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.

 19

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 22

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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,

 412

 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

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 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

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 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?

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 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.

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 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?

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 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.

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 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

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 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

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 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.

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 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

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 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?

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 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

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 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.

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 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,

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 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?

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 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

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 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

 499

 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

 503

 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

 2

 3

 4

 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.

 19

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

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