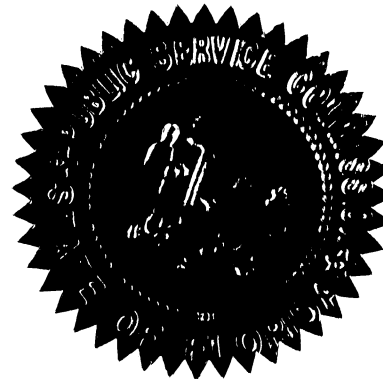


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

In the Matter of

FUEL AND PURCHASED POWER  
COST RECOVERY CLAUSE WITH  
GENERATING PERFORMANCE INCENTIVE  
FACTOR.



VOLUME 6

Pages 700 through 768

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, November 5, 2008

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

APPEARANCES: (As heretofore noted.)

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I N D E X

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NAME:

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(Transcript continues in sequence from  
Volume 5.)

**CHAIRMAN CARTER:** Thank you all so kindly. We appreciate you allowing us to trade out with our court reporters. And, Ms. Bradley, you're recognized.

**MS. BRADLEY:** Thank you, sir.

T.O. JONES

continues his testimony under oath from Volume 5:

## CONTINUED CROSS EXAMINATION

BY MS. BRADLEY:

**Q** Mr. Jones, let's try this one more time. I'll try to clarify it a little bit further.

You have indicated that this individual had a reported use of marijuana in his teens, and continuing into his early 30s he had at least two incidents of driving under the influence and public intoxication, two alcohol issues. If you had used this information to deny him access, unrestricted access to your facility, then this incident is unlikely to have occurred, would it not?

**A** Yes, Commissioner. If we had changed our screening process to use any one of those factors as a disqualifying event, then he would have been denied unescorted access and the incident would not have occurred.

**Q** Thank you.

1           And if you had used the fact that he failed the  
2 written report of the psychological test, rather than  
3 rehabilitating him with a psychologist, then, too, this  
4 incident is unlikely to have occurred?

5           **A**     I don't agree with the way --

6           **MR. BUTLER:** I'll object to the characterization,  
7 rehabilitating with a psychologist. It is a two-step process,  
8 as Mr. Jones had described earlier, and I think that's an  
9 unfair characterization.

10           **CHAIRMAN CARTER:** Ms. Bradley, rephrase it based upon  
11 the evidence in the record.

12           **MS. BRADLEY:** Yes, sir.

13 BY MS. BRADLEY:

14           **Q**     You testified earlier, or the evidence from your  
15 testimony is that he -- and from your records is that he failed  
16 the written part and then you sent him to a psychologist. If  
17 you had denied him unrestricted access based upon his failing  
18 the written part rather than sending him to a psychologist,  
19 then this incident is unlikely to have occurred, correct?

20           **A**     First, yes, if we would have denied access the  
21 incident would not have occurred. And, yes, if we changed the  
22 approved process such that 80 percent of the people that take  
23 that screening questionnaire do not need to go through the  
24 clinical psychologist evaluation and then reviewed by an  
25 independent, if we changed that process such that we would deny

1 access at that point, then, yes, that would be true, you would  
2 not get access to the nuclear power plant.

3 **Q** One of your other steps is that each individual is  
4 required to successfully complete an FBI criminal history  
5 verification, including fingerprints, with no disqualifying  
6 criminal background. Now, one of the crimes for which this  
7 person was arrested was criminal mischief. Do you know whether  
8 that criminal mischief involved painting graffiti, or something  
9 fairly innocuous, or something more violent, such as clubbing  
10 somebody's mailbox with a baseball bat or something?

11 **A** No, I do not.

12 **Q** Would that not make a difference when you are doing  
13 your matrix as to the severity of the crime?

14 **A** Without getting into the particulars of the matrix,  
15 it depends on the nature of the offense, whether or not -- how  
16 the offense was dispositioned, or the charges were dismissed,  
17 the frequency of the pattern. All that is looked at in the  
18 aggregate, and so, no, there were no disqualifying events, and  
19 that process has been reviewed by the Nuclear Regulatory  
20 Commission and found to be sound and an example to be  
21 replicated at other facilities.

22 **Q** Did I understand you to say you don't know whether  
23 exactly what crime it was as far as the criminal mischief, the  
24 details of that?

25 **A** I do not know the details of the criminal mischief.

1           **Q**     If you had used any of those six, or all six of those  
2 arrests as a disqualifying factor for unrestricted access, then  
3 this is unlikely to have occurred, is it not?

4           **A**     First off, there were not six arrests. There was two  
5 arrests, one in 1989 and one in 1990. But, yes, if we changed  
6 our process and made any and all arrests a disqualifying event,  
7 then, no, the person would not have had access to the facility  
8 and the incident would not have occurred.

9           **Q**     Do you have a copy of the FBI report?

10          **A**     I have a copy of the FBI Freedom of Information Act.

11          **Q**     I'm sorry. If you'll look on, I think it's Page 12.

12          **CHAIRMAN CARTER:** Are you referring to Exhibit 54?

13          **MS. BRADLEY:** Yes, sir, I'm sorry. Thank you.

14 BY MS. BRADLEY:

15          **Q**     Do you see six charges, six arrests detailed on that  
16 page?

17          **A**     I see six charges.

18          **Q**     So there were six charges that were listed?

19          **A**     Yes, I count six charges.

20          **Q**     Okay. And if you had used those six charges to  
21 disqualify him from unrestricted access -- I'm sorry,  
22 unescorted access, then this is unlikely to have occurred,  
23 would it have not?

24          **A**     Again, I will state that, yes, if we changed our  
25 matrix, our methodology that has been reviewed and approved by

1 the NRC, and is used throughout the industry, and made any one  
2 of these charges a disqualifying event regardless of whether  
3 there was six, one, or one-half charge, then, yes, the person  
4 wouldn't have access to the facility and the incident wouldn't  
5 have occurred.

6 **Q** Would you agree that a number of charges is more  
7 serious than a single isolated charge?

8 **A** Yes, I would.

9 **Q** Would you agree that charges -- arrests made when the  
10 person is in their 30s is much more serious than a youthful  
11 offender arrest?

12 **A** No, I wouldn't say that. I would consider a youth  
13 that takes a gun and shoots someone much more serious than  
14 someone that got arrested for DUI.

15 **Q** All right, fair game. Would you agree that charges  
16 of the nature listed here committed by an adult are more  
17 serious than a smoking pot by a youthful offender?

18 **A** Yes, I would.

19 **Q** You indicated that you have a security access  
20 manager, if I got that title right, or something along those  
21 lines that does your screening?

22 **A** There is an entire group that is involved in  
23 performing the access screening, yes.

24 **Q** Who makes the final decision on that?

25 **A** The security access manager makes the final decision



1 as long as all of the screening criteria is met. The final  
2 decision is the security access manager.

3 **Q** Is there any supervision of his decisions? Does he  
4 ever consult with you or any other senior level managers?

5 **A** Yes. There are certain conditions around access to  
6 the nuclear power plant that require senior line management  
7 approval.

8 **Q** Did that occur in this case?

9 **A** No, I don't believe it did.

10 **Q** Now, is the person that you talked to the other day  
11 about this matter the same person that did the screening at the  
12 time of this incident in 2006, or has there been any change in  
13 that position?

14 **A** David Armstrong (phonetic) is still our corporate  
15 security access manager.

16 **Q** And he was the person in charge at the time of this  
17 incident in 2006?

18 **A** Yes, he was. That's correct.

19 **Q** Is there any federal code or rule that prevents him  
20 from testifying about these matters to the extent that you  
21 have?

22 **A** No. As far as rules and codes, he is under the same  
23 confidentiality requirements that anyone would be that has  
24 access to the information.

25 **Q** Would you agree that -- in fact, I think in your

1 testimony you indicated that failure to successfully complete  
2 any of the security screening steps will result in the  
3 individual being denied unescorted access to Florida Power and  
4 Light's nuclear facilities, correct?

5 **A** That is correct.

6 **Q** So a person that had red flags on pretty much all of  
7 them, would you agree that that should have raised some  
8 concern?

9 **A** Again, the person completed the psychological  
10 screening; they completed the employment verification; they  
11 completed successfully the character verification as to the  
12 character of this person. And in regard to the criminal  
13 history background check, applying the industry standard that  
14 has been accepted and approved by the NRC, he completed that  
15 screening requirement successfully. He met all the  
16 requirements for unescorted access.

17 **Q** Have you made any changes since this incident in your  
18 matrix or security screening?

19 **A** No, we have not.

20 **Q** Did you consider making any changes to prevent this  
21 type of incident?

22 **A** Yes, of course, we did consider if there were changes  
23 that we could make to prevent this type of incident, but we  
24 could not determine any change that we could make that would  
25 protect us against any individual from committing a random act

1 of vandalism.

2 **Q** If you had required this person to have an escort,  
3 might that have prevented this incident from occurring?

4 **A** If the question -- if we have had an escort assigned  
5 to them full-time, would it have prevented the incident? I  
6 would say that that is likely, yes.

7 I would also say that it's not practical to escort  
8 all the personnel that we bring in for a refueling outage,  
9 given that they are in the hundreds.

10 **Q** If you restricted that to persons that had prior drug  
11 histories, prior alcohol problems, refusal to answer questions  
12 about alcohol treatment, six or more arrests, and various  
13 issues like that, if you isolated to that type of escort,  
14 wouldn't that cut down on the number of people?

15 **A** I don't know the total number of people that have  
16 smoked marijuana and, you know, gave it up, or the number of  
17 people that have had a alcohol problem and have since gotten  
18 help and have given that up. I don't know what that population  
19 is.

20 **Q** Well, if we look at the six arrests, the failure of  
21 the written psych test, if we restricted it to that type of  
22 person, would that cut down on the number?

23 **A** Again, he did not fail the psychological screening.

24 **Q** The record indicates he failed the written test,  
25 correct?

1           **A**     Fail is a word that the special agent from the FBI  
2 chose to use. That is not the word that I choose to use.  
3 Eighty percent are not flagged to have to have a clinical  
4 interview. Roughly about 20 percent are. That is the process.

5           **Q**     Would it be less risky if you, instead of flagging  
6 those people for a psychological check, just excluded them from  
7 your population?

8           **A**     Yes, it would be.

9           **Q**     Do you have any idea why when people like Public  
10 Counsel and his staff come through your facility they are  
11 escorted by armed guards, and yet a person with this record is  
12 not?

13          **A**     The reason people that come to our facility as  
14 visitors are escorted is because we have no background  
15 information on them at all. We don't have the employment  
16 verification, we don't have the character reference check, we  
17 don't have the credit check, we don't have the FBI criminal  
18 background check, we don't have a psychological profile, and so  
19 we don't -- this is obviously a nuclear power plant and we are  
20 not going to take at face value just because your stature in  
21 the community and it appears you are on official business that  
22 that is what you are really there for.

23          **Q**     Did you testify --

24                   **CHAIRMAN CARTER:** Ms. Bradley, would you yield,  
25 please.

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Mr. Chair. Thank you,  
3 Ms. Bradley.

4 Just real quick on the response to the last question  
5 in terms of Ms. Bradley indicating when visitors come into the  
6 nuclear facility. Why is it then that you require Social  
7 Security Numbers if no background check is performed?

8 **THE WITNESS:** That's so that we can at least verify  
9 who you are in our personnel access database. Give me a  
10 minute; I've got to think if I can disclose this.

11 We use that as a verification to at least confirm  
12 that you are at least who you say you are.

13 **COMMISSIONER SKOP:** Thank you.

14 **CHAIRMAN CARTER:** Ms. Bradley.

15 **MS. BRADLEY:** Thank you.

16 BY MS. BRADLEY:

17 **Q** Are you telling us that you don't do any criminal  
18 background checks on all your visitors?

19 **A** I'm telling you that we're not required to do any  
20 criminal background check on our visitors, and so we don't do  
21 criminal background checks on our visitors because we are  
22 escorting them for a -- we are escorting them 100 percent of  
23 the time, never out of line of sight or out of hearing  
24 distance.

25 For the Commissioners, we may have to bring in a

1 technical expert just for one day, and so, therefore, it is not  
2 efficient nor cost-effective to go through a six-week  
3 background investigation, screening and all of that expense.  
4 And so we would elect to get the Social Security Number, verify  
5 that they are who they say they are, and then put them under  
6 continuous escort and observation to allow them to complete  
7 their task for us.

8 **Q** What type of training does your security access  
9 manager get as far as the matrix, and who does that?

10 **A** I don't know the answer to that question. You asked  
11 specifically about the manager. The people within the access  
12 program that are doing the processing and supplying the initial  
13 information are trained by the access control manager and the  
14 supervisors on the processes.

15 **Q** Do you have any -- what are the job requirements as  
16 far as those positions?

17 **A** In this particular case, our corporate access manager  
18 has been in access control and fitness for duty for 18 years,  
19 and is on the NEI task force that sets policy, and interacts  
20 with the NRC for rulemaking changes and determining those  
21 program requirements. So this particular person is considered  
22 a national subject matter expert on it. So that's why I kind  
23 of hesitated. I'm not sure anybody can give him any additional  
24 training.

25 **Q** Do you have any idea what kind of training he got,

1    though, before he started in that position?

2           **A**     No, I do not.  He was in that position for quite  
3    sometime.

4           **Q**     Do you all ever look at these issues to see if there  
5    is room for improvement?

6           **A**     Yes.  We do periodic self-assessments on our access  
7    control program, our fittest for duty, and our continuous  
8    behavioral observation program, and out of those  
9    self-assessments we always identify enhancements or better ways  
10   to do business, and we'll enter those into our corrective  
11   action program and track them to completion.

12                    We also ask our nuclear assurance department, which  
13   is independent from the line organization and has a direct  
14   reporting relationship to our Nuclear Chief Operating Officer  
15   to do periodic audits of our access control program to verify  
16   that it is in the requirements of the NRC.  So we do more  
17   frequent audits than the NRC.  Then, of course, the NRC comes  
18   in and does their own inspections and audits on the programs.  
19   In fact, we just had, in addition to that AIT team that came in  
20   as a result of the event that complimented us on our program,  
21   about two months after they already had a regularly scheduled  
22   inspection, and so they came in and did that inspection with  
23   similar results.  And then we just completed one this summer  
24   with no adverse findings or violations.  So it's very  
25   thoroughly inspected by the Nuclear Regulatory Commission.

1           **Q**     If Mr. Twomey was to walk into your facility today  
2 and apply for a job similar to the one this individual had, and  
3 he had a criminal history of six arrests ranging from firing  
4 off a gun, to DUI, to public intoxication, and this type of  
5 thing, and he failed the -- or didn't pass the written  
6 psychological test, and admitted to some drug use in the past,  
7 and refused to answer questions about any type of substance  
8 abuse treatment he might be undergoing, would you grant him  
9 unescorted access today?

10           **A**     I can't answer that question. We would have to put  
11 him through the whole process. We would have to get the  
12 references, we would have to do the credit check, we would have  
13 to have someone vouch for his character.

14           **Q**     Let me clarify that. If he came in with the same  
15 credentials and history that this individual did today, would  
16 you grant him unrestricted access? I mean unescorted access.

17           **A**     If the results of all his screening was identical to  
18 that particular individual, yes, he would have gained  
19 unescorted access for our program. Which, again, is the same  
20 as the rest of the industry and meets the requirements of the  
21 Nuclear Regulatory Commission.

22           **Q**     Now, several times you talked about information you  
23 had gotten from your security access manager, who isn't here  
24 today. Do you have any corroboration in the record of what he  
25 told you?



1           **A**     In what regard?

2           **Q**     Several times you mentioned that you had checked with  
3 the security access manager about different issues, and had  
4 relied on what he told you about, as far as the screening he  
5 had done and the evaluation he had done of this case. Is there  
6 any corroboration of that outside of what he told you that is  
7 in this record?

8           **MR. BUTLER:** I'm sorry, are you saying corroboration?

9           **MS. BRADLEY:** Yes.

10          **MR. BUTLER:** Sorry. I wasn't sure I was hearing  
11 correctly.

12          **THE WITNESS:** No, there's not.

13 BY MS. BRADLEY:

14          **Q**     You also mentioned a couple of times that the Nuclear  
15 Regulatory Commission had complimented you on your screening  
16 and all of that. Is there any documentation or corroboration  
17 of that in the record?

18          **A**     You have the augmented inspection team report in the  
19 record.

20          **Q**     And which exhibit is that?

21          **THE WITNESS:** John, can you help me with the exhibit  
22 number?

23          **MR. BUTLER:** Hold on.

24          **CHAIRMAN CARTER:** One second.

25          **MR. BUTLER:** Can we just take a second to confer?

1           It's part of staff's stipulated exhibit. It's one of  
2 the confidential documents. I'm not sure if the Commissioners  
3 want to have it passed out at this point, whether the questions  
4 go to that or not, but it's is the AIT report that Mr. Jones  
5 has referred to on several occasions reviewing the security  
6 processes and the program. It's one of the exhibits in the  
7 record.

8           **CHAIRMAN CARTER:** Hang on a second.

9           Ms. Helton, on the confidential document, I suppose  
10 we would have to go from the perspective that everyone signed  
11 the agreement. Give me some guidance on this before we go down  
12 this road. I'd rather not go down this road, if possible.

13           **MS. HELTON:** Obviously, the Commissioners, you all  
14 can see it; and the witness, Florida Power and Light, and I  
15 guess -- does Ms. Bradley have a copy of it?

16           **MR. BUTLER:** No, she would not have had a copy. This  
17 is a production response.

18           **MS. HELTON:** Have the parties to the case signed some  
19 kind of agreement with you so that they can have access to it  
20 during this process, or are you -- where are we with respect to  
21 that?

22           **MR. BUTLER:** We do not have an arrangement with the  
23 Attorney General's Office to that effect. This is the first  
24 time I was aware that she had an interest in seeing it.

25           **MS. BRADLEY:** Can I ask if the Commission has

1 declared it confidential?

2 **MS. HELTON:** It doesn't matter if we have declared it  
3 or not. If they have filed it under confidential cover, if  
4 they have filed a request for confidential treatment, then our  
5 rules in Section 366.093, I think it is, say that we have to  
6 keep it confidential until the case is closed. And anyone who  
7 may disagree with the Commission's ruling has an opportunity to  
8 disagree with the court.

9 **MS. BRADLEY:** The only point I'm trying to make is --

10 **CHAIRMAN CARTER:** So let's not go down that road, Ms.  
11 Bradley. I think you can make your point without that.

12 **MS. BRADLEY:** All right. But the issue I was trying  
13 to make is if the Commission has declared it confidential, then  
14 we are all obligated, as with any court of law, to honor that  
15 confidentiality.

16 **CHAIRMAN CARTER:** Well, you heard what Ms. Helton  
17 said. I think you can get your point across without doing  
18 that. I mean, we are well beyond your ten minutes, and I  
19 realize you may have meant a different kind of ten minutes, but  
20 let's move forward.

21 **MS. BRADLEY:** I thought that was PSC ten minutes.  
22 I'm sorry.

23 **CHAIRMAN CARTER:** Let's move on.

24 **MS. BRADLEY:** I'll finish up real quick here.

25 **CHAIRMAN CARTER:** I'd appreciate it.

1                   **MS. BRADLEY:** Okay.

2 BY MS. BRADLEY:

3           **Q**     Let me ask you one more question. You have asked  
4 that this 6.1 million be passed along to your customers so that  
5 they bear that expense. Did they have any involvement in the  
6 selection of the contractor, the screening of the employee, or  
7 anything of that type?

8           **A**     No, Commissioners. The customers did not have any  
9 involvement in the selection of the contractor or the screening  
10 of the contractor employee.

11          **Q**     And you have indicated you didn't have any insurance  
12 or any indemnification agreement with your contractor that  
13 would have protected the customers, correct?

14          **A**     We have warranties with the contractors for the  
15 quality of the work to the specifications with regards to  
16 workmanship, material defect, as well as stipulated penalties  
17 for performance. But typically the contract limits of  
18 liability don't exceed the value of the contract.

19          **Q**     So you didn't have any type of indemnification  
20 agreement that would have protected your customers from the  
21 pass-through that you are fixing to do, trying to do?

22          **A**     I'm not an expert on the contracts. I would have to  
23 have one of our legal staff go through the details of that  
24 contract and make sure the terminology we are using here is  
25 correct. My understanding is that our contracts are typically

1 limited to the warranty and any liability of the contractor is  
2 limited to the value of the contract. We have property  
3 insurance as well as the accidental outage insurance to protect  
4 ourselves and our customers.

5 **Q** If you're passing this through to your customers,  
6 then I have to assume that you have not sought any other type  
7 of reimbursement in lieu of this.

8 **A** Yes, that is correct.

9 **Q** Would it also be fair to say that if you could not  
10 pass this through to the customers that you might have looked a  
11 little bit harder about ways to protect the company or steps  
12 you could have taken to keep this kind of thing from happening?

13 **A** No, that is not correct. We work extremely hard  
14 every day to make sure that nuclear safety is number one. I  
15 have never been associated with a more dedicated work force.

16 **Q** And so you would have taken or considered no  
17 additional steps to prevent this type of incident from  
18 happening, or keep people like this out with his history if it  
19 was your liability?

20 **A** Again, when it comes to doing our job in nuclear, it  
21 doesn't matter where the liability falls. We do everything  
22 that is humanly possible to protect that plant, protect our  
23 people, and protect our public.

24 **Q** Have you changed your policies to keep the people  
25 with -- well, this individual's history out?

1           **MR. BUTLER:** I'm going to object. That has been  
2 asked and answered at least twice.

3           **CHAIRMAN CARTER:** That's correct, Ms. Bradley.

4           **MS. BRADLEY:** All right. No further questions, then.

5           **CHAIRMAN CARTER:** Thank you.

6           Commissioners, I'm going to go to Mr. Twomey, unless  
7 there is something from the bench.

8           Mr. Twomey, you're recognized.

9           **MR. TWOMEY:** Mr. Chairman, I had an awful lot of  
10 questions to ask, but fortunately --

11           **CHAIRMAN CARTER:** Give us the short version.

12           **MR. TWOMEY:** But, fortunately, Mr. Burgess asked them  
13 all this morning, most of them several times, allegedly. And  
14 Ms. Bradley asked -- I won't testify, but she asked a bunch of  
15 what I thought were dynamite questions, and so I'm not going to  
16 try to recover any of those. Mr. Wright asked some good  
17 questions, but I have had some questions passed to me by  
18 colleagues that thought of things and were prompted by other  
19 questions, and I'm going to ask those as if they were my own  
20 and try and do them justice. And there is only two or three,  
21 so it shouldn't take long at all.

22                                   CROSS EXAMINATION

23 BY MR. TWOMEY:

24           **Q**     And the first area, Mr. Jones, involves the  
25 chronology of the handling of the information that is contained

1 in Exhibit 54. And you have a copy of the -- I know that has  
2 got another name, but I would call that a purple color. Do you  
3 have that, 54? That's it.

4 **A** Is this it?

5 **Q** Yes, sir.

6 Now, I want to ask you a couple of questions about  
7 the chronology that appears apparent from some of the dates  
8 mentioned in this document.

9 If you will turn to the hearing exhibit stamp at the  
10 bottom which ends in 02, the second page, not counting the  
11 cover. That is a letter from the United States Department of  
12 Justice, Federal Bureau of Investigation, to Mr. Antonio  
13 Fernandez. Do you see that?

14 **A** Yes, I do.

15 **Q** Okay. I read that as being a cover sheet to the rest  
16 of the response of the FBI. Would you agree with that as being  
17 accurate?

18 **A** That's the way I read it.

19 **Q** Okay. And the date of the FBI's letter to  
20 Mr. Fernandez is September 26, 2008, correct?

21 **A** Yes, that is correct.

22 **Q** Now, turn back to the first page, which is the cover  
23 letter. It appears to be the cover letter of Mr. Butler to  
24 Ms. Lisa Bennett, who we know is the staff attorney with the  
25 Public Service Commission. And it says -- see if you agree

1 with me, it says, "On July 18th, 2008, that FPL responded to  
2 Request Number 18 of staff's third request for production of  
3 documents (regarding the FBI investigative report for the  
4 Turkey Point Unit 3 pressurized piping incident) by producing a  
5 copy of the materials that the FBI had received in response to  
6 a Freedom of Information Act request." Then he goes on and he  
7 says, "Recently, FPL has received additional materials in  
8 response to that FOIA (phonetic) request." That's what it  
9 says, right?

10 **A** That's correct.

11 **Q** That's what it says in part, because I didn't finish  
12 all of it. So it seems to me that this document indicates that  
13 the staff was interested in this subject matter certainly prior  
14 to July 18th, because that was the date of FPL's first response  
15 to Request Number 18. Would you agree?

16 **A** Yes, I would.

17 **Q** And, in fact, while it's not specific, the recently  
18 that Mr. Butler refers to in his second sentence actually could  
19 be read as -- as much as three or four weeks ago we received  
20 these additional materials, would you agree?

21 **A** Although I don't know the exact date.

22 **Q** Yes, sir, we don't know the exact date. But we do  
23 know that according to the FBI cover, the FBI purported to mail  
24 it September 26th, 2008, which was a Friday. And so even if we  
25 allowed a full five days, or the rest of the month of September



1 for mail transit from Washington D.C. to Juno Beach, that would  
2 indicate, would it not, that the company was in possession of  
3 the FBI response for at least 27 days before it was forwarded  
4 on to the PSC staff and the Office of Public Counsel, is that  
5 correct?

6 **A** Using that math, yes.

7 **Q** Pardon me?

8 **A** Yes. Using that scenario, about 27 days, that's  
9 correct.

10 **Q** Okay. So the question is if those dates are correct,  
11 and let me clarify, if I may, what I thought I heard you say in  
12 response to, I think it was Mr. Wright's questioning, or it may  
13 have been Mr. Burgess's. Did you tell them and the Commission  
14 that you had not been made aware of this response from the FBI  
15 until last Thursday when you were being prepared for your  
16 testimony here?

17 **A** Until last week, that is correct.

18 **Q** Sir?

19 **A** It was sometime last week. I believe I got it in my  
20 position on either Thursday or Friday as a PDF file.

21 **Q** Okay. So that would be Thursday, the 30th, or  
22 Friday, the 31st, Halloween?

23 **A** Thereabouts, in that time frame. It was definitely  
24 last week when I received a copy of this.

25 **Q** Do you know why the company retained possession of

1 this FBI response in the neighborhood of 27 days before it  
2 forwarded the document to Commission staff and Public Counsel?

3 **A** No, I do not know the answer to that question.

4 **Q** Did you ask?

5 **A** No, I did not ask.

6 **Q** Would you agree with me, Mr. Jones, that the  
7 chronology for whatever the motivation of retaining the  
8 document and not forwarding it to the Office of Public Counsel  
9 and the Commission staff before some, apparently, 27 days after  
10 receipt from the FBI would, to some degree, impair the ability  
11 of the Commission staff and the Office of Public Counsel from  
12 inquiring further and examining the materials forwarded? Isn't  
13 that necessarily a consequence is my question?

14 **A** Are you asking me to stipulate what the impact is on  
15 the Public Service Commission staff and what amount of time  
16 they would need to process this document?

17 **Q** No, sir. I don't like the word stipulate, and I  
18 didn't mean to use that if I did. I'm just asking you doesn't  
19 it necessarily follow that if the company had forwarded what  
20 has now been identified as Exhibit 54 to the public staff,  
21 which the company knew the Commission staff wanted the  
22 information and the Office of Public Counsel the next day,  
23 after having received it from the FBI, whatever date that was,  
24 early October, that the Commission staff and the Office of  
25 Public Counsel would necessarily have had more time to examine

1 it and prepare for this hearing today than they ended up having  
2 as a result of receiving it when they did?

3 **A** Yes. If they would have gotten it sooner, they would  
4 have had more time to prepare, yes, I agree.

5 **Q** Okay. Thank you.

6 The other line of questions I was asked to ask is  
7 very simple, and it is, or they are, who was in a position to  
8 deny ultimate employ to, as Ms. Bradley referred to him, the  
9 secret perp?

10 **CHAIRMAN CARTER:** Mr. Twomey.

11 **MR. TWOMEY:** Sir.

12 **CHAIRMAN CARTER:** Please. We are a tribunal that --  
13 you know, we are not dealing with the criminal aspects of it or  
14 the noncriminality. I think that would have been the United  
15 States Attorney's Office as well as FDLE. I think you can ask  
16 the question without inflammatory --

17 **MR. TWOMEY:** Yes, sir. I don't want to be  
18 argumentative, but irrespective of what the U.S. Attorneys  
19 Office thought here or the State Attorney's Office, or whoever,  
20 there was a crime committed here. That is the fact. Whether  
21 there was a person charged, there was a crime, and we haven't  
22 really had a good name to call this person, but I will fall  
23 back on --

24 **CHAIRMAN CARTER:** We have a record before us and you  
25 can refer to the record, Mr. Twomey, without inflammatory

1 language. So please govern yourself accordingly.

2 **MR. TWOMEY:** I will refer to him as the person of  
3 interest.

4 BY MR. TWOMEY:

5 **Q** Mr. Jones, who was in a position to deny ultimate  
6 employ to the person of interest who committed this crime of  
7 drilling a hole in your unit at Turkey Point 3, your customers,  
8 the contractor vendor that you utilized, or Florida Power and  
9 Light?

10 **A** That would be Florida Power and Light.

11 **Q** For the same person of interest who apparently  
12 committed this crime, who was in a position to deny this  
13 individual access, unescorted access to Turkey Point 3, your  
14 customers, the vendor contractor you utilized, or FPL?

15 **A** FPL.

16 **MR. TWOMEY:** That's all I have, Mr. Chairman. Thank  
17 you.

18 **CHAIRMAN CARTER:** Thank you, Mr. Twomey.

19 Commissioner Edgar, you're recognized.

20 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

21 Mr. Jones, we've covered a lot of different issues  
22 this afternoon. You have been very patient, which I  
23 appreciate. You may have answered these questions already, and  
24 if so, I apologize, but it will help me just kind of keep  
25 things concisely in my mind if I can go through and clarify a

1 few points.

2           So the first question is the security status that was  
3 given to the gentleman that has been under discussion this  
4 afternoon, what is the term of that? I think I have heard  
5 unrestricted access, I think I have heard unescorted, I may  
6 have even heard unsupervised, but what is the status that was  
7 actually granted?

8           **THE WITNESS:** The standard terminology is unescorted  
9 access, which means that you have access to the protected area.  
10 The protected area is -- gets you within the power plant and  
11 supporting buildings. Within the protected area there are  
12 vital areas. So just because you have unescorted access  
13 doesn't mean that your access level is approved to vital areas.  
14 So depending on what your work assignment is, you would be  
15 granted access to certain vital areas. The Unit 3 containment  
16 building during a refueling outage is a vital area to which you  
17 have to have specific access for that.

18           **COMMISSIONER EDGAR:** Okay. And I think you just  
19 answered what was going to be my follow-up question. So,  
20 again, just to make sure I understand, so the status of  
21 unescorted access -- did I get that right?

22           **THE WITNESS:** It would be unescorted. Unescorted.

23           **COMMISSIONER EDGAR:** Okay. So the status of  
24 unescorted access to protected areas would not include access  
25 to vital areas?

1           **THE WITNESS:** It may or may not depending on the  
2 nature of your work. If you were -- let's say that you were in  
3 administration, then you have no reason to have access to the  
4 emergency feed water system, which is one of the vital areas as  
5 an example. There could be -- depending on the nuclear power  
6 plant, there could be 15 or there could be 40 different vital  
7 areas, but you would have unescorted access so that you could  
8 enter and leave the protected area, but you would not have  
9 access to the vital area of containment or emergency feed  
10 water.

11           And if you were a worker who was coming in  
12 specifically to support work on an emergency diesel generator,  
13 you would have unescorted access, you would be approved for  
14 access to the emergency diesel generator building, which is a  
15 vital area, but you would not have approved access to the vital  
16 area of the containment building or, say, emergency feed water.

17           **COMMISSIONER EDGAR:** Okay. I think I got that.

18           So to kind of ask the same question in a slightly  
19 different way, the status of unescorted access to protected  
20 areas, there is -- let me put it this way, is there a security  
21 clearance that would be considered a higher level than that?

22           **THE WITNESS:** No, there is not. It's based on -- so  
23 the determination is, it is just like confidential information,  
24 it is based on a need to know or a need to be there.

25           **COMMISSIONER EDGAR:** Okay. I'm going to move on to

1 my next question. Thank you. Is the -- my word -- the  
2 protocol that was used to screen -- was used and is used to  
3 screen and to make the determination of whether to grant this  
4 status, is that an FPL protocol, or is it one that is  
5 prescribed by another entity?

6 **THE WITNESS:** It's a nuclear regulatory requirement  
7 for the programs and the elements of the program. And then all  
8 licensees are required to define the details of that program,  
9 and then the NRC inspects you to verify that your program meets  
10 their requirements at a minimum.

11 **COMMISSIONER EDGAR:** Okay. And one of the reasons I  
12 was asking that question is I think in some of the discussion  
13 earlier I heard the term guidelines used. And in my mind  
14 guidelines would -- in my thinking, guidelines would not  
15 necessarily be as stringent as a required protocol. There  
16 would be maybe some more leniency, so --

17 **THE WITNESS:** Yes. Unfortunately, terminology  
18 between procedures and programs and guidelines are sometimes  
19 interchangeable, but access control guidelines are hard written  
20 requirements, given the seriousness of the program.

21 **COMMISSIONER EDGAR:** Okay. So from the term that you  
22 used just now, access control guidelines, in this instance does  
23 that mean the same thing as my words, a protocol required by  
24 the NRC?

25 **THE WITNESS:** Yes. And you'll find the requirements

1 for access control and fitness for duty in the Code of Federal  
2 Regulations, and there is also additional requirements  
3 specified in a NRC order that was issued after 9/11.

4 **COMMISSIONER EDGAR:** Okay. And so these access  
5 control guidelines is what was used and is used for this  
6 security access, was approved, was reviewed and approved by the  
7 NRC, and was filed and was followed in this instance?

8 **THE WITNESS:** Absolutely, yes.

9 **COMMISSIONER EDGAR:** Okay. I think that's all I have  
10 right now. Thank you.

11 **CHAIRMAN CARTER:** Thank you.

12 Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

14 Just two follow-up questions. On Page 38 of the  
15 report that we have been provided -- excuse me, Page 37, I  
16 recognize that this was an interview conducted by, I guess, the  
17 field agents of the FBI, and they interviewed obviously an  
18 individual whose name has been redacted. And I recognize that  
19 in a court of competent jurisdiction that this would be hearsay  
20 evidence. If I correctly understand what action FPL has taken  
21 with respect to the person of interest, FPL has taken steps,  
22 remedial action to deny that individual from ever working at a  
23 FPL facility, and I hope that's all facilities on a  
24 forward-going basis, not just limited to nuclear.

25 I guess the question I have is noting from the



1 statement that was taken that the second individual basically  
2 stated that on or about March 14th, the person of interest  
3 stated to him that he had drilled a hole in a pipe -- and,  
4 again, I recognize that is hearsay, but with respect to that  
5 second person, certainly that person, if what is taken on face  
6 as being true as being represented from the person of interest,  
7 certainly that person would have had some sort of obligation to  
8 report that to someone. I mean, that's a heck of a nuclear  
9 safety issue.

10 And so my question is what action, if any, has FPL  
11 taken to prevent that second person from working at a facility  
12 for failing to disclose that critical piece of information?  
13 Because the leak was found on March 13th, so about 15 days  
14 prior to that apparently a co-worker of this contractor had  
15 information, if what you take as written there is true, and,  
16 again, granted it is hearsay. But, again, certainly if  
17 somebody came to me, or Mike Twomey came to me and told me he  
18 had just drilled a hole in a pipe in a nuclear reactor, I think  
19 I might have a concern about reporting that to somebody.

20 **THE WITNESS:** Yes. I don't know if we know who that  
21 individual is, and I don't know if we have taken any action on  
22 that.

23 **COMMISSIONER SKOP:** Wouldn't that be prudent on your  
24 part to find that out, because that person failed to disclose  
25 something that could have resulted in a nuclear accident?

1           **THE WITNESS:** I would say that it definitely warrants  
2 further investigation to see what the circumstances are that  
3 this was -- and the context that this was revealed, and what  
4 that person thought at the time. So, yes, I agree there is  
5 further action that -- further investigation that should be  
6 done.

7           **COMMISSIONER SKOP:** All right. Well, putting that  
8 into context, if I work through security at Tallahassee  
9 Airport, which is not a big airport, but, again, and made the  
10 representation saying that I was armed with a firearm or  
11 something stupid, certainly I think I would have the security  
12 screeners jump all over me. So to me, even jokingly, and going  
13 through airport security is a concern. So even if somebody  
14 said something like that jokingly in passing, I would think  
15 that the second employee, assuming he was from the same  
16 contractor, had some sort of obligation to report that to  
17 someone, because that's quite a concern.

18           **THE WITNESS:** Yes, I agree.

19           **COMMISSIONER SKOP:** On the second point, again, and I  
20 don't know whether you are appropriate to answer it, but I'm  
21 going to pose it to you, and I guess Mr. Butler can object if  
22 he deems appropriate. Certainly, FPL has the burden of proof  
23 with respect to the prudence of the cost-recovery sought from  
24 the ratepayer in this instance for the purchased power. And,  
25 you know, noting that there has been some discussion upon

1 whether civil action was appropriate, whether they would  
2 prevail in a civil action against the contractor, but, you  
3 know, it puts the Commission in a difficult situation.  
4 Because, again, from the testimony I'm hearing, you know, FPL  
5 to a great part is relying upon an NRC-approved matrix as the  
6 basis for all of its decision-making absent exercising its own  
7 independent judgment and discretion to allow access to its own  
8 facility.

9           So I guess what bothers me is, you know, faced with  
10 making a decision which obviously would have a potential to  
11 impact your ratepayers, I'm wondering whether it might not be  
12 appropriate for this Commission, and I'd like to get a response  
13 of some sort, to defer rendering a decision as to whether to  
14 allow cost-recovery until such time as FPL seeks to exhaust all  
15 of its other civil remedies available to it from the  
16 contractor. And I'm not saying that we would not ultimately  
17 approve or deny cost-recovery. I'm merely saying that we  
18 should be, in terms of making a decision that effects the  
19 ratepayer, an option of last resort based upon you have other  
20 recourse.

21           **MR. BUTLER:** Commissioner Skop, I think that is  
22 probably outside of his area of testimony. Certainly if he has  
23 view on it you are entitled to ask him about it. So I defer,  
24 but I suspect that he is --

25           **COMMISSIONER SKOP:** If you have you can offer it,

1 but, I mean, it is just a question, I think, worthy of bringing  
2 to light in lieu of the fact that a second employee of the  
3 contractor may have omitted its obligation to do something  
4 that, again, could at least have brought this to the attention  
5 of personnel sooner rather than later, and that might have been  
6 able to be fixed concurrent with the repairs that were going  
7 on, or the work to the extent that purchased power might not  
8 have been necessary.

9           **MR. BUTLER:** Commissioner Skop, I think Ms. Dubin may  
10 be in a better position to respond to your question about the  
11 way that the Commission has handled, and we would propose  
12 handling any recovery from the contractor or from the  
13 individual. So if it's possible, it might be preferable to  
14 defer that question to her. She will be testifying on this  
15 issue subsequently.

16           **COMMISSIONER SKOP:** Thank you. That's an issue I  
17 think that each of my colleagues is probably struggling with.  
18 Again, we are faced with making a decision that has financial  
19 impact to the ratepayers. And, again, it's a tough decision,  
20 and I'm struggling with it trying to do what is right, to  
21 weight the evidence on the merits. But, again, I'm looking to  
22 make sure that all options have been exhausted rather than just  
23 taking the easy approach of assuming that the ratepayers  
24 should, by virtue of the fact that they are the ratepayers  
25 should be obligated to pay for this.

1                   **CHAIRMAN CARTER:** Thank you, Commissioner.  
2 Commissioner Argenziano.

3                   **COMMISSIONER ARGENZIANO:** Just a question --  
4 something Commissioner Skop said jogged my memory about  
5 something I was looking at, and if it is not within your realm  
6 of responsibility, please just let me know, and then I could  
7 ask the proper company personnel. And I've got to be careful,  
8 because it's something I read in a confidential packet.

9                   What I would like to know is if in any -- I guess,  
10 since this -- oh, I would say in the last year, has the company  
11 instituted any type of policy to make sure that there is a very  
12 clear feeling with employees that they could come to the  
13 company personnel at any time to voice a concern they have  
14 whether it's over the well-being of another employee or safety  
15 concerns in the work environment? Have you instituted anything  
16 to employees to let them know that it is perfectly acceptable,  
17 and, matter of fact, downright a responsibility of theirs to be  
18 able to come to any supervisor to let them know that they can  
19 report something they think is out of whack or possibly could  
20 be?

21                   **THE WITNESS:** Yes. Actually, we take advantage of a  
22 number of occasions to reinforce to our employees of how to  
23 raise issues safely. That they can raise it to their  
24 supervisor. For whatever reason, if they are not comfortable  
25 raising it to their supervisors, then they can use the

1 employees concerns program. They can use that either in person  
2 or anonymously. Also, they can raise the concern through -- we  
3 have an electronic corrective action program, so we have a  
4 number of kiosks that you can't identify who the originator is,  
5 and so they can raise the concern that way in the corrective  
6 action program, which will make it, you know, very public  
7 within nuclear. And then we also encourage them that if they  
8 are not comfortable using that, then please, you know, raise  
9 the concern to the NRC, and we do have NRC resident inspectors  
10 on-site.

11 We also do safety culture surveys to gauge the  
12 employees' willingness to raise safety concerns, and we get  
13 excellent results on whether someone will raise a safety  
14 concern. And there's other questions, also, to get at the  
15 working relationship and how they feel about their work  
16 environment and sense if there is a level of frustration with  
17 getting things and issues addressed. So it is very much an  
18 important part of nuclear safety.

19 **COMMISSIONER ARGENZIANO:** Let me ask it a different  
20 way. Since maybe January, let's say the beginning of the year  
21 of '08, has there been anything additional to standard policy  
22 about letting employees know that they should have no  
23 apprehension whatsoever in addition to what was already in  
24 place to reporting any kind of thoughts or feelings they had  
25 about the safety or well-being of the plant? Anything

1 additional to what was standard and has been in practice for  
2 the past number of years and the past year that you know of?

3 **THE WITNESS:** Because I don't specifically work at  
4 Turkey Point or St. Lucie, I don't know the answer to that  
5 question.

6 **COMMISSIONER ARGENZIANO:** Okay. Then what I may do  
7 is ask staff and the company, and because it's confidential  
8 I'll just refer to FCR089777, and would like to know the  
9 outcome of the questions in the letter in that confidential  
10 matter and what the company has done to remedy the problem  
11 identified.

12 **CHAIRMAN CARTER:** Mr. Butler, is this the witness for  
13 that, or Ms. Dubin?

14 **COMMISSIONER ARGENZIANO:** I think maybe he's not.

15 **CHAIRMAN CARTER:** Oh, he's not? Okay. Because he  
16 doesn't work with --

17 **COMMISSIONER ARGENZIANO:** Right. He may not be aware  
18 of that.

19 **CHAIRMAN CARTER:** How about Ms. Dubin.

20 Mr. Butler, can you help me out in terms of who is  
21 the proper witness for this?

22 **COMMISSIONER ARGENZIANO:** And it may be, Mr.  
23 Chairman, that they can't do it at the present time.

24 **CHAIRMAN CARTER:** If not, maybe he can get it to us  
25 tomorrow.

1 Mr. Butler, I don't want to catch you off guard like  
2 that.

3 **COMMISSIONER ARGENZIANO:** The reason I ask is because  
4 it does kind of pertain to some of the issues we are dealing  
5 with today and would give me a comfort level to know the  
6 response.

7 **CHAIRMAN CARTER:** Mr. Butler, do you want to just  
8 maybe try to get back with us in the morning on that?

9 **MR. BUTLER:** That would be fine.

10 **CHAIRMAN CARTER:** Okay. Let's do that. Let's do  
11 that, then. One second. Commissioner Argenziano, had you  
12 completed your --

13 Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

15 Just one additional question with respect to my prior  
16 question, which I believe was on Page 37, about the second  
17 individual that had at least hearsay knowledge from the person  
18 of interest. Since the purview of the NRC is safety, nuclear  
19 safety, is there any reason why the Nuclear Regulatory  
20 Commission would not have some concerns with respect to the  
21 failure of any contract employee to report a potential nuclear  
22 threat of some sort, of vandalism, nuclear vandalism?

23 **THE WITNESS:** Obviously I'm concerned about it.  
24 Obviously the NRC would be concerned about it. I just don't  
25 know --



1           **COMMISSIONER SKOP:** Does the NRC know about it? Does  
2 the FBI -- I mean, is there any correlation between the parties  
3 here?

4           **THE WITNESS:** No, I don't know that -- well, the NRC  
5 had -- this is documents that the NRC had in their possession.  
6 That's how we got this. So I can't speak to what they know or  
7 they don't know. I do know this person cooperated in the  
8 investigation, and so I don't know if this was recognized, and  
9 if that person, you know, was dealt with on that avenue or not.

10           **COMMISSIONER SKOP:** Well, that would be -- again, it  
11 is outside of our jurisdiction, but I think it is relevant to  
12 the discussion of cost-recovery. But certainly in terms of if  
13 I were the NRC and I saw that, I would probably send out a  
14 bulletin reminding operators of the fact that they should  
15 instruct their employees or contract employees that they have a  
16 duty to report any threat, whether it be taken as a joke or a  
17 real threat. I mean, I think it's important when you are  
18 dealing with something that critical.

19           **THE WITNESS:** Yes. As a matter of fact, we did,  
20 immediately following this event -- I didn't have the benefit  
21 of that particular knowledge, but we did reinforce to everyone  
22 on-site for a heightened sense of awareness, report things that  
23 look out of normal. Don't assume that if a piece of piping  
24 insulation is damaged that it was because, you know, someone  
25 stepped on it or we dropped a piece of equipment. It could

1 indicate foul play.

2           And for a period of time we went on increased  
3 patrols, as well as just to reinforce the message, we gave out  
4 these lanyard cards so that people could see what they -- know  
5 what they would be looking for. In fact, that was of the one  
6 things that the augment inspection team -- they interviewed a  
7 number of operators and security officers to see if they  
8 understood that.

9           **COMMISSIONER SKOP:** And I appreciate that, and I have  
10 the utmost respect for FPL's nuclear employees. I think my  
11 concerns are more directed towards the contractors. It seems  
12 to me that is where some of the issues are.

13           **THE WITNESS:** Yes. When you bring in the  
14 contractors, and as you know, you bring them for a short period  
15 of time, but that is definitely part of their initial site  
16 orientation is the duty and responsibility to report any  
17 aberrant behavior, whether it be a fellow contractor, an FPL  
18 employee, it doesn't matter who it is.

19           **COMMISSIONER SKOP:** So with respect to that then, the  
20 person that received the hearsay statement from the person of  
21 interest, obviously he didn't adhere to that and was negligent  
22 in not reporting that.

23           **THE WITNESS:** I would expect him to report that, yes.

24           **COMMISSIONER SKOP:** Okay. Thank you.

25           **CHAIRMAN CARTER:** Thank you.

1                   Commissioners, I'm going to go to staff. Again, if  
2 you have any questions, let me know and I'll come back to you,  
3 but at this point in time I am going to go to staff.

4                   Staff, you're recognized.

5                   **MR. YOUNG:** Thank you, sir.

6                                   CROSS EXAMINATION

7 BY MR. YOUNG:

8                   **Q**     Mr. Jones, to your knowledge has the FBI  
9 investigation of the Turkey Point 3 pressurized pipe drilling  
10 incident have been concluded?

11                  **A**     Yes, I believe it has been concluded.

12                  **Q**     And you mentioned several times today that the  
13 documents identified in Exhibit Number 54 is not the FBI report  
14 regarding the incident, but just notes from the FBI's  
15 investigation, correct?

16                  **A**     Yes. My view is this is not some comprehensive, you  
17 know, report. It's information from the FBI. It also looks to  
18 be a record of conversations that occurred between the NRC  
19 Office of Investigation and the FBI. So when I consider  
20 something a report, it has an opening, it has some description,  
21 and some conclusion as to what the subject matter is, some  
22 outcome. And that's what I mean by it doesn't appear to me to  
23 be a report, but it is the FBI documents that were used during  
24 their investigation.

25                  **Q**     When do you expect to receive -- when does FPL expect

1 to receive the final FBI investigation report regarding the  
2 hole drilling incident at Turkey Point 3?

3 **A** I don't know that there is anything else that will be  
4 coming from the FBI.

5 **Q** So let me get this right, the FBI will not be sending  
6 you a report or anything of that nature?

7 **A** I do not know the answer to that question.

8 **Q** Is that something somebody else can answer possibly?

9 **MR. BUTLER:** I can speak for FPL that we do not have  
10 any present understanding or expectation that we are going to  
11 receive a final report from the FBI. And when one reads some  
12 of the comments in these materials that were produced to us by  
13 the FBI, it seems to indicate that they may be just letting the  
14 investigation conclude without any formal report. Certainly,  
15 if we receive one, we will make it available, but we have no  
16 commitment that we will be receiving one.

17 **MR. YOUNG:** Okay.

18 BY MR. YOUNG:

19 **Q** Looking at the contractor, does FPL still use the  
20 contractor that employed the individual who drilled the hole?

21 **A** Yes, we do.

22 **Q** Now, you have answered these questions, but briefly.  
23 The individual that was in question was employed by the  
24 contractor hired by FPL to perform the services in support of  
25 Turkey Point 3, right, in 2006, for the 2006 refueling outage?

1           **A**     Yes, that is correct.

2           **Q**     All right. And the contractor FPL hired who worked  
3 on Turkey Point 3 was not bonded?

4           **A**     Just give me a second to look through our  
5 interrogatory responses. Our response to Interrogatory Number  
6 32 was no bonding or performance guarantee applied to the  
7 individual.

8           **Q**     And the contract between --

9           **A**     I'm sorry, you asked to the contractor. That was to  
10 the individual.

11          **Q**     Yes, the contractor.

12          **A**     That would be Number 33. There is no performance  
13 bond requirement in the contract. The contract contains  
14 warranty protection related to the work performed by the  
15 contractor. "Work must be performed in accordance with the  
16 specifications and other descriptions and requirements set  
17 forth in the contract in accordance with standards of care,  
18 skill, and diligence consistent with recognized and sound  
19 industry practices, procedures, and techniques delivered to FPL  
20 free from faulty design, constructed utilizing new materials  
21 and/or equipment free from faults, defects, fabrication, or  
22 workmanship to be of kind, size, quality, and design." Sorry.

23          **Q**     Are you done, sir?

24          **A**     Do you want me to repeat that?

25          **Q**     No.

1                   **CHAIRMAN CARTER:** Please.

2 BY MR. YOUNG:

3           **Q**     Now, the drilling hole incident in the pressurized  
4 piping, is that a standard that conforms with industry  
5 practices?

6           **A**     No, it is not.

7           **Q**     Okay. And since that doesn't conform with industry  
8 practices, since that behavior that results is a need of  
9 replacement of power did not conform with the industry  
10 practices, would you agree with me, sir, that FPL should have  
11 grounds to seek recovery of these costs from the contractor?

12          **A**     That would be a question for legal counsel.

13          **Q**     Based on your knowledge and your practices and your  
14 experiences?

15               **MR. BUTLER:** I'm going to object to the question. It  
16 does call for a legal conclusion, and Mr. Jones has indicated  
17 that he is not knowledgeable to make the --

18               **CHAIRMAN CARTER:** But he is asking him not  
19 necessarily for a legal conclusion, he asking him -- this guy  
20 is a senior manager. He's asking him based upon his experience  
21 and his knowledge in the industry. Now, based upon his  
22 experience and knowledge in the industry is different from a  
23 legal conclusion.

24                   Ms. Helton.

25               **MS. HELTON:** Yes, sir. I think we have already

1 decided that today, so --

2           **THE WITNESS:** Based on my knowledge and experience in  
3 the industry, the contractor is required to repair the hole in  
4 the pipe at no time, material, or cost of labor to FPL. It is  
5 relatively -- I want to say there's nothing exotic about the  
6 repair, but obviously it took time to effect the repair.

7           In regards to replacement cost power, it has been my  
8 knowledge and experience that no contractor subjects themselves  
9 to the liability of replacement cost power.

10           **MR. YOUNG:** No further questions.

11           **CHAIRMAN CARTER:** Commissioner Skop.

12           **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And  
13 just one more quick question. Again, I hasten -- or I hate to  
14 go back to Page 38 of the report, but -- and I recognize,  
15 again, this is hearsay, but I'm wondering if you have knowledge  
16 with respect to the person of interest, the second individual  
17 who the alleged person of interest spoke with stated that or  
18 alleged that FPL wanted to lay him off earlier than was  
19 previously promised.

20           Do you have knowledge if that is true, and if so,  
21 what might have been the reasons or rationale for wanting to  
22 lay someone off earlier than previously promised, if they had  
23 gone through such an extensive remedial screening process to be  
24 able to be granted unescorted access?

25           **THE WITNESS:** I don't know if that particular

1 individual was one of the ones being considered for a lay off.  
2 As I said, we bring in hundreds of people to help us execute  
3 the refueling outage in the most effective means possible, and  
4 obviously given what you have to go through to gain access, we  
5 do bring in, if possible, a few more people because if we wind  
6 up shorthanded then the outage would get extended. It is far  
7 better to bring in a few more people, and if the work  
8 progresses and there isn't major discovery, it's like working  
9 on anything else, you could get into discovery and have  
10 expanded scope, then we ramp down the contractors early. And  
11 those contractors know that when they come in that there is no  
12 guarantee that they will be there for the entire 30 days, or 35  
13 days, and that based on the scope of work determines how long  
14 that they will be in our employ.

15 **COMMISSIONER SKOP:** And I appreciate that. I just  
16 was wondering if you know what was taken as hearsay had any  
17 merit to it, whether there was a disciplinary problem or a  
18 workmanship problem that might have led to that person making  
19 that hearsay representation. But I'll move on. And I guess  
20 the last question I have on that page is that -- I guess they  
21 had sought employment to gain access to be sheet metal workers,  
22 but apparently they were engaged in or working with insulators.

23 Was that person of interest doing insulation work and  
24 does that involve sheet metal or was he -- because I know  
25 sometimes, at least from what I have seen in my career, you



1 know, you have metal and all kinds of different insulating  
2 techniques, but I'm just wondering whether that was the case or  
3 not.

4 **THE WITNESS:** Commissioner, are you asking me if  
5 sheet metal and insulation goes together?

6 **COMMISSIONER SKOP:** Well, I'm just wondering whether,  
7 you know, if he applied to be a sheet metal worker and he was  
8 engaging in insulating, does that involve the sheet metal trade  
9 as opposed to factory type materials?

10 **THE WITNESS:** And you're on Page 37?

11 **COMMISSIONER SKOP:** Yes, sir.

12 **THE WITNESS:** Whereabouts?

13 **COMMISSIONER SKOP:** At the first paragraph, or second  
14 paragraph it discusses that they applied for Unit 3 as sheet  
15 metal workers, and then after the expletive on the fourth  
16 paragraph, at the beginning of the fifth paragraph he talks  
17 about worked with several insulators during the outage. But I  
18 think that the --

19 **THE WITNESS:** Oh, yes. The insulation is --  
20 especially in this particular area is Calsil insulation. It's  
21 a hard form that fits around the pipe, and then you have a band  
22 that goes around it to hold it in place. And because it's  
23 inside the containment, then you have to prevent transport to  
24 the containment itself, so it is wrapped with sheet metal. And  
25 so you have sheet metal and pop rivets to make sure the Calsil

1 remains in place.

2           **COMMISSIONER SKOP:** Okay. And with the sheet metal  
3 and pop rivets, would need a drill necessarily for that?

4           **THE WITNESS:** Absolutely.

5           **COMMISSIONER SKOP:** Because you have to drill the  
6 pilot holes for the pop rivets?

7           **THE WITNESS:** That's correct. And that's how you  
8 remove the sheet metal is you drill out the pop rivets.

9           **COMMISSIONER SKOP:** Thank you.

10          **CHAIRMAN CARTER:** Thank you. Commissioner  
11 Argenziano.

12          **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chair.  
13 Something I meant to ask before. On what is it, Exhibit -- I  
14 forget what it is, Exhibit 34, 54. The purple stuff that Mr.  
15 Twomey talked about on 37 indicates that the individual, you  
16 know, after he failed the psychological examination and was  
17 ordered to see a psychiatrist, and it says he finally passed,  
18 but he complained about how much time it was taking to begin  
19 working inside the plant. And then goes on to indicate that he  
20 started complaining that the equipment was not functional, the  
21 drills were not powerful enough, the drill bits were not sharp,  
22 and complained several times that he was not making enough  
23 money and was promised a certain amount and FPL wanted to lay  
24 him off earlier than he was previously promised. It just  
25 seemed that he was becoming more disgruntled. And then it

1 states from the FBI indications here on or about March 14th,  
2 2006, stated that he drilled a hole in the pipe. That he  
3 finally got a drill bit that worked, and he went on. And I  
4 won't continue to say what he says.

5 Two points there. I'm wondering if that is the  
6 hearsay or was that from his own mouth to someone at the FBI.  
7 And did the company, or did any of the psychologists, were they  
8 flagged to the -- were you aware of his complaining and his  
9 maybe disgruntled behavior that he was exhibiting at that time,  
10 and who was he complaining to, or was he complaining to  
11 superiors other than just employees that he worked with? And,  
12 of course, I want to know if anybody saw the indicators of a  
13 disgruntled employee running around the plant with a drill.

14 **THE WITNESS:** Yes, Commissioner. There was a number  
15 of questions in there. I think the first one was who was  
16 speaking here?

17 **COMMISSIONER ARGENZIANO:** Well, it indicates on this  
18 sheet that -- it's saying on or about March 14th, 2006,  
19 so-and-so, the person stated that he drilled a hole, and he  
20 went on. Is that the hearsay or did he actually state that to  
21 someone? Do we know where that comes from? Is that attributed  
22 to the other individual that he worked with? Do we know?

23 **THE WITNESS:** Yes, this is the source, the witness  
24 who provided FBI with information to determine the person of  
25 interest. That's the way I read this. That's who's speaking.

1           **COMMISSIONER ARGENZIANO:** Okay. This wasn't -- the  
2 person himself had not -- what I'm trying to determine, because  
3 it doesn't indicate here, he said this to -- Mr. A said this to  
4 Mr. B. So, Mr. A, being the suspect, did not actually say this  
5 to anyone. This is attributed to the Person B and hearsay.

6           **THE WITNESS:** If we go with Person A as being the  
7 witness, the source, then Person A would be the very first  
8 sentence, an individual, being Person A, provided the following  
9 information.

10           **COMMISSIONER ARGENZIANO:** No. Maybe we have got this  
11 backwards. I think Person A, the guy we are talking about is  
12 the suspect. The guy who drilled the hole who said this. What  
13 I am trying to find out is the guy who drilled the hole, did he  
14 say this to an FBI agent, or was this the witness who heard it  
15 from the guy who drilled the hole. Is it that hard? Am I  
16 saying it wrong?

17           **CHAIRMAN CARTER:** I follow you. I think you are  
18 saying that the --

19           **COMMISSIONER ARGENZIANO:** I want to know did this  
20 come out of -- because what I'm reading here doesn't say  
21 that -- in this paper it doesn't say that, you know, another  
22 employee heard Mr. So-and-so.

23           **CHAIRMAN CARTER:** Right. That's the way I read it.  
24 This is what the witness testifying against the hole driller.  
25 This is not the hole driller talking. This is a quote from the

1 guy that --

2 **COMMISSIONER ARGENZIANO:** That's what I wanted to  
3 make sure of, because I didn't want to miss that. Because if  
4 it was here and it was actually from his lips then it is a  
5 different scenario.

6 And the second part of that is he obviously seemed to  
7 be becoming more and more disgruntled in his employment, and I  
8 wondered if he had indicated that to any superior other than  
9 just an employee friend.

10 **THE WITNESS:** I don't know the answer to that  
11 question if he had any conversations with any supervisors in  
12 that regard expressing frustration.

13 **COMMISSIONER ARGENZIANO:** Well, I wonder if anybody  
14 does. I mean, that's important when you are talking about  
15 nuclear power plants and an employee. I'm just wondering if  
16 the company had any kind of indication that the guy was -- I  
17 hate to say this -- going postal. I'm going to get all kinds  
18 of -- going nuclear.

19 **CHAIRMAN CARTER:** Going nuclear.

20 **THE WITNESS:** Obviously during a refueling outage  
21 there is a tremendous workload, and there's always a certain  
22 level of frustration. So it is not unusual for workers,  
23 supervisors, and managers to complain about the workload and  
24 what's going on. And certainly when it comes to craft labor  
25 that is brought in on a temporary basis, their complaint ratio

1 is always a little bit higher. It's not unusual.

2 But by the same token, we have every expectation that  
3 the supervisors deal with the issues so that they don't balloon  
4 into something else, because a frustrated worker is not paying  
5 attention to the task at hand.

6 Now, unfortunately these folks demobilize, you know,  
7 at the end of the outage, and so we have a handful of FPL  
8 supervisors that administer the contracts and control the  
9 variable workforce. Most of the supervisors associated with  
10 the craft are contractors themselves, so I don't know what  
11 opportunity we had there.

12 **COMMISSIONER ARGENZIANO:** Is there an employee file  
13 that's kept on each employee indicating like this gentleman  
14 didn't originally pass his psych test until he had then gone  
15 further through the process. And if there is an employee file,  
16 is there some way of finding out if there was some kind of an  
17 indication from this employee to his superiors or somewhere  
18 down the line that he had exhibited, you know, irritability or  
19 beyond what was normal, since he did have somewhat of a problem  
20 passing the first part of the process? You know, just  
21 something that flagged it, that's what I'm looking for.

22 If that is anywhere available, I would think that we  
23 should know about that if it was. If the company didn't know  
24 that he was becoming disgruntled, how can they just arbitrarily  
25 say, well, we better go check on this guy. But if they did

1 know, well, then I wonder if there is any culpability or, you  
2 know, negligence in not looking at it. And I would just like  
3 to know if that is a possibility, if that is in this making at  
4 all.

5 **THE WITNESS:** I would say it's definitely a  
6 possibility that he could have complained to supervisors, and I  
7 just don't know how the supervisors -- if he did complain to  
8 supervisors, I don't know how the supervisors dispositioned the  
9 concern or issue. He also --

10 **COMMISSIONER ARGENZIANO:** I mean, if he complained to  
11 the supervisors as a normal person would, hey, I have been  
12 waiting for months, I don't have a raise. If he was like, you  
13 know, one of those kind of things, something that would get you  
14 to write it up that this guy is a little -- I wonder if there  
15 was any of that kind of an indication somewhere written up in  
16 the record.

17 **THE WITNESS:** Right. If someone was being very vocal  
18 or out of norm, then you would expect that that would be  
19 elevated up through management and then we would go into an  
20 evaluation mode absolutely. That's part of the continuous  
21 behavior observation program. But responding, you know,  
22 candidly and factually, I don't know if this person complained  
23 to a supervisor and then how a supervisor dealt with that  
24 issue. He also made statements directly to the FBI that he had  
25 no complaints about FPL. I don't know anyone --

1           **COMMISSIONER ARGENZIANO:** Well, it's kind of  
2 different when you are sitting in front of the FBI.

3           **THE WITNESS:** I don't know anybody who has no  
4 complaints with FPL.

5           **COMMISSIONER ARGENZIANO:** But maybe we could -- I  
6 wonder if we could find that out, if there is something, a file  
7 that indicates, if the company could give us that kind of  
8 information. And there may be nothing. There may be nothing  
9 there.

10          **MR. BUTLER:** We are going to check. I'm not sure if  
11 we will be able to do it today, but to see if there is anything  
12 in the personnel file that would indicate, you know, reports of  
13 either his reporting that he was disgruntled are any note  
14 saying that the employee appeared to be disgruntled.

15          **COMMISSIONER ARGENZIANO:** Right. Any kind of  
16 incident that would -- okay, thank you.

17          **CHAIRMAN CARTER:** Thank you. Commissioner Edgar.

18          **COMMISSIONER EDGAR:** Thank you. And I will be brief.  
19 Just a couple of questions, again. And you may have answered  
20 these, and if so, I apologize, but it does help me sometimes to  
21 ask it in my own words rather than the way somebody else did.

22                 In the opening statement -- thank you, Mr. Butler.  
23 Mr. Butler, I believe, made the statement that the evidence  
24 will show that FPL acted prudently in this instance. And, you  
25 know, as a Commission, I know as just one Commissioner, to make



1 this determination on this issue and many that we have had  
2 before and many that we will, I'm sure, again, sometimes I try  
3 to think about what is reasonable and prudent with the  
4 information at hand at the time versus further down the road  
5 when you can look back and have information in hindsight. So  
6 that is just my comment, that's not a question. But that is  
7 the point I'm trying to think through.

8 **CHAIRMAN CARTER:** Excuse me, Commissioner. Just give  
9 me one second to break in on you for a housekeeping matter.  
10 Sometimes, as I often do, is I ignore the clock, but at 6:00  
11 o'clock the automatic electronic locks hit the building.

12 **COMMISSIONER EDGAR:** Are you telling me my question  
13 was too long?

14 **CHAIRMAN CARTER:** No, no, no. You have a great  
15 question, a fantastic question. In fact, I was just, you know,  
16 really enjoying it, but it's just that we can get in, the  
17 Commissioners can get in and out, and staff can get in and out,  
18 but it is just kind of -- I just want to kind of give everybody  
19 a heads-up. You know, if you leave the building you can't get  
20 back in.

21 **MR. BURGESS:** I thought we couldn't get out.

22 **CHAIRMAN CARTER:** No, that's too easy there. The  
23 other thing is that the air conditioning will be shut off at  
24 that time, so govern yourselves accordingly. And we do keep  
25 proper decorum, so you can't lose your clothes in here.

1 Commissioner Edgar, you're recognized.

2 **COMMISSIONER EDGAR:** Thank you.

3 I will try to be more brief. What I was trying to  
4 get to is what I'm trying to think through is this question  
5 that we always deal with in these instances of reasonableness  
6 and prudence versus what any human being can know at the time  
7 to make a decision on versus what you can know after the fact.  
8 So that is just my context.

9 Mr. Butler in his opening statement, I believe, said  
10 the evidence will show that FPL acted prudently. From your  
11 perspective, with your expertise as the Vice-President of  
12 Nuclear Plant Support, and with your background that you have  
13 described having worked for the U.S. Navy on nuclear programs,  
14 TVA, and FPL, all very prestigious, from your position and  
15 expertise, what do you see that was done in this instance that  
16 was reasonable and prudent, realizing the seriousness of the  
17 nature of the work that you do?

18 **THE WITNESS:** What I see was done as reasonable and  
19 prudent is that the NRC established the program standards, also  
20 issued an NRC order following post-9/11, and we implemented all  
21 phases and aspects of that program, and I won't go back through  
22 all of those bullets again.

23 **COMMISSIONER EDGAR:** And that's not necessary.

24 **THE WITNESS:** And the NRC has obviously through the  
25 augmented inspection team specifically did a vertical slice

1 into our performance and our programs and processes and found  
2 them to be -- I'm going to say it, reasonable and prudent and  
3 meet or exceed industry standards. Follow-up inspections. In  
4 fact, they consider the adjudication table a model and took it  
5 back with them to regional headquarters.

6 And without the benefit of hindsight, you know, we  
7 did everything humanly possible right in line with common  
8 industry practice, the NEI guidelines, the NRC rules and  
9 regulations. And, you know, as upset as we are about this  
10 individual and this deliberate act, I don't know what else we  
11 could have done.

12 **COMMISSIONER EDGAR:** And I thank you for that answer.  
13 And the reason I asked it is you have, as I said before, been  
14 very patient and gracious, which is your job, by the way, but  
15 thank you for doing it anyway in answering so many questions.  
16 And I wanted to hear it in your own words, you know, how you  
17 view it with your expertise. So I thank you for that. And I  
18 would just point out that tomorrow, I guess, I would like to  
19 ask the same question of Witness Dubin, I think, and then also  
20 Witness Larkin from OPC, and from their perspective that same  
21 question from their expertise with the information available at  
22 the time. So thank you for that.

23 Give me just one second, Mr. Chairman.

24 **CHAIRMAN CARTER:** You're recognized.

25 **COMMISSIONER EDGAR:** And see if I have covered all of

1 my highlighted points. I guess just to wrap it up, then,  
2 putting the question a little bit the other way, with the  
3 benefit of hindsight, realizing that there was, again, as Mr.  
4 Butler called it, the drilled hole incident, and we have also  
5 termed, I think, a random act of vandalism. What, if any,  
6 changes have been made in procedures related to this contractor  
7 or contracting, or anything else to try it take advantage of a  
8 lesson learned, if, indeed, there is a lesson learned?

9 **THE WITNESS:** Yes. We went and looked at our  
10 screening process, our adjudication process. I did ask for a  
11 comparison on how this measured up with our screening process  
12 an adjudication process for just regular employment with FPL,  
13 as well what is other nuclear utilities were doing, and that is  
14 when I discovered that it was actually more conservative than a  
15 number of other utilities. And so reflecting back on that, we  
16 saw no change that we could make that would have prevented the  
17 event.

18 Now, if we were to exclude anyone whoever said they  
19 smoked marijuana, then that would get us there, or if we  
20 excluded anyone whoever had an arrest, that would get us there.  
21 But we also know in the industry, the reality of it is that the  
22 population -- and no offense to pipe fitters and boilermakers,  
23 and carpenters -- but that population of work force has  
24 dwindled, and there aren't the numbers to allow us to exclude  
25 people that had transgressions in the past.

1           Having said that, having said that, those  
2 transgressions had better well be in the past and there better  
3 not any evidence of a pattern, repeat, or anything in the  
4 character verification or the psychological examination that  
5 would indicate that that person isn't, you know, living the  
6 right lifestyle currently.

7           **COMMISSIONER EDGAR:** Thank you. And, again, wanting  
8 to hear both sides of the coin. I will just put out there that  
9 I would like to pose, again, a similar question to the OPC  
10 witness along those same lines from their expertise.

11           **THE WITNESS:** I would like to clarify. You know,  
12 when I said that there aren't enough workers, what I mean is,  
13 again, there are advantages to doing -- there are advantages to  
14 our customers to have our refueling outages in the spring and  
15 the fall, and, of course, most of the industry is doing that,  
16 and so that has a high workload. And so the alternative is to  
17 go with a smaller work force, and a longer outage, and that  
18 isn't in the best interest of our customers.

19           **COMMISSIONER EDGAR:** Thank you. And I'm finished,  
20 Mr. Chairman.

21           **CHAIRMAN CARTER:** Thank you.

22           Commissioner Argenziano and then Commissioner Skop.

23           **COMMISSIONER ARGENZIANO:** It is just a comment. And  
24 in all fairness, and I'm not condoning marijuana smoking or  
25 anything, but if you look up on the Internet and you look up

1 under the national drug abuse whatever they are, and I closed  
2 my computer down, but it indicates that between the ages of 17  
3 and 18, I believe it's 47.7 percent have smoked pot, and  
4 between the ages of, I think, 17 and -- it was college  
5 students -- 17 to 28 have at least smoked pot once. I think  
6 there is a lot more than once. But in all fairness, I think it  
7 is pretty hard to assume that because somebody once smoked pot  
8 that they would drill a hole in a pipe. So I think in fairness  
9 to say -- just to give you those statistics, and I looked for  
10 them purposefully, because I figured there was somebody that  
11 did a study of that somewhere. Coming from the flower power  
12 generation, a lot of people were out there, you know, and a lot  
13 of those people turned out to be very, very great people. So  
14 in fairness, we need to say that.

15 **COMMISSIONER EDGAR:** Some of them are lawyers.

16 **COMMISSIONER ARGENZIANO:** Some of them are lawyers.

17 **CHAIRMAN CARTER:** Yes. We will leave them all  
18 nameless. That was a blind study. Or survey, a blind survey.  
19 No pun intended there.

20 Commissioner Skop, you're recognized, sir.

21 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

22 Two quick questions. The first one to staff with  
23 respect to Hearing Exhibit Page 37, again. And I guess  
24 Commissioner Argenziano had asked a question. At least for me,  
25 the individual being intervened is, I guess, Employee B, and

1 the person conveying him information is the person of interest,  
2 the hole driller. And I guess just as a note in passing, and  
3 at least in my professional view neither one of these persons  
4 should be allowed in any nuclear facility or power generating  
5 facility in the United States. Again, one, by virtue of the  
6 fact that the alleged person of interest allegedly drilled a  
7 hole. But, secondly, the person, the second person had that  
8 knowledge and didn't disclose it in terms of being a safety  
9 issue. So, again, that's a problem.

10 A question to staff. With respect to the hearsay  
11 statement made to the second individual, would that qualify for  
12 any exceptions under the hearsay?

13 **MS. HELTON:** I think that when the person of interest  
14 made the statement, that was an admission against interest, so  
15 that would be not counted as hearsay in a legal proceeding.  
16 But having the second person report it, you're going way beyond  
17 what my brain is capable of at this point in time.

18 **COMMISSIONER SKOP:** I understand. But what I'm  
19 trying to get at, again, the question to staff would be would  
20 it qualify -- or would it not be hearsay to the extent that the  
21 second person could testify in a civil action without  
22 overcoming a hearsay objection and testify what that person  
23 told him?

24 **MS. HELTON:** I do not feel comfortable saying right  
25 now what he could testify to or not testify to in a civil

1 proceeding. My practice has mainly been before the Florida  
2 Public Service Commission, and so that I don't think that makes  
3 me an expert on what you can say or not say in a civil court.

4 **COMMISSIONER SKOP:** Thank you.

5 And then back to Mr. Jones just briefly. You  
6 mentioned that there is not enough workers, you know, to do  
7 outages. That workers are in demand, but I guess a follow-up  
8 question to that would be wouldn't that be part of your  
9 consideration in hiring any given contractor would be the  
10 contractor's ability to produce qualified capable personnel in  
11 sufficient numbers to accomplish the scope of work?

12 **THE WITNESS:** Yes, absolutely, and there are a  
13 limited number of contractors that can meet the qualifications  
14 and specifications for the quality of work to perform work at a  
15 nuclear power plant. And it doesn't -- you know, we mentioned  
16 boilermakers and sheet metals and pipe fitters. We have the  
17 same challenge in health physics in that there's a shortage of  
18 health physics technicians nationwide, and so that is a  
19 constant challenge to get the desired number of health physics  
20 technicians in for a refueling outage.

21 **COMMISSIONER SKOP:** And then just secondly to follow  
22 up on a previous point. Again, at the end of the day I know  
23 that there has been a lot of discussion about the NRC matrix  
24 and procedure, but when it comes down to it, ultimately since  
25 FPL conducts the background screening of contractors and



1 employees, ultimately you have the discretion to look further  
2 and ultimately you have the discretion whether to allow  
3 unescorted access to the containment building, is that correct?

4 **THE WITNESS:** Yes, Commissioner.

5 **COMMISSIONER SKOP:** Thank you.

6 **CHAIRMAN CARTER:** Commissioners, what I would like to  
7 do -- Mr. Butler, I know you have got redirect.

8 **MR. BUTLER:** Very short.

9 **CHAIRMAN CARTER:** Okay, good, because I just didn't  
10 want to put people -- you know, because these locks are on  
11 time. Mr. Butler, you're recognized.

12 **MR. BUTLER:** I will try to be very quick.

13 REDIRECT EXAMINATION

14 BY MR. BUTLER:

15 **Q** Mr. Jones, you mentioned in discussions with, I  
16 think, several of the people you have responded to questions  
17 that you had inquired with an access control manager to gain  
18 information on the access authorization file for the person of  
19 interest that we have been discussing, is that correct?

20 **A** That is correct.

21 **Q** And that person is -- his name is Dave Bonthron  
22 (phonetic), is that right?

23 **A** That is correct.

24 **Q** What is Mr. Bonthron's position?

25 **A** He is the corporate security access fitness for duty

1 manager, or some version of that title.

2       **Q**     Is it FPL's usual business practice that someone in  
3 your position as vice president of nuclear plant support would  
4 rely on information from Mr. Bonthron or someone in his  
5 position with respect to access authorization files of  
6 particular individuals who have access to FPL nuclear plants?

7       **A**     Yes, absolutely.

8       **MR. BUTLER:** Thank you. That's all the questions  
9 that I have.

10       **CHAIRMAN CARTER:** Let's do this. We've got the wind  
11 at our backs, guys. Let's go with the exhibits.

12       **MR. BUTLER:** That should be easy. There is one. It  
13 is TAJ-1. I think it is Exhibit 9.

14       **CHAIRMAN CARTER:** That would be Exhibit 9. Any  
15 objections? Without objection, show it done.

16               (Exhibit Number 9 admitted into the record.)

17       **CHAIRMAN CARTER:** From the parties, do we need  
18 anything further from this witness? Mr. Burgess.

19       **MR. BURGESS:** Only a matter of -- I'm not sure  
20 whether 54 was admitted when it was --

21       **MR. BUTLER:** I think it was stipulated at the time  
22 that we --

23       **MR. BURGESS:** I think it was, I just wanted to make  
24 sure.

25       **CHAIRMAN CARTER:** I appreciate that, Mr. Burgess.

1 Hang on. Everybody hold yourselves in place. Yes. Exhibit  
2 Number 54 has been entered into evidence. And also 55, which  
3 was Mr. Badders' case. So it's in there.

4 **MR. BURGESS:** Thank you, Mr. Chairman.

5 **CHAIRMAN CARTER:** Anything else in evidence, staff,  
6 that we may have missed out on?

7 **MS. BENNETT:** We have everything that was on the  
8 Comprehensive Exhibit List. I do know that this witness might  
9 have an answer for Commissioner Argenziano tomorrow morning  
10 based on some information that Mr. Butler is going to look, so  
11 I don't know that I would excuse him.

12 **CHAIRMAN CARTER:** When we deal with preliminary  
13 matters tomorrow, we will deal with it then, and we will  
14 without objection show it in. We will just put a placeholder.  
15 That will be Exhibit 56. Let's just make that a placeholder.  
16 Well, let's do this. It may not be an exhibit, it may just be  
17 some information that Commissioner Argenziano wanted. Let's do  
18 this. Let's deal with that in preliminary matters tomorrow.

19 Not that we are ready or anything like that, but I  
20 think for all practical purposes both from the parties and the  
21 intervenors there are no further questions from this witness?  
22 Mr. Butler, am I correct on that? I'm trying to keep my  
23 paperwork together here.

24 **MR. BUTLER:** I'm sorry, Mr. Chairman.

25 **CHAIRMAN CARTER:** On Mr. Yupp are we complete with

1 this witness, because I'm really looking for excusal. Mr.  
2 Jones.

3 **MR. BUTLER:** We are complete -- with Mr. Jones I  
4 think that we are complete. But, honestly, you know, given  
5 what we had talked about at the beginning of the day of having  
6 Public Counsel present its witness and that we might end up  
7 having rebuttal, it is possible he is going to be back anyway,  
8 so too bad for him.

9 **CHAIRMAN CARTER:** Well, don't go home for this  
10 portion. Anything further for today? Tomorrow we will  
11 start -- Commissioners, I appreciate your time, and I  
12 appreciate the time of the parties and all like that. We had  
13 an extensive day on this, and we will start first thing in the  
14 morning with Ms. Dubin. Did I get the name right?

15 **MR. BUTLER:** That's right, yes.

16 **CHAIRMAN CARTER:** And then we will go with OPC's case  
17 with Mr. Harkin. Did I get it right, Mr. Burgess?

18 **MR. BURGESS:** Mr. Larkin.

19 **CHAIRMAN CARTER:** Larkin. It was a sound thing.  
20 H. Larkin. Did I get it right? Mr. Larkin. And then we will  
21 go with the rebuttal case.

22 Commissioners, anything for the good of the order?  
23 9:30 tomorrow morning. We are in recess until 9:30 tomorrow.

24 (The hearing adjourned at 6:04 p.m.)

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STATE OF FLORIDA       )  
  
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COUNTY OF LEON        )

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 10th day of November, 2008.



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