this
9 the case with PROSYM?

10 A Yes. PROSYM is an hourly simulation model. So I
11 would characterize it as one of these more precise but
12 time-consuming models.

13 Q What about POWERSYM?

14 A I'm not familiar with POWERSYM very much. I presume
15 that if it is at the same kind of level of precision as PROSYM,
16 that it would also be of the same order of magnitude as far as
17 run time and execution complication.

18 Q But you don't know that?

19 A I do not know.

20 Q Page 8. You talk about PGD's original estimates
21 seemed aggressive there on Lines 11 and 12?

22 A Yes.

23 Q And you called them on that, did you not?

24 A Yes. I thought --

25 Q I'm trying to move it along.

1 CHAIRMAN JABER: Mr. Moyle, don't interrupt the
2 witness.

3 A (Continuing) I thought that the numbers looked fine
4 and certainly comported with a lot of the bid information we
5 were seeing. They ended up being in the lower range, and I
6 just wanted to make sure that PGD could stand behind those
7 numbers and that indeed those numbers were representing average
8 operating conditions as I believed all of the bidders were
9 providing in their proposals, although we actually never knew
10 that.

11 In the supplemental solicitation, the final heat
12 rates that were used by PGD were pretty much right in the
13 middle of all of the combined cycle bids. We had 13 combined
14 cycle bids. If you consider the additional technology of
15 either both Martin and Manatee as representing the 14th and you
16 ranked them as heat rates from best to worst, the Martin and
17 Manatee heat rates were at number six. So we are not talking
18 about heat rates in this solicitation that are out of line. In
19 fact, they are right in the middle of the pack.

20 Q Do I understand your testimony correctly with respect
21 to what is found on Page 8, starting at Lines 11, that PGD's
22 original estimates were aggressive, so you encouraged them to
23 go back and take a look at them. And then on Lines 14 they
24 acknowledge that their original estimates reflected heat rates
25 for brand new capacity conditions, and they revised them in

1 accordance with your concern?

2 A Yes. Basically, I said that they seemed aggressive,
3 I didn't say that they were aggressive. But I encouraged FPL
4 to return to PGD and ensure that they weren't just using brand
5 new numbers. And, indeed, they had been.

6 Q Did you check any other PGD numbers with respect to
7 whether they seemed aggressive or not?

8 A Yes. I looked at all the numbers. I did not check
9 them, per se, in the sense that I took every bidder at face
10 value. Indeed, we learned, or FPL learned during the process
11 of negotiations with one of the short-listed bidders that they
12 had done the same sort of incorporation of brand new heat rates
13 into their bid, and those numbers had to be revised in order to
14 be on an apples-to-apples comparative basis with the rest of
15 the proposals.

16 Q Okay. You may have misunderstood my question. I was
17 trying to ask if you checked PGD's numbers with respect to the
18 numbers they used for the cost of the steam turbines?

19 A No, I did not.

20 Q Did you check them for the CTs?

21 A No.

22 Q Did you check them for the HRSGs?

23 A No.

24 Q Did you check the gas numbers, transportation?

25 A We used the gas transportation numbers consistently

1 across all bids.

2 Q Did you check the numbers for the EPC work?

3 A No. Nor were any of such numbers checked for any of
4 the bidders. Basically every bidder was responsible for
5 standing behind their numbers.

6 Q Page 12. At the bottom you talk about some of the
7 benefits associated with purchased power contracts relative to
8 utility ownership, do you see that?

9 A Yes.

10 Q Do you know whether those benefits were factored in
11 by FPL in their evaluation?

12 A No, I do not. I was not involved with the risk
13 analysis process. But from what I have read of the testimony,
14 subsequent to the evaluation process it is clear in Mr.
15 Dewhurst's and Mr. Silva's testimony that these risk issues
16 were considered and factored in.

17 Q Were the benefits associated with buying from an IPP,
18 were those listed anywhere in the RFP?

19 A Listed in the RFP?

20 Q In terms of factors that would be considered?

21 A I don't believe so. I don't know that I have ever
22 seen factors necessarily favoring purchases represented in an
23 RFP, simply elements of what would be evaluated, perhaps.

24 Q The RFP would speak for itself. I think we can
25 probably deal with that in post-hearing briefs.

1 Page 16. Actually it starts on Page 15, you are
2 asked some questions and you respond by talking about
3 contracts. But on Page 16, Line 3, let me direct your
4 attention to that. Thus, the price certainty offered in power
5 supply agreements is not firm until a contract is signed?

6 A Correct.

7 Q What are you trying to convey there?

8 A I have seen in negotiations prices change from what
9 was originally in a proposal. So I simply want to make sure
10 that the Commission is aware that proposals are a
11 representation of an offer, but invariably they are not
12 absolutely firm numbers in that in just about every proposal I
13 have ever seen there is usually some statement that an ultimate
14 power purchase agreement would need to be negotiated and
15 approved by the supplier's board of directors.

16 It is highly unusual -- in fact, I know of no
17 instance where a bidder has taken a proposal before their board
18 of directors before submitting it in a solicitation. So as
19 much as an RFP may insist that all prices be firm, from a
20 business practice standpoint the numbers are not nailed down,
21 if you will, until a power purchase agreement is finalized.

22 Q In that same concept that you just explained to the
23 Commission, it would also hold true, would it not, for bids to
24 supply steam turbines?

25 A Yes.

1 Q And for HRSGs, the same principle applies?

2 A Yes.

3 Q Generators, the same principle?

4 A Yes.

5 Q Transportation, gas transportation, the same
6 principle?

7 A All of those issues would generally be finalized once
8 a project was definitive in the sense that it was going to move
9 forward, be it a self-build or for that matter an outside
10 proposal. Generally developers will not solidify those issues
11 and fully negotiate their EPC contracts, or their turbine
12 supply contracts, labor contracts, what have you, until they
13 know that their project is ready to move forward.

14 Q The same thing with the EPC contracts, you need to
15 have a contract as compared to a bid?

16 A Yes. Usually there is a relationship that the
17 developers may have with an EPC contractor where they have some
18 idea about what the contract is going to cost, that factors
19 into their ultimate pricing that they use in their proposals.

20 CHAIRMAN JABER: Are you saying EPC?

21 THE WITNESS: EPC, which is engineering, procurement,
22 and construction.

23 CHAIRMAN JABER: Thank you.

24 BY MR. MOYLE:

25 Q So I take it from that that you would give much more

1 credence to a contract than an estimate, would you not?

2 A I believe that a contract has greater certainty of
3 the final cost because those are absolutely accurate.

4 Q Let me flip you to Page 18. You are asked about
5 whether you believe the supplemental RFP was fair, and you
6 said, yes, that you believed that?

7 A Yes.

8 Q Were you ever in meetings where decisions were
9 reached with respect to the bids that were submitted?

10 A No.

11 Q Okay. So it follows that you weren't aware of the
12 analysis or the reason at the time those bids were eliminated
13 when FPL was sitting around making these decisions, correct?

14 A Yes. And I gather when you are talking about these
15 meetings you are referring to bid disqualification decisions?

16 Q Yes.

17 A Yes. And your question again was?

18 Q You were not at those meetings?

19 A I was not at those meetings.

20 Q You never talked to any of the bidders as to whether
21 they viewed the supplemental RFP as fair, did you?

22 A No, I did not.

23 Q And with respect to the reg-out provision, you never
24 talked to any financial institutions, banks, anybody that loans
25 money on these deals as to whether the reg-out provisions set

1 forth in the purchased power agreement was fair, did you?

2 A No, I did not, although I believe that this is
3 similar language to what I have seen in many utility RFPs, and
4 it is something that ultimately a bidder can state exception to
5 when they submit a proposal.

6 Q Let's flip to Page 20, and you touched on this in
7 your brief opening remarks summarizing your testimony about
8 this, the weighting process?

9 A Yes.

10 Q Where you put weights on certain things?

11 A Yes.

12 Q This has been done previously, has it not?

13 A It has been.

14 Q And has it resulted in the award of contracts to
15 bidders?

16 A I'm sure it has in certain instances, and certainly
17 in my experience it has been problematic and has required
18 invariably a fair amount of subjectivity, even in a process
19 that has weights.

20 Q You would agree with me, would you not, that a
21 process that has weights has less subjectivity than a process
22 that does not have weights as a general proposition?

23 A No, I don't think I would agree. It gives an
24 appearance of greater objectivity, but invariably in these
25 weighting processes there are scoring categories where in an

1 RFP there might be 20 percent put on project technical
2 feasibility, and 20 percent on project financeability, and 50
3 percent on pricing, invariably there is some subcategorization
4 of the points that go within those specific categories that
5 does require subjective judgment, though.

6 Q Right. And I would agree with that. But with
7 respect to if you had a situation where price was 40 percent,
8 licensing was 10 percent, financial viability was 30 percent,
9 and other was 20 percent, at least you would have bands, would
10 you not, that the bidders would know the relative weight that
11 might be given to certain aspects?

12 A You would have bands, that is correct.

13 Q And don't you believe that having those bands with
14 that kind of a process is less subjective than the process that
15 FPL engaged in here?

16 A I think within the various categories there is a
17 great deal of subjectivity.

18 Q Page 21. You talk about the frustration of Mr. Egan,
19 who was substituted by Mr. Finnerty, and you indicate, I
20 believe here that the burden of proof in the regulatory
21 process, that the company is pursuing the best alternatives for
22 meeting its customers needs, do you see that on Lines 4, 5, 6,
23 and 7 of Page 21?

24 A Yes.

25 Q Doesn't FPL have the burden of proof in this

1 proceeding?

2 A Yes, they do.

3 Q Given what you testified to earlier, you don't
4 believe that these estimates can serve as the basis for
5 determining the most cost-effective alternative, do you? You
6 don't believe estimates --

7 A These estimates, what do you mean?

8 Q Let me rephrase that. You don't believe that
9 estimates can serve as the basis for determining the most
10 cost-effective alternative, do you?

11 MR. NIETO: I object to the question as being
12 ambiguous. I'm not sure what he means by estimates, whether he
13 is referring to the bids as being estimates or what. I'm just
14 unclear as to what the question means.

15 CHAIRMAN JABER: Mr. Moyle, the objection is to form.

16 MR. MOYLE: I'll rephrase.

17 BY MR. MOYLE:

18 Q You don't believe, sir, do you, given the questions
19 we asked, I asked you about the bids being binding and whatnot,
20 and we talked about the strengths of contracts versus
21 proposals, you don't believe that something that is backed up
22 merely by estimates can serve as the basis for determining the
23 most cost-effective alternative, do you?

24 A No, I don't agree with you. I do believe that it can
25 form the basis. In fact, I believe that both the FPL

1 self-build options which are based on estimates and the outside
2 proposals which hopefully those prices are as firm as possible,
3 but those technically are just estimates until you have got a
4 contract in place. And indeed those prices can move during
5 negotiations, I think that the only legitimate process you can
6 do is hold a competitive bidding solicitation, evaluate the
7 results, encourage all players to be as firm in their numbers
8 as possible, and make a decision. Find out what the least-cost
9 combination of proposals are, move ahead with that for the
10 benefit of the customers. You are not going to know for sure
11 whether all of those numbers are firm until you have advanced
12 the process to the final stage, as far as signing contracts or
13 getting everything in place.

14 Q Down at the bottom of that same page. I want to
15 modify this question just slightly and ask it to you, okay.
16 The question that starts on Page 18?

17 A Page 18?

18 Q I'm sorry. Page 21, Line 18. Are you with me?

19 A Yes.

20 Q Do you think that some other entity, the Commission
21 or an independent evaluator can insert itself in the process
22 and replace the utility in one or more parts of the
23 solicitation to, here is my insert, provide more independence,
24 going back to the question, in the decision-making or
25 negotiating task than currently exists?

1 A My use of the words there, insert in the process,
2 meant to actually displace. And I think it is important that
3 the Commission recognize that the utility has an obligation to
4 serve. And an independent evaluator or members of the
5 Commission staff, as much as they might provide an oversight
6 process and review independently the process, I don't believe
7 it is appropriate for the Commission or an independent
8 evaluator to actually insert itself into the process and
9 displace the utility in any of the chain of events as far as
10 the development of the RFP, the evaluation of the responses,
11 and the negotiation process.

12 I really believe that the utility needs to be in the
13 driver's seat the whole way through. Otherwise, if the
14 Commission inserts itself in the process, there is no one to
15 really hold accountable if the fingerprints of the Commission
16 are all over a final evaluation process because the Commission
17 inserted itself and performed the negotiation of the contracts
18 or the evaluation of resources, I think that that would remove
19 the ability for the Commission to hold the utility accountable.
20 And I think that that is an important issue for the Commission
21 to always preserve.

22 Q I think you stated the basis for your reasoning, but
23 I guess you would agree with the part of the question that it
24 could be achieved to have a more independent process than
25 currently exists if, just say the PSC were inserted into the

1 process to make the evaluation, you would agree with that,
2 would you not?

3 A It is the word inserted. And I guess by insert I
4 mean insert into the process and displace. If there is a
5 parallel process where the utility is still on its track as far
6 as performing the evaluation or the negotiation process, I
7 think that an independent evaluator or members of the
8 Commission staff can provide a valuable cross-check to verify
9 what is happening. But I don't think that they should be
10 inserted in the process to the extent that they are displacing
11 the utility from the decision-making process.

12 Q Let's move on. Page 22. There is a question, "Were
13 you ever instructed to come to a particular conclusion?" You
14 say, "Never. Instead I was encouraged to make suggestions for
15 improvements anywhere in the process." Did you make any
16 suggestions for improvement in the process other than the one
17 we talked about with the aggressive PGD numbers?

18 A Yes, I did.

19 Q Were those suggestions accepted?

20 A Yes, they were.

21 Q As we sit here today, would you have any
22 recommendations to FPL about how they might be able to conduct
23 a better RFP process having been through it?

24 A I'm sure I would if I sat down and thought about it
25 in kind of a postmortem prospective. I don't have ideas on the

1 top of my head. I really think that the process was very
2 rigorous, it was a robust evaluation, it was unbiased, and I
3 think it reached the correct results.

4 Q You state on Line 18, Page 22, you believe it is
5 surprising that a utility such as Florida Power and Light might
6 win its own solicitation, and you say you stand by the results
7 of the evaluation. Are you aware of the history of the bid
8 rule in Florida, and how many bids have been solicited, how
9 many RFPs have been issued and how many bids have been won by
10 IPPs?

11 A A little bit as actually represented in Mr. Egan's or
12 Mr. Finnerty's testimony. But beyond his representation I
13 don't have a great historical knowledge of that.

14 Q The top of Page 23. You state, "In a sense I would
15 say that Florida Power and Light's customers are already
16 enjoying the benefits of a competitive wholesale electric
17 market." Is it a good thing to have a competitive wholesale
18 market in your view?

19 A Yes.

20 Q And is it a good thing to have a robust competitive
21 wholesale market?

22 A I'm not sure what you mean by robust. I think that
23 it is important to have new resources for customers developed
24 through a competitive bidding process where many players can
25 offer proposals for supplying the best resources. And, indeed,

1 I have even testified just in the last 12 months in Arizona and
2 Wisconsin on behalf of consortiums of IPPs to try and encourage
3 the development of bidding systems very much like what you have
4 here in Florida to make sure that the utility customers are,
5 indeed, provided with competitive bidding solicitations that
6 yield the best resources for them.

7 Q As a general proposition, a market with more buyers
8 and sellers is better than a market with less buyers and
9 sellers, wouldn't you agree with that?

10 A Yes, I would.

11 Q On Page 23 you talk about the evaluation process and
12 you are responding to some things raised in Mr. Egan's
13 testimony. I would just ask you, you have heard a lot of
14 testimony about the equity penalty, you would agree with me,
15 would you not, that the equity penalty calculation was never
16 disclosed to the bidders in the supplemental RFP as to how that
17 penalty would be imposed?

18 A I believe that the basic concept was included in the
19 RFP, but I would agree with you that the formulaic approach was
20 not included.

21 Q Could that formulaic approach have been provided? If
22 it is a mere formula, couldn't you just set it forth in the
23 supplemental RFP?

24 A Without any sort of capacity pricing, which is kind
25 of the first step in the formula, you would want to leave that

1 as an unknown to make sure that you weren't inserting capacity
2 pricing into an RFP and therefore providing some sort of
3 inadvertent guidance or inappropriate pricing signature for
4 what you expected to see in terms of proposals.

5 Q Right. So the bidders could put in their own pricing
6 and get the number so they would know how much an equity
7 penalty their bids would receive?

8 A Yes.

9 Q Page 24. You talk a little bit more about the equity
10 concept. How many utilities have you done work for around the
11 country, approximately?

12 A Probably in the competitive bidding process?

13 Q Yes.

14 A I would say over a dozen.

15 Q Okay. Isn't it true that outside of the State of
16 Florida there has been the use of the equity penalty in only
17 one other occasion with one other utility?

18 A Yes, and I believe that that is largely because of a
19 lot of what the utility markets have gone through in the last
20 five to seven years. With the advent of retail competition,
21 many states were requiring their utilities to divest their
22 resources. So there was a general trend in the mid to late
23 '90s for utilities to not go out and build their own
24 generation, but instead develop unregulated affiliates and have
25 the unregulated affiliates build the generation and then sell

1 back through power purchase agreements. It didn't really make
2 sense to go ahead and build a facility if you are going to have
3 to turn around and sell it the next year.

4 So these kind of arrangements were, I think,
5 developed because of where the marketplace was going.

6 To have a power purchase agreement from an affiliate
7 back to the standard utility, the regulated utility, you have
8 exactly the same sort of balance sheet impact as you have from
9 an IPP or any outside bidder. So the issue of equity penalty I
10 think was not very pronounced in the mid to late '90s just
11 because regulated utilities were more and more in a position
12 where they were simply entertaining contracts from outside
13 power providers, be they IPPs or unregulated affiliates.

14 I think it has really only been in the last year or
15 so, particularly with market events such as the bankruptcy of
16 Enron and the financial fallout from that, that there has
17 become a real interest in off-balance sheet obligations and
18 what they do to the financial standing of an energy company.
19 So I think that all of this has really shifted to a situation
20 where the equity penalty is becoming much more important these
21 days. And I believe that we are going to see a lot more state
22 commissions considering it in the coming months and years.

23 Q That scenario you just described where a lot of
24 markets have changed and whatnot, and the utilities weren't
25 necessarily building, but were buying, in your view is that a

1 positive change in these other states?

2 A I'm not really sure. If you could rephrase that as
3 far as the --

4 Q I just was listening to your answer and you had
5 talked how -- I thought I understood you to say the equity
6 penalty had not been used in some other states in part because
7 there had been some changes in these other states with respect
8 to the regulatory structure in that certain IOUs were not
9 necessarily building, but they were buying from IPPs or their
10 unregulated companies. Did I understand that correctly?

11 A Yes.

12 Q And my question is do you see that type of a change
13 as a positive development in your professional opinion? And
14 you can just answer yes or no, I don't need the explanation.

15 A I don't know.

16 Q You don't know?

17 A As far as having situations where unregulated
18 affiliates are potentially building the resources and selling
19 them back to the regulated entity, that has some advantages,
20 but it is really very much like the IPP scenario. I have seen
21 situations where what is being proposed is the affiliate would
22 build the power plant, sell it back to the regulated utility,
23 the customers would end up paying for the facility over the
24 full 25 years, and at the end of the 25 years the unregulated
25 affiliate now owns the resource and is able to earn whatever

1 value off of it that they want.

2 I think that that is fine to have those kind of
3 contractual arrangements available, but I think that it is also
4 fine to have self-build opportunities in place where customers
5 would pay for a resource over, say, this 25-year period that
6 has been proposed in the FPL plan and yet still have ownership
7 of the full facility at the end of the 25 years.

8 CHAIRMAN JABER: So is your concern then, your
9 hesitancy relates to the affiliated IPPs constructing a plant
10 and leasing back to their subsidiary or to their affiliate?

11 THE WITNESS: Yes, basically. My concern is simply
12 that there needs to be a recognition hopefully that those
13 contract payments over that time period with -- whether it's an
14 affiliate or nonaffiliate, it doesn't matter.

15 CHAIRMAN JABER: But your concern is limited to those
16 circumstances. Setting that aside, the response to Mr. Moyle's
17 question is you generally think that that development in the
18 electric market is a good one?

19 THE WITNESS: I do. And certainly affiliate
20 contracts or IPP contracts are fine, as long as they are
21 cost-effective, bottom line.

22 MR. MOYLE: I was going to note to my question, I
23 think I got an explain without a yes or no, but I will leave it
24 at that and let Mr. McGlothlin ask some questions. Thank you.

25

CROSS EXAMINATION

1 BY MR. McGLOTHLIN:

2 Q Mr. Taylor, as I understand your statement on
3 rebuttal, it is your view that greater precision in this
4 instance, precision greater than that afforded by the modeling
5 that FPL did was not a necessary or desirable thing to do?

6 A It was not necessary. It would be desirable if there
7 were more time, but I believe that in any project of this
8 degree and complexity it is important to balance the
9 comprehensive review of all the proposals and the comprehensive
10 analysis of combinations of proposals rather than trying to get
11 production cost precision out to the year 2030, yes.

12 Q My line of cross-examination relates to that
13 assertion. Mr. Taylor, what is the number of megawatts that
14 FPL proposes to add by virtue of these two dockets?

15 A Approximately 1,896 megawatts.

16 Q And what is the capital cost associated with that
17 proposal?

18 A With AFUDC, I believe it is \$990 million.

19 Q And ballpark what is the present value of the revenue
20 requirements associated with this proposed project?

21 A I don't have that number in my head. I don't know.

22 Q Does 40 billion sound about right, if you are
23 familiar enough with it to know?

24 A No. That is the present worth of all of the costs of
25 the existing FPL fleet, all of the fuel, nuclear fuel, natural

1 gas, coal, contract payments for the entire system.

2 Q Okay. How many developers submitted bids in an
3 effort to offer more cost-effective alternatives?

4 A I believe it was 16 in the supplemental RFP.

5 Q And how many proposals did they submit?

6 A A total of 53.

7 Q Now, the analysis of the cost-effectiveness of the
8 proposals did include an examination of production costs as one
9 component of the overall, is that correct?

10 A As one component, yes.

11 Q I want to give an illustration that is based upon
12 some evidence that has been presented in this case. I want you
13 to assume that the difference between two proposals, FPL and an
14 alternative, excluding equity penalty and expressed on a
15 present value basis is \$2 million. Then I represent to you
16 that based upon an exhibit that FPL sponsored, the system net
17 fuel in 2005 is more than \$2 billion. What percentage is \$2
18 million of two billion?

19 A Mathematically it is a tenth of one percent, but I
20 don't believe that those are appropriate comparable numbers.

21 Q Okay. I will represent to you that the system fuel
22 for the year 2006 is a greater number, but it is also in excess
23 of 2 billion, let's round down to another \$2 billion.

24 Mathematically, what percentage of \$4 billion is \$2 million?

25 A It would be half that, .05 percent.

1 Q 5/100ths of one percent?

2 A If my math is correct on a Friday night like this.

3 Q And that takes into account only the 24 months that
4 you said you would be willing to regard as useful in terms of
5 an analysis of the future?

6 A No, actually I don't believe that I stated that. I
7 stated that I don't believe that those numbers of comparable,
8 meaning I don't believe that the total fuel costs for the
9 entire FPL system are the appropriate denominator at all.

10 Q Okay. Well, let's pursue my illustration. I will
11 give you a chance to say why it is right or wrong. The
12 model -- you are familiar with the EGEAS model that was used in
13 this exercise, are you not?

14 A Yes.

15 Q And is it true that the EGEAS model looked at the
16 economics of the use of the unit on an annual basis?

17 A Correct.

18 Q Whereas by definition an hourly production costing
19 model would examine the economics of the system hourly
20 throughout the year?

21 A Correct.

22 Q You are aware that the EGEAS model employed by FPL
23 had no unit commitment dispatch logic?

24 A It does have dispatch logic in the sense that it has
25 got algorithms that simulate the dispatch. So I don't know if

1 I agree with your statement.

2 Q Dispatch happens once a year, right, it does not do
3 it on an hourly basis?

4 A It uses an algorithm where it is not dispatching a
5 resource once a year or just -- dispatching all resources for
6 the entire year, it actually has in the model 8,760 hours. So
7 every hour of the year is represented in the model as far as
8 the precision of the load modeling.

9 It is then taking resources and effectively loading
10 them into this load curve to think of it simplistically, it is
11 a more complex mathematical algorithm, but effectively it is
12 gauging how much each resource on the system is going to be
13 used. The very low cost resources, nuclear, coal-fired
14 facilities, and so forth, low variable cost at least are going
15 to be used for basically base load purposes the whole year.
16 More expensive resources are only going to be started up or
17 utilized by the system for an estimated portion of the year
18 that is much smaller. So peaking resources might only be
19 started up for the highest 100 hours of the year, which might
20 be a series of hot summer afternoons. So EGEAS is simulating
21 that kind of process and capturing that kind of detail.

22 Q Once a year?

23 A It is doing the process annually, and then coming up
24 with an estimation of basically how many hours or how many
25 megawatt hours of generation will come from each resource.

1 Q FPL in its use of EGEAS assumed that a resource was
2 either all in or all out, correct, the capacity of the
3 resource?

4 A When you say all in or all out --

5 Q I am referring to the single segment subject, the
6 fact that it was either the entire capacity or none of the
7 capacity that was modeled?

8 A It is not that the model took all of the capacity
9 out, it simply loaded the 91 or so resources on the system in
10 one at a time. And as it loaded them in, yes, you are right,
11 it was using a total capacity number for most of the resources.
12 For actually the self-build resources and the outside proposals
13 that included duct-firing, or peak-firing, or power
14 augmentation, there actually was a division of greater
15 representation of the operating modes for those resources.

16 So in those cases there actually was a recognition
17 that a resource, an outside proposal with a base amount of
18 capacity was going to be dispatched. That portion of the
19 resource is going to be dispatched for most of the year.
20 Duct-firing, which tends to be more of a peaking type of
21 service, that is going to be saved for most of those hot summer
22 afternoons. And peak-firing or any sort of additional power
23 augmentation might be only for one percent of the year. So
24 actually there was segmentation of the resources that were
25 competing in the solicitation.

1 Q There is no segmentation of all the other units?

2 A That is correct.

3 Q If you know, was the EGEAS model that FPL employed
4 capable of multi-segment modeling?

5 A I believe it was, at much greater run time expense.

6 Q Okay. Now, with respect to the question of whether
7 the comparison is appropriate or useful, isn't it true that if
8 the impact of a resource, an alternative resource on total
9 system fuel costs within just the first two years approached a
10 fraction of one percent, that would have had the effect of
11 flipping the results as to whether the alternative or FPL was
12 more cost-effective excluding --

13 (Simultaneous conversation.)

14 MR. NIETO: I object to the question to the extent
15 that it assume facts that are not in evidence. I believe that
16 he disagreed with that assumption.

17 MR. MCGLOTHLIN: Well, I'm putting the question to
18 him. My proposition is that if a more refined model indicated
19 that the alternative had an impact on total system fuel costs
20 more than sufficient to overcome \$2 million, that would have
21 flipped the ranking of those two alternatives, excluding the
22 equity adjustment.

23 CHAIRMAN JABER: I will allow the question.

24 THE WITNESS: I think that the relevant fuel costs
25 would be the relational savings between two proposals, which

1 may be on the order of, say, \$5 million a year. So the \$2
2 million out of what might be relational savings of \$5 million
3 could represent 40 percent of the picture here. So in that
4 case, two different proposals would have to be substantially
5 different in their dispatch costs in order to achieve that kind
6 of relative difference.

7 BY MR. McGLOTHLIN:

8 Q First answer my question, Mr. Taylor. Would a result
9 of more than \$2 million on system fuel have the effect of
10 flipping the ranking of those two alternatives in this example?

11 A Flipping the alternatives. If you are talking about
12 two resources that differ by no more than \$2 million, and you
13 changed assumptions and had the higher one become \$2 million
14 cheaper, then, yes, they would be then dead even.

15 Q Well, you added something to my question. I didn't
16 say change assumptions, I said using a more detailed model. If
17 the effect of the more refined and detailed model capable of
18 greater precision indicated that fuel costs were other than
19 that predicted by EGEAS such that the differential overcame the
20 \$2 million differential first measured earlier, would that
21 change the rankings?

22 MR. NIETO: And, again, I would object. There has
23 been no evidence that a more detailed model would produce that
24 result.

25 MR. McGLOTHLIN: Well, that is the whole issue,

1 because one was available and not used. And this witness is
2 saying was it necessary. I am pointing out how narrow the
3 difference was, the difference between the models, and the need
4 for detail when it was available.

5 CHAIRMAN JABER: Mr. McGlothlin, I am going to allow
6 the question.

7 THE WITNESS: I believe the answer is no, and I
8 believe that because the incorporation of a more detailed model
9 that is working off of assumptions about what natural gas
10 prices are going to be on a Tuesday, July afternoon in 2025 is
11 giving you false precision. It is better to use a model that
12 effectively treats system operations on a more averaged basis
13 if the kind of inputs that you are putting into the model are,
14 indeed, fairly uncertain anyway. You gain a false precision by
15 assuming that the way that certain dispatch decisions are being
16 made now in 2002 or out in 2005 are going to continue to
17 propagate and be the same kind of process out through the year
18 2020 or 2030.

19 CHAIRMAN JABER: I need to understand that, too. If
20 the inputs -- why is it you believe the inputs are not as
21 definitive as they should be?

22 THE WITNESS: I simply believe that over time
23 forecasts have a greater degree of uncertainty to them. I
24 think that if you talk to a natural gas trader or somebody who
25 understands natural gas prices, just to pick an example, and

1 you were to ask them what they think natural prices are going
2 to be a month from now, there are forward price curves that
3 they can go in the marketplace and get quotes for exactly what
4 they can buy natural gas one month from now.

5 Three years from now, five years from now, there
6 aren't those specific price curves quoted, but there is enough
7 industry knowledge about how much gas-fired generation might be
8 coming on, how much drilling is going on that firms that do
9 forecast these types of parameters can come up with a fair
10 degree of certainty about where they think prices may be.
11 Recognize that there are always geopolitical events or other
12 things that can cause spikes and dramatic changes, but I think
13 if you looked at averages of prices over some of these time
14 periods and compared them to forecasts, hopefully you would see
15 more correlation in the early years. I think in the later
16 years it becomes, I won't say highly speculative, but the
17 forecasts do have greater uncertainty. And I think to bog down
18 an evaluation process with an overly detailed model is giving
19 one basically false precision. It is not a more correct
20 answer, it actually may be more precisely wrong.

21 MR. McGLOTHLIN: May I?

22 CHAIRMAN JABER: Mr. McGlothlin, go ahead.

23 BY MR. McGLOTHLIN:

24 Q Mr. Taylor, your answer was in terms of analysis of a
25 25-year period. Is it true that the size of the system fuel

1 costs that I presented in my first example was looking at a
2 12-month period?

3 A I understand that as what you have represented in
4 your example, yes.

5 Q And the comparison that lead to a difference of .05
6 percent was only at 24 months?

7 A Using the numbers as you saw them fit for comparison,
8 not me, yes.

9 Q It would have been possible, would it not, sir, to
10 have used EGEAS as a screening tool to identify the top six or
11 eight proposals, and then have run each of those through an
12 hourly production costing model to get the additional
13 refinement?

14 A I would say yes, it would have been possible. What I
15 take issue with is the last couple of words you added to the
16 end of the question as far as to get additional refinement. I
17 don't believe that it would have provided the additional
18 refinement.

19 Q Well, when would one ever use an hourly production
20 costing model if not to get additional refinement?

21 A You would use them in the scope of projects that
22 require that level of detail, and where the inputs to the
23 models can also be sufficiently detailed. That would be in
24 rate cases, that would be in establishing 12 or 24-month fuel
25 budgets, maintenance scheduling over the next 12 to 24 months,

1 O&M budgeting. All the operations where one might have fairly
2 detailed information by month over the next year or two.

3 Q It would have been possible, also, to have used the
4 multi-segment modeling capabilities of EGEAS, would it not?

5 A It would have been possible, yes.

6 CHAIRMAN JABER: Let's say this Commission wanted
7 that had level of detail, which model would you recommend?

8 THE WITNESS: I would say probably EGEAS given that
9 there are already databases developed on the annual level, and
10 I think it would be easiest and most practical for FPL to
11 expand the development of those databases than to try and adopt
12 a new outside model. I don't think it is appropriate to force
13 something else on them.

14 CHAIRMAN JABER: So you would use EGEAS, but modify
15 it so that that level of detail could go in on the input side,
16 but also so that when the runs are calculated there would be a
17 level of detail in the runs?

18 MR. McGLOTHLIN: Chairman Jaber, I believe perhaps
19 you and the witness are perhaps speaking by each other. I
20 assume from your question you were interested in the level of
21 detail that is the subject of my proposition. That is capable
22 with an hourly production costing simulation model. There is
23 more than one of those that has been identified in this case.
24 And the witness responded in terms of EGEAS, but that is not an
25 hourly production costing model.

1 CHAIRMAN JABER: It is along the lines of your
2 questions, obviously, because I am following your questions,
3 but I have to confess I'm not following your logic.

4 THE WITNESS: Okay.

5 CHAIRMAN JABER: You said that EGEAS is used as a
6 supplemental check, a cross-check, it doesn't have the level of
7 detail as suggested by Mr. McGlothlin through his
8 cross-examination. My question to you is assume with me for
9 just a moment that the Commission does seek that level of
10 detail, that in the input values there would be detailed
11 inputs, detailed analysis, and to add onto Mr. McGlothlin's
12 point, that the numbers would be calculated on an hourly basis,
13 not on an annual basis. What model would you recommend?

14 THE WITNESS: I think there are a number of factors
15 that would go into that, and I don't have a firm opinion. I
16 mean, PROMOD is an hourly production cost model, PROSYM is, I
17 believe POWERSYM is, which FPL does have. So if you wanted to
18 go down to an hourly level of detail, I have run Realtime,
19 which is another model, so there are several models out there
20 that would do this. The kinds of models that tend to be run
21 for resource planning, the kind of optimization analysis,
22 realize that all the models that I just listed there do not
23 package together portfolios. You don't put in 53 bids or 31
24 bids and have the model put things together. It is literally a
25 very static process where you tell the model exactly what units

1 are going to come in in which years, and then it will go
2 through an hour-by-hour process of how the production costs
3 will come from those units.

4 CHAIRMAN JABER: Okay. So as you are evaluating bids
5 or as the company was evaluating bids, they put in each bid and
6 ran the model according to -- I guess, I'm trying to get my
7 hands around how it is an apples-to-apples comparison. Each
8 time you ran the model you had to put the specific inputs that
9 were proposed by the individual bid?

10 THE WITNESS: Actually, no. There are two entirely
11 different models here. I shouldn't say entirely different.
12 One is a resource optimization model, and the two that are most
13 prevalent in the industry are EGEAS and Strategist (phonetic).
14 They do basically exactly the same thing in that they have got
15 a production cost engine inside of them, but as part of a
16 larger process they take a selection of bids, the user puts in
17 however many bids they want, and the model will go through and
18 try and find combinations of those bids that satisfy the
19 resource needs of the utility.

20 And it may generate thousands of different portfolios
21 that actually have generation expansion plans for each
22 portfolio that go out the full 30 years to 2030. These
23 resource optimization models are then evaluating and developing
24 the production cost estimates for each of 1,000 different
25 portfolios, and then coming back and telling the user at the

1 end of the process here is the number one plan.

2 And indeed in this solicitation, with the 31 bids,
3 there is no way we could have actually put all 31 into EGEAS.
4 I'm running various other solicitations around the country
5 right now, I am facing the same kind of constraints. There
6 literally are tens of thousands of different combinations of
7 these portfolios, and it is more than actually any one model
8 run can handle. If you did try and put everything in there,
9 the model run would actually execute over several months, if
10 not years.

11 So invariably these are very large optimization
12 problems, but we design efforts in the solicitation processes
13 to try and identify the best potential candidates and that was
14 described by Doctor Sim as this Tier-1, Tier-2 kind of process
15 that was employed which gave every proposal an opportunity to
16 combine its way into the least cost portfolio, but focused most
17 of the effort on the top-ranked bids. Because, quite honestly,
18 those are the bids that are most likely to end up in a
19 least-cost plan.

20 All of that said, let me turn my attention entirely
21 away from resource optimization tools to production cost
22 models. Production cost models, and as I say the resource
23 optimization tools have a production cost engine as part of
24 them. The production cost models take a static representation
25 of the generation system, so they take a specific set of

1 proposals. You say I want proposal P3 and P17 in 2005, and I
2 want proposal P24 in 2006, and I want the following kinds of
3 generic resources anchored in 2007, 2009, 2011, and so forth.
4 You actually specify the entire system from the start of the
5 study to the end of the study. And then these production cost
6 models will give you, with increasing level of detail,
7 information on how much that one static picture is going to
8 cost. But there is no consideration of different combinations,
9 the user would manually have to sit there and try different
10 combinations and run the model for the next hour or so, and
11 then come back and try another combination and run it for hours
12 or in some cases days.

13 As I say, these production cost models are oriented
14 toward more near-term focus, so to run them out to the year
15 2030 can be rather time intensive.

16 CHAIRMAN JABER: Now, the selection for use in the
17 production cost models of the static proposals, that is a
18 subjective determination that FPL made, not that you assisted
19 with?

20 THE WITNESS: That is correct. I basically saw FPL's
21 resource planning process as being one where they already had
22 databases developed and tools that they were comfortable with.
23 So I did not see in my scope of work to come in and recommend,
24 you guys have to go out and spend \$200,000 on a new model, and
25 get your entire staff trained to do something. But I do

1 believe that their existing planning process is rigorous, and I
2 support it. I think it is a good process and they are using
3 the right models.

4 CHAIRMAN JABER: Thank you. That is very helpful to
5 me.

6 BY MR. McGLOTHLIN:

7 Q Mr. Taylor, it would have been possible to marry the
8 two processes you described so as to use EGEAS to do the first
9 identification of the rankings, and then using the hourly
10 production costing model to further refine the results of the
11 rankings that identify the first six or eight, is that correct?

12 A Yes, I believe it would have been executionally
13 feasible. I don't know that it would have provided additional
14 value. Because, as I say, to run these detailed models out to
15 2030 provides us a sense of false precision.

16 Q And to be clear, you did not run any EGEAS runs in
17 your analysis, did you?

18 A That is correct.

19 Q And you did not apply any of the hourly production
20 costing models in any way?

21 A That is correct.

22 Q So sitting here today, you don't know what the
23 results of that additional analysis would be, do you?

24 A I have a great deal of knowledge about hourly
25 production cost models, and I have looked at this issue because

1 on many solicitations there has been some question about what
2 degree of effort should be placed on various areas. But, yes,
3 you are correct, I do not know sitting here exactly what the
4 results would have been.

5 Q You described your use of a different kind of filler
6 as a sensitivity in your separate analysis. Can you tell me
7 whether FPL in its analysis ran any sensitivities on fuel
8 costs?

9 A I do not believe so, no.

10 Q Interest rates?

11 A I don't know what the finance department may have
12 looked at. I don't believe that there were any EGEAS runs.

13 Q Any escalation rate sensitivities?

14 A I don't believe so, no.

15 Q You mentioned that there were several proposals that
16 included heat rates as low as or lower than the FPL
17 assumptions. Can you tell me, if you know, whether they were
18 based on the same machine or different machines?

19 A I do not know.

20 Q So it could have been different -- well, let me back
21 up. Different machines are capable of different heat rates, is
22 that correct?

23 A That is correct.

24 Q And there are some machines available that can
25 operate on heat rates better than the GE 7FA?

1 A That is correct.

2 Q But you don't know which machines were represented in
3 these particular heat rates?

4 A I don't know specifically, although I generally
5 remember representations from FPL that all the bids were
6 using -- all the combined cycle bids were basically using the
7 statement 7FA technology.

8 Q Are you sure of that?

9 A It is my recollection, I am not sure.

10 MR. MCGLOTHLIN: I'm through.

11 CHAIRMAN JABER: Thank you, Mr. McGlothlin. Mr.
12 Perry?

13 MR. PERRY: No questions.

14 CHAIRMAN JABER: Staff?

15 MS. BROWN: No questions.

16 CHAIRMAN JABER: Commissioners?

17 COMMISSIONER PALECKI: I have one question.

18 CHAIRMAN JABER: Commissioner Palecki.

19 COMMISSIONER PALECKI: You acknowledge that
20 determining the most cost-effective alternative is a very
21 difficult job for this Commission. And my question to you is
22 that if we had an RFP proposal that was very well defined up
23 front, something that might be relatively close to a purchased
24 power agreement with just a limited number of options that
25 would be filled in by the bidders, including FPL or one of its

1 generating entities, would that make the job of this Commission
2 in determining the most cost-effective alternative an easier
3 one?

4 THE WITNESS: It could. I have seen RFPs where model
5 power purchase agreements are actually attached to the RFP, so
6 that even at the outset of the process each bidder knows what
7 the general terms and conditions are that they are bidding to.
8 That tends to be somewhat onerous for each and every bidder
9 from the very get-go to have to read through a lengthy legal
10 document. So I think it is also fine and in some ways
11 preferable to have a more condensed version like what FPL
12 provided in its RFP.

13 The only other potential problem that I could see
14 with trying to lay out contractual terms and too much
15 specificity at the outset where there were just several blanks
16 that a bidder could fill in is it could constrain the
17 creativity that some bidders may bring to a process. It is
18 hard to design a one-size-fits-all kind of contract that would
19 necessarily give you all the best proposals.

20 COMMISSIONER PALECKI: I guess one of the
21 difficulties I am having here is it seems like we are comparing
22 apples-to-oranges. And it is almost one of the reasons that it
23 is necessary for Florida Power and Light to hire an expert like
24 you, because that is a difficult task, especially when you have
25 different lengths of proposals, different megawatt sizes, and

1 just a whole gamut of different variables with each one of the
2 many, many different proposals.

3 THE WITNESS: That is true. I think that I encounter
4 this degree of complexity in every solicitation I face, though,
5 whether there is a self-build option or not. As I say, I am
6 running three solicitations right now, and in the others it is
7 purely outside proposals, but they are just as complicated by
8 exactly the factors that you are alluding to here. Different
9 time period in terms of the various contracts, different
10 technologies, gas, coal, wind. And it is not easy. It is a
11 very complex process to marry all of this information into a
12 cohesive decision-making framework.

13 COMMISSIONER PALECKI: You say you are running three
14 RFPs right now. Does that mean that you are actually involved
15 in making the request for proposals, or you are doing this type
16 of analysis that you are doing, that you have described to us
17 here?

18 THE WITNESS: I'm doing a very similar process to
19 what I have described that I have been doing here. In two of
20 those solicitations I was not involved with developing the RFP,
21 but I am working in parallel with the utility using the
22 response surface model to evaluate the various proposals and
23 cross-check the detailed modeling that they are doing using
24 Strategist, which is an EGEAS look-alike model. It's a
25 resource optimization model that does exactly those kind of

1 processes.

2 COMMISSIONER PALECKI: So in some of your projects
3 that you worked on, you have helped to design the RFP?

4 THE WITNESS: Yes, I have.

5 COMMISSIONER PALECKI: What are the some of the
6 things you would do in designing an RFP to make the comparison
7 between the various projects a little easier for a Commission
8 like this?

9 THE WITNESS: That's a tall order for late on a
10 Friday night.

11 COMMISSIONER PALECKI: Give me the condensed version.

12 THE WITNESS: I'm trying to think. I honestly
13 believe that the RFP that FPL developed leaves open the
14 possibility for some creativity and does not overconstrain how
15 bidders might respond. But at the same time, there were
16 various forms included in the RFP that specified exactly what
17 numbers went in various columns and actually took away some of
18 the uncertainty that Sedway Consulting and FPL in their
19 evaluation efforts of the initial RFP had, where resources were
20 being proposed and it wasn't clear exactly what pricing applied
21 to which parts of the proposal.

22 So there is already a fair amount of specificity in
23 the current FPL RFP. I'm trying to think of additional
24 concepts that might make the process easier. Perhaps, although
25 I realize that this has downsides that I just spoke of, the

1 inclusion of a model power purchase agreement with the initial
2 RFP would give further specificity of the kinds of terms and
3 conditions that FPL would be expecting to see in a final
4 contract. But as I say, that tends to be a fairly large
5 document. And in FPL's case they waited until they were
6 looking at short-listing proposals before they burdened the
7 bidders with a need to examine the details of a full PPA. And
8 I think that that has its advantages, as well.

9 COMMISSIONER PALECKI: Thank you.

10 CHAIRMAN JABER: Redirect.

11 MR. NIETO: We have no questions.

12 CHAIRMAN JABER: Thank you. Thank you, sir. And we
13 had no exhibits, so call your next witness.

14 MR. GUYTON: I call Doctor Sim.

15 May Mr. Taylor be excused?

16 CHAIRMAN JABER: Yes.

17 MR. GUYTON: Thank you.

18 CHAIRMAN JABER: Staff, just so you can have it
19 ready, at the end of the hearing I will ask you about the
20 upcoming time line, if you want to look for the CASR. Thank
21 you.

22 STEVEN ROBERT SIM

23 was called as a witness on behalf of Florida Power and Light
24 Company and, having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. GUYTON:

2 Q Please state your name for the record?

3 A Steven Robert Sim.

4 Q Doctor Sim, did you have occasion to prefile rebuttal
5 testimony in this docket consisting of 53 pages?

6 A Yes, I did.

7 Q If I were to ask you the questions contained in your
8 rebuttal testimony today, would your answers be the same as
9 appear therein?

10 A Yes, they would.

11 MR. GUYTON: We would ask that Doctor Sim's rebuttal
12 testimony be inserted into the record as though read.

13 CHAIRMAN JABER: I have an errata sheet, Mr. Guyton,
14 to the rebuttal testimony.

15 MR. GUYTON: It is only to his exhibit, Madam
16 Chairman.

17 CHAIRMAN JABER: Thank you. The prefiled rebuttal
18 testimony of Steven R. Sim shall be inserted into the record as
19 though read.

20 BY MR. GUYTON:

21 Q Doctor Sim, did you have occasion to prefile rebuttal
22 exhibits identified as Rebuttal Document Number SRS-1 and SRS-2
23 as attached to your rebuttal testimony?

24 A Yes.

25 Q And did you have occasion to have an errata sheet for

1 that document filed?

2 A That is correct.

3 MR. GUYTON: We would ask that rebuttal documents
4 SRS-1 and SRS-2 along with the errata be identified as the next
5 exhibit.

6 CHAIRMAN JABER: Yes. SRS-1 and SRS-2 with the
7 rebuttal errata sheet are identified as Exhibit 45.

8 (Exhibit 45 marked for identification.)

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF STEVEN R. SIM**

4 **DOCKET NOS. 020262-EI, 020263-EI**

5 **SEPTEMBER 11, 2002**

6

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

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

10

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

12 A. Yes.

13

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

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

1 **I. Mr. Egan's Testimony**

2

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

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

5

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

7

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

15 A. I have several comments.

16

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

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

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

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

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

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

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

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

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

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

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

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

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

3

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

8

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

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

15

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

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

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

3

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

12

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

17

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

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

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

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

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

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

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

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

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

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

3

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

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

18

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

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

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

10

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

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

23

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

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

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

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

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

4

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

6

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

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

19

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

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

3

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

5

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2

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

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

15

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

19

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

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

3

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

5

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

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

12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23

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

6

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

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

17

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

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

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

4

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

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

16

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

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

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

3

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

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

8

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

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

17

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

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

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

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

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

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

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

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

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

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

23

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

7

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

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

15

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

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

1 customers that pay the cost. If there are cost underruns, they accrue to the
2 benefit of customers.

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

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

22

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

8
9 **9) Mr. Egan's Statement That Bids Are "Binding."**

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

14 A. I have several reactions to this statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

4
5 **II. Mr. Slater's Testimony**

6
7 **Q. What aspects/statements in Mr. Slater's testimony will you address?**

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

9
10 **1) Mr. Slater's Understatement of the Margin of the Economic Analysis**

11
12 **Q. Mr. Slater testifies at page 4 that there is "...only \$60 million between**
13 **FPL's proposal and other alternatives" and that "this is a very small**
14 **margin..". What is your reaction?**

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

18
19 My second reaction is that he has his facts wrong. As Mr. Silva's testimony
20 states, the final differential after the negotiations with El Paso were completed
21 between the All FPL plan and the most economic combination plan that does
22 not contain both FPL self-build options is not \$60 million, but \$83 million. As
23 I mentioned earlier in my testimony, I have prepared Rebuttal Document No.

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

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

11
12 **2) Mr. Slater’s Inability to State That The Outcome of FPL’s Analysis**
13 **Was Wrong**

14
15 **Q. Mr. Slater stated in his conclusions on page 5 that in regard to FPL’s**
16 **evaluation “..the wrong result may have been reached” (emphasis added).**

17 **What is your response to that?**

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

22
23 **3) Mr. Slater’s “Problems” with EGEAS Modeling**

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

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

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

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

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

3

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

9

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

18

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

20

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

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

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

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

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

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

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

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

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

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

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

11

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

19

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

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

5

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

7

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

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

14

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

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

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

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

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

20
21 **Q. Were the costs of these greenfield filler units unusually high?**

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

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

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

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

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

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

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

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

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

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

8
9 **Q. Did Mr. Slater have a second concern regarding the filler units?**

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

12
13 In both FPL's analyses and Sedway's base analyses the assumption of firm
14 gas transportation cost for the filler units was FGT. This approach was taken
15 based on the premise that the filler units would be "greenfield" sites and that
16 all expansion plans would have essentially the same number of these filler
17 units. In addition, FGT already covers a substantially larger portion of the
18 state than Gulfstream is projected to cover. It seemed logical that a majority of
19 these new greenfield filler units would likely be served by the broader expanse
20 of the FGT system. This premise was backed up by the fact that a number of
21 the bids received stated that they would be served by FGT. Consequently,
22 FGT costs were chosen as the basis for the firm gas transportation costs for
23 the filler units.

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

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

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

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

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

4

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

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

11

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

17

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

19

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

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

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

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

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

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

10

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

16

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

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

3

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

5

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

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

12

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

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

20

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

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

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

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

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

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

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

3

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

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

12

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

19

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

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

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

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

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

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

23

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

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

23

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

4

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

6 **A. Yes.**

1 BY MR. GUYTON:

2 Q Doctor Sim, is the information contained in Exhibit
3 45 true and correct to the best of your knowledge and belief?

4 A Yes.

5 Q Would you please summarize your rebuttal testimony?

6 A Yes. Good evening, Commissioners, Madam Chairman.
7 My rebuttal testimony addresses the direct testimonies of Mr.
8 Egan, Mr. Finnerty, and Mr. Slater, and corrects a number of
9 inaccuracies and misleading statements that are found in those
10 testimonies. One of those corrections is the fact that with
11 Calpine's withdrawal of all of its bids, there are no plans
12 remaining that are less expensive than the All-FPL plan, even
13 without the proper inclusion of the equity penalty costs.

14 My rebuttal testimony itself actually addresses 18
15 inaccurate or misleading items, but in the interest of time, I
16 will only touch on a few of those here in my summary. And I
17 will start with what I call Mr. Egan's testimony. I understand
18 Mr. Finnerty has taken it over. That testimony claims that
19 FPL's RFP was unfair and contained terms that are, quote, at
20 best commercially unreasonable, unquote. These charges are
21 best refuted by the fact that FPL's two RFPs resulted in 134
22 bids from 18 different bidders. Clearly, Mr. Egan's opinion is
23 not widely shared.

24 Mr. Egan then discusses FPL's alleged unwillingness
25 to enter into a purchased power contract, especially, quote, if

1 the proposed contractual term is for a short-term, say three to
2 five years, unquote. Perhaps he was unaware at the time that
3 in the months prior to issuing the initial RFP, FPL entered
4 into seven purchased contracts of from one to six years in
5 length that total over 1,100 megawatts. All of those contracts
6 were with entities that later bid into the two RFPs that FPL
7 issued.

8 Mr. Egan then states that FPL used the equity penalty
9 as a, quote, ace in the hole, unquote, and, quote, a high card
10 that it could hold in its hand until it was needed, unquote.
11 He must have overlooked the fact that the supplemental RFP
12 document clearly states that FPL's evaluation will include, and
13 I quote from Page 18 of the supplemental RFP, the estimated
14 impact on FPL's cost of capital associated with entering into a
15 purchased power agreement, unquote. So did the initial RFP
16 document and all of FPL's initial filings in those proceedings,
17 which included a laying out of the calculation methodology that
18 FPL was employing.

19 Mr. Egan alleges that FPL had determined, quote, its
20 preference to self-build before it evaluated the competing
21 proposals, unquote. And he attempts to back up this inaccurate
22 claim by pointing to three documents that have been discussed
23 here at length. However, an accurate and unbiased reading of
24 those documents clearly show that just the opposite of what he
25 alleges is true. Commissioners, his allegation is just flat

1 wrong. At no time did we ever predetermine the outcome of
2 either of those RFPs.

3 In summary, his testimony boils down to repeated
4 claims that FPL's RFP process was deliberately unfair.
5 Although he is wrong on all of these counts, it is really the
6 only argument he has. Considering both RFPs, Competitive Power
7 Ventures consistently submitted the highest cost bids. So not
8 only the FPL options, but virtually all other bids in both RFPs
9 were of lower cost than CPV's.

10 In regard to Mr. Slater's testimony, he first
11 testifies that the cost savings shown by the Martin and Manatee
12 units coming in in 2005 represent, quote, a very small margin,
13 unquote. Despite the fact that the margin of the savings in
14 our evaluation is \$83 million cumulative present value of
15 revenue requirements versus plans containing one FPL unit, and
16 approximately \$500 million versus plans that contain only the
17 outside proposals.

18 Despite admitting that his review was, quote, less
19 than exhaustive, unquote, Mr. Slater claims that there may be
20 problems with the evaluation. One such claim that he
21 continually makes is that FPL's two units were improperly
22 evaluated using what he calls new and clean heat rates and
23 capacity ratings. However, my testimony going all the way back
24 into the initial RFP and FPL's statements that were posted on
25 the Q&A website for the supplemental RFP clearly state that the

1 values for the FPL units are average values, not new and clean
2 values. So the bidders knew that going in.

3 Another problem Mr. Slater claims is that the
4 particular type of filler unit was not used in the evaluations.
5 However, Mr. Taylor's testimony clearly states that the
6 independent evaluation performed the exact filler unit analysis
7 that Mr. Slater calls for.

8 Finally, Mr. Slater calls for a no decision in these
9 proceedings and to hold yet another complete evaluation, even
10 if the delay results in no capacity additions for FPL in the
11 year 2005. His call for such an extreme action is made despite
12 the fact that he only states that, quote, the wrong result from
13 the RFP may have been produced, unquote. His follow-up
14 calculation intending to show that no harm would come from not
15 adding capacity in 2005 is, number one, fundamentally flawed in
16 at least four ways. Number two, would lower FPL's 2005 reserve
17 margin to 14 percent. And, three, would set quite a precedent
18 that all one had to do is state that the answer might be wrong
19 in order to stop a need determination.

20 In conclusion, Commissioners, Mr. Egan's and Mr.
21 Slater's testimonies can be summarized by claims that the RFP
22 was unfair, the evaluation may be wrong, and less delay so we
23 can do this all over again for a third time. FPL's evaluation
24 was comprehensive, it was unbiased, and it was confirmed by the
25 only other analysis that has been conducted for this case, that

1 of the independent evaluator, Sedway Consulting.

2 Both of our evaluations show that the Martin and
3 Manatee units in 2005 are the best and most cost-effective
4 options with which to meet our customers' capacity needs for
5 2005 and 2006, and we urge the Commission to approve these
6 resource additions. That concludes my summary.

7 BY MR. MCGEE:

8 Q One quick question of clarification. In your
9 rebuttal testimony you refer to Mr. Egan, and would it be
10 appropriate to substitute Mr. Finnerty in lieu of Mr. Egan in
11 your rebuttal testimony?

12 A If that is the correct thing to do procedurally, yes,
13 then it would be correct.

14 MR. GUYTON: With that we tender Doctor Sim for
15 cross.

16 CHAIRMAN JABER: Mr. Moyle.

17 MR. MOYLE: Thank you, Madam Chair.

18 CROSS EXAMINATION

19 BY MR. MOYLE:

20 Q Doctor Sim, you filed approximately 32 pages of
21 rebuttal testimony that relate to testimony provided by the CPV
22 witness, isn't that correct?

23 A That is correct.

24 Q Okay. The hour is getting late, I'm going to try to
25 walk through this in as rapid a fashion as I can, but I do have

1 some important questions that I need to discuss with you. So
2 we will just try to be patient and endure it. The first one I
3 have is on Page 2. And what I want to do, you have your
4 prefiled testimony in front of you, don't you?

5 A My rebuttal testimony?

6 Q I'm sorry, your rebuttal testimony.

7 A Yes.

8 Q And I heard you mention in opening remarks you
9 believe that because a lot of people responded that that is
10 evidence that the process was fair?

11 A Yes, I believe it is a very good indication.

12 Q I was thinking about that and trying to wrestle with
13 that, and the only thing I can up with, and it is late, but you
14 know that Publishers Clearinghouse thing, a lot of people
15 respond to that, too, don't they?

16 A Yes, they do.

17 Q Do you think that is fair, the Publishers
18 Clearinghouse process?

19 A I think for the odds and what you invest in it, yes,
20 it is fair.

21 Q Do you know that the Florida Attorney General has
22 been looking into that matter?

23 A That I don't have any knowledge of.

24 Q Page 3, you talk about the exceptions, and CPV
25 testified on direct about the quandary that they believe they

1 are in with respect to the exceptions. And on Line 10 you say
2 that, starting on Line 8, quote, "A number of bidders stated
3 absolutely no exceptions to the terms of the RFP documents.
4 This is further evidence that a number of bidders did not share
5 Mr. Egan's position." You don't know necessarily why the other
6 bidders did not take exception, do you, as we sit here today,
7 you just know that they didn't take exception?

8 A That is correct.

9 Q So it could have been that they didn't take exception
10 because they were unsure as to how the exceptions would be
11 viewed, whether they would be knocked out of the competition
12 because they took too many exceptions, you would agree with
13 that?

14 A I would agree that is possible, as well as I would
15 say it is possible that they may have had simply no exceptions.

16 Q And you would also agree that maybe they could have
17 thought that, well, maybe if we get to the table with FPL we
18 can then negotiate some of these issues, that could have been a
19 thought that they had in not taking exceptions, could it?

20 A I would agree. But I would add to that that those
21 that took exceptions could have also had the same idea in mind.

22 Q We have been here three days, you have heard the
23 direction of the chair to answer questions yes or no, that is
24 not always an easy thing to do, is it?

25 A No.

1 MR. GUYTON: Madam Chairman, if I would just note the
2 first remark that Doctor Sim gave to Mr. Moyle's prior question
3 was I agree, and then was an explanation.

4 BY MR. MOYLE:

5 Q Let me flip you to Page 4. On Line 19 you are
6 talking about the bidder, I think, being bound by all the terms
7 of the supplemental RFP. And on Line 19 you state in your
8 testimony, "In other words, it asks a bidder to state whether
9 they agreed or disagreed with the terms of the supplemental
10 RFP," is that your testimony?

11 A I'm sorry, could you repeat, please.

12 Q Page 4, Line 19. "In other words, it" -- and I
13 believe you are referring to the RFP -- "asks a bidder to state
14 whether they agreed or disagreed with the terms of the
15 supplemental RFP."

16 A Yes.

17 Q Do you see how that could be akin to asking the
18 bidder to state yes, or asking a witness to state yes or no in
19 this proceeding?

20 A I guess I could agree with that, yes.

21 Q Page 5, Line 19. You state, "Many bidders offered
22 indicative terms or prices subject to change in negotiation.
23 Such uncertain proposals are difficult to evaluate because
24 prices are likely to change in negotiations." Could it be that
25 bidders offered indicative terms and prices because they were

1 not willing to be, in their view, bound by the terms of -- all
2 the terms and conditions of the supplemental RFP?

3 A That was not the impression that I had as I read
4 through the proposals I will call that had indicative language
5 in them.

6 Q How did you treat the indicative proposals?

7 A We treated the indicative proposals, the proposals
8 that posed exceptions, and the proposals that posed no
9 exceptions identically in the economic evaluation. We ignored
10 all of that and just evaluated the prices and the megawatt
11 terms that were given to us. It had absolutely no impact on
12 the economic evaluation.

13 Q How about the noneconomic evaluation, did it have an
14 impact on that?

15 A To my knowledge, no.

16 Q Page 6, Line 9. There is reference to the
17 legislative-out provision, and I think we talked about this a
18 little bit on direct, but essentially my words not yours, but
19 that provision said that if there was a legislative change
20 affecting the regulatory construct in Florida, Florida Power
21 and Light could walk away from the contract after 90 days or
22 120 days, is that essentially your recollection?

23 A Generally that is correct.

24 Q Do you believe -- that term was taken out of the RFP,
25 correct, of the supplemental RFP?

1 A Yes.

2 Q Do you believe that term as it was set forth in the
3 original RFP was fair?

4 A My answer would be yes, I believe it was fair in the
5 eyes of the beholders, because the bidders came in with 81 bids
6 to an RFP that had that language in it.

7 Q The next provision down is the reg-out language, is
8 that correct?

9 A You are talking further down the page?

10 Q Yes, sir.

11 A Yes.

12 MR. MOYLE: Can I show the witness a document? For
13 the record, this document, I believe, is admitted into
14 evidence. It is an e-mail from Sam Waters to Mr. Evanson, and
15 it talks about certain provisions that were set forth in the
16 RFP.

17 MR. GUYTON: Do you have an exhibit number, Jon?

18 MR. MOYLE: I don't have it.

19 THE WITNESS: Thank you.

20 BY MR. MOYLE:

21 Q This e-mail dated 4/18/02 talks about certain terms
22 that were in the initial RFP, correct?

23 CHAIRMAN JABER: Exhibit 13.

24 MR. GUYTON: Thank you.

25 THE WITNESS: I'm sorry, what was the question?

1 BY MR. MOYLE:

2 Q This talks about terms that were in the initial RFP?

3 A That is correct.

4 Q Let me flip you to the reg-out provision.

5 CHAIRMAN JABER: Mr. Moyle, can you hang on one
6 minute. Is it Exhibit 13?

7 MR. GUYTON: Yes, Commissioner, I believe it is.

8 CHAIRMAN JABER: Go ahead, Mr. Moyle.

9 BY MR. MOYLE:

10 Q Under the second paragraph of these regulatory-out
11 provisions it says, "Suggested remedy: Return to the old form
12 of the regulatory-out provision that states that FPL will
13 simply not pay that portion of the contract costs not allowed
14 for cost-recovery. The bidders will still complain, but it is
15 less onerous and certainly far less risk than our right to
16 cancel the contract. It is entirely possible that the
17 Commission would throw this out if they had any say in the
18 contract design. They have rejected it in recent standard
19 offer contracts."

20 Was the reg-out provision that is set forth in the
21 draft PPA, is that what is being referred to here when you are
22 talking about the regulatory-out language in the paragraph I
23 just read?

24 MR. GUYTON: Objection, I don't believe it has been
25 established that Doctor Sim was talking about anything in this

1 e-mail. It was copied to him, but he did not offer this
2 e-mail.

3 CHAIRMAN GARCIA: Mr. Moyle.

4 MR. MOYLE: And I'm simply asking if he knows with
5 respect to the regulatory-out provision that is in the draft
6 PPA that is in evidence as to whether that is the provision
7 that is being referenced here in the e-mail.

8 THE WITNESS: I have never read the PPA.

9 BY MR. MOYLE:

10 Q How about with respect to the supplemental RFP?

11 A The language -- you are asking is the language in
12 this e-mail referring to the supplemental RFP?

13 Q I'm asking is the regulatory-out language or the
14 concept that was set forth in the supplemental RFP, to your
15 knowledge is that the same or similar to the regulatory-out
16 language that the Commission has rejected in the standard offer
17 contracts?

18 A I'm not familiar with what was discussed for standard
19 offer contracts. I can't answer.

20 Q Page 8, it starts in 7. We talk about the criteria.
21 Mr. Egan says that FPL never revealed the complete list of
22 criteria by which the proposals were judged or the weights
23 assigned to the various criteria. And you indicate that there
24 was criteria revealed on Pages 17 through 20, correct?

25 A I'm sorry, which line are you on on Page 8?

1 Q Yes, you have got to start on Page 7. Start on Page
2 7, read the question starting on Line 18, and then your answer.

3 A And, I'm sorry, your question is?

4 Q All of the provisions that FPL used in determining
5 and evaluating bids were not disclosed in the supplemental RFP,
6 were they?

7 A I'm not sure I can answer that definitively, we never
8 set out to try to list all the criteria that might be used for
9 an evaluation in the supplemental RFP because we felt we never
10 could, because we never knew what type of bids would be coming
11 in. What we tried to do was to give a reasonable set of
12 evaluation criteria that we thought likely might be used. And
13 we felt like that was the best message to give to the bidders.

14 Q Okay. We have talked a lot about this over the past
15 couple of days, I think I asked Mr. Silva some questions.
16 Contractual certainty, that was a provision that you used in
17 evaluating the bids, was it not?

18 A I did not take part in the noneconomic portion of the
19 evaluation.

20 Q Okay. As we sit here today, do you believe that
21 contractual certainty is something that you would have
22 difficulty anticipating in terms of setting that criteria forth
23 in an RFP?

24 A Can you define contractual certainty for me, please?

25 Q Have you read Mr. Silva's testimony?

1 A I read it when it was first written. I have not
2 reviewed it in some weeks.

3 CHAIRMAN JABER: Doctor Sim, you know that one of the
4 considerations was the contractual commitment phrase I think is
5 what it was. You recall from listening to the testimony that
6 there was some consideration given by FPL in evaluation of the
7 bids to the ability of a bidder to keep their contractual
8 commitments, you recall that testimony, don't you?

9 THE WITNESS: In general terms, yes, I do recall
10 that.

11 CHAIRMAN JABER: Mr. Moyle, ask your question.

12 BY MR. MOYLE:

13 Q Was that aspect disclosed to the bidders in the
14 supplemental RFP?

15 A I think at least in general terms, it was.

16 Q But not specifically?

17 A I would have to go back and review the supplemental
18 RFP to find a specific reference.

19 Q Let me see if I can move this along. I have made
20 some notes, but Florida labor markets, experience in Florida
21 labor markets, greenfield sites having an advantage, residual
22 value of FPL's plants, those were all items that were set forth
23 in testimony of FPL witnesses that impacted the evaluation of
24 bids received in response to the supplemental RFP, would you
25 not agree?

1 MR. GUYTON: Objection. I think we are going well
2 beyond the characterization of what was in the supplemental RFP
3 versus factors that were considered in the evaluation. This
4 line of questions start with the criteria that were mentioned
5 in the supplemental RFP, and now we are going beyond the
6 criteria into various factors that may have played at some
7 place in the evaluation process, and I have some concern about
8 --

9 CHAIRMAN JABER: So what is your objection?

10 MR. GUYTON: Fundamentally that I think it is a
11 mischaracterization and an oversummarization of three days of
12 testimony.

13 CHAIRMAN JABER: Mr. Moyle, show the witness via
14 questions in the rebuttal what it is you are referring to. And
15 if you are trying to summarize testimony, just say so.

16 MR. MOYLE: He states in his rebuttal testimony
17 starting on Page 7 at Line 22, and I quote, that FPL did list
18 the criteria it might use in evaluating outside proposals in
19 both its initial and supplemental RFP, starting on Pages 20 to
20 17. And what I'm trying to do is point out situations that I
21 believe the record has reflected that criteria or factors were
22 considered that were not set forth in the RFP.

23 CHAIRMAN JABER: Doctor Sim, I think that is a fair
24 question and I'm going to allow it. In your rebuttal you do --
25 you are critical of Mr. Egan's allegation that the criteria

1 were not specifically listed. This is a fair question, I will
2 allow it.

3 BY MR. MOYLE:

4 Q Could you please answer it.

5 A I have forgotten the question, can you repeat,
6 please?

7 Q Do you recall during the last three days testimony
8 indicating that things such as contractual certainty, Florida
9 labor markets, greenfield sites, residual value of FPL units
10 were all referred to as either factors or criteria that were
11 considered in some way while evaluating proposals?

12 A Yes.

13 Q And if we were to look at the supplemental RFP, none
14 of those criteria would be expressly stated, correct?

15 A Well, in terms of contractual commitment, I would say
16 that we did refer to the experience or track record of the
17 bidder. To my thinking that is related. However, in the
18 supplemental RFP, we do state factors which may be considered
19 but are not necessarily limited to, and then we list a fairly
20 long list. If I were a bidder, I would assume that FPL may
21 well go beyond that list to consider items. I don't think any
22 list can be completely all-inclusive.

23 Q So you reserve the right to add criteria further down
24 the road in the supplemental RFP, correct?

25 A Yes. I think it's the only wise thing to do.

1 Q And you didn't indicate -- you heard the testimony of
2 the expert who said that he thought that the equity penalty
3 calculation could be set forth, the formula that you used to
4 determine the equity penalty could have been set forth in the
5 supplemental RFP. You didn't do that in the supplemental RFP,
6 did you?

7 A Frankly, no. We explained that a cost of equity
8 calculation would be made, and we had laid out the calculation
9 in great detail in all of the filings for the initial RFP. It
10 never occurred to us that people who had bid into the initial
11 RFP and who were expected to bid into the supplemental RFP
12 would not have looked at these documents to see the
13 calculations that we made.

14 Q Were you in the room this morning when I asked Mr.
15 Dewhurst some questions about the turbine contract, the master
16 turbine contract?

17 A I believe I was there for at least part of it, yes.

18 Q Do you know whether the fact that FPL Group was
19 obligated to GE to place a certain number of turbines factored
20 into FPL's decision to self-build?

21 A Yes. I can state categorically it had absolutely no
22 impact and was never considered in the economic evaluation.

23 Q How about the noneconomic evaluation?

24 A To my knowledge the noneconomic evaluation considered
25 only the outside proposals.

1 Q Who would know whether the turbine situation as
2 described was a factor, would it be Mr. Evanson?

3 A He might know. But, again, I can state categorically
4 it was never considered in the economic evaluation. We never
5 considered whether we had problems with commitments on turbines
6 or whether any of the outside bidders had problems with turbine
7 commitments.

8 Q Right. But your role was limited to the economic
9 evaluation, correct?

10 A Once the bids come in, that is correct.

11 Q That would be a noneconomic factor that might be
12 considered at a higher level of management, wouldn't you agree?

13 A I don't think so. I would view that as if there is a
14 financial penalty of some sort with a turbine commitment, I
15 would think if we were going to consider that, that would have
16 been rolled into the economics.

17 Q And it wasn't, was it?

18 A That is correct, it was not.

19 Q You talk a little bit about the preassigning weights,
20 and we have talked about that, and I don't want to spend a lot
21 of time on this, but you said that the decision based on its
22 prior experience in a capacity solicitation that preassigning
23 weights simply does not work and is very difficult to
24 implement. Have you had an RFP where you assigned weights?
25 Has FPL had an RFP where it assigned weights?

1 A Yes. In the early '90s, Commissioners, we had such
2 an RFP.

3 Q Did you end up awarding a contract as a result of
4 that RFP?

5 A I can't recall whether we ended up with a decision on
6 that, whether it was the Cypress evaluation or whether it was
7 an RFP that preceded Cypress. However, I recall in great
8 detail the difficulty we had in trying to assign weights, first
9 of all, that were meaningful, and then once we were evaluating
10 the proposals trying to evaluate them to score within those
11 categories.

12 Q But if it was the Cypress case, at the end of the day
13 it worked, did it not? You guys moved forward with a need
14 determination filing for that. At least it worked to get to
15 the need determination filing?

16 A I disagree with the reference to it that it worked.
17 We ended up at the end of the day at the same place we would
18 have ended -- we ended up with the economic results only, that
19 is my recollection of it. And we spent an awful lot of time on
20 the scoring of the other categories.

21 Q Let's move on. Page 10. There is a letter in the
22 record from Mr. Caldwell, and you spent a lot of time talking
23 about that letter and Mr. Caldwell and whatnot. Do you recall
24 that?

25 A Yes.

1 Q You state on Line 9, "I have been informed that Mr.
2 Caldwell was dismissed from FPL in 1993, that he never held a
3 management position at FPL, and that he had no responsibility
4 for formulating FPL policy or philosophies." Is that your
5 testimony?

6 A Yes, it is.

7 Q Just because he didn't hold these positions doesn't
8 necessarily mean that he is not aware of FPL policy or
9 philosophies, does it?

10 A I would say that, speaking from experience, the lower
11 one is at FPL in terms of the organization, the further one is
12 removed from the policymaking that goes on. Therefore, I would
13 find it very difficult for someone who had never held a
14 management position to have been privy to the decision-making
15 processes that lead to FPL's policy or to know in details what
16 those policies are.

17 Q Do you know whether he had relationships with anybody
18 in management who would know what FPL's policies and
19 philosophies were?

20 A No. I have never met Mr. Caldwell and do not know
21 who he knew at FPL.

22 Q So as we sit here today, you don't know whether he
23 may currently have contacts within FPL upon which he based the
24 opinions set forth in his letter?

25 A That is correct.

1 Q And you don't disagree that Mr. Caldwell spent 20
2 years with FPL, do you, as set forth in his letter?

3 A Mr. Caldwell, I have no knowledge of that one way or
4 another.

5 Q And somebody who spent 20 years with a company, they
6 would be more privy to things obviously than someone who, like
7 my client, who has spent no time being employed with FPL, you
8 would agree with that, would you not?

9 A I would agree only in a very limited sense. I have
10 been at FPL for 22 years, and there are many areas of company
11 policy I have simply no idea what it is, simply because I don't
12 deal day-to-day in that area.

13 Q Are you aware of FPL's philosophy or policy with
14 respect to Florida energy markets?

15 A In what sense, please?

16 Q Generally. Florida energy markets, are they
17 supportive of wholesale competition, that kind of thing?

18 A I have had no direct involvement in that other than
19 through resource planning.

20 Q So is your answer no, you don't have any information
21 about FPL's policies or philosophies with respect to something
22 like wholesale competition in the Florida market?

23 A I will agree. My answer is no.

24 Q Did you understand the point Mr. Egan was making with
25 respect to assuming FPL was opposed to merchant plants in the

1 State of Florida, that entering into a three or five-year
2 contract with an IPP and coming through this need determination
3 would, at the end of the three or five years, allow that
4 facility to operate as a merchant plant if the facility chose
5 not to renegotiate a contract with FPL? Could you conceptually
6 understand that point he was making?

7 A I understand the concept, but found it difficult to
8 deal with with the company just having signed seven short-term
9 contracts for 1,100 megawatts.

10 Q And weren't all of those seven short-term contracts
11 with peaker plants that didn't have to go through the Power
12 Plant Siting Act?

13 A No.

14 Q How many of them were with peakers?

15 A Were or were not?

16 Q Were.

17 A I believe five of the seven were with peakers.

18 Q I will try to move it along. Give me just a minute.

19 Page 16, you were asked why is it appropriate to
20 remove the plans that included Calpine proposals. Previously
21 at the top of that page you state, "With Calpine's withdrawal
22 of all its proposals, there is no remaining plan that has lower
23 total revenue requirements than the All-FPL plan, even without
24 an equity penalty." Explain to me at the bottom of the page
25 why you set forth your testimony in Lines 20 to 23?

1 A I'm sorry, I don't understand the question.

2 Q Calpine withdrew from this case, correct?

3 A That is correct.

4 Q And it is your view that they withdrew their bids, as
5 well?

6 A That is correct.

7 Q If CPV were to withdraw right now from the case,
8 would you consider that the information that they submitted,
9 the bids they submitted would also be withdrawn and not
10 something that this Commission could consider?

11 A Yes, if you withdrew. If CPV withdrew their bids
12 from further consideration, I would say they are out of
13 consideration.

14 Q So that would be removing evidence that would
15 otherwise potentially be relevant, correct?

16 A No, in this case CPV's bids were so far out of the
17 money, I don't think it would be relevant.

18 Q How about with respect to Calpine, theirs was a
19 little closer, was it not?

20 A Calpine's were more competitive than CPV's, that's
21 correct.

22 Q We talk about some these memos that were attached,
23 the Sam Waters memo to Mr. Evanson where they were setting up a
24 meeting to talk about FPL's generation strategy. With respect
25 to all these memos, Ms. Iglesias' evaluation plan which I do

1 want to ask you a few questions about, you set forth what you
2 believe those documents related to and take a different view
3 than what Mr. Egan believes those documents say, correct?

4 A Yes.

5 Q And wouldn't you agree that those documents speak for
6 themselves?

7 A Yes. Would you care to discuss a specific one? I'm
8 not sure which you are referring to.

9 Q Just generally. So if the documents speak for
10 themselves, ultimately you would agree with me that it is the
11 Commission's job to determine what those documents mean in the
12 context in which they were written?

13 A I would agree that the Commission or any unbiased
14 individual or entity that read the testimony concerning them on
15 both sides as well as the documents themselves can certainly
16 reach a conclusion, and I believe they will reach the correct
17 one.

18 Q We may have a disagreement about what the correct one
19 is, but --

20 A Yes.

21 Q Let me refer you to Page 19. This is in reference to
22 the draft RFP evaluation that Ms. Iglesias prepared that we
23 have had some discussion about. And on Line 19 you say that
24 this is a first cut at developing an evaluation plan. Why are
25 you indicating that?

1 A Because it was the first attempt to sit down and
2 figure out how we were actually going to do the evaluation of
3 the initial RFP.

4 Q And there was never any other document other than
5 that first cut that FPL prepared internally that set forth how
6 the bids would be evaluated, correct?

7 A That is correct, because there didn't need to be one.

8 Q Even though this is a \$1.1 billion solicitation, you
9 didn't believe that there was any other need to put forth a
10 plan in writing as to how the evaluation would be done?

11 A No, because Ms. Iglesias and I work closely together.
12 She has the office across the hall from me, and we interact
13 continually all day every workday.

14 Q Ms. Iglesias' memo has a process outlined that is an
15 iterative process, correct, and you testified that that was not
16 used?

17 A That is correct. It did not need to be used, because
18 it was only going to be used if we got into a situation where
19 FPL was faced with a group of -- one or a group of proposals
20 that were better than the self-build options, and we wished to
21 see if we wanted to meet or beat and could meet or beat, but we
22 were never in that situation.

23 Q If there was a proposal that was lower than FPL's
24 self-build options, would you have used that iterative process
25 outlined in her memo?

1 A We would not have gone through the process as she
2 outlined it, but we would have gone through a piece of it,
3 which would have been the iterative process. But we would not
4 have used other items in that memo such as value of deferral,
5 et cetera.

6 Q Page 27. I think we are about done. We're talking
7 about cost overruns here, and Mr. Egan states that cost
8 overruns by a bidder would be shouldered by the private sector,
9 not ratepayers. And you say this is true in only one of three
10 possible scenarios that might occur if the successful bidder
11 pays cost overruns.

12 Let's talk about each one of those scenarios just
13 briefly. The first one, you would agree that the ratepayers
14 would be benefitted if the bidder absorbs the costs, correct?

15 A I think they would be neutral compared to if there
16 had been no cost overrun. There would be no impact on the
17 ratepayer, neither positive nor negative.

18 Q And if either number two or three occur, the
19 utility's customers may be negatively impacted, is that right?

20 A Yes.

21 Q And number two is renegotiating with FPL?

22 A Correct.

23 Q Is that similar to the renegotiation that FPL Group
24 has undertaken with GE with respect to the turbine deal?

25 A I have no knowledge of that negotiation with GE.

1 Q Number 3 you said that there is a problem if the
2 bidder, unable to do either of the above, walks away from the
3 project, right?

4 A Yes.

5 Q Okay. You are aware that the draft purchased power
6 agreement had step-in rights, are you not?

7 A I believe my testimony earlier was I have never seen
8 the PPA document.

9 Q If it did have step-in rights, wouldn't that give
10 some level of protection to Florida Power and Light?

11 A I'm not familiar with the term, so I can't answer the
12 question.

13 Q It essentially allows -- let's say CPV was building a
14 power plant and got three-quarters of the way through it and
15 ran into difficulty, it would allow FPL to come in and take
16 over the project and receive the benefit of three-quarters of
17 the plant being constructed. Would that be a benefit in your
18 view?

19 A I guess it would depend upon what you are comparing
20 it to. If we stepped into a situation that required an
21 inordinate amount of time and money to fix, I would say that
22 the customers would be worse off than if we had chosen another
23 option in the beginning.

24 Q You talk about bids that are binding. Didn't the RFP
25 require guaranteed pricing?

1 A It requested guaranteed pricing, but in many cases it
2 was very clear that we were not getting firm or guaranteed
3 pricing.

4 Q Do you know whether CPV provided guaranteed pricing?

5 A My recollection is there was language in the CPV bids
6 that said that the proposal, and not exact words, but in
7 general terms would be contingent upon a contract being signed.
8 So, therefore, it was not viewed as firm as other bids that did
9 not have that language in there.

10 Q Wouldn't all bids be contingent on a contract being
11 signed?

12 A Yes.

13 Q You state on Page 28, Line 21, quote, the initial
14 negotiations in this case are evidence that the bids are
15 anything other than certain or binding. Why do you make that
16 statement?

17 A Because when we went into the initial negotiations
18 with the El Paso bidder, we found out that the cost
19 representation that we had gotten and the performance
20 representation that we had gotten were inaccurate. And they
21 corrected those in the negotiations saying the costs for those
22 projects, they had one on the east coast, one the west coast
23 went up by approximately \$15 million in one and
24 approximately -- excuse me, \$11 million in one and I believe 24
25 million in the other.

1 Q Given that reasoning then, wouldn't it be evidence
2 with respect to Florida Power Corporation that the price they
3 bid was binding? And what I'm asking about is I understood
4 from previous testimony Florida Power Corp sent in a bid, you
5 sent them a letter that said please lower your bid, and they
6 either didn't respond or indicated that they couldn't lower
7 their bid?

8 A My understanding is they said we won't lower it.

9 Q So that would indicate that the price was binding to
10 you, would it not?

11 A No. Because we didn't sit down face-to-face with
12 them in initial negotiations the way we did with El Paso. So
13 we can't state with certainty that something wouldn't have come
14 up in those initial negotiations that would have caused the
15 price to go upwards.

16 Q And you can't state with certainty whether the prices
17 of Calpine, TECO, PG&E, others that were at least in one
18 document listed on a short-list, whether those prices were
19 binding or not because you never negotiated with them, correct?

20 MR. GUYTON: Objection to the mischaracterization of
21 the document.

22 CHAIRMAN JABER: Mr. Moyle.

23 MR. MOYLE: The document says what it says. I think
24 we have a debate about whether it is a medium list or a short
25 list.

1 CHAIRMAN JABER: So do you have a question on the
2 document, or are you withdrawing your question because it
3 speaks for itself?

4 MR. MOYLE: Given the hour, I'll withdraw the
5 question.

6 I have nothing further. Thank you.

7 CHAIRMAN JABER: Thank you, Mr. Moyle.

8 Mr. McGlothlin.

9 CROSS EXAMINATION

10 BY MR. MCGLOTHLIN:

11 Q Doctor Sim, you did not know at the time you
12 developed and then applied the evaluation methodology which
13 bidders would stay in and which bidder would choose not to stay
14 in, did you?

15 A In general that is correct. I mean, we knew early on
16 that certain bids were declared ineligible and were removed.

17 Q But as to voluntary decisions to stay the course or
18 not, you did not know at that time who would stay and who would
19 not?

20 A That is correct.

21 Q And if a different methodology had been employed, and
22 if a different methodology had produced a result other than the
23 one you are sponsoring here today, you don't know what impact
24 that would have had on who would stay in and who would stay
25 out?

1 A I believe the answer to your question is yes,
2 although I'm having a very difficult time trying to tie the
3 methodology to whether a bidder for whatever reason would
4 voluntarily pull out of the process somewhere along the line.

5 Q Well, if one result was bidder is number six, but the
6 next result is bidder is number two, would that have some
7 bearing on whether a bidder would stay in or voluntarily leave?

8 A I'm sorry, sir, I got lost. Six and two.

9 Q By way of illustration, if the rankings were
10 significantly different as the outcome of a different
11 methodology, might that have some impact on decisions to stay
12 or go?

13 A It might, it might not.

14 Q Looking at Page 34 of your rebuttal testimony, and
15 this is purely for clarification, because I believe as worded
16 your statement beginning at Line 9 is ambiguous. You do not
17 mean to state here, do you, sir, that in the evaluation work
18 done with the supplemental evaluation EGEAS calculated how many
19 times and when units would start and stop?

20 A No, and the language here does not state that. It
21 says merely that we use the start-up costs in the optimization
22 to ensure that they were captured properly.

23 Q At Page 35 you state you did not model seasonal
24 variation because combined cycle units regardless of whether
25 bidders or FPL units will have relatively similar seasonal

1 variations. Would you agree that combined cycle units that are
2 either configured differently or have different modes of
3 operation could see different impacts as a result of seasonal
4 variations?

5 A I would agree you could see some impact, although
6 from your experience that would be negligible for combined
7 cycles based on similar or the same technology, virtually
8 identical heat rates, and in most cases similar sizes and
9 operational modes.

10 Q Yes. But, for instance, if one combined cycle unit
11 utilized duct-firing and another did not, that would affect
12 both the operational mode and the heat rate and impact seasonal
13 variations, would it not?

14 A It would, but in our opinion the impact would be
15 negligible.

16 Q At Page 45 in response to the question what about
17 Mr. Slater's claim of the most aggressive availability
18 assumption for these units, you said, "A first glance may give
19 that appearance. However, after accounting for the fact that
20 the peak-firing component of FPL's options will only be
21 available to be operated one percent of the hours in the year,
22 the overall availability of the 1,107-megawatt FPL units used
23 in the evaluation is actually 94.7 percent." Then you say,
24 "This availability value is in line with the majority of the
25 bids received." And you provide a calculation for the

1 proposals to be 94.9 percent.

2 But isn't it true, sir, that none of the bidders
3 offered a peak-firing model?

4 A That's correct. Some of them offered power
5 augmentation, some of them offered foggers, et cetera. There
6 was wide variation among the bids.

7 Q So if you were to remove from consideration FPL's
8 employment of a peak-firing mode, would your availability
9 assumption then be 97 percent?

10 A Yes. But that would be incorrect because then you
11 are taking out a component of the FPL self-build option. Just
12 as it a would be incorrect to remove operational modes from the
13 outside proposals.

14 Q At Page 52 you characterize Mr. Slater as
15 recommending a quota system. But it is true, is it not, that
16 Mr. Slater never uses the word quota?

17 A That is correct, that was my term.

18 MR. McGLOTHLIN: That's all I have.

19 CHAIRMAN JABER: Thank you, Mr. McGlothlin.

20 Mr. Perry.

21 MR. PERRY: I have no questions.

22 CHAIRMAN JABER: Staff.

23 MS. BROWN: No questions.

24 CHAIRMAN JABER: Commissioners? Redirect.

25 MR. GUYTON: No questions. Move Exhibit 45.

1 CHAIRMAN JABER: Thank you. Without objection,
2 Exhibit 45 is admitted into the record.

3 (Exhibit 45 admitted into evidence.)

4 CHAIRMAN JABER: Doctor Sim, thank you very much.

5 THE WITNESS: Thank you, Commissioners, Madam
6 Chairman.

7 CHAIRMAN JABER: All right. Staff, we are at the
8 point where I can establish a time period for late-filed
9 exhibits. By my estimation we only have one, and that was a
10 staff request, Late-filed Exhibit 18. And, Doctor Sim, I think
11 that was actually an exhibit requested of you, and I'm thinking
12 two weeks should be sufficient?

13 MR. GUYTON: Yes.

14 CHAIRMAN JABER: So how about you have that
15 late-filed exhibit in by October 18th, is that right?

16 THE WITNESS: Yes, Madam Chairman.

17 UNIDENTIFIED SPEAKER: I believe that's a Saturday.

18 CHAIRMAN JABER: Is it, what is today? It just feels
19 like a Saturday. Late-filed Exhibit 18 will be due October
20 18th. And, staff, briefs are due when?

21 MR. HARRIS: Commissioners, the briefs in this matter
22 are due on October 14th.

23 CHAIRMAN JABER: Oh. Well, then we need to speed up
24 the late-filed exhibit. So how about the late-filed exhibit
25 being due on the 12th. Mr. Guyton, is that going to be a

1 problem?

2 MR. GUYTON: We can do that.

3 MR. HARRIS: I believe that is a Saturday,
4 Commissioner.

5 MR. BUTLER: That would be a Saturday.

6 CHAIRMAN JABER: Well, you guys need to tell me when
7 a Friday would be.

8 MR. GUYTON: I will volunteer the 11th.

9 CHAIRMAN JABER: Okay. Late-filed Exhibit 18 will be
10 due October 11th and briefs are due October 14th. And the
11 staff will file its recommendation on --

12 MR. HARRIS: November 7th.

13 CHAIRMAN JABER: For an agenda of?

14 MR. HARRIS: November 19th.

15 CHAIRMAN JABER: You all have a great evening. Thank
16 you -- oh, are there problems?

17 MR. McGLOTHLIN: Just a housekeeping matter. Earlier
18 in the proceeding you refused to admit Exhibit 9, if you will
19 recall. Consistent with that, I move to strike the handful of
20 references to the content of Exhibit 9 that occurred before
21 your ruling so as to remove any ambiguity as to the status of
22 that.

23 CHAIRMAN JABER: Is there an objection to striking
24 the discussion as it relates to Exhibit 9?

25 MR. GUYTON: I would like to see the specific

1 references that Mr. McGlothlin is moving to strike before I
2 respond to that, if I might.

3 CHAIRMAN JABER: Mr. McGlothlin, do this for me. I
4 know it is extra work but, frankly, it is late in the day and I
5 would have to go back and think what happened 48 hours ago.
6 Put your request in writing.

7 MR. MCGLOTHLIN: All right.

8 CHAIRMAN JABER: Let staff take a look at it and
9 advise either the prehearing officer or bring it to agenda.

10 MR. BUTLER: Madam Chairman, I'm sorry, I apologize
11 for latest of the hour, but one other matter I wanted to bring
12 before you. We would move the admission as an exhibit the
13 deposition of Sam Waters. You know, he was originally
14 scheduled to be a witness. Mr. Moyle chose not to call him.

15 There is a considerable amount of testimony on the
16 subject of his involvement in the initial RFP process.
17 Mr. Waters' deposition consists entirely of questions by Mr.
18 Moyle about that subject, and we think it would be extremely
19 relevant evidence in the record. There is, you know, a
20 contemplation under Section 90.803(22) of the evidence code for
21 depositions to be admitted under these circumstances, and we
22 would move that it be admitted for those reasons.

23 CHAIRMAN JABER: Any objections?

24 MR. MOYLE: Yes. Mr. Waters was a witness that I was
25 going to call. During part of the trial I decided not to call

1 him. I don't think it is appropriate for them to be helping me
2 with my case in that way.

3 CHAIRMAN JABER: Mr. Butler, your request is denied.

4 MR. MOYLE: One other housekeeping matter.

5 CHAIRMAN JABER: Yes.

6 MR. MOYLE: Just so the record will provide for it, I
7 believe there was also a request by staff to the extent that
8 there was a gas contract that was entered into, if I recall,
9 that that exhibit be provided to staff, as well. And to the
10 extent that that is entered into, I guess does the record need
11 to make the availability?

12 CHAIRMAN JABER: Ms. Brown, do you recall the
13 reference to that exhibit?

14 MS. BROWN: I remember trying to get an assurance
15 from the witness that as soon as they got it they would give it
16 to us. Frankly, I'm not sure I ever got that assurance. I'm
17 sure they will.

18 CHAIRMAN JABER: Nor did you ask for it as an
19 exhibit.

20 MS. BROWN: No, I never asked for it as a late-filed
21 exhibit.

22 CHAIRMAN JABER: So, Mr. Moyle, I don't know if that
23 was a request of me or not, but it is denied if it is.
24 Anything else?

25 MR. MOYLE: Thank you for your patience.

1 CHAIRMAN JABER: Anything else?

2 MR. GUYTON: Thank you.

3 CHAIRMAN JABER: You all have a great weekend.

4 Thank you for your patience. See you later.

5 (The hearing concluded at 8:10 p.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

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

19 DATED THIS 7TH DAY OF OCTOBER, 2002.

20

21

22 _____
23 JANE FAUROT, RPR
24 Chief, Office of Hearing Reporter Services
25 FPSC Division of Commission Clerk and
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