

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of )  
Arrangement to Mitigate Impact of ) DOCKET NO. 150075-EI  
Unfavorable Cedar Bay Power Purchase )  
Obligation, by Florida Power & ) FILED: July 16, 2015  
Light Company. )  
\_\_\_\_\_ )

RECEIVED FPSC

JUL 16 AM 7:57  
COMMISSION  
CLERK

**REDACTED**

**CEDAR BAY GENERATING COMPANY'S REVISED  
FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Cedar Bay Generating Company, Limited Partnership ("Cedar Bay"), by and through undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code ("F.A.C."), and Section 366.093, Florida Statutes ("F.S."), hereby requests confidential classification for the deposition transcripts of Rick Neff, Tracy Patterson, and Stephen Mark Rudolph (the "Deposition Transcripts") which were filed with the Commission on May 29, 2015. Please note that on June 19, 2015, Cedar Bay filed its Fifth Request for Confidential Classification which included a blanket request for confidential treatment of the Deposition Transcripts. This REVISED Fifth Request for Confidential Classification includes the full-size pages of the Deposition Transcripts of Rick Neff, Tracy Patterson, and Stephen Mark

- COM \_\_\_\_\_ Rudolph and is intended to supersede the blanket requests for
- AFD \_\_\_\_\_
- APA \_\_\_\_\_ confidential treatment with respect to the Deposition Transcripts
- ECO \_\_\_\_\_ (excluding the indexes to Mr. Neff's, Mr. Patterson's, and Mr.
- ENG TRP \_\_\_\_\_ Rudolph's deposition transcripts, which will remain covered by
- GCL TRP \_\_\_\_\_
- IDM \_\_\_\_\_
- TEL \_\_\_\_\_
- CLK \_\_\_\_\_

the blanket request). In support of its request, Cedar Bay states as follows:

1. On May 29, 2015, Cedar Bay filed its Fifth Notice of Intent to Request Confidential Classification ("Fifth NOI") related to the Deposition Transcripts. On June 19, 2015, Cedar Bay filed its Fifth Request for Confidential Classification. Accordingly, Cedar Bay's original Fifth Request for Confidential Classification was timely. This REVISED Fifth Request only covers information that was already covered by Cedar Bay's Fifth NOI and Fifth Request, thus there has been and can be no lapse in confidential protection of the information covered by this REVISED Fifth Request. Please note that on June 29, 2015, Cedar Bay filed its Eighth Request for Confidential Classification which addressed the deposition transcript of Stephen Mark Rudolph which was submitted by the Florida Industrial Power Users Group ("FIPUG") in the "mini" version as part of its direct testimony. Please also note that on July 10, 2015, Cedar Bay filed its REVISED Eighth Request for Confidential Classification which addressed only the portions of the deposition transcript of Stephen Mark Rudolph (in the "mini" version) which had been designated as testimony by FIPUG and Florida Power & Light Company. Cedar Bay will file a separate Notice of Substitution of Exhibits whereby Cedar Bay will provide the Commission the full-page versions of Exhibit A and B to the REVISED Eighth

Request for Confidential Classification. This REVISED Fifth Request includes the full-page version of Mr. Rudolph's full deposition transcript.

2. The following exhibits are included and made a part of this request:

- a. Exhibit A is a CD containing the full-page versions of the Deposition Transcripts of Rick Neff, Tracy Patterson, and Stephen Mark Rudolph on which all information for which Cedar Bay is requesting confidential treatment is highlighted. Exhibit A is submitted separately in a sealed envelope marked "CONFIDENTIAL."
- b. Exhibit B consists of two CDs containing redacted copies of the full page versions of the Deposition Transcripts on which all information for which Cedar Bay is seeking confidential treatment has been redacted.
- c. Exhibit C is a table that identifies the specific statutory bases for the claim of confidentiality.
- d. Exhibit D is the affidavit of Jacob A. Pollack, Vice President and Secretary of Cedar Bay.

3. Section 366.093(1), F.S., provides that "Upon request of the public utility or other person, any records received by the Commission which are shown to be proprietary confidential

business information shall be kept confidential and shall be exempt from s. 119.07(1)." Section 366.093(3), F.S., defines proprietary confidential business information to mean information that is (i) intended to be and is treated as private confidential information by the company, (ii) because disclosure of the information would cause harm, (iii) to the company's business operation, and (iv) the information has not been voluntarily disclosed to the public. Additionally, section 366.093(3)(e) defines as proprietary confidential business information "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

4. Cedar Bay is requesting confidential classification of the Deposition Transcripts because the Deposition Transcripts contain proprietary and confidential competitive business information, including information concerning internal business plans, projected capital expenditures, confidential contractual negotiations, contractual arrangements, internal budget projections, financial forecasts, plant operations, and other competitively sensitive commercial information, the disclosure of which would harm or otherwise adversely impact Cedar Bay's and/or its affiliates' competitive business interests. Cedar Bay has treated the information contained in the Deposition Transcripts as confidential and Cedar Bay has not voluntarily disclosed the

information contained in the Deposition Transcripts to the public.

5. Upon a finding by the Commission that the material in Exhibit A for which Cedar Bay seeks confidential treatment is proprietary confidential business information within the meaning of Section 366.093(3), F.S., such information should not be declassified for a period of at least eighteen (18) months. Additionally, the material provided should be returned to Cedar Bay as soon as the information is no longer necessary for the Commission to conduct its business, pursuant to Section 366.093(4), F.S.

WHEREFORE, for the above and foregoing reasons, as more fully set forth in the supporting materials and affidavit included herewith, Cedar Bay Generating Company, Limited Partnership respectfully requests that its REVISED Fifth Request for Confidential Classification be granted.

Respectfully submitted this 16th day of July, 2015.



Robert Scheffel Wright  
Florida Bar No. 966721  
schef@gbwlegal.com  
John T. LaVia, III  
Florida Bar No. 853666  
jlavia@gbwlegal.com  
Gardner, Bist, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
(850) 385-0070 Telephone  
(850) 385-5416 Facsimile

Attorneys for Cedar Bay  
Generating Company, Limited  
Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 16th day of July, 2015.

Martha Barrera  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Jon C. Moyle, Jr./Karen Putnal  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301

Mr. Ken Hoffman  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, Florida 32301

J.R. Kelly / John J. Truitt  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400

John T. Butler / Maria J. Moncada  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408

Anna H. Upton, Esq.  
Anna H. Upton, P.L.  
9005 Eagles Ridge Drive  
Tallahassee, Florida 32312

  
Attorney

PSC DOCKET 150075-EI

CEDAR BAY GENERATING COMPANY'S  
REVISED FIFTH REQUEST FOR  
CONFIDENTIAL CLASSIFICATION

EXHIBIT B



**EXHIBIT C**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of )  
Arrangement to Mitigate Impact of ) DOCKET NO. 150075-EI  
Unfavorable Cedar Bay Power Purchase )  
Obligation, by Florida Power & ) FILED: July 16, 2015  
Light Company. )  
\_\_\_\_\_ )

<u>Document</u>	<u>Pages</u>	<u>Justification</u>
<b>Deposition Transcript of Charles R. Neff</b>		
	<u>Page 98</u> Lines 15 - 25	§ 366.093(3)(e), Fla. Stat.
	<u>Page 99</u> Lines 1 - 9	§ 366.093(3)(e), Fla. Stat.
	Lines 12 - 16	§ 366.093(3)(e), Fla. Stat.

**Deposition Transcript of Tracy Patterson (Volumes 1 and 2)**

<u>Volume 1</u>	<u>Page 26</u> Part of line 5 through part of line 6	§ 366.093(3)(e), Fla. Stat.
	<u>Page 55</u> Part of line 12	§ 366.093(3)(e), Fla. Stat.
	Lines 13 - 21	§ 366.093(3)(e), Fla. Stat.
	<u>Page 126</u> Lines 1 - 8	§ 366.093(3)(e), Fla. Stat.
	Lines 11 - 25	§ 366.093(3)(e), Fla. Stat.
	<u>Page 127</u> Part of line 6	§ 366.093(3)(e), Fla. Stat.
	Lines 16 - 21	§ 366.093(3)(e), Fla. Stat.
	Line 25	§ 366.093(3)(e), Fla. Stat.
	<u>Page 128</u> Lines 1 - 3	§ 366.093(3)(e), Fla. Stat.
	Lines 8 - 9	§ 366.093(3)(e), Fla. Stat.
	Lines 21 - 25	§ 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

**Deposition Transcript of Tracy Patterson  
(Volumes 1 and 2) (continued)**

<u>Page 129</u>		
Lines 1 - 14		§ 366.093(3)(e), Fla. Stat.
Lines 23 - 25		§ 366.093(3)(e), Fla. Stat.
<u>Page 130</u>		
Lines 1 - 3		§ 366.093(3)(e), Fla. Stat.
Lines 16 - 20		§ 366.093(3)(e), Fla. Stat.
Lines 23 - 25		§ 366.093(3)(e), Fla. Stat.
<u>Page 131</u>		
Line 1		§ 366.093(3)(e), Fla. Stat.
<u>Page 137</u>		
Part of line 8 through line 10		§ 366.093(3)(e), Fla. Stat.
Part of line 13 through line 14		§ 366.093(3)(e), Fla. Stat.
<u>Page 141</u>		
Part of line 4 through line 5		§ 366.093(3)(e), Fla. Stat.
Part of line 12		§ 366.093(3)(e), Fla. Stat.
Part of line 13		§ 366.093(3)(e), Fla. Stat.
<u>Page 168</u>		
Lines 15 - 25		§ 366.093(3)(e), Fla. Stat.
<u>Page 169</u>		
Lines 1 - 2		§ 366.093(3)(e), Fla. Stat.
Line 4		§ 366.093(3)(e), Fla. Stat.
Lines 6 - 7		§ 366.093(3)(e), Fla. Stat.
Lines 9 - 15		§ 366.093(3)(e), Fla. Stat.
Lines 21 - 23		§ 366.093(3)(e), Fla. Stat.
<u>Page 170</u>		
Part of line 25		§ 366.093(3)(e), Fla. Stat.
<u>Page 171</u>		
Part of line 1		§ 366.093(3)(e), Fla. Stat.

Volume 2

No confidential information contained in Volume 2.

**Document**

**Pages**

**Justification**

**Deposition Transcript of Stephen Mark Rudolph**

Page 14  
Part of line 6 through line 9 § 366.093(3)(e), Fla. Stat.

Page 17  
Part of line 10 § 366.093(3)(e), Fla. Stat.  
Part of line 17 § 366.093(3)(e), Fla. Stat.

Page 21  
Part of line 16 through line 17 § 366.093(3)(e), Fla. Stat.

Page 25  
Part of line 19 § 366.093(3)(e), Fla. Stat.

Page 26  
Part of line 24 through line 25 § 366.093(3)(e), Fla. Stat.

Page 30  
Part of line 1 § 366.093(3)(e), Fla. Stat.  
Part of line 5 § 366.093(3)(e), Fla. Stat.  
Part of line 6 § 366.093(3)(e), Fla. Stat.  
Part of line 20 § 366.093(3)(e), Fla. Stat.

Page 34  
Part of line 1 § 366.093(3)(e), Fla. Stat.  
Part of line 2 § 366.093(3)(e), Fla. Stat.  
Part of line 19 § 366.093(3)(e), Fla. Stat.  
Part of line 24 § 366.093(3)(e), Fla. Stat.

Page 35  
Part of line 20 § 366.093(3)(e), Fla. Stat.

Page 36  
Part of line 2 § 366.093(3)(e), Fla. Stat.  
Part of line 4 § 366.093(3)(e), Fla. Stat.  
Part of line 6 § 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

**Deposition Transcript of Stephen Mark Rudolph (continued)**

	<u>Page 38</u>	
Part of line 4 through line 7		§ 366.093(3)(e), Fla. Stat.
Part of line 10		§ 366.093(3)(e), Fla. Stat.
Parts of line 12 through part of line 13		§ 366.093(3)(e), Fla. Stat.
Part of line 20		§ 366.093(3)(e), Fla. Stat.
	<u>Page 39</u>	
Part of line 6		§ 366.093(3)(e), Fla. Stat.
Part of line 7		§ 366.093(3)(e), Fla. Stat.
Part of line 14		§ 366.093(3)(e), Fla. Stat.
Part of line 15		§ 366.093(3)(e), Fla. Stat.
Part of line 17		§ 366.093(3)(e), Fla. Stat.
Part of line 18		§ 366.093(3)(e), Fla. Stat.
	<u>Page 43</u>	
Part of line 22		§ 366.093(3)(e), Fla. Stat.
	<u>Page 47</u>	
Lines 23 - 24		§ 366.093(3)(e), Fla. Stat.
	<u>Page 50</u>	
Part of line 17		§ 366.093(3)(e), Fla. Stat.
	<u>Page 53</u>	
Part of line 3		§ 366.093(3)(e), Fla. Stat.
Part of line 9		§ 366.093(3)(e), Fla. Stat.
	<u>Page 54</u>	
Part of line 9		§ 366.093(3)(e), Fla. Stat.
	<u>Page 72</u>	
Part of line 17		§ 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

**Deposition Transcript of Stephen Mark Rudolph (continued)**

Page 75

Lines 10 - 12 § 366.093(3)(e), Fla. Stat.  
Part of line 19 § 366.093(3)(e), Fla. Stat.  
Part of line 23 § 366.093(3)(e), Fla. Stat.  
Part of line 24 § 366.093(3)(e), Fla. Stat.  
Part of line 25 § 366.093(3)(e), Fla. Stat.

Page 76

Parts of line 3 § 366.093(3)(e), Fla. Stat.  
Part of line 15 § 366.093(3)(e), Fla. Stat.  
Parts of line 16 § 366.093(3)(e), Fla. Stat.  
Part of line 17 § 366.093(3)(e), Fla. Stat.  
Part of line 25 § 366.093(3)(e), Fla. Stat.

Page 77

Part of line 1 § 366.093(3)(e), Fla. Stat.  
Part of line 2 § 366.093(3)(e), Fla. Stat.  
Part of line 5 § 366.093(3)(e), Fla. Stat.  
Parts of line 12 § 366.093(3)(e), Fla. Stat.  
Part of line 13 § 366.093(3)(e), Fla. Stat.  
Part of line 15 § 366.093(3)(e), Fla. Stat.  
Part of line 16 § 366.093(3)(e), Fla. Stat.  
Part of line 17 § 366.093(3)(e), Fla. Stat.  
Part of line 19 § 366.093(3)(e), Fla. Stat.  
Part of line 20 § 366.093(3)(e), Fla. Stat.  
Parts of line 21 § 366.093(3)(e), Fla. Stat.  
Part of line 23 § 366.093(3)(e), Fla. Stat.  
Parts of line 24 § 366.093(3)(e), Fla. Stat.  
Line 25 § 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

**Deposition Transcript of Stephen Mark Rudolph (continued)**

Page 78

Parts of line 2	§ 366.093(3)(e), Fla. Stat.
Part of line 5	§ 366.093(3)(e), Fla. Stat.
Part of line 8	§ 366.093(3)(e), Fla. Stat.
Parts of line 9	§ 366.093(3)(e), Fla. Stat.
Part of line 10	§ 366.093(3)(e), Fla. Stat.
Part of line 12	§ 366.093(3)(e), Fla. Stat.
Part of line 19	§ 366.093(3)(e), Fla. Stat.
Part of line 21	§ 366.093(3)(e), Fla. Stat.
Part of line 22	§ 366.093(3)(e), Fla. Stat.
Part of line 23	§ 366.093(3)(e), Fla. Stat.

Page 79

Parts of line 3	§ 366.093(3)(e), Fla. Stat.
Part of line 5	§ 366.093(3)(e), Fla. Stat.
Part of line 7	§ 366.093(3)(e), Fla. Stat.
Part of line 9	§ 366.093(3)(e), Fla. Stat.
Part of line 10	§ 366.093(3)(e), Fla. Stat.
Part of line 11	§ 366.093(3)(e), Fla. Stat.
Part of line 13	§ 366.093(3)(e), Fla. Stat.
Parts of line 14	§ 366.093(3)(e), Fla. Stat.
Parts of line 15	§ 366.093(3)(e), Fla. Stat.
Part of line 21	§ 366.093(3)(e), Fla. Stat.
Part of line 23	§ 366.093(3)(e), Fla. Stat.
Part of line 24	§ 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

**Deposition Transcript of Stephen Mark Rudolph (continued)**

Page 80

Part of line 1 § 366.093(3)(e), Fla. Stat.  
Line 2 § 366.093(3)(e), Fla. Stat.  
Part of line 5 § 366.093(3)(e), Fla. Stat.  
Part of line 6 § 366.093(3)(e), Fla. Stat.  
Part of line 7 § 366.093(3)(e), Fla. Stat.  
Part of line 8 § 366.093(3)(e), Fla. Stat.  
Part of line 9 § 366.093(3)(e), Fla. Stat.

Page 83

Part of line 14 § 366.093(3)(e), Fla. Stat.  
Part of line 21 § 366.093(3)(e), Fla. Stat.  
Line 23 § 366.093(3)(e), Fla. Stat.

Page 84

Parts of line 4 § 366.093(3)(e), Fla. Stat.  
Part of line 5 § 366.093(3)(e), Fla. Stat.  
Part of line 6 § 366.093(3)(e), Fla. Stat.  
Part of line 7 § 366.093(3)(e), Fla. Stat.  
Part of line 25 § 366.093(3)(e), Fla. Stat.

Page 92

Line 12 through part of line 17 § 366.093(3)(e), Fla. Stat.  
Line 20 through part of line 21 § 366.093(3)(e), Fla. Stat.  
Part of line 23 through line 25 § 366.093(3)(e), Fla. Stat.

Page 93

Line 1 § 366.093(3)(e), Fla. Stat.  
Line 3 § 366.093(3)(e), Fla. Stat.  
Lines 10 - 16 § 366.093(3)(e), Fla. Stat.

Page 96

Part of line 6 through line 8 § 366.093(3)(e), Fla. Stat.  
Lines 10 - 16 § 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

Deposition Transcript of Stephen Mark Rudolph (continued)

Page 100  
Part of line 2 § 366.093(3)(e), Fla. Stat.

Page 103  
Part of line 1 § 366.093(3)(e), Fla. Stat.  
Parts of line 5 § 366.093(3)(e), Fla. Stat.  
Parts of line 6 § 366.093(3)(e), Fla. Stat.

Page 105  
Parts of line 24 § 366.093(3)(e), Fla. Stat.

Page 106  
Parts of line 9 § 366.093(3)(e), Fla. Stat.  
Parts of line 12 § 366.093(3)(e), Fla. Stat.  
Parts of line 18 § 366.093(3)(e), Fla. Stat.

Page 107  
Line 8 § 366.093(3)(e), Fla. Stat.  
Parts of line 9 § 366.093(3)(e), Fla. Stat.  
Part of line 12 § 366.093(3)(e), Fla. Stat.  
Part of line 23 § 366.093(3)(e), Fla. Stat.  
Part of line 24 § 366.093(3)(e), Fla. Stat.  
Part of line 25 § 366.093(3)(e), Fla. Stat.

Page 108  
Part of line 1 § 366.093(3)(e), Fla. Stat.  
Part of line 7 § 366.093(3)(e), Fla. Stat.

Page 110  
Part of line 7 § 366.093(3)(e), Fla. Stat.  
Part of line 14 § 366.093(3)(e), Fla. Stat.  
Part of line 17 § 366.093(3)(e), Fla. Stat.  
Part of line 22 § 366.093(3)(e), Fla. Stat.  
Part of line 23 § 366.093(3)(e), Fla. Stat.



Document

Pages

Justification

**Deposition Transcript of Stephen Mark Rudolph (continued)**

Page 111

Part of line 2 § 366.093(3)(e), Fla. Stat.  
Part of line 14 § 366.093(3)(e), Fla. Stat.  
Part of line 15 § 366.093(3)(e), Fla. Stat.

Page 113

Part of line 2 § 366.093(3)(e), Fla. Stat.  
Parts of line 3 § 366.093(3)(e), Fla. Stat.  
Part of line 8 through line 9 § 366.093(3)(e), Fla. Stat.  
Part of line 11 through part of line 12 § 366.093(3)(e), Fla. Stat.

Page 114

Part of line 6 through line 7 § 366.093(3)(e), Fla. Stat.

Page 117

Parts of line 3 § 366.093(3)(e), Fla. Stat.  
Part of line 4 § 366.093(3)(e), Fla. Stat.  
Part of line 11 § 366.093(3)(e), Fla. Stat.  
Part of line 16 § 366.093(3)(e), Fla. Stat.

Page 118

Part of line 3 § 366.093(3)(e), Fla. Stat.

Page 119

Part of line 6 § 366.093(3)(e), Fla. Stat.

Page 120

Part of line 8 § 366.093(3)(e), Fla. Stat.

Page 121

Part of line 9 § 366.093(3)(e), Fla. Stat.  
Part of line 10 § 366.093(3)(e), Fla. Stat.  
Part of line 22 § 366.093(3)(e), Fla. Stat.  
Parts of line 23 § 366.093(3)(e), Fla. Stat.

Page 122

Part of line 3 § 366.093(3)(e), Fla. Stat.  
Parts of line 6 § 366.093(3)(e), Fla. Stat.

Document

Pages

Justification

Deposition Transcript of Stephen Mark Rudolph (continued)

	<u>Page 123</u>	
	Part of line 19	§ 366.093(3)(e), Fla. Stat.
	Part of line 23	§ 366.093(3)(e), Fla. Stat.
	<u>Page 124</u>	
	Line 3	§ 366.093(3)(e), Fla. Stat.
	<u>Page 125</u>	
	Part of line 14	§ 366.093(3)(e), Fla. Stat.
	Line 15	§ 366.093(3)(e), Fla. Stat.
	<u>Page 126</u>	
	Lines 1 - 3	§ 366.093(3)(e), Fla. Stat.
	Part of line 4 through line 7	§ 366.093(3)(e), Fla. Stat.

**EXHIBIT D**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Approval of )  
Arrangement to Mitigate Impact of ) DOCKET NO. 150075-EI  
Unfavorable Cedar Bay Power Purchase )  
Obligation, by Florida Power & ) FILED: July 16, 2015  
Light Company. )  
\_\_\_\_\_ )

**AFFIDAVIT OF JACOB A. POLLACK IN SUPPORT OF  
CEDAR BAY GENERATING COMPANY'S REVISED  
FIFTH REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jacob A. Pollack, who being first duly sworn, on oath deposes and says that:

1. My name is Jacob A. Pollack. I am over the age of 18 years old and I have been authorized by Cedar Bay Generating Company, Limited Partnership ("Cedar Bay") to give this affidavit in the above-styled proceeding on Cedar Bay's behalf and in support of Cedar Bay's REVISED Fifth Request for Confidential Classification (the "REVISED Fifth Request"). I have personal knowledge of the matters stated in this affidavit.

2. I am Vice President and Secretary for Cedar Bay. I am also Senior Vice President and General Counsel for Cogentrix Energy Power Management, LLC ("CEPM"), which (1) is an affiliate of Cedar Bay, and (2) employs Rick Neff, Tracy Patterson, and

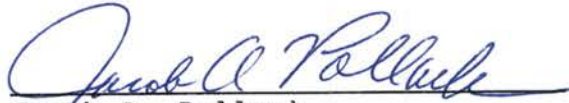
Stephen Mark Rudolph, the individuals who have been deposed in connection with the above-styled proceeding and whose deposition transcripts are the subject of this REVISED Fifth Request. My business address is 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273. I am responsible for all legal, corporate governance, and corporate records matters for Cedar Bay and CEPM.

3. Cedar Bay is seeking confidential classification for the deposition transcripts of Tracy Patterson, Rick Neff, and Stephen Mark Rudolph as more specifically identified in Exhibits A and C of Cedar Bay's REVISED Fifth Request for Confidential Classification.

4. Cedar Bay is requesting confidential classification of this information because it is competitively sensitive confidential business information, in that it contains information concerning internal business plans, projected capital expenditures, confidential contractual negotiations, contractual arrangements, internal budget projections, financial forecasts, plant operations, and other competitively sensitive commercial information. The disclosure of this information to third parties would adversely impact Cedar Bay's and/or its affiliates' competitive business interests and otherwise harm Cedar Bay and/or its affiliates.

5. The information identified in Exhibit A and Exhibit C is intended to be and is treated as confidential by Cedar Bay and has not been disclosed to the public.

6. This concludes my affidavit.



Jacob A. Pollack  
Vice President and Secretary  
Cedar Bay Generating Company, LP  
9405 Arrowpoint Boulevard  
Charlotte, North Carolina 28273

SWORN TO AND SUBSCRIBED before me this 15<sup>th</sup> day of July, 2015, by Jacob A. Pollack, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification and who did take an oath.



  
Notary Public, State of North Carolina

My Commission Expires: October 1, 2019

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light  
Company's Petition for Approval of Arrangement to Mitigate  
Impact of Unfavorable Cedar Bay Power Purchase Obligation

DOCKET NO. 150075-EI  
FILED: May 6, 2015

---

THE DEPOSITION OF: CHARLES R. NEFF

AT THE INSTANCE OF: FIPUG AND OPC

DATE: May 15, 2015

TIME: Commenced at 9:34 a.m.  
Adjourned at 1:41 p.m.

PLACE: 2540 Shumard Oak Boulevard  
Room 105  
Tallahassee, Florida

REPORTED BY: SARAH B. GILROY, RPR, CRR  
sbrinkhoff@comcast.net  
Notary Public in and for  
the State of Florida at  
Large

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A Remington Green Lane  
Tallahassee, FL 32308  
(850) 878-2221

1 APPEARANCES:

2

REPRESENTING FLORIDA POWER & LIGHT:

3

JOHN T. BUTLER, ESQUIRE

john.butler@fpl.com

4

MARIA J. MONCADA, ESQUIRE

maria.moncada@fpl.com

5

ADAM SHEINKIN, ESQUIRE

Florida Power & Light

6

700 Universe Boulevard

Juno Beach, Florida 33408

7

REPRESENTING THE PUBLIC SERVICE COMMISSION:

8

MARTHA F. BARRERA, ESQUIRE

mbarrera@psc.state.fl.us

9

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

10

REPRESENTING THE OFFICE OF PUBLIC COUNSEL:

11

JOHN TRUITT, ESQUIRE

truitt.john@leg.state.fl.us

12

CHARLES J. REHWINKEL, ESQUIRE

rehwinkel.charles@leg.state.fl.us

13

111 West Madison Street, Room 812

Tallahassee, Florida 32301

14

REPRESENTING FIPUG:

15

JON C. MOYLE, ESQUIRE

jmoyle@moylelaw.com

16

Moyle Law Firm

118 North Gadsden Street

17

Tallahassee, Florida 32301

18

REPRESENTING COGENTRIX:

19

SCHEF WRIGHT, ESQUIRE

schef@gbwlegal.com

20

Gardner, Bist, Wiener, Wadsworth & Bowen

1300 Thomaswood Drive

Tallahassee, Florida 32308

21

JACOB POLLACK, ESQUIRE

22

MICHAEL GERGEN, ESQUIRE

23

24

25

I N D E X

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

<u>WITNESS</u>		PAGE NO.
CHARLES R. NEFF		
Direct Examination by Mr. Truitt		5
Cross Examination by Mr. Moyle		58
Cross Examination by Mr. Butler		100
Recross Examination by Mr. Moyle		102

INDEX OF EXHIBITS  
(Exhibits attached hereto.)

NUMBER DESCRIPTION (marked in Volume 1, Patterson)	
1 Operations Summary, April 2013	
2 FPL Billing statement, August 2013	
3 Cogentrix presentation to PSC	
4 DEP monitoring document	
5 2014 Cogentrix business objectives	
6 e-mail string, beginning 8-14-14	
7 CB0009896	
8 CB0012698	
9 CB0013073	
10 10 CB0010257	
11 11 CB0013661	
12 12 e-mail string, beginning 5-7-13	
13 13 Cedar Bay PPA	
14 14 e-mail string, beginning 11-12-14	
15 15 Notification to Cedar Bay Employees	
NUMBER DESCRIPTION (marked in Neff)	
16 16 3-24-15 e-mail string	84
CERTIFICATE OF OATH	103
CERTIFICATE OF REPORTER	104
ERRATA SHEET	105
READ AND SIGN LETTER	106



1       The following deposition of CHARLES R. NEFF was taken  
2 on oral examination, pursuant to notice, for purposes of  
3 discovery, and for use as evidence, and for other uses  
4 and purposes as may be permitted by the applicable and  
5 governing rules. Reading and signing is not waived.

6                               \*    \*    \*

7               THE REPORTER: Do you solemnly swear or affirm  
8 the testimony you are about to give in this cause  
9 will be the truth so help you God?

10              THE WITNESS: I do.

11 Thereupon,

12                               CHARLES R. NEFF

13 was called as a witness, having been first duly sworn,  
14 and was examined as follows:

15              MR. TRUITT: John Truitt, OPC. I will have  
16 the same little introductory clause on every  
17 deposition. So real quickly for the record, OPS  
18 intends to use the deposition as a pure discovery  
19 deposition. Should any party or staff choose to  
20 move any portion of these depositions, including  
21 any attached exhibits, into evidence, OPC intends  
22 to exercise any and all related provisions found in  
23 the Rules of Civil Procedure that are applicable,  
24 including objections on any available grounds, as  
25 well as the right to rebut the evidence.

1           And I would assume, again, Mr. Wright, that  
2           you're not waiving reading; you will be reading and  
3           signing; correct?

4           MR. WRIGHT: That is correct.

5           MR. TRUITT: Okay. And then we will just keep  
6           handling objections how we have been.

7                                 DIRECT EXAMINATION

8           BY MR. TRUITT:

9           Q     Morning, Mr. Neff. Could you please state  
10           your name and spell your last name for the record.

11           A     My full name is Charles Richard Neff, last  
12           name is N-E-F-F.

13           Q     Thank you.

14           MR. TRUITT: Okay. Can we note the same  
15           appearances for the record on this one as well?

16           BY MR. TRUITT:

17           Q     Could you please state the company you work  
18           for and your business address.

19           A     I'm employed by Cogentrix Energy Power  
20           Management. And the business address is 9405  
21           Arrowpoint -- all one word -- Boulevard, Charlotte,  
22           North Carolina, 28273.

23           Q     And how long have you worked for your current  
24           employer?

25           A     Since January of 1999.

1 Q And what is your current job title, sir?

2 A My current job title is senior vice-president  
3 for environment, health, and safety.

4 Q And how long have you been in your current  
5 position?

6 A Since December of '14.

7 Q Now, could you please give us a description of  
8 the duties that go along with your current position.

9 A The duties fall under the -- the general  
10 category of analyzing, managing, and mitigating risk  
11 to the company and shareholders in the environmental  
12 and health and safety fields.

13 Q Who was your -- in your position immediately  
14 preceding you?

15 A I believe I am the first senior vice-president  
16 of environment, health, and safety at Cogentrix.

17 Q Okay. Could you please give us a brief  
18 overview of your work history, including the other  
19 positions with your current employer.

20 A Sure. Well, let me start from 1999 and move  
21 forward. 1999 I was first hired by Cogentrix Energy  
22 as manager of environmental affairs. When I first  
23 joined the company, my primary duties were for  
24 permitting of greenfield power plant developments.  
25 Over time that role involved where I became more

1 involved in the water resources aspect of the  
2 operating plants, as well as maintaining the  
3 greenfield development activity.

4 Getting to a bit of your question before, in  
5 2009, Mark Casper, who had been the vice-president of  
6 EHS for Cogentrix, he resigned, and soon thereafter,  
7 in 2009, I became the vice-president of EHS for  
8 Cogentrix.

9 The -- the big difference in -- from being the  
10 manager of environmental affairs to vice-president of  
11 EHS is, I took on the direct line management  
12 responsibility for all of the different disciplines  
13 that are represented in the EHS department, rather  
14 than having those individuals as colleagues.

15 And those include having an air manager, water  
16 and waste specialist, as well as the health and safety  
17 specialist.

18 Q Okay. And just so the record is clear, I  
19 don't know if we had EHS?

20 A Environment, health, and safety.

21 Q Okay. Could you please explain your  
22 educational background.

23 A I have a bachelor's in environmental  
24 engineering from the University of Florida and a  
25 master's in civil engineering from the University of

1 Virginia.

2 Q And then you've given us a description of your  
3 duties in general. Could you give us a description of  
4 your specific responsibilities and duties with regards  
5 to the Cedar Bay plant itself.

6 A Specifically to the Cedar Bay plant, I do not  
7 very often become involved in the day-to-day  
8 operations at the plants. The -- the individual  
9 disciplines at the plant are handled first off by the  
10 staff at Cedar Bay.

11 My staff provides guidance; we also provide an  
12 audit function for the several disciplines that we're  
13 dealing with. At Cedar Bay the two primary categories  
14 are the -- the air permit and the health and safety  
15 features at the facility. Due to the nature of the  
16 water supply from the steam host, and that it is a  
17 zero discharge plant, the water environmental dealings  
18 at the facility are pretty minimal.

19 Q Now is there anyone that works at Cedar Bay  
20 that is a direct report to you?

21 A A direct administrative report, no. From a  
22 technical basis, we do talk fairly frequently with  
23 Jeff Walker, who is the environmental manager at the  
24 plant; and also the health and safety manager at the  
25 plant, Don O'Neal, he spends quite a bit in

1 conversation with my head of health and safety,  
2 Mr. Doug Post.

3 Q Now, in the overall umbrella of EHS, and any  
4 reports that would come out of the EHS section, are  
5 there any reports from Cedar Bay that have to get your  
6 approval before they are sent somewhere else?

7 A No. The signatory authority resides with the  
8 general manager at the facility.

9 Q Okay. In terms of environmental reports  
10 specifically, since you just stated you don't have to  
11 approve any of them, are you copied on any of them  
12 before they're sent anywhere else?

13 A Directly copied, no. The documents are filed  
14 within the Cogentrix library system. And if they are  
15 conspicuous by their absence, we note that and call  
16 the plant.

17 We also track the plant maintaining those  
18 obligations of filing within our obligation tracking  
19 system. So as they get nearer to a date where a  
20 report is supposed to be filed, and we don't see it  
21 disappearing from the obligation tracking system, then  
22 either myself or the people who work for me will be  
23 contacting the plant and asking them, when is it going  
24 to happen.

25 Q Okay. So absent that scenario, where you have

1 the checklist, and you don't see a big question, as a  
2 matter of course, are there any reports from Cedar Bay  
3 that you make it a habit to look at?

4 A No.

5 Q Okay. Were you involved in any way with the  
6 negotiations with FPL regarding the proposed purchase?

7 A I had discussions with FPL personnel regarding  
8 the environmental conditions at the site and the  
9 permitting. I would not call it a negotiation. They  
10 requested information; we provided information.

11 And we then discussed the information. In  
12 terms of when I think of negotiation, I think in terms  
13 of a financial transaction, terms and conditions; that  
14 part the answer is no.

15 On the technical environmental side, the  
16 answer is, we discussed the information.

17 Q Okay. What kind of information did they  
18 request?

19 A We provided them all of the -- the air  
20 emissions reports for several years historic, the air  
21 permits. The same on the water side; monitoring  
22 reports, the permit reports, also the reports from the  
23 groundwater monitoring program, as well as a -- at the  
24 time fairly recent, Phase I environmental site  
25 assessment, conducted by a third party in conformance

1 with ASTM procedure 1527E.

2 And we provided that third-party assessment of  
3 the environmental risk at the site to them.

4 Q Who performed that third-party assessment?

5 A That was provided by Golder Associates.

6 Q And of the reports you mentioned, seemed to me  
7 like all of them were required by a regulatory entity;  
8 is that correct?

9 A Correct -- well, except the Phase I.

10 Q Sorry. Outside of that one, did you provide  
11 them any other environmental related reports that are  
12 not required by a regulatory entity?

13 A I cannot recall any. I don't believe we did.

14 Q Okay. Were you involved in any way in the  
15 drafting of the purchase and sale agreement between  
16 FPL and Cedar Bay?

17 A In no way.

18 Q Were you involved in anyway in the review of  
19 the purchase and sale agreement?

20 A I reviewed the schedules in the environmental  
21 portion from the PPA and also that section that  
22 pertained to the -- the environmental liability and  
23 environmental matters at the facility.

24 Q Okay. And in the exchange of information with  
25 FPL, who did you talk to at FPL? And I mean that you



1 specifically.

2 A Yeah, me specifically, my initial contact was  
3 with Pat Maher. She's a geologist who works in the  
4 environmental group at FPL. And my discussions with  
5 her were exclusively asking what information she  
6 wanted to see in order for her team to do their  
7 diligence and me making sure -- actually myself and my  
8 colleague, Cheryl Sawyer, making sure that we gathered  
9 up the documents and provided them into the data room  
10 for FP&L's use.

11 When it got into the data analysis part, a  
12 Mr. Ray Butts from FPL -- I'm not sure of Mr. Butts'  
13 title. I got the feeling that Mr. Butts and I had  
14 comparable level positions within the organizations.  
15 I may be wrong on that.

16 However, Mr. Butts and I discussed in specific  
17 what the potential liabilities associated with the  
18 ground at the facility, given the fact that the Cedar  
19 Bay generating plant was built on a brownfield site,  
20 that had been in various forest industry activities  
21 for about a century.

22 Q Then the last really general question, are you  
23 responsible in any way for the implementation or  
24 execution of the current PPA between Cedar Bay and  
25 FPL?

1 A None at all.

2 Q Okay. I'm going to start with this question  
3 that's bounded by a time frame. So I'm looking at  
4 2010 to now. Did the cost of operating and  
5 maintaining Cedar Bay environmental controls vary with  
6 changes in capacity factor that you're aware of?

7 MR. WRIGHT: Can I ask you to clarify, you did  
8 say just maintaining?

9 MR. TRUITT: Operating and maintaining.

10 MR. WRIGHT: Operating and maintaining. Okay.

11 A Okay. Could you clarify when you say the cost  
12 has changed?

13 BY MR. TRUITT:

14 Q Okay. What I mean is between 2010 and now,  
15 have you noticed, or are you aware, I guess is  
16 probably more appropriate, of a change in cost of the  
17 environmental controls that's related to the changes  
18 in the capacity factor?

19 A Okay. Would that include raw material usage,  
20 in that we buy limestone?

21 Q Yes.

22 A Okay.

23 Q That would include that.

24 A The limestone and the ammonia, limestone being  
25 used for SO<sup>2</sup> reduction, and the ammonia for the NOx

1 reduction, that's going to be a perfectly linear  
2 relationship, that, as you're dispatched more, you're  
3 adding tons of limestone for however much fuel goes in  
4 to maintain the SO<sup>2</sup> control.

5 So as the generation goes up or down, those  
6 costs are going to follow -- I should say the mass  
7 will follow linearly. I pay no attention to what the  
8 spot market is for limestone or ammonia cost.

9 The only other, since 2010, I believe that  
10 that is the year that we did the initial data  
11 collection for the MATS program. We received our  
12 initial information request from EPA, required staff  
13 testing, laboratory analysis, et cetera, et cetera.  
14 That testing, I believe, was done in 2010. Those  
15 costs were associated.

16 Subsequently, in going through that data, and  
17 as we saw the rule evolving, a compliance strategy  
18 that the facility adopted for complying with the  
19 mercury portion of the MATS rule was to seek the very  
20 low emitter status. And that required the purchase of  
21 a -- it's a piece of sampling equipment, a mercury  
22 sorbent trap, and I think it was -- I know it's a  
23 several hundred thousand dollar piece of equipment.

24 And the plant elected to make that purchase up  
25 front in order to do that to make that demonstration,

1 because in the long-term, it would reduce the  
2 compliance costs for the mercury portion of the rule.

3 Q I guess we will start by, can you give us a  
4 list of the permitted air pollutants that are emitted  
5 from Cedar Bay?

6 A Oh, we have all of the categorical pollutants,  
7 which are SO<sup>2</sup>, NO<sub>x</sub> -- SO<sup>2</sup>, sulfur dioxide; NO<sub>x</sub>,  
8 nitrogen oxides; carbon monoxide, which is CO; PM,  
9 particulate matter. There is an opacity -- I think  
10 I'm remembering -- forgetting one on the categorical.

11 There are also limitations under the existing  
12 Title 5 permit, which will be modified to conform with  
13 the MATS rule for the hazardous air pollution --  
14 hazardous air pollutants. Those are not monitored by  
15 direct measurement; it's based on the fuel type and  
16 the type of combustor, and the EPA provides formulas  
17 by which the facility calculates the amount of those  
18 emissions.

19 Q Now, do you -- or are you aware if the CO<sup>2</sup>  
20 emission rate for Cedar Bay in pounds per megawatt  
21 hour is reported?

22 A Oh, it's recorded, and it's reported in the  
23 EPA's electronic greenhouse gas reporting system.

24 Q And do you know the current CO<sup>2</sup> emission rate  
25 for Cedar Bay in pounds per megawatt hour?

1           A     Today?  No.  Roughly speaking, the facility is  
2     about 2100 pounds of CO<sup>2</sup> per megawatt hour.  And  
3     that's going to vary based on the steam load that is  
4     sent over the fence to the steam host.

5           Q     Okay.  So for the record, can you explain how  
6     that varies with the steam load?

7           A     The way that EPA and certainly the -- their  
8     methodology that I am the most familiar with is the  
9     methodology they used in developing the MATS rule,  
10    where they look at the total BTUs that go into the  
11    boiler.  They then take the steam flow that was used  
12    to calculate -- or, excuse me, to generate the  
13    electricity -- and let's hold that BTU over on the  
14    side for a moment -- and they also will take the  
15    pounds of steam that were sent over the -- exported to  
16    the steam host.

17                    So in essence, the facility gets credit for  
18    the secondary use, because the steam, which is  
19    extracted, it is a -- too low of a quality to be  
20    useful in spinning a steam electric turbine.  However,  
21    for the industrial processes that are used at the  
22    paper mill, it works just great for them.

23                    So you have the total mass of BTUs which come  
24    into the facility, which has a CO<sup>2</sup> associated with it.  
25    You have the fraction, which is associated with the

1 electrical production. That CO<sup>2</sup> mass is then divided  
2 by the megawatt hours that were generated that come up  
3 with the poundage.

4 The CO<sup>2</sup> that's associated with the steam that  
5 goes over the fence, they do not go into that  
6 calculation.

7 Q Okay. I know you discussed some yesterday  
8 during a presentation, but I want to have the  
9 discussion on the record. So I'm going to ask you a  
10 couple questions that are generally -- how would you  
11 characterize Cedar Bay's current compliance posture  
12 with regards to CSAPR?

13 A With CSAPR, we will --

14 Q Pause for just a second.

15 A I'm sorry.

16 Q When we say CSAPR, for Cross-State Air  
17 Pollution Rules, so it's in the record.

18 A Okay. For CSAPR, we anticipate that the plant  
19 will have to buy a couple hundred NOx allowances in  
20 order to comply with it. I say the -- when we -- or  
21 if we need to buy them, we would not start purchasing  
22 probably until late summer. I'd say right now we're  
23 looking at a budget, you know, market price of about  
24 \$125 a ton. The final strike price when we close on  
25 those, probably be in that magnitude.

1           But I can't give you an exact number.

2           **Q**    So you're saying roughly -- if we guesstimate  
3   125 a ton, you have to buy some allowances, how -- how  
4   much would the total cost look like in terms of the  
5   number of allowances?

6           **A**    We're thinking that for this year, if we have  
7   the level of dispatch that we have had the past three  
8   years, which is, that's our planning window, and I  
9   don't know where we are on that dispatch curve right  
10  now, we're looking at roughly \$29,000 would be  
11  required.

12          **Q**    And then in terms of a projected going forward  
13  basis compliance with CSAPR, how does that look each  
14  year going out in the future?

15          **A**    Tough to tell, since this is a new market, and  
16  we are in the first year.  If we look at price  
17  behaviors from the several predecessor transport rule  
18  markets, I would say within three years the price  
19  would be 50 percent.

20                By the time we get to five to seven years out,  
21  you're probably 10 to 25 percent of the current price.  
22  That's typically how pricing drops throughout the  
23  life.

24          **Q**    Okay.  And then, again, how would you  
25  characterize Cedar Bay's current compliance posture

1 with regard to MATS?

2 A With regard to the Mercury and Air Toxics  
3 rules --

4 Q Sorry. Thank you.

5 A -- they're in -- we have not submitted our  
6 monitoring and reporting plans per the rule to have  
7 those certified by DEP that we are in compliance. We  
8 already know that for the testing portion of it, we  
9 are in compliance.

10 We do have some paperwork and internal  
11 procedures that the plant is working on literally as  
12 we speak to be able to make that submittal as soon as  
13 the window is open for us to shove our compliance form  
14 on through.

15 Q Okay. But when does that window open?

16 A I believe for this facility, we're probably  
17 around the first of June, maybe the first of July.

18 Q Okay.

19 A You know, we expect to have certified  
20 compliance before the end of the summer.

21 Q Okay. And you said in terms of testing,  
22 you're going to be compliant. So could you please  
23 state for the record what the standard is going to be  
24 and where Cedar Bay is at?

25 A Correct. For mercury, the standard is 1.2



1 pounds per trillion BTUs of heat input. Cedar Bay  
2 clocks in -- and I don't have my sheet -- excuse me.  
3 I'm looking at Exhibit 3 to get my numbers out.

4 Okay. For mercury, the standard is the 1.2  
5 pounds of mercury per million BTUs. Cedar Bay's  
6 emission is 0.02 pounds of mercury per million BTUs.

7 For the acid gases, the standard is 0.2 pounds  
8 of SO<sup>2</sup> per million BTUs of heat input. The plant's  
9 emission is 0.09 pounds SO<sup>2</sup> per million BTUs.

10 The non-mercury metal, the standard is 0.03  
11 pounds of particulate matter, PM, per million BTUs.  
12 And Cedar Bay's emission are 0.003 pounds, PM, per  
13 million, BTUs.

14 MR. BUTLER: John?

15 MR. TRUITT: Yes?

16 MR. BUTLER: Just to clarify, I may have  
17 misheard. But I think the witness may have said  
18 1.2 pounds of mercury per million.

19 THE WITNESS: If I did I was incorrect. It is  
20 1.2 pounds per trillion.

21 MR. BUTLER: Thanks.

22 MR. TRUITT: Well, since you referenced that,  
23 we're going to attach it as an exhibit. So we will  
24 label that Exhibit 1.

25 MR. MOYLE: I think it's already --

1           MR. TRUITT: It was already on the previous  
2 one, but I think if someone, you know, pulls  
3 depositions separately, we'll have to label that  
4 for Exhibit 1 on this one.

5           MR. WRIGHT: I agree. I think that's going to  
6 be the way, by far, the most convenient way to do  
7 this, separate depositions -- separate exhibits for  
8 each deposition.

9           MR. REHWINKEL: Can we go off the record?

10           (Discussion off the record.)

11 BY MR. TRUITT:

12           Q     Just to clarify, we were referring to Exhibit  
13 No. 3. And we determined off the record that we're  
14 going to do a consecutively numbered exhibit list. So  
15 you were referring, when we talked about those  
16 emission rates, to Exhibit No. 3, which is the  
17 presentation you gave yesterday?

18           A     Correct.

19           Q     Okay. Then moving on, and attempting to have  
20 more fun, I want to talk about a Clean Power Plan.  
21 Again, you discussed that yesterday, so you have  
22 Exhibit 3 in front of you. So I would like to go  
23 through, on the record, kind of what you explained  
24 yesterday.

25                     So first, I want to preface it with, you've

1 stated it's roughly 2100 pounds of CO<sup>2</sup> per megawatt  
2 hour, you believe, for Cedar Bay right now?

3 A Actually the value that went in for the  
4 baseline in appendix 7 of the supplemental data for  
5 the Clean Power Plan is 2,071 pounds, 2071 pounds per  
6 megawatt hour.

7 Q Okay. And that was in the EPA supplemental  
8 data?

9 A That's in the EPA supplemental data, and they  
10 base that off of the 2012 emissions from the plant.

11 Q Okay. Now I'm going to ask a hypothetical.  
12 If you can't answer that, fine.

13 But assuming capital wasn't an issue, how low  
14 do you think the CO<sup>2</sup> rate for Cedar Bay could go?

15 A With existing, proven technology, you would be  
16 able to drop it a few percentage points.

17 Q Okay. By a few percentage points, I just want  
18 to kind of clarify that. You mean five or less or --

19 A I would say -- I would say five or less, yeah.

20 Q Okay. And I'm understanding that's all  
21 hypothetical.

22 A It's all hypothetical.

23 Q Okay. So if you could, please, kind of walk  
24 us through, at least for Exhibit 3 purposes, on the  
25 record, the Clean Power Plan's impact to Cedar Bay.

1 And I know it's couched under the ability to perform  
2 EPA, and then I'm going to go into some more questions  
3 after that.

4 A Okay. When we first looked at the -- the  
5 Clean Power Plan, our thought -- and actually when I  
6 did this analysis, I did not say, oh, I'm just going  
7 to look at Cedar Bay, and who cares about the rest of  
8 the fleet?

9 I looked at the Clean Power Plan in the  
10 context of every facility that Cogentrix manages in  
11 the portfolio. The first portion that we looked at  
12 is -- and it's the first portion I look at for every  
13 rule I look -- go through -- and that is, okay, when  
14 do they think that the final version of the rule is  
15 coming out.

16 And then between a -- our in-house  
17 discussions, outside technical consultants that I use,  
18 as well as outside legal counsel that I refer to, I go  
19 in to the handicapping the lawsuit season that will be  
20 associated with the rule.

21 And that gives us -- really getting on to  
22 slides 25 and 26 of Exhibit 3. And slide 25, where I  
23 show the diagram, that is the first decision point  
24 which I show is timing. What's the timing on this  
25 going to be?

1           In going through -- and I'm now switching to  
2 slide 26 for the details -- my initial assessment was,  
3 and at that time the analyses that one was seeing,  
4 there were some in the trade press, not very much  
5 discussion regarding lawsuit season in the normal news  
6 media, and looking at it solely on the basis of, first  
7 off, this is a big bill.

8           The second part was, not only is it a big  
9 bill, but it covers not just CO<sup>2</sup> emissions from power  
10 plants, in essence it -- well, let's say there are  
11 parties who read it that it requires an entire  
12 reordering of how the economy works in order for this  
13 to come into effect.

14           My basis for that is that, right now power  
15 markets, generally speaking, they dispatch based on  
16 the lowest cost of production. Those facilities --  
17 and that's absent must-run facilities.

18           But the facilities with the lowest cost of  
19 production; typically that is your nuclear units;  
20 they're the first units on. You know, hydro unit is  
21 another big one that -- they're the first units on.  
22 And they're running; they're humming along at base  
23 load.

24           As one goes above their generation capacity,  
25 each additional megawatt is based on what's the

1 marginal cost of production. The -- the best  
2 surrogate for that is the heat rate of the unit.

3 But there are other factors which go into  
4 determining what the -- the cost of production is for  
5 any given generating unit under any given scenario.

6 Under the Clean Power Plan, when you look at  
7 really step 2 in the BSER, that gets to, well, we're  
8 going to redispatch, based on carbon intensity of  
9 fuel. You can run into situations -- and there are  
10 quite a few -- where you have coal plants that will  
11 dispatch ahead of gas plants.

12 And it depends on how many dollars per million  
13 BTUs your fuel is costing you. We're still at roughly  
14 40 percent or so of the electricity generated in the  
15 U.S. is from coal. And to say, well, that 40 percent  
16 now must be displaced with something else at the end  
17 of ten years, or largely displaced, not 100 percent,  
18 but it's going to go from a number from 40 down to a  
19 significantly lower number.

20 The way that I look at the world, that is a  
21 major restructuring of the economy. And I was willing  
22 to bet at the time that there is going to be a lot of  
23 people who have something to say about that, be it the  
24 constitutionality of the rule, what it's looking for,  
25 the whole argument of trying to regulate CO<sup>2</sup> from

1 power plants under rule 111(d), when it's already a  
2 stationary source, which is regulated under other  
3 portions of the Clean Air Act, and there is that  
4 wonderful, ambiguous language, between the final House  
5 bill and the final Senate bill which keeps that area  
6 in contention.

7 I throw all that together, and I see seven to  
8 ten years, easy, before this whole issue -- I'm not  
9 talking about the guts of the rule. You know, just in  
10 terms of the scope of the rule, the breadth of the  
11 rule, the far reachingness of the rule, that it's  
12 going to take a long time.

13 And I do not see the rule having its initial  
14 compliance period in 2020, for a whole host of  
15 reasons.

16 You know, I have some reference in here -- I  
17 don't know what you want to know about, you know --  
18 what I know right now on legal challenges, there are a  
19 bunch of them have been filed. Probably the most  
20 visible one is the Murray Energy.

21 And Murray Energy is -- they were joined by  
22 the State of West Virginia, and the State of West  
23 Virginia claiming that, even though this is just a  
24 draft rule, the draft rule is already causing -- I  
25 think it's significant harm to the State of West

1 Virginia -- I believe there were several other states  
2 that filed amicus briefings on that lawsuit.

3 It went before the D.C. circuit. The  
4 D.C. circuit has not issued their decision on it yet.  
5 Some colleagues of mine who did sit through the orals  
6 on that, what they were hearing from the bench was  
7 that the Administrative Procedure Act does not allow  
8 the D.C. circuit to stay a draft rule.

9 The rule has to be final before -- the bench  
10 also made comments that if one were to file a petition  
11 to stay on the day the rule went final, that it would  
12 take the court about eight weeks to render that  
13 decision. All right?

14 Gives you a strong indication that at this  
15 time where several of the members of the D.C. circuit  
16 are thinking on the rule.

17 Probably the final part is, prior to this rule  
18 being published in June, and even to this day, rumors  
19 coming out of EPA regarding what comments will be  
20 considered, what will be included in the final version  
21 of the Clean Power Plant [sic], I mean, it's -- you're  
22 in the Mojave Desert looking for water trying to find  
23 those rumors.

24 There is very little. So we thought it pretty  
25 telling when Ms. McCabe before the Senate hearing a



1 few months ago said, yeah, we know the 2020 date is  
2 going to be a problem. And what's her exact quote on  
3 there -- you know, they're looking at it very, very  
4 closely.

5 So with all of that on the timing issue,  
6 that's what led me to my conclusion that I think that  
7 there is going -- you know, if the rule makes it  
8 through in its general, current incarnation, it ain't  
9 going to happen before 2020. It may happen before  
10 2025.

11 But I see it somewhere in that window. And I  
12 personally lean towards the back end of that window.  
13 And the PPA expires in January of 2025.

14 So if you are at the initial part, or you miss  
15 implementation of the rule, hence my conclusion that  
16 strictly from a timing point of view, there is no  
17 impact on the plant's ability to perform the PPA.

18 Q Okay. So it's safe to say, for this  
19 assumption, it was all couched in the scope of the  
20 PPA; correct?

21 A Correct.

22 Q Okay.

23 A Other plants I look at differently, but this  
24 plant, strictly --

25 Q Okay.

1           A     -- the PPA.

2           Q     Now, you know, depending on if it's pushed up  
3 or not, and Laurence Tribe had some good arguments  
4 in --

5           A     Yeah.

6           Q     -- the D.C. circuit, he did a pretty good job.  
7 But the plant will exist after 2025; correct?

8           A     Correct.

9           Q     Okay. So taking it out of just the PPA scope,  
10 the Cedar Bay facility itself, what would you see past  
11 the scope of the PPA of the Clean Power Plan effect  
12 coming in? Have you analyzed that? I guess that's  
13 the first question I should ask.

14          A     As an engineer practicing law right now,  
15 (laughter) I will tell you that what I see is the day  
16 the PPA ends, absent another PPA with a regulated  
17 entity in the state of Florida, Cedar Bay cannot  
18 generate. And I'm basing that on the Duke New Smyrna  
19 decision.

20                    So there would need to be some other  
21 structure, be it with FPL, be it with, you know, the  
22 munis and co-ops; who knows?

23                    But it -- the way that I read what the PSC  
24 rules are and how the Florida Supreme Court has ruled  
25 on that matter, if you have a power plant in Florida,

1 and it is not selling 100 percent of its output to a  
2 regulated utility, there is no -- there is no  
3 market -- you're not going to have a market-based  
4 generator in Florida under existing rules.

5 Q Now did Cogentrix submit comments during the  
6 comment period on 111(d)?

7 A Yes, we did.

8 Q Okay. Do you know who drafted those comments?

9 A The comments that we submitted under the  
10 Cogentrix letterhead, it was a combination of myself  
11 and a couple of individuals from Trinity Consultants  
12 out of their Charlotte office.

13 Q Are those the consultants that you talked to  
14 when you mentioned earlier, you said you talked to  
15 outside consultants regarding Clean Power Plan  
16 analysis?

17 A I talked to -- the two that I rely on the most  
18 are Trinity Consultants and Atmospheric Dynamics.  
19 They're located out in California. I also use ERM and  
20 Golder Associates.

21 That's kind of the four that I bounce ideas  
22 through, plus they do specific plant level projects  
23 for the company too.

24 Q Now, since you said you were involved with  
25 drafting the comments, could you give us a brief

1 summary of Cogentrix's comments regarding the Clean  
2 Power Plan?

3 A The biggest portion of our comments focused on  
4 really step one in the BSER. Step one requires an  
5 improvement in efficiency at existing units. Were one  
6 to do -- and this is also where I came up with the  
7 very low percentage number.

8 Absent a major change in the Clean Air Act,  
9 specifically in new source review requirements, no one  
10 with an existing source is going to undertake any  
11 project to try and significantly reduce their  
12 facility, because they will then throw themselves  
13 open. Everything that they built, financed, you name  
14 it on, goes out the window, because under new source  
15 review, you fall under the prevailing set of rules for  
16 a brand new and clean facility as of the day your PSD  
17 comes through, versus the way all power plants issue  
18 right now, is that they operate under the set of rules  
19 that existed when their facility was permitted  
20 originally.

21 That's really what we focused on. In order  
22 for us in particular, and industry in general, to have  
23 fun in seeing what you can do to improve efficiency at  
24 the plant, well if in doing so means you're going to  
25 have to shut down the plant for some other reason

1 that's 100 percent unrelated to the Clean Power Plan,  
2 why would you do that?

3 Q Okay.

4 A You have parts of the Clean Air Act that are  
5 fighting you on either end of the argument.

6 That was the main portion of our argument. I  
7 also believe we included arguments in there that -- to  
8 have clarity regarding the, were a trading program to  
9 be in, to be more specific, in terms of what sort of  
10 model they were looking at for market design for a  
11 trading program, because saying, oh, you can have a  
12 trading program; won't that be neat?

13 Well, absent knowing specifics of a trading  
14 program, you know, it's an interesting concept, but as  
15 with everything else, the devil is in the details.

16 Q Okay. Now, you were talking about block one  
17 the EPA used, and they came up with -- they wanted 6  
18 percent based on their analyses --

19 A 1 --

20 Q -- in the hypothetical.

21 A 1 and a half to 6.

22 Q Right. Could Cedar Bay's heat rate be  
23 improved by 6 percent do you think?

24 A I will speak as an attorney; I won't speak as  
25 a combustion engineer, though. And I would say,

1 absent triggering new source review, I doubt you're  
2 going to hit 6 percent. It doesn't mean -- you may --  
3 you may get -- well, I put it back. I don't think  
4 you're going to get to 6 percent.

5 I think you can be, you know, 1 and a half, 2,  
6 maybe up to 3. That part is pretty darn easy. And  
7 the modifications that you would have to do would be  
8 significantly small in size that you would not trigger  
9 new source review, whether you're de-bottlenecking or  
10 all sorts of other things that can happen throughout  
11 the process.

12 You know, if you put in a new fan size, or you  
13 put in variable speed fans, what does that impact with  
14 your ability to push more megawatts down the wire?  
15 That's -- that's a problem that you start running  
16 into.

17 And, yeah, you improve the heat rate. You  
18 improve the efficiency of the facility. But there is  
19 other portions of the Clean Air Act that will then  
20 come back to bite you.

21 Q Okay. And then also as part of EPA's  
22 hypothetical, they had worked out \$100 per kilowatt  
23 with the improvement, right now. Whether that number  
24 is accurate or not, I don't know, but do you agree  
25 with that number?

1 MR. WRIGHT: I was just going to ask you to  
2 clarify, \$100 per kilowatt of what or what?

3 MR. TRUITT: In terms -- okay. I'm sorry.

4 BY MR. TRUITT:

5 Q Under the EPA's proposed rule in block one for  
6 their analysis, assuming up to a 6 percent heat rate  
7 improvement, they state in the proposed rule that that  
8 would cost \$100 per kilowatt --

9 MR. WRIGHT: Of capacity?

10 MR. TRUITT: Yes, of capacity --

11 MR. WRIGHT: Okay.

12 MR. TRUITT: -- to get to that improvement.

13 BY MR. TRUITT:

14 Q I know there is debate about that \$100 per  
15 kilowatt hour number. Do you agree with it? Or what  
16 is your opinion if you don't?

17 A My opinion is, is that as an order of  
18 magnitude number -- and I look at it, well, is it  
19 going to be closer to \$10 or closer to \$100 or closer  
20 to 1,000? I think it's going to be closer to 100, and  
21 you're probably going to fall somewhere in the  
22 spectrum -- I doubt there is going to be a single fix.

23 You will have a handful that will be close to  
24 the ten bucks per KW. As you get to some of the other  
25 projects, you will probably get, you know, at 100,

1 maybe even above, so that when you blend them across,  
2 you know, I think that's kind of the centroid with a  
3 pretty large error band around it.

4 Q Okay. I'm going to leave the Clean Power Plan  
5 and go to Exhibit 4 that we looked at yesterday, which  
6 is the groundwater sampling.

7 MR. WRIGHT: There you are.

8 BY MR. TRUITT:

9 Q The first question, were you in the room when  
10 I was discussing this with Mr. Patterson yesterday?

11 A Yes, I was.

12 Q Okay. So the quick preface is I printed out  
13 groundwater sampling reports from DEP's OCULUS site  
14 for the last five quarters.

15 Are you familiar with these types of reports?

16 I'm not asking --

17 A Oh, yeah.

18 Q -- about these specific ones.

19 A Yeah.

20 Q Okay.

21 A Not these specific ones, I have not seen, but  
22 they go back to the beginning of the conditions of  
23 certification for the facility.

24 Q Okay. And I know we had these labeled as  
25 No. 4. I think Mr. Patterson stated that he had seen



1     them.  And if we go to admit them later or something,  
2     we will deal with that.  I just want to use these for  
3     reference purposes now at the moment, because we have  
4     some groundwater issues, I believe, at the site.

5             So if we could first turn to -- I'm going to  
6     turn to page 43 of 189.  They're numbered on the  
7     bottom corner.

8             And do you see where it says, monitoring well  
9     ID MWC 5B?

10     A     Yes.

11     Q     Okay.  I'm discussing the same wells we  
12     discussed yesterday.

13             So this report appears as though it's in the  
14     first quarter of 2014; would you agree with me it says  
15     that on there?

16     A     Yes.

17     Q     Okay.  Now, I'm looking again at the  
18     parameters of sample measurement comment -- column and  
19     the permit requirement column.

20     A     Okay.  Can I make an observation?

21     Q     Yes.

22     A     There is no permit.

23     Q     Okay.

24     A     If you --

25     Q     So explain that.

1           A     -- go to the site certification -- and, gosh,  
2 I don't remember; it's probably around page 7 or 8.  
3 And you will see a table that lists all of these  
4 parameters in it. About two paragraphs below that --  
5 well, actually even if you go before that part -- the  
6 groundwater monitoring began in the late 1980s, and it  
7 began because the piece of property which this  
8 facility was built on, it is a brownfield site.

9                     Prior to the construction of the Cedar Bay  
10 power plant, there were several disposal pits that  
11 were unlined that had been around on the site for --  
12 we will just say a while -- that existed. One of them  
13 was an unlined lime pond. And what the conditions of  
14 certification, which this is also one of the squirrely  
15 conditions of certification for Cedar Bay, in that it  
16 is a condition that applies to the Cedar Bay  
17 Generating facility, however, it also references in --  
18 right now the current edition of the site cert has SS,  
19 so that would be SSCC, Smurfit-Stone Container  
20 Corporation.

21                     Well, we all know Smurfit-Stone doesn't own it  
22 anymore. Prior to Smurfit-Stone it referred to  
23 Seminole Craft.

24                     In any case, the intent was, is that for a  
25 number of issues, a huge one being the water supply

1 issue; the secondary one being the groundwater  
2 conditions, that Cedar Bay Cogen and the paper mill  
3 have joint considerations, we will call them,  
4 regarding these permit conditions.

5 For this specific area regarding the -- and I  
6 see here on their form, it does indeed say permit  
7 requirements. There is no permit.

8 And not only that, there is no standard. The  
9 conditions of certification require that you sample  
10 the well once a quarter. It gives a sampling  
11 methodology, all the good things that go along with  
12 that.

13 And they have the comparator of the data is  
14 the general groundwater quality standards, I believe  
15 it is FAC 62-520.400. The FCA will have the exact  
16 number. I think I'll get you in a few page flips of  
17 the right part of FAC with that number.

18 So you are comparing to the general  
19 groundwater criteria. It also has the proviso in  
20 there is that, if a sample result exceeds the general  
21 groundwater criteria, then the correct comparator is  
22 the established background concentration for that  
23 parameter.

24 Really all of that is the intent and the  
25 recognition by DEP, the steam host, and the cogen that

1 this is a brownfield site.

2 Everyone knows that there is existing  
3 groundwater contamination on the site, and really  
4 the -- the comparator -- excuse me.

5 When you look at what the ground lease has in  
6 it, very generally speaking it is what was there by  
7 the paper mill before the cogen existed. That's the  
8 lookout of the paper mill, ain't the lookout of the  
9 cogen.

10 Now anything new that shows up, well, then,  
11 that's something that Cedar Bay Cogen has to deal  
12 with.

13 I did not hear you reference yesterday -- I  
14 know I brought it up this morning -- the Phase I ESA  
15 which we had completed, and I believe it was in early  
16 2013, where Golder Associates went on through, and  
17 they did from back in the midst of time, in the late  
18 '80s through 2013, looking at the trending from all of  
19 the wells of the groundwater quality data, and their  
20 conclusion was that there was no statistically  
21 significant difference between background  
22 concentrations and existing concentrations.

23 The only other thing that I will add to that  
24 is that, looking at the data absent the well level  
25 data, and, you know, I know it gives a -- a number

1 down there. But that is, you know, I don't believe  
2 reference to the local elevation of the well and  
3 really seeing what the local groundwater flow path is  
4 at the time that you're doing the sample.

5 Because we do have a couple of wells out there  
6 that one month they will look like a down gradient  
7 well; another month they will look like an up gradient  
8 well, just the -- the vagaries of rainfall, the  
9 permeability on the site, all those things that go  
10 along with it.

11 So that was a hell of a preamble to give you  
12 in comparing the 10.47 and the permit requirement,  
13 which is not a permit requirement, and the fact that  
14 you are above it, it -- you know, if I remember  
15 correctly, this area here, where we now have a lined  
16 storage pond, that's in the pretty darn close, within  
17 probably 100 feet of where the former unlined lime  
18 pond -- lime disposal pond used to be.

19 So in my mind, well, it was an unlined lime  
20 pond; of course the pH is going to be high.

21 Q Okay. Now, then, if there's not a permit --  
22 I'm just trying to understand all this -- then the  
23 Permit No. FL0061204, do you know what that is, top  
24 left on the left column?

25 A That refers to the facilities NPDES permit.

1 And the state needed a mechanism by which to attach a  
2 monitoring requirement to, so it is attached to the  
3 NPDES permit.

4 Q Okay. Now you said the ground lease had a  
5 clause that explains preexisting versus new.

6 A Correct.

7 Q Okay. Could we go into a little more detail  
8 about that? What is -- explain to me as much about it  
9 as you know, I guess, in terms of how it works.

10 A Okay. How it works is, when the initial  
11 studies were done and during the -- the preparation of  
12 the initial conditions of certification -- and for  
13 that, for one who wishes to research the matter, what  
14 DEP presents on their website right now for Cedar Bay  
15 is only the latest edition of the conditions of  
16 certification, and that is a very skinny document, 30,  
17 40 pages, something in that range.

18 The analyses which were done during the  
19 preparation of the application for certification  
20 volumes that include that. I know from a -- a public  
21 data request, one can get that from DEP. They keep  
22 it. I do not believe they digitize that far back in  
23 the midst of time.

24 And also the initial issuance of the  
25 conditions of certification was a page -- or excuse

1 me -- a document that was hundreds of pages of long.  
2 And that's really the controlling language that the  
3 facility uses on how it makes a judgment; do we have  
4 an issue with groundwater contamination, or do we not?

5 Those terms and conditions are largely  
6 reflected in the ground lease. You know, absent  
7 reading through the paragraphs, which actually I  
8 confess I use Mark Chaffee, our chief civil structural  
9 engineer, who lives for reading through tightly-worded  
10 legal descriptions.

11 But the -- the language is in there that  
12 establishes what basis was made for determining where  
13 areas were contaminated. The methodology for  
14 monitoring to see that Cedar Bay Cogen does not  
15 contribute to that -- either the existing parameters  
16 which have a problem with the general groundwater  
17 criteria, or that they do not add new material from  
18 the facility.

19 That totality of the existing site also led  
20 to, as Mr. Patterson briefly alluded to yesterday, how  
21 the facility is designed, how everything is --  
22 everything is containment. All of the precipitation  
23 that hits an industrial area, it lands on a piece of  
24 ground. That's the water that goes into the lined  
25 storage pond, which we actually have monitors

1 underneath that, between the double layers, to see if  
2 we are leaking through that pond.

3 And that water ultimately becomes recycled  
4 into cooling water makeup and uses throughout the  
5 pond. And eventually there is a dried salt, which is  
6 removed from the site.

7 So knowing that the area had contamination and  
8 how to separate the meum from the tuum in terms of the  
9 existing contamination, that drove a lot of the design  
10 of the facility and the degree of -- or excuse me, the  
11 degree of containment that is used on the facility.

12 Now, there are also areas for which there is  
13 no industrial equipment; nothing is stored in tanks  
14 there. You know, it's a parking lot, or it's an open  
15 gravelled area that has the high voltage lines going  
16 over it.

17 Runoff from those areas, that will go into an  
18 unlined pond. And the preference of the facility is  
19 that we reclaim that water too. And that goes on  
20 through, predominantly in for cooling tower makeup.

21 I believe Mr. Patterson referenced there is --  
22 I believe one time in the plant history in '09 in  
23 response to a tropical storm that they did have a  
24 surface water discharge.

25 Q Okay. Now, combining the -- so the ground



1 lease -- your explanation is the ground lease protects  
2 Cedar Bay from any prior existing contamination?

3 A Correct.

4 Q And is that protection or indemnification  
5 embodied in the conditions of certification?

6 A No. That's in the ground lease. What the  
7 conditions of certification do is have a, in essence,  
8 a state-refereed methodology for continually  
9 measuring. And the data that we collect is  
10 distributed, obviously to DEP. The information also  
11 goes to the steam host.

12 And I do not know how often they exercise it,  
13 but we notice them of when we're sampling and offer to  
14 split samples with them as well.

15 Q Now, have you -- or has Cogentrix, say  
16 Cogentrix, performed any decommissioning studies in  
17 the Cedar Bay facility with respect to environmental  
18 cleanup?

19 A The specific answer to your specific question  
20 is no. To give a little more color on that, the first  
21 question is, is so what environmental contamination am  
22 I going to clean up?

23 We have from the -- and previous Phase I's  
24 have shown the same thing. You know, there have been  
25 a meager handful of events on the facility where you

1 will have a delivery truck, and his transmission picks  
2 the time that he's on your facility to have his  
3 transmission blow out.

4           So we have to clean up that material. All of  
5 that information is logged into the spill prevention  
6 control and countermeasure plans. We mitigate that  
7 cleanup at the time. That information was also  
8 included in the Phase I site assessment.

9           So we know that there are a number of very  
10 small areas that, in total, probably -- yeah, I will  
11 be generous today -- probably about the entire size of  
12 this desk. And I doubt the total volume of dirt  
13 involved is, you know, the volume of the -- yeah, it's  
14 a polygon -- inscribed by this desk and the floor.

15           It's not much material. There is -- you know,  
16 it's difficult to find material in order to remove it.  
17 I also understand the concern about potential  
18 contamination at the site.

19           When Cogentrix first took over management of  
20 the facility, I believe it was in early 2006. At the  
21 time my duties were predominantly in the water sector  
22 at the facility. And myself and my -- my chemist,  
23 Cheryl Sawyer, we spent a lot of time going into the  
24 weeds regarding what was the past history; where did  
25 everything come from.

1           We went out to the site. Ms. Sawyer even went  
2 to the trouble of going through sampling events with  
3 the samplers to make sure that, in her opinion, they  
4 were adhering to the required sampling protocols the  
5 way that they were supposed to be.

6           Through that -- and also around that time, the  
7 company had a -- a Phase I ESA done in the 2006 era.  
8 I think the company that performed that was Amec,  
9 A-M-E-C.

10           Through that they came to the conclusion  
11 independently of what Ms. Sawyer and I came to, and  
12 that, yes, there is indeed historic groundwater  
13 contamination at that site. You can trace that  
14 contamination to facilities that the steam host had  
15 originally on the parcel that is now Cedar Bay  
16 Generating. When they relocated those facilities,  
17 they're now uphill from Cedar Bay Generating.

18           And we came to the conclusion that Cedar Bay  
19 has not contributed to the groundwater contamination  
20 at the facility, that the groundwater contamination is  
21 essentially unchanged since the initial commissioning  
22 of the site.

23           So to get to your question, well, gosh, why  
24 didn't I look at the cost for removal of contaminants  
25 and decommissioning, there is -- I mean, from small

1 events, it happens; we remove it; we mitigate it; it's  
2 gone.

3 Q Okay. Under the terms of the ground lease,  
4 would it be correct to assume that the ground lease  
5 has determined that, if you dismantle Cedar Bay, there  
6 is a certain requirement on how you have to place the  
7 land back into, like, what state it needs to be  
8 returned to?

9 A My understanding is that if one must demantle  
10 [sic] the site, that you bring it down to the top of  
11 the foundations.

12 Q Okay. Do you know of any terms in the ground  
13 lease that require, besides the top of the  
14 foundations, monitoring or sampling to assure the  
15 landowner that it is returned to the state it was in  
16 when you got it?

17 A Outside of the existing monitoring program,  
18 no, I am not aware of any terms.

19 Q Okay. Now regarding the -- this topic, but  
20 linked back to our discussion regarding the  
21 negotiations and exchange of information --  
22 non-negotiations, I'm sorry -- exchange of information  
23 with FPL, do you know if FPL did a similar  
24 environmental site analysis?

25 A I know that I gave all of the information that

1 we had at the time -- you know, all of these reports,  
2 everything else to FPL.

3 Earlier when I referenced my discussion with  
4 Mr. Butts, Mr. Butts and his staff were conducting a  
5 similar type of assessment of the facility that  
6 Ms. Sawyer and I conducted for Cogentrix ten years  
7 ago.

8 So the exact process that he took, the level  
9 from the questions that he was asking of us and how  
10 did we deal with whatever the topic was he had on his  
11 mind at the time, I'm under the impression that FPL  
12 did a very rigorous diligence review on contamination  
13 at the site.

14 Q Were you made aware of their conclusions  
15 regarding the environmental status of the site?

16 A They stopped asking me questions, and the  
17 purchase sale agreement was signed. So I'm of -- and  
18 also from what I saw of the exhibits in the purchase  
19 sale agreement and also the clause's on-site  
20 environmental conditions in the PSA, I'm under the  
21 impression that they became comfortable with the site  
22 as it is today, as well as the contents of the ground  
23 lease.

24 Q Are you aware of any insurance policy for  
25 environmental damage liability?

1           A     Yes.

2           Q     Okay.  Can you give me the details you know of  
3 that?

4                   I'm sorry.  Strike that.  I will narrow it  
5 down.  Do you know who it is with?

6           A     I do not.

7           Q     Do you know the coverage limits?

8           A     I believe the coverage limits are 5 million  
9 per event, 20 million in the aggregate.

10          Q     And do you know the rough scope of coverage?

11          A     The rough scope of coverage is that it covers  
12 the unknowns.  If there is a -- well, first off, what  
13 is definitely known is the existing contaminated  
14 groundwater.  That is very well defined, very well  
15 monitored.  There is no coverage for that area.

16                   If we move into the power block, the -- the  
17 handful of areas that I described earlier, where we  
18 have had an incident, and we had mitigated, removed,  
19 those sites are referenced in the Phase I ESA as  
20 historical RECs; and a REC being a recognized  
21 environmental condition.

22                   Those areas are not covered.  The rest of the  
23 facility, to my understanding, is covered by the  
24 pollution liability insurance.

25          Q     Okay.  Are you aware of any enforcement

1 actions by Florida DEP against Cedar Bay?

2 A Not in recent history. There were the two --  
3 well, I'm confusing with Jacksonville BESD, which, at  
4 the time, had delegation under the Clean Air Act. The  
5 events that Mr. Patterson described yesterday, those  
6 are the only two that I understand ever occurred since  
7 Cogentrix has had control of the facility.

8 Q Okay. Are you aware of any pending  
9 enforcement action by any regulatory agency regarding  
10 environmental issues?

11 A I know of no pending actions.

12 Q Okay. Have there been any lawsuits regarding  
13 EHS topics against Cedar Bay?

14 A I have never heard of one.

15 Q Okay. Now, am I correct in -- we went through  
16 some discovery in the presentation yesterday. Am I  
17 correct in stating that there is a contract regarding  
18 the CCR ash, those contracts in general; okay, do you  
19 know the portions of CCR that go to each of these  
20 entities?

21 A Beforehand, no. After the fact, when I look  
22 at the -- the annual ash reports that the plant  
23 publishes, they maintain for their own personal  
24 records; they are not a reported -- reporting  
25 requirement under site cert. But the plant maintains

1 all of the manifests when things go out, and they also  
2 tabularize the data.

3 Q Okay. Do you know regarding a CCR contract,  
4 if there are clauses such as minimum take or pay?

5 A I have no knowledge of any of the financial  
6 parts of the contracts.

7 Q Okay. I'm going to run through two more just  
8 to make sure for --

9 A Okay.

10 Q -- the record.

11 Termination for convenience clause?

12 A No idea.

13 Q Okay. And any indemnification from liability  
14 for the material generator; do you know if there is  
15 any clause regarding that?

16 A I don't know. I -- my colleague, Cheryl  
17 Sawyer, who is much better versed in these matters, I  
18 know that she vets the contract. She actually goes;  
19 she examines their trucks, their unloading areas,  
20 their truck maintenance areas. Where they ultimately  
21 take it to, soup to nuts, before she will finalize her  
22 discussions with purchasing and issuing the  
23 particulars of what she does, I can't tell you.

24 I know that for a new contractor, if they can  
25 get past Cheryl in three weeks, then they've been



1 really doing well.

2 Q Okay. We discussed this with Mr. Patterson,  
3 but I kind of want to close the loop.

4 A Yep.

5 Q Hazardous materials on site at Cedar Bay, are  
6 you aware of any?

7 A Yes.

8 Q Okay. Do you know -- can you please give us a  
9 brief description of what they are.

10 A Actually, I believe Mr. Patterson may have  
11 misspoke yesterday, in that the -- the bulk chemicals  
12 that we use on the facilities; the sulfuric acid, the  
13 ammonia, the caustic, those are the large -- also we  
14 use a fair amount of bleach for disinfection.

15 All of those are hazardous by their very  
16 nature, which is why they come in placarded trucks,  
17 why we have dedicated unloading areas, you know, why  
18 they're either in double-walled tanks or secondary  
19 containment.

20 So we do have those hazardous materials on  
21 site. They're driving down the highway on a routine  
22 basis, and they come in the plant.

23 And we monitor them when there is an  
24 unloading. We have people stationed and observing  
25 when we unload any of the materials.

1           We also do have some specialty chemicals.  
2           Typically those come in 400-gallon totes, which we  
3           also store in secondary containment, be they an  
4           inventory or whether or not they are near their point  
5           of use within the plant.

6           **Q**     You have hazardous wastes on site at Cedar  
7           Bay?

8           **A**     Yeah. The site is registered as a  
9           conditionally exempt small quantity generator, which  
10          means that they generate less than 100 kilograms per  
11          month of -- you know, if we had a product, you know,  
12          if it's acid, and we spill it, and we cannot resell,  
13          the acid may not be high enough quality for us to put  
14          in our demineralizers. However, someone with a less  
15          exacting use, for them it's perfectly good sulfuric  
16          acid.

17                 If we sell that as a product, it is not  
18          counted as a waste. If it is indeed contaminated, and  
19          no one can use it, then it is manifested as a waste  
20          and disposed of by a licensed contractor.

21                 The other portion that Mr. Patterson referred  
22          to yesterday, RA classification of hazardous wastes  
23          that fall under the universal waste program.

24                 The battery in everyone's cell phone in here,  
25          throw it out. It is a hazardous waste. For those

1 types of batteries and others, we have defined  
2 collection points at the plant, where they go into  
3 their receptacles. They are dated; they are  
4 manifested; referred to halogen light bulbs, some of  
5 the fluorescent bulbs we use, electronic waste.

6 Also when we get into oily rags, those sorts  
7 of things, we collect them; we inventory them; we  
8 follow the universal waste procedure. And we have the  
9 licensed contractors, which come in at a maximum of  
10 six months, because that's our maximal holding period.  
11 And off it goes. We get new containers and continue  
12 on from there.

13 Q Have there been accidental leaks or spills of  
14 hazardous materials or hazardous wastes on site at  
15 Cedar Bay?

16 A Hazardous materials, yes. Earlier when I  
17 mentioned the -- you know, when we've had vehicles,  
18 that they spill some oil, you know, that happens.  
19 That is a hazardous material.

20 I do not recall ever having had a -- a bulk  
21 come out of the chemical, the acid caustic ammonia,  
22 bleach, spill outside of containment.

23 And in Florida we report greater than 25  
24 spills -- or 25 gallons, even if to containment -- and  
25 I'm having a tough time ever having seen an initial

1 incident report for that.

2 Q Okay. So that's the limiting for the  
3 reporting. Internally, do you keep track of any  
4 spills if it doesn't rise to the reporting level?

5 A We keep track of every spill.

6 Q So --

7 A Yeah, we have -- it's called our initial  
8 incident reporting system. And anytime you have a  
9 material that is outside of the container for which it  
10 should be, even if you capture it, like you're doing  
11 a -- you're topping off lube oil at a pump, you put  
12 your spill pan underneath; you're pouring the oil in;  
13 some of it spills; it ends up in the spill pan, we  
14 still generate an incident report for that.

15 Q Okay. To generate incident reports for that,  
16 could you give me a rough estimate of the frequency  
17 during the year, about how many a year?

18 A Cedar Bay, all told -- well, and I will caveat  
19 that, that the same -- the same incident reporting  
20 system is -- if there is a -- a voltage surge, and  
21 something trips at the plant, that shows up as a  
22 report. So there are other operational and health and  
23 safety.

24 So it's -- it's not just environmental. The  
25 whole universe, from Cedar Bay, I'm thinking maybe 15

1 to 20 a year, of which maybe two or three, maybe on a  
2 huge year, four, are environmental incidences.

3 Q How does that compare to the rest of  
4 Cogentrix's fleet?

5 A Better than most.

6 Q Okay. Again, under the EHS umbrella, are you  
7 aware of any accidents at Cedar Bay causing injury to  
8 people?

9 A During the recent outage there were two or  
10 three incidences where -- they were OSHA 300  
11 recordable incidences. I don't believe any of them  
12 were lost time accidents. Before that time you would  
13 have to go a while, but I would really need to check  
14 the stats for the plant.

15 Q Okay. Are you aware of any lawsuits against  
16 Cogentrix for accidents that have happened at Cedar  
17 Bay?

18 A No, I am not.

19 Q Okay. I do want to clarify. Earlier I asked  
20 about enforcement actions --

21 A Yeah.

22 Q I kind of want to clarify. I know in the  
23 Title 5, the requirements of the Title 5, there is --  
24 sometimes it's termed deviations from the permit or  
25 reportable releases --

1           A     Uh-huh.

2           Q     -- a couple different categories.

3           A     Correct.

4           Q     So could you tell me what all the categories  
5 regarding that are? That you can recall. I will put  
6 it that way.

7           A     When one gets on to plant-level air  
8 compliance, I am by far and away the worst person in  
9 the department. My expertise in the air is on policy  
10 and new source permitting.

11                   I have my air expert explain those to -- to  
12 me. You know, there are times where it is permissible  
13 for short excursions to exceed your permit level in  
14 one form or another. For that you file a deviation  
15 report. You note it in your data.

16                   And in almost every incident, there is not an  
17 NOV associated with it. You know, it can be as simple  
18 as that your -- your CEMS unit went down. So you have  
19 a period of time where you are operating without your  
20 continuous emissions monitoring system, however, you  
21 have the unit back online within the specified period  
22 of time.

23                   So you're making the assumption that, you  
24 know, you were point 1 going in; you were point 1  
25 coming out; let's guess all the minutes in between

1 were probably point 1, because nothing else changed in  
2 the operation.

3 Probably the biggest incident that we have  
4 with our deviation reports.

5 Q Okay. Are you -- do you recall any deviation  
6 reports that you had to do for Cedar Bay?

7 A The deviation reports are generated by the  
8 plant.

9 Q Okay.

10 MR. TRUITT: I appreciate it. I don't have  
11 anything else.

12 CROSS EXAMINATION

13 BY MR. MOYLE:

14 Q Have you been deposed before?

15 A Yes, sir.

16 Q Approximately how many times?

17 A Five or six.

18 Q Can you describe them -- if it's a personal  
19 thing, I'm not particularly interested. But can you  
20 describe the times you were deposed in your  
21 professional capacity?

22 A Oh, two broad categories, either in water  
23 rights and proving up water rights; two or three times  
24 those in Idaho, Nevada.

25 Q Were you working for Cogentrix at that time?

1           A     For those, yes. For other times that I was  
2     deposed, and also as an expert witness, it was in  
3     Florida and associated with the PPSA in site  
4     certification hearings.

5           Q     What was the nature of that proceeding?

6           A     It's -- what did I testify on? Or --

7           Q     No, the nature of the proceeding.

8           A     The nature of the proceeding at the time, the  
9     requirements for the Power Plant Siting Act is that  
10    there would be a formal hearing, regardless of whether  
11    or not there were any uncontested issues regarding a  
12    power plant.

13                   And it would be the applicant and the  
14    applicant's representatives, a soup to nuts  
15    description of the project, all of the, you know,  
16    engineering disciplines and the environmental  
17    disciplines, land use planning, et cetera, that go  
18    into the -- the governor and cabinet issuing the  
19    conditions of certification.

20           Q     So this hearing was uncontested?

21           A     No, they were contested. Now the rule is, is  
22    that, if everything is stipulated to, one does not  
23    need to have a hearing. At the time I was doing it,  
24    that modification had not occurred to the rule.

25           Q     This wasn't the original certification



1 hearing; was it, that you're referencing?

2 A I did not testify for the original Cedar Bay  
3 hearing.

4 Q So what time frame are we referencing when you  
5 testified?

6 A First one was in '89. Last one was in '96.

7 Q Okay. And do you have to come back every so  
8 many years under the site certification to refresh  
9 things? Tell me why -- why you had to have these  
10 hearings.

11 A These were all the initial hearings. It was  
12 prior to the facility getting its conditions of  
13 certification approved.

14 Q Okay. So the hearings -- I may have the time  
15 line confused in my head. So what you're referencing  
16 in terms of your testimony was pre governor and  
17 cabinet giving you the blessing and saying, here is  
18 your site certification; go forth and operate?

19 A Correct.

20 Q Okay. Any other depositions?

21 A Not that I can recall.

22 Q Do you reside in North Carolina?

23 A No.

24 Q Where do you reside?

25 A South Carolina.

1           Q     That's more than 100 miles from Tallahassee;  
2 correct?

3           A     Yes.

4           Q     How many coal generating units does Cogentrix  
5 have?

6           A     Three right now.

7           Q     Where are they?

8           A     Two are in Virginia, and then the Cedar Bay  
9 facility.

10          Q     You would agree you also have natural gas  
11 fired units; is that right?

12          A     Yes, we do.

13          Q     With respect to environmental issues,  
14 generally speaking, don't gas plants present less  
15 environmental issues than coal plants?

16          A     I would disagree with the way you worded the  
17 question. I would say that there are more rules that  
18 apply to coal plants than apply to gas plants.

19                I disagree that there are more issues at coal  
20 plants than gas plants.

21          Q     You said there is more rules and regulations  
22 related to coal -- coal plants than gas plants?

23          A     Correct.

24          Q     I was going to ask you if you were given a  
25 choice between managing a coal plant for environmental

1 compliance or a -- choice between a coal plant and a  
2 gas plant, which you would prefer. But I'm not sure I  
3 know your work ethic, so it might be hard to answer.

4 MR. WRIGHT: I'm going to object to the form,  
5 because it sounded squirrely. You can answer if  
6 you understood the question.

7 BY MR. MOYLE:

8 Q Are you a hard worker; do you like to work?

9 A It depends on what I'm working at.

10 Q Did you -- were you involved in producing  
11 documents pursuant to FIPUG's request for documents?

12 A There were some, yes.

13 Q But what did you do to gather up documents?

14 A Called Cheryl.

15 Q So does she have access to all the e-mails and  
16 all the documents?

17 A Pretty much from the day-to-day operational  
18 level. What comes in my inbox goes into Cheryl's  
19 inbox as well.

20 I do not spend a tremendous amount of time in  
21 the office in Charlotte. I'm generally either  
22 visiting operating plants or doing other company  
23 business off site. And if a call comes, and I'm in  
24 California, I call Cheryl.

25 Q I just want to make sure I understood. You

1 had referenced a Phase I that was done by Golder &  
2 Associates; right?

3 A Correct.

4 Q And when was that done, time frame?

5 A It was either the very waning days of 2012 or  
6 the very early days of 2013. I don't know the exact  
7 certification date.

8 Q Do you know if that document was produced to  
9 FIPUG?

10 A I don't know.

11 Q That would be a Cheryl question?

12 A Either that or someone looks in the data room.  
13 I don't know.

14 Q What was the purpose of that Phase I?

15 A The Phase I establishes a baseline of what  
16 contamination may exist at a facility. And it's  
17 not -- it comes -- the reason that we did the one in  
18 2012 was because it was associated with the  
19 refinancing of the project. So the lenders wanted to  
20 make sure that there was comfort on the potential risk  
21 at the facility.

22 Q Did FPL ask for a Phase I as part of their due  
23 diligence related to this plant?

24 A No, they did not. Let me put it this way.  
25 They didn't -- we gave them a copy of our existing

1 one. I did not hear of them requesting site access to  
2 conduct an independent one.

3 Q So a lot of things can happen in three years;  
4 correct?

5 A Depends what -- I mean, like the Gators could  
6 win the national champion? What kind of things are  
7 you talking about?

8 Q If you were advising your client with respect  
9 to buying a generating asset, and there was a  
10 three-year-old Phase I, and you wanted to get an  
11 understanding of the environmental conditions, would  
12 you tell your client, don't worry about it; we got one  
13 that's three years old; or would you say, you know, we  
14 ought to just go ahead and get an updated Phase I?  
15 How would you handle that?

16 A That would depend whether -- what the  
17 financing structure for doing the deal was. If we had  
18 a bank involved, absolutely, positively, because  
19 otherwise the financing would occur.

20 Q Otherwise it would not occur?

21 A It would not occur.

22 Q Lose your own money?

23 A We have.

24 Q Right. But I'm asking you, hypothetically,  
25 you know, they come to you and say, here, we're

1 looking to buy into this asset. We're going to spend  
2 our own money. Our own capital is pretty valuable to  
3 us. What do you recommend with respect to getting,  
4 you know, an environmental --

5 A If it was, and in this instance I believe the  
6 Phase I they were looking at was barely a year old, if  
7 that, not three years, and also going through all of  
8 the operating records, including the SPCC plans, all  
9 of the recordings at the facilities, depending on a  
10 lot of facilities, I might say, yeah, it would be  
11 nice, but it's not an absolute necessity.

12 Q Okay. I thought you told me the Golder report  
13 was done in 2012 or '13?

14 A Yeah.

15 Q So -- okay. '15, I guess, if it's '12, three  
16 years old? Because we're in 2015 now. If it was done  
17 in 2012, it's three years; right?

18 A No. It depends on when the start and the end  
19 date are. And if they're doing their diligence a year  
20 ago, then that would be a year less.

21 Q Were they doing their diligence a year ago?

22 A It was around this time. I don't have -- when  
23 I got the initial call of provide information, I know  
24 it was late second quarter, early third quarter, so  
25 it's around this time.

1 Q Who called you?

2 A Pat Maher.

3 Q Is that someone, to use yesterday's analogy,  
4 upstream from you?

5 A She works for FPL.

6 Q Oh, okay. But somebody told you what they --

7 A Internally they said, you're going to be  
8 getting a call from FPL asking for data at Cedar Bay;  
9 give it to them.

10 Q And who told you that internally?

11 A I don't know exactly, but I think it was  
12 probably Cliff Evans.

13 Q Okay. And is Cliff your upstream direct  
14 report?

15 A No reporting relationship at all.

16 Q Okay. Do you have an upstream direct report?

17 A Yes, I do.

18 Q And who is it to?

19 A Doug Miller, the president.

20 Q And then how many reports are you receiving up  
21 through you?

22 A I have right now three direct reports and  
23 about 14 indirect reports.

24 Q Okay.

25 A And that is -- their paycheck comes from the

1 plant. From technical supervision, we provide that.  
2 But the -- the GM is the one ultimately responsible  
3 for the individual.

4 Q So your three directs are who?

5 A Matt Lydon, who is our air specialist; Cheryl  
6 Sawyer, who is water and waste; and Doug Post is  
7 predominantly health and safety. He moonlights as an  
8 air engineer.

9 Q So FPL you had the initial contact. And tell  
10 me what you recall about that initial contact. Was it  
11 a phone call or e-mail or a phone call followed up by  
12 e-mail?

13 A It was a phone call. I do not recall an  
14 e-mail. I called Kelly White, who manages contents of  
15 the data room. I told her to first, whatever we had  
16 for the refinancing, dump that into this data room.

17 And then I don't know if I called Cheryl  
18 directly or if I asked Kelly to call Cheryl and tell  
19 her to bring all of the quarterly and monthly  
20 monitoring reports up to date.

21 Q So when we talk about data rooms, what was  
22 provided to FPL -- this is all virtual; right? There  
23 is no room with a bunch of documents in it?

24 A Correct.

25 Q Okay. So you had one data room for the



1 refinancing. And then you had another data room for  
2 the -- for the FPL review; is that right?

3 A Correct.

4 Q And did all the documents from the refinancing  
5 go into the FPL data room?

6 A I cannot speak to anything other than the EHS.  
7 For the EHS, I asked Kelly to just dump it. You know,  
8 mirror the one to the other. I never went in to  
9 verify that every single document made it over.

10 Q So EHS --

11 A Environment, health, and safety.

12 Q And you know that went into the data room, the  
13 EHS?

14 A I know I received questions from FPL on a  
15 number of items that were in there, so I know they had  
16 access to them.

17 Q Okay. To get into the data room, I assume you  
18 need a key?

19 A When there are data room requests, I tell  
20 Kelly who wants to go in, who she goes through,  
21 whether it is legal, you know, whether it is whoever,  
22 to grant access. And then the actual provider, who  
23 maintains the data site, they send an e-mail with  
24 credentials, passwords, et cetera, for the person to  
25 get into the data room.

1 Q Okay. So there is a record of somebody --

2 A Every single time anyone goes in a data room.

3 Q Do you know if it also measures how long  
4 they're in the data room?

5 A No idea.

6 Q But electronically there is the equivalent of  
7 a camera that sees somebody going in the data room  
8 when they go in?

9 A I do not know how they log the data for access  
10 to it.

11 Q But it is logged?

12 A That part we do know when people access the  
13 data room. How long they're there, what they look at,  
14 I do not know if that data is available.

15 Q And then do you have any information with  
16 respect to FIPUG's request for production, when we  
17 asked for environmental information, how that was --  
18 how information contained in the data room for the  
19 lender -- the banks, for the refinancing, and the room,  
20 for FPL, whether all that data that was in there was  
21 provided to FIPUG or somebody went through and said,  
22 you know, this is not responsive, or you just don't  
23 know?

24 A I have absolutely no idea.

25 Q Okay. You had mentioned someone else from FPL

1 that you interacted with, Mr. or Mrs. Butts?

2 A Ray Butts.

3 Q And how did you interact with Ray Butts?

4 A It was several months after we populated the  
5 data room. And I believe I got a telephone call from  
6 Mr. Butts, and we started -- you know, he started  
7 asking for, well, when it says this, does it mean  
8 that? Really more just clarification of looking at  
9 some unfamiliar formats of reports and the way that  
10 things were entered in the data room.

11 And then asking, well, how did you guys get  
12 comfortable with the, you know, a brownfield site with  
13 existing groundwater contamination?

14 And I walked him through pretty much the  
15 discussion that we had a few minutes ago.

16 Q You mentioned that insurance policy. Who is  
17 the -- who is the beneficiary under the insurance  
18 policy, the pollution liability policy?

19 A I know we have it. I know some very general  
20 terms, which I probably mangled. In terms of anything  
21 other than a 14-point font, I have no idea.

22 Q But -- let me come at it this way. What's  
23 your understanding of why the policy was obtained?

24 A To limit liability for unknowns.

25 Q Whose liability, yours -- yours being

1 Cogentrix's?

2 A Cedar Bay Generating, yes.

3 Q And help me understand what that liability  
4 might be.

5 A If you are doing a construction project, and  
6 one ran across something that no one had any idea  
7 that -- and you come across a -- a drum, a whatever,  
8 there is a something that shouldn't be there that has  
9 a potential risk, and you've got to get rid of it.

10 It covers the getting rid of it.

11 Q But there weren't any -- there aren't any  
12 construction projects planned for the site; right?

13 A One never knows when one is going to do  
14 something at a power plant. That's why you have  
15 insurance.

16 Q I'm just trying to understand, are there any  
17 current -- as you know, any current construction plans  
18 for the site?

19 A Construction, not related to routine  
20 maintenance of the units, I do not know of any.

21 Q And the document between RockTenn as to how  
22 environmental liability, responsibilities allocated  
23 will, you know, would be the best evidence. But as I  
24 heard you describe it, essentially it's anything that  
25 was there before you got on site is on their dime.

1 Anything that's there after you got on site is on your  
2 dime; is that a fair generalization?

3 A That's how I understand it, correct.

4 Q And do you -- how long have you-all been on  
5 site; 20 years?

6 A No. The facility went commercial in 1994.  
7 Cogentrix took over the management of it, I believe,  
8 in 2006.

9 Q Do you have an understanding that if anything  
10 happened between 1994 and 2006 whether that was  
11 assumed when Cogentrix took over?

12 MR. BUTLER: Assumed for whom, Jon?

13 MR. MOYLE: Assumed by Cogentrix.

14 A I have no knowledge of how liabilities were  
15 partitioned in that transaction.

16 BY MR. MOYLE:

17 Q You were with Cogentrix in 2006 when they took  
18 over; right?

19 A Correct.

20 Q Were you involved in any kind of environmental  
21 review of the site that took place at that point in  
22 time?

23 A No.

24 Q Did such a review take place; do you know?

25 A Yes.

1 Q Do you know what the results of it were?

2 A We bought the facility.

3 Q No, no --

4 A I wasn't involved in it.

5 Q -- I understand.

6 A I never read the reports. That was done under  
7 when Goldman had the ownership. Goldman had a very  
8 siloed information flow regarding this transaction. I  
9 was not inside the silo. You know what I know.

10 Q Okay. From 2006 until today, have there been  
11 any occurrences or incidents that -- to use kind of  
12 the general answer to the previous question about  
13 events happening on Cogentrix's side of the ledger,  
14 have any events occurred that have resulted in  
15 liabilities or cost exposure or risk exposure on  
16 Cogentrix's side of the ledger?

17 A No.

18 Q Okay. And same question with respect to the  
19 time period between 1994 to 2006 -- and I believe  
20 you're going to answer you don't know, because we just  
21 said you're not sure of the information that was  
22 revealed between '96 -- between '94 and 2006; is that  
23 right?

24 A Correct.

25 Q Do you know if FPL has done any risk analysis

1 of events that have taken -- may have taken place  
2 between 1994 and 2006?

3 A I don't know any details of FPL's diligence.

4 Q But you did say a report was done, you  
5 believe?

6 A No. I believe what I said was that from the  
7 questions they were asking, I was under the impression  
8 that they were doing a very rigorous diligence. What  
9 exactly that covered, what time frame, those kind of  
10 particulars, no idea.

11 Q Okay. And that was a poor question on my  
12 part. I just want to make sure that we are clear. If  
13 I asked your counsel for, hey, I would like to see the  
14 report that was done by Cogentrix or commissioned by  
15 Cogentrix for any environmental situations or  
16 accidents that occurred between 1994 and 2006, based  
17 on your knowledge, would there be a document  
18 responsive to that request?

19 A The only thing that I think may come is the  
20 2006 Amec Phase I.

21 Q And what's that?

22 A It's just like the 2013 Phase I that we had  
23 conducted by Golder as part of the refinancing. When  
24 Goldman was purchasing the asset, they conducted the  
25 Phase I, and I know that the document exists. I may

1 have even seen it sometime in my life, but I was not  
2 involved in that transaction.

3 Q So when was Goldman in and out of this deal;  
4 do you know?

5 A This deal? I -- I know that Goldman closed on  
6 the purchase of Cogentrix; I believe it was in  
7 December of '02. And I know Goldman and Carlyle --  
8 gosh, was that December of '12? Or maybe -- yeah,  
9 it's been a couple of years.

10 Q And what did Goldman and -- do vis-a-vis  
11 Carlyle?

12 A No idea.

13 Q You don't know if they sold their interest to  
14 Carlyle?

15 A I know that one day we didn't call Goldman  
16 people for things, and one day we called Carlyle  
17 people. The particulars, I have no idea.

18 Q Okay. But deductive reasoning would suggest  
19 that if you weren't calling Goldman anymore, they  
20 weren't part of the ownership structure; correct?

21 A That would be one possible interpretation.  
22 The other would be a management services agreement. I  
23 don't know.

24 Q So based on your previous answer, you interact  
25 with Carlyle?



1           A     Occasionally.

2           Q     In what kind of matters do you interact?

3           A     Usually when there is a new rule coming down  
4 the pike, they want me to know what I think about the  
5 new rule. That is probably the more common  
6 interaction I have with them.

7                     The second level would be that, when we are  
8 looking at new acquisitions, I typically lead the  
9 environmental diligence for whatever the asset is.  
10 And I will hear from the Carlyle folks at that time.

11                    Finally, when there is a board meeting, and  
12 they want EHS statistics, I have Mr. Post compile  
13 them, and we send them off to Carlyle.

14           Q     Do you typically correspond with them by phone  
15 or e-mail, or is it a mixed bag?

16           A     The deliverables, like an assessment of a  
17 rule, will be by e-mail. The initial contact will be  
18 by phone. Typically when it's about an M&A, mergers  
19 and acquisition activity, pretty much by telephone.

20           Q     Did you have communication with them regarding  
21 the Cedar Bay --

22           A     No.

23           Q     -- arrangement?

24                    Have you communicated with Carlyle with  
25 respect to the 111(d) rule?

1           A     The Clean Power Plan, yes.

2           Q     And given your previous answer, that you  
3 typically send them written documentation when they  
4 ask for what's up with this rule?

5           A     Correct.

6           Q     Okay. Did you tell them anything you didn't  
7 tell Mr. Truitt today when he asked you all about  
8 111(d) and how the future looks?

9           A     At the time that I wrote it I had nowhere near  
10 the level of information that I have almost a year  
11 later. So as much as I am guessing today, I would say  
12 back then I was taking some pretty wild-ass guesses.

13          Q     That slide yesterday that y'all have, I think  
14 it's Exhibit --

15          A     Yeah, in Exhibit 3?

16          Q     Yeah.

17          A     Which has now gone to earth. Oh, here we go.

18          Q     It has all my notes on it.

19                THE WITNESS: Do you have your Exhibit 3?

20                Sorry to make...

21                BY MR. MOYLE:

22          Q     So really what I was going to ask you -- you  
23 can have it if you need it -- but you went through a  
24 whole history of a whole bunch of rules with a lot of  
25 acronyms. And the one thing that struck me is, as

1 being the same with respect to all of them, is they  
2 ended up becoming rules after some period of time. It  
3 was -- it was a litigious past, shall we say, but --

4 A Or except for the rules that have disappeared,  
5 which is why we don't include them, because we don't  
6 do anything with them. I hate to be flippant, but --

7 Q Yeah, that's fair.

8 A -- rules do die.

9 Q And 111(d), does it appear to you to be a  
10 fairly healthy patient?

11 A At this stage of the game, I would say it's  
12 going to be one hell of a fight. I personally don't  
13 think that what ultimately may or may not come down  
14 the pike, that it will be quite some time, and it will  
15 have a passing resemblance to this, but it will not  
16 cue to it. I think most of it is going to be on  
17 constitutional basis.

18 I told you I was an engineer practicing law.

19 Q Yeah, I have -- I have high regard for the  
20 University of Florida and their education, in that I  
21 have two degrees from there. But yours is from the  
22 engineering school; is that right?

23 A Yeah. But the beauty is, is I took my law  
24 classes at University of Virginia.

25 Q And ended up with a master's in --

1           A     Engineering.

2           Q     -- engineering?

3           A     Yeah.

4           Q     You made a comment in answering a question for  
5 Mr. Truitt. I wrote it down that you said there were  
6 situations where coal, you believe, would dispatch  
7 before natural gas on an admissions basis; did I get  
8 that right?

9           A     No. On a price basis.

10          Q     In today's market, you believe?

11          A     Oh, yeah.

12          Q     And that would be because you had a high --  
13 highly efficient, state of the art coal plant and a  
14 very old and inefficient gas plant?

15          A     No. Regardless of the efficiency of the coal  
16 plant and the gas plant, it's how much are you paying  
17 per million BTUs. Obviously you're going to need a --  
18 a clean and efficient either coal or gas plant, or  
19 else you're going to fail on all these rules. It  
20 doesn't make a difference, coal or gas.

21                 However, if you have a -- a low enough priced  
22 coal, then you will dispatch ahead of gas.

23          Q     In today's market, and for the foreseeable  
24 future, gas beats coal; correct?

25                 MR. WRIGHT: I'm going to object, lack of

1 foundation. You can answer if you -- it's also  
2 vague. I would ask you to try to rephrase --

3 MR. MOYLE: Okay. I will.

4 MR. WRIGHT: -- and make it a little more  
5 specific, Jon.

6 MR. MOYLE: I'm just speaking --

7 MR. WRIGHT: Well, I know, but --

8 BY MR. MOYLE:

9 Q Do you have an understanding as to the  
10 relative price of coal to natural gas in today's  
11 economic world?

12 A Yes.

13 Q And tell me about that.

14 A That right now the gas is going for low to mid  
15 \$3 per million BTUs. Going forward, looking at a slow  
16 increase; add inflation, maybe a little bit more.

17 On the coal price, the big question is, what  
18 coal are you using? If you are using Powder River  
19 Basin coal or if you are using Illinois Basin coal,  
20 then you're probably a bit over two bucks a million  
21 BTUs for coal, you know.

22 You can buy more expensive gas, and you can  
23 buy more expensive coal, but the -- my earlier comment  
24 about coal plants being dispatched ahead of gas, the  
25 majority of them would either be Powder River Basin or

1 Illinois Basin coal facilities.

2 Q Do you have any information about the Cedar  
3 Bay facility and how it would be dispatched based on  
4 future fuel price projections?

5 MR. WRIGHT: I'm going to object as to whether  
6 this is the right witness who has foundation to  
7 discuss this. But he may answer if he can answer  
8 it.

9 MR. MOYLE: He's a lawyer. You know, he has a  
10 lot of talents --

11 THE WITNESS: Just not a combustion engineer,  
12 so --

13 A To my knowledge, I have no knowledge of how  
14 FPL dispatches. Gas is relatively high in Florida  
15 because of transport, just like raiing coal into  
16 Florida is relatively high.

17 Low demand periods, I would guess that coal  
18 would have a tough time competing in Florida. High  
19 demand periods, coal can compete.

20 BY MR. MOYLE:

21 Q Because the -- based on the demand, it sort of  
22 determines where the economic dispatch stacks up?

23 A If this were in a market in Florida which, by  
24 Florida law, cannot exist, then the example you would  
25 give would apply. But Florida is not a -- it's not an

1 open market for electricity.

2 How FERC and all the utility -- well, all the  
3 generators are dispatched, because of -- well, first  
4 off, my lack of interest in economics in general, and  
5 knowledge of the Cedar Bay PPA in particular, I don't  
6 pay any attention to that.

7 Q Did you read the petition that FPL filed in  
8 this case?

9 A No.

10 Q Is -- do you have an understanding or a belief  
11 with respect to electricity; is that something that is  
12 a commodity that is involved in interstate commerce,  
13 if you know?

14 A I cannot interpret the interstate commerce  
15 clause as it applies to this. I do know that  
16 electricity travels across state lines.

17 Q And Cedar Bay is how far from the  
18 Florida-Georgia line?

19 A Trying to think what the exit number you get  
20 off there. It's about 350, and it's 371 to get  
21 through the state. 20-ish miles.

22 Q So maybe if Georgia needed power, maybe Cedar  
23 Bay could sell to Georgia?

24 A If one did not consider the problems of  
25 wheeling charges and access to line and transmission

1 system capabilities, theoretically it could.

2 Q Are you aware that FPL has told the commission  
3 that they want -- they're basically planning to buy  
4 this plant and then wait until their -- the Sabal  
5 Trail gas plant gets constructed and then shut down  
6 the Cedar Bay plant?

7 MR. WRIGHT: I'm going to object to the  
8 characterization of the FPL petition. It can speak  
9 for itself.

10 MR. MOYLE: It's 12:00. Why don't we take  
11 a --

12 MR. TRUITT: Okay.

13 MR. MOYLE: -- lunch break. And we'll come  
14 back, and we'll finish up. You guys, 1:00 -- is  
15 1:00 okay? That'll give us about an hour.

16 (Short recess.)

17 BY MR. MOYLE:

18 Q We left off, I had asked you a question about  
19 your understanding of FPL's request of the PSC and  
20 characterized it in a way that elicited an objection  
21 from your counsel.

22 MR. MOYLE: If you would hand those out.

23 BY MR. MOYLE:

24 Q I'm going to hand you a document that  
25 characterizes it a little bit differently. It's an



1 internal document that I got out of the documents  
2 produced by -- by Cogentrix.

3 MR. WRIGHT: Jon, do you want this to be  
4 marked as an exhibit?

5 MR. MOYLE: Yeah, let's go ahead and mark it.  
6 We're doing it sequentially. What number will it  
7 be?

8 THE REPORTER: 16.

9 MR. MOYLE: 16.

10 (Exhibit No. 16 was identified for the  
11 record.)

12 BY MR. MOYLE:

13 Q In a couple of statements, do you know Jeff  
14 Campbell or Horton Conyers?

15 A I've heard the name. I believe that they are  
16 at the Cedar Bay plant, but -- I may have even met  
17 them. The names really don't ring a bell to me  
18 though.

19 Q Okay. And in that Cedar Bay plant, I think we  
20 established yesterday with Mr. Patterson, that the  
21 announcement about the FPL filing was made verbally  
22 and that there wasn't a document distributed to them.  
23 You were here for that; right?

24 A Yes.

25 Q Is that your understanding as well?

1           A     Yes.

2           Q     Okay.  There is a sentence up here that says,  
3     quote, is there a capacity payment in the FPL and  
4     merchant world to cover the fixed costs?

5                     I interpret that to say, you know, can the  
6     capacity payment in and of itself cover the fixed  
7     costs for the unit.

8                     Do you have any information about that?

9           A     No.

10          Q     You don't?  And if you flip over to the second  
11     page, and this is the characterization, it says, FPL  
12     has asked permission to buy Cedar Bay in order to get  
13     rid of the PPA and to save the ratepayers \$70 million.  
14     They plan to operate the plant at 5 percent capacity.  
15     When a new gas pipeline makes it into Florida for  
16     their gas plants, they will shut down.

17                     And there are some adjectives, nasty,  
18     pollutant, baby-killing, cancer-causing coal plant.  
19     The public is already praising FPL for doing their  
20     civil duty to protect them from harm, etc., etc.  So  
21     when the commission approves the sale, paren, by July  
22     31st, quote, or sooner to save ratepayers even more  
23     money, end quote, they plan to take ownership by  
24     September, paren, or sooner to save ratepayers even  
25     more money, close paren.

1           They have requested Cogentrix CVOS to operate  
2 and maintain the facility. So things aren't good  
3 here, and there will be big changes here if we only  
4 operate at 5 percent capacity three weeks a year.

5           Besides the adjectives which we will just  
6 disregard, is it your understanding that this is the  
7 plan that FPL has put forward?

8           MR. WRIGHT: Would you restate the question?  
9 I was being whispered to by my colleague.

10          MR. MOYLE: Sure.

11          MR. WRIGHT: Thank you.

12          MR. MOYLE: I want to just -- my previous  
13 question was asking him a question about FPL's  
14 plan.

15          MR. WRIGHT: Uh-huh.

16 BY MR. MOYLE:

17          Q     And I'm asking him, with respect to this  
18 statement, adjectives aside, don't worry about the  
19 adjectives.

20                But in terms of what you understand the plan  
21 to be with FPL, is this essentially it?

22          A     Until yesterday I had never heard of the  
23 pipeline coming into the area. However, the -- the  
24 first full sentence and also the 5 percent capacity  
25 factor, those are things that I had heard. The new

1 gas pipeline, I had not heard.

2 Q Are you aware of the new -- new gas pipeline  
3 in other contexts, or no?

4 A Yesterday was the first I heard about it,  
5 period.

6 Q Never hit your radar screen?

7 A Never.

8 Q And where I wanted to go with this is, is that  
9 it appears FPL wants to shut down the coal plant. And  
10 your testimony, as I understand it is, is there is no  
11 environmental reasons to shut down the coal plant;  
12 correct, that you --

13 MR. WRIGHT: I'm just going to object to the  
14 preface there, Jon. You can characterize your  
15 understanding of things all you want. But if you  
16 ask him -- if you ask an extra question that would  
17 be okay, but trying to tie it to your premise I  
18 object to.

19 BY MR. MOYLE:

20 Q All right. Do you have an understanding as to  
21 whether FPL is planning on shutting down the coal  
22 plant?

23 A Other than the lower capacity, I have -- their  
24 long-term plans, no.

25 Q Okay. Would you accept for the purposes of

1 the question if FPL represented in their petition that  
2 they're contemplating shutting it down, that -- would  
3 you accept that fact for the purposes of a question?

4 MR. WRIGHT: I'm going to object to lack of  
5 foundation. He hasn't read their petition, and he  
6 just testified he doesn't know what FPL's plans  
7 are. You can ask him --

8 MR. BUTLER: If you want him to comment on the  
9 petition, why don't you show him the petition  
10 instead of an e-mail from somebody at the plant  
11 that doesn't work for FPL --

12 MR. MOYLE: Well, I'm trying to understand his  
13 characterization, you know, the Cogentrix's  
14 understanding of it.

15 MR. BUTLER: You keep asking him about what  
16 FPL said in its petition. And this is, at best,  
17 pretty sketchy, tertiary information about what the  
18 FPL petition says. We can provide you a copy of  
19 the petition if you would like to show it to him.

20 BY MR. MOYLE:

21 Q Why don't we just come at it this way. Forget  
22 the petition; forget FPL; forget all this happiness.

23 If -- if you were making a decision with  
24 respect to Cedar Bay, and you were the owner, it was  
25 titled in your name, do you feel that you could make a

1 judgment about whether you would keep that plant in a  
2 condition to be operated and run, or would you shut it  
3 down? Or can you not answer the information -- or the  
4 question?

5 MR. WRIGHT: I object, because it has lack of  
6 foundation and is asking the witness to speculate.

7 If you feel comfortable answering the  
8 question, Mr. Neff, you may answer the question  
9 subject to my objections.

10 A The only portion that I can speak on is the  
11 existing and proposed environmental regulations and  
12 what I know of the compliance history of the facility  
13 to date. And from that, the rules do not preclude the  
14 plant continuing operating.

15 BY MR. MOYLE:

16 Q So who is the best person to ask about the  
17 economics of it, Mr. --

18 A Either Mr. Evans or Mr. Rudolph.

19 Q Okay. There is two federal environmental  
20 laws, it's RCRA and CERCLA; is that right?

21 A Correct.

22 Q Okay. Does the plant have any issues with  
23 either of those environmental laws, as far as you  
24 know?

25 A They do not.

1           Q     In CERCLA, in particular, what do you  
2 understand its scope to be?

3           A     CERCLA, also known as the Superfund Act, deals  
4 with hazardous waste disposal.

5           Q     Are any of the constituents that we talked  
6 about yesterday that are showing up on that DEP  
7 report; I think it's Exhibit --

8                     MR. TRUITT: 4?

9 BY MR. MOYLE:

10          Q     -- 4? Are any of those constituents  
11 considered hazardous?

12          A     In their native state, no. You can have  
13 concentrations and in mixtures where they can become.  
14 And also we're talking about water in that report.  
15 And the CERCLA RCRA considerations would be pertaining  
16 to solid rather than liquid waste.

17          Q     But if you had arsenic in the soil, you know,  
18 is arsenic a covered material under CERCLA or RCRA?

19          A     It can be.

20          Q     And the difference is, is whether it's  
21 naturally attenuated arsenic or whether it got there  
22 through another source; is that right?

23          A     It really goes more towards the concentration.

24          Q     Have you done any analysis with respect to the  
25 numbers that are found in Exhibit 4 to be able to

1 answer any questions as it might relate to whether  
2 there could be a CERCLA or RCRA issue at the site?

3 A We have done analyses of the groundwater  
4 contamination. Exempt would be a poor word for the  
5 situation of the groundwater at the site, because it  
6 is not.

7 The State of Florida pays very close attention  
8 to the water quality standards. However, the source  
9 of the groundwater contamination are from materials  
10 and/or activities that predate the existence of Cedar  
11 Bay generating. And from that point, no, we have not  
12 done studies on someone else's issue.

13 Q And you say it's someone else's issue. You  
14 say that because that's your understanding of the  
15 contract; correct?

16 A No. It's my understanding of the data, of how  
17 the material -- how the groundwater concentrations got  
18 to be where they are, how the contract is -- how the  
19 parties deal with that fact.

20 Q All right. But doesn't CERCLA impose strict  
21 liability on either the owner or the operator of a  
22 facility?

23 MR. BUTLER: I'm going to object to that as  
24 calling for a legal conclusion, pretty complicated.

25 MR. MOYLE: We've already established he's



1 qualified to answer that earlier.

2 MR. BUTLER: No. No. I'm not arguing.

3 MR. MOYLE: Give me your --

4 MR. WRIGHT: That's a well-placed objection,  
5 but you may answer the question if you have an  
6 understanding, I will ask you to do so.

7 BY MR. MOYLE:

8 Q I'm not asking for your legal opinion.  
9 Mr. Butler and Mr. Wright and I could argue about  
10 that. But just do you have an understanding with  
11 regard to CERCLA, and does it only impose liability on  
12 the owner; does it also capture the operator, and is  
13 there strict liability associated with it?

14 A Since there are no materials that are causing  
15 the groundwater problems attributable to Cedar Bay  
16 Generating, it's not -- not a consideration we worry  
17 about.

18 Q No, I understand. But I'm just asking you  
19 your understanding of the state of the law of  
20 CERCLA -- my understanding is that it covers  
21 operators. Am I -- do you think I'm wrong on that?

22 A If the operator is causing the material which  
23 potentially brings in the jurisdiction of RCRA or  
24 CERCLA, I agree. If the operator is an innocent  
25 bystander, then I disagree.

1           Q     Okay.  And do you have an understanding of  
2 strict liability?

3           A     Yes.

4           Q     What do you understand it to be?

5           A     That mitigating circumstances don't matter.

6           Q     All right.  Just a couple more questions.

7 Hopefully we will bring you in for a landing.

8                     Your Title 5 permit, you presently have that;  
9 right?

10          A     Correct.

11          Q     Do you know when it's up for renewal?

12          A     Not off the top of my head, no.

13          Q     Do you know the term for which Title 5s are  
14 typically provided by -- that's a delegated program;  
15 right?

16          A     Correct.  Five years.

17          Q     Five years?  And not to hold you to it  
18 exactly, but did you do it recently, or do you think  
19 it may be upcoming or...

20          A     I think we're within a year or two of needing  
21 to renew.

22          Q     Okay.  And when you renew, that is an event  
23 that has some risk associated with it; correct?  Third  
24 parties can get in and challenge it and say, no, this  
25 coal plant needs to be shut down, arguably?

1           A     Yeah.  It -- and assuming other than disliking  
2     the facility, that they had a point in law.

3           Q     Yeah.  And lawyers have to file pleadings  
4     that --

5           A     Right.

6           Q     -- have a point in law?

7                     Have any of your Title 5 permits anywhere in  
8     the country ever been challenged?

9                     MR. WRIGHT:  I'm sorry.  Let me clarify; you  
10    mean any Cogentrix plants?

11                    MR. MOYLE:  Right.

12           A     Renewal, no.

13    BY MR. MOYLE:

14           Q     Initial?

15           A     Initial?  We had one in Mississippi in 2000,  
16    2001 time frame; more recently in California, a new  
17    one -- there were other intervenors in the project,  
18    but the Title 5 permit, it was never denied.  There  
19    were intervenors in the whole process.

20           Q     Were those units gas fired or coal fired?

21           A     Gas.

22           Q     And same question with respect to your NPDES  
23    permit; do you know where kind of -- what the term of  
24    that is, where you are in the life of the current  
25    permit?

1           A     The current permit? We will be submitting the  
2 renewal package pretty darn soon if we have not  
3 submitted it already.

4           Q     And same question with respect to risks;  
5 people could challenge it at that point in time?

6           A     They could.

7           Q     Do you know if any analysis has been done with  
8 you or FPL with respect to the renewal of either the  
9 NPDES or the Title 5 permit?

10          A     I cannot speak to FPL. On a renewal of a  
11 permit, I cannot remember the last time for any of our  
12 facilities, coal or gas, that we had a single written  
13 comment on a renewal.

14          Q     Knock on wood.

15          A     Yeah.

16          Q     You answered a previous question, you said,  
17 meum from tuum regarding allocation. I didn't -- I  
18 didn't understand that.

19          A     What's mine is mine, what's yours is yours.

20          Q     And you were answering that, I guess, in the  
21 context of liability for contamination at the site; is  
22 that right?

23          A     Correct. And what the steam host created,  
24 that's their problem. What Cedar Bay Generating  
25 creates, that's Cedar Bay Generating's problem.

1           Q     When you store your coal on site, is that on a  
2 lined -- is it a lined or impervious surface, or is it  
3 on the ground?

4           A     It is on a -- well, a good portion of the coal  
5 pile is covered to keep precip off it. There are  
6 times when some of the coal is in an uncovered area.  
7 That area is lined.

8                     All of the precip that hits the coal pile area  
9 goes into the lined water storage pond and ultimately  
10 recycled and evaporated.

11          Q     As you sit here today, as -- as the person  
12 with ultimate responsibility for environmental issues  
13 at Cedar Bay, what do you believe is the biggest  
14 environmental risk at the facility?

15                     MR. WRIGHT: Just to clarify, if any?

16                     MR. MOYLE: Yeah.

17                     MR. WRIGHT: The way you stated the question,  
18 it assumes that there are environmental risks. If  
19 you said what, if any, is the biggest, or what  
20 environmental risk is the biggest, if any, I would  
21 be okay with it.

22           A     Potential for pollution control equipment  
23 malfunctions.

24 BY MR. MOYLE:

25          Q     Okay. So that would be more so than getting

1 permits renewed or pending regulations? Just  
2 something breaks, and all of a sudden you start  
3 blowing limitations because of broken pollution  
4 equipment?

5 A Yeah. And getting the equipment repaired,  
6 getting the plant back up on line.

7 Q I wasn't exactly clear where the conversation  
8 about hazardous materials and hazardous wastes ended  
9 up. And I'm -- yesterday I think we established that  
10 you don't have hazardous materials, but --

11 A That's incorrect.

12 Q -- you do have hazardous waste, so --

13 A No, that is --

14 THE WITNESS: I'm sorry.

15 MR. WRIGHT: Let him finish asking his  
16 question.

17 BY MR. MOYLE:

18 Q Anyway, you believe that was a mistake with  
19 respect to Mr. Patterson's testimony, in that you have  
20 both hazardous waste that's generated from the  
21 facility, and you have hazardous materials that are  
22 stored at the facility; is that right?

23 A Correct.

24 Q And the fact that you have hazardous wastes,  
25 stored-up materials just means you've got additional

1 rules and regulations you have to comply with and make  
2 sure it's being done in accordance with those rules  
3 and regulations?

4 A Correct.

5 Q Is there any financial implications of having  
6 hazardous materials on site? Do you have to put up  
7 bonds or do anything? Does it cost you money?

8 A If it does, I have never heard of it.

9 Q And you had -- answered a lot of questions  
10 about the lease agreement with RockTenn. In laymen's  
11 terms, can you tell me what you understand the  
12 obligation to be of Cogentrix or whoever has the  
13 lease, the lessee with respect to turning the property  
14 back over to RockTenn at the end of the lease?

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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

[REDACTED]

Q So it sounds like it's a to-be-determined condition, largely?

[REDACTED]

Q Has a Phase II ever been done on this site?

A No.

Q And a Phase II, just so the record is clear, is a more detailed environmental evaluation than a Phase I?

A No.

Q What's the difference between a Phase I and a Phase II?

A A Phase II is warranted if the Phase I shows a



1 potential problem that has not been addressed or  
2 mitigated. And it is the process to define what that  
3 problem may be.

4 Q And the lease term runs through when?

5 A I -- I would defer to Mr. Patterson's  
6 testimony yesterday. I don't recall.

7 Q Okay. And do you have any information with  
8 respect to the obligation to make payments pursuant to  
9 the lease term, or should I ask somebody else that  
10 question?

11 A You need to ask someone else.

12 MR. MOYLE: Okay. That's all I have. Thank  
13 you.

14 MS. BARRERA: Staff has no questions.

15 THE WITNESS: I'm sorry?

16 MR. WRIGHT: The staff has no questions, but  
17 give me one second.

18 (Discussion off the record.)

19 MR. WRIGHT: We have no redirect. Mr. Neff,  
20 you're excused.

21 CROSS EXAMINATION

22 BY MR. BUTLER:

23 Q Could I have one clarification, Mr. Neff,  
24 which I hope won't lead to a lengthy line of redirect.

25 You were asked some questions earlier,

1 Mr. Neff, about when you began engaging with FPL with  
2 respect to the environmental due diligence for the  
3 proposed transaction; do you recall --

4 A Yes.

5 Q -- being asked about that?

6 A Yes.

7 Q I'm not sure from my notes exactly when that  
8 occurred. Could you clarify or specify when you first  
9 recall being involved with FPL in gathering due  
10 diligence materials or otherwise participating in that  
11 environmental due diligence process?

12 A I remember having the call with Ms. Maher when  
13 I was at my house in the Georgia mountains. I'm  
14 usually there in late June and in July. So based on  
15 the recollection of having the call from that  
16 location, that's the time period I put it in.

17 Q And that would be of what year?

18 A Oh, I'm sorry, last year, 2014.

19 Q And do you know whether there was any earlier  
20 contact than that with -- between FPL and Cogentrix  
21 with respect to environmental due diligence?

22 A I have no knowledge of it.

23 MR. BUTLER: Okay. All right. Thank you.

24 MR. WRIGHT: And I don't have any redirect on  
25 Mr. Butler's questions either.

1 MR. MOYLE: Well, let me just ask one  
2 question.

3 RECROSS EXAMINATION

4 BY MR. MOYLE:

5 Q You're the -- you're the guy on environmental.  
6 There is nobody above you in your corporate hierarchy;  
7 right --

8 A Correct.

9 Q -- for Cogentrix? And there is nobody in  
10 Carlyle that is -- you know, countermands you on  
11 environmental substantive issues; correct?

12 A Correct.

13 MR. MOYLE: Okay. I had assumed that. I  
14 don't know that we spelled it out. But thank you  
15 for that.

16 MR. WRIGHT: You're welcome. And Mr. Neff is  
17 excused now.

18 (The deposition was concluded at 1:41 p.m.)

19  
20  
21  
22  
23  
24  
25

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

**CERTIFICATE OF OATH**

STATE OF FLORIDA                    )  
COUNTY OF LEON                    )

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
NOTARY PUBLIC  
850.878.2221

**CERTIFICATE OF REPORTER**

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

STATE OF FLORIDA        )  
COUNTY OF LEON        )

I, SARAH B. GILROY, Registered Professional Reporter,  
and Notary Public, do hereby certify that the foregoing  
proceedings were taken before me at the time and place  
therein designated; that a review of the transcript was  
requested, and that the foregoing pages numbered 1  
through 103 are a true and correct record of the  
aforesaid proceedings.

I further certify that I am not a relative, employee,  
attorney or counsel of any 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 \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
850.878.2221



ACCURATE STENOGRAPHY REPORTERS  
2894-A Remington Green Lane  
Tallahassee, Florida 32308  
850-878-2221

May 27, 2015

Charles Neff  
c/o SCHEF WRIGHT, ESQUIRE  
schef@gbwlegal.com

re: May 15, 2015, deposition of Charles Neff, Docket  
No. 150075-EI

Dear Mr. Neff:

This letter is to advise that the transcript for the  
above-referenced deposition has been completed and is  
available for your review and signature at your  
attorney's office, or if you wish, you may sign below to  
waive review of this transcript.

It is suggested that the review of this transcript be  
completed within 30 days of your receipt of this  
letter, as considered reasonable under applicable  
rules; however, there is no Florida Statute to this  
regard.

The original of this transcript has been forwarded to  
the ordering party, and your errata, once received,  
will be forwarded to all ordering parties for  
inclusion in the transcript.

Sincerely yours,

SARAH B. GILROY, Court Reporter

cc: All ordering counsel

Waiver:

I, \_\_\_\_\_, hereby waive the reading and  
signing of my deposition transcript.

\_\_\_\_\_  
Deponent signature

\_\_\_\_\_  
Date

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light  
Company's Petition for Approval      DOCKET NO. 150075-EI  
of Arrangement to Mitigate  
Impact of Unfavorable Cedar Bay      FILED: May 6, 2015  
Power Purchase Obligation

---

Volume 1, Pages 1 - 180

THE DEPOSITION OF:                      TRACY PATTERSON

AT THE INSTANCE OF:                    FIPUG AND OPC

DATE:                                      May 14, 2015

TIME:                                      Commenced at 1:03 p.m.  
    Adjourned at 5:57 p.m.

PLACE:                                    2540 Shumard Oak Boulevard  
    Room 105  
    Tallahassee, Florida

REPORTED BY:                            SARAH B. GILROY, RPR, CRR  
    sbrinkhoff@comcast.net  
    Notary Public in and for  
    the State of Florida at  
    Large

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A Remington Green Lane  
Tallahassee, FL 32308  
(850) 878-2221



1 APPEARANCES:

2

REPRESENTING FLORIDA POWER & LIGHT:

3

JOHN T. BUTLER, ESQUIRE

john.butler@fpl.com

4

MARIA J. MONCADA, ESQUIRE

maria.moncada@fpl.com

5

ADAM SHEINKIN, ESQUIRE

Florida Power & Light

6

700 Universe Boulevard

Juno Beach, Florida 33408

7

REPRESENTING THE PUBLIC SERVICE COMMISSION:

8

MARTHA F. BARRERA, ESQUIRE

mbarrera@psc.state.fl.us

9

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

10

REPRESENTING THE OFFICE OF PUBLIC COUNSEL:

11

JOHN TRUITT, ESQUIRE

trutt.john@leg.state.fl.us

12

CHARLES J. REHWINKEL, ESQUIRE

rehwinkel.charles@leg.state.fl.us

13

111 West Madison Street, Room 812

Tallahassee, Florida 32301

14

REPRESENTING FIPUG:

15

JON C. MOYLE, ESQUIRE

jmoyle@moylelaw.com

16

Moyle Law Firm

118 North Gadsden Street

17

Tallahassee, Florida 32301

18

REPRESENTING COGENTRIX:

19

SCHEF WRIGHT, ESQUIRE

schef@gbwlegal.com

20

Gardner, Bist, Wiener, Wadsworth & Bowen

1300 Thomaswood Drive

Tallahassee, Florida 32308

21

JACOB POLLACK, ESQUIRE

22

MICHAEL GERGEN, ESQUIRE

23

24

25

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

I N D E X

<u>WITNESS</u>	PAGE NO.
TRACY PATTERSON	
Direct Examination by Mr. Truitt	11
Cross Examination by Mr. Moyle	81

INDEX OF EXHIBITS  
(Exhibits attached hereto.)

NUMBER	DESCRIPTION	
1	Operations Summary, April 2013	43
2	FPL Billing statement, August 2013	43
3	Cogentrix presentation to PSC	51
4	DEP monitoring document	62
5	2014 Cogentrix business objectives	125
6	e-mail string, beginning 8-14-14	137
7	CB0009896	143
8	CB0012698	148
9	CB0013073	148
10	CB0010257	152
11	CB0013661	153
12	e-mail string, beginning 5-7-13	168
13	Cedar Bay PPA	175
14	e-mail string, beginning 11-12-14	175
15	Notification to Cedar Bay Employees	175
	CERTIFICATE OF OATH	179
	CERTIFICATE OF REPORTER	180

1       The following deposition of TRACY PATTERSON was taken  
2 on oral examination, pursuant to notice, for purposes of  
3 discovery, and for use as evidence, and for other uses  
4 and purposes as may be permitted by the applicable and  
5 governing rules. Reading and signing is not waived.

6                                   \*   \*   \*

7           MR. MOYLE: Let's go on the record. I'm Jon  
8 Moyle. I represent the Florida Industrial Power  
9 Users Group, and we noticed the depositions for  
10 today and tomorrow.

11           I wanted to start just by thanking Cogentrix  
12 for their cooperation with the document production  
13 efforts and for producing their witnesses without  
14 the need for subpoena.

15           So thank you to the company and to your  
16 counsel. We have worked through a number of issues  
17 and will continue to do so. It's been handled with  
18 professionalism. I wanted to start with that.

19           The Office of Public Counsel is going to ask  
20 their questions first, and then FIPUG will follow  
21 up second. I know that at some point we probably  
22 will need to address confidentiality issues. I  
23 will just start by saying, it's my understanding  
24 that this whole deposition will be confidential;  
25 that the microphones that we have here are for the

1 aid of people in the room, and there is no  
2 broadcast or taping taking place.

3 You know, we'll probably deal with  
4 confidentiality in an off-the-record fashion and  
5 announce it when we have it all sorted out.

6 Without burdening the record any further than  
7 I have, I'll go ahead and turn it over to the  
8 Office of Public Counsel.

9 MR. WRIGHT: I'd just like to add a couple of  
10 things. Our view is very similar, but our view is  
11 that the whole thing is confidential. If there are  
12 subsequent issues about what is or is not as  
13 relates to information that might want to be  
14 entered at the hearing, we'll deal with that at the  
15 time.

16 But this whole deposition and all exhibits is  
17 to be confidential, is our understanding.

18 MS. BARRERA: That was the agreement.

19 MR. MOYLE: Yeah, but not forever. If  
20 something comes out, and he says something that we  
21 may want to contest and say that's not  
22 confidential, or we want to put it in at hearing as  
23 a confidential document --

24 MR. WRIGHT: Yeah, and that's what I just said  
25 is, after the fact, we can -- we will address any

1 issues relating to confidentiality.

2 MS. BERRERA: Right.

3 MR. WRIGHT: And we'll -- we will agree you're  
4 not waiving your legal ability to challenge our  
5 claim of confidentiality.

6 MR. MOYLE: Right.

7 MR. WRIGHT: One other thing, and that is that  
8 there -- as between FPL and the Cedar Bay  
9 companies, there is a special category of  
10 information that is designated highly sensitive  
11 information. If such information appears likely to  
12 come up, I may mention it at the time. But  
13 regardless, I'll work with FPL's counsel to ensure  
14 that none of that is inappropriately divulged.

15 MR. MOYLE: Okay. And I think one other  
16 thing, John, before I turn it over to you. Given  
17 that -- you know, I may not have artfully phrased  
18 it, but essentially that this deposition is under a  
19 blanket of confidentiality; at this point in time,  
20 it probably makes sense just to go through the room  
21 and have everybody identify themselves.

22 We have 20 people in the room, 25 people in  
23 the room. So maybe we could just do that so we  
24 have a good record of who was here.

25 MR. REHNWINKEL: Two things. This Charles

1 REHWINKEL with Public Counsel's Office.

2 Schef, do I understand when you reference the  
3 highly sensitive information, is there information  
4 that may be divulged by Cedar Bay in response to a  
5 question that FPL is not entitled to?

6 MR. WRIGHT: Everybody in this room is  
7 entitled to hear it, and FPL because it's their  
8 attorneys. But we have a separate agreement as to  
9 some -- some information that is highly, highly  
10 sensitive in the business context that we agreed  
11 with FPL, pending any further workouts, that it  
12 would only be seen by their attorneys and not by  
13 anybody in a position to -- well, it would only be  
14 seen by attorneys today and ever, absent some other  
15 arrangement or order, would only ever be seen by  
16 persons not in a position to use it adversely to  
17 Cogentrix, as they're Cedar Bay's competitors.

18 MR. MOYLE: Everybody here today from FPL is  
19 an attorney, as I understand it.

20 MR. WRIGHT: That's correct.

21 MR. REHWINKEL: Thank you.

22 MR. MOYLE: All right. So maybe just start  
23 with the witness, go around the table, and we'll  
24 get everybody in the room, then I'll turn it over  
25 to you, John.

1 THE WITNESS: Tracy Patterson, Cogentrix  
2 Energy Power Management.

3 MR. WRIGHT: I'm Schef Wright, and I represent  
4 Cogentrix and Cedar Bay.

5 MR. POLLACK: Jake Pollack, General Counsel,  
6 Cogentrix Energy Power Management.

7 MR. GERGEN: Mike Gergen, Latham & Watkins, on  
8 behalf of Cogentrix.

9 MS. MONCADA: Maria Moncada, attorney for  
10 Florida Power & Light.

11 MR. BUTLER: John Butler, attorney for Florida  
12 Power & Light.

13 MR. SHEINKIN: Adam Sheinkin, attorney for  
14 Florida Power & Light.

15 MR. ELLIS: Phillip Ellis, Commission Staff.

16 MS. BARRERA: Martha Barrera, Commission  
17 Staff.

18 MR. REHNWINKEL: Charles REHWINKEL, Public  
19 Counsel's Office.

20 MR. TRUITT: John Truitt, Office of Public  
21 Counsel.

22 MR. FLETCHER: Bart Fletcher, Commission  
23 staff.

24 MS. WU: Jenny Wu, Commission Staff.

25 MR. HIGGINS: Devlin Higgins, Commission

1 Staff.

2 MR. MILLER: Doug Miller, Cogentrix Energy  
3 Power Management.

4 MR. EVANS: Cliff Evans, Cogentrix Energy  
5 Power Management.

6 MR. RUDOLPH: Mark Rudolph, Cogentrix Energy  
7 Power Management.

8 MR. NEFF: Rick Neff, Cogentrix Energy Power  
9 Management.

10 MR. MOYLE: Do you want to go ahead and swear  
11 the witness.

12 THE COURT REPORTER: Do you solemnly swear or  
13 affirm the testimony you are about to give in this  
14 cause will be the truth so help you God?

15 THE WITNESS: I do.

16 Thereupon,

17 TRACY PATTERSON

18 the witness herein, having been first duly sworn, was  
19 examined and testified as follows:

20 MR. TRUITT: All right. Thank you. John  
21 Truitt, Office of Public Counsel. I just want to  
22 put a short statement on the record, right at the  
23 beginning here, based on a phone call we've had a  
24 while back.

25 For the record, OPC intends to use this



1 deposition as a pure discovery deposition. Should  
2 any part of your staff choose to move any portion  
3 of these depositions, including attached exhibits,  
4 into evidence, we intend to exercise any and all  
5 related provisions found in the rules of civil  
6 procedure and that are applicable, including  
7 objections on any available grounds, as well as the  
8 right to rebut the evidence.

9 So could we state that all objections, except  
10 as to form, are reserved until any portion of this  
11 deposition is introduced into evidence?

12 Do you agree to that?

13 MR. WRIGHT: I certainly will agree to that,  
14 although given that -- given that parts of the  
15 deposition may be offered into evidence, I may be  
16 posing objections during the course of the  
17 deposition --

18 MR. TRUITT: Okay. That's fine.

19 MR. WRIGHT: -- on grounds other than as to  
20 form.

21 MR. TRUITT: Okay. I assume you're not going  
22 to waive reading and signing; are you?

23 MR. WRIGHT: That is correct.

24 DIRECT EXAMINATION

25 BY MR. TRUITT:

1           Q     Mr. Patterson, could you please state your  
2 name and spell your last name for the record.

3           A     Sure. Tracy Lee Patterson, P-A-T-T-E-R-S-O-N,  
4 the second.

5           Q     Can you please state the company you work for  
6 and the business address?

7           A     Cogentrix Energy Power Management, physically  
8 located, my office is 9640 East Port Road,  
9 Jacksonville, Florida, 32218.

10          Q     Okay. And what is your current job title?

11          A     Vice-president of operations.

12          Q     Okay. And how long have you been in your  
13 current position?

14          A     Five months.

15          Q     Okay. Immediately preceding that, what was  
16 your job title?

17          A     General manager, Cedar Bay Generating.

18          Q     Okay. And how long in that position?

19          A     Eight and a half years.

20          Q     Okay. How long have you worked for your  
21 current employer?

22          A     25 years this past April.

23          Q     Could you give us a brief description of the  
24 duties that go along with your current position.

25          A     The current position is vice-president of

1 operations. Recently Cogentrix and Carlyle acquired  
2 additional facilities in Georgia, and we've  
3 reorganized the operating group to kind of -- more of  
4 a regionalized type approach, so that there are  
5 actually three people that are responsible or  
6 coordinate their actions for each one of their  
7 facilities.

8 That's a vice-president for the operations of  
9 maintenance. There's a general manager at the  
10 facility, and there's also an asset management person  
11 assigned to each one of those facilities, mostly for  
12 the contractual, financial relationships.

13 Q Okay. Now in your previous position as a  
14 manager at Cedar Bay, could you give us --

15 A General manager at Cedar Bay.

16 Q As a general manager, could you give us a  
17 description of the duties that went along with that  
18 position.

19 A There was a lot of responsibility in that  
20 position. You're responsible for the day-to-day,  
21 longer term planning for the maintenance, the  
22 budgeting for the operations, ensuring the facility is  
23 compliant with our health and safety rules, ensuring  
24 its compliance with the environmental regulations;  
25 contractual relationships and ensuring that the

1 contractual requirements are met, whether it be  
2 reporting, notification, submission of certain  
3 operating records or documents, performing all the  
4 contractual obligations.

5 Q Now, in that position as the manager of the  
6 plant, who did you directly report to, or did you have  
7 multiple people you had to report to?

8 A I reported -- and it's changed over the years.  
9 But most recently it was to the Vice-President of  
10 Asset Management until we reset the operational  
11 structure in December. Now I report to Mr. Evans,  
12 Senior Vice-President of Operations, prior to that  
13 Vice-President of Asset Management. Prior to that, we  
14 had a vice-president of operations.

15 Q Okay. Now, prior to being manager at Cedar  
16 Bay, could you just give us a brief overview of your  
17 prior work history.

18 A With Cogentrix, prior to the -- to taking the  
19 position as general manager at Cedar Bay, I was in  
20 with the Environmental Health & Safety Corporate  
21 Support Group at Cogentrix. My primary duties there  
22 were related to air permits and air-permit-required  
23 compliance duties. That included some permitting  
24 activities, repermitting activities; ensuring the  
25 various state and/or federal regulatory requirements

1 were met. And I had performed that function from 1995  
2 through 2006 when I took the general management  
3 position.

4 Q Did you work in the industry prior to working  
5 for Cogentrix?

6 A Yes.

7 Q Who with, and could you give us a brief  
8 description.

9 A Prior to Cogentrix I worked for Colorado Ute  
10 Electric Association. That was a power-generating  
11 facility in Colorado, primarily the western part of  
12 the state, that served member cooperatives. That was  
13 for approximately eight years.

14 Q And what did you do there?

15 A I was in the instrumentation controls  
16 department, instrumentation, electrical and controls  
17 group. And I was also the training supervisor for  
18 instrumentation, electrical and controls personnel  
19 at -- within the Colorado Ute Electric Association.

20 Q And what is your educational background, sir?

21 A I attended two years, Middle Tennessee State  
22 University. Unfortunately I didn't pay close  
23 attention to my studies, and that was during the time  
24 of the Vietnam conflict. And then I got -- I got the  
25 closest I had ever come to winning the lottery. I had

1 a 32 number, so I decided -- I opted to go into the  
2 Air Force rather than being drafted by the Army.

3 In the Air Force, I worked for the branch of  
4 the Air Force that performs related functions for the  
5 National Security Agency.

6 Q Now, a couple of generalized questions that  
7 we'll get to more in detail later, but I'm just going  
8 to lay these out and maybe save some time later on.

9 Were you involved in any way with the  
10 negotiations with FPL regarding the proposed purchase?

11 A Yes.

12 Q Okay. How so?

13 A Providing historical operations and  
14 maintenance costs for the facility.

15 Q Now, were you involved in any way in the  
16 drafting of the purchase and sale agreement?

17 A No.

18 Q You were involved in negotiations, not  
19 involved in the drafting.

20 Now were you involved in any way in the review  
21 of the drafts?

22 A No.

23 Q And would my assumption be correct that,  
24 obviously as the manager of Cedar Bay, you were  
25 responsible in some way for the implementation or

1 execution of the PPA that's in existence between Cedar  
2 Bay and FPL?

3 A Yes.

4 Q Okay. Now, with relation to the PPA, can you  
5 explain directly what went through you. I mean, it  
6 has a lot of clauses. I just want to understand your  
7 oversight of it.

8 A Pardon me. I have to apologize. Allergies  
9 start to really kick in about this time of day.

10 My primary responsibilities as it relates to  
11 the PPA is ensuring that required reports were  
12 submitted. Monthly we would submit a report to  
13 Florida Power & Light, the manager -- accounting  
14 manager of -- and I don't remember the full, complete  
15 title. We had a contract administrator, so to speak.

16 Every month we'd submit operating statistical  
17 reports according to the requirements of the PPA --  
18 and essentially those followed standard FERC reporting  
19 requirements -- forced outage, service hours, heat  
20 input, and generation.

21 We also scheduled the maintenance. It has to  
22 be coordinated with Florida Power & Light. Every year  
23 we have to send them a five-year projection for our  
24 maintenance schedules and what some of the major  
25 activities are anticipated to be and also the time

1 when that outage would begin and when it would end.

2 Each year we are required to perform -- every  
3 five years we had to do -- have a third party come in,  
4 do an evaluation of the operation and maintenance of  
5 the facility to provide that evaluation. There were  
6 certain occasions at the plant where we would have an  
7 incident that resulted in a plant outage, and in  
8 certain cases, we would follow the PPA guidelines for  
9 submitting a claim of *force majeure*.

10 We believed that it was beyond our control.  
11 We couldn't really anticipate. And we'd submit a  
12 claim of *force majeure* in accordance with the  
13 contract. FPL would respond to that.

14 There were -- the other functions I would  
15 perform according to the PPA, just coordination with  
16 their dispatch and generation, just for, you know, an  
17 idea so that we could better anticipate our needs for  
18 fuel and some of the other commodities.

19 Q In terms of the billing process, could you  
20 give me a little bit of an overview of exactly how  
21 that works.

22 A Two components to the contract. We get an  
23 energy payment for those periods of time when we  
24 operate, when we're up and generating electricity.

25 And the energy payments, they're tied back to



1 the delivered price of fuel for the St. Johns River  
2 Power Park facility in north Jacksonville. Their  
3 delivered price for coal actually sets the price that  
4 we're going to get for the energy times a percentage  
5 times an efficiency factor for the St. Johns River  
6 Park. That's what we're indexed to for energy.

7 The other part -- pardon me. Let me back up.  
8 That's tracking the periods when Florida Power & Light  
9 has control of the plant, how much their -- what their  
10 requirements are for generation. There's a mode of  
11 operation that's called automatic generation control,  
12 where they actually control the output of the plant.  
13 And they have limits that they can operate the plant  
14 between, between the minimum load and the maximum load  
15 that they're -- that's available to them.

16 So what we do at the end of the month is, we  
17 reconcile the generation and the dispatch periods,  
18 amount of time on automatic generation control versus  
19 when they would manually dispatch the plant. That's  
20 the fundamental for calculating.

21 In the contract it's called the annual  
22 capacity factor; in the PPA, it's annual capacity  
23 factor. We refer to it, and you may have heard the  
24 term once or twice this morning, that it's billing  
25 capacity factor.

1           It's actually the -- it means the same thing.  
2           It's the calculation of what the plant's availability  
3           was, according to the requirements of the power  
4           purchase agreement, on a monthly basis. And then the  
5           capacity payment is based on the 12-month rolling  
6           average of the monthly capacity factors.

7           We review those; we coordinate it, and then we  
8           discuss that with FPL for every billing cycle to  
9           ensure it's accurate.

10          Q     Okay. So you would characterize that  
11           discussion as a pretty open channel of communications  
12           with the billing? I mean, there's a good amount of  
13           back and forth?

14          A     There's not a good amount of back and forth.  
15           It's usually perhaps one or two: Here's the draft;  
16           you missed a period of dispatch; you know, just --  
17           that's just the level of -- it's a very informal  
18           process.

19           We provide backup. We keep very complete  
20           records, as do they.

21          Q     Okay.

22          A     Most of the time it's very easy to reconcile  
23           any differences.

24          Q     I want to do some questions about the actual  
25           plant itself, just to get these on the record. I know

1 some of this information may be available for the EIA  
2 or in other locations, but I want to go ahead and walk  
3 through them with you.

4 What's the name plate capacity on the plant?

5 A Name plate capacity on the plant is 250  
6 megawatts net. We do have a -- we do have an on-peak  
7 and an off-peak generation under the PPA, but the  
8 rating submitted to the DOE EIA is 250 megawatts net.

9 Q Do you have a different rating for summer or  
10 winter, or is it the same year-round?

11 A It's the same year-round. The only thing that  
12 changes is the peak periods, where you're in air  
13 conditioning or heating.

14 Q I know from your presentation earlier, you  
15 guys had discussed in 2007, 2008, some improvements  
16 that were made, and so, you know, you didn't have as  
17 much outages and things like that. So I'm going to  
18 look at after that. That was in 2008 I think you said  
19 it was completed and kind of in effect?

20 A Parts of it were implemented in 2008.

21 Q Okay. When was it completely done?

22 A Which part of the improvements? I'm sorry. I  
23 need to be clear.

24 Q Well, you talked about the coating on the  
25 water well tubes and then there was another issue with

1 the impingement of the sand and everything going  
2 around on the inside. So when all of that was done,  
3 and you finished both of those projects.

4 A A large portion of the coating program had  
5 been fully implemented in 2008.

6 Q Let's look at 2009. I want to make sure we're  
7 after the period where you had improved that with some  
8 of these questions.

9 Since 2009 what's the average heat rate that  
10 your plants actually run at, and what are you getting  
11 out of it?

12 A Could I ask you to be more specific in terms  
13 of the heat rate? There's a couple -- I just want to  
14 make sure because there's --

15 Q I know there are multiple different versions.

16 A Yes, there are.

17 Q So I have some forms that we're going to look  
18 at to go through some different ones. So let's try --  
19 let me just start with the net plant heat rate, and  
20 then we'll get to all the different versions later.  
21 So what's been the average net plant heat rate?

22 A To be honest, I almost have to look at those  
23 and think about them each and every time. I primarily  
24 focus on the full load heat rate. That gives us a  
25 good reference point in terms of the overall

1 efficiency of the plant.

2 Q Okay.

3 A Such as when we go through a major turbine  
4 overhaul, tighten everything up, we get it back to  
5 what the design specifications were.

6 Q Could you give me the average full load heat  
7 rate?

8 A Full load heat rate last year was 11,200,  
9 approximately, BTUs per kilowatt hour.

10 Q And can you tell me the average CO<sub>2</sub> emissions,  
11 pounds per megawatt hour?

12 A No, I couldn't.

13 Q Okay.

14 A We calculate that annually. And I don't  
15 really -- there's not really a need for me to try to  
16 quantify that right now on a pound per megawatt hour.

17 Q So I took -- during the presentation, I know  
18 you put up tons of CO<sub>2</sub>. If I took that and then took  
19 your megawatt hours that had been reported to EIA,  
20 would that be a correct way to calculate your  
21 CO<sub>2</sub> pounds per megawatt hour?

22 A Approximately yes. That was the average. I  
23 believe Mr. Neff has that number up for the period of  
24 2012 through 2014.

25 Q Okay. Since recently you were the manager of

1 that plant, general manager of the plant, are there  
2 any performance problems with the pumps or prime  
3 movers of the plant that you're aware of?

4 MR. WRIGHT: I'm going to object to form. I  
5 think pumps and prime movers may be ambiguous. If  
6 you could be a little clearer, that would be  
7 helpful.

8 BY MR. TRUITT:

9 Q Okay. What is your understanding of the term  
10 "prime mover"?

11 A In the sense of the plant, I would term prime  
12 mover as the turbine, steam turbine.

13 Q Okay. So are there any performance problems  
14 that you know of with the steam turbine at the plant?

15 A No.

16 Q Are there any performance problems with any of  
17 the water systems at the plant, such as, you know, the  
18 pipes that carry the water that's going to go into the  
19 steam, that nature, that stuff?

20 A The pipes that carry water make up to the  
21 boiler?

22 Q Uh-huh.

23 A No.

24 Q I guess I'll just ask the general question.  
25 Any performance problems with anything at the plant

1 that you're aware of?

2 A No.

3 Q Okay. Has there been any life extension work  
4 performed on the plant in the last five years?

5 A No.

6 Q Is there any life extension work that's  
7 planned for the plant over the next ten years?

8 A No.

9 Q Is there any prediction for a need for a major  
10 capital addition over the next ten -- I'll just say  
11 any capital additions over the next ten years at the  
12 plant?

13 A No major capital additions.

14 Q Okay. I remember during the presentations,  
15 there was something referenced, I think it was about  
16 640,000 a year was the cap X planned?

17 A Approximately, I believe, that's the number  
18 Mr. Rudolph referenced in the financial models.

19 Q Would you know what that would encompass?

20 A We always have some funds earmarked for safety  
21 improvements. We're adding platforms, for example.  
22 Analyzed basis, we're in the hundred, \$125,000 just in  
23 safety improvements for those type of activities.

24 Q Okay.

25 A There may be some other improvements to the

1 plant. Typically any major type repairs are not  
2 capitalized. Those are included in our major payments  
3 schedule, and they are expensed.

4 Q Now, what were the dates of your last two  
5 turbine inspections?

6 A Could you clarify what a turbine inspection  
7 is. Are you referring to like a major overhaul or --

8 Q Yes.

9 A -- if we look into the back end of it?

10 Q No, a major overhaul.

11 A The last major was in 2010. Those are on an  
12 eight-year cycle according to our plans right now.

13 Q How much is budgeted for that inspection, that  
14 major overhaul?

15 MR. WRIGHT: Just to clarify, do you mean the  
16 next one or the one in 2010?

17 MR. TRUITT: I'll go with the past one first  
18 and then what's coming up. Start with the last  
19 one.

20 THE WITNESS: To the best of my recollection,  
21 that was approximately four-and-a-half million. It  
22 was under \$5 million. If I can qualify that, that  
23 included also some generator inspections as well,  
24 where you take the rotor out; you do electrical  
25 tests. That's the whole steam turbine generator.



1 We do the major at the same time.

2 BY MR. TRUITT:

3 Q So then what would be the budgeted for the  
4 next one, which should be coming up in 2018?

5 A I believe our typical escalation is [REDACTED]  
6 [REDACTED] per year, and we probably benchmark it at  
7 the \$5 million and escalate it, whatever that would  
8 be.

9 Q Okay. Based on the last major inspection of  
10 the turbine and how the plant's been running since, do  
11 you have any indication of a requirement for extensive  
12 repairs during the next turbine inspection?

13 A No.

14 Q Okay. Now, who performs the turbine  
15 inspection?

16 A Cogentrix utilizes, or we have our own field  
17 service group that are rotating equipment. We have  
18 steam turbine specialists, combustion turbine  
19 specialists. But we do do that at an arm's length  
20 type condition, where we'll actually go out and  
21 solicit proposals from the OEM, Toshiba; we'll solicit  
22 a proposal from Cogentrix Field Service, and one or  
23 two other specialty providers, so that we always  
24 ensure we're getting the best maintenance for the  
25 dollar.

1           In the last case, we did use Cogentrix Field  
2 Services. And they did contract some of that out to  
3 some -- to a third party for some machinist-type work  
4 to help support that.

5           Q     Now, during the negotiation process for the  
6 purchase and sale agreement, did you share these  
7 reports, the turbine inspection reports with FPL?

8           A     I can only say that we provided that  
9 information that was put into the data room. Whether  
10 they looked at it --

11          Q     It was available.

12          A     Yes.

13          Q     I'll qualify it that way.

14          A     It was available.

15          Q     Okay. I'm sorry. Did you say as part of the  
16 major turbine inspection, do they check the generator  
17 as well at the same time, or is that separate?

18          A     Yes, I did say that.

19          Q     I thought so. I just wanted to make sure.  
20 Okay. So I do want to talk about outages for a  
21 minute.

22                Now, I understand the outages decreased  
23 significantly based on the presentation earlier. But  
24 over the last five years, can you tell me what  
25 incidents caused any forced outages?

1           A     I can't tell you all the incidences.

2           Q     Okay.

3           A     We did have a situation -- I'm kind of putting  
4 this into 2009 through 2014 time frame, last year. We  
5 had -- in 2012 and 2013, there were several failures  
6 in the back pass area of each boiler. If you recall  
7 from the drawing and the discussion this morning, hot  
8 gases go through the back pass or convection area.

9                     Those are -- those tubes on the wall and roof  
10 all carry steam. And, of course, the whole box is  
11 sealed up, has a membrane between each one of the  
12 tubes. Steam provides a cooling medium for the tubes.  
13 The membrane is approximately a quarter-inch plate  
14 which doesn't really have any cooling on it  
15 separately.

16                    After 20 -- approximately 20 years of cycling  
17 the boilers up and down and heating and contraction,  
18 expansion, contraction, we started to get some tearing  
19 or mechanical stresses between the membrane and the  
20 tube where it would rip the tube at the weld line.

21                    We -- after we had several failures -- and  
22 they were across all three of the combustors, the  
23 boilers. We did replace the roof, roof tubes, and all  
24 three boilers between the fall and the spring of 2013.

25                    A couple of other incidents, we -- as I

1 mentioned this morning, these are like one-off  
2 occurrences. There was a disconnect switch failure in  
3 the JEA switch yard. One of the phases -- there was a  
4 high -- there was a high resistance joint between  
5 where this mechanical switch rolls up into the clamp,  
6 and -- actually this is right at the tail end of an  
7 outage we had just come off.

8           The high resistance created heat. That  
9 exploded, took the plant down.

10           In 2014, we had a severe electrical storm.  
11 There was a little arc-over between a tube that caused  
12 a small -- slight oil leak on our main transformer.  
13 We had to shut down to repair that.

14           There could be some other minor derates, not a  
15 complete outage. We live in Florida. You can get  
16 very heavy rain. Our limestone and coal can be  
17 exposed and get very wet. Sometimes it presents a  
18 little bit of material handling problem.

19           Those are usually very minor in duration, but  
20 it can affect a full load, which shows up in overall  
21 forced outage rate.

22           Q    Okay. I'm going to circle back to the  
23 membrane, the tube, the weld rupture.

24           As I understand you mentioned the cycling, the  
25 up and down cycling of the boiler, and it ruptured.

1 Was that earlier than it should have ruptured?

2 A No. After -- after approximately 20 years in  
3 service and as many times as the plant was up and  
4 down -- perhaps keep in mind the high forced-outage  
5 rates in the early 2000s, where a boiler was cycled,  
6 like being from up at full operating temperature to  
7 all the way down to ambient temperature so that you  
8 can work on it, and then a restart. Lots of cycles.  
9 It may have aggravated it -- aggravated the situation,  
10 but it's not an unknown failure.

11 Q Okay.

12 A Or an uncommon failure.

13 Q You said you replaced the -- you replaced it.  
14 So what is the expected lifespan for what you replaced  
15 it with?

16 A I couldn't tell you for sure.

17 Q Okay.

18 A I'm not going to have to worry about it,  
19 though (laughter.)

20 Q Fair enough.

21 A I'm not going to be around that long. We got  
22 20 plus years; the plant is running much better. I'm  
23 not trying to be flippant. But we're not cycling the  
24 plant nearly as much now because we've addressed some  
25 other issues.

1           Q     Okay.  That was forced outages over the last  
2 five years.  What about maintenance outages?

3           A     We take two maintenance outages per year,  
4 according to the power purchase agreement.  We're  
5 allotted 42 days, or we're allowed 42 days, but --  
6 except for once every minimum of five years, we could  
7 have an extra week under the PPA for a major turbine  
8 generator overhaul.

9           Q     Okay.  So two outages -- maintenance outages  
10 per year according to the PPA, 42 days; is that  
11 combined between the two outages?

12          A     Correct.  I was going to say we typically  
13 split that up.  The peak periods, the summer months,  
14 when the demand is going to be heaviest, just prior to  
15 that we typically take a longer maintenance outage, 28  
16 days, normally in April.

17                     That's when we do the majority of our  
18 maintenance work, inspections.  That's plant wide; the  
19 whole plant comes down.  We're inside the combustors,  
20 inspecting the coating.  We're doing our measurements.  
21 We're outside doing scheduled maintenance on valves  
22 and pumps, calibrations, do that within 28 days.

23                     And then we will take a fall outage at the end  
24 of the peak summer run periods, just to do a little  
25 touch-up work, some light work, primarily inside the

1 combustors, make sure everything still looks good or  
2 it performed as we expected under the coating program.  
3 There's no other damage.

4 But that also gives us the ability to kind of  
5 set the scope for the following spring, too. As I  
6 mentioned, the coating program and measuring the  
7 thickness of that coating has allowed us to get to a  
8 program where we manage the coating and not just  
9 wholesale strip it off and replace it.

10 Q Okay.

11 A 28 days and 14 days.

12 Q Okay. Now, in terms of being able to split  
13 it, like you currently use 28 days and 14 days, do you  
14 negotiate with FPL how long it's going to be, or do  
15 you only have to tell them when you're going to do it  
16 under the PPA?

17 A I request a maintenance schedule. As I  
18 mentioned, every year I send them the request for  
19 maintenance schedule, and they send us back that  
20 approval.

21 Q Okay. Now, still kind of in the realm of  
22 maintenance, could you please describe any  
23 nondestructive tests you've performed on some of the  
24 major components? By "major components," I mean  
25 turbine generator, those types of components.

1           A     We have very extensive, nondestructive  
2 examination and testing. Each spring we do a  
3 nondestructive NDE or NDT, whichever you want to call  
4 it, of the fan rotors themselves, make sure there's no  
5 cracks. There's no indicators, as they call it, of a  
6 potential failure.

7                     We have a plan where we do NDE tests of our  
8 high-energy piping. Over a period of a couple of  
9 years, we examine all of the high-energy, high-stress  
10 points in the main steam and the reheat steam piping.  
11 And we also examine and reset or replace pipe hangers.

12                    Pipe hangers are very critical, because these  
13 pipes, just like we were talking about on the boiler  
14 tubes, they're going to grow; they're going to go this  
15 way; they're going to go -- those guys are quite the  
16 wizard in calculating which way those things are going  
17 to go. So hangars are replaced and reset.

18                    We also do flow accelerated corrosion testing  
19 on high-energy flow areas where the water's going  
20 through. That's -- that's on a set schedule, so we go  
21 through and examine those each spring.

22                    During the -- during the major turbine outage,  
23 of course, we completely disassemble the steam  
24 turbine, replace seals, inspect all of the blading to  
25 make sure there's no impingement problems, or if



1 nothing's impinged on the blade, tighten the machine  
2 up so all the steam goes through the blades instead of  
3 around the seals.

4           And then we do nondestructive testing on the  
5 generator. The rotor will come out; we'll have  
6 electrical tests on that for the wedges; hold the bars  
7 in place to make sure those are tight and not rattled.  
8 We'll also get inside -- usually the smaller guys get  
9 that job; they go inside. But we also want to inspect  
10 the stator windings, look at the insulation.

11           There are some electrical tests and special  
12 tests that I don't fully understand. But we have an  
13 electrical -- we have a generator specialist, and he  
14 comes down and performs those tests for us.

15           Q    By "we," do you mean Cogentrix?

16           A    Cogentrix Field Services.

17           Q    Okay.

18           A    And within the Cogentrix Field Services, we do  
19 have a generator specialist.

20           Q    Okay. Now, in the scope of the nondestructive  
21 tests that you just explained, the tests performed  
22 over the last three years, has there been any  
23 indications of future problems in any of those areas  
24 that are unanticipated?

25           A    No.

1           Q     And any indications of any anticipated  
2 problems in those areas in the future?

3           A     I'm sorry. Would you say that again?

4           Q     Indications of anticipated problems, like, you  
5 understand that based on the life of this and the  
6 wear, something is coming up.

7           A     I'm sorry. Thank you.

8                     No.

9           Q     Okay. Let's see. Okay. I'm going to get to  
10 the first little spreadsheet. This is part of the  
11 discovery documents that you submitted back to FIPUG's  
12 request, the document number was CD 0001517.XLSX.  
13 It's one of those Excel spreadsheets, a workbook.

14                     I didn't print out the whole thing. I just  
15 have the summary page, and it's got some terms on it I  
16 want to kind of walk through so we're all on the same  
17 page of what the language is related to this. I'll  
18 hand you one of the spreadsheets.

19                     Like I said, of the spreadsheets, the first  
20 tab is a summary. I just printed that out. I'll give  
21 you a minute to skim over that. This just happened to  
22 be April of 2013. It didn't really matter what month  
23 it was.

24                     I'm not concerned with the values themselves.  
25 I'm more concerned with what the terms mean in your

1 in-house definitions; not all of them, but some of  
2 them.

3 So first question, have you seen spreadsheets  
4 with this data on it before?

5 A Yes.

6 Q Okay. So I want to look at -- first I want to  
7 go down the left column. I'm going to look at  
8 "Capacity Factor, Contractual."

9 Can you explain to me what exactly that means?  
10 What goes into that calculation?

11 A I'm sorry. Those are very closely related to  
12 the annual capacity factor and the monthly capacity  
13 factors under the PPA.

14 Q Okay. Now how is that calculated, then?

15 A As I mentioned, we have an on-peak period  
16 every day and an off peak, where we have to be  
17 available or should be available, 258 megawatts on  
18 peak and 250 megawatts off peak. The periods change  
19 seasonally.

20 And the way the PPA worked -- PPA works, for  
21 example, if we are -- if FPL does not require a full  
22 load for a period of time, if we are below a certain  
23 point in generation, we would get credit, even though  
24 we weren't at 250 megawatts, for contractual  
25 capacity -- contractual capacity factor calculation,

1 we would -- we would not be penalized in terms of the  
2 capacity of the plant.

3 For instance, it's -- we're in the time --  
4 we're in the summer peak period. That goes from noon  
5 until 9:00 p.m. every night. It's a cool day in  
6 Florida. FPL does not require 258 megawatts, so they  
7 have dispatched a plan, or they have it controlled to  
8 90 megawatts.

9 The plant is not penalized for only putting  
10 out 90 megawatts. We get credit for being  
11 available -- being available for 250 megawatts for  
12 capacity factor calculations.

13 Q Okay.

14 A Does that kind of sort of make sense?

15 Q Yes. So the "Raw Capacity Factor," the next  
16 column down, is that the actual capacity factor based  
17 on the actual --

18 A Yes.

19 Q -- generating capacity?

20 A Yes.

21 Q Okay.

22 A Could I add one more thing? You picked April,  
23 which happens to be an outage month, so that's why I  
24 think you might see a big disparity between  
25 contractual capacity, because, again, we're not

1 penalized if we're in a scheduled maintenance outage.

2 Q Okay.

3 A During the -- every day for the scheduled  
4 maintenance outage, we're getting credit for every day  
5 based on the previous 12 months contractual capacity  
6 factor.

7 Q Okay.

8 A But the raw capacity, that represents actual  
9 generation for when the unit was available.

10 Q Now, you said that FPL may dispatch it for  
11 only 90 megawatts was the example you just used a  
12 second ago.

13 A Correct.

14 Q So the amount that it's dispatched for is  
15 totally based on what FPL needs, or do you have any  
16 input to that?

17 A No.

18 Q Okay. You have no input. It's based on what  
19 FPL needs; is that correct?

20 A By "input," I was thinking, my only input is,  
21 I'm not available because I've got something that's --  
22 a piece of equipment that's down. That's my only  
23 input. We notify them whenever that situation should  
24 occur, so that doesn't enter into the actual dispatch  
25 of the plant except for -- to dispatch and control.

1           We can only dispatch Cedar Bay to this point  
2 because they have a boiler that's down, for example.

3           **Q**    So -- now I notice, or I remember in the  
4 presentation this morning, there were bonus capacity  
5 payments.  Where does that come in?

6           **A**    The way --

7           **Q**    Bonus payments related to capacity.

8           **A**    The way the capacity payments are scheduled  
9 according to PPA, it's -- I guess I would call it a  
10 tiered approach.  There is a level between 87 percent  
11 contractual capacity and 95, where the capacity  
12 payments are exactly according to the schedule and the  
13 PPA.

14                   That's your maintenance and operating  
15 reimbursement, if you would, under the capacity  
16 payment.  If you get above 95 percent annual capacity  
17 factor up to 98, then there's a multiplier that is  
18 applied to those base capacity payments.

19                   And if you achieve contractual capacity  
20 greater than 98, there is a different multiplier  
21 that's applied to it.  If you fall below 87, it works  
22 in the opposite direction.

23           **Q**    Okay.  So it has nothing to do with the actual  
24 raw capacity factor?  It's all -- the bonuses is all  
25 based around contractual capacity factor?

1           A     Contractual capacity, correct.  Yes.

2           Q     Okay.  Now I'm going to look on the right  
3 side, or the right column here.  Now here is where we  
4 have all the heat rates listed.

5           A     Uh-huh.

6           Q     I want to get an idea of what each one of  
7 those encompasses so I can understand the difference  
8 in these numbers.  So I'm just going to start at the  
9 top.

10                   "Generation Only Heat Rate," what does that  
11 constitute?

12           A     I really wish I had my cheat sheet.

13                   Generation only, I think that's about the most  
14 raw number that you can have in terms of, it's how  
15 much -- how much BTUs of coal did you put in there  
16 versus how many megawatts did you get out of the back  
17 end.  You don't get any kind of credit.  We don't take  
18 any credit for, let's say, the export steam that may  
19 be going over to the steam host facilities, which  
20 negatively impacts your heat rate.  It makes it look  
21 very bad.  If you're down a lot or you have a lot of  
22 low loads, it impacts the heat rate.

23           Q     Okay.  So then the next one's the "Average  
24 Full Load."  So what does that encompass?

25           A     That would be those periods of time when the

1 plant was above 245 megawatts net generation. That's  
2 very -- that's essentially what we were discussing  
3 earlier. It's higher in this case, because that was  
4 an outage in the startup months.

5 Q Okay.

6 A So you have that extra -- you have that time  
7 that the startup negatively affects the plant.

8 Q Okay. And then "Gross Plant Heat Rate"?

9 A Gross plant heat rate, to the best of my  
10 recollection, that takes credit for the megawatt  
11 equivalent of the steam that is exported over to the  
12 steam host. It's basically, how many BTUs in a  
13 kilowatt.

14 Well, we sent this many BTUs of steam energy  
15 across the fence. We take credit for that and look at  
16 that back in terms of the heat rate.

17 Q And then "Net Plant"?

18 A I can't recall specifically the differences  
19 between the net plant and the generation only.

20 Q How about "Net Plant Equivalent"?

21 A That falls pretty much under the same  
22 category. There is a small nuance of difference.  
23 Sometimes the engineering staff finds these more  
24 interesting than I particularly do.

25 Q Okay. Under "Consumables, Coal-Fired Plant,"



1 and there's obviously some use of boiler oil. And  
2 then it says, "Fiber Rejects Used."

3           Could you please explain what that is?

4           A     Fiber rejects, within the contract with  
5 RockTenn for the steam services, RockTenn -- that  
6 particular facility is a recycled cardboard facility.  
7 They take old cardboard containers, and they strip it  
8 down to the fibers and make recycled, or new liner  
9 boards, or the corrugated material for boxes and  
10 packaging.

11           As I understand it, each fiber's got a finite  
12 life cycle. It gets a little shorter every time it  
13 gets reprocessed or recycled. It finally gets so  
14 short they can't put it back in the process, and those  
15 are culled out or stripped out in their process.

16           In the negotiation of the contract, we take  
17 those, and we combust them and -- as allowed by the  
18 air permit -- within two of our boilers. So there's a  
19 very -- in fact, we have to pay them for that based on  
20 the heating value. It's a very low heating value.

21           But they think that there was a -- they  
22 believe there was a real value. So in negotiating the  
23 contract, we take those short fiber rejects on the  
24 order of 2,000 BTUs per pound, very low heating value.

25           But we have to accumulate or account for that

1 in terms of heat input into the boiler. We have to  
2 track it for the air permit, and we have to pay them  
3 for it on a BTU basis.

4 Q Okay. I'm done with that.

5 MR. TRUITT: We will make that Exhibit 1 to  
6 the deposition.

7 (Exhibit No. 1 was identified for the record.)

8 MR. TRUITT: That will be entitled "Cedar Bay  
9 Spreadsheet - Summer."

10 Then I'm going to move on to another handout  
11 that dovetails with that one. Again, it came  
12 through the discovery documents. It's just a  
13 billing statement for August 1, 2013, through  
14 August 31st, 2013.

15 So I'm going to go ahead and attach this as  
16 well. So it will be No. 2. We will title it  
17 August 2013 Billing Statement?

18 (Exhibit No. 2 was identified for the record.)

19 BY MR. TRUITT:

20 Q I kept the whole document together itself just  
21 so it's complete in case anybody wanted to look at  
22 other parts of it later. But I specifically want to  
23 look at the second page, which you guys have Bates  
24 stamped CB 0028094.

25 So, again, it's got some terms. I just want

1 to understand what these terms mean so we're all on  
2 the same page.

3 A Oh, that's the document number at the bottom  
4 you're referring to?

5 Q Yeah. It should be the same page.

6 A That's an FPL number.

7 Q Okay. Have you seen a form like this before,  
8 Mr. Patterson, these numbers?

9 A Yes.

10 Q Do you understand what all these categories  
11 are?

12 A Yes.

13 Q Okay. I want to go ahead and go through, just  
14 for the record, to make sure we're on the same page.

15 And start at "Excess Energy, All Hours." It's  
16 almost halfway down. Do you see where I'm at?

17 A Yes.

18 Q Okay. What is that?

19 A That would be an overgeneration. If we're in  
20 the peak periods -- actually on peak and off peak. If  
21 the dispatch signal was 90, and we averaged 91  
22 megawatts, for example, that would be excess energy.  
23 If we were in peak, and it was 258, if we're at 260,  
24 that would be excess energy.

25 There's certain provisions within the PPA for

1 reimbursement, primarily during the peak generating  
2 hours. If we're over, and the demand for energy is  
3 such, and the pricing on the energy is such that we  
4 will share, FPL and Cedar Bay will share the  
5 difference between what our normal energy payment was  
6 for that period versus what the market price was for  
7 that.

8 Q Okay. And you mentioned -- in that  
9 description you mentioned, "dispatch signal," I think  
10 was the phrase you used.

11 A Correct, the dispatch signal, dispatch --

12 Q How exactly does that work? How does it come  
13 into the plant? How do you guys receive it from FPL?  
14 I want to get a complete picture of that.

15 A The communication is via a phone link, a  
16 commercial phone link. And if they want the plant at  
17 a higher output, they're measuring what the output is  
18 from the plant. How they do it, I don't know.

19 But what the plant basically sees is just a  
20 pulse. It's a discrete or digital signal that turns  
21 on; it turns off.

22 Each one of those pulses comes back into the  
23 Cedar Bay control system as a signal to increase the  
24 firing rate, which increases the pressure in the  
25 boiler, or the other direction would be a down signal.

1 It's just a pulse until the plant gets to the level  
2 that the FPL dispatch center wants.

3 Q Okay. I want to go back to this -- back to  
4 this list. So that was -- you described the excess  
5 energy, all hours. I want to skip the next one and go  
6 to "Energy Received, All Hours."

7 What does that mean exactly?

8 A That would be energy received -- that would be  
9 the energy that was received into the FPL system from  
10 Cedar Bay.

11 Q Okay. Now then it says "Energy Received, All  
12 Dispatch Hours."

13 What's the difference?

14 A All dispatch hours, that would be the energy  
15 that is received while we were on automatic generation  
16 control, while they were -- their system or their  
17 dispatch center was sending us a signal to what the  
18 generation of the plant should be.

19 Q Okay. Now, so that's when you're on that  
20 automatic generation control. What about when you're  
21 not on the automatic generation control? How does  
22 that work? Are you not running when you're not on  
23 automatic generation control, or ...

24 A No. We can have automatic generation, or we  
25 can have a manual request for generation.

1 Q How does the manual work?

2 A We get a phone call from Florida Power &  
3 Light. They ask us to take the signal -- the unit off  
4 of automatic and to put the unit at a specified  
5 operating level.

6 Q Okay. Historically which is used more,  
7 automatic or manual?

8 (Phone sounding.)

9 A Sounds like somebody's getting a tweet.  
10 (Laughter)

11 I don't know that I can definitively answer  
12 that. During the peak months, we would be on manual  
13 dispatch perhaps six to seven hours a day. The  
14 majority of the time it's on automatic dispatch.

15 Q Okay. Now, looking down to almost the bottom,  
16 "Unit Fuel Costs," where is that number from?

17 A That would be reference to the delivered price  
18 of fuel, St. Johns River Power Park.

19 Q Okay.

20 A That's a number they -- FPL calculates.

21 Q Now, why is the fuel price set at St. Johns  
22 River Power Park?

23 A I couldn't tell you.

24 Q Okay. Do you know if that's a term in the  
25 PPA?

1 A Yes.

2 Q Okay. And where does the coal come from?

3 A For St. Johns --

4 MR. WRIGHT: For clarity, which coal?

5 BY MR. TRUITT:

6 Q Okay. The coal you guys actually burn.

7 A Cedar Bay Coal. That's under contract with  
8 Nally & Hamilton. Their facilities are located in  
9 southeast Kentucky, their mines, or they may  
10 contract -- they have relationships with several  
11 loadouts or mines. But it's supplied from there.

12 Q Now, is their price different than the price  
13 of coal at St. Johns River Power Park?

14 A Yes.

15 Q Okay. Are they -- is St. Johns River Power  
16 Park more expensive or cheaper, generally?

17 A The delivered price of fuel at St. Johns River  
18 Power Park is generally cheaper, lower cost delivered  
19 than what our coal is.

20 Q So do you know why in the PPA there's that  
21 discrepancy in terms of the coal costs, why it's set  
22 to the price at St. Johns River Power Park, yet you're  
23 paying for higher expensive -- more expensive coal?

24 MR. BUTLER: I object to the form of the  
25 question, using the term "discrepancy." At least

1 to me, that conveys a sense of something that's an  
2 inappropriate.

3 MR. WRIGHT: I was going to similarly object  
4 on the grounds -- I don't believe there is a  
5 discrepancy in the PAA itself.

6 BY MR. TRUITT:

7 Q Okay. Why in the PPA is it set up so that the  
8 price of coal is not the actual price of coal that you  
9 pay coming into the plant? It's somehow limited to  
10 another -- indexed to some other place?

11 A I don't know.

12 Q Okay. In your experience, is that an  
13 industry -- a normal occurrence in the industry?

14 A I don't have any relative experience to that.  
15 There are so many different mechanisms to repay a  
16 plant. I don't know.

17 Q Okay. Is the plant currently operating at a  
18 profit or a loss?

19 A At a profit.

20 Q Okay. Now, what are the key factors to that?  
21 What are the key drivers to the outcome of you being a  
22 profitable plant?

23 A As Mr. Rudolph discussed this morning, the  
24 profit in the plant is derived from the power purchase  
25 agreement, the capacity payment.



1           Q     Now, I'm assuming besides the PPA the plant  
2 has multiple contracts with other entities; is that  
3 correct? I know we had a slide that discussed some of  
4 them.

5           A     Yes.

6           Q     Okay. If you can please walk me through all  
7 of those contracts. Big picture overview, a little  
8 bit more detail than what we have earlier. I want to  
9 have it so it's on the record.

10          A     Going from memory, I think I could give you an  
11 overview.

12               MR. WRIGHT: Would you like to -- would you  
13 like somebody to give the witness a copy of the  
14 slide? It might facilitate things.

15               MR. TRUITT: If you have a clean copy. I  
16 don't want to attach it or anything.

17               THE WITNESS: If I can just look at it, I want  
18 to make sure I cover them first if somebody asks  
19 about it.

20               MR. MOYLE: And I think, just for record  
21 clarity, he's referred to it a number of times in  
22 his questions. I plan to attach it if he doesn't.  
23 I mean, it's a public document and everything.

24               THE WITNESS: Just want to make sure I --

25               MR. MOYLE: We will mark it as 3 if you want.

1 I'll deal with it. Go ahead. I'm sorry.

2 (Exhibit No. 3 was identified for the record.)

3 A Starting with the Florida Power & Light,  
4 that's the contract for the capacity and the energy  
5 out of the plant, the power purchase agreement.  
6 Jacksonville Electric Authority, that provides us the  
7 interconnection and the transmission services for the  
8 energy from the plant to the FPL interconnect, which  
9 is somewhere on the south side of Jacksonville. They  
10 have the electron pipeline.

11 Under that contract, we pay them for the --  
12 for the capacity rights of the transmission to carry  
13 our -- the full output of the plant that's reserved;  
14 it's like space on the pipe; some other charges, of  
15 course.

16 If the plant is not operating, we have to  
17 backfeed electricity from them to operate certain  
18 plant equipment. We don't have any backup generators.  
19 We do get invoiced or billed, or pay a bill, a light  
20 bill, so to speak. All of those come in a monthly  
21 invoice.

22 Q How long is that contract for?

23 A It goes through the term concurrent with the  
24 PPA. Turning around counterclockwise -- I recall  
25 Mr. Evans went counterclockwise this morning.

1 RockTenn, container packaging, I believe is what CP  
2 means. That's who we have the steam sale agreement to  
3 provide steam energy to and also a separate ground  
4 lease for the property that the Cedar Bay facility is  
5 located on.

6 They take steam from us; they reimburse us for  
7 the energy. We receive fiber rejects from them; we  
8 pay them for the heating value of the fiber rejects.  
9 Also between those two contracts, that provides for  
10 the boiler makeup water, which we purchase from them.

11 That provides for us to supply them with  
12 de-min water. If they're self-generating, they have  
13 the ability to make their own steam if Cedar Bay is  
14 offline. And also some of the other potable water,  
15 handling of sanitary sewer, those are all encompassed  
16 in those two contracts.

17 BY MR. TRUITT:

18 Q Okay. How long is the steam contract for?

19 A That runs concurrent with the PPA. As I  
20 believe Mr. Evans went through, we were successful in  
21 negotiating that through 2025.

22 Q What about the ground lease?

23 A Ground lease, 2041, to the best of my  
24 recollection right now.

25 Q On the ground lease for a moment -- I don't

1 want to leave it -- are there any requirements  
2 regarding possible contamination or remediation in the  
3 ground lease? Does it deal with those types of terms?

4 A Specifically I couldn't tell you -- I couldn't  
5 tell you the specifics under that part of it.

6 Q Okay. Do you recall if the ground lease has  
7 any terms regarding indemnification, Cedar Bay's  
8 indemnified --

9 A I believe there are contract conditions  
10 regarding indemnification. Mr. Neff would probably be  
11 able to speak better to those.

12 Q Okay. And then -- so then the next one,  
13 "Cedar Bay Operating Services."

14 A Correct. Cedar Bay Operating Services is a  
15 subsidiary within the Cogentrix family. That's the --  
16 that's the company that's set up strictly for the  
17 operation and maintenance of the plant, hires the  
18 folks who is responsible for providing O&M services.

19 The limestone supply, that's under contract  
20 with Martin Marietta. That's a sand grade limestone.  
21 It looks physically like sand, and it's mined in the  
22 Bahamas, transported up by barge to a terminal within  
23 just two or three miles of the facility. We're very  
24 close to the St. Johns River.

25 And then it's trucked over from there. We

1 further process it, grind it and make it ready for use  
2 in the boilers.

3 Q When does that contract expire?

4 A We just renewed that last year. I believe the  
5 initial term is three years, and then there's some  
6 provisions to extend it beyond that. There's a couple  
7 of two-year renewals that are built into it by mutual  
8 agreement.

9 Q Okay. Then on to the "BFL Headwaters"?

10 A Ash removal. We have two contracts for  
11 removal of the ash. BFL Headwaters this is  
12 transportation and handling of the materials. They  
13 take a good portion of the ash and use it for  
14 beneficial application and reuse in Orlando, Florida.

15 Sudden Logistics is a company that takes the  
16 remainder of the ash that's transported to a lined  
17 landfill in Folkston, Georgia. It's a Waste  
18 Management operated/controlled facility, and they take  
19 that up where it's -- it's actually used sometimes  
20 with some of the leachate from the landfill to  
21 solidify that leachate, and then it's placed into the  
22 landfill.

23 Sudden Logistics' contract goes through 2018.  
24 The BFL Headwaters' contract, it will actually be up  
25 for renewal this year, best of my memory.

1 Q Okay.

2 A Field transportation, that's with CSX. We  
3 have a contract with them that goes through the end of  
4 this year. We've already had some preliminary  
5 discussions regarding renewal of that contract.  
6 They're very interested in continuing to supply us  
7 with transportation of fuel.

8 We lease the rail cars that are used to  
9 transport the coal. Those are leased from Trinity  
10 Rail. That's under a lease that runs through 2025.

11 And Nally & Hamilton is the company, and  
12 they're in Kentucky. [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 Q Are there any other contracts you can think  
23 of?

24 A No.

25 Q Okay. So limiting the scope, then, to these

1 contracts, do you know of any existing contract  
2 disputes regarding any of these contracts?

3 A No.

4 Q Have you had any historical contract disputes  
5 regarding any of these contracts?

6 A Prior to my time, I believe there may have  
7 been some disputes with several of the suppliers.

8 Q But you don't have any direct knowledge of  
9 that?

10 A No, I do not.

11 Q I want to shift gears a little bit to  
12 environmental compliance. I know there was some of  
13 the discussion this morning, and I understand we're  
14 going to talk to Mr. Neff later. But I want to get  
15 your input as well because you were the manager at the  
16 plant.

17 So --

18 MR. BUTLER: Excuse me, John. Before you go  
19 on, status of exhibits, did you mark this August  
20 2013 --

21 MR. TRUITT: That was 2.

22 MR. BUTLER: You want to save that as  
23 Exhibit 2?

24 MR. TRUITT: Yeah.

25 MR. BUTLER: And then did we agree we are or

1 aren't marking the presentation as Exhibit 3?

2 MR. TRUITT: If we want to, we can just stick  
3 it in now. That will be 3.

4 MR. REHNWINKEL: She needs a copy of it. Does  
5 anybody have a clean copy of it?

6 MR. WRIGHT: May we go off the record, please?

7 (Short recess.)

8 MR. MOYLE: Back on the record. I just want  
9 to try to keep the record clear with respect to the  
10 exhibits. We have three exhibits that have been  
11 identified and marked, the last one being the  
12 complete set of the handout that was used by  
13 Cogentrix this morning to brief the commission  
14 staff, and that's not a privileged document.

15 So thank you for providing the copy,  
16 Mr. Wright.

17 MR. BUTLER: And not even confidential.

18 MR. MOYLE: I'm sorry?

19 MR. BUTLER: Not even confidential.

20 MR. MOYLE: Not even confidential.

21 BY MR. TRUITT:

22 Q Before we took the break, I said I was going  
23 to shift gears to environmental compliance. I was  
24 saying, I know Mr. Neff is speaking later --

25 A Yes.



1           Q     -- but being the plant manager, I wanted to  
2 talk to you about it as well, because you were  
3 actually at that plant.

4                     So you had mentioned in your duties as the  
5 plant manager, you oversaw environmental compliance  
6 reporting and things of that nature. So I want to go  
7 more in-depth.

8                     What reports regarding environmental  
9 compliance came across your desk?

10           A     Monthly we submit a report, a discharge  
11 monitoring report, if you will, which we don't have  
12 any discharges, but that's electronically filed with  
13 the Florida DEP. Quarterly there are the results of  
14 the required groundwater monitoring sampling report.

15                     Those are submitted -- there's a quarterly --  
16 another quarterly report for other discharges that  
17 kind of follows the same pattern as the monthly DMR.  
18 There's a quarterly report that encompasses any  
19 discharges for the -- for the quarter.

20                     And there's also -- any transfer of water we  
21 do within the permits, we're allowed to transfer some  
22 water back to RockTenn -- reclaim water from our side  
23 back to them for use in their cooling power makeup.

24           Q     Now, those reports, do you have to, as the  
25 plant manager -- that's what I'm referring to here in

1 this line of questioning.

2 As the plant manager, do you have to approve  
3 those reports before they're submitted?

4 A The monthly DMR, no. I do coordinate with the  
5 environmental manager to make sure it's submitted.  
6 But we don't have any discharges, so it's just -- you  
7 know, really just a checking-the-box type of function  
8 to make sure we comply with the permit requirements.

9 The quarterly report does require my review  
10 and signature. It's sent hard copy.

11 Q Okay. And who's the environmental manager at  
12 Cedar Bay?

13 A That's Mr. Jeffrey Walker. He's the  
14 environmental manager.

15 Q Okay. And so is he the one that's ultimately  
16 responsible for completing the reports --

17 A Yes.

18 Q -- would be an accurate statement?

19 A Yes.

20 Q Okay. Now you just mentioned that on the  
21 quarterly reports, you had to review them and sign off  
22 to make sure you weren't exceeding the permit levels;  
23 correct?

24 A Correct.

25 Q What happens if you're exceeding permit

1 levels?

2 A Since we've never exceeded a permit level, I'm  
3 sure that that would show up. The DEP would make an  
4 inquiry. The compliance responsibilities have --  
5 within the last two years, City of Jacksonville used  
6 to be the compliance authority for all of our permits.  
7 That went back to DEP, the northeast regional office.

8 I'm -- I would just imagine that there would  
9 be a notice of violation. There might be a civil  
10 penalty associated with it. That's just a guess. We  
11 don't discharge. We only discharged, per the reports  
12 I've mentioned, been one occurrence in 2008 due to  
13 Tropical Storm Fay, which is allowed by the permit.

14 When we discharge under those conditions, we  
15 have to complete some environmental sampling for total  
16 suspended solids and pH, to the best of my  
17 recollection.

18 If we expect -- it's a complex system in Cedar  
19 Bay, but all the water is collected. We have ponds.  
20 We monitor the level in those two ponds. We know  
21 there's a heavy rain event; we get the sampling kit  
22 ready, collect the samples.

23 Q Has DEP had any enforcement actions against  
24 Cedar Bay that you can recall?

25 A DEP has not -- DEP has not had any enforcement

1 actions against Cedar Bay.

2 Q Okay. Any other regulatory agency had an  
3 enforcement action against Cedar Bay that you can  
4 recall?

5 A In my experience, yes. There were two  
6 situations. City of Jacksonville in 2007, there was a  
7 cease-and-desist order. That was for an exceedance of  
8 the 30-day rolling average in OX emissions, the mass  
9 emission -- there is three different emissions or  
10 compliance levels there. It went over on a mass  
11 emission for a couple of days out of a 30-day rolling  
12 average.

13 There was a separate incident -- the best of  
14 my recollection, I believe it was 2009. During the  
15 period we were conducting annual compliance testing  
16 for particulate matter, maintenance personnel went  
17 inside and performed some maintenance inspections on  
18 the boiler while it was being compliance tested.

19 Once you open the door, you stir up everything  
20 that's inside that bag house, and it goes out the  
21 stack. So we failed that compliance test. We  
22 subsequently turned around and performed another test,  
23 passed it without any problems.

24 Q In the 2009 particulate matter violation, who  
25 did the enforcement action come from?

1           A     City of Jacksonville.

2           Q     City of Jacksonville.  Okay.

3                     Now you stated you're a zero discharge  
4 facility; correct?

5           A     That's correct.

6           Q     Okay.

7           A     Yes.

8                     MR. TRUITT:  I have more papers, sorry.  But  
9 we're going to make this Exhibit 4.  It's the  
10 Groundwater Sampling Reports from DEP's OCULUS site  
11 for the last four quarters.

12                     (Exhibit No. 4 was identified for the record.)

13 BY MR. TRUITT:

14           Q     It's in chronological order starting  
15 January 1, 2014, and it winds up going through -- I  
16 combined them into one big PDF and page numbered them  
17 at the bottom of the right-hand corner.  So if I refer  
18 to page numbers, I'll go by that.

19                     MR. WRIGHT:  John, let me just ask, is this a  
20 public record, a public document readily available  
21 to the public off the DEP site?

22                     MR. TRUITT:  It is, yeah.

23                     I'm going to -- let's see -- so I would say we  
24 label that as 4; correct?  Okay.

25 BY MR. TRUITT:

1 Q So if we flip to page 53, if you can. There's  
2 a letter there from Cogentrix to DEP.

3 Do you see that?

4 A Yes.

5 Q Okay. Is that the Jeffrey Walker you were  
6 talking about?

7 A Yes.

8 Q Okay. Is he currently still the environmental  
9 manager at Cedar Bay?

10 A Yes.

11 Q Okay. And do you know how long he's been  
12 there as the environmental manager?

13 A I believe since the late '90s.

14 Q Okay. So he was the environmental manager the  
15 entire time you were the plant manager there; correct?

16 A Yes.

17 Q Okay. Now, these are the quarterly reports --  
18 this is one of those reports you have to sign off on  
19 before it goes in?

20 A This one I do not sign off on.

21 Q Okay.

22 A This is the required sampling by an outside  
23 firm, submit the results, the other documentation that  
24 goes with the sampling of the monitored wells on the  
25 plant site.

1 Q Who's the outside firm that does the sampling?

2 A I believe the name of the company is Aerostar.  
3 We may -- if this is the complete report, there might  
4 be a chain-of-custody form or an indication in there  
5 of who did it.

6 Q What's --

7 A Although I take that back. I don't think  
8 chain of custodies go in with these reports.

9 Q Okay. Now, I note on the top right corner of  
10 each of these pages, it has a monitoring well ID and  
11 then a description of the well based on location.

12 For historical reference, has there ever been  
13 any point in time where the current well numbers and  
14 locations would have been different well numbers and  
15 locations? Like, did you guys switch up the numbers  
16 is what I'm trying to get at.

17 A We didn't, but I seem to recall some  
18 discussion about, it might have been a numbered well,  
19 but it was -- the suffix; was that an A or a B versus  
20 what was on the report, and I don't remember any more  
21 specifics than that.

22 Q Okay. Do you remember about the time frame  
23 that that issue might have come up?

24 A No, I don't.

25 Q Okay. That's fine.

1 I'm going to just kind of look at random -- a  
2 couple of random pages in here. Let's start with --  
3 let's see. Let's go to page 43 of 189. And I'm not  
4 going to reference all of these pages. I just wanted  
5 them to be complete in case it comes up later, it's  
6 all there.

7 So I'm looking at 43 of 189 that says it's  
8 monitoring well ID MWC 5B, and then there's a  
9 description that says its 20 feet west of the lime  
10 storage area.

11 Do you see where I got that?

12 A Yes.

13 Q Okay. I just want to make sure we're on the  
14 same page. Now looking at the chart in the middle of  
15 the page, we have several columns. We have the  
16 parameters, the parameter code, the sample  
17 measurement, and the permit requirement, unit,  
18 statistical base code, monitoring frequency, et  
19 cetera.

20 I'm concerned with the parameter "sample  
21 measurement" and the "permit requirement." The first  
22 one I want to look at is pH.

23 Do you see there where it says the permit  
24 requirement, 6.5 to 8.5?

25 A Yes.



1 Q And the sample management was 10.47?

2 A Yes.

3 Q And then we look at, for example, aluminum at  
4 200 permit requirement, and the sample measurement was  
5 45,000; do you see that?

6 A Yes.

7 Q And the next one, arsenic. 10 was the permit  
8 requirement, micrograms per liter, and the sample  
9 measurement was 150?

10 A Yes.

11 Q So these numbers were above the permit  
12 requirement is what I'm getting at.

13 Do you know why?

14 A No, I do not.

15 Q Okay. And you're not aware of any enforcement  
16 action that occurred related to this?

17 A No.

18 Q Okay. Do you understand why there wouldn't  
19 have been an enforcement action related to that?

20 MR. WRIGHT: I object to the extent it calls  
21 for speculation. He can answer. He may answer if  
22 he can.

23 A Yes. The only thing I can tell you about the  
24 groundwater monitoring is the numbers go up, and they  
25 go down. I believe there's some additional

1 correspondence related to the last site certification  
2 or some permit issuance where the DEP acknowledged,  
3 referenced, or made some kind of comment in response  
4 to the sporadic results of some of the groundwater  
5 monitoring results.

6 I cannot be any more specific than that.

7 Q Okay. You reference there to the last site  
8 certification, when did that occur?

9 A I believe the last site cert -- again, this is  
10 just my memory -- 2010.

11 Q Okay.

12 A There may have been one since, but that's all  
13 I recall right now.

14 Q Okay. So that was -- well, MWC 5B, which says  
15 it's 20 feet west of the lime storage area.

16 Now I'm going to flip to page 49, and on  
17 page 49, we've got MWC 6B, and it says it's 20 feet  
18 west of the unlined yard area runoff.

19 My first question's going to be: Do you know  
20 about how far away 6B is from 5B?

21 A Actual distance, no.

22 Q Okay. Can you give me a rough estimate?

23 A Those two reference points are right next to  
24 each other in terms of the physical location of the  
25 ponds. But, no, I couldn't tell you how far it is

1 between those two wells.

2 Q Okay. So do you see there on 6B, we have the  
3 same permit exceedances regarding pH, aluminum, and  
4 arsenic?

5 A Yes.

6 Q Okay. Now that was in -- that was for the  
7 quarter, the first quarter of 2014.

8 Am I reading that correct, at the top?

9 A The monitoring period?

10 Q Yes.

11 A Yes.

12 Q Okay. Now I'm going to flip in the back and  
13 skip a bunch of monitoring periods in the middle. I'm  
14 going to go to page 184 of 189. And 184 -- again,  
15 we're back to well MWC 5B, the one we discussed first.

16 A Yes.

17 Q And it's 20 feet west of lime storage area,  
18 runoff pond 1. This is for the first quarter of 2015;  
19 am I read that correct?

20 A Yes.

21 Q Okay. We have the same issues with pH  
22 exceedance, aluminum exceedance, arsenic exceedance?

23 A Yes.

24 Q Okay. I also notice on this one we have iron  
25 exceedance. Is there an issue with iron in the

1 groundwater up there?

2 A There's an issue with all the groundwater. If  
3 I might add, from my limited knowledge or some of the  
4 inquiries that we've made, you almost have to put this  
5 in context with the original groundwater monitoring  
6 results and sampling. Mr. Neff may have more insight  
7 on that one. But there have been issues with  
8 groundwater before the plant was constructed.

9 Q Okay. I'm going to circle back to that. I  
10 just want to go to page 188 first.

11 A Okay.

12 Q So then we can be done with this giant stack  
13 of paper.

14 A Thank you.

15 Q And, again, because I just wanted to look at  
16 the same well again, MWC 6B, the second well we looked  
17 at. That's for the first quarter of this year now;  
18 correct?

19 A Yes.

20 Q Okay. And we're having the same permit  
21 exceedances with pH, aluminum, and arsenic still in  
22 that well?

23 A Yes.

24 Q I'm going to be done with that for now.

25 I don't think I will come back to it, but you

1 said put in the context with the groundwater --  
2 original groundwater sampling.

3 Do you know when the original groundwater  
4 sampling was done on this site?

5 A If I recall, in the late 1980s, very early  
6 1990s, there was -- I believe I've seen some data from  
7 there. I saw some reports. They go back to that time  
8 period.

9 Q You said putting it in context. Can you  
10 expand upon whatever you recall about hearing those  
11 reports. I understand you're saying that's a while  
12 ago, but I'm trying to understand what your memory is  
13 of what the problems were with that groundwater.

14 MR. MOYLE: I'm going to object to the form.

15 MR. TRUITT: I'll put it in the context of,  
16 what do you recall of problems with the groundwater  
17 at this site?

18 A Just through to the previous use and  
19 application. I believe, my understanding, is the  
20 ground -- continued groundwater monitoring was to  
21 ensure there was no contribution or impact from Cedar  
22 Bay. But the groundwater, I believe it exceeded some  
23 of those parameters, best I recall.

24 Q Okay.

25 A Very early on.

1           Q     What is -- in terms of those quarterly reports  
2 where they have the column "Permit Requirement," what  
3 is your understanding of why that permit requirement  
4 is on there?

5           A     My understanding are those were limitations  
6 that were derived from some overriding, very broad or  
7 general environmental regulatory requirement.  
8 Mr. Neff may be able to give you more specifics on  
9 that.

10          Q     Okay. In terms of Mr. Walker, who does those  
11 reports, is that his sole function on the plant is  
12 environmental reporting, or do he have any other  
13 duties?

14          A     Environmental compliance; that's air, water,  
15 waste, anything on the environmental side.

16          Q     Okay. Does anyone outside of the Cedar Bay  
17 plant itself review environmental reports before  
18 they're submitted to DEP?

19          A     No, I don't believe so.

20          Q     Okay. So I want to walk through a  
21 hypothetical of your understanding. Again, you're in  
22 the plant manager's shoes. So if there's anything in  
23 the hypothetical you don't understand, I want to know,  
24 because I want it to be straightforward.

25                     Assuming the plant exists, ownership as it

1 exists right now; okay? And it's dismantled and  
2 retired, maintaining the same ownership as it stands  
3 right now.

4           What is your understanding of the site cleanup  
5 that would have to occur if it was dismantled and  
6 retired?

7           A     My understanding -- Mr. Neff would have more  
8 specifics -- but we would have to do -- we would have  
9 the two water collection ponds; there would have to be  
10 a cleanup of those areas. One is unlined. That's  
11 just general storm water, very minor.

12           The other one is a lined. We keep those  
13 fairly well cleaned up. There would be some cleanup  
14 and remediation of those areas; removal of the other  
15 materials with some small amount of coal and  
16 limestone. But those areas are lined as well.

17           There is a provision within the ground lease  
18 that we would have to coordinate with the final  
19 condition of the property at the termination of the  
20 ground lease with RockTenn as to how they wanted the  
21 facility left. They could take the whole structure.  
22 They could take all the equipment and just leave it  
23 intact if they wanted it, or they could require it to  
24 be taken back down to the foundation and in bowls, if  
25 you will.

1           Q     Is there -- do you recall any requirement of  
2 actually going subsurface in terms of cleanup and  
3 remediation, besides the ponds?

4           A     I'm not aware of any requirement.

5           Q     Okay. And, again, assuming the same  
6 hypothetical that it was retired, dismantled today,  
7 would that terminate the land lease?

8                     Is there any clause in the land lease that  
9 causes that to terminate, or is the land lease running  
10 until 2041, regardless?

11          A     I believe within -- and I'm not as familiar  
12 with the ground lease out to that point. That's not a  
13 point I've really studied. I've just looked at it in  
14 terms of how do we have to leave -- what would be the  
15 broad requirements for how do we leave the site.

16          Q     Okay. As part of your normal course of  
17 operations, in terms of your business running the  
18 plant, do you do retirement and dismantlement studies?  
19 Have you ever done one before on Cedar Bay?

20          A     No.

21          Q     Never done one?

22          A     Studies? I've had people come to visit the  
23 site, but I have not done a study.

24          Q     Okay. Do you know if Cogentrix has done one?

25          A     Yes.



1 Q Okay. Do you know when the last one was done?

2 A Yes.

3 Q Okay. When was that?

4 A January of this year.

5 Q Okay. Is that a regularly-occurring item,  
6 retirement dismantlement study?

7 A No.

8 Q No? Can you tell me -- do you know what  
9 triggered them doing one in January of 2015?

10 A In conjunction, as I understood it, to  
11 evaluate what would be the costs if we needed to -- in  
12 conjunction with -- with the potential or the petition  
13 to be submitted by FPL in conjunction with the ground  
14 lease, if we had to take it down, what would the cost  
15 be.

16 Q Okay. Again, sticking to the idea of  
17 remediation dismantlement type thing, what materials  
18 do you have on site that are considered hazardous  
19 materials?

20 MR. WRIGHT: I object to the form. If you say  
21 what, if any, John, it's okay.

22 MR. TRUITT: No, I was going to say -- I was  
23 going to start with, do you have any materials on  
24 site that are hazardous materials.

25 A We don't have any materials on site that

1 themselves are hazardous.

2 BY MR. TRUITT:

3 Q Do you have any materials on site that require  
4 special handling procedures, things of that nature;  
5 specific permits to transport them, anything like  
6 that?

7 A No, no, huh-uh.

8 Q Okay. Do you have any materials on site that  
9 fall under any type of regulatory oversight?

10 A Yes.

11 Q Okay. What are those materials?

12 A We do have some hazardous waste -- not  
13 hazardous materials, but hazardous waste. The  
14 majority of those fall under I believe what's called  
15 the ignitability type category. It could be  
16 considered a hazardous waste.

17 We -- there are some small amounts that are  
18 handled as universal wastes. That would be used  
19 oil -- not waste oil; it's used oil. We collect high  
20 intensity discharge lamps. Those would be considered  
21 a hazardous waste.

22 We do collect all of our electronic wastes, so  
23 to speak, certain cards, components, computers,  
24 monitors. Those we recycle. Fluorescent tubes, we  
25 collect and handle those as a hazardous waste.

1           There are some components in some of the  
2           paints or solvents or degreasers that are used in the  
3           maintenance application that we do handle as a  
4           hazardous waste once we're done using it; maybe some  
5           paints or solvents, but we handle those appropriately  
6           in contract with a licensed contractor for handling,  
7           removal, and disposal.

8           Q     Okay. Do you know who the contractor is for  
9           that?

10          A     Jacksonville Pollution Control.

11          Q     Okay. Has any regulatory entity ever found  
12          you in violation for handling those materials?

13          A     No.

14          Q     Okay. I remember in your presentation you  
15          mention that there's aqueous ammonia injected?

16          A     Yes.

17          Q     How is that contained on site?

18          A     In a tank that's located inside containment.

19          Q     What kind of containment?

20          A     A brick wall, epoxy lined.

21          Q     Any other storage tanks on site for liquids?

22          A     Yes.

23          Q     What do you have in those tanks?

24          A     We have No. 2 fuel oil for startup of the  
25          boiler, also to supply fuel oil for the limestone

1 grind process. I have sulfuric acids used in the  
2 water treatment process. I have caustic soda used in  
3 the water treatment process.

4 There are some small containers of other  
5 chemicals that are used to treat the boiler water,  
6 phosphates. Mr. Neff is a chemical engineer. He can  
7 probably give you a better description of those than I  
8 can.

9 Q Okay. Sulfuric acid, what kind of a tank is  
10 that in in containment?

11 A A large metal tank.

12 Q Okay. Does it have a brick wall with epoxy?

13 A Yes.

14 Q Okay. Caustic soda, is that the same?

15 A Yes.

16 Q Okay. Has there been any regulatory entity  
17 that's cited you for violation of containment of any  
18 of those materials?

19 A No.

20 Q Okay. Have there ever been any leaches that  
21 you've discovered, or leaks of those materials on  
22 site?

23 A We report leaks anytime it's outside of the  
24 intended container. It's not reportable to the  
25 regulatory agency, but we do report those internally

1 to the extent of a couple of drips per hour. And we  
2 repair those.

3 Q Okay.

4 A There was one -- we did have a spill of some  
5 diesel fuel oil back in 2008 or 2009 from a refueling  
6 of mobile equipment. That was cleaned up, remediated,  
7 and acknowledged by -- the City of Jacksonville I  
8 believe had jurisdiction at that time.

9 Q Okay. Let's see, I'm going to have one  
10 question, but we're going to go substance by  
11 substance.

12 So for the tank, what is the expected  
13 remaining life on the tank that contains the aqueous  
14 ammonia?

15 A We tested, but I haven't seen any kind of  
16 projections for what kind of -- it's not deteriorated  
17 at all. So I'm sure the tank is sufficient to go  
18 through the end of the PPA.

19 Q Okay. Is that your same answer for the  
20 sulfuric acid, caustic soda, and fuel oil tank?

21 A Yes.

22 Q Okay.

23 A May I add a comment?

24 Q Uh-huh.

25 A We did recently close and remove a tank,

1 because our testing indicated that it was starting to  
2 be corroded on the inside in the metal wall thickness,  
3 because we do have a rigorous above-ground storage  
4 tank. All the tanks are inspected on a regular cycle.  
5 We did remove that tank and closed it with the state.

6 Q What kind of a tank was that?

7 A It was a sulfuric acid. I believe it might  
8 have been -- I don't remember what the materials  
9 were --

10 Q Okay.

11 A -- but it was -- it was starting to -- the  
12 wall thinness, thickness was deteriorating, so we did  
13 close it, remove it.

14 Q Am I correct in assuming that all the tanks  
15 that are required to be registered with DEP that are  
16 on site are registered with DEP?

17 A All the ones that are required to be  
18 registered are registered, and inspected.

19 Q And the one you shut down or removed because  
20 it was thinning, was there any leaks from that --

21 A No.

22 Q -- prior to your -- okay.

23 My last question is going to be, so who is the  
24 plant manager now?

25 A Stephen Busbin, B-U-S-B-I-N.

1           Q     Was he a -- I guess it wasn't my last  
2 question. I have one more.

3                     Did he come internally from Cogentrix?

4           A     Yes.

5                     MR. TRUITT: Okay. Can we take a short break,  
6 make sure --

7                     MR. WRIGHT: Of course. Sure.

8                     (Discussion off the record.)

9 BY MR. TRUITT:

10           Q     I have to preface this with, in discovery  
11 documents that were sent over, there's an e-mail,  
12 dated October 7th, 2014, where there's a discussion  
13 about a steam turbine generator excitation controls.

14                     Do you know about that?

15           A     I know the subject, yes.

16           Q     Okay. The e-mail hints at, the project was  
17 started and then stopped before it was completed.

18                     Is that an accurate statement on my part?

19           A     Yes.

20           Q     Okay. Could you please explain to me where  
21 that -- where you're at in that process and what  
22 happened.

23           A     We planned to replace the excitation, the  
24 voltage regulator and the field breaker, and had  
25 contracted with a company to provide the equipment,

1 another company to provide the engineering that goes  
2 with that.

3 We actually had received the equipment, but we  
4 did not install it during this past outage.

5 Q Assuming FPL, the purchase goes through, is  
6 that something they're going to have to complete, or  
7 is that a may complete?

8 A They may complete it.

9 Q Okay. Is it -- you said they were purchased,  
10 so they're already paid for?

11 A The equipment is paid for.

12 Q It's sitting on site?

13 A Yes.

14 Q It just has to be physically put in the plant?

15 A Remove the old, put in the new, set it up,  
16 test it.

17 MR. TRUITT: Okay. That's it.

18 MR. MOYLE: It's FIPUG's turn. So I'm going  
19 to jump in.

20 CROSS EXAMINATION

21 BY MR. MOYLE:

22 Q And I'm going to go back and try to clarify a  
23 few points that you talked about with counsel for  
24 Office of Public Counsel.

25 Before I do, I wanted just to tell you, you



1 know, if you need a break, let me know.

2 Have you ever been deposed before?

3 A No.

4 Q Okay. Well, the court reporter is taking a  
5 record. So you've done a good job of letting the  
6 lawyer ask the question and then you're responding, so  
7 that you don't talk over each other.

8 If you don't understand the question that's  
9 being asked, I'm happy to clarify it. I don't want  
10 you to have to guess or speculate about any of your  
11 answers. And you have to verbalize your responses.  
12 You've been doing a good job of that; yes, nos.

13 So are we clear?

14 A Yes.

15 Q You were asked a question about retirement  
16 dismantlement studies by Mr. Truitt. My recollection  
17 is you said that you had not done one, but when asked  
18 if Cogentrix had done one, you said, yes, one had been  
19 done.

20 And I was curious why different answers, if my  
21 recollection is correct?

22 A I wasn't provided the information, so I don't  
23 really know what consists of a study. I was asked to  
24 provide information for the purpose of evaluating what  
25 would it take to dismantle the facility, or take it

1 down, or retire it.

2 Q Did you ask, why are you asking this question,  
3 or did you just give them the data that they were  
4 seeking?

5 A I just gave them the data that they asked for.

6 Q So if I say "you," just so we're clear, who --  
7 who is "you"? I mean, there are a lot of corporate  
8 entities involved. You know, Cedar Bay, the limited  
9 partnership, Cogentrix. But if I'm asking a question,  
10 and I say "you" in kind of shorthand, my intent is for  
11 that to include all of the people in the ownership  
12 structure that own Cedar Bay.

13 Can we agree on that?

14 A No.

15 Q Why not?

16 A I can't answer on behalf of people or entities  
17 or functions above Cedar Bay in relation to many of  
18 these questions. I was the general manager. My  
19 responses and the questions have been related to the  
20 period of time that I was the general manager there.

21 There are times when activities or questions  
22 may be made of me, and I don't need to know anything  
23 more than provide the response.

24 Q As a matter of practice, just in terms of  
25 trying to make sure you're given the right

1 information, do you ask, you know, the why question?  
2 Like, why do you need this information? I might be  
3 able to make sure I'm getting you the right stuff.

4 Is that typically something that you will ask?

5 A No, not typically.

6 Q So, for example, the voltage regulation  
7 equipment, it was not installed.

8 If I asked you why, would you have an answer  
9 for me?

10 A I could answer that. That was a decision that  
11 was made at the plant level.

12 Q Why did you decide not to install it?

13 A There was another \$150,000 in costs that would  
14 have been incurred to do some of the other activities.  
15 The current equipment is working fine. We actually  
16 had it checked out and validated and verified that it  
17 was in good working order, worked fine. Made the  
18 decision not to expend the other \$150,000 pending the  
19 outcome of this petition.

20 Q How much did it cost, roughly?

21 MR. BUTLER: It, Jon, referring to what?

22 MR. MOYLE: The voltage regulation equipment.

23 A That equipment, that total project was  
24 \$650,000, perhaps, spread over two years, three years.

25 BY MR. MOYLE:

1           Q     And the capital costs for the equipment itself  
2 that I assume is sitting in a ware -- in a warehouse  
3 somewhere on site, how much was that?

4           A     I think the hardware portion of it was perhaps  
5 450-, \$475,000.

6           Q     Where exactly is it right now?

7           A     It's sitting inside the plant. We -- in an  
8 environmentally protected area, keep it dehumidified.  
9 It's ready, it's being preserved, maintained.

10          Q     I assume when you ordered it, you thought it  
11 was needed; right?

12          A     It's a long process, yes.

13          Q     And are you not putting it in now in an effort  
14 to save money, save the installation costs?

15          A     Every time we do a project, we evaluate  
16 long-term. The voltage regulator, there are some NERC  
17 requirements coming up with an effective date  
18 perhaps -- I believe of perhaps two years. And that  
19 was one of the reasons for ordering this new equipment  
20 is we may have to provide some additional modeling of  
21 how that equipment would react to a disturbance on the  
22 electric system.

23                     That was one of the big drivers for  
24 replacing -- wanting to upgrade or anticipating  
25 replacing it. Pending the sale of the facility, you

1 know, the decision was made not to expend the extra  
2 funds right now.

3 Q Did you make that decision?

4 A I did make that decision and discussed it with  
5 my asset manager.

6 Q Who is that?

7 A The asset manager was Collin Franceschi.

8 Q And who employs Collin Franceschi?

9 A Cogentrix Energy Power Management.

10 Q Is Collin out of Charlotte?

11 A Yes.

12 Q So the question I was trying to get you to  
13 answer is -- you know, and if you can answer it yes or  
14 no, that's all I really need.

15 But was the decision made not to install it in  
16 order to save the costs, save the additional cost?

17 A Yes.

18 Q Okay. And you live in Jacksonville; is that  
19 right?

20 A Live -- the facility is located in  
21 Jacksonville, yes.

22 Q And are you -- do you live in Duval County?

23 A No.

24 Q Okay. Let me ask you this way.

25 Do you live more than 100 miles away from

1 Tallahassee?

2 A Yes.

3 Q Okay. I'm not trying to invite myself over.

4 A I didn't know. Mr. Wright wanted to invite  
5 himself over last night. (Laughter.)

6 Q This is a small point, but you answered the  
7 question about your service in the military.

8 And were you in the Air Force, or were you  
9 working for a contractor for the Air Force?

10 A I was in the Air Force.

11 Q Okay. You were asked a question about the  
12 reports that you had to submit, and you named a few.

13 Did you name all of the reports that you are  
14 responsible for?

15 A No, I did not.

16 Q Okay. Why don't you continue naming the  
17 reports that you were responsible for.

18 A Other reports related to the air permit;  
19 there's a quarterly -- it's called the Excess Emission  
20 Report. It's a new performance standard requirement.  
21 Certain requirements to report data, those are  
22 submitted every month.

23 There is a report that goes to the EPA, Clean  
24 Air Markets Division, which provides the basis for the  
25 compliance requirements with what was a NOx SIP Call,

1 which was a CAIR, which has now become CSAPR, those  
2 reports were submitted.

3 There's an annual report to the DEP, one  
4 report that's an annual operating report that's  
5 emissions from the facility, the basis for the annual  
6 emission fee payment.

7 There is an annual Title 5 Compliance  
8 Certification, certifying that the plant is in  
9 compliance with all the terms and requirements of our  
10 Title 5 air permit.

11 Off the top of my head, those are the ones  
12 that readily come to mind.

13 Q Did you recall the question as asking about  
14 environmental reports or being broader than that?

15 A I recall the question as being environmental  
16 reports.

17 Q Okay. So let me just ask you to tell me any  
18 other reports that you're responsible for --  
19 responsible for in a broader fashion.

20 MR. WRIGHT: Jon, can you just clarify to whom  
21 the reports would be sent that you're attempting to  
22 ask about?

23 MR. MOYLE: Yeah, I'm not sure. I'm just  
24 asking him as part of his duties and  
25 responsibilities, I think he said he prepared

1 report. He asked about environmental, I believe,  
2 so I'm just asking about what are the other reports  
3 he prepared.

4 THE WITNESS: Yes, he did. I believe I  
5 mentioned on one or two occasions there are  
6 contractual reporting requirements with Florida  
7 Power & Light. There's a monthly operation report  
8 that's submitted, indicates hours of service,  
9 forced outage rate, heat, input, generation, some  
10 other factors that are in there; also a summary  
11 according to the GADS reporting that is submitted  
12 with the --

13 BY MR. MOYLE:

14 Q GADS, what is it? The gas ...

15 A Generator availability -- you know, in the  
16 business we deal with a lot of acronyms, and sometimes  
17 you forget what they all mean.

18 That's more of a NERC requirement, but that  
19 also follows what the requirements are for the EPA to  
20 submit that information as well.

21 There's the annual five-year projection of  
22 maintenance schedules that's submitted to FPL for  
23 their approval to coordinate generation availability  
24 through their system. There's the informal  
25 communication, but it's not really a report. It's



1 just coordinating for the monthly invoices.

2           There's the monthly Department of Energy,  
3 Energy Information Agency Reporting for fuel burn  
4 generation, a few others, and, you know, the costs  
5 per -- delivered cost and commodity cost per BTU  
6 that's submitted every month. There's annual reports  
7 to the Energy Information Agency for generation  
8 summaries and other general operating cost  
9 requirements, maintenance fees, that's submitted to  
10 EIA DOE.

11           Weekly we submit a forecast of how much ash is  
12 going to be generated to the ash haulers so they know  
13 how to schedule equipment. I believe that may be the  
14 majority of the contractual or regulatory required  
15 reports that come to mind.

16           Q     Do you have any requirements to report  
17 financial information to the people who have loaned  
18 you money?

19           A     I do not, no.

20           Q     Do you know if any such requirements exist?

21           A     I -- yes.

22           Q     And do they exist?

23           A     Mr. Rudolph would be able to talk better about  
24 that. That falls more under his group. I review --

25           Q     I will ask him.

1           A     I submit a budget every year, but that's  
2 approved. I live -- I get reports back on how we have  
3 performed according to the budget so that I can  
4 inquire of folks, why did we spend so much money? Or  
5 we did a great job last month.

6                     But I don't submit the financial reports.

7           Q     Okay. But you know financial reports are  
8 submitted?

9           A     Yes.

10          Q     Do you review them before they get submitted?

11          A     No.

12          Q     And who's responsible for that, is your  
13 understanding? Is it Mr. Rudolph?

14          A     That would be under his -- under his purview,  
15 yes.

16          Q     Mr. Truitt asked you a question about life  
17 extension work. What's life extension work?

18          A     Life extension work, as I understand it, would  
19 be something that would be intended to prolong the  
20 life of the facility beyond some indeterminate point  
21 that I don't know what it would be. We do routine  
22 repair and maintenance on the equipment just to  
23 maintain its current status.

24          Q     Add this plant has been operating how long?

25          A     Commercial operation date was January of 1994.

1 That would be 21 years, four months, 19 days. No, I'm  
2 just -- I believe the COD was January 27th or 28th,  
3 1994.

4 Q Did it have a purchase power agreement when it  
5 began operating?

6 A Yes.

7 Q And what was the term of that purchase power  
8 agreement?

9 A January 2025.

10 Q What's the -- in terms of looking at the  
11 plant, what's the expected life capacity of your unit  
12 beyond the PPA? I mean, I understand the PPA runs  
13 out, but the power plant doesn't go away at that  
14 point; does it?

15 MR. WRIGHT: Jon, I object to the form,  
16 because I don't understand the term "life  
17 capacity."

18 MR. MOYLE: Life expectancy. How long can you  
19 expect to run a coal plant for based upon his  
20 information.

21 THE WITNESS: I don't know. This one runs  
22 very well. I do know that. But I don't know how  
23 long.

24 BY MR. MOYLE:

25 Q Do you know how many years are used for

1 depreciation on it?

2 A No.

3 Q And you're knocking around -- how long have  
4 you been in the power industry?

5 A I started in the power industry in April of  
6 1980, nuclear TVA.

7 Q You heard of coal plants running for 40 or 50  
8 years; correct?

9 A Yes.

10 Q And you know of no reason why Cedar Bay  
11 couldn't run for 40 or 50 years; correct?

12 A No.

13 Q You know of no reason why it couldn't run;  
14 correct? Maybe if you could answer yes. That was a  
15 little --

16 A It's a double negative, I think.

17 Q Let me ask you this. Strike that.

18 Is there any reason, in your view, as the  
19 manager of the plant, that the Cedar Bay facility  
20 could not run for 40 or 50 years?

21 A No.

22 Q And in response to a question, you had said  
23 there was a data room of information that was made  
24 available, I think to FPL; right?

25 A Yes.

1 Q And where was that data room?

2 A Physically, I do not know where the data was  
3 stored. It was on some -- some website. I don't know  
4 where that website -- what server that may have been  
5 on.

6 Q Do you know what was loaded into that virtual  
7 data room?

8 A No. Not completely, no.

9 Q Do you know in any respect?

10 A I was asked for some information.

11 Q What were you asked for?

12 A A lot of the same information we've talked  
13 about here today. It was in the environmental  
14 reports, groundwater monitoring reports, things that  
15 would have been generated from the plant that they  
16 weren't sure if they had in Charlotte. Almost  
17 everything gets copied to Charlotte.

18 Q Okay. And so were you asked in writing for  
19 the -- for the information to provide for the data  
20 room?

21 A There were e-mails to supply. Can you look  
22 and see if you find this -- a copy of this.

23 Q Do you know if those e-mails were produced by  
24 Cogentrix in response to FIPUG's request for  
25 information?

1 A Yes.

2 Q You know that they were?

3 A Yes.

4 Q Okay. Were you involved in that process of  
5 gathering documents or looking for documents or  
6 helping respond to the request?

7 A Just some requests, yes.

8 Q You made a comment in answering one of  
9 Mr. Truitt's questions about a document, there was  
10 some numbers at the bottom, and you said those look  
11 like FPL numbers.

12 A Yes.

13 Q Is it your understanding that the numbers on  
14 the bottom of, say -- say, Exhibit 2, which is the  
15 Florida Power & Light billing statement, August 1,  
16 2013, through August 31, 2013, that Bates number is an  
17 FPL number; is that right?

18 A It may be -- I believe I said that may be an  
19 FPL number. That's nothing I put on there.

20 Q Do you know that for a fact, or --

21 A No, I don't.

22 Q Okay. So another deposition rule is, if you  
23 don't know the answer, it's okay to say, I don't know  
24 the answer. I don't want you to have to speculate or  
25 guess. You made that point. So --

1           A     I'll pay attention.

2           Q     Okay.

3           A     Thank you.

4           Q     Okay.  The -- the automated generating control  
5 and the manual, that's how I understand it, that the  
6 plant is dispatched is really two options; is that  
7 correct?

8           A     When the plant is operating, yes.

9           Q     Okay.

10          A     Yes.

11          Q     And what is your understanding as to why it  
12 might go automated generating control vis-a-vis  
13 manual, or the other way around; why it might go  
14 manual as compared to automated -- automatic  
15 generating control?

16          A     Signal failure, telecommunication failure,  
17 inability to -- sometimes, you know, that signal will  
18 drop out.  Sometimes their computer doesn't work.  We  
19 don't get a full explanation other than a phone call:  
20 Manual dispatched it to 175 megawatts.  We'll call you  
21 back.

22          Q     Both forms of communication are telecom;  
23 right?

24          A     There's two separate lines.  One is a  
25 telephone, and another one is another separate phone

1 line or a data link.

2 Q Are there any economic differences or reasons  
3 as to why one type of dispatch might take place over  
4 another that you know of?

5 A No.

6 Q If there were economic reasons, would you know  
7 of that?

8 A No.

9 Q Who would, the -- Mr. Rudolph would be the  
10 best person to answer that question?

11 A No.

12 Q Who would be?

13 A Florida Power & Light dispatches the plant  
14 according to what they determine the system needs are.  
15 That's all the information that we get.

16 Q Over the course of the years that you ran the  
17 plant, would you meet with them annually and just kind  
18 of sit down and say, we're a partner; we provide you  
19 energy. What issues do we have?

20 Did you ever have those kind of meetings or  
21 discussions?

22 A No.

23 Q How would you communicate with Florida Power &  
24 Light?

25 A As I indicated previously, my communication



1 would primarily be with the dispatch generation  
2 scheduler, try to get a forward look for the next two  
3 weeks or the next month, just for ordering coal.

4 Q Okay. Again, I'm just following up some of  
5 the previous questions. You had answered a question;  
6 you said that you did not have any notices of  
7 violation related to the plant.

8 Any other types of communications; a warning  
9 letter from DEP, any other governmental authority? I  
10 want to expand the question a little bit.

11 A If I understand what you said, you said I  
12 responded there had not been any NOV's?

13 Q That's right.

14 A I recall indicating that there had been two  
15 NOV's, or cease-and-desist notices from the City of  
16 Jacksonville, who was the compliance authority since I  
17 had been there.

18 Q We may be talking past each other, because I'm  
19 more familiar with DEP and not the City of  
20 Jacksonville.

21 A None from the DEP, but we did have -- if I  
22 recall Mr. Truitt's question, he asked if I was aware  
23 of any violations. And there was the incident in  
24 2000 -- pardon me, 2007, and I believe the other was  
25 in 2009.

1 Q No warning letters from the feds?

2 A No.

3 Q The document that Mr. Truitt showed you that  
4 he marked as No. 4 that he got off the website, all  
5 the information related to arsenic and things like  
6 that, based on your information, you would agree that  
7 permit conditions were exceeded based on the  
8 information he showed you?

9 A Yes.

10 Q And some of those constituencies are not good;  
11 correct? Arsenic is a known carcinogen?

12 A Yes.

13 Q Same question with respect to barium; do you  
14 know?

15 A Yes.

16 Q That it is -- it is a known carcinogen; right?

17 A Yes.

18 Q Cadmium, same thing?

19 A Yes.

20 Q Chromium?

21 A Yes.

22 Q What was the -- what took place on the Cedar  
23 Bay site before the power plant was built?

24 A It had been property that belonged to  
25 different owners. As it moved between owners that,

1 you know -- what they call a virgin papermill, my  
2 understanding of the term "virgin," they used to bring  
3 in lumber.

4 They had the different -- different materials  
5 produced from the paper-making process, and I'm not  
6 that familiar with it, but black liquor and green  
7 liquor. And there was lime that was used to soften  
8 the water. It had a long history as a paper-making  
9 facility.

10 Q Okay. And is it your understanding that some  
11 of these exceedances may have related to the prior use  
12 of the property?

13 A Yes.

14 Q Have you ever looked at possible cost of  
15 cleanup that could be associated with these  
16 exceedances of these known carcinogens if the power  
17 plant was taken down, stopped operating? Would you  
18 have to go in and clean up to clean soil standards; do  
19 you know?

20 A I believe there were two questions in there.  
21 One was -- one was, have we ever looked at the cost of  
22 cleaning it up. No. I'm not sure what the other  
23 question was, but there were two parts to that one, if  
24 you wouldn't mind.

25 Q Sure. Do you know if you would need to clean

1 it up to, in effect, residential clean soil  
2 conditions, or -- you know, there is various levels of  
3 cleanups. Are you familiar with those?

4 A No.

5 Q Okay.

6 A Well, I know there are lots of different  
7 standards. I don't know what the level of cleanup is.

8 Q Do you have any understanding with respect to  
9 people who own properties that if they have  
10 exceedances, that they have some obligation,  
11 potentially, to clean up the property?

12 A No. I'm not aware of those.

13 Q So you've never been in any conversations  
14 about what potential cost might be to clean up the  
15 site if you had to do that?

16 A No.

17 Q Okay. And with respect to the lease agreement  
18 that you have, it's with RockTenn; is that right?

19 A Yes.

20 Q Okay. And if you -- "you" being your  
21 company -- decided to say, we're out of the power  
22 plant business; we're done; we're turning it off and  
23 walking away from the plant, do you know, would you  
24 have to continue to make lease payments to RockTenn?

25 A I don't know. No. I don't know.

1           Q     You don't know?

2           A     I don't know.

3           Q     And the lease agreement would -- would address  
4 that; correct, with RockTenn, between RockTenn and  
5 your company?

6           A     Yes.

7           Q     Describe for me the reason why the RockTenn  
8 steam agreement was extended.

9           A     The initial term on the steam agreement went  
10 through 2016, January 2016, I believe. There were  
11 options within that initial contract for two five-year  
12 renewals, the best I recall, just, you know, what the  
13 original contract was, which would be intended to take  
14 that out through or in conjunction with the PPA.

15                     There was a point made this morning about the  
16 original -- or maybe it wasn't made, but I believe the  
17 original financing of the plant had anticipated a mid  
18 2013 payoff of the original debt. There was a desire  
19 to refinance the debt on the plant, but in order to  
20 refinance the debt, of course you needed good  
21 contracts in place.

22                     So we negotiated with RockTenn for an  
23 extension of the existing steam sale agreement to run  
24 out concurrent with the term of the PPA. That enabled  
25 us to go out, get the lender support that we needed to

1 refinance the plant.

2 Q And why was the RockTenn important as part of  
3 your financing package that you shopped?

4 A The power purchase agreement contains  
5 requirements for the facility to be a qualifying  
6 facility. In other words, you have to -- it's a  
7 cogeneration facility.

8 Steam energy is used to make electricity, and  
9 then after we extract some work from that steam, then  
10 it's used for a secondary purpose, such as in a  
11 separate industrial process, the RockTenn paper-making  
12 facility.

13 And we have to maintain that qualifying  
14 status, which is, a certain amount of the energy per  
15 year of electrical energy has to be used for that  
16 secondary purpose. That's a condition in the power  
17 purchase agreement. So it's -- in order to maintain  
18 the PPA condition, we have to have a qualifying use of  
19 additional energy or steam, and RockTenn provides  
20 that.

21 Q Do you know what the percentage is in the  
22 purchase power agreement that you referenced?

23 A That --

24 MR. WRIGHT: Objection to the form. I think  
25 it's vague. What percentage?

1 MR. MOYLE: Would you read back his previous  
2 answer, please?

3 (Last answer read.)

4 BY MR. MOYLE:

5 Q Do you know what that certain amount of energy  
6 that needs to be provided to RockTenn is?

7 A It's 5 percent.

8 Q And do you have an understanding if that is  
9 only a contractual requirement, or may that also be a  
10 federal law requirement?

11 A It's federal required. That's from the FERC  
12 requirements.

13 Q Over the years RockTenn has received  
14 liquidated damages from Cedar Bay; is that right?

15 A I don't know, not in the time that I've been  
16 there.

17 Q Okay. If there were liquidated damages in a  
18 contractual relationship were going to RockTenn, would  
19 you be aware of that, or would that be up in  
20 Charlotte?

21 A Yes. If there had been liquidated damages  
22 incurred while I was there, I would be aware of that.

23 Q Because you have an obligation under the  
24 contract to provide them certain amounts of steam;  
25 right?

1           A     Yes.

2           Q     Okay.  In looking at some of these documents,  
3 there was a long period of time where y'all were not  
4 running in the last few years; correct?

5           A     Yes.

6           Q     And what time frame was that when you weren't  
7 running?

8           A     Depending on the year, but in general, mid,  
9 early December through perhaps late February or early  
10 March over the last two or three-year period.

11          Q     And in that, say, a three-month time when  
12 you're not running, you don't provide any steam to  
13 RockTenn?

14          A     We don't, no.

15          Q     And do you have an understanding whether --  
16 whether RockTenn has any contractual claw-back rights  
17 if steam is not being provided?

18          A     They can self supply their steam.  They have  
19 package boilers.

20          Q     And if -- does RockTenn have the ability to  
21 put to you their -- what, their fiber rejects; is that  
22 right?

23          A     Yes.

24          Q     Do you have the ability to take all the fiber  
25 rejects that they put to you?



1           A     We take all the fiber rejects they put to us,  
2     yes.

3           Q     Have you always taken all the fiber rejects  
4     that they put to you?

5           A     In the time that I've been there, yes.

6           Q     Tell me your understanding of the distinction  
7     between hazardous waste and hazardous materials.

8           A     Material is going to be hazardous just by the  
9     nature of what it is.  But a waste would be something  
10    that perhaps did not start out, or you mix something  
11    with it, so then it became hazardous.

12                   And there's a lot of different  
13    characteristics, as I understand it, from that  
14    particular environmental based on ignitability, or  
15    flammability, or corrosivity, or -- I can't even begin  
16    to list off all the different characteristics that --  
17    in that regulation which would make it hazardous.

18           Q     And just to be clear, so you do generate  
19    hazardous waste, but you have no hazardous materials  
20    on site; correct?

21           A     That's correct.

22           Q     Okay.

23           A     Yes.

24           Q     Okay.  When someone asks you at a social  
25    event -- and you don't have a lot of time, and you

1 don't have any documents with you, when someone asks  
2 you who owns the Cedar Bay facility, how do you answer  
3 that question?

4 A Cedar Bay Generating Company.

5 Q And then they say, oh, is that -- is that  
6 affiliated with anybody else?

7 A Yes.

8 Q Who?

9 A There's upstream companies, you know. In my  
10 awareness or my involvement, I don't know exactly how  
11 the order proceeds, but I've seen historical documents  
12 that references Cedar Bay/Gray Hawk. But ultimately,  
13 I think those were all acquired -- all those  
14 companies, however that shakes out, that was -- that  
15 was originally privately held.

16 Then Goldman Sachs owned Cogentrix or those  
17 entities, and then Carlyle owns the companies or those  
18 interests, purchased those assets.

19 Q So to stick with your upstream analogy, the  
20 headwater of the spring would be Carlyle?

21 A That's as far up as I know it to go, yes.

22 Q How well versed do you consider yourself with  
23 respect to the economics of the -- of the plant?

24 A Could you give me an idea of what you mean by  
25 "well versed"?

1           Q     I want to have a conversation with you about  
2 the plant and the economics, you know. Are you  
3 comfortable with my doing so?

4           A     My focus is on the operation and the  
5 maintenance charges of the plant; what does it cost to  
6 operate it and maintain it.

7           Q     And what does it cost to operate it and  
8 maintain it on an annual basis?

9           A     In that broad sense, I don't know. I look at  
10 it in terms of, I know approximately what the  
11 chemicals are; I know approximately what the coal may  
12 be, you know, but that sum total? I'm sorry, I don't  
13 have that number off the top of my head.

14          Q     You answered Mr. Truitt, you said, yeah, it's  
15 profitable; it makes money. So I assumed you had some  
16 basis for that answer; right?

17          A     Yes.

18          Q     What was the basis for that answer?

19          A     I look at a budget variance report versus, you  
20 know, what was budgeted and what was received on  
21 capacity payments, energy payments, and steam  
22 payments, and look at the -- I will skim on down and  
23 look, and yes, we had a positive variance for the  
24 month.

25          Q     Have there been months when you've had

1 negative variances?

2 A In the 2006-2007 time frame, there were --  
3 there were perhaps negative variances.

4 Q And in terms of what you look at, it's revenue  
5 and expenses; is that right?

6 A The bottom line, did we -- did we -- were we  
7 profitable for that operating month? Yes.

8 Q And do you know, when you look at that report  
9 that we're talking about, whether interest payments  
10 are reflected in that report or not?

11 A I don't know. Interest payments, as I said, I  
12 would -- I focus on the operating costs and the  
13 maintenance costs.

14 Q My review of a lot of these financial  
15 documents suggest to me that there is not much profit  
16 in this operation at the end of the day, after a lot  
17 of things are paid. That's a very broad statement and  
18 a generalization. But would you agree with that  
19 characterization?

20 A I would defer that one to Mr. Rudolph.  
21 After -- I tried accounting twice in college; it made  
22 absolutely no sense to me. And I'm not being -- I  
23 mean, there's things that take place for accounting  
24 that -- you know, there's all these things that get  
25 added in. So I don't know, Jon.

1           Q     I appreciate that answer.  And you and I have  
2 a shared similarity in that respect.  And I would  
3 rather ask you that question as the plant manager,  
4 because I haven't had a chance to speak to Mr. Rudolph  
5 yet, but he's going to know a lot of accounting terms  
6 that will probably have me scratching my head.

7                     So just kind of at the end of the day, can you  
8 answer the question as a general term?  I understand  
9 you're more comfortable with him answering it.

10           MR. WRIGHT:  I'm going to object.  He's  
11 answered the question.  He said, I don't know.  You  
12 can try again, but he is -- he said, I don't know.

13 BY MR. MOYLE:

14           Q     You don't know the answer to the question?  
15 You don't know?

16           A     I do not know.

17           Q     Okay.  And a similar question with respect  
18 to -- you have talked about environmental.  I guess  
19 you have more familiarity with environmental matters;  
20 is that correct?

21           A     I have more familiarity with environmental  
22 than accounting for sure.

23           Q     Okay.  What is your current employee head  
24 count at the facility?

25           A     63 full-time employees.

1           Q     If this deal is approved by the Public Service  
2 Commission, will those employees still have jobs; do  
3 you know?

4           A     As I understand it, part of the petition is  
5 that Cedar Bay Operating Services would be retained to  
6 provide the O&M services they're currently providing.

7           Q     And how long does that contract go?

8           A     I don't know. I'm not aware of the contract.  
9 I believe that was the concept. But I'm not sure of  
10 the term of -- I don't know that there's a contract  
11 that exists for that right now. I'm not aware.

12          Q     Let's go back to that exhibit that we talked  
13 about. It's --

14               MR. WRIGHT: Jon, just ask you to clarify what  
15 contract you are talking about, because I think you  
16 guys were talking past each other.

17 BY MR. MOYLE:

18          Q     Okay. Do you have what's been marked as  
19 Exhibit 3? It's the slide show presentation that  
20 y'all presented to staff?

21          A     Yes. Yes. Yes.

22          Q     On page 5, there's a -- the slide is entitled,  
23 "Commercial Overview, Key Contracts," and there's one  
24 that says "O&M," and it says, "Cedar Bay Operating  
25 Services, LLC."

1           Was that the contract that we were just  
2 talking about --

3           A     Yes.

4           Q     -- for operation and maintenance?   Okay.

5                   And do you know how long the term of this  
6 contract is?

7           A     No.   The current contract, no.

8           Q     But your understanding is that if FPL -- if  
9 the commission approves FPL buying this, then they  
10 will assume that contract; is that right?

11          A     I believe that would be -- my understanding --  
12 a separate contract with Cedar Bay Operating Services  
13 for O&M.

14          Q     If the employees are let go, do you know if  
15 the -- if FPL would be responsible for that, assuming  
16 the PSC approves this deal?

17                   MR. WRIGHT:   Object to the form.   It calls for  
18 speculation.   You can answer if you have an answer.

19          A     If the petition is approved, I don't know what  
20 the plans are for the operation of the plant.

21 BY MR. MOYLE:

22          Q     Have you read FPL's petition?

23          A     No, I haven't.

24          Q     I will represent to you that part of their  
25 petition says they're thinking that they will probably

1 close it down after they get this Sabal Trail gas line  
2 in, but you don't have any information on that?

3 A I read the press release.

4 Q Do you know the origins of the deal to buy the  
5 Cedar Bay facility?

6 A No.

7 Q You -- in response to a question I asked you  
8 about the head of the spring, in terms of the ultimate  
9 owner of the operation, you had mentioned Goldman  
10 Sachs.

11 Does Goldman Sachs currently have an interest  
12 in this facility; do you know?

13 A No.

14 Q Did they previously have an interest?

15 A Yes.

16 Q What was their interest, if you know?

17 A They had owned Cogentrix and the facilities  
18 for a period of time from 2003 or '04 through the time  
19 that Goldman bought the company.

20 Q And then Goldman owned it -- so the head of  
21 the spring was Goldman when Goldman owned it?

22 A It was Goldman. Now it's Carlyle. I may have  
23 misspoke that one.

24 Q Are you aware if FPL has any security interest  
25 in the property?



1           A     My understanding, I believe within the PPA,  
2 they probably have some security interest or rights,  
3 but that's -- that's not anything that I have specific  
4 knowledge of.

5           Q     So if they have a mortgage on the property,  
6 you would maybe know that; maybe not?

7           A     Yes.

8           Q     Do you know if they have a mortgage on the  
9 property?

10          A     I do not know.

11          Q     Do you understand -- do you have information  
12 about any kind of bonus payment that is due to the  
13 contractor who does the operations and maintenance of  
14 the facility?

15          A     Not sure I understand that question.

16          Q     All right. So this is that Cedar Bay  
17 Operating Services, LLC.

18          A     Yes.

19          Q     They run the plant; right?

20          A     That's -- yes.

21          Q     Yeah. So in terms of the operator, we could  
22 agree it's Cedar Bay Operating Services, LLC; correct?

23          A     Yes.

24          Q     And they are downstream, but ultimately owned  
25 by the same upstream owner, the Carlyle Group; is that

1 right?

2 A Ultimately, yes.

3 Q Okay. And are you aware if there is a  
4 provision in that contract, or are you aware if there  
5 are bonus payments made to them for operating the  
6 plant?

7 A To the -- the entity itself?

8 Q Right.

9 A No.

10 Q If there were bonus payments, I mean, that  
11 would just be something that, to the previous point;  
12 you don't get into the financials that much; there may  
13 be; there may not be; is that right?

14 A Yes.

15 MR. MOYLE: Let's do this. I have a couple  
16 documents I would like to walk through. Let's take  
17 a little break; we'll come back in five minutes,  
18 and we'll go through some documents.

19 (Short recess.)

20 MR. MOYLE: All right. So we're back on the  
21 record, and I'm going to go through some documents  
22 with you in a moment.

23 BY MR. MOYLE:

24 Q I have just a -- couple of questions.

25 And just so the record is clear, you and I

1 were talking, using the analogy, the head of the  
2 stream. And you identified Carlyle as the head of the  
3 stream.

4 But we would agree -- you could agree with me  
5 that with respect to the real party in interest in  
6 this transaction, with respect to your organization,  
7 the real party in interest is the Carlyle Group;  
8 correct?

9 MR. WRIGHT: You can answer the question.

10 A Yes.

11 BY MR. MOYLE:

12 Q And do you know who negotiated this deal --

13 A No.

14 Q -- on behalf of --

15 A Sorry.

16 Q -- your entity?

17 A No.

18 Q And your present direct report upstream is  
19 who?

20 A I directly report to Mr. Cliff Evans.

21 Q And he's with us today; right?

22 A Yes.

23 Q Okay. And then how do you report to him  
24 typically?

25 A We have a weekly phone call, just -- where all

1 the -- all the plants, or representatives of the  
2 plants discuss any significant issues at the plant. I  
3 do some e-mails, questions, responses; might be a  
4 phone call.

5 Q If FPL says they're calling you up, and  
6 they're going to decommit the plant, do you inform him  
7 of that or no --

8 A Yes.

9 Q -- typically?

10 A Yes.

11 Q How do you do that?

12 A E-mail. Let several parties know at one time.

13 Q Is e-mail -- if an issue comes up, let's call  
14 it on a one-to-ten scale, it's a seven or eight, would  
15 you likewise e-mail and communicate with him via  
16 e-mail?

17 MR. WRIGHT: Object to the form. I don't have  
18 any idea what you meant of seven or eight.

19 MR. MOYLE: On a one to ten.

20 MR. WRIGHT: What's the scale?

21 MR. MOYLE: One (sic) is, Houston, we have a  
22 really bad problem, and one is minimal.

23 BY MR. MOYLE:

24 Q Do you understand my question? It's probably  
25 not the best. I'm just trying to understand how you

1 engage with him; whether you call him, whether you  
2 e-mail him, whether it depends on the factual  
3 situation on the ground; some you call; some you  
4 e-mail.

5 Just help me understand your communication  
6 flow, please.

7 A I have to answer your question as yes.

8 Q Well, my question was: Describe your  
9 communications with Mr. Evans, if you would.

10 A As you -- as I answered, you said it could be  
11 an e-mail; it could be a phone call; it could be any  
12 of those.

13 Q What -- what, in your mind, makes the  
14 difference as to whether it's an e-mail or a phone  
15 call?

16 A Location, significance; several factors.

17 Q If it's more significant, how would you  
18 communicate with him?

19 A I'm having a difficult time trying to put this  
20 into perspective of some "yes" or "no," or here is how  
21 I do it. I can give you examples, maybe, perhaps,  
22 but, I mean, that's no more definite than the question  
23 as I understand it right now.

24 Q Well, give me an example.

25 A If I'm in the control room, and the plant is

1 upset, I would give him a phone call. Or I might send  
2 him an e-mail from the smart phone.

3 If I get a phone call from the plant after  
4 hours, I may just send him an e-mail. If it's  
5 daylight hours, I might give him a phone call.  
6 It's -- each and every situation, depending upon the  
7 severity or the time of day or where I'm located, even  
8 perhaps where I believe him to be located might result  
9 in a different type of communication.

10 Q If it was a more severe situation, are you  
11 more inclined to call him or send him an e-mail?

12 A I would call, if I could reach him.

13 Q Do you have interactions and communications  
14 with Mr. Neff or Mr. Rudolph regularly?

15 A Not regular, no.

16 Q When you do communicate with them, in what  
17 context is it?

18 A Mr. Neff, e-mail.

19 Q And what is that typically about? Is it a  
20 quarterly meeting or an annual meeting? Just give me  
21 a little feel for your relationship with Mr. Neff.

22 A With Mr. Neff, as the -- being responsible for  
23 environmental, if we've got a new permit, I would send  
24 him an e-mail saying, Rick, we've received a new  
25 permit. Not a tremendous amount of communication with

1 either one of those individuals.

2 Q Mr. Rudolph, any communication or just --  
3 describe that for me, please.

4 A He schedules a conference call once a month to  
5 go over the financial results. He's the host of that  
6 call that we participate in.

7 Q How many people are on that call?

8 A I don't know.

9 Q A lot?

10 A What's -- I don't know what "a lot" means. It  
11 would be --

12 Q But it's a monthly call. I mean, you know,  
13 you've been on it -- how many times have you been on  
14 that monthly call?

15 A There are plant managers; there are finance  
16 managers, and there are management committee members.

17 Q And what's the purpose, to go over the  
18 financials of each plant?

19 A They go over the financial results for each  
20 plant.

21 Q For all of the plants that are owned by  
22 Cogentrix or only the ones for which you have  
23 responsibility?

24 A All of the Cogentrix facilities.

25 Q Because you have just responsibility for

1 Georgia plants and the one in Florida; is that right,  
2 as vice-president of --

3 A The Cedar Bay and one of the Georgia plants.

4 Q What's Marlin?

5 A Marlin is the name that was assigned to the  
6 FPL inquiry about purchasing Cedar Bay.

7 Q Who assigned that name to it?

8 A I don't know.

9 Q You said, about FPL's inquiry of purchasing  
10 Cedar Bay. I assume, then, they contacted you about  
11 purchasing the power plant; is that right, based on  
12 your answer?

13 A No.

14 Q Did you contact them about purchasing it?

15 A No.

16 Q How did it happen? I mean, there's two  
17 parties to the deal. How -- who contacted who?

18 A Who is "you"?

19 Q "You" is your upstream real party in interest  
20 and everybody downstream.

21 A I don't know who contacted -- when this  
22 occurred. I was only made aware of it sometime after  
23 there had been some discussions.

24 Q Who made you aware of it?

25 A Actually I inquired, based on some of the



1 information that I had been requested to supply. Is  
2 there something else -- is there something going on?

3 Q Who did you inquire of?

4 A I inquired of my asset manager at that time.

5 Q Who was that?

6 A Colin Franceschi.

7 Q Is he still with the company?

8 A Yes.

9 Q What's his position?

10 A Director of Asset Management, I believe.

11 Q And then why did you inquire and ask, what's  
12 going on? Because you told me earlier in the  
13 deposition that you typically didn't do that. You  
14 just provided information and didn't ask the why  
15 question.

16 So why in this situation did you ask the why  
17 question?

18 A Typically I don't ask, but based on the type  
19 of information, I had -- it's not the type of  
20 information that I'm asked on a regular basis, so I  
21 inquired.

22 Q Okay. I'm sorry. My apologies. I talked  
23 over you.

24 What was the information that you were being  
25 asked to provide that piqued your interest to the

1 extent that you asked the why question?

2 A Backfilling some of the environmental or  
3 historical records.

4 Q What does that mean?

5 A Backfilling environmental or historical  
6 records. Can you fill in a data gap here or fill in a  
7 data gap there. They didn't have all the records in  
8 Charlotte.

9 Q So what did you do?

10 A Scanned them and sent them.

11 Q I assume you had multiple inquiries like this  
12 for information?

13 A More than one.

14 Q Was what prompted you to ask the why question  
15 here the content of the information, or kind of the  
16 timing? Like, was this an early request, give me the  
17 environmental?

18 A Content of the information.

19 Q Do you have a list -- have you seen a list of  
20 all the materials that may have been provided to FPL  
21 as part of a due diligence inquiry?

22 A No.

23 Q Do you know if FPL did a due diligence  
24 inquiry?

25 A No.

1           Q     If anyone in your organization knew -- knew  
2 that, who might that be?

3           A     I don't know.

4           Q     In your organization, do you know who had kind  
5 of key point of contact with FPL related to this deal?

6           A     No.

7           MR. MOYLE:   Schef, I have some documents I'm  
8 going to use with the witness. Kind of like  
9 Mr. Truitt did, what I was going to do was, you  
10 know, hand them out -- they're all confidential --  
11 and ask him, you know, about those documents. He  
12 may be the right witness; he may not be the right  
13 witness.

14                  What I was going to do, like Mr. Truitt did,  
15 hand them, ask the parties to retain them -- you  
16 know, we'll probably see them again tomorrow -- and  
17 just handle it that way. So is that okay?

18           MR. WRIGHT:   Yeah. Everybody here is covered  
19 by either the notice of intent or a confidentiality  
20 agreement. So that's fine.

21                  It's your intent to recollect them from the  
22 parties when you're done with them tomorrow? I'm  
23 just asking.

24           MR. MOYLE:   I'm not sure I've crossed that  
25 bridge.

1 MR. WRIGHT: Then we shall cross it when we  
2 get to it.

3 MR. MOYLE: For the record, the documents I  
4 brought are in red folders, designating their  
5 confidential nature.

6 MR. BUTLER: Nice touch. Thank you.

7 BY MR. MOYLE:

8 Q I'm showing you a document that's entitled  
9 "2014 Cogentrix Energy Power Management, Business Plan  
10 Objectives."

11 Have you ever seen this document before?

12 A No.

13 MR. WRIGHT: Jon, are you going to designate  
14 this as an exhibit or not?

15 MR. MOYLE: I plan to.

16 MR. WRIGHT: Do you want to do that now?

17 MR. MOYLE: Sure. I think it will be 4.

18 THE REPORTER: 5.

19 MR. WRIGHT: I think it will be 5.

20 (Discussion off the record.)

21 (Exhibit No. 5 was identified for the record.)

22 BY MR. MOYLE:

23 Q Let me refer you to page 3 of this document.

24 At the top, it's entitled, "Cedar Bay."

25 A Yes.

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

[REDACTED]

A Yes.

Q Please tell me.

[REDACTED]

1 Q Do you have to make this decision anytime soon  
2 as to which direction you're going to go?

3 A I'm trying to remember the specifics of the --  
4 of the process. I would say a little bit later on  
5 this summer sometime, by a little bit later on, in the  
6 [REDACTED] time frame, I think we have to indicate  
7 or designate which -- which option we wanted to  
8 pursue.

9 Q Will you be making this decision?

10 A That would -- that would be a discussion, but  
11 I wouldn't make the final decision, no.

12 Q Who would?

13 A Somewhere between the senior vice-presidents,  
14 the management committee, and legal in terms of  
15 acknowledging or signing a contract.

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Do you have an understanding as to what's  
23 being referenced there?

24 A No.

25 [REDACTED]

1

2

3

4

5

6

Do you have an understanding of -- I mean, is this a business plan for 2014, and we're now in 2015; correct?

7

A Yes.

8

9

10

11

12

13

14

15

MR. BUTLER: I'm going to object to the predicate to that question, Jon. I'm not sure where you're getting this is a business plan for 2014. It was presented in October of 2014, which seems a little late to be presenting a 2014 business plan.

16

17

Is there something other than just what you're reading on here that you are referring to?

18

19

MR. MOYLE: No, I -- point well taken. So let me just rephrase.

20

BY MR. MOYLE:

21

22

23

24

25

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q Okay. And you have a separate contract for  
 16 rail cars; is that right?

17 A Yes.

18 Q Who is that with?

19 A Trinity Leasing.

20 Q And how long does that run?

21 A Consistent or concurrent with the term of the  
 22 PPA, through 2025.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1

2

3

4 Q Right. Do you know how they charge you for  
5 the rail cars? Is it on a per-mile basis?

6 A Could you explain what you mean by "who's  
7 charging"?

8 Q The lease -- the contractual arrangement, the  
9 lease of the rail cars, do you know how, how much  
10 money you pay them is determined?

11 A That's a flat fee per month per car, flat  
12 rate.

13 Q Do you have to use the cars in order to make  
14 the payment?

15 A No.

16

17

18

19

20

21 Q Do you know how much that contract is on an  
22 annual basis?

23

24

25



1           A     I don't know.

2           Q     So what's the status of the appeal of the  
3 property tax assessment?

4           A     I don't believe there's any progress on that  
5 at the moment.

6           Q     Do you know what year's taxes were appealed?

7           A     Yes.

8           Q     What?

9           A     2013, starting year.

10          Q     And what were -- what was -- what was the  
11 basis of the appeal? What did you all say to the  
12 property appraiser? It's Duval County; is that right?

13          A     Yes.

14          Q     Tell me about your contention with respect to  
15 the property appraiser.

16          A     I don't know what the contention was. I just  
17 host visitors.

18          Q     So you didn't -- did you read the petition?

19          A     No.

20          Q     Out of the -- the three people remaining that  
21 I get to talk to, who do you think would be most  
22 knowledgeable about that?

23          A     I don't know. They all may have some  
24 awareness, but I don't know who might be most  
25 knowledgeable.

1           Q     Do you know if an appraisal was prepared on  
2 your behalf to submit as part of the information  
3 provided to the property appraiser or to the value  
4 adjustment board?

5           A     I don't know if an appraisal was conducted or  
6 performed or not. I'm not aware of it.

7           Q     Are you aware of any appraisals being  
8 performed on the Cedar Bay Generating project?

9           A     We -- yes.

10          Q     Please tell me about what you know.

11          A     We have had consultants on site as part of  
12 the -- as part of this tax appeal, in conjunction with  
13 actually visitors from Duval County. They went around  
14 and measured, and tried to get a better understanding  
15 of what Duval County felt versus what Cogentrix felt  
16 was a -- would be an appropriate value to assess on  
17 the property.

18          Q     My question was pretty broad with respect to  
19 appraisals --

20          A     Yes.

21          Q     -- appraisers formed.

22          A     Yes.

23          Q     Any others that you're aware of?

24          A     Yes. We've had appraisals of the fair ground  
25 lease value to discuss with RockTenn, to value the

1 property and come up with a fair ground lease value.

2 Q When did these discussions take place?

3 A We had an appraisal done late last year, I  
4 believe. There's -- within the ground lease, this --  
5 this is the point in the ground lease where we get to  
6 discuss any revaluation of the ground lease value, so  
7 we had one done.

8 Q And why does that factor into the ground  
9 lease, the appraisal? Does that change how much you  
10 pay for the ground lease? I mean --

11 A Yes.

12 Q -- help me understand that. How does it  
13 change it?

14 A We have the opportunity to reset the value.  
15 They have the opportunity, the parties have the  
16 opportunity to reset the ground lease value that was  
17 in the original ground lease.

18 Q Okay. And was that -- was that done; and if  
19 it was done, what was the result? Did the lease  
20 payments go up or go down or stay the same?

21 A Not determined yet.

22 Q It's still in process?

23 A Yes.

24 Q Have the appraisals been performed?

25 A Yes.

1           Q     And it's your understanding that the  
2 appraisals only valued the land?

3           A     That was -- that appraisal, yes, was to value  
4 the land and assign an appropriate lease value to the  
5 land.

6           Q     Okay. Back to my big, broad question. Are  
7 you aware of any other appraisals --

8           A     Yes.

9           Q     -- that have been done? Please tell me.

10          A     Under the PPA, there's a requirement that we  
11 have two independent agencies appraise the value of  
12 the Cedar Bay Generating facility.

13          Q     How often?

14          A     Annually.

15          Q     Who -- who did that for you? Do you know the  
16 name of the company?

17          A     Most recently Burns & McDonald and Loomis  
18 Consulting.

19          Q     Do they value the purchase power agreement  
20 separately as part of that work?

21          A     No.

22          Q     Are you aware, has Cedar Bay Generating or any  
23 of the related entities, has there ever been a point  
24 in time when you were in default of the purchase power  
25 agreement?

1 A No.

2 Q There wasn't uh-oh, we have a problem, and we  
3 have time to cure? Any kind of issue?

4 A To my knowledge, no.

5 Q If you were in default, would that be  
6 something that you would know, or would that be a  
7 Charlotte issue?

8 A If we were, had been since 2006, I would know.

9 Q You believe?

10 A From 2006 through -- through right now, I  
11 would know if there had been an issue of default.

12 Q Why did you refinance? Why was this deal  
13 refinanced?

14 A The original term on the loan was -- my  
15 understanding of the financing -- the original term on  
16 the loan was through June of 2013. That's -- that's  
17 like when the big payment or the balloon payment or  
18 the balance was due.

19 So there was a need to refinance the debt.  
20 The debt wasn't paid off, my understanding.

21 Q Okay. Any other appraisals?

22 A No.

23 Q If there were other appraisals performed, you  
24 would be aware of them, I assume; correct?

25 A If the appraisal was performed, and people

1 visited the plant site, I would know about those.

2 Q You have a pretty good idea who's on the  
3 property, who's -- I mean, other than your employees,  
4 but somebody from outside coming on, that information  
5 generally flows up to you?

6 A Yes.

7 Q All right. Continuing with this exhibit that  
8 I provided to you, it says, [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Do you know what is being referenced there?

12 A No.

13 Q How about, [REDACTED]

14 [REDACTED]

15 A No.

16 Q Okay.

17 MR. MOYLE: Let's go ahead, and if I could, I  
18 will give you that copy to mark as?

19 THE REPORTER: 5.

20 (Exhibit No. 5 was previously identified for  
21 the record.)

22 MR. BUTLER: Jon, are you going to mark this  
23 one?

24 MR. MOYLE: Yes. That would be 6.

25 (Exhibit No. 6 was identified for the record.)



1 BY MR. MOYLE:

2 Q I have before you a document that's been  
3 marked Exhibit 6 to your deposition.

4 Have you seen this document before?

5 A No.

6 Q Do you know who Mark Chaffee is?

7 A Yes.

8 Q Who is he?

9 A Engineering department in Charlotte.

10 Q How about Richard Gray?

11 A Yes.

12 Q Who is he?

13 A Engineering group in Charlotte.

14 Q Okay. And does this relate to the question  
15 you got earlier from Mr. Truitt about, do you know  
16 about estimates for demolition of Cedar Bay?

17 MR. WRIGHT: I'm going to object. He  
18 testified he has never seen this document before.  
19 If you want to give him time to look at it, he can  
20 look at it. But he has said he's never seen it  
21 before.

22 MR. BUTLER: I would also object. I believe  
23 earlier the earlier references were --

24 THE REPORTER: I'm sorry?

25 MR. WRIGHT: Yeah, I missed that. Would you

1       restate what you just said, please?

2               MR. BUTLER: I also object to the form of the  
3       question. I think the earlier references he cited  
4       were to dismantlement, not to demolition.

5 BY MR. MOYLE:

6       Q       So, go ahead and take a minute and look at the  
7       document if you would, and I'll rephrase.

8               Tell me whenever you --

9       A       I'm ready.

10       Q       The dismantlement study that you had  
11       referenced earlier, would that be something different  
12       from a -- looking at demolition, do you know? Is  
13       there a difference between dismantlement and  
14       demolition?

15       A       Yes.

16       Q       And what's that difference?

17       A       My perception, interpretation of the words  
18       "dismantlement" and "disassembly," I believe as kind  
19       of indicated down there, that would be taking it apart  
20       in a defined manner or a nondestructive manner so that  
21       it could be put together at some other site. I'm  
22       aware that that happens sometimes with other types of  
23       equipment.

24               The other demolition is, tear it down, sell it  
25       for scrap metal. Perhaps sell some of the -- some of

1 the equipment. Mostly you're going for scrap value of  
2 the equipment, my understanding.

3 Q So are you aware that the company apparently  
4 got a demolition estimate for Cedar Bay?

5 A Yes.

6 Q Were you aware before I showed you this  
7 document?

8 A Yes.

9 Q Okay. And why did they do that?

10 A I'm not exactly sure. I don't know the reason  
11 for that study, no.

12 Q How did you know that -- how did you know  
13 about a demolition report?

14 A I had some site visitors sometime last year.

15 Q Do you know if this demolition study was done  
16 as part and parcel of the discussions with FPL about  
17 buying the facility, or was it done separate and apart  
18 from that, or do you just not have any information  
19 about that?

20 A Yes.

21 Q I asked three questions.

22 A I know you did. I was going to let you off on  
23 it that time.

24 Yes, it was done as part of the -- part of the  
25 FPL process.

1 Q Do you know why -- well, you don't know why it  
2 was done?

3 A No.

4 Q Do you know if the -- [REDACTED]

5 [REDACTED]

6 Do you know if that's something that's being  
7 talked about or is being actively considered?

8 A No.

9 MR. WRIGHT: I object. It assumes a fact not  
10 apparently in evidence to me. I see it on the  
11 second page, Jon. In the highlight you had  
12 [REDACTED] but on the second page it does  
13 [REDACTED] Go ahead.

14 BY MR. MOYLE:

15 Q So, is that news to you?

16 A That's news. No, I'm not aware of any  
17 plans -- whatever your previous question was, no.

18 Q Let's be clear. I know you've been going at  
19 it for a while, but let me be clear.

20 A This is a long few seconds.

21 Q The -- you're not aware of -- you haven't been  
22 involved or been in any discussions or have any  
23 information about plans to take the Cedar Bay unit and  
24 reassemble it elsewhere?

25 A No.

1 MR. MOYLE: Okay. Are we good on that? We've  
2 got it marked?

3 THE REPORTER: I don't have one. Thank you.

4 MR. MOYLE: That's 6.

5 BY MR. MOYLE:

6 Q Do you routinely get quarterly income  
7 statements?

8 A No.

9 Q So when you have this monthly financial call,  
10 what documents do you typically have in front of you  
11 for that call?

12 A There's the monthly management report.

13 Q (Tendering document.)

14 A Is this for me?

15 Q That's for you and your lawyer just to look  
16 at.

17 Have you seen this document before or  
18 something like this that has the information that set  
19 forth?

20 A No.

21 Q Let's just do this, so -- I'll give you a copy  
22 of it.

23 MR. BUTLER: Are we now getting a copy of  
24 this?

25 MR. MOYLE: (Nodding head affirmatively.)

1 MS. BARRERA: Is this going to be 7?

2 MR. BUTLER: Is this going to be 7?

3 MR. MOYLE: 7.

4 (Exhibit No. 7 was identified for the record.)

5 MR. MOYLE: Let me grab that one back. It was  
6 my original.

7 Schef, can I get that one back?

8 MR. WRIGHT: Oh, sure. Sorry.

9 BY MR. MOYLE:

10 Q Okay. So I'm showing you a document that's --  
11 it has a number on it, CB 0009896. It will be marked  
12 as Exhibit No. 7 to your deposition.

13 At the left it's entitled "Cedar Bay  
14 Generating Company, LP, Income Statement, First  
15 Quarter Forecast."

16 As the plant manager, do you see forecasts  
17 such as this, income statement forecast?

18 A No.

19 MR. BUTLER: Jon, may I ask you -- this is in  
20 a pretty unusual format. Is this how you received  
21 the document?

22 MR. MOYLE: Yes.

23 MR. BUTLER: Okay.

24 BY MR. MOYLE:

25 Q Let me just refer you to page 8. The first

1 quarter of 2015, it's over; right?

2 A Yes.

3 Q And this was a forecast -- at least by its  
4 terms -- for 2015. Down at the bottom of page 8 --  
5 and I've highlighted it -- there is lines,  
6 consolidated net income or loss, net income or loss.

7 There appears to be some losses reflected in  
8 this spreadsheet; correct?

9 A I don't know.

10 MR. WRIGHT: I'm going to object. He's never  
11 seen this before.

12 MR. BUTLER: It sort of goes to my question.  
13 It looks like a series of values that would  
14 normally go into columns of some sort without  
15 headings to them, but they aren't.

16 Do you know from what you were able to look at  
17 what the values on here, each of these that are  
18 appearing sequentially represent?

19 MR. MOYLE: No. That's why -- that's why, you  
20 know, I'm asking questions in a discovery depo. I  
21 don't know. I got this, and I'm trying to figure  
22 it out.

23 MR. BUTLER: All right.

24 MS. BARRERA: Who did you get it from?

25 MR. MOYLE: Cogentrix. Let's go ahead. We'll

1           just mark it.

2                   (Exhibit No. 8 was identified for the record.)

3 BY MR. MOYLE:

4           **Q**     Do you know who -- who prepared the appraisal  
5 for you with respect to the RockTenn valuation  
6 process?

7           **A**     For clarification, the ground lease?

8           **Q**     Right.

9           **A**     We used Ennis -- Ennis & Mullen I believe was  
10 the name of the appraisal firm in Jacksonville.

11          **Q**     Did Navigant prepare a report for the other  
12 side --

13          **A**     Yes.

14          **Q**     -- do you know?

15          **A**     Yes.

16          **Q**     They did?

17          **A**     Yes.

18          **Q**     And it's your understanding that all these,  
19 again, related to ground lease, didn't get into the  
20 value of the power plant?

21          **A**     Would you say that again?

22          **Q**     Sure. That all the appraisal work we're  
23 talking about now was looking at the value of the  
24 ground lease, like what this property could be used  
25 for if you put condos up or, you know, something else;



1 that they didn't really try to value the power plant?

2 MR. WRIGHT: Just to clarify, when you say  
3 "all the appraisal work," do you mean -- do you  
4 mean the appraisal done by Ennis & Mullen for Cedar  
5 Bay and by Navigant for RockTenn?

6 MR. MOYLE: Yes.

7 MR. WRIGHT: Okay.

8 A Yes. It's supposed to be for the property as  
9 it sits, as it exists, bare.

10 (Exhibit No. 8 was identified for the record.)

11 BY MR. MOYLE:

12 Q I'm showing you a document that I'll go ahead  
13 and mark as No. 8 to your deposition.

14 Have you seen this document before?

15 A I'm trying to recall. I don't have a specific  
16 recollection of it, but it certainly has my name on  
17 it.

18 Q And there's reference in here about making  
19 calls to high-ranking officers within JEA.

20 Do you have any recollection about that topic  
21 or subject matter?

22 A No, I don't recall.

23 Q Do you know, has the closing being delayed by  
24 JEA?

25 MR. BUTLER: Jon, closing of what are you

1 referring to?

2 MR. MOYLE: The \$250 million refinancing.

3 MR. BUTLER: Okay.

4 A I don't recall what that was.

5 BY MR. MOYLE:

6 Q And who's Marilyn?

7 A With reference to JEA, that was our account  
8 representative with Jacksonville Electric Facilities.

9 Q Who is Gary?

10 A I don't recall.

11 Q So you said in the e-mail, I called her again  
12 and asked her to please call Gary, et cetera, to get  
13 updates.

14 Do you recall whether Gary was with JEA, or  
15 just no recollection at all?

16 A No recollection.

17 Q Okay. Do you know who Blue Energy Services  
18 is?

19 A No.

20 Q And Steve Busbin, he runs the plant now; is  
21 that right? He's the plant manager?

22 A He is the general manager.

23 Q General manager. Is there a difference  
24 between a general manager and a plant manager?

25 A That's the title of that position within

1 Cogentrix.

2 Q What's the title for the person in charge of  
3 the plant?

4 A The general manager.

5 Q Okay. So do they sometimes refer to them as  
6 plant manager?

7 A Some outside people do.

8 Q Nicely put.

9 I'm showing you what will be marked as Exhibit  
10 No. 9.

11 (Exhibit Nos. 8 and 9 were identified for the  
12 record.)

13 BY MR. MOYLE:

14 Q Can you identify this document, please?

15 A Subject: "Weekly report for Cedar Bay, week  
16 ending 12-22-2013."

17 Q So this is what you would typically get in a  
18 weekly report; is that right?

19 A Typically in a weekly report, there might be a  
20 summary as -- as indicated herein, Steve and something  
21 significant. Or for the week, there should be also an  
22 attachment, an Excel document -- I'm sorry, a Word  
23 document that would have the operating statistics for  
24 the previous week.

25 Q Okay. Your company produced a lot of

1 documents quickly, and they were working with us, and,  
2 you know, we were sorting through them, so I don't  
3 have the attachment. I apologize for that.

4 I'm trying to get a sense of the information  
5 flow. It says, QF status is 1 percent for the week  
6 and 7½ percent year to date. What is that  
7 referencing?

8 A Reference our previous discussion on the  
9 qualifying facility requirements for FERC. And this  
10 is a summary of what part of the energy supplied to  
11 RockTenn for the previous week would qualify or be  
12 counted towards QF for the week. And then also the  
13 running total year to date.

14 Q Were y'all on a calendar year?

15 A Beg your pardon?

16 Q Are y'all on a calendar year for  
17 calculating -- making these calculations, or no?

18 A Yes.

19 Q So the magic number was 5 percent, and here  
20 you're saying you were at 7½ percent year to date; is  
21 that right?

22 A Yes.

23 Q What would happen -- was there ever a concern  
24 about RockTenn maybe not being there and going away  
25 and jeopardizing your qualifying facility status? Did

1 you all ever have any information about that, or look  
2 into that, or try to address it as a concern?

3 MR. WRIGHT: I'm just going to object to the  
4 form. There were four questions in there, Jon.

5 BY MR. MOYLE:

6 Q Okay. If RockTenn -- RockTenn -- do you know,  
7 did RockTenn buy that asset out of bankruptcy?

8 A No.

9 Q Do you have an understanding as to how  
10 RockTenn acquired the asset?

11 MR. WRIGHT: Just, will you please clarify  
12 which asset you're speaking of there, Jon.

13 MR. MOYLE: The RockTenn asset. It's a pulp  
14 and paper -- yeah, I think it was described earlier  
15 as a box plant or a pulp and paper...

16 MR. WRIGHT: It's a fiber mill.

17 MR. MOYLE: All right.

18 MR. WRIGHT: Thank you.

19 THE WITNESS: I hate to do this. Would you  
20 restate that question, please?

21 BY MR. MOYLE:

22 Q Sure. I was under the impression that a  
23 company called Smurfit Stone previously operated the  
24 facility that RockTenn currently operates, the  
25 facility that you supply steam to.

1           Do you have that understanding, or just don't  
2 know?

3           A     Yes.

4           Q     You do have that understanding?

5           A     I have that understanding.

6           Q     Okay.  And do you -- do you know -- you  
7 don't -- you don't know how RockTenn acquired that  
8 asset, whether it was out of bankruptcy or not?

9           A     These were not in bankruptcy.

10          Q     Smurfit Stone was not?

11          A     No.

12          Q     Okay.  If RockTenn decided they didn't want to  
13 continue operations and shut down, and you didn't have  
14 them as a recipient of the steam, would that  
15 jeopardize your QF status?

16          A     Yes.

17          Q     Okay.  Did you all, in contingency planning or  
18 risk analysis, ever go through an exercise about what  
19 you would do if RockTenn decided that they were going  
20 to no longer continue in business?

21          A     Yes.

22          Q     Okay.  And tell me about what you did.

23          A     We engaged an engineering company to provide  
24 us with estimates for constructing some type of  
25 facility that would qualify us as a QF, that would

1 be -- the option examined was a CO<sub>2</sub> plant.

2 Q And what did you do with that report?

3 A Put it on the shelf.

4 MR. WRIGHT: This is Exhibit 10, Jon; is that  
5 right?

6 MR. MOYLE: I think that's right -- yes.

7 (Exhibit No. 10 was identified for the  
8 record.)

9 BY MR. MOYLE:

10 Q I'm showing you what's been marked as  
11 Exhibit 10. Is this the Ennis & Mullen appraisal  
12 report that you referenced earlier in response to one  
13 of my questions?

14 MR. MOYLE: Okay. We can go ahead and put  
15 that in.

16 A Yes.

17 BY MR. MOYLE:

18 Q Were business plans routinely shared with you  
19 as the person in charge of Cedar Bay?

20 A Yes.

21 Q So if I gave you a copy of a 2014 business  
22 plan, chances are you'll say, yes, I've seen it  
23 before?

24 A Yes.

25 MR. MOYLE: Let's do that. Why don't you take

1 a couple minutes. I misplaced the exhibit.

2 (Short recess.)

3 MR. MOYLE: All right. Let's go back on.

4 BY MR. MOYLE:

5 Q I've provided a document that's entitled "2014  
6 Business Plan" to the witness. We will have it marked  
7 as exhibit to the deposition, No. 11, and ask the  
8 witness -- I think I've already asked you, but I will  
9 ask you again.

10 Can you identify this document, please?

11 A Yes, I can.

12 Q What is it?

13 A It is the business plan prepared for calendar  
14 year 2014.

15 (Exhibit No. 11 was identified for the  
16 record.)

17 BY MR. MOYLE:

18 Q You're familiar with this document?

19 A Yes, I am.

20 Q Let me refer you to page 4 of the document.

21 Do you see where it says, 2.1.2, major customers and  
22 factors affecting them?

23 A Yes.

24 Q Okay. Right above that, there is some  
25 highlights -- they're my highlights. I'll represent



1 to you the same as on all these documents.

2 But it's referencing here the reduction in the  
3 annual capacity on the plant from 70 percent in 2009  
4 down to a projected annual capacity factor in 2013 of  
5 31 percent; right?

6 A Yes.

7 Q Where did -- where did the forecast capacity  
8 numbers come from; do you know?

9 A Forecast capacity, as it says from FPL,  
10 talking with the generation and transmission modeling  
11 or scheduling group.

12 Q And they would provide you those numbers  
13 regularly, the projected capacity numbers?

14 A I called and asked them if they had any  
15 projections at all as part of the budgeting process,  
16 yes.

17 Q And when they would provide a figure like  
18 that, would this be something that you were  
19 comfortable with for budgeting purposes, or did the  
20 capacity factor tend to vary, based on your  
21 experience?

22 A First question, yes.

23 Q You're comfortable with the numbers for  
24 budgeting?

25 A Yes. Second question, did it vary? No. Not

1       tremendously, no.

2           Q       And what is the capacity factor, the annual  
3       capacity factor?

4           A       As the term is used in the business plan, it's  
5       related to the overall rock capacity factors we had  
6       discussed. I think when Mr. Truitt was asking me  
7       questions, it's projected really, the ratio between  
8       what the actual generation is to what the maximum  
9       potential generation could be.

10          Q       So how do you -- how do you get that? Do you  
11       add up all of the hours in a year, and then the 31  
12       percent is the number of hours that represent 31  
13       percent of a year?

14               MR. WRIGHT: I object to the form. That was  
15       ambiguous.

16       BY MR. MOYLE:

17          Q       When it says that the projected annual  
18       capacity factor in 2013 is 31 percent, it's 31 percent  
19       of what?

20               MR. WRIGHT: Object to the form. He can  
21       answer -- you can answer if you have an answer.

22          A       It's 31 percent of the maximum generation and  
23       megawatt hours possible, or potential.

24       BY MR. MOYLE:

25          Q       So economically, the higher the percentage,

1 the better for you economically, or not necessarily?

2 A Not necessarily.

3 Q And why did you say not necessarily?

4 A The more you run, the harder you run the  
5 plant, the more coal you need, the more wear and tear  
6 on the equipment.

7 Q So right now, if FPL calls you up and says, we  
8 need you; you know, you're dispatching. Based on what  
9 they pay you, do you make money on the energy price  
10 and the capacity price when you net it out against  
11 your cost; do you know?

12 A Yes.

13 Q So it doesn't -- it doesn't necessarily -- you  
14 know, you're not losing money when you're running the  
15 plant?

16 A No.

17 Q The next highlighted area down here under  
18 2.1.2.1, where it says Florida Power & Light; do you  
19 see that?

20 A Yes.

21 Q It says, quote, as more of these gas-fired,  
22 combined-cycle units become fully commissioned, along  
23 with present suppressed natural gas pricing, Cedar Bay  
24 may expect more dispatch to lower loads and benefit  
25 from lower dispatch capacity.

1           Can you explain what's meant by how there  
2 would be a benefit from lower dispatch capacity?

3           A     Yes.

4           Q     Please do so.

5           A     Very similar to my previous statement.  If we  
6 have a lower dispatch capacity, we're not running as  
7 hard.  It's less wear and tear on the equipment, less  
8 erosion on the tubes, less coal that's required.

9           Q     Have you done an analysis, or are you aware  
10 that -- let's just say you didn't dispatch -- say you  
11 dispatched at 5 percent, which is the minimum required  
12 to keep your QF status; right?  No, I'm mixing things.

13           Let me ask you this --

14           A     I object to form.  (Laughter.)

15           Q     Would the plant be economical if you just --  
16 if all you got was the capacity payment?

17           A     Yes.

18           Q     And you had to meet the ability to run; you  
19 had to be ready to rock'n'roll and fire up the plant  
20 and go, and they never called you to do that, but you  
21 had to hire all the people and keep them there, your  
22 testimony is, is that with the revenue associated only  
23 with the capacity payment, that you could -- you could  
24 do that?

25           A     Yes.

1           Q     And does your testimony also include paying  
2 all the debt service?

3           A     Yes.

4           Q     And when I asked you earlier about those  
5 numbers and the debt service, you said the debt  
6 service wasn't -- wasn't in there. How -- how do you  
7 know what the debt service is?

8           A     When I'm talking about debt service, paying  
9 the people, could we be profitable, you know, keep  
10 compounding things on there.

11                     But at the end of the day my -- my  
12 understanding and my knowledge is, on the capacity  
13 payments, Cedar Bay was still be profitable.

14                     You paid the bills, paid -- paid the loan and  
15 be financially profitable.

16           Q     Do you know what the interest rate on the loan  
17 is?

18           A     No.

19                     MR. WRIGHT: Jon, as I said to you off the  
20 record, this is your deposition, and you are  
21 welcome to ask Mr. Patterson whatever you want to  
22 ask him. These questions would better be directed  
23 to Mr. Rudolph.

24                     MR. MOYLE: Okay. Thank you.

25                     MR. WRIGHT: You're welcome.

1 BY MR. MOYLE:

2 Q There is a statement on the bottom that says,  
3 quote, as a result, Cedar Bay lost a direct link  
4 between fuel price and energy revenue.

5 A I'm sorry. Where are you reading?

6 Q Bottom of page 5.

7 A Oh, 5. Okay. Uh-huh. Yes.

8 Q There is some highlighting in there, and it  
9 says, previously there was a contract. Pricing was  
10 directly linked to energy reserves in the FPL power  
11 sales agreement.

12 In your understanding of what's going on here,  
13 can you explain -- explain the change with respect to  
14 the contract pricing being directly linked to energy  
15 revenues?

16 A I don't have direct knowledge. This  
17 particular section gives a historical perspective on  
18 the fuel program and costs, the initial coal supply  
19 contract.

20 To my knowledge, there was a tie between  
21 whatever the St. Johns River Power Park delivered fuel  
22 cost was to what the Cedar Bay would pay for its coal;  
23 keep them lined up. That was with that first initial  
24 contract. Then in 2001 that company went bankrupt,  
25 lost the contract. So they had to go to -- Cedar Bay

1 had to go to the market and secure a new supply of  
2 coal.

3 MR. WRIGHT: Jon, Mr. Evans would be better  
4 positioned to answer these questions, but you're  
5 welcome to continue asking of Mr. Patterson.

6 BY MR. MOYLE:

7 Q Just for general information, when you went to  
8 the market, did you pay more for the coal as compared  
9 to the deal?

10 A That predated me.

11 Q You make a couple of assumptions; the company  
12 went bankrupt; maybe the market deal was pricier. But  
13 you don't have any information on that?

14 A The historical was that, yes, the cost of coal  
15 fell out of sync with the delivered price of fuel at  
16 St. Johns River Power Park.

17 Q When you say fell out of price --

18 A Fell out of sync.

19 Q Which way; up or down?

20 A We paid more.

21 Q And you burn pet coke as well?

22 A No.

23 Q But you're allowed to by permit?

24 A Yes.

25 Q There is a sentence on page 6 that says, if

1 Cedar Bay -- and I'm quoting -- if Cedar Bay cannot  
2 burn all of the reject material, the plant is  
3 responsible for disposal costs.

4 Have you ever had to pay for disposal costs?

5 A Yes.

6 Q Is that something that happens regularly?

7 A Yes.

8 Q Can you give me an order of magnitude as to  
9 what those costs may be?

10 A No. If the plant's not running, we still have  
11 to take the fiber rejects.

12 Q What do you do with them?

13 A We transport them to a landfill for disposal.

14 Q And when we were talking earlier about the  
15 ash, you said that some of the ash goes and is  
16 beneficially reused, and other ash goes in a landfill;  
17 is that right?

18 A Yes.

19 Q And how do you determine what goes to be  
20 beneficially reused, and how do you determine what  
21 goes to a landfill?

22 A Ability of each contractor to take the  
23 material. It takes trucks, drivers, tankers, and you  
24 have to have material to stabilize. With material to  
25 stabilize -- if they don't have as much material to



1 stabilize, we ship it, and it goes to the landfill.  
2 If we have a lot of material to stabilize, we'll shift  
3 it and send it down there for stabilization.

4 Q When you talk about "stabilization," what are  
5 you referencing?

6 A Stabilization, solidifying a liquid waste  
7 stream or sludge waste stream.

8 Q Do -- you pay them to take the material, or do  
9 they pay you?

10 A We pay.

11 Q How much; do you know?

12 A Contracts are different.

13 Q Do you save money using it for beneficial use,  
14 putting it to that person, or the landfill? Which is  
15 the better deal economically?

16 A Beneficial use.

17 Q Have you looked at, or are aware of any  
18 potential liabilities associated with the beneficial  
19 use of coal ash in open environments where people have  
20 access to it?

21 I mean, have you looked at all as to whether  
22 there's any liability associated with coal ash?

23 MR. WRIGHT: I'm going to object. That sounds  
24 ambiguous to me. If you understood the question,  
25 Mr. Patterson, you may answer.

1           A     I'm aware of the problems.  That's part of our  
2 due diligence process before we enter into any  
3 contract is, every aspect of it from the time and the  
4 equipment and material they're going to load it into,  
5 the route they're going to travel, the offloading, and  
6 then the final disposal or handling of the material.

7 BY MR. MOYLE:

8           Q     When you say "aware of the problems," does  
9 that also include what is going to be done with it  
10 with respect to beneficial reuse?

11          A     With what other people have experienced.  
12 That's why we have the due diligence process on  
13 each -- any end use or any use of our material.

14          Q     What is the due diligence process?

15          A     I described that.  We look at the  
16 transportation.  We look at the offloading equipment.  
17 We look at the pollution or dust controls.

18                   We look at whatever they're going to be using  
19 it, if it's going to be going into some other  
20 material, what is that material going to be used for;  
21 how is it finally handled, or where is it disposed.

22          Q     Are you aware of a lawsuit in Mississippi  
23 against one of the contractors that you provided coal  
24 ash to?

25          A     Yes.

1 Q Tell me what you know about that.

2 A It was a contractor that we had used to  
3 transport and use material from Cedar Bay. In that  
4 case, and in particular as part of the process, we did  
5 not approve the use of any of our ash for that  
6 particular process.

7 They were taking our ash and using it for  
8 sludge stabilization and oil field dredging waste in  
9 Texas. We did not give approval for the use as any  
10 kind of structural fill through that company.

11 Q Are you a party to the lawsuit?

12 A No.

13 Q But your contractor is; is that right?

14 A Yes.

15 MR. WRIGHT: Jon, Mr. Neff would be better  
16 positioned to answer these questions.

17 MR. MOYLE: He did a fine job answering them.

18 MR. WRIGHT: That's fine. You can ask them.

19 I'm just telling you --

20 MR. MOYLE: I appreciate it. I got the  
21 message.

22 MR. WRIGHT: Okay.

23 BY MR. MOYLE:

24 Q Down under provision 2.1.3.4, "Contract  
25 Compliance," the sentence says, Cedar Bay will

1 continue to focus on contract compliance to ensure  
2 maximum revenue, no defaults, and no incurred  
3 liquidated damages.

4 I think you were unaware of any liquidated  
5 damages related to RockTenn. Do you have any  
6 information what's being referenced here regarding  
7 liquidated damages?

8 A Standard statement, Jon, similar to, if you  
9 could go back to our operating philosophy slide from  
10 this morning. In that presentation, that's part --  
11 part of our basic operation philosophy, how we're  
12 going to operate our plant, things we're going to look  
13 for.

14 We discussed that and made staff and everybody  
15 on the team aware of it, you know, certain  
16 requirements; meet contract; don't interrupt the  
17 steam, et cetera.

18 Q Yeah, and I just was following up on. What  
19 contracts do you know of that have liquidated damages  
20 provisions in them?

21 A The steam service agreement is the one of our  
22 main focus, not to incur any liquidated damages.

23 Q And who is that contract with?

24 A With RockTenn.

25 Q Page 8. There's is a sentence that says, the

1 gap between the cost of coal at the St. Johns River  
2 Power Project and our cost for 2014 has increased.

3 That's what we were referencing earlier. Your  
4 cost of coal has gone up; is that right?

5 A Yes.

6 Q And obviously that makes the plant less  
7 economical if you have to pay more for coal?

8 A Less profitable.

9 Q Take you to page 12, section 2.3.1 entitled,  
10 "Major Maintenance."

11 A 2.3 --

12 Q .3?

13 A .3 for major maintenance.

14 Q Bottom of page 12.

15 A Uh-huh.

16 Q It says, quote, Cedar Bay must retube or  
17 possibly replace feed water heater 6 as approximately  
18 12 percent of the tubes are presently plugged due to  
19 tube failures.

20 That's an accurate statement?

21 A Yes.

22 Q Do you know what the capital cost of -- if you  
23 had to replace a feed water heater 6 is?

24 A I believe we had that or carry that in our  
25 major maintenance as an expense item. And the best of

1 my recollection is 225-, \$250,000.

2 Q Okay. And who prepared this plan?

3 A I did.

4 Q You did?

5 A (Nodding head affirmatively.)

6 Q And who do you share it with?

7 A I send that to asset management and Mr. Evans,  
8 share it with both those groups for a reference point.

9 Q So your lawyer has been urging me to talk to  
10 the chief financial officer about some of this stuff,  
11 but you prepared it.

12 How do you get the information, like on the  
13 financial stuff, to put in here? Do you...

14 A I would ask the financial manager -- there's  
15 one or two sections where perhaps it takes some of the  
16 input from the financial group. So I asked the  
17 financial manager to prepare that so I can just paste  
18 it into the document.

19 Q So like with respect to the analysis and  
20 things like that, you're not really conducting that  
21 analysis; you're just putting it in the document?

22 A Which analysis?

23 Q Related to the financial matters.

24 A If you could give me a specific -- I may be  
25 able to draw some -- some conclusions myself, or it

1 may come from discussions with other sources, but I  
2 put all this together.

3 Q I believe there was another section we talked  
4 about, cash availability, or something like that.

5 A That would have come from the financial  
6 manager.

7 Q I'm handing you a document that has been  
8 marked as Exhibit 12 to your deposition.

9 Can you identify this document, please?

10 A Looks like an e-mail thread between myself and  
11 my manager at that time, Ken Koele.

12 (Exhibit No. 12 was identified for the  
13 record.)

14 BY MR. MOYLE:

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1

2

3

Q Was it a projection of what?

4

5

Q So the terms that we were just talking about,

6

7

8

A Yes.

9

10

11

12

13

14

15

16

Q Who was the consultant that you hired?

17

A I don't recall the name of that consultant.

18

Q Do you know if he produced that report to us

19

pursuant to the documents request?

20

A I don't know.

21

22

23

24

What was the basis of that statement?

25

A We tried to anticipate or perhaps correlate



1 whatever the -- this was forwarded in the day ahead  
2 pricing estimates that we receive every day, trying to  
3 correlate where we think we might be running to where  
4 we actually ran as compared to what the gas market may  
5 be.

6 Q Do you know what gas is today?

7 A No.

8 Q Do you have familiarity with gas forecasts?

9 A Yes.

10 Q Is gas projected to be under or over \$4 in the  
11 near term?

12 A Give me an idea of what you're looking at in  
13 terms of "near term."

14 Q Five years.

15 A I don't look that far out.

16 Q How far do you look?

17 A A year ahead.

18 Q And the same question with respect to the year  
19 that you looked.

20 A Under -- under \$5 I think was the benchmark  
21 you indicated?

22 Q Well, I'm using your \$4.

23 A Oh, \$4? Next year is under \$4.

24 Q So your statement here is true, for the next  
25 year, then, [REDACTED]

1 [REDACTED] of operation; is that right?

2 A I don't know what the basis is for dispatch.  
3 It's just pure speculation on our part.

4 Q Because that's an FPL decision?

5 A That's correct.

6 Q So if they lose a big unit, you don't know if  
7 they lost the unit. They don't call you up and tell  
8 you why they need you; they just call you up and say,  
9 we need you?

10 A Yes.

11 Q Okay. Do you know who -- strike that.

12 Do you have familiarity with the purchase  
13 power agreement?

14 A I have familiarity with the purchase power  
15 agreement.

16 Q I'm handing you what will be marked as  
17 Exhibit 13. At the top there is a section entitled,  
18 "Security." And it says that, FPL holds \$10 million  
19 in security for the performance of the Cedar Bay  
20 contract.

21 Is that your understanding that FPL has \$10  
22 million of Cedar Bay money that they are holding?

23 A Yes. I believe so. Some of these are not as  
24 well-known to me as perhaps some others.

25 Q And the others would be whom, Mr. Rudolph?

1           A     I would say Mr. Rudolph or Mr. Evans may have  
2 better specific knowledge about some of that.

3           Q     Okay. And I had asked you about a second lien  
4 or a mortgage. The basis of my question is here in  
5 the second sentence. It says, in addition, pursuant  
6 to the PPA, Cedar Bay and FPL entered into a second  
7 lien mortgage and second lien security agreement.  
8 FPL's liens against Cedar Bay are subordinated to the  
9 liens of the other lenders.

10                   Do you know what's being referenced here?

11           A     No.

12           Q     Do you have -- do you have an understanding of  
13 mortgages and they're typically used to secure things,  
14 money, or --

15           A     I understand the concept of a mortgage, yes.

16                   (Discussion off the record.)

17 BY MR. MOYLE:

18           Q     Have you seen this document before?

19           A     I recall parts of this discussion, this e-mail  
20 thread.

21           Q     Who's John -- is it Fraites?

22           A     Fraites.

23           Q     Who is he?

24           A     He's the financial manager for the Cedar Bay  
25 facility.

1           Q     So I've highlighted a portion here that says,  
2     quote, as a result, this budget would reflect our  
3     original 2015 budget up to 3 -- I'm sorry -- 6-30 and  
4     then switch to the new skinny version.

5                     What's being referenced when we talk about the  
6     skinny version of a budget?

7           A     Skinny version would be using a reduced  
8     operating capacity post closing. In other words, we  
9     wouldn't operate the plant as much; we wouldn't  
10    require as much maintenance, wouldn't require as much  
11    coal or chemicals.

12          Q     Why?

13          A     The premise would be based on following the  
14    information that we would be operating at reduced  
15    capacity factor.

16          Q     And who provided that information to you?

17          A     That was one of the scenarios I was asked to  
18    provide.

19          Q     Who asked you to provide it?

20          A     That was a collaboration between Collin  
21    Franceschi and John Fraites and one the presumptions,  
22    or the assumptions that we were asked to provide  
23    budgetary numbers for by Florida Power & Light.

24          Q     So is it fair to say that the skinny budget  
25    version was something that was prepared for the

1 benefit of FPL; is that right, or they had requested  
2 it?

3 A It was in conjunction with the discussions for  
4 what were the O&M costs. That was both for our side  
5 and their side. Where it finally went, I don't know.

6 Q There's a sentence in here, it says, quote,  
7 the only issue with a high-level model is the request  
8 from Carlyle, as I understand it, is to have a working  
9 budget that would be used in the event of closing.

10 Do you know what's being referenced there?

11 A I believe it's the same as what I just said,  
12 that a presumption would be a reduced capacity from  
13 the time of the closing for the remainder of whatever  
14 the year was.

15 Q I guess down at the bottom you say, yeah, this  
16 is what was presented to FPL. Is that right? You're  
17 copied on that, on November 12, 2014, at 11:34?

18 A Uh-huh.

19 Q Did you -- who -- who from Carlyle was  
20 involved in this, if you know?

21 A I do not know.

22 Q And now on the second page, I guess there is  
23 reference to, quote, Carlyle is looking to have this  
24 for the next meeting of the board.

25 Do you know what board is being referenced

1 there? Is that the Carlyle board?

2 A I don't -- I don't know, no.

3 Q You just don't know one way or the other?

4 A I do not know which board it's referring to.

5 Q And John, who wrote this, he works over at  
6 Cedar Bay; is that right?

7 A No.

8 Q Where does he work?

9 A He's out of Charlotte.

10 Q Okay. Did you ever review presentations to  
11 the -- to board of directors for either Carlyle or  
12 Cogentrix?

13 A I supplied operating information that was to  
14 be used for board presentations.

15 Q To both entities?

16 A I'm not sure which entities it were -- they  
17 were. I was just asked to supply for update operating  
18 statistics that would be used in a board presentation.

19 Q I'm handing you what will be marked as Exhibit  
20 15 to your deposition.

21 (Exhibit Nos. 13, 14, and 15 were identified  
22 for the record.)

23 BY MR. MOYLE:

24 Q It's entitled, "Notification to Cedar Bay  
25 Employees." I'll represent to you it's one of the

1 documents that was produced by your company to me.

2 Have you seen this document or a document  
3 similar to this --

4 A Yes.

5 Q -- before today?

6 A Sorry. Yes.

7 Q Did you review this document before it went to  
8 the employees?

9 A Yes.

10 MR. WRIGHT: I'm just going to object. That  
11 seems to assume a fact not in evidence. This  
12 appears to be a draft. It's not clear this is  
13 actually the document that went to the Cedar Bay  
14 employees.

15 BY MR. MOYLE:

16 Q Did this document, or one substantially  
17 similar to it, go to the employees?

18 A This document was not delivered to the  
19 employees. This --

20 Q Why -- go ahead.

21 A This was used to formulate the discussion and  
22 the notification to the employees.

23 Q So this was kind of like a talking point for  
24 your use?

25 A For our use, yes.

1 Q When you say "our," who is that?

2 A We thought it was important that Mr. Evans  
3 came to the site where we anticipated or expected to  
4 make the notification to employees. So Mr. Evans  
5 traveled from Charlotte, and we had a meeting with the  
6 employees to discuss it, present these points.

7 Q The first sentence of the document says,  
8 quote, Florida Power & Light has approached us and  
9 offered to purchase Cedar Bay.

10 I think we've already talked about that. You  
11 don't know whether that's right or not; correct?

12 A Right. Yes, that part of it, I don't know.

13 Q When did you notify the employees? Was it the  
14 same day FPL made their filing in the case?

15 A Yes.

16 Q Who is Robert Martin?

17 A I'm not familiar with that name. I don't  
18 know.

19 MR. MOYLE: All right. Let's -- I think I've  
20 covered about everything I need to cover. But as  
21 they were referencing earlier, I'm not really good  
22 about letting go completely.

23 So let's take a couple of minutes, and then  
24 we'll come back on. If I have any other questions,  
25 we will finish up.



1 THE WITNESS: Very well.

2 MR. MOYLE: I'd like to get you over and done.

3 MR. BUTLER: I thought we were stopping at  
4 6:00.

5 MS. BARRERA: This is a good time to stop?

6 MR. MOYLE: Okay. We can do that. That's  
7 fine. We're going to stop for the day. You'll be  
8 here tomorrow anyway; right?

9 THE WITNESS: Yes, I will.

10 MR. MOYLE: All right. So we'll come back.  
11 We will do it that way. Thank you.

12 THE WITNESS: You're welcome.

13 (The deposition was adjourned at 5:57 p.m.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

**CERTIFICATE OF OATH**

STATE OF FLORIDA                    )  
COUNTY OF LEON                    )

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
NOTARY PUBLIC  
850.878.2221

**CERTIFICATE OF REPORTER**

STATE OF FLORIDA       )  
COUNTY OF LEON       )

I, SARAH B. GILROY, Registered Professional Reporter,  
and Notary Public, do hereby certify that the foregoing  
proceedings were taken before me at the time and place  
therein designated; that a review of the transcript was  
requested, and that the foregoing pages numbered 1  
through 179 are a true and correct record of the  
aforesaid proceedings.

I further certify that I am not a relative, employee,  
attorney or counsel of any 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 \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
850.878.2221

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light  
Company's Petition for Approval      DOCKET NO. 150075-EI  
of Arrangement to Mitigate  
Impact of Unfavorable Cedar Bay      FILED: May 6, 2015  
Power Purchase Obligation

---

Volume 2, Pages 181 - 206

THE DEPOSITION OF:                      TRACY PATTERSON

AT THE INSTANCE OF:                    FIPUG AND OPC

DATE:                                      May 15, 2015

TIME:                                      Commenced at 9:00 a.m.  
Terminated at 9:32 a.m.

PLACE:                                    2540 Shumard Oak Boulevard  
Room 105  
Tallahassee, Florida

REPORTED BY:                            SARAH B. GILROY, RPR, CRR  
sbrinkhoff@comcast.net  
Notary Public in and for  
the State of Florida at  
Large

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A Remington Green Lane  
Tallahassee, FL 32308  
(850) 878-2221

1 APPEARANCES:

2

REPRESENTING FLORIDA POWER & LIGHT:

3

JOHN T. BUTLER, ESQUIRE

john.butler@fpl.com

4

MARIA J. MONCADA, ESQUIRE

maria.moncada@fpl.com

5

ADAM SHEINKIN, ESQUIRE

Florida Power & Light

6

700 Universe Boulevard

Juno Beach, Florida 33408

7

REPRESENTING THE PUBLIC SERVICE COMMISSION:

8

MARTHA F. BARRERA, ESQUIRE

mbarrera@psc.state.fl.us

9

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

10

REPRESENTING THE OFFICE OF PUBLIC COUNSEL:

11

JOHN TRUITT, ESQUIRE

trutt.john@leg.state.fl.us

12

CHARLES J. Rehnwinkel, ESQUIRE

rehwinkel.charles@leg.state.fl.us

13

111 West Madison Street, Room 812

Tallahassee, Florida 32301

14

REPRESENTING FIPUG:

15

JON C. MOYLE, ESQUIRE

jmoyle@moylelaw.com

16

Moyle Law Firm

118 North Gadsden Street

17

Tallahassee, Florida 32301

18

REPRESENTING COGENTRIX:

19

SCHEF WRIGHT, ESQUIRE

schef@gbwlegal.com

20

Gardner, Bist, Wiener, Wadsworth & Bowen

1300 Thomaswood Drive

Tallahassee, Florida 32308

21

22

JACOB POLLACK, ESQUIRE

23

MICHAEL GERGEN, ESQUIRE

24

25

I N D E XWITNESS PAGE NO.

## TRACY PATTERSON

Cross Examination (cont'd) by Mr. Moyle	184
Cross Examination by Mr. Wright	191
Recross Examination by Mr. Moyle	199

## INDEX OF EXHIBITS

(Exhibits described in Volumes 1.)

## NUMBER DESCRIPTION

1	Operations Summary, April 2013	43
2	FPL Billing statement, August 2013	43
3	Cogentrix presentation to PSC	51
4	DEP monitoring document	62
5	2014 Cogentrix business objectives	125
6	e-mail string, beginning 8-14-14	137
7	CB0009896	143
8	CB0012698	148
9	CB0013073	148
10	CB0010257	152
11	CB0013661	153
12	e-mail string, beginning 5-7-13	168
13	Cedar Bay PPA	175
14	e-mail string, beginning 11-12-14	175
15	Notification to Cedar Bay Employees	175

## NUMBER DESCRIPTION

(No documents identified in Volume 2)

CERTIFICATE OF OATH	203
CERTIFICATE OF REPORTER	204
ERRATA SHEET	205
READ AND SIGN LETTER	206

1 MR. MOYLE: All right. Let's go back on the  
2 record. We're continuing the deposition of  
3 Mr. Patterson.

4 CROSS EXAMINATION (cont'd)

5 BY MR. MOYLE:

6 Q You're still under oath --

7 A Yes.

8 Q -- today. And we spent some time talking  
9 about the 2004 business plan yesterday that you had  
10 prepared.

11 A '14.

12 Q Yeah, 2014.

13 A Correct, yes.

14 Q Did you prepare a 2015 business plan as well?

15 A No, I have not, did not.

16 Q Any reason why you did not?

17 A No particular reason, other than expecting, I  
18 guess, what the -- we were deep into the thought  
19 process of anticipating the petition and so on from  
20 FPL. So quite honestly, I just didn't prepare one.

21 Q I take it in past years you did. As part of a  
22 regular responsibility that you would do for every  
23 year, you would do it for '13 and '12 --

24 A Yes.

25 Q -- and '11 and '10?

1           And the document I showed you yesterday, maybe  
2 I could ask you to take a look at it. It's been  
3 marked, I believe, as Exhibit 11, the 2014 business  
4 plan.

5           A     Yes. I have that.

6           Q     And the date on it is November 22nd, 2013; is  
7 that right?

8           A     Right. Yes.

9           Q     So typically you prepare them in advance of  
10 the year?

11          A     Yes.

12          Q     Was it your decision not to prepare one for  
13 2015, or did someone else tell you don't prepare one?

14          A     My decision.

15          Q     And it was basically premised upon, well,  
16 there's a lot going on. We have this deal with FPL; I  
17 don't think we need to prepare one this year?

18          A     Yes.

19          Q     Can I ask you to turn to page 9 of the  
20 document that's before you, 2014 business plan.

21          A     Yes. There.

22          Q     Towards the bottom of the page, in section  
23 2.2.3.4, it's entitled "Other Projects," and the third  
24 bullet point down says, quote, determine a solution to  
25 the super heater spray control valve erosion



1 discovered in 2013 as a result of the extended  
2 operation at minimum boiler loads.

3 Did you determine a solution --

4 A Yes.

5 Q -- for this issue?

6 A Sorry. Yes.

7 Q What was it? What was the solution?

8 A We changed the control valve trim. That's the  
9 term that's used to the internals. It refers to how  
10 much flow you get for a certain amount of valve  
11 opening.

12 Q And this has already been done?

13 A Yes.

14 Q So it's not a pending fix or capital  
15 expenditure that you have to make?

16 A No.

17 Q And the extended operation at minimum boiler  
18 loads, is that part and parcel of not being dispatched  
19 as much as you previously had historically?

20 A Yes.

21 Q Does Cogentrix have any other -- I say  
22 "Cogentrix." I'm using the term very broadly,  
23 including -- including the Carlyle Group, as we talked  
24 about yesterday. But do they have any other  
25 generating assets in Florida?

1           A     No.

2           Q     And if the Public Service Commission decides  
3 not to approve the proposed sale to FPL, what happens  
4 to Cedar Bay?

5           A     Business as usual, live -- perform according  
6 to the contracts we have.

7           Q     So with respect to the commission's decision,  
8 there is no urgency to have the commission make the  
9 decision on an expedited basis or kind of with exigent  
10 circumstances prompting a decision; correct?

11          A     Could you tell me the framework for the  
12 urgency, or the time frame?

13          Q     Well, sometimes people come in to the  
14 commission and say, here's a reason I've got to hurry  
15 up and get you to act on this or move forward. You  
16 know, in this case, as I understand your testimony, if  
17 the deal gets approved, that's okay. If the deal  
18 doesn't get approved, that's okay; business as usual.

19                 You testified yesterday you're making money.  
20 So my -- my thinking is, well, there's nothing  
21 pressing that requires the commission to say, hurry up  
22 and do this. They need to get it right as compared to  
23 getting it fast. Would you --

24                 MR. WRIGHT: I'm going to -- before he  
25 answers, I'm going to object to the form and ask

1       you to clarify. Do you mean from his perspective  
2       as the until recently plant manager, or from the  
3       perspective of Cedar Bay Generating Company, or  
4       what?

5 BY MR. MOYLE:

6       Q     Did you understand the gist of the question?  
7       There is nothing that, from your perspective as the  
8       plant manager, requires the PSC to hurry up and act on  
9       this issue; correct?

10      A     As the general manager, from the operation and  
11      maintenance, there's -- there's nothing that changes  
12      either way, based on the timing of the decision.

13      Q     Okay. So then the answer to my question would  
14      be: Yes, Mr. Moyle, you're right; there's nothing  
15      that is pressing to require us to act; correct?

16           MR. WRIGHT: Object to the form; overbroad and  
17      misleading.

18 BY MR. MOYLE:

19      Q     Did you understand the question?

20      A     I will still give my previous answer --

21           MR. WRIGHT: I'm going to further object;  
22      asked and answered. He answered as plant manager,  
23      and that's his capacity to answer.

24 BY MR. MOYLE:

25      Q     Do you have any capacity other than plant

1 manager here today? If I ask you to say, does  
2 Cogentrix, the larger company, think we got to hurry  
3 up and act, is your answer going to be any  
4 different --

5 A As vice-president of operations, my  
6 familiarity with the plant, the plant can perform  
7 according to the contracts, regardless of the timing  
8 of the decision by the commission.

9 Q So there is no urgency for the commission to  
10 hurry up and make a decision from your standpoint as  
11 vice-president of operations; correct?

12 A Right. Yes.

13 Q Okay. Do you have -- wearing any other hats  
14 or have any other information to suggest that there is  
15 urgency on behalf of any of the upstream corporations  
16 to hurry up and act?

17 A No.

18 MR. MOYLE: Would you read the question back,  
19 please?

20 (Last question and answer read.)

21 BY MR. MOYLE:

22 Q If there was urgency to act, would you have  
23 that information, do you believe?

24 A No.

25 Q Why not?

1           A     Strictly from the operation and maintenance  
2 side, Mr. Moyle.

3           Q     So when you answered my question, you just  
4 don't have the information; correct?  You don't have  
5 information?  You don't know whether there's  
6 information -- somebody else may get up here and go,  
7 yes, we have to do this because of some reason?  You  
8 have to do it next month; you have to do it quickly.

9                     You just don't know whether somebody may say  
10 that or may not say that; correct?

11          A     Correct.

12          Q     Do you know whether any analysis of  
13 contractual obligations that FPL would acquire upon  
14 closing has been performed?

15          A     No.

16          Q     Have you provided all of the contracts that  
17 currently exist to FPL?

18          A     I don't know.  It goes back to the discussion  
19 yesterday --

20          Q     What's in the data room?

21          A     What's in the data room.  I didn't -- I don't  
22 know everything that's in the data room.

23          Q     Who was responsible for putting stuff in the  
24 data room?

25          A     I believe the custodian in Charlotte was Kelly

1 Newsome, just the custodian, so to speak.

2 Q With respect to coordinating the documents,  
3 there were presumably some communications; can I see  
4 this document; can I see that document; can I see  
5 stuff relating to the environmental -- who was the  
6 point on sort of handling that information flow, if  
7 you know?

8 A That was Kelly Newsome.

9 Q And there hasn't been any analysis done of  
10 costs to clean up subsurface conditions at the site;  
11 is that right?

12 A Mr. Neff would most likely be able to answer  
13 that.

14 Q Okay. But as you are sitting here, you -- do  
15 you know whether there was an analysis done or no?

16 A No.

17 Q You just don't know?

18 A I don't know.

19 Q Okay.

20 MR. MOYLE: Thanks for your time. I don't  
21 have any other questions.

22 MS. BARRERA: We have no questions.

23 CROSS EXAMINATION

24 BY MR. WRIGHT:

25 Q Mr. Patterson, I have a few questions for you

1 on what is technically cross-examination, although we  
2 may also consider it to be redirect examination.  
3 These are largely questions to clarify responses that  
4 you provided to either Mr. Truitt or Mr. Moyle's  
5 questioning.

6 You were asked a question about the life span  
7 of some expected membrane repairs.

8 A Yes.

9 Q Do you expect that the life span of the  
10 membrane repairs would extend beyond the life of the  
11 PPA?

12 A Yes.

13 Q You were asked some questions about some of  
14 the contracts on the diagram with all the circles on  
15 it as to whether there were any expiring contracts.

16 My question for you is, do you expect to be  
17 able to renew or replace any expiring contract between  
18 now and the end of --

19 MR. MOYLE: Object -- I'm sorry. I'll let you  
20 finish your question before I object.

21 BY MR. WRIGHT:

22 Q My question is, do you expect today that Cedar  
23 Bay could renew or replace any contract that expires  
24 between now and the end of the PPA?

25 A Yes --

1 MR. MOYLE: I'm going to --

2 THE WITNESS: I'm sorry.

3 MR. MOYLE: I'm sorry. I'm going to object to  
4 the form of the question on the basis that it  
5 requires speculation on the part of the witness.

6 He can testify as to what he thinks, but he  
7 surely can't testify as to what another party,  
8 another contracting party may or may not do in  
9 contract negotiations. On that basis, I will  
10 register an objection.

11 BY MR. WRIGHT:

12 Q You can answer the question.

13 A Yes.

14 Q Are you aware of any reason that an expiring  
15 contract might not be able to be renewed or replaced  
16 between now and the end of the PPA?

17 A No.

18 THE WITNESS: I'm sorry.

19 MR. MOYLE: Same objection.

20 A No.

21 BY MR. WRIGHT:

22 Q You had some conversation I think both with  
23 Mr. Truitt and with Mr. Moyle regarding some  
24 permitted, some reported values as to groundwater  
25 quality; do you recall those discussions?



1           A     Yes.

2           Q     Who would be best positioned to answer  
3 questions on that subject for the company?

4           A     Mr. Neff.

5           Q     Thank you. While we're on that subject, do  
6 you have -- do you have any knowledge as to whether  
7 there is a contractual allegation of liability as  
8 between Cedar Bay, which leases the site, and the  
9 owner of the site?

10          A     Could you rephrase that or restate that,  
11 please.

12          Q     Sure. Are you aware whether there is any  
13 allocation of liability within the ground lease, the  
14 person to which Cedar Bay leases the site, as between  
15 Cedar Bay and the owner of the site? When I say  
16 "liability," I mean liability as to environmental  
17 costs or liabilities.

18          A     Just vaguely familiar with some of the  
19 indemnifications or that, but I haven't -- I'm not  
20 very familiar with that part.

21          Q     And of the remaining witnesses that we are  
22 producing for these depositions, who would be best in  
23 position to answer this question?

24          A     Environmental issues would be Mr. Neff.

25          Q     Okay. And you mentioned earlier that

1 Mr. Steve Busbin is the plant manager today?

2 A General manager, yes. (Laughter.)

3 Q Well done.

4 And when did he assume the position of general  
5 manager?

6 A April 27th.

7 Q And so from -- and you became vice-president  
8 of operations on January 1st?

9 A Yes.

10 Q And you actually held both positions, then,  
11 through April 26th?

12 A Yes.

13 Q Thank you. You had some discussions regarding  
14 life extension work and I think whether life extension  
15 work would -- was necessary for the plant.

16 Do you recall those discussions?

17 A Yes.

18 Q What did you understand the term "life  
19 extension work" to mean when you gave your answer?

20 MR. MOYLE: Objection; it's been asked and  
21 answered.

22 MR. WRIGHT: I don't think that question has  
23 been asked and answered.

24 MR. MOYLE: The record will speak to it. I  
25 think I asked him, what's life extension.

1 BY MR. WRIGHT:

2 Q You can answer the question. If my question  
3 was objectionable, it could be disallowed as evidence  
4 in the hearing. But you can answer the question.

5 A My understanding of the life extension process  
6 or project would be some undertaking by the plant that  
7 would extend the life beyond what could normally be  
8 expected at the plant.

9 We -- we had the discussion 40 or 50 years  
10 would not be unreasonable to operate a well maintained  
11 power plant. There have been no projects to that  
12 extent, that I'm aware of, at Cedar Bay or -- or  
13 planning.

14 Q When you conceive of life extension work, do  
15 you think of that in terms of some significant capital  
16 expenditure project?

17 A Yes.

18 Q You were asked some questions about a budget  
19 variance report. Do you recall those?

20 A I'm not sure I recall a budget variance  
21 report. The only one I recall was the -- that  
22 scrambled data we saw that was a forecast report, I  
23 believe.

24 Q Do you recall some discussion about -- I think  
25 you had several questions and answers with Mr. Moyle

1 regarding the plant making money; I'm sure you recall  
2 those questions.

3 A Yes.

4 Q And I think you recall -- do you recall some  
5 questions about whether you make more money or less  
6 money the more you operate or the less you operate?

7 A Yes.

8 Q Could you clarify for us how that works. Do  
9 you make more money when you generate more  
10 electricity, or you make less money when you generate  
11 more electricity?

12 MR. MOYLE: So I'm going to -- the first  
13 question I think was the right question, which was,  
14 please explain the finances, the -- the other one  
15 was compound and leading.

16 MR. WRIGHT: I will withdraw the second one.  
17 Please answer the first one. Please explain what's  
18 going on there.

19 THE WITNESS: Could you read back the first  
20 part of the question, please.

21 (Requested portion read.)

22 A Yes.

23 BY MR. WRIGHT:

24 Q And the question is, please explain what --  
25 please explain that relationship.

1           A     Per the discussion yesterday, we make more  
2 money when we run less. It's inversely related.

3           Q     And why is that?

4           A     The less we run or the lower we are  
5 dispatched, then the less it takes in fuel, the less  
6 coal, less chemicals, the lower the maintenance costs.  
7 All the associated O&M costs are reduced, based on the  
8 level of operation of the plant. The capacity payment  
9 is fixed.

10           As long as we maintain or can sustain the  
11 annual capacity factor, then those payments will  
12 remain constant.

13           Q     If one of your inquiring -- one of the  
14 inquiring attorneys here were to want to probe this in  
15 more detail, is there another witness who would be  
16 better positioned to answer these questions?

17           A     Mr. Evans is very knowledgeable as well.

18           Q     Thank you. Mr. Moyle mentioned to you a  
19 lawsuit in Mississippi regarding a contractor that  
20 takes some of the coal ash away from Cedar Bay; do you  
21 recall those questions?

22           A     Yes.

23           Q     Do you know whether Cedar Bay was named as a  
24 defendant in that lawsuit?

25           A     We were not.

1 MR. WRIGHT: Thank you. That's all my  
2 redirect questions.

3 THE WITNESS: You're welcome.

4 MR. MOYLE: I just have -- do you have  
5 anything?

6 MR. TRUITT: (Shaking head negatively.)

7 RECROSS EXAMINATION

8 BY MR. MOYLE:

9 Q I just want to follow up on one area that we  
10 talked about yesterday that your counsel just asked  
11 you about related to making -- making money. And you  
12 just said in response to a question by Mr. Wright that  
13 you make more money the less you run. And that's  
14 because you have to make expenditures for fuel and  
15 maintenance and other things, and if you're not  
16 running, you don't have to make those expenditures; is  
17 that right --

18 A Yes.

19 Q -- essentially? So stated a different way,  
20 would it be fair to say that, with respect to energy  
21 pricing, or the energy market, that the Cedar Bay  
22 facility is not profitable?

23 MR. WRIGHT: Object to the form.

24 BY MR. MOYLE:

25 Q So if you were in a merchant world -- and I

1 thought what you said is, it costs -- well, let me ask  
2 you: Does it cost you more to run the facility than  
3 you would get in revenues coming in if you were  
4 selling your power? I think that's sort of what my  
5 question is.

6 MR. WRIGHT: I object to the form and to the  
7 relevance of this question about a hypothetical  
8 merchant world. You may answer the question if you  
9 have an answer.

10 BY MR. MOYLE:

11 Q Well, let me rephrase.

12 Does the -- does the market price for power in  
13 Florida impact whether Cedar Bay dispatches or not?

14 MR. WRIGHT: I'm going to object to the form  
15 and to the relevance, but he can answer the  
16 question.

17 A FPL --

18 MR. BUTLER: Further object to the fact, I  
19 believe, assuming facts not in evidence. I don't  
20 believe that Cedar Bay dispatches the plant.

21 MR. MOYLE: He may know. I mean, he's been  
22 the plant manager for a long time. I'm sure he's  
23 had some conversations with people, you know.

24 MR. BUTLER: But your question assumes that  
25 Cedar Bay dispatches the plant. That's my

1 objection.

2 BY MR. MOYLE:

3 Q Do you have any information whether FPL  
4 considers economics when dispatching Cedar Bay?

5 A I don't know how FPL makes decisions, how they  
6 dispatch plants.

7 Q They could roll dice for all you know?

8 MR. WRIGHT: I would object to the form. You  
9 can answer if you can answer.

10 MR. MOYLE: I'll withdraw it.

11 BY MR. MOYLE:

12 Q Has any analysis been done that you know of  
13 with respect to the economics of the Cedar Bay plant  
14 as it relates to its ability to sell energy and make  
15 money from selling energy?

16 A Could you clarify? We operate under the PPA.

17 Q Right.

18 A And under the terms of those -- I'm not trying  
19 to give you a suggestion, but are you talking like  
20 post PPA? I don't know what the basis is for your  
21 question.

22 Q Yeah. Assume there is no PPA. Assume that it  
23 was breached or assume that the commission said, we're  
24 not authorizing payments anymore, and you didn't have  
25 the PPA.



1           Does the Cedar Bay plant still run from an  
2 economic standpoint as we sit here today?

3           A     I don't know.

4           Q     And you said you didn't read the petition  
5 yesterday. Did you read the -- the appraisal report  
6 that FPL attached to its petition or the testimony of  
7 the appraiser that FPL sponsored as a witness in this  
8 case?

9           A     No.

10          MR. MOYLE: That's all I have.

11          MR. WRIGHT: Thank you. May Mr. Patterson be  
12 excused, please?

13          MR. MOYLE: Yes.

14          MR. WRIGHT: As we discussed at the outset, we  
15 will read and sign.

16               (The deposition was concluded at 9:32 a.m.)

17

18

19

20

21

22

23

24

25

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

**CERTIFICATE OF OATH**

STATE OF FLORIDA                    )  
COUNTY OF LEON                    )

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
NOTARY PUBLIC  
850.878.2221

**CERTIFICATE OF REPORTER**

STATE OF FLORIDA        )  
COUNTY OF LEON        )

I, SARAH B. GILROY, Registered Professional Reporter,  
and Notary Public, do hereby certify that the foregoing  
proceedings were taken before me at the time and place  
therein designated; that a review of the transcript was  
requested, and that the foregoing pages numbered 181  
through 203 are a true and correct record of the  
aforesaid proceedings.

I further certify that I am not a relative, employee,  
attorney or counsel of any 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 \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
850.878.2221



ACCURATE STENOGRAPHY REPORTERS  
2894-A Remington Green Lane  
Tallahassee, Florida 32308  
850-878-2221

May 26, 2015

Tracy Patterson  
c/o SCHEF WRIGHT, ESQUIRE  
schef@gbwlegal.com

re: May 14 and 15, 2015, deposition of Tracy Patterson,  
PSC Docket No. 150075-EI

Dear Mr. Patterson:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for your review and signature at your attorney's office, or if you wish, you may sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under applicable rules; however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party, and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely yours,

SARAH B. GILROY, Court Reporter

cc: All ordering attorneys

Waiver:

I, \_\_\_\_\_, hereby waive the reading and signing of my deposition transcript.

\_\_\_\_\_  
Deponent signature

\_\_\_\_\_  
Date

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light  
Company's Petition for Approval of Arrangement to Mitigate  
Impact of Unfavorable Cedar Bay Power Purchase Obligation

DOCKET NO. 150075-EI  
FILED: May 6, 2015

---

THE DEPOSITION OF: STEPHEN MARK RUDOLPH

AT THE INSTANCE OF: FIPUG AND OPC

DATE: May 15, 2015

TIME: Commenced at 1:45 p.m.  
concluded at 5:53 p.m.

PLACE: 2540 Shumard Oak Boulevard  
Room 105  
Tallahassee, Florida

REPORTED BY: SARAH B. GILROY, RPR, CRR  
sbrinkhoff@comcast.net  
Notary Public in and for  
the State of Florida at  
Large

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A Remington Green Lane  
Tallahassee, FL 32308  
(850) 878-2221

1 APPEARANCES:

2 REPRESENTING FLORIDA POWER & LIGHT:

3 JOHN T. BUTLER, ESQUIRE  
john.butler@fpl.com  
4 MARIA J. MONCADA, ESQUIRE  
maria.moncada@fpl.com  
5 ADAM SHEINKIN, ESQUIRE  
Florida Power & Light  
6 700 Universe Boulevard  
Juno Beach, Florida 33408

7 REPRESENTING THE PUBLIC SERVICE COMMISSION:

8 MARTHA F. BARRERA, ESQUIRE  
mbarrera@psc.state.fl.us  
9 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

10 REPRESENTING THE OFFICE OF PUBLIC COUNSEL:

11 JOHN TRUITT, ESQUIRE  
trutt.john@leg.state.fl.us  
12 CHARLES J. REHWINKEL, ESQUIRE  
rehwinkel.charles@leg.state.fl.us  
13 111 West Madison Street, Room 812  
Tallahassee, Florida 32301

14 REPRESENTING FIPUG:

15 JON C. MOYLE, ESQUIRE  
jmoyle@moylelaw.com  
16 Moyle Law Firm  
118 North Gadsden Street  
17 Tallahassee, Florida 32301

18 REPRESENTING COGENTRIX:

19 SCHEF WRIGHT, ESQUIRE  
schef@gbwlegal.com  
20 Gardner, Bist, Wiener, Wadsworth & Bowen  
1300 Thomaswood Drive  
Tallahassee, Florida 32308

21

22

23

24

25

I N D E X

<u>WITNESS</u>	PAGE NO.
STEPHEN MARK RUDOLPH	
Direct Examination by Mr. Truitt	5
Cross Examination by Mr. Moyle	40

INDEX OF EXHIBITS  
(Exhibits attached hereto.)

7	NUMBER DESCRIPTION (marked in Volume 1, Patterson)	
8	1 Operations Summary, April 2013	
9	2 FPL Billing statement, August 2013	
10	3 Cogentrix presentation to PSC	
11	4 DEP monitoring document	
12	5 2014 Cogentrix business objectives	
13	6 e-mail string, beginning 8-14-14	
14	7 CB0009896	
15	8 CB0012698	
16	9 CB0013073	
17	10 CB0010257	
18	11 CB0013661	
19	12 e-mail string, beginning 5-7-13	
20	13 Cedar Bay PPA	
21	14 e-mail string, beginning 11-12-14	
22	15 Notification to Cedar Bay Employees	
23	NUMBER DESCRIPTION (marked in Neff)	
24	16 3-24-15 e-mail string	
25	NUMBER DESCRIPTION (marked in Rudolph)	
26	17 8-9-13 Cogentrix memo	18
27	18 Duff & Phelps report	18
28	19 2-7-13 McNamara e-mail	86
29	20 8-23-13 Officer's Cert	89
30	21 CBGC, LP financial statements	
31	December 31, 2014 and 2013	99
32	22 GBGC, LP 3-20-13 presentation to	
33	lenders	102
34	CERTIFICATE OF OATH	136
35	CERTIFICATE OF REPORTER	137
36	ERRATA SHEET	138
37	READ AND SIGN LETTER	139





1 deposition. Should any part of your staff choose  
2 to move any portion of these depositions, including  
3 any past exhibits, in evidence, OPC intends to  
4 exercise any and all related provisions found in  
5 the Rules of Civil Procedure that are applicable,  
6 including objections on any available grounds, as  
7 well as the right to rebut the evidence.

8 DIRECT EXAMINATION

9 BY MR. TRUITT:

10 Q To start with, could you please state your  
11 name and spell your last name for the record.

12 A Stephen Mark Rudolph, R-U-D-O-L-P-H.

13 Q And state the company you work for and your  
14 business address please.

15 A Cogentrix Energy Power Management, 9405  
16 Arrowpoint Boulevard, Charlotte, North Carolina,  
17 28273.

18 Q And how long have you worked for your current  
19 employer?

20 A Ten years.

21 Q What is your current job title?

22 A Senior vice-president, chief financial  
23 officer.

24 Q How long have you been in that position?

25 A Five years.

1           Q     And could you give us a description of the  
2 duties that go along with your current position?

3           A     I'm in charge of all the accounting, corporate  
4 finance, and tax functions. I think that's all.

5           Q     And could you please give us a brief overview  
6 of your work history, including other positions with  
7 your current employer.

8           A     I started out with Cogentrix in 2005 as the  
9 controller. My background is accounting. I got my  
10 bachelor's and master's in accounting from the  
11 University of Florida.

12                     Prior to working at Cogentrix I worked at the  
13 independent power subsidiary of TECO Energy. Prior to  
14 TECO, I worked in public accounting, primarily at  
15 Deloitte & Touche.

16           Q     What are your specific responsibilities with  
17 regards to the Cedar Bay plant specifically?

18           A     I oversee the people in my group who do the  
19 accounting; they do financial management, which  
20 includes reporting on the debt, includes internal  
21 management reporting; the tax group does any required  
22 tax filings.

23                     So I indirectly oversee all of that.

24           Q     Are there any employees at the Cedar Bay site  
25 themselves that are direct reports to you?

1 A No.

2 Q Are there any reports that emanate from Cedar  
3 Bay that you get?

4 A No.

5 Q Okay. In your duties, are you required to  
6 review any particular reports that come from Cedar  
7 Bay?

8 A No.

9 Q Okay. Were you involved in any way with the  
10 negotiations with FPL regarding the proposed purchase?

11 A Negotiations, no.

12 Q Were you involved in any way of drafting the  
13 purchase and sale agreement between FPL and Cedar Bay?

14 A By "drafting," do you mean review?

15 Q That's going to be my next question, but I  
16 mean actually drafting.

17 A No drafting.

18 Q Okay. Do you --

19 A Sorry, step back. I was involved in the -- I  
20 guess I would call it the construction of the working  
21 capital exhibit. I didn't do any drafting. But I  
22 think we provided a spreadsheet that ultimately became  
23 part of an exhibit of the PSA.

24 Q Okay. And then the next question, were you  
25 involved in any way in the review of the purchase and

1 sale agreement?

2 A Yes.

3 Q Okay. Now, could you give us the description  
4 of how you were involved in that issue?

5 A When the document got circulated periodically,  
6 I would review specifically our reps and warranties  
7 that we were making as part of the document to make  
8 sure everything was true and correct and that we  
9 could -- from my standpoint and my view and the  
10 company stand behind the reps and warranties.

11 Like I said, any -- specifically if we had as  
12 part of our reps and warranties, you know, made  
13 financial statements available, et cetera, making sure  
14 the reps were correct and that the periods of  
15 information that we provided were accurate.

16 And the same with the working capital, the  
17 schedule working directly with that.

18 Q Would it be a fair statement to say that,  
19 prior to signing off on the purchase and sale  
20 agreement, that your approval of the way it was set up  
21 was required?

22 A My -- I wouldn't characterize it like that.  
23 It was circulated for review. And I didn't approve  
24 it. But the way it would generally work is, we need  
25 to sign off that we have reviewed it and that

1 everything -- that we don't know that anything is  
2 incorrect about it.

3 And that, when I say "we," that wouldn't  
4 include just me. It would include really all the  
5 functional areas within Cogentrix, which could include  
6 my area as well as engineering, environmental, legal,  
7 et cetera.

8 So I would be one, quote, unquote, reviewer,  
9 and I would sign off that I had, in fact, reviewed it.

10 Q Okay. You speak about areas that make me ask.  
11 How many direct reports do you have?

12 A I was counting back, I think, after you asked  
13 Rick that. I think it's 15 now.

14 Q Okay. And who do you direct report to?

15 A Doug Miller, who is the president of the  
16 company.

17 Q Okay. In the scope of your duties in your  
18 position, are you responsible for any compliance  
19 aspects of the Cedar Bay facility?

20 A Can you define "compliance"?

21 Q Any kind of regulatory scheme that requires  
22 following something, like, for example, we had  
23 environmental permitting. Obviously there is certain  
24 accounting requirements and things like that I'm  
25 trying to get in the grand scheme of things.

1 A Not from a regulatory perspective, no.

2 Q Okay. Any other perspective?

3 A For -- when I think of compliance, I think of  
4 debt compliance and -- and maybe tax compliance. Debt  
5 compliance, you know, the debt agreement comes with  
6 all different kinds of covenants that we have to  
7 comply with which affect, you know, my department all  
8 the way across from financial statements to tax  
9 filings to covenant -- or coverage ratio calculations,  
10 et cetera.

11 So we're doing all kind of compliance work  
12 from that perspective.

13 Q Okay. Now, are you responsible for, in any  
14 way, implementation or execution of the current PPA  
15 between Cedar Bay and FPL?

16 A No.

17 Q Okay. Are you responsible for, in any way,  
18 review of the execution of the current PPA between  
19 Cedar Bay and FPL?

20 A No.

21 Q Okay. Do you, in the course of your duties,  
22 get reports on that PPA?

23 A There is -- actually, they're not very widely  
24 circulated. But I'm knowledgeable of a report that's  
25 done for compliance with a covenant in the PPA

1 regarding -- it's a maximum -- I think it's a maximum  
2 debt allowance type covenant. It's not operational in  
3 any way for us, but it's required as part of a -- I  
4 guess Mr. Patterson used the term, check the box type  
5 requirement, that it's an agreed upon procedures  
6 report that our auditors do.

7 Q Okay. I'm going to ask you to grab a copy of  
8 what we have as Exhibit 3, which is the presentation  
9 from yesterday. And, again, forgive me, it may seem  
10 repetitive, but I want to get the statements that you  
11 had under oath. So I will ask questions, and if you  
12 could give kind of a broad answer with the scope  
13 limited to what you did yesterday.

14 Right after -- would you give us an  
15 explanation of the current monthly costs and revenues  
16 for Cedar Bay and also where you have future  
17 assumptions going regarding those.

18 A Can you tell me specifically what you're  
19 referring to in here?

20 Q Specifically I'm talking about the financial  
21 results. You had that specific section --

22 A It's on page 15, the historical financial  
23 results?

24 Q Yeah. And then you -- because you had also  
25 mentioned projected on page 16. So if you could kind



1 of recap in your own words again what you did  
2 yesterday just so we have it in the record.

3 MR. WRIGHT: Okay. John, just to clarify,  
4 your pending question used the word "monthly."  
5 This appears to be annual.

6 MR. TRUITT: Right. And that's fine. I  
7 understand it was in this format. So I will amend  
8 my question.

9 MR. WRIGHT: Did you want to ask him about  
10 monthly, or did you want to ask him about this  
11 information? That's what I'm trying to clarify.

12 MR. TRUITT: We'll go with this information  
13 that we have in front of us, and it may require  
14 different question.

15 BY MR. TRUITT:

16 Q I will strike my previous question and say,  
17 can you please go over page 15 and 16 of Exhibit 3.

18 A Okay. Sure. Page 15 is historical financial  
19 results. And we have laid it out in terms of EBITDA,  
20 which, if you look in the audited financial  
21 statements, that's operating income plus depreciation.  
22 EBITDA doesn't appear in there, so I defined it.

23 And the first bullet there is really a trend  
24 of our EBITDA from 2007 through 2014. We included  
25 that to show the low points in 2007, 2008, when there

1 were forced outage issues that have been previously  
2 discussed. And the trends, as I stated in the  
3 presentation, it shows an upward trend.

4 It starts at 41 million in 2007, dips down to  
5 27.4 million in 2008, and trends upward all the way to  
6 2012, where it topped out at 82.7. And then in 2013  
7 and 2014, it dips down to 50 million and 54 million,  
8 respectively.

9 And, again, as I explained before, the dips in  
10 2013 and 2014 is related to a scheduled reduction in  
11 the base capacity payments. In the PPA they were  
12 originally sculpted to increase over time, and then  
13 decrease for a short period of time, and then increase  
14 again. And so you can see from 2013 to 2014, it's  
15 increasing again.

16 The reason why we wanted to put that on there  
17 is because the base capacity payments are really  
18 economically the lifeblood of the plant. I think over  
19 75 percent of the plant revenue is derived from the  
20 capacity payments.

21 The second bullet is -- describes the capital  
22 structure of Cedar Bay, because it's a little  
23 different than you would normally see in that it has  
24 senior debt and subordinated intercompany debt. The  
25 subordinated intercompany debt has been there as far

1 as I know from the beginning of time. We weren't  
2 involved in the original design of that capital  
3 structure. But it's been treated as equity for -- as  
4 long as I've been around.

5 It eliminates within consolidation, so it's  
6 owed to an affiliate company. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 The next bullet down there, the senior debt of  
11 \$250 million was raised in a refinancing in 2013.  
12 That debt has since been paid down to \$179 million and  
13 is scheduled to be paid off when we close with FPL.  
14 The refinancing in 2015 occurred because we had debt  
15 coming due.

16 At that time the debt due was less than \$100  
17 million. So we were able to, through the strength of  
18 the PPA, raise 250 million in the debt markets.

19 On page 16 are projected financial results,  
20 really just going through what we went through in  
21 order to present that debt package to the market. The  
22 financial projections were -- you know, a detailed  
23 financial model was prepared and was a basis for that  
24 financing. And it was, of course, reviewed by the  
25 debt arrangers, the credit rating agencies, lenders

1 and lenders' independent engineers.

2 The base case projections showed EBITDA  
3 generally in excess of \$70 million a year. That was  
4 based on a dispatch profile provided by an independent  
5 consultant and a coal forecast provided by an  
6 independent consultant.

7 The projections also included downsize  
8 sensitivities. I put the most onerous one in here,  
9 which was a high dispatch case, which still showed  
10 EBITDA at excess of \$50 million per year. The high  
11 dispatch case was shown, because in a high dispatch  
12 situation, it eats into the profitability of a  
13 capacity payment, but it still shows the capacity  
14 payment provides more than enough to have financed  
15 \$250 million and pay it off by the end of the term in  
16 2020.

17 Also put in here the projections for capex are  
18 minimal, averaging \$650,000 per year. In the model I  
19 believe that's really an estimate that is escalated  
20 and that we don't have projected capital expenditures  
21 other than routine that are out there that needed to  
22 be included specifically.

23 That's all on that page.

24 Q Thank you. Now, with that information kind of  
25 as the background and looking at this proposed

1 purchase and sale, when did you become aware that the  
2 purchase and sale negotiations were occurring?

3 A Tough to remember the time frame, maybe  
4 sometime around this time last year.

5 Q Okay. Now, we know the purchase and sale  
6 agreement, it's a \$520 million figure; you're aware of  
7 that; correct?

8 A Yes, sorry.

9 Q That's fine. When did you become aware that  
10 that was the figure that these parties were settling  
11 on?

12 A I'm not quite sure. I'm not sure when that  
13 was.

14 Q Okay.

15 A It might have been when it actually got  
16 written into the agreement.

17 Q Okay. I'm going to try and narrow it down. I  
18 understand it might not be precise, but it might help  
19 me. I know in the purchase and sale agreement, it  
20 says "dated as of December 10th, 2014," is the exhibit  
21 that FPL submitted.

22 Do you know if it was before that you were  
23 aware of it?

24 A Yes. I think it was before that.

25 Q Same month, the month prior? I'm not trying

1 to get an exact date, just --

2 A No, it was --

3 Q -- trying to get an idea.

4 A -- it was probably -- it was probably end of  
5 the summer type --

6 Q Right.

7 A -- time frame, which would have been like  
8 August, September time frame.

9 Q Okay. Now, from -- in your position, you  
10 discuss here excess of [REDACTED] you say  
11 here on page 16.

12 A Uh-huh.

13 Q What's the benefits to Cogentrix selling the  
14 facility versus keeping the PPA as it stands?

15 A I think the main benefit is just to reduce the  
16 operating risk of realizing that [REDACTED] a year.

17 As you've gone through the operating  
18 depositions here, there is a lot of work that goes  
19 into earning that and keeping the facility running  
20 with, you know, the coatings programs that Tracy  
21 Patterson went through and all the work that the plant  
22 has done to improve operations.

23 All that has been done, but it's a lot of work  
24 going through that. And you will always have  
25 operating risks to try and keep the plant available

1 and running as well as it has.

2 Q Okay. Now, you mentioned on page 16 of  
3 Exhibit 3 the -- I'm sorry, 15, the refinancing of  
4 debt, \$250 million. And you had stated, I believe,  
5 based on the strength of the PPA, I think that was the  
6 line that you used.

7 A Yes.

8 Q So then it's accurate to say that the PPA was  
9 a strong reason that that financing -- was that the  
10 main support for that financing to occur?

11 A Absolutely.

12 Q Okay. In your position, do you do internal  
13 valuations of the PPA?

14 A No.

15 Q No. Did you -- or did Cogentrix have a third  
16 party do valuations of the PPA?

17 A No.

18 Q No. Okay. I've got two exhibits. I'm going  
19 to keep them separate. So it's going to be -- what  
20 are we at, 17 and 18?

21 (Exhibit Nos. 17 and 18 were identified for  
22 the record.)

23 BY MR. TRUITT:

24 Q All right. So 17 -- both of these came in  
25 discovery from Cedar Bay. 17 is a Cogentrix

1 memorandum, dated August 9th, 2013. And 18 is going  
2 to be a Duff & Phelps valuation of assets of 2013.

3 I'll give you a second, if you could look over  
4 those briefly as he's passing them out, and we will  
5 have a conversation about them.

6 A I'm familiar with the Duff & Phelps report.

7 MR. TRUITT: Okay. I guess -- do you want to  
8 go off the record?

9 MR. WRIGHT: No.

10 MR. TRUITT: Okay.

11 MR. WRIGHT: Just before you go on, John --

12 MR. TRUITT: Uh-huh.

13 MR. WRIGHT: -- I just wanted to let everybody  
14 know that the latter document, the Duff & Phelps  
15 report, dated April 5, 2013, is what we  
16 characterize as highly sensitive information.  
17 Everybody's fine.

18 MR. TRUITT: 18.

19 MR. WRIGHT: I just want everybody to know  
20 that.

21 MR. TRUITT: For the record, Exhibit 18 is --  
22 falls in the highly sensitive category?

23 MR. WRIGHT: Correct.

24 MR. TRUITT: Okay.

25 MR. MOYLE: But that doesn't -- that doesn't



1 mean anything, other than double heads up, you  
2 know --

3 MR. WRIGHT: Doesn't mean anything to anybody  
4 in this room, yeah. Everybody in this room can see  
5 it, and that's fine. My colleagues at FPL can't  
6 show it to their business people. That's what it  
7 means.

8 BY MR. TRUITT:

9 Q I do want to start with 17 first. So I will  
10 ask the question essentially for the record.

11 Are you familiar with 17, this memorandum?

12 A The memorandum?

13 Q Yeah.

14 A I haven't seen it in a while. So I haven't  
15 read it in a while. But I'm familiar with the gist of  
16 it, I believe.

17 Q Okay. I will ask, do you know who Phil  
18 Gregorich is?

19 A Yes.

20 Q Okay. Can you explain for the record who he  
21 is?

22 A He previously worked for Cogentrix as our  
23 controller.

24 Q Previously. Okay. When did he leave; do you  
25 know that?

1           A     December 2014.

2           Q     Okay.  I was -- I was wanting to look at this.  
3     And is it -- I guess if you can skim it, and you can  
4     either say you don't know, or if skimming it you do  
5     know, it's up to you.  It appears to be a memorandum  
6     that, one, references this transaction.  But the  
7     specific thing I was looking for is that on the second  
8     page it mentions, in the middle section, following key  
9     conclusions of Cedar Bay are included in the Rhea  
10    valuation report.

11                   Do you see that kind of in the middle?

12           A     Uh-huh.

13           Q     The second bullet?

14           A     Uh-huh.

15           Q     It mentions there, "Cedar Bay PPA with FPL  
16    Group had a [REDACTED]

17    [REDACTED]

18                   And it appears that this memo discusses the  
19    value of the PPA and how it supported this  
20    transaction.

21                   Am I generally correct in that idea?

22           A     And how it supported this trans -- can you  
23    describe this transaction?

24           Q     Well, the memorandum is regarding acquisition  
25    by Carlyle, this membership in CBAS Power Holdings.

1 And, I guess, in terms of the acquisition, they wanted  
2 to know the assets, liabilities, et cetera, and that a  
3 valuation of the PPA which kind of came along with  
4 that acquisition would be included. So a valuation  
5 was done; is that correct, or am I off base?

6 A This valuation -- I guess it's easier for me  
7 to start with the Duff & Phelps report. This  
8 valuation was done. It's not -- it says valuation.  
9 It's a purchase price allocation as a part of the  
10 purchase that Carlyle did of the entire Cogentrix  
11 portfolio that they purchased from Goldman, a  
12 component of which is Cedar Bay and its assets and  
13 liabilities.

14 Q Okay. All right. So then let's look at what  
15 we have in 18, the valuation.

16 A Uh-huh.

17 Q Now, it goes through, as you've just stated,  
18 it goes through kind of a portfolio type evaluation.

19 Can you give us an overview of what this  
20 report is, and then we will get to some specific  
21 questions. But I want to get for the record your  
22 understanding of exactly what this is.

23 A Yeah. When -- when the -- the purchase and  
24 sale agreement was drafted, which is common in most  
25 purchase and sale agreements, there is agreement among

1 the parties to allocate the purchase price to the  
2 acquired assets and liabilities --

3 Q I'm sorry. Let me stop you for a second.  
4 Just for the record, purchase and sale agreement,  
5 exactly which one are you talking about when you say  
6 purchase and sale agreement at this time?

7 A I was saying generally at this time. So it is  
8 generally a requirement in purchase and sale  
9 agreements for both parties to agree on the allocation  
10 of the purchase price.

11 Q Okay.

12 A In the case where Carlyle purchased the  
13 portfolio from Goldman, we agreed to perform the  
14 purchase price allocation and hired Duff & Phelps to  
15 do so.

16 Q You say "we hired Duff & Phelps to do so."  
17 Now I notice, if you look at page 2 of this report,  
18 which is CB 0042860, it appears to be a cover letter,  
19 the second page right after the first cover itself.  
20 I'm sorry.

21 A Yes.

22 Q And it appears that that letter is written to  
23 you. So by "we," was it you specifically engaged Duff  
24 & Phelps, or is Duff & Phelps just giving the report  
25 to you because of your position?

1           A     Giving the report to me because of my  
2 position.

3           Q     So when Duff & Phelps was engaged, what was  
4 the request for them to do exactly?

5           A     To take the purchase price paid by Carlyle to  
6 Goldman for the entire portfolio and allocate it among  
7 the different assets and liabilities acquired.

8           Q     Okay. Now it discusses the PPA between Cedar  
9 Bay and FPL in here.

10          A     Uh-huh.

11          Q     If you could please explain to me your  
12 understanding of this report's valuation of the PPA?  
13 If you're able to point out pages, that's great, but  
14 I'm not hoping for something more than just a cursory  
15 overview.

16          A     Sure.

17          Q     I want to walk through.

18          A     Sure. What they -- what Duff & Phelps would  
19 have done is taken the model that Goldman provided to  
20 Carlyle, a cash flow model, and taken the adjusted --  
21 if Carlyle made any adjustments to it, taken the  
22 adjusted model that Carlyle based its purchase price  
23 on, and looked at that model and applied discounted  
24 cash flow analysis based on their understanding of  
25 markets to sort of separate the different assets

1 acquired into -- break the purchase price into  
2 different assets acquired by -- by the cash flows  
3 associated with each one.

4 Q Okay. Now, I'm going to look at -- I'm  
5 looking at specifically page -- the section starting  
6 on page 44 of the report, Section 7, entitled  
7 "Valuation of the Intangibles and Other Assets and  
8 Liabilities."

9 Are you there?

10 A Uh-huh.

11 Q Okay. On 45 they have a listing chart. And  
12 you see the Cedar Bay PPA on that; correct?

13 A Yes.

14 Q And it goes through a discussion of the power  
15 purchase agreements. And then go to page 47. And  
16 there is a little chart right above that that says,  
17 "valuation concluded, agreements for the sum of  
18 present cash flows is positive" --

19 Then it says Cedar Bay nets [REDACTED] in  
20 its valuation they gave it; correct?

21 A Yes.

22 Q So am I correct, if I remember reading this  
23 report, because that's a fair market value is what  
24 they did in terms of the valuation?

25 A Yes.

1 Q Okay. And can you explain fair market value;  
2 it's my understanding it has a specific meaning; it's  
3 not a general term. Can you explain to us what you  
4 understand the meaning of "fair market value" when you  
5 hear it in your business capacity to be?

6 A The price paid between two willing parties in  
7 an arm's length transaction.

8 Q Okay. So when this report was done -- I know  
9 it's dated April 5th, 2013, on the cover --

10 A Uh-huh.

11 Q -- but I believe someone -- again, I'm not  
12 sure exactly -- it had a specific date -- this  
13 valuation is effective as of -- you know, most of  
14 these valuations --

15 A Exactly.

16 Q -- they put a date on it.

17 Do you know the exact date?

18 A It would have been done as of the closing date  
19 of Carlyle's purchase of the portfolio from Goldman.

20 Q Okay. Do you know when that was?

21 A I want to say -- I don't know the exact  
22 date -- December of 2012.

23 Q Okay. So in theory, as of December 2012,  
24 whenever that date is in there, the PPA was worth [REDACTED]

25 [REDACTED]

1           A     In that transaction, yes.  But it's all a  
2 function of what Carlyle paid for the entire  
3 portfolio, which included other assets and which also  
4 included an operating platform at Cogentrix, which  
5 included a long-term run rate of costs in there.

6                     So the starting point is what Carlyle paid for  
7 the basket of assets and liabilities that it  
8 purchased.  So once you apply that, then that's how  
9 much comes out to the Cedar Bay PPA.

10           Q     Okay.  Now, I know there's some worksheets  
11 toward the back.  And they go kind of through all  
12 these -- there is a bunch of different exhibits in the  
13 back.  And they go through different analyses.  And  
14 let's see, I'm going to look at page -- it's  
15 Exhibit D.2.  The CB number is going to be CB 0042948.

16                     MR. MOYLE:  Would you mind repeating that,  
17 please?

18                     MR. TRUITT:  CB 0042948, Exhibit D.2.

19 BY MR. TRUITT:

20           Q     Are you there?

21           A     Yeah.

22           Q     Okay.  At the top here it says "valuation of  
23 Cedar Bay PPA."  It does say purchase price allocation  
24 analysis, so I get that.

25                     And then you would agree they did this chart



1 here; it looks like they went from the point in time  
2 of valuation, 2012, to the end of the PPA?

3 A Uh-huh.

4 Q Is that what that says?

5 A Yes.

6 Q I'm looking here, and they have capacity  
7 factor varies every single year.

8 I looked across this chart, and I see capacity  
9 factor is 250 megawatts.

10 So you guys weren't planning on changing the  
11 capacity factor of the plant; is that correct?

12 A Correct.

13 Q Okay. Now I see the capacity factor varies  
14 through all these years. Do you know why that is?

15 A It's an estimate based on -- I don't know what  
16 it's exactly based on, but that's what -- well,  
17 actually, let me think back. I believe what that  
18 comes from is when Carlyle purchased the portfolio  
19 from Goldman, they had an independent engineer come in  
20 and help them with capacity factor and analysis of the  
21 plant. And then I believe that capacity factor is  
22 what they got from their independent engineer.

23 Q Okay. So was it your understanding that they  
24 looked at past operations of the plant and tried to  
25 project the future or tried to make a -- an assumption

1 on what it would do in the future? Or what was your  
2 understanding? I guess I will put it that way.

3 A I wasn't part of that process, because at the  
4 time I was on the other side of the transaction.

5 Q Okay.

6 A I was employed by a subsidiary of Goldman.

7 Q All right. In terms of your professional  
8 experience, have you seen other valuation reports  
9 before?

10 A Yes.

11 Q Okay. Is that common practice in the  
12 valuation reports you've had experience with that they  
13 attempt to predict what's going to happen in the  
14 future?

15 A Yes.

16 Q Okay. Now, we see a bunch of the numbers;  
17 they change, vary from year to year. And it would be  
18 logical that a lot of that changes depending on the  
19 capacity factor and the output and everything else; am  
20 I correct in that assumption? A lot of these numbers  
21 are trickling out from how much they anticipate the  
22 plant is going to be used, et cetera?

23 A Absolutely, yes.

24 Q Okay. Now we're getting -- all the way -- we  
25 trickle down all the way to the bottom left-hand

1 column, and it comes up with that [REDACTED] number.  
2 Now when I look at the chart, they've put in -- you  
3 know, they have the steam revenue here, and the total  
4 revenues, and the total variable costs, all these  
5 different lines. And they come down to [REDACTED]

6 I'm trying to understand how the [REDACTED]  
7 is part of the total allocation of the purchase price,  
8 because it appears by this chart that they took in all  
9 the revenues, and they took out all the costs. And  
10 then they said that's what this PPA is going to make  
11 you in 12 years.

12 And I'm not an accountant. I'm just old  
13 infantry playing a lawyer, so I'm hoping to understand  
14 that.

15 So I don't understand that difference, because  
16 you were saying it's the allocation. But it looks to  
17 me -- when I look at this chart, it looks like they  
18 said, we think the plant is going to do this for 12  
19 years. Based on the revenues that come in and the  
20 expenditures that go out, it's worth [REDACTED].

21 How is that part of this price allocation that  
22 they paid for this whole portfolio? What's the  
23 differences here?

24 A It's not -- it's not a big difference. But  
25 the -- I guess the premise is, unless there is

1     extenuating circumstances, they can't come up with a  
2     value that's greater than the purchase price for the  
3     portfolio in total.

4             And so they've got to use -- in some respects  
5     they've got to backsolve for some of the value, in  
6     that if they -- for instance, if they used capacity  
7     factors, and they used a discount rate, they came up  
8     with a value that was higher than the purchase price  
9     of the portfolio in total, it is likely that they  
10    would assume one of their variables was incorrect and  
11    attempt to backsolve for either some variable that may  
12    have been off, because, again, in the absence of  
13    extenuating circumstances, they've got to get back to  
14    that purchase price, because it's an allocation of a  
15    purchase price. It is not specifically a valuation  
16    for purposes of making a deal.

17            The deal has already been made. The purchase  
18    price has already been set for what -- the  
19    transaction. So they've got that number to work with;  
20    they've got to allocate it.

21            So when they do this cash flow analysis for  
22    all of the assets in the portfolio, they've got to do  
23    a certain amount of backsolving in order to come up  
24    with the actual purchase price paid.

25            Q     Okay. So is that -- I think you were saying,

1 I know we were talking about this specific scenario,  
2 that they had the purchase price, and then they had to  
3 backsolve and tweak some variables.

4           Again, in your experience, prior history of  
5 valuations, is that how it normally works in the  
6 deals, or was that just specific to this deal?

7           A    No. I think that's how it normally works  
8 because, again, the notion that the -- that the  
9 accountants are driving this a lot of times, that  
10 they're trying to get away from is negative goodwill,  
11 meaning there is one party at the outset that has --  
12 it was a bargain purchase. There has to be  
13 extenuating circumstances in order to come to a  
14 bargain purchase.

15           And so unless those extenuating circumstances  
16 exist, you know, something extreme like buying it out  
17 of bankruptcy, then the assumption is it's a fair  
18 market value; it's a transaction between willing  
19 parties. And so that purchase price, whatever it was,  
20 has to be allocated.

21           And so in order to make everything fit into  
22 that bucket, there has to be some back-solving and  
23 manipulation of the numbers. Again, it's not a  
24 determination of value in order to make the deal. The  
25 deal has already been done. It's just a mechanical

1 process in order to do the accounting and do the tax  
2 filings.

3 Q Okay. Just a second. Sorry.

4 Based on what you just said there, the deal  
5 has been done, and you're doing some, you know,  
6 back -- what did you say, backfiling?

7 A Backsolving.

8 Q Backsolving. I'm sorry. Thank you. Trying  
9 to make sure you didn't run into the goodwill problems  
10 in all of the numbers.

11 So then if the valuation is done in that  
12 order, you have the deal, and then you do this  
13 valuation for allocation purposes.

14 A Uh-huh.

15 Q Am I correct in saying it that way? Is that  
16 an accurate way to say it?

17 A Yeah. I think so.

18 Q Okay. Okay. It seems illogical to me that  
19 you would use a valuation like this to support the  
20 purchase price; am I correct in that? Because you're  
21 doing it after the fact.

22 A You're not necessarily supporting -- that's  
23 correct. You're not supporting the purchase price.  
24 All you're doing is allocating what was there.

25 Q Okay. So it wouldn't be accurate for me to

1 say, hey, I bought this; I got [REDACTED] See, it's  
2 worth [REDACTED] I got a good deal?

3 A No, no.

4 Q Okay. I wanted to make sure on that. Now --  
5 again, because, like I said, this is kind of new to  
6 me.

7 Also in this valuation, like we talked about,  
8 we have capacity factors kind of vary, and we  
9 discussed that we were assuming that Duff & Phelps was  
10 kind of projecting where things would go.

11 A Uh-huh.

12 Q Have you ever seen a valuation for -- we're  
13 going to go with power plant here -- where those  
14 numbers never change in the future, capacity factors  
15 steady, heat rate steady, revenue steady, burn hold  
16 steady?

17 A No.

18 Q Okay. Now, would it be fair to say that  
19 Carlyle paid [REDACTED] for this and for Cedar Bay in  
20 December 2012 and is now turning around and selling it  
21 for 520 million?

22 A No.

23 Q Okay. What is incorrect about that statement?

24 A The [REDACTED] is a component of, again, a larger  
25 portfolio sale. That price was determined at arm's

1 length that included more components than Cedar Bay,  
2 one of which was, again, a platform that is an ongoing  
3 cost center that they've taken on from Goldman, which  
4 would not be included in here. It is neither an  
5 asset, nor is it a liability.

6 So they negotiated a deal overall for what  
7 they purchased from Goldman, a much broader set of  
8 assets and liabilities than Cedar Bay. And all this  
9 is doing is -- again, assuming that that purchase  
10 price was arm's length and was not a bargain purchase,  
11 all this is doing is allocating value to the Cedar  
12 Bay -- to an identifiable asset in that transaction.

13 But, again, the overriding premise is you have  
14 to start with what they paid for the whole thing.

15 Q Okay. So, again, he is much better at  
16 accounting stuff than I am. I'm just going to muddle  
17 around here for a minute.

18 A Sure.

19 Q You have the purchase price; it's a big pot, a  
20 big basket. So this egg was valued at [REDACTED]  
21 I'm just saying that's how it was allocated out.

22 A Yes.

23 Q Now that egg would be going to FPL for 520  
24 million?

25 A (Nodding head affirmatively.)



1           Q     So until -- again, my simple way is having  
2     difficulty with -- if it's valued at [REDACTED] when  
3     you divvied up the allocations and just that little  
4     piece that was valued at [REDACTED] is going over  
5     here for 520 million, how is it not basically, got it  
6     for [REDACTED] going over here for 520 million?

7           A     I will help you reconcile it one other way --

8           Q     Okay.

9           A     -- which is -- first way is what we just  
10    described; it was not specifically purchased, that  
11    asset, at arm's length from Goldman.

12                     Second way is a lot of things changed between  
13    2012 and when the deal with FPL was consummated. You  
14    had a significant de-risking of the asset with the  
15    refinancing. The steam agreement got extended, which  
16    was very significant, because it's required for QF  
17    status.

18                     So the extension of the steam agreement, the  
19    refinancing that we were able to execute in the  
20    market, allowing for a debt, and an enormous  
21    distribution that came out of that unlocking value,  
22    and continued low gas prices and continued to forecast  
23    low gas prices.

24                     The capacity factors in here are nowhere near  
25    where we have been operating and where we are

1 projected, and the projections in the financing are  
2 nowhere near this high.

3 And I think something that we have been  
4 talking about in previous dep -- you know, testimony  
5 that we're giving is, the whole notion that Cedar  
6 Bay -- the more it runs, the worse off it is  
7 economically, which is absolutely true, because of,  
8 you know, I think Tracy mentioned wear and tear on the  
9 equipment, higher maintenance, et cetera.

10 But the factor, as I was listening, that  
11 didn't come up as much is the production margin. When  
12 the plant runs and dispatches at a high level, because  
13 of the difference in coal price that the plant pays  
14 versus what it gets reimbursed in revenue based on the  
15 St. Johns River Power Park marker, because that's a  
16 negative differential, the more it runs, the more it  
17 loses on an energy basis. But even in a high dispatch  
18 case there was still a significant amount of  
19 profitability in the PPA in the capacity payments to  
20 allow for this refinancing.

21 So, again, talking about what changed?  
22 Significant de-risking associated with those  
23 activities, getting the steam agreement extended so  
24 the QF status wasn't in jeopardy, and getting a  
25 refinancing done so a new owner wouldn't have to pay

1 some type of bullet that was due, gas prices remaining  
2 low such that the dispatch factors -- the capacity  
3 factor in the valuation that you see in the Duff &  
4 Phelps report is, if you look at the numbers, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 And the -- in the financing report that an  
9 independent consultant, Ventex did, the capacity  
10 factors projected in that report were [REDACTED] than  
11 what Cedar Bay has been doing in most recent history.  
12 They were in the [REDACTED], sometimes in [REDACTED]  
13 [REDACTED] in terms of how much Cedar Bay would run and,  
14 therefore, how much Cedar Bay would not have to incur  
15 the negative differential on its production margin.

16 So really just reaping the benefit of the  
17 capacity payment.

18 Q Okay. So that's what I was going to ask you,  
19 what the projected capacity factors were. Now you  
20 referenced what document when you said [REDACTED]

21 A As a part of the financing, and it's in the  
22 independent engineer's report that we provided as part  
23 of the data and materials. We -- the lenders  
24 always -- always make any type of independent  
25 financing get independent projections. And they

1 agreed that we would use a firm, Ventex.

2 And they provided projections of capacity  
3 factors to drive a lot of the financial modeling. And  
4 those capacity factors, again, a measure of how much  
5 it's running, some -- I think -- I want to say just  
6 for a general measure, [REDACTED] percent on average is  
7 what they were predicting. So, again, that [REDACTED]  
8 capacity factor versus what you're seeing here is a  
9 significant reduction of the negative margin that the  
10 plant would experience by running.

11 Q Okay. And then -- let's see. So then after  
12 that explanation, I'm starting to wrap my head around  
13 it, it is -- I will get there eventually -- I can't  
14 take this report and say, this justifies the [REDACTED]  
15 [REDACTED] price for that. And I was going -- I know it  
16 was a background thing. Just take that away.

17 Okay. If I said [REDACTED] I couldn't take  
18 this and say, nope, I'm good. It says [REDACTED]  
19 that is proof that it is a fair arm's length  
20 transaction.

21 That's not the intent of this document;  
22 correct?

23 A Absolutely not; correct.

24 MR. TRUITT: Okay. I appreciate it. Thank  
25 you. I have nothing else.

1           MR. WRIGHT: Before we go on, I just want to  
2 clarify that I've had a chance to look at Exhibit  
3 17, the memorandum from Mr. Gregorich, and we have  
4 determined that that is also highly sensitive  
5 information.

6           MR. MOYLE: Tell Mr. Butler.

7           MR. WRIGHT: He heard me. He knows.

8           (Discussion off the record.)

9                                   CROSS EXAMINATION

10 BY MR. MOYLE:

11         Q     Have you been deposed before?

12         A     No.

13         Q     You were in the room yesterday when I gave  
14 some directions --

15         A     Yeah.

16         Q     -- to Mr. Patterson. So I'm trying to have a  
17 conversation with you and get information from you;  
18 I'm not trying to trick you or --

19         A     Sure.

20         Q     If I'm not asking clear questions, ask me to  
21 rephrase. Make sure you understand what I'm asking  
22 and also make sure we're not talking past each other.

23                 Let me ask the question, and then you respond,  
24 because the court reporter is taking everything down,  
25 and it will be available in written format and reads

1 better if there is a question followed by an answer  
2 without talking over each other.

3 A Understood.

4 Q Okay. Where do you -- where do you live?

5 A Charlotte, North Carolina.

6 Q Okay. And that's more than 100 miles from  
7 Tallahassee; right?

8 A Yes.

9 Q And in your previous employment history, you  
10 said you were with TECO, the nonregulated arm of TECO  
11 for a while --

12 A Correct.

13 Q -- is that right?

14 A Correct.

15 Q And where did you go after that?

16 A Cogentrix.

17 Q Cogentrix? And then did you leave  
18 Cogentrix or -- how did you end up at Goldman? I  
19 guess it was before TECO?

20 A No. I was not at Goldman. I was -- when  
21 Goldman was the seller to Carlyle, Cogentrix was still  
22 a wholly-owned subsidiary of Goldman Sachs. So we  
23 didn't -- we weren't on the Carlyle side negotiating a  
24 deal with Goldman.

25 So this -- the information I was pointing to

1 was -- that was Carlyle information, what I came to  
2 know of it after the fact.

3 Q Okay. I'm not that familiar with the  
4 transactions. But maybe just walk me through a  
5 history of Cogentrix, if you would.

6 A A history of Cogentrix?

7 Q Right.

8 A Like I said, that's -- I've only worked there  
9 since 2005. So, I mean, I know anecdotally kind of  
10 where Cogentrix came from. Is that --

11 Q You know, go ahead and just tell me what you  
12 know.

13 A I think it was founded in 1983 as an  
14 independent power company and family-owned through  
15 2003, I think, when Goldman bought them.

16 And then through 2003 through 2012 Goldman  
17 owned Cogentrix as a wholly-owned subsidiary. And  
18 then in 2012, Carlyle bought Cogentrix, and I guess  
19 what -- what hasn't come out yet in this is that  
20 Cogentrix now -- the assets of the former Cogentrix  
21 are owned by funds managed by Carlyle. So Cogentrix  
22 is no longer -- Cogentrix Energy Power Management is  
23 no longer an owner of assets. We manage the assets  
24 for Carlyle, operate them via contract.

25 Q What was -- who was the family that started

1 Cogentrix?

2 A The Lewis family.

3 Q Where are they out of?

4 A I think -- I've never met any of them. I  
5 don't -- I think Charlotte. I think it's always been  
6 Charlotte.

7 Q Is that family in the banking business?

8 A I do not know.

9 Q Don't know. So Goldman owns it in 2003, and  
10 then they sell it to Carlyle in 2012; is that right?

11 A Yes.

12 Q Okay. How much did Goldman sell it for?

13 A I think it's in this document.

14 Q When you say "this document" are you referring  
15 to 18?

16 A This is the Duff & Phelps report, yes.

17 Q Why don't you point me to it.

18 A Well, it's not stated in here actually that I  
19 could find. But if you look on page -- the second  
20 page of the report, that's how they've allocated all  
21 of the value. So in other words, they've allocated  
22 [REDACTED] to property, plant, and equipment.

23 Q Okay. Hold on a second. The second page of  
24 the report that I have at the bottom is CB 0042860,  
25 and that's the --



1 A Oh, sorry. I'm on 862, which is a table.

2 Q Okay.

3 MR. WRIGHT: Before we can continue, I'd just  
4 like to interpose an objection as to the relevancy  
5 of this information to anything having to do with  
6 this case. But you can continue the question.

7 A So the answer to your question specifically, I  
8 would have to go back to the purchase and sale  
9 agreement and actually look. I can't remember. But  
10 what this implies is the values on this page, 862  
11 here.

12 BY MR. MOYLE:

13 Q So you're the -- you have a -- you're a CPA;  
14 is that right?

15 A Yes.

16 Q Are you licensed presently?

17 A Yes.

18 Q What states?

19 A Florida.

20 Q So if I was going to look at CB 0042862, which  
21 is a page in this Duff & Phelps report, to get the  
22 purchase price, what would I -- what column would I  
23 add up?

24 MR. WRIGHT: I'm just going to object to the  
25 form to the extent that -- that it's not clear that

1       you can get the purchase price from this table.  If  
2       you can, then he can answer the question.

3       A     I wouldn't try to do that, honestly, unless I  
4       had the purchase and sale agreement in front of me,  
5       and I could reconcile what was stated in there as the  
6       purchase price to what was in this table, to be honest  
7       with you.

8                If I tried -- if I just told you, well, just  
9       add up in the fair value owned column, I'm not certain  
10      that would be accurate.

11     BY MR. MOYLE:

12       Q     I'm confused, because when I initially asked  
13      you the question, it was just a straight out question:  
14      How much did Goldman sell it for?

15       A     I don't -- the answer to that is, I don't  
16      remember.

17       Q     Okay.  But then you went to this table and  
18      said, I look at this table.  So that tells me, I mean,  
19      if we're allocating -- allocating a purchase price,  
20      you don't pay Duff & Phelps to allocate only a portion  
21      of the purchase price; right?

22       A     Correct.

23       Q     So wouldn't the logic follow that this table,  
24      if you add it all up, it gets you to the purchase  
25      price, if it's 100 percent allocation?

1           A     Yes.  But I want to qualify that in that I  
2 wouldn't say that that's the purchase price unless I  
3 reconciled it to the document that was an actual  
4 purchase and sale agreement.

5           Q     And you would -- you would reconcile it for  
6 the purchase and sale as a double-check; correct?

7           A     Yes.

8           Q     It's not because you don't have confidence in  
9 these --

10          A     Correct.

11          Q     -- numbers?

12          A     Correct.  I would want to make sure.  Again,  
13 this document was prepared a while ago.  I haven't  
14 looked at it in a while.  And so I would want to make  
15 sure that I was able -- if I added up the numbers in  
16 one of these columns, it actually equaled what was  
17 said in the purchase and sale agreement.

18          Q     Which -- which column would you add up?  And  
19 for the purposes of the record, there's two columns;  
20 one that is more to the left of the page and one  
21 that's more to the right of the page.

22                 So if you would tell me which column you would  
23 add up to determine the --

24          A     The one on the right.

25          Q     And why would you do that?

1           A     Because the one on the left is fair value at  
2     100 percent.  And at the time of the purchase, not all  
3     of the assets in the portfolio were 100 percent owned.  
4     You can see two were 50 percent owned.

5           Q     But the Cedar Bay facility was 100 percent  
6     owned?

7           A     Yes.

8           Q     So in doing this calculation, would I -- I  
9     subtract the numbers that are in parentheses?

10          A     Yes.  Those are liabilities.

11          Q     Do you -- do you know the -- the number?  If I  
12     asked you, what does the number add up to, could you  
13     tell me, or do you have a calculator --

14          A     No.

15          Q     -- or I could give --

16          A     No.

17          Q     -- you a calculator?

18          A     No, not without doing the math, no.

19          A     (Performing calculations.)  I can round,  
20     hopefully.

21          Q     Yeah, round.

22          A     The phone calculator is not what I'm used to.

23

24

25          A     Uh-huh.

1 Q Thank you.

2 A Uh-huh.

3 Q And do you know why there were parentheses  
4 around the two Cedar Bay numbers, Cedar Bay MSA and  
5 Cedar Bay OMA?

6 A Yes. The Cedar Bay, the -- that stands for  
7 MSA agreement and operations and management agreement.  
8 Those agreements are legacy agreements at the plant.

9 And so those -- they date back to I think the  
10 beginning of when the plant went in service. And the  
11 fees associated with those contracts are what the  
12 accountants would call out of market at this point in  
13 time, because they're -- you can't charge as much as  
14 you were able to in the early '90s for those types of  
15 contracts.

16 Q And the MSA stands for what?

17 A Management services agreement.

18 Q Okay. And the OMA stands for operations and  
19 maintenance agreement?

20 A Yeah.

21 Q And do you know the term of those two  
22 agreements as we sit here today?

23 A I don't. I don't know whether they're for the  
24 entire term or they renew, you know, periodically with  
25 an evergreen clause of some sort.

1           Q     And how is the determination made that they  
2 were out of market at the point in time this Duff &  
3 Phelps valuation was prepared?

4           A     I would have to read their methodology.  But  
5 we have been asked that a number of times.  It's very  
6 difficult to determine, because there isn't a ready,  
7 available market for these types of contracts.  So  
8 it's -- it's -- you know, from their valuation  
9 standpoint, it's -- it's difficult.

10          Q     Right.  But you don't question it?  I mean,  
11 you hired them; they're the experts on valuation?

12          A     Right.  Again, in this type of study, you  
13 know, that's how it's done.  If the assumptions are  
14 generally reasonable, you know, there is a -- it's  
15 okay.

16          Q     And the discussion you had with Mr. Truitt  
17 about allocation, is there an IRS regulation that  
18 requires you to do that?  I mean, is it for tax  
19 purposes?  Why do you do the allocation?

20          A     It can be for tax purposes, and it can be for  
21 accounting purposes.

22          Q     Why was it done in this case?

23          A     I would have to look at the -- the purchase  
24 and sale agreement and see whether -- why it's  
25 stipulated that it would be done.  Sometimes it

1 stipulates in accordance with tax regulations.  
2 Sometimes it stipulates it needs to be done in  
3 accordance with GAAP.

4 Sometimes it's silent and just says the  
5 parties agree that one will be done.

6 Q Why do you have to get an appraiser to do it?

7 A You don't. It's just usually more efficient  
8 to do that, because they are used to doing it. And  
9 obviously it involves a lot of data crunching. And  
10 it's easy to make errors. It's better to have an  
11 expert do it.

12 Q All right. It seems to me -- I don't know  
13 much about this, I will confess. But it seems to me  
14 that you don't have a lot of discretion with respect  
15 to allocation. I mean you couldn't kind of do it  
16 randomly and say, you know, let's kind of reallocate  
17 it this way, put all the value on, you know, [REDACTED]  
18 and none of the value on the other assets, and we just  
19 agreed with it, and that works?

20 A That's right.

21 Q And that's right why?

22 A Well, I guess it also depends on -- on how  
23 you're going to use the allocation once it's been  
24 done. If you're going to use it to file a tax return,  
25 obviously you have to certify the tax return that the

1 numbers are correct.

2 If you're going to use it in financial  
3 statements, you probably have to certify in the  
4 financial statements that the numbers are correct and  
5 reasonable. If you have to provide it to, you know, a  
6 seller or a buyer, there is probably some  
7 certification in there.

8 So there has to be some degree of  
9 reasonableness assumed.

10 Q And the deal between Goldman and Carlyle, that  
11 was an arm's length transaction, a fair market value  
12 deal; correct?

13 A As far as I know, yes.

14 Q And you -- the position you were in at the  
15 time was what?

16 A I was the CFO of Cogentrix.

17 Q Okay. So if there was some situation which  
18 suggested maybe it wasn't a fair market value deal,  
19 you would know of that?

20 A Yes.

21 Q What is the -- what is -- well, what is --  
22 presently do you know what your basis is? When I say  
23 "your basis," the basis in the plant? Does this  
24 establish the basis?

25 MR. WRIGHT: I'm just going to object to the



1 form, because I think it's ambiguous as to what you  
2 mean by "basis," Jon.

3 BY MR. MOYLE:

4 Q Do you understand what I meant by "basis"?

5 A I understand, but I -- the basis could occur  
6 at many levels, you know, within the organization.

7 Q So does the basis get reset after a deal like  
8 this is consummated? So now all of a sudden Carlyle  
9 owns it; they paid a certain amount for it, for  
10 capital gains purposes, or other they take it at a  
11 certain basis; right?

12 A They do. But, again, Carlyle, you know, it's  
13 owned by funds. And I don't know what happens from a  
14 fund accounting level.

15 And so the basis that you're talking about,  
16 from the purchase, gets -- gets pushed down into the  
17 financials at -- you know, they didn't get pushed into  
18 Cedar Bay Generating; they got pushed into upper level  
19 entities. And so the basis is reset there based on  
20 this.

21 And if Carlyle has further adjusted it, I have  
22 no knowledge of that.

23 Q Right. I understand how it could be split  
24 going upstream to funds that own it, they could  
25 allocate it this way or that way. I'm just trying to

1 understand. Let's just say you kept it at this level,  
2 and you didn't upstream it or force it up. Would it  
3 be [REDACTED] or would it be close to that? Or you just --  
4 there is nothing in this report that would tell you  
5 that?

6 A No. It would be, based on this report, at the  
7 entities that were -- that the purchase price was  
8 allocated to, it would be in that particular instance  
9 [REDACTED] and it would be amortized through to the end of  
10 the PPA.

11 MR. WRIGHT: I'm just going to note a  
12 continuing objection to this line of questioning as  
13 to its relevance to this proceeding.

14 MR. MOYLE: And I would just note that I think  
15 we've had a discussion about what this report is  
16 and done by appraisers, and I think it has  
17 information related to value that is relevant. But  
18 we will probably -- none of us in this room can  
19 decide that today, so we will move on.

20 BY MR. MOYLE:

21 Q What do you know about Duff & Phelps?

22 A Just generally?

23 Q Yeah.

24 A I just know them as a valuation firm that we  
25 have used in the past.

1 Q Did you select them for this, or did someone  
2 else select them, or do you remember?

3 A No. I selected them.

4 Q I was trying to understand your answer to a  
5 question from Mr. Truitt. You said that you believed  
6 that the value of the PPA may have increased as time  
7 has gone forward. Did I get that right?

8 A What I was saying is that he was asking to  
9 reconcile between [REDACTED] and 520, and I was providing  
10 factors that could change the value.

11 I wasn't really reconciling between the two,  
12 because, again, you have an arm's length deal between  
13 two parties determining value. I was citing some  
14 factors that have changed positively since their  
15 Carlyle purchase.

16 Q And those factors that you cited in terms of  
17 positively changing, those were all factors that are  
18 important to the current owner; correct?

19 A Yes.

20 Q Do you have a belief as to their level of  
21 importance to the purchaser?

22 A I don't.

23 Q Okay. And if the purchaser has, you know, a  
24 lot of cash, and I think FPL has a lot of cash, you  
25 look at their financial statements, and they don't

1 need the debt -- they're not buying it and assuming  
2 that debt, your comment about -- about the refinancing  
3 being done probably wouldn't be particularly  
4 meaningful to them with respect to valuation; correct?

5 MR. WRIGHT: I'm going to object to lack of  
6 foundation as to all this stuff about FPL.

7 MR. BUTLER: I would join that objection.

8 BY MR. MOYLE:

9 Q When you had answered, you told Mr. Truitt a  
10 lot of things have changed; there was refinancing. If  
11 a purchaser didn't need the refinancing, we could  
12 agree that the refinancing wouldn't have value to the  
13 purchaser with respect to determining a price to pay  
14 for an asset; correct?

15 A I don't -- I think every situation would have  
16 to be looked at on its own. I couldn't say that for  
17 sure.

18 Q Well, if you were going to buy a house for  
19 \$100,000, and somebody had a mortgage on it, and there  
20 was \$50,000 on the mortgage, you know, at 10 percent  
21 interest, and you had \$20 million, and you were going  
22 to buy the house, would you give much weight to the  
23 fact that there was a \$50,000 mortgage on the house  
24 that might be assumable?

25 A In that situation, no.

1           Q     And you also said that one of the things that  
2 had changed was the continued low gas price and that  
3 you think that that de-risks things. Explain why you  
4 said that, please.

5           A     Because with lower gas prices, Cedar Bay  
6 doesn't run as much. One of the scenarios in the  
7 refinancing, the most onerous scenario, was high gas  
8 prices and high dispatch, meaning if gas prices were  
9 high, gas units would not run, and Cedar Bay would run  
10 more, and that would allow the coal price differential  
11 to eat into the value of the capacity and bring it --  
12 bring the profitability down.

13                     Again, still profitable, because it was a  
14 worst case scenario, still profitable, and allowed us  
15 to raise a significant amount of money. But, again,  
16 that -- that worst case scenario hasn't turned out and  
17 isn't forecast to turn out anytime soon.

18           Q     And is that because your payment for energy is  
19 fixed?

20           A     No. Our payment for energy isn't fixed.

21           Q     What is it pegged to?

22           A     The St. Johns River Power Park cost of fuel.

23           Q     Well, if gas went to 15 bucks, and coal stayed  
24 the same, wouldn't that help you economically, or, no,  
25 it would be indifferent -- you would be indifferent to

1 that?

2 A I don't think you can simplify it like that.  
3 If -- if gas went to 15 bucks, it depends on what  
4 the -- what the coal purchase price at St. Johns River  
5 Power Park is versus our own coal purchase price, what  
6 that differential is, and then how much Cedar Bay is  
7 going to run. Again, the best scenario is don't run  
8 at all.

9 Q And the reason that's the best scenario is, is  
10 you very nicely said it. I was floundering around  
11 with it for a couple of days trying to understand the  
12 point.

13 But I think you said it was because of the  
14 production margin differential; is that right?

15 A Right.

16 Q And does that, in effect, mean that it costs  
17 you -- you know, when you're running you're losing  
18 money, because it costs you more to run than the  
19 revenue you receive?

20 A If the coal price differential is what it has  
21 been in the recent past, yes. It fluctuates, because  
22 the cost at St. Johns River Power goes up and down  
23 based on what we buy coal for, and ours goes up and  
24 down based on the timing of our reopeners in our coal  
25 contract. It's been narrow at times; it's been wide

1 at times.

2 Q Do you track that pretty regularly, whether  
3 you're in the money or out of the money? And when I  
4 say "in the money or out of the money," do you  
5 understand what I mean by that?

6 A Generally. I mean I don't track the cost at  
7 St. Johns River Power Park versus our costs in that  
8 level of detail regularly. But you can look at the  
9 financial statements and see where we are relative to  
10 that from a broad perspective.

11 Q Tell me about this platform that you  
12 reference. There was a platform that was part of the  
13 transaction, and it was neither --

14 A It's just --

15 Q -- an asset --

16 A I'm sorry.

17 Q -- nor a liability.

18 A Just the Cogentrix corporate group, the -- you  
19 know, the building, the land, the computer systems,  
20 the people, the ongoing cost of maintaining that  
21 corporate group.

22 Q And just -- why did you bring that up?

23 A Because it was a factor in the value that  
24 Carlyle paid Goldman. They were taking on a longer  
25 term cost that, because it's not a specific liability,

1 wouldn't have been valued. But, still, to the extent  
2 that they wanted to keep it as a going concern, it  
3 would be a long-term cost for them.

4 Q So would -- in that situation would Carlyle  
5 argue for a little bit of a lower price because of  
6 them taking on kind of this platform with certain  
7 long-term fixed costs? Or would they say, oh, we will  
8 pay you more because we get this platform with these  
9 fixed costs?

10 A No. It would be the former.

11 Q And that same analysis would be done, I would  
12 assume, with respect to any long-term contracts that  
13 are in place with respect to suppliers to Cedar Bay?  
14 And if you have a long-term contract, another 20-year  
15 contract where you have to make lease payments, or you  
16 have to rent cars, rail cars, you know, if FPL is  
17 looking at that saying, well, gees, we're going to  
18 shut the plant down, but I got a 20-year lease  
19 obligation for rail cars, they would suggest maybe  
20 they should pay less for the -- for the deal; isn't  
21 that correct, all other things being equal?

22 A I can't speak for what FPL would -- you  
23 mentioned FPL. But I guess I can answer as a buyer,  
24 yeah, you would probably factor that in to your  
25 analysis.



1 Q Do you understand how FPL makes money?

2 A Only generally.

3 Q Do you understand generally that the more FPL  
4 pays for an asset, assuming the commission approves  
5 it, and they get to earn on the asset, that that's  
6 better than paying less for an asset?

7 MR. BUTLER: I'm going to object to the form  
8 of the question.

9 BY MR. MOYLE:

10 Q You can answer.

11 MR. BUTLER: Better in what sense, Jon?

12 MR. MOYLE: Economically.

13 BY MR. MOYLE:

14 Q It can be characterized this way. I mean,  
15 would you rather earn 10 percent on \$100 or 10 percent  
16 on \$500?

17 A In that characterization I would rather earn  
18 it on \$500. But I -- again, I've not worked in a  
19 regulated environment.

20 Q So if I asked you a question about how you  
21 have information about a regulatory asset and how  
22 that's treated, you probably wouldn't be able to  
23 answer that?

24 A Correct.

25 Q The three things you told Mr. Truitt, you said

1     there were three things that you think de-risk the  
2     deal, and the steam agreement being inked was one of  
3     them.

4             If there were plans to not continue to run a  
5     facility, that wouldn't be particularly significant  
6     with respect to value; correct?

7             MR. WRIGHT: I'm going to object to the form  
8     as to from whose perspective it wouldn't be  
9     significant as to value?

10            MR. MOYLE: A purchaser.

11            A     Can you restate your question?

12     BY MR. MOYLE:

13            Q     Sure. You had said that the steam agreement  
14     being inked helped de-risk the deal, I believe from  
15     your perspective. And I'm asking you from a  
16     purchaser's perspective, if you assume the purchaser's  
17     plans were not to continue to run and operate the  
18     facility for an extended period of time, you would  
19     agree that having a steam agreement would not -- not  
20     add value from the purchaser's perspective?

21            A     Again, it would need to be analyzed in its own  
22     merit. You know, the rest of the contract would need  
23     to be analyzed in terms of termination rights and that  
24     type of thing, so --

25            Q     It could be a liability if you signed a steam

1 deal that requires you to put steam to somebody for 20  
2 years, and your plan is to shut it down, that could  
3 potentially be a liability; couldn't it?

4 MR. BUTLER: I'm going to object to the form  
5 of the question. Speculation as to the terms of  
6 the agreement, not specifying what they are and not  
7 tying them to any particulars in the agreements  
8 that's at issue here.

9 BY MR. MOYLE:

10 Q Can you answer?

11 A Can you restate the question?

12 Q Okay. Do you have -- do you have familiarity  
13 that there is a current agreement -- you must, because  
14 you answered it in response to Mr. Truitt's question.  
15 You said there is a steam agreement that's been inked;  
16 right? So do you have information about a steam  
17 agreement that's been inked with RockTenn?

18 A Yes.

19 Q Okay. And why did you answer Mr. Truitt when  
20 you said that was important, because it de-risks the  
21 situation?

22 A Because a steam agreement is required in order  
23 to maintain QF status, which is required by the PPA.  
24 So extending that extends the QF status through the  
25 end of the PPA and paved the way for a refinancing.

1           Q     And if -- if a potential purchaser was not  
2 concerned about maintaining QF status, wouldn't it  
3 logically follow that having that steam agreement in  
4 place would not be particularly valuable?

5           MR. WRIGHT: I object to the form. This is  
6 speculative and potentially misleading because  
7 you're just talking about generic purchasers. And  
8 that's not really the context here.

9 BY MR. MOYLE:

10          Q     Can you answer the question?

11          A     I'm sorry. Can you state it again?

12          Q     Sure.

13          MR. MOYLE: You know what, let's take a break.

14          MR. WRIGHT: Good idea.

15                (Short recess.)

16 BY MR. MOYLE:

17          Q     We were taking a break, and I was having a  
18 verbal wrestling match with you with respect to the  
19 issue of the value of maintaining QF status vis-a-vis  
20 the steam agreement.

21                And from Cogentrix's perspective, that has  
22 value, because contractually, as long as you're a QF,  
23 and you're available to provide energy to FPL, FPL has  
24 to make a capacity payment to you; you would agree  
25 with that; correct?

1           A     Yes.

2           Q     So to the extent that FPL is buying this power  
3 plant, the value of having to make the capacity  
4 payment goes away; that's why FPL is, you know, doing  
5 this deal as represented to the commission, because  
6 they are saying the capacity payment is over market,  
7 and they want out of the capacity payment.

8                     Wouldn't you agree that with respect to having  
9 that RockTenn agreement extended at -- to the  
10 purchaser is probably not of much value if -- if --

11           MR. BUTLER:   Jon, are you talking about the  
12 value of the PPA, or are you talking about the fair  
13 value of the asset?

14           MR. MOYLE:   I'm talking about with respect to  
15 the value that he ascribed to having the steam  
16 contract with RockTenn.  He said --

17           MR. BUTLER:   Contracts of the fair value of  
18 the PPA or PPA or of the facility?

19           MR. MOYLE:   Of the facility.

20           MR. BUTLER:   I would object to that as not  
21 relevant to what's at issue to the proceeding, but  
22 I'm happy to let him continue to answer the  
23 question --

24           MR. MOYLE:   Well, let's talk about that.

25   BY MR. MOYLE:

1           Q     Do you not think that the fair market value of  
2 the facility is relevant to the proceeding?

3           MR. BUTLER:   Well, certainly not in a very  
4 direct sense.  I mean the figure we have all been  
5 talking about here, the \$520 million, is the fair  
6 value estimate for the PPA I guess is what I'm  
7 trying to get clarification from you on.

8 BY MR. MOYLE:

9           Q     Okay.  There was a question pending.  Do you  
10 want to take a stab at it?

11          A     Can you repeat the question --

12          Q     Sure.

13          A     -- since there has been a --

14          Q     Sure.  I'm just trying to get your impression  
15 or ask you to agree with me that to the extent that  
16 the RockTenn steam agreement de-risks the deal from  
17 your perspective, because it gave you greater  
18 certainty that you would continue to be a QF, you  
19 continue to be a QF, you get your capacity payments,  
20 with FPL buying it, the fact that this RockTenn  
21 agreement is there may not be that significant?

22          MR. WRIGHT:  I object to the form.

23          A     Yeah, in terms of significant, I'm not sure  
24 significant to whom?  I mean --

25 BY MR. MOYLE:

1 Q To FPL.

2 A I don't know in terms of what their -- what  
3 their intent is, how they look at that steam  
4 agreement. I just don't know -- I can't speak for  
5 them.

6 Q Do you have an idea as to how long that steam  
7 agreement continues to run for?

8 A It runs through the PPA length now.

9 Q Is there any way out of it?

10 A I don't know what the termination provisions  
11 are.

12 Q So if you have an ongoing, long-term  
13 obligation to make payments, that's kind of viewed as  
14 a negative as a deal point; isn't it?

15 A I think it would depend on the contract and  
16 what the termination provisions were.

17 Q Okay. Who negotiated this deal?

18 MR. WRIGHT: Objection to the form. "This  
19 deal" is vague, Jon, in this context. Which deal?  
20 The steam agreement extension?

21 MR. MOYLE: Okay. And I --

22 MR. WRIGHT: The purchase of the membership  
23 interests in the -- in the companies that own the  
24 facility? By a deal, which deal?

25 BY MR. MOYLE:

1 Q Do you understand that a petition has been  
2 filed with the Public Service Commission asking them  
3 to approve a contractual arrangement between Cogentrix  
4 and Florida Power & Light?

5 A Yes.

6 Q Okay. And if I say "this deal," in a  
7 shorthand fashion, can we agree that that will  
8 reference the contract that Florida Power & Light is  
9 asking the commission to approve?

10 A If I'm confused, I will tell you.

11 Q So I will take that as a yes?

12 A Yes.

13 Q Okay. Who negotiated this deal?

14 A To the best of my knowledge, it was Tom  
15 Bonner, who was Cogentrix's former president, and  
16 Cliff Evans, who are the two people that I know -- I  
17 think were involved. I was not involved in the  
18 contract negotiations.

19 Q Do you know between Mr. Bonner and Mr. Evans  
20 who kind of was the chief negotiator of --

21 A I don't.

22 Q And do you know who the counterparties were  
23 with respect to FP&L?

24 A I thought you were talking about the RockTenn  
25 extension.



1 Q No. I'm sorry.

2 A That's who -- that's what I was referring to  
3 is the RockTenn extension.

4 Q Okay. So Mr. Bonner and Mr. Evans negotiated  
5 the RockTenn extension?

6 A Yes.

7 Q Who negotiated the sale of the Cedar Bay  
8 facility to FP&L?

9 MR. WRIGHT: I object just to this extent,  
10 Jon: It's not the facility that's being sold; it's  
11 the membership interest and companies that own the  
12 facility.

13 MR. MOYLE: Which has the result of selling  
14 the facility.

15 MR. BUTLER: The facility is an asset of the  
16 entities in which we are acquiring stock.

17 MR. WRIGHT: It's an acquisition of membership  
18 interest and stock.

19 MR. MOYLE: Okay.

20 MR. WRIGHT: Again, there is an exhibit in  
21 FP&L's testimony --

22 BY MR. MOYLE:

23 Q Do you know -- do you know who negotiated the  
24 acquisition of the ownership interest and stock as it  
25 relates to the Cedar Bay project on behalf of

1 Cogentrix or Carlyle?

2 A Not specifically.

3 Q Generally?

4 A Not persons. As far as I know, it took place  
5 at what I will call the Carlyle level.

6 Q What does that mean?

7 A That people at Carlyle spoke with people at  
8 FPL and negotiated a deal.

9 Q Who would the people at Carlyle typically be  
10 that would be arranging such a deal?

11 A Potentially Jim Larocque.

12 Q How do you spell his last name?

13 A L-A-R-O-Q-U-E [sic], I think.

14 Q What position does he hold?

15 A I don't know specifically within Carlyle.

16 Q Who else?

17 A I don't know.

18 Q Why do you say you think Jim Larocque would  
19 have been involved in this deal?

20 A From a Carlyle perspective, he is the person  
21 who is most involved in Cedar Bay.

22 Q What is your involvement with Carlyle? How do  
23 you interact with them?

24 A Mostly to provide information -- you know,  
25 information requests, monthly financial statement

1 reviews, you know, any requests for historical  
2 information that they have kind of thing.

3 Q Do you do that typically verbally, e-mail,  
4 mixed bag?

5 A Mixed bag.

6 Q The monthly reports, are they in e-mails?

7 A Generally, yes.

8 Q Who did Mr. Larocque negotiate with on the  
9 other side for FPL; do you know?

10 A I don't.

11 Q Have you ever heard the name Jim Robo?

12 A No.

13 Q Eric Silagy?

14 A No.

15 Q I think you already testified you weren't  
16 involved in the negotiations; right?

17 A Correct.

18 Q Was Doug Miller?

19 A I don't know.

20 Q Who is Doug?

21 A He's the president of Cogentrix.

22 Q Okay. And John Gasbarro, who is he?

23 A He is the senior vice-president of asset  
24 management for Cogentrix.

25 Q Gary Heichel?

1           A     He's our tax director. He works for me.

2           Q     You had indicated that, I think, you had  
3 reports related to debt covenants. Do you prepare  
4 monthly reports to people who have loaned you money  
5 about debt covenants or periodic reports?

6           A     People in my department do.

7           Q     Okay. And why do they do that?

8           A     To maintain compliance with the covenants.

9           Q     Okay. Have the covenants ever not been  
10 complied with at any point in time, as far as you  
11 know?

12          A     Of the current loan?

13          Q     Or the preceding loan.

14          A     The current loan I don't know of any -- any  
15 defaults in the covenants. In the preceding loan  
16 there was a -- I believe a payment default. But I  
17 don't know of other covenant defaults.

18          Q     And what prompted that payment default?

19          A     I think that -- I was in a different position  
20 at the time, so I wasn't as involved in the financing  
21 aspect. I was the controller, in charge of the  
22 accounting only.

23                 But as far as I know, the loan, as structured  
24 at that time, had high fixed payments. And so when  
25 Cedar Bay had operational issues in the 2007-2008 time

1 frame that created a cash flow issue, and high fixed  
2 payments on that debt created obviously a payment  
3 issue on that debt, so there was a restructuring that  
4 had to occur.

5 Q And was that the restructuring that took  
6 place, the 250 million?

7 A No. That was prior to that.

8 Q So -- so the debt was restructured prior to  
9 the 250 million refinancing?

10 A Yes. The debt was restructured in, I believe  
11 late 2008, and the payment schedule was changed from a  
12 fixed amortization schedule to a minimum amortization  
13 schedule, where the fixed amortization was low, and  
14 100 percent of the cash was swept, I believe it was  
15 100 percent, to allow for volatility in cash flow.

16 And by doing so, all of the debt was paid down  
17 to roughly -- something less than [REDACTED] I want  
18 to say, by the time that it was refinanced in 2013.

19 Q And how did -- I don't understand how, if you  
20 aren't amortizing the loan, how you would reduce and  
21 pay down the debt.

22 A Cash flow sweeps would go to pay -- if it's a  
23 small amount of principal that's required, the rest of  
24 the cash would come from cash flow sweeps to pay --  
25 using cash that was left over, essentially, prior to

1 it going to owners.

2 Q Unallocated free cash flow?

3 A Free cash flow would used to be -- would be  
4 swept to pay down principal and interest.

5 Q Okay. And the 250 financing, that was just  
6 because the current paper was expiring; there was --

7 A The restructured loan was reaching its natural  
8 termination in June of 2013. So it had to be  
9 refinanced.

10 Q Who was the lender of the loan before the 250?

11 A It was a consortium of lenders.

12 Q And who loaned you the 250?

13 A Again, a consortium of lenders.

14 Q Who is the lead?

15 A It was arranged by Barclays primarily.

16 Q Do you know the genesis -- and I will -- I  
17 will say the deal, but the purchase of the stock  
18 interests that we described previously, do you know  
19 the genesis of that arrangement?

20 A What I know, I believe FPL called Cliff Evans  
21 and asked about the potential of reworking the  
22 economics of the deal somehow.

23 Q You had said from your perspective, getting  
24 cash now was attractive because it eliminated the  
25 operating risk; is that correct?

1           A     Certainly if it sold, yes, the operating risk  
2 is eliminated, yes.

3           Q     You also agree regulatory risk is a  
4 significant risk with the existing asset; correct?

5           A     Describe what you mean by "regulatory risk."

6           Q     New regulations that may come down,  
7 requirements by governmental entities that regulate  
8 you, be they local, state, or federal?

9           MR. WRIGHT: I'm going to object to the form.  
10           That's still ambiguous. If you could clarify  
11           whether you mean economic regulatory, OSHA,  
12           environmental, Securities and Exchange Commission.  
13           What -- what are you trying to ask about?

14          BY MR. MOYLE:

15           Q     I'm trying to keep it general and move it  
16           along. We can -- I can go through -- get out the  
17           laundry list of governmental entities and go through  
18           them one at a time. But ...

19           A     I would -- my understanding of regulatory risk  
20           would be with respect to what Mr. Neff went through in  
21           terms of his environmental deposition, which I think  
22           generally it's characterized as relatively low.

23           Q     Do y'all do any kind of formal risk analysis  
24           for the Carlyle folks? Do they say, here is our fleet  
25           of power plants? We would like you guys to do a risk

1 analysis for each one and tell us which ones present  
2 the lowest risk, which ones present the highest risk?

3 A No.

4 Q You were given a document that -- I think it's  
5 marked as Exhibit 17; it's that memorandum from Phil  
6 Gregorich.

7 A Uh-huh.

8 Q Do you have it?

9 A Yes.

10

11

12

13 Is that the same transaction for which the  
14 Duff & Phelps valuation report was prepared?

15 MR. WRIGHT: Just to be clear, you mean the --  
16 what's Exhibit 18?

17 MR. MOYLE: Right.

18 A (Examining document.) This is addressing the  
19 purchase price allocation of the [REDACTED]  
20 that Carlyle bought -- subsequently bought from  
21 Goldman post the trans -- after the trans -- the Cedar  
22 Bay originally, in the original transaction between  
23 Goldman and Carlyle, Carlyle bought [REDACTED] and  
24 then subsequently acquired the rest of it, [REDACTED]

25 This memo addresses the [REDACTED] subsequent



1 acquisition.

2 BY MR. MOYLE:

3 Q And did they pay [REDACTED] for [REDACTED]  
4 interest in the asset?

5 A They paid that for Goldman's interest in an  
6 entity.

7 Q And that entity had --

8 A For a minority interest in an entity.

9 Q Right.

10 A For the rights associated with that minority  
11 interest.

12 Q So now Carlyle has 100 percent of all of the  
13 Goldman assets; right?

14 A Yes.

15 Q Okay. And they picked up -- they picked up [REDACTED]  
16 [REDACTED] as referenced here for [REDACTED] right?

17 A [REDACTED] of what I guess is the question,  
18 because what they picked up was Goldman's interests.

19 So you would have to look at what Goldman's  
20 membership interest afforded them in that LLC --

21 Q Well, you tell me, because you were there.

22 A I don't know. I would have to go back to the  
23 LLC agreement and see exactly what rights Goldman had  
24 or did not have with respect to the interests. I do  
25 not believe it is as simple as straight math of [REDACTED]

1 [REDACTED] of Cedar Bay is what they purchased, because  
2 they purchased a membership interest of these [REDACTED]  
3 membership interests in this entity.

4 So you would have to go back to specifically  
5 what [REDACTED] was and what it -- what it meant to  
6 purchase that.

7 Q Do you have any idea?

8 A I don't, without rereading the agreement.

9 Q So there may be other interests out there that  
10 we're not aware of that have interest in the Cedar Bay  
11 generating facility?

12 A No. There is [REDACTED] and [REDACTED] at the  
13 time, and so they bought out [REDACTED] And to  
14 determine what they bought, I think you have to look  
15 at the rights and obligations of [REDACTED]

16 Q What -- what does this memo represent, [REDACTED]  
17 [REDACTED] is that right?

18 A Is that right? I think it is.

19 Q It's in the re, it says [REDACTED]

20 A (Examining document.) Yes, [REDACTED]

21 Q And [REDACTED] then would have [REDACTED]

22 A Along with other assets. They bought an  
23 entity, which the [REDACTED] owned a portion -- owned  
24 [REDACTED] of Cedar Bay and [REDACTED]

25 [REDACTED]

1 Q Okay. So if you take -- if you take the  
2 [REDACTED] interests and combine them with the [REDACTED]  
3 interests, those are all of the interests that  
4 comprise the ownership of Cedar Bay; correct?

5 A Yes. But [REDACTED] owns other interests as  
6 well.

7 Q Okay. So if you asked me, what would you  
8 rather have; would you rather have one share of [REDACTED]  
9 [REDACTED] or one share of [REDACTED] if I asked you that  
10 question, I assume you would say [REDACTED] because I  
11 get one share of Cedar Bay plus some other assets,  
12 whereas [REDACTED] I only get one share of Cedar Bay; is  
13 that correct?

14 A Depends on the other assets.

15 Q If they were liabilities you might not say  
16 yes?

17 A Right.

18 Q Assuming they had value, the answer to my  
19 question would be, I'd rather have the [REDACTED]

20 A It would depend on how much value.

21 Q So tell me why I can't do this. If [REDACTED]  
22 only represents the interest in Cedar Bay, and it's [REDACTED]  
23 [REDACTED] I assume this was an arm's length  
24 transaction; wasn't it?

25 A I believe so.

1 Q I mean you would know; right?

2 A I have no reason to believe it wasn't.

3 Q So if Goldman paid [REDACTED] for [REDACTED]  
4 couldn't I just do the math and say, well, what would  
5 the remaining [REDACTED] be if you used this  
6 transaction to establish fair market value at the  
7 point in time the [REDACTED] instruments were conveyed?

8 A I'm not sure I understood the question.

9 Q When [REDACTED] interest of Cedar Bay was  
10 sold -- and it was sold for [REDACTED] right?  
11 Wouldn't that suggest that the [REDACTED] that that had  
12 the consequence of also affecting the value of the  
13 [REDACTED] shares in terms of fair market value?

14 A [REDACTED] of Cedar Bay was not sold. [REDACTED]  
15 [REDACTED] of the [REDACTED] in CBAS Power Holdings  
16 were sold.

17 Q And CBAS Power Holdings owned who?

18 A Ultimately it owned Cedar Bay, but the  
19 valuation would go to what the buyer was purchasing,  
20 what the buyer was purchasing in terms of the rights  
21 and obligations of the [REDACTED] In  
22 other words, they may have had very constricted rights  
23 and may not have had what you would think of as [REDACTED]  
24 [REDACTED] in Cedar Bay.

25 Q Do you know if the distribution rights of free

1 cash or dividends were different for holders of [REDACTED]

2 [REDACTED]

3 A Yes, they are; they're different.

4 Q How so?

5 A [REDACTED] gets certain tax preferences from the  
6 other assets in the portfolio that [REDACTED] does not  
7 get. It's a complex allocation of cash. But [REDACTED]  
8 [REDACTED] to the best of my knowledge, got no distributions.

9 Q Did [REDACTED] get distributions?

10 A Yes.

11 Q Do you know how -- how much?

12 A Not off the top of my head.

13 Q What's the -- is it Rhea or Rhea?

14 A Rhea

15 Q What is that?

16 A That was just a transaction they -- for the  
17 Goldman -- for the Carlyle purchase of Goldman's  
18 interest in the Cogentrix portfolio.

19 Q And it says here, I guess on this page I had  
20 asked you that question, it says D&P issued evaluation  
21 report, dated April 5, 2013, for the Rhea transaction,  
22 which, among other things, established the fair value  
23 of the Cedar Bay project.

24 Is that right?

25 A Is what right?

1 Q That sentence. Is that factually correct?

2 A I wouldn't word it that way.

3 Q I'm just asking you if it's in error.

4 A This -- I can explain that this is a purchase  
5 price allocation memo, and that because of the Duff &  
6 Phelps report that was already done, this memo was  
7 simply drafted in order to use the work that had  
8 already been done in the Duff & Phelps report and  
9 simplify the purchase price of allocation to -- to the  
10 percentage purchased.

11 Q Okay. So let's just break that sentence down  
12 quickly. D&P did the valuation report, dated April  
13 5th, 2013, for the Rhea transaction; right?

14 A Where are you reading from?

15 Q See where it says push down accounting on the  
16 top of page 2?

17 A Yes.

18 Q Second sentence.

19 A (Examining document.) Okay.

20 Q Okay. So we're in agreement there that they  
21 did the report; right? And the next portion of that  
22 sentence says, "which, among other things, establish  
23 the fair value of the Cedar Bay project."

24 We're in agreement on that portion of the  
25 sentence as well?

1           A     Agreement how?

2           Q     That that's what it did.

3           A     No.

4           Q     So you -- you -- you don't think that it  
5 established the fair value of the Cedar Bay project?

6           A     No.

7           Q     Does that have consequences for any accounting  
8 folks if you are testifying under oath that you don't  
9 think that that report established a fair value for  
10 the Cedar Bay project?

11          A     No.  What -- I think the wording here is a bit  
12 poor, that it established an allocation, acceptable  
13 allocation, based on the prior transaction.

14          Q     And Phil is a direct report to you?

15          A     He no longer works for Cogentrix, but he was.

16          Q     He was?  Did he talk to you about this memo  
17 before he sent it to you?

18          A     I'm sure he did.

19          Q     Would you typically review drafts of memos  
20 like this before they would go to the accounting  
21 files?

22          A     Yes.

23          Q     Do you recollect reviewing this memo?

24          A     Not specifically.

25          Q     But it would be consistent with your general

1 practice to review it before it -- it went to the  
2 accounting file?

3 A Yes.

4 Q On the third page, the last bullet before the  
5 portion that says "subsequent accounting for basis  
6 differentials," the last bullet says, "the difference  
7 between the purchase price and the fair value of the  
8 assets and liabilities listed above is attributable to  
9 the PPA."

10 What does that mean?

11 A That's just a way of, again, backing into the  
12 purchase price. It was the same concept as before, an  
13 arm's length transaction. If the purchase price is  
14 [REDACTED] and you can identify other assets and  
15 liabilities and get to a -- a value, then this was an  
16 efficient way of allocating the purchase price,  
17 meaning, if everything else is -- has been established  
18 prior to that, then the rest is going to be allocated  
19 to the PPA.

20 Q How much was allocated to the PPA? Is that  
21 the [REDACTED] number?

22 A No. This would have only allocated the  
23 [REDACTED]

24 Q To the PPA?

25 A It would have allocated according to this



1 memo. So I don't know -- it doesn't say how much was  
2 allocated to the PPA, I don't think.

3 Q Well, if -- if it was -- if it was buying  
4 [REDACTED] and [REDACTED] owned Cedar Bay  
5 assets and no other assets, and it bought [REDACTED]  
6 for [REDACTED], wouldn't you just allocate the whole  
7 [REDACTED]

8 A I think the fair value is allocated, if you  
9 look at the last full paragraph on page 2.

10 Q All right.

11 A Where it says, "given the short duration since  
12 the time of the Rhea transaction"?

13 Q Uh-huh.

14 A I think those bullets describe how it was  
15 allocated.

16 Q Can you summarize it for me?

17 A I can read it. I don't think I can summarize  
18 it without just reading it word for word.

19 Q It doesn't do any good to read it if it's  
20 already in the record. But I don't see any numbers in  
21 what you're referencing --

22 A There aren't.

23 Q -- me to.

24 Then how do you know how it was allocated if  
25 you don't have numbers to go, out of this [REDACTED]

1 we're going to allocate X amount over here and Y  
2 amount over here?

3 A Well, there were numbers. They're just not in  
4 this memo.

5 Q Is there anything in this memo that's  
6 inconsistent with the allocation as set forth in the  
7 Duff & Phelps report?

8 A Not to my knowledge.

9 Q Other than the disagreement about the poor  
10 choice of words, I guess.

11 A Correct.

12 Q Do you have any information about a  
13 subordinated lease provision for the benefit of FP&L?

14 A That doesn't ring a bell.

15 Q Maybe I could show you a document. Would that  
16 possibly refresh your --

17 A It might.

18 Q -- memory? I mean, if there were liens on the  
19 property or things like that, would that be stuff that  
20 you would kind of keep up with as part of your duties  
21 and responsibilities, or no?

22 A Sure.

23 MR. MOYLE: John, will you help me?

24 MR. TRUITT: Yeah.

25 MR. WRIGHT: Is this going to be an exhibit,

1 Jon?

2 MR. MOYLE: Yes.

3 (Exhibit No. 19 was identified for the  
4 record.)

5 MR. MOYLE: What number are we on? 19.

6 BY MR. MOYLE:

7 Q I've handed you what's been marked as Exhibit  
8 19. The subject is Moody's questions relating to  
9 contract summaries. At the top it says "can you talk  
10 about the subordinated lease provisions for benefit of  
11 FP&L, under what circumstances do they take over?"

12 Then in bold it says, "pursuant to the FPL  
13 subordination agreement, FPL's right to take over is  
14 subordinated to the right of the lenders, including  
15 the new lender group. We anticipate that FPL consent  
16 will confirm this arrangement."

17 Is that ringing a bell, or no?

18 A Yes, yes. I hadn't heard it called a  
19 subordinated lease provision before.

20 Q And Kevin McNamara, who is he?

21 A He's now vice-president of asset management.

22 Q For Cogentrix?

23 A Yes.

24 Q So tell me your understanding of the  
25 subordinated lease provision or whatever it's called

1 or the nomenclature that you all use to describe for  
2 me your understanding, if you would, please.

3 A Well, it's common for any PPA arrangement  
4 where the counterparty of the PPA has a lien on the  
5 assets, such that if the asset doesn't perform, and  
6 the contract is breached, then they have certain  
7 rights with respect to that asset. And all this is  
8 doing -- and FPL has that with respect to the PPA.

9 And all this is doing is -- it's explaining as  
10 a part of the financing that they would need to  
11 consent to the fact that the lenders have a superior  
12 lien in the financing.

13 Q And when you asked them to consent, is that  
14 just asking them to say, yeah, I understand? Or is  
15 that asking them to subordinate an interest right that  
16 they may have to the person loaning the money?

17 A It depends on the agreement. I mean, the  
18 consent, it's not just a, hey, we can do this. It's a  
19 document.

20 So it depends on what the language says in the  
21 agreement.

22 Q Do you have an understanding whether FPL had a  
23 higher lien position pursuant to the PPA with respect  
24 to a claim on the property before people who loaned  
25 you money?

1           A     Not specifically, but the PPA generally -- the  
2 PPA counterparty always has a secondary lien to the  
3 lenders. The lenders will not loan money if they  
4 don't have the primary lien.

5           So going back through time, I don't believe --  
6 at least in my time at Cogentrix, Cedar Bay has never  
7 been without project lenders. So the project lenders  
8 would always have the primary lien on the property.

9           **Q**     What's a collateral agent?

10          A     In a project financing, the cash flows are  
11 handled by a collateral agent. So the lenders, since  
12 their only recourse is to the project, the lenders  
13 control the cash accounts. And the collateral agent  
14 is -- could be a lender, but it could also be another  
15 bank that handles the cash accounts.

16          **Q**     Did FPL ever draw down on collateral that was  
17 in place?

18          A     Yes.

19          **Q**     Tell me -- tell me the facts and circumstances  
20 related to that, please.

21          A     As far as I know, again, it was prior to my  
22 current position. But as far as I know, there was --  
23 for security under the PPA there was a \$10 million  
24 letter of credit that was in place from a prior  
25 financing. And when that letter of credit came due to

1 be renewed, it was not chosen to be renewed by the  
2 lenders.

3 And so FPL had the right at the time to take  
4 cash -- there was no longer a letter of credit  
5 available, so \$10 million of cash was required as the  
6 security.

7 Q And where did that \$10 million of cash come  
8 from?

9 A From the bank that issued the letter of  
10 credit.

11 Q Okay. Did you, in part of your role related  
12 to Cedar Bay, execute officer certificates?

13 A Yes.

14 Q Okay. And what -- what is the purpose of an  
15 officer certificate?

16 A As it relates to what specifically?

17 Q I hand you a copy of a document that is being  
18 marked as Exhibit 20, ask you if you -- to identify  
19 this document, please.

20 A (Examining document.)

21 (Exhibit No. 20 was identified for the  
22 record.)

23 A I don't remember this specifically, but  
24 generally it just looks like a series of facts that  
25 are -- that we were asked to certify, you know,

1 regarding the PPA and the financing in order to get  
2 FPL consent for the financing.

3 BY MR. MOYLE:

4 Q Is that your signature on page 3?

5 A Yes.

6 Q Did you do this regularly and routinely, or  
7 was this sort of a one-off --

8 A No, this --

9 Q -- to get the consent?

10 A Yeah. This was specifically related to the  
11 financing.

12 Q I'm going to try to test your memory on this.  
13 I can get you the document if you need it. I think  
14 it's in, but there's also reference in a document  
15 that's -- I think it's Exhibit 13. Why don't we just  
16 pull it up and give it to you. 13.

17 MR. MOYLE: Do you have it, Schef?

18 MR. WRIGHT: What did you say? 13?

19 MR. MOYLE: 13. Yeah, here it is.

20 MR. WRIGHT: I will have it in a second.

21 MR. MOYLE: It's already been marked in a  
22 previous deposition as 13. For the purposes of the  
23 record, are you familiar with this document? I  
24 tell you what, let me -- I don't think I need you  
25 to be familiar with it.

1           The second sentence says, quote, in addition,  
2           pursuant to the PPA, Cedar Bay and FPL entered into  
3           a second lien mortgage and second lien security  
4           agreement. FPL's liens against Cedar Bay are  
5           subordinated to the liens of the loan.

6           That's the same thing we were talking about  
7           previously; is that right?

8           THE WITNESS: Yes.

9           BY MR. MOYLE:

10          Q       Okay. And following that, there is a whole  
11          series of bullet points, of termination bullet points.  
12          Do you know why -- why this document was prepared?

13          A       I don't.

14          Q       Has Cedar Bay ever been in default of any of  
15          the bullet points that are set forth herein as to a  
16          default?

17          A       (Examining document.) Not to my knowledge.

18          Q       Okay. Do you have knowledge of FPL ever  
19          corresponding with Cedar Bay and providing written  
20          notice of a default?

21          A       No.

22          Q       Let me hand you Exhibit 5. That was marked  
23          yesterday, entitled "2004 Cogentrix Power Management  
24          Business Plan Objectives."

25                 Have you seen that document before?



1 A Yes.

2 Q Who prepares this document?

3 A I think it's collectively prepared by the  
4 Cogentrix's senior management team.

5 Q And are you part of that team?

6 A Yes.

7 Q On page 3 there is a number of bullets related  
8 to Cedar Bay. The questions were asked yesterday  
9 about this. I think they may have been punted to you,  
10 so I'm going to just run through it quickly. The  
11 question pending was: There is a bullet that says,

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 [REDACTED]  
17 [REDACTED] So St. Johns River Power  
18 Park, I believe, has access to the Illinois Basin and  
19 Columbian, and their permit allows them to burn them.

20 [REDACTED]  
21 [REDACTED] the negative  
22 differential that we discussed earlier.

23 Q Okay. So put in shorthand, [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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

[REDACTED]

MR. WRIGHT: Object --

[REDACTED]

MR. WRIGHT: -- just object to the form.

Since you said "lose less money," I don't think it's established that the facility would lose money.

BY MR. MOYLE:

Q Go ahead.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q The property tax assessment, do you have information about that that is ongoing?

A Yes.

Q Tell me what you know about that, please.

A The Cedar Bay facility, from a property tax perspective, the Duval County taxes, the tangible value of the facility. And as we have been talking about, you can -- from a value perspective, you split the facility into its tangible components and

1 intangible components.

2 And as we have said, I think in FPL's filing,  
3 all the value is in the intangible component, which is  
4 the PPA, which is not taxable from a property tax  
5 perspective.

6 And so the -- for whatever reason, the  
7 tangible personal property on the tax rolls I think is  
8 on there for \$120 million. And so our appeal involved  
9 reducing the tangible value because of the argument  
10 that all of the value of the facility, from a taxing  
11 standpoint, is in the PPA, which should not be taxable  
12 by Duval County.

13 Q Did you argue that -- that the proper value  
14 for taxation purposes is zero?

15 A No, we did not.

16 Q What did you argue?

17 A We went for -- it's more of a strategic call  
18 in terms of the -- rather than going to zero, in terms  
19 of negotiating with Duval County, we sought a  
20 reduction, rather than an elimination of property  
21 taxes, knowing the importance of tax revenue to the  
22 county. So I can't recall a specific reduction we  
23 asked for, but perhaps 50 percent.

24 Q So it's currently on the books at 120; is that  
25 right?

1           A     On the property tax rolls.  As far -- as far  
2 as my memory serves, yes, the tangible personal  
3 property that's taxable.

4           Q     Right.  And did you have -- you had  
5 conversations with them about how they got to the 120  
6 number, I assume?

7           A     No, I did not.  Gary Heichel had meetings with  
8 them.  But it's a -- it's -- that number, as far as I  
9 know, has been on the tax rolls for a long time.  And  
10 so I'm not sure there is direct information about how  
11 it got to 120.

12          Q     And where does that stand as we sit here  
13 today?

14          A     It is in litigation, as far as I know, because  
15 we filed an appeal.  There was a hearing.  They denied  
16 the appeal.  And then through attorneys, we have -- we  
17 made a claim.  And it's not resolved at this point.

18          Q     And would this ongoing litigation be  
19 transferred if the PSC approved this arrangement; do  
20 you know, to FP&L?

21          A     I do not know whether they will continue to  
22 pursue it or not.

23          Q     Whether FPL would pursue it or not?

24          A     Correct.

25          Q     Right, but -- but you do have an understanding

1 if it would be transferred, it would be off your  
2 books; correct?

3 A Yeah. We would no longer have anything to do  
4 with it. It's the facility that is making the -- it's  
5 Cedar Bay Generating that is making the claim.

6 Q Okay. The next bullet, [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 What does that mean?

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 And so it's just a mechanism of managing that  
18 and making sure that we are aware of it.

19 Q Did you identify that there would be a risk  
20 that you would have to engage in debt restructuring  
21 based on the current financial situation?

22 A No.

23 Q And there was a bullet about approaching FPL  
24 about restructuring the PPA. Did that happen?

25 A As I stated earlier, I think FPL approached

1 Mr. Evans.

2 Q So that answer would be no?

3 A No. As far as I know.

4 Q What information, if any, do you have about  
5 the two budgets for 2015, the skinny budget and the  
6 other budget?

7 A I know about them.

8 Q And what is your understanding of the request  
9 from Carlyle?

10 A I'm not sure what request you're talking  
11 about.

12 Q There was a request that says, the only issue  
13 with the high level model is the request from Carlyle,  
14 as I understand it, is to have a working budget that  
15 could be used in the event of closing.

16 MR. WRIGHT: Jon, are you referring to a  
17 document that we can show the witness?

18 MR. MOYLE: I am. It's a document that's  
19 dated November 12, 2014. I think it's already in.

20 MR. WRIGHT: I was hoping that and hoping that  
21 we could identify it.

22 MR. MOYLE: I think it's Exhibit 14. Exhibit  
23 14.

24 MR. WRIGHT: Thanks. Looks like that might be  
25 it.

1 MR. MOYLE: It's Exhibit 14. Thank you.

2 THE WITNESS: What's the question?

3 BY MR. MOYLE:

4 Q So the question is, why were two budgets being  
5 prepared for 2015?

6 A The first part -- the first budget for six  
7 months was for operating as usual. The second would  
8 have been, had the sale closed in the second half of  
9 the year, what a budget might have looked like if --  
10 under FPL's ownership.

11 Q And why would there be a change?

12 A If they chose to dispatch the plant less than  
13 it was being dispatched.

14 Q Did that assume that they would be  
15 communicating that to you or -- I mean, did you all  
16 know that? It seems -- why -- why did you make that  
17 assumption?

18 A I didn't have any direct knowledge of  
19 communicating about that. But I think that's what, in  
20 terms of the people who were talking to FPL, I think  
21 that's why the budget was constructed is, what would  
22 it look like if it was dispatched -- how much cost  
23 would you have if it was dispatched less.

24 Q And after -- those costs would be borne by  
25 FP&L, correct, after the closing?

1           A     Sure.

2           Q     Yeah.  I've handed you a document that we will  
3 mark as Exhibit 21.

4                     (Exhibit No. 21 was identified for the  
5 record.)

6 BY MR. MOYLE:

7           Q     It's entitled "Cedar Bay Generating Company,  
8 Limited Partnership, Financial Statements December 31,  
9 2014, and 2013."

10                    Are you familiar with this document?

11           A     Yes.

12           Q     The first question, what -- why do you have a  
13 financial statement when it says 2014 and '13?  Are  
14 they two years' worth of financial statements, or is  
15 that something in the industry that --

16           A     No, that's a standard GAAP convention of  
17 comparative financial statements; GAAP meaning  
18 Generally Accepted Accounting Standards.

19           Q     Okay.  Page 3, I sometimes, with financial  
20 statements, like to try to go to the bottom line.  And  
21 if I were to do that with this financial statement,  
22 would -- would that -- would the bottom line be found  
23 on page 3, where it says, net income and comprehensive  
24 income?

25           A     That's where that caption is, yes.



1 Q Okay. So -- so for 2014, after everything has  
2 been addressed, the plant made [REDACTED] is that  
3 right?

4 A That's the net income and comprehensive  
5 income. It doesn't -- the part there that can be a  
6 bit misleading is what I addressed in my original  
7 presentation, which is the interest expense there,  
8 over 55 percent of it is owed to an affiliate.

9 Q In the form of debt?

10 A Yes.

11 Q Is the affiliate going to be made whole if the  
12 commission approves this transaction?

13 A No. The debt will be canceled.

14 Q Why?

15 A Because it's -- it really just represents our  
16 historical equity in the project. It was an  
17 alternative to equity.

18 Q Will -- will there be an equity payout, people  
19 that have equity, will they get money if this deal  
20 closes?

21 A I'm not sure equity --

22 Q I'm trying to understand, you know, if the 520  
23 million or 30 million is approved, and there is a  
24 closing, it seems to me logically that if I was on the  
25 Cogentrix side of the table, and I had some debt

1 instruments where money was owed, I would kind of say,  
2 hey, I would like to get paid. But you're telling me,  
3 no, that's not how it's going to happen.

4 And so, are those people just going to be  
5 told, you don't have any money coming, or you have  
6 money, but we're going to pay it as a return on  
7 equity? What's going to happen?

8 A No. This debt is owed within the group of  
9 companies that FPL is buying. It's the owners of the  
10 generating company have loaned the generating company  
11 money over time, which really represents their equity  
12 in the project. And so that's not Cogentrix or  
13 anybody else.

14 That's within a group of companies that FPL is  
15 buying. And so that will go away with the  
16 transaction, because they will own both sides of the  
17 debt and the investment in the debt.

18 Q So those entities will have a capital gain  
19 likely; is that right?

20 A Which entity?

21 Q The entities that hold the debt, the  
22 intercompany entities that hold the debt.

23 A I don't think so. I'm not a tax expert, but  
24 that is going with the transaction. I would have to  
25 look back in the PSA and see exactly what is happening

1 at closing. But it's both sides of the debt are being  
2 purchased. So it effectively goes away.

3 Q And these financial statements correctly state  
4 the financial condition of the company; correct?

5 A Yes.

6 MR. WRIGHT: Were you done with 21 for now,  
7 Jon?

8 MR. MOYLE: I am.

9 BY MR. MOYLE:

10 Q I'm handing you a document that we will mark  
11 as Exhibit 22 and ask if you can identify this  
12 document, please.

13 (Exhibit No. 22 was identified for the  
14 record.)

15 A This is a presentation that we gave to  
16 potential lenders regarding financing for the 2013  
17 refinancing.

18 BY MR. MOYLE:

19 Q You were involved in the preparation of this  
20 document?

21 A Yes.

22 Q So you're familiar with it?

23 A Generally, yes.

24 Q All right. I want to walk through some  
25 questions with you. We were talking back and forth

1 about the [REDACTED]

2 On page 3 there is a very simple statement  
3 that says, "Cedar Bay is a 250 megawatt coal fired  
4 generation facility located in Jacksonville, Florida,  
5 paren, the project, [REDACTED] owned by [REDACTED]  
6 [REDACTED] and [REDACTED] owned by [REDACTED]

7 Is that accurate?

8 A That's what's included in this, yes.

9 Q And you have a provision that talks about the  
10 proceeds of the term loan, what they're going to be  
11 used to do?

12 A Yes.

13 Q Senior secured indebtedness at Cedar Bay, what  
14 was that? Was that the paper that was on it that you  
15 had to get kind of --

16 A The existing debt, yes.

17 Q Okay. And then cash collateralized security  
18 obligations, what's that?

19 A Cash collateralize, any debt service reserve,  
20 anything like that that we needed security for.

21 Q Did you need to do that?

22 A Yeah. That's standard. You can either cash  
23 collateralize or use a letter of credit.

24 Q And how had you done it prior to that? Was  
25 there cash -- had it been cash collateralized?

1           A     Yes.

2           Q     So couldn't you just keep that cash there, and  
3 you wouldn't need to take the new money and take out  
4 the old money?

5           A     No. The previous lenders were different. So  
6 all that had to be cleared out and a new collateral  
7 agent set up, new accounts, et cetera.

8           Q     Pay previously deferred operator and manager  
9 fees; what's that?

10          A     The project had -- the operator and manager  
11 fees and the MSA and O&M agreements that we previously  
12 discussed were subordinated to the debt service in the  
13 previous loan. And as I said, the cash on the  
14 previous loan was all swept to the lenders. So there  
15 wasn't cash available to pay the fees on those  
16 contracts.

17                   So when we refinance, that cash freed up, and  
18 we were able to pay the accrued fees.

19          Q     Were there -- were there other obligations  
20 that you deferred besides -- besides the operator and  
21 manager fees?

22          A     When you say "deferred," I'm not sure what you  
23 mean.

24          Q     You didn't have enough -- just to respond to  
25 your answer, you didn't have enough cash to make the

1 payment presently; you said, we will defer it and get  
2 you later.

3 A They weren't deferred in that they were  
4 accrued and owed. They weren't paid, because of where  
5 they came, and the cash waterfall for the project,  
6 which is the set of accounts that the project has to  
7 pay out of, all of the cash, before it reached the  
8 point that it could be paid to the holders of the MSA  
9 and O&M contracts, went to the banks first.

10 They were still -- they were not deferred;  
11 they were still accrued and owed.

12 Q What's the present waterfall of cash?

13 A It -- the waterfall is just -- it's just a  
14 term for a system of accounts that the collateral  
15 agent holds.

16 Q And here, the last one, repay a portion of the  
17 subordinated debt, accrued interest held by certain  
18 sponsor affiliates with Cedar Bay. Who is that?

19 A That's the same debt that we talked about.  
20 That's essentially quasi equity which is to make the  
21 accrued interest payment to the upstream entity that  
22 is essentially equity.

23 Q So I have seen the term "sponsors" used in  
24 other documents to refer to either [REDACTED] or [REDACTED]  
25 Is that consistent with your recollection of the use

1 of the term "sponsor" in these documents?

2 A I think we named the sponsors in here.

3 So a sponsor is really just something --  
4 somebody who the lenders can look to as, you know, the  
5 primary contact with respect to the offer, who is  
6 going to sign their engagement letter, et cetera.

7 Q So who are the sponsors in this offer?

8 A On this particular overview, I'm listed, and  
9 [REDACTED] at [REDACTED] is listed.

10 Q Okay. And on page 8, I appreciate the  
11 individuals, but that lists the overview of the  
12 sponsors being [REDACTED] and [REDACTED];  
13 right?

14 A Yes.

15 Q Okay. So back to that bullet point, repay a  
16 portion of the subordinated debt accrued interest held  
17 by certain sponsor affiliates of Cedar Bay.

18 Did debt held by [REDACTED] or [REDACTED] get paid  
19 off with the proceeds from the 250?

20 A No. What was paid off was accrued interest on  
21 the intercompany debt between the Cedar Bay affiliated  
22 entities within the -- I don't have an org chart in  
23 front of me -- but within the group.

24 Q Okay. So it wiped out the accrued interest,  
25 didn't touch the principal?





1 [REDACTED] that are investment funds sponsored by The  
2 Carlyle Group; is that right?

3 A I think so. But this is -- as identified in  
4 01, this is a simplified organizational structure. So  
5 I would want to look at our real active organizational  
6 structure to say that. It's a lot of entities in it,  
7 so I wouldn't want to speculate. But [REDACTED] is  
8 no longer in the picture.

9 Q Correct. Okay. It's a fair representation of  
10 the structure in a general sense?

11 A Generally.

12 Q Somebody loaned you 250 on it; right?

13 A Right. It says we have ref'd to this  
14 document, yes.

15 Q I'm having a little difficulty understanding  
16 the intercompany debt. I've asked you a lot of  
17 questions about it. Really I'm not trying to get  
18 information, just understand it better.

19 And on page 5 there is a footnote that  
20 references it. This is the sources and uses slide.

21 A Uh-huh.

22 Q And it says that the intercompany debt will be  
23 pledged as part of the collateral package.

24 What does that mean? Does that mean you will  
25 cancel the debt if you need to? Explain that

1 statement to me.

2 A No. Whenever you're doing a loan that's a  
3 project-based financing, where it's nonrecourse and  
4 it's recourse only to the project, it's typical to  
5 pledge your equity in that project to the lenders for  
6 their being in default, and they have rights. In this  
7 case there isn't the equity; it's the subordinated  
8 debt.

9 So it's just simply pledge the subordinated  
10 debt to the lenders that they can step in and receive  
11 any payments to the subordinated debt holders that are  
12 due.

13 Q Okay. The next page, page 6, and you say it's  
14 a subordinated loan facility. Is that the same  
15 subordinated debt we have been talking about?

16 A Yes, I believe so.

17 Q Okay. So what does that show you with respect  
18 to -- read that line out and tell me what that line  
19 means for subordinated loan facility -- faculty, I'm  
20 sorry.

21 A Facility?

22 Q Facility?

23 A That's just the amount of principal and  
24 interest related to the subordinated loan that were on  
25 the books as of March 31st, 2013.

1 Q Page 12, what is this slide depicting?

2 A It's just showing the percentage that the debt  
3 gets paid down based on contracted gross margin,  
4 meaning the -- how much of the -- there is -- the debt  
5 paydown is based on a predictable cash flow resource,  
6 the PPA with FPL, enhances the credit quality.

7 Q So why do you start at [REDACTED]

8 A I guess it's -- I would have to see what they  
9 have defined in terms of gross margin, whether it's --  
10 I would have to go back and look at the numbers. But  
11 that's what it's saying is gross margin, which would  
12 typically be revenue less fuel.

13 MR. BUTLER: Jon, I'm sorry, what are you  
14 saying is starting at [REDACTED]

15 MR. MOYLE: See it at the left hand of page 12  
16 of Exhibit --

17 MR. BUTLER: Yeah, nothing starting at [REDACTED]  
18 though. There is a little diamond that is  
19 expressing percentages shown on the right-hand  
20 side. In the bar it looks like it's 114 is my  
21 question.

22 MR. MOYLE: I looked at the [REDACTED] to the left,  
23 and the diamond appeared close to the [REDACTED]

24 MR. BUTLER: There is a scale on the right  
25 too, if you look at the line, it's percentage of

1 debt outstanding. I'm pretty sure that line there  
2 is [REDACTED] You've got two different methods  
3 expressed on this one axis.

4 THE WITNESS: Well, it's just -- it's just  
5 saying what percentage of the debt is being paid  
6 down by contracted cash flows.

7 MR. WRIGHT: Off the record.

8 A Contracted --

9 MR. WRIGHT: Can we go off for just a second.  
10 I'm just going to try to help you out.

11 (Discussion off the record.)

12 BY MR. MOYLE:

13 Q We had a discussion off the record about the  
14 slide page 12. I was referencing [REDACTED] There is a bar  
15 graph that shows [REDACTED] just so the record is clear  
16 with respect to that.

17 Again, the gross margin profile shows what?

18 A Shows -- I'm not sure what your question is.

19 Q What's the gross margin profile?

20 A It's the amount of gross margin generated by  
21 the plant.

22 Q When it pays for all its expenses, and then  
23 gets the PPA money, that's what that shows?

24 A It gets the PPA revenue, and this is the  
25 revenue less fuel cost, O&M.

1 Q So let me back up --

2 A It's not specifically defined in here.

3 Q Okay.

4 A It could be -- you would have to look at the  
5 financial statements to which it was referring to get  
6 back to the number. There isn't a standard definition  
7 of gross margin is what I'm trying to say.

8 Q Okay. I'm assuming that this PPA, that --  
9 that the value of the PPA is -- declines as time goes  
10 on; is that right, because there is less capacity  
11 payments, and every year that rolls by so the value  
12 would decline?

13 A Yeah, cash flows roll off.

14 Q Page 14. The MPV of contracted cash flows,  
15 what is that?

16 A That's just showing the different discount  
17 rates, what the value of the cash flows from FPL would  
18 be if you chose these different discount rates.

19 Q And so if we were doing this calculation  
20 today -- this was done on March 20th, 2013; that was  
21 two years before. If you did this same calculation  
22 today, the numbers would be lower; right?

23 A Not necessarily. It depends on the discount  
24 rate you use, which is a function of operating risk.  
25 This is showing the lenders what their collateral

1 value is at the time that they're making the loan and  
2 showing some scenarios where it ranges from [REDACTED]  
3 [REDACTED] to [REDACTED]

4 Q Is this valuing the PPA, the cash flows of the  
5 PPA?

6 A Yes.

7 Q And if you -- when you say that you use  
8 different discount rates, that means the [REDACTED]

9 [REDACTED]  
10 A Yes.

11 Q Okay. So the issue is the [REDACTED]  
12 [REDACTED] and you ran the numbers today,  
13 the PB of FCF would be lower; wouldn't they?

14 MR. WRIGHT: I'm going to object that that is  
15 a potentially ambiguous.

16 A That's not an accurate statement, because  
17 it's -- these numbers are a function of the model that  
18 was used in this financing, which includes a certain  
19 dispatch rate. It includes certain assumptions of  
20 St. Johns River Power Park. It includes certain  
21 assumptions about our cost of coal.

22 So to the extent that any of those factors  
23 have changed, then applying these same discount rates  
24 will not yield the same numbers. This was based on a  
25 model that was presented to lenders at the time. If

1 you applied these discount rates, this is what the  
2 value of the PPA, their collateral would be.

3 BY MR. MOYLE:

4 Q Okay. That's helpful. So the model may have  
5 inputs that have changed in effect. It's not as  
6 simple as just running math at [REDACTED],  
7 [REDACTED]

8 A That's correct.

9 Q -- on a cash stream?

10 A That's correct.

11 Q Because there are a bunch of other independent  
12 variables?

13 A Yes.

14 Q What's the model that you used to run this?

15 A It's just an Excel-based set of spreadsheets  
16 that has all the different variables rolled into  
17 essentially a long-term cash flow.

18 Q Is it -- do you have a name for it?

19 A Just a base case model. It may be in here  
20 somewhere. It may be -- the financial projections may  
21 be in here. I think it was provided in the materials.

22 Q All right. So would it be fair to say at this  
23 point in time this is what the cash flows represented,  
24 depending on the discount rate used?

25 A Yeah. This, again, it was based on inputs

1 from a third party regarding dispatch, inputs from a  
2 third party regarding coal costs, St. Johns River  
3 Power Park, et cetera.

4 Q Okay. Page 19. That capacity factor I've  
5 highlighted in there, it falls off precipitously from  
6 '11 to '12. Why is that?

7 A The plant ran less; it was dispatched less by  
8 FP&L.

9 Q And that's a good thing economically?

10 A Yes.

11 Q Page 21, your modeling assumptions. We were  
12 just talking about the modeler. Are those the  
13 assumptions that went into it?

14 A Some of them.

15 Q So page 23, there is a line about  
16 three-quarters of the way down that says, cash flow  
17 after debt service. I guess these are projected  
18 numbers; is that right?

19 A Yeah. I think -- it doesn't -- they're  
20 projections. I think it's probably the base case.  
21 I'm not sure.

22 Q How would somebody who was looking at this, if  
23 I were a financial person, how would I know base case  
24 versus other cases?

25 A It would need to be labeled.



1 Q It's not; right?

2 A It is not labeled.

3 Q Why do you think it's the base case?

4 A I can't tell specifically from this, but I  
5 wouldn't want to speculate. I was trying to tie it to  
6 page 25, but I can't.

7 Q So I -- I -- I think in your presentation  
8 yesterday, my recollection is you said there was 179  
9 million in senior debt on the property. Is that -- is  
10 that your recollection?

11 A Yes.

12 Q Okay. So on this sheet that I'm looking at, I  
13 was looking, there is a line, cash flow after debt  
14 service. I didn't see the 179 of debt being serviced.

15 A The 179 is just what's outstanding now. The  
16 250 has been paid down to 179 as of, I think I got  
17 that as the end of April. Cash flow after debt  
18 service is just simply a -- a caption for the amount  
19 of cash after we paid debt that's left over for  
20 payment of the subordinated debt.

21 Q Is cash flow after debt service the same thing  
22 as free cash flow?

23 A I think generally in this case, yeah.

24 Q And so if -- when people like you are looking  
25 at these numbers, and you were going to say, how does

1 this look with respect to my return on an investment  
2 and this asset, and if in 2013 your free cash flow is  
3 [REDACTED] in '14 it's projected to be [REDACTED] '15 it's [REDACTED]  
4 '16 is [REDACTED]

5 People like Goldman Sachs and Carlyle, would  
6 they say that's good or not so good or...

7 A You need to look at more facts than that. You  
8 can't say whether it's good or bad. We chose to  
9 borrow \$250 million. We didn't -- if we had borrowed  
10 less than that and not taken a dividend out of that of  
11 [REDACTED] these cash flows would have been a lot  
12 higher.

13 So that was simply a choice that we made based  
14 on the debt markets at the time. There was active  
15 debt markets with good pricing, and so in terms of  
16 calculating return, and that [REDACTED] would be  
17 factored into that. So obviously we entered into this  
18 loan because it was a good return on it.

19 So the fact that these cash flows are what  
20 they are now is solely a function of how much we  
21 decided to borrow at the time. If we decided to  
22 borrow less at the time, these would be higher if the  
23 pricing were different in the market at the time.

24 Q At the time you had a need to borrow the 250;  
25 is that right? Was that including the 120 dividend

1 payment?

2 A We did not have a need to borrow 250. The  
3 amount outstanding was less than [REDACTED]

4 Q Okay.

5 A We chose to borrow 250 just because of the  
6 market at the time would support that.

7 MR. MOYLE: All right. That's all I have.  
8 Thank you.

9 THE WITNESS: Uh-huh.

10 MR. MOYLE: Do you have that exhibit?

11 MR. WRIGHT: Jon, when you said that's all I  
12 have, does that mean you're done questioning  
13 Mr. Neff [sic]?

14 MR. MOYLE: Yeah, I want to make sure this  
15 exhibit is marked and in.

16 (Short recess.)

17 CROSS EXAMINATION

18 BY MS. BARRERA:

19 Q Mr. Rudolph, would you take a look at Exhibit  
20 21, the Cedar Bay, Limited, financial statements?

21 MR. WRIGHT: You should have that.

22 THE WITNESS: I think you took them back from  
23 me.

24 MR. WRIGHT: Here it is. You took it back  
25 from me.

1 THE WITNESS: Yes.

2 BY MS. BARRERA:

3 Q Yes. And would you turn to page 2 and scroll  
4 down to where it says property and equipment, less of  
5 accumulated depreciation and the amount on -- under  
6 that for 2014 is [REDACTED]

7 A Yes.

8 Q Okay. What does this amount represent?

9 A That's the historical cost of the facility  
10 less accumulated depreciation and any capital  
11 expenditures since then.

12 Q Okay. Now is this the net book value of the  
13 plant as of December 31st, 2014?

14 A Of the property plant. I'm not sure what you  
15 mean by "plant" specifically. But it's the net book  
16 value of the property plant and equipment, yes.

17 MS. BARRERA: All right. I have no more  
18 questions.

19 MR. BUTLER: I hope to be as admirably  
20 efficient. I may have a couple more.

21 CROSS EXAMINATION

22 BY MR. BUTLER:

23 Q Let me ask you to get your copy of Exhibit 3  
24 and then also your copy of the Duff & Phelps valuation  
25 report, Exhibit 18.

1 A Okay.

2 Q And on the Duff & Phelps exhibit, most, if not  
3 all, of my questions are going to be in the -- on the  
4 page that ends in 948, the Exhibit D.2 you were asked  
5 about earlier.

6 A Yes.

7 Q First of all, you have -- this shows, I think,  
8 a discount rate being used of [REDACTED] is that  
9 right, down near the bottom of the column before the  
10 2012 entries?

11 A Yes.

12 Q Okay. And would you agree that if a lower  
13 discount rate were used, that it would result in a  
14 higher calculated fair value?

15 A Yes.

16 Q Okay. Let me ask you to turn to, in your  
17 Exhibit 3, to page 15. Do you have that?

18 A Yes. Sorry.

19 Q And the table there is showing the EBITDA -- I  
20 have trouble saying that -- for various years  
21 historically, including 2012 through 2014; is that  
22 right?

23 A Yes.

24 Q Okay. Now, I would like to look at what is  
25 shown as the EBITDA on -- excuse me -- that were

1 projected here for 2012, 2013, and 2014 on the  
2 Exhibit D.2 of the Duff & Phelps valuation.

3 A Yes.

4 Q Okay. And your actual for 2012 was 82.7  
5 million; correct?

6 A Yes.

7 Q Okay. And that compares to what on the  
8 Exhibit D.2?

9 A I think it's [REDACTED]

10 Q So something like [REDACTED] on the --  
11 excuse me -- excuse me -- projections in the Duff &  
12 Phelps report compared to your actuals --

13 A Yes.

14 Q -- is that correct?

15 A Uh-huh.

16 Q Okay. And then for 2013 you show actuals of  
17 50.6 million; correct?

18 A Correct.

19 Q And that compares to a projection for 2013 in  
20 the Duff & Phelps report of, what do you see -- what  
21 do I see there?

22 A I think it's [REDACTED]

23 Q [REDACTED] So something like [REDACTED]  
24 in the -- excuse me -- projections than the actuals;  
25 correct?

1 A Yes.

2 Q And then finally, for 2014 you have 53.8  
3 million actual, and it looks like about [REDACTED]  
4 is that right?

5 A Yes.

6 Q Something like roughly [REDACTED] or [REDACTED] --

7 A Yes.

8 Q -- less?

9 Okay. Would lower EBITDA figures in the  
10 projection, if that carried through as a trend  
11 throughout the analysis, would that tend to result in  
12 a lower fair value than higher figures for that EBITDA  
13 in -- same projection?

14 MR. MOYLE: I'm going to object to the form.

15 BY MR. BUTLER:

16 Q If the EBITDA in Exhibit D.2 for each of these  
17 years were higher than it shows here, would that  
18 result in a higher fair value calculated for the PPA?

19 A Yes.

20 Q Okay. Can I ask you to turn to page 6, page 6  
21 in Exhibit 3.

22 A Yes.

23 Q Okay. And this shows -- excuse me -- one of  
24 the things it shows in the table on page 6 are the --

25 MR. WRIGHT: Excuse me. Where are you?

1 MR. BUTLER: I'm sorry. Page 6 of Exhibit 3.  
2 I'm still looking to Exhibit D.2 in the Duff &  
3 Phelps.

4 MR. WRIGHT: Could you show me what you're  
5 looking at?

6 MR. BUTLER: The section entitled "reliable  
7 operating performance."

8 (Discussion off the record.)

9 BY MR. BUTLER:

10 Q So, again, focussing on the 2012 through 2014  
11 actuals versus Duff & Phelps 2012 through 2014  
12 projections, this shows an actual capacity factor of  
13 31 percent for 2012; is that right --

14 A Correct.


15 Q -- on Exhibit 3?

16 A Yes.

17 Q And then the figure, it looks like, as  
18 capacity factor for 2012 projected with something like

19 

20 A Yes.

21 Q Okay. And then for 2013, there is a -- an  
22 actual capacity factor of 36.1 percent. And that  
23 compares to projections. Is that 

24 A Yes. Yes.

25 Q Okay. And finally, 2014 actual of 40.2



1 percent, and that compares to -- I have a hard time  
2 reading that. I guess it's --

3 A [REDACTED]

4 Q -- or something like that?

5 A Yes.

6 Q All right. Excuse me. So in each of those  
7 years where one can compare actuals to what was  
8 projected by Duff & Phelps, we were seeing a -- excuse  
9 me -- a lower actual capacity factor than what had  
10 been projected; is that right?

11 A Yes.

12 Q Okay. The lower -- the lower projected -- I'm  
13 sorry, the lower --

14 MR. WRIGHT: Excuse me. We're getting some  
15 fairly loud vibrations that the microphone is  
16 picking up that's causing some difficulty hearing  
17 down at this end.

18 MR. BUTLER: Sorry about that.

19 MR. WRIGHT: That's okay.

20 BY MR. BUTLER:

21 Q As you had discussed earlier on -- because of  
22 the phenomenon of the relationship between energy  
23 payments and cost of generation for Cedar Bay  
24 facility, lower capacity factors are actually good in  
25 terms of earnings for the facility; is that correct?

1 A Yes.

2 MR. MOYLE: Object to the form.

3 THE WITNESS: Sorry.

4 BY MR. BUTLER:

5 Q Would you please comment on whether or not  
6 lower capacity factors are likely to result in higher  
7 or lower income for the Cedar Bay facility in a  
8 particular year?

9 A Lower capacity factors are likely to result in  
10 higher income for the facility in a particular year.

11 Q If you look out at the capacity factors that  
12 were reflected in the Duff & Phelps valuation for the  
13 years after 2014, the figures, it looks like they are  
14 all ranking from a low of mid [REDACTED] up into the

15 [REDACTED]

16 Is that consistent with your current  
17 expectation of capacity factors for the Cedar Bay  
18 facility in the years from 2015 through 2024?

19 A No.

20 Q Do you expect -- your current expectation is  
21 that the capacity factors would be lower or higher  
22 than those values projected by Duff & Phelps?

23 MR. MOYLE: Object to the form.

24 BY MR. BUTLER:

25 Q You can answer the question.

1

2

3

4

Q That the --

5

6

7

8

MR. BUTLER: That's all I have. Thank you very much.

9

10

MR. WRIGHT: I am going to have some cross, slash, redirect, but I need to confer with my general counsel for a minute.

11

12

13

MR. MOYLE: Do you need to go outside to do that?

14

15

MR. WRIGHT: That's probably a better idea. Thank you, Jon.

16

17

(Short break.)

18

MR. WRIGHT: Okay. Back on the record.

19

CROSS EXAMINATION

20

BY MR. WRIGHT:

21

Q Mr. Rudolph, I just have a few questions for you to clarify some things that came up during your examination by Mr. Truitt and Mr. Moyle.

22

23

24

There has been some discussion about -- and references to The Carlyle Group and Carlyle funds.

25

1 What -- what entities own the membership interests  
2 that FPL would be acquiring?

3 A As it relates to the Carlyle?

4 Q As it relates to the Carlyle entities.

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

6 Q Does Carlyle Group -- does the, capital T-H-E,  
7 Carlyle Group, own any of the membership interests  
8 that are being acquired in this transaction?

9 MR. MOYLE: Object to the form.

10 A They own directly the membership interests in  
11 CBAS Power.

12 BY MR. WRIGHT:

13 Q Who does?

14 A I would have to look at an org chart to see  
15 exactly, but it ultimately rolls up to Cogentrix Power  
16 and Cogentrix Power Holdings.

17 Q In your mind is there a difference between The  
18 Carlyle Group and Carlyle managed funds?

19 MR. MOYLE: Object to the form.

20 A Yes. I believe there is a difference.

21 BY MR. WRIGHT:

22 Q As between those, who -- what entity or  
23 entities would own the entities that own the  
24 membership interests that are the subject of the  
25 transaction here?

1 MR. MOYLE: Object to the form. It's  
2 ambiguous. We've already -- I spent a lot of time  
3 talking about member interests. They are A and B.  
4 It's ambiguous and compound.

5 BY MR. WRIGHT:

6 Q Subject to Mr. Moyle's objection, did you  
7 understand the question?

8 A Can you repeat the question?

9 Q As between The Carlyle Group and Carlyle  
10 Managed Funds, which owns the entities that own the  
11 membership interests that are the subject of this  
12 transaction?

13 MR. MOYLE: Same objection.

14 A Carlyle Managed Funds.

15 BY MR. WRIGHT:

16 Q Thank you. In 2012 -- you were asked a number  
17 of questions about the steam agreement between Cedar  
18 Bay and RockTenn; do you recall those questions?

19 A I recall being asked questions about it.

20 Q Fair enough. My first question is this: As  
21 of 2012, had the steam agreement been extended?

22 A I don't believe so.

23 Q As of 2012, say as of December 2012, had the  
24 refinancing that you discussed with at least  
25 Mr. Moyle, and I think maybe Mr. Truitt as well, had

1 the refinancing been accomplished?

2 A No.

3 Q What effect, if any, did the extension of the  
4 steam agreement have on the fair value of the Cedar  
5 Bay PPA?

6 A I don't know that there is a direct link.

7 Q If you have an opinion, would it have tended  
8 to increase the fair value of the Cedar Bay PPA?

9 MR. MOYLE: Object to the form.

10 A It depends on in what context, I suppose.

11 BY MR. WRIGHT:

12 Q If you know, was there uncertainty surrounding  
13 the ability of Cedar Bay to extend the steam agreement  
14 as of December 2012?

15 A Yes.

16 Q If you have an opinion, would the refinancing  
17 that Cedar Bay accomplished in 2013 have tended to  
18 increase, decrease, or have no effect on the fair  
19 value of the Cedar Bay PPA?

20 MR. MOYLE: Objection; it's been asked and  
21 answered. It's the same question.

22 BY MR. WRIGHT:

23 Q Subject to Mr. Moyle's objection, you can  
24 answer the question. The fight over its admissibility  
25 would come later, if any.

1 A There isn't a direct link, I don't think.

2 Q Do you have an opinion as to whether the  
3 transaction between the FPL, as the purchaser, and  
4 CBAS Power Holdings as the seller of the interests  
5 involved in this transaction, is an arm's length  
6 transaction?

7 A Yes.

8 Q And your opinion is what?

9 A It is an arm's length transaction.

10 MR. WRIGHT: That's it. Thank you.

11 RE CROSS EXAMINATION

12 BY MR. MOYLE:

13 Q I have two areas of redirect. With respect to  
14 your answer that you believe it's an arm's length  
15 transaction, why do you say that?

16 A Because as far as I could tell, it was two  
17 willing parties coming to the table to negotiate a  
18 transaction.

19 Q Okay. But you weren't -- you weren't at the  
20 table; right?

21 A Correct.

22 Q So whatever you're relying on for your opinion  
23 was told to you as hearsay?

24 A I don't know of any reason why it's not. I  
25 can put it that way.

1           Q     Right.  But I'm just asking -- my question  
2 relates to the basis for your opinion.  And I think  
3 it's based on statements other people made to you;  
4 correct?

5           A     Yes.

6           Q     And are you aware, does The Carlyle Group or  
7 any other entities affiliated with it do other  
8 business with FPL or any other entities affiliated  
9 with FPL, including NextEra Energy or any of its  
10 companies?

11           MR. WRIGHT:  I'm going to object on the basis  
12 that it's not related to anything I asked him and  
13 also on the basis that it's not relevant.

14           MR. BUTLER:  I would join that objection.

15 BY MR. MOYLE:

16           Q     You can go ahead and answer.

17           A     I don't know.

18           Q     Who would?

19           A     I don't know.

20           Q     The Carlyle company, they -- they are in  
21 finance; right?  Isn't that -- that's part of what  
22 they do?

23           MR. WRIGHT:  Objection.  Well, beyond the  
24 scope of anything I asked him and irrelevant to  
25 this case.



1 BY MR. MOYLE:

2 Q You can go ahead --

3 MR. BUTLER: I join the objection.

4 BY MR. MOYLE:

5 Q You can go ahead and answer.

6 A It's fund managers as far as I know. It's --  
7 that's what I know of The Carlyle Group to be.

8 Q So fund managers, they're buying and trading  
9 different investments and equities and debt, things  
10 like that?

11 A I don't --

12 MR. WRIGHT: Same continuing objection, beyond  
13 the scope and irrelevant.

14 A I've never been in that business, so I don't  
15 know. I only know --

16 BY MR. MOYLE:

17 Q Sure.

18 A -- what they do with respect to our business.

19 Q And then Mr. Butler asked you some questions  
20 about -- asked you to compare these two documents  
21 based on a capacity factor. I think -- I think you  
22 said, well, if there is a lower capacity factor  
23 compared to a higher capacity factor, that means that  
24 the purchase power agreement is worth more; is that  
25 right, that the revenue streams associated with the

1 purchase power agreement would be worth more, and,  
2 consequently, the asset would be worth more?

3 A I thought he asked about the profitability of  
4 the plant.

5 Q Okay. You're probably right.

6 Would it affect the value? The capacity  
7 factor, would that affect the value?

8 MR. WRIGHT: Just objection to the form. If  
9 you could clarify what you mean by "value" I'll  
10 probably withdraw the objection.

11 MR. MOYLE: Sure.

12 MR. WRIGHT: The value of?

13 MR. MOYLE: The value of the plant.

14 A A lower capacity factor would make the plant  
15 more profitable.

16 BY MR. MOYLE:

17 Q Okay. So it would make more money. Then the  
18 follow-up is, would it make it more valuable kind of  
19 in a fair market value context?

20 A I believe so, yes.

21 Q Why?

22 A A willing buyer would reap the benefit of more  
23 profit.

24 Q And do you have -- do you understand FPL to,  
25 you know, if gas went to \$15, do you have an

1 understanding, would that potentially alter FPL's  
2 dispatch decisions?

3 A I don't know.

4 Q Do you think having a coal plant is a -- not a  
5 bad hedge on fuel diversity?

6 MR. BUTLER: I object to that. It's way, way,  
7 way beyond my examination, not proper redirect by  
8 you.

9 BY MR. MOYLE:

10 Q You can go ahead and answer.

11 A I don't know.

12 Q I will represent to you there was something in  
13 these slides. If it says in the slides it's a good  
14 fuel diversity play, you wouldn't object to that or  
15 disagree with it; would you?

16 MR. WRIGHT: I'm going to object to the  
17 question. I think it's beyond the scope of your  
18 direct examinations, let alone our cross. But you  
19 can answer the question if you have an answer,  
20 Mr. Rudolph.

21 A It depends on the balance of the portfolio and  
22 what it's hedging.

23 MR. MOYLE: Thanks. That's all I have.

24 MR. WRIGHT: We don't have any more.

25 MR. MOYLE: Thanks for your time.

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

(The deposition was concluded at 5:33 p.m.)

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

**CERTIFICATE OF OATH**

STATE OF FLORIDA                    )  
COUNTY OF LEON                    )

I, the undersigned authority, certify that said designated witness personally appeared before me and was duly sworn.

WITNESS my hand and official seal this \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
NOTARY PUBLIC  
850.878.2221

**CERTIFICATE OF REPORTER**

STATE OF FLORIDA       )  
COUNTY OF LEON        )

I, SARAH B. GILROY, Registered Professional Reporter,  
and Notary Public, do hereby certify that the foregoing  
proceedings were taken before me at the time and place  
therein designated; that a review of the transcript was  
requested, and that the foregoing pages numbered 1  
through 136 are a true and correct record of the  
aforesaid proceedings.

I further certify that I am not a relative, employee,  
attorney or counsel of any 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 \_\_\_\_\_ day of May, 2015.

/s/ Sarah B. Gilroy  
SARAH B. GILROY  
sbrinkhoff@comcast.net  
850.878.2221



ACCURATE STENOGRAPHY REPORTERS  
2894-A Remington Green Lane  
Tallahassee, Florida 32308  
850-878-2221

May 29, 2015

Stephen Mark Rudolph  
c/o SCHEF WRIGHT, ESQUIRE  
schef@gbwlegal.com

Re: May 15, 2015 deposition of Stephen Mark Rudolph,  
Docket No. 150075-EI

Dear Mr. Rudolph:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for your review and signature at your attorney's office, or if you wish, you may sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under applicable rules; however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party, and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely yours,

SARAH B. GILROY, Court Reporter

cc: All ordering parties

Waiver:

I, \_\_\_\_\_, hereby waive the reading and signing of my deposition transcript.

\_\_\_\_\_  
Deponent signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
ACCURATE STENOGRAPHY REPORTERS, INC. \_\_\_\_\_