BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060635-EU

In the Matter of

PETITION FOR DETERMINATION OF NEED FOR

ELECTRICAL POWER PLANT IN TAYLOR COUNTY

BY FLORIDA MUNICIPAL POWER AGENCY, JEA,

REEDY CREEK IMPROVEMENT DISTRICT, AND

CITY OF TALLAHASSEE.

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VOLUME 5

Pages 372 through 513

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR

COMMISSIONER ISILIO ARRIAGA

COMMISSIONER MATTHEW M. CARTER, II

COMMISSIONER KATRINA J. TEW

DATE: Thursday, January 11, 2007

TIME: Commenced at 1:45 p.m.

Concluded at 4:00 p.m.

PLACE: Betty Easley Conference Center

Room 148

4075 Esplanade Way

Tallahassee, Florida

REPORTED BY: LORI DEZELL, RPR, CCR

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APPEARANCES: (As heretofore noted.)

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

2 (Transcript follows in sequence from

3 Volume 4.)

4 CHAIRMAN EDGAR: Okay. We will go back on the

5 record. I hope everybody got some good nourishment

6 because we're going to need it.

7 Before we call the next witness, we are

8 looking perhaps at some availability for Commission

9 and hearing room time maybe tomorrow, maybe

10 Tuesday, maybe Thursday. And I don't mean all of

11 those. But those are the days that look like we

12 can get the room and all of those sorts of things.

13 So if you would all just kind of think on that

14 and think about your schedules and witness

15 schedules. I am open to reordering the order of

16 witnesses to accommodate schedules considering that

17 in a way that is orderly.

18 And if you would, again, think about your

19 schedules and perhaps after the next break we can

20 try and make some decisions and hopefully try to

21 accommodate everything that we need to do and to

22 the best of our ability as many scheduling

23 constraints and requirements as we are able to do.

24 Okay. We will move on to the next witness,

25 Mr. Perko.

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1 MS. RAEPPLE: Madam Chair, we call

2 Michael Lawson.

3 MS. BROWNLESS: Next Tuesday is a date you

4 have in mind, Madam Chair?

5 CHAIRMAN EDGAR: Yes, it is one of the dates.

6 Monday of course is a holiday so Monday so Monday

7 is not a possibility. So perhaps tomorrow, Friday,

8 perhaps some time Tuesday and perhaps some time

9 Thursday.

10 MS. BROWNLESS: Okay. Thank you.

11 MIKE LAWSON

12 was called as a witness on behalf of the Applicant, and

13 having been duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MS. RAEPPLE:

16 Q Please state your name and business address.

17 A I'm Mike Lawson, L-A-W-S-O-N. My business

18 address is 21 West Church Street, Jacksonville, Florida,

19 32302.

20 Q Have you been sworn?

21 A Yes, I have.

22 Q Mr. Lawson, did you submit prefiled testimony

23 on September 19, 2006 in this proceeding consisting of

24 four pages?

25 A Yes, I did.

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1 Q Do you have any changes or additions to that

2 testimony?

3 A No, I do not.

4 Q And did you submit revised direct testimony on

5 December 26, 2006, consisting of six pages?

6 A Yes.

7 Q Do you have any changes or additions to that

8 testimony?

9 A No, I do not.

10 Q If I were to ask you those same questions set

11 forth in your revised direct testimony today, would your

12 answers be the same?

13 A Yes, they would.

14 Q Are you sponsoring any exhibits to your

15 testimony?

16 A Yes, I am.

17 Q And those have been designated as Exhibits 6

18 and 8; is that correct?

19 A No. Exhibits --

20 Q Exhibit 6 was identified in your testimony as

21 MNL-1 and Exhibit --

22 A I'm sorry, yes.

23 Q -- 8 was identified in your testimony as

24 MNL-1R?

25 A Those are correct.

379

1 Q Okay. Do you have any changes to those

2 exhibits?

3 A No, I do not.

4 Q Are you sponsoring the sections of the need

5 for power application designated in Exhibit 7 --

6 A Yes.

7 Q -- as amended by the errata sheet in

8 Exhibit 3?

9 A Yes, I am. I'm sponsoring Section A.3.1.

10 Q Okay. Are there any changes to that section

11 for the need for power application that you're

12 sponsoring?

13 A No, there's not.

14 MS. RAEPPLE: Madam Chairman, I request that

15 Mr. Lawson's testimony be admitted into the record

16 as though read.

17 CHAIRMAN EDGAR: The prefiled testimony will

18 be entered into the record as though read.

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404

1 BY MS. RAEPPLE:

2 Q Mr. Lawson, have you prepared a summary of

3 your testimony?

4 A Yes, I have.

5 Q Will you please present that summary.

6 A I'm the project manager of the Taylor Energy

7 Center. I'm responsible for all phases of the project

8 from engineering through construction and startup.

9 I have a mechanical engineering degree from

10 the University of Alabama in Huntsville and I'm a

11 registered professional engineer in the state of

12 Florida.

13 I've worked for JEA since 1983. My work

14 experience includes project management activities at the

15 St. Johns River Power Park, site construction manager

16 for the Northside Repowering Project, project manager

17 for the Brandy Branch Combined Cycle Project, and I'm

18 currently the Taylor Energy Center project manager.

19 Prior to JEA, I had several positions in

20 project management such as startup engineer, project

21 engineer and plant engineer.

22 The TEC is a joint development project for

23 municipal utilities, Florida municipal power agency,

24 JEA, the City of Tallahassee and the Reedy Creek

25 Improvement district will have varying degrees of

405

1 ownership in the facility.

2 FMPA's ownership share is 38.9 percent; JEA,

3 31.5 percent; the City of Tallahassee, 20.3 percent; the

4 Reedy Creek Improvement District has 9.3 percent. All

5 cost of the project will be shared in direct relation to

6 the percent shares I just mentioned.

7 By jointly developing a power plant, the

8 participants reap the benefits of economics of scale

9 associated with constructing a large single facility

10 versus multiple smaller facilities. JEA issued their

11 request for proposals on behalf of all the participants

12 on November 28th, 2005 soliciting power supply pricing

13 from other sources. Through this process, two bids were

14 received from one company, Southern Power Company.

15 Southern Power proposed one alternative power supply

16 from a solid fuel source -- solid fuel fired source and

17 one from a combined cycle power plant.

18 The evaluation performed by R.W. Beck

19 concluded that neither of the Southern Power bids were

20 more cost-effective than the self-built option.

21 And that concludes my testimony -- or summary.

22 MS. RAEPPLE: Tender the witness for

23 cross-examination.

24 CHAIRMAN EDGAR: Thank you. Ms. Brownless?

25 MS. PABEN: Thank you, Madam Chairman.

406

1 CROSS-EXAMINATION

2 BY MS. PABEN:

3 Q Good afternoon, Mr. Lawson. I have just a few

4 questions for you.

5 Are you aware that the Commission has

6 identified as issue No. 7 in this proceeding whether or

7 not the applicants requested available funding from DOE,

8 the Department of Energy, to construct an IGCC unit or

9 other cleaner coal technology?

10 A Yes.

11 Q Mr. Lawson, are you aware that in your revised

12 direct testimony you stated in response to a question

13 asking you to describe the efforts made by TEC to secure

14 federal financial assistance for alternative

15 technologies that the applicants investigated funding;

16 is that correct?

17 A That's correct.

18 Q Mr. Lawson, are you familiar with the

19 resolution passed by the Taylor County Board of County

20 Commissioner on October 5th, 2003, that stated as

21 follows: "If a coal generated power plant is to be

22 located in Taylor County, that JEA requests funding from

23 the U.S. Department of Energy for this plant so that it

24 will be built using only the very latest and cleanest

25 technology available such as the coal gasification

407

1 process"?

2 A Yes, I am aware of that.

3 Q Mr. Lawson, also in your revised direct

4 testimony you offered Exhibit 8. I think it was

5 formerly MNL-1R, a letter dated March 10th, 2006, that

6 you sent to Chairman Darryl Gunter of the Taylor County

7 Board of County Commissioners also indicating that you

8 responded to their request in that resolution and, in

9 fact, investigated funding; is that correct?

10 A That's correct.

11 Q Mr. Lawson, did you or any of the applicants

12 actually request funding from the United States

13 Department of Energy for this plant?

14 A No, we didn't, because there was none

15 available.

16 Q So to make sure that I understand it

17 correctly, you're stating that you did not request

18 funding as required by the resolution or the issue in

19 this case?

20 A We would request funding if it was available.

21 Q And your response was that you did not,

22 correct?

23 A There were verbal inquiries made to the

24 Department of Energy as well as members of the Congress

25 by a representative of JEA, an indication that there's

408

1 not funding available except for in special cases, for

2 example, constructing an IGCC at an elevation of

3 4,000 feet or greater.

4 Q Mr. Lawson, as indicated earlier in the public

5 testimony portion of this proceeding, a Taylor County

6 resident sent a Freedom of Information Act request to

7 the United States Department of Energy asking for any

8 communications or documents related to the proposed

9 coal-fired power plant in Taylor County. She indicated

10 that she specifically asked for any correspondence to

11 and from and between a number of entities including all

12 TEC partners and that the responses from the Department

13 of Energy indicate no documents in their records showing

14 any communications with any of the applicants in DOE.

15 Isn't it true, Mr. Lawson, that, in fact, the

16 applicants did not request the funding from the

17 Department of Energy?

18 A We did not formally in writing request funding

19 from the Department of Energy, correct.

20 Q Mr. Lawson, have the applicants identified the

21 coal railroad routes expected to be used for the supply

22 of coal or other materials to and from the Taylor Energy

23 Center?

24 A We've identified the route from a certain

25 point. But since the fuel sources are not necessarily

409

1 defined as yet, the entire route would not be defined.

2 Q Have the applicants evaluated the

3 appropriateness of the infrastructure of that portion of

4 the route and any necessary mitigation costs related to

5 negative effects of using that route to meet the

6 specific needs of TEC?

7 A The evaluation of the conditions of

8 infrastructure in place is the responsibility of the

9 railroad, and they've done that.

10 Q So it's your position that TEC did nothing to

11 evaluate the full extent of the route for those

12 purposes?

13 A We evaluated if feasibility of the routes, the

14 condition of the routes was the responsibility of the

15 railroad.

16 Q Just to make sure I can clarify, only for a

17 portion of the route; is that correct?

18 A The feasibility was considered all the way to

19 the point sources. I mean, that was one of the criteria

20 for selecting the site. We had rail capability.

21 Q I'm a little confused because you just

22 indicated that the actual sources weren't determined so

23 you couldn't entertain the entire route. Can you

24 clarify that?

25 A Well, the sources range from Wyoming to

410

1 Jacksonville to Tampa. So we verified the routes are

2 available but we didn't individually analyze every

3 possibly conceivable rail route through those sources.

4 Q Would you concede that the -- those costs

5 associated would differ depending on which route you

6 selected?

7 A Yes, they do.

8 Q Can you explain the context that you or any of

9 the applicants have had with local government entities

10 through which that transportation route will run

11 regarding this specific issue?

12 A We've had contact with the City of Perry

13 discussing the possible route. In fact, we approached

14 them proactively to make sure they were fully aware of

15 the impact of the rail traffic.

16 Q Did the applicants expect to incur costs

17 associated with any infrastructure improvements or

18 necessary mitigation costs to address concerns with

19 respect to local government entities?

20 A Yes, we do.

21 Q Could you elaborate further on what expected

22 costs you intend to incur?

23 A When we first started looking at the rail

24 traffic through Perry, we felt like Perry was a

25 significant impact because they're at the end of the

411

1 line for the short-line rail carrier. So our plant

2 would impact the number of rail cars going through Perry

3 about double.

4 We presented this to the, to the city -- I

5 actually met with emergency response personnel with the

6 City of Perry, police, fire, city managers, county

7 managers discussing costs around some mitigation -- or

8 mitigation possibilities or their concerns.

9 We developed plans that would include possibly

10 a bypass. That was pretty much objectionable to the

11 town of Perry. They did not want a bypass. The

12 estimate -- and then testimony yesterday you heard some

13 of -- I'll go ahead and say it -- $5 million commitment

14 for the project to the City of Perry. That was derived

15 as an estimate equal to an overpass. We felt like to

16 address the emergency response issues, $5 million to

17 build an overpass would address the emergency response

18 issue which was a priority.

19 Someone sitting a couple of more minutes at a

20 crossing was not necessarily a priority but as long as

21 emergency response could handle that, that was our

22 priority. Not top priority.

23 The City of Perry -- so we discussed this with

24 the City of Perry, said that could be used for rail

25 improvement, signaling, safety awareness programs,

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1 possibly fire and rescue satellite stations up on each

2 side of the track. These type of measures that were a

3 concern for public safety.

4 They also were pursuing, the City of Perry was

5 pursuing a grant or some type of funding to put a bypass

6 around the City of Perry. We offered that to the extent

7 the 5 million would be avoided if a bypass was put

8 around the City of Perry, then they could use that 5

9 million that we would be using for the safety mitigation

10 for that bypass. And we have an agreement or a letter

11 that I sent the City of Perry stipulating that and we

12 are in the process of formulizing that agreement.

13 Q The letter that you're referring to,

14 Mr. Lawson, is the letter dated October 5, 2006, to

15 Mayor Emily Ketring, mayor of the City of Perry, that's

16 entered into these proceedings as Exhibit No. 87; is

17 that correct?

18 A That's correct.

19 Q This letter states in its opening paragraph

20 that you're writing a letter in response to concerns

21 raised by the City of Perry; is that correct?

22 A Correct.

23 Q The letter further goes on to say that you

24 pledge 5 million to the construction of an easterly

25 bypass railroad track to address those concerns

413

1 articulated by the City of Perry and its residents; is

2 that correct?

3 A Yes.

4 Q Those concerns articulated in the letter

5 include some of the emergency responses that you're

6 talking about but also deal with other economic effects,

7 safety effects, traffic congestion? Other issues are

8 detailed in there, not just the emergency response; is

9 that correct?

10 A That's correct.

11 Q Is it your testimony here today that that

12 letter actually contends that you would only pledge the

13 5 million if they are not able to receive a grant?

14 A That's correct.

15 Q I'm a little confused by that articulation.

16 The letter which I have here in front of me doesn't seem

17 to qualify the $5 million contribution to the City of

18 Perry contingent on the grant. It does -- it does

19 identify the proposed grant and that you would support

20 their efforts to achieve that. But then the second and

21 the third paragraphs go on to indicate that you commit

22 the 5 million to do the bypass or up to 5 million for

23 other necessary improvements.

24 After looking at the letter, can you tell if

25 that's a more accurate characterization of that letter?

414

1 A I'm confused by that question. Or was it a

2 question?

3 Q Yes. The question was, you stated that the

4 5 million was only if the grant was contained, but the

5 letter actually has three separate sections, the first

6 where you agree to support their application for the

7 grant --

8 A Right.

9 Q -- and then the second and the third where you

10 commit the 5 million without making it contingent on the

11 grant acceptance.

12 A To rephrase, if you're asking we would not

13 contribute 5 million if they did not get the grant,

14 that's incorrect. We'll contribute 5 million for the

15 other mitigation issues even if they do not get the

16 grant.

17 MS. RAEPPLE: Madam Chairman, could I please

18 ask that if counsel is going to continue to

19 question Mr. Lawson about the content of documents,

20 that she could show him the document? Thank you.

21 CHAIRMAN EDGAR: Let me say for the record,

22 yes, absolutely. And if the witness needs a

23 document, ask as well. Okay? Do you --

24 MS. PABEN: Thank you. I don't have actually

25 further questions about that letter, and I would

415

1 have provided them. I'm sorry. He said he was

2 very familiar with it having written it himself.

3 Sorry about that.

4 BY MS. PABEN:

5 Q Just a couple of remaining questions. Do you

6 know if the $5 million that you've -- that we've been

7 discussing was articulated in the application to the

8 Public Service Commission as a cost expected to be

9 incurred in the development of the Taylor Energy Center?

10 A It is in the cost of the project, yes.

11 Q Can you point specifically in the record to

12 where that cost is indicated?

13 A It's not a line item.

14 Q Can you point to the general area where it's

15 included?

16 A It's under the infrastructure item. We

17 have -- it's -- it would be in the normal line of things

18 that were considered contingent items. So you're not

19 going to see an item called rail bypass or city

20 contribution. It's just going to be part of the

21 uncertainty, part of the component of the infrastructure

22 improvements.

23 Q Is it the intent of the applicants after the

24 testimony you heard here yesterday to have conversations

25 with any other local governments regarding similar

416

1 concerns and costs associated with this project?

2 A I'm sorry, I missed the first couple of words.

3 Q Is it the intention of the applicant to have

4 any further conversations related to the same concerns

5 with other local government entities that you've heard

6 expressed to you yesterday as well as previous to these

7 proceedings?

8 A The -- the people that spoke yesterday

9 concerned with the rail traffic along other parts of the

10 rail line, we would be very willing to sit down with

11 them and talk with them. However, the situation in

12 Perry is significantly different than those cities that

13 were represented yesterday.

14 Q Mr. Lawson, you indicated by affidavit that

15 you did respond to Staff Interrogatory No. 68; is that

16 correct?

17 A That's correct.

18 Q In the response to the question whether or not

19 you have contingency plans in the event that the City of

20 Tallahassee does not obtain final approval to

21 participate in TEC, you indicate three alternatives as

22 to how that would be addressed.

23 Can you walk us through each of those

24 alternatives and the steps that you imagine being taken

25 if the City of Tallahassee or any other partner were to

417

1 withdraw?

2 A I do not have the phase 2B agreement which

3 outlines those conditions in front of me. And generally

4 speaking, the first step, if an owner, any owner decides

5 to withdraw, then the other owners have the ability to

6 absorb or redistribute the percentages that that leaving

7 participant is accounting for.

8 The second step would be the leaving

9 participant finds a suitable or acceptable replacement

10 participant for their share or maybe some portion. The

11 other participants could take a portion of that share.

12 If that second step -- if they could not find anybody

13 and we could not absorb the share, then the third

14 alternative would be to resize the plant for -- to

15 proceed proportionately to reduce the size of the plant

16 to accommodate a fully-prescribed power plant.

17 Q In any of those three options, what would be

18 the role of the Public Service Commission in addressing

19 those issues?

20 A You're asking me what the Public Service

21 Commission would rule?

22 Q I'm asking how the applicant would address the

23 PSC with any of those different alternatives?

24 A I'm not able to answer that question.

25 Q Is there someone more suitable to answer that

418

1 question on the TEC staff?

2 MS. RAEPPLE: Madam Chairman, I believe she's

3 requesting a legal conclusion.

4 CHAIRMAN EDGAR: I believe the witness said

5 that he was not able to answer the question.

6 MS. PABEN: Is the follow-up appropriate to

7 ask if there is -- the earlier witness indicated

8 other people that would be more appropriate to

9 answer certain questions.

10 CHAIRMAN EDGAR: On the witness list?

11 MS. PABEN: Right.

12 CHAIRMAN EDGAR: If you know the answer, you

13 may answer. If you don't --

14 THE WITNESS: I don't know. I would have to

15 refer to our counsel for that answer.

16 MS. PABEN: Thank you very much.

17 CHAIRMAN EDGAR: Mr. Jacobs?

18 MR. JACOBS: I'm sorry, no questions,

19 Madam Chairman. I think Ms. Brownless may have

20 some though.

21 MS. BROWNLESS: Yes, we do.

22 CHAIRMAN EDGAR: Okay. Just a moment.

23 Commissioner Arriaga.

24 COMMISSIONER ARRIAGA: Thank you. Would you

25 please clarify for me the extent of the analysis

419

1 you did regarding the availability of

2 transportation from the source of coal to the

3 proposed plant. The extent of that evaluation. I

4 was a little bit confused. I didn't know what you

5 were answering.

6 THE WITNESS: The initial extent of the

7 evaluation was to verify that there were routes

8 available to supply that were adequate to supply

9 the fuel for the plant, and that's initially -- as

10 far as infrastructure we did not do that. But yes,

11 we verified there were suitable carriers. In fact,

12 the short line railroad that supplies the site

13 location touches two suppliers so we have

14 competitive rail for the main carrier and a short

15 line for just the last part.

16 MS. BROWNLESS: Okay. What I was trying to

17 do, so --

18 CHAIRMAN EDGAR: Ms. Brownless, I'm sorry, to

19 the microphone, please.

20 MS. BROWNLESS: What I was trying to find was

21 a copy of the public power solid fuel power plant

22 phase 2B development agreement which was your

23 answer to staff's POD, production request No. 8.

24 Do you have a copy of that? I think it's in the

25 stack of materials that everybody has, I just

420

1 couldn't find it. Your green sheet listed as

2 No. 7. It's the staff POD No. 8 which is the phase

3 2B development agreement.

4 CHAIRMAN EDGAR: Are we close?

5 MS. RAEPPLE: I believe it begins at Bates

6 stamp 001742 and it runs through 001814 -- I'm

7 sorry, I believe it runs from Bates 001742 through

8 001814. Is that what you would like me to give the

9 witness?

10 MS. BROWNLESS: The copy that I have starts

11 at --

12 CHAIRMAN EDGAR: Okay, folks, let's --

13 MS. BROWNLESS: That's fine.

14 CHAIRMAN EDGAR: Are we there?

15 MS. RAEPPLE: Yes, ma'am.

16 CHAIRMAN EDGAR: Ms. Raepple, can you -- yes,

17 please. Thank you.

18 MS. BROWNLESS: And I'm sorry for the

19 confusion. The copy I had had a separate set of

20 numbers on them than what was provided to the

21 parties.

22 CROSS-EXAMINATION

23 BY MS. BROWNLESS:

24 Q This is the document that you were previously

25 referring to, Mr. Lawson, the request when you were

421

1 speaking with Ms. Paben, the phase 2B development

2 agreement?

3 A Yes, it is.

4 Q Okay. Are you the project director of the TEC

5 project, Mr. Lawson?

6 A No, I'm not.

7 Q Who is?

8 A I'm the project manager.

9 Q Okay. I'm sorry, project manager. And were

10 you appointed to that position full time in July of

11 2005?

12 A No, I was not.

13 Q Okay. When were you appointed?

14 A January 13th, 2005.

15 Q Okay. When did you begin receiving full time

16 compensation from the project, the TEC project, for your

17 services?

18 A It started approximately July 1st, 2005.

19 Q And is it fair to say that since that time

20 you've been working full time on this project?

21 A Correct.

22 Q Section 4 of this phase 2B agreement concerns

23 the participation and obligation rights of the parties

24 to the agreement; is that correct?

25 A That is correct.

422

1 Q And I just want to ask just a few questions so

2 I can clarify what the rights are for the participants,

3 the current participants of the project. And by current

4 participants of the project, I mean the applicants in

5 this proceeding. And is it true that the applicants in

6 this proceeding have actually executed and signed this

7 phase 2 agreement?

8 A That's correct, they have.

9 Q And I assume gotten the appropriate

10 authorization from their individual boards to do so?

11 A I'm sorry, what?

12 Q And I assume that they got the appropriate

13 authorizations from their own boards to do so?

14 A Yes, they did.

15 Q Okay. At any time during phase 2B -- and

16 you've set out a definition of what phase 2B is. So let

17 me start by asking you, what is the basic series of

18 events that phase 2B is intended to encompass?

19 A Basically it covers the participant's scope

20 through -- up until receiving permits.

21 Q Okay. And that would be up through receiving

22 all of your permits, your sight certification permit,

23 your air permit, water permit?

24 A That's correct.

25 Q Okay. And the end of phase 2B would be the

423

1 time at which you would have all of your permits in hand

2 so that you could develop a more accurate final cost for

3 this project?

4 A We would be developing a more accurate final

5 cost dynamically as we move forward. We wouldn't wait

6 till be got the permits in hand. We would be close

7 enough before that -- we are constantly tuning the cost.

8 Q Yes, sir, I appreciate that. And I guess what

9 I'm trying to say is -- well, I'll strike that.

10 At any time during this phase 2B process, can

11 any two participants reallocate their capacity among

12 themselves as long as it doesn't affect the

13 percentage -- ownership percentages of the other two?

14 A That would require approval by all of the

15 participants.

16 Q Okay. And I'm looking at paragraph 4.1.1.1 on

17 page 23 of the agreement. Is that the correct section?

18 A You have to give me a minute to read it.

19 Q Sure.

20 A (Examining document.) Now that I've read it,

21 I have to correct my statement a minute ago. You are

22 correct that two participants can reallocate between

23 themselves percent shares of the participation as long

24 as the total interest is maintained at 100 percent.

25 Q Okay. And can any participant reduce or --

424

1 reduce its interest or completely withdraw if any -- I'm

2 sorry, let me strike that.

3 If any participant wants to reduce its

4 interest or wants to completely withdraw from this

5 project, can he do so if one of the other three

6 participants is willing to completely take his share?

7 A Yes, he can.

8 Q Okay. And can he also invite someone else

9 into the group with the approval, the written consent of

10 the other parties?

11 A Yes.

12 Q When I was taking the deposition of, I

13 believe, Mr. Rollins, I asked him if the other

14 participants in this project had the equivalent of a

15 right of first refusal. And by that I mean do the other

16 participants get first dibs at capacity that one of the

17 original participants wished to abdicate; is that true?

18 A Is that a statement or a question?

19 Q Here's the question. Do the other three

20 people -- if person number one wants to get out, let's

21 say the City of Tallahassee wants to completely get out,

22 do the other remaining three people have the first right

23 to assume that capacity?

24 A I think I already answered that in the three

25 steps. The first step was the other participants taking

425

1 that share.

2 Q But do they have the right to take it before

3 anyone else is offered it?

4 A Yes.

5 Q Now, Attachment A to this agreement lists all

6 of the phase 2 activities; is that correct?

7 A That's correct.

8 Q And at the end of those phase 2 activities,

9 which I believe you've already testified include site

10 certification by the siting board, do all parties have

11 the ability to make a final go, no-go decision?

12 A Yes, they do.

13 Q When you get to that date, what obligation

14 does each participant have?

15 A When we get to that phase?

16 Q Yes, sir.

17 A They have no obligation.

18 Q Okay. And I want to make sure I clearly

19 understand.

20 A Because the agreement is complete.

21 Q When you get to the no-go decision, you've

22 fulfilled all the terms of this contract and would you

23 enter into another contract?

24 A Yes.

25 Q And that subsequent contract would be with

426

1 whomever wanted to continue to participate?

2 A That's correct. Which hopefully that account

3 would be in place before we have the permits.

4 Q Okay. And that would be because you've --

5 A And I'll clarify. In place I mean in place

6 but not executed.

7 Q Okay. Now, once this plant is built, what do

8 you anticipate the rights and obligations of each

9 participant will be with regard to the plant?

10 A In direct accordance with the percentage

11 shares that they have.

12 Q Okay. And so would each participant have the

13 exclusive right to the capacity equal to his own

14 ownership share?

15 A Yes, they would.

16 Q Okay. And could he therefore either use that

17 capacity himself or sell it on the wholesale market?

18 A It's his capacity.

19 Q Okay.

20 A Or their capacity.

21 Q Yes, sir. And does he have to sell it through

22 TEC in conjunction with other capacity being sold from

23 TEC if there is any or can he separately negotiate to

24 sell his own capacity?

25 A I'm not sure I understand the question.

427

1 Q Okay. Sometimes when units are owned by more

2 than one company --

3 A Right.

4 Q -- and capacity from that unit is sold for

5 whatever reason on the wholesale market, the unit, as it

6 were, sells the capacity and then revenues are divided

7 up, however they're divided up to the individual owners

8 of the total unit and sometimes the individual

9 participants are able to separately negotiate wholesale

10 bulk market sales?

11 A Right.

12 Q So have you determined whether TEC will

13 operate as one unit or whether individual participants

14 will be able to make individual decisions as to the sale

15 of their individual capacity?

16 A That's -- all that type of structure and how

17 that will be worked out is that contract -- will be

18 worked out for the operating of the 30-year plant life.

19 Q Okay. Do you anticipate that the TEC unit

20 will be able to make sales into the Florida wholesale

21 market?

22 A There may be opportunities when we have --

23 happen to have excess capacity for weather conditions,

24 there may be when some other major units are down, sure.

25 Q Do you have a copy of revised table A.3-5,

428

1 which is the updated capital cost estimate summary?

2 A No, I do not.

3 Q That should be in the TEC exhibit, TEC 1. At

4 deposition, we asked, I believe it was, Mr. Rollins to

5 tell us what's included in the owner's cost listed on

6 this updated capital cost estimate summary and he

7 deferred that question to you, Mr. Lawson. So it shows

8 here that the owners' costs are 138, approximately

9 $138 million; is that correct?

10 A That's correct.

11 Q What type of costs are included in this

12 category?

13 A They include all project management. We are

14 the project managers. All the project management, QA,

15 QC staff, accounting staff to build the project. And

16 I'm sitting here now. That's part of that cost.

17 It also includes insurance costs, it includes

18 land cost -- I'm sorry, the land is a separate item.

19 And other office administration costs, things required

20 for setup. It does include some one-time chemicals for

21 initial startup.

22 Q And the one-time chemical, would that be the

23 limestone base?

24 A No, that's the -- these -- that was a

25 relatively small item in the owners' cost. The

429

1 limestone, initially limestone and fuel was in another

2 cost estimate.

3 Q Okay. So that was separately included in --

4 A Correct.

5 Q -- another cost estimate? And I assume that

6 the -- there's a certain amount of coal, sacrificial

7 coal bed. That's also included in another cost

8 estimate; is that correct?

9 A Yes.

10 Q So these owner's cost, fair to say, are

11 generally administrative cost for the project?

12 A Yes, ma'am.

13 Q Do these also include the administrative cost

14 for preparing this application?

15 A Yes, it does.

16 Q And I assume your projected costs for securing

17 all the necessary site certification and air permits?

18 A Yes.

19 Q Okay.

20 A It also includes preliminary engineering costs

21 I omitted.

22 Q Okay. Everything necessary to get this plant

23 up through the --

24 A Everything from the phase 2B agreement.

25 Q And that's allocated among the participants on

430

1 their ownership basis?

2 A Yes, it is.

3 Q Have those costs -- obviously they've already

4 been incurred, or some of them.

5 A Yes.

6 Q Have they already been paid for?

7 A The ones that we're paying as we go. So if

8 there are costs incurred, they've been paid for.

9 Q Okay. So to the extent -- and I'm sure you do

10 have a budget for the phase 2 process -- that budget has

11 already been approved and you already are receiving

12 payments in accord with that budget?

13 A That's correct.

14 Q So essentially those monies are being fronted

15 by the individual participants?

16 A That's correct.

17 Q Now, are you the person that was in charge of

18 administering the requests for proposals in this

19 proceeding?

20 A Yes, I was.

21 Q And that was done in November of 2005?

22 A That's correct. It was issued to the public

23 on November.

24 Q I believe you indicated in your testimony that

25 there was only one bidder; is that correct?

431

1 A That's correct.

2 Q And that was Southern Power Company; is that

3 right?

4 A That's right.

5 Q Okay. And that is the wholly-owned subsidiary

6 of Southern Power; is that right?

7 A Yes, ma'am.

8 Q And that's the same entity that bid and

9 successfully won the bid for the OGC IGCC plant; is that

10 right?

11 A I'm not sure about the contractual arrangement

12 of the OGC plant.

13 Q Okay. Would your RFP as written, Mr. Lawson,

14 have allowed the Southern Power Company to bid an IGCC?

15 A Absolutely.

16 Q Okay. So it was not limited with regard to

17 technology in any way?

18 A No. We -- we -- we stated in the IGCC -- we

19 preferred prudent technology but we did not restrict the

20 capability of the bidder to propose any power plant they

21 wanted to.

22 Q So any type of technology they wanted to?

23 A Yes.

24 Q Had the bidders approached the applicants with

25 a request to go to DOE for funding for an IGCC plant,

432

1 would that have been within -- would you have considered

2 that to be a responsive bid?

3 A I misunderstood the very first part.

4 Q Okay. Let's assume that a bidder as part of

5 his bid proposed had said, we want to build an IGCC

6 plant and we request that the applicants come with us to

7 DOE in order to secure funding for that plant. Would

8 you have considered that to be a responsive bid?

9 A In the context of an RFP, no.

10 Q That would have been nonconforming?

11 A Correct.

12 Q Thank you, Mr. Lawson.

13 MS. BRUBAKER: Madam Chairman, if I may --

14 CHAIRMAN EDGAR: Ms. Brubaker.

15 MS. BRUBAKER: -- actually -- I have a few

16 questions.

17 CHAIRMAN EDGAR: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. BRUBAKER:

20 Q Mr. Lawson, were you president -- excuse me,

21 were you present during yesterday's public testimony

22 portion of the hearing?

23 A Yes, I was.

24 Q And do you happen to recall testimony by

25 Alex Robinson, a Baker County commissioner?

433

1 A Yes, I do.

2 Q And generally his testimony had some concern

3 about a traffic cross -- traffic delays at a railroad

4 crossing and the delays that might cause for emergency

5 vehicles. Do you recall that?

6 A Yes, ma'am.

7 Q Were the applicants aware of this particular

8 transportation problem, to your knowledge?

9 A We weren't aware of the particular instances

10 that Mr. Robinson mentioned concerning the

11 one-hour-and-45-minute delay I think Commissioner Carter

12 was concerned with also. But the -- we're aware that

13 that town, Sanderson, I believe he mentioned, is a

14 potential route of some of the rural deliveries that we

15 may be getting for this plant.

16 Q In what way -- if it does, in what way does

17 the need application address the concerns regarding that

18 area?

19 A Maybe the application addresses that.

20 Q It does not specifically account for possible

21 delays in that particular area?

22 A I do not believe it does.

23 Q Okay. You did state earlier in your testimony

24 today though that to the extent you were contacted by

25 the Baker County Commission or concerned persons, that

434

1 you would be willing to speak with them about possibly

2 reaching some resolution about those concerns?

3 A We would discuss potential. As I mentioned

4 earlier with the rail deliveries, the exact rural rail

5 routes haven't been established so they may or may not

6 be impacted.

7 Q Are you aware of any other potential problems

8 of that type along the planned rail route from

9 Jacksonville to TEC? Are there other areas of which

10 you're aware of similar issues?

11 A No. In fact, if we're talking about the

12 particular rail line from Jacksonville to -- into

13 Madison County, that's a straight rail line. Typically

14 the train runs from 35 to 50 miles an hour. The impact

15 of one of our trains would be less than 2 minutes at a

16 crossing. The county commissioner from Baker County,

17 that sounds like a procedural issue with the railroad,

18 and rightfully so.

19 I think Commissioner Carter was concerned and

20 wants someone to bring it to someone's attention. So no

21 rail crossing should be blocked a couple of hours unless

22 it's some type of mechanical breakdown or other type of

23 emergency.

24 MS. BRUBAKER: Thank you. That concludes my

25 questions.

435

1 REDIRECT EXAMINATION

2 BY MS. RAEPPLE:

3 Q Mr. Lawson, are railroads common carriers

4 under the Service Transportation Board's jurisdiction?

5 A I assume so, yes. Yes.

6 Q Would the participants have the ability to

7 dictate how that common carrier ran their railroad?

8 A No, we do not.

9 Q With regards to how the Taylor Energy Center

10 would be operated, after the phase 2B agreement and the

11 operating agreement is in -- after the phase 2B

12 agreement is complete and the operating agreement is in

13 place, would the rights and responsibilities of the

14 participants be dictated in that final operating

15 agreement?

16 A Yes.

17 MS. RAEPPLE: Thank you. I have nothing

18 further.

19 CHAIRMAN EDGAR: I think we have a few

20 questions. Commissioner Carter.

21 COMMISSIONER CARTER: Thank you, Madam Chair.

22 Am I missing something that in the need

23 determination you didn't factor the cost of getting

24 the fuel that the plant would be powered by to the

25 plant?

436

1 THE WITNESS: Yes, that was factored. I

2 understood the question to be did we account for

3 the improvements to rail situations in the towns

4 that the rail passed.

5 COMMISSIONER CARTER: That would not be a

6 consideration in the --

7 THE WITNESS: It's a consideration for the

8 town of Perry.

9 COMMISSIONER CARTER: If you're going to get

10 the fuel -- excuse me, Madam Chair -- if you're

11 going to get the coal from point A to point B,

12 point A being the plant and point B being the point

13 of beginning to the entry to the state or from the

14 west coast or east coast or the Bay area or

15 whatever, but from point A to point B, I mean, did

16 you not consider that?

17 Because let's say there's the -- the cost for

18 the plant determines -- is based upon getting --

19 and I think it was the other gentleman that was

20 talking about how you considered the cost of

21 operation. Do you remember that -- you were here

22 this morning, right, when I went through that

23 question about the cost of operation?

24 THE WITNESS: Yeah. We would account for

25 those and the tariff that we pay for the shipping

437

1 cost to the railroad. It's their railroad. They

2 would improve it to meet the needs of the --

3 COMMISSIONER CARTER: I understand. It's the

4 state's highways but still we go from point A to

5 point B.

6 The point is, in the process of determining

7 the type of plant that you have, you would

8 obviously have to figure the cost of getting the

9 raw materials necessary to generate the energy at

10 the plant, is that not part of the equation?

11 THE WITNESS: That is correct, yes.

12 COMMISSIONER CARTER: So I'm asking, did you

13 make that consideration in terms of what it would

14 cost in transportation to get the fuel back and

15 forth to the plant?

16 THE WITNESS: Yes, we did.

17 COMMISSIONER CARTER: And in that process did

18 you consider a route structure? For an example, if

19 you're going to build a road from Tallahassee to

20 Tupelo, Mississippi, you have a route.

21 THE WITNESS: Yes.

22 COMMISSIONER CARTER: And then that route is

23 going to determine if we want to run over streams

24 and cemeteries and things like that. The cost

25 would be one. If we have a straight shot, the cost

438

1 is going to be 2, right?

2 THE WITNESS: Correct.

3 COMMISSIONER CARTER: So in that process, did

4 you go through that process and determine what it

5 would cost? And in the process of determining what

6 that cost was, did you consider the impact of

7 things between point A and point B?

8 THE WITNESS: We took into the rail tariff

9 cost from point A to point B and those tariffs, the

10 rail industry should address any impacts between

11 those two points.

12 COMMISSIONER CARTER: Madam Chairman, the only

13 reason I'm asking the question -- excuse me. The

14 only reason I'm asking the question is we had a lot

15 of discourse yesterday when citizens were talking

16 about things that impact the process. We talked

17 this whole discourse about relevancy, things that

18 are collaterally related, things that are not

19 related.

20 But it would seem to me the cost -- you can't

21 operate the cost without having fuel for the plant.

22 Am I missing something?

23 So in the process of getting the fuel to the

24 plant to operate the plant, then there's a cost

25 involved in that. And if you're going to go from

439

1 point A to point B -- did you guys just say, okay,

2 I'm thinking of a route between -- and throw a dart

3 on the board? I mean, you had to factor in some

4 kind of cost in terms of transportation from here

5 to there, right?

6 THE WITNESS: Yes.

7 COMMISSIONER CARTER: And in that -- or did

8 you say, now, you took bids. Excuse me,

9 Madam Chairman.

10 CHAIRMAN EDGAR: Go right ahead.

11 COMMISSIONER CARTER: You took bids in an RFP

12 for what it would cost to build the plant, the type

13 of plant, et cetera, right?

14 THE WITNESS: Yes.

15 COMMISSIONER CARTER: You also -- you took

16 bids about what it would cost to take the fuel from

17 the source to the plant, right?

18 THE WITNESS: No, we did not take bids. We

19 did a --

20 COMMISSIONER CARTER: Just took whatever costs

21 they gave you.

22 THE WITNESS: -- a fuel forecast that Mack

23 Preston can testify to the components of the fuel

24 forecast which includes transportation cost.

25 COMMISSION CARTER: I hope that by the end of

440

1 the day that we can find the legitimate costs of

2 this process. I think it -- excuse me,

3 Madam Chairman, and I beg your indulgence. But I

4 can understand why the people are frustrated.

5 They're trying to get a straight answer. And it

6 seems like a moving target.

7 In a need determination, the cost -- there's

8 got to be a cost. I mean, I can buy gas in

9 Tallahassee or I can drive across the county -- the

10 state line and buy it in Thomasville. It's going

11 to be one price in Thomasville, one price in

12 Tallahassee.

13 But it just seems like this whole thing --

14 now, you're the guy that did the RFP to determine

15 what the cost of the plant would be. You said,

16 hey, you can pick whatever kind of plant you want,

17 IGCC, you can have a biomass plant, you can have a

18 little hamster running in the wheel plant, right,

19 whatever it is. But we put out the RFP based upon

20 specifications, right?

21 THE WITNESS: We put the RFP out asking for

22 megawatts. We didn't specify a route or rail

23 delivery or how they would get their fuel. We gave

24 them a fuel forecast.

25 COMMISSION CARTER: But would you not agree

441

1 that the cost of transporting the fuel to the plant

2 that will power the plant has a direct correlation

3 in how much it would cost to operate the plant?

4 THE WITNESS: Absolutely.

5 COMMISSION CARTER: So I'm back to my original

6 question. Did you factor what it would cost to get

7 the fuel from point A to point B?

8 THE WITNESS: Yes, we did.

9 COMMISSIONER CARTER: And in that

10 consideration, in factoring in that consideration,

11 did you just take whatever number the railroad gave

12 you or did you take -- did they say X number of

13 cars at X amount or did you just say it's a flat

14 fee? I'm trying to see what are the parameters or

15 what were the components of the pricing of the

16 transportation of the fuel to the plant.

17 THE WITNESS: It was based on the tariffs

18 charged by the railroad. And that's their --

19 that's what it costs for them to deliver fuel to

20 us. And in those costs, they're business. They

21 have all the other associated costs of going

22 through towns and rail maintenance and everything

23 it takes to get from point A to point B in those

24 tariffs. For us to add something else on top of

25 that would be accumulating extra cost that isn't

442

1 really there.

2 COMMISSION CARTER: Well, I don't want to

3 sound flippant, but maybe we should have added some

4 common sense to it. It just seems to me that in

5 most of the components -- most of the partners in

6 this project are governmental entities, and as

7 government it's our responsibility, whether state,

8 local or national government, to consider our

9 citizenry. And in the process of that, getting the

10 fuel from point A to point B, going across

11 geographical and different jurisdictional

12 boundaries and things of that nature, we would

13 think about that.

14 Are you trying to say that whatever the

15 railroad says is fine regardless? Regardless of

16 whatever activities that they engage in, whatever

17 they do between -- it's not your problem as long as

18 they get to the plant on time?

19 THE WITNESS: No, actually we have considered

20 our problem in Perry. We were proactive and came

21 forward and are working with them on a plan to

22 mitigate their impacts because they are, by far,

23 the most significantly impacted city.

24 The other cities, maybe the presumption that

25 we're the only business that's using that rail

443

1 line. That rail line that goes down by U.S. 90 and

2 actually through the City of Tallahassee is used by

3 many, many trains every day.

4 COMMISSION CARTER: I think that's verified by

5 what Commissioner Robinson said, is that it's used

6 by too many trains already and it seems that in his

7 opinion, it could exacerbate matters, particularly

8 tying up the opportunities for fire, rescue,

9 police, families and communities.

10 And then -- I know it may not be your problem,

11 but a lot of times -- excuse me for waxing

12 philosophically, Madam Chair -- but we on this

13 Commission take our citizenry serious, is that

14 sometimes a dose of common sense, or as they said

15 in the old days, an ounce of prevention is worth a

16 pound of cure; is that sometimes I remember the

17 Department of Transportation, particularly at the

18 turnpike when they were building the roadway going

19 through miles, they said, you know what? Between

20 here and there there's a cemetery or something like

21 that so we need to -- the engineers, you know, the

22 guys with the slide rules and the pocket protectors

23 say, just go straight. But the common sense says,

24 you know, it's just not good public policy to go

25 through a graveyard. Maybe we need to shift the

444

1 road over some. Yet it's going to cost us

2 another $100,000 but we need to put that in our

3 price estimate. Do you see where I'm going with

4 this?

5 THE WITNESS: I know exactly where you're

6 coming from.

7 COMMISSION CARTER: Help me out.

8 THE WITNESS: I agree with you. And that's

9 why looking at the other areas, the railroad tariff

10 should account -- should address those things. The

11 procedural issue with the siting, extending the

12 siting. If they have more rail traffic, they can

13 hopefully by adding another customer like us,

14 they'll have the revenues to extend that siting to

15 avoid the Sanderson problem.

16 We recognize the railroad was not going to

17 step up and do some things in Perry, so we're

18 stepping up to do that.

19 COMMISSION CARTER: I swear to you,

20 Madam Chairman, this is my last question on this.

21 But if you ask them to step up to the plate in

22 Perry, then our neighbors in Baker County, are they

23 not due the same level of, you know, respect or

24 consideration?

25 THE WITNESS: It's not a matter of respect,

445

1 it's a matter of impact and they're not impacted --

2 no, no.

3 COMMISSION CARTER: It's a financial impact,

4 is that what you're saying?

5 THE WITNESS: No, I'm talking about

6 inconvenience or whatever when you're talking about

7 a train, our train, coming through those areas and

8 tying up the crossing for less than ten minutes

9 compared with all the other trains that are already

10 going through there. You compare that to Perry

11 where the train now comes through at 10 miles an

12 hour to a curve, if one of our trains now went

13 through the town of Perry, it would tie up a

14 crossing for eight minutes. And that's a concern.

15 It would split the town.

16 So we're doing things to mitigate the speed of

17 the train. If the rail bypass happens, we'll help

18 the speed of the train to actually reduce the time

19 of the existing trains delivering goods to Buckeye

20 and receiving goods from Buckeye. Their existing

21 trains plus our trains going net out in a whole

22 week will go from 70 to 78 minutes of train track

23 crossing. We recognize that.

24 We recognize the possibility of emergency

25 response needs, we recognize the possibility of

446

1 additional signaling and safety. So we're trying

2 to do the right thing to where only the towns that

3 we feel -- only the town that is impacted. And I

4 agree there -- it's not an undetectable impact to

5 the other cities but it's very minimal. And quite

6 frankly, it's through the rail provider that should

7 address those issues.

8 Because it may not just be those cities. What

9 about all the cities between our site and Wyoming?

10 Some of our rail deliveries may be coming from

11 Wyoming. How can we possibly address every city

12 that has a concern between Perry, Florida and

13 Wyoming?

14 COMMISSION CARTER: I know I said it was the

15 last question but he goes back to -- he went right

16 back to point A and point B. So here we are again.

17 It's circular -- in consideration, did you consider

18 from point A to point B, point B being the plant,

19 whether you get it from the east coast or west

20 coast or whatever. You remember we went through

21 this?

22 THE WITNESS: Yes.

23 COMMISSION CARTER: I don't want to be

24 antagonistic, I'm just trying to ask a question.

25 And in the process maybe as a good corporate

447

1 citizen, you as -- I mean, it's not even within our

2 jurisdiction, but maybe as a good corporate citizen

3 maybe you and the partners in this process can send

4 letters to the congressional delegation and

5 Legislature, whoever, and say, look, this is going

6 to impact our citizenry in Florida, we need your

7 help on this.

8 I don't know the answer. That's why -- but I

9 do know this. I'm deeply concerned about the

10 people of Florida. I know a lot of people in the

11 United States are geographically challenged,

12 present company included. But I do know that

13 between Perry and Jacksonville, Baker County lies.

14 That I do know.

15 So again, not to be antagonistic but certainly

16 as we look at a major project like this impacting

17 multi-jurisdictional boundaries, certainly some

18 consideration should be given to the big picture,

19 if you will. And I know that when you see people

20 coming in here, citizens say this is not -- this is

21 not -- I'm still on the same point, Madam Chair.

22 CHAIRMAN EDGAR: I know that.

23 COMMISSION CARTER: That this is not a

24 relational issue but it really is. It does impact

25 on the cost of getting the fuel to the plant and

448

1 all of that is -- and points in between, is that

2 he's talking about Wyoming. Suppose in this post

3 911, suppose there's some kind of, God forbid,

4 terrorist act or something like that. I mean, all

5 of that stuff goes in there. I would surely hope

6 that in this post 911 generation or time that we

7 would put in parameters and we factor costs that we

8 didn't put in before because it's a different

9 world. Thank you, Madam Chair.

10 CHAIRMAN EDGAR: Commissioner Tew.

11 COMMISSIONER TEW: I have one along that same

12 line too. And I just want to make sure that I'm

13 clear. Are you saying that the rail roads in

14 providing you an estimate for transporting coal

15 have factored in or has possibly factored in

16 contingencies for those types of local rail issues

17 that may occur in Sanderson, for example? And I

18 guess I'll go a step further. That if they didn't,

19 it would be their responsibility to take care of?

20 THE WITNESS: That's correct.

21 COMMISSIONER TEW: That's an or question.

22 THE WITNESS: What they charge for rail

23 delivery per ton is the cost of their doing

24 business and things that they need to improve their

25 system, maintenance and additions and whatever. If

449

1 their rail traffic increases in certain areas, they

2 have to do certain things. They have to do safety

3 audits for crossings that may not have been

4 protected before and the rail traffic increases,

5 they have to possibly add those crossings, the

6 signaling devices for those crossings. That's part

7 of their business.

8 COMMISSIONER TEW: In follow-up to that, so if

9 they haven't adequately factored in those types of

10 costs for issues that might occur in Sanderson and

11 other communities, your belief is that it would be

12 their liability to deal with that local government

13 and that those --

14 THE WITNESS: That's correct. But early on I

15 offered that we would sit down and talk to them and

16 be a conduit between the local cities and the rail

17 road and facilitate and use what leverage we could

18 as a potential client to help them make some

19 improvements. We're very willing to do that.

20 COMMISSIONER TEW: If the Taylor Energy Center

21 is approved based on that understanding and then

22 later you sit down with local governments like

23 Sanderson, for instance, if the rail route chosen

24 ultimately does go through there and you think it

25 shows that there is some impact, where do those

450

1 costs show up, I suppose? How do we take that into

2 account?

3 THE WITNESS: The railroad would have to come

4 up with those costs.

5 CHAIRMAN EDGAR: Okay. Ms. Raepple?

6 FURTHER REDIRECT EXAMINATION

7 BY MS. RAEPPLE:

8 Q Just very briefly. Mr. Lawson, when you said

9 that the rail traffic is governed by tariff, the

10 railroad tariff, is that tariff set by a governmental

11 body?

12 A That's out of my expertise.

13 Q Okay. Is the tariff that is set by a railroad

14 similar to when you get on, say, the turnpike and you

15 pay a toll from A to B, it's a set amount and it's not

16 subject to negotiation?

17 A That would be correct.

18 MS. RAEPPLE: Thank you. I have nothing

19 further.

20 CHAIRMAN EDGAR: Commissioner Carter?

21 COMMISSION CARTER: The turnpike goes up on

22 its tolls from time to time as costs go up. For an

23 example, back in the day, they just used to have a

24 plaza where you get a pack of crackers and a soft

25 drink. But now they've got Mrs. Fields' chocolate

451

1 chip cookies, not that that's the only reason I

2 stop. But they also have Popeye's fried chicken

3 there and they have Burger King there. Not that

4 I'm giving them a plug, but they are there.

5 And as the cost goes up, then the price for

6 the toll goes -- the only thing that I'm asking,

7 Madam Chairman, and that's what we're trying to get

8 to in a need determination, what does it cost to

9 operate this plant? And if these costs are hidden

10 costs and later on we're going to have to jerk the

11 rug out from under the consumers and say, oh, yeah,

12 by the way, we had this little problem, and then

13 the railroad gets into a nun-kissing contest with

14 the providers and then they -- and some court who

15 for whatever purposes apportioned the damages to

16 both parties, then we're right back where we

17 started and it's a judicially-mandated price

18 increase, rate increase for our consumers.

19 So I'm saying if we know this going in, we

20 need to look at this. When making a need

21 determination, I asked about the cost of operating

22 the plants and I asked about the cost of

23 maintenance and all of that. And it just seems to

24 me that these may be some hidden costs.

25 I'm still not satisfied with the response that

452

1 I'm getting. And again I don't want to be

2 confrontational or anything like that. We just

3 want to arrive at the best solution and it just

4 seems to me that -- I don't know. It just -- thank

5 you, Madam Chairman.

6 MS. RAEPPLE: Madam Chairman, there will be

7 another witness, Mr. Jim Myers, who may be able to

8 answer in more detail these questions about fuel

9 cost.

10 CHAIRMAN EDGAR: Okay. And we will look

11 forward to the opportunity to ask those questions.

12 We have exhibits.

13 MS. RAEPPLE: Move exhibits -- we move

14 Exhibits 6, 7 and 8 into the record.

15 CHAIRMAN EDGAR: Exhibits 6, 7 and 8 will be

16 entered into the record.

17 (Exhibits No. 6, 7 and 8 admitted into the

18 record.)

19 CHAIRMAN EDGAR: The witness is excused.

20 Thank you.

21 THE WITNESS: Thank you.

22 CHAIRMAN EDGAR: I'm ready to go forward. Why

23 don't you call your next witness.

24 MS. RAEPPLE: We call William May.

25 CHAIRMAN EDGAR: Thank you.

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1 WILLIAM MAY

2 was called as a witness on behalf of the Applicant, and

3 having been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MS. RAEPPLE:

6 Q Please state your name and business address.

7 A My name is William May, and my address is

8 8553 Commodity Circle, Orlando, Florida.

9 Q Have you been sworn?

10 A Yes, I have.

11 Q Did you submit prefiled testimony on

12 September 9th, 2006 in this proceeding consisting of

13 12 pages?

14 A Yes.

15 Q Do you have any changes or additions to your

16 testimony?

17 A No.

18 Q If I were to ask you those same questions, set

19 forth in your testimony today, would your answers be the

20 same?

21 A Yes, they would.

22 Q Are you sponsoring any exhibits to your

23 testimony?

24 A Yes, I am.

25 Q Are those Exhibits 9, 10, 11 and 12?

454

1 A Yes, they are.

2 Q Do you have any changes to those exhibits?

3 A No, I do not.

4 Q Are you also sponsoring the sections of the

5 need for power application designated in Exhibit 13?

6 A Yes, I am.

7 Q Do you have any changes to those sections to

8 the need for power application?

9 A No, I do not.

10 MS. RAEPPLE: Madam Chairman, I request that

11 Mr. May's testimony be admitted into the record as

12 though read.

13 CHAIRMAN EDGAR: The prefiled testimony will

14 be entered into the record as though read.

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1 BY MS. RAEPPLE:

2 Q Have you prepared a summary of your testimony?

3 A Yes, I have.

4 Q Would you please present that testimony?

5 A The purpose of my testimony is to discuss

6 FMPA's expected need for capacity and discuss strategic

7 considerations that support our decision to participate

8 in the Taylor Energy Center.

9 FMPA is a wholesale power agency providing

10 economies of scale in power generation and related

11 services to support community owned electric utilities.

12 Fifteen members participate in the all requirements

13 project to secure an adequate, economical and reliable

14 supply of electric capacity and energy to meet their

15 needs.

16 FMPA has established an 18 percent summer

17 reserve margin criteria. Considering this criteria, and

18 our load forecast, we require 230 megawatts in the

19 summer of 2012 and 442 megawatts in the summer of 2014.

20 Our significant increase in need is the result of the

21 retirement of less efficient units and the expiration of

22 substantial purchase power contracts.

23 Member cities encourage energy conservation by

24 customers through energy audits, lighting conversions,

25 Energy Star and other programs. As a wholesale power

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1 supplier, we cannot directly implement demand side

2 management measures. But we support DSM efforts of

3 members by analyzing measures for opportunities to

4 reduce customers' costs and by providing assistance to

5 member cities that are implementing DSM programs.

6 Taylor Energy Center will fulfill our

7 projected capacity requirements, it will increase our

8 fuel diversity and supply reliability and stabilize

9 volatility in electric rates. It will satisfy the need

10 of member cities for low cost, base load energy better

11 than all other alternatives. Thank you.

12 MS. RAEPPLE: I tender the witness for

13 cross-examination.

14 CHAIRMAN EDGAR: Thank you.

15 Ms. Brownless?

16 Mr. Simms?

17 CROSS-EXAMINATION

18 BY MR. SIMMS:

19 Q Good afternoon, Mr. May. In your testimony,

20 you indicate that the demand side management planning is

21 among your responsibilities with FMPA; is that correct?

22 A I'm sorry, I did not understand the question.

23 Q Demand side management is -- with planning is

24 within the scope of your responsibilities at FMPA?

25 A To some degree, that's correct.

477

1 Q I believe that your testimony states that at

2 page 1, lines 17 through 21. And line 21, demand side

3 management is listed among the functions, the

4 responsibility for the functions you have responsibility

5 for; is that correct?

6 A Yes.

7 Q Okay.

8 A The word is "demand side planning."

9 Q Demand side planning, okay.

10 And you have sponsored some sections of the

11 application; is that right?

12 A Yes, I have.

13 Q And section B.7 is one of the sections that

14 you have sponsored, is that right, B.7 through -- well,

15 section B.7?

16 A Actually it's B.7.1.

17 Q B.7.1. Thank you.

18 The application at B.7.1 discusses FMPA

19 members existing demand side management measures; is

20 that right?

21 A Yes, it does.

22 Q Okay. And there's a list of measures there on

23 page B.7-1 to B.7-2; is that right?

24 A Yes, there are.

25 Q The application here indicates that these

478

1 measures are currently offered or being reviewed by FMPA

2 members, is that correct, and I believe that's --

3 A Yes.

4 Q And can you tell me what being reviewed means

5 in this context?

6 A Well, it means that our members are on an

7 ongoing basis looking at opportunities to reduce their

8 cost through demand side or conservation measures.

9 Q It appears to me that the phrase -- this is

10 the introduction to the list of demand side management

11 measures that runs from page B.7.1 to B.7.2. It

12 identifies them as measures that are either offered or

13 being reviewed. Does that mean that not all of these

14 measures are currently being offered?

15 A Well, some -- some of the measures are -- if

16 you're talking about at this instant in time, that may

17 be the case, that some of the members do not offer these

18 programs at this point in time. But -- but such

19 measures as energy audits are offered by quite a few of

20 the members. There are some members that do not offer

21 those right now because of their small size.

22 Q Okay. So -- so the list that we see here are

23 not necessarily measures that are all currently being

24 offered?

25 A The list of measures here are not necessarily

479

1 being offered by all of our cities. Our cities range

2 from less than 20 megawatts of capacity to just over

3 200 megawatts.

4 Q Okay. Is there anything in -- in the

5 application, or any of the other materials you've

6 prepared that indicates precisely what measures are

7 being offered by which -- by which members? I mean, I'm

8 just trying -- I'll let you answer that question.

9 A I -- I do not recall if we have provided a

10 specific table of the measures. I think that we have

11 provided some information that's more specific to the

12 member -- to which members are providing what programs.

13 Q Okay. Thank you.

14 FMPA does not have demand side -- demand side

15 management programs which it administers itself; is that

16 correct?

17 A That's correct. As a wholesale power of

18 energy, we are not in a position to actually implement

19 demand side management programs.

20 Q Okay. Let me ask you a couple of questions

21 about the programs that your members themselves manage.

22 With respect to those programs -- well, strike

23 that.

24 In general, is aggregate coincident peak

25 demand the basis for a dispatch of FMPA's system?

480

1 A I'm sorry, I don't quite understand the

2 question. Is aggregating peak demand?

3 Q Aggregated coincident peak?

4 A Is it what?

5 Q Is that the basis for dispatch of FMPA's

6 system?

7 A I wouldn't say it's the basis for the dispatch

8 of our system. We -- we aggregate the -- we look at the

9 aggregate load on a continuous basis of our cities and

10 dispatch to meet that aggregate load.

11 Q Does that aggregate load or the aggregate -- I

12 mean, are you -- are you drawing a distinction between

13 your aggregate load and aggregate coincident peak?

14 A Our aggregate coincident peak is a single

15 point in time as opposed to the dispatch of generating

16 units which is continuous.

17 Q Does the aggregated coincident peak demand

18 determine the amount of capacity needed?

19 A Yes, it does.

20 Q Does it ultimately also affect the cost to

21 provide services as well?

22 A Well, since -- since the aggregate peak, I --

23 the coincident peak is what we determine our capacity

24 requirements on, it -- in that sense, it does affect our

25 cost.

481

1 Q It does drive the cost of --

2 A Excuse me?

3 Q It does drive the cost of providing services

4 in that context?

5 A Yes, it does.

6 Q Yeah. Does FMPA have any coordinated program

7 that it is intended to help lower the aggregated

8 coincident peak program coordinated among the members?

9 A Well, we -- we have a member services

10 department that works with the cities to coordinate the

11 city's efforts at conservation programs or demand side

12 management programs. But FMPA cannot implement those

13 programs.

14 Q I understand you cannot implement your own

15 demand side management programs. I guess what I'm

16 asking is whether FMPA, whether that -- whether that

17 member services function, if part of that includes a

18 specific plan for helping members to coordinate their

19 DSM programs in a way that is intended to lower the

20 aggregated coincident peak?

21 A Well, to the extent that we can disseminate

22 information between the cities, if one city might happen

23 to see a program that works for that city, that we can

24 share with the other cities, we do that.

25 To the extent that we could provide

482

1 information about our aggregate load or the individual

2 city's loads back to the cities, and the cities see that

3 as beneficial, we can do that also in order for them to

4 coordinate the implementation of demand side management

5 programs.

6 Q I understand that you -- sorry, I don't want

7 to -- I'm not trying to push this point too far. I

8 understand you can do that. My question is whether you

9 have a plan that's specifically designed to do that.

10 A No, we do not.

11 Q Generally would you say that the greatest

12 effectiveness of the DSM programs of your membership

13 would occur if they are -- if those DSM programs are

14 instituted and implemented by all members or as many

15 members as possible simultaneously?

16 A Not necessarily. Because a DSM program that

17 results in load control devices, the load control

18 devices once again would have to be installed at the

19 cities for the cities' customers. And if the city were

20 to operate those load control devices to reduce their

21 peak, their peak is not necessarily at the coincident

22 peak of FMPA.

23 Q I see. So would you say, then, in general the

24 greatest effectiveness of the collective DSM programs

25 would occur if they are -- if they are coordinated so as

483

1 to lower the aggregated coincident peak?

2 A Well, to the extent that -- yes, we -- we

3 lower the coincident peak of FMPA. We could do that.

4 We would have to be -- it's not a simple program

5 since -- since the peaks of the individual cities are

6 not necessarily the same time during the day as the peak

7 for FMPA. We can end up shifting the coincident peak to

8 a different hour in the day.

9 Q But in general, the objective of lowering

10 aggregate coincident peak is the most effective way

11 to --

12 A That is the objective.

13 Q Right. You indicated at the beginning of

14 page -- at the beginning at page 8 of your direct that

15 FMPA considered DSM in connection with this application.

16 And let me find the line reference for that.

17 So at the beginning of page 8, you reference

18 the DSM programs that are implemented by your --

19 implemented by the individual members. Did FMPA conduct

20 a coordinated and comprehensive assessment of all of the

21 DSM measures currently being employed by its members in

22 connection with this application?

23 A We did question each of our members on what

24 their existing conservation and demand side management

25 programs are.

484

1 Q And did you gather from the members the -- the

2 specific details of all of those programs in connection

3 with this application?

4 A We gathered the details that were provided to

5 us by the cities.

6 Q So you asked the cities for the deals; is that

7 right? Is that what you're saying?

8 A We asked the cities for what programs they are

9 currently implementing.

10 Q Right. And did you ask them for the details

11 of the program, their effectiveness?

12 A No, we did not ask them for their

13 effectiveness.

14 Q Do you know if there's a uniform criteria that

15 all members use to assess the DSM -- their DSM measures?

16 A That all -- all --

17 Q That all of your members use -- do all of your

18 members use a uniform criteria for assessing the

19 effectiveness of their DSM measures?

20 A Not to my knowledge, they do not.

21 Q Okay. And FMPA's analysis found that -- in

22 connection with this application, found that no program

23 evaluated was cost effective for any member; is that

24 correct?

25 A The evaluation of DSM was done for FMPA, not

485

1 the individual members.

2 Q Not the individual members. And that found

3 that there was no cost effective measure?

4 A That none were cost effective in replacing our

5 base load requirement.

6 Q And -- and -- so are you saying that there was

7 no assessment of whether there may be cost effective

8 measures for individual members?

9 A No, we did not do any assessment for

10 individual members. Had we done an assessment for

11 individual members, it would likely have shown that it

12 was even more costly for the individual member than it

13 would be for FMPA.

14 Q But we don't -- we don't have that analysis,

15 right?

16 A No.

17 Q Okay. But there are members who currently

18 do -- do have and are implementing DSM measures, is

19 that --

20 A Based on the survey that we did, there are

21 customers out there that implement the Energy Star

22 program, that encourage energy conservation, that

23 provide information to their consumers to reduce their

24 energy consumption.

25 Q And those are the measures that were listed

486

1 in -- in the application in the section that you

2 sponsored that were the measures that were either

3 currently existing or being considered?

4 A I -- I wouldn't say that all of the measures

5 that were listed in the need for application are

6 specifically offered to the members. Those were the

7 measures that were evaluated for cost effectiveness.

8 Q So I just want to make sure that I understand

9 this. I'm sorry I'm taking a little while. So the

10 measures that were discussed in the application are

11 measures that were evaluated for FMPA itself?

12 MS. RAEPPLE: Excuse me, Madam Chairman.

13 Could you please ask Mr. Simms to point the witness

14 specifically to the measures that he's referencing

15 because I think there's some confusion.

16 CHAIRMAN EDGAR: I think that's a reasonable

17 request.

18 Mr. Simms, if you'll help us.

19 MR. SIMMS: Yes, I apologize.

20 BY MR. SIMMS:

21 Q I'm going back to page 8 -- well, okay.

22 Page 8 of the -- of the direct testimony for Mr. May.

23 Here there are several measures that have been

24 specifically identified. Those measures are the

25 measures that were evaluated, and this is from lines 11

487

1 to line 17 on page 8. Those are the measures that were

2 specifically evaluated for FMPA; is that right?

3 A No, those are the measures that -- those are

4 the programs that at some point in time by some of our

5 cities are offered to their members.

6 Q Okay. At some point in time for some of your

7 cities, these are -- these measures are offered, but

8 they are not necessarily all being offered currently?

9 A Correct.

10 Q Is that correct?

11 A Correct.

12 Q And do these particular DSM measures

13 necessarily relate to the cost effectiveness study that

14 was done for FMPA's participation in the TEC process?

15 A Not necessarily.

16 Q And again I just want to clarify. FMPA did

17 not do an evaluation of cost effectiveness of DSM

18 program for its members just for FMPA itself, is that

19 right, in connection with this application?

20 A You said members and for FMPA. Which

21 document?

22 Q I'm sorry, I will clarify that question.

23 FMPA did not evaluate the availability or cost

24 effectiveness of DSM measures for its members in

25 connection with this application?

488

1 A Well, because we serve the members and the

2 evaluation was done for this need filing of DSM measures

3 for FMPA, the measures were evaluated for the benefit of

4 the members.

5 Q But not members that they would implement,

6 that FMPA would implement?

7 A If we had found measures that proved to be

8 cost effective for us to implement, I would have

9 personally taken those to the members and said, this is

10 something that we need to look at in more detail. But

11 we found no measures that were cost effective.

12 Q Okay. How many individual measures did FMPA

13 consider in the DSM analysis for this?

14 A The -- I believe there were 180 different

15 measures that were evaluated and that analysis was done

16 by Brad Kushner.

17 Q Right. Do you know with respect to the

18 measures that are currently being implemented by any of

19 your members, whether they would pass the rate impact

20 measure -- rate impact test as determined by the FIRE

21 model?

22 A I believe that was the question you asked me

23 earlier, that whether any of these measures were

24 evaluated.

25 Q No, I'm asking -- I'm asking if you know

489

1 whether any of the members -- any of the measures that

2 your members currently implement, whether they would

3 pass the rate impact -- rate impact test?

4 A That analysis would have to be done by our

5 members. And because of their size, their small size,

6 it's likely they did not do that extensive amount of

7 analysis.

8 Q So that, we do not know. Okay. Thank you.

9 Do you know, did your analysis of measures for

10 FM -- DSM measures for FMPA compare the levelized cost

11 of each measure to the levelized cost of the power

12 from -- producing power from TEC?

13 A Are you referring to the DSM measures?

14 Q The DSM measures.

15 A I did not do the analysis.

16 Q Okay. So you don't know?

17 A Brad Kushner did the analysis.

18 Q So you don't know the answer to that question,

19 is that --

20 A I'll defer the answer to that question to

21 Brad Kushner.

22 Q Do you know if any of your members serve any

23 industrial or manufacturing electric customers?

24 A Yes, we do.

25 Q Just a couple more questions. In your

490

1 testimony beginning at page 6, you talking specifically

2 about the need for additional capacity. I believe that

3 begins with the question at line 19. Is that right? Is

4 that an accurate description of what's being discussed

5 here?

6 A What was the question again?

7 Q Page 6, beginning at line 19, there's a

8 discussion of the need for additional capacity, FMPA's

9 need for additional capacity. Page 6, line 19 of your

10 testimony.

11 A That's where the discussion begins, yes.

12 Q Okay. Thanks.

13 Is it your view that there's little or no base

14 load capacity available in Florida?

15 A Well, as -- as I testified here, the cases

16 from the request for proposals that we have sent out

17 over the last four years have indicated to us that there

18 is no base load capacity.

19 Q Okay. Do you believe that there would be a

20 ready market for base load capacity produced at TEC

21 should any of FMPA's power not ultimately be needed by

22 FMPA or the power wasn't needed until a later time after

23 2012?

24 A Our analysis shows that on an economic basis

25 that we can use even more capacity, base load capacity,

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1 than our share of the Taylor Energy Center. So to the

2 extent that we could use even more economically than we

3 have evaluated, I would say that -- that may not be the

4 case. That another member not participating would not

5 necessarily make more base load capacity available in

6 the market.

7 Q I'm sorry, there may have been some confusion

8 about my question. What I was asking was whether there

9 would be a market for TEC's power should FMPA or one of

10 the other participants wish to sell it.

11 A Okay. If one of the other participants wished

12 to sell their base load capacity, I would say yes, there

13 would be a market.

14 Q And would that be true of FMPA as well if FMPA

15 had excess?

16 A FMPA will not have excess.

17 Q That's the point you're trying to make. I

18 understand.

19 Okay. Did you prepare late-filed Exhibit

20 No. 1? I believe it's entitled -- the first page is

21 "Initial Study Case Rate Results."

22 A Yes, I did.

23 Q Do you have that document in front of you?

24 A Yes, I do. It's not a color copy, so --

25 Q Okay. Mine's not a color copy either. So we

492

1 can talk about shades of gray. I'm not going to go into

2 great detail on this. Don't worry. I want to ask one

3 question about this. And that is: Is it true that this

4 analysis, this -- that this base case assumptions used

5 for this analysis do not incorporate the new capital

6 costs?

7 A No, it's not true.

8 Q It's not true?

9 The assumptions -- the base case assumptions

10 for TEC for this -- this late-filed exhibit do include

11 the new capital costs for the TEC?

12 A You said new capital costs. No, this includes

13 capital costs.

14 Q I'm talking about the revised capital costs.

15 A This analysis was done in 2004 and earlier.

16 It includes the capital cost from them.

17 Q Okay. And not the revised capital cost that

18 we had recently?

19 A It doesn't include the revised capital cost

20 for Taylor Energy Center or any other technology that's

21 here.

22 Q Okay. Thank you.

23 And is this the only rate impact study you've

24 done of the Taylor Energy Center?

25 A This is -- this is from 2004.

493

1 Q But this is the only one that currently

2 exist?

3 A No, it's not.

4 Q The only study of --

5 A No, it's not.

6 Q There is another rate impact study of the

7 TEC?

8 A We did a -- as part of our integrated resource

9 plan, we look at rates as well as net present value and

10 we look at the impact on rates. So in 2006 as Mr. Fonts

11 indicated, we completed a 2006 integrated resource plan.

12 So the analysis was done at that time also.

13 Q My recollection is that at your deposition you

14 testified that there was only one rate impact study for

15 the -- for the TEC. Is that an incorrect recollection

16 on my part?

17 A Would you just show me where that is in my

18 deposition?

19 Q Just a second, please. I believe that's on

20 page 25, lines 14 through -- 14 through the end of the

21 page.

22 A I see a reference there to doing rates, rate

23 comparisons.

24 Q I'll ask one last question and then I'll pass

25 it along. This is a very specific rate impact study,

494

1 and I'm wondering if there was another specific rate

2 impact study case rate results of this nature done in

3 connection with TEC.

4 A (No audible response.)

5 Q I'm sorry. Was there -- was there another

6 specific rate case rate impact study aside from this

7 that was -- that did this very same analysis in

8 connection with the TEC application?

9 A As I mentioned earlier, as part of our

10 integrated resource planning process, we analyzed net

11 present value and rates. In my deposition, the question

12 focused on the 2004 integrated resource plan and the

13 rate analysis that was done there. That was the

14 exhibits that we concluded mutually that you wanted to

15 see. We did a 2006 integrated resource plan and we

16 analyzed rates there also.

17 Q Okay. And I will just point you to one other

18 place in your -- in your deposition. And that's page 41

19 starting on line 1. There's another reference to a rate

20 impact analysis. Do you see that reference?

21 A Yes, I do.

22 Q I want to clarify that this is the analysis,

23 this late-filed deposition -- late-filed exhibit,

24 Exhibit 1, is what you're referencing between lines --

25 in this discourse between lines 1 and 18?

495

1 A I -- well, later on in the deposition, we

2 clarified what rate impact analysis it was that you

3 wanted. For instance, on page 43, line 1, we referred

4 to 2004. On line 14, the question was, "And yet so we

5 would get the 2004 base case?" And that's what we

6 provided.

7 Q Okay. So now your testimony today is that

8 there is no -- aside from what was referenced here in

9 2004, there is no rate impact study that's specifically

10 similar to this study?

11 A Yes.

12 Q Okay. Thank you. And I'm sorry, one last

13 thing.

14 This is the copy that you have is -- this is a

15 true copy of your rate impact analysis that was filed as

16 late-filed Exhibit No. 1?

17 A What do you mean by "true copy"?

18 Q It's a correct representation of the original?

19 A With respect to the trend -- I mean, the

20 original is a color copy.

21 MS. BROWNLESS: We understand that.

22 THE WITNESS: Yes, it is.

23 MS. BROWNLESS: Thank you.

24 THE WITNESS: This one, I haven't looked

25 through all of these, but this one on top is.

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1 MS. BROWNLESS: We're just trying to make

2 sure. But for the color, is this an accurate copy

3 of late-filed deposition Exhibit No. 1?

4 CHAIRMAN EDGAR: Yes, it is. I appreciate you

5 helping with the documents and everybody else,

6 helping each other with the copies as well.

7 MR. SIMMS: We'll wrap up.

8 CHAIRMAN EDGAR: You do need to speak into the

9 microphones for the record and for the court

10 reporter. And I think we've gotten what I think

11 you were trying to do.

12 MR. SIMMS: I did. Thank you.

13 CHAIRMAN EDGAR: Okay. Are there further

14 questions or cross? Mr. Jacobs?

15 MR. JACOBS: Thank you, Madam Chairman.

16 CHAIRMAN EDGAR: Excuse me. I'm sorry.

17 Commissioner Arriaga.

18 COMMISSIONER ARRIAGA: Thank you,

19 Madam Chairman. Our staff was just reminding me

20 that we have no jurisdiction or authority to set

21 goals, DSM goals to FMPA. Do you agree with that?

22 THE WITNESS: Yes.

23 COMMISSIONER ARRIAGA: And I also heard that

24 because you're a wholesale provider, you don't set

25 or you don't implement DSM goals. Is that also

497

1 correct?

2 THE WITNESS: That's correct.

3 COMMISSIONER ARRIAGA: And I think I heard

4 that 180 programs are evaluated and not found cost

5 efficient?

6 THE WITNESS: Correct.

7 COMMISSIONER ARRIAGA: Is it possible that any

8 one of your members participating in this program

9 could benefit if we approved a need determination

10 for additional capacity without making a

11 real serious effort to increase their DSM

12 programs?

13 THE WITNESS: Our need is so significant in

14 2012 and 2014 that the feasible DSM programs that

15 could be implemented, cost aside, doesn't appear

16 that it would achieve in the time frame that we're

17 talking about our need, sufficient reductions in

18 load even if it were done at the individual city

19 level.

20 From a cost perspective, since we evaluated or

21 it was evaluated at the FMPA level to reduce our

22 coincident peak and was not cost effective, if the

23 individual city evaluated implementing those

24 programs, it could -- we did it on an optimal

25 basis. If the individual city did it, it can only

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1 be a higher cost for them than it would be at the

2 FMPA level.

3 COMMISSIONER ARRIAGA: See what I'm trying to

4 get at is the investor owned utilities that we do

5 regulate and that we do set goals have more or less

6 the same needs that you have for additional

7 capacity because the state is growing all over for

8 everybody. But those are your views, have to show

9 us an honest effort to implement DSM programs.

10 How can I get the same answer, that the same

11 efforts have been made at all levels of all cities?

12 Understanding that you have the same needs for

13 growth, how can I be assured if I make this need

14 determination instead of 900 megawatts you could do

15 with 800 if you implemented honest and -- efforts

16 in DSM programs?

17 THE WITNESS: I understand. And we used for

18 that analysis the FIRE model, the model that is the

19 approved model by the PSC, to do that analysis for

20 FMPA. And had any of those programs been

21 beneficial to FMPA from a -- on the basis of that

22 model, we would have taken them to the cities to

23 determine how we would implement them at the city

24 level such that it would be a benefit to FMPA.

25 If we took those same measures and evaluated

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1 it, for instance, a direct load control, we talked

2 about the coincident peak for FMPA is what we

3 calculate our capacity, our coincident factor which

4 is the percent of the customer's load, peak load,

5 noncoincident peak that occurs at our on peak hour

6 is somewhere in the neighborhood of 95 to

7 100 percent of their peak. So if a customer were

8 to reduce their peak or shift their peak to a

9 subsequent hour, they could actually shift load on

10 to FMPA's coincident peak and increase our capacity

11 requirements.

12 So even though it could appear to be cost

13 effective at the city level, because we have this

14 great benefit of aggregating the cities and taking

15 an advantage, advantage of the coincidence factor

16 among all of those cities spread from Key West to

17 Jacksonville Beach to Havana, we in effect are

18 reducing our capacity requirements with that one

19 action.

20 Since we -- our evaluation did not show that

21 for FMPA, there were cost effective measures. That

22 means that it's even less likely that there are

23 cost effective measures at the individual cities.

24 COMMISSIONER ARRIAGA: I think you were

25 talking about load shifting and I was talking about

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1 DSM. But in any case, does FMPA have any authority

2 to set goals to your individual members in the DSM

3 programs?

4 THE WITNESS: We don't have any authority to

5 enforce goals. We can set goals.

6 COMMISSIONER ARRIAGA: We so. We have

7 authority to enforce the IOUs but you don't have

8 any authority to do it to your individual members?

9 THE WITNESS: No.

10 COMMISSIONER ARRIAGA: Okay. So it is

11 possible -- it is a possibility that one of your

12 members could not be doing all of the necessary

13 efforts to go to the extremes necessary to have

14 reliable DSM programs, cost effective, reliable DSM

15 programs?

16 THE WITNESS: Sure, it's possible. But also

17 keep in mind that in contrast to the IOUs, we are a

18 nonprofit organization. We are trying to minimize

19 the cost to our customers whereas investor owned

20 utility is trying to maximize the profit to their

21 shareholder.

22 COMMISSIONER ARRIAGA: But I'm talking about

23 DSM, not about rate regulation.

24 THE WITNESS: But for us, the rate regulation

25 and the implementation of DSM are hand-in-hand.

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1 COMMISSIONER ARRIAGA: Okay. Thank you so

2 much.

3 CHAIRMAN EDGAR: Mr. Jacobs?

4 MR. JACOBS: I believe Mrs. Brownless had a

5 prompt for an exhibit.

6 MS. BROWNLESS: A matter, Your Honor, which is

7 to identify Late-filed Deposition Exhibit No. 1 as

8 the next exhibit and to ask that it be moved into

9 the record.

10 CHAIRMAN EDGAR: Ms. Helton?

11 MS. HELTON: Is this the exhibit that

12 Mr. Simms asked the witness about, I guess, at the

13 end of his cross-examination? I'm a little bit

14 confused about which exhibit you mean.

15 MS. BROWNLESS: This is Late-filed Deposition

16 Exhibit No. 1 that we asked -- we provided to

17 Mr. May and asked if this was a black-and-white

18 copy of his color exhibit.

19 MS. HELTON: I guess do the applicants have

20 any objections to the identification of the

21 exhibit? I'm assuming -- I mean, I think it's

22 appropriate to mark the exhibit since I think it

23 will make the record clear what the witness was

24 asked about. I guess at the appropriate time at

25 the conclusion of the witness's testimony, we can

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1 address whether it should be entered into the

2 record.

3 MS. BROWNLESS: And if it's appropriate simply

4 to mark it now, that's what we'll do.

5 MS. PERKINS: No objection.

6 CHAIRMAN EDGAR: Just a moment. I need to get

7 the right papers in front of me. Okay. We will

8 mark it as Exhibit 103.

9 And, Ms. Brownless, will you give me a title?

10 MS. BROWNLESS: It says "Initial Study Case

11 Rates Results."

12 (Exhibit No. 103 identified.)

13 CHAIRMAN EDGAR: Mr. Jacobs?

14 MR. JACOBS: Thank you, Madam Chairman.

15 CROSS-EXAMINATION

16 BY MR. JACOBS:

17 Q Good afternoon, Mr. May.

18 A Hi.

19 Q Without belaboring the point of DSM too much,

20 I'd like to follow-up briefly on Commissioner Arriaga's

21 discussion with you.

22 As I understand it, your role in the process

23 of DSM with regard to FMPA is essentially a coordinating

24 role. There is really little administration or

25 oversight that FMPA does anyway and certainly is not

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1 within the scope of your duties; is that a correct

2 statement?

3 A Well, I wouldn't say little administration.

4 We -- to the extent that we can help the cities

5 coordinate efforts among themselves, and keep in mind

6 that they are spread out all across the state, from an

7 administrative perspective, we would assist them with

8 that. To the extent that we can provide information on

9 load patterns or load use for the city in total, then we

10 could provide that back to them and administer that

11 effort.

12 Q Is there any reciprocal process? Do they then

13 come back to you and provide to you what they did with

14 that information?

15 A It's -- what they did with the information?

16 Q Yes. If I understand, you just said you --

17 you can track their load patterns, their use patterns,

18 and you can provide that information to them as -- as a

19 matter of -- just as a matter of information and they

20 can take that and do the analysis and determine whether

21 and how they want to implement DSM as a result. Is

22 that --

23 A Not just the load pattern but the realtime

24 use, the use at every instant in time of what their load

25 is doing. So if they wanted to use load control

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1 measures, they have the information to do that.

2 Q And then my follow-up question was then, do

3 you receive any feedback from your members as to what

4 they actually implemented as a result of the information

5 you gave them?

6 A Well, the feedback could come -- come in two

7 ways. One is that if they are implementing load control

8 devices, then -- then they would provide us feedback on

9 the coordination of the operation of those load control

10 devices. If they're conservation measures, then the

11 information comes back to us in the form of changes in

12 their load patterns. We forecast on an annual basis the

13 load usage by each of the 15 cities taking into account

14 what their actual hourly energy consumption is, anywhere

15 from a few years to ten years historically.

16 Q Okay. And so you could -- you could -- by

17 those -- by those historical reports, you could see that

18 some impact -- have you seen in the reports -- are you

19 aware of it in the reports that you've observed in the

20 last two years -- last five years, have you observed the

21 kind of -- the kind of differentiation in patterns that

22 would demonstrate an active use of DSM on your members?

23 A That would be very difficult to ascertain

24 because our cities have grown -- have been growing at a

25 rate at less than 1 percent to over 10 percent in some

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1 years. So try -- trying to pick out a particular city

2 and look at their load usage from a historical

3 perspective would most likely be masked by the growth in

4 demand.

5 Q Now, is it also -- would it be the case that

6 you could look at a particular member's load use -- load

7 and use patterns and identify whether or not they have

8 an industrial -- there's an industrial component that

9 have load, if they are commercial or residential, can

10 you -- you can differentiate that out?

11 A The cities provide to us their actual usage

12 split separately on an energy basis, a monthly energy

13 consumption basis in those different demand categories.

14 On an hourly basis, we do not track that information.

15 Q So at least at some level, you -- am I

16 understanding you to say that you would be able to track

17 patterns of usage across classes? In other words, could

18 you track patterns of uses in residential, commercial

19 and industrial?

20 A On a monthly basis would be the greatest

21 amount of detail, that we could track that.

22 Q And at that level, you would be able to

23 determine if some -- some measure had been implemented

24 by the city because you would see some -- some pattern

25 of usage change by -- in that class -- in that class of

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1 use by that particular member?

2 A Possibly. But as I stated earlier, it's --

3 with the growth in load that we've experienced in these

4 cities and the variability of that growth and load from

5 very small cities, potentially not growing much at all,

6 to larger cities growing substantially, it's -- it would

7 be very difficult to isolate whether -- not whether, but

8 the amount of conservation or load control that's

9 actually effected.

10 Q Now, let's -- let's talk a little bit more

11 specifically about this application. In most of your

12 other projections and planning, FMPA's projections and

13 planning for the petition of need in here, it's

14 organized around the all requirements project; is that

15 correct?

16 A Yes, it is.

17 Q And so the real issue would be then to look at

18 your requirements underneath the all requirements

19 project and determine what the use -- the use patterns

20 are in that context. Would that be a fair statement?

21 A That's what we do.

22 Q Okay. Now, the -- the -- it does not appear

23 from what I've understood thus far then, that it would

24 be FMPA's statute to look at this information, these

25 load patterns on a monthly basis and say, wow,

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1 industrial usage by this member is as of such a category

2 that there might be some -- some way that they can

3 effect that usage by implementing DSM especially if

4 they're experiencing growth -- growth at a significant

5 level. You wouldn't do that sort of an analysis?

6 A Actually indirectly we do that because we've

7 contracted with an energy services company that provides

8 the services to the members to go into individual

9 specific industrial customers and contract with those

10 customers to do an energy audit of that customer.

11 Now, that's something that's paid for either

12 by the customer or by the city to perform that audit and

13 would result in recommendations on what that specific

14 industrial customer could do to improve their energy

15 usage.

16 Q And so it very well might be then that the

17 energy services company might provide a recommendation

18 to your member that a way they may want to address this

19 growth is to look at some -- some -- some DSM or other

20 measures?

21 A Actually it's to the specific customer that

22 they would provide that recommendation. And if it were

23 cost-effective to that specific customer to implement

24 those changes, whether it's swapping out motors or

25 swapping out florescent lightbulbs, for energy efficient

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1 lightbulbs or anything of that nature, insulation, then

2 that customer would be responsible for implementing it.

3 Q So it sounds like for this application, it

4 would have been really an interesting piece of

5 information to see a catalog of those -- of those energy

6 services reports to the customers of your members

7 because that would be a very good indicator of the

8 extent to which there might be some demand side

9 management issues that could -- that would deter or

10 mitigate the need for the all requirements project in

11 this case; is that a fair statement? A long statement,

12 but is it fair?

13 A I agree it would be interesting information.

14 But the bottom line is for those programs that are

15 implemented, they result in a change in the load pattern

16 for the cities. We collect that information and it's

17 incorporated into that load forecast, whether we know

18 explicitly what the information is or not.

19 Q Right. And I accept that. But one of the

20 conclusions that was reached in the application here is

21 that for each applicant, there were no demand side

22 management or conservation measures that would mitigate

23 their need for the capacity from TEC. And my question

24 is: From what I'm hearing, the only way FMPA could have

25 known that is if it were to be privy to the reports that

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1 these energy services companies gave to the customers or

2 of your members? Because therein is the only place

3 where somebody went to your members and said, here are

4 potential measures that could be implemented.

5 CHAIRMAN EDGAR: Mr. Jacobs, I'm sorry, it --

6 it's been a long day. Shorter questions.

7 MR. JACOBS: I'd be happy to.

8 BY MR. JACOBS:

9 Q Energy services companies are -- is the place

10 where feedback is given to customers in FMPA's territory

11 about potential conservation DSM requirements, is

12 that --

13 A And that is on an ongoing basis. It's not a

14 program that we would initiate just for the Taylor

15 Energy Center.

16 Q And FMPA --

17 A It's happening now. So it was happening

18 yesterday, last year. So those programs are taking

19 place. And they're inherent in the load, the actual

20 load, that's being consumed by the cities.

21 Q FMPA really doesn't organize and coordinate

22 that piece of information?

23 A The information, no.

24 Q Okay.

25 A The service, yes.

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1 Q I understand. And so the idea that FMPA,

2 whether or not its all requirements project needs can be

3 mitigated by DSM sounds like it comes from the

4 information that comes from the energy services

5 companies?

6 A I wouldn't necessarily agree with that.

7 Q Fair enough. Let me move on. Isn't it true

8 that one of the key issues for FMPA to participate in

9 TEC is interconnection costs?

10 A That's part of the cost of building the power

11 plant.

12 Q I'd like to point you to your response to

13 Interrogatory 30. I'm sorry, I meant to look and make

14 sure this is one that you -- that you responded to and I

15 may be wrong. But I would like to point to the

16 applicant's response to Interrogatory No. 30 from

17 staff -- I'm sorry, staff's second set of

18 interrogatories.

19 A Yes.

20 Q And here it speaks to the interconnection of

21 charges that will apply for TEC for the applicants. And

22 here it indicates, "FMPA will incur approximately

23 $39 million charge for transmission."

24 A That would be our share of transmission

25 improvements if the total cost is $100.3 million.

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1 Q Is it a correct statement that's substantially

2 above what your -- what your present transmission costs

3 are per -- permitted are?

4 A I'm sorry, I didn't understand the question.

5 Q Is it -- is it a fair statement to say that

6 the allocation of cost that you'll receive from TEC

7 represent a fairly significant increase above your

8 relative present cost for transmission?

9 A I think that's mixing apples and oranges here.

10 Our transmission costs are tied to the rate that we pay

11 Progress Energy for transmission services because we

12 have network services. This $39 million, even though we

13 may end up paying it up-front for the services, will be

14 refunded through credits on our transmission services on

15 an annual basis. So our net would be no increase in the

16 rate that we would pay for transmission services.

17 Q I understand. Thank you for that

18 clarification. Let me move on to the point I'd like to

19 really get to. And --

20 CHAIRMAN EDGAR: Mr. Jacobs, I need a stretch.

21 I think it's just about that time, and I apologize

22 for -- it sounded like a good transition point.

23 MR. JACOBS: No problem.

24 CHAIRMAN EDGAR: Okay. So let's -- and while

25 we are taking a brief break, I would ask that the

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1 parties get together and talk schedules as well.

2 My understanding from where I sit and what I know

3 about the calendar right now from the Commission's

4 perspective is that we have some time tomorrow if

5 we needed it, we have some time Thursday, I know I

6 mentioned earlier Tuesday, but I have since then

7 been made aware of a conflict on that day.

8 So until I am told something different than

9 that, I'm looking at tomorrow and then Thursday if

10 we needed it. If you-all can get with our staff

11 and talk. Let's take about 20 minutes. And when

12 we come back, we'll talk schedule.

13 And then, Mr. Jacobs, we'll take back up with

14 your questioning. Thank you.

15 (Break taken.)

16 (Please go to Volume 6.)

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1 CERTIFICATE OF REPORTER

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5 STATE OF FLORIDA )

6 COUNTY OF LEON )

7

8 I, LORI DEZELL, RPR, CCR, certify that I was

9 authorized to and did stenographically report the

10 proceedings herein, and that the transcript is a true

11 and complete record of my stenographic notes.

12 I further certify that I am not a relative,

13 employee, attorney or counsel of any of the parties, nor

14 am I a relative or employee of any of the parties'

15 attorney or counsel connected with the action, nor am I

16 financially interested in the action.

17 WITNESS my hand and official seal this 12th

18 day of January, 2007.

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21 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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